

Feminist Politics and Feminist Pluralism: Can We Do Feminist Political Theory Without Theories of Gender?*

AMY R. BAEHR

Philosophy, Hofstra University

PHILOSOPHERS writing in normative political theory have recently focused our attention on two competing understandings of the normative foundations of liberalism. According to those calling themselves political liberals, liberal political philosophy can and should proceed without the help of a particular conception of the person and of moral validity. It is argued that political philosophy should propose political principles that could be found acceptable to citizens holding a wide variety of doctrines concerning *what persons are, and what the proper ends of human and community life are*. On this view, the acceptability of political principles depends on the fact that they do not conflict with the fundamental values of dominant ethical traditions.¹

Comprehensive liberals, on the other hand, argue that political philosophy cannot be done without the help of a determinate conception of the person and moral validity. According to this view, we cannot say much of interest about how we ought to live together without knowing *who we are and what the appropriate ends of human and community life are*. Indeed, the comprehensive liberal accuses the political liberal of tacitly assuming such conceptions. Comprehensive liberals admit that their political doctrines, grounded as they are in particular and thus potentially controversial conceptions of the person and moral validity, may come into competition with common doctrines that citizens hold. But they believe that political philosophy cannot honestly avoid this result.²

Feminists have begun to consider the implications of this debate for feminist political philosophy.³ A common claim is that feminists ought not to be political

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¹For example Larmore (1990) and Rawls (1993).

²For example Sandel (1982) and Raz (1990).

³For example Becker (1999); Exdell (1994); Okin (1994); Lloyd (1994), (1998); Yuracko (2003). For an overview of contemporary feminist liberalisms, see Baehr (2002) and "Introduction" in Baehr (2004).

liberals because political liberalism buys its broad acceptability at the cost of diluting its commitment to substantive equality, a consequence that seriously challenges most feminist political projects.⁴ While I am curious about these implications, I want to focus our attention on a somewhat different question this debate suggests for feminist political philosophy. As political liberals suggest that political philosophy can and should be done without foundation in a theory of the person and in moral theory, should feminists attempt to do feminist political philosophy without a foundational theory of gender? Or, on the other hand, as comprehensive liberals argue that political philosophy cannot be done without foundations, should feminist political philosophers found feminist political philosophy on a particular theory of gender? This question is similar to the question at issue between political and comprehensive liberals insofar as it asks about the relationship between the questions “Who are we?” and “How should we live together?”

This question is not merely academic. For, presumably, it would be politically efficacious to have a “big tent” feminism, that is, an account of feminist political claims that is palatable to feminists holding a diversity of views about gender— androgynists, difference essentialists, social constructionists, just to name a few. But is it possible (and desirable) to describe a feminist politics that is compatible with such diverse theories of gender? What would its normative foundation be?

Of course, these questions about normative foundations disappear when we simply abandon normative political philosophy altogether. It is suggested by some feminists that normative proposals habitually do not recognize that the conceptions of liberation they represent are always reactions to particular experiences of domination and subordination. As such they carry with them and are constrained by the experience of those particular forms of domination. Thus, far from offering a view of full liberation, they present partial and backward-looking conceptions of liberation that keep us from recognizing new forms of domination and imagining new forms of liberation.⁵ This warning is surely warranted. But it does not require that we stop doing normative political philosophy altogether. On the contrary, it underscores the importance of such work while reminding us of its inevitable dangers. Rather than offering a comprehensive conception of human liberation, the warning requires that as feminists we see our work as contextual and pragmatic, responding to particular experiences of domination and subordination. On this view, normative political philosophy can accept the obligation to reflect on domination and human suffering, while recognizing that it operates within a particular horizon of political experience.⁶

⁴For example Okin 1994.

⁵Brown 1995.

⁶I echo Nancy Fraser’s hope for a critical feminist theory “simultaneously situated and amenable to self-reflection . . . potentially radical and subject to warrants” (Fraser 1997, p. 219). I endeavor to engage in “philosophy as defense” in which, “arguments are meant to serve as public justifications rather than as deductions from premises about human nature or rationality” (Laden 2003, p. 379).

Such situated reflection is the topic of this paper. I begin by examining a number of prominent feminist political theories and discussing the central role played by gender theory in those theories. This first section is critical insofar as it shows that placing gender theory at the foundation of a theory of feminist politics gives that political theory a justificatory burden it cannot support in the context of feminist pluralism. In a second section, I argue for a particular version of feminist contractualism as an example of a feminist political conception that, while providing a normative foundation for feminist politics, is not committed to a determinate ontology of gender. This makes the conception more viable in the context of feminist pluralism.

I. FEMINIST POLITICS GROUNDED IN ONTOLOGIES OF GENDER

Many feminists seem to hold that the validity of feminist political demands depends on the truth of particular claims about gender. For example, Elizabeth Cady Stanton writes,

Here gentlemen, is our difficulty: When we plead our cause before the lawmakers and savants of the republic, they can not take in the idea that *men and women are alike*; . . . we ask for all that you have asked for yourselves in the progress of your development, since the *Mayflower* cast anchor beside Plymouth rock; and simply on the ground that the rights of every human being are the same and identical.⁷

Notice that Stanton's political claim that men and women ought to enjoy the same rights is shored up by her claim about the genders, namely that they are "alike."

A very different ontology of gender was offered by an other type of early feminist. These feminists argued that, far from being the same, men and women are importantly *different* from one another. For example, a contemporary of Stanton, Jane Frohock writes, "It is woman's womanhood, her instinctive femininity, her highest morality that society now needs to counter-act the excess of masculinity that is everywhere to be found in our unjust and unequal laws."⁸

Stanton and Frohock disagree about what men and women *are*; but note that they share a strategy. In each case a set of claims about what women (and men), *qua* women (and men), are is offered, from which a conception of gender justice is then derived. Presumably, if one were to determine that one of these theories of gender is incorrect, its corresponding normative claim would lose its warrant.

Difference of opinion concerning what women and men *qua* women and men are implies important differences in the content of feminist politics. Stanton's emphasis on sameness supported the extension of rights to women identical to those of men. Frohock's emphasis on difference supported some different rights, for example, protective labor law for women. We are familiar with these

⁷Quoted in Cott 1987, p. 19.

⁸Ibid.

emphases on sameness and difference in their contemporary guise as the equality versus difference debate in feminist jurisprudence.⁹ The disagreement between “sameness” and “difference” approaches has seemed quite impossible to resolve because, as Martha Minow has pointed out, feminist thinking is caught up in a “dilemma of difference.” According to this dilemma, sameness approaches tend to ignore what seem to be obviously relevant differences between men and women. But difference approaches often end up stigmatizing those who differ from the norm and have the potential of legally entrenching the relations under which women have suffered.¹⁰ That is, both approaches have potentially unhappy implications for women. Is it possible that this dilemma is the result of a particular feminist philosophical strategy, namely grounding feminist political claims in particular theories of gender? Though this question is not pursued directly below, what follows is motivated by the suspicion that a non-gender-theory-based conception of feminist politics, or at least one that makes extremely minimal ontological claims about gender, can help us to move beyond the unattractive choice between sameness and difference approaches. But before I develop that approach, consider how a connection drawn between politics and gender theory causes trouble in the work of two contemporary feminist political theorists.

A. IRIGARAY AND SEXED RIGHTS

An ontology of gender seems to be fundamental to Luce Irigaray’s conception of politics. Indeed, Irigaray appears to draw political conclusions—statements about what the goals and strategies of the women’s movement should be—from claims about the ontology of gender. In her reading of Freud, Irigaray shows that the stories our culture habitually tells about human psychological development portray women as existing only *in relation to*, and as *deviations from* a masculine norm. Girls are “inferior little men”; women’s identity is limited to the role women play in men’s “primal fantasy.”¹¹ Because women are reduced to their relation to men, we can say that in patriarchy there really is only one sex, the masculine sex with *its* other. In the face of this masculine reduction of sexual difference to female difference from men, Irigaray insists that we acknowledge a substantive difference between men and women that is not reducible to this “dream of symmetry.”¹²

Replacing the one [the masculine] by the two of sexual difference thus constitutes a decisive philosophical and political gesture, one which gives up a singular being in order to become a dual being. This is the necessary foundation for a new

⁹For a helpful overview, see Goldstein 1993a.

¹⁰Minow 1990, p. 47.

¹¹Irigaray 1989, pp. 27, 33.

¹²Irigaray 1989, p. 11.

ontology, a new ethics, and a new politics, in which the other is recognized as other and not as the same.¹³

Irigaray sees sexual difference situated in sexually distinct embodied experiences. She writes: “There is nothing that is generally valid for women and men besides the economy of nature.”¹⁴ Thus while western political philosophy has traditionally seen the extension of rights to women as a matter of showing that women are relevantly similar to men, Irigaray claims:

People must have rights in civil society. These rights must necessarily be sex-specific. I mean, even when one sex can identify itself subjectively with the other, such identification is objectively impossible. Concretely this means that a body has objectively sex-specific characteristics that stand in the way of a subjective assimilation or identification [with the other sex]. Thus the discourse of equality remains an idealistic discourse so long as it abstracts from the bodily reality.¹⁵

Among the sex-specific rights Irigaray lists are legal preferences for mothers’ over fathers’ rights; the right to abortion; the right to have “public signs, as well as mass media programmes and publications . . . respect women’s sexual identity. It would be a civil offense to depict women’s bodies as stakes in pornography or prostitution,”¹⁶ and half of the media should be in the hands of women.¹⁷ Notice that a feminist politics inspired by Irigaray would not want the state to be neutral on the meaning and value of sexual difference—for attempts at neutrality will inevitably end up presupposing the male identity of the citizen.

Irigaray’s substantive political proposals are worth considering.¹⁸ Here, however, we focus on a political question about Irigaray’s philosophical strategy: are we to expect feminists, who presumably hold a diversity of views about gender, to accept a political program that is presented as grounded in a very particular theory of gender? One answer might be that feminist politics is *dependent* upon a particular conception of gender—for example Irigaray’s or some other—so those who would be feminists must either accept it or rethink their politics. Another answer, that this paper explores, is that this strategy

¹³Irigaray 1995, p. 19.

¹⁴Irigaray 1990, p. 348.

¹⁵Irigaray 1990, pp. 339–40. Author’s translation from an essay published in German translation.

¹⁶Irigaray 1994, pp. 76, 75.

¹⁷Irigaray 1990, p. 343.

¹⁸Some critics point to “a tension in Irigaray’s work between the sexual difference model (which argues for two subjects, a male and a female one) and the critique of universalism (which opens the way to a greater plurality of subject-positions)” (Whitford 1994, p. 16), and endorse the latter, but not the former. For example, Gail Schwab writes that Irigaray’s work can be read as the foundation “for the construction of an ethics of difference modeled on sexual difference, an ethics for the future of humanity in all of its diversity” (Schwab 1998, p. 76). Others distinguish between Irigaray’s specific political proposals and her more abstract claims about political change, again endorsing the latter but not the former. The latter include the idea that “women’s full participation in public life will become possible only when the political realm is radically redefined so that . . . it remains inherently connected to the world of intimate bodily relations” (Stone 2002, p. 34). On this, see also Cheah and Grosz (1998).

unduly burdens feminist politics. This answer would be accompanied by the hope that one can articulate a conception of feminist politics that does not depend for its validity on the truth of some particular theory of gender.

But is this perhaps an unfair reading of Irigaray? A more careful reading might see in Irigaray's insistence on feminine difference not a claim about what women *are*, but merely a *strategic* assertion of difference meant to free women from the constraints of patriarchal accounts of women's identity.¹⁹ If this is right, then Irigaray does not really mean that women are, actually, by nature, fundamentally different from men. She merely means that feminists should *think* of them this way now. Margaret Whitford writes: "This enables essentialism to be interpreted as a position rather than as an ontology, and Irigaray to be interpreted as a strategist . . . rather than as an obscurantist prophet of essential biological or psychic difference."²⁰

If Irigaray is a strategic essentialist, then she offers only an account of what women are under patriarchy, more being epistemologically inaccessible. As we learned above, what women are under patriarchy is merely a "male fantasy," part of a "dream of symmetry," a rationalization of male dominance. The strategic essentialist argues that we should assert feminine difference nonetheless because doing so challenges the patriarchal construal of women's difference. It opens up the possibility that the other be recognized "as other and not as the same,"²¹ not as a mere mirror image of masculine identity. Strategic essentialism *asserts* feminine difference so that it *makes a difference*.

If this is the correct reading of Irigaray's work, should we conclude that her political proposals do not rely on a determinate ontology of gender?²² Yes and no. Epistemological skepticism is the foundation for her strategic essentialism. And while epistemological skepticism would seem to be agnostic about matters of ontology, it does cast serious doubt on many accounts of what women are. For example, if we cannot know what women really are, then simple feminist difference essentialisms should not be trusted. (Of course, a true skepticism would merely caution us against trusting any particular account but not venture to claim that an account is wrong.) Nor should androgynist feminists be trusted when they claim that women and men are essentially the same. So while Irigaray, the strategic essentialist, may indeed be agnostic about gender ontology in the sense that she does not put forward a determinate account, her view does imply that we should withhold trust from gender ontologies. Many feminists will find this withholding of trust to be in serious conflict with their own views about gender. Thus, because feminists can reject this skepticism without being

¹⁹Schor 1994, p. 10. Commentators arguing that Irigaray is using essentialism strategically (or in Margaret Whitford's case, "provisionally") include Xu (1995), Schor (1994), Stone (2002), and Whitford (1994, p. 28). According to Whitford, at times Irigaray herself appears to clearly repudiate essentialism (see Whitford 1991, p. 173). See also Schor 1994, p. 76, n. 28.

²⁰Whitford 1994, p. 16.

²¹Irigaray 1995, p. 19.

²²I take no side on whether Irigaray is best read as an essentialist or a strategist.

unreasonable, a politics that is grounded in it will be less viable than one might hope.

B. BUTLER AND THE RADICAL CRITIQUE OF IDENTITY

At this juncture, perhaps we should turn to a theorist who explicitly seeks to develop a feminist politics that does not depend for its validity on an ontology of gender, for example, Judith Butler. Butler writes, "It is no longer clear that feminist theory ought to try to settle the questions of primary identity in order to get on with the task of politics."²³ Butler seems to be saying that feminist politics ought not to rest on particular claims about what women are. Indeed, this idea has been her claim to fame, as she joined many feminists in the 1980s and 1990s to dismantle the myth of the universal woman as the subject of feminist politics. Some theorists reacted to this dismantling with alarm, asking, "How can we possibly do feminist politics without a conception of woman?" I join Butler, however, in asking how we could possibly have thought we could do it *with* such a conception. But I worry that Butler is not as committed to severing politics from the theory of gender as she would seem. Consider the continuation of the passage quoted above.

It is no longer clear that feminist theory ought to try to settle the questions of primary identity in order to get on with the task of politics. Instead, we ought to ask, what political possibilities are the consequence of *a radical critique of the categories of identity*? What new shape of politics emerges when identity as a common ground no longer constrains the discourse on feminist politics?²⁴

But what is this "radical critique of the categories of identity"? According to Butler, the radical critique tells us that identity is a "political construction." We must "unmask" the fact that gender is "a kind of persistent impersonation." Butler tells us that "'naturalness' is constituted through discursively constrained performative acts . . . The practice by which gendering occurs, the embodying of norms, is a compulsory practice, a forcible production."²⁵ "Femininity is thus not the product of choice, but the forcible citation of a norm, one whose complex historicity is indissociable from relations of discipline, regulation, punishment."²⁶ Moreover, such regulation results in the creation of abject others. "This exclusionary matrix by which subjects are formed thus requires the simultaneous production of a domain of abject beings . . . those 'unlivable' and 'uninhabitable' zones of social life which are nevertheless densely populated."²⁷

Butler suggests that a particular approach to politics flows from this account of gender (and identity). As I read her, this politics has at least three components.

²³Butler 1989, p. xi.

²⁴Ibid.

²⁵Butler 1993, pp. x, 231.

²⁶Butler 1993, p. 232.

²⁷Butler 1993, p. 145.

First, a Butlerian politics recommends careful attention to disrupting traditional gender categories and expectations (“denaturalization”²⁸). Second, it recommends a focus on the claims of the abject, those excluded others, especially perhaps those who progressive movements themselves create.²⁹ And third, Butler’s account of gender and identity as performative suggests that significant transformation will occur via “resignification”.³⁰ Examples Butler offers are the progressive appropriation of the term “queer” by the gay, lesbian, bisexual and transgender movement. And in her work on hate speech, Butler suggests that a “politics of the performative” involves the transformation of meanings rather than their entrenchment in law.³¹

The point is not to put these intriguing claims about what gender is or about how progressive politics ought to proceed into question here. The point is merely that Butler *does* make claims about the fundamental nature of gender, and draws from them conclusions about the appropriate goals and practices of the women’s movement (and the queer movement as well).³² If this is right, Butler’s view implies that we *do need* to have our gender ontology figured out before we do feminist politics. If we do not, we run the risk of proposing political programs that entrench oppressive identities and create a sphere of abject others. Ironically, then, while intending to sever politics from ontology, Butler actually ties the two together. But then Butler’s feminist politics may not be capable of meeting with the acceptance of feminists holding a diversity of views about gender.³³ Just as I do not mean to disagree with Irigaray’s substantive political proposals, my concern is not to criticize the politics that Butler’s view of gender has inspired. I mean only to register a concern about the connection drawn between gender theory and politics.

But is Butler’s work not anti-essentialist and thus a rejection of particular ontologies of gender? That Butler’s work is anti-essentialist means that instead of offering an ontology (of gender or of anything else), she offers a *genealogy of ontology*:³⁴ an account of how we come to think things are the way we think

²⁸Butler 1993, p. 240.

²⁹See Butler 1993, pp. 112, 114, and 227. Butler recognizes the importance of “provisionally institut[ing] an identity and at the same time . . . open[ing] the category as a site of permanent political contest. That the term is questionable does not mean that we ought not to use it, but neither does the necessity to use it mean that we ought not perpetually to interrogate the exclusions by which it proceeds” (Butler 1993, p. 222).

³⁰Butler 1993, p. 240. An important question about Butler’s politics concerns whether she can account for any difference between positive and negative resignification. On this, see Oliver (1999).

³¹Butler 1997. Butler notes that using state power to address oppression can result in the entrenchment of the identity of the victim, rather than in her liberation. Importantly, Butler does not believe that resignification results from sovereign subjects taking meaning into their own hands and transforming it. The nature of language as volatile and the self as an effect of power foreclose this.

³²Butler 1993, pp. 223ff.

³³I do not suggest that Butler intends her view to be so capable.

³⁴Butler 1989, pp. 32–3.

they are. Indeed, as Butler uses the term, ontology seems to involve the fixing of identities, precisely what her work rejects.³⁵ She writes:

Clearly this project does not propose to lay out within traditional philosophical terms an ontology of gender whereby the meaning of being a woman or a man is elucidated within the terms of phenomenology. The presumption here is that the “being” of gender is an effect, an object of a genealogical investigation that maps out the political parameters of its construction in the mode of ontology.³⁶

This passage suggests that for Butler, to claim that gender is an effect is not to make an ontological claim. That is, it would seem that for Butler any and all ontologies are essentialist.³⁷ But surely this is an idiosyncratic use of the term “ontology.” *Merriam-Webster’s* reports that ontology is “a particular theory about the nature of being or the kinds of existents.” Butler tells us about the kind of being that gender is. She tells us that it is the result of “contingent acts” and not a natural substance. Indeed, Butler herself writes:

That the gendered body is performative suggests that it has no ontological status apart from the various acts which constitute its reality.³⁸

That it has no ontological status *apart* from the acts that constitute its reality means that its ontology, what it is, is determined by those acts. And while this writer is not unsympathetic to Butler’s account of gender, it is still an account of gender. And such accounts make problematic foundations for feminist politics because of the disagreement they inevitably engender in the context of feminist pluralism. If it is possible to do feminist political theory without doing gender ontology at all, then that political theory might be interestingly viable.

One might defend Butler against the claim that she is proposing an ontology of gender by suggesting that her project is ultimately epistemological, not ontological. Veronica Vasterling suggests that Butler’s claim (in her 1993 work) that the body is linguistically constructed should be interpreted as a claim about the limits of our knowledge, and not a claim about what bodies are.³⁹ Would it be plausible to read Butler’s earlier work on gender (1989) in this way? Such a reading would say that Butler does not tell us that gender *really is* the effect of “the embodying of norms,” but that is all we can know about it. Space is lacking here to pursue this question in sufficient depth. But briefly, even if Butler’s claims about gender do only amount to claims about the limits of knowledge and not about what things are, they still imply a serious rejection of many accounts of

³⁵Butler 1993, p. 148. Butler writes, “discursive practice by which matter is rendered irreducible simultaneously ontologizes and fixes [a] gendered matrix in its place” (Butler 1993, p. 29). “Being” or “ontological weight is . . . always conferred” by a power regime (p. 34).

³⁶Butler 1989, p. 32.

³⁷Stella Sandford makes the same point: “Butler . . . makes no distinction between this ‘metaphysics of substance’ and the more general notion of an ontology” (Sandford 1999, p. 20).

³⁸Butler 1989, p. 136.

³⁹Vasterling 1999, p. 22.

gender common to a pluralistic culture like ours, and common even among feminists. Just to give one example, if Butler's view is that all we can *know* about what women are is that it is an effect of power, then her view is in serious conflict with the belief, held by many feminists, that science will gradually get behind our social practices and reveal the inaccuracy of sexist beliefs about women. If this is the case, Butler's epistemology might not provide a reliable foundation for a conception of feminist politics.

To summarize the discussion above about Irigaray and Butler: even if both theorists are read as proposing accounts of the limits of our knowledge about gender, and not accounts of what gender is, their theories still have serious implications for feminist thinking about gender ontology. Most importantly, they enter the fray, seriously challenging common feminist accounts of what women are. The concern that motivates this paper is that such controversy at the very foundation of feminist political theory might not serve it well.

C. AN OVERLAPPING CONSENSUS OF FEMINIST DOCTRINES?

It is possible that a conception of feminist politics (Butler's or Irigaray's or some other) could be found acceptable to feminists holding theories of gender that differ significantly from the one its original defender uses as a foundation. This would imply that a conception of politics might stand even if its originally justifying conception of gender falls. Perhaps such a conception of feminist politics could find support in diverse feminist theories that are held in a pluralistic feminist culture like ours. That is, perhaps a conception of feminist politics can be seen to be justified from a variety of feminist points of view—though feminists holding those diverse points of view would disagree about why the conception is justified because they disagree about the nature of gender (or about other philosophically fundamental issues). For example, it is possible that feminists holding a variety of incompatible views about gender could agree on the political claim, made by Butler, that feminist politics ought to be vigilant about self-criticism, to be sure that it not create abject others. If there were such agreement, it might be because Butlerians could support the claim for Butlerian reasons, while humanist feminists could support it for humanist reasons, difference essentialists for difference essentialist reasons, ecofeminists for ecofeminist reasons, etc. If this happened, there would be an overlapping consensus of feminist doctrines supporting a component of a conception of feminist politics.⁴⁰ This possibility is interesting because it represents an account of the normative foundations of feminist politics that does not make the truth of some particular ontology of gender carry the justificatory burden.

⁴⁰Overlapping consensus is described by John Rawls (Rawls 1993). Rawls intends to develop an account of justice suitable for a democratic society divided along moral and religious lines. As Rawls uses the term, an overlapping consensus exists where a conception of justice "is a module, an essential constituent part, that in different ways fits into and can be supported by various reasonable comprehensive doctrines that endure in the society regulated by it" (Rawls 1993, pp. 144–5).

Accepting overlapping consensus as the *sole* ground of feminist politics has the happy consequence of not being associated with any difficult-to-defend ontological claims.⁴¹ But it has an unhappy consequence as well. It makes feminist politics seem self-validating. It suggests that whatever we feminists say is right is right. It holds us to no higher standard than our own current convictions. The immanent critique of feminism offered by lesbians and women of color in the past decades has shown us that any generation's current convictions are hardly entirely trustworthy. Thus the overlapping consensus approach seems to take justification too lightly, more lightly in fact than I think most feminists themselves take it.

Indeed, surely most feminists do not think their political demands are right merely because an overlapping consensus of feminist doctrines supports them. It is more likely that they think their demands are right for some other reason. If the foregoing readings of Irigaray and Butler are accurate, they think they are right because they have discovered something about the nature of gender. But this brings us back to the beginning. Does the rightness of feminist politics depend on the truth of some particular theory of gender? Can we begin to answer the question "Why are feminist political claims right?" without making use of a particular ontology of gender? The remainder of this paper is dedicated to answering that question.

II. A FEMINIST CONTRACTUALIST ALTERNATIVE

A number of feminists have considered versions of contractualism as candidates for an explanation of the normative foundations of feminist politics.⁴² Contractualism has long attracted thinkers who wish to reconcile political justice with pluralism of the sort that we find in the women's movement, and thus it would seem a logical place for us to look. But many feminists have criticized contractualism as incapable of anything but the affirmation of conventional values.⁴³ In the remainder of this paper I propose a version of feminist contractualism. If it is successful, we will have reason to doubt that contractualism is so limited. I first explain the conception and the kind of normative grounding it provides for feminist political claims. Then I consider whether the feminist contractualism sketched really avoids assuming the truth

⁴¹On Rawls's view, the fact that there is overlapping consensus on a particular political conception does not, by itself, justify that conception. But any conception that failed to be the subject of an overlapping consensus would not be suitable for a society in which there is serious disagreement about moral and religious matters.

⁴²For example Susan Okin (1989, 1994), Jean Hampton (1993), Seyla Benhabib (1987), Onora O'Neill (1989), Janna Thompson (1993), S. A. Lloyd (1998).

⁴³Alison Jaggar writes: "Of course, the tacit acceptance of conventional or dominant values is an inevitable result of the skepticism about the human good that lies at the heart of liberal theory" (Jaggar 1983, p. 189). Other important feminist critics of contractualism include Held (1993), Nussbaum (2000), and Pateman (1988).

of a particular ontology of gender, and thus whether it is compatible with feminist pluralism.

Feminist contractualisms will begin with the critical intuition that if there is a hypothetical contract justifying current social relations, it is a hypothetical contract between a select group of people (or between parties representing a select group of people), and not between all persons in society. This is because, as far as feminists are concerned, *existent social relations clearly benefit some over others for reasons that could not be found acceptable to those left worst off under them*, many of whom, of course, are women.⁴⁴ In other words, if contractualism is meant to explain the validity of current conventional social relations, then it is merely an exercise in rationalization. What feminist contractualisms affirm is the deeper normative claim that social relations are justified only if they are, in some sense, capable of acceptance by those who are subject to them, including those left least well off. But who are “those subject to them”?

Some feminist theorists have argued that theorists should not attempt to describe these folks, because any description will be subject to bias. Instead, we are advised to think of the parties to contractualist discourse as actual people and discourse as real discourse. For example, Marilyn Friedman writes in support of real discourse: “No universalization without representation!”⁴⁵ Seyla Benhabib writes: “[T]he condition of ideal role-taking is not to be construed as a hypothetical thought process . . . but as an actual dialogue situation in which moral agents communicate with one another.”⁴⁶ And even Virginia Held, normally quite opposed to contractualism writes: “Actual dialogue between actual persons . . . [is] much more likely to be satisfactory” than imagined discourse.⁴⁷ This would mean that social relations are justified if they could be found acceptable to actual people deliberating. But these actual people are likely to have biases as bad or worse than the fictional inhabitants of a Hobbesian or Lockean state of nature. That is, their views about themselves and others, and about the appropriate arrangement of social relations are also likely to reflect relations of domination and subordination. Thus, insisting on real dialogue is no sure antidote to bias in contractualism. Real dialogue *might* be something like an antidote if we made “dialogue” mean something like: cooperative discussion motivated solely by the desire to reach consensus.⁴⁸ Then dialogue might work to weed out bias. But *real people* are rarely, if ever, solely motivated

⁴⁴Women are disproportionately represented among the least well off in societies like ours. For documentation of this claim, see the substantial literature on women and poverty. One might begin with Diana Pearce’s “The Feminization of Poverty” (Pearce 1978). For an international context to the subject of interpersonal comparisons of well-being, with special focus on women, see Amartya Sen (1993). What makes a feminist contractarianism feminist is the special attention it pays to the connection between women and disadvantage.

⁴⁵Friedman 1993, 8.

⁴⁶Benhabib 1987, p. 93.

⁴⁷Held 1993, p. 41.

⁴⁸This is Jürgen Habermas’ strategy (Habermas 1990, 1995).

by the desire to reach consensus. Thus we would no longer be talking about real discourse.

But the advocates of real discourse have an important point. Since the answer to the contractualist question—What conditions for our common life together are capable of acceptance by all?—depends on parties' sense of who they are and what their most important needs and interests are, and these things vary from socio-historical context to context, an adequate contractualism will have to exhibit some flexibility.⁴⁹ Now, clearly we do not want a political conception to be flexible in the sense of uncritically shifting to fit the changing constellations of power in society—so that a racist society should have a racist conception of justice, a sexist society a sexist one. What the advocates of real discourse seem to be pointing towards is what I would like to call *right flexibility*.⁵⁰ When contractualism is flexible in the *wrong* way it favors some folks by tailoring principles of justice to reflect their needs and interests, to the detriment of others' enjoyment of the fruits of social cooperation. *Right flexibility* avoids such partial tailoring while still permitting principles of justice to fit specific contexts. By context I mean these three things. First, what it means to be an autonomous citizen—to live one's life as one sees fit and participate in the framing of the conditions under which one must live—varies from socio-historical context to context. That is, *who* citizens are is not static. Second, because *whose* autonomy it is varies, *what resources* citizens need to exercise this autonomy will also vary—these resources are what Rawls calls “primary goods.”⁵¹ And third, the precise ways in which these resources remain scarce varies. By permitting the flexibility necessary to reflect these specific conditions, a contractualism can help us to construct principles of justice that apply to specific socio-historical situations. The proposal I sketch below is an attempt to illustrate this right flexibility.

A. THE PROPOSAL

The feminist contractualism I have in mind begins with the idea of contractualist discourse between *parties described in ways informed by some of the insights of feminist scholars and activists*. In what follows, I explain which insights those are, what a discourse among parties so described would look like, and why this feminist description of parties, as an example of right flexibility, should be preferred.

There are many insights of feminist theorists and activists that could be fruitfully operationalized in a contractualist theory. Rather than attempting to

⁴⁹On this issue see also Nancy Fraser's discussion of the “politics of needs interpretation” (Fraser 1989).

⁵⁰The idea of right flexibility has conceptual affinity with Rawls's idea of something's not being “political in the wrong way” (Rawls 1993, p. 40).

⁵¹Rawls 1982. On expanding the list of primary goods, see Johnston (1994).

be comprehensive, I focus here on the insights of what Eva Kittay calls feminist “dependency theorists.”⁵² Thus what I propose is part of a feminist account of justice, not the whole. Dependency theorists have developed a conception of the person according to which persons have, among other things, a fundamental interest in seeing that the needs of people who depend on them for basic care are met. This interest is neglected in conventional contractualist accounts, because those accounts presuppose that the needs of the dependent⁵³ will be met by “others,” namely by “volunteer forces of those who accept an ethic of care,”⁵⁴ by “the invisible hands of women.”⁵⁵

What does contractualist discourse look like once we *privilege* the sense of self of these volunteer forces? Parties with an interest in seeing that the needs of dependent others be met could not be described as mutually disinterested utility maximizers. They would not be disinterested because they would see each other and themselves as potential dependents for whose well-being they are concerned, or as potential care-givers on whom they might depend.⁵⁶ But these parties are not purely selfless either. They would be concerned with their own autonomy—with living their lives as they see fit, and with being co-authors of the conditions under which they live.⁵⁷ Thus, deliberation would not revolve around how to secure the conditions for the exercise of the autonomy of independent parties, but rather how to make possible both autonomy and the fulfillment of dependency-related obligations. Parties would want the basic structure of society to ensure that their autonomy can be exercised in a way that is compatible with seeing that the needs of their dependents are cared for.⁵⁸ We should think of the parties as *desirous of personal and political autonomy compatible with dependency-related obligations*. As such they would insist that social arrangements make the interests in autonomy and care compatible. Thus they would endorse an explicit reference to dependency-related obligations in a

⁵²Kittay 1998. See also see Held (1993), Baier (1987), and Thompson (1993).

⁵³To be dependent is to require significant aid, financial, physical, or psychological, from an other person or persons to see that one’s basic needs are met. Some forms of dependency are socially constructed. But other forms of dependency are not. In these forms the dependency does not cease when the social context changes. (I thank Wendy Lee-Lampshire for raising this issue.)

⁵⁴Baier 1987, p. 49.

⁵⁵Thompson 1993, p. 264. Dependency work is, in our society, gendered, but also raced and classed. The extent to which conventional conceptions of justice ignore the relevance of human dependency reflects the extent to which the voices of women, but also of the poor and racial and ethnic minorities, have been ignored.

⁵⁶Because parties see themselves as potentially dependent, they are concerned that care-givers be able to provide care. Is this sufficient to give contractualist voice to the legitimate interests of the dependent themselves? Martha Nussbaum is not convinced. See Nussbaum (2000). Jean Hampton argues that while contractualism is not suited to articulate fully the moral-political relationship between those who are substantially unequal, it can provide some guidance (Hampton 1993).

⁵⁷There is an interesting literature on the value of autonomy as it relates to care. See for example Clement (1996), Held (1993), Meyers (1989), and Nedelsky (1989). For recent work on relational autonomy, of which my model is an example, see *Relational Autonomy* (Mackenzie and Stoljar, eds. 2000).

⁵⁸See Janna Thompson’s version of this point (Thompson 1993, pp. 269–71).

principle of equality—requiring, for example, that *the determination of what goods count as basic, and the distribution of such basic goods, not favor non-dependency workers over those engaged in dependency work.*

Consider just a few of the policy implications of this principle of equality. First, some will choose not to take on dependency obligations related to childbirth and childrearing.⁵⁹ Thus for women to enjoy autonomy, they must be able to choose to terminate pregnancies that they do not wish to carry to term. Second, the principle of equality articulated above seems to require that care work and wage work be made compatible. Possible methods for reconciliation include flex-time and part-time work at decent wages, adequate paternity and maternity leave, transitional vocational training for those moving from care work to wage work, and high quality, affordable professional dependent care. Third, the principle might require making care work sustainable without wage work. This would require public support for full- or part-time care work, including leisure time equity for care workers, which would imply the availability of quality, affordable professional dependent care available also to relieve full-time care workers. Fourth, the principle would seem to require an end to the devaluing of dependency work, such as we might find in a policy of comparable worth. And finally, it would seem to require policies intended to create effective equality of political voice for caregivers. This might involve quotas in decision-making bodies.⁶⁰

In short, that social relations should assure the compatibility of autonomy and care is the overarching demand of justice that the dependency-conception of the person implies. It is important to note that the dependency-conception of the person, and the idea of justice to which it belongs, are not meant to represent the whole of a feminist conception of justice. They are developed here to illustrate how part of a theory of justice would look if it took seriously some of the considered convictions of feminists.

This model is rightly flexible in at least three ways. First, autonomy is not understood abstractly—indeed, it is not at all clear what autonomy is if it is not *somebody's* autonomy—but as the autonomy of concrete persons: persons potentially charged with dependency-related obligations. Second, though this point would need to be fleshed out, the feminist contractualism described lets the operative conception of autonomy determine what goods count as “primary goods,” that is, what goods the principles of justice are to distribute. And third, note that this contractualism takes account of the specific ways in which the scarcity of primary goods is maintained—say by a culture-wide systematic devaluing of work defined as “women’s work”—and permits principles of justice to speak to this specific situation.

⁵⁹Dependency obligations are often unavoidable, for example when children or a partner become disabled, or parents age.

⁶⁰On this issue, see Anne Phillips (1991).

B. JUSTIFYING THE CONCEPTION

But why should this conception of the person be privileged? Justification in contractualism is an extremely complex topic on which there is a large literature.⁶¹ I will lay out here the path that, as I read him, Rawls has taken concerning the justification of his conception of justice. I use this path as a guide for explaining what sort of justification is available and appropriate to feminist contractualism.

Contractualist political theories depend crucially on the way they characterize parties to deliberation. The feminist contractualism I have described above is no exception. Rawls's early work was roundly criticized by writers desiring to know how his particular description of the parties was to be justified. Rawls's first answer was to argue in two directions.⁶² On the one hand, Rawls deepened the philosophical argument for the description of the parties explaining that it was grounded in a Kantian conception of the self as autonomous. At the same time, Rawls argued that the conception is justified because it is "implicitly affirmed" in our political culture. He puts this criterion later this way: the conception is justified because it is one of the "deep-seated convictions and traditions of a modern democratic state."⁶³ These two justificatory strategies were shown by critics to work at cross-purposes. And Rawls later argues that his conception of parties does not depend after all on the truth of a Kantian conception of the person but is rather a "political" conception of the person that carries no such heavy philosophical burden.⁶⁴ Continuing the second strand of justification begun in 1980, Rawls argues in 1993 that his description of the parties fits into the "deep-seated convictions of a modern democratic state" precisely because, rather than modeling some very specific philosophical conception of the person with which many citizens may be reasonably expected to disagree, it models a very minimal sense of what it means to be a reasonable citizen, to live together with others with whom disagreement about fundamental matters is to be expected, but who desires nonetheless to live together with these others under conditions that are mutually acceptable. Rawls weakens his justification of the description of the parties one step further, prodded by criticisms of Jürgen Habermas, who himself desires a retreat to a stronger Kantian justification.⁶⁵ Rawls writes, "the overall criterion of reasonableness is general and wide reflective equilibrium."⁶⁶ General and wide reflective equilibrium is achieved when citizens severally consider candidate conceptions of justice, "and the force of various arguments for them," and come to "affirm the same public conception of political justice."⁶⁷ Earlier Rawls had put this criterion this way: the

⁶¹See for example Raz, Ackerman, Sandel, Scheffler, Habermas, Hampton.

⁶²Rawls 1980.

⁶³Rawls 1993, p. 300.

⁶⁴Rawls 1993.

⁶⁵Habermas 1995.

⁶⁶Rawls 1995, p. 141.

⁶⁷Rawls 1995, p. 141 n. 16.

conception must “prove acceptable to citizens once it was properly presented and explained.”⁶⁸ Meeting this criterion is, in one sense, an empirical matter. But in another sense it is not. Because it is not clear what it means that the conception has been presented “properly.” Nor is there any way to be sure that citizens’ acceptance or rejection of the conception followed upon due consideration. Despite these clear problems, Rawls conjectures that justice as fairness can meet the requirement. Some critics have applauded this retreat from Kantianism,⁶⁹ and others have lamented it.⁷⁰ I would like to explore what Rawls seems to have learned about justification in contractualism, and consider how a feminist contractualism might be justified against this background.

As I see it, Rawls’s work taken as a whole suggests that a contractualism must show four things to justify itself.⁷¹ But, as should become clear, *justification* is not to be thought to settle the matter once and for all. Instead, philosophical justification of a political conception should be thought of as a matter of showing plausibility, as a contribution to public discourse about justice.⁷² In this sense, writing political philosophy is a political activity. The four things it must show are these. First, the conception of the person on which the feminist contractualism above depends must not commit citizens to a particular metaphysical conception of the self or of morality. This is important for political philosophy in general, but as section I above makes clear, it is also important for any feminist political theory. Second, the feminist conception of justice, and the reasoning to it, must be shown to be part of the “deep-seated convictions of a modern democratic state.” And third, it must be capable of achieving what Rawls calls “general and wide reflective equilibrium.” This is closely connected to showing, fourth, that it models what it means for citizens to be reasonable. I discuss these criteria in order, showing that each is fulfilled well enough by the feminist contractualism, and thus that it is justified well enough.

The first criterion requires that the description of the parties not commit one to any particular doctrine concerning the person or morality. But why this? Could one simply not argue that the dependency-conception of the person is true, or at least more true than, say, the Rawlsian conception? Would the truth of the conception—once established—not explain why it should be privileged? The answer is, no. For, even if we could determine that the dependency-conception of the person is true (or more true than others), its being true would not sufficiently explain why it should be privileged in a normative theory. If it

⁶⁸Rawls 1980, p. 518.

⁶⁹Rorty 1991.

⁷⁰Ackerman 1994, Habermas 1995.

⁷¹Each of these conditions is controversial. There is an impressive literature suggesting that Rawls’s own conception of the person does not satisfy them (for example Wenar 1995, p. 54; Scheffler 1994, p. 13). And critics have asked whether satisfaction of these criteria should even count as justification (Scheffler 1994; Ackerman 1994). I will not settle these issues here. I use these conditions to explain what sort of justification is available and appropriate to the feminist contractualism sketched.

⁷²On this see Laden (2003) and footnote 6 above.

is true about people, then surely many other things are also true about people. To decide which description of persons should be normatively privileged, we need something more than, or other than, its truth. Also, basing a contractualist account of justice—or part of a contractualist account, as is given here—on a supposedly true conception of the person would mislead the reader into thinking that I plan to provide a stronger justification than I think one can provide. I mean my proposal to be contextual, to respond to particular experiences of disadvantage. And finally, if the conception were presented as true, it would demand the acknowledgment of citizens, violating the condition of pluralism argued for above. The conception of justice pursued here is capable of meeting with the agreement of citizens holding a wide variety of views about what persons are and what morality is, as well as about the nature of gender. As Rawls writes, the conception of the person in contractualism should not be thought of as true.

When, in this way, we simulate being in the original position, our reasoning no more commits us to a particular metaphysical doctrine about the nature of the self than our acting a part in a play, say of Macbeth or Lady Macbeth, commits us to thinking that we are really a king or a queen.⁷³

Feminist contractualism does not depend on the dependency-conception of the person being, or being accepted as, true—citizens need not believe that all persons are, by their very nature, bound tightly in a social web such that they are concerned to see that their dependency-related obligations are met, and such that any denial of that would be alien to one's true self or false consciousness.⁷⁴ Meeting this requirement is important, but it still does not show that the dependency-conception of the person is the one we should adopt. Criteria two and three bring us closer to showing that.

The second requirement is that the conception of justice, and the reasoning to it, be implicit in the traditions of the modern democratic state. Can feminist contractualism meet this requirement? While a conception of justice worked up for a particular people—which is how this proposal is meant—will not stand much of a chance if it is not presentable as consistent with that people's political traditions, our political traditions have been decidedly sexist. This means that the dependency-conception of the person will not have played as central a role in our state's foundational thinking—political, judicial, philosophical—as will the conception of the person as independent. A feminist contractualism will thus not require that its conception of the person be drawn from the dead center of our political tradition. It will be satisfied to show continuity with important parts of our tradition. (Of course, what constitutes the center and the parts of a tradition is always a matter for reinterpretation, of the sort undertaken here.) While it is not seen as central, the dependency-conception of the person is not

⁷³Rawls 1993, p. 27.

⁷⁴Something like this is the social ontology implied in care ethics.

alien to our tradition either. Thus the conception *can* be presented as “implicitly affirmed” in some of what are today understood as the foundations, and not just the periphery, of our political culture. For example, it is a longstanding, though waning, idea in our political culture that while men owe an obligation of military service to their country, women owe an obligation of care to their families. To make this obligation to care for families legally explicit, or simply to imply it legally,⁷⁵ is to acknowledge state—and thus common—interest in the well-being of dependents and in the ability of care-takers to fulfill their dependency-related obligations. Another example to consider is the longstanding traditional obligation that adult children have to care for their aging parents.⁷⁶ This obligation was transformed into a common obligation early in the last century, when economic realities made the fulfillment of that obligation extremely hard or impossible for many citizens. Beginning with the New Deal, in the United States it has been thought appropriate that the community—through the agency of the state—assure the well-being of aging parents. Thus the fulfillment of a particular familial obligation is again transformed into a general political obligation.⁷⁷ In addition to cases such as these, consider also that the dependency-conception of the person, and the conception of equality to which it belongs, are expressible with the conceptual vocabulary of autonomy, the preferred language of our political culture. This places the feminist contractualism developed in the company of other feminist political theories attempting to transform but not jettison the conception of autonomy at the root of our political culture. Feminist proposals that abandon the language of autonomy may be criticized as parentalistic,⁷⁸ but also because they do not present their ideas with the vocabulary of our political tradition and thus fail to make clear the interface between our current political realities and an envisioned better future. Thus, to conclude these remarks about the second requirement, while a feminist conception of justice need not fit neatly into the center of our political tradition—because that center has been sexist—it should, and can, be presented as implicit in important parts of our tradition.

I have shown that the feminist contractualism outlined above fulfills criteria one and two—it does not commit citizens to any divisive metaphysical doctrines, and it can be shown to be implied in the traditions of a modern democratic state. These criteria outline necessary but not sufficient conditions for a conception of justice being justified. The third criterion brings us a bit closer to a sufficient

⁷⁵See Kerber 1998.

⁷⁶This obligation was, and continues to be, interpreted as an obligation that women owe their parents, or even their husbands’ parents. Caring for elderly relatives adds burdens to women already working one shift outside the home, and another shift providing the majority of care for children and the majority of housework. For data on women’s “second shift” work, see D. Spain and S. M. Bianchi (1996).

⁷⁷For an argument in support of seeing New Deal policies as part of the foundations of our political culture, see Ackerman (1991).

⁷⁸See for example Noddings (2002).

condition, but as should become clear in what follows, the language of sufficient conditions leads us to believe we will be getting a stronger justification than is possible or prudent. According to the third criterion, a contractualist theory must model citizen reasonableness. This is so that principles of justice are those that reasonable citizens would accept. But how do we get the conception of reasonableness? Recall that Rawls has abandoned a strong Kantian justification for his conception. Rawls looks for a conception that makes no metaphysical commitments (criterion 1 above), that can be found implicit in our political traditions (criterion 2 above), and that is in reflective equilibrium with a set of considered convictions about justice that he takes to be central. This is the best that a political philosopher can do. In our case we have included in our considered convictions about justice the claim that society should be organized in such a way that citizens' dependency-related obligations may be fulfilled without the systematic disadvantaging of those citizens who are socialized to, or naturally desire to, see to them. That is, we have augmented the conception of reasonableness so that citizens are reasonable when they recognize that citizens will come to differing answers to fundamental metaphysical questions, and yet they desire to live with these others under conditions that are mutually acceptable, and they desire to see that their dependency-related obligations are met in a way that is compatible with their enjoying personal and political autonomy. How can it be shown that this conception of reasonableness is the appropriate one rather than Rawls's or anyone else's for that matter? This brings us to the fourth criterion.

The fourth criterion requires that a conception of justice be capable of achieving what Rawls calls "general and wide reflective equilibrium,"⁷⁹ in other words, that it would "prove acceptable to citizens once it was properly presented and explained."⁸⁰ But how are we to know whether this criterion is ever met? Clearly the political philosopher has no choice but to speculate. While empirical data would not be entirely useless, they alone would not determine what conception would pass this test. This is because it is not clear what the test requires. What does it mean to present the conception "properly"? How would we know when citizens' acceptance or rejection of the conception followed upon due consideration? At this point, the political philosopher has no choice but to act as social critic, and suggest to the public what it might affirm, were it to engage in sustained and reflective discourse on the question. But surely the proposal made here suffers the same fate as Rawls's, or anyone else's, at this point. Indeed, Rawls believes that his political conception, along with its conception of the person, will ultimately stand the test of "wide and general reflective equilibrium." But he admits that he is speculating. As long as we are speculating, let me say that I think that the dependency-conception of the person

⁷⁹Rawls 1995, p. 141.

⁸⁰Rawls 1980, p. 518.

is more likely to “prove acceptable to citizens once it was properly presented and explained.” This paper is an exploration of that conjecture and its implications.

The conjecture is based on some facts. The economy in the United States has changed fundamentally in the past 30 years so that single-earner families are nearly unheard of. According to recent estimates, merely 7 per cent of American families have a mother at home caring for children or elderly parents and a father doing wage work.⁸¹ As has been well documented, this change has meant that women are now working both inside the home, doing the lion’s share of housework and childcare, as well as outside the home.⁸² The injustice of this arrangement consists not only in women’s working disproportionately long hours, much of it unpaid, but also in the harm to women’s equal opportunity in the job market caused by men’s relative freedom from domestic burdens. Most importantly for our purposes here, however, is the fact that this economic change has created nothing short of a national consensus on the idea that the family is in crisis. Citizens on the left and the right are in fundamental agreement that the way we are now organizing our common life ignores our individual obligations to our dependents, or it seems to presume that someone else—the housewife—will be caring for the dependents. She, of course, no longer exists. Most citizens know this. It would seem to follow that we must organize our common life in a way that makes it a communal concern that all citizens be able to fulfill their dependency-oriented obligations. Under conditions of pluralism we will not come to agreement on how those obligations are to be fulfilled. But we can come to an agreement about the importance of their being fulfilled.

In summary, one can construct a contractualist model informed by some of the insights of feminist scholars and activists that provides support for a particular principle of equality. According to this principle of equality, basic goods must reflect the needs of citizens with significant dependency-related obligations, and be distributed in a way that does not systematically disadvantage those with such obligations. This principle of equality is meant as *part* of a feminist contribution to a theory of justice.

C. EVALUATING FEMINIST CONTRACTUALISM

Part I above showed that feminist political theories depending for their validity on the truth of a particular theory of gender pose a problem in the context of feminist pluralism. They make it necessary for feminists, who presumably hold a variety of views about gender, to agree to a particular conception of gender before they accept a conception of feminist politics. That section showed that both Luce Irigaray and Judith Butler make the validity of their political proposals

⁸¹Spain and Bianchi 1996.

⁸²For more data, see Williams (2000, p. 234).

depend on the truth of the claims they make about the nature of gender. This makes their political claims less viable than they might otherwise be. I suggested that feminist contractualism might turn out to be attractive because it provides a conception of feminist politics without an underlying theory of gender.

A critic might worry that the model sketched *seems to rely on* claims about the nature of gender. Drawing on the work of dependency theorists, it seems to suggest that women *qua women* are fundamentally interested in caring for dependents. If the feminist contractualism sketched above does this, then its normative claims presumably would stand or fall with the truth of certain claims about gender. And it might have to be rejected by feminists holding conflicting theories of gender.

But to sign on to the feminist contractualism sketched one need not believe anything very particular about what women really are. One might think that women are natural care-takers, or are socialized into being that way. One might think that gender difference is merely an effect of power, or that it is not. One need only affirm that society is unjust if it systematically disadvantages those who, regardless of how they got that way or whether they will stay that way or should or should not, experience themselves as having obligations to dependent others.

The feminist contractualism sketched above is, to use Christine Littleton's words, an "acceptance approach" to equality.

[An] acceptance [approach] does not see differences as problematic per se, but rather focuses on the ways in which differences are permitted to justify inequality. It asserts that eliminating the unequal consequences of sex differences is more important than debating whether such differences are 'real', or even trying to eliminate them altogether . . . The focus of equality as acceptance, therefore, is not on the question of whether women are different, but rather on the question of how the social fact of gender asymmetry can be dealt with so as to create some symmetry in the lived-out experience of all members of the community . . . The function of equality is to make gender differences, perceived or actual, costless relative to each other, so that anyone may follow a male, female or androgynous lifestyle according to their natural inclination or choice without being punished for following a female lifestyle or rewarded for following a male one.⁸³

The conception does depend, in some quite minimal sense, on gender being an element of our social world. If the conception could not depend on this, it could not begin with the considered conviction that disadvantage linked to one's status as dependency worker is suspicious. This disadvantage is particularly suspicious because it is linked to women (as well as to race and class). Indeed, dependency-worker status is, to a significant degree, a proxy for women. But these claims—that gender is an element of our social world (for good or ill, necessarily or contingently), and that women make up the majority of dependency workers—are minimal and, most importantly, not controversial.

⁸³Littleton 1991, pp. 37–8.

An additional worry might be that the acceptance approach runs afoul of many feminist doctrines due to its apparent acceptance of traditional gender roles and its apparent reluctance to criticize them. Does not an acceptance approach say it is all right to be a traditional housewife, to live primarily for others? And does it not thus conflict with all those feminisms that see gender roles themselves as oppressive?⁸⁴ If it did, it would fail to offer a conception of feminist politics viable under conditions of feminist pluralism because it would depend for its validity on a theory of gender, namely, a theory that says traditional gender roles are not the result of oppression. But the acceptance approach does not take a stand on whether wanting to live a traditionally female life is the result of oppression. It merely insists that the disadvantages involved in living out a life gendered traditionally feminine be removed. The acceptance approach says that if traditional gendered lives are compatible with equality (as described above), then there is nothing wrong with them from a political point of view. This does not mean that feminists ought not to agitate to change them. Such agitation is an appropriate part of a culture like ours. But until they are changed, and if they never are for whatever reason, the acceptance approach says that women should not be penalized for it.

III. CONCLUSION

Is something important lost when feminist politics is severed in this way from theories of gender? Is it not appropriate that feminist politics be grounded in theories of gender since so much has been learned about the ways in which conventional politics has been grounded in misogynist conceptions of the person? Surely feminists should not stop doing gender theory! This work is crucial to countering misogyny and heterosexism in many realms. The suggestion made here is more modest: an account of feminist politics might be more viable if it can be presented without grounding in a particular theory of gender. Does this attempt at wide acceptability result in a watering down of the feminist commitment to thoroughgoing social critique? To radicalness? Perhaps. But it would seem that the feminist contractualism sketched here is quite hostile to traditional gender roles, if those depend on a significantly unequal distribution of social power.

REFERENCES

- Ackerman, Bruce. 1991. *We the People*. Cambridge, Mass.: Harvard University Press.
 Ackerman, Bruce. 1994. Political liberalism. *Journal of Philosophy*, 91, 364–86.
 Antony, Louise and Charlotte Witt, eds. 1993. *A Mind of One's Own*. San Francisco: Westview Press.
 Baehr, Amy. 2004a. Introduction. In Baehr 2004b.

⁸⁴I thank Charlotte Witt for raising this concern.

- Baehr, Amy, ed. 2004b. *Varieties of Feminist Liberalism*. Lanham, Md.: Rowman and Littlefield.
- Baehr, Amy. 2002. Liberalism in recent feminist political philosophy and philosophy of law. *American Philosophical Association Newsletter on Philosophy of Law*, 2(#1) (Fall 2002).
- Baier, Annette. 1987. The need for more than justice. See Hanen and Nielsen (1987).
- Bartlett, Katharine T. and Rosanne Kennedy, eds. 1991. *Feminist Legal Theory*. New York: Westview Press.
- Becker, Mary. 1999. Patriarchy and inequality: towards a substantive feminism. *University of Chicago Legal Forum*, 21.
- Benhabib, Seyla. 1987. The generalized and the concrete other. Pp. 77–95 in Benhabib and Cornell, 1987.
- Benhabib, Seyla and Drucilla Cornell. 1987. *Feminism as Critique*. Minneapolis: University of Minnesota Press.
- Brown, Wendy. 1995. *States of Injury*. Princeton, N.J.: Princeton University Press.
- Burke, Carolyn, Naomi Schor and Margaret Whitford, eds. 1994. *Engaging With Irigaray*. New York: Columbia University Press.
- Butler, Judith. 1989. *Gender Trouble: Feminism and the Subversion of Identity*. New York: Routledge.
- Butler, Judith. 1993. *Bodies that Matter: On the Discursive Limits of 'Sex'*. New York: Routledge.
- Butler, Judith. 1997. *Excitable Speech: A Politics of the Performative*. New York: Routledge.
- Cheah, Phen and Elizabeth Grosz. 1998. Of being-two: introduction. *Diacritics* (Special Issue on Irigaray and the Political Future of Sexual Difference), 28(#1), 3–18.
- Clement, Grace. 1996. *Care, Autonomy and Justice*. Boulder, Colo.: Westview.
- Cott, Nancy. 1987. *The Grounding of Modern Feminism*. New Haven: Yale University Press.
- Exdell, John B. 1994. Feminism, fundamentalism, and liberal legitimacy. *Canadian Journal of Philosophy*, 24, 441–63.
- Fraser, Nancy. 1997. *Justice Interruptus*. New York: Routledge.
- Fraser, Nancy. 1989. *Unruly Practices*. Minneapolis: University of Minnesota Press.
- Friedman, Marilyn. 1993. *What Are Friends For?* Ithaca: Cornell University Press.
- Gerhard, Ute, Mechtild Jansen, Andrea Maihofer, Pia Schmid, and Irmgard Schultz, eds. 1990. *Differenz und Gleichheit*. Frankfurt am Main: Ulrike Helmer Verlag.
- Goldstein, Leslie Friedman. 1993a. Can this marriage be saved? Feminist public policy and feminist jurisprudence. In Goldstein 1993b.
- Goldstein, Leslie Friedman, ed. 1993b. *Feminist Jurisprudence*. Lanham, Md.: Rowman and Littlefield.
- Habermas, Jürgen. 1990. *Moral Consciousness and Communicative Action*. Cambridge: MIT Press.
- Habermas, Jürgen. 1995. Reconciliation through the public use of reason: remarks on John Rawls's *Political Liberalism*. *Journal of Philosophy*, 92, 109–31.
- Hampton, Jean. 1993. Feminist contractarianism. In Antony and Witt 1993; reprinted in Baehr 2004b.
- Hanen, Marsha and Kai Nielsen. 1987. *Science, Morality and Feminist Theory*. Calgary: University of Calgary Press.
- Held, Virginia. 1993. *Feminist Morality*. Chicago: University of Chicago Press.
- Irigaray, Luce. 1989. *The Speculum of the Other Woman*. Ithaca, N.Y.: Cornell University Press.
- Irigaray, Luce. 1990. Über die Notwendigkeit geschlechtsdifferenzierter Rechte. In Gerhard 1990.
- Irigaray, Luce. 1993. *Je, Tu, Nous. Toward a Culture of Difference*. New York: Routledge.
- Irigaray, Luce. 1994. *Thinking the Difference. For a Peaceful Revolution*. New York: Routledge.
- Irigaray, Luce. 1995. The question of the other. *Yale French Studies*, 87, 7–19.

- Jaggar, Alison. 1983. *Feminist Politics and Human Nature*. Totowa, N.J.: Rowman and Littlefield.
- Johnston, David. 1994. *The Idea of a Liberal Theory*. Princeton, N.J.: Princeton University Press.
- Kerber, Linda. 1998. *No Constitutional Right to Be Ladies*. New York: Hill and Wang.
- Kittay, Eva. 1998. *Love's Labor: Essays on Women, Equality, and Dependency*. New York: Routledge.
- Laden, Anthony Simon. 2003. The house that Jack built: thirty years of reading Rawls. *Ethics*, 113, 367–90.
- Larmore, Charles. 1990. Political liberalism. *Political Theory*, 18, 339–60.
- Littleton, Christine. 1991. Reconstructing sexual equality. In Bartlett and Kennedy 1991.
- Lloyd, S. A. 1998. Toward a Liberal Theory of Sexual Equality. *Journal of Contemporary Legal Issues*, 9 (Spring). Reprinted in Baehr 2004b.
- Lloyd, S. A. 1994. Family, justice and social justice. *Pacific Philosophical Quarterly*, 75, 353–71.
- Mackenzie, Catriona and Natalie Stoljar, eds. 2000. *Relational Autonomy*. New York: Oxford University Press.
- Meyers, Diana. 1989. *Self, Society and Personal Choice*. New York: Columbia University Press.
- Minow, Martha. 1990. *Making All the Difference*. Ithaca, N.Y.: Cornell University Press.
- Nedelsky, Jennifer. 1989. Reconceiving autonomy. *Yale Journal of Law and Feminism*, 1, 7–36.
- Noddings, Nel. 2002. *Starting At Home: Caring and Social Policy*. Los Angeles: University of California Press.
- Nussbaum, Martha. 2000. The future of feminist liberalism. *Proceedings of the American Philosophical Association*, 74 (#2). Reprinted in Baehr 2004b.
- Okin, Susan. 1989. *Justice, Gender and the Family*. New York: Basic Books.
- Okin, Susan. 1994. Political liberalism, justice and gender. *Ethics*, 105, 23–43.
- Oliver, Kelly. 1999. What is Transformative About the Performative? From Repetition to Working-Through. *Studies in Practical Philosophy* 1(2): 144–66.
- O'Neill, Onora. 1989. *Constructions of Reason*. New York: Cambridge University Press.
- Pateman, Carol. 1988. *The Sexual Contract*. Stanford, Calif.: Stanford University Press.
- Pearce, Diana. 1978. The feminization of poverty. *Urban and Social Change Review*, 1978, 28–36.
- Phillips, Anne. 1991. *Engendering Democracy*. University Park: Pennsylvania State University Press.
- Rawls, John. 1971. *A Theory of Justice*. Cambridge, Mass.: Harvard University Press.
- Rawls, John. 1980. Kantian constructivism in moral theory: the Dewey lectures. *Journal of Philosophy*, 77, 515–72.
- Rawls, John. 1982. Social unity and primary goods. In Sen and Williams 1982.
- Rawls, John. 1993. *Political Liberalism*. New York: Columbia University Press.
- Rawls, John. 1995. Reply to Habermas. *Journal of Philosophy*, 92, 132–80.
- Raz, Joseph. 1990. Facing diversity: the case of epistemic abstinence. *Philosophy and Public Affairs*, 19, 3–46.
- Sandel, Michael. 1982. *Liberalism and the Limits of Justice*. Cambridge: Cambridge University Press.
- Sandford, Stella. 1999. Contingent ontologies: sex, gender and 'woman' in Simone de Beauvoir and Judith Butler. *Radical Philosophy*, 97, 18–29.
- Scheffler, Samuel. 1994. The Appeal of Political Liberalism. *Ethics*, 105, 4–22.
- Schor, Naomi. 1994. Previous engagements: the receptions of Irigaray. In Burke, Schor and Whitford 1994.
- Sen, Amartya and Bernard Williams, eds. 1982. *Utilitarianism and Beyond*. Cambridge: Cambridge University Press.
- Sen, Amartya. 1993. Positional objectivity. *Philosophy and Public Affairs*, 2, 126–46.

- Schwab, Gail. 1998. Sexual difference as model: an ethics for the global future. *Diacritics*, 28(#1), 76–92.
- Spain, D. and S. M. Bianchi. 1996. *Balancing Act: Motherhood, Marriage and Employment Among American Women*. New York: Russell Sage Foundation.
- Stone, Alison. 2002. Sexing the state: familial and political form in Irigaray and Hegel. *Radical Philosophy*, 113 (May/June).
- Thompson, Janna. 1993. What do women want? Rewriting the social contract. *International Journal of Moral and Social Studies*, 8(#3), 257–72.
- Vasterling, Veronica. 1999. Butler's sophisticated constructivism: a critical assessment. *Hypatia*, 14(#3), 17–38.
- Wenar, Lief. 1995. Political liberalism: an internal critique. *Ethics*, 106, 32–62.
- Whitford, Margaret. 1991. *Luce Irigaray: Philosophy in the Feminine*. New York: Routledge.
- Whitford, Margaret. 1994. Reading Irigaray in the nineties. In Burke, Schor and Whitford 1994.
- Williams, Joan. 2000. *Unbending Gender: Why Family and Work Conflict and What to Do About It*. New York: Oxford University Press.
- Xu, Ping. 1995. Irigaray's mimicry and the problem of essentialism. *Hypatia*, 10(#4), 76–89.
- Yuracko, Kimberly A. 2003. *Perfectionism and Contemporary Feminist Values*. Bloomington: Indiana University Press.