

**Bearing Responsibility:**  
**Reconceiving RU486 and the regulation of women's  
reproductive decisions**

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## **Abstract**

This thesis explores the status of abortion in Australia and analyses the representations of women that are produced and relied upon in public discourse on this issue. Drawing predominantly on the field of corporeal feminist theory I examine the historical and political-legal context of abortion in Australia over time, and in particular debates concerning the medical abortion drug RU486. I argue that the debate has been informed by dualistic understandings of women as irrational, maternal vessels requiring paternalistic regulation in the interests of the reproduction of the nation. This thesis questions the assumption that opposition to abortion is primarily motivated by concern for the foetus, and explores and elaborates the gendered and politico-cultural constructions of sexuality, the nation and women's 'natural' role that inform the debate. Finally, I demonstrate that constructs of morality, rationality, sexuality and the nation have: been informed and limited by dualistic imaginaries of women and in response I argue for the feminist potential of an alternative embodied ethical framework

## Chapter One: Of mothers and murderers

*We don't want to live in an Australia where abortion again becomes the political plaything of men who think they know better.*

**- Prime Minister Julia Gillard, 2013<sup>1</sup>**

This bold statement made by then Prime Minister Julia Gillard drew criticism from all sides of politics; she was accused of "stoking a gender war" and not focusing on "the big policy issues."<sup>2</sup> These criticisms are belied by the vulnerable and contested status of abortion access in Australia. The violent repudiation of Gillard's warning suggests a deeper discomfort with the discussion of the issue of abortion in Australia, and in particular a sense that Gillard, as a (childless, unmarried) woman, cannot or should not speak on the issue.

The question of abortion is the subject of my thesis, in particular I will consider the assumptions and representations of women that are relied upon in public discourse in relation to abortion. I will draw upon the theories of corporeal feminists including Elizabeth Grosz, Susan Bordo, Rosalyn Diprose and Moira Gatens in order to analyse the ways in which women have been represented in the debates concerning the passage through Australian Federal Parliament of the Bill to remove ministerial responsibility for approval of the medical abortion drug RU486. The discussions in Parliament, the Senate and the media at this time were dominated by the positioning of RU486 as a moral crisis for the nation, with women framed as irresponsible and dangerous, requiring regulation and control in the interests of the foetus. Corporeal feminism allows for a reconfiguring of the debate by bringing to light the operation of Cartesian dualism in positioning men as rational and cultured and women as irrational and closely associated with unruly nature, unable to transcend their bodies and so dominated by ungovernable emotion. Firstly, I will analyse the discussions

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<sup>1</sup> Julia Gillard. The Blue Tie Speech: Prime Minister's Address to Women for Gillard, 2013. *australianpolitics.com*.

<sup>2</sup> "Opposition accuses Julia Gillard of stoking 'gender war' with abortion comments." *ABC News*. <http://www.abc.net.au/news/2013-06-12/gillard-under-fire-from-opposition-over-abortion-claim/4747738>.

surrounding RU486 with attention to how these dualistic notions operate through State and public discourse in relation to women's reproductive choices. Secondly, I will explore the feminist potential of an alternative ethical<sup>3</sup> framework that accounts for women's embodied experience.

The medical abortion drug RU486, or Mifepristone, had a delayed and contentious arrival in Australia. The passage of RU486 into Australia was marked by intense political and public debate over who had the authority to decide whether women should have access to medical abortion. The Therapeutic Goods Amendment (Repeal of Ministerial responsibility for approval of RU486) Bill 2005 was passed in 2006. It proposed that the decision to allow RU486 to be prescribed in Australia be made by the Therapeutic Goods Association rather than allowing the then Federal Health Minister Tony Abbott to continue to hold veto rights over the introduction of the drug. The RU486 debate became focused on the question of the morality of abortion, and who should be in the position to decide whether women should have the option of medical abortion. The rhetoric used was often not focused around women's experience but rather it positioned the debate as a question of women's rights versus foetal rights. The impact of this framing is a denial of women's bodily integrity and an increased focus on whether individual abortions were morally justifiable, with reasons related to career, finance or simply not wanting a child being considered less justifiable than if the pregnancy resulted from rape. The debates in the House of Representatives and the Senate as well as the media coverage over the passage of the Bill provide an interesting case study of the discourse surrounding abortion in Australia and the ways in which women's reproductive choices and bodies are positioned.

In her 1989 work *The Disorder of Women: Democracy, Feminism and Political Theory*, Carole Pateman argues that women are excluded from civil society because the social contract that constitutes the basis of our representative democracy is a

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<sup>3</sup> Corporeal feminists prefer to focus upon and employ the terminology of ethics rather than morals, as they argue that moral frameworks are informed by patriarchal ideology.

“fraternal pact that constitutes civil society as a patriarchal or masculine order.”<sup>4</sup>

While at first glance Pateman’s work may appear to have only historical relevance as a feminist critique of liberalism, this conception of the operation of patriarchy in modern civil society is vitally relevant for understanding the present day regulation of women’s reproduction. Pateman believes that the social contract is based on masculine bodies, presented as the universal, disembodied individual,<sup>5</sup> and on the division between public and private spheres that mirrors the division between “men’s reason and women’s bodies.”<sup>6</sup> For Pateman, women’s ability to give birth is central to modern patriarchy as the social contract is fundamentally: “an agreement through which the brothers inherit their legacy of patriarchal sex right and legitimise their claim over women’s bodies and ability to give birth.”<sup>7</sup> This account of how dualistic and reductive gendered understandings of women as irrational and closer to nature and therefore in need of masculine control informs the culture and structures of contemporary society is reflected in later writings of corporeal feminists who seek to account for the ways in which women’s embodied experience has been marginalized within our social, legal and political spheres.

In *Volatile Bodies: Towards a Corporeal Feminism*, Elizabeth Grosz traces the ways in which women’s bodies have been imagined in philosophy, feminism and psychoanalysis and asks the question “What, ideally, would a feminist philosophy of the body avoid, and what must it take into consideration?”<sup>8</sup> Grosz engages a broad range of theorists in order to form a theory of corporeal feminism that foregrounds the body, arguing that many feminists have only addressed the body as being either an “impediment to equality” or containing some “special insight”<sup>9</sup> that male bodies do not possess. She finds both of these approaches to be damaging as they either accept or do not address the Cartesian dualism that frames mind and body as separate. Women have been and continue to be associated with nature and irrationality; their

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<sup>4</sup> Carol Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory* (United Kingdom: Polity Press, 1989), 33.

<sup>5</sup> *Ibid.*, 46.

<sup>6</sup> *Ibid.*, 45.

<sup>7</sup> *Ibid.*

<sup>8</sup> Elizabeth Grosz, *Volatile Bodies: Toward a corporeal feminism* (Indiana, Indiana University Press, 1994), 21.

<sup>9</sup> *Ibid.*, 4.

oppression has been historically justified by claims of ‘natural inequality’ attributed to their “being weaker, more prone to (hormonal) irregularities, intrusions, and unpredictabilities.”<sup>10</sup> Grosz is conscious of the difficulty of addressing bodily difference without entering into essentialist and ahistorical assumptions that have defined the position of the body and instead combines philosophy and post-modern feminism as a means of challenging and expanding these prevailing notions for contemporary purposes.<sup>11</sup>

Corporeal feminism is informed by Foucault’s understanding of bodies as the primary locus for the operations of power. In *Discipline and Punish*, Foucault develops an understanding of power that is attentive to the disciplinary techniques that define “a certain mode of political investment in the body”<sup>12</sup> and disciplinary punishment that “is not so much the vengeance of an outraged law as its repetition, its repudiated insistence.”<sup>13</sup> A Foucauldian concept of power is able to account for the ways in which embodied experience may be counter to formal assurances of equality, as “The real, corporeal disciplines constituted the foundation of the formal, juridical liberties.”<sup>14</sup> Whilst Gatens is critical of Foucault’s failure to address the “patriarchal character of modern political life,” she believes his theorisation of power is useful to feminism because of his rejection of the idea that bodies have fixed characters as well as the need to understand the complex ways in which “socio-political structures construct particular kinds of bodies, with particular powers/capacities, needs and desires.”<sup>15</sup> The concept that this work on the population is not limited to the direct control of government but carried out through a diverse array of institutions, surveillance, laws and discourse with a reliance on the creation of self-regulating subjects, is useful for feminism to account for the embodied articulation of power.

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<sup>10</sup> Ibid., 14.

<sup>11</sup> Ibid., xiv.

<sup>12</sup> Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1979), 140.

<sup>13</sup> Ibid., 180.

<sup>14</sup> Ibid., 222.

<sup>15</sup> Moira Gatens, *Feminism and Philosophy: Perspectives on difference and equality* (Cambridge Polity Press, 1991), 138.

An attention to the embedded operation of power allows Susan Bordo, in *The Body and the Reproduction of Femininity: A Feminist Appropriation of Foucault*, to expand on previous feminist understandings of the regulation of bodies. Bordo suggests that previous theoretical models of the “oppressors and oppressed” used to explain the patriarchy do not account for “the mechanisms by which the subject becomes enmeshed, at times, into collusion with forces that sustain her own oppression.”<sup>16</sup> In a manner similar to Grosz, Bordo takes Foucauldian theory and applies his concept of power to a feminist analysis of how women may be compelled to regulate their behaviour and bodies in more complex ways than the ‘oppressor and oppressed’ model allows for. Crucially, power is described by Foucault as “the network of practices, institutions and technologies that sustain positions of dominance and subordination within a particular domain” and power described is “not repressive, but *constitutive*.”<sup>17</sup> This Foucauldian understanding of power is useful in the context of women’s experience of abortion; while there are elements of the ‘oppressor and oppressed model,’ for example majority male legislators making decisions to restrict abortion access, the complex interaction of social and institutional power on women’s subjectivity and their decisions is far more intricate than simply the matter of legality and access. Bordo’s approach allows for an analysis of how social and institutional influences create a self-regulating subject, and in the context of the RU486 debate it provides critical insight in the complex network in which ‘choices’ around abortion operate. Additionally, it can be used to analyse the frequent focus from those opposed to RU486 on rates of depression and posttraumatic stress disorder following an abortion.

Rosalyn Diprose, in her 1994 *The Bodies of Women: Ethics, Embodiment and Sexual Difference*, echoes Grosz’s concern that feminism has tended to accept and work with prevailing dualistic frameworks that privilege a default masculine body. Diprose believes that situating ethics in a dualistic dichotomy that associates rationality with the mind and irrationality with nature and the body serves to “disqualify women from

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<sup>16</sup> Susan Bordo, "The Body and the Reproduction of Femininity: A Feminist Appropriation of Foucault," in *Gender/Body/Knowledge: Feminist Reconstructions of Being and Knowing*, ed. A. Jaggar and Susan Bordo (London: Rutgers University Press, 1989), 15.

<sup>17</sup> Ibid.

ethical social exchange.”<sup>18</sup> Diprose is particularly interested in how pregnant bodies and an ethics of reproduction therefore sit uncomfortably in relation to disciplinary moral codes.<sup>19</sup> In her 2010 chapter *The Political Technology of RU486: Time for the Body and Democracy*, Diprose analyses the Australian RU486 debate with a focus on the significance of biotechnologies such as RU486 in challenging political authority that is legitimated through an appeal to nature.<sup>20</sup> Whereas Diprose is concerned with the significance of biotechnologies for democracy, I focus on providing a discursive analysis of the ways in which women were spoken about and represented through the debate. Diprose’s claims around the role of biotechnologies such as RU486 in challenging Cartesian dualism and the idea of women’s reproduction as “obligatory, or at least applauded as morally worthy,”<sup>21</sup> are particularly relevant to my analysis. The expectation that certain bodies commit time towards the reproduction of the nation she sees as an inequity that can be partially redressed by biotechnologies that challenge conceptions of what is ‘natural,’ and bodies control over their own reproduction.<sup>22</sup>

In order to question the ethical framework at play in such discussions, Moira Gatens believes that there needs to be more theoretical focus on the relationship between women’s bodies and the state.<sup>23</sup> In *Imaginary Bodies: Ethics, Power and Corporeality*, Gatens determines to utilise the theories of philosopher Benedict Spinoza in order to produce an ethical framework that does not define women’s bodies by an essentialist understanding of sexual difference but rather by what they might become in various socio-technical relations. Gatens creatively uses the term “imaginary body” to disrupt traditional binaries and refer to “those images, symbols, metaphors and representations which help construct various forms of subjectivity” and in particular is concerned with “those ready-made images and symbols through

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<sup>18</sup> Rosalyn Diprose, *The bodies of women: ethics, embodiment and sexual difference* (London, Routledge, 1994), 18.

<sup>19</sup> *Ibid.*, 21.

<sup>20</sup> Rosalyn Diprose. "The Political Technology of RU486: Time for the Body and Democracy." In *Political Matter: Technoscience, Democracy, and Public Life*, edited by Bruce Braun, Isabelle Stengers. (Minneapolis University of Minnesota Press, 2010), 222.

<sup>21</sup> *Ibid.*, 222.

<sup>22</sup> *Ibid.*, 213-214.

<sup>23</sup> *Ibid.*, 49.

which we make sense of social bodies and which determine, in part, their value, their status and what will be deemed their appropriate treatment.”<sup>24</sup> Gatens, along with Grosz and Diprose, shares the concern that current ethical frameworks deal with a default masculine body, arguing that:

The neutral body assumed by the liberal state is implicitly a masculine body. Our legal and political arrangements have man as the model, the centre-piece, with the occasional surrounding insets concerning abortion, rape, maternity allowance, and so on. None of these insets, however, take female embodiment seriously. It is still the exception, the deviation, confined literally to the margins of man’s representations.<sup>25</sup>

Gatens’ theory can be applied to the construction of women’s embodiment as well as their capacity for decision making and rational autonomy in the discourse around abortion in Australia, and in particular the debates over RU486. Throughout the parliamentary speeches advocating for the maintenance of ministerial responsibility for the approval of RU486, women’s embodied experiences were not discussed, and on a number of occasions were actively dismissed. A powerful example of this can be found in a speech made by Senator George Brandis expressing that he felt the debate had been framed as a women’s issue, and that there had been suggestion that:

Because this issue directly affects women, it is an issue on which the point of view of women carries greater weight than the point of view of men. But women are sharply divided on this issue, just as men are. There is no ‘female’ point of view about abortion.<sup>26</sup>

Brandis went on to state that the matter is one of when life begins, and therefore whether abortion can be “morally defensible” or not, “and that is not a women’s issue.

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<sup>24</sup> Moira Gatens, *Imaginary Bodies: Ethics, Power and Coporeality* (New York: Routledge, 1996),viii.

<sup>25</sup> *Ibid.*, 24.

<sup>26</sup> *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading* Canberra: Retrieved from <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2006-02-08%2F0147%22>.

It has nothing to do with gender. It is a philosophical issue for women and men alike.<sup>27</sup> These sentiments restate the issue as a philosophical one within a philosophical framework that does not account for women's experience and that elides its masculine bias. The argument also reframes the debate as one about when life begins, and pushes the embodied experience of the pregnant woman to the margins.

As soon as a woman falls pregnant her body is no longer viewed as hers but is the site for intense moral concern and scrutiny from society and various institutions.

Tellingly, in the RU486 debate there was a repeated argument that access to RU486 should not be decided on by the panel of medical experts at the Therapeutic Goods Association because they did not view pregnancy as an illness or injury, and therefore the drug was not therapeutic. Senator Santo Santoro put forward this argument, stating: "I cannot regard pregnancy as a disease. As both a father and a Christian, I regard pregnancy as a blessing, a gift, an opportunity and a life."<sup>28</sup> Gatens believes that it is common that the "fetus, in utero, represents the 'completion' of the female body, rather than an 'addition to it'" and proposes this because:

The female body, in our culture, is seen and no doubt often 'lived' as an *envelope, vessel or receptacle*... Put bluntly, women's bodies are not seen to have integrity, they are socially constructed as partial and lacking... The root of integrity (Latin 'integritas') involves not only the notion of wholeness but also notions of moral soundness, honour and honesty... I maintain that this etymological link is not incidental. Women are not thought to be 'morally sound' or possess 'honour' – that is, to have integrity – precisely because they are not thought of as *whole* beings.<sup>29</sup>

If, accordingly, we understand women's bodies to be "'begging the question' of completion by a man and/or child"<sup>30</sup> then it is consistent that such dominant cultural

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, 41.

<sup>30</sup> Ibid., xii.

sexual imaginaries would influence the understanding of the decision to terminate a pregnancy as somehow unnatural or immoral.

The intensity with which maternal bodies are regulated cannot be explained by any single factor. Diprose quotes Gatens when she writes: “the labour of pregnancy has also been privatised but remains, paradoxically, open to public scrutiny in the interests of the health and welfare of the social body.”<sup>31</sup> The discourses and technologies around abortion cannot be understood solely as a concern for the mother or concern for the foetus, nor can they be considered solely as an oppressive mechanism. Rather, it is important to analyse such discourses with an awareness of how disciplinary power operates, and with what consequences. The moral concern that is omnipresent in discourses around pregnancy intensifies in cases of abortion, discourses that are informed by notions of women as irresponsible and irrational and thus in need of regulation or supervision, by an investment in the reproduction of the social body, and, by dominant and normative assumptions about women’s place as mothers and carers. Therefore it is possible, and necessary, to analyse the multiple technologies, practices and disciplinary techniques surrounding pregnancy and motherhood in order to better understand the implications and consequences of these assumptions.

In 2004 the then Health Minister Tony Abbott, who had used his ministerial discretion to veto access to RU486, delivered a speech entitled "The ethical responsibilities of a Christian politician." Abbott’s now infamous speech stated that the rate of abortion was a “national tragedy” and declared:

The problem with the contemporary Australian practice of abortion is that an objectively grave matter has been reduced to a question of the mother’s convenience...abortion is the easy way out.<sup>32</sup>

The impetus for Abbott’s proposal to achieve “fewer abortions, fewer traumatised young women and fewer dysfunctional families”<sup>33</sup> was to discourage teenage

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<sup>31</sup> Moira Gatens quoted in Diprose, *The Bodies of Women: Ethics, Embodiment and Sexual Difference*, 19.

<sup>32</sup> Abbott, *The ethical responsibilities of a Christian politician*.

promiscuity. The way in which Abbott framed the problem is interesting and corresponds with much of the discourse around RU486. He did not directly condemn women who have had abortions, instead assuring his audience he did not wish to “stigmatise the millions of Australians who have had abortions or encouraged others to do so.”<sup>34</sup> However, he went on to question the moral integrity of those women, suggesting that they did not “understand that their actions have consequences and take their responsibilities seriously.”<sup>35</sup> The notion that access to abortion, and in particular RU486, would open the floodgates and increase abortion rates is contradicted by the statistical data which demonstrates that the factor that decreases abortion rates is access to contraceptives, and restricting access to abortion services does not decrease abortion rates but instead results in unsafe abortions.<sup>36</sup> This suggests that the abortion debate is also fundamentally a debate over female sexuality, whereby women who have sex for pleasure rather than procreation are construed as immoral and not willing to take responsibility.<sup>37</sup>

The response to Abbott’s speech, and similar comments made by Members of Parliament debating the Bill, from pro-choice<sup>38</sup> voices was frequently to assert the immense difficulty of the decision to have an abortion, and focus on extreme cases such as where the pregnancy had resulted from rape. These responses could be viewed as existing within the same limited framework set out by those who insist on questioning the morality of abortion and position the mother’s rights as being in conflict with foetal rights. This perpetuates the stigma surrounding abortion and the tendency to view abortions on a ‘case-by-case’ basis as to the degree of morality exercised. Corporeal feminist theory has potential for further analysing the

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<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Sneha Barot. "Unsafe Abortion: The Missing Link in Global Efforts to Improve Maternal Health." *Guttmacher Policy Review*, 14.2 (2011).

<http://www.guttmacher.org/pubs/gpr/14/2/gpr140224.html>.

<sup>37</sup> The abortion debates are heavily informed by a desire to control women’s sexuality, however, due to the limited scope of thesis this aspect of the debate will only be briefly addressed.

<sup>38</sup> In this thesis I will use the terms ‘pro-choice’ and ‘anti-choice’ to refer to advocates for and against abortion access respectively. I have deliberately not used the term ‘pro-life’ as it is a loaded term that contributes to abortion stigma. I will, however, critically analyse the limitations of the choice framework in my third chapter.

relationship between women's embodied experience and the State in these circumstances, and for imagining alternative ethical frameworks.

The way in which women who have abortions are represented and discussed in politico-legal forums such as Parliament is significant to women's understanding of themselves and their decisions. During the debate on RU486 Senator Andrew Bartlett expressed concern over the impact his colleagues rhetoric may have on women: "To label as murderers people who choose to have an abortion or who assist someone to do that and to label RU486 as a human pesticide or a drug designed to kill babies is an abuse of language and a vilification of women."<sup>39</sup> Even in circumstances where the women who have had abortions were not being referred to in clearly negative terms the way in which they were described may have an impact on their understanding of themselves. It is useful here to draw on Judith Butler who employs Althusser's theory of interpellation; "the hailing of a person into her or his social and ideological position by an authority figure."<sup>40</sup> For Butler, interpellation is a "performative act...statements that, in the uttering, also perform a certain action and exercise a binding power,"<sup>41</sup> causing a subject to recognise themselves as they are addressed. Butler shares corporeal feminists concern with the way in which women have been relegated to the realm of the natural<sup>42</sup> and argues that:

It is not enough to inquire into how women might become more fully represented in language and politics. Feminist critique ought also to understand how the category of "women," the subject of feminism, is produced and restrained by the very structures of power through which emancipation is sought.<sup>43</sup>

The power of interpellation, which I will address in more detail in my third chapter, was demonstrated during Parliamentary debates and the media discussion of pregnant women who may wish to access RU486 when the women were referred as 'mothers.'

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<sup>39</sup> *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.*

<sup>40</sup> Judith Butler, quoted in Sara Salih, *Judith Butler* (London: Routledge, 2002), 78.

<sup>41</sup> Judith Butler, *Bodies that matter: on the discursive limits of sex*, (New York: Routledge, 1993), 225.

<sup>42</sup> Judith Butler, *Gender Trouble* (New York: Routledge, 1990), 12.

<sup>43</sup> *Ibid.*, 2.

This linguistic distinction is rhetorically significant as it calls women in these positions to recognise themselves as mothers, a term that is laden with a focus on the potential life of the foetus and suggests that the woman should identify with being a mother. The idea of women being ‘naturally’ maternal is destabilised when we understand this appellation to be a process of hailing, of constructedness, when, to quote Butler, “the apparently naturalised body turns out to be a naturalised effect of discourse.”<sup>44</sup> As well as having an impact on the way in which women understand themselves and how they make and feel about their decisions, the stigma surrounding abortion further perpetuates silence around the issue and can sit uncomfortably with issues of state responsibility to educate, fund and make accessible services.

Deborah Gould in *On Affect and Protest* distinguishes between affect and emotion, explaining “Where affect is unfixed, unstructured, and nonlinguistic, an emotion is one’s personal expression of what one is feeling in a given moment, and expression that is structured by social convention, by culture.”<sup>45</sup> Just as Butler understands that interpellation is historically revisable because there is an “impossibility of full recognition, that is, of ever fully inhabiting the name by which one’s social identity is inaugurated and mobilized,”<sup>46</sup> Gould proposes that every “capture” of affect into emotion:

Coincides with an escape of affect as well. Due to that escape, indeterminacy, and thus potential, accompany the processes through which something takes determinate form within culture. There is always something more than what is actualised in social life.<sup>47</sup>

Gould is particularly interested in the “interpretive emotion work” of social movements. As the interpretation of affect into emotion is not fixed, social movements can influence the interpretation of affect, providing “an emotional

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<sup>44</sup> Judith Butler quoted in Salih, *Judith Butler*, 8.

<sup>45</sup> Deborah Gould, *On Affect and Protest*. In *Political Emotions*, eds. J. Staiger, A. Cvetkovick and A. Reynolds (New York: Routledge, 2010), 27.

<sup>46</sup> Judith Butler, *Bodies that matter: on the discursive limits of sex* (New York: Routledge, 1993), 225.

<sup>47</sup> *Ibid.*

pedagogy of sorts, a guide for how to feel and what to do in light of those feelings,<sup>48</sup> she uses the example of the feminist movement placing women's feelings of depression into their historical context and transforming those feelings into anger.<sup>49</sup> It is interesting to apply this idea to how pro-choice and anti-choice movements create "emotional pedagogies" for how women feel about abortion. I will explore this in greater detail in the following chapters in relation to the focus on abortion as a difficult and traumatic decision and the implication that women who do not experience a moral crisis following an abortion are by nature spurious subjects. I will suggest that those in the debate that use the argument that women should not have access to abortion because they need to be protected from post-abortion depression fail to account for the dominant social conventions that instruct how affect may be interpreted into emotion,<sup>50</sup> as they position guilt and regret as an inevitable emotional consequence of the procedure.

The discourse around RU486 is particularly interesting when applying Gatens' theory of the 'imaginary body,' as it draws attention to how representations of women who have had or who consider having an abortion impact on women's construction of their own subjectivity as well as the determining of "in part, their value, their status and what will be deemed their appropriate treatment."<sup>51</sup> In this thesis I will seek to explore how dualistic and highly normative gendered understandings of women inform the discourse around abortion in Australia and deny women bodily integrity. In Chapter Two I will provide a historical overview of abortion debates in Australia through to the present legal situation in the States and Territories. In doing so I will demonstrate that the discourse surrounding abortion has in many ways remained remarkably stagnant, with the pro-choice and anti-choice movements both trapped in rhetoric focussed on the morality of women's individual choices. In Chapter Three I will engage with the theory I have introduced in Chapter One in order to provide a close analysis of how these sexual imaginaries inform both sides of the debate around

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<sup>48</sup> Ibid., 34.

<sup>49</sup> Ibid.

<sup>50</sup> I will return to the question of affect in my third chapter. I am aware that there is a whole field of theory in relation to affect, which despite its importance I will only be able to touch on here.

<sup>51</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, viii.

RU486. Finally, I will look to Gatens' proposal of an alternative embodied ethical framework to imagine an approach to the abortion debates that is able to account for women's embodied experience in its total affective context.

## Chapter Two: Criminal bodies

*When a state makes abortion legal or illegal, it determines whether women live or die, with dignity or fear.*

**Dr Jo Wainer, 2006<sup>52</sup>**

This thesis will focus primarily on the controversy surrounding the introduction of the medical abortion pill RU486 to Australia and the specific ways in which the discourses around RU486 have represented women. In this chapter I will examine the debates in the Senate, House of Representatives, the media and the broader community. However, it is first necessary to explore the historical background of the RU486 debate and understand the current legislative and legal framework of abortion in Australia. As abortion is legislated at the level of States and Territories each jurisdiction has its own complex and fraught history and this chapter will not seek to give a complete account of this, rather, I will provide a preliminary background of the major events and decisions that have shaped the current status of abortion in Australia.

Abortion remains technically illegal in most of Australia, with the procedure existing in murky legal territory. This situation is incongruous with the reality of access to abortion as it is one of the most common and safest medical procedures in Australia and it is estimated that one in three Australian woman will have an abortion in her lifetime.<sup>53</sup> Although it is possible to access abortion in most areas, there are a number of factors that impact on its accessibility. The legal ambiguity surrounding abortion has meant that it has primarily been confined to private clinics, rather than public hospitals, and generally located in large centres.<sup>54</sup> Furthermore, the prohibitive costs associated with the procedure itself and the travel costs for women from rural and

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<sup>52</sup> Jo Wainer, *Lost: illegal abortion stories*. (Melbourne: Melbourne University Press, 2006), 3.

<sup>53</sup> Tanya Drabsch, *Abortion and the law in New South Wales: Briefing Paper No 9/05* (Sydney: NSW Parliamentary Library Research Service, 2005), 3.

<sup>54</sup> *The Regulation of Abortion in Australia: Public Health Perspectives* (ACT: Public Health Association of Australia, 1998), 4.

regional areas who may not have a local option mean that socio-economic and geographical factors are significant.

Where abortion continues to be listed in the Crimes Act or Criminal Code the enforcement of those laws has been guided by subsequent legal rulings. In some cases this has resulted in greater clarity within the law, and in other cases it has further obfuscated it. The rulings in significant cases in Australia have predominantly determined under what circumstances a doctor can legally perform an abortion. These rulings have often set out under what circumstances a doctor can determine it justifiable to refer a woman for an abortion, a decision that commonly rests on whether the doctor is satisfied that the continuation of the pregnancy would result in serious threat to the woman's physical or mental wellbeing.

### **The Criminalisation of Abortion**

The inclusion of abortion in Australian Crimes Acts and Criminal Codes has its historical basis in the common law of the United Kingdom. Initially abortion early in the pregnancy was not considered an offence, and only became so once the fetus had 'quickened' (moved), this distinction was later abolished in 1837, making any attempt to procure a miscarriage a felony.<sup>55</sup> Significantly, in 1861 the law was expanded to criminalize the pregnant woman, whereas previously it had only been concerned with the person who performed the abortion. The movement towards criminalizing the pregnant woman mirrored the concern of the Catholic Church with the perceived immorality of abortion.

It was not until 1929 that termination was determined to be permissible where necessary to save a woman's life.<sup>56</sup> Significantly, this determination was the result of a case where a fourteen-year-old girl was raped and the doctor deemed that her mental and psychological health would be endangered if she were forced to continue the pregnancy. While this opened the way for abortions to be performed, it also has meant that women have had to present themselves as psychologically struggling in order to

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<sup>55</sup> Drabsch, *Abortion and the law in New South Wales: Briefing Paper No 9/05*, 13.

<sup>56</sup> *Ibid.*, 15.

seek an abortion, and that the question of ‘justification’ for the procedure has had a significant presence in discourse around abortion. Both sides of the debate often reinforce this dynamic, with anti-choice groups talking about women who have abortions for ‘selfish’ reasons such as pursuing their career, and pro-choice campaigns often relying on the emotive example of ‘would you force this woman to have her rapist’s baby.’ In such debates women who have abortions are predominantly portrayed as young, promiscuous and unwilling to take on the responsibility of motherhood. This stigmatized representation is in stark contrast to the reality of the broad range of women who access abortion. Historically married mothers who could not afford to have more children have largely accessed the procedure, and been forced to have illegal abortions or travel interstate because they have not been judged to be able to ‘justify’ their abortion.<sup>57</sup>

Australia’s laws were largely based on the UK 1861 Abortion Act that criminalized any woman who attempted to procure a miscarriage, and allowed scope for abortion in cases of mental or psychological threat to the woman. The same wording that existed in the UK in 1861 remains unchanged in the NSW Crimes Act and the QLD Criminal Code.<sup>58</sup>

The early history of abortion in Australia was overwhelmingly that of illegal and often unsafe ‘backyard’ abortions, or of dangerous attempts by women to end their own pregnancy.<sup>59</sup> Herbal and chemical treatments were popular and were often ineffective and poisonous, other women who could not afford abortions operated on themselves with household objects including coat hangers and knitting needles.<sup>60</sup> The relationship of the feminist movement to abortion and contraceptives has changed radically over time. Post-suffrage feminists considered that contraception was a symptom of unbridled sexuality, and they considered sex to be necessarily degrading for women and therefore concentrated on measures that would restrain sexuality, such

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<sup>57</sup> Anne Summers, *Damned Whores and God's Police* (Victoria: Penguin Books Australia, 1975), 366.

<sup>58</sup> *Ibid.*, 14.

<sup>59</sup> *The Regulation of Abortion in Australia: Public Health Perspectives*, 3.

<sup>60</sup> *Your Body Your Baby: Women's Legal Rights from Conception to Birth*. (Sydney: Redfern Legal Centre Publishing, 1996), 25.

as increasing the age of consent.<sup>61</sup> It was only in the 1960s, with the advent of feminism that embraced the notion of sexual freedom that the feminist movement began to make demands for safe, legal and affordable contraception and abortion.<sup>62</sup> Much of the campaigning effort and the legal reforms around abortion have been motivated in response to awareness of cases where women have died as a result of illegal abortions. In *The Regulation of Abortion in Australia: Public Health Perspectives*, the Public Health Association estimates that if the same number of women were to die now from abortion-related causes as did in 1960, maternal mortality rates would be tripled.<sup>63</sup>

### **Status of Abortion in Australian States and Territories**

In this section I will trace changing moments in the legislative history of abortion as a means of demonstrating the extent to which the conception of abortion remains anchored in the 19<sup>th</sup> century. It is disturbing that our current language and frameworks for viewing abortion remain situated in a period of time when women were not recognized as legal subjects and were denied voting rights.

The status of abortion varies throughout Australia as it is legislated for at the level of States and Territories. The Territories are the only jurisdictions to not have had abortion included in their criminal legislation. The Northern Territory deals with abortion under its Medical Services Act and allows abortion up to 14 weeks gestation if there is risk to the woman's physical or mental health, or if the child is at substantial risk of disability. The Australian Capital Territory does not include abortion within its Crimes Act and is the only part of Australia where the ultimate decision making power rests with the woman at every stage of the pregnancy.<sup>64</sup>

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<sup>61</sup> Marilyn Lake, "The Inviolable Woman: Feminist Conceptions of Citizenship in Australia." In *Feminism the Public & the Private*, ed. J.B. Landes (New York: Oxford University Press, 1998), 232-234.

<sup>62</sup> Anne Summers, *The Misogyny Factor* (Sydney: NewSouth Publishing, 2013), 25.

<sup>63</sup> *The Regulation of Abortion in Australia: Public Health Perspectives*, 2.

<sup>64</sup> Paul Gerber and Melissa Castan. "A Woman's Right to Choose: Human Rights and Abortion Rights in Australia." In *Contemporary Perspectives in Human Rights Law in Australia*, edited by P. Gerber and Melissa Castan (Sydney: Thomson Reuters, 2013), 270.

The States have all historically included abortion in their Criminal Code or Crimes Act, and there have been a range of legal and political efforts since 1969 to the present day to reform or repeal these sections. These efforts, along with a number of significant legal decisions, have either restricted or liberalised abortion access and have defined the circumstances under which abortion may be legal, where the decision-making authority rests and the timeframe in which abortions can occur. These measures all result from and perpetuate particular beliefs surrounding women's autonomy, their facility for decision-making and their role in society.

South Australia was the first State to define the circumstances under which an abortion may not be a crime. The South Australian Criminal Code was amended in 1969 to allow abortion for up to 28 weeks gestation for reasons of maternal health, or if there is a substantial risk that the child will be mentally or physically disabled.<sup>65</sup> Tasmania passed the Reproductive Health (Access To Terminations) Bill 2013 that amended the Criminal Code to determine that abortion would only be considered a crime if carried out by someone other than a medical professional or the pregnant woman, or without the woman's consent. The Bill went further to institute a ban on protesting within 150 meters from premises at which terminations are provided; Tasmania is the only jurisdiction in Australia to have this restriction on protesters.<sup>66</sup>

Victoria experienced a significant shift in the status of abortion during the 1970s following the public revelations of dangerous practices of backyard abortions and the police corruption that had sustained this situation. The work of Doctor Bertram Wainer during this period was dramatized in the 2012 ABC television drama *A Dangerous Remedy*. Wainer's interest in abortion was spurred by 1969 death of 21 year old Carolyn Jamieson who was found dead following an illegal abortion she was too ashamed to tell her parents about.<sup>67</sup> This incident spurred Wainer give up his General Practice and to throw himself into the cause of abortion law reform and

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<sup>65</sup> Australian abortion law and practice. (2013, 10 December 2013). <http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice> (accessed 10 March 2014, 2014).

<sup>66</sup> Tasmanian Legislative Council. *Reproductive Health (Access to Terminations) Bill 2013*, (Government Printer Tasmania, 2013).

<sup>67</sup> Melissa Sweet. "Lost: Illegal Abortion Stories." *British Medical Journal* 333 (2006): 307.

would ultimately lead to the Menhennitt ruling in Victoria that determined abortion to be lawful where necessary to “preserve the woman from a serious danger to her life or her physical or mental health.”<sup>68</sup> Following the Menhennitt ruling Wainer and his partner set up Australia’s first openly operating abortion clinic.<sup>69</sup>

Jo Wainer, Bertram Wainer’s partner and an abortion rights activist instrumental in the campaign to decriminalise abortion in Victoria in the 1960s wrote *Lost: Illegal Abortion Stories*, telling the stories of women who had illegal abortions between 1930 and 1980. Wainer chose the title *Lost* to reflect her view that there was poor public policy surrounding abortion because women’s voices had not been included. Wainer evokes the impact of the criminalization of abortion and the unquestioned and inherent paternalism enshrined in the legislation, writing:

The illegal and dangerous nature of abortion at the time served the purpose of keeping women terrified and powerless in relation to their bodies and their lives, and dependent on, and in service to, their husbands.<sup>70</sup>

Crucially, the Menhennitt ruling allowed scope for doctors to determine that an abortion was necessary and put an end to the days of abortion being steeped in police corruption and dangerous backyard operations. However, the procedure remained in the Criminal Code until the successful 2008 Abortion Law Reform Bill which decriminalized abortion up until 24 weeks gestation. The Bill’s passing was decried by anti-choice organizations, with Pro-Life Victoria stating: “you have just condemned untold numbers of Victorians to death...their blood is on your hands.”<sup>71</sup> Others, including Jo Wainer, welcomed the move as putting an end to the uncertainty

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<sup>68</sup> Gideon Gaigh. "The Principle of Necessity: Justice Menhennitt & Australia's Roe v Wade." *The Monthly*.

<http://www.themonthly.com.au/issue/2007/november/1316494184/gideon-haigh/principle-necessity>.

<sup>69</sup> Sweet, *Lost: Illegal Abortion Stories*, 307.

<sup>70</sup> Wainer, *Lost: illegal abortion stories*, 3.

<sup>71</sup> "Abortion decriminalised in Victoria. *The Sydney Morning Herald*.

<http://news.smh.com.au/national/abortion-decriminalised-in-victoria-20081010-4xz2.html>

around abortion services and allowing women greater control over their lives and reproductive choices.

In Western Australia in 1998 two doctors were charged under the Criminal Code for performing an abortion. Up until this point Western Australia had been in a similar situation to many other States in that abortion was included in the Criminal Code but the law remained unenforced and services were generally available. The charges caused most doctors to immediately cease providing abortions for fear of the legal consequences. This created a degree of urgency as the case was not likely to be heard for eighteen months and in the meantime Western Australian women were left without access to abortion. Those who could afford to do so traveled interstate, however, many could not afford this option and two women were admitted to hospital after attempting to self-abort.<sup>72</sup>

In response to the charges Labor Member of Parliament Cheryl Davenport pushed through a bill to amend the Criminal Code and was successful in reforming the law. However, the outcome was compromised, as restrictions were placed upon access to abortion with women under sixteen requiring parental consent and abortion only legal up until twenty weeks gestation.”<sup>73</sup>

Many of the significant moments in abortion law reform and legal rulings have been in response to a situation where a rarely exercised law has been utilized, with immediate and severe consequences for access to abortion in that State. I recently spoke with a member of the New South Wales Upper House who has been heavily involved in the pro-choice movement and explained that pro-choice New South Wales politicians were wary of pushing for abortion law appeal for fear of results like those in Western Australia and Victoria where abortion law reform has in some ways further restricted access through requiring parental permission and restricting access to late term abortions. Such a circumstance has arisen as a direct result of the disproportionate influence of the anti-choice movement in Parliament, through such

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<sup>72</sup> Cheryl Davenport. "Against the odds: abortion law reform in Western Australia," in *Party Girls: Labor women now*, ed. Penny Sharpe and Jo Tilly (Sydney: Pluto Press, 2000) p.87.

<sup>73</sup> *Ibid.*, 93.

voices as Fred Nile in the New South Wales Upper House, as well as widespread cultural discomfort with the notion of late-term abortion.

In New South Wales abortion is still listed in the NSW Crimes Act 1900, which allows sentencing of up to 10 years for the pregnant woman or anyone aiding the procurement of a miscarriage by drug or other instrument, or life imprisonment for anyone who supplies the “drug or noxious thing” knowing it is to be used for a miscarriage.<sup>74</sup> The current application of the law is guided by the 1971 ruling by Justice Levine which determined that abortion would be legal if the doctor found there was “any economic, social or medical ground or reason” that an abortion was required to avoid a “serious danger to the pregnant woman's life or to her physical or mental health”<sup>75</sup> at any point during the pregnancy. The applied impact of this ruling is that any woman who is faced with an unplanned pregnancy and wishes to have an abortion must be prepared to mount an argument as to why she is deserving of an abortion, having to demonstrate physical or psychological frailty in order to qualify. The implication of this process is that choosing an abortion can never be a responsible or moral choice, and that the woman must be in some way incapable if they do not wish to continue the pregnancy.

The consequences of listing abortion in the Criminal Code have been exemplified by a recent criminal case in Queensland in 2009. The case is demonstrative of the archaic nature of the 110 year old Criminal Code, and how the combined force of legal, media and public attention has reinforced the stigma of abortion and the limited understanding or framing of what could be a ‘justifiable’ abortion.

The criminal case was brought against Cairns resident Tegan Leach who was charged for procuring her own miscarriage and her partner Sergi Brennan who was charged for assisting her as he had supplied her with mifepristone, or RU486. The arrest occurred as a result of the police searching their house in relation to another matter and finding the mifepristone packaging. Leach had readily and freely explained to

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<sup>74</sup> Australian abortion law and practice. (2013, 10 December 2013). Retrieved 10 March 2014, 2014, from <http://www.childrenbychoice.org.au/info-a-resources/facts-and-figures/australian-abortion-law-and-practice>.

<sup>75</sup> Costa, *RU486: The Abortion Pill*, 79.

them that the pills had been used to terminate her pregnancy, as she was not aware that abortion was illegal under the Criminal Code.<sup>76</sup>

The bringing of the charges alone caused an immediate reduction in abortion services in Queensland. In Cairns the only two doctors providing abortions ceased to operate for fear of legal repercussions, and many more across the state followed, including those operating in public hospitals. Pro-choice lobby groups were disappointed that the case did not serve as a trigger to reform the 110 year old Criminal Code to remove abortion.<sup>77</sup>

During the trial the Crown prosecutor argued that the Leach's abortion was a "lifestyle choice" and therefore illegal as it was not for the protection of her life or health. Leach and Brennan were finally acquitted eighteen months after the arrest and following a harrowing media spectacle in which their names and photographs were continually displayed. Many of the abortion providers who ceased to operate during this time have since recommenced, however, the case did cause an overall reduction in abortion providers and greater confusion over the application of the law.<sup>78</sup> The Cairns case powerfully reflects the notion that women who have abortions in all but the most extreme circumstances are manifestly irresponsible, selfish and immoral, and that their behavior must be closely regulated.

### **Present threats**

At the time of writing there are a number of measures being considered by State and Territory Parliaments that threaten to place new restrictive measures on abortion access and criminalise pregnant women for their actions during pregnancy.

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<sup>76</sup> "Abortion couple Tegan Simone Leach and Sergie Brennan found not guilty." *news.com.au*. <http://www.news.com.au/national/abortion-couple-tegan-simone-leach-and-sergie-brennan-verdict-being-considered-by-jury/story-e6frfkvr-1225938533599>.

<sup>77</sup> "Change we've helped achieve: campaign successes: RU486." Children by Choice. <http://www.childrenbychoice.org.au/working-for-change/campaign-successes/ru486>.

<sup>78</sup> Australian abortion law and practice, 2013.

Interestingly, the measures being considering in New South Wales, South Australia and Western Australia do not specifically address abortion, rather, they propose affording personhood status to the foetus. These measures allow for a substantial shift in the way women's bodies are regulated, as they risk criminalizing women for what they choose to do with their body during pregnancy.

In New South Wales a Bill, known as Zoe's Law, has recently passed through the Lower House. The Bill was put forward as a direct response to the experience of Brodie Donegan, who miscarried following a car accident and felt that there should be a greater sentencing than grievous bodily harm for the driver. Member of the Legislative Council Fred Nile who publicly opposes abortion introduced the original Bill. The Bill provides for a perpetrator to be charged with manslaughter in such a situation as it gives personhood status to the foetus. In South Australia the Offences Against the Unborn Child Bill and in Western Australia a Foetal Homicide Bill have both been narrowly defeated by one vote in recent years and may be reintroduced to Parliament.<sup>79</sup> While on face value the laws do not address abortion, many legal and medical groups as well as pro-choice lobbyists and activists have expressed concern that giving a foetus personhood is a significant conceptual departure from previous laws and would further confuse the law surrounding abortion and place women and medical professionals at risk of prosecution.<sup>80</sup>

The Northern Territory Government is considering whether to introduce legislation to "either prosecute or alternatively restrain [women] from engaging in conduct that harms their unborn child."<sup>81</sup> Tellingly, the Northern Territory Attorney General John Elfernack, who is pushing for the legislation in the interests of protecting foetal rights, has said that though these measures "brings into question a number of human

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<sup>79</sup> Rachel Watts. "Foetal homicide laws set up a competing set of rights for women." *The Drum*. <http://www.abc.net.au/unleashed/3889266.html>.

<sup>80</sup> Hamad, Ruby. "We cannot take our rights for granted." *Daily Life*. <http://www.dailylife.com.au/news-and-views/dl-culture/we-cannot-take-our-rights-for-granted-20131008-2v5az.html>.

<sup>81</sup> "Drinking alcohol during pregnancy targeted as NT Government considers rights of unborn child." *ABC News*. <http://www.abc.net.au/news/2014-03-14/nt-government-considering-rights-of-unborn-child/5320016>.

rights...we will cross that bridge when we get there.”<sup>82</sup> Elfernick’s statement suggests a perceived division between women’s rights and foetal rights, and a societal need to be regulating women’s bodies in order to protect the rights of the unborn.

There is currently a proposal in Victoria from Member of Parliament Geoff Shaw who is preparing a Private Members Bill that includes measures including not requiring anti-choice doctors to refer patients to an impartial colleague, requiring pain relief to be provided to foetuses during the termination procedure and to resuscitate foetuses that survive the procedure.<sup>83</sup> Shaw has stated these measures are in response to the problem of sex-selective abortions and instances where foetuses survive the termination procedure, in spite of there being no evidence of either of these circumstances occurring in contemporary Australia. Shaw has positioned himself as both a protector of the unborn and champion of women’s rights:

Here in Australia we can’t kill snake eggs but we are quite happy to kill an egg in the tummy and it should be the safest place for a baby to be. How can any women who are pro-women’s rights say that you can kill girls?<sup>84</sup>

Shaw’s rhetoric is particularly extreme in its disregard for biological accuracy and its portrayal of women as incubators. However, it is also broadly reflective of a number of consistent themes in anti-choice arguments, including: the appeal to the morality of the nation in conjunction with a call to protect foetuses, here presented as children, and the protection of women, whose irrational logic would lead them to damage their own sex if it were not for masculine intervention in their reproductive decisions.

These recent moves to criminalise women for what they choose to do with their bodies during pregnancy perpetuates the dominant cultural sexual imaginary of women as reproductive vessels and thus public property, and, as morally irresponsible or deficient and lacking in bodily integrity or restraint and composure. Within this

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<sup>82</sup> Ibid.

<sup>83</sup> Oliver Milman. "Victorian MP Geoff Shaw travels to US to research abortion law." *The Guardian*. <http://www.theguardian.com/world/2014/may/09/victorian-mp-geoff-shaw-travels-to-us-to-research-abortion-law>

<sup>84</sup> Ibid.

framework the woman's body is no longer her own but a site of intense societal and institutional scrutiny, and in this case the site of explicit (Foucauldian) discipline,<sup>85</sup> operating in the interest of the continuing health and reproduction of the nation.

### **Abortion experiences**

In her autobiography *Ducks on the Pond* Anne Summers writes candidly about her experience of an illegal abortion; she chooses to share her story with the public as a reminder of the vital importance of safe and accessible abortion services. Summers' account is singular as women rarely spoke about their experiences of abortion and information on how to obtain one was very difficult to find. The secrecy and shame that abortion is shrouded in is reinforced and promoted by the legal status and framing of abortion. Due to the prohibitive cost and lack of abortion providers prior to 1970, many women died from attempting to terminate the pregnancy themselves through use of pills, potions or sharp instruments.

Summers' doctor refused to assist her in procuring an abortion, as he did not want to be involved in illegal activity. She recounts resorting to "all the so-called old wives' remedies. I had sat in a scalding hot bath and tried to force down a bottle of gin. I had been on energetic walks. I had jumped off tables."<sup>86</sup> These attempts were unsuccessful and Summers tried to make an appointment in Melbourne, the first place she tried charged 120 pounds so she booked with another operator who charged \$60 pounds. She tells of travelling to Melbourne by train without her parent's knowledge and being picked up from a street corner and blindfolded before being driven to a secret location where she was put under anesthetic. The experience was horrifying, Summers describes the plastic bucket on the floor between her legs and hearing the doctors discuss what she would look like in a bikini as they operated on her.

Once she returned to university in Adelaide, Summers spent the first two weeks hemorrhaging and experiencing cramping pains. Eventually she sought help from the

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<sup>85</sup> This will be returned to in the third chapter.

<sup>86</sup> Anne Summers, *Ducks on the Pond: an autobiography 1945-1976*. (Victoria: Penguin Books, 1999), 137.

doctor who had refused her an abortion and he advised her she had had an incomplete abortion and arranged for her to be admitted to a public hospital as a teaching patient so that she would not have to pay for the operation and so it would take place when the hospital was empty. Summers reflects poignantly on the “cruel absurdity” of a law that did not prevent abortions but forced women either into dangerous backyard abortions or to resort to performing their own, a choice which often claimed their lives.<sup>87</sup>

As a result of seeking to assert her freedom of choice and her autonomy and control over her own body Summers was forced to endure not only the criminalization of her behaviour, but also humiliation, isolation, physical harm and sexual objectification. Her story demonstrates the prohibitive power of the threat of legal sanction on doctors’ willingness to treat patients, the impact of financial and geographical restrictions upon access to abortion and the powerful symbolic and material impacts of the stigma and shame surrounding abortion.

While the accessibility and safety of abortion has increased since Summers’ experience, the stigma remains. In 2008 young journalist Clementine Ford published one of her first opinion pieces in which she spoke about having had two abortions. The piece is titled “Clementine Ford reveals her two no guilt, no shame abortions” and in it Ford addresses the societal pressure that she felt to feel shame and grief over the decision. Ford discusses her awareness that her abortions would be frowned upon by many and not deemed to be justifiable as she has had multiple abortions and did not agonize over the decision:

I feel no shame regarding either of them. I acted in my own best interest, a fact I refuse to apologise for. It wasn’t the ‘hardest decision I have ever had to make’. It was actually really, really easy. The only thing I felt afterwards was intense relief. Women have got to stop feeling like they owe the world a truckload of guilt simply because they exercised their legal right to govern

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<sup>87</sup> Ibid., 142.

their own reproduction.<sup>88</sup>

Ford's radical account of her experience attracted many negative responses. Reflecting on the experience in 2013, Ford writes; "But had I written that I'd been raped twice (I wasn't, but that's beside the point), perhaps I would have secured more sympathy from the readers. As it was, they saw a young woman writing with no apology about the fact that she'd chosen to prioritise her life and ambitions over that of a potential life. I was reimagined as a 'slut' who 'couldn't keep her legs closed' and used abortion 'as a contraception.'"<sup>89</sup> Ford's experience illustrates the pervasive and corrosive impact of abortion stigma and the moral dichotomy set up between abortions that are seen as 'justifiable' and abortions that are viewed as irresponsible or selfish. The ferocity of the responses to Ford demonstrates how women's experience of abortion is regulated and policed on a societal and cultural level and women are disciplined for not conforming to expectations that they manifest feelings of regret and grief.

### **The Abortion Debates**

The argument that restricting abortion access protects the foetus and the woman is a relatively recent one. In analyzing what is at stake in the regulation of abortion it is crucial to understand the historical development of the debate and how it has been informed by patriarchal ideology of the role of women as mothers and wives entrusted with the service of the reproduction of the nation, with the biological reproduction of the body politic.<sup>90</sup> Furthermore, it is interesting to consider how these ideas live on in present discourse and to what extent they are representative of community attitudes towards abortion.

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<sup>88</sup> Clementine Ford. "Clementine Ford reveals her two no guilt, no shame abortions." *Adelaide Now*. <http://www.adelaidenow.com.au/news/my-no-guilt-no-shame-abortions/story-e6frea6u-1111115304867>.

<sup>89</sup> Clementine Ford. "Do you have sex? Do you not want to be pregnant?" <http://www.dailylife.com.au/news-and-views/dl-opinion/do-you-have-sex-do-you-not-want-to-be-pregnant-20120903-25a0g.html>.

<sup>90</sup> Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory*, 44.

The anxieties surrounding access to abortion are paralleled in the history of contraceptives in Australia. The notion that abortion is immoral has a strong grounding in the teachings of the Catholic Church, however, this was due to concern with the use of contraceptives and abortion due to a belief that sex that was not within the sanctity of marriage and thus for procreative purpose was immoral. As sex explicitly for pleasure was frowned upon and abortion was seen as evidence of this, abortion was considered doubly reprehensible. It was only towards the end of the 19<sup>th</sup> century that the Catholic Church began to focus on an ontological view of the foetus as a life in need of protection.<sup>91</sup>

In Australia the abortion debates were also entangled in anxieties over the reproduction of the white nation. The Church and the State viewed contraception and abortion as being responsible for the declining birthrate and were especially concerned by the increasing use of these methods by white women, believing it was "race suicide."<sup>92</sup> Indeed, concern for population control also informed early family planning advocates, who were motivated by eugenicist ideology rather than concern for women's control over their bodies.<sup>93</sup>

The extent to which concerns about contraception and abortion were based on racialised ideas, rather than concern for foetal life, is evident when considering the experience of Indigenous Australian women. During the 1970s the Department of Aboriginal Affairs was supplying Depo Provera as a contraceptive through Indigenous medical services, despite knowledge that it was ineffective and caused spontaneous termination of pregnancy.<sup>94</sup> Thus, paradoxically, at the same time as white feminists were campaigning for abortion access, Indigenous women were suffering under a policy of forced and nonconsensual abortions.

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<sup>91</sup> De Costa, Caroline. "Abortion Law, Abortion Realities." Paper presented at the Mayo Lecture, James Cook University, 2008.

<sup>92</sup> S. Siedlecky and D. Wyndam, *Populate and Perish: Australian Women's Fight for Birth Control* (Sydney Allen & Unwin, 1990), 18.

<sup>93</sup> Summers, *Damned Whores and God's Police*, 227.

<sup>94</sup> Aileen Moreton-Robinson, *Talkin' up to the white woman: Aboriginal women and feminism* (Queensland: University of Queensland Press, 2000), 171.

The impact of these eugenical and pronatal ideas saw white women portrayed in the 1904 *Royal Commission on the Decline of the Birthrate* as “abdicating their civic responsibility by selfishly choosing to limit their families.”<sup>95</sup> In *Populate and Perish: Australian Women’s Fight for Birth Control*, Siedlecky and Wyndham identify that it was only from the late 1960s that the debate shifted to concern for protection of the foetus from the moment of conception.<sup>96</sup>

These histories belie the idea that the abortion debate has always been one concerned with the protection of the foetus. Furthermore, they clearly demonstrate the ways in which public and institutional anxieties around abortion and contraception have been entrenched in controlling women’s sexuality and role in society and the perpetuation of a particular liberal and patriarchal vision of the nation. While these traditional notions of the nation, marriage and women’s role in society have shifted, they are still evident in the abortion debates and public discourse and policy as well as the institution of government financial incentives to marriage and motherhood. The post World War II slogan “Populate or Perish” was used to increase the birth rate, and in 2004 the then Federal Treasurer Peter Costello told Australian women: “You should have one for the father, one for the mother and one for the country...come on, your nation needs you.”<sup>97</sup> This statement echoes a call to war and implicitly suggests that women are putting the nation in peril by having abortions.

There is not a substantial amount of data on Australian perspectives regarding abortion, however, there have been a number of studies done in recent years that have sought to gauge public opinion on this subject. Numerous opinion polls have demonstrated widespread support for the idea that women should be able to decide whether to access abortion, and very little support for further restrictions on availability.<sup>98</sup> In 2005 the Bioethics Institute published their study *Give Women Choice: Australia Speaks on Abortion*. The study was a survey of one thousand two

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<sup>95</sup> Siedlecky and Wyndam, *Populate and Perish: Australian Women's Fight for Birth Control*, 18.

<sup>96</sup> *Ibid.*, 77.

<sup>97</sup> "So, will you do it for your country?" *The Age*.

<http://www.theage.com.au/articles/2004/05/14/1084289883805.html?oneclick=true>.

<sup>98</sup> Drabsch, *Abortion and the Law in New South Wales: Briefing Paper No 9/05*, 1.

hundred adults across Australia and it found that seven out of ten respondents agreed that Australian women should have legal access to abortion. However, the respondents did display discomfort in relation to the question of the morality of abortion: “apart from the ‘hard cases’ involving a danger to the mothers health or foetal disability, fewer than one in four thinks that abortion is morally justified.”<sup>99</sup> In this respect, the criteria for legal abortion requiring that the doctor be satisfied of a threat to maternal or foetal health, does reflect a widely held belief that, in Naomi Wolf’s words, “some abortions are less moral than others.”<sup>100</sup>

In the government sponsored report *We Women Decide: Women’s Experiences of Seeking Abortion in QLD, SA and Tasmania*, the authors found that women’s experiences of abortion were radically divorced from the ways in which the issue was handled in public debate. The women interviewed predominantly did not refer to the foetus as life and the authors found:

There was widespread resentment among women that their reasons for seeking abortion needed to be judged worthy by doctors in seeking a ‘counselling’ exchange.... women resented the fact that they were required to present themselves as or be designated as mentally incompetent.<sup>101</sup>

The disjuncture between the respondents experiences of the process of seeking an abortion and their considerations in making that choice and the concerns emphasized in public debate suggests a need for a greater presence of women’s voices in the debate. Furthermore, the women’s resentment reflects their discomfort with the paternalistic nature of the process required to obtain an abortion. The presumption that women should fulfil their maternal role and reproduce for the nation positions them as vessels that must be regulated effectively in the interests of society.

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<sup>99</sup> JI. Fleming and S.Ewing, S, *Give Women Choice: Australia Speaks on Abortion* (Adelaide: Southern Cross Bioethics Institute, 2005), 3.

<sup>100</sup> Emily Maguire, *Princesses & Pornstars: Sex, Power, Identity* (Melbourne: Test Publishing, 2008), 187.

<sup>101</sup> Lyndall Ryan, Margie Ripper and Barbara Butterfield. *We Women Decide: Women's experiences of seeking abortion in Queensland, South Australia and Tasmania 1985-1992* (South Australia: Women's Studies Unit, Flinders University, 1994), 111.

In conclusion, the history of abortion in Australia is one that maps regulation of reproduction as a site for intense social and political scrutiny. The very act of bringing these stories into focus is significant, as women's voices and experiences have been excluded from dominant histories. Furthermore, these women's histories highlight the historically contingent nature of embodied experience and the central role of reproductive autonomy in determining the overall conditions and possibilities of women's lives. In the following chapter I will apply the theories introduced in Chapter One to an analysis of the debate over the medical abortion pill RU486 and I will then explore the feminist potential of an embodied ethical framework.

## Chapter Three: A moral crisis for the nation

*RU486 divides Australia like no pill since The Pill.*

**Sydney Morning Herald, 2006.**<sup>102</sup>

In my third and final chapter of this thesis I have chosen to focus on the RU486 debate in Australia as it frames and highlights many of the central concerns with women's role in society and their status and capacity to be rational and autonomous citizens. Firstly, I will outline the key events in the RU486 debate and engage the theories of corporeal feminism introduced in Chapter One to explore the recurring themes in the discourse around the use of RU486, in particular I will consider the role of sexual imaginaries in the core themes of the debate and their implications for women's experience and status in society. Further, I will critically analyse the responses from pro-choice proponents within the debate and consider how responses that foreground the question of women's decision-making and the liberal feminist 'choice' framework fall within the same dualistic framework as the anti-choice movement and thus are ultimately limited in effect. Finally, I will argue for the importance of an alternate embodied ethical framework.

The drug RU486, or mifepristone, works to suppress progesterone and cause the lining of the uterus to break down, thereby terminating the pregnancy.<sup>103</sup> RU486 has been used by many countries around the world since the late 1980s and is listed by the World Health Organisation as an essential medicine.<sup>104</sup>

The issue of allowing RU486 to be supplied in Australia has been politically determined in accordance with partisan concerns. It was the staunchly anti-choice Independent Senator Brian Harradine who tabled the Therapeutic Goods Amendment Bill 1996 that created a new class of goods, "restricted goods" defined as "drugs

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<sup>102</sup> "RU486 divides Australia like no other pill since The Pill." *The Sydney Morning Herald*. <http://www.smh.com.au/news/womenshealth/ru486-divides-australia-like-no-other-pill-since-the-pill/2006/02/17/1140064236328.html>.

<sup>103</sup> Drabsch, *Abortion and the law in New South Wales: Briefing Paper No 9/05*, 53.

<sup>104</sup> "WHO endorses safer abortions despite U.S. Interference." *Union of Concerned Scientists*. [http://www.ucsusa.org/scientific\\_integrity/abuses\\_of\\_science/mifepristone-and-misoprostol.html](http://www.ucsusa.org/scientific_integrity/abuses_of_science/mifepristone-and-misoprostol.html).

intended for use in women as abortifacients.”<sup>105</sup> The Bill specified that restricted goods could not be imported without the permission of the Minister for Health. This ideologically driven legislative move was unprecedented as the usual process for the importation of drugs involved the Therapeutic Goods Administration’s panel of medical experts making an assessment on the safety of the drug, thereby allowing doctors to prescribe and patients to use the drug.<sup>106</sup> Harradine’s interest in restricting abortion access came from his own belief that abortion is immoral and that his concern that RU486 would increase abortion rates as he believed: “RU486 is promoted as a simple do-it-yourself, private, demedicalised abortion.”<sup>107</sup> Harradine’s concern over RU486 being administered in the home suggests anxiety that the process could take place in the ungoverned private sphere of the home, a sphere that is simultaneously feminised and connected to the body and thus to irrationality, thus seen as requiring masculine surveillance, intervention and control. Harradine was able to exert influence far beyond proportional representation, as at the time he was one of two Independent Senators holding the balance of power for passing the Howard Governments legislation in the Senate.<sup>108</sup> The restriction on women’s access to medical abortion in Australia was facilitated in return for Harradine’s vote in favour of the privatisation of Telstra.

The issue came to prominence during the period of October 2005 to April 2006, due to media attention and an increase in the lobbying efforts of many women’s groups and health activists.<sup>109</sup> The representative make-up of Parliament had changed significantly since the Harradine Amendment had been voted on, with a seventeen percent increase in female representation.<sup>110</sup> On the 8<sup>th</sup> December 2005 a cross-party Private Members Bill, the Therapeutic Goods Amendment Bill 2005, was moved by Senators Fiona Nash (National Party), Lyn Allison (Democrats), Claire Moore

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<sup>105</sup> Caroline De Costa, *RU486: The Abortion Pill* (South Australia: Boolarong Press, 2007), 91.

<sup>106</sup> *Ibid.*

<sup>107</sup> Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

<sup>108</sup> De Costa, *RU486: The Abortion Pill*, 90.

<sup>109</sup> *Ibid.*, 100.

<sup>110</sup> Dowse, Sara. "A different kind of politics." *Inside Story*. <http://inside.org.au/a-different-kind-of-politics/>

(Labor) and Judith Troeth (Liberal).<sup>111</sup> This was the first time that a Private Members Bill had been moved by representatives from four different parties and it signalled the beginning of what would become an unprecedented effort between majority women representatives moving across party lines to ensure the removal of Ministerial responsibility for the approval of RU486. Their efforts were ultimately successful when the Bill was passed in February 2006 following a conscience vote. Ninety percent of women Senators voted in favour of the Bill, in stark contrast with only forty-six percent of male Senators.<sup>112</sup> These figures are a powerful indication of the difference in approach to issues of women's reproductive decisions by women representatives compared to their male counterparts. It also suggests that increased female representation in politics would substantially shift the way issues of women's bodily integrity are discussed and legislated for by Government. If we consider Pateman's argument that liberal representative democracy is based on a fraternal and sexual pact that legitimates men's access to women's bodies,<sup>113</sup> the presence of women in political institutions has the potential to partially disrupt the force and stability of that pact.

The consideration of legislation of reproductive issues as a matter for the individual morality of representatives, rather than a representation of the views of their electorate, is formalised through the use of a conscience vote. The vote on the Therapeutic Goods Amendment Bill 2005 was positioned as a moral question from the outset as it was determined it would be a conscience vote, representatives were not bound to vote with the rest of their party but could vote according to personal conviction as the issue related to matters of life or death. Sawer and Simms have argued that the historical insistence on conscience votes on matters of women's reproductive and domestic concerns is a gendered phenomenon that reflects the patriarchal divide between public and private, and the tendency to see such issues as not "warranting the label of real politics," instead being considered a private and

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<sup>111</sup> De Costa, *RU486: The Abortion Pill*, 103.

<sup>112</sup> Dowse, Sara. "A different kind of politics."

<sup>113</sup> Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory*, 45.

moral concern.<sup>114</sup> Many representatives who wanted Ministerial approval to be maintained argued that it was incumbent on the Government to take responsibility for such moral decisions and that medical professionals could not be trusted to make moral decisions. For example, Senator Gary Humphries argued that the TGA were “not equipped to make the ethical, social and political decisions which would surround the use of RU486 in Australia”<sup>115</sup> and Senator Helen Polley argued that the drug should not be dealt with by the TGA: “Why are we considering allowing the TGA to make a decision about a drug that kills? ... Is RU486 for therapeutic use? It is clear that it is not...Pregnancy is not a disease, nor is it an injury.”<sup>116</sup> These arguments portrayed abortion as radically separate from all other medical procedures because it involves termination of a foetus.

In February 2006 a *Sydney Morning Herald* headline read: “RU486 divides Australia like no pill since The Pill.”<sup>117</sup> The equation between the debate over the contraceptive pill and the medical abortion pill is telling, as it suggests anxiety over technology that has the potential to alter women’s ability to have autonomy over their sexuality and reproduction without external surveillance from the public sector. Diprose argues that the controversy over RU486 was due to the potential for biotechnologies to transform meanings to do with sex, the body and reproduction and believes the efforts to retain ministerial responsibility were “an attempt to minimize the possibility that women could ‘do it themselves’ away from direct scrutiny of biopolitical regulative mechanisms.”<sup>118</sup> While these factors provoke concern for those invested in maintenance of the patriarchy, the successful mobilization of a group made up of predominantly women in vocal and persuasive support of access to these pills

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<sup>114</sup> Marian Sawer and Marian Simms, *A Woman's Place: Women and Politics in Australia* (New South Wales: Allen & Unwin, 1993), 233.

<sup>115</sup> Senate Database. *Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading*. Canberra. <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22chamber%2Fhansards%2F2006-02-08%2F0147%22>.

<sup>116</sup> Ibid.

<sup>117</sup> "RU486 divides Australia like no other pill since The Pill." *The Sydney Morning Herald*. <http://www.smh.com.au/news/womenshealth/ru486-divides-australia-like-no-other-pill-since-the-pill/2006/02/17/1140064236328.html>.

<sup>118</sup> Diprose, *The Political Technology of RU486: Time for the Body and Democracy*, 223.

demonstrates a desire to transform such meanings and insist upon greater bodily autonomy.

### **Pregnancy is not an illness<sup>119</sup>**

The insistence that women must always desire pregnancy is a striking example of women's bodies being framed as a vessel, "begging the question of completion by a man and/or child."<sup>120</sup> Furthermore, statements such as Senator Barnett's that "pregnancy is not an illness" and Senator Santoro's comment that pregnancy is always a "blessing"<sup>121</sup> are good examples of Butler's theory of interpellative performative statements, where performativity is a "reiterative and citational practice by which discourse produces the effects that it names."<sup>122</sup> The Senators are regulating the performance of gender norms in drawing on a repetitive and historical reiteration that women should experience pregnancy with gratitude and acceptance. Butler draws upon Foucault when she describes the status of the maternal body as "An effect or consequence of a system of sexuality in which the female body is required to assume maternity as the essence of itself and the law of its desire."<sup>123</sup> This assumption that reproduction is at the very (irreducible) centre of a woman's identity is apparent in the statements of these Senators and whilst interpellative performative statements can only ever achieve partial success, Butler argues, "Subjects who do not willingly embrace the names they are called will nonetheless be constituted by them."<sup>124</sup> Therefore, the Senators' statements prescribe the way women should experience and respond to pregnancy, whether unwanted or not, by refusing to entertain the idea that pregnancy could be experienced as anything other than a cause for celebration and gratitude. Thus, women who do not experience their pregnancy in this way are nevertheless policed and constituted by abortion stigma that relies on a reiterative and disciplinary insistence on what is 'normal' for a woman to experience or feel when

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<sup>119</sup> Senator Guy Barnett quoted in Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for RU486) Bill 2005 Second Reading.

<sup>120</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, 5.

<sup>121</sup> Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for RU486) Bill 2005 Second Reading.

<sup>122</sup> Butler, *Bodies that matter: on the discursive limits of sex*, 2.

<sup>123</sup> Butler, *Gender Trouble*, 92.

<sup>124</sup> Judith Butler quoted in Sara Salih, *Judith Butler* (London: Routledge, 2001), 107.

faced with pregnancy.

The increased accessibility of the drug was of primary concern to both supporters and opponents of the Bill. Many of the criticisms of RU486 were fearful that abortion would be made easier, with Henshaw observing that critics saw RU486 as meaning “easier access to safe abortion services, an easier treatment for medical and nursing staff to administer, or easier - both physically and psychologically for the women having abortions.”<sup>9</sup> The arguments put forward in relation to easier access were frequently inconsistent; oscillating between concerns that women would find the process too easy and not grasp the moral consequences of their actions, and the idea that RU486 would place women at greater risk of harm and trauma.

### **A laissez-faire approach to termination<sup>125</sup>**

The submission to the Senate surrounding RU486 from the Catholic Women’s League of Tasmania stated: “The apparent simplicity when compared to a surgical abortion is likely to result in those close to the women regarding it as a relatively trivial event” and Senator Santoro referred to pro-choice Senators as having a “laissez-faire<sup>126</sup> approach to termination.”<sup>127</sup> These statements convey a belief that if women have increased control over the administration of the process, and it is done in a private setting without state intervention or regulation, this will mean that they will make immoral decisions without an understanding of the implications of their actions. The rhetoric of ‘trivial’, ‘convenient’ abortions returns the debate to one of women being irrational actors incapable of rational and moral decisions. Furthermore, it perpetuates the concept of a dichotomy between the woman and the foetus, with the foetus requiring protection from the dangerous and immoral woman.

In his 2004 speech, "The Ethical Responsibilities of a Christian Politician," Tony

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<sup>125</sup> Senator Santo Santoro quoted in Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for RU486) Bill 2005 Second Reading.

<sup>126</sup> Laissez-fair refers to an environment in which transactions between private parties are free from governmental restrictions, an expression used in relation to liberal capitalism.

<sup>127</sup> Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

Abbott expressed his concern that “an objectively grave matter has been reduced to a question of the mother’s convenience.”<sup>128</sup> This comment, alongside accusations of abortions on “whim or caprice”<sup>129</sup> and the legal requirements in the majority of Australia, begs the question of what reasons would be sufficient for a woman to be considered ‘deserving’ of an abortion. Feminist legal theorist Drucilla Cornell has argued that: “If a woman’s personhood is truly to be represented by the law, then she must also be the ultimate source of the decision to abort and the meaning given to that decision.”<sup>130</sup> The comments made by a number of representatives in Parliament and the Senate, and the criminalisation of abortion in many jurisdictions, denies women the opportunity to give their own meaning to their decision by requiring that they demonstrate their physical or mental incapacity for motherhood in order to access an abortion. Moreover, the interpellation of women who fail to ‘perform’ their normative gender (by refusing to embrace their pregnancy) as selfish or trivial imposes a disciplinary moral framework on women that contains implicit messages about what a woman is and her subjectivity, how she should experience her life and her body.

The meaning making of Ford’s account, described in the previous chapter, of her abortion experiences demonstrates a resistance to this moral code. Ford made a direct link between the criticisms she received for “prioritising my life and ambitions over that of a potential life” and being “reimagined as a ‘slut.’”<sup>131</sup> Ford resisted providing an account of herself that would appease dominant understandings of what is a ‘less immoral’ abortion by being open and unapologetic about the reasons for her decision. Ford’s resistance displays the necessary incompleteness of interpellation as she resists being hailed as a ‘slut’, however, in responding she also demonstrates the power of that name as even in the refusal of it she is nonetheless defined in relation to it.

In contrast, when social commentator Jane Caro said on radio that she had had an abortion, she was surprised by the lack of vitriol she received and the number of women who then spoke to her about their own abortions. Caro was motivated to speak

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<sup>128</sup> Abbott, *The ethical responsibilities of a Christian politician*.

<sup>129</sup> Drabsch, *Abortion and the law in New South Wales: Briefing Paper No 9/05*, 27.

<sup>130</sup> Drucilla Cornell, *The Imaginary Domain: Abortion, Pornography & Sexual Assault* (New York: Routledge, 1995), 35.

<sup>131</sup> Ford, *Clementine Ford reveals her two no guilt, no shame abortions*.

publically for the first time about her abortion when in a radio interview two men were discussing the topic “as if it happened to a small and peculiar group of not-very nice females.”<sup>132</sup> Caro’s later written account of her abortion was similar to Ford’s in its refusal to comply with a moral code that demands guilt and shame, writing:

For the few weeks that the pregnancy lasted I always felt it had happened to my body and not to me. When I had the termination, I felt not just relief but that my life had gone back to being the way it should be.<sup>133</sup>

This account reflects the disconnect between dominant conceptions of abortion and women’s embodied experience of the practice and what it may mean for their lives. The response following the interview caused Caro to reflect on the needlessness of what she termed “the great female silence.”<sup>134</sup> She concluded that “if unwanted pregnancy and abortion are such a normal part of women’s lives I often watch those who fulminate against the practice and wonder how many women in their lives are lying to them.”<sup>135</sup> This reflection illustrates the role of stigma in contributing to the exclusion of women’s voices and allowing disproportionate representation of male, anti-choice voices.

### **A national tragedy**<sup>136</sup>

The nationalistic concerns that have historically informed abortion debates were also evident in the discussions of RU486, when in 2006 Federal Member of Parliament Dana Vale stated in reference to the RU486 debate that Australia could become a Muslim nation within fifty years because “we are aborting ourselves almost out of

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<sup>132</sup> Jane Caro. "The truth is abortions are normal." *The Hoopla*.  
<http://www.womensagenda.com.au/talking-about/opinions/jane-caro-the-truth-is-abortion-are-normal/201311143205#.U4RzXFISwSg>.

<sup>133</sup> Ibid.

<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup> Abbott, *The Ethical Responsibilities of a Christian Politician*.

existence.”<sup>137</sup> Vale’s comments demonstrate the continued presence of nationalist and xenophobic anxieties regarding abortion rates. In the coverage of Vale’s comments a number of her colleagues expressed their own concern with the rate of abortions.

The 2007 implementation of a National Pregnancy Support Helpline is illustrative of a coercive strategy to limit women’s control over their reproductive choices and sexual agency. In his memoir, *Battlelines*, Abbott explains that he introduced the Helpline because, “It seemed like the best way to nudge the abortion rate down without affecting a woman’s right to choose.”<sup>138</sup> The Helpline was run by a Catholic organization and funded by the Federal Government, and did not provide referrals to abortion services.<sup>139</sup>

Such prevailing anxieties over the rate of abortion, an issue that was described emotionally by Abbott as “a national tragedy”<sup>140</sup> demonstrate that the ideologies informing resistance to abortion availability are multiple. Rather than being limited to concern for the foetus these debates are also tied to not only patriarchal constructs but to racial and nationalist ideology and the idea that the burden of reproduction falls to the (white, heterosexual) Australian woman.

### **No-one benefits from abortion; all are hurt**<sup>141</sup>

The anti-choice arguments during the RU486 debate alternated between condemning women who have abortions and expressing concern for their wellbeing. Many of the arguments from representatives and groups opposed to RU486 were centred around concern for the woman who they believed would be isolated and ill-informed, not

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<sup>137</sup> Stephanie Peatling. "Abortion will lead to Muslim nation: MP." *The Sydney Morning Herald*. <http://www.smh.com.au/news/national/abortion-will-lead-to-muslim-nation-mp/2006/02/13/1139679540920.html>.

<sup>138</sup> Tony Abbott, *Battlelines* (Melbourne: Melbourne University Press, 2009), 181.

<sup>139</sup> Sean Parnell. "Abbott's pregnancy hotline reborn as parents' helpline." *The Australian*. <http://www.theaustralian.com.au/news/nation/abbotts-pregnancy-hotline-reborn-as-parents-helpline/story-e6frg6nf-1225820598207>.

<sup>140</sup> Abbott, *The ethical responsibilities of a Christian politician*.

<sup>141</sup> Barnaby Joyce quoted in Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

understanding the consequences of her actions and needing greater intervention from the state, doctors and other groups. For example, Alison Hope from the Australian Federation of Right to Life Associations, stated:

It [RU486] can further isolate women who are already desperate and unsupported, leaving them to undergo the abortion process and possibly face the sight of their 4-7 week old aborted child alone...our society is capable of providing women who are pregnant in difficult circumstances with better, more supportive solutions than drugs such as RU486.<sup>142</sup>

Similar concerns were put forward by Senator Steve Fielding who said of his party: “Family First is pro woman, which is why we must also consider the potentially serious medical and psychological effects [of RU486 use].”<sup>143</sup> In his speech to the Senate opposing the bill, Senator Barnaby Joyce described: “the RU486 process, with the culmination of little hands and legs, glazed eyes and a skull being flushed by the mother down a toilet, is especially psychologically and physically brutal.”<sup>144</sup> Joyce’s confronting and graphic speech interpellates women facing unwanted pregnancy as mothers cruelly destroying a life, and in the process harming themselves. This interpellation combined with a doubled concern for protecting the foetus from the woman and protecting the woman from herself, is a powerful example of the ways in which women are understood as irrational, dangerous, animalistic and chaotic vessels in need of paternalistic guidance in all matters of reproduction.

In considering the consequences of arguments that oppose access to abortion on the basis that abortion is traumatic and will inevitably result in guilt, depression and trauma, I believe it is necessary to distinguish emotion from affect. Gould describes affect as being the “noncognitive, nonconscious, nonlinguistic, and nonrational qualities of emotion.”<sup>145</sup> In contrast, emotion is that which “squeezes a vague bodily

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<sup>142</sup> Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

<sup>143</sup> Ibid.

<sup>144</sup> Ibid.

<sup>145</sup> Gould, *On affect and protest*, 25.

intensity or sensation into the realm of cultural meanings and normativity.”<sup>146</sup> This understanding of the differentiation of emotion and affect allows for awareness of the operation of sexual imaginaries in informing an emotional pedagogy in relation to abortion. Insisting upon this distinction destabilizes the assumption in such arguments that responses such as guilt and shame are ‘natural’ emotional responses, and instead betrays the disciplinary role that these arguments themselves play in both prescribing and proscribing certain affects.

Others believed the concern expressed by RU486 opponents for women’s health was insincere. For example, Senator John Faulkner argued that:

Concern over risks and side effects is an alibi for the real reason: the determination to keep this option closed to Australian women. This simple question of process - that experts, not politicians, should decide if a drug is safe and appropriate for import - has become a proxy for a campaign against Australian women’s right to control their fertility and choose for themselves whether to continue or end a pregnancy.<sup>147</sup>

The intense regulation of how women make decisions in relation to their reproduction reflects broader imaginaries of what women’s role in society should be. While opposition to RU486 was often framed as being in the interests of the woman, those representatives and groups only focused their attention on the woman’s wellbeing while she was pregnant, in other words, they were only interested in her welfare to the extent that it ensured successful reproduction. It is significant that such concerns did not extend to the woman’s wellbeing following the birth, whether such consideration be for the woman’s own personal circumstances or for institutional and social supports such as childcare and paid parental leave. This debate suggests that the intense regulation of the female body as a maternal body that is concerned with the reproduction of citizens and of the public body, and thus invokes the patriarchal liberal Enlightenment understanding of woman as by their very nature incapable of reason and morality and requiring intervention and control in the interests of the

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<sup>146</sup> Ibid, 25.

<sup>147</sup> Ibid.

(reproduction of the) state.

Strikingly, there were a number of occasions during the debate where women expressed frustration at the way their gender had been positioned and portrayed in the debate and how they had been instructed and governed to feel about pregnancy. Senator Lyn Allison gave a powerful speech in which she shared her own experience of abortion and expressed frustration at many of her male colleagues comments:

This is why it is so galling listening to the men - and it is mostly men - who have neither compassion nor understanding of the huge, and for many, daunting task of taking an embryo the size of a grain of rice to adulthood... Women are fully human. We will act on our own set of values and can be trusted to make reproductive health decisions with those we trust... An estimated one in three women has an abortion - and I am one of them.<sup>148</sup>

Senator Allison's speech was a powerful insistence upon women's agency and autonomy, and also for the first time a recognition of the enormous physical and material demands that pregnancy makes upon a woman, an aspect which the state is not nearly as interested in being involved in or supporting. This assertion of women's agency was also evident in Dr Jo Wainer's submission to the Senate: "Women are fully human and capable of fully moral decisions. They do not require the oversight or the supervision of Parliament (or anyone else) to ensure that they make ethically sound decisions about mothering."<sup>149</sup> There were numerous comments from women politicians, lobbyists and commentators during the debate that insisted on women's status as equally human and not a feminine subset of a humanity whose default human figure is masculine. These comments convey frustration with an inequitable and highly restrictive framework that denies women's ability to make ethical decisions and awareness that women are not being afforded bodily integrity, autonomy and rational sovereignty.

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<sup>148</sup> De Costa, *Abortion Law, Abortion Realities*, 117.

<sup>149</sup> Drabsch, *Abortion and the law in New South Wales: Briefing Paper No 9/05*, 53.

### **An intensely personal and difficult decision**<sup>150</sup>

The sexual imaginary of women as essentially maternal vessels in need of patriarchal intervention in their decisions concerning reproduction was pervasive in the RU486 debates. In response, many pro-choice voices emphasized the difficulty of the decision to terminate a pregnancy with comments such as Senator Penny Wong's statement that to terminate a pregnancy is: "An intensely personal and difficult decision."<sup>151</sup> This response insists on women's decision-making capability, however, it also contains implicit messages about how women should feel about such a decision.

The need to emphasize the difficulty of the decision to terminate a pregnancy is argued for by bioethicist Cannold in her book *The Abortion Myth: Feminism, Morality and the Hard Choices Women Make*. Cannold believes that the pro-choice movement sidelines women's voices and has failed to reclaim the terms of the debate away from a framing that positions foetuses as lives in need of protection from women,<sup>152</sup> she shares Naomi Wolfe's view that the pro-choice movement has lost support because of its refusal to see abortion as a moral issue.<sup>153</sup> Cannold proposes an alternative approach that places the pregnant woman and her decision making process at the centre of concern in the interests of demonstrating that: "sometimes abortion is not the *most* moral choice, it is the *only* one."<sup>154</sup> Cannold professes to having set out to "reclaim the moral ground"<sup>155</sup> in the abortion debate and she interviewed forty-five Australia women from a range of backgrounds. Her findings included:

For these women the central moral issue was whether or not a woman's decision to abort was - or was not - justified. What differentiated a choice to "kill from care" and an immoral abortion choice was the pregnant woman's motives,

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<sup>150</sup> Penny Wong quoted in Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

<sup>151</sup> Senate Database. Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

<sup>152</sup> Leslie Cannold, *The Abortion Myth: feminism, morality, and the hard choices women make* (United States of America: Wesleyan University Press, 2001), xxiii.

<sup>153</sup> *Ibid.*, xxiii.

<sup>154</sup> *Ibid.*, xvii.

<sup>155</sup> *Ibid.*, 45.

behaviour, emotions and decision-making process. Did she have good reasons? Did she consider everyone's needs and interests? Did she make her decision thoughtfully and lovingly? Grieve over the need to make the decision at all?<sup>156</sup>

Cannold's approach succeeds in asserting that women are capable of making decisions around their reproduction, however, it simultaneously prescribes a moral decision making framework that places care for the potential life of the foetus at the centre and sets up a sliding scale of abortion morality.<sup>157</sup>

It is necessary to consider the interpretative and symbolic work implicit in Cannold's identification of the affect that accompanies 'good reasons,' such as grief. In attempting to demonstrate the morality of some 'difficult' abortion decisions, this framework is illustrative of Gould's argument that social movements can create 'emotional pedagogies,'<sup>158</sup> as it delegitimises and stigmatises decisions that do not demonstrate these emotions and thus it does not prioritise the woman. Cannold's argument is representative of how the pro-choice movement often perpetuates similar regulative power to the anti-choice movement in calling women to fulfil an ideal of the woman who makes selfless decisions in the interests of the foetus and, wherever she is able, carries a pregnancy to term. While the aims of the movements are separate, they both send explicit and implicit messages about what makes a 'good' or a 'bad' abortion and how women should feel, thus regulating and prescribing affect as well as action.

The central failing of Cannold's approach is that it accepts dominant conceptions of morality without considering how these moral codes are produced. Fittingly, Gatens argues that morals or ethics have "historically been the product of which ever group has monopolized political right,"<sup>159</sup> and argues for an alternative embodied ethics, a subject I will return to later in this chapter. Therefore it is essential that morality is not considered as universal and transcendent, rather, that it is seen as gendered, partial, cultural and contextual and thus subject to scrutiny for its instrumental role in

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<sup>156</sup> Ibid., xviii.

<sup>157</sup> Ibid.

<sup>158</sup> Gould, *On affect and protest*, 225.

<sup>159</sup> Gatens, *Feminism and Philosophy: Perspectives on Difference and Equality*, 138.

patriarchal social relations and control.

### **Let us leave it to the woman<sup>160</sup>**

The dominant framework of the pro-choice movement has been a liberal feminist approach that focuses on abortion as a choice that should be in the hands of the woman. This approach has been very successful in enabling a focus on bodily autonomy and placing the woman and her decision at the centre of concern, rather than the foetus or the interests of the nation. However, Traina is critical of the choice model, writing in her book *Feminist Ethics and Natural Law*: “liberal feminism erroneously assumes that creation of external conditions for moral autonomy is sufficient to undo women’s oppression.”<sup>161</sup> The choice framework risks presupposing that if the legal barriers are removed, the woman will have the economic, social, geographical and educational means to access an abortion. It also fails to account for the relational element of autonomy, whereby the possibility of autonomy is supported or undermined by socio-cultural relations<sup>162</sup> and also those Foucault refers to as disciplinary and that Butler describes by way of interpellation. Butler considers arguments for abortion access should aim to:

Understand how the “viability” of a woman’s life depends upon an exercise of bodily autonomy and on social conditions that enable that autonomy...we are referring to forms of autonomy that require social (and legal) support and protection, and that exercise a transformation of the norms that govern how agency itself is differentially allocated among genders, thus a woman’s right to choose, remains, in some contexts, a misnomer.<sup>163</sup>

The ‘choice’ to have an abortion or not is one aspect of the ability of a woman to

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<sup>160</sup> Senator Anne McEwen quoted in Therapeutic Goods Amendment (Repeal of Ministerial Responsibility for Approval of RU486) Bill 2005 Second Reading.

<sup>161</sup> Cristina Traina, *Feminist Ethics and Natural Law: The End of the Anathemas* (Washington: Georgetown University Press, 1999), 28.

<sup>162</sup> Jennifer Nedelsky. "Reconciling Autonomy: Sources, Thoughts and Possibilities." In *Feminist Ethics*, ed. Moria Gatens (England: Dartmouth Publishing Company Limited, 1989), 296.

<sup>163</sup> Judith Butler, *Undoing Gender* (New York: Routledge, 2004), 12.

control her reproduction and therefore her future. Diprose employs a Foucauldian understanding of power in looking at how “power operates to construct a possible field of actions”<sup>164</sup> in any situation where an individual may have an apparent freedom to choose. Where the choice model has been successful is in insisting that the final choice must rest with the woman because it is her body, however, it also risks being a privatised model that keeps abortion a hidden, shameful event and does not demand state support or funding to ensure real choice for all women.

### **Women are fully human and capable of making moral decisions<sup>165</sup>**

The RU486 debate is an exemplar of the failure to reconceptualise abortion in the context of contemporary society and the ways in which the discourse on this topic is dominated and tempered by ideas that we consider to have been long overturned and revolutionised by the equality arguments of second wave feminism. The responses from pro-choice advocates demonstrate the risks inherent in defending the morality of women’s decision making, as well as the limitations of the choice model in ensuring actual choice for women.

Crucially, the RU486 debate also demonstrates the discursive power of women's voices speaking on abortion. When Gillard stated, "We don't want to live in an Australia where abortion once again becomes the political plaything of men who think they know better," she received overwhelming criticism for daring to speak on the issue as a woman. The criticism that Gillard received whenever she spoke on issues relating to women, that she was playing the "gender card," is argued by Anna Goldsworthy, in her 2013 Quarterly Essay *Unfinished Business: Sex, Freedom and Misogyny*, as functioning as a "useful silencing term, through which female grievance can be reduced to phatic noise."<sup>166</sup> The backlash to Gillard's comments illustrates Gatens' argument that, "Women speaking in public, of women, is clearly a threat to

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<sup>164</sup> Rosalyn Diprose. "The body biomedical ethics forgets." In *Troubled bodies: critical perspectives on postmodernism, medical ethics, and the body*, edited by P. A. Komesaroff (Melbourne: Melbourne University Press, 1995), 214.

<sup>165</sup> Dr Jo Wainer quoted in De Costa, *RU486: The Abortion Pill*, 109.

<sup>166</sup> Anna Goldsworthy, *Unfinished Business: Sex, Freedom and Misogyny* (Melbourne Black Inc, 2013), 15.

the integrity of the political body."<sup>167</sup> The RU486 debate, which saw women from all sides of politics successfully unite to insist upon greater reproductive autonomy, is a powerful example of the disruptive and transformative power exercised by the inclusion of women's voices in the discourse surrounding women's bodies.

In her submission to the RU486 Senate Inquiry, Dr Jo Wainer wrote, "women are fully human and capable of making moral decisions."<sup>168</sup> It is a powerful reflection of the historically stagnant nature of this debate that a woman who has have been active in campaigning for and providing access to abortion since the 1960s is compelled to inform the Senate of a seemingly basic truth.

In researching this topic I have been struck by the continued relevance of theorists such as Pateman who wrote that modern civil society was a patriarchal social order based on a division between "men's reason and women's bodies."<sup>169</sup> Furthermore, given recent and current threats to women's reproductive autonomy, the assertion by second wave feminists that free, legal and accessible abortion is central to women's liberation remains pertinent. These notions are not recent ones and thus their bearing on current events suggests a need for a critical approach to the ways in which abortion access has been advocated for and what alternative frameworks are available for understanding this issue. The pervasive dominant sexual imaginaries that frame women as irrational, maternal vessels serve to restrict the ways in which issues around women's bodily integrity can be discussed and thought of. Gatens writes:

Our political vocabulary is so limited that it is not possible, within its parameters, to raise the kind of questions that would allow the articulation of bodily difference and it would not tolerate an embodied speech.<sup>170</sup>

The RU486 debate reflects a political vocabulary that was informed by ideas of women as vessels, compelled to reproduce for the good of society and the nation. The

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<sup>167</sup> Gatens, *Feminism and Philosophy: Perspectives on Difference and Equality*, 136.

<sup>168</sup> De Costa, *RU486: The Abortion Pill*, 109.

<sup>169</sup> Pateman, *The Disorder of Women: Democracy, Feminism and Political Theory*, 45.

<sup>170</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, 26.

pro-choice voices in the debate were therefore forced into a basic defence of women as responsible, moral decision makers who could be trusted to put the interests of the potential life of their foetus first. In order to progress beyond this bind, there must be an abandonment of Cartesian dualism that legitimates women's subordination, and an end to the reliance on disciplinary moral codes to police women's reproductive decisions.

In *The Second Sex*, Simone de Beauvoir wrote, "Humanity is male, and man defines woman not in herself, but in relation to himself; she is not considered as an autonomous being."<sup>171</sup> In this statement Beauvoir identifies that the default social body is masculine and therefore women are always only defined in relational terms to men and do not have autonomy. Beauvoir's response was to accept the dualisms that framed women's bodies as impediment and immanence and to propose that women must be made equals so as to strive for disembodied transcendence from nature. Gatens is critical of this approach, so fundamental to equality feminism, because women are "able to be 'disembodied' in the public sphere because 'natural' functions, childrearing, sensuality, and so on, have become the special province of women and are confined to the private sphere."<sup>172</sup> This failure of equality feminism to account for women's embodied experience is evident in the abortion debates and the inability to imagine women as whole beings.

The application of insights from corporeal feminist theory assists in opening up new and more nuanced ways of reconceptualising abortion. Gatens argues for the transformative potential of recognising our sexual imaginaries, "Bringing these [sexual] imaginaries into focus may well contribute to the process of altering both the affects of which we are capable and the ways in which we may affect others."<sup>173</sup>

The pervasive nature of sexual imaginaries in determining how women and their bodies are understood is starkly evident in discussions of abortion. Gatens is useful for turning our focus to the operation of these sexual imaginaries because she

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<sup>171</sup> Simone De Beauvoir, *The Second Sex*. Translated by C. B. S. Malovany-Chevallier (London: Vintage, 2011), 5.

<sup>172</sup> Gatens, *Feminism and Philosophy: Perspectives on Difference and Equality*, 7.

<sup>173</sup> *Ibid.*, 9.

uniquely combines an approach that avoids any biological determinism or recourse to essentialised sexual difference and thereby diffuses the problematic of the difference versus equality debate as she is able to address embodied difference while understanding gender as “the way in which power takes hold of and constructs bodies in particular ways.”<sup>174</sup> Therefore Gatens recognises the role of the cultural imaginary in how we construct ourselves, and seeks to explore the material impact this has had on women’s experience.

An inability to account for matters concerning women’s reproduction in a way that is not through the paternalistic imposition of a disciplinary moral code is illustrated in the decision to handle decisions regarding abortion by a conscience vote. Grosz is concerned with the ways in which:

The corporeal ‘universal’ has in fact functioned as a veiled representation and projection of a masculine which takes itself as the unquestioned norm, the ideal representative without any idea of the violence this representational positioning does to its others.<sup>175</sup>

So too, Bordo situates unwanted pregnancy within “histories and practices of containment and control” that have shaped women’s bodies as “politically inscribed entities.”<sup>176</sup> In analysing the varied implicit and explicit framing of women that have abortions as existing on a sliding scale of morality it becomes clear that the one constant of the debate is not concern for the foetus, rather, what is consistently identifiable is the reiteration of a particular understanding of women’s ‘natural’ role in society, and an exercise of control to maintain that. This has manifested itself in diverse ways, including in concern that any woman who does not wish to be pregnant is irrational and in need of regulatory intervention and control to ensure that she is not a danger to her foetus. Also significant is the continued anxiety over women’s sexuality that is betrayed by the tendency for anti-choice arguments to focus on the

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<sup>174</sup> Ibid., 70.

<sup>175</sup> Grosz, *Volatile Bodies: Towards a Corporeal Feminism*, 188.

<sup>176</sup> Susan Bordo, "Feminism, Foucault and the Politics of the Body," In *Feminist Theory and the Body: A Reader*, edited by J. P. a. M. Shildrick, 246-270 (Edinburgh: Edinburgh University Press, 1999), 251.

woman's sexual activity, rather than the man who impregnated her, and to propose abstinence as a solution rather than promote improved sex education or access to contraception.

The application of a Foucauldian understanding of power, in relationship to a corporeal feminist understanding of the particular operations of patriarchal power over women's bodies in modern society, is crucial to understanding that even in circumstances where all formal barriers to access to abortion may be removed, women's understanding of themselves and the options available to them may still be restricted by sexual imaginaries. Diprose engages with Foucault's understanding of "how power operates to construct a possible field of actions" in order to argue that the focus of ethics must be widened from attention to the relationship to individuals to the "political investments in the knowledges and practices that constitute our embodied being in the world."<sup>177</sup> This in turn raises questions of what an alternative ethics would look like, and how to centre women's own experience without opening up their decisions to further patriarchal scrutiny.

### **From paternalistic morality to feminist ethics**

It may seem unlikely that the abstruse theories of Spinoza would be of relevance to contemporary abortion debates, however, Gatens utilises Spinozist philosophy as she believes that it circumvents the dualisms of traditional modern philosophy, while also allowing for difference that is not dichotomised. In this way it avoids the pitfalls of equality feminism, which accepts traditional philosophical dualisms and therefore cannot account for embodied difference; and of difference feminism, which is biologically determinist.

Gatens draws on Spinoza to argue that contemporary ethics is based on masculine experience, and therefore there needs to be created an *ethics* of difference "which would be capable of acknowledging that different forms of embodiment are

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<sup>177</sup> Diprose, *The body biomedical ethics forgets*, 218.

themselves *historical* and open to change.”<sup>178</sup> For Spinoza, there is no universal morality and no knowable body, rather, the capacities and limitations of bodies are determined by their context and are therefore unknowable.

The Spinozist approach is useful for conceiving of an alternative view of abortion as a Spinozist reading of a woman in a circumstance of unwanted pregnancy would be of a “historically specific body whose capacities are reduced by its sphere of activity and the conditions under which it creates itself.”<sup>179</sup> An analysis of such a circumstance within this framework would therefore not rely on assumptions of woman as ‘naturally’ or ‘essentially’ maternal and irrational, nor on notions of morality that insist that a woman prioritise a potential life over her own. Instead, it would consider the body as having integrity and look to how its own capacities for action may be maximized or reduced depending on its context. Gatens employs a Spinozist philosophy because it relies on an embodied ethics and allows theorization of the relationship between “sexed bodies and other body complexes such as the body politics or other institutional assemblages.”<sup>180</sup> Within this embodied ethical framework there is awareness as to all of the ways in which “institutions function to deplete women’s powers of action,”<sup>181</sup> even after formal barriers to participation in society are removed.

In practice, the approach to abortion that most closely reflects a Spinozist philosophy may be found in the Reproductive Justice movement. The Reproductive Justice Movement is an approach to advocating for women’s reproductive autonomy that originated in the United States as a response from women of colour to the pro-choice movement that they saw as relying on, white, bourgeois and liberal “essentially individualist, consumerist notions of ‘free’ choice that do not take into consideration all the social, economic, and political conditions that frame the so-called choices that women are forced to make.”<sup>182</sup> The Reproductive Justice movement is instead

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<sup>178</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, 104.

<sup>179</sup> *Ibid.*, 57.

<sup>180</sup> *Ibid.*, 149.

<sup>181</sup> *Ibid.*, 147.

<sup>182</sup> Andrea Smith. "Beyond Pro-Choice versus Pro-Life: Women of Color and Reproductive Justice." *NWSA Journal*, 17.1, (2005): 127.

interested in an intersectional approach that strives for women to have and exercise reproductive rights with regards to deciding whether or not to have a child, and the “enabling conditions to realize these rights.”<sup>183</sup> Furthermore, the approach asserts that, “the ability of any woman to determine her own reproductive destiny is linked directly to the conditions in her community.”<sup>184</sup> Therefore, the focus is not merely on the decriminalization of abortion, but also on access to reproductive health services, and addressing the structures of oppression that may limit women’s capacities to fulfil their own aims and desires.

In its consideration of the “enabling conditions to realize these rights” the Reproductive Justice movement reflects Gatens’ understanding of embodiment as the “total affective context of the body.”<sup>185</sup> In this sense this movement holds the potential to achieve a critical awareness as to how women’s bodies are regulated through social and institutional controls, and mirrors Spinoza’s focus on how a bodies capacities may be depleted or enabled dependent on their context. The Reproductive Justice framework further rejects the public/private divide that corrals matters of women’s embodiment into the private sphere, and instead insists on the importance of these issues in determining women’s capacity for being in society.

The issue of women’s control over their reproduction has always been at the centre of feminist efforts to refuse and reform the patriarchal construction of women as slaves to their bodies and reproduction, in contrast to men who are considered able to master their bodies through reason. By bringing into focus the dualistic sexual imaginaries that inform our dominant cultural, socio-political and legal understandings of abortion the potential for Gatens’ alternative embodied ethical framework is brought into focus. In recognising the importance of moving away from a reliance on understandings that are informed by these reductive and ideologically driven dualistic sexual imaginaries, and instead embracing an approach that does not demand neat resolution Gatens approach accommodates the conflicting and never univocal experiences of women by understanding the experience of the body and sexuality

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<sup>183</sup> Loretta Ross. "Understanding Reproductive Justice: Transforming the Pro-Choice Movement." *Off our backs: a women's newsjournal* 36.4 (2006): 14.

<sup>184</sup> Ibid.

<sup>185</sup> Gatens, *Imaginary Bodies: Ethics, Power and Corporeality*, 131.

(and agency) as always complex, unstable, mutable and contingent.

Abortion debates in Australia have frequently focused on the decision to abort as a moral question, thereby applying an intrinsically oppressive and patriarchal moral framework that is incapable of affording women bodily integrity. An embodied ethical framework has the potential to circumvent this difficulty as it would assume women to have bodily integrity and approach any circumstance in regards to how her powers and capacities may be impacted by the total affective context of her existence, understanding that this is historically contingent and subject to change.

In this thesis I have analysed the situation of abortion in Australia, with particular focus on the introduction of RU486, in order to locate and explicate the ways in which women's bodies are regulated and understood and how this may impact on their capacities in all areas of life. The theories of corporeal feminists allow women's embodied experience to be addressed without reverting to the terrain of difference feminism and biological determinism. The insistence upon a Foucauldian understanding of power enables an understanding of the diverse and historically changeable ways in which bodies are regulated. Furthermore, Butler's theory of interpellation and Gould's theory of how social movements create guides for the interpretation of emotions are useful in ascertaining how women may be compelled to understand themselves and their decisions and how that is also subject to partial resistance and historical change. Finally, Gatens' use of Spinoza in advocating for an alternate ethical framework offers an alternative to these disciplinary and discursive binds such that women's embodied experience is placed at the centre of the debate.

A critical ethical approach to abortion, informed by insights from corporeal feminism, insists upon women's own non-monolithic but contingent and embodied experience and thus returns to women the agency to determine what is in their best interest, rather than focusing attention on 'woman as mother' who bears the responsibility to reproduce in the interests of the patriarchy, morality and the nation. As I have sought to demonstrate in this thesis such an approach to the question of abortion, which has been governed by outmoded patriarchal representations of women and a highly disciplinary discourse, is both necessary and long overdue.

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