Psychological Jurisprudence and the Power of Law
A Critique of North Carolina's Woman's Right to Know Act

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INTRODUCTION

The critical philosophy of psychological jurisprudence ("PJ") is one way to undertake an examination of law and policy.[1] PJ takes the view that any useful assessment of public policy necessarily begins with theory that can "describe, explain, and predict law by reference to human behavior."[2] Such a theory offers

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1. *See* BRUCE A. ARRIGO ET AL., THE ETHICS OF TOTAL CONFINEMENT: A CRITIQUE OF MADNESS, CITIZENSHIP AND SOCIAL JUSTICE 5–7 (2011) [hereinafter ETHICS] (describing psychological jurisprudence generally and its relevance for advancing citizenship); Bruce A. Arrigo, *De/reconstructing Critical Psychological Jurisprudence: Strategies of Resistance and Struggles for Justice*, 6 INT'L J. L. CONTEXT 363 (2010) [hereinafter *Psychological Jurisprudence*] (developing the critical reformist philosophy of psychological jurisprudence). As socio-cultural criticism and as philosophy of law, Arrigo has described the relevance and utility of PJ – especially with respect to case and statutory analysis. As he explained:

> "Its [i.e., PJ's] premise is that the exercise of power is not so much an effect of the law as it is a cause, especially since this power is embedded within and conveyed through the very construction of legal language and as sourced within legal texts . . . PJ's critical paradigm assumes that the possibility of achieving citizen justice and communal good requires a careful (re)reading of the concealed values, unspoken interests and hidden assumptions [i.e., underlying ideology] lodged within various legal documents, including those texts affecting vulnerable and marginalized individuals and/or collectives."

Id. at 364 (internal citations omitted).

2. Mark. A Small, *Advancing Psychological Jurisprudence*, 11 BEHAV. SCI. & L. 3, 11 (1993); *see also* Brian G. Sellers & Bruce A. Arrigo, *Adolescent Transfer, Developmental Maturity, and Adjudicative Competence: An Ethical And Justice Policy Inquiry*, 99 J. CRIM. L. & CRIMINOLOGY 435, 436 (2009) [hereinafter *Adolescent Transfer*] (explaining psychological jurisprudence); Heather Y. Bersot & Bruce A. Arrigo, *The Ethics of Mechanical Restraints in Prisons and Jails: A Preliminary Inquiry from Psychological Jurisprudence*, 11 J. FORENSIC PSYCHOL. PRAC. 232 (2011); S. Lorén Trull & Bruce A. Arrigo, *U.S. Immigration Policy and the 21st Century Conundrum of 'Child Saving': A Human Rights, Law and Social Science, Political Economic and Philosophical Inquiry*, 66 STUD. LAW POL. & SOC'Y 1, 31 (forthcoming 2015) [hereinafter *Juvenile Immigration Policy*] (describing the methodology of psychological jurisprudence).

a critique about how and for whom justice is administered through judicial and/or legislative decision-making. It also diagnoses the type of ethic that this rendition of justice both dignifies and affirms at structural, institutional, and individual levels of inquiry and analysis.[3] In practice, PJ offers a path to courtroom and congressional fact-finding that guides legislative and judicial officials to judgments based on sensible values and pertinent data that support human capital (growth in moral character) and wellbeing (depth in moral conscience).[4] When this virtue-based reasoning informs judicial and legislative choice and action, then "these values and data emphasize not merely what law [and policy] [are] but what [they] *ought to be*."[5]

This article examines the North Carolina Woman's Right to Know (WRK) Act through the lens of PJ's underlying normative philosophy.[6] The North Carolina State Legislature's reevaluation of abortion laws is consistent with a nationwide shift in abortion policies.[7] This move is based in part on a

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3. *See, e.g.*, Bruce A. Arrigo, *Responding to Crime: Psychological Jurisprudence, Normative Philosophy, and Trans-desistance Theory*, 41 CRIM. JUST. & BEH. (forthcoming 2015) (outlining the elements of PJ's philosophical critique of justice and diagnosis of ethics in relation to theorizing criminal desistance).

4. ETHICS, *supra* note 1, at 141-159 (discussing how to make the social theory and how to translate the critical philosophy of PJ into justice policy).

5. *Id.* at 6–7. Several empirically-based studies of case and/or statutory law help to substantiate this claim. *See Adolescent Transfer*, *supra* note 2, at 363 (reviewing the ethics that informs the U.S. Supreme Court's policy prescription on juvenile waiver, cognitive impairment, and adjudicative competence); Heather Y. Bersot & Bruce A. Arrigo, *Inmate Mental Health, Solitary Confinement, and Cruel and Unusual Punishment: An Ethical and Justice Policy Perspective*, 2 J. THEOR. & PHILOS. CRIMINOLOGY 1, 3 (2010) (reviewing the ethics that informs appellate and U.S. Supreme Court policy prescription on solitary confinement, mentally disordered offenders, and cruel and unusual punishment); *Juvenile Immigration Policy*, *supra* note 2, at 34 (reviewing the ethics that informs the Nation's policy prescription on juvenile immigration, criminalization, and human rights); Heather Y. Bersot & Bruce A. Arrigo, *Responding to Sex Offenders: Empirical Findings, Judicial Decision Making, and Legal Moralism*, 41 CRIM. JUST. & BEH. (forthcoming 2015) (reviewing the ethics that informs the U.S. Supreme Court's policy prescription on sex offenders, civil commitment, offender registration and community notification). Each of these studies considered how (and for whom) justice was administered given that the jurisprudential or doctrinal reasoning was not derived from or based upon virtue ethics.

6. Our concern is with how political and cultural dynamics coalesce in legislation, revealing a fundamental logic whose rhetorical power (i.e., performativity) can itself be the object of inquiry. *See, e.g.*, JACQUES DERRIDA, SPEECH AND PHENOMENA, AND OTHER ESSAYS ON HESSERL'S THEORY OF SIGNS 3–16 (David B. Allison trans., Northwestern Univ. Press 1973) (1967) (explaining the relationship between language and truth); JACQUES DERRIDA, OF GRAMMATOLOGY 74–95 (Gayatri Chakravorty Spivak trans., Johns Hopkins Univ. Press 1997) (1967) [hereinafter GRAMMATOLOGY] (examining the connections between writing and knowledge); JACQUES DERRIDA, POSITIONS 4–5 (Alan Bass trans., Continuum 2nd ed. 2002) (1972) [hereinafter POSITIONS] (discussing the relationship between rhetoric and meaning). In this regard, the question of investigating *any* policy prescription can be stated thusly: "How and for whom justice is served (or denied) by prevailing…decisions and practices." Bruce A. Arrigo, *Justice and the Deconstruction of Psychological Jurisprudence: The Case of Competency to Stand Trial*, 7 THEOR. CRIMINOL. 55, 55 (2003) [hereinafter *Justice and Deconstruction*].

7. *See, e.g.*, Ryan Bakelaar, *The North Carolina Woman's Right to Know Act: An Unconstitutional Infringement on a Physician's First Amendment Right to Free Speech*, 20 MICH. J. GENDER & L. 187, 188–89 (2013); Ellen Camburn, *Doctor-Patient-State Relationship: The Problem with Informed Consent and State Mandated Ultrasounds Prior to Abortions*, 10 RUTGERS J. L. & PUB. POL'Y 301, 304–05 (2013) [hereinafter *Mandated Ultrasounds*]; Aimee Furdyna, *Undermining Patient Autonomy by Regulating Informed Consent*

reevaluation of controversial social science issues surrounding abortion.[8] In the case of North Carolina's WRK Act, this shift in political and cultural reality challenges socio-legal scholars to reconsider how critical analysis can help to account for the process of legislative decision-making, and explain the nature (i.e. the character or personality) of ideological policy prescription.[9]

To analyze the North Carolina WRK Act, we address three issues. In part I, we discuss the country's shifting jurisprudential climate on abortion law and policy. This includes a brief review of the precedential U.S. Supreme Court decisions that have shaped subsequent lower court decision-making on the matter, as well as a summary appraisal of several recent constitutional challenges to state abortion statutes. In part II, we describe the key theoretical and methodological elements of our PJ-informed investigation of North Carolina's WRK Act. In particular, these elements both explain and integrate feminist standpoint epistemology and postmodern deconstructionist philosophy, and

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for Abortion, 6 ALB. GOV'T L. REV. 638, 639–43 (2013) [hereinafter *Informed Consent*]; Brendan Pons, *The Law and Philosophy of Personhood: Where Should South Dakota Abortion Law Go from Here?* 58 S.D. L. REV. 119 (2013) [hereinafter *Personhood*]; Jeffrey Roseberry, *Undue Burden and the Law of Abortion in Arizona*, 44 ARIZ. ST. L.J. 391 (2012) [hereinafter *Undue Burden*]. On June 17, 2011 the North Carolina WRK Act was ratified and presented to Governor Beverly Perdue. Ten days later, Governor Perdue vetoed the act, asserting that the bill "contains provisions that are the most extreme in the nation in terms of interfering with that [physician/patient] relationship." Paul Stam, *Woman's Right to Know Act: A Legislative History*, 28 ISSUES L. & MED. 3, 13 (2012). Governor Perdue additionally argued that the relationship and medical advice shared between a physician and his or her patient should not be interfered with by elected officials in order to "impose their own ideological agenda on others." *Id*. Notwithstanding Governor Perdue's veto, the Woman's Right to Know Act was passed on July 26, 2011. *See* Woman's Right to Know Act, ch. 90, 2011 N.C. Laws 405.

8. Three prominent streams of inquiry exist within the medical, social and behavioral sciences literature regarding a woman's reproductive rights, the abortion experience, and the health and welfare policy that pertains to them. These streams of inquiry include studies that: (1) examine the unsettled relationship between mental health and abortion; (2) assert or assess the importance of state mandated information on informed consent; and (3) discuss the problem of personal and social stigma. *See* RICKIE SOLINGER, REPRODUCTIVE POLITICS: WHAT EVERYONE NEEDS TO KNOW 1–3 (2013) (examining relationship between mental health and abortion, informed consent, and personal and social stigma); *accord* Brenda Major et al., *Abortion and Mental Health: Evaluating the Evidence*, 64 AM. PSYCH. 863, 863–63 (2009); Alison Norris, *Abortion Stigma: A Reconceptualization of Constituents, Causes, and Consequences*, 21 WOMEN'S HEALTH ISSUES 49, 49–50 (2011); Gilda Sedgh et al., *Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008*, 379 LANCET 625 (2012).

9. We are mindful that multiple, competing, and contradictory notions of ideology exist. *See generally* VALERIE KERRUISH, JURISPRUDENCE AS IDEOLOGY (1991) (distinguishing between neutral and negative ideologies); JOHN THOMPSON, IDEOLOGY AND MODERN CULTURE: CRITICAL SOCIAL THEORY IN THE ERA OF MASS COMMUNICATION (1990) (arguing socio-political thinkers have failed to take account of culture and mass communication in modern societies). Our view is consistent with Mannheim's Marxian-derived attempt to understand the construct within the confines of the sociology of knowledge. *See* KARL MANNHEIM, IDEOLOGY AND UTOPIA: AN INTRODUCTION TO THE SOCIOLOGY OF KNOWLEDGE 2-3 (Harcourt, Brace & Co. 1954) (1936). This perspective on and about ideology allows the researcher to identify the objective bases through which ideology generates "totalizing" meaning and the interpretive bases on which this objectivity makes evident "the social and activist roots of thinking." *Id*. at 4. Totalizing meaning leads to the problem of reification. This is the condition in which dominant belief systems (i.e., ideologies), as socially constructed, function as "facts of nature, [the] result of cosmic laws, or manifestations of divine will." PETER BERGER & THOMAS LUCKMANN, THE SOCIAL CONSTRUCTION OF REALITY: A TREATISE IN THE SOCIOLOGY OF KNOWLEDGE 33 (Anchor Books 1967) (1966). As we subsequently explain in our theory and method section, this view of ideology can be investigated by relying on and assimilating feminist standpoint epistemology and postmodern deconstructionist philosophy.

specify how such a synthetic approach to statutory analysis can be deployed to evaluate the WRK Act. In part III, we present and discuss the intra-textual themes that reflect congressional intent (e.g., attitudes, dispositions, preferences), as well as commentary on how these themes reveal (i.e. make present and absent) the political and cultural dynamics of abortion policy in North Carolina (i.e. legislative ideology).

I. LAW AND POLICY

The country's climate of shifting jurisprudence on abortion law and policy can be traced to several U.S. Supreme Court decisions, including *Roe v. Wade*,[10] *Planned Parenthood of Southeastern Pennsylvania v. Casey*,[11] and *Gonzales v. Carhart*.[12] In this section, we summarily explain the essential doctrinal reasoning of these rulings and examine several recent appellate and district court cases addressing various constitutional challenges to abortion laws. These recent cases reveal the divergent (and thus inconsistent) legal reasoning that presently underscores (and confounds) the status of abortion law and policy in the United States.

A. Supreme Court Cases

In *Roe*, the Court set forth the trimester framework, limiting states' abilities to restrict women's access to abortion. Women had the right to choose to have an abortion at any time during the first trimester. During the second trimester, states could regulate abortion only as reasonably related to promoting the states' interest in maternal health. It was not until the third trimester that the states had the right to enact legislation favoring the potential life of a fetus. In the third trimester, states could regulate and even proscribe abortion, provided that any such regulation included exceptions for situations in which the mother's life would be at risk.

Roe's trimester framework remained intact until 1992, when the Supreme Court rendered its decision in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.[13] This case represented the first challenge to the informed consent provisions of *Roe*. Specifically, the Pennsylvania statute at issue required a twenty-four hour waiting period and mandatory counseling for women of all ages, ordered that minors receive consent from their parents, and mandated that married women notify their husbands before an elective abortion could take place. The *Casey* Court only found the spousal notification provision unconstitutional and upheld the other requirements. Additionally, the *Casey* Court affirmed the essential holding of *Roe*; namely, that a woman's right to have an abortion pre-viability (in the first two trimesters) without undue state interference was constitutionally protected.

10. Roe v. Wade, 410 U.S. 113 (1973).

11. Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833 (1992).

12. Gonzales v. Carhart, 550 U.S. 124 (2007).

13. *See Casey*, 505 U.S. at 870 (explaining that "the line should be drawn at viability, so that before that time the woman has a right to choose to terminate her pregnancy").

However, the *Casey* Court rejected certain personal liberty guarantees that were established under *Roe's* trimester framework. In particular, *Casey* allowed states to impose restrictions on first trimester abortions so long as those restrictions solely served to safeguard a woman's health interests. Moreover, the Court acknowledged that with medical advances, the point of viability might occur before the third trimester. Finally, the *Casey* Court concluded that any state regulation that had the effect of placing a "substantial obstacle" in the way of women's access to pre-viability abortion constituted an "undue burden," and was thus an unconstitutional interference on a woman's right to choose.[14] This aspect of the *Casey* decision set the stage for legal exegeses at the appellate and district court levels wherein challenges to the constitutionality of abortion state statutes were reviewed under the new undue burden test.

In the case of *Gonzales v. Carhart*,[15] the lower courts reasoned that the Partial-Birth Abortion Ban Act of 2003 was unconstitutional because it did not include an exception for circumstances in which the banned intact dilation and extraction procedure would preserve the health of the woman. Thus, consistent with *Casey*, the lower courts found that the federal ban imposed an undue burden on women because the procedure covered pre- and post-viability abortion. The Supreme Court upheld the constitutionality of the Act, reasoning that the ban did not impose an undue burden on women; instead, it prohibited only one type of late-term abortion procedure (namely, intact dilation and extraction), leaving the more common regular dilation and extraction procedure. Since alternatives to the banned method existed, the lack of a health exception did not constitute a substantial burden on women's access to abortion. The *Carhart* decision was the first to deviate from the doctrinal reasoning acknowledging that a health exception for women represented sufficient constitutional grounds for an abortion to be considered legal.

B. District and Court of Appeals Cases

Several district and appellate court decisions from recent years inform the current climate of shifting jurisprudence with respect to abortion law and policy around the country. These lower court rulings are the result of First and Fourteenth Amendment challenges to state abortion laws. In what follows, we discuss only those cases that are the most recent and germane to determining the status of abortion law and policy at the district and appellate court levels. With respect to First Amendment challenges, *Stuart v. Huff* and *Texas Medical Providers Performing Abortion Services v. Lakey* are the most relevant cases for furthering the constitutional landscape of abortion law and policy.[16]

In *Stuart*, a group of North Carolina physicians challenged a section of the North Carolina Woman's Right to Know (WRK) Act as unconstitutional under First Amendment. They argued that the "speech- and-display" provision of the Act, which required physicians to perform an ultrasound and verbally describe the image in detail to a woman seeking an abortion, unconstitutionally

14. *Id.* at 877.
15. Gonzales v. Carhart, 550 U.S. 124, 143-44 (2007).
16. Tex. Med. Providers Performing Abortion Servs. v. Lakey, 667 F.3d 570 (5th Cir. 2012).

compelled physician speech.[17] Relying on a strict scrutiny standard of review, the U.S. District Court for the Middle District of North Carolina held that the speech-and-display requirement was unconstitutional. Under the strict scrutiny standard, the state must possess a "compelling government interest and. . . [must have] narrowly tailored [the law] to serve that interest."[18] The *Stuart* Court found that North Carolina did not have a state interest sufficient to compel physician speech; thus, the speech-and-display provision violated First Amendment free speech protections.[19] In 2013, the U.S. Court of Appeals for the Fourth Circuit affirmed the district court's decision, and permanently enjoined the speech-and-display portion of the North Carolina WRK Act.[20]

Similarly, in *Texas Medical Providers Performing Abortion Services*, *v. Lakey*, a speech-and-display requirement in a similar Texas statute, Texas House Bill 15, was challenged under the First Amendment's freedom of speech provision.[21] The U.S. District Court for the Western District of Texas examined the speech-and-display provision based on the strict scrutiny standard of review and ruled in favor of the plaintiff with respect to the compelled physician speech provision. However, the Court of Appeals for the Fifth Circuit later vacated the District Court's decision. Rather than assessing the statute's constitutionality under the strict scrutiny standard of review, the Court of Appeals applied the "undue burden" test and found that "the [statute's] required disclosures of a sonogram, fetal heartbeat and their medical descriptions [constituted] the epitome of truthful and non-misleading information."[22]As such, the speech-and-display requirement did not amount to a substantial obstacle on a woman's access to abortion and was therefore not an undue burden pursuant to the *Casey* framework.[23]

In addition to the First Amendment challenges that have surfaced within abortion law and policy, several pertinent Fourteenth Amendment concerns have

17. Stuart v. Huff, 834 F. Supp. 2d. 424, 428 (M.D.N.C. 2011).

18. Jennifer M. Keighley, *Physician Speech and Mandatory Ultrasound Laws: The First Amendment's Limit on Compelled Ideological Speech*, 34 CARDOZO L. REV. 2347, 2378 (2013).

19. *Stuart*, 834 F. Supp. 2d at 437.

20. Stuart v. Huff, 706 F.3d 345 (4th Cir. 2013).

21. *Lakey*, 667 F.3d at 574.

22. *Id.* at 577-78.

23. *See* Planned Parenthood of Southeastern Penn. v. Casey, 505 U.S. 833, 834 (1992) (explaining that states are allowed to restrict abortions after viability). In a legal analysis of the Texas legislation which compels women to receive and view a pre-abortion ultrasound, Camburn reasoned that the statute did violate the First Amendment, and that it placed an undue burden on women. *See Mandated Ultrasounds*, *supra* note 7, at 316–19. The author noted that mandatory ultrasounds and the required disclosure of information by physicians surrounding the same, not only informed a woman "about the life of a fetus, but more specifically about the life of *her* fetus." *Id.* at 317-18 (emphasis added). Additionally, Camburn explained that as more states enact legislation requiring pre-abortion ultrasounds, more constitutional challenges will emerge. *Id.* at 337–38, especially if higher courts fail to provide structured guidance about how to best interpret these First Amendment challenges. The author concluded by raising concerns about the mounting partisan nature of the physician-patient relationship on matters of women, health, and abortion. *Id.*. As Camburn observed, "the average woman knows what an ultrasound looks like and knows if she views her ultrasound it will look roughly the same. These statutes ignore the autonomy of the patient and physician to engage in a relationship that is medically appropriate and without political ideology." *Id.* at 338.

also been raised[24] with respect to substantive due process and equal protection. In *Planned Parenthood Arizona v. American Association of Pro-life Obstetricians and Gynecologists*,[25] Planned Parenthood argued that certain provisions of Arizona's abortion legislation – specifically, the informed consent provision – violated the equal protection and due process clauses of Arizona's constitution. The informed consent provision indicates that state-mandated information, including an ultrasound and adoption options, must be provided to women "orally and in person."[26] Following a trial court hearing in which the statute's provision was analyzed under a strict scrutiny standard of review, the court issued a preliminary injunction enjoining the informed consent statutory provision against which Fourteenth Amendment due process challenges had been raised. However, relying on the undue burden standard of review, the Court of Appeals of Arizona reversed the trial court's ruling in part, holding that while receiving such information before a mandatory waiting period may be an inconvenience for women seeking an abortion, it did not constitute an undue burden.[27]

In *Hope Clinic for Women v. Flores*,[28] the Illinois Supreme Court addressed First and Fourteenth Amendment challenges to the Illinois Parental Notification Act of 1995.[29] Employing a strict scrutiny standard of review, the Court held that the Act did not violate the state's constitutional guarantees to due process, privacy, and equality. Rather, the Court determined that the Act was carefully crafted to effectuate the goal of promoting minors' best interests through parental consultation prior to abortion.[30]

Additionally, several appellate court cases have challenged state abortion statutes by relying only on the Due Process Clause of the Fourteenth Amendment for jurisprudential or doctrinal guidance. For example, in *Planned Parenthood of Greater Texas Surgical Health Services v. Abbott*, Planned Parenthood challenged two state statute provisions: one requiring physicians to have active admitting privileges to hospitals within 30 miles of an abortion clinic, and another that limited the use of medically-induced abortion procedures.[31] With

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24. *See Undue Burden*, *supra* note 6 at 392-97 (exploring constitutional challenges relevant to Arizona abortion law); *see also* Jessica L. Knopp, *The Unconstitutionality of Ohio's House Bill 125: The Heartbeat Bill as Analyzed Under the First Amendment of the United States Constitution*, 4 AKRON J. CONST'L L. & POL'Y 1, 4-6 (2013) (discussing First and Fourteenth Amendment concerns in relation to Ohio's abortion statute).

25. Planned Parenthood Ariz., Inc. v. Am. Ass'n of Pro-Life Obstetricians &Gynecologists, 257 P.3d 181 (Ariz. Ct. App. 2011).

26. *Id.* at 187.

27. *Id.* at 191.

28. Hope Clinic for Women, Ltd. v. Flores, 991 N.E.2d 745 (Ill. 2013).

29. The Parental Notification Act of 1995 prohibited physicians from "performing an abortion upon an unemancipated minor or 'incompetent person'" without giving 48 hours of "actual notice" to an adult family member, as defined in the Act. The Act allowed for exceptions when the minor or incompetent person is accompanied by a person entitled to notice, notice is waived by an entitled person, a physician certifies that a medical emergency exists creating insufficient time for notice, notice is judicially waived, or the minor declares herself "a victim of sexual abuse, neglect, or physical abuse by an adult family member as defined in" the Act in writing and the attending physician certifies receipt of the minor's written declaration. *Id* at 750.

30. *See id.* at 763 (stating that parental consultation may be necessary to ensure a minor is "sufficiently mature and well-informed" to decide whether to have an abortion).

31. Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott, 734 F.3d 406 (5th Cir.

respect to hospital admitting privileges, the plaintiffs reasoned that the thirty-mile radius was too small in a state as large as Texas, and that this provision thus imposed an undue burden on women. Further, the plaintiffs argued that imposing these limited admitting privileges on physicians could severely diminish women's geographical access to state-sanctioned abortions. With respect to limiting the use of medically induced abortion procedures, the plaintiffs reasoned that the provision restricted and reduced access to abortion for women in the state of Texas. The U.S. Court of Appeals for the Fifth Circuit enjoined the provision of the statute requiring physicians to have active hospital-admitting privileges and issued a stay for the provision regarding medically-induced abortions. The stay meant that physicians would need to positively determine that the mother's life or health necessitated a medically-induced procedure before performing one. However, the court indicated that the provision should stand in non-life-threatening situations.

In *MKB Management Corporation v. Burdick*,[32] MKB Management Corp. (the only clinic providing abortions in the state of North Dakota) challenged the constitutionality of North Dakota House Bill 1456. This bill banned abortions following the detection of a fetal heartbeat – as early as six weeks after conception – and imposed a criminal charge on physicians performing the procedure after that time. MKB argued that the fetal-heartbeat legislation would undermine North Dakota's current abortion statute, which permitted abortions until the point of viability. As of this writing, the U.S. District Court for the District of North Dakota has granted a preliminary injunction and temporarily enjoined the enforcement of House Bill 1456 pending a future decision.

Similarly, *Isaacson v. Horne*[33] involved an Arizona law that prohibited abortions after the 20-week gestation period; that is, after 20 weeks measured from the first day of a woman's last menstrual period. The plaintiffs challenged the constitutionality of the ban on the grounds that it would effectively prohibit some pre-viability abortions, contrary to the principles enumerated in *Roe*. Following the case's dismissal at the district court level, the U.S. Court of Appeals for the Ninth Circuit ruled that the 20-week abortion ban in Arizona was unconstitutional.

However, the Ninth Circuit's decision was questioned in *Horne v. Isaacson*,[34] in which the complainant argued that the Ninth Circuit should have analyzed the Arizona legislation according to the undue burden test promulgated in *Casey*. The U.S. Supreme Court denied Horne's petition for a writ of certiorari in January of 2014. The petition's denial is an example of the U.S. Supreme Court's choice not to render a potential landmark decision on abortion law, leaving lower courts to interpret the relevant jurisprudential and doctrinal issues regarding abortion's legal landscape without definitive constitutional guidance.

Finally, two pertinent cases involving both First and Fourteenth Amendment challenges are worth noting. The first, *Planned Parenthood Minnesota*

2013).

32. MKB Mgmt. Corp v. Burdick, 954 F. Supp. 2d 900 (D.N.D. 2013).

33. Isaacson v. Horne, 884 F. Supp. 2d 961 (D.Ariz. 2012).

34. Issacson v. Horne, 716 F.3d 1213, 1218 (9th Cir. 2013), *cert. denied*, 134 S. Ct. 905 (2014).

v. Rounds,[35] considered a provision of a South Dakota statute requiring that a woman seeking an abortion be made aware that the procedure could lead to an increased risk of suicide or suicidal ideation. The U.S. Court of Appeals for the Eighth Circuit held that such a requirement represented an undue burden on women's access to abortion, as the information was not proven to be truthful and was misleading. Thus, this informed consent provision violated women's right to privacy under the Fourteenth Amendment's Due Process Clause. Additionally, the Eighth Circuit held that the required disclosures regarding suicide risk did compel physician speech, thereby infringing upon First Amendment protections. Ultimately, the Eighth Circuit affirmed the lower court's decision to enjoin the suicide advisory in the statute.

The second case, *Planned Parenthood Minnesota v. Daugaard*,[36] addressed challenges to South Dakota's informed consent provision. This provision, as amended in 2011, requires the fulfillment of four elements: "(1) the Pregnancy Help Center Requirements; (2) the 72-Hour Requirement; (3) the Risk Factors Requirement; [and] (4) the Coercion Provisions."[37] That is, women are required to visit a pregnancy help center in order to receive mandatory pre-abortion counseling, engage in a state-mandated waiting period of seventy-two hours after said counseling prior to receiving an abortion, be made aware of any risk factor (physical, psychological, and emotional) deemed by the state to be related to undergoing an abortion, and be asked to verify whether or not they are seeking an abortion as a result of coercion by another party.[38] The U.S. District Court for the District of South Dakota granted a preliminary injunction, enjoining this legislation after finding it imposed an undue burden on women's access to abortion. The seventy-two hour waiting period was only challenged on Fourteenth Amendment Due Process grounds; the other three informed consent statutory requirements were challenged on both due process and free speech grounds. The decision was affirmed in part and reversed in part by the federal district court.[39] Currently, the only piece of legislation that remains enjoined is the seventy-two hour waiting period.[40]

The *Rounds* and *Daugaard* cases have been subject to considerable scholarly analysis.[41] For example, Erin Bernstein suggested that while disclosure requirements vary, they have the potential to promote public health in the context of abortion.[42] In this regard, Bernstein proposed that a "uniform, mandatory disclosure" would benefit individuals in the abortion decision-making process.[43] Following a brief review of *Rounds* and *Daugaard*, Bernstein concluded that even when courts approach abortion laws like those of South

35. Planned Parenthood Minn., N.D., S.D. v. Rounds, 686 F.3d 889 (8th Cir. 2012).

36. Planned Parenthood Minn., N.D., S.D. v. Daugaard, 799 F. Supp. 2d 1048, 1052 (D.S.D. 2011).

37. *Personhood*, *supra* note 7, at 136.

38. *Daugaard*, 799 F. Supp. 2d at 1052.

39. *Id*. at 1077.

40. *Id*. at 1065.

41. *See, e.g.*, Erin Bernstein, *The Upside of Abortion Disclosure Laws*, 24 STANFORD L. & POL'Y REV. 171, 182, 184-86 [hereinafter *Upside to Abortion*]; *see also Informed Consent*, *supra* note 7, 639–43 (describing the limits and liabilities of abortion informed consent regulation on patient autonomy).

42. *Upside to Abortion*, *supra* note 41, at 191.

43. *Id*. at 177.

Dakota with skepticism, they remain reluctant to wholly invalidate the disclosure measures.[44] As Bernstein notes, "twenty years after the *Casey* Court approved pre-abortion disclosure requirements, even skeptical courts are not likely to reject that decision's embrace of the states' power to compel truthful physician disclosures."[45] Bernstein additionally asserted that disclosure requirements should be used as "politically neutral regulatory tool[s]" and ought not to be politicized; instead, they should enhance a woman's choice by engaging the public health system.[46] Bernstein's conclusion that these requirements have the possibility to promote public health stands in contrast to the conclusion of Aimee Furdyna based on bioethics and medical-decision-making.

According to Aimee Furdyna, the portion of the South Dakota legislation left intact does impose an undue burden on women.[47] Relying on a bioethical context for medical decision- making, Furdyna concluded that "[i]n enacting these pieces of legislation, the states have prescribed the exact process by which a patient may terminate a pregnancy, and have left the patient without any choice in the matter of her own care."[48] Furdyna suggested that South Dakota adopt a model enacted by other states, in which women receive printed material, including information mandated by the state. Under these circumstances, women would have the information easily available to them without infringing on their own or their physicians' constitutional rights.[49]

As demonstrated in the preceding review, the climate of abortion law and policy in the country is not static. Currently, inconsistencies remain in how decisions are reached by district and appellate courts – especially with respect to the standard of review (i.e. strict scrutiny and undue burden analysis). Although the U.S. Supreme Court has had the opportunity to provide further constitutional guidance on the undue burden standard, it has chosen not to do so. Thus, until further jurisprudential or doctrinal guidance is provided on how to best interpret this standard in relation to state statutes, lower courts will continue to be presented with constitutional challenges to current abortion laws.

Clearly, not every case that has addressed the constitutionality of abortion legislation favors a woman's absolute right to reproductive freedom. Statutory challenges, however, continue to be raised in those states where the legislation increasingly attempts to erode a woman's prerogative to choose. Thus, these state challenges provide a useful doctrinal context for assessing the current jurisprudential climate of abortion policy in the country, as well as a political context for assessing how restrictive state abortion legislation advances interests that may not be compatible with women's needs.

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44. *Id.* at 185.
45. *Id*.
46. *Id.* at 213–14.
47. *Informed Consent*, *supra* note 7, at 642.
48. *Id*. at 657.
49. *Id*. at 661-62.

II. THEORY AND METHOD

In this section, we address three core issues that inform and direct the theoretical and methodological underpinnings of the ensuing study. First, we present the constituent components of feminist standpoint epistemology ("FSE"). FSE contests the gendered (masculine) construction of knowledge claims. Second, we recount the elements of Jacques Derrida's deconstructionist method ("DDM"). DDM contests the meaning-making process on which all knowledge claims depend. Third, we describe the integration of FSE and DDM. This synthesis includes a delineation of the study's qualitative research design as fitted to an examination of case or statutory law (such as North Carolina's WRK Act), consistent with the critical philosophy of PJ.[50]

A. Feminist Standpoint Epistemology

As a theory, FSE is comprised of three general concepts: (1) knowledge is socially situated; (2) disenfranchised group members have access to information that non-group members do not possess; and (3) in order to produce more fully objective knowledge, research should begin in the lives of the marginalized.[51] As an operating principle, FSE maintains that scientific research about girls and women must begin with the *lived* experiences of girls and women.[52] For FSE, all knowledge is situated. Thus, all knowledge claims represent standpoints or positions from which meaning is generated. As such, FSE adherents contend that

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50. The proposed integration also comments on the importance of turning to standpoint epistemology and deconstructionist philosophy, especially if the aim is to advance a more fully objective (i.e., inclusive) science on public policy matters. This is science that accounts for how legislative decision-making politically and culturally embraces (or fails to embrace) the justice-based (i.e., equity and equality) realities of poor, vulnerable, or otherwise marginalized societal groups through state-level statutory enactments. As we explain, reliance on the epistemological and methodological grounding of this science to promote reform is compatible with the ethics-of-justice philosophy that functions as a core precept of PJ.

51. *See, e.g.*, SANDRA HARDING, THE SCIENCE QUESTION IN FEMINISM 26–27 (1986) [hereinafter SCIENCE] (challenging the intellectual, political, and cultural foundations of scientific thought and reasoning); SANDRA HARDING, WHOSE SCIENCE? WHOSE KNOWLEDGE?: THINKING FROM WOMEN'S LIVES 169–72 (1991) [hereinafter EPISTEMOLOGY] (delineating a feminist standpoint theory); SANDRA HARDING, THE FEMINIST STANDPOINT THEORY READER: INTELLECTUAL AND POLITICAL CONTROVERSIES 1-4 (2004) [hereinafter STANDPOINT THEORY] (detailing the development of the theory by several of its leading exponents); *see also* Janet Kourany, *The Place of Standpoint Theory in Feminist Science Studies*, 24 HYPATIA 209 (2009) (analyzing the use of standpoint theory as a resource for feminist epistemology); Sharon Crasnow, *Is Standpoint Theory a Resource for Feminist Epistemology?: An Introduction*, 24 HYPATIA 189 (2009) (examining Sandra Harding's standpoint theory in relation to feminist epistemology).

52. *See* SCIENCE, *supra* note 52, at 105–10 (explaining the gender biases found in scientific disciplines); *see also* IRIS M. YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 3 (2nd ed.) (explaining how theories and definitions of justice are cloaked in masculine norms of rights-claiming and reasoning); Katharine Bartlett, *Feminist Legal Methods*, 103 HARVARD L. REV. 829, 829–36 [hereinafter *Legal Method*] (exploring the relevance of a woman's lived reality as a part of cultivating feminist epistemology as contributing to feminist approaches to law); Kristina Rolin, *Standpoint Theory as a Methodology for the Study of Power Relations*, 24 HYPATIA 218, 218–20 (discussing the gendered construction of lived reality).

the situated position of a knower is relevant to the production of knowledge.[53]

Situated knowledge is rooted in Hegel's analysis of the master-slave relationship.[54] Hegel argued that oppression and injustice are best understood from the viewpoint of the slave, rather than that of the slave master, as it is the master who is bound by the work of the slave, rather than the slave bound by the master. [55] Thus, only when the subjugated (that is, the disenfranchised or marginalized) come to realize that the world around them has actually been crafted by their own work will they then be able to achieve self-consciousness and subsequently be able to experience collective release from their constructed alienation.[56]

Consistent with this view, early feminist standpoint theorists attempted to counter the culture of accepted knowledge production. For example, grounding her argument in Marxist theory,[57] Nancy Hartsock claimed that "if material life is structured in fundamentally opposing ways for two different groups, one can expect that the vision of each will represent an inversion of the other, and in systems of domination the vision available to the rulers will be both partial and perverse."[58] When social reality is structured in oppositional ways to advance only dominant values (master over the slave), then the dualities of human activity can never be fully acknowledged and the interdependencies of different groups can never be fully appreciated. Consequently, FSE maintains that perversions of knowledge production result from valuing only the masculine register and male vision regarding the dualities of gender. This is why FSE proponents contend that the situated knowledge of women makes possible a reconsideration of these dualities by "reversing the proper valuation of human activity."[59]

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53. *See* EPISTEMOLOGY, *supra* note 52, at 270; *Legal Method*, *supra* note 53, at 867; *see also* Elizabeth Comack, *Producing Feminist Knowledge*: *Lessons from Women in Trouble*, 3 THEOR. CRIM. 287, 288-90 (1999) [hereinafter *Lessons*] (describing feminist and standpoint knowledge production derived from the experience of doing research with women in prison).

54. *See* GEORG WILHELM FRIEDRICH HEGEL, PHENOMENOLOGY OF SPIRIT 115-19 (A.V. Miller trans., Oxford Univ. Press 1977) (1807) [hereinafter SPIRIT] (describing the dialectical and historical process through which consciousness or mind produces absolute or ideal knowledge about reality); *see also* MARTIN HEIDEGGER, HEGEL'S PHENOMENOLOGY OF SPIRIT 129–41 (James M. Edie et al. ed., Parvis Emad & Kenneth Maly trans., Indiana Univ. Press 1988) (1980) (explaining Hegel's conception of situated knowledge); JOHN RUSSON, READING HEGEL'S PHENOMENOLOGY 70–95 (2004) (discussing Hegel's use of the master-slave relationship); ROBERT C. SOLOMON, IN THE SPIRIT OF HEGEL: A STUDY OF G.W.F. HEGEL'S *PHENOMENOLOGY OF SPIRIT* 443–55 (1983) (same).

55. SPIRIT, *supra* note 55; SCIENCE, *supra* note 52, at 111–19; David A. Duquette, *Hegel: Social and Political Thought*, INTERNET ENCYCLOPEDIA OF PHILOSOPHY (Sept. 2, 2014), http://www.iep.utm.edu/hegelsoc/.

56. SPIRIT, *supra* note 55, at 117.

57. For an overview of Marxist theory, see KARL MARX, THE ECONOMIC AND PHILOSOPHIC MANUSCRIPTS OF 1844 (A. Milligan, trans., International Publishers 1964) (1844).

58. Nancy C. M. Hartsock, *The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism*, *in* 161 DISCOVERING REALITY: FEMINIST PERSPECTIVES ON EPISTEMOLOGY, METAPHYSICS, AND PHILOSOPHY OF SCIENCE 283, 285 (Sandra Harding & Merrill B. Hintikka eds., 2nd ed. 2003) [hereinafter *Historical Materialism*] (analyzing and critiquing the philosophical grounding of the natural and social sciences with relevance for public policy concerns).

59. *Id*. at 299. However, when this reversal (or inversion) is undertaken, something more fundamental is still needed. *See* FRIEDRICH W. NIETZSCHE, BEYOND GOOD AND EVIL: PRELUDE TO A PHILOSOPHY OF THE FUTURE 192 (Walter Kaufmann trans., Penguin Books 1973) (1886) (stating that

Additionally, Catharine MacKinnon asserted that expressions of law are dominated by masculine logic and reasoning.[60] To substantiate her view, she demonstrated how this dominance is expressed in the different-but-equal approach to legal equality claims. Specifically, MacKinnon argued that sex equality in the law becomes a contradiction in terms.[61] When seeking legal equality, women must do so by maintaining that they are distinctly different from men. For women, however, equality under the rule of law still means being scrutinized under the existing conditions of equality as measured by the male standard. Thus, MacKinnon maintained that equality for women *under* the law is only possible when first accounting for the dominance of the male standard *in* the law.[62] The concept of situated knowledge as advanced by FSE adherents suggests, then, that the inversion of traditionally valued (masculine) knowledge production may reveal both discourse and meaning that is currently obscured or absent in (legal) texts.

The concept of situated knowledge as adopted by feminist standpoint theorists gives rise to a second core element of FSE, namely that disenfranchised groups have access to knowledge that non-group members lack. In this regard, disenfranchised or marginalized groups function as the "outsiders within,"[63] meaning that as individuals immersed within the values of the outsider, they have access to unique knowledge not accessible to the enfranchised. Retrieving this knowledge and expressing these values "offers resources for decreasing the partiality and distortion of research" as more inclusive knowledge production is increased.[64] Thus, FSE proponents assert that, in conjunction with women's

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"every elevation of the type 'man' has hitherto been the work of an aristocratic society - and so it will always be: a society which believes in a long scale of orders of rank and differences of worth between man and man and needs slavery in some sense or the other"). In his examination of post-modernism's relationship to law, criminology, and social justice, Bruce Arrigo writes:

> In short, the Hegelian thesis unwittingly functions to legitimize the power of the status quo through the act of reaction-negation. The slave responds to the voice and force of the master; the slave negates the words and the values of the master. However, the position and identity of the slave remains unchanged; dispossession and anonymity still pervade (and perniciously silence) the slave's reality.

BRUCE A. ARRIGO ET. AL., THE FRENCH CONNECTION IN CRIMINOLOGY: REDISCOVERING CRIME, LAW, AND SOCIAL CHANGE 37–38 (2005) [hereinafter REDISCOVERING] (arguing that "a doctrine is needed powerful enough to work as a breeding agent: strengthening the strong, paralyzing and destructive for the world-weary").

60. *See* CATHARINE A. MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 1–17 (1987) (explaining that aspects of the law specifically affecting women have been articulated in masculine terms).

61. *See* Catharine A. MacKinnon, *Reflections on Sex Equality under the Law*, 100 YALE L. J. 1281, 1286-88 (1991) [hereinafter *Reflections on Sex Equality*] (exploring the tension between a view of equality as being the same as men and therefore being treated the same, and the existence of important differences like pregnancy).

62. *See* Catherine MacKinnon, *Difference and Dominance: On Sex Discrimination*, *in* FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER 81 (Katherine Bartlett & Rosanne Kennedy, eds., 1991) (determining that recognition of the differences between the sexes is necessary for sex equality); Catherine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515 (1982) (inquiring into male dominance in the law).

63. EPISTEMOLOGY, *supra* note 52, at 131.

64. *Id*. at 132; *see also* MACKINNON, *supra* note 61, at 1–8; CATHARINE A. MACKINNON, TOWARDS A FEMINIST THEORY OF THE STATE ix–xvii (1989) [hereinafter THE STATE] (examining female experiences).

subordinate position in society, this "double vision" provides "a basis for feminist knowledge."[65] This is because women are able to access two worlds: "their own and that of the dominant group."[66] Double vision gives researchers an epistemic advantage in that they have access to previously concealed information that makes possible a more complete analysis and more inclusive knowledge production.

Indeed, as Harding noted, it is only when one works on "both sides" that the possibility exists to uncover objective knowledge.[67] Moreover, as she explained, "objectivity is increased by thinking out of the gap between the lives of 'outsiders' and the lives of 'insiders'. . . [including] their favored conceptual schemes."[68] To accomplish this, scholars need to investigate the relationship between subject and object rather than "deny[ing] the existence of, or seek[ing] unilateral control over, this relation[ship]."[69] Thus, FSE adherents maintain that objective knowledge production is made more likely when relying on the insider/outsider double vision within and out of which disenfranchised groups dwell. Moreover, this objectivity increases especially when oppositional standpoints (or knowledge claims) among group and non-group members are more closely examined for their potential mutuality and interdependence.

Finally, precisely because disenfranchised group members have access to knowledge that non-group members lack, FSE contends that knowledge production must be grounded in the experiences of the marginalized. According to Harding, this strategy "leads us to ask questions about nature and social relations from the perspective of devalued and neglected lives."[70] Consistent with this reasoning, MacKinnon argued that "man has become the measure of all things"[71] However, when knowledge production is grounded in the experiences of women as a disenfranchised segment of society, then it is possible to have a legal measurement that is not defined by or reduced to male-stream logic and meaning. Indeed, under these conditions, women's equality would not be "judged by [their] proximity to . . . [the masculine] measure."[72] Thus, grounding scholarship in the lives of the disenfranchised (including women), allows researchers the opportunity to uncover values and assumptions that other, more mainstream methods might be inclined to overlook or discount.[73]

B. Derrida's Deconstructionist Method

Derrida's deconstructionist method operates on many levels, and it is intended to explain the philosophical problem of how terms or values function in

65. *Lessons*, *supra* note 54, at 290.

66. *Id.*

67. EPISTEMOLOGY, *supra* note 52, at 191.

68. *Id*. at 132.

69. *Id*. at 152; *see also Reflections on Sex Equality*, *supra* note 62, at 1298 (arguing that the "inequality of women to men deserves a theory of its own").

70. EPISTEMOLOGY, *supra* note 52, at 150.

71. THE STATE, *supra* note 65, at 220.

72. *Id*. at 220–21.

73. *See* STANDPOINT THEORY, *supra* note 52, at 1-13 (introducing standpoint theory as a site of political, philosophic, and scientific debate).

binary opposition as presented in texts and as spoken through systems of communication.[74] The Derridean problem of binary opposition has been used to advance feminist theory and to account for the gendered construction of (legal) knowledge.[75] For example, commenting on the transformational promise of feminist jurisprudence, Cornell noted that "we can and should understand the deconstructibility of law to open up the space for the reinterpretation and reinvocation that allows feminist inroads into the law."[76] These inroads re-examine the situated knowledge terms and values that govern the administration of justice, reconsider the standpoint from and to which this reasoned and lived justice is rendered, and re-conceive the group-member status on which these claims should be made or these decisions should be reached.[77]

Derrida's deconstructionist method is grounded in three core theoretical concepts: (1) the metaphysics of presence; (2) the condition of logocentrism; and (3) the logic of how arguments undo themselves.[78] Additionally, Derrida's method consists of three main components: (1) the reversal of hierarchies; (2) the activities of *différance*; and (3) the performativity of the trace.[79] DDM rests upon the notion that unspoken, obscured, and/or deferred values are lodged within texts. As a method, Derridean deconstruction offers an approach to locating these concealed and missing standpoints and to unpacking these knowledge-producing and meaning-generating values.[80] In what follows, we review the two

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74. *See. e.g.,* REDISCOVERING, *supra* note 60, at 24-27 (summarizing Derrida's epistemology and its critical potential for furthering social change and citizen justice); Jack B. Balkin, *Deconstructive Practice and Legal Theory*, 96 YALE L. J. 743, 785 (1987) [hereinafter *Deconstructive Practice*] (describing the theory and application of Derrida's deconstructionist philosophy for law).

75. DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW 3 (Rowman & Littlefield Publishers ed., Routledge 1991) (1999) [hereinafter ETHICAL FEMINISM]; JANE DURAN, TOWARD A FEMINIST EPISTEMOLOGY 163–67 (1995) [hereinafter FEMINIST EPISTEMOLOGY]; MOIRA GATENS, FEMINISM AND PHILOSOPHY: PERSPECTIVES ON DIFFERENCE AND EQUALITY 112 (1991) [hereinafter DIFFERENCE AND EQUALITY]; PAM PAPADELOS, FROM REVOLUTION TO DECONSTRUCTION: EXPLORING FEMINIST THEORY AND PRACTICE IN AUSTRALIA 9 (2010).

76. ETHICAL FEMINISM, *supra* note 76, at 111.

77. BRUCE A. ARRIGO & DRAGAN MILOVANOVIC, REVOLUTION IN PENOLOGY: RETHINKING THE SOCIETY OF CAPTIVES 133-160 (2009) [hereinafter REVOLUTION] (theorizing prospects for advancing said ethics-of-justice through the critical phenomenology of the shadow and stranger).

78. Derrida developed the theory and method of his deconstructionist philosophy over a series of controversial books and essays. *See generally,* GRAMMATOLOGY, *supra* note 6; JACQUES DERRIDA, MARGINS OF PHILOSOPHY (Alan Bass trans., The Univ. of Chicago Press 1982) (1972) [hereinafter MARGINS]; POSITIONS, *supra* note 6. For useful overviews of Derrida's deconstructionist philosophy *see generally* JOHN D. CAPUTO (ED.), DECONSTRUCTION IN A NUTSHELL: A CONVERSATION WITH JACQUES DERRIDA (1996) [hereinafter CONVERSATION]; JONATHAN CULLER, ON DECONSTRUCTION (1982) [hereinafter ON DECONSTRUCTION]. The latter concept, arguments that undo themselves, addresses the complex relationship between speech, writing, and *difference*. *See* JACQUES DERRIDA, WRITING AND DIFFERENCE 3–30 (Alan Bass trans., The Univ. of Chicago Press 1978) (1967) [hereinafter WRITING AND DIFFERENCE] (analyzing the relationship among these entities). Given that the ensuing study focuses on the NC WRK Act as a text to deconstruct, the Derridean concern for speech and writing will not be specifically featured. However, for commentary examining the relevance of Derrida's notion that arguments undo themselves with particular attention to law, *see, e.g., Deconstructive Practice, supra* note 74, at 755-758 (explaining Derrida's arguments); *Justice and Deconstruction, supra* note 6, at 64 (same).

79. *Deconstructive Practice*, *supra* note 75, at 746–55; *Justice and Deconstruction*, *supra* note 6, at 62–63.

80. FEMINIST EPISTEMOLOGY, *supra* note 76, at 164. Commenting on the reach of this method,

main theoretical concepts of DDM, and then explain the theory's three principal methodological elements. The relationship between theory and method is also tacitly examined as a way to further convey what makes Derrida's textual approach to the problem of binary oppositions so relevant to FSE and to the present study.

1. Derrida and Theory as Method

The metaphysics of presence introduces Derrida's argument that there exist terms that are not just in binary opposition to one another but are also structured in a hierarchical manner.[81] These "thought" hierarchies privilege one of the binary terms and subordinate the other.[82] For example, in speech, the term "objective knowledge" eclipses the term "subjective knowledge"; the values assigned to "whiteness," "maleness," and "heterosexuality" displace the values assigned to "blackness," "femaleness," and "homosexuality." For Derrida, the metaphysics of presence is a function of bias in Western thought, a bias that reveals the object of deconstruction. As Balkin succinctly noted, "Western conceptions of philosophy proceed from the hidden premise that what is most apparent to our consciousness – what is most simple, basic, or immediate – is most real, true, foundational, or important."[83] That is, what is most readily apparent to readers or listeners (for example, a text's conventional, taken-for-granted, or shared meaning) becomes the privileged truth of that text. This truth is accepted on its face, and it is valued for the assumed accurate (factual) information that it conveys. The purpose of deconstruction in relation to the metaphysics of presence, then, is to "think beyond [the] identity [of each term] to unity."[84] This is meaning that is located in the mutuality of the terms or values that are positioned in binary opposition. Thus, as a component of deconstructionist theory, the metaphysics of presence seeks "to counter the simple choice of one of the terms or one of the series against the other. . ., [by generating]. . . new concepts and new models."[85] These concepts emerge from a deconstructionist re-reading of a text's "*presencing*" or privileging of meaning.

Logocentrism explains why binary oppositions exist and why they are

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Duran suggested that, "no text is really a text in the standard sense; every text is what the reader (or interpreter) makes it, and every text (including those not literary) may be deconstructed." *Id*. This view does not imply that all knowledge is relative or subjective; rather, it implies that the meaning-making process is multi-layered and non-exhaustive. As Arrigo et al. explained, "[t]he task of deconstructionist analysis, then, is to identify the play of differences and the mutual interdependencies between terms in a hierarchical opposition, as a way of demonstrating the positional, relational, and provisional nature of all phenomena… [and as a way of ensuring that] what is spoken or written is liberated from the author." REDISCOVERING, *supra* note 60, at 26; *see also Justice and Deconstruction*, *supra* note 6, at 56 (examining the importance of deconstruction).

81. OF GRAMMATOLOGY, *supra* note 6, at 49; *see also* ON DECONSTRUCTION, *supra* note 78, at 92 ("[P]hilosophy has been a 'metaphysics of presence,' the only metaphysics we know").

82. *See Deconstructive Practice*, *supra* note 75, at 747 (stating that "for Derrida, hierarchies of thought are everywhere"); *see also Psychological Jurisprudence*, *supra* note 1, at 366 (illustrating Derrida's logic of hierarchies within the realm of mental health law).

83. *Deconstructive Practice*, *supra* note 75, at 747.

84. CONVERSATION, *supra* note 79, at 152.

85. WRITING AND DIFFERENCE, *supra* note 79, at 19.

structured hierarchically.[86] To a significant degree, these concerns are linked to how the concept accounts for the underlying reasoning that informs the metaphysics of presence. Following Derrida, if the truth of a text is situated in what is most immediate and true to a reader, then a text is (unwittingly) stripped of meaning beyond that. Consequently, the writing itself is evaluated not by what is *fully* written, but by the logocentric argument that is presented.[87] This reading of a text "send[s] everything. . . [other than the demonstrably true and factual argument] off to the periphery as mere rhetoric or ornamentation, letting the logic lead the letter."[88] Thus, given the condition of logocentrism, the activity of writing can only provide concretized (although incomplete) inscriptions of and for human life. These inscriptions render absent other unexamined readings of a text, and these concretized readings are re-enacted (i.e. re-lived as totalizing meaning) through the metaphysics of presence.[89] For Derrida, "logocentrism. . . has always placed in parenthesis, *suspended*, and suppressed for essential reasons, all free reflection on the origin and status of writing."[90] Indeed, the condition of logocentrism stabilizes the written word and, in the process, conceals the multiplicity of meaning or pluri-signification inherently available (and thus retrievable) in the written text.[91] These readings are rendered absent when the logic of argumentation that is most present is then also privileged, or when terms or values in a hierarchical binary dominate the meaning-making process by subordinating the terms or values on which such binaries depend. The result is a finalized and sanitized text, devoid of the possibility of conveying more all-inclusive sense-making and corresponding knowledge production.

2. Derrida and Method as Theory

The problem of binary opposition, as explained through the metaphysics of presence and the condition of logocentrism, indicates that the theoretical footing of this problem depends on a method of re-reading texts (here, state-level statutes). The analytics of this method make evident how texts operate to convey privileged meaning and, in the process, displace or defer other forms of knowledge production. As a dimension of DDM, the reversal of hierarchies calls for the inversion of values in hierarchical opposition. The purpose of this reversal "is to ascertain what additional insights, if any, might be found in their reconstituted arrangement."[92] Additionally, "by switching. . . the hierarchies, one

86. OF GRAMMATOLOGY, *supra* note 6, at 50 (describing logocentrism as a "metaphysics of presence" that is motivated by a desire for a "transcendental signified"); REDISCOVERING, *supra* note 60, at 25 (specifying how logocentrism implies that the "centrality of the first or dominant term masks and conceals the interdependence of both values").

87. *Deconstructive Practice*, *supra* note 75, at 757 (asserting that Derrida called for writing to "expose the hidden logocentric biases of Western thought"); *see also* Bruce A. Arrigo, *Madness, Citizenship, and Social Justice: On the Ethics of the Shadow and the Ultramodern*, 23 LAW & LIT. 405 (2011) [hereinafter *Ethics of the Shadow*] (exploring the ways in which control engulfs the "dialect that is the human agency/social structure duality").

88. CONVERSATION, *supra* note 79, at 83.

89. *Ethics of the Shadow*, *supra* note 88, at 414–15.

90. OF GRAMMATOLOGY, *supra* note 6, at 43.

91. *Justice and Deconstruction*, *supra* note 6, at 62 ("[L]ogocentrism esteems limited interpretations of phenomena, subtending (even marginalizing) alternative readings of a text.")

92. *Id*. (explaining that "To this end, deconstructive practice, as a method of critical inquiry,

can re-examine and re-think the mutual interdependence of both terms."[93] Cornell addressed the paradox of achieving neutrality (objectivist science) when examining hierarchical oppositions within a text, and the requirement of a deconstructionist process that temporarily reverses terms or values in binary opposition. As she noted:

> "[R]ebellion against metaphysical oppositions cannot amount simply to a denial of their existence or an attempt to rise above them in already established 'neutral' discourse, there must be a 'phase' of overturning. . .necessary for the intervention into the hierarchical structure of opposition."[94]

Moreover, commenting on the objectivist potential of inversion, Bruce Arrigo and Dragan Milovanovic explained that the inversion process "decenters our favored ways of interpreting phenomena and invites us to consider other, potentially transformative configurations in which *both* terms are [or can be] valued."[95] Thus, when the term homosexuality is privileged over the term heterosexuality in a text, or when the value of race difference is hierarchically preferred over the value of race neutrality in discourse, this oppositional act turns a text on its head momentarily so that the reader can reconsider the meaning-making and knowledge production process.[96]

For Derrida, specifying the valuation of both terms in a binary opposition draws attention to their mutual interdependencies.[97] These interdependencies help to make explicit Derrida's pluri-significant meaning for the concept of *différance*. As Balkin explained:

> *Différance* simultaneously indicates that (1) the terms of an oppositional hierarchy are differentiated from each other (which is what determines them); (2) each term in the hierarchy defers the other (in the sense of making the other term wait for the first term); and (3) each term in the hierarchy defers *to* the other (in the sense of being fundamentally dependent upon the other).[98]

To illustrate, *différance* indicates how the two logocentric values for "straight" or "gay" are different from each other; how, given the metaphysics of presence (and absence), the spoken or written term postpones the other and how both values are mutually dependent on one another for their meaning-making and knowledge production identities. Thus, as Arrigo concluded, the more

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'reveals and de-centers, although incompletely and temporarily, how legal arguments often disguise ideological positions.").

93. *Id*.; *see Ethics of the Shadow*, *supra* note 88, at 415–16; (examining the merits of deconstruction); *Deconstructive Practice*, *supra* note 75, at 744–46 (discussing the merits of deconstructionism for lawyers).

94. ETHICAL FEMINISM, *supra* note 76, at 95.

95. REVOLUTION, *supra* note 78, at 76.

96. DRAGAN MILOVANOVIC, AN INTRODUCTION TO THE SOCIOLOGY OF LAW 134 (3rd ed. 2003) [hereinafter SOCIOLOGY OF LAW]; *see also Deconstructive Practice*, *supra* note 75, at 746-47 (explaining that the purpose of this inversion "is not to establish a new conceptual bedrock, but rather to investigate what happens when the given, 'common sense' arrangement is reversed").

97. *See, e.g.*, POSITIONS, *supra* note 6, at 39–40; MARGINS, *supra* note 79, at 3.

98. *Deconstructive Practice*, *supra* note 75, at 752; *see also Ethics of the Shadow*, *supra* note 88, at 415–16 (analyzing the concept of différance).

complete (objectivist) meaning of such binaries "emerges from [an assessment of] the interplay of differences and dependencies simultaneously operating within [a given] text."[99]

The final methodological component of DDM relevant to the proceeding assessment of North Carolina's WRK Act is Derrida's notion of the trace.[100] In effect, the trace is an extension of *différance*. As Derrida observed, "if words and concepts receive meaning only in sequences of differences [*différance*], one can justify one's language, and one's choice of terms only within a topic (an orientation in space) and an historical strategy."[101] Cornell further commented on this historical strategy by noting that "*différance* subverts the claim that 'this is all there is!' The [historical] trace of Otherness remains."[102] Stated differently, the value of one term in a hierarchical opposition is always and already contained within the value of the other term on which it (the privileged value) depends for communicating meaning and for generating knowledge.[103] Thus, as Milovanovic concluded with respect to the trace and its performativity:

> [O]ne must start with the idea that any term (presence) always implies a hidden one (absence); both are essential to any meaning of each. The *trace* is that part that exists in each and maintains the relation. In many ways, it is the 'glue.' For those practicing [legal] deconstruction, the challenge is to identify the absent term which maintains the term that is felt as present.[104]

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99. *Justice and Deconstruction*, *supra* note 6, at 63. Gatens uses the example of 'man' and 'woman' when describing the concept of *différance* to further specify this point's complexity. She argues that "if 'woman' has meaning only in relation to its opposite 'man', and if 'man' is implicated in what it means to be 'woman', then a politics which basis itself on the irreducibility and specificity of women's experience is bound to result in contradiction and incoherence." *Difference and Equality*, *supra* note 76, at 112. These contradictions and incoherencies result from the differences between 'man' and 'woman' which postpone, suspend, or repress each other, while also exposing how both terms are dependent on one another to more completely convey their uniqueness or distinctiveness. Thus, the activity of *différance* "disrupts … claims to [singular] identity." by revealing the mutuality of terms in binary opposition. *Ethical Feminism*, *supra* note 76, at 140.

100. *See* OF GRAMMATOLOGY, *supra* note 6, at 46-47; (explaining the notion of the trace); *see also Deconstructive Practice*, *supra* note 75, at 752–53 (same); *Justice and Deconstruction*, *supra* note 6, at 63 (same).

101. OF GRAMMATOLOGY, *supra* note 6, at 41.

102. ETHICAL FEMINISM, *supra* note 76, at 108–09.

103. The trace "is a metaphor for the effect of the opposite concept, which is no longer present but has left its mark on the concept [made present]. . .[.] The trace is what makes deconstruction possible[.]" *Deconstructive Practice*, *supra* note 75, at 752.

104. SOCIOLOGY OF LAW, *supra* note 97, at 134 (emphasis in original). Moreover, the trace helps to explain both how and why method is inevitably linked to its "glue;" namely, the legacy of theory. But this legacy, as history, need not be built upon nihilism, foundationless positions, or the undecided "iterability" (i.e., inexhaustibility) of the text *ad infinitum* and *ad nauseam*. *Id*. at 135. Instead, a deconstructionist method can be deployed whose theoretical moorings promote virtue-based reform (i.e., an ethics-of justice). Commenting on the anchoring of method by way of said deconstructionist theory, Balkin offered the following observations:

> Any social theory must emphasize some human values over others. Such categorizing necessarily involves a privileging, which in turn can be deconstructed. But the goal of deconstruction is not the deconstruction of all possible social visions. Be recalling the elements of human life relegated to the margin in a given social theory, deconstructive readings [as method] challenge us to *remake* [re-historicize] the dominant conceptions

C. Qualitative Research Design[105]

The ensuing study of North Carolina's WRK Act is guided by PJ's underlying ethics-of-justice philosophy. Fundamentally, this philosophy addresses the question: "How and for whom is justice served (or denied) by prevailing [judicial or legislative] decisions and practices?"[106] This query guides the presentation and discussion of the proceeding data. As an operating principle, PJ probes this question by relying on theory that can "describe, explain, and predict law by reference to human behavior."[107] Stated differently, reliance on such theory makes possible a diagnosis of the condition (i.e. the equity means and equality measures) of justice dignified and affirmed at various levels of reality construction (that is, structurally, institutionally, and individually). With respect to the North Carolina WRK Act, the ensuing ethics-of-justice inquiry focuses on how the statute fairly dignifies and proportionately affirms the lived experiences of a woman. It is these experiences that are under critical consideration.

In what follows, we explain how the assimilation of FSE and DDM provides the requisite analytics by which to account for congressional attitudes, predispositions, and values (intra-textual legislative intent), and the necessary empirics by which to comment on how these themes reveal and relay the political and cultural dynamics of abortion policy in North Carolina (intra-textual legislative ideology). To address these matters, we delineate the key points of integration that exist between FSE and DDM, indicate how they will be deployed in the thematic evaluation of the statute, and identify where this assimilation furthers PJ's critical philosophy of ethically-animated inquiry. For simplification purposes, we refer to each of these points of integration as synthetic postulates.

1. Integrating FSE and DDM: Four Synthetic Postulates

[theories] of our society."

105. As a point of departure, we note that our qualitative research design shares several affinities with critical discourse analysis (CDA). *See generally* NORMAN FAIRCLOUGH, CRITICAL DISCOURSE ANALYSIS: THE CRITICAL STUDY OF LANGUAGE (1995); NORMAN FAIRCLOUGH, ANALYZING DISCOURSE: TEXTUAL ANALYSIS FOR SOCIAL RESEARCH (2003); MICHELLE M. LAZAR, FEMINIST CRITICAL DISCOURSE ANALYSIS: GENDER, POWER, AND IDEOLOGY IN DISCOURSE (2005). CDA animates a text (e.g., a state statute, a legal case) by identifying how it functions as a form of socio-political practice (i.e., ideology) made evident by a re-reading of the text's hidden commentary on or about power relations and forms of domination. *See* NORMAN FAIRCLOUGH, LANGUAGE AND POWER 1–13 (2nd ed. 2001) (analyzing the methodology of CDA); DISCOURSE STUDIES: A MULTIDISCIPLINARY INTRODUCTION VOLUME 1 at 1–34 (Teun A. van Dijk ed., 2nd ed. 2011) (1997) (same); RUTH WODAK & MICHAEL MEYER, METHODS OF CRITICAL DISCOURSE ANALYSIS 1–33 (2nd ed. 2009) (same). We are interested in how a text (Section 1 the NC WRK ACT) can be read for what it both reveals and conceals about a woman, the exercise of her reproductive freedom, and meaning-making and knowledge production about both of them. The integration of FSE and DDM provides a novel rubric by which to critically analyzing the discourse that constitutes the statute. PJ's ethics-of-justice orientation provides a novel approach by which to direct and undertake this CDA-informed textual inquiry.

106. *Justice and Deconstruction*, *supra* note 6, at 55.

107. Small, *supra* note 2, at 11.

Postulate 1: *Socially constructing reality (i.e., the meaning-making and knowledge production process) occurs from within value-based systems of communication.*

The North Carolina WRK Act will be reread to consider how it socially constructs reality (the administration of equity and equality under the law) for a woman, how it dignifies and affirms one's right to an abortion (reproductive freedom), and how the Act communicates meaning for and produces knowledge about both. In other words, consistent with PJ, this re-reading of the statute will identify all ethics-of-justice themes that begin to answer the following question: how and for whom is justice fairly and proportionately distributed within and throughout the legislation as form of policy prescription?

Postulate 2: *Value-based systems of communication convey meaning and generate knowledge by depending on the use of terms that reveal the most evident of truths and relay the most apparent of facts (the metaphysics of presence). The hierarchical presencing (i.e., preferring) of these terms conceals the oppositional values on which such preferred terms depend. The ongoing suppression of these oppositional values (and their corresponding terms) is a condition in which meaning is totalized and knowledge is concretized (the condition of logocentrism).*

The identified ethics-of-justice themes and their corresponding construction of a woman's fair and proportionate interests present an evident version of a woman's lived reality. The way in which this reality is communicated through the statute signifies underlying legislative intent. This intent consists of embedded attitudes, covert predispositions, and preferred values, which reveal and relay how North Carolina's legislature chooses to socially construct the equity (the means of justice) and equality (the measures of justice) of a woman's reality with respect to abortion and reproductive freedom, as well as knowledge about both. All data points of legislative intent will be identified, including: (a) embedded attitudes on or about abortion rights; (b) covert predispositions on or about reproductive freedom; and (c) hidden preferences concerning meaning for and knowledge about both abortion rights and reproductive freedom.

Postulate 3: *When meaning for and knowledge about marginalized groups (e.g., women, persons of color, sexual assault survivors, the poor and homeless) are rendered absent within the prevailing texts of socially constructed reality, such absence defers meaning and postpones knowledge that, when made present, makes possible a more completely objective (or scientifically inclusive) rendering of lived reality or human experience.*

A theme-based delineation of data points regarding congressional intent as lodged within the North Carolina WRK Act makes both present and absent the political and cultural dynamics of abortion policy in North Carolina. The incompleteness in what is revealed constitutes the presence of ideology; the continued postponement of what is concealed renders absent the construction of a more fully objective and inclusive science of meaning-making and knowledge production. Each instance of legislative intent will be deconstructed for what it does and does not make evident about a woman, abortion, and meaning for and knowledge about each. Consistent with PJ's emphasis on human behavior, these intra-textual data points indicate how the statute fairly dignifies and

proportionately affirms the lived realities of a woman. These data will be delineated, mindful of the Act's: (a) concealed attitudes on or about abortion, (b) covert predispositions toward reproductive freedom, and (c) hidden preferences concerning knowledge of and about either or both of them.

Postulate 4: *In order to further this more objectivist science, socially constructing reality (i.e., meaning-making and knowledge production) should begin in the lives of those who are marginalized. To be situated within this reality, hierarchical oppositions must be temporarily reversed, the interplay of differences (différance) and the interdependencies of binary terms in opposition must be enumerated and deconstructed, and the specification of the terms or values that linger in the other's meaning (the trace's performativity) must be made explicit.*

A more precise (diagnosis of how and to what extent the WRK Act dignifies and affirms the ethics-of-justice interests of a woman's lived reality is itself incomplete, *unless* the hierarchical and oppositional terms and values on which these equity and equality experiences depend are themselves subjected to additional deconstruction. The statute's terms and values that represent data points of legislative ideology regarding a woman, abortion, and reproductive freedom will be reexamined. The oppositional binaries on which each of them depends to convey meaning and to produce knowledge will be temporarily reversed, the free play of this text as *différance* will be explored, and the trace of each instance of legislative ideology will be made present.

III. DATA PRESENTATION AND DISCUSSION[108]

A. Data Presentation

1. Synthetic postulate #1

Four ethics-of-justice (EJ 1-4) themes are located within Section 1 of the North Carolina WRK Act. These themes begin to specify how and for whom equality and equity are administered through the legislation's policy prescription.[109] The themes are made apparent in how the statute presents them.

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108. All data points for the ensuing study are derived from the Woman's Right to Know Act, ch. 90, 2011 N.C. Laws 405. Although the speech-and-display portion of the Act was permanently enjoined following the case of *Stuart v. Huff*, *supra* note 21, the Act's ultrasound requirement remains a source of contestation within the State, and it is the source of political and cultural reality construction in the U.S. To illustrate, "currently[,] twenty-three states regulate the provision of ultrasounds by abortion providers…[of these] twelve require verbal counseling or written materials…three states require the health care provider to show and describe the ultrasound image, while nine states require the provider to offer the opportunity to view the image." *See* Snehal Trivedi, *North Carolina to Appeal Court Decision tha*t *Abortion and Ultrasound Violates the First Amendment*, CAMPBELL LAW OBSERVER (Sept. 2, 2014), http://campbelllawobserver.com/2014/02/north-carolina-to-appeal-court-decision-that-abortion-and-ultrasound-law-violates-the-first-amendment/.

109. Excluded from the data were themes commenting on: (1) the maintenance of a government web site; (2) the requirements in case of a medical emergency; (3) the requirements of reporting; (4) civil remedies; (5) privacy protection in court proceedings; (6) the assurance of informed consent; (7) the assurance that consent is freely given; and (8) severability. These data address the procedural rather than the substantive equity and equality interests of a woman under Section 1 of the NC WRK Act, and a CDA-informed assessment of this text is beyond the scope of the present inquiry. Also

Specifically, these themes are made self-evident through their statutory identification as WRK Act sub-sections. Table 1 summarizes the socially constructed rendition of justice (the means of equity and the measures of equality) that each theme makes present, embraces, and affirms for a woman with respect to abortion, reproductive freedom, and meaning for or knowledge about both of them.

Table 1: Statutory Data for Synthetic Postulate #1

Ethics-of-Justice Themes	Equity and Equality Realities for a Woman
The definition of relevant terms	Eleven terms (and their definitions) are essential to the WRK Act's composition and meaning. These terms include: (1) abortion; (2) attempt to perform an abortion; (3) the North Carolina Department of Health and Human Services (NCHHS); (4) the real-time display of the unborn child; (5) medical emergency; (6) physician; (7) probable gestational age; (8) qualified professional; (9) qualified technician; (10) stable Internet website; and (11) woman.
The requirements of informed consent	There are four conditions that must be met before a woman's consent to an abortion can be considered informed and voluntary under the law. These conditions include: 1) a twenty-four hour waiting period; (2) the receipt of specific information that explains the benefits of choosing life and that identifies the alternatives to abortion; (3) participation in and completion of a certification procedure; and (4) a process for physicians that verifies their receipt of said certification.
The requirements of printed information	Two sets of information must be published or made available to ensure that the State has fulfilled its obligations to a woman who seeks an abortion. One set requires the dissemination of NCHHS information on alternatives to abortion; the other set requires the dissemination of medical and health information about the unborn child.
The requirements of an ultrasound	There are several duties that a physician or qualified technician must perform in order to fulfill that expert's obligations to provide an ultrasound of the unborn child to a woman so that she can make an informed decision about the exercise of her reproductive freedom. These duties encompass both medical treatment and professional (medico-legal) practice

excluded from the data were themes commenting on the equity and equality interests of a minor under the Act (e.g., the requirements of informed consent for an unemancipated minor).

	requirements.

2. Synthetic postulate #2

The statute's legislative intent consists of embedded attitudes, covert predispositions, and preferred values. These data reveal and relay how the North Carolina legislature elects to socially construct the realities of equity (the means of justice) and equality (the measures of justice) or a woman, with regard to abortion, reproductive freedom, and knowledge about them. Table 2 lists these data based on the four previously delineated ethics-of-justice themes.

Table 2: Statutory Data for Synthetic Postulate #2

Abortion Attitudes	Reproductive Freedom Predispositions	Preferred Values
Abortion shall be understood by and will depend on its essential definitions, terms, and conditions.	These essential definitions, terms, and conditions establish the linguistic coordinates of meaning and knowledge by and through which North Carolina's WRK Act shall fairly and proportionately legislate over a woman's reproductive freedom.	These linguistic coordinates value a woman and her rights within the contexts of valuing the rights (and responsibilities) of all relevant stakeholders.
All legally authorized abortions depend on a woman satisfying the informed and voluntary consent terms and conditions of the State.	The exercise of a woman's reproductive freedom depends on her fulfilling the State's means and measures of justice. These are the fair and proportionate coordinates of meaning by which a woman satisfies the State's informed and voluntary consent conditions. For the condition of a 24-hour waiting period, the terms indicate that a woman must consult in person or by telephone with a physician or qualified professional so that she is apprised of all: (a) medical risks (i.e., to self if abortion is or is not chosen); (b) risks to life (i.e., by reporting the child's probable gestational age at time of abortion, by making it possible to view the unborn child through available ultrasound imaging and to listen to the unborn child through	In order for a woman to fully satisfy the State's informed and voluntary consent provisions, she must know the time-sensitive risks to having an abortion (to self) and know the time-sensitive benefits of not having an abortion (to self and unborn child). The State recognizes that the risks have been made fully known only after the completion of a formalized rights-conscious and information gathering process and an iterative

	available heart tone monitoring, and by identifying the available hospital support); and (c) economic risks (i.e., to self, should an abortion be attempted or performed incorrectly by an uninsured physician). For the condition requiring that a woman receive specific information that explains the benefits of choosing life and that identifies the alternatives to abortion, the terms indicate that she must consult in person or by way of telephone with a physician or qualified professional at least 24 hours prior to the abortion so that she is apprised of the medical, public, legal and human service assistance programs, services, and/or rights, that she is entitled to or might be eligible to receive. For the condition requiring a certification procedure, the terms indicate that a woman's acknowledged consent depends on the creation and maintenance of an official (medical file) and a duplicate (copy to the woman) written record. For the condition requiring a process for physicians that verifies their receipt of said certification, the terms indicate that the physician or qualified technician who will perform the abortion must receive a copy of a woman's certification.	documented procedure.
The State shall print and make digitally available information that informs the choice not to abort that a person of "ordinary	The exercise of a woman's fully informed and voluntary reproductive freedom depends on her receipt of two types of information. One type documents the available public and private agency assistance – from	In order for the State to satisfy its requirement to inform a woman of ordinary intelligence of her right to know, the State must make

intelligence" can comprehend.	pregnancy, to childbirth, to potential adoption – that a woman has a right to know. This includes ultrasound imaging and heart tone monitoring services. The other type: (a) provides scientific information about the life status of the unborn child based on two-week gestational increments; (b) includes a statement indicating that "life begins at conception [and that] abortion will terminate the life of another human being. . ."; and (c) specifies the medical (including psychological) risks associated with abortion, which consist of risks stemming from various abortion procedures and risks stemming from the choice not to abort.	available information that affirms the choice to not abort, that dignifies the life of the unborn child, and that affirms a woman's life should she choose to carry the pregnancy to term.
All legally authorized abortions depend on a woman satisfying the ultrasound terms and conditions of the State.	The informed exercise of a woman's reproductive freedom depends on her fulfilling the State's means and measures of justice. These are the fair and proportionate coordinates of meaning by which a woman's choice (to abort or not) satisfies the State's requirements. For the substantial condition requiring a physician or qualified technician to perform an obstetrics ultrasound, the terms indicate that a woman has a right to know what the "presence, location, and dimensions of the unborn child [are] within the uterus and the number of unborn children depicted [therein]." For the substantial condition requiring a physician or qualified technician to display the ultrasound images of the unborn	The State recognizes that a woman's choice to abort is legal in substance, only after a medical expert takes images of, explains the life status of, and displays a real-time view of the unborn child. The State recognizes that a woman's choice to abort is operationally legal, only after the completion of a formalized rights-conscious and information sharing process and an iterative documented procedure in which

	child, the terms indicate that a woman has a right to view the images. For the substantial condition requiring a physician or qualified technician to "provide a medical description of the ultrasound images," a woman has a right to know the life status of the unborn child (e.g., "dimension of the embryo or fetus," and/or "presence of external members and internal organs"). For the operational condition requiring a physician or qualified technician to obtain a woman's written certification, the terms indicate that the abortion depends on her acknowledging that the State complied with the Act's ultrasound requirements, and it depends on her indication of "whether or not she availed herself of the opportunity to view the image." For the operational condition requiring a process that verifies receipt of said certification, the terms indicate that the physician or qualified technician who will perform the abortion must receive a copy of a woman's written certification for medical filing purposes to be kept for no less than seven years.	a woman declares and verifies whether or not she viewed the displayed ultrasound image.

3. Synthetic postulate #3

The statute's ideology (the political and cultural dynamics of abortion in North Carolina) is made evident by deconstructing each instance of legislative intent. The data in Table 3 explicate what is present and absent in each instance of legislative intent with respect to a woman, reproductive freedom, and meaning for and knowledge about either or both of them, mindful of the four ethics-of-justice (EJ 1-4) themes by which the North Carolina WRK Act is constructed.

Table 3: Statutory Data for Synthetic Postulate #3
Deconstructing Legislative Intent

EJ 1: The Definition of Relevant Terms	**EJ 2: The Requirements of Informed Consent**
A woman exists and possesses rights relationally. This relational status (as patient, as citizen, as potential child-bearer and mother) and these relational rights (to abort the unborn child, to knowingly exercise one's reproductive freedom) depend on terms whose meanings produce the State's rendition of relational knowledge. Absent from this relational existence, rights-claiming, and knowledge production, however, is the relational knowing that a woman lives as patient, citizen, and as child-bearer and mother. Stated differently, the meaning-making and knowledge production present in the statute defers (renders absent) a woman's knowledge about what it means to live her relational role-sets in contemporary society.	A woman's relational status as patient, citizen, and potential child-bearer and mother requires that she know the risks (to self) of having an abortion and know the benefits of not having an abortion (to self and to child). The life of the woman and the unborn child are in a relationship mediated by the State through information from medicine, science, and law. However, absent from consideration are the risks to a woman when abortion is not chosen and the benefits to a woman when abortion is chosen. Stated differently, the meaning-making and knowledge production present in the statute defers (renders absent) a woman's knowledge about what it means to live the risks of choosing to not abort and what it means to live the benefits of choosing to abort. No formalized rights-conscious information gathering process or iterative documented procedure exists that informs a woman of or about this.
EJ 3: The Requirements of Printed Information	**EJ 4: The Requirements of an Ultrasound**
The State's relational knowledge-sharing with a woman makes present information that supports her status as a potential childbearing and potential child-rearing patient and citizen. It also makes present health status information about the unborn child as a patient and life status information about the unborn child as a person-citizen. However, the State renders absent information about what it means to live the patient or citizen status as an actual child-bearer and mother. Moreover, the State renders absent information about what it	The State's relation knowledge on or about abortion makes the unborn child present to a woman. This presence is virtualized, described and possibly displayed to a woman. The medical process on which the presencing of the unborn child depends is also procedurally subject to confirmation and verification. However, the State renders absent a woman's lived experience when choosing not to abort the unborn child. This reality is not virtualized, described, or displayed by a (medical) expert. No formalized rights-conscious information gathering

means for a woman's child to live the actual status of patient and citizen in contemporary society.	process or iterative documented procedure exists that informs a woman of or about this.

4. Synthetic postulate #4

The data points of legislative ideology reveal the cultural and political dynamics (e.g., power relations, forms of domination) of abortion policy. This ideology is a hidden or deferred text that is communicated through terms and values that are in hierarchical and binary relations of meaning-making and knowledge production. These relations can be made more evident by a re-reading (a deconstruction) of the Act's text. Mindful of the statute's four ethics-of-justice themes, data in Table 4 specify the Act's ideology concerning a woman, abortion, and reproductive freedom, and the table inverts the hierarchical terms and values on which this ideological meaning depends in order to make present more complete (objective and inclusive) knowledge about a woman's lived equity and equality interests. This inversion reveals the trace of an (un)known justice.

Table 4: Statutory Data for Synthetic Postulate #4

Themes	**Legislative Ideology**	**The Trace and a Woman's (Un)known Justice**
The definition of relevant terms	The terms on which relational knowing about abortion and the exercise of a woman's reproductive freedom are defined by the State render absent her lived experience of being a patient, citizen, and child-bearer, and mother. Thus, law's power defines a woman and her "right to know" on its own "performative" terms. These are the terms (and values) of a non-inclusive objectivity.	When citizenship, healthcare, and reproductive freedom depend on the administration of gendered justice, then the right to know is made more complete. The fairness and proportionality of this more inclusive justice would depend on statutory terms and definitions that revealed and relayed the lived experiences of a woman in order to convey deeper meaning about and establish fuller relational knowing regarding abortion, the unborn child, a woman's existence, and her rights-claiming. This meaning and knowing constitute an (un)known justice.
The requirements of informed consent	The terms and conditions on which a woman satisfies the State's informed and voluntary consent provision	When the law's performativity on the matter of a woman's voluntary and informed consent is subject to

	require that she know the risks to herself when abortion is chosen as well as the benefits to herself and the unborn child when abortion is not chosen. Rendered absent or deferred in the statute are the risks that a woman (and the child) experiences when choosing not to abort and the benefits that a woman experiences when choosing to abort. Thus, the law's performativity makes evident that its informed and voluntary consent provision is derived from the terms and values of a non-inclusive objectivity.	deconstructionist inversion, then a woman's justice depends on terms and values that make present: (1) the lived risks of child forfeiture (e.g., foster care and adoption); and (2) the lived benefits of not (yet) mothering and raising a child (e.g., reproductive freedom and non-child dependency).
The requirements of printed information	The terms and conditions that satisfy the State's requirements to make available printed right-to-know abortion information depend on: (1) affirming the health and citizenship status of the woman as a potential mother; and (2) affirming the health, life, and citizenship status of the unborn child as a potential person. Rendered absent or deferred in the statute are a woman's actual experiences of childbearing and mothering both as a patient and as a citizen. Also rendered absent or concealed in the statute are the actual health, life, and citizenship experiences of personhood for the child. Thus, the law's performativity makes evident that its printed information	When the law's performativity on the matter of the State's printed information requirements is subject to deconstructionist inversion, then a woman's justice depends on terms and values that make present: (1) the health and social realities of child-bearing and mothering, especially mindful of class and race effects; and (2) the health and social realities of personhood for the child, especially mindful of class, race, and gender effects.

	requirements are derived from the terms and conditions of a non-inclusive objectivity.	
The requirements of an ultrasound	The terms and conditions on which a woman satisfies the State's ultrasound requirements depend on her consent to the presencing of the unborn child performed as a series of duties by the attending physician or medical expert. The confirmation and verification of this process legitimizes these presences. Rendered absent in this process are the presences of a woman's life as a mother and caregiver, derived from the realities of her economic, political, and socio-cultural condition or status. These "real time" realities are not virtualized, described, or displayed by an expert. No process exists that concretizes the legitimacy of these presences. Thus, the law's performativity makes evident that its ultrasound requirements are based on the terms and conditions of a non-inclusive objectivity.	When the law's performativity on the matter of the State's ultrasound requirements is subject to deconstructionist inversion, then a woman's justice depends on terms and values that privilege the "real time" and lived realities of mothering and care-giving, mindful of: (1) the type, the access to, and the quality of available State assistance services; and (2 the availability of financial, familial, political, and cultural capital.

B. Data Discussion: PJ and Diagnosing the North Carolina WRK Act

Given the presentation of data, one clear and compelling human behavioral finding is now discernible. The statutory construction of North Carolina's WRK Act makes evident that on the matter of abortion and reproductive freedom, *a woman exists in her absence*. In what follows, we specify the empirical contexts in which this ethics-of-justice epistemology is recognizable in the statute and indicate what this ideological construction means for a woman, for her reproductive choice, and for the cultivation of a more fully objective science of meaning-making and knowledge generation.

Table 5: The North Carolina WRK Act and the Epistemology of a Woman's Absence

Ethics-of-Justice Themes	**Means and Measures of Justice**	**Abortion Ideology**
Relevant definitions, terms, conditions, and values	The fairness of justice and the proportionality of justice depend on relational knowing and rights-claiming.	Relational knowing for a woman who seeks an abortion means that her choice must be made based on statutory language that *excludes* definitions, terms, conditions, and values that account for the realities of being a citizen, patient, child-bearer, and mother.
The requirements of informed consent	The fairness of justice and the proportionality of justice depend on a woman's knowledge of particular risks and benefits that make her choice informed and voluntary.	These risks *exclude* information on or about the realities of child forfeiture that a woman confronts when choosing not to abort. These benefits *exclude* information on or about a woman's experiences of remaining childless.
The requirements of printed information	The fairness of justice and the proportionality of justice depend on a woman's receipt and knowledge of health and citizenship information that affirms both her potential as a mother and the unborn child's potential as a person.	These requirements *exclude* from dissemination printed information that accounts for the actual health and citizenship realities of mothering and the actual health

		and citizenship realities of personhood.
The requirements of an ultrasound	The fairness of justice and the proportionality of justice depend on a woman's knowledge of the unborn child's physical existence and health condition made possible by a virtual, descriptive, and/or "real time" display of the fetus.	These requirements *exclude* from "real time" view the lived experience of mothering and child care-giving, given stratification effects.[110]

Each ethics-of-justice theme identified in Table 5 communicates something of relevance about the fair (equity) and proportionate (equality) interests that the WRK Act dignifies and affirms. This valuation of means and measures helps to socially construct meaning for and knowledge about what the reality of abortion and reproductive freedom shall be for a woman, according to the State. As such, the valuation of this lived reality makes present the legislature's rendition of the administration of justice.

As the findings indicate and as Table 5 reports, the Act embodies an ethics-of-justice whose epistemology makes evident that a woman exists in her absence. With respect to the statute's relevant terms, definitions, and conditions, this absence is made discernible in how the Act defers language that would otherwise value a woman's lived experience of being a citizen, patient, child-bearer, and mother. With respect to the statute's requirements of informed and voluntary consent, a woman's absence is made discernible in how the Act omits language that would otherwise make evident the risks of child forfeiture and the costs and benefits of a woman's choice to remain childless. With respect to the statute's requirements of printed information, a woman's absence is made discernible in how the Act excludes information on or about the actual health and citizenship realities of mothering and the actual health and citizenship realities of personhood. With respect to the statute's ultrasound requirement, a woman's absence is made discernible in how the Act screens from view the "real time" lived experience of mothering and child care-giving, especially when noting the societal presence of race, gender, class effects and related opportunity-limiting socio-cultural dynamics. Mindful of these findings, we assert that the North Carolina WRK Act ideologically constructs abortion, reproductive freedom, and a woman's relational rights-claiming that pertains to both of them. As such, prospects for cultivating a more fully objective science on these collective matters are hierarchically silenced. The necessary legislative work that could make possible more inclusive statutory language is discursively

110. Stratification effects refer to the socioeconomic inequities and gendered inequalities that follow from classifying categories of people (e.g., woman, persons of color) into hierarchically constructed arrangements of privilege and power. Examples of these effects include access to medical treatments or technologies, quality of health services, affordability in public health care.

postponed. The administration of a more complete (gendered) justice remains performatively (un)known.

CONCLUSION

We argued that the North Carolina WRK Act reflects congressional failure to establish fair and proportionate legislation for a woman. Indeed, as discussed in this article, the Act both socially constructs and ideologically manufactures a non-objective statutory reality on abortion, reproductive freedom, and a woman's right to knowledge about them both. Accordingly, we assert that this state of affairs is as unsustainable as it is untenable precisely because of the ethical footing that it lacks. To be sure, change is in order.

Our proposed analytics and empirics integrated key insights from feminist standpoint epistemology (FSE) with Derrida's deconstructive methodology (DDM) to reveal and relay a hidden text operating through the North Carolina WRK Act. This text makes clear that on the issue of abortion and reproductive choice, a woman's existence (that is, what it means *to be* or *to exist* as a woman in contemporary society) depends on making absent her lived experiences.[111] In order to initiate legislative change and to redirect the academic and practitioner communities to necessary reformist solutions, we recommend that additional analysis on the issue of abortion, reproductive freedom, and a woman's rights-claiming be pursued. PJ's underlying philosophy and its corresponding ethics-of-justice framework represent one critical approach that promotes this objective and that furthers progressive and inclusive evidence-based law and policy analysis.

111. That said, it is worth noting the core analytical and empirical limitations of the preceding inquiry. First, although innovative, the experimental nature of our investigation warrants further refinement. The complexities of FSE and DDM are considerable, and our commentary on them individually and then synthetically was deliberately structured to omit several concepts (e.g., Derrida's arguments that undo themselves). Attention to these additional concepts could represent a basis for amplifying or restricting our preliminary findings. Second, the data collection focused only on adult women, and the substantive components of the Act pertaining to the exercise of their reproductive freedom. Missing from the data were intra-textual themes that could account for the procedural aspects of the legislation. Moreover, we excluded from consideration statutory language that could explain the political and cultural realities of abortion for a minor. Third, our interest in the ideological nature of abortion politics and decision-making relied on one State statute as a basis to explore this controversial thesis. Clearly, the generalizability of our findings is limited; thus, our results must be read with caution.