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Daddy Plants a Seed: Personhood Under Patriarchy*

by
BARBARA KATZ ROTHMAN**

For a sociologist, a day-long law conference is a challenge. It is not that the concepts are unfamiliar; they are the daily concepts of American life. It is that these concepts, these values, these ideologies that underlie American life go unchallenged in this setting. They are, in essence, the rules of the game, the delimiting system within which you must work.

From the perspective of the social scientist or social philosopher, there is an irony in watching the law attempt to address medicine. From where I sit the same social world—with all of its limitations, flaws, biases, and injustices—produces both medicine and the law. The same system that produces the technologies produces the legal structure that presumes to control them. And from where I sit, not only is it not working, but it cannot be expected to work. The rights of those individuals most in need of protection cannot be protected, neither in law nor in medicine, when approached from the perspective of individual rights. That is the built-in tension in, most especially, any feminist critique of the laws surrounding procreation.

Our legal system is founded on social contract theories, and contracts in American life are more than means. They are themselves deeply held moral values, symbols of goodness, fairness, and justice. Throughout the legal discussion of the new reproductive technologies, the language of contracts hums and buzzes. The solution to all problems appears to lie in the protection of individual liberties, and the way to accomplish that is through some form of contract protection. No matter what the problem—frozen embryos fought over or

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abandoned; babies torn from the breasts of recalcitrant “surrogates”; insurance companies’ eugenic/cost-saving pressures to abort for “pre-existing conditions” in a fetus—the solution lies in a better contract, a more informed individual, pulling clauses from the fullest array of choices.

But social contract theory is itself a development of a social philosophy developed to answer the founding question: “How is society possible?” The question is absurd. It grows out of an assumption that in the beginning, there are individuals. The argument, with its flaws, was brought most clearly to the fore in the classic contract theories, such as those of Hobbes, Mill, Spencer, and Locke, but remains current in social philosophy. The central question with which these philosophers wrestle is, How do people, as rational, self-interested individuals, come together to create social order? Although contract theory has been systematically, creatively, thoughtfully, and thoroughly critiqued, do bear in mind that it is the philosophical underpinning of American society, winding its way throughout our entire legal system, setting the basis for all our legal thinking.

But “How is society possible?” is the wrong question. I remember many years ago in an introduction to philosophy class being taught one of the classic proofs of the existence of God. Since everything is naturally still, God is needed to explain the existence of motion. But who said everything is naturally still? What is “still”? Atomic particles whirl around in rocks, and all life is inherently in motion. Even in death, the body is in the motion of decomposition. Stillness is an illusion, an outcome of the limited vision of the human eye.

So it is with the question of where the social comes from. That is not what needs explaining. Like motion, the social is what there is—its absence is an illusion. We look at something like the Los Angeles riots on television, and think we are seeing the absence of social order. Look again, and we see people passing televisions to each other out of store windows; we see gangs, groups, clusters of interacting, social people. This was, of course, the key insight in early “slum” research and other Chicago School urban sociology which found patterns and organization where chaos and anarchy were thought to be. Discovering order in the world, from social life in the slum (reborn “ghetto” or “inner city”) to the ecosystem of the jungle (reborn “rain forest”) continues to be startling to mainstream, Eurocentric researchers, who presumably thought they had cornered the market on order.

The teasing out, recognition, naming, acknowledgement of the social order is the stock in trade of sociology; it is what we do. Many

of us would argue that sociology began in earnest with Durkheim's critique of Spencer's utilitarianism, as Durkheim attempted to explain social solidarity. Durkheim, as a sociologist, argued from social structure—we are placed socially, and from that placement come the feelings that permit solidarity. Durkheim said that the utilitarian argument would not work. We could not come together as individuals to form a social contract, because without a *preceding* trust, there can be no contract. He placed the source of that trust, of our social solidarity, in our ritual coming together—the “collective conscience” or “collective representations” that are social life.¹

This argument at the level of the social is what distinguishes sociology. But I am not alone in not quite seeing how this explains why we join together, why we develop these rituals, why feelings emerge as they do in this joining together. No question, ten people joining together in song is quite different from ten people singing in their own showers. In ritual we lose ourselves in something larger than ourselves. We become part of a whole. But where is the need for that closeness grounded? Why do we seek out sociability over and over again?

Are people essentially individuals, separate beings, who must come together to form a social order? Or are people essentially interconnected beings, products of the social order? American society, American law, operates on the basis of the first assumption. I am operating on the basis of the second.

Contract theories are problematic for answering many of life's important questions, for addressing many of our value-laden concerns. But this is a theoretical, philosophical approach that is particularly badly situated for addressing issues of procreation. I will argue that the very question of where the social comes from—and all of the law that flows from that—is itself grounded in a patriarchal ideology.

I. Patriarchy

The term “patriarchy” is often loosely used as a synonym for “sexism” or to refer to any social system in which men rule. The term technically means “rule of fathers,” though in its current practical usage it more often refers to any system of male superiority and female inferiority. But male dominance and patriarchal rule are not quite the same thing, and the distinction is important.

1. EMILE DURKHEIM, *THE DIVISION OF LABOR IN SOCIETY* 200-29 (George Simpson trans., 1964).

Patriarchal kinship is the core of what is meant by patriarchy—the idea that paternity is the central social relationship. A very clear statement of patriarchal kinship is found in the book of Genesis, in the “begats.” Each man, from Adam onward, is described as having “begotten a son in his likeness, after his image.”² After the birth of this firstborn son, the men are described as having lived so many years and begotten sons and daughters. The text then turns to that firstborn son, and in turn, his firstborn son after him. Women appear as “the daughters of men who bore them offspring.”³ In a patriarchal kinship system, children are reckoned as being born to men, out of women. Women, in this system, bear the children of men.

The essential concept here is the “seed,” the part of man that grows into the child of his likeness within the body of woman. Such a system is inevitably male-dominated, but it is a particular kind of male domination. Men control women as daughters, much as they control their sons. But they also control women as the mothers of men’s children. It is a woman’s motherhood that men must control to maintain patriarchy. Any reading of the history of family law lays bare these control mechanisms. In a patriarchy, because what is valued is the relationship of a man to his son, women are a vulnerability that men have; to beget these sons, men must pass their seed through the body of a woman.

While all societies appear to be male-dominated to some degree, not all are patriarchal. In some, the line of descent is not from father to son, but along the line of women. In these matrilineal societies, it is a shared mother that makes for a lineage or family group. Men still rule in these groups, but they do not rule as fathers. They rule the women and children who are related to them through their mother’s line. Women in such a system are not a vulnerability, but a source of connection. People are not men’s children coming through the bodies of women, but the children of women.

Let me put this in everyday language. In Western, patriarchal societies, the classic where-do-babies-come-from tale we tell children is a variation on “Daddy plants a seed in Mommy.” Contrast this with a tale Pearl Buck wrote for children. Johnny wants to know where he came from. You were in me, his mother explains. But BEFORE, Johnny wants to know. You were *always* in me, his mother explains. When I was in my mother, you were in me. When she was in her

2. *Genesis* 5:3.

3. *Genesis* 6:4.

mother, you were in me. You were always in me.⁴ That is matrilineal thinking.

Modern thinking is no longer classically patriarchal. We have acknowledged that women have seeds too, and have extended to women some of the privileges of patriarchy. Women are recognized as also being connected to their children, through their seed. This modified patriarchy is not at all like matrilineal thinking. It maintains absolutely the primacy of the seed. Children are “half his, half hers,” we say—and might as well have grown in the backyard. Or in a “gestational host,” an animal host or a machine.

In patriarchal thinking, including our own modified version, when people talk about “blood ties,” they are talking about a genetic tie—the only truly bloodless part of procreation, a connection by seed. In a mother-based system, the blood tie is the mingled blood of mothers and their children. Children grow out of the blood of their mothers, of their bodies and being. The maternal tie is based on the growing of children; the patriarchal tie is based on genetics, the seed connection.

Each of these ways of thinking leads to different ideas about what a person is, and ultimately, what society itself is. In a mother-based system, a person is what mothers grow. People are made of the care and nurturance that bring a baby forth into the world and turn that baby into a member of society. In a patriarchal system, a person is what grows out of a seed; originally a man’s seed, but now expanded to the sex-neutral language of “gametes.” The essence of what a person is, in patriarchal thinking, is there when the seed is planted. Motherhood becomes, in such thinking, a place. Providing the place becomes a service. Under patriarchy, the place in which the seed grows does not really matter. It can be a wife, a “surrogate,” or an artificial womb.

Such a system brings us the dismissal of the significance of nurturance. In a classic patriarchy, men—and particularly men of the upper classes—had the rights to hire whatever services and to use whatever women they needed in order to achieve paternity. In some times and places, these men have used their wives for procreation and kept mistresses; in others, wives assumed more of the role of mistress, while wet nurses, nannies, governesses, and child-tenders took on the nurturance needed to accomplish paternity.

In our own modified patriarchy, women—and particularly women of the upper classes—are acquiring many of the privileges of pa-

4. PEARL S. BUCK, *JOHNNY JACK AND HIS BEGINNINGS* (1954).

triarchy. How will the developing technologies of procreation be used in this context? You have only to look at the poor women of color tending their white affluent charges in the playgrounds of every American city to understand which women will be carrying valued white babies in their bellies as a cheap service.

This expansion of the privileges of patriarchy to women is not the unique contradiction it might appear, but flows directly out of liberal thinking and liberal progress. The social history of America has been an expansion of the category of "individual"—first a truer, and then a broader interpretation of "all men" who are created equal. It is this expansion—from white men of property to all white men to all men to women—that has been the saving grace of the American system. The principle of the contract is upheld; the definition of the individual who may enter into contract is expanded.

When applied to issues of procreation, procreative law, and procreative technology, the contradiction emerges. The liberal theorists in this area assure us that these technologies pose no fundamental threat to family law as we understand it, and they tell us that this technology will expand the "reproductive options" of unpartnered men and women, of gay men and lesbians. They are, oddly, right. The fundamentals—the primacy of the seed and the fungibility of nurturance—are maintained. The definition of the individuals who may use nurturance services to grow their gametes into children of their likeness expands. In this arena as well, the principle of the contract is upheld, and the definition of the individual expanded.

III. Beyond Patriarchy

People do not begin as separate beings, disparate individuals, scattered gametes. We begin as parts of our mothers' bodies. We don't, as the language of patriarchy would have it, "enter the world" or "arrive." From where? Women who give birth, I have often pointed out, don't feel babies arrive. We feel them leave. But the very language we have for understanding the origins of people, for explaining where babies come from, is the language of patriarchy. Nurturance is not a service provided to gamete owners, but the fundamental human condition.

What does liberal, individualist theory, in which our legal, social, and political institutions are grounded, tell us about this connectedness? What are the origin theories that accompany the social contract theory? Consider what Hobbes had to say: It is as if we spring up like

mushrooms.⁵ Put as baldly as that, or implicitly stated, the social contract approach is based on the emergence of people as fully formed individuals: rational, self-interested, and ready to come together. And from where do these people emerge? They emerge from the bodies, kitchens, and lives of women: out of the "private" and into the "public" world.

People do not spring forth asocially, like mushrooms. We are conceived inside human bodies. We come forth after months of hearing voices, feeling the rhythm of the body, cradled in the pelvic rock of our mother's walk. We move from inside the body to outside. Right outside. We spend years in intimate physical contact with other bodies. Being cradled, carried, held, suckled. That is who we are and how we got to be who we are. We are not separate beings who must learn to cope with others, but attached beings who learn how to separate. Cradle a child, sit by the side of someone frightened or in pain or dying—we cling to one another. For a few moments, now and again, when everything is going okay, it is possible to hold on to the illusion that we are separate individuals. But the connectedness is the reality, the separation the illusion. We seek the connectedness in which we are grounded. We are social.

So what does this tell us about the reproductive technologies and reproductive laws we develop? Our patriarchal ideology tells us that the essence of humanity lies in our seeds, that what makes a person is fundamentally there in that seed from which the person springs. The person whose seed it is, is the person whose child it is; reproductive technologies focus on getting particular persons' seeds to grow. On the one hand, this brings us such technologies as microinjection of sperm. On the other hand, it brings us the relatively crude application of prenatal diagnosis: you start a pregnancy, you test the seed, and then you keep it or abort it.

But we are developing ever more sophisticated technologies out of this ideology, mechanisms to sort, read, and manipulate seeds. As industrial society took the machine as its model for the body, post-industrial society takes the computer, and sees the seed as containing not the entire object within (the homonculus) but the "program." And programs, we think, can be fixed. New technologies of procreation have moved the seed outside of the body, brought it into the lab-

5. 2 Thomas Hobbes, *Philosophical Rudiments Concerning Government and Society*, in *THE ENGLISH WORKS OF THOMAS HOBBS OF MALMESBURY* 1, 109 (William Molesworth ed., 1841).

oratory and made it manipulable. The genetic engineering of human beings, all the way up and down the slippery slope, is coming our way.

Ideologies bring us technologies, and technologies create the world in their own image. That is the context in which I see both the reproductive technologies and the growing body of law surrounding them—one part of patriarchal ideology creating the world in its own image. But that image is one of scattered, separate individuals, an image in which social life is problematic, in which connection requires some explanation. We are moving in the direction of creating a world in which Hobbes will be right; we will spring up like mushrooms. There are already eager scientists actively pursuing the artificial womb, the totally controlled environment in which to grow the “perfect” engineered embryos.

But if Hobbes might turn out to be right, so too will Durkheim. Hobbes’ world will not work. Without the trust, the social solidarity, the fabric of connectedness, the social order is not possible.

The answer offered within the American legal system is not sufficient to protect us in this. More protection of individual rights, more contracts, more informed consent—these are all necessary, but far from sufficient to address the far reaching implications if reproductive technology continues to recreate the world in its own image.