IMPERSONAL LIFE: LAW AS A SITE OF CONVERGENCE

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A person, simply put, is a human being. This fact should be enough. The intrinsic humanity of unborn children, by definition, makes them persons, and should, therefore, guarantee their protection under the law.

—Personhood USA

On 22 March 2013 the North Dakota House in a 57–35 vote passed SCR 4009, a resolution that amends article 1 of the state constitution to include the statement that “the inalienable right to life of every human being at any stage of development must be recognized and protected.” Whether or not this amendment is ratified by the popular vote, it marks a watershed moment for certain “pro-life” groups that advocate so-called personhood initiatives, as North Dakota becomes the first state to successfully pass legislation of this sort. Unlike other challenges to Roe v. Wade that seek to limit the conditions under which an individual might seek an abortion, personhood measures, proponents argue, set the stage for Roe’s reversal by gaining legal recognition for the “life” that begins at the moment of fertilization as a “person.” According to Personhood USA, such recognition fills the “Blackmun hole”—the logical proposition or gap they read in Justice Harry Blackmun’s majority opinion in Roe. Blackmun argues, “If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed by the [Fourteenth] Amendment” (Roe v. Wade, 410 U.S. 113, 156–157 (1973)). Having ostensibly demonstrated the exception—the claim that the fetus is a (legally recognized) person—North Dakota’s law, for Personhood USA, becomes the challenge to Roe that could effectively re-criminalize any and all abortions in the United States.

1 On 22 July 2013 Federal Court Judge Daniel L. Hovland blocked the implementation of the law, arguing that it was “in direct contradiction to a litany of United States Supreme Court cases addressing restraints on abortion” (Eckholm 2013).
Some anti-abortion activists argue, however, that these initiatives that propose a ban on abortion without any exceptions might only further entrench abortion rights, especially when the public is left to imagine the wide-ranging consequences of recognizing a fertilized egg as a person. The recent history of public debates around proposed personhood measures seems to confirm their fears. Leading up to the 2012 elections, Democrats on the campaign trail characterized (with great success) the proposed measures by anti-abortion activists as part of the “War on Women,” taking aim at specific measures that they deemed extreme. One of the targets of this campaign was Georgia State Representative Bobby Franklin. In early 2011, he proposed a personhood bill that would not only ban all abortions, but would have also criminalized miscarriages unless it could be demonstrated that there was “no human involvement whatsoever in the causation of such event” (Linkins 2011). Franklin argued that the state should investigate all miscarriages, making a woman’s pregnancy an issue of public health. Although the phrase “no human involvement” sparked a social controversy if not a public outcry, what was most reported was the proposition that “prenatal murder” could carry a death sentence.\(^2\) This came on the heels of reports that South Dakota had proposed (and then later tabled) a bill that would have made protecting the unborn a “justifiable reason to commit homicide” (Linkins and Buckley 2011). Likewise, Mississippi’s proposed amendment 26, a personhood initiative that would have criminalized all abortions in a state with only one operating clinic that provided abortions, became part of the national conversation about the risks of recognizing personhood. Over and over again, the introduction of these initiatives was met with a singular message that effectively persuaded majorities in various states—states where the population tended to be anti-abortion: personhood measures have “unintended consequences” that call into question women’s rights and access to health care (Blake 2011).

Faced with the overwhelming defeat of these measures and a growing public suspicion of legislation that institutes an absolute ban on abortion, anti-abortion members of several state legislatures decided on a different tactic to promote “pro-life” legislation. None was as sweeping as the legislation introduced in Kansas. On 6 February 2013 Kansas state representatives introduced HB2253, the Omnibus Abortion Restriction Bill (also called the “Pro-Life Protections Act”), which states: “the life of a human being begins at fertilization” (Sec. 2). As explained by Kansas for Life, the bill is not a personhood measure. “Personhood measures,” they clarify, “attempt to defy

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\(^2\) *Mother Jones*, for example, published an article titled, “Ga. Law Could Give Death Penalty for Miscarriages” (Quaraishi 2011). The *Daily Kos* ran another titled, “Georgia Republican Wants Death Penalty for Miscarriages” (Gray 2011).
Roe v. Wade by (1) winning a state ballot initiative that declares the state constitution forbids abortion and (2) hoping the federal courts will allow it to stand” (Ostrowski 2013a). Unconvinced that such a strategy will be successful under the Supreme Court’s review, Kansas for Life argues that declaring that life begins at the moment of fertilization will allow the state to “legislate with a preference for childbirth over abortion—in effect ‘corralling’ Roe from drifting into other areas” (Ostrowski 2013a). Putting aside the legal and social controversy over who counts as a person, the Kansas legislation claims to recognize life itself—life without the concept of the person. This strategy is meant to significantly narrow the legal reach of Roe’s arguments about who can be considered a subject of law and whose rights are given priority, effectively eliminating the protections for women to make private decisions that Roe affords.

Although considered to be a more reserved strategy than personhood measures, the Kansas state legislature’s recognition of life without the person has had far-reaching consequences. The bill itself, which upon introduction was over sixty-nine pages long and contained forty provisions, is a complex legislative work that, among other things, changes the tax code so that organizations providing abortions will be penalized, directs doctors on the type of information they must provide to women who might be seeking an abortion, bars anyone who works for an organization that provides abortions from teaching sex education in schools, and bars state medical schools from teaching students how to perform abortions. Alongside this comprehensive bill, signed into law on 19 April 2013 by Governor Sam Brownback, the state legislature passed two additional bills meant to recognize and value a particular form of life. The first is Senate Bill 199. Introduced on 13 February 2013 and signed into law on 22 April, this bill creates the MidWest Stem Cell Therapy Center. A research and treatment facility to be housed at the University of Kansas, it focuses “on activities that advance adult, cord blood and related stem cell and non-embryonic stem cell research and therapies for patient treatment” (SB 199, Sec. 1 (a) 1). While detailing how the center is to be staffed and funded, the bill goes to great lengths to explicitly ban any form of embryonic stem research or therapies (SB 199, Sec. 5). The second bill is SB 142, called the “Civil Rights for the Unborn” bill by proponents. Approved by the governor on 10 April 2013, this law bans “wrongful life” and “wrongful birth” lawsuits. Typically filed by a severely disabled child or his or her parent(s) against the supervising doctor of the pregnancy, these suits allege that the doctor’s negligence in running tests or explaining risks resulted in a life of extreme suffering for the child (“wrongful life”) or the parent’s inability to make an informed decision about whether or not to terminate a pregnancy (“wrongful birth”). In banning
these types of lawsuits, the Kansas legislature contends that the birth of a child can never be a compensable injury because “life” by definition is not and cannot be injurious or wrong.

What do these laws, read together, tell us about the convergence of different questions of life in law? This essay reads these three “pro-life” legislative actions together to understand the limits and possibilities of recognizing life in law without the conception of the person. To be clear, the purpose of this reading is not to produce a normative claim about the value of this legislation or engage in an assessment of the abortion debate in the United States more generally. Nor is it a call for the return to a legal conception of personhood. Instead, this essay explores the language of these legislative acts as a way to illuminate the purchase of bioconvergence for legal studies. Specifically, it challenges the idea that law is simply a “site”—the place or background—in which life is defined, constituted, or recognized. Rather, I argue that the logic put forth in these legislative acts figures law as external to the very question of life. Throughout the essay, I draw on Roberto Esposito’s work to demonstrate how such a relation between life and law not only replicates the rhetorical problems of the person, but also renders law complicit with biopolitical practices.

The Politics of Impersonal Life

The title of this essay, “Impersonal Life,” clearly refers to the strategy Kansas’ legislature takes in defining life outside or beyond the terms of personhood—a life without the legal person. But, in a very different way, “impersonal life” also invokes Roberto Esposito’s work in Third Person: Politics of Life and Philosophy of the Impersonal. In this work, Esposito offers a critique of “modern personalism” as it emerges through the Universal Declaration of Human Rights (1948) in response to the crimes against humanity perpetrated during the Second World War. In this context, the person became the bearer of human rights—rights meant to reconcile the human being with the citizen, life with rights, by locating in the person a right to “an appropriate form of life” (Esposito 2012b, 67). In other words, human rights grant an individual a right to life that is meant to guard against any assault on the entirety of human life (or humanity). For Esposito, however, if human rights were “intended to signal the inclusion of all human life within the protective space of the law, we are forced to admit that no right is less guaranteed today than the right to life” (Esposito 2012b, 4). The problem Esposito suggests is that the person, tasked with unifying the biological body and rights, splits or divides “the human being into two areas: a biological body and a site of legal imputation, the first being
subjected to the discretionary control of the second. Once again, and perhaps even more than before, the person is actually superimposed onto the human being—but also juxtaposed with it—as an artificial product of the very law that defines it as such” (Esposito 2012b, 82–83). Esposito’s critique, in other words, stems from the way personhood makes one the “owner” of one’s body, essentially turning the biological body into an object to be disciplined and mastered by the person—a legal construct that is “superimposed” on the body but never coextensive with it (Esposito 2012b, 13). “Through the formal filter of the person,” he explains, “the law continued to maintain a distance from the concrete existence and corporeal density of an individual human being, focusing instead on the development of abstract categories” (2012b, 76). As an abstraction into which an individual’s life can never “fit” perfectly, the person cannot bring about a “right to life” because it is the mechanism in and through which life and rights are in fact separated. The lesson for Esposito is that “the essential failure of human rights, their inability to restore the broken connection between rights and life, does not take place in spite of the affirmation of the ideology of the person but rather because of it” (Esposito 2012b, 5).

To reimagine how we speak about a “right to life,” Esposito turns to the concept of the “impersonal.” The basis for his “affirmative biopolitics,” the impersonal acts as a resistance to—perhaps even a remedy for or an ethics that addresses—the kind of mastery demanded by the separation of human life created and performed by the person. Timothy Campbell, reading Esposito, suggests that the impersonal is thus “a way of weakening the superimposition of boundaries enacted in the name of the personal self” (Campbell 2012, 46). What this means for Esposito is that the impersonal calls into question the very boundaries between what is inside or outside, inclusive and exclusive of the self. Importantly, the impersonal for Esposito cannot be calculated as the negation or contradiction of the personal:

Of course the impersonal lies outside the horizon of the person, but not in a place that is unrelated to it: the impersonal is situated, rather, at the confines of the personal; on the lines of resistance, to exact, which cut through its territory, thus preventing, or at least opposing, the functioning of its exclusionary dispositif. The impersonal is a shifting border: that critical margin, one might say, that separates, the semantics of the person from its natural effect of separation; that blocks its reifying outcome. The impersonal does not negate the personal frontally, as a philosophy of the anti-person would; rather, the impersonal is its alteration, or its extroversion into an exteriority that calls it into question and overturns its prevailing meaning. (2012b, 14)
Here Esposito understands the impersonal as a critique of (an Hegelian) practice of social recognition. The personal and impersonal are not to be found at the same scene of address as oppositional or dyadic figures. Instead, the impersonal is that which stands outside of a scene of recognition in and through which a subject (an ‘I’) is inaugurated into a community (a ‘we’) (2012b, 102). Outside but not opposed to this scene, the impersonal exposes the ways the self splits or separates from itself when an I is taken up into a we. Or, to put it in different terms, the impersonal reveals the separation of the self created when one gains recognition as a person—as an abstract, regulative category. What the impersonal makes possible then is not a negation of the person, but “something that, being of the person or in the person, stops the immune mechanism that introduces the ‘I’ into the simultaneously inclusive and exclusive circle of the ‘we’” (2012b, 102). In this sense, the impersonal “preserves” the self from its “self-protective and self-destructive slide into the general” (2012b, 108).

The value of Esposito’s impersonal politics then lies, in part, in its power to call into question what is included and what is excluded in legal categories. As Esposito repeatedly reminds us, the impersonal does not destroy the person, but acts as “an opening to a set of forces that push it [the person] to its logical, and even grammatical boundaries” (2012b, 14). The impersonal is the condition of reimagining that to which the person refers. The turn to Esposito’s work, in this essay, is significant because it offers a way to understand how the Kansas legislation defining the beginnings of life as the moment of fertilization figures the relationship between human life and law in a “right to life.” If the person is removed from the language of law, can law offer an unmediated claim to life? Does life without the legal person create the (political, ethical, and rhetorical) possibilities Esposito sees in the impersonal? Or, does the logic of the person re-emerge in a different form, re-creating the oppositions—both the theoretical oppositions of the kind Esposito outlines and the political oppositions seen in contemporary American debates about personhood—that make it unworkable?

To answer these questions, I read each of the three laws in relation to one another, as the issues converged in time and place to define and defend “pro-life” measures. This reading demonstrates that the attempt to remove the language of the person creates a separation, not in the living being recognized by law, as Esposito suggests, but in law itself. As I will show, the Kansas legislation opposes law to the questions of life. That is, the law’s language—the text that addresses subjects of law—is separated from the very scene of address in and through which one demands the law respond to a claim of life. Given that it is unable to account for the rhetorical conditions in which it defines life, the person cannot help but reappear in the logic and language of the laws.
HB 2253: The Omnibus Abortion Bill

Called the “Pro-Life Protections Act” by proponents, HB 2253 declares that human life begins at fertilization. A law that “corrals” Roe, it does not make abortion illegal in the state of Kansas. In fact, it appears to set out the terms and conditions of a legal abortion. And yet, throughout its many pages, HB 2253 repeats the provision that the rules and principles outlined in the bill should not be “construed to create a right to an abortion. Notwithstanding any provision of this section, a person shall not perform an abortion that is prohibited by law” (HB 2253, Sec. 10 (d)). What is the difference between a legal abortion and a right to an abortion? What is gained by the repeated declaration that the law does not recognize or constitute a right to abortion? The answer to these questions lies in the way this law’s language works to define the dimensions and contours of life.

That fertilization marks the beginning of human life might not be the most politically relevant argument in HB 2253. The justification for this claim might be more telling. In the law’s explicit description of the text that must appear on all printed material given to pregnant women possibly seeking an abortion, it states, “that abortion terminates the life of a whole, separate, unique, living human being” (HB 2253, Sec. 15 (a)(2)(E)). It clarifies this statement by defining “human being” as “an individual member of the species of homo sapiens, including the unborn human being during the entire embryonic and fetal ages from fertilization to full gestation” (HB 2253, Sec. 14 (m)(1)). Interesting here is the law’s attempt to define human life as both “whole” and “separate,” given that oppositional arguments often focus on the dependency of the fetus on the mother. In this argument, however, questions of “viability” are side-stepped in order to establish and recognize life. Viability is merely a potential characteristic of life, not its condition. “Wholeness” and “separateness” depend instead on the biologization of life. Life is human to the extent that it can be recognized as part of the species homo sapiens. This logic is not quite as circular as it initially sounds. The law grounds its definition of life in the ostensibly objective language of science. One is of a particular species, the law claims, because one carries a genetic code that is recognizable as such. We see this most clearly in the section of the law that spells out what must be printed in texts describing the week-by-week development of a fetus: “Pregnancy begins at fertilization with the union of a man’s sperm and a woman’s egg to form a single-cell embryo. This brand new being contains the original copy of a new individual’s complete genetic code. Gender, eye color and other traits are determined at fertilization” (HB 2253, Sec. 15 (a)(3)). The emphasis in this statement is placed on the originality of the “brand new being,” evidenced by its unique genetic code. This genetic code appears to be generated
ex nihilo, independent of the genetic material contributed by the sperm and egg. The man and woman present in the first sentence are absent in the second where the new being appears. The being is thus “whole” because the entire genetic code—deterministic of human traits according to the law—is present and “separate” because this code belongs only to this embryo.

This definition of life already seems to replicate a logic of the person because it invests life in practices of power that regulate and constitute its value. “The concept of person,” Esposito explains, “functions as the crucial passage through which a biological material lacking in meaning becomes something intangible. Only a life that has crossed beforehand through the symbolic door of the person is believed to be sacred or is to be valued in terms of its qualities since only life is able to produce the proper credentials of a person” (Esposito 2012a, 18). In the context of HB 2253, the Kansas legislature transforms a fertilized egg into a life with value through the appeal to genetics. Although its terms are different, the law uses genetic code as a category for deciding “the final difference between what must live and what can be legitimately cast to death” (Esposito 2012b, 13). Drawing on Michel Foucault’s famous definition of biopolitics as a power “to foster life or disallow it to the point of death” (Foucault 1990, 138), Esposito points to the way that the process wherein life is recognized or misrecognized by law suggests that this life remains complicit with biopolitics’ power to make live and let die. 3

This biopoliticization of life—the equation of human life with the presence of a particular genetic code—enables the law, as one might expect, to cast its claims about life as objective, scientific truth. In fact, throughout HB

3 Esposito’s suggestion that claims to recognize life in law through the person are complicit with biopolitical techniques are not entirely new (see Steinberg 1991). Esposito’s account, however, clarifies the conditions and stakes of the passage of North Dakota’s SB 2203. This bill was written, “to ensure that mother and baby are both treated as medical patients, that medical care is not inhibited, and that fertility treatments are not banned” (Ertelt 2013). Identifying conception as the beginning of the person, North Dakota’s law treats that person, first and foremost, as a medical subject. Once conceived, the person, according to the law, not only deserves, but demands a form of care that will foster its growth—a care that “makes live” by demanding that everything be done to ensure that it does not die. The North Dakota legislature shores up this demand for life by passing SB 2203, a bill that extends criminal law to “‘all human beings born and unborn’” (Ertelt 2013). Making of the “new person” not only a medical subject, but also a potential victim of a crime, the laws inaugurate this person as a part of population—a population at risk that needs to be regulated and protected by law. This, the signature of biopolitics, for Esposito shows once again how the person presupposes and reinforces a separation between the law and the material existence of the human being, as this life is recognized only insofar as it finds itself as part of the abstractions and operations of a population.
2253, provisions detailing what must be told to women by their doctors, on websites, and in printed materials include the requirement that this information must be marked as “scientifically accurate.” Any information on a website, for example, must include a link that states the following:

_The Kansas Department of Health and Environment maintains a website containing objective, nonjudgmental, scientifically accurate information about the development of the unborn child, as well as video of sonogram images of the unborn child, at various stages of development. The Kansas Department of Health and Environment can be reached by clicking here._ (HB 2253, Sec. 14 (l))

Although it would be easy to point to the way that the language of the “unborn child” performatively undermines the claim to objectivity, what is most interesting about this section is the way that it figures law in relationship to these claims made about life. Throughout Sections 14 and 15, the law dictates word-for-word the text that must appear in a variety of media. Marked by italics suggesting a quotation, this text does not belong to the law. The law itself, that is, does not make the claim that this information is objective or scientific. Instead, it is hijacked by a quotation of something that comes from outside the law—text that stands in for the voice of law. In this context, the law says nothing of the truth of life. It appears to be separated from such claims (and perhaps from the right or ability to make such claims) by the intrusion of a text that appears external to the language of law itself. Law here acts only as a site in which truths external to the law might be stated, but not addressed or argued, turning law itself into a metaphorical link through which life might be found.

Separated from its own claims to life or about life, the law’s operations are relegated to a practice of silencing anything that might lead to a question of or subjective claim about life. Law, in other words, is tasked with guaranteeing that life does not become a question for or of law. This happens in two ways throughout the text. The first can be found in the rules that determine what constitutes consent to a legal abortion. HB 2253 establishes a set of rules that require women considering abortion to recognize—to “see”—the fetus as a human life. In addition to printed materials that provide sonogram pictures and scientifically accurate drawings or images of a fetus at a particular developmental stage, physicians are required to present women with the ability to view and receive a “physical picture of the ultrasound image” (HB 2253, Sec. 14 (h)) or hear a heart beat through a monitor (HB 2253, Sec. 14 (i)). The law stipulates that this offer must be made at least thirty minutes prior to the abortion procedure and, once offered to the woman, the physician must time
stamp and record this practice. If a woman refuses, she must certify in writing that she was “offered the opportunity” to see or hear the signals of life the medical technology might provide (HB 2253, Sec. 14 (h)). As the rules are written, the choice of technology made available to the woman is left to the doctor. Whether a woman chooses to use the technology or not, she is required to accept the premise that the abortion will not only terminate life; it will terminate a recognizable human form of life, the baby. The rules laid out by the law thus serve to confirm and shore up the truths of the biological life put forth as justification for these rules.4

The law works to silence questions of life in a second, perhaps more sinister or damaging, way by barring speech and education that promotes a view of life that diverges from the one articulated in this law. Medical students at state-sponsored universities, for example, voiced grave concerns about the provision that bars state agencies from providing abortions or using facilities funded by the state to teach or provide abortion procedures (Sec. 3 (d)). Interpreting this measure as one that would make it impossible to teach doctors how to properly perform abortions, no matter the circumstances in which such a procedure was performed, some opponents to the law claimed that it might actually threaten students’ ability to obtain a medical license. The more direct threat to education, however, came in the limitations placed on who might teach issues of sexuality and sexual health in district schools. The law states:

No school district, employee or agent thereof, or education service provider contracting with such school district shall provide abortion services. No school district shall permit any person or entity to offer, sponsor or otherwise furnish in any manner any course materials or instruction relating to human sexuality or sexually transmitted diseases if such person or entity is an abortion services provider, or an employee, agent or volunteer of an abortion services provider. (HB 2253, Sec. 4)

This section is remarkable for its attempt to remove any education in schools that would promote or even address issues of sexual freedom or responsibility

4 It is this effect of the bill that worries proponents as they question the accuracy of the “scientific” information physicians are required to offer to women possibly seeking abortions. Of particular concern to opponents of the law was the requirement that doctors present information about abortion and the risks of breast cancer (Sec. 14 (a)(3)). As explained by Elise Higgins, the Kansas coordinator for the National Organization for Women, this provision is “an obvious intrusion into the doctor–patient relationship by making them get this inaccurate information” (Murphey 2013). While research suggests that carrying a child to term might reduce breast cancer, there have been several studies indicating that terminating a pregnancy does not indicate an increase in the likelihood of developing breast cancer (Ohlheiser 2013).
without putting forth the science the law authorizes, essentially mandating a type of abstinence-only education taught from a singular point of view. In both instances, the law appears to target *speech* about life, rather than life itself, in an attempt to “fix” a narrative about life and its value for citizens of Kansas.

Cast as the mechanism through which speech about life might be dictated and regulated, law is placed in opposition to the very *question* of life. The Omnibus Abortion Bill, that is, establishes the conditions in which speech that questions life, or better yet speech that turns life into a question rather than a scientific fact, must be silenced. By locating claims about life outside of law, in the language of silence and the voice of an administrator dictating text, law is removed from the conversation about life; it becomes the mouthpiece through which (a particular version of) life takes hold. This externalization of law from questions of life is what allows the law to claim repeatedly that it neither recognizes nor constitutes a “right to an abortion.” A right in this context might be best understood as a claim addressed to law—a claim that establishes and justifies the speaker’s standing in law. But what this law dismantles is the very ability of law to hear or respond to claims that question the definition or status of human life and the ability of law’s subjects to make such claims. Even without recourse to the person, this law creates an opposition between life and law. This opposition, however, is found not in the separation of the human and the citizen or in the division between the biological conditions of life and rights, as Esposito suggests, but in the separation of law’s language from the scene of address in which law operates. Said another way, this law separates the legal rules and definitions from the very rhetorical conditions in and through which these definitions appear.

**SB 199: The Midwest Stem Cell Therapy Center**

Three days after Governor Sam Brownback signed HB 2253 into law, he signed a bill that established the “Midwest Stem Cell Therapy Center” at the Kansas University Medical Center. Opponents attacked the bill on several fronts. For one, they criticized the creation of a research center at a university that had neither requested the center nor established a faculty to staff the center. Representative Barbara Bollier remarked, “the doctors and researchers who are involved know what they are doing and they don’t need us to set up a specific stem cell treatment center” (qtd. in Rothschild 2013). Different from anything the legislature had ever done before, the establishment of the center was all the more perplexing as the state offered rules for how funding for the center should be structured, but offered no funds from the state. For Bollier and others, the law infringes on the independence of university research and governance. Still
others criticized the bill because it specifically bans the use of any embryonic stem cells in any research or treatment protocols. Adult stem cells, opponents argued, are “more costly and difficult to work with than embryonic stem cells, which can be harvested from fertilized eggs left over from artificial insemination” (Cauthon 2013).

While some proponents of the bill attributed its opposition to “sour grapes” over being on the “losing side” of “pro-life” issues (Ostrowski 2013c), two additional arguments emerged to respond to the criticism. The first explained that such a center might only be created by the legislature because of “‘the political questions involved’” (Rothschild 2013). Republican legislators argued that, without their involvement, such a center might never be imagined, held back by a politics that they themselves could put aside. The second response, largely articulated by “pro-life” groups in the state, was that the center provided a location close to home that could treat those who most needed it. As such, the center acts as “a deterrent to the alarming phenomenon of ‘stem cell tourism’ in which suffering Americans are lured abroad—largely via internet—for unproven stem cell applications by unqualified personnel” (Ostrowski 2013b). As a clearinghouse for stem cell research, the KU Center, proponents argue, guarantees a safe environment in which to receive treatment.

The public debate surrounding the establishment of the center reveals a problem of place that follows from the way that the Omnibus Abortion Bill defines law and its relationship to questions of life. On the one hand, the debate poses the question: Whose place is it to institute and direct the scientific research into biological and genetic problems of life? If this law falls in line with the one passed before it (and advocates contend that it does), then it would seem that life must be left to scientists who are conducting the research. On the other hand, though, the debate asks whether and how places where life is treated as a question of science might be regulated and protected. Hanging in the balance yet again is the power of law to regulate that which definitionally does not belong to it. In SB 199, unlike HB 2253, the strain of this balancing act begins to show the cracks in its logical foundation.

Much like the abortion bill, SB 199 limits research to only those forms that will support the view of human life as “whole” and “separate” from the moment of fertilization. As such, the law bans the use of embryos abandoned after in vitro medical procedures in all research and treatment at the center. The law, however, goes one step further to limit not only the use of embryonic stem cells, but also the inquiry into and education about these cells. Despite the center’s mandate to maintain a list of global locations that provide stem cell therapies (SB 199, Sec. 1 (a)(5)), the center will “create education modules to
train and educate physicians and research scientists about peer-reviewed adult, cord blood and related stem cell therapy applications for patients’ (SB 199, Sec. 1 (a)(7)), as well as “inform the public on available adult, cord blood and related stem cell therapeutic options” (Sec. 1 (a)(9)). The focus of the law once again is not just on what can or cannot be done, but what can be said or what information can be made available. But this law is unlike the other because the abortion bill’s ban on speech was justified in order to let science be the voice that speaks the truth of life. Here, the law admits, perhaps against its own will, that science speaks with more than one voice and that the science that is true must be rooted out and recognized by law.

The rules that determine the administrative and financial structure of the center might be read as a desire to cover over the anxiety produced by this quiet confession. Offering a comprehensive overview of its structure, the law situates the power over the center firmly within the university. The executive vice chancellor of the university appoints the director of the center (SB 199, Sec. 2 (a)). The director then is tasked with the administration of “personnel, equipment, and facilities” (SB 199, Sec. 2 (d)), the “coordination of patient treatment and research” (SB 199, Sec 2 (e)), the solicitation of “grants, gifts, contributions or bequests made for the purpose of furthering the [center’s] goals and missions” (SB 199, Sec. 2 (f)). Placing all the operations of the center in the hands of its university-appointed director, the legislature appears to have separated itself from the scientific work coming out of the center. The fact that the center receives no funding from the state’s tax generated revenue also works to paint a picture of a center that, although established by this law, would run independently.

The independence of the center and its scientific work, however, are called into question as the law defines (and confines) the place of the center in the larger political landscape. This is accomplished in two ways. First, the rules regulating the advisory board allow board members, exactly half of whom are appointed by the governor or are chosen by (or are themselves members) of the state legislature, to speak on behalf of the center “to advance public awareness of successful adult, cord blood and related stem cell therapeutic options” (SB 199, Sec. 4 (d)). With this provision, the advisory board, not the Director, becomes the face of the center in charge of “public speaking” (SB 199, Sec. 4 (d)). The message and perhaps the politics of the center are placed in the hands of a body whose role is to advise the director and translate the work of the center into public information. Talk about research takes place in and through this intermediary body. The questions of life are theirs to define and address and, as such, are not as wholly independent as imagined. The law, second, attempts to fix the physical place of the center as well. The entirety of Section 5
addresses the fact that the facilities cannot be used for any embryonic stem cell research. The place of the center, its buildings and structures, are locked down, controlled and regulated so as to prevent this kind of research, marking a zone where such research is prohibited. Throughout the language of the law, a preoccupation with keeping the center free of contaminants is evident. We can read this concern in the regulations of pharmaceuticals within the institution. “Except as otherwise provided in this act,” the law reads, “the sale and distribution of drugs shall be limited to pharmacies operating under registrations or required by this act, and the actual sale or distribution of drugs shall be made by a pharmacist or other persons acting under the immediate personal direction and supervision of the pharmacist” (SB 199, Sect. 7 (a)). Motivating this provision is the need to control the exchange or the movement of drugs in and out of the center. The law, through a guarantee of supervision and surveillance, insists that research and treatments remain in place.

The anxiety over place read in this law can be understood as the effect of the separation of law from speech about life. This law works to locate and secure the place in which the questions of human life are asked and answered. What is revealed though is that these questions take place (and are given place) only in and through law, suggesting that this law does not exist wholly outside the scene in which claims of life are made.

**SB 142: An Act Relating to Civil Actions and Abortion**

For those who ushered in Kansas’ “pro-life” legislation, SB 142 is better known as the “Civil Rights for the Unborn Act.” The shortest of the three laws at a single page, it represents the culmination of the logic set forth in HB 2253. If human life begins at fertilization and can be recognized as a “whole” and “separate” being, if the truth of this life belongs to science, if science is independent of legislative and political practices, if the law is not the site where one might raise a question of life, then law can do nothing but reaffirm the value of life and assess the cost of death—the destruction of this life. As such, SB 142 bans “wrongful life” and “wrongful birth” lawsuits. Philosophically intriguing, but legally problematic, these lawsuits are brought on behalf of parent(s) or children who are usually severely disabled. They allow individuals to seek compensation for the negligence of a physician that resulted in the birth of a child who, had the birth parent(s) been given accurate information, would have been aborted to prevent the suffering of the child or the emotional, physical, or economic costs to the parent(s). The ban on such lawsuits makes it impossible to stand before the law and claim an injury for the act of living a life or recover costs associated with supporting this life.
Although the law itself does little more than ban these types of legal action, the debate that occurred in the Kansas legislature and in public forums evidenced the radically different philosophies and goals of both sides. For opponents of the bill, these legal actions provide a deterrent to anti-abortion physicians who would lie or omit information if they believe a woman might choose an abortion. Josh Freeman, chair of the Department of Family Medicine at the University of Kansas Hospital in Kansas City, claims, for instance, that “this effort to limit damages against doctors raises serious ethical issues,” adding that the reason for the ban is “that there are doctors doing this already or want to do it and want the cover of law so they can’t be sued for it” (Heger 2012). Proponents claim, however, that doctors can still be sued for medical practice if they are in fact negligent. For them, the point of the ban is to recognize the inherent dignity of life and to stop “‘jackpot’-size damage awards” (Heger 2012).

Despite the true motivation behind the law, its effect is to prohibit individuals from making a claim that life is injurious. The law here cannot even entertain a question of whether human life is anything other than a good in itself. SB 142 performs the opposition of law and the question of life—legal language and the scene in which law responds to a claim from the other—in an absolute, almost perfect way. It cannot hear the injury if “the damages arise out of a claim that a person’s action or omission contributed to such minor’s mother not obtaining an abortion” (SB 142, Sec. 1 (a); emphasis mine). What offends the law is the claim that life is otherwise than what has been detailed in HB 2253—a dignified, if not sacred, being marked by a unique genetic code.

Not surprisingly, into this opposition of law and the question or claim of life, the person cannot help but to re-emerge. Following Esposito’s insight, we see that in the opposition of law and life—an opposition that in these laws emerges when law fails to account for the rhetorical conditions of its own language—we take refuge in the language of the person. In SB 142, this happens in the most telling of ways. The law states, “If the death of a person is caused by the wrongful act or omission of another, an action may be maintained for the damages resulting there-from if the former might have maintained the action had he or she such person lived…” (SB 142, Sec. 2 (a)). The strikethrough of “he or she” and its replacement with “such person,” when read through Esposito’s work, exposes the limits of law’s ability in this instance to reimagine a right to life that avoids the pitfalls of the person. Esposito understands “the impersonal” as a linguistic practice that has the potential to
resignify our understandings of human life and law. The impersonal appears for Esposito as the “third person”—the “he” and “she”—that can only be referenced as something external to the scene of address in which one finds oneself. The he/she exists outside the logics and language that establish and dictate the relationship between the I and you. The place of the third person, that is, is not dependent on an immediate situation in which the you is designated as the (temporary) addressee of the I who with speech—with the statement of I—becomes the subject in the scene. Following Emile Benveniste, Esposito argues that the “you” is not in excess of the “I,” but instead, “is conceivable only and always in relation to the I. It can never be anything but non-I—its reverse and its shadow” (Esposito 2012b, 106). The third person thus escapes both this dialectic and the inevitable mastery of the I over the you. Its power lies in the fact that it “refers to something, or even someone, but to a someone who is not recognizable as this specific person, either because it does not refer to anyone at all or because it can be extended to anyone” (Esposito 2012b, 107). A referent that resists recognizability in a person, the third person (a figure that stands in for the impersonal) reveals and calls into question the opposition that constitutes the I and you. And, yet, in SB 142, the impersonal remains only as a trace of what was once possible. The law, in the end, necessitates that the person be the bearer of this logical and performativ opposition between law and the questions of life.

The “De-activation” of Law in the Convergence of Questions of Life

The Kansas legislature’s attempts to recognize law in life seems to confirm rather than reimagine Esposito’s critique of the “right to life.” “No matter, how

5 This point is made clearly in Esposito’s “The Dispositif of the Person” (2012a). The last line of the essay highlights the purchase of the impersonal: “Even more, it suggests the possibility, one again largely ignored today, of profoundly changing our philosophical, juridical and political lexicon” (2012a, 30). Esposito’s turn to the impersonal offers us a language—or a refiguration of terms—that alter those relationships that govern and name human life.

6 Drawing on Émile Benveniste’s understanding of grammatical subjects, Esposito claims “the pronoun he/she is radically different from I and you. This is so much the case that the third person can actually be defined by its opposition to the first two: not only is he/she not what I and you are; it is what they are not” (Esposito 2012b, 104). The third person, in other words, is not an additional figure that appears alongside the I and you. The third person exceeds the subject positions offered by the first and second person. And, it also exceeds the relationship between these positions—a relationship defined by the subjects’ ontological dependence and “mutual reversibility”: “Since anyone who pronounces the word I assumes the role of subject in relation to the you, he or she is destined to be replaced as soon as the you takes the floor in its turn, thereby placing the previous speaker in the silent role of listener” (Esposito 2012b, 105).
they are conceptualized,” he warns, “the three terms ‘individual,’ ‘law,’ and ‘humanity’ fail to line up along a single path. Each seems to stand in the way of the other two at the junction where these two meet up. Law is incapable of uniting humanity and the individual. Individuals cannot find recognition of themselves as human beings in the dispositif of the law” (Esposito 2012b, 67). This misrecognition of life by law (and of law by life) emerges in the three “pro-life” measures where law is figured as a scene or site through which different issues or problems of life converge. The final section of this paper then turns to the effects of imagining law as a site of bioconvergence.

For the purposes of this essay, I understand bioconvergence to mean the intersection of discourses through which a specific definition of life is constituted, embodied, and recognized. The Kansas laws thus present us with a double convergence of sorts. For one, the definition of life found in these laws is itself a convergence of technology, genetics, and theology. Life takes shape in HB 2253, for instance, only with a genetic code that gives meaning, substance, and a name to an embryo. But the recognition of the genetic code depends on technologies and medical practices that authenticate the presence and the advent of this “embryonic life.” The value of this life gains leverage when linked to theological claims (translated into secular legal and political concepts) that demand dignity for this life. Life itself then is already a convergence. But, it is the second sense of bioconvergence to which this essay dedicates its focus. The three laws read in this essay, although they appeared at the same time and were cast as part of a larger push for “pro-life” legislation, address very different legal controversies. Abortion, stem cell research institutions, and wrongful life and birth lawsuits each pose very specific and different legal problems. They are not self-evidently linked by the social controversies they address. Rather, the Kansas state legislature brought these questions together, linking them by a particular logic that defines law as external to the questions of life.

Read carefully, the convergence of these life questions in law opens a larger issue of what it means for scholars to investigate a site of convergence. My reading of Kansas HB 2253, SB 199, and SB 142, for example, demonstrates that practices of bioconvergence operate to call into question the very site where this convergence might be read. More specifically, I have argued that, bringing together questions of life in law problematizes the power of law itself. To use Esposito’s term, these particular questions of the value, status, and standing of human life are “de-activating the law, constantly transforming the exception into the norm and the norm into the exception” (Esposito 2012b, 28). In the logic where law cannot respond to the questions posed by its subjects—where it must silence any question that emerges so as to
deny that life can even appear as a question for us—the law stops operating as that which engages and adjudicates claims. We see this clearly in the wrongful life and birth lawsuits. Were there so many of these lawsuits that a law was necessary to limit the liability of doctors? There is no evidence presented to answer in the affirmative. But proponents of the ban used exceptional cases (most often from different states) to stand in for what they claim is a universally present logic that everywhere allows life to be treated as an injury, rather than as an unequivocal good. Yet, in this demonstration, the valuing of life is possible only to the extent that law is de-activated—made into a docile instrument unable to decide or address claims about human life.

One might object here that this is precisely how law should operate. As the code that institutionalizes the norms decided by the people, law should, perhaps must, give itself and its voice over to “the public”—wherever that elusive figure lies. Misunderstood in this opinion, however, is the danger of imagining law as a site where public debate plays out. Relegating law to a backdrop for the theater of democratic decision-making, in other words, ignores the ways that the de-activation of law is the occasion and effect of biopolitics (Esposito 2012b, 28). Unable to respond to both questions and claims of human life, and unable to account for the conditions in which the text addresses subjects, law becomes complicit with forms of power that vacate the meaning and value of life for an individual—the living figure who remains in the law’s addition and subtraction of the person. Likewise, this effacement of the individual appears in the wrongful life and wrongful birth ban. Supporters of the ban often cite Wendy F. Hensel’s article, “The Disabling Impact of Wrongful Birth and Wrongful Life Actions” (2005). Discussing such cases from a disabilities studies perspective, Hensel argues, “Tort law should not serve as a tool of injustice under the guise of benevolent intervention on behalf of individuals with disabilities. Because relief to individual litigants in wrongful birth and wrongful life actions is purchased at a cost to society as a whole, neither action should be recognized by state legislatures or the courts” (Hensel 2005, 45). The reasoning here adopts a view that law must protect the population of people with disabilities in an effort to protect society as a whole. An individual’s suffering—really, an individual’s experience of his or her own disability—gets read, or misread as the case may be, only in terms of how it might affect the population of individuals with disabilities. A signature move of biopolitics, it treats subjects of law according to cost–benefit calculations for larger populations. As a backdrop for questions of life, a site of bioconvergence, law can neither see nor hear the individual who stands before it. Figured in this way, law never completes what appears to be the simplest of equations for
those who advocate a “right to life”: “A person, simply put, is a human being. This fact should be enough” (Personhood USA). And, yet, it never is.
Works Cited


