



Trans Pregnancy in a Repronormative World

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3.1 INTRODUCTION

In 2008, Thomas Beatie produced a media sensation in the US after publishing a first-person essay in *The Advocate*, a prominent LGBT publication, about his impending parenthood (Beatie, 2008). Beatie was a trans man, and he was pregnant with his and his wife Nancy's first child. In his *Advocate* article, he explained that as part of his transition¹ he had undergone top surgery² but had retained his ability to give birth. His wife, suffering from endometriosis, had undergone a hysterectomy years before, so was unable to carry a child. The couple therefore made the decision that Beatie should carry their child, conceived with an anonymous sperm donor. The photograph accompanying the *Advocate* essay of Beatie, shot naked from the waist up caressing his pregnant stomach, was widely reproduced. The media dubbed Beatie "the first pregnant man", and he was recognised by the Guinness Book of World Records as "the first married man to give birth" (Guinness World Records, n.d.). Beatie thus became, figuratively, *the* pregnant man (Pearce & White, 2019), "something exotic, different, a symptom of the modern age" (Lester, 2017, p. 146). Several other countries have since had their "first" pregnant men (the UK has had two "first"

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pregnant men, in fact), and each time the media have responded with sensationalism, shock and a narrative of novelty (Pearce & White, 2019).

Beatie was certainly not the first trans man to go through the experience of pregnancy or childbirth. In 1999, Matt Rice, a trans man, gave birth to his son Blake (Califa-Rice, 2000), and trans men who give birth have been the focus of academic research before (More, 1998). More recent research has indicated that the number of trans pregnancies may be increasing. One 2014 study recruited 41 trans respondents who had conceived post-transition (Light et al., 2014); another study found that young trans people had similar rates of pregnancy as the general population (Veale et al., 2016). More recently, the international Trans Pregnancy Project has interviewed 50 trans participants from the UK, Australia, Canada and the US who have given birth, have been pregnant or may want to in future (“Trans Pregnancy”, n.d.; Riggs et al., 2020, 2021).

Trans people who give birth or want to conceive face a number of social, medical and legal barriers. Some jurisdictions require trans people to be sterilised if they wish to gain legal recognition of their gender (Dunne, 2017; Repo, 2019), and options for preservation of fertility are not always well understood (Chen et al., 2017; Nixon, 2013). Furthermore, when trans people do become pregnant and give birth, they are subject to stigma and legal bureaucracy that struggles to recognise someone who gives birth as anything other than a woman or a mother (Pearce et al., 2019).

This chapter explores how current legal frameworks across the globe make it difficult or impossible for transmasculine and non-binary (TMNB)³ people to give birth and be recognised as a “father” or a “parent”. It begins with trans sterilisation requirements in Europe and beyond and frames these requirements as overt biopolitical regulation of trans bodies. It then uses case studies of two trans men—Yuval Topper-Erez (Israel) and Freddy McConnell (England)—who have given birth and have struggled to navigate legal and bureaucratic systems that erase the possibility of the pregnant man. Finally, the chapter addresses three common objections to legal reform for trans parents: that trans pregnancy is “unnatural”; that trans pregnancy is undesirable; and that trans rights clash with women’s rights. In examining these arguments, the chapter concludes that the failure to protect trans people’s reproductive rights and desires across the globe is a result of the perceived threat trans reproduction poses to the dominant *repronormative* order: the preservation of heteropatriarchal standards of

sexuality in which only reproductive sex between cis men and -women is deemed legitimate (Franke, 2001; Weissman, 2017).

3.2 UNDERSTANDING SEX, GENDER AND BEING TRANS

The term “trans” is an umbrella term, the widely accepted definition of which is a person whose gender identity is incongruent with the one they were assigned at birth (Stonewall, 2019). A cisgender or cis person is one whose assigned gender matches their gender identity. Gender is assigned at birth based on visible characteristics, usually the presence of either a penis and testicles or a vulva and vagina. If the former, a baby is assigned male and is assumed to be a man; if the latter, a baby is assigned female and is assumed to be a woman.

Some find it is useful to separate gender—a complex set of physical, psychological and social characteristics—from biological sex. Biological sex is usually captured by a cluster of characteristics, including chromosomes, gonads, reproductive organs, balance of hormones and secondary sex characteristics. We define biological sex along the binary of male and female. Some therefore argue that sex is an immutable, biological fact, whereas gender is a social and cultural identity (Oakley, 1972). In this sense, one can have a “female” body but identify as a man.

However, the distinction between sex and gender is often murkier than this. Feminist and queer theorists have pointed out that the terms “male” and “female” are *already gendered* concepts we use to describe clusters of biological traits, and furthermore that only one biological trait (visible sex organs) is used to assign someone’s *gender*, not simply their *sex* (Butler, 1994; Fausto-Sterling, 2000). When expecting parents receive an ultrasound scan, they are told they are having a *girl* or a *boy*, not that their baby has a penis or is an “anatomic female”.

Those babies grow into children, teenagers and adults whose identities do not match the gender they were assigned at birth. A person assigned female at birth may identify as a trans man, for example, and someone assigned male at birth may identify as a trans woman. However, one’s gender identity does not have to fall neatly at one pole of the binary gender spectrum; there are a wealth of other identities that fall along this spectrum including non-binary, genderqueer, gender non-conforming and so on. In general, all of these identities can be thought of under the “trans” umbrella.

3.3 UNDERSTANDING TRANS PREGNANCY

Being trans does not necessarily require a change to one's reproductive organs or any other anatomical features. Some trans people choose to medically transition, which can consist of hormone therapy and/or surgical interventions. Statistics suggest, however, that most trans people do not undergo surgeries to transform their reproductive organs (Nolan et al., 2019; Quinn et al., 2017). This chapter focuses on trans people who have the capacity to get pregnant and give birth. In general, they are people who were assigned female at birth, but identify either as trans men or another label like transmasculine or non-binary (someone who does not identify along the man/woman gender binary at all). I use the acronym TMNB (trans men/masculine and non-binary) throughout this chapter in order to capture this group of people. If a TMNB person wants to conceive, they are advised to stop taking testosterone (if they are undergoing hormone therapy). They then have the same options as any person who wants to conceive, namely through sex with their partner who can produce sperm, using a sperm donor or conceiving through assisted reproductive technologies.

3.4 THE LEGAL AND MEDICAL GATEKEEPING OF TRANS REPRODUCTION

The road to trans pregnancy is not necessarily easy or even possible for all. Trans people's civil rights vary greatly across the globe, as does discrimination and stigma. Even in jurisdictions where trans people enjoy legal protection (e.g. through anti-discrimination laws) and relatively straightforward mechanisms to have their gender legally recognised, there persists a lack of understanding of trans pregnancy in the medical community and more generally (Hoffkling et al., 2017). Furthermore, there are many jurisdictions where the ability for trans people to reproduce at all is curtailed or even removed entirely.

For example, in 16 European jurisdictions, sterilisation is a requirement for any person who wishes to change their legal gender (Dunne, 2017). Legal recognition means one's gender marker on passports and other official documents match one's identity and presentation. In some jurisdictions, like Malta (TGEU, 2015), Luxembourg (Intersex and Transgender Luxembourg, 2018), Argentina and Ireland (Open Society Foundations, 2014), legal recognition is obtained through a self-declaration framework.

These jurisdictions do not require medical interventions of any kind to gain legal gender recognition. Other jurisdictions do have medical requirements, for example the UK, which requires diagnosis of gender dysphoria by a registered medical practitioner or psychologist; living in the “acquired gender” for at least two years prior to the application; and the intent to live in the acquired gender until death (Gender Recognition Act, 2004).

Finally, some jurisdictions require trans people to be sterilised if they want their legal gender to be changed. In Finland (Repo, 2019), trans people are required to prove they are sterile either through natural infertility or through medical interventions from hormone therapy or surgical sterilisation to gain legal gender recognition. The Czech Republic also requires a “termination of reproductive function” through removal of ovaries or castration, a requirement that the European Committee of Social Rights has noted “lacks an objective and reasonable justification” and is a situation that “has a serious impact on a person’s health and ability to give free consent” to a significant medical procedure (European Committee of Social Rights, 2018). In 2017, the European Court of Human Rights found that requiring sterilisation for gender recognition violates Article 8 of the European Convention on Human Rights (A.P., Garçon and Nicot v. France, 2017).

Despite this, 16 EU states enforce a requirement the ECHR has deemed a violation of human rights. Furthermore, trans people face coercive sterilisation in many other parts of the globe including Japan (The Lancet, 2019), Hong Kong, Singapore, South Korea (Open Society Foundations, 2014) Uzbekistan, Kazakhstan and Tajikistan (TGEU, 2019). Sterilisation requirements are defended for a number of reasons including the avoidance of “legal confusion”, fears that children of trans parents will face discrimination and abuse, and aversion to reproduction outside of traditional understandings of sex and gender (Dunne, 2017). The latter argument is perhaps the most explicit example of repronormativity—the preservation of heteropatriarchal standards of sexuality in which only reproductive sex between cis men and -women is deemed legitimate (Franke, 2001; Weissman, 2017). The possibility of the pregnant man poses a challenge to these repronormative values that form the basis of legal and social understandings of sex and gender.

3.5 THE LEGAL AND BUREAUCRATIC “SOLUTIONS” TO THE PREGNANT MAN

Compulsory sterilisation is at the explicit end of the spectrum when it comes to the gatekeeping of trans reproduction; repronormativity also results in social, legal and bureaucratic barriers to those who reproduce outside of the bounds of traditional, heteronormative structures. Even in countries without a sterilisation requirement, the legal and bureaucratic elision of pregnant men causes distress and inconvenience. This section presents two case studies, the first (in Israel) exemplifying the experience of trans men in contexts where the act of giving birth and being a woman are fundamentally intertwined. The second example (in the UK) shows that even in contexts where pregnancy and childbirth do not invalidate a TMNB person’s gender identity, the category of “mother” is strictly enforced as a matter of reproductive, biological fact.

Yuval Topper-Erez, a trans man, gave birth in 2011 to his first child in Israel with his partner Matan Topper-Erez. The new parents registered their newborn son with Israel’s Interior Ministry as required, but the ministry refused to recognise both men as the biological fathers. Gender reassignment was possible in Israel, and both Yuval and Matan were legally recognised as male. Israel had also previously recognised same-sex couples as parents; in 2005, a same-sex couple was granted the right to adopt one another’s children (*Yaros Hakak v the Attorney General*, 2005), and in 2008 the right for same-sex couples to adopt was confirmed in a decision by the attorney general Menachem Mazuz (Yoaz, 2008). However, although in the past the state had recognized same-sex couples as parents to children through adoption orders, there had never been a same-sex couple both registered as a child’s *biological* parents (Efraim, 2013).

After a protracted legal battle, the Interior Ministry settled on a bureaucratic solution: they re-registered Yuval as female in order to register him as his son’s biological mother, and Matan as his biological father. Yuval was subsequently re-re-registered as a man (Efraim, 2013). Yuval went on to have more children, each time having to go through the same process of registering as female and re-registering as male, leading him to joke in a conference talk that he must hold the record for number of legal gender reassignments in the world (Beatie et al., 2020).

The *Times of Israel* noted that while this was presented as a groundbreaking case in Israeli media, the Interior Ministry’s solution could be described as “a bureaucratic sleight of hand” that the couple were forced

to accept (Santo, 2013). Confirming this, Matan in an interview with media outlet YNet called the move “bureaucratic stupidity, made up of lack of respect and sensitivity to the fact that there are a variety of ways and identities through which to express yourself” (Efraim, 2013). When confronted with Yuval’s existence as a man who had given birth, the Israeli state simply denied the possibility of his existence. Only after a great deal of legal pressure from Interior Minister Gideon Sa’ar and the chairman of the Knesset Interior Committee Miri Regev (JTA, 2013) were the Topper-Erezes offered a convoluted solution that arguably increases the “legal confusion” that trans parents are often positioned as creating (Dunne, 2017). Furthermore, there seemed to be little recognition from the state or the judiciary that this process had a personal and social cost for the Topper-Erezes. A legal and bureaucratic solution to the “problem” of Yuval’s existence was the priority, not the dignity or recognition of trans parents.

The problems with this kind of solution were finally recognised by the Israeli High Court of Justice on 5 May 2021. The Court heard the case of another couple, Yonatan and Daniel Martin Marom, two men who had a son together (Parsons, 2021). After giving birth to their son, Yonatan found that his gender in the population registry had been changed without his permission from male to female and that he had been registered as the child’s mother (Joffre, 2021). The court ruled that, instead, trans parents can opt to appear on their children’s birth certificates with the non-gendered designation “parent” rather than “mother” or “father”. The court argued that regardless of Yonatan’s gender in the population registry, “that does not justify the harm caused by registering him on the child’s birth certificate as a ‘mother’” (Joffre, 2021).

TMNB people who give birth in Israel can therefore remain registered as male and avoid being registered as the “mother” of their children. However, they must also confirm to a Gender Adjustment Committee that their gender is unchanged after the birth, an element that has attracted some criticism. Dr Ido Katri, Assistant Professor of Law at Tel Aviv University and trans advocate, was quoted in *PinkNews* and *The Jerusalem Post* as arguing that “the ruling continues to reflect outdated perceptions and conditions the recognition of trans parenting on its appeal to a medical committee” (Joffre, 2021; Parsons, 2021). Despite this, he also noted this was a clear decision “in favor of the trans community’s right to parenthood and equality”, and the ruling has been welcomed as a step forward for trans parents in Israel. In the UK, journalist Freddy McConnell recently

lost his own legal battle to be recognised as his child’s father or parent rather than “mother”. McConnell, a trans man who gave birth to his son, was told by the General Register Office (responsible for registration of births and deaths in England and Wales) that he would have to be registered as the child’s mother, although the registration could be in his current (male) name. McConnell challenged this in high court in 2019 (*The Queen (on the Application of TT) v Registrar General for England and Wales*, 2019). His primary claim was that he should be entitled to be registered as a “father, “parent” or “gestational parent” on his child’s birth certificate. His secondary and alternative claim, on the basis that domestic law requires his registration as “mother”, was for a declaration of incompatibility under Section 4 of the Human Rights Act (1998) on the ground that UK law is incompatible with his and his child’s Convention rights under Articles 8 and 14 of the European Convention on Human Rights. The high court judge Sir Andrew McFarlane ruled against McConnell, arguing that the only way McConnell can be registered on his child’s birth certificate is as the mother, a decision that was upheld on appeal (*R (Alfred McConnell) v The Registrar General for England and Wales and Others*, 2020).

Unlike in Topper-Erez’s case, the high court judgement did not conclude that giving birth made McConnell a woman. In fact, the judgement explicitly notes that McConnell is legally a man and that “[f]or all other purposes, be they social, psychological or emotional, [McConnell] will be a male parent to his child and therefore his ‘father’” (para. 147). However, the judgement states that the term “mother” “is the status afforded to a person who undergoes the physical and biological process of carrying a pregnancy and giving birth” (para. 279). The terms “mother” and “father” are simply “a matter of the role taken in the biological process, rather the person’s particular sex or gender” (para. 139). The judgement cites the Human Fertilisation and Embryology Act (HFEA) (2008), Section 33 of which specifies that “the woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child”. In other words, the person who carries a child is legally considered to be the mother of that child.

Interestingly, despite the gendered language in the HFEA (i.e. “the woman who is carrying or has carried a child”), the judgement in McConnell’s case divorces the category of “mother” from the sexed or gendered subject, instead arguing that “mother” is defined entirely by

reproductive experience (para. 139) (Pearce et al., 2019). Furthermore, the Appeal judgement notes that the term “parent” is defined elsewhere in law (paras 65-66) and so cannot be used on a birth certificate in the place of “mother” as McConnell desired.

The idea that the term “mother” is divorced from a sexed or gendered subject, of course, stands in tension with the social and cultural understanding of the term. Beyond the specific reproductive experience of childbirth, motherhood is an inherently gendered concept which denotes a familial role defined by heteropatriarchal society (Fineman, 1992). McConnell’s legal representatives argued that being identified as “mother” on his child’s birth certificate undermines his legal status as a man, and effectively “outs” McConnell as trans to anyone who reads that document. Indeed, the high court judgement notes there is likely to be “a tension” (para. 147) between the legal definition of motherhood and the social and psychological understanding of the term, but neither the high court nor the Appeal judgement were able to identify a legal remedy for this tension.

Both McConnell and Topper-Erez’s cases demonstrate the embedded legal understanding of “mother” as discursively inseparable from a person’s biology and the specific reproductive experience of childbirth. In these jurisdictions, deviating from parental roles and markers was more difficult than reassigning one’s legal gender. Thus, the regulation of trans reproduction begins at birth with one’s assignment of sex which carries with it a future parental role (Katri, 2019). However, the reversal of position in Israel, where TMNB parents can now register as “parent” rather than “mother”, demonstrates one of several legal and bureaucratic solutions to the “problem” of TMNB people giving birth, possibilities that have been modelled already in various parts of the globe. In the Canadian province of Quebec, up to four people of any gender can be assigned as a parent to a newborn child (Katri, 2019), and the Swedish system allows trans men who give birth to be listed as father on birth certificates, and trans women who contribute sperm as mothers (TGEU, n.d.). Rather than generating contradiction and paradox—like registering and re-registering a person as a different gender six times over or designating someone a “male mother”—these solutions model a helpful and coherent way forward for trans parents. Despite this, barriers to the recognition of trans parenthood persist.

3.6 THE REPRONORMATIVE BARRIERS TO LEGAL REFORM

This section turns attention to the common objections raised to legal reform, analysing their underlying theoretical constructions of sex, gender and reproduction. “Legal reform” here refers to changes in legislation that make trans reproduction possible (e.g. removing sterilisation requirements) and that allow for the recognition of trans parents (e.g. allowing a trans man to be registered as his child’s father). The objections presented here are not only legal arguments but also social, cultural and political ones that draw upon a number of common discursive ideas. The first, the “nature” argument, is an explicitly essentialist argument that cis women instinctively desire motherhood due to their biology, and the ideal family consists of a cis mother and a cis father. This is analysed through the concept of repronormativity. The second argument is an implicitly eugenic one that positions trans (and other “deviant”) bodies reproducing as undesirable. Finally, I turn attention to the argument put forward by trans-exclusionary radical feminists (TERFs) that positions an expansion of trans rights as an attack on (cis) women’s rights. Despite these three positions appearing incompatible (most feminists would balk at the suggestion that women are biologically wired to desire motherhood, for example), they share a rhetoric appeal to “common sense” understandings of gender and reproduction that are in fact expressions of conservative repronormative values.

3.6.1 *The “Nature” Argument*

In general, there exists a “common sense” discursive framing of reproduction based on heteropatriarchal values that exist in most parts of the world. In this framework, women have the reproductive organs that enable pregnancy and childbirth, and it is expected that motherhood is the desired state for most women; indeed, womanhood and motherhood are so discursively linked that “women’s health” is almost always used to refer to reproductive health (Waggoner, 2017). Men have the capacity to produce sperm but not to carry children; thus, fatherhood is a role decoupled from the act of carrying and giving birth to children. A cis woman and a cis man having children together is the natural, normative state against which other acts of reproduction are measured (Fineman, 1992; Weissman, 2017).

This framework that understands biological sex to be a determinant of gender and therefore of parental role is deeply embedded into many legal

systems. For example, there persists a biologically determinist understanding in European law that every person has unambiguous biological traits that are male or female; only those with female reproductive organs can give birth; therefore, that person is a woman (Dunne, 2017) or at least, as in McConnell’s case, a mother.

While the socially constructed nature of gender is now a relatively uncontroversial concept, the distinction of sex as immutable and natural (therefore untouched by social and cultural norms) persists. Furthermore, reproduction as an act discursively tied to the heterosexual family unit remains the norm even in liberal contexts (Fineman, 1992; Karaian, 2013). Weissman (2017) notes that countries with liberal attitudes towards same-sex marriage have generally lower levels of acceptance towards same-sex adoption and assisted reproduction, indicating a discomfort with non-reproductive sexuality. This is something Edelman terms “reproductive futurism”: the privileging of sexual acts that propagate the species and are thus granted legitimacy that most queer people cannot achieve (Edelman, 2004).

It is therefore only when reproduction happens within the bounds of legitimacy and “nature” that it is socially accepted. Franke (2001) coined the term “repronormativity” to describe hegemonic social forces that incentivize motherhood and erase the possibility of non-reproductive desire and pleasure. Any reproduction that falls outside of heteronormative conceptualisations of the family is framed as illegitimate, and therefore a legitimate target of state sanction (Eggert & Engeli, 2015). This argument against legal recognition of trans reproduction can be found in a number of legal jurisdictions (Dunne, 2017).

3.6.2 *The Eugenic Argument*

The overt curtailing of reproduction in certain sections of the population (e.g. requiring the sterilisation of trans people) can usefully be thought of as a *biopolitical* project, and also as a eugenic one. “Biopolitics” is the term Foucault used to describe the mechanism through which nation states implicitly or explicitly manage populations (Foucault, 1998). A dimension of *biopower*—“a power to foster life or disallow it to the point of death” (Foucault, 1998, p. 138)—biopolitics encourages the proliferation of life through diffusive and pervasive means, but also works in tandem with disciplinary power that is exerted upon unruly bodies (Foucault, 2008). The result is regulation of populations and individual bodies that is

sometimes overt but is often implicit, framed through concepts like reproductive choice and responsibility (Rabinow & Rose, 2006).

Eugenics—the practice of improving the population by control of inherited qualities (Shakespeare, 1998)—could be conceived of as a particularly overt form of state power. However, Shakespeare (1998) differentiates between “strong eugenics”—“population-level improvement by control of reproduction via state intervention” (p. 669)—and “weak eugenics”. He frames weak eugenics as “promoting technologies of reproductive selection via non-coercive individual choices”, for example using antenatal testing to present pregnant people with the decision to end an otherwise wanted pregnancy due to the detection of an abnormality (Shakespeare, 1998, p. 669). It is my contention that trans people face both strong and weak eugenics.

The sterilisation requirements for trans people seeking legal recognition in many parts of the world is a clear example of strong eugenics (Lowik, 2018). Beyond explicit practices like sterilisation, the barriers to legal recognition of trans parenthood demonstrate the working of weak eugenics and biopolitics. TMNB people who give birth are often blamed for making an “irresponsible” choice to have children in a way that causes legal and bureaucratic problems. For example, Freddy McConnell’s legal battle to be recognised as his child’s father has been framed by some sections of the media as a selfish and harmful situation for his son who would be “without a mother” (Ditum, 2019; White, 2020). Furthermore, the potential effects of prior testosterone use on a pregnancy is framed as a selfish risk (Jeffreys, 2014), even though the current medical advice for TMNB people who want to conceive is simply to stop taking testosterone in the absence of evidence prior use affects birth outcomes (Brandt et al., 2019; Obedin-Maliver & Makadon, 2016). This frames individual reproductive choice as a way to avoid stigma and distress rather than locating the problem within flawed legal structures, a neoliberal biopolitical move that places responsibility on the individual rather than the state.

The argument that the barriers to trans reproduction are both eugenic and biopolitical is contextualised by similar strong and weak eugenic practices levelled against minority groups throughout history. In the US, Women of Colour have historically been discouraged from reproduction through involuntary sterilisation and more diffuse barriers like systemic poverty and vilification as poor mothers (Forward Together, 2005; Silliman, 2004). Canadian provinces instituted laws in the 1930s that sanctioned involuntary sterilisation of women who were institutionalised

for mental health issues (Amy & Rowlands, 2018), as did Sweden (Boréus, 2006). Indigenous women were also targeted by sterilisation programmes until the late 1970s in the US and Canada (Pegoraro, 2015), and French doctors performed involuntary sterilisation and abortions on thousands of Black women in French foreign territories in the 1960s and 1970s (Vergès, 2018). In the UK, screening technology and directive advice from medical professionals has arguably created a weak eugenic climate in which aborting pregnancies with “abnormalities” and therefore potential disabilities is considered desirable (McLaughlin, 2003; Shakespeare, 1998). Furthermore, in February 2020 controversy was ignited in the UK when a blog post from a Conservative government aid was unearthed supporting “enforced contraception” for those in the “permanent underclass” (Proctor, 2020). Academic and journalistic commentary on the incident expressed concern that Conservative Prime Minister Boris Johnson did not explicitly condemn the remarks (Bienkov & Payne, 2020; Bush, 2020; Wester, 2020; Woodcock, 2020).

In each of the examples above, minority groups are identified who present some threat to the repronormative order (Weissman, 2017). Repronormativity does not just produce children; it reproduces *values*, the heteropatriarchal and nationalistic values upon which nation-states are often built (Yuval-Davis, 1996). Heteronormative reproduction between cis women and -men is so embedded into many social and legal landscapes that to reproduce outside of this framework is to attack the foundations upon which society is built (Fineman, 1992; Weissman, 2017). Women of Colour and working-class women are characterised as promiscuous, irresponsible and a burden on the welfare state (Hawkes, 1995; Jones, 2013; Tyler, 2008), and those with physical and mental disabilities are “unfit” to reproduce (Boréus, 2006). Through overt sterilisation requirements and legal barriers to recognition as parents, trans people are subject to “eugenic logics” that position their reproductive capacity as confusing, undesirable or even dangerous (Lowik, 2018).

3.6.3 *The “Women’s Rights” Argument*

The resistance to recognition of trans parenthood becomes more complex when supported by those with ostensibly feminist values. A vocal minority of feminists have argued against legislative and political efforts to expand trans people’s civil rights, positioning these rights as clashing with those of cis women. Called “gender critical” feminism by its supporters and

“trans-exclusionary radical feminism”, or TERFism, by its detractors, this strand of feminism has gained increasing popularity in recent years, particularly in the UK (Hines, 2019). Some TERFs⁴ argue, following earlier work by feminist theorists like Sheila Jeffreys (1997) and Janice Raymond (1994), that gender is functionally indistinguishable from biological sex, and therefore one cannot identify as a woman if one is not born a woman. In Jeffrey’s words, “[t]he inferior sex caste status of women is assigned with reference to their biology, and it is through their biology that their subordination is enforced and maintained through rape, impregnation and forced childbearing” (Jeffreys, 2014, p. 6). Others accept that gender can be self-defined, but that *femaleness* is an immutable and unchangeable fact determined by chromosomes and reproductive organs (Stock et al., 2019). In this iteration of the argument, gender is a social identity, whereas sex is a biological fact. A trans woman can identify as a woman if she likes, but she does not possess the *female* attributes that make her a “real” woman.

While the focus of TERFs tend to be on trans women and their “infiltration” of women’s spaces (Bindel, 2019; Joyce, 2018; Richards, 2018), the logic underpinning this ideology is also applied to trans masculine and non-binary people. While there is little to no academic work published on “gender critical” views of trans pregnancy, TERFs in mainstream media have argued against calls to be inclusive of TMNB parents by using gender-neutral terms in relation to pregnancy like “pregnant persons” and “chest-feeding” (rather than breastfeeding) (Glosswitch, 2015; Moore, 2020). It is argued that this gender-neutralisation is irrational because the terms “mother” and “breast-feeding” are simply labels for biological realities (O’Neill, 2017). Again, this argument is easily challenged by troubling the gender/sex distinction upon which it is based: “motherhood” and “breast-feeding” are discursive and linguistic constructs that make our biology intelligible to us rather than immutable, independent truths (Butler, 1994).

However, another element of this argument is that legal reform and “gender-neutralisation” of the law runs the risk of ignoring the gendered nature of reproductive experiences and the social inequalities that stem from them. Abandoning the term “mother” in relation to pregnancy and childbirth limits our ability to frame them as political issues that primarily affect women, it is argued, and thus trans rights are pitted against (cis) women’s rights (Glosswitch, 2015). This argument has been made in academic work on family law, albeit outside the framework of “gender critical” feminism. Fineman, in 1992, argued that the push towards gender neutrality in family law was part of a “male backlash” which aimed to

reassert patriarchal control over the family. As the figure of the Mother rhetorically disappeared from family law in favour of gender neutrality, she argues, legal discourse became “Mother-purged” and no longer reflected the real gendered inequalities that women experienced (Fineman, 1992). The TERF argument against recognising trans birth parents as anything other than mothers can be framed as another iteration of this position: pregnancy, childbirth and reproductive rights are framed as *women’s* issues for salient political reasons, so “gender-neutralising” motherhood glosses over the gendered inequalities cis women experience.

Fineman’s paper, however, ends with a call to build family law from the perspective and lived experience of women and mothers (Fineman, 1992). If this principle were extended to trans parents, it would quickly become clear that on the issue of reproductive rights, trans and feminist activists share a great deal of ground. The argument that trans rights “clash” with those of cis women are challenged by examples of trans and women’s organisations mobilising together. In Argentina, trans and women’s groups have used the country’s liberal legal and political framework around gender recognition (TGEU, 2013) to act as a platform to support abortion rights, using the same arguments around bodily autonomy and civil rights that had reformed gender identity laws (Junco & Fernández, 2020). In 2018, an abortion rights bill was discussed in congress, and trans and feminist interventions changed the wording of the bill to “women and gestating persons”, modelling inclusive language that does not “de-gender” the issue of reproductive rights (Sutton & Borland, 2018). Similarly, in Northern Ireland, more recently, the campaign to decriminalise abortion saw mobilisation of trans and feminist groups to create a gender-inclusive abortion law that recognised TMNB people’s need for abortion as well as cis women’s (Moore & McIlwaine, 2020; TransgenderNI, 2019).

Here, TERF objections to inclusive legal reform become both unconvincing and counterproductive. In so fiercely defending the essentialist understanding of motherhood as a biological category, TERF arguments reinforce the repronormative framework that not only denies the existence of trans birth fathers but also discursively entwines cis women’s bodies with the role of motherhood. As Weissman argues, “by determining who is considered illegitimate to reproduce, there is a reification of who can (and must) produce” (Weissman, 2017, p. 291): repronormativity mandates that cis (and white, affluent, middle-class) women *should* be mothers (Franke, 2001). Allying with trans activists’ efforts to resist the idea that

pregnancy is necessarily sexed as female would, rather than depoliticise reproductive rights, “further dismantle the normative and socially constructed sexed and gendered roles that govern us” (Karaian, 2013, p. 224). The TERF argument may be framed as a feminist position; however, its *effects* are indistinguishable from those of heteropatriarchal, repronormative politics that equate recognition of TMNB birth parents with social disorder and disgust.

3.7 CONCLUSION

Legal and social barriers persist in many contexts that prevent or make it difficult for TMNB people to become parents. For those who can have children, the legal systems in many countries do not accommodate an understanding that a person can give birth and yet not be a woman or want to be referred to as a mother. This is not simply an individual inconvenience for TMNB people who give birth, nor can it be dismissed as an innocuous quirk of law that often was not designed with trans people in mind. Trans reproduction destabilises the often deeply embedded “truth” in law and wider society that pregnancy is necessarily sexed as female, and trans fathers and birth parents therefore challenge the heteropatriarchal assumptions that many legal systems are built on.

Trans birth parents are framed by various actors and institutions as disruptive to nature and the biological order, legal certainty (Dunne, 2017), reproductive legitimacy (Lowik, 2018; Weissman, 2017), and cis women’s rights (Bindel, 2019; Jeffreys, 2014; Stock, 2018). This chapter suggests that a reframing is in order. Seeing the “problem” of trans parents through the lens of repronormativity shifts focus from the individual experiences of TMNB parents—whose stories are nevertheless worthy of attention—to a wider hegemony that frames “deviant” reproduction as undesirable. Rather than locating the problem with TMNB parents, attention should continue to be turned to legal solutions that protect the reproductive and civil rights of trans people and their children.

NOTES

1. Transitioning is the process a trans person goes through to live in their gender identity. This process differs for everyone but can include medical interventions like hormone therapy and surgery, social elements like “coming

- out” to friends and family, and legal processes like changing one’s name and gender marker on official documents.
2. Reduction or removal of breast tissue: the term “top surgery” is commonly used to refer to this procedure when undertaken as part of gender transition.
 3. Not all trans people who were assigned female at birth identify as men—some prefer the term “transmasculine” (identifying more with the “masculine” end of the spectrum) or non-binary (identifying outside of the gender binary altogether). The term “transmasculine and non-binary” (TMNB) acts as an umbrella term for this group of trans people who may be able to get pregnant and give birth.
 4. Some argue that the term “TERF” is a slur. I do not agree, and I use it here in recognition that (a) it was coined as a technical, neutral and descriptive term (Williams, 2014 in Hines, 2019) for an ideology that is weaponised by cis women against a marginalised group and (b) it is widely used and recognised to refer to the ideology under discussion.

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