

Michele Goodwin

Policing the Womb: Invisible Women and the Criminalization of Motherhood
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If you did not know better, then you would believe the nature of medical and legal regulation of pregnant women in the United States of America, as outlined in Michele Goodwin's book, *Policing the Womb*,¹ was taken straight out of Margaret Atwood's dystopian novel, *The Handmaid's Tale*.² A world where women are arrested for falling down the stairs, for refusing to follow medical advice, and for being addicted to narcotics, all because they are pregnant, surely must be a work of fiction. Sadly, this is not the case. It is the state of the USA at the end of the twentieth century and into the twenty-first century.

Goodwin does a truly phenomenal job of pulling together the strands of evidence and arguments that make up the complex web that can be broadly characterised as 'foetal protection laws'. Her book is extremely detailed, reviewing a substantial number of legal cases, pieces of statute and legislation, briefs, government reports and guidance, publications from civil society and advocacy organisations, as well as academic literature. The result is a compelling and coherent narrative of how America got to the point whereby it is effectively dangerous to be a pregnant woman in most states in the USA, particularly if you are poor and/or a woman of colour.

The focus of the book is on state policing of pregnancy, including the role of medical professionals as 'snitches' and police informers.³ But *Policing the Womb* goes further than this, successfully capturing something that is lacking in previous texts on the topic. Goodwin, a Chancellor's Professor at the University of California, Irvine, contextualises the experiences of women whose reproductive rights, bodies, and, ultimately, wombs are controlled and regulated by the state. By doing so, she examines the political, legal, social, and cultural landscapes that provided the fertile ground for such toxic legal practice to occur. Foetal protection laws is an area of legal enquiry that I also research, specifically in relation to how such approaches to regulation and control of conduct manifest in England and Wales.⁴ A question I am often asked is 'how did we get here?' The punitive nature of the current system, the injustices faced by too many women, and the tangible harm that these policies and laws cause to fetuses and children is so immense,⁵ it is incredibly difficult to fathom how a 'civilised' society reached this point. It is a question I always struggle to answer, to piece together. And for good reason. For as Goodwin clearly illustrates, the control of women's reproductive health and reproducing bodies developed through the convergence of a number of 'policy landmines'—mass incarceration, the USA's War on Drugs, welfare reform, and the country's history of eugenics.⁶ The consequence: 'set[ting] the stage for regarding pregnant women as objects of the

¹ M. Goodwin, *Policing the Womb: Invisible Women and the Criminalization of Motherhood* (Cambridge: Cambridge University Press, 2020).

² M. Atwood, *The Handmaid's Tale* (London: Vintage Books, 1996).

³ Goodwin, *supra* note 1, chapters 5 and 6.

⁴ E. Milne, 'Putting the Fetus First—Legal Regulation, Motherhood, and Pregnancy', *Michigan Journal of Gender & Law* 27(1): 149–211; E. Milne, *Criminal Justice Responses to Maternal Filicide: Judging the Failed Mother* (London: Emerald, 2021).

⁵ Goodwin, *supra* note 1.

⁶ Goodwin, *supra* note 1, p.191.

state, deploying criminal punishment as a viable means of regulating their behaviour, and, in essence and substance, criminalizing pregnancy'.⁷

Goodwin's text provides an impressive example of how important it is for those of us who research healthcare law and law relating to health to look beyond the silos of our study and put our findings and conclusions in perspective. By examining the wider context of foetal protection laws, Goodwin has produced a narrative that provides far greater coherence and depth. Connecting research, ideas, and findings is how we build knowledge that crosses disciplinary lines. In an area as crucial to the rights of women such as this, it is of the utmost importance that research takes these steps.

A further success of the book lies in how Goodwin directly attributes the policing of pregnancy to sex-based, racial, and class discriminations. The racial and class dynamics of state control of women's reproduction are hard to ignore. As Goodwin outlines, overwhelmingly it is poor women and/or women of colour who have been reported to the police by medical professionals, and who have been arrested directly after giving birth or loss of a pregnancy, still bleeding in some instances.⁸

However, in centralising race and poverty, Goodwin still illustrates the nature of state conduct and control as a product of sex-based discrimination; as she argues, 'A sex equality framework is concerned not only about distinctions among women; distinctions between sexes are no more permissible than distinctions within sexual classifications'.⁹ As she argues,

Distinctions between sexes to advance fetal health reifies stereotypes and ignores medical facts. For example, when the state uniquely and exclusively burdens women in the advancement of fetal health, but not men, it does so under the flawed theory that women alone determine fetal health. Such regulations thereby reduce women to symbolic wombs and human incubators for the state.¹⁰

Goodwin's intersectional approach is yet another success of the book that scholars can and should strive to emulate. In the beginning chapters in the book, Goodwin illustrates that the approach of, predominantly, white feminists to 'choice' and access to abortion led scholars focused on women's reproductive rights and health to miss the development of foetal protection laws and policies. Goodwin argues that the arrest, detainment, and convictions of pregnant black women who used cocaine, and the sterilisation of women of colour who used drugs, for the supposed purpose of preventing the reproduction of a 'bio-under class',¹¹ was misread as poor black women who lack concern, care, and discipline for their pregnancies. The lack of surveillance and arrest of white women for their conduct while pregnant (including use of prescription drugs) meant a false narrative emerged about the problem of a generation of 'crack babies' and their black mothers. As a consequence, mainstream women's rights organisations ignored the civil liberties concerns encompassed in this state intervention into women's reproductive health.

⁷ *Ibid.*

⁸ *Ibid.*, p. 109-10.

⁹ *Ibid.*, p. 179.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 18.

But, in fact, poor, often black, women who were arrested for their conduct in pregnancy were the ‘canaries in the coalmines’—the test cases to detect risk of and opposition to state forging of this path of control and regulation of female conduct. The end result was a realisation that ‘A medical and political culture that devalues women’s reproductive autonomy, privacy, and basic dignity could potentially respond unjustly to all women regardless of race and class’.¹² In this sense, Goodwin’s book reads almost as a tragic cautionary tale of what happens when those of us in privileged positions of academic research determine that there is limited scholarly value in the plight of those not in the mainstream—that is those who are not white, male, and of the middling classes.

Policing the Womb is a tough read, and I say that as someone who has spent a considerable amount of time researching foetal protection laws and their consequences. Goodwin beautifully interweaves detailed stories of women’s experiences through her critical assessment of laws, policies, politics, and professional conduct of medical staff. In so doing, she constantly reminds us that this is not just an academic study, but the tragic reality for far too many women. For me, reading this book has reinforced the message I share when I present research or teach students about foetal protection laws—if you become pregnant, do what you can to stay away from the USA: it is a dangerous place for women. Sadly, it would appear that the UK, at least, is preparing to follow the same path in legal, cultural, and medical control of pregnant women.¹³ With some luck, scholars and political activists on this side of the Atlantic Ocean learn the lessons that Goodwin so skilfully outlines in this remarkable book.

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¹² *Ibid*, p. 100.

¹³ Milne, ‘Putting the Fetus First; Milne, *Criminal Justice Responses to Maternal Filicide*, *supra* note 4.