

Jurisprudence and Gender

Robin West

Western legal and political thought has been dominated by men. Robin West argues that this fact introduces a deep, pervasive bias into the debate: the fundamental experiences and stories men use to understand law are radically different from women's experience and the stories they would have told had they influenced political theory and law.

West distinguishes what she terms liberal legalism—a view she traces to Hobbes and Dworkin—from Critical Legal Studies. CLS emphasizes the role political ideology plays in law's development, particularly the ideological and political contradictions found in legal doctrine and theory. Legal debate cannot, claims CLS, be separated from political conflict. CLS is also critical of much traditional political theory, which it sees as overly individualistic at the expense of the values of community. West's focus is on the conflict between these two male approaches, liberal legalism and critical legal studies, on the one hand, and the two approaches to law taken by feminists, namely, cultural feminism and radical feminism, on the other. Robin West is professor of law at the University of Maryland School of Law.

What is a human being? Legal theorists must, perforce, answer this question: jurisprudence, after all, is about human beings. The task has not proven to be divisive. In fact, virtually all modern American legal theorists, like most modern moral and political philosophers, either explicitly or implicitly embrace what I will call the "separation thesis" about what it means to be a human being: a "human being," whatever else he is, is physically separate from all other human beings. I am one human being and you are another, and that distinction between you and me is central to the meaning of the phrase "[human being].... We are each physically "boundaried"—this is the trivially true meaning of the claim that we are all individuals. In Robert Nozick's telling phrase, the "root idea" of any acceptable moral or political philosophy is that "there are individuals with separate lives."¹...

The first purpose of this essay is to put forward the global and critical claim that by virtue of their shared embrace of the separation thesis, all of our modern legal theory—by which I mean "liberal legalism" and "critical legal theory" collectively—is essentially and irretrievably masculine. My use of "I" above was inauthentic, just as the modern,

increasing use of the female pronoun in liberal and critical legal theory, although well-intended, is empirically and experientially false. For the cluster of claims that jointly constitute the "separation thesis"—the claim that human beings are, definitionally, distinct from one another, the claim that the referent of "I" is singular and unambiguous, the claim that the word "individual" has an uncontested biological meaning, namely that we are each physically individuated from every other, the claim that we are individuals first, and the claim that what separates us is epistemologically and morally prior to what connects us—while "trivially true" of men, are patently untrue of women. Women are not essentially, necessarily, inevitably, invariably, always, and forever separate from other human beings: women, distinctively, are quite clearly "connected" to another human life when pregnant. In fact, women are in some sense "connected" to life and to other human beings during at least four recurrent and critical material experiences: the experience of pregnancy itself; the invasive and "connecting" experience of heterosexual penetration, which may lead to pregnancy; the monthly experience of menstruation, which represents the

potential for pregnancy; and the post-pregnancy experience of breast-feeding. Indeed, perhaps the central insight of feminist theory of the last decade has been that women are "essentially connected," not "essentially separate," from the rest of human life, both materially, through pregnancy, intercourse, and breast-feeding, and existentially, through the moral and practical life. If by "human beings" legal theorists mean women as well as men, then the "separation thesis" is clearly false. If, alternatively, by "human beings" they mean those for whom the separation thesis is true, then women are not human beings. It's not hard to guess which is meant.

... [T]his Article will contrast the "human being" constructed and described by (non-legal) feminist theory, with the "human being" constructed, described, or simply assumed by masculine jurisprudence. I will try to show that the "human being" sometimes explicated, and most often simply assumed by our modern legal theory contrasts in every particular with the "woman" sometimes assumed but more often carefully constructed by modern feminist theory. That contrast, however, is not a simple one. Neither masculine jurisprudence nor feminist theory is internally hegemonic. First, masculine jurisprudence is presently divided into two camps: "liberal legalism" on the one hand, and "critical legal theory" on the other. While both liberal legal theorists and critical legal theorists subscribe to the "separation thesis" described above, each group presents radically divergent accounts of what I will call the subjective experience of the state of separation. Similarly, "feminist theory" is sharply divided between "cultural feminism" on the one hand and "radical feminism" on the other. And, in a parallel sense, while both cultural and radical feminists subscribe to the "connection thesis" described above, they present divergent accounts of the subjective experience of the state of connection. Therefore ... this article will present what is ultimately a four-way contrast between the complex and possibly conflicted human being constructed by

masculine jurisprudence on the one hand, and the complex and possibly conflicted woman constructed by feminist theory on the other....

The by now very well publicized split in masculine jurisprudence between legal liberalism and critical legal theory can be described in any number of ways. The now standard way to describe the split is in terms of politics: "liberal legal theorists" align themselves with a liberal political philosophy which entails, among other things, allegiance to the Rule of Law and the Rule of Law virtues, while "critical legal theorists," typically left wing and radical, are skeptical of the Rule of Law and the split between law and politics which the Rule of Law purportedly delineates. Critical legal theorists are potentially far more sensitive to the political underpinnings of purportedly neutral legalistic constructs than are liberal legalists. I think this traditional characterization is wrong for a number of reasons: liberal theorists are not necessarily politically naive, and critical theorists are not necessarily radical. However, my purpose is not to critique it. Instead, I want to suggest another way to understand the divisions in modern legal theory.

An alternative description of the difference (surely not the only one) is that liberal legal theory and critical legal theory provide two radically divergent phenomenological descriptions of the paradigmatically male experience of the inevitability of separation of the self from the rest of the species, and indeed from the rest of the natural world. Both schools, as we shall see, accept the separation thesis; they both view human beings as materially (or physically) separate from each other, and both view this fact as fundamental to the origin of law. But their accounts of the subjective experience of physical separation from the other—an individual other, the natural world, and society—are in nearly diametrical opposition. Liberal legalists, in short, describe an inner life enlivened by freedom and autonomy from the separate other, and threatened by the danger of annihilation by him. Critical

legal theorists, by contrast, tell a story of inner lives dominated by feelings of alienation and isolation from the separate other, and enlivened by the possibility of association and community with him. These differing accounts of the subjective experience of being separate from others, I believe, are at the root of at least some of the divisions between critical and liberal legal theorists. I want to review each of these experiential descriptions of separation in some detail, for I will ultimately argue that they are not as contradictory as they first appear. Each story, I will suggest, constitutes a legitimate and true part of the total subjective experience of masculinity.

... I will start with the liberal description of separation, because it is the most familiar, and surely the most dominant. According to liberal legalism, the inevitability of the individual's material separation from the "other," entails, first and foremost, an existential state of highly desirable and much valued freedom: because the individual is *separate* from the other, he is *free* of the other. Because I am separate from you, *my* ends, *my* life, *my* path, *my* goals are necessarily *my* own. Because I am separate, I am "autonomous." Because I am separate, I am existentially free (whether or not I am politically free). And, of course, this is true not just of me, but of everyone: it is the universal human condition. We are each separate and we are all separate, so we are each free and we are all free. We are, that is, equally free.

This existential condition of freedom in turn entails the liberal's conception of value. Because we are all free and we are each equally free, we should be treated by our government as free, and as equally free. The individual must be treated by his government (and by others) in a way that respects his equality and his freedom. The government must honor at the level of politics the existential claim made above: that my ends are *my* ends; that I cannot be forced to embrace your ends as my own. Our separation entails our freedom which in turn entails our right to establish and pursue our own concept of value, independent of the con-

cept of value pursued or favored by others. Ronald Dworkin puts the point in this way:

What does it mean for the government to treat its citizens as equals? *That is ... the same question as the question of what it means for the government to treat all its citizens as free, or as independent, or with equal dignity.* ... [To accord with this demand, a government must] be neutral on what might be called the question of the good life. ... [P]olitical decisions must be, so far as is possible, independent of any particular conception of the good life, or of what gives value to life. Since the citizens of a society differ in their conceptions, the government does not treat them as equals if it prefers one conception to another, either because the officials believe that one is intrinsically superior, or because one is held by the more numerous or more powerful group.²

Because of the dominance of liberalism in this culture, we might think of autonomy as the "official" liberal value entailed by the physical, material condition of inevitable separation from the other: separation from the other entails my freedom from him, and that in turn entails my political right to autonomy. I can form my own conception of the good life, and pursue it. Indeed, any conception of the good which I form, will necessarily be *my* conception of the good life. That freedom must be respected. Because I am free, I value and have a right to autonomy. You must value it as well. The state must protect it. This in turn implies other (more contested) values, the most important of which is (or may be) equality. Dworkin continues:

I now define a liberal as someone who holds ... [a] liberal ... theory of what equality requires. Suppose that a liberal is asked to found a new state. He is required to dictate its constitution and fundamental institutions. He must propose a general theory of political distribution. ... He will arrive initially at something like this principle of rough equality: resources and opportunities should be distributed, so far as possible, equally, so that roughly the same share of whatever is available is devoted to satisfying the ambitions of each. Any other general aim of distribution will assume either that the fate of some people should be of greater concern than that of others, or that the ambitions or talents of some

ue pursued or favored by others. Dworkin puts the point in this way:

What does it mean for the government to treat equals? That is ... the same question as of what it means for the government to treat citizens as free, or as independent, or with dignity.... [To accord with this demand, a government] must be neutral on what might be the question of the good life.... [P]olitical justice must be, so far as is possible, independent of the particular conception of the good life that gives value to life. Since the citizens differ in their conceptions, the government does not treat them as equals if its conception to another, either because it believes that one is intrinsically better than the other, or because one is held by the more numerous and powerful group.²

Given the dominance of liberalism, we might think of autonomy as a "moral" liberal value entailed by the material condition of inevitable separation from the other: separation entails my freedom from him, and it entails my political right to autonomy. I can form my own conception of the good which I form, will necessarily be respected. Because I value and have a right to autonomy, I must value it as well. The state respects it. This in turn implies other values, the most important of which (or may be) is equality. Dworkin

argues a liberal as someone who holds ... a theory of what equality requires. A liberal is asked to found a new theory required to dictate its constitutional institutions. He must propose a theory of political distribution.... He initially settles at something like this principle: resources and opportunities should be distributed, so far as possible, in roughly the same share of what is available, devoted to satisfying the ambitions of all. Any other general aim of distribution seems either that the fate of some would be of greater concern than that of others, or talents of some

are more worthy, and should be supported more generously on that account.³

Autonomy, freedom and equality collectively constitute what might be called the "up side" of the subjective experience of separation. Autonomy and freedom are both entailed by the separation thesis, and autonomy and freedom both feel very good. However, there's a "down side" to the subjective experience of separation as well. Physical separation from the other entails not just my freedom; it also entails my vulnerability. Every other discrete, separate individual—because he is the "other"—is a source of danger to me and a threat to my autonomy. I have reason to fear you solely by virtue of the fact that I am me and you are you. You are not me, so by definition my ends are not your ends. Our ends might conflict. You might try to frustrate my pursuit of my ends. In an extreme case, you might even try to kill me—you might cause my annihilation.

Annihilation by the other, we might say, is the official *harm* of liberal theory, just as autonomy is its official value. Hobbes, of course, gave the classic statement of the terrifying vulnerability that stems from our separateness from the other:

Nature hath made men so equal, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body, or of quicker mind than [sic] another; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himselfe any benefit, to which another may not pretend, as well as he. For as to the strength of body, the weakest has strength enough to kill the strongest, either by secret machination, or by confederacy with others, that are in the same danger with himselfe.... From this equality of ability, ariseth equality of hope in the attaining of our Ends. And therefore if any two men desire the same thing, which nevertheless they cannot both enjoy, they become enemies; and in the way to their End, (which is principally their own conservation, ...) endeavour to destroy, or subdue one another. And from hence it comes to passe, that where an Invader hath no more to feare, than another mans single power; if one plant, sow, build, or possesse a convenient Seat, others may

probably be expected to come prepared with forces united, to dispossesse, and deprive him, not only of the fruit of his labour, but also of his life, or liberty. And the Invader again is in the like danger of another.⁴

... Thus, according to liberal legalism, the subjective experience of physical separation from the other determines both what we value (autonomy) and what we fear (annihilation). We value, and seek societal protection, of our autonomy: the liberal insists on my right to define and pursue my own life, my own path, my own identity, and my own conception of the good life free of interference from others. Because I am me and you are you, I value what I value, and you value what you value. The only value we truly share, then, is our joint investment in autonomy from each other: we both value our right to pursue our lives relatively free of outside control. We can jointly insist that our government grant us this protection. We also share the same fears. I fear the possibility—indeed the likelihood—that our ends will conflict, and you will frustrate my ends and is an extreme case cause my annihilation, and you fear the same thing about me. I want the right and the power to pursue my own chosen ends free of the fear that you will try to prevent me from doing so. You, of course, want the same....

Now, Critical Legal Theory diverges from liberal legalism on many points, but one striking contrast is this: critical theorists provide a starkly divergent phenomenological description of the subjective experience of separation. According to our critical legal theorists, what that material state of separation existentially entails is not a perpetual celebration of autonomy, but rather, a perpetual longing for community, or attachment, or unification, or connection. The separate individual strives to connect with the "other" from whom he is separate. The separate individual lives in a state of perpetual dread not of annihilation by the other, but of the alienation, loneliness, and existential isolation that his material separation from the other imposes upon him. The individual strives through love, work, and government

to achieve a unification with the other, the natural world, and the society from which he was originally and continues to be existentially separated. The separate individual seeks *community*—not autonomy—and dreads isolation and alienation from the other—not annihilation by him. If we think of liberalism's depiction of the subjectivity of separation as the official story, then, we might think of this alternative description of the subjectivity of separation as the unofficial story. It is the subterranean, unofficial story of the unrecognized and—at least by liberals—slightly detested subjective craving of lost individuals.

Thus, there is a vast gap, according to critical theory, between the "official value" of liberal legalism—autonomy—and what the individual *truly* subjectively desires, which is to establish a true connection with the other. Similarly, there is a vast gap between the "official harm" of liberal legalism—annihilation by the other—and what the individual *truly* subjectively dreads, which is not annihilation by him, but isolation and alienation from him. According to the critical theorist, while the dominant liberal culture insists we value autonomy and fear the other, what the individual truly desires, craves, and longs to establish is some sort of connection with the other, and what the individual truly dreads is alienation from him....

In another sense, though, the longing for connection persists not so much "in spite of" the dominant culture's valuation of autonomy, but *because* of that value. The value we place on autonomy, according to some critical legal theorists, aggravates our alienation, isolation and loneliness. Duncan Kennedy describes the feeling:

The "freedom" of individualism is negative, alienated and arbitrary. It consists in the absence of restraint on the individual's choice of ends, and has no moral content whatever. When the group creates an order consisting of spheres of autonomy separated by (property) and linked by (contract) rules, each member declares her indifference to her neighbor's salvation—washes her hands of him the better to "deal" with him. The altruist asserts that the staccato alternation of me-

chanical control and obliviousness is destructive of every value that makes freedom a thing to be desired. We can achieve real freedom only collectively, through group self-determination. We are simply too weak to realize ourselves in isolation.

... The problem is the conversion of force into moral force, in the fact of the experience of moral indeterminacy. A definition of freedom that ignores this problem is no more than a rationalization of indifference, or the velvet glove for the hand of domination through rules.⁵

The longing for connection with the other, and the dread of alienation from him, according to the critical theorists, is in a state of constant "contradiction" with the official value and official harm that flow from separation—autonomy from the other and annihilation by him. Nevertheless, in spite of that tension, both the dread of alienation and the desire for connection are constantly *there*. The dominant culture insists we value autonomy from the other and fear annihilation by him. But subjectively, the individual lives with a more or less unrealized desire to connect with the other, and a constant dread or fear, of becoming permanently alienated, isolated—lost—from the other.

To summarize: according to liberal legalism, each of us is physically separate from every other, and because of that separation, we value our autonomy from the other and fear our annihilation by him. I have called these our "officially" recognized values and harms. Critical legal theory tells the unofficial story. According to critical legal theory, we are indeed physically separate from the other, but what that existentially entails is that we dread the alienation and isolation from the separate other, and long for connection with him. While liberal culture officially and publicly claims that we love our autonomy and fear the other, subjective life belies this claim. Subjectively, and in spite of the dominant culture's insistence to the contrary, we long to establish some sort of human connection with the other in order to overcome the pain of isolation and alienation which our separateness engenders. These two contrasting stories of the subjective experience of perpetual separation

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from the rest of human life might be schematized in this way:

	(The Official Story) Liberal Legalism	(The Unofficial Story) Critical Legalism
VALUE (or Longing):	Autonomy	Connection; Community
HARM (or Dread):	Annihilation; Frustration	Alienation; Isolation

Let me now turn to feminist theory. Although the legal academy is for the most part unaware of it, modern feminist theory is as fundamentally divided as legal theory. One way to characterize the conflict—the increasingly standard way to characterize the conflict—is that while most modern feminists agree that women are different from men and agree on the importance of the difference, feminists differ over which differences between men and women are most vital. According to one group of feminists, sometimes called "cultural feminists," the important difference between men and women is that women raise children and men don't. According to a second group of feminists, now called "radical feminists," the important difference between men and women is that women get fucked and men fuck: "women," definitionally, are "those from whom sex is taken," just as workers, definitionally, are those from whom labor is taken. Another way to put the difference is in political terms. Cultural feminists appear somewhat more "moderate" when compared with the traditional culture: from a mainstream non-feminist perspective, cultural feminists appear to celebrate many of the same feminine traits that the traditional culture has stereotypically celebrated. Radical feminists, again from a mainstream perspective, appear more separatist, and, in contrast with standard political debate, more alarming. They also appear to be more "political" in a sense which perfectly parallels the critical theory-liberal theory split described above: radical feminists appear to be more attuned to power disparities between men and women than are cultural feminists.

I think this traditional characterization is wrong on two counts. First, cultural femi-

nists no less than radical feminists are well aware of women's powerlessness, vis-à-vis men, and second, radical feminism, as I will later argue, is as centrally concerned with pregnancy as it is with intercourse. But again, instead of arguing against this traditional characterization of the divide between radical and cultural feminism, I want to provide an alternative. My alternative characterization structurally (although not substantively) parallels the characterization of the difference between liberal and critical legalism. Underlying both radical and cultural feminism is a conception of women's existential state that is grounded in women's potential for physical, material connection to human life, just as underlying both liberal and critical legalism is a conception of men's existential state that is grounded in the inevitability of men's physical separation from the species. I will call the shared conception of women's existential lives the "connection thesis." The divisions between radical and cultural feminism stem from the divergent accounts of the subjectivity of the potential for connection, just as what divides liberal from critical legal theory are divergent accounts of the subjectivity of the inevitability of separation.

The "connection thesis" is simply this: Women are actually or potentially materially connected to other human life. Men aren't. This material fact has existential consequences. While it may be true for men that the individual is "epistemologically and morally prior to the collectivity," it is not true for women. The potential for material connection with the other defines women's subjective, phenomenological and existential state, just as surely as the inevitability of material separation from the other defines men's existential state. Our potential for material connection engenders pleasures and pains, values and dangers, and attractions and fears, which are entirely different from those which follow, for men, from the necessity of separation. Indeed, it is the rediscovery of the multitude of implications from this material difference between men and women which has enlivened (and divided)

both cultural and radical feminism in this decade (and it is those discoveries which have distinguished both radical and cultural feminism from liberal feminism). As Carol Gilligan notes, this development is somewhat paradoxical: during the same decade that liberal feminist political activists and lawyers pressed for equal (meaning same) treatment by the law, feminist theorists in non-legal disciplines rediscovered women's differences from men.⁶ Thus, what unifies radical and cultural feminist theory (and what distinguishes both from liberal feminism) is the discovery, or rediscovery, of the importance of women's fundamental material difference from men. As we shall see, neither radical feminists nor cultural feminists are entirely explicit in their embrace of the connection thesis. But both groups, implicitly if not explicitly, adhere to some version of it.

If both cultural and radical feminists hold some version of the connection thesis, then one way of understanding the issues that divide radical and cultural feminists, different from the standard account given above, is that while radical and cultural feminists agree that women's lives are distinctive in their potential for material connection to others, they provide sharply contrasting accounts of the subjective experience of the material and existential state of connection. According to cultural feminist accounts of women's subjectivity, women value intimacy, develop a capacity for nurturance, and an ethic of care for the "other" with which we are connected, just as we learn to dread and fear separation from the other. Radical feminists tell a very different story. According to radical feminism, women's connection with the "other" is above all else invasive and intrusive: women's potential for material "connection" invites invasion into the physical integrity of our bodies, and intrusion into the existential integrity of our lives. Although women may "officially" value the intimacy of connection, we "unofficially" dread the intrusion it inevitably entails, and long for the individuation and independence that deliverance from that state of

connection would permit. Paralleling the structure above, I will call these two descriptions feminism's official and unofficial stories of women's subjective experience of physical connection.

In large part due to the phenomenal success of Carol Gilligan's book *In a Different Voice*, cultural feminism may be the most familiar of these two feminist strands, and for that reason alone, I call it feminism's "official story." Cultural feminism (in this country and among academics) is in large part defined by Gilligan's book. Defined as such, cultural feminism begins not with a commitment to the "material" version of the connection thesis (as outlined above), but rather, with a commitment to its more observable existential and psychological consequences. Thus limited, we can put the cultural feminist point this way: women have a "sense" of existential "connection" to other human life which men do not. That sense of connection in turn entails a way of learning, a path of moral development, an aesthetic sense, and a view of the world and of one's place within it which sharply contrasts with men's. To reverse Sandel's formulation, for women, connection is "prior," both epistemologically and, therefore, morally, to the individual. One-cultural-feminist-Suzanna Sherry—calls this women's view of the world a "feminine" rather than "feminist" perspective. She summarizes the "feminine perspective" in this way:

[T]he feminine perspective views individuals primarily as interconnected members of a community. Nancy Chodorow and Carol Gilligan, in groundbreaking studies on the development of self and morality, have concluded that women tend to have a more intersubjective sense of self than men and that the feminine perspective is therefore more other-directed. . . . *The essential difference between the male and female perspectives [is that] . . . "the basic feminine sense of self is connected to the world, the basic masculine sense of self is separate."* Women thus tend to see others as extensions of themselves rather than as outsiders or competitors.⁷

Why are men and women different in this essential way? The cultural feminist explanation for women's heightened sense of

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connection is that women are more "con-
nected" to life than are men because it is
women who are the primary caretakers of
young children. A female child develops her
sense of identity as "continuous" with her
caretaker's, while a young boy develops a
sense of identity that is distinguished from
his caretaker's. Because of the gender align-
ment of mothers and female children, young
girls "fuse" their growing sense of identity
with a sense of sameness with and attachment
to the other, while because of the gender dis-
tinction between mothers and male children,
young boys "fuse" their growing sense of
identity with a sense of difference and separa-
tion from the other. This turns out to have
truly extraordinary and far reaching conse-
quences, for both cognitive and moral devel-
opment. Nancy Chodorow explains:

[This means that] [g]irls emerge from this period
with a basis for "empathy" built into their pri-
mary definition of self in a way that boys do not.
... [G]irls come to experience themselves as less
differentiated than boys, as more continuous
with and related to the external object-world and
as differently oriented to their inner object-world
as well.⁸

Women are therefore capable of a degree
of physical as well as psychic intimacy with
the other which greatly exceeds men's capacity.
Carol Gilligan finds that:

The fusion of identity and intimacy . . . [is] clearly
articulated . . . in [women's] . . . self-descriptions.
In response to the request to describe themselves
. . . women describe a relationship, depicting
their identity in the connection of future mother,
present wife, adopted child, or past lover. Similarly,
the standard of moral judgment that in-
forms their assessment of self is a standard of re-
lationship, an ethic of nurturance, responsibility,
and care . . . [In] women's descriptions, identity is
defined in a context of relationship and judged
by a standard of responsibility and care. Similarly,
morality is seen by these women as arising
from the experience of connection and con-
ceived as a problem of inclusion rather than one
of balancing claims.⁹

One of Gilligan's subjects, Claire, eloquently
expresses her subjective sense of epistemo-

logical, moral, and psychological connec-
tion:

By yourself, there is little sense to things. It is like
the sound of one hand clapping, the sound of
one man or one woman, there is something lacking.
It is the collective that is important to me,
and that collective is based on certain guiding
principles, one of which is that everybody be-
longs to it and that you all come from it. You have
to love someone else, because while you may not
like them, you are inseparable from them. In a
way, it is like loving your right hand. *They are part of you;*
that other person is part of that giant collec-
tion of people that you are connected to.¹⁰

Thus, according to Gilligan (and her sub-
jects), women view themselves as fundamen-
tally connected to, not separate from, the
rest of life. This difference permeates virtu-
ally every aspect of our lives. According to
the vast literature on difference now being
developed by cultural feminists, women's
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ment, no less than our anatomy, are all fun-
damentally different from men's, and are
different in the same way: unlike men, we
view ourselves as connected to, not separate
from, the other. As a consequence, women's
ways of knowing are more "integrative" than
men's; women's aesthetic and critical sense
is "embroidered" rather than "laddered;"
women's psychological development re-
mains within the sphere of "attachment"
rather than "individuation."

The most significant aspect of our differ-
ence, though, is surely the moral difference.
According to cultural feminism, women are
more nurturant, caring, loving and responsi-
ble to others than are men. This capacity for
nurturance and care dictates the moral
terms in which women, distinctively, con-
struct social relations: women view the
morality of actions against a standard of re-
sponsibility to others, rather than against a
standard of rights and autonomy from oth-
ers. As Gilligan puts it:

The moral imperative . . . [for] women is an in-
junction to care, a responsibility to discern and
alleviate the "real and recognizable trouble" of
this world. For men, the moral imperative ap-

pears rather as an injunction to respect the rights of others and thus to protect from interference the rights to life and self-fulfillment.¹¹

Cultural feminists, to their credit, have re-identified these differences as women's strengths, rather than women's weaknesses. Cultural feminism does not simply *identify* women's differences—patriarchy too insists on women's differences—it celebrates them. Women's art, women's craft, women's narrative capacity, women's critical eye, women's ways of knowing, and women's heart, are all, for the cultural feminist, redefined as things to celebrate. Quilting, cultural feminism insists, is not just something women do; it is art, and should be recognized as such. Integrative knowledge is not a confused and failed attempt to come to grips with the elementary rules of deductive logic; it is a way of knowledge and should be recognized as such. Women's distinctive aesthetic sense is as valid as men's. Most vital, however, for cultural feminism is the claim that intimacy is not just something women *do*, it is something human beings *ought* to do. Intimacy is a source of value, not a private hobby. It is morality, not habit.

To pursue my structural analogy to masculine legal theory, then, intimacy and the ethic of care constitute the entailed values of the existential state of connection with others, just as autonomy and freedom constitute the entailed values of the existential state of separation from others for men. Because women are fundamentally connected to other human life, women value and enjoy intimacy with others (just as because men are fundamentally separate from other human life men value and enjoy autonomy). Because women are connected with the rest of human life, intimacy with the "other" comes naturally. Caring, nurturance, and an ethic of love and responsibility for life is second nature. Autonomy, or freedom from the other constitutes a value for men because it reflects an existential state of being: separate. Intimacy is a value for women because it reflects an existentially connected state of being.

Intimacy, the capacity for nurturance and the ethic of care constitute what we might call the "up side" of the subjective experience of connection. It's all good. Intimacy feels good, nurturance is good, and caring for others morally is good. But there's a "down side" to the subjective experience of connection. There's danger, harm, and fear entailed by the state of connection as well as value. Whereas men fear annihilation from the separate other (and consequently have trouble achieving intimacy), women fear separation from the connected other (and consequently have trouble achieving independence). Gilligan makes the point succinctly: "Since masculinity is defined through separation while femininity is defined through attachment, male gender identity is threatened by intimacy while female gender identity is threatened by separation."¹² Separation, then, might be regarded as the official harm of cultural feminism. When a separate self must be asserted, women have trouble asserting it. Women's separation from the other in adult life, and the tension between that separation and our fundamental state of connection, is felt most acutely when a woman must make choices, and when she must speak the truth. It is at those times that separation and individuation are at a premium. Gilligan explains:

Since women, however, define their identity through relationships of intimacy and care, the moral problems that they encounter pertain to issues of a different sort. *When relationships are secured by masking desire and conflict is avoided by equivocation, then confusion arises about the locus of responsibility and truth.* [Mary] McCarthy, describing her 'representation' to her grandparents, explains:

Whatever I told them was usually so blurred and glossed, in the effort to meet their approval . . . that except when answering a direct question, I hardly knew whether what I was saying was true or false. I really tried, or so I thought, to avoid lying, but it seemed to me that they forced it on me by the difference in their vision of things, so that I was always transposing reality for them into the terms they could understand. To keep matters straight with my conscience, I shrank, whenever pos-

the capacity for nurturance and care constitute what we might call "the subjective experience." It's all good. Intimacy, nurturance is good, and caring morally is good. But there's a fear of the subjective experience of There's danger, harm, and fear in the state of connection as well as in men fear annihilation from other (and consequently have leaving intimacy), women fear from the connected other (and they have trouble achieving independence). Gilligan makes the point succinctly: masculinity is defined by attachment, male gender threatened by intimacy while female identity is threatened by separation; then, might be the official harm of cultural norms: when a separate self must be assumed, women have trouble asserting it. Separation from the other in adult life tension between that separation and the fundamental state of connection, is especially when a woman must make a choice when she must speak the truth. At times that separation and indifference are at a premium. Gilligan ex-

n, however, define their identity in relationships of intimacy and care, the ways that they encounter pertain to a different sort. When relationships are seen as desire and conflict is avoided by equifusion arises about the locus of responsibility. [Mary] McCarthy, describing her return to her grandparents, explains: "I told them was usually so blurred and, in the effort to meet their expectations, I hardly knew whether what I was saying was true or false. I really tried, or so I say, to avoid lying, but it seemed to me forced on me by the difference in the things, so that I was always translating for them into the terms they understand. To keep matters straight on conscience, I shrank, whenever pos-

sible from the lie absolute, just as, from a sense of precaution, I shrank from the plain truth.

The critical experience then becomes not intimacy but choice, creating an encounter with self that clarifies the understanding of responsibility and truth.¹⁵

Separation, and the fear of separation, can lead to real harm, especially in later life. In her final chapter, Gilligan elaborates:

[B]ecause women's sense of integrity appears to be entwined with an ethic of care, so that to see themselves as women is to see themselves in a relationship of connection, the major transitions in women's lives would seem to involve changes in the understanding and activities of care. Certainly the shift from childhood to adulthood witnesses a major redefinition of care....

In the same vein, however, the events of mid-life—the menopause and changes in family and work—can alter a woman's activities of care in ways that affect her sense of herself. If mid-life brings an end to relationships, to the sense of connection on which she relies, as well as to the activities of care through which she judges her worth, then the mourning that accompanies all life transitions can give way to the melancholia of self-deprecation and despair.¹⁶

Now, while Gilligan is undoubtedly explaining a real experiential phenomenon—I don't know of any woman who hasn't recognized herself somewhere in this book—her material explanation of that phenomenon is incomplete. Which is not to say it isn't *true*: It seems quite plausible that women are more psychically connected to others in just the way Gilligan describes and for just the reason she expounds. Mothers raise children, and as a consequence girls, and not boys, think of themselves as continuous with, rather than separate from, that first all-important "other"—the mother. But this psychological and developmental explanation just raises—it does not answer—the background material question: why do women, rather than men, raise, nurture, and cook for children? What is the cause of this difference?

Although Gilligan doesn't address the issue, other cultural feminists have, and their explanations converge, I believe, implicitly

if not explicitly, on a material, or mixed material-cultural, and not just a cultural answer: women raise children—and hence raise girls who are more connected and nurturant, and therefore more likely to be nurturant caretakers themselves—because it is women who bear children. Women are not inclined to abandon an infant they've carried for nine months and then delivered. If so, then women are ultimately more "connected"—psychically, emotionally, and morally—to other human beings because women, as children, were raised by women, and women raise children because women, uniquely, are physically and materially "connected" to those human beings when the human beings are fetuses and then infants. Women are more empathic to the lives of others because women are physically tied to the lives of others in a way which men are not. Women's moral voice is one of responsibility, duty and care for others because women's material circumstance is one of responsibility, duty and care for those who are first physically attached, then physically dependent, and then emotionally interdependent. Women think in terms of the needs of others rather than the rights of others because women materially, and then physically, and then psychically, provide for the needs of others. Lastly, women fear separation from the other rather than annihilation by him, and "count" it as a harm, because women experience the "separating" pain of childbirth and more deeply feel the pain of the maturation and departure of adult children....

The response to this "central reality" among American liberal feminists and American feminist lawyers has been to deny or minimize the importance of the pregnancy difference, thus making men and women more "alike," so as to force the legal system to treat men and women similarly.

Although a review of the history of liberal feminism is well beyond the scope of this essay, suffice it to say that there is a growing awareness amongst even liberal feminist legal theorists that this strategy has to some extent backfired. It has become increasingly clear that feminists must attack the burdens

of pregnancy and its attendant differences, rather than denying the uniqueness of pregnancy....

Whether we embrace a material or a purely developmental explanation of women's heightened connection with the other, however, the "story" of women's relationship with the other as told by cultural feminists contrast in virtually every particular with the story of men's relationship to the other as told by liberals. First, men, according to the Hobbesian account, are by nature equal. "Nature hath made men so equall, in the faculties of body, and mind; as that though there bee found one man sometimes manifestly stronger in body . . . ; yet when all is reckoned together, the difference between man, and man, is not so considerable, as that one man can thereupon claim to himself any benefit. . . . [T]he weakest has strength enough to kill the strongest. . . ."¹⁵ Women, by contrast, are not "equal" in strength to the most important "other" they encounter: the fetus and then the newborn child. Rather, the fetus and the woman and later the infant and the mother occupy what might be called a natural, hierarchical web of inequality, not a natural state of equality: whereas men may be "by nature equal" women are "by nature stronger" than those who are most important to them and most dependent upon them. The natural physical equality between self and other on which Hobbes insists is simply untrue of women's natural state. Second, according to Hobbes, "men" are naturally inclined to aggress against those they perceive as the vulnerable other. Again, women are not: infants are dependent upon mothers and vulnerable to them, yet the natural mother does not aggress against her child, she breastfeeds her. And lastly, men respond to the vulnerability of natural equality by developing morality and a civil state that demand respect for the equality, rights and freedom of the other. Women do not. Women respond to their natural state of inequality by developing a morality of nurturance that is responsible for the well-being of the dependent, and an ethic of care that responds to the greater

needs of the weak. Men respond to the natural state of equality with an ethic of autonomy and rights. Women respond to the natural state of inequality with an ethic of responsibility and care.

We might summarize cultural feminism in this way: women's potential for a material connection to life entails (either directly, as I have argued, or indirectly, through the reproduction of mothering) an experiential and psychological sense of connection with other human life, which in turn entails both women's concept of value, and women's concept of harm. Women's concept of value revolves not around the axis of autonomy, individuality, justice and rights, as does men's, but instead around the axis of intimacy, nurturance, community, responsibility and care. For women, the creation of value, and the living of a good life, therefore depend upon relational, contextual, nurturant and affective responses to the needs of those who are dependent and weak, while for men the creation of value, and the living of the good life, depend upon the ability to respect the rights of independent co-equals, and the deductive, cognitive ability to infer from those rights rules for safe living. Women's concept of harm revolves not around a fear of annihilation by the other but around a fear of separation and isolation from the human community on which she depends, and which is dependent upon her. If, as I have suggested, cultural feminism is our dominant feminist dogma, then this account of the nature of women's lives constitutes the "official text" of feminism, just as liberal legalism constitutes the official text of legalism.

These two "official stories" sharply contrast. Whereas according to liberal legalism, men value autonomy from the other and fear annihilation by him, women, according to cultural feminism, value intimacy with the other and fear separation from her. Women's sense of connection with others determines our special competencies and special vulnerabilities, just as men's sense of separation from others determines theirs. Women value and have special competency for inti-

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macy, nurturance, and relational thinking, and a special vulnerability to and fear of isolation, separation from the other, and abandonment, just as men value and have a special competency for autonomy, and a special vulnerability to and fear of annihilation.

Against the cultural feminist backdrop, the story that radical feminists tell of women's invaded, violated lives is "subterranean" in the same sense that, against the backdrop of liberal legalism, the story critical legal theorists tell of men's alienation and isolation from others is subterranean. According to radical feminism, women's connection to others is the source of women's misery, not a source of value worth celebrating. For cultural feminists, women's connectedness to the other (whether material or cultural) is the source, the heart, the root, and the cause of women's different morality, different voice, different "ways of knowing," different genius, different capacity for care, and different ability to nurture. For radical feminists, that same potential for connection—experienced materially in intercourse and pregnancy, but experienced existentially in all spheres of life—is the source of women's debasement, powerlessness, subjugation, and misery. It is the cause of our pain, and the reason for our stunted lives. Invasion and intrusion, rather than intimacy, nurturance and care, is the "unofficial" story of women's subjective experience of connection.

Thus, modern radical feminism is unified among other things by its insistence on the invasive, oppressive, destructive implications of women's material and existential connection to the other. So defined, radical feminism (of modern times) begins not with the eighties critique of heterosexuality, but rather in the late sixties, with Shulamith Firestone's angry and eloquent denunciation of the oppressive consequences for women of the physical condition of pregnancy. Firestone's assessment of the importance and distinctiveness of women's reproductive role parallels Marilyn French's. Both view women's physical connection with nature and with the other as in some sense the

"cause" of patriarchy. But their analyses of the chain of causation sharply contrast. For French, women's reproductive role—the paradigmatic experience of physical connection to nature, to life and to the other, and thus the core of women's moral difference—is also the cause of patriarchy, primarily because of men's fear of and contempt for nature. Firestone has a radically different view. Pregnancy is indeed the paradigmatic experience of physical connection, and it is indeed the core of women's difference, but according to Firestone, it is for that reason alone the cause of women's oppression. Male contempt has nothing (at first) to do with it. *Pregnancy itself*, independent of male contempt, is invasive, dangerous and oppressive; it is an assault on the physical integrity and privacy of the body. For Firestone, the strategic implication of this is both clear and clearly material. The technological separation of reproduction from the female body is the necessary condition for women's liberation.¹⁶

In a moment, I will turn to heterosexual intercourse, for it is intercourse, rather than pregnancy, which consumes the attention of the modern radical feminism of our decade. But before doing so it's worth recognizing that the original radical feminist case for reproductive freedom did not turn on rights of "privacy" (either of the doctor-patient relationship, or of the marriage, or of the family), or rights to "equal protection," or rights to be free of "discrimination." It did not turn on rights at all. Rather, the original feminist argument for reproductive freedom turned on the definitive radical feminist insight that pregnancy)—the invasion of the body by the other to which women are distinctively vulnerable—is an injury and ought to be treated as such. Pregnancy connects us with life, as the cultural feminist insists, but that connection is not something to celebrate; it is that very connection that hurts us. This argument, as I will argue later, is radically incommensurate with liberal legal ideology. There's no legal category that fits it. But it is nevertheless the radical argument—that pregnancy is a dangerous, psychically

consuming, existentially intrusive, and physically invasive assault upon the body which in turn leads to a dangerous, consuming, intrusive, invasive assault on the mother's self-identity—that best captures women's own sense of the injury and danger of pregnancy, whether or not it captures the law's sense of what an unwanted pregnancy involves, or why women should have the right to terminate it.

The radical feminist argument for reproductive freedom appears in legal argument only inadvertently or surreptitiously, but it does on occasion appear. It appeared most recently in the phenomenological descriptions of unwanted pregnancies collated in the *Thornburgh* amicus brief recently filed by the National Abortion Rights Action League ("NARAL").¹⁷ The descriptions of pregnancy collated in that peculiarly non-legal legal document are filled with metaphors of invasion—metaphors, of course, because we lack the vocabulary to name these harms precisely. Those descriptions contrast sharply with the "joy" that cultural feminists celebrate in pregnancy, childbirth and child-raising. The invasion of the self by the other emerges as a source of oppression, not a source of moral value.

"During my pregnancy," one woman explains, "I was treated like a baby machine—an incubator without feelings."¹⁸ "Then I got pregnant again," another woman writes,

This one would be only 13 months younger than the third child. I was faced with the unpleasant fact that I could not stop the babies from coming no matter what I did. . . . You cannot possibly know what it is like to be the helpless pawn of nature. I am a 71 year old widow.¹⁹

"Almost exactly a decade ago," writes another, "I learned I was pregnant. . . . I was sick in my heart and I thought I would kill myself. It was as if I had been told my body had been invaded with cancer. It seemed that very wrong."²⁰

One woman speaks directly, without metaphor: "On the ride home from the clinic, the relief was enormous. I felt happy for the first time in weeks. I had a future again. I had my body back."²¹

According to these women's self-descriptions, when the unwanted baby arrives, the injury is again one of invasion, intrusion and limitation. The *harm* of an unwanted pregnancy is that the baby will elicit a *surrender* (not an end) of the mother's life. The *fear* of unwanted pregnancy is that one will lose control of one's individuated being (not that one will die). Thus, one woman writes, "I was like any other woman who had an unintended pregnancy, I was terrified and felt as though my life was out of my control."²²

This danger, and the fear of it, is gender-specific. It is a fear which grips women, distinctively, and it is a fear about which men, apparently, know practically nothing. Another woman writes:

I was furiously angry, dismayed, dismal, by turns. I could not justify an abortion on economic grounds, on grounds of insufficient competence or on any other of a multitude of what might be perceived as "legitimate" reasons. But I kept being struck by the ultimate unfairness of it all. I could not conceive of any event which would so profoundly impact upon any man. Surely my husband would experience some additional financial burden, and additional "fatherly" chores, but his whole future plan was not hostage to this unchosen, undesired event. Basically his life would remain the same progression of ordered events as before.²³

And another:

Being a mother is hard at any age but being a teenager makes it harder. . . . Things I may have wanted to do before getting pregnant, like college and a career are different now. Before I think about my dreams, I have to think about taking care of a baby. . . . I could be making plans for my future, but instead I'm making plans for my baby's future.²⁴

Conversely, women who had abortions felt able to form their own destiny. One woman wrote: "Personally legal abortion allowed me the choice as a teenager living on a very poor Indian Reservation to finish growing up and make something of my life."²⁵ And another:

I was not glad that I was faced with an unwanted, unplanned pregnancy, however I am glad that I

ling to these women's self-descriptions the unwanted baby arrives, the again one of invasion, intrusion, violation. The *harm* of an unwanted pregnancy is that the baby will elicit a *surrender* (of the mother's life). The *fear* of pregnancy is that one will lose one's individuated being (not that lie). Thus, one woman writes, "I was another woman who had an uninterested pregnancy, I was terrified and felt as if my life was out of my control."²² anger, and the fear of it, is gendered. It is a fear which grips women, fully, and it is a fear about which apparently, know practically nothing. A woman writes:

Justly angry, dismayed, dismal, by turns, not justify an abortion on economic grounds of insufficient competence other of a multitude of what might be as "legitimate" reasons. But I kept believing in the ultimate unfairness of it all. I conceive of any event which would so deeply impact upon any man. Surely my husband would experience some additional financial, and additional "fatherly" chores, but future plan was not hostage to this undesired event. Basically his life would be same progression of ordered events.²³

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ersely, women who had abortions did to form their own destiny. One wrote: "Personally legal abortion allowed the choice as a teenager living on poor Indian Reservation to finish up and make something of myself and another:

glad that I was faced with an unwanted, ended pregnancy, however I am glad that I

made the decision to have an abortion. The experience was a very positive one for me. It helped me learn that I am a person and I can make independent decisions. Had I not had the abortion I would have probably ended up a single mother struggling for survival and dealing with a child that I was not ready for.²⁵

As noted above, radical feminism of the eighties has focused more on intercourse than on pregnancy. But this may represent less of a divergence than it first appears. From the point of view of the "connection thesis," what the radical feminists of the eighties find objectionable, invasive, and oppressive about heterosexual intercourse, is precisely what the radical feminists of the sixties found objectionable, invasive, and oppressive about pregnancy and motherhood. According to the eighties radical critique, intercourse, like pregnancy, blurs the physical boundary between self and other, and that blurring of boundaries between self and other constitutes a profound invasion of the self's physical integrity. That invasion—the "dissolving of boundaries"—is something to condemn, not celebrate. Andrea Dworkin explains:

Sexual intercourse is not intrinsically banal, though pop-culture magazines like *Esquire* and *Cosmopolitan* would suggest that it is. It is intense, often desperate. The internal landscape is violent upheaval, a wild and ultimately cruel disregard of human individuality, ... no respecter of boundaries....

Sometimes, the skin comes off in sex. *The people merge, skinless. The body loses its boundaries....* There is no physical distance, no self-consciousness, nothing withdrawn or private or alienated, no existence outside physical touch. The skin collapses as a boundary—it has no meaning.... Instead, there is necessity, nothing else—being driven, physical immersion in "each other" but with no experience of "each other" as separate entities coming together....

The skin is a line of demarcation, a periphery, the fence, the form, the shape, the first clue to identity in a society ... and, in purely physical terms, the formal precondition for being human. It is a thin veil of matter separating the outside from the inside.... The skin is separation, individuality, the basis for corporeal privacy....²⁶

Women, distinctively, lose this "formal precondition for being human" and they lose it in intercourse:

A human being has a body that is inviolate; and when it is violated, it is abused. A woman has a body that is penetrated in intercourse: permeable, its corporeal solidness a lie. The discourse of male truth—literature, science, philosophy, pornography—calls that penetration *Violation*. This it does with some consistency and some confidence. *Violation* is a synonym for intercourse. At the same time, the penetration is taken to be a use, not an abuse; a normal use; it is appropriate to enter her, to push into ("violate") the boundaries of her body. She is human, of course, but by a standard that does not include physical privacy. She is, in fact, human by a standard that precludes physical privacy, since to keep a man out altogether and for a lifetime is deviant in the extreme, a psychopathology, a repudiation of the way in which she is expected to manifest her humanity.²⁷

Like pregnancy, then, intercourse is invasive, intrusive and violative, and like pregnancy it is therefore the cause of women's oppressed, invaded, intruded, violated, and debased lives. Dworkin concludes:

This is nihilism; or this is truth. He has to push in past boundaries. There is the outline of a body, distinct, separate, its integrity an illusion, a tragic deception, because unseen there is a slit between the legs, and he has to push into it. There is never a real privacy of the body that can co-exist with intercourse: with being entered. The vagina itself is muscled and the muscles have to be pushed apart. The thrusting is persistent invasion. She is opened up, split down the center. She is occupied—physically, internally, in her privacy....

She, a human being, is supposed to have a privacy that is absolute; except that she, a woman, has a hole between her legs that men can, must, do enter. This hole, her hole, is synonymous with entry. A man has an anus that can be entered, but his anus is not synonymous with entry. A woman has an anus that can be entered, but her anus is not synonymous with entry. The slit between her legs, so simple, so hidden—frankly, so innocent—for instance, to the child who looks with a mirror to see if it could be true—is there an entrance to her body down there? ... —that slit which means entry into her—intercourse—appears to be the key to women's lower human status. By defin-

tion, . . . she is intended to have a lesser privacy, a lesser integrity of the body, a lesser sense of self, . . . [and] this lesser privacy, this lesser integrity, this lesser self, establishes her lesser significance. . . . She is defined by how she is made, that hole, which is synonymous with entry; and intercourse, the act fundamental to existence, has consequences to her being that may be intrinsic, not socially imposed.²⁹

Although Dworkin herself does not draw the parallel, for both Dworkin and Firestone, women's potential for material connection with the other—whether through intercourse or pregnancy—constitutes an invasion upon our physical bodies, an intrusion upon our lives, and consequently an assault upon our existential freedom, whether or not it is also the root of our moral distinctiveness (the claim cultural feminism makes on behalf of pregnancy), or the hope of our liberation (the claim sexual liberationists make on behalf of sex). Both intercourse and pregnancy are literal, physical, material invasions and occupations of the body. The fetus, like the penis, literally occupies my body. In their extremes, of course, both unwanted heterosexual intercourse and unwanted pregnancy can be life threatening experiences of physical invasion. An unwanted fetus, no less than an unwanted penis, invades my body, violates my physical boundaries, occupies my body and can potentially destroy my sense of self. Although the culture does not recognize them as such, the physical and existential invasions occasioned by unwanted pregnancy and intercourse are real harms. They are events we should fear. They are events which any sane person should protect herself against. What unifies the radical feminism of the sixties and eighties is the argument that women's potential for material, physical connection with the other constitutes an invasion which is a very real harm causing very real damage, and which society ought to recognize as such.

The material, sporadic violation of a woman's body occasioned by pregnancy and intercourse implies an existential and pervasive violation of her privacy, integrity and life projects. According to radical feminists,

women's longings for individuation, physical privacy, and independence go well beyond the desire to avoid the dangers of rape or unwanted pregnancy. Women also long for liberation from the oppression of intimacy (and its attendant values) which both cultural feminism and most women officially, and wrongly, overvalue. Intimacy, in short, is *intrusive*, even when it isn't life threatening (perhaps *especially* when it isn't life threatening). An unwanted pregnancy is disastrous, but even a *wanted* pregnancy and motherhood are intrusive. The child *intrudes*, just as the fetus invades.

Similarly, while unwanted heterosexual intercourse is disastrous, even wanted heterosexual intercourse is intrusive. The penis occupies the body and "divides the woman" internally, to use Andrea Dworkin's language, in consensual intercourse no less than in rape. It preempts, challenges, negates, and *renders impossible* the maintenance of physical integrity and the formation of a unified self. The deepest unofficial story of radical feminism may be that intimacy—the official value of cultural feminism—is itself oppressive. Women secretly, unofficially, and surreptitiously long for the very individuation that cultural feminism insists women fear: the freedom, the independence, the individuality, the sense of wholeness, the confidence, the self-esteem, and the security of identity which can only come from a life, a history, a path, a voice, a sexuality, a womb, and a body of one's own. Dworkin explains:

In the experience of intercourse, she loses the capacity for integrity because her body—the basis of privacy and freedom in the material world for all human beings—is entered and occupied; the boundaries of her physical body are—neutrally speaking—violated. What is taken from her in that act is not recoverable, and she spends her life—wanting, after all to have something—pretending that pleasure is in being reduced through intercourse to insignificance.... She learns to eroticize powerlessness and self-annihilation. The very boundaries of her own body become meaningless to her, and even worse, useless to her. The transgression of those boundaries comes to signify a sexually charged degradation into which she throws herself, having been told,

nings for individuation, physical, and independence go well beyond pregnancy. Women also long on from the oppression of intimacy (its attendant values) which both minimize and most women often wrongfully, overvalue. Intimacy, intrusive, even when it isn't life-giving (perhaps especially when it isn't). An unwanted pregnancy is but even a wanted pregnancy and it is intrusive. The child invades the fetus invades.

y, while unwanted heterosexual intercourse is disastrous, even wanted heterosexual intercourse is intrusive. The penis is body and "divides the woman" to use Andrea Dworkin's language. Consensual intercourse no less rape. It preempts, challenges, renders impossible the maintenance of integrity and the formation of a life. The deepest unofficial story of feminism may be that intimacy—the lie of cultural feminism—is itself. Women secretly, unofficially, intuitively long for the very individuality cultural feminism insists women need, the independence, the intimacy, the sense of wholeness, the confidence, self-esteem, and the security of which can only come from a life, a path, a voice, a sexuality, a womb, of one's own. Dworkin explains:

...in the experience of intercourse, she loses the capacity for intimacy because her body—the basis of freedom in the material world for beings—is entered and occupied; the boundaries of her physical body are—neutrally—violated. What is taken from her is not recoverable, and she spends her life after all to have something—pre-hat pleasure is in being reduced to insignificance.... She romanticize powerlessness and self-annihilation; very boundaries of her own body become meaningless to her, and even worse, useless. The transgression of those boundaries signify a sexually charged degradation in which she throws herself, having been told,

convinced, that identity, for a female, is there—somewhere beyond privacy and self-respect.⁵⁰

Radical feminism, then, is unified by a particular description of the subjectivity of the material state of connection. According to that description, women dread intrusion and invasion, and long for an independent, individualized, separate identity. While women may indeed "officially" value intimacy, what women unofficially crave is physical privacy, physical integrity, and sexual celibacy—in a word, physical exclusivity. In the moral realm, women officially value contextual, relational, caring, moral thinking, but secretly wish that everyone would get the hell out of our lives so that we could pursue our own projects—we loathe the intrusion that intimacy entails. In the epistemological and moral realms, while women officially value community, the web, the spinning wheel, and the weave, we privately crave solitude, self-regard, self-esteem, linear thinking, legal rights, and principled thought.

The contrasting accounts of women's subjective lives that emerge from modern feminist theory's rediscovery of women's difference might be schematized in this way:

	Cultural Feminism	Radical Feminism
VALUE (or Longing):	Intimacy	Individuation Integrity
HARM (or Dread):	Separation	Invasion; Intrusion

Finally, then, we can schematize the contrast between the description of the "human being" that emerges from modern legal theory, and the description of women that emerges from modern feminism:

	<i>The Official Story (Liberal legalism and cultural feminism)</i>		<i>The Unofficial Story (Critical legalism and radical feminism)</i>	
	Value	Harm	Longing	Dread
LEGAL THEORY (human beings)	Autonomy	Annihilation; Frustration	Attachment; Connection	Alienation
FEMINIST THEORY (women)	Intimacy	Separation	Individuation	Invasion; Intrusion

As the diagram reveals, the descriptions of the subjectivity of human existence told by

feminist theory and legal theory contrast at every point. There is no overlap. First, and most obviously, the "official" descriptions of human beings' subjectivity and women's subjectivity contrast rather than compare. According to liberal theory, human beings respond aggressively to their natural state of relative physical equality. In response to the great dangers posed by their natural aggression, they abide by a sharply anti-naturalist morality of autonomy, rights, and individual spheres of freedom, which is intended to and to some extent does curb their natural aggression. They respect a civil state that enforces those rights against the most egregious breaches. The description of women's subjectivity told by cultural feminism is much the opposite. According to cultural feminism, women inhabit a realm of natural inequality. They are physically stronger than the fetus and the infant. Women respond to their natural inequality over the fetus and infant not with aggression, but with nurturance and care. That natural and nurturant response evolves into naturalist moral ethic of care which is consistent with women's natural response. The substantive moralities consequent to these two stories, then, unsurprisingly, are also diametrically opposed. The autonomy that human beings value and the rights they need as a restriction on their natural hostility to the equal and separate other are in sharp contrast to the intimacy that women value, and the ethic of care that represents not a limitation upon, but an extension of, women's natural nurturant response to the dependent, connected other.

The subterranean descriptions of subjectivity that emerge from the unofficial stories of radical feminism and critical legalism also contrast rather than compare. According to the critical legalists, human beings respond to their natural state of physical separateness not with aggression, fear and mutual suspicion, as liberalism holds, but with longing. Men suffer from a perpetual dread of isolation and alienation and a fear of rejection, and harbor a craving for community, connection, and association. Women, by contrast, according to radical feminism, re-

spond to their natural state of material connection to the other with a craving for individuation and a loathing for invasion. Just as clearly, the subterranean dread men have of alienation (according to critical legalism) contrasts sharply with the subterranean dread that women have of invasion and intrusion (according to radical feminism).

The *responses* of human beings and women to these subterranean desires also contrast in substance, although, interestingly, the responses are structurally similar. According to both critical legalism and radical feminism, human beings and women, respectively, for the most part deny the subterranean desires that permeate their lives. Instead, they collaborate, to some degree, in the official culture's elaborate attempt to deny while partially accommodating the intensity of those felt needs. Both do so for the same reason: both human beings and women deny their subterranean desires because of a fear legitimately grounded—that the subterranean need, if asserted, will be met by either violence or rejection by the dominant culture. The dominant male culture condemns as aberrant the man who needs others, just as the dominant female culture condemns the woman who wants to exist apart from others. Thus, men deny their need for attachment and women deny their need for individuation. The mechanisms by which the two groups effect the denial are fundamentally opposed in substance, albeit structurally parallel. According to critical theory, human beings deny their need for attachment primarily through the distancing and individuating assertion of individual rights. It is the purpose and content of those rights to largely deny the human need for attachment and communion with the other. According to radical feminism, women deny their need for individuation through the "intimating" mechanisms of romance, sentiment, familial ideology, the mystique of motherhood, and commitment to the false claims of affective attachment. It is the purpose and content of romance and familial ideology to largely deny women's

need for individuation, separation, and individual identity.

Somewhat less obviously, the "unofficial" description of subjectivity provided by each side is not simply the equivalent of the "official" description of the other, although they are often mistaken as such. The mistaken belief that they are responsible, I think, for the widespread and confused claim that critical legal studies already *is* feminist because the critical scholars' description of subjectivity converges with the cultural feminists' description of subjectivity, and the less widespread but equally confused claim that radical feminism is "just" liberalism, for the parallel reason.

First, the subjectivity depicted by critical legalism—the craving for connection and the dread of alienation—is not the subjectivity depicted by cultural feminism—the capacity for intimacy, the ethic of care, and the fear of separation. It is not hard to see the basis for the confused claim that cultural feminism's depiction of feminine subjectivity mirrors critical conceptions of the subjective experience of masculinity, though. There are two reasons for this confused identification. First, as Duncan Kennedy correctly notes, liberalism is indeed the rhetoric of the status quo. The description of subjectivity upon which critical legalists insist—"withdrawn selves" who cringe from autonomy and secretly crave community—contrasts sharply with the description of subjectivity endorsed by dominant, mainstream liberal ideology. The critics' description of subjective life is not well regarded by people in power, to put the point lightly. Indeed, it is somewhat despised. Vis-à-vis liberal ideology, it is truly radical. It is underground. Similarly, women and women's values, to put the point lightly, are underground, despised, opposed, or at best undervalued by people in power. Vis-à-vis *feminism*, cultural feminism may be "dominant," but vis-à-vis *liberalism*, cultural feminism is at least as deeply underground and disapproved as critical legalism, if not more so. Cultural feminism and critical legalism share the outsider's status.

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Further, the potential for connection which women naturally have and which cul-
tural feminism celebrates, is in a sense the goal of critical legalism's alienated hero. For that reason, perhaps, the critical description of subjectivity may be confusedly identified as feminist. Nevertheless, the identification is over-stated....

[W]omen value love and intimacy because they express the unity of self and nature within our own selves. More generally, women do not struggle toward connection with others, against what turn out to be insurmountable obstacles. Intimacy is not something which women fight to become capable of. We just do it. It is ridiculously easy. It is also, I suspect, qualitatively beyond the pale of male effort. The difference might be put pictorially: the intimacy women value is a sharing of intersubjective territory that preexists the effort made to identify it. The connection that I suspect men strive for does not preexist the effort, and it is not a sharing of space; at best it is an adjacency. Gilligan inadvertently sums the difference between the community critical legal studies insists that men surreptitiously seek, and the intimacy that cultural feminism insists that women value: "The discovery now being celebrated by men in mid-life of the importance of intimacy, relationships, and care is something that women have known from the beginning."³¹

Similarly, the dread of alienation that (ac-
cording to critical legal studies) permeates men's lives is not the same as the fear of iso-
lation and separation from the other that characterizes women's lives. The fear of sep-
aration, for women, is fundamental, phys-
ical, economic, empathic, and psychological, as well as psychic. Separation from one's infant will kill the infant to whom the mother has been physically and then psychically connected, and therefore a part of the mother will die as well; separation from one's community may have similarly life threatening consequences. The alienation men dread is not the fear that oneself or the one with whom one is in symbiosis will be threatened. The alienation that men dread

is not a sorrow over fundamental, basic, "first" existential state of being. The longing to overcome alienation is a socially constructed reaction against the natural fact of individuation. More bluntly—love, for men, is an acquired skill; separation (and therefore autonomy) is what comes naturally. The separation that endangers women, by contrast, is what is socially constructed—attachment is natural. Separation and the dread of it, is the response to the natural (and pleasant) state of connection.

Second, the description of women's subjective nature, aspirations, and fears drawn by radical feminism is not the same as the description of "human nature" employed by liberalism. It is not hard, however, to see the basis for this confusion. Both radical feminism and liberalism view the other as a danger to the self: liberalism identifies the other as a threat to autonomy and to life itself; radical feminism identifies the other as a threat to individuation and to physical integrity. It is hardly surprising, then, that radical feminists borrow heavily from liberalism's protective armor of rights and distance. From the radical feminist point of view, "liberal rights-talk," so disparaged by critical legalists, is just fine, and it would be even better if it protected women against the dangers that characterize their lives, as well as protecting men against the dangers that characterize their lives.

The structural similarity ends there, though. The *invasion* and *intrusion* that women dread from the penetrating and impregnating potential of the connected other is not the same as the annihilation and frustration by the separate other than men fear. Men's greatest fear is that of being wiped out—of being killed. The fear of sexual and fetal invasion and intrusion that permeates women's lives is not the fear of annihilation or frustration. The fear of sexual and fetal invasion is the fear of being occupied *from within*, not annihilated *from without*; of having one's self overcome, not ended; of having one's own physical and material life taken over by the pressing physical urgency of another, not ended by the conflicting in-

terests of another; of being, in short, overtaken, occupied, displaced, and invaded, not killed. Furthermore, the intrusiveness of less damaging forms of intimacy—"wanted" intimacy—is not equivalent to the lesser form of annihilation liberalism recognizes: having one's ends frustrated by the conflicting ends of the other. I do not fear having my "ends" frustrated; I fear having my ends "displaced" before I even formulate them. I fear that I will be refused the right to be an "I" who fears. I fear that my ends will not be my own. I fear that the phrase "my ends" will prove to be (or already is) oxymoronic. I fear I will never feel the freedom, or have the space, to become an ends-making creature.

Similarly, the individuation prized by radical feminism is not the same as the autonomy liberalism heralds, although it may be a precondition of it. The "autonomy" praised by liberalism is one's right to pursue one's own ends. "Individuation," as understood by radical feminism, is the right *to be* the sort of creature who might have and then pursue one's "own" ends. Women's longing for individuation is a longing for a transcendent state of individuated being against that which is internally contrary, given, fundamental, and first. Autonomy is something which is natural to men's existential state and which the state might protect. Individuation, by contrast, is the material pre-condition of autonomy. Individuation is what you need to be before you can even begin to think about what you need to be free.

These, then, are the differences between the "human beings" assumed by legal theory and women, as their lives are now being articulated by feminist theory. The human being, according to legal theory, values autonomy and fears annihilation, while at the same time he subjectively dreads the alienation that his love of autonomy inevitably entails. Women, according to feminist theory, value intimacy and fear separation, while at the same time longing for the individuation which our fear of separation precludes, and dreading the invasion which our love of intimacy entails. The human being

assumed or constituted by legal theory precludes the woman described by feminism.

...Women often, and perhaps increasingly, experience heterosexual intercourse as freely chosen intimacy, not invasive bondage. A radicalism that flatly denies the reality of such a lived experience runs the risk of making itself unintelligible and irrelevant to all people, not to mention the audience that matters most: namely, those women for whom intercourse is not free, not chosen, and anything but intimate, and who have no idea that it either could be or should be both.

This "critique of the intimacy critique" can easily be misconstrued....I am not denying that heterosexuality is compulsory in this culture or that women as a consequence of that compulsion become alienated from their desire for freedom. It is indeed true that both heterosexuality and heterosexual intercourse are compulsory. But heterosexuality is compulsory because of the institutions that render it compulsory, not because of the nature of the act. The same is true of motherhood and pregnancy. Because they are compulsory, motherhood and heterosexuality are tremendously constraining, damaging, and oppressive. It is indeed true that the institutions which render them such need to be, ought to be, and will be destroyed. But it does not follow from any of this that either motherhood or intercourse themselves will be, need to be, or ought to be destroyed....

Now, it is also true—emphatically true—that neither motherhood nor intercourse have been "released" from patriarchy. Until they are, there is no project more vital to our understanding of women's present oppression than the description of the subjective experience of motherhood, and of intercourse, within the patriarchal institutions that render those activities compulsory. This is the importance of Rich's multitextured work on compulsory motherhood and heterosexuality, and of Dworkin's passionate but disappointingly unidimensional work on intercourse. We need to be aware—to be made aware—of those institutions as institu-

constituted by legal theory pre-man described by feminism. often, and perhaps increase-heterosexual intercourse en intimacy, not invasive bond-ism that flatly denies the real-lived experience runs the risk if unintelligible and irrelevant not to mention the audience most: namely, those women for whose is not free, not chosen, but intimate, and who have no either could be or should be

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tions that constrain as they define the act. But, as Rich clearly saw with respect to mothering, that is not all we need to understand. Feminists also need to understand what it means to mother and to enjoy intercourse with aspirational conditions of freedom, for it is those conditions which potentially and increasingly, for many of us, define the nature of those events. When we reach this understanding, or at least strive for it, we will have a better understanding of what non-institutional and non-patriarchal intercourse and motherhood might be and might ultimately become.

Of course, to again borrow from Rich, to catch even a glimpse of mothering or intercourse within a non-patriarchal culture requires a "quantum leap" of imagination. It requires, most of all, the ability to imagine ourselves in a society in which women are in full possession of our bodies:

[T]he "quantum leap" [of imagination] implies that even as we try to deal with backlash and emergency, we are imagining the new: a future in which women are powerful, full of our own power, not the old patriarchal power-over but the power-to-create, power-to-think, power-to-articulate and concretize our visions and transform our lives and those of our children. I believe... that this power will begin to speak in us more and more as we repossess our own bodies, including the decision to mother or not to mother, and how, and with whom, and when. For the struggle of women to become self-determining is rooted in our bodies, and it is an indication of this that the token woman artist or intellectual or professional has so often been constrained to deny her female physicality in order to enter realms designated as male domain.³²

Yet we make small versions of these "quantum leaps" every day. We continue to mother and to want to mother in spite of the compulsory nature of institutional motherhood. We also make small versions of the same "quantum leap" with respect to intercourse. Women do, increasingly, freely engage in heterosexual intercourse in spite of the compulsory nature of the institution of intercourse. Increasingly, we have a sense of what intercourse feels like when "released"

from compulsory heterosexuality. Explanations that rest on denial of the possibility that equality and freedom can define intercourse and motherhood fail to incorporate real glimpses that we increasingly have of a world without the present oppressive institutions. They consequently endanger the seriousness and the truth of the radical feminist insight that many women, indeed most women, define their intimate relationships within the confines of necessity rather than possibility, and within the dictates of compulsion, rather than choice....

That women live with a fundamental contradiction between invasion and intimacy is much harder to test than the parallel claim that men live in a fundamental contradiction between autonomy and alienation for this simple reason: the fundamental contradiction that characterizes men's lives is manifested absolutely all over the place in public life. As Kennedy correctly claims, once we are sensitized to it, we see the "fundamental contradiction" in art, literature, music, and, perhaps most emphatically, in virtually every field of law. The fundamental contradiction that characterizes women's lives (if it does), by contrast, has no outlet. Women are silent, particularly with respect to the injuries we suffer. This is, of course, changing: Women speak, write books, compose music, produce art, drama and dance, and increasingly even legislate, advocate and adjudicate law. But nevertheless, women express their subjectivity with nowhere near the voice of authority with which men express theirs. Women's subjectivity, unlike men's subjectivity, is not expressed in the objective world. Women's silence, more than any other single factor, inhibits the study of women's subjective lives.

We can, though, test the sense of this contradiction against the evidence of our own experienced lives, if not the evidence of art, literature and legal doctrine. When I read Carol Gilligan's book for the first time several years ago, I had an unequivocal shock of recognition. What she is saying, I thought then and still think, is important, transformative, empowering, exciting, enlivening,

and, most fundamentally, it is simply *true*. It is true of me, and was true of my mother, and is true of my sisters. She has described the way I think, what I value, what I fear, how I have grown, and how I hope to grow. And she has described the moral lives of the women I know as well. Her book captures what I know and have always known but have never been able to claim as my own moral vision, and what parts of that vision I share with women generally. When I read Andrea Dworkin's book, I had the same unequivocal shock of recognition. What Dworkin is saying about intercourse is important, transformative, empowering, exciting, liberating, enlivening, and most fundamentally, it is simply true. It is true of me, was true of my mother, and is true of my sisters. She is describing how I have been debased, victimized, intruded, invaded, harmed, damaged, injured, and *violated* by intercourse. Yet it also seems undeniably true to me that these two feminist visions of my subjective life rest on flatly contradictory premises....

Of course, there is a major difference between the presence of contradiction in legal theory and the presence of contradiction in feminist theory. Even if it is true that women, like men, live within the parameters of a contradiction, women live within the parameters of this fundamental contradiction *within the oppressive conditions of patriarchy*. Men don't (although men do live within the parameters of the oppressive conditions of capitalism). Therefore, feminists need to develop not just an examination of the experience of the contradiction between invasion and intimacy to which our potential for connection gives rise, but also a description of how patriarchy affects, twists, perverts, and surely to some extent causes that contradiction. We also need, however, to imagine how the contradiction would be felt outside of patriarchy, and we need to reflect on our own experiences of nonpatriarchal mothering, intercourse, and intimacy to generate such imaginings. For while women's bodies may continue to be "materially connected" to others as long as they are women's bodies, they need not forever be *possessed* by others.

Our connection to the other is a function of our material condition; our possession by the other, however, is a function of patriarchy. We need to imagine both having power over our bodies and power over our contradictory material state. We need to imagine how this fundamental contradiction would feel outside of the context of the dangers and fears that patriarchy requires. Adrienne Rich asks, of non-constrained, non-compulsory, truly chosen motherhood in a world free of patriarchy:

What would it mean to mother in a society where women were deeply valued and respected, in a culture which was woman-affirming? What would it mean to bear and raise children in the fullness of our power to care for them, provide for them, in dignity and pride? ... What would it mean to mother in a society which was making full use of the spiritual, intellectual, emotional, physical gifts of women, in all our difference and diversity? What would it mean to mother in a society which laid no stigma upon lesbians, so that women grew up with real emotional and erotic options in the choice of life companions and lovers? What would it mean to live and die in a culture which affirmed both life and death, in which both the living world and the bodies of women were released at last from centuries of violation and control? This is the quantum leap of the radical feminist vision.³⁵

We need to ask these questions of intercourse as well. What would intercourse feel like, or *be*, in a world in which it was freely chosen? What would it mean to have intercourse in a world in which women's pleasures were honored, and women's injuries were cared for, and women's labor was compensated? And finally we need to ask these questions of intimacy generally. How would the "contradiction" between invasion and intimacy feel in a world free of the fear of male sexual aggression? Would intimacy be entirely non-threatening where there was no reason to fear rape? Would individuation be as enticing where intercourse and motherhood were not mandatory? Would separation be as harmful where familial association was not the assumed form of women's lives? How would the contradiction between

ction to the other is a function of social condition; our possession by however, is a function of patriarchy. We need to imagine both having power over bodies and power over our contrarian state. We need to imagine fundamental contradiction would be of the context of the dangers that patriarchy requires. Adrienne Rich's non-constrained, non-compulsory chosen motherhood in a world triarchy:

It means to mother in a society where we're deeply valued and respected, in a culture where woman-affirming? What would it mean to bear and raise children in the fullness of care for them, provide for them, and pride? ... What would it mean to a society which was making full use of all, intellectual, emotional, physical men, in all our difference and diversity? Would it mean to mother in a society no stigma upon lesbians, so that we'd end up with real emotional and erotic choice of life companions and love? Would it mean to live and die in a culture that affirms both life and death, in which the world and the bodies of women end at last from centuries of violation? This is the quantum leap of the radical vision.³³

d to ask these questions of interwell. What would intercourse feel like in a world in which it was freely chosen? What would it mean to have inter-a world in which women's pleasure is honored, and women's injuries are healed, and women's labor was compensated? And finally we need to ask these questions of intimacy generally. How would "adiction" between invasion and withdrawal in a world free of the fear of aggression? Would intimacy be non-threatening where there was no fear of rape? Would individuation be chosen where intercourse and mothering are not mandatory? Would separation be harmful where familial association is the assumed form of women's choice? Would the contradiction between

intimacy and intrusion feel, if we had no reason to fear the more life threatening forms of invasion? We need to ask these questions, but we also need to answer them.

We need to show what the exclusion of women from law's protection has meant to both women and law, and we need to show what it means for the Rule of Law to exclude women and women's values.

The way to do this—the only way to do this—is to tell true stories of women's lives. The Hobbesian "story" of deliverance from the state of nature to the Rule of Law, as both liberal and radical legal scholars are fond of pointing out, does not purport to be history. But that doesn't make it fantasy. The Hobbesian story of the state of nature (and the critical story of alienation as well) is a synthesis of umpteen thousands of personal, subjective, everyday, male experiences. *Images* are generated from that synthesis, and those images, sometimes articulate, sometimes not, of what it means to be a human being then become the starting point of legal theory. Thus, for example, the Hobbesian, liberal picture of the "human being" as someone who treasures autonomy and fears annihilation from the other comes from men's primary experiences, presumably, of school yard fights, armed combat, sports, games, work, big brothers, and fathers. Similarly, the critical picture of the human being as someone who longs for attachment and dreads alienation comes from the male child's memory of his mother, from rejection experiences painfully culled from his adolescence, and from the adult male's continuing inability to introspect, converse, or commune with the natural world, including the natural world of others.

The "separation thesis," I have argued, is drastically untrue of women. What's worth noting by way of conclusion is that it is not entirely true of men either. First, it is not true materially. Men are connected to another human life prior to the cutting of the umbilical cord. Furthermore, men are somewhat connected to women during intercourse, and men have openings that can be sexually penetrated. Nor is the separation

thesis necessarily true of men existentially. As Suzanna Sherry has shown, the existence of the entire classical republican tradition belies the claim that masculine biology mandates liberal values.³⁴ More generally, . . . material biology does not mandate existential value: men can connect to other human life. Men can nurture life. Men can mother. Obviously, men can care, and love, and support, and affirm life. Just as obviously, however, most men don't. One reason that they don't, of course, is male privilege. Another reason, though, may be the blinders of our masculinist utopian visionary. Surely one of the most important insights of feminism has been that biology is indeed destiny when we are unaware of the extent to which biology is narrowing our fate, but that biology is destiny only to the extent of our ignorance. As we become increasingly aware, we become increasingly free. As we become increasingly free, we, rather than biology, become the authors of our fate. Surely this is true both of men and women.

On the flip side, the "connection thesis" is also not entirely true of women, either materially or existentially. Not all women become pregnant, and not all women are sexually penetrated. Women can go through life unconnected to other human life. Women can also go through life fundamentally unconcerned with other human life. Obviously, as the liberal feminist movement firmly established, many women can and do individualize, speak the truth, develop integrity, pursue personal projects, embody freedom, and attain an atomistic liberal individuality. Just as obviously, most women don't. Most women are indeed forced into motherhood and heterosexuality. One reason for this is utopian blinders: women's lack of awareness of existential choice in the face of what are felt to be biological imperatives. But that is surely not the main reason. The primary reason for the stunted nature of women's lives is male power.

NOTES

¹ Robert Nozick, *Anarchy, State, and Utopia* 33 (1974).

² Ronald Dworkin, *A Matter of Principle* 191 (1985) (capitalization omitted) (emphasis added).

³ *Id.* at 192-3 (capitalization omitted).

⁴ Thomas Hobbes, *Leviathan* 183-84 (C. B. Macpherson, ed. 1968).

⁵ Duncan Kennedy, "Form and Substance in Private Law Adjudication," 89 *Harv. L. Rev.* 1685, 1774 (1976).

⁶ Carol Gilligan, *In a Different Voice* 6-8 (1982).

⁷ Suzanna Sherry, "Civic Virtue and the Feminine Voice in Constitutional Adjudication," 72 *Va.L.Rev.* 543, 584-85 (1986) (citations omitted) (emphasis added).

⁸ Nancy Chodorow, *The Reproduction of Mothering* 167 (1978).

⁹ Gilligan, *In a Different Voice* at 159-60.

¹⁰ *Id.* at 160.

¹¹ *Id.* at 100.

¹² *Id.* at 8.

¹³ *Id.* at 164 (emphasis added).

¹⁴ *Id.* at 171.

¹⁵ Hobbes, *Leviathan* at 183.

¹⁶ Shulamith Firestone, *The Dialectic of Sex* (1970).

¹⁷ Amicus Brief for the National Abortion Rights Action League, et. al., *Thornburgh v. American College of Obstetricians and Gynecologists*, Nos. 84-495 and 84-1379

("NARAL Amicus Brief") (on file at The University of Chicago Law Review). For the Supreme Court opinion, see 476 U.S. 747 (1986).

¹⁸ NARAL Amicus Brief at 13 (emphasis added).

¹⁹ *Id.* at 19 (emphasis added).

²⁰ *Id.* at 28 (emphasis added).

²¹ *Id.* at 29 (emphasis added).

²² *Id.* at 29.

²³ *Id.* at 29.

²⁴ *Id.* at 24.

²⁵ *Id.* at 29.

²⁶ *Id.*

²⁷ Andrea Dworkin, *Intercourse* 21-22 (1987) (emphasis added).

²⁸ *Id.* at 122.

²⁹ *Id.* at 122-23 (emphasis added on the words "and intercourse, the act," otherwise emphasis in original).

³⁰ *Id.* at 137-38.

³¹ Gilligan, *In a Different Voice* at 17.

³² Adrienne Rich, *On Lies, Secrets and Silence* (1979) at 271-72.

³³ *Ibid.* at 272-73.

³⁴ Suzanna Sherry, 72 *Ua.L. Rev.*, cited above, at 584.

REVIEW AND DISCUSSION QUESTIONS

1. What is the "separation thesis"? Why is it not true of women?
2. Describe the image of human nature and law offered by liberal legalism and critical legal studies.
3. Describe the image of human nature and law offered by cultural feminists and radical feminists.
4. "Though their views of community are similar, the cultural feminists and CLS also differ in an important respect." Explain.
5. Compare and contrast the harm or fear expressed by liberal legalism with that of radical feminists.

6. Does West's acknowledgment that these positions are not universally true of either men or women undermine her claim? Is the basis of the claim cultural or biological?

7. Describe West's recommendations regarding what women should now do to further their understanding of law and politics.

8. Women are in some sense separated from other people, including their children, just as men are in some sense connected. Does that matter for West's argument?