

Anthropology Book Forum

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Goodwin, Michele. 2020. *Policing the Womb: Invisible Women and the Criminalization of Motherhood*. Cambridge: Cambridge University Press, ISBN: 9781139343244

While the frenzied calls of Trump rally goers during the 2016 and 2020 presidential campaigns to jail Hilary Clinton – “lock her up, lock her up!” – was never more than a perverse form of catharsis, the passage of so-called fetal protection laws throughout the United States in the last two decades really *has* resulted in the incarceration of hundreds of women, especially indigent women of color. At present, at least thirty-eight states have such laws, and while some state laws were originally intended to protect pregnant women – who are at higher risk of domestic violence – such laws are increasingly used to prosecute rather than protect them. Indeed, between 2006 and 2020, according to the Center for Public Integrity’s websiteⁱ, more than 1,300 women have either been prosecuted for fetal crimes or have been subject to involuntary medical interventions. Of these, most are in the South and nearly one-half have occurred in Alabama alone.

Two trends, as Goodwin shows, undergird the expansion of these laws. The first is the tendency to treat fetuses and even embryos as children. This is best exemplified by a recent Georgia adoption law that declares that embryos have “rights and responsibilities” under state law. The second is the tendency to assume that a woman has complete control over the outcome of a pregnancy, or, as one South Carolina court held, “absent depraved conduct on the part of pregnant women, stillbirths do not occur and that all pregnancies produce healthy babies (42)”. While the first tendency is rooted in religious dogma or belief, and, therefore, cannot be disproven, the second one clearly can be as there are many medical, social and environmental causes that can and do lead to miscarriage, and many cases in which this outcome cannot be determined.

A major focus of *Policing the Womb* is on the impact that fetal protection laws have on the fiduciary relationship between patients and their doctors or other health care providers. Thanks to TV court dramas, most Americans are likely aware that communication between lawyers and their

clients is scrupulously protected; lawyers are even prevented from revealing information about illegal activities that their clients are involved in without their clients' consent. A similar relationship historically exists between doctors and their patients regarding the release of medical information; however, as Goodwin notes, pregnant women living in the South – particularly poor, women of color – are increasingly at risk of arrest if a toxicology report reveals that they have illicit substances in their bodies. Such was the case in South Carolina where dozens of Black women responded to an advertisement for free prenatal care at the Medical University of South Carolina, which, as the medical director later acknowledged, was little more than a sting operation. Carrying the comparison further, the Goodwin argues that while police receive legal training and would be required to obtain permission from a judge to search a home, medical personnel have no training in constitutional law, and need not apply to a neutral, third party to conduct a search of the body or give the results of the search to law enforcement.

While the South Carolina legislature, the district attorney and the MUSC might be directly to blame, Goodwin is also very critical of organizations like Planned Parenthood whose singular focus on abortion has not only led them to ignore the proliferation of “fetal protection laws,” but also the cases like Captain Susan Struck who became pregnant while stationed in Vietnam and was told either to terminate her pregnancy or leave the base within 48 hours. When Struck, an observant Catholic, refused to have an abortion, she was discharged from the military, a decision she appealed unsuccessfully on seven occasions. In this vein, Goodwin argues for a broader perspective on reproductive rights that includes: contraception (as well as protection against involuntary sterilization), pregnancy screening, testing and treatment of sexually transmitted diseases, pre-natal care, “and, of course, the equally important right to maintain or terminate a pregnancy” (13).

Policing the Womb also discusses somewhat better known topics such as the South's dismal maternal health outcomes, and institutional violence in the U.S healthcare system more generally. For example, in contrast to the pregnant South Carolina women described above, Goodwin notes that notwithstanding the fact that white women use prescription drugs during pregnancy at a higher rate than Black women – including certain pharmaceuticals that might harm a developing fetus – they face no similar risks of arrest or incarceration. A similar contrast can be drawn between the moral and media panic surrounding crack babies born to Black mothers in the 1980s, and the much more muted response to women (more frequently Caucasian) who smoke or consume alcohol

during pregnancy despite the fact that alcohol poisoning causes serious and permanent neurological damage to babies in utero whereas the effects of crack are inconclusive at best.ⁱⁱ

While no reader, certainly no anthropologist, will mistake *Policing the Womb* for an ethnographic study, Goodwin does punctuate this timely study with moving, albeit brief, descriptions of women who've been victimized by these new and recently revised laws. Perhaps, the most poignant – certainly the most gruesome – of these is the case of Marlise Muñoz, a thirty-three old woman who collapsed and died after a blood clot entered her lungs. However because Muñoz was fourteen weeks pregnant at the time, and a resident of Texas, neither her advanced directives nor her family's desire that she die with dignity were honored. Indeed, her brain dead, body was tethered to medical "life support" equipment for 62 days to permit a fetus -- with hydrocephalus and other serious fetal abnormalities – to gestate. Only after a state judge ruled that the Texas fetal protection law did not apply to Muñoz because she was dead, did this extraordinary intervention come to an end.

There are a couple places in the book where readers may feel that Goodwin gets down in the legal weeds or is writing strictly for lawyers. One is the discussion of *Gidulig v. Aiello*, a case in which four pregnant women sued the State of California's disability insurance program when they were denied coverage. The prevailing view among feminist legal scholars is that the decision by SCOTUS to provide a pregnancy exception to the insurance program meant the court rejected the application of the equal protection clause to pregnancy. However, based on a complex analysis of Justice Potter Stewart's footnotes and Justice Brennan's dissent, Goodwin argues in favor of much narrower view of the decision with the aim of showing how a sex equality agenda might still be constructed out of existing judicial decisions. Such ventures into complex legal analysis, however, are few and quite far beyond between. Some readers, though, may choose to skip Chapter 10.

In short, *Policing the Womb* is an impressive, scholarly, yet very readable, study which draws on more than two hundred court cases, statutes, legal briefs, and legislative and government reports as well as an impressive list of scholarly books and articles which span medicine, health policy, law and the social sciences. It also draws on hundreds of newspaper articles, films and other media sources. While I plan to use it for an upper division medical anthropology course that I've been teaching for the last seventeen years, I think it would also be suitable for courses on health policy and law, women and gender studies, and ethics.

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ⁱ <https://publicintegrity.org/inside-publici/newsletters/watchdog-newsletter/pregnancy-loss-crime-reproductive-rights/>

ⁱⁱ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4180095/>



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