

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

---

Volume 6 (1999-2000)  
Issue 2 *William & Mary Journal of Women and  
the Law*

---

Article 3

February 2000

## The Rise and Fall of Women's Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?

Lynne Marie Kohm

Colleen Holmes

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



Part of the [Civil Rights and Discrimination Commons](#)

---

### Repository Citation

Lynne Marie Kohm and Colleen Holmes, *The Rise and Fall of Women's Rights: Have Sexuality and Reproductive Freedom Forfeited Victory?*, 6 Wm. & Mary J. Women & L. 381 (2000), <https://scholarship.law.wm.edu/wmjowl/vol6/iss2/3>

Copyright c 2000 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.  
<https://scholarship.law.wm.edu/wmjowl>

# THE RISE AND FALL OF WOMEN'S RIGHTS: HAVE SEXUALITY AND REPRODUCTIVE FREEDOM FORFEITED VICTORY?

LYNNE MARIE KOHM\* AND COLLEEN HOLMES\*\*

*"In 1998—less than two years before the dawn of a new millennium—women working in 'pink-collar' positions continue to be paid significantly less than men in 'blue-collar' jobs. Women's work is still worth less than equivalent work by men."<sup>1</sup>*

The early efforts of the women's rights movement spawned great advances in human rights and economic opportunities for women.<sup>2</sup> Over the past several decades, however, activists have deemed certain rights to be more important, more crucial to womanhood, or more critical to women's bodily autonomy.<sup>3</sup> These political choices have overshadowed such noble objectives as ending pay discrimination based on sex, eliminating discrimination against women in general, allowing women to be paid fairly for their labor, and continually opening opportunities to women that have long been held as sanctuaries for men. Consequently, the facts indicate that women are not gaining as much ground as they had hoped or expected.<sup>4</sup> This Article will demonstrate that the current women's

---

\* Associate Professor and John Brown McCarty Professor of Family Law, Regent University School of Law; J.D. Syracuse University College of Law; B.A. SUNY Albany.

\*\* J.D. Regent University, B.A. Wellesley College. We would like to express our deep gratitude to Michelle Lombardo for her research and contributions to this Article regarding the engaging history of the early women's rights movement.

1. Thomas P. DiNapoli, *Women's Work Must Earn as Much as Men's*, *NEWSDAY*, Mar. 31, 1998, at A37.

2. Examples illustrating these advances range from the abolition of slavery to female suffrage. See generally OLIVE BANKS, *FACES OF FEMINISM* (1981) (providing an historical perspective of women's movements).

3. See *id.* at 228–30 (discussing radical feminists who emphasize reproduction).

A recent hearing on pay equity revealed that the starting salary for an executive secretary at a local university is \$20,453. While the job demands computer proficiency and excellent typing and communication skills, it also pays \$9,000 less than a custodian, \$11,000 less than a groundskeeper, and \$20,000 less than a carpenter or painter at the school. See DiNapoli, *supra* note 1.

4. No one would argue that floors must be cleaned and lawns must be mowed, but why are the people organizing essential computer files and running departmental offices worth \$10,000 less? This kind of discrepancy must be corrected.

The idea that women are working for "pin money" is a dinosaur that has been extinct for decades. Just ask any dual-income family. Today, a woman's pay check goes toward groceries, a mortgage or a child's new sneakers. For single-mother households, achieving pay equity is even more crucial.

DiNapoli, *supra* note 1.

rights movement has promoted a feminist agenda<sup>5</sup> that has focused solely on reproductive freedom to the detriment or exclusion of freedom and equality for women in other areas.

According to the President's Council of Economic Advisors, women have not yet begun to approach pay levels equal to those of men.<sup>6</sup> In 1998, women earned seventy-five cents for every dollar a man earned.<sup>7</sup> Although one might expect some narrowing in the gender pay gap over the past thirty years, the increase is only a meager one.<sup>8</sup> These differences are very apparent in the medical profession,<sup>9</sup> as well as in the legal profession and in general.<sup>10</sup>

---

5. Feminism, for purposes of this Article, will be defined as it is portrayed by the modern media, which focuses on organizations like the National Organization for Women (NOW) led by Patricia Ireland, the National Abortion and Reproductive Rights Action League (NARAL) led by Kate Michelman, and the Planned Parenthood Federation of America (PPFA) led by Gloria Feldt. This list is not intended to be exhaustive, but merely representative of what the modern media culture has developed as the "notion" of feminism. For a thorough discussion of the various perspectives within feminist philosophy and how they relate to women in education and society, see generally Katharine T. Bartlett, *Feminist Perspectives on the Ideological Impact of Legal Education upon the Profession*, 72 N.C. L. REV. 1259 (1994). "Feminists are those who think critically about the role gender plays in existing social, political, and legal arrangements and who are committed to changes, of one sort or another, in these arrangements." *Id.* at 1259.

6. See *White House Focuses on Gap in Gender Pay*, ATLANTA J. & ATLANTA CONST., Apr. 8, 1999, at A14, available in 1999 WL 3761237.

7. See *id.*

8. See *Gains for Working Women*, CHRISTIAN SCIENCE MONITOR, Jan. 8, 1998, at 20 (stating that the average female worker earned 56.2% of a man's pay in 1969 and 71.7% in 1994). Some have offered explanations other than sexism for the lack of equity in salaries between the sexes:

[W]omen's choices of education and profession influence average pay. Few recipients of business and technical degrees in the '60s and '70s—who today would be at the top of their fields—were women. This lowers average wages. . . . 80% of women bear children, and working mothers frequently choose jobs that let them better combine work with family. To gain much-desired control over their time, women often sacrifice higher wages. A preference for more time at home with less pay and less job advancement is a legitimate choice.

Diana Furchgott-Roth & Christine Stolba, *Women Don't Need Equal Pay Day*, INVESTOR'S BUS. DAILY, Apr. 6, 1998, at A36.

9. See Tamar Hausman, *Your Career Matters: The Jungle*, WALL ST. J., Mar. 2, 1999, at B12, available in 1999 WL 5442575. In a 1997 sampling of medical specialties and their gender pay gap, a male cardiologist made \$381,819 annually compared to a female cardiologist who made \$222,886 annually. See *id.*

10. See Wynn R. Huang, *Gender Differences in the Earnings of Lawyers*, 30 COLUM. J.L. & SOC. PROBS. 267, 267 (1997) ("In 1994, women earned only 76.4 cents for every dollar earned by men." (citing U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES: 1995, at 443 tbl. 677 (1995))); see also U.S. Department of Labor Women's Bureau, *Women's Bureau Press Release: Women Gaining in Pay But Still Lag Behind Men According to U.S. Department of Labor Report*, June 10, 1998, available in 1998 WL 305539 (stating that in 1998, women earned 76 cents for every dollar made by men, compared to 59 cents in 1963) [hereinafter Women's Bureau]; Christina Sciammacco, *Feminists Call for Closing of*

Simply put, "[w]omen earn less money than men."<sup>11</sup>

"Women comprise 24% of all lawyers, and nearly 50% of all law students," yet "equality remains elusive for many women attorneys."<sup>12</sup> Female lawyers receive significantly less pay than their male counterparts<sup>13</sup> and have a more difficult time achieving partner status,<sup>14</sup> especially if such women are mothers.<sup>15</sup>

A 1993 poll showed that 48% of women think the women's movement has made women's lives harder than they were twenty years ago.<sup>16</sup> "These figures [which demonstrate that traditional views have been hard to change] parallel the upsurge in the divorce rate over the same period, which has caused many women to experience a significant drop in income and loss of lifestyle."<sup>17</sup>

Narrowing the gender wage gap is a worthy objective, yet it seems to draw minimal support and even less attention, if any, from women's rights activists today. Feminist spokeswomen seem to be content with an increase in the minimum wage rather than fighting for fair salaries or reasonable increases in women's pay.<sup>18</sup> President

*Wage Gap* (visited Nov. 13, 1999) <<http://www.now.org/nnt/05-98/wagegap.html>> (stating that women earn 74% of what men earn).

11. *Women Getting Savvier About Retirement Savings*, VIRGINIAN-PILOT, Aug. 10, 1998, at D4 (stating that because women earn less money than men, "it makes it no surprise they save less: 1.5% of their income, vs. 3.1% for men"). Women also live an average of six years longer than men, according to statistics from the National Center for Health Statistics, which requires financing more retirement years. *See id.* Because women work fewer years and change jobs more frequently, "they can expect smaller paybacks from social security and pension programs. Indeed, two out of three women have no pension plans at all, according to the Employee Benefit Research Institute." *Id.* *See generally* Huang, *supra* note 10 (discussing the differences in earnings between genders); Lynne Marie Kohm, *A Fresh Perspective on Professional Women as Mothers: The Traditional Values Mother Is One of a Few Good Men*, 81 WOMEN LAW. J., June 1995, at 8 (discussing the detrimental effect of the "mommy track" on women's earnings).

12. *Women in the Legal Profession*, A.B.A. SERV. BRIEF, Aug. 1998, at 1, 1.

13. *See* Huang, *supra* note 10, at 273.

14. *See* Jennifer A. Kingson, *Women in the Law Say Path Is Limited by "Mommy Track,"* N.Y. TIMES, Aug. 8, 1988, at A1.

15. *See* Kohm, *supra* note 11, at 8 (explaining that lawyers who choose motherhood while building their careers are "mommy-tracked" into a pink-collar ghetto, receive considerably fewer perks and less compensation for services they render to a firm, and become derailed from the partnership track).

16. *See* Cal Thomas, *Women Reject Feminist Falsehoods*, HUMAN EVENTS, Oct. 16, 1993, at 10, 10 (citing a USA Today-CNN-Gallup poll).

17. *Id.*; *see also* Joni Hersch, *The Economics of Home Production*, 6 S. CAL. REV. L. & WOMEN'S STUD. 421, 421-22 (1997) (discussing the implications of a divorce in which a woman's primary productive contribution is in the home).

18. *See, e.g.,* Alice Ann Love, *Gender Pay Gap Is Further Narrowed*, VIRGINIAN-PILOT, June 10, 1998, at D1 (explaining that because women "still tend to be concentrated in the lowest-paying jobs," the minimum wage increases often translate into a wage increase for women).

John F. Kennedy signed the Equal Pay Act (EPA) of 1963<sup>19</sup> with the objective of outlawing wage discrimination.<sup>20</sup> The fact remains, however, that women are not receiving equal wages, and "[p]ay discrimination still exists."<sup>21</sup> With equal pay remaining an illusory goal, women's rights groups say they are not very concerned with this issue, because "[t]rends for women's rising wages are still strong—more college education, increased labor force participation, the integration of jobs . . . . The prospect looks good."<sup>22</sup> Such a belief appears to be that destiny will assure the improvement of women's wages.<sup>23</sup> Statistics do not indicate that such factors will bring about equal pay and opportunity for women.<sup>24</sup>

The situation is not getting better as time goes on. "The average female worker in America still earns just 76¢ for every dollar a man earns, up 17¢ from the '70s but still no cause for rejoicing. And for most women, the glass ceiling is impenetrable as ever."<sup>25</sup> Yet, many high profile women who claim to represent women generally, such as celebrities and feminists leaders, no longer appear to be addressing the need for women's equal pay and opportunity,<sup>26</sup> but that need still exists.

Women's rights activists scream with urgency over issues regarding reproductive freedoms but miss the real issues by viewing the wage gap problem through rose-colored glasses. There are many examples of feminists reducing activism to a discussion of reproductive freedom and ignoring freedom and opportunity in

---

19. Pub. L. 87-30, §5, 75 Stat. 67 (codified as amended at 29 U.S.C. § 206(d)(1994)).

20. See Love, *supra* note 18.

21. *Id.*

22. *Id.* (quoting Institute for Women's Policy Research Director Heidi Hartmann).

23. See *id.* On the contrary,

[w]hile men's weekly wages, in inflation-adjusted dollars, fell steadily during the 1980s, women's earnings rose as they joined the work force in ever greater numbers, increasingly bringing a college degree with them. But by the mid-1990s, a booming economy was pushing men's wages up again while women's barely held steady, and the pay disparity between the sexes bulged from \$132 a week in 1993 to \$148 last year. The recent narrowing to a \$141-a-week wage gap in 1998's first quarter, [however], could be temporary, receding if times get tough again.

*Id.*

24. See Huang, *supra* note 10, at 267 (stating that although differences in training and education accounted for part of the wage gap between men and women, between 42% and 44% of the gap remained unexplained in 1987).

25. Ginia Bellafante, *Feminism: It's All About Me!*, TIME, June 29, 1998, at 54, 58. "There are only two female CEOs at FORTUNE 500 companies, and just 10% of corporate officers are women." *Id.*

26. See *id.* at 57.

other aspects of life.<sup>27</sup> The focus of some publications reflects more concern about the lack of training in performing second trimester abortions in medical schools' gynecology and obstetrics classes than about opening opportunities for women to study medicine.<sup>28</sup>

Furthermore, American feminists have taken this distorted mindset abroad.<sup>29</sup> In a well-intended effort to empower indigent South African women, activists prioritized fighting for those women's abortion rights over fighting for educational opportunities, access to health care in general, and protection from gender discrimination.<sup>30</sup> Neither did a report of the United Nations Population Fund (UNFPA) show concern for an extreme shortage of female population in Asian countries.<sup>31</sup> Rather, it focused on the need for human rights treaties to "recognize rights to reproductive and sexual health" as paramount.<sup>32</sup> The report did add, though, that the UNFPA is concerned also about "equality and equity for men and women in all spheres of life."<sup>33</sup>

This distorted set of priorities has its roots in contemporary women's rights activism. As a result, equal employment, equal pay, professional potential, educational choices, personal happiness, and infinite opportunity have been forfeited in favor of contraception, reproductive alternatives, sexual lifestyle choices, and abortion on demand. The expansion of reproductive choices has placed a stranglehold on womanhood. Instead of experiencing freedom of choice in reproduction, women have been condemned to be further

27. See *infra* Part I.B. Some have even suggested that "feminism has come to seem divorced from matters of public purpose." Bellafante, *supra* note 25, at 60.

28. See, e.g., EILEEN L. McDONAGH, *BREAKING THE ABORTION DEADLOCK: FROM CHOICE TO CONSENT* 3-6 (1996) (mentioning the lack of access to abortions because of a shortage of trained professionals); Helene Cooper, *Medical Schools, Students Shun Abortion Study*, WALL ST. J., Mar. 12, 1993, at B1 (discussing the lack of training in performing abortions).

29. See Audrey E. Haroz, *South Africa's 1996 Choice on Termination of Pregnancy Act: Expanding Choice and International Human Rights to Black South African Women*, 30 VAND. J. TRANSNAT'L L. 863, 902 (1997).

30. See *id.*

31. See UN: *Denial of Reproductive Rights Kills or Harms Millions of Women*, PRESSWIRE, May 30, 1997, available in 1997 WL 10370878 [hereinafter UN]. This shortage is due to abortion and infanticide of female children. See Dorothy C. Wertz, *International Perspectives on Ethics and Human Genetics*, 27 SUFFOLK U. L. REV. 1411, 1432 (1993); Nicholas D. Kristof, *Stark Data on Women: 100 Million Are Missing*, N.Y. TIMES, Nov. 10, 1991, at C1 (citing Harvard economist Amartya Sen). "Tragically, girl babies are frequently killed at birth and orphaned little girls are left to starve to death." Family Research Council, *China/MFN: Which Side Are You On?*, WASHINGTON WATCH, Apr. 18, 1997, at 1, 1. Male children are preferred for agrarian work, societal status, and legal purposes, whereas the implications of a dearth of women are female sex-slavery, wife-selling, and rampant male deviancy. See Kristof, *supra*.

32. UN, *supra* note 31.

33. *Id.*

defined by their reproductive capacity. This emphasis on reproductive freedom has detracted attention from the immensely valuable contributions women can make to society aside from reproduction, thereby limiting women to a more narrow spectrum of importance in the economic world.

The first section of this Article gives a brief historical overview of the character and goals of early women's rights leaders. Part II continues with an overview of the various understandings of womanhood, analyzes post-modern feminism and the radical feminist agenda of today's culture, and concludes with a forecast for reproductive freedom. Part III then reviews and evaluates the rise of reproductive freedom in American case law, followed by its fall as a result of restrictions on and regulation of that freedom by judicial and legislative lawmaking. This section illustrates that the women's rights movement's focus on reproductive freedom ironically has given rise to state legislation and Supreme Court decisions that place practical limitations on abortion rights. Part III also will show that feminist philosophy has distorted the legal concept of privacy, which the Court introduced to uphold privacy within the family.

Part IV examines how the feminist movement has impacted societal attitudes and limited women's reproductive choices. Finally, Part V proposes a solution: a return to the original feminists' goals of equality based on strength of character, via a philosophy that encourages and empowers women to find freedom through complementarity between the sexes. This Article concludes that the women's movement began more than a hundred years ago with virtuous objectives but has swerved off track by pursuing unfettered sexual and reproductive freedom, thereby further disempowering women and any movement for women's rights in general. Today's activists have forsaken the honorable and crucial fight for general freedom and equality in order to pursue the narrow objective of freedom from childbearing at any cost. We offer some suggestions for a broader, more balanced approach to pro-women activism.

The exaggerated emphasis on women's sexual and reproductive capacities has jeopardized many of the advances for which women have fought over the past century and has sabotaged the continuing pursuit of equality. Redefining womanhood in light of reproduction and sexuality only, rather than seeing women as whole persons with diverse needs and capabilities, serves to deny the personhood

of women.<sup>34</sup> Many leading women's activists are desperately trying to free women from that which makes them uniquely women, the human womb, by overemphasizing reproductive capacity and minimizing the rest of a woman's life. As a result, we now are witnessing the conversion of reproductive freedom into mere and ignorant sexual power.<sup>35</sup>

## I. UNDERSTANDINGS OF WOMANHOOD

### A. *An Historical Analysis*

Those who began the fight for women's rights and equality waged war with a providential perspective. Their goals were to emancipate women from social constraints that prevented them from realizing their full potential in a society that did not regard women as whole persons.<sup>36</sup> The courage and faith European and American women displayed in the seventeenth century and during the American and French Revolutions gave birth to the philosophical underpinnings of the women's rights movement.<sup>37</sup>

Mary Wollstonecraft, an eighteenth century English author, was a pioneer of the women's rights movement.<sup>38</sup> In *A Vindication of the Rights of Women*, Wollstonecraft shocked many of her contemporaries.<sup>39</sup> She called for equality in education and the opening of professions to women, and she valiantly expressed her concern about prejudice against women in the context of her personal faith.<sup>40</sup>

---

34. During the 1992 Republican Convention, Marilyn Quayle "warned of the danger that occurs when some women try to deny women's essential nature as women." Thomas, *supra* note 16, at 10.

35. Andrea Dworkin stated that:

objectification occurs when a human being, through social means, is made less than human, turned into a thing or commodity, bought and sold. When objectification occurs, a person is depersonalized, so that no individuality or integrity is available socially or in what is an extremely circumscribed privacy (because those who dominate determine its boundaries). Objectification is an injury right at the heart of discrimination: those who can be used as if they are not fully human are no longer fully human in social terms; their humanity is hurt by being diminished.

Andrea Dworkin, *Against the Male Flood: Censorship, Pornography, and Equality*, 8 HARV. WOMEN'S L.J. 1, 15 (1985).

36. See Bellafante, *supra* note 25, at 57.

37. See BANKS, *supra* note 2, at 4-9.

38. See *id.* at 28-30.

39. See WILLIAM J. BENNETT, *THE BOOK OF VIRTUES* 787 (1993).

40. See *id.*



When that wise Being who created us and placed us here, saw the fair idea, He willed, by allowing it to be so, that the passions should unfold our reason, because He could see that present evil would produce future good. Could the helpless creature whom he called from nothing break loose from His providence, and boldly learn to know good by practicing evil, without His permission? No. . . .

But if, to crown the whole, there were to be rational creatures produced, allowed to rise in excellence by the exercise of powers implanted for that purpose; if benignity itself thought fit to call into existence a creature above the brutes, who could think and improve himself, why should that inestimable gift, for a gift it was, if man was so created, as to have a capacity to rise above the state in which sensation produced brutal ease, be called, in direct terms, a curse? . . . Firmly persuaded that no evil exists in the world that God did not design to take place, I build my belief on the perfection of God.<sup>41</sup>

Though modern feminism has its most immediate roots in the "women's lib" (liberation) movement of the 1960s and 1970s, and even earlier in the women's suffrage movement of the late 1800s and early 1900s, women were keenly aware of the dilemma of societal inequality long before. In the 1700s, women understood that they longed for equality in society and in their relationships with their husbands.<sup>42</sup> They desired to enjoy the wonder of intimacy in every way. In 1792, Mary Wollstonecraft wrote:

[T]he nature of reason must be the same in all, if it be an emanation of divinity . . . . [T]he inquiry is whether she have reason or not. If she have, which . . . I will take for granted, she was not created merely to be the solace of man, and the sexual should not destroy the human character.<sup>43</sup>

Wollstonecraft's words are eerily prescient, foretelling the future of this movement. They discourage the belief that before the sexual revolution of the 1960s, women were not free to discuss their desire for sexual fulfillment, much less assert their right to it.<sup>44</sup> Her words also indicate that there are more effective and more

---

41. *Id.* at 788 (quoting Mary Wollstonecraft). In this excerpt from Wollstonecraft's writings, she expresses her faith that women and men improve themselves according to the Creator's Divine Plan.

42. *See id.*

43. MARY WOLLSTONECRAFT, *A VINDICATION OF THE RIGHTS OF WOMEN* 111-12 (1792).

44. *See* Raymond C. O'Brien, *Single-Gender Marriage: A Religious Perspective*, 7 *TEMPLE POL'Y & CIV. RTS. L. REV.* 429, 431 (1998) ("Why have the changes come about? . . . There is, to begin with, the so-called sexual revolution, which . . . champions a rich, full sex life.").

dignified ways to express this desire than by making vulgar statements and degrading women's sexuality as many of today's women's rights activists have chosen to do.<sup>45</sup> Other women joined Wollstonecraft in this thinking.

In 1790, Judith Sargent Murray, a women's rights activist from Massachusetts, wrote an essay entitled *On the Equality of the Sexes*.<sup>46</sup> In it, she sought to open more educational opportunities for women because, in her opinion, women were endowed by their Creator with intellects every bit as sharp as men's.<sup>47</sup> Appended to her essay was a letter she had written ten years earlier to a male friend who, basing his claim on scriptural evidence, concluded that males had superior intelligence.<sup>48</sup> In that instance, Murray's friend had twisted scripture to demean and oppress women, contrary to the teachings of Jesus Christ.<sup>49</sup> Murray responded:

Not long since, weak and presuming as I was, I amused myself with selecting some arguments from nature, reason and experience, against this so generally received idea [of male superiority]. I confess that to the sacred testimonies I had not recourse. I held them to be merely metaphorical, and thus regarding them, I could not persuade myself that there was any propriety in bringing them to decide in this *very important debate*. However, as you, sir, confine yourself entirely to the sacred oracles, I mean to bend the whole of my artillery against those supposed proofs, which you have thence provided, and from which you have formed an intrenchment *apparently* so invulnerable.<sup>50</sup>

Carolyn De Swarte Gifford has commented on the movement for equal education in that period, suggesting that at the beginning of the nineteenth century, women were demanding that equal opportunities be available both to boys and girls.<sup>51</sup> "While women

---

45. See *infra* text accompanying notes 179-83.

46. See Judith Sargent Murray, *On the Equality of the Sexes*, in *THE FEMINIST PAPERS: FROM ADAMS TO DE BEAUVOIR* 18 (Alice S. Rossi ed., 1973).

47. See *id.* at 18-22.

48. See Carolyn De Swarte Gifford, *American Women and the Bible: The Nature of Woman as a Hermeneutical Issue*, in *FEMINIST PERSPECTIVES ON BIBLICAL SCHOLARSHIP* 11, 12 (Adela Yarbro Collins ed., 1985).

49. For example, in the fourth chapter of the Gospel of John, Jesus meets a Samaritan woman, whom He knows has had five husbands and lives with a man who is not her husband. Yet Christ treats her with respect, regardless of her gender, regardless of her race, and regardless of her social status, as they inquire into the meaning of the "water of life" when Christ makes His divinity clear to her. See *John* 4:1-26.

50. Gifford, *supra* note 48, at 12 (quoting Murray).

51. See *id.* at 13-14.

could not govern, they could guide, and their guidance extended to the moral and religious realms."<sup>52</sup> Women became teachers in both public schools and Sunday schools, "exerting spiritual and moral influence over America's youth."<sup>53</sup>

The women's rights movement continued as women fought for entry into public fora to advocate for those with little power and few resources. In the 1830s, female abolitionists such as Angelina and Sarah Grimke,<sup>54</sup> Lucretia Mott,<sup>55</sup> and Elizabeth Cady Stanton<sup>56</sup> began pleading the cause of the slave before "promiscuous assemblies."<sup>57</sup> Women were prohibited by tradition from addressing such mixed assemblies, but within the abolitionist movement, these early leaders discovered a forum and a sense of purpose in a society in which most forms of political and economic activity were closed to women.<sup>58</sup> Abolitionism also provided male allies for these women, including Frederick Douglass, William Lloyd Garrison, and Henry Blackwell.<sup>59</sup>

On July 19 and 20, 1848, the first Women's Rights Convention in the United States was held at Seneca Falls, New York.<sup>60</sup> Approximately 250 women and 40 men who had responded to a local newspaper advertisement were in attendance.<sup>61</sup> The drafters of the Declaration of Sentiments and Resolutions, including Elizabeth Cady Stanton, Lucretia Mott, Martha C. Wright, and Mary Ann McClintock, also were present.<sup>62</sup> The documents were modeled after the Declaration of Independence and focused primarily upon reform at the state level in order to improve the legal status of women.<sup>63</sup> The Declaration also attacked "the

52. *Id.* at 14.

53. *Id.* at 13-14.

54. The Grimke sisters were southern women who migrated to the North to lead an anti-slavery campaign and champion other moral reforms such as temperance. *See* BANKS, *supra* note 2, at 20.

55. Lucretia Mott was a Quaker minister who had been influenced by Mary Wollstonecraft's *A Vindication of the Rights of Women*. She is hailed as a pioneer of American feminism. *See id.*

56. Elizabeth Cady Stanton was the wife of an abolitionist leader who became, along with Lucretia Mott, the moving spirit behind the Seneca Falls Convention in 1848. *See id.* at 23-24.

57. Promiscuous assemblies were gatherings that included both men and women. *See* Gifford, *supra* note 48, at 14.

58. *See* MARY BECKER ET AL., *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 2 (1994).

59. *See id.*

60. *See* CHRISTINA HOFF SOMMERS, *WHO STOLE FEMINISM: HOW WOMEN HAVE BETRAYED WOMEN* 33 (1994).

61. *See id.* at 34.

62. *See* BECKER ET AL., *supra* note 58, at 2.

63. *See* SOMMERS, *supra* note 60, at 34.

supremacy of man," the unequal allocation of power in family, state, and church, and the different moral codes applied to men and women.<sup>64</sup> A women's rights scholar, Christina Hoff Sommers, notes that "Seneca Falls focused on specific injustices of the kind that social policy could repair by making the laws equitable."<sup>65</sup>

Although the Seneca Falls gathering did not immediately change the position of women in American society, it prompted a movement toward equality between the sexes.<sup>66</sup> Yet it is unfortunate that the successors of these brave women seem to have lost the original vision of the fight for women's equal dignity via the tenets of religious belief, as strong women of personal faith are frequently viewed as outsiders and discrepancies within the movement continue nearly undaunted a century and a half later.<sup>67</sup>

---

64. See BECKER ET AL., *supra* note 58, at 3; SOMMERS, *supra* note 60, at 35. Sommers recounts the way in which Elizabeth Cady Stanton and Susan B. Anthony organized a campaign to help Hester Vaughan. *See id.* In 1869, at the age of twenty, Vaughan's husband deserted her. She went to work for a wealthy Philadelphia family where the man of the house seduced, impregnated, and then fired her. Left without any means of support, she collapsed after giving birth to her child in an unheated rented room. Before someone discovered her, the baby died. She was charged with murder, not permitted to testify in her own defense, and received a death sentence from an all-male jury. *See id.* Stanton and Anthony "[d]emanded a pardon for Vaughan, an end to the double standard of morality, the right of women to serve as jurors, and the admission of women to law schools. . . . According to Stanton, Vaughan's trial by a jury of men . . . illustrated the indignity and injustice of women's legal status." *Id.*

65. SOMMERS, *supra* note 60, at 35.

66. See Margaret Claiborne, *The New Face of Feminism: Area Teens Know Their Place as Women of the 21st Century*, ITHACA JOURNAL, July 11, 1998, at 1A (reporting the celebration of the 150th Anniversary of the convention in Seneca Falls, NY). "Five women sat around a table in Waterloo, NY in 1848 and devised a two-day gathering that would change American history. That event, the First Women's Rights Convention, held in nearby Seneca Falls, is credited with being the impetus for the women's rights movement in America." *Id.*

67. *See id.* Women, including Hillary Clinton and Madeline Albright, were praised at the gathering. *See id.* Yet, there was no comment about the fact that the current leaders of the movement are not using the advantages they enjoy as a result of their predecessors' efforts to fight this inequality to benefit womanhood, but are fighting womanhood and the privileges of motherhood inherent in it.

The lasting effect of the work done by the predecessors is apparent in the comments of young women who were interviewed on the subject. *See id.* The *Ithaca Journal* surveyed girls of junior high school age growing up near Seneca Falls. These young women expressed gratitude for the strides that have been made toward equality, but that gratitude was laced with uncertainty about what those strides mean for them. *See id.* Fourteen year old Elizabeth Thonny remarked of Susan B. Anthony and Elizabeth Cady Stanton: "If it weren't for them, we wouldn't be where we are now." *Id.* Fifteen year old Morgan Campbell noted that in her chosen career of film production, "I would say usually the bigger jobs go to males who usually get more money. I will just have to work harder and be better than my competitors." *Id.* Ms. Campbell will also have to balance these tasks with the demands of marriage and motherhood, as she and many of her peers expressed a desire to be wives and mothers. *See id.*

Fifteen year old Anna Schlieleen's commentary on the modern feminist movement

Though the original women's rights activists based their activities in their personal faith, church men of the day viewed those women as unnatural and unsuitable for the public arena.<sup>68</sup> Thus, neither secular nor sectarian society was inclined to embrace the female leaders' messages.<sup>69</sup>

Almost without exception women's rights leaders in the nineteenth century firmly believed that the Bible, correctly interpreted, would disclose God's intention that women be equal to men. Although generations of men might be sexist, God was not. They rather naively assumed that it was simply a matter of encouraging unbiased investigation of the Bible by scholars and nonscholars alike, in order to change American society's definition of womanhood and woman's sphere.<sup>70</sup>

By the 1850s, women reformers such as Susan B. Anthony boldly stood to voice their opinions in rallies and conferences.<sup>71</sup> In 1872, Anthony registered to vote in Rochester, New York.<sup>72</sup> She was prosecuted for violating a provision of the 1870 Civil Rights Act designed to prevent white men from canceling out Black male votes by casting more than one ballot.<sup>73</sup> Consistent with the general consensus of the day, however, that such women were a nuisance but were not to be taken too seriously, the judge directed a verdict against her that was never enforced.<sup>74</sup> Nevertheless, the suffrage movement continued into the twentieth century, and on August 26,

---

demonstrated that many women feel they have to distance themselves from contemporary feminism. See *id.* Although they believe in equality between the sexes, they do not believe contemporary feminism accurately represents their viewpoint:

The biggest problem when you are growing up female is that you hear people talking about feminism as if it is a bad thing. If you say you believe that women should have the same rights as men, people jump to the conclusion that you think all men are evil. When people ask if you're a feminist, you're tempted to say "no." Society sends a lot of mixed messages about how they expect women to behave.

*Id.*

68. See Gifford, *supra* note 48, at 14-15. These men apparently overlooked the many "good women" of the Bible whose goodness was often manifested outside the home. An example is the woman held out as the good wife who, in addition to caring for her family, "buys a field and plants a vineyard out of her earnings" and "[s]ees that her business goes well." *Proverbs* 31.

69. See Gifford, *supra* note 48, at 14-15.

70. See *id.* at 21.

71. See JOAN HOFF, *LAW, GENDER, AND INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN* 35 (1991).

72. See BECKER ET AL., *supra* note 58, at 10. Anthony and fourteen other women actually cast ballots. See *id.*

73. See *id.*

74. See *id.* at 11.

1920, women finally won the right to vote through the Nineteenth Amendment to the United States Constitution.<sup>75</sup>

Throughout the 1920s, women continued to fight for and use what little political power they gathered to champion the causes of those who lacked power and resources.<sup>76</sup> Women such as Jane Addams and Lillian Wald reached out to poor and displaced women.<sup>77</sup> Florence Kelley and others actively engaged in political battles to protect their children and families from dangers ranging from unfair child labor laws to impure water.<sup>78</sup> Though these were landmark accomplishments, women were still far from enjoying equal dignity and opportunity in society.

It is difficult to pinpoint when reproductive rights became a focal point.<sup>79</sup> Early feminist opposition to abortion was joined with condemnation of male sexual irresponsibility and coercion and the lack of economic and social support for pregnant women abandoned by the fathers of their children.<sup>80</sup> These feminist abortion opponents were motivated by concerns for women with crisis pregnancies and their unborn children, as well as mothers and born children with inadequate resources.<sup>81</sup> The abortion opponents were focused on preventing the circumstances giving rise to abortion, through sex education and family planning,<sup>82</sup> not advocating abortion as a source of female empowerment.<sup>83</sup>

75. See U.S. CONST. amend. XIX.

76. See BANKS, *supra* note 2, at 154-55.

77. See JANET ZOLLINGER GIELE, *TWO PATHS TO WOMEN'S EQUALITY* 146 (1995). Addams ran Hull House and Wald ran Henry Street Settlement, both settlement houses for poor women and their families. See *id.*

78. See *id.*

79. "The birth control campaign . . . is much less easy to place within feminism." OLIVE BANKS, *BECOMING A FEMINIST: THE SOCIAL ORIGINS OF "FIRST WAVE" FEMINISM* 49 (1986). Banks provides a history of the British feminist movement. She notes that in Britain, as in the United States, most feminists shunned the birth control movement until the end of the 19th century. See *id.*

80. See MARY KRANE DERR, *MAN'S INHUMANITY TO WOMAN MAKES COUNTLESS INFANTS DIE* ii-iii (1991) (detailing the opposition to abortion held by early feminists including Susan B. Anthony, Elizabeth Cady Stanton, Sarah F. Norton, Victoria Woodhull, Dr. Alice Bunker Stockham, and Tennessee Claflin).

81. See *id.* at ii.

82. See *id.* at i.

83. Although modern feminists may draw some distinctions under certain cases, they generally see abortion as empowering women. See CATHERINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 184-94 (1989); see also April L. Cherry, *A Feminist Understanding of Sex-Selective Abortion: Solely a Matter of Choice?*, 10 WIS. WOMEN'S L.J. 161, 161-68 (1995) (discussing sex selection of fetuses due to social concerns); Jodi Danis, *Sexism and "The Superfluous Female": Arguments for Regulating Pre-Implantation Sex Selection*, 18 HARV. WOMEN'S L.J. 219, 220-23 (1995) (discussing sex-skewed societies and the inherent discrimination therein). See generally KRISTIN LUKER, *ABORTION AND THE POLITICS OF MOTHERHOOD* (1984) (discussing the moral choices made by women about abortion).

Early women's rights activists, indeed, viewed abortion as distasteful and as one method by which men exerted control over women's sexuality.<sup>84</sup> "Early feminist opposition to abortion recognized that abortion itself did not empower women, but rather it allowed males relinquishment of responsibility for pregnancy."<sup>85</sup> Elizabeth Cady Stanton opposed abortion because she thought that it was dangerous for women.<sup>86</sup> She found both abortion and infanticide to be "disgusting and degrading crimes."<sup>87</sup> Her colleague, Susan B. Anthony, called abortion "the horrible crime of child murder."<sup>88</sup> The founding feminists saw abortion as an evil consequence of unrestrained male sexuality and an irresponsibility against which they should focus their efforts.<sup>89</sup> Yet these goals have been sadly distorted as modern feminists embrace the consequence of abortion and pursue their own unrestrained sexuality and irresponsibility.<sup>90</sup>

Early American leaders of the women's rights movement made significant achievements. They won for all women the right to vote and the ability to exercise free speech, free assembly, and free association. They gained major ground in opening educational opportunities to women, and they were among the first to openly and courageously advocate the complete abolition of slavery. These achievements marked the rise of women's rights.

Throughout both secular and sectarian women's history, then, whether fighting for the franchise or for equal opportunities and wages, the voices have been raised but the message has taken over a century and a half to be completely heard. Unfortunately, for all the hard fought battles and well deserved progress, there also has been an inexcusable erosion of fundamental moral values and a corruption within the women's movement in our post-modern culture.

---

84. See DERR, *supra* note 80, at 19.

85. Lynne Marie Kohm, *Sex Selection Abortion and the Boomerang Effect of a Woman's Right to Choose: A Paradox of the Skeptics*, 4 WM. & MARY J. WOMEN & L. 91, 116 (1997). Agreeing with several founding feminists, Kohm notes,

Abortion coerces women to handle crises that they did not create alone. Yet the men, who are at least equally responsible for the crisis, are relieved of any concern, torment, anguish, or responsibility by a woman's choice of abortion. Indeed, the ultimate irony of abortion is that it inherently lets men off the hook.

*Id.* at 122-23.

86. See ELISABETH GRIFFITH, *IN HER OWN RIGHT: THE LIFE OF ELIZABETH CADY STANTON* 133 (1984).

87. *Id.* (quoting Stanton).

88. DERR, *supra* note 80, at 24 (quoting Anthony).

89. See *id.* at i-iii.

90. See discussion *infra* Part III.B.

## B. Post Modernism<sup>91</sup>

Secular feminism split in the 1970s over the introduction of radical, lesbian theories to the movement.<sup>92</sup> As the early 1970s established its place in history, it carried with it from the 1960s the free love movement,<sup>93</sup> the "me generation,"<sup>94</sup> a sub-culture of rebellion submerged in hallucinogenic drug abuse,<sup>95</sup> Dr. Spock and his hands-off approach to raising children,<sup>96</sup> continued protests against the war in Vietnam,<sup>97</sup> and the onslaught of abortion rights first founded in the unprecedented Supreme Court decision of *Roe v. Wade*.<sup>98</sup> With the formation of the National Organization for

---

91. Few scholars agree on a precise definition of postmodernism. For purposes of this Article, we refer to postmodernism as a critical phase of modernism and as a movement characterized by a disavowal of universalist theory. See generally STEVEN CONNOR, *POSTMODERNIST CULTURE: AN INTRODUCTION TO THEORIES OF THE CONTEMPORARY* (1989).

In a mischievously serious commentary on constitutional "scholarship," Professor Dennis Arrow comments extensively on the phenomenon of "postmodernism."

Much as Critical Legal Studies was a romanticized, radicalized, Sixtiesized version of Legal Realism, see, e.g., Louis B. Schwartz, *With Gun and Camera Through Darkest CLS-Land*, 36 STAN. L. REV. 413, 415-19 (1984), legal postmodernism preserves the extreme leftist, antirational, and anti-democratic features of CLS, but heavily intersperses it with a revised jargon, cf. *id.* at 414 (noting the centrality of neo-Marxist jargon to CLS), grounded [gasp!] in a persuasive dollop of Michael Foucault, Jacques Derrida, and other bad French "philosophers." Cf. LEO TOSTOY, *WHAT IS ART?* 36 (Alymer Maude Trans., Liberal Arts Press, Inc. 1960) (1896) . . . .

Dennis Arrow, "Rich," "Textured," and "Nuanced": Constitutional "Scholarship" and Constitutional Messianism and Millennium, 78 TEX. L. REV. 149, 151 (1999). The rest of the commentary is full of commentary (not "commentary") on "postmodernism."

92. See ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967-1975*, at 215 (1989) (citing *Women's Liberation Is a Lesbian Plot*, RAT, May 8-21, 1970, at 12). On May 1, 1970, at the opening night of the second Congress to Unite Women, 40 outspoken lesbians took over the scheduled proceedings:

[A]bout 300 women were quietly sitting in the auditorium of intermediate school 70 waiting for the Congress to Unite Women to come to order. The lights went out, people heard running, laughter, a rebel yell here and there, and when those lights were turned back on, those same 300 women found themselves in the hands of the LAVENDER MENACE.

*Id.* At this event, "[t]he issue of lesbianism really exploded." *Id.* at 214.

93. See NICHOLAS DAVIDSON, *THE FAILURE OF FEMINISM* 10 (1998).

94. See *id.*

95. See generally *DRUGS IN AMERICAN LIFE* (Morrow & Suzanne Wilson eds., 1975) (discussing legal, medical, and personal aspects of contemporary drug use); ANNIE GOTTLIEB, *DO YOU BELIEVE IN MAGIC?* (1987) (discussing the drug culture movement in America).

96. See generally BENJAMIN SPOCK, *BABY AND CHILD CARE* (1968) (rejecting a "child centered" approach to parenting).

97. See DAVIDSON, *supra* note 93, at 10.

98. 410 U.S. 113 (1973).



Women (NOW)<sup>99</sup> and the resurgence of the Planned Parenthood Federation of America (Planned Parenthood or PPFA),<sup>100</sup> the most vocal leaders of the feminist movement began pushing for the right of women to do what they wanted with their bodies.<sup>101</sup> Those women who had joined the movement seeking equal dignity with men and equal pay for equal work were somewhat lost in the shuffle.<sup>102</sup> The voices of reason, respect, gender equality, and personhood were silenced by the radicals' consuming voices of reproductive freedom.<sup>103</sup>

---

99. NOW was founded in 1966 to take action to bring about equality for all women. See National Organization for Women, *The History of the National Organization for Women* (visited Jan. 13, 2000) <<http://www.now.org/history/history.html>>. It has been an enormously powerful political organization. See National Organization for Women, *Home Page* (visited Jan. 13, 2000) <<http://www.now.org>> (describing the various issues with which NOW is involved). NOW's website demonstrates its concern for equality in the workplace. See National Organization for Women, *Women-Friendly Workplace and Campus Campaign* (visited Jan. 13, 2000) <<http://www.now.org/issues/wfw>>. Unfortunately, as this Article demonstrates, these objectives have been hindered by a disproportionate reliance on reproductive freedom to bring about equality.

100. Planned Parenthood was founded in 1942 largely due to the efforts of Margaret Sanger, who was heavily influenced by the eugenics movement. See Planned Parenthood, *Margaret Sanger* (visited Nov. 22, 1999) <<http://www.plannedparenthood.org/about/thisispp/sanger.html>>. Planned Parenthood's website states that Margaret Sanger's involvement in the eugenics movement has been distorted and misconstrued: "Sanger's critics attempt to discredit [Sanger's accomplishments] by intentionally confusing her views on 'fitness' with eugenics and racism." *Id.*; see also GEORGE GRANT, *GRAND ILLUSIONS: THE LEGACY OF PLANNED PARENTHOOD* 32-44, 63-79 (1998) (outlining Malthusian and eugenics principles and Sanger's interest in and involvement with them). Regardless of how pure Sanger believed her motives were, any activism that combines the concepts of birth control and "fitness" is potentially very dangerous. See *id.* It poses particular threats to disadvantaged members of society. See *id.* These are precisely the groups women should be seeking to protect. See Tom Neven, *It Can't Happen Here . . . Or Can It?*, *FOCUS ON THE FAMILY*, Aug. 1998, at 11, 11-13 (giving a first-hand account of the carnage that can result from such seemingly innocuous concepts as eugenics and "fitness").

The eugenics movement in Germany precipitated the Holocaust. It began with the July 14, 1933 Law for the Prevention of Congenitally Ill Progeny. See *id.* at 11. This movement had two goals: to encourage the increase of "racially healthy" Aryans and to eliminate those lives deemed "unworthy to be lived." *Id.* Although abortion was technically illegal in Germany at the time, eugenic factors "carried equal weight to medical considerations," and racially undesirable children were allowed to be aborted. *Id.* The progression with which the eugenics advocates were able to ease German citizens into accepting the mass slaughter of hundreds of thousands of individuals should give Americans pause about their attitudes toward abortion, even abortion of children who may have birth defects. See *id.*

101. This social and political pressure was captured in the Boston Women's Health Collective's book *OUR BODIES, OURSELVES* (1965).

102. See Bellafante, *supra* note 25, at 57.

103. See generally JANE J. MANSBRIDGE, *WHY WE LOST THE ERA* (1986) (arguing that ideological and organizational conflict within the pro-ERA movement contributed to the ERA's defeat); Susan E. Marshall, *Ladies Against Women: Mobilization Dilemmas of Antifeminist Movements*, 32 *SOC. PROB.* 348 (1985) (comparing the resource mobilization dilemmas of the anti-suffrage movement and the anti-ERA movement and arguing that the

Case law, including Supreme Court decisions and judicial intervention, has been the method whereby radical leaders of the women's movement have sought to solicit reproductive freedom rights. A review of those major decisions is necessary to analyze the current state of the women's rights movement.

### C. Current Climate

In the mid 1980s, the Supreme Court considered the limitations a Pennsylvania statute placed on abortion in *Thornburgh v. American College of Obstetricians & Gynecologists*.<sup>104</sup> The Amicus Brief filed by the National Abortion Rights League (NARL)<sup>105</sup> illuminates the feminist agenda of liberty for women. Referring to *Meyer v. Nebraska*<sup>106</sup> the brief explicitly stated:

Without the right to choose abortion the Fourteenth Amendment's guarantee of liberty has little meaning for women. With the right to choose abortion, women now are able to enjoy, like men, the right to fully use the powers of their minds and bodies. . . . correspond[ing] to the very same rights and freedoms celebrated in *Meyer*.<sup>107</sup>

In other words, leading women's rights activists believe that women have no use for the Fourteenth Amendment and the liberties it guarantees unless it protects the right to abortion.<sup>108</sup> On the contrary, most women highly value the liberties afforded in *Meyer*, such as the rights to pursue an occupation, to establish a home, to marry, to raise children, to worship God, and generally to pursue happiness.<sup>109</sup> Such a myopic view as that reflected in the NARL brief does not represent women's attitudes. In fact, it deliberately rejects many, if not most, of their beliefs.

---

problems confronted by both countermovements were caused in part by their predominately female constituencies and their opposition to feminism).

104. 476 U.S. 747 (1986).

105. See Brief of Amicus Curiae National Abortion Rights League, *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747 (1986), in CARL E. SCHNEIDER & MARGARET F. BRINIG, *AN INVITATION TO FAMILY LAW* 545 (1996). NARL has since changed its name twice to reflect the times, first to National Abortion Rights Action League (NARAL) in the late 1980s, then to the National Abortion and Reproductive Rights Action League (but keeping the acronym NARAL) in the 1990s. See, e.g., Minnesota NARAL (visited Nov. 22, 1999) <<http://www.mtn.org/mnnaral>> (outlining the changing efforts of the organization).

106. 262 U.S. 390 (1923).

107. Brief of Amicus Curiae National Abortion Rights League, *supra* note 105, at 545.

108. See *id.*

109. See *Meyer*, 262 U.S. at 399.

Feminists claim that their input into the national and international political scene counteracts what they see as the persistent violence and desire for dominance inherent in maleness and masculinity.<sup>110</sup> They present the "feminization of culture" . . . as a bromide to cure everything from child abuse to ulcers, nuclear proliferation, and war."<sup>111</sup>

Abortion is the cornerstone of this platform of beliefs. Indeed, feminists loudly and proudly claim that "feminism has been a major force behind the legalization, proliferation, and even government financing of abortion" and reproductive freedom.<sup>112</sup> Abortion is a necessary component of the mainstream feminist vision because it combines reproductive freedom with the feminist emphasis on sexual liberty.<sup>113</sup> For such feminist advocates, abortion technology makes possible the woman's full "emancipation" from the home and male authority.<sup>114</sup> Kristin Luker describes this salient point succinctly when she discusses the differences between pro-life and pro-choice people:

[Pro-choice persons] see women's reproductive and family roles not as a "natural" niche but as potential barriers to full equality. . . . [M]otherhood, so long as it is involuntary, is potentially always a low-status, unrewarding role to which women can be banished at any time. Thus, *control* over reproduction is essential for women to be able to live up to their full potential.<sup>115</sup>

Therefore, for the feminist today, equality hinges on reproductive freedom. The enigma is that all other aspects of equality are gobbled up and swallowed by the reproductive piece, making abortion the absolute social necessity for female participation in the ideological and economic marketplace.<sup>116</sup> This

---

110. See generally ELINOR LENZ & BARBARA MYERHOFF, *THE FEMINIZATION OF AMERICA: HOW WOMEN'S VALUES ARE CHANGING OUR PUBLIC AND PRIVATE LIVES* (1985) (discussing society's view of the meaning of women's lives in relation to male culture).

111. David J. Ayers, *The Inevitability of Failure: The Assumptions and Implementations of Modern Feminism*, in *RECOVERING BIBLICAL MANHOOD & WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM* 220, 322 (John Piper & Wayne Grudem eds., 1991) (citing LENZ & MYERHOFF, *supra* note 110).

112. *Id.*

113. See Kohm, *supra* note 85, at 117.

114. See EDWARD SHORTER, *A HISTORY OF WOMEN'S BODIES* 177-224 (1982).

115. LUKER, *supra* note 83, at 176.

116. Both secular and religious sources have claimed this rite of passage. See Virginia Ramey Mollenkott, *Reproductive Choice: Basic to Justice for Women*, 17 *CHRISTIAN SCHOLAR'S REV.* 286, 291-93 (1988) (supporting, as a Christian feminist, a woman's right to choose). Choices favoring motherhood, caring for one's own children, men, marriage, and a

Article suggests that this faulty paradigm is destroying everything for which women's rights activists have worked since the beginning of the movement, as well as, ironically, destroying reproductive rights. As we shall see, case law supports this hypothesis.

## II. THE RISE AND FALL OF REPRODUCTIVE FREEDOM

### A. *The Constitutionality of Abortion and the Limits Placed upon That Right*

The constitutional right of privacy is generally an analogue to reproductive freedom, but the concept of privacy actually started with the *Meyer-Pierce* doctrine<sup>117</sup> in the 1920s.<sup>118</sup> Confirming that the parent-child relationship was protected by the Due Process Clause, this doctrine has been stretched to protect more than mere due process; it also prohibits some types of legislation altogether.<sup>119</sup> This jurisprudence created substantive due process,<sup>120</sup> from which

---

homeward focus also are consumed by the myopic pursuit of sexual and reproductive freedom. Although these are, for the most part, choices that are reproductive in nature, they are not currently within the feminist contemplation of reproductive freedom.

117. The doctrine received its nomenclature through the combination of the legal principles set out in *Meyer v. Nebraska*, 262 U.S. 390 (1923), and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

The first of the privacy/parents' rights cases were *Meyer v. Nebraska* and *Bartels v. Iowa*, in which the Court struck down statutes that banned the teaching of foreign languages below the ninth grade. In later cases of the series, *Pierce v. Society of Sisters* and *Farrington v. Tokishige*, the Court struck down statutes that were aimed at eliminating private education.

The statute struck down in *Pierce* had banned private schools outright by mandating children's attendance at public schools. The statute struck down in *Farrington* imposed an extensive and intrusive regulatory regime on so-called "foreign language schools" in Hawaii. Of these four cases, two of them—*Meyer* and *Pierce*—came to be seen as the leading ones, and the theory that sees the parent-child relationship as protected by the Due Process Clause is sometimes called the *Meyer-Pierce* doctrine.

David Wagner, *The Family and American Constitutional Law*, 1 LIBERTY, LIFE & FAM. 145, 157-58 (1994).

118. See Wagner, *supra* note 117, at 157.

119. See *id.* at 157-58.

120. Before this point, the Due Process Clause of the Fourteenth Amendment related only to procedure. See John Harrison, *Substantive Due Process and the Constitutional Text*, 83 VA. L. REV. 493, 501 (1997). When courts began to define the concept of liberty in validating the substance of state legislation, the clause came to be interpreted as a limitation upon the substantive power of state legislatures to regulate various areas of a peoples' lives. See MORTON J. HOROWITZ, *THE TRANSFORMATION OF AMERICAN LAW, 1870-1960: THE CRISIS OF LEGAL ORTHODOXY* 158 (1992). In the context of the post-civil war judiciary, Professor Horowitz explains the conflict between classical legal thought and the progressive transformation in the concept of property. See *id.* at 154-59. "It was easy to confuse the controversial expansion of federal judicial power under the Fourteenth Amendment with a

newly created rights have been derived, transferring the familial/relational privacy of the *Meyer-Pierce* doctrine to privacy protection for isolated individuals' self-definition.<sup>121</sup>

This privacy right was developed in *Griswold v. Connecticut*,<sup>122</sup> an opinion which made contraception a constitutional right.<sup>123</sup> This right to contraception for married couples was extended to unmarried individuals in *Eisenstadt v. Baird*.<sup>124</sup> Under this rubric, privacy became a right to define oneself, especially through sexual activity. Along with this concept, in *Roe v. Wade*,<sup>125</sup> the Court held that women have a constitutionally protected right to an abortion, thereby establishing the principle that a woman must be free from the requirement of continuing a pregnancy.<sup>126</sup> In 1975, reproductive freedom gained momentum with *Planned Parenthood v. Danforth*,<sup>127</sup> in which the Court struck down parental consent as a requirement for abortion<sup>128</sup> and formed a peak that gave further rise to reproductive freedom while at the same time beginning the slide toward limiting that freedom in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.<sup>129</sup>

The Court in *Casey* moved away from the "fundamental rights" language that the *Roe* Court used in its delineation of abortion rights.<sup>130</sup> By rejecting *Roe*'s rigid trimester framework, the Court gave states more authority to limit abortion.<sup>131</sup> Indeed, the *Casey* decision maintains that states may regulate and even forbid post-viability abortion, with the exception of abortions necessary to preserve the mother's health.<sup>132</sup> Abandoning the fundamental rights language, the Court in *Casey* held that a state statute may be struck down if it places an "undue burden" on pre-viability abortion.<sup>133</sup> Although the *Casey* decision significantly contracted

---

supposed change in constitutional methodology from 'procedural' to 'substantive' due process. That confusion was largely produced by later critical Progressive historians intent on delegitimizing the *Lochner* court." *Id.* at 158. Concepts of law changed as a result, and due process was transformed from a methodology that was merely procedural in nature to a concept that was largely substantive in nature. *See id.*

121. *See* Wagner, *supra* note 117, at 162.

122. 381 U.S. 479 (1965).

123. *See id.* at 485-86.

124. 405 U.S. 438 (1972).

125. 410 U.S. 113 (1973).

126. *See id.* at 153.

127. 428 U.S. 52 (1975).

128. *See id.* at 74-75.

129. 505 U.S. 833 (1992).

130. *See id.* at 846-59.

131. *See id.* at 872-73.

132. *See id.* at 873-78.

133. *See id.* at 876-78; Kohm, *supra* note 85, at 119-24.

women's access to abortion on demand, abortion proponents claimed it as a victory nonetheless because of the way the Court incorporated abortion into its description of liberty protected by the Fourteenth Amendment.<sup>134</sup> "Since the *Casey* decision, abortion continues to be a protected liberty, judiciously designed to safeguard and preserve the liberty interests of all women."<sup>135</sup>

The Court in *Casey* announced that the constitutional protection of a woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment.<sup>136</sup> That clause provides that no state shall "deprive any person of life, liberty, or property without due process of law."<sup>137</sup> The Court noted that the connection between the Fourteenth Amendment and abortion is "liberty."<sup>138</sup> *Casey's* three-Justice plurality explained that some may try to confine Due Process exclusively to protecting those rights already guaranteed to individuals by the Bill of Rights.<sup>139</sup> The plurality reminded, however, that "this Court has never accepted that view."<sup>140</sup> Instead, the plurality opinion adopted a nebulous, broad-sweeping definition of liberty: "At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State."<sup>141</sup>

The plurality appears to believe that the attributes of personhood are an amalgamation of every individual's belief about existence, meaning, the universe, and the "mystery of human life." Under this line of reasoning, there is, therefore, no objectively true definition of personhood—it is whatever anyone says it is at any given time. We will call this excerpt from *Casey* the "mystery passage," which exemplifies the existentialism of our time, but also ushers in both the climax and the beginning of the decline of unlimited sexuality and reproductive freedom.

This rationale, upon which the feminists' foundational issue of reproductive freedom rests, accommodates philosophies that could

---

134. See, e.g., Linda C. McClain, *The Poverty of Privacy*, 3 COLUM. J. GENDER & L. 119, 120 n.5 (1992); Ronald Dworkin, *The Center Holds!*, N.Y. REV. BOOKS, Aug. 13, 1992, at 30; Kathleen Sullivan, *A Victory for Roe*, N.Y. TIMES, June 30, 1992, at A23.

135. Kohm, *supra* note 85, at 119.

136. See *Casey*, 505 U.S. at 846.

137. U.S. CONST. amend. XIV.

138. See *Casey*, 505 U.S. at 846.

139. See *id.* at 847.

140. *Id.*

141. *Id.* at 851.

deny women's personhood.<sup>142</sup> If, as the plurality in *Casey* assumes, each individual is free and correct in his or her own definition of personhood, the Nazi, the anti-Semite, the racist, the person who believes a human fetus is not a person, and the misogynist are all correct in denying fundamental attributes of humanity to whomever they find repugnant or inconvenient. If this is the philosophy for which feminists have been fighting, they will be destroyed by their own efforts.

Five years later, the Court distanced itself from this language in *Casey*, and the mystery passage in particular. Justice Rehnquist, delivering the majority opinion in *Washington v. Glucksberg*,<sup>143</sup> stated, "[t]hat many of the rights and liberties protected by the Due Process Clause are sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, and *Casey* did not suggest otherwise."<sup>144</sup> As *Glucksberg* demonstrates, the Court is clearly uncomfortable with its broad definition of liberty.<sup>145</sup>

Although the *Glucksberg* Court did uphold the conclusion reached in *Casey*, even calling abortion a fundamental right,<sup>146</sup> which *Casey* did not, it dramatically retreated from the moral relativism contained in the rationale.<sup>147</sup> Deciding whether it should uphold a Washington State law banning assisted suicide, the Court in *Glucksberg* limited the scope of liberties protected by the Due Process Clause of the Fourteenth Amendment to those rights which are fundamental and those that are explicitly mentioned in the Constitution:

The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due

---

142. Cf. Wagner, *supra* note 117, at 163 (suggesting that "[t]he Court's recent privacy jurisprudence is really the constitutionalization of . . . the existentialists" who emphasized choice over being or personhood).

143. 521 U.S. 702 (1997). The Court in *Glucksberg* held that a Washington State statute banning assisted suicide did not violate the Due Process Clause of the Fourteenth Amendment. See *id.* at 735.

144. *Id.* at 727-28 (citing *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 33-35 (1973)).

145. See *id.*

146. See *id.* at 726.

147. See *id.* at 726-28.

Process Clause includes the rights to marry; to have children; to direct the education and upbringing of one's children; to marital privacy; to use contraception; to bodily integrity; and to abortion.<sup>148</sup>

Even though the Court seems to have affirmed a fundamental right to abortion in *Glucksberg*, it did not elaborate on the source or parameters of this right.<sup>149</sup> Such vagueness may open the door for challenges to the conclusion that the right to abortion is fundamental. Such ambiguity also has made abortion vulnerable to limitation. Even if the notion that there is a fundamental right to abortion continues to survive, abortion proponents will find it much more difficult to convince the Court that every woman has a fundamental right to partial-birth abortion, late-term abortion, or abortion without her parents' or husband's consent.<sup>150</sup> For instance, *Casey* qualified the abortion right with various limitations, including the judicial acknowledgment and validity of a waiting period,<sup>151</sup> record keeping requirements on abortion providers,<sup>152</sup> and parental consent laws.<sup>153</sup> Each of these limitations on reproductive freedom has received further affirmation in various ways via state legislative codifications and enhanced enforcement.<sup>154</sup>

### B. *The Reaction of Modern Feminists*

In their crusade to "keep abortion safe, legal and accessible," women's rights activists who champion abortion as an essential aspect of women's health have focused their energies on keeping abortion legal and accessible, but have failed to ensure its safety.<sup>155</sup> Reproductive health activists seem to be more concerned with keeping abortion providers free from regulation than with ensuring

---

148. *Id.* at 719-20 (citations omitted).

149. *See id.*

150. *See Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 881-87 (1992).

151. *See id.*

152. *See id.* at 900-01.

153. *See id.* at 899. In fact, the only restriction in the challenged Pennsylvania law which the *Casey* Court did not uphold was a spousal consent provision. *See id.* at 887-98.

154. *See, e.g.*, 720 ILL. COMP. STAT. ANN. 510/6 (West 1993) (prohibiting abortion for the purposes of sex selection); VA. CODE ANN. § 16.1-241(v) (Michie 1999) (prohibiting physicians from performing abortions on minors unless the minor has notified a parent). Virginia's parental notification law recently was upheld by the Fourth Circuit in *Planned Parenthood of the Blue Ridge v. Camblos*, 155 F.3d 352, 369-72 (1998). Both of these laws are examples of legislation from across the country that has been the result of the domino effect of *Casey* upholding most of the Pennsylvania statute. *See* 18 PA. CONS. STAT. ANN. § 3204(A) (West 1983).

155. *See Kohm, supra* note 85, at 122.



abortion patients' proper care.<sup>156</sup> When the Supreme Court upheld a Montana law prohibiting the performance of abortions by physicians' assistants, one commentator said "the ruling was a devastating acceptance of discrimination against abortion providers."<sup>157</sup> Unfortunately, this view reflects more concern about the abortion providers than the patients.<sup>158</sup>

Oft-forgotten by states and feminists alike is the issue of proper record-keeping at abortion clinics.<sup>159</sup> Failure to keep proper records could dramatically jeopardize women's health.<sup>160</sup> Florida's Health and Rehabilitative Services Department (HRS) has been shamefully lax in enforcing existing regulations on abortion providers, and the attempts HRS has made have not been taken very seriously.<sup>161</sup> The St. Petersburg Times reported that:

One abortion clinic remained open for more than two and a half years without a license, despite warnings from HRS to cease operating . . . .

. . . .

Lack of paper work in files indicates that some clinics may not have been inspected at all in some years, the reports show, and when HRS did inspections and found problems, there were no follow-up surveys to see if the deficiencies were corrected.<sup>162</sup>

If feminists are truly interested in keeping women from unsafe "back alley" abortions, they should be following through to ensure that abortion remains safe now that it is legal and accessible. Instead, they oppose regulations that protect abortion safety but may limit its accessibility.<sup>163</sup>

Thankfully, some feminists, such as legal scholar Catherine

156. *See id.* at 123.

157. *Id.* (citing Janet Benshoof of the Center for Reproductive Law and Policy).

158. *Cf. id.* at 121-24 (discussing the overall laxity in policing and monitoring safe conditions for women).

159. *See id.* at 123-24 (discussing poor record keeping in abortion clinics in Florida and Ohio).

160. *See id.* at 121 (discussing the importance of proper record keeping to the health of the pregnant woman and the fetus).

161. *See id.* at 123.

162. Diane Rado, *Enforcement of Abortion Rules is Lax, Records Show*, ST. PETERSBURG TIMES, Dec. 6, 1989, at B4. Similar concerns are evident in Ohio. *See American Political Network, State Report: Ohio: Health Officials Blasted for Abortion Record-Keeping*, ABORTION REP., Mar. 9, 1994.

163. *See Kohm, supra* note 85, at 122 (arguing that the laxity of the enforcement of abortion record keeping can be explained by the emphasis on reproductive freedom by women's rights activists).

MacKinnon, believe that abortion is merely an industry that allows "men to control society and sexuality, cloaking that control in a woman's right to privacy."<sup>164</sup> This was the precise concern Elizabeth Cady Stanton voiced over a century ago.<sup>165</sup> Even individuals who do not accept Stanton's view should be appalled not only by the lack of concern for potential victims of abortion malpractice, but by the hypocrisy of abortion advocates' failure to ensure that abortion be safe.<sup>166</sup>

Sadly, this hypocrisy seems to be part of a feminist trend of sacrificing the overall good of women for the pursuit of politically popular "catch phrase" causes and policies. A prime example is seen in the way feminist leaders handled themselves during the Clinton impeachment, ignoring the harms of sexual harassment and manipulation for the sake of saving the Clinton abortion agenda.<sup>167</sup> It seems the movement as a whole is indeed more interested in self-perpetuation than in seeking the truth about which policies and social attitudes will improve women's lives effectively.

Gloria Steinem's editorial to the *New York Times* regarding President Clinton's affair with Monica Lewinsky is a sad illustration of how one of the movement's most outspoken leaders has chosen to ignore the President's gross abuse of power to get a young woman in his employ to engage in sexual acts with him.<sup>168</sup> Steinem states that if the allegations are true, and now we know they are,<sup>169</sup> the President is "guilty of nothing more than frat boyishness."<sup>170</sup> If this were President Nixon in 1970, such an abuse

164. *Id.* (citing CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES OF LIFE AND THE LAW* 95 (1987)).

165. *See id.* at 116 (discussing the early feminists' views on abortion); *see also supra* notes 84-87 and accompanying text.

166. *See id.* at 122 ("[T]he laxity with which these standards are enforced can only be explained by political pressure . . . from women's rights activists.").

167. *See* Gloria Steinem, *What Sexual Harassment Isn't*, *NEWS & OBSERVER* (Raleigh, N.C.), Mar. 24, 1998, at A11. Steinem notes, "[i]f all the sexual allegations now swirling around the White House turn out to be true, President Clinton may be a candidate for sex addiction therapy. But feminists will still have been right to resist pressure by the right wing and the media to call for his resignation or impeachment . . ." *Id.*

Steinem singles out reproductive freedom over all other women's issues to illustrate the necessity of feminists supporting him: "If Clinton were as vital to preserving freedom of speech as he is to preserving reproductive freedom, would journalists be condemned as 'inconsistent' for refusing to suggest he resign? Forget it." *Id.*

168. *See* Bellafante, *supra* note 25, at 56.

169. President Clinton addressed the nation on August 17, 1998, stating that he had testified before a grand jury investigating potential obstruction of justice charges against him and that, despite a vehement denial months earlier, he did engage in sexual acts with Lewinsky. *See Testing of a President: In His Own Words; Last Night's Address*, *N.Y. TIMES*, Aug. 18, 1998, at A1.

170. Bellafante, *supra* note 25, at 56 (quoting Steinem).

of power would have been castigated on the cover of and throughout *Ms.* magazine. Ginia Bellafante, however, accurately summarizes what seems to have happened to once-principled women's activists: "They say Clinton-loving feminists, as if following the how-to-catch-a-man *Rules* manual, have chosen to overlook the faults of a man who has been their best provider. Ideals be damned for the President who vetoed the ban on partial-birth abortions."<sup>171</sup> According to everything the feminist movement purportedly stands for, Ms. Steinem should have recognized at the very least the grave danger associated with a relationship involving such an extreme imbalance of power,<sup>172</sup> but she could not afford to lose such a powerful ally in the fight for abortion, regardless of the cost to women's dignity.

Apparently abortion advocates have had more success in educating the medical community about abortion than have domestic violence prevention advocates in educating doctors about domestic violence. Christina Hoff Sommers reports that doctors are more careful to look for signs of birth defects in unborn children than for signs of domestic violence in women and children.<sup>173</sup> Perhaps these professionals find that it is easier to eliminate birth defects through abortion than to eliminate domestic violence through directing women to appropriate resources. Whatever the justification, the result is clear—sexual reproduction has taken center stage over all other policies and practices that serve women's best interests. Sexual and reproductive freedom have resulted in the fall of other rights of women.<sup>174</sup>

### III. FREEDOM CONTRIBUTING TO INEQUALITY

#### A. *Disproportionate Emphasis on Sexual Freedom*

The movement's self-perpetuating philosophy has been tremendously destructive as it has begun to reduce its main issue to a lowest common denominator: sex.<sup>175</sup> Aside from the women's movement's failure to secure the simple economic goal of equal pay for equal work, we purport that its disproportionate focus on sexual

---

171. *Id.*

172. *But see* Steinem, *supra* note 167. Steinem claimed that the President did nothing wrong because he took no for an answer from Paula Jones and Kathleen Willey and yes for an answer with Monica Lewinsky. *See id.*

173. *See* SOMMERS, *supra* note 60, at 17.

174. *See, e.g.,* Steinem, *supra* note 167.

175. *See* Kohm, *supra* note 85, at 117.

freedom and reproductive rights has not only impeded progress for women, but has dealt debilitating blows to the movement's efforts to secure proper respect for and treatment of women.<sup>176</sup>

Supreme Court Justice Clarence Thomas's confirmation hearings precipitated outrage from the feminist community about sexual harassment and the general lack of respect for women in the workplace.<sup>177</sup> Yet, with powerful backpedaling, feminists now seem to be more interested in indulging their own freedom to participate in similar sexuality-based behavior than they are in stopping the offensive behavior.<sup>178</sup>

Men and women across America were outraged when Anita Hill claimed that Thomas made a comment about finding a pubic hair in his Coke while the two were dining together.<sup>179</sup> Yet just a few years later actress Marisa Tomei was applauded for paying tribute to pubic hair during *The Vagina Monologues*.<sup>180</sup> This celebrated gathering brought together some of the most highly-respected and well-known members of the female acting community, including Uma Thurman, Winona Ryder, Calista Flockhart, and Whoopi Goldberg, to celebrate their sex organs.<sup>181</sup> The event was hailed as "the glitziest affair in recent months," and "[t]he *Village Voice* called it 'the most important and outrageous feminist event' of the past 30 years."<sup>182</sup> Instead of taking a stand against the male practice of comparing penises to derive feelings of self-worth and power, feminists in the late 1990s have decided "if you can't beat 'em join 'em."<sup>183</sup> In resorting to such vulgarity, the movement

---

176. See generally *id.* (discussing the effects of sex selection abortion on the feminist ideology and women themselves).

177. See National Organization for Women, *Anita Hill: The Clarence Thomas Hearings* (visited Jan. 13, 2000) <<http://www.now.org/issues/harass/anitahil.html>>. NOW's website briefly mentions its role in protesting Justice Thomas's confirmation hearings with a demonstration one year later during which demonstrators wore "I believe Anita Hill" t-shirts. See *id.*

The organization proudly states that it was one of the first organizations to oppose the confirmation of Clarence Thomas. See *id.* It notes that he opposes abortion rights and his jurisprudence relies on "antiquated" notions of "natural law." See *id.* It is essential to note that the American legal system is based on the concept of natural law. See generally CHARLES RICE, 50 QUESTIONS ON THE NATURAL LAW (1993); Kirk A. Kennedy, *Reaffirming the Natural Law Jurisprudence of Clarence Thomas*, 9 REGENT U. L. REV. 33 (1997).

178. See Bellafante, *supra* note 25, at 56.

179. See University of Virginia Information Technology & Communication, *The Thomas Hearings* (visited Nov. 21, 1999) <<http://www.people.virginia.edu/~govdoc/thomas/hearings.html>>.

180. See Bellafante, *supra* note 25, at 56.

181. See *id.*

182. *Id.* Bellafante reports that the event's cause, raising money for domestic violence, "seemed lost in the giddy theatrics." *Id.*

183. *Id.* Acts during *The Vagina Monologues* included Glen Close's "offering an homage

betrayed women's dignity, detracted time, resources, and attention from the substantive issues that affect women's everyday lives, and diminished women's credibility.

Ironically, the performance of *The Vagina Monologues* was assembled to raise money for domestic violence.<sup>184</sup> Feminist writers rightly have criticized the pornography, entertainment, and advertising industries for exploiting female sexuality for profit.<sup>185</sup> Feminists such as Catherine MacKinnon and Andrea Dworkin have noted the strong correlation between pornography and other material that objectifies women on the one hand and rape and domestic violence on the other.<sup>186</sup> In their view, and they are quite accurate, such objectification is devastating to women.<sup>187</sup> What could be more objectifying than the *Vagina Monologues*—a celebration of womanhood that focuses on one body part? While this was only one event, the women's movement has lost direction and purpose to the point where it calls the *Vagina Monologues* a celebration of womanhood.

Whereas feminists cheered on *The Vagina Monologues'* participants, they reacted very strongly and very negatively when a group of men gathered on the Mall in Washington D.C. to repent for their mistreatment of women.<sup>188</sup> Patricia Ireland, President of NOW, spoke out vehemently against this assembly.<sup>189</sup> Elizabeth

---

to an obscene word for female genitalia; and, finally, the playwright delivering three solid minutes of orgasmic moaning." *Id.*

184. *See id.*

185. *See* CATHERINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND THE LAW* 117-45 (1987).

186. *See id.* at 171. *See generally* Kate Ellis, *I'm Black and Blue from the Rolling Stones and I'm Not Sure How I Feel About It: Pornography and the Feminist Imagination*, 14 *SOCIALIST REV.* 103, 103-09 (1984) (discussing objectification and the feminist movement to censor pornography). Ellis explains that such women, such as Gloria Steinem, make a distinction between pornography and erotica:

"Erotica," she says, "is rooted in 'eros' or passionate love, and thus in the idea of positive choice, free will, the yearning for a particular person." Pornography, on the other hand, means "writing about" or "description of," which puts still more distance between subject and object, and replaces a spontaneous yearning for closeness with objectification and voyeurism." . . . In Steinem's view, sexuality inspired by erotica is caring and tender, in contrast to pornographically inspired sex, which is alienated and emotionless.

*Id.* at 106.

187. *See* Nadine Strossen, *Feminist Critique of "The" Feminist Critique of Pornography*, 79 *VA. L. REV.* 1099, 1139-40 (1993).

188. *See* National Organization for Women, *NOW, Other National Groups Join to Expose Promise Keepers' Hidden Agenda* (visited Jan. 13, 2000) <<http://www.now.org/press/06-97/06-12-97.html>>.

189. Ireland insisted, "[t]he Promise Keepers have created a false veneer of men taking responsibility, when they really mean men taking charge. . . . Their targets are women, lesbians and gay men, and anyone who supports abortion rights or opposes an authoritarian,

Cady Stanton, Susan B. Anthony, and their contemporaries would have been overjoyed if the men of their time gathered together to declare that they were going to put their families first in their lives and view women as co-heirs with them to life, liberty, and the pursuit of happiness.<sup>190</sup> These founding feminists would be shocked and outraged to see the leader of an organization allegedly dedicated to carrying on the movement they started issuing a statement of such dissatisfaction so far from and contrary to the movement's original ideals. The sharp contrast between the above-documented statements of "erotica" and the original goals of the feminist movement may have unforeseen consequences.

### *B. Consequences of Overemphasizing Sexual Freedom*

An overemphasis on sexual freedom and reproductive rights has reaped some unexpected consequences. In 1991, the Supreme Court reviewed a company policy that limited a woman's employment opportunities simply because of her innate ability to potentially bear children.<sup>191</sup> In *Automobile Workers v. Johnson Controls, Inc.*,<sup>192</sup> the Court held that "Title VII . . . forbids sex-specific fetal-protection policies . . . Concern for a woman's existing or potential offspring historically has been the excuse for denying women equal employment opportunities."<sup>193</sup> The Court further stated, however, that although the company policy was in violation of Title VII, the policy may have been upheld had the company been able to demonstrate a bona fide occupational qualification (BFOQ).<sup>194</sup> This reasoning leaves women vulnerable to employment discrimination, especially when one considers that "[t]here is some evidence . . . that employers have moved from the blatant type of policy enunciated in *Johnson Controls* to more subtle policies that require extra notice and counseling of reproductive risks for women

---

religiously-based government." *Id.*

190. See SOMMERS, *supra* note 60, at 34-35.

191. See *Automobile Workers v. Johnson Controls, Inc.*, 499 U.S. 187, 190 (1991). Johnson Controls manufactured batteries, and because some of its processes involved the use of lead, certain tasks risking exposure to lead could be harmful to a human fetus. See *id.* The company adopted a policy in 1982 that excluded pregnant women and women of childbearing age from jobs presenting significant risks of lead exposure. See *id.* at 191-92. Two of the female employees who brought this suit due to being excluded from these position were a sterilized woman and a 50 year old divorcee. See *id.* at 192, 196-98.

192. 499 U.S. 187 (1991).

193. *Id.* at 211.

194. See *id.* at 188. "By excluding women with childbearing capacity from lead-exposed jobs, respondent's policy creates a facial classification based on gender and explicitly discriminates against women on the basis of their sex." *Id.* at 187.

only.<sup>195</sup> It is commendable that the company policy aimed to protect future children, yet it is discouraging that the company hardly considered the health and general welfare of the female employees independent of their reproductive capacities. One might sense that the contemporary feminist movement, with all of its emphasis on reproductive capacity, might have indeed resulted in a perception of women as mere reproductive beings. Has the feminist overemphasis on reproductive freedom ironically been turned on its head to be justified as a BFOQ against women?

Case law since *Griswold*<sup>196</sup> and *Roe*<sup>197</sup> has shown that sexual and reproductive liberty will not go unchecked.<sup>198</sup> As with the constitutional protections afforded reproductive freedom, sexual behavior has likewise seen a demise in its unbridled constitutional

---

195. MARY JOE FRUG, *WOMEN AND THE LAW* 126 (1992). These comments suggest that women are still treated differently simply because of their reproductive capacity. For example, "if it costs more to employ pregnant women than pregnant men, can an employer defend on the grounds that a discriminatory policy is a BFOQ?" *Id.* It is also noteworthy that the record in the case does not indicate any problems or abnormalities among the babies born to the eight employees who had become pregnant prior to the action being brought. If the employer was truly concerned about liability, and the employer "has not been negligent in exposing the employees to toxic materials, how likely is liability?" *Id.* at 127.

196. *Griswold v. Connecticut*, 381 U.S. 479 (1965).

197. *Roe v. Wade*, 410 U.S. 113 (1973).

198. See *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 878-79, 887, 899, 900 (1992) (replacing the trimester framework adopted in *Roe* with the undue burden test to evaluate abortion restrictions before viability and upholding informed consent requirements, 24-hour waiting period, parental consent provision, and reporting and record keeping requirements); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 507 (1989) (holding that restrictions in state statutes on use of public employees and facilities in performance or assistance in nontherapeutic abortions did not place an unconstitutional government obstacle in the path of women who choose to terminate their pregnancies); *Bowers v. Hardwick*, 478 U.S. 186, 196 (1986) (holding that Georgia's sodomy statute did not violate the fundamental rights of homosexuals); *H.L. v. Matheson*, 450 U.S. 398, 413 (1981) (holding that a state statute requiring physicians to notify, if possible, parents of minors seeking abortions did not violate any guarantees of the Constitution as it was narrowly drawn to protect the interests of minors); *Harris v. McRae*, 448 U.S. 297, 306-11 (1980) (holding that the Medicaid section of Title XIX of the Social Security Act did not obligate a participating state to pay for those medically necessary abortions for which federal funding is unavailable under the Hyde Amendment). But see *Casey*, 505 U.S. at 898 (holding that a state statute's spousal notification provision imposed an undue burden and was constitutionally invalid); *Hodgson v. Minnesota*, 497 U.S. 417, 450 (1990) (holding that a state statute requiring that both parents be notified of a minor's abortion decision did not reasonably further any legislative state interest and was unconstitutional); *Carey v. Population Servs. Int'l*, 431 U.S. 678, 690 (1977) (holding that a state's prohibition of nonmedical contraceptives to persons over sixteen years old except through a licensed pharmacist burdened the right of individuals to use contraceptives and served no compelling state interest); *Eisenstadt v. Baird*, 405 U.S. 438, 454-55 (1972) (holding unconstitutional a state statute which permitted married couples to obtain contraception but forbidding unmarried people from obtaining it).

acceptance.<sup>199</sup> In 1986, the United States Supreme Court held that the Constitution permits states to prohibit homosexual sodomy in *Bowers v. Hardwick*.<sup>200</sup> "The majority simply took the position that theories of freedom are one thing, constitutional law is another, and nothing in the Constitution authorizes the Court to act as the nation's official philosophy board."<sup>201</sup>

A case that is quite illustrative of this trend upheld family integrity over individual sexual reproduction and liberty. *Michael H. v. Gerald D.*<sup>202</sup> held that one man's claim to self-fulfillment through sex with a married woman was not accompanied by protected parental rights over the child born from the relationship.<sup>203</sup> This case indicated the Court's willingness to protect the institution of the family over protecting sexual freedom.

These trends limiting reproductive and sexual freedom are likely to continue, particularly if feminists continue to pursue sexual and reproductive autonomy over common social good. As individuals begin to push the boundaries of the recently created substantive due process freedoms, the result is not only heightened scrutiny of these freedoms, but a deeper analysis of their foundations and limitations. Thus a focus on reproductive and sexual freedom is not only too narrow, it is self-defeating.

The emphasis on reproductive freedom also has resulted in a deterioration of the original ideals of the founders of the women's movement. Reasonable women who may disagree with a reproductive freedom agenda are not welcomed into the fold;<sup>204</sup> yet the founders themselves thought abortion was a reprehensible act.<sup>205</sup>

---

199. See *infra* text accompanying notes 200-03.

200. 478 U.S. 186, 196 (1986).

201. Wagner, *supra* note 117, at 163.

202. 491 U.S. 110 (1989).

203. See *id.* at 130. This case concerned the rights of an adulterous biological father, Michael, to assert paternity over a child born to a mother who was married to someone else. See *id.* at 113-14. Basing its holding on the presumption of legitimacy (that a child born to a married woman is presumed to be the child of her husband), the Court refused to consider Michael's conclusive blood test as evidence showing he was almost certainly the child's father. See *id.* at 124-27. The rationale of this case moved right past the individual freedom of Michael's argument to a foundation favoring "family rights" over an individual's rights to sexual and reproductive freedom. See *id.* at 145 (Brennan, J., dissenting).

204. Naomi Wolf deals with this concern, as it is her own, in her article *Our Bodies, Our Souls: Rethinking Pro-Choice Rhetoric*, NEW REPUBLIC, Oct. 16, 1995, at 26, 26, in which she discusses the desperate need for feminists to be truthful and face the facts that abortion is the taking of a life. Wolf's view is that abortion, even if it means killing a baby, is justified to preserve the autonomy of the mother, but her point is that the women's movement needs to stop lying about the fact that a person is killed in an abortion.

205. See *supra* notes 80-89 and accompanying text.



"Choice" is a favored catch word among feminists, but ironically, the movement itself does not give women much choice. Unfortunately, however, those who espouse that philosophy have been more successful in obliterating women's choices than other concerned women have been at protecting them.

Professions have opened to women, presenting them with new opportunities and difficulties. This opening was one of the primary goals of the founding feminists and certainly is to be celebrated. Instead of collaborating with men to find solutions to the problems working parents face that would benefit individuals and society as a whole, the contemporary feminist movement has relied on reproductive freedom to solve the family versus career dilemma.<sup>206</sup> Modern feminists have focused on reproductive freedom and national day care as solutions to this dilemma.<sup>207</sup> These options are wholly inadequate for women to both spend time with their children and contribute their talents to society. NOW's overwhelming commitment to institutional child care, to the exclusion of all other solutions to this problem, leaves women who choose to stay at home without political support.<sup>208</sup>

Society loses the unique talents and contributions that many women could bring to the marketplace of ideas as women opt for the "mommy track," or to be full-time homemakers. Social attitudes and women's organizations that condemn women's family/career choices grossly compound a woman's dilemma. Regardless of the choices women make, someone will condemn them unless a strong and veritable women's movement affirms their choices. This need is vividly illustrated in the controversy that accompanied Barbara Bush's selection as the commencement speaker at Wellesley College's 1990 graduation ceremony.<sup>209</sup> Several female graduating

---

206. Hillary Clinton unveiled a \$27.1 billion National Day Care plan loaded with a variety of government-controlled programs, but it has met with great controversy from all angles and is not a good solution to the work-family dilemma many women face. See Letter from Gary L. Bauer, President, Family Research Council 2 (Feb. 18, 1998) (on file with the authors) (writing to supporters of the Family Research Council and addressing the letter "Dear Friend").

207. See National Organization for Women, *Key Issues* (visited Nov. 14, 1999) <<http://www.now.org/issues>>; see also National Organization for Women, *The History of the National Organization for Women* (visited Nov. 21, 1999) <<http://www.now.org/history/history.html>> (boasting that NOW popularized the slogan, "Every Mother is a Working Mother," which recognizes the value of women's work, both in the home and in the paid labor market).

208. See National Organization for Women, *1999 National NOW Conference Resolutions* (last modified Nov. 19, 1999) <<http://www.now.org/nnt/fall-99/resolutions.html>>.

209. See *Letters to the Editor*, WELLESLEY (Wellesley College, Wellesley, Mass.), Fall 1991 (on file with the authors).

seniors loudly voiced their opposition to Bush's selection because they did not believe she had any accomplishments other than being married to the President of the United States.<sup>210</sup> They gave no thought to the demanding schedule she kept, the years spent taking care of her home and family to allow her husband to keep a rigorous work schedule, or the hundreds of hours planning and hosting exhausting social events. Bush's life seems to reflect the college's motto, "*Non ministrari, sed ministrare*,"—"not to be served, but to serve."<sup>211</sup> On the other hand, when Hillary Rodham Clinton was the graduation speaker the following year, there was no opposition.<sup>212</sup> Apparently, members of the graduating class were interested in hearing words of wisdom and encouragement from someone who had gained more recognition for her individual accomplishments than from her partnership with her husband. Although the two women held the same title, one was condemned by college feminists while the other was hailed.

The feminists' desire to free women from the bonds of biology and fertility has only "freed" those who truly do not wish to have children. The quest, however, has effectively narrowed women's reproductive choices through case law, social attitudes that value career ambition over family interests, an inflexible employment structure that forces women to choose career, motherhood, or mediocrity and second class status in the workplace, and pays them less for the same work as their male counterparts. Indeed, this "progress" for women's rights has forced many women who otherwise would have chosen family values to work outside the home just to meet their financial obligations.

In her prologue to the twentieth anniversary edition of *The Feminine Mystique*,<sup>213</sup> Betty Friedan reports,

[T]here is unfinished business here, to make such choices real for many women. Now that economic necessity dictates that most women must continue to work after they become mothers (nearly half of the women with children under six now work, compared with less than one-fifth in 1960; and so do nearly two-thirds of the women with kids over six), someone is

---

210. See *id.* Successfully bearing and raising several children, some of whom have become statesmen in their own right and launching a successful campaign against illiteracy, among others, was of no consequence to these Wellesley women.

211. Wellesley College, *Wellesley College Home Page* (visited Jan. 13, 2000) <<http://www.wellesley.edu>> (showing Wellesley's motto).

212. See Hillary Rodham Clinton, Address at the Wellesley College Graduation (May 21, 1991).

213. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1997).

going to have to battle in a new and serious way for institutions that will help the new family. A new economic-political basis must be found for the maternity leave, paternity leave, parental sick leave, parental sabbaticals, reduced schedules, flextime, job sharing, and child-care supports that don't now exist. But who will take up this battle, and how will it be fought . . . ?<sup>214</sup>

Friedan's suggestions are good ones. The contemporary feminist movement, however, has chosen sexual and reproductive freedom instead. This Article offers another alternative which is more reflective of enlightened femininity.

#### IV. COMPLIMENTARITY AS THE SOLUTION

Sex should not be the primary focus of a movement that empowers women. When women or men focus on sex purely for their own pleasure or power, it becomes a destructive force. These results of postmodern feminism were squarely pronounced in a recent issue of *Time* magazine.<sup>215</sup> The self-centered individualism begun in the name of reproductive freedom has expanded and made some women's attitudes toward their sexuality similar to that condemned in men by the early feminists.<sup>216</sup> Relishing sexual power, feminists have turned to the bedroom rather than the boardroom to gain control.<sup>217</sup> Postmodern feminism appears consumed with sexual self-satisfaction.<sup>218</sup>

---

214. *Id.* at xxxiv.

215. See Bellafante, *supra* note 25.

216. See *supra* text accompanying note 80.

217. Cf. CAMILLE PAGLIA, *SEXUAL PERSONAE* (1990) (arguing that men are the weaker sex, as they have remained powerless over their desire for the female body). The argument that women who want to succeed must "relish sexual power" has manifested itself in erotic self-orgasm, see LISA PALAC, *THE EDGE OF THE BED: HOW DIRTY PICTURES CHANGED MY LIFE* (1998), feminist group-sex advocacy, see BETTY DODSON, *LIBERATING MASTURBATION* (1972), and female sexual fantasies, see NANCY FRIDAY, *MY SECRET GARDEN* (1973), and ultimately has praised women for being voracious and predatory, see ELIZABETH WURTZEL, *BITCH: IN PRAISE OF DIFFICULT WOMEN* (1998).

218. Another example of self-consumption with sex is *Bust* Magazine.

Created by Debbie Stoller, a 35-year-old who holds a doctorate in women's studies from Yale[, the magazine was] . . . developed as an antidote to magazines like *Cosmopolitan*, which present female sexuality so cartoonishly. However noble the intent, the message is often lost in the magazine's adolescent tone: read about an adult woman's first-time vibrator discoveries or a scintillating account of lust for delivery men in an article titled "Sex with the UPS Guy." . . . [I]n the end, *Bust* offers a peekaboo view of the world of sex that leaves one feeling not like an empowered adult but more like a 12-year-old sneaking in some sexy reading behind her parents' back.

Bellafante, *supra* note 25, at 59-60; see also NAOMI WOLF, *PROMISCUITIES: THE SECRET STRUGGLE FOR WOMANHOOD* 183 (1997) (offering wisdom from Confucius that a concubine or

[F]eminism at the very end of the century seems to be an intellectual undertaking in which the complicated, often mundane issues of modern life get little attention and the narcissistic rambling of a few new media-anointed spokeswomen get far too much. You'll have better luck becoming a darling of feminist circles if you chronicle your adventures in cybersex than if you churn out a tome on the glass ceiling.

What a comedown for the movement.<sup>219</sup>

This emphasis on sex and sensuality has led, at a minimum, to a loss of direction, and potentially to a decay of already hard-fought freedoms for women. "Fashion spectacle, paparazzi-jammed galas, mindless sex talk—is this what the road map to greater female empowerment has become?"<sup>220</sup> This egocentric emphasis on sensual pleasure has brought about the ugliness and the diminution of the women's movement. This type of display makes a mockery of women who are truly interested in equality. Taking women seriously in the workplace may no longer be as likely when women themselves focus on using sex to get power<sup>221</sup> instead of using brains to attain professional respect. Even pioneers of the sexual revolution see that the women's movement has gone off the deep end in its pursuit of sexual freedom: "All the sex stuff is stupid," notes Betty Friedan.<sup>222</sup> "The real problems have to do with women's lives and how you put together work and family."<sup>223</sup>

Rather than this myopic focus on reproductive freedom and sex, a mature femininity can be expressed and actualized by a disposition, as described below, rather than a set of roles or behaviors.<sup>224</sup> Mature femininity expresses itself in infinite ways

---

wife should be satisfied sexually as well as supported financially). Notable to Wolf might also have been *Deuteronomy* 24:5 in the TORAH (Old Testament Bible), which states, "[i]f a man has recently married, he must not be sent to war or have any other duty laid on him. For one year he is to be free to stay at home and bring happiness to the wife he has married." Most likely, it did not occur to Wolf that God the Creator ordained sexual happiness for women, as well as men, and much more beyond sex. See ED WHEAT & GAYE WHEAT, *INTENDED FOR PLEASURE* 132-33 (1981).

219. Bellafante, *supra* note 25, at 57.

220. *Id.* at 56.

221. See generally PALAC, *supra* note 217.

222. Bellafante, *supra* note 25, at 60 (quoting Betty Friedan).

223. *Id.*

224. See John Piper, *A Vision of Biblical Complementarity*, in *RECOVERING BIBLICAL MANHOOD & WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM*, *supra* note 111, at 31, 31-59 (discussing a biblical vision of manhood and womanhood that embraces rather than rejects the differences between men and women). Though we do not ascribe to everything that Piper stipulates, we do believe he is on the right track and his work is well worth noting.

depending on the circumstances and situation, when women with an attitude of strength and empowerment act in relation to men, not in conflict with them.<sup>225</sup> Character and authenticity<sup>226</sup> offer the solutions for female empowerment. Women with such dispositions create solutions.

Women need not be confined to a few alternatives that limit reproduction, safely separating them from men. Rather, women can be imbued with power and support with a view toward complimentary roles with men in society, leading to freedom in reproduction, sexual intimacy, relationships, personal and professional potential, and every other area of equality and empowerment. Feminist scholar Olive Banks lists "complementary roles" as one category of feminist ideology.<sup>227</sup> Yet the American feminist movement has not embraced this philosophy. Complementarity indeed depends

[u]pon an acceptance of distinctive roles for men and women based primarily on women's actual or potential maternity. Coming close in some respects to traditional ideas on femininity, it [does] not, however, accept either the necessity of women's subordination in the home, or her exclusion from the public sphere. Indeed . . . it [is] argued that women [are] needed in public life specifically because they [are] different from men. In the home, and in public life, . . . men and women play[ ] different but essentially complementary roles.<sup>228</sup>

Complimentarity suggests both equality and beneficial differences between men and women that challenge traditional and artificial patterns of behavior. The beauty of mutual interdependence between women and men is the essence of this postulate. The concept is one of actual freedom rather than mere bondage breaking from reproduction.<sup>229</sup> Complimentarity renders a woman free to be a wife, a mother, a talented artist, a productive career person, or whatever a woman feels is best for herself and the family she has freely chosen to surround her. "Therefore, true freedom is not giving in to our every impulse. It is the sometimes

---

225. See generally Lynne Marie Kohm, *The New Paradigm for the Feminine Mystique: The Authentic Woman's Perspective*, 2 LIBERTY, LIFE & FAM. 259 (1996) (explaining that authenticity can exist only within the context of universalism, women working in complement with men to attain their personal and corporate objectives).

226. We define "authenticity" as consistent personal character founded on wisdom, honesty, trustworthiness, and grace, as opposed to manipulation, deceit, and greed for power.

227. See BANKS, *supra* note 2, at 77.

228. *Id.*

229. See *id.*

painful and exhilarating discovery of God's power to fight free from the bondage of our sinful selves."<sup>230</sup>

Sexual complementarity is one area of crucial importance, and this ideal of complementarity provides principles of appropriate strength and power for achieving true freedom not only in sexual intimacy, but in all personal relationships, aspirations, and objectives.<sup>231</sup> "The fundamental principle is that the sexes, although equal, are also different."<sup>232</sup>

Radical feminism, however, rejects transcendent monotheism in favor of glorifying the self.<sup>233</sup> Christina Hoff Sommers has stated

230. Piper, *supra* note 224, at 47-48. Piper continues: "I believe that the femininity to which God calls women is the path of freedom for every woman. It will not look the same in every woman. But it will lay responsibilities on all women in the same way that mature masculinity lays responsibilities on all men." *Id.* at 48.

231. In grave contrast to the shallow darkness of episodes of *The Vagina Monologues*, the power for character development of authentic sexual intimacy cannot be overemphasized.

The practice of tenderness, loving gestures, frequent, affectionate, physical touching, shared thoughts, exchanged feelings, mutual supportiveness and trust, the valuing of each other's bodies, almost as if they were our own, shared laughter, a closeness so substantial and abiding that no one else can interfere with it—all this adds up to a continuous sexual interaction in a deeply satisfying form. It is the mating pattern of true sexual intimacy.

This intimacy has its roots in the sense of belonging that two people nurture and develop over a period of time. . . .

Intimacy is rooted in this security of belonging, but it must be nourished by an ongoing sexual relationship that is sensuous and satisfying, characterized by tenderness, and by the feeling both partners receive of being loved for themselves. When sex is experienced in this way, a cluster of emotional benefits appears: relief from hurts, a welling of joy and optimism, a sense of security and peace.

WHEAT & WHEAT, *supra* note 218, at 132-33 (describing the power of sexual intimacy between husband and wife).

232. Thomas R. Schreiner, *Head Coverings, Prophecies and the Trinity*, in RECOVERING BIBLICAL MANHOOD & WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM, *supra* note 111, at 124, 138. "Th[is] principle . . . should be applied in a variety of ways given the diversity of the human situation." *Id.* "[W]hat Jesus redeems from corruption is the beautiful order of creation in which distinct complementary roles for man and woman were ordained by God's creative acts." Dee Jespen, *Women in Society: The Challenge and the Call*, in RECOVERING BIBLICAL MANHOOD & WOMANHOOD: A RESPONSE TO EVANGELICAL FEMINISM, *supra* note 111, at 388, 410 (providing Bible passages illustrating the redemption of women as well as men); see also *John* 1:12-13 (giving those who were baptized the right to become God's children); *Romans* 8:14-17 (sharing the spirit of God's children); *2 Corinthians* 5:17 (mentioning uniting in Christ to form a new order); *Galatians* 3:26-28 ("For through faith you are all sons of God in union with Jesus Christ. . . . [T]here is no such thing as . . . male and female; for you are all one person in Jesus Christ."). Sexual complementarity is indeed a noble Biblical vision designed for mankind, in which each gender not only allows, but is responsible for encouraging the other gender toward full and complete potential.

233. The Paglian philosophy is an example of this, holding that "Judeo-Christianity never did defeat paganism, which still flourishes in art, eroticism, astrology, and pop culture." PAGLIA, *supra* note 217, at xiii. Paglia argues that truth exists in sexual stereotypes. See *id.*; see also Janice Shaw Crouse, "Healing and Empowering Ourselves": Where Radical

that radical feminism and similar studies are better understood as religions rather than as academic disciplines.<sup>234</sup> This attitude becomes evident in goddess worship and beliefs of dark sexual power.<sup>235</sup> The goal for the woman worshipper is to create a deity in her own image.<sup>236</sup> Gloria Steinem prologued one of her books with the commentary: "For rebellion is as the sin of witchcraft[,] proudly advocating rebellion and embracing the concept of witchcraft against which scripture warns."<sup>237</sup> Cloaking women's issues in such rhetoric further alienates both men and other women. Thus, the current focus of feminism is merely a distraction from, not a solution to, the real problems women face on a daily basis.

Perceiving women as reproductive vessels undermines what the women's movement should be, a fight for society to view women as whole persons.

A woman should not, at first impression or thereafter, be viewed merely as a woman, though her qualities as a woman may indeed be charming. She must be seen as an individual who is that much more complete because of her gender. Herein lies the foundation for the fulfillment of her gender-specific roles.<sup>238</sup>

This theory of complementarity is promoted by rational argument, rather than relentless civil war with men.<sup>239</sup> Gender feminism,<sup>240</sup> on the other hand, derives from a "system of male-dominance made

*Feminism Goes Astray*, 17 FAITH & FREEDOM 8, 8-9 (1997-98) (rejecting a transcendent God and supporting the focus on oneself in order to create a female deity).

234. See Christina Hoff Sommers, *The Feminist Revelation*, VIII SOC. PHIL. & POL'Y 1, 141 (1990).

235. See DEMETRA GEORGE, MYSTERIES OF THE DARK MOON: THE HEALING POWER OF THE DARK GODDESS 3-26 (1992) (exalting the "dark side" of women's "emotional-sexual cycle" and identifying this side with the female who is "objectionable and threatening to men").

236. See, e.g., STARHAWK, DREAMING THE DARK: MAGIC, SEX AND POLITICS 10-11 (1988) (describing the Goddess religion as one centered on women, ritual, and practices that change consciousness and evoke "passionate desire for each other's living flesh").

237. GLORIA STEINEM, OUTRAGEOUS ACTS AND EVERYDAY REBELLIONS at prologue (1983) (quoting I Samuel 15:23).

238. Kohm, *supra* note 11, at 9.

239. For example, "[t]he limited success of law in protecting women's reproductive self-determination is directly related to the patriarchal constructs that shape the law." Paula Abrams, *Reservations About Women: Population Policy and Reproductive Rights*, 29 CORNELL INT'L L.J. 1, 2 (1996).

240. "Gender feminism views all social reality in terms of the 'sex-gender system'" which is "a fundamental variable organizing social life throughout most recorded history and in every culture today." Richard John Neuhaus, *The Feminist Revelation*, 18 FIRST THINGS 56, 56 (1991) (quoting gender feminist Sandra Harding).

possible by men's control of women's productive and reproductive labor."<sup>241</sup>

The women's movement initially sought to embrace and defend that which is uniquely feminine and to fight specific injustices. The movement has evolved into a masculine-style battle, framing men as the enemy. Instead of seeking opportunities to enhance society by bringing a unique feminine perspective to long-established institutions embodied in corporate and political structures, feminists, as a movement, have settled for getting men to allow them to play men's games by men's rules and customs.

If the feminist game is continued, men and women will always be on opposite teams. Complimentarity allows men and women to form their own collaborative teams—families in which they can work together to determine to which roles they are best suited given their own natural inclinations, desires, and convictions. It richly benefits society as a whole as individuals cooperate to maximize their own potentials and personal well-being and to allow others to do the same.

The beauty in this self-restraint and self-regulation is that it facilitates maximum individual freedom, fulfillment, and happiness. Unfortunately, and in the women's rights movement's defense, complimentarity or any worthwhile foresighted social reform requires changing people's minds and hearts. It cannot be accomplished through any single-issue, soundbyte movement. Social movements arise to bring an end to social concerns. Yet, ultimately, as in the case of the modern feminist movement, self-perpetuating activism damages the movement as a whole and jeopardizes the very changes the founders originally advocated.

When cultural feminism becomes activist and mounts an attack on such women's right as that to choose their occupation, it is particularly troubling to many feminists. Women's right to contract was hard-won and took years to achieve . . . .

. . . .

The choice that the split within feminism offers the contemporary woman is clear. On the one hand is the image of a woman as victim of a patriarchal society which, strangely, is asked to use its legal system to protect her from itself. On the other hand is the image of woman as powerful, outspoken, and able to control her own life. As women continue to gain

---

241. *Id.* (surveying the differences between gender feminism and the views of most women).



social, economic, political, and personal power, the second choice becomes the only one to make.<sup>242</sup>

That second choice is authenticity within complementarity. It is the solution to a movement gone awry.

## V. CONCLUSION

In a Wellesley Alumni Magazine, a letter to the editor reflected a grave disappointment about the content of the address given by 1996 commencement speaker Nora Ephron, Class of 1962, complaining about her radical feminism.<sup>243</sup> The letter states that Ephron's "lifestyle advice can be summarized as maximum selfishness, . . . [and] cynical self-indulgence," and that her address further implied "that anyone who is not in favor of abortion has no brain."<sup>244</sup>

New thinking in the postmodernism era requires more than the old guard rules of 1960s feminism. The movement for women's rights began with authentic social objectives, yet those noble goals have eroded into ones of personal success, egotism, erotica, arrogance, and congenitally infuriated feminism. Those values do not represent most contemporary women.<sup>245</sup> Women today look forward to marriage<sup>246</sup>—with a man<sup>247</sup>—something that cannot happen successfully without at least a minimal understanding of complementarity.

Ally McBeal is a television example of the woman who suffers from the misguided trappings of self-centered and frivolous feminism. McBeal is lost somewhere between Margaret Sanger, Gloria Steinem, and Princess Diana.

242. Joan Kennedy Taylor, *Does Sexual Speech Harm Women? The Split Within Feminism*, 5 STAN L. & POL'Y REV. 49, 59-61 (1994) (discussing the goal of social justice for women in the context of pornography).

243. See Kathleen Schwab McCreary, *Letters to the Editor*, WELLESLEY (Wellesley College, Wellesley, Mass.), Fall 1996, at 1, 1-2.

244. *Id.* This myopia is rather frustrating, as this alumna states: "If there is only one thing that graduates should have learned at Wellesley is that successful, thoughtful, ambitious women come in all stripes, colors, and persuasions. Radical feminists are only one of many paradigms on the horizon. If graduates have no one else on their radar screen, then the College has, indeed, failed in its educational mission." *Id.* at 2.

245. See Suzanne Fields, *Ally McBeal Feminism*, WASH. TIMES, June 29, 1998, at A17, available in 1998 WL 3451727.

246. See *id.*

247. See *id.*

Is feminism dead? That is the question. Time magazine asks it in a cover story, observing a downhill slide from suffragette Susan B. Anthony to television character Ally McBeal. Susan B. Anthony campaigned for the vote for women. . . . Ally McBeal's desires are more egocentric. . . . Older feminist activists emphasize women as victims of men, Ally cries out to be a victim. Ms. is short for "masochist."<sup>248</sup>

She is a sitcom character, but she clearly reflects the baggage that women at the turn of the century are trying to throw off from their angry feminist forerunners and to gain from their happily married women's rights matriarchs. "What makes her a postmodern woman is that she desperately wants to be courted. . . . Ally's essential vulnerability is her longing to be married and have children, an authentic feminine emotion that softens her."<sup>249</sup> Complimentarity is the solution to bring modern women relief from genderless refuse, through equality of opportunity and compensation, to familial ecstasy and fulfillment.

The solution does not lie in any one key political issue. Do women really experience more freedom because abortion is legal? Do women as a whole experience more deeply fulfilling lives because, in general, society is more comfortable with women talking about sex? The answers to these questions are a very clear "no." Although the solution is more difficult than engaging in single-issue, lowest-common-denominator myopic and self-destructive activism, women must pursue the best solution, not simply the easiest one. That solution lies in a campaign to change women's character, individually and corporately, which inevitably will change society.

---

248. *Id.*

249. *Id.*