

# WHAT IS MISSING FROM THE RHETORIC OF CHOICE? A FEMINIST ANALYSIS OF THE ABORTION DILEMMA IN THE CONTEXT OF SEXUALITY

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## INTRODUCTION

No woman wants to have an abortion. No woman who does not want to have a child *chooses* to get pregnant. Nevertheless, women do get pregnant and have abortions. Their decision is celebrated as “*choice*” by the pro-choice rhetoric.<sup>1</sup> Their access

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1. Examples of “pro-choice rhetoric” include most propaganda material of activist groups which focus on arguments for the availability of abortions on demand. A summary version of them is the badge or t-shirt with the word “choice” on it. One presumes that the person who wears these stands for access to abortion, as opposed to free choice of sexual preference, choice of values for life in general, or the empowerment of women to make genuinely free choices in their lives. Obviously these values are not mutually exclusive. What is more, they very often are complimentary. However, the magic word “choice” seems to be identified with and used for representing a certain view on the abortion dilemma. I should note that the situation is similar in the context of the word “life.” I was once about to buy a badge with the single word “life” on it. I asked myself: Is this not too controversial? We can hardly say that the rhetoric of choice (and the rhetoric of pro-life) does not enter

to abortion is identified with their exercise of "*self-determination*," their *control* over their bodies and sexualities. Feminism should reflect women's real experiences; feminists should tell the real story. In the context of the abortion debate, we do not do so. Part of the story, part of the whole experience, is artificially taken out of context. The "pro-choice rhetoric," along with its "pro-life" counterpart, pretends that the fetus just "happens" on the woman.<sup>2</sup> The discourse treats an unwanted pregnancy as if it were a "natural disaster" as opposed to a clear consequence of power relations in sexuality.

In this Essay, I discuss how the existing rhetoric of choice, which purports to serve women's interests, in fact supports and maintains the status quo of patriarchy. Moreover, I attempt to place the abortion dilemma in the context of human sexuality,<sup>3</sup> thereby focusing on the abortion "choice" as part of a continuum of female experience.

#### I. "PRO-LIFE" — "ANTI-WOMAN-CONSERVATIVES" OR "PRO-CHOICE" — "PRO-WOMAN PROGRESSIVES": ARE THESE PACKAGE DEALS?

Making a simple statement of one's position concerning the abortion dilemma often leads to far reaching conclusions about

our everyday lives. The question is, to what extent does this rhetoric influence the way we think about the abortion issue? To what extent do the semantics restrict us to seeing the dilemma in a particular context?

2. This expression is used by Catherine MacKinnon, in the reverse order: "Liberals have supported the availability of the abortion choice as if the woman just happened on the fetus." CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* 94 (1987) (footnote omitted). Professor MacKinnon probably means that although liberals often argue for a woman's right to have an abortion, their argumentation takes the abortion decision out of the context of the woman's life as a whole. In other words, liberals tend to view the abortion decision as an incident which is isolated from the continuum of the female experience. They see the woman "on the fetus" in a vacuum at a given point in time without seeing her history or the history of her gender. They see the fetus in the female body without trying to see how and why that body is engendered. It is likely that liberals, in particular liberal men, are pro-choice because their "out of context" approach allows them to identify fully with the pregnant woman. They pretend that the same even could happen to them, but for their male body. Accordingly, the abortion decision is just one of the many free decisions of the free individual in a free society. MacKinnon seems to imply that, given this liberal standpoint as to the freedom of the individual, the conclusions which follow from this standpoint can only be false and have as little to do with women's reality as the standpoint itself. The liberal approach fails to reflect upon the woman "as if the woman just happened on the fetus."

3. Although I use the expression "human sexuality," the analysis focuses on heterosexuality, as it follows from the subject matter of the Essay.

one's general views on women. Whole packages of ideas are identified with the "pro-life" as well as the "pro-choice" label, and the elements of each package are presumed to be closely related to or perhaps even to follow from each other. In political discourse someone who is "pro-life" is presumed not only to be devoted to the principle that life begins at conception, but also to have certain conservative views about women. In particular, a "pro-lifer" is supposed to be a guardian of the status quo who sees women as born-to-be-mothers, who, by terminating their pregnancies, refuse their "natural roles." Other elements of the presumed (and often actual) pro-life mindset include the following: If abortion was prohibited, women would continue to be mothers and the status quo could be maintained; moreover, the female body was meant to be used for reproduction and not as a source of the woman's own pleasure, but those who "choose" to have an abortion obviously had sex, probably for pleasure as opposed to reproduction. This set of presumptions sees pro-lifers as enemies of women's liberation and therefore as "anti-women." The main problem is not that this "package-approach" is overly general and consequently often false and unfair to those who simply hold certain views about when life begins, an issue upon which compromise is very difficult if not impossible to achieve. The danger comes from the conclusion that being pro-choice instead of pro-life is equal to being pro-woman.

The "pro-choice package" of presumed interrelated principles is associated with the view that access to legal abortion allows women to opt out of their traditional role and decide not to be mothers. Pro-choice people often automatically get credit for supporting legal abortion for progressive reasons. It is assumed that pro-choice people support legal access to abortion because it is a means of liberating women, a means which provides women with the possibility of having sex for their own pleasure on the same terms as men. According to this presumption, legal abortion frees women sexually and allows them to exercise control over their bodies and sexualities.

As opposed to "pro-legal abortion," this liberal "package" is called "pro-choice," referring to the woman's right to choose between legal abortion and childbirth. It is worth noting, though, that hardly anyone challenges a woman's right to carry her preg-

nancy to term.<sup>4</sup> Therefore, fighting for "choice" is essentially identical to supporting the right to legal abortion.

If you are pro-choice, you are identified with that package and you are presumed to be a supporter of women's equality and therefore progressive. If you are *not* pro-choice, you are pro-life and therefore anti-equality and conservative.<sup>5</sup> I believe that the stigmatization linked to the "package deals" has for too long prevented us from seeing new approaches and adopting new perspectives on the abortion debate. Pro-choice people are reluctant to mention or even listen to any doubts or uncertainties which challenge the coherence of the package because of the fear that the "pro-life-right-wing" groups would immediately take political advantage of "alternative" positions on the issue. If abortion were seen as a painful loss rather than a simple technicality, it might be understood as evidence that there is value in what is lost. "If it is such a terrible loss, if what you experience is grief, it must have been life." Raising doubtful voices is tantamount to approaching the enemy.

The current pro-choice discourse concentrates almost exclusively on arguments against potential or actual legislative acts which would cause harm to women by depriving them of access to abortions. We tend to think that this effectively excludes the possibility of speaking out about the harm of the abortion, the intervention, which is not caused by a public act of the government, but, in fact, by a "private" act of sexuality. More precisely, apart from contraceptive failure, pregnancy and abortion are caused by "sex," as it is constructed and understood.

Professor Frances Olsen explains the defensiveness of pro-choice feminists, arguing that, "[b]y threatening criminalization of a common and all too necessary practice, antiabortion pressure denies women the leeway to express the ambivalence and grief they sometimes feel about their abortions."<sup>6</sup> She also indicates that the need to defend the right to abortion forces us to focus on the symptom, rather than the disease itself. In other

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4. The exception to this is cases of mandatory sterilization of certain groups of marginalized women.

5. Although I am aware of the existence of feminist pro-life groups, I am not familiar with any publication by them. Women who identify themselves as feminist and pro-life at the same time certainly have not become part of the mainstream of either feminist literature or the abortion debate. It appears that their ideas either have not been heard or have not been listened to.

6. Frances Olsen, *Unraveling Compromise*, 103 HARV. L. REV. 105, 124 (1989).

words, we focus on *why pregnant women need access to abortion*, instead of *why masses of women get pregnant against their will*. Olsen uses a good analogy to illustrate her point:

The antiabortion movement puts women into the position of having to fight for something they need rather than want. As an analogy, suppose some group believed that begging and sleeping out of doors or under bridges were immoral. The homeless and their supporters would find themselves having to fight for the right to sleep under bridges and beg in the streets. Instead of simply fighting to end homelessness, advocates would have to divert their attention to protecting rights of people to live as homeless people.<sup>7</sup>

Although I basically agree with Olsen's point, I do not think we can explain our silence regarding the dynamics of power in sexuality and its relation to the abortion issue by the need to defend women from anti-abortionists alone. I do not think the fact that abortion causes most women to suffer (both psychologically and physically) *necessarily weakens* the arguments supporting the need for legal access to abortion. As I later elaborate, I believe that it is easier to confront an enemy who is faceless and whose political beliefs are as far from ours as those of the "pro-life package" people than to confront our anger about our vulnerability which is manifested in an unwanted pregnancy. Similarly and especially for men who identify themselves as progressive, it is easier to empathize with women's fight for the right to have a legal abortion than to reconsider and reconstruct human sexuality in a way which would prevent most abortions.

## II. THE CURRENT PRO-CHOICE DISCOURSE SHOULD CHANGE

While we try to insist, using and abusing the liberal rhetoric, that we are fully able, free agents of our lives who can make free choices, we experience how determined we are by our bodies. While within the current legal discourse framework, we have no other option than placing the issue of access to abortion in the realm of privacy, we in fact transfer the problem of unwanted pregnancy from the private realm into the public and the political without realizing the close relationship between the two. The legal as well as political discourse, which see abortion as a privacy issue because it has to do with the body and with sexuality, are similar to some aspects of the discourse on gay and lesbian rights. In both cases there are, actual or potential laws "made in

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7. *Id.* at 123-24.

the public arena," which deny rights to political minorities. In the case of women, it is the right to have an abortion, something which "follows from" sexuality, and in the case of gay rights, it is the right to one's own sexuality.<sup>8</sup> The progressive legal strategy in both cases is to protect those rights from "public intervention" by insisting that they belong solely in the private sphere, that they are "privacy issues." In both cases, however, a side effect of this claim is that certain important aspects of the human relationships inherent in the subjects are excluded from the discourse in order to preserve the coherency of the legal framework of the claims. This leads to silence about power dynamics, vulnerability, and other phenomena often present in "the privacy of the bedroom." Both in the abortion and in the gay and lesbian rights context, "privacy" suggests isolation. Such an approach disconnects individuals not only from government but also from each other.

I believe that the inherent individualism of the privacy based discourse relating to sexuality is largely responsible for so much silence about the power imbalance in heterosexual relationships and are the basis for such relationships' connection to the abortion issue. Moreover, it is possible that the privacy approach is also an obstacle to speaking out about problems related to power and violence in gay and lesbian relationships. Perhaps we feel pressure to present female sexuality as well as gay life as "ideal but for" the intervention by the public into these "private" spheres. This approach neglects to provide for actual individual freedom as a precondition to genuine privacy. On the whole, I argue that both the right to be gay and the right to have an abortion should be approached primarily on equal protection grounds. If the discourses are limited to "sex as private" and "sexual orientation as private," both feminist and gay communities silence themselves about issues which might take place in the sphere which is traditionally identified as private, but which involve power relations and oppression, therefore becoming a political or public issue. "Privacy," in the context of women and abortion, equals the isolation of "the woman's private problem" from problems in society at large and, therefore, produces solitude in the status quo of the patriarchy. "Privacy" in the context

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8. Of course, homosexuality is, in most cases, one's personal identity rather than just one's sexuality (as the pure privacy approach to gay and lesbian rights suggests).

of gay and lesbian rights equals not only the closet, but also a higher likelihood of oppression.

Apart from shifting the legal discourse from privacy to equal protection, another option is viewing the abortion "choice" within its sexual context and within the power relations seemingly inherent in sexuality as private vis-à-vis government regulation, but public in terms of our community and our society. One can say that power dynamics in the bedroom cannot be regulated by the government through laws. In other words, the law might not be the right method by which to send the message: Do not abuse your partner's love towards you and her vulnerability, do not make her pregnant if she does not want to have a child. Still, we could focus on the abuse of power "in the private sphere" by raising awareness about its existence and about its connection to the abortion problem. While perhaps what happens in sexuality cannot be regulated by laws, it could be influenced by *ethical* norms. "Keep the government outside the bedroom" could be the principle of law (provided that it is not actual violence that goes on in the bedroom), and "Don't abuse your power over your partner" could be the ethical norm.

At this stage we confront the pro-life lobby whose rhetoric oppresses us, we confront the government which jeopardizes our right to access to abortion, but we do not confront *how* and *why* we actually become pregnant when we do not want to. Some of us wear badges that command, "U.S., get out of my body" even though we know that it is not the government but our partner who made us pregnant. Obviously, the command of the badge does not refer to the act of impregnation as an interference with the female body, but instead to the anti-abortion laws. In other words, the rhetoric concentrates on the government's responsibility for the woman *remaining* pregnant and treats this as the relevant interference with her body, as opposed to concentrating on the responsibility of the patriarchy (or an individual man) for the woman *becoming* pregnant. Only if we use "the U.S." or "the government" as a symbol of the status quo, or as a symbol of existing power relations, can we claim that the government is largely responsible for the fact that women *become* pregnant against their will.

By accepting that we are free individuals with choice as a starting point, we seem to imply that we are responsible for our pregnancies. In my view, if our impregnated bodies represent isolated, free individuals, our moral right to claim access to abor-

tion is weaker as opposed to stronger, than if we are part of a society which is constructed such that in this day and age large masses of women still become pregnant against their will.

I doubt that emphasizing the close relationship between power relations in the privacy of the bedroom and legal abortion would threaten the main conclusions of feminists in the context of the abortion issue. Instead, I believe that the abortion issue must be contextualized much further. In particular, we must link how unwanted pregnancies occur to how we should deal with unwanted pregnancies. We have to see this as a continuum. Disappointment, pain, and loss are inherent parts of this experience. Again, I emphasize that this major step towards contextualization and towards reflecting upon the reality and the complexity of the experience cannot and should not challenge the validity of the final conclusions regarding legal abortion. It can, however, threaten the existing status quo of power relations concerning human sexuality. Feminists should not see this as a major danger. By reflecting more on the actual experiences of women, the present pro-choice feminists could reformulate the rhetoric as well as the legal framework of the discourse.

I suggest that we should separate the right to self-determination, control over one's sexuality, and the right to choose from the right to access to abortion. The "new rhetoric" should not celebrate abortion itself as if it were a good thing and a free choice for women. It should not approach abortion *as a method of* controlling one's body, but instead as a *redress of the denial* of the right to control one's body, an ultimate "restitution" for the violation of a woman's right to *bodily integrity*.

The current arguments which are "pro-choice" in their rhetoric should be shifted to the stage *before* the unwanted pregnancy occurs. The right to self-determination should secure women's right to decide not to have children. The right to control one's body and sexuality should be used to secure a woman's right to have sex, for pleasure, if and when she wishes, with whom she wishes, and the way she wishes. This should be the real meaning of *choice*. While engaging in sex, women should have the right to be *free from* violence and any *unwanted, nonconsensual act of sex*. This should include nonconsensual penetration of the vagina and this should include nonconsensual *impregnation* by *ejaculation* into the vagina. This set of rights follows from the woman's right to privacy and her right to bodily



integrity, which should include the right “not to get pregnant.”<sup>9</sup> As I later elaborate, I would not exclude the possibility of transforming this right into an actual rule of law criminalizing non-consensual impregnation. However, even in the absence of formal laws, society should aim to develop a strong *ethical* obligation in men to abstain from making a woman pregnant, or, in other words, from ejaculating into the vagina when no effective contraception is used.

One of the difficulties with establishing such an ethical obligation lies in our socialized thinking that sexuality is a biological phenomenon, which is governed “by hormones,” by the body itself, something fully spontaneous which cannot be controlled by rules of behavior.

In his excellent book, *Refusing To Be A Man*, John Stoltenberg says:

[W]hat good does it do to know that eroticism, ethics, and gender identity are fundamentally interrelated?

If we do not understand that interrelatedness, then indeed there is no hope. But there is enormous promise in perceiving gender as an ethically constructed phenomenon — a belief we create by how we decide to act, not something that we automatically “are” on account of how we are born.<sup>10</sup>

In another chapter of the book, he further elaborates on the related issues of sexuality, gender, and ethics:

Evaluation of the ethical issues in men’s sexual behavior has fallen on hard times. It is the fashion nowadays to presume that an act is more or less outside the pale of ethical examination if at any point along the course of it there is an erection or an ejaculation. It is also the fashion to describe human conduct in language that obscures the fact of acts, the fact that acts have consequences, and the fact that one is connected to one’s acts whether or not one acknowledges it. Also, it is fashionable to call acts “reactions,” as if the agent really responsible for the act were someone or something else. So it is that in matters of men’s sexual behavior there is talk of “feelings,” “emotional reactions,” “expression,” and “fantasies” in situations where it would be more accurate to speak of actions that are *actions* — that is, susceptible to ethical interpretation and evaluation: Who is doing exactly what to whom? is the act fair or unfair? what is the consequence of the act for the person to whom it is done? and is the person who is doing the act pay-

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9. Whether this is a right which can be enforced by the law or “just” a moral issue should be explored. This Essay is only concerned with what is wrong with pro-choice rhetoric.

10. JOHN STOLTENBERG, *REFUSING TO BE A MAN* 24 (1989).

ing any attention to the act, its consequence, and its impact on someone else?<sup>11</sup>

### III. MEANINGS OF "CHOICE"

I am convinced that most abortions are not "side effects" of women's liberated sexuality, but rather evidence of the survival of power relations and often internalized oppression. Sexual liberation should mean that women may enjoy sexuality as persons who are free from social pressure to have or not to have sex, as well as from the pressure to have sex as it is defined by male dominated society. This would include the understanding of women's needs inside and outside the bedroom. If this were the case, most women who now have abortions would not need this painful and traumatic invasion of their bodies and selves.

The close relationship between the sexual liberation of women and their access to abortion, as it is set out by the current rhetoric, is misleading. Sexual liberation of women should mean, among other things, that women can live in a world in which sex is genuinely pleasurable for them, in which their stories are understood, in which they feel comfortable with(in) their bodies, in which safe contraceptives are easily accessible, where cultural norms are such that contraception is a joint responsibility between partners, and in which abortion is available as a back-up for rare contraceptive failures. Linking easy access to abortion and defining it as "free choice" and self-determination ignores the fact that women's increasing access to abortions ends up liberating men from the ultimate restriction on their sexual freedom — the fear of impregnating their partners and the consequences of such an event.

I disagree with the feminist presumption that men jeopardize women's right to abortion because they want to force us to bear children. Many men want to oppress women by maintaining the experience of motherhood in a framework which is defined by men as "natural." However, men as individuals want to have children when *they* decide to have them. Losing control over this decision means a loss of power as well as loss of means, as they might have to support an unwanted child. In this context, Catharine MacKinnon asks the question: "What are babies for men?"<sup>12</sup> And she answers:

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11. *Id.* at 47.

12. MACKINNON, *supra* note 2, at 93.

On one level, men respond to women's rights to abort as if confronting the possibility of their own potential nonexistence — at women's hands, no less. On another level, men's issues of potency, of continuity as a compensation for mortality, and of the thrust to embody themselves or their own image in the world, underlie their relation to babies (as well as to most else).<sup>13</sup>

In my view, this approach neglects the possibility that men fear losing their power "at women's hands" because the woman in deciding whether or not to abort determines when to reproduce, as opposed to the man. At present, a man's decision to ejaculate into the partner's vagina when no contraception is used rarely equals a decision to reproduce apart from the case when he indeed wants to have a child. Aside from the latter case, he just "happens" to ejaculate into the vagina and after being "conscious again," typically hopes that no pregnancy occurs or that the woman will "choose" to have an abortion. I see a sharp difference between the attitude of many men in politics, challenging women's right to have abortions and too many men as "private" individuals — pro-life as well as "pro-choice" — refusing to use a condom or withdrawing from the vagina before ejaculation when no other contraceptive is being used. In my view, the root of this controversy is not, as many feminists argue, that "men want women to have children."

Women who are impregnated against their will by men indeed have a "choice" between carrying their unwanted pregnancy to term or aborting the fetus. This is indeed a better situation than being forced to give birth to unwanted babies. Nevertheless, such a "choice" is like a "choice" between being slapped in the face or kicked in the stomach. While the slap in the face might seem less aggressive than a kick in the stomach, I would not call an attacker who asks the victim which of these two forms of pain she would "choose" to suffer liberal or even human.

Perhaps a better analogy to illustrate the situation of the woman who is impregnated against her will would be one in which a person who is pushed in front of a car could "choose" between surgery or confinement to a wheelchair as the solution to his or her situation. In the absence of a more appropriate expression, one could say that although neither of the options are "good," the victim does have a *choice* between the two options. In the

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13. *Id.*

case of the abortion "choice" the woman was impregnated against her will, not by some unavoidable "natural force," but by a man, and she has to make a painful decision between giving birth to a child whom she did not intend to have or having an artificial, undesired intervention upon her body, an abortion. The fact that she can decide to have the abortion does not mean that she *chooses* it. The only situation in which she would be freely choosing abortion is one in which she decided to get pregnant even though she does not want to have a child so that she may have the particular experience of terminating a pregnancy. I have never met a woman who would choose to go through such an experience. I have met some, though, who said "they did not care" about getting pregnant, they did not think about it during the intercourse. However, all of them came to find that abortion was a bigger deal than they had imagined. The trivialization of the abortion experience inherent in the rhetoric of "choice" has misled many women.<sup>14</sup>

In the rhetoric, liberation and "choice" are intertwined. However, while an abortion can save a woman from unwanted motherhood, such a "choice" hardly liberates anybody. Liberation involves *not being forced* to make such a choice. The essential element of women's true liberation should be not having to choose only between the two painful options of abortion or bearing an unwanted child. The positive connotation of the conventional meaning of "choice,"<sup>15</sup> which is also attributed to it in the abortion context, does not reflect the reality of the dilemma for most women. The majority of women who seek abortions do not exercise a free "choice." They are forced to make a decision

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14. Yet a new step in the trivialization of the abortion experience can be seen in the campaign for access to the RU486 abortifacient. The rhetoric of the campaign pushes the abortion issue even deeper into the realm of privacy. I can imagine, with much horror, television commercials in the near future with pretty, smiling women saying: "Have an abortion in the privacy of your own bedroom! By the time your loved one is back from a long day of work, you are ready for him again!" I have not yet seen such a commercial, but I have seen a T-shirt on a young woman saying: I WANT my RU486. If she knew how painful the cramps of the miscarriage caused by the "new miracle" can be, perhaps she would throw away her shirt. I would be happy to give her my favorite one to wear. It says: "Feminism is the radical idea that women are human beings."

15. "Choice" is normally used as an expression with positive tone, such as a popular key-word in advertisements targeted at women produced by the fashion industry. It implies the free, pleasure-giving decision of the modern woman to determine the way she looks, smells, and ultimately, feels, *see, e.g.*, "CHOICE" CATALOGUE order forms, on which pretty, modern looking women appear to say: "I know exactly where I'm going. When you want to look great, every girl wants choice."

which is not an exercise of self-determination as pro-choice rhetoric suggests, but the consequence of *the lack of self-determination*. Women do not exercise control over their bodies and sexualities when having abortions. They undergo abortions because, at an earlier point, they were not in the position to exercise full control over their body and sexuality — at least one would presume that most women would have preferred not to get pregnant and undergo an abortion if they had full control over what happened to their bodies.

#### IV. IS THIS A VOICE OF VICTIM FEMINISM?

The expression “victim feminism” has appeared recently in feminist literature.<sup>16</sup> The proponents of this phrase argue that traditional feminists tend to identify women as inherent victims as opposed to powerful human beings. In the discourse regarding feminist views on sexuality, scholars often referred to as “victim feminists” are mainly those who argue that heterosexual intercourse can never be really freely chosen by women,<sup>17</sup> and that heterosexual intercourse is essentially an act of false consciousness. Another group of feminists, mainly liberal feminists and those who recently have begun to identify themselves as “power feminists,” argue that women are free agents in charge of their own sexuality and, apart from “real rape,” women have intercourse only because they freely choose to do so. In *Fire with Fire*, Naomi Wolf contrasts the main tenets of victim feminism with those of power feminism. Regarding sexuality, she argues that victim feminism is “sexually judgmental, even anti-sexual.”<sup>18</sup> Moreover, she contends that it “is self-sacrificing, and thus fosters resentment of others’ recognition and pleasures”<sup>19</sup> and “is judgmental of other women’s sexuality and appearance.”<sup>20</sup> Furthermore, according to Wolf, it “thinks dire: believes sensuality cannot coincide with seriousness; fears that to have too much fun poses a threat to the revolution.”<sup>21</sup> In contrast, what the author

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16. See NAOMI WOLF, *FIRE WITH FIRE* (1993); KATHIE ROIPHE, *THE MORNING AFTER* (1993).

17. This view is associated with radical feminists, particularly Catharine MacKinnon, see generally *supra* note 2, and Andrea Dworkin, who explicitly says, “[n]o woman needs intercourse; few women escape it.” ANDREA DWORKIN, *ABORTION, LAW & INEQUALITY* 95 (1983).

18. WOLF, *supra* note 16, at 136.

19. *Id.*

20. *Id.* at 137.

21. *Id.*

identifies as "power feminism" is "unapologetically sexual; understands that good pleasures make good politics."<sup>22</sup> Also it "is tolerant of other women's choices about sexuality and appearance; believes that what every woman does with her body and in her bed is her own business."<sup>23</sup>

I personally believe that women experience their sexualities in very different ways and that feminists should hear these different voices. However, I also believe that in many women's experiences there are certain gray areas between rape and fully consensual, freely-chosen, pleasure-giving sex. The picture is even more complex if we talk about vaginal intercourse, or, for that matter, about oral sex. Robin West explores this issue in the context of promiscuous heterosexuality. She cites the story of a woman on a date to illustrate the "fine line between the feeling of being threatened by an implied threat of force and the feeling of sheer inevitability of sex."<sup>24</sup> The dynamics of this situation are hardly atypical:

He wants to see how far he can go. She lets him. (She wants to, or she does not want to but he's taken her out after all, and spent money on her, she needs a lift home, she doesn't want to seem a prude, *he might be angry*) . . . .

Or she refuses. He tries to persuade her. He tells her he loves her. He says she doesn't love him. He calls her a prude, immature, frigid. He says he needs sex . . . . Each time she finally tells him to stop, breaks away, he gets angry, he rages, he sulks, he tells how bad it is for men to be left 'excited.'<sup>25</sup>

Finally, the passage recounts, she gives in and performs oral sex on the man. The summary of the story is, "This isn't rape, this is normal, everyday stuff. The magazines call it young love."<sup>26</sup> This quotation perfectly illustrates how limited a woman's consciousness of her moral right to say "no" can be and how we limit our right to self-determination and choice. We might often feel that our individual lives are just too short to change the nature of human relationships, or we might simply feel very lonely and desperate so we go along with the existing rules of the game, to gain intimacy — or we sometimes feel that there must be some-

22. *Id.*

23. WOLF, *supra* note 16, at 136-37.

24. Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WISC. WOMEN'S L. J. 81, 103 (1987).

25. *Id.* at 102 (citing WOMEN AGAINST VIOLENCE AGAINST WOMEN (WAVAW) 27-28 (D. Rhodes & S. MacNeill eds., 1985)).

26. *Id.* (citing WAVAW at 27-28).

thing wrong with us for not being able to experience our sexuality the way in which we are expected. Those heterosexual women who need sex and affection are dependent on men and the rules that are set by men. These rules cannot be challenged by confrontation because sexuality and intimacy are intertwined and they are seen as counterparts of power and confrontation. In the socially constructed world of intimacy and sexuality, the woman, more often than not, is expected to give up her power to "get" intimacy. Values which are emphasized and celebrated in the abortion context are too often neglected in the context of female sexuality. The most obvious example is power itself. The focus of women's need for empowerment is constantly shifted from sexuality, as such, to the abortion decision. Liberals and pro-choice people in general seem to be satisfied with empowering women to have abortions but they neglect the question of why so many women are still powerless in their sexuality. In other words, according to liberals, the goal of empowering women as individuals with their own personal, emotional, and sexual needs is accomplished by giving access to abortion.

In the grey area of not-fully-consensual sex, women do consent to have sexual intercourse, in the legal sense of the word. I disagree with the radical feminist view that women should have the right to abortion *because* the fact that they got pregnant indicates that they had intercourse, "therefore they were raped." Nevertheless, I am convinced that the element of nonconsensuality should be shifted towards the center of the feminist discourse on abortion, emphasizing consciousness raising as well as law.

Women who carry unwanted pregnancies to term had intercourse. Most of them were not raped in the "legal" sense of the word. While they might or might not have *fully* consented to intercourse, it is almost certain that they did not consent to a *particular element* of the intercourse: their *impregnation*. It can or should be seen as a presumption, in the legal as well as in the common understanding of the word, that in the absence of stated consent, a woman does not agree to ejaculation into her vagina when the partners do not use contraception. Women who seek abortions presumably did not want to become pregnant, because they did not want to have a child. However, they did get pregnant against their will and apart from contraceptive failure, their pregnancies were caused by the male partner's ejaculation into the vagina. Of course, even in the case of contraceptive failure this is the case, but the causal relationship can be debated. Simi-

larly, the failure of coitus interruptus as a contraceptive method is open to analysis as to causation and fault. These women may not be victims of rape, but they might be victims of the violation of their *bodily integrity*.

#### IV. THE SOCIALLY CONSTRUCTED MEANING OF "SEX" (AND "LOVE")

As previously discussed, the discourse on the issue of abortion typically treats unwanted pregnancy as a "natural catastrophe." As Anna Nicol Gaylor puts it in her book, *Abortion Is a Blessing*,<sup>27</sup> the title of which might not be reflective of many women's experiences, "pregnancy is not something you do, it is something that *happens to you*."<sup>28</sup> We are socialized to think that women get pregnant because we are human beings and we have to have sexual intercourse and sex might result in pregnancy. Moreover, if we are pro-women, we accept and celebrate women's need to have sex.

But *what is sex*? Obviously, the definition of "sex" is what each society and each culture *defines as sex*. In the dominant culture of the Western World, sex is equated with heterosexual intercourse. Sex involves the penetration of the penis into the vagina, with the aim of orgasm. Male orgasm involves ejaculation. John Stoltenberg is quite straight forward, saying: "Men as a class are devoted to the sex act that deposits their semen in a vagina — 'in situ' as men have so tellingly named their target."<sup>29</sup>

Male ejaculation into the vagina when no contraception is used, can cause pregnancy. It follows from this construction of sex that unwanted pregnancy is a risk (for women) of having sex. Admittedly, it is essential for the liberation of women to separate sex from reproduction, but it appears that we still define sex in the same way we did when we linked it to reproduction. In order to approach the abortion dilemma in a way which is more genuinely and effectively pro-woman, we have to confront this contradiction.

Society not only constructs the meaning of "real sex" but also what it means to be a "real woman."<sup>30</sup> A "healthy attitude"

27. ANNA NICOL GAYLOR, *ABORTION IS A BLESSING* (1975).

28. *Id.* at 24.

29. STOLTENBERG, *supra* note 10, at 96.

30. I should note that the image of the "real man" is also socially constructed, and it may cause a lot of anxiety for men. Many men worry all of their lives about the size of their penis or their ability to have or maintain an erection or, more gener-



toward sex is inseparable from real womanhood. This construct is a product of socializing women to identify with the male image of sexuality — heterosexual intercourse, penetration, ejaculation into the vagina. “This is what healthy women want.” Society defines women’s mental and sexual health according to their views on vaginal intercourse. It is no surprise that many women become furiously defensive when compulsory vaginal intercourse is challenged. Their socially constructed “healthy woman” image is at stake.

In reality, the whole body is full of erogenous zones. The biggest one is the skin itself. The part of the female body which is typically most erogenous is the clitoris. Conversely, the vagina is almost free from nerves. Nevertheless, “sex” is vaginal intercourse according to the common definition. In his book, *Making Sex: Body and Gender from the Greeks to Freud*, Professor Thomas Laqueur examines the relationship between patriarchal politics and the “construction” of vaginal orgasm in Freudian theory. In her review of the book, Lillian Faderman summarizes Laqueur’s points as follows:

Laqueur believes that Freud must have known that he was inventing the vaginal orgasm because he surely knew that the vagina had few nerve endings. To make his argument, Laqueur quotes a number of earlier medical works of which Freud, with his medical training, would have been aware. Laqueur thus concludes that Freud’s invention of the vaginal orgasm stemmed from his belief that patriarchy was the only possible way to organize relations between the sexes and from his view of the external, active penis and the internal, passive vagina as necessary signs within the body of patriarchal relations. In short, Laqueur suggests that Freud lied about the possibility of a vaginal orgasm in the service of preserving a social configuration he deemed important. Laqueur is brilliantly convincing in his argument that the ways in which sexual difference have been imagined or presented in the past have served a political purpose and have been unconstrained by observable facts and what is actually known about the body.<sup>31</sup>

Although Professor Laqueur examined the issue in a historical context, it is likely that his observations regarding the social construction of female sexuality and its relationship to patriar-

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ally, about being a “real man” — whatever socialized meaning that concept has for them. I am convinced that many men also feel objectified and alienated by the construction of gender.

31. Lillian Faderman, Book Review, 17 SIGNS 820, 822–23 (1992).

chal politics have not undergone a radical change up to this stage. Even today, too many women internalize this social definition of sex so much that they think they must have vaginal intercourse in order to "really have sex." Actually, very often, the purpose is to "give him sex." This is an issue which is crucial in the understanding of the relationship between the dynamics of sexuality and abortion.

What Robin West refers to as the "giving self" of women<sup>32</sup> is an important element of the social construction of female sexuality, which is defined *relative to men's needs* and which pretends that those are identical to women's needs. This identification implies much more than views on the "mystery of vaginal orgasm." My experience suggests that it is hopeless and needless to defend either the existence or the impossibility of vaginal orgasm. Women who argue that it does exist furiously silence others who deny it, while the others furiously argue that vaginal orgasm is a lie. I do not think that I have to take a side on this issue or that I have to make a final judgment on whether or not some women enjoy intercourse. However, I do want to argue that the social construction of female sexuality is deeply interrelated with the abortion dilemma. Although I have met many women who argue that radical feminists' views on female heterosexual experience are unrealistically negative and therefore should not be referred to as *the* female experience, I would like to suggest that Andrea Dworkin's thoughts might be acceptable to many of us:

Especially we are supposed to be loyal to the male meanings of intercourse, which are elaborate, dramatic, pulling in elements of both myth and tragedy: the king is dead! long live the king! — and the Emperor wears designer jeans. We have no freedom and no extravagance in the questions we can ask or the interpretations we can make. We must be loyal; and on what scale would we be able to reckon the cost of that? Male sexual discourse on the meaning of intercourse becomes our language. It is not a second language even though it is not our native language; it is the only language we speak, however, with perfect fluency even though it does not say what we mean or what we think we might know if only we could find the right word and enough privacy in which to articulate it even just in our own minds. We know only this one language of these folks who enter and occupy us: they keep telling us that we are different from them; yet we speak only their language and we have none, or none that we remember, of our own; and we do not dare, it seems, invent one, even in signs and gestures. Our

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32. See West, *supra* note 24, at 108–11.

bodies speak their language. Our minds think in it. The men are inside us through and through. We hear something, a dim whisper, barely audible, somewhere at the back of the brain; there is some other word, and we think, some of us, sometimes, that once it belonged to us.<sup>33</sup>

Real sex is still defined by the form of sex (vaginal intercourse, ideally with no barrier between the two bodies and involving ejaculation into the vagina) which is required for reproduction. The real separation of sexuality from reproduction should begin by rethinking how and why so many women still *internalize* this socially-constructed definition of sex. Why do they risk getting pregnant and having abortions for something, essentially the man's orgasm into the vagina, which is unrelated to the woman's pleasure.

While the "rhetoric of choice" is based on the woman's right to *control her body and her sexuality*, in fact, her body and sexuality still are largely controlled by the male partner under this paradigm. *He* controls the woman's body, by controlling his orgasm. The *choice* is the man's choice. He might choose to make the woman pregnant, for the sake of *his more sophisticated* orgasm. He might choose to have more pleasure for a couple of seconds.

Would any woman rationally and *freely choose* an unwanted pregnancy were she not manipulated by the socially constructed definition of sex and love? Would she ever "*choose*" to *have an abortion*? She "knows" that she has to sacrifice her physical and mental well being if she truly "loves" him. She "knows" she shouldn't love herself enough to protest — that would be seen as *selfish*. Nice women are not selfish. So they get pregnant and choose to have abortions. For women, vulnerability and the giving self were made a part of "love." This is the most unfair form of oppression. This is why the private sphere is so passionately protected from interventions by "justice." The private is the realm of love. Love, for women, has to do with giving and sacrificing. Love, as it is still often understood and interpreted, cannot comprehend fairness and justice. Now, as so much was taken by justice from the realm of love, the private, by laws that criminalize marital rape, date rape, and domestic violence at least consensual sex must be left intact. Impregnation of a woman against her will, it seems, must remain private, because it has to do with love.

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33. ANDREA DWORKIN, INTERCOURSE 134-35 (1987).

Because abortion is a result of socially constructed love, it is seen as a privacy issue. Most of us might feel uncomfortable with the idea of making impregnation illegal, although this is not a new idea in feminist literature. Frances Olsen wrote in 1989: "A less obvious, but heuristically important, means to reduce abortion would be for the state to outlaw the act of impregnating women who do not wish to become pregnant."<sup>34</sup>

Robin West is also critical of the lack of the legal recognition of the harm done by impregnation:

In sum, the Rule of Law does not recognize the danger of invasion, nor does it recognize the individual's need for, much less entitlement to, individualization and independence from the intrusion which heterosexual penetration and fetal invasion entails. The material consequence of this lack of recognition in the real world is that women are *objectified* — regarded as creatures who cannot be harmed.<sup>35</sup>

If the feminist analysis of the abortion dilemma shifts from the present rhetoric of choice toward recognition of women's right to bodily integrity and equal protection, in some time we might view nonconsensual impregnation as a legal issue, similar to date rape, marital rape, and domestic violence. As I pointed out earlier, even if it is not declared illegal, nonconsensual impregnation can and should be considered fundamentally *unethical*.

## VI. "MEN'S LIVES ARE AT STAKE: LET'S RECONSTRUCT SEX"

An important element of the tenets of the rhetoric of choice is that most unwanted pregnancies are the result of contraceptive failure. In the desperate fight to save the right to have an abortion as a back-up to contraception, we might really work hard to convince ourselves that this is the case. While such statistics may be accurate, it is important to recognize two aspects of them. First, in the current framework of arguments for legal access to abortion, women's interests are served by proving that the incidence of contraceptive failure is frequent. This follows from the approach, apparently internalized to some extent by pro-choice women, that the woman is responsible for contraception, and if she becomes pregnant, it is the result of her negligence, therefore, she should bear the consequences. By proving that pregnancy is often not the fault of the woman but rather of the

34. Olsen, *supra* note 6, at 130.

35. Robin West, *Jurisprudence and Gender*, in *FEMINIST LEGAL THEORY* 201, 231 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) (emphasis added).

contraceptive method used, we try to free women from responsibility for their pregnancies and thereby make their claim to abortion morally acceptable.<sup>36</sup> I note that this approach implies that it is either the woman or the contraceptive method, which is responsible for an unwanted pregnancy. Of course, never the man! Reading these analyses, one might even forget about the fact that a man was probably involved. Secondly, statistics and figures about contraceptive failure rarely clarify whether or not the contraceptive method of coitus interruptus is included in the figures and, if so, what exactly counts as failure. If he says: "Sorry, I really meant not to . . . but you were just so great, honey!" — is this considered a contraceptive failure?

While fighting for women's right to have control over their bodies and sexualities, we neglect the question: Why do so many women *lack* control over their bodies and sexualities? Why are they completely vulnerable to men? Class- and race-related answers do not provide a full explanation because masses of women from all classes and races abort unwanted fetuses as a result of not using contraceptives. Statistics and figures on this issue vary, but probably *most* abortions are the results of unprotected sex.<sup>37</sup> In this day and age, it is called "unsafe sex." Unprotected intercourse "has become" unsafe now, due to the AIDS tragedy from which *men can die*. Society has been working hard to reconstruct sex. Abstinence was once seen as old fashioned and prudish, now it is encouraged. Masturbation was once labelled childish and sick, now it is seen as erotic. Vaginal intercourse was the norm, now men are taught to enjoy "alternatives."

Why wasn't safe sex an issue when millions of women had to carry unwanted pregnancies or go through the traumatic experience of abortion? Because *men* could participate in intercourse with hardly any negative consequences for themselves? Why is it

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36. Under a subheading titled, *Degree of the Woman's Responsibility for the Pregnancy*, Robert N. Wennberg says, "many would assume that a woman who has used a contraceptive but became pregnant anyway may also be less obligated." ROBERT N. WENNBERG, *LIFE IN THE BALANCE* 137, 138 (1985).

37. One of the many research studies on the subject suggests that eight out of ten men who were interviewed at the clinic where their partners had abortions reported that "the current unwanted pregnancy occurred because no contraception had been used." The reason most often given for this was "carelessness." STOLTENBERG, *supra* note 10, at 99 (referring to Arden Aibel Rothstein, *Men's Reactions to Their Partners' Elective Abortions*, in 128 AM. J. OF OBSTETRICS & GYNECOLOGY 831, 831-37 (1977)). Although the reference is not recent, Stoltenberg's book was published in 1989 and the author does not indicate that the findings of the 1977 survey are outdated.

that male condoms are so easily available but female condoms, though in existence, are hardly mentioned anywhere? Why are we now encouraged to exercise responsibility in bed? Isn't sex private? Why shouldn't the "liberated individual" have the right to *choose* between dying or staying alive in accordance with the choice to have protected or unprotected sex?

In fact, the issue of abortion and the issue of HIV transmission are analogous in several ways when contextualized in the framework of sexuality. Suppose someone knows or thinks that he is HIV positive and has intercourse without using a condom. Ejaculation into the vagina, or into the anus, increases the risk of transmission as opposed to when there is ejaculation. According to the liberal approach used in the rhetoric of choice, the HIV-negative partner is an autonomous adult individual who freely consented to sex at a time when most people know about the existence of AIDS. In case of an infection, she or he is fully responsible for her or his fate and cannot shift responsibility to the HIV-positive partner.

Of course, this parallel is false on at least two levels. First, the current rhetoric of choice does not focus on the sexual act freely chosen, though it seems to presuppose it, but rather on the abortion decision which is only a consequence of the sexual act as free choice. Still, there is considerable similarity between the two problems' structures. The other difference is that while the unwanted pregnancy can be "cured" by an abortion, HIV and AIDS are incurable. However, the fact that HIV transmission would ultimately result in death, which is an undoubtedly greater loss, does not mean that the unwanted pregnancy and abortion is not also a loss — and an avoidable, unnecessary loss.

Because of the considerable differences between HIV transmission and impregnation through consensual intercourse the analogy might be more realistic if we compare the transmission of a curable venereal disease with unwanted impregnation. Suppose there is a sexually transmitted disease that is transferred through semen. The carrier of the virus or bacteria ejaculates into the partner's body which then becomes infected. One possible approach for legal analysis of this issue is identical to the one described above in the context of HIV transfer. In this approach, the transmission of the disease would not be criminalized (or seen as a tort) even if the transmitter knew about his condition. A second, more widely accepted approach is that the carrier of the disease is legally responsible. This analogy is relevant to the

issue of unwanted pregnancy and abortion because such a situation would not be addressed by the law on privacy grounds, save the extreme liberal attitude which holds that one's body is private and whatever one consents to be done to it one must take responsibility for, but rather on grounds of the previously uninfected person's right to *bodily integrity* and right to health. It follows that in the current discourse, an unwanted pregnancy is seen as a lesser harm than a venereal disease, or at least as a completely different kind of harm. This disparate perception might be the result of the trivialization of the abortion experience or of the fact that the men who only impregnate women against their will are seen by society as less guilty than those who cause an *actual bodily harm* to a woman or another man.

To take the analogy further, the fight to find a cure for AIDS and the search for effective, affordable cures of venereal diseases does not exclude the possibility of acknowledging the responsibility of those who infect others. Similarly, fighting for the right to abortion does not exclude the possibility of recognizing the responsibility of the partner who causes the unwanted pregnancy. Again, one might see these as legal issues, or, alternatively, as *ethical* questions. One might say that holding an HIV positive person responsible for failing to give up intimacy is unfair, particularly if we consider the extraordinary circumstances in the life of a person with HIV. Still, the idea of criminalizing HIV transfer through consensual sex, or the transfer of a venereal disease the same way, is much more familiar to legal theory than criminalizing unwanted impregnation through consensual sex, even though in the case of the venereal disease the general well-being of the person is typically not interfered with by a serious or otherwise disturbing disease. Therefore, if the transfer of a disease through consensual intercourse is justifiable, then, in the case of impregnation, it is at least equally justifiable. The *mens rea* element is not problematic in the case of impregnation (if it is not, in the case of HIV or venereal disease) and the *actus reus* is basically the same.

Thus, we can conclude that attitudes toward imposing civil or criminal liability for unwanted impregnation are essentially social constructions. As far as the issue of unwanted impregnation is concerned, probably most people, whether they would impose liability or not, would see the reckless transfer of any disease through intercourse as both unethical and as a breach of the trust

which is inherent in intimacy. Perhaps we should also view unwanted impregnation in this manner.

Although the HIV issue and the ways in which it affects women are very much *related* to the issue of abortion and choice, it is too complex to explore fully in this Essay. Nevertheless, it is worth asking why so many women's quality of life was not enough of a reason to enact a major campaign for protected sex. Why did progressives campaign for "choice" and not for the kind of sex which is *safe for women*?

## VII. MADONNA, WHORE, BOTH? OR ENGENDERED HUMAN INDIVIDUAL?

Society's answer to the question of why there are so many sexually active, heterosexual women who do not use contraception is that these women are *not responsible enough*. The reality is that they are. They feel too much responsibility for maintaining the "right image" for women in society. The trouble is that the image is a bit too contradictory. The messages are confusing. The expectations about women can be best summarized by the classic "Madonna/Whore" split. In the eyes of the patriarchy, the ideal woman is a *good combination* of Madonna and Whore, some innocence and vulnerability combined with frivolous sexiness. If women developed their genuine, individual sexualities it would be too dangerous for the status quo. Compulsory heterosexuality and the socialization to identify vaginal intercourse as a "must" for sex, preferably with ejaculation into the vagina, helps maintain women's dependence on men. Our whole sexuality is constructed and structured so that the man is *in charge*. According to Dworkin,

[I]ntercourse frequently requires as a precondition for male performance the objectification of the female partner. She has to look a certain way, be a certain type — even conform to preordained behaviors and scripts — for the man to want to have intercourse and also for the man to be able to have intercourse. The woman cannot exist before or during the act as a fully realized, existentially alive individual.

Despite all efforts to socialize women to want intercourse — e.g., women's magazines to pornography to *Dynasty*; incredible rewards and punishments to get women to conform and put out — women still want a more diffuse and tender



sensuality that involves the whole body and a polymorphous tenderness.<sup>38</sup>

The heterosexual woman with the need for sex is dependent on the man. She has to behave according to male expectations to have sex. She might even think that it is politically wrong, but her biological self cannot be politically correct. Many women are actually frightened of developing a feminist consciousness, simply because they are afraid that then they could not have sex.

Men can manipulate women by saying that equality is fine, but as a sexual being, "I can only be attracted to feminine women." How is a feminine woman supposed to behave regarding contraception? If she tells her new date she is on the pill or has an intrauterine device, she is a whore. This is wrong because she should be a Madonna. Although she is a Madonna, she shouldn't say no to the man, especially after an expensive dinner, or after the first long kiss. If she interrupts the spontaneity and intimacy of the foreplay (also a socially constructed expression) in order to place a diaphragm into her body (over which she has a right to control),<sup>39</sup> she is selfish and obviously frigid. Similarly, if she insists on interrupted intercourse, she does not enjoy sex, and she is wrong. Once intercourse begins, she should be a whore who does not care about anything else but the pleasure the penis provides for her — unconditionally. She knows she can get pregnant, but she should not think about it. Any other consideration should be forgotten in the ecstasy of vaginal intercourse.<sup>40</sup>

Why does the woman allow the man to ejaculate into her body? Is this something that "happens to her" or is it something

38. DWORKIN, *supra* note 33, at 126.

39. For a discussion on the same issue, see MACKINNON *supra* note 2, at 95.

40. John Stoltenberg refers to a report by Maria C. Boria-Berna, *Husband's Role in Birth Control Acceptance*, in *5 MEDICAL ASPECTS OF HUMAN SEXUALITY* 70, 70-74 (1972), which found the following: "On the post-partum floor of a large New York City hospital, Dr. Maria Boria-Berna interviewed 130 women who had just given birth and approximately 100 men who had impregnated them. She asked the men how they felt about their wife's using birth control. The majority of the men 'did not like the idea at all.' She asked the women how they felt about using birth control, and eight out of ten replied that they 'favored contraception without reservation.' But about half of the women favoring contraception said that if their husband objected, they would defer and not use any. At that rate of deference to the determined will of husbands, it is not surprising that 48 percent of these new mothers reported that their pregnancy had been totally unplanned." STOLTENBERG, *supra* note 10, at 96. Again, the figures might be different today. However, it would be interesting and in fact a very important task to carry out a large-scale research project on women's contraceptive practices nowadays including looking at how these are affected by the expectation of their male partners.

over which she has control? Why does the woman who enjoys gentle touches and kisses more than intercourse put up with it? Why does the woman who likes intercourse but does not, at the time, use birth control put up with it? Is this her *free choice*? I believe she does so because this is one of the rare situations in her female experience when she can be *Madonna and Whore in one body*. Like the Madonna, she is vulnerable. The man is in full control of her body.<sup>41</sup> And just like the Madonna, she is impregnated by someone, who cannot be a real human being. Must be God! If she conceives, it is the "Immaculate Conception." A human being, especially a loved one, *cannot possibly do it to her body* against her will. Madonna cannot be *angry* with God! She forgives. And she continues to see the man. Or live with him. The modern Madonna is liberated, so she may not be totally happy with motherhood. And of course, the modern God didn't mean that, either. It just happened. The modern Madonna cannot be oppressed. She has *the right to choose*.

When she allows the man to ejaculate into her, she is a Whore, too. Her ecstasy for the Penis and the Man is unconditional. She does not think about unwanted pregnancy. If it crosses her mind for a second, she forgets about it in the next. She knows, she *has the right to choose*. And her sisters believe this is the truth. They make her celebrate *her free choice!*

#### CONCLUSION

Mainstream feminist scholarship and activism identifies the woman's right to have access to legal abortion with her right to self-determination, control over her body and sexuality, *her right to choose*. In the rhetoric of choice these rights are exercised when the woman is already pregnant against her will. Whether feminism's neglect of the issue of *nonconsensual impregnation* is related to the need to defend access to abortion within a certain legal and constitutional framework, or because of its perceived private intimate nature is unclear. Nevertheless, if feminism is deeply concerned with women's experience and with women's interests, the focus of feminist legal theory as well as activism should shift toward *preventing abortions* as well as defending the

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41. While some women would disagree with the point that when there is no contraception used, the man is in full control of the woman's body, the fact is that many of us do end up at abortion clinics. Do women who disagree really not care about the risk when their partner is about to ejaculate? Are they really in such ecstasy that they do not care?

right to (early) abortion as back-up. In order to do so, we should recognize the close link between the social construction of sexuality, power relations in the privacy of the bedroom, and the abortion dilemma.

