

Emily Apter, “Contracepted Persons: Legislative Bans and the Blurry Legal Zone of the Unconceived”

How does the law understand *conception*? Certainly the word is fascinating and multivalent; suggesting the arrival or “birth” of a concept as well as the idea of coming to life or becoming intelligible as the live material of personhood. How might we get a better technical handle on the legal principles, statutes, and regulatory rules (or lack of them) governing contraception in the medical industry? How do we frame pre-personhood as a kind of being without a body, yet recognized as having agency, within a Lockean self-property framework of ownable personhood and possessive individualism? To whom or to what do the contracepted belong?

Responding to these questions draws attention to the slippery slope from pregnancy blockers to abortion pills within the politics of bans and curtailments of reproductive freedom. *Griswold v. Connecticut* and *Eisenstadt v. Baird* were turning points in this story, upholding the right to privacy and affirming that states could no longer outlaw contraceptives or prohibit clinicians from prescribing conceptive methods to their patients. Despite these rulings, current abortion legislation in many states, basing itself on the misinformation that contraceptives are abortifacients, justifies the extension of bans on abortion medication to bans on contraception.

What comes to the fore in the context of the *Life at Conception Act*, attacks on reproductive health and the autonomy of pregnant persons in a post-Dobbs era is a notion of the *contracepted person*.¹ A figurehead of what might be thought of as “personhood absolutism,” this is a hypothetical “being” foreclosed by contraceptive medication who nonetheless “lives” in a blurry, imaginary legal forcefield of the unconceived. The contracepted is a quasi-being or pseudo-legal persona. It is not the same thing as the “unborn” of fetal personhood, (extended recently by the Alabama State Supreme court ruling that assigns statute-protected status to frozen embryos on the grounds that they are “extrauterine children”), nor the abstract, non-live entity of corporate personhood, but sharing a rights claim on behalf of the non-or not-yet person.² This ghost-being – born of the *conception* of a child *conceived* without having sex (with both senses

¹ The *Life at Conception Act* was introduced by Representative Alexander Mooney on 1/20/2023. The bill “declares that the right to life guaranteed by the Constitution is vested in each human being at all stages of life, including the moment of fertilization, cloning, or other moment at which an individual comes into being.” What is the “when” of coming into being? At the moment of mental conception? At the predawn of pre-personhood? How backdated can persons be conceived – once they are conceivable? The theologically freighted *Life at Conception Act* (driven, it would seem, by some ideal of sex-free Virgin Birth or Immaculate Conception), would ultimately outlaw all contraceptive prophylactics and award the unborn human a “right to life” that could potentially trump the rights of actually existing persons.

² A concurring opinion by Alabama Supreme Court Chief Justice Tom Parker condemned the destruction of embryos as “an affront to God.” This theologically enhanced “duty to protect ‘unborn life’ without exception,” opens the door to similar protections being accorded to contracepted persons, authorizing comprehensive bans on contraception in addition to putting the entire future of IVF and genetic testing in the state in legal jeopardy. (See, Dan Rosenzweig-Ziff, “Frozen Embryos are Children, Ala. High Court Says in Unprecedented Ruling,” *The Washington Post* 2/19/2024.

of “to conceive” playing off each other) - can be strategically assigned persona-hood, along with some kind of legal status, if not actual positive legal rights and powers. The weaponization of junk science related to “quickening” and conventional stoppages within gestational temporality is another issue to be considered. The aim will be to map a messy problem for contemporary legal thinking that threatens to have significant potential impact on the post-Dobbs future of reproductive freedom.

BIO:

Emily Apter is Julius Silver Professor of Comparative Literature and Chair of French Literature, Thought and Culture at New York University. Her books include *Unexceptional Politics: On Obstruction, Impasse and the Impolitic* (Verso, 2018), *Against World Literature: On the Politics of Untranslatability* (2013), the *Dictionary of Untranslatables: A Philosophical Lexicon* (co-edited with Barbara Cassin, Jacques Lezra and Michael Wood) (2014); and *The Translation Zone: A New Comparative Literature* (2006). She co-edited and wrote the Foreword to Gayatri Chakravorty Spivak’s *Living Translation*,” a collection of Spivak’s contributions to translation theory. Nearing completion is *What is Just Translation?*, a book that maps translation and justice across media. Essays have appeared in *Public Culture*, *e-flux*, *Law and Literature*, *Diacritics*, *October*, *PMLA*, *Comparative Literature*, *Art Journal*, *Third Text*, *Paragraph*, *boundary 2*, *Artforum* and *Critical Inquiry*. Since 2000 she has edited the *Translation/Transnation* series at Princeton University Press. In 2023 she received a Doctor Honoris Causa from the University of Liège. In 2019 she was the Daimler Fellow at the American Academy in Berlin. In 2017-18 she served as President of the American Comparative Literature Association. In fall 2014 she was a Humanities Council Fellow at Princeton University and in 2003-2004 she was a Guggenheim Fellowship recipient.