Criminalized Pregnancy: Drug Abuse, Fetal Rights, & Dehumanization of Poor Women

I

“I didn’t know unborn children had lawyers” – Alicia Beltran, accused of endangering her unborn fetus.

Our society abides by the principle of “save the children.” This has been seen countless times within the discussion of homosexuality, oral contraception, and pornography. The societal mentality of “saving the children” has moved away from living children to those who have yet to be born. In “The Goodness of Nations,” Benedict Anderson speaks about the “goodness” that is supposedly inherent in the unborn and sacrifices nation-states imagine as necessary to protect this goodness. Anderson says “[The unborn] have no social lineaments at all … it is exactly this monochrome purity that guarantees their Goodness, and that allows them to impose on us obligations that we might resent accepting from a large number of Americans actually alive” (Anderson, 1999). This ideology can be seen in the discussion of fetal rights.

As Judith Warner argues, motherhood is a religion. She says “motherhood has been made into an over-determined thing, invested with quasi-ecclesiastical notion of Good and Evil” (Warner, 2007). Women are required to maintain the healthiest lifestyle, especially when they are pregnant and this is viewed as “Good”. But the moment they make a mistake, they are scrutinized and criminalized for causing undue harm to their fetus, which our society has deemed as “Evil” or “bad”. Criminalizing pregnancy is a way to promote fetal rights and fetal personhood at the expense of the mother.
Even when women do not make a mistake, the life of the fetus is held with higher importance than the rights of the mother. This is evident in the case of Marlise Munoz. In November 2013, Marlise Munoz's husband found her on the kitchen floor unconscious due to blood clot. Once she arrived at the hospital she was declared brain dead. At the time, Marlise Munoz was 14 weeks pregnant. Marlise Munoz’s husband reported that both he and Marlise had discussed end of life care which included that they would not want life-sustaining measures (Hellerman, 2014).

Her husband and parents decided to honor her wishes and agreed to remove her from the ventilator, but the hospital, John Peter Smith Hospital in Fort Worth, Texas prevented them from proceeding with this action. The hospital claimed that a Texas state law forbade them removing life-support of a pregnant woman. “Under Texas Health and Safety Code 166.049, a person may not withdraw or withhold life-sustaining treatment from a pregnant patient, even if there is a "do not resuscitate" request from the patient or if the family of the patient seeks to end life support” (Texas, 1991). The important disclaimer of this law is that it is only valid if the pregnant mother is found to be in a coma or vegetative state (Brazelon, 2014). In the case of Marlise Munoz, she was found to be brain-dead.

Under this law, it is clear that the main focus is the fetus and not the mother. This feeds into the current societal mentality of “save the children” and in this case, save the fetus at the expense of the mother’s wishes. Brooke Magnanti of The Telegraph brought up the implications of these laws for women in that as a patient, “you should have the final say over whether life-extending measures would be taken in extreme circumstances and that your health directive will be respected” (Magnanti, 2014). But if you are pregnant female, this might not be applied to you. Marlise had discussions with her husband that clearly stated what type of medical procedure she wanted or did not want, but that was
completely negated because the life of the fetus mattered more to the state of Texas. Her rights were held secondary to her fetus’s rights.

After Marlise’s husband spoke at a hearing to remove his wife from life-support, a federal court judge ordered that the hospital must remove Marlise from life-support. During this hearing the judge was presented with information that the fetus had abnormalities, which arose from being deprived of oxygen when Marlise collapsed. The attorneys of this case also indicated that the Texas state law did not apply in Marlise’s case because Marlise was found to be brain-dead.

Upon the discovery that Marlise Munoz was brain-dead, she no longer fit the definition of a pregnant patient and the state law is no longer valid. The life-sustaining measures given to Marlise would not have improved her condition. The lawyers of the hospital were claiming that they were abiding by state law, which only holds true if the pregnant patient is found to be in a coma or vegetative state. This abuse of the state law forced a woman who had clearly defined wishes to become a “host for her fetus”. She was held in this state for nearly, 2 months; Marlise Munoz was removed from life support in January 2014. Marlise was a healthy woman without any existing issues that might have caused harm to the fetus. This unfortunate death was caused by something unforeseeable. Even with the lack of mistakes made on her part, her autonomy was stripped away from her so that her fetus would be able to survive.

As indicated by the Marlise Munoz case, no mistake needs to be made in order for the fetus’s rights to be held primary to the mother’s. When a mistake is made or the lifestyle of this mother is not favored by society, what happens? As of September 1998, at least 200 women in more than 30 states have been arrested or charged with alleged drug use or other actions during pregnancy (Paltrow, 1998). Majority of these women who have been targeted for this behavior are of low-income. This situation of
conflicting rights between mother and fetus becomes further complicated when drug use and class becomes a factor.

Within the past two decades, there have been new court cases arising about fetal rights, which include feticide, endangerment of a fetus, and child abuse. The National Advocates for Pregnant Women (NAPW) also released a study showing that from 1973 – 2005, 413 pregnant women in 44 states were arrested or forced into treatment due to drug-related behavior. Since 2005, there have been an additional 300 cases and these numbers continue to rise (Paltrow, 2013).

II

More often than not, the mothers of these fetuses are charged for the criminal behaviors that have supposedly endangered the fetus. “Pregnant women bear an obligation, which can carry the weight of law, to place the needs and welfare of the fetus above their own” (Gustavsson, 1997). Mary Haack looked specifically at the issues of drug dependent mothers and their children in the state of South Carolina. She found that more often than not, the first step to handling situations of drug-dependent mother is punitive as opposed to rehabilitation. If the option of rehabilitation was offered, it was coupled with the threat of criminal sanctions (Haack, 1997).

With the lack of adequate treatment programs, the state and our society handles women’s drug use and addiction as a criminal activity instead of a public health concern. “The case for incarceration rests on the idea that women must be held personally accountable for the choices of ingesting illegal substances that harm yet-to-be-born children” (Haack, 1997). These women are blamed for their actions and the fetus must be protected from the harm that is being caused by the mother. Usually, these women are scrutinized for their behavior and not provided the treatment that they need. Instead, they are placed in prison.
State policies ensure that these women are punished for the harm that has been done to these fetuses. The Guttmacher Institute released a report in April 2014 that looks specifically at state policies and substance abuse during pregnancy. They found that “17 states consider substance abuse during pregnancy to be child abuse under civil child-welfare statutes, and 3 consider it grounds for civil commitment” (Guttmacher Institute, 2014). Among these 17 states are Texas, Minnesota, Oklahoma, South Dakota and Wisconsin where the Alicia Beltran case took place. The Guttmacher Institute also found that in 15 states, health care professionals must report suspected prenatal drug abuse and 4 states require them to test if they suspect prenatal drug abuse.

In Wisconsin, state legislation says that they have “jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children” (Wisconsin, 1997). They classify pregnant women who have a drug or alcohol abuse problem as “habitually lacking self-control.” Using this terminology aids in the need to protect the fetus, by claiming that these women lack self-control. Therefore, it is the responsibility of the state to control the situation.

Currently, the harsh child-endangerment laws that have been implemented in many states have negatively affected low-income women. In a study conducted by Paltrow and Flavin, the cases that they found with pregnant women who were charged for harming their fetus were “overwhelmingly, and regardless of race, economically disadvantaged” (Paltrow, 311).

In Dorothy Roberts’ book *Killing the Black Body*, she discusses that while there has been an increase of reproductive freedom for American women such as the right to abortion, there has also been a heavy focus on restricting these reproductive freedoms from black woman. One key point Robert’s makes about reproductive justice is that reproductive justice goes beyond a woman’s choice to end her pregnancy. “It must acknowledge that we make reproductive decisions within a social context, including inequalities of wealth and power” (Roberts, 1997). Roberts recognizes that issues regarding reproduction
must keep in mind the disparities of wealth. This disparity contributes heavily to how low-income mothers are perceived in our society. If the decision to have (or not have) a baby is seen as a choice, not as a right, women who are young, poor, disabled, or on welfare but still “choose” motherhood can be criticized for making a bad choice” (Ladd-Taylor, 2004).

If they do not have the means to provide for the child, then are typically classified as bad mothers and the State must supply support to these mothers which usually includes the removal of their children from their care. “The most progressive reformers, like Jane Addams, defended disadvantaged mothers on the grounds that if they were bad mothers, it was because of their conditions, like poverty or poor housing, that were beyond their control” (Ladd-Taylor, 2004). This highlights one of the major issues with criminalizing pregnancy, class.

Nora Gustavsson and Anne MacEachron point out that policies used to criminalize pregnant women serve to victimize poor, pregnant women. They state that “criminalizing illicit drug use for pregnant women ignores the most serious threats to fetal well being – tobacco and alcohol” (Gustavsson 682) Alcohol abuse and tobacco abuse is something that is seen in both poor and rich communities, but there are more poor women using illegal drugs more than legal drugs. This behavior is heavily scrutinized. Women of lower economic class are often targeted for their drug use during pregnancy.

On the other hand, women of higher economic class have the funds to pay for pre-natal care, drug treatments and have the means to pay for privacy regarding their medical treatment; therefore they are rarely publicly scrutinized for their behavior. Mary Haack also noted in her discussion of the South Carolina policies surrounding drug-dependent mothers that “had alcohol been chosen or had private obstetrical patients been included, the policy would have been less susceptible to the charge of targeting a poor, largely African-American population for punitive treatment” (Haack, 1997).
Several questions arise from the conflicting issue of fetal rights versus maternal rights. The mother and the baby should be considered as one entity, so why are state policies trying to separate the two? Why are states more interested in punitive measures as opposed to treatments? Who reaps the benefits from this type of misguided retribution? More importantly, why aren’t mothers’ rights just as important if not more important than the rights of the fetus?

In this paper, I plan to explore the complex nature of fetal and maternal rights within the context of the Alicia Beltran case, showing how state policies criminalize the drug use of pregnant women further I argue that we need to pay special attention to class because women of lower economic class are put at a higher risk for being criminalized.

III

In July 2013, Alicia Beltran thought she was going in for a routine prenatal check-up at her local clinic but instead it turned into a legal battle between herself and her fetus. Alicia Beltran met with a physician’s assistant (PA) at the West Bend Clinic in West Bend, Wisconsin for a routine prenatal check-up. She disclosed to the PA that she had previously struggled with an addiction to Percocet. She was taking Suboxone, a drug used to treat Percocet addiction. Because Beltran did not have health insurance, she was not able to afford this medication. She used a friend’s prescription and began to self-administer this drug in decreasing doses. A few days prior to the prenatal check-up, Beltran took her last dose of Suboxone and was no longer addicted to Percocet.

The PA recommended that Beltran renew her use of Suboxone under a doctor’s supervision. Beltran declined this recommendation but she asked to take a drug test, which was negative for Percocet and other substances except for Suboxone. Two weeks after visiting the clinic, a social worker came to
her home and told her that she needed to continue Suboxone treatment under a physician’s supervision and Beltran once again declined. Two days later, Beltran was handcuffed and arrested at her home.

The officers took Beltran to the hospital where she underwent a doctor’s exam that showed her pregnancy was normal and healthy. She was being accused of endangering her fetus. Even with the evidence showing that Alicia Beltran was no longer abusing drugs, the county judge ordered Beltran to spend 90 days in a drug treatment center. During this hearing, the judge also told Beltran that she would not be provided with an attorney at that time but she would be appointed counsel for the next hearing in her case. With that being said, a lawyer had been appointed to represent her fetus, to which Beltran responded, “I didn’t know unborn children had lawyers.”

The case of Alicia Beltran is a prime example of targeted criminalization of low-income drug-addicted pregnant women. Alicia Beltran did not have health insurance which implies that she is of low-income status which puts her at a risk for being targeted for certain criminal behaviors. Beltran also went to a public clinic because she did not have health insurance.

Often times, public clinics do not provide the most outstanding care but they do provide sufficient care for the patient. The conversations Alicia Beltran had at the clinic were with a physician’s assistant not a physician and this contributes to the difference between sufficient care she was receiving and the outstanding care she could have had at a private clinic or doctor’s office. The benefit of going to one of these private clinics or doctor’s office is that there might be more privacy.

After having a discussion with a physician in a private clinic, the conversation possibly would not have been relayed to a social worker. But Alicia Beltran is of low-income therefore she is not privileged enough to have the benefit of privacy. Dorothy Roberts makes a similar claim stating that “the right of privacy stresses the value of personhood, and it protects against the totalitarian abuse of
government power” (Roberts, 1991). Because Alicia Beltran was not wealthy enough to afford privacy, her personhood was devalued and that allowed for the government to take control of her life.

Due to her low-income status, she did not have the means to go about the ‘appropriate’ route of becoming clean. The way she weaned herself off Percocet is seen as a red flag to a healthcare professional mainly because she is a pregnant individual who was addicted to Percocet. The means she used were a prescription from an acquaintance in order to get the proper medication she needed to become clean. Had she been of a higher economic status even with pregnancy, she would have been able to go to a treatment facility where the medication would be provided for her. All of these factors depict someone of low-income status and coupled with pregnancy larger issues arise.

The interactions Beltran had with the physician’s assistant, social worker, and the judge stripped away her personhood. First, neither the physician’s assistant nor social worker respected Alicia Beltran’s choice not to have a treatment plan supervised by a doctor especially after the drug tests showed that she was no longer a drug-addicted person. Lynn Paltrow, executive director of NAPW said this “the woman loses pretty much every constitutional right we associate with personhood” (Silva, 2013). This was clear with the blatant disregard for Beltran’s decisions not to seek additional treatment of which she did not need. This was also clear in the way she was handcuffed and arrested at her home and taken to a hospital to have a doctor’s exam. All of which did not occur under her own free will. At that point like Marlise Munoz, Alicia Beltran was a host for her fetus, which is the most important ‘person’ in this issue.

Also, Alicia Beltran was forced into a treatment plan even though every medical test she had showed that her pregnancy was normal and healthy as well as negative for drugs in her system. Because the judge was so concerned with the state of the fetus, the judge used the state policy to enact what he
thought was best for the fetus. The judge thought that a 90 day stay in a treatment facility would be the best for the fetus and not what was best for Alicia Beltran. There was no discussion with Alicia Beltran. From the moment she was arrested to the point she was charged with child abuse, she was no longer a person. The court decided that she did not have the ability to make the best decisions for her fetus, therefore the state needed to make the decision for her. Dorothy Roberts says “the prosecution of [drug]-addicted mothers infringes upon both a mother's right to make decisions that determine her individual identity and her right to be respected equally as a human being by recognizing the value of her motherhood.” (Roberts, 1991). In this way, the court dehumanized Alicia Beltran in order to protect her innocent fetus.

Second, Alicia Beltran was not appointed a lawyer for her first court hearing; it was as though her rights did not matter and she as living person did not matter. But the fetus was appointed a lawyer, which means that the rights of the fetus mattered more than the rights of the mother. This grapples with the question, why are they not seen as one entity? And this also raises the importance of Alicia Beltran’s statement, “I didn’t know unborn children had lawyers.” The court sees Beltran as two entities and one of those entities must be protected. In a way, the court split Alicia Beltran into two people. “Criminalizing the behavior of pregnant women results, in part, from perceiving the fetus as a person with enforceable rights” (Gustavsson, 1997).

As Benedict Anderson discusses in “The Goodness of Nations”, the unborn are an innocent group that hasn’t been tainted by societal mindsets or values. It makes it easier to protect something that is pure and honest. This is seen in the division of legal support for Beltran and her fetus. The fetus is seen as an innocent entity and it must be protected from the mother that is causing potential harm, therefore a lawyer must be promptly provided to defend it.
In a study completed by Paltrow and Flavin looking at the legal implications for pregnant women, they found that “where prosecutors, judges, and other state actors had articulated legal arguments for depriving pregnant women of their liberty, they are the same as those made in support of personhood measures; both rely on the idea that state actors should be empowered to treat fertilized eggs, embryos, and fetuses as completely, legally separate from the pregnant women” (Paltrow, 2013).

By separating Beltran from her fetus, it generates a case where there is a complainant and a defendant. This case has the best complainant because it is an innocent fetus. Because an unborn child cannot speak, then a voice must be appointed for it, which brings in the lawyer. It becomes easier to convict mothers of wrongdoing or force the mothers into treatments that they don’t need. Mothers essentially do not have a fair chance of winning a case against an innocent fetus. The Alicia Beltran case exemplifies the idea of save the children by all means necessary and the irony is that the unborn child must be saved from its mother, the person who is providing all the essential nutrients for proper development. The mother and the fetus are two conflicting entities that depend upon each other. It is a paradox.

IV

Usually state policies are used as a means to protect those who reside in that state. At times, these policies are distorted to target certain groups for behaviors that are not respectable in the eyes of the society. Some of these policies are designed to target poor women and some policies are so specific as to directly target drug abusing pregnant mothers. These types of policies are not rare; in fact there are 17 states that have specific policies that address the state’s right to protect the unborn child from its mother. (Guttmacher Institute, 2014) One of these states is Wisconsin where the Alicia Beltran case took place. The specific piece of legislature that was used as the basis of the Alicia Beltran case was
Wisconsin Statute: 48.133 *Jurisdiction over unborn children in need of protection or services and the expectant mothers of those unborn children*. This statute states:

“The court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services which can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child, and of the child when born, will be seriously affected or endangered unless the expectant mother receives prompt and adequate treatment for that habitual lack of self-control. The court also has exclusive original jurisdiction over the expectant mother of an unborn child described in this section” (Wisconsin, 1997).

This piece of legislature is written to target women who are poor drug abusers. The first few words of this policy states that “the court has exclusive original jurisdiction over an unborn child alleged to be in need of protection or services…” In the first statement, the state immediately strips all rights that the mother would have over her body, which includes her “unborn child” and transfers those rights to the state. The welfare of the mother is not to be considered as a focal point of discussion. The duty the state has is to the unborn.

The other striking component to the opening of this policy is the jurisdiction the state has over the unborn child “alleged” to be in need. This text is very vague and any person can allege something happened. Who determines if the fetus is alleged to be in need? In Alicia Beltran’s case, it was the Physician’s Assistant who believed the child was in harm’s way; that it was allegedly in need of protection. The important fact to remember is that Alicia Beltran was no longer abusing drugs. By the time she went to the clinic, Alicia Beltran was already “clean.” Therefore there was no need for the Physician’s Assistant to consult authorities. The Physician’s Assistant follows the same idea of mother worship, mother blame; Alicia Beltran needed to be blamed for her “alleged” bad behavior. Her past was enough evidence to allege that she put her fetus in harms’ way.
The policy goes on to say that the protection or services offered by the state “can be ordered by the court whose expectant mother habitually lacks self-control in the use of alcohol beverages, controlled substances or controlled substance analogs, exhibited to a severe degree, to the extent that there is a substantial risk that the physical health of the unborn child.” This statement alone is evidence of the direct targeting of drug addicted pregnant women. The interpretation of the words “habitually lack self-control” is just as subjective as the interpretation of the word “alleged” except it purports condemnation at the same time. Under the same ideology, who determines if the expectant mother “habitually lacks self-control or in other words, who determines if the mother is a drug user?

Once again, this raises the importance of the terminology and how it is being distorted to target women of a specific population. To say someone lacks self-control is a way to dehumanize them. Animals lack self-control; humans have self-control. No one would put a child in the care of an animal. They are saying people who are drug addicts are essential animals and if they are pregnant women stronger rules must be put in place to protect the unborn. This part of the policy offers a position where lawyers can blame mothers for their behaviors.

Again in Alicia Beltran’s case, the physician’s assistant determined that she habitually lacked self-control and therefore the authorities needed to be called in order to protect the fetus. Alicia Beltran was a no longer a drug addict. If anything, Alicia Beltran's ability to find a means to remove herself from drugs and become clean for her unborn child shows that she has self-control. Alicia Beltran did not fall underneath the definition provided for a drug-addicted pregnant woman. Alicia Beltran was treated like an animal. Her voice was not respected. She expressed to the physician’s assistant multiple times that she did not want to receive treatment and she had to take multiple test to prove that she was no longer a drug-addicted individual. Despite all of this, she was still arrested and brought to court in
shackles like a rabid dog and told that she had no say during the remainder of her pregnancy. She was no longer a human; the court took that right away from her.

The one requirement that is provided for the mother so that she can maintain her personhood is only if “the expectant mother receives prompt and adequate treatment for that habitual lack of self-control.” This is the only reference to the expectant mother as an important entity whereas the majority of the policy is focused on the well-being of the fetus. The mother must be treated for her animal-like behavior so that she can care for her unborn child. Once again, who determines of her treatment for this habitual lack of self-control is adequate?

Alicia Beltran treated herself and believed to have had adequate treatment. The physician’s assistant and judge, however they did not believe, to use the words of the policy, that Alicia Beltran received “adequate treatment for that habitual lack of self-control”. Therefore, the judge forced Alicia Beltran into a treatment program for a problem she no longer had. Even in the instance where the policy should work for the mother, it does not. In theory, helping the mother treat her drug addiction seems like a noble thing to do. Unfortunately, these state policies are abused only to place blame on the drug-using mothers. In the case of Alicia Beltran, this policy was used, as a means to target her for her behavior, which the judge thought was an unsuitable behavior for a mother and forced her against her, will to enter into a treatment program.

The people that Alicia Beltran came into contact with were so focused on protecting fetus and not on getting the mother the real help that she needs. In actuality, Alicia Beltran did not need a treatment program. What Alicia Beltran needed was health insurance, so that she could access prenatal care and a better advocate for her legal and medical needs. These needs could not be addressed because she is a woman of lower economic class. These policies might not have had such a great effect on her if
she were able to afford health insurance and go to a doctor’s office where they would work with her with the knowledge of her medical history to make sure that she is at her healthiest state for herself and for her unborn fetus.

Although this policy addresses alcohol abuse as an activity of someone who lacks self-control, some professionals might not consider alcohol to be a worrisome drug. As said by a Senator Gwen Howard, a former child welfare worker, “fetal alcohol syndrome, caused by a pregnant woman's heavy drinking, is a major concern of hers, but she would not target alcohol use by pregnant women because alcohol is legal, and meth, cocaine and heroin are not” (Stoddard, 2008).

In instances where harder drugs are used, Senator Gwen Howard feels more inclined to involve the policy. This is a clear issue of class. Drugs of the upper class include alcohol; prescription pills and other legal substances where as drugs of the lower class include those of marijuana, meth, heroine and other illegal substances. Because these drugs are viewed in this way, lower class women find themselves being arrested for crimes such as criminal negligence, distribution of drugs to a minor, and child endangerment.

V

A major issue in the criminalization of pregnancy is the component of blame, where more often than not, the mother of the fetus is blamed for any harm or wrong-doing that happens to the fetus. There are many philosophical theories that discuss the justification of criminal punishments. Two of these include retributive theory and utilitarian justifications. Criminal punishments are usually delivered with either the mindset of retribution to the person that was wronged or a means to protect the greater good, which is the utilitarian mindset. In the cases of drug addicted pregnant women, criminal punishment is viewed as an act of retribution for the fetus that was wronged. “Retributive theories all focus on the
morality of the offender, as evidenced by their past acts, as the locus of the justification for criminal punishment” (Toscano, 2005). This is problematic for drug addicted pregnant women. Usually these women have a history of drug abuse and based on that alone it justifies that they should be charged with several of crimes such as endangering a fetus or child abuse.

More importantly in the case of Alicia Beltran, it is evident that this was the type of mentality that the judge had when he was forcing Alicia Beltran into treatment. All of the information that was gathered against Alicia Beltran was information about her past. She was a drug addict and addictions of this magnitude must mean that she has low moral character. In the words of Wisconsin state law, she was a person who had a habitual lack of self-control. According to retributive theorist, her past is evidence enough to make her blameworthy for any harm done to her fetus.

Her past is evidence enough to render her voice silent. The amount of times Alicia Beltran voiced that she did not want treatment and her voice was ignored shows that her past was a loud enough voice to placate her into one type of identity. That identity is a drug-addicted pregnant person. Her morality is shaped around this one aspect of her past life. There is nothing she could do or say to remove herself from that identity. Lastly, her past was the only evidence the judge needed to justify criminal punishment. Despite the fact of Alicia Beltran’s current state as a “clean” individual who decided to become clean on her own accord, the judge was too focused on her previous state of being to take that into account. The judge felt as though his only duty was to provide retribution for Alicia Beltran’s unborn fetus.

Vicki Toscano discusses this idea of retribution in “Misguided Retribution: Criminalization of Pregnant Women Who Take Drugs.” She presents three discourses that contribute to the retributive
punishment of pregnant drug users: fetus as person; successful reproduction as an individual responsibility; and women as primary source of fetal harm.

The basis for retribution is to first establish the person who deserves that retribution and the person who gives the retribution. As discussed earlier, it is important to divide the mother and the baby into two entities to have the ability to place blame the mother. The same ideology applies to retributions; the fetus must be considered a person, in order for retribution to be given. Toscano describes this relationship well. She states “the fetus is seen as a separate person for moral and legal purposes and the pregnant woman is understood as harboring two persons in one body. At the same time, the dependent nature of the maternal–fetal relationship is exploited to justify direct control of a pregnant woman’s actions on behalf of the fetus” (Toscano, 2005).

Using the argument that the fetus is person as wells as dependent upon the actions of the mother, the court is able to criminalize the mother based on any actions that would be considered harmful towards another person and in this case towards her fetus. This is evident in Alicia Beltran’s case. She is a person harboring another person whose only means of living is through the nourishment of the mother. The court used her previous drug habit and the direct channel between mother and baby to make her responsible for the any harm that could be done to her fetus. There is no room for deniability or doubt that the mother did not have any direct responsibility in endangering her fetus. Therefore the fetus deserves some form of retribution and that retribution would be forcing the mother into a treatment plan or placing her in prison.

The discourse that surrounds successful reproduction as an individual responsibility also plays a very large role in retribution for the fetus. A successful reproduction would be one where the mother does not engage in any activity that would lead to endangering the fetus. Any activity done by the
mother of which, she did on her own free will that results in harm to the fetus would be considered her individual responsibility. As described by Toscano, “in order for a person to be held morally responsible for an act, it must be determined that the individual made a choice to engage in that act.” In this case, the act is the consumption of drugs while pregnant. In order for criminal punishment to be justified on the basis of moral responsibility, “the individual’s choice to engage in that act must be understood as the primary cause for the act to have taken place” (Toscano, 2005).

The problem with viewing crime in this way is that it focuses on the actions of the individual and not the social context why the individual is choosing these actions. It is almost a though society purposeful neglected the individual’s social context because society would have to take responsibility for the mother choosing an act that could harm the fetus. It shifts the focus of blame away from society and places it on the woman. Looking at Alicia Beltran’s social context of a poor woman, this type of environment could have pushed her to drug abuse. Also, she self-treated drug addiction by using a friend’s prescription in order to help rid her of her drug habit because she did not have the means such as health insurance to get a prescription herself. The round-about way she removed herself from Percocet was a product of being a poor woman. The important issue at hand is that her society does not have enough resources to help poor woman therefore she made individual decisions that if in she were in another social context might not have needed to be made.

Another issue is that this ideology is based on the potential for harm to occur to the fetus and not that actual harm did occur to the fetus. In instances where harm did not occur, women were still charged due to their immoral behaviors. Looking at the Alicia Beltran case, there was no signs of damage to the fetus but because there was the potential for harm and it was her individual decision to take Percocet, it is her individual responsibility to take the punishment that comes with this decision.
The action that Alicia Beltran took to remove herself from Percocet shows that she does fit within the social idea of motherhood, trying to be your best self for the sake of your fetus. She took on the individual responsibility of becoming clean so that no harm could be done. In most instances, this would be considered “praise” worthy actions but because there was the potential to cause harm, she was forced to comply with the punishments from the judge. In that instance, she no longer had individual responsibility; the judge took that responsibility from her. The judge, who speaks for the society, became the individual who was responsible for acting like a true mother to care for the fetus.

One can also look at the concept of individual responsibility within the context of the pregnancy. The act of willing sex led to pregnancy and it is an individual’s responsibility to deal the duty of pregnancy. This concept of individual responsibility is targeting poor drug-addicted women by blaming them for having sex. Society sees these women as not equipped to be good mothers, therefore should be punished based on their actions, whether those actions are sex leading to pregnancy or drug abuse while pregnant.

The last form of discourse Toscano addresses is women as primary source of fetal harm. Toscano states that criminalizing drug addicted pregnant women “creates the perception that pregnant women themselves are individually to blame in that circumstance but also reinforces one prominent ideology which argues that women are primarily responsible for fetal harm and fetal well-being in general” (Toscano, 2005). This is discourse could be the most harmful towards poor drug addicted pregnant women and women in general. Society creates the idea that poor, pregnant drug addicted women are to blame themselves for the circumstances they are in and if any of their external issues harm their baby then they are even more to blame. If these groups of women believe that this is the popular ideology, this hinders them from accessing care that they so desperately need such as prenatal care and rehabilitation centers (Toscano, 2005). If they fear they will be prosecuted the minute they walk into a
clinic, one it reinforces the idealized picture of motherhood of which they do not fit; two, it reinforces that society is right that they should blame themselves for not fitting this idealized picture of motherhood.

This ideology puts these women in a tough predicament because they can risk going to a clinic and be criminalized due to their current state or they can take Alicia Beltran route and become clean and still get criminalized due to their past state. There seems to be no way out for these women and they way society is structured, it will be very difficult for them to win in any scenario. Because these women are trapped in this space, if any harm occurs to the fetus then they are also to blame because they did not seek out help. Even if they tried to seek out help, they would be blamed for their actions. This discourse is used when discussing welfare programs. The society does not want to take care of those women on welfare and they are to blame to have found themselves in a state where they cannot take care of themselves or take care of their children. But society does not give them any other option.

This discourse of women as the primary source of fetal harm is very harmful to women as a whole because it reinforces the idea of women as body and their identity stems from their connection to their body. Outside of the realm of poor women and drug abuse, women falling in the bathtub or down stairs could result in harm to fetus. In these instances, women are to blame themselves for incidents that are accidents of which they had no control over. This perpetuates this idea that women’s sole purpose is to be a reproductive being that must care for children and if she fails at that one responsibility, she must be blamed. Or even worse, she is classified as a lesser woman where now the state must intervene. The state will strip away her personhood; force her to participate in a treatment program; or worse charge her with child endangerment and put her in prison. These societal ideologies hurt women collectively but instances that are outside of being poor and a drug addict could be forgiven. But for this specific group
of women, more often than not, they are not forgiven. They are being hurt by a system that ought to help them.

One could argue that this retribution is misguided as Toscano suggests. The current society is very blame focused and coupled with the mentality of “protect the innocent,” poor drug addicted pregnant women fail to receive the true support that they need in order to attain this ideal status of parenthood their society so strongly supports. It is easy to blame a group who lacks the resources to fight against these accusations towards them. One can argue that the true group that deserves retribution is poor drug-addicted pregnant women who are put at a disadvantage due to the idealized moral compass of their society. “Ultimately, this discourse perpetuates an ideology that forces women to have to bear all of the costs associated with pregnancy and allows the political community, and society as a whole, to ignore any areas of collective responsibility…” (Toscano, 2005).

VI

For future considerations, like Patricia Hill Collins suggests in “Shifting the Center,” “feminist theorizing about motherhood might be shifted if different voices became central in feminist discourse” (Collins, 1994). This is important when looking at this topic. The voices of poor pregnant women needs become the new focus of discourse. Stories like that of Alicia Beltran must be told in order to bring light the issues that these women are facing. The conversation need to be shifted away from blaming the mother for potential harm to the fetus and we need to look at what positive influences our society, justice system, or legislations can have on poor pregnant, drug-addicted women without stripping away their personhood.

In shifting the focus onto poor pregnant women, it brings to light how these types of policies and legislations pose barriers for pregnant women from accessing the health care they need. Mary Haack found in her analysis of policies in South Carolina that “the shame and fear of losing one’s children are
major factors that deter drug-addicted mothers from seeking treatments” (Haack, 1997). Also, Nora Gustavsson and Ann MacEachron also suggest the same thing saying that “criminalizing maternal conduct may also have unintended consequences such as discouraging women from seeking health care” (Gustavsson, 1997). States need to understand what affects their policies have on these mothers. Because these women have a fear that they will be criminalized, it negatively affects their prenatal care.

By not discussing these cases it also neglects the most important issues. As Mary Haack highlights that “the threat to fetal well-being posed of drug abuse is emotionally charged in ways that other, more common but legal behaviors that endanger fetal health, such as alcohol use, tobacco use, poor prenatal care and inadequate diet, are not” (Haack, 1997). This is where the focus should be when talking about these groups of women. The focus should be on the environments these women are living in and how improvements can be made.

In this way, the state and the society have failed our women. They must take some of the blame as to why these women are put in such compromising situation with no safe way out. Also, “criminalizing behavior for only one group of citizens, based solely on their gender and temporary biological condition, establishes a worrisome precedent” (Gustavsson, 1997). These ideas of protecting the innocent and blaming the mother, sets the precedent that it is appropriate to target these women because of their particular lifestyle especially during pregnancy. It is important to understand that these ideas are formulated on the basis of a temporary biological condition. These ideas can still affect women after they are no longer pregnant. If a woman’s child is born with some type of complication due to their drug addiction, the state might charge them with child endangerment and these women could potentially go to prison. These women are trapped in the situation where there is no positive way out during and after pregnancy.
One way the state can address these issues is by making legislations that directly helps poor pregnant drug-addicted women. In a report by the Guttmacher Institute as of April 2014, they found that there are “18 states that have created or funded drug treatment programs specifically targeted to pregnant women and 10 [states] provide pregnant women with priority access to state-funded drug treatment programs” (Guttmacher Institute, 2014). Even though there are many states that assist these women with drug treatments a large majority also have policies that if a pregnant woman is suspected in drug abuse, the physician must report and it might be considered child abuse or grounds for civil commitments. Of the 28 states that have targeted treatment plans, only 8 states strictly have targeted programs with no other added consequences for the pregnant woman. As a country, there needs to be better support for these women.

As Molly Ladd-Taylor said our world “is full of “bad” mothers: unmarried mothers, teen mothers, mothers on drugs, mothers on welfare” (Ladd-Taylor, 2004), but this shouldn’t be the primary focus. The new focus should be on the mother or the woman as a person. As Dorothy Roberts said “a commitment to guaranteeing these fundamental rights [of privacy and personhood to] poor women, rather than punishing them, is the true solution to the problem” (Roberts, 1991).
Bibliography


Texas. Code AD Pregnant Patients § 166.049 (LexisNexis 1991)

