RECOGNIZE ME:

EMBODIED RECOGNITION AND THE DILEMMA OF ABORTION

by

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A thesis submitted to the

Faculty of the Graduate School of the

University of Colorado in partial fulfillment

of the requirements for the degree of

Master of Social Science

Humanities and Social Sciences Program

2013
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April 18th, 2013
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ABSTRACT

Because abortion was justified primarily as an issue of privacy contingent upon the trimester framework of pregnancy in the landmark case Roe v. Wade, it has been left vulnerable to radical revision, which has put the right itself in question. Though the privacy rationale has a place in the abortion argument, it is insufficient to justify the right to abortion in multiple ways. First, it does not acknowledge prior inequality in the private, nor the social factors that limit the right to privacy. Second, as articulated to Roe, only the right to decide is protected, not the right to access. Third, because it is still grounded in the individualism of liberal theory, and not in women’s autonomy, women’s authority to make that choice knowingly is delegitimized. And finally, the private context of the decision is not sufficiently differentiated from the interest of the state. In the context of the 1978 by the Pregnancy Discrimination Act, I further argue that denial of the right to abortion potentially functions in a similar fashion.¹ To the extent that women are denied control of decisions regarding their pregnancies, and hence of their futures, in a way that men are not, denial of the right to abortion constitutes discrimination.

¹ The Pregnancy Discrimination Act of the 14th Amendment, was passed so that pregnancy-based cases of discrimination could be adjudicated under the rubric of equal protection and sex discrimination law; that “classifications on the basis of sex includes classification on the basis of pregnancy.” (Ginsburg, “Thoughts on Autonomy” (1984), p. 3).
To more completely address these weaknesses of the privacy argument in the context of abortion, I will first argue in this paper that as a normative framework for justice, recognition has the capacity to address problems that arise from the confluence of identity, power, and the role of capital; it thus provides a much stronger theoretical and practical basis for the right to abortion than the right to privacy, and draws attention to the ways lack of a right to abortion detrimentally affects women and their chances for social, economic, and political equality. Next I will introduce the concept of embodiment as a way to reposition women, their experiences, and their agency as the foci of the dilemma, and recognizing the way social support mechanisms impact women’s potential choices and their outcomes, we can move toward recognition of the abortion right as part of a broader reproductive rights and justice framework that supports a similarly strong understanding of equality. I will also use this framework to interrogate whether the practice of recognition better challenges conventional treatments of the abortion conflict in a way that moves social and political struggles toward the broader goal of gender justice, and as a way to secure the abortion right as a permanent one.

The form and content of this abstract are approved. I recommend its publication.

Approved: Lucy Ware McGuffey
DEDICATION

I dedicate this work to my grandmother, Mary Margaret Briddick.
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CHAPTER I
INTRODUCTION

Rethinking the Right to Abortion

There is no debate that abortion remains one of the most controversial social issues in the contemporary United States. My years working in a clinic that provides abortion services caused me to think about how or whether abortion altered women’s identity in some fundamental way other than in the moment of having an abortion, and in a way that was way beyond the confines of privacy. Drucilla Cornell argues in *The Imaginary Domain* that women require what she calls the minimum conditions of individuation in order to achieve an equivalent chance to participate in social and political life as equal citizens.\(^2\)

One of those conditions is the right to bodily integrity, which demands the right to abortion, in order for women to be able to project their current and future selves. Similarly, Susan Bordo argues in *Unbearable Weight* that the fight for the right to abortion is about more than the right itself, but about women’s personhood. These two trains of thought led me to question why, with so many thoughtful assessments of the problems of abortion, many are still trying to work in the framework of privacy and choice, when they both clearly seem to be inadequate for the task today, and, if so, what is a better way to approach it?

I am going to argue here that the practical theoretical framework of recognition can help us move beyond the categories of privacy and choice, toward a more substantive justification for the right to abortion, because recognition is grounded in the knowledge that identities carry value, which in turn has a direct bearing upon rights, participation in

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social life, and equality. Thus among Axel Hornet’s three categories of recognition: love, rights, and solidarity, I focus primarily on the role of rights in the context of abortion. I do this first, because rights encompass the ideal of the universal dignity of persons; second, in the formation of self-respect, rights designate one as a morally responsible agent; and third, rights signify the ability to discursively assert claims of rights violations. And, I would add, because rights are empirically documented instantiations, we have something to look to so we can evaluate the outcomes of those rights based on how particular rights actually function in real life.

I begin my project (Chapter One) considering the limitations of the privacy argument for the right to abortion, which fall into four main themes. These are: First, the right to privacy does not acknowledge inequality in the private, nor the social factors that limit the exercise of privacy; Second, as articulated in Roe, privacy only protects the right to decide, but does not ensure access; Third, because privacy remains grounded to a certain extent in the abstract individualism of liberal theory, and not explicitly in women’s autonomy, it delegitimizes women’s authority to make that choice knowingly. And finally, the private context of the decision itself is not sufficiently differentiated from the public/political interest of the state, which has its own right to interfere with procuring an abortion at specifically defined points. All of which has left the right to abortion extremely porous.

I therefore argue that a theory and practice of recognition provides a stronger foundation for the right to abortion than the right to privacy alone for many reasons (Chapter Two). Coming from the tradition of critical theory, recognition raises questions about the categories we use to organize our experiences. Presupposing intersubjectivity,
it can address the extent to which the characteristics that compromise who we are, come to bear on our place in the world, and what we are able to accomplish in it. Addressing identity in this way challenges conventional interpretations of gender in the context of rights and the false binarisms within public/private distinctions. Further, because recognition is also an emancipatory framework, it is an appropriate way to frame the right to abortion when abortion is included in the broader struggle for reproductive justice. Hornet’s recognition project seeks to establish a normative theory of social justice founded on the fact that social conflicts often revolve around identity-based issues. One advantage of recognition that it opens up traditional rights frameworks, with their abstract, atomistic subject, to one that situates the individual as a product of, and existing in, the context of intersubjective community.

But recognition has its own limitations. It is often limited, at least in Hornet’s analysis, by its adherence to the Hegelian framework of a phenomenology of consciousness, demonstrated by his reliance on various psychoanalytic theories. While I would not argue against the possibility of psychological damage as a result of our experiences, because there certainly is, our infant and childhood bonding experiences should not be viewed as foreclosing, nor over-determining, all the social interactions that follow, nor whether we will necessarily end up in conflicts over them in the future. Further, while Honneth uses events such as rape and abuse within love-based relations as examples of the manifestation of a type of disrespect, he fails to acknowledge the gendered nature of these phenomena, nor their remedies. This is an example of the ways he fails in general to explicitly acknowledge the embodied nature of injuries that do not necessarily emanate from conflicts grounded in psychological damage in infancy.
To remedy these shortcomings, embodiment must be a critical part of recognition, and with this additional perspective, recognition theory becomes a solid foundation for the right to abortion (Chapter Three). Recognition is enhanced by an embodied approach to the extent that we are governed, formally and informally, based on the value of our physical characteristics. If social conflicts are strongly grounded in struggles for recognition of identities, not of our consciousness, then recognition must be grounded in an understanding of the primacy of the body, as bodies are the boundaries of rights bearing subjects, and these boundaries, I contend, are gendered. If rights are a claim for recognition, as Honneth asserts, and abortion is a gendered right, then the right to abortion is a claim for the recognition of the moral and bodily autonomy of women, and of abortion as an embodied experience. Embodied recognition further addresses the limits of Hornet’s approach because it includes an understanding that opportunities for self-realization are often limited to those with access to the necessary resources, and to that extent resources are another source of identity conflicts. As Lois McKay argues: “the middle classes have a certain relation to the body or habitus that enables them to represent themselves and their experience in terms of a discourse of ownership. This conception of self as property has not been historically available to less-privileged groups and, as a consequence, they are unable or dispositionally disinclined to reconfigure their experiences in such a manner.” Embodied recognition thus allows us to take into consideration why it is that different bodies have different values that matter in relation to rights and resources. As such, Cornell reasons, “it is only on the basis of some account of women’s lesser worth that one could allow the state to regulate our bodies.”
To conclude, while the privacy aspect to the right to abortion has a place in terms of protecting women who obtain them, and protects certain personal expressions, it has clearly not been enough to sustain the right, nor make it stronger. It thus needs to be made explicitly clear why abortion matters to women’s ability to be treated as unconditionally equal citizens, and to be able to interpret the meaning of citizenship for them.
CHAPTER I

EQUALITY AND THE LIMITS OF PRIVACY

Introduction

In the United States, anti-choice activism, whether in the courts, conservative mass media culture, or anti-choice rhetoric, have largely succeeded in erasing women from the abortion discourse, replacing them with hyperbolic rhetoric and questionable research on the origin of fetal life. For those who oppose a right to abortion, we hear little conversation, beyond the nine months of pregnancy, about what access to abortion means to women. Difficult questions that impact the decision to continue a pregnancy are met with silent disregard as social safety nets that can support a woman and her pregnancy, as well as future childrearing, are undermined or absent. The problem is compounded by arguments against a strong welfare state that potentially supports a woman’s choice to continue a pregnancy when she might not otherwise do so. To that end, we need a more substantive approach to abortion specifically and reproductive rights in general such that the right to abortion no longer hinges on a battle between a woman and her fetus, nor the choice between giving birth and being able to provide for your family. This approach must also include a reconsideration of the infrastructure needed to support women and families regardless of the choice a woman makes. And, so far, neither the right to privacy, nor the right to equal treatment, has been used sufficiently to justify a universal right to an abortion in the United States.

As such, my project in this thesis is to begin to craft a stronger justification for the right to abortion that builds on some of the positive aspects of privacy and equal treatment approaches. I will argue that a feminist engagement of the practice of
recognition, first articulated by Hegel and made contemporary by Axel Honneth, more successfully address social injustices generated when we identify and treat people as “other” based on their gender and sexuality. What it does for the abortion argument is to be able to frame it in a way that it is situated among a series of interlocking social, cultural, and economic factors that influence how the abortion decision is made, and to what effect.

In Chapter one, I will outline the inadequacies of the privacy argument as a justificatory framework for abortion. I will then address the debate as an issue of equality that still fails to fully articulate the specific harm involved in the negation of the right to abortion as it relates to sex and gender discrimination. To do this I will trace current problems of equality to their origins in early liberalism and contract theory. The relationship of equality and embodiment leads us to a critique of liberal political theory as a masculinist discourse that abstracts the categories of “woman” and “gender” such that women’s individuation as distinct, morally autonomous beings is denied. For instance, the language of abortion law erases women by claiming “protection” for fetuses as independent entities, but fails to take into account the ways forced or coerced pregnancy interferes with women’s image of themselves, how they live up to those images, and the lived experiences that accompany them. This applies to both laws that affect women directly and those that impose undue burdens on facilities that provide abortion services. “It is important to examine the interconnections between subjective forms and impersonal forces, partly because, as identity increasingly becomes the focus for neo-liberal modes of social control, the nature of agency and resistance is altered.”³ As society becomes

increasingly complex, the ways in which individual agency is mediated becomes increasingly and simultaneously complicated, this applies very pertinently to the abortion decision.

In Chapter two I explicate the role of recognition and its origins in early critical theory. I do so because the role of labor and production have a profound effect on social outcomes that are in turn related to the multiple aspects of our identity, whereas we interpret, and are interpreted by the value of our labor. Further, women’s capacity for work as well as the meaning and value of her labor are intricately tied to her potential for pregnancy. Because critical theory and recognition theorize the individual and identity as the product of intersubjective relations, recognition move us away from abstract ideals of citizenship and personhood toward an embodied language that more specifically articulates the harm that results when women lack the abortion right. Recognition operates on an individual level to address individual (political) identity conflicts that potentially affect a woman’s “imaginary domain,” as well as the three forms of recognition that constitute the relation-to-self, and on an institutional level to address the ways misrecognition or disrespect operates at this level that enforces a woman’s distorted view of herself, with or without an abortion. ⁴

In the final chapter, I will push for a synthesis of embodiment and recognition as a way to consider that our bodies cannot be separated from our experiences in them. Bodies serve as boundaries for rights bearing subjects, and all bodies are gendered in some way. Abortion, because it happens to people who are sexed as female, is a specifically sexed and gendered right that cannot be approached in any way other than as

⁴ Cornell, Drucilla, The Imaginary Domain: Abortion, Pornography, and Sexual Harassment. New York: Routledge, 1995. Honneth defines “self-relation” as “the consciousness or feeling that a person has of him-or herself with regard to the capabilities and rights he or she enjoys” (Disrespect, pp. 135-36).
an embodied experience that shapes women’s identity, and is at the same time, a claim to be recognized as morally and bodily autonomous beings. Embodied recognition thus provides a richer understanding for the right to abortion because it can account for the fact that some aspects of self-realization are limited by access to resources, and as such can be another source of identity conflicts, and that these conflicts may have a direct affect on the efficacy of rights.

Privacy and the Private

The “Private”

The public/private separation was first articulated in Greek law and philosophy, where the polis (city-state) was distinguished from the oikos (household). The polis was a realm of free men “whose economic virtue had earned them citizenship and the right to participate in collective governance”; the “private economic sphere” was populated by “wives, children, and slaves” who lived as “subordinates and ancillaries to autonomous male caretakers.”5 These realms, though certainly intertwined, were considered unrelated to the political world, whose main concern was limited to commerce and war. Thus, one basis for modern political thought was an understanding that the family was a sphere of natural inequality properly governed by a male head from within, and by a male-led body of decision makers from without. While it did not yet have the connotation of “sanctuary” that developed in modern political theory, it was nonetheless understood to as an extension of male rule.

But for modern political man the domestic, home, was where man cultivated his public spirit, because the family represented man’s private dominion. “While classical thought tolerated the private and celebrated the public, modern liberal thought often reflects an opposing tendency to celebrate the private as an essential domain for the expression and cultivation of personal identity, freedom, and responsibility.”⁶ Men were obligated to take the privileges of freedom and responsibility into the public world of citizenship; women were to confine those traits to private expression in the home. After men became “free” with the end of monarchical rule, they were able to order their family relations as they saw fit, and as far as those relations mirrored what they perceived to be the order of relations in nature. According to John Locke:

> To understand political power right, and derive from it its original, we must consider what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons as they see fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.⁷

Thus men begin in a perfect state of freedom, that is their natural condition, and from here they order their world. “From this perspective, the “public” came to be understood as the socially constructed realm of power and domination and (following Aristotle) as the site for “natural” freedom, free from relations of power and domination properly understood.”⁸ Conversely, what domestic life became a domain of unchecked power and male domination, where “natural” inequality became entrenched and reified in law, and where “privacy” later became problematic. Pregnancy is paradigmatic of women’s

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⁶ Ibid.
subordination in both spheres: defined by the domestic/private realm as dependent moral and material beings, marked as incapable of participation in civil society, and confined to a narrow space in which their individuation was virtually impossible. Abortion is thus controversial because it is a move that seems to reject these paradigms.

Susan Moller Okin argues that two major ambiguities prevail when theorizing about the public and private, but are necessary to understand for the purpose of analyzing real political problems that primarily stem from treating the spheres as a relatively undifferentiated binary. The first ambiguity concerns the fact that both the public and the private spheres contain two pairs of distinctions within them: between “state and society (as in public and private ownership),” and between “non-domestic and domestic life.”9 If we were to break experience down even further, even this additional layer of analysis does not cover all the ways our life activities overlap and create even more diverse spheres of experience. Delineating life into two strictly opposing realms is insufficient for theorizing about women and the family because daily life is not so clearly delineated. The second ambiguity results from the gendered division of labor within the spheres of the public/domestic dichotomy itself. “Once we admit the idea that significant differences between men and women are created by the existing division of labor within the family, we begin to see the depth and the extent of the social construction of gender.”10 In short, our public and private worlds are not cleanly distinct in the way early, and to some extent later, political theorists have urged. As such, when women are relegated to a discreet realm, ideologically or in fact, it becomes difficult to comprehend where women’s right to privacy emanates from. Problematically, privacy rights in the positive sense of self-

9 Ibid.
protection and individuation seem to accrue only to those with unquestioned (public) political rights, that is, a male, rights-bearing citizen. For those who reside primarily in the private, rights are more difficult to assess.

Carole Pateman argues that it was crucial for men in the early years of liberalism to argue their rule over women was necessary, as was women’s confinement to the domestic world “in order to head off the revolutionary implications for sexual relations of the doctrine of natural freedom and equality.” Naturalization of the spheres in early liberal political doctrine was directly related to efforts to control women and their sexuality at a time when a philosophy of universal freedom was emerging that women recognized could positively alter their relationship to public life. The patriarchs seemed also to anticipate this connection among women, sex, and the family, and, controversially, women might do the same and connect the “Rights of Man” to themselves and thus have a strong claim for their equality with men.

Privacy

The rights of citizenship for women were tied to the politics of the home to the extent that the duties connected to it substituted for the duties and responsibilities of political (public) citizenship. Because women’s relationship to the home was intimately tied to the view that bearing children is the natural outcome of marriage, defending abortion on the grounds of privacy avoids questions about whether a pregnancy impinges on women’s participation in political and social life. Privacy’s relationship to the private must be integrated with the understanding that the “private” is not unproblematic. When

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privacy is therefore confined to activities in the private sphere, it is difficult to locate the origin of the right itself and how it is to function outside of the private, to cover behaviors and decisions that are not strictly confined there. For a broader, more useful application of privacy, the legal and theoretical categories of “public” and “private” must cease to been seen as a natural result of the relation between women and men, family and state, and instead be considered as conventional constructed categories. Laura Kipnis argues that our current standards of privacy are “a modern invention, tied to the rise of the middle class, the invention of the modern autonomous individual, and the consequent transformations of daily life into an elaborately complicated set of negotiations between body, psyche, and the social.”

Thus the existence of a realm deemed “private” is a historical moment, not a thing or place automatically granted. Because it is conceptually tied to other spheres of the social world, and those spheres are governed by the value we grant to particular identities, women’s relationship to privacy is complex in terms of how and where those boundaries are drawn.

“Privacy” creates a sphere where the government may not intrude, while it simultaneously creates another sphere upon which other citizens may not intrude, and within each certain relationships are protected. “Tellingly, the political strategies lawyers originally adopted to win the privacy right [that encompasses a right to abortion] in the courts included de-emphasizing women as independent actors and emphasizing either the socially-sacred private marital relationship or the esteemed private physician/patient relationship.” Thus, even in the late 20th century, the legal community still found it necessary to argue that women’s right to privacy was grounded in her relationship to

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male authority rather than emanating from her status as a fully equal, rights-bearing citizen. The privilege of the private relationships acknowledged in Roe however, did not account for women who did not have access to either a spouse or a private physician. Women with greater economic status have almost always been able to call on a private doctor for an abortion and to have her procedure protected from scrutiny by the confidential doctor/patient relationship. In 1963, Griswold v. Connecticut invoked the realm of privacy in marriage to protect the decision of married couples to use birth control; not until Eisenstadt v. Baird (1972), did that privilege extend to unmarried women. And in 1973, privacy was expanded once again to encompass the right to choose, and to receive, an abortion in Roe v. Wade. In all of these cases, privacy was understood in a progressive way, a place where personal, intimate decisions and choices were made, and, the courts argued, a place where the government had no right to influence or interfere. Keeping the legitimacy of the decision about abortion within the private doctor/patient or spousal relationship avoided articulating how the right to abortion is implicated in women’s equality. The result of this move is that women’s decision to have an abortion was, and continues to be, considered as morally dubious and less authoritative, than one made in conjunction with male approval.

In avoiding questions of equality, the concept of “privacy” itself not challenge the additionally raced and gendered divisions between public and private, the home’s removal from the realm of the political, nor the problematic meaning and function of privacy itself. Privacy establishes a boundary of space within each realm, intrusion of which may necessitate legal remedies, but the efficacy of the right depends on where one

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14 While it is true that not all physicians are men, the preponderance of male dominance in the field of medicine, including obstetrics and gynecology, is well documented.
stands in the gamut of identities and place.\textsuperscript{15} This does not negate the importance of establishing such a space, but should cause us to question \textit{how} it functions and why.

Patricia Williams argued:

\begin{quote}
For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others that elevates one’s status from human body to social being.\textsuperscript{16}
\end{quote}

Conferring rights has a symbolic and practical affect in that it acknowledges a person as worthy of rights and equal to others who hold those rights. Thus the extent to which a particular woman is recognized as a rights bearing citizen has a direct effect on her relationship to the experience of abortion. In this context, the challenge is to eliminate, as much as possible, barriers to access, including lack of certain other rights, that can negatively interfere with exercising the right to abortion.

Thus the problem of privacy in terms of the abortion argument is twofold. First, those who are economically disadvantaged already tend to suffer from \textit{increased} government intrusion in their private lives vis-à-vis their use of social safety nets. Second, only the \textit{decision} or decision-making process is private. You have a right to decide to have an abortion; whether you are able to attain one is another matter. Further, the trimester framework laid out in \textit{Roe} reifies the moment a state’s interest in fetal life is \textit{more compelling} than, and thus overrides, the concerns or needs of the woman needing the abortion.\textsuperscript{17} Sophisticated reproductive technologies have validated the trimester framework and helped justify tighter restrictions related to fetal viability and autonomy.

\begin{flushleft}
\textsuperscript{16} Patricia Williams in Brown, \textit{Injury}, p. 158.
\textsuperscript{17} While I would not go so far as to argue that the state \textit{never} has a compelling interest in the regulation of abortion, I propose that there must be a more stringent burden of proof \textit{on the state} in order to assert that its interest is more compelling than a woman’s.
\end{flushleft}
such as mandatory ultrasounds, waiting periods, and the list goes on. Thus, merely having a right to privacy, and hence abortion, is clearly no guarantee of the ability to exercise it, and the decision to abort is increasingly judged from the position of an authoritative public.

A defense of abortion in terms of privacy avoids the question whether enforced motherhood is a matter not of privacy but public citizenship. Feminists might ask how it is, when enforced labor was long ago deemed incompatible with free democratic citizenship that so many popular and official voices see no contradiction between the enforced labor of motherhood and women’s standing and dignity as citizens.

When the abortion right is reframed in this way, we can think in terms of what it is about pregnancy and parenting that hinders the day-to-day activities that constitute practicing citizenship. If we think in terms of forced motherhood, these activities are complicated by questions about the violation of autonomy of living, independent persons.

Some who are critical of the privacy argument link it to the problems inherent in the public/private dichotomy, more specifically, to the fact that a dichotomy is presumed to be something tangible to begin with. Paradoxically, privacy, on the one hand, implies a realm of negative freedom, freedom from interference by individuals and/or institutions. On the other hand, it shields certain punishable behaviors within families because a right to privacy in the home protects them. Because women experience inequality more sharply in the context of the home, it is important to attend to these instances where even informal subordination is made less politically problematic when it occurs in the private realm. In either case, to demand recognition of one’s realm of

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18 Guttmacher Institute: [http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf](http://www.guttmacher.org/statecenter/spibs/spib_OAL.pdf). This is a summary of abortion restrictions in the United States as of May 1st, 2012.

privacy, or to insist that one’s rights are not diminished in the context of the private,
requires possession of the status of a rights-bearer.

In sum, some feminist objections to privacy as a basis for women’s reproductive
rights rest on the view that privacy jurisprudence not only fails to attend to the
fact that many women lack the power to make effective use of these rights, but
also works to reinforce the view that the state has no obligation to ensure that
women have the resources necessary for the effective enjoyment of rights in such
“private” areas.\(^\text{20}\)

As long as the content of the “private” remains somewhat ambiguous, the law will
continue to avoid strongly adjudicating on the rights within it. To the extent that these
questions remain unsettled, the abortion right must be reframed in the context of
women’s self-determination and individuation, rather than as a right to privacy alone.\(^\text{21}\)
This is crucial because the privacy fails to articulate why women as individuals, as
“different,” require such a right. Further, the privacy argument does not, and cannot,
acknowledge existing barriers to exercising the right to privacy because of the way it
remains grounded in the liberal ideal of equality as sameness, nor does it address
problems arising from binding the legal understanding of privacy to the proscribed
relationships of spouse or patient/doctor. Neither of these relationships is defined or
controlled by women; thus they do not get to define the parameters of privacy for
themselves, as such, privacy cannot contribute to an emancipatory or normative

\(^\text{20}\) Allen, “Jurispolitics,” p. 73, emphasis mine. I think this is important to stress that while social safety
nets continue to be eroded, there is still more support for a woman to have a baby, which ultimately costs
women and the state more, than to have an abortion whether or not she is ready to parent or have additional
children.
\(^\text{21}\) While keeping in mind that neither abortion, nor contraception has functioned, nor has the same
meaning, for women of all ethnicities, races, and cultural groups, and in fact has often been used in the
spirit of racism and eugenics by governments and private organizations. See Angela Y. Davis Women,
Race, and Class, especially Chapter 12, Linda Gordon’s Woman’s Body, Woman’s Right: Birth Control in
America, Chapters 13 and 14, and Reproductive Rights and Wrongs: The Global Politics of Population
Control, Revised Edition, by Betsy Hartmann.
understanding of equality. I will address the problems of equality arguments later in the chapter.

**Privacy in the Private, Privacy in the Public**

Regarding the efficacy of privacy in the “private” one need only compare *Roe* to a later privacy case, *Bowers v. Hardwick*. In this case, the Supreme Court upheld a Texas statute that criminalized consensual sex between people of the same sex, in this case two men, stating that the right to privacy affirmed in *Roe* and other cases did not extend to protecting “sodomy” in the privacy of one’s home. “Privacy” in the public, in terms of whether or what behavior is immune from scrutiny by public institutions is also questionable, for instance, when those who receive some sort of public assistance have their private behavior scrutinized, and, as a result, may have their assistance removed or modified based on possible transgressions.\(^{22}\) In daily life, the family does in fact exist in public life for the simple fact that in the modern world it is required that certain aspects of the family be governed by public laws and norms. “Therefore, the dividing line between the state’s possibilities to intervene and private prerogative determines the point at which the public localizes zones within the family in which moral appeals have failed.”\(^{23}\) One of those moral appeals of course is the appeal for women’s equality within the family to be achieved in part by her ability to control her pregnancies and births, which at times requires the right to abortion. The efficacy of privacy broadly defined, in the public or the private, depends on the identity of the body attempting to exercise it because not all actions (or people) are entitled to the same protection as the *Bowers* case

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\(^{22}\) Drug testing welfare recipients, for example.

illustrates. Privacy is a right mediated by the conflicting, embodied categories of race, class, gender, and sex, among others.

Problems of privacy and the private are rooted in issues of equality that are bound with the conundrums of yet another theoretical conflict: the sameness/difference debate. The problems of this dichotomy remain unsolved because of the disembodied nature of the philosophy in which they are grounded. If we reorient ourselves to understand political concepts such as “equality” and “privacy” as embodied the origins of problems of discrimination and other social violations become more clear. We can then re-imagine sameness as universality, and difference as particularity; and with a thicker definition of these concepts, define and address the barriers that emanate from particularity in the context of the universal privileges of privacy and equality.

It is important to understand the connection between the public/private split and theories of equality because theories of equality require the mystification of inequality in the private, and its role in women’s subordination. That is, liberalism requires that we ignore inequality in the private sphere in order to maintain male equality in the public. Inequality in the private sphere was established and maintained through the institution of marriage; inequality in the public sphere was established through private property. It follows that the institutions that grew up around these relationships, to essentially manage social inequalities, would at the same time reflect inequality and the values of property owning men; property that also included women and children. Thus while women lose their natural equality in the transition from the state of nature to civil society because of their place in the family, men’s rights remain intact and become more explicit with the emergence and acquisition of private property. Consequently for Locke and Rousseau,
marriage is both natural and contractual, which makes it and the family both private and public.

**Equality**

Equality is a foundational concept in liberal political commitments and social contract theorists attempted to explain how and why this came to be. Beginning with Hobbes, political philosophers used the trope of the mythical “state of nature,” to reason that natural equality existed in this state and transferred to civil society through the social contract. The decision to enter into such an agreement was framed as a “choice” exercised by freely choosing individuals that in fact masked the extent to which domination and subordination of other groups was already woven into the fabric of this newly formed society. In a theory premised on “equality,” how did women (or anyone) fall out of consideration as the social and political equals of men? John Locke and Jean-Jacques Rousseau craft theories they argue emanate from “nature” to justify political arrangements they claim to be conventional, such as the role of women in the home, and, that the biological differences between women and men are politically irrelevant. At the same time, because these differences were what brought women and men together through marriage and childbearing, their relationship necessarily remained in the private, the home, where the problems of equality were moot, such that there are no problems of equality. I argue that the extent to which these differences (including race) translate into negative effects of inequality, inside or outside the private, they are, and remain, political.

These presumptions were not without a proto-feminist challenge, however. In *A Vindication of the Rights of Woman* Mary Wollstonecraft argued that the social and
political reconceptualization of all men being equal that fueled the French Revolution logically and rightly applied to women. She reasoned that the great lengths men went to groom women for their proper life roles rendered them poor companions, simpletons, vain, and petty. In short, men (and their female conspirators, of which there were plenty) created a self-fulfilling prophecy that validated all women’s continued political and social subordination. 24 What was actually happening, in part, in the overcoming of monarchical patriarchalism was the freeing of markets in the wake of early capitalism. This revolutionary opening up of society was not, as some hoped, a movement in which all people would become free and equal, but rather freed all property-owning men to be equal and economically competitive among themselves. 25 As such, the terrain of domestic life for many women did not undergo drastic changes at this time, and as Wollstonecraft correctly pointed out, the private/domestic life was not always borne willingly (as her own life proved), but one that women accepted because they often had no alternative. Women were the chattel of their fathers and husbands, and were thus legally powerless to control their marital options, and they had limited, if any, economic potential of their own, being barred from most work outside the home and disqualified from the privilege of inheritance. Further, neither love nor consent was a necessary requisite for marriage and domestic life, and most women and girls married for the purely practical reasons mentioned above. Thus, I endorse the view, along with Cornell and others, that the ideal of the “sanctuary” of the domestic is a product of the imaginary of men, and the “masculinist liberal subject…premised upon a division of labor and

25 Women did not get the right to vote in France until 1944.
activities…persists even as this division unravels and even as it is detached from physiological correlates.”

The language of liberalism, in the face of all of these contradictions, attempts to convey the inherent social and political equality of all humans. However, the social and political attributes of “man” and “citizen” are those that belong, whether by law or by custom, to subjects that can only be understood as male.

Fiercely autonomous and diffident, he is unencumbered by anyone or anything, independent in both senses of the term (free of dependents and dependency in civil society). He is not oriented toward relationships and persons but toward the self and things.

Men are thus not obligated to procure freedom or equality for others to the extent that it imposes a burden on him that might involve a little less freedom for his self. Thus the language of neutrality within the discourse of liberalism obscures the sexual division of labor, while at the same time, disavowing its role in the social positioning of subjects through the subsequent discourse of naturalization. And the reality of the inequality of a person, but more often a group, is the product of a discourse that delineates the qualities that those who count and to what extent, possess. For example, courts have used the language of liberalism to justify racist segregation policies. In the Civil Rights Cases (1883), the Supreme Court struck down the provisions of the Civil Rights Act of 1875, which forbade segregation in places of public accommodation. The Court ruled that the 1875 Act only covered “state-sponsored” discrimination, but did not prohibit individual business owners from doing so. In Plessy v. Ferguson (1896) the Court seemed to reverse itself and grant that segregation was lawful on public transportation. “At issue in

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26 Brown, Injury, p. 152.
27 Injury, p. 149.
Plessy was an 1890 Louisiana law requiring passenger trains operating within the state to provide “equal but separate” accommodations for the “white and colored races,” which was not struck down until Brown v. Board of Education of Topeka (1954).\(^{28}\)

For Locke, private property is intimately connected to the family. Women’s subordination is at once natural and necessary to this relationship because women give birth to the next generation of the men who inherit it. He argued that the government’s influence and power should end at the border of man’s private life, his home and his family, unless his choices should impact the body politic. But in terms of who governs both domains, they are one and the same body. Women on the other hand exist in the private sphere but do not govern it; she occupies it by virtue of the marital relation, which is requisite for its existence, and as such was defined and subordinated in that space.\(^{29}\)

Rousseau, by contrast, acknowledges private property as a source of inequality, but nonetheless argues that the family is separate from this concern. Instead, he insists that the family is a product of a natural “moral love” between women and men that develops in civil society, and creates (male) citizens-to-be. These future citizens are the product of women’s “reproductive labour” which is “distinct from biological reproduction, and refers specifically to the adult expenditure of time and effort in the provision of nurture and active socialization to physically dependent children.”\(^{30}\)

Women tacitly agree to reside in the family because she understands she has much to gain in it such as sustenance and protection, men gain comfort and companionship. Thus, while the natural equality of

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\(^{30}\) Lange, Lynda, “Rousseau, Women, and the General Will” in The Sexism of Social and Political Theory, Clarke & Lange, Eds. New York: University of Toronto Press, 1979, p. 43. This vision of women’s role applies to both Locke and Rousseau, and, it could be argued, to most theorists of the early modern era.
the state of nature is lost in civil society, civil society allows women and men to best express their “true” natures, which were subsumed in the state of nature for the sake of survival.

John Rawls and others in this tradition have argued that the “state of nature” “represents a moral claim about the absence of natural subordination amongst human beings.”

But liberalism and the corresponding myth of the social contract, does in fact presuppose certain inequalities among people. These justified inequalities have since transcended their initial function of social differentiation, to abide in our modern social and political arrangements, and, most perniciously, in the family. And despite obvious changes in society and in the family itself, the ideology of the “traditional” family continues to hold some sway in popular imagination and resides in conservative arguments against women’s use of birth control, and of course, abortion.

Denial of the right to abortion right is framed in ways that place judgment about women’s “place” in the family (because they misunderstand or reject it), their sexuality (“sluts”), their social and political standing as independent beings worthy of equal respect for their humanity (god created Eve after Adam for a reason), and the equal rights they need to achieve individuation (which will make them want to destroy the family). Thus it women’s very femaleness, and all its presuppositions and meanings, that lay at the heart of discrimination against women where equality is denied because they are women, and this denial is premised upon their capacity for pregnancy. To that end, whether and when to have children is implicated in the shape and scope of women’s opportunity for equality

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and hence, may be indicative of the extent to which a woman may also exercise a right to privacy.

Despite the assertion that “all men are created equal,” this “truth” is negated in practice by the inequality that results from the specific ways certain subjects are embodied, and the value, in the form of rights, granted to them.

The first strand of “abstract individualism,” found in theorists as various as Locke, Kant, Rousseau, Dworkin, and Rawls, treats persons as individuals abstracted out of all social contexts and, thus, out of bodies. Within this strand, the body is no more than a container for the rights-bearer. Neither social context nor corporeal experience should have any effect on the moral status of the rights bearer.32

Race and sex discrimination laws, and informal discriminatory behavior point to such failures even as the mythology persists. Many strong arguments for an equality approach to abortion were put forth during and since Roe was decided, but the problem remained that neither political theorists nor legal scholars were or have been able to adequately answer the question: equal to whom? I will bracket this complex question for a now and state that in general the right to abortion increases the potential for women as a group to become more equal to men as a group, to the extent that women are more likely to be negatively impacted, socially and economically, by an unwanted pregnancy than men, regardless of individual circumstance. Though this statement brings us back to questions about the generic understanding of equality that attaches to the ideal of a “universal man” with “universal” equal rights, it is also true that we must have at least this minimum guarantee in order to begin to imagine our full individuation.

One of the problems women suffer from is they have yet to be recognized as having unconditional, legitimate claims to equality; the demand for equality itself is a claim for recognition for the subjects’ worth. This claim subsequently requires recognition of other rights as necessary to achieve and maintain equality. While formal rights themselves do not guarantee an outcome of equality, they do provide a standard for adjudication if necessary. “Yet the problem is not with rights as such, but with the tendency to cast the state in the role of exclusive rights violator, ignoring the many ways in which non-state actors, like employers or spouses, can threaten people’s freedom or well-being.”\textsuperscript{33} That is, like human beings, formal institutions and informal social structures work intersubjectively to produce social outcomes, and both individuals and institutions are capable of violating another’s rights. For example, a man who believes he has a right to “discipline” his wife is legally, and, in many places that have weak or insufficient laws and remedies, ideologically supported in this belief.\textsuperscript{34} The act of violence is the first violation, and lack of remedy and support is the second. Violations committed by non-state actors, such as partners or spouses, may be more pernicious and difficult to remedy because of the ways these violations are protected by the veil of the private domestic sphere, such as marital rape, only recently acknowledged as a legitimate legal offense.\textsuperscript{35}


\textsuperscript{34} The controversies surrounding the passage of the Violence Against Women Act demonstrate this quite clearly. In opposition to its renewal, one congressman dissented on the grounds that it would extend protection to Native American and LGBTQ people, and by doing so, would detract from the women who really needed it.

\textsuperscript{35} North Carolina was the last state to criminalize marital rape in 1993. As of 1999, 30 out of 50 states still regarded marital rape as a lesser crime than stranger or acquaintance rape. "The National Center for Victims of Crime - Library/Document Viewer" nevc.org.
The trope of privacy, which protects the dialogue and decision about abortion, fails to make it a substantive right that gets at the heart of remedying an inequality whose source is women’s bodies and sexuality because privacy does not guarantee access, which is an issue for women who lack money, transportation, or live in a state with no services. Unfortunately, before and since Roe, arguments for, and even against, the right, fail to address the concrete barriers to obtaining an abortion, or to address the systemic challenges to carrying a healthy pregnancy to term. Even those who look to an equality basis for the right, get mired in circular “sameness/difference” arguments remain grounded in traditional liberal understandings of personhood and rights. In attempting to achieve the outcome of equality for all, real differences fail to be accommodated in a progressive way due in part to the cultural value attached to those differences that are reflected in the dominant culture.

Because propertied men have occupied and defined the dominant social position, standards governing employment, citizenship, and morality, reflect their dominance. Therefore women and their experiences must be their own measure not only of the validity of the abortion choice, but of the practice of citizenship as well.

Though shared to an extent by men, the burdens of sexuality, pregnancy, and childrearing are overwhelmingly women’s burdens. Laws restricting access to abortion make it more difficult for women to avoid these burdens. Women’s legally enforced disadvantages suggest “second class” citizenship and unequal protection of law. Accordingly, permissive abortion laws would seem to be required by the Equal Protection Clause.36

Abortion is tied to questions of equality because conception and abortion “occur at the site of women’s bodies” and their bodies have been naturalized to be of service to the

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family. This service is in turn tied the ability to acquire goods, both material and
recognitive, for herself. Some theorists, like Wendy Brown, have argued that control
over the abortion right reflects men’s fear of the loss of control over the family vis-à-vis
women’s bodies. By extension, the denial of a right to abortion can be viewed as a
reaction against male loss of recognition of a role that has been naturalized for them
through liberal doctrine and the pervasive influence of capitalism. Further, because
language reveals inclusion and exclusion these processes become part of our cultural
habits and practices, and through these practices, we begin to act according to
internalized limitations imposed through law, policy, and in daily life. Who defines and
who is the standard of measurement against which others are measured and valued
determines our vulnerability to injury by and through the systems that operationalize the
privilege of defining. At the same time, people can occupy places of privilege and
inequality concurrently.

To be sure, few discussions of equality take account of the structure of inequality
of sexual relations, but that is not to say that women’s position can be understood
without recognizing that women are both equal and subordinate, both free and
subject, both citizens and yet not citizens in the same way as men. Equality and
difference are not necessarily opposed, but, historically, this is how the categories
have developed.

These categories have developed to reflect the extent to which individuals or groups
measure up to the dominant cultural, including sexual, standards. Difference ends up
manifesting as an inequality to the extent those differences inadequately meet or reflect
those standards. By working toward an embodied theory of recognition that grounds the
right to abortion more strongly than privacy or equality alone, I will continue to point out

37 *Injury*, 141.
how theories of equality are already embodied, and the way recognition operationalizes this connections.

**Conclusion**

The “private” refers to the zone of domestic life; a place where the family resides, and where multiple relations of inequality co-exist: the inequality between parents and children, and the socially constructed inequality between adult women and men. Until the Industrial Revolution came to fruition in the United States, it was also the site for the production of the necessities of daily life: food, cloth, tools, and the like. “Privacy” on the other hand, refers to a zone of personal space; it functions to keep out state or institutional intrusions, as well as other individuals. In both cases it has been interpreted to protect personal decisions about one’s body or behaviors in that space. Each person theoretically has a zone of privacy around them, but it is not the case that every person has been able to occupy, define, or defend such a space.

The right to abortion, in spite of *Roe*, remains immured in a number of historical conflicts. While the affirming justices who decided *Roe* ruled that *all* women have a right to privacy equivalent to married couples or men, that included the abortion choice, they failed to situate abortion strongly as a right necessary for overcoming barriers to equality. Being compelled to carry an unwanted pregnancy to term inhibits women’s equality and compromises their standing as citizens with rights equivalent to men by interfering with their participation in social and political life. Framing abortion in the context of a right to privacy ignores all the embodied ways this and other rights can and are compromised.
Presupposing the intersubjective nature of the social world, the language of recognition gives us a better understanding of how to talk about the role social and political institutions play in the interpretations of bodies, and interact in the production of inequalities. A recognition approach to abortion brings to light important factors regarding women’s agency and equality which must be considered in the discourses of the abortion debates. It draws attention to the ways the lack of a right to abortion adversely affects women and their capacities for individuation by compromising their social, economic, and political equality.

Thus in the next chapter I push for a new understanding of equality that harnesses the insights of both critical theory and recognition to begin to build a foundation for a more durable rationale for the right to abortion. As opposed to traditional theory, such as liberalism, which seeks primarily to understand and explain social phenomena, critical theory, as an interdisciplinary framework of inquiry and critique, seeks to transform the structures that obstruct human liberation. Recognition is one approach within the critical tradition that questions the very nature of the categories we employ to give meaning to our experiences, and how our social reality conflicts with particular ideals, such as equality. The goal of emancipation thus makes critical theory and within it recognition appropriate for interrogating the place of the right to abortion, and the ways women fail to achieve equality, and hence emancipation, without it. While Honneth serves as a starting point for my incorporation of a modern theory of recognition, I will also indicate where he doesn’t go far enough, which requires we look to feminist theory and some of Honneth’s critics, for a more expansive understanding of recognition and how it may be
used more effectively to secure the abortion right in the larger context of reproductive health justice.
CHAPTER III
CRITICAL THEORY AND RECOGNITION

Introduction

In Chapter one I outlined the limitations of the privacy rationale for the abortion right. The primary source of privacy’s limitations is the abstract individualism inherent in liberal political theory, which tends toward treating political subjects as if they are all the same, concurrently, that the law has the same effect or consequences for all people. What actually happens however is that law and policy has embodied effects based on the value of the particular characteristics of subjects. The right of privacy and abortion are no different, because the level of access to the abortion right is predicated upon a vast intersection of social and political factors such that not all women actually have the resources to exercise either right. The limitations of the right to privacy must be taken seriously in all future abortion rights work because this right has clearly not been strong enough to withstand substantive erosion.

In this chapter, I will engage the counterdiscourse of critical theory as well as the contemporary framework of recognition. Critical theory is by definition necessarily political, and through praxis, transformative. Two of the functions of critical theory is critique, and through the process of critique, transformation of social relations and the political, cultural, and economic structures that undergird them. It is a counterdiscourse to the extent that critical theory presupposes the intersubjective nature of the subject, rather than the individual rational subject as a product solely of his own fashioning. Part of this process includes the effects of rights, law, and policy, which shape the socio-cultural contexts in which we exist. For women, this context includes the role of the right
to abortion. Coming from the tradition of critical theory, recognition raises questions about the categories we use to organize our experiences, rather than presupposing the categories traditional theory posits we should use for these purposes. Addressing identity in this way challenges conventional gender interpretations in the context of rights, as well as the problems emanating from the false binarism of the public/private distinction.

To do so I first briefly describe the basic premises of critical theory and its foundations in Marxist and Freudian analysis. Next I will situate recognition theory, first, as one of Hegel’s earliest, and perhaps most resilient philosophical argument for understanding the formation of human subjectivity, and later as the foundation of later critical theorists who resume Hegel’s project. I will continue to discuss the ways recognition supports the right to abortion; those ways are grounded in recognition theory’s attention to power and identity. However, the relationship between the body and identity is one I and others argue is neglected by Honneth, and one that can only be remedied by the synthesis of recognition and embodiment.

Of course, recognition and social justice are not solely about the distribution of material goods and labor; it is also about the dominant patterns of cultural interpretation and value. These patterns establish the kinds of respect a group or individual may expect to receive; notions of esteem and self-respect are in turn bound up in these valuation patterns. Honneth argues that there is a psychological basis for our need for recognition that derives its importance from the role recognition plays in human development. The three primary forms of recognition that are also related to the needs of individuation and development are: love, which contributes to our self-confidence; rights, which foster self-respect; and solidarity, needed for self-esteem. Violation of any one of these
intersubjective spheres constitutes an assault on the relation-to-self (disrespect), which in turn hinders psychological and moral development.

Critical Theory and Recognition

Critical Theory

Hegel’s early theory of recognition contributes to an understanding of individuals as intersubjectively formed through multiple types of recognition. Hegel’s first thesis is “that the formation of the practical self presupposes recognition between subjects;” only after this confirmation takes place “can they mutually reach an understanding of themselves as autonomously acting, individual selves.”\(^\text{39}\) After this initial interaction, “the various forms of recognition…are distinguished according to the level of autonomy they make possible for the agent.”\(^\text{40}\) Hegel’s third thesis of recognition is that it is only once a struggle begins that “the sequence of forms of recognition follows the logic of a formative process…the outcome of which is the recognition of claims to autonomy previously not socially affirmed.”\(^\text{41}\) There is an initial struggle for confirmation of a basic self that is proceeded by a subsequent struggle to discover what needs are not being met that prevent our autonomy, and which form the basis of further struggles for recognition. Honneth thus begins with this model to argue that successful human individuation requires the existence of an ethical community that, like the individual, is established by a struggle for recognition.


\(^\text{40}\) Honneth, *Struggle*, p. 69.

\(^\text{41}\) Ibid.
It is in this spirit, and with close readings of Kant, Locke, and Rousseau, that Hegel’s early writings, and through the master-slave dialectic in the *Phenomenology of Spirit*, that he begins to articulate a model of a struggle for recognition. This struggle is necessary because it is the only way human ethical relations develop. Hegel reasoned that we grow only when our consciousness is recognized by another consciousness: the master is disempowered to the extent that the slave does not, or refuses to, acknowledge the master’s consciousness. By so doing, the slave comes to acquire a certain amount of power over the master, and to that extent becomes a master himself. But this is a limited recognition because the slave is not a free subject; the ideal form of recognition occurs “among equals.”42 However, and as Honneth points out, Hegel was concerned with the development of *individual* self-consciousness and did not clearly articulate how this relationship functions intra or inter-communally. For Hegel, the (intersubjective) social aspect was merely a step in the process of Spirits’ individual formation.43 It was up to later theorists to unravel recognitions’ social application.

The primary contradiction motivating social struggle was identified by Marx as the “fact” of private property, whereby private property was presupposed in political economy, rather than a phenomenon to be explained as the result of particular, exploitative labor relations. The mystification of the origins of private property as natural and inevitable (not unlike women’s subordination), made both political economy and private property ideological, and doing so “hides the alienation in the essence of labor by not considering the immediate relationship between the worker (labor) and production.”44

42 “Politics,” p. 50.
44 Marx, Karl. “Alienated Labor,” Tucker, p. 136. See also Althusser, “Ideology and Ideological State Apparatuses.” Althusser argues that all relations, and hence, all ideology, is material because the ideas of
When we ignore the fact that the object you own is produced by real human beings, and not by the factory itself (because the factory requires humans to make it run), the true origins of the object is mystified, and in its place, an ideology of the object is produced.

Marx reasoned that individuality was a product of social recognition and labor. Labor transforms our ideas and consciousness into objects, and those objects come to represent us, to say something about our identity. As capitalism advanced, the laborer became increasingly alienated from the objects of labor, and hence from the laborers’ true identity, their species-being. The task of recognition taken up by later critical theorists is in part to rectify the alienation produced by advanced capitalism, which is implicated in the suppression of the symbolic in the form of identity. Honneth and others have insisted that recognition precedes the emancipatory processes of dismantling identity-based barriers because we must establish that there is a self to experience violation. Thus, if “equal liberties take precedence over equal opportunity which take precedence over equal resources,” as it does in Western liberal democracies, we fail to acknowledge first, that in practice liberties are very much tied to resources, and that all three are tied to the identity of the individual relative to the dominant culture and how those non-dominant identities are valued.45 For instance, once unionized workers became increasingly individuated as workers through the weakening of unions, their identity as a powerful collective bargaining entity was diminished, and their symbolic power in class-consciousness was practically eliminated.

And while material production alone does not create ideological systems, they can be viewed as a consequence of systems that include material relations, and indeed cannot

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45 Kymlicka, p. 56.
be separated from them, which are made increasingly ideological when ideas about these
relations are separated from actual relations produced by economic arrangements.46
Ideology rationalizes that which is made true (unjust relations) by the material conditions
that make them unjust to begin with, as well as rationalizing the justification of those
material conditions, and are often rooted in arguments that naturalize inequality. For our
purposes, gender ideology rationalizes women’s inequality through the trope of the
“natural” functions of their bodies. The fact of gender subordination functions similarly
whereby women’s subordination is taken as a consequence of their “natural” inferiority,
as such, everything else about them flows from this “fact.”

From these struggles, which originate in social and political critique, emerge new
normative foundations for justice. What made critical theory unique, as opposed to
traditional theory, was that knowledge from all branches of the social sciences should be
engaged because systems of domination did not emerge from one source alone, nor are
the effects of domination confined to one aspect of life. Therefore, by engaging all the
tools of social science along with the methodologies of the empirical sciences, a
sufficiently comprehensive framework for analyzing the “social existence of humans” for
the purpose of emancipation from oppressive regimes and the unjust material relations,
could be created.47

The first generation of critical theorists argued in the 1930’s that material
production and cultural influence were the results of rational planning and conscious
decision-making, not of forces outside of human control, but imbued with embodied
agency, with the implication that no aspect of life is outside of some kind of system. The

46 See Fredrich Engels, The Family, State, and Private Property and Marx’s “German Ideology”.
contradictions arising from these relationships, they reasoned, should be a force to stimulate the working class to action that will dissolve both the contradictions of labor, and by extension, rationalized systems themselves. What happened instead was that capitalism became so effective at mystifying its role in the oppression of the masses, that people no longer saw themselves connected to the system sufficiently to think they had any power to change it. With this transition, aided in part by the creation of a vast welfare state, the working class ceased to realize their emancipatory potential. Similarly, when sex and gender relations are positioned outside of or separate from systems, we fail to transform them. As such, we need to view sex and gender as within systems as an expression of their interactions, as well as a system unto itself.

As the inheritors of both the Marxist and Freudian traditions, early critical theorists were concerned with the injustices that flowed from contradictions within capitalist production, and their attendant psychological ramifications. Recognizing that material relations deeply influence the relationship of culture and ideology, they argued that if the working class could be pacified by a modicum of social welfare provisions, and distracted by the culture industry, they could also be persuaded away from revolutionary struggles, leaving the contradictions unresolved. On the other hand, when we can recognize and identify ideological barriers and unjust material relations, we begin to

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48 I cannot exhaustively list the most pertinent readings here, but for two concise statements on the foundations of the work of critical theory, see Max Horkheimer “Traditional and Critical Theory,” and the chapter “The Culture Industry: Enlightenment as Mass Deception” in The Dialectic of Enlightenment by Horkheimer and Theodor Adorno.

49 See “The Culture Industry: Enlightenment as Mass Deception” in The Dialectic of Enlightenment, by Max Horkheimer and Theodor Adorno, New York: Continuum, 1990, pp. 121-167. The Dialectic is widely recognized as the “pessimistic” turn in critical theory. By pessimistic is meant that critical theorists, such as Horkheimer and Adorno, no longer saw the working class as the source of revolutionary consciousness or action due to their pacification by the welfare state and the culture industry. While they continued to view unjust material conditions as a social problem, the no longer believed the solution was with the laboring class per se.
disempower them and begin the process of emancipatory struggles: “Yet this awareness is prevented from becoming a social force by the differentiation of social structure which is still imposed on the proletariat from above and by the opposition between personal class interests which is transcended in only very special moments.” Thus, critical thought and theory:

is the function neither of the isolated individual nor of a sum-total of individuals. Its subject is rather a definite individual in his real relation to other individuals and groups, in his conflict with a particular class, and, finally, in the resultant web of relationships with the social totality and with nature.

Critical theory’s most important insight is that to address social injustices, we must look not only to the multiple, interlocking forces that create relations of domination, but also to the “entire spectrum of social scientific disciplines” in order to more fully assess possible solutions. The abortion dilemma represents one such injustice that cannot be remedied by merely redefining the right to it, but also to address the other injustices that precede and interfere with it.

**Women, Labor, and Gender Ideology**

Ideologically, the activity of social reproduction was unchanged as the primary economic activity that maintained the family was relocated from the home itself to industrial production in the late 19th and early 20th centuries. Despite changes in the domestic economy, the work of childbirth and childrearing as “women’s work” continued to be naturalized with a specific, heteronormative content both politically through policy and in the public imagination through cultural messaging (the “cult of domesticity” for

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example). These messages persisted despite the fact that these activities have changed with the advancement of capitalist production worldwide, and the concomitant advancement of women’s rights.

When “productive” activities leave the household and in turn come to constitute the world of change and dynamism, then activities of “reproduction” become viewed as either the brute, physiological and non-historical aspects of human existence or as by-products of changes in the economy.  

Social realities have thus turned the historical distinction of the public and private on its head. As such, it is not enough to attempt to change gender dynamics in the domestic realm, because women continue to be similarly ghettoized in certain professions and occupations. Instead, these phenomena must be seen as interconnected events that mutually reinforce women’s subordination. Lack of access to legal abortion feeds into this particular organization of labor by reinforcing the message that a woman’s most important job is mothering whether they want to or not, or whether they are economically or psychologically able to do so. Thus: “Eliminating gender-specific maldistributions requires abolishing the gender division of labor – both the gendered division between paid and unpaid labor and the gender divisions within paid labor.”  

Some have suggested working toward the separation of the act of childbirth from the work of childrearing in order to delegitimize the perception that these activities are the same, and women are obligated to do both. This separation would free up many women to participate in the workforce, go to school, or engage in activities that contribute to their individuation and self-perception, and thereby she can attempt to actualize equality or at the least pursue activities that bring her closer to it.


As I argued earlier, capital and labor are deeply impacted by women’s participation in the workforce, which is in turn impacted by the fact of women’s pregnancy, which alters their participation in the paid labor force. Not unlike union members (who are also women), but for different reasons, women’s paid labor has often been socially stigmatized as less valuable and contingent, rather than as a viable and important part of their identity and sense of themselves. It is as women that their labor has been devalued and it is to this extent that it must be re-valued in itself and not contingent upon the identity of the one performing the labor. Through the lens of recognition, which retains the importance of the role of social labor, equality ceases to be abstract to the extent that we create shared meaning and values through personal interactions. Through the process of creating shared meaning we come also to interrogate why inequality is grounded in identity, which is in turn impacted by economic status. Equality and cultural politics are bound up with economic activities, which in turn have a moral component because they guide and influence political, social, and cultural outcomes. “Thus the moral-cultural notion of recognition can be seen as underlying the social category of (economic) distributive justice rather than vice versa. More generally, every economy is culturally embedded.”55 What we can provisionally conclude is that identity impacts equality because certain identities are culturally devalued, and that devaluation is institutionally reinforced through law, policy, and mass culture.

It makes sense then that “the concrete demands of a consistent theory of recognition must be mediated by a critique of capitalist anti-social division of labour and

the irrationality of the market." It could also, without too much trouble, be argued that the disqualification of women from many professions was indeed irrational. But as Marx argued earlier, the system of capitalist production has an interest in fostering divisiveness in the workplace, whether by race, gender, or position of authority, and that these divisions were an inevitable outcome of the processes of labor because labor itself is divided by the value assigned to it by the ruling class, as in the value difference of manual labor versus technology. Those who are most likely to do those jobs, is in turn affected a priori by factors such as race, education, and gender. These divisions hold for the public world of work as well as the world of domestic work, and extend into our socio-cultural world.

Processes of cultural exclusion consist of strategies that limit opportunities for articulating class-specific experiences of injustice by systematically withholding the appropriate linguistic and symbolic means for their expression. These strategies are applied through agencies of public education, the media of the culture industry, or forums of political publicity.

These processes of cultural exclusion are specifically embodied harms that are meant to counter resistance to hegemonic socio-cultural dominance by groups who experience injustice by virtue of the very make-up of those dominating institutions.

**Recognition**

It is generally agreed that recognition came to matter with the decline of institutionalized social hierarchies that accompanied monarchical regimes, and the concomitant rise of liberalism and private property in the 18th century. Opposed to the

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57 See Nancy Fraser’s essay “What’s Critical About Critical Theory?” for an excellent discussion on the multiple, gendered divisions of labor, and the conceptual separation of material and symbolic reproduction.

58 Honneth, *Disrespect*, p. 88.
concept of “esteem,” which refers to recognition earned by performing certain deeds, the term “honor” refers to the regard due a person based on their position within or relative to the monarchical hierarchy. As such, not everyone was owed honor because “identity was largely fixed by ones’ social position,” and social position was then largely a matter of heredity.\textsuperscript{59} Outside this system no one was owed due recognition because it was not clear that everyone possessed inherent worth. This is in part why the ideal of universal equality that emerged at this time was so radical a notion as to incite social upheaval.

Broadly speaking, recognition is an intersubjective interaction by which an individual is confirmed as an independent, moral subject, a phenomenology of consciousness originating with Hegel. Recognition is both a pre-condition for self-realization, as well as confirmation of that realization by another; violating or withholding recognition results in the experience of disrespect, which can manifest in the restriction of an individual’s freedom to act, or compromise one’s self-understanding through the manipulation of their rights.

Recognition acknowledges the determinate content of individual self-realization insofar as it encompasses a plurality of concrete instantiations. It transcends this particularism, however, insofar as it is a universal structural feature of social life and a normative pre-condition for individual autonomy.\textsuperscript{60}

Part of a claim for recognition is that an expectation for recognition is violated or not met, an expectation that Axel Honneth argues we all develop as infants in the maternal bonding stage of life. Recognition and rights are intimately intertwined because “rights assure the real opportunity to exercise the universal capacities constitutive of

\textsuperscript{59} “Politics of Recognition,” p. 31.
personhood,” which in turn designates someone as a morally responsible agent. And this is only possible in the context of another who acknowledges us in this way. There is an equality principle at work in recognition whereas autonomy and equality are meaningless in the context of a solitary individual; we need others to recognize our autonomy in order to make it meaningful.

Honneth thus suggests that the key to the interpretation and resolution of social conflicts resides in the processes of recognition. His project in *The Struggle for Recognition* is to establish a normative theory of social justice, the foundation of which is the fact of social conflicts that revolve primarily around identity based struggles. Following George Herbert Mead, Honneth asserts that “the self can individuate itself in accordance with its inner impulses to act only if in the course of idealization it can always be sure of recognition of an extended communication community.” The conflicts arise when we become unsure, or when others fail to provide recognition for some aspect of ourselves; as such, support from the intersubjective world is necessary for the articulation of needs. This suggests that our traditional understandings of rationality, focused as they are on the individual, have thus far not been flexible enough to consider the ways identity influences what one perceives as truth about the world and oneself. Recognition, then, opens up traditional rights frameworks, with its atomistic yet abstract subject, to one that retains the individual in an intersubjective community. While the meaning of an abortion procedure is unique to each woman, the cultural milieu in which that woman lives will influence the meaning she gives to the experience, and in turn, that the abortion will have

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on her image of herself. Denying a right to abortion imposes a meaning on it that is not the product of a woman’s own crafting; its value is already being judged by its absence.

What is the connection between identity and recognition? For Honneth, Taylor, and others, the connection is the that “crucial feature of human life is its fundamentally dialogical character.” Sometimes the nature of this dialogical character takes the form of a struggle against others’ expectations of us, which may conflict with our personal self-understanding, but may also help us achieve a new self-understanding. The importance of recognition developed alongside the emergence of the concept that there was value inherent in the individual, and that individuality (as distinction) mattered and had value. While Taylor argues that group recognition has always existed as the basis of communities and cultural groups, the concept of individual identity within the group was unrecognized a priori, unlike the taken for granted social categories established by the community. As such, I argue that the emergence of the individual was and is a source of conflict, and of claims for recognition. The recognition model undermines traditional theoretic assumptions “about both the self-interested motives for social conflict and the atomistic character of the state of nature” to the extent that it is teleological oriented toward emancipation and social justice.

The more complex and differentiated a society is, the more complex identities become, and the greater the opportunity for those entities to conflict based on those divergent needs. Of course, the needs of individual people are not the same needs as institutions but are often reflected in them; as such mechanisms of recognition are needed to mediate this divergence. As Honneth argues: “one can count as bearer of rights of

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63 “Politics,” p. 32.
some kind only if one is socially recognized as a member of a community.”

The larger the community becomes, and the more intricate the mechanisms for governing that community become, the greater the instances one has to misrecognize another, and the more complicated it becomes to redress these injuries, be they psychic or physical. Thus: “What has come about with the modern age is not the need for recognition, but the conditions in which the attempt to be recognized can fail.” By arguing that potential injustices reside in the misrecognition or disrespect that occurs in the process of identity formation, including of social labor, Honneth hopes to identify a universal emancipatory interest that may not be fully expressed at any given time, but is discoverable through critique and social struggles.

**Feminist Critique**

Feminists have critiqued Hornet’s analyses on a number of fronts that are relevant to my argument for an embodied theory of recognition. One critique in particular faults Honneth for not following his own argument about the nature of conflicts that emerge from specific embodied identities. He writes, for instance:

> Only once we have taken the perspective of the ‘generalized other,’ which teaches us to recognize the other members of the community as the bearers of rights, can we also understand ourselves to be legal persons, in the sense that we can be sure that certain of our claims will be met.

While we can, following Kant, recognize that everyone begins with the right to universal respect as a human being, and that all people are legal persons, neither of the those two assertions about the self guarantee that any claim will be met. Primarily because, I argue,

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64 *Struggle*, 109.
65 “Politics,” pp. 34-35.
we have yet to reach a stage in human history where such a universal recognition holds unproblematically. It seems to me that the spheres of recognition, rather than something that is true, represent an ideal of how we come to matter, as well as articulating the things we actually strive for in life. And that is why denial of the abortion right stands as an interference of those pursuits. As Amy Allen argues: “[Honneth] fails to address the challenges posed by the intertwining of recognition and domination, an intertwining that is evident in the maintenance and reproduction of gender subordination.”67 Hornet’s analysis does not move strongly enough beyond individual instances of misrecognition or disrespect to examine large-scale domination of particular identity groups that may be an important context for individual experiences of disrespect. A rich theory of recognition must be able to account for individual acts of misrecognition, and at the same time, be able situate that individual act in the context of broader violations.

Nancy Fraser argues that individual behavior, the quality of one’s social interaction with another, alone cannot account for misrecognized “distorted subjectivity,” but rather, institutional reinforcement condoning individual behavior reinscribes and concretizes negative cultural values. For example, in the case of rape where a judge holds up a case against a rapist by inappropriately questioning what the victim was wearing, or what time of night she was out.

When misrecognition is identified with internal distortions in the structure of self-consciousness of the oppressed, it is but a short step to blaming the victim, as imputing psychic damage to those subject to racism, for example, seems to add insult to injury.68

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If institutions define social interactions it makes sense to interrogate the role institutions play in the process of recognition. Institutions, such as law, can both instantiate norms of interpersonal recognition when they pass judgments on particular social interactions, and at the same time, they mirror dominant power relations. That is, they both create particular power dynamics as well as reflect them. Denial of the right to abortion is not only an identity issue in so far as lack of this right impacts a woman’s current or future sense of self; it is also political because courts, Congress, and states can create a situation where an individual’s identity is negated, denied, or disrespected institutionally, which in turn influences how other institutions, groups, or individuals perceive women, whether or not they have an abortion experience.

**Conclusion**

Status recognition or social esteem is closely linked to the institutionalization of the principle of legal equality. The democratization of forms of legal recognition highlights the persistence of unjust value hierarchies and the lack of social esteem accorded to certain individuals and groups within civil society.\(^{69}\)

One take on liberal society is that it errs when or if it tries to impose a vision of “the good life” on its citizens because it interferes with their substantive right to make that determination for themselves, and thus negates or interferes with our universal potential for rational, moral decision-making. But the work necessary to operationalize this potential requires what Taylor calls “external recognition” whereby the state recognizes that it cannot, should not, be legislating from the perspective of dictating its vision of the

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\(^{69}\) *Against Recognition*, p. 273.
good life.\textsuperscript{70} External recognition functions in a second way when it intervenes in cases where either citizens or states are not dealing fairly or equally with each other.

As Honneth argues:

For the individual, having socially valid rights-claims denied signifies a violation of the intersubjective expectation to be recognized as a subject capable of forming moral judgments. To this extent, the experience of this type of disrespect typically brings with it a loss of self-respect, of the ability to relate to oneself as a legally equal interaction partner with all fellow humans.\textsuperscript{71}

Denying that a right to abortion exists reflects the belief that women are inherently worth less, less deserving of an individuated identity, legal equality, and the necessary tools, in the form of rights, to achieve it. Thought of instrumentally: “Rights are practices and should be assessed by whether they actually make a difference in people’s lives.”\textsuperscript{72}

While the foundation of certain rights may be abstract, their exercise and efficacy may be measured practically. Honneth refers to rights as “those individual claims that a person can legitimately expect to have socially met because he or she participates, with equal rights, in the institutional order as a full-fledged member of a community.”\textsuperscript{73} Thus a right is a claim related to the ability to engage in specific activities though they require recognition as belonging to specific individuals.

Recognition can help us articulate the harm in the denial of the right to abortion, and the way rights are gendered and enmeshed in problems of power, because the right to an abortion contributes to women’s construction of their identity and a positive view of themselves by practically and symbolically acknowledging their capability as moral

\textsuperscript{71} Honneth, Struggle, pp. 133-34.
\textsuperscript{72} Kiss, p. 8.
\textsuperscript{73} Honneth, Struggle, p. 133.
agents. In the final chapter I will work toward a synthesis of the insights of critical theory, recognition, as well as the feminist critiques that address the gaps in Honneth’s analysis that will enhance justification for the abortion right.
CHAPTER IV

EMBODIED RECOGNITION AND ABORTION

Introduction

Much of the scholarly work in the west on women’s relationship to rights and the democratic state is based on the traditional liberal framework of rights and the firm delineation of gender roles and duties. What many feminists conclude is that women will continue to be unequal and fail to achieve individuation as long as control over decisions regarding their bodies remains elusive, and under the control of a masculinist system that uses policy to enforce gender roles. In Chapter one I argued that equality is already, always, embodied, liberalism to the contrary; similarly, every person has a body of some kind, thus every person is embodied. Embodiment matters in problems of equality because different values are assigned to bodies in ways that result in inequality. Women’s inequality has been justified on the embodied experience of pregnancy. As such, addressing the interaction of the multiple structures that prevent substantive equality as a result of bodies is integral to reaching meaningful solutions.

Some have argued that there is no fundamental right to privacy, and as such no concomitant constitutional right to abortion. I believe there is and agree with Anita Allen who argues: “The debate in the Supreme Court over whether access to abortion should be deemed a fundamental right can be recast as a debate about whether women’s citizenship status is diminished by unwanted pregnancy.” The legal struggles over abortion are less about the abortion itself than what withholding this right says about


women’s status as equal citizens. What is clear from current trends in abortion regulation is that questions about the citizenship status of the fetus have begun to supersede similar questions about women. The right of privacy is limited in its capacity to address this emerging trend because, as I argued earlier, the privacy right is unstable and contingent. Further, privacy makes no sense in the context of weighing fetal rights against women’s rights because the fetus is part of the woman’s body, and because the fetus has yet to be recognized in federal law as a legal person with full rights of citizenship.

The privacy argument for the right to abortion further fails to the extent that it remains rooted in a traditional liberal rights framework that neglects the embodied nature of citizens by adhering to the principle of equality as sameness. This is not to say that a demarcated zone of privacy has no intrinsic value or positive function, but in the case of abortion, merely stating that a zone of privacy covers decisions such as whether to have an abortion ignores the specifically embodied ways a right to that space is denied. As such, the right to privacy, like the abortion right itself, is a problem of equality because privacy and abortion can be limited a priori by access to resources, that in turn compounds inequality. If rights are indeed a claim for recognition, than the first thing to be recognized is rights should not be limited by resources.

Recognition encompasses a principle of equality in that the basis of struggles for recognition involve demands from disrespected individuals and groups to have denial of rights claims recognized as violations of their relation-to-self, which is bound up with notions of autonomy. The abortion decision and subsequent denial of access distort a woman’s view of herself as capable of autonomous moral judgment, capable of understanding the meaning and weight of her decision. Laws against the abortion right
imply that others are more capable of making decisions for her. Further, to put that decision in the hands of an impersonal institution that is ill equipped to respond to the context of her life experience, is to also devalue the importance of that context to the decision she must make. Women’s equality is compromised when they are stripped of the opportunity to weigh their circumstances against an unintended pregnancy and to decide the outcome for themselves. While many women do bear children willingly, and it will always be a necessary social function, to compel them, by legislation, that they do so under threat of legal sanctions regardless of life circumstances, undermines the very premises of equality, participation, and social value.

As my work is grounded in both critical and feminist theories, my point is to address the actual social and political conditions of women’s lives, such as the abortion choice, that impact their ability to irrevocably achieve individuation on their own terms. Not only is it important to examine the multiple injuries we sustain by virtue of subordination, but we must take responsibility for defining what we require for our own sense of self-respect, particularly when these requirements lay outside of male-dominant paradigms that attempt to tell us what we should require as properly gendered women.

As Robin Dillon argues:

Self-respect is crucial to feminist political empowerment, as the source of the strength and confidence needed to effectively challenge and change subordinating institutions. But I suspect that the roots of our difficulties lie still deeper, in what we understand self-respect to be.76

This is difficult, yet important because “self-respect is embedded in a nexus of such profoundly problematic moral concepts as personhood, rights, autonomy, responsibility,

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identity, virtue, and integrity.” The concepts themselves are problematic as well as the way they interact which depends on how aspects of our identity influence our relationship to those concepts. Honneth argues: “While elaborated ideas of justice seek to provide evaluations of social situations within a relatively coherent system of relations, unwritten social morality consists of situationally bound condemnations of certain social facts.” Abortion is one of those social facts, and the unwritten social morality surrounding it is constituted by an ideology of female subordination and domination.

**Embodiment**

An analysis that begins with bodies is critical for abortion rights and reproductive health justice because bodies are the source of conflicts that arise here. In this chapter, I will argue for a re-grounding of the right to abortion in a framework of embodied recognition in three steps. First, despite Honneth’s claim for the primacy of consciousness, modern struggles for recognition are in fact grounded in the recognition of identities in the form of bodies, not consciousnesses. This is a crucial point because bodies are the boundaries of the rights-bearing subject, and those bodies and boundaries are gendered. As such, we are governed based on the values places on our physical characteristics. Therefore, recognition must be grounded in an understanding of the primacy of the body. Second, if opportunities for self-realization are often limited by access to resources, and different bodies have different values in relation to resources and rights, then resource access is an aspect of identity conflicts. When the right to abortion is constrained in this way, it too becomes a part of identity conflicts. Finally, if rights are a claim for recognition, as

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77 Ibid.
78 *Disrespect*, p. 84.
Honneth asserts and I agree, and abortion is a gendered right, then the claim for a right to abortion is a claim for recognition of the moral and bodily autonomy of women, and of abortion as an embodied experience. Taken together, this approach provides a more comprehensive, and more durable foundation for the right to abortion.

Though many think gender is automatically implicated in the discourse of abortion, outside of feminist dialog, it often is not. Gender as a paradigm for analysis raises important questions about the innate character of those who occupy certain realms of the social world. It also raises questions about the separation and the distinction of a public and private sphere to being with, whereas “the terms ‘public’ and ‘private’ are used with little regard for clarity and without precise definition.” This separation is not only a theoretical one, but has had real consequences and institutional support in practice. Thus we cannot overcome injustices in these realms philosophically if we do not consider their complex interactions in embodied experience. Deciphering who occupies these spheres, and what these spheres “are” or “mean,” and what they do there help us identify the injustices that occur within them. The framework of recognition, with its concern for the consequences of the intersubjective nature of identity, elucidates important features of women’s agency we must consider in the discourse of abortion, including the rationale used for its restriction or denial, and how denial of a right to abortion mediates women’s relationship to the ideal of universal equality. When we attend to women and their experiences as the foci of abortion conflicts, rather than the fetus, we bring into focus that the ways bodies are interpreted is part of how abortion is and will be viewed in the context of women’s equality. When we attend to women and their experiences as the foci

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79 Okin, “Gender,” p. 117.
of abortion conflicts, rather than those of the fetus, we draw attention to the ways bodies are interpreted, how abortion is and will be viewed in relation women’s equality.

In *The Imaginary Domain*, Drucilla Cornell contends that freedom and equality are in tension in the struggle over abortion. On the one hand, women require equivalent rights of freedom to pursue their individuation. On the other hand, they require the right to abortion in order for their equality to be meaningful, both freedom and equality are constrained without it. A substantive, embodied theory of equality is necessary to address this tension in order for women to begin the process of individuation, because all individuals do not require the same measures to secure access to the tools that enable equality to result.

Cornell makes two important additional points about the abortion right: first, the right to abortion is one, if not the, primary avenue toward women’s equivalent bodily integrity; second, in the context of the first claim, the privacy rationale must be rejected as insufficient because individuation is both social and symbolic. She further argues that the rhetoric of “choice” is similarly inadequate because it trivializes the role of abortion in female individuation to the extent that “choice” has come to refer to decisions revolving around capitalist consumption of goods rather than complex decision-making processes, and as such, has become devoid of substantive meaning. Both “privacy” and the rhetoric of “choice” presuppose both as unproblematic positions or options, when in fact these concepts are deeply embedded in issues of identity. Lois McNay similarly argues:

The situated nature of subjectivity can be taken to mean many things but, in general, it denotes the way in which our sense of self, our understanding of what
is good and what is just, are not trans-historical, universal phenomena but are inseparable from specific cultural and social contexts.\textsuperscript{80}

Cornell and McNay’s larger point is that women are not “their” selves if someone else, be it the state, or a spouse, has a greater right to define them, symbolically or materially, than they do.

Once we understand that the right to abortion is essential to bodily integrity and individuation, we can see that what is at stake in the state’s efforts to regulate abortion is the woman’s right to be insulated from state imposition of the views of others on her own imaginary.\textsuperscript{81}

Because women’s bodies are always seen as pregnant bodies, they require broad reproductive rights to the extent that equality is withheld premised on reproductive functions only biological women possess. If we think of forced pregnancy as a physical injury with implications beyond the body alone, we can understand it as a bounded point of entry for disrespect for the context of that body. For “it is not merely bodily pain as such, but the accompanying consciousness of not being recognized in one’s own self-understanding that constitutes as moral injury.”\textsuperscript{82} The ways we experience pain or injury through our bodies has effects on the way we view ourselves as whole integrated beings.

While Cornell presumes of female personhood, Susan Bordo questions whether we can understand women’s personhood in a universal way because our legal milieu often disregards our distinct embodiment.\textsuperscript{83} As she claims, “two different [legal] traditions have been established, one for embodied subjects, and the other for those who

\textsuperscript{80} Against Recognition, p. 5.
\textsuperscript{81} Imaginary, p. 54. Cornell argues: “One way out of this dilemma is to define the right to abortion as absolute in order to make its definition consistent with a strong interpretation of what the right of privacy entails” (FN 34, p. 248).
\textsuperscript{82} Disrespect, pp. 133-34.
come to be treated as mere bodies.” By this she means that male bodies are seen as embodied subjects in the sense that they have been granted, through various means, important realms of experience and authority. That authority extends beyond the boundaries of their physical bodies to encompass other bodies within their sphere of authority, including women and children. Physical bodies have a relation to power that is intrinsic to their subjectivity. “It is important to retain a subject orientation in thinking about freedom, partly because it goes some way to overcoming an easy elision between ideas of agency, resistance, and indeterminancy.” When we retain the subject we can address particular agency, what injustice is being resisted, and avoid indeterminacy because we can identify both with a specific individual. This is important for women and feminist arguments as women’s subjectivity gets lost in abstractions of power particularly within liberal discourses.

Honneth argues that social shame results from injury to one’s physical integrity. Social shame violates the “taken-for-granted respect for the autonomous control of one’s own body, which itself could only be acquired at all through experiencing emotional support as part of the socialization process.” While I agree with his larger point, I would also assert that many women often do not experience feelings of autonomous control of their bodies because we live in a culture in the United States that teaches, in myriad ways, fear of the body, body hate, and as a result tolerates rape culture. The law, historically, has made this quite clear. I think it is fair to say that in the 21st century global west, men and women, boys and girls, are not generally socialized to have similar, positive relationships to their bodies, nor inculcated to positively relate their bodies to the

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84 Bordo, Unbearable Weight, p. 72.
85 Against Recognition, p. 18.
86 Struggle, pp. 132-33.
world around them. However, Honneth is correct to say that one might still, despite the obstacles, have a positive relationship to oneself that can be violated from without, as in the case of assault or rape. At the same time, the legal remedies meant to address these violations are often articulated in such a way that some violations are not seen as such, or that the victim shares partial responsibility for the violation.

Alisa Rosenthal has argued that the right to bodily integrity is an embodied one that is not granted or respected equally among women and men. In the case of pregnancy, courts have upheld certain violations of bodily integrity as “reasonable” because pregnant women constitute a unique class of persons based on their pregnant status. Thus women’s bodily integrity may be violated in a number of ways related to pregnancy. First, by voluntarily continuing a pregnancy, she is forced to assume a new legal status or category. Second, by being denied an abortion, she is often pitted against the fetus and becomes divided from herself, rather than considered as a whole, independent person. Third, she may be related to undergo painful, pregnancy-related treatments against her will. Fourth, her bodily integrity may be denied or compromised when she is compelled to continue a pregnancy by willful misinformation from a medical provider, strict parental or spousal consent laws, or by a total lack of abortion services in her area. These violations are bound up with power “because every attempt to gain control of a person’s body against his or her will – irrespective of the intention behind it – causes a degree of humiliation that impacts more destructively than other forms of

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87 Rosenthal, “Owing Autonomy.”
88 See the case of Angela Carder for example. “They [the Court of Appeals in re AC] found that all persons possess the right to accept or refuse medical treatment – “the right of bodily integrity” – and that neither incompetence nor illness decreases a person’s claim to that right. The Court observed that, “it matters not what the quality of a patient’s life may be; the right of bodily integrity is not extinguished simply because someone is ill, or even at death’s door” (In re AC 573A. 2d 1247). The dissenting justice in this case argued that women give up that right the moment they become pregnant.
respect on a person’s practical relation-to-self.”

Because we first primarily experience the world through our bodies, it follows that violation of our bodies necessarily alters, often in negative ways, our relation to self, physically and emotionally.

Thus, in terms of gender ideologies and their impact on identity formation and individuation: “social and cultural identities are both socially constructed and real, sources of both knowledge and mystification, to varying degrees.” Socially constructed identities (which all identities are) have very real implications for the individual and for collective community identity. Thus changing prevailing cultural patterns that produce and sustain marginalization and subordination require addressing demands for public recognition. This cultural change may be facilitated by institutional support for public recognition, such as when same-sex marriage rights are approved in a given state. I am not making a claim here about the primacy or importance of the individual over the collective or vice versa, rather that the individual cannot be viewed or understood apart from the community in which they reside. However, if we can achieve public recognition for previously disrespected groups, we may be able to stake a greater claim for those individual instances where disrespect must be addressed and can be done in a way that is more consistent with broader community values. If we can agree that all women are worthy, all women are valuable, and all women have an equivalent right to pursue their life’s course (even if we disagree with that course), we may then see, understand concretely, the value and necessity of a right to abortion for all women.

The disembodied nature of law thus does not avoid embodied results, but rather it operates in gendered ways that contradict the philosophical understanding of

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89 Struggle, p. 132.
persons/bodies as similar. Thus, the wrong in sex discrimination emanates from the presumption that law itself is disembodied when in fact it is not.

Under current sex-discrimination law, as conventionally interpreted, the wrong of discrimination is the imposition of a universal on an individual who does not match that universal. The wrong is not the imposition of stereotypes per se, but the imposition of stereotypes when they are not “true” – that is, when the stereotypes are not an adequate description of the actual life of the person.  

The argument is that some stereotypes “work” in cases where they are generalizable, and in such cases it is acceptable to use them as a standard of measurement. It is only when stereotypes do not “work” that a wrong may be found in using it as a measure of adjudication. This creates a second wrong in that a court cannot “see” a case on its individual merits, or as being about specific bodies that may require more or less from the law in order to achieve the desired outcome. Thus Cornell asks: “How can women’s reproductive capacity, which is a difference irreducible to imposed conventions, be valued and legally protected?”

Denial or restriction of the abortion right revolves around a state’s interpretation of what the stereotypes of women and comparisons to men, mean. Where abortion is highly restricted or unavailable, the burden of proof lay with a woman such that she must prove why the denial of an abortion poses a significant burden on her, why a particular stereotype does not hold for her, which raises the specter of the question: Whose life counts? As I have already argued, the language of privacy does not take women’s autonomy as given, nor grant her the power to determine the practical or discursive boundaries of privacy for herself; this gives us a clue about the answer to that question. However, if the discourse of law and social convention are powerful enough that they

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92 Imaginary, pp. 282-283.
93 Imaginary, p. 284.
negatively shape the course of one’s individuation, a re-defined or re-interpreted discourse may also do so positively. “Thus, the emphasis on the performative power of language, in and through which gender identity is constituted, allows for the transformation and reinterpretation of current structures of gender identity which devalues the feminine and defines heterosexuality as the norm.”94 However, identities still present a problem when institutions do not support or affirm these reinterpretations and instead oppose or reinscribe traditional gender ideologies, both implicitly when particular identities are not recognized as intrinsic to the individual to whom they belong, and explicitly when this disrespect is codified in law.

If we think of the systems of law and economics as embodied, a symbolic “Other,” we can think of it as “a system that does not merely recognize, but constitutes and confirms who is to be valued, who is to matter,” because only that which is embodied has the capacity to recognize another embodied being.95 Considering institutions as embodied, rather than insisting that they act neutrally, means that we can envision that they also have the capacity to act in specific, injury-redressing ways that rectify conflicts of inequality without charging them with violating some principle of equal treatment.

By starting with identity and power, I expand the normative purchase of recognition by focusing on how power differentials alter or prevent recognition. I argue that this approach, rather than the mother/child dyad Honneth begins with, contributes to a greater understanding of recognition’s practical application to social struggles, and how

95 Imaginary, 42.
those struggles are tied to broader institutional misrecognition. There are structures of power that permeate our relations before and after we first experience disrespect.

Gender oppression, for example, is misunderstood by being construed as, in its essence, a form of interpersonally engendered misrecognition rather than also as systemically generated oppression. […] By focusing principally on this mode [the primal dyad], the idea of recognition obscures the extent to which identity and subjectivity are penetrated by structural dynamics of power which often operate at one remove from the immediate relations of everyday life.

Lack of the abortion right expresses a relation of power as it positions women within the gender hierarchy. This hierarchy dictates that women are primarily responsible for the consequences of sexual activity. At the same time, they are often denied adequate resources to deal with those consequences in a timely and responsible manner. Though not all women end up needing an abortion, it occupies the background of women’s sexual socialization as a possible consequence some time during their sexual lives. Recognition can address this embodied possibility thus contributing to a critique of anti-abortion activity that rejects the importance of this social reality.

**Material Aspects of Embodiment**

A justification of the right to abortion based on an understanding of embodied recognition takes seriously the material effects of labor and economics, and other identity factors that interfere with the right and access to abortion privacy cannot address. “The necessarily abstract nature of universal rights renders women’s subordination such a thin

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96 Because of his focus on the psychological foundations of identity formation, Honneth, following Freud and others, begins his account of recognition with the first relationship a person has in life, the mother. Honneth clarifies this relationship by stating that this person need not be the biological mother of the child, nor even a woman, but the one in charge of primary caretaking in the infant phase. This relationship, he argues, forms the basis of future relationships with others, as well as the relation to self. See Chapter 5, “Love, Rights, and Solidarity” in *The Struggle for Recognition.*

97 *Against Recognition*, p. 9.
concept that the particulars of women’s inequality vanish from the content and justification of the right.”

There are three connections constituted by the relationship between the division of labor and women’s embodied sexuality that impacts the availability and practice of both privacy and access to abortion. First, historically, women of higher economic status have always been able to obtain abortions; second, there are pervasive stereotypes about women’s economic status related to welfare and fitness to parent (think 1980’s “welfare queen” rhetoric); third, the reasons most women choose abortion over parenting or adoption are most closely related to economic constraints than to relationship status.

Current social support systems in the United States do not support pregnancy and child-rearing in a way that women in less than ideal circumstances might choose to continue a pregnancy, even if unplanned. Rather than a battle between a woman and her fetus, abortion is often about the weight of material concerns, not only in a woman’s immediate life circumstances, but the projection of her future self, which may include concern for children she already has, or those yet to be.

In reflecting on Roe, Justice Ginsburg, and others in the legal community, have recognized a compelling connection between a right to abortion and the achievement of women’s life goals. A woman can be neither self-sustaining nor independent when she is not in control of her body.

The conflict, however, is not simply one between a fetus’ interests and a woman’s interests, narrowly conceived, nor is the overriding issue state versus private control of a woman’s body for a span of nine months. Also in the balance is a woman’s autonomous charge of her full life’s course... her ability to stand in

99 I say this because though the majority of all pregnancies are unplanned, not all of them are unwanted, which I think is an important distinction.
relation to man, society, and the state as an independent, self-sustaining equal citizen.\textsuperscript{100}

Abortion cannot be separated from ideas of ourselves as embodied, sexuate beings thus
“It is only on the basis of some account of women’s lesser worth that one could allow the state to regulate our bodies. Because women are devalued in this way, what concerns them (socially or politically) has also been devalued. “Social oppression not only deprives individuals of the material resources that enable autonomous agency, but it may also deprive them of fundamental emotional resources. The mutually reinforcing concerns of equal pay and affordable child-care remain an issue because most working women are the primary caretakers of children and other family members. Further, while the two-earner family as much as the single-parent family has become an important social reality in the labor force, in most cases pay continues to be structured such that women’s income is treated as less significant for familial survival. At the same time, households with more than one parent or guardian will often sacrifice the income of the lower earner because the cost of child-care outstrips the benefits of a second income. Note also the inability of the states to ratify the ERA as at least one measure that could begin to rectify this gap both in pay and in the division of labor itself. Thus, until these needs are seen as equally important as those that seem to primarily affect men in the workforce, ideologies about women’s place will continue to prevail.\textsuperscript{101}

That women’s destiny is rightly decided by the state, or by her (presumed heterosexual) marital status is indicative of an ideology that is historically tied to economic interests that coincide with the rise of industrial capitalism, when work done by

\textsuperscript{100} Ginsburg, “Thoughts,” p. 4.
\textsuperscript{101} While it is true that only biological women (or people with uteruses) can give birth, people of any sex or gender can parent. As such, in terms of the child-rearing binary, men are just as capable of parenting as women.
women and the family in and for the home began moving to commercial production in factories.\textsuperscript{102} This resulted in a shift in women’s informal power over and within domestic/home life, which diminished concomitantly with the loss of control over production of the necessities of daily life. The growth of industrial capitalism thus nurtured an emergent “middle class” in which women’s economic potential was diminished, and a gendered ideology grew up around it that justified women’s removal to the home. At the same time, for working women, rules and laws were devised that barred them from most types of work and limited their capacity to work in the areas they were allowed. These limitations were in turn correlated to what was perceived that women could provide to the common good \textit{as citizens}, which would always be inadequate relative to the dominant ideology.

Thus to say that a man is a first-class citizen is to say that he is “normally treated by the organized society as a respected and responsible member, a participant, one who counts for something in the society.”\textsuperscript{103} Women will fail to “count for something” as long as their equality is compromised by a lack of authority over their sexual and bodily choices, and as long as equality is premised upon monetary considerations. Lack of the abortion right bars women from “counting” while economics remain tied to social status, which is in turn tied to the way your rights “count” is premised upon the assigned cultural value of those characteristics, as in the right to privacy.\textsuperscript{104} By the same logic the less women \textit{seem to} publicly contribute to the needs of civil society, the less their contributions actually count. Anita Allen articulates concisely the conundrum of abortion, privacy, and equality: “The language of privacy implies that women are choosers against

\textsuperscript{102} Bordo, “Are Mothers Persons?,” p. 77.
\textsuperscript{103} Anita Allen, “The proposed equal protection fix,” p. 423.
\textsuperscript{104} “The proposed equal protection fix,” p. 422.
a background of a number of realistic, attractive, alternatives. In general, choice rhetoric is not appropriate where patterns of individual behavior follow largely unacknowledged gender norms that operate to disempower women. Equality arguments must then be made sufficiently neutral to be able to move away from gendered norms of role expectation, while acknowledging that the remedies needed to achieve meaningful neutrality must consider embodied experience, and be sufficiently strong enough to resist creation of exceptions to equality where inequality may be justified, and hence, reified in law.

Because citizenship and rights are intimately tied to the division of labor, women’s relationship to the state has developed along a different trajectory then men’s. Women have been thus removed from a universal framework of rights and duties because they have been disconnected from normative understandings of work or labor. Some have argued that the division of labor is universal to the extent that all people occupy some place within it; however, its organization serves the particular interests of the ruling class, and to that extent it mitigates individual freedom to pursue individuation and personal fulfillment. It has also been argued that women who choose marriage, and/or have children, willingly conform to subordinating gender roles that have a certain ideological, and for some, material value. Can chosen roles also be subordinating? It is important to understand that people can be treated in ways that are subordinating in consensually chosen relationships, but that does not justify willful subordination. It is possible that which roles are subordinating may be determined by who occupies those roles.

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105 Joan Williams in Allen, p. 430.
spaces because certain gender-specific roles have been viewed as inherently subordinate ones.

From this perspective we could argue that it is possible for women to experience misrecognition prior to an abortion because she already exists in a cultural milieu that marks her as less deserving of equal status despite the fact that most barriers to women’s formal equal citizenship have been removed. We may view denial of the abortion right as a reminder to women of their subordinated status to the extent that forced pregnancy impedes her ability to exercise the formal rights she possesses. Thus, according to Nancy Fraser: “To be misrecognized is to be constituted by institutionalized patterns of cultural value in ways that prevent one from participating as a peer in social life.” ¹⁰⁶ Women are first misrecognized by virtue of living in a culture that denigrates and devalues them; they are again misrecognized when they are forced to assume social roles, like mothering, that interfere with the pursuit of her life choices and individuation. Isolation of the abortion experience from women’s embodied selves allows it to be separated from the reasons that compel a woman to choose to abort in the first place, and again positions the woman against the fetus in an all-or-nothing standoff where moral consideration lays primarily with the fetus. As such, it is critical that we resituate abortion right in relation to women’s bodily integrity, and all the reasons a woman would choose abortion must be considered relevant to the decision itself.

¹⁰⁶ Recognition or Redistribution?, p. 29.
Conclusion

Embodied Recognition and the Right to Abortion

Equality remains a norm of justice to the extent that today it is understood as a universally accepted, though diversely interpreted, social and political goal. The conundrum of recognition and equality is how to achieve a practicable norm of justice without either subsuming, or over politicizing individual identities. That is, how do we avoid the tendency of liberalism to want to treat everyone the same? “Recognition is a remedy for social injustice, not the satisfaction of a generic human need. Thus the form(s) of recognition justice requires in any given case depend(s) on the form(s) of misrecognition to be redressed.”

We must avoid the impulse to apply blanket remedies to specific injustices. In our case, the recognitive justice of the abortion right redresses the misrecognition of women as materially and morally dependent, and incapable of autonomous decision-making. In this historical moment, and because pregnancy and abortion are an intimate part of women’s embodiment, it is not possible for women to achieve substantive equality without it. At the same time, because all women, like men, are not similarly situated, the presence or absence of the abortion right does not have the same effect for individual women.

Broadly, if not individually then, denying a right to abortion potentially violates all three of Hornet’s instances of recognition. First, in terms of social esteem (solidarity/labor), the denial of the abortion right reflects a devaluation of women’s social contribution, both in terms of motherhood and in terms of her formal labor. This “status refers to the degree of social esteem accorded to his or her manner of self-realization

107 “Recognition without Ethics?” p. 30.
within a society’s inherited cultural horizon.”

Second, in terms of self-respect (rights), denial of the abortion right reflects a belief that women are inherently worth less and as such are less deserving of equality. “This refers to those forms of personal disrespect to which an individual is subjected by being structurally excluded from the possession of certain rights within a society.”

Third, in terms of self-confidence (love), the denial of the abortion right is a manifestation of the ideology that women are incapable of independent moral agency and decision making; it makes women slaves to their reproductive biology by putting others in control of it.

Thus, the kind of recognition that this type of disrespect deprives one of is the taken-for-granted respect for the autonomous control of one’s own body, which itself could only be acquired at all through experiencing emotional support as part of the socialization process.

This framework is helpful for understanding the injuries sustained in the denial of the right to abortion as a way of countering the charge that to have an abortion is to be selfish and thoughtless. I concede however that the extent any individual woman experiences abortion in this way differs across the personal contexts in which the decision is made. Needless to say, regardless of personal experience or moral position on the issue, the truth remains that there are injustices involved in this process that are complex and interrelated. If we can then think about abortion in this way it becomes clearer that the resolution of this conflict goes much deeper than the law; it requires more thoughtful attention to the social realities that make abortion necessary.

Denial of the right to a safe abortion should be recognized as a potential source of sex discrimination because pregnancy has been legitimized as a source of sex and gender.

108 Struggle, p. 134.
109 Struggle, p. 133.
110 Struggle, pp. 132-33.
discrimination. Abortion needs should be similarly theorized with the understanding that social structures framed around one aspect of identity that is unique to women shapes and potentially interferes with their individuation. When women do not control an embodied experience such as abortion, a gender/sex ideology is instantiated that frames women as incapable of competent decision making or understanding the meaning of their decision for themselves. That women’s decision and meaning-making is questioned in this way, and on the basis of their sex in my view constitutes sex discrimination, particularly when we place abortion in the context of reproductive rights, which have been legally acknowledged as necessary for women’s equality. Anti-abortion laws “render invisible the gender subordination enacted in women’s lack of control over the terms and conditions of sexuality and reproduction.” Subordination is rendered invisible when the experience of pregnancy and the fetus is disconnected from the woman, when there is no provision for abortion in the case of rape or other violence, in short, when women do not matter.

Recognizing the right to abortion challenges the discourse which legitimizes our social status as objects to be manipulated, since it insists that it is women who must be empowered to define and re-imagine what maternity means to them. An equality rationale for abortion, framed as a remedy for sex discrimination, is still insufficient to the extent that the concept of equality remains understood to mean “sameness”. To reframe equality as an embodied concept is to acknowledge that it personifies an ideal generated by real people with distinct personalities and needs. Many feminist theorists have pointed out that in the formative years of liberal democracies, those personalities in many instances were distinctly male and property owning.

111 Injury, p. 141.
112 Imaginary, p. 88.
However we retain part of that legacy to the extent that people do not conform to the dominant ideology, application of the equality principle remains tenuous.

Women’s subjectivity and their status as equal political subjects is altered by pregnancy because they now share that subjectivity vis-à-vis their bodies with a fetus, and abortion laws in many states and communities reflect and encode this relationship. Susan Bordo explains that “the rationale lies in gender ideology,” which justifies her subordination, and requires denying the ability to control their reproductive and sex lives.

The pregnant woman (whose ethical and legal status as a person is not constructed as a question in the abortion debate, and which most people wrongly assume is fully protected legally) is seen as fighting, not for her personhood, but “only” for her right to control her reproductive destiny.\(^{113}\)

While the fact that women’s personhood is no longer debatable can be viewed as a positive step in the evolution of our consciousness, the fact that her reproductive life remains separated from her personhood, and can thus be governed as such, should give us pause. Situating abortion rhetorically and legally as a disembodied process is made easier in some ways by advanced reproductive technologies, the focus of the abortion debate has almost seamlessly drifted into one defined in terms of moral concern for the fetus.

Nothing about the rationale of Roe, nor its subsequent re-evaluations, guarantee that an individual woman is the primary, autonomous decision maker regarding the outcome of her pregnancy as “there has been one legal tradition for those who occupy the cultural location of the subject and another for those who are marked as “other”.”\(^{114}\)

\(^{113}\) Bordo, pp. 93-94.

\(^{114}\) Bordo, p. 80. Bordo talks at length about the concurrent trend in abortion law where men are claiming authority, or at least a stake, in the abortion choice based on what has been termed “father-right.” In some cases they have successfully argued that their interest in the fetus coming to birth, “because it’s their child too,” is more important than any reason a woman may offer for choosing to abort her pregnancy. The mere
Those marked as other are embodied subjects only in the context of a relation to another. In the case of abortion law, it is increasingly the fetus that gives women’s bodies their meaning, and, I argue, this distorted subjectivity remains an obstacle to abortion laws that are framed as important for women’s health as opposed to those focused on the potential future life of the fetus. Bordo argues that the advancement of reproductive technologies has played a significant role in making the fetus relevant, more meaningful if you will, to the detriment of women and their ability to be seen as valuable in and of themselves. Woman becomes valuable only in “her biological, purely mechanical role in preserving the life of another.”¹¹⁵ This relates to the problem of the private/domestic realm as this functional aspect has justified her confinement there, if only ideologically.

This status of women and the fetus is not only instantiated in law, but is supported and perpetuated informally through cultural norms that are taken as natural and inevitable. It must not be taken for granted that this view is confined to formal government institutions and structures. Rather, the two spheres mutually reinforce gender ideology, because it is in the private/domestic realm of the home where the law has been least effective in eliminating, or at least facilitating, the end of sex inequality.

Isolating women in a world where the law refuses to intrude further obscures the discrepancy between women’s actual situation and our nominal commitment to equality. Like other collective ideals, the equality norm is expressed predominantly in legal form. Because the law as a whole is removed from women’s world, the equality norm is perceived as having very limited application to women….¹¹⁶

¹¹⁵ Bordo, p. 79.
¹¹⁶ Taub & Schneider, p. 13.
While pregnancy continues to be viewed as a legitimate source of sex discrimination, and because pregnancy largely occurs in the private realm, inequality in the domestic will continue to be viewed as legitimate. This makes pregnancy more difficult to adjudicate in the public world, even more so an unwanted one. Because pregnancy is isolated in this way, this split must be viewed as a false antithesis because most women work, many have children, and many are not married; people reside in multiple realms at once, and must be seen as such if we are to get any closer to resolving the conflicts that occur there. And if we can view these realms as interactive, we may also be better able to adjudicate those areas that create conditions of inequality, instead of viewing some areas of life as exempt from this potential.

Inequality is the outcome of the relationship of the forces of oppression and the agents of subordination. Oppression results from the complex interactions of ideological, political, and economic forces. Recognizing that embodied agents enact subordination rather than a transcendental accident indicates the self-consciousness nature of systems, a point I and other critical theorists agree upon. To that end, it seems that women’s subordination and inequality has been built into a system of norms that govern most modern cultures of the world. Because there also remains widespread disagreement over the meaning of equality, that it is in turns ambiguous and subjective, sexual equality remains similarly ambiguous and complicated. Thus, part of the resolution of the abortion conflict is, in part, to reinstate the missing equality argument into the framework of future abortion cases, without removing privacy argument. At the same time, privacy must be resituated as one aspect of the right to abortion in the broader pursuit of equality. Women must be able to be free from interference in the process of her decision-making
process, including access to accurate medical information that is free from bias. While all medical information is protected by HIPAA, it is imperative that abortion information be treated with as much sensitivity as other medical information, even when the patient is a minor.\textsuperscript{117} Privacy further remains important because there must still be a space where personal behavior and choices are protected from public scrutiny; the process of deciding about abortion thus remains covered by this right. To that end, we may measure equality is by the efficacy of the privacy right.

Throughout this thesis I have argued that the abortion right serves a recognizant function necessary to women’s equality. Granting the right to abortion recognizes that women’s sex and sexuality, including their actual or potential childbearing, has played a primary role in denying them political and social equality. A broad right to abortion recognizes women as morally autonomous beings equivalent to men, without arguing about whether they moralize differently than men. While the law has historically defined women by a singular nature, granting the abortion right acknowledges that the context and conditions of women’s daily life matters to decisions about pregnancy. To that extent, women as individual people can be differentiated from a function their bodies perform, and rather than be defined by it, she is the one to define. Taking into consideration that some child-bearing is done against women’s will, the right to abortion functions with the understanding that there are structural as well as relational reasons a woman may not be able to freely exercise a right to “choose.”\textsuperscript{118} Finally, but not least important, the right to abortion allows women to control their sex lives to the extent that

\textsuperscript{117} Health Insurance Portability and Accountability Act (1996).
\textsuperscript{118} Spousal consent for abortion was ruled unconstitutional in \textit{Planned Parenthood v. Danforth} (1976). Spousal notification for abortion was rule unconstitutional in \textit{Planned Parenthood v. Casey} (1992).
they are not compelled to carry a pregnancy they do not want as punishment for having a sex.

By this understanding, do we then have a new understanding of privacy as well? Using recognition broadly, I think we can conceive of a more positive role and understanding of privacy to include the right to bodily integrity, which requires both the right to privacy as well as a right to abortion. That a subject is imbued with power is a pre-condition for recognition. And by power I do not mean someone with the potential to dominate another, but rather, that a person has an understanding of their own individuation and sense of self by which they are in control of the decision making process in their lives. The demand for the right to abortion is a demand for recognition because it involves reversing the way one group, women, are viewed by the mechanisms, formal and informal, that dominate and control the cultural discourse about who or what women are or should be. While the provision of the right does not automatically convey a sense of self-worth on the subject, it does remove a formidable barrier, and by doing so improves her chances of doing so for her self.
REFERENCES


