

# ESSAYS

## WHOSE MOVE? BREAKING THE STALEMATE IN FEMINIST AND ENVIRONMENTAL ACTIVISM

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### INTRODUCTION

Is there a feminist jurisprudence that includes attention to ecological issues? Should there be? What good might it do? Where might thinking about it lead?

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Professor Frug was born in Saint Joseph's, Missouri, on November 13, 1941. She received her B.A. from Wellesley College in 1963 and her J.D. in 1968 from Washington University Law Center, where she was a member of the Order of the Coif. In 1972, she received her LL.M. from New York University Law School. Professor Frug worked at MFY Legal Services from 1968 to 1971 and was a Reginald Herber Smith Fellow from 1969 to 1971. From 1971 to 1972, she was a Ford Fellow in urban law at New York University School of Law. She was an associate in law at Columbia University School of Law from 1972 to 1974. From 1975 until 1981, Professor Frug served on the faculty of Villanova University School of Law, and from 1981 until her death, she was on the faculty at the New England School of Law. While there, Professor Frug taught in the areas of contracts, domestic relations, and women and the law, and published articles on these subjects. On April 4, 1991, she was murdered near her home in Cambridge, Massachusetts.

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This Essay offers one beginning. The tremendous array of feminist and environmental activism all over the world that makes the topics considered here interesting and worth discussing will largely be taken as given. In New England, for example, more than 200 local groups participate in the New England Environmental Network conference held each spring at Tufts University. Thousands of feminist groups and projects, organizing day care, staffing rape crisis services, running health clinics, and providing shelter to women who have been battered and their children, are at work around the world.

This Essay, however, steps back from the activities and activism and focuses on some aspects of the relation of feminism and ecology, or feminist and ecological activism.<sup>1</sup> It explores two important phenomena in this relationship: the fact that current efforts to protect the environment often fail to include the protection of oppressed people as part of the task; and the apparent ambivalence of many feminists, especially feminist lawyers, about engaging in problems of "nature." It suggests that environmental activism needs more feminism, and that feminists need to find new ways to approach environmental issues.

Two preliminary observations are in order. First, the law of environmental protection in the United States is of fairly recent origin<sup>2</sup> and is expressed in an extremely broad array of statutes.<sup>3</sup> This

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1. Although there is substantial debate about their meaning and political differences about their use in many contexts, the words "environmental" and "ecological" are used interchangeably here. This is deliberate, a sign that those differences are not what this Essay is about. For a concise expression of the issues of usage, see Gwyn Kirk, *Blood, Bones, Connective Tissue: Linking Feminism and Ecology* (Apr. 30, 1991) (unpublished manuscript, on file with author).

2. The National Environmental Policy Act, which inaugurated the current legal era of environmental protection, was enacted in 1969. 42 U.S.C. § 4321 (1988). The role of the law in decisions about who gets to exploit natural resources is, of course, older than contemporary environmental protection law. Rights to use flowing water have been delineated for centuries in the common law. In the United States, water rights doctrine began to take a strong shape in the middle of the nineteenth century. *See, e.g., Irwin v. Phillips*, 5 Cal. 140 (1855) (enunciating doctrine of "prior appropriation" of flowing water, in context of conflicting water claims of groups of gold miners); *Elliot v. Fitchburg Ry.*, 64 Mass. (1 Cush.) 191 (1852) (adopting in Massachusetts the doctrine of "reasonable use" of flowing water by upstream riparian owners). Allocating the environmental damage of mining has also been a source of much litigation. *See, e.g., Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922).

Efforts to use law to regulate the destructive impact of resource exploitation date back at least to fifteenth century Florence, where legislation to control surface water pollution was enacted in the period from 1420 to 1485. These laws were not particularly effective, largely because they were not adequately enforced. CAROLYN MERCHANT, *THE DEATH OF NATURE* 36 (1983).

remarkable breadth of coverage, however, has very little constitutional underpinning.<sup>4</sup> Indeed, the most active role for federal constitutional law on environmental issues thus far has been as the

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3. Looking only at the federal level, a sampling includes the: National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 (1988); Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399; Clean Water Act of 1977, 33 U.S.C. § 1251 (1988); Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 (1988); Marine Mammal Protection Act of 1972, 16 U.S.C. § 1361 (1988); Endangered Species Act of 1973, 16 U.S.C. § 1531 (1988); Wild and Scenic Rivers Act, 16 U.S.C. § 1271 (1988).

There are many additional state statutes, some of which are required by or related to federal law, but some of which are more or less independent of federal law. The independent state laws, such as the Massachusetts Wetlands Protection Act, MASS. GEN. L. ch. 131, § 40 (1991), may become increasingly important as the political content of federal law and policy changes. See Diane Dumanoski, *New Rules Would Cut Wetlands, Reports Say*, BOSTON GLOBE, Nov. 22, 1991, at 1.

4. This can be verified, in an intuitively appealing method that does not require much time, by glancing at the index of Laurence Tribe's treatise, AMERICAN CONSTITUTIONAL LAW. LAURENCE H. TRIBE, AMERICAN CONSTITUTIONAL LAW (2d ed. 1988). There are no entries under "ecology," or "environment," or even under "resources" or "natural resources."

Environmental sections are found in some state constitutions, but they have not yet had a significant impact on the development of environmental law. Two examples from constitutions enacted or amended in the early 1970s illustrate this point. The Illinois Constitution of 1970 provides:

Sec. 1. The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

Sec. 2. Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law.

ILL. CONST. art. XI.

The first case in which the Illinois Supreme Court interpreted this provision arose from a challenge by the state Attorney General to a portion of the Illinois Environmental Protection Act, ILL. REV. STAT. ch. 111 1/2, para. 1001 (1975), which allowed the state Environmental Protection Agency ("EPA") to institute enforcement actions before the Pollution Control Board. The court agreed with the Attorney General that the legislative provision violated the constitutional allocation of powers to the Attorney General. Article XI was held not to expand the powers of the legislature to allow it to designate the EPA as the prosecuting agency for such cases. *People ex rel. Scott v. Briceland*, 65 Ill. 2d 485, 359 N.E.2d 149 (1976).

Article 97 of the Massachusetts Constitution provides in part:

The people shall have the right to clean air and water, freedom from excessive and unnecessary noise, and the natural, scenic, historic, and esthetic qualities of their environment; and the protection of the people in their right to the conservation, development and utilization of the agricultural, mineral, forest, water, air and other natural resources is hereby declared to be a public purpose.

MASS. CONST. amend. art. XCVII.

The most notable success of this statute in litigation to date has been in a decision upholding local regulation of billboards, where it was cited as part of a discussion of the

basis of challenges to environmental regulation.<sup>5</sup> The scope of the statutory and regulatory law of environmental protection in the U.S. is impressive, but it has yet to prove its staying power.<sup>6</sup>

Second, a brief note on the problem of terminology in a critical discussion of ecological issues is in order. Referring to something as part of the "nonhuman" world sounds a bit like referring to some people as "nonwhite" — there is the standard, and there are the failures. But labelling part of the world "human" and part "natural" does not seem good either; it accepts a division that should be vigorously challenged and investigated, as suggested in the second part of this Essay. Some inconsistency in language in this Essay is therefore inevitable, and serves as a reminder of the dynamics of the discussion.

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constitutional dimension of aesthetics in urban areas. *John Donnelly & Sons v. Outdoor Advertising Bd.*, 369 Mass. 206, 219, 339 N.E.2d 709, 717 (1975).

5. Constitutional claims raised in opposition to environmental regulation are primarily "takings" claims under the Fifth and Fourteenth Amendments. *See, e.g.*, *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Pennsylvania Coal Co.*, 260 U.S. 393; *Lucas v. South Carolina Coastal Council*, 404 S.E.2d 895 (S.C. 1991), *cert. granted*, 112 S. Ct. 436 (1991). At issue in some cases, particularly challenges to states' efforts to regulate interstate disposal of waste, is the Commerce Clause. *See, e.g.*, *City of Philadelphia v. New Jersey*, 437 U.S. 617 (1978).

6. Statutory environmental law has not received a particularly sympathetic reception at the highest levels of the federal court system. The Supreme Court has construed the National Environmental Policy Act, 42 U.S.C. § 4321, more often than any other environmental statute. It has tended to take a restrictive view of NEPA's purpose and scope. *See, e.g.*, *Weinberger v. Catholic Action of Hawaii Peace Education Project*, 454 U.S. 139 (1981) (NEPA does not require Navy to reveal to public whether it has prepared internal environmental impact statement ("EIS") dealing with facility capable of storing nuclear weapons); *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978) (NEPA does not require consideration of energy conservation in EIS for nuclear power plant construction); *Kleppe v. Sierra Club*, 427 U.S. 390 (1976) (NEPA does not require region-wide EIS for Interior Department coal leasing program).

The Court's initial interpretation of the scope of state authority to regulate water pollution under the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. § 1251, in *EPA v. California ex rel State Water Resources Control Bd.*, 426 U.S. 200 (1976), was promptly overturned by Congress in the Clean Water Act of 1977, 91 Stat. 1566, 33 U.S.C. § 1251 (1988). The simultaneous decision in *Hancock v. Train*, 426 U.S. 167 (1976), interpreting state authority under the Clean Air Act Amendments of 1970, 42 U.S.C. § 1857f, was reversed by Congress in the Clean Air Act Amendments of 1977, 91 Stat. 685, 42 U.S.C. § 7418 (1988). In its first opportunity to interpret the waiver of sovereign immunity enacted in the Clean Water Act, the Court concluded that the Act did not allow the imposition of "punitive fines" against a federal agency by a state. *Department of Energy v. Ohio*, 60 U.S.L.W. 4325 (1992).

# I. SOME FEMINIST QUESTIONS ABOUT ENVIRONMENTAL ISSUES

Environmental issues need to be confronted everywhere. What happens when a feminist perspective is brought to bear on environmental problems?<sup>7</sup> Three issues serve as useful examples: subways, lead, and trees.

In the three weeks before Mary Joe Frug was killed on April 4, 1991, in Cambridge, Massachusetts, there were three reported incidents of women attacked while walking home from subway stops in Cambridge.<sup>8</sup> Three months earlier, the thirteen-volume Final Supplemental Environmental Impact Statement/Final Supplemental Environmental Impact Report ("FSEIS/R")<sup>9</sup> for a massive highway reconstruction project in Boston, the Central Artery/Third Harbor Tunnel project, was certified by the Massachusetts Secretary of Environmental Affairs. The Secretary stated that the FSEIS/R "adequately and properly complies with the Massachusetts Environmental Policy Act and with its implementing regulations."<sup>10</sup> As part of the certification, however, the Secretary nevertheless imposed additional requirements for improving public mass transit in the Boston area, including capital improvement projects for the subway and commuter rail systems, new bus terminals, expanded parking facilities at public transit stations, and freezes on the development of additional parking spaces in parts of the Boston area. According to the Secretary, such improvements "are absolutely necessary to achieve greater air quality improvements in metropolitan Boston."<sup>11</sup>

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7. A path-breaking model of feminist inquiry and environmental analysis is H. PATRICIA HYNES, *THE RECURRING SILENT SPRING* (1989).

8. Sarah Koch, *Rash of Attacks on Women Prompts Fear in Cambridge*, BOSTON GLOBE, Apr. 6, 1991, at 26.

9. This massive project is subject both to NEPA and its Massachusetts analogue, the Massachusetts Environmental Policy Act, MASS. GEN. L. ch. 30 §§ 61-62H (1991). One report was submitted to satisfy the requirements of both statutes.

Generally, the environmental impact study process looks at the effect of changes in the physical environment anticipated to occur from the construction and use of the proposed project. The Central Artery FSEIS/R, for example, characterizes the "major environmental effects" studied as transportation, air quality, noise and vibration, energy, economic characteristics/financial framework, land use and neighborhood characteristics, visual characteristics, historical resources, archaeological resources, water quality, wetlands and waterways, floodplains, and vegetation and wildlife. MASS. DEPT OF PUBLIC WORKS, FINAL SUPPLEMENTAL ENVTL. IMPACT STATEMENT, CENTRAL ARTERY (I-93)/TUNNEL (I-90) PROJECT, i-ii (1991).

10. CERTIFICATE OF THE SECRETARY OF ENVTL. AFFAIRS ON THE FINAL SUPPLEMENTAL ENVTL. IMPACT REPORT 1 (Jan. 2, 1991) (citations omitted).

11. *Id.* at app. 17.

Federal law requires an environmental impact statement (EIS) to be included in every proposal "for legislation and other major Federal actions significantly affecting the quality of the human environment."<sup>12</sup> The EIS is intended to help assure that the government agency involved takes a "hard look" at the environmental consequences of a proposed action.<sup>13</sup> But as long as "the adverse effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs."<sup>14</sup>

One would think that the risk of being raped walking home from the subway after work would be an element of the "quality of the human environment."<sup>15</sup> But in none of the thirteen volumes of the FSEIS/R, and nowhere in the Secretary's Certificate on the FSEIS/R, and in none of the major public debate about the Central Artery/Third Harbor Tunnel project, has there been one word about the importance of women's safety as one of the goals of an adequate system of public transportation. This is not to be critical of the goal of abatement of air pollution — breathing is useful and its absence is not fun — but it is to suggest that we also need a rape abatement program. It might start with what Andrea Dworkin has strikingly characterized as "a 24-hour truce during which there is no rape."<sup>16</sup>

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12. 42 U.S.C. § 4332(C) (1988).

13. *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (citing *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972)).

14. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (citations omitted).

15. The FBI states that 102,555 "forcible rapes" were reported in 1990. This is a nine percent increase from the 1989 figures. It means that about 80 of 100,000 women were reported rape victims in the FBI reporting system. FEDERAL BUREAU OF INVESTIGATION, U.S. DEPT OF JUSTICE, UNIFORM CRIME REPORTS, CRIME IN THE UNITED STATES 16 (1990). For a detailed critique of the conventional methods of determining the rate of rape in the U.S., see Diana E. H. Russell & Nancy Howell, *The Prevalence of Rape in the United States Revisited*, 8 SIGNS 688, 692 (1983) (deriving an estimate that there is a "46 percent probability that a woman will be the victim of attempted or completed rape at some time in her life."). The recent National Women's Study, based on a telephone survey, shows a higher incidence of rape than the FBI figures. It also reports that a majority of women who have been raped were first raped when they were under 18. David Johnston, *Survey Shows Number of Rapes Far Higher than Official Figures*, N.Y. TIMES, Apr. 24, 1992, at A14.

16. ANDREA DWORKIN, *I Want a Twenty-four-Hour Truce During Which There is No Rape*, in LETTERS FROM A WAR ZONE 162 (1989). In addition to the political efforts Dworkin suggests, there is also a lot of legal work to do to transform the law of rape. See CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 171-83 (1989).

The conventional EIS process has not brought us very far toward recognizing that women's safety should be part of the package.<sup>17</sup> Perhaps there ought to be a GIS, Gender Impact Statement, for major governmental actions that significantly affect the quality of the human environment. Isn't the direct impact on women something to consider in transportation projects, housing projects, commercial development projects, and military projects? The usual subjects of the EIS process, such as the effects of dam construction on fish and fishing,<sup>18</sup> or the effects of pollution from marine oil spills accompanying offshore drilling,<sup>19</sup> are important, and studying them is a small but necessary step in reducing the damage people do to the world. But the safety of women is also absolutely necessary if the human environment is to have any quality worth mentioning.<sup>20</sup>

Unfortunately, "gender impact" as a concept has not generally done very well in the courts.<sup>21</sup> Not only do courts frequently fail to recognize the importance of discriminatory impact,<sup>22</sup> occasionally they create it. The Massachusetts Supreme Judicial Court, for example, recently engaged in an astonishing display of creating an adverse gender impact, and did so with a particularly vulnerable group: parents of children with serious lead poisoning.<sup>23</sup>

Lead, when ingested, can have a devastating health impact on people, especially children. Recognition of lead's toxicity is at least

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17. Some cases interpreting NEPA have held that the generic issue of "crime" is an appropriate topic for an EIS in some circumstances. *See, e.g.,* Hanly v. Mitchell, 460 F.2d 640 (2d Cir. 1972), *cert. denied*, 409 U.S. 990 (1972); Chelsea Neighborhood Ass'n v. U.S. Postal Serv., 389 F. Supp. 1171, 1184 (S.D.N.Y. 1975), *aff'd*, 516 F.2d 378 (2d Cir. 1975). This view has been limited to require "a primary impact on the physical environment" before socio-economic impacts must be examined in an EIS. Como-Falcon Community Coalition v. U.S. Dep't of Labor, 609 F.2d 342, 345 (8th Cir. 1979) (quoting Image of Greater San Antonio v. Brown, 570 F.2d 517, 522 (5th Cir. 1978), *cert. denied*, 446 U.S. 936 (1980)). The Supreme Court construes NEPA "to include a requirement of a reasonably close causal relationship between a change in the physical environment and the effect at issue." Metropolitan Edison Co. v. People Against Nuclear Energy, 460 U.S. 766, 774 (1983) (NEPA does not require EIS prior to start-up of undamaged reactor at Three Mile Island).

18. Marsh v. Oregon Natural Resources Council, 490 U.S. 360 (1989).

19. Natural Resources Defense Council, Inc. v. Morton, 458 F.2d 827 (D.C. Cir. 1972).

20. For descriptions of the commonplace presence of violence throughout women's lives, see ANDREA DWORKIN, *MERCY* (1991); DIANA E. H. RUSSELL, *SEXUAL EXPLOITATION: RAPE, CHILD SEXUAL ABUSE, AND WORKPLACE HARASSMENT* (1984).

21. *See, e.g.,* Personnel Adm'r v. Feeney, 442 U.S. 256 (1979).

22. *See, e.g.,* Ward's Cove Packing Co. v. Antonio, 490 U.S. 642 (1989). This case was substantially overruled by the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (1991), although the company was exempted from its application.

23. Ankiewicz v. Kinder, 408 Mass. 792, 563 N.E.2d 684 (1990).

two thousand years old.<sup>24</sup> In the United States, legislation to control the incidence of lead poisoning dates back to the early eighteenth century, when the rum trade between the Massachusetts Bay Colony and North Carolina was threatened by the incidence of lead colic in North Carolina consumers caused by lead used in distilling materials and containers.<sup>25</sup> Early in the twentieth century, medical studies in Australia showed the dangers to children of ingesting lead-based paint.<sup>26</sup> This important health problem is still the subject of investigation and is far from under control. In October of 1991, the federal Centers for Disease Control adopted new, more stringent guidelines for identifying lead poisoning in children under the age of six.<sup>27</sup>

Despite the long history of information about lead poisoning, the United States in the twentieth century responded by dispersing lead into all parts of the environment. Most notably, lead was used in two products ubiquitous in everyday life: gasoline for automobiles and paint for houses. Steps to reverse this trend did not begin until the middle 1970s.<sup>28</sup>

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24. Herbert L. Needleman, *Lead Exposure and Human Health: Recent Data on an Ancient Problem*, TECH. REV., Mar./Apr. 1980, at 39, 40-41.

25. *Id.* at 41. Massachusetts was sufficiently alarmed that it enacted legislation regulating the use of lead pieces in rum distilling. The law provided for a system of inspection and imposed stiff fines on violators. An Act for Preventing Abuses in Distilling of Rum and Other Strong Liquors, with Leaden Heads or Pipes, ch. 11, Province Laws 1723-24 (Sep. 3, 1723), reprinted in THE ACTS AND RESOLVES OF THE PROVINCE OF MASSACHUSETTS BAY 302 (1874).

26. H. Patricia Hynes, *Lead Contamination*, in RECONSTRUCTING BABYLON 3, 6 (H. Patricia Hynes ed., 1991).

27. U.S. CENTERS FOR DISEASE CONTROL, PREVENTING LEAD POISONING IN YOUNG CHILDREN (4th rev. 1991).

28. The regulation of leaded gasoline began with Environmental Protection Agency regulations requiring accurate labeling of leaded and unleaded gasoline at the retail level, beginning July 1, 1974. The regulations also mandated the reduction of the lead content in leaded gasoline in phases. EPA Regulation of Fuel and Fuel Activities, 40 C.F.R. pt. 80 (1991). However, leaded gasoline is still widely used in the developing world, with disastrous health results. Kenny Bruno, *Not Getting the Lead Out*, GREENPEACE, Oct./Dec. 1991, at 18.

In 1977, the Consumer Product Safety Commission issued regulations banning a variety of lead-containing paints and consumer products using such paints. Consumer Product Safety Commission Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead Containing Paint, 16 C.F.R. pt. 1303 (1991). A much earlier effort to reduce the use of lead pigment in house paint and to regulate its use in industrial contexts was made as an occupational health measure by the international community in the 1920s, through the Convention Concerning the Use of White Lead in Painting (1921), entered into force on Aug. 31, 1923. INTERNATIONAL LABOUR ORG., INT'L LABOUR CONVENTIONS AND RECOMMENDATIONS, 1919-1981, 367 (1982). The U.S. did not sign the Convention.



The courts' treatment of lead poisoning has lagged substantially behind its importance, even when they have received legislative guidance. In Massachusetts, some efforts have been made by statute to reduce the threat posed by lead-based paint in residential buildings. A statute was initially passed in 1971, providing for the appointment of a lead poisoning control director in the state Department of Public Health, requiring reporting of lead poisoning cases, setting up a screening program for children under six, establishing an inspection program, setting forth the landlord's duty to remove lead paint hazards, and making landlords liable for non-compliance.<sup>29</sup> The law was amended in 1988, adding *inter alia* mandates for the state to test and approve new methods of lead abatement, license and certify lead paint inspectors and deleaders, and aggressively inspect "emergency lead poisoning areas."<sup>30</sup> The ambitious 1988 version has not been implemented to any significant degree, largely because of the state government's budget constraints. Although at the moment this statute is a regulatory failure, it does provide a solid legal basis for individual suits by injured children against landlords.

A typical example of such claims is *Ankiewicz v. Kinder*,<sup>31</sup> in which a young child who was suffering from lead poisoning sued his landlord; the suit was brought on the child's behalf by his mother. The landlord, however, asserted a claim for contribution against the mother. The court reasoned "that the substantive nature of the plaintiff's claim under the lead paint act is a tort claim. . . ."<sup>32</sup> As such, it was within the ambit of the Massachusetts statute<sup>33</sup> allowing third-party claims for contribution in tort cases.<sup>34</sup> The third party from whom contribution was sought by the defendant was the child's mother. The court apparently saw nothing peculiar in allowing this contribution claim.

In accepting the defendant's claim, the *Ankiewicz* court may have been influenced by two somewhat related social attitudes. One is the tendency, once dominant but still current, to take as given the presence of peeling lead-based paint in older, poorly maintained housing, and therefore to identify the causes of lead poisoning as the

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29. MASS. GEN. L. ch. 111, §§ 190-99 (1991).

30. MASS. GEN. L. ch. 111, §§ 190-197(B) (1991).

31. 408 Mass. 792, 563 N.E.2d 684.

32. *Id.* at 795, 563 N.E.2d at 686.

33. MASS. GEN. L. ch. 231B, § 1(a) (1991).

34. 408 Mass. 792, 563 N.E.2d at 686.

behavior of the child or her family.<sup>35</sup> This victim-blaming model asserts that children would not ingest flaking paint if their families behaved differently. It suggests both that toddlers and young children can and should be watched absolutely every minute, and that it is possible for normally vigilant adults to keep children from putting objects in their mouths.<sup>36</sup> One must wonder whether the members of the court's majority ever spent a day looking after a small child.

In dissent, Chief Justice Liacos argued that the statute evidenced a legislative policy choice to reject family responsibility for illness caused by lead paint. He noted that, "[w]hile the lead paint statute itself may . . . create an action 'in tort,' it does not follow that the legislature intended that the parents of children who ingest lead-based paint in rented apartments be found liable in tort."<sup>37</sup> The missing connection between the statute and the majority opinion is supplied by the social assumption that the child's family must be partly responsible for the situation.

The second model of social behavior that seems to have influenced the majority decision is that of a mythic motherhood. Femi-

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35. See, e.g., Harris Chaiklin et al., *Recurrence of Lead Poisoning in Children*, 19 SOC. WORK 196 (1974) (analyzing families of lead-poisoned children). Nor is this attitude confined to the United States. H. Patricia Hynes, *Lead in Soil*, INT'L ENVTL. REP., Mar. 8, 1989, at 139, 142 (reporting conversation with Parisian official). But see J. Julian Chisholm, Jr. & Harold E. Harrison, *The Exposure of Children to Lead*, 18 PEDIATRICS 943, 955 (1956):

[M]others were asked if they were aware of their child's ingestion of paint or had heard of the danger of lead poisoning. Significant is the fact that 14 of 33 mothers, while aware of the dangers involved, were not concerned because they considered the amount of paint flakes their child was eating to be insufficient 'to hurt him.' Such maternal statements are quite understandable in view of the preceding calculation that less than 1 gm of paint flakes may contain highly toxic quantities of lead. It is the repetitive ingestion of these minute quantities of such paint chips which leads to lead intoxication. If it is conceded that no mother can reasonably be expected to prevent this type of ingestion in the face of crumbling paint and plaster, it will be recognized that proper maintenance of both interior and exterior painted surfaces is probably the most important environmental factor in the long-term aspect of the prevention of childhood lead intoxication.

36. See, e.g., LEAD INDUSTRIES ASS'N, FACTS ABOUT LEAD AND PEDIATRICS 3 (1971) (urging that "clean-up and constant alertness can prevent children from getting at old paint and plaster chips."). It is commonly accepted, however, that when a toddler "picks things up for the sake of picking them up, drops them because dropping things is fun, puts them in his mouth to understand them better, he is playing and learning." PENELOPE LEACH, YOUR BABY AND CHILD 350 (1989). See also Chisholm & Harrison, *supra* note 35, at 954; Ankiewicz, 408 Mass. at 801 n.3, 563 N.E.2d at 689 n.3 (quoting from legislative report on Massachusetts lead poisoning bill).

37. 408 Mass. at 798, 563 N.E.2d at 688.

nists have noted that the social demands on motherhood include a demand for a truly mythic level of nurturance and protection.<sup>38</sup> The mythic mother must overcome any adversity, including the paint on the walls, to protect her children. Living in a situation of poverty and social neglect is not supposed to have any impact on the quality of care she can and must offer her children.

When other social mechanisms fail to protect children, therefore, it is easy to pass the blame on down the line to a woman, who has no social inferior to whom to pass it.<sup>39</sup> In the *Ankiewicz* situation, the child's mother has also suffered an injury — the illness of her child. She did not put the lead paint on the walls, nor did she fail in a statutory duty to take it off. She hardly fits the notion of joint tortfeasor with the landlord, but the court nevertheless pushed her into a role of hypothesized legal liability.

The *Ankiewicz* court has turned an effective, if slow and piecemeal, tool in the effort to end a significant public health threat into the proverbial double-edged sword. Money judgments against landlords help compensate individual children who are injured by lead poisoning, as well as serve the larger function of creating some deterrent to landlords' failure to obey the lead paint law.<sup>40</sup> The possibility of liability for contribution, however, can make litigation extremely expensive, both financially and emotionally, for plaintiffs. The financial expense arises not only from the possibility of having to contribute part of the damages in a successful case, but also from

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38. See, e.g., PHYLLIS CHESLER, *MOTHERS ON TRIAL* (1986); NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING* (1978); DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR* (1976).

39. Although the *Ankiewicz* decision is, of course, couched in terms of parental responsibility, the parent in the case is the mother. 408 Mass. at 793, 796, 563 N.E.2d at 685, 687.

40. The search for remedies for lead poisoning is moving beyond the liability of individual property owners. See generally Jane Perkins, *Lead Poisoning Problems Challenged on Many Fronts*, 25 CLEARINGHOUSE REV. 13 (1991). An attempt to apply the market-share liability theory developed in DES litigation (see, e.g., *McCormack v. Abbott Laboratories*, 617 F. Supp. 1521 (D. Mass. 1985); *Sindell v. Abbott Laboratories*, 26 Cal. 3d 588, 607 P.2d 924, 163 Cal. Rptr. 132 (1980), cert. denied, 449 U.S. 912 (1980)) to the lead pigment industry was recently rebuffed at the summary judgment stage in federal district court. The rebuff was based on the lack of a clear causal connection between the plaintiffs' injuries and the defendants' lead pigment, and the court's reluctance to extend market share liability to the suppliers of an ingredient (lead pigment) rather than the marketers of a product (lead paint). *Santiago v. Sherwin Williams Co.*, Civil Action No. 87-2799-T (D. Mass. Jan. 13, 1992).

In view of the extent of the understanding of lead's dangers early in the twentieth century, *supra* notes 24, 26, 28, and accompanying text, the U.S. lead paint industry appears to be an appropriate level at which to fix a major portion of the responsibility for the injury caused by the standard use of lead-based house paints prior to the 1970s.

defending against the contribution claim during the litigation.<sup>41</sup> The emotional expense will almost uniformly be borne by women, the socially designated caretakers of small children. They will have to cope with the sick child, the litigation, and the poverty that is often responsible for the family being in poisonous surroundings, compounded by the anguish of legally sanctioned attacks on their competence as parents. The imposition of such costs is hardly an attractive prospect for redressing an injury that is so widely known and so strongly condemned by the law.

Maine, the venue of the conference from which this Essay developed, leads, by a relatively straightforward chain of association, to thoughts about trees. Trees, especially forests, are often seen as a paradigm of wilderness. But this idea is surprisingly problematic. Isn't there something worth thinking about in the phrase, "virgin wilderness," which is often applied to areas remote in either geography or culture from the speaker? The term seems to be part of a complex romance about a passive female nature that needs to be saved by the hero from ravishment by men (or, perhaps, by *other* men).<sup>42</sup> What happens to wilderness that is no longer virgin, but used? Is it discarded or ignored, no longer worth the attentions of romantic ardor? How does such a notion of wilderness address the complex relationships between human societies and trees?

One view of the situation is provided by a story of Palau, a small archipelago 500 miles east of the Philippines:<sup>43</sup> Once, there

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41. That this problem may have a real impact on litigation is shown in *Ankiewicz* itself. The plaintiff voluntarily dismissed two counts of the complaint, those for negligence and breach of warranty. The Supreme Judicial Court commented that since those counts, on which the trial court had upheld the landlord's claim for contribution, had been dismissed, "the plaintiff's mother would not be required to contribute to an award to the child. . . ." 408 Mass. at 794, 563 N.E.2d at 686. It is interesting to note that the court used the locution "the child," rather than "her child," which suggests a level of detachment that may account for the result.

42. This is one among many insights for which I am grateful to Gwyn Kirk. Kirk, *supra* note 1.

43. The Republic of Palau is the last remaining trust territory in the United Nations Trusteeship system. U.N. CHARTER, arts. 75-85. It has been under the administration of the United States since 1947, as part of the Trust Territory of the Pacific Islands, the only "strategic trust" in the Trusteeship system. *Id.* at arts. 82-83. The U.N. Security Council terminated the Trusteeship for the other three entities in the Trust Territory (Federated States of Micronesia ("FSM"), Republic of the Marshall Islands, and Commonwealth of the Northern Marianas) on December 22, 1990. U.N. Doc. S/RES/683 (1990). The FSM and the Marshall Islands are "freely associated" with the United States on the basis of their adoption of a Compact of Free Association, Jan. 10, 1986, 99 Stat. 1800 (U.S. approval codified at 48 U.S.C. § 1681 (1988)). The Northern Marianas chose in 1975 to become part of the United States as a commonwealth, although the arrangement was not implemented until 1988. The Covenant to

was a huge flood. One village was cut off from the others by it; indeed, it remained inundated. The village breadfruit tree began to bear fish as well as breadfruit in its new environment. The village women tended the tree and used its bounty for the village, as they had in the past. A few men, foolishly, wanted to cut the tree down, perhaps on the same theory expressed in the European fable of the goose that laid the golden egg. The women protected the tree from attack, and it continued to provide for the village.<sup>44</sup>

In real life, the life-sustaining functions of trees still need protection, often by women, from short-sighted actions driven by short-term profit. Women began the Chipko ("tree-hugging") movement in the Himalayan hills of India. One of the movement's slogans is "What do the forests bear? Soil, water, and pure air."<sup>45</sup> This deep and sensible ecological insight has been articulated in opposition to the policies of governments, both national and local, in India. The Chipko movement is one of women and men engaging in direct action, organization, and education to save forests from destruction by the timber industries.<sup>46</sup>

Although in the early stages, Chipko women and local men were united in opposition to outside timber interests, as time has gone on the Chipko movement also finds itself in opposition to smaller scale, locally-based economic development projects that exploit the forests.<sup>47</sup> A locally-run sawmill that employs men from the immediate area nevertheless requires the continuous cutting of trees to feed the mill and assure the continued employment of the

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Establish a Commonwealth of the Northern Marianas in Political Union with the United States, Feb. 15, 1975, 90 Stat. 263 (U.S. approval codified at 48 U.S.C. § 1681 (1988)).

Palau and the United States, however, have not yet agreed on a post-Trusteeship status. Seven plebiscites on three different versions of a Compact of Free Association (the most recent version appears at 48 U.S.C. § 1681 (1988)) have failed to attain the 75% majority vote required by Palau's constitution to approve any agreement that would allow nuclear weapons, power, or waste to be brought into Palau. REPUBLIC OF PALAU CONST. art. II, § 3, art. XIII, § 6, reprinted in Roger S. Clark, *Trust Territory of the Pacific Islands*, in CONSTITUTIONS OF DEPENDENCIES AND SPECIAL SOVEREIGNTIES 5 (Albert P. Blaustein & Phyllis M. Blaustein eds., 1988); *Gibbons v. Salii*, App. No. 8-86 (Palau Sup. Ct., App. Div., Sept. 17, 1986).

44. This is an inartistic retelling of the story told to the author by Elicita Morei, in Cambridge, Mass. (Sept. 9, 1991).

45. VANDANA SHIVA, *STAYING ALIVE* 210 (1989). The discussion in the text follows Shiva's description and analysis.

46. The devastating floods and landslides in November, 1991, that left 7,000 people dead and more than 120,000 homeless on the island of Leyte in the Philippines have been attributed to uncontrolled deforestation from illegal logging. Jeremy Clift, *In Flood's Wake, Aquino Pledges to Curb Logging*, BOSTON GLOBE, Nov. 12, 1991, at 2.

47. SHIVA, *supra* note 45, at 70-71.

workers. Careful planning might limit the impact of such projects on the forest system, but then they would be less successful in the market system. There turns out to be a difference between "local male interests for commercial activity based on forest products, and local women's interests for sustenance activity based on forest protection."<sup>48</sup>

This distinction reveals an important difference between the role of forests in the hills of India and the role of forests in the Northeastern United States. The forests in the Northeast are important to many people in many ways, but in every way, the trees are reduced to commodities. They may be timber, potential timber, potential vacation home obstruction, or objects of aesthetic or recreational pleasure.<sup>49</sup> They are the objects of human use (even if that use is mere contemplation), not part of an ongoing whole. The natural functions of the trees are no longer integrated into the life of the human community at the level of day-to-day survival the way they are in the Himalayan hills: people in the Northeast do not generally collect herbs and mushrooms from the forest as part of their primary food sources, nor do they lop branches from oak trees to provide tender leaves for cattle fodder and to increase the density of the forest.<sup>50</sup>

Where survival is the issue, both theory and practice must get serious. The Chipko theory and practice of forest management aim to "create a sustainable, renewable forest system, supporting and renewing food and water sources. The maintenance of conditions for renewability is its primary management objective," in contrast to "the maximizing of profits through commercial extraction" that is the primary objective of management based on demands of factory and market.<sup>51</sup> This approach to forest management, developed by women who depend on healthy forests and the ecosystems of which they are a part, is profoundly important and challenging.

What would a jurisprudence of the protection of the community of trees and people look like? It would need to protect the relationship that already exists between the villagers and the forests. It would need to help preserve these environments while allowing

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48. *Id.* at 71.

49. The situation of these forests is analyzed and recommendations made in FOREST SERV., U.S. DEP'T OF AGRIC. & GOVERNORS' TASK FORCE ON NORTHERN FOREST LANDS, NORTHERN FOREST LANDS STUDY (1990). Recommendations are also made in GOVERNOR'S TASK FORCE ON NORTHERN FOREST LANDS, THE NORTHERN FOREST LANDS: A STRATEGY FOR THEIR FUTURE (1990).

50. SHIVA, *supra* note 45, at 65, 74.

51. *Id.* at 76.

the continued survival and even the growth and increased prosperity of the people living there. It would not ignore, denigrate, destroy, or appropriate without credit women's forestry and agricultural expertise that has been developed and refined over centuries.

Such a jurisprudence could not be based, however implicitly, on notions of human ownership of non-human property that give the owner almost absolute control over the property, even to the point of deciding (as in the cases of clear-cutting of forests or damming of rivers or strip-mining) that the property will in some fundamental way cease to exist.<sup>52</sup> This jurisprudence could not be "neutral," evenhandedly providing timber companies and villagers a forum in which to contest property claims. It would necessarily "take sides" if it made it possible for disadvantaged villagers to protect themselves from well organized and socially validated industries that look at their homes and see raw materials.

The development of a feminist environmental jurisprudence is a complex and difficult task. An important part of the difficulty may well be feminist ambivalence about "nature," which has left many educated U.S. feminists, especially feminists in the law, not quite up to the tasks we must face.

## II. "NATURE": A PROBLEM

This part is explicitly for Mary Joe Frug. She was passionately interested in postmodern theory.<sup>53</sup> She used the often arcane and willfully difficult theories of postmodernism in her writing and teaching and in continually interesting conversation with skeptical friends. Although many of these methods seem to have little actual utility for lawyers, the Frug version often opened new vistas of analysis. "Why does this category matter? — and to whom?" is the post-modern interrogation that prompts these reflections.

The relevant categories here are two classics, nature and culture.

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52. The question of "property," including various legally sanctioned constructions and uses of it, is one of many large issues lurking, largely unremarked upon, in this discussion. For a small jolt on notions of property and how they function, see the articles appearing in *Western Oceania: Caring for the Ancestral Domain*, 15 CULTURAL SURVIVAL Q. No. 2 (1991).

53. Among the range of works she particularly appreciated are JACQUES DERRIDA, *OF GRAMMATOLOGY* (Gayatri C. Spivack trans., 1976) and JUDITH BUTLER, *GENDER TROUBLE* (1989).

It is not possible to say something definitive about the nature/culture split in a law review essay; it is probably not possible at all.<sup>54</sup> Nor does this section discuss directly the varied and courageous feminist work around the world that is making practical improvements to the state of both culture and nature.<sup>55</sup> The question addressed here is: why are many of us worried about the "nature" part of this work?

Many feminists, particularly feminist lawyers, are ambivalent about nature because we want to be on the winning side, or at least not on the losing side. In our society, culture is the winner, and nature is the loser. This bald statement should not be taken to mean that a nature/culture dualism is independently real, preexisting human interpretation. The existence and contours of such a dualism, however it is conceptualized, are clearly culturally constructed.<sup>56</sup> But they are also culturally real. The nature/culture split is every bit as simultaneously meaningful, messed up, and in need of critique as the public/private split, which has been the focus of much serious feminist discussion.<sup>57</sup>

Nevertheless, in the dominant cultural construct in the U.S., "women" and "nature" are losers together. Women are seen to be closer to nature, more natural, more emotional/intuitive than men;

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54. A more systematic discussion of this issue is presented by Ynestra King, *Healing the Wounds: Feminism, Ecology, and Nature/Culture Dualism*, in GENDER/BODY/KNOWLEDGE 115 (Alison Jaggar & Susan R. Bordo eds., 1989).

55. There is, for example, the Greenbelt Movement in Kenya, begun as a project of the National Council of Women by Wangari Maathai. Over the past 14 years, thousands of women have planted millions of trees, and hundreds of women have been trained to run tree nurseries. The movement grew out of a recognition that many problems that hit women particularly hard — lack of firewood, lack of building materials, soil erosion, and poor water quality — were all related to deforestation. Wangari Maathai, *Foresters Without Diplomas*, Ms., March/April 1991, at 74; Maggie Jones & Wangari Maathai, *Greening the Desert*, in RECLAIM THE EARTH (Léonie Caldecott & Stephanie Leland eds., 1983).

Much of the organizing in the U.S. that seeks to halt the dumping of toxic wastes and the siting of facilities producing toxic wastes in poor communities is locally-based organizing by women. See, e.g., Cynthia Hamilton, *Women, Home, and Community: The Struggle in an Urban Environment*, in REWEAVING THE WORLD 215 (Irene Diamond & Gloria F. Orenstein eds., 1990); NICHOLAS FREUDENBERG, NOT IN OUR BACKYARDS! (1984).

56. Sherry B. Ortner, *Is Female to Male as Nature Is to Culture?*, in WOMAN, CULTURE AND SOCIETY 67 (Michelle Z. Rosaldo & Louise Lamphere eds., 1974) is the *locus classicus* of this topic in contemporary academic literature.

57. See, among many others, PATRICIA A. WILLIAMS, *On Being the Object of Property*, in THE ALCHEMY OF RACE AND RIGHTS 216 (1991); MARTHA MINOW, MAKING ALL THE DIFFERENCE 277-83 (1990); MACKINNON, *supra* note 16, at 83-125.



the list is long and everyone knows examples.<sup>58</sup> These attributes could be positive or neutral or unremarkable in some society, but not in the dominant white Euro-North American one we now have.<sup>59</sup> That the association between women and nature is not a happy one can be quickly surmised from the prevalence of words for animals in the lexicon of abuse of women: chick, bitch, beaver, cow . . .<sup>60</sup>

For many women, our society's joint and reciprocal devaluing of women and nature creates an understandable desire to move up into the world of culture — of beings who count — and leave behind the world of nature — of beings that are used. This is a particularly pointed problem for feminists involved in the law because the central "nature" problem for this generation of legal feminists has been the struggle for reproductive rights.<sup>61</sup> In this arena, the concept of the natural is a major weapon used against women's efforts to gain reproductive self-determination. One example should suffice to indicate the flavor of the arguments: Women naturally have children. A woman who does not want to have any children, or who does not want to have a child at this particular point, is rebelling against the natural order. The rebellion may be characterized as misguided, wicked, or hopeless, but in general this type of argument

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58. Ortner, *supra* note 56, characterizes the prominence of reproductive functions in women's physiology, the importance of women's role in the rearing of children, and the tendency of women's personalities to focus on the concrete, rather than the abstract, as the main constituents of the view of women as closer to nature, a view which she takes to be universal.

59. Paula Gunn Allen identifies a number of alternatives among Native American cultures. One example, found in many traditions, is a social structure having two chiefs, one female and one male. The female chief's responsibilities were to "maintain[ ] peace and harmony among the people of the band, village, or tribe and administer domestic affairs." The male chief was to "preside[ ] over relations with other tribes and officiate[ ] over events that took people away from the village." PAULA GUNN ALLEN, *Grandmother of the Sun*, in *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS* 13, 18–20 (1986).

60. ANDREA DWORKIN, *PORNOGRAPHY* 27–28 (rev. ed. 1989). This is part of a longer analysis of a pornographic photograph showing a woman lashed across the hood of two hunters' car, like a slain deer. The photo caption is "beaver hunters."

61. The U.S. Supreme Court has decided about 30 cases on contraception and abortion rights from *Griswold v. Connecticut*, 381 U.S. 479 (1965) (invalidating ban on supplying contraceptives to married couples), to *Rust v. Sullivan*, 111 S. Ct. 1759 (1991) (upholding "gag rule" restricting communication about abortion by health care providers with clients of programs receiving federal family planning funds). The Court has decided more than half a dozen cases about employment rights and women's reproductive capacity from *Cleveland Bd. of Educ. v. La Fleur*, 414 U.S. 632 (1974) (invalidating mandatory maternity leave for teachers), to *International Union, UAW v. Johnson Controls*, 111 S. Ct. 1196 (1991) (holding policy of restricting women but not men from working in certain jobs in the lead industry violates Title VII).

pits the insignificant individual woman against vast biological imperatives. In response, feminists have made strong and sensible arguments that women, like men, are not bound by nature, but are fully functioning social beings. Social arrangements and the power relations they enact are the real problem for women's reproductive autonomy, not failure to adhere to some hypothesized natural order.<sup>62</sup> As an unintended consequence of the depth and importance of the struggle for reproductive freedom, it can seem very dangerous for women to express concern for, or identification with, the world that exists around and outside of people, because such concern appears to be the first step on a short and slippery slope back down into the muck of the natural.<sup>63</sup>

This potential danger is highlighted by the strand of environmental analysis, prominently portrayed in the mass media, that sees too many people, using up too many scarce resources, as the source of the world's ecological ills, and prescribes population control as the solution.<sup>64</sup> In this view, women are seen as "population polluters."<sup>65</sup> Various forms of coercion to lower birth rates are consid-

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62. For histories of the reproductive rights struggle, see generally LINDA GORDON, *WOMAN'S BODY, WOMAN'S RIGHT* (1967); ROSALIND P. PETCHETSKY, *ABORTION AND WOMAN'S CHOICE* (rev. ed. 1990). For critical analyses of the context and meaning of the deep social divisions over abortion in particular, see ANDREA DWORKIN, *RIGHT-WING WOMEN* 71-105 (1983); Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 *YALE L.J.* 1281, 1308-24 (1991).

63. An example is the criticism made of ecofeminist writer Ynestra King, on the grounds that King fails to provide any basis for principled support for abortion rights. Patricia J. Mills, *Feminism and Ecology: On the Domination of Nature*, 6 *HYPATIA* 162 (1991). King's work includes *Healing the Wounds*, *supra* note 54, and a collection of articles, *YNESTRA KING, WHAT IS ECOFEMINISM?* (Gwyn Kirk ed., 1990).

64. Two of the most notable examples are PAUL EHRLICH, *THE POPULATION BOMB* (1968) and *THE LIMITS TO GROWTH: A REPORT FOR THE CLUB OF ROME'S PROJECT ON THE PREDICAMENT OF MANKIND* (Donnella Meadows et al. eds., 1972). A concise critique of this tendency is found in BETSEY HARTMANN, *REPRODUCTIVE RIGHTS AND WRONGS* 20-24 (1987).

65. Janice G. Raymond, *The Spermatic Market: Surrogate Stock and Liquid Assets*, 1 *REPROD. & GENETIC ENGINEERING* 65, 71 (1988). Reproductive exploitation of women may be spilling over the relatively clear division of pressures to increase the reproduction of well-off white women and coercive measures to decrease the reproduction of poor women of color: as reproductive technologies begin to be used to separate the labor of carrying a pregnancy from both the genetic make-up of the fetus and the rearing of the child, poor women of color can begin to be used as intermediaries in the production of more children of well-off white men. See, e.g., HYNES, *supra* note 7, at 197-209; Gena Corea, *Junk Liberty*, in *RECONSTRUCTING BABYLON*, *supra* note 26, at 142, 144-45.

ered to be necessary, or even desirable; such coercion is almost always directed against poor women.<sup>66</sup>

This abuse of women in the name of environmental preservation and world stability is challenged by the increasingly strong movement that insists that social justice is an essential component of sound ecology.<sup>67</sup> Nevertheless, the long history and strong presence of the population control approach in Western responses to the world ecological crisis can make feminists reluctant to associate themselves with environmental activism. It also can make them mistrustful of any concepts or associations that appear to affirm women's vulnerability to the kind of oppression proposed, and to a large extent practiced, in the name of population control.<sup>68</sup>

It is thus not surprising that feminists, particularly feminist lawyers, have often run away from "nature." The way we have done this has not been very productive, and can be dangerous to women. To the extent that we have severed the negative link between women and the natural, we have done so largely inside our own heads. We have not yet succeeded in the culture as a whole. The power relations that define women's lives have not changed so much that some women's rejection of forced connection with nature is able to redefine all women's situations. The men with power are still able to decide that women belong down there, with the cows and the tortoises and the tropical forests and the other things to be used.

Oppression of women and mistreatment of the natural world are related in complex ways.<sup>69</sup> The relationship is sufficiently com-

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66. "Compulsory control of family size is an unpalatable idea, but the alternatives may be more horrifying. As those alternatives become clearer to an increasing number of people in the 1970s, we may well find them *demanding* such control." PAUL EHR- LICH ET AL., *HUMAN ECOLOGY* 256 (1973). For a description of coercion in Bangla- desh, including withholding food from poor women with starving children unless they submit to sterilization, see HARTMANN, *supra* note 64, at 213-19.

67. The leading international synthesis of this movement is WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *OUR COMMON FUTURE* (1987). A landmark in U.S. consciousness of social justice, particularly racial justice, and environmental issues is COMMISSION FOR RACIAL JUSTICE, UNITED CHURCH OF CHRIST, *TOXIC WASTES AND RACE IN THE UNITED STATES* (1987). For more explicitly feminist per- spectives, see MARILYN WARING, *IF WOMEN COUNTED* (1988); Barbara Omolade, *We Speak for the Planet*, in *ROCKING THE SHIP OF STATE* 171 (Adrienne Harris & Ynestra King eds., 1989).

68. My thanks to Lynn Paltrow for reminding me of the importance of population control environmentalism.

69. See GENA COREA, *THE MOTHER MACHINE* 60-97 (1985) for an extended de- scription and analysis of the relationship between techniques of factory farming that abuse animals, particularly cows, and techniques of reproductive technologies that

plex that many views about it are not only possible, but plausible. One might believe that dealing with the oppression of women must come first, and only after we establish human equality will the rehabilitation of humans' relationship with nature be a realistic project, or one worth engaging in. One might believe that unless all people put much more significant efforts into righting the ecological disasters some of us have created, the oppression of women as we now know it will not matter very much at all. One might believe that trying to separate the two issues, either analytically or in practice, is hopeless and wrong; work on both is the only way to make progress on either.<sup>70</sup>

Whatever position one takes on the question of women and nature, it is also necessary to recognize that a simple rejection of any relationship between women and nature is not helpful to women struggling to survive all over the world, or to the ecological balance on which we all depend. Those women and this world can not afford to have the few women with some tools and some access to some of the levers of power, even if not control over them, decide that the connection between the well-being of women and the well-being of trees and water is conceptually retrograde, and therefore not to be discussed in polite company — much less acted upon.

What is needed, rather, is for feminists to reevaluate the view that caring about nature will contribute to women's oppression. We need to approach ecological survival the way we say we approach other critical issues: to pay attention to a wide variety of experiences and take action on the basis of understanding those experiences. Only then will we be able to continue to move forward both to end the oppression of women and to keep the planet alive and healthy for all its inhabitants.

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abuse women. CAROL J. ADAMS, *THE SEXUAL POLITICS OF MEAT* (1990) looks at the politics of our society's meat-eating and the history of vegetarianism as a political protest movement. (Adams also makes the provocative suggestion that feminists' identification and use of metaphors about animals to signal abuse and degradation of women can sometimes have the effect of short-circuiting conscious consideration of the underlying, equally real, abuse of animals, which gives the metaphor its power. *Id.* at 60–61.).

70. This seems to be the attitude that unifies otherwise disparate strands of what is usually called ecofeminism. Kirk, *supra* note 1, at 3–4.