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Reproducing Autonomy

by

Jennifer M. Denbow

A dissertation submitted in partial satisfaction of the

requirements for the degree of

Doctor of Philosophy

in

Jurisprudence and Social Policy

and the Designated Emphasis

in

Women, Gender, and Sexuality

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Christopher Kutz, Co-Chair

Professor Sarah Song, Co-Chair

Professor Kristin Luker

Professor Wendy Brown

Fall 2010

Abstract

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Jennifer M. Denbow

Doctor of Philosophy in Jurisprudence and Social Policy

with a Designated Emphasis in Women, Gender, and Sexuality

Professors Christopher Kutz and Sarah Song, Co-Chairs

This dissertation explores the notion of reproductive autonomy through examination of the legal and medical regulation of abortion and sterilization in the United States. Despite numerous critiques of autonomy from feminists and post-structuralists (including feminist post-structuralists), I argue that the concept should not be abandoned but should be resignified or reproduced in a way that heeds these critiques. Not abandoning autonomy is especially crucial in the context of reproduction because it can help combat the ongoing control of women's reproductive capacities. Specifically, I argue that although the self of autonomy theory has often been understood as self-constituting, it need not be so. While autonomy may presuppose the existence of selves, those selves can be understood as produced by social and regulatory forces. Understanding autonomy in this way requires attention, then, to how these selves are produced.

At the core of the dissertation is an account of re-produced autonomy. According to this account, autonomy involves the ability to act on preferences within a relatively unconstrained field of possibility. This formulation suggests that re-produced autonomy combines respect for individual preference with an interrogation into the social forces of production. Moreover, on this account transgressive acts can open up more possibilities and can also prompt situated reflection and conversation that conduce to self-knowledge. If we understand self-knowledge as necessary to self-governance, this situated reflection is important to autonomy.

Re-produced autonomy is further explored in the context of the practices of abortion and sterilization. The dissertation examines the legal and medical literature concerning abortion and sterilization with a two-fold purpose. First, I am interested in what these expert discourses reveal about the production of women and reproductive desire. How do law and medicine understand women, maternal desire, the female body, and reproductive capacity? On my reproduced account of autonomy, legal and medical productions of women-mothers constrain autonomy. Second, I explore to what extent legal and policy changes can open up greater room for disruptions of the identity of women with maternity. How might legal and medical approaches be transformed to increase autonomy?

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I also want to thank fellow students and friends who provided needed outlets for dissertation angst and a sense of community in the often solitary task of writing a dissertation. Most recently, participants in Barrie Thorne's dissertation workshop—especially the members of the “accountability group” that grew out of the workshop—have provided inspiration and community and kept me going during the final days of dissertation writing.

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INTRODUCTION: THE POSSIBILITY OF REPRODUCTIVE AUTONOMY

There has long been something appealing to me about the idea of autonomy—the idea that individuals are or should be self-governing and should be allowed to choose their own course of life. In particular, autonomy seemed a value worth upholding in the realm of reproductive regulation. I understand criminalized abortion, for example, as compromising women's ability to choose their own course. The concept of autonomy, however, has been the target of various feminist, post-structuralist, and feminist post-structuralist critiques. Notably, feminists have challenged autonomy for its seeming reliance on the idea of an independent and atomistic self, which they argue masks and derogates inevitable relations of dependence. Post-structural thought has more deeply challenged autonomy on the basis of the idea that selves are produced or socially constructed. On this view the self is brought into being by social forces and apparatuses of power and autonomy is problematic because it is bound up with the idea that the self who governs must be in some sense authentic or pre-social.

These challenges to autonomy—especially that derived from the notion that selves are constructed or produced—open up a host of difficult questions concerning reproductive autonomy. What could it possibly mean to be autonomous with regard to one's reproduction? If a complex account of the constitution of the self, including the self's desires, values, and beliefs, is accepted then why should self-governance be privileged? If the idea that we are the origin of our preferences is disrupted, then why should self-direction be favored? If women's choices with regard to abortion are really the product of social forces and environment, then the argument that the right to abortion conduces to autonomy appears compromised. However, despite the destabilizations of autonomy suggested by these questions, I thought it possible to rethink autonomy—particularly reproductive autonomy—in a way that would address the feminist and post-structuralist challenges. This dissertation is my effort at such a rethinking of autonomy—a rethinking I have termed re-produced autonomy.

This reproduction of autonomy has important implications for political and legal debates over reproduction. Concerned as I was and am with women's reproductive decisions, I viewed autonomy as an important counter to the paternalism that has often attended the regulation of women's reproductive decisions. I was concerned about the consequences of disavowing autonomy in the realm of reproductive regulation and politics. My concern was that dispensing with autonomy in the realm of women's reproductive decisions—particularly regarding abortion and sterilization—in the United States would not counter and might even serve to strengthen forces and arguments that would substitute others' judgments for women's own judgements about their bodies and their situations. Conceiving of individuals as autonomous, then, has long seemed to me an important way to counter certain forms of oppression. My challenge in writing the dissertation was to think through whether autonomy could both answer to post-structuralist and feminist critiques and at the same time retain what had drawn me to it in the first place.

This project of rethinking autonomy in the context of reproductive regulation took me to some unexpected places. I came to realize that the autonomy theory of both canonical and contemporary scholars—whose work is explored and critiqued in chapter one—was very much entwined with epistemological issues and questions. Questions regarding the character and origins of self-knowledge were key to accounts of

autonomy. How do we know ourselves? Is there some truth of self-knowledge? Who knows our interests best? I also came to realize that accounts of autonomy had provided insufficient answers to these questions. In keeping with the idea that there needs be some real, authentic, or true self to ground autonomous action, autonomy theorists tend to posit some passive self that is there to be discovered and once discovered reveals the self's autonomy-grounding true values and desires. This view not only neglects to understand the self as produced, it also—as I argue in chapter one—takes up an objectivist perspective that presumes knowledge originates with a distancing from the thing to be known. The alternative, however, seemed to be to let anything go, to take a person's preferences as necessarily grounding their autonomy. This view, however, assumes that a person's desires, commitments, or values can be unproblematically understood as the agent's own—that is, it does not account for the production of the self.

Accounts of the production of the self are themselves troubled in their treatments of agency. I argue that these accounts—which are the subject of chapter two—are caught in their own bind. They want to uphold agency as a value but have difficulty explaining exactly on what grounds it should be upheld and even in what agency inheres. Dominance feminist Catharine MacKinnon wants to uphold something like women's agency but given her account of women's production through male sexual dominance, she also wants to say that certain preferences are so distorted as to be justifiably overridden. The post-structuralists—although they provide a nuanced account of the processes of production and argue persuasively that production should not be understood to preclude agency but to enable agency—have a difficult time explaining and defending agency. The discursive understanding of the production of subjects—especially as explored in the work of Judith Butler—is crucial to this dissertation's re-production of autonomy both for its nuanced account of the production of the subject as well as for its articulation of the possibility of subversion. However, one of the drawbacks of discursive accounts of the production of the subject is that they give insufficient attention to materiality and corporeality. In thinking through the production of maternal subjects and desire, I realized that I needed to reckon with embodiment and the corporeality of the body, especially given the intimate bodily character of sexual reproduction. My dissertation inquiry thus took me to another unexpected place as I turned to feminist engagements with materiality and social production, which are first discussed in the last part of chapter two, in order to join the discursive with a discussion of bodies in their materiality. In fact, the very term “re-produced autonomy” is meant to signal this conjunction of discursive and material.

According to the account of re-produced autonomy given in chapter three, autonomy involves the ability to act on one's preferences within a relatively unconstrained field of possibility. This view, however, does not understand preferences as emanating from an original or authentic self but nonetheless accords them respect. An important claim in this regard is that, while autonomy makes recourse to the existence of selves, those selves need not be understood as authentic, pre-social, or self-constituting. In fact, taking up a view of the self as produced entails an inquiry—which will always be partial and contingent—into the mechanisms of that production. Central to re-produced autonomy is a respect for individuals' avowed preferences that exists simultaneously with an interrogation of the social context and a concern with opening up more significant options and reproductive possibilities.

Since many of the important questions in autonomy are epistemic, I also propose in chapter three that knowledge should be understood as situated. This understanding abandons the notion of an objectivist, universal, or a priori truth. It is no longer possible to say—from the outside, as objective determinant—what could ground a woman's actions so as to make them her own. Rather, I acknowledge the multiplicity of ways in which a woman might come to regard a reproductive preference as her own. In doing so the point is not to undermine all such inquiries into how we might come to understand a desire or preference as our own but to understand the singular character such descriptions often take as serving to limit unnecessarily the modes by which that process might occur. I turn to feminist epistemology to argue that we can understand the self as situated in a way that rejects a transcendental view of the self but nonetheless does not discount the self's situated knowledge. Furthermore, I argue (and in doing so turn to John Stuart Mill's work, which is discussed in chapter one) that transgressive acts can prompt reflection in a way that encourages autonomy. The idea is that encountering alternatives often has the effect of exposing an accepted way of doing or being as contingent and can reveal the situatedness of one's own perspective and knowledge. A kind of situated reflection that may increase autonomy results.

Moreover, transgression is possible not only at the level of discourse but also at the level of materiality. That is, re-produced autonomy draws on the ideas, not only that subjects and discourses are mutable, but also that material itself is continually changing. In the context of reproduction, bodily mutability often happens at the hands of technology. In thinking through the materiality that cannot and should not be gotten away from in a discussion of reproduction I was particularly drawn to Donna Haraway's cyborg theory. Especially with regard to my analysis of sterilization, cyborg theory gave me a way of theorizing the mutability of materiality and its disruptive possibilities.

More generally I began to see reproduction as a process that is so heavily imbued with technology that it is unbelievable to me now that I could ever have thought I could think about the politics of reproduction without confronting technology. While the dissertation takes up the specific areas of abortion and sterilization, everything from “the pill” to the ultrasound serves as background to and the conditions under which procreation is now approached.¹ Technology is the condition of possibility of discourse such as that of “responsible” procreation taken up in chapter four's discussion of abortion and chapter five's discussion of sterilization. Technology has rendered procreation a choice in a way that has profound implications for how reproductive outcomes are evaluated. If babies no longer just happen, but are brought into existence only by specific intentions, much is changed. While procreative processes were once understood as beyond or just marginally within human control, today each point in women's reproductive cycles and pregnancies are possible sites of intervention and control. Monthly bleeding,² ovulation, and implantation of a fertilized egg are not the uncontrollable processes they used to be. This is not to say that people did not exert some control over these processes in the past but that the character of this intervention

¹ See Hartouni, *Cultural Conceptions* for a discussion of the implications of some reproductive technologies.

² Katie Hasson at the University of California, Berkeley is working on a doctoral dissertation, *No Need to Bleed*, which explores the phenomenon of birth control pills that are marketed primarily for the fact that they eliminate or reduce monthly bleeding. The contraceptive function of these pills is pushed to the background.

has changed. Reproductive processes are now understood rather mechanistically and have been opened up to manipulation and control in ways previously unimagined.

Precisely because of the ubiquity of technology and technological approaches to reproduction, medical expertise has increasing influence over reproduction and reproductive practices. Thus, there is a question of expert knowledge that surfaces with regard to both medicine and law. A significant question that emerges with regard to the regulation of sterilization, for example, is whose knowledge is privileged. To the extent they are opposed, does regulation favor the knowledge of the patient or the doctor? In the final two chapters of the dissertation—which deal respectively with abortion and sterilization—legal and medical expertise emerge as central modes of regulating and restricting women's reproductive options. I argue in both contexts that expert knowledge is too often favored over a woman's knowledge of herself. I also understand legal and medical discourses as productive and thus interrogate such discourses for the understanding of women they both reflect and produce.

I am especially concerned in chapter four with the legal discourse that appears in the “partial birth abortion” case of *Gonzales v. Carhart*. Not only does *Carhart* hinder autonomy by restricting women's options, but in doing so the Court both privileges fetal life over women's health and relies on a logic of victimization through abortion. The dissertation focuses mainly on the discourse of victimization, its role in the constitution of women, and the effect on autonomy. While the *Carhart* decision was devastating to read I could not shake the feeling that there was something within left rhetoric itself that had contributed to the tortured logic of Justice Kennedy's opinion and that it had to do with the relentless, sometimes overwhelming characterization of women as victims. In *Carhart* the source of victimization is abortion, and the response to that victimization is to protect the victim from making certain decisions for herself. The implication in that case is that a woman cannot know her own situation best because she has been so deeply manipulated.

Even within arguments that would give women choice, there is a tendency to present women as overwhelmingly oppressed in a way that I argue works at cross purposes to the goal of autonomy. I saw parallels, then, between the right's woman-protective antiabortion argument and the left's prominent anti-subordination argument, which affords women a choice but does so because motherhood is marked by oppression and injury. In this frame, women are given control over reproduction as an escape but not as a means to autonomy. Chapter four, then, is concerned with how the framing and function of rights affect the project of autonomy. It also presents a formulation of the right to abortion that is similar to Drucilla Cornell's account and that is also in accord with a re-produced notion of autonomy. On this account, a woman's ability to decide the material configuration and symbolic meaning of her pregnancy is paramount.

In taking up sterilization in chapter five, the dissertation continues its focus on legal regulation, but in this chapter it is joined most explicitly with technology and medical expertise. Moreover, as opposed to most scholarship on sterilization, the chapter deals not only with coerced sterilization, but also in detail with voluntary sterilization. I began to think of voluntary sterilization as a possible realm of inquiry when a friend, after some trouble, became one of the childfree and sterilized women who are one of the subjects of chapter five. Time and again, people—even self-identified feminists and progressives—stood astonished, with mouth agape, at her decision. There seemed to be something deeply troubling to them about a young, white, female, soon-

to-be attorney choosing to forego the possibility of ever bearing children. Others assumed she would regret her decision and that she could not possibly really know her mind about the issue: there was an underlying sense that she was being irrational—that her decision could be understood as nothing else—even as she articulated sound argument upon sound argument in defense of her decision. These judgments and the accompanying difficulty of attaining a sterilization, I thought, had much to do with gender and autonomy. Voluntary sterilization seemed an area in which women's autonomy should also be central.

Moreover, coerced sterilization is an obvious violation of autonomy, and the chapter also takes up this topic. Considering voluntary and forced sterilization together results in a fuller understanding of each. For example, the productions of the ideal reproducer and of the overly fertile, irresponsible reproducer are deeply entwined. The ideal reproducer could not be imagined without its negation. Chapter five, then, keeps both compulsory and voluntary sterilization in view as it traverses the medical production of the maternal woman, the legal regulation of sterilization, and the sterilized woman as a cyborg figure that might disrupt the very medical production of woman-mother that serves as a bar to access to sterilization.

Having provided the motivation for and briefly adumbrated the discussion to come, I now want to mention a topic that is of significance to autonomy but that is outside the bounds of this dissertation. The issue is that of mental competence. There are important questions that pertain to psychological manipulation, brainwashing, and mental disabilities—all of which may compromise one's ability to be autonomous. There may be times when paternalistic intervention is justified because of a person's inability to do things such as formulate a plan of action or evaluate options. While it is worth noting the existence of the issue and its complexity, this dissertation does not take up such issues in part because to do so would take me too far afield from the dissertation's focus on the possibility of autonomy given the production of the self. Moreover, to understand fully such issues of mental competence I think it is necessary to undertake a contextualized analysis of a given situation or condition. I am thus most sympathetic to those approaches to the issue of mental competence that really attempt to understand and respect agents' valuations instead of assuming an incompetence that renders autonomy impossible.³

In keeping with this need for contextualized analyses, the dissertation does not argue that autonomy is universally valuable or that my re-production of the term should be exported unthinkingly to other contexts. While I do hope that my account will be of use in thinking through other issues and while I make a number of arguments that will be of more general interest, my account of autonomy here is circumscribed by the issues and the context with which I am engaged. I am here concerned, then, not simply with an unqualified sort of autonomy but with women's autonomy with regard to reproduction in the contemporary United States. My concern with contextualized analysis translates in this dissertation to attention to the legal and medical context of reproduction and to the operation of the concept of autonomy within that context.

In my view, and as I argue in the dissertation, a reproductive and re-produced autonomy can help anchor a feminist approach to the politics and law of reproduction

³ See, e.g., Jaworska, "Respecting the Margins of Agency." for an account of how Alzheimer's patients' autonomy can be respected even though they lack abilities often assumed necessary to autonomy.

and provide some grounds for the evaluation of legal and political interventions. The point is not to try to return to some real or imagined past in which “natural” processes were allowed to run their course relatively unimpeded, but to accept the mutability of concepts, subject, and bodies. With regard to bodies, the point is to see that we live in a cyborg world in which technology has opened up possibilities for bodily transformation. The challenge, as Haraway notes, is to understand the technological, especially in its union with the biological, as a potential source of both dominations and fruitful disruptions. In the history of reproductive technology and its regulation we see the actualization of both potentials. As elaborated in chapter four, abortion opens up the possibility for women to control childbearing in ways that they experience as empowering; by rendering childbearing a choice, it may also translate into calls for justification of one's childbearing—for the tacit or explicit pressure to make one's reproductive decisions conform to ideals of “responsible” procreation. As discussed in chapter five, sterilization has been and continues to be a mechanism of oppression, but it also represents a potentially fruitful coupling. My concern in this dissertation is to keep both possibilities in view and, especially, to consider how legal frameworks might be able, through attention to a re-produced account of autonomy, to counter domination and provide potent grounds for more emancipatory ends.

CHAPTER ONE: AUTONOMY

What is meant by the term autonomy is not self-evident. One aim of this chapter is to explore some ways in which the term has been understood in both canonical and contemporary philosophical works. The purpose of the chapter is not to provide an exhaustive account of autonomy—that project would take volumes. Rather, my purpose is to explore how the concept has and is understood and how aspects of the social formation and situatedness of the self have been brought to bear on theorizations of autonomy.

I begin by exploring the thought of some canonical thinkers—namely, Jean-Jacques Rousseau, Immanuel Kant, and John Stuart Mill. I have chosen these three theorists because each is strongly associated with, and has profoundly influenced, Western understandings of freedom. Additionally, elaborating their works allows me to outline the key insights each brings to the questions with which my dissertation is concerned. Even though none these theorists think of the self as produced in the way that, as will be discussed in the next chapter, post-structuralists do, they nonetheless understand that the self is shaped by society and that autonomy cannot be held up as a central value without accounting for this. Each grapples, in one way or another, with how autonomy might be thought of in light of socialization. Although this issue is slightly different from my own, their insights are nonetheless useful for this project.

After this discussion and before moving on to discuss more recent theorizations of autonomy, I outline some of the feminist critiques of traditional ways of thinking about autonomy. I then turn to certain contemporary philosophical accounts of autonomy, some of which can be understood as responses to feminist critiques of autonomy. In fact, when I turn to contemporary accounts I pay special attention to relational accounts, which are specifically concerned with addressing the feminist critique that autonomy tends to involve an isolated self. By contrast, relational accounts directly engage with the social situatedness of the self.

Finally, I explore a tension that appears in many of the theories explored in this chapter, which is between wanting to uphold self-governance as a value and not trusting individuals' ability to govern themselves. In particular, the concern is that socialization—sometimes, more specifically, oppressive socialization—warps people's values and desires such that they cannot be understood as properly self-governing. In the chapter's conclusion, I argue that there is an underlying epistemological framework to contemporary autonomy accounts that relies on a logic of inner discovery, and I turn to feminist critiques of such epistemology to critique extant autonomy theory.

Autonomy in Canonical Texts: Rousseau, Kant, and Mill

I begin, then, with a discussion of autonomy in the works of Rousseau, Kant, and Mill.

Rousseau

Rousseau's *Second Discourse* starts from the observation that it is difficult, if not impossible, to know what is original or natural about man from what is artificial.⁴ Rousseau employs the device of the state of nature not to reveal man's nature but to imagine what he would be like before society and before the state. In doing so,

⁴ Rousseau, *The First and Second Discourses*, 92-3.

Rousseau highlights the extent of man's plasticity and acknowledges that man has been profoundly altered by society. In Rousseau's state of nature, individuals are free to do what they please. With the beginning of society, however, comes humanity's downfall: people come to depend on one another in society, which leads to inequality and subjection. For example, whereas in the state of nature people possessed the original self-love, *amour de soi-meme*, marked by confidence and pleasure in mere existence without stopping to think about the self, in society individuals come to possess a different kind of self love: *amour propre*. *Amour propre* is a narcissistic self-love that can only exist in reference to others: it is a rivalrous, narrow, self-occupied type of love that leads to increased conflict. Along with society comes not just this new form of self-love, but also a whole variety of new needs to which humans become subjected. The sexual division of labor plays a key role in the formation of these new needs because this division leads to more productivity and thus more leisure time. With this leisure time, men develop more conveniences and in the process come to "need" more things. People thus come to be, in a sense, slaves to their new socially derived desires. Moreover, increased dependence on one another in society means increased susceptibility to others' commands since only upon becoming interdependent do people feel the necessity of obeying others. We come to be dependent on others only when they have something we need. Thus, this increase in needs leads directly to human dependence and subjection.

In this story from the *Second Discourse*, then, formation by society – particularly socially formed desires – is what creates our unfreedom. However, given Rousseau's recognition of human plasticity, there is the possibility that people could be molded into beings who could be free. In *The Social Contract*, Rousseau is concerned with exactly this. He sees in his ideal civil society the possibility for a new kind of freedom, which he characterizes as "obedience to a law one prescribes to oneself"⁵—that is, to autonomy, as it is often defined. The only way for this form of freedom to be achieved is through the general will, which is something like the expression of the collective autonomy of the individuals who contract to institute civil society. It is an embodiment of the common or collective will and its content is determined by what is good, not for the individual, but for the collective. Rousseau writes that the "general will alone can direct the forces of the state in accordance with that end which the state has been established to achieve—the common good."⁶ The social contract ensures that the governing will is general by stipulating that everyone must agree to the contract, that legislative rule must be participatory, and that economic inequalities among citizens must be limited. Thus, since each person plays a role in the legislation of the general will, obedience to it cannot be said to be contrary to autonomy. In fact, acting in accord with the general will ensures obedience to self-legislated law.

A problem with Rousseau's account of civil society is that it depends for its success on the proper constitution of men. His civil society is set up to produce the sort of men that will ensure its continued existence; however, it is unclear how, upon its founding, men will be oriented toward the institutions that sustain society. Rousseau resolves this problem by introducing the lawgiver and civil religion. The lawgiver, whose office is extra-governmental, takes advantage of the contingent nature of humanity to shape and perhaps manipulate individuals into the sorts of beings who can transcend their

⁵ Rousseau, *The Social Contract*, 65.

⁶ *Ibid.*, 69.

individual wills and become “part of a much greater whole.”⁷ The mechanism by which the lawgiver achieves this is civil religion. Rousseau's account thus ultimately depends on the formation of citizens by an external and possibly deceptive force. Since this force will play a role in the construction of desires and wills, there is a clear tension with Rousseau's claim that freedom can actually be achieved in civil society via the general will. If the selves that take part in legislating the general will are so formed by the legislator and civil religion, the tension between autonomy and the formation of the self by outside forces remains.

Rousseau runs up against the same tension in *Emile*, his treatise on education. The figure of the tutor who educates Emile is in many respects similar to that of the lawgiver in that his job is to make his pupil's will accord with the general will. As Rousseau writes: “good social institutions are those that best know how to denature man, to take his absolute existence from him in order to give him a relative one and transport the *I* into the common unity.”⁸ Once people enter civil society, the task for education is to instill virtue, to mold men into understanding that their individual interests are not at odds with the collectivity's. In making such a man of Emile, the tutor must relentlessly manipulate Emile's environment such that when he fails to act virtuously he sees the “evils” which result “as coming from the very order of things and not from the vengeance of his governor.”⁹

In Emile's education lies the possibility for the freedom that results from one's needs matching one's strength. Rousseau writes that “the truly free man wants only what he can do and does what he pleases . . . society has made man weaker not only in taking from him the right he had over his own strength but, above all, in making his strength insufficient for him. That is why his desires are multiplied along with his weakness, and that is what constitutes the weakness of childhood compared to manhood.”¹⁰ He goes on to say that, by multiplying needs and thus creating dependency, “laws and society have plunged us once more into childhood.”¹¹ It is this sort of dependence on men that renders humanity unfree. The goal, then, of Emile's education is to free him from this sort of dependence and thus unfreedom. The only way to do this is to “substitute law for man and to arm the general will with a real strength superior to the action of every particular will” and this can only be done through the shaping of virtuous citizens such as Emile is to become.¹²

Rousseau's approach in *Emile* has a problem similar to that in *The Social Contract* since he relies on the manipulating figure of the tutor to establish the congruence of Emile's will with the general will. As he writes, “there is no subjection so perfect as that which keeps the appearance of freedom. Thus the will itself is made captive.”¹³ The freedom of man ultimately depends on the existence of external, manipulative entities like the legislator and the tutor. Thus, Rousseau's account of the possibility for self-governance falls short since we must be tricked into being self-governing. His work, however, retains a crucial insight: given social existence, individuals must play a role in the production of something greater than themselves if there is to exist any possibility

⁷ Ibid., 84.

⁸ Rousseau, *Emile*, 40.

⁹ Ibid., 102.

¹⁰ Ibid., 84.

¹¹ Ibid., 85.

¹² Ibid.

¹³ Ibid., 120.

for true self-governance. Even if he ultimately has a notion of a human nature—and thus, as will be discussed in the next chapter, does not accept a productionist view of the subject—his insights into what freedom might be are valuable. Self-governance, for Rousseau, is not an isolating ideal. It is not a matter of individual self-rule, but requires grappling with our attachment to others, to our existence as part of a collectivity. Additionally, Rousseau recognizes that the process of ensuring self-governance is ongoing. A one time act is not enough to ensure continued self-rule.

Kant

Kant, who read and was deeply influenced by Rousseau, is perhaps the philosopher most commonly associated with the concept of autonomy in part because it serves as a cornerstone of his moral and political theory. Like Rousseau, Kant understands autonomy in terms of obedience to a self-given law. However, crucial to Kant's theory of autonomy is a distinction that Rousseau does not make—that between the noumenal and the phenomenal realms. I briefly outline this distinction before turning to an explicit discussion of autonomy in Kantian thought.

The basic distinction between the noumenal and phenomenal realms is that the noumenal realm consists in the world of things in themselves whereas the phenomenal realm consists in the world of appearances. The phenomenal realm is ruled by the law of causality and thus determinism. Although humans exist in both realms, when we interact with the world of sense objects, we are determined in that objects cause us to behave in certain ways and desire certain things. The noumenal realm, however, consists in "whatever comes into consciousness, not through affection of the senses, but immediately" through the faculty of reason.¹⁴ That is, by reason we can know the world of things-in-themselves and hence not be determined by outside forces. Whether the noumenal and phenomenal represent ontologically separate worlds, as Paul Guyer argues, or whether they should be understood epistemologically, as two different ways of apprehending an object, as Henry Allison argues, the noumenal realm holds out the possibility for non-determinism and thus for freedom.¹⁵

Kant is specifically concerned, then, with the issue of preserving freedom in the face of the determinist view of the physical world precipitated in part by Newtonian science. For Kant, we can only have a moral duty to act in ways in which we can actually act. If our actions are predetermined then we could have a duty to do nothing but what we in fact do.¹⁶ The distinction between the noumenal and the phenomenal allows Kant to account for determinism but nonetheless preserve freedom and morality.

Drawing on Rousseau's idea that freedom inheres in self-given law, Kant argues that only self-given laws, which originate in the exercise of reason, can bind rational agents. We have access to moral principles through the faculty of reason – that is, in the noumenal realm. Thus, in acting in accord with the rational will – and thus autonomously – one is not swayed by the pushes and pulls of desire that mark the phenomenal world. In fact, in acting in accordance with desire or mere custom or habit, one acts heteronomously. Autonomy requires putting these externally determined things aside and acting only on the basis of the rationally arrived at self-given law.

¹⁴ Kant, *Groundwork of the Metaphysics of Morals*, 451.

¹⁵ Guyer, *Kant on Freedom, Law, and Happiness*; Allison, *Kant's Transcendental Idealism*.

¹⁶ Guyer, *Kant on Freedom, Law, and Happiness*, 228.

Moreover, since individuals can never be sure how their acts will actually affect things in the world, all that matters for the purposes of this rational autonomy is intention.¹⁷

In this account, especially in his understanding of phenomena, Kant views the individual as deeply affected by forces and objects outside of the self. However, in his belief that the subject can transcend the world of objects and thereby govern itself, his account is at odds with a productionist account of the subject. Kant bifurcates individuals in such a way that we can supposedly apprehend the moral law while being unaffected by the sensible world of appearances, customs, desires, and so on of which we are a part. There is here an assumption that it makes sense to think of a self outside of and prior to its social embeddedness. Also, remember that when we act in accordance with desire or habit, we are necessarily acting heteronomously. Thus, for Kant, the formation of those desires and habits are not strictly a matter of concern for autonomy. All that matters is that the individual can put them aside. Moreover, since Kant sees freedom as inhering in intentions, actual ability to achieve an aim does not affect autonomy.

While Kant's concern about preserving freedom in the face of determinism is not wholly unlike my concern with preserving autonomy in the face of a productionist account of the subject, when I turn to that account in chapter two, we will see that determinism and productionism are quite different. To understand the self as the product or effect of social forces and regulatory apparatuses, as post-structuralists do, is not to understand the self as determined. Moreover, for the reasons outlined above, Kant's answer to the determinism-freedom puzzle, which is to introduce the phenomena/noumena distinction, is inadequate for my purposes.

All of the above, however, is not to say that Kant says nothing about the formation of rational capacity or the empirical conditions that must obtain for us to be able to act on our wills. Indeed, he does discuss how children must be educated to acquire reason, as well as the "practical" or "civil" freedom that must exist if individuals are to be able to exercise their wills.¹⁸ These things notwithstanding, the kind of subject that Kant presupposes in his account of rational autonomy is profoundly at odds with a view of the subject as produced. Nonetheless, Kant's political theory has elements that will be useful for my reformulation of autonomy. In particular, Drucilla Cornell has taken up Kant's notion of individuals possessing equal intrinsic value, but has justified it "not [as] a metaphysical proposition, but [as] an aspect of the politically conceived free person."¹⁹ As a political matter, recognizing persons as possessing equal intrinsic value entails recognizing all "as capable of generating our own evaluations of our life plans."²⁰ This still leaves intact Kant's general argument that:

man's *freedom* as a human being, as a principle for the constitution of a commonwealth, can be expressed in the following formula: no-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit, so long as he does not infringe upon the freedom of others to pursue a similar end which can be reconciled with the freedom of everyone else within a

¹⁷ Kant, *Groundwork of the Metaphysics of Morals*; Kant, *Critique of Practical Reason*.

¹⁸ Hirschmann, *Gender, Class, and Freedom in Modern Political Theory*.

¹⁹ Cornell, *At the Heart of Freedom*.

²⁰ *Ibid.*, 18.

workable general law—i.e. he must accord to others the same right he enjoys himself.²¹

I discuss Cornell's theory, which is indebted to Kantian thought, more in chapter four, but here it is worth noting that although Kant's understanding of the subject is deeply at odds with productionism his political theory would leave adequate space for individual freedom and would disallow others from imposing their conception of another's welfare upon that person.

Mill

Mill, like Kant in his political writings, is concerned with establishing a realm of self-governance for the individual and thus takes a strong stance against paternalism. In *On Liberty*, Mill works within the framework of an extant state and argues that the state must be a guardian of liberty by staying out of private affairs so long as the private action at issue does not harm others. Mill strongly believes that individuals know what is best for themselves and that the state, insofar as it has the power to encroach on the individual's sphere of autonomy, is a threat to self sovereignty. Although Mill does not use the term autonomy, if, as is often presumed today, some degree of self-direction and critical reflection are understood as central to the concept of autonomy, then Mill can be understood as concerned with autonomy. Indeed, Mill asserts that "[o]ver himself, his own body and mind, the individual is sovereign."²² Here I argue that Mill is quite attuned to the socialization, if not the social constitution, of the individual. I also argue that Mill's understanding of individual liberty is quite transgressive and that this is due to his attention to socialization.

In the third chapter of *On Liberty*, Mill makes a series of forceful and intertwined arguments for affording the individual as much liberty in the direction of his life as is compatible with a like liberty for others. One argument he makes for the priority of liberty is epistemological. He writes that: "The strongest of all arguments against the interference of the public with purely personal conduct is that when it does interfere, the odds are that it interferes wrongly, and in the wrong place."²³ His argument here is that we know our own interests better than we know the interests of others and that we should therefore be allowed to act on our own interests without interference from others.

Mill also encourages diversity in modes of living because uniform adherence to the customary mode of life impedes progress and human happiness.²⁴ Mill is thus concerned that the majority views "individual spontaneity" as undeserving of regard: "The majority, being satisfied with the ways of mankind as they now are (for it is they who make them what they are) cannot comprehend why those ways should not be good enough for everybody."²⁵ In this statement we see a nod to the formative role of the majority. This observation also sets the stage for his argument that eccentricity is necessary for the sake of liberty. To quote him at some length:

²¹ Kant, *Kant: Political Writings*, 74.

²² Mill, *On Liberty and Other Essays*, 14.

²³ *Ibid.*, 92.

²⁴ *Ibid.*, 63.

²⁵ *Ibid.*

the individual or the family do not ask themselves – what do I prefer? or, what would suit my character and disposition? or, what would allow the best and highest in me to have fair play, and enable it to grow and thrive? They ask themselves, what is suitable to my position? . . . I do not mean that they choose what is customary, in preference to what suits their own inclination. It does not occur to them to have any inclination, except for what is customary. Thus the mind itself is bowed to the yoke: even in what people do for pleasure, conformity is the first thing thought of; they like in crowds; they exercise choice only among things commonly done: peculiarity of taste, eccentricity of conduct, are shunned equally with crimes . . . In this age, the mere example of non-conformity, the mere refusal to bend the knee to custom, is itself a service. Precisely because the tyranny of opinion is such as to make eccentricity a reproach, it is desirable, in order to break through that tyranny, that people should be eccentric.²⁶

The above stands as a forceful articulation of the value of counter-majoritarian conduct. The problem is not necessarily that the majority way is wrong or less advantageous than other ways but that the majority do not even consider the possibility of alternatives since people are so blinded by the dominant modes of thinking that they do not even think to conceive of alternatives. Furthermore, Mill argues that "[i]f resistance waits till life is reduced *nearly* to one uniform type, all deviations from that type will come to be considered impious, immoral, even monstrous and contrary to nature."²⁷ In this way, then, what is customary can come to be taken as natural and thus incontrovertible, even unquestionable. Eccentricity is thus crucial so that we do not get to that point. Also bound up with this need for eccentricity as a way to counter the tyranny of the majority is the value of diversity: diversity of modes of life entails a wider variety of options. It is diversity that induces reflection, which is one of the key components of Mill's understanding of self-direction. Thus, while acting eccentrically is an instance of liberty, it is also necessary to maintain liberty for the general populace.

Mill further elaborates on injurious practices of socialization in *The Subjection of Women*. For example, he states that "[w]hat is now called the nature of women is an eminently artificial thing."²⁸ He argues that women are taught to be obedient and repress any desire for liberty they may have. Due to a sort of mental control that men exercise over women, women internalize the idea that they are to be the opposite of men; they are taught to be submissive and self-sacrificing instead of self-governing. Mill thinks that lifting legal barriers to women's liberty, along with educational reforms, would lead to what he labels a "morality of justice" and would make women less self-sacrificing and men less selfish. A society of equals would also make women less dependent, which is an observation Mill stresses greatly. In fact, at one point he seems to say that a lack of dependency is a necessary precondition or even constitutive of freedom.²⁹ Even so, Mill seems to naturalize women's place in the home, maintaining that if women were permitted greater opportunities outside the home, the majority would devote themselves primarily to household pursuits.

²⁶ Mill, *On Liberty and Other Essays*, 68; Mill, *On Liberty and Other Essays*, 74.

²⁷ Mill, *On Liberty and Other Essays*, 82.

²⁸ *Ibid.*, 493.

²⁹ *Ibid.*, 586.

Nevertheless, in both *On Liberty* and *The Subjection of Women* Mill grapples with the threat that socialization poses to liberty. Moreover – and this is a crucial point – Mill emphasizes the value of individuality, not because he sees us as fully forming ourselves, but because individuality needs to be stressed in light of the pervasive and pernicious forces of public opinion. It is through eccentric, counter-majoritarian conduct that space for alternative modes of being is opened. With this arises the possibility of liberty – of people realizing they have choices, reflecting upon them, and ultimately choosing a course of conduct rather than it being prescribed to them by their social position. However, it would be wrong to conclude that only such deliberative reflective action is valuable from the standpoint of liberty. To the contrary, Mill repeatedly mentions spontaneity and impulse in his discussion of eccentric conduct. In this, I read him as saying that counter-majoritarian measures need not be well thought out, but that even moments of impulsive rebellion have disruptive effects on majoritarian thinking. Even these moments demonstrate that there is an alternative to the dominant mode of life and thereby increase space for autonomy.

Nonetheless, Mill seems to suggest that the only way for a conformist to be autonomous is for him to reflect upon and ultimately choose the customary. If this is the case, then it appears that spontaneous action could not be autonomous, taken as it is without reflection and perhaps even not with a clear self-conception that one is *choosing*. That is, to act impulsively is in some sense to forego any sort of decision-making process that is thought to precede the act of choosing. Regardless, I think Mill wants to retain the importance of this non-reflective spontaneity since, whether or not an agent conceives of the action as the result of a choice, it has disruptive effects on majoritarian thinking and can thus induce reflection in others.

Thus, Mill's account of socialization and, as he sees it, the concomitant value of individuality is quite well developed. Although, like Kant, he thinks that acting merely on the basis of custom is an insufficient basis for autonomy, he does not assume that individuals can wholly transcend this construction via reason as does Kant. Nonetheless, Mill does fail to explain exactly how it is that we can come to question the received common sense and publicly sanctioned ways of life if we are so blinded by them. It appears self evident to him that some individuals will have the ability to question public opinion and deliberately act eccentrically. He seems to presume that some people can move beyond socialization to become individuals of their own making but does not provide an account of that supposed transcendent potential.

From the foregoing discussion of Rousseau, Kant, and Mill, we garner a preliminary idea of what an account of autonomy that is attentive to the social constitution of the self might look like, even if these theorists themselves did not have a productionist view of the self. Rousseau sees that autonomy is an ongoing process and that in order to be truly self-governing, one must participate in the larger political processes so that the general will can be conceived of as a self-given will. Kant's political theory contains a strong articulation of the threats of domination and paternalism for the project of freedom. Mill, even if he at times conflates autonomy with independence, still highlights the need for eccentricity and diversity to safeguard a degree of autonomy. Nonetheless, the difficulty that attends these thinkers' articulations of

autonomy—especially as they grapple with social existence—signals the difficulty of thinking through the autonomy of the socialized and politicized self.

Importantly, all of these thinkers suggest that there is a disjuncture between autonomy and desire: autonomy, or what I will for myself, cannot be understood strictly or unqualifiedly as that which I merely want. For Rousseau, individual preference must conform with the collective will. For Kant, desire exists in the world of determinism and so cannot be the object of self-legislation: it is only by transcending desire and employing reason that one can ever achieve autonomy. For Mill, autonomy implicitly requires reflection in a context of options. His example of non-liberty comes from those who, in a context of extreme conformity, ask themselves merely, “what is suitable to my position?”³⁰ This disjuncture and the process by which individuals might come to think of themselves as willing a particular end for themselves, and not merely as acting on or even being controlled by what they desire, is of persistent interest and concern to autonomy.

Before moving on to discuss feminist critiques of autonomy, I want to acknowledge that in the foregoing discussion I have not been precise about whether the autonomy in question has been moral, personal, or political. Moral autonomy tends to be understood as concerned with the self-legislation of and obedience to the moral law; personal autonomy is understood as involving determination of the course of one's own life; political autonomy generally involves a concern with personal authorization of the laws and political system that govern the individual. Kant is most often taken as concerned with moral autonomy,³¹ the Mill of *On Liberty* is understood as primarily concerned with personal autonomy, and Rousseau's *The Social Contract* is most concerned with political autonomy. While I am not specifically interested in moral autonomy, I have discussed Kant's conception of autonomy because it nonetheless brings up important issues that warrant attention and because the sharp divide between moral and personal autonomy may be overstated.³² If I have been sliding between personal and political autonomy it is because, as I will argue later, the customary division between personal and political autonomy does not serve my critical purposes. In fact, this binary maps onto the self-society binary that I want to destabilize.

Feminist Critiques of Autonomy

I now turn to an explication of various feminist critiques of autonomy—which have been leveled both at the way autonomy has been understood in some of the foregoing theories, as well as at the concept more generally.³³ This discussion is important for situating the more contemporary accounts of autonomy I turn to in the next section of this chapter. (Also, these critiques will reappear in chapter three when I argue that they are contingent critiques of autonomy and thus do not foreclose the concept's reformulation in ways that respond to these critiques.)

The first critique I want to explore is based on the observation that social contract theories like Rousseau's simply ignore women in their discussions of the origin of the state. By implication, women lack the requisite natural autonomy to participate in the

³⁰ Ibid., 68.

³¹ Although see Taylor, “Kantian Personal Autonomy.” for an argument that there is a way in which Kant is also concerned with personal autonomy.

³² Ibid.

³³ I discuss post-structuralist critiques of autonomy in the next chapter.

process of instituting a legitimate state. As Carole Pateman has argued, since freedom in political society originates with the social contract, women are decidedly unfree. Moreover, by being left out of the process and the resulting social contract, women are subordinated to the men who institute the political society. In the process, women's situation outside the political—that is, in the private, familial realm—is naturalized.³⁴ Susan Okin has further developed this thought to argue that the lack of application of principles of justice to the family has resulted from this paradigm, which sees women's location within the family as outside that of the properly political. In particular, the constraints placed upon women in the family—and thus women's significant lack of sovereignty in the private realm—have been ignored by Western political theory.³⁵

This line of thought calls our attention to the way in which autonomy has traditionally been bound up with the masculine: the autonomous individual has been historically and theoretically produced as male. Correspondingly, the female has been understood as lacking self-governance and thereby requiring the rule of man to ensure her proper governance. Theories like Rousseau's, then, serve not only as exemplars of the way in which gender relations have been justified and constructed, but also as constructing forces themselves. In the Western tradition, women have not been capable of autonomy.

Another feminist critique of autonomy is based on the claim that the specific view of autonomy most often employed by Western liberal theorists conceptualizes persons as individuals first: any view of people as participants in a community or as connected to one another is secondary. That is, what separates us and what makes us autonomous are epistemologically prior to what connects us.³⁶ Alison Jaggar says of liberalism generally that it assumes “individuals could exist outside a social context.”³⁷ Feminists such as Robin West go further to argue that this view ignores the perspectives of women whose experiences often demonstrate the inherent interconnectedness of individuals. West points in particular to some women's intimate bodily connections with fetuses to argue that a philosophy that views individuals as inherently separate does not speak to women's experiences or even to a range of men's experiences. After all, both men and women are born and often die in a state of dependence on others.

A related critique of liberal autonomy theory is that its atomistic conceptualization of individuals leads to an assumption that self-sufficiency and independence are bound up with or even constitutive of autonomy. The result is a derogation of relations of dependency and a masking of social relations. Since independence connotes male, white, affluent, and able-bodied, we should be wary of invocations of an autonomy linked with independence. Furthermore, given that social context plays a constitutive role in the development of the self, liberal autonomy theory is inadequate.³⁸

³⁴ Pateman, *The Sexual Contract*.

³⁵ Okin, *Justice, Gender, and the Family*.

³⁶ West, “Jurisprudence and Gender.” See also Brennan, “Recent Work in Feminist Ethics.” for a nice summary of feminist critiques to mainstream ethics and some feminist responses. See Gilligan, *In a Different Voice* for the origin of this critique. This critique is also closely related to the communitarian critique of liberalism. Communitarians see the individual as partially constituted by society, family, and community and thus resist the atomistic individualism of liberalism. See, e.g., Sandel, *Liberalism and the Limits of Justice*, ix-xiv., though Sandel himself rejects the label “communitarian.”

³⁷ Jaggar, *Feminist Politics and Human Nature*, 29.

³⁸ Nedelsky, “Reconceiving Autonomy”; Friedman, *Autonomy, Gender, Politics*, 82-87. provides a good summary of critiques of this kind; See also Iris Marion Young, “Mothers, Citizenship, and Independence.” for an argument that self-sufficiency and autonomy should be theoretically untangled.

According to other critics, liberal emphases on autonomy and choice obfuscate the fact that seemingly autonomous choices, especially those of women, are often greatly constrained by circumstance and context.³⁹ Moreover, there is a tendency to claim that autonomy inheres in formal rights and freedoms. However, it does not follow from the fact that, for example, a woman has a formal right to abort a fetus, that she has reproductive autonomy. If she has to travel far and pay a substantial portion of her income to obtain an abortion or if she must negotiate a medical system that is geared toward dissuading her from abortion, it is anything but clear that when she decides the outcome of her pregnancy she is acting autonomously. Again, part of the problem with mainstream understandings of autonomy is the tendency to ignore women's viewpoint and social location.

One final and related consideration that complicates feminism's relation to autonomy is the connection between autonomy and responsibility. Generally, to be seen as responsible for one's actions, one must have acted autonomously. And, if one acted autonomously, one should be held accountable for one's actions. In some contexts, such as in the criminal law, it may serve the interests of an individual woman to claim that her circumstances—of, for example, being the subject of ongoing battery—mitigate the responsibility she has for her actions and, thus, that it is inappropriate to hold her accountable. However, in the words of Kathryn Abrams, this kind of criminal defense—which is often referred to as the “Battered Woman Syndrome”—“has also fueled a view of battered women as pathologically passive and starkly unable to provide for either themselves or their children.”⁴⁰ That is, battered women are viewed as incapable of being autonomous—of responsibly exercising self-sovereignty. This then entrenches the idea that women are not, or even cannot fully be, autonomous. This double bind that women are often in with respect to autonomy reflects the earlier point that the traditional Western philosophical concept of autonomy is inadequate as applied to women's experiences.

Autonomy: Procedural, Substantive, and Relational

As a response to the feminist critiques just outlined—particularly the charge that accounts of autonomy tend to present the individual as atomistic, independent and not socially formed—many contemporary philosophers have undertaken to theorize autonomy relationally. As Catriona Mackenzie and Natalie Stoljar note, relational autonomy does not refer to any unified account of autonomy, but to a series of attempts to bring the socially situated nature of the self to bear on autonomy. In their words, “the focus of relational approaches is to analyze the implications of the intersubjective and social dimensions of selfhood and identity for conceptions of individual autonomy and moral and political agency.”⁴¹ In this section I discuss some attempts to account for the relational self in theories of autonomy and in doing so touch on some important areas of scholarship that are relevant for my own inquiry.

Autonomy theories may be characterized, not only as relational, but also as either procedural or substantive. While there is much variation within both of these approaches, the procedural accounts are generally concerned with the process by which a person adopts a certain desire, value, preference, or plan. Substantive accounts may

³⁹ See MacKinnon, *Women's Lives, Men's Laws* for an example of this critique.

⁴⁰ Abrams, “The Constitution of Women.”

⁴¹ Mackenzie and Stoljar, “Introduction,” 4.

also be concerned with the processes by which a person arrives at such things, but they also include substantive restrictions on the content of an agent's values or desires. Often substantive accounts require that one has to make decisions consistent with upholding autonomy as a value. Both procedural and substantive accounts assume that an agent's mere representation of a value or desire as his or her own is insufficient to ground autonomy and thus seek to separate out preferences or commitments that are *really* one's own and those that are not. I use the distinction between procedural and substantive autonomy to organize the discussion that follows. In discussing each of these two types of autonomy theory, I am especially though not exclusively focused on those accounts that are relational or that present a complex understanding of the self.

Before beginning this discussion, I want to note that the process/substance split is itself somewhat misleading since process and substance are unavoidably entwined. For example, the substance of one's commitments may shape the process by which one determines one's plans or preferences. If an agent is committed to living a life that comports with religious dictates, the process by which she decides on a course of action will look quite different from the process of an agent who is committed to living a life of pleasure. In fact, Marilyn Friedman argues that the distinction between substantive and procedural, content-neutral conceptions of autonomy collapse at some point. She writes:

A substantive conception requires someone to be committed to autonomy itself as a value or, at least, to have no values that conflict with this commitment . . . A person who cares about her own autonomy cares about her own activity of reflecting on her deeper, self-defining concerns without manipulation or coercion and to be able to act accordingly and with some capacity to persist in doing so in the face of opposition from others. This commitment is a commitment to nothing other than *content-neutral* [procedural] autonomy!⁴²

As Friedman recognizes, to require that the substance of one's values accord with autonomy is to require that a person value the *process* of coming to autonomous decisions. Nonetheless, the distinction is frequently employed in accounts of autonomy and so I use the distinction to structure the below discussion.

Procedural Autonomy

Procedural autonomy theories seek to identify a particular mechanism, set of mechanisms, or sometimes specific skills that are requisite for autonomy. On some accounts, a person's preferences must be reflectively endorsed and must accord with her higher order desires;⁴³ on others a person must (also) have developed commitments in a legitimate or independent way;⁴⁴ and on still another account, one is autonomous if in possession of a requisite set of competencies or skills.⁴⁵ I here consider just a couple of accounts in detail—namely, those of Gerald Dworkin and the more relationally focused account of Marilyn Friedman.

⁴² Friedman, *Autonomy, Gender, Politics*, 21.

⁴³ Frankfurt, "Freedom of the Will and the Concept of a Person."

⁴⁴ Dworkin, *The Theory and Practice of Autonomy*.

⁴⁵ Meyers, *Self, Society, and Personal Choice*.

Dworkin argues that to be autonomous, one's choices must be voluntary, and the values and desires that move one to act must be, in some sense, authentic and independent. Thus, external control over not only one's acts, but also one's desires can be detrimental to autonomy. Dworkin gives the following definition:

[A]utonomy is conceived of as a second-order capacity of persons to reflect critically upon their first-order preferences, desires, wishes, and so forth and the capacity to accept or attempt to change these in light of higher-order preferences and values. By exercising such a capacity, persons define their nature, give meaning and coherence to their lives, and take responsibility for the kind of person they are.⁴⁶

In Dworkin's conceptualization, autonomy includes not only the capacity to reflect critically, but also the ability to make one's actions accord with one's reflected upon desires and values. Furthermore, in order for one to be autonomous, the formation of one's desires and values must be procedurally independent. That is, they must be formed in such a way that influences on one's reflective faculties must advance those faculties rather than undermine them. This "involves distinguishing those influences such as hypnotic suggestion, manipulation, coercive persuasion, subliminal influence, and so forth, and doing so in a non ad hoc fashion."⁴⁷ Dworkin's concept of autonomy does not include any particular substantive content. He defends a hypothetical decision to "[d]o whatever my mother or my buddies or my leader or my priest tell me to do" as autonomous so long as the influences on such decisions "promote and improve" reflective capabilities.⁴⁸

Like Dworkin, Marilyn Friedman—another philosopher who has sought to unpack autonomy—adopts a procedural approach: to determine whether or not an individual's actions count as autonomous, she looks only to the process by which a choice is made. For Friedman, what matters is the reflective process and one's endorsement of the second-order desires that guide action. She argues that autonomous behavior must be self-reflective in two senses. First, choices and actions must be "partly caused by the actor's reflective consideration of her own wants and values, where reflective consideration may be cognitive in a narrow sense or also affective or volitional and cognitive in a broad sense."⁴⁹ Second, the actions and choices must mirror those reflectively-endorsed wants and values. In other words: "Autonomous behavior is . . . based on the deeper wants and commitments of the behaving person, is partly caused by her reflections on and reaffirmation of them, and mirrors those wants and commitments in the sense of helping her to achieve, promote, or protect them."⁵⁰

Friedman argues that her understanding of autonomy is compatible with a relational understanding of the self, and she explores the ways in which autonomy itself must be understood relationally. She understands persons as "products of socialization by other selves."⁵¹ She also argues that autonomy involves certain capacities, such as the ability to recognize options and to understand one's own wants, which "must be

⁴⁶ Dworkin, *The Theory and Practice of Autonomy*, 20.

⁴⁷ *Ibid.*, 18.

⁴⁸ Dworkin, *The Theory and Practice of Autonomy*, 21, 18.

⁴⁹ Friedman, *Autonomy, Gender, Politics*, 14.

⁵⁰ *Ibid.*, 8.

⁵¹ *Ibid.*, 15.

acquired through learning from other persons already able to exercise them."⁵² She thinks that emphasizing these relational and intersubjective aspects of autonomy is crucial to counter the oft-criticized tendency for autonomy to be excessively individualistic. She notes that "atomistic selves, lacking any prior social relationships" are not autonomous and that "socially deracinated, autonomy would be a pointless and meaningless notion."⁵³

Both Dworkin and Friedman mention but do not really account for the importance of social relationships for the development and expression of the self.⁵⁴ Friedman, who is more attuned to the feminist issues and give a more relational account, fails really to account for the deeply constitutive character of the self. She does little more than mention that the self is produced by social forces. Any amount of reflective consideration makes one more autonomous, "even if done in the light of other standards and relationships not simultaneously subjected to the same scrutiny."⁵⁵

The primary problem with these accounts is their lack of interrogation and analysis of the forces that produce the self. The foregoing theorists see self-governance as inhering in an isolated individual inquiry into one's desires. Given that they both partially recognize that outside forces play a role in the constitution of those desires, their failure to think seriously about those forces is both curious and significant. Another way to put this critique is that, though Dworkin and Friedman each recognize that the self does not exist in a vacuum, their accounts of autonomy are deeply personal. Although recognizing the interplay between self and society, their accounts of autonomy do not grapple enough with this interplay.⁵⁶ Their recognition of social embeddedness does not translate into an account of autonomy that grapples at its base with the social.

For example, whereas Dworkin views hypnotism and coercion as subverting influences on autonomy, he fails to see larger (and less localized) forces as having any relevance for autonomy.⁵⁷ Though he notes the role of those forces in shaping us, they remain unproblematic for him unless they somehow undermine reflective capacities.⁵⁸ In his estimation, the fact that such capacities are formed by the social is of no real consequence for autonomy. Dworkin, therefore, takes little account of social production. Dworkin and Friedman both hold that an individual's reflection on desires or norms will necessarily lead to greater autonomy, even if the individual just validates externally produced norms or desires that have already been internalized. Because autonomy is located squarely in individual processes, the social and political context is ignored and even masked. By taking deeply held desires and commitments as given, these philosophers obfuscate the production of those desires. If the self is taken as deeply constituted by society, however, then correspondingly the self - society binary cannot be unproblematically assumed.

I am not claiming here that personal reflection has no place in autonomy; however, if we take external forces seriously and understand the complicated relation between external forces and individual preference, we will see that we cannot hang the whole of

⁵² Ibid.

⁵³ Ibid., 17.

⁵⁴ Friedman, *Autonomy, Gender, Politics*, 81-97; Dworkin, *The Theory and Practice of Autonomy*, 21-23.

⁵⁵ Friedman, *Autonomy, Gender, Politics*, 104.

⁵⁶ Saba Mahmood makes a similar point. Mahmood, *Politics of Piety*, 150-51.

⁵⁷ Similarly, Friedman notes the adverse effects of things like coercion, deception, and manipulation.

⁵⁸ Dworkin, *The Theory and Practice of Autonomy*, 18.

autonomy on individual consideration of norms and wants. Since autonomy is about, indeed is defined as, *self-government*, attention to the production of the self must be fundamental to a theory of autonomy. Additionally, we should reflect on how this narrow focus on individual self-reflection, which excludes a consideration of the processes that constitute us, precludes an analysis of those processes and forecloses the possibility of a more robust autonomy – the kind that might be found to be possible were we to undergo a critical engagement with construction.⁵⁹

Additionally, procedural accounts, while content-neutral, nonetheless valorize a specific reflective process and in doing so presume a particular architecture of the self. The claim that autonomy involves reflecting on one's second-order desires assumes a split level picture of the self. I think that these accounts also assume a stable self—after all, autonomy involves reflecting on one's deeply held commitments and values which are presumably relatively stable. Dworkin, for example, assumes a core of higher order desires, values, etc. that serve as the basis for evaluating first order preferences. There is a view of a core, stable self that should direct the self's actions. That is, the choice of a certain reflective process already assumes a particular account of the self and its architecture. For Dworkin and Friedman there is an underlying hierarchical and relatively stable self such that their process-focused accounts write much more into the self than they acknowledge. The intersectional autonomy accounts to which I now turn present an alternative view of the self and its architecture.

Intersectional, Process-Focused Accounts

In an attempt to integrate the social embeddedness of the self more thoroughly into autonomy, both Diana Tietjens Meyers and Edwina Barvosa-Carter—to whose accounts I now turn—have brought together autonomy and the notion of intersectional identity. Their accounts take issue with reliance on a unitary, static self as the basis of autonomy; they instead emphasize multiplicity of identity and highlight the complexity and dynamic character of individuals. Specifically, these intersectional approaches understand individuals as often having deeply conflicting desires and commitments but decline to attribute non-autonomy categorically to subjects so conceived. Both Meyers and Barvosa-Carter argue that being socially subordinated does not necessarily lead to impaired reflective abilities and could even be a boon to those abilities.

Meyers, for example, has argued that having an intersectional identity—understood as “an identity drawn from diverse sources,”⁶⁰ especially different group identities—“contributes to autonomy by connecting individuals to systemic social relations and to the social meanings of those structures.”⁶¹ Moreover, “[a]pplying the skills that comprise autonomy competency, intersectional subjects analyze their position in social hierarchies, interpret the psychic impact of their social experience, and reconfigure their identities as members of social groups. In so doing, they constitute authentic intersectional identities.”⁶² Meyers is especially concerned to show that intersectionality is compatible with her own competency account according to which

⁵⁹ This point in some ways is similar to a question Judith Butler poses: “what kinds of agency are foreclosed through the positing of an epistemological subject precisely because the rules and practices that govern the invocation of that subject and regulate its agency in advance are ruled out as sites of analysis and critical intervention?” Butler, *Gender Trouble*, 144.

⁶⁰ Meyers, “Intersectional Identity and the Authentic Self?,” 154.

⁶¹ *Ibid.*, 164.

⁶² *Ibid.*, 154.

agents must have certain “skills that contribute to self-discovery, self-definition, and self-direction” to count as autonomous.⁶³

It is worth pausing here with the notion of authenticity since Meyers uses it in a non-traditional sense. As it is generally understood, “authentic” is a term reserved for that part of the self that transcends the social milieu within which individuals exist. That is, authenticity tends to be understood as an aspect of one's original or true self. Meyers, however, theorizes authenticity as constituted. In fact, her concern is to “direct our attention—away from the internal structure of the authentic self and toward the process of constituting an authentic self.”⁶⁴ Her understanding of authenticity is based on the idea that it is possible to distinguish “one's real or genuine desires—that is, the desires of an authentic self”—from other desires that one “happens to have.”⁶⁵ While, like Meyers, I am interested in the *constitution* of desires (as well as things like commitments and values), I avoid the term “authenticity” because I think, as Meyers' theorization suggests, it implies that desires are really one's own in some deep and important sense. While I do not deny that individuals may experience some desires as more authentically their own, I want to direct attention toward the contingent and variable character of desire. While I am concerned with enabling people to act on preferences and desires that they conceive of as their own, I decline to theorize those preferences and desires as authentic because I worry that to do so would obscure their contingency.

Without relying on the notion of authenticity, Barvosa-Carter has, like Meyers, extended the notion of what kind of subject can be understood as autonomous through an exploration of intersectional identity. She has suggested “mestiza consciousness as useful for theorizing the wide variety of intersecting and sometimes conflicting identifications and social relationships that agents can have.”⁶⁶ Barvosa-Carter applies this intersectionality to an explicitly procedural account of autonomy. She writes: “autonomous agents act in keeping with syncretic endorsements that they formulate through their critical reflection on the array of values and norms that are given to them socially as part of their different social and personal identities.”⁶⁷ Barvosa-Carter makes a number of significant points, one of which is on the value of ambivalence. On this point she writes:

For agents socialized in and still living in the midst of social relations of group conflict, those conflicting social relationships can shape the practice of autonomy in ways that make two particular kinds of ambivalence useful to agents in their everyday attempts to achieve autonomy. The first of these is ambivalence toward the principles that they have disavowed as those not among their guiding endorsements. The second is ambivalence toward the rank order of their endorsements.⁶⁸

Her account, then, reveals previous accounts of autonomy as overly exclusive insofar as their model of autonomy is based on the kind of reflection expected of those in

⁶³ Meyers, *Being Yourself*, 58.

⁶⁴ Meyers, “Intersectional Identity and the Authentic Self?,” 152.

⁶⁵ *Ibid.*, 158.

⁶⁶ Barvosa-Carter, “Mestiza Autonomy as Relational Autonomy,” 2.

⁶⁷ *Ibid.*

⁶⁸ *Ibid.*, 3.

privileged positions. She and Meyers both reveal as unjustified the assumption that oppressive socialization is a hindrance to reflection and therefore autonomy and also the idea that a unitary, hierarchical self is necessary for autonomy.

I think that both of these accounts of autonomy thus serve as important correctives to procedural understandings of autonomy in which it is implicitly or explicitly presumed that the privileged have the capacities that tend toward autonomy. Also, they address the critique I leveled against other procedural accounts by more readily engaging with how the social affects preferences and reflection. They do not presume the same sort of division between self and society as do Dworkin and Friedman. However, despite this and the importance of their contributions, these accounts maintain a concern with the psychology and the internal capacities of subjects. While it is crucial to note that intersectionality can prompt critical reflection insofar as one is aware of competing norms and commitments stemming from one's different social positionings and identities, the intersectional accounts merely replace the subject of autonomy with a more complex and subordinated individual. In doing so, they maintain a circumscribed psychological account of the autonomous subject.

These intersectional accounts, though, demonstrate that the specificity of the procedural accounts of Dworkin and Friedman lead to a failure to recognize the validity of other ways in which a person may come to conceive of her desires as her own. That theorists have come up with varied accounts of what makes a desire genuinely one's own suggests that there are many ways in which people come to understand their preferences as their own. While there is value in exploring these psychological issues, I want to resist taking any one process as *the* condition of autonomy. While it is important not to assume a clear division between self and society, for my purposes (and as will be elaborated in subsequent chapters) the precise psychological mechanism by which we deem our desires our own is relatively unimportant. I worry that such approaches unduly exclude certain people from the ambit of autonomy. Also, I am less concerned with the internal mechanisms of autonomy than with the social forces that constrain autonomy.

Substantive Autonomy

One way theorists have tried to account for the effects of socialization—especially oppressive socialization—is by taking up substantive accounts of autonomy. Substantive theorists critique purely procedural accounts on the grounds that they allow for the non-intuitive assignment of autonomy to agents who, although steeped in oppressive circumstances, nonetheless reflect on their preferences and endorse their subservient role. Substantive approaches try to account for this possibility by placing some sort of restraint on the content of a preference or action, where the type of constraint, as Mackenzie and Stoljar discuss, determines whether the account is weakly or strongly substantive. In their words, weak accounts add “conditions on autonomy that operate as constraints on the contents of the desires or preferences capable of being held by autonomous agents”; strong accounts demand “specific contents of the autonomous preferences of agents.”⁶⁹ Here I outline and critique some substantive accounts.

⁶⁹ Mackenzie and Stoljar, “Introduction,” 19.

Paul Benson has articulated a weak account of substantive autonomy (although he has also articulated a strong account⁷⁰) which arises from a specific concern with the effects of oppression. Benson requires that an agent have a sense of self-worth to count as autonomous.⁷¹ He considers the case of a woman who is deemed a “hysterical wife” by her physician husband who takes her “active imagination[] and strong passions” as signs of “a serious psychological illness.”⁷² This diagnosis results in the woman conceiving of herself as crazy and incompetent “on the basis of reasons that are accepted by a scientific establishment which is socially validated and which she trusts.”⁷³ Benson takes this lack of self-worth to indicate a lack of autonomy and in doing so makes self-worth a requirement of autonomy. Although such an agent would pass a procedural test of autonomy and indeed the agent may still be able to carry out her preferences, we should understand her lack of self-worth as undermining her autonomy. Mackenzie and Stoljar label this approach weakly substantive “because although it places constraints on the desires, preferences, and values that count as autonomous, it abandons the content specificity of strong substantive theories.”⁷⁴

More frequent than weak accounts like Benson's are strong substantive accounts. That is, in response to the intuition that procedural accounts of autonomy do not adequately account for oppressive socialization, theorists have more often turned to strong—as opposed to weak—substantive accounts. For example, Natalie Stoljar places content restrictions on autonomy. In arguing for content restrictions, Stoljar draws on Kristin Luker's work on sexually active women who decide not to take contraception and later pursue an abortion. Stoljar maintains that, as the women Luker studies articulate their decisions not to contracept, those decisions reflect sexist norms such as: women are not supposed to plan on having sex or even to want it necessarily, women are only valuable potential spouses if they are fertile, and pregnancy shows that a woman is a 'real' woman. Even though, as Luker argues, these women may be rational because they think about the costs and benefits and decide to take a risk (as many of us do all the time), Stoljar claims that the “feminist intuition” is to understand these women as non-autonomous because their decisions are the effect of internalized sexist norms. Stoljar argues that the women in the study would generally pass the test of procedural autonomy on a number of different accounts of that process, thus the “feminist intuition” alerts us to the fact that procedural accounts are flawed. We need a substantive approach “that places restrictions on the contents of agents' preferences” to account for the “feminist intuition.”⁷⁵ Here, it is “the content of [the] norms [that Luker's subjects internalize] that can be criticized from a feminist point of view, not the way in which Luker's subjects engage in the bargaining process.”⁷⁶

Another strongly substantive relational account comes from Marina Oshana who also makes her case in part through appeal to our intuitions regarding specific examples. One such hypothetical example is of a woman living in pre-2001 Afghanistan who, although previously an independent physician, chooses a life of subservience to and dependence upon her husband. Oshana stipulates that the decision of this “Taliban

⁷⁰ Benson, “Autonomy and Oppressive Socialization.”

⁷¹ Benson, “Free Agency and Self-Worth.”

⁷² *Ibid.*, 656.

⁷³ *Ibid.*

⁷⁴ Mackenzie and Stoljar, “Introduction,” 20.

⁷⁵ Stoljar, “Autonomy and the Feminist Intuition,” 95.

⁷⁶ *Ibid.*, 109.

woman," as Oshana calls her, was made after sufficient, competent reflection such that the process by which she chose this course of life would satisfy procedural autonomy accounts. Nonetheless, Oshana appeals to intuition to argue that this woman is not in fact autonomous and that merely procedural autonomy accounts should be rejected. She contends that "autonomy calls for a measure of substantive independence from other persons and from social roles and traditions of a variety deemed to be inhospitable to autonomy."⁷⁷ Thus, autonomy must be understood as conceptually relational, where social relations are part of what determines whether an individual is autonomous: a person must stand in certain relations to others and have significant options to be considered autonomous. Even if a woman chooses a position that would limit her options, such as that of a subservient wife, she cannot subsequently be understood as autonomous because she does not stand in the requisite social relations. Oshana even argues that: "The failure of people to decide accurately about their autonomy might offer one reason in favour of paternalistic interferences, even when a person has decided in what he believes is his best interest."⁷⁸

John Christman has argued against Oshana's account (and I think his critique applies to Stoljar's argument as well) by claiming that it is overly and problematically narrow and perfectionist. He writes:

Relational theorists who decry procedural views on the grounds that they would allow voluntary slavery to masquerade as autonomy are in fact supporting a conception of autonomy which is an *ideal* of individualized self-government, an ideal that those who choose strict obedience or hierarchical power structures have decided to reject. Those whose value conceptions manifest relatively blurred lines between self and other, who downplay the value of individualized judgments and embrace devotion to an externally defined normative structure . . . stand in defiance of the normative ideals that relational views of autonomy put forward. It is one thing to say that models of autonomy must acknowledge that we are all deeply related; it is another to say that we are autonomous only if related in certain idealized ways.⁷⁹

From Christman's perspective, this restrictive use of autonomy is a problem because of what autonomy is commonly taken to entail. First, being marked as autonomous is to "enjoy the status marker of an independent citizen whose perspective

⁷⁷ Oshana, *Personal Autonomy in Society*, 72.

⁷⁸ *Ibid.*, 116.

⁷⁹ Christman, "Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves," 151. In response to Christman's critique, Andrea Westlund has put forth an innovative account of autonomy that she thinks helps account for the intuitions to which Oshana appeals but that avoids Christman's worries. Instead of requiring specific substantive commitments, Westlund understands "autonomy in choice and action" as "rel[ying] (at least in part) on the disposition to hold oneself answerable to external critical perspectives on one's action-guiding commitments." Westlund, "Rethinking Relational Autonomy," 28. Her autonomy is relational in that it "requires an irreducibly dialogical form of reflectiveness and responsiveness to others." *Ibid.* However, she maintains that her relational approach is "formal rather than substantive in nature and carries with it no specific value commitments." *Ibid.* While there is much to appreciate in Westlund's account I think she overlooks both that to have the requisite disposition to answer to others' critical perspectives of your action is, in a sense, to have a commitment to dialogical reflection and also that there may be valid reasons not to have such a commitment.

and value orientation get a hearing in the democratic processes that constitute legitimate social policy."⁸⁰ Accounts like Oshana's would exclude from democratic deliberation the voices of those who are oppressed but are nonetheless competent decision-makers. Second, Christman points out that autonomy is generally thought to entail protection from paternalistic intervention. To mark out the woman who chooses a life of obedience as non-autonomous is, as Oshana defends, to justify intervening in her, by hypothesis, procedurally autonomous decision. Because of this troubling consequence, Christman maintains a distinction between recognizing that social conditions play a role in the development of autonomy and claiming that "being autonomous *means* standing in proper social relations."⁸¹

I share Christman's worries and specifically take issue with the fact that these substantive accounts would justify interventions into an agent's actions that the agent conceived of as her own. I think that these accounts can promote this intervention in part because, in their focus on oppressive socialization, they are blind to the ways in which social forces, especially in their productive capacity, present a problem for autonomy more generally. Social production—whether it is oppressive or not—presents a puzzle for everyone's autonomy, not just for those who are subordinated. By employing such an extreme yet reductionist hypothetical example as that of "Taliban Woman," Oshana not only privileges her own voice, she also ignores the breadth of social production. While there may certainly be distinct concerns that arise when socialization is oppressive, the deeper point is that to the extent we are produced by the social, there is a deep question regarding to what extent we can ever get outside of norms (as in Stoljar's account) or to achieve "substantive independence" (as in Oshana's theory).

In a way, I think the substantive autonomy criticism of procedural accounts—that they cannot account for intuitive assessments in cases of oppressive socialization—misses the real problem with those approaches, which is that they position certain ideal processes as the key to autonomy and in doing so do not see the variety of ways in which one might understand their preferences as their own. Because substantive theorists miss this criticism of procedural autonomy, they tend to replicate this error by failing to consider that autonomy is not a universal value. They present some idealized notion of autonomy as though it should be an important value for everyone. In my view, part of what autonomy involves is allowing people some amount of room to reject autonomy. Moreover, I think that the contours of autonomy and its value are best theorized when they are thoroughly contextualized. To theorize on the basis of an abstract and hypothetical "Taliban Woman"—where the caricature of this example is reflected in the capitalization and lack of an article—does not suffice. Listening to those whose conduct the theorist would limit is crucial.

Despite these criticisms, however, I think that these substantive relational accounts do have the virtue of taking into account aspects of the environment. That is, Oshana recognizes that the actual constraints one is under are of consequence to autonomy. Although I disagree with her move to paternalism to counter this, I agree with her that constraints on action are relevant to autonomy.

⁸⁰ Christman, "Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves," 157.

⁸¹ *Ibid.*, 158.

Conclusion: Toward a Critique

In conclusion, I would like to note that, like the canonical theorists discussed in the first part of the chapter, the contemporary accounts of autonomy assume a disjuncture between autonomy and mere desire or preference. To say that I prefer a particular outcome is not to say that that outcome can be understood as expressive of autonomy. They impose certain procedural or substantive requirements in order to assure the congruence of action or choice and autonomy.

In a way, the key questions of autonomy are epistemological questions such as: What is the character of self-knowledge and how do we come to have that knowledge? Who is in the best position to know our interests? In analyzing how autonomy theorists have analyzed these questions, I turn to feminist epistemologies and argue that in addressing these questions both procedural and substantive accounts of autonomy make recourse to an objectivism that feminist epistemology has unmoored. I turn specifically to the works of Catharine MacKinnon and Donna Haraway. I first briefly outline their incisive epistemological critiques and apply them to the autonomy theory explored in this chapter. I then move briefly through other critiques of the foregoing accounts. This final section is meant to foreshadow the discussion that runs throughout the coming two chapters on the connected ideas of social production, epistemology, and paternalism. I explore the social constructionist accounts of both MacKinnon and Haraway in the next chapter and in chapter three I again explore these epistemological issues in outlining my own account of autonomy.

MacKinnon writes of scientific epistemology that “the basic epistemic question [has been taken] as a problem of the relation between knowledge—where knowledge is defined as a replication or reflection or copy of reality—and objective reality, defined as that world which exists independent of any knower or vantage point, independent of knowledge or the process of coming to know, and, in principle, knowable in full.”⁸² Given male power, it is the male perspective—not only of science narrowly understood, but of society and law as well—that has been encoded as aperspectival, as point-of-viewlessness. In MacKinnon's frame there is no view from nowhere.

In a similar vein, Haraway has written: “Science has been about a search for translation, convertibility, mobility of meanings, and universality—which I call reductionism, when one language (guess whose) must be enforced as the standard for all the translations and conversions.”⁸³ Further, she writes of social constructionists—a category in which she includes herself: “We unmasked the doctrines of objectivity because they threatened our budding sense of collective historical subjectivity and agency and our ‘embodied’ accounts for the truth.”⁸⁴ For Haraway (and as will be discussed in greater depth in chapter three) knowledge is partial and situated.

For both MacKinnon and Haraway the objectivist mistake is to assume that there is a truth of things as they are in themselves and that we can access that truth through taking up a distanced, aperspectival stance. The problem, then, is the positing of an Archimedean point. Although they end up in different places, MacKinnon and Haraway both critique traditional and dominant epistemological approaches for privileging objectivity understood as point-of-viewlessness. They each argue that knowledge production must be understood as emanating from a perspective. Rather

⁸² MacKinnon, *Toward a Feminist Theory of the State*, 97.

⁸³ Haraway, *Simians, Cyborgs, and Women*, 187.

⁸⁴ *Ibid.*, 186.

than taking the objective as that which has no point of view, we should recognize that there is no way not to have a point of view.

In a way, the accounts of autonomy discussed in this chapter are unsatisfactory because they replicate the errors of the aperspectival account of knowledge. If we understand the central questions with which autonomy thinkers are concerned as epistemic questions, we see that the substantive approach takes the outsider (read: philosopher) who can transcend the particularities of a situation as the one with special recourse to the true, or at least uncontaminated, preference of the (sometimes oppressed) other. The philosopher sets himself or herself up as the expert who has recourse to the knowledge of whether or not another's preference or desire really count as her own. On the substantive autonomy view, certain preferences cannot, *prima facie*, be understood as self-given and so cannot provide the basis for autonomous action. To connect those accounts to the canonical accounts explored in the first part of the chapter, we can note that this substantive autonomy approach takes up a Rousseauian perspective: like Rousseau, the substantive autonomy theorists understand certain inclinations as necessarily warranting paternalistic intervention.

The procedural account avoids the problem of imposing certain substantive commitments on agents by focusing on the process by which one might arrive at knowledge of one's desires or one's true self. I think procedural autonomy theorists, however, merely relocate the substantive problem. Instead of imposing requirements on the contents of one's values, life plans, or preferences, many of them impose a particular method of knowing oneself on agents.⁸⁵ True or unproblematic self-knowledge is only that which is arrived at after a specific process that, although it is rendered universally available and valuable, is nonetheless a process that itself originates with the unacknowledged perspective of the theorist. This is not to say that valuable things cannot be learned from beginning with one's own perspective and thinking through how one comes to think of one's values and preferences as one's own; the point is that it is problematic to then render the process by which the individual theorist comes to have knowledge of herself as *the* way of accessing the kind of self-knowledge that can ground autonomous action.

It is important to note, though, that the intersectional accounts are more concerned with increasing the ambit of autonomy and what is recognized as reflection that conduces to autonomy than they are with limiting the ascription of autonomy-inducing reflection. My critique, then, is not leveled so much at those accounts. Rather, the work of scholars like Barvosa-Carter supports my point that accounts of autonomy tend to be overly limited in their accounts of reflection. The intersectional accounts critique other accounts for the way they posit a given process as the route to self-governance—that is, many procedural accounts originate from a specific location that goes unnoted. The intersectional accounts open up other ways of thinking about the processes that conduce to autonomy.

The unwarranted limiting of autonomy that many of the accounts of autonomy explored in this chapter would justify are troubling when we take into account that non-autonomy is often the basis for paternalistic (legal) intervention. Since I am quite concerned with paternalistic legal intervention, I reject these accounts of autonomy for my purposes. I want to resist an overly narrow account of autonomy that may

⁸⁵ It should be noted, though, that some procedural accounts, like Barvosa-Carter's leave the method more open.

unnecessarily exclude too many from its ambit. Especially given that one of the main feminist critiques of autonomy is that they assume an independent, excessively individualist, and masculine self we should pay careful attention not simply to recode autonomy with a different, but no less particularistic, view of selves.

The point with regard to reproduction is not to rely on an overly narrow assessment of autonomy because this could justify overriding a person's avowed desires in favor of someone else's potentially (and perhaps likely) biased preference. I tend to agree with Mill's epistemological claim that we know our interests better than others know our interests. This is not at all to say that autonomy precludes reflection or that an environment that is conducive to autonomy will not engender critical dialogue. In fact, one advantage of the approach to autonomy I outline in chapter three is that the opening up of alternatives that is a part of autonomy means that people will more often be confronted with new possibilities that may engender critical reflection. While I want to maintain a concern for critical reflection, I decline to predetermine what this critical reflection should or will look like. Significantly, I also do not want to make a particular type of reflection a requirement of autonomy; rather than conducing to freedom, such accounts may often be used to justify paternalism. (This is an issue I take up at greater length in chapter four.)

Another problem with the foregoing approaches—both canonical and contemporary—is that they do not engage deeply enough with the view of the self as produced and so I think that, while they have their place, such accounts are insufficient. A number of moves are made in these accounts, all of which unsatisfactorily treat the issue of desire and value formation. Kant employs the notion of a self that is autonomous in its transcendence from the world of objects. Contemporary procedural accounts like Dworkin's and Friedman's assume that desires are affected by socialization, but this socialization does not present a serious issue for autonomy. The substantive accounts, which I argued have a certain affinity with Rousseau's approach, get around the problem of socialization's potentially adverse effects on preference and capacity formation by requiring certain substantive commitments, but in doing so they take up a troubled epistemology that would justify paternalism.

As will be discussed in chapter three, I attend to post-structural critique and to the context of reproductive autonomy and the law in a way that shapes my approach and leads to an understanding that diverge from the accounts outlined here. Additionally, and in contrast to these approaches, I theorize autonomy in a very specific context. While some of what I say may extend beyond this context, my critiques of extant autonomy theory lead me to resist potentially universalizing accounts of autonomy. I situate autonomy, then, within the context of reproduction in the United States and ask: What might reproductive autonomy mean? How might it be achieved? How might law and medicine constrain and enhance autonomy? I think these questions are crucial because the language of autonomy can be useful to counter the specific and historical mechanisms of oppression that depend on how women's reproductive capacity is understood and controlled. My argument, then, is circumscribed by this specific context.

CHAPTER TWO: THE PRODUCTION OF THE SELF

Like autonomy, the idea that the self is constructed or produced has been theorized in myriad ways. The purpose of this chapter is to outline some ways in which this idea has been understood. Because of the dissertation's focus, I am especially attuned to the treatment of autonomy and related ideas in the following accounts of social production.

I begin the chapter with the dominance feminism of Catharine MacKinnon, who gives an account of the production of women through male sexual dominance. Given that some of the most basic questions of autonomy are questions of epistemology, I will be especially concerned with MacKinnon's critique of subjectivist and objectivist epistemologies. I then turn to a consideration of the post-structuralist accounts of Michel Foucault and Judith Butler. As with MacKinnon, I pay special attention to Foucault's account of knowledge. My discussion of Butler focuses on her argument that the production of the subject is the site of agency, but I argue that her account of agency is ultimately insufficient.

The chapter ends with a discussion of the works of Elizabeth Grosz and Donna Haraway. Each is attuned to the construction of the self but also directs attention to materiality. Since the body's corporeality is both frequently ignored in productionist accounts of the subject and is important in thinking through sexual reproduction this discussion is key to the dissertation. Moreover, Grosz and Haraway are interested in disturbing the social/natural binary—a move that has important epistemological ramifications.

Although there are differences among all of the following accounts of the self's production, what unites these theories is the idea that the self is not just formed or socialized by society, but is produced or constructed. That is, there is no originary or authentic self that is merely warped by society; rather, they reject the idea that there is an original self that may be thought of as existing outside society. In fact, the accounts of the production of the self that I find compelling disturb the very binary between self and society that a view of mere socialization, rather than production or construction, presumes.

Dominance Feminism: MacKinnon

Catharine MacKinnon is well-known for the idea that male dominance has created women as subordinate or powerless. More specifically, she argues that sexuality is *the* location of women's oppression: it is through sex and sexuality that men dominate and construct women as subordinate. "Sexuality is the set of practices that inscribes gender as unequal in social life."⁸⁶ Even further, she suggests that sex difference itself is constructed. In *Toward a Feminist Theory of the State*, MacKinnon does not argue that there are essential sexual differences or that these differences need to be valued, but that sexual difference is defined by power. She writes that "women/men is a distinction not just of difference, but of power and powerlessness . . . Power/powerlessness is sex difference."⁸⁷ She does not view sex as biologically given and gender as socially constructed; rather, sex and gender are bound up with one another and constructed by male dominance. More than that, men have instituted a system that obscures this very

⁸⁶ MacKinnon, *Women's Lives, Men's Laws*, 275.

⁸⁷ MacKinnon, *Toward a Feminist Theory of the State*, 123.

construction. Male dominance "is metaphysically nearly perfect. Its point of view is the standard for point-of-viewlessness; its particularity the meaning of universality. Its force is exercised as consent, its authority as participation, its supremacy as the paradigm of order, its control as the definition of legitimacy."⁸⁸

As a legal theorist, MacKinnon explores the role of the law in the production of female oppression. She does not, though, understand the law as another site of power beyond male dominance, but as a crucial site for the transmission of male dominance and a masculinist epistemology. Law simply codifies the male perspective as neutral and fair, thereby covering over the produced and biased character of that "neutrality." More generally, the male perspective is taken as that which has no perspective and thus has access to an objective representation of reality. As mentioned in the last chapter, MacKinnon thus critiques the underlying epistemological view that takes objective knowledge as that which has no perspective, no point of view. She exposes what is taken as the objective view from nowhere as the male point of view. Furthermore, on MacKinnon's account, the divide between epistemology and ontology collapses. She writes that male, understood as "a social and political concept . . . is more epistemological than ontological in a way that undercuts the distinction itself, given male power to conform being with perspective."⁸⁹ Thus, what is taken as a matter of being—sex difference—emerges as a construction of reality from the male point of view. She writes:

In life, 'woman' and 'man' are widely experienced as features of being, not constructs of perception, cultural interventions, or forced identities. Gender, in other words, is lived as ontology, not as epistemology. . . . In male supremacist societies, the male standpoint dominates civil society in the form of the objective standard—that standpoint which, because it dominates in the world, does not appear to function as a standpoint at all.⁹⁰

Since sexuality is the linchpin of women's subordination, women's expression of sexuality cannot be the site of empowerment or agency on MacKinnon's account. She writes: "[I]nterpreting female sexuality as an expression of women's agency and autonomy, as if sexism did not exist, is always denigrating and bizarre and reductive."⁹¹ Thus, she is strongly opposed to practices such as prostitution and pornography. Even lesbian sexuality does not transcend the male/female, dominant/submissive structuring of heterosexual sexuality that is the source of women's subordination. She writes: "Lesbian sex, simply as sex between women, given a social definition of gender and sexuality, does not by definition transcend the erotization of dominance and submission and their social equation with masculinity and femininity."⁹² Even the absence of sexuality and sexual desire arises from the position of women and so originates with male dominance. She writes:

In [feminist] theory, a women [*sic*] is identified as a being who identifies and is identified as one whose sexuality exists for someone else, who is

⁸⁸ MacKinnon, "Feminism, Marxism, Method, and the State," 116-17.

⁸⁹ MacKinnon, *Toward a Feminist Theory of the State*, 114.

⁹⁰ *Ibid.*, 237.

⁹¹ *Ibid.*, 153.

⁹² *Ibid.*, 119.

socially male. What is termed women's sexuality is the capacity to arouse desire in that someone. . . Considering women's sexuality in this way forces confrontation with whether there is, in the possessive sense of 'women's,' any such thing. Is women's sexuality its absence? If being for another is women's sexual construction, it can be no more escaped by separatism, men's temporary concrete absence, than it can be eliminated or qualified by sexual permissiveness, which, in this context, looks like women emulating male roles.⁹³

At the base of this account is a notion of power as something that is exercised by one group over another such that power and domination are more or less synonymous. Women are constructed, not by complex and varied relations of force but by the seemingly totalizing force of male dominance. Men produce women as women – which is to say as sexually subordinate – by their treatment of them as such. Furthermore, just as women cannot get outside of the totalizing forces of male dominance to have any sort of sexuality of their own, MacKinnon argues that both feminism and antifeminism are responses to women's condition and so do not have an origin that is external to power.

Similarly, abortion is necessary, not so much because it can be a site for the exercise of women's autonomy, but because it is necessitated by women's severe lack of control over sex and the conditions under which it happens. As she writes, "Because forced maternity is a sex equality deprivation, legal abortion is a sex equality right."⁹⁴ The right to abortion, rather than leading to any meaningful type of autonomy, merely gives women a moment of control in a process otherwise determined by men. Although MacKinnon supports abortion rights on this basis, she is also critical of them. She writes:

So long as women do not control access to our sexuality, abortion facilitates women's heterosexual availability...The availability of abortion removes the one remaining legitimized reason that women have had for refusing sex besides the headache. As Andrea Dworkin put it, analyzing male ideology on abortion, 'Getting laid was at stake.'⁹⁵

In increasing women's sexual availability, abortion serves male interests even as it also allows women to escape forced motherhood.

A significant question emerges from MacKinnon's theorization: if women are so wholly dominated, how can women know or be anything other than what male dominance dictates? As MacKinnon puts it: "From the feminist point of view, the question of women's collective reality and how to change it merges with the question of women's collective reality and how to know it. What do women live, hence know, that can confront male dominance? What female ontology can confront male epistemology; that is, what female epistemology can confront male ontology?"⁹⁶

MacKinnon's response lies in *the* method of feminism: consciousness raising. Through consciousness raising women can come to see their individual struggles as

⁹³ Ibid., 118.

⁹⁴ MacKinnon, *Women's Lives, Men's Laws*, 146.

⁹⁵ MacKinnon, *Feminism Unmodified*, 99.

⁹⁶ MacKinnon, *Toward a Feminist Theory of the State*, 241.

part of a much broader case of male social power. Consciousness raising, rather than claiming a view from nowhere, arises out of women's experiences and perspectives—that is, “the point of view of women's subordination to men.”⁹⁷ In consciousness raising lies the possibility for collective action to combat women's oppression through refusing to be sexual objects and by lobbying for changes in the laws of, for example, reproduction and rape. That “[w]omen are not permitted fully to know what sex equality would look like, because they have never lived it” does not bar women from knowing how to combat oppression.⁹⁸ Women “know inequality because they have lived it, so they know what removing barriers to equality would be. Many of these barriers are legal; many are social; most of them exist at the interface between law and society.”⁹⁹

Therefore, although it is initially unclear why MacKinnon privileges the rejection of sexuality since just like sexual desire it cannot be understood as one's own but only as an effect of male dominance, through consciousness raising women come to understand sexuality as a mechanism of male dominance and understand that it constitutes a barrier to equality. Because sexuality is the mechanism of male dominance, MacKinnon privileges its denunciation. The absence of sexuality is acceptable—not because it is unmarked, original, or unformed by male dominance—but because the only way to combat male dominance is to denounce sexuality. Because male dominance both constitutes and is perpetuated through sexuality, the only way to counter that dominance is to oppose the especially troublesome manifestations of male sexual dominance that occur in rape, prostitution, and pornography, even if male dominance initiates that opposition.

While MacKinnon does not claim that consciousness raising allows women to access some pure desire, she nonetheless suggests that it will reveal the same mechanism of oppression to all women and that, with this revelation, women will access an underlying shared desire to combat male dominance. Although MacKinnon acknowledges that not all women are feminists and that some who identify as feminist do not adhere to *MacKinnon's* feminism, which she takes to be “feminism unmodified” or simply “feminism”, she never really accounts for this diversity, insisting that there is a single legitimate view of women's situation, which is hers, which is the view that she seems to think inevitably flows from consciousness raising. MacKinnon has been thoroughly and I think rightfully critiqued for her rather monolithic account of women's subordination.¹⁰⁰

In the end, MacKinnon replicates that which she so incisively critiques: the rendering of a situated knowledge, in this case that which originates from her perspective, as *the* legitimate perspective. In her own words: “Authority of interpretation—here, the claim to speak for all women—is always fraught because authority is the issue male method intended to settle . . . Treating some women's views as merely wrong, because they are unconscious conditioned reflection of oppression and thus complicitous in it, posits objective ground.”¹⁰¹ She repudiates this “false consciousness” approach for this reason, but nevertheless seemingly imputes false consciousness to those women who would take sexuality as potentially or actually

⁹⁷ Ibid.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ See, e.g., Harris, “Race and Essentialism in Feminist Legal Theory.”

¹⁰¹ MacKinnon, *Toward a Feminist Theory of the State*, 115.

emancipatory. MacKinnon simultaneously insists that women are what male dominance has made them and that she or “feminism” can unequivocally discern the effects and mechanisms of this dominance.¹⁰²

In a way MacKinnon shares the problem of the relational autonomy theorists discussed in chapter one: in asking how women can be freed from male domination, she answers that certain practices ought to be forbidden, and in the process that certain substantive preferences—for pornography, for example—should never be understood as expressive of a woman's agency or autonomy. Such a preference can only ever be the product of male dominance. Like substantive relational theorists, she renders the content of certain desires as nothing other than the product of male dominance so that despite what a woman might say about her desire—that is, whether or not she understands it as her own or whether or not she thinks it redounds to her empowerment—MacKinnon knows better. Even though I relied in part on MacKinnon's understanding of epistemology to critique such substantive approaches to autonomy, MacKinnon nonetheless fails to avoid the problem herself.

In other words, MacKinnon ultimately falls back on a false consciousness type of reasoning: she would preclude certain decisions from women, especially with regard to pornography and prostitution, in the name of non-dominance. I would argue that this preclusion, in its falling back on false consciousness, ultimately understands (certain) women as unable to make appropriate decisions for themselves. With this understanding, MacKinnon reveals that she does not understand an anti-male dominance position to include necessarily anti-paternalism. My approach, however, in focusing on autonomy, takes paternalism as an important danger that is itself a type of dominance.

It is important to mention here one way that some have tried to avoid the objectivist, “false consciousness” approach and its attendant problems, which is to take up what MacKinnon identifies as the “subjectivist approach.” The subjectivist orientation takes women's individual desires as unproblematic and as the grounds of their emancipation. She writes: “The subjectivist approach proceeds as if women were free, or at least had considerable latitude to make or choose the meanings of their situation.”¹⁰³ It thus “tends to assume that women have power and are free in exactly the ways feminism has found they are not.”¹⁰⁴ Correspondingly, the discourse of choice tends to conceal the ways in which power operates and women's choices are constrained. For MacKinnon, “choice” is used to conceal the ways in which power operates and women's choices are actually constrained. She points out, for example, that describing women as choosing prostitution conceals that prostitutes are very often those women who have the fewest choices. To construe prostitution as flowing from a woman's decision or from her subjective preference obscures the power relations and domination involved in that decision and the constitution of her desire. Therefore, both the false consciousness, objectivist stance and the subjectivist stance are in error: “the

¹⁰² As Judith Butler has written of MacKinnon: “the thoroughgoing systematicity of domination, evidenced by the fact that it now constitutes the domain of what ‘is,’ renders it unclear where MacKinnon or any feminist might position herself within or outside of this totalizing oppression. That she effectively does position herself outside and appoint herself as the transparent observer of this systematic oppression, is clear. But how that position is accounted for within the terms of the theory of power-as-domination that she accepts, is finally unclear.” Butler, “Review.”

¹⁰³ MacKinnon, *Toward a Feminist Theory of the State*, 115.

¹⁰⁴ *Ibid.*

'false consciousness' approach cannot explain the experience as it is experienced by those who experience it, and its alternative can only reiterate the terms of that experience."¹⁰⁵

With this observation, MacKinnon makes an important insight. Given her attention to social construction, she is attuned to the dangers of taking women's choices or desires as emancipatory: she very much sees the need to theorize the production of those desires. (For her, it is also important to judge the content of desires.) Given her critique of the objectivist epistemological account, she understands the dangers of replacing a woman's account of her situation with some other's supposedly more objective account. It is precisely the tension between the subjectivist and objectivist stances that is a central issue of this dissertation. The fact that, in the end, she falls back on such an objectivist stance reveals the intractability of the tension between these two observations. Because this problem is partially an epistemological problem, I will eventually turn to more promising feminist epistemologies to work out a resolution. Moreover, since many of the problems with MacKinnon's account spring from her account of power I now turn to other theorists who I think give better, more complex accounts of power that do not preclude agency.

Post-structuralism: Foucault and Butler

Post-structuralism is often thought to have heralded the "death of the subject" because of its sustained critique of the idea that subjectivity is a pre-social, pre-discursive phenomenon.¹⁰⁶ Far from proclaiming the death of the subject, however, post-structuralism reorients the subject and, if there is any death, it is only of that understanding of the subject as a pre-social, self-constituting entity who wields power but is not deeply constituted by power. As I argue in this section with regard to the work of Michel Foucault and Judith Butler, post-structuralist accounts provide a new way of thinking about the subject, but certainly do not kill it. Neither theorist denies the existence of selves or subjects: what they reject is the view of the subject as a pre-discursive phenomenon that is responsible for its own constitution. They also argue that productionism, far from undermining any possibility for agency, actually serves as the condition of possibility for it. As Butler puts it, construction "is the necessary scene of agency, the very terms in which agency is articulated and becomes culturally intelligible."¹⁰⁷ With their respective accounts of resistance and subversion, Foucault and Butler resist a characterization of subjects as determined by the social and discursive, even as they are constituted by them. Moreover, I will argue in this and the next section that, while post-structural thought has disrupted the idea that we can be immediately self-knowing, it does not foreclose completely the possibility of attaining some knowledge and governance of ourselves, although such knowledge and governance will be limited, partial, and mobile.

Foucault

Foucault argues that subjects are produced by the very mechanisms of power that are often considered to be effects of the subject. Thus, to understand the Foucaultian production of the subject, it is necessary to inquire into his understanding of power. By

¹⁰⁵ Ibid.

¹⁰⁶ Benhabib, "Feminism and Postmodernism; Subjectivity, Historiography, and Politics"; Friedman, *Autonomy, Gender, Politics*.

¹⁰⁷ Butler, *Gender Trouble*, 147.

his own account, Foucault's ideas on power stand in stark contrast to both the notion of power employed in social contract theory as well as Marxism. As opposed to those philosophical dispositions – which view power as something to be contracted for, traded, or otherwise treated like a commodity – Foucault understands power to exist only in its exercise. It is an action and its effect is "a relation of force."¹⁰⁸ Foucault does not analyze power as MacKinnon does as something which is held by a sovereign or a privileged group of people over or against the subjugated or powerless. Rather, "power is everywhere; not because it embraces everything, but because it comes from everywhere . . . [power] is the name that one attributes to a complex strategic situation in a particular society."¹⁰⁹

However, Foucault does not argue that power is equally distributed or that domination is unconnected to power. While he does not view power merely in a top-down fashion, domination does have a place in his model of power. He argues that "the manifold relationships of force that take shape and come into play in the machinery of production, in families, limited groups, and institutions, are the basis for wide-ranging effects of cleavage that run through the social body as a whole." These relations of force are linked and "bring about redistributions, realignments, homogenizations, serial arrangements, and convergences of the force relations. Major dominations are the hegemonic effects that are sustained by all these confrontations."¹¹⁰ That is, although power comes from below, it is not wholly separate from systemic relations of domination and subjugation. He is focused on investigating mechanisms of power at the lowest level and studying how it is that these mechanisms come to have political or economic utility and thereby come "to be colonised and maintained by global mechanisms and the entire State system."¹¹¹ We must understand the techniques of power as they are exercised at the bottom to be able to form a picture of more far-reaching, even global, dominations. Thus, Foucault would not deny, for example, that patriarchal relations of domination exist. He would, however, resist patriarchy's characterization as a case of men's "consolidated and homogeneous domination" over women in favor of a view of it as consisting in a whole series of localized and contextualized inegalitarian force relations which come to serve a broader utility and in this way form a global cleavage of power.

Theoretically entwined with Foucault's notion of power is that of knowledge. The exercise of power relies on knowledge production: objects of study must be conformable to techniques of knowledge. Simultaneously, power determines what can be taken as objects of study and knowledge. In *The History of Sexuality* Foucault writes: "if sexuality was constituted as an area of investigation, this was only because relations of power had established it as a possible object; and conversely, if power was able to take it as a target, this was because techniques of knowledge and procedures of discourse were capable of investing it."¹¹² So conjoined are the concepts that at times Foucault uses the term "power-knowledge" to denote the link. Additionally, as is evident from the above quote, discourse plays a key role in power-knowledge – in fact,

¹⁰⁸ Foucault, *Power/Knowledge*, 89.

¹⁰⁹ Foucault, *The History of Sexuality*, 93.

¹¹⁰ *Ibid.*, 94.

¹¹¹ Foucault, *Power/Knowledge*, 101.

¹¹² Foucault, *The History of Sexuality*, 98.

"it is in discourse that power and knowledge are joined together."¹¹³ In his "Two Lectures" he states:

[T]here are manifold relations of power which permeate, characterise and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation, circulation and functioning of a discourse. . . We are subjected to the production of truth through power and we cannot exercise power except through the production of truth.¹¹⁴

Due to this conjunction of power and discourse, we must not have a simplistic view of discourse that would divide it easily into dominant discourse and subjugated discourse, mainstream discourse and alternative discourse; rather, we should view it "as a multiplicity of discursive elements that can come into play in various strategies." Discourse should be seen "as a series of discontinuous segments whose tactical function is neither uniform nor stable."¹¹⁵ Thus, discourses are not always employed in the service of power. They certainly can be, just as they can be products of power. Nevertheless, the discontinuity, multiplicity, and instability of discourses mean that they can also be impediments to power and thereby serve as points of resistance.

In keeping with this characterization of resistance, in *The History of Sexuality* Foucault states that: "Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power."¹¹⁶ Resistance is immanent to power. And, like power, resistance is discontinuous and takes diverse forms most often comprising "mobile and transitory points of resistance."¹¹⁷ It does not follow from this that resistance is "only a reaction or rebound, forming with respect to the basic domination an underside that is in the end always passive, doomed to perpetual defeat."¹¹⁸ Rather, resistance creates cleavages in the social, "travers[ing] social stratifications and individual unities" and at times producing revolutionary changes. More often resistance takes the form of more mundane but – to use Mill's term – eccentric¹¹⁹ actions, as is evident by Foucault's statement that "it is good to be dirty and bearded, to have long hair, to look like a girl when one is a boy (and vice versa); one must 'put in play,' show up, transform and reverse the systems which quietly order us about."¹²⁰

This discussion of power, knowledge, and discourse leads inevitably to an inquiry of the subject. The relationship of the Foucauldian subject to power is, in some ways, similar to the relation between knowledge and power. As noted above, knowledge both advances and is mobilized by power; similarly, a subject does not merely exercise power, but also simultaneously undergoes that power. In other words, the subject both articulates and is constituted by power. Foucault himself is interested in – and this is

¹¹³ Ibid., 100.

¹¹⁴ Foucault, *Power/Knowledge*, 93.

¹¹⁵ Foucault, *The History of Sexuality*, 100.

¹¹⁶ Ibid., 95.

¹¹⁷ Ibid., 96.

¹¹⁸ Ibid.

¹¹⁹ Arnold Davidson has made a comparison between Mill and Foucault, specifically between Mill's concept of eccentricity and Foucault's understanding of counter-conduct, to which my own comparison of these thinkers is indebted. Davidson, "In Praise of Counter-Conduct."

¹²⁰ Foucault, "A Conversation with Michel Foucault," 201.

where production of the subject more explicitly enters the discussion – discovering how "subjects are gradually, progressively, really and materially constituted through a multiplicity of organisms, forces, energies, material, desires, thoughts etc."¹²¹ It is worth quoting him at some length here:

The individual is not to be conceived as a sort of elementary nucleus, a primitive atom, a multiple and inert material on which power comes to fasten or against which it happens to strike, and in so doing subdues or crushes individuals. In fact, it is already one of the prime effects of power that certain bodies, certain gestures, certain discourses, certain desires, come to be identified and constituted as individuals. The individual, that is, is not the *vis-a-vis* of power; it is, I believe, one of its prime effects. The individual is an effect of power, and at the same time, or precisely to the extent to which it is that effect, it is the element of its articulation. The individual which power has constituted is at the same time its vehicle.¹²²

Foucault therefore eschews the traditional philosophical view – the very one on which many autonomy theorists rely – that presupposes the subject and conceives of it as a pre-discursive and pre-societal phenomenon. The subject, for Foucault, does not exist outside of power relations but is instead constituted by them; the subject is both an effect and a vehicle of power relations. The individual is a power production.¹²³

As a corollary to this conception of the subject is thus the idea – so far implicit in this discussion of Foucaultian power – of productive power. It is productive power that constitutes the subject and "produces effects" at the levels of desire and knowledge.¹²⁴ Foucault contrasts productive power with what he claims is the more traditional view of power as repressive. Repressive power is that which prohibits and is largely associated with sovereign power and the rule of law. Although Foucault focuses on non-judicial articulations of productive power and seems to align repressive power with the law, the law is an instance of both repressive and productive power. In fact, one theme of this dissertation concerns the productive power of the law. Insofar as power and knowledge operate through the circulation of legal discourses and rationales, the law is a productive force that should be interrogated on that basis.

It is worth emphasizing here that, given power-knowledge, both knowledge and knowledge-production are bound up with the constitution of the subject. In *The History of Sexuality*, for example, Foucault can be read as arguing that individuals are controlled both by others' knowledge and expertise and also through individuals' knowledge of themselves. To the extent we are produced by power, we internalize norms and monitor ourselves. Individuals are disciplined as objects of scientific study and techniques; as such, we also become self-regulating subjects. Thus, to understand self-knowledge as the key to freedom or autonomy is to misunderstand self-knowledge: rather than being authentic or liberatory, self-knowledge is itself an effect of power. Here we can see the basis for a critique of the autonomy theory discussed in chapter one: especially in the psychological or internal accounts of autonomy, it is through some sort of internal truth-seeking that individuals are thought to find the self-knowledge that can ground

¹²¹ Foucault, *Power/Knowledge*, 97.

¹²² *Ibid.*, 98.

¹²³ *Ibid.*, 58, 117.

¹²⁴ *Ibid.*, 59.

autonomy. But if, as Foucault argues, knowledge is always bound to power, then it is difficult to see how such internal knowledge seeking could be emancipatory.

Foucault's critique of confession is pertinent here. He writes:

this new way of philosophizing: seeking the fundamental relation to the true, not simply in oneself—in some forgotten knowledge, or in a certain primal trace—but in the self-examination that yields, through a multitude of fleeting impressions, the basic certainties of consciousness. The obligation to confess is now relayed through so many different points, is so deeply ingrained in us, that we no longer perceive it as the effect of a power that constrains us; on the contrary, it seems to us that truth, lodged in our most secret nature, 'demands' only to surface; that if it fails to do so, this is because a constraint holds it in place, the violence of a power weighs it down, and it can finally be articulated only at the price of a kind of liberation. Confession frees, but power reduces one to silence; truth does not belong to the order of power, but shares an original affinity with freedom.¹²⁵

According to Foucault, then, to take the voicing of some presumed truth of oneself and one's experience as freedom is to ignore the power endemic to that truth. Not only is this a problem for autonomy theorists, it is also a problem for MacKinnon. As Wendy Brown has argued, it is precisely this notion that truth-telling about one's experience is emancipatory that grounds consciousness raising as feminist method for MacKinnon. As discussed in the previous section, this feminist methodology is paradoxical for MacKinnon given her deep social constructionist understanding of women and gender. As Brown writes, "Within the confessional frame [of consciousness raising], even when social construction is adopted as method for explaining the making of gender, 'feelings' and 'experiences' acquire a status that is politically if not ontologically essentialist—beyond hermeneutics."¹²⁶ Thus, although Foucault and MacKinnon both understand individuals—or, in MacKinnon's case, women—to be produced, Foucault's critique of confession can be used to critique both the accounts of autonomy in the previous chapter that assume the existence of an authentic self-knowledge, as well as MacKinnon's ultimate reliance on consciousness raising.

Before launching into a discussion of Butler, it is worth pausing here to compare and contrast Foucault's and MacKinnon's theorizations of power and knowledge. Especially notable is that they articulate similar critiques of objectivity and subjectivity: for both of them, the problem with an objectivist, Truth-seeking stance is that it presumes that there is an outside to power rather than understanding knowledge and truth as themselves effects of power. Moreover, both Foucault and MacKinnon critique strategies that take personal knowledge or desire as emancipatory because such strategies also ignore the constructed character of the self. Whereas MacKinnon ultimately reproduces that which she critiques, both by taking women's truth-telling as foundational and by ultimately positioning herself outside of construction through male dominance, Foucault makes neither error. Rather than seeking the truth about power and its operation in personal experience, he focuses on resistance as the method for

¹²⁵ Foucault, *The History of Sexuality*, 59-60.

¹²⁶ Brown, *States of Injury*, 42.

altering relations of power. This resistance is possible because he does not understand power as a totalizing domination as does MacKinnon. His more complex and fragmentary understanding of power's operation leaves room for resistance and agency. This topic is taken up at greater length below.

Butler

Drawing on Foucault, Judith Butler develops an account of the subject and subjectivity that is especially concerned with issues of sex and gender. Like Foucault, she rejects the strand of constructionism that seeks to place "Culture or Discourse or Power" in the agentive place of the subject. There is no single entity that acts and creates the subject; rather, there is only a process, an acting through which "both 'subjects' and 'acts' come to appear at all. There is no power that acts, but only a reiterated acting that is power in its persistence and instability."¹²⁷ More specifically, Butler locates this production of the subject in performativity: it is through our very performance of gendered norms that we, as gendered subjects, come into being. Gender is brought into being by the very performances – which consist in the reiteration of norms – that are taken to be its result.

Therefore, Butler does not think that there are pre-social beings who are then acted on by gendered norms; rather, "identity is performatively constituted by the very 'expressions' that are said to be its results."¹²⁸ It follows from this that, contrary to prevalent understandings of the terms, Butler does not view sex as pre-cultural and gender as a social construction that maps onto sexed selves. Rather, she argues that sex itself is brought into being through social productions. Following Foucault, she writes that gender is the "very apparatus of production whereby the sexes themselves are established. . . gender is the discursive/cultural means by which 'sexed nature' or 'natural sex' is produced and established as 'prediscursive,' prior to culture, a politically neutral surface *on which* culture acts."¹²⁹ Thus, matter itself should not be seen as given, but as something that is established through a process that gives the appearance that matter is fixed.¹³⁰ This view leads her to raise questions about the norms by which sex is materialized and to question the oft unquestioned presupposition of the givenness of sexed bodies.¹³¹ She views the body itself – not as a passive, pre-societal entity – but as a construction in that "[b]odies cannot be said to have a signifiable existence prior to the mark of their gender."¹³²

As is apparent from the above explication, central to Butlerian construction is the concept of reiteration. However – and similar to the way in which, for Foucault, discourse is crucial to our constitution while also being varied and fluid – for Butler, reiteration is neither uniform nor stable. Additionally, norms cannot sustain themselves but require our performances for their sustainability. Reiteration does not amount to perfect replication and thus in reiteration lies one possibility of subversion of the very norms that construct us. In our performances lies the possibility of impeding prevailing norms, of subversion. On this topic, Butler writes:

¹²⁷ Butler, *Bodies That Matter*, 9.

¹²⁸ Butler, *Gender Trouble*, 24-5.

¹²⁹ *Ibid.*, 7.

¹³⁰ Butler, *Bodies That Matter*, 9.

¹³¹ *Ibid.*, 10.

¹³² Butler, *Gender Trouble*, 8.

'Intelligible' genders are those that institute and maintain relations of coherence and continuity among sex, gender, sexual practice, and desire . . . because certain gender identities fail to conform to those norms of cultural intelligibility, they appear only as developmental failures or logical impossibilities from within that domain. Their persistence and proliferation, however, provide critical opportunities to expose the limits and regulatory aims of that domain of intelligibility and, hence, to open up within the very terms of that matrix of intelligibility rival and subversive matrices of gender disorder.¹³³

Thus, gender performance is subversive "to the extent that it reflects on the imitative structure by which hegemonic gender is itself produced and disputes heterosexuality's claim on naturalness."¹³⁴

While Butler is focused on how heterosexuality comes to appear as natural, she is also critical of approaches that take maternal desire as given. She argues that we should consider "mechanism[s] for the compulsory cultural construction of the female body *as* a maternal body."¹³⁵ While the production of maternal desire as natural to womanhood and as located in the female body masks its very production,¹³⁶ Butler argues that if we heed Foucault's insights the maternal body "would be understood . . . as an effect or consequence of a system of sexuality in which the female body is required to assume maternity as the essence of its self and the law of its desire . . . [W]e are compelled to redescribe the maternal libidinal economy as a product of an historically specific organization of sexuality."¹³⁷ In accord with this statement, this project questions the mechanisms of the production of maternal desire; also, as does Butler, I take compulsory heterosexuality and compulsory motherhood as bound up with one another.

Moreover, Butler builds on Foucault's insight that power produces the very subjects that it then claims to represent to argue that the "feminist subject is discursively constituted by the very political system that is supposed to facilitate its emancipation."¹³⁸ In a passage from *Bodies That Matter* that is evocative of Foucault and that squares with my above critiques of autonomy theory, Butler writes:

the agency denoted by the performativity of 'sex' will be directly counter to any notion of a voluntarist subject who exists quite apart from the regulatory norms which she/he opposes. The paradox of subjectivation . . . is precisely that the subject who would resist such norms is itself enabled, if not produced, by such norms. Although this constitutive constraint does not foreclose the possibility of agency, it does locate agency as a reiterative

¹³³ Ibid., 17.

¹³⁴ Butler, *Bodies That Matter*, 125.

¹³⁵ Butler, *Gender Trouble*, 90.

¹³⁶ As Mary Poovey puts it, from this masking it "has seemed to follow not only that mother-love emanates from the body, in the form of maternal instinct but also that the desire to be a mother motivates and lies at the heart of all female desire." Poovey, "The Abortion Question and the Death of Man," 243.

¹³⁷ Butler, *Gender Trouble*, 92.

¹³⁸ Ibid., 2.

or rearticulatory practice, immanent to power, and not a relation of external opposition to power.¹³⁹

As is clear from this passage, Butler, like Foucault, does not presuppose the subject, and the agency possible in her account does not consist in the voluntary action of a self-determining individual. In her more recent work, Butler has elaborated her Foucaultian understanding of agency in relation to the notion of subjection, which involves both subjectivity—"the process of becoming a subject"—and subjugation—"the process of becoming subordinated by power."¹⁴⁰ She argues that subjectivity and subjugation are inevitably intertwined: it is through a subordination to power that the subject comes into being. On this account, "[s]ubjection consists precisely in this fundamental dependency on a discourse we never chose but that, paradoxically, initiates and sustains our agency."¹⁴¹ Butler writes further that:

Where conditions of subordination make possible the assumption of power, the power assumed remains tied to these conditions, but in an ambivalent way; in fact, the power assumed may at once retain and resist that subordination. This conclusion is not to be thought of as (a) a resistance that is *really* a recuperation of power or (b) a recuperation that is *really* a resistance. It is both at once, and this ambivalence forms the bind of agency.¹⁴²

Thus, replication and subversion, the doing and undoing of norms, are inescapably bound up with one another. Because power is the precondition of agency, the agent, even in resisting, cannot escape power.

A crucial aspect of Butler's theorization of agency throughout her work is the idea that constitution through norms enables agency. Butler's theorization of agency does not lead her into the determinism/agency paradox that is often thought to ensue from the constructionist project. By understanding the constitution of the subject as the site and precondition of agency, the constitution of the self no longer presents a bar to agency; rather, agency cannot occur except for this discursive production. The political project for Butler, then, is not to free subjects from power because power is also the condition of possibility of agency. Agency is not strictly opposed or external to power. And, owing to reiteration, "what is enacted by the subject is enabled but not finally constrained by the prior working of power."¹⁴³ Power thus enables but does not determine the subject's actions.

While this aspect of Butler's thought is important for this dissertation, her theorization of agency is insufficient. Butler equivocates on the issue of precisely what makes an action agentic: in fact, a tension exists throughout Butler's work between an all-encompassing account of agency and an account that privileges transgressive acts as the exemplars of agency. With regard to the extreme breadth of agency, Butler's account leaves one wondering whether—since she is insistent that power, while the precondition of agency is not determinative—agency is ever precluded. Since power is

¹³⁹ Butler, *Bodies That Matter*, 15.

¹⁴⁰ Butler, *The Psychic Life of Power*, 2.

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*, 13.

¹⁴³ *Ibid.*, 15.

not determinative and norms are never perfectly replicated but only reiterated, does agency inhere in every act? Could we be constituted by power in a way that completely forecloses agency? Or could there ever be an environment or situation in which agency is not possible? It seems as though the possibility, if not the actuality, of agency is maintained in all circumstances since we all presumably and “never merely mechanical[ly]” engage in reiterative practices.¹⁴⁴ Perhaps for Butler agency is a matter of degree so that, though never precluded, we can talk meaningfully about more and less agency. While I think such an account of agency would be consistent with Butler's work, she does not explicitly provide such an account. More fundamentally, what exactly agency *is* remains unclear. Butler argues compellingly that power is the *condition* of agency but does not go further to discuss whether it is a sufficient condition or just a necessary one. In the end, exactly in what agency inheres is unclear.

While Butler at times suggests an all encompassing notion of agency, at other times she privileges the transgressive or subversive in her discussion of agency. For example, she writes in *Psychic Life of Power*: “agency is the assumption of a purpose *unintended* by power, one that could not have been derived logically or historically, that operates in a relation of contingency and reversal to the power that makes it possible, to which it nevertheless belongs.”¹⁴⁵ Here Butler seemingly excludes from agency that which is intended or would reinforce power; agency appears only as that which is unintended by and acts as a *reversal* of power. Saba Mahmood similarly observes that “while [Butler] emphasizes the ineluctable relationship between the consolidation and destabilization of norms, her discussion of agency tends to focus on those operations of power that resignify and subvert norms. . . . In other words, the concept of agency in Butler's work is developed primarily in contexts where norms are thrown into question or are subject to resignification.”¹⁴⁶

In other words, although Butler maintains that replication and subversion are bound up with one another, she at times focuses on the agency of subversive acts in a way that makes it seem as though agency inheres in resistance. While Butler provides a comprehensive and compelling theorization of power and its relation to the subject, on the issue of agency her account is wanting in part because of her lack of attention to what makes an act agentic as well as the tension between a seemingly all-encompassing account and one that privileges subversion.

Given that Butler tends to privilege the transgressive, there is a further question of why subversion or resignification of norms is good. With her privileging of transgression, there is an implicit claim that resignification is beneficial in some way, although she falls short of giving an explicit account of why that is. As Nancy Fraser – after noting the implicit positive character of resignification – asks of Butler: “Why is resignification good? Can't there be bad (oppressive, reactionary) resignifications?”¹⁴⁷ Similarly, Amy Allen asks of Butler: “But why should we resignify these norms? Why expose them as unnatural? Why denaturalize sex?”¹⁴⁸ Since Butler's interpretation of agency is so broad, she cannot appeal to that concept to answer why norms should be resignified. For if we are all agentic simply in virtue of our constitution, then Butler

¹⁴⁴ Ibid., 16.

¹⁴⁵ Ibid., 15.

¹⁴⁶ Mahmood, *Politics of Piety*, 21.

¹⁴⁷ Fraser, “False Antitheses,” 68.

¹⁴⁸ Allen, “Power Trouble,” 466.

cannot say that resignification is good because it encourages agency. Nonetheless, in *Excitable Speech* Butler gives a reason why resignification might be good. She writes:

the interval between instances of utterance not only makes the repetition and resignification possible, but shows how words might, through time, become disjoined from their power to injure and recontextualized in more affirmative modes. I hope to make clear that by affirmative, I mean 'opening up the possibility of agency,' where agency is not the restoration of a sovereign autonomy in speech, a replication of conventional notions of mastery.¹⁴⁹

Here Butler indicates that resignification contains the potential for words to become more affirmative, where affirmative is connected to the possibility of agency. Since agency is enabled by power and its production of the subject, here she might be read as suggesting that power, although enabling agency, does not necessarily or unavoidably lead to agency. Thus, she could be suggesting a further precondition for agency. She also might be suggesting that there are degrees of agency and that we can understand certain actors as possessing more or less agency such that we should be interested in *increasing* agency. Regardless of how we interpret Butler's statement here in relation to her other work, the point is that she is ultimately unclear on the question of the exact conditions of agency, which leads to an incomplete account of the beneficial aspects of resignification. While a broad understanding of agency certainly has its place—since agency is often employed in order to understand that even agents mired in (oppressive) power relations are not automatons—it alone appears insufficient to account for the beneficial aspects of subversion.

Furthermore, I think Butler's inability to address these questions may be connected to her desire to distance herself from the very concept in which I am centrally interested: autonomy. She writes:

The subject is constituted through an exclusion and differentiation, perhaps a repression, that is subsequently concealed, covered over, by the effect of autonomy . . . autonomy is the logical consequence of a disavowed dependency, which is to say that the autonomous subject can maintain the illusion of its autonomy insofar as it covers over the break out of which it is constituted.¹⁵⁰

Butler seemingly understands independence and self-determination as definitive of autonomy. This equation of autonomy with independence and self-determination – which I view as only contingently related to the concept – leads her to dismiss the possibility of self-governance and instead favor agency. I think that her view of the subject's constitution is compatible with a more robust view of people's ability to govern themselves; in fact, I think it can provide the grounds for her implicit judgment that it is good to subvert norms.¹⁵¹ By eschewing the notion of autonomy for its supposed reliance on a transcendental subject, Butler cannot answer that resignification

¹⁴⁹ Butler, *Excitable Speech*, 15.

¹⁵⁰ Butler, "Contingent Foundations," 45-6.

¹⁵¹ On this topic see Allen, "Power Trouble"; Fraser, "False Antitheses."

is good because it allows for greater self-governance because she only has recourse to the broad and ultimately ill-defined concept of agency. While she could say that resignification allows for more agency, she would need a more detailed account of what it might mean to have more or less agency. It is evident that agency is not equivalent to autonomy for her. She writes, for instance, that “agency is not the restoration of a sovereign autonomy.”¹⁵²

While I am indebted in my forthcoming theorization of autonomy to Butler's insight that production *enables* agency and while I am careful to avoid “making the subject appear as if it belonged to no prior operation of power,”¹⁵³ my project departs from Butler's in part because I argue that we can accord a privileged status to subversive and resistant acts because of their beneficial effects for autonomy. Although I do not argue that an act must be subversive to be autonomous, subversive acts do retain a special status in virtue of their potential to contribute to a more open field of possibilities that themselves tend toward increased autonomy. I think making recourse to the more robust concept of autonomy—even as I re-think that concept—allows me to pay more attention to the conditions that constrain action. While Butler is certainly correct that autonomy has often been thought to involve independence and self-determination, in chapter three I turn to her argument that even historically tainted terms retain continuing political promise in virtue of their potential to be resignified in making my own argument for the re-production of the notion of autonomy.

Finally, it is important to see here how Butler's objection to autonomy does not, as Marilyn Friedman argues, stem from a belief that “selves do not exist.”¹⁵⁴ This is a common misreading of Butler, and has unfortunately been used as the basis for dismissing her work, especially in the realm of autonomy theory. One contribution of my dissertation is that, in not discounting Butler but instead understanding her as exposing the production of the subject—which is not at all the same as claiming that the self or the subject does not exist—I bring her significant insights regarding subjectivity and performativity to bear in a reconfiguration of autonomy. Her understanding of constitution not as antithetical to agency but as a precondition of agency leaves theoretical room for the coexistence of productionism and autonomy. Although she herself does not talk in terms of autonomy and is critical of the term, this does not preclude its reconfiguration in a way that would both be consistent with the idea that selves are produced and would also depart from her own account of agency. It is to this reconfiguration that I turn in the next chapter.

Nature-Culture, Object-Subject: The Epistemology of “Social” Construction

I now want to turn to the theories of Elizabeth Grosz and Donna Haraway, who are both concerned with processes of construction, but are also concerned with thinking through the physical and its relation to processes of construction. I explore these accounts of matter and their relation to production, as well as each scholar's attention to oft-assumed binaries such as nature/culture and object/subject. To the extent the former in each pair is understood as passive and the latter as active knower, these dichotomies underlie the objectivist and subjectivist epistemologies that, for example, MacKinnon describes and critiques. Thus, the disruption of these binaries are key to understanding and moving beyond those troubled ways of knowing.

¹⁵² Butler, *Excitable Speech*, 15.

¹⁵³ Butler, *The Psychic Life of Power*, 15.

¹⁵⁴ Friedman, *Autonomy, Gender, Politics*, 30-36.

In trying to move beyond the traditional dualism of nature/culture, Butler considers the way in which the "natural" is actually the product of power, rather than the given matter upon which power acts. Elizabeth Grosz is another theorist who is concerned with rethinking the nature/culture binary, especially with regard to gender. Although her work contains certain resonances with Butler's – especially in her argument in *Volatile Bodies* that bodies are social and discursive objects¹⁵⁵ – she takes a different approach to the theorization of matter. In fact, she critiques Butler for not "acknowledging that the very mark of being counted, of mattering, can be accomplished only through matter, in this case, biological or organic matter."¹⁵⁶ Moreover, according to Grosz, there is no room in Butler's account for an explanation of matter because it is a presupposition of her theory. That is, she takes issue with Butler's lack of attention to the physical substance, the corporeality, of our bodies. Specifically, she asks: "Instead of regarding culture as that which performatively produces nature as its 'origin,' as . . . Judith Butler [implies], . . . can we regard culture as the most elaborate invention of a nature that is continually evolving?"¹⁵⁷

In her disruption of the nature/culture binary, Grosz argues that we must cease construing nature as a passive medium upon which culture acts. She maintains that such a view denies the relentless change and variation that is endemic to nature. Accordingly, she argues that the "biological, the natural, and the material remain active and crucial political ingredients precisely because they too, and not culture alone, are continually subjected to transformation, to becoming, to unfolding over time."¹⁵⁸ In this, Grosz's theory has certain alliances with Donna Haraway's. Consider, for example, Haraway's statement that "there is no border where evolution ends and history begins, where genes stop and environment takes up, where culture rules and nature submits, or vice versa. Instead, there are turtles upon turtles of naturecultures all the way down."¹⁵⁹ Haraway, through the figure of the cyborg—which represents the union of technology and organism—both disturbs the nature/culture dichotomy and understands the biological and the material as deeply mutable in a way that has political ramifications. (The figure of the cyborg is discussed at greater length in chapter five.)

Both Grosz and Haraway disrupt and complicate the received nature/culture binary and therefore add additional depth to accounts of productionism sketched above. By destabilizing the nature/culture division they also destabilize the self/society binary since the latter rests on a division between the pre-social, natural, or authentic self and the social. Grosz's argument that a problem with the nature - society binary is that it presupposes that there is a social outside or independent of the natural is parallel to my observation in chapter one that one problem with the self - society binary is that it supposes that there is a self outside or independent of society.¹⁶⁰ Grosz also makes it clear that, in discussing construction, the point is not to argue over or seek to determine

¹⁵⁵ Grosz, *Volatile Bodies*.

¹⁵⁶ Grosz, *Time Travels*, 78.

¹⁵⁷ *Ibid.*, 50.

¹⁵⁸ *Ibid.*, 79.

¹⁵⁹ Haraway, *The Haraway Reader*, 2.

¹⁶⁰ What I take from Grosz's and Haraway's destabilizations of the nature/culture dichotomy is that we should resist an anthropocentric stance that renders humans outside or independent of something called the natural. This is not to say that humans do not transform our environments radically or adversely; it is to say that such transformations should not be understood as strictly unnatural. In my view, we should question and challenge the presumably given and disrupt the nature/culture divide itself through an ecological understanding of humanity as just as much a part of nature as any other group of organisms.

what about us might precede culture and what does not. If we define the natural as that which is opposed to the cultural, then we make it, not just unfruitful to ask, but impossible to answer the question: what is natural?

Grosz also argues that we should engage with the fluidity of the natural and even take it as a model. She writes that feminist theory is "the struggle to render more mobile, fluid, and transformable the means by which the female subject is produced and represented."¹⁶¹ Similarly, Haraway argues that the figure of the cyborg presents possibility through its transgression of received binaries such as human/machine and nature/culture. The aim of this dissertation is precisely to move us toward such a production of the subject because I think it is in such fluidity and transformation that we find greater opportunity for autonomy. Additionally, I want to avoid the notion that the biological or the natural is destiny for that only serves to foreclose possibilities and hinder autonomy.

One reason behind some feminists' reluctance to engage with the concept of the natural is due to the understanding that what is natural is both immutable and good because it is in the order of things. What Grosz reveals, particularly in her discussion of Darwinian evolution, is that the natural is marked by change and chance.¹⁶² The figure of the cyborg in Haraway's thought reveals that through the union of technology and organism, "the certainty of what counts as nature . . . is undermined, probably fatally."¹⁶³ Just because things are the way they are now does not mean that they had to be that way or that current circumstances determine the future. Rather, as both evolution and human society are marked by dynamism and chance, the future is anything but determinate.

The nature/culture binary relates and in some ways tracks the object/subject binary and so returns us to the epistemological questions that have been running throughout the dissertation. Nature has very often been conceived of as the object of study, not as agentic itself, whereas culture is presumed to be that which is imbued with (human) agency—where the qualifier "human" is unnecessary because there is no agency that is not human. Nature on this model is rendered the passive recipient of culture. Grosz and Haraway, in their own ways, argue for a re-conceptualization of nature as itself agentic. Thus, a social constructionist picture that takes the social as constituting the passive natural—that is, that understands the natural, including human bodies as non-actors—is deficient.

The disruption of nature/culture, especially in its relation to object/subject, is relevant for this dissertation in some related ways. First, when I talk of the constitution of the self I do not mean to efface the materiality of the body but to include it as an actor involved in production. While it is often thought that to "naturalize" something is to render it inevitable, once we take the "natural," including bodies, as active and dynamic, our understanding of the processes of construction is changed. Construction ceases to be only the product of human agency imposed on the passive material world. In fact, I turn to cyborg theory in chapter five as a way of directly engaging with the corporeality of the body and as a way of opposing the view, in Haraway's words, that "'man makes everything, including himself, out of the world that can only be resource and potency to his project and active agency.'"¹⁶⁴ When I discuss my own take on social

¹⁶¹ Grosz, *Time Travels*, 193.

¹⁶² *Ibid.*, 13-42.

¹⁶³ Haraway, *Simians, Cyborgs, and Women*, 153.

¹⁶⁴ *Ibid.*, 67.

production, I do not mean to evoke the kind of social that is understood as strictly separate from or outside of the natural. In recognition both of the fluidity between natural and social, as well as the agency of the natural and organic, I tend to drop the “social.”

Additionally, the disruption of the nature/culture and object/subject binaries are relevant for autonomy if we understand autonomy as requiring some knowledge of the self. Since it is the very split between object and subject that has served as the basis of the kind of epistemology that both Haraway and MacKinnon critique—and which was explained in the previous chapter—by disturbing that split it may be possible to move past the impasse between positing an all-knowing outsider and taking up a relativist subjectivist position. At the base of some of the autonomy theories critiqued in chapter one was the idea that the self as (active) subject can split itself from the self as (passive) object to discover real knowledge about the object-self that the subject-self can then act upon in order to be autonomous. For the substantive autonomy theorists, for example, this process will sometimes be unavoidably tainted so that some outsider, who can understand the self's situation better, is needed to ensure real autonomy.

I want to explore what happens if we reconfigure the implicit subject/object split that I think is implied by much autonomy theory. What if we understand the self in terms of a recursive subject/object relationship in which the subject is not the sole actor and the object is not the sole recipient? More specifically, I turn, in the coming chapter, to Haraway's characterization of situated knowledges to help me think through this interaction and its consequences for autonomy.

Conclusion

In this chapter I have discussed dominance feminism and post-structural accounts of the production of the self, as well as accounts that focus on materiality and are concerned with disrupting the nature/culture binary.

With regard to MacKinnon's dominance feminism, I have argued that—although MacKinnon provides incisive critiques of the objectivist epistemological stance that takes the aperspectival outsider as objective, as well as the subjectivist epistemological stance that would uphold individual knowledge in a move that ignores the production of that knowledge—MacKinnon's account ultimately commits the objectivist mistake. Foucault provides a similar critique of objectivist and subjectivist epistemological accounts. He combines these critiques, though, with a more nuanced and persuasive account of power that leaves room for resistance and agency. In turning to Butler, the post-structuralist account of power was enriched further, especially through her argument that the production of the self is the necessary site of the self's agency. She reveals that the presumed paradox between production and agency is unwarranted. Although this insight is crucial for my re-production of autonomy in the following chapter, I also argued that her account of agency is, in the end, wanting.

In turning to the work of Grosz and Haraway, I intended to show the importance of not effacing the materiality of bodies. Especially because this dissertation is concerned with the very bodily process of sexual reproduction, this accounting for materiality is key. In part because subsequent chapters focus on the material transformations that occur through practices of abortion and sterilization, I demonstrated in this chapter that, although many accounts of the production of the self do not focus on materiality, corporeality is not at odds with productionism. In addition, by turning to Grosz and Haraway, I was able to draw out more epistemological

implications of traditional binary divides like nature/culture and object/subject. Disturbing such binaries and their accompanying epistemologies is the first step to moving beyond the bind created by the objectivist and subjectivist stances. In the next chapter I rely on such disruptions in giving an account of re-produced autonomy.

CHAPTER THREE: AUTONOMY RE-PRODUCED

Because power works through us and constitutes us it is incorrect to think of it as an alien force that is thereby opposed to autonomy. If, as Butler argues, power's production is the necessary site and precondition of agency, then the very possibility of autonomy inheres in productionism. Moreover, because norms and their operation are dynamic both production and autonomy are ongoing processes. We do not merely set up society and institutions once and for all and declare ourselves autonomous. The apparent tension between autonomy and productionism is not to be understood as the paradox of self-governance and determinism because to be produced is not to be determined, which in turn means there is room for thinking through what the autonomy of a produced self might involve.

Although autonomy may presuppose the existence of selves, a theory of autonomy need neither rely on a notion of those selves as pre-social nor place the constitution of those selves outside the realm of inquiry. In my view, one value of productionism is that, by unmasking the contingency of things we take to be “natural”—that is, immutable or given—it establishes that things can be different, and this allows for the argument that things should be different.¹⁶⁵ However, if autonomy is thought of as undermined by the constructionist project then one important basis for arguing for transformation is precluded. For example, in coming chapters I base my evaluations of reproductive regulations and discourse on what they mean for autonomy.

The aim of this chapter is to provide a thinking through of the autonomy of the produced self—that is, to give an account of re-produced autonomy. I begin with a discussion of what exactly is being (re)produced in this rethinking of autonomy. I argue that the constitution of ideas, subjects, and bodies is ongoing and mutable and that the term and concept of re-produced autonomy draws on the re-production of all three. I then turn to a more explicit account of how I understand autonomy. Roughly, I argue that autonomy involves the ability to act on one's preference within a relatively unconstrained field of possibility. Although individual preference is key here, this understanding of autonomy does not take those preferences as authentic or make recourse to an original self. Even in its focus on respecting individual preference, it is concerned with the social constitution of preference, especially in its connection to the field of possibility.

The chapter then moves on to a discussion of the role of reflection and epistemology in this re-produced notion of autonomy. I return to some critiques of contemporary autonomy theory in putting forth a conception of autonomy that relies on the feminist epistemology of situated knowledges. I argue that situated reflection is an important component of autonomy. In relying on the notion of situated knowledges in my account of autonomy, I avoid the pitfalls of other accounts of autonomy and provide a more open way of thinking through reflection and its connection to autonomy.

I then turn to an explicit treatment of the role of law in upholding the value of autonomy, as well as its role in subordination. Finally, I defend my conception of autonomy as feminist and argue that it responds to the various feminist critiques

¹⁶⁵ Along these lines, Martha Nussbaum has argued that social construction can be understood as a source of freedom. She maintains that it does not “force us into rootless relativism; instead, it opens up a space for normative argument, political criticism, and reasoned change.” Nussbaum, *Sex and Social Justice*, 256.

leveled at the concept. I also defend my reliance on autonomy, as opposed to freedom or agency.

Re-producing What? Ideas, Subjects, and Bodies

I begin by explaining how I understand the processes of production and how my understanding of them, as well as of the concept of autonomy, is reflected in the term, “re-produced autonomy.” I begin by asking: What precisely is being produced and out of what?

In *The Social Construction of What?*, Ian Hacking argues that we can talk about the construction of ideas – which include beliefs, concepts, and desires – or the construction of objects. I am interested in both and especially in the interaction between the two. First, I am focused on the construction of beliefs about reproduction (e.g., who should reproduce and under what circumstances), as well as the construction of maternal desire. Second, I am concerned with the production of the reproducing *subject* – of how women as mothers or potential mothers are produced. Given my topic I am also concerned with the production of the idea that women are non-autonomous, even incapable of self-governance, and always already subjugated. And in this I am again concerned with how the constructed idea serves to construct people. These two areas of concern are not, however, strictly separate. For example, the production of women as childbearers and as subjugated are intertwined. Moreover, truly increasing reproductive autonomy means accounting for the construction of both maternal desire and autonomy. Concordant with the re-produced notion of autonomy outlined in this chapter, women's self-governance cannot be positively affected without investigating the produced self.

With this approach, I am principally focused on what Hacking labels “interactive kinds” in which the thing being classified (people) in some sense reacts to its classification.¹⁶⁶ This happens because either people are aware of the way they are being classified, or the people around them are aware and change their behaviors and institutions accordingly, or both. Furthermore, the way people react to the classification can come to change the classification. It is not the case, then, that the construction is one-way – from society to people. It is two-way or interactive. The very way people are classified interacts with and can come to change the societal classification.¹⁶⁷ In Hacking's words:

We think of many kinds of people as objects of scientific inquiry. . . We think of these kinds of people as definite classes defined by definite properties. As we get to know more about these properties, we will be able to control, help, change, or emulate them better. But it's not quite like that. They are moving targets because our investigations interact with them, and change them. And since they are changed, they are not quite the same kind of people as before. The target has moved. I call this the ‘looping effect’. Sometimes, our sciences create kinds of people that in a certain sense did not exist before. I call this ‘making up people.’¹⁶⁸

¹⁶⁶ Hacking, *The Social Construction of What?*, 103.

¹⁶⁷ *Ibid.*, 116.

¹⁶⁸ Hacking, “Making Up People.”

This approach squares with a Foucaultian approach that sees force relations as a necessary precondition for the subject's agency and which views agency as immanent to power, not as exterior to it.

As Foucault argues, the construction of both ideas and objects involves the production of the idea that the thing being constructed is natural and inevitable. The point, then, of discussing the production of maternal desire is to reveal that it is not, in fact, natural or inevitable. It is to question, as Katherine Franke thinks legal scholars in particular have neglected to do, the presumed fact that women generally want to and do reproduce – a phenomenon she terms “repronormativity.”¹⁶⁹ This dissertation interrogates a notion underlying repronormativity—that women are naturally maternal—while also making central to the inquiry the ways in which some women's reproduction is neither incentivized nor encouraged. Hacking thinks that, in arguing that something is not inevitable, social constructionists often implicitly or explicitly argue that the thing is bad and should be changed.¹⁷⁰ This is not my point in arguing that reproductive desire is constructed. While I do think it is problematic from the perspective of autonomy for motherhood and maternal desire to be compulsory, I do not think that maternal desire is itself bad. The point is not to do away with it or motherhood, but to disrupt the idea that it is natural and consequently open up more possibilities.

Hacking's account—while prompting me to think more explicitly and carefully about what exactly is being produced, as well as giving a nice account of the interaction between ideas and objects—is of less use in thinking through the materiality of the objects being classified. Since I am dealing with reproduction—which is clearly and significantly a bodily, embodied practice—I want to spend some time here (and also in chapter five) considering how to think about materiality. As opposed to some theorists of construction, my approach does not take materiality as passive, given, or determined—as the raw material upon which construction merely does its work but that is ignored or obscured in a theory of construction.¹⁷¹ In fact, my term “re-produced autonomy” is meant to signal the mutability of ideas, subjects, and bodies: it signals that the subject is (re)produced both discursively and materially and the idea that autonomy itself is understood, not as an originary desire or attribute of that self, but as a produced concept that is thus open to re-production. The term itself is thus significant and merits some explanation. Through this explanation Hacking's treatment of interactive kinds is combined with an account of the body.

Importantly, “re-produced autonomy” is not only or even primarily concerned with the realm of the discursive or the conceptual but should be understood simultaneously in terms of reproduction as bodily and sexual practice. The term “re-produced,” then, has a dual meaning, playing on sexual reproduction as well as the production of the subject. The similarity of the very terms reproduction—understood as procreation—and production—as in productive power and the idea that the subject is the product of regulatory discourse and power—reflects some interesting resonances between their meanings. For example, neither one should be confused with replication. Although reproduction may seem to suggest a replication, to reproduce sexually is not strictly to replicate or clone. Rather, reproduction signifies both a continuity and a

¹⁶⁹ Franke, “Theorizing Yes.”

¹⁷⁰ Hacking, *The Social Construction of What?*, 1-3.

¹⁷¹ This was discussed in chapter two, especially with regards to Elizabeth Grosz's argument that Butler presupposes material matter.

break. The child who is produced is not created out of thin air, but out of the raw material of the biological parents' bodies; the child is, nevertheless, a distinct embodied entity. We both originate from prior beings and diverge from them such that there is simultaneously a continuity and a break between parents and children. Similarly, processes of production (as in productive power) should not be understood as replicative. Rather, as in Butler's understanding of reiteration, these processes must be understood both as continuous—as in dependent upon and derivative from existing norms—and as somewhat discontinuous. To be produced is not to be determined.

With these discursive and material elements, re-produced autonomy signifies the joining of reproduction as a material, bodily process with the produced—or, more aptly *re-produced*—account of the subject. I thus fasten the discursive to the material but do not thereby conceptualize the material as passive. In some ways, I approach reproductive autonomy as, to borrow a term from science studies, a “semiotic-material” process which, in Haraway's words, “highlight[s] the object of knowledge as an active, meaning-generating axis of the apparatus of bodily production, without *ever* implying immediate presence of such objects or, what is the same thing, their final or unique determination of what can count as objective knowledge at a particular historical juncture.”¹⁷² On this approach, which I am adopting as central to re-produced autonomy, the discursive and material are not strictly separate but are very much entangled. As will be discussed in more depth in chapter five, the discursive conceptualization of reproduction has ramifications for the material and technologically infused body.

It is important to note that the “re” in “re-produced” is crucial not only because it allows me to draw the connection with sexual reproduction but also because it gestures toward the existence of bodies, norms, and concepts that are re-worked, created from something. That is, I think mere “production” can sometimes mask that there is something there that provides the condition of possibility for productive power and the production of the subject. To say the subject is produced begs the question: out of what? Like “social construction” it may suggest the human as sole agent in the processes of production. The focus on *re*-production suggests the existence of materials and concepts that are dynamic and can be reconfigured.

I mean re-producing autonomy, then, to bring attention to the mutability of both embodied, norm-ridden reproductive practices, as well as autonomy as concept. Just as both sexual reproduction and productive power involve both continuity and rupture, I am re-producing the concept of autonomy in a way that signals both a correspondence with and a break from other conceptualizations. I have not created a new term or concept but have adopted a well-known term that is fraught with associations. My account maintains a certain continuity with earlier instantiations of the concept while also breaking from them.

Theorizing autonomy in the way I do here—that is, in a way that accounts for the constitutive character of individuals and desires—dislodges autonomy from an atomistic or pre-social account of the self. I think it is precisely this ability for concepts like autonomy—as Butler says in general of “the key terms of modernity”—“to acquire non-ordinary meanings that constitutes their continuing political promise.”¹⁷³ The use of autonomy in a productionist context creates dissonance precisely because autonomy is

¹⁷² Haraway, *Simians, Cyborgs, and Women*, 200. On this term see also Latour, *Reassembling the Social*.

¹⁷³ Butler, *Excitable Speech*, 145.

so often linked with ideas of authenticity and independence. This dissonance does not mean that the re-production of autonomy must fail but that its very re-production can both disturb its previous associations and be a way toward, again in Butler's words, "configur[ing] a different future."¹⁷⁴ Since women's reproduction has often been regulated for the sake of the "social good," configuring a different future in which women's own interests are paramount is especially important in the context of reproductive regulation.¹⁷⁵ An emphasis on the individual and her wishes—that is, on autonomy—can be a means toward a different configuration. While autonomy may not be universally desirable or emancipatory, I think re-producing autonomy is desirable in the context of law and reproductive politics in the United States. (Chapters four and five can be read as arguments for this claim in the contexts of abortion and sterilization.)

Preferences, Possibility, and Norms

Central to autonomy in my understanding is the ability to act upon one's preferences within a relatively unconstrained field of possibility. In this section I outline what I mean by this, beginning with a brief discussion of preference and moving on to discuss the importance of possibilities, as well as the interaction between preferences, possibility, and norms.

Let me begin by elaborating on why I rely on and how I understand preference. I do not understand preference as synonymous with desire but take desire as a possible basis of preference. In recognition that people may have preferences that also spring from things like values or duties, I adopt "preferences" or "inclinations" as the focal point for understanding reproductive autonomy.¹⁷⁶ Crucially, preferences and the desires or values that ground them, are not conceptualized as lying there to be discovered in oneself. Rather, preferences and the desires that may ground them are produced. Since a productionist account troubles the idea that there is any pure preference that springs solely from one's core self, I do not make recourse to such an account. Nevertheless, people have preferences and the fact that they are produced does not mean that they cannot or should not be given normative weight. We can recognize the self as produced and still maintain a concern with individuals' ability to act on their preferences within a relatively unconstrained context. However, as should become clear below, to say that preferences should be given normative weight is not to say that we may not or should not scrutinize the social forces that constitute preference.

In fact, the "in a relatively unconstrained field of possibility" aspect of my understanding of autonomy is crucial because it indicates that individual preference occurs and is produced within a context. Moreover, since autonomy will always be exercised within a field of constraint, I emphasize that the field of possibility should be *relatively* unconstrained. Recognizing that there will always be constraints on actions leads me to conceptualize autonomy as a matter of degree. It is not that we either are or are not autonomous; rather, we may be more or less autonomous depending, among

¹⁷⁴ Ibid., 160.

¹⁷⁵ The history and legacy of eugenics is especially notable. A brief history of this movement and its current instantiations is offered in chapter five.

¹⁷⁶ See Double, "Two Types of Autonomy Accounts" for an argument that autonomy accounts that focus only on desires are overly narrow. Relatedly, Nussbaum notes that, "Western philosophers, ever since Plato and Aristotle, have agreed that the explanation of human action requires quite a few distinct concepts; these include the concepts of belief, desire, perception, appetite, and emotion—at the very least." Nussbaum, *Sex and Social Justice*, 1209.

other things, on the field of possibility. On this account, autonomy depends on what the field of possibility is like which in turn depends on whether an adequate range of valuable options is available.¹⁷⁷

What constitutes an adequate range of options, however, is not immediately obvious and is open to debate. In the dissertation I restrict myself to arguments regarding some options that are important for women's reproductive autonomy. I hold that reproductive autonomy depends in part on whether women have both the option to become mothers on their own terms and the option to be childfree. (Although there are other options that are crucial to reproductive autonomy—such as the option to be a non-biological mother—the dissertation is focused on the contexts of abortion and sterilization and so does not deal directly with non-biological motherhood.) I take a relatively unconstrained field of reproductive possibility to be counter to both a context of compulsory motherhood and that of compulsory sterility such that certain norms can be understood as compromising autonomy. While all norms constrain possibility and that alone may not give us ground to oppose them, I think that the limitation of procreative possibilities through norms and their attendant regulatory practices—like abortion restrictions, forced sterilization, or certain restrictions on voluntary sterilization—do provide grounds for their opposition, in part because the experiences of pregnancy and motherhood—and thus also their absence—bear significantly on how one's life is lived and how one's body is embodied. As subsequent chapters will demonstrate, however, norms—especially in their connection to adequate options—are complex, and how we understand what constitutes an adequate option is an intricate matter that requires a contextualized appraisal of norms and law.

Nevertheless, because of the material and symbolic significance of the experiences of child-bearing and child-rearing, having an adequate range of significant options with regard to one's reproductive life is a crucial constituent of autonomy. Attention to the bodily, material process of reproduction is critical in part because it is the very transformation of the body in pregnancy that makes the privileging of reproductive autonomy over, for example, some notion of the collective good that would deny women authority over their bodies so important. Moreover, as Drucilla Cornell has argued with regard to abortion, a woman's ability to decide the outcome of her pregnancy is crucial to her sense of self. Abortion prohibitions restrict women's symbolic representations of themselves and violate their bodily integrity. It is crucial that women have the space to decide the symbolic meaning of their pregnancies, and restrictions on abortion deny women that possibility.¹⁷⁸ The issue with regard to sterilization is similar. Both forced sterilization and the denial of voluntary sterilization treat women as violable in way that denies women the ability to decide their bodily configurations and their meanings.

Let me now return to the idea mentioned above regarding the constitution of preferences. The key point in this regard is that preferences should not be conceived of as existing independently or in separation from the field of possible options. Preferences are not hidden deep inside us but are very much formed within and dependent upon a context. Bringing a productionist account to bear on autonomy

¹⁷⁷ Raz and Nussbaum also understand the availability of significant options as important for autonomy. Raz, *The Morality of Freedom*; Nussbaum, *Sex and Social Justice*.

¹⁷⁸ Cornell, *The Imaginary Domain*, 31-91. Cornell's treatment of abortion is discussed in much more depth in chapter four.

means inquiring into the production of the self. On this perspective, the concern is not merely that external impediments constrain autonomy but also that regulatory apparatuses of production can constrain autonomy in their constitution of individuals, including individual desires, values, and beliefs. For example and as I argue in chapter four, a legal discourse that naturalizes motherhood renders non-mothers and a lack of maternal desire unintelligible in a way that limits reproductive options and is more likely than a context that permits women more valuable options to constitute women as mothers. This constitution of woman-mother¹⁷⁹ essentializes maternal desire such that the resulting preference for motherhood is not even understood as a preference but is instead taken for granted. There is a strong connection between the context—e.g., how open the field of possibility is—and the constitution of the aspects of the self such as the desires and values that ground preferences.

Importantly, what the field of possibility is like affects not only the constitution of the self but also how individuals are involved in the reiteration of norms. While there may always be room for transgressive acts—because individuals, even when in the most oppressive of positions still exist and move within the social, and both their acceptance and denial of social norms affect the processes of construction—the more constrained the context is, the less room we have to maneuver with regard to norms.¹⁸⁰ As Foucault notes, we are not merely passively constituted as subjects, but are also always vehicles of power. We are involved in the circular process of constituting our environment and being constituted by it.

It is not that I think we can shape norms before they shape us. In fact, that understanding of norms—as in some sense existing outside or before us—does not make sense in a Butlerian perspective. Norms work *through* us: norms and subjects are so intertwined that to pull them apart and suggest that individuals make them before they make us, or that they exist apart from subjects, is to miss this deep entanglement. However, a more constrained field of possibility is problematic for autonomy in part because such constraint hinders one's ability to resist norms that may themselves limit valuable possibilities. To the extent a given context is governed by intense pro-natalism or compulsory motherhood, options are not only limited but, further, the ability to undermine or destabilize those very norms is compromised. Women who resist the identification of women with mothers may contribute to a context that increases reproductive possibilities.¹⁸¹ Furthermore, to the extent that the category woman is constituted by reference to maternity, the opening up of more non-maternal identities for women can destabilize the very category woman that, on a Butlerian understanding, is itself a product of regulatory processes. These new identities would be no less produced but they may be the result of a less hegemonic process and may better serve autonomy.

We cannot, then, think of autonomy as an isolated endeavor. As Rousseau was so keenly aware, isolated freedom is not possible. We cannot even conceive of autonomy

¹⁷⁹ This term comes from Hird, "Vacant Wombs" whose work is discussed in chapter five.

¹⁸⁰ See Schultz, "Room to Maneuver (f) or a Room of One's Own?" and Coombe, "Room for Manoeuver." for discussions of the phrase "room to maneuver."

¹⁸¹ It is important to note that, as Rosemary Gillespie argues, "Being childfree has always been socially sanctioned for some groups, such as spinsters, widows, nuns, and nannies" yet these roles were "defined by loss, self-sacrifice, and/or the nurturing of others' children. They failed to challenge, and even served to bolster, pronatalist cultural discourses that fused hegemonic femininity with motherhood." Gillespie, "Childfree And Feminine," 133.

in society in a way that would abstract us from that society. For Rousseau, in order to be free in society, we have to participate in something greater than the self. What the post-structuralist understanding of social norms and the self reveals is that we necessarily are, in some sense, involved in the collective processes of production. Although we do not determine or shape the social forces before they shape or produce us, we are, in a Butlerian perspective, necessarily implicated in their continued power. Thus, it is our very involvement in the ongoing reiteration or reconstitution of norms that creates the possibility of autonomy. Autonomy requires grappling with the collectivities of which we are a part, not just because they form us, but because we have a role—even if always partial and contingent—in shaping them.

It is crucial to keep in mind, though, that we can never be fully aware of the extent of this mutual shaping, in part because mechanisms of power work by obscuring their processes. We will never be fully conscious of productive power or how it works through us. We will also be constrained in that we will always be reacting to dominant forces—as Foucault argues, we are never outside of power. Regardless, it does not follow that our action is wholly governed by outside forces. The resistive or subversive potential fundamental to the Foucaultian and Butlerian accounts of power is relevant to my account of autonomy: in challenging norms and their accompanying external and psychological constraints, subversion has the potential to increase autonomy. Consequently, some room for movement and some room for reflection on that shaping remains possible. It is to the possibility and the importance of reflection in re-produced autonomy to which I turn in the next section.

Finally, it is crucial to reiterate that options alone do not necessarily or inevitably increase autonomy. In fact, an increase in options may be accompanied by pressure to decide in socially prescribed ways as well as in changes in the way an action is morally evaluated. This possibility is discussed in chapter four. Moreover, I think that the politics and production of regret is another way of keeping decisions in line with normative standards and can function to limit the potentially disruptive effects of an increasingly open field of possibility. This phenomenon is explored in each of the following chapters as well as the conclusion.

Subversion, Knowledge, and Situated Reflection

In this section I want to connect reflection to the epistemological issues and questions scattered through the dissertation. As I have discussed, questions long considered central to autonomy center on questions of epistemology: How may we know the content of our true or real desires? Can we (or how can we) understand certain preferences as our own? Who knows best what is in our interest? All of these questions are concerned with issues of self-knowledge. Recall, however, that I critiqued an array of autonomy theories for relying on a discredited epistemological stance regarding the character of self-knowledge as well as the mode of acquiring it.¹⁸² I think extant autonomy theories tend to employ what Donna Haraway refers to as “a logic of ‘discovery.’” According to this logic, the self is taken to exist in some pure (even if socially formed and embedded) form and the challenge for autonomy is to be able to access or “discover” that self’s true desire. In a way, then, the self whose real desire is

¹⁸² In the discussion of nature-culture in chapter two I discussed the ways in which Grosz’s and Haraway’s disruption of the nature/culture binary is relevant for the dissertation. One way was with regard to the epistemological character of autonomy: I noted that I want to make recourse to the active agency of the self that is the object of inquiry in autonomy.

being uncovered is understood as a passive entity. Although the autonomy theorist certainly understands the part of the self that is doing the discovery as active, there is a sense in which another part of the self is rendered passive and simply there to be discovered. Thus, the object/subject split is recreated within the self. Also, this splitting is what opens up the potential for someone outside the self—one who may even lack a point-of-view—to be able (as happens in substantive autonomy accounts) to know better the real or true preference of the passive, object part of another's self.

This implicit picture of the self is a problem for a couple of different reasons. First, it is at odds with a productionist understanding of the self. Even if this picture could make room for a shifting, dynamic self, it still implies that there is something true or real about the self that is lying underneath to be discovered. It is thus in tension with the view that the self is produced. This is not to say that the self does not exist, but that the logic of discovery on which I think these approaches implicitly rely suggests that the real self, although sometimes deeply buried, is there to be uncovered. This depiction of the self is also problematic because in rendering part of the self as simply there to be discovered it understands that aspect of the self as passive. This is in tension with the productionist picture that understands the self as agent, as playing a role in its constitution rather than being determined by external forces that are merely imposed. The passive/active, object/subject split that underlies this approach is the epistemological approach that, in denying the object of knowledge any agency, tends to accompany the view that knowledge is what originates from the active aperspectival outsider.

My strategy for avoiding the problems of many autonomy theories while also preserving some importance for reflection and holding out the possibility of self-knowledge is twofold. First, I replace the logic of discovery with a logic of conversation according to which situated conversations encourage autonomy. On this point, I turn to the feminist epistemology of Donna Haraway. Second, I focus on the context that would encourage reflection of all kinds and not on, say, a specific requirement as to how a person may undertake reflection. For example, I do not require that a person reflect on—and therefore conceive themselves as having—higher order desires in order to be autonomous. As I argued in chapter one in outlining the process by which actors might be considered autonomous, procedural accounts assume a particular architecture of the self and unduly limit the ascription of autonomy.

With regard to the first part of the strategy I maintain that autonomy involves not self-discovery but a particular kind of conversation: a “situated conversation.”¹⁸³ I ask: what if we understand knowledge—even of the self—not as depending on discovery by a removed self but as resulting from a situated conversation? As Haraway writes, “situated knowledges require that the object of knowledge be pictured as an actor and agent, not a screen or a ground or a resource, never finally as slave to the master that closes off the dialectic in his unique agency and authorship of ‘objective’ knowledge. . . . Accounts of a ‘real’ world do not, then, depend on a logic of ‘discovery’, but on a power-charged social relation of ‘conversation.’”¹⁸⁴ Such situated knowledges will always be partial and, for Haraway, offer a type of objectivity that is both feminist and that is “not about transcendence and splitting of subject and object.”¹⁸⁵

¹⁸³ Haraway, *Simians, Cyborgs, and Women*, 200.

¹⁸⁴ *Ibid.*, 198.

¹⁸⁵ *Ibid.*, 190.

I propose that the self-knowledge that can ground autonomy should be understood as a partial, somewhat unstable, fluid knowledge that originates in a “power-charged” conversation among situated entities. The kind of conversation I am envisioning involves interchange with oneself and others. With regard to conversation with oneself, there is no passive or real self to be discovered, but only an active self engaged in a conversation. Autonomy requires, not distancing or abstracting oneself from oneself, but acknowledging one's location; there is not a splitting of self as object from self as subject but a less easily described and messy conversation in which no part of the self is understood as passive, simply there to be discovered. Situated conversation also involves conversation—where conversation is understood broadly—with others. Again, as Haraway writes, “The knowing self is partial in all its guises, never finished, whole, simply there and original; it is always constructed and stitched together imperfectly, and therefore able to join with another, to see together without claiming to be another.”¹⁸⁶

This second aspect of situated conversation is connected to my strategy of engendering a context conducive to reflection which is itself connected to subversion. The danger with “tyranny of opinion” or hegemonic norms is that they function to “naturalize” the customary: the customary or the compulsory may become so accepted that it is not even thought that it could be any other way. In this way and to the extent norms produce the self, the situatedness of self-knowledge is obscured because it appears simply as the obvious, the taken for granted fact. The knowledge that accompanies the naturalized customary is viewed not as partial but as universal. For example, in a context of compulsory motherhood a woman's desire to be a mother would be taken for granted. The kind of reflection I am promoting, then, may be understood as a situated reflection. The understanding is that the reflection is undertaken from a perspective and will result in partial knowledge of a self that is itself agentic and that may change in and through the very process of reflecting. The self is conceived, not in terms of a necessarily bifurcated self in which one part discovers another, but in terms of an always agentic self that may very well be split and contradictory, but that does not require getting outside of or transcending itself—for how could it do this?—to acquire knowledge.¹⁸⁷ While another's perspective can provoke critical reflection precisely because it is removed from one's own experience, the other should not be understood as unsituated. The other will have a distinct take, not because the other is without perspective but because the other has a different but no less situated perspective. The point is not to discover an originary or core desire, but to reflect upon one's situated, partial knowledge that may nonetheless be enhanced. Confrontation with the eccentric or subversive may lead to a confrontation with another partial perspective and so provoke an awareness of one's own situatedness and reflection on what has been taken for granted. As Haraway writes:

A cyborg world might be about lived social and bodily realities in which people are not afraid of permanently partial identities and contradictory standpoints. The political struggle is to see from both perspectives at once

¹⁸⁶ Ibid., 193.

¹⁸⁷ Haraway describes the self as “split and contradictory,” where the “[s]plitting’ in this context should be about heterogeneous multiplicities that are simultaneously necessary and incapable of being squashed into isomorphic slots of cumulative lists.” The splitting of the self she describes, then, is not an object/subject split within the self. Ibid.

because each reveals both dominations and possibilities unimaginable from the other vantage point. Single vision produces worse illusions than double vision or many-headed monsters.¹⁸⁸

My argument here also draws on Mill's point regarding the importance of a diversity of ideas and modes of life. He privileges diversity because if we confront only one way of doing things, we will blindly follow that example, and it will not even occur to us that things could be other than they are. The way to effect diversity is through, in Mill's terms, eccentricity, which is, I think, akin to resistance or subversion. These concepts are closely aligned with one another due to their shared concern with counter-majoritarian conduct. Mill characterizes eccentricity as "the mere example of non-conformity, the mere refusal to bend the knee to custom."¹⁸⁹ Foucault talks of the importance of "look[ing] like a girl when one is a boy (and vice versa)."¹⁹⁰ Butler writes of subversion through parodic practices such as drag. These practices all amount to a resistance of power. The value of eccentricity—or resistance or subversion—is its *potential* to unmask the effects of power—that may otherwise appear "natural"—by revealing their contingency.

Through this unmasking and the consequent opening up of possibilities, hegemonic forces may be disrupted. Additionally, everyone—even those who conform—have enhanced autonomy since being confronted with alternative ways of life may induce reflection upon aspects of ourselves that have been taken for granted as apparently "natural" and inevitable. I do not think that one must, after reflecting, accept an alternative mode of life to be considered autonomous. Merely by considering other possibilities and then choosing—rather than having no concept that things could be otherwise—we are more autonomous, where increased autonomy means that we consequently have more play in the reiteration of norms. None of this is to say, however, that only reflective subversive or eccentric actions are valuable for autonomy. I would like to preserve Mill's focus on spontaneity and impulsive action; such conduct, insofar as it counters dominant norms, also benefits autonomy. Even if the person who acts spontaneously does not reflect on her conduct, it nonetheless serves as an example of an alternative, opens up possibilities, and can consequently induce situated conversation and reflection.

Although I do not take autonomy to inhere in transgression, transgressive acts nevertheless have a special status in my framework because they can prompt the type of reflection that is important to autonomy. Even though I recognize both that the transgressive does not escape production but originates with it and also that acts which reflect or uphold norms can be just as autonomous as subversive acts, subversion is important for its potential to open up room for reflection upon norms and one's own preferences. That is, by presenting an alternative way of doing or being, transgressive acts—even if undertaken spontaneously and without much reflection—can prompt reflection in others: they can lead to a social context of reflection in which we may become, even if always only marginally and partially, more aware of aspects of our environment and ourselves that we may have taken for granted.

I want to be clear, though, that a subversive action is not necessarily autonomous and that autonomous action is not always or even mainly transgressive. In the end, I

¹⁸⁸ Ibid., 154.

¹⁸⁹ Mill, *On Liberty and Other Essays*, 74.

¹⁹⁰ Foucault, "A Conversation with Michel Foucault," 201.

privilege an individual's own assessment of her preferences and do not maintain that a person must reflect on her preferences in any particular way to be regarded as autonomous in her action or decision. My focus is not, as it is for procedural autonomy theorists, on taking a specific type of reflection as the lynchpin of autonomy. I am more interested in allowing for an environment that could reasonably be thought to induce reflection. Although reflection is not thought to result in something like a pure, originary preference, reflection is nevertheless valuable.

Respect for people's avowed preferences, then, does not preclude questioning a woman about, or encouraging reflection upon, her preferences and underlying values, beliefs, and desires. Actually, I think that we express respect for others and their decision-making capacity by engaging in dialogue. To present another with a different perspective or even a constructionist account of her desire is not to disrespect her but to demonstrate respect for her reflective capabilities. Certainly there are ways in which one might critique another's desire in a non-respectful and demeaning way. However, the process of critiquing desires and norms is not in and of itself disrespectful. Rather, to engage in such questioning and conversation is to acknowledge and respect others' ability to govern themselves. My refusal to disregard or override declared desires, then, should not be taken as precluding individual or communal examination of desire. In fact, as I argued here I value a context of situated reflection and knowledges: through such situated reflection, preferences may very well change but this change will result, not from an oppressive process, but from one that affirms self-governance.

One aim of the remaining chapters of the dissertation is to think through the power operating in (legal) reproductive discourse in order to think through how to shift it in ways that would increase autonomy. A premise of this inquiry is that legal expertise—as well as the medical expertise which the law often privileges—must itself be situated and understood as presenting a perspective and not a transcendental view from nowhere. The point is not that the law or medicine provide no relevant knowledges or truths but that it should not be privileged as the objective truth. Because of the conjunction between power and knowledge expertise is a crucial site of investigation. The expert is often rendered as the one who has the all-knowing view from nowhere and, as such, expertise tends to get depoliticized. What I want to question is the way in which medical and legal expertise is allowed to rule over the body. As Cornell argues, one important role of the right to abortion is that it ensures women the psychic space to develop their own understandings of themselves.¹⁹¹ In some instances the privileging of expert knowledge threatens this space.

Autonomy, Subordination, and Legal Subjects

Understanding the self as produced by a multiplicity of forces means not only that the idea of self-governance is produced but also that the individual is constituted in part through the discourse of self-governance. Moreover, although certain instantiations of autonomy may reify and obscure the production of the self, it is nonetheless the case that not all individuals are understood and constructed as self-governing. When, for example, an individual is widely understood as incapable of autonomy it affects her ability to be autonomous: she will be treated and constituted as unable to decide for herself and in accord with her real will or desire. Therefore, others may interfere with

¹⁹¹ See Cornell, *The Imaginary Domain*. Cornell's work and its relation to mine is explored in more depth in chapter four.

her decisions. As Hacking notes, a person interacts with how she is classified. She may resist or internalize the classification but either way the ascription of non-autonomy to her will play a role in how she and others see her(self).¹⁹² When I refer to the production of women as non-autonomous, I am referring both to the production of ideas about women's autonomy and to the production of women themselves. In this section, I discuss the implications of subordination and the discourse of subordination for autonomy. In the process I also elaborate on law's relation to autonomy through exploring both the repressive and productive aspects of law.

Before discussing the implications of subordination on autonomy, I first want to say more about how I think of subordination and how it may be distinguished from victimization. I understand subordination as a diffuse operation of power directed at a group and victimization as a more contained phenomenon that suggests the action of an agent. There is not a strict separation between victimization and subordination. For example, an individual woman may be a victim of rape, but rape may also be a mechanism of gender subordination. Nonetheless, because it is a more systemic and widespread phenomenon that affects a particular group, subordination is more readily connected with group identity and so subordination tends to characterize members of a group. Furthermore, to be subordinated implies significant constraints on one's ability to make and carry out one's plan of life. In other words, I take subordination to involve a limitation of options that hinders the subordinated in the exercise of their preferences and thus their autonomy.

Now, subordination may be thought to hinder autonomy at the level of individual mental capacities that are often taken as requisite for autonomy. Indeed, implicit in my account of autonomy is the idea that autonomy involves some sort of capacity. In particular, my articulation of autonomy as involving the ability to act on one's preference in an environment that is relatively unrestricted and thus likely to foment reflection at the individual and collective levels implies an ability to reflect, to evaluate different options, and ultimately to make a decision. I maintain, however, that a context of oppressive socialization may or may not hinder such capacities since, as the autonomy theorists interested in intersectional identity persuasively argue, certain oppressive circumstances or identities may actually aid reflection. In any case, we cannot make any assumptions about the interaction between oppression and mental capacity for autonomy. Furthermore, my purpose in the dissertation is not to give an account of how this capacity is developed or even to give much detail about the process of reflection. In fact, I am wary of approaches that are so specific in their accounts of the mechanism of autonomous reflection that they leave little room for individuality. I also decline to understand the substance of a given decision as indicative of a flawed reflective process. After all, what constitutes a "right" or "appropriate" or "reasonable" decision is itself debatable.

Even though it is mistaken to assume that being in an oppressed or subordinated social position necessarily hinders one's reflective capacities, subordination does have negative implications for autonomy. One way in which subordination hinders autonomy is through the limitation of valuable options that I understand as accompanying a subordinated social status. While the mere limitation of options hinders the exercise of autonomy, it is also important to consider the mechanisms through which options are limited as well as to attend to the reasons for and logic

¹⁹² Hacking, *The Social Construction of What?*

behind such limitations. My primary focus in the dissertation is on law's role in imposing constraints on autonomy, as well as its related role in the production of the subject. Here I focus on the ways in which the law is implicated in the production and practices of subordination and autonomy. (Some of the ideas sketched out here are elaborated with more specificity later in the dissertation in the contexts of abortion and sterilization.) I focus on the role of law in part because it is a key site of the regulation of reproduction and also, because of this, it plays an important role in the production of the reproducing subject.¹⁹³

One reason I think it is important to emphasize reproductive autonomy, especially in the domain of law, concerns the conceptual relation between autonomy and the specific mode of subordination marked by paternalism. Autonomy is often understood to demarcate a space within which an individual is permitted to make her own decisions and is thus protected from paternalistic intervention. As John Christman has noted, one "function of the concept of autonomy is to mark out the parameters within which a person is [or should be] immune from paternalistic intervention."¹⁹⁴ Since paternalism consists in the intervention in a person's actions, against that person's will and for her supposed good or benefit, then it becomes clear why autonomy is counter to paternalism. Autonomy marks out an arena in which individuals are their own governors and not subject to the rule of others.

Since it is so often the rule of law that has the power both to determine the boundaries of self-governance and the complementary power to restrict options such that subjects lack the power to make their own decision, it is important to think about autonomy in conjunction with the law. Although there are many ways of understanding the relation between legal rights and autonomy, I focus on two understandings here. One way of understanding this relation is that rights promote and even ensure autonomy by marking out a realm in which the individual is free from interference.¹⁹⁵ Another way of understanding the relation between law and rights, however, is that autonomy is a prerequisite or basis of being granted rights.¹⁹⁶ On this understanding the perceived lack of ability to govern oneself is taken as grounds for withholding rights or for allowing for the substitution of the subject's judgment for another's. On the one hand, then, rights are understood as conducing to self-governance, but on the other hand may only be conferred on those who are considered self-governing.

¹⁹³ See, Nussbaum, *Sex and Social Justice*, 130-153, for a discussion of the circular relation between preferences, norms, and law.

¹⁹⁴ Christman, "Relational Autonomy, Liberal Individualism, and the Social Constitution of Selves," 157. See Holroyd, "Relational Autonomy and Paternalistic Interventions," 326-27, for citations to more theorists who make similar claims.

¹⁹⁵ This is the way the Supreme Court understood the right to abortion in *Roe v. Wade*. Reiterating its earlier decision in *Eisenstadt v. Baird*, the Court held that: "[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.", Blackmun, *Roe v. Wade*, vol. 410, quoting Brennan, *Eisenstadt v. Baird*, vol. 405.

¹⁹⁶ Christian F. Rostboll discusses this distinction between understandings of autonomy and rights. He refers to the view that takes autonomy as grounding rights as Kantian, whereas he refers to the view that rights promote autonomy as Millian. Rostboll, "Autonomy, Respect, and Arrogance in the Danish Cartoon Controversy."

Here I favor the former understanding of rights. I thus understand rights, and law more generally, as demarcating a realm of non-interference. I take rights to be a way of marking out a realm in which people are protected from paternalism. Conversely, the law can also lead to lack of autonomy. For example, in the withholding or revocation of certain rights, the law may limit individuals' ability to govern themselves. Criminalizing abortion, for example, limits women's ability to govern themselves with regard to reproduction. In the next two chapters of the dissertation, though, I offer a reading of law that takes law as central to carving out an area of self-governance for women with regard to their reproductive preferences.

Recall that both Kant and Mill provide arguments for the importance of being able to decide for oneself. Kant writes that: "no-one can compel me to be happy in accordance with his conception of the welfare of others, for each may seek his happiness in whatever way he sees fit."¹⁹⁷ Mill argues that: "The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it."¹⁹⁸ In the coming chapters we will see how reproductive regulation often seeks to enforce a conception of women's welfare upon women, thereby denying women the ability to seek their welfare on their own terms. Nonetheless, I will argue that the law has potential to be reformulated in a way that would guard against such impositions.

It is important to note that law is implicated in autonomy not only through its power to carve out a realm of non-interference but also through its exercise of productive power. In fact, law may produce through its exercise of repressive power. For example, through the act of restricting women's options, the law may serve as a site for the production of women as incapable of rationally deciding for themselves. The law may take a paternalistic stance toward women and this is an issue for autonomy since it both declines to afford women decision-making authority but also because in so doing it may define women as unable to be autonomous, to govern themselves in accord with their own judgment. Given the productive power of law and legal discourse, it is also important to investigate the reasoning and logic behind the law's refusal to afford decision-making authority. Some justifications for withholding reproductive decision-making authority to women emerge in the coming chapters. Many of these justifications rely on the idea that self-governance requires a specific outcome—for example, the woman-protective argument explored in chapter four assumes that women are naturally maternal and for that reason a woman's choice to abort cannot be reflective of an autonomous decision. With these justifications for withholding decision-making authority from women the specter of the objective outsider re-emerges.

It is because of productive power that I am wary of discourses of dominance like MacKinnon's, especially because she would encode this discourse in the law. A legal discourse of subordination, which is often taken to mark a subject as non-autonomous, can play a role in the continuing construction of women as subordinated and thus non-autonomous. I think that while it is crucial not to efface subordination, it is also important to consider how the discourse and logic of subordination operates and whether it may itself hinder autonomy. Here I would like to turn to a common critique of MacKinnon—namely the criticism that she erases women's agency or autonomy through her rendering of women as overwhelmingly subordinated—as a way of

¹⁹⁷ Kant, *Kant: Political Writings*, 74.

¹⁹⁸ Mill, *On Liberty and Other Essays*, 17.

exploring this issue. With regard to the criticism that in portraying women as overwhelmingly subordinated MacKinnon plays a role in reconstituting them as such, MacKinnon writes:

the parade of horrors demonstrating the systematic victimization of women often produces the criticism that for me to *say* women are victimized reinforces the stereotype that women 'are' victims, which in turn contributes to their victimization. If this stereotype is a stereotype, it has already been accomplished, and I come after. To those who think 'it isn't good for women to think of themselves as victims,' and thus seek to deny the reality of their victimization, how can it be good for women to deny what is happening to them?¹⁹⁹

Putting aside the elision here between victimization and subordination, MacKinnon's response is inadequate in part because she simplifies the critique. On a more nuanced account of power and construction than MacKinnon's individuals are produced not just by one monolithic type of dominance, but by varied and messy forces. On such an account the discourse of the theorist and of the legal remedies she would implement are themselves some of those forces. Moreover, the critique I would level at MacKinnon is not that to discuss the victimization of women creates women as victims, but that MacKinnon's theorization of how dominance and victimization work renders women so fully dominated that it is difficult to see how women could ever exercise any agency. Not only is this an inaccurate account of women's situation, it also plays a role in the constitution of women: it does not alone *make* them victims but it is nonetheless one of the constructing forces, and MacKinnon's rendering of women defined by dominance is worth examining.

I nonetheless take MacKinnon's point that it is detrimental to ignore subordination and its mechanisms. However, I also agree with MacKinnon's detractors that the discourse of victimization and/or subordination²⁰⁰ does also play a role in the constitution of women. This is not to say that the solution is not to talk about the injuries women suffer but it is to say that attention should be paid to the operation and logic of subordinated discourses. MacKinnon can be critiqued further because she not only relies heavily on a theory of male dominance that effaces women's agency, but she also would inscribe that understanding in the law. As Wendy Brown has argued, such an inscription of subordination in the law should give us pause in part because of the possibility for the reinscription of both the dominating forces and the injury they have inflicted.²⁰¹

¹⁹⁹ MacKinnon, *Toward a Feminist Theory of the State*, 220.

²⁰⁰ Although I have made a conceptual distinction between the terms they are often not used precisely and, in practice, the discourses of victimization and subordination are quite bound up with one another and both often connote disempowerment and non-agency.

²⁰¹ Brown, *States of Injury*, 12. Brown is taken up again in chapter four. Butler's work on terms and the politics of recognition is also relevant. She writes: "to be addressed is not merely to be recognized for what one already is, but to have the very term conferred by which the recognition of existence becomes possible." Butler, *Excitable Speech*, 5. She also writes: "we sometimes cling to the terms that pain us because, at a minimum, they offer us some form of social and discursive existence. . . . a critical perspective on the kinds of language that govern the regulation and constitution of subjects becomes all the more imperative once we realize how inevitable is our dependency on the ways we are addressed in order to exercise any agency at all." *Ibid.*, 26-27.

The worry is that dependence on a subordinated identity in legal projects can circumscribe more emancipatory projects. In the following chapter on abortion I aim to balance a consideration of the law as discourse with experiences of subordination in arguing for a reformulation of the right to abortion. Central to that reformulation is the idea that discourse matters for how rights and options are framed. While rights can play an important role in opening up options, there is a danger that in so doing understandings of the legal subject as non-autonomous can be reinscribed. Thus, although I maintain that for the purpose of law, autonomy should be understood as involving the availability of valuable options, the social context and the discourse and logic within which such options are afforded is crucial. It is the potential of that discourse to re-entrench notions of subordination and lack of rationality to which we should attend.

A Feminist Autonomy

Having given an explanation of re-produced autonomy I now want to explore the feminist implications of this reconceptualized autonomy, as well as explain how it responds to the various feminist critiques of autonomy outlined in chapter one. As an initial matter, it is important to note that the paradox of a self-governing agent whose very self is constituted by social forces is of critical import to feminism. On one hand, calls for recognition of women's capacity for self-governance have been the basis for reforms ranging from suffrage to reproductive rights, while on the other hand, many feminists are committed to some degree of constructionism, having heavily theorized the social production of gender.

Underlying the tension between these tendencies is a question about whether asserting women's autonomy requires recourse not just to a pre-social subject, but to a pre-social *female* subject. If it did, it would seem to require adherence to essentialism – the belief that there is some feminine essence or essential core of femaleness.²⁰² When women's essence is posited it is often argued or assumed to inhere in women's reproductive capabilities. Robin West and Julia Kristeva, for example, appeal to women's maternal nature in their respective works.²⁰³ If a commitment to women's autonomy did require appeal to such a feminine essence autonomy would be in direct tension with the constructionist view of the female subject as coming into being through social, historical, and discursive processes. Some feminists, however, fear that a deep constructionist position eviscerates the basis for claims to autonomy or freedom, making women seem inevitably determined by others; others worry that it constitutes a denial of women's natural maternal capabilities and desires. Constructionism's potential to make a self-governing authentic self seem impossible can, at best, make us puzzle over why women should be treated as autonomous or even afforded rights to autonomy.²⁰⁴ Moreover, the centrality of reproduction to my analysis strikes at the very core of feminist debates between essentialism and constructionism.

The tension between construction and autonomy also lies at the foundation of many legal and policy debates within feminism. To take one example, anti-

²⁰² Harris, "Race and Essentialism in Feminist Legal Theory"; Poovey, "The Abortion Question and the Death of Man."

²⁰³ West, *Caring for Justice*; Kristeva, *Desire in Language*.

²⁰⁴ I do not mean to suggest here (or anywhere) that men are somehow above or immune from social construction. I do, however, mean to highlight the acuteness of the social construction - autonomy paradox for feminism because of its particular commitments.

pornography feminists like MacKinnon privilege construction over autonomy by emphasizing, not just the possibility of exploitation in the production of pornography, but also pornography's power to shape how women are viewed and to construct men's desires. Other feminists, however, argue that participation in pornography is a matter of a woman's choice: to deny her this option is to violate her autonomy. Similarly, debate over the use of the Battered Woman Syndrome (BWS) can be understood in terms of autonomy and social construction. Those opposed to BWS see it as a way of constructing women as pathological and devoid of self-control, and even view the syndrome itself as a social construct. Advocates, on the other hand, emphasize BWS's exculpatory function and its consequent ability to free individual women from an otherwise unjust criminal system.

The theoretical underpinnings of these policy disputes can also be illuminatingly explored in terms of self-governance and constructionism. For example, liberal feminism privileges notions like rights, equality, and autonomy, whereas dominance feminists, such as MacKinnon, premise their arguments on the social construction of women's sexuality by male dominance. Of course, each of these debates is more nuanced than can be captured by these brief descriptions, but the point is that the concepts of self-governance and constructionism play a foundational role in discussions of these and other issues of concern to feminists.

Attention to the productionist - autonomy tension, however, reveals that framing these theoretical and policy debates in terms of a divide between autonomy and constructionism is overly simplistic: self-governance cannot be understood without taking into account the production of the self: re-produced autonomy has the potential to provide a novel perspective of both policy and theory debates. While feminist theorists are well aware of this tension, they have not generally tried to remedy the tension and instead have tended to privilege one concept and its accompanying perspective over the other. Those defending a productionist view have tended to critique autonomy theorists for their presumed reference to a masculinist or pre-discursive individual. Those defending an autonomy based theory have critiqued the post-structuralists for abandoning the subject and thereby the grounds for that subject's liberation. Relational autonomy theorists may present a middle-ground, but they merely place the self of self-governance in a social and relational context and do not really take into account post-structural insights.

I take an intermediary position by reconceptualizing the autonomous subject rather than abandoning it. Given the numerous critiques of autonomy, however, one might wonder why the concept is worth holding on to at all. To begin, let us revisit the feminist critiques of autonomy outlined in chapter one and notice that they are all contingent upon the specific ways in which the term has tended to be understood in the liberal tradition. Thus, the critique that autonomy has been theoretically bound up with masculinity is a peculiar feature of the way the term has historically been employed. Moreover, the traits of self-sufficiency and independence that have long been conjoined with the concept of self-governance are not things that are strictly or inherently related to autonomy. Rather, they are a product of a particular, but by no means best or most appropriate understanding of the notion: these criticisms do not provide us with any reason to abandon the theoretical exploration and understanding of autonomy.²⁰⁵

²⁰⁵ See Friedman, *Autonomy, Gender, Politics*, 30-55, for a detailed discussion of different critiques of autonomy and why they do not undermine a feminist understanding of autonomy.

Furthermore, my conceptualization of autonomy is partially a response to the argument that traditional views of autonomy conceptualize people as individuals first. In fact, my approach views us as inextricably connected. An asset of conjoining an investigation of autonomy with productionism is that it reveals, quite vividly, the mutual interdependence of individuals. Far from derogating or obscuring relations of dependence, then, this project puts those relations at the forefront. Finally, the reconceptualization of self-governance that I have outlined does not obscure constraints on action that can undermine autonomy; rather, it takes this critique seriously and makes constraints on action central by making a relatively unconstrained field of possibility central. Furthermore, not only do material conditions that affect one's ability to act on a right become objects of investigation, so do the forces – which include rights themselves – that shape one's very person. Women's social location becomes key to the analysis.

None of the feminist critiques of autonomy, then, should lead to wholesale abandonment of the notion. They are contingent critiques that emerge from the admittedly problematic form autonomy has often taken. Even if we want to pursue projects more radical than the liberal framework would allow, we need not abandon autonomy merely because it plays a foundational role in liberalism. As is evident by re-produced autonomy, terms like autonomy are open to reconfiguration. Additionally, I think this reconfiguration is important. For, if the attribution of subordination is thought to contribute, in a sense, to a subordinated identity, then what is the consequence of the disavowal of autonomy? Despite this concern, as well as my arguments that there is room for the re-production of autonomy and that the feminist critiques leveled at it are contingent, there is still a question as to why I am focusing on autonomy and not freedom or agency.

Autonomy, especially in the way I have characterized it, is clearly related to freedom. So, why, then, am I not be discussing freedom? One reason I prefer a focus in discourse and theory on autonomy – especially with regard to women's reproduction – is a result of the attention the term brings to the self. Although, as argued above, I take quite seriously critiques of mainstream notions of autonomy for their reliance on independent, self-sufficient individuals, I also think that, varied as it is, much of women's historic subordination has often been connected to a lack of attention to women's individuality.²⁰⁶ Women have variously been understood as self-sacrificing, incapable of self-governance, opportunistic, lazy, savage, conniving, and submissive; our individual interests have been viewed as either corrupt or non-existent. Additionally, an emphasis on autonomy over freedom in discourse is important because a culture that emphasizes self-sovereignty is likely to be more open to the questioning and rejection of traditions, norms, and social contexts that can constrain an individual's or group's ability to dissent from those very things.²⁰⁷ That is, emphasizing autonomy may lead to greater acceptance of eccentricity – to more resistance.

Another reason I prefer autonomy is that, in its reliance on the self, it invites pondering crucial questions about the self's production. Autonomy's presupposition of the existence of selves necessitates reflection on the production of those selves. While investigations into freedom certainly do not preclude such an inquiry, neither do they

²⁰⁶ Friedman, *Autonomy, Gender, Politics*; Nussbaum, *Sex and Social Justice*.

²⁰⁷ See Friedman, *Autonomy, Gender, Politics*, 98-112, for an account and defense of autonomy's potential to lead to social disruption.

so directly implicate it. This relates to the above point that an emphasis on the individual can be a strong counter to oppression. What is crucial is that the individual is recognized as constituted by the collective. The focus, then, on the individual in autonomy arises not from an atomistic, pre-discursive view of selves; instead, it arises from the very recognition that the self is produced. One goal is to produce selves that are understood as self-governing, not as subjugated or incapable of governance. With this it should be apparent that I do not consider the desire for autonomy to be outside the bounds of construction. I do not view autonomy, or freedom in any form, as an innate desire that characterizes humanity.

It will be useful here to contrast my perspective with Nancy Hirschmann's since she has a decided preference for freedom over autonomy. She states that "the ability to make choices and act on them is the basic condition of freedom."²⁰⁸ But, she adds, "that choice needs to be understood in terms of the desiring subject, of her preferences, her will, and identity."²⁰⁹ And in this her resistance to the notion of autonomy lies. She holds that autonomy, unlike freedom, ultimately relies on a notion of an authentic or true self who must do the choosing and governing. She argues that freedom from patriarchal construction of the self and its concomitant barriers is necessary before we can ever achieve autonomy. Freedom, she thinks, is a necessary prerequisite of autonomy and that "if there is such a thing as a 'true' self [of autonomy theory], or 'authentic' desire, then in order to determine what that might be, women must be freed from the multiple, intersecting, and overarching barriers that pervade patriarchal society."²¹⁰ Even though her concern is explicitly with what freedom might be in light of social constructionism, she does not seem to accept the constructionist account of the subject thoroughly enough since on such an account there is no true or authentic self that would emerge if only oppression would cease. We are always already produced. In my view, we may be more or less problematically constructed, but even if we are constructed in line with the value of freedom or autonomy, that does not mean that we reveal our "authentic" self, but that we have been constituted as autonomous.

Moreover, I disagree with this characterization of freedom as a prerequisite of autonomy. I instead view autonomy as an instantiation of freedom – as one way to understand, or give content to the broader idea of freedom. At times and with respect to theorists who focus on freedom, I have used that term, not because I see freedom and autonomy as equivalent, but because I see autonomy as subsumed under the category of freedom. As should be clear by now, I see lack of attention to the social production of the self as a major flaw of contemporary autonomy theories. This is not to say, as Hirschmann does, that theorizing autonomy precludes such investigations; instead, I think that autonomy's explicit reliance on the self necessitates interrogation into the production of the sovereign self.

While I do not think autonomy should be displaced by freedom, I also do not think the notion of agency is an appropriate substitute. As I argued with regard to Butler's use of the term, agency is often understood broadly such that a wide range of activities – many of which are only marginally related to self-governance – can be seen as agentive. For example, a woman who goes limp during a beating by her intimate partner in order to mitigate her injuries is certainly exercising agency.²¹¹ However, we

²⁰⁸ Hirschmann, *The Subject of Liberty*, 30.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*, 39.

²¹¹ This example comes from Hirschmann, *The Subject of Liberty*.

cannot say that she is acting autonomously when she does so. Agency, while a useful concept, is not robust enough for my project. This project consists not in theorizing or underscoring the actions and resistances of the oppressed but in theorizing and thinking critically about autonomy, which I take to be an important counter to oppression.

Conclusion

My conception of autonomy especially in its connection to the political involves Mill's claim that the state should stay out of the private realm so that individuals have a sphere of self-governance. It is this sphere that is crucial to maintaining valuable options. As will be discussed later in the dissertation, I am especially wary of giving legal or medical experts the authority to impose their ideas of what is in another's interest. However, although non-interference with individual decisions is important, non-interference does not go far enough in explaining or even making it explicit that self-governance has as much to do with the individual as with the social because, in fact, the two cannot be easily pulled apart. The self-society binary must be troubled, and this troubling has methodological ramifications. Instead of focusing solely on either individual desires or the political context, I will juxtapose them because to study either in isolation is to ignore the role of the political in the production of the self.²¹²

While I mean to turn a critical eye to the constitution of the self and do not take an individual's preferences as authentic, I do privilege a person's preferences for several connected reasons. One important reason is that to take a false consciousness approach that would discredit a woman's preference as originating from her oppression would commit the mistake that MacKinnon so aptly points out: "Treating some women's views as merely wrong, because they are unconscious conditioned reflections of oppression and thus complicitous in it, posits objective ground. . . this approach criticizes the substance of a view because it can be accounted for by its determinants. Most things can."²¹³ She notes further that "the 'false consciousness' approach cannot explain the experience as it is experienced by those who experience it."²¹⁴

Although there may be certain cases, such as of brainwashing or demonstrable lack of information, in which there might be legitimate reason to intervene in someone's decision, I am skeptical—especially in the realm of reproduction—of the paternalism that the ascription of false consciousness would justify. For example, even if a woman's inclination to be a mother can be traced to the fact that she lives in a context in which women like her are evaluated primarily on the basis of their reproductive capacity and are viewed first and foremost as mothers, that does not seem to me to provide grounds for overriding her preference. Not only would such an intervention be paternalistic—and thus contrary to one of the most important consequences of autonomy—it may also leave the woman in a devalued social position. Not only would she be denied the ability to act in accord with her avowed preference, in doing so she may lose social recognition in her community. A woman may even conceive of her desire to be a mother as very

²¹² I am using the term "political" to denote, not just that which relates to the state, but that which pertains to the general arrangements governing our collective life. My understanding of the political is thus broad and encompasses the social. With this understanding, along with my foregoing complication of the divide between personal and political, I am resisting the differentiation of our lives into distinct spheres such as those of the moral, private, legal, social, and political.

²¹³ MacKinnon, *Toward a Feminist Theory of the State*, 115.

²¹⁴ *Ibid.*, 116.

much an effect of a context of compulsory motherhood or an environment in which women's value is attached to their capacity for and actualization of their reproductive function. She may nonetheless, or even precisely because of this, want to be a mother: mothering confers on her social recognition and status. How would denying her that option or rendering her preference merely the product of social circumstance, serve her autonomy? How, more broadly, would it serve the purposes of a feminist project?

Although my respect for women's stated desires does direct attention away from the narrow issue of an individual woman's will to a consideration of social forces that constitute that will, it does not preclude an inquiry into how the will is constituted. Thus, I understand the formation of desires and values as central to autonomy. In order to constitute more autonomous selves, we should not override stated desires but seek to transform social forces. In understanding the self of autonomy to be socially produced, focus diverts from a narrow consideration of an individual's choice to the social context that constitutes the self and within which the choice operates. This is why the dissertation is focused on legal and medical discourses and social policies. The point is to think about how to open up options while respecting a person's avowed preference.

One of the benefits of re-produced autonomy is that it rejects the idea that to interrogate our social constitution is to undermine the basis for our respect of an individual's desires, even if those may have been produced by oppressive forces. In recognition that respect of an individual's inclinations is a way of acknowledging another's autonomy and is productive of that autonomy, I argue for respecting such desires (at least in the contexts with which this dissertation is concerned). In doing so, I avoid entanglement in debates over whose preferences should therefore be overridden because problematically produced. To attribute a woman's preference to be a mother to false consciousness encounters the epistemological issues discussed previously and also presents a simplified picture of the processes of production that covers over that all desire is produced. I instead argue for respect of people's avowed preferences while also maintaining that a context that promotes situated reflection and conversation conduces to autonomy.

CHAPTER FOUR: ABORTION

A common assumption of proponents of legalized abortion is that the existence of the right to abortion increases autonomy. In this chapter, I destabilize and complicate that claim by arguing that the degree to which the right to abortion leads to reproductive autonomy is dependent both on the formulation of the right and the context within which the right operates. In doing so, I use the right to abortion as a vehicle to complicate understandings both of what it means to be autonomous and of what it means to seek autonomy through law. In particular, I argue that the productive power of law must be taken into account in order to have a fuller understanding of how the right to abortion relates to reproductive autonomy. As described in the previous chapter, law can be understood not merely as a repressive force—a force that operates through restriction—but also as a productive force. That is, the law plays a role in constructing that which it names and regulates. Judith Butler describes this Foucaultian notion as follows:

[J]uridical systems of power *produce* the subjects they subsequently come to represent. Juridical notions of power appear to regulate political life in purely negative terms—that is, through the limitation, prohibition, regulation, control and even “protection” of individuals related to that political structure through the contingent and retractable operation of choice. But the subjects regulated by such structures are, by virtue of being subjected to them, formed, defined, and reproduced in accordance with the requirements of those structures.²¹⁵

In this chapter I argue that we must understand both the right to abortion and the rationale for the right as not merely acting on subjects constituted outside or before the law but as constitutive of subjects.

My argument proceeds through an interrogation of, first, the 2007 U.S. Supreme Court case of *Gonzales v. Carhart*—which upheld the Congressional “Partial Birth Abortion Ban Act”—and the woman-protective argument it advances and, second, the prominent “antissubordination” argument for the right to abortion. I analyze each argument with respect to the understanding of women it both reflects and produces, arguing that the two approaches parallel each other. Although the arguments are not mirror images of one another, I argue that each reinscribes the identification of women with mothers and understands the issue of abortion primarily through reference to women's injury. In doing so, each entrenches the notion of the victimized female subject in need of protection.

I then explore how the right to abortion operates differently for different women. I argue that the option to abort changes the way a person and others morally evaluate a woman's actions with regard to pregnancy. Given that some women's reproduction is devalued and encoded as “irresponsible,” this change in moral evaluation could lead to pressure to choose in a “responsible” manner. In the process, I suggest that prominent arguments for abortion obscure the production of the subject who is afforded the choice to abort and also depoliticize, by taking for granted, the context within which the decision to abort is made.

²¹⁵ Butler, *Gender Trouble*, 2.

I conclude the chapter with a discussion of a reformulated right to abortion, informed by the arguments and explorations of the chapter and based on a re-produced autonomy perspective. On this account, the right becomes not just about an individual's interest in non-interference or non-domination, but includes the individual's interest in being constituted as capable of self-governance. Finally, I connect and distinguish this approach from that of Drucilla Cornell's right to bodily integrity.

Woman Protective Antiabortion Arguments

Before discussing the *Gonzales v. Carhart* decision, I briefly situate and trace the origins of the woman-protective argument it advances. In the immediate post-*Roe v. Wade* period, the most prominent arguments against abortion centered on the humanity, life, and consequent rights of the fetus. The antiabortion movement has more recently turned to what Reva Siegel has termed the “woman-protective antiabortion argument” (WPAA),²¹⁶ according to which abortion should be prohibited because it harms women. Proponents of this argument claim that women undergo psychological trauma and severe regret after abortion (known as “post-abortion syndrome”) and are at higher risk of suicide and substance abuse. Proponents of the WPAA also claim that women are at high risk of severe or even life threatening complications arising from abortion. These claims are joined with the assertion that women are frequently coerced or pressured into aborting: it is not the pregnancy that is unwanted but the abortion.

Siegel traces the rise in the woman-protective argument to a deliberate change in strategy in substantial segments of the pro-life movement.²¹⁷ As leaders became aware that the movement's previous concentration on fetal protective arguments—which largely ignored the role and situation of pregnant women—alienated many moderates on the issue, the movement's leaders began advancing the woman-protective argument for its supposed strategic value. The rationale of the WPAA is summed up well in the slogan of the pro-life organization, The Elliot Institute: “Abortion is the unchoice. Unwanted. Unsafe. Unfair.”²¹⁸ The same organization has produced a number of advertisements to propound this anti-abortion argument, many of which claim that over 60% of abortions are coerced. The ads blame boyfriends, parents, and husbands for using physical or psychological abuse to force women to have abortions. They also claim that doctors misrepresent the risks and the details of the procedure. One poster reads: “She believed . . . the guy in the white coat who said it was just a blob of tissue.”²¹⁹ Some ads even hint at pressures to abort that stem from wider social issues like poverty and women's increased risk of losing employment due to pregnancy.²²⁰

The use of this kind of woman-protective argument has not been confined to such public advertising campaigns. Significantly, the reasoning appears in the arguments for the 2006 abortion ban passed by the South Dakota legislature and put to a statewide

²¹⁶ Siegel, “Right's Reasons.”

²¹⁷ As Siegel reports, pro-life activist David Reardon urged activists to embrace a woman-centered approach in order to reframe the political debate in a way that will be more favorable for the pro-life movement. For example, he argues that: “[F]rom a natural law perspective, we can know in advance that abortion is inherently harmful to women. It is simply impossible to rip a child from the womb of a mother without tearing out a part of the woman herself—a part of her heart, a part of her joy, a part of her maternity.” Reardon, *Making Abortion Rare*, 5-6, quoted in Siegel, “New Politics of Abortion,” 1019.

²¹⁸ Elliot Institute, “The Unchoice Campaign.”

²¹⁹ *Ibid.*

²²⁰ *Ibid.*

vote. As a proponent of that ban said, “I refuse to show pictures of dead babies.”²²¹ Instead, proponents relied heavily on the argument that abortion hurts women and that abortion should be banned in order to protect women. A report on abortion that was commissioned by the South Dakota legislature and named The South Dakota Task Force Report takes it to be self-evident that women are pressured to abort and claims that “abortion is a completely unworkable method for a pregnant mother to waive her fundamental right to her relationship with her child.”²²² In a reflection of the new pro-life rhetoric, the report claims that:

[T]his method of waiver of the mother's rights expects far too much of the mother. It is so far outside the normal conduct of a mother to implicate herself in the killing of her own child. Either the abortion provider must deceive the mother into thinking the unborn child does not yet exist, and thereby induce her consent without being informed, or the abortion provider must encourage her to defy her very nature as a mother to protect her child. Either way, this method of waiver denigrates her rights to reach a decision for herself.²²³

Crucially, the report recommends banning abortion, making it clear that the Task Force is less concerned with allowing a woman “to reach a decision for herself” than it is with forcing motherhood upon women. Recognizing that a ban may not be possible, however, the report recommends a number of other legislative changes including requiring women to look at ultrasounds, permitting only abstinence based sex education, and strengthening child support laws.

South Dakota is not the only state that has considered such legislative changes. A number of other state legislatures have passed abortion-restrictive measures that stem from a woman-protective perspective. In 2008 both Oklahoma and Idaho passed laws concerning coerced abortion. The Oklahoma law “requires abortion providers to post notice informing women that coerced abortion is illegal and that they can contact the authorities if necessary.”²²⁴ The Idaho legislation “makes it a crime to coerce a woman into having an abortion by either physically harming her or threatening to do so.”²²⁵ The WPAA has also been combined with the older fetal protective arguments in the form of ultrasound requirements. Sixteen states now have provisions requiring abortion providers to provide some sort of access to ultrasound. Among the most restrictive of these provisions is Oklahoma's law,²²⁶ which mandates that providers describe the image from the ultrasound that they are required to perform on women obtaining abortions. Although the law permits women to avert their eyes from the monitor, the provider must position it so that she is able to see it.²²⁷ These laws impose requirements on abortion providers to combat women's supposed victimization at their hands. They both reflect and can be traced to the WPAA.

²²¹ Davey, “National Battle Over Abortion Focuses on South Dakota Vote.”

²²² Task Force, *Report of the South Dakota Task Force to Study Abortion*, 55.

²²³ *Ibid.*, 56.

²²⁴ Guttmacher Institute, *Laws Affecting Reproductive Health and Rights: State Policy Review for 2008*.

²²⁵ *Ibid.*

²²⁶ The law is currently not in effect due to a legal challenge. *Ibid.*

²²⁷ *Ibid.*

Gonzales v. Carhart

The most surprising instantiation of the WPAA has been its appearance in the reasoning of the Supreme Court in *Gonzales v. Carhart*. In this section, I detail the relevant reasoning of that opinion and explain the ways in which the opinion is detrimental to autonomy.

In upholding the federal ban on intact dilations and extractions (D&Es)—as “partial birth abortions” are known in the medical community— the Court ostensibly relied on the framework set forth in *Planned Parenthood v. Casey*, which has three central holdings. First, it protects a woman's right “to have an abortion before viability and to obtain it without undue interference from the State.”²²⁸ Second, the state can restrict abortion post-viability so long as there is an exception in the law for situations in which a woman's life or health is endangered. Third, “is the principle that the State has legitimate interests from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.”²²⁹

After asking whether the Partial Birth Abortion Ban Act “imposes a substantial obstacle to late-term but previability abortions,”²³⁰ Justice Kennedy, writing for the majority in *Carhart*, immediately analyzes the governmental purpose of the Act, later claiming that the “furtherance of legitimate government interests bears upon, but does not resolve . . . whether the Act has the effect of imposing an unconstitutional burden on the abortion right.”²³¹ In analyzing the government interest and while claiming he is simply applying the *Casey* framework, Kennedy recasts *Casey*'s third holding such that the government has a legitimate interest not merely in protecting fetal life but in demonstrating “profound respect for the life within the woman.”²³² Using this broader standard places the act more clearly in the category of legitimate state action in part because the act does not purport to save any fetal life.²³³ Specifically, Kennedy argues that Congress's conclusions were perfectly legitimate: intact dilation & extractions (D&Es) “had a ‘disturbing similarity to the killing of a newborn infant’”²³⁴ and signified disrespect for fetal life.

Although the decision purports to rely on the statement in *Casey* that “[s]tates are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning” as an abortion,²³⁵ *Carhart* denies women decision-making authority by banning the controversial procedure. The decision hinders autonomy in part because, in its exercise of repressive power, the Court prohibits women from making a decision for themselves. In this way women's

²²⁸ O'Connor, *Planned Parenthood v. Casey*, 505:846.

²²⁹ *Ibid.*

²³⁰ Justice Kennedy, *Gonzales v. Carhart*, 550:156.

²³¹ *Ibid.*, 550:161. In the undue burden analysis that follows the section under discussion here, Kennedy inquires only into whether the lack of a health exception to the statute constitutes an undue burden. After claiming that there is medical disagreement over whether the procedure is ever necessary to protect women's health, Kennedy presumes that it is not necessary and thus that the ban does not impose an undue burden.²³¹²³¹ *Ibid.*, 550:161ff.

²³² *Ibid.*, 550:157.

²³³ And, in fact, the Court uses the fact that the Partial Birth Abortion Ban Act will not “prohibit the vast majority of D&E abortions” as support for its claim that the Act does not impose an undue burden on women obtaining abortions. *Ibid.*, 550:156.

²³⁴ *Ibid.* quoting “Congressional Findings” in notes following U.S. Congress, *U.S. Code* 18 (2000), §1531.

²³⁵ Justice Kennedy, *Gonzales v. Carhart*, 550:159, quoting O'Connor, *Planned Parenthood v. Casey*, 505:873.

opportunities for self-governance are limited; they are not free in the negative sense of being unhindered by external obstacles. Justice Ginsburg points out this aspect of the opinion in her dissent when she states that the majority does not permit women “to make an autonomous choice.”²³⁶

The decision can also be understood as hindering autonomy through the court's exercise of productive power, which constitutes the subject and “produces effects” at the levels of desire and knowledge.²³⁷ Although Foucault focuses on non-judicial articulations of productive power and at times seems to align repressive power with the law, the law is an instance of both repressive and productive power. Specifically, the law plays a role in producing that which it names and regulates. Insofar as power and knowledge operate through the circulation of legal discourses and rationales, then, the law is a productive force that should be interrogated on that basis.

There are two different but highly interrelated ways in which the decision in *Carhart* constitutes women as non-autonomous. First, the bare exercise of repressive power, apart from the logic of the Court's opinion, is itself productive: through the act of restricting women's options, the Court's decision serves as a site for the production of women as incapable of rationally deciding for themselves. The Court not only harms women's autonomy by not giving them a choice to make, but in prohibiting women from deciding for themselves it constitutes them as non-autonomous. Even if a woman undergoing a late term abortion does not wish to have an intact dilation and extraction (D&E)—as a “partial birth abortion” is known in the medical community—her lack of choice can be detrimental to her autonomy because it treats her as unable to govern herself.

The second method by which *Carhart* constitutes women as non-autonomous concerns the reasoning advanced in support of the prohibition, which binds abortion to injury and women to motherhood.²³⁸ This reasoning itself reflects the WPAA and is apparent in Kennedy's argument that the ban may deter women from having an abortion at all, thus serving the legitimate state interest articulated in *Casey* of protecting fetal life. Consider, for example, Justice Kennedy's statement in the majority opinion in *Carhart* that:

Respect for human life finds an ultimate expression in the bond of love the mother has for her child . . . Whether to have an abortion requires a difficult and painful moral decision. While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained. Severe depression and loss of esteem can follow.²³⁹

By prefacing this unsupported claim regarding the existence of something akin to “post-abortion syndrome” with the claim about maternal love, Kennedy draws on, and in the process reinforces, the notion that women are maternal and cannot help but regret ending a pregnancy. Furthermore, reflecting the language of the statute,²⁴⁰

²³⁶ Justice Kennedy, *Gonzales v. Carhart*, 550:184.

²³⁷ Foucault, *Power/Knowledge*, 59.

²³⁸ In a discussion of the South Dakota Report, Siegel also makes the observation that the WPAA reflects stereotypes both of women's roles and women's agency. Siegel, “New Politics of Abortion,” 1030-40.

²³⁹ Justice Kennedy, *Gonzales v. Carhart*, 550:159.

²⁴⁰ See, for instance, U.S. Congress, *U.S. Code* (b)(1)(A).

Kennedy consistently refers to the woman who has undergone an intact D&E as a “mother,”²⁴¹ suggesting that a woman cannot ever wholly escape her maternal nature since even the pregnant woman who has elected to abort her “unborn child” is a mother.²⁴²

This language, especially when read in light of other instantiations of the WPAA,²⁴³ suggests an identification of women with motherhood: to be a woman is to be a (potential) mother. Rendering maternity part of women's essence serves only to contribute to, and obscure the processes by which, the production of that identity occurs. While the logic of Kennedy's opinion might be compatible with an understanding of liberty posited upon women's maternal essence it is opposed to reproduced autonomy, which takes such essentialized notions of the self as limiting. An appeal to maternal essence limits autonomy precisely because it is antithetical to an account of the individual as produced.

Furthermore, Kennedy's reliance on regret is problematic not only because—despite having “no reliable data”—he asserts its existence, but more importantly because he is not willing to allow women to make a decision that they may come to regret. His impulse is to protect women from potential regret rather than let them make an autonomous decision. Privileging women's autonomy in a discussion of abortion means that the possibility of regret is not taken as a reason for overriding women's expressed desires. Autonomy entails living with the consequences of decisions instead of being relentlessly protected from potential adverse outcomes. If Kennedy's concern were with women's autonomy he would recognize regret as a potential consequence of being autonomous—of making choices of one's own.

Another problem with Kennedy's approach to regret is that he locates grief in the essence of the mother-child relationship, which is closely connected in the woman-protective frame with women's biology.²⁴⁴ In contrast, I see this guilt as produced: the guilt women may feel after an abortion is in part a product of antiabortion discourse and pro-choice reluctance to counter the post-abortion guilt narrative.²⁴⁵ And, indeed, Kennedy's assumption of its existence—based largely on the natural maternal bond—(re)constructs it. I also disagree with Kennedy's conclusion that women should be protected from this grief by not being allowed to choose a “partial birth abortion.” The problem, then, is not with the fact that he recognizes that some women may feel guilty after an abortion, but with where he places the origin of that guilt and what conclusion

²⁴¹ For example, Kennedy writes “. . . the former occurs when the fetus is partially outside the mother . . .” Justice Kennedy, *Gonzales v. Carhart*, 550:160. See also *Ibid.*, 550:159.

²⁴² Kennedy does use the term “unborn child” in *Carhart*. See, e.g., *Ibid.*, 550:134.

²⁴³ For example, pro-life advocate David Reardon argues that: “[F]rom a natural law perspective, we can know in advance that abortion is inherently harmful to women. It is simply impossible to rip a child from the womb of a mother without tearing out a part of the woman herself—a part of her heart, a part of her joy, a part of her maternity.”²⁴³²⁴³ Reardon, *Making Abortion Rare*, 5-6, quoted in Siegel, “New Politics of Abortion,” 1019. Similarly, the South Dakota Task Force Report states that: “Either the abortion provider must deceive the mother into thinking the unborn child does not yet exist, and thereby induce her consent without being informed, or the abortion provider must encourage her to defy her very nature as a mother to protect her child.” Task Force, *Report of the South Dakota Task Force to Study Abortion*, 56.

²⁴⁴ *Ibid.*, 52-5.

²⁴⁵ Ludlow, “The Things We Cannot Say,” 30-32. Ludlow discusses how pro-choice emphasis on “traumatic” abortions—such as those involving women who were raped or live with violence—covers over the mundane reasons women have abortions and in the process contributes to the stigma and grief constructed around such everyday experiences of abortion.

he draws from it. This is not to say that such guilt is unreal or that potential guilt and regret do not present important issues. It is to say, however, that presenting it as emanating from maternal love produces the guilt and naturalizes it as the product of women's essence, thereby covering over its production.

Kennedy's argument proceeds by combining the issue of regret with the suggestion that physicians manipulate women into undergoing intact D&Es. He writes: "In a decision so fraught with emotional consequence some doctors may prefer not to disclose precise details of the means that will be used."²⁴⁶ Moreover, "[i]t is self-evident that a mother who comes to regret her choice to abort must struggle with grief more anguished and sorrow more profound when she learns, only after the event . . . that she allowed a doctor to pierce the skull and vacuum the fast-developing brain of her unborn child, a child assuming the human form."²⁴⁷ He then relies on the statement in *Casey* that "[s]tates are free to enact laws to provide a reasonable framework for a woman to make a decision that has such profound and lasting meaning" to reason that the lack of information that allegedly attends the procedure is of legitimate concern to the state. However, instead of concluding that a reasonable state regulation would consist in requiring the disclosure of information to women, he holds that the act at issue is a reasonable state action. Specifically, he states:

It is a reasonable inference that a necessary effect of the regulation and the knowledge it conveys will be to encourage some women to carry the infant to full term, thus reducing the absolute number of late-term abortions . . . The State's interest in respect for life is advanced by the dialogue that better informs the political and legal systems, the medical profession, expectant mothers, and society as a whole of the consequences that follow from a decision to elect a late-term abortion.²⁴⁸

That is, prohibiting intact D&Es encourages dialogue on the whole range of late-term abortion procedures and their "consequences"—presumably the severe regret and anguish women allegedly experience; this dialogue may persuade some women not to elect a late-term abortion at all. If Kennedy were to argue that banning intact D&Es leaves women with no alternative "late-term but previability" abortion options the act would be in clearer danger of violating the undue burden standard. He thus argues that, though there are alternatives to the banned procedure, women may be less inclined to use them simply because Congress's act has increased awareness of the consequences. Relying on these tenuous claims, Kennedy holds that the act is related to the legitimate state interest in protection of fetal life.

The discourse of maternal nature that is present in *Carhart* is also entwined with the claim that women are victimized. As other WPAA literature suggests, women who abort are either coerced against their wills or manipulated at the level of desire.²⁴⁹ Thus, women undergoing abortions—a phenomenon that may otherwise appear as a logical impossibility from within the woman-protective frame that understands women as

²⁴⁶ Justice Kennedy, *Gonzales v. Carhart*, 550:159.

²⁴⁷ *Ibid.*, 550:160.

²⁴⁸ *Ibid.*

²⁴⁹ Reardon, *Making Abortion Rare*; Elliot Institute, "The Unchoice Campaign."

maternal—is rendered an effect of victimization.²⁵⁰ Victimization renders intelligible the unnatural acts of women, even as maternal nature simultaneously serves as evidence for the manipulation of women. According to the reasoning in this part of the opinion, women are doubly injured: they are victimized by doctors and also harmed when they experience regret and even “post-abortion syndrome.”

Underlying the approach to “partial birth abortion” present in *Carhart* is an understanding of women as victims who need protection from the state, not as agents who are responsible for their decisions. Telling in this regard is that both the ban at issue in *Carhart* and the South Dakota antiabortion legislation punish the duplicitous doctors who allegedly coerce women, and not the women who would choose the now banned procedure. There is scant evidence that this victimization actually occurs, and it is hypostatized to provide a basis for precluding women from deciding for themselves. If doctors were manipulating women, mandating detailed consent forms or other such safeguards might be necessary to ensure that women make informed decisions. Without any evidence that it would enhance autonomy, Kennedy’s decision removes decision-making power from women. Recourse to victimization, at least in *Carhart*, is conjoined with a lack of concern for autonomy, and in the process, Kennedy sets himself up as the omniscient outsider who knows better than women what is in their best interest.

Thus, while Kennedy’s reasoning in this section is initially puzzling, it becomes more understandable when we view it as emanating from a woman-protective perspective. Since women are naturally maternal according to that perspective, women who abort must have been coerced or manipulated. That an abortion occurred is taken as *prima facie* evidence of coercion; and in *Carhart*, the fact that an especially gruesome late-term abortion occurred is taken as even more definitive proof that a woman did not freely choose abortion. Suggesting that women do not make the decision to abort themselves also allows Kennedy to escape the contradiction of mothers acting against their nature and killing their babies: women’s manipulation at the hands of physicians renders the gruesome killing of “unborn children” more comprehensible from within the WPAA and easier to square with women’s maternal nature. In the end, rather than providing women with resources that would mitigate the supposed coercion they experience in deciding to abort, the WPAA rationalizes that women should be prohibited from making a decision at all.

Although not explicit in the decision itself, the WPAA as described by certain pro-life organizations makes it clear that this victimization is two-tiered. At the first level there are those women who do not want to abort, but who are pressured into aborting by others. At the second, deeper level are the women who think they do want to abort: these women have been manipulated at the level of desire or will. As activist David Reardon argues, some women will need “a tremendous amount of love and help to see” that their interests are best served by bringing their pregnancies to term.²⁵¹

Interestingly, in claiming that women’s desires have been distorted and manipulated—that mainstream society oppresses and creates in women desires that run counter to women’s interests—pro-life activists rely partially and implicitly on the notion of false consciousness. As was argued in chapter two, Catharine MacKinnon

²⁵⁰ Similarly, Judith Butler argues that “precisely because certain kinds of ‘gender identities’ fail to conform to those norms of cultural intelligibility, they appear only as developmental failures or logical impossibilities from within that domain.” Butler, *Gender Trouble*, 17.

²⁵¹ Reardon, *Making Abortion Rare*, 5, quoted in Siegel, “New Politics of Abortion,” 1019.

relies on something like false consciousness—even as she critiques the very concept—in her account of social construction: she sees women as so thoroughly produced by male dominance that some have desires (for pornography or sadomasochism, for example) that run counter to women's interests. Also, the relation substantive autonomy theories discussed in chapter one take a similar perspective. Here we see a convergence of right and left regarding oppression and its effects on the will. Each of these approaches wants to protect people from making certain decisions about their own plan of life because each camp understands certain preferences as necessarily produced by oppressive circumstances. This turn in pro-life strategy, then, resonates with the underpinnings of certain feminist orientations concerning consciousness and desire.

The final way in which the decision in *Carhart* constrains autonomy is, in being denied the ability to undergo an intact D&E, a woman is denied an important avenue through which she can partake in the ongoing production of women and reproduction. Insofar as “woman” is understood in terms of motherhood and reproductive capacity, the woman refused an abortion procedure is denied one way in which she might disrupt the very category of woman. With access to abortion, women have more of an opportunity to reflect something other than dominant norms: denying access to abortion removes an opportunity to resist compulsory motherhood and disrupt the identification of women with mothers. In separating autonomy from an atomistic conceptualization of the self, re-produced autonomy understands an individual's actions as having broader effects. That is, bringing autonomy together with productionism renders this prohibition not only an affront to women's individual decision-making capacity: it also constrains the manner in which they can take part in one process through which they are themselves produced.

I have argued in this section that the prohibition flowing from, and the logic of, the woman protective antiabortion argument constitutes subjects as it regulates them. The Court's appeal to familiar cultural views of women in *Carhart* re-constitutes those views, even as it naturalizes them.²⁵² The Court plays a role in producing that which it renders an independent reality—in this case, the maternal nature of women.²⁵³ While the practice of abortion is potentially destabilizing to the mutual constitution of womanhood and motherhood, the Court's rationalizations neutralize this possibility, turning the potentially subversive act into a symptom of women's coerced denial of their maternal nature.

The Left's Woman Protective Argument

I now turn to an analysis of “antissubordination” arguments in favor of the right to abortion. Many legal scholars have recently turned to such arguments,²⁵⁴ which move the focus from the non-interference, negative liberty frame that characterized the privacy rationale of *Roe v. Wade* toward a frame that greater contextualizes the right to abortion. While such arguments have advantages, I argue here that as applied to abortion the antissubordination approach parallels the WPAA in significant ways. Interestingly, Siegel—who has adeptly critiqued the turn toward the WPAA—is herself

²⁵² Hartouni, *Cultural Conceptions*, 70.

²⁵³ Poovey, “The Abortion Question and the Death of Man,” 241.

²⁵⁴ Examples of antissubordination abortion rights arguments include Siegel, “Reasoning from the Body”; Law, “Rethinking Sex and the Constitution”; Allen, “Proposed Equal Protection Fix for Abortion Law.” Also, the antissubordination framework is reminiscent of Catharine MacKinnon's dominance feminism. See, e.g., MacKinnon, *Women's Lives, Men's Laws*.

a proponent of the antistatutory argument. In fact, I focus on her antistatutory theory because she has developed it in the context of abortion more extensively than other scholars.

In her article "Reasoning from the Body," which pre-dates her exploration of the WPAA, Siegel places current arguments about abortion that focus on the physiology of women's bodies or on fetal protection in the context of the nineteenth century campaign to criminalize abortion. In that campaign, advocates for criminalization of abortion fused arguments about the physiology of reproduction with arguments about women's roles as mothers, often deducing women's social and familial functions from supposed medical facts about women's bodies. Siegel uses this context to argue that more contemporary fetal-protective arguments, although they rarely explicitly rely on claims about women's roles, implicitly rely on such claims in a way that violates the Equal Protection Clause. Specifically, she argues that "social discourses concerning women's roles have converged with physiological discourses concerning women's bodies, as two distinct but compatible ways of reasoning about women's obligations as mothers."²⁵⁵

When considered in the context of the history of the criminalization of abortion, we see that "issues we habitually conceptualize in terms of women's bodies . . . in fact involve questions concerning women's roles."²⁵⁶ Physiological and medical arguments tend to obscure the social context and social norms that are bound up with regulation of women's reproduction. As Siegel writes: "Analyzed within a medical framework, exclusion from employment, denial of unemployment and health insurance benefits, the stigma of unwed motherhood, and other of pregnancy's 'natural sanctions' appear as consequences of a woman's body—not practices of the community that would regulate her conduct."²⁵⁷ Moreover, the medical facts of reproduction are themselves laden with value judgments about women's roles. For example, "[w]hen the fetus is considered as an object of regulatory concern distinct and apart from the women bearing it, it becomes possible to reason about regulating women's conduct without seeming to reason about women at all."²⁵⁸ Siegel then goes on to analyze some of the ways in which states assert their interest in the protection of fetal life and argues that these demonstrate that "regulators are deeply contemptuous of women whom they judge to have violated the maternal role."²⁵⁹

Against this background, Siegel makes her legal argument that abortion restrictions violate the Equal Protection Clause. In her view, the Constitution's guarantee of equal protection is animated by the dual ideals of antidiscrimination and antistatutory. Antidiscrimination is "concerned with the reasoning of state actors, prohibiting them from acting on the basis of prejudicial or traditional habits of thought that deny the full humanity, individual worth, or dignity of members of particular social groups;" antistatutory is "concerned with the material and dignitary injuries inflicted on members of particular social groups by public actions premised on such prejudicial habits of thought."²⁶⁰ Restrictions on the right to abortion violate the antidiscrimination principle since their legislative purpose "is to pressure or compel

²⁵⁵ Siegel, "Reasoning from the Body," 265.

²⁵⁶ *Ibid.*

²⁵⁷ *Ibid.*, 274.

²⁵⁸ *Ibid.*, 333.

²⁵⁹ *Ibid.*, 341. For example, she analyzes workplace regulations to demonstrate that such judgments reflect understandings of women's maternal role. *Ibid.*, 336-40.

²⁶⁰ *Ibid.*, 353.

women to carry a pregnancy to term.”²⁶¹ This purpose itself embodies “‘archaic and stereotypic notions’ about the sexes”²⁶² that are prohibited under the antidiscrimination principle. Siegel argues, though, that the “most important” way in which abortion restrictions violate the Equal Protection Clause is not due to the stereotypes they reflect but to the harm they impose on women—namely, compelling women to bear and rear children.²⁶³ Hence antisubordination is the keystone of her approach.

Antisubordination is relevant to abortion because discriminatory abortion-restrictive legislation harms women by contributing to their subordination. Siegel has a three part argument regarding how abortion restrictions harm women. To quote her at length:

First, restrictions on abortion do not merely force women to bear children; powerful gender norms in this society ensure that almost all women who are forced to bear children will raise them as well, a result that legislatures adopting restrictions on abortion both desire and expect. Second, the work legislatures would force women to perform defines women's social status along predictable, gender-delineated lines. Women who perform the socially essential labor of bearing and rearing children face diverse forms of stigmatization and injury, none of which is ordained by the physiology of gestation, and all of which is the doing of the society that would force women to bear children. Third, when states adopt restrictions on abortion, they compel women to become mothers, while in no respect altering the conditions that make the institution of motherhood a principal cause of women's subordinate social status. When the gender-based impositions of abortion-restrictive regulation are considered in light of the forms of gender bias that may animate it, it is clear abortion-restrictive regulation is and remains caste legislation which subordinates women in ways that offend constitutional guarantees of equal protection.²⁶⁴

Among other things, then, Siegel points to the gender imbalance of parenting work and the stigmatization women encounter if they do not perform as ideal nurturers as examples of the injuries mothers face. She also discusses the ways in which child rearing limits women's ability to participate in the public sphere and “compromise[s] women's opportunities in education and employment.”²⁶⁵ She concludes that “a woman's identity, relations, and prospects are defined by becoming a parent in a way that a man's are not.”²⁶⁶

Although I am sympathetic to Siegel's project and agree with many elements of her analysis, I think there are several related problems with her approach. First, I think that her approach is insufficiently focused on liberty. She does acknowledge that the right to abortion serves liberty, but it is a very limited liberty, affording women only “some rudimentary control over the sex-role constraints this society imposes on those

²⁶¹ Ibid., 357-8.

²⁶² Ibid., 355, quoting O'Connor, *Mississippi University for Women v. Hogan*, 458:725.

²⁶³ Siegel, “Reasoning from the Body,” 368.

²⁶⁴ Ibid., 370.

²⁶⁵ Ibid., 377.

²⁶⁶ Ibid., 376.

who bear and rear children."²⁶⁷ Considered in this way, the right to abortion is necessary because it allows women to escape the injuries that attend pregnancy and motherhood. The problem with this characterization is that the right to abortion hinges on women's injury. As is the case with the WPAA, the antisubordination argument is premised on women's injury. For Siegel, abortion allows women to escape the subordination that attends pregnancy and motherhood. For the WPAA, abortion restrictions allow women to avoid the injuries of abortion. Both arguments foreground women's injury in a way that I worry re-entrenches women's injured identity.²⁶⁸

In linking maternal subordination with womanhood, the antisubordination argument understands women by reference to the injuries women have sustained. Each time the right that is supposed to remedy that injury—here, the right to abortion—is invoked, the injury will be re-instantiated as the basis of the subject's identity. This argument owes a great deal to Wendy Brown, who has argued that rights “codify, even as they may slightly mitigate certain modalities of subordination or exclusion” and asked “whether legal ‘protection’ for a certain injury-forming identity discursively entrenches the injury-identity connection it denounces.”²⁶⁹ Furthermore, and paradoxically, Siegel's argument, in its attempts to afford women an escape from the burdens of motherhood, may also reconstruct the identification of womanhood with motherhood on which the WPAA is premised.²⁷⁰ In presenting the right to abortion as protection from the subordinating institution of motherhood, which is one of the very forces that constitute women as subjects, Siegel re-entrenches both the productive power of that institution, as well as the injury it has inflicted.

Another result of basing the claim to the right to abortion on the need for avoidance of the subordinating institution of motherhood—which is one of the very things that produce us as subjects—is that, to the extent that those powers and the context that makes motherhood so subordinating are successfully challenged, the basis of women's claim of right would simultaneously be eviscerated. In fact, a key part of Siegel's argument is that legislatures have not accompanied restrictions on abortion with “any provision that would mitigate or offset the social consequences of enforced motherhood for women.”²⁷¹ While her argument does not stand or fall on this claim, it raises the question of what would result for women's right to abortion if motherhood's social consequences were thoroughly addressed. Premising the right to abortion upon the maternal subject's subordinated status places feminists in a double bind between agitating for changes in the broader social context and upholding the basis for the right to abortion. Comparable to the way in which the WPAA does not aim to provide women with resources that would mitigate the coercion they supposedly face in deciding to abort, the antisubordination approach to combating coercion is quite narrow. The antisubordination framework allows women an escape from motherhood but does not cohere well with a framework that would provide women with resources

²⁶⁷ Ibid., 378. Here Siegel expresses a similar sentiment to that of MacKinnon, who argues that: “However difficult an abortion decision may be for an individual woman, it provides a moment of power in a life otherwise led under unequal conditions that preclude choice in ways she cannot control.” MacKinnon, *Women's Lives, Men's Laws*, 141.

²⁶⁸ Although victimization and subordination can be distinguished conceptually—in fact, I made such a distinction in chapter three—each concept centrally involves injury. This is what is key to my analysis.

²⁶⁹ Brown, *States of Injury*, 12, 21.

²⁷⁰ Poovey, “The Abortion Question and the Death of Man,” 239-56.

²⁷¹ Siegel, “Reasoning from the Body,” 377.

or tools for reconceiving the institution of motherhood. It thus tends to depoliticize the context within which women decide to abort by taking it for granted and, indeed, by reinscribing it as the basis of women's right to abortion.

The tension between the right to abortion and transformation of the social context is even more pronounced when we take into account that the antisubordination approach would reinscribe, *in the law*, the notion of women as victims. The antisubordination argument binds the injury of motherhood to women's legal status. Women's subordinated identity permits their legal recognition as subjects with certain rights, making efforts to eliminate the injury and maintain legal recognition paradoxical. In this way, as Brown argues, subjects can become invested in the continued existence of subordinating powers since they form the basis of identity and legal status.²⁷² I am thus critical of basing the right to abortion on women's subordinated status and want to focus attention on what results when rights arguments are based on a rather universalizing account of women's experiences of reproduction.

I am also concerned that the antisubordination approach leaves open the question of whether non-subordinating motherhood is possible. Siegel's trenchant analysis of how motherhood and pregnancy continue to subordinate women—an analysis which is key to her argument—leaves little room for non-subordinated accounts of motherhood. Consider, for example, the following quote:

For women, the work of parenting begins in a lengthy period of bodily labor. Because the work of making life does proceed within a woman's body, it can subject her to physical discomfort, pain, disability, and risk throughout the term of pregnancy, and after. These physical burdens alone are sufficient grounds for many to hesitate before assuming the work. Yet, because gestation is not simply a reflex process, its impositions are not solely physiological. Childbearing, like childrearing, involves work to be performed in accordance with detailed prescriptive norms. . . . The work of gestation thus involves on-going calculations and compromises that can have a pervasive impact on women's lives; its impositions are simultaneously physical and social.²⁷³

Siegel goes on to argue that:

Pregnancy, and the period of lactation that follows it, are not merely burdensome, disruptive, or even consuming forms of work. They amplify the gendered judgments and constraints to which women are already subject, exposing them to material and dignitary injuries having nothing to do with the physiology of reproduction, and entangling them in relationships that profoundly define their identity and life prospects.²⁷⁴

Here Siegel closely associates maternity with physiological and social harms. Despite that Siegel does not suggest that subordination constitutes women's essence—instead pointing to specific social practices that produce subordination—this aspect of her account is similar to the essentialist WPAA account which presumes that a woman who

²⁷² Brown, *States of Injury*, 115-20.

²⁷³ Siegel, "Reasoning from the Body," 373-74.

²⁷⁴ *Ibid.*, 375.

aborts was coerced. The WPAA associates abortion with coercion so thoroughly that a woman who would freely choose to abort is rendered an impossibility; the antisubordination approach so closely links motherhood with subordination that a non-subordinating motherhood appears unimaginable.

While I agree with Siegel's general point that women have been subordinated and that that subordination has been tied to practices of childbearing and child-rearing, I worry that her approach may work at cross-purposes to more emancipatory goals that she surely supports. This is not to say that Siegel's approach is not at all concerned with liberty. In fact, her argument that lack of abortion access "makes the social reality of women's lives more nearly conform with social stereotypes of women's lives" aligns with my own analysis. However, I think avoidance of one kind of subordination, that which attends motherhood, rather than a more positive concern for women's liberty, animates her approach. Her approach presents abortion as a necessary escape hatch.

Also, because Siegel does not take law or her own arguments as productive, she is not attentive to the way in which her rationale re-produces women as subordinated.²⁷⁵ Siegel's inattention to constructionist issues is also evident when she argues that one problem with abortion restrictions is that they *reflect* archaic stereotypes about women. Not only does the fact that state regulations still rely, even if implicitly, on these stereotypes belie that these are ancient images of women, but also understanding them as merely *reflecting* such images neglects their constitutive role. The problem is not just that the restrictions that reflect stereotypes force women to conform to those stereotypes, but that they actually further constitute women in a way that is consistent with these stereotypes.

I want to be clear that I am not arguing that Siegel's analysis is without merit. Furthermore, I acknowledge that Siegel is writing within the framework of current Equal Protection Clause jurisprudence, which invites this kind of analysis by providing increased scrutiny for actions that target "suspect classifications," where what is suspect is often tied to histories of subjugation. Given the current state of Equal Protection Clause jurisprudence, her analysis is understandable and represents one of the strongest arguments for the right to abortion because it makes a compelling argument that women are subordinated through motherhood and pregnancy. This does not, however, mean that the antisubordination argument or fourteenth amendment jurisprudence should not be the objects of critical inquiry.²⁷⁶

One thing that emerges upon thinking critically about the antisubordination argument is that, as outlined above, there are notable resonances between the antisubordination approach and the WPAA. Attention to these similarities highlights one of the dangers of the discourse of injured identity. Given the legal prominence of discourses of dominance and subordination on which scholars such as Siegel (and also MacKinnon) rely, it is not all that surprising that when the pro-life movement went looking for an alternate framing of the issue of abortion that focused on women, it turned to a discourse of injury. Given left emphases on the harmful physiological and social effects of pregnancy and motherhood, it is not that surprising to see the emergence of a counter-discourse that upholds pregnancy as beneficial and abortion as the real site of women's injury. Moreover, once abortion is viewed in terms of women's

²⁷⁵ Ibid., 378.

²⁷⁶ My critique of the antisubordination argument as applied to abortion may in fact extend more broadly to fourteenth amendment analysis that makes legal recognition and the granting of rights depend upon establishing a subordinated identity.

injury, the debate turns on whether it is abortion access or abortion restrictions that really injure women. Since the stakes are so high, there is little room for complexity, for the idea that maybe some women are injured by abortion and some by pregnancy. Maybe a single woman experiences both injury and emancipation in abortion or childbearing. The disputants in this controversy cannot allow for such nuance or ambiguity since the matter of abortion's legality turns on a somewhat absolute assessment: either abortion harms or helps women. Everything comes to turn on the establishment of injury, which itself may lead each side to a unitary perspective of women's experiences of abortion, pregnancy, and motherhood.

For example, antisubordination analysis, which is premised on establishing pregnancy and motherhood as injuries, obscures the fact that some women—such as lesbians, women of color, and poor women—are more subordinated via denial or discouragement of motherhood than through compelled motherhood. Of course, since legal arguments and analyses depend upon singling out certain aspects of complex situations, it might be thought that it makes perfect sense to single out the ways in which motherhood and pregnancy are subordinating because that is what is most relevant to the analysis of abortion restrictive legislation. In a sense, this is true, and I do not fault Siegel for acknowledging injury or seeking a remedy. However, by making the analysis turn on an establishment of injury and by rendering abortion, not so much a matter of liberty, but as an escape, the antisubordination framework cannot grapple with harm stemming from the denial of motherhood. Because of the deep investment in establishing that pregnancy and motherhood are the harms, the antisubordination framework cannot account for harms from non-maternity. (I elaborate on this in the next section.) After all, if some women are not harmed by motherhood, but find motherhood emancipatory, then why should they have the right to abortion? Should the right be granted to all women because some women are oppressed through pregnancy and motherhood?

The point is not that Siegel is incorrect about the social consequences of reproduction. The point is that she would base the legal right to abortion on the subordination of motherhood. This creates an interest in amplifying and somewhat universalizing the experience of motherhood so that it appears as an intractable harm to women. Remember that she is not detailing these negative social consequences with an eye to remedying them necessarily, but to allowing women to *escape* these consequences by avoiding motherhood. If motherhood as oppressive social consequences for many women—and I do not doubt that it does—the focus should be on *changing* those consequences. According to the antisubordination analysis, the right to abortion merely presents women with a choice between subordinated motherhood or no motherhood. While that is better than simply have subordinated motherhood imposed, I think abortion's importance is too restricted on this view. The point is also not that injuries should not be acknowledged or that remedies should not be sought, but that critical attention should be paid to the ways injuries are framed, how they are employed, and what sort of remedy is being sought.

On my approach, whether or not motherhood and pregnancy are oppressive, women should have the authority to make such a life-altering decision as whether and when to bear children. Subordination may increase the stakes of being able to make such a decision for oneself since abortion in a context of oppressive motherhood would provide a way to avoid such oppression. With the foregoing analysis, then, I am not claiming that abortion restrictions do not involve subordination. As I defined

subordination in chapter three, I understand it to involve the restriction of valuable life options. Since abortion restrictions constrain women's options with regard to pregnancy and motherhood, I understand them as a mechanism of subordination and counter to autonomy. Crucially, though, this assessment of abortion and the necessity of abortion access for women's autonomy does not require that motherhood and pregnancy be subordinating. Although the social consequences of pregnancy and motherhood are sometimes oppressive, the endurance of this subordination is not requisite for upholding the right to abortion as I understand it. (I elaborate on my approach later in the "Reformulating Rights?" section of this chapter.)

Options and Autonomy

As I just argued, in framing abortion regulation in terms of protection from harm, both the WPAA and the antisubordination argument place primary focus on demonstrating the existence of injury. In the process of defending a particular understanding of women's relation to motherhood, certain experiences become more salient. In the WPAA, women's purported experiences of harm from abortion are salient, whereas the antisubordination argument privileges the experiences of subordinated motherhood. In placing emphasis on the establishment of a specific type of harm—because the desired legal outcome depends on it—there is a tendency to present a universalizing account of women's experiences in a way that obscures the process by which they become salient as well as the theorist's or advocate's role in that process.²⁷⁷ My concern here is that an emphasis on harm from lack of abortion can preclude an analysis of how women might be harmed from the option to abort. Is there a way in which abortion might hinder autonomy? What nuance is lost in a defense of abortion that rests on the subordinating conditions of motherhood? Might an emphasis on establishing injury neglect the diversity among women's experiences with reproduction and implicitly rely on a privileged, heteronormative perspective? In this section, then, I explore a question that is largely absent from both the antisubordination literature on abortion and the wider literature on reproductive rights: might autonomy be hindered by the choice to abort?

Examination of this question is precipitated in part by the view of autonomy taken up in this dissertation. Making a relatively unconstrained field of possibility a condition of autonomy requires that attention be paid to the context within which options or rights are afforded. As Brown advises, rights are not necessarily emancipatory: they operate differently in different times and for different people. Thus, "it makes little sense to argue for or against [rights] separately from an analysis of the historical conditions, social powers, and political discourses with which they converge or which they interdict."²⁷⁸ Here I consider an operation of the right to abortion that remains unexamined in the antisubordination approach. Through an analysis of how options can change social evaluations of a person's actions and actually constrain autonomy I argue here that an increase in options can impede autonomy and result in the reproduction of certain women as lacking the capacity for self-governance. Increasing options does not necessarily reduce constraints.

It is crucial to note, though, that the right to abortion cannot be equated with the actual option to abort. Decreasing numbers of abortion providers, persistent harassment

²⁷⁷ For a critical approach to experience, see Scott, "The Evidence of Experience."

²⁷⁸ Brown, *States of Injury*, 98.

of women obtaining abortions, and the sometimes violent intimidation of doctors create significant impediments to abortion access despite the legal right to abort.²⁷⁹ Nonetheless, the right to abortion does open up the option of abortion for many women. Moreover, and regardless of actual impediments, others may still assume that because abortion is legal a woman can avail herself of the option to abort if she desires. Barriers to obtaining abortion, then, do not necessarily protect women from the assessments of their procreative responsibility that, as I argue presently, can hinder autonomy.

One reason why increasing options does not necessarily reduce constraints on action is that the existence of a choice entails heightened responsibility for the consequences of a choice.²⁸⁰ Without a viable option to abort, bringing a pregnancy to term is generally regarded as a consequence of fate. However, legalized abortion in conjunction with the abortion discourse of choice render a woman's decision to carry her pregnancy to term a choice. This opens up a woman's decision regarding the outcome of her pregnancy to moral evaluation—to assessments of whether or not she is choosing responsibly. To the extent that assessments of whose reproduction is "responsible" continue to be connected to eugenic notions of "fitness" for reproduction, some women—such as poor women, women of color, and women with disabilities—may be regarded as acting irresponsibly when they choose birth.²⁸¹

This irresponsibility is connected to ideas about such women's autonomy. As historian Rickie Solinger has argued, because women formally have the options to abort and use birth control, indigent women are viewed as making poor choices when they have children: they are assumed to be irrational, bad at governing themselves, and even unfree.²⁸² Moreover, because of some women's (presumed) dependency on the state—due to poverty, disability, single status, or race—combined with doubt in their rational capabilities (who would have a child on welfare? why would a disabled woman ever procreate?) and prevailing beliefs about the value of their and their potential children's lives, any effort to justify their choice not to abort may be futile.²⁸³ Having the presumptive option to abort changes the evaluation of the actions of both those who exercise the option and those who do not. The option creates the possibility of being judged as bad at governing oneself.

It is worth pausing here to survey some of the ways in which certain women's reproduction is devalued and discouraged. Consider, for example, the rationales that have been put forth by some who advocate "family caps" on welfare to deny women increased benefits when they bear additional children.²⁸⁴ A citizen at a Louisiana committee hearing on a family-cap proposal stated: "How long can we spend taxpayers' money on irresponsible people? We're sick and tired of working for other people. If you're not going to work, you can at least refrain from bringing other people into the

²⁷⁹ Information on trends in abortion access can be found in: Jones et al., "Abortion in the United States"; Henshaw and Finer, "The Accessibility of Abortion Services in the United States, 2001."

²⁸⁰ Dworkin, "Is More Choice Better Than Less?," 50.

²⁸¹ The devaluation of such women's reproduction is discussed in: Roberts, *Killing the Black Body*; Solinger, *Beggars and Choosers*; Saxton, "Born and Unborn"; Finger, "Claiming All of Our Bodies." I also discuss its manifestation in sterilization practices in chapter five.

²⁸² Solinger, *Beggars and Choosers*, 183ff.

²⁸³ David Velleman makes a similar argument in the context of euthanasia. Velleman, "Against the Right to Die," 11.

²⁸⁴ Saletan, *Bearing Right*, 206-17.

world."²⁸⁵ This type of discourse and policies like the family cap lead historian Rickie Solinger to ask: "Do Americans want motherhood to be a class privilege? A life experience only available to middle class women?"²⁸⁶

It is not only poor women whose reproduction is discouraged: women of color, single women, and disabled women also tend to face stigmatization when they bear children. When poverty intersects with race, marital status, and disability the message not to procreate is intensified. In the case of race, Dorothy Roberts argues that since "class distinctions are racialized, race and class are inextricably linked in the development of welfare policy."²⁸⁷ Because of this, it is not a stretch to view former Louisiana state representative David Duke's family cap proposal as an extension of his earlier plan as President of the National Association for the Advancement of White People to give cash payments to welfare recipients for undergoing sterilization.²⁸⁸ Because women of color are presumed to be more irresponsible and more likely to depend on the state, it is likely that Duke assumed the plan would target the procreation of women of color.

The reproduction of women with disabilities is also devalued and generally understood as irresponsible in part because of the commonly held notions that (most) disabilities are inherited and that life with a disability is a life of misery. As Marsha Saxton notes of disabled parents she knows, "a common reaction they hear is that the child they are with could not have been their own and 'should they really be babysitting in their condition?'"²⁸⁹ Medical professionals may even presume that women who are disabled will be unable to care for their children. In fact, physicians tend to counsel women with disabilities not to have children, often with little or no evidence that the woman's disability would pose a problem in pregnancy or childbirth.²⁹⁰ Additionally, when even reproductive rights advocates play on stereotypes about disability in their arguments for allowing women to abort "deformed" fetuses, it is not surprising that disabled women's procreation is widely condemned.²⁹¹ It should also be noted that there is a nexus between poverty and disability, which results both from the fact that poverty increases risk of disability and the fact that disability is a risk factor for poverty. The irresponsible procreation message, then, will be heightened for many disabled women who are also poor.²⁹²

Moreover, the welfare mother trope conjures up an image of a single woman—whose motherhood is itself devalued and discouraged in myriad ways²⁹³—for whom the state must provide the support that a husband would and should normally provide. On this point consider the recent statement by conservative talk show host Rush Limbaugh that "[the Democrats] have destroyed poor families by breaking up those families, by offering welfare checks to women to keep having babies, no more father

²⁸⁵ Ibid., 207.

²⁸⁶ Solinger, *Beggars and Choosers*, 223. I would add that, making the decision to bear a child a choice—which is prompted not only by the existence of the option to abort but also by pro-choice, reproductive rights rhetoric—gives the state greater discretion over whether to support children. Supporting children comes to be seen more as a state's choice and less like its responsibility.

²⁸⁷ Roberts, *Killing the Black Body*, 110.

²⁸⁸ Saletan, *Bearing Right*, 206.

²⁸⁹ Saxton, "Born and Unborn," 304.

²⁹⁰ Kaplan, "Disability Rights Perspective," 242.

²⁹¹ Finger, "Claiming All of Our Bodies," 281-97.

²⁹² Elwan, *Poverty and Disability: A Survey of the Literature*.

²⁹³ Minow, "The Welfare of Single Mothers and Their Children"; Roberts, *Killing the Black Body*, 104-49.

needed."²⁹⁴ This sort of rhetoric casts indigent single women as privileging their own greedy interests above all else and characterizes their reproduction as profoundly irresponsible. Even though some women's reproduction would be stigmatized in the absence of the right to abortion, when combined with the right, such stigmatization complicates the situation and can change a woman's own evaluation of her action. For example, as David Velleman argues, an option creates the potential for pressure to make a "responsible" decision.²⁹⁵ While there is little evidence that women are actually pressured to abort, an option can also affect a woman's decision in a more subtle way. Even if no one actively exerts pressure on her, a woman may—knowing that her status as a responsible, autonomous agent depends upon it—choose as others would have her choose. Others' moral evaluations of her action change because she is perceived to have a choice; in turn, her own evaluation of her options may be affected by how others are evaluating her choice.²⁹⁶ She may thus decide differently than she would have in the absence of the stigmatization of her reproduction and discourses of responsible procreation. This change in evaluation, then, may restrict autonomy by complicating the ability to act on one's preferences.

This potential for the right to abortion to change evaluations of actions and to constrain autonomy is unaccounted for and obscured in the antisubordination approach. That the right to abortion may affect women in different ways is at odds with an approach that is premised upon the subordination of motherhood. This is not to say that Siegel only discusses privileged women. For example, in discussing drug-dependent pregnant women she notes that pregnant women of color are disproportionately targeted for prosecutions related to drug-dependency. And, in fact, in a footnote she notes that:

Some advocates of fetal-protective regulation do in fact argue that the pregnant woman has assumed the duties, burdens, and penalties they would inflict on her because she has failed to obtain an abortion. Considered from this perspective, fetal-protective regulation can be understood as providing incentives for abortion which at least some of its proponents may intend as a matter of conscious design.²⁹⁷

With this statement, she acknowledges that the option to abort is not necessarily beneficial. That she fails to address this issue fully and only mentions it in a footnote reveals, I think, that the issue cannot be analyzed sufficiently from within the antisubordination framework. Antisubordination is heavily invested in establishing compelled motherhood as a harm and thus cannot grapple well with the possibility of oppression arising from denied motherhood or the option to abort.

While denying women the right to abortion would largely eliminate the issues raised here regarding the evaluation of women's pregnancy decisions, to do so would not only hinder the autonomy of those who want to abort, but the denial of the ability to choose would also be a site of the production of women as non-autonomous. My

²⁹⁴ Limbaugh, "Rush's First Televised Address to the Nation: Conservative Political Action Conference (CPAC) Speech."

²⁹⁵ On the relation between choice and pressure, see Velleman, "Against the Right to Die," 7-8.

²⁹⁶ *Ibid.*, 13.

²⁹⁷ Siegel, "Reasoning from the Body," 344, note 341.

argument therefore should not be taken as a call to restrict options. Rather, it is meant to highlight that choice is not a sufficient condition for autonomy and that assessment of rights' autonomy enhancing potential requires a contextualized analysis. Given my argument that restricting choice amounts to imposing a course of action (or even a way of life) on someone and can itself constitute those whose options are restricted as non-autonomous, in the context of abortion I favor, not restricting options, but mitigating the negative effects entailed by their existence. This, in turn, requires confronting and transforming the social context, including but not limited to law, policies, and their accompanying discourses.

It is also important to consider that this change in moral evaluation of women's reproduction due to the existence of legalized abortion, along with inadequate public assistance policies, may exert some pressure on women to determine the outcome of their pregnancy in a supposedly responsible manner.²⁹⁸ Furthermore, these pressures may coexist with opposing pressures and policies, such as those resulting from the line of cases that decline to impose any positive obligation on states to fund or otherwise provide support for indigent women to obtain abortions.²⁹⁹ Scholars such as Dorothy Roberts have written about such opposing pressures, arguing that because of the simultaneous lack of public funding for abortions and the devaluation of Black women's reproduction and motherhood, Black women's "choice" has often been between becoming a "welfare mother" and undergoing sterilization.³⁰⁰ Notwithstanding that some states provide funding for low-income women's abortions and make access to abortion a priority,³⁰¹ the fact that the very women whose autonomy I suggest may be hindered because of the option to abort simultaneously face impediments to obtaining an abortion does not undermine my analysis. My approach is rooted in a slightly different perspective of the issue that focuses on how public discourse and policies combine with the existence of the right to abortion to affect negatively a woman's decision-making process.

In any case, I hope the foregoing discussion has illuminated that if the goal is reproductive autonomy, and not merely protection of the right to abortion, examination of the context within which the right operates is crucial. We must heed Brown's admonition not to take rights as necessarily emancipatory. In the context of the right to abortion, I have demonstrated how the existence of the option to abort can undermine

²⁹⁸ See Denbow, "Abortion: When Choice and Autonomy Conflict," for an argument that certain policies may be understood as exerting such pressures. The existence of such pressure is suggested by surveys that show that many women in the United States abort for reasons of inadequate financial or emotional resources. Statistics from the Guttmacher Institute demonstrate that "financial constraints and lack of partner support" play a significant role in many women's decisions to abort. Finer et al., "Reasons U.S. Women Have Abortions." In a 2004 study, seventy-three percent of women named lack of financial resources as a reason for aborting. Fourteen percent of women in the same study cited the fact that their partners did not want them to have a baby as a reason for aborting, though only two percent cited partner abuse. Six percent of women studied listed their parents' desire for them to abort as a factor. *Ibid.*, 113.

²⁹⁹ For example, the Court has upheld the Hyde Amendment's restrictions on federal funding of abortions in²⁹⁹ Stewart, *Harris v. McRae*, vol. 448.; has held that the state need not fund non-therapeutic abortions for the poor in Powell, *Maher v. Roe*, vol. 432.; and has held both that a state may prohibit the use of public facilities for abortions and that a state may prohibit public employees from performing abortions in Rehnquist, *Webster v. Reproductive Health Services*, vol. 492.

³⁰⁰ Roberts, *Killing the Black Body*.

³⁰¹ Guttmacher Institute, *State Funding of Abortion Under Medicaid*.

the ability of some women to carry out their preferred choice. Even though arguments for reproductive rights, including the antisubordination argument, support increasing women's options, some women will still be treated and constituted as lacking autonomy, not in spite of the existence of the right to abortion, but precisely because of it. The same state structure that is affording them the option to abort is also signaling to them that they should exercise that option, thereby casting them as incapable of making an appropriate decision on their own. That is, an increase in opportunities for autonomy undermines some women's capacity for autonomy. It is perhaps not surprising that when a subject such as the welfare mother is afforded the right to abortion by the same regulatory system that produced her, the result is not necessarily an increase in her autonomy.

Gender, Law, and Autonomy

A paradox that frequently arises from emancipatory feminist efforts is that either women are held to a masculine ideal of the autonomous liberal subject that ignores the ways in which women's ability to be self-governing is constrained and sometimes justifies our punishment when we diverge from that ideal or we are treated as special in a process that re-entrenches our difference and subjugation. As Mary Poovey writes, "using the language of rights exacts its price, for the language of rights coincides with a set of assumptions about the nature of the individual who is possessed of those rights, which is, in turn, intimately bound to a set of assumptions about gender."³⁰² A manifestation of this paradox is the tension that attends antisubordination rationales: rights assume the existence of a liberal individual with an abstract ability to be self-governing, but basing a right on subordinated status entails avowing an imperfect liberal personhood status. This difficulty of concurrently recognizing and overcoming past injustices confounds emancipatory feminist efforts.

Related to this paradox, and implicit in the preceding discussion, is the account of the circular and paradoxical relationship of capacity and opportunities for autonomy. Once the Kantian conception of the autonomous person as one who transcends the world of objects and acts in accord with reason is rejected and the autonomous person is recast as produced, we can see how the availability of options and the context of their availability can constitute the self. If an actor is not presumed to have the capacity for autonomy, then her options are often restricted. However, not to afford an actor options is to produce her as non-autonomous, which then further justifies the restriction of options. Another way to put this is that ascribing autonomy to women is necessary for women to become autonomous but in this very act of ascription we risk neglecting the ways in which women have been treated and constituted as non-autonomous.³⁰³ I have further complicated this picture by arguing that the existence of options does not necessarily enhance autonomy. Options can impede a person's ability to act in accord with her preferences, result in disrespect of her decision-making capabilities, and re-construct her as non-autonomous. Beyond illuminating the range of, and complexity of the interactions among, modes of power, this suggests that we must be careful in our assessment of the emancipatory potential of law and policy.

Another related tension in the preceding discussion is that between the heightened responsibility accompanying the existence of the choice to abort and the insulation from

³⁰² Poovey, "The Abortion Question and the Death of Man," 241.

³⁰³ See LaVaque-Manty, "Kant's Children," 383-87, on the concept of ascriptive autonomy.

responsibility resulting from women's re-construction as victims. The extent to which these tensions are truly at odds largely depends upon what follows from the heightened responsibility that attends choice. Although choice may increase pressure on women to choose in the way society would have them choose, it is effective precisely because, when women do not choose according to social expectations, they are often marked as irrational and incapable of self-governance, which tends to mitigate responsibility and instead justify paternalistic practices. Sometimes, however, when women do not decide as society would have them the result is punishment, not paternalism. Connected to this is the fact that what gets socially coded as a choice is contingent. Sometimes women on welfare will be judged as though they are fully autonomous, choosing subjects; sometimes as so oppressed that whatever they do will be deemed involuntary.

Arguments that justify women's rights or actions by reference to stereotypes about women are another effect of this double bind between recognition and transcendence of oppression. Unlike the antisubordination argument, which I argue indirectly re-trenches women's identification with motherhood, these arguments more explicitly and directly invoke predominant discourses regarding the notion of motherhood. For example, abortion rights advocates often emphasize that most women abort, not in spite of the interests of the fetus, but for the sake of it and existing children.³⁰⁴ While the interests of the fetus and the woman are undoubtedly deeply entwined and many women do abort for the sake of the fetus or existing children³⁰⁵ and while these moves may have strategic political value, I worry that such emphases are effective to the extent they ignore the existence of or implicitly derogate women who abort "merely" because they do not want a child. They play on the same selfless, caring mother trope as does Kennedy, the logic of which precludes inquiry into the institutional forces that require a woman to choose between her career and motherhood.³⁰⁶

Moreover, this logic fails to challenge the notion that a woman who, for example, aborts for the sake of her career, is acting selfishly. Joan Williams argues that, though the idea of individuals making self-interested choices is central to American thought, when women make self-interested decisions with regard to abortion, they are denounced as selfish. Aborting for one's own well-being is seen as selfish only because women are expected to be mothers and as mothers are to be self-sacrificing caregivers. Williams also argues that the rhetoric of choice in the abortion debate has increased fears of selfless women abandoning their children, which would explain the tendency of activists to stress the selflessness of women who abort. Nonetheless, and although I share Williams's concern that challenging women's natural selflessness in the context of abortion risks being understood as setting women "against the sanctity of life itself,"³⁰⁷

³⁰⁴ Guttmacher Institute and Physicians for Reproductive Choice and Health, "An Overview of Abortion in the United States." MacKinnon writes on this point that "[u]sually there is not [a conflict between what is good for the woman and what is good for the fetus], in large part because when there is, women tend to resolve it in favor of the fetus . . . Many women have abortions as a desperate act of love for their unborn children." MacKinnon, *Women's Lives, Men's Laws*, 141.

³⁰⁵ For example, thirty-two percent of women in a 2004 Guttmacher Institute report cited the existence of other children or dependents as a reason for aborting. Finer et al., "Reasons U.S. Women Have Abortions," 113.

³⁰⁶ In the same study cited above, twenty-five percent of women questioned cited either the fact that the timing of the pregnancy was bad or that they were not ready to have a baby as their primary reason for aborting. Four percent stated that their main reason for getting an abortion was because a baby would interfere with their career or education. *Ibid.*, 114.

³⁰⁷ Williams, "Gender Wars," 1561.

we should consider in what ways such a strategy may also constrain autonomy enhancing goals. By emphasizing that many women who abort are often already mothers and that they frequently end their pregnancies out of concern for existing children, activists play into and reinforce the idea that woman's natural vocation is to be a care-giver, a mother. They also thereby ignore the women who simply want to avoid or delay motherhood. Since re-produced autonomy involves disrupting the idea that women's natural function is to reproduce and mother, acknowledging the existence of women who abort for the very reason that they do not see themselves as mothers is beneficial.

Reformulating Rights?

What should be clear from the above discussion is that the right to abortion cannot be assumed to lead to greater autonomy. In this section, I want to address a set of questions regarding what follows from the above analysis. Given the above critiques of the right to abortion, should the right be abandoned altogether? Should it be reformulated? If so, how? What limitations attend the task of reformulation? With regard to the first question, I want to make it clear that, however troublesome various understandings of the right to abortion are and whatever the drawbacks to its current instantiation, the above critique should not be taken as a call for the revocation of the right. Were the right to abortion to disappear tomorrow the situation would be decidedly worse for women's autonomy. In light of this, then, I argue for reformulating the right in accord with re-produced autonomy—a reformulation which, as I argue in the following section, is similar in important ways to Drucilla Cornell's articulation of the right to abortion. From the perspective of re-produced autonomy, the right to abortion becomes a means toward autonomy and not an end in itself. The right to abortion would be subservient to the goal of reproductive autonomy and the right would be evaluated for its ability to act in the service of this end.³⁰⁸

This is not to say that autonomy itself does not serve some further end. In fact, as discussed in chapter three, the value of autonomy lies partly in the fact that it allows for greater room to maneuver and hence be involved in ongoing productive processes. This room to maneuver can further challenge hegemonic forces in a way that can increase autonomy. The relation between autonomy and productionism, then, is highly circular. For example, the right to abortion allows women to delay or avoid motherhood in a way that challenges the identification of women with mothers. Not only does the right have the potential to increase an individual woman's autonomy, in doing so it also affords her more modes by which she can be involved in the ongoing constitution of women and motherhood.

This returns us to Mill's argument discussed in chapters one and three about the value of eccentricity and diversity. Eccentric, counter-majoritarian conduct is necessary so as to challenge and avoid the identification of the customary with the natural in a way that renders it unquestionable. Recall that he argues that:

In this age, the mere example of non-conformity, the mere refusal to bend the knee to custom, is itself a service. Precisely because the tyranny of

³⁰⁸ This does not preclude autonomy in turn being a means to some further end such as well-being or happiness. I do think that autonomy tends to lead to higher levels of well-being, although I do not think this effect is the primary justification for, or value of, autonomy and so I emphasize that reproductive rights should be a means to reproductive autonomy and not well-being or some other such thing.

opinion is such as to make eccentricity a reproach, it is desirable, in order to break through that tyranny, that people should be eccentric.³⁰⁹

The challenging of the dominant production of women as maternal that is opened up by the right to abortion has the potential to disrupt the tyranny of dominant norms in a way that would allow for other understandings of women and reproduction. These disruptions can engender a context in which the identification of women with reproductive capacity and the givenness of maternal desire are brought into crisis. This crisis may foment reflection on maternal desire and expose its contingency. Moreover, such disruptions may increase the modes by which a given woman can engage with reproductive practices and hence enhance her ability to govern herself. In doing so, she also has more ways in which she can be involved in the ongoing construction of womanhood and motherhood. To the extent that the discourse that defines women by reference to maternal capacity and nature is successfully disrupted, the foundation for future generations to have increased possibilities may be laid. Members of this generation will have desires that are no less constructed, but they may be a product of a less hegemonic process.

Another way to understand this argument is by reference to Butler's understanding of subversion. The "persistence and proliferation [of gender identities that fail to conform to the norms of cultural intelligibility] provide critical opportunities to expose the limits and regulatory aims of that domain of intelligibility and, hence, to open up within the very terms of that matrix of intelligibility rival and subversive matrices of gender disorder."³¹⁰ Thus, gender performance is subversive "to the extent that it reflects on the imitative structure by which hegemonic gender is itself produced and disputes heterosexuality's claim on naturalness."³¹¹ With regard to abortion, the point is to ensure that the law not foreclose the "persistence and proliferation" of non-procreative female identities. The denial of the right to abortion, with its consequent forcing of motherhood upon women, impedes the project of disrupting the givenness of motherhood and maternal desire. Subversion of norms and diversity of modes of life are important because they can present rival understandings of the female subject, thereby troubling the naturalness of reproduction.

With access to abortion, an individual woman's action is less constrained and she hence has more autonomy—more room to maneuver. However, it is not as though without the right, women's actions with respect to pregnancy and motherhood would not affect the greater social context, nor is it the case that there would not be room for subversive acts in the presence of an abortion prohibition; yet, the right does give women greater room to maneuver. Because we are constituted by ongoing processes, this greater room to maneuver allows for greater possibilities, more modes by which to participate in these processes. Because abortion allows women a way to avoid motherhood, it allows women to dissent from their production as mothers. It thus does not devalue motherhood, but challenges the idea that women are naturally maternal by exposing the contingency and production of the relation between maternal desire and womanhood. It is crucial to recall, however, that an action need not be subversive to be autonomous. Subversive acts are privileged because of their ability to disrupt norms,

³⁰⁹ Mill, *On Liberty and Other Essays*, 74.

³¹⁰ Butler, *Gender Trouble*, 17.

³¹¹ Butler, *Bodies That Matter*, 125.

but whatever a woman's preference, her autonomy is best served by being allowed to make decisions regarding her reproduction for herself.

In addition, on my formulation the right to abortion is itself understood as a form of power through which subjects are constituted. This understanding also precludes making abortion illegal since, as discussed above, removing choice not only signifies a paternalistic attitude toward women, it also signals to them that they are, and indeed plays a role in constituting them as, incapable of autonomy. The right becomes crucial to women's autonomy not just for the standard reason that it gives women control over the fate of their pregnancies but because, by affording women important options regarding their reproductive lives, it can treat women as autonomous, as the kinds of beings capable of governing themselves.

Crucially, then, abortion restrictions can be understood as a form of oppression because they effectively impose a way of life on women. They limit women's ability to control their bodies and impose motherhood on women. Since, whether or not motherhood is oppressive, decisions about one's reproduction are important life decisions, abortion restrictions do not provide women with an adequate range of options and thus limit women's autonomy. Thus, although abortion restrictions could be understood as a form of subordination, this argument for the right to abortion does not depend on women's subordinated identity or on the oppression of the institution of motherhood. Criminalized abortion, for example, is an instance of restricting valuable life options and so is an instance of restricting autonomy.³¹²

The re-produced autonomy approach, then, responds to many of the critiques I made of the antisubordination approach—many of which were related to the fact that the approach does not consider the relevance of productive power. Because the rationale for the right to abortion is itself constitutive, the basis of the right is crucial. If the rationale for abortion is antisubordination as Siegel wants it to be, then we do not really escape production as non-autonomous (because subordinated) individuals. Although on her understanding women are still afforded a choice, women are given the option because, as mothers, women are thoroughly oppressed. In contrast, according to my reformulation, safe abortions are necessary simply because their existence is crucial for women's autonomy: it requires making no claims about the oppression of pregnancy and motherhood. Insofar as the law produces subjects, women are produced as more autonomous because the mere existence of an option carries with it the presumption that those to whom it is afforded are capable of self-governance and also because the reason for providing this option consists in an explicit recognition of women's interest in reproductive autonomy.

My account has the additional advantage of not pitting efforts to transform the context of maternity against the right to abortion. That is, measures that would make motherhood less oppressive and that are aimed at mitigating pressures women experience in making reproductive decisions would aid the project of increasing autonomy, but they would not simultaneously compromise the basis for the right to abortion. Since the right is premised on both the ability of women to govern themselves and on their interest in being produced as the kinds of beings capable of that autonomy, any effort that reduces the oppressive circumstances in which women find themselves supports the broader interest the right is meant to serve. In this way, my approach less

³¹² Drucilla Cornell makes a similar argument in *The Imaginary Domain*. Her argument is discussed later in the chapter.

heavily invests women as legal subjects in their subordination. It also allows for a more complex understanding of reproduction because it does not rely on generalizations of women's experiences of pregnancy and motherhood. In this, my framework understands autonomy, not as an isolated pursuit but as a necessarily political and collective social process.

Choice and Preference

While productionism invites questions about the production of preferences, my analysis declines to override women's stated reproductive preferences and their concomitant decisions. I have been concerned with how law, policies, and discourse may produce women as non-autonomous, but have declined to discredit women's stated preferences by claiming they are mere reflections of their production by patriarchal, racist, and otherwise subjugating forces. To do so would be to reproduce that which I critique. Overriding others' preferences is one of the chief dangers associated with those accounts of the self that hold that individuals should be forced to act in harmony with their nature. In the case of the WPAA, this notion of liberty takes the form of stripping women of decision-making power and forcing them to be free through acting in accordance with their maternal nature. It would be similarly problematic for me to argue that women's stated preferences should be disregarded because they result from oppressive productive forces. With respect to the issues considered in this chapter, women's preferred outcomes must be respected if greater reproductive autonomy is to be achieved, not just because the existence of options itself is an important component of autonomy—even if the adverse consequences that can flow from options must be considered—but also because to deny women choice is to constitute them as lacking the ability to be self-governing. To compel women to act contrary to stated preferences—whether through limitation of options or pressures—would be to undertake the same overriding, the same limiting of options that I critiqued in the case of *Carhart*.

I thus regard women's reproductive preferences as worthy of respect and furthermore think that autonomy involves the ability to act on these preferences, which itself presumes the existence of choice. While denying women the right to abortion would largely eliminate the negative consequences of legalized abortion that I outlined, to do so would not only hinder the autonomy of those who want to abort, but the denial of the ability to choose would be a site of the production of women as non-autonomous. Thus, my argument regarding increased pressures to abort due to the availability of abortion should not be taken as an argument for restricting options. Rather, it is meant to highlight that choice is not a sufficient condition for autonomy and that rights require a contextualized analysis to assess their autonomy enhancing potential. Given my argument that restricting choice amounts to imposing a course of action (or even a way of life) on someone and can itself constitute those whose options are restricted as non-autonomous, in the context of abortion I favor, not restricting options, but mitigating the negative effects entailed by their existence. This, in turn, requires confronting and transforming the social context, including but not limited to legal and bureaucratic discourse.

Yet, as I argued, the option to abort, in combination with various discursive systems and regulatory forces, can indeed play a role in the production of a woman's preferences regarding abortion. I similarly argued that the discourse of the WPAA, in its identification of womanhood with motherhood, is one of those forces that

(re)constitutes maternal preference. My respect for women's stated preferences, then, does not preclude an inquiry into how the will is constituted, although it does direct attention away from the narrow issue of an individual woman's will to a consideration of social forces that constitute that will.

Thus, as discussed in chapter three, I understand the formation of preferences as central to autonomy. In understanding the self of autonomy to be socially produced, focus diverts from a narrow consideration of an individual's choice to the social context that constitutes the self and within which the choice operates. This is why I have focused in this chapter on legal discourse and social policies. The point has been to think about how to open up options while respecting a person's avowed preference and this itself entails interrogating how context can act to undermine one's ability to act on such a preference.

One of the benefits of my approach is that it rejects the idea that to interrogate social constitution is to undermine the basis for respect of an individual's preferences, even if those may have been produced by oppressive forces. In recognition that respect of an individual's preferences is a way of acknowledging another's autonomy and is constructive of that autonomy, I argue for respecting such preferences (at least in contexts such as the ones considered in this chapter). In doing so, I avoid entanglement in debates over whose preferences should therefore be overridden because problematically produced and avoid the troubling aspects of substantive autonomy approaches discussed in chapter one. As argued there and in chapter three, to attribute a woman's preference to be a mother to false consciousness covers over that all preference is produced and presents a simplified picture of the processes of production. Instead I argue that with regard to reproductive decisions, women must be regarded as the best decision-maker and that her avowed preferences must be respected. Crucially, as argued in chapter three, this respect does not preclude questioning a woman about, or encouraging reflection upon, her preferences. Rather, as explored in the previous chapter, situated reflection is important to my understanding of re-produced autonomy.

Why not a Right to Bodily Integrity?

In many ways my reformulation of the right to abortion and my project in general is similar to one that has been of continuing interest to Drucilla Cornell. Cornell has explored the need for a feminist politics to speak from women's perspectives and experiences while also recognizing the potential of such a politics "to reset the trap of rigid gender identities, deny the real differences between women . . . and reflect the history of oppression and discrimination rather than an ideal of an ethical positioning to the Other to which we can aspire."³¹³ That is, she is also critical of attempts to ground politics and rights on a subordinated history. Moreover, she is concerned with the constitutive power of the law: she argues that the legal system "does not merely recognize, but constitutes and confirms who is to be valued, who is to matter."³¹⁴ In *The Imaginary Domain*, she is concerned with how the denial of the right to abortion identifies women with the maternal function. On her psychoanalytic account:

The denial of the right to abortion enforces the kind of splitting that inevitably and continuously undermines a woman's sense of self. Her

³¹³ Cornell, *Beyond Accommodation*, 3.

³¹⁴ Cornell, *The Imaginary Domain*, 42.

womb and body are no longer hers to imagine. They have been turned over to the imagination of others, and those imaginings are then allowed to reign over her body as law.³¹⁵

To deny women the right to abortion is to reinscribe “the identity of women with the maternal function.”³¹⁶ Cornell goes on to argue that a reformulation of the understanding of the right to abortion “can play an important role in the resymbolization of pregnancy in a way that would neither deny the power of maternity nor define a woman only through her reproductive capacity.”³¹⁷ In articulating such a reformulation, she argues that the right to abortion should be understood as a right to bodily integrity and writes that “the wrong of denying abortion is the wrong that prevents the achievement of the minimum conditions of individuation necessary for any meaningful concept of selfhood.”³¹⁸ She thinks that denial of the right to abortion denies women meaningful equality since it is inegalitarian to treat women as violable because of their childbearing potential.³¹⁹ Moreover, like me, she refuses to override women's own understandings of themselves, arguing that “the imaginary domain insists . . . that as a matter of right we should not impose any model of sexual life but rather that people should be allowed to craft their own. To give people this freedom does not mean that they have to use it in any particular way.”³²⁰

For Cornell, equality appeals “to our political recognition as free persons who must be given the moral and psychic space to represent how women see themselves as sexuate beings”—that is, as beings formed by sex and sexuality.³²¹ Hence equality rests on an “analysis of the minimum conditions for all sexuate beings to achieve individuation.”³²² Furthermore, the abortion right rests on the “demand that women be valued as beings who can constantly contest and re-evaluate their own self-images in an endless process of recreation.”³²³ In this, she is concerned with something like my understanding of autonomy, especially since her emphasis on individuation eschews a notion of the self as radically individualistic. And, although she understands selves as existing via social productions and symbolic functions, this does not mean that we should not be invested in those productions and symbolic processes. In fact, “once the right of bodily integrity is recast, part of the feminist struggle is to protect the feminine imaginary domain, to allow us to take ‘ourselves’ back from the masculine imaginary as it has been symbolized in law.”³²⁴

Although this understanding of the right to abortion is similar to mine, there are significant differences, one of which is Cornell's appeal to the need for the “equivalent value of the feminine within sexual difference.”³²⁵ She takes the feminine as a space for utopian visions and for reimagining and even subverting common understandings of the feminine; she is concerned that we not devalue the feminine, even if it has been

³¹⁵ Ibid., 47.

³¹⁶ Ibid., 64.

³¹⁷ Ibid.

³¹⁸ Ibid., 33.

³¹⁹ Ibid., 35.

³²⁰ Ibid., 181.

³²¹ Cornell, *At the Heart of Freedom*, 185.

³²² Cornell, *The Imaginary Domain*, 64.

³²³ Ibid.

³²⁴ Ibid., 86.

³²⁵ Ibid., 54.

produced by a masculine imaginary.³²⁶ The right to abortion as a right to bodily integrity is one crucial legal transformation that can affirm the “equivalent value of the feminine within sexual difference.” To evaluate the feminine equivalently “forces us to face the fact that how a woman's body matters is inseparable from how ‘it’ is symbolized and whether ‘it’ is evaluated as of equivalent value to the masculine body.” This re-evaluation “inevitably changes how a woman's body is thought to matter in the sense of both material reality and significance.”³²⁷

While I agree with much in Cornell's approach and think it is one of the most emancipatory visions of the law I have encountered, I worry that her focus on the equivalent evaluation of “the feminine within sexual difference” fails to place into question the dichotomous symbolization of bodies. Her approach, in Butler's words, posits “one fundamental structuring principle and that principle is sexual difference” in a way that re-entrenches rather than troubles the binary understanding of sexual difference. For example, Butler takes issue with sexual difference by arguing that, to say that sexual difference “will affect how one is a gay man or a gay woman” is to misunderstand the relationship between sexual difference and gayness. As she argues, “[i]f one really pursues the theoretical consequences of gayness, one finds that even the presupposition of sexual difference is brought into a really important crisis.”³²⁸ And it is this area in which Butler is most interested—that is, in the spaces “where masculine/feminine break down, where they cohabit and intersect, where they lose their discreteness.”³²⁹

Similarly, I take the identification of women with reproductive capacity as one of the key “presupposition[s] of sexual difference” and, with my approach to reproductive rights, seek to disrupt this identification and thus the sexual difference paradigm.³³⁰ That is, by questioning the notion of women as those who bear children we call into question one of the presuppositions of sexual difference. I talk of the right to abortion as an issue of autonomy and not as a way of equivalently valuing masculine and feminine bodies because I think the latter relies too heavily on, and thus fails to question, the binary symbolization of bodies. Importantly, such a formulation obscures and renders unintelligible intersex bodies. And, to the extent the female body is identified with reproductive capacity, the sexual difference paradigm may not be able to make sense of female bodies that lack the capacity to reproduce. As will be discussed more in the following chapter with regard to sterilization, my approach is concerned with calling into question the identification of women, not just with motherhood, but also with the potential to become pregnant. Unlike Cornell, I take seriously the body's materiality and understand both the material and symbolic as open to change.³³¹ While Cornell is interested in something similar, I think her reliance on the sexual difference paradigm is at cross-purposes to this goal. Although I wholly agree with Cornell that women's reproductive capacity should be valued, I take issue with her reliance on “the feminine within sexual difference.”

³²⁶ Cornell, *Beyond Accommodation*, 100.

³²⁷ Cornell, *The Imaginary Domain*, 55.

³²⁸ Butler in Cheah et al., “The Future of Sexual Difference,” 24.

³²⁹ Butler in *Ibid.*

³³⁰ Cornell, *The Imaginary Domain*, 24.

³³¹ Grosz argues that materiality “is both presupposed by and inexplicable for the kinds of culturally and psychically—i.e., symbolically—oriented feminist projects undertaken by Cornell.” Grosz, *Time Travels*, 78.

Cornell herself has acknowledged some shortcomings of her reliance on the feminine. In a 1998 interview she characterizes her more recent work as a turning away from the feminine for its conservative character—for conserving “something of the traditional definitions of the masculine and the feminine.” She nonetheless simultaneously claims that the feminine is a salient category for her³³² and that she does not “think one can completely do away with the category of the feminine, since we have a symbolic order that polices and reinforces gender hierarchy and identity.”³³³ Moreover, in *At the Heart of Freedom*, Cornell continues her appeal to sexual difference, by arguing, for example, for a “concept of right that would allow us to be recognized as the source of our own evaluations and representations of our sexual difference.”³³⁴ She has not eliminated the notion of sexual difference from her work, then, and even if she has turned away from the feminine, she relies on it heavily in *The Imaginary Domain*—which contains her only sustained treatment of the issue of abortion.

Another shortcoming of Cornell's account is that at times she does not fully take into account the difficulty of reformulating the right to abortion in such a way that women's subordination is not reinscribed. As she writes in *The Imaginary Domain*:

[M]y argument for abortion demands only that we be treated as worthy of personhood with the right to bodily integrity. Thus, our sexual difference can be recognized in that it is women who need the right to abortion for their bodily integrity, without turning that recognition into a demand for protection. The right to bodily integrity must be differentially allotted to women to include their unique capacity to get pregnant as part of what it means to equivalently evaluate our sex as worthy of personhood.³³⁵

While her formulation avoids the obvious demand for protection that troubles the antisubordination rationale, she fails to take into account that simply asserting that the right to bodily integrity is not about protection does not make it so. It is not up to her as a theorist—nor is it even completely up to the Court—to decide how the right gets coded and understood in public discourse. Cornell's account cannot escape that the inclusion of the capacity to get pregnant within the right to bodily integrity—in other words, the differential application of the bodily integrity right—can be taken as a request for protection. Indeed, one way to understand her explanation of the right to abortion is as a demand for the protection of women's bodily integrity, for the protection of “women's ability to project herself as whole over time,” which is denied us when abortion is illegal.³³⁶ This problem is not resolved just by placing the right to abortion under the larger umbrella of the right to bodily integrity, which men can claim as well.

This issue is partially addressed, however, by Cornell's attention to non-legal reforms and her call for continual reimagining. Although *The Imaginary Domain* is heavily focused on the domain of rights and law and does not thoroughly contend with the limitations of rights, *At the Heart of Freedom* takes a more delimited approach to law. In that work she argues that women must take direct political action to combat wrongs

³³² Cheah et al., “The Future of Sexual Difference,” 21.

³³³ Ibid., 24.

³³⁴ Cornell, *At the Heart of Freedom*, 11.

³³⁵ Cornell, *The Imaginary Domain*, 35.

³³⁶ Ibid., 34.

and is concerned about protective and paternalistic legislation. Additionally, as Adam Thurschwell notes of Cornell's understanding of freedom, it is "inherently contestable—not refutable, as an empirical claim or deductive argument would be, but open to reasoned contestation."³³⁷ As Cornell writes, "[b]ecause who we could become in a society in which women were fully recognized as free and equal persons is not yet possible for us to experience, the process of reimagining ourselves does not have an end point."³³⁸ Cornell, then, does not take law as *the* path to emancipation, nor does she foreclose other imaginings of freedom.

Cornell also recognizes the limitations of rights and echoes Brown in her statement that "enunciated rights fix a desirable present into the future, thus closing out future possibilities for liberation and potentially reinforcing existing power structures they were meant to challenge."³³⁹ She contends, though, that her account allays this concern, arguing that

in the end, what is stabilized is the right of the person to claim herself as her own design. Rather than freezing the present, [the imaginary domain] asserts the right to future possibilities. This protection of the future inherent in the definition of the ideal can help free our political struggle from the burden of past identities, both singular and collective, as the truth of who we are. . . . Our right to our imaginary domain . . . is a right to imagine, represent, and symbolize the meaning of the material constituents of sex and gender as we lead our lives as sexuate beings.³⁴⁰

Although I would caution against being overly optimistic about the potential of re-articulations of rights, I do think that Cornell's reformulation and my own, by focusing on potentialities and future possibilities of what we might be and how we might (re)construct practices of reproduction, do help us escape the re-entrenchment of subordinated identities and the powers that produce them that plague many contemporary rights claims. Although I have argued that my approach and Cornell's approach have some important differences, I conceive of my approach as complimentary to Cornell's and not at fundamental odds with it. Even given the ability of dominant norms to resignify transformative (legal) projects in a way that neutralizes their transformative potential, a reconceptualization of the right to abortion—as Cornell argues—has the potential to reframe public discourse and to open up alternate understandings of women and reproduction. I offer re-produced autonomy as one such reframing.

³³⁷ Thurschwell, "Radical Feminist Liberalism," 49.

³³⁸ Cornell, *At the Heart of Freedom*, 186.

³³⁹ *Ibid.*, 179.

³⁴⁰ *Ibid.*

CHAPTER FIVE: STERILIZATION

“[F]eminism set out to break both taboos — those surrounding the experiences of the mothers and of the non-mothers, but . . . in the long run we were better able to attend to mothers' voices (or at least to begin on that project) than we were able to imagine a full and deeply meaningful life without motherhood, without children.”
—Ann Snitow³⁴¹

“To suggest that we reconceptualize procreation as a cultural preference rather than a biological imperative, and then explore the ways in which to lessen or at least modify the demand to conform to that preference, is to initiate a conversation within feminism that has been explicitly and curtly rejected by some legal feminists.”
—Katherine Franke³⁴²

The lack of attention to “the complex ways in which reproduction is incentivized and subsidized”—that is, to “repronormativity,” as Katherine Franke calls it—is an ongoing issue in feminist scholarship. In this chapter I take up the call of both Franke and Ann Snitow to explore non-motherhood by examining voluntary female sterilization. I am less interested, however, in incentives to reproduce than I am in what I take to be a more fundamental issue—namely the propensity to take reproduction as essential to female bodies and identity. I argue in this chapter that the regulation of voluntary female sterilization contributes to the medical and social identification of women with procreative capacity, but that the proliferation of the practice, especially among women without children, could play a role in destabilizing that identity.

Because voluntary sterilization cannot be adequately understood apart from the history of eugenics, neo-eugenics, and compulsory sterilization, I begin the chapter with a discussion of that history before discussing the contemporary context of both sterilization abuses and obstacles to access to the procedure. In particular, sterilization and other long term contraceptives continue to be forced on some women without their knowledge or consent, while other women who seek sterilization are often denied access to the procedure if they have not fulfilled their womanly nature by having children. I then look in detail at the medical paradigm through which women's bodies and reproductive capacity are understood and examine what the contemporary medical discourse and practice surrounding female sterilization reveal about the ongoing production of women, motherhood, and sexual reproduction.³⁴³ Since medical professionals control access to sterilization, this analysis is key.

In the latter part of the chapter, I consider how voluntary sterilization, as a moment when a woman forecloses the possibility of procreation, might destabilize the very understandings of womanhood and motherhood that are revealed by the medical regulation of sterilization. How might the practice of voluntary sterilization, particularly among childfree women, help (re)construct motherhood as a preference? In particular, I explore the disruptive potential of voluntary sterilization through the

³⁴¹ Snitow, “Feminism and Motherhood,” 33.

³⁴² Franke, “Theorizing Yes,” 184-85.

³⁴³ See Hird, “Re(pro)ducing Sexual Difference” for an account of why the qualifier sexual is important. She points to the innumerable processes of reproduction that are continually happening on and in our bodies to urge us to problematize our assumptions regarding the necessity of sex and sexual difference to reproduction.

framework of cyborg theory. Might the sterilized body be read as a cyborg figure that subverts, not just the idea of women as inevitably maternal, but also widespread binary notions of woman-man, nature-culture, and organism-machine? Relying on cyborg theory allows me to take up issues of the body and technology that I argue are left out of the limited scholarship that does examine repronormativity and non-motherhood.

Despite the potentially disruptive character of voluntary sterilization, however, the law privileges physician expertise in a way that makes physicians gatekeepers of access to sterilization. The chapter concludes with a discussion of how the legal landscape of sterilization hinders reproductive autonomy through the privileging of expert medical knowledge over women's preferences. I am specifically concerned with how law fails to redress either sterilization abuse or lack of access to sterilization. Finally, I address a principal question of this dissertation: how might reproductive autonomy be enhanced, and what role might law play in such a project? I argue that the legal and medical framework could be reworked so as to better respect women's reproduced autonomy.

Eugenics, Neo-Eugenics, and Coerced Sterilization

At the turn of the twentieth century, the eugenic movement—which sought to “better” society by controlling who procreated—took hold in the United States and was tightly linked with the emergence of modern family planning techniques and practices.³⁴⁴ For example, birth control advocate Margaret Sanger wrote in 1919, “More children from the fit, less from the unfit—that is the chief issue of birth control.”³⁴⁵ Thus, while wealthy and middle-class women had difficulty accessing contraceptives and were accused of committing “race suicide” when they failed to have enough children, those deemed “unfit” were often sterilized against their wills.³⁴⁶

Laws allowing for forced sterilization of the “socially inadequate” became widespread during the first half of the twentieth century: by 1931, thirty states had enacted such laws.³⁴⁷ The 1922 “Model Eugenical Sterilization Law,” drafted by influential eugenicist Harry Laughlin and designed to pass constitutional muster, reveals the expansiveness of the category “socially inadequate.” His model statute provided for the sterilization of a person who “fail[ed] chronically in comparison with normal persons, to maintain himself or herself as a useful member of the organized social life of the state.” The “socially inadequate classes” included the “feeble-minded,” the “insane,” the “criminalistic,” the “diseased,” the “deformed,” and the “dependent.”³⁴⁸

Although eugenic sterilization laws such as Laughlin's model law allowed for the sterilization of both men and women, as fears about women's increasing independence rose in the 1920s, eugenic sterilization efforts became increasingly and disproportionately targeted toward women.³⁴⁹ Officials' determination of whether a

³⁴⁴ Roberts, *Killing the Black Body*, 72-76.

³⁴⁵ Quoted in Gordon, *Woman's Body, Woman's Right*, 281. Family planning programs at this time were often promoted and funded by the very wealthy, who, as Thomas Littlewood notes, “fear[ed] that the capitalist system would be threatened by lower-class overpopulation.” Littlewood, 6. In fact, the numerous eugenic research centers established between 1910 and 1930 were funded by wealthy families such as the Carnegies and the Rockefellers. Kluchin, *Fit to Be Tied*, 12.

³⁴⁶ *Ibid.*, 14.

³⁴⁷ Shapiro, *Population Control Politics*.

³⁴⁸ Laughlin, *Eugenical Sterilization in the United States*.

³⁴⁹ Kluchin, *Fit to Be Tied*, 14-17.

woman was deemed inadequate often depended on whether her behavior and lifestyle appeared to conform to ideal norms of femininity and appropriate gender roles. If a woman could convincingly present herself as sufficiently domestic and obedient to male authority, she could avoid sterilization.³⁵⁰ At the same time, non-marital sexual activity was often sufficient evidence of feeble-mindedness. Historian Elaine Tyler May writes, “[i]n the writings of the eugenic reformers, race, class, sexuality, and ethnicity were all blurred. Nonmarital sexual activity was a code for class and a marker for hereditary inferiority. There is no evidence that middle-class or affluent women were ever labeled feeble-minded or sterilized against their will.”³⁵¹ Poor women were also more prone to coming in contact with the social welfare and public health officials who—consistent with the widely held belief at the time that experts could solve social ills—were often charged with the duty of determining whether individuals were “socially inadequate.”³⁵²

In the 1927 case of *Buck v. Bell*, the U.S. Supreme Court ruled on the constitutionality of a Virginia eugenical sterilization law that was modeled on Laughlin's. The particulars of the case and the Court's reasoning are illustrative of the sterilization practices of the time and beliefs about those practices. The case involved Carrie Buck, an eighteen year old white woman who had been involuntarily admitted to the State Colony for Epileptics and Feeble-minded when, after a relative of her foster parents raped her, her foster parents discovered she was pregnant.³⁵³ As Stephen Jay Gould writes, Buck was “committed to hide her shame (and her rapist's identity), not because enlightened science had just discovered her true mental status. . . Her case was never about mental deficiency; it was always a matter of sexual morality and social deviance.”³⁵⁴

In an 8 to 1 decision, the Court held that the Virginia Act fell within the police powers of the state and that the state had instituted sufficient safeguards to protect the due process rights of those being considered for sterilization. Justice Oliver Wendell Holmes, writing for the majority in *Buck v. Bell*, declared that:

We have seen more than once that the public welfare may call upon the best citizens for their lives. It would be strange if it could not call upon those who already sap the strength of the State for these lesser sacrifices, often not felt to be such by those concerned, in order to prevent our being swamped with incompetence. It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough.³⁵⁵

The last line of this quote is a reference to the alleged imbecility of Buck's mother and her daughter. Buck's mother, Emma Buck, had herself borne Carrie out of wedlock and had, as had Carrie, scored in the imbecile range (mental age of six to nine years) of the

³⁵⁰ Schoen, *Choice and Coercion*, 75-138.

³⁵¹ May, *Barren in the Promised Land*, 103.

³⁵² *Ibid.*, 106.

³⁵³ Gould, “Carrie Buck's Daughter,” 15-17.

³⁵⁴ *Ibid.*, 17.

³⁵⁵ Holmes, *Buck v. Bell*, 274:207.

incipient Stanford-Binet IQ test, in which “normal” corresponded to white middle-class values.³⁵⁶ At the age of seven months, Carrie Buck's daughter, Vivian, had been cursorily assessed by a Red Cross social worker, who attested that: “There is a look about it [Vivian] that is not quite normal, but just what it is, I can't tell.”³⁵⁷ It was on the basis of this assessment alone that Vivian was declared a mental defective and that the inheritability of the imbecility that afflicted Carrie and Emma Buck was established. Later assessments revealed that both Carrie and Vivian Buck were of perfectly average intelligence.³⁵⁸

Notably, taking sexual deviancy as a proxy for mental deficiency allowed the public officials and the Court to ignore the will or desires of Buck herself. Buck's personal interest in bearing children is not even mentioned, and it is taken as given that she cannot know what would promote her welfare. That Buck was taken as incapable of making her own decisions is clear. In fact, the “feeble-minded” women who were sterilized in this era were widely understood as irrational and lacking the ability to govern themselves. As E.P. Bicknell, the secretary of the Indiana State Board of Charities said in 1896, “In the feeble-minded person the animal passions are usually present and are often abnormally developed, while will and reason, which should control and repress them, are absent. The feeble-minded woman, thus lacking the protection which should be her birth-right, falls easily into vice.”³⁵⁹ As was the case with Buck, what was understood to be in the best interests of those sterilized was also that which best served the interest of society as a whole: sterilization was for the sake of the public good.

After World War II, eugenic ideas became less favored and sterilization organizations and policies started emphasizing “consent.”³⁶⁰ The sterilization strategies that began in the 1950s marked a shift to what Rebecca Kluchin has termed “neo-eugenics.” While neo-eugenecists maintained the eugenic preoccupation with “fitness” for reproduction and sterilization of the “unfit,” neo-eugenics had distinguishing features. For example, early eugenic reformers were primarily motivated by anxieties regarding the dilution of the gene pool by poor, white immigrants. In the 1950s, anxieties centered on the reproduction of blacks, especially in the south, and Mexican immigrants. Later, these anxieties were combined with fears of global overpopulation and worries over expanding welfare programs. Also, eugenics was a formal movement with established research centers and conferences; by contrast, neo-eugenics was a more diffuse and informal movement.³⁶¹

Despite these differences, neo-eugenecists continued the eugenicists' project by promoting and even coercing “unfit” individuals into sterilization. Many physicians made medical care such as delivery and abortion contingent upon the patient's agreement to sterilization or, in some cases, did not even attempt to obtain consent.³⁶²

³⁵⁶ May, *Barren in the Promised Land*.

³⁵⁷ Gould, “Carrie Buck's Daughter,” 17.

³⁵⁸ Gould, “Carrie Buck's Daughter.”

³⁵⁹ May, *Barren in the Promised Land*, 100.

³⁶⁰ The series of name changes undergone by a eugenic organization exemplifies this shift in rhetoric. The organization, which called itself “Birthright Inc.” in 1943, changed its name to the “Human Betterment Association of America” in 1950, and then to the “Human Betterment Association for Voluntary Sterilization” in 1962, before settling on the name “Association for Voluntary Sterilization” in 1965. Kluchin, *Fit to Be Tied*, 26-30.

³⁶¹ Kluchin, *Fit to Be Tied*, 19-21; Kluchin, *Fit to Be Tied*, 216.

³⁶² May, *Barren in the Promised Land*, 111-12.

Women in institutions were at times given the “choice” between undergoing sterilization and being released from the institution in which they were being held.³⁶³ Other physicians threatened women with the revocation of welfare benefits if they did not consent to sterilization.³⁶⁴ There is much evidence that sterilization abuses continued throughout the 1960s and 1970s.³⁶⁵ During this time the link between family planning and control of the reproduction of the poor continued. Plans to create a federally funded family planning program gained support due to the belief that such programs would reduce the numbers of the poor and dependent.³⁶⁶ Wanting to keep the welfare rolls down provided a rationale for the non-consensual sterilization of women of color. The sterilization abuse of Native American women was particularly egregious: by one estimate, more than 25 percent of Native American women were sterilized without their consent in the mid-1970s.³⁶⁷

Sterilization in the Contemporary United States

Coerced Sterilization

The patterns that have characterized the practice of sterilization since its inception continue today. Notably, *Buck v. Bell* has never been overturned. To protect against sterilization abuses, courts have instead required that additional procedural safeguards be followed.³⁶⁸ These procedural safeguards have been insufficient to prevent wrongdoing. Women who come in contact with the criminal justice system are especially likely to be victims of sterilization abuse.³⁶⁹

A 2008 human rights report on abuses in prisons in California³⁷⁰ found that medical professionals at prison facilities tend to recommend hysterectomy for inmates for medical conditions that either the patient does not have or that could be treated by much less aggressive means that would preserve the prisoner's reproductive capacity. Moreover, the women who are thus sterilized often do not have full information about the procedure and sometimes do not consent.³⁷¹ There is evidence that such abuses occur in other states.³⁷² Additionally, prosecutors and judges will sometimes pressure women into accepting sterilization by making it a condition of receiving a lighter sentence. For example, in 2005, a Georgia woman who had been charged with killing her infant daughter consented to sterilization in order to avoid prison.³⁷³ Many of the old eugenic rationales regarding the irresponsibility of women of color—who make up

³⁶³ *Ibid.*, 112.

³⁶⁴ *Ibid.*, 122-23.

³⁶⁵ Gordon, *Woman's Body, Woman's Right*; Petchesky; Shapiro, *Population Control Politics*.

³⁶⁶ King and Madonna Harrington Meyer, “The Politics of Reproductive Benefits,” 12.

³⁶⁷ May, *Barren in the Promised Land*, 119.

³⁶⁸ Blank and Merrick, *Human Reproduction, Emerging Technologies, and Conflicting Rights*, 16.

³⁶⁹ Silver, “Eugenics and Compulsory Sterilization Laws,” 863.

³⁷⁰ The report was conducted collectively by the following organizations: WILD for Human Rights; Justice Now; and the Transgender, Gender Variant and Intersex Justice Project.

³⁷¹ Lee, Levi, and Sok, *Human Rights Violations Against Women of Color in the United States: A Report on U.S. Government Compliance with the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, 16. In fact, a governmental prison advisory committee in California recently “considered evaluating the cost effectiveness of doing ‘voluntary sterilizations’ on people in prison who have recently given birth and installing IUDs in women in prison.” *Ibid.*, 17.

³⁷² *Ibid.*, 16.

³⁷³ Volz, “A Matter of Choice: Women with Disabilities, Sterilization, and Reproductive Autonomy in the Twenty-First Century,” 203.

a disproportionately high percentage of incarcerated women—are cited as reasons for sterilizing such women.³⁷⁴

The recommendation of aggressive therapeutic procedures that result in sterility occurs outside of prisons as well. Sue Fisher has demonstrated that the course of treatment recommended to women with abnormal Pap smear results is connected to their race, socio-economic status, and number of children. In particular, “older women who had their families, poor women, minority women, women who were on welfare, women who had had multiple abortions, and women who had had several children without being married seemed more likely to have hysterectomies recommended.”³⁷⁵ Fisher reports that a young, married, Mexican-American woman who had three children was initially counseled to undergo a hysterectomy upon receiving abnormal Pap smear results. She subsequently had a tubal ligation, after which the doctor retracted the hysterectomy recommendation, opting instead to freeze the abnormal cells.³⁷⁶

Other doctors continue simply to sterilize women without their consent. For example, a Massachusetts woman has recently alleged that in 2006 she was sterilized without her consent after giving birth. The woman, who is the mother of nine children, is on public assistance and is disabled due to non-Hodgkin's lymphoma.³⁷⁷ The background of this woman, as well as of those for whom therapeutic hysterectomy is aggressively recommended, situate them as “unfit” reproducers so that their sterilization comports with neo-eugenic ideas.³⁷⁸

Dorothy Roberts has linked the history of non-consensual and coerced sterilization to more recent policies that “degrade Black women's reproductive decisions.”³⁷⁹ Most relevant were plans in the 1990s to distribute Norplant—an implant that releases a synthetic hormone and prevents pregnancy for up to five years—to black communities, those on public assistance, and low-income women who are ineligible for welfare benefits.³⁸⁰ Norplant is so effective and long lasting that Roberts calls it “a form of temporary sterilization.”³⁸¹ Since Norplant can only be removed by a doctor, it is one of only a few contraceptive methods that women do not control. Its implantation and removal is dependent on the willingness of physicians to perform the requested procedure and thus “gives doctors and other health care workers the opportunity to impose their own judgments upon poor minority patients by refusing to remove the device.”³⁸² Roberts shows that the implantation of Norplant is marked by coercion and that trying to get the device removed can be extremely difficult. A Native American woman who wanted the device removed was told that it would only be removed if she submitted to a tubal ligation.³⁸³

³⁷⁴ Lee, Levi, and Sok, *Human Rights Violations Against Women of Color in the United States: A Report on U.S. Government Compliance with the United Nations International Convention on the Elimination of All Forms of Racial Discrimination (CERD)*, 16.

³⁷⁵ Fisher, *In the Patient's Best Interest*, 32.

³⁷⁶ Fisher, *In the Patient's Best Interest*, 49-50.

³⁷⁷ Harding, “Is Forced Sterilization Ever OK?.”

³⁷⁸ Day, “Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women's Sterilization,” 82.

³⁷⁹ Roberts, *Killing the Black Body*, 7.

³⁸⁰ *Ibid.*, 106-112.

³⁸¹ *Ibid.*, 106.

³⁸² *Ibid.*, 129.

³⁸³ *Ibid.*, 128-133.

Additionally, some organizations have started offering drug addicted women cash incentives to undergo sterilization or use long term birth control like Norplant or the IUD. An organization called Children Requiring a Caring Kommunity (CRACK) is a private organization that makes such offers, although state and federal governments often pay for the sterilizations.³⁸⁴ Rebecca Kluchin notes that this organization presumes a right to interfere in women's decisions for the sake of society when "the women in question have 'demonstrated' their lack of reproductive fitness through their poverty, illegitimacy, and / or criminality."³⁸⁵ Physicians also take this attitude and presume they are better decision makers than their patients.

Voluntary Sterilization and the Childfree

Although there is relatively little research on voluntary sterilization, that which does exist shows that many middle- and upper-class women who sought sterilization from the early 1900s onward were unable to access sterilization because physicians were generally unwilling to sterilize "socially adequate" women. However, some women succeeded in getting their tubes tied by presenting themselves as poor or sexually deviant to officials who then deemed them good candidates for "compulsory" sterilization.³⁸⁶

In the postwar era, even as neo-eugencists continued to sterilize some women against their wills, other women were barred from the procedure by emerging rules governing sterilization. One such rule was the "120 rule" that restricted sterilization to those women whose age multiplied by their number of children totaled at least 120. The American College of Obstetricians and Gynecologists promoted this rule until 1969. More generally, physicians at this time were reluctant to perform sterilizations on "fit" individuals.³⁸⁷ A woman who tried to get sterilized in 1970 noted, "Just like women who are sterilized without consent, we're treated as objects of population policy."³⁸⁸

The American College of Obstetricians and Gynecologists no longer promulgates guidelines regarding how old a woman must be or how many children she should have in order to qualify for a tubal ligation; nonetheless, many doctors refuse to sterilize women under thirty or women without children.³⁸⁹ Although little has been written about current impediments to sterilization procedures, research suggests that young, childless, middle-class women have the greatest difficulty finding a physician willing to ligate their fallopian tubes.³⁹⁰ Despite the presumptive status of sterilization as a right (which will be discussed at greater length below), physicians are generally guaranteed the ability to choose their patients.³⁹¹ They are thus free to limit access to sterilization based on their idea of a patient's "best interest"— an idea that Fisher argues is heavily informed by medical research and professional norms.³⁹²

That women without children have difficulty accessing sterilization is significant since rates of childlessness, and presumably of childless women seeking sterilization,

³⁸⁴ Kluchin, *Fit to Be Tied*, 222-23.

³⁸⁵ *Ibid.*, 223.

³⁸⁶ Schoen, *Choice and Coercion*, 5.

³⁸⁷ May, *Barren in the Promised Land*, 113-20.

³⁸⁸ *Ibid.*, 113.

³⁸⁹ Zylbergold, "Are You Kidding?."

³⁹⁰ Campbell, *Childfree and Sterilized*.

³⁹¹ See, e.g., ³⁹¹³⁹¹ American Medical Association, *Principles of Medical Ethics*. Principle VII.

³⁹² Fisher, *In the Patient's Best Interest*.

have been increasing since the 1970s.³⁹³ Since the voluntary sterilization of women without children is more disruptive to dominant understandings of women than the sterilization of mothers, it is worth surveying the “childfree movement” and the attendant phenomenon of increasing rates of childlessness. Historian Elaine Tyler May has characterized this movement as partially “a function of feminism, environmentalism, and the increasing tolerance for alternatives to the nuclear family” and partially “as a reaction to the intense pronatalism of the baby-boom years.”³⁹⁴ Women who remain childfree cite a number of reasons for their decision, including their aversion to the physical changes of pregnancy, concerns about overpopulation, wanting to increase their standard of living, and their rejection of motherhood and the primacy of children to many women's lives.³⁹⁵ Childfree women who seek sterilization generally say that they have never wanted to procreate and that the only way for them to represent accurately their chosen lifestyle is to be sterilized. If performed correctly, sterilization has few to no significant side effects and frees them from monthly scares and continual anxieties.³⁹⁶

Heterosexual women without children are frequently called on to justify or explain their decision not to have children, whereas mothers—at least those whose reproduction is socially encouraged—are rarely asked to explain or justify their decision to have children.³⁹⁷ This is true despite the fact that, as one childfree woman noted, the decision to have a child is one that “affect[s] many more people with far more widespread consequences” than not having a child.³⁹⁸ Just as in the medical context discussed below, in society more broadly, reproduction is conceived as women's default desire and thus requires no explanation.

The assumption that reproduction is woman's natural or default desire is reflected in some of the labels—such as “intentionally childless” or merely “childless”—used to refer to those without children. Many non-parents reject those terms because they emphasize an absence or lack. In addition, “intentionally childless” or “childless by choice” perpetuates the idea that it is non-parenthood that must be chosen, thereby (re)constructing the idea that parenting or motherhood is the default that does not need to be justified and is not necessarily characterized as a choice. Thus, non-parents tend to prefer the more positively framed term “childfree,” which emphasizes the unburdened character of not being a parent.³⁹⁹

Since women without children challenge the idea of reproduction as woman's default desire, there are many cultural assumptions about childless women that tend to undermine the subversive potential of childlessness. In her study of women without children, Carolyn Morell outlines three primary cultural assumptions about childless women: that they do not like children and are anti-family (where children are taken to define family), that they are self-absorbed, and that they had unhappy childhoods. Since wanting to be a mother is seen as natural, the presumption is that “only women

³⁹³ May, *Barren in the Promised Land*, 181-209.

³⁹⁴ *Ibid.*, 183.

³⁹⁵ May, *Barren in the Promised Land*, 196-207; Campbell, *Childfree and Sterilized*, 168-69; Gillespie, “Childfree And Feminine,” 123.

³⁹⁶ Campbell, *Childfree and Sterilized*, 158.

³⁹⁷ Morell, *Unwomanly Conduct*, 49.

³⁹⁸ Campbell, *Childfree and Sterilized*, 123.

³⁹⁹ Campbell, *Childfree and Sterilized*. However, Carolyn Morell, who is herself childless, declines to use the term “childfree” because she thinks it manifests a hostile attitude toward children. Morell, *Unwomanly Conduct*, 21.

who are morally suspect or flawed by events beyond their control would reject motherhood."⁴⁰⁰ Non-mothers, then, are viewed as morally or psychologically deficient and are presumed to suffer for not having children.⁴⁰¹ Both the explanation of deficiency and the frequent characterization of childlessness as a "lifestyle choice" depoliticize the issue.⁴⁰²

It is important to note here that, especially compared to the literature on eugenics, there is relatively little research on the childfree movement. In particular, little is known about the numbers and characteristics of women who seek and are turned away from sterilization. Although rates of voluntary childlessness are generally lower among black and hispanic women than white women, one 1989 study shows that the disparity in rates between black and white women disappear when class is taken into account.⁴⁰³ In any case and given the paucity of research, I want to resist making easy assumptions about who is getting turned away from sterilization procedures.

At the same time, though, a discussion of sterilization cannot get away from the historical and ongoing appropriate/inappropriate reproducer divide. This divide and the assumption that voluntary sterilization is an issue of concern only to those in the former category leaves me open to the charge that this is a "luxury" issue that only affects privileged women. Even if that were the case, I maintain that the relatively unexplored impediments to voluntary sterilization warrant analysis. Also, as the subsequent analysis demonstrates, juxtaposing a discussion of voluntary sterilization alongside sterilization abuses illuminates both practices and the way they interact to maintain the fit/unfit dichotomy. In fact, the maintenance of the category of the "fit" depends on an exclusion of and thereby the maintenance of the category of the "unfit." Although I spend slightly more time on the question of voluntary sterilization, I hope the following analysis succeeds in demonstrating the importance of thinking through the two modes of sterilization oppression together.

The Medical Production of Woman-Mother

The social view of women as naturally maternal is connected to medical notions of women's bodies and their function. Given the intense medicalization of contemporary American society, medical discourse plays an important role in the constitution of the "normal" subject.⁴⁰⁴ With reference to historical and sociological research, I demonstrate here that the identification of the female body with reproduction is a key element of the current medical paradigm. Because of this identification, the sterilization of women without children is rendered suspicious and abnormal in a way that affects the treatment of such women when they seek sterilization. Although there have been important and partially successful social movements that have opened up non-maternal identities for women, I argue here that the medical treatment of reproduction, especially with regard to sterilization, remains restrictive in its ascription of female identity.

Key to the argument in this section is the concept of a paradigm as understood by philosopher and historian of science Thomas Kuhn. In Kuhn's lexicon, a paradigm is a shared body of theoretical assumptions, techniques, and beliefs, which remain unquestioned in normal, everyday scientific practice. Adoption of a paradigm and its

⁴⁰⁰ Morell, *Unwomanly Conduct*, 55, 77.

⁴⁰¹ *Ibid.*, 97; *Ibid.*, 124.

⁴⁰² Morell, *Unwomanly Conduct*, xv.

⁴⁰³ May, *Barren in the Promised Land*, 192; Boyd, "Minority Status and Childlessness."

⁴⁰⁴ Lupton, "Foucault and the Medicalisation Critique," 100.

accompanying conceptual apparatus profoundly affects how scientists perceive phenomena. For example, a pre-Copernican scientist “saw” a planet when observing the moon, whereas after the Copernican revolution, astronomers “see” a satellite when looking at the moon. As Kuhn argues in general about science, medical practice and research occurs within the confines of a paradigm.⁴⁰⁵

With regard to reproductive medicine, it is crucial to note that women's bodies have not always been viewed in the way they currently are: the biomedical characterization of female bodies as essentially different from male bodies has a relatively recent history. Until the eighteenth century, biomedical science in the Western world understood male and female bodies as fundamentally similar, with the one key difference between male and female bodies being that genitals on the female were inside the body. This framework of bodily similarity gave way in the eighteenth century to a framework that took the female body as profoundly different from the male body. This shift in perspective led to the isolation of the study of women's bodies from men's and to the emergence of gynecology as a distinct field of medicine in the late nineteenth century. Because the male body was understood as representative of the human body, the male body was not set apart as a discrete focus of study.⁴⁰⁶ Nelly Oudshoorn argues further that gynecology “established a discursive practice in which sex and reproduction became considered ‘more fundamental to Woman's than Man's nature.’”⁴⁰⁷ That reproductive function is seen as peripheral to man's nature and body explains why andrology—the medical study of men's reproduction—is an insignificant branch of medicine.⁴⁰⁸

The convergence of medical thought on the idea of bodily difference is tied up with medical education. Scientific training, according to Kuhn, is central to the dominance of a given paradigm. He writes, “normal research, even the best of it, is a highly convergent activity based firmly upon a settled consensus acquired from scientific education and reinforced by subsequent life in the profession.”⁴⁰⁹ This education, which he argues distinguishes science from other academic disciplines, is marked by a textbook-driven pedagogy and a “rigid education in exclusive paradigms.”⁴¹⁰ Assigned reading for students, even at the graduate level, comes almost exclusively from textbooks. These textbooks may discuss different subjects but not different approaches to a given subject: they are all written from within the dominant scientific paradigm and so do not differ in overall approach or perspective. Students of science are not asked to read collections of scientific work or historical classics of their fields—“works in which they might discover other ways of regarding the problems discussed in their textbooks.”⁴¹¹

Importantly, medical education is marked by this dominance of textbooks. Sociologist Suzanne Day has analyzed the treatment of voluntary sterilization in medical textbooks and contraceptive guides published between 1987 and 2007. Her research shows the extent to which the prevailing medical paradigm is characterized by

⁴⁰⁵ Kuhn, *The Structure of Scientific Revolutions*.

⁴⁰⁶ Laqueur, *Making Sex*.

⁴⁰⁷ Oudshoorn, “The Decline of the One-Size-Fits-All Paradigm, or, How Reproductive Scientists Try to Cope with Postmodernity,” 153.

⁴⁰⁸ *Ibid.*

⁴⁰⁹ Kuhn, “The Essential Tension,” 140.

⁴¹⁰ *Ibid.*, 142.

⁴¹¹ *Ibid.*, 141.

a belief that reproductive capacity is fundamental to women's bodies and identity. For example, Day demonstrates that medical literature characterizes the appropriate sterilization candidate as a woman who has completed her childbearing. A childless woman seeking sterilization is not even present as a possibility in the bulk of these texts, and the timing of sterilization is discussed in relation to a woman's most recent pregnancy.⁴¹² Since the medical paradigm is marked by an identification of the female body with the maternal body, the possibility of a woman without children seeking sterilization does not even occur to the authors of these texts.

Additionally, the texts Day analyzes depict women as having a primary, innate desire to reproduce such that their stated reasons for sterilization are suspect, even if the women are already mothers. The textbooks warn that a woman's stated reasons for sterilization may not be trusted and that emotional instability may be causing her to seek the surgery. The doctor has the responsibility to ensure that the patient is making a rational decision.⁴¹³ One textbook even suggests that physicians tell single, childless patients that the right man "might just turn up tomorrow."⁴¹⁴ Unsurprisingly, these same texts discuss the consequences of tubal ligation in terms of "loss, regret, and dysfunction: a loss of identity that was rooted in a woman's reproductive capacity, a regret at the inability to fulfill a woman's 'primary desire' to reproduce, and a dysfunctional body responding to the medical intervention in woman's 'natural' state of reproduction."⁴¹⁵

The discourse of regret and loss also appears in biomedical research on sterilization outcomes, much of which focuses on the issue of post-sterilization regret. These studies tend to show that women who are sterilized under the age of thirty have higher rates of regret than older women, although the regret rates for all women, especially those under thirty are probably inflated.⁴¹⁶ What is most revealing about the medical paradigm, though, is the research questions that are not posed.

Only one text that Day analyzed considered the possibility of regret after not undergoing a tubal ligation, even though many women who have unwanted pregnancies must regret not getting sterilized.⁴¹⁷ Also, there is a dearth of research on

⁴¹² Day, "Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women's Sterilization," 60-61.

⁴¹³ Ibid., 62.

⁴¹⁴ Ibid., 63.

⁴¹⁵ Ibid., 73.

⁴¹⁶ The rates are likely inflated because these studies often take women's inquiries about reversal as a proxy for regret, thereby not accounting for the fact that some women who ask about reversal do so as a sop to a new partner's desire for children. Campbell, *Childfree and Sterilized*, 148-150. Given that younger women are more likely to have new partners post-sterilization, the reported rates for sterilization regret for women under thirty are probably even more inflated than those for older women. Studies of regret also tend not to isolate women who are childfree. One study discusses sterilization only in relation to women's last pregnancy and thus does not even consider the possibility of women without children getting sterilized. Day, "Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women's Sterilization," 60. Even a study of childfree women did not consider the possibility of women showing their commitment to being childfree through sterilization. See Morell. There is some evidence, however, that sterilized women without children have much lower rates of regret. Campbell, *Childfree and Sterilized*, 150; Schmidt et al., "Requesting Information about and Obtaining Reversal after Tubal Sterilization: Findings from the U.S. Collaborative Review of Sterilization"; Guttmacher Institute, "Women Who Are Sterilized at Age 30 or Younger Have Increased Odds of Regret."

⁴¹⁷ Day, "Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women's Sterilization," 71.

and discussion of post-vasectomy regret. The only American study I found that examined post-vasectomy regret looked at regret of both husbands and wives after one of them had been sterilized.⁴¹⁸ The American Congress of Obstetricians and Gynecologists has a webpage devoted to “Sterilization for Women and Men,” but it only mentions regret with regard to tubal ligation.⁴¹⁹ This absence of attention to post-vasectomy regret reflects both the presumption that men know their minds, as well as a difference in the way men's reproductive capacity is linked to their identity. Since men are not medically understood by reference to their procreative potential, a loss of that potential is not discursively linked to a crisis of identity as it is for women. Given the assumptions of the dominant medical paradigm, neither post-vasectomy regret nor post-pregnancy regret present themselves as objects of study.

This is not to say that there is no link between men's reproductive function and their identity. Although ideas of masculinity and fertility vary widely across cultures, virility and potency are sometimes tied to understandings of male identity. There may even be an increased tendency in the United States to identify masculinity with fertility and responsible fatherhood.⁴²⁰ Nevertheless, as is evidenced by the medical literature, male bodies tend not to be viewed primarily as reproductive bodies. This partially explains, I think, the fact that post-vasectomy regret is rarely studied. Because reproductive capacity is not so tightly linked with medical understandings of the male body, a loss of that function is not tied to a loss of identity in the same way it is for women.⁴²¹

Another thing that complicates my account here is the question of women who cannot conceive. How does the medical conflation of woman and mother play out in instances of women who are involuntarily infertile or who are post-menopausal? With regard to involuntary infertility, I think the discourse surrounding involuntary infertility supports the conflation of woman and mother insofar as infertility is rendered a pathology.⁴²² Viewing infertility as a disorder is consistent with the idea that the medical paradigm takes reproductive function as central to female bodies. Lack of reproductive function due to menopause is a different issue and perhaps signals that the medical relation between woman and mother changes with age. However, to the extent menopause is also pathologized, this rendering supports the idea of reproductive function as woman's natural and appropriate state.⁴²³

⁴¹⁸ Miller, SHAIN, and PASTA, “The Pre- and Post-sterilization Predictors of Poststerilization Regret in Husbands and Wives.” See Rungby et al., “Vasectomy” for a study that looks at post-vasectomy regret among Danish men.

⁴¹⁹ American Congress of Obstetricians and Gynecologists, “ACOG Education Pamphlet AP011 -- Sterilization for Women and Men.”

⁴²⁰ President Obama's promotion of responsible fatherhood is part of this trend. See Phillips, “Responsible Fatherhood: The White House.” for an example of one of Obama's fatherhood messages.

⁴²¹ It should be noted, though, that vasectomy is both a simpler and less costly procedure than tubal ligation. Vasectomy, however, is not necessarily more reversible. See Hendrix, Chauhan, and Morrison, “Sterilization and Its Consequences” for a discussion of the reversibility of different kinds of sterilization procedures.

⁴²² Ikemoto, “The In/Fertile, the Too Fertile, and the Dysfertile.”

⁴²³ See Woods, “Menopause.” for a discussion of two different conceptualizations of menopause, one of which understands menopause as a disease. Ferguson and Parry, “Rewriting Menopause.” for an analysis of pathologization and medicalization of menopause. See also Goodman, “Toward a Biology of Menopause” for a discussion of the methodology that contributed to the classification of menopause as a disease.

Another significant aspect of the research on sterilization is that studies frame sterilization as an option for couples and focus on the use of sterilization among married women.⁴²⁴ Medical research, then, re-entrenches not only the identification of women with reproductive capacity, but also heteronormative ideals regarding the proper site for procreative decision-making. Such studies ignore, perhaps because the paradigm prevents them from seeing, the possibility of a single woman seeking out and obtaining a sterilization.

Medical texts and some sterilized women themselves discuss the potential for post-sterilization regret, as well as other adverse emotional and physical consequences of sterilization, in terms of “post-tubal ligation syndrome.”⁴²⁵ Like “post-abortion syndrome” discussed in chapter four, “post-sterilization syndrome” conflates women and reproductive capacity and links contraceptive sterilization to both mental and physical dysfunction. The language of syndrome casts the sterilized body as abnormal and inadequate.

Also, medical contexts more generally do not merely reflect an independent reality regarding sterilization regret. Not only do norms governing motherhood and women—which are tied to medicine’s paradigmatic assumptions regarding women—render post-sterilization “syndrome” and regret possible objects of medical study, these very studies set up an expectation of regret and contribute to the construction of those norms. This is not to say that post-sterilization regret is a fiction or that a medical practitioner should not discuss the possibility of regret with patients; it is to say that we must look critically at the discursive context of sterilization and regret, especially since fear of a patient’s future regret is one reason doctors are reluctant to perform tubal ligations on certain women.⁴²⁶

Moreover, as Foucault argues, this type of medical research uses “comprehensive measures” and “statistical assessments” to determine what is normal or deviant for a given population. In turn, these assessments inform clinical practice. In the sterilization consultation, the doctor examines the body as well as a woman’s motives for seeking sterilization and applies expert knowledge gained from the comprehensive study of tubal ligation.⁴²⁷ Women who try to obtain sterilizations report that medical professionals treat them like children and that practitioners tend to dismiss or trivialize their reasons for requesting sterilization—such treatment is no doubt connected to research that constitutes the sterilized body as deviant and dysfunctional.⁴²⁸ Given the notion that women have an innate desire to reproduce, physicians are especially reluctant to sterilize childfree women; one such woman reported that a physician told her to return when she was married with children.⁴²⁹

A 1985 study on sterilization suggested that men who seek sterilization are not treated as paternalistically as women who seek the operation in part because they are expected and trusted to know their minds.⁴³⁰ Also, given the differing ways in which

⁴²⁴ Godecker, Thomson, and Bumpass, “Union Status, Marital History and Female Contraceptive Sterilization in the United States.”

⁴²⁵ Day, “Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women’s Sterilization,” 72; Post-tubal Coalition, “Post Tubal Ligation Syndrome (PTLS).”

⁴²⁶ Campbell, *Childfree and Sterilized*, 132.

⁴²⁷ Foucault, *The History of Sexuality*; Foucault, *Discipline and Punish*.

⁴²⁸ Campbell, *Childfree and Sterilized*, 119.

⁴²⁹ *Ibid.*, 114.

⁴³⁰ *Ibid.*, 134, citing Allen, *Counselling Services for Sterilization, Vasectomy and Termination of Pregnancy*.

reproductive function is linked to women's and men's identities and bodies, men's decisions to get sterilized are treated as less momentous since, even if they do not know their minds, they are not violating their nature by getting sterilized. There is a connection, then, between how women are treated during consultations and how they are depicted in medical literature. The physician is trained and the research is conducted from within the prevailing medical paradigm that closely identifies women with reproductive capacity.

The link between the paternalism women encounter when they seek to obtain sterilization and the view of the female body as maternal is also evident in discussions of the reversibility of tubal ligations. While women presumably seek out sterilization precisely because of its permanence, some of the medical literature Day examined presents the more difficult to reverse procedures—which are also more effective—as negative precisely because of their permanence. One book advises against performing the most difficult to reverse tubal ligations, such as the electrocauterization of the fallopian tubes, on women under twenty-five and those with few children.⁴³¹ Day argues that such texts situate the decisions of young women with few children as untrustworthy.⁴³² It is to be expected that a woman's default, innate desire to reproduce will overcome her current, misguided decision to be sterilized. Even though physicians inform patients on the irreversibility of the tubal ligation, medical textbooks focus on the potential of reversibility with regard to young women with few children.⁴³³ It is unsurprising, then, that medical literature characterizes the ideal female sterilization patient as one who does not want any additional children.⁴³⁴

Paternalism is again evident in considerations of whether performing a difficult to reverse tubal ligation on a young woman with relatively few children is ethical.⁴³⁵ One British medical ethics article begins with the question, "Is it ethical to sterilise a young woman who is determined she never wants children, even if there are no strong medical reasons to avoid pregnancy?"⁴³⁶ This article and others like it ask whether respecting a competent adult's desire regarding her own fertility is unethical. The point of departure for these authors is the ethical status of sterilization, not the ethical status of not respecting the wishes of the patient. That is, the question is whether it is ethical to sterilize a woman who requests sterilization, not whether it is ethical to deny her sterilization. A sterilization operation performed at a woman's behest can be potentially unethical only if her desires are discounted in favor of a potential and allegedly likely future desire (which presumably emanates from her nature). One of the articles concludes by stating that "it is morally defensible" to sterilize such a woman as long as the physician does not think it is contrary to the best interest of the patient, although there is no discussion of how the physician might come to know what is in the best interest of the patient or why the patient's best interest might depart from her expressed wishes.⁴³⁷

⁴³¹ Day, "Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women's Sterilization," 66.

⁴³² Ibid.

⁴³³ Some methods of ligating the fallopian tubes are more reversible than others, although guides suggest that physicians tell women to regard the procedure, no matter how performed, as irreversible. Ibid.

⁴³⁴ Ibid., 60.

⁴³⁵ Benn and Lupton, "Sterilisation of Young, Competent, and Childless Adults," 1323; Berger, "Ethics of Tubal Ligation."

⁴³⁶ Benn and Lupton, "Sterilisation of Young, Competent, and Childless Adults," 1323.

⁴³⁷ Benn and Lupton, "Sterilisation of Young, Competent, and Childless Adults."

It is important to note that the medical literature discussed here does not discuss the race or class of women seeking sterilization: instead the texts characterize women in general in terms of their reproductive capacity. Regardless, this does not mean that all women are treated the same by medical practitioners, but that the differing treatment of women cannot be tied to explicit characterization of women in medical literature. I do think that medical paradigm views women in terms of reproductive capacity, although some women, such as women of color and low-income women, continue to be understood as “too fertile.”⁴³⁸ Despite the discourses of regret and dysfunction that mark the medical discussion of tubal ligation, not all women’s sterilization is regarded with suspicion. In fact, as discussed in the previous section, some women continue to be forcibly sterilized. Although the female body is understood in terms of reproductive capacity, the medical profession disciplines the female body differently based on ideas of “fitness” for reproduction. As Foucault argues, with the regulation of sexuality and reproduction, the population is controlled at the same time the body is disciplined.⁴³⁹ Some women’s sterilization is regarded as necessary while others is regarded as problematic.

Sterilized Cyborgs

“Which way do we look to try and see the possible impact modern science will have on the status of women? . . . the feminist theoretician today can only be ‘in transit,’ moving on, passing through, creating connections where things were previously dis-connected or seemed un-related, where there seemed to be ‘nothing to see.’”
—Rosi Braidotti⁴⁴⁰

In this section I examine sterilization technology and the sterilized woman through the framework of Donna Haraway’s cyborg theory. In doing so, I consider the possibility for technology to subvert the identification of maternity and procreative capacity. Although there is a large body of scholarship on both (involuntary) infertility and assisted reproductive technologies, there is scant literature on the use of technology to become voluntarily sterile.⁴⁴¹ Much of the existing literature on technology and reproduction explores the possibilities for technology to redefine motherhood.⁴⁴² Some of this literature—for example, Elizabeth Sourbut’s work on gynogenesis—uses Haraway’s cyborg theory as a tool for exploring the potential of emerging or potential technologies to transform motherhood.⁴⁴³ This work takes up an important project, but it fails to confront or even articulate the possibility of non-motherhood; even as it attempts to disrupt reproductive norms, it reflects a maternal-centric perspective.

⁴³⁸ I am borrowing this term from Ikemoto. Ikemoto, “The In/Fertile, the Too Fertile, and the Dysfertile.”

⁴³⁹ Foucault, *Power/Knowledge*.

⁴⁴⁰ Braidotti, “Mothers, Monsters, and Machines,” 76.

⁴⁴¹ Literature on infertility and reproductive technology includes Allen, “The Socio-Economic Struggle for Equality: The Black Surrogate Mother”; Roberts, *Killing the Black Body*; Rowland, “Technology and Motherhood”; Thompson, *Making Parents*.

⁴⁴² Braidotti, “Mothers, Monsters, and Machines”; D’Adamo and Baruch, “Whither the Womb?”; Ikemoto, “The In/Fertile, the Too Fertile, and the Dysfertile”; Shultz, “Reproductive Technology and Intent-Based Parenthood.”

⁴⁴³ Sourbut, “Gynogenesis: A Lesbian Appropriation of Reproductive Technologies.”

There are some scholars, however, who explore non-motherhood and pronatalism.⁴⁴⁴ Myra J. Hird's work on the subversive potential of non-motherhood is particularly relevant. She argues that, although reproduction is taken as essential to women's bodies and femininity, childless women challenge this association, along with the more specific associations of "women's bodies and children, women's desire and proclivity for children, men's bodies and the lack of maternal function and men's lack of desire for children."⁴⁴⁵ Relying on Butler's theory of performativity, Hird argues that childless women present transformative potential in that they may "parody gender, to reveal the 'arbitrary' relation between various acts taken to be inimical to gender identity."⁴⁴⁶ Not only do women without children stand in opposition to gender norms, but also "their identity is no longer in opposition to that of 'man'. . . if male gender identity is founded on the negation of a female gender identity (that of woman-mother) then childless women threaten the stability of male gender identity."⁴⁴⁷ If, as Butler argues, the maternal body is understood "as an effect or consequence of a system of sexuality in which the female body is required to assume maternity as the essence of itself and the law of its desire," the childless woman presents a potentially radical challenge to the ontology of gender.⁴⁴⁸

I agree with Hird's argument, especially regarding the subversive potential of childlessness among women. Because norms such as motherhood require our performance to be sustained, in our performance lies the possibility of subversion of those norms. Since childless women challenge prevailing norms, they may appear as "developmental failures or logical impossibilities. . . Their persistence and proliferation, however, provide critical opportunities to expose the limits and regulatory aims of that domain of intelligibility and, hence, to open up within the very terms of that matrix of intelligibility rival and subversive matrices of gender disorder."⁴⁴⁹ For Hird the focus is not so much on disrupting "heterosexuality's claim on naturalness," as it is for Butler, but on disputing the accompanying presumed naturalness of maternity.

What is unexplored in Hird's and other work on non-motherhood is the technology that has opened up the possibility of childlessness for an array of women. Not only is some attention to contraceptive technology warranted, the possibility of the permanent foreclosure of sexual reproduction arguably presents a greater challenge to "repronormativity" and the gender binary than the non-sterilized, heterosexual childfree woman. The latter woman can much more easily forego contraception, and even if she is deeply committed to remaining childfree, her situation will more readily conform to normalizing discourses. Others will likely presume she will change her mind, perhaps when the "right man comes along." Even though these normalizing discourses are precisely the ones that childless women will encounter in trying to obtain a sterilization, such women's subsequent sterilized bodies (and even their attempts to be sterilized) presents a potentially more severe disruption to the ontology of gender than the presumably fertile childless woman. Although the sterilized female body of a

⁴⁴⁴ Franke, "Theorizing Yes"; Gillespie, "Childfree And Feminine"; Hird, "Vacant Wombs"; Meyers, "The Rush to Motherhood"; Sandelowski, "Failures of Volition."

⁴⁴⁵ Hird, "Vacant Wombs," 15.

⁴⁴⁶ Ibid.

⁴⁴⁷ Ibid.

⁴⁴⁸ Butler, *Gender Trouble*, 92; Hird, "Vacant Wombs," 16.

⁴⁴⁹ Butler, *Gender Trouble*, 17.

childless woman may be medically marked by pathology, such a body still substantially disrupts the constitution, to use Hird's term, of "woman-mother."

In response to the absence of work on sterilization as a disruptive practice, here I consider both the technology of sterilization and the sterilized body itself. Although this analysis is conjoined in parts with a discussion of childlessness, it is crucial to note that a woman without children who gets sterilized is not precluded from becoming a mother through adoption. A woman may very well not want to bear children but still want to be a parent. Nonetheless, I maintain that the voluntary sterilization of women without children is potentially disruptive because of their intentional infertility. With my attention to the technology of sterilization, I approach the sterilized body as a union of technology and organism—as a cyborg. Reading the sterilized body in this way provides, I think, for a fecund analysis of sterilization.

Haraway first discussed a cyborg world in her 1985 article, "A Manifesto for Cyborgs," in which she defines a cyborg as "a cybernetic organism, a hybrid of machine and organism, a creature of social reality as well as a creature of fiction."⁴⁵⁰ She intends the figure of the cyborg as both a "tool and myth, instrument and concept,"⁴⁵¹ and argues that in our time we are all "theorized and fabricated hybrids of machine and organism; in short, we are cyborgs."⁴⁵² By this she means that our world is so pervaded by technology that the distinction between organism and machine is unclear: we both produce and are produced by technology. Her point is not that we all have machines embedded within us—although some humans do have identifiable machines implanted in their bodies. Rather, I take Haraway's cyborg figure to represent the profound entanglement of machine and organism that results from the interweaving and overlapping developments in fields such as medicine, technology, pharmaceuticals, and communication. The diffusion of technology and machines in society gives rise to a connected and networked world. Thus, the cyborg world is not a world of individuals constructed outside of society or technology, but a world of connectivity and networks. Humans are immersed in networks and, together "with each other and with objects," we produce "what it means to be humans."⁴⁵³

With the figure of the cyborg Haraway counters the tendency she attributes to feminists to see technology as a mode of domination. Instead Haraway sees possibility in the hybridity that marks cyborg culture. She writes: "My cyborg myth is about transgressed boundaries, potent fusions, and dangerous possibilities which progressive people might explore as one part of needed political work."⁴⁵⁴ She argues that viewing technology as domination or as a perverting influence on the human is to "recall us to an imagined organic body," thereby re-entrenching prominent dualisms of nature/culture and organism/machine.⁴⁵⁵ Of principal concern to Haraway are precisely these dualisms—which also include mind/body, animal/human, public/private, men/women, and primitive/civilized—that characterizes, she thinks, much contemporary thought. With the cyborg as instrument and concept she blurs the distinctions between and generally disrupts these dichotomies.

⁴⁵⁰ Haraway, *Simians, Cyborgs, and Women*, 149.

⁴⁵¹ *Ibid.*, 154.

⁴⁵² *Ibid.*, 160.

⁴⁵³ Haraway, "Donna Haraway Interview Transcript (Interview with Hari Kunzru for Wired)."

⁴⁵⁴ Haraway, *Simians, Cyborgs, and Women*, 154.

⁴⁵⁵ *Ibid.*, 153-154.

The cyborg is a figure that undermines “the certainty of what counts as nature.”⁴⁵⁶ The cyborg is simultaneously a tool to destabilize boundaries and a figure that can suggest “some very fruitful couplings.” Since modern medicine is a realm that is “full of cyborgs, of couplings between organism and machine,” it is also a realm in which we might find potent fusions.⁴⁵⁷ Even if it is not a particularly new procedure, I think sterilization is one example of such a potentially fruitful coupling.⁴⁵⁸ Moreover, technological advancements since the 1960s have led to the development of a procedure that is not only less invasive, safer, and faster than previous methods, but also one that more readily entangles organism and machine.

For example, laparoscopic tubal ligations have multiplied since the 1960s. Laparoscopy, or the use of fiber optics to view the body's interior, allows a physician to clip, cut, tie, or burn the fallopian tubes with only a few small abdominal incisions.⁴⁵⁹ The more recently developed Essure device has further simplified the sterilization process. In a procedure that requires no anesthesia, the device—which is composed of “polyethylene terephthalate (PET) fibers wrapped around a stainless steel core, surrounded by 24 coils of nickel-titanium alloy”—is inserted into the fallopian tubes through a catheter that passes through the vagina. The design of the device induces the formation of scar tissue around the implant, and a few months after the procedure the tubes are fully occluded.⁴⁶⁰ Emerging technologies therefore continue to simplify the actual process of ligating the fallopian tubes, even as the technology becomes more and more complex. These procedures make the production of sterilized cyborgs easier and the connection between body and machine more intimate.

Since sterilization is, crucially, a bodily transformation, it requires attention to the matter, the corporeality of the body. Analyzing sterilization in terms of cyborg theory better accounts for the complexity and mutability of the corporeal body than, for example, Butler's performativity. As Elizabeth Grosz has argued, Butler does not “acknowledg[e] that the very mark of being counted, of mattering, can be accomplished only through matter, in this case, biological or organic matter.”⁴⁶¹ More generally, some scholars have called for more engagement with the body in feminist theory.⁴⁶² Susan Bordo writes that “the study of cultural representations alone, divorced from consideration of their relation to the practical lives of bodies, can obscure and mislead.”⁴⁶³ Approaching sterilization from the perspective of cyborg theory allows us to account for the materiality of the sterilized body in a way that does not merely presuppose matter. That is, cyborg theory does not efface the dynamic character of materiality. As Grosz argues, “the biological, the natural, and the material remain active and crucial political ingredients precisely because they too, and not culture alone, are continually subjected to transformation, to becoming, to unfolding over time.”⁴⁶⁴ Although Grosz is thinking about processes like evolution, cyborg theory allows us to see that the material can also be transformed by the technological.

⁴⁵⁶ Ibid., 152.

⁴⁵⁷ Ibid., 150.

⁴⁵⁸ The first tubal ligation was performed in 1880. Zurawin, “Tubal Sterilization.”

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid.

⁴⁶¹ Grosz, *Time Travels*, 78.

⁴⁶² Bordo, “The Body and the Reproduction of Femininity”; Davis, “Embody-ing Theory: Beyond Modernist and Postmodernist Readings of the Body.”

⁴⁶³ Bordo, “The Body and the Reproduction of Femininity,” 104.

⁴⁶⁴ Grosz, *Time Travels*, 79.

However, turning toward cyborg theory to think through sterilization does not entail a rejection of Butlerian performativity. In fact, I think Haraway's and Butler's theories are compatible, and, as mentioned above, I agree with Hird's performative analysis of non-motherhood. In a way, re-produced autonomy brings together cyborgs and performativity. Nonetheless, because my concern here is with sterilization as a technology that transforms the material body, I find it useful to focus on the cyborg in my analysis.

Importantly, the shifting techno-bodily configurations of a cyborg world can be taken as "crucial political ingredients" such that technological transformation adds another dimension to the politics of reproduction. The figure of the cyborg is important for a discussion of tubal ligation because, not only does the sterilized non-mother disrupt the identification of women with motherhood via her dissension from procreative norms—as does any childless woman—the sterilized body itself provokes awareness of the mutability of the body. Through bodily change, the sterilized woman challenges the prevailing production of women and women's bodies at the level of the body. This is important since the constitution of the category woman is intimately connected to understandings of the body, which are themselves connected to the materiality of the body. This challenge, then, occurs not (only) via performance or discourse, but (also) via the material, fleshy body. The very body of the sterilized woman is a potential challenge to the construction of that body as made for reproduction.

Moreover, using cyborg theory to analyze the sterilization procedure and the resulting sterilized body allows us to resist simplistic understandings of the body and agency. Haraway does not limit agency to human actors, but admits a number of "odd sorts of agents and actors"—including machines, animals, and bodily tissue—to "the narrative of collective life."⁴⁶⁵ For this reason, Haraway takes issue with those perspectives that amount to "'man makes everything, including himself, out of the world that can only be resource and potency to his project and active agency.'"⁴⁶⁶ With regard to sterilization, cyborg theory reveals the tissue that scars itself and the technological devices that transform the body as co-constructors of the collective narrative. Theorizing the body as a passive, inert medium is insufficient.

It is worth emphasizing that this cyborg analysis challenges prominent understandings of technology as something that humans wield in the service of their wills. As Haraway says of high-tech culture, "[i]t is not clear who makes and who is made in the relation between human and machine."⁴⁶⁷ In the context of sterilization, humans may make the technology that allows for the proliferation of sterilization, but that technology in turn allows for the remaking of the human. Rather than viewing technology and medicine, and the procedure of tubal ligation specifically, as merely mechanisms of domination or of negative constructions of the feminine, technology can be viewed as a co-constructor of alternatives. Medicine can be used to modify, indeed to change irrevocably, the "natural" female body. Even as medicine constructs the female body by reference to reproductive function, its techniques may be used to break that connection.

Therefore, the transformed body that results from increasingly sophisticated sterilization techniques represents a potentially "potent fusion" of cybernetics and

⁴⁶⁵ Haraway, *The Haraway Reader*, 66.

⁴⁶⁶ *Ibid.*, 67.

⁴⁶⁷ Haraway, *Simians, Cyborgs, and Women*, 177.

organism, and the sterilized woman could be an example of the disruptive boundary figure Haraway discusses. Not only may the sterilized woman as cyborg blur the machine/organism boundary—and, thereby, the culture/nature dichotomy—it also, and to the extent female is coterminous with reproductive capacity, potentially disrupts the male/female binary. The point is not that the non-reproductive female body has an inherent meaning, but that the non-reproductive female body may challenge the idea that the female body has an inherent meaning by revealing the mutability, not just of ideas about the body, but of the very body itself. Destabilizing prevailing constructions of women, the sterilized woman may contribute to an opening up of greater possibilities. It is, however, important to keep in mind that this is only a potentiality and that, for Haraway, the cyborg is dangerous if vision becomes unitary and if the cyborg ceases to be a site of contestation. In the context of sterilization, there is no necessary way in which the sterilized body will be understood, and thus attention to discourse remains crucial.

It is also crucial to note that the internal character of sterilization does not prevent it from being transgressive. That is, one may wonder how the interior, somewhat invisible procedure of sterilization may have such politically disruptive effects. First, the marking of sterilization, especially with the aid of laparoscopy, is quite visible to the physician who performs the procedure. Because of the role of the medical profession in maintaining repronormative standards, the doctor's perception is key. Second, the existence of a sterilized body is as visible or public as a person decides to make it. Although not necessarily perceptible by the eye, a sterilization can nonetheless be potentially subversive if a woman is open about her sterilization.⁴⁶⁸

Nonetheless, sterilization may disrupt the production of women as mothers and challenge the ontology of gender in a way that opens up more possibilities. Whereas the foreclosure of options—the forcing of a way of life on someone that marks a context of compulsory motherhood—hinders autonomy, it is precisely this opening up of greater possibilities that, as I have argued at various points in the dissertation, can increase autonomy. It allows for materially changed bodies in a way that has important implications for how one's life is lived and understood. In becoming sterilized, for example, a woman changes her body in a way that challenges dominant productions of woman, thereby potentially contributing to a (re)production of womanhood, especially in its relation to reproductive capacity. Although deciding to get sterilized may be understood as an individual choice, given the connectivity of the (cyborg) world, it has ramifications well beyond the self. In other words, sterilization has potential to transform larger cultural meanings regarding reproduction.

One may ask, though, whether sterilization can really be such a potentially transformative practice given its disturbing history. As Haraway reminds us, though, a practice or technology is not constrained by its origin or history. She writes: “The main trouble with cyborgs, of course, is that they are the illegitimate offspring of militarism and patriarchal capitalism, not to mention state socialism. But illegitimate offspring are often exceedingly unfaithful to their origins. Their fathers, after all, are inessential.”⁴⁶⁹ The cyborg, although it does not overcome the oppressive history of technology, is nevertheless not bound by its oppressive origins. The point is that some of the

⁴⁶⁸ A friend of mine who is childfree and sterilized had a “no baby shower” and passed around pictures of her cauterized fallopian tubes in a way that mimicked the display and rituals around pregnancy and birth and that also had the effect of publicizing her sterilization.

⁴⁶⁹ Haraway, *The Haraway Reader*, 70.

couplings of human and organism represent fruitful possibilities; it is thus unnecessarily limiting to view technology from a singular point of view that would take its origins as predetermining its future. There is an alliance here between cyborgs and the notion of re-production explored in chapter three: cyborgs represent a transformation of both machine and organism that involves both a continuity and a break from earlier instantiations of the mechanical and the organic. Moreover, just as my notion of re-produced autonomy is meant to engage with the material, bodily processes of reproduction, the figure of the cyborg directs attention to, without presupposing, the corporeal.

Given this analysis sterilization need not be constrained by its origins. However, given prevalent ideas regarding who should and should not reproduce as well as the ongoing abuse of sterilization, not every sterilization has transformative potential. Forcing sterilization on a woman serves more to impose hegemonic notions of responsible reproduction than it does to disrupt the production of woman-mother. Part of what makes sterilization potentially disruptive is its voluntariness: the idea that a woman would choose infertility destabilizes the conflation of women with reproductive capacity. Moreover, it is important to note that given sterilization's neo-eugenic implications, the voluntary sterilization of relatively privileged women may hold greater disruptive potential. However, if what it is to be fit is maintained in part through the category of the unfit then maybe the voluntary sterilization of the so-called unfit would disturb that very dichotomy. To the extent the unprivileged are taken as too fertile, their intentional infertility may challenge that association and create its own disruptions. Nevertheless, my concern is not only with the lack of respect for women's autonomy with regard to the denial of sterilization, but also to the affront to autonomy that occurs through coerced sterilization. I now turn to a discussion of how the law insufficiently addresses issues of both sterilization access and abuse.

The Regulation of Sterilization

While the proliferation of (childfree) sterilized women may undermine the woman-mother identification in a way that increases autonomy, access to tubal ligation is hindered both by the medical paradigm discussed above and the accompanying legal framework. In this section, I discuss the legal context of sterilization and argue that it simultaneously sets up sterilization as a rights violation and inadequately protects against sterilization abuse.

Although the Supreme Court has never explicitly ruled on whether there is a right to sterilization, many lower courts have extended the Court's reasoning in other cases to find such a right.⁴⁷⁰ As the First Circuit Court of Appeals has noted, "While *Roe* and *Doe* dealt with a woman's decision whether or not to terminate a particular pregnancy, a decision to terminate the possibility of any future pregnancy would seem to embrace all of the factors deemed important by the Court in *Roe* in finding a fundamental interest, but in magnified form."⁴⁷¹ Just as with abortion, though, the right to sterilization does not guarantee access to the procedure and doctors serve as gatekeepers to the exercise of the right. Moreover, despite the presumptive status of sterilization as a right, the regulation of medical sterilization is geared toward protection from sterilization abuse. In part because of the successful advocacy of anti-sterilization abuse activists, the

⁴⁷⁰ Pashman, *In re Grady*, vol. 85; Heffernan, *Matter of Guardianship of Eberhardy*, vol. 102; Gruccio, *Ponter v. Ponter*, vol. 135; Lavender, *Morris v. Sanchez*, vol. 746.

⁴⁷¹ Coffin, *Hathaway v. Worcester City Hospital*, vol. 475.

regulation of sterilization situates the procedure primarily as a violation of the right to bear children and not as a means to reproductive freedom.⁴⁷² That is, the possibility that some women would experience the *withholding* of sterilization as a violation is not considered.

In the 1970s, women who had been sterilized against their will brought numerous lawsuits to recover damages for their loss of fertility. These lawsuits failed overwhelmingly, but the sterilization abuse movement was nonetheless successful in changing sterilization policy.⁴⁷³ Following the publicity of the case of the young African-American sisters Minnie Lee and Mary Alice Relf—who were sterilized using federal funds without their knowledge or consent in Montgomery, Alabama in 1973—serious attention was paid to reforming federal sterilization policies.⁴⁷⁴ Against the wishes of physicians and some liberal feminists, the Department of Health, Education, and Welfare eventually promulgated guidelines for federally funded sterilizations. These guidelines forbade the sterilization of individuals under twenty-one years old, required a thirty-day waiting period between consent and surgery, increased regulations governing the sterilization of institutionalized individuals, and provided for regular audits of physicians who performed sterilizations.⁴⁷⁵

Anti-forced sterilization advocates were also successful in getting courts and legislatures to increase procedural safeguards. As Elizabeth Scott notes, following a Washington Supreme Court case, most sterilization reform laws came to “embody strict procedural and substantive requirements that create a strong presumption against sterilization” in cases of people determined mentally incompetent.⁴⁷⁶ Scott concludes that laws tend to “treat sterilization as an infringement of the right to procreate rather than as a means of exercising the right not to procreate.”⁴⁷⁷ That law tends to treat sterilization as a violation is also evident in state laws that protect doctors from liability if a woman changes her mind, but not from liability if they refuse to perform a sterilization.⁴⁷⁸

Additionally, Day argues that bioethical debates—which cast sterilization as a potential rights violation—contribute to the barriers some women face in attaining sterilization. This view of sterilization as a rights violation is manifest in the common assumption that sterilization's key ethical issue turns on reversibility: bioethical discussions often assume that reversibility of sterilization would resolve all ethical

⁴⁷² Day, “Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women’s Sterilization,” 54-55; Scott, “Sterilization of Mentally Retarded Persons: Reproductive Rights and Family Privacy,” 420.

⁴⁷³ Rebecca Kluchin has analyzed all such lawsuits and notes that only one out of thirty-three cases filed by victims of forced sterilization was marginally successful. She argues that this discrepancy can be attributed to the fact that the “Operation Lawsuit” cases—as the suits aimed at overturning restrictive sterilization policies were called—were able to draw upon a growing precedent regarding women's reproductive rights, particularly access to abortion. Because this law was concerned with access to reproductive health services, it was not easily applied to cases of forced sterilization. Kluchin, *Fit to Be Tied*, 148-161.

⁴⁷⁴ Kluchin, *Fit to Be Tied*, 98-101; Kluchin, *Fit to Be Tied*, 175-180.

⁴⁷⁵ *Ibid.*, 207-08; *Ibid.*, 122.

⁴⁷⁶ Scott, “Sterilization of Mentally Retarded Persons: Reproductive Rights and Family Privacy,” 391.

⁴⁷⁷ *Ibid.*, 420.

⁴⁷⁸ For example, both Delaware and Tennessee protect doctors from liability via statute. Delaware Legislature, *Voluntary and Involuntary Sterilization: Limitation of Liability*; Tennessee Legislature; Merhige, *Doe v. Temple*, vol. 409 discusses a similar statute in Virginia.

issues.⁴⁷⁹ This perspective not only neglects that it is precisely the permanence and irreversibility of the procedure that makes sterilization appealing to some women, but also fails to consider that there might be an ethical issue concerning lack of access to the procedure.

It is important to note, though, that there were activists who sought greater access to sterilization and that their efforts were partially successful. In the 1970s, such activists overturned numerous hospital policies that, for example, required spousal consent to obtain sterilization, restricted sterilization based on a woman's age and/or parity, or required that more than one doctor approve a sterilization. This advocacy effort, undertaken jointly by the Association for Voluntary Sterilization, the American Civil Liberties Union, and Zero Population Growth, failed, however, with regard to conscience clauses.⁴⁸⁰ These clauses—which include the federal “Church Amendment”—allow physicians or private hospitals to refuse to perform sterilizations or abortions. They were more difficult to overturn in part because they set women's rights “against hospitals' and individuals' religious freedom.”⁴⁸¹

Regardless of the marginal success of sterilization access activists, the medical and legal emphasis is on preventing abuse, not on affirming the right to sterilization. In part that is due to the efficacy and breadth of the social mobilization around sterilization abuse, as well as perhaps the perception that, since reproduction is women's default desire, coerced sterilization—even of those whose reproduction tends to be discouraged—constitutes a more severe harm than does denial of sterilization. Just as I argued in the previous chapter that a focus on access to abortion can obscure the way in which that access can actually undermine the autonomy of some women whose reproduction is generally not valued, I worry here that making avoidance of coerced sterilization the focus of policy and practice undermines the autonomy of those who seek sterilization, especially those whose reproduction is otherwise valued and incentivized. As Day argues, to the extent sterilization has been “discursively situated as a ‘rights violation’, women seeking sterilization voluntarily today may well be facing significant barriers to obtaining sterilization.”⁴⁸²

We must keep in mind, however, that regulations meant to guard against sterilization abuses have been inadequate. Even as sterilization is primarily seen as a violation in part because of the success of efforts to prevent coerced sterilization, anti-sterilization abuse procedures have worked imperfectly. The framework that has been set up to protect sterilization abuses has certainly contributed to the significant decrease in forced sterilization rates, but it has nonetheless failed to prevent abuses completely. That abuses have not been fully prevented reflects the inadequacy of changes in formal law to effect change in practice. Requiring consent forms, for example, does not guarantee that a woman has been fully informed about the procedure. More broadly, changes in law have not precluded other coercive practices, the continuance of which reflects, I think, the endurance of neo-eugenic ideas.

Another reason abuses have not been fully prevented is that experts' interests and rights continue to be privileged over those of their patients. Significantly, both the legal

⁴⁷⁹ Day, “Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women’s Sterilization,” 55.

⁴⁸⁰ Kluchin, *Fit to Be Tied*, 115-147.

⁴⁸¹ *Ibid.*, 147.

⁴⁸² Day, “Fitness, Fertility and Femininity: Making Meaning in the Tying of Tubes: A Feminist Discourse Analysis of Women’s Sterilization,” 54.

and policy context surrounding access to sterilization and protection from sterilization abuse are dominated by a reverence for doctors' interests and opinions over the interests of their patients. In deciding the cases that were brought to redress the injury of forced sterilization, courts "privileged physicians' judgment over patients' rights."⁴⁸³ For example, in 1977 a court ruled in favor of Dr. Clovis Pierce, who required women on Medicaid with two or more children to submit to sterilization as a condition of delivering their babies. Because he was the only obstetrician in his county in South Carolina who would serve women on Medicaid, such women had little choice but to accept his conditions.⁴⁸⁴ The court who heard the case, however, pointed to the existence of signed consent forms and concluded: "We perceive no reason why Dr. Pierce could not establish and pursue the policy he has publicly and freely announced."⁴⁸⁵ Similarly, in determining the validity of conscience clauses that restrict access to sterilization, courts have privileged doctors' interests over those of their patients. In both cases the presumption is that it is worse to force physicians to act against their judgments than it is for women to be forced to conform to physicians' judgments.

By framing the issue of sterilization in terms of physicians' rights to act on the basis of their personal and professional judgment, the topics of access and abuse are depoliticized. The physician's opinion and how it was formed are placed outside the realm of inquiry; this authorizes the expert not only to question a woman's opinion or motivation but to control her access to medical services. As Haraway writes of experts:

Who, within the myth of modernity, is less biased by competing interests or polluted by excessive closeness than the expert, especially the scientist? . . . Whether he be a male or a female, his passionless distance is his greatest virtue; this discursively constituted, structurally gendered distance legitimates his professional privilege, which in these cases, again, is the power to testify about the right to life and death.⁴⁸⁶

It is precisely this distance that I think is at work in the legal context. And as Haraway argues, the object of study simultaneously legitimates the expert's career and is constituted by expert practice.⁴⁸⁷ In obstetrics and gynecology, "truths" about the female body legitimate the expert's opinion, even as the female body can be read as an effect of medical practice. Medicine and its paradigm play a role in constructing the maternal nature of women, which it understands as an independent reality.

Autonomy, Law, and Medicine

Given this background, foregrounding women's autonomy could serve as a corrective to the continually troubling context of sterilization. Both compulsory sterilization and the denial of voluntary sterilization are opposed to women's reproductive autonomy, which, as I understand it and as I elaborated in chapter three, involves the ability to act on one's reproductive preferences within a relatively unconstrained field of possibility. Also, as should be apparent from the foregoing discussion of the history of sterilization, both forced sterilization and the denial of sterilization occurred for the supposed benefit of society at large. In both cases,

⁴⁸³ Kluchin, *Fit to Be Tied*, 176.

⁴⁸⁴ *Ibid.*, 161-67.

⁴⁸⁵ Quoted in *Ibid.*, 164.

⁴⁸⁶ Haraway, *The Haraway Reader*, 88.

⁴⁸⁷ *Ibid.*

women's individual bodies were regulated for the betterment of society, and women's own interests—indeed, their interests in autonomy—were neglected. Thus, I think that, despite the numerous critiques of autonomy, in the context of sterilization regulation, a focus on self-governance is beneficial. As in earlier chapters, especially as discussed in chapter three, the self of self-governance should not be understood as self-constituting; rather, seeing the self as produced opens up an inquiry into the production of that self. In the context of sterilization, then, we should be concerned with how women and maternity are rendered in medical and other discourse—that is, we should begin to politicize the expert and his practice.

By privileging women's autonomy I do not mean to set up an essential tension between autonomy and a notion of the social good. Rather, I seek to problematize the epistemic basis of an expert assessment of the social good. I here privilege autonomy in part because of the fraught character of expert determinations of the social good. As the persistence of neo-eugenic thinking that permeates sterilization practice reveals, expert assessments of the social good often derogate women's avowed reproductive interests. This point returns us to the argument in the first three chapters of the dissertation that the objective, view from nowhere epistemology ignores the situatedness of all knowledge practices. When that aperspectival knowledge is permitted to reign over the body in the form of law, a woman's own knowledge is disparaged and her ability to be autonomous is compromised. Partially because decisions about one's reproductive capacities are significant matters that deeply affect how one's life is lived, it is crucial that those decisions ultimately rest with the individual.

I understand reproductive autonomy, then, as one way to give content to the idea of reproductive freedom. In the context of reproductive regulation in the United States, I think it is vital to foreground self-governance.

Drucilla Cornell's work on the imaginary domain discussed in the previous chapter is insightful here. Cornell writes that

[t]he notion of the imaginary domain recognizes that literal space cannot be conflated with psychic space and reveals that our sense of freedom is intimately tied to the renewal of the imagination as we come to terms with who we are and who we wish to be as sexuate beings. . . it demands that no one be forced to have another's imaginary imposed upon herself or himself in such a way as to rob him or her of respect for his or her sexuate being.⁴⁸⁸

To allow the expert's determination of the often conflated individual and social good to reign over the individual in the form of coerced sterilization or refusal of voluntary sterilization is to restrict the imaginary and to disrespect the individual. In Cornell's words, it is to degrade or to fail to "be treated as worthy of the right to pursue sexual happiness."⁴⁸⁹ Although I do not have an understanding of preferences or desires as authentic but instead take preferences and values as produced, their status as worthy of respect is not thereby undermined.

One way of moving beyond the rule of medical expertise in the context of sterilization is to recognize that the law, itself a field of expert knowledge, is not powerless with regard to medical expertise. Carole Smith argues that, as opposed to

⁴⁸⁸ Cornell, *The Imaginary Domain*, 8.

⁴⁸⁹ *Ibid.*, 11.

Foucault's understanding that "law is fated to justify its operations by 'perpetual reference to something other than itself,'" such as non-legal expert knowledge, the juridical has the power to constrain the practice of experts and hold them to account for their actions. Through the examination of British cases dealing with caesarean sections and sterilization, Smith argues "that law and the juridical field operate to manipulate and control expert knowledge to their own ends."⁴⁹⁰ A major problem with regard to forced sterilization, however, is that the law privileges the doctor over the patient. Although women may have a formal right to sterilization, whether or not that right can be exercised is determined by medical professionals. This is one reason why the foregoing discussion of the medical production of woman-mother is important.

The ways in which physicians' denial of sterilization hinders the autonomy of those who seek sterilization parallels the autonomy hindrance discussion in the previous chapter on abortion but is worth outlining here again. First, when physicians outrightly refuse to perform sterilizations a woman's autonomy is hindered in that she is denied an opportunity to carry out her desires. Second, in barring women from acting on their preferences, the physician treats women as incapable of deciding for themselves and constitutes them as such. In other words, the paternalism that marks physician consultations over sterilization and medical literature on tubal ligations treat and play a role in (re)producing women as irrational and incapable of deciding for themselves. In fact, even when a woman succeeds in obtaining a sterilization from a doctor who is hostile to the idea, she may be treated paternalistically. She may also feel pressure to present her reasons for wanting sterilization in a way that comports with dominant, normalized discourses of womanhood and reproduction. One childfree woman assured her practitioner that she would adopt if she later decided she wanted children, even though she was certain she never would.⁴⁹¹

Third, since the refusal or reluctance of the physician to perform a tubal ligation emanates from the idea that reproductive capacity is fundamental to women's bodies and identity, the denial of sterilization re-entrenches the notion of women-mothers. This is a problem, not just because it imposes a specific course of life on women, but also because rendering maternity fundamental to the female body and identity contributes to and obscures the processes by which the production of that body and identity occurs. The existing legal and medical framework, then, is incompatible with the idea of reproducing autonomy. Since my view of autonomy rejects the notion of a fundamental or authentic maternal identity, this appeal to maternal essence limits autonomy precisely because it is antithetical to a deep productionist perspective. Importantly, reproducing autonomy is compatible with the fact that maternity is central to some women's identity; the problem arises, though, when the notion of essential maternity is used to limit women's reproductive possibilities.

Finally, in denying a (childfree) woman the ability to ligate her fallopian tubes, medical professionals deny her one significant avenue by which she can resist the identification of women with motherhood. They deny her the ability to be a cyborg boundary figure and in doing so limit the ways in which she can participate in the ongoing production of gender, women, and reproductive function. Thus, it is not just that denying sterilization compels women to continue being potential reproducers, but

⁴⁹⁰ Smith, "The Sovereign State v. Foucault," 283.

⁴⁹¹ In general, the process of obtaining a sterilization compromised many women's integrity and sense of self. Campbell, *Childfree and Sterilized*, 142-43.

that in doing so women seeking sterilization are also denied an opportunity to resist compulsory motherhood and disrupt the identification of women with mothers.

I want to emphasize, however, that a woman should have a choice regardless of her motivations. She need not intend to disrupt the notion of woman-mother in order for her autonomy to be violated by the denial of sterilization. It is also important to remember that, regardless of intentions, our actions do have wider social impact. Recall from chapter three that the picture of the individual that animates re-produced autonomy is not an isolated self but one that simultaneously constitutes and is constituted by the social in a process that blurs a clear division between self and society. That is, one consequence of re-producing autonomy is that autonomy becomes dislodged from its atomistic origins: in the networked cyborg world, an individual's actions have ramifications well beyond the self. It is for this reason that the subversive is privileged on my account. It is neither the case that autonomous actions are necessarily subversive nor that subversive acts are necessarily autonomous, but that the subversive contributes to a context of increased possibilities and situated reflection that is central to re-produced autonomy.

It is also important to keep in mind that a single act can be an instance of both resistance and conformity. For example, a woman's childlessness could be understood both as resistant to dominant gender ideologies and also as conforming to a consumerist ideology. One reason women cite for being childfree is their desire to have more money to spend on themselves rather than incurring all of the expenses that go along with childrearing.⁴⁹² Moreover, it is worth noting that there is a similar strand of Malthusian discourse in both (neo)eugenics and the childfree movement. Thus, a woman's voluntary sterilization may be read as and may be explicitly joined with a call to others to do the morally responsible thing by getting sterilized as well. Additionally, a request for sterilization from a woman without children could reinforce sexist notions about mothers' self-sacrificing nature. In any case, discursive analysis remains important because it provides a way of assessing both the destabilizing and reifying effects of the cyborg. My point here is to argue that sterilization is potentially disruptive.

While these aspects of the current framework are problematic, I think there is potential for law and medicine to change in a way that would increase autonomy. With regard to law, I would not recommend doing away with waiting periods or requirements that women receive written information on the details of the tubal ligation. While similar measures could be considered paternalistic in some contexts, given the ongoing existence of sterilization abuses, such measures are crucial for the women whose autonomy is most threatened by coerced sterilization. Importantly, such women's autonomy, like that of women denied sterilization, is hindered by their lack of options. Just like the woman who cannot access sterilization, the woman who has it forced on her is subject to the will of a doctor who thinks he knows what is best for her. As mentioned above, women who are forcibly sterilized are also understood as incapable of properly deciding for themselves. Moreover, the doctor's decision to sterilize a woman without her full knowledge or consent is rooted in the idea that she is overly fertile. The woman who is coerced into sterilization is viewed in terms of reproductive capacity, although her reproduction is viewed as dangerous and irresponsible.

⁴⁹² May, *Barren in the Promised Land*, 196-207.

Instead of abolishing safeguards, then, I would recommend guidelines that place a strong presumption in favor of carrying out a woman's desire. Rather than placing the burden on a woman to justify her decision to get sterilized, the burden would be on the doctor who would deny her that option. A physician who would deny a woman a sterilization would have to put forth strong reasons for denying the procedure: simply pointing to the possibility of future regret or to her childlessness would not suffice. I should also say that this would apply only to physicians who are not opposed to sterilization in general. I would not want to force those who are opposed to sterilization to perform the operation, although it is worth thinking about the ethics of the physician who is unwilling to perform procedures basic to the practice of obstetrics and gynecology yet nonetheless enters that practice.

One might object to this formulation by arguing that the autonomy of the woman who comes to regret her tubal ligation would have been better served had she not had the surgery. I do not think, however, that we can assume that such a woman's later inclination is somehow better or more autonomously formed than her preference at the time of sterilization.⁴⁹³ Although there is something to be said for maturity, a later preference is not obviously better simply because it arises later in life. In fact, a woman dedicated to remaining childfree may get sterilized as a way to guard against a future desire to have children. While certain views of autonomy are skeptical of such decisions because they foreclose future decisions, I allow for such preclusion. Autonomy entails living with the consequences of decisions instead of being relentlessly protected from potential adverse outcomes. In my view, privileging women's autonomy in a discussion of sterilization means that the possibility of regret is not taken as a reason for overriding women's expressed preference.

Another important issue with regard to regret pertains to what is singled out as that which should be feared. In the context of medicine and sterilization, it is presumed that regret over infertility is that which should be guarded against. This understanding ignores that regret may very well ensue after childbearing and that having a child is irreversible and forecloses future possibilities. However, because childbearing is taken as the default preference and as normal for women, the regret of parents is obscured. To prevent or discourage a woman from undergoing sterilization because she may regret it presents lack of fertility as the chief reproductive outcome to be feared. This logic and its accompanying discourse seek to normalize reproductive practices.

Also, the presumption that a woman is going to regret her decision is often rooted in an understanding of inherent maternal desire and thus rejects a constructionist perspective. To deny a woman a sterilization based on the possibility of future regret is to force a naturalized conception of the female body and reproductive desire on a woman who is explicitly trying to become infertile. This limits the modes of life open to her and hinders autonomy. Furthermore, not to respect a woman's avowed desire regarding her body is to take a paternalistic attitude toward her. It is to disrespect her own assessment of her future desire in favor of someone else's. Although the doctor's opinion may be informed by medical research, this research assumes and is part of what establishes maternal desire as "normal." Young women with no children have the hardest time getting their tubes tied because their desire for sterilization most greatly challenges and disrupts predominant understandings of the normal woman.

⁴⁹³ Benn and Lupton discuss this as well. Benn and Lupton, "Sterilisation of Young, Competent, and Childless Adults."

Even though the young and childfree experience the most difficulty in obtaining sterilization, their very requests for sterilization could help disrupt the naturalization of maternity that marks the medical paradigm. Although, as the foregoing discussion demonstrated, the sterilized body and the childfree women who seek sterilization are understood in terms of loss and dysfunction, this does not foreclose the possibility of a paradigm shift. Kuhn argues that when a prevailing paradigm fails to conform to empirical investigation a paradigm shift may occur. There may be holdouts who will refuse to shift their framework, and it may take quite some time for a different framework to emerge, but scientific paradigms are not static.⁴⁹⁴ A proliferation of childfree women seeking sterilization could prompt an examination of the idea that reproduction is fundamental to female bodies and identity.

Conclusion

I want to be clear that, despite my focus in this chapter on the disruptive potential of voluntary sterilization, I do not think that access to sterilization is more important than preventing sterilization abuse. Rather, I think voluntary sterilization and impediments to the surgery have not been adequately examined and are worth consideration. Nonetheless, I have tried to resist either-or characterizations of sterilization as either presumptively damaging or emancipatory. As Haraway urges, we should resist narrow, unitary perspectives and instead see from multiple, even contradictory standpoints. From one perspective sterilization may represent violation and coercion; from another it may represent emancipation. The point is not to take one or the other as the best or most objective way to view the practice; rather, the point is “to see from both perspectives at once because each reveals both dominations and possibilities unimaginable from the other vantage point.”⁴⁹⁵ I hope that foregrounding autonomy can help us see the problematic dominations that characterize both forced sterilization and the denial of sterilization.

This is not to say that autonomy is the only frame through which we might usefully view sterilization. Dorothy Roberts, for example, has argued that reproductive freedom should be understood as an issue of social justice since the regulation of reproduction has been a key element of racial oppression. I agree but do not think that foregrounding a reproduced notion of autonomy precludes attention to issues of racial oppression or social justice. In fact, Roberts herself writes: “[Slavery] marked Black women from the beginning as objects whose decisions about reproduction should be subject to social regulation rather than to their own will.”⁴⁹⁶ Lack of autonomy and social oppression are linked. In this chapter I have investigated how decisions about sterilization continue to be subject to social and medical regulation while not assuming the existence of an authentic will.

Focusing on voluntary sterilization is additionally important because, as Franke says of her focus on repronormativity, it can make us “cautious about developing strategies in which assimilation to a white, middle-class hetero/repro norm stands for the absence of coercion, and the restoration of a non-biased natural set of choices.”⁴⁹⁷ To

⁴⁹⁴ Kuhn, *The Structure of Scientific Revolutions*.

⁴⁹⁵ Haraway, *Simians, Cyborgs, and Women*, 154.

⁴⁹⁶ Roberts, *Killing the Black Body*, 23.

⁴⁹⁷ Franke, “Theorizing Yes,” 196.

the extent there is a tendency to figure the reproductive situation of relatively privileged women as the ideal, the examination of the context of compulsory motherhood, including some women's difficulty accessing tubal ligation, can make us question that tendency.

Finally, none of what I have argued with regard to the subversive potential of sterilization should be taken as a valorization of non-motherhood over motherhood. My point is not to devalue motherhood, but to think about how a specific contraceptive practice can challenge the naturalness of maternity and thereby open up more room for women to maneuver. I worry that maternity and maternal desire have been naturalized and rendered unquestionable. To foreground reproduced autonomy in examinations of reproduction is both to reassert a concern for the individual woman who is affected by reproductive policy and norms into public discourse and to disrupt the connection of the feminine with the maternal. In destabilizing the relation between maternity and women, gender itself may be brought into crisis.

CONCLUSION: ON EXPERTISE, TECHNOLOGY, AND AFFECT

I want to begin the conclusion by mentioning the limitations of the analysis herein. While this is a dissertation on reproductive autonomy, it does not give an exhaustive treatment of the issue. Rather, I have focused on the regulation, limitations, and possibilities of two medical procedures. This does not even begin to cover the breadth of reproductive issues that might also be helpfully analyzed with re-produced autonomy or that are important to reproductive freedom. Although I take abortion and sterilization to be important to reproductive freedom, I do not understand them as synonymous with or as the touchstone of reproductive freedom. The way I think of autonomy in the dissertation, then, is particularly suited to the question of how to think about reproductive autonomy with regard to abortion and sterilization in the contemporary United States.

Since the dissertation is focused on two specific contexts, in conclusion I want to consider the politics of abortion and sterilization together. In particular, I draw out the themes of expertise, technology, and affect that have emerged in the dissertation.

Largely because of advances in medical and technological knowledge, reproduction has become increasingly technologized. In this technologized reproductive landscape, reproduction—for better or worse—is understood as a phenomenon that is ultimately under the control of humans and our technology. Medical expertise makes this human control possible. Thus, medical practices such as abortion and sterilization are bound up with expert knowledge. Medical expertise should not be understood as inherently good or bad, as necessarily leading to either liberation or oppression. Rather, it has a complicated character that is revealed by attending to how it operates in the politics of sterilization and abortion.

As I explicitly argued in the final chapter, medical expertise plays a role in the production of woman-mother and results in limited access to sterilization procedures for some women. I argued that in the realm of sterilization the law and courts tend to privilege medical expertise over women's interests. In *Carhart*, however, there was a different relation between legal and medical expertise. An aspect of *Carhart* that I did not discuss much was the Court's dismissal of medical evidence that intact dilations and extractions are sometimes necessary to protect women's health. The Court asserts that there is medical uncertainty over this claim, although in her dissent Ginsburg disputes this claim, arguing that most experts agree that the procedure is sometimes medically necessary.⁴⁹⁸ Although it is surprising and troubling that the Court would uphold a ban on a procedure that is disputably necessary for women's health, the fact that it does so demonstrates the point that legal expertise is not beholden to medical expertise.⁴⁹⁹

In the case of *Carhart* I think that medical expertise should have been taken more seriously. Although I critiqued the medical paradigm with regard to sterilization, my point was not that medical knowledge has no place or lacks all credibility, but that it does not represent a complete and accurate representation of some independent reality. It should be understood as a situated knowledge, as a knowledge that is acquired from a perspective. Understanding it as originating from a certain location is not itself to discredit it but to cease to uphold it as a knowledge acquired from some Archimedean point. Moreover, its point of view and commitments are not immune to critique. Thus,

⁴⁹⁸ Justice Ginsburg, *Gonzales v. Carhart*, vol. 550.

⁴⁹⁹ Smith, "The Sovereign State v. Foucault."

my critical inquiry into medical expertise in chapter five should not be taken as a total discrediting of medical knowledge.

In fact, it is this medical knowledge that opens up the possibility of the cyborg boundary figure. Thus, both abortion and sterilization can be understood as technological processes that have the potential to open up options in a way that might enhance autonomy. However, it is important to note that an increase in options and the increase in control over reproduction opened by these practices are not without peril. Unsurprisingly, the shift to this understanding of procreation, especially the call for women to control this most fundamental of human activities is potentially radically destabilizing. I think that it is against this background that the emergence and power of discourses of regret in connection with reproduction can best be understood.

Put another way, I think the discourse of post-abortion and post-sterilization regret and their accompanying syndromes can be understood as a technique of re-normalization the purpose of which is to keep women's decisions in line. In this way, we can understand regret and the fear of regret in terms of the politicization of affect in which affect comes to play a central role in normalizing processes. In fact, regret becomes such a looming presence, such a thing to avoid, that the existence of post-abortion or post-sterilization regret is asserted in order to justify the limitation of women's options with regard to reproduction. Fear of regret keeps women in line at the same time that fear is used to justify the limitation of options.

I thus think that the politics of affect functions to circumscribe the destabilizing potential opened up by technology and, specifically, women's control of reproduction. Through medical, legal, and popular discourses of regret and syndrome, remorse is produced. I would argue, for example, that one of the purposes of recent state legislation that would require a woman to look at an ultrasound before undergoing an abortion is to try make women view the fetus as a separate human being. Such legislation surely violates Cornell's view of the imaginary domain in its imposition of a specific meaning on a woman's pregnancy. It seeks to disallow women from developing their own meanings of their pregnancies. Such ultrasound legislation works to construct and normalize certain emotions by producing and imposing a specific understanding of fetuses on the women who would abort them.

The further appeal to those emotions, though, presents them as settled and incontrovertible — after all, how can you dispute a woman's claim that she feels remorse? There is, then, a way in which regret is taken for granted: because it presumably originates with an individual's experience it represents that person's truth and cannot be questioned. Precisely because affect is understood as that which is indubitably dependent on a personal, subjective experience, it is rendered unquestionable—outside the bounds of the political and beyond hermeneutics. While I also privilege the individual's assessment of her situation and preferences, I do not simultaneously turn a blind eye to the context within and the ways through which those preferences are produced and those experiences understood. While I would not discount a woman's feelings of regret, I do want to turn a critical perspective on the production and politics of regret. None of this is to say that the potential for regret is not worthy of a woman's consideration, but that we should not accept it as unquestionable. If I have demonstrated anything in this dissertation, I hope I have destabilized and complicated the assumption that the individual and her experiences, situation, and preferences can be adequately understood in abstraction from the political and social.

Another important thing to note about the logic of post-abortion and post-sterilization regret is that regret is held up as a devastating consequence, as if regret were something to be avoided at all costs. As discussed in chapters four and five, I think regret is better understood as a consequence of autonomy. Being autonomous involves being allowed to make decisions that we may later regret. Underlying the politics of post-abortion and post-sterilization regret is the idea that it is better to protect future selves from experiencing a certain negative emotion than it is to allow present selves to make their own decisions. I think, in fact, that discourses of regret serve more broadly to keep people in line with hetero- and repro-normative ideals. Women, in particular, are told they will regret not getting married and having children. The image of the relentlessly ticking biological clock works to keep women on a normative timeline as well. Although technological innovations are continually pushing back and twisting this picture of the inevitable loss of fertility, the image is powerful and works to re-entrench certain normative ideals and timelines. The prominent discourse of regret obscures that many people who have children in a normative way regret that decision.

Re-produced autonomy is meant to provide a basis for respecting the emotions (among other things) of individuals while not precluding analysis of the production of those emotions. In a Cornelian fashion, it is about allowing women to give their own meanings to their reproductive decisions and processes. The point is neither to impose certain visions on women and their lives nor to shelter women from other views. The point is to allow women to decide for themselves but to maintain a concern with the context within which decisions are made and the ways in which the context contributes to the production of the self. Along these lines, it is important to note that neither abortion nor sterilization has an inherent meaning. Just as medical expertise has no inherent meaning, neither practice is inherently liberating or oppressive. My discussions of these practices have demonstrated that each practice can be understood from multiple angles. To see from different perspectives is to reveal the situatedness of one's own perspective and, in the process, come to a more complex understanding. Politically, it is crucial to undertake this multiple viewing strategy because by doing so we mitigate the risk of re-entrenching dominations and are reminded that our own view is not a view from nowhere.

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