

William & Mary Journal of Race, Gender, and Social Justice

Volume 19 (2012-2013)

Issue 1 *William & Mary Journal of Women and the Law: 2012 Special Issue: Gender and Post-Conflict Transitional Justice*

Article 4

December 2012

Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland

Catherine O'Rourke

Follow this and additional works at: <https://scholarship.law.wm.edu/wmjowl>



Part of the [Law and Gender Commons](#), and the [Military, War, and Peace Commons](#)

Repository Citation

Catherine O'Rourke, *Dealing with the Past in a Post-Conflict Society: Does the Participation of Women Matter? Insights from Northern Ireland*, 19 Wm. & Mary J. Women & L. 35 (2012), <https://scholarship.law.wm.edu/wmjowl/vol19/iss1/4>

Copyright c 2012 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.

<https://scholarship.law.wm.edu/wmjowl>

DEALING WITH THE PAST IN A POST-CONFLICT SOCIETY:
DOES THE PARTICIPATION OF WOMEN MATTER?
INSIGHTS FROM NORTHERN IRELAND

CATHERINE O'ROURKE*

INTRODUCTION

- I. WOMEN'S PARTICIPATION AND TRANSITIONAL JUSTICE:
CLAIMS OF PROCESS OR SUBSTANCE?
- II. WHY DOES WOMEN'S PARTICIPATION MATTER? MAPPING
CLAIMS IN THEORY
- III. WHY DOES WOMEN'S PARTICIPATION MATTER? MAPPING
CLAIMS IN WOMEN'S ACTIVISM
- IV. "AM I THAT NAME?" WOMEN IN THE REPORT OF THE
CONSULTATIVE GROUP ON THE PAST
- V. A WAY FORWARD? ENGENDERING THE PAST, NORTHERN
IRELAND AND BEYOND
 - A. *The Justice Claim: A Politics of Presence and the Need
for Women's Participation*
 - B. *The Different Agenda Claim: A Politics of Ideas and
Articulating What Women Can Contribute*
 - C. *The Politics of Care Claim: A Feminist Politics of the
Female Body*
 - D. *The Larger Dream Claim: A Feminist Politics of
Difference and Democracy*

INTRODUCTION

*I believe that dealing with the past is very important
for women—important because it has also to do with
what is made visible in the past It touches
another theme, which is to what extent are women
political subjects. If you don't recognize women as*

* Lecturer in Human Rights/International Law and Gender Research Coordinator, Transitional Justice Institute ("TJI"), University of Ulster. The first version of this article was presented as the keynote paper in the seminar "Feminism and Truth Recovery," organized by the Women's Resource and Development Agency and Hanna's House in Belfast in February, 2011. Thanks to my colleagues in Hanna's House for their input on the presentation. In particular, to Clare Hackett, who commented on a longer written draft of the paper. Thanks also to University of Ulster colleagues, Eilish Rooney and Carmel Roulston, for input on the paper. Particular thanks to TJI Associate Director, Professor Fionnuala Ní Aoláin, for extensive input and comments. Final thanks are to Katie Skeehan for referencing and proofreading. Mistakes which remain are my own.

*political subjects in the past, historically, they will not be recognized in the present.*¹

*[W]omen were not recognised for their roles and experiences throughout the conflict and therefore their invisibility cannot but be mirrored in the post-conflict structures. We expect the structures proposed to deal with the legacy of the past take this as their starting point and seek to address this gross inequality.*²

This article is concerned with the participation of women in dealing with the past, both as a priority for women's movements and as a practical matter for transitional justice processes. The article aims both to describe and critique a particular set of texts—primarily the 2009 Report of the Consultative Group on the Past in Northern Ireland (the Report),³ but also the documentary interventions made by local women's organizations into that Report—as well as to open up critical space for similar projects in other areas. Fundamentally, the article asks: does the participation of women matter in dealing with the past? And if so, what difference does it make? I draw principally on feminist political theory on the participation of women in politics, as well as gender scholarship on conflict and transitional justice, as a theoretical framework for this analysis. I want to focus less on debating the merits of such theoretical positions, and more on how their interventions can be useful in analyzing a specific case.

The first part of the article offers a context for why women's participation has emerged as central to both women's movement demands in transitional justice and in policy responses in the area. In Part II, the article then synthesizes the key theoretical claims made in favor of women's increased participation in politics, namely justice, different agenda, politics of care, and the larger dream, and identifies them as claims of both process and substance. Part II also extends these claims by analogy to claims for women's participation in official processes to deal with the past. The third and fourth parts of the article outline, respectively, the context of official efforts in

1. Interview with Lorena Fries, Dir., Chilean Nat'l Inst. Of Human Rights, in Santiago, Chile (Oct. 27, 2008).

2. ETAIN O'KANE, A RESPONSE TO DEALING WITH THE PAST IN NORTHERN IRELAND: THE RECOMMENDATIONS OF THE CONSULTATIVE GROUP ON THE PAST 27 (2009).

3. ROBIN EAMES ET AL., CONSULTATIVE GROUP ON THE PAST, REPORT OF THE CONSULTATIVE GROUP ON THE PAST IN NORTHERN IRELAND (2009) [hereinafter REPORT OF THE CONSULTATIVE GROUP ON THE PAST].

Northern Ireland to deal with the past and women's movement interventions into dealing with the past and the prominence of claims for women's participation therein. I contend that demands for women's participation in dealing with the past—rather than being grounded in equality claims about the justice requirements of women's equal participation—are predominantly linked to consequentialist claims about the substantive outcomes that women's participation will bring to dealing with the past. These consequentialist claims may prove effective in terms of holding diverse women and women's organizations together in their interventions into official processes to deal with the past. The article describes, however, the very limited traction that these claims have achieved in an official process that is largely disinterested in the substantive outcomes that women's participation is said to guarantee. I argue that the conflation of participation as a question of process—that women should, as a matter of justice, be involved in related decision-making—with participation as a guarantee of substance—that women's participation will lead to a certain set of predetermined outcomes—is both problematic in theory and unhelpful in terms of feminist politics. I conclude by proposing a novel third way that acknowledges a tentative, though dynamic and evolving, relationship between women's participation as process and substantive outcomes in dealing with the past, while continuing to ground calls for women's participation within justice claims.

I. WOMEN'S PARTICIPATION AND TRANSITIONAL JUSTICE: CLAIMS OF PROCESS OR SUBSTANCE?

The term “transitional justice” has come to encompass a range of legal and quasi-legal mechanisms designed to deliver accountability and redress for past human rights violations in states emerging from sustained periods of political violence.⁴ Initiatives such as international trials, truth commissions, and reparations are increasingly prominent and standardized in the aftermath of mass human rights violations.⁵ Transitional justice is now big business, bringing with it substantial international energy, attention, and resources to post-conflict and post-authoritarian states.⁶ With the expansion of the practice and funding of transitional justice, the objectives assigned

4. See, e.g., HAMBER ET AL., PAST IMPERFECT: DEALING WITH THE PAST IN NORTHERN IRELAND AND SOCIETIES IN TRANSITION (1998) (presenting papers that discuss accountability issues surrounding dealing with the past in post-conflict Northern Ireland).

5. See, e.g., INT'L CTR. FOR TRANSITIONAL JUSTICE, DONOR STRATEGIES FOR TRANSITIONAL JUSTICE: TAKING STOCK AND MOVING FORWARD 4 (2007) (summarizing the remarks of Shahid Malik).

6. See *id.* at 1.

to transitional justice initiatives have similarly grown.⁷ Transitional justice mechanisms and processes were initially attached to more modest objectives: baseline documentation and minimum forms of accountability for a limited number of perpetrators addressing a small number of victims.⁸ Contemporary transitional justice activity, however, aspires to a much broader set of transformative societal objectives, including reconciliation,⁹ economic redistribution,¹⁰ and the establishment of a functioning system of rule of law in fragile states.¹¹ The global expansion of transitional justice activity is occurring at the same time as growing international recognition and institutionalization of the need for a gender perspective in conflict and post-conflict activities, most notably through the Women, Peace and Security (WPS) agenda initiated by United Nations Security Council Resolution 1325 (the Resolution).¹² This confluence of transitional justice expansion and the WPS agenda is motivating a dramatic broadening of feminist objectives in transitional justice.¹³ Whereas transitional justice activity motivated little feminist concern or engagement in the paradigmatic transitions of the Latin American Southern Cone,¹⁴ it is now an area of concerted feminist analysis,¹⁵ policy,¹⁶ and activism.¹⁷ Feminist ambitions in transitional justice range from the modest to the transformative. At a minimum,

7. *See id.*

8. As classically articulated by Chilean President Patricio Aylwin, “justice so far as possible.” CYNTHIA BROWN, AMERICAS WATCH, HUMAN RIGHTS AND THE “POLITICS OF AGREEMENTS”: CHILE DURING PRESIDENT AYLWIN’S FIRST YEAR 5 (1991).

9. *See, e.g.*, BRANDON HAMBER, TRANSFORMING SOCIETIES AFTER POLITICAL VIOLENCE: TRUTH, RECONCILIATION, AND MENTAL HEALTH 153–62 (2009).

10. *See Transitional Justice and Development*, INT’L CTR. FOR TRANSITIONAL JUSTICE, <http://ictj.org/our-work/research/transitional-justice-and-development> (last visited Nov. 6, 2012).

11. *See, e.g.*, U.N. Secretary-General, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies: Rep. of the Secretary-General*, U.N. Doc. S/2004/616 (Aug. 23, 2004).

12. S.C. Res. 1325, ¶¶ 1–18, U.N. Doc. S/RES/1325 (Oct. 31, 2000) [hereinafter S.C. Res. 1325].

13. *See, e.g.*, *Joint Statement—Femmes Africa Solidarité, WILPF & World YWCA: Effective Remedies for Conflict Related Sexual Violence*, WOMEN’S INT’L LEAGUE FOR PEACE & FREEDOM (July 5, 2012), <http://www.wilpfinternational.org/statement-effective-remedies-for-conflict-related-sexual-violence> [hereinafter *Joint Statement*].

14. Catherine O’Rourke, *Transitioning to What? Transitional Justice and Gendered Citizenship in Chile and Colombia*, in *GENDER IN TRANSITIONAL JUSTICE* 136, 145 (Susanne Buckley-Zistel & Ruth Stanley eds., 2011).

15. *See* Christine Bell & Catherine O’Rourke, *Does Feminism Need a Theory of Transitional Justice? An Introductory Essay*, 1 INT’L J. OF TRANSITIONAL JUST. 23, 28 (2007).

16. For example, the United Nations has recently reorganized its gender work to increase emphasis and expertise on issues of post-conflict justice. “Women, War and Peace” is now one of the five focus areas of UN Women. *Women, War & Peace*, UN WOMEN, http://www.unifem.org/gender_issues/women_war_peace/ (last visited Nov. 6, 2012).

17. *See, e.g.*, *Joint Statement*, *supra* note 13.

feminists have intervened to ensure that transitional justice processes “do no harm” and do not expose women to further trauma.¹⁸ A recurrent challenge is holding onto the perverse equality gains of war.¹⁹ Disruptive periods of political violence are typically accompanied by the loosening of social strictures around gender roles.²⁰ For example, the absence of men in a community can provide new space for women’s community leadership (and, indeed, household leadership).²¹ The principle of “do no harm” also means avoiding a return to more restrictive and iniquitous gender roles that preceded violent conflict.²² More optimistic interventions by feminists seek the recognition, documentation, and even a measure of accountability for the harms experienced by women in contexts of political violence.²³ Thus, dealing with the past is now broadly recognized by gender theorists, policymakers, and women’s movements as holding important implications for women and for gender relations in transitional societies.

Of particular concern in this article is the commitment to affirm and advance the participation of women in processes to deal with the past that is embedded within the WPS agenda and broader women’s equality objectives in transitional justice.²⁴ Given that transitional justice processes are undertaken in contexts of formerly (or sometimes persistently) violently divided societies, the degree of consensus amongst women’s organizations and movements about the need for women’s participation in these processes is striking. Irrespective of how deeply entrenched ethnic and other divisions are amongst women, the demand for the participation of women achieve remarkably broad support from women. Locally, conflicts are characterized by a “meta-conflict”—that is, “multiple disagreements over what kind of conflict it is, and about whether it is ‘one’ or ‘many.’”²⁵ Different meta-conflict stances will be underwritten by different experiences of the conflict and will produce differing ideas as to the necessary

18. See, e.g., VASUKI NESIAH ET AL., INT’L CTR. FOR TRANSITIONAL JUSTICE, TRUTH COMMISSIONS AND GENDER: PRINCIPLES, POLICIES, AND PROCEDURES, 20–21 (2006) (explaining the process of taking statements from victims to ensure victims are not retraumatized).

19. Julie Mertus, *Improving the Status of Women in the Wake of War: Overcoming Structural Obstacles*, 41 COLUM. J. TRANSNAT’L L. 541, 555 (2003).

20. *Id.*

21. See *id.* at 543.

22. See Mertus, *supra* note 19, at 544.

23. See Fionnuala Ní Aoláin & Catherine Turner, *Gender, Truth & Transition*, 16 UCLA WOMEN’S L.J. 229, 246–47 (2007).

24. See, e.g., Catherine O’Rourke, *Women, Peace and Security: Does the Participation of Women Matter?*, Presentation at the University of Minnesota Law School Symposium: Gendering Conflict and Post-Conflict Terrains: New Challenges and Opportunities (May 18, 2012).

25. JOHN MCGARRY & BRENDAN O’LEARY, *EXPLAINING NORTHERN IRELAND: BROKEN IMAGES 1* (1995).

ingredients for resolving the conflict.²⁶ Feminist theoretical engagement with post-structuralism,²⁷ and internal feminist critique of silenced dissident voices,²⁸ demonstrate that to suggest the existence of a uniform women's experience of conflict is at best naive, or at worst, despotic. To pose a feminist consensus around the nature of harms experienced by women in conflict would conceal a range of internal disagreements and implicit hierarchies about what harms matter. Predictably, therefore, there is no unified feminist theoretical or political perspective about either the nature or causes of women's experiences of conflict.²⁹ Rather, translating women's diverse experience of conflict into feminist theory and strategy for dealing with the past is an inherently political activity that reveals a range of prior political commitments. These prior political commitments pertain chiefly to whether gender is understood as *causal*, or as *significant*, or as *incidental* to the motivation for harms experienced by women in conflict. The role afforded to gender in determining conflict has profound implications for building a feminist political and legal strategy to ensure the necessary ingredients to resolve conflict. To illustrate, feminist approaches to dealing with the past could privilege the private sphere and women's private experiences of harm, without reference to the context of conflict violence. Alternatively, conflict violence might be placed at the center of women's experiences, and conflict harms privileged. Gender relations of the society might be understood as the single most important determining factor in how a woman experiences conflict. On the other hand, relations between men and women might be understood as only one of a range of important factors influencing a woman's experience of harm, and secondary to the underlying ethnic, ideological, or resource-based causes of conflict. Transitional justice mechanisms are overt sites of meta-conflict negotiations.³⁰ Women in conflict situations will not stand outside this meta-conflict, but they will instead reflect it—albeit in ways that are different from those of men. As Bell and I have argued elsewhere, “[t]he feminist emphasis on the participation of women needs also to be understood as a response to the problems of articulating common political goals in the context of deeply

26. *Id.*

27. *See, e.g.*, FEMINISM/POSTMODERNISM (Linda Nicholson ed., 1990).

28. *See* Valerie Amos & Prabha Parmar, *Challenging Imperial Feminism*, 17 FEMINIST REV. 3 (1984).

29. For an overview of different feminist approaches to epistemology and “standpoint,” *see* SANDRA HARDING, WHOSE SCIENCE? WHOSE KNOWLEDGE? THINKING FROM WOMEN'S LIVES (1990).

30. *See, e.g.*, Christine Bell, *Dealing with the Past in Northern Ireland*, 26 FORDHAM INT'L. L.J. 1095, 1145 (2003).

entrenched differences amongst women, both locally and across global divides.”³¹

The absence of an easy feminist agreement on the content of a “women’s agenda” in transitional justice has resulted in a focus on process: women agree that they should at least be included in the institutions and practice of transitional justice. The extent of the policy traction that this demand for women’s participation has received is illustrated most vividly, though not exclusively, in the first operative provision of the Resolution, which “[u]rges Member States to ensure increased representation of women at all decision-making levels in national, regional and international institutions and mechanisms for the prevention, management, and resolution of conflict”³²

This policy traction is further illustrated in the subsequent UNSC resolutions addressed to the Women, Peace and Security agenda, all of which call for the increased participation of women in the processes and institutions of peace and security.³³ Moreover, “Leadership and Participation” is one of the six focus areas of UN Women.³⁴ The policy focus on participation reflects an understanding of participation as a question of process that women should by right be included within transitional justice processes and institutions. Nevertheless, the focus on participation raises questions of substance: what difference does the participation of women make to such processes and institutions?

II. WHY DOES WOMEN’S PARTICIPATION MATTER? MAPPING CLAIMS IN THEORY

Calls for women’s participation in politics are grounded in at least four broad claims about why women’s participation matters, namely the justice claim, the different agenda claim, the politics of care claim, and the “larger dream” claim. These claims have received extensive examination and reflection from feminist political theorists and all have relevance to calls for women’s participation in dealing with the past and why it matters. This section explains these claims in terms of feminist political theory and applies them to calls for women’s participation in dealing with the past.

31. Bell & O’Rourke, *supra* note 15, at 31.

32. S.C. Res. 1325, *supra* note 12, ¶ 11.

33. S.C. Res. 1889, ¶¶ 1, 4, 6, 11, 14, 15, 18–19, 19b, 19d, U.N. Doc. S/RES/1889 (Oct. 5, 2009); S.C. Res. 1888, U.N. Doc. S/RES/1888 (Sept. 30, 2009); S.C. Res. 1820, ¶ 12, U.N. Doc. S/RES/1820 (June 19, 2008).

34. *Focus Areas*, UN WOMEN, <http://www.unwomen.org/focus-areas/> (last visited Nov. 6, 2012).

First, the *justice* claim is the most compelling and most common argument for women's participation in politics.³⁵ Political decision-making has implications for the entire polity.³⁶ Women constitute half of the polity, and hence the exclusion of women from that decision-making is manifestly unjust. If politics were organized in a truly fair and open manner, one could reasonably expect the roughly equal presence of men and women within democratic structures. The justice argument is regarded as the most theoretically "pure" argument for women's increased participation in politics because it says nothing about what difference this more equal representation of women will make.³⁷ The justice argument relates only to the physical presence of women, and not to the inclusion of specific policy issues or ways of conducting politics typically attributed to women.³⁸ By avoiding claims about what women's participation will substantively bring to politics, the justice argument avoids creating ideal types of womanhood as uniformly caring, or conciliatory, or unmotivated by self-interest.³⁹

When applied to processes for dealing with the past, the justice argument confronts an obvious obstacle in that dealing with the past is not necessarily understood as the concern of all members of the polity the same way that politics is understood as such. Many would argue that victims, however defined, should have stronger moral claims for inclusion in this process.⁴⁰ Others would argue that the "buy-in" of formerly warring parties is needed to ensure an effective and inclusive process for dealing with the past.⁴¹ Feminists would argue that to acknowledge only formerly violent actors as stakeholders in dealing with the past structurally excludes women, given their statistically lower presence amongst armed actors.⁴² Moreover, many feminists argue that women were victims of the conflict, but recognizing their victimhood requires a broader understanding of harms than that which currently underpins most official processes to deal with the past.⁴³

Hence, in dealing with the past, the justice claim links to a broader set of debates over what constitutes "the past." In this way, it differs from deploying the justice claim for women's participation

35. See ANNE PHILLIPS, *THE POLITICS OF PRESENCE* 63 (1995).

36. *Id.* at 81.

37. *Id.*

38. *Id.*

39. See *id.* at 64.

40. See RAMA MANI, *BEYOND RETRIBUTION: SEEKING JUSTICE IN THE SHADOWS OF WAR* 90 (2002).

41. *Id.* at 91.

42. See Bell & O'Rourke, *supra* note 15, at 25.

43. Fionnuala Ní Aoláin, *Sex-Based Violence and the Holocaust—A Reevaluation of Harms and Rights in International Law*, 12 *YALE J.L. & FEMINISM* 43, 44 (2000).

in elected fora. In the context of Northern Ireland, for example, should the human rights violations of state actors be the priority or exclusive concern of official efforts to deal with the past? Alternatively, should the deaths and community intimidation perpetrated by paramilitaries be the priority focus? Does the past refer to the most recent period of political violence, or to the preceding several hundred years of ongoing political tensions and violence? In practical and legal terms, this debate is reflected in disagreements about the appropriate international legal framework for examining culpability in the conflict. Is international humanitarian law, which recognizes the political violence in Northern Ireland as an internal conflict within the parameters of Protocol II to the Geneva Conventions,⁴⁴ and the Irish Republican Army as combatants in that conflict, the appropriate frame? Or, is international human rights law, in which the state responded to criminal violence of pro- and anti-state paramilitaries, the appropriate frame? Deciding which international frame to apply fundamentally impacts which violations we bring into view when dealing with the past. It is difficult to disentangle the justice claim for women's participation in dealing with the past, without entering into the fraught political terrain of just what constitutes the past. This is terrain around which there may be little unity amongst women, women's movements, or feminists.

Second, the *different agenda* claim is motivated by a concern for the political interests that are excluded from decision making when women are excluded from elected fora.⁴⁵ The claim, which carries great intuitive appeal, is that gender is critical in determining one's employment status, income level, leisure time and activities, and caring role and responsibilities.⁴⁶ Women are disproportionately represented in low-wage, insecure, and part-time work, and they bear the disproportionate burden for caring for young and elderly dependent family members.⁴⁷ Where women are excluded from politics, the quotidian material concerns that emerge from this precarious employment situation, greater levels of poverty, and heavy caring responsibilities, are unlikely to be priorities on the political agenda, or adequately understood by those formulating political prescriptions to related social problems.⁴⁸ The claim is, therefore, that greater participation of women in politics would give rise to a "different agenda"

44. Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *opened for signature* Dec. 12, 1977, 1125 U.N.T.S 17513.

45. See PHILLIPS, *supra* note 35, at 66.

46. *See id.*

47. *See id.*

48. *See id.*

in formal politics, one more concerned with the daily material concerns of childcare and family welfare, and the provision of basic goods to all.⁴⁹

The different agenda claim is both logical and compelling. It resonates with most people's own experience of typical gender roles in daily life. It is therefore, as Phillips observes, "an argument from political realism."⁵⁰ The different agenda claim transfers well to demands for women's inclusion in processes to deal with the past. There is now broad scholarly and official recognition—at the UN level at least—that gender is one of the most significant determining factors in one's experience of conflict.⁵¹ This has marked an important starting point for greater policy emphasis at the UN level on the need for the inclusion of women in peace processes, peace negotiations, and transitional justice processes,⁵² in order to ensure that these different experiences of conflict are represented in relevant decision-making.

The different agenda claim is not, however, without its own internal inconsistencies and shortcomings. Most ominously, it carries the shadows of both the theoretical and practical consequences of essentialism. To briefly rehearse the dangers of essentialism here: essentialist beliefs reinforce stereotypes; trap the individual in the images traditionally held of the group; make it hard for those individual to treat their identities flexibly and performatively; de-emphasize the lines of division within groups, to the advantage of dominant groups within the group; and harden lines of division between groups.⁵³ Most seriously, if an agenda of issues can be presumed to be included with the mere inclusion of women, would it not be possible to simply ensure the inclusion of this agenda, without necessarily going so far as to require the inclusion of women themselves? Is it appropriate and/or desirable that women alone should be regarded as uniquely capable of articulating this agenda? Are men not too easily relieved of any responsibility to articulate and defend what are perceived to be "women's interests"? Are women precluded from commenting on other issues that do not belong to a "different agenda," such as fundamental tensions around what temporal period should be investigated, or what legal frame should be applied? The shortcomings noted in the different agenda claim caution against the easy conflation of women with any particular set of

49. *See id.* at 67.

50. *Id.* at 66.

51. *See* U. N. SECRETARY-GENERAL, WOMEN, PEACE AND SECURITY, at ix, 4 U.N. Sales No. E.03.VI.1 (2002).

52. *See id.* at 1.

53. Jane Mansbridge, *Quota Problems: Combating the Dangers of Essentialism*, 1 GENDER & POL. 622, 623 (2005).

issues, in particular when those issues are regarded as tangential or unimportant to an official process to deal with the past in a post-conflict society. Ironically, the idea that women bring a “different agenda” of issues to processes to deal with the past might in fact reinforce the basis for their continued exclusion from such processes.

Third, the *politics of care* claim appeals to women’s presumed “essential” capacity and proclivity for care work. The claim is that the political system should be reordered to emulate the caring relationship between mother and child.⁵⁴ Such a reordering would privilege the alleged maternal values of caring and selflessness.⁵⁵ According to the politics of care claim, the greater number of women in politics would result in a qualitative transformation of politics away from the self-interest and individualism that motivates most contemporary political demands and towards a selfless and cooperative politics belonging to a higher moral order.⁵⁶

Applied to dealing with the past, it is submitted that the “politics of care” claim manifests in the following distinct ways: it claims that, due to their natural caring role, women will invariably privilege “caring” concerns about the material well-being of dependent family members over “selfish” political concerns of, for example, retributive justice.⁵⁷ Further, the “politics of care” claim manifests in claims that women are uniquely capable of transcending “base” political concerns of ethnic identity and national aspirations in order to identify and pursue the common material interests of a divided society.⁵⁸ Finally, the “politics of care” claim works to confirm women’s inherent capacity and natural proclivity for peacemaking.⁵⁹ Thus, unlike the presumed masculine tendency to continue re-fighting the old war through the now non-violent contestation around the meta-narrative, women are believed to prefer a conciliatory stance and to seek common ground between politically opposed parties in political efforts to deal with the past.⁶⁰

Unsurprisingly, the politics of care claim is controversial in feminist theoretical reflection on the importance of women’s greater political participation. Feminist theorists such as Sara Ruddick and Jean Elshtain are in a minority in advocating this notion of “social”

54. See JEAN B. ELSHTAIN, PUBLIC MAN, PRIVATE WOMAN: WOMEN IN SOCIAL AND POLITICAL THOUGHT 349–50 (1981); Sara Ruddick, *Maternal Thinking*, 6 FEMINIST STUD. 342, 361 (1980).

55. See Ruddick, *supra* note 54, at 360.

56. See PHILLIPS, *supra* note 35, at 73.

57. See *id.* at 73–75.

58. See *id.* at 74.

59. See *id.*

60. See *id.*

or “maternal feminism,” in which the caring and selflessness of the maternal relationship would be privileged and located at the center of the political organization of the state.⁶¹ Mary Dietz argues that the generous care given to dependent children by mothers is a poor basis for a political system built on fundamental political equality and mutual respect.⁶² Phillips contends that the politics of care is problematic both because it is founded on women’s supposed superiority over men, and because it “loads too much on women’s role as mothers.”⁶³

In terms of dealing with the past, the problem with politics of care as the basis of any claim for women’s inclusion in decision-making is the extremely restrictive terms of inclusion that result.⁶⁴ The politics of care constructs ideal types of women—as *peacemaking*, as *carers of the community*, and as *transcendent of political divisions*—that are impossibly onerous to fulfill, yet must be met as a precondition to women’s participation in dealing with the past. Moreover, these ideal types preclude women from expressing views that reflect—rather than transcend—ethnic or national loyalties, a desire for retributive justice, or that are unconnected to material concerns of family or community welfare.⁶⁵ Such ideal types provide little space for the participation of, for example, former women combatants, or indeed any woman whose political subjectivity is grounded in a non-maternal role or identity.⁶⁶ Ironically, therefore, the politics of care claim may in fact reinforce the exclusion of most women from processes to deal with the past.

Finally, the *larger dream* claim for women’s greater participation in decision-making links women’s participation to a broader project of “increasing and enhancing democracy.”⁶⁷ The claim for representation is not just aimed at the inclusion of women, but at transformative feminist engagement with politics. The hope is that by changing the players the nature of the game will change in turn, thereby allowing a different set of priorities to emerge. Because women predominate

61. See O’Rourke, *supra* note 14, at 140–41.

62. Mary G. Dietz, *Citizenship with a Feminist Face: The Problem with Maternal Thinking*, 13 POL. THEORY 19, 31–32 (1985).

63. PHILLIPS, *supra* note 35, at 75. It should be noted that the politics of care claim has evolved in feminist theory, moving away from its essentialist origins that assume women are uniquely talented at care work, to seek political recognition of care work as important per se, irrespective of who conducts that work. Joan Tronto, *Beyond Gender Difference to a Theory of Care*, 12 SIGNS 644, 662 (1987).

64. See Tronto, *supra* note 63, at 646–47.

65. See *id.* at 662.

66. Pascha Bueno-Hansen, *The “Other’s” Burden of Being for the Nation: Representations of Women in the Peruvian Truth and Reconciliation Commission*, Presentation at the International Studies Association Annual Convention Panel Presentation (Feb. 15, 2009).

67. PHILLIPS, *supra* note 35, at 189.

in local community-based politics and civil society organizations, the “larger dream” is that the greater inclusion of women in politics will alter the balance between citizens and representatives in modern democracies.⁶⁸ Citizens will be empowered to express their interests and preferences for formal democratic fora through local groups and organizations. Thus, claims for women’s greater participation in politics are linked to aspirations for a more participatory style of democracy, which is also more deliberative.⁶⁹ Through greater participation of citizens and civil society, representing a range of different perspectives, politics will enable greater deliberation and negotiation from people in different positions.⁷⁰

Applying the larger dream claim to official processes to deal with the past would suggest a more inclusive, broad-based, and participatory process that includes all stakeholders (broadly defined) and allows for deliberation amongst those of traditionally opposing positions. This process is transformative—rather than bureaucratic—with an expansive—rather than narrow—understanding of the past and past harms.

III. WHY DOES WOMEN’S PARTICIPATION MATTER? MAPPING CLAIMS IN WOMEN’S ACTIVISM

This section turns to testing the theoretical claims made in Part II. The discussion of theory suggests several avenues for empirical investigation, chiefly: how are claims for women’s participation in dealing with the past grounded in practice? And do these claims work, in terms of securing women’s participation in such processes? The uniqueness of feminism as being both a body of theory *and* a movement has long been recognized as one of its defining characteristics.⁷¹ Indeed, the difficulty of feminism’s position in theory and the academy has been attributed to its dual political ambitions: feminist theory is critiqued within the academy for its overly political objectives, while it is also critiqued by feminist activists for its embedment within a masculinist academy and doctrine.⁷² Further, the idea that feminist theory should be assessed for its value on the ground in transitional societies, where the need for gender justice (however defined) is most acute, is neither radical nor new. Feminist theoretical

68. *See id.* at 189–90.

69. *Id.* at 190.

70. *Id.*

71. *See, e.g.*, Vicky Randall, *Feminism*, in *THEORY AND METHODS IN POLITICAL SCIENCE* 109, 110 (David Marsh & Gerry Stoker eds., 2nd ed. 2002).

72. Elizabeth Grosz, *A Note on Essentialism and Difference*, in *FEMINIST KNOWLEDGE: CRITIQUE AND CONSTRUCT* 332, 332 (Sneja Gunew ed., 1990).

activity is characterized not just by an attention to theoretical coherence, but also by an aspiration to political utility. Or, as Bottomley and Conaghan note: “the strength of feminist jurisprudence is tested not by claims to internal coherence but rather by an ability to deliver.”⁷³ As noted in the introduction, in global terms, the feminist emphasis on process and participation emerged from recognition of the internal diversity and disagreement within women’s movements, and the need to forge unifying demands in the context of women’s divergent experiences and priorities.⁷⁴ It is reasonable to inquire, therefore, to what extent do feminist theoretical claims for women’s participation hold the center of women’s movements and effectively underpin unified women’s demands on processes to deal with the past.

Northern Ireland is arguably *the* site for the exploration of the tensions around demands for women’s participation in dealing with the past.⁷⁵ The peculiar ad hoc⁷⁶ and piecemeal approach adopted to dealing with the past in Northern Ireland, combined with substantial activism by women throughout the period of the conflict, the peace process, and its aftermath, make Northern Ireland a particularly useful site to explore claims and tensions around women’s participation in dealing with the past. The comprehensive peace agreement of 1998, the Belfast/Good Friday Agreement (the Agreement),⁷⁷ underpinned institutional transformation and political consensus sufficiently to bring about a sustained end to conflict violence.⁷⁸ The Agreement involved the British and Irish governments, Northern Ireland political parties, including an all women party, and political representatives of paramilitary groups.⁷⁹ The Agreement provided for a new legislative assembly with a consociational executive; new state institutions for the protection of equality and human rights; substantial reform to the institutions of criminal justice and policing; a new relationship between Northern Ireland, the Republic of Ireland, and Great Britain; and made the constitutional status of Northern Ireland subject to the principle of consent.⁸⁰ However, the political consensus necessary to underpin the new institutional arrangements of the jurisdiction only extended to forward-looking reforms. Regarding the

73. Anne Bottomley & Joanne Conaghan, *Feminist Theory and Legal Strategy*, 20 J.L. & SOC’Y 1, 1 (1993).

74. See LISA BALDEZ, WHY WOMEN PROTEST: WOMEN’S MOVEMENTS IN CHILE 2 (2002).

75. See *supra* Part I.

76. Bell, *supra* note 30, at 1106.

77. Agreement Reached in the Multi-Party Negotiations, Apr. 10, 1998, available at <http://www.dfa.ie/uploads/documents/Anglo-Irish/agreement.pdf> [hereinafter Good Friday Agreement].

78. *Id.*

79. *Id.*

80. *Id.*

past, the causes of the conflict, or even a deliberate bespoke process to provide accountability for past harms, there was no comparable consensus between parties to the Agreement.⁸¹ Instead, accountability in Northern Ireland has been pursued through a series of individualized, legalized, expensive, state-led, and highly contested trials, public inquiries, police investigations, and inquests.⁸² In Northern Ireland, dealing with the past has dominated political life long into the post-settlement terrain.⁸³ Political decision-making in the jurisdiction remains dominated by unresolved questions concerning past wrongdoings. Questions such as the following bleed into contemporary decision-making around ostensibly non-contentious issues, such as the location of social housing: Who were the wrongdoers? What were the wrongs? Which wrongs were in fact right given the political circumstances?⁸⁴ Moreover, police inquiries and active prosecutions for conflict-related deaths continue to destabilize fragile inter- and intra-community consensus about the political process.⁸⁵

Since the re-escalation of conflict in the 1960s,⁸⁶ women's organizing has been a mainstay of the jurisdiction.⁸⁷ However, the emergence and evolution of women's civil society organizations in Northern Ireland has not been immune to the political divisions that structured violent conflict in the jurisdiction.⁸⁸ Rather, women's civil society organizing in Northern Ireland has been very largely determined by these prevailing political divisions.⁸⁹ As Rick Wilford has observed: "[E]fforts to forge [a united] women's movement in Northern Ireland ha[ve] foundered over the mutually reinforcing cleavages of nationality and religion. . . ."⁹⁰ The fraught political backdrop of ethnic

81. The Agreement contains no express provision for mechanisms to deal with the past, but contains the need to move on from conflict. See Good Friday Agreement, *supra* note 77, at art. 2–4.

82. See Bell, *supra* note 30, at 1138–39.

83. See *id.* at 1116.

84. See Noel McAdam, *Row Over Housing Plan for Old Army Base at Belfast Interface*, BELFAST TEL. (Mar. 15, 2011), <http://www.belfasttelegraph.co.uk/news/local-national/northern-ireland/row-over-housing-plan-for-old-army-base-at-belfast-interface-15114234.html>.

85. See, e.g., Owen Bowcott, *Belfast Riots: A Setback for Area Barely Reshaped by Peace Process*, THE GUARDIAN, June 22, 2011, <http://www.guardian.co.uk/uk/2011/jun/22/belfast-riots-setback-peace-process> (reporting that local discontent at investigations by the historical inquiries team a factor in causing unrest).

86. See, e.g., MCGARRY & O'LEARY, *supra* note 25, at 195 (noting that the conflicts in Northern Ireland began in the late 1960s).

87. Carmel Roulston, *Gender, Nation, Class: The Politics of Difference in Northern Ireland*, 18 SCOTTISH AFF. 54, 65 (1997) (noting that a women's movement has always existed in Northern Ireland).

88. *Id.* at 56.

89. *Id.* at 60.

90. Rick Wilford, *Women and Politics in Northern Ireland*, in 49 PARLIAMENTARY AFF. 41, 41 (1996).

divisions, intercommunal violence, and routine presence of highly militarized security forces, meant that women's mobilization in Northern Ireland during the conflict came to be defined by practical cooperation of women on issues of material survival for the family and community.⁹¹ Hence, rather than a "women's movement" per se, Northern Ireland has been home to a "women's sector" since the 1970s.⁹² This "women's sector" consists of a large network of organizations of, and for, women, defined not by their avowed feminist commitments, but by their common concern for material survival issues of women and families.⁹³

Unsurprisingly, feminist actors and women's organizations more broadly have attempted to enter and influence this ongoing debate about whether and how to deal with the past in Northern Ireland.⁹⁴ Also unsurprising is the consistent emphasis on the importance of women's participation in the process of dealing with the past within these interventions by women.⁹⁵ However, in making these interventions, local women have also been forced to confront both the difficulty of forging any kind of unified position amongst women on how to deal with the past and the limited terms on which women's inclusion in debates on how to deal with the past is permitted and valued. In their demands for participation in practice, they have confronted the tensions foreshadowed in theory.

Data and Framework for Analysis: The remainder of this section details and analyzes the findings of the empirical research undertaken for this article. The most prominent reports and policy documents of women's organizations concerned with dealing with the past were the subject of close textual reading and thematic coding.⁹⁶ Demands for women's participation in dealing with the past were identified in the documents, and the underpinning claims were

91. See *id.* at 48–49.

92. See Eilish Rooney, *Political Division, Practical Alliance: Problems for Women in Conflict*, 6–7 *J. OF WOMEN'S HIST.* 40, 45 (1995).

93. See *id.*

94. See Bell, *supra* note 30, at 1128. WOMEN'S RES. & DEV. AGENCY [hereinafter WRDA] & WOMEN'S CENTRES REG'L P'SHIP [hereinafter WCRP], *WOMEN AND THE CONFLICT: TALKING ABOUT THE "TROUBLES" AND PLANNING FOR THE FUTURE* (2008), available at http://www.wcrp.org.uk/cms/data/upimages/Women_&_ConflictReport.pdf; WRDA, *Grant Application Form, Limited Call Application, EU Programme for Peace and Reconciliation in Northern Ireland and the Border Region of Ireland 2000–2006* (Mar. 13, 2007) (copy on file with author); A RESPONSE TO DEALING WITH THE PAST, *supra* note 2; RELATIVES FOR JUSTICE, WAVE TRAUMA CENTRE, & COISTE NA N-IARCHIMÍ, *REPORT OF THE WORKSHOP ON 4TH DECEMBER 2010 IN EUROPA HOTEL BELFAST TO INFORM THE IRISH NATIONAL ACTION PLAN FOR UN RESOLUTION 1325* (Dec. 4, 2010) (copy on file with author) [hereinafter WORKSHOP].

95. See *infra* Part V.B.

96. See sources cited *supra* note 94.

recorded according to the justice, different agenda, politics of care, and larger dream claims discussed earlier.

Findings and Analysis: Clear patterns cut across different levels of the advocacy under review. Across the interventions, the absence of women in formal politics in Northern Ireland is a principal point of entry. We see here the clear imprint of the *justice* claim for women's increased political participation in the attention drawn to women's political exclusion as an injustice of the past and an unjust legacy of the conflict: "Thousands of women [were] affected by the conflict and they don't have a voice."⁹⁷ This absence of women is contextualized in terms of the exacerbating impact of the conflict, the limiting effects of socioeconomic disadvantage on women's capacity to participate in public life,⁹⁸ and the juxtaposition with the abundance of women in women's groups that sustained communities during the conflict.⁹⁹ "Given the high proportion of women affected by this conflict, [we are] offended and angry that we had to organise this [workshop] ourselves."¹⁰⁰ Women's past experience of political exclusion underpins contemporary claims for their inclusion in dealing with the past: "Community based Women's Centres, groups and projects work tirelessly to meet the needs of women in disadvantaged areas, who have suffered greatly from the conflict, and continue to suffer its legacy today. We would therefore emphasise again that their voices are heard and heeded."¹⁰¹ This consistent invocation of the justice claim evidences its unifying power amongst women activists. While there may be little agreement as to whether the past should be dealt with per se, what past should be dealt with, and how it should be dealt with, there is at least consensus that women should be included in the associated decision-making.

Further, the *different agenda* claim—that the greater participation of women in the process will bring a new and different set of priorities to the process due to women's gender-specific experiences of the socioeconomic impact of conflict—can be identified throughout the interventions under study.¹⁰² Tellingly, the largest and most comprehensive of the advocacy documents under analysis is itself organized around the headings: "Impact on Family Life"; "Impact on Communities"; and "Issues Today."¹⁰³ The absence of men through exile, imprisonment, or death, is a prominent narrative in this

97. WORKSHOP, *supra* note 94, at App. 1, 1–3.

98. WRDA & WCRP, *supra* note 94, at 4.

99. *Id.* at 5, 34.

100. WORKSHOP, *supra* note 94, at App. 1, 1–3.

101. O'KANE, *supra* note 2, ¶ 4.5.

102. *See, e.g.*, WRDA & WCRP, *supra* note 94, at 109.

103. *Id.*

account of the past.¹⁰⁴ The consequent added burden on female heads of household, in terms of managing families, and in particular, managing family poverty, is discussed.¹⁰⁵ “It is arguable that women have suffered disproportionately as a result of the conflict. Many were left without partners and were required to maintain families in very difficult circumstances.”¹⁰⁶ The impact is elaborated in terms of the increased family responsibilities of girls;¹⁰⁷ the shortages of basics; the energy borne disproportionately by female family members;¹⁰⁸ the emotional, time, and resource burden of visiting imprisoned male relatives;¹⁰⁹ and crippling concerns for family safety carried by female heads of household.¹¹⁰ “Fear has been a constant in women’s lives during the conflict—fear for the physical safety of their families and themselves, fear of the impacts of the conflict and fear that their sons would become ‘involved.’”¹¹¹ This focus on women’s gender-specific experiences of the conflict, in particular as carers for family members and stalwarts of the community, resonates strongly with the different agenda claim of feminist political theory for women’s increased participation. Importantly, these gender-specific experiences of women are then linked to “priority issues” to be addressed by the state in the policy changes demanded by the women’s sector. “[In the workshop] women also had the opportunity to consider priority issues requiring immediate attention, on which their group could campaign if they so desired. Each group had different priorities, although there was considerable overlap.”¹¹² The priorities articulated chiefly concerned mental and general health service provision;¹¹³ safer streets and communities (including public transport), with an emphasis on community policing and tackling antisocial behavior; improved education funding and access to education, community regeneration and job creation; and the improved representation of women in decision-making.¹¹⁴ “By failing to carry out the required gender-sensitive analysis of the conflict, [official efforts to deal with the past] render[] a range of issues that affect women and girls in Northern Ireland invisible—such as mental, physical and reproductive health, domestic violence, sexual violence, coercion,

104. O’KANE, *supra* note 2, ¶ 3.19; WRDA & WCRP, *supra* note 94, at 12.

105. *See* O’KANE, *supra* note 2.

106. *Id.* ¶ 3.19.

107. WRDA & WCRP, *supra* note 94, at 13–14.

108. *Id.* at 4.

109. *Id.* at 22.

110. *Id.* at 14–15; O’KANE, *supra* note 2, ¶ 3.28.

111. WORKSHOP, *supra* note 94, at 3.

112. *Id.* at 64.

113. *Id.* at 2; WRDA & WCRP, *supra* note 94, at 58.

114. *See id.* at 66–68.

prostitution, and trafficking.”¹¹⁵ These priorities, identified in women-led interventions into dealing with the past, therefore, constitute supporting evidence for a different agenda claim that, with the inclusion of women in dealing with the past, a different set of priorities would structure such processes.

Thirdly, the *politics of care* claim—that women’s participation in dealing with the past will secure the inclusion of actors who are naturally peacemaking, carers of the community, and transcendent of political divisions—can be traced throughout the data. “A historical breakdown of communities and families shows how women bonded during the periods of male imprisonment. Women were the community leaders.”¹¹⁶ The constant threat of violence and consequent harm to the community is a discernible strand in the account of the past emerging from these accounts.¹¹⁷ In particular, the pervasive sense of insecurity on the streets is raised in many interventions.¹¹⁸ The damage and loss to the community when people chose to exit the conflict environment through emigration is observed. Women, as nurses, also often dealt with the impact of the conflict at the community level,¹¹⁹ particularly in dealing with the aftermath of tragic events. “Some women who had been nurses during the ’70s, ’80s, and ’90s found themselves dealing with the aftermath of violent events.”¹²⁰ Most notably, the suggestion of a common maternal identity unifying Catholic and Protestant, rural and urban, young and old women’s experiences of the past resonates with a politics of care claim that locates an essential female caring capacity within a common maternal role. The common experience of Catholic and Protestant women as mothers is emphasized:

While the specific focus of women’s worries and fears as mothers occasionally differed slightly, overall, the sentiments expressed by rural and urban and Protestant and Catholic women as mothers across the past four decades shared many similarities.¹²¹

More subtly, the politics of care claim can be discerned from the relative invisibility of women who perpetrate violence. “Arrests and imprisonment” are something that happened to “family members,” not to women themselves.¹²² The military and paramilitary activities of

115. O’KANE, *supra* note 2, ¶ 2.6.

116. WORKSHOP, *supra* note 94, at App. 1, 5–6.

117. *See id.* at 11.

118. WRDA & WCRP, *supra* note 94, at 60.

119. *Id.* at 24.

120. *Id.*

121. *Id.* at 18.

122. *Id.* at 12; O’KANE, *supra* note 2, ¶ 3.19; WORKSHOP, *supra* note 94, at App.1, 1–3.

women are not noted. Finally, in terms of transcending political divisions, women's religious identities as either "Catholic" or "Protestant" are frequently referenced.¹²³ Where divergent positions were adopted on particular issues, it is noted. For example:

Memories of the arrest and imprisonment of family members was a strikingly regular feature of many Catholic women's childhood memories of the '60s, '70s and '80s in particular. Prison visits featured much less in Protestant women's stories.¹²⁴

Interventions such as these provide little context for the diverging experiences of prison visits of Catholic and Protestant women. These different experiences of Catholic and Protestant women are caused by the very different relationship between the respective religious communities to the state and to the political violence that prevailed in the jurisdiction.¹²⁵ While the difference between women is observed, it is without the attribution of any political significance to that difference.¹²⁶ This emphasis on shared experience did not emerge in a political vacuum. Rather, it reflects the terms of engagement that had been developed within women's organizing over the long period of the conflict. In order to achieve practical agreement and shared action on a limited set of policy issues, an unspoken consensus of "don't mention the war" had come to define women's organizing in Northern Ireland.¹²⁷ These terms of engagement continue to operate in the context of a fragile peace.¹²⁸

The *larger dream* claim, the idea that the meaningful inclusion of women will democratize and ensure better outcomes of the process to deal with the past, is a thread that runs through all of the documents, but it is arguably most explicit in the following quote:

There should be specific commitment to societal transformation rather than a return to the past. This should encompass the systems of inequality that structure and limit women's participation in society such as socioeconomic disadvantage. The workshop participants expressed their fear of recurrence of conflict and felt that their proposals for dealing with the past and transforming the future were necessary to ensure that violent conflict did not happen again.¹²⁹

123. WRDA & WCRP, *supra* note 94, at 12.

124. *Id.*

125. MCGARRY & O'LEARY, *supra* note 25, at 361–62.

126. *See, e.g.*, WRDA & WCRP, *supra* note 94, at 69.

127. *See* Rooney, *supra* note 92, at 12.

128. Eilish Rooney, *Women's Equality in Northern Ireland's Transition: Intersectionality in Theory and Place*, 14 FEMINIST LEGAL STUD. 353, 356 (2006).

129. WORKSHOP, *supra* note 94, at 1–3.

The immediate movement here, from questions of process (participation) to substance (lasting peace), is noteworthy.

In global terms, the feminist emphasis on process and participation emerged from a recognition of internal diversity and disagreement within women's movements.¹³⁰ As this section has shown, participation constitutes a claim that can effectively hold the center amongst women with different, often divergent priorities in dealing with the past. Claims for participation were repeated and prominent throughout the interventions by women's organizations. As this section has also revealed, demands for participation of women in the process of transitional justice were overtly linked to a set of substantive outcomes of transitional justice: namely the inclusion of a different agenda of issues, the incorporation of an ethic of care, and the achievement of a larger dream in dealing with the past.

IV. "AM I THAT NAME?"¹³¹ WOMEN IN THE REPORT OF THE CONSULTATIVE GROUP ON THE PAST

In addition to forming a unifying issue amongst women, claims made on an official process to deal with the past also aspire to gain political traction with the relevant decision-makers. In the parlance of social movements theory, the internal framing of demands must be such as to mobilize movement members, but the external framing must mobilize change in the target constituency.¹³² This section turns to this latter question, namely the extent to which demands for participation in women's movement interventions were effective in securing the desired political outcome in the official process to deal with the past in Northern Ireland. To what extent did these demands for women's participation, as linked to delivering the inclusion of a different agenda of issues, the incorporation of an ethic of care, and the achievement of a larger dream in dealing with the past, gain traction within official processes to deal with the past?

In 2007, the British government finally announced its intention to begin addressing the most obvious "missing piece" of the infrastructure of Northern Ireland's transition from conflict, namely a bespoke mechanism to deal with the past.¹³³ On June 22, 2007, Peter Hain, then Secretary of State for Northern Ireland, announced the

130. See *supra* Introduction.

131. DENISE RILEY, AM I THAT NAME: FEMINISM AND THE CATEGORY OF WOMAN IN HISTORY (2003).

132. See, e.g., Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, 26 ANN. REV. SOC. 611 (2000) (providing an overview of theoretical developments in this area).

133. RILEY, *supra* note 131, at 22.

formation of an independent Consultative Group.¹³⁴ The Group was asked to:

- consult across the community on how Northern Ireland society can best approach the legacy of the events of the past 40 years;
- make recommendations, as appropriate, on any steps that might be taken to support Northern Ireland society in building a shared future that is not overshadowed by the events of the past;
- present a report, which will be published, setting out conclusions to the Secretary of State for Northern Ireland, by summer 2008.¹³⁵

Chaired by Church of Ireland Primate of All-Ireland, Robin Eames, and by former Catholic priest Dennis Bradley, the Report of the Consultative Group on the Past is popularly known as the Eames-Bradley Report (the Report).¹³⁶ Finalization of the Report was delayed and was finally published on January 23, 2009.¹³⁷ When published, the Report has three substantive sections: one setting out the impact of the conflict on society, victims, and survivors; another section reviewing existing processes for dealing with the past; and a final section proposing a way forward through the establishment of a single body (the “Legacy Commission”), to combine the disparate legal and service provision elements of dealing with the past.¹³⁸

The Report was not a truth commission per se; rather, it was a conversation about what form truth recovery and broader accountability efforts might take in Northern Ireland. The Consultative Group did not hold hearings or have the task of collating lengthy transcripts of manifold individual testimonies. The Consultative Group was not tasked with agreeing on a definitive account of the past, the harms that occurred, or the individuals and institutions who perpetrated those harms. Rather, the Consultative Group met with interested parties, read written submissions, and on that basis proposed a process and model for dealing with the past.¹³⁹ In writing their Report, nevertheless, the Consultative Group adopted and inscribed a particular understanding of the past that was to be dealt with, the

134. *Id.*

135. *Id.*

136. Jonathan Doak & David O'Mahony, *In Search of Legitimacy: Restorative Youth Conferencing in Northern Ireland*, 31 *LEGAL STUD.* 305, 325 (2011).

137. *REPORT OF THE CONSULTATIVE GROUP ON THE PAST*, *supra* note 3, at 33.

138. *Id.* at 6–10.

139. *Id.* at 22.

harms most acutely requiring redress, and the individuals most entitled to be included in the process of accountability and redress.

Data and Framework for Analysis: The remainder of this section examines the Report. A close textual reading and thematic analysis of the Report was undertaken, in which explicit mentions of women (either in general, or in specific reference to named women) within the Report were examined. Each general or specific mention of named women was coded according to the underpinning claim for women's participation, namely justice, different agenda, politics of care, or larger dream. The findings and analysis are presented here.

Findings: Two of the eight Consultative Group members were women, namely Elaine Moore, an addiction counselor, and Lesley Carroll, a Presbyterian minister.¹⁴⁰ That women were there, but only as one-quarter of the group, suggests that the *justice* claim had very limited traction with those charged with selecting the Group members.¹⁴¹

The analysis of women's movement documents in the previous section revealed the popular association made between the participation of women and the inclusion of a "different agenda" of issues in dealing with the past, most notably socioeconomic issues. To what extent did these claims gain traction in the Report? It is possible to identify some concern with socioeconomic issues in the Report. The inclusion of Moore, a drug counselor, and Carroll, a woman with a background in community and youth work, could be seen as an effort to include the socioeconomic impact and legacy of the conflict within the concerns of the Group.¹⁴² Further, the impact of bombs on businesses, on deterring tourists, and boycotts of businesses by one community are documented in the Report.¹⁴³ However, there is no acknowledgment of the poverty exacerbated by the conflict, and the difficulties experienced by families and communities in meeting basic needs.¹⁴⁴ The account of the Report bears no relationship to the accounts of "poverty and hardship" articulated in the "Women and the Troubles" document.¹⁴⁵ Moreover, the actual provision for addressing the socioeconomic legacy of the conflict is worryingly vague.¹⁴⁶ There is a recommendation to establish a bursary of £100 million to address the "society issues" emerging from the conflict, with a particular

140. *Id.* Note, however, that neither of the international advisers nor Chairs were women.

141. To note the non-compliance with UNSC Resolution 1325 would be naive. S.C. Res. 1325, *supra* note 12, ¶ 11.

142. *See id.* at 28.

143. *Id.*

144. *See, e.g.*, REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 79.

145. *Compare id.* at 28, with WRDA & WRCP, *supra* note 94, at 18–19.

146. *See, e.g.*, REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 28.

emphasis on the healthcare legacy of the conflict, enhancing the role of young people in society, and tackling sectarianism.¹⁴⁷

The very limited and partial treatment of socioeconomic issues in the Report makes it clear that the socioeconomic legacy of the conflict was not a priority in this official process to deal with the past. Issues of socioeconomic harms were unlikely to secure prominence in any official process to deal with the past in Northern Ireland. The marginalization of socioeconomic issues and the omission of socioeconomic harms is one of the most profound criticisms of transitional justice.¹⁴⁸ Miller attributes this “blind spot” to the understanding within transitional justice of inequality or structural violence as a contextual background rather than a central issue in transition.¹⁴⁹ The Northern Ireland case is not unique then in the sense that the investigation and redress of the socioeconomic causes, consequences, and legacy of the conflict was never likely to be meaningfully explored in the Report. But this is not a gender-neutral oversight, both in terms of women’s disproportionate exposure to economic disadvantage and in terms of the prominence given to socioeconomic issues in the interventions by women’s organizations.

The body of the Report is dedicated to dealing with those who lost their lives in the conflict and the justice demands of their immediate family members. Feminist analysis of truth commissions criticizes an exclusive focus on killings, because women are underrepresented in this victim group and tend to experience other (often non-physical) harms in contexts of political violence.¹⁵⁰ In practice, however, killings activate a significant body of international legal obligations on states, most notably to ensure the effective investigation of killings carried out by state agents.¹⁵¹ Hence, in contrast with the vague and brief terms in which provision is made for dealing with “society issues” emerging from the conflict, the recommendations of the Report concerning alternatives to the ongoing legal processes that investigate killings by state agents are written in lengthy and meticulous detail.¹⁵²

147. *Id.* at 143.

148. See Zinaida Miller, *Effects of Invisibility: In Search of the ‘Economic’ in Transitional Justice*, 2 INT’L J. TRANSITIONAL JUST. 266, 266 (2008).

149. *Id.* at 266.

150. Ní Aoláin & Turner, *supra* note 23, at 258.

151. See, e.g., Christine Bell & Johanna Keenan, *Lost on the Way Home? The Right to Life in Northern Ireland*, 32 J.L. & SOC’Y 68, 71 (2005); Fionnuala Ní Aoláin, *Truth Telling, Accountability and the Right to Life in Northern Ireland*, 5 EUR. HUM. RTS. L. REV. 572, 572–73 (2002).

152. REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 124–58.

Women are featured among the dead in the Northern Ireland conflict,¹⁵³ and they are featured in the Report in that capacity.¹⁵⁴ The remainder of this section is dedicated to identifying those women and revealing the circumstances of their inclusion in the Report.

The Report, although established to provide an alternative to legal processes, is constructed around a very particular set of largely legally endowed priorities.¹⁵⁵ The UK government is bound by a detailed set of legal obligations concerning the effective investigation of killings carried out by state agents. These obligations arise from decisions of the European Court of Human Rights on procedural obligations of the European Convention's Article 2 on the right to life.¹⁵⁶ The Report cited and discussed these cases.¹⁵⁷ While these four cases concerned male victims of lethal force, the controversial 1994 decision of the European Court of Human Rights concerning the use of lethal force against four members of the IRA in 1988 was the precursor to this jurisprudence.¹⁵⁸ Mairéad Farrell was among these four IRA members.¹⁵⁹ Farrell was both a combatant in the conflict, and also ultimately a victim of the conflict.¹⁶⁰ The politics of care claim suggests that women should participate in dealing with the past because of their supposed natural proclivity for peacemaking. Yet, the example of Mairéad Farrell provides a powerful counter-narrative to assumptions of women as peacemakers, or as unconnected to the perpetration of violence in the conflict. Gender analysis of the treatment of women combatants in truth commissions identifies the tendency to focus on the woman's victimhood (for example, conflict-related sexual violence), instead of documenting and affirming the woman's agency as a combatant.¹⁶¹ But in the Report, Farrell

153. See, e.g., Malcolm Sutton, *An Index of Deaths from the Conflict in Ireland*, UNIV. OF ULSTER, <http://cain.ulst.ac.uk/sutton> (last visited Nov. 6, 2012).

154. REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 60–62.

155. See *id.* at 14.

156. See *Jordan v. United Kingdom*, 2001-III Eur. Ct. H.R.; *Kelly v. United Kingdom*, 2001-III Eur. Ct. H.R.; *McKerr v. United Kingdom*, 2001-III Eur. Ct. H.R.; *Shanaghan v. United Kingdom*, 2001-III Eur. Ct. H.R. Note that *McCann v. United Kingdom*, 21 Eur. Ct. H.R. 97, 98–99 (1996), is the acknowledged precursor to the *Jordan et al.* cases discussed in the Report. See Bell & Keenan, *supra* note 151, at 72.

157. See, e.g., REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 116.

158. See *Rights Court Says Britain Illegally Killed 3 in I.R.A.*, N.Y. TIMES, Sept. 28, 1995, <http://www.nytimes.com/1995/09/28/world/world-news-briefs-rights-court-says-britain-illegally-killed-3-in-ira.html>.

159. Patrick Smyth, *Legal Battle to Bring British to Task for Gibraltar Killing of IRA Group Nears End*, IRISH TIMES, Feb. 20, 1995, at 6, available at LEXIS.

160. *Court to Be Told Gibraltar Killing of IRA Terrorists Was Human Rights Violation*, HERALD, Feb. 20, 1995, at 24.

161. Luisa Maria Dietrich Ortega, *Transitional Justice and Female Ex-Combatants: Lessons Learned from International Experience*, in *DISARMING THE PAST: TRANSITIONAL*

is (albeit posthumously) a rights-holder. Her death and its circumstances activated a substantial set of interlocking legal obligations that meant that her exclusion from the Report, and from any possible way forward in dealing with the past, was unthinkable. The protagonists of Northern Ireland's proud tradition of women's peace activism, or the women who more prosaically managed daily community survival during the conflict, could make no such claim on the past nor on official efforts to deal with that past.

The Report grounds its prescriptions for a non-legal alternative to the existing "landscape of legal processes" in dissatisfaction at the length of time and cost of the existing legal processes.¹⁶² In the review of the "landscape of legal processes" within the Report,¹⁶³ the public inquiry into the circumstances surrounding the death of Catholic criminal defense lawyer, Rosemary Nelson, is featured. Nelson was a prominent human rights solicitor who acted for Republican paramilitaries and those accused of Republican paramilitary activities.¹⁶⁴ She died in a car bomb in 1999, at the hands of Loyalist paramilitaries, in circumstances that suggested the involvement of state forces.¹⁶⁵

The politics of care claim that underpinned women's civil society interventions implied that women transcended the political divisions that structured the Northern Ireland conflict. By contrast, the case of Rosemary Nelson, targeted for violence because of her perceived Republican sympathies, demonstrates how entrenched many women were in the political divisions that structured the Northern Ireland conflict.

The Report also includes a discussion of efforts to recover the missing bodies of individuals known to have lost their lives in the conflict,¹⁶⁶ of whom Jean McConville is arguably best-known.¹⁶⁷ McConville was abducted, killed, and dumped in an unmarked grave by a group of IRA men and women in December, 1972.¹⁶⁸ Because she was a Catholic woman, and especially as the a mother of ten children, the case has become emblematic of the IRA's capacity

JUSTICE AND EX-COMBATANTS 158, 168–71 (2009); FIONA ROSS, BEARING WITNESS: WOMEN AND THE TRUTH AND RECONCILIATION COMMISSION IN SOUTH AFRICA 90–93 (2003).

162. Indeed, Chapter 7 of the Report is entitled: "Legal Processes: The Arguments for Change." REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 124.

163. *Id.* at 111.

164. See Beatrix Campbell, *So Who Did Kill Rosemary Nelson?*, THE GUARDIAN, July 3, 2009, <http://www.guardian.co.uk/uk/2009/jul/04/rosemary-nelson-murder-public-inquiry>.

165. *See id.*

166. *See* REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3, at 121–22.

167. *See Jean McConville's Family Welcome IRA Boston Ruling*, BBC NEWS, July 9, 2012, <http://www.bbc.co.uk/news/uk-northern-ireland-18765606>.

168. *Id.*

for extreme violence.¹⁶⁹ Controversy surrounds the reasons for her death.¹⁷⁰ One side argues that her death was punishment for going to the aid of a British soldier who had been shot; the other side claims that she acted as an informer for British security forces.¹⁷¹ In either event, it can be argued that McConville was targeted for violence because of her perceived “betrayal” of the community, by providing assistance to the opposing military force.¹⁷² It is in this capacity that Jean McConville merits one of the handful of explicit mentions of women in the Report.

Analysis: This section set out to determine whether the framing adopted by women’s organizations in grounding demands for women’s participation in dealing with the past in claims of justice, different agenda, politics of care, and larger dream, gained traction in official initiatives to deal with the past. The overview and review of women’s place in the Report identified no substantive discussion of women or women’s experiences of the conflict as a group. Rather, isolated, individual women could be identified in the document. Specifically, five women were identified: IRA combatant Mairéad Farrell, Republican defense solicitor Rosemary Nelson, disappeared woman Jean McConville, and the Consultative Group members Lesley Carroll and Elaine Moore. The Report demonstrates little conviction in a justice claim, that the participation of women in dealing with the past is—of itself—an important value in dealing with the past. Moreover, the Report betrays little interest in the “different agenda” of socioeconomic concerns articulated by women’s movement interventions and embodied by the women members of the Group. The almost exclusive mention of women who were deeply embroiled in the conflict divisions and, in the case of Mairéad Farrell, an agent of political violence, reveals how little political traction attaches to the claim that women participate in official processes because of their capacity for peacemaking, transcending political divisions, or caring for the community.¹⁷³

In the case of women included in the Report, it would appear that inclusion has come at the cost of denying the gender of these women. By being yet another gender-neutral (read: male) actor of the

169. *Who Killed Jean McConville? A Battle for IRA Secrets*, NPR, July 15, 2012, <http://www.npr.org/2012/07/15/156811081/who-killed-jean-mcconville-a-battle-for-ira-secrets>.

170. *Id.*

171. These conflicting allegations are documented in a police investigation. POLICE OMBUDSMAN FOR NORTHERN IRELAND, REPORT INTO THE COMPLAINT BY JAMES AND MICHAEL MCCONVILLE REGARDING THE POLICE INVESTIGATION INTO THE ABDUCTION AND MURDER OF THEIR MOTHER MRS. JEAN MCCONVILLE 7 (2006).

172. Maol Muire Tynan, *After 25 Years, Hoping to Bury Her Mother at Last*, IRISH TIMES, June 26, 1998, at 9, available at LEXIS.

173. *See, e.g., id.*

past, there is no need to interrogate the particular circumstances of women's political agency and victimhood during the conflict.¹⁷⁴ To recognize the multiple complex identities of Farrell, Nelson, and McConville would necessitate de-linking "women" from their traditional gender moorings in conflict settings as peaceful, passive, carriers/bearers of "community."¹⁷⁵ It would require some interrogation of men's perceived protective role of women in particular—and the community in general—during the conflict.¹⁷⁶ To consider Farrell, Nelson, and McConville as women in a man's world, women taking up non-traditional roles in armed defense of community or political interests, would challenge perceived constructions of masculinity in conflict situations.¹⁷⁷ The Report avoids any such discussion.¹⁷⁸ Rather, "society issues" are confined to sectarianism and the role of young people in society.¹⁷⁹ The types of violent masculinity and passive femininity that are nurtured by violent conflict are not the concern of the official process to deal with the past. The women who are named and acknowledged within the official process are included in ways that they most resemble men, and because they most resemble men.¹⁸⁰ By including only women who fit within established categories of political actor, and refusing to acknowledge their distinctive gender, those categories are left untouched and unchanged. Any transformative potential of the initiative to challenge or subvert those traditional categories is lost.

V. A WAY FORWARD? ENGENDERING THE PAST, NORTHERN IRELAND AND BEYOND

On the whole, the significance of the Northern Irish case is in revealing the limited traction of consequentialist participation claims within official processes to deal with the past. The framing of claims for women's participation in dealing with the past in terms of justice, a different agenda, politics of care, and a larger dream may have proven effective in holding together diverse women's organizations with divergent priorities. This article has shown, however, that this framing was ineffective in influencing the gendered operation of official efforts to deal with the past in Northern Ireland.

174. See JOSHUA S. GOLDSTEIN, *WAR AND GENDER: HOW GENDER SHAPES THE WAR SYSTEM AND VICE VERSA* 34–35 (2001).

175. *Id.* at 48–49.

176. *Id.* at 34–35.

177. *See id.*

178. *See* REPORT OF THE CONSULTATIVE GROUP ON THE PAST, *supra* note 3.

179. *See id.* at 17, 38, 138.

180. *See id.* at 60–62, 111–12, 121–22.

In terms of why women's participation matters, the justice claim is compelling, but it remains problematic because one cannot easily analogize from claims for political participation in democratic fora to claims for women's participation in dealing with the past, without entering the very heart of the meta-conflict about what past must be dealt with (an issue around which there may be little unity amongst women or feminists).¹⁸¹ What difference does women's participation make? The evidence examined in this article, in terms of the issues prioritized in women's movement interventions, suggests that greater women's participation will result in greater attention to socioeconomic issues and a broadening of harms considered in official processes. However, this greater attention to socioeconomic issues may be piecemeal and de-prioritized by larger legal imperatives that require a focus on deaths and physical harms to the body.¹⁸²

This article has shown that the conflation of participation as a question of process with participation as a guarantee of substance is both problematic in theory and unhelpful in terms of feminist politics. I conclude by proposing a novel third way that acknowledges a tentative, though dynamic, relationship between women's participation as process and substantive outcomes in dealing with the past, while continuing to ground calls for women's participation within justice claims.

A. The Justice Claim: A Politics of Presence and the Need for Women's Participation

Despite the weaknesses in demands for women's presence, empirical studies of women's mobilization repeatedly demonstrate the unifying and mobilizing power of those demands.¹⁸³ This unifying and mobilizing effect is also evident in the Northern Irish case of women's civil society interventions into dealing with the past.¹⁸⁴ In the context of historically entrenched divisions along ethnic and other lines that tend to mark post-conflict societies attempting to deal with a difficult past, the galvanizing effect of presence demands on women's mobilization ought not to be underestimated or undervalued.

This article noted that it can be difficult to analogize from the justice claim for women's participation in democratic fora to the justice claim for women's participation in official processes to deal with

181. Marysia Zalewski, *Gender Ghosts in McGarry and O'Leary and Representations of the Conflict in Northern Ireland*, 53 POL. STUD. 201, 213–17 (2005).

182. See *supra* Part III.

183. See BALDEZ, *supra* note 74, at 2.

184. See *supra* Part II.

the past without entering into the meta-conflict about what past must be dealt with.¹⁸⁵ The idea that dealing with the past must be broad-based, inclusive, and deal with a broad range of harms is not a politically neutral position. Motivated either by pragmatics, or political ideology, there are many who seek a closed and narrow process to deal with the past that focuses on a particular set of harms and a particular (generally either pro- or anti-state) set of perpetrators and victims.¹⁸⁶ Women seeking greater participation in official decision-making to deal with the past would be wise to recognize that justice claims bring with them a particular understanding of the past. This understanding of the past is not located outside the meta-conflict; rather, it is at the heart of the meta-conflict, and thus may not have the support of all women.

If women are to be present in their diversity and divergent positions on the meta-conflict in official decision-making to deal with the past, women must be present in significant numbers. Thus, the implicit emphasis on presence and process within the justice claim can be a genuine means to recognize women's multiple positions within the meta-conflict. Cass Sunstein argues compellingly that perceptions of legitimate entitlement are always influenced by existing distribution of entitlements.¹⁸⁷ Thus, if politics is to be more than the mere aggregation of existing private interests, it must be the site for the formulation of new and revised interests based on deliberation amongst a genuine range of perspectives and positions in circumstances of political equality. Process-based decision-making must be open to different and new priorities emerging from that process. Ultimately, the meaningful participation of women may *not* lead to an official approach to dealing with the past that prioritizes socio-economic issues, or any other predetermined set of "women's priorities," but that does not necessarily mean that the participation of women was neither meaningful nor transformative. In invoking a process-based justice claim, we must abandon any certainties about what the substantive outcomes of that process will bring.

B. The Different Agenda Claim: A Politics of Ideas and Articulating What Women Can Contribute

In the review of feminist political theory in Part I, this article acknowledged that the justice claim, in its most theoretically "pure"

185. See BALDEZ, *supra* note 74, at 4.

186. See *id.* at 197.

187. Cass Sunstein, *Preferences and Politics*, 20 PHIL. & PUB. AFF. 3, 8 (1991).

form, tends not to underpin successful demands for women's participation.¹⁸⁸ Demands for women's participation, without some grander claims about what substantively that participation will bring, have historically had little traction on those who hold power.¹⁸⁹ In this section, I tread into the theoretically fraught terrain of what women's participation might bring to official decision-making to deal with the past.

The case study explored in this article, of official and women's civil society initiatives to deal with the past in Northern Ireland, charted the divergent priorities in dealing with the past to emerge from the respective initiatives.¹⁹⁰ These divergent priorities suggest, though are not conclusive, that processes to deal with the past that included women in equal numbers would be more attentive to socio-economic issues of material concern to families and communities. However, in order to ground any feminist demand for increased participation of women in official processes to deal with the past, these distinct priorities of women must be historicized within a context of entrenched gender inequality. The disproportionate concern with family and community welfare in women-only initiatives to deal with the past can only be understood in the context of the caretaking role adopted by women during the period of political violence. As extensive feminist discussion of women's political interests has revealed, "interests" have special historical significance and are historically contingent.¹⁹¹ To reiterate Sunstein's thesis, these political interests of women were formulated from a position of entrenched political inequality.¹⁹² By historicizing the different agenda that women bring to decision-making to deal with the past, it can be distinguished from a politics of care claim. Most importantly, the circumstances giving rise to the articulation of women's "needs" or "interests" in dealing with the past are interrogated, rather than assumed. Dealing with the past then becomes a means to open up and challenge historical conditions of gender inequality (such as the gendered division of labor, acute poverty, particular construction of hyper-masculinity in context of violence), rather than reaffirm "essential" gender stereotypes.

188. See *supra* Part I.

189. See *supra* Part III.

190. See, e.g., MCGARRY & O'LEARY, *supra* note 25, at 1–2.

191. See Irene Diamond & Nancy Hartsock, Comment, *Beyond Interests in Politics: a Comment on Virginia Sapiro's "When Are Interests Interesting?"* *The Problem of Political Representation of Women*, 75 AM. POLI. SCI. REV. 717, 719 (1981); Anna G. Jonasdottir, *On the Concept of Interest, Women's Interests, and the Limitations of Interest Theory*, in *THE POLITICAL INTEREST OF GENDER: DEVELOPING THEORY AND RESEARCH WITH A FEMINIST FACE* 33, 35 (Kathleen B. Jones & Anna G. Jonasdottir eds., 1988).

192. See Sunstein, *supra* note 187, at 8–9.

C. The Politics of Care Claim: A Feminist Politics of the Female Body

The politics of care claim is rooted in biological determinism: because the female body performs particular nurturing functions, women are innately caring. Thus, a great deal of social meaning is attached to physical functions, and this social meaning (women as caring, selfless, conciliatory) becomes the basis for demands for women's greater participation in decision-making.¹⁹³ Ironically, the common feminist critique of transitional justice is its over-concern with physical harms to the body, to the exclusion of other types of harms, in particular socioeconomic harms and harms to familial relationships.¹⁹⁴ Ní Aoláin argues that, while the physical harm to the body is recognized in transitional justice, the social meaning of that harm is overlooked.¹⁹⁵ In Northern Ireland, however, a double paradox is observed: harms to the body are the focus of official initiatives to deal with the past (the deaths of McConville, Nelson, and Farrell), but there is no acknowledgment that those bodies are female and no discussion of the social meaning of the harm. Meanwhile, women's civil society interventions focus on the social impact of conflict violence, but make no mention of the physical harms to the body that motivate official efforts to deal with the past.¹⁹⁶

Feminist theorists are divided on the political relevance of the female body.¹⁹⁷ Feminist legal scholars typically focus on the regulatory and restrictive relationship of law to the female body.¹⁹⁸ From legal constructions of women's sexuality as passive and submissive, to the intensive regulation of women's reproductive capacities, the feminist project in law has often been most concerned with the liberation of women's bodies from legal control.¹⁹⁹ Feminist political theorists, by contrast, advocate using the female body to subvert and reclaim traditional exclusionary and masculinist tenets.²⁰⁰ They note that it is the disembodiment of the rational self that underpins the notion of the autonomous rational actor at the center of liberal legal

193. Kathleen B. Jones, *Citizenship in a Woman-Friendly Polity*, 15 *SIGNS* 781, 809 (1990).

194. See Vasuki Nesiiah, *Discussion Lines on Gender and Transitional Justice: An Introductory Essay Reflecting on the ICTJ Bellagio Workshop on Gender and Transitional Justice*, 15 *COLUM. J. GENDER & L.* 799, 805 (2006).

195. Ní Aoláin, *supra* note 43, at 80.

196. See NESIAH, *supra* note 18, at 800.

197. See, e.g., CAROL SMART, *FEMINISM AND THE POWER OF LAW* 90 (1989).

198. *Id.* at 93–94.

199. See *id.*

200. Belinda Carpenter, *The Prostitute and the Client: Challenging the Dualisms*, 2 *WOMEN'S STUD. INT'L F.*, 387, 393–94 (1998).

paradigm.²⁰¹ The notion of the autonomous rational actor, capable of individual choice, and free of state interference, has been fundamental to abstract notions of equality.²⁰² To combat this reasoning, feminists have drawn attention to the multiple bonds of relationships and familial duties, and issues of physical vulnerability, that bind the individual in practice.²⁰³ Genevieve Lloyd observes: “Wom[e]n qua wom[e]n [are the] symbol of attachment to individual bodies, private interests and natural feeling”²⁰⁴ Thus, the feminist politicization of the body has been integral to feminist politicization of women’s everyday lives, and by extension, the politicization of the normal, routine, quotidian harms that occur within the private sphere of family and home.

This article advocates a feminist politics of the female body. While grave concerns are justified about the limiting and exclusionary archetypes of womanhood that emerge from the traditional politics of care and the equation of the female body with bonds of relationships, there is enormous value in opening up the private sphere of family and home to scrutiny in dealing with the harms of the past. A feminist politics of the female body would bring into view the public harms to the body that motivate official processes to deal with the past (such as the deaths of McConville, Nelson, and Farrell), but it would also bring into view the perceived “private” physical harms to women’s bodies, such as domestic violence, restrictions on women’s reproductive autonomy, and the negative health impact of poverty.

D. The Larger Dream Claim: A Feminist Politics of Difference and Democracy

In their own ways, each of the claims in this section for women’s participation in official decision-making to deal with the past have been linked to the larger dream claim. The reformulated justice claim focuses on inclusion and deliberation amongst equals.²⁰⁵ The reformulated different agenda claim emphasizes the need to historicize the “different agenda” that women bring to decision-making, so official processes to deal with the past challenge, rather than reaffirm, existing inequalities.²⁰⁶ The reformulated politics of care claim points

201. *See id.*

202. *See id.*

203. *See id.*

204. Genevieve Lloyd, *Selfhood, War and Masculinity*, in *FEMINIST CHALLENGES: SOCIAL AND POLITICAL THEORY* 63, 76 (Carole Pateman & Elizabeth Gross, eds., 1986).

205. *See supra* Part I.

206. *See supra* Introduction.

to the need to open up public and private harms of the past to scrutiny in official processes to deal with the past.²⁰⁷

In this final reformulation of claims for women's participation, I engage with the troublesome theoretical shadow that has lingered over the other claims, namely: is it possible to represent the interests and views of a group as diverse as women in official decision-making to deal with the past? The silence around women such as Mairéad Farrell, Rosemary Nelson, and Jean McConville in cross-community women's civil society initiatives to deal with the past in Northern Ireland poses obvious, yet incredibly difficult, questions around: just who represents whom in claims to represent "women" in decision-making? With what authority are those claims made?

Ultimately, it is submitted, a principled feminist commitment to internal democracy and respect for difference provides the most promising basis for claims for women's participation in decision-making to deal with the past. The principled commitment to internal democracy would value and respect the expression of dissent. While difference and dissent may ultimately give rise to division, this is the nature of politics. The difficulty of respecting the right of others to espouse different opinions, while laying claim to the same political identity of woman or feminist, is not underestimated. However, making women's participation in official decision-making to deal with the past contingent on the exclusive articulation of family and socioeconomic concerns has, firstly, limited effective traction on official processes, and, secondly, substantially undermined the transformative potential of women's participation in dealing with the past.

207. *See supra* Part I.