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CRIMINALIZING PREGNANCY: AN ANALYSIS OF THE WAR ON DRUGS AND THE FETAL RIGHTS MOVEMENT

by

Sheryl R. Fett

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Submitted to the
Faculty of The Graduate College
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Sheryl R. Fett

CRIMINALIZING PREGNANCY: AN ANALYSIS OF THE WAR ON DRUGS AND THE FETAL RIGHTS MOVEMENT

Sheryl R. Fett, M.A.

Western Michigan University, 1994

The focus of study was the war on drugs and the fetal rights movement as they relate to the criminalization of pregnancy. There was a movement in the 1980s and early 1990s to prosecute pregnant women for prenatal drug use under child abuse statutes and/or drug delivery statutes.

A social constructionist framework was used to analyze this movement. This thesis utilized a qualitative case study relying on documentary analysis. Literature on the war of drugs and the fetal rights movement was analyzed as it related to the prosecutions of pregnant drug users and the subsequent criminalization of pregnancy.

It was determined that the problem of pregnant drug users was socially constructed by four primary claimsmakers: (1) prosecutors, (2) health care officials, (3) the Reagan and Bush administrations, and (4) fetal rights advocates. Such prosecutions primarily served the interests of the claimsmakers, especially the Reagan and Bush administrations and the fetal rights movement.

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CHAPTER I

PRESENTATION OF PROBLEM

Introduction

Historically, women have been viewed as nurturers of their offspring. However, within the last decade a shift in the political climate placed woman and fetus in adversarial positions. According to the New York based Center for Reproductive Law and Policy, at least 164 women in the United States were arrested between 1987 and 1992 for their behavior during pregnancy ("Drugged baby's," 1992; Paltrow, 1992). At least 159 of these arrests were for allegations of drug violations and/or child abuse related to women's drug use during pregnancy (Paltrow, 1992). During the conservative era of the Reagan and Bush administrations, what once was a medical, moral and social issue increasingly became a criminal issue. Two main factors contributed to the criminalization of pregnancy. The first was the "war on drugs." This term was popularized during the Reagan era and continued to have strong support in the Bush administration. Cocaine, in particular, was viewed as a threat in this war. The second contributing factor was the fetal rights movement which displayed itself in increased legislation on behalf of the fetus and more fervent efforts by anti-abortion groups. Both the drug war and the fetal rights movement were backed by a right-wing political

movement that peaked during the Reagan and Bush administrations. They combined to create an atmosphere in which civil rights were placed at jeopardy. Pregnant drug users became a target of both of these movements.

This first chapter will discuss the theoretical and methodological approaches used in the thesis. Theoretically, this thesis is developed using a form of the social constructionist approach, as the criminalization of pregnancy can best be understood using this framework. The social constructionist approach to understanding social phenomena often relies on analysis of documents that are relevant to specific cases falling within the social problem being studied. The criminalization of pregnancy will be analyzed using a form of this methodology. Following the methodology discussion, the literature on the criminalization of pregnancy will be reviewed. This chapter will then review the war on drugs and the fetal rights movement and discuss how these factors combined to create an atmosphere in which society was willing to advocate the criminalization of pregnancy. This discussion will highlight how women as a whole, and poor minority women in particular, are targeted by these movements. Specifically, the following questions will be addressed during the course of this thesis:

1. What is the criminalization of pregnancy?

2. What is the relationship between sex, race, class and the criminalization of pregnancy?

3. What role has the war on drugs played in the criminalization of pregnancy?

4. What role has the fetal rights movement played in the criminalization of pregnancy?

5. Who are the claimsmakers in the criminalization of pregnancy and why do they undertake their crusade?

6. How, then, has the problem of "drug babies" been socially constructed and what are the implications of it?

Chapter II in this study will be the actual application of the theory and methodology reviewed in Chapter I. Clayton A. Hartjen's model for constructing a social problem will be used to analyze the criminalization of pregnancy. In 1977 a book by Hartjen was published titled Possible Trouble: An Analysis of Social Problems. In this book, Hartjen lists several steps that may take place in the creation, perpetuation and solving of a social problem. Chapter II will review these steps and use them to analyze the criminalization of pregnancy. The key role players, or "claimsmakers," in each of these movements will be identified. The third and final chapter will be a discussion and summary of the material formulated in the first two chapters. The implications of the findings of this research will be reviewed and a conclusion will be reached.

Theoretical Framework

The term "social problem" is defined most simply as a condition that society finds undesirable. For instance, pregnant drug users are viewed as a social problem. Sociology has held an active interest in studying social problems since it's origin

as a discipline in the early 1800s. Hartjen (1977) writes that, historically, sociologists have approached the study of social problems in one of two ways. The first approach views social problems as conditions that are objective and absolute. The second approach views social problems in terms of the process by which they come into existence. This process may vary from time to time and society to society. The manner in which social problems are defined largely determines how they are studied and how they are presented. Traditionally, sociologists took the first approach identified above. Social problems were studied in terms of the actual perceived problem itself. Consequently, the goals of the sociologist were to explain the causes of an existing condition, measure the extent of the problem, and determine solutions to this social problem. The second approach, on the other hand, was more interested in the social processes involved in producing societal attitudes toward various conditions. The social problem itself was not the primary focus.

It was not until the 1950s that some sociologists moved away from the traditional manner of studying social problems in order to examine how behavior was defined as deviant or problematic. Labeling theory looked at those making the labels, not just those being labeled as deviant. Becker (1963), one of the leading labeling theorists, states that deviance does not lie in a certain behavior itself but in society's reaction to the behavior and the person committing the act. Because of this, what is defined as deviant may change from time to time depending on who is committing the act and who perceives themselves as being hurt by an act. Some people in society may be labeled as deviant more readily than others. Becker

(1963) writes that deviance is actually created by society and that, "The deviant is one to whom that label has successfully been applied" (p. 9).

Labeling theory was the precursor to the social constructionist approach. This approach has gained strength in recent decades and contains many of the same concepts as labeling theory. In studying social problems within the social constructionist framework, the problem-creation process, not the problem itself, is the focal point. The sociologist is interested in the problem creator rather than simply the perceived problem, as in traditional sociological approaches (Gusfield, 1984). Social constructionists view social problems as claimsmaking activity rather than as conditions. Spector and Kitsuse (1987) write that social problems are defined by "the activities of individuals or groups making assertions of grievances and claims with respect to some putative condition" (p. 75). Value judgements make people view certain conditions as offensive and lead them to define these conditions as social problems. The claimsmakers then demand that something be done about the "social problems."

According to Spector and Kitsuse (1987), the central problem in social constructionist theory is accounting for the nature of claimsmaking activities and how these activities emerge and are maintained. The emphasis is on how the activities become organized. This theory looks at who is to benefit from defining a condition as a social problem. It is important to note whether claimsmaking individuals or groups have a vested interest in changing or maintaining the status quo. The history of the social problem and/or the related claimsmaking activity is

also important in understanding the dynamics of the social problem. Claimsmaking activity may take various forms and may be carried out by a variety of people such as moral crusaders, the media, helping professionals, or other officials.

Moral crusaders are of particular interest in the study of the criminalization of pregnancy because they have played an important role in promoting the issue of pregnant drug users as a critical social problem. Becker (1963) describes moral crusaders as "fervent and righteous, often self-righteous" (p. 148). They tend to operate with an absolute ethic, seeing everything in black and white. They often view their cause as a holy one and therefore feel that any means are justified to fight their specific cause. Becker (1963) writes that moral crusades are generally led by members of the dominant social class which tend to be comprised of White Anglo-Saxon Protestants. These persons often purport to aid those who are situated less favorably in the social and economic structure of society. By legitimating their moral position, through the use of crusades, the moral crusaders often increase their power in the social structure of society.

However, Becker (1963) indicates that moral crusaders are not simply trying to impose their values on others. They often have humanitarian interests at heart and genuinely believe that it will benefit others to embrace their values. Prohibitionists are cited as an example of previous moral crusaders. Those in the temperance movement believed that alcohol was preventing people from experiencing a truly good life. They therefore advocated the prohibition of alcohol sales for what they believed to be the good of society. Becker (1963) notes that

moral crusades may begin with good intentions but may attract those whose motives are not as altruistic. For instance, some industrialists supported prohibition because they thought that laborers would be more manageable if they were not consuming alcohol (Becker, 1963). By the same token, some moral crusaders who support the criminalization of pregnancy may truly believe that prosecuting pregnant drug users is in the best interest of the unborn child and society. However, others in the movement to criminalize pregnancy may have less pure motives.

The stated purposes behind any moral crusade must therefore be examined within a social, political, and historical context. The criminalization of pregnancy, like prohibition, involves complex claimsmaking practices, which must be analyzed to detect their true import. One approach to such an analysis is that of the social constructionist approach. This is the approach that has been chosen to analyze the creation of the social problem of pregnant drug users. This study will deviate, however, from a strict social constructionist approach. This will be explained further in Chapter II of this thesis.

Methodological Framework

A social constructionist approach will be used in analyzing the criminalization of pregnancy and the two movements central to its development, the war on drugs and the fetal rights movement. The methodology used will be that of a case study relying on documentary analysis. This is the dominant methodology used in the social constructionist approach. This study initially began with a review

of court documents pertaining to the prosecutions of two Muskegon, Michigan women who were charged in 1989 and 1990 with delivering cocaine to their newborn babies. However, after reading further literature it became apparent that these prosecutions were only a small part of a much larger movement. The focus of research subsequently shifted to a thorough review of all literature available on the criminalization of pregnancy. Due to the topical nature of this issue, literature was primarily located in library journals and newspaper articles. Original papers were also obtained through correspondence with Dr. Drew Humphries, Associate Professor of Sociology at Rutgers University. These readings led to a further examination of the war on drugs and the fetal rights movement which this thesis proposes are central to the development of the criminalization of pregnancy. Books, journal articles and newspaper articles were then reviewed for related information on these two movements. In order to further understand the social constructionist approach to studying social problems, books on this approach were reviewed. A qualitative approach rather than a quantitative approach was chosen to present this thesis because the focus of study is not so much pregnant drug using women themselves as the process of how these women have come to be viewed as a social problem warranting criminalization.

Literature Review

The Criminalization of Pregnancy

The first conviction of a pregnant drug user occurred in Florida in July of 1989. Jennifer Johnson, a twenty-three year old Black crack addict, gave birth to children in 1987 and 1989 who both tested positive for cocaine. In 1988, the state of Florida had begun a policy of prosecuting pregnant drug addicts. Subsequently, Johnson was charged with two counts of delivering a controlled substance to her children and one count of felonious child abuse. Since these statutes did not apply to fetuses, the prosecution alleged that a cocaine metabolite was "delivered" through the infants' umbilical cords during the 60 second period after Johnson gave birth and before the umbilical cord was severed. Judge O.H. Eaton, Jr. found Jennifer Johnson not guilty of child abuse but found her guilty of the two counts of delivering drugs. She was sentenced to 15 years probation with special terms that she enter a drug treatment program, submit to random drug testing and enter an intensive prenatal care program if she ever became pregnant again (Roberts, 1990). Agents in other communities across the nation also made a point of prosecuting similar cases. From 1987 to 1992, 164 women were charged criminally for their behavior during pregnancy ("Drugged baby's," 1992; Paltrow, 1992). At least 159 of these arrests were for allegations of drug violations and/or child abuse related to women's drug use during pregnancy. Virtually all of these prosecutions involved women's use of crack and/or cocaine (Paltrow, 1991). These prosecutions took

place in 24 states with a disproportionate number occurring in Florida and South Carolina. Thirty-four prosecutions took place in Florida and at least 87 occurred in South Carolina (Paltrow, 1992).

Advocates of prosecuting pregnant drug users insist that these prosecutions are for the good of the mother and that they will "only" get probation (Grabar, 1990). However, an update from Lynn Paltrow (1991) of the American Civil Liberties Union (ACLU) shows that of eleven women convicted, only three received straight probation. The rest were sentenced to some term of incarceration, ranging from 150 days in jail to 13 years in prison. Advocates of these prosecutions also propose that the threat of prosecution will motivate pregnant drug users to seek treatment. However, there are few treatment programs for women to begin with and even fewer for pregnant women given the issues of liability. Furthermore, some pregnant drug users have other children and without child care they may find it difficult to enter such programs (Maher, 1990; Mariner, Glantz & Annas, 1990). In a survey of drug abuse treatment programs in New York City, it was found that 54% did not accept any pregnant women, 67% would not treat pregnant addicts on Medicaid, and 87% denied treatment to pregnant women on Medicaid who were addicted to crack (Chavkin, 1989).

It is feared that pregnant women who are addicted to drugs will avoid any prenatal care if there is a known risk of prosecution. This could ultimately endanger both the mother and infant (Maher, 1990; Mariner, Glantz & Annas, 1990). For instance, in Allegheny County, Pennsylvania, where the practice of

terminating parental rights of drug addicted women occurs, pregnant women sometimes avoid prenatal care out of fear of losing their infants (Phillips, 1982). Another example is cited in Michigan where from 1989 to 1990 three women were prosecuted for drug delivery and/or child abuse involving their newborn children. Two of these prosecutions took place in Muskegon County, Michigan. These prosecutions were highly publicized and Tony Tague, the prosecutor in these cases, made it known that he was making these prosecutions a priority (Paltrow, 1992). According to a program manager for children and family services in Muskegon, Michigan, some women were actually leaving town to give birth for fear of prosecution. He stated, "The logical conclusion is that if women are going out of town to avoid the threat of prosecution, they are probably also avoiding medical treatment they might otherwise seek out" (Perlman, 1991, p. F1).

Medical providers are currently required to report infants who are born addicted to drugs (Humphries et al., 1992). If physicians are required to report drug use in pregnant clients as well, the doctor-patient relationship will be at risk, and physicians will be placed in the role of law enforcement agents (Chavkin, 1990). Lynn Bremer of Muskegon, Michigan, who was charged with delivering drugs to her baby commented, "I never thought my doctor would become a police officer and turn me in" (Perlman, 1991, p. F2). Deterring women from prenatal care has the potential, then, not to promote any legitimate state interest but, instead, to undermine public health. For this reason, at least 14 public health and public interest groups have taken a stand against these prosecutions (Paltrow, 1990).

An integral assumption behind prosecutions of pregnant women is that women have a special responsibility to the fetus which men do not. When Pamela Rae Stewart's baby died, the state of California attempted to prosecute her for taking amphetamines and disregarding doctors orders not to have sex with her husband and to go to the hospital at the first sign of bleeding (Mariner, Glantz & Annas, 1990). However, her husband was not viewed as being equally responsible for having sex with her or for not transporting her immediately to the hospital. Similarly, all of the focus to date has been on the woman's role in passing effects of drug use on to the fetus. However, a study conducted at the Washington University of Medicine in St. Louis examined the role of a male drug user's sperm. Findings suggest that cocaine can "piggyback" its way into a new embryo by riding on the fertilizing sperm and may subsequently harm the embryo's development (Ezzell, 1991). Another study reported in the Journal of the American Medical Association found that cocaine use by males may affect sperm and pregnancy outcomes (Paltrow, 1993b). It seems discriminatory to women that more research is not done in this area and that men are not then targeted similarly regarding "drug babies."

Further evidence of gender discrimination is the fact that drug use by itself is not a crime in most states, and pregnancy is not a crime in any state. Yet, when the two take place at the same time, women may be prosecuted. Consequently, pregnancy becomes a necessary element in a criminal offense. What is actually being criminalized is a woman's state of pregnancy, which is a condition not an act

(Mariner, Glantz & Annas, 1990). Even in states where drug use may be prosecuted, evidence obtained from hospital emergency rooms is not used as evidence for prosecution. Yet, drug charges against pregnant women are based only on urinalysis and/or blood tests by medical staff (Grabar, 1990). Furthermore, most criminal charges have been for more than simple drug use. The woman's pregnancy status suddenly transforms her from a drug user to a drug trafficker or child abuser. The only sure way to avoid prosecution would be to not carry the baby to full term. Ironically, this is also something that the Reagan and Bush administrations would have liked to penalize. Some suggest that the lack of choice which results in this situation violates constitutional privacy guaranteeing reproductive choice and bodily autonomy. The fourteenth amendment guarantees equal protection under the law, but prosecution of pregnant drug users denies this right. These women are singled out for special penalties solely because they are pregnant (Paltrow, 1990). It is a concern that if criminal sanctions are used to enforce certain standards in pregnancy, they may be extended further to apply to smoking cigarettes, failing to comply with doctors' orders, engaging in strenuous activities and so on. Pregnancy could potentially become strictly regulated by the state. If this were to happen, pregnant women would become nothing more than "fetal containers" with no individual autonomy (Chavkin, 1992; Mariner, Glantz & Annas, 1990; Roberts, 1990).

Prosecution of pregnant drug users especially discriminates against women who are poor and of color. Paltrow (1992) indicates that approximately 70% of the women who have been prosecuted for their drug use during pregnancy have been

women of color. This is partially because poor minority women tend to be under closer surveillance by the government as a result of receiving welfare benefits. They also tend to be in poorer health and therefore under closer medical scrutiny (Logli, 1990; Maher, 1992). Furthermore, officials may be more likely to perform toxicology screening on infants in public hospitals when problems are observed than in private hospitals. Public hospitals may then attribute the newborn's symptoms to drug exposure if test results are positive, whereas these tests may not even be performed in private hospitals as symptoms may be attributed to other factors (Gustavsson, 1991).

As an example of bias in drug testing and reporting, a Florida study is cited. This study identified pregnant women in the community who were using drugs and then compared them to the group of women that public and private hospitals selected for drug testing. First, the study collected urine samples from both African-American and White women who were under obstetrical care in public and private hospitals. No significant difference in the rate of positive results was found between Black and White women or between public and private patients. However, a significant difference was discovered when socio-economic status and race were examined. White, middle-class women were more likely to test positive for marijuana, whereas Black, lower-income women were more apt to test positive for cocaine. The characteristics of pregnant women that medical providers looked for before testing women were then analyzed. Overall, the women who medical providers tested were from poorer socio-economic backgrounds than the middle and

low income women who had tested positive for drugs in urine samples. However, the economic discrimination was not as apparent as the racial bias. Medical professionals were ten times more likely to report Black women than White women, in both public and private hospitals. The research team hypothesized that this discrimination revealed both the reluctance of private doctors to report affluent patients and the stereotypical views held by physicians at large, urban hospitals (Humphries et al. 1992).

The discrimination shown towards pregnant drug users who are poor and minority is merely a reflection of a larger level of societal discrimination. For example, people of color have been discriminated against in general in the war on drugs. The National Institute of Drug Abuse (NIDA) estimated that in 1990 Whites made up 77% of all drug users, while only 15% were Black and 8% were Latinos. Yet, in 1989 Blacks made up 41% of those arrested on drug charges (Lusane, 1991).

The preceding pages have reviewed the existing literature on the criminalization of pregnancy. Figures were given citing the number of pregnant drug using women who were prosecuted since 1987. Rationales were given for both those advocating and opposing these prosecutions. Literature was then reviewed which identified the gender, racial, and class biases of these prosecutions. Now that a basic knowledge has been provided of the criminalization of pregnancy, the following segments will highlight the two movements which helped to create the social problem of pregnant drug users, the war on drugs and the fetal rights movement.

The War on Drugs

The current war on drugs initially surfaced in mid-1986. At that time, two well known athletes, Len Bias and Don Rogers, had suffered cocaine-related deaths. Crack cocaine was just coming to the attention of the general public. In early July national papers began hinting that President Reagan was about to launch an anti-drug campaign. Shortly after this, House Speaker Thomas O'Neil and other Democratic leaders announced a bipartisan effort to fight illegal drugs. Subsequently, a struggle began over who would be leading this effort. This was a popular issue for incumbent politicians who wanted to take the moral "high road." By late August of 1986, the drug war had spread across the nation (Jenson, Gerber & Babcock,1991).

This war on drugs called for a large financial investment. According to the Office of Management and Budget, spending by the federal government for interdiction and drug enforcement more than tripled between 1980 and 1990 (Sonnett, 1990). The anti-drug effort was carried over from the Reagan administration to the Bush administration. Treaster (1992) notes, "No president has even come close to Bush's anti-drug spending" (p. A7). President Bush's strategy was to divide spending into the three categories of offshore law enforcement, domestic law enforcement and education/treatment. However, most drug experts believe that this formula actually amounted to more of a two-way split, at the expense of education and treatment (Treaster, 1992). Despite the attempt to control

the amount of drugs entering the United States, total imports of cocaine increased and, in some cities, the price of cocaine actually dropped (Sonnett, 1990).

In what appears to be an effort to conceal the failures of the drug war, the Reagan and Bush administrations opted for high publicity actions. For instance, when George Bush was vice-president he was often seen riding powerful chase boats and helicopters with agents who were patrolling the coast of Florida for narcotics (Treaster, 1992). In another high publicity act, Bush posed for photographers by a stack of bills confiscated in the arrest of Ramon Milian-Rodriguez in 1983 for racketeering and laundering narcotics money (Cockburn, 1987). The largest public relations coup for the war on drugs was the seizure of General Manuel Antonio Noriega in 1989 when the United States invaded Panama and brought Noriega back to the United States on drug charges (Treaster, 1992).

On the domestic front, arrests and prosecutions for drug offenses increased disproportionately to any other crime during the 1980s. Figures from the U.S. Department of Justice show that from 1983 to 1987 arrests for drug offenses increased 52%, convictions increased 71%, and sentences of incarceration increased 104% (Gustavsson, 1991). This created a vastly overcrowded jail and prison system. Sentences for drug offenses have increased with many states now having mandatory minimum sentences ranging from five years to life without parole (Sonnett, 1990). The National Drug Control Strategy Report, a primary source for Bush's war on drugs, singled out pregnant cocaine users and estimated that 100,000

babies born yearly were exposed to cocaine prior to birth (Humphries et al., 1992).

Prosecutions of pregnant women tend to be sensational and politically popular. These prosecutions are generally highly publicized. However, in cases which have been challenged, most courts have ultimately dismissed these charges because the statutes upon which they are based are often not applicable. According to the United States Supreme Court, a fetus is not a person with rights separate from the woman, at any stage of pregnancy. Consequently, most fetal laws which do exist were designed to allow prosecution when a fetus is killed or injured during a fatal or near fatal attack on a pregnant woman or to force fathers of illegitimate children to support pregnant partners. However, in some instances, these laws have been used to prosecute pregnant women themselves (Brill, 1991; Mariner, Glantz & Annas, 1990; Paltrow, 1990). In other cases, such as with Jennifer Johnson, the meaning of "delivery" of drugs is interpreted to apply to delivery through the umbilical cord.

Whereas the initial prosecution of these women are well-publicized, the dismissal of the same charges tend to be of a low profile nature. For instance, in the case of Jennifer Johnson, the first woman convicted of delivering drugs to her infants through her umbilical cord, the Florida Supreme Court overturned these convictions in July of 1992. This was mentioned in a two paragraph segment on the fourth page of the Detroit Free Press ("Court reverses," 1992). Similarly, when the prosecutor in the case of Lynn Bremer decided in July of 1992 to drop an appeal that he had made, this was noted on a back page of the Kalamazoo Gazette

(Walsh, 1992). Gardiner and McKinney (1991) discuss the way that America handled its drug problem and state the following:

> The activities of tough-guy management are frequently dramatic and visible; drug busts, arrests and jailing of users and dealers, and the pronouncements of politicians make excellent television fare. Each such announcement or bust furthers the popular illusion that tough-guy management is working, and obscures the fact that black market drugs continue to flow into this country, that problems of addiction continue to be serious, and that the well-publicized successes of authoritarian management belie its underlying failure (p. 608).

The irony of the popular war on drugs created by the federal government is the government's own role in contributing to the drug problem. The United States has had a history of involvement with drug producing nations dating back at least to World War II. An anti-communist agenda was behind most of these alliances. While attempting to contain the "menace of communism," the United States allowed drug trafficking to continue. Some have alleged that the United States' association with such countries greatly contributed to the importation of drugs into the United States (see, e.g. Cockburn, 1987; Lusane, 1991; Scott, 1991). By 1990 many of the strongholds of Communism had crumbled, allowing national attention and military resources to go elsewhere. From 1981 to 1991 the Pentagon's budget for fighting drugs rose from one million to 800 million dollars. In 1990 eight classes of aircraft and six classes of warships were added to the military equipment used specifically for the drug war (Coy, 1991). Furthermore, it is estimated that airborne radar stations of the Air Force now spend approximately 40% of their time tracking drug dealers (Lusane, 1991).

It appears that the war on drugs served the Reagan and Bush administrations well. Federal and local law enforcement agencies were strengthened, civil liberties were weakened and the drug war propaganda acted as a catalyst for increased attention to other issues such as pregnant drug users.

The Fetal Rights Movement

Two factors which greatly influenced the fetal rights movement were increased medical technology and the abortion debate. The first instance of prenatal diagnosis took place in the early 1960s. At that point the medical profession was first able to identify fetuses at serious risk for disabilities by looking at the mother's Rh level. A few other prenatal diagnostic procedures were developed in the late 1960s and early 1970s. With an ever increasing sophistication in medical technology the womb has become much more visible. Today a wide range of techniques are available to monitor prenatal development. The fetus can be analyzed, images may be seen and heartbeats heard through methods such as sonograms, amniocentesis and electronic fetal monitoring. In some instances fetuses can be given blood transfusions prior to birth. Corrective therapy may also be performed on the fetus (Hubbard, 1990). With more measures available than ever before to treat the fetus, the fetus has become viewed by some as a patient in its own right. By increasing the rights of the unborn, more obligations are placed on the born, specifically on women. Consequently, more pressure has been directed towards pregnant women to do what doctors and society expect of them. If this

concept were carried to its extreme a pregnant woman could ultimately be considered little more than a fetal container (Fetal Rights, 1992).

As the birthing process has become more medicalized over the years, women's control over their own bodies has decreased. The birthing process initially was an event that took place at home among friends and family. A midwife or a physician was sometimes present, but the woman was considered to be the central actor in the birth. With the development of the modern science of obstetrics and gynecology, both the mother and fetus came to be viewed as patients. However, today many would argue that the fetus has taken the role of the main actor while the mother has

become a secondary actor in the birthing process (Rodin & Collins, 1991). In the year 1900, approximately one-half of all United States births were attended by midwives and less than five percent took place in hospitals. By 1935, the percentage of births officiated by midwives had dropped to 16% whereas the number taking place in hospitals had risen to about one-half. By 1972, 99% of all births were attended by physicians and almost all of these took place in hospitals (Hubbard, 1990). Medicalizing birth has led to some improvements in birthing conditions but has also made the birthing process more impersonal and less controlled by the woman herself.

In recent years there have been a number of attempts to force pregnant women to undergo medical tests or procedures against their will. Hubbard (1990) writes that in the 1980s there was "an alarming willingness to override women's

choices and controls over our bodily integrity" (p. 157). By the mid-1980s most states had passed laws which applied to the wrongful death of the fetus. Previously these laws had been created in harmony with the rights of the mother, as in the case of a woman who was nine months pregnant and was killed by a drunk driver while the fetus, with significant injuries, lived. The drunk driver in this case was prosecuted for injuries to the fetus as well as for the death of the mother. In contrast, more recent laws have assumed a conflict between the rights of the pregnant woman and the fetus. These laws were created to protect the fetus from the mother. This conflict of rights provides the state with a great deal of power in controlling the behavior of pregnant women. Courts have taken custody of the fetus (and of course the woman as well) in order to protect it by comparing the court's role in protecting the fetus with that of protecting children. A judge in Chicago made a fetus a ward of the state because of a woman's heroin addiction. In Washington, D.C., a judge sentenced a woman to serve out the term of her pregnancy in jail following a forgery conviction because he felt that her fetus needed protection from her drug abuse (Terry, 1989). Another court in Washington, D.C., ordered that a cesarean section be performed prior to full term on a terminally ill cancer patient, even though she and her husband were both opposed to it. Both woman and fetus died (Pollitt, 1990). According to Clayton (1991), some courts have also ruled that a woman's actions during pregnancy may be considered in subsequent efforts by the state to take custody of her child after birth or in custody disputes.

Policies to protect the fetus have even gone so far as to affect women's choice prior to pregnancy. During the 1980s an increasing number of major corporations instigated "fetal protection policies" which limited or banned women from jobs which were traditionally male and also higher paying. These policies were supposed to protect women who could potentially be childbearers from exposure to chemicals and radiation. In the case of the Johnson Controls company, which was widely publicized, women were even banned from career paths leading to these higher paying jobs. However, potential fathers were not equally "protected" from such exposure despite evidence that many chemicals may be just as harmful to men's reproductive functions. Ironically, this interest in protecting women's fertility has been prevalent primarily in high paid, traditionally male fields even though traditionally female work places such as beauty parlors, garment sweatshops, hospitals and drycleaners also deal with potentially harmful chemicals (Faludi, 1991).

As the viability of the fetus has increased, public approval of the option for abortion has decreased. Anti-abortion groups have aimed at humanizing the fetus and dehumanizing the woman carrying the fetus (Brill, 1991). This is evident in "pro-life" propaganda which often displays a fetus in the womb independent of the woman carrying it. After Roe vs. Wade legalized abortion in 1973, anti-abortion forces increased their efforts, led by the hierarchy of the Catholic church (cited in Bennett, Wolhandler & Gallagher, 1992). These forces won a small victory in 1976 when Congress passed the Hyde Amendment, banning federal Medicaid funding for

abortions unless the woman's life was in danger. Following this, many states passed similar legislation. When the Supreme Court upheld the Hyde Amendment in 1980 (cited in Harris vs. McRae), constitutional rights established under Roe vs. Wade gradually began to erode (cited in Bennett, Wolhandler & Gallagher, 1992). During the 1980s, the anti-abortion movement grew in strength under the support of the Reagan and Bush administrations. At the same time, fundamentalist Christian groups which overlapped the New Right and "right to life" organizations were rapidly growing (Bennett, Wolhandler & Gallagher, 1992). When Judge Anthony Kennedy was appointed to the Supreme Court in 1988 the court had a conservative majority for the first time ever (Drucker, 1990). The political climate of the U.S. Supreme Court became increasingly more conservative during the Reagan-Bush years as a result of five appointments made to the bench during those administrations. While Reagan was in office he proposed a "gag rule" which prevented family planning programs from providing abortion counseling or referrals if they received any federal funds. This law was upheld in 1991 by the United States Supreme Court in Rust vs. Sullivan (cited in Doerr, 1991). The Supreme Court's 1989 Webster decision allowed states to enact laws which could interfere with a woman's right to choose abortion (Doerr, 1991). While Bush was in office he consistently opposed the use of aborted fetuses for research, despite fetal tissue research showing promising results for such diseases as Diabetes, Parkinsons and Alzheimers. He only approved of research using fetal tissue from miscarriages and tubal pregnancies, because he said that anything else would be encouraging the

practice of elective abortions. As of October of 1992, Bush had vetoed 36 bills and 9 of these bills were related to abortion (Rovner, 1992).

Those behind the anti-abortion movement at the grass- roots level have become increasingly more persistent in their attempts to stop abortion. Some of these groups have become violent in their tactics and have often resorted to illegal behavior. As of 1992 over 80% of all abortion providers had been picketed. Many others had been subjected to other forms of harassment such as property destruction, bombings and death threats (Bennett, Wolhandler & Gallagher, 1992). In 1993, two physicians who performed abortions were shot by members of the anti-abortion movement. Dr. David Gunn was shot to death outside of an abortion clinic in Florida by a member of Operation Rescue, a vigilant anti-abortion group that began using methods of civil disobedience in the late 1980s to protest abortions. Following this, Dr. George Tiller was shot and injured outside of an abortion clinic in Kansas by a woman who had been part of the anti-abortion movement for several years ("Shooting Victim, 1993).

Summary

The fetal rights movement and the war on drugs both grew in strength during the mid-1980s and early 1990s. They were both supported by the Reagan and Bush administrations and by the "New Right" that developed during the same years. Both of these movements had an interest in prosecuting pregnant drug users. These prosecutions were beneficial to the war on drugs in two ways. First, those behind

the war on drugs could capitalize on the same public outrage to stress the need for stronger sanctions in the fight against drugs if even the sacred mother-child relationship had been impacted. Secondly, the highly publicized prosecutions of pregnant drug users could be used as an example of success in getting tough with those violating drug laws. By advocating these prosecutions the fetal rights movement could capitalize on public outrage and emphasize the priority of the life of the fetus over that of the woman. The combination of the war on drugs and the fetal rights movement created an atmosphere in which the prosecution of pregnant drug users was not only accepted but encouraged.

The first chapter of this thesis has established the framework within which to begin studying the criminalization of pregnancy. The reader has been provided with a basic knowledge of how and when the prosecutions of pregnant drug users began as well as the philosophies behind the movements both for and against these prosecutions. The theoretical framework has been discussed and will be implemented in the following chapter. Finally, the movements believed to be behind the criminalization of pregnancy have been introduced. Having established the foundation for this study, the next chapter will provide an actual application of theoretical principles in the construction of a social problem.

CHAPTER II

APPLICATION OF THEORY

Introduction

Chapter I provided foundation for the theory and methodology to be used in this study as well as a literature review on the criminalization of pregnancy, the war on drugs and the fetal rights movement. Chapter II in this study will be the actual application of the theory and methodology reviewed in Chapter I. In this chapter, Clayton A. Hartjen's model for constructing a social problem will be used to analyze the creation of the social problem of "drug babies" and the subsequent criminalization of pregnancy. Hartjen (1977) writes that social problems develop under conditions of social change when value conflicts and power struggles arise between subgroups in a society. An interest group must exist which has a stake in either changing or maintaining the status quo. Hartjen (1977) writes, "It is the ability of groups to generate public concern (either in terms of desirability or undesirability of some proposed change) over the conditions of social life that determines the fate of any social problem" (p. 38). The greater an interest group's status and material means are, the greater the chances for social change to occur.

Hartjen (1977) lists several steps that may take place in the creation, perpetuation and solving of a social problem. Chapter II will review these steps and

use them to analyze the social construction of "drug babies." The key role players, or "claimsmakers," in this process will be identified. After each of these steps have been presented, they will be critiqued. By critiquing these stages, this study deviates from a strict social constructionist approach in that such an approach would merely present the observed creation of a social problem. A critique is critical in noting the social position of claimsmakers, which even Hartjen (1977) indicates is important. Furthermore, Spector and Kitsuse note that "the central problem of theory is to account for the emergence, nature, and maintenance of claimsmaking and responding activities (p. 76)." This study is interested in the implications of the social construction of pregnant drug users as a problem, not just the process itself. Therefore, this writer felt that a critique of the various stages was necessary in order to adequately analyze the creation of the social problem of pregnant drug users.

Hartjen's Model

Introduction

The first step in Hartjen's model is the selection of a condition. It may be an actual condition or an imagined one. This condition is usually something that conflicts with the ideals of society. The next step is to define this condition as a problem. In order to do this, the condition must be presented as undesirable or harmful. It should then be asserted that something should be done to either prevent, eliminate, or change this condition to make it more desirable. It should be

represented on a level which is simple and sufficiently tangible for almost anyone to relate to and understand. The third step is to publicize the issue. Without access to the media it is difficult for a group to create or sustain interest in a social problem. Government agents and those from other powerful groups usually have access to the media. This helps them to establish legitimacy which, in turn, facilitates their ability to create social problems. After the issue is publicized, large-scale concern must be generated. The success of the creation of a social problem depends on the creator's ability to "get people worked up over it" (Hartjen, 1977, p. 46). This may be done by producing statistical evidence of a widespread problem or by showing that this situation is reaching a crisis point. The next step is to propose a solution to the perceived problem. Ideally, this solution should be one on which people will disagree. This will allow attention to be focused on the solution to the problem, not the legitimacy of the problem itself. Then, an agency should be established to deal with this problem. Typically this would be a government agency. Preferably, this agency should be one created specifically to address the socially constructed problem. This ensures the continued life of the program and of the problem. Then, as the social problem develops, the nature of the problem should be periodically redefined to allow for continued interest in this issue. If a problem remains unresolved for too long people will tend to withdraw their support as they will either lose interest or view the problem as hopeless. Redefining the scope and nature of the problem can renew interest in a problem. For instance, Hartjen (1977) gives the example of changing the definition of

"alcoholism" to "problem drinking." This allows the creator of the problem to focus on a different aspect of the issue as well as to renew interest in the cause. The last step is to demonstrate that the problem has been dealt with successfully. This can be done by showing that the problem no longer exists or, at least, is no longer a threat. Statistics or progress reports may be used to demonstrate this. A social problem may not be constructed in the exact order of the steps listed, but will vary depending on the unique dynamics of the problem. The following is an application of Hartjen's steps to the construction of the social problem of "drug babies" and the subsequent criminalization of pregnancy.

Stage One: Selection of a Condition

Presentation

The condition which was selected was that of pregnant drug users. In the mid-1980s, at the same time that the war on drugs and the fetal rights movement were gaining momentum, agents of both law and health institutions began focusing on babies who were born to drug using women. Dr. Ira Chasnoff, a leading researcher in the field of perinatal drug exposure, reported that 375,000 babies were born yearly to women who used drugs (Humphries et al., 1992). The National Drug Control Strategy Report estimated that of this number 100,000 babies were exposed to cocaine prior to birth (Humphries et al., 1992). Cocaine, in particular, was viewed as a threat in the war on drugs. This drug, more than others in the past,

seemed to cross traditional gender lines. Women were reported to use crack cocaine as frequently as men, whereas previous drugs, such as heroin, had been used primarily by men (Humphries, 1992).

Consequently, the documented use of cocaine by women, especially pregnant women, generated public concern. This concern gave validity to the creation of the social problem of drug babies. Pregnant drug users became easy targets for sanctioning as their behavior clearly conflicted with the ideal values of society.

Critique

Although it is true that women use crack cocaine as frequently as men, it is also true that crack/cocaine users only amount to one to three percent of the drug using population. Furthermore, the fear the issue of drug mothers provokes is based on an assumption that crack using women will continue to use drugs during pregnancy and will consequently give birth to permanently and seriously impaired babies. It should be noted, however, that of the 100,000 babies reported to be born yearly exposed to cocaine, less than 10% exhibit the stereotypical symptoms associated with "crack babies." Furthermore, studies of these affected infants over periods of two to four years have indicated their development to be within the normal range (Humphries, 1992).

One of the reasons the issue of drug mothers created such concern was that, historically, Western culture has created an idealized concept of the family and women's role in the family. Traditionally, the "normal" family has been presented

as a two parent (male and female) unit with a division of labor between the genders. Men have been expected to be the primary wage earners, and women have been expected to be the primary caregivers to their children. In this model, the image of motherhood has been romanticized. Women, and mothers in particular, have been placed on a pedestal and expected to act in a manner befitting this stature. Brill (1991) writes, "The Christian image of the Madonna with the infant Jesus has provided a great precedent for a mythological view of motherhood." In addition to being given a higher standard of conduct, women were also given more responsibility for parenting. Maher (1992) writes that the concept of the ideal mother stemmed from a shift at the beginning of the twentieth century in culture and science. At this point mothers began to be held responsible for the end product of child-bearing and how children were raised.

The idealization of one type of family has led to other types of families being viewed as deviant. In the same sense, an idealized concept of motherhood has led to the social construction of "bad mothers" versus "good mothers." In this way, pregnant drug users were socially constructed as "bad mothers."

Stage Two: Define the Condition as a Problem

The presentation of this stage will be divided into two parts. The first will consist of an illustration of how, in a broad sense, pregnant drug users were presented as a problem to society. The second segment will describe who was involved in creating the social problem of pregnant drug users. These individuals

and groups are the claimsmakers in the creation of this problem. The critique for each segment of this stage will also be divided using the same format.

Segment One

Presentation. Defining pregnant drug users as a problem was not difficult. In the mid-1980s, crack cocaine became the symbol of what was wrong in society, and pregnant drug users epitomized to many the devastating results of crack cocaine use. A 1990 article in the New York Times suggested that the power of crack cocaine was great enough to destroy a woman's "maternal instinct." It was assumed that motherhood was something instinctual to women. Experts then concluded that without this "maternal instinct" women were a risk to their infants (Humphries, 1993).

It was reported that women who used cocaine had newborns with smaller head size, some congenital malformation and a higher risk of premature birth or still birth. It was reported that these women were also more likely to have infants with lower birth weights (5.5 pounds or less) (Mariner, Glantz & Annas, 1990). Low birth weight in newborns is a concern because two-thirds of all deaths during the neonatal period occur in infants who are born weighing 5.5 pounds or less. The risk of mortality increases as the birth weight decreases. Furthermore, low birth weight babies are five times more likely to die during their first year of life than infants of normal weight and are more likely to have neurodevelopmental handicaps if they do survive (Ruzek, 1991). There was also a concern over long term effects of

cocaine on these infants. Schools were put on "emergency alert" about the "crack babies" that were on the way (Goodman, 1992).

It was reported that pregnant women who used drugs placed their babies at serious risk. The reported incident rates of babies born to female drug users established that a significant number of babies were potentially impacted. In this way, the condition of pregnant drug users was defined as a problem.

Critique. Some of the original conclusions reached about drug babies, however, have since been disputed. For instance, conditions such as Sudden Infant Death Syndrome, permanent neurological impairment and urinary tract difficulties which were once considered to be cocaine-related are no longer listed as such. Furthermore, many of the findings of previous research in this area are questionable because the medical research has often been conducted with small samples and no control groups. This research has failed to consider psychosocial variables such as lack of prenatal care, poverty and violence. The combined use of drugs, alcohol and tobacco may also be ignored (Gustavsson, 1991). Many factors in addition to drug use such as poor nutrition and stress may impact fetal development. Researchers have concluded that it is difficult, if not impossible, to differentiate between symptoms resulting from these factors and those resulting from prenatal drug exposure (Paltrow, 1993). Additionally, some researchers have only studied low income minority women who generally have poorer prenatal health than other women (Mariner, Glantz & Annas, 1990).

Humphries et al. (1992) cite research indicating that studies that fail to show cocaine's negative effects on pregnancy tend to be ignored. For instance, 58 abstracts were submitted for presentation at the Society of Pediatric Research conference showing fetal results following cocaine exposure. Nine of these abstracts showed no effects and 28 reported negative effects. Yet, only one abstract showing no effects from drug use was used for presentation, even though these studies used control cases and verified cocaine use more frequently than did other studies. More than half of the abstracts showing adverse effects following cocaine use were presented.

It is clear that, starting in the mid-1980s, an effort was made to define the issue of pregnant drug users and "drug babies" as a problem. Members of the health care profession as well as the media were anxious to cite the negative consequences of prenatal drug exposure. The results presented were not always accurate or complete. However, the result was that the public quickly came to view "drug babies" and their mothers as a social problem.

Segment Two

Presentation. Several claimsmakers can be identified as being chiefly responsible for the creation and perpetuation of the social problem of "drug babies." The following claimsmakers will be discussed in this stage: Prosecutors, health care officials, the Reagan and Bush administrations, and members of the fetal rights movement.

Prosecutors have played a central role in claimsmaking. In the mid-1980s, prosecutors in communities across the nation began prosecuting women for their actions during pregnancy, sometimes indicating that such prosecutions were necessary to protect the rights of the fetus (Paltrow, 1993a). From 1987 to 1992, 164 women in 24 states were charged criminally for their behavior during pregnancy ("Drugged baby's," 1992; Paltrow, 1992). At least 159 of these arrests were for allegations of drug violations and/or child abuse related to women's drug use during pregnancy (Paltrow, 1991b). Although no state has a law yet specifically criminalizing prenatal behavior, prosecutors have used existing laws and interpreted them in such ways as to prosecute women for their behavior during pregnancy in the name of fetal rights (Paltrow, 1993a).

Prosecutors have organized to address the issue of prosecuting pregnant drug using women. For instance, the National District Attorneys Association and the American Prosecutors Research Institute, its research division, have taken an active role in the prosecutions of pregnant drug users. In 1990 the American Prosecutors Research Institute sponsored a conference through its National Center for the Prosecution of Child Abuse in order to come up with the best strategies for prosecuting pregnant drug users (Humphries, 1991).

Prosecutors are just one of the groups of claimsmakers involved in the criminalization of pregnancy. Health care officials have also played the role of claimsmaker by reporting pregnant drug users to authorities. It has generally been health care professionals who have notified prosecutors of drug use by pregnant

women. Health care officials determine drug use in one of three ways. The woman may tell the health provider of her drug use; the health care official may screen the urine of the mother; or the health provider may screen the newborn baby's urine. According to Paltrow (1993a) only eight states currently require health care providers to report positive drug tests in newborn infants as an indication of child abuse or neglect. However, some physicians have also reported drug use in pregnant women to authorities. Lynn Bremer of Muskegon, Michigan, who was charged with delivering drugs to her baby commented, "I never thought my doctor would become a police officer and turn me in" (Perlman, 1991, p. F2).

The federal government joined with prosecutors and health care officials to play a primary claimsmaking role in socially constructing this problem, especially during the Reagan and Bush administrations. The birth of the most recent "war on drugs" occurred during Reagan's second term in office. Reagan's drug war agenda was met with much enthusiasm. Support for the war on drugs continued to grow during the Bush administration (Jenson, Gerber & Babcock, 1991). These administrations focused on law enforcement to address the issue of drugs in the United States. Police forces grew as tougher penalties were created for drug dealers and drug users, especially when cocaine was involved. According to the Office of Management and Budget, spending by the federal government for interdiction and drug enforcement more than tripled between 1980 and 1990 (Sonnett, 1990). Treaster (1992) notes that Bush spent more than any other president in United States history to fight drugs. In January 1990, Bush proposed a plan which called for 70%

of the total anti-drug budget to be used for law enforcement and interdiction. Only 30% of the anti-drug budget was earmarked for drug treatment, prevention, and rehabilitation programs. The National Drug Control Strategy Report, which Bush used as the key source for his war on drugs, singled out pregnant cocaine users as a serious problem to be addressed when it estimated that 100,000 cocaine exposed babies were born yearly (Humphries et al., 1992). The war on drugs called for tough actions against drug users and drug dealers. According to the policies promoted by the Reagan and Bush administrations, pregnant drug users qualified as both and therefore deserved harsh sanctions.

The final claimsmakers to be discussed in the creation of the social problem of drug babies are members of the fetal rights movement. In the early 1980s a movement began which focused concern around the rights of the fetus (Pollitt, 1990a). Improvements in medical technology have aided in this movement. Improved technology has made the womb more visible and increased the viability of the fetus thereby allowing the fetus to become an entity of its own (Fetal Rights, 1992). Over the years those advocating fetal rights have focused on a number of different issues relating to fetal protection. For instance, during the 1980s an increasing number of major corporations instigated "fetal protection policies" which limited or banned women of childbearing age from jobs which might harm their reproductive processes (Faludi, 1991). In recent years there has been a number of attempts to force pregnant women to undergo medical tests or procedures against their will. These procedures included forced Caesarean sections (Pollitt, 1990b).

By the mid-1980s most states had passed laws which applied to the wrongful death of the fetus (Pollitt, 1990b; Terry, 1989). Prosecution of pregnant drug users is just part of a larger trend towards advocating the rights of the fetus.

The anti-abortion movement has been a strong sub-group of the fetal rights movement. As the viability of the fetus has increased, approval of the option for abortion has decreased. During the 1980s the anti-abortion movement grew in strength under the support of the Reagan and Bush administrations. Those opposing the right to legal abortions have not succeeded in criminalizing abortion but have effectively restricted the accessibility of abortions for millions of women. As a result of lobbying by anti-choice advocates, only 16 states fund abortions for poor women. Likewise, actions by anti-abortion protesters has led to only 18% of counties having any abortion providers at all (Pollitt, 1990a). Anti-choice lobbyists have been proponents of fetal rights in situations unrelated to abortion. Consequently, most anti-abortionists have been in favor of prosecuting pregnant drug users as a means of protecting the fetus (Pollitt, 1990a).

The preceding pages have described the primary claimsmakers in the social construction of the problem of "drug babies." Each group of claimsmakers have been presented and its role in the construction of this problem detailed. Although the primary claimsmakers have been prosecutors, other groups including health care officials, the Reagan and Bush administrations, and fetal rights advocates have played an essential role in creating this social problem.

Critique. The preceding pages have presented an objective overview of the claimsmakers' respective roles in the construction of the social problem of drug babies. The following material will consist of a critical analysis of each claimsmaker's role in socially constructing this problem, beginning with the role of the prosecutor.

If prosecutors are the primary claimsmakers, an analysis of their power and interests is certainly in order. When Robert H. Jackson was Attorney General, in 1949, he stated the following:

> The prosecution has more control over life, liberty, and reputation than any other person in America...It is in this realm-in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons and then looks for an offense, that the greatest danger of abuse of prosecutorial power lies (cited in Friedman, 1987, p.69).

The prosecutor has a great deal of discretionary power for several reasons. One reason is the vast number of penal laws in existence, many of which are vague and loosely written or complex and obscurely written. This allows the prosecutor to apply criminal charges selectively. Furthermore, there are appeal systems set up to challenge prosecution of an individual. However, when criminal charges are not pursued, this decision is not subject to appeal. There appears to be an inherent assumption in our political system that prosecutors act in good faith. This, consequently, places the burden of proof on the defense to show that a certain prosecutorial act is inappropriate (Friedman, 1987). Even when charges are dismissed or a defendant is found not guilty of an offense, the charged individual is still left with the stigma of the accused. For some reason, citizens of the U.S. do

not seem to question the unlimited power of the prosecutor but rather appear to view this as justified.

There has been a great deal of prosecutorial discretion involved in the prosecutions of pregnant drug users. These prosecutions have been inconsistent from community to community. Some prosecutors have advocated the prosecution of pregnant drug users while others have not. For instance, in Michigan, Muskegon County Prosecutor Tony Tague stated that he had committed himself to prosecuting pregnant drug users and added, "Somebody's got to look out for these kids" (Perlman, 1991, p. F2). In 1989 and 1990, Tony Tague filed charges against two Muskegon women for delivering drugs to their babies and also charged one of these women with child abuse. Both of these infants were in reasonably good health at birth (Perlman, 1991). In contrast, the mother of a baby born addicted to crack cocaine in Detroit was not charged with any criminal violation even though this child accumulated over one million dollars in medical bills ("Million Dollar," 1990). This is just one example of the range of prosecutorial discretion that exists.

Another example is the fact that although crack cocaine use is reportedly higher in large cities than in other areas, most prosecutions of pregnant crack users have occurred in less populated areas within states such as North Carolina, New Mexico and Michigan. Humphries (1993) indicates that this suggests that local prosecutors have simply seen an exploitable situation and used it to make a name for themselves as these prosecutions tend to be sensational and politically popular. Another explanation for prosecutorial discretion is racial and economic

discrimination. The women targeted for prosecution are primarily poor and minority (Logli, 1990; Maher, 1992; Paltrow, 1991b). Roberts states the following regarding the criminalization of pregnancy: "Prosecutors have selected women whom society views as undeserving to be mothers in the first place...Society is much more willing to condone the punishment of poor minority women who fail to meet the middle class ideal of motherhood" (cited in Maher, 1992, p. 52).

The second group of claimsmakers to be evaluated is health care officials. Those in the health care field are crucial to the prosecutions of pregnant drug women as they are generally the ones to initially bring a woman's drug use to the attention of authorities. Most criminal defendants come before prosecutors through the police. However, women charged with drug use during pregnancy rarely come to the attention of prosecutors through these channels. Rather, they enter the criminal justice system through hospitals and clinics (Humphries et al., 1992). One of the problems with health care officials reporting positive drug tests is that these tests only indicate whether a woman took a drug in the past 24 to 72 hours. They do not indicate the frequency of use or whether a woman is an addict or a one-time user of drugs. Furthermore, false positive test results have been known to occur (Paltrow, 1991a).

Additional problems in reporting center around discretion in selecting who to target for sanctions. As noted previously, physicians and other health care workers have a significant amount of discretion in deciding who to report to authorities for drug use (Gustavsson, 1991; Humphries et al., 1992). Consequently,

racial and economic discrimination occurs at this stage as well as the prosecution stage. For example, research shows that Black women have at least twice the chance of being reported to authorities for substance abuse compared to White women, despite similar rates of abuse. This is because the combination of poverty and racism makes them more visible and vulnerable. Additionally, guidelines like those used in South Carolina determine that women who have no, late or incomplete prenatal care may be justifiably tested for drug use. These circumstances more often apply to poor women than to middle or upper class women, making them automatic candidates for drug testing (Humphries et al., 1992).

The racial disparity in prosecutions of pregnant drug users is a reflection of larger societal biases. For instance, the targeted users and traffickers of illegal drugs are disproportionately persons of color. Clarence Lusane writes, "By mainly going after street-level dealers, drug enforcement officials perpetuate the myth that the majority of traffickers and users are people of color" (1991, p. 45). The media also tend to depict drug users as people of color, feeding on the fears of a racist society. Laws passed by Congress have only served to further this bias. These laws call for harsher mandatory sentences for offenses related to crack cocaine, a drug with which Black street level dealers are more likely to be involved (Lusane, 1991).

The third group of claimsmakers to be discussed is the Reagan and Bush administrations. These administrations were advocates of both the drug war and fetal rights. Prosecution of pregnant drug users was politically popular and fit the Reagan and Bush administrations' emphasis on both of these themes. Drug war

rhetoric, in particular, played a central role in the federal government from the mid-1980s to the early 1990s. Reagan introduced this policy during his second term in office, and by late August of 1986, the drug war had spread across the nation (Jenson, Gerber & Babcock, 1991).

Focusing on pregnant drug users allowed the government to alarm society and create public support for the war on drugs while at the same time diverting attention away from larger scale failures of the drug war. Pregnant drug users effectively became the "scape goats" in the war on drugs (Humphries, 1992).

By labeling one group of people, such as pregnant drug users, as deviant or violent to their offspring, other ideological purposes may be served. For instance a deviant subculture may be created which, in turn, aids the creation of a moral panic and, ultimately, serves the interest of the state (Caulfield, 1991). In the case of the U.S. war on drugs, attention has been diverted from large-scale failures on the government's part to a small segment of the drug using population, pregnant drug users. According to Becker (cited in Ben-Yehuda, 1986), social groups create deviance by defining rules that are not to be broken. These rules are often the product of different social groups and individuals negotiating about morality. According to Ben-Yehuda (1986), "moral entrepreneurs" are those who attempt to persuade others to abide by particular value systems and start "crusades" to change public attitudes about specific issues. In the process they often create "moral panics" in which a specific person or group of people become defined as a threat to society and societal values. This type of phenomenon appears to have occurred

through the highly publicized war on drugs and, specifically, the war against pregnant drug users. In this atmosphere, prosecutions of pregnant women were not only accepted but viewed favorably by many. Rather than focusing on developing more adequate treatment for pregnant drug users, the public attitude seemed to be willing to "legitimize virtually any action to suppress drugs" (Mariner, Glantz, & Annas, 1990, p. 30).

The final claimsmakers to be analyzed are members of the fetal rights movement. This movement grew in strength during the same time period that the war on drugs was gaining momentum and, like the war on drugs, was backed by the conservative Reagan and Bush administrations. The agenda of fetal rights activists was aided by sophisticated advancements in reproductive technologies (Maher, 1990). However, these advancements often led to a decrease in privacy for pregnant women and a tendency to focus on the fetus as a patient independent of the woman carrying it (Fetal Rights, 1992). This attention to the fetus assisted fetal rights activists in advocating strong measures to protect the fetus. One such measure was to criminalize pregnant drug users. Many prosecutions of pregnant drug using women were carried out in the name of fetal rights. By the mid-1980s most states had passed laws which applied to the wrongful death of the fetus. Traditionally, these laws had been created in harmony with the rights of the mother. However, more recent laws have assumed a conflict between the rights of the pregnant woman and the fetus. These laws were created to protect the fetus from the mother. This conflict of rights provides the state with a great deal of power in controlling the

behavior of pregnant women (Pollitt, 1990b; Terry, 1989). Pollitt (1990a) points out that fetal rights advocates not only grant fetuses more rights than women but also more rights than any 2 year old. For instance, no court would order a parent of a 2 year old to undergo medical treatment for the benefit of the child. Yet, similar orders have been directed to women, as in the case of forced Caesareans.

As indicated previously, members of the anti-abortion movement have been strong supporters of fetal rights. Anti- abortion groups have aimed at humanizing the fetus and dehumanizing the woman carrying the fetus (Brill, 1991). Many anti-choice proponents support prosecuting pregnant drug users. It is ironic, then, that these prosecutions may actually lead women to have abortions that might not otherwise do so. Pollitt (1990a) indicates that pregnant drug users faced with criminal charges may seek abortions as a means of avoiding incarceration.

The past pages have provided a critical review of the four primary claimsmakers in the social construction of the problem of "drug babies" and the subsequent movement to criminalize pregnancy. These claimsmakers all had their own motivations for pursuing the criminalization of pregnant drug users although some of their interests overlapped. The preceding segment of this chapter reviewed the actions of prosecutors, healthcare officials, the Reagan and Bush administrations, and fetal rights advocates in their respective roles as claimsmakers in defining pregnant drug users as a problem.

Stages Three and Four: Publicize the Condition/Create Large-scale Concern About Condition

Presentation

The third and fourth steps of Hartjen's model to constructing a social problem are being combined for the purpose of this study, because these two stages are closely linked in the creation of the social problem of "drug babies." Publicizing this condition was crucial to the widespread concern that was generated. One stage cannot adequately be discussed apart from the other.

Hartjen (1977) indicates that there are three primary groups that are significant in deciding whose interests are to be promoted. These are private interest groups, public officials and the media. Of these three, the media usually plays the primary role. The power of the media in shaping public opinion is especially apparent during the emergent stages of a social problem. Although the media may be used by different groups, the government has a special advantage in using the media to its benefit for several reasons. It can manipulate the information that the media receives; statements from government officials may seem especially newsworthy and therefore outweigh opposing views; the media relies on the government to a certain extent for its stories; and the media may actually advocate the government's views. It clearly served the interests of the conservative Reagan and Bush administrations for the media to publicize the issue of "drug babies."

The media turned its attention to drug-using pregnant women in the

mid-1980s. During this time period a growing alarm about "crack babies," in particular, began taking place in communities. This followed drug war propaganda which promoted an aggressive approach to fighting the war on drugs. It also coincided with a time when fetal rights activists were growing in strength. An influx of literature described the negative effects of cocaine on infants. According to Dr. Gideon Koren, director of the Motherisk program at the Hospital for Sick Children of Toronto, the media coined the term "crack babies" (cited in Fackelmann, 1991). Media headlines nationwide detailed the horrors of these babies.

A computer search was conducted to learn the number of national media items which included the term "crack babies" from 1984 to February of 1994. The results showed the number of documents including magazines, newspapers, newsletters, wire services and television transcripts which referenced this term during these ten years (Mead Corporation, 1994). Table 1 lists documents by year. As can be seen, the number of media articles related to crack babies steadily increased from 1984 to 1990. The first decline in numbers did not occur until 1991. This number then peaked at 532 in 1992 before declining again in 1993. Not enough time has elapsed yet in 1994 to project any figures for this year. The attention given to "crack babies" fueled interest in prosecuting pregnant drug users.

In addition, pregnant drug using women have generally been portrayed in the newspapers and on television as Black or Hispanic. Furthermore, poor women of color have been prosecuted for their behavior during pregnancy disproportionate to White middle class women. An ACLU report by Lynn Paltrow (1991b) indicates

Table 1

Media Documents Referencing "Crack Babies"

Year	No. of Media Documents
1984	76
1985	123
1986	143
1987	154
1988	213
1989	357
1990	500
1991	417
1992	532
1993	451

*January 1, 1994 to February 16, 1994 - 63 media documents

that of 59 pregnant drug users arrested at that time, 40 were African-American, 2 were Latino, 1 was Native American, and only 13 were White. The vast majority of these women were lower class. An updated report by Paltrow (1992) cites 159 criminal prosecutions of pregnant women and indicates that approximately 70% involve women of color. Consequently, as Humphries (1992, p. 5) states, "The image which endured was racial, and it activated existing white fears about racial

minorities."

Before any woman was ever convicted of charges related to drug use during pregnancy, a foundation had already been laid for public support of these prosecutions. Publicity, provided primarily by the media, had depicted drug-dependent babies as victims. The mothers of these babies, then, were the obvious "perpetrators" in the eyes of the public. Hartjen (1977) states that in order for large-scale concern to be created about a condition, those creating a social problem must "get people worked up over it." The highly publicized war on drugs in combination with the fetal rights movement appears to have created an atmosphere in which people were ready to get "worked up."

Critique

The publicity directed toward babies born to drug using women effectively created the crack baby myth. The term "crack babies" became a national buzzword that drew to mind mental images of mutant, permanently damaged children. Kennedy (1992, p. A9) writes, "Punchy headlines such as 'Crack Babies: Genetic Inferiors' and 'Crack in the Cradle' have helped shape the stereotype." Ira Chasnoff, president of the National Association for Perinatal Addiction Research and Education (NAPARE) stated the following regarding the public's fascination with the subject of crack babies: "The image of the crack baby really moves out there. Politicians really picked it up. It worked into the trend of writing about the underclass. It's sexy, it's interesting, it sells newspapers and it perpetuates the

us-versus-them idea" (cited in Kennedy, 1992, p. A9).

Yet, estimates by the U.S. Department of Health and Human Services show that more than two out of three crack exposed babies have no adverse effects at birth. With prenatal care the prognosis for drug-exposed newborns improves (Humphries, 1993). Furthermore, of the estimated 100,000 babies that are exposed yearly to cocaine, less than 10% exhibit the symptoms usually associated with "crack babies" (Humphries, 1992). Even those babies who do suffer adverse effects of maternal drug use have been shown to overcome initial disadvantages far more than once believed. In a longitudinal study performed by Dr. Chasnoff cited in Humphries, 1992), crack babies were followed from birth to two and four years of age. Development for these children was found to be within the normal range.

Furthermore, researchers from the National Association for Perinatal Addiction, Research and Education (NAPARE) in Chicago studied 300 crack-exposed children over a period of almost seven years while at the same time assisting the mothers and children. Results showed that IQ scores of crack-exposed children were the same as children who were not exposed to drugs but lived in a similar environment (Kennedy, 1992). Claire Coles, a clinical psychologist at Emory University who has studied "crack kids" states, "It's astonishing that so much fuss has been raised about cocaine when kids born with fetal alcohol syndrome are so much worse off" (cited in Kennedy, 1992, p. A9).

Prosecutions of pregnant women tend to be sensational and politically popular. These prosecutions have generally been highly publicized. Whereas the

initial prosecutions of these women have been well-publicized, the dismissal of the same charges have tended to be much more low profile. Initial prosecutions of pregnant drug using women make headlines and the front page of newspapers nationwide. Dismissals of these charges, however, have been placed further back, in less noticeable sections of newspapers ("Court reverses," 1992; Walsh, 1992). Likewise, studies showing negative effects of maternal behavior make headlines, whereas studies showing no negative effects do not get the same press. Furthermore, studies showing negative effects of paternal behavior get little press (Pollitt, 1990a). This absence of equal press coverage suggests a bias by the media against pregnant drug users.

By the mid to late 1980s the media had effectively publicized the supposed drug crisis and the issue of drug babies. Widespread concern resulted from this publicity. In 1990 Sonnett wrote, "The public is in a punitive mood. The sense of national crisis of drugs and related crime has understandably frustrated Americans to the point of near hysteria" (p. 27). Consequently, many Americans reported that they would be willing to give up some of their freedoms under law if it would mean a significant reduction in illegal drug use (Sonnett, 1991).

Stage Five: Propose a Solution to the Condition

Presentation

As noted previously, Hartjen (1977) indicated that the order of the steps to

constructing a social problem vary depending on the unique dynamics of the problem. In the case of pregnant drug users, the "solution" which was reached early on was to prosecute pregnant drug using women. For instance, in Greenville and Charleston, South Carolina, prosecutors joined with individuals at local public hospitals and state officials to establish a procedure of prosecuting pregnant women testing positive for illicit substances (Paltrow, 1990). In Butte County, California, District Attorney Michael Ramsey decided that something had to be done about the number of drug exposed newborns. He subsequently proposed legislation that would allow all newborns to be tested for signs of exposure to controlled substances. Positive results would then be used as evidence against the mothers. This would be a misdemeanor carrying a penalty of a mandatory 90 day jail term if drug rehabilitation were refused. Ramsey proposed this type of legislation to avoid the problems other courts had encountered in attempts to convict these women of delivery of drugs (LaCroix, 1989). Elsewhere in California, over a dozen bills related to placing sanctions on pregnant drug addicts were proposed (Roberts, 1990).

In Michigan in 1991, Muskegon County Prosecuting Attorney Tony Tague said that he was committing himself to prosecuting pregnant women who were addicted to drugs. He indicated that if he failed in these attempts, he would fight to change state laws so that fetal drug exposure was covered in drug delivery and child abuse statutes. (Perlman, 1991, p. F2). Other states, such as Florida, Massachusetts and New Jersey already had child abuse and neglect statutes designed to prosecute women for prenatal drug abuse when their infants suffered physical

harm as a result (LaCroix, 1989). As of 1992, 12 states had broadened their definitions of child abuse to incorporate fetal drug exposure (Steinbock, 1992). Advocates of prosecuting pregnant drug users rationalize this as being "protective" of the mother and fetus. Various prosecutors have indicated that their interest is in getting pregnant drug users into treatment. Les Bowens, Chief Trial Attorney in Muskegon, Michigan, calls the threat of prosecution a "hammer" to force these women to seek treatment (Perlman, 1991). To these prosecutors and to the public, in general, the solution to the problem of pregnant drug users was to prosecute these women.

Critique

Those favoring prosecution of pregnant drug users claim to have the interests of both woman and child in mind. Advocates claim that prosecutions of pregnant drug users will motivate women to seek treatment and will deter other women from using drugs during pregnancy. Those opposing these prosecutions see these actions as merely punitive.

It is feared that pregnant women who are addicted to drugs will avoid any prenatal care if there is a known risk of prosecution. This could ultimately endanger both the mother and infant (Maher, 1990; Mariner, Glantz & Annas, 1990). Furthermore, it is arguable whether such prosecutions realistically serve any deterrent to continued drug usage, especially to those women addicted to substances. In 1925 the U.S. Supreme Court recognized addiction as a disease. Then, in 1989,

the Supreme Court ruled in Linden v. United States that those addicted to substances may not be able to abstain from use even for a short period of time (cited in Paltrow, 1991a). As such, it seems unrealistic to expect women who are using substances prior to pregnancy to suddenly stop "cold turkey." Additionally, there are few treatment centers available to women and even fewer available to pregnant women given the issues of liability (Maher, 1990; Mariner, Glantz & Annas, 1990). Most of the substance abuse programs that are available to women were modeled after men's programs and are not specifically designed to address the unique psychological, social, and economic issues facing female addicts (Paltrow, 1991a).

Furthermore, it is a concern that women are being prosecuted because of their pregnancy status in the name of fetal rights. If they were not pregnant they would not be prosecuted in most states for drug use and would not be prosecuted in any state for child abuse or delivery of drugs related to their drug use. If criminal sanctions are used to enforce drug use during pregnancy, they may be extended further to apply to legal behavior such as smoking cigarettes, failing to comply with doctors' orders, engaging in strenuous activities and so on. Pregnancy could potentially become strictly regulated by the state. If this were to happen, pregnant women would become nothing more than "fetal containers" with no individual autonomy (Chavkin, 1992; Mariner, Glantz & Annas, 1990; Roberts, 1990).

It is difficult to view the prosecutions of pregnant drug users as either protective or in the best interest of the women at stake. Rather, these prosecutions

may deter women from seeking prenatal care and may deter women from seeking substance abuse treatment even when it is available. In other cases, it may punish women for not addressing their substance abuse needs when no treatment is available.

Stage Six: Establish an Agency to Deal With the Problem

Although there has not been one central agency that has been organized to address this issue, individuals and pre-existing organizations have taken an interest in it. These persons and groups are the claimsmakers involved in constructing the social problem of "drug babies." Prosecutors, healthcare officials, the federal government, and fetal rights advocates have been cited as the primary claimsmakers in the creation of this social problem. These claimsmakers were discussed in detail in Stage Two, Segment Two.

Stage Seven: Periodically Redefine Nature of Social Problem to Allow for Continued Interest

As this "problem" has been of relatively short existence, there has been little time to redefine the nature of it to date. At present it appears that the interest in this "problem" has, temporarily at least, subsided. This issue will be discussed more thoroughly in the following segment.

Stage Eight: Demonstrate That Problem Has Been Successfully Dealt With

The following segment will not be broken down into separate sections of "presentation" and "critique" because there does not appear to be any definitive material regarding the success of measures to address "drug babies." However, this segment will be broken down as follows: (a) the prevalence of continued prosecutions, and (b) the political attention directed to the topic of "drug babies."

Prevalence of Continued Prosecutions

It is not completely clear at this point whether the movement to criminalize pregnancy has been successful or not. However, judging by the lack of recent media documentation and material received in March of 1994 from the ACLU's Center for Reproductive Law and Policy, prosecutions of pregnant drug users have slowed down, at least for the time being. Furthermore, no state has yet passed a law making it a crime for a woman to give birth to an infant who is exposed to illegal drugs, despite efforts to do so (Paltrow, 1992). Paltrow (1993a) indicates that women charged criminally for their behavior during pregnancy have generally been pressured into pleading guilty or accepting a plea bargain. However, there have been 23 cases in which women have challenged the validity of the charges. In all 23 of these cases, the courts have determined the prosecutions to be illegal and/or unconstitutional. Furthermore, prosecutions have stopped in all but one of the states where these prosecutions were successfully challenged.

All of these factors suggest that the prosecutions which were common between the mid-1980s and 1992 are beginning to subside. This apparent decline in prosecutions may be attributed to one of two factors. First of all, prosecutors may be getting discouraged by the fact that most prosecutions of pregnant drug users have ultimately been overturned on the basis that these women were charged under statutes which were never meant to apply to such circumstances. On the other hand, prosecutors may simply be reorganizing for a new attack on pregnant drug users as they wait for new legislation addressing prenatal drug use (Paltrow, 1992). Secondly, there may be prosecutions occurring which are just not receiving the same amount of publicity as earlier prosecutions did. According to Emily Chin (personal communication, March 8, 1994), Administrative Assistant at the New York based Center for Reproductive Law and Policy, there are still ongoing prosecutions and appeals to convictions of pregnant drug users in Indiana and elsewhere.

Political Interest Directed at "Drug Babies"

The interest in advocating the criminalization of pregnancy for drug users also appears to have dissipated as the political atmosphere changed. Humphries (1992) notes that during the Persian Gulf War attention was diverted away from the drug war and domestic concerns to international politics. The 1992 Presidential campaign reflected this change as well. In contrast to the 1988 Presidential campaign in which rhetoric about the war on drugs and anti-crime propaganda

played a central role, the 1992 campaign focused on issues appealing primarily to the middle class such as the deficit, jobs and health care. This group of the population was concerned primarily with improving the American economy and making America competitive in the world market. Both Democrats and Republicans steered away from issues involving poverty and drugs. Humphries (1992) writes that the Republicans avoided topics such as crack mothers because this left them vulnerable for criticism about the failed war on drugs and the large amounts of money which had been directed towards this effort. Additionally, focusing on poverty and its association with cocaine and crack mothers left the administration open for criticism of a Bush recession. Democrats, on the other hand, were trying to present a new, more conservative image to the electorate. Therefore, they steered away from defending underprivileged groups such as crack mothers for fear of coming across as stereotypical "tax and spend liberals."

Ironically, although the war on drugs was not an issue in the 1992 election, the abortion issue was. The Democrats continued to take a "pro-choice" stance towards abortion. The Democratic platform included the following statement: "Democrats stand behind the right of every women to choose, consistent with Roe v. Wade, regardless of ability to pay, and support a national law to protect that right" (1992 National Election, p. 246). The Republican platform, on the other hand, included the following statement against abortion:

> We believe the unborn child has a fundamental right to life that cannot be infringed. We therefore reaffirm our support for a human life amendment to the Constitution, and we endorse legislation to make clear that the

> Fourteenth Amendment's protections apply to unborn children. We oppose using public revenues for abortion and will not fund organizations that advocate it (1992 National Election, p. 243).

If past actions are any indication, as long as the fetal rights movement in the United States remains strong, there will still be advocates of prosecuting pregnant drug users.

Summary

As noted in the first chapter of this thesis, Hartjen (1973) wrote that the fate of any social problem depended on the generation of enough public concern. Although not enough time has passed to adequately see the ultimate fate of this issue, it would appear that at this point, in the case of drug babies, claimsmakers have not been able to maintain an adequate level of public concern to allow for the continuation of this issue as a valid social problem.

The second chapter of this thesis has shown how the problem of "drug babies" was socially constructed, by using the eight stages outlined by Hartjen. The final chapter will be a summary of the information provided thus far. The implications of the findings will then be discussed and conclusions will be reached.

CHAPTER III

IMPLICATIONS AND CONCLUSIONS

Introduction

The first chapter of this thesis began by providing the theoretical framework for this study. Social constructionism was reviewed and it was explained that a form of this theoretical approach would be applied, although not a strict social constructionist approach. The methodological foundation was then provided. The reader was informed of how research was conducted and how it would be presented. Next, literature on the criminalization of pregnancy was presented, and the war on drugs and fetal rights movement were discussed as they related to this issue. Following this first chapter, the second chapter of this thesis provided an application of the theoretical focus. Hartjen's steps to the creation of a social problem were used to demonstrate how the issue of drug babies developed into a social problem. The various stages were subsequently critiqued. The third and final chapter of this thesis will initially review the implications of this study. Following this, measures to deconstruct the social problem of pregnant drug using women and their babies will be suggested. Finally, a summary and conclusion will be presented.

Implications

The criminalization of pregnancy is an important issue because it has targeted members of society on the basis of gender, race, and economic class. More than ever, a woman's behavior during pregnancy has come under scrutiny. Her pregnancy status has automatically made her suspect as the rights of the fetus have increasingly taken precedence over her own. Furthermore, women who are poor and minority have been targeted disproportionately, and, some contest, unjustly, for prosecution (Gustavsson, 1991; Humphries et al., 1992; Logli, 1990; Maher, 1992).

It has been purported that those in positions of power have used women, and primarily poor, minority women, as scapegoats to serve their own purposes (Gustavsson, 1991; Humphries, 1992; Maher, 1990). Proponents of the war on drugs used pregnant drug users as an example of the rising drug problem in the U.S. and as a means of creating public concern about this problem. Prosecutions of these women created an illusion of success under a "get tough" drug policy. As Sonnett (1990) points out, this focus also served to shift attention away from other large-scale failures of the war on drugs. Advocates of the fetal rights movement, on the other hand, used the issue of pregnant drug users to emphasize the rights of the unborn fetus over those of the mother (Pollitt, 1990b). Women were portrayed as their babies' worst enemies.

Gusfield (1969) writes that the public responds to political events largely in terms of their symbolic meaning. He indicates that political action usually has a

meaning beyond what any political action actually achieves. Gusfield uses the temperance movement as an example. He writes that prohibition laws were more symbolic than instrumental in American politics. The fact that the public supported and passed the laws was as important as society actually abstaining from alcohol, because this demonstrated that those in the temperance movement had established a level of social and political dominance. In the case of prosecutions of women for prenatal drug use, pregnant drug users were used to symbolize the wrongs in society. By advocating the prosecutions of these women, those in the drug war and fetal rights movements could fulfill other aspects of their agendas as well. For instance, proponents of the war on drugs could site the need for stricter drug laws and a larger police force. Likewise, members of the fetal rights movement could use pregnant drug users as an example of the need to protect the fetus from a woman's choice.

In addition to promoting the interests of the war on drugs and the fetal rights movement, prosecutions of pregnant drug users also served to divert attention away from systemic social problems and any blame held by society regarding drug babies (Maher, 1990). Prosecuting pregnant drug users provides a quick, visible response to prenatal drug use. However, it does not offer any long term solutions and does not address the reasons why women are using drugs in the first place. As noted previously, the threat of prosecution may actually deter drug using women from seeking prenatal care and subsequently pose more of a risk to both woman and fetus (Maher, 1990; Mariner, Glantz & Annas, 1990). Furthermore, punitive actions

ignore the fact that there are few treatment options available to women and even fewer to pregnant women (Maher, 1990; Mariner, Glantz & Annas, 1990). Also ignored are the backgrounds of many of the women targeted for prosecution. Paltrow (1991a) estimates that up to 90% of female addicts suffered rape or incest as children and notes that many of these women continue to be in abusive relationships. She suggests that, for these women, drug use is not self-indulgent but rather is a form of self-medication to escape from otherwise painful lives.

Prosecuting pregnant drug users has led to the criminalization of pregnancy. These prosecutions have sought to take away a woman's autonomy over her own body. They have been discriminatory towards women based on their gender as it is a woman's pregnancy status which makes her eligible for prosecution. Paltrow (1993b) indicates that in one court case the state argued this assertion by stating that "a male cannot be convicted...for delivery of cocaine arising from prenatal drug abuse only because a male cannot become pregnant-not because the statute impermissibly singles out pregnant women who have used drugs" (p. 21). However, Paltrow notes that actions taken by men can cause damage to their sperm which in turn may result in injury, illness, miscarriage, or neonatal death. Furthermore, there have been preliminary studies suggesting that male drug use may also effect the fetus (Ezzell, 1991; Paltrow, 1993b). Yet, men are not equally targeted for prosecution.

In addition, prosecutions have been discriminatory towards poor women of color in particular. As cited in Chapters I and II, this is partially due to bias

involved in the drug testing procedure and partially due to impoverished minority women being under closer government supervision (Gustavsson, 1991; Logli, 1990; Maher, 1992). Prosecutions have been presented as being in the interest of both the women and the fetuses. However, some argue that the interest which they have truly served has been that of special interest groups such as advocates of the war on drugs and the fetal rights movement.

Suggestions

The issue of drug babies has been socially constructed as a problem over a number of years. Although it is not clear whether or not this issue will continue to be considered a social problem noteworthy of criminal prosecutions, it seems reasonable to conclude that this issue will not disappear instantly as a social problem either. Therefore, the following segment of this thesis will provide suggestions on how to deconstruct this "social problem" and deal with the issue of pregnant drug using women in a more productive and beneficial manner than has been done thus far.

First of all, the public could be educated on the facts regarding prenatal drug use and its effects on the fetus. The media, for the most part, has conveyed the message that most babies exposed to drugs are seriously and permanently impaired. "Crack babies," in particular, have been touted by the media as an illustration of the harmful effects of prenatal drug usage (Fackelmann, 1991). However, Humphries (1993) cites estimates by the U.S. Department of Health and Human Services which

indicate that more than two out of three crack exposed babies show no adverse effects at birth, and with adequate prenatal care the prognosis for drug exposed newborns improves. Members of society could also be informed of the number of babies born exposed to drugs and then the number actually effected negatively by drug use. For example, Humphries (1992) indicates that of the estimated 100,000 babies exposed to cocaine, less than 10% actually exhibit symptoms typically associated with "crack babies." Furthermore, although there has been concern over the long-term impact of babies born to drug-using women, longitudinal studies have shown development to be within the normal range for these children (Humphries, 1992). It may be beneficial for the general public to be made more aware of the true long term effects of prenatal drug use on the children of drug users. In addition to this, the public should be made aware that punitive sanctions have been directed unjustly at poor and minority women (Gustavsson, 1991; Logli, 1990).

Secondly, the public could be educated regarding the respective roles of fetus and mother. The fetal rights movement, combined with advances in medical technology, has allowed the fetus to be viewed increasingly as an entity on to itself (Fetal Rights, 1992). This has contributed to the perception of women being adversaries to their fetuses. A bumper sticker observed by this writer in April of 1994 captured this sentiment with the statement, "The most dangerous place for a child to be today is in its mother's womb." This type of philosophy has contributed to the prosecutions of pregnant drug users. In order for the public to stop viewing women as threats to their children, recent ideology regarding women and their

fetuses must be redefined. Maher (1990) writes that in order to do this it is crucial for the image of the fetus to be placed back within the woman's body, as it actually is, rather than free-floating as traditionally presented by anti-abortion activists. Furthermore, the public could be made aware that prosecuting pregnant drug users does not always serve a legitimate health interest for the fetus as advocates of these prosecutions profess, but instead, may place both women and their fetuses in further jeopardy (Paltrow, 1990).

Just as the media played a central role in creating pregnant drug users and their babies as social problems, it can also play a key role in dispelling the myth of "drug babies." However, the media may not be interested in publicizing this information as this message may not be politically popular or as sensationalistic as that of crack babies and prosecutions of pregnant drug users. Therefore, it could be more effective for segments of society having an interest in deconstructing this social problem, such as women's groups and the ACLU, to use whatever resources they have to educate the public on the facts involved in prosecutions of pregnant drug users as well as the roles of woman and fetus.

In addition to constructing a revised view of pregnant drug users and the woman/fetus relationship, it is also important that drug use and abuse be approached in a different manner. Maher (1990) indicates that in order to redefine the "problem" of drug babies, the dominant political, media and social science rhetoric regarding this issue must be deconstructed. Maher states that this involves coming to the conclusion that the crack culture is a product of "Reaganite social policy,"

not the "decadent excesses" of the 1960s. She further states:

> Every dollar spent on the cops, courts, corrections and bureaucratic infrastructures required to sustain the drug-war machine is a dollar diverted from reversing the social policies that gave birth to the ghetto, nurtured sexism and racism and spawned the crack culture (p. 8).

In order to begin reversing the social conditions which led to pregnant drug users and their babies being created as social problems in the first place, proactive rather than punitive action might be taken to address substance abuse. As an initial step, the government could start channeling more money into substance abuse treatment and education rather than focusing on building up law enforcement and creating tougher sanctions for drug users. Increased penalties for drug offenses have not reduced illegal drug consumption or importation into the United States but, rather, have served to create an overloaded judicial and prison system (Sonnett, 1990).

This thesis has made note of the limited number of substance abuse treatment facilities available to and designed specifically for women (Maher, 1990; Mariner, Glantz & Annas, 1990; Paltrow, 1991a). Instead of prosecuting pregnant drug users for prenatal drug use when treatment is typically not available, some argue that the government and communities should focus on creating more adequate substance abuse treatment facilities for women, including specialized treatment for pregnant drug users. This type of action would be a positive and proactive response to female drug use and could yield more long-term, lasting benefits than might punitive prosecutions. Ideally, treatment centers for women would not be modeled

after male-oriented centers as has been the case historically. Instead, these agencies would be designed specifically for women. Taking into account the high percentage of substance-abusing women who have been victimized by physical or sexual abuse, treatment would include counseling to deal with past and/or present abuse as well as joint family counseling (Paltrow, 1991a). Furthermore, if necessary, child care would be provided for these women while they are in treatment. In addition, treatment centers for pregnant women would provide both prenatal care and substance abuse treatment and education.

There already are some agencies after which new treatment centers could be modeled. For instance, Project Together, of Des Moines, Iowa, was created in April of 1990, as a means for women to maintain parental custody of their children while at the same time seeking help for substance abuse. Women and their children are allowed to stay in this program for up to two years. While there, women address such issues as substance abuse, parenting skills, and gaining independence from the welfare system. In the first 16 months of operation, this home served 56 women, 5 of whom were pregnant. Preliminary data for 32 women indicated that the average length of stay was 109 days. Forty-one percent of these women left the program "successfully." Another 34% left the program early against staff advice, and 25% were rule violators (Saunders, 1992). Although these numbers may not seem to reflect a huge success rate, these numbers may actually be quite positive considering the length of this program. Furthermore, others who were not listed as "successes" may have actually gained useful life tools while involved in this

program. It may be possible to obtain a more accurate reflection of the success of this program given more time.

Humphries et al. (1992) cite other programs which combine prenatal care and drug treatment. They include Born Free of San Diego, California, which was the country's first residential treatment program for pregnant women; Harlem Hospital Center in New York, which treats pregnant addicts exclusively; and Hutzel Hospital of Detroit, Michigan which provides prenatal, delivery, and post-partum care to pregnant addicts while at the same time encouraging women to enter residential or day programming at the Hutzel Recovery Center. Success rates for these programs were not provided. However, Humphries et al., indicate that they are most optimistic about programs which are voluntary, family-centered, and offer assorted social services in addition to drug treatment and prenatal care.

Just as the issue of "drug babies" and pregnant drug users has been socially constructed as a problem, it may also be deconstructed. This may be achieved by presenting members of society with a reconstructed perspective regarding prenatal drug use, pregnant drug using women and the relationship between woman and fetus. In order to counteract the media-created hysteria over drug-exposed infants, education could be provided on the facts regarding prenatal drug use and its actual effects on the fetus. Furthermore, the message could be conveyed that prosecutions of pregnant drug using women unfairly target poor women of color. In addition to this, some propose that the adversarial relationship between woman and fetus created largely by the fetal rights movement needs to be reconstructed. Some

suggest that in order for this to occur, the fetus should be perceived as an entity within and secondary to the woman, rather than independent from and primary to the woman. Finally, more adequate means of addressing female substance use and abuse is called for. Rather than spending money on prosecutions of pregnant drug users, the government and communities could be investing money in creating specialized drug treatment programs for women.

Summary and Conclusion

The issue of drug babies was socially constructed as a social problem in the mid- to late 1980s. During this time period several factors joined together to make this possible. At the same time that the war on drugs was gaining in popularity, the media began publicizing stories of newborn babies who had been prenatally exposed to drugs by their mothers. Those exposed to crack cocaine were targeted specifically. This added to public alarm as cocaine had already been presented to the public as the primary concern in the fight against drugs. At the same time that the drug war was growing in strength, the movement towards fetal rights was also gaining momentum. The attention provided by the media to the unborn fetuses or newly born infants of pregnant drug users complemented the approach of fetal rights advocates who focused on the rights of the fetus rather than the woman. Like the war on drugs, the fetal rights movement thrived under the conservative Reagan and Bush administrations. Both of these movements sought to take away basic civil rights from individuals. These movements combined to create an atmosphere which

was conducive to the prosecutions of pregnant drug users.

Consequently, in the mid-1980s, prosecutors began charging women with drug delivery and/or child abuse related to their drug use while pregnant. These prosecutions were generally based on unrelated statutes. Furthermore, prosecutions focused disproportionately on poor and minority women. However, instead of objecting to or questioning these prosecutions, the general public seemed to be in favor of the punitive actions taken against these women. Primary claimsmakers behind the movement to criminalize pregnancy were the media, prosecutors, health care providers, the federal government and members of the fetal rights movement. It has only been in the past year or two that high-publicity prosecutions of pregnant drug users and rhetoric on the peril of drug babies have appeared to subside.

In conclusion, the first chapter of this thesis provided the methodological foundation and the theoretical framework for this study and reviewed literature on the criminalization of pregnancy, the war on drugs, and the fetal rights movement. The second chapter of this thesis then provided an application of the theoretical focus using Hartjen's steps to the creation of a social problem to demonstrate how the issue of drug babies developed into a social problem. The various stages were then critiqued. Finally, the third chapter of this thesis reviewed the previous two chapters and then discussed implications of this study and suggestions for deconstructing pregnant drug users and their babies as social problems.

This thesis has illustrated how the issue of drug babies was socially constructed as a problem given the underlying movements of the war on drugs and

the fetal rights movement.The significance of the subsequent criminalization of pregnancy and its wide reaching effects have also been conveyed. This study has provided the reader with an awareness of the importance of this issue and has provided suggestions to address the issue of pregnant drug using women. This knowledge is critical to deconstructing this socially created problem and to preventing the continued criminalization of pregnancy.

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