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## FEMINISM AND ABORTION POLITICS: CHOICE, RIGHTS, AND REPRODUCTIVE FREEDOM

LISA SMYTH

School of Social Sciences and International Development, University of Wales Swansea,  
Keir Hardie Building, Singleton Park, Swansea, SA2 8PP, UK

**Synopsis** — This paper examines the problems associated with feminist articulations of rights claims and other alternatives for advocating reproductive freedom. Criticisms of private choice advocacy in particular, and rights advocacy in general, are considered, along with proposals either to abandon rights claims in favour of care theory on the one hand, or advocate gendered citizenship on the other. Drawing on the work of Nancy Fraser and Drucilla Cornell, the author argues that the category of the rights-bearing citizen should not be thought to be necessarily masculinized, in virtue of the assumption of “indivisibility,” and that making rights claims does not necessarily entail reproducing a gendered public/private dichotomy. Thus, this paper contends that rights theory offers a worthwhile platform for feminist advocacy of reproductive freedom. © 2002 Elsevier Science Ltd. All rights reserved.

### INTRODUCTION

How can feminism best advocate abortion access? Feminist politics faces complex questions over what direction abortion advocacy should take, particularly over the efficacy of framing such advocacy in terms of rights. This paper will consider some problems with feminist articulations of rights claims and other alternatives for advocating reproductive freedom. Two apparent problems with pro-choice discourse will be outlined initially: the limitations of private choice claims, particularly in the light of how they have been applied in the US context; and the emergence of competing claims for recognition of foetal rights. I will then consider feminist attempts to deal with this history by reformulating claims for abortion access in other than rights terms, before considering a number of attempts to devise a politics of reproductive freedom by employing rights theory.

### PROBLEMS WITH “A RIGHT TO CHOOSE”

#### *Whose Choice?*

Feminist arguments in support of abortion rights have necessarily engaged with broader debates over how to produce rights claims which minimise the risk of application or interpretation in unjust and unequal ways. This has, in turn, led to debates over whether rights claims can ever be a sufficient remedy for inequality and injustice. The strategy of defending abortion access as “a woman’s right to choose” has come under pressure from two directions. Firstly, the particular articulation of the demand has facilitated racist and eugenic policies concerned with population control, particularly in the US context.<sup>1</sup> The major problem which has facilitated this form of appropriation lies with the meaning of the term “choice,” generally defined, both culturally and legally, as an aggregation of ideas of privacy and autonomy. The implicit meaning informing the use of the concept can be found even in feminist criticisms of its political value. For example, Petchesky (1986), in her influential consideration of its limits, defines choice as “a woman’s right to control her own body,” a version of bodily and decisional autonomy, while also arguing that such autonomy should be limited, because, as she

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puts it, recognizing women as the source of decision making over pregnancy “lets men and society neatly off the hook” (Petchesky, 1986, p. 7). Specifically, the complex contexts of abortion decisions is left unexamined in making a claim for abortion access as an issue of “private” choice (Davis, 1981; Himmelweit, 1988). In other words, the emphasis on privacy prevents any consideration of the socio-political forces which produce both involuntary pregnancies and calls for abortion access, and constrain the “choices” of different women in different contexts. This construction of abortion as an issue of private choice trivializes abortion decisions, as well as endorsing the very mind/body dualism which feminism has consistently contested (Cornell, 1995, p. 33).<sup>2</sup>

The problems associated with this narrow interpretation of what is at stake in abortion politics can be seen, for example, in Lucinda Cisler’s (1969) argument that access to birth control is essential to women’s liberation. She explained the very high rates of sterilization among Puerto Rican women in New York city as a pragmatic response by those women, precisely through the exercise of private choice, both to Catholic regulation of sexual morality, and to the difficulty of practicing birth control legally in Puerto Rico.<sup>3</sup> In other words, the very high rates of sterilization among Puerto Rican women, she assumed, was due to a form of private female resistance to enforced motherhood, rather than as the result of specifically racist official policy.<sup>4</sup> Thus, she failed to take into account classed and raced constructions of gender, sexuality, and nationhood. She consequently offered a mistaken account of abortion practices, in terms that would not address the wider contexts within which particular groups of women seek abortions.<sup>5</sup>

This misinterpretation illustrates the tension in the idea of “choice” which, on the one hand, acknowledges that women’s decisional and bodily autonomy is at stake in (anti-) abortion politics, and, on the other, facilitates the “illusion,” to use Himmelweit’s term (1988, p. 40), that a woman can make a “private” choice free from social, economic, and political constraints (Charles, 2000, p. 164). As Petchesky comments, “. . . the idea of ‘a woman’s right to choose’ as the main principle of reproductive freedom is insufficient and problematic at the same time as it is politically compelling” (Petchesky, 1986, pp. 6–7).

There are two aspects to the problem with pro-choice privacy claims. Firstly, the definition of “privacy” is always contestable, and feminists have defined it, for example, not as the familial or domes-

tic sphere, but rather as the imaginary sphere of personal identity and self-realization.<sup>6</sup> Nancy Fraser (1997, p. 115) has argued that the feminist project is aimed not at the collapse of the boundaries between public and private, but rather “to overcome the gender hierarchy that gives men more power than women to draw the line between public and private,” while also taking account of other dimensions to that power imbalance, not least those of race, ethnicity, and class. Kandiyoti (1991, p. 430) emphasizes the major difference between privacy and patriarchy, arguing that feminists should be wary of ethnocentric definitions of the private and the public, and should acknowledge that the “private” is often problematically defined by the state.

The second problem with claiming abortion as a privacy right, however, is that this construction does not oblige the state to ensure access to abortion services (Petchesky, 1986). Treating abortion as a right to privacy is therefore insufficient to prevent the state from actively obstructing access (Cornell, 1995, p. 33).<sup>7</sup> If the private sphere were officially defined not in the usual terms of possessive individualism, but in terms of personal identity and self-realization, then perhaps the state would be obliged to support abortion access (a point which will be considered in section three, on Feminist Rights Theory, below). To borrow Nancy Fraser’s (1997) analytic model, the claim that abortion should be considered an issue of private choice, in contexts where privacy is defined either in familial, domestic terms, or in terms of possessive individualism, can be characterized as an “affirmative recognition” strategy, which, in this context, ultimately endorses essentialist constructions of women as mothers.

The ease with which feminist pro-choice arguments have been connected with Malthusian views on population control, and have served to justify the operation of racist and eugenic policies, notably in the US,<sup>8</sup> has raised serious questions for feminist political theory. Before considering how these difficulties have been addressed, I will discuss the second major problem with a feminist defence of abortion access in terms of “a woman’s right to choose,” namely the emergence and success of foetal rights advocacy.

### *Which Rights?*

Rights theory is based on the assumption of competing recognition claims. As already mentioned, the second major problem with the “right to choose” discourse has been that it has enabled the successful lobbying for both cultural and official recognition of

foetal rights (McNeil, 1991). To evoke rights in the context of abortion would seem to affirm the construction of pregnancy in adversarial terms, between foetus and woman, rather than between woman and the state, or between women and men. In other words, constructing abortion access as a rights issue would appear to inevitably generate opposing claims on behalf of foetuses, as well as on behalf of men as fathers (Porter, 1996; Steinberg, 1991, p. 280). Foetal-rights advocates have necessarily constructed women in terms of the potentially dangerous foetal environment, in need of regulation.<sup>9</sup>

Many feminists have drawn attention to the way contemporary foetal rights discourse depends on the construction of pregnant women as both absent and as threateningly present. Foetal iconography generally relies on implications of exemplary masculine autonomy (Braidotti, 1994; Duden, 1993; McNeil, 1991; Petchesky, 1987; Rothman, 1989; Sandlos, 2000). As Rothman puts it:

... the foetus in utero has become a metaphor for 'man' in space, floating free, attached only by the umbilical cord to the spaceship (in Petchesky, 1986, p. xi)

The primary purpose of this construction would appear to be that in order to command moral-political legitimacy foetal-rights advocates have had little choice but to proceed within the terms of rights politics. However, in order to claim rights-bearer status, the foetus must be constructed as morally equivalent to women. This construction relies on a basic contradiction. On the one hand, the autonomy or independence of the foetus must be emphasized, in order to meet the basic preconditions of a rights-bearing individual. On the other hand, the essential vulnerability or dependency of the foetus must also be emphasized, in order to defend the claim for the superiority of foetal rights over those of women. This contradictory position is unavoidable if abortion is to be constructed as an issue primarily concerning foetal rights.

The success of the foetal-rights lobby is due not to an intrinsic misogyny underlying rights theory, but, rather, to the particular blend of three basic assertions which have combined to legitimise these rights claims. These are, firstly, that the foetus is morally equivalent to a rights-bearing person; secondly, that the foetus is morally superior (because morally "innocent") to an involuntarily pregnant, and implicitly sexually guilty, woman; and thirdly, that the claim to a right to choice carries less moral weight than the claim to a right to life.

This blend of claims has, for instance, provided the basis for the success of the anti-abortion lobby in the Republic of Ireland, where the idea that an innocent individual's life is at risk from women and girls is motivating the current Government to reverse the partial liberalisation of abortion access which occurred in 1992, in response to the "X" case. While women's right to an abortion was recognised by the Supreme Court in 1992 in cases where a pregnant woman's life is at risk from suicide (Smyth, 1998), the Twenty-Fifth Amendment of the Constitution (Protection of Human Life in Pregnancy) Bill (2001) proposed to amend the Constitution so that a woman's right to abortion will be recognised only where her right to life is at risk from causes *other* than suicide. This move to reverse the X case ruling has been justified by the Taoiseach [Prime Minister], Bertie Ahern, as follows:

The Government . . . is of the view that legislation for the provision of abortion on the ground of threat of suicide would start an inevitable and unstoppable slide toward 'social abortion' in Ireland. (Irish Times Ahern's Response to Fine Gael, October 20, 2001).

The distinction he is drawing here is between medical and social causes for abortion. Only in cases of an inevitable biological threat to a woman's life from pregnancy will her right to life be recognised. The assumption of moral equivalence between woman and (innocent) foetus is operating here to severely limit women's right to life and health, by setting up these sharp distinctions between "life" and "health"; and between "physical" and "mental" threats to life. Under this proposal, it seems that pregnant women's right to life would extend little beyond a right to mere existence. Where foetal rights are at stake, women's right to life in a more substantial sense, where a woman's long-term health and quality of life are in question, would, it seems, be compromised. However, at the same time, the official guarantee that a woman's right to travel cannot be compromised by a foetal right to life<sup>10</sup> provides women living in Ireland with a right to obtain an abortion abroad. This has the effect of implicitly constructing abortion as an issue of "private choice," allowing those with the means to do so to "choose" an abortion outside the state's territory.<sup>11</sup>

Rather than engaging consistently with rights theory, foetal rights advocacy instead relies on an asserted equivalence between foetuses and rights bearing persons, not least through deploying an iconography that symbolizes that equivalence. The

significance of birth in conferring rights is minimised.<sup>12</sup> Furthermore, it relies on a contradiction between claiming independence and claiming rights on the basis of dependency, or vulnerability. As Joe McCarroll (1997), an anti-abortion campaigner in Ireland, has argued:

The unborn are the weakest of the weak, and the right to life is the most fundamental of human rights, so it is appropriate and necessary in a democracy to have legal protection for the right to life of the unborn. (McCarroll, 1997, p. 6)

It seems that the successes of these claims rely less on a logic of misogyny at the heart of rights theory, and more on the capacity of this lobby to exploit a particular misperception of who or what a rights-bearer might be, and consequently, which rights carry heavier moral weight. Thus, it seems to me that the emergence of foetal rights claims does not in itself indicate the inadequacy of rights theory for feminist politics. Rather, it suggests an attempt by the anti-abortion lobby to successfully appropriate this discourse, and articulate it in inconsistent ways, on the basis that rights theory provides the primary framework through which the distribution of political and social goods are justified or contested, in democratic contexts. The fact that this compelling claim to recognition of rights has emerged to counter feminist claims for abortion access is insufficient to justify a feminist abandonment of these claims. Rather, feminist political theory can elaborate a consistent claim for recognition of abortion rights against the state, without thereby necessarily taking up an already anti-feminist position. Indeed, such a position should be able to withstand the inconsistent rights claims made on behalf of foetuses, as well those claims that men should, as fathers, have the right to decide the fate of foetuses. The next two sections of this paper will consider feminist responses to the problems which have arisen with feminist articulations of rights claims in general, and the right to choose in particular.

### **ABORTION AND REPRODUCTIVE FREEDOM: FEMINIST ALTERNATIVES TO RIGHTS CLAIMS**

The problematic legal-political interpretation of feminist arguments claiming abortion rights in the US in the 1970s, and the emergence of competing rights claims on behalf of foetuses and fathers, has produced a perception among some feminists of the ineffectiveness of the rights theory generally (e.g., Petchesky, 1986). Thus, some have generalized from

this particular history by recommending an abandonment of any attempt to produce rights-based political principles. The argument here is that rights theory is embedded in an essentially masculinist ontology, and therefore is not only inadequate to the problems of women's embodied inequality, but actually reinforces that very inequality (Franklin, 1991; Himmelweit, 1988; Petchesky, 1986; Poovey, 1992).<sup>13</sup> This section will firstly consider feminist objections to rights theory's ontological assumptions, and then will outline the problems with the elaboration of a non-rights based alternative.

#### *Rights Theory and Masculinism*

Pro-choice discourse has been criticized by some feminists for its reliance on a definition of women as rights-bearing individuals. What is particularly problematic, from this perspective, is that the category of the "individual" has been historically constructed, through the Lockean notion of the masculine possessive individual (Newman, 1996, p. 65), in terms which depend on the exclusion of women. Pateman (1988, p. 114) has demonstrated, for instance, how this particular definition of the individual underlies political contract theory. The ontological basis upon which the rights-bearing individual has been constructed is that of "indivisibility" (Williams, 1976), an ontology which excludes women by virtue of their maternal capacity. Women have historically been denied individual rights precisely because they fail to fulfill the requirements of "indivisibility." As Newman puts it:

Woman's failed singularity — her reproductive body — justified the refusal to extend to women the rights claimed for universal 'Man' and thereby helped to deflect the threat to gender hierarchies posed by Enlightenment liberalism. (Newman, 1996, p. 66)

Thus, some feminists have called for a rejection of rights theory, on the basis that any claim for recognition of women's rights will always be open to withdrawal, and particularly so when women's "divisible" status comes into play in contexts of reproduction (e.g., Himmelweit, 1988).

Should feminists accept that a political or normative theory should be derived from ontological positions? As Taylor (1995, p. 182) argues in considering the analogous debate between communitarianism and liberalism, the relationship between ontological claims and advocacy or normative issues is complex. While ontological positions are never politically innocent, and help define the options it is meaningful

to support through advocacy, they do not in themselves amount to advocacy. In other words, normative principles should not be simply derived from ontological claims. The key distinction which should be taken into account in considering the relationship between ontological claims and advocacy issues is that between liberal social theory, which offers interpretations of society in atomistic terms, on the one hand, and liberal political theory, which is concerned not with social explanation, but specifically with producing justifications for decisional autonomy, bodily integrity, and identity recognition, on the other (Cohen, 1996). As Taylor (1995, pp. 181–185) points out, either position on the atomist–holist ontological scale can be combined with either position on the liberal–communitarian political scale.<sup>14</sup> For example, in the case of abortion politics in Ireland, the anti-abortion right wing rely on combining an atomistic assertion of foetal (“individual”) rights with a communitarian holism, justifying the former in terms of the latter. The strength of this lobby’s position has depended explicitly on the connection they succeeded in establishing between the nationhood project and an anti-abortion morality (Smyth, 1998). The strength of this combination has marginalised feminist arguments for *women’s* individual rights, since those rights claims have not been justified in simple national–communitarian terms.

The argument that rights theory relies on an atomistic ontology which excludes women, while historically convincing, does not provide sufficient grounds for abandoning that theory altogether, particularly since atomism is not necessarily connected to a particular form of politics. Normative rights theory is complex, varying from right-wing libertarianism’s concern with defending private property to political liberalism’s primary concern with justice and equality (Kymlicka, 1990; Parekh, 1999, p. 71). The historical foundations of rights theory can be, and indeed have been, reformulated to include a more situated and embodied concept of the rights-bearer. The latter category is not necessarily defined as a disembodied entity existing prior to language and culture.

### *Care Theory and Feminism*

Feminist dissatisfaction with rights theory has led some to elaborate an alternative political framework, namely care theory. This is a formulation which takes its lead from the relationship between mother and child. Kymlicka (1990, p. 269) describes the care theory project as an attempt to produce principles not of “rights and fairness”, but of “responsibilities and relationships”. In this formulation, a concern with

justice, regarded as masculinist, is replaced with a concern with “care,” derived from women’s experience as mothers, and concerned with the recognition of women’s needs and friendship (Mouffe, 1993, p. 79).

This is the position taken up, for example, by Elisabeth Porter (1996) in her consideration of abortion politics in Ireland, north and south. She justifies her position largely in pragmatic terms, claiming that a shift towards constructing abortion as an issue of collective responsibility rather than individual rights better suits Irish political culture, and would therefore have a more persuasive effect in claiming abortion access for women. However, her position suffers from the problems attached to care theory in general, a position which relies on the essentially unequal mother–child relationship to provide the framework for an alternative to masculinist politics. Consequently, this position fails to provide a substantive means for contesting inequality. For example, care theory uses subjective hurt as the basis for making moral claims. Porter advocates the following set of questions as the preferred process of arriving at an abortion decision:

Who will I hurt most if I have this abortion? Who will be affected if I don’t have this abortion? Who must I consider in contemplating abortion? What is my partner’s response? Given my context, what are responsible choices? (Porter, 1996, p. 291)

As Kymlicka (1990, 279) points out, this sort of framework demands too little responsibility for personal well-being, while at the same time imposing too great a responsibility for the well-being of others. A woman could be persuaded, on this basis, that she has a responsibility to remain involuntarily pregnant and give birth, particularly in the context of Ireland, where access to abortion has been constructed as a threat to “the common good” (Smyth, 1998).<sup>15</sup>

There are a number of other problems associated with care theory. Mary Dietz has argued that the mother–child relationship at the heart of care theory cannot provide an adequate model of citizenship since, in a democratic context, individuals aim at being equals (Mouffe, 1993, p. 80). Furthermore, care theory normatively constructs female identity in essentially maternal terms, thereby reproducing precisely the dualistic ontological essentialism for which rights theory or justice theory has been criticised.<sup>16</sup> The moral framework within which gender and sexuality operate in practice is affirmed here rather than challenged. Adopting an ethic of care rather than an ethic of justice and rights ultimately entails accepting an essential dualism between universal (justice)

and particularist (care) principles, rather than attempting to reformulate feminist political principles in non-dualistic, and therefore anti-essentialist ways.

There have been other feminist responses to the problems with “right to choose” discourse, which the next section will outline, before considering whether any substantive alternatives have been produced which can limit both the legitimacy of foetal rights claims, and the possibility of the application of feminist principles for unjust purposes.

### ABORTION POLITICS AND FEMINIST RIGHTS THEORY

Feminist responses to the problems with rights theory have not been limited to attempts to move away from that theory entirely. There has been a range of attempts to engage with rights theory. In the specific context of claiming abortion access, feminist arguments have shifted from claiming the right to choice towards claiming a more comprehensive right to reproductive freedom (Berer, 1988; Charles, 2000; Davis, 1981; Petchesky, 1986). Marge Berer describes the purpose of the “reproductive rights” reformulation:

The phrase ‘women’s reproductive rights’ to describe the concept of women’s right to decide if, when and how to have children has only been around since about 1979. It was first coined in the USA by feminists who formed the campaigning Reproductive Rights National Network. The concept itself is new in that it links up all the different aspects of birth control and childbearing which previously had been campaigned on separately by women. (Berer, 1988, p. 24)

The reformulation can be understood as an effort to transform the cultural politics within which different groups of women are defined differently, particularly in relation to the distribution of reproductive rights. This can be described as a form of “transformative recognition” politics, aimed at restructuring the relations of recognition, and at destabilizing group difference (Fraser, 1997, p. 27). How does this “reproductive rights” strategy, ultimately aimed at destabilizing gender and sexual dichotomies, translate in legal terms when claiming reproductive freedom?

#### *Women’s “Individual” Reproductive Rights?*

A number of attempts to redefine abortion in terms of reproductive rights indicate an uncertainty

over whether or not to advocate the latter as individual rights. Two examples will illustrate this problem. Firstly, as already mentioned, Petchesky (1986, p. 7), in her well-known attempt to reformulate abortion claims in terms of reproductive freedom, cautions against feminist advocacy of women’s absolute right to control reproduction, arguing that this position is rooted in an essentialist construction of women as mothers. However, she also rejects the idea that control over reproductive decisions should be in the hands of “the community”:

Can we really imagine the social conditions in which we would be ready to renounce control over our bodies and reproductive lives — to give over the decision as to whether, when, and with whom we will bear children to the ‘community as a whole’? (Petchesky, 1986, p. 13)

She expresses her discomfort with her inability to offer a clear articulation of a feminist position advocating reproductive freedom as follows:

Despite the real tensions between these ideas — stressing changes in the social relations of reproduction and stressing women’s control over their bodies — neither is dispensable for feminists. Yet, no political movement for ‘reproductive rights’ or women’s emancipation, including our own, has yet sustained this double agenda in a systematic and consistent way. (Petchesky, 1986, p. 14)

The second example of this uncertainty over the advocacy of reproductive rights claims as a substantial alternative to the “right to choose” can be seen in Susan Himmelweit’s (1988) attempt to elaborate the parameters of that alternative. Her aim, as she describes it, is to work within, while also transcending the limits of, individual rights politics. She defines what she refers to as a “humanitarian” alternative, which should enable the provision of abortion on demand to all women without medical authorization, a goal which, unlike Petchesky, she advocates unequivocally. However, her determination to avoid “individualizing” abortion decisions leads her to recommend a form of welfarism as the basis upon which such decisions should be made, a move which seems to suggest a community-level interest in the making of those decisions:

A recognition of the active involvement and interdependence of mother and foetus would provide a secure foundation for a humanitarian

claim for abortion on demand, based on the welfare of both mother and foetus. (Himmelweit, 1988, p. 53)

It seems to me that the uncertainty and limitations these articulations of “reproductive rights” exhibit suggest a confusion between providing explanation and producing political principles. Explaining the legitimacy achieved for particular interpretations of “individual” rights for unjust ends, a task of social theory, is distinct from, although related to, the task of devising and refining political principles which can resist or withstand such misinterpretation, misapplication, or appropriation. While providing explanations and devising normative principles are not mutually exclusive exercises, they do pose different questions, and demand different answers. Petchesky’s argument, warning feminists of the dangers of supporting women’s absolute right to reproductive decision-making, combined with a call for a revolution to address the circumstances within which reproductive freedoms are curtailed,<sup>17</sup> seems to exemplify the inadequate formulation of principles which this confusion can produce. Are there any more substantial attempts to construct feminist responses to the inadequacy of the right to choose position?

### *Sexually Differentiated Rights*

A major strand of feminist political theory which has attempted to address the limits historically placed on women’s rights claims from within rights theory has been a call for sexually differentiated citizenship.<sup>18</sup> Carol Pateman is well known for proposing this remedy to the historical masculinisation of the rights-bearing citizen in liberal political theory. On the basis of her analysis of the history of this body of theory, she advocates a reformulation of citizenship such that female specificity and the common humanity of men and women are simultaneously recognized. In this way, she argues that the construction of the rights-bearing citizen as disembodied, unitary, and defined in terms of a patriarchal opposition between public and private, can be overcome. Feminists should elaborate a sexually differentiated construction of the individual and the citizen which would include “women as women in a context of civil equality and active citizenship” (Pateman, quoted in Mouffe, 1993, p. 81).

However, Pateman’s alternative has been criticised for reliance on precisely the essentialized categories which she ultimately aims to overcome. As Chantal Mouffe (1993, p. 81) argues, this

argument also relies on a definition of women as mothers.

More particularly, Nancy Fraser (1997) has criticised Pateman’s reliance on the definition of the male/female opposition in terms of a master/subject hierarchy:

... Pateman’s approach is too absolutist to do justice to the inherent complexity of contemporary cultural politics. An adequate approach ought not to assume that mastery and subjection exhaust the full meanings of masculinity and femininity. Nor that the meanings of those terms are impervious to contestation and change ... (Fraser, 1997, p. 234)

It would seem that attempts to address the historical problems with rights theory by formulating a theory of sexually differentiated rights inevitably affirms rather than transforms normative identitarian categories, and the relations of recognition (Fraser, 1997, p. 27).<sup>19</sup> Is there a feminist formulation of rights claims which does not suffer from a dualist and essentialist account of gender and sexuality in the making of those claims?

### *A Right to Bodily Integrity: Rights and Personhood*

There has been a feminist approach which makes abortion rights claims on the basis of sexual and reproductive difference, without affirming the dualistic relations of recognition informing legal and representative structures. Sexuality and embodiment have been placed at the centre of the legal–political theory formulated by Cornell (1995), which makes abortion rights claims on the basis of a right to bodily integrity. She is concerned with elaborating, and claiming recognition for, the minimum conditions required for all sexual beings to achieve individuation. Her formulation is produced to redress the way abortion regulation in the US, in particular, has both defined women in terms of maternity, and furthermore, has limited “the play of the feminine imaginary,” as she puts it, by attempting to define the meaning of abortion for women.

Two strands of argument support Cornell’s formulation of the right to abortion in terms of a right to bodily integrity. Firstly, she defines personhood in terms of individuation, an effect of the imaginary perception of one’s self as whole over time. The rights-bearing individual’s “indivisibility” bears a complex relation to their embodied personhood. The imaginary, rather than physical underpinning of “bodily integrity” is what is at stake. Thus, abortion

regulation primarily concerns women's individuated sense of self. As she argues:

The right to abortion should not be understood as the right to choose an abortion, but as the right to realize the legitimacy of the individual woman's projections of her own bodily integrity, consistent with her imagination of herself at the time that she chooses to terminate her pregnancy. (Cornell, 1995, p. 53)

Thus, Cornell argues, women should be the source of both the abortion decision and the significance of that decision.

The second strand to Cornell's argument is her account of the law as a powerful symbolic system which constitutes and confirms who matters.<sup>20</sup> Thus, the legal system is central to the production of an integrated sense of self. Legal denial of women's right to bodily integrity amounts to an assault on "the feminine imaginary." As she argues,

The denial of the right to abortion should be understood as a serious symbolic assault on a woman's sense of self precisely because it thwarts the projection of bodily integration and places the woman's body in the hands and imaginings of others who would deny her coherence by separating her womb from her self. (Cornell, 1995 p. 38)

This seems to be a weighty alternative to the inadequacy of the "right to choose" position's reliance on problematic notions of privacy, and mind/body dualism. Claiming abortion rights on the basis of a right to bodily integrity, where what counts as "integrity" is defined by a particular woman's imagined sense of wholeness over time, seems specific enough to limit the possibility that it might be applied or interpreted in such a way as to deny any group or individual reproductive freedom. This basis for a feminist claim to abortion access on a right to bodily integrity would also limit the legitimacy of fathers' claims to decisional authority over reproduction, since to recognise such claims would require that women's right to bodily integrity, a sense of personal wholeness over time, be dispensed with.

This framing of what is at stake in abortion access would also seem to meet the feminist concern to limit the legitimacy of foetal rights claims. Since foetuses do not meet the basic precondition of citizenship, i.e. embodied individuation, they cannot claim citizenship rights. In other words, placing foetal claims to rights on the same moral level as those of women entails a denial of women's embodied selfhood, and

thereby discounts women from the legal recognition of who matters. The right to abortion as a right to bodily integrity can be thought of as a coherent feminist argument that citizenship depends on embodied personhood, and that the legal system should consequently not seek to undermine that basic precondition. To do otherwise is to produce unjust inequalities in the distribution of citizenship rights, as well as, Cornell (1995) argues, assaulting women's sense of selfhood. In this framework, the recent efforts by the Irish Government to allow access to abortion only to women whose life, as opposed to health, is at risk from pregnancy, excluding a risk of suicide, would be unjustifiable.

## CONCLUSION

This paper has outlined the problems with feminist advocacy of abortion access in terms of a right to choose, and has explored the alternatives proposed. Right to choose discourse suffers from the limits of "privacy" claims, particularly as evidenced in the US context, where "privacy" has been interpreted either in terms of possessive individualism, or in terms of familial domesticity, neither of which facilitate feminist advocacy of abortion as a right enforceable against the state, independently of collective or familial interests. This articulation has not prevented the state from actively obstructing abortion access. Furthermore, feminist campaigns for abortion access in these terms have not limited possible appropriation of this discourse for racist and eugenic official policies.

A major feminist response to the problems associated with the articulation of abortion access in terms of a right to choose has been to argue that the articulation of rights claims is necessarily detrimental to feminist politics, since to do so entails reliance on a masculine construction of the rights-bearing individual. Not only has this historically legitimised the exclusion of women from the category of rights-bearer, it has in turn facilitated the construction of the foetus as a rights-bearer, by asserting foetal independence, for instance through the idea of foetal "viability." Consequently, there has been a distinctive attempt to exclude rights claims from feminist political theory, largely by elaborating an ethic of care as an alternative to an ethic of justice. Abortion provision could be justified, in this framework, on the basis of social responsibilities rather than abstract rights. This would, it is claimed, avoid the adversarial construction of pregnancy which rights politics has produced. However, this strategy can be characterised as a form of affirmative recognition politics, which does not seek to transform the relations of recognition

(Fraser, 1997). Unequal constructions of gender and sexuality would not be brought into question, with the consequence that women could, particularly in communitarian political cultures, be persuaded to remain involuntarily pregnant, and to give birth. Thus, it would appear inadequate to a transformative feminist politics which seeks comprehensive reproductive freedom.

This latter feminist project necessarily relies on making rights claims on the basis of embodied citizenship. Implicit in this position is the assumption that the rights bearer is not necessarily a possessive individual, a construction which depends on an assumed mind/body dualism. Women can be considered indivisible individual rights bearers, where indivisible refers to the imagined integrity at the centre of selfhood, a condition which may or may not be at risk from pregnancy, depending on the context. Furthermore, this articulation limits the legitimacy of foetal rights claims, since foetuses can not legitimately be characterised by embodied autonomy. While public policy should be concerned with foetal welfare, foetuses should not be considered as morally equivalent to rights bearing citizens.

The shift from claiming abortion access as a right to choose to claiming comprehensive reproductive rights must be theorized in such a way as to prevent its application in ways which rely on the mind/body or public/private dualisms informing the elaboration of right to choose claims. Attempting to claim reproductive rights on the basis of sexually differentiated citizenship, while providing a sound basis on which to make claims for active state provision, does not seem to overcome other problems of “choice” discourse. Specifically, this remedy again reaffirms the very gender dichotomies which a feminist transformative politics seeks to undo. It seems to me that the strongest alternative to claiming abortion on the basis of a right to choice has been to assert women’s right to bodily integrity, in a context where citizenship is consequent on embodied individuation. This provides a sound normative base from which feminist claims for reproductive freedom can be made, without relying on dualistic constructions of gender and sexuality. This formulation does not facilitate official obstruction of access to abortion, or official misapplication of the principle in ways which would legitimise, for example, disregarding women’s mental and physical life and health, in the apparent interest of foetal “rights.”

## ENDNOTES

1. One major source of the entanglement between feminist calls for abortion access and forces interested in “population control” can be traced to the historical consolidation of medical power through a gradual assertion of professional scientific and moral authority over pregnant women. Abortion regulation was pivotal to the nineteenth century professionalization of medicine, when the status of medical knowledge and practice was enhanced through positioning newly institutional medicine in opposition to abortion providers (Luker, 1984; Petchesky, 1986; Reagan, 1997; Thomson, 1998).
2. As Cornell puts it, “[t]he rhetoric of choice and control assumes the much criticized dualistic conception of the subject as the king who reigns over the body” (Cornell, 1995, p. 33).
3. Angela Davis has argued, rather, that the very high rate of sterilization of this particular group of women is the result of a government policy which has operated since 1939 (Davis, 1981, p. 219).
4. Cisler’s interpretation is actually countered by an editorial footnote drawing attention to the racism of official birth control programmes (Morgan, 1970, p. 257). Her interpretation of reproductive politics and the effects on particular groups of women was not uncontroversial at the time Cisler presented it. Criticism, for example, can be found in a statement on birth control published in the same anthology, from the Black Women’s Liberation Group, which underlines the perception among Black Americans that the birth control movement operated as a form of genocide (Morgan, 1970, pp. 360–360). However, this competing interpretation of reproductive politics argues that, despite its racist agenda, birth control nevertheless offers black women and children the freedom necessary to fight racism and genocide. The controversial status of birth control in the Black Civil Rights Movement, and specifically the resistance by women within the movement to the claim that birth control was simply a form of racist population control, can be found in Greenwood and Young (1976, pp. 98–101). See also Davis (1981), particularly Chapter 12.
5. This position, Cisler argues, was favoured even by a majority of Catholics who responded to a 1969 poll on the issue (Cisler, 1969, p. 277).
6. Jean Cohen, for instance, offers the following definition: “Let me formulate the standard that underlies this aspect of privacy as *the right not to have an identity imposed upon one by the state or third parties that one cannot freely affirm and embrace.*” (original emphasis) (Cohen, 1996, p. 201).
7. For example, the current Irish Government’s policy of allowing women to travel abroad for abortions which are not available in Ireland, leaving those women without the means to travel who don’t have any recourse to the state, unless their lives are at risk from their pregnancy (Brennock, 2001).
8. The entanglement between feminist and population control discourse has been traced, for example, in the discourse of the International Planned Parenthood Federation (Linda Gordon, quoted in Greenwood & Young, 1976, p. 104).
9. Barbara Duden argues that women are present in this iconography only as the delicate and possibly dangerous eco-system necessary for the survival of the usually male foetus (Duden, 1993, p. 2). Sally Sheldon (1997) provides an analysis of the foetal discourse legitimizing medical practice in cases of multiple pregnancy.
10. This is guaranteed following the thirteenth amendment to the Constitution, ratified by referendum following the

- X case in November 1992. The relevant sections of Article 40.3.3° declares: "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right. This subsection shall not limit freedom to travel between the State and another state." (Bunreacht na hÉireann, 1937).
11. In what is known as the "C" case (1997), however, the state itself procured an abortion in Britain for a 13-year-old ward of court, who was, like X, also pregnant as a result of rape. This was done on the grounds that her decision to exercise her right to travel could not be compromised by her pregnancy.
  12. For example, a campaign leaflet entitled "The First Weeks of Life" given to me by the Irish Society for the Protection of Unborn Children in 1997, describing the process of gestation, declares: "Birth — just another stage in an already well advanced process."
  13. Although Poovey's (1992) article focuses on making these arguments, she finally draws back from calling for a feminist abandonment of rights claims.
  14. Indeed, Taylor argues that ontological holism best captures the actual practices of societies based on procedural liberalism (Taylor, 1995, p. 197).
  15. However, Porter ultimately is not prepared to recommend an abandonment of rights claims altogether, a position that seems to contradict her preference for care theory (Porter, 1996, p. 293).
  16. As Mary Poovey argues: "A cardinal feature of individualism as it was elaborated in the late seventeenth century and institutionalized in the eighteenth and nineteenth centuries was the constitution of maternity as the essence of the female subject." (Poovey, 1992, p. 243).
  17. As she argues: "[t]he point is not that present attempts to secure funded abortion, pregnancy and maternity benefits, child-care services, and other reforms should be abandoned but that those attempts must be moved beyond the framework of "a woman's right to choose" and connect to a broader revolutionary movement that addresses all the conditions for women's liberation." (Petchesky, 1986, p. 17)
  18. For example, Yuval-Davis and Werbner (1999, pp. 1–31) argue for a thick conception of citizenship which places difference as a higher-order value, above "abstract universalism." In my view, this position comes dangerously close to collapsing citizenship into identity politics, through the reification of "difference." It emerges from a view of "universal rights" as based on sameness, rather than on a thick conception of equality and justice. It seems to me that this strategy would risk a "backlash of misrecognition," in Fraser's terms, through defending a version of affirmative recognition politics, producing the danger of facilitating further classed, nationalist, or sexist hierarchies of rights distribution.
  19. As Fraser argues, "[w]hereas affirmative recognition remedies tend to promote existing group differentiations, transformative recognition remedies tend, in the long run, to destabilize them so as to make room for future regroupments" (Fraser, 1997, p. 24). For further consideration of this issue in the context of debates over feminism and multiculturalism, see Cohen, Howard and Nussbaum (1999), particularly the articles by Okin, Parekh and Sunstein.
  20. "... we can ... think of a legal system as a symbolic Other; a system that does not merely recognize, but constitutes and confirms who is to be valued, who is to matter". (Cornell, 1995, p. 42).

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