The Woman-State Conflict: A Deconstruction of Fetal Rights Discourse and its Damaging Effect on Women’s Reproductive Rights

by

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ABSTRACT OF THE DISSERTATION

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Reproductive rights have been historically steeped in “moral” discourse. The “morality” involves anti-choice policy makers and interest groups taking a protectionist standpoint for the fetus, or “unborn child” by purporting that it is a living person. However noble a cause this may seem, the passing of restrictive reproductive rights policy under the “moral” guise has devastating effects on women. These effects are telling of an underlying cause of the anti-choice movement – one that involves removing women from reproductive responsibilities and processes, thus chipping away at individual liberties, citizenship and bodily autonomy. This paper asserts that the fetus is misappropriated by policy makers and ideological anti-choice groups as a tactical pawn to perpetuate control over women’s reproductive choices. This paper focuses on the seven U.S. states with the most restrictive reproductive rights policies—Alabama, Colorado, Louisiana, Nebraska, North Dakota, Oklahoma, and South Dakota— using an analysis of the language of their policies and pending legislation. Findings demonstrate that anti-choice groups and policy makers forward a normative social construction of women in discourse and images and attempt to make restrictive legislation more acceptable to the polity. Furthermore, findings show that the anti-choice narrative of fetal personhood is a pretense for enacting state-mandated control over women’s
reproductive choices. This work supports a growing field of research on reproductive rights policy, as well as provides an analytical approach to how theory underlies policy.
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INTRODUCTION

As state legislatures actively pass restrictive reproductive rights policy into law, women find themselves with a steadily decreasing control over their own reproductive choices. This thesis sets out to examine the potentially damaging effects of these policies on women. In order to accomplish this daunting task, however, it is necessary to understand how these restrictive measures are passed. This requires a detailed analysis of the rhetoric of the anti-choice movement, its activists, and its sympathetic or actively involved policy-maker members. Though there is a semblance of reproductive choice in the U.S., it is shrouded in shame, misunderstanding, and in the religiously motivated fury of the anti-choice narrative. Clearly when it comes to abortion rights, the anti-choice framing of abortion is the loudest and most recognizable.

What makes the anti-choice narrative successful? Research conducted for this thesis reveals what amounts to a four-step rhetorical strategy by anti-choice advocates and policy-makers that enables them to pass restrictive policy regardless of the violations of Constitutionality, the real life implications for women, and the pro-choice attitudes of their constituents and the U.S. polity in general. Using a deconstructive analysis, this thesis makes evident that the anti-choice strategy for making reproductive restrictions more socio-politically acceptable is as follows:

- Constructs narratives that are beyond simply framing an issue, rather go as far as constructing realities and knowledges. These narratives reach as far as how women are perceived socio-culturally as well as politically, how the science of reproduction is understood, and the personhood of fetuses. It also, and most
importantly, situates the identity of fetuses as people, an idea which is used to separate the fetus from women, constructing the maternal-fetal conflict.

• Uses the power of discourse and images to normalize the narratives. Repeated language in the form of rhetoric, combined with the psychologically stringent effects of images, enable the narratives above to be adopted into the socio-political psyche of the general polity. Images and language aid in bringing narratives into the public wherein it is culturally accepted that the fetus is a person and a woman is a third-party in her own pregnancy.

• Introduces the most restrictive bills possible in an effort to get any of them passed into law, regardless of the Constitutionality or lack thereof. Additionally, the effects of policy diffusion will unify narratives and political agendas throughout neighboring states.

• Uses the law to assert the paternal state for the protection of fetal rights. Though abortion is legally protected under case law as well as the Constitution, language within case law permits a limited amount of state intervention into reproductive matters. However, anti-choice policy-makers and advocates challenge precedent-setting cases through highly restrictive legislation mentioned above.

Though this may seem like a cynical analysis of the anti-choice advocates and policy-makers in the U.S., the reality of their agenda could not be more evident. One needs only to deconstruct the language of the state materials related to reproductive rights issues to notice the clear anti-choice agenda, damaging narratives, and “moral” stance of the paternal state. Therefore, stated for the purposes of this thesis, that is exactly what has been done. The reproductive rights policy of seven states – Alabama, Colorado,
Louisiana, Nebraska, North Dakota, Oklahoma and South Dakota – are analyzed in this thesis, and deconstructed for language and images that support the anti-choice strategy outlined above. This thesis asserts that within the anti-choice strategy of constructing narratives, the fetus is used as a tactical pawn to enact restrictive reproductive rights policy. Using language and images to set out the narrative of fetal personhood, anti-choice proponents seek to dominate the reproductive rights discourse, and pass restrictive legislation that does nothing more but use state powers to control women’s reproductive decision-making.

In this thesis, the underlying narratives, asserted by anti-choice advocates and policy-makers, are brought to light through deconstructive policy analysis and content analysis. Once these narratives are drawn out, they are viewed through a postmodernist lens to be examined for any damaging effects they may have on women. The effects, of course, are important in understanding women’s equality, freedom, and their very identity as U.S. citizens. Whether women are given equal protection under the law, autonomy in their decisions equal to that of their fellow male citizens, and how women are defined as citizens, all are contingent upon reproductive rights. The implications of the findings of this thesis are vast and salient. At a time when reproductive rights are undergoing rapid change – change that has the potential of altering the standing of the rights of every reproductively capable woman in this country as well as future generations of women – this study is of the utmost urgency. The findings of this thesis additionally highlight the relationship between anti-choice activist organizations, some very radical, and policy-makers. Language used by the two is compared for similar narratives or more direct
substantiation between anti-choice organizations and the state. This thesis lends further credibility and support to an already credible, large and ever-growing field of research.

In an effort to be comprehensive and efficient, this thesis provides a background of the history of reproductive rights in the U.S. Chapter 1 contains a historical perspective of abortion rights, including discourse and practice. Obtaining background knowledge of the historical framework is important in understanding where reproductive rights originate and where they are currently situated. Examined in Chapter 1 are the various ways in which reproduction was historically shrouded in privacy and misinformation. While it is true that reproductive rights have come a long way towards being brought into the public consciousness, it is interesting to see some of the same values and arguments being perpetuated by the anti-choice movement today. It is also interesting to make connections on how pregnant women were perceived, including the racial and class-related perceptions, in comparison to current perceptions and discourses.

Chapter 2 delves into the various narratives that are utilized in the reproductive rights discourse. As noted above, the construction of narratives is the first step in the control of women’s reproductive rights; therefore, an analysis of those narratives is imperative. In this chapter, constructions of the fetus, women, and of abortion as a practice are examined. Being simultaneously supportive of and supported by current literature by feminist scholars, narratives are understood for both their functionality and their effects. Narratives such as the selfless mother, the (alternatively) bad mother, the maternal-fetal conflict, and the fetal person, are all socially constructed ideas and thus ripe for analysis. Using the work of political scientists and policy analysts Schneider and Ingram (1993), these constructions are found to be along the continuums of negative-
positive, overrepresented-underrepresented. This chapter also provides an important background for Chapter 5 which discusses methodology employed in this thesis. As the methodology includes postmodernism, a method that is based on acknowledging then challenging social constructions, Chapter 2 offers a preliminary take on this method. It also sets the stage for a further analysis of the knowledge-power structure. Most anti-choice ideology is informed by a strict androcentric power dynamic that creates a knowledge reality through which policy is situated. These knowledges are also constructed and engrained into narratives under examination in Chapter 2.

As much of this thesis focuses on the use of images within the reproductive rights discourse, as well as the pervasiveness of ultrasound requirement laws, Chapter 3 outlines the emergence and importance of reproductive technology. Ultrasound imaging accounts for extremely dichotomous relationships between woman and fetus, woman and doctor, and woman and state. Though ultrasound technology has been able to diagnose abnormalities within pregnancies, and provides some individuals a feeling of connectivity or realness in relation to the fetus, this technology has been appropriated by the anti-choice movement to be used as a tool against women. Ultrasound requirements are some of the most restrictive, invasive and unnecessary of the informed consent laws studied in this thesis. They are used to make women feel guilty, to impose waiting periods, to expose women to anti-choice propaganda, and to subject women to invasion of their bodies\textsuperscript{1}. Chapter 3 thus lays the groundwork for understanding how ultrasound images are used, why they are so important to the underlying narratives, and limitations on the use of images. This chapter also provides salient analysis, supported by many feminist

\footnote{\textsuperscript{1} See Oklahoma’s “vaginal transducer” ultrasound requirement explained in further detail in Chapter 6.}
scholars since the normalizing of ultrasound during pregnancy, regarding the commodification of the fetus and the usurping of women’s privileged position over knowledge of their pregnancies.

As the ultimate goal of the anti-choice movement is to assume control of reproduction by limiting women’s access to abortion services and other related services, this is evidence of a power struggle. Chapter 4 involves a political theorist’s view of the reproductive rights debate in terms of liberal citizenship, privacy, the role of the state, and women’s rights to autonomy. Here, the paternal state is defined and acknowledged within the reproductive rights discourse. As described in Chapter 1, precedent-setting case law has allowed the state to limit abortion after viability due to the perceived “compelling interests” of the state thus enabling the paternal state. In addition, this chapter examines all reaches of the state into reproductive matters including: body politics, the legislating over an individual’s body; futurity, the state’s investment in future generations; and, the ideal citizenship of the fetus, being able to give the fetus voice with a particular message. Also discussed in this chapter is the public/private divide, an issue which has been the focus of feminists for decades. However much progress women have made to overcome this divide, it continues to dominate the reproductive rights discourse wherein the lived experiences of women are still silenced by archaic forms of “privacy.” This silencing of women’s voices, stories, and knowledges is a point that is pervasive throughout the analysis of state law in this thesis and discussed in greater detail in Chapter 7.

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Chapter 5 includes a detailed description of the methodologies employed throughout this study as well as an account of the preliminary research involved in narrowing down the states included. This chapter shows how the seven states included were narrowed down by categories based on level of restrictiveness of abortion policy. Over the course of the writing of this thesis, several states could have been added to the existing states included. This potential change came on the heels of a dramatic mid-term election in 2010, followed by a sweeping of state legislatures and governorships by anti-choice proponents. However the states of focus may have been able to change, the reproductive policies of these states remained the most restrictive. The states included – Alabama, Colorado, Louisiana, Nebraska, North Dakota, Oklahoma and South Dakota – came to represent not only the most restrictive of all abortion laws, but also a regional dynamic. These states must have ultrasound requirements, stringent informed consent policy, and anti-choice policy statements or state constitutions, and/or unenforceable abortion bans.

As described in Chapter 5, the methods of deconstruction, content analysis, and postmodernist analysis are employed for the purposes of this thesis. Postmodernism allows the narratives underlying the policies at issue to be analyzed for social constructions. This method shows how these constructions are used within the narrative to construct a reality that is rarely questioned. Deconstruction encompasses the actual content analysis of the materials coded for this study. Materials are coded for rhetoric, narratives, repetition, and diffusion among states. Images from the seven states included also were coded and analyzed similarly to the language materials. They were analyzed
and coded for narratives, social constructions, repetition, and tropes as they were combined with language.

Chapter 6 discusses a quantitative and qualitative analysis of the findings. This chapter details specific language and images, breaking down each social construction and narrative found within the coded materials. The findings validate the assertions of this study. Social constructions of women and fetuses create narratives that make up realities and knowledges of reproductive rights. Women are stripped of autonomy through negative constructions, or through their invisibility in reproductive policy. The fetus, alternatively, is aggrandized and personified, given rights and situated as a separate individual apart from the woman. The true conflict between the woman and the state is evident in the findings as much of the materials are highly constructive of a maternal-fetal conflict. Thus it can be clearly seen within the findings how the fetus is appropriated within the anti-choice discourse as a pawn for actors within the state to enact controlling reproductive policies. Furthermore, the language of both state materials and materials of anti-choice organizations are compared for similarities to show how the organizations both influence and gain support from actors within the state. Chapter 6 details the ways in which each of these policies can be, and in fact, already are damaging to women.

In Chapter 7 this thesis concludes with some more empowering sentiments including reconstruction, implications for future research, the importance of feminist research methods and the potential for informing policy-makers. This thesis calls for a coming forward for women who have had abortions in an attempt to demystify the practice and reconstruct both social perceptions and policy based on these lived
experiences and knowledges. It also examines the potential problems associated with this study so as to strengthen future research. Additionally, Chapter 7 examines what future research may stem from this particular thesis. Studies of citizenship, larger and more current policy analyses, and political psychology can all arise from the assertions of this thesis. Women’s reproductive rights are as pertinent a topic today as it was half a century ago. The most current restrictions of focus in this thesis are a stark indication that this issue demands further study, and reconstruction.
CHAPTER 1: A BRIEF HISTORY OF REPRODUCTIVE RIGHTS IN THE U.S.

To understand the implications of the fetal rights discourse in the U.S., it is important to first examine the evolution of fetal rights, abortion, and pregnancy. Fetal rights, fetal personhood, the maternal-fetal conflict, reproductive technologies, and reproductive rights have vacillated greatly over time in U.S. history. From private matters, protected and strictly medical, to primetime abortion, the discourse surrounding reproductive rights has undergone enormous social shifts as well as policy shifts. It is imperative to this thesis to provide a snapshot of the invariably deep and often confusing history of reproductive rights in the U.S. in order to provide a greater understanding of where reproductive rights stand today.

I. 19th Century Reproductive “Rights”

While discussing the history of reproductive rights, many scholars aptly begin at the point where the “rights” of reproductive rights were put forth by law: the U.S. Supreme Court case *Roe v. Wade*, 410 U.S. 113 (1973). However, for the purposes of this thesis, earlier history is equally relevant as this history tells a story of the belief in the privacy and connectivity of woman and fetus.

In the late 18th century, reproductive rights in the U.S. were relegated to a basic legal issue. If a fetus was caused harm by a third party, a woman could seek legal recourse for damages – damages which were paid to her husband. Schroedel (2000) suggests this illuminated women’s status as one of a “legal hybrid” – white wives of landowning men were free in a sense; however were also chattel as they did not own their bodies and pregnancies (p. 26). Legal interpretation of reproductive issues were based on
the “deference and protection” of pregnant women, a basis which interestingly is still echoed in state laws today. Women at this point in reproductive history as in other areas of their citizenship had no other rights. The fetus was not represented or distinguished between pre-quickening and post-quickening\(^3\) as would come later.

In the early 19\(^{th}\) century, increased urbanization and prostitution with little means of contraception, gave way to an increase in abortion. In addition, a shifting attitude of married women who believed bearing large families was burdensome led to a surge in the need for abortion services (Sauer, 1974, p. 54). Abortifacients made of dangerous poisons were criminalized in an effort to protect women. While the criminalization of these poisons may have been in good conscience to protect the health of women, some of whom inevitably died from use, it did not directly deal with the issue that abortion was a necessary and desired medical procedure. The failure to deal with preventing abortion, dangerous or not, by providing greater access to contraceptives, is a failure that continues to pervade policy to this day.

The anti-abortion movement during this time consisted largely of first wave feminists who saw abortion as a means for men to avoid the responsibility of fatherhood. First wave feminists urged women to continue their pregnancies and to avoid being coerced by men into abortion.\(^4\) Another anti-abortion group was the eugenicists who saw the rise of abortion as “race suicide” for whites (Schroedel, 2000; Hansen and King, 2001), and more specifically, for Protestants who were by far the largest group of women obtaining abortion (Sauer, 1974). Interestingly, physicians were another vocal anti-

\(^3\) Quickening refers to the movement of the fetus in the womb, which is felt by the pregnant woman.

\(^4\) Interestingly, anti-choice advocates recently and incorrectly invoked first wave feminists in their arguments to restrict abortion rights, which are discussed in Chapter 6.
abortion group as, according to Schroedel (2000), they were competing in business against midwives who were also performing abortions. It should be noted, however, that literature regarding physician’s attitudes towards abortion during this time is debatable. According to Sauer (1974), physicians were morally opposed to abortions based on their concern for the “life” of the fetus (p. 58).

Nearing the end of the 19th century, the legal precedence for fetal “rights” was set forth by the decision in Dietrich v. Inhabitants of Northampton, 138 Mass. 114, (1884) wherein a woman sought tort damages for her miscarriage. Her claim, according to Daniels (1993), was denied as the fetus was not believed to have any semblance of independence from the woman. This case reiterated the sentiment that was understood by the law and by the larger society that the fetus was part of the woman, connected inextricably to her until birth (Daniels, p. 11).

II. Early to mid-1900s

By 1910, each state in the U.S. had abortion illegal on paper; with non-uniform laws running the gamut from distinguishing between pre- and post-quickening, and including exceptions for the life of a woman (Sauer, 1974, p. 57). However, these new laws did not stop the need or procurement of abortion. Affluent white women with private doctors who could negotiate around state law were able to receive therapeutic abortions. Fetal rights made small gains during this time in terms of inheritance rights, advancements in tort law including damages for prenatal injury, and criminal law regarding third-party killings. However, the fetus was still very much viewed as part of the woman, not as a separate entity.
By the 1950s, the medical community had completely dominated the entire reproductive rights discourse. While they may have dominated, scholars such as Condit (1990) and Schroedel (2000) assert that they did not do so as one unified faction. The medical community was highly polarized, in fact, between those who believed that abortion was a medical necessity and those who were morally opposed to abortion (Schroedel, p. 37). As can be seen throughout reproductive history thus far, abortion was still a desired procedure and women who could not pay a private doctor for an abortion sought other methods. Illegal abortions, or back alley abortions thusly named after their derelict locations and practices, were the cause of thousands – potentially one million – women’s deaths in the U.S. during that time (Schroedel, 2000, p.36, quoting Rosenberg, 1991, p. 353; Graber, 1996, p. 42). The true numbers are contested among scholars due to the difficulty in finding a reputable source of information. Certainly, the stigma and need for privacy surrounding women who obtained illegal abortions led to an inability for contemporary scholars to estimate the actual number of women who found themselves in that situation. However, the effects of illegal abortion on women were a stark reality to the physicians who treated them. Schroedel (2000) asserts that the high admittance number of injured women due to illegal abortion caused some hospitals to open “special wards… to treat them,” (p. 36).

In 1962, Sherrie Finkbine, the host of a popular television show and nationally beloved wife and mother, learned that her ingestion of medication during her pregnancy caused her fetus to be severely deformed, and subsequently sought a therapeutic abortion. Though her decision was private, it was made public in a local newspaper and her abortion procedure was cancelled by the hospital, forcing her to seek care in Sweden.
Condit (1990) notes that Sherrie Finkbine’s blocked access to abortion was not missed by the pro-reform groups across the country. Finkbine became a recognizable and sympathetic face for the need for abortion policy reform. Her conditional need for abortion challenged perceptions of who was seeking abortion - it was based on a medical necessity, and she was a successful mother. Finkbine represented what Condit calls the “good woman” and was seen as “…a pawn of the professionals – the courts and hospitals and churches, fighting over her pregnancy” (p. 29). Hence, pro-reformers were invigorated to argue for a loosening of abortion restrictions and for women to have greater control over their own reproductive capacities.

Reformers won a small victory in California (1964), Mississippi (1966), and Colorado (1967) when these states began to reform their criminal abortion policy. Gradually, other states followed suit, some adopting guidelines set forth by the American Law Institute that would allow abortion in cases of rape, incest, the physical or mental health of the woman, and in cases of severe deformity of the fetus (Sauer, 1974, p. 63). This, however, did not guarantee that states overall were becoming more liberal in their abortion laws. While some states pushed for greater access to reproductive rights under a broadened set of situations, others remained limited. Feminist groups such as the National Association for the Repeal of Abortion Laws (NARAL) and the National Organization for Women (NOW) spearheaded the efforts of reforming state abortion laws. On the other end of the spectrum, around 1963, the “right to life” discourse began to emerge from religious-based community groups opposing reform.
III. 1970s – Roe and Beyond

In 1973, the groundbreaking U.S. Supreme Court decision in the case of a Texas rape victim seeking an abortion, Roe v. Wade, 410 U.S. 113 (1973) set legal precedent on the way in which abortion and reproductive rights would be interpreted. The Supreme Court noted three main assertions about current state-wide criminalization of abortion: 1) abortion was an issue that fell under the right to privacy of the 14th Amendment of the U.S. Constitution; 2) states had to prove that any regulation of abortion procedure was done under a “compelling interest” in potential life; and, 3) that a fetus was not considered a person. While Roe created a new and seemingly liberated opinion on the status of abortion bans in the U.S., many scholars agree that it also created a false sense of security of abortion rights. (Schroedel, p. 41).

The language in the Roe opinion, delivered by Justice Blackmun, created an undeniable and confusing divide between the scope of privacy and the scope of state interest. Blackmun held, “…a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision,” (Roe, p. 154).

Whereas scholars such as Schroedel (2000) and Condit (1990) find this language to be creating the maternal-fetal conflict, it can be clearly seen that this is a mischaracterization. The conflict created in Roe is the subject of this thesis: the woman-state conflict. Roe, as is discussed further in Chapter 4, did not validate that the fetus was a person, deserving of rights. On the contrary, the decision specifically stated that the Court did not believe a fetus was a person. It is this distinction that quashes the assertion
that the maternal-fetal conflict arose within this decision. However, the Court held that
the state may assert its power in restricting abortion access only for the “…protection of
health, medical standards, and prenatal life,” which the Court saw as growing in
significance the later the gestational period (Roe, p. 155). The Court decision specifically
focused on the right to privacy under the 14th Amendment as including a woman’s right
to choose. Justice Blackmun, writing for the Court asserted “…the right of personal
privacy includes the abortion decision, but that this right is not unqualified and must be
considered against important state interests in regulation” (p. 154). It is important to note
that the Court did not assert that fetal rights fell under the same Constitutional protection.
In fact, a fetal “rights” argument initially brought forth by the Appellee Wade was
withheld in their argument before the Supreme Court (Roe, p. 157). Rather, the Court
held that the state’s interest in regulating abortion could only come after a certain “point”
of the pregnancy where viability of the fetus was ensured. Justice Blackmun writes,
“[w]ith respect to the State's important and legitimate interest in potential life, the
"compelling" point is at viability. This is so because the fetus then presumably has the
capability of meaningful life outside the mother's womb” (Roe, p. 163)\(^5\). The viability
boundaries set forth in Roe were not to interpret the cultural or theoretical arguments of
when life begins, but to provide the states with a standard to which restrictions on
abortion policy could be created and enacted. Therefore, it can be clearly seen that the
decision made by the Supreme Court in Roe was balancing the rights of the woman’s
privacy and the state’s right to regulate.

\(^5\) For a more detailed analysis on the state’s “compelling interest” in “potential life” as set forth by Roe, see
Chapter 4.
Whereas, in retrospect, contemporary feminists look at *Roe* with cautious approval, it was an invariably positive decision to eliminate the criminalization of abortion procedures. The anti-choice movement took notice of this decision and subsequently increased their efforts in 1973 to oppose abortion rights. The National Right to Life Coalition was started by priests in the Catholic Church and began working on legal battles to propose a Right to Life Constitutional amendment, which was ultimately unsuccessful. In 1976, however, an amendment banning federal funding of abortion through Medicaid, the Hyde Amendment, was successfully passed with the help of the National Right to Life Coalition.

Following the general national swing in favor of greater protection of abortion rights, the anti-choice discourse in the late 1970s grew more extreme. The radical anti-choice group Americans for Life PAC led the charge of extremist language by calling women who sought abortions “babykillers,” by campaigning to elect anti-choice policy makers, and practicing civil disobedience at protests in front of clinics throughout various states. Additionally, post-*Roe* abortion clinics were beginning to experience targeting of violent attacks through arson or bombings, among other intimidation methods, by the anti-choice extremists. Of the 13 reported and known attacks of clinics in the U.S. through bombing or arson between 1976 and 1979, only two cases led to convictions, the remainder being closed due to statutes of limitations.6

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IV. 1980s and the Crack Baby “Epidemic”

The abortion debate in the 1980s reflected a polarized country; however, the presence of this debate was not under the same veil of silence that it had been previously. Reproductive rights, as well as the personification of the fetus, were being played out and theorized under the media spotlight. Lauren Berlant (1997) writes of the increase in specifically anti-choice publicity to be manifest with the conservative presidency of Ronald Reagan, who wrote *Abortion and the Conscience of a Nation* in 1984, as well as the production of noted extreme anti-choice films *The Silent Scream* (1984), and *The Eclipse of Reason* (1987). Additionally, Berlant cites popular music such as Pat Boone’s *Let Me Live* (1983) and movies such as *Look Who’s Talking* (1989) as reflective of the emerging fetal personhood discourse. Condit (1990) discusses the prevalence of the social issue of abortion as featured on several primetime television series. In these shows, female characters from a variety of situations were faced with unwanted pregnancies – some choosing abortion, and others who chose to continue pregnancy turned out to not be pregnant after all. Condit notes that it was interesting and important to see abortion, as an issue, surface in mainstream television programming by showing women in variant situations through which unwanted pregnancy would occur. While these television shows reflected the abortion discourse of the time, they also notably created parameters of what situations would be understood as “acceptable” for obtaining an abortion (Condit, p. 126).

As ultrasound technology was first used in the late 1950s, it was in the 1980s where ultrasounds began to be used increasingly not just to discover abnormalities in fetuses, but for personal reasons. Ultrasound technology, as discussed further in Chapter
3, allowed obstetricians to treat the fetus as a patient – furthering the discourse of the separation of woman and fetus (Petchesky, 1987, p. 271). Petchesky notes that during this time, there was no medical consensus on the importance, if any, of ultrasounds:

[a] 1984 report by a joint National Institutes of Health/ Food and Drug Administration panel found “no clear benefit from routine use,” specifically, “no improvement in pregnancy outcome” (either for the fetus/infant or the woman), and no conclusive evidence either of its safety or harm. The panel recommended against “routine use,” including “to view ... or obtain a picture of the fetus” or “for educational or commercial demonstrations without medical benefit to the patient” (“the patient” here, presumably, being the pregnant woman) (p. 273).

Similar to the fetus on the big screen, ultrasound technology emergence was another way in which the fetus was placed on another screen, albeit smaller, however still separate from the woman.

In 1989, state control of reproductive rights also was brought into the mainstream by way of the Medical University of South Carolina (MUSC) and one nurse, Shirley Brown. Dorothy Roberts (1997) traces the story of the crack baby “epidemic” that arose from Brown’s reporting to the local police department of the perceived increase in crack-addicted newborns in that hospital. As the hospital serviced mostly what Roberts characterized as an “indigent minority population,” Brown worked with local authorities to institute a program to test pregnant women for drugs without their consent, report results to the police department, charge women with child abuse, and arrest pregnant women and women who had just given birth (p. 164-5). The program was highly problematic, riddled with racial discrimination, and placed many women in deplorable and dangerous conditions. Women had limited access to prenatal care while in jail, and were reported in some cases as being forced to give birth in handcuffs. This program was significant to the reproductive rights debate in several ways. Many of the women who
were pregnant and tested positive for drug use were charged with “…child neglect or distribution of drugs to a minor” which obviously calls into question whether a fetus could be considered a child and what that may mean for abortion laws (p. 166). Additionally, with the racial and socioeconomic demographics of the 42 women arrested in MUSC’s crusade against pregnant drug addicts, a narrative developed as to whether these women – generalized as a population by legal, political and police authorities – can be trusted to make decisions about their reproductive health by themselves.

The crack baby “epidemic” along with a multitude of other cases in which pregnant women were tested without consent, reported to police, and treated in a derogatory manner, allowed state policy-makers, through law and policy, to act as a “protector” of the fetus. In analyzing the suspicious nature of the concern of the state for the protection of Black fetuses and Black infants, Roberts (1997) notes that among other reasons, “[t]he history of state neglect of Black infants casts further doubt on the professed concern for the welfare of the fetus. When a nation has always closed its eyes to the circumstances of pregnant Black women, its current expression of interests in the health of unborn Black children must be viewed with distrust,” (p. 183). It should be noted that 10 of the 42 pregnant patients involved in MUSC’s policy filed suit against MUSC’s policies and their treatment in the case Ferguson v. City of Charleston, 532 U.S. 67 (2001) which was argued on appeal up to the U.S. Supreme Court. The Court ultimately found that MUSC’s policy (Policy M-7) violated the rights of the women’s privacy and Fourth Amendment rights of unreasonable search and seizure. Justice

7 It is not only the non-consensual drug testing and arrests of pregnant drug addicts, but also cases including forced surgery and forced medical intervention of pregnant women. For more see Daniels (1993); Strickland and Whicker (1995); and Roth (2000).
Stevens delivered the opinion of the Court citing that the decision was based on the fact that “[i]n the course of the policy's administration, [law enforcement officials] had access to Nurse Brown's medical files on the women who tested positive, routinely attended the substance abuse team's meetings, and regularly received copies of team documents discussing the women's progress” (Ferguson, p. 82). The Court noted that the use of positive drug tests for the criminalization of the pregnant women was far too pervasive; that a positive drug test did not change the course of prenatal care, or the care given to the infants once born. Justice Stevens wrote, “[t]he stark and unique fact that characterizes this case is that Policy M-7 was designed to obtain evidence of criminal conduct by the tested patients that would be turned over to the police and that could be admissible in subsequent criminal prosecutions” (p. 85, 86). In the end, MUSC’s policy that touted its concern for “crack babies,” was ultimately found to be no more than an unconstitutional vehicle for criminalizing mostly impoverished and minority pregnant drug addicts.

V. Dawn of the 21st Century

The U.S. Supreme Court upheld its decision in Roe in the case of Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992); an appeal which challenged the constitutionality of the restrictions within the “Pennsylvania Abortion Control Act of 1982.” The holding of this case was based on a three-pronged approach: 1) states cannot restrict abortion pre-fetal viability; 2) state interference post-fetal viability must include exceptions for the health and/or life of the woman, and; 3) the state has a legitimate interest in protecting the health of both the woman and the fetus.

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8 The restrictions in this statute included a mandatory 24 hour waiting period with informational materials as part of informed consent, the consent of one parent in the case of a minor, the signature of a married woman that she notified her husband, reporting requirements of facilities that provide abortion, and a “narrow” definition of “medical emergency” Casey (p. 833-879).
This case, while affirming the woman-state conflict, also set parameters by which state policy would have to adhere, specifically relating to viability and the prohibition of creating an undue burden on women seeking legal abortion. This thesis finds the viability requirement in *Casey* problematic as each pregnancy has its own “point” of viability as discussed in Chapter 2 and 6 in greater detail.

A conservative Congress in 1995 attempted to pass a “partial-birth” abortion ban, which was subsequently vetoed by then President Bill Clinton. In 2000, Nebraska policy-makers attempted to pass a “partial-birth” abortion ban which would outlaw the use of a particular abortion method known as dilation and extraction. This law, however, was taken to court and ruled unconstitutional for not containing exceptions for women’s health. In 2003, however, under the conservative presidency of George W. Bush, Congress was able to pass the federal “Partial-Birth Abortion Ban Act of 2003” which was subsequently signed into law by President Bush. This act, much like the attempted “partial-birth” abortion ban in Nebraska three years prior, outlaws the dilation and extraction method of abortion. It is interesting to note that the text of the act does not include an exception to preserve a woman’s health. On the contrary, the act states that due to the nature of the dilation and extraction procedure, it is never in the interest of a woman’s health to receive an abortion by this method. Although the federal law was challenged by abortion providers who asserted that it placed an undue burden on women seeking abortion, the “Partial Birth” Abortion Ban Act of 2003 was upheld by the U.S. Supreme Court in *Gonzales v. Carhart*, 127 S.Ct. 1610 (2007).

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9 The term “partial-birth” is a non-medical term which has been “coined” by the National Right to Life Coalition, the organization which aided in developing the 1995 bill. [http://www.npr.org/templates/story/story.php?storyId=5168163](http://www.npr.org/templates/story/story.php?storyId=5168163) and [http://www.nrlc.org/abortion/pba/PBAall110403.html](http://www.nrlc.org/abortion/pba/PBAall110403.html)
Aside from legal battles, abortion rights remained a divisive issue in the first decade of the 21st century. Anti-choice extremists representing the far right fringe of the anti-choice movement continued to harass, intimidate and commit violence against abortion clinics, their employees and patients. In 2009, anti-choice extremist Scott Roeder walked into a church in Wichita, Kansas and fatally shot Dr. George Tiller, a well-known late-term abortion provider. This murder essentially shut down abortion operations in Wichita. Though Roeder was convicted of murder one year later, his defense team argued that his act was a justifiable homicide to prevent further abortions. A federal investigation as to whether Roeder was acting alone or through a network of violent anti-choice extremists is currently underway.

As a result of the 2010 mid-term elections, many staunchly anti-choice state and federal politicians assumed office on the auspices of job creation and a need for a stronger economy following a national recession. Though newly elected conservative policy makers claimed job creation was their first priority, some of the first measures on state and federal levels were to introduce extreme anti-choice legislation. Congress attempted to pass a “No Taxpayer Funding for Abortion” Act as the third bill to be considered by the new Congress, and despite the sound authority of the Hyde Amendment. Additionally, as it pertains to this thesis, an alarming onslaught of anti-choice legislation was brought forth by state policy-makers ranging from fetal personhood bills, bans on abortion after a heartbeat can be detected, reforming clinic codes that essentially invalidates all non-hospital abortion clinics, criminalized miscarriage, fetal pain bills, and a very controversial criminal legislation change that would enable “justifiable homicide” to apply to abortion providers.
Undoubtedly, there has been much debate over the history of the U.S. on abortion rights and reproductive rights in general. Though this is a brief snapshot of some of the major developments, court cases, and attitudes towards abortion, it is important to understand where the state laws, statutes and pending legislation of focus in this thesis are situated. Certainly, a historical view of each state of focus is warranted for further study. Additionally, given the advancing and fluctuating nature of present abortion debate, it would be extremely difficult, if not impossible, to capture and analyze every media mention, introduced bill, rally, statement, and poll on reproductive rights – nor would it be wise. However, for the scope and purpose of this thesis, the above main events are a necessity to the analyses and contentions asserted hereafter.
I. Social Constructions

Feminist scholars from the roots of the second-wave feminist movement have developed the idea of social constructions by analyzing gender and identity. Feminist theorists and scholars from Simone de Beauvoir, to Betty Friedan, to Judith Butler, among many others, have grappled with the link between social identities and gender roles. In feminist theory, identities are constructed through actions and social norms. Judith Butler (1986), in examining de Beauvoir’s pivotal feminist theorizing in *The Second Sex* (1949), writes, “[b]ecoming a gender is an impulsive yet mindful process of interpreting a cultural reality laden with sanctions, taboos, and prescriptions” (p.40). In other words, feminist scholars analyze social constructions to understand the ways in which norms and identities are created with regard to gender.

For this thesis, social constructions are analyzed from the starting point of feminist theory – that identities are created through social processes. However, this thesis also employs the idea of social constructions as it has been used by policy analysts. Social constructions in this way are assumptions about the behaviors, characteristics, and needs of target populations or groups that are based on normative roles and/or stereotypes. As Fischer (2003) explains, constructionist lens is pertinent to the study of public policy in two ways: in having a “direct bearing on the methods and techniques of policy science…” in understanding truth, facts and realities \(^\text{10}\); and, on influencing the

\(^{10}\) This point is discussed in further detail in the explanation of the employment of postmodernism and deconstructive methods for this study, in Chapter 5.
fields of sociology and public policy “[i]n so far as public policies are designed to address social problems,” (p. 54). In public policy literature, scholars and analysts look to social constructions to understand how created identities of target groups are used to substantiate public policy. Within this thesis, it is argued that on the most fundamental level, reproductive rights policy that heavily relies on social constructions runs a great risk of creating bad policy. If target groups and populations of citizens are socially constructed, there is no way to take into account the substantially variant needs, situations and concerns of individuals. Such policy becomes a teleological impasse. Furthermore, as social constructions can be either positive or negative, social constructions may lead to the unequal treatment of entire groups of citizens if applied through policy.

In addition to reproductive rights policy, social constructions have been examined by policy analysts and scholars in various policy arenas. Ange-Marie Hancock (2004), for example, studies the social construction of welfare recipients. Otherwise known as “welfare queens,” Black women who receive welfare have come to represent the face and public identity of welfare recipients. Black female welfare recipients, as explained by Hancock, are negatively constructed in a variety of ways including being characterized as lazy, non-working, illegitimate, drug users, and overly fertile (p. 69). Hancock explores how this construction of those who use welfare affects public perception and policies. She uses a content analysis, similar to this thesis, to analyze how welfare recipients were portrayed in the media and what effect that had on policy and welfare reform.

Negative social constructions are also dangerous because they can be so deeply rooted and ingrained into society that they are hardly noticeable to the general population. As asserted in this thesis, the reality created by the deeply ingrained “fetal personhood”
construction is a reality that is generally taken for granted as truth. However, as women’s voices are often stifled in the reproductive rights discourse and debate, the more realistic narrative that consists of a wealth of situations of pregnant women and opinions within the medical field are also stifled. What is left instead is a “truth” narrative based on social constructions of women, fetuses, and abortion – a narrative that has devastating results for women’s citizenship, equality, health, and autonomy. “Truth” narratives, however, are widely accepted in policy and in popular culture, as explained in this chapter as well as Chapter 5. It is the use of these narratives and constructions that this thesis deconstructs and analyzes to uncover their damaging effects and what can ultimately be done to correct those effects.

Anne Schneider and Helen Ingram (1993) discuss the advantages or disadvantages of target populations based on social construction. Schneider and Ingram write, “[o]ur theory contends that the social construction of target populations has a powerful influence on public officials and shapes both the policy agenda and the actual design of policy” (p. 334). In their analysis of target populations, social construction can be either positive or negative, and when combined with political power creates a cross sectional of target populations that would allow one to predict policy outcomes. Schneider and Ingram describe four types of constructed groups who are represented through policy, favorably to criminally. The authors situate these groups on a two-by-two table. The groups include: the advantaged group, who are the nation’s success including veterans and businesses; the contenders, who are powerful yet negatively constructed, and include unions and cultural elites; the dependents, who are generally positively constructed but politically weak including mothers and children; and, the
deviants, both negatively constructed and politically weak, represented by criminals and drug addicts. The top row of the table represents the powerful groups – the advantaged and the contenders – and the bottom row the weaker two groups. Social constructions are represented in the columns wherein the left column is the generally positively constructed groups of the advantaged and the dependents and the right is the negatively constructed groups of the contenders and the deviants.

Schneider and Ingram contend that policy outcomes are determined by these constructions and by a target population being placed within one of these categories. These categories also represent whether a target population’s issues have political salience, appearing on the political agenda. If the issue arises on the agenda, Schneider and Ingram’s theory would also predict whether the policy would be more beneficial or burdensome to the target group. Groups who appear most on the agenda are the advantaged and the deviants. Policy-makers acquire political capital by making policy which rewards the advantaged and punishes the deviants. This model presented by Schneider and Ingram can be applied to this thesis to understand the social constructions and policy outcomes of reproductive rights. According to their theory, the advantaged group – one that has a positive construction, high issue salience and enjoys rewarding policy – is compromised of only the fetus. Women, as noted throughout this thesis, fall into two different categories; dependents and deviants, both of which are low, or weak, in power. The dichotomy of women’s social construction has to do with whether a woman falls into the androcentric view of womanhood; the selfless and willing mother. Though the selfless mother’s issues are mostly low in political importance, she is positively
constructed, as explained below. All other women, including women of color and women who seek abortion, are deviants.

<table>
<thead>
<tr>
<th>Table 2.1 – Policy Outcomes for Target Populations (Based on Constructions)*</th>
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<tr>
<td><strong>Reward/ Beneficial Policy</strong></td>
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<td><strong>High</strong></td>
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* This table is based on the table presented by Schneider and Ingram in their 1993 article Social Construction of Target Populations: Implications for Politics and Policy and adapted to meet the needs of this thesis.


A. Fetuses

Fetuses are generally positively socially constructed; through the status of a “protected” class of citizenry, and would fall in the category of “dependent” or possible “advantaged” in some states. Fetuses would be “dependent” based on their proponents claiming a lack of representation or voice. However, according to Schneider and Ingram, the high occurrence of fetal rights issues within state legislatures leads to their potential cross into the “advantaged” group. Politicians want to be aligned with the rights of fetuses to gain political capital, and to take a “moral” standpoint of representing a “voiceless” target group.
1. The theory of “life”

The right to life of a fetus, however positively constructed, can be seen for its troubling underlying theory. An often used basis of argument of fetal rights is life, or more accurately, when life begins. Without arguing a theory that determines a particular gestational stage is life-assuming, for the purpose of this study it is necessary to note that life at conception is a highly disputed and disputable belief; one that is based in normative understandings of sex, reproduction, and conception. The “moment” of conception when an egg is “penetrated” by sperm is classically androcentric with descriptions and widely held perceptions of the active “male” nature of the sperm, and the passive “female” nature of the egg, despite the fact that this is not the case\(^\text{11}\) (Leckenby, 2007, p. 37). Likewise, belief in the idea that “life” begins at conception is flawed as there is no one, singular moment of conception.

It has been argued that the idea of a “moment of conception when a new human being is miraculously created is over-dramatized, and results from ignorance of modern biology.” The point of this criticism is that in fact the alleged “moment” when the sperm and ovum fuse is a series of stages which may last 24 hours or more hours; “However you date man’s beginning, it is, like his ending, a process.” (Scott, 2002, p. 39).\(^\text{12}\)

However, Scott notes that though conception is “over-dramatized” as a “moment,” she admits that it is extremely symbolic in its significance, and therefore still highly utilized in argument. As analyzed in greater detail in Chapter 6, the states included in this study produced materials that include language which over-dramatizes this “moment.”

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\(^{11}\) Anthropologist, Emily Martin, points to research from Johns Hopkins University wherein it was found that sperm were weaker than initially understood, and furthermore, that both sperm and egg have adhesive materials on their surfaces that binds them together, an adhesive which for the egg, one molecule of which is much stronger than a sperm can break free from. See, Martin, E. (1991). The Egg and the Sperm: How Science Has Constructed a Romance Based on Stereotypical Male-Female Roles [Electronic version]. *Signs, 16*(3), 485-501.

popular phrase for states to adopt to enhance their anti-choice standing is that life begins at the “moment of conception.”

The “life” argument will not be argued at all in this thesis, as debate between scholars, scientists, political actors and interest groups on this issue almost always ends in stalemate, riddled with religious undertones. The “life” of a fetus is an issue to which there is an infinite regress, which ultimately boils down to personal beliefs. Additionally, whether the fetus has a life does not change the pure fact that the woman is still the one who becomes pregnant and carries the fetus. If indeed a fetus does have a life, its life is completely dependent on the woman. It is the woman who carries, nourishes, and births the fetus. It is her body, her will and her impetus that either nurtures or – spontaneously or knowingly – terminates the pregnancy.

2. The fetus as an individual

However disputed, the narrative of fetal personhood is a central component to the argument set forth by fetal rights proponents. Without this narrative, the fetus cannot be separated from the woman. As seen in the history of fetal personhood explained in Chapter 1, the fetus has not always been at the forefront of reproductive rights debate. In fact, it is a relatively new idea based on morality politics, but one that has so permeated popular culture and policy that it has become an accepted social reality. Much of state’s laws in the U.S. are based on the theoretical underpinnings of fetal personhood, as seen in Chapter 6. Constructing the fetus as a person with legal rights, personifying and giving the fetus a voice, has extremely serious and disastrous policy implications for women. As Lauren Berlant describes in her book, The Queen of America Goes to Washington
“...the pro-life movement has composed a magical and horrifying spectacle of amazing vulnerability: the unprotected person, the citizen without a country or a future, the fetus unjustly imprisoned in its mother’s hostile gulag” (p. 97). There is an overwhelming belief through fetal personhood that the fetus must be ascribed a voice, and that voice is that of conservative facets of the American polity. Although the woman is the fetus’ most closely related individual, having an intimate knowledge and connection to the fetus which is in her own body, she is often criminalized or excluded from the discourse altogether. Thus by acknowledging a fetus’ personhood and subsequently its rights, the fetal rights advocates can situate their logic around its lack of a voice, despite the woman’s obvious candidacy for that position.

3. Fetal objectification

The fetus, however, represents more than a megaphone for the anti-choice proponents; it represents a blank slate on which anti-choice ideals can be projected. When anti-choice advocates use the fetus to argue the futurity of the nation, they aggrandize the fetus and objectify it simultaneously. Anti-choice rhetoric that supports the state’s “compelling interest” in “potential life,” while seemingly compassionate, is paternalistic and harmful to the maternal-fetal relationship. Berlant (1997) writes, “[t]he pro-life image of the nation as parent with a compelling interest in its children/citizens has produced an image of the autonomous fetus – a cruel, inhuman image, both because of the vulnerability of its body and because of its violent expropriation from the maternal site” (p. 129). The “logic” of the anti-choice fetal personhood narrative tends to break down for the objectification it embodies.
Researchers of fetal rights always arise at the same conclusion regarding the flaws and hypocrisies within fetal personhood theories. Questions often arise such as: why would fetal rights policy-makers supporting the dignity of all human life not demand greater access to prenatal care for low income women, postnatal childcare, expanded welfare opportunities for women and children, or maternity and paternity leave? (Schroedel, 2000, p. 13). Additionally, the fetal rights discourse utilized by anti-choice advocates and policy-makers is not consistent within all aspects of the law. For example, male-caused third-party fetal abuse and killings are not as aggressively legislated, pursued, or prosecuted as fetal abuse cases involving pregnant drug addicts (Schroedel and Peretz, 1995). This thesis does not argue that in order to be a proponent of fetal rights necessarily requires one to believe that abortion would “spare” a life of misery. However, it is evident that those who support fetal rights do so upon misguided flawed logic, archaic gender stereotypes, and negative social constructions that ultimately harms women and children.

B. Women

Understanding the social construction of pregnant women is just as, if not more, important than understanding the social construction of fetuses in the reproductive rights debate. From the offset, one can assume that pregnant women are at the very least placed in the positive, but weak social category of “dependents” – acknowledged as good, but having little to no power. According to Schneider and Ingram’s (1993) model, if pregnant women were in the dependent group, political actors would “…want to appear to be aligned with their interests; but their lack of political power makes it difficult to direct resources towards them” (p. 338). A more detailed analysis of the current state of
reproductive rights in the U.S. suggests something different. As discussed in greater
detail in Chapter 6, reproductive rights policy is becoming more burdensome, punitive,
and is high on the political agenda. Working backwards off of Schneider and Ingram’s
model, these factors suggest that pregnant women are negatively constructed and
powerless, therefore, deviants.

1. “Deviant” women

Of course, the “deviant” nature of women seeking abortion is not new to feminist
scholars. Many feminist scholars have written about the negative social construction of
women who do not fit the normative role of selfless, mothering, dutiful and submissive of
her rights (Roberts, 1991; Daniels, 1993; Roth, 2000; Mitchell, 2001). With Black
women, impoverished women and women with drug and/or mental health issues
shouldering most of the negative social construction, their rights to bodily autonomy and
to the ability to control the outcome of their own lives are severely impinged upon.
Punitive policy measures are often taken against these target groups. Rachel Roth (2000)
conducted a study of the various criminally punitive measures taken against pregnant
women who committed petty crimes between 1973 and 1992. Of the 172 prosecutions,
she found that many of the cases with resolved records (about 64 had resolved records)
indicated that the women were sentenced to probation (“more than one-third”); prison
(“almost one-fourth”), some with extended sentences; and/or placed under house arrest
(p. 149). Roth’s research proves that “…collectively and individually, women suffer
significant punishment for ad hoc crimes and for minor crimes for which they would
never have been prosecuted if they were not pregnant” (p. 149). The idea underlying the
prosecutions of pregnant women is that they were held to a higher standard of behavior based on the fact that they were pregnant.

Discussed below, anti-choice groups and policy-makers negatively construct abortion as their disdain and disapproval of this choice runs deep within their ideology. A disdain for the procedure of abortion itself also leads to a mischaracterization and negative construction of the women who seek and obtain abortions. Women who obtain an abortion are constructed as selfish, promiscuous, irresponsible and abnormal ultimately suffering for their poor decision through “post abortion syndrome.” While “post abortion syndrome” is discussed heavily within anti-choice circles, it should be noted that this is not a medically recognized disorder. The American Psychological Association as recently as 2008, and as far back as 1989, has found that there is no conclusive data that the mental health of a woman who obtains an abortion will be negatively affected by that choice.13

2. Normative motherhood

Women live within the narrative that to be feminine and to be a woman is to be a mother; however blind this narrative is to queer women, women who cannot conceive, or women who do not wish to be mothers at all. Berlant (1997) equates this narrative with the very notion of citizenship; that a good citizen is one who does something of value for the nation through production or reproduction: “[a]t this time in America… the reproducing woman is no longer cast as a potentially productive citizen, except insofar as she procreates: her capacity for other kinds of creative agency has become an obstacle to

national reproduction” (p.100). As developed further in Chapter 7, this citizen-by-motherhood status is congruent with the woman-state conflict asserted in this thesis.

In a cruel hypocrisy, women who follow through on pregnancies are also negatively constructed. Hancock (2004) writes, “[t]he stereotype of Black women as bad mothers dates to slavery, when the terms “Jezebel” and “Mammy” represented oversexed and asexual women respectively… who shared in common neglect of their own children, in favor of having sex (the “Jezebel”) or tending to the master’s children (the “Mammy”)” (p. 26, quoting White 1985). More recently, as discussed in Chapter 1, the prosecution of drug-addicted pregnant women speaks to the general attitude and construction of who should be having children in the first place. Roberts (1997) discusses the underlying assumptions of pregnant drug addicts in her detailed analysis of their social and legal prosecution. Instead of focusing on the pains of crack addiction as a societal ill or the inadequate prenatal care for low-income women, media outlets during the late 1980s focused on the alluring narrative of the crack-addicted pregnant women. Roberts writes, “[t]he pregnant crack addict was portrayed as an irresponsible and selfish woman who put her love for crack above her love for her children. In news stories she was often represented by a prostitute, who sometimes traded sex for crack, in violation of every conceivable quality of a good mother,” (p. 156). As pregnant crack addicts were seen to buck, insult or even undermine what was generally understood to be a maternal instinct that all women “should” have, negative constructions led to the legislation over their bodies. Roberts explains further, “[t]he monstrous crack-smoking mother was added to the iconography of depraved Black maternity, alongside the matriarch and the
welfare queen. Crack gave society one more reason to curb Black women’s fertility,” (p. 157).

C. Abortion

The procedure of abortion itself is negatively constructed – struggling to be seen as a necessary and legal medical procedure, part of basic healthcare. Abortion rights always seem to be teetering on the edge of extinction. *Roe* in the sociopolitical arena is often perceived as having been decided on a “razor-thin” margin, and while that may be true, it is in constant apprehension of being overturned. This puts women in a precarious situation of being on the verge of a complete loss of reproductive decision-making. However, it can be understood according to Schneider and Ingram’s (1993) social construction and issue salience table, that abortion providers may be placed in the category of contenders. Though negatively constructed, doctors who provide abortion do so with the law on their side. With the erosion of reproductive rights and lack of access to abortion across states, it may be difficult to remember that abortion is still a right in the U.S. that is supported by federal and state law. Post-*Roe* abortion bans discussed in this thesis are unenforceable because of the unconstitutionality of an outright ban on abortion. Therefore, considering the high issue salience of abortion, negative construction of providers, their protection to practice under the law, and the punitive measures taken upon them in restrictive abortion policy, abortion providers would certainly be contenders.

As discussed in Chapter 3, reproductive technologies have played important roles in the shaping of reproductive policy. This is also true for technological advances in
abortion practices as well. However, not all reproductive technology is similarly socially constructed. Unlike the technology of the ultrasound being used to expand the “rights” of the fetus, technological advances in abortion practice do not necessarily expand the rights of women seeking abortion. The non-surgical abortion pill RU486 provides women with a safe alternative to surgical abortion. However, this pill has been under attack by anti-choice groups since its emergence on the European market in the late 1980s (Schroedel, 2000, p. 187). Schroedel predicted that “[i]f the drug is marketed in the United States, pro-life groups will lose a major public relations battle because the public’s image of abortions will radically change from the gruesome images conjured up by partial birth abortions to a much less troubling image” (p. 187).

While an entirely separate study on the public perception and marketing of RU486 could be conducted, its negative social construction can already be seen in the states included in this thesis.14 Anti-choice groups from the states included perhaps are recognizing the potential of non-surgical abortion to shift public perception. As seen in Chapter 6, anti-choice groups are currently poised to make hyperbolic and sometimes even false statements about the nature of a non-surgical abortion as expelling a “tiny dead baby.”15 Additionally, using negative constructions of women seeking abortions, anti-choice groups and policy makers situate the RU486 method as making it “easier” for women to have abortions, assuming that decisions of abortion are made flippantly.

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14 Though this thesis did not focus its categories of restriction on restricting the use of RU486, during the course of the research, several states were found to have bills pending to outlaw the use of RU486. Ohio had a statutory law already on the books outlawing the sale and use of RU486.
Though a national survey conducted by the Pew Research Center in the Spring of 2011 evidences a general polity in the U.S. that supports the legality of abortion in all or most cases (54% legal, 42% illegal)\textsuperscript{16}, abortion rights are still highly controversial and subject to attack by anti-choice policy-makers and interest groups. Looking at this fact alone begs the question of how these well-supported rights can be so burdened within state legislatures. It is important to understand that, as this thesis asserts, these extremely restrictive reproductive policies are allowed to pass under the guise of fetal personhood and fetal rights. With the negative constructions of women and abortion as a procedure combined with the positive construction of fetuses, a narrative emerges which allows restrictions to be passed somewhat under the radar.

Glimpses of the pro-choice majority, however, can be seen across the nation. States such as New Jersey and New York have much less restrictive abortion policy and generally protect women’s agency. Even in the states included in this thesis, which represent the most extreme anti-choice states, voter referendum in South Dakota, Colorado and North Dakota voting down amendments to make abortion illegal reflects the pro-choice majority, as discussed in Chapter 6. Additionally, as discussed in Chapter 7, pro-choice policy makers and interest groups constantly battle restrictive measures in court and make public the importance of women’s agency. Nevertheless, the louder the fetal personhood narrative becomes, the more generally accepted it becomes by the polity, translating, therefore, into restrictive policy.

\textsuperscript{16} The “illegal in most cases” category would suggest that there are cases in which women should still be able to legally obtain an abortion – a point which needs further study by the Pew Research Center. However, for the raw numbers of supporting legality, this poll suggests favor by over 10 points. http://people-press.org/typology/quiz/?pass&src=typology-video
II. The Maternal-Fetal Misnomer

The maternal-fetal conflict is a medical term that describes a health conflict between a woman and her fetus. Some scholars use this term to represent the policies that place a woman’s rights against those of the fetus (Roberts 1997, 40). This thesis contests the notion of the maternal-fetal conflict, not on medical terms, but on the grounds that when applied to policy, it is a highly constructed idea. The ways in which this notion is constructed can be seen in Roberts’ description of the practices of slavery in the U.S.:

[T]he beating of pregnant slaves reveals that slave masters created just such a conflict between Black women and their unborn children to support their own economic interests. The Black mother’s act of bearing a child profited the system that subjugated her. Even without the benefit of perinatology and advanced medical technologies, slaveowners perceived the Black fetus as a separate entity that would produce future profits or that could be parceled out to another owner before its birth. The whipping of pregnant slaves is the most powerful image of the maternal-fetal conflict I have ever come across in all my research on reproductive rights. It is the most striking metaphor I know for the evils of policies that seek to protect the fetus while disregarding the humanity of the mother (p. 41, emphasis mine)

While Roberts uses this horrific situation to assert the existence of the maternal-fetal conflict, her statement actually seems to support the idea of this thesis that this conflict is constructed. If Black fetuses were not part of the slave trade, they would not be seen as separate from the pregnant slave. The fetus was only viewed as separate by the slave owner on the basis of its economic worth. In fact, Roberts seems to acknowledge that the separation of fetus from woman is something that is constructed by the slave owner (see my emphasis). Not to conflate the vastly different situation of pregnant slaves and that
of contemporary pregnant women, it is nonetheless noteworthy that the fetus is treated as separate from the woman by those in power positions when it is most beneficial for them to do so.

Women have an infinite amount of differing experiences during pregnancy including feelings of separation, excitation, joy, worry, neutrality, indifference, and anticipation. Separation and fetal personhood are not experienced by all women, despite the dominant narrative. These feelings are created by fetal personhood proponents by ascribing rights to the fetus, using technology to “prove” that it is a separate entity, and framing abortion as something that uninformed or “bad” women commit against their fetuses. Furthermore, separating fetuses as individuals, giving fetuses rights and a life, allows for a shift in power dynamics from the capabilities of women to control their own reproductive capacities to those who wish to subjugate them by usurping that control. As explored further in Chapters 3 and 4, many otherwise positive and powerful experiences women may have during pregnancy are used against them.

III. Implications of Narratives

A. Situatedness of Pregnant Women

In her 2001 book, Baby’s First Picture, Lisa Mitchell describes the homogenization of pregnant women’s experiences through guidebooks. To assert her theory, Mitchell uses language from guidebooks such as What to Expect When You’re Expecting and informational booklets such as Nine Months for Life, a publication out of Canada where she conducts her research. While What to Expect is an American publication and best-seller, the Canadian informational booklets can be likened to the
state-mandated informational materials analyzed in Chapter 6. What these guidebooks tell is a story of pregnancy, however it is a story that is “… aimed at heterosexual, married, middle-class, ideal-weight, able-bodied women, and the authors presume that their readers have both the time and money to eat right, reduce stress, and learn how to be pregnant ‘properly’” (Mitchell, 2001, p. 89). Lumping pregnant women’s experiences into one predictable and idealistic constructed narrative can lead to an exclusion of the multitudes of experiences pregnant women have.

Mitchell (2001) interviewed pregnant women in Quebec and Montreal and became a participant observer in their pregnancies. Through this method Mitchell was able to extract the plurality of distinct emotions, encounters and feelings that her subjects experienced. As can be expected, and what would seem to be common wisdom, these women all felt different ways about their pregnancies. Most notable in Mitchell’s work is that the construction of pregnancy as one particular normative experience can be alienating towards women. Just as women who do not wish to keep a pregnancy, or women who never wish to become pregnant are considered deviant, pregnant women who do not fit into the “proper” construction may feel abnormal and misrepresented.

Not just limited to guidebooks, situating pregnant women as one homogenous group can be reflected by policy-makers in creating bad policy. As discussed further in Chapter 3 and 6, requiring a woman to undergo an ultrasound before abortion assumes that each woman will have the same (positive) reaction to that ultrasound. While it is possible that some women may change their minds upon viewing an ultrasound as policy-makers may intend, there can exist an infinite amount of reactions including an assurance that abortion is the correct choice. However, because policy-makers and anti-choice
advocates rely on the construction of pregnant women’s experiences as homogenous and positive, an ultrasound in this narrative would be helpful in changing her mind to fit that construction. Mitchell (2001) found that women, contrarily do not all have the same reaction to ultrasound; some may not understand what they see because of the technological expertise required to analyze the image (hence doctors being required to read a description), and some may understand the picture but may not feel a bond to the fetus. Therefore, the requirement of ultrasound before abortion can be unnecessary for the woman, expensive, and burdensome due to the imposition of waiting time between ultrasound and abortion.

B. Maternal-Fetal Relations

It should be noted that similar to constructing pregnancy as one homogenous experience held by women, constructing maternal-fetal relationships may have alienating, and negative policy effects. Like pregnancy, women experience their relationship to the fetus in a variety of ways. Situating the woman as lacking in what should be feminine instinct to feel “motherly” if she does not bond with the fetus, is unrealistic and damaging.

The maternal-fetal relationship, a physical connection which cannot be denied, is often constructed in a way that holds the fetus as controlling the relationship. The guidebooks Mitchell (2001) refers to in her research provide dietary guides which may suggest a sense of control for the woman, but are riddled with anxiety over which foods and activities would be best for the fetus. Mitchell writes, “[w]omen’s emotional and physical symptoms of pregnancy are equated with a fetal voice expressing its own needs.
That voice represents a vulnerable dependent fetus. The depiction of that interaction carries a clear message of normative maternal behaviour [sic]” (p. 96).

Additionally, and more cynically, women are also constructed as environmental hazards for fetuses. As explained further in Chapter 6, anti-choice groups often use rhetoric calling the womb a “dangerous” place. The division of woman and fetus furthers the narrative analyzed throughout this thesis: women cannot make reproductive decisions on their own, women and fetus are separate, and the individually separate fetus has rights that directly conflict with the woman. This narrative of the maternal-fetal conflict allows the fetus to be framed as intrinsically at odds with the woman despite the intimate connection and dependency shared during pregnancy.

C. Second-class Citizenship

Feminist scholars have explored the various ways in which women are relegated to second-class citizenship. Whether it be through welfare stigma, the glass ceiling of the corporate world, disproportionate poverty, the culture of domestic and sexual violence, the wage gap, underwhelming representation in governments on both state and federal levels, it is no surprise that women’s issues continue to be fought by feminists wishing to create a more equal and just society. Daniels (1993) addresses the second-class status of women with regards to their reproductive decisions:

[d]oes 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? As the fetus is animated and personified in public culture, the power of the state to regulate the behavior 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 (p. 2).
When women are either forced or asked to surrender their right to bodily autonomy, a condition that no free man under any condition would ever be forced to face, it becomes clear that women are held to a different standard of citizenship.

Similarly, Condit (2000) notes that the narrative used by anti-choice groups constantly place women at a lower class of citizenry than men. “Focusing on the fetus allowed [anti-choice groups] to side step the possibility that, in asking women to sacrifice themselves for reproduction, they were asking women, directly and unfairly, to serve the society more than men did” (p. 63). In other words, women according to the anti-choice narrative are being given some kind of choice indeed, though not the rightful choice of reproductive autonomy. This choice consists of the following: give up their rights for the “rights” the fetus has been ascribed, or attempt to obtain an abortion and go through the emotional, and socio-political hurdles and stigmas that come along. The only “acceptable” answer of course, is to choose sacrificing their rights, thus becoming the selfless mother. Although, as discussed above, the “conflict” between a woman’s rights and the “rights” of the fetus are a socially constructed reality and that no such conflict could or should exist, this is still seen as the dominant discourse of reproductive rights in the U.S. It is within this discourse that policy is made and within this discourse that feminist scholars have set themselves apart from normative arguments, to challenge the status quo.
Understanding social constructions pertaining to reproductive rights is invaluable to understanding reproductive rights policy and attitudes. Social constructions shape the perceptions and practices of individuals in ways that become ingrained into the fabric of society. While it may be difficult at times to recognize social constructions due to the fact that they underlie most ideologies, it is detrimental to extract these constructions and reveal any constructions which may be harmful. What occurs thereafter is a more succinct understanding of attitudes and realities which can better inform policy and have a positive impact on women’s lives.
CHAPTER 3: REPRODUCTIVE TECHNOLOGY

I. Ultrasound/Sonogram

As discussed in Chapter 1, the ultrasound technology was used sparingly in the late 1950s and 1960s for pregnancy. Becoming increasingly routinized as a normal part of pregnancy, ultrasound gained significance in the 1980’s as a way of diagnosing fetal problems, and gender identification. By the 21st Century, ultrasound has proven to be more of the norm for seeing and understanding a pregnancy, than a strictly diagnostic tool. With the advent and increased use of social media, ultrasound images of fetuses are everywhere17, and the social capital is not lost on anti-choice advocates and policy-makers. Of ultrasounds, Taylor (2000) warns, “[a]s with any technology, its use in social practice does not correspond exactly to any one set of intentions” (p. 396).

This chapter provides essential background information on reproductive technologies as they are presented in feminist and public policy literature. An understanding of the analyses that follow is relevant to this study’s deconstruction of reproductive rights policy, specifically ultrasound requirements. Ultrasound images have been co-opted throughout the years by the anti-choice and fetal rights proponents in an effort to contextualize their arguments and support their discourse. Reproductive technology is of vast significance to this thesis for its purported establishment of fetal personhood and fetal separation, and for its bypassing of women as a source of information about pregnancy. It is another way in which women are removed from

pregnancy and reproductive decision-making. Thus, it is imperative to understand the complexities behind this diagnostic tool.

A. Emergence

Bringing the fetus into the public through images, fetal rights advocates normalize the idea of their argument. Daniels (1993) explains,

[f]etal technologies merged with a powerful anti-abortion movement to create the public spectacle of fetal personhood. While fetal technologies could not themselves endow the fetus with independent life, they could suggest the ways in which such imagery could be used to shift the power of procreation and pregnancy away from women and towards the social institutions of science and the state (p. 19).

As scholars note, through rapid advances in medical technology, fetuses can become highly public figures, separate from women, and thus situated at odds with women’s choices, experiences and bodily integrity. Berlant (1997) illustrates this point by asserting, “…the sonogram has come to attain higher truth value than many other knowledges of pregnancy, including the mother’s feelings and experiences…” (p. 113). Likewise, Sandelowski (1994) acknowledges the connectedness between ultrasound technology and “responsible motherhood” noting, “…fetal ultrasonography has also had the effect of minimizing pregnant women's special relationship to the fetus while maximizing their responsibility for fetal health and well-being” (p. 231).

In many ways, ultrasound technology is used by doctors to manage a woman’s pregnancy, using estimated guesses based on this technology instead of relating directly to the pregnant woman and asking her about her pregnancy. Taylor (2000) asserts that ultrasounds, in this way are a “…safe means of obtaining a great deal of information not otherwise available, about the position, appearance, and activity of the fetus. The
availability of such information does not, however, in and of itself explain why the
information is considered valuable or useful” (p. 393). There exists a bypassing of
women as a “source of knowledge” about the fetus or pregnancy in general that is largely
brought about by the emergence of ultrasound technology. This bypassing that occurs in
the realm of the otherwise normative pregnancy can also be seen in the case of abortion
policy. Women’s experiences and knowledges about their pregnancy, their reasons for
termination, hardships, concerns, and their variety of situations are bypassed by policy-
makers who seek to obtain their own “truth” of those pregnancies in order to fit their
policy prescriptions.

Interestingly, the use of ultrasound has been highly routinized according to Taylor
(2000) “…despite medical professional guidelines, which have consistently
recommended against routine screening of all pregnancies and for more limited usage
only in the face of certain specified medical indications” (p. 396). Taylor goes on to
explain that it is important to note that ultrasound is often used to diagnose problems with
the fetus to which there is no medical treatment. In these cases, the medical suggestions
following such ultrasounds are most commonly abortion. Thus, the ultrasound, a medical
tool, is placed in a precarious frame. Ultrasound is simultaneously used for
empowerment, as in diagnosing fetal abnormalities for which the woman makes a choice
with her doctor as to treatment options including abortion; as well as for oppression, as in
the increased transparency of women, and ultrasound laws increasingly burdening
abortion rights. Though ultrasound technology is highly interpretive, one point is clear:
ultrasound has become highly routinized as part of many women’s pregnancies and, in an
increasing number of states, their abortions.
1. Commodification v. Objectification

The over-use of ultrasound technology can be analyzed in a variety of ways. Taylor (2000) describes this phenomenon as a commodification of the fetus, and of pregnancy. Taylor asserts a type of assembly-line theory: women are seen as unskilled workers, the fetus is a product, and the doctors are managers. The use of ultrasound would be a management tool through which doctors could maintain a quality control over the product. The consumers of the product would also be women (in addition to being unskilled workers) who, thanks to the use of ultrasound, know the gender of the fetus, and can purchase goods from necessary to extravagant based on that gender. Taylor’s theory is interesting and as it pertains to this thesis, provides helpful insights into the rapid emergence of the ultrasound and its heightened importance in reproductive rights policy. However, shifting the focus of Taylor’s management staff from doctors to political actors, a different analysis comes to light. As so much of the anti-choice discourse focuses on bolstering a particular narrative, their policy directives tend to ignore the real needs of fetuses, pregnant women, and infants. Hence, the fetus, for which anti-choice policy-makers and activists claim to be providing a voice, is simply a vehicle for the underlying policy of control of reproduction.

Analysts and scholars looking into the commodification of the fetus, or fetal personhood theories should not cease when they find that the anti-choice narrative suggests that the fetus is a baby. The analysis does not stop there because the narrative does not stop there. Each Marxist-feminist theory of the consumer culture that surrounds pregnancy; buying new products, guidebooks, gendered clothes and goods, unnecessary ultrasounds, and the entire industry that thrives off of normative pregnancy, must go
beyond the implication that the fetus is a baby (in need of consumer items). Certainly the “baby” industry is lucrative, however, not all women and families spend thousands on new products and ultrasonic images. As it is asserted throughout this thesis, women experience pregnancy in a variety of ways, including and excluding participating in consumerism. However, even if one could make definitive connections between the commodification of the fetus for monetary gains, it begs the question as to who profits from the commodification of the fetus. Furthermore, even if an institution or corporation gains monetarily from fetal commodification, what comes next?

Of course, most of the scholarly work on the commodification of the fetus revolves around women who are part of (re)production by continuing pregnancy. What is more apparent when looking at women who do not wish to (re)produce, is that the narrative focuses more on the objectification of the fetus for power gains. As mentioned in Chapter 2, the fetus is objectified as it is given “voice.” Its image is harnessed, taken out of context, pitted against the woman from whom it is nourished, and victimized as a prisoner in utero. On billboards, license plates, protest signs, magazine covers, bumper stickers, etc., the fetus is objectified, as opposed to commodified. Certainly an organization would profit, however incrementally, from selling such merchandise, but it is spreading the message through the merchandise which is the true ideological strategy. Because this does not revolve around monetary gains, it can be seen that the fetus is in this respect, objectified for the cause. As images are persuasive, fetuses, their protection and their personification, become the guise through which reproductive control is legislated.
2. Transparency of Women

Daniels (1993) finds that “[i]n order to publicly display the fetus in photographic and video images, the pregnant woman had to become transparent…” changing and shifting the discourse surrounding pregnancy and leading “…to a fundamental transformation in how we think about the pregnant woman’s body” (p. 16, 17). In this way, women are often removed from the larger picture of pregnancy and reproduction. Through both ultrasound-produced images and imagery used in advocacy work, it is feared, according to Schroedel (2000), that “…women will eventually be reduced to nothing more than ‘fetal containers’” (p. 3). Certainly it can be seen that even through a brief examination of the discourse within the fetal rights interest groups and state policy, the woman is separated from her own pregnancy. Daniels (1993) asserts that the woman is broken down into parts not containing agency of her own, or having connection to the fetus she carries. Daniels writes,

The uterus is not a part of the woman, but is the fetus’s “sanctuary.” The woman is not pregnant, but is an “expectant mother,” a mother whose child has already been “born” at conception but not yet been released from the womb… As the fetus emerged as a person, the pregnant woman began literally to disappear from view. In much of the promotional literature of the anti-abortion movement, the fetus is visually severed from the mother, presented as a free-floating being, attached tenuously to the “mother ship” by the umbilical cord (p. 20, 21).

Scholars have pointed to the use of ultrasound by policy-makers and anti-choice advocates as an incredible piece of medical technology which provides a “window to the womb.” The implications of statements such as these are vast and undeniably damaging towards the autonomy and liberties of women. Seeing women’s bodies as a previously impenetrable barrier creates an environment that situates the woman as more of a hindrance to anti-choice policy makers in serving as a representative of their true
constituent – the fetus. As mentioned earlier, the bypassing of women and their experience through the “truth” of ultrasound technology allows women’s bodies and voices to disappear in the reproductive rights discourse. Stabile (1992) writes, “[t]he visual and symbolic exclusion of women from reproduction seems a further extension of this logic, yet another strategy for investing power in legal, medical, and other institutional bodies, while ignoring material female bodies” (p. 194).

Instead of being the focus of public attention, the woman now is made invisible, unimportant, and at the complete whim of the fetus, whose rights are represented more than her own. It is in this way that women’s agency is diminished for the sake of fetal rights thus, according to some scholars and women’s rights advocates, creating the maternal-fetal conflict. However, it is important to explore the relationship asserted in the theory of the maternal-fetal conflict. It is not that the woman and her fetus are in a rights struggle at all times, rather the underlying assumption of this theory reads as more of a power struggle between woman and state, or the ability to gain autonomy in the face of reproduction. The insistence by state law that women undergo ultrasound before abortion and of the asserted importance of fetal images by anti-choice groups illustrate that making women transparent in order to separate the fetus unnaturally, is at the center of the reproductive power dynamic.

B. Ultrasound Laws

Ultrasound has been used as a restrictive measure through policy mandates with regards to abortion. In each state included in this thesis, a woman must undergo an ultrasound prior to an abortion, with varying degrees of severity regarding whether the
woman must look at the screen, or have the fetus described in detail, among others. What is widely misunderstood by the general public is the nature of the ultrasound procedures. Abdominal ultrasound includes an instrument used over the woman’s skin; the familiar jelly-on-the-belly, non-invasive shadowy grey image-producing procedure. However, vaginal ultrasound is more invasive, requiring an instrument to be inserted vaginally, and producing a clearer picture than the grey “blob” so many are accustomed to. States that have pre-abortion ultrasound requirements may indicate that the ultrasound be performed vaginally, such as in Oklahoma, thus creating what some scholars and civil rights advocates argue to be a violation of due process. As discussed in detail in Chapter 6, subjecting a woman to an invasive medical procedure upheld by court orders and state law places women at a distinct position of having their bodily integrity violated by virtue of their choice to have an abortion.

Pre-abortion ultrasound requirements as part of informed consent laws rely on the power of the visual. These laws exist, on the surface, to demonstrate the importance of seeing a fetus in an effort to convince a woman of her “bad” decision. Oklahoma, one of the states included in this thesis, was among the first states to enact an ultrasound requirement in its informed consent laws, which was ultimately challenged by pro-choice organizations. This law followed on the heels of the 2007 U.S. Supreme Court decision upholding the so-called Partial-Birth Abortion Ban Act, which was a ruling that in and of itself was highly focused on the image of late-term abortion procedures. Instead of a doctor using his or her discretion as to whether an ultrasound is necessary for the abortion

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18 The U.S. Supreme Court holding in *Gonzales v. Carhart*, 127 S.Ct. 1610 (2007) upheld the challenged federal law known as the Partial-Birth Abortion Ban Act, explained in Chapter 1, which prohibited the use of D&E abortion procedures.
procedure, the law mandates an ultrasound coupled with the act of turning the screen towards the pregnant woman. This law was the most aggressive act of imposing the visual on a woman seeking abortion.

Furthermore, the precedent-setting Oklahoma law was the first to state that the ultrasound must be interpreted orally, the fetus described in detail by the doctor. As explained in detail below, the use of the simultaneous oral description and image of the fetus is common in anti-choice rhetoric. Images, though sometimes powerful, require the accompaniment of language to help manifest its engrained value, meaning, and construction, thus compelling one to perceive the image in a particular way. The ultrasound laws analyzed in this thesis all contain a verbal description, and even more interestingly, most note that a woman may avert her eyes, but say nothing about not listening to the description. Clearly the image of the ultrasound does not stand alone in affirming an anti-choice argument of fetal personhood. Even the structure of the Oklahoma law is notable for its padding of the visual with language. The language includes requirements that: 1) the ultrasound must be performed (vaginally or abdominally); 2) a description of the ultrasound must be given; 3) the ultrasound screen must be turned towards the woman; and, 4) the description of the fetus including details of functions.¹⁹ (See Table 3.1).

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¹⁹ For an analysis on the other ultrasound laws in the states included, see Chapter 6, Table 6.2.
Table 3.1 – Image-Language Strategy

<table>
<thead>
<tr>
<th>Action</th>
<th>Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ultrasound must be performed before abortion</td>
<td>Image</td>
</tr>
<tr>
<td>Description of ultrasound image must be given</td>
<td>Language</td>
</tr>
<tr>
<td>Ultrasound must be viewed (or screen turned)</td>
<td>Image</td>
</tr>
<tr>
<td>Description of fetal development must be given</td>
<td>Language</td>
</tr>
</tbody>
</table>

This format of image-language\(^{20}\) is extremely important to the construction of fetal images and is the foundation the imposition of state control over women’s reproductive choices. It should be noted that due to the efforts of feminist and reproductive rights groups, this Oklahoma law is currently stayed pending a lawsuit on its constitutionality.

**C. In Fetal Rights Discourse**

Mitchell (2001) contends that ultrasound technology has evolved from being simply a medical instrument used by technicians and doctors to track development, sex, age and check for abnormalities. What was once a medical procedure used to ensure health of the woman and fetus has been harnessed by fetal rights advocates equating the fetus to children and/or adults. Daniels (1993) explains the images used by fetal rights proponents as being largely influenced by the ultrasound technology; “[s]uch images sought to *personify* the fetus, to establish visual metaphors and encourage a complete identification between “pre-born life” and the newborn baby or even the full-grown human being” (p. 20, emphasis in original). Clearly, fetal rights advocates utilize these

\(^{20}\) Interestingly, Oklahoma’s law can be compared to a 2007 federal bill introduced by then Senator Brownback (KA) entitled the Ultrasound Informed Consent Act, which, though it died in committee, was the first ultrasound as informed consent bill introduced in the U.S. This failed bill was a reaction to the *Gonzales* ruling and followed the same structure of image-language. [http://www.govtrack.us/congress/billtext.xpd?bill=s110-2075](http://www.govtrack.us/congress/billtext.xpd?bill=s110-2075)
images--what were once privately viewed by doctors and soon-to-be parents--in order to bring fetuses into the public sphere and situating fetuses as a class of citizenry that requires protection. In fact, fetal rights advocates are reliant on these now publicized images for impressing their “moral” discourse on the general public and state policy makers. Ruhl (2002) asserts, “[w]ithin this social context, where the fetus – thanks largely to ultrasounds now performed in grotesquely unnecessary numbers – is literally seen as an embattled individual, it should not be surprising to see the law called upon to protect this helpless person-to-be” (p. 40, original emphasis).

Petchesky (1987), Condit (1995) and Berlant (1997) each discuss the use of ultrasound images in the well-known anti-choice video The Silent Scream, which in 1984 brought the visual of ultrasound, as well as abortion, to the public sphere. Petchesky (1987) analyses the sociocultural meanings behind the images in The Silent Scream. The film, which was unabashedly a propaganda piece for the anti-choice group the National Right to Life Committee, “… was intended to reinforce the visual "bonding" theory at the level of the clinic by bringing the live fetal image into everyone's living room” (p. 265). As discussed previously, the idea that women would automatically “bond” with the image of the ultrasound is heavily relied upon among anti-choice groups and policy-makers. Nevertheless, the film also includes numerous cutaways by who Petchesky describes as “someone who "looks like" the paternal-medical authority figure of the proverbial aspirin commercial” (p. 266). The purpose of this actor is to present physical models of the fetus as a means of further explanation of what is occurring in the ultrasound. Petchesky notes that the film was criticized for its gross inaccuracies including the fetus models being much larger than an actual fetus at the same stage, and
“camera tricks” which produce images of a quick-moving fetus. (p. 267). However inaccurate the film may be, a striking point of departure from its message is its simultaneous fetus model comparison to the ultrasound image. If indeed an ultrasound is so powerful in its capacity to shed light on the personhood of the fetus that it persuades women from having an abortion upon viewing it, why would a model need to be used simultaneously?

III. Images: Importance and Limitations

A. The Spectacle

Fetal personhood is normalized into the public domain through an endless barrage of images: in mainstream movies, music videos (Berlant, 1997), widely read magazines, or car advertisements (Roth, 2000). The fetus is everywhere “… follow[ing] the celebrity logic of the diva, whose majesty derives from her bigness on the screen, her intimacy with pain and death, her capacity to survive by being a space of permission for the expression and bodily demonstration of excess sentiment” (Berlant, 1997, p. 125).

Bringing the fetus into the public cannot be done without strict contextual meaning. In other words, the fetus is not publicized alone, rather, with a clear sociocultural message that it is a baby. Condit (1995) examines the publicized fetus and its symbolic translation to the general polity through images, video, objects (such as dolls) and rhetoric:

These rhetorical translations of fetal images into babies have a cumulative effect: We perceive these fetuses as babies because we’ve been exposed to them as such previously. We walk away from each encounter having incorporated those images in a way that shapes our next exposure to a fetal image. Gradually, the symbolic meaning of “fetus” is being radically transformed. Where the abstract idea of fetus once signified an invisible,
unknowable potential, it is coming to designate an extant, corporeal entity with a knowable autonomous identity as a baby (p. 32).

The publicly constructed perception of a fetus as a baby can be quite damaging for the autonomy of women. Even if the fetus was seen as a “potential baby,” as diametrically opposed to just “baby,” the sentiment would acknowledge the importance of the woman, the dependency of the fetus to the woman, and the interconnectedness of that private bodily relationship. The fetus then would cease to be objectified as a perpetual victim, a spectacle, a lonely traveler trapped in a hostile environment.

Sandelowski (1994) points out that not only is the fetus cast as a spectacle through ultrasound specifically, but ultrasound also creates a spectacle of the woman. In a dichotomous relationship, women are simultaneously transparent as well as spectacles. By virtue of the way ultrasound is conducted, women become the spectacle; “[t]he fetus is the primary object of scanning and the primary subject of the fetal sonogram, and it is the pregnant woman's body that must be scanned to gain visual access to the fetus” (p. 235). However, Sandelowski’s study highlights an extremely salient point on which this thesis rests: the spectacle created by ultrasound, and arguably most fetal imagery, is contingent upon the male gaze that is the spectator. As it stands, there can be no spectacle without one to gaze upon it. Ultrasound and sonogram imaging become a “technological surveillance of pregnancy constituting a new but familiar order of control over women” (Sandelowski, p. 239). Indeed, Sandelowski continues, “[w]omen’s bodies are made transparent to the male gaze” (p. 239). In fact, the importance of lessening a woman’s “privileged” position in having knowledge of, and a relationship

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with the fetus by transparency, removal, or demonization is an inherently androcentric attitude. As women are bypassed as the primary “source of knowledge” of their pregnancy, mentioned at the beginning of this chapter, it is the male gaze through the woman, made possible through ultrasound, that replaces women’s experienced knowledge with knowledge gained through technology.

Sandelowski (1994), in much more positive terms asserts,

> Although both women and men derived great comfort and pleasure from seeing their babies, fetal ultrasonography seemed to be more important to some men than to their wives in confirming the existence of a baby and their impending parenthood. For women, the transformations of their bodies, feeling the fetus, and, especially, quickening remained important or more important than viewing the fetal sonogram as a stimulus of maternal feeling… For many of the men, the fetal sonogram was a kind of proxy for female experience; it was a way for them to become more relevant and to move to center stage beyond their stagehand role in reproduction vis-a-vis their pregnant partners' leading-lady role (p. 237).

Though the male-fetal bonding can be a pleasant experience for expectant couples, for the purposes of this thesis, these very real attitudes and experiences can be directly applied to the politics surrounding abortion and reproductive rights. To gain a semblance of control over reproduction, which after sexual intercourse, is biologically and technically speaking is within women’s control, ultrasound technology and other types of fetal imagery are employed so that the normative, androcentric narrative can be assumed through the “voice” given to the fetus. As described in greater detail in Chapter 4, it is no mistake that anti-choice policy-makers and state agents assume an androcentric and paternalistic approach in their policies of control over the reproductive rights of women.
B. The Limitation of Images

However popular and persuasive fetal images can be in creating personhood, or promoting the transparency of women, they include vast limitations. As mentioned above in the analysis of laws requiring ultrasound before abortion, the image is always coupled with a description of the image. Ultrasound technology, while useful to medically trained professionals, can be visually confusing to non-medically trained laypersons. As many scholars (Sandelowski, 1994; Condit, 1995; Berlant, 1997; Mitchell, 2001) note, ultrasound images are problematic to laypersons as the clouded grey image is subject to interpretation by those trained to attach meaning. Of course, an ultrasound image performed on a pregnant woman focuses on the fetus as a subject; however, the image itself cannot stand alone.

Ultrasound images are not the only images subject to interpretation and framing to attach meaning. Most images, especially those used in anti-choice literature and films, are buttressed by translation. Petchesky (1987) notes that the reliance of narrative coupled with the images shown in *The Silent Scream* (1984) create a “double text” of audio and visual. Of course, the narrative heard in this film is riddled with rhetoric proclaiming to tell a “truth” about the images. Similarly, scholars have found that the Lennart Nilsson fetoscopic images of fetuses seen in *Life* magazine in 1965 are highly contingent upon the accompanying text.22 Stepping even further away from ultrasound images, many of the illustrated images of fetuses subject to analysis in this thesis and described in detail in Chapter 6, are placed within a context of language and comparisons.

\[22\] Interestingly, what accompanying text would reveal is that not all of the images are of “living” fetuses, rather some meticulously positioned fetuses are products of both spontaneous and intentional abortion.
In fact, as described in the methodology employed in this thesis\textsuperscript{23}, one of the categories of analysis was whether an image of a fetus was coupled with language and labels that attach a particular meaning to that image.

Additionally, as Condit (1990) explains, images used in the reproductive rights discourse are usually contextualized by various tropes such as metaphor, hyperbole, metonymy, and synecdoche. By placing fetal images within these tropes, a narrative can form that for all intents and purposes is more powerful than the image itself. However, Condit notes that despite their face-value persuasiveness, images have great limitations. “Because arguments based on images are completely dependent on tropes, they are open to the dual possibility of persuasive potency and argumentative inaccuracy” (p. 81-82). Where inaccuracies abound, and the lived experiences of women are often dismissed, the visual manifestations of the anti-choice discourse can be seen as damaging and pervasive.

* * * * *

Though much can be learned through the use of ultrasound technology, scholars must not lose sight of its symbolic effect on women. The adherence of ultrasound technology to “responsible motherhood,” the simultaneous transparency of women, the fetal spectacle and objectification, and the spectatorship of men as a means of reproductive control, are all by-products of this rapidly advancing technology. Additionally, the expansive policy diffusion among states of ultrasound laws for abortion is no mistake. Ultrasound technology plays in perfectly with the advancement of the use of state power to control women’s reproductive capacities by reducing their role in

\textsuperscript{23} See Chapter 5.
pregnancy, objectifying both women and the fetus, and creating burdensome bureaucratic restrictions on abortion. As this technology is allowing those in the medical field to understand and treat women and fetuses, as well as providing expecting couples an experience in which they often revel, the joy and potential good ultrasound can generate is being usurped by anti-choice advocates and policy-makers in a way to restrict and burden women.
CHAPTER 4: POWER DYNAMICS

I. The Role of the State

The main intention of this thesis is to highlight the conflict that exists between the woman and the state with regards to a woman’s reproductive capacities. Scholars have attempted to show this conflict in policy issue areas such as welfare, the prison system, and slavery. Though these areas provide salient examples of the woman-state conflict, abortion remains the single most overt policy that displays this conflict. As this thesis outlines in Chapters 1 through 3, anti-choice policy-makers use state power to gain a semblance of control over women’s reproductive capacities by limiting women’s access to abortion. By limiting, or arguably stripping away access to abortion, women would no longer have autonomy in reproduction. Without the legal access to abortion, a woman who becomes pregnant would be forced to carry the pregnancy to term and birth an infant regardless of the conditions under which she became pregnant, the health risks associated with pregnancy, or her intentions on being a mother.

Chapter 2 delved into the theory of fetal personhood – the guise through which restrictive policy is enacted. It is contended in this thesis that argument on behalf of the fetus, or its rights thereof, are central to the justification of limiting or stripping women’s abilities to control their reproductive capabilities. The maternal-fetal conflict is a theory that gives a name and a “condition” to this justification, allowing it to resonate with the general polity. Thus, it is important to understand the true conflict behind reproductive rights issues and the power dynamics that underlie restrictive policies. It is also
important to take a closer look at the state’s role in reproduction, in policy, practice, and
theory.

A. Paternal State

The paternal state is one that is deeply entrenched within the underlying narratives
discussed in Chapter 2 – the good/bad mother, heteronormative behavior, fetal
personhood, and androcentricity. In the paternal state, the state bears the responsibility of
dictating norms and behaviors based on these underlying narratives, however dismissive
of reality these norms may be. Daniels (1993) writes, “[t]he power of the state to
endorse interpretations of cultural symbols is critical in determining where we assign
culpability and whom we absolve from blame,” (p. 99). Specifically, within political
issues that are determined “moral” issues the distinction of norms created and endorsed
by the state through its various actors are all the more inherent.

By giving “voice” to the fetus, political actors can situate the state as having a
responsibility of protecting its most vulnerable citizens. This responsibility of course, is
in place of a woman’s responsibilities which she shed, one can assume, by being corrupt,
“bad,” selfish or feminist. The appropriation of paternal responsibilities is an ideology
that is even more constructed than the maternal-fetal conflict. Policy-makers and fetal
rights advocates contend that they speak directly for the interests of fetuses – as a conduit
– knowing what they want, and protecting them from irresponsible women and
murderous doctors. What is “spoken” to these policy-makers by fetuses is then put into
policy. However, what is noteworthy, and often overlooked by scholars, is that not only
is there no fetal voice whatsoever, but that the voice in and of itself is constructed. The
fetus may not need protection at all. Rather, policy-makers construct a voice and assert
that this voice is asking to be placed directly and, ironically, at odds with the sole entity from which it obtains sustenance – the woman. Hence, in the paternal state wherein the voice of a fetus is aligned with a conservative policy agenda, a woman must be demonized in order to allow policy-makers to use the state to step in as nurturer, protector and voice of the fetus.

The role of women under the paternal state, when not demonized, is infantilized. In the paternal state, a woman would need protection as well as her fetus, against doctors, pro-choice advocates, or even protection from themselves. Women’s Right to Know policies, discussed in greater detail in Chapter 6, are based on the idea that when a woman seeks an abortion, that decision is inherently uninformed. This decision is seen as uninformed due to both the woman making a snap decision without thought of consequence, as well as due to doctors who withhold information. The sentiment of “protecting” women from abortion is extremely interesting, yet confounding. In the paternal state, policy-makers utilize this discourse to restrict women’s access to abortion services, creating a dangerous reproductive atmosphere for most women. As noted in Chapter 1, the paternal state is not new; abortion was illegal in the U.S. until 1973, with policy-makers citing protectionism of women as a reason for the illegality. While some of the earlier practices of abortion had terrible health effects, the methods employed in the mid 20th century improved greatly. In fact, as noted in Chapter 1, it was the illegal “back alley” abortions that caused women substantial illnesses, including death. As seen in this light, the “protection” utilized in reproductive policy today by the paternal state is flawed, misplaced, unnecessary, and damaging.
B. Compelling Interest

The language of the state’s compelling interest found in state law is a direct reference to the very most fundamental reproductive federal case law. As the most current precedent-affirming case, Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992) notes in its three-pronged U.S. Supreme Court holding regarding state restriction on reproductive rights that the state has a legitimate interest in protecting the health of both the woman and the fetus. While this language leaves a largely interpretive open door for state policy-makers to define their own “interests,” it also assumes a separation between woman and fetus, affirming the importance of the maternal-fetal conflict in the normative discourse. Furthermore, it reaffirms the presence of the state in a woman’s reproductive life, and showcases the power dynamics within the woman-state conflict.

As noted in Chapter 1, the compelling interest language which the Casey court upheld derives from the Supreme Court ruling of Roe v. Wade, 410 U.S. 113 (1973). The state’s interest in the “…protection of health, medical standards, and prenatal life,” as described by Justice Blackmun, placed the state and the fetus as primary actors in the reproductive rights debate; the woman’s body being the stage (Roe, p. 155). The vague protectionist language of Roe was clarified only slightly more in the Casey decision by asserting that a woman’s access to abortion services should not be “unduly” burdened by a state’s compelling interest. This created some pause for feminists during the early 1990’s as a “burden” can be just as vague and subjective as compelling interests. The freedom to terminate a pregnancy stipulated in Casey only applied to pregnancy that is
pre-viability. After the point of viability, however, policy-makers are able to enact restrictions on abortion access, as well as other types of reproductive restrictions, all in the purported interest of fetal protectionism.

Literature that focuses on the use of the “compelling interests” sentiment usually focuses on the more horrifying aspects of state control over reproduction wherein women are subjected to violations of their bodily autonomy through forced surgery, forced medical treatment or some kind of statutorily-imposed detention. However, it is important to remain aware of the ways in which the “compelling interests” of the state are used to restrict abortion pre-viability. In *Casey*, the “compelling interests” of the state expand to include informed consent provisions. Described in full detail in Chapter 6, informed consent policies provide an umbrella for restrictions to pre-viability abortion access. Ultrasound requirements, waiting periods, state-mandated scripts for doctors, state-mandated anti-choice counseling, and medically inaccurate informational packets all fall within the realm of informed consent policy and can be some of the most burdensome and troubling among abortion policies. Nevertheless, anti-choice policy-makers rely upon an interpretation of the “compelling interest” language of the Supreme Court holdings in *Roe* and *Casey*, in order to enact these restrictive policies.

C. Ideal Citizen

Undoubtedly the fetus represents many different rhetorical points through which anti-choice policy-makers may assert control over reproduction. Having assumed a

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24 As noted throughout this thesis, with the support of research within the medical community, there is no uniform “point” of viability of fetuses. Pregnancies are unique and each fetus may reach viability at distinct gestational ages. For more, see Chapter 6.

25 Daniels (1993) discusses the numerous potential and in some cases, actual bodily restrictions women have had to endure due to state protection of fetuses, including: imprisonment, being committed to a mental hospital, being fired from her job, undergoing invasive surgery, and forced feeding (p. 25).
position as a parental figure protecting the vulnerable fetus, and written that situatedness into the law, policy-makers continue to push the rhetoric of the fetus as an ideal citizen. The fetus, in the anti-choice narrative, is a literal representation of futurity, specifically of American futurity. To believe in the rights of the fetus is to believe in the future of America. Images of fetuses in the anti-choice discourse tend to link the fetus to patriotic icons such as riding a motorcycle and space exploration\(^{26}\), both of which are engrained into the American psyche as representing freedom (of the open road), and American exceptionalism and ingenuity (as in the conquering of the vast unknown of space). These images infer that to be pro-choice is un-American, or at least is to be someone who needs “saving.” Additionally, as the logic would follow, the greatest form of patriotism a woman can take part in is motherhood — supplying the future generations of Americans. Berlant (1997) explains:

> In so recasting the pregnant body as, at its best, a vehicle for the state’s “compelling interest” in its citizens, the pro-life nation that currently exists sanctions the pregnant woman as American only insofar as she becomes impersonal and public, committed to submitting her agency to the “compelling interests” of any number of higher powers” (p. 99).

The roots of the patriotic pregnant woman run deep within American culture to the very onset of the eugenicist movement. “Race suicide” was an idea held by many Protestants in the U.S. in the late 1800s, fearing that they were being outnumbered by Catholics (Sauer, 1974, p. 59). As discussed in Chapter 1, reproductive control was at the center of the eugenicist movement through promoting sterilization methods on less-desirable groups of citizens, and in opposing abortion practices for other groups such as

\(^{26}\) The images referenced here are described in greater detail in Chapter 6: an anti-choice billboard of a baby poised and dressed as though it were going to ride a motorcycle, with “Born to Ride” language contextualizing the photo; and, the space-like images of fetuses by Lennart Nilsson as published by Life magazine in 1965 and again in 1990.
Protestants (who during the late 1800s were a large majority of those seeking abortion). The underlying eugenicist current can be seen today in the controversial anti-abortion advertisements seen in New York City and St. Louis declaring, “The most dangerous place for an African American is in the womb” and similarly in Los Angeles, a bilingual English/Spanish billboard claiming the same of Latinos. The idea behind these billboards is to suggest two divergent ideas: that Black and Latina women are being coerced into abortion, or that Black and Latina women are inherently selfish or culturally depreciative by seeking abortion. The protectionist language is clear in these billboards and states a radical and rather unnerving message; that the womb is a dangerous place for fetuses. While the womb is in fact the only place for fetuses, these eugenicist-inspired billboards beg the question: where is the safest place for fetuses? The “logic” of these billboards seems to suggest that the abstract entity that is the state would be the safest place. Thus women, especially minority women, should place their reproductive autonomy in the hands of state actors, who legislate according to their assumed knowledge and connectivity to the needs of fetuses.

Aside from futurity and race-assurance, the fetus also represents the ideal citizen through its very innocence and lack of voice. Berlant (1997) writes,

> because it appears to be personhood in its natural completeness, prior to the fractures of history and identity, the fetus is supposed to be a solution, from the origin of human existence, to the corporeal, juridical, intimate violence that plagues American today. It has become an index of natural/national rights with respect to which adult citizens derive their legitimation (p. 104).

27 The irony behind these billboards is staggering as early eugenicist ideology is perpetually linked to racism and forced sterilization of minority women. Additionally, for Latina women, the most recent anxiety within socio-political discourse of immigration policy is that surrounding “anchor babies;” children born to undocumented immigrants in the U.S., who become citizens by the locality of their birth. (Billboards are from the Radiance Foundation and Life Always).
The fetal voice is constructed, and therefore it is essentially a blank slate on which the anti-choice movement may project their message of control. Policies stemming from this representation of the fetus are those which are enacted for the “health” or “wellness” of the fetus. Scholars have long traced these policies as heavily paternalistic, allowing anti-choice policy-makers to construct a situation in which the citizen fetus, as opposed to the adult woman citizen, receives greater rights, care and attention than the woman. Forgetting that the woman can be the only true citizen, women’s bodily autonomy as citizens is often legislated against in the name of the highly constructed “citizen” fetus.

D. Body Politics

Body politics refers to policy that directly relates to corporeal power dynamics – it is a policy that is made to control or apply power over the body of an individual. Abortion happens to be one of the most salient policy issues that reflect body politics. Daniels (1993) writes, “…at the point of fetal viability, the woman’s body can literally become the body of the state, at which point the pregnant woman might lose her most fundamental right to resist state intrusion” (p. 25). The legislating of bodies by state actors is an austere reality for women. Though the scope of this thesis cannot provide for an analysis of fetal surgery issues, scholars note the occurrence of court intervention on “behalf” of the fetus in cases of refusal to surgery by the woman as a direct manifestation of body politics (Roth, 2000). Additionally, in discussing reproductive rights issues, scholars often call to mind the incarceration of pregnant crack addicts as another example of body politics (Daniels, 1993; Berlant, 1997; Roberts, 1997; Roth, 2000).

28 Citizen as defined by the Fourteenth Amendment of the U.S. Constitution is any person born or naturalized in the United States.
Another interesting point to acknowledge about the body politics at play within abortion policy is that of the fetal patient. As reproductive technologies evolve, the ability of doctors to treat fetuses, and perform surgery on fetuses also increases. Though this is a welcome advancement for women whose complicated pregnancies can be treated with relatively low to moderate risk, these technological advances tend to inform the anti-choice discourse. The idea of the fetal patient furthers the construction of the independent fetus. Women are often reduced to a barrier which a doctor must break down to get to the “real” patient – the fetus. This frame of thinking has dangerous legislative consequences for women, discussed in greater detail in Chapter 6. One brief example is the recent influx of “fetal pain” laws which prohibit abortion after 20 weeks gestational age on the highly disputed grounds that the fetus can feel pain at this point. Additionally, viability policies reflect the idea that an independent fetus, as a patient, does not need a woman’s body for its survival. The dynamics of power within these policies are indisputably evident as anti-choice policy-makers and advocates seek to legislate women out of reproduction, assuming the rights and responsibilities.

II. Privacy v. Autonomy

A. The Private/Public Divide

The understanding of “privacy” in reproductive rights discourse has undergone many semantic, legal, and sociopolitical transformations. As discussed in Chapter 1, privacy with regards to reproduction was based, historically, on a more traditional understanding of the role of women – that they, and all family matters, were private.

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29 Another way in which the fetal patient rights damage women is in conscious-based exemption policies wherein pharmacists, doctors or nurses can refuse to give medication, or provide a service that they believe is for abortive purposes. These extreme policies outlined by Schroedel (2000).
While this may seem like a more liberated place for women, allowing them to access therapeutic abortion without much public outcry or state interference, it should be remembered that this lack of intervention was not rights-based. Women’s reproductive decisions were kept private by the men in their lives, and by their doctors. Furthermore, sheer lack of understanding of pregnancy led to an encouragement of women to take abortifacients as a way to cure “irregular” menses in the early 1800s which were usually the early stages of pregnancy (Schroedel, 2000, p. 23). As abortion practices were shrouded in privacy, misunderstanding and stigma, so were women’s bodies, therefore women’s reproductive rights were not ripe for debate.

As the abortion debate became more public in the mid-20th century, however, the reality of women’s abortion practices and reproductive rights took center stage. The privacy discourse shifted from a sociopolitical and cultural paternalism to a liberal right. The reproductive practices of women were being spoken about more openly and honestly in an attempt to demystify the previously hushed narrative of reproductive rights. Condit (1990) describes an increasingly contrasting discourse, however, between women who sought to tell their own stories on their abortion and the media’s reductive characterizations of these women. Condit notes,

…reporters and public advocates resorted to an alternative rhetorical device: they selected for portrayal stories of women whose purposes for seeking abortion were culturally more persuasive – victims of rape, incest, eugenics, and extreme youth. Such cases could, in the briefest number of words, convey the forcefulness of the problems facing women who chose abortion (p. 176).

While undoubtedly these cases were important to highlight, it further situated women’s variant and complicated stories in the private/public divide as private still.

“The multiple, demanding realities of women’s lives were thus lost in the translation to
public justification. The public discourse did not take into account the full range and complexity of individuals’ lived experiences” (p. 177). Thus the hard-fought attempt of second-wave feminists to adopt the privacy men enjoyed was slipping away to the “privacy” women had been living with for generations. This “privacy” was the one that obscured and silenced women’s realities.

As a result of women’s stories becoming public, whether reduced or fully explained, a “right to choose” narrative emerged. This narrative, reflected in the language of the *Roe* decision, indicated that a woman’s right to choose her own reproductive health options was protected under the Fourteenth Amendment as a private decision, though as described below, this came with limitations. The private/public divide, however, continues to be active within the reproductive rights discourse. With each precedent-setting case, and with each bill that becomes a law, women’s privacy is constantly weighed against the state’s interest. The state can be seen as the public side of the debate; policy-makers increasingly arguing for the publicizing of fetuses, the vocalizing of fetuses through themselves, and the prohibiting of public money and facilities for abortion services. Women, alternatively, seek to gain autonomy through privacy rights. Ironically, this necessitates vulnerability to the public realm – it encompasses the freedom and greater understanding that may come with vocalizing women’s realities, but also with making their bodies public. It begs the question of whether the ends justify the means. Seeking autonomy through claims of a right to privacy is also problematic due to the limited scope of privacy, and its misuse when applied to women’s rights. Therefore, as discussed below, autonomy must be sought as a right in and of itself.
Feminist scholars have long grappled with avenues to negotiate the public/private divide on various grounds, and the standing of women within the liberal polity. Liberal citizenship is certainly consistent with the privacy of reproductive decision-making as the theory of liberalism promotes rights of liberty to individuals. Scholars have been exploring the ways in which the privacy of liberal political theory, as applied to reproductive rights issues doesn’t necessarily have to be a tenuous or archaic public/private divide. Scott (2002) asserts that there are various positions and meanings privacy may take on: freedom from interference, privacy as a right instead of a value, and a right to exclude from the public (p. 197-199). Privacy, regardless of its multitude of theoretical interpretations, does not adequately address the rights lost by restrictive reproductive policies analyzed in this thesis. Privacy lends itself to unbalanced power dynamics wherein control of reproduction through restrictive abortion policy can still be seen as justified within liberal theory. Ultimately, liberal theory in its focus on individual-rights, however positioned, allows anti-choice policy-makers to use the state to restrict private individual liberties, wherein there are “public interests” or “other rights” to justify those restrictions (Scott, 2002, p. 201). Like the “compelling interest” that has been ascribed into law in Roe and affirmed in Casey, privacy rights in liberalism show their limitations.

B. Autonomy

As discussed in greater detail in Chapter 6, the materials, laws, statutes and pending bills analyzed within this thesis do not deal solely with issues of privacy. All of the materials relate directly to body politics and the anti-choice attempt to legitimize control over women’s reproductive agency through the state and the claims of fetal rights.
Because the underlying narratives focus so heavily on corporeal aspects of control and ways of knowing, a right that encompasses both the body and identity must be adopted. Thus “autonomy” is used throughout this thesis to describe what is at stake when restrictive measures are passed. Feminist interpretations of autonomy relate to the right to self-rule – to make decisions as an individual being supported by a social network. Autonomy also incorporates what Scott (2002) describes as “…an aspect of one’s interest in self-determination” and therefore important to the abortion debate (p. 14). Autonomy is also an important right in reproductive rights discourse because it does not inherently deny connectivity between the fetus and the woman. Autonomy acknowledges and “…draws attention to a woman’s “reflective perspective” in which she is aware not only that the fetus is somehow inside her own “subjectivity,” based on the physical connection between the two, but also that, if the pregnancy continues, the being within her will become a separate being for whom she is morally responsible” (Scott, 2002, p. 14 quoting MacKenzie (1992)). Drawing on women’s subjectivity and experiences through rights of autonomy would shift the power dynamic towards the self-determination of women; that women due to their connectivity and intimacy with the fetus during pregnancy are the only ones who can make decisions regarding their own reproductive healthcare.

It is important to understand, for the scope of this thesis, that autonomy is the primary right that is infringed upon by restrictive reproductive policies. Anti-choice policy-makers and advocates use underlying narratives within reproductive rights discourse to construct the identity of women – as mothers, selflessly catering to traditional gender roles, or on the other hand, as un-American, unnatural, inherently bad,
uninformed decision-makers. Therefore, feminists must approach the reproductive rights debate from an autonomy-based standpoint; a position that directly confronts the false and misleading narratives while imploring policy-makers to trust women as free agents.

* * * * *

In the reproductive rights discourse and practice, power dynamics manifest in the form of control. Control can be applied to reproductive rights through restrictive abortion policies, silencing of women’s lived experiences, a seemingly harmless paternal state, the upholding of archaic gender roles and narratives, and/or writing a “compelling interest” to subvert privacy rights into law. Power can also be highly psycho-cultural – the construction of the fetus as an ideal American citizen, having a voice, and being intrinsically at odds with the woman. The dynamics of power can tilt when women’s intimate understanding of the fetus and experiences during pregnancy are silenced.

This chapter can only touch on the vast amount of feminist literature regarding the public/private debate in reproductive rights policy. However, it is possible to see the limitations of a privacy argument in the way it has been used by courts in reproductive rights cases. Privacy rights neither fully protect women from legislative or legal intrusion in reproductive matters, nor do they acknowledge women as full citizens. Privacy has failed to truly preserve women’s autonomy in discourse, statutes, case law, and socio-cultural paradigm, therefore, a shift in the understanding of rights is necessary. Autonomy should not be attempted through privacy, but as a right on its own. The right to autonomy is an all-encompassing right, focused on the self and corporeal identity – supportive of the connectivity of woman and fetus, as opposed to their separation.
Autonomy also demands acknowledgement of women’s ability to make decisions about their own bodies, and to cast off harmful narratives and constructions. Most importantly, the right to autonomy creates certitude of full citizenship for women, equal to that enjoyed by men.
CHAPTER 5: METHODOLOGY

I. Preliminary Research and State Categorization

In order to obtain an accurate snapshot of the current reproductive rights discourse across all fifty states a preliminary categorization of state policy was employed. Each state was researched on its existing laws and pending legislation and coded against criteria that would reveal restrictions within reproductive policy. The categories of restrictiveness were attained by 2010 reports from NARAL and The Guttmacher Institute, and adding pertinent categories as they arose in specific policy. These reports were an effective tool in analyzing current and pending state policy on reproductive rights as each category represented a way in which “compelling interest” was used to chip away at legalized abortion.

Eight categories were chosen to reflect the levels of restriction: counseling, ultrasound, viability, public facility, state constitution, policy statement, post-\textit{Roe} ban, and pending ultrasound bill. (See Appendix A). The categories also provided a preliminary framework by which to narrow down all 50 states to just seven states – one state, Colorado, being used as a case study. Each category represents a salient restriction which speaks to the underlying narratives analyzed within this thesis. The requirement of counseling before abortion was important as not only do the vast majority of states have this requirement, but some states have very specific language that must be used during this “counseling” session. Whether a state requires ultrasound before abortion was an important category as – it in itself – had levels of restriction as to when the ultrasound
would be performed, the language about on whom the ultrasound would be performed, if
the ultrasound would be required viewing, or if the image of the ultrasound would be
described in detail by the doctor performing the abortion. Requirements of viability
restrict abortion to being performed only before a certain gestational age. This
requirement is essential in illuminating how anti-choice policy-makers, though they
cannot make abortion illegal in its entirety, place greater emphasis on the viability of the
fetus, and benchmarks as to when a fetus can live outside the womb, without nourishment
from the pregnant woman – thus making the fetus seem more autonomous. Though
almost every state has a viability requirement, along with a federal ban on abortions in
the third trimester, the benchmark gestational ages vary as well as the reasons behind
why the particular gestational age was chosen. It is important to note that these ages are
incongruent with medical evidence and positive statistical findings of the prematurely
born, discussed in greater detail in Chapter 3 and 6.

Four out of the seven states included – Alabama, Louisiana, North Dakota and
South Dakota – contain statutory provisions which would ban abortion completely in that
particular state should the U.S. Supreme Court precedent-setting case *Roe v. Wade*,
ensuring women’s access to legal abortion, be overturned. As it stands, states cannot in
their own right ban abortion, as it is federally protected by case law in *Roe* and
subsequent cases such as *Planned Parenthood v. Casey*, as well as the U.S. Constitution
through the 14th Amendment. However, given the chance that federal law changed
giving state representatives supreme authority to decide the legality of abortion, four
states have already pre-ordained the intention of making abortion totally illegal in their
state. The legal and public health consequences of an abortion ban are vast and
potentially devastating, thus the importance of focusing on such an extreme category is clearly evident.

The category of public facility refers to a statutory restriction of performing abortions in public facilities. This issue speaks to both the state interest in “preserving life” and to public sentiment. It is often argued by anti-choice groups that the state, having a “compelling interesting preserving life” could not consciously allow public facilities to perform abortion, additionally, that taxes paid by citizens of the state should not be used to fund facilities that perform abortions if that is not the “moral” consensus of the people. However, these arguments and assertions are highly flawed in their logic, as the federal Hyde Amendments has been prohibiting the use of public funds for abortions since 1976. What this particular restriction shows is another limitation to the access of abortion, particularly for impoverished women who cannot afford a private doctor.

While this category points out an interesting anti-choice argument, the scope of this thesis would not allow for a complete analysis of the use, or lack thereof, of public facilities for abortion purposes. Therefore, this category remains for the purposes of this study, a preliminary research category for narrowing down states by restrictiveness of reproductive policy.

The above-described categories contain the most pertinent restrictions to reproductive policy related to this thesis. Literature from these categories best reflects the underlying narratives and theories – fetal personhood, social constructions of women, and state power dynamics – that this thesis hopes to reveal. After the states have been narrowed down to the most restrictive, their bills, statutes, informational websites and
literature, and images are deconstructed and analyzed to reveal findings of underlying
narratives discussed in greater detail in the next chapter.

II. Data

A. States Included

The seven states included—Alabama, Colorado, Louisiana, Nebraska, North Dakota, Oklahoma and South Dakota—demonstrate a regional dynamic of middle-America and the Deep South. (See Appendix B). Focusing on these states methodologically served many purposes—the language deconstructed in statues and in pending legislation exhibited policy diffusion. Also, the severity of restrictiveness of the policies in these states highlight a profound need for a postmodernist interpretation of the underlying woman/state power dynamic. Furthermore, these states, with the exception of Colorado, used as a case study on one particular ballot initiative, provide the most actual literature to deconstruct making for a more empirically sound study. The scope of this thesis, unfortunately would not allow for a complete empirical study of all 50 states, thus narrowing down the states to focus on the most restrictive states was necessary. These states, therefore, represent the most extreme anti-choice states. The very nature of their outlier policies and ultra-conservative language made these states the most compelling to study.

The states included, with the exception of Colorado, met four or more of the eight categories of restriction (counseling, ultrasound, viability, public facility, state constitution, policy statement, post-Roe ban, and pending ultrasound bill) discussed above. Although seven additional states—Idaho, Kansas, Kentucky, Missouri,
Pennsylvania, Texas and Utah – fell into four or more restrictive categories, a policy analysis based on deconstruction of language was employed to eliminate these states as they did not consistently use fetal personhood language, if at all. Ultimately, the states included in this study represent policy and pending legislation that is so severe and outlying that the very extremity of these policies and bills begs their study and analysis.

B. Coding

With the states narrowed down to a manageable seven, materials were gathered to be coded. These materials include the abortion policy as it currently stands, specific ultrasound policy, direct policy statements on abortion, pending bills, hearings on pending bills, state health websites, and state-mandated informational booklets. A total of 46 materials were collected to be analyzed. The coding of the materials is based on the constructions of three subjects – fetuses, women, and the state – with multiple indicators. (See Table 5.1). The indicators were created to extract language that is based on social constructions. Indicators of fetal constructions were fetal personhood, viability, capability to feel pain, and language of “unborn child.” For the construction of women, indicators included “mother” language, the absence of women, maternal-fetal conflicts, women as a fetal environment, and ultrasound requirements. The role of the state had indicators such as using the language that abortion was an “uninformed decision,” CPC referrals, state paternalism, voice for fetuses, inflating the risk of abortion over childbirth, and feminist language appropriation.

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30 Admittedly, ultrasound requirements could fit into the category on the state role, however, for the purposes of this study, and because ultrasound is performed on a woman, it was placed in the women category.
Table 5.1 – Language Coding Indicators

<table>
<thead>
<tr>
<th>Indicators</th>
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<tbody>
<tr>
<td><strong>Fetuses</strong></td>
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<tr>
<td>Can survive outside the womb, living being, unborn child, feels pain, does</td>
</tr>
<tr>
<td>childlike things, doctor must explain fetal function</td>
</tr>
<tr>
<td><strong>Women</strong></td>
</tr>
<tr>
<td>Mothers, absent, maternal-fetal conflict, pregnant “person,” fetal</td>
</tr>
<tr>
<td>environment, ultrasound required</td>
</tr>
<tr>
<td><strong>The State</strong></td>
</tr>
<tr>
<td>Abortion “uninformed” decision, voice for fetuses, state as protector, CPC</td>
</tr>
<tr>
<td>referral, inflating risks of abortion over risks of childbirth, feminist</td>
</tr>
<tr>
<td>language appropriation</td>
</tr>
</tbody>
</table>

Images were also collected from the seven states included in this study. As images often support or boost the impact of language, it is important that they are included in this study. A total of 93 images were collected from sources including state mandated literature, state websites (not literature), state informational literature (non-mandated), anti-choice groups and popular culture. Analysis of these images is based on several indicators utilized by Condit (1990): singling out one particular part of the fetus that is most like a living human being, the use of content surrounding the image to label it, the use of hyperbole, the juxtaposition to an older fetus or born child, and the absence of the pregnant woman. All of these indicators support and enhance the idea of the fetus as being an “unborn baby.” Condit (1990) notes, “[i]n the abortion case the wide variety of beings that constitute developing unborn human life-forms – the blastocyst, embryo, fetus, viable baby – were reduced to a single entity through the creation of a single vision of the ‘unborn baby.’” (p. 82). Since the acknowledgment of the “unborn baby” rhetoric is extremely important to fetal personhood discourse, it is

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31 Popular culture included “Choose Life” license plates and anti-choice billboards from various groups and one non-affiliated student.
equally important to deconstruct the images according to what the fetal rights proponents hope to accomplish. Omission of women from an image, highlighting the most human-like parts of a fetus, and labeling the unrecognizable parts as “unborn baby” are essential to the fetal personhood narrative.

III. Methods

As the scope of this study in dealing with social constructions of women, normative narratives and androcentric power dynamics is complex and can be seen as potentially abstract, it is important to understand the methodology employed within this study. This study delves into the deeply-rooted and theoretically informed nature of the reproductive rights policies and bills to understand how they came about, what real-life implications they may have on women, what underlying theories and narratives inform their existence, and, cutting through rhetoric and political spin, what these policies and bills really hope to accomplish.

A. Postmodernism

A postmodern approach is most appropriate for this study, as it speaks directly and critically to the construction of the norms associated with fetal personhood. Leavy (2007) writes,

…grand theories are definitive statements about how something is – they are self-legitimating explanations and their claims to unchallenged. These grand narratives become taken-for-granted explanations about social reality. Postmodernism points to the social construction of reality and how some interests may be served by particular constructions (p. 87).

The “grand narratives” which are under critique through the larger scope of this study – the public nature of pregnancy and the state interest therein, the “conflict” between
woman and fetus, and the perpetually selfless pregnant “mother,” and the personification of the fetus – are all perpetuated through discourse and policy. The reality that these narratives and theories construct is created by anti-choice and fetal personhood advocates who have a particular interest in upholding gendered power dynamics by restricting reproductive rights of women. Thus, these “realities” must be questioned and deconstructed in order for women to reclaim autonomy.

Roth (2000) explains the constructed nature of these theories: the “[m]aternal-fetal conflict erases all other aspects of a pregnant woman’s identity. All pregnant women are expectant mothers… Referring to pregnant women as “mothers” before they give birth evokes the qualities of selflessness and duty associated with motherhood…” (p. 6). A postmodern approach highlights the inherent gendering of reproductive rights – that “selflessness and duty” are always traits attributed to the “mother;” the “father” being largely absent aside from being mentioned with relation to power and ownership, as exemplified in state laws requiring the “father” to be notified of a woman’s intent to obtain an abortion.

Additionally, a postmodern analysis identifies the gendering of “experience,” as a woman is ideally, within normative power structures, expected to react with joy upon realizing she is pregnant and form an intimate bond with her fetus. However, much of the literature focusing on experiences of pregnant women suggests a more diverse scope of experience, suggesting that “experience” itself is questionable as to how it is constituted. As Ruhl (2002) states, “…there is a deep assumption of the “naturalness” of maternal feelings on the part of women, a conviction that is reinforced and indeed made into a self-fulfilling prophecy with women’s adherence to the strict script of prenatal
care” (p. 46). Notably, the feminist postmodern explanation of “women’s experience” is essential to this study in that “…experience is shaped by discursive practices, and the “meanings” that we create from the telling of our experiences cannot emerge without a process of signification – experience is inextricably linked with discourse” (Leavy, 2007, p. 96).

A postmodern approach allows this thesis to analyze the language used in the restrictive policies and pending legislation and the paradox of gendered expectations regarding pregnancy. Many feminist scholars have asserted that women are simultaneously painted as abnormal or going against “natural” instincts of womanhood when choosing abortion, and inexplicably third-party members of a pregnancy – third to state and fetus – if mentioned at all. Postmodern analyses exhibits that this language is of particular importance to allowing these extreme policies and bills to be introduced, passed, and ultimately accepted by the general polity in so that only very particular pro-choice groups tend to find fault in and battle these policies. By creating an identity of women that is either a negative social construction or a third-party status, the reality of reproductive rights shifts from the woman, her body and her rights to the fetus and the powers of the state. In this way, restrictions on reproductive rights are more digestible as women’s autonomy is being stripped away. In the anti-choice reality, women do not own their bodies, their fetuses, or their own rights, thus the state must step in to make reproductive decisions for them.

An additional benefit to applying a postmodern lens to this study is that “[i]nstead of grand narratives and truth claims, postmodernism proposes an expansive study of difference and the inextricable relationship between power and knowledge” (Leavy,
2007, p. 88). Much of what is understood as general knowledge about reproduction is based on androcentric methods of obtaining that “knowledge.” This “knowledge” is engendering, reinforcing of stereotypes of the masculine and feminine, and unfortunately, very informative to reproductive policy. Clearly, the “experience” of pregnancy, explained previously, is based on this “knowledge” thus perpetuating the relationship between power and knowledge. Leavy explains,

[Michel] Foucault… theorized the power and knowledge are inextricably linked in a complex web of power-knowledge relations. Put differently, Foucault’s work professes that all knowledge is contextually bound and produces within a field of shifting power relations (p. 89).

This is precisely why the employment of the postmodern interpretation of knowledge and power is necessary to this particular study; it is the relation between power and knowledge that is so informative of policy regarding women’s reproductive rights. Furthermore, as this thesis contends that the fetus is a pawn used by anti-choice state actors to enforce their power over women’s autonomy by restricting reproductive rights, the postmodern lens which underscores the existence of power dynamics is of direct value to this thesis. Through the postmodern discourse analysis employed by this study, power dynamics are revealed and quantifiable.

B. Deconstruction of Language

The utilization of deconstruction is the second methodological basis of this thesis, as the entirety of the study surrounds the analysis and examination of the language, discourse, and symbols used by the anti-choice to maintain and support the androcentric status quo. Deconstruction an important and useful methodology as according to Leavy (2007),
…it is based on the notion that the meaning of words happens in relation to sameness and difference. In every text, some things are affirmed, such as truth, meaning, authorship, and authority; however, there is always an “other,” something else, that contrasts that which is affirmed (p. 90).

As the focus of this study is on the analysis of discourse within reproductive policy, and the discourse used by fetal rights advocates through literature or images, it is vital to make the connection between what is truth, what constitutes authority, and who is the “other,” within the dominant constructed reality. Fetal rights advocates would undoubtedly reply that the fetus is the “other,” at odds with the privilege of those who have a voice. However, since this thesis contends that the fetus and fetal personhood is a veil behind which proponents of restrictive reproductive policy use to assert their position in a way that is digestible to the public, it is therefore essential to utilize the feminist methodology of deconstruction as a means of pointing out these damaging underlying theories, providing feminist scholars and activists with a reframed discourse. As the findings and analysis should validate, it is not the fetus that is the “other” as anti-choice advocates would like the general public to believe, rather it is the woman who is the “other,” as her experiences and particular situations contrast “that which is affirmed” in their social construction of women.

The language used to assert fetal personhood is pervasive in the policies and pending bills, at times being obvious such as calling a fetus an “unborn child,” and other times less obvious, needing a deconstructive lens to draw out the imprecise, socially constructed, gendered and normative nuances. Haweksworth writes,

…deconstruction cannot be a futile effort to fix meaning. On the contrary, critical interrogation of binaries is intended to supplement meaning by illuminating flawed attempts to constrain interpretation within the binary formation, decontextualizing and recontextualizing terms in order to disrupt dominant frames
of reference. Within this deconstructive framework, evidence itself is linguistic, unstable and unfixed, but attention to contradictions, lacunae, false totalities, and homogenizations within particular relations of signification can provide an opening for efforts to trace multiplicities of meaning, deconstruct binary oppositions, and overthrow the hierarchies and privilege they attempt to establish (p. 105).

The current discourse on reproductive policy is dominated by an androcentric framework that situates images and language within the public domain in a way that is self-supporting and self-perpetuating. This study supports current literature that utilizes the much needed deconstruction of that framework to point out the underlying meanings and emphasize how women’s rights are being subjugated in very real ways, by the same. By literally deconstructing the language used in policies and bills regarding reproductive rights, the “dominant frames of reference” become evident. It is this language that, by empirical measurement proves that repetition of a particular discourse in abortion policy both creates and sustains the dominant paradigm against which all other arguments are difficult to assert. Methodologically, each policy, pending legislation, policy statement, informational literature, and ballot initiative have been deconstructed for specific language of fetal personhood, women as third-parties, women as mothers, and women-absent language. Quantifying the language in reproductive rights policies and bills shows the reliance of this specific and dramatic language by anti-choice groups and policy makers.

The method of deconstruction is also useful in examining the power dynamics at play within reproductive policy. Since deconstruction is a subcategory of postmodernism, it can serve as a practical lens through which to examine the power-knowledge structures brought to light by feminist postmodernist analysts such as Roberts (1999) and Berlant (1997). Through empirical evidence in deconstructed policy, the so-
called maternal-fetal conflict erodes away to reveal the more succinct dynamic – the woman-state conflict. States are not consistent in their protection of fetal rights in all other areas of law, including abortion policy (Daniels, 1993). How the states included in this study arrive at these restrictive policies is important to understanding how to change them.

Deconstruction of language can also be used to understand the adoption of restrictive policy by comparing the similarities between the language in policy and the language used by anti-choice interest groups. Lee (2005) notes, “[a]mong political scientists, there is little consensus on the precise extent of interest-group influence in Congress… Regardless of their disputes, however, political scientists reject as crude and exaggerated the popular view of overwhelming interest-group influence.” (p. 289). However rejected the idea of interest groups having “excessive” influence in Congress, this study suggests otherwise. Using deconstruction of the language in policy and rhetoric in anti-choice literature, the striking similarities are measurable – at least, on a state level. Furthermore, when deconstructing anti-choice literature, especially those which are supported financially and politically by the state, the influence of anti-choice groups on the social construction of reproductive rights issues is apparent. When anti-choice groups dominate the discourse, the paradigm of how the polity views abortion shifts. Lee asserts, “…interest-group representatives provide members [of Congress] with information on public policy issues, information that is crucial for members to achieve their policy goals.” (p. 294). As this study shows, especially in the deconstruction of images used both by anti-choice groups and in popular culture forms of media, the “information” provided by anti-choice groups, however damaging to women,
is pervasive and dominant, and therefore quantifiable. Not letting policy-makers themselves off the hook for their extreme anti-choice stances, language and images used by policy-makers in their support of restrictive reproductive policy is also subject to analysis.

C. Deconstruction and Postmodern Analysis of Images

As the main focus of this thesis is on policy and pending legislation in which ultrasound is required before abortion – asserting that this is the most restrictive and socially unnecessary requirement – it is important to discuss the impact of the fetal image on reproductive rights debate. As discussed in Chapter 3, the use of ultrasound technology is rapidly increasing in reproductive healthcare. In some cases, it is welcome by the pregnant woman, excited to catch a glimpse of her fetus. Some women feel a sense of disbelief or awe at seeing an ultrasound. However, in the scope of this thesis, the requirement of having an ultrasound performed before abortion, as seen through a deconstruction of the language of policy, does nothing but provide an image that intentionally attempts to persuade women with unwanted pregnancies against abortion, and set up provisional and mandatory waiting periods that make it difficult for women to obtain an abortion. Though the image often must be explained in great detail, it is important, to anti-choice proponents, that this image is seen by the woman. It is also important to note, as other scholars have noted, the image of the fetus in an ultrasound creates the illusion of being independent from the woman’s body, not within it, rather, free-floating, on screen, beside the woman. A postmodern analysis of fetal images provides that the use of these images, pervasively by anti-choice, fetal rights groups and policy-makers adds drama to the public sentiment, bringing the fetus into every home.
across the nation as a separate entity. The fetal image becomes normalized and
personified to fit the narrative of a “tiny human being” despite “…the dramatic
differences between the fetus and the newborn infant (such as the immature brain, central
nervous system, and lungs)” (Daniels, 1993, p. 16).

The quantifiable element to this portion of the study is in the study of fetal
images, and how they are used to forward a normative narrative that the fetus is a “tiny
human.” This study focuses on recognizable and well-known fetal pictures to prove their
overwhelming presence in society. An active deconstruction of the context of these fetal
images shows the heavy reliance of these images and their underlying meanings by anti-
choice groups and policy-makers. The images are obtained from four main sources:
state-mandated literature, popular culture media, anti-choice groups, and images used by
policy-makers to support restrictive legislation. These sources provide examples to
support each facet of the reproductive rights discourse. As images are potentially infinite
in their presence and existence, for the purposes of this thesis, a sampling of images was
coded from the various sources mentioned above.

The state-mandated literature is a manifestation of policy and how fetal
personhood translates into supposedly unbiased, non-partisan healthcare information.
Images policy-makers rely on for dramatic effect during the course of their political
careers are also telling of how images affect policy. Images used by anti-choice groups
consist of everything from their protest signs to billboards, from their website design to
their organizational logo. Each image used by anti-choice groups can be traced to a
developing social norm in which fetal personhood is pushed onto the public, with little
challenge and widely accepted, with great consequence.
Deconstruction of these images is based on several factors utilized by Condit (1990): singling out one particular part of the fetus that is most like a living human being, the use of content surrounding the image to label it, the use of hyperbole, the juxtaposition to an older fetus or born child, and the absence of the pregnant woman. All of these images support and enhance the idea of the fetus as being an “unborn baby.” Condit (1990) notes, “[i]n the abortion case the wide variety of beings that constitute developing unborn human life-forms – the blastocyst, embryo, fetus, viable baby – were reduced to a single entity through the creation of a single vision of the ‘unborn baby.’” (p. 82). Since the acknowledgment of the “unborn baby” rhetoric is extremely important to fetal personhood discourse, it is equally important to deconstruct the images according to what the fetal rights proponents hope to accomplish. Leaving women out of an image, highlighting the most human-like parts of a fetus, and labeling the unrecognizable parts as “unborn baby,” are essential to the fetal personhood narrative. However powerful these images seem, they are indeed extremely vulnerable to exposition of their own false logic and underlying theories through the method of deconstruction.

When images single out a part of the fetus to illustrate the “baby-like” qualities of a fetus, it creates what Condit calls a synecdoche – supplementation of a whole thing for one part (p. 88). Since much of a fetus is unrecognizable, this does not fit neatly into the fetal personhood discourse, therefore, portraying the most “baby-like” features in images and focusing solely on those features are essential and effective in communicating fetal personhood theory. When images are not recognizable, such as most first-term ultrasounds, the image is often labeled or contextualized with other images of born babies or older, more developed fetuses. The need to label an image of a fetus – at all – begs
the question of how the image is salient or useful in its attempt to establish fetal personhood. Since these images are reliant on their external labels and outside context, it further proves that proponents of fetal personhood are simply attempting to vilify abortion and women who chose abortion at all gestational stages – even those in which “life” is virtually unrecognizable.

The absence of the woman in images is perhaps the most troubling. This can occur by removing the image of the umbilical cord, placenta, uterus, or any semblance of the woman’s body that surrounds the fetus. To remove a woman, the only person who can conceive, carry, nourish and birth a fetus is to remove her from the reproductive rights discourse altogether. When the focus is solely on the fetus, absent the pregnant woman, her own rights are being completely diminished to an invisible state. The fetus, though dependent on the woman, must be separated from the woman to gain social independence. The “freeing” of the fetus from a woman’s body, then, is the ultimate form of liberty – aided solely by anti-choice groups and policy-makers. This is also the basis of the argument that a fetus is a separate entity with rights equal to any other human – including a “right to life.”32 What these seemingly independent fetuses represent, however, is quite the opposite of what anti-choice groups hope to accomplish; the “independent” fetus represents just how connected the fetus is to the pregnant woman. The woman and fetus are inseparable beyond the mechanics of the woman’s body (birth or miscarriage) or her choices (abortion). Woman and fetus are related physically and intimately by blood, tissue, and cells, so when the fetus is depicted in anti-choice

32 As noted by many feminist scholars, whether the fetus is considered a person is immaterial to the rights of a pregnant woman. Even in a life-threatening situation, one person could not be forced to donate his or her organs, bone marrow, or any part of the body to another. Thus in the case of a fetus, a woman’s uterus could not be forcibly used to house and nourish a fetus, lest the woman’s rights be violated. Condit (1990, p. 205)
literature, that physical evidence of connectivity – the placenta, umbilical cord, etc. – are also largely absent.

The significance of deconstructing these images is vast – showing the larger societal acceptance of fetal personhood, the development of the social norm that is the “unborn baby,” and the translation of these images into policy with damaging effects on the rights of women. When images are exposed for their underlying meanings, they can be no longer taken at face value as intended by anti-choice groups. Images and language come together, therefore, to form a collective “truth” about how society views pregnancy and how what is possibly the most private and intimate relationship can become a vehicle for state power.

* * * * *

With a greater understanding of these normative narratives, social constructions, and power dynamics of reproductive rights policy, the methods which best analyze them are applied directly to coded materials from the seven states. If this thesis is correct, the findings in the next chapter will directly vindicate the assertions of this thesis. The language that is deconstructed in the coded materials from the states included should speak to the social construction of women, as mothers, or fetal environments, and the fetus as a “tiny human.” The images deconstructed in the coded materials should likewise work with restrictive language to fit into the normative narrative which enables restrictive and damaging policy to pass in state legislatures without major national uproar.
CHAPTER 6: FINDINGS AND ANALYSIS

I. Elements of Analysis

In order for restrictive reproductive rights policy to be implemented and accepted, anti-choice policy makers and proponents must establish a number of elements: a framing of a palatable view of reproductive rights control and of social constructions of women, a “grand narrative” that utilizes and supports the frame, a repetition of language and images that fits the frame and narrative, and policy diffusion across states that reinforces the preceding elements. With these elements all active and interrelated, as gears in a giant clock work together to turn the hands of the clock forward, anti-choice proponents are able to seize control over women’s reproductive rights - except the hands on the clock of this issue are not moving forward, but back to a time when women, robbed of agency and bodily integrity, did not have a choice.

The assertion of this thesis is that a more accurate description of women’s reproductive rights is one that is a power struggle between a woman and the state. To support this thesis, the findings would have to prove the elements mentioned above – and in detail in the previous chapters – that together speak of an underlying normative theory that necessitates control over women’s reproductive decisions, specifically abortion, by anti-choice proponents. Each element relates to a specific coding category, as explained at length in the previous chapter. No element is mutually exclusive, and all are equally important to creating a “grand narrative” and a “truth” about the nature of women, the rights of fetuses, and the role of the state. Before delving into the findings of this thesis, an understanding of each element is necessary.
The social construction of women is the first and foremost underlying elements, the largest gear that would allow the rest to turn. As discussed in Chapter 2, women have long been relegated to a different, lower standard of citizenry based largely on social constructions of women as weak, dependent, lacking of agency or rights, selfless mothers chiefly existing in the “private sphere” (Daniels, 1993, p. 4). Through this interpretation, women have operated on a separate plane of citizenship, the lines of which have since blurred with the inclusion of women into the public sphere, the workplace, politics, the voting polity, and broadly in reproductive healthcare. However, social constructions still exist in provable quantifiable ways – through the language in policy that reproductive decisions are “uninformed,” that women are “mothers,” and, that reproductive decisions must be made for women by policy-makers to protect them against themselves. The language in these policies, explained below in the more detailed findings of this study, perpetuates the social construction of the selfless mother, who is always willing to be a mother, yet who also lacks decision-making capabilities.

This social construction of women satisfies a narrative of the normative woman – women are mothers, valued reproducing members of society, bearers of children who also, incidentally, do not place any strain on society by being delinquents. Androcentrism and heteronormativity are present in this narrative in that heterosexual men presumably made the normative woman narrative possible – they provided the sperm through expected heterosexual intercourse, and they created the policies that would regulate reproductive rights ensuring that every pregnancy would optimally end in live birth. Of course this narrative does not reflect reality; women become pregnant due to rape and incest, fetuses are diagnosed with life-altering abnormalities, lack of
contraceptive options or ignorance of those options lead to unwanted pregnancies, poverty of single mothers, failed contraceptives, and an infinite number of other reasons spell out why women seek abortions. Yet the narrative of the normative woman prevails as dominant in reproductive rights discourse and policy as illustrated in the deconstruction and analysis to follow.

To enforce this narrative regardless of society’s general understanding of reality, language and images are used repetitively. Repetition is an acknowledged mode of the “rhetorical process” which enforces that narrative. Condit (1990) explains “…terms such as ‘shared meanings,’ a ‘dominant *ideology,’ or a *hegemony of understandings locate a concrete, identifiable set of discourses that have identifiable effects because they are shared be an identifiable public.” (p. 7). The more the discourse is repeated, the more identifiable it becomes – even to an informed public – as the dominant and therefore increasingly acceptable ideology. Aiding this repetition is the use of policy diffusion. As discussed in the previous chapter, policy diffusion occurs when states adopt similar or identical language in policy. The discourse then seems to spread or diffuse from one state to another based on acceptance in the state that preceded it.

With these elements in place and applying the feminist methodologies discussed in the previous chapter to the coded materials, the findings of this study validate this thesis. What follows are the findings of the qualitative as well as quantitative deconstructive methods of this thesis and a postmodern analysis.
II. Findings

A. Women As…

1. Mothers

Women are represented in the coded material in various ways. However, in 13 of the coded materials, in keeping with the underlying narrative, women are referred to as mothers. Using the word “mother” is troubling as it conjures up social perceptions of the mother. A woman is only called a mother because she has one or more child. Using the term “mother” for a pregnant woman, therefore, establishes the idea that the fetus is a child. Since there is no way to confirm that each pregnant woman has a child or children resulting from previous pregnancies, it can only be assumed that the “child” who is the cause of her “motherhood” is the fetus.

<table>
<thead>
<tr>
<th>Language</th>
<th>Mother</th>
<th>Unborn Child</th>
<th>Totals (reflecting repetition)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills</td>
<td>5 (55%)</td>
<td>9 (100%)</td>
<td>72 mother, 143 unborn child</td>
</tr>
<tr>
<td>Statutes</td>
<td>5 (18.5%)</td>
<td>25 (92.5%)</td>
<td>10 mother, 153 unborn child</td>
</tr>
<tr>
<td>Literature</td>
<td>4 (80%)</td>
<td>4 (80%)</td>
<td>16 mother, 49 unborn child</td>
</tr>
<tr>
<td>Other*</td>
<td>3 (60%)</td>
<td>3 (60%)</td>
<td>57 mother, 80 unborn child</td>
</tr>
</tbody>
</table>

*Includes hearings, House Joint Resolutions, and unenforceable Acts, Total: 5

Total pending bills coded: 9
Total statutes coded: 27
Total literature coded: 5

“Mother” is also used repetitively in the coded materials both consistently and inconsistently, in conjunction with “woman” or “pregnant woman,” and sometimes with
“pregnant female” as in South Dakota’s unenforceable post-\textit{Roe} ban on abortion.

“Mother” is also used in conjunction with certain descriptions of the fetus that support the fetal personhood narrative. This is consistent with the analysis that mothers and children are in the same rhetorical plane and discourse. Though “mother” occurs in statutes, it is most frequently and repetitively used in the coded materials that were less objective and more ideological: pending bills, unenforceable statutes, pending resolutions, hearings, and state-mandated informational literature. The use of “mother” in state-mandated literature may be an even more detrimental occurrence as women seeking abortion or reproductive options in general may not read the abortion statutes in their state but instead have a much greater chance, if they are not already required, to view the printed or computer-based literature. By most state laws, the materials are supposed to be scientific, non-biased and non-judgmental in nature, however, this is clearly not the case.

One illustration of this occurrence is in the North Dakota literature, an order-through-website-only booklet entitled “Fetal Growth and Development.” This booklet, which coincidentally is a paper version of South Dakota’s web-ready literature, does not mention abortion at all, but instead outlines fetal development in two week increments. This literature uses the word “mother” to describe a pregnant woman as early on as four weeks gestational age where it warns that the “mother” should get proper nutrition and avoid alcohol and tobacco, not for her own health but “…because of the developing body systems [of the embryo]” which at this point, medically, is a group of cells. (p. 6). It is important to note that the use of “mother” in this instance supports the narrative of the selfless mother. Smoking and drinking in excess are generally destructive to the human body, male or female, yet in this literature, a woman is encouraged to give up what may
well be her daily habits not for her own health, but for the health of the fetus. Nebraska’s “If You Are Pregnant” informational booklet, which is difficult to find via the internet, similarly does not mention abortion as a choice and urges women to give up their bad habits for the sake of their fetuses. In this booklet, while the more neutral and scientific terms “fetus,” “embryo,” “pregnant woman” are used, it uses the term “mother” once. Interestingly, the one sentence that contains “mother” refers to quickening; “[t]he mother begins to feel fetal movements and kicking.”

Additionally, as these booklets are meant for women who have just found out they are pregnant and are weighing their options, to use the word “mother” is biased, leading, and unnecessary. It may potentially slant a woman’s view of her own pregnancy, thus forcing her to either continue with an unwanted pregnancy, or deal with added emotional trauma as she seeks an abortion. Analyzed in detail below, images that appear state-mandated fetal development booklets in North Dakota, South Dakota, Nebraska and Oklahoma that show and describe development up to 40 weeks illustrate this point perfectly. If the purpose of these booklets is to provide a pregnant woman who is seeking abortion with information regarding her pregnancy as it stands, why do these booklets continue past the gestational age at which abortion becomes prohibited?

2. Fetal Environments

The discourse that stresses the health and rights of a fetus over the health and rights of a woman is believed by some scholars to be what constitutes the maternal-fetal conflict. However, it is more succinctly understood, for the purposes of this thesis, as the

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33 [http://www.dhhs.ne.gov/LifespanHealth/If-You-Are-Pregnant.pdf](http://www.dhhs.ne.gov/LifespanHealth/If-You-Are-Pregnant.pdf)
woman-state conflict – the tactical use of the fetus by anti-choice proponents to control women’s bodily autonomy. Findings show a lower occurrence of the use of “mother” in the coded materials comparatively to the use of “unborn child” in its various forms. This lower occurrence is not a phenomenon or an anomaly in the assertion of this thesis – women are represented in various ways within the coded materials, if at all. Thus, in addition to the “mother” discourse, coded materials represent women as being simply an environment for the fetus. In five coded materials the woman is seen as a fetal environment instead of an autonomous person. Scholars have noted this occurrence in reproductive literature – that women are simply an environment for housing a fetus, sometimes hostile to what their bodies are “programmed” to accomplish (i.e. – live birth). As the narrative goes, when women go “against” their biological imperative of reproduction by choosing abortion, they are vilified, seen as deviant and subject therefore to penalty by control or exclusion.

The women-as-environment discourse presents in two distinct ways in the coded materials: first, as seen above in conjunction with the duties of motherhood, wherein the woman is supposed to view her body and health as secondary or serving only the needs of her fetus. Second, the women-as-environment discourse comes in the form of language which asserts that the fetus can survive outside of the womb. In 11 cases (24%), coded material mentions that the woman should be made aware that the fetus can survive outside the womb. While some of these include definitions of viability, others are simply statements as part of informed consent policy. For example, both Alabama and Nebraska’s informed consent compulsory language requires the treating physician to state “[t]he unborn child may be able to survive outside the womb.” The language is exactly
the same in both of these states though they differ on the gestational age of viability – 19 weeks for Alabama, as opposed to 24 weeks for Louisiana. They also both fail to mention that for a fetus to survive even at 24 weeks gestational age, long-term disabilities are very likely to follow and the survival is contingent upon severe medical intervention.

Forwarding the fetal personhood narrative, the idea of a fetus surviving outside of the womb robs women of agency and their role in reproduction. Based on medical evidence, the fetus cannot survive safely outside of the womb during the majority of pregnancy, and when it can, it needs urgent and intensive care – which does not ensure its survival or subsequent health. According to the March of Dimes, infants born before 28 weeks,

… are too immature to suck, swallow and breathe at the same time, so they must be fed through a vein (intravenously) until they develop these skills. They often cannot cry (or you cannot hear them due to the tube in their throat) and they sleep most of the day. These tiny babies have little muscle tone, and most move very little.

Babies born this early look very different than full-term babies. Their skin is wrinkled and reddish-purple in color and is so thin that the blood vessels underneath can be seen. Their face and body are covered in soft hair called lanugo. Because these babies have not had time to put on fat, they appear very thin. Most likely, their eyes are closed, and they have no eyelashes.

These babies are at high risk for one or more of the complications discussed above. However, most babies born after about 26 weeks gestation do survive (about 80 percent at 26 weeks), although they may face an extended stay in the newborn intensive care unit (NICU).  

In coded materials when mentioning that a fetus can live outside the womb, the fact that they have a very low chance of survival is conveniently left out of the discourse. In Nebraska’s informative booklet “If You Are Pregnant” mentioned above, the survival

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rates of fetuses after 20 weeks gestational age are mentioned; however information about long-term complications and the type of intensive care needed to ensure that percentage of survival is omitted. Regardless of medical logic, state materials continue to use language that a fetus can survive outside of the womb thus perpetuating the fetal personhood narrative. Interestingly, in this way, women are written out of reproduction, as unnecessary after a certain point in the pregnancy.

The women-as-environment discourse also supports the underlying theory of this thesis of the power dynamics – woman-state conflict. When women are ostensively written out of pregnancy, there is only one entity that could step forward: the state. The state therefore, through the use of medical technology and neonatal intensive care technology, becomes the protector of the now born infant. However, in the case of a 20 week old fetus, a recent standard age of measurement of viability by anti-choice and fetal rights advocates, an obstetrician/ gynecologist would not consider any life-saving measures as there is no statistical probability that the fetus would survive outside the womb. A fetus does not begin to have a significant chance of surviving outside of the womb until it reaches 25 weeks gestational age (50% chance survival) with long-term and chronic disabilities likely to occur, and medical intervention vital to support a newborn at this early stage.

Interestingly, Alabama has the most curious and potentially emotionally devastating language built into their abortion policy – that a woman has the right to request that a method of abortion be used that would “preserve the life of the unborn child.” In a case of policy diffusion, other states are following suit in this language of using an abortion method that would “preserve the life of the unborn child,” including
newly introduced legislation from Oklahoma, as well as Louisiana’s Woman’s Right to Know policy. This creates an unrealistic narrative that the fetus does not need to “die” in an abortion, but can simply be delivered. So as the logic would follow, any woman who does not choose this “preserving” method would be as choosing “death” for her fetus. In reality, the vast majority of abortions take place in the first trimester, wherein the embryo or fetus has zero chance of survival outside the womb. Anti-choice and fetal rights advocates tout reproductive technology as proof that the fetus is capable to survive outside of the womb with little to no mention of the reality of premature birth defects and conditions. Incubation technology, which mimics the womb, is the priority focus of fetal rights advocates who, through medical technology, assume the “pregnancy” in an ideological sense. In the case of the Alabama “preservative” method of abortion discussed above, a fetus as the earliest stage of viability according to its own statutes would be 19 weeks. If a pregnant woman chose as Alabama would prefer, a 19 week old fetus could potentially be delivered into the hands of the state regardless of the cost, or medical and ethical reality of that situation.

3. Absentee

With the woman now essentially absent from her own pregnancy, one can see how her rights are not cause for consideration in the case of reproductive rights policy. Interestingly, two Alabama statutes reflected the sentiment of women being absent from reproductive rights policy. In the statute which mandates an ultrasound before abortion, the language curiously states that the ultrasound “…shall be performed on the unborn child,” [emphasis mine] instead of on the woman. Additionally, no woman is mentioned in any form (pregnant woman, mother, client, pregnant person, or woman) until halfway
through the statute when mentioned passively as “her” and “she.” Assumingly, the statute is referring to a pregnant woman since only pregnant women are legal parties to reproductive policy. The blatant omission of a woman from a policy that directly affects her reproductive capacities, right to privacy and bodily autonomy is a bold statement that situates the focus and priority of policy-makers on the fetus and what restrictions and roadblocks to choice can be applied in the name of the fetus. The absentee woman occurred in three of the coded materials. Most notably, in an Oklahoma pending bill SB 546 relating specifically to fetal personhood, the pregnant woman is not mentioned once despite the obvious connection to the existence of the “unborn child.”

While Alabama tends to write women out of their reproductive policy, it is the assertion of this thesis that this tactic is purely a façade for policy-makers to gain control of women’s reproductive rights by any means necessary. Even when absent from policy, in their absence, women still remain the focus of anti-choice proponents and policy makers. These groups would go out of their way to create the narrative that women are not necessary for reproduction, especially after the “point” of viability, assuming there is a specific “point” at all.

4. Feminist Language

Some policy-makers and anti-choice advocates, alternatively, try their hand at adopting feminist language as a tactic of increasing the palatability of restrictive reproductive rights policy. In five cases the policy purports to be empowering women. Statutes, for example, that use the title “Woman’s Right to Know” as their informed consent laws suggest that the state is looking out for women’s best interests regardless of
the restrictive and burdensome nature of the law. Another example comes from
Oklahoma Congresswoman Billy, the author of Oklahoma’s controversial ultrasound
policy. Rep. Billy uses feminist language to support her legislation in an op-ed to *USA
Today*:

Women should have the choice to see that image. I have personally visited
with women who obtained an abortion in a panic and were devastated
years later to see a friend's ultrasound and realize: *That child is the same
age as my baby when* ... It is a devastating moment of intense sorrow and
regret.
I filed this bill to empower women, no matter what their circumstance, to
have as much information as possible before making a life-altering
decision\(^{35}\) (emphasis in original).

Louisiana statutes claim that their ultrasound requirement exists “for the purpose
of preserving a woman’s health...” Oklahoma’s HJR 1009, which is an opposition to the
federal Freedom of Choice Act, also uses feminist language asserting that abortion in
their state is heavily regulated in Oklahoma to protect the health of the woman.
Additionally, HB 1402, a recently pending bill in Oklahoma, entitled the “Women’s
Health Defense Act,” lists all the complications of abortion, but does not list
complications of childbirth or pregnancy. It also sets a gestational limit of viability to 20
weeks seeking a ban for all abortions after that point. The bill states, “The State of
Oklahoma has legitimate interests from the outset of pregnancy in protecting the health of
women.”

Another example is a recently passed bill in the South Dakota legislature, HB
1217, which requires a mandatory 72 hour waiting period before abortion to prevent
“coercion.” This falls under feminist language, for the purposes of this study, as it
purports to want to protect women from being coerced into having an abortion. While

that is a noble idea, it begs the question; if South Dakota policy-makers are concerned with coercion insomuch that it is necessary to legislate on the issue, why are they not concerned with protesters harassing pregnant women who do choose to get an abortion? Is that not coercion into continued pregnancy or motherhood?

Though this language is on the surface seemingly pro-woman, it is always instantly met with its underlying ideology of protectionism and misogyny. Likewise, the seemingly feminist language of Louisiana’s abortion policy is discredited by further referring to all abortions as being “uninformed decisions” made by women; “…it is the purpose of this Act to: …protect unborn children from a woman’s uninformed decision to have an abortion.” Additionally, Oklahoma’s HJR 1009, a rejection of the federal Freedom of Choice Act, inserts feminist language into its rejection of an extremely pro-woman, pro-choice federal law while concurrently stating that it is the state’s duty to protect the fetus. The language of protectionism begs the question: in the case of abortion, who is it that the state must protect the fetus against? This language underscores the crux of this thesis – the woman-state conflict is the true conflict in reproductive rights policy.

B. State Control Power Dynamics Through Informed Consent

Feminist language, though utilized sloppily in restrictive reproductive rights policy, is tied to informed consent policy, or as they are most often labeled, “Woman’s Right to Know.” The message behind these policies is that an informed decision is a lawful and good decision. While that may be true in a medical sense – all surgery and procedures are performed with all patients informed of their rights – as well as in an
emotional sense and a legal sense, there is an underlying attitude found in the language of informed consent policy that situates abortion as an inherently “wrong” decision.

In nine (20%) of the coded materials, abortion was referred to as an “uninformed decision” made by women. This sentiment speaks directly to the narrative of the normative woman. An “informed” woman or an “empowered” woman does not exist truly in this narrative unless she chooses to continue the unwanted pregnancy. Even, presumably, in the cases of rape or incest, an “informed” woman would still be expected continue the pregnancy.

Forcing a woman to continue a pregnancy has grave implications, not just on the reality of emotionally, physically and economically carrying a pregnancy to term, birthing and raising a child, but is also telling of how anti-choice proponents view women as citizens. Expecting a woman to relinquish her rights because the state refuses to recognize them is to hold all women at a lower standard of citizenry than men. This point is exemplified in the judicial testimony of Nebraska’s “Pain-Capable Unborn Child Protection Act.” On the floor, law professor at the University of St. Thomas, Minneapolis, Teresa Stanton Collett, argues what she understands to be legal support for unequal treatment of women in the case of reproductive rights: “[t]he woman’s privacy is no longer sole and any right of privacy she possesses must be measured accordingly.” This, however, is a serious and damaging “truth” to propose. This “truth” is solely based on a narrative that a fetus is a person, has rights, has conflicting rights with the pregnant woman carrying it, and needs the powers of the state to protect its interest as a citizen. The “truth” of this matter does not recognize the woman’s relationship to the fetus, and does not recognize her rights as an equal citizen. As the woman is constructed as a lower
or second class citizen, her rights are able to be violated, if those rights are even recognized to exist at all.

A woman who chooses an abortion is willingly going against the social construction of a woman – one who is selfless, nurturing and readily able to be a mother. In this narrative of the normative woman, pregnancy is a function to be fulfilled by her biological imperative. For a woman to seek abortion for an unwanted pregnancy would suggest a deviant woman – one who cannot care for a fetus, let alone herself. As this does not reflect reality, it can be assumed in this narrative that a woman cannot be trusted to make the right decision concerning her pregnancy. The narrative continues to a logical conclusion that the state, once again, must step into the protector role, protecting ignorant women from their own bad decisions. Informed consent policy also assumes that women do not understand what having an abortion entails. Informed consent policy assumes that a woman can only be informed of the immorality and perils of abortion. Furthermore, informed consent policy assumes that the only reason why women have abortions is due to unwanted pregnancy, avoiding understanding women’s infinitely variant situations that lead them to seek abortion – physical factors such as (non-fatal) bodily impairment, deformities of the fetus, rape, incest, and socio psychological factors – psychological and emotional conditions, and poverty.

Informed consent policy enumerates in certain terms what constitutes being “informed.” The informative elements that would enable a woman to make her decision include but are not limited to: counseling, including distribution of printed materials or website information on fetal development and pregnancy; referrals to crisis pregnancy centers (CPC), which are notorious for fear-based techniques and anti-choice persuasion;
and viewing an ultrasound. Each one of these components of informed consent policies produced findings that were significant to this thesis.

1. Ultrasounds

As this thesis focuses on the adoption of some of the most restrictive new policies and pending legislation on abortion in recent history – requiring ultrasounds before abortion – a thorough quantitative analysis of coded materials is necessary. Of the seven states included, four states require that an ultrasound be performed on a woman prior to abortion as part of informed consent laws. These states – Nebraska, Louisiana, Alabama and Oklahoma – were the most restrictive states in all other categories as well. North Dakota and South Dakota require offering ultrasound to the pregnant woman, but do not require it to be performed prior to abortions. These ultrasound requirements, as explained throughout this thesis, are specifically damaging and troubling to women seeking abortion for a variety of reasons: they are usually required 24 hours before abortion, which would entail a waiting period for abortion that is problematic to low-income women, women with health issues, or women in violent situations; they are invasive as in the state of Oklahoma where a vaginal ultrasound is required; they are emotionally burdensome as many statutes require a full description of the ultrasound image to be read as well; and aside from any pre-procedural steps the doctor may view as medically necessary to having a safe abortion, ultrasound is only necessary to literally paint a picture of fetuses that fulfill the narrative of fetal personhood.
Table 6.2 – Various Levels of Ultrasound Requirements By Severity of Restriction*

<table>
<thead>
<tr>
<th></th>
<th>Most Severe</th>
<th>Very Severe</th>
<th>Severe</th>
<th>Less Severe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alabama</td>
<td>Required 24 hours before abortion, doctor must explain fetal functions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Louisiana</td>
<td>Required 2 hours before abortion, ultrasound images given to woman in envelope, doctor must explain fetal functions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nebraska</td>
<td>Required 1 hour before abortion, ultrasound must be displayed but the woman can avert her eyes</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>North Dakota</td>
<td>Offered but not required, doctor must explain fetal functions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Oklahoma</td>
<td>Required 1 hour before abortion by abdominal or vaginal transducer, doctor must explain fetal functions</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Dakota</td>
<td>Offered but not required, doctor must explain fetal functions</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*Statutes only

The specific language around ultrasound requirements is important as well in order to highlight the burdensome nature of these policies. As described earlier, Alabama’s ultrasound requirement is oddly worded to eliminate the woman from the policy, stating that an ultrasound “shall be performed on an unborn child.” Of the other three states, Nebraska, Oklahoma and Louisiana, policy diffusion takes its course. Each state that the ultrasound screen should be positioned in a way that a woman can see it.
Though they all state that a woman can “avert” her eyes, this would mean that a woman would have to actively shield herself from the ultrasound picture. This rather aggressive language, compared to the more passive language of North Dakota and South Dakota, underscores the “punishment” that women must endure if they wish to, or have to break the mold of the socially constructed normative woman and elect abortion. In addition to putting the fetal image in full view, Alabama and Louisiana require the doctor to simultaneously explain the physical characteristics of the ultrasound image. Therefore, while a woman may “avert” her eyes from the ultrasound image, she would additionally have to cover her ears from the doctor’s description if it is something she does not wish to hear. Likewise, in North Dakota and South Dakota, while an ultrasound is required to be offered as opposed to required to be performed, doctors also must include a physical description of the fetal function. In Louisiana, a woman must undergo an ultrasound, and be provided with an envelope with a print out of the ultrasound image inside. A woman in this case can throw away the envelope containing the picture if she does not wish to view it, prompting metaphorically challenging imagery. In South Dakota the informed consent law regarding ultrasounds states, “[t]he woman's response to the offer [of an ultrasound] shall be documented by the facility, including the date and time of the offer and the woman's signature attesting to her informed decision,” (emphasis mine).

Curiously, “informed” in South Dakota does not mean having to view an ultrasound, rather, being offered one. In the case of Oklahoma’s vaginal transducer ultrasound policy, it is clear that the requirement is simply an exercise in state intrusion and control over a woman’s medical decision - intrusion that is literal. Not much else could be more symbolic.
These strange language and burdensome requirements in informed consent policies beg many questions: what is the difference between seeing the ultrasound and hearing the description? Is the description present because the ultrasound image to the untrained eye is really abstract? Does a description produce a more powerful mental image than an ultrasound image can physically produce? If a woman can avert her eyes from the ultrasound or refuse the offer of an ultrasound, would she still be considered “informed?” Can a woman shield herself from listening to the description of the ultrasound image? Do physicians feel any of this is necessary to a woman’s decision to elect abortion?

2. Informational Materials

It is far easier to decipher the underlying messages of reproductive rights policy when viewed through a lens of power dynamics. The conflict of power between a woman’s bodily autonomy and state control of reproduction is clearly laid out in most of these policies. North Dakota is a prime example of the woman-state conflict. The “Optimal Pregnancy Outcome” (OPO) program professes that it is the exclusive aim of the state to ensure that every pregnancy results in childbirth. In the state-mandated materials on reproductive options, either online or in print, information on abortion is not available. Instead, women in North Dakota who face unwanted pregnancies are also faced with material sponsored under the OPO program that only describe how “your baby” is developing, and what you may expect from “your body” as a result of the pregnancy. Materials also discuss “your responsibility” after becoming pregnant which includes “telling your family” but omits the responsibility of making an informed reproductive choice of either the options of parenthood, adoption or abortion. North
Dakota’s OPO program speaks directly to the normative woman narrative. In this program, each pregnant woman is a selfless mother with a wanted child, and a supportive family.

Under the guise of informed consent discussed above, North Dakota’s state-mandated informational website directs pregnant women to a list of Crisis Pregnancy Centers (CPCs) for further information on options. CPCs are… Of the 11 websites: seven are overtly religious; none are pro-choice or speak about abortion as a legal and safe option; and one boasts its support of a failed personhood bill (HB 1572, 2009). North Dakota is not alone in their anti-choice information; other states have similar CPC referrals on their state-mandated informational websites and some exclusively written into their statutes or bills. Oklahoma’s website includes CPC referrals. Alabama has CPC referrals written directly into their informed consent statute;

‘[t]here are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or place him or her up for adoption. The State of Alabama strongly urges you to contact those agencies before making a final decision about abortion.

Louisiana uses the exact same phrase as Alabama. South Dakota has both website CPC referrals as well as language in the bill stating: “…the physician who is to perform the abortion… [must] provid[e]… [t]he name, address, and telephone number of a pregnancy help center in reasonable proximity of the abortion facility where the abortion will be performed.” On South Dakota’s informational website, a list of services is made available to pregnant women. Most are state programs, however, of the three private, non-state agencies each one was a vehemently anti-choice CPC.
State-mandated informational materials are supposed to be scientifically-based for the purpose of providing the pregnant woman with further knowledge, hence the name of the laws “Woman’s Right to Know.” All of the states included contain language about their printed materials being “nonjudgmental” and “objective.” In South Dakota, for example, the statute which outlines what must be contained in these informational materials asserts, “[t]he materials shall be objective, nonjudgmental, and designed to convey only accurate scientific information about the unborn child at the various gestational ages.” This is an interesting phrase in itself as clearly the use of “unborn child” is not part of medical or scientific terminology and therefore is subjective creating an initially judgmental attitude. Oklahoma’s informational pamphlet, available online and titled “A Woman’s Right to Know,” also is, purportedly, nonjudgmental, objective, and scientific. However, it contained the highest number of repetitions in use of the phrase “unborn child,” as well as calling pregnant women “mother.” An example of a more notably nonjudgmental informational pamphlet came from Nebraska entitled “If You Are Pregnant,” which used “fetus” and “embryo” where appropriate and “mother” once.

If one was to follow the narrative that adopts feminist language as a way of explaining how informed consent is important to a sound decision, these materials would not be so biased towards anti-choice groups, they would consider abortion an option, and the language on the websites would be more medical or neutral. What is seen in the coded materials, however, is an outright anti-choice stance which offers no alternatives for women who need abortions or want abortions.
3. Anti-Choice Status – Post-Roe Bans

Some states are more transparent in their loathing for abortion and reflect the sentiment in their own ways. In Alabama, abortion is seen as a “wanton disregard for human life.” North Dakota, South Dakota and Alabama each stress the risks of abortion more than the risks of childbirth. Alabama, Louisiana, North Dakota and South Dakota all effectively have post-Roe bans that would, in the event of the Supreme Court overturning Roe v. Wade, ban abortion in the state. These bans are not veiled attempts to come out against abortion as in North Dakota’s OPO program, but realistic and dangerously intrusive statewide bans on abortion that would place policy-makers in control of each and every woman’s pregnancy. The “optimal pregnancy outcome” in these states would be a forced pregnancy and forced birth. In Louisiana and South Dakota, the post-Roe abortion ban comes without an exception to women who have been raped – an ultimate act of control of the state by further victimizing the victim. Alabama has an unenforceable post-Roe abortion ban on the books, and two currently pending in both state houses.

Colorado is included among the states focused on in this thesis as it is an important case study for state abortion bans. The ballot measure (62) that was voted down by voter referendum in November 2010 was a fetal personhood bill that would amend the Colorado state constitution to label the fetus as a person. The amendment would apply “personhood” status to “every human being from the beginning of the biological development of that human being.” Citing inalienable rights, equality of justice, and due process, proponents of this amendment sought to use fetal personhood to ban the legal choice of abortion in reproductive decision-making. In the Colorado Blue
Book, an informational booklet that allows citizens of Colorado to weigh each side of a ballot measure to be voted on, the legal and theoretical issues surrounding this measure were laid out by its opponents. Some of the legal issues surrounded the idea that this measure would be unenforceable, a waste of time and money, and would bring about an onslaught of lawsuits by anti-choice groups on behalf of aborted fetuses. Other legal issues surrounded the language of the measure which did not include an exception if the health of the pregnant woman was in danger. Theoretical issues highlighted what some scholars see as the maternal-fetal conflict – if a fetus is a person, it has rights to life, liberty and due process; however, a woman, also a person, has the same rights.

Notably, similar measures were voted down in North Dakota and twice in South Dakota. In North Dakota in 2009, HB 1572 was a personhood bill with language similar to that of Colorado, which was rejected. South Dakota in 2006 with HB 1215 and in 2008 with Ballot Initiative II – a personhood bill and an abortion ban, respectively – were both rejected.

Even in the most restrictive states, abortion bans are not the will of the people. However, anti-choice groups and policy-makers still attempt to bring forward ballot measures, bills, and initiatives to ban abortion, usually under the guise of fetal personhood. As part of the main assertion of this thesis is that the fetus is used by anti-choice policy-makers and advocates as a tactical pawn to enact restrictive reproductive rights policy, it is important to analyze the ways in which the fetus is used in policy.
C. The Fetus As…

As mentioned earlier, following the narrative that the fetus is living, and therefore deserving of the same rights as any other person, is essential to the claim for state control over reproductive rights. The theory of fetal personhood creates powerful imagery, and taps into what essentially connects all living human beings – that we were all created in the same way. Though this thesis does not attempt to tackle the issue of at what point life begins, if there exists a particular moment at all is highly contested among scholars, and in the medical community, however it should be understood that the states included all use the belief that the fetus is a living human being as an argument for restrictive policy.

Alabama, Louisiana, Oklahoma, North Dakota and South Dakota all have existing statutes that explicitly state the belief in fetal personhood. North and South Dakota adhere to the policy diffusion model in their informed consent laws, requiring that as part of counseling, a doctor must tell the pregnant woman that “the abortion will terminate the life of a whole, separate, unique, living human being[.]” For Alabama, fetal personhood is essential to the state’s duty to protect “life, born and unborn.” The coded material, however, does not necessarily have to be so overt in its belief that life begins at conception. The language in a vast majority (over 90%) of the coded materials suggests that belief on its own. Without having overt statements such as in North and South Dakota, the materials provide an underlying theory of fetal personhood by using phrases such as “unborn child,” “unborn human being,” “baby,” and other variants. South Dakota further states its belief in fetal personhood by subtly asserting the fetus is a living human in their “definition of terms” within the state abortion laws: “Human being,” an individual living member of the species of Homo sapiens, including the unborn human
being during the entire embryonic and fetal ages from fertilization to full gestation,”
(emphasis mine).

1. Unborn Child

Calling a fetus an “unborn child” or any variant thereof is not medical, scientific or legal terminology; it is purely symbolic and provocative of a powerful image of a tiny baby that just has not been born yet. The idea of the fetus as the “unborn child” is tied very tightly, in fact, to images like the ones coded in this study. However, aside from the imagery it conjures up, the language itself suggests something equally powerful. As seen in the analysis of the woman as “mother,” the “unborn child” speaks to the same narrative – that every pregnancy is wanted, created between two consenting, willing, healthy and adequately prepared adults. This narrative also creates an entity to protect; a vehicle for which the state can become a necessary part of a pregnancy. In this narrative, if the fetus is an “unborn child” it is only any different from a born, living and breathing child in that it is currently encapsulated in a woman’s womb. States claiming to want to “protect” the “unborn child” as analyzed earlier create a condition in which the pregnant woman is not to be trusted with her own pregnancy.

Interestingly, it is the repetition of the phrase “unborn child” that is the most prominent finding of this study, occurring 425 times over all 46 documents coded. The “unborn child” in this way, as a separate entity from the pregnant woman, must be constantly referenced and referred to in bills, statutes and other materials in order to propel the narrative into a dominant discourse. All but one of the materials that used “unborn child” language did so numerous times throughout the material. Just as “mother”
was repeated in the coded materials, to a greater extent, “unborn child” and its variants were also heavily repeated. One of the most recent materials, a bill in the 2011 North Dakota House of Representatives, HB 1297, that among a few other changes to the existing policy, mainly changes every word “fetus” into “unborn child” and more disturbingly, “viable fetus” into “infant.” If the language of “unborn child” and the imagery and underlying assumptions that come with it did not make a substantive difference in the way the general polity views and votes on abortion issues, there would not be an overwhelming push to change that language where it is not present, or to use it as frequently where it is present.

The fetus is also most notably and effectively personified when “unborn child” language is coupled with other language suggesting the fetus is a “baby.” For example, most of the coded materials couple “unborn child” and its variants with how child-like a fetus is in its actions. A child-like fetus is described to be sucking its thumb, hiccupping, exercising, and consciously reacting to pain. Neonatal medical science informs that a fetus cannot suck; in fact, a primary health issue of premature infants is that they may, if born only at 28 weeks gestational age, lack the ability to suck, swallow and breathe, thus the need for artificial breathing devices. Nevertheless, the image that a thumb-sucking fetus conjures up speaks specifically to the belief that the fetus is a person – albeit a tiny person. Most informed consent policies require the doctor to describe what body parts a fetus has, and what it can “do,” besides grow. The idea that the fetus is doing “childlike” things also assumes that the fetus does these things intentionally, as if it possessed rational thought.
Table 6.3 – Comparison of “Unborn Child” Language to Description of the Fetus Doing “Childlike” Things and/or Feeling Pain

<table>
<thead>
<tr>
<th></th>
<th>Unborn Child</th>
<th>Does “Childlike” Things</th>
<th>Feels Pain</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bills</td>
<td>9 (100%)</td>
<td>1 (11%)</td>
<td>2 (22%)</td>
</tr>
<tr>
<td>Statutes</td>
<td>24 (85%)</td>
<td>0 (0%)</td>
<td>6 (22%)</td>
</tr>
<tr>
<td>Literature</td>
<td>4 (80%)</td>
<td>3 (60%)</td>
<td>2 (40%)</td>
</tr>
<tr>
<td>Other*</td>
<td>3 (60%)</td>
<td>1 (20%)</td>
<td>1 (20%)</td>
</tr>
</tbody>
</table>

Total pending bills coded: 9
Total statutes coded: 27
Total literature coded: 5
*Includes hearings, House Joint Resolutions, and unenforceable Acts, Total: 5

2. Pain-Capable

As fetal medical technology increases, so does the belief that knowledge of the fetus does as well. Some, often conflicting scientific theories suggest fetal pain at a certain point of gestational age and brain development. While this is still an ongoing understanding, recent reports of fetal pain prompt new legislation reflecting what is widely believed by anti-choice advocates and policy-makers to be scientific fact and vindication of their anti-choice position. It is quite fitting and appropriate to their personification of the fetus – if a fetus can feel pain, which is just further proof that it is a living, feeling human being worthy of rights. Many policy-makers have jumped on the opportunity to advance their restrictive policy under the guise of the pain-capable fetus. Louisiana, Nebraska, Oklahoma and South Dakota all have either statutes or pending legislation which add to the discourse the language of the pain-capable fetus. Louisiana’s current abortion law states that a fetus can feel pain at 20 weeks.
Nebraska’s “Pain-Capable Unborn Child Protection Act” was adopted as recently as April 2010; a law which states that pain is felt by fetuses at a gestational age of 20 weeks. The floor debate on the matter, which was part of the coded materials, revealed staggering repetition of the term “unborn child” and its variants (65 times) as well as “mother” (50 times). It also provided a glimpse into the uncertainty of fetal pain – doctors testifying that a fetus can feel pain from possibly as early as 16 weeks. Notably, the debate mentions that a vaginal birth is stressful and painful for a fetus. However, in the scope of this study, it has never been founded that a policy-maker is concerned for fetal pain during childbirth so much as to introduce a bill that is a state-mandate of cesarean section deliveries only. It seems as though the concern among policy-makers and anti-choice advocates are towards fetuses about to be aborted, instead of a concern for the welfare of all fetuses.\(^{36}\)

In a case of policy diffusion, Oklahoma’s most recent congressional session has a bill pending (HB 1888) entitled the “Pain-Capable Unborn Child Protection Act” in which a fetus is said to feel pain at 20 weeks. It even goes so far as saying the fetus may feel pain at 16 weeks or, remarkably, as early as eight weeks, as the embryo “recoils” as a reaction to stimuli. Though the bill is meant to prohibit abortion from the 20 week gestational period, these scientific unknowns are being used to trumpet the fetal personhood narrative.

Policies and pending legislation on the pain-capable fetus beg further questions: why is this information, regardless of its highly debatable nature, considered necessary to

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\(^{36}\) This inconsistency is noted by many feminist scholars in analyzing fetal harm laws wherein the pregnant woman is often charged with more serious violations than harm caused by a man (i.e. – through abuse of the woman, thereby the fetus).
informed consent laws? Is it the belief of anti-choice policy-makers and advocates that upon hearing this information, a woman would reconsider her choice for abortion? Does that information change a woman’s situation of an unwanted pregnancy?

III. Anti-Choice Narrative

It is important to this study to understand the influence and presence of anti-choice interest groups, as these groups are at the foundation of anti-choice thought and discourse. A thorough investigation of each sponsor or author of each piece of legislation and that legislator’s ties and support from anti-choice groups was too grand and unrealistic for the scope of this thesis. However, as some of the states included were either proud enough or transparent enough to admit, there are definite linkages between extreme anti-choice advocates and state policy-makers. These links speak of a network of anti-choice advocates – activists and policy-makers alike – that aim to perpetuate the normative narrative and restrict women’s reproductive rights through legislation.

A. Crisis Pregnancy Centers

One can clearly see the support anti-choice policy-makers are giving to restricting women’s reproductive rights, not just in the language and images as discussed below but also by referring women to Crisis Pregnancy Centers. As mentioned earlier, and noted by scholars, Crisis Pregnancy Centers (CPCs) are counseling centers that are anti-choice in basic ideology and attempt to persuade women with unwanted pregnancies to continue those pregnancies. Their staff uses fear-based techniques, extreme rhetoric, unsubstantiated medical “facts” and free ultrasounds to coerce women into continuing pregnancy. Each state of focus had either a statutory provision or pending legislation that
refers women to CPCs specifically because they provide “alternatives to abortion.”
While it may be true that CPCs offer alternatives, however, they are not simply women’s health centers that do not provide abortion – they are mostly religious, extremely anti-choice and support the damaging narrative of the normative woman.

A basic review of the vision statements and services offered by the specific CPCs referred to by state reproductive policy produces findings which could be, and in some cases already are, an entirely separate area of inquiry and study. For example, one CPC in Nebraska consistently refers to the fetus as a “baby,” which as detailed earlier in this chapter, promotes the narrative of fetal personhood. This particular center’s website also has incorrect facts in discussing the risks associated with abortion, noting among others that abortion is linked to breast cancer – a myth which has been thoroughly disproven37 – and that a woman who has an abortion has a “600%” greater chance of placenta previa, which is also discredited.38

Likewise, a state-promoted CPC in South Dakota uses fetal personhood language, calling a fetus a “baby” 21 times in their “facts” about abortion webpage. In describing the effects of RU-486, this CPC’s website notes “…when the woman finally does abort, she will expel a tiny dead baby.”39 Additionally, a section regarding informed consent entitled “I Only Wish I Would Have Known,” details pregnancy in two-week intervals. In this section, they assert that the fetus can feel pain at 13 weeks, and that it can survive

37 http://www.cancer.gov/cancertopics/causes/ere/workshop-report
38 http://www.mayoclinic.com/health/placenta-previa/DS00588/DSECTION=risk-factors
39 http://www.alphacenter.org/answers/abortions.php
outside of the womb at six months with “special care.” No medical citation or substantiation of factual information, however, is provided.

Of course, the noteworthy fact is not that CPCs exist, or that they have an underlying agenda, but rather that policy-makers are actively promoting their services through state policy. It is clear that “informed consent” laws are a misnomer. Anti-choice policy-makers are attempting to uphold the narratives that necessitate their control over women’s reproductive rights. In this light, it seems that the only things that states want to “inform” women on are those underlying narratives.

B. Anti-Choice Organizations

State policy-makers are supported politically and financially by anti-choice organizations within their states. These organizations run the gamut from large and nationally organized, to small and locally based. The organizations also can be religious to varying degrees. While a study on these organizations has been a focus of other scholars of reproductive rights, it is important to analyze the involvement of these organizations, however briefly for the purposes of this thesis. Policy-makers in the states included tend to rely on these groups to provide testimony in support of restrictive legislation, to call attention to anti-choice policy issues, and to exist as a political action committee wherein political endorsement and donations could flow. These organizations are also pivotal in maintaining the damaging narratives discussed in this thesis.

A brief analysis on anti-choice interest group activity in the states included finds that one group in particular is outspoken in advocacy of reproductive restrictions – the

40 http://www.alphacenter.org/answers/wish.php
National Right to Life Committee. Each state included in this study has a state-wide chapter, if not several local chapters. Each state chapter boasts of their support and/or testimony on restrictive legislation.

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<th>Table 6.4 – Legislation Supported by Anti-Choice Organizations</th>
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The Right to Life chapters in each state all utilize the discourse of fetal personhood, and the normative woman, if the woman is mentioned at all, to champion their cause. A *USA Today* article reports on the support of Oklahoma’s anti-choice advocacy group on

\(^{41}\) [http://www.al4life.org/](http://www.al4life.org/)
\(^{42}\) [http://www.prolifelouisiana.org/](http://www.prolifelouisiana.org/)
\(^{44}\) [http://www.okforlife.org/resources/LegAlert-02-14-2011.pdf](http://www.okforlife.org/resources/LegAlert-02-14-2011.pdf)
\(^{45}\) [http://legis.state.sd.us/sessions/2011/Minutes/minHJU02141000.htm](http://legis.state.sd.us/sessions/2011/Minutes/minHJU02141000.htm)
Oklahoma’s controversial ultrasound law, which was vetoed by the governor and subsequently overridden by the conservative state Congress:

Tony Lauinger, state chairman of the anti-abortion group Oklahomans for Life and vice president of the National Right to Life Committee, said each of the measures are designed to protect the unborn as well as pregnant women.

"It is just as important for a woman who is pregnant as a result of rape or incest as it is for any other woman to have the benefit of full and complete information prior to taking the irrevocable step of having her baby aborted," Lauinger said.46

This quote outlines the insidious language used by anti-choice organizations in support of state legislation. This particular quote adopts feminist language of wanting to “inform” women, and fetal personhood language in calling a fetus “baby.” The feminist language is utilized with the same logic explained throughout the findings of this study; the only way a woman can be “informed” is if she is informed to carry out her pregnancy. Additionally, the fetal personhood language used in the Nebraska anti-choice organization’s vision statement directly reflects language of policy statements, statutes and pending legislation in the states included: “This commitment is derived from a belief that each human being, from the time of fertilization to natural death, has an immeasurable dignity and unalienable right to life.” The same language is used in Oklahoma’s HB 1571 which defines “person” as from fertilization forward and demands inalienable rights for all “people;” North and South Dakota’s twin policy statements, “the abortion will terminate the life of a whole separate, unique, living human being;” Louisiana’s unenforceable abortion ban, defining “unborn human being” as “… an individual living member of the species, homo sapiens, throughout the entire embryonic

and fetal stages of the unborn child from fertilization to full gestation and childbirth;”
Colorado’s failed personhood ballot initiative which defines personhood as “every human
being from the beginning of the biological development of that human being;” and,
Alabama’s abortion statute which views abortion as “a wanton disregard of human life.”

Again, similar to CPCs, it is not the fact that these groups take a position on a
controversial issue that is the ultimate problem, but that their ideology is adopted into
state policy, without revision. Additionally, as their ideology relies on the socially
constructed narratives of the normative woman, fetal personhood, and the paternal state
narrative, this too is adopted into state policy.

IV. Images

The 93 images analyzed came from five types of coded material including state
mandated literature, state websites (not literature), state informational literature (non-
mandated), anti-choice groups, and popular culture. To validate this thesis, images would
fit the narratives and constructions of women and fetuses as set forth by the postmodern
analysis of the language of coded materials. Indeed, with few exceptions, the images
followed the narrative of the normative woman, if women were shown at all, and fetal
personhood. Some images stood alone as asserting the normative narrative; however,
others were contextualized with language to accomplish those ends. The images overall,
provide a powerful visual accompaniment to language that completes the narrative that
allows for the erosion of women’s reproductive rights.
A. Women As…

1. Mothers or Noticeably Pregnant

As discussed in the language deconstruction, the image of a happy, selfless mother is the main goal of using normative “mother” language in reproductive legislation and informational materials. The visual aid, in case the metaphorical image does not become conjured up itself in the public’s mind, if clearly present in the coded images. The normative woman or “happy mother” appears in 14 (15%) of the coded images. While that may not seem like a significant number, it is virtually the only way women are represented at all. Women only appear in 17 (18%) coded images. In this light, of the 17 pictures of women, 14 (82%) were representative of the normative woman. In only three of the images, the woman is depicted as visibly pregnant. These three images of pregnant women are in themselves troubling. North Dakota’s Abortion Alternative brochure pictures a visibly pregnant and upset teenager. She is holding her pregnant belly indicating that she is clearly far along in the pregnancy – farther than when most abortions actually do take place.47 Louisiana’s Title X family planning website features a pregnant woman in a section labeled “General Reproductive Health,” however, this image is troubling because the only area of this woman that is actually pictured is her torso; wearing a white sports bra only, exposing a very pregnant belly. She does not have any other body part above or below this area in the picture. Certainly this picture wishes to highlight not the woman herself, but only her condition of being pregnant. In a section labeled “General Reproductive Health,” one would assume that the reproductive health of

47 According to 2006 Census data, more than 60% of abortion occur in pregnancies less than nine weeks gestation. http://www.census.gov/compendia/statab/2011/tables/11s0100.pdf
a woman – which consists of more than just the ability to have children, but also STDs, non-sexuality transmitted diseases, among others – would mean more than pregnancy alone. The last pregnant woman image comes again from North Dakota’s Optimal Pregnancy Outcome website where a very pregnant woman in a white gown stands with a little girl who has her ear to the woman’s pregnant belly. While this image alone does not present overt issues, it is contextualized among two other pictures of a newborn baby and a happy mother with born child image. This website has been discussed above as problematic in its language and intention of state control of all pregnancies and its images are vindication of the program’s adherence and preference of the normative paradigm.

The images of “mothers” – or women who can only be assumed to be mothers based on the general societal understandings of “mothering” behavior – in each instant provide the vision of a happy, smiling mother either playing with or holding a born child. Most of these appear to be stock photography, and surely are, as two completely different websites, Oklahoma Right to Life and South Dakota’s private pregnancy center referral website, use the same exact picture of a woman who seems to be cooing at the screaming baby she is holding. These “mother” images are all pleasant and loving. The women all smile and seem happy that they have children. Of course, an organization would most likely not put an unpleasant image up on their website\(^{48}\), say that of a woman who is visibly unhappy with a child, however, the images shown, coupled with the accompanying language within the reproductive rights discourse paint an unrealistic

\(^{48}\) As an aside, the coded images in this study do not include the gruesome images of aborted fetuses that the extreme anti-choice groups use to shock and deter the general population from supporting reproductive rights. A wealth of images of that scope were, in fact, available to be coded, however, due to various reasons expressed in the Appendix, they were not included. Among these reasons is the fact that these images are of questionable origin. An entirely separate study would be necessary for the analysis and effect of these images on the public and women’s reproductive rights.
picture that normalizes all women’s experience of pregnancy in a way that alienates and stigmatizes those who have unplanned or unwanted pregnancies.

2. Fetal Environments or Absentee

The requirement of ultrasound before abortion is important as a symbolic image, above all other potential reasons that would necessitate this requirement. Ultrasounds by nature allow the fetus to be viewed apart from the woman, to appear free-floating on a separate screen. Symbolically, removing the woman, as seen in the language deconstruction, creates a reality where the inherently intimate connection between a woman and her fetus is denied. In this way, the fetus can become an entity, deserving of rights and privileges despite the woman. However, even this ultrasonic view of the fetus does not completely satisfy the fetal personhood beliefs of anti-choice proponents. As an abdominal transducer image can be cloudy, grey, and unclear Oklahoma inserted a provision requiring the ultrasound be performed via vaginal transducer, which would provide a clearer picture. Additionally, nine of the coded materials require a description, as explained above, which shows that an ultrasonic image cannot stand alone for non-medical staff.

Ultrasonic images used in informational materials discussed above, are also misrepresentative of routine abdominal transduction images. In North Dakota and South Dakota’s informational booklet, images of fetuses at different gestational ages come from Lennart Nilsson, a scientist and photographer made famous for his macro photography of fetuses in his book, *A Child is Born* (1965), and in *Life* magazine in the same year. Similarly Oklahoma’s state-mandated informational booklet relies on the same images.
These images are problematic, however, as they are vastly more detailed than a typical ultrasound, and color saturated, as a result of being created with an endoscope. Thus, informational materials create the illusion that an ultrasound would reflect images like those from the endoscopic photography of Lennart Nilsson. If nothing else, these images simply allow any reasonable person to make a direct connection between the grainy and often ambiguous ultrasound image and the detailed, artistic images provided by the informational booklets.

Interestingly, the photos from Mr. Nilsson while providing macroscopic detail of the fetus, also present the fetus as floating in a black space. It should be understood that this black space is in fact, the womb. In the case of younger fetuses, the black space would be greater due to the diminutive size of the fetus; however, in the images of older fetuses, the black space is created artificially through the use of different lenses. In Oklahoma’s A Woman’s Right to Know informational booklet, the images of the fetus at 20 weeks and 32 weeks are both taken through what appears to be a fish-eye lens, distorting the image to highlight the center of the image, creating a perfect circle outline with back edges beyond. Creating an image wherein the woman is edited out, or cast as simply a black void of space presents complications to a woman’s inherent connection to her fetus. It also reiterates the way in which women in the normative narrative are viewed – as fetal environments, instead of real people, or citizens with a right to bodily autonomy. If women are simply an incubator for a fetus, it limits their involvement in

49 http://www.lennartnilsson.com/q_a.html
50 In fact, in coding the informational literature containing photos by Lennart Nilsson, the categories of coding labeled “ultrasound/sonogram” and “photo” were merged as Mr. Nilsson’s specific type of endoscopic photography straddles the line of ultrasound and photo, thus presenting problems for the coding scheme. An endoscope is a medical instrument that situates a camera on a long, thin wire, which is inserted into the body.
pregnancy, as impossible a task that may be, thus allowing for others such as policy-makers to enact policy that controls the outcome of their pregnancy. If women are just the environment for a fetus, their experiences and rights are considered less when policy makers are discussing reproductive policy. Making women a second class citizen in this way allows policy makers to focus on the fetus, using it symbolically to represent a protected class of citizenry that can only be protected by the state through restrictive reproductive policy.

Women, are now relegated to a lower class of citizenry or are left out of the discourse altogether. As mentioned briefly above, an astonishing 82%, 76 of the 93 images do not show the woman at all. Fetuses are pictured as free-floating, and born children are pictured alone. In the cases where a placenta and umbilical cord are present, the only ways a woman could possibly be represented if only in part, it is almost always downplayed as explained above, by being otherwise surrounding the fetus within a black void of space. In the case of Nebraska’s If You Are Pregnant informational booklet, the woman is absent in all of the fetal illustrations; the umbilical cord, which is the only thing that represents the connection between fetus and woman, is downplayed or seen as translucent, fading into a light blue background. If these images are supposed to inform a woman what to expect when she becomes pregnant, it begs the question: how important is it that the woman understands what is going on in her own body, not just the development of the fetus? Where is the scientific, visual representation of the effects of pregnancy on a woman’s body? Where and how in a woman’s uterus is a fetus situated and connected in different stages of development? These questions are not addressed in most of the literature and not addressed at all in the images. It becomes clear then,
through this lens that the woman is not the primary concern of proponents of policy that requires this material. The way the materials and images focus constantly on the fetus highlight that the main objective is not “protection” of a woman’s “right” to “knowledge” or “information” on her reproductive decision, rather is just a way in which anti-choice policy-makers can use state powers to control women’s reproductive choices through restrictive and burdensome policy.

B. The Fetus as…

1. Unborn Children

The visual representation of the fetus is extremely important to anti-choice proponents and policy makers. Through the image of the fetus, these groups intend to situate the fetus as an individual, a person with features and therefore rights identical to any other human. In order to assert this message, the fetus must be separated from the pregnant woman, and elevated to an individual entity that is not dependent on a woman. Coded images demonstrate that the fetus is separated from the woman most successfully by age – the older the fetus is and the more viable it becomes, the less it depends on the woman. While that may be medically true in some ways, as discussed earlier in the analysis regarding viability and fetal technology, the overreliance on medical technology to save preterm infants is more justification that the fetus is inextricably dependent on the woman. However linked the woman and the fetus may be in reality, the normative narrative separates the fetus and the woman as a way of perpetuating the woman-state conflict. With the woman and fetus separate, the state can step into the pregnancy, asserting control over any decisions relative to reproduction. Also, since the language of
fetal protectionism is that the state has a compelling interest in the potential life of a fetus, the images show a dependence on older, more developed fetuses and born children to show what could come of an otherwise disconnected fetus. The result is images that follow the language that is the normative construction of the fetus – a tiny human. The older a fetus is, the more childlike it becomes. Mentioned briefly above, the state-mandated informational booklets from Oklahoma, Nebraska, North Dakota and South Dakota all contain information on fetal development, mostly with pictures accompanying the descriptions, up until 40 weeks gestational age. If nothing else, this is simply a visual roadblock for women considering abortion. The image of the older fetus in these informational booklets is irrelevant as abortion is nationally prohibited from 24 weeks gestational age forward and in some states, earlier. The older, more childlike fetus is used therefore to assert the idea that a fetus is a person – an unborn child that deserves protection by the state in the form of restrictive abortion laws.

Similar to the language which asserts that fetuses are “unborn children,” images reinforce this by depicting fetuses literally, as born children. Of the 93 images analyzed for the purpose of this study, 33% of those images were of born children. The idea is to relate the fetus to a born child to create a logical continuum of the fetus’ potential for life. Anti-choice group websites and state websites were the two groups that presented the fetus as a born child. These pictures ranged from stock photography of women holding chubby, clean babies with clear and open eyes to illustrations as seen on state “choose life” license plates. In popular culture images, such as billboards, babies were often

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51 The language of “Choose Life” license plates is interesting as it begs the question of who the intended audience is; which would vastly change the meaning of the plates. If the audience is women, a woman reading the license plate would be informed to “choose life,” indicating a support for a woman’s right to
dressed up in humorous ways, relating to the message on the billboard. In a billboard campaign by Pro-Life Across America, the self-proclaimed leading organization for anti-abortion billboards, a baby clad in a black vest and orange head scarf, sits up straight with his arms stretched forward, smiling. The accompanying language reads “I was born to ride! Baby’s arms appear 28 days from conception!” The message behind this image is clear – even a six week old embryo has the potential to do human-like things such as riding a motorcycle. Obviously, the imagery is dangerous and false – not only can no one under the age of 16, at the youngest, ride a motorcycle, but certainly a fetus cannot. The image of a six week old fetus, still in embryonic stages, is vastly different than that of the baby featured on this particular billboard including but not limited to the existence of a tail.

2. Parts of a Whole

When fetuses aren’t being represented as actual born children in images, they are being compared to born children by being represented in parts. By focusing on the most “childlike” part of a fetus, the connection to a born child or any human is evident. Fetuses in these images are in the womb, unlike their born child image counterparts; however, the reality of existing in the womb is skewed. Nowhere is the woman represented in these photos, as discussed above, by way of a placenta, an umbilical cord, or any other characteristics of the womb. On the occurrence of these types of images, Condit (1990) notes,
[a]n accurate, full picture of a young fetus includes features not associated with adult human beings – the placenta and the umbilical cord and, in a six-week fetus, even a “tail.” With these and its ungainly face and head, off-balance and poorly formed, a young fetus looks like a wretched creature, bloody and undernourished… Fetal feet, however, are very close to baby feet in shape… Our visual logic “recognizes” such feet as “small human feet” and we synecdochically expand the unseen picture to see a full “small human.” Thus, the synecdoche tightened the identity between fetus and adult by eliminating all those components that reveal the differences between the two, focusing on one single, stunning similarity.

Personifying the fetus as a “small human” in images by taking away elements of the womb is truly a powerful statement, not just as imagery that draws strong connections between fetuses and adult humans, but also in ways that speak to the body politics surrounding the abortion issue. The womb is not simply a representation of a woman, like a born child represents the potential life in a fetus, but rather the womb directly represents a woman because it is a part of the woman. As mentioned above, removing a woman from pregnancy in these images has grave consequences to her bodily autonomy and individual liberties on making reproductive health decisions.

While fetuses are reduced to their most childlike parts, cleaned off, and floating free from the womb, they are also placed next to older fetuses in an attempt to contextualize their immature development. In four of the coded materials, which notably were all informational booklets, the young fetus was juxtaposed with older, more developed and more “childlike” fetuses. These images are similar to the comparison in the born child images and fetal parts images in that they seek to show the similarities of extremely young fetuses and born humans. They also seek to show the potential for life.

Interestingly, in North Dakota and South Dakota’s state-mandated Fetal Growth and Development informational booklet, a veritable chorus line of fetuses at various ages
of gestation from 12 through 38 can be seen. The ascension of growth is crudely illustrated, without any other context than that which compares relative size of a 12 week fetus with a 38 week fetus. Oddly enough, the 12 week fetus is placed in the back of this line, with no real details visible. The entire illustration is a conglomerate of feet, legs almost indistinguishable in origin, and round heads bowing forward. There is nothing scientific or usefully informative about this image. It is also, as mentioned previously, questionable as this booklet shows images of fetuses over 24 weeks gestational age, an age at which except for in rare cases is illegal to obtain an abortion.

In the same informational booklet from North Dakota and South Dakota, as well as Oklahoma’s A Woman’s Right to Know booklet, the familiar endoscopic photos by Lennart Nilsson are used. Most notably, a photo of a fetus at 20 weeks which appears to be sucking its thumb is used in all three of these materials. This image is interesting in that it seems to be capturing the fetus exemplifying a childlike habit – thumb sucking. It is supposed to provide a deep connection between the viewer and the image, with behavior in which perhaps the viewer at one time partook. What is not seen, of course, is most of the fetal body or any of the pregnant woman. The image is a macroscopic photo of the head of a fetus, backlit to show its profile, and the hands, one of which is raised giving the impression of thumb sucking. Fetuses at 20 weeks may seem to be thumb sucking, however it is a reflexive “motion;”\textsuperscript{52} the fetus at this point cannot suck.\textsuperscript{53} The thumb sucking image of the fetus is powerful, and is one that is invoked to assert a

\textsuperscript{52} \url{http://www.mayoclinic.com/health/fetal-development/PR00113}.
\textsuperscript{53} Information on premature babies born before 28 weeks lists complications in breathing as an infant before 28 weeks lacks the ability to “…suck, swallow and breathe at the same time,” \url{http://www.marchofdimes.com/baby/premature_indepth.html}. 
semblance of humanity; nevertheless, it does not change the fact that a 20 week old has virtually no chance of survival outside of the womb.

* * * * *

As this thesis finds, the woman-state conflict has grave consequences on the bodily autonomy of women, and access to healthcare. Furthermore, the woman-state conflict perpetuates the negative social construction of women wherein exercising or fighting for her rights to bodily autonomy and reproductive freedoms position her further into a negative light that compels greater infringement on those rights. However bleak and unrelenting this cycle of power dynamics may seem, it is an assertion of this thesis that the issues and underlying narratives can be reframed to support a more inclusive reality. This reality reconstructs the discourse in a way that recognizes the autonomy of women, the connection a woman has with the fetus, and trusts women to make responsible and informed decisions without coercion for or against abortion.
CHAPTER 7: CONCLUSION

I. Summary of Findings

This thesis is a policy analysis of the reproductive rights policy of seven U.S. states, representing a regional and ideological dynamic. This study focuses, specifically, on the most restrictive abortion policies in an effort to understand what social implications these policies may have on women. Additionally, by focusing on the most extreme policies, this study delves into the question of how such restrictive policies are passed without a major national outcry. It is the contention of this thesis that the rhetoric of fetal personhood is the main vehicle through which restrictive policies are implemented. However, this thesis also asserts that the idea that a fetus is a person with rights is a veil for the more succinct motive behind restrictive policy – state control of women’s reproductive decisions.

In an attempt to address the questions and assertions of this thesis, current statutes, pending bills, state-mandated informational packets and websites were collected. Also included are materials, including mission statements and policy approval statements, from well-known anti-choice organizations from each state included in this thesis. These materials are used to analyze the similarities between narratives of fringe groups and the state. All of the materials were coded and analyzed for language and images regarding fetal personhood or fetal rights, constructions of women (i.e. – normative gender roles, stereotypes), and representations of the state. For the findings to be significant, the coded materials would need to exhibit heavily constructed narratives that endorse an extreme viewpoint, and a repetitive use of those narratives to substantiate a restrictive policy.
The findings of this study, detailed in Chapter 6, indicate that state policy relies upon a systematic construction of narratives, beyond fetal personhood, in order to justify severe restrictions on reproductive rights. These narratives are used repetitively, and exhibit extreme, unpopular and, in some cases, scientifically questionable information. Thus, the findings affirm the assertions of this thesis. Women are constructed as willing and selfless mothers, uninformed third-parties, or relatively invisible. Fetuses are used tactically by the anti-choice advocates and policy-makers to assert their control over women’s reproductive decisions. Fetuses are unnaturally given a voice, personified, and ascribed rights that are not replicated in any other area of law. Additionally, the state is constructed to be a paternalistic authority over reproductive matters. The act of state involvement into women’s reproductive decisions is damaging to women’s rights, autonomy, and standing as equal citizens under the law.

The findings of this study are vast and complicated, necessitating a challenge of the very truths and realities that are imbedded in reproductive rights discourse in the U.S. The findings are also fascinating in that anti-choice rhetoric is obviously, and in some cases, proudly mirrored onto state policy. The affects of this rhetoric onto the national discourse has dangerous policy outcomes. The anti-choice rhetoric is extreme, unpopular, scientifically unsound, and does not consider the situatedness of women. Policy which is informed by this rhetoric can only further violate the rights of women and subject them to a lower class of citizenship. Therefore, it is important to reiterate the core findings and analysis this thesis has uncovered, as well as offer suggestions for future study.
A. Women

Women will struggle to gain full equality under the law as men enjoy if the narratives set forth by anti-choice policies are socially accepted. As seen in the findings of this study, women are constructed in several different, and sometimes conflicting, lights: 1) a selflessly dedicated mother who is a willing participant in her pregnancy and who bears all responsibility for the nurturance and safeguarding of her fetus\textsuperscript{54}; 2) a third-party fetal environment, uninformed and unable to make reproductive decisions; 3) invisible or unrepresented; and/or, 4) a danger from which fetuses must be protected\textsuperscript{55}. These narratives are clearly seen within the coded materials of the seven states included. Certainly anti-choice advocacy groups can be expected to utilize rhetorical tactics that paint women who seek abortion or to control their reproductive capabilities as selfish or as going against the natural inclinations women have towards motherhood, however, the coded materials from state departments, pending legislation, and current law, reflect the same discourse. In fact, the language used within state materials was strikingly similar to those used by interest groups, some radical, of the anti-choice persuasion.

In alarming numbers, the most pervasive was the construction of the selfless mother. Perhaps the most damaging to women’s rights and citizenship, the idea that all women are always willing participants in pregnancy is unreflective of the realities that some women face, especially those who seek abortion and who are the targets of restrictive policies. Abortion has been shown to be a relatively safe and necessary medical procedure. The reasons for abortion tell the true story of women; not all are

\textsuperscript{54} One of the most conflicting constructions is that between the responsibility of pregnant women to their fetuses, and the responsibility that the state purports to have in protecting fetuses.

\textsuperscript{55} This is most often seen in anti-choice rhetoric and anti-abortion campaigns.
willing participants in pregnancy or motherhood – pregnancy can occur due to rape or incest, or be burdensome due to medical, emotional, psychological, or economic reasons. The very fact that women are faced with unwanted pregnancies at all invalidates the selfless mother construction and narrative altogether.

Another significant finding presented within the coded materials was the social construction of women as fetal environment. ‘Fetal environment,’ in other words, signifies an anti-choice ideology wherein women are only seen as useful for their womb. Within informed consent policy, informational packets and state-mandated informational scripts that a doctor must disseminate and/or read before performing an abortion contain language of this nature. As explained in Chapter 6, language within the coded materials speak often of fetal viability, not only as an argument for fetal rights, but as an assertion that women are only needed within a pregnancy up until the point at which a fetus is viable to live outside the womb. This language is dangerous and unrealistic. A pre-term fetus may not live outside the womb without extensive medical intervention, and, in most cases, life-long medical issues for that child. The language, therefore, is in place to attempt to subjugate women to fetal environments – vessels that are only necessary until the fetus is viable and the paternal state can assume the pregnancy through policy and ideology.

Women are also seen as fetal environments in language placing ultrasound requirements before abortion. As discussed in Chapter 2, the ultrasound technology that brings joy and affirmation to many women simultaneously creates a means by which the state can place further regulations and constructions onto women’s reproductive control. Ultrasound requirements in abortion policy, as part of informed consent laws, generate an
atmosphere in which the woman no longer is seen as the primary patient, rather an obstacle to the fetus. Ultrasound technology thus allows women to become invisible, offering a window to the fetus and situating the fetus as the primary patient despite its similar health interests to the woman. Clearly, state-imposed ultrasound requirements are pivotal in upholding the constructed maternal-fetal conflict.

As women fight to be seen as patients, or decision-making agents, they do so against policies which make them invisible altogether. In a troubling discovery, detailed in Chapter 6, women are often removed completely from reproductive rights policy. Coded materials including current Alabama statutes, as well as state policy statements against the federal Freedom of Choice Act, do not mention women once, despite the fact that these policies directly affect women and their autonomy. As seen in the fetal environment construction of women, when women are removed from reproductive decision-making, or reproduction as a whole, policy-makers assert that it is the paternal state which must step in.

Lastly, and as an aggressive anti-choice measure, women are constructed as dangerous to fetuses. Anti-choice rhetoric is echoed throughout state policy when this type of discourse is used, asserting that women make selfish and uninformed decisions when they choose abortion. Informed consent policies often suggest that abortion is an inherently bad decision; Louisiana, for example, went as far as repeating this sentiment five times in one statute. This language is compared to images and slogans of anti-choice groups within the seven states included for similarities. Aside from the selfless mother construction, the deviant mother was present in several anti-choice campaigns. Policies using a deviant mother construction do not foresee women as being able to make
important reproductive decisions, nor do they want them to, as clearly they do not see women as trustworthy.

B. Fetuses

Fetuses, alternatively, are constructed in a way in which they are simultaneously personified and objectified. In images and in policy, fetuses are consistently compared to born children, aggrandizing what *could* be if a woman carried her pregnancy to term and gave birth. This personification and comparison to born children is antithetical to the reality and understanding of pregnancy and fetal development. A fetus has many stages of development which are very much connected and dependent upon the woman’s corporeal nurturance and sustenance, and which also vary between pregnancies. However, language personifying the fetus serves one purpose: to elevate the fetus in order to separate it from the woman thus creating the maternal-fetal conflict. Under this constructed guise, policy-makers may enact restrictive legislation to gain control over reproductive rights.

In an unparalleled feat, coded materials from the seven states included use the biased, unscientific language of fetal personhood, “unborn child,” a total of 420 times. This repetition, which measures an average of nine times per item, is evidence of a concerted push by anti-choice proponents and policy-makers to bolster the fetal personhood narrative. Language of fetal personhood also included that the fetus can feel pain, is viable as soon as 20 weeks, and can consciously do childlike things. With all the focus now placed on the “unborn child,” and women made secondary in the pregnancy, the state may take on paternalistic roles. However, it was not solely the language which
situated fetuses as children. Images ranging from state websites, mandatory informational packets, to anti-choice campaigns portray fetuses as born children, or focus on their “childlike” features. Additionally, coded images include misrepresentations of fetuses through illustration, or Lennart Nilsson’s enhanced endoscopic pictures made famous through Life magazine. Again, these images distort the reality of pregnancy and fetal development, remove women from pregnancy, and construct fetal personhood.

C. The State

The role of the state in reproductive policy is of extreme importance to this thesis. As this thesis asserts, anti-choice advocates and policy-makers, as state actors, are responsible for creating the maternal-fetal conflict in an effort to insert the state into pregnancies and reproductive decision-making. This strategy is made possible through the U.S. Supreme Court decisions of the precedent-setting cases Roe and Casey which, though protecting women’s right to choose, also give power to the states to impose limits on abortion policy. This strategy is also manifested when policy-makers pass vehemently anti-choice legislation which pushes the boundaries of constitutionality. Discussed in greater detail in Chapter 4, these Supreme Court decisions do not simply give power to the states to regulate abortion policy; rather they explicitly assert that it was within a state’s “compelling interest” as a right to protect the potential life of a fetus as well as the health and life of the woman. Thus, the paternal state ensued, citing “compelling interest” in fetuses, fetal rights, and the fetal voice.

Initially, this thesis contended that policy would include language of fetal protectionism by emphasizing the lack of a fetal voice. As discovered through analysis
of the findings, however, this occurred only twice; in a pending Oklahoma bill, and in aindia hearing of a Nebraska fetal pain bill. Accordingly, as detailed below, it wouldbe interesting to determine the extensiveness and the capacity in which the “fetal voice”argument is used. Regardless of the nominal findings of the “fetal voice” language, thepaternal state is inserted into reproductive decision-making through informed consentlaws. These laws, while boasting their ability to “help” women make decisions, do nothing more than push anti-choice rhetoric, impose strict and mandatory waitingperiods, unnecessary ultrasounds, and include language and images of fetal developmentthat is not scientifically sound. For example, the findings of this study point to analarmingly increased policy diffusion of fetal pain bills being adopted as a new viabilitystandard, despite the medical inconsistencies. In the fetal pain policies, the paternal stateissituated to be an authority on medicine, reproduction, and morality.

In addition to the state overreach and unnecessary restrictions in informed consentpolicies, state-wide bans on abortion are another way in which policy-makers controlreproductive rights. Though unenforceable, post-\textit{Roe} bans, policy statements, and stateconstitutional amendments banning abortion practices were present in six of the sevenstates included. As a case study, this thesis additionally included Colorado for its mostrecent reproductive rights battle; a ballot initiative that would impose an amendment onthe state constitution would view fetuses as a person and therefore outlaw abortion.During the course of writing this thesis, the ballot initiative was soundly defeated. Notedin Chapter 6, both North Dakota and South Dakota had similar ballot initiatives severalyears earlier that were also defeated. These unenforceable bans and defeated personhoodballot initiatives are purely symbolic on behalf of anti-choice state actors and interest
groups, but speak volumes to what could be if not for the protection of the right to choice by the Court. Unenforceable bans also point directly to the invasive and controlling nature of the paternal state that would require each woman, if pregnant, to carry her pregnancy to term, and bear the child regardless of whether she is willing or able. Additionally, the defeat of these ballot initiatives reflect the view of a U.S. polity that does not wish to see abortion outlawed or women forced to give birth.

In the introduction to this thesis, the anti-choice strategy of control of reproduction is outlined in a four-step process: 1) construct narratives of women and fetuses; 2) normalize these narratives within the discourse through language, rhetoric and images; 3) push the limits of constitutionality with introducing the most restrictive legislation possible; and 4) use the law to promote fetal rights. The findings of this study are highly indicative of this process being implemented on the state level. Narratives of the “good” mother and “bad” mother, the personified fetus, and the highly constructed maternal-fetal conflict dominate reproductive rights discourse so much so that they are accepted as “truth.” These “truth” narratives have been normalized and supported in the discourse through images and rhetoric such as are found in state mandated informational packets, on state websites, and in popular culture images such as billboards, magazines, and television. Newly constructed “realities” allow policy-makers to push through anti-choice legislation such as mandatory ultrasounds. The policies all contain language which supports the constructed narratives – most notably the maternal-fetal conflict – which allow the policies to seem more useful and necessary. These policies are either supported loosely by an interpretation of current case precedent, or by directly challenging current law by pushing the limits of constitutionality.
It is important to note that as the findings show, the narratives created within this process go beyond framing, politicking, or rhetorical spin. The narratives are painstakingly constructed using historically-based stereotypes of mothers, racist eugenicist arguments, and meticulously produced images of fetuses that highlight their “childlike” qualities. The maternal-fetal conflict is a reality that exists only in few, very rare medical cases; however, this medical conflict has been adopted and constructed to fit an anti-choice ideology for the purposes of enacting restrictive policies. In no other way would such invasive and controlling policies set forth by policy-makers on autonomous individuals be accepted.

II. Potential Problems

Any thesis is not without potential criticism and problems, and this study is no exception. The topic of reproductive rights is undeniably a controversial topic that has divided the American public, lawmakers, and courts throughout history. However, it is for that reason – the curious investment that others have in controlling another’s body – that makes this issue so interesting and necessary to examine.

A potential problem one may find within this research is its focus on a rapidly changing and, in times, difficult-to-follow legislative process. Bills analyzed in this thesis may never make it out of committee, laws may be challenged in court or repealed, and new bills may be introduced and signed into law. In fact, some of these outcomes have already happened to the coded materials in this thesis. It is possible, though exigent, to track such legislation. Though individual pieces of legislation are certainly important to analyze and understand, it should be noted that this research suggests a greater point of
analysis which more accurately captures the nature of this type of legislation. Policy diffusion, noted in Chapter 6, often causes state policy-makers to adopt similarly, or even identically worded legislation. Statutes entitled “A Woman’s Right to Know” is one example of policy diffusion. Many of the states included have A Woman’s Right to Know as their informed consent policy, and other states that do not have it, may introduce it as a bill including the same language. Fetal pain legislation is another example of a diffused policy. With slightly more variety in the language, mostly on the gestational age of the fetus, such policies are of the same stratum and should be categorized as such. Preliminary research for this thesis, described in detail in Chapter 6, categorizes state statutes and bills into policy “types” associated with policy diffusion. This categorization makes it more possible to organize even those rapidly changing pieces of legislation, track, isolate, and deconstruct for the purposes of a succinct analysis.

Another potential problem critics may have with this research is the methods employed. Certainly not all scholars, policy-makers, or advocates are comfortable with the idea of postmodern analysis. Even among feminists, this methodology can be seen as being based on an idea of multiple interpretations of reality which can lead to fragmentation (Hesse-Biber and Leavy, 2007, p. 20). The deconstruction of truth claims and the drawing out of the power/knowledge dynamics that comes with a postmodern analysis may lead some to feel as though there would be no place for women’s voices. Indeed, a vocal criticism from within feminist scholarship includes a critique of postmodernism for being too rigid, wherein a standpoint analysis including women’s lived experiences would not be possible as a postmodernist would see those experiences
as constructed as well. While the varying critiques within feminist research are too numerous to be discussed here, it is important to note that this thesis, while employing a postmodern deconstructive analysis, also calls for the reconstruction of discourse through the lived experiences of women, as discussed below. Therefore, it is the assertion of this thesis that these types of feminist methodologies are not so diametrically opposed, and can be used jointly, in a mixed method approach to research.

III. The Importance of Feminist Methods

Part of the method of postmodern analysis includes acknowledgment of the systems of oppression within a discourse. The deconstruction of the coded materials of this thesis uncovers oppressive constructions within policy and discourse. However, it would highlight the utility of this thesis by suggesting the ways in which the findings could inform policy towards progressive change. Hence, it is important to note that this thesis calls for a reconstruction of reproductive rights discourse as both necessary and expedient. Employing a mixed method approach of feminist methodologies, women’s lived experiences could better inform policy-makers of the needs of the people directly affected by restrictive reproductive rights policy.

A. Mixed Methods

A mixed method approach refers to “…a type of research design that uses both quantitative and qualitative data collection and analysis to answer a particular question or set of questions in a single research design” (Leckenby and Hesse-Biber, 2007, p. 253). This thesis employs a mixed method approach which first uses a quantitative feminist content analysis to deconstruct coded materials, and a qualitative postmodern analysis to
acknowledge the constructions within discourse and how those constructions play into the power/knowledge structure. The results of a mixed method design such as this thesis is a comprehensive and detailed understanding of the ways in which pregnant women are intruded upon, subjugated, and cast into second class citizenship through restrictive reproductive rights policy. This approach also allows this thesis to analyze the use of fetal personhood by anti-choice advocates and policy-makers as a façade for implementing restrictive policies. The benefits of a mixed method approach are numerous and are being increasingly acknowledged for their usefulness by feminist researchers (Leavy, 2007, p. 228).

B. Reconstructing Discourse by Including Lived Experiences

Feminist methodologists have proven to be productively critical of a vast amount of realist and empiricist claims which, though androcentric and masculinist, have been assumed to be “truths” or “objective” realities. Reproductive rights discourse and policy is riddled with such assumptions. As described in Chapter 6, as well as being a reoccurring sentiment throughout this thesis, the idea of a “natural” inclination towards motherhood is based on archaic gender roles which, however antiquated, inform reproductive policy today. The challenging of these “truths” by employing feminist methods therefore is useful in bringing to light outdated claims and power structures. Postmodernism as a feminist research method, is key in disputing truth claims that may be based in androcentric or oppressive beliefs. However, for the purposes of this thesis, once a discourse is analyzed for power-knowledge structures, what occurs then?
It is a further contention of this study that including women’s lived experiences would better inform policy-makers on policy decisions so that they may understand more comprehensively how restrictive reproductive policy affects real women. Of course, this is an ideal situation, and possibly unattainable; however, research conducted from a feminist standpoint theory approach may help inform policy on state levels. Research conducted on women who have had abortions can serve multiple purposes. For one – going beyond a quantitative study on demographics – surveying and interviewing women would speak directly to women’s realities and varied situations that led them to seek abortion. Allowing women the space to speak freely of their lived experiences would enable policy-makers and interest groups to see how silence and restrictions affect women. It would also help shed the stigma of abortion. Abortion, in the seven states included in this thesis, is seen as an uninformed decision. Policy-makers and anti-choice advocates promote a discourse in which abortion is viewed as a flippant, unnatural, and potentially coerced decision. Women in this discourse are rarely afforded the agency of making decisions about their own health, bodies, and lives. The more women speak out about their abortions, the more the discourse will be forced to change based on their lived experiences and knowledge. Of course it may be difficult to encourage women to divulge such private information, specifically when the stigma of abortion is so great. However, with the recent onslaught of legislation being passed by states – one more restrictive and draconian than the next – there is urgency for women’s voices to enter into the discourse.
IV. Future Studies

This thesis leads to further studies that may support or reinvigorate research done by other scholars as well as provide original thoughts and materials to add to the growing field of feminist reproductive rights studies. Here, three potential courses of future research are outlined, which would, like this thesis, provide much needed mixed approaches between feminist methodologies and policy analysis.

A. 50 State Study

This study may be expanded into a 50-state study for a more comprehensive understanding of where states stand in relation to one another, and where this country as a whole stands on the issue of reproductive rights. Though this would be a far more involved and complex task, it is important to recognize that reproductive rights are vastly more protected in some states as compared to others. It would be interesting to use a similar method of deconstruction of discourse and content analysis when comparing prohibitive states to unrestricted states. Questions that may arise from such a study include: in which ways do the discourses of states with restrictive reproductive rights policy differ from states in which reproductive rights are protected? In which ways does reproductive rights policy vary contextually? How are women fairing – economically, intellectually, and/or politically – in these states? What are the opinions of doctors who perform abortions on the necessity of either restrictive or protective reproductive rights policy? Do reproductive rights issues depress or enhance voter turnout and grassroots political activity? Does this differ between restrictive or liberal states?
In addition to potentially answering the above questions, a 50-state study could offer a greater understanding of policy diffusion. The “types” of legislation mentioned above that have most often been seen within the seven states included in this thesis as diffused policy – ultrasound requirements, informed consent, and fetal pain – can be understood on a much larger scale in a 50-state study. Being able to track policy diffusion would be extremely useful in analyzing regional dynamics, and in aiding advocates who are preparing for the evolving discourse of this increasingly salient issue. Tracking policy diffusion would also be of vital importance for policy-makers, as the consequences of passing restrictive reproductive rights legislation in other states may inform a policy-maker of whether he or she should support or reject such a policy if it were to be introduced.

B. Why Restrict?

As this study focuses on how states are able to pass restrictive reproductive rights policy, it leads to also wanting to understand why this happens. Over the entirety of this thesis, it is contended that fetal rights and fetal protection is simply a guise for anti-choice policy-makers desired control over women’s reproductive capacities. This is why, as mentioned in Chapter 6 as well as studied by many feminist scholars, fetal protection laws are inconsistent both within states and throughout the country. Fetal protection laws are most often, in criminal cases, more prosecutorial of situations in which the woman is the cause of fetal harm, as opposed to when a man causes the harm such as in domestic abuse cases. Greater environmental and workplace regulations would be seen if fetal protection was the primary aim of “pro-life” policy-makers and advocates. Furthermore, more comprehensive sexual education including preventative forms of birth control,
access to universal healthcare, prenatal care, and mental healthcare would be the foremost objectives of fetal rights and fetal protection advocates if the fetus was the ultimate object of conservation. However, this is clearly not the case, especially in a political climate such as the current one which yields cuts in funding for education, healthcare services, and heavy attacks on Planned Parenthood.

Understanding why anti-choice state actors are so desirous of reproductive control would be interesting and informative on a variety of levels. Investigating such a question would lead to an analysis of state’s rights: should states have the right to regulate abortion? It would also address the historical aspects of state’s rights in reproductive matters. Additionally, it would be interesting to delve into a more interpretive look at the Supreme Court cases that highlighted the state’s rights or “compelling interests” in potential life – Roe v. Wade, Planned Parenthood v. Casey, and Gonzales v. Carhart – should the Courts have granted states the rights to regulate abortion and what have been the implications of these rulings, in terms of state power?

In a more theoretically feminist approach, exploring why certain states seek to control reproduction could add to the dialectic of androcentric power dynamics. In other words, examining gender roles and socio-cultural knowledge structures of reproduction may uncover a psychology of dominance by heterosexual males, who are overrepresented within the state. A brief but intensely interesting point made by Carol Cohn in her article Sex and Death in the Rational World of Defense Intellectuals (1987), that in her study of defense intellectuals, she found that they tend to utilize a heavily androcentric, masculinized, sexualized, and phallocentric language in discussing nuclear war and technology. This language, necessarily, abstracts nuclear technology from the horrific
human tragedy of nuclear war. However, she witnessed that the defense intellectuals would often allude to male birth when discussing the creation of a bomb. Cohn suggests that “…men’s desire to appropriate from women the power of giving life…” is one of the most intriguing ways these intellectuals spoke of the missiles and bombs. Cohn’s assertion may be applied to investigating a more deep desire of men to be able to both give and prohibit life the way women can. As undoubtedly society, power-knowledge structures, and politics are dominated by the predominantly white heterosexual male, the need for control of women’s reproductive capabilities may stem from a feeling of inadequacy – with oppressive and dangerous policy implications.

C. Women’s Citizenship

The implications of restrictive reproductive policy can reveal themselves in the socio-cultural views of women, in the more foundational aspects of women’s rights to autonomy, or in women’s standing as U.S. citizens. Though touched upon briefly in Chapter 4, women’s citizenship begs discussion when examining reproductive rights. Discourse analyzed within this study showed elements of the belief that pregnant women, by virtue of their pregnant condition, are not in equal standing to males as liberal citizens; that they owe a different duty of care and of obligation to their pregnancy regardless of the circumstances under which they became pregnant or whether their health was in jeopardy. The selfless mother narrative which has been thoroughly discussed in this thesis is not merely a cultural perception, but a political standpoint that situates women outside the periphery of full citizenship. Feminist scholars for generations have been criticizing the second-class citizenship of women through a loss of a number of rights. However, second-class citizenship has long evolved into a rhetorical phrase that, as this
thesis shows, should not be viewed as such. The real implications of unequal or second-class citizenship can be directly extracted from within reproductive rights discourse. Questions arise particularly about liberal citizenship, women’s standing as liberal citizens, and if women can be citizens in the liberal polity. Daniels (1993) poses similar questions as to whether “gender equality require[s] reconstruction of the terms of liberal citizenship itself” (p. 133).

Clearly a study of women’s standing as citizens in lieu of their capabilities to become pregnant would include the functions and limits of fundamental principles such as liberty, privacy, rights and freedoms. Daniels (1993) addresses some of her own questions by emphasizing self-sovereignty and agency as fundamental rights to be included in the liberal citizenship of women. Self-sovereignty or the right to be “let alone” according to Daniels would address certain aspects of the pregnant body such as integrity, while simultaneously promoting the “right to be a free decision-maker in one’s private life, to have a realm in which one can be self-determining” (p. 134). The right to self-sovereignty, according to Daniels, must be adapted to include pregnant bodies, as it is self-sovereignty that includes an empowerment of pregnant women within the social network and an acknowledgment that they are rational beings capable of decision-making. It also acknowledges that the health of the fetus and the woman are one in the same; a point which is supported throughout this thesis. Daniels suggests that self-sovereignty as a right for liberal citizenship must include other rights for women such as “consensual sex… women’s freedom from rape and domestic violence… [and] the right to voluntary pregnancy” (p. 138).
Used for the purposes of this thesis, self-sovereignty or autonomy, as discussed in Chapter 4, is a fruitful area of continued analysis. An examination of citizenship based on a perspective of autonomy, not as a theory or an ideal, but as policy, would certainly lead to a much needed critical evaluation of equality among citizens in the U.S. An autonomy-based analysis would also influence a shift in the discourse of reproductive rights away from the limitations of privacy.

* * * * *

This thesis supports and is part of a growing field of scholarly research on reproductive rights. It is becoming increasingly salient to study the changes and effects of restrictive reproductive rights policy within state legislatures, especially considering the current climate of anti-choice fervor. The discourse that surrounds these restrictive policies necessitates further examination and analysis, as it is has proven to be so closely linked to an extreme rhetoric used by fringe elements of anti-choice interest groups. Though this may be the dominant political discourse, it is, as it has been proven in this study, a hard fought battle for constructed narratives by anti-choice groups and policy-makers. Anti-choice proponents and policy-makers will go above and beyond what is allowed by case law to introduce bills that are specifically restrictive and burdensome on women’s access to abortion. They will also make a point of using language that progresses the narrative of the normative woman, the “maternal-fetal conflict” and fetal personhood in an attempt to undermine women’s autonomy and usurp control of women’s reproductive capabilities through the paternal state.
As compared to the so-called maternal-fetal conflict, the woman-state conflict analyzed in this thesis more succinctly describes the power relationship at play in reproductive rights policy. Though the cycle of power dynamics may seem bleak and unrelenting, it is an assertion of this study that the issues and underlying narratives can be reframed by pro-choice and pro-women policy-makers and groups to support a more inclusive and understanding reality – one where women have access to safe, legal and healthy medical procedures. Reality reflects a need to reconstruct the discourse. Women can and have already provided a wealth of experiences regarding pregnancy, intended or unintended, from which knowledge can be drawn. A reconstructed discourse, informed by women’s lived experiences, would recognize the autonomy of women, the connection a woman has with the fetus, and would trust women to make responsible and informed decisions without coercion for or against abortion. Reconstruction would place women, possibly for the first time in the history of the U.S., onto a more equal plane of citizenship to that of men.

This study can inform policy-makers of the damaging ways in which women are constructed – constructions which have real impacts on women’s rights. Progressive policy-makers may use the findings of this study as a model to create policy that respects the rights and autonomy of women, and to fight policy that restricts those rights. Progressive policy-makers may also use the findings of this study to encourage a diffusion of a more autonomy-oriented policy model wherein women may have safe access to the historically necessary procedure of abortion. It is only when the narrative changes to reflect the various experiences and situations of women that knowledge can be reflected in policy. Through new and progressive policy, the polity can be liberated from
heavily constructed “realities” and androcentric knowledge-power structures that require so much subjugation of women to uphold, and women can be liberated from the state.
## Appendix A: A 50-State Preliminary Analysis

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### Appendix B: States Included

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*Ballot Initiative (62) to Amend State Constitution to Ban Abortion – Did not pass
References


Statutes and Proposed Legislation Cited

**Alabama**
Ala.Code 1975 § 26-22-1
Ala.Code 1975 § 26-23A-4
Ala.Code 1975 § 26-23A-6
Abortion prohibited except to preserve the life of a pregnant woman, or when rape or incest occurs, penalties, const. amend., HB. 40, Reg. Sess. (2010)
Abortion, ultrasound requirements further provided for, Sec. 26-23A-4 am'd., S.B. 49, Reg. Sess. (2010)
Abortion, ultrasound required to be performed on pregnant women prior to procedure, civil penalties, S.B. 365, Reg. Sess. (2010)

**Louisiana**
LSA-R.S. 40:1299.30
LSA-R.S. 14:87
LSA-R.S. 40:1299.35.1
LSA-R.S. 40:1299.35.2
LSA-R.S. 40:1299.35.6

**Nebraska**
Neb.Rev.St. § 28-327
Neb.Rev.St. § 28-3,103

**North Dakota**
NDCC, 14-02.1-10
A Bill for an Act to create and enact two new sections to chapter 14-02.1 of the North Dakota Century Code, H.B. 1297, 62nd Leg. Assy. (2011)

**Oklahoma**
63 Okl.St.Ann. § 1-730
63 Okl.St.Ann. § 1-732
63 Okl.St.Ann. § 1-738.2
63 Okl.St.Ann. § 1-738.3
63 Okl.St.Ann. § 1-738.7
63 Okl.St.Ann. § 1-738.8
63 Okl.St.Ann. § 1-738.9
63 Okl.St.Ann. § 1-738.10

**South Dakota**
SDCL § 22-17-5.1
SDCL § 34-23A-1
SDCL § 34-23A-10.1
SDCL § 34-23A-10.3
SDCL § 34-23A-10.4
SDCL § 34-23A-52
An Act to establish certain legislative findings pertaining to the decision of a pregnant mother considering termination of her relationship with her child by an abortion, to establish certain procedures to better insure that such decisions are voluntary, uncoerced, and informed, and to revise certain causes of action for professional negligence relating to performance of an abortion, H.B. 1217, 86th Sess. Leg. Assy. (2011)
Amanda Roberti
597 Jersey Ave., Apt 1
Jersey City, N.J. 07302
201-213-0175 amanda.m.roberti@gmail.com

Research Objectives

With a Master’s of Art in Political Science and a concentration in Women and Gender Studies, I am continuing my Master’s thesis research into a Ph.D. program. This research focuses on a content analysis of fetal rights discourse in state reproductive rights policy. This work is relevant to supporting a growing field of research on reproductive right policy, as well as providing a critical mixed methods approach to how theory underlies policy.

Education

Present  Rutgers University – New Brunswick, NJ  Ph.D. Political Science
Concentration: Women and Politics, American Politics

2009-2011 Rutgers University – Newark, NJ  M.A. Political Science,
Concentration: Women and Gender Studies


2000-2004 Kutztown University – Kutztown, PA  B.A. Political Science, minor
Philosophy

Awards

Fall 2010 Rutgers University – Graduate School – Newark Master’s Scholarship Award

Research Experience

2010-Present Research Assistant to Dr. Heidi Swartz, Rutgers University – Newark

Present Research Assistant to Dr. Cynthia Daniels, Rutgers University – New Brunswick

Conferences

April 2011 New England Political Science Association 62nd Annual Meeting – Hartford, CT
Presenter
Title of Presentation: The Woman-State Conflict: A Deconstruction of Fetal Rights Discourse and its Damaging Effect on Women’s Reproductive Rights

May 2011 Institute for Research on Women Spring Colloquium “Feminist Fantasies: Future Directions for the Study of Gender and Sexuality” – Rutgers-New Brunswick
Presenter
Title of Presentation: The Woman-State Conflict: A Deconstruction of Fetal Rights Discourse and its Damaging Effect on Women’s Reproductive Rights

Sept. 2011 American Political Science Association Annual Meeting – Seattle, WA
Presenter
Title of Presentation: The Woman-State Conflict: A Deconstruction of Fetal Rights Discourse and its Damaging Effect on Women’s Reproductive Rights

Relevant Coursework

- Feminist Theory
- Feminist Research Methods
- Gender and Global Politics
- Public Policy
- Immigration, Citizenship and American Identity
- Research Methods
- Policy Analysis

Leadership Experience

2009 Coordinator, The Vagina Monologues – Philadelphia, PA
2001-2004 President, Feminist Majority Leadership Alliance– Kutztown University
2001-2004 Coordinator, The Vagina Monologues – Kutztown University

Professional Experience

Legal Assistant

Legal Assistant/Receptionist/File Clerk