## Contemporary Pregnancy Rituals in Mainstream Medicine and the Anti-Abortion Agenda in England and the U.S.A since 2000

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## **Abstract**

The anti-abortion agenda worldwide seeks to afford fetuses with personhood status as a means to condemn abortion. This essay looks at normative medical pregnancy practices in England and the US since 2000 and argues them to be performative rituals which reinforce the notion of foetal personhood. Coming from the viewpoint that that which is constructed is inherently performative, informed by the theses' of Judith Butler and Simone de Beauviour, I will argue that these 'performances' function as corroboratory with the anti-abortion campaign. By dissecting common practices of medical ante-natal care and information provision, including routine check-ups, the idea of the fetus as a patient, uses of language, and medical technologies used in pregnancy, I will reason my claim in a scientific context, with specific reference to the social, legal and societal contexts from which this medicine has grown.

The idea that the abortion debate hinges on the controversy of foetal personhood calls the construction of personhood into question. Personhood is both a social and a legal construct that distinguishes a 'person' from a 'human being'. This distinction in law is generally understood to be a behavioural one. That is, while a 'human being' is "taken to be a biological category, encompassing any living creature that is genetically a member of the human species,"98 a 'person' is this and more. Indeed, in jurisprudence it is recognised that "To be a legal person is to be the subject of rights and duties...[and] Predictability of societal action, therefore, determines rights and duties and rights and duties determine legal personality."99 In other words, a 'person' "denotes a category of beings which possess a certain kind of moral status, typically elaborated in terms of interests or rights, and yielding to a cluster of normative implications concerning how it is morally acceptable to treat such beings." Clearly, the significance of this is totally cryptic. It is completely ambiguous as to what these "rights and duties" and "normative implications" are, what the "moral status" is, and who has the power to decide what is "morally acceptable". What is absolutely clear in English and American law and culture both however is that "It is never permissible to kill persons" 101. Intentionally ending the life of a legally defined "natural person", as it is called, is murder. Abortion intentionally ends life in the way that it deliberately rids the

<sup>98</sup> (Greasley 2017, 13)

<sup>&</sup>lt;sup>99</sup> (Smith 1928, 283)

<sup>&</sup>lt;sup>100</sup> (Greasley 2017, 13)

<sup>&</sup>lt;sup>101</sup> (Greasley 2017, 13)

pregnant body<sup>102</sup> of an embryo or foetus, thus removing the pregnancy, and both the embryo and the foetus are termed as 'human beings' under the categories defined above and in accordance with biological classification. That is, just as frogspawn is biologically deemed a frog, an embryo or foetus are biological 'human beings', but their status as 'persons' is not currently legitimised in the eyes of the law. If it were, the legality of abortion would be fundamentally undermined; abortion, by default, would be "At best, defensible homicide. At worst, murder." Foetal personhood is thus intrinsic to the anti-abortion campaign and has become a key focal point specifically in America for overturning Roe vs. Wade. 104

It is through ritualised acts—that is, repeated action that makes way for transformation—that the anti-abortion campaign is attempting to construct fetal personhood in the hopes of interrogating the status quo. These ritualised acts come in several different forms in a medical context. Some are more overt, such as a physicians emotive dubbing of the foetus as a 'baby' or 'unborn child', and some are more subtle, such as the correlation between patienthood and personhood. In this essay, I will look at a variety of pregnancy rituals that exist in the medical domain, and unpack the ways in which they are intimately aligned with with the anti-abortion agenda. Coming from the assumption that that which is constructed is inherently performative, reinforced by Judith Butler's discussion around Simone de Beauvoir's idea that "one is

<sup>102</sup> I will refer to the carrier of a pregnancy as the 'pregnant body' and 'pregnant woman' sporadically and interchangeably in acknowledgement that although the vast majority of people that carry pregnancies do identify as women, not all people that carry pregnancies *are* women.

<sup>&</sup>lt;sup>103</sup> (Greasley 2017, 13)

<sup>&</sup>lt;sup>104</sup> (Gersen 2019)

not born, but, rather, *becomes* a woman,"<sup>105</sup> one could say, by extension, that one is not born a 'person', but rather, becomes a 'person', and indeed the same can be assumed pre-birth. Gender, personhood or indeed any constructed state of being is, as Butler puts it, "in no way a stable identity or locus of agency from which various acts proceede; rather, it is an identity tenuously constituted in time—an identity instituted through a *stylized repetition of acts*."<sup>106</sup> This is the premise from which I will work.

Pregnancy rituals are embedded in English and American culture alike. More, they are intertwined. Given the context of British colonisation in the United States, the similarity of both countries' general historical religious sensibilities, and the more contemporary "Special Relationship" between the two that is both political and cultural, England and the U.S. have served over millennia to inform, mimic, influence and replicate each other in many aspects of society. This "special relationship today has a political and ideological superstructure" and is grounded "partly on the perception that British and American interest are—or should be —closely aligned, and partly on sentimental assertions of shared values." These "shared values" include attitudes to medicine, and pregnancy and birth. Working from the established framework that that which is constructed is performative, this essay functions on the idea that these medical rituals of pregnancy—which are albeit rooted in science, but framed socially and thus constructed are inherently performative. Important to note too is that while this study concerns the contemporary moment, it is important to

<sup>&</sup>lt;sup>105</sup> (de Beauvoir 1974, 38)

<sup>&</sup>lt;sup>106</sup> (Butler 1988, 519)

<sup>&</sup>lt;sup>107</sup> A phrase popularised in 1946 by Winston Churchill when delivering a speech at Westminster College in Fulton, Missouri alongside President Harry S. Truman, as outlined in Time Magazine: (Waxman 2018)

<sup>108 (</sup>Wallace and Phillips 2009, 263)

understand the socio-political context from which these practices grew out, and recognise the "long and complex history which of course predates the introduction of twentieth century innovations" 109. The twentieth century was a time of immense, rapid and total change with regard to public opinions, reproductive rights, abortion rights, and legislative, medical and technological change in the scientific, sexual, and reproductive domains. In terms of the expanding influence and capacity of science and medicine:

Around 1900, few pregnant women in Western Europe or North America had any contact with a medical practitioner before going into labour. By the end of the twentieth century, the hospitalisation of childbirth, the legislation of abortion and a host of biomedical technologies from the Pill and IVF to obstetric ultrasound and prenatal diagnosis had dramatically extended the reach of science and medicine into human reproduction. 110

Indeed, excluding the feminist challenge to the authority of the hospitals and mainstream medicine in the second wave feminist movement of the 1970s, pregnancy and birth moved steadily and without refute from the home to the hospital over the course of the twentieth century. In 2017, 2.1% of women gave birth at home in the UK compared with 33.2% in 1960 (see Appendix 1), and significantly more home births existed pre-1940s "because of the high rate of infections following birth, [meaning] women were

<sup>&</sup>lt;sup>109</sup> (Al-Gailani and Davis 2014, 229)

<sup>&</sup>lt;sup>110</sup> (Al-Gailani and Davis 2014, 229)

<sup>&</sup>lt;sup>111</sup> (Al-Gailani and Davis 2014, 229)

<sup>&</sup>lt;sup>112</sup> (Office for National Statistics 2018)

actually more likely to die if they went to hospital."<sup>113</sup> In 1958, ultrasound was used for the first time in Glasgow, Scotland, and new attitudes towards sex, pleasure, autonomy, gender roles, and the plight of women's rights saw England legalise abortion in 1967 under the Abortion Act, and the U.S. constitutionalise abortion as a legal right in Roe v Wade in 1973. These factors, among others, transformed the landscape in which pregnancy and medicine exists, altering the meaning of how and what it is to carry a pregnancy post-2000 on an astronomic scale, and shaping the norms and implications of mainstream Western medical pregnancy practices, serving to bolster the anti-abortion agenda.

Medical ante-natal care in England and the U.S. can be read as symptomatic of a broader trend within science whereby "developments in medicine and technology [have] produce[d] a burgeoning fascination with fetuses" 115. Specifically, there exists a "growing recognition of the fetus as a patient" 116, and this "concept of fetal patienthood may promote the notion of fetal personhood," 117 because "as a rule, patients should not be killed by physicians." 118 In England, ante-natal care, in its widening scope, has expanded to include extensive screening tests designed to determine the probability of the fetus "having certain conditions, such as Down Syndrome" 119 as part of its most basic National

<sup>113</sup> (BBC news 1999)

<sup>&</sup>lt;sup>114</sup> (Greasley 2017, 204)

<sup>&</sup>lt;sup>115</sup> (Al-Gailani and Davis 2014, 231)

<sup>&</sup>lt;sup>116</sup> (Williams 2005, 2085)

<sup>&</sup>lt;sup>117</sup> (Williams 2005, 2085)

<sup>&</sup>lt;sup>118</sup> (Williams 2005, 2088)

<sup>119 (</sup>National Health Service 2019)

Health Service (NHS) ante-natal care provision. Also included in this standard care—that is, care for an uncomplicated pregnancy are "blood tests to check for syphilis, HIV and hepatitis B" and "screening for sickle cell and thalassaemia". 120 The idea that the fetus itself is receiving its own treatments, tests and medical attention, not literally separate to, but separate from the pregnant body's treatments, would suggest that the fetus is, in and unto itself, a patient. The fetus and the pregnant body as separate entities is not a particularly new or shocking possibility; it is this feasibility that IVF and other methods of extracorporeal pregnancies depend upon, but it is complicated when the fetus is so separated from the pregnant body that is carrying it—in the case of natural pregnancies—that it is imbued with person status. The idea that "the fetus has become the primary focus of medical intervention in pregnancy and childbirth" 121, implicates the fetus not only as a patient, but as a patient of greater value than its carrier. It is relevant to here to note the legal status of the fetus in Ireland up until very recently: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right." Though this "equal right to life" policy is not law in England nor the U.S., and Ireland has since legalised abortion by repealing this 8th Amendment, this is not to say that the fetus does not have this status, or something similar to it, outside of the law and within medical practices in England and the U.S.A.. To be of greater value than a pregnant woman insinuates that the fetus *must* be a person, and so the parallel between fetal patienthood and person-making is drawn. Indeed, "Although the concept of fetal patienthood does not directly link with personhood, it is one of a number of 'rituals and

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<sup>120 (</sup>National Health Service 2019)

<sup>&</sup>lt;sup>121</sup> (Al-Gailani and Davis 2014, 231)

<sup>122</sup> Constitution of Ireland, 1983, Article 40.3.3.

practices' being extended to the fetus, which can govern 'person making"123. This negotiation of whose needs are of greater import is extremely subjective and controversial—it lies at the heart of the 'pro-life' versus 'pro-choice' abortion debate—and conventional practices of medicine are generally not accustomed with how to tread this line of duality. Indeed, "Part of the difficulty is that four of the major principles of Western medical ethics, justice, respect for autonomy, beneficence and non-maleficence (Beauchamp and Childress, 1989) are predominantly individualised concepts, containing little capacity or authority to balance the competing needs of patients" 124 such as with a pregnant woman and a fetus. Specifically in the case of fetal surgery, "a complex procedure which requires the pregnant woman to undergo uterine surgery, often more than once, usually under general anaesthetic"125 typically for the sake of lethal conditions threatening the fetus, the fetus is absolutely granted individual patienthood. More, its life is prioritised over the comfort, and potentially life, of the pregnant woman, in line with the idea that the fetus is regarded as a patient of greater value than its carrier. There appears to be an essential conflict in which medical practitioners are legally required and professionally bound to protecting the life of their patient, but in the case of two physically conjoined patients such as a pregnant body and its fetus, the welfare of one can be inversely related to the other. More, the prioritisation of the fetus is growing, reflected by the increase in uptake of fetal surgery: "worldwide the numbers appear to be increasing, and there is a move towards surgery for non-lethal conditions" 126. In her research on the fetus in medical work, Clare Williams quotes a midwife who points to the way in which medical procedures—specifically fetal surgery—imbue the

123 (Michaels and Morgan 1999) as cited in (Williams 2005, 2093)

<sup>&</sup>lt;sup>124</sup> (Williams 2005, 2087)

<sup>&</sup>lt;sup>125</sup> (Williams 2005, 2090)

<sup>&</sup>lt;sup>126</sup> (Williams 2005, 2090)

fetus with person status. She says, "If you're even talking about surgery, then you're going to see that baby now 127 as a person[,] because obviously something that's a clot of blood or a developing thing[,] that's not a human yet...[so] you're not going to be talking about surgery." It is significant that this midwife, who works in the profession, and thus has an extensive understanding of the science of pregnancy, as well as a fairly accurate feeling for the emotions of pregnant women, recognises the way in which fetal medical procedures are in fact constructing fetal personhood.

More, the use of language—the script—within medical discourse functions to conjure personhood. Specifically, practitioners' interchangeable use of the words 'baby', 'unborn child' and 'fetus', and the inclination towards the former aligns with fetal person-making and thus anti-abortion rhetoric. Indeed, the anti-abortion agenda has it's own script; "anti-abortionists prefer to use terms such as baby, or unborn child."129 For example, in another interview conducted by researcher Clare Williams, a fetal medical unit consultant who consults and advises pregnant women on fetal surgery, repeatedly, solely and explicitly uses the emotive term "baby" when referring to the fetus. 130 This use of language is inflammatory and reflects a bias that might unfairly sway those being advised to put the needs of the fetus above their own, undermining their freedom of choice. It illuminates and mimics "the powerful effects of the deceptively simple question that frequently accompanies the offer of prenatal testing: "Madam,

<sup>&</sup>lt;sup>127</sup> Strikethrough is my own edit to lessen the grammatical strain of this sentence and better convey meaning.

<sup>&</sup>lt;sup>128</sup> (Williams 2005, 2091)

<sup>&</sup>lt;sup>129</sup> (Williams 2005, 2085)

<sup>&</sup>lt;sup>130</sup> (Williams 2005, 2091)

would you like to know if your baby is all right?" <sup>131</sup> In another interview with a nurse, she describes her personalised approach to her work: "I find it very helpful knowing if it's a he or she, not it... a lot of my work is talking about what will happen when the baby's born...I suppose I am trying to encourage early bonding before the baby is even born, to help them more. I talk about it more as a baby than a fetus, as a person who has personality already. I ask the sex, name, I ask to see photos."132 Here the nurse directly acknowledges the ways in which she actively constructs the fetus as a 'baby' for and with her pregnant patients. What is problematic about this is the blatant disregard and denial of potential complications to come later on in pregnancy—complications including the pregnant body's choice to abort. The nurse's position as a figure of authority is critical. Stanley Milgrim's notorious theories and experiments summarised in his book Obedience to Authority: An Experimental View illuminate just that; people have an innate tendency to listen to authority. Indeed, "There is a propensity for people to accept definitions of action provided by legitimate authority," 133 and a nurse, being in a position of medical authority as a caregiver, has the ability to manifest a bias when advocating for and partaking in behaviours that afford fetal personhood. Her actions are likely to encourage patients to imagine the fetus as a 'baby', thus eliminating the possibility of abortion and aligning them with the anti-abortion agenda. The nurse's account corroborates the notion that "rituals and practices that govern person making are extended to fetuses: fetuses are sexed, named, "photographed", surgically altered, spoken to and about, and even speak themselves, Hollywood style." Fundamental to this construction of the fetus as 'baby' is ultrasound. Ultrasound literally images the fetus and

<sup>131</sup> (Löwy 2014, 296)

<sup>&</sup>lt;sup>132</sup> (Williams 2005, 2091-2092)

<sup>133 (</sup>Milgrim 1974, 145)

<sup>134 (</sup>Michaels and Morgan 1999, 6) as cited in (Williams 2005, 2086)

the culture of hype surrounding the ritual of ultrasound is one of person-making; "Pregnant women expect that they will "meet their baby" on the ultrasound screen, and are encouraged by experts to see in the image digitalized evidence of a gendered, conscious and sentient fetal actor communicating its demands and needs." A gendered being with thoughts, feelings and desires is, to all intents and purposes, a person. Supplementary to "Some parents [who] pay for private 3D-ultrasound viewings solely so that they can look at their baby,"136 anti-abortionists in the U.S. specifically have recognised "fetal ultrasound's emotional utility" and its power as a person-making mechanism. With sonograms literally portrait-ing the fetus, it emerges as an individual entity, "promot[ing the antiabortion] view of the fetus as an individual with legal rights." <sup>138</sup> And while ultrasound images—sonograms—are often perceived to be "unmediated, neutral and objective pictures of reality (Joyce 2005)[,] This perceived objectivity neglects how technical, political, and cultural forces affect the production, dissemination, and perception of these technical images." <sup>139</sup> Indeed, these medical methods can be propagandistic and manipulative in the way they are framed, both consciously and subconsciously, and target women at a potentially already difficult time, pointing to the way in which medical vocabulary and practices can and do take on antiabortionist sentiments.

In addition to the use of 'baby' and 'unborn child', the use of the word 'mother' casts the pregnant woman prematurely as mother, preempts birth and establishes the fetus again as 'baby' by

<sup>&</sup>lt;sup>135</sup> (Mitchell and Georges 1998, 120) as cited in (Williams 2005, 2086)

<sup>136 (</sup>Tropp 2017)

<sup>&</sup>lt;sup>137</sup> (Denbow 2019, 1)

<sup>&</sup>lt;sup>138</sup> (Denbow 2019, 2)

<sup>&</sup>lt;sup>139</sup> (Denbow 2019, 2)

way of inverse default. Nurse researcher Reva Rubin has examined this phenomenon, specifically "how women attained the role of mother during pregnancy," 140 and found that the woman's role as mother does indeed begin during pregnancy. This is in part due to the information and advice ascribed to pregnant women. The volume of information available for pregnant people on their pregnancy is immeasurably vast and its prescriptions meticulous. Indeed, "women are confronted with an abundance of far-reaching and often highly contested knowledge about how to create optimal wombs and then to monitor their fetuses, babies, and children in order to reduce the risks of anything deemed undesirable."141 This information and advice comes in many forms, including books such as The Big Fat Activity Book for Pregnant People—the number one bestseller under the pregnancy and childbirth category on amazon.com<sup>142</sup>—and online forums such as the UK favourite website mumsnet.com. This information also comes from a range of different sources differing in legitimacy. One source, deemed to be substantially legitimate, is the government. Both England and the U.S. have their own government resources that inform on pregnancy. Under the U.S. Department of Health and Human Services' 'Pregnancy' tab are six main headings that under them have a combined total of twenty-five sub-headings beneath them. Clicking into these subheadings leads to exponentially more amounts of sub-headings and guidance whose titles include, "Staying healthy and safe", "Eating for two", "Caffeine", "Weight gain", "Calorie needs", "Keeping fit", and "Foods good for mom and baby". 143 Aside from the information serving to regulate almost

<sup>140</sup> (Denbow 2019, 5)

<sup>&</sup>lt;sup>141</sup> (Wolf 2011, 75)

<sup>&</sup>lt;sup>142</sup> Amazon, 2019, "Best Sellers in Pregnancy and Childbirth, <a href="https://www.amazon.co.uk/Best-Sellers-Books-Pregnancy-Childbirth/zgbs/books/270766">https://www.amazon.co.uk/Best-Sellers-Books-Pregnancy-Childbirth/zgbs/books/270766</a>.

<sup>143 (</sup>Office on Women's Health 2018)

every aspect of a pregnant person's life and being somewhat of an overwhelming bombardment that infringes upon her agency as a woman, the phraseology "mom and baby", and the repeated use of the terms "mom" and "baby" within the passages of information subliminally marry the notion of pregnancy with mother and child, thus performing an anti-abortion service. In line with Sarah Ahmed's feminist affect theory she propounds in her book The Promise of Happiness, members of an affective community consider "the same objects as the cause of happiness" and "objects like a family photograph album construct the family as a happy object." <sup>145</sup> Crucially, "One who has negative or ambivalent feelings about [this "happy object"] is...in Ahmed's terms, alienated from the affective community." If extended to this governmental use of "mom and baby" in government-published literature, "mom and baby" becomes the lexical "happy object" the family picture—and that which threatens it—abortion—is alienated and abhorred. More, neither the U.S. Department of Health and Human Services' pregnancy page, nor the British NHS page include any information or hyperlinks to advice about abortion, indicating an anti-abortion bias by convoluting the process by which to find abortion information. The guidelines are catered only towards pregnancy that will result in birth; indeed the NHS page is entitled "Your pregnancy and baby guide" 146. Birth is forged as an inevitability through the use of language, and emotive imaging that echoes anti-abortion imagery. Appendix 2 evidences the unmistakeable similarity in design between the NHS's pregnancy guide homepage and the anti-abortion group Right to Life's homepage. Both capture mother and (birthed) child engaging in different versions of physical contact, and evocatively depict the intimacy and cuteness of the moment. Both images are adorable,

<sup>144</sup> (Ahmed 2010, 38)

<sup>&</sup>lt;sup>145</sup> (Denbow 2019, 4)

<sup>146 (</sup>National Health Service 2019)

and one has to ask why, in England where abortion has been legal since 1967, the NHS is using imagery almost identical to anti-abortionists' graphics which work to invent the born, person status of the unborn fetus.

Medicine in the U.S. and the UK is bound by a code of ethics that physicians must abide by in order to lawfully practice. In the UK, the General Medical Council outlines that doctors must abide by a certain level of "Good medical practice" that includes criteria such as, "Make the care of your patient your first concern," "Respect patients' right to reach decisions with you about their treatment and care," and "Never discriminate unfairly against patients or colleagues."147 In lieu of my findings and assertions about the intrinsic connection between the rituals and practices of medical pregnancy care, it becomes disappointing, obvious, and mildly ironic that these standards can evidently not be adhered to. As evidenced, "pro-life activism since the legalisation of abortion, especially although not only in the United States, has intersected with developments in medicine and technology to produce a burgeoning fascination with fetuses"<sup>148</sup> that undermines the agency of the pregnant body and is biased towards an anti-abortion agenda. Specifically, "medicine and technology may play a role in keeping emotions in line with dominant norms,"149 and the insidiousness of this medical power is disguised under the mask of science and indisputable fact. We forget that we are a society of constructed parts in a structure of similarly constructed norms that imprint upon us and self-perpetuate. Our established institutions, such as that of medicine, are borne out of the patriarchy and serve to uphold it. And so we must question those institutions, and those in positions

<sup>&</sup>lt;sup>147</sup> General Medical Council, 2014, *Good Medical Practice*, <a href="https://www.gmc-uk.org/media/documents/good-medical-practice---english-1215\_pdf-51527435.pdf">https://www.gmc-uk.org/media/documents/good-medical-practice---english-1215\_pdf-51527435.pdf</a>.

<sup>&</sup>lt;sup>148</sup> Al-Gailani and Davis 2014, 231)

<sup>&</sup>lt;sup>149</sup> (Denbow 2019, 2)

of authority within them that "have a powerful ideological impact" <sup>150</sup> if we are to create our own narratives, exercise our own free will and navigate the ambiguousness of what it really means to be a 'person', a woman, a life-giver in contemporary Western society.

<sup>&</sup>lt;sup>150</sup> (Williams 2005, 2092)

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