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Property and Women's Alienation from Their Own Reproductive Labour

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Abstract

There is an urgent need for reconstructing models of property to make them more women-friendly. However, we need not start from scratch: both 'canonical' and feminist authors can sometimes provide concepts which we can refine and apply towards women's propertylessness. This paper looks in particular at women's alienation from their reproductive labour, building on Marx and Delphy. Developing an economic and political rather than a psychological reading of alienation, it then considers how the refined and revised concept can be applied to concrete examples in global justice for women: in particular, the commercialisation of embryonic and fetal tissue in the new stem cell technologies.

'Why are women so poor?' Virginia Woolf asked in *A Room of One's Own*. In this article I want to bring together some theoretical and some practical aspects of women's poverty, but I also want to do something more. I want to show how the continuing failure to 'count women in' radically undermines current policy guidelines on new biotechnological developments, particular stem cells, and how that failure threatens a new sort of poverty for women.

Women, now and in the past, have typically held less property than men, and sometimes, as in classical 'democratic' Athens, no property at all. (Dickenson 1997b) In both classical and liberal democratic theory, it is because women are propertyless that they are not construed as political subjects; it is because they are not accorded the status of subjects that they hold little or no property. Yet it is not enough to assume, as many feminists have done, that women have had no other relation to property than as its objects. As the legal theorist Carol Rose points out, there has been far more feminist interest in women as objects of property than as its subjects. (Rose 1994)

Women's relationship to property is stranger than that. Women are neither simple objects of property-holding, nor are they unqualified subjects whose property-holding may suffer under rectifiable practical handicaps. There is not time here to reproduce the range of examples with which I illustrated this argument in my 1997 book, *Property, Women and Politics*. There I also argued that this duality is not fully captured by any canonical political theory, although it is confronted by Carole Pateman in her formative work, *The Sexual Contract*. (Pateman, 1988) In particular, women's labour—which in Lockean terms is what grounds the right to hold

property—is rarely recognised as the product of an unsullied, unqualified agent. Although women labour, not least in the labour of childbirth, that is rarely recognised *as* labour; and labouring does not get women the same rights which in liberal theory it assures for men..

If liberalism cannot shed light on this dilemma, can Marxism help? Perhaps the Marxist concept of alienation might get at some of this strangeness. Many feminist theorists have picked up on the psychological aspects of alienation, but few have applied it to economics and technology. In Marx, however, alienation has not so much to do with the psyche as with the notion of external, forced labour. The strength of the notion of alienation, and its possible relevance to women's propertylessness in relation to the new reproductive technologies, lies in its closeness to commodification. In the contract motherhood debate, for example, both concepts frequently come into play: opponents of paid surrogacy often argue that the practice is wrong because it alienates women from the 'true' nature of motherhood, and because it commodifies babies as mere objects of property. It is these two notions, alienation and commodification, which I shall be using in the theoretical section of this paper, and in the practical application to reproductive ethics and stem cell technologies which I shall suggest in its second half.

Alienation and the Domestic Mode of Production: Marx and Delphy

In the *Grundrisse* Marx notes that under the capitalist system which produces alienation, 'labour always appears as repulsive, always as *external forced labour*; and not labour, by contrast, as "freedom and happiness" (Marx, 1973, p. 611). In both Marx and Engels, the oppression of married women is not, strictly speaking, a form of alienation, which is characteristic only of relations under capitalism; domestic work is instead a non-capitalist anomaly. From the early days of the Woman Question, however, beginning with writers such as Mary Wollstonecraft and Margaret Fuller, feminists have insisted that women's domestic labour is actually external and forced, even the creation of that most intimate 'product', children. By contrast, they have argued, women are encouraged to think of their labours for the family as 'freedom and happiness'. Thus feminists have extended the logic of alienation into marriage, and specifically into what Marx terms reproduction: refreshing existing workers through providing food and creature comforts, and replenishing the future supply of labourers through childbearing and childbearing. I want to argue that we now need to extend that notion still further, to encompass the new reproductive technologies in bioethics. (It should be noted that the sense of alienation with which I am concerned is an economic one, and not the psychoanalytical Freudian or Foucaultian concepts on which other feminist authors have frequently concentrated [e.g. Bartky 1979, Foreman 1977, Barrett 1980].)

There is nothing intrinsically alienating about childbearing, childrearing and household labour, according to Marx and Engels: only about the conditions under which they are performed in capitalist society. A Marxist analysis of the new reproductive technologies, for example, might present them as the apotheosis of the way in which capitalism degrades women's labour, taking us further and further from the 'natural'. Under the mystique of IVF (Pfeffer, 1984), the conditions under which women perform the task of childbearing become more and more alienating, certainly more external and less natural. Thus the Marxist feminist Ann Ferguson asks whether

contemporary high-technology childbirth is a form of alienated labour (Ferguson, 1991).

Where Marx and Engels err, however, is in claiming that alienation and commodification are limited to capitalist societies, and that all capitalist societies are equally alienating and commodifying. Women's propertylessness in their bodies and the labour of their bodies predates capitalism; nor, strictly speaking, can either men or women legally own property in the body, even under capitalism. (Grubb 1999). We can accept the basic feminist materialist tenet that women's oppression is historically specific without necessarily holding that it is specific only to capitalism. It may also occur within other non-capitalist regimes, and vary between them: the Athenian model allowed women no property rights whatsoever, whereas women in ancient Sparta, Crete and Egypt had substantial entitlements. The real challenge, then, is to see whether alienation can still be a useful concept even if it is not an 'unnatural' condition, as it is to Marx, who believes that the worker always 'naturally' and rightfully owns the labour power of his person. For women, alienation from their labour power appears to be both *natural* and endemic, if not equally so in all periods, whereas to Marx alienation is unnatural.

In particular, there are limitations to the Marxist analysis in relation to reproduction. What women do in giving life is, to Marx, like what the earth does: it is natural, not social. This is radically to undervalue labour in childbirth, or labour in labour. It also undermines the utility of alienation, at least in Marx's formulation of it. Alienation cannot apply to women's reproductive labour, because women's reproductive labour lies outside the realm of productive work.

The French feminist Christine Delphy, however, substitutes what she terms 'the domestic mode of production' for Marx's notion of reproductive labour. Hers is a more promising approach: alienation *can* be applied to women's poverty in Delphy, where it is defined in terms of lack of power and control. What Delphy adds is an explanation of why women do not own their labour in the home, why their labour there is properly regarded as alienated, and why the home is correctly seen as a mode of production to which a Marxist analysis of labour as alienated can rightfully be applied.

Women's domestic and reproductive labour is not properly regarded as alienated in Marx. It is said to produce no use-values and to add no surplus value. Just as work in the home cannot be alienated labour because it lies outside capitalism, so is it also seen in classical Marxism as lying outside production altogether, as belonging to the realm of the 'merely' natural or reproduction. (Labour in childbirth epitomises this, as I shall argue further in the second section.) Delphy, however, introduces a new category into conventional Marxism, 'domestic relations of production'. The effect of this is to highlight the injustice which occurs when women receive no share in the domestic products which they create, including the products of conception and pregnancy. By contrast, in conventional Marxism work which does not produce surplus value, such as cooking for the family, is actually regarded as consumption, not as production at all.

To call women's domestic labour consumption or reproduction rather than a form of production, Delphy asserts, ignores the question of why women's labour is not seen as

adding value, even when the products women produce and the services they provide would have to be purchased in the market if women did not make them for nothing. That is, conventional Marxists presuppose that there is something natural and inherently non-exploitative about the division of labour within the family, by assuming that reproduction simply *is* women's domain. Delphy's counter-argument is that housework is excluded from market relations because it is done by women, and not because it is inherently not a source of market value, or because it could not be exchanged for money. As she writes,

[F]ar from it being the nature of the work performed by women which explains their [women's] relationship to production, it is their relations of production which explain why their work is excluded from the realm of value. It is women as economic agents who are excluded from the (exchange) market, not what they produce. (Delphy, 1984, p. 18)

To apply Delphy's argument to an example from bioethics, the same could be said of contract motherhood. Whichever way one leans in the paid surrogacy debate, the effect of that debate is to underline that women's labour in pregnancy and childbirth has potential market value, and that it is indeed productive labour. One effect of late capitalism—the commodification of practically everything—is to knock down the Chinese walls between the natural and productive realms. Women's labour in pregnancy and childbirth can be seen *as* what it is, labour which produces something of value. But this does not necessarily mean that women will benefit from the commodification of practically everything. Indeed, in the final section of this paper, I want to issue a warning that in the newly developing biotechnologies involving fetal and embryonic stem and germ cells, the reverse is more likely.

Stem Cells, Fetal and Embryonic Tissue, and the Exploitation of Women

Until very recently the question of who owns embryonic or fetal tissue was of limited commercial importance, although there were applications of aborted fetal tissue in the treatment of Parkinson's disease, diabetes mellitus and other conditions. The threshold event occurred in November 1998, when two separate teams of US scientists claimed that they had managed to isolate human embryonic and fetal cells and grow them indefinitely under laboratory conditions. These pluripotent and/or totipotent cells are effectively the parent cells for all bodily tissues, with an unlimited capacity to divide and the theoretical potential to become any body tissue. Pharmaceutical and biotechnology firms are hugely interested in the use of such cultured cells and in the development of tissue banks of both undifferentiated and specialised cells and tissues. Six to eight pluripotent cell lines have already been developed, in the US and Singapore: none at present in the UK.

One of the US teams, based at the University of Wisconsin, produced their cells from blastocysts developed *in vitro* as part of infertility treatment. The second team, from Johns Hopkins, used what they called primordial germ cells, which would eventually have become gametes. Interest has mainly focused on embryonic stem cells (ES cells) rather than embryonic germ cells (EG cells), where attempts to derive adult cells in mice have led to abnormalities. Use of ES cells has also been assumed to be less ethically debatable, because it does not require abortion, or because pre-embryos are thought to have a lesser moral status than fetuses. I think it is far from obvious,

however, that use of ES cells is ethically trouble-free; but that is because I shall focus not on the status of the fetus/embryo, but on the rights of the mother.

The Wisconsin method uses embryos grown in vitro, developed through fertilisation of the mother's ova with the father's sperm: primarily 'spare' embryos which are not to be implanted. (It would also be possible to create embryos from gametes 'harvested' expressly for this purpose.) Stem cells are derived from the inner cell mass of the blastocysts; the outer cellular layer, which would normally develop into the placenta, is dissolved. Since the blastocysts are used before implantation, the mother's 'sweat equity' is reduced, but she has still undergone the labour of stimulation with fertility drugs (super-ovulation) and extraction of ova—painful and moderately risky procedures.

The Johns Hopkins method of using primordial gamete cells relies on derived stem cells from primordial germ (gonadal) cells in aborted fetal tissue; here the mother has put the labour and discomfort endurance of early pregnancy, along with enduring the pain of abortion: arguably a form of 'sweat equity'.

Although the two techniques raise separate moral and legal questions, commentators have united in approaching both of them almost solely through focusing on the moral status of the embryo or fetus. So far as the mother is concerned, the only legal and ethical issues are usually held to concern the quality of consent to further uses of the embryonic and fetal tissue. For example, the Nuffield Council on Bioethics (1999) concluded that 'the removal and cultivation of cells from a donated embryo does not indicate lack of respect for the embryo' (p.1).

There has been little or no debate about possible exploitation of women: rather, the reverse concern about insufficiently altruistic women. In the UK the current Medical Research Council draft guidelines, together with the previous Polkinghorne report (1989) on uses of aborted fetal tissue, both insist that the woman must be prevented from seeking any share in the profits which researchers and biotechnology companies will derive from the products of her labour. The MRC draft guidelines seek to promulgate what they term the 'gift relationship': women will be asked to sign a consent form in which they state that they understand they will not derive any profit from further research and development performed on their tissue. (There is no option to tick, 'I understand that perfectly well, I just don't agree with it.') Although the guidelines make a good deal of the 'gift relationship' (Titmuss 1971), what they are actually about is commodification. A compulsory and one-way gift relationship is not gift, but exploitation. Nor is it adequate to conceptualise the issue in terms of consent alone, any more than it is adequate to say that the worker consents to work and therefore retains no further rights to control the conditions of his labour.

Similarly, in the US, an National Institute of Health panel convened in 1998 recommended that women should not be allowed to direct the donation of embryonic or fetal tissue, to a family member or friend, for example. (Capron 1999) Certain forms of gift, it seems, are not quite the thing—non-profit-making ones to friends and family—but 'gifts' to researchers and multinational biotechnology companies should certainly be encouraged. As Lori Knowles puts it, there is a 'tension between the altruism individuals are supposed to exhibit by donating their tissue for research and the current patent system, which encourages companies to stake lucrative property claims in that research.' (Knowles 1999, p. 38) To put things more strongly still: the

semblance of gift masks and legitimises what is actually the extension of commodification. That this is merely a semblance is demonstrated by the rejection in these guidelines of what most people would recognise as genuine, uncommodified gift. If donors believe they are demonstrating altruism, but biotechnology firms and researchers use the discourse of commodity and profit, we have not ‘incomplete commodification’ (Radin, 1996) but complete commodification with a plausibly human face.

Ironically enough, it seems that the committees convened by the National Institute of Health and the Medical Research Council to consider the regulation of stem cell technologies must be chock-full of good Marxists. Together with their earlier predecessor the Polkinghorne Committee, they have taken the view that it is crucial that women should be prevented from deriving any property rights in the products of their reproductive labour. Apparently, if that labour counts as labour at all, it lies outside the realm of productive work—into which the work of researchers and biotechnology companies comfortably fits.

One might say that we are now witnessing the endless inventiveness of capitalism in extracting the surplus value from women’s reproductive labour, or, in Delphy’s terms, their labour under the domestic mode of production. In the stem cells example, women are alienated from control over both the conditions of their labour—forced to accept the ‘gift relationship’—and from any control over the profits resulting from it, which they might perhaps prefer to see reinvested in the health service rather than in private hands. Or perhaps they might prefer a system in which biotechnology firms should be obliged to make cell-lines available widely and price products derived from them at affordable level (Knowles 1999). But although there have been some murmurings at European levels about ‘benefit-sharing’ (HUGO, 2000) at present women are offered no alternative to the compulsory ‘gift relationship’.

Elsewhere (Dickenson, in press) I have offered three alternative strategies which public policy might pursue to regulate the traffic in stem-cells:

1. *The status quo: reinforcing the law’s primary concentration on obtaining a genuine informed consent from the tissue donor, rather than conferring property rights.* Given, however, that ‘informed consent is no part of English law’ (Sidaway v. Bethlem, 1985) this is unlikely to provide satisfactory protection for women. The very favourable public image of IVF is another problem: there is not going to be much pressure on IVF clinics to justify what they do with blastocysts obtained as part of infertility treatment. Couples may be pressured to agree that ‘spare’ blastocysts can be used for commercial purposes, perhaps in exchange for reduced cost of treatment cycles. The first model continues to maintain what has become a fiction in actuality, if a fact in law: that tissue extracted after procedures is no longer of any interest to anyone.
2. *Stricter regulation of commercialisation:* The second approach is not intrinsically undesirable, but the auguries in its favour are not good. (Perhaps this is because it is simply a reformist strategy, without sufficient theoretical grounding such as I have tried to suggest in this article.) In the UK, no research can be authorised on embryos older than fourteen days, but that provision would still allow the method developed by the Wisconsin team, using blastocysts, under license from the HFEA. None the less, there are mounting commercial pressures, by which I include pressures from the leading IVF clinics, to repeal the fourteen-day rule and

to end regulation altogether. These pressures were manifest in the deliberations of the Chief Medical Officer's expert advisory group on therapeutic human cloning, where IVF specialists argued that schedule 2 of the HFE Act already permitted stem cell line development—even though the techniques described in this chapter, and the cloning technologies which give them commercial importance, were completely unknown at the time the Act was passed in 1990.

3. *Vesting control over all tissue in the mother, and treating alienation of it from her as theft.* A feminist model sensitive to women's alienation from their reproductive labour might want to take a more radical tack than regulating commercial interests. This need not be a full-fledged property claim, and given the legal and philosophical incoherence of the concept of property in the body, it probably should not be. It need only be as great as the scope delineated in the recent UK decision in *Kelly*: enough to protect the tissue from being appropriated by others, under penalty of the Theft Act. In his influential model, *A Theory of Property*, Stephen Munzer argues that 'persons do not own their bodies, but they do have limited property rights in them.' (Munzer, 1990, p. 41) These he views as primarily powers (to transfer, waive and exclude others from the use of one's body parts) rather than as claim-rights (to possess, use, manage and receive income). (Munzer, 1990, p. 22, following Honore, 1961)

Even with these two assumptions, there are still problems. Vesting control over tissue in the mother may not be sufficient to protect the woman from exploitation by commercial interests. Those interests surpass any in surrogacy, where it is difficult enough to distinguish between allowing women to contract as equals and opening them to exploitation. Arguably, thinking of the mother as having any kind of property interest in fetal tissue or the tissue by-products of pregnancy is also false to the uniqueness of the relationship between the woman and the developing fetus (Mahowald, 1994).

Stem cell technologies highlight the 'use-value' which women produce in the reproductive labours of superovulation, egg extraction, and the work of early pregnancy and abortion. It is abundantly clear that these pregnancy-derived tissues have value, and enormous value. What is shown by the commodification of bodily products such as stem cells is that there is no firm divide, as Marx thought there was, between the use-values produced through social means of production and the absence of use-values in reproduction.

There are two forms of counter-argument to this thesis. The first might assert that blastocysts generated from spare embryos are like any other form of tissue, and that by my own argument, we do not own a property in our tissue. Therefore no exploitation takes place when embryonic or fetal tissue is used for commercial purposes, whereas much good can be done. This argument might look for further reinforcement to the attitudes which women actually exhibit about their surplus embryos, for example, noting that they do not actually believe they have a property in them. But they may simply be mistaken about that, merely reflecting society's general unwillingness to recognise that embryonic and fetal tissue represents women's labour.

I have argued at greater length elsewhere (Dickenson 1997b; Dickenson, in press) that on Lockean grounds there is indeed no general property in the body; but that there is rather a property in the person, construed as agency and intention; this is what confers property rights in a liberal analysis. We do not generally own that which we have not laboured to create; we do not create our bodies in Lockean terms—God does. However, the products of women’s reproductive labour constitute the unique exception—not to the Lockean logic, but based on it. Women *do* labour to create the bodies of their fetuses in pregnancy and childbirth.. The labour which women put into superovulation, egg extraction and early pregnancy qualifies as labour which confers a property right in a Lockean model. I have also discussed the impact of a feminist Lockean model on the case of gamete donation elsewhere (Dickenson 1997a, Dickenson 1997b). In this article I have concentrated not on the Lockean justification for such a property right, although I believe that a compelling case can be made on such grounds, but rather on a feminist Marxist analysis, which likewise supports women’s property rights in the forms of embryonic tissue which they have laboured to create.

The second counter-argument recognises that embryonic tissue is different from other tissue which we have not laboured to create, and that it does represent a form of surplus value. However, it views that surplus value as added not by the woman from whom the tissue is extracted, but by researchers and biotechnology firms. This was the argument accepted in the *Moore* judgement (1990), but it has also been argued that the *Moore* case was decided in a manner which breaches previous legal precedents (Gold 1996). The general principle in the common law (*res nullius*) has traditionally been that no one can hold property in tissue taken from the body. It may be that the patient does not own the tissue, but does that necessarily mean that the researcher or hospital does? If we wish to avoid the commodification of tissue which would result from allowing the patient tradable rights, why are we so willing to allow them to the researchers? If we want to promote freedom of research, should we not restrict patents by biotechnology firms as much as we do the property rights of tissue-donating subjects?

Normally, however, the discussion about women and stem cell tissue never even gets to the counter-argument stage. We simply do not notice that women are putting in labour through undergoing superovulation or egg extraction. Consider the cloning debate, where again, the great bulk of writings turn on the moral status of the clone; there is never any mention of the possible exploitation of the contract mothers who would be required to produce clones—remember that it took 267 ‘surrogate mother’ sheep to produce Dolly. We can remain smugly unaware that these surrogate mothers will be needed, because we just don’t notice the labour of pregnancy and childbirth. Like Marx himself, the ‘good Marxists’ among our prominent bioethicists appear to presuppose that reproduction simply *is* women’s domain, that it is not the domain of productive labour, and that this structure is natural and non-exploitative.

What we can see in the MRC, NIH, Polkinghorne and Nuffield guidelines is an extension to bioethics of the process described by the historian Leonore Davidoff:

The struggle to keep unlimited calculation...from creeping into every sphere of life was a long-drawn-out and even bloody one. Nowhere was it more visibly

demonstrated than in the segregation of women and the home from market forces...
(Davidoff, 1995, p. 83)

The way in which this was done in early capitalism was by segregating women's domestic labour as that unpolluted realm, creating the necessary fiction that women's labour produced no use-values. We can see a modern continuation of this struggle in the stem cell debate, and more broadly, in guidelines concerning the storage and further use of all pregnancy-related tissues. Bioethicists have understandably been concerned to preserve some space free of the commodification of practically everything. The problem lies not with erecting fences, but with whom they enclose: not those with power, but those without.

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