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## **Framing Wrongs and Performing Rights in Northern Ireland: Towards a Butlerian Approach to Life in Abortion Strategising**

By Kathryn McNeilly<sup>1</sup>

### **Abstract**

Feminist strategising on abortion has been dominated by a “pro-choice” frame. Increasingly, however, pro-choice discourse is being viewed as inadequate to meet contemporary and complex feminist aims and analyses, in particular due to the individualising ontological framework upon which it appears to be based. The work of Judith Butler is one location where such concerns have been explored and an alternative approach based upon a renewed analysis of the concept of “life” has been asserted. Foregrounding the fundamental precariousness of intersubjective life and opening the socio-political conditions sustaining precarious life to democratic public engagement carries significant implications for feminist strategising for Butler, and envisages a reconceptualisation of debate on abortion. In this article Butler’s work on life will be combined with her theoretical tool of the frame to explore space which may exist within pro-choice strategising to potentially work towards such a renewed approach to life in social debate on abortion. This space may be used to rethink feminist strategising on abortion beyond pro-choice discourse, and presents an accessible starting point from which to do so. In carrying out this analysis insights will be drawn from feminist advocacy and activism in the contingent location of Northern Ireland where recent employment of a health frame and a rights frame demonstrate instances of pro-choice strategising which may be reiterated to shift feminist activism towards more radical engagement with life as a precarious social process demanding critical attention.

*Keywords:* Abortion; Feminist Activism; Judith Butler; Life

### **Introduction**

Abortion is an issue that engages diverse feminist strategising in a myriad of contemporary global locations. Within this strategising, “pro-choice” approaches towards achieving enhanced and dignified access to abortion facilities have been dominant. Within feminist theorising, however, sustained attempts have been made from a variety of perspectives to voice alternatives to the liberal, individualistic commitments of pro-choice discourse. Judith Butler is one such voice. For Butler, a renewed approach to the concept of “life” carries significant implications for feminist strategising and envisages a reconceptualisation of debate on abortion. Butler seeks to foreground the precariousness of intersubjective life, open such conditions of precariousness to democratic public engagement, and so engender a reflexive approach to society’s obligations to life and subjects’ ability to live a socially viable life. In this essay, Butler’s work will be employed to explore space which may exist within pro-choice strategising to potentially work towards such a renewed approach to life. This space may be used

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to rethink feminist strategising on abortion beyond pro-choice discourse, and presents an accessible starting point from which to do so.

In undergoing this exploration, insights will be gathered from engagement with contemporary pro-choice strategising in Northern Ireland where restrictive access to abortion stands as an anomaly in UK law. Pro-choice advocacy in this location constitutes an historically contingent example of sustained but also shifting strategising which contains much potential to move towards a rethinking of life. Analysis of this potential will be assisted via the use of Butler's concept of the "frame", the discursive shaping of what can and cannot be seen, heard and known. Two recent pro-choice approaches to the strategic framing of abortion in Northern Ireland will be engaged with; the health frame and the rights frame. The latter of these two frames in particular has been employed through a submission of evidence to the inquiry procedure of the Optional Protocol for the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW), allowing for analysis of rights claiming as a performative practice under the auspices of the rights frame. In working towards the rethinking of life in more radical ways it will be asserted that recent invocation of the health frame holds the potential to illuminate the ethical obligations of intersubjective life through acts of public mourning, and that rights claiming offers possibility for interrupting the current hegemonies of gendered life through performatively intervening in the social processes by which gender identity is articulated.

This investigation will be undertaken by, firstly, situating the study through providing a brief genealogy of abortion provision in Northern Ireland which strategising has been directed towards. This will be followed by an introduction to Butler's theoretical framework on life, recognition and practices of framing. Thirdly, discussion will move to investigate two dominant strategies employed in pro-choice campaigning on abortion in Northern Ireland as frames, considering the space which exists in each for moving towards a new approach to life. Finally, some precarious conclusions will be drawn as to feminist strategising moving towards a radicalisation of the abortion debate.

### **Genealogy of Abortion Provision in Northern Ireland**

In considering contemporary developments in abortion strategising in Northern Ireland, it is important to note that the geopolitical history of the UK and Ireland has endowed Northern Ireland with particular legal arrangements in this area. Prior to 1920 all of Ireland was governed directly from London as part of the UK. Following political contention seeking Irish independence, however, the 1920 Government of Ireland Act sought to establish a devolved government in Dublin to administer the majority of the island, and one in Belfast which would be responsible for six counties in the north east, to become known as Northern Ireland. In 1922 the part of the island to be governed from Dublin seceded from the UK and declared itself the Irish Free State, later becoming the Republic of Ireland. Northern Ireland did not join the Free State, remaining part of the UK, as it continues to do under devolved administration. Northern Ireland is usually included in the jurisdiction of UK legislation created at Westminster, although on some matters, including abortion, differing provision exists.

Abortion is currently illegal in Northern Ireland aside from two exceptions. Firstly, termination carried out after the 28<sup>th</sup> week of pregnancy is considered legal if the act was carried out in good faith for the purposes of preserving the mother's life<sup>2</sup> and, secondly, termination

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<sup>2</sup> Section 25(1) Criminal Justice Act (Northern Ireland) 1945.

carried out in good faith prior to the 28<sup>th</sup> week will be legal if there are reasonable grounds to believe that continuing the pregnancy would render the woman a “physical and mental wreck”.<sup>3</sup> However, doctors in Northern Ireland have traditionally expressed an unwillingness to test this piecemeal framework, especially up to 28 weeks, for fear that judicial interpretation of “good faith” will go against them (Northern Ireland Family Planning Association, Northern Ireland Women’s European Platform and Alliance for Choice paras. 4.52, 4.69). Legal uncertainty on abortion in the earlier stages of pregnancy was significantly reduced in England, Scotland and Wales with the passing of the Abortion Act 1967 which permits legal termination in four broad circumstances; cases of risk to the woman's life; to prevent serious permanent injury to the woman's physical or mental health; to avoid risk of injury to the physical or mental health of any existing child(ren); and cases likely to result in severe foetal abnormality. This represents a significant departure from the criminalising approach in Northern Ireland. It also has the practical consequence of rendering abortion provision widely accessible, in contrast to the legal framework for Northern Ireland which permits only 40 women on average per year to access legal termination (Northern Ireland Executive, 2012). In light of the significant changes engendered by the 1967 Act in the rest of the UK, it must be asked why Northern Ireland was excluded from such reform.

When the 1960’s debates were taking place in Westminster, Northern Ireland was the only region of the UK operating under a devolved Parliament and so the issue was left for the Northern Ireland Parliament to debate itself. However, such debate never took place. This omission can be attributed to the particular religious and social conservatism of Northern Ireland, and its heavy representation in Northern Irish politics (Roulston, 1989:221). Government documentation from the time reveals that the likelihood of conscientious objection from medical staff was advanced as the major reason for prohibiting wider access to legal termination, but that this assertion was also used as an excuse for political inertia (The Newsletter, 2 January 2013). When direct rule returned to Westminster following collapse of the Northern Ireland Parliament in 1972, the question of creating parity of esteem in abortion provision rarely came close to materialising into legislative action. This was in the most part due to the continuing lack of impetus from Northern Irish political representatives. *In terms of local grassroots lobbying for reform, following the increase in sectarian conflict from the beginning of the 1970’s until the late 1990’s the energies of the women’s movement in Northern Ireland were often directed elsewhere,*<sup>4</sup> *and divergences of opinion on the issue of abortion also confounded collective campaigning from the women’s sector* (Sales, 1997:133-134). Since the early 2000’s and the stabilisation of devolved government, however, public debate has increased on the issue and a number of strategies have been applied by self-defined “pro-choice” and “pro-life” groups to solidify the law either way. These oppositional factions have clashed in political chambers, court rooms and on the streets (see Fletcher, 2005; Smyth, 2006). As in other global locations, one interlinking factor in all strategic approaches employed in activism on abortion in Northern Ireland has been engagement in some form with the socio-cultural recognition of life. Recent pro-choice advocacy in particular has engaged with the question of life and its recognition in particularly interesting, and potentially productive, ways. In order to examine these assertions

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<sup>3</sup> *R v Bourne* [1939] 1 KB 867.

<sup>4</sup> From 1968 Northern Ireland experienced over three decades of violent sectarian conflict between two national identities which can broadly be defined as Nationalist/Republican, seeking the reunification of Ireland, and Unionist/Loyalist, wishing Northern Ireland to remain part of the UK. While peace was officially declared in 1998, Northern Ireland still remains highly culturally divided. For further discussion see Walker.

further, some brief comments on the theory of recognition and the socio-political condition of “life”, as theorised by Judith Butler, must be engaged with.

### **Theorising Strategy: Recognition of Life, Livability and the Frame**

When recognition is used in this sense it is referring to the conditions afforded by localised social environments which allow us to engage with others to affirm one another’s existence, and, in doing so, maintain self-affirmation. The theory of recognition decentres the modern conception of the individualistic and atomistic subject by stressing the ethical intersubjective nature and dependency of life (Williams, 1997:2). Recognition is part of the ongoing construction of the self, operating to produce a subject through externality; all subjects need the “Other –individuals, state, community–and the corresponding ‘social dimension of normativity that governs the scene of recognition’ to exist (Butler, 2005:23). Recognition of life is thus inextricably linked to the formation of the self as a socially viable being, encouraging intersubjective respect and the creation of individual identity (Douzinas and Gearey, 2005:197; Douzinas, 2000:263-296). Lack of recognition, or misrecognition, not only demeans and degrades conceptions of the self as an individual, or as part of a wider group, but also projects discursive messages about these selves and groups, placing certain lives in an inferior position which leaves them vulnerable to oppression and maltreatment (Douzinas and Gearey, 2005:197).

Intersubjective recognition has emerged as a consistent theme in the work of Butler. Kaye Mitchell elaborates that Butler’s approach to recognition precedes from Spinoza’s idea that ‘every human being seeks to persist in his [sic] own being’ to Hegel’s claim ‘that desire is always a desire for recognition’, combining these assertions in her own suggestion that ‘to persist in one’s own being is only possible on the condition that we are engaged in receiving and offering recognition’ (Mitchell, 2008:424 citing Butler, 2004a:31). Recognition for Butler produces the subject in relationship with social and cultural conditions, so the “I” ‘has no story of its own that is not at once a story of a relation – or a set of relations to – a set of norms’ (Butler, 2005:12).

The offering and receiving of recognition in Butler’s work is closely linked to the critical investigation of human life and what she has come to outline the possibilities for “livable” life; socio-political processes of recognition shape who is *recognised* and *recognisable* as a subject capable of living a life that counts (Butler, 2009a:5). Livability, therefore, can be understood as the ability to sustain a socially viable life in our existence as interdependent beings. Butler outlines that there are at least two senses of living; a minimum biological form, and another that establishes the minimum conditions for living a livable life with reference to culturally intelligible ideas of “human” life (Butler, 2004a:39). All human life is exposed and dependent on the other and conditions outside itself, haunted by the possibility of failing to be recognised, always vulnerable to injury, destruction and a lack of livability, requiring various social and economic conditions to be met in order to be sustained (Butler, 2009a:14). This vulnerability is what Butler terms the “precariousness” of life and forms the ontological framework which Butler asserts should guide all social and political action and engagement. In encouraging social engagement with the inevitable precariousness of life it must be acknowledged that ‘there is no life without the conditions of life that variably sustain life, and those conditions are pervasively social, establishing not the discrete ontology of the person, but rather the interdependency of persons’ (Butler, 2009a:19). States of precariousness are distributed differently, and politically, throughout society and this inescapable condition of precariousness means that we must abandon

the protectionism of “life itself”, the precariousness of all life making this an impossible task (Butler, 2009a:18). This acknowledgement of life as precarious and interdependent must move society towards securing the conditions for livable life on egalitarian grounds; realising positive social obligations to provide the basic supports that minimise precariousness and maximise livability (Butler, 2009a:21-22).

Such an analysis leads Butler to outline a new approach to abortion as a social issue, and one which departs from traditional pro-choice discourse of individualistic choice. Butler uses the ontological approach above to assert that ‘perhaps there is a way to retrieve thinking about life for the left and to make use of this framework of precarious life to sustain a strong feminist position on reproductive freedoms’ (Butler, 2009a:15-16). Following this, the considerations guiding debate on abortion should not be “life itself”, but should always be the interdependent conditions of life, where “life” is something that requires these conditions in order to become livable (Butler, 2009a:23). Therefore, Butler asserts that ‘the point is emphatically not to extend the “right to life” to any and all people who want to make this claim on behalf of mute embryos, but rather 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’ (Butler, 2004a:12). While corporeal autonomy remains part of Butler’s envisaged approach, the central focus is shifted to livability and the asking of questions about which lives are recognisable as valued reproductively and what type of vulnerability current organisation of reproductive relations permit us to see and hear (Butler, 2004b:21).

In moving towards such a renewed approach to “life”, Butler’s work also suggests a rethinking of “pro-choice” and “pro-life” binarisation and how this qualifies what will and will not count as meaningful political discourse (Butler, 2004a:107). In ‘Is Kinship Always Already Heterosexual?’ Butler outlines the need to critically reflect on why the parameters of political debate on gay marriage have been fixed where they currently stand – “for” and “against” – and how this has come to restrict political engagement (Butler, 2004a:107). These comments may quite easily also be applied to the abortion debate. Butler sets out to question why under present conditions “becoming political” depends on the ability to operate within currently existing binaries (Butler, 2004a:107). What is needed is attention to the foreclosure of the possible that takes place in the framing of political debate and a different conception of politics that attends to its own foreclosures (Butler, 2004a:108). In order to work towards such a rethinking of the abortion debate using a radicalised approach to “life” as not the internal feature of a monadic individual, but a conditioned process socio-political process (Butler, 2009a:23), it is submitted that analysis must start by investigating the current possibilities that exist within feminist strategising in favour of reproductive freedoms. While rejecting the liberal foundations of pro-choice discourse, it is possible that elements of such strategising may be capitalised upon in order to work towards a renewal of the abortion debate. In seeking to undertake such analysis Butler’s theorising on frames and framing provides an additionally useful tool.

The frame fits into Butler’s theory as a means of deploying socio-cultural recognition of life. While the concept is not unique to Butler, Butler’s particular exploration of framing in the context of her wider work offers some unique insights which are particularly salient for the current analysis. Butler considers the “frame” as a discursive means of interpretation which is applied to an idea, situation or event, having the effect of controlling and delimiting its surrounding discourse – what can be seen, heard and felt – thereby working to establish the parameters of reality itself (Butler, 2009a:xi). The frame acts as an interpretive lens, filtering what can be understood, and the meanings which can be gathered from this understanding.

Frames operate everyday from the micro level of social relations to the macro level of global political relations, all aiding the presentation of partial accounts of social phenomena. No frame can ever be fully inclusive but always forecloses something in an attempt to control and stabilise what is represented inside itself (Butler, 2009a:xiii). In interacting with processes of recognition, frames aid in the differential distribution of the precariousness of human life, those who are framed as unrecognisable are characterised by precariousness (Butler, 2009b:xii-xiii).

Butler's discussion of the operation of the frame resonates particularly with strategising on abortion and its relation to processes of recognition. Zero sum games of recognition have often played out in framing of the debate, pitting the life of the foetus against the woman and eschewing wider approaches to life as an intersubjective, socio-political process. Such framing is significant as it not only affects our intellectual understanding of the lives involved, but our moral responses to them and the suffering they are perceived to undergo (Butler, 2009a:41). Butler elaborates that 'whether and how we respond to the suffering of others, how we formulate moral criticisms, how we articulate political analyses, depends upon a certain field of perceptible reality having already been established' (Butler, 2009a:64). In contemporary feminist framing, therefore, it is important to analyse the approach to life which is being taken and ask whether any space exists to stimulate societal debate on the politics of life and livability. Indeed, for Butler, frames are iterable structures, requiring repetition to maintain coherence and authority. The iterability of the frame leads Butler to assert that it is not the assertion of new frames that radical politics should work towards, but the reiteration of currently existing ones, the reworking of what is already there in new directions (Butler, 2009a:12). Keeping these comments in mind, attention will now turn to contemporary developments in framing the abortion debate by pro-choice advocates in Northern Ireland considering possibilities for reiteration of feminist strategising in a way that would stimulate re-engagement with the concept of "life" within the abortion debate.

## **Strategic Approaches and Frames of Understanding**

### *a. The Health Frame*

The first frame employed by pro-choice strategising in Northern Ireland which can be analysed using Butler's framework on recognition, life and livability can be described as the health frame. Increasingly pro-choice advocacy in a variety of global locations, including the Republic of Ireland, has turned to the language of health to frame their concerns about the wrongs of restrictive abortion access (see McBride Stetson, 2001; Smyth, 2005:125). The major benefit of such a frame for pro-choice strategising is that it offers potential to counter the moralistic framing of abortion which often seeks to foreclose debate on women's health and wellbeing. The work of Fegan and Rebouche (2003:233) has elaborated how, in the Northern Ireland context, the health frame has emerged as the safest option for pro-choice lobbyists and advocates. Indeed, the employment of health as a means of attempting to reframe the debate in the province occurred as early as the 1990's when the Northern Ireland Women's Coalition sought to relocate political discussion of abortion within the parameters of health (Fegan and Rebouche, 2003:232). The health frame also very much directed the decade-long judicial review litigation in which the Family Planning Association Northern Ireland sought to achieve guidelines on the legal parameters of abortion access for women and clinicians from the Department of Health Social Services and Public Safety (See Fletcher, 2005).

The health frame has been most recently employed by Northern Irish pro-choice advocates following the highly publicised death of Savita Halappanavar in November 2012 after

being denied a life-saving termination 17 weeks into her pregnancy at a Galway hospital. Admitted to hospital experiencing a miscarriage Savita Halappanavar was told that her pregnancy was no longer viable, but that she could not be provided with a legal abortion. She died four days later from septic shock and E coli (BBC News 13 April 2013). The death of a woman due to a lack of clarity on when abortion provision is legal highlighted for pro-choice activists the threat to life that restrictive abortion provision generates on both sides of the Irish border (BBC News 16 November 2012). However, events surrounding the death of Savita did more than draw attention to concerns of physical life alone; the framing of the wrongs involved in this case can be seen to potentially create space for deeper engagement with “life” in the Butlerian sense. This potential was revealed in the public performance of vigils which took place across Ireland, including in Belfast, in the days and weeks following Savita’s death. These public acts of mourning worked towards a kind of social undoing which foregrounded life’s precariousness and societal obligations to it. As Butler states, ‘open grieving is bound up with outrage, and outrage in the face of injustice... has enormous political potential’ (Butler, 2009a:39).

Butler directly engages with the question of mourning in a number of locations in her work. In her early work she outlines that the heterosexual subject’s melancholia lies in the foreclosed mourning of homosexual desire so that all identity is troubled at its origin, shadowed by an incompleteness that can never be fully acknowledged (Butler, 2006:86-89). In *Precarious Life* Butler develops this analysis of mourning and foreclosure further to consider public prohibition of mourning in cultural contexts such as the AIDS epidemic and the “War on Terror” post-9/11 (see McIvor, 2012:416). Mourning becomes less an individual pathology, although the melancholic subject remains, and more a political and cultural phenomenon where some losses are cast as unspeakable by current regimes of recognition. As Butler outlines, ‘where there is no public recognition or discourse through which such a loss might be named and mourned, then melancholia takes on cultural dimensions’ (Butler, 1997:139). In such contexts Butler (2004a:23) advances making grief itself a resource for politics.

A third sense of mourning, however, can be detected for Butler, and it is this third sense which reveals the potential in the most recent use of the health frame in Northern Irish pro-choice strategy. Butler extends her analysis of public mourning to consider the ways in which acknowledging and mourning loss publically can have a dispossessing effect, revealing that I depend and am impinged upon by the exposure and dependency of others, and can culture ethical attitudes of generosity and humility towards the other whom life depends upon (Butler, 2009a:14). Acknowledging the loss of another due to the inevitable precariousness which faces all life turns Butler from considering situations of prohibited mourning alone to emphasising the ethical dispositions which may be cultivated through such practices of acknowledgement. This splits the work of mourning so that ‘it operates as an effective means of mobilising rage against the material and discursive powers that be while simultaneously involving an ethical responsiveness to the other and to ‘precarious life’ (McIvor, 2012:415). In this shift in Butler’s work, recognition of loss gains the goal of creating an ethical response to loss, suffering and universal precariousness which could shape a less violent society. Acknowledging the nature of interdependent “life” allows us to understand that we are dispossessed by the other, by the other’s precariousness, leading us to realise our ethical obligations in social life.

Experiences of dispossessing mourning are therefore fundamentally linked to the revitalised approach to life which Butler outlines. Acknowledging the precariousness of all life and engaging in debate as to the egalitarian obligations we collectively owe to life makes



subjects responsive to the losses and mourning of others. Importantly, once these losses and this mourning have been acknowledged the task is not merely to resolve them as quickly as possible, but to consider them. Butler insists upon ‘*not* resolving grief and staunching vulnerability too soon... but to take the very unbearable of exposure as the sign... of a common vulnerability’ (Butler, 2005:100). Thus, Butler asks ‘if we stay with the sense of loss, are we left feeling only passive and powerless, as some might fear? Or are we, rather, returned to a sense of human vulnerability, to our collective responsibility for the physical lives of one another’ (Butler, 2004b:30). As David McIvor (2012:420) elaborates on this point, ‘incessant mourning keeps open our relations to others, provides a constant reminder of our constitutive sociality, and undergirds a more generous and humble approach to shared lives together’.

From identifying with the other and the other’s suffering, Butler sees mourning as allied with a critical reflexivity about the ways in which certain lives figure as more valuable, more human than others. Grief and mourning for Butler are experiences that are ‘symptomatic of the inter-corporeal nature of existence: the extent to which one’s sense of self depends on others’ (Lloyd, 2007a:141). They act as forms of dispossession which engender a kind of undoing of one by another so that ‘my own foreignness to myself is, paradoxically, the source of my ethical connection with others’ (Butler, 2004b:46). The discomfort and difficult demands made upon us by the questions of life facilitated by public mourning and the health frame in late 2012 in Northern Ireland, therefore, holds the potential for an opening towards concerns of vulnerability, recognition, interdependency and community. It exposes the precariousness of life and this precariousness as the moment when ethical relations are foregrounded and one is undone by unavoidable dependency on the other.

In Northern Ireland, public mourning in the context of the death of Savita can be observed to have worked towards a dispossessing opening of the debate on gender, life and abortion, if only incrementally. It made discussion and recognition of the gendered vulnerability of life public and imperative, and provided space for those who are “pro-life” in the wide sense to engage. Definite shifts can also be detected in media reporting and in general attention to the issue of abortion in Northern Ireland. Perhaps such a re-consideration of the health frame and its underlying possibilities to engender cultures of dispossessing mourning does have potential in working towards a new debate on life and livability and perhaps such potential has come at a significant time. It is possible that cultures of social dispossession could underlie and interact with the effects of another recent strategic approach of the pro-choice movement in the Northern Ireland context – use of the rights frame and in particular the claiming of human rights.

#### *b. The Rights Frame: From Framing to Claiming*

Viewing the issue of abortion through the frame of human rights is also an approach which has proliferated pro-choice strategising in recent years. A significant factor in moves towards such framing has been the increasing dominance and authority of international human rights discourse, and the effect such discourse has had in securing changes to domestic laws (Cook et al., 2003:155, 215). As a result, human rights have come to be regarded as constituting a “rich, infinitely mouldable raw materials out of which individuals, communities and societies can shape their reproductive and sexual identity” (Cook et al., 2003:215). However, Butler reminds us that human rights, and the “human” they pertain to, are fundamentally caught up with norms of recognition and power differentials (Butler, 2004a:2, 17-39). Butler also outlines the “human” of human rights as necessarily contingent and not fully inclusive of the range of currently unintelligible and unrecognised ways of being and living (Butler, 2004a:36-38). As a result,

localised employment of rights framing must not be accepted uncritically, and must be contextually examined in terms of the engagement of such framing in local processes of recognition, life and livability.

In Northern Ireland, pro-choice strategy has sought to engage with the framing of abortion as an issue of rights on a number of occasions. To date, paramount amongst these has been engagement with the Northern Ireland Bill of Rights debate which took place between 1998 and 2008. Ultimately this process did not achieve recognition of abortion as an issue relevant for inclusion in a potential Bill. Despite this lack of success in using rights framing to expand the localised “human” to take into consideration the gendered experience of abortion, pro-choice strategising has turned to the frame of rights once again. By 2009, pro-choice strategy was in a position whereby a radical shift to overcome the mainstream morality-based framing dominating the local abortion debate was required. Utilising the language and symbolic signification of rights alone appeared insufficient to successfully challenge prevailing cultures of recognition; a more radical move was required. This radical move came with engagement in the practice of rights claiming.

In December 2010 the Family Planning Association Northern Ireland, Northern Ireland Women’s European Platform and grassroots organisation Alliance for Choice, submitted evidence to the CEDAW Optional Protocol inquiry procedure. This procedure grants the Committee power to initiate inquiries into “grave or systematic” violations of rights under the 1979 Convention. It provides an international platform for the scrutiny of domestic human rights violations and the making of recommendations by the Committee which are politically significant, although not legally binding. To date, only one inquiry has been made into the abduction, rape and murder of women in and around Ciudad Juárez, State of Chihuahua in Mexico (See CEDAW).

The Northern Ireland submission was made on the basis that current legal provision on abortion violates provisions of CEDAW regarding policy measures to address discrimination; sex role stereotyping and prejudice; education; health; rural women; and marriage and family life. The submission focused upon the UK Government’s persistent failure to act upon this situation, emphasising that primary responsibility for implementing the rights contained in CEDAW lies with central Government at Westminster, and that devolution could no longer be used to ‘excuse the significant differences in the rights and equality of women within the UK’ (Northern Ireland Family Planning Association, Northern Ireland Women’s European Platform and Alliance for Choice paragraphs 3.1-3.2). The submission sought to petition the CEDAW Committee to instigate an inquiry into the situation and to recommend that a new legal framework be put in place that is non-discriminatory to women, does not criminalise and permits termination in cases of rape, incest and foetal abnormality. As such, the submission moved the pro-choice rights frame to actively claim rights. Given Butler’s view of human rights as implicated in norms of recognition and current discourses of intelligibility, asserting a claim to rights where they currently do not exist could effect a potentially significant shift in recognition of life.

Claiming rights has indeed come to be viewed as a practice of demanding social recognition by seeking to arrest the flight of the floating signifier of the “human” and attach it to previously excluded identities and experiences (Douzinas and Gearey, 2005:191). This claiming as a struggle for recognition can be understood as both symbolic and material; challenging the language and the remit of rights in relation to certain lives, but also being ontologically consequential in potentially altering processes of subjection themselves (Douzinas, 2000:258).

Therefore, rights claiming is not just an empty language claim, but can actively help to begin realisation of the results it seeks to achieve. It is this nature of rights claiming which deems it a performative exercise with potential to challenge the cultural norms regulating life and livability. In what follows below, Butler's work on performativity, and its development by Karen Zivi, will be utilised to consider how the CEDAW submission shift in pro-choice strategising can be understood as performatively empowering and sustaining a demand for the recognition of life and more inclusive livability, gendered livability in particular.

### **Performing Rights, (Re)Performing Gender**

Judith Butler is perhaps most widely known for her theory of gender performativity formed in her early work. This theory suggests that subjects are, from the very beginning, produced by systems of discursive and normative power; subjected to them, formed, defined and reproduced in accordance with the requirements of those structures (Butler, 2006:2). Butler employs this view of subject formation to look specifically at cultural hegemonies which provide and maintain dominant scripts of gender. She suggests that any subject's social intelligibility and viability is premised upon ongoing repetition of culturally acceptable gender norms under conditions of duress; punitive social, and often material, consequences exist if subjects do not repeat the performance of gender as expected. These repeated performances constitute the identity that they purport to be, so that 'gender is always a doing, though not a doing by a subject who might be said to pre-exist the deed' (Butler, 2006:34). Accordingly, gender is not a noun or a static cultural marker, but an incessant and repeated action (Butler, 2006:151).

While Butler does see subjects as compelled to repeat gender to maintain social intelligibility, the performative repetition of gender scripts is not completely fixed. Opportunities exist to disrupt these performances and create space for subversive performances by acting upon the instability of current significations, generated by their need for constant repetition. Repeating norms differently works to produce alternative domains of intelligibility and *resignification*. This resignification is possible not by virtue of an autonomous, voluntaristic subject, but through the creative possibilities offered by the dual nature of power which Butler derives from Foucault (Foucault, 1990:82-96). This view sees power as both subjecting individuals, and thereby bringing intelligibly gendered subjects into existence, but also offering creative possibilities as subjects may 'take an oppositional relation to power that is, admittedly, implicated in the very power one opposes' (Butler, 2004b:17).

It is possible that the practice of rights claiming can aid this resignification of performative gender by publically advocating subversive repetitions of what is understood to be "woman" or female life. It is at this point that performativity and performative subversions interact with cultures of livable and intelligible life. Such subversive repetitions made through the process of claiming rights can be viewed as performative contradictions (Butler, 2004a:191) which may rework and unsettle passionate attachments to gender subjection and so open up space for subversive performances of gender in social life more generally. It is through this newly created space for subversive performativity that unrecognised lives may lay claim to what they require. This possibility for rights claiming to engage with processes of gender performativity and the resignification of gendered life draws upon the performative nature of rights themselves, which has been elaborated by Karen Zivi. Zivi (2009) outlines that rights are traditionally understood to be "things"; in making a rights claim it is perceived that the claimant is describing something already in existence. However, the act of claiming a right is much more

than this, something is actively being performed and produced in making the claim (Zivi, 2009:165). When those who are already culturally recognised as possessing rights make rights claims they performatively repeat the current cultural relations which sustain their recognition and place in society. However, when lives currently deemed culturally unrecognisable cite the conventions of rights they are placing current discourses of recognition into crisis (Zivi, 2009:165). It is in this respect that rights claiming is performative, actively creating, reinforcing or - importantly - challenging the normative framework in which the claim is made.

Thus, the performativity of rights claiming may intersect with what Butler outlines as the performativity of gender in order for hegemonic gender identities to be contested and reconfigured rather than reified (Zivi, 2005:379). Butler's more recent corpus, influenced by her own personal involvement in the LGBT human rights movement, moves towards endorsing the performative potential of rights to engender new ways of recognising and conceiving identity. For example, LGBT human rights campaigns are advanced as potentially aiding the resignification of the range of lives which are recognisable and valued in society; 'one of the central tasks of lesbian and gay international human rights is to assert in clear and public terms the reality of homosexuality, not as an inner truth, not as a sexual practice, but as one of the defining features of the social world in its very intelligibility' (Butler, 2004a:29-30). When those who are unrecognised assert a right they are not struggling with rights attaching to persons, but are interacting with norms in order to be recognised as persons and the social and political processes by which recognisable life is articulated (Butler, 2004a:32).

Therefore, rights claiming's involvement in the citation of norms can open up subversive strategies for alternative localised gender performances of what is currently intelligible as "woman" and resultantly an opening of gendered livability. Asserting that women should be recognised as possessing access to reproductive choice in Northern Ireland through the public claiming of rights reveals what is currently understood as sex and gender to be unstable social productions which are open to different, foreclosed performances. Utilising rights claiming as part of a feminist strategy to counter restrictive abortion provision, therefore, carries the potential to publically challenge how women and their reproductive experiences are culturally recognised and the precarity involved in such recognition. This potential is coupled with the wider possibility of the troubling of gender and its performative maintenance as a social doing more generally which may challenge pre-existing and taken for granted ways of being, thinking and doing life (Zivi, 2009:168).

### **Precarious Conclusions**

Analysis in this article has sought to consider two strategic approaches to pro-choice framing of abortion in Northern Ireland from the perspective of Judith Butler's theoretical work on life and possibilities to reiterate the framing operating in each in order to work towards more radical approaches in feminist advocacy. Engagement with two recent framing developments in this location has illustrated the potential that current pro-choice strategising may contain for working towards a renewed approach to life in the abortion debate and in social life more generally. The attention to the vulnerability of intersubjective life facilitated through the health frame provides an opportunity to engage public debate on society's egalitarian obligations to minimise precarity and maximise livability. Similarly, the public claiming of rights as part of the rights frame engages the question of gendered life and its apparent naturalness in a new and potentially subversive way. Feminist strategising must capitalise upon such moments in order to

encourage a rethinking of life as a process sustained by social and political conditions, and a shift beyond the binarised paralysis that the abortion debate has been caught in.

However, it is important to note that the potential for the rethinking of life through such capitalisation must be viewed as just that; potential. The reiteration of any social concept or idea is always itself precarious, open to unpredictable and uncontrollable results. This lesson is evident from Butler's work on performativity. For Butler, the performative contradiction offers no performative promises because any reiteration is inherently unstable, unpredictable and dependent upon contextual reception (see Lloyd, 2007b). While it is this unpredictability that opens up the possibility for novel and subversive repetitions to current ways of thinking and being, it is also what renders the effect of any subversive repetition inevitably unsure. Subversive reiterations can operate to aid the denaturalisation of normative significations and usages, but equally the iteration may be deemed socially unintelligible with potentially damaging results (Lloyd, 2007a:64; Butler, 2004a:3).

Nevertheless, because lack of predictability is an immutable condition of any democratic action, subversive or non-subversive, the rethinking of life in abortion debate and reiteration of feminist strategising should not be discouraged. It is the incessant contestation for disruption which Butler sees as characteristic of any radical practice (Butler, 2004a:39). Feminist engagement in the radicalisation of the abortion debate should embrace the unpredictability of alternative, socially challenging approaches made possible through the reiteration of current pro-choice frames rather than allowing the possibility of failure to breed political paralysis. Engaging in radical politics requires activists to see their activity not as serving to bring political debate to an end but as an opening (Zivi, 2012:27). It is this opening which the abortion debate requires in order to invigorate an approach which will encourage more ethical political and legal encounters with life.

## References

- BBC News. (2012) "Savita Death Leads to Call for Clearer NI Abortion Law". 16 November 2012. <<http://www.bbc.co.uk/news/uk-northern-ireland-20353104>>. Online.
- (2013) "Savita Halappanavar: Medical misadventure verdict in inquest". 19 April 2013. <<http://www.bbc.co.uk/news/world-europe-22213630>>. Online.
- Butler, J. (1997) *The Psychic Life of Power: Theories in Subjection*. California: Stanford University Press.
- (2004) *Undoing Gender*. New York; London: Routledge.
- (2004) *Precarious Life: The Powers of Mourning and Violence*. London: Verso.
- (2005) *Giving an Account of Oneself*. New York: Fordham University Press.
- (2006) *Gender Trouble: Feminism and the Subversion of Identity*. 2<sup>nd</sup> ed. New York; London: Routledge.
- (2009) *Frames of War: When is Life Grievable?* London: Verso.
- (2009) "Performativity, Precarity and Sexual Politics". *AIBR: Revista de Antropología Iberoamericana* 4(3): i-xiii.
- Committee on the Elimination of All Forms of Discrimination Against Women. (2005) *Report on Mexico produced by the Committee on the Elimination of Discrimination Against Women under Article 8 of the OP to the Convention, and Reply from the Government of Mexico*. UN Doc CEDAW/C/2005/OP.8/MEXICO.
- Cook, R, B Dickens and M Fathalla. (2003) *Reproductive Health and Human Rights: Integrating Medicine, Ethics and Law*. Oxford: Oxford University Press.
- Douzinas, C. (2000) *The End of Human Rights: Critical Legal Thought at the Turn of the Century*. Oxford: Hart.
- Douzinas, C and A Gearey. (2005) *Critical Jurisprudence: The Philosophy of Justice*. Oxford: Hart.
- Fegan, E and R Rebouche. (2003) "Northern Ireland's Abortion Law: The Morality of Silence and the Censure of Agency". *Feminist Legal Studies* 11(3): 221-254.
- Fletcher, R. (2005) "Abortion Needs or Abortion Rights? Claiming State Accountability for Women's Reproductive Welfare". *Feminist Legal Studies* 13(1): 123-134.
- Foucault, M. Trans. R Hurley. (1990) *The History of Sexuality Volume One: An Introduction*. London: Penguin.
- Lloyd, M. (2007a) *Judith Butler: From Norms to Politics*. Cambridge: Polity.
- (2007b) "Radical Democratic Activism and the Politics of Resignification". *Constellations* 14(1): 129-146.
- McBride Stetson, D, ed. (2001) *Abortion Politics, Women's Movements and the Democratic State: A Comparative Study of State Feminism*. Oxford: Oxford University Press.
- McIvor, D. (2012) "Bringing Ourselves to Grief: Judith Butler and the Politics of Mourning". *Political Theory* 40(4): 409-436.
- Mitchell, K. (2008) "Unintelligible Subjects: Making Sense of Gender, Sexuality and Subjectivity After Butler". *Subjectivity* 25: 413-431.
- Newsletter, The. (2013) "Why the Abortion Act Wasn't Extended to the Province". 2 January 2013. <<http://www.newsletter.co.uk/news/politics/latest/why-abortion-act-wasn-t-extended-to-the-province-1-4633980>>. Online.

- Northern Ireland Executive. (2012) "Termination of Pregnancy Statistics Revealed". 22 August 2012. <<http://www.northernireland.gov.uk/news-dhssps-220812-termination-of-pregnancy>>. Online.
- Northern Ireland Family Planning Association, Northern Ireland Women's European Platform and Alliance for Choice. (2010) *Submission of Evidence to the CEDAW Committee Optional Protocol: Inquiry Procedure*. Belfast: Family Planning Association.
- Roulston, C. (1989) "Women on the Margin: The Women's Movement in Northern Ireland, 1973-1988" *Science and Society* 53(2): 219-236.
- Sales, R. (1997) *Women Divided: Gender, Religion, and Politics in Northern Ireland*. London; New York: Routledge.
- Smyth, L. (2005) *Abortion and Nation: The Politics of Reproduction in Contemporary Ireland*. Aldershot: Ashgate.
- (2006) "The Cultural Politics of Sexuality and Reproduction in Northern Ireland" *Sociology* 40(4): 663-680.
- Walker, B. (2012) *A Political History of the Two Irelands: From Partition to Peace*. Basingstoke: Palgrave MacMillan.
- Williams, R. (1997) *Hegel's Ethics of Recognition*. Berkeley: University of California Press.
- Zivi, K. (2005) "Feminism and the Politics of Rights: A Qualified Defense of Identity-Based Rights Claiming" *Politics and Gender* 1(3): 377-397.
- (2009) "Rights and the Politics of Performativity" in T Carver and S Chambers (eds). *Judith Butler's Precarious Politics: Critical Encounters*. New York; London: Routledge: 157-170.
- (2012) *Making Rights Claims: A Practice of Democratic Citizenship*. Oxford; New York: Oxford University Press.