Fetal Rights versus the Female Body: Contested Domains

This article examines the debates surrounding the personhood of the fetus in relationship to the mother as these issues were socially constructed in the Mississippi state legislature in 1990 and 1991. In examining the patriarchal assumptions that underlay the proposed Mississippi legislation, the article also addresses the legal ramifications of defining the fetus as a person whose rights are posited as equal to, or greater than, those of the pregnant woman. By relying on medical/scientific definitions of personhood, the groundwork for further refinement and monitoring of women and fetuses is being established, such that what it means to be human is increasingly defined in essentialist terms. In the final evaluation, focusing on conception as the moment in which an “unborn child” is created sets the stage for the ultimate essentialist metaphor: a eugenic definition of personhood. [fetal rights, personhood, eugenics, Mississippi legislature]

Anthropologists have long recognized that, in a profound sense, our definitions of ourselves as persons derive from the cultural traditions in which we were raised (Carrithers et al. 1985). This truism pertains to the study of our own culture(s) no less than it applies to those “discovered” and made the object of scientific scrutiny by Europeans and Euro-Americans. All definitions of what it means to be a person in Western societies are thus social constructions, and even though personhood may seem to be determined by immutable orientations and values, such is not the case. The nature of these social constructions becomes readily apparent in the context of the abortion debates in American society because in these debates the nature of the self—what counts as a full-fledged human person and what does not—is the focus of an intensely contested cultural domain. Using data collected from the Mississippi state legislature about the nature of personhood and data from feminist counterarguments, I show how both sides in the abortion debate utilize certain Western categories of personhood and how they both conflate legal, medical/scientific, and everyday discourses in trying to determine what is a person.
When looking at *how* individuals use cultural knowledge, Brigitte Jordan argues that knowledge itself is not "a substance that is possessed by individuals but [instead should be viewed] as a state that is collaboratively achieved within a community of practice" (1993[1978]:154). Her concept of authoritative knowledge is summarized as follows:

By authoritative knowledge, I mean, then, the knowledge that participants agree counts in a particular situation, that *they* see as consequential, on the basis of which they make decisions and provide justifications for courses of action. [1993(1978):154]

Because Jordan is concerned with the use of knowledge in interactional contexts, she analytically distinguishes between the knowledge that counts as authoritative in a particular situation and the knowledge of people in authority positions (the latter, she argues, is not what she means by authoritative knowledge). In this article I extend the concept of authoritative knowledge to include the mediated knowledge expressed in the language of proposed Mississippi state legislature bills that sought to limit abortion.¹ To understand why certain forms of authoritative knowledge have come to dominate the discussions, we must, when looking at such highly charged cultural debates, examine whose voices are heard in the discourse about personhood. The language used in the proposed Mississippi legislative bills was not limited solely to that state nor solely to foes of abortion rights, and helps to illuminate the underlying assumptions about personhood found on both sides of the debate.

**Views of Gender and Personhood in the Proposed Mississippi Laws**

In the wake of the U.S. Supreme Court's *Webster* decision (July 1989),² members of the Mississippi state legislature, like many other state legislatures, seized the opportunity to introduce bills that attempted to restrict abortion rights or to make it mandatory to charge with child abuse or neglect women who gave birth to a drug-dependent child.³ Consideration of bills introduced in the Mississippi state legislature immediately after the *Webster* decision offers a unique opportunity to analyze the words and apparent intents of these lawmakers. The proposed bills were not, of course, introduced without opposition. Most of them failed to become law due, in part, to the lobbying efforts of pro-choice groups like Planned Parenthood, Citizens for Choice, and the Children's Defense Fund. The Mississippi Medical Association also opposed several bills, helping to circumvent them at the committee level.⁴

The Mississippi legislature in the years considered here, 1990 and 1991, was dominated by white Protestant males (77% white, 90% Protestant, 94% male).⁵ In 1990, 13 bills were proposed; all of these were written by white males except for House Bill 1448, which was introduced by ten white males, four white females, and one African American male, and House Bill 1013, written by an African American male. Only 1 of the 13 bills proposed in 1990 actually passed, and that one, Senate Bill 2884 (a clinic licensure bill), was vetoed by Governor Ray Mabus (Mississippi Legislative Report 1990:3). In 1991 seven bills, some of them identical to ones introduced the previous year, were proposed. One of these was an informed consent bill, House Bill 982, which had been introduced and defeated the previous
year as House Bill 1448. This time the bill was passed by the legislature and vetoed by the governor, but within 24 hours the legislature had overridden the veto. At this point Planned Parenthood filed suit for an injunction in Federal Court (Mississippi Legislative Update 1991:7); however, the Mississippi Informed Consent Law went into effect in August 1992, when the injunction was overturned (Harry Crumpler, personal communication, July 12, 1994).5

What do the texts of the bills reveal about the authors’ perceptions of women, the fetus, and the status of persons? What are the metaphors being used, and how do they tie into the nature of personhood? In answering these questions I will address both fetal rights and abortion issues since both pertain to conceptions of gender and personhood.

Defining the Fetus as “Unborn Child”

Of all the bills introduced to limit abortion rights, House Bill 982—the informed consent bill that passed in 1991—was perhaps the clearest in defining the rights of the fetus. Unquestionably, the bill’s authors assume that a fetus is an unborn child and want to persuade women that this is the case. In the actual wording of the bill, the legislators defined “probable gestational age of the unborn child” in these terms:

“Probable gestational age of the unborn child” means what, in the judgment of the attending physician, will with reasonable probability be the gestational age of the unborn child at the time the abortion is planned to be performed. [Committee Substitute for House Bill 982, 1991]

A woman seeking an abortion was to be informed of “the probable gestational age of the unborn child at the time the abortion is to be performed or induced.” Furthermore, she had to read and sign a document indicating that she had reviewed the following:

Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from the time when a woman can be known to be pregnant to full term, including any relevant information on the possibility of the unborn child’s survival. [Committee Substitute for House Bill 982, 1991]

These directives imply that the fetus should be defined as an unborn child from the moment of conception onward. They conflate “gestational” age, a medical term attributed to the fetus, with the commonsense category of “age” as an attribute of persons. In addition, the use of the term survival indicates the view that the fetus has characteristics of personhood, for only persons are able to survive independently outside the mother’s body; fetuses cannot survive independently of the mother until a certain indeterminate point in development.

This bill further stated that materials given to a woman about the development of the “unborn child” were to be “objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages” (Committee Substitute for House Bill 982, 1991). In so doing the authors of the bill took constructions of knowledge from science and the medical profession and transformed them into knowledge statements backed by the force
FETAL RIGHTS

of law. The terms objective, scientific, and nonjudgmental were then linked to the symbolically loaded label unborn child. The direct implication was that a woman who terminates a pregnancy was killing that “unborn child.” This language implied a dichotomy between the rights of the mother and the rights of the fetus, and it attempted to legislate morality by enforcing one particular view of personhood.

Legislators’ views about abortions were further illustrated by the wording of the bill as it was originally introduced in 1991, before it was changed in committee. In that version the bill contained, in addition to a counseling and waiting period, the following provisions:

The physician or his qualified assistant shall orally advise a woman seeking an abortion, and obtain a signed consent form, that: (a) according to the best medical evidence she is pregnant; (b) the name of the physician who will perform the abortion; (c) that the woman is free to withhold her consent to the abortion at any time before the abortion; (d) that abortions are a medical procedure with foreseeable physical and psychological risks, and the degree of risk of the following: (i) retained tissue of conception, (ii) damage to the cervix, (iii) hemorrhage, (iv) infection, (v) perforation of the uterus, (vi) sterility, (vii) complication of future pregnancies, (viii) death, (ix) post-traumatic stress disorder, (x) severe depression, (xi) anniversary syndrome, (xii) sexual dysfunction, and (xiii) interference with personal relationships; (e) weeks elapsed since the probable conception of the fetus. . . . [House Bill 982, 1991; emphasis added]

The wording used here is punitive and exaggerates the risks of abortion by spelling out, in detail, a plethora of “foreseeable” risks. It implies that a woman who is told about these risks and still has an abortion is somehow responsible for the outcome. This wording is particularly striking given that the original bill failed to spell out any of the risks of pregnancy, a point made by Harry Crumpler, head of Mississippi Planned Parenthood at the time, to the legislative committee. He noted that the risks of pregnancy were often much greater than those associated with an abortion.8 Although the list of medical risks associated with abortions was ultimately deleted in favor of a more balanced assessment of the risks of both abortion and pregnancy (Harry Crumpler, personal communication, July 12, 1994), the changes were probably made to help ensure passage. In any case, the intent underlying the authors’ use of the list as a deterrent to abortion remains clear.

Establishing an Adversarial Relationship between Parent (Read: Mother) and Fetus

Although the language of the proposed bills may have seemed to be neutral, House Bill 624, introduced in 1990, actually suggested an adversarial relationship between the “mother” or “pregnant woman” and the “child” or “fetus” (see also Terry 1989:24). Though neither the words parent nor mother appear in the text cited below, medical references to prenatal exposures (such as alcohol) imply that the mother is a threat to her fetus:

It is the intent of the Legislature that the following shall constitute prima facie evidence of abuse or neglect of a child as the case may be: . . . (b) proof that a child has a medical diagnosis of failure to thrive syndrome is prima facie evidence of abuse; (c) proof that a child has a medical diagnosis of fetal alcohol syndrome is prima facie evidence of neglect; (d) proof that a child has a medical diagnosis
at birth of withdrawal symptoms from any controlled substance is prima facie evidence of neglect. [House Bill 624, 1990]

Even though the bill does not distinguish between prenatal and postnatal exposures to the fetus/child, it is hard to escape the conclusion that the charges of neglect or abuse brought at birth (because a child has a “medical diagnosis of failure to thrive syndrome” or shows evidence of “withdrawal from a controlled substance”) would be directed at the mother. Had it become law, this legislation would have paved the way for increased monitoring of pregnant women and offered the implicit potential (already being applied in some legal/legislative cases) for control over women to ensure the birth of “healthy” children. In essence it posed a fundamental dichotomy between the rights of the woman as a person and the rights of the fetus (Gallagher 1985, 1987, 1989; Hubbard 1982; Johnsen 1986, 1987; Paltrow 1990). Notice that these sanctions apparently did not pertain to fathers as long as the neglect or abuse could be attributed to actions taken by the woman during pregnancy. Such reasoning is based upon a rationale that makes the outcome of a pregnancy uniquely the responsibility of the individual woman. Note too that the physical abuse of women by males during pregnancy, which can harm a developing fetus, is not discussed, even though 1 in 12 women are beaten during pregnancy (Pollitt 1990a). Such understandings of responsibility reinforce traditional gender roles as defined by our society and place the blame squarely on women. Pollitt notes that in considering the outcome of pregnancies, sexist bias implies “if the mother isn’t to blame, no one is to blame” (1990a:416).

In the following quote the authors of House Bill 1448 (the informed consent bill introduced in 1990) also made clear that abortion decisions involved much more than an individual woman’s right to personal autonomy and privacy.

Any person upon whom an abortion has been performed without complying with this act, the father of the unborn child who was the subject of such an abortion, or the grandparent of such an unborn child may maintain an action against the person who performed the abortion for Ten Thousand Dollars ($10,000.00) in punitive damages and treble whatever actual damages the plaintiff may have sustained. Any person upon whom an abortion has been attempted without complying with this act may maintain an action against the person who attempted to perform the abortion for Five Thousand Dollars ($5,000.00) in punitive damages and treble whatever actual damages the plaintiff may have sustained.

The authors evidently place the interests of the father or the grandparent of a fetus on an equal basis with those of the woman who carries the fetus. Fathers and grandparents were entitled to sue for as much money as the mother or pregnant woman. Notice as well that the bill’s language does not reference the mother or pregnant woman by kinship category, as is done when referring to the “father” and the “grandparent.” Instead it uses the more impersonal terminology “person upon whom an abortion has been performed” or “attempted.”

Political Implications of the Proposed Mississippi Legislation

The Mississippi legislators who authored these bills and passed an informed consent bill were not operating in a cultural vacuum; they were responding to the current discourse on personhood. Indeed, the reason these legislators introduced
such bills was obviously tied to the 1989 Webster decision. Though most of the attention on Webster focused on individual state legislatures’ attempts to limit abortion, it also provided an important statement about the nature of personhood. The Missouri law that the U.S. Supreme Court upheld in Webster stated in the preamble:

1. The general assembly of this state finds that: (1) The life of each human being begins at conception; (2) Unborn children have protectable interests in life, health, and well-being; (3) The natural parents of unborn children have protectable interests in the life, health, and well-being of their unborn child. . . .

3. As used in this section, the term “unborn children” or “unborn child” shall include all unborn child [sic] or children or the offspring of human beings from the moment of conception until birth at every stage of biological development. [quoted in Smolin 1990:73–74]

In the Supreme Court ruling on the declaration that life begins at conception, “the plurality expressly limited its holding of constitutionality by finding that the preamble imposed no substantive restrictions on abortion or any other aspect of medical practice” (Kolbert 1989:158). While the Supreme Court appeared to view the preamble as merely expressing a value judgment (Kolbert 1989), the lower federal courts invalidated the preamble, according to Smolin,

based on their view that the preamble set the philosophical premise for the remainder of the provisions in the abortion-restrictive bill, thus violating the teaching of Roe and City of Akron v. Akron Center for Reproductive Health that a State could not endorse one theory of life as a justification for abortion-restrictive legislation. [1990:74]

Smolin, an anti-abortion lawyer who authored one of the amicus curiae briefs in support of the Missouri law, found that the failure of the Supreme Court to address the constitutionality of the preamble was legally significant.10

In the Missouri preamble only one view of human life was affirmed: specifically, that human life begins at conception. For this reason the preamble had moral as well as legal implications. By explicitly stating that the fetus is human from conception, it implicitly stated that an abortion is the taking of human life. This perspective seems to be shared by the authors of the proposed Mississippi laws, even if they avoided stating it as explicitly. The argument that the fetus is a person from the moment of conception is, of course, also vociferously endorsed by the right-to-life advocates, whose militancy has encouraged such legislation (Ginsburg 1989; Luker 1984; Rothman 1989).

Feminist scholars of law who monitor our legal system concur that the perceived opposition constructed in recent years between the rights of the mother and the rights of the fetus has been invoked as one rationale for the states’ efforts to control women (Gallagher 1985, 1987, 1989; Hoff-Wilson 1987; Hubbard 1982; Johnsen 1986, 1987; MacKinnon 1989; Paltrow 1990; Rhode 1989). Had the more restrictive of the Mississippi laws been passed as originally authored, for example, the rights of a fetus would have outweighed those of the woman who carried that fetus. Johnsen claims that laws pitting the rights of the fetus against those of the pregnant woman (along with court decisions to incarcerate pregnant women and order cesarean births against the wishes of the woman) depend on “largely unin-

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tentional" and "unnecessarily simplistic reasoning" on the part of the lawmakers (1986:609–610). In her view, members of the legal system have "mistakenly viewed their options as being limited to either granting the fetus personhood status without regard to the context of the parties involved, or denying the very existence of the fetus" (1986:610). She argues that the creation of such a dichotomous, adversarial relationship provides the state "with a powerful means for controlling women's behavior during pregnancy, thereby threatening women's fundamental rights" (1986:610).

In an effort to counter such simplistic reasoning, Gallagher (1987), Johnsen (1986, 1987), and Williams (1982) have proposed alternative ways of understanding the relationship between the mother and the fetus. They write that placing the fetus in conflict with the pregnant woman infringes on the her privacy rights and rights to autonomy. In arguing against the adversarial relationship of fetus to pregnant woman, they point out that the legal system has been used to justify cultural stereotypes about the biological factors surrounding birth. They argue that the courts, rather than ensuring that the rights of the woman to control her body have precedence over decisions about the fetus, have played a balancing game. According to Gallagher, when confronted with a woman's refusal of medical treatment during pregnancy, the courts have weighed on an ad hoc basis "the individual's privacy, self-respect, and the degree of bodily invasion against the claimed state interests of preserving human life and the refusal's possible impact on third parties" (1987:19). Joan Kaspin, a human resource management specialist, further notes that the courts have been much more consistent in their decisions about racial discrimination in employment than in decisions about sexual discrimination (personal communication, August 15, 1993).

Warren (1973, 1989) and Thompson (1971) offer different rationales for why the fetus should not be placed in opposition to the woman who carries it. They conclude that definitions stating that personhood begins at conception do not take into sufficient account the legal and moral status of women as individuals—individuals with rights that should outrank those of the fetus.

Warren, a feminist moral philosopher, points out the problems with the assumption that a fetus has the same rights as an infant. She states that while "most contemporary philosophers believe that birth cannot make a difference to moral rights," it in fact does make a difference and has done so in the past (1989:46). Warren examines two common assumptions that underlie moral rights: (1) the intrinsic properties assumption, "the view that the only facts that can justify the ascription of basic moral rights or the moral standing to individuals are facts about the intrinsic properties of those individuals"; and (2) the single-criterion assumption, which claims that "there is some single property, the presence or absence of which divides the world into those things which have moral rights or moral standing, and those which do not" (1989:47). She believes that these two assumptions ignore the social relationships that could be taken into account in moral decision making. Because the courts rely on these assumptions in addressing issues of personhood, they do not address moral questions about personhood that are related to larger social issues (such as poverty). As a consequence, decisions about when life begins are framed as all-or-nothing decisions, and turn on such criteria
as the viability of a fetus to survive outside the mother's womb or some marker of self-awareness.

None of these criteria, according to Warren, are capable of withstanding the problems posed by the new reproductive technologies. For example, if viability (defined by *Roe* as occurring in the third trimester of pregnancy), is pushed further and further back in time, or if ectogenesis (the development of the fetus in an artificial womb) becomes feasible, then society could be faced with the mandatory care of innumerable fetuses (*Warren* 1989:50). Warren establishes birth as the criteria of relevance for the reason that any other interpretation pits the woman against the fetus. Summarizing her point of view, she states: "It is impossible to treat fetuses in utero as if they were persons without treating women as if they were something less than persons" (*Warren* 1989:59). Thus she concludes that women's rights outweigh those of fetuses who are not yet "thinking, self-aware, socially responsible members of communities" (*Warren* 1989:62).

Thompson (1971) argues that even if the fetus is held to be a person, women would still not be responsible for supporting fetal life. As summarized by Meilaender, the argument's essentials are as follows:

> We are embodied beings; thus the person is involved when the body is given or used. To require women to continue an unwanted pregnancy is, therefore, to ask of them personal sacrifice. Since men cannot become pregnant (and be required to make such sacrifice), prohibiting abortion is, in effect, the institutionalization of sexual inequality. [1989:16]

Thompson's arguments thus consider the ramifications of forced, coercive bodily support in maintaining the life of another. She holds that such a requirement is unjust, using reasoning derived from ethical obligations to help others. Currently the debate is framed by reference to organ donations. Since the courts do not require persons (male or female) to provide organs or even blood to those who may need them to live, women cannot be asked to carry fetuses to term (*Jung* 1988).

Thompson’s bodily support argument and Warren’s personhood argument have not silenced the opposition. It seems that no matter how strongly feminists such as Rothman stress the need for considering the woman’s role in creating a child, somehow the fetus is still increasingly viewed as a separate being, contained within the mother, “like nesting Russian dolls, one inside the other” (*Rothman* 1989:160). Indeed, it appears that Macklin is right when she claims that the values that underlie the various definitions of personhood make it impossible, in the context of the abortion debate, to reach a conclusion about the status of fetus as a person (1984; see also *Markowitz* 1990).

Legal decisions and proposed legislation that, in the interest of “protecting her unborn child,” make drug-dependent pregnant women into criminals convey the culturally specific message that the fetus is indeed a “person.” The fetus, moreover, is seen as a special type of person whose rights are equal or actually outweigh those of the mother. Indeed, according to Pollitt, such laws theoretically give the fetus more rights than those of a two-year-old child. She notes, for example, that, at present, no court would require a parent to have surgery to benefit a two-year-old (1990a:414).

We must then ask ourselves why the fetus is chosen for such special status. Pollitt suggests that it is a way to “allow the government to appear to be concerned
about babies without having to spend any money, change any priorities or challenge vested interests" (1990a:411). While I concur with Pollitt's evaluation of patriarchal vested interests, I also argue that there may exist more deeply rooted cultural assumptions.

**An Essentialist View**

Is there some common ground in these discussions over what it means to be human, to be a person? I argue that both sides cannot but be influenced by what I see as the prevailing *essentialist* discourse about personhood. By this I refer to the assumption pointed out by Warren that the personhood of the fetus rests on the search for a single criterion that in and of itself allows us to determine its status as a person.

Members of the anti-abortion contingent have already defined for themselves what this criterion is: life begins at conception. But this assumption troubles many of those who take a pro-choice stand. That the attribution of personhood to a developing fetus is problematic for many in the pro-choice movement means that their arguments about the nature of personhood itself are also problematic. According to Luker (1984), pro-choice advocates, while distinguishing between an "embryo" and a "person," also believe that at some point (often at the stage of viability) the "embryo" becomes a "person." This gradualist approach makes apparent the difficulty in deciding when the fetus becomes a "person" worthy of life and thereby makes the use of abortion at some point during gestation objectionable, since at some point the embryo becomes a person. The gradualist perspective, although extremely significant in defining moral and activist stands with respect to abortion, leaves the parameters of personhood open to shifting influences, public opinion, and most especially to the controlling roles of social, medical, and scientific discourse.

Even though feminists such as Warren may want to use birth as the criterion that distinguishes a fetus from a person, the cultural debate seems to me to indicate that some other form of discourse is coming to dominate the discussion. I preface the following argument by saying that it is *speculative*; I also ask that readers look closely at the arguments and evidence, which reveal an unintended paradox in the position of the Mississippi state legislators who proposed the laws limiting abortion rights.

Members of the Mississippi state legislature relied on two different kinds of knowledge systems in their proposed laws. The first, medical/scientific knowledge, was cited overtly as an "objective" form of knowledge. The second, Christian religious precepts, could not be stated overtly in the actual bills because of the separation of church and state. Although neither the *Webster* preamble nor the proposed Mississippi laws made clear that their concept of personhood was religiously determined, the legislation implied affinity with the Judeo-Christian concept that each individual has a unique soul that comes from God. Anti-abortionists often portray their stance as the only choice for Christians, but, of course, many pro-choice activists are also Christian. That they, too, find abortions problematic in light of their religious views can readily be seen in studies done by Luker (1984) and Ginsburg (1989), among others. However, given the fact that the Mississippi state legislature did pass an informed consent bill, it would seem to indicate that a
majority, at least, of those who voted either agreed with the right-to-life stand or found it politically expedient to appear to do so.

I want to explore a potential conflict in the use of these religious and scientific knowledge systems that has seemed to elude the authors of the proposed Mississippi legislation. First, what is it that the fetus represents here? In structuralist and religious terms, the fetus appears to be sacred and the mother profane. The fetus, in these legislators’ eyes, is something to be protected from harm. Furthermore, as long as the fetus is not born, it can be seen as a sort of “perfect” person, a “pure soul” whose existence is untroubled by any of the “messy” realities of ordinary life. The woman’s job therefore becomes one of providing the perfect environment for the “perfect” child-to-be. Of course, once a woman gives birth, that child is no longer insulated from the profane world and becomes enmeshed in social realities.

Second, and in some ways much more problematic, the legislators rely on medical/scientific definitions of personhood. They cite as their primary source of authority the medical/scientific community. In addition, they claim that medical/scientific knowledge is unproblematic. They seem to believe that science provides “objective” and “nonjudgmental” data. In some ways their appeal to science offers them one obviously needed legitimating rhetorical strategy, since they cannot appeal to their religious justifications. They also do not acknowledge the socially constructed nature of medical/scientific knowledge, for to do so would undermine the power of their arguments. Their naive use of science, however, falls apart as soon as the multiplicity of views about science/medicine are acknowledged and examined in the light of sociology of knowledge perspectives (see, for example, Jacobus et al. 1990; Lindenbaum and Lock 1993; Lock and Gordon 1988). Especially now, reliance on the medical/scientific community to determine personhood (through fetal monitoring or genetic testing in particular) raises a number of questions about the nature of the fetus as a person.

It is not so much that the discourse of the Mississippi legislation points toward any one medical definition of what it means to be a fetus/person, but rather that it points toward the use of medical/scientific discourse as the final arbiter of personhood. I find this to be problematic. Social scientists who monitor the creation and use of scientific knowledge have long been aware of its potential for persuasion when coupled with social structures of power. Even though many in the academic community claim that the hegemony of science has been diminished by the recognition of alternative social constructions of reality, Martin and other feminists point out that we need to look more closely at how these various social realities are being constructed (Martin 1990; Mascia-Lees et al. 1989). They note that despite the postmodernist claim that there are “multiple voices,” each having an equal say in defining reality, it is quite naive to think that all of these voices have equal social power. They do not. Differences in power raise the question of which modes of reality construction are relied upon, and it is here that the medical discourse about personhood takes on such significance.

 Observers note that North American medical discourse remains entrenched in certain Enlightenment assumptions about the importance of rational thought and individual responsibility in defining the person; that it reifies a Cartesian split between mind and body; and that it focuses on technology as the preferred method of treatment (Gordon 1988; Kirmayer 1988; Schepet-Hughes and Lock 1987).
Gordon (1988) notes that these assumptions lead to a separation and glorification of individual self in opposition to the social world (the latter is viewed as constraining and as a threat to the individual’s freedom). Paradoxically, Gordon also notes:

> To sustain as tenable an ideal of the autonomous, cultureless man, when from our first moments of life we exist in a social context, requires tremendous cultural and social support. Biomedicine and naturalism provide much of it. [1988:43]

When members of the Mississippi legislature invoked the medical community and cited medical language as their major sources of authority, they participated in the social construction of the prevailing North American biomedical worldview.

In my view, reliance on biomedical definitions of personhood cannot be separated from the larger medical community and research contexts in the United States. Many in this scientific community share the assumption that there must be some intrinsic property of individuals that defines what it means to be human. The problem with such an assumption is that it creates what I see as an unsolvable problem: What one property in a multitude of aspects, causes, social relationships, and world of chances makes a person human?

Although many spokespersons for the biomedical worldview readily agree that they cannot answer this question, I and other monitors of the system have recognized that the prevalent biomedical model does in fact purport to give an essentialist answer (Casalino 1991:118; Draper 1992; Rothman 1992). This version of essentialist thinking about the fetus is a form of eugenics, now labeled "genetic engineering." Though this is not the only medical/scientific viewpoint, it appears to be a rapidly growing perspective (Draper 1992; Rothman 1992); and I suspect that its growth has much to do with the assumption that there must exist some single criterion that defines exactly what a person/fetus is. From the perspective of genetic engineering, the fetus is being defined as a person from conception onward but only if that fetus can be shown to have “healthy DNA.” Increasingly, the answers to all riddles of life are assumed to lie in the realm of the DNA, the so-called blueprint for life, which paradoxically also has become the blueprint for disease. Draper argues that there now exists among employers and many scientists a “new genetic orthodoxy, which acknowledges that both genetics and the environment contribute to disease, but in fact represents a model of genetic causation” (1992:S17). Rothman, in discussing the impact on women of new reproductive technologies (for example, surrogacy, infertility drugs, artificial insemination, frozen embryos), also expresses concern about the interest in “genetic determinism, and the specific shape that concern takes in the form of research.” She notes:

> We are mapping the human genome, hunting down oncogenes, and generally trying to make more and more predictions about the course of a human life from reading the tea leaves of chromosomal patterns. [1992:S14]

The more that emphasis shifts to genetic testing and even manipulation, the more the individual fetus/child will come to be defined by its DNA. The more we rely on testing, the more the medical community will come to have the final decision in determining which fetuses are normal and which are not. For example, Draper (1992) has pointed out the unexamined costs experienced by women undergoing genetic counseling. Many women are told to wait until after they receive the results of such testing before they think of the fetus as their “child.” This perspective, she
argues, negates women's experiences of pregnancy and makes pregnant women's
"choices" dependent both on the medical definition of the situation and on their
*husband's* definition of the situation (Rothman 1992: S13–S14). As the determi-
nation of what constitutes healthy DNA becomes subject to ever increased monitoring
by the scientific/medical community, this community is coming to have *the* major
defining role in determining what constitutes a person (or even with the potential
for genetic manipulation, becoming the "creator" of the person). To my knowledge
the equation between healthy DNA and personhood has not yet been explicitly
analyzed, though Emily Martin has noted that our current metaphors of personhood
have been projected onto the egg and the sperm. This perspective, she notes, endows
"cellular entities with personhood" and raises a number of important questions
about "why we are doing [this] at all" (1991:501). One major question raised by
the equation of personhood with healthy DNA (also raised in the religious view
that life begins at conception) is: Why do the attributes given the fetus serve to
make the mother and the fetus increasingly opposed beings?

We have seen that the proposed Mississippi laws would deprive a pregnant
woman of her legal rights as an individual in favor of those of the fetus. Cases in
which cesarean births have been court ordered against the wishes of the woman
dramatically illustrate the state's power to intervene in assuring what it deems to
be a healthy birth (Jordan and Irwin 1987; Paltrow 1990). When we examine what
happens during the monitoring of the fetus by the medical system, we see that
control of the woman in the interest of her fetus also comes to include DNA. Tests
on the fetus are currently done to indicate whether or not the fetus possesses
genetically deleterious traits. If the fetus has Down's syndrome, for example, then
a decision will often be made to abort. These tests define which aspects of the fetus
are thought to be deleterious or unhealthy; by acting on these judgments, eugenic
decisions are being made about what DNA forms a healthy person and what DNA
does not.

Reliance on an essentialist definition of personhood—that the fetus is an
"unborn child"—can also pave the way for the monitoring of that "unborn child"
by the state. Even though feminists scholars such as Corea, Elshtain, and Hubbard,
to name just a few, see clearly the eugenic nature of these practices, they are also
aware that American women (and men) are taught, encouraged, and/or coerced into
relying on medical practitioners and scientists to make decisions about the nature
of life itself. Similarly, while pro-life advocates object in principle to the abortion
of any fetus, they nevertheless invoke arguments drawn from medicine, science,
and technology to justify their positions on personhood. In so doing they establish
a dangerous precedent.

Do not mistake the nature of my arguments here. I am not saying that we
should necessarily suspend our monitoring of a fetus's development. Nor am I
saying that individuals do not have the right to make decisions about whether or
not to carry to term a fetus with Down's syndrome. Rather, in my opinion, once we
come to rely on the scientific/medical system to define what it means to be a person
(as the Mississippi state legislators did), then the possibility also exists for conse-
quences that go well beyond those initially intended. Especially if we rely on what
Draper calls the "new genetic orthodoxy" to make the decisions about what it means
to be a healthy fetus/person, then the state's potential for invasion of the body becomes not only greater, it becomes absolute.

I think this compartmentalization of personhood into DNA—so that human life is defined as occurring at the moment of conception, so that the rights of this newly conceived "person" are pitted against those of the woman who carries the fetus, and so that judgments are being made about which fetuses are "healthy" and therefore worthy of life (and, conversely, if "unhealthy," then unworthy of life)—bears much closer examination. In the words of Andrew Kimbrell:

[O]ur science has promised us we can know everything, our technology has promised us we can do everything, and our advertisers have promised us we can have everything. But it just ain't so. [Hitt et al. 1990:53]

Critical examination of definitions of personhood cannot fail to raise questions about the links between social power and biomedical/scientific knowledge. When the Mississippi legislature proposed laws to limit abortion rights, they entered into a debate about the nature of what it means to be a person from a position of potential legislative power. When they cited the medical/scientific community as their primary source of "objective" knowledge, they paved the way for further political and social uses of that knowledge—uses that they might not condone. Words signify more than a fixed set of dictionary meanings—Mississippi legislators mediated and created knowledge that is more than just "text." The proposed laws represented views of personhood that pitted mother against fetus in subtle and not so subtle ways. I have suggested partial answers for why the proposed laws expressed so much concern for the fetus and so little concern for mothers or children. The search for an essentialist definition of personhood appears so deeply rooted at a cultural level that members of this culture often appear blind to the paradoxes inherent in their essentialist quest.

Notes

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1. By extending Jordan's concept of authoritative knowledge to legislative bills, I show two things: (1) how cultural knowledge is encoded in the process of legislation itself; and (2) how textual materials are themselves a context in which various positions about knowledge are invoked and mediated through the actions of cultural members. That is, legislative bills are authored by people, discussed by people, and voted upon by people. While such a view is, of course, obvious at one level, this perspective often gets overlooked, especially once a bill has become law. Legislative members can create laws, but in so doing they are subject to the same processes that operate in other contexts: they search for sources of knowledge that will count as authoritative in their particular contexts.

2. The Webster v. Reproductive Health Services Supreme Court decision was a review of a Missouri statute that placed limitations on abortion rights. Webster was seen as a major challenge to the 1973 landmark case Roe v. Wade, which made abortion in the first two
trimesters of pregnancy legal in the United States. In the ruling on *Webster* the Court upheld three provisions of the Missouri statute and refused to address a fourth provision. The decision was viewed as a victory by many anti-abortion activists, and many legislatures immediately introduced similar bills. In the words of Kathryn Kolbert, "reproductive freedom" for American women is now "hanging by a thread" (1989:153). For a summary evaluation of the Webster decision see Kolbert 1989.

3. Mississippi was a test case for the success or failure of abortion legislation. Local newspapers began reporting proposed abortion legislation (and the strategies that "pro-life" and "pro-choice" groups would use) in Mississippi immediately after the *Webster* decision even though the legislative session would not begin for another five months. Mississippi was viewed as a conservative state whose legislators would immediately introduce laws attempting to limit abortion rights. Reporters were careful, though, to note those who were opposed to such limitations (Kanengiser and Richards 1989).

4. Information about legislative lobbying was obtained from interviews with Harry Crumpler, statewide organizer for Planned Parenthood in Mississippi, and Rims Barber, lobbyist for the Children's Defense Fund. Copies of all fetal rights or abortion limitation bills introduced into the Mississippi Legislature in 1990 and 1991 were obtained from Harry Crumpler.

5. Calculations of percentages were based on material contained in the Mississippi Senate and House Journal Indexes 1990 and 1991.

6. Another bill, referred to as Mississippi's Parental Consent Law, was introduced and passed during the 1986 term (before the *Webster* decision). This bill went into effect in May 1993. In 1991 the Mississippi legislature voted to suspend normal procedures and overrode Governor Mabus's 1990 veto of the clinic licensure bill (Senate Bill 2884, 1990). According to Crumpler, the "collective effect of all of Mississippi's laws has been to make abortion less available, more expensive, and more burdensome to obtain" (personal communication, July 12, 1994). He adds that "through 1993 no other state had both a two-parent consent and a 24-hour wait for abortion, [though] there are some bills pending in 1994 that could change this."

7. In these legislators' eyes the knowledge derived from science and medicine was capable of telling the "objective truth." Their use of science and medicine indicated that they shared a popular commonsense notion of science, that "science uncovers its objects and does not construct them" (Young 1993: 119). See also the more extended discussion in the section entitled "An Essentialist View."


9. This bill was reintroduced in 1991 as House Bill 982. House Bill 982 was changed in committee and passed by the Mississippi state legislature.

10. For the view of those who opposed *Webster* see Kolbert (1990). She discusses the significance of the plurality's opinion on the preamble in light of the efforts to present amicus curiae briefs opposed to *Webster*.

11. Whitbeck's (1983) argument is an interesting counterpoint to Warren's. Whitbeck does not conclude that birth is the relevant criterion. Rather, she argues that the differences between the fetus and the newborn have not been properly considered in the ethics of abortion. She also makes a strong case that women have not been regarded as "people" in this culture (see also Moore 1988), and that this perspective has a great deal to do with the inadequacies of a "rights"-based ethics. In my opinion her argument that the status of the fetus is similar in many ways to the newborn, and her use of the term *infanticide*, undermined the force of her critique (see Morgan 1989 on the culture-bound nature of the term *infanticide*).

13. That pregnant women have been increasingly treated by the biomedical community as less important than the fetus they carry has been documented by a number of studies of birth. For example, fetal monitoring techniques (such as ultrasound) have focused on the fetus to the point that they actually exclude and negate the pregnant woman’s experience of pregnancy itself (Davis-Floyd 1987; Jordan 1993[1978]).

14. Notions of what constitutes a self and/or a person are marked by a great deal of cross-cultural variation (see Carrithers et al. 1985). Likewise, there are various notions about when a fetus becomes a person or even when a child becomes a person (see Morgan 1989). It is beyond the scope of this article to review the cross-cultural status of the fetus, but it is crucial to note that the view of the fetus as a person is only one among many viewpoints. For example, Morgan notes:

Biological and social birth are not recognized as separate events in Western societies, even though they structure the onset of personhood in many non-Western societies. The U.S. abortion debate thus replicates Western divisions of the life cycle, overlooking the fact that even the human developmental cycle is socially patterned. [1989:99]

15. See also Pollitt 1990b. There is usually no acknowledgement of societal influences on fetal development, such as adequate nutrition, housing, prenatal health care, safety, and other necessities of life. For discussions of the effects of bills that limit abortion on women of color and on the poor, see Nsiah-Jefferson (1989) and Krauss (1991).

16. Many paradoxes result from the use of “scientific” rhetoric to justify “religious” points of view. The fact that these forms of knowledge are usually viewed as “competing” and “incommensurable” is an artifact of the Western Enlightenment view of the world that still pervades much of our discourse about the way things are (see Heriot 1994; Skorupski 1976). (It is, of course, certainly encoded in our legal system.) As I point out below, reliance on these divisions may lead to unintended consequences.

17. While pro-life advocates repeatedly argue that abortion is “murder,” observers have noted that, in American society, a fetus whose weight is less than 500 grams is not given a burial, even in Catholic hospitals (Whitbeck 1983:258). This practice points to an inconsistency in the pro-life argument that personhood begins at conception. In addition, class affects burial practices. For example, indigent children in New York City under one year of age at death have been buried “in unmarked graves in Potter’s Field, where parents were not permitted to visit the gravesites” (Morgan 1989:102). Such cases appear to indicate that it is not the care for “fetuses” and “children” that underlies the Christian “pro-life” position. Analysts have often pointed toward another factor, the control of women (Whitbeck 1983).

18. For alternatives to “essentialist” thinking among biomedical researchers see Haraway (1993). She discusses postmodern bodies in which there are multiple and shifting loci of control.

19. Keller is especially forceful about the current reliance on genetics as an answer to all our problems:

To the extent that we believe that genes determine our constitution . . . then of course you’re going to put all your resources into it. . . . In the last few years belief in genetic determinism has just taken over, it’s just swept through our culture. [Casalino 1991:118]

20. There is an extensive literature among feminists linking the development of the new reproductive technologies to eugenics. For example, many authors have noted that decisions about who has access to the new reproductive technologies are based on class and ethnic status. They also stress the link of males to their “genetic” offspring as another means of asserting control over women. See especially Corea 1985, 1987, 1989; Elshtain 1989; and Hubbard 1988. In addition see Marcus et al. 1988–89, Murphy 1989, and Spallone and Steinberg 1987.
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