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# Rape, Race and Representation: The Power of Discourse, Discourses of Power and the Reconstruction of Heterosexuality

Elizabeth M. Iglesias

*University of Miami School of Law*, [eiglesia@law.miami.edu](mailto:eiglesia@law.miami.edu)

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## Rape, Race, and Representation: The Power of Discourse, Discourses of Power, and the Reconstruction of Heterosexuality

*Elizabeth M. Iglesias\**

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\* Professor of Law, University of Miami. B.A., University of Michigan, 1984; J.D., Yale Law School, 1988. Earlier versions of this Article were presented at the First Annual Mid-Atlantic People of Color Legal Scholarship Conference, Howard Law School, February 1995, and at the Women, Sexuality and Violence: Revisioning Public Policy Conference, University of Pennsylvania Law School, April 1995. Thanks to Sherry Colb, Mary Coombs, Drucilla Cornell, Marc Fajer, Gary Francione, Steven Hobbs, Marnie Mahoney, Jim Pope, Dorothy Reberts, Steve Schnably, and Jonathan Simon. Special thanks to Twila Perry. University of Miami School of Law student, Carlos Mustehier, and Rutgers Law School students, Sean Brennan and Jackie Romero, provided helpful research assistance. I also want to give my special thanks to the editors of the *Vanderbilt Law Review*, particularly Glen Allen Staszewski, for their excellent editorial suggestions. This project was supported by the University of Miami School of Law Summer Research Fund and by the generosity and encouragement of Dean Roger I. Abrams of the Rutgers School of Law-Newark. Finally, I dedicate this Article to the memories of Norma Iglesias Ortega (1981) and Maria Ortega Fernandez (1993) and to the Sage-King Warriors who have helped me survive their loss.

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## I. INTRODUCTION

This Article explores some of the difficulties involved in designing genuinely effective and broadly inclusive legal strategies for eliminating women's sexual oppression. Part II.A begins the analysis by using Gary LaFree's empirical studies of rape enforcement practices to develop some observations about the kinds of legal strategies most likely to foster women's sexual autonomy.<sup>1</sup> LaFree's studies illustrate how the institutional structures and decision making procedures of the criminal justice system create the opportunity for rape processing practices to reproduce relations of race and gender subordination. Each discretionary decision point in the system creates a social space in which legal agents can deploy racialized images of male and female sexuality. Because these images are both racist and sexist, their circulation in the processing of rape cases is a vehicle through which state power becomes embedded in and subordinate to the cultural logic of white supremacy and male supremacy.

LaFree's account of the criminal justice system also suggests why feminist legal strategies that target the criminal justice apparatus have been and are likely to remain ineffective in eliminating rape. It is precisely because some degree of discretion is inevitable at every decision point in any case processing system that the legal struggle for female sexual autonomy—for freedom from rape and sexual coercion—must move beyond the struggle to reform the substantive criminal laws and the legal procedures through which these laws are enforced. Redefining the substantive elements of rape or reforming evidentiary rules, for example, cannot eliminate the discretion embedded at each decision point in the criminal justice system. Because the culturally dominant images of race and sexual identity inevitably influence the processing of rape cases through the discretionary judgments of individual agents, these images and their social production are themselves important targets for feminist legal intervention and political struggle.

While LaFree's studies allow me to articulate the "rules of sexual accessibility" that show the connection between rape processing practices and the logics of white supremacy and male supremacy, the ultimate question for women is still whether we can really expect to

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1. See generally Gary D. LaFree, *Rape and Criminal Justice: The Social Construction of Sexual Assault* (Wadsworth, 1989).

eliminate rape—and if so, how and under what circumstances. In Part II.B, I approach these questions with the understanding that the legal strategies feminists advocate are directly informed by the answers we give to these questions, that these answers depend on how we understand the meaning of rape, and that different women understand rape differently, depending in part on differences in the way women experience sexuality, class subordination, and racial privilege. To explore these differences, I offer three categories for defining what rape may mean to different women. These categories are “rape as hate crime”, “rape as sex”, and “rape as power”. These definitions of rape suggest ways in which the practice of rape is reinforced by the distribution of economic resources and racial privilege, as well as by the culturally dominant images of femininity and masculinity. As a result, some women are more sexually vulnerable than others, and the struggle for sexual autonomy requires legal strategies that can address these differences.

Put differently, although feminism has sometimes aspired to be the solidarity women develop as we struggle to overcome our common oppressions, feminist theory remains as much a source of conflict and misunderstanding between women as it is a source of solidarity among women.<sup>2</sup> Thus, while sexual oppression is a common experience for most women,<sup>3</sup> feminist legal struggles have floundered around two major problems that are presented most directly in the lives of straight women of color. The first is heterosexual desire, a problem engendered by the experience of female sexual desire for and emotional dependence on men.<sup>4</sup> The second problem is racial and

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2. See Beatriz M. Pesquera and Denise A. Sugura, *There is No Going Back: Chicanas and Feminism*, in Norma Alarcón, et al., eds., *Chicana Critical Issues: Mujeres Activas En Letras Y Cambio Social* 95-115 (Third Woman Press, 1993); Gloria I. Joseph and Jill Lewis, *Common Differences: Conflicts in Black and White Feminist Perspectives* 19-71 (Anchor/Doubleday, 1981); Chandra T. Mohanty, Ann Russo, and Lourdes Torres, eds., *Third World Women and the Politics of Feminism* 1-80, 271-377 (Indiana U., 1991); Gloria I. Joseph, *The Incompatible Menage a Troi: Marxism, Feminism and Racism*, in Lydia Sargeant, ed., *Women and Revolution: A Discussion of the Unhappy Marriage of Marxism and Feminism* 91-107 (South End, 1981); See generally Shabnam Grewal, et al., eds., *Charting the Journey: Writings by Black and Third World Women* (Sheba Feminist, 1988).

3. See Catharine MacKinnon's hyperdefensive response to Angela Harris's critique in Catharine A. MacKinnon, *From Practice to Theory, Or What is a White Woman Anyway?*, 4 *Yale J. L. & Feminism* 13, 15-17 (1991) (arguing that feminism ought to be about sexual oppression because it is what is left in common once you bracket the differences between women). For a more thoughtful articulation that grounds solidarity among women on the notion of “a gendered life,” see Martha A. Fineman, *Feminist Theory in Law: The Difference it Makes*, 2 *Colum. J. Gender & L.* 1, 15-23 (1992).

4. Compare Catharine A. MacKinnon, *Feminism Unmodified: Discourses On Life And Law* 46-62 (Harvard U., 1987) (discussed in note 252 and accompanying text), and Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal*

ethnic solidarity.<sup>5</sup> Indeed, many Black and Third World feminists have been particularly critical of the priority given sexual oppression, claiming that this prioritization reduces feminism to gender essentialism, a theoretical and political position limited to the specific concerns of middle-class white women.<sup>6</sup>

A genuinely inclusive feminism must join the struggle against racism, cultural imperialism, and economic exploitation.<sup>7</sup> In this Article, however, I explore the problems of heterosexual desire and racial/ethnic solidarity from a different perspective. More specifically, I approach sexuality as a realm of social interaction where liberation is, indeed, a feminist issue for women of color. My perspective emphasizes the differences that culture, class, and sexual orientation can

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*Theory*, 3 Wis. Women's L. J. 81, 129 (1987) (describing female sexuality as "erotic submission"), with, generally, Drucilla Cornell, *Sexual Difference, the Feminine and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State*, 100 Yale L. J. 2247 (1991), and Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. Cal. L. Rev. 1283 (1992).

5. See Kim Crenshaw's pained and painful struggle to position herself in relation to the the prosecution of 2 Live Crew, Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 Stan. L. Rev. 1241, 1283 (1991) ("I oppose the obscenity prosecution of 2 Live Crew, but not for the same reasons as those generally offered in support of 2 Live Crew, and not without a sense of sharp internal division, of dissatisfaction with the idea that the 'real issue' is race or gender, inertly juxtaposed"). See also Dorothy E. Roberts, *Rape, Violence, and Women's Autonomy*, 69 Chi.-Kent L. Rev. 359, 387-88 (1993) (expressing the concern that "the singleminded mission of enhancing individual women's security by ensuring that offenders are punished conflicts with the antiracist interest in protecting the Black community's freedom from excessive and biased state power").

6. More specifically, the argument has been that feminist struggles that focus exclusively or even primarily on practices that target women for oppression and subordination *because of their sex and sexuality*—practices like rape, sexual harassment, and pornography—neglect the many practices through which *women* are oppressed by structures of race, religion, class, and ethnicity and ignore the bonds that unite the men and women who share these oppressions. This type of criticism is well illustrated by Cheryl Johnson-Odin's account of the United Nations' Conference in Copenhagen in the mid-1980s. Cheryl Johnson-Odin, *Common Themes, Different Contexts: Third World Women and Feminism*, in Mohanty, Russo, and Torres, eds., *Third World Women* at 314, 322 (cited in note 2). When First World feminists condemned the practice of female genital mutilation, Third World feminists objected that "problems of nutrition, infant mortality, illiteracy, health-care delivery, [and] skill training" were as important to them *as women* as female circumcision. *Id.* Addressing these problems would, however, require feminists to "take an antiimperialist position," and according to Johnson-Odin, "[m]any Third World women fe[el] that their self-defined needs are not addressed as priority items in the international feminist agenda, which does not address imperialism." *Id.*

7. See *id.* at 322. Johnson-Odin writes: "If the feminist movement does not address itself also to issues of race, class and imperialism, it cannot be relevant to alleviating the oppression of most of the women of the world. In addition to broadening the parameters of feminism, there is the problem of setting a common agenda." *Id.* Some white feminists have already made particularly thoughtful contributions to that effort. See, for example, Martha R. Mahoney, *Whiteness and Women, In Practice and Theory: A Reply to Catharine MacKinnon*, 5 Yale J. L. & Feminism 217 (1993).

make in how women experience the struggle for and envision the objective of sexual autonomy. From this perspective, the questions feminists need to ask and answer are these: What would it take to secure every woman's right to heterosexual autonomy? How can women experience and express heterosexual desire without fear of rape, harassment, or other forms of coercion through which men attempt to appropriate our sexuality for themselves?<sup>8</sup>

These questions focus on the experience and expression of female sexual desire because representations of women's sexual desire and feminine identity, both as mothers and as sexual beings, often operate to reproduce racial hierarchy. In addition, these representations legitimate public policies that reinforce women's economic dependence on men and excuse interpersonal practices that deprive women of the right to desire and the freedom to experience sexual intimacy.<sup>9</sup> Indeed, in Part II.C, I argue that culturally dominant representations of feminine and masculine sexual identities are directly implicated in the practices and ideologies of rape because they encourage women and men to enact sexual identities that produce het-

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8. The question does not specify *heterosexual* autonomy in order to minimize or ignore the extent to which lesbian sexual autonomy is restricted by the practices through which men enforce their version of heterosexuality. See, for example, Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, in Ann Snitow, Christine Stansell, and Sharon Thompson, eds., *Powers Of Desire: The Politics Of Sexuality* 177, 177-205 (Monthly Review, 1985). Instead, I want to avoid a different form of essentialism, that is, the heterosexism which presumes that reforming the practices and narratives through which heterosexuality is constructed (my primary concern in this Article) would be enough to secure sexual autonomy for *all women*. Heterosexuality does, however, pose particular problems for straight women of color that need to be dealt with as such. Unlike lesbians (of any race), our desire and its ultimate satisfaction depends upon achieving the conditions for sexual intimacy with men who often will (maybe always and at least sometimes) try to dominate us. At the same time, the scripts men enact in their sexual relations with women of color have narrative elements in which the drive to dominate may have as much to do with their/our class, race, and culture, as it has to do with their/our genders. See Part III.C on the sexual scripts organized by the virgin/whore dichotomy, especially in Latin culture. See also Part V.A on the racial dimensions of pornographic masculinity.

9. Black and Third World feminists have clearly and persuasively set forth the ways that the subordination and sexual oppression of women of color have been organized around degrading (mis)representations of our *racialized* sexual desire. See, for example, Jacquelyn Dowd Hall, "The Mind that Burns in Each Body": *Women, Rape, and Racial Violence*, in Snitow, Stansell, and Thompson, eds., *Powers of Desire* 328, 331-33 (cited in note 8). Black women are unrapable whores and Latinas are just as bad. See generally Oliva M. Espin, *Cultural and Historical Influences on Sexuality in Hispanic/Latin Women: Implications for Psychotherapy*, in Carole S. Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* 154 (Routledge & Kegan Paul, 2d. ed. 1985). See also Abdul R. JanMohamed, *Sexuality on/of the Racial Border: Foucault, Wright and the Articulation of "Racialized Sexuality,"* in Donna C. Stanton, ed., *Discourses of Sexuality: From Aristotle to AIDS* 94, 112 (U. Michigan, 1995) ("[W]ithin the discursive formation of racialized sexuality the process of racialization is always already a process of sexualization, and the process of sexualization is also always already—or at least functions as if it were—a process of racialization").

erosexual animosity, reduce individual autonomy, and reproduce socioeconomic inequalities. These identity positions, in turn, reduce the chances that women and men will establish relationships that can sustain a nonsubordinating sexual intimacy.<sup>10</sup>

If the ultimate goal is to secure women's sexual autonomy, then part of the struggle is to change the way women and men think about ourselves and each other. However, just as class, culture, and sexual orientation affect how women experience the social meaning of rape, they can also affect how women respond to different images of feminine sexual identity. Understanding the feminist struggle for sexual autonomy as part of a larger struggle to alter the culturally dominant images of race and sexuality highlights women's potential inter-cultural conflicts over the "feminist images" that emerge from this struggle.<sup>11</sup> Nevertheless, while women may not agree on which images are "more liberating," a genuinely inclusive feminism will seriously consider these differences in the struggle over the production of alternative images of motherhood and sexuality.

Part III.A begins the analysis by linking rape to the social construction of women's sexual vulnerability. Both of these, in turn, are connected to the images of women that circulate in the dominant culture of white, middle-class America. My initial focus is on the images of "mother" recounted in the psychoanalytic discourses through which both white feminists and the predominantly white, upper-middle-class "men's movement" have attempted to explain interpersonal practices, like rape, and cultural narratives, like pornographic mascu-

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10. This account is developed by analyzing how different narratives of power call men and women to enact their interpersonal relations as subject/subject or subject/object relations. See Jessica Benjamin, *The Bonds of Love: Psychoanalysis, Feminism, and the Problem of Domination* 7 (Pantheon, 1988).

11. For example, a woman may perceive the struggle to circulate feminist images of motherhood or female sexuality as having very different implications for female autonomy depending on her sexual preferences and the kinds of sexual experiences she has had, whether she is single or married, whether her work makes her economically self-sufficient, whether she wants her children to go to the college of their choice rather than work in the family business, and whether she wants to leave an abusive partner or a boring marriage or simply wants her husband to pay more attention to her. Different images of motherhood and sexuality may facilitate some of these objectives and obstruct others, even as a woman's race, culture, and sexual orientation will be directly implicated in the kinds of objectives she is likely to embrace. Accordingly, the images of motherhood and sexuality that might further the objectives of middle-class, white, American women, might threaten the objectives of Black or Latin women. For an excellent criticism of the way the interests of poor mothers have been negatively impacted by white liberal feminism, which deploys images of equality in the market and gender-neutrality in family as the ultimate objectives of feminist struggles, see Martha A. Fineman, *The Neutered Mother*, 46 U. Miami L. Rev. 653, 660-62 (1992).



linity. These images of "mother" are then compared in Part III.B to the images that circulate in the subordinated discourses of Black and Latin culture. This cross-cultural analysis of alternative images of "mother" provides a critical perspective on the public policies and legal doctrines that increase women's sexual vulnerability through the regulation of motherhood. These policies and doctrines are implicitly, and often explicitly, designed to pressure women into abdicating sexual autonomy and maternal power to the will of a dominant male partner. My point here is that liberating motherhood from the cultural ideologies, public policies, and legal doctrines that promote the male-dominated nuclear family is an important part of "what it will take" to secure women's sexual autonomy.

Like the images of "mother," the virgin/whore dichotomy is another culturally dominant narrative that informs the public policies and legal doctrines that determine the "rules of sexual accessibility" and restrict the parameters of women's sexual autonomy. Part III.C examines how this dichotomy influences the substantive elements in the legal definition of rape as well as the processing practices through which rape laws are enforced. The discussion then examines the impact this dichotomy has on the practices of heterosexuality. Here, I focus primarily on Latin culture because it directly and definitively links the practices of sexual dominance to the articulation of this dichotomy. My point is that rape will remain a pervasive phenomenon so long as heterosexuality is experienced and practiced through the virgin/whore dichotomy. I introduce Jungian psychoanalyst Nancy Qualls-Corbett's work on the archetypal image of the "sacred prostitute" as an alternative discursive regime that might help to shatter the cultural power of this dichotomy.<sup>12</sup>

While Part III grounds the social construction of women's sexual vulnerability in the policies that regulate motherhood and female sexuality, Part IV emphasizes the extent to which "machismo" prevents both women and men from embracing alternative images that could support the reforms necessary to secure women's sexual autonomy. Even if mainstream culture embraces images of women as "powerful mothers" and "desiring subjects," the circulation of these images would not generate the changes necessary to reform the legal incidents of motherhood or the rules of access to female sexuality until the culture begins to circulate alternative images of men, masculinity, and "male power."

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12. See generally Nancy Qualls-Corbett, *The Sacred Prostitute: The Eternal Aspects of the Feminine* (Inner City Books, 1988).

Part V links the feminist struggle against rape to an ideological struggle over competing images of masculinity, in general, and male power, in particular. Just as race, class, and culture affect women's perceptions of feminine identity, these differences also influence the way we respond to alternative images of men. The notion, for example, that male power is at the root of women's sexual oppression pervades white feminist theory.<sup>13</sup> This account of male power as the root of women's oppression has made it easy to see the importance of empowering women economically, culturally, and psychologically. But it has also made it harder to understand how deeply women's liberation is invested in the empowerment of the men with whom we want to establish sexual relations, form families, raise children, and develop interpersonal intimacy. By contrast, each of the two problems presented by the experience of straight women of color offers a perspective from which the root of women's sexual oppression is located not so much in male power as in the mechanisms through which men attempt to cope with, deny, and disguise their powerlessness.<sup>14</sup>

Developing an analysis that connects the practices of sexual dominance to male powerlessness has a number of advantages. First, it provides a basis for a redemptive and transformative analysis of the structures, practices, and cultural narratives through which women's sexuality is oppressed.<sup>15</sup> The exclusive focus on male power suggests

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13. Feminist theory has developed a sophisticated concept of male power, which ranges from analyses of the interpersonal strategies through which individual men attempt to dominate and control women, such as rape and sexual harassment, to the institutionalization of male power. MacKinnon, *Feminism Unmodified* at 3 (cited in note 4) ("[T]he social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual—in fact, is sex"). See Heidi Hartmann, *Capitalism, Patriarchy and Job Segregation by Sex*, in Zillah R. Eisenstein, ed., *Capitalist Patriarchy And The Case For Socialist Feminism* 206, 208 (Monthly Review, 1979) (stating that women's economic dependence on men is reinforced by job segregation and wage discrimination); Martha R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 Mich. L. Rev. 1, 93 (1991).

14. At one level, my argument is obvious: we already know this. The evidence linking male abusiveness to male insecurity, to socio-economic or psychological inadequacy, to *male lack* is abundant, and reference to that evidence is pervasive in feminist theory. See, for example, Susan Schechter, *Women and Male Violence: The Visions and Struggles of the Battered Women's Movement* 209-40 (South End, 1982); Peter Wade, *Man the Hunter: Gender and Violence in Music and Drinking in Colombia*, in Penelope Harvey and Peter Gow, eds., *Sex and Violence: Issues in Representation and Experience* 115, 126-34 (Routledge, 1994) (analyzing domestic violence in Colombian culture as a product of male failure to negotiate successfully the different value systems of competing masculinities); JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 94-116 (cited in note 9). Nevertheless, it is a connection that has not been adequately thematized in feminist legal theory.

15. Thomas Ross, *Despair and Redemption in the Feminist Nomos*, 69 Ind. L. J. 101, 117 (1993) (discussing MacKinnon's work on pornography and sexual harassment: "Her expression

that women's liberation from sexual oppression depends on finding better ways to claim the kinds of power men wield. Women need access to the jobs that produce economic resources and social status, which men use to suppress the claims we make on them and to leverage the claims they make on us.<sup>16</sup> There is truth in this claim, but it is only a partial truth in that women want more than the freedom to confront men as empowered market actors.<sup>17</sup> To the extent women want to develop deeply intimate sexual relationships with the men in our lives, female disempowerment is only one part of the problem and female empowerment only one part of the solution. For it is impossible to develop intimate relationships with weak, selfish, and insecure men—the kind of men who need to dominate women.

Second, an analysis that focuses on the relationship between women's oppression and male powerlessness invites feminists to take a critical look at what is being represented and attacked as male power.<sup>18</sup> If male domination is not power, but powerlessness, then we

of the horrific nature of the present reality and the radically different world that must be created seems to signify such a large void between here and there that she has put aside any real redemptive possibilities").

16. Dorothy E. Roberts, *Motherhood and Crime*, 79 Iowa L. Rev. 95, 96 (1993); Hartmann, *Job Segregation by Sex*, in Eisenstein, ed., *Capitalist Patriarchy* at 208 (cited in note 13).

17. See Mahoney, 65 S. Cal. L. Rev. at 1300 (cited in note 4).

18. For example, in a highly provocative passage, Catharine MacKinnon characterizes male power as a concrete, real, and inescapable fact in women's lives. MacKinnon writes:

[B]ecause men have power over women, women come to epistemological issues situated in a way that sheds a rather distinct light on the indeterminacy/determinacy question as men have agonized over it. . . . How do we deal in the fact of Cartesian—updated as existential—doubt? Women know the world is out there. Women know the world is out there because it hits us in the face. Literally. We are raped, battered, pornographed, defined by force, by a world that begins, at least, entirely outside us. *No matter what we think about it, how we try to think it out of existence or into a different shape for us to inhabit, the world remains real.* Try some time. It exists independent of our will. We can tell that it is there, because no matter what we do, we can't get out of it. Male power is for us—therefore *is*—this kind of fact.

MacKinnon, *Feminism Unmodified* at 57 (cited in note 4) (emphasis added).

This account of male power is highly problematic for a number of reasons. First, while it is true that women cannot simply "imagine away" an abusive relationship or sexual assault, MacKinnon's account of male power ignores the fact that the content and exercise of agency is guided more by what we think than by the reality we live. A fist in the face *does not mean the same thing* to all women: one woman takes it, another woman leaves, and still another woman hits back but stays. We cannot begin to understand, let alone to determine, the meaning of these different responses unless we appreciate the fact that the reality that is outside the interpretative resources through which individuals understand their behavior and relationships is as much a product of the choices we can make as an external restriction upon the choices we do make. Narratives of sexual identity are exactly the kind of interpretative structures that explain why some women will interpret and respond to that fist as an intolerable "last straw," others as an inescapable force they must submit to, and still others as provoking a fight they may just as likely win or lose. Thus, while I agree that women cannot "imagine away" the psycho-social practices of male sexual dominance, how women understand these practices influences how we respond to them (that is, whether we just take it, exit, or fight back). How

need a radically different account of what power is and what it means for the relations through which we constitute ourselves as masculine or feminine subjects. That account necessarily invokes a different set of values and socio-political commitments than those expressed by the practices of male domination. It struggles, instead, to articulate images of a masculinity that can not only withstand but also affirmatively embrace the equality and autonomy of female subjectivity. Such images would offer the resources needed for sustaining the practices of a deeply intimate heterosexuality.

Put differently, feminists—at least, straight feminists of color—have a vested interest in articulating positive images of masculine power that we can live with and love. Such images are completely missing in most feminist legal theory, and we need them desperately. Women's liberation depends ultimately and fundamentally, not on the improbability that men's power over women's lives can ever be eliminated, but rather on a feminist intervention to redefine male power and develop the structures, narratives, and practices through which we can produce men who do not feel compelled to dominate us.

Part V develops this account by attacking the narratives of masculinity in male supremacist discourses as pornographic and truncated distortions of the mature masculine. Drawing on the profoundly provocative work of Robert Moore and Douglas Gillette, I explore what they call the archetypes of mature masculinity: "the King, Warrior, Magician, and Lover."<sup>19</sup> I read these images as alternative narratives of masculine identity and examine the kinds of power they invite men to exercise in order to assess the impact that increased cultural circulation of these images might have on women's interests, both as feminists and as heterosexual desiring subjects. I argue that these four images of the Jungian Archetypal Self offer untapped resources that women and men can incorporate to help further the feminist struggle against misogynistic heterosexuality.

The goal in this analysis is to develop a critical account of the ways in which different images of female and male sexual identity

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we understand them, in turn, depends as much on what we think (rightly or wrongly) as on what they are—even as what we think depends less on what they are than on the cultural narratives we have internalized. The second problem with MacKinnon's formulation is that not all men have equal power over all women. See Part V.A. The third problem is that equating male supremacy and sexual dominance with male power ignores the positive elements of masculine power. See Part V.B.

19. See generally Robert Moore and Douglas Gillette, *King, Warrior, Magician, Lover: Rediscovering the Archetypes of the Mature Masculine* (Harper, 1990).

represent the nature of power—that is, the different ways in which maternal power, female sexuality, and male dominance are coded in the narratives of commodified femininity and pornographic masculinity.<sup>20</sup> Eliminating rape and other forms of sexual oppression presupposes the successful deployment of effective counter-narratives that will redefine the nature and meaning of power and shatter the delusion that male power depends upon female powerlessness.

Finally, Part VI provides some concrete examples where the incorporation of Latin images of maternal power, as well as Jungian images of female sexuality and mature masculinity, into the dominant culture might have a positive impact on the public policies and legal doctrines through which women's sexual vulnerability is currently constructed. This analysis focuses specifically on the way images of maternal power and female sexuality are deployed in welfare reform proposals and child custody determinations.

## II. THE PROCESSING OF RAPE CASES AND THE SOCIAL MEANING OF RAPE

### A. *Patterns of Rape Processing Decisions: Suspect/Victim Racial Compositions and Gender Role Stereotypes*

In *Rape and Criminal Justice*, Gary LaFree compiled empirical data for rape cases processed in Indianapolis, Indiana, in 1970, 1973, and 1975.<sup>21</sup> This data and LaFree's analysis raise important questions for understanding the ways in which rape processing practices reproduce the relations of white supremacy and male supremacy. LaFree distinguishes rape cases according to the racial composition of the suspect/victim combination, that is Black/Black, White/White, and Black/White rapes.<sup>22</sup> He then compares how these different suspect/victim compositions were processed through the decision points

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20. "Pornographic masculinity" and "commodified femininity" are two ways of referring to the same subjection of male and female sexuality to the imperatives of power, which, in this society, are increasingly organized to facilitate the commodification of all social relations including sex. See notes 63-74 and accompanying text.

21. LaFree, *Rape And Criminal Justice* at 59 (cited in note 1). Because the passage of time and jurisdictional differences may affect rape processing practices, it may be problematic to generalize about rape processing patterns in other jurisdictions. Nevertheless, my discussion focuses on the more general significance of LaFree's data and analysis.

22. White/Black rapes were not included in the chart because during the period under study there were only 11 cases involving white offenders and Black women (1.2%, which was too small to include in LaFree's multivariate analysis). *Id.* at 129.

of the case processing system, from the initial decision to arrest and prosecute through the imposition of a prison sentence.<sup>23</sup> Not surprisingly, the total number of cases at each decision point decreased as the cases moved through the system. Some cases were disposed of earlier than others, indicating the extent to which decisions made at earlier points in the process determined the cases that would bear the progressively increasing force of the criminal law.

Analyzing the points at which different cases were screened out of the system in terms of the racial composition of the suspect/victim combination indicates that race played a significant role in the processing of rape cases. For example, LaFree's data shows that most of the reported rapes involved Black suspects and Black victims. The second largest category involved white suspects on white victims, while Black on white rapes constituted the smallest group of reported rapes. As these cases progressed through the system, however, the percentage of cases involving Black suspects and white victims steadily increased, the percentage of Black intraracial assaults steadily decreased, and the percentage of white on white rapes remained relatively constant.<sup>24</sup>

While LaFree's studies show that the racial composition of suspect/victim combinations had a statistically significant impact on the way rape cases progressed through the system, the more significant finding in these studies raises important issues for straight feminists of color. Specifically, these studies show that comparing the dispositions of rape cases solely on the basis of the defendant's race does not adequately account for the extent of racial bias in the processing of rape cases. Indeed, if Black men committed approximately seventy percent of the reported rapes, then the fact that they received the harshest sanction in seventy percent of the cases belies any inference of discrimination.<sup>25</sup> When the victim's race is factored into

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23. See *id.* (indicating in Figure 6.1 the percentages of Black Suspect/White Victim (BW), Black Intraracial (BB), and White Intraracial (WW) Incidents for Eight Processing Stages).

24. These results are even more problematic when we consider the racial implications of the fact that although there were more Black/Black rapes than Black/White rapes, Black/White rapes, which constituted only 23% of all reported rapes, constituted 45% of the rapes resulting in state penitentiary incarceration and 50% of the cases resulting in maximum prison sentences of six or more years. By contrast, Black/Black rapes, which constituted 45% of all reported rapes, comprised only 26% of the rapes that resulted in state penitentiary incarceration and only 17% of the cases that resulted in maximum prison sentences. *Id.* at 133.

25. LaFree's data indicates that Black men committed 67.7% of 870 reported rapes compared to 32.3% committed by white men. The data also indicates that of the 30 cases in which prison sentences of six or more years were imposed, Black men received 66.7% of the sentences,

the analysis, however, these results suggest that the harsher treatment of Black men convicted of interracial rape compensated for the more lenient treatment of Black men convicted of intraracial rape. This disparity produces the appearance of proportionality.<sup>26</sup>

With this reading of the data, important questions arise. Why, for example, was a Black man who raped a Black woman less likely to bear the maximum sentence than a white man who raped a white woman? Why was a Black man who raped a white woman more likely to receive the maximum sentence than a white man who did the same? This reading also suggests why feminists may respond differently to evidence of racial bias in the processing of rape cases. The implications of such evidence are, after all, ambiguous. If Black men and white men are treated differently in the processing of rape cases, does that mean that the Black and white men who rape white women should "enjoy" the same relative impunity with which Black men rape Black women? Or does it mean that the white men who rape white women and Black men who rape Black women should bear the same consequences as the Black men who rape white women? In other words, while racial and ethnic solidarity may compel feminists of color to condemn the fact that rape laws are discriminatorily applied when racially subordinated men rape white women, as women we are still left with rape. The fact that Black men are more vulnerable to prosecution for raping white women does not change the fact that men rape women, and that they rape women of color with virtual impunity.

In a second part of his book, LaFree considers the impact of women's nonconformity to stereotypical gender-roles on the processing of rape cases.<sup>27</sup> Both official records and data compiled through jury trial observations and interviews with jurors and court personnel indicated that evidence of women's nonconformist behavior affected the way their rape complaints were processed. Police records indi-

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compared to 33.3% received by white men. *Id.* at 132. Without taking the victims' race into account, these results seem entirely proportional.

26. LaFree's data indicates that 44.7% of the total number of rapes reported against Black suspects involved Black victims, while 23% involved white victims. The data also indicates that in the cases where sentences of six or more years of penitentiary incarceration were imposed on Black men, 50% of the cases involved white victims, while only 16.7% involved Black victims. *Id.* at 132. Thus, Black men received the harshest criminal sanction more often in cases where they were convicted of raping white women.

27. Examples of nonconformist behavior include: "(1) hitchhiking, (2) drinking at the time of the offense, (3) being at a tavern or bar without a male escort, (4) allegedly engaging in sex outside of marriage, and (5) willingly entering the suspect's car, house, or apartment . . . [as well as] assaults (1) by prior acquaintances, (2) occurring outside the victim's home, (3) perpetrated by only one offender, (4) in which the victim did not physically resist, and (5) that were not reported promptly by the victim." *Id.* at 72-73.

cated that officers systematically failed to arrest in cases where they observed nonconformist behavior on the part of the victim.<sup>28</sup> Data gathered from jury trial observations and juror interviews indicated a similar pattern.<sup>29</sup> In cases where defendants alleged consent or denied that intercourse had occurred "jurors . . . were clearly influenced by testimony about victims' life-styles. Any evidence of drinking, drug use, or sexual activity outside marriage led jurors to doubt defendants' guilt, as did any prior acquaintance between victim and defendant."<sup>30</sup>

LaFree explains the impact of both suspect/victim racial combinations and gender-role behaviors on rape processing decisions in terms of the conflict and labeling theories of criminology.<sup>31</sup> These theories challenge the priority that criminology places on criminal etiology, that is, the study of the causes of crime, crime rates and how they change, and the characteristics of individuals and groups that violate criminal laws. The crucial issue is no longer why people commit crimes, but rather how legal agents determine that particular conduct should be criminalized and that a particular crime has been committed. Proceeding from the theoretical premise that law is invoked and applied in order to maintain relations of dominance and subordination across different social groups, these theories shift attention from criminal etiology to the study of the social processes and political conflicts through which law is created and enforced.

From this perspective, the results in LaFree's rape cases reveal that state power reproduces hierarchical relations between different social groups through the processing of rape cases.<sup>32</sup> In this society,

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28. *Id.* at 76.

29. Non-conformist behavior in the jury trial study included: "(1) drinking, either in general or at the time of the incident, (2) using drugs in general or at the time of the incident, (3) engaging in sexual activity outside marriage, (4) having illegitimate children, and (5) having a reputation as a 'partier,' a 'pleasure seeker,' or someone who stays out late at night." *Id.* at 201.

30. *Id.* at 226.

31. Labelling theory focuses on the way decisions are made in contexts involving factual ambiguities and argues that "official processing decisions in criminal cases are based less on the actual behavior of the accused than on the interpersonal context of the incident." See *id.* at 72. This suggests that outcomes are more affected by extra-legal variables than by legal variables, that is, by the officer's "situation sense" rather than an analytical determination that the elements of a crime could be established by the evidence. Conflict theory focuses on the ways in which the resolution of factual ambiguities reinscribes existing hierarchical relations between social groups, such as whites and nonwhites, or males and females. *Id.* at 11-12, 34-52.

32. *Id.* at 8-11, 151 ("[L]egal protection, like other scarce resources, may be withheld from some individuals on the basis of their race, age, economic status or gender. In addition, some individuals forfeit legal protection because they live outside the legal or moral structure of society. . . . [I]f women who violate traditional sex roles and are raped are unable to obtain justice



the structure of intergroup relations is white over nonwhite (particularly over Black) and male over female. Thus, the threat of harsher enforcement against Black males accused of raping white women constitutes a form of social control that reproduces what Abdul JanMohamed calls "the racial-sexual border."<sup>33</sup> Similarly, the relative impunity with which men rape white women acting outside traditional gender roles sends a clear message to white women that the law will not protect them if they are attacked while exercising prerogatives of autonomy outside of traditional gender roles. Finally, the relative impunity with which men rape racially subordinated women leads these women to understand that the law will not protect them at all.

Put differently, this pattern of enforcement serves to reproduce the logic of white supremacy and male supremacy by establishing what I call "the rules of sexual accessibility." A translation of this logic might be:

- (a) **All men must have sexual access to at least some women (male supremacy).** The social meaning of this pattern of enforcement might be interpreted as follows: Black men are men. As men, they are entitled to sexual access to Black women. Indeed, their assertion of that right will be punished only in the most extreme cases. Thus, of the approximately 390 reported rapes Black men perpetrated on Black women, only 5 resulted in the maximum prison sentence.
- (b) **Some women are sexually accessible to only some men (white supremacy).** The pattern of enforcement made evident in LaFree's studies also suggests that male supremacy is a social structure embedded in the equally powerful logic of white supremacy. The fact of harsher enforcement for Black/White rapes (of approximately 200 rapes, 15 resulted in the maximum sentence) enforces the color line, but it is the comparative treatment of Black and white women victims that reveals its hierarchy. The data shows that if Black men were punished severely for raping white women, it is not because these women were women but because they were white.<sup>34</sup>

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through the legal system, then the law may be interpreted as an institutional arrangement for reinforcing women's gender-role conformity").

33. See JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 99 (cited in note 9).

34. Kim Crenshaw makes the point like this:

Where racial discrimination is framed by LaFree primarily in terms of a contest between Black and white men over women, the racism experienced by Black women will only be seen in terms of white male access to them. . . . [However,] Black women are also discriminated against because intraracial rape of white women is treated more seriously than intraracial rape of Black women. . . . In order to understand and treat the victimization of Black women as a consequence of racism and sexism, it is necessary to shift the analysis away from the differential access of men and more toward the differential protection of women.

Crenshaw, 43 *Stan. L. Rev.* at 1277-78 (cited in note 5).

- (c) **All women must be sexually accessible to at least some men (male supremacy).** This element captures the socio-political meaning of LaFree's data revealing prior social relations as statistically significant nonconformist behavior. It is best illustrated by the marital rape exception but is also apparent in the Model Penal Code, which makes rape a second degree felony unless the action inflicts serious bodily injury or the victim was not a "voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties,"<sup>35</sup> in which case it is a first degree felony. Women could easily interpret these legal doctrines and empirical data to mean that no woman above the legal age of consent has the right to be sexually inaccessible to all men.<sup>36</sup> A woman is either accessible to her husband or her nonconformist unmarried status makes her accessible to any man with whom she has a social or sexual relationship.
- (d) **Some women are sexually accessible to all men (male supremacy and white supremacy).** The failure to prosecute and convict men accused of raping women engaged in nonconformist behavior reinforces relations of male supremacy, even as the general underenforcement of rape laws in cases involving racially subordinated women reinforces relations of white supremacy. These facts reflect the higher social value placed on white women's right to bodily integrity.<sup>37</sup>

While these rules of sexual accessibility elucidate the relationship between rape processing practices and the logics of white supremacy and male supremacy, they do not adequately convey what

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35. Model Penal Code and Commentaries § 213.1 (Official Draft and Revised Comments (ALI, 1980)). Rape by a "voluntary social companion" is a less serious offense than rape by a stranger because the woman's nonconsent to sexual intercourse in the context of a date is ambiguous. *Id.* Interestingly, LaFree never breaks the cases down in terms of the marriage relationship between the victim and rapist probably because the marital exemption meant that those cases were never prosecuted even in the rare instances that complaints might have been filed. LaFree does, however, note that prior sexual involvement between an alleged victim and defendant is legally relevant under Indiana law, just as their prior acquaintance proved to be a statistically significant variable in reducing the perceived credibility of the victim and the seriousness of the incident. LaFree, *Rape and Criminal Justice* at 226 (cited in note 1). For changes in the marital rape exemption laws, see, for example, Jaye Sitton, Comment, *Old Wine in New Bottles: The "Marital" Rape Allowance*, 72 N.C. L. Rev. 261, 269-88 (1993).

36. See Dorothy E. Roberts, *Foreword: The Meaning of Gender Equality in Criminal Law*, 85 J. Crim. L. & Criminology 1, 6-7 (1994) (arguing that "[t]he critique of statutory rape laws should focus on challenging courts' persistent acceptance of some degree of violence against girls as a means of sexual access. . . ." This judicial posture explains why "prosecutors sometimes must rely on statutory rape laws to obtain a conviction even where victims experience violence").

37. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 581, 590-605 (1990) (reviewing the relationship between dominant images of Black female sexuality and the history of rape laws). The legal treatment of sexual assault against Black women has "progressed" from an initial point where Black women were legally unrapable to the current situation in which they are rapable, but rarely raped. Roberts, 85 J. Crim. L. & Criminology at 4 (cited in note 36) (noting that "[c]ontemporary American juries and law enforcement officials continue to discount the stories of Black victims of sexual assault").

rape means to women. Nor do they reflect the various ways different women understand the social meaning of rape and its significance for our lives. The next Section explores the implications of LaFree's work from two perspectives. First, LaFree's analysis of the criminal justice system provides a rational basis for redefining the terms of feminist anti-rape legal interventions. More specifically, it suggests why efforts to reform substantive rape laws may be less effective than efforts to reform the structure of discretionary power in the criminal justice system.

Second, even legal interventions grounded on LaFree's analysis can flounder in achieving feminists' ultimate objective because this endeavor still presupposes that the criminal justice apparatus should be the principle target in the struggle against rape. Once we begin to think about rape through the three categories I explore in the next Section, we begin to understand how these legal strategies address only the least controversial category of rape. By instead focusing on all three categories of rape, feminists will be better equipped to redefine their target and rechannel their reform efforts from the criminal justice apparatus to the public policies that construct women's sexual vulnerability and the culturally dominant images of women and men upon which these policies are based.

*B. Strategic Implications and the Social Meaning of Rape: Dilemmas in the Practice of Feminist Legal Theory*

LaFree's empirical studies illustrate how the enforcement of rape laws expresses bias against racially subordinated men and women, as well as against white women who do not conform to traditional gender roles. LaFree's work also has important implications for feminist legal struggles aimed at eliminating rape. In LaFree's analysis, the criminal justice system appears as a network of interconnected discretionary decision points, beginning with the victim's initial decision to make a complaint and progressing through the decisions to arrest, file a felony charge, prosecute or dismiss the charge, convict or acquit the defendant, impose a prison sentence or probation, and so on. At each step, legal agents, including the victim, make judgments about whether to move a case forward based on assumptions about the victim's credibility and other subjective assessments

about what "really" happened and how seriously the allegation should be treated.<sup>38</sup>

This recourse to stereotypical judgments occurs, in part, because a rape is often witnessed only by the individuals whose competing accounts are at issue. LaFree explains that "[w]ithout eyewitnesses processing decisions may depend less on an assessment of whether a rape has occurred than on a perception of whether the victim and the assailant are the *kind of people* who could have been involved."<sup>39</sup> At the same time, because these stereotypes are often both racist and sexist, the decisions they generate will produce rape processing patterns that reinforce white supremacy and male supremacy. This will continue so long as racist and sexist cultural narratives remain dominant in the interpretive judgments made by police officers, prosecutors, jurors, and judges. Indeed, these results will be produced even in the face of a universal condemnation of rape.<sup>40</sup>

This account of the criminal justice system as a network of discretionary decisions, which are based on subjective assessments of ambiguous facts, suggests a number of things about the legal struggles most likely to eliminate bias in the processing of rape cases. First, feminists must target the social spaces where dominant cultural narratives actually influence the decisions made at different points in the case processing system. Feminist legal activists should identify precisely the points at which a legal agent's decision becomes discretionary, either by legally conferred authority or by the nature of the decision, such as the de facto discretion involved in applying legal standards to ambiguous factual situations.

While feminist initiatives to reform the elements of rape have been controversial, the intrafeminist conflict over rape tends to be

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38. LaFree explains: "[T]he difficult task in real cases is establishing whether these crimes have actually occurred, whether the correct suspect has been identified, and whether there are any aggravating or mitigating circumstances." LaFree, *Rape and Criminal Justice* at 27 (cited in note 1).

39. *Id.* at 28. LaFree supports this assertion with data from police and court records as well as his analysis of a series of jury trials. In jury trials, LaFree notes that "jurors' doubts about the conclusiveness of the evidence allow them to disregard the evidence and decide the case on the basis more of their personal values than of the facts. . . . [I]n cases with weak evidence, jurors turn to other factors, such as the defendant's physical appearance or the victim's life-style, in reaching decisions." *Id.* at 203.

40. Thus LaFree notes: "[W]hen the police talked about rape, they universally condemned it and thought it should be punished swiftly and severely. However, further observations of police responses to actual cases indicated much more ambivalence. In effect, the officers were unanimously opposed to rape and agreed that it was a serious offense, but in actual practice they rarely encountered cases that fit their specific definitions of rape." *Id.* at 26.

generated, not so much by the substantive definition of rape, but by the way racial bias operates in the enforcement of rape laws.<sup>41</sup> Indeed, legal strategies that seek to protect women by increasing police power and prosecutorial charging flexibility without establishing procedures that ensure legal accountability for the abuse of power are particularly problematic for women of color, whose racial and ethnic identities often position us in opposition to the forces of white "law and order" that appear all too ready to occupy minority communities and bestialize minority men.<sup>42</sup> Accordingly, feminists could consolidate our anti-rape reform efforts more effectively by focusing on the structure of police and prosecutorial discretion and by prioritizing reforms that make the exercise of official discretion (both formal and de facto) more accountable to feminist and antiracist community struggles, particularly our struggles to reconstruct the culturally dominant narratives of race and sexuality.

For example, police and prosecutors currently exercise power through legal doctrines that allow a broad range of discretion. These legal actors make decisions about whether to arrest a suspect, file a complaint, prosecute a case, and empanel a jury. These decisions are based on a variety of factors that may have little to do with the likelihood that the alleged rape actually happened.<sup>43</sup> Legislative proposals that effectively reduce the opportunity for police to "unfound" rape complaints,<sup>44</sup> or that prevent prosecutors from practicing selective prosecution,<sup>45</sup> or that increase the victim's leverage to compel prosecu-

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41. Thus, for example, Dorothy Roberts's ambivalence towards the establishment of new categories of sexual assault reflects concerns that focus primarily on the racially biased manner in which these new categories will be enforced. See Roberts, 69 Chi.-Kent L. Rev. at 387-88 (cited in note 5).

42. See Crenshaw, 43 Stan. L. Rev. at 1283 (cited in note 5); Roberts, 69 Chi.-Kent L. Rev. at 387-88 (cited in note 5).

43. See, for example, Mary I. Coombs, *Telling the Victim's Story*, 2 Tex. J. Women & L. 277 (1993) (discussing the various and conflicting institutional incentives that structure police and prosecutorial processing decisions). See generally Norman Abrams, *Internal Policy: Guiding the Exercise of Prosecutorial Discretion*, 19 U.C.L.A. L. Rev. 1 (1971).

44. See Coombs, 2 Tex. J. Women & L. at 291-92 (cited in note 43) (discussing the reasons police frequently invoke for unounding rape cases). According to Coombs, "The implementation of 'unfounding' decisions may obscure the effect of rape myths. For example, if a police officer is not convinced that an event was a rape, he will include facts indicating the 'undeserving' character of the complainant in his report, but will exclude them if he expects a prosecution to go forward." *Id.* at 292.

45. See, for example, *City of Minneapolis v. Bushcette*, 240 N.W.2d 500, 506 (Minn. 1976) (applying a rational basis standard of review to reject a prostitute's equal protection challenge against a city ordinance and its discriminatory enforcement); *Commonwealth v. King*, 372 N.E.2d 196, 205-07 (Mass. 1977) (applying intermediate scrutiny). See, for example, P.S. Kane, Note, *Why Have You Singled Me Out? The Use of Prosecutorial Discretion for Selective Prosecution*, 67 Tulane L. Rev. 2293, 2305-10 (1993).

tion,<sup>46</sup> may have a greater impact on the racist and sexist patterns of rape processing than strategies aimed at redefining the substantive elements of rape. These strategies hold more promise precisely because the pervasive circulation of culturally dominant narratives of race and sexuality renders any incongruent factual situations ambiguous. These ambiguities, in turn, create the social spaces in which de facto discretion can reinscribe relations of male dominance and racial subordination.<sup>47</sup>

LaFree's work also suggests the importance of feminist legal struggles aimed at challenging the narratives that are routinely deployed in the rape processing system, such as struggles over the admissibility of expert testimony to challenge the validity of culturally dominant narratives that might otherwise trigger acquittals.<sup>48</sup> Finally, the de facto discretion inherent in applying legal standards to complex factual situations, particularly those that do not fit neatly within the dominant narratives of race and sexuality, suggests some of the difficulties involved in attempting to eliminate rape through legal struggles directed at a criminal justice apparatus that women do not control. Winifred Woodhull has observed that these struggles force women

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46. See, for example, Stuart P. Green, *Private Challenges to Prosecutorial Inaction: A Model Declaratory Judgment Statute*, 97 Yale L. J. 488, 495-506 (1988). Such proposals should take into account cases refusing to reach the merits of a victim's effort to compel prosecution on the basis of a lack of standing, such as *Linda R. v. Richard D.*, 410 U.S. 614, 619 (1973), or on the basis of separation of powers, such as *Inmates of Attica Correctional Facility v. Rockefeller*, 477 F.2d 375, 381 (2nd Cir. 1973).

47. Moreover, as Professor Coombs has noted, rape law reform proposals that seek to eliminate the elements of force, consent, and mens rea from the substantive definitions of rape are highly improbable and perhaps undesirable. Coombs, 2 Tex. J. Women & L. at 287-88 & nn.36-37 (cited in note 43). "Thus, juries remain free to apply rape myths, and feminists must work to eradicate them from our cultural understandings." *Id.* at 288.

48. See, for example, Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. Davis L. Rev. 1013, 1026 (1991) (discussing the use of expert testimony in counteracting the impact of pervasive rape myths on jury determinations). For a lucid and comprehensive account of the myths routinely deployed in the processing of rape cases, see generally Coombs, 2 Tex. J. Women & L. at 277 (cited in note 43). For a passionate and compelling criticism of the use of rape-trauma syndrome expert testimony to secure convictions at the expense of depoliticizing the pervasiveness of rape and replacing one set of disempowering rape myths with another, see Susan Stefan, *The Protection Racket: Rape Trauma Syndrome, Psychiatric Labeling, and Law*, 88 Nw. U. L. Rev. 1271, 1272-73 (1994).

to call for more general repression in order to secure for themselves a modicum of safety in public space. . . . Moreover, because the law, the courts and the police are male dominated, women are obliged to call for male protection in the face of male brutality.<sup>49</sup>

As long as rape processing practices are embedded in a network of discretionary decisions, legal agents will enforce the culturally dominant narratives of race and sexuality. As long as these narratives are racist and sexist, appeals to the criminal justice system will only reinscribe "[t]he disjuncture between the rape victim's grounds for appealing to the legal system—including the violation of her right to liberty and self-determination—and the court's response."<sup>50</sup> This disjuncture illustrates the tenuous nature of legal strategies that expect to eliminate rape by reforming the criminal justice apparatus.<sup>51</sup>

The results of LaFree's studies support this general observation and further suggest that the cultural narratives of race and sexuality constitute a deployment of power different in kind from other forms of power. The power deployed by the circulation of images is constitutive of, but not the same as, the relations of subordination constructed by the social arrangements, interpersonal practices, and official decisions that invoke these images. This, in turn, suggests why the legal struggle for female sexual autonomy—for freedom from rape and sexual coercion—must develop strategies of

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49. According to Woodhull, such appeals make it seem that the elimination of rape depends on urging that:

(1) existing laws against rape be enforced and that the offenders, rather than the victims be put on trial (with respect to one's sexual history, for example); (2) stricter laws be enacted requiring harsher and more systematic punishment of sexual assault, with the probable result that men from racial and ethnic minorities, especially blacks, will be prosecuted and given severe sentences in numbers that exceed the proportion of rapes committed by those groups, particularly when their victims are white; and (3) more safety be assured in city streets and public buildings, which in effect means more police and security guards.

Winifred Woodhull, *Sexuality, Power and the Question of Rape*, in Irene Diamond and Lee Quinby, eds., *Feminism & Foucault: Reflections on Resistance* 167, 172-73 (Northeastern U., 1988).

50. *Id.* at 172. "In the course of a typical rape trial it becomes clear that women are regarded as criminals . . . merely for presuming to circulate in public without men's protection, or for daring to articulate what it means for them to be in control of their bodies, in this case, by deciding where, when, with whom, and under what circumstances they will participate in a sexual act." *Id.*

51. "The fundamental challenge to the social relations of production and reproduction necessary for the struggle against rape cannot ultimately come, then, from demands for rights in legal battles, yet neither can these claims be renounced as long as women are forced to choose between problematic protection and no protection at all." *Id.*

transformation that move beyond reforming the criminal justice apparatus.<sup>52</sup>

At the same time, while the rules of sexual accessibility I have offered clarify the relationship between the patterns produced by rape processing practices and the logic of white supremacy and male supremacy, they do not convey the many complex ways in which women experience their own sexuality and the sexuality of men. Women have different interpretations of sexual autonomy and the legal interventions most likely to promote it. To address these differences, feminists need to develop conceptual frameworks that illuminate the broader socioeconomic contexts and psycho-cultural systems that reinforce the practice of rape.<sup>53</sup> In the following discussion, I use three distinct accounts of rape to organize an inquiry into the cultural narratives that support the public policies, interpersonal practices, and socioeconomic structures that construct women's sexual vulnerability and promote the practices of male sexual dominance. These three accounts are "rape as hate crime," "rape as sex," and "rape as power".

(a) **Rape as Hate Crime:** This account projects the image of the violent, half-crazed rapist hiding in the bushes. The rapist is a deviant person acting out his anti-social hostility on any unlucky woman unfortunate enough to happen across his path at the wrong time, in the wrong place. Consensus is widespread. The response is to "Get those guys. Lock them up and throw away the key." The rape is coded as intentional and violent, a vicious assault designed both to inflict serious physical injury and to degrade. Enormous amounts of cultural resources are deployed to maintain this image as the dominant account of what rape is. Nevertheless, this account obscures the many other psycho-social contexts and manners in which women's sexual autonomy is assaulted by men.<sup>54</sup>

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52. Understanding legal struggles as struggles over image production highlights potential intercultural conflicts between women over the substantive content of feminist images. The struggle for "feminist images" suggests that alternative narratives are available and that circulating these alternatives is a transformative political struggle. This is a position that most feminists could probably agree to without in turn agreeing over which images are better or more liberating. Part of the struggle is identifying the images that hurt different women, where the images are deployed, and how it is that their deployment actually harms different women.

53. According to Abdul JanMohamed, "rape . . . defines a field in which formal identities, thematic continuities, translations of concepts and polemical interchange may be deployed." JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 108 (cited in note 9).

54. See generally Susan Estrich, *Rape*, 95 Yale L. J. 1087 (1986) (discussing sexism in the context of rape).



(b) **Rape as Sex:** In this account, rape reflects the fact that women's consent is simply not relevant to some, many, or most men's sexual gratification. Rape is coded as a consequence of the way men experience their sexual desire for women. Men want sex because it feels good. Because they are ordinarily bigger and stronger than the women they are with, they take it with more or less force and little awareness of the woman's lack of consent. In these accounts, rape is not necessarily intentional, but the sex usually involves at least some degree of coercion and physical force. This account underlies the movement to redefine the mens rea of rape law by requiring a defendant who asserts consent to meet an objective standard of reasonable belief.<sup>55</sup>

(c) **Rape as Power:** In this account, rape is coded as a conscious and deliberate use of physical strength and sex to enforce male dominance. In its purest form, power rape is intentional but not necessarily violent. For example, in the middle of an argument, a husband says to his wife, "You may make more money than I do, but I can make you want me anytime I want to," and then proceeds to prove it. The rape is clearly intentional since the man's whole purpose is to show the woman that he can have sex with her without her consent. Her lack of consent is, for him, an important part of the event because it is precisely her lack of consent that makes the intercourse an assertion of dominance. The rape may be, but need not be, violent since the purpose of the rape is neither to injure nor even to orgasm,

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55. See, for example, Dolly F. Alexander, Comment, *Twenty Years of Morgan: A Criticism of the Subjectivist View of Mens Rea and Rape in Great Britain*, 7 Pace Intl. L. Rev. 207, 233-34 (1995). Alexander delineates three "states of mind" that illustrate the way rape as sex gets coded legally to meet the traditional requirement in rape cases that sexual intercourse involve a guilty "state of mind," or mens rea: "First, the defendant realises that the woman may not be consenting but hopes that she is. Second, the defendant realises that the woman may not be consenting but is determined to have intercourse with her regardless. Third, the defendant is so intent on having intercourse with the woman, that although it occurs to him that she may not be consenting, he suppresses the thought, and deliberately closes his mind to the risk." *Id.* at 233-34 (internal quotations and citations omitted). Alexander discusses three other "states of mind" that help illustrate why the requirement of intent or recklessness in the mens rea analysis inadequately addresses the psycho-sexual dynamic involved in rape as sex. Under this standard of mens rea, sexual intercourse does not trigger criminal liability if "the defendant does not advert to the issue of consent at all. This may occur if the defendant's mind is a total blank," if it simply does not occur to the defendant that the woman might not be consenting, or if "the defendant, having realised that the woman might not be consenting, wrongly and quite unreasonably concludes that she is." *Id.* (internal quotations and citations omitted). In each instance, the refusal to acknowledge criminal culpability treats the woman's consent as only contingently related to, rather than as an essential element, of the sexual act. This is a position that implicitly "views women as a means to an end, rather than a partner with equal interest in the activity." *Id.* at 235-36. See also Lani Anne Remick, Comment, *Read Her Lips: An Argument for a Verbal Consent Standard in Rape*, 141 U. Pa. L. Rev. 1103, 1138-51 (1993) (arguing that courts should adopt an objective verbal standard in rape cases).

but rather quite consciously to make the woman give in to him, to show her that she is, after all, only a woman.

These three categories are arguably distinct and comprehensive, even though any particular rape may involve any combination of the categories.<sup>56</sup> The ways in which a particular rape intersects these categories gives the rape its social and interpersonal significance.<sup>57</sup> For example, rape as power can, but does not always, intersect with rape as hate crime. While hate crime rape will always involve the assertion of male dominance, the assertion of male dominance through rape is not necessarily a hate crime rape. In other words, the will to dominate is not the same as the will to injure. A man can love a woman and still want to dominate her, if necessary, through rape. From this perspective, the difference between rape as power and rape as hate crime is the difference between the will to dominate and the desire to injure. Likewise, the difference between rape as power and rape as sex may turn on a man's reason for using force, whether his purpose is specifically to make the woman give in, or simply, to get sex. In other words, the will to dominate is not the same as the desire to "get laid."

As illustrated above, these categories implicitly organize the meaning of rape according to the different ways women have interpreted the motives and interests that make men rape. While labeling and conflict theories are better predictors of rape enforcement patterns, the meaning of rape (for women) still turns on the way women interpret the motives that drive it. Different motives imply different things about the circumstances that increase our vulnerability to rape

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56. This categorization implicitly rejects MacKinnon's account of heterosexuality, which reduces female sexual desire to self-annihilation and collapses male sexuality into the narratives of pornographic masculinity. See MacKinnon, *Feminism Unmodified* at 46-62 (cited in note 4) (discussed in note 252 and accompanying text). By contrast, these three categories suggest some of the complex ways in which women experience heterosexuality. Thus, in some instances, women's experience of enforced subordination is indeed sexualized, but in others it is not. Sex is, in some instances, but not always, experienced as rape. Rape, itself, is experienced in different ways, often depending as much on the meaning women assign to the experience as on the physical actions of the rape. In order to develop effective resistance and transformative interventions, feminist theory must help women articulate the dynamics that produce these different experiences.

57. For a moving account that explains rape through the various forms of spiritual injury that it inflicts, see Adrien Katherine Wing and Sylke Merchán, *Rape, Ethnicity, and Culture: Spirit Injury from Bosnia to Black America*, 25 Colum. Hum. Rts. L. Rev. 1, 29-38 (1993) (describing rape as defilement, silence, sexuality, emasculation, trespass, and pollution).

and hence about the nature of the measures necessary to cope with and eliminate the threat of rape.<sup>58</sup>

From this perspective, the resources deployed to promote rape as hate crime as the dominant cultural image of rape channel the socio-political struggle over rape around a set of ideas and practices that appear trivial, if not completely irrelevant, when contrasted to the struggles organized around the images of rape as sex and rape as power. Rape as hate crime suggests that women are relatively safe so long as they avoid dark alleys and take other appropriate steps to reduce their vulnerability to the depraved and deranged who are stalking the streets, usually at night. This account of causes and cures feeds certain struggles and suppresses others.

For example, the focus on hate rape generates objections that men who rape do not specifically hate women. These men hate everyone, but they target women because women are commonly perceived as more vulnerable to attack than other men. Regardless of the steps women take to avoid the depraved and deranged, women will continue to live under the threat of hate rape so long as they are perceived as

58. If the ultimate question for women is whether we can really hope to eliminate rape, feminists have responded to this question from a variety of perspectives. Susan Brownmiller writes:

Man's structural capacity to rape and women's corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself. Had it not been for this accident of biology, an accommodation requiring the locking together of two separate parts, penis and vagina, there would be neither copulation, nor rape as we know it. . . . We cannot work around the fact that in terms of human anatomy the possibility of forcible intercourse incontrovertibly exists. *This single factor may have been sufficient to have caused the creation of a male ideology of rape.*

Susan Brownmiller, *Against Our Will: Men, Women, and Rape* 4 (Bantam, 1975). As Winifred Woodhull argues, however, this form of biological determinism reduces the complex social processes that produce rape to the anatomical difference between the sexes:

So while sex is said to be "primal" and thus, implicitly, to precede power relations of any kind, the structural features of male and female anatomy are nonetheless considered to be marked by an equally "basic" asymmetry, which makes the male powerful and the female powerless. . . . [T]he vagina comes to be coded—and experienced—as a place of emptiness and vulnerability, the penis as a weapon, and intercourse as violation.

Woodhull, *Sexuality, Power*, in Diamond and Quinby, eds., *Feminism & Foucault* at 171 (cited in note 49). My own experience leads me to conclude that rape is better explained as an artifact of men's efforts to enact the culturally dominant scripts of pornographic masculinity and the frustrations this effort inevitably engenders, rather than stemming from any anatomical difference. After all, while some men may like to think of their penises as weapons, see generally John Stoltenberg, *Pornography and Freedom*, in Michael S. Kimmel, ed., *Men Confront Pornography* 70 (Meridian, 1991), this is not the only image that codes the penis. On the contrary, the erect penis is also the Magician's wand, an organ of pleasure as much for women as for men. See Michael Ventura, *Notes on Three Erections*, in Christopher S. Harding, ed., *Wingspan: Inside the Men's Movement* 43, 44 (St. Martin's, 1992); Joseph and Lewis, *Common Differences* at 213-14 (cited in note 2) ("Betty: Listen, you all. I got to say this—the dick is good! (laughter) The dick is good").

vulnerable and weak, that is, as appropriate targets for rape.<sup>59</sup> At the same time, if women are perceived as more vulnerable targets, that may be because women *are* more vulnerable because our social and economic status makes us more vulnerable. The ability to avoid dark alleys and “bad neighborhoods” turns, in many instances, on having the money to own a car or take a taxi home to a “nice neighborhood.” Thus, the proffered solution presupposes access to the economic and social resources that enable some, but not all, women to take appropriate steps to avoid attack. Even the most unbiased rape processing

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59. This is the perspective from which movies like *Thelma and Louise* appear to be a step in the right direction. *Thelma and Louise* was first screened in 1991. The public response to the movie made it “the talk of the summer” and the subject of “white-hot debate.” See Richard Schickel, *Gender Bender: A white hot debate rages over whether Thelma and Louise celebrates liberated females, male bashers—or outlaws*, *Time* 52 (June 24, 1991). See also *Women Cheer, Men Fret over Thelma and Louise*, *Phoenix Gazette* C5 (July 10, 1991); John Robinson, *The Great Debate over Thelma and Louise: Is It Evil Man-Bashing or Liberating Fantasy? He Hates It*, *Boston Globe* 29 (June 14, 1991). Indeed, the movie so captured the public imagination that during the Clarence Thomas hearings, Phyllis Schafly, president of the conservative Eagle Forum, referred to Thomas’s opponents as *Thelma and Louise*, stating that “[t]hey hate men and anybody who stands in their way.” John E. Young and Lynne Duke, *Outside the Hearing, It Was Cheers, Jeers; Thomas’s Supporters Were the Most Vocal, Visible*, *Wash. Post* A9 (Oct. 12, 1991). Why the uproar? The movie traces the interactions between two women and a series of men. Over and again, the men fail to view the women as a potential threat with tragic consequences both for the men (one dies, another is locked in a trunk, another’s truck is blown up) and for the women. For me, the most indicative moment is the confrontation between Louise and a rapist. She points a gun to his head. She tells him, “Next time. . . .” He replies, “I should have gone ahead.” She says, “What did you say?” He says, “Suck my dick.” So Louise shoots him, not because there was any danger of rape, but because he told her to suck his dick. But why did he say that when *she had a gun to his head*? Because he simply could not or would not see her as a threat to him.

This interaction is instructive because it illustrates how male perception of female powerlessness prevents the interaction from producing higher self-knowledge. What is different about *Thelma and Louise* is their willingness to make their point with violence. The message to male viewers is simple. If you don’t learn the easy way, you will learn the hard way. Most often, women are unwilling or unable to press their points, and consequently, most men simply do not learn. As Karl Mannheim has written: “In personal life, too, self-control and self-correction develop only when in our originally blind vital forward drive we come upon an obstacle which throws us back upon ourselves. In the course of this collision with other possible forms of existence, the peculiarity of our own mode of life becomes apparent to us.” Karl Mannheim, *Ideology and Utopia: An Introduction to the Sociology of Knowledge* 47 (Harcourt, Brace, 1936). The commitment to self-knowledge and correction is crucial to maintaining a life-affirming and dynamic relationship that is, in turn, necessary for sexual intimacy. In this struggle for self-knowledge, the Other is the Obstacle through which the self is thrown back upon itself and forced to confront the need for change. Change is at best difficult and often painful. Because it is difficult and painful, change is often resisted and happens only if the Other is in fact, an obstacle, in other words, if the Other has enough power to throw us back upon ourselves. Women often do not have the power to throw men back upon themselves, and men often do not have the ability to accept (if they even recognize) the fact that they have been thrown back by a woman, with tragic consequences for men and women.

system will not eliminate rape so long as women's socioeconomic positions make them vulnerable to sexual exploitation and assault.

The struggles organized around the image of rape as hate crime are moderate points of contention compared to the struggles generated by the rape as sex and rape as power accounts. Rape as hate crime projects an image of socio-sexual relations in which women's sexuality is relatively safe because rape is deviant and unusual behavior. By contrast, rape as sex implies that heterosexuality is itself a constant source of danger for women. Rape is possible, perhaps even likely, in any encounter with any man. Given the opportunity and the appropriate circumstances, any man will rape, and many men do. While the image of rape as sex conveys some of the ways women experience their sexuality as subordinated by male sexual aggression, rape as power addresses the instances in which we experience our subordination as sex. Put differently, rape as sex refers to the ways men use physical strength or psycho-social coercion to get sex, while rape as power refers to the ways men use sex and sexuality to establish dominance.

Thinking about rape through these three categories furthers the search for more effective and inclusive legal strategies to promote women's sexual autonomy because these categories redirect our attention to the link between women's vulnerability and the public policies, legal doctrines, and cultural practices that construct it. More specifically, the idea that emerges is that rape feeds upon women's sexual vulnerability, a vulnerability that is, in part, a socially constructed phenomenon. Put differently, if men rape because women's consent is irrelevant to their sexual gratification, this is because of the arrangements and cultural expectations that reduce women's power to make their consent relevant. Similarly, if men rape in order to establish dominance, this also is because of the cultural imperatives that reinforce the urge to dominate, particularly in men.

To eliminate rape, feminist legal activists need to identify the social contexts in which public policies and legal doctrines increase women's sexual vulnerability. For example, the policies behind welfare eligibility rules seek to keep poor mothers dependent on male wage-earners and penalize them for their sexuality.<sup>60</sup> Meanwhile doc-

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60. See notes 312-35 and accompanying text (discussing Sylvia A. Law's work, *Women, Work, Welfare, and the Preservation of Patriarchy*, 131 U. Pa. L. Rev. 1249 (1983) (analyzing the ways in which welfare eligibility and work requirements encourage female dependence on a male wage-earner, while simultaneously undermining and penalizing female independence); Dorothy E. Roberts, *The Unrealized Power of Mother*, 5 Colum. J. Gender & L. 141, 142-46 (1995) (discussing the Personal Responsibility Act as an assault on maternal independence);

trines like "the best interests of the child" are used in custody proceedings to penalize expressions of maternal sexuality that do not produce a stable, male-headed nuclear family.<sup>61</sup> Legal reforms aimed at transforming policies and doctrines that construct women's sexual vulnerability may be a more effective strategy for eliminating rape than legal struggles to redefine the crime of rape or reform the criminal justice system.

*C. Beyond Law: Narratives and Counter-Narratives in the  
Reconstruction of Heterosexuality*

In the preceding Section, I illustrated how thinking of rape through the categories of rape as hate crime, rape as sex, and rape as power relocates the struggle for women's sexual autonomy within a broader struggle to transform the legal doctrines and public policies that construct women's sexual vulnerability. In this Section, I introduce the argument that drives the analysis in the next three Parts of this Article. Specifically, my point is to show that the struggle for women's sexual autonomy is linked ultimately to an even broader struggle over the production and dissemination of popular culture, with particular emphasis on images of sexual identity and the way images of femininity and masculinity encourage us to organize our interpersonal relations.<sup>62</sup>

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Larry Catá Backer, *Welfare Reform at the Limit: The Futility of "Ending Welfare as We Know It,"* 30 Harv. C.R.-C.L. L. Rev. 339, 340-41 (1995) (noting ideological similarities in the "competing" welfare proposals contained in the Republicans' Personal Responsibility Act and President Clinton's Work and Responsibility Act). See generally Martha A. Fineman, *The Neutered Mother, The Sexual Family and Other Twentieth Century Tragedies* 114-18 (Routledge, 1995) (indicating that the imagery surrounding welfare includes moral and normative judgments founded upon stereotypical perceptions of females).

61. See notes 336-54 and accompanying text. See generally Part VI. See also Fineman, *The Neutered Mother* at 118-23 (cited in note 60); Barbara Stark, *Divorce Law, Feminism, and Psychoanalysis: In Dreams Begin Responsibilities*, 38 U.C.L.A. L. Rev. 1483, 1520-26 (1991) (discussing post-divorce consequences of custody arrangements).

62. It is only recently that social science has begun to understand both the extent to which individuals actively construct, rather than passively receive, their sexual identities as well as the extent to which this process of self-construction is embedded in a pre-given context, which may or may not circulate competing narratives of sexual identity. See, for example, Henrietta Moore, *The Problem of Explaining Violence in the Social Sciences*, in Harvey and Gow, eds., *Sex and Violence* at 142 (cited in note 14). According to Moore,

[a]nthropology . . . has begun to move away from a simplistic model of a single gender system into which individuals must be socialized, towards a more complex understanding of the way in which individuals come to take up gendered subject positions through engagement with multiple discourses on gender. This move has enabled researchers to focus on the process of failure, resistance, and change in the acquisition of gender identity as well as instances of compliance, acceptance and investment.

The popular representation of women's feminine identity as mothers and as sexual beings significantly reinforces the ways women are controlled and subordinated. Just as the racialized images of women's sexual desire reinforce racial hierarchy and excuse male sexual dominance,<sup>63</sup> images of female sexuality also rationalize the disciplinary regimens imposed upon women workers in the Third World.<sup>64</sup> These images also incite the self-disciplinary regimens through which First World women become "fashion slaves,"<sup>65</sup> all at the expense of genuine sexual autonomy. In these discursive regimes, being a woman requires Third World women to produce goods for First World capitalists under constant surveillance, through which labor discipline is enforced for the sake of sexual morality. Meanwhile, First World women (of all races) are encouraged to invest large sums of money to enact a sexual identity that requires them to sacrifice the economic and educational aspirations that could secure their autonomy or reduce their dependence on men.<sup>66</sup>

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Id.

63. See Dowd Hall, *The Mind that Burns in Each Body*, in Snitow, Stansell, and Thompson, eds., *Powers of Desire* at 328 (cited in note 8); Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 154 (cited in note 9); JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* (cited in note 9).

64. Thus, Chandra Mohanty writes about Third World women working in multinational factories. These women live in otherwise "traditional" societies, where factory work makes them vulnerable to categorization as "loose," "immoral," or "unsupervised." In these factories, "[d]iscipline was exercised not only through work relations but also through surveillance and the cooperation of village elders in managing the maidens and their morality. Assailed by public doubts over their virtue, village-based factory women internalized these disparate disciplinary schemes, engaging in self- and other-monitoring on the shopfloor, in *kampung* society and within the wider society." Chandra Mohanty, *Cartographies of Struggle*, in Mohanty, Russo, and Torres, eds., *Third World Women* at 29-30 (cited in note 2) (quoting Aihwa Ong, *Spirits of Resistance and Capitalist Discipline: Factory Women in Malaysia* 220 (S.U.N.Y., 1987)). Put differently, these women accept this disciplinary surveillance and impose it on each other in order to assuage *their own* doubts about their own sexual morality, which are driven by their internalization of traditional constructions of morality.

65. See Sandra Lee Bartky, *Foucault, Femininity, and the Modernization of Patriarchal Power*, in Diamond and Quinby, eds., *Feminism & Foucault* at 61, 64 (cited in note 49) (examining the *self-disciplinary* practices through which women "produce a body which in gesture and appearance is recognizably feminine"). Bartky writes: "The woman who checks her makeup half a dozen times a day to see if her foundation has caked or her mascara has run, who worries that the wind or the rain may spoil her hairdo, who looks frequently to see if her stockings have bagged at the ankle or who, feeling fat, monitors everything she eats, has become, just as surely as the inmate of the Panopticon, a self-policing subject, a self-committed to a relentless self-surveillance. This self-surveillance is a form of obedience to patriarchy." Id. at 81.

66. Joseph and Lewis make the point in the following manner:

For there to be mass consumption, the corporate interests which control and own the means of production need not only to make their products known, but to create needs which seduce us into buying things as if they are essential. . . . Yet, as the ads direct our vision toward objects to buy, they also, in the images they use, enmesh us in a whole system of power distribution, suggesting desirable patterns of dominance and oppression

Focusing feminist legal struggles on transforming the images of sexuality in popular culture is also important because sexuality and sexual autonomy are important elements of human fulfillment.<sup>67</sup> Just as culturally dominant images of female and male sexuality organize relations of racial hierarchy and economic exploitation, these relations also construct a reality of subordination that makes heterosexual intimacy an elusive,<sup>68</sup> and perhaps unimaginable dream for many women.<sup>69</sup>

Thus, while the effort to disseminate alternative narratives of sexual identity would inevitably generate extensive interventions in the production of popular culture,<sup>70</sup> these interventions are a crucial component in the struggle against rape and other forms of sexual coercion. Rape certainly feeds on women's socially constructed vulnerability, but it also draws momentum from the heterosexual animosity created by the interpersonal dynamics through which individuals con-

which are most immediately and significantly present in the gender roles that the advertisements blatantly and subtly suggest.

Joseph and Lewis, *Common Differences* at 167 (cited in note 2).

67. In psychoanalytic theory, sexuality is opposed both to the death wish (Thanatos) and to aggression. Both the death wish and aggression can be understood as the suppression/repression of Eros. See Benjamin, *The Bonds of Love* at 66-67 (cited in note 10); Qualls-Corbett, *The Sacred Prostitute* at 11-19 (cited in note 12).

68. See Joseph and Lewis, *Common Differences* at 215 (cited in note 2).

[M]any Black women were fearful of losing their man if they did not please him sexually, so they did not disclose dissatisfaction. Black women understand that the Black male has had little opportunity for economic advancement. They have therefore provided ego gratification to the male in the area of sexual relations. In attempting not to further damage the male ego, women sacrificed their feelings. In the long run, this created more problems for both partners.

Id. This quote would, however, be completely out of context without noting the very next sentences: "What must not be overlooked . . . is the fact that Black women as well as Black men truly enjoy sex and view orgasm as the ultimate in pleasure. This is a positive factor and should be used as a positive reinforcer for relationships." Id. See note 262 and accompanying text.

69. Compare Joseph and Lewis, *Common Differences* at 260-61 (cited in note 2):

The feminist struggle is committed to understanding the history and processes of male dominance and women's oppression—so, until that dominance and oppression end, the relishing of "free" sexuality with men (given that feminist understanding) is highly problematic. As one heterosexual feminist wrote: "I have noticed that when I feel most militantly feminist I am hardly at all interested in sex."

Id.

70. These struggles are made all the more problematic because producing the images of pornographic masculinity and commodified femininity is a capitalist "growth industry." Boris Frankel, *On the State of the State: Marxist Theories of the State After Leninism*, in Anthony Giddens and David Held, eds., *Classes, Power And Conflict* 257, 260 n.5 (U. Calif., 1982) ("[T]he media is no mere ideological apparatus, but rather a massive billion dollar capitalist production unit"). The struggle for control over the production of popular culture is, therefore, as much a struggle against the social and political forces that are committed to the increasing commodification of social reality as a struggle against inherited ideologies of race and sexual identity.



stitute themselves and their relationships in conformity with the narratives of commodified femininity and pornographic masculinity that currently dominate white, American popular culture.<sup>71</sup>

Both women and men spend enormous energy and resources trying to act out the culturally dominant scripts of masculinity and femininity. Women give up jobs, stay in bad marriages, accept disproportionate responsibility for childcare and domestic work, fake orgasms, and generally defer to male selfishness, all of which makes them more vulnerable to assaults upon their sexual autonomy. Men overwork, ignore their children, consume pornography, commit adultery, abuse their wives and children, and also fake orgasms.<sup>72</sup>

The contradictions between our experiences of sexual intimacy (or lack of intimacy) and the images of sexuality in culturally dominant narratives, in turn, illustrate the double binds that commodified femininity and pornographic masculinity create for individual women and men. If we try to enact these forms of sexual identity and fail, then we bear the psychological burden of not being "real" women and men. If we succeed to any degree, we thereby inscribe our lives in a network of self-disciplinary practices that strip women of our autonomy and men of their spiritual vitality and emotional en-

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71. See generally note 20. For an account of "commodified femininity," see Parts III.A. and III.C. For an account of "pornographic masculinity," see Part V.A. When individual men and women expend energy and resources to enact these sexual identities, they are no more liberated than the Third World women in multinational factories who are subjected to disciplinary restrictions enforced by constant surveillance. As Sandra Lee Bartky's essay illustrates, the First World consumer is also subject to power that restricts her freedom and self-affirmation. This disciplinary power is "dispersed and anonymous; there are no individuals formally empowered to wield it; it is, as we have seen, invested in everyone and in no one in particular. . . . For all that, its invasion of the body is well-nigh total: the female body enters a machinery of power that explores it, breaks it down and rearranges it." Bartky, *Foucault, Femininity*, in Diamond and Quinby, eds., *Feminism & Foucault* at 80 (cited in note 49) (quoting Michel Foucault, *Discipline and Punish* 138 (Vintage, Alan Sheridan, trans., 1979)). Of course, the fact that power is pervasive does not mean that male and female sexual identity is culturally uncontested. On the contrary, this Article explores alternative narratives of femininity and masculinity, in part, to illustrate that there is no single femininity/masculinity, but a plurality, which individual men and women must negotiate and which creates the opportunity for the exercise of judgment and agency in the process of self-construction. See generally Moore, *Explaining Violence*, in Harvey and Gow, eds., *Sex and Violence* at 138-55 (cited in note 14).

72. See Ventura, *Notes on Three Erections*, in Harding, ed., *Wingspan* at 49 (cited in note 58) ("There is ample evidence in face after face that, as there are women who have never come, so there are men who have often ejaculated but never come. And they likely don't know it. . . . These men live in a terrifying and baffling sexual numbness in which they try the right moves and say the right things but every climax is, literally, an anticlimax. . . . Men can't fake the ejaculation of sperm, of course, but we can fake muscle spasms, hip jerks, and moans as well as any woman can").

gagement—all in the service of what John Kavanaugh would call the Commodity Form.<sup>73</sup>

The risk of linking rape to the internalization of impoverished cultural narratives of sexual identity is that it seems to minimize how differential access to economic resources and social status increases women's vulnerability to rape, as well as men's desire to rape. Nevertheless, these narratives are the main resources through which individuals interpret their interactions. If the goal is to eliminate rape, then part of the struggle is to change the way men and women think about themselves and each other. This is true precisely because the way we think has a significant impact on what we are likely to accomplish or refuse to accept.<sup>74</sup> Cultural narratives of sexual identity are also important targets for reasons already suggested: they are pervasive in the discourses through which public policy is formulated and the institutions where legal agents apply the laws that make women more or less vulnerable to rape, harassment, and other assaults on our sexual autonomy.

In the following Parts of this Article, I begin to articulate alternative images of femininity and masculinity by drawing on the narratives of sexual identity and interpersonal relation found in

73. The preeminent values of the Commodity Form are producing, marketing, and consuming. These values are the ethical lens through which we are conditioned to see our worth and importance. John Kavanaugh makes the point well:

Friendship, intimacy, love, pride, happiness and joy are actually the *objects* we buy and consume. . . . And since none of these deepest human hopes can be fulfilled in any product, the mere consumption of them is never enough; "more" of the product, or a "new improved" product, is the only relief offered to our human longings.

John F. Kavanaugh, *Following Christ in a Consumer Society (Still)* 34 (Orbis, 1991). Kavanaugh further observes:

With human sexuality objectified, voyeurized, and technologized, there is little place for the full relationship of one human being to another. Sexuality as an expression of the self, as a *saying* of the self, as an embodiment of interiority, is lost because the self is lost in the dictatorship of commodity consciousness, in the world perceived through the filters of the Commodity Form.

Id. at 51-52.

74. Indeed, a fundamental part of my argument is that the way women exercise agency is influenced as much by the narratives of sexual, racial, and class identities that we internalize—that give us our sense of our "proper place"—as it is by the practices and relations through which power is deployed against us. Women, of course, confront deployments of power that suppress our self-determination (violently, sometimes even fatally), but that power, though pervasive, is not all-encompassing, and some women have more resources for resistance than others. Whether we will find the gaps in power that create the opportunity for autonomy depends on how hard we keep looking for them, which is in turn influenced by the degree to which we internalize narratives of identity that encourage effective agency. Whether we will allow our struggles for self-determination to be derailed by images of feminine identity (which suggest we are lesser women precisely because we struggle) in turn depends, not insignificantly, on the images we are offered.

cross-cultural studies of Black and Latin culture and embedded in the Archetypal Images that various Jungian analysts have sought to disseminate.<sup>75</sup> These sources enable a critical re-reading of the ways that relations of power and powerlessness are represented in the dominant cultural images of pornographic masculinity and commodified femininity. Read as alternative narratives of sexual identity and interpersonal relation, the Jungian images of the Archetypal Self offer untapped resources that can further feminist struggles against the continued deployment, enactment, and enforcement of misogynistic heterosexuality.

### III. IMAGES OF WOMEN: THE POLITICAL PATHOLOGIES OF ENACTING A FEMININE IDENTITY

Feminists have long recognized that the dominant images of women represent us as mother, virgin, or whore.<sup>76</sup> Indeed, many feminists have linked violence against women to the ways in which these images circulate in cultural narratives and the psychic structures of individual men and women. Some feminists argue that the male impulse to dominate women stems from the lost security of the mother.<sup>77</sup> Others argue that the sexual exploitation of women is organized around the virgin/whore dichotomy. This dichotomy suggests that men act properly as long as they target the whore and respect the virgin.<sup>78</sup> Rather than focus on the differences between these im-

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75. See generally Qualls-Corbett, *The Sacred Prostitute* (cited in note 12); Moore and Gillette, *King, Warrior, Magician, Lover* (cited in note 19).

76. While the exact meaning and particular expressions of these images reflect cross-cultural and historical specificities, these three images of woman are pervasive as a paradigm of female gendered identities. Some of their modes of appearance in Latin cultural imagery are illustrated in Erlinda Gonzales-Berry, *Unveiling Athena: Women in the Chicano Novel*, in Alarcón, et al., eds., *Chicana Critical Issues* at 33-44 (cited in note 2), and Norma Alarcón, Ana Castillo, and Cherrie Moraga, eds., *The Sexuality of Latinas* 147 (Third Woman Press, 1993). For an account of the ways these images are applied to Black women, see Dorothy E. Roberts, *Racism and Patriarchy in the Meaning of Motherhood*, 1 *Am. U. J. Gender & L.* 1, 11-12 (discussing the images of the sexually promiscuous Jezebel and the nurturing and subservient Mammy).

77. Indeed, Dorothy Dinnerstein has argued that men will not stop trying to dominate women until they are reared by men. Dorothy Dinnerstein, *The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise* 54 (Harper & Row, 1976). See also Nancy Chodorow, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* 106-07 (U. Cal., 1976); Cornell, 100 *Yale L. J.* at 2269 (cited in note 4) (discussing a Lacanian perspective on the intersection of infant individuation and gender formation, Cornell writes that "the primordial moment of separation is experienced by the infant both as a loss of unity and the gaining of an identity").

78. Women of color and poor women (of any race) may be particularly vulnerable to sexual exploitation to the extent their color and their class automatically make them whores. See, for

ages, it is important to note that their common characteristic is a complete failure to convey any sense of the passion that sustains an intimate sexual relationship between persons who are mutually admired and desired. The mother and the virgin are completely asexual,<sup>79</sup> while the whore is an appropriate target for sexual exploitation and the wife for sexual appropriation.<sup>80</sup>

In this Part, I explore the images of mother that circulate in the psychoanalytic discourses of both white feminists and the predominantly white, upper-middle-class men's movement. I then investigate how these images are used to explain the interpersonal practices (like rape) and the cultural narratives of sexual identity (like pornographic masculinity and commodified femininity) that repress women's sexual autonomy, and compare them to the images of mother that circulate in Black and Latin culture.<sup>81</sup> There are two points to this comparison.

First, the images of mother in Black and Latin culture are not only very different from the images of mother in white American culture. They are also very different from the images of motherhood that circulate in white discourses about Black and Latin mothers.<sup>82</sup> In

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example, Wing and Merchán, 25 Colum. Hum. Rts. L. Rev. at 25-29 (cited in note 57) (discussing the impact slavery has had upon American society's view of the rape of Black Americans).

79. Although some feminists have rejected the image of asexual motherhood, a pervasive theme in white feminist discourse is the incompatibility of motherhood and sexuality. See, for example, Nancy Chodorow and Susan Contratto's discussion of Shulamith Firestone's *The Dialectic of Sex* and Nancy Friday's *My Mother/My Self*. Nancy Chodorow and Susan Contratto, *The Fantasy of the Perfect Mother*, in Barrie Thorne and Marilyn Yalum, eds., *Rethinking the Family: Some Feminist Questions* 54-71 (Longman, 1982). More importantly, none of the feminist images that identify motherhood with sexuality focus unambiguously on the heterosexual sexuality of a mother's continued desire for an adult male partner. The mother's sexuality is recognized only in affirming the sexual pleasure in mothering and the connection between the physical pleasures of mother/infant relating and lesbian sexuality. Id. Contrast the images of motherhood and female sexual desire in Latin Culture, discussed in Parts III.B. and III.C.

80. The image of the "wife" is somewhat problematic in this tri-model. In some instances, the "wife" merges into the asexual image of the wife/mother and, at other times, into the image of the whore, a woman who is available for sexual appropriation. In Latin culture, "the wife" is the "*mujer principal*" with all that implies. See Part III.B.

81. In referring to "Latin culture," I refer interchangeably to materials that focus, in some instances, on Bolivian practices and, in others, on Chicano, Cuban, Peruvian, and Puerto Rican practices. I do this not because I am unaware of the significant diversity in these different manifestations of Latin culture, but precisely because the elements that make us similar to each other make us different from white Americans.

82. See, for example, Roberts, 1 Am. U. J. Gender & L. at 4 (cited in note 76). Professor Roberts powerfully captures some of the ways white racism distorts the meaning of motherhood for racially subordinated women, even as patriarchal narratives distort the *meaning* of the ways women experience and attempt to meet the burdens of motherhood in a racist and sexist society. For example, Roberts notes, "[a]n unwed Black teenager, for example, may experience mother-

many of these accounts, the Black and Latin mother's culturally recognized power to direct her children and run her home is translated through the lens of white racism and patriarchal misogyny into the image of the castrating matriarch,<sup>83</sup> thereby reinscribing the delusion that male power depends on female powerlessness.<sup>84</sup> By contrast, Black and Latin culture offer images of motherhood that challenge the idea that men are men only if they control and subordinate women. The interpersonal practices found in the matrifocal extended family of

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hood as a rare source of self-affirmation, while society deems her motherhood to be illegitimate and deviant. She may experience caring for her child as a determined struggle against harsh circumstances, while society sees in her mothering the pathological perpetuation of poverty." Id.

83. See, for example, Nancy Fraser and Linda Gordon, *A Genealogy of Dependency: Tracing a Keyword of the U.S. Welfare State*, 19 *Signs* 309, 327 (1994); Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 154 (cited in note 9). This devaluation of matrifocal extended families is based upon the same ethnocentrism that Stanley Kurtz exposed through his critique of white, Western, psycho-analytic models and the practice of applying these models to other cultures. See, for example, Stanley N. Kurtz, *All the Mothers are One: Hindu India and the Cultural Reshaping of Psychoanalysis* (Colum. U., 1992). Nevertheless, this racist devaluation has led some women of color to repudiate the images of maternal strength and female power. See, for example, Michele Wallace, *Black Macho & The Myth of Superwoman* 107 (Dial, 1990). Wallace describes the stereotypical black woman:

[A] woman of inordinate strength, with an ability for tolerating an unusual amount of misery and heavy distasteful work. This woman does not have the fears, weaknesses, and insecurities as other women, but believes herself to be and is, in fact, stronger emotionally than most men. Less of a woman in that she is less "feminine" and helpless, she is really *more* of a woman in that she is the embodiment of Mother Earth, the quintessential mother with infinite sexual, life-giving, and nurturing reserves.

Id. While this image of the Black woman is certainly stereotypical, it is also a caricature of the emotional and personal strength that many women of color raised in matrifocal kinship structures aspire to enact. See, for example, Lillian Comas-Diaz, *Mainland Puerto Rican Women: A Sociocultural Approach*, 16 *J. Community Psych.* 21, 23-24 (1988) (positioning Latin motherhood between the competing discourses of "*marianismo*," the aspirational emulation of the Virgin Mary, which encourages mothers to enact positions of endurance and self-sacrifice, and the discourses of "*hembrismo*," which call them to enact positions of strength, survival, and active engagement in community struggles). See also Patricia Hill Collins, *Black Feminist Thought: Knowledge and Consciousness & The Politics of Empowerment* 115-37 (Unwin Hyman, 1991) (describing the practices of community mothering and the experience of maternal power in Black culture).

I am not so ready to abandon the images of maternal power, nor the practices and kinship structures that sustain them. I prefer instead to re-code and disseminate these narratives as more life-affirming and empowering images of feminine sexual identity than the images embedded in the narratives of white motherhood. I do this particularly given the unique survival resources matrifocal kinship arrangements have offered many Latin women and might offer the increasing number of white single mothers. See Part III.B.

84. Clearly, the devaluation of female power is a constitutive first principle in the logic of patriarchy: "The devaluation of woman represents a necessary stage in the history of humanity, for it is not upon her positive value but upon man's weakness that her prestige is founded. In woman are incarnated the disturbing mysteries of nature, and man escapes her hold when he frees himself from nature." Simone de Beauvoir, *The Second Sex* 75 (Knopf, 1953). By this logic, it is precisely through man's dual escape from and subjugation of nature (i.e., women), that he purportedly gains freedom and mastery.

Black and Latin culture offer women a wide variety of psycho-social resources that are simply ignored in the various discourses that portray these families as failed versions of the white, male-headed nuclear family.

The second reason for this comparison is to provide an initial point of reference for interrogating the family model underlying the psychoanalytic theories deployed in the discourses of white feminism and the white men's movement. White feminists have articulated a powerful theoretical framework for understanding the interpersonal practices and cultural narratives through which men repress female sexual autonomy as a reaction against the psychological impact of being "mothered" as infants exclusively by women.<sup>85</sup>

The theory is that men want control of women's sexuality, to deny our subjectivity, and to repress our autonomy either because they want to recreate "the oneness" the infant experiences with his mother, or because they want to resist "the oneness" that threatens to subsume and infantilize them. Men can escape that sense of oneness—the loss of boundaries that sexual intimacy can trigger—only by making the male experience of female sexuality into a subject/object relation. Mediated through the subject/object framework, a man can re-experience oneness through sexual intimacy without experiencing the fear and pain triggered by separation: the woman is his; her will is subject to his; he will not lose her because she must do what he wants, not what she wants. At the same time, coding the relation through the subject/object framework allows the man to remain a distinct autonomous subject to her object. He must maintain his individuality and autonomy. Consequently, sexual intimacy depends on her loss of individuality and autonomy. She must give herself to him, but he cannot give himself to her. Thus she is part of him, but he is not part of her. The origin of this dynamic is

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85. See Dinnerstein, *The Mermaid and the Minotaur* at 54 (cited in note 77); Chodorow, *The Reproduction of Mothering* at 180-90 (cited in note 77). Chodorow summarizes her theory like this:

Masculinity becomes an issue as a direct result of a boy's experience of himself in his family—as a result of his being parented by a woman. For children of both genders, mothers represent regression and lack of autonomy. A boy associates these issues with his gender identification as well. Dependence on his mother, attachment to her, and identification with her represent that which is not masculine; a boy must reject dependence and deny attachment and identification. Masculine gender role training becomes much more rigid than feminine. A boy represses those qualities he takes to be feminine inside himself, and rejects and devalues women and whatever he considers to be feminine in the social world.

Id. at 181.

then traced back to the male child's experience of individuation from the mother/infant bond.<sup>86</sup>

While white feminists have used these psychoanalytic narratives of sexual dominance, along with their images of mother and mothering, to encourage social changes that promote their vision of increased female autonomy,<sup>87</sup> antifeminists and racists have used these same psychoanalytic narratives to attack women's autonomy by deploying negative images of maternal power. These attacks are calculated to pressure women into abdicating any significant power as mothers and to abandon any claimed right to direct our own lives or our children's.<sup>88</sup> At the same time, these images of mother are used to exonerate male abuse and sexual violence, blaming the practices of pornographic masculinity on maternal dominance.<sup>89</sup>

Comparing the images of mother and maternal power that circulate in Black and Latin culture is one way to combat both dynamics by revealing the class, racial, and cultural contingencies of the family model underlying the misogynist anti-mother discourses of

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86. Dinnerstein, *The Mermaid and the Minotaur* at 59-75 (cited in note 77); Benjamin, *The Bonds of Love* at 11-50 (cited in note 10).

87. For example, feminists have fought vigorously for changes in employment and parenting practices that can increase paternal involvement with, and facilitate maternal separation from, their infant-children. For a compelling criticism of this strategy, see Fineman, *The Neutered Mother* at 33-66 (cited in note 60). For an argument that expressly invokes Chodorow's psychoanalytic theories in support of child custody arrangements that promote paternal custody, see Stark, 38 U.C.L.A. L. Rev. at 1508-14, 1520-26 (cited in note 61) (discussed in Part VI).

88. For evidence of the extent and form of these attacks, see Fineman, *The Neutered Mother* at 101-42 (cited in note 60). In this book, Fineman proposes alternative ways to conceptualize relationships of dependence. *Id.* at 161-64, 231-36. Fineman argues that caregiving relationships (such as mother/child) rather than sexual relationships (such as husband/wife) should be the center of the conceptual frameworks we use to determine legal rights and construct legal institutions. *Id.* at 233. The idea is that if mothers are weak and dependent, it is the network of social/political and economic systems that make them so. Fineman's proposals presuppose that strong and independent mothers are a good thing, a social objective well worth the radical social, political, and economic reconstruction it would entail. *Id.* at 232. I fully agree. Indeed, from this perspective, my goal is to point out the triple binds of the "castrated mother" and explore the significance of the fact that white culture (unlike Black and Latin culture) has no culturally prevalent positive images of strong mothers: maternal power is something individual women are routinely encouraged (by cultural narratives and public policy) to abdicate to a male head of family. The lack of positive images of maternal power only adds to the uphill battle Professor Fineman's proposals will surely confront.

89. See Part III.A. The use of these images of mother and mothering by white feminists and their antifeminist counterparts alike may be particularly threatening to many Latin women. Unlike white feminists, Latin women may often see no benefit to increased male participation in the home and parenting. This may be because it is extremely unlikely that Latin men will ever "do diapers" in any meaningfully helpful way, so long as images of Latin masculinity are so pervasive in the subculture, see notes 139-50 and accompanying text. Or it may be because these women do not have the same kind of class/race based opportunities that would make freedom from home obligations worth the lost authority and investment the performance of these obligations confer.

white feminism and the white men's movement.<sup>90</sup> By creating a rhetorical framework that attacks mothers as much for their power as for their powerlessness, these anti-mother discourses reinforce the anti-feminist, racist forces that attack public policies designed to help women as mothers. These attacks emphasize the fact that these policies subsidize maternal independence from a dominant male figure who is needed to counterbalance the Overwhelmingly Feminine environment created by maternal power and to provide the stability and security which most women cannot provide (except at public expense).<sup>91</sup>

Part VI will show how this rhetorical structure is expressed in two legal contexts that bear directly on the way motherhood is experienced by many women: welfare eligibility rules and child custody determinations after divorce. These policies, in turn, construct a social reality in which motherhood often means poverty, economic hardship, governmental intervention, and dependence upon individual men. All of this increases women's sexual vulnerability and completely ignores the empowering aspects of matrifocal family arrangements, thereby obstructing their cultural articulation and contributing to their further demise.<sup>92</sup>

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90. For example, women raised in families where their mother had no life outside the home, and their power in the home was subordinate to an otherwise absent husband, may feel liberated by images of motherhood that promote increased paternal involvement in parenting, particularly if they aspire to any activity that would be facilitated by shifting domestic responsibilities to a father figure (for example, a professional career). Women raised in families where their mothers *did* have a life outside the home or significant authority over matters in the home may view these images of motherhood differently. Race, class, and culture will make a difference to the family structures women experience—the former being typical primarily of white suburban motherhood.

91. Women of color are repeatedly assaulted through the double binds of this rhetorical structure. For example, Twila Perry notes a similar rhetorical structure operating in arguments made by white liberal feminists who advocate the placement of Black children in white households on the theory that Black mothers are often too weak (economically disadvantaged) or too strong (emasculating matriarchs) to warrant making intraracial placements a policy priority. Twila Perry, *The Transracial Adoption Controversy: An Analysis of Discourse and Subordination*, 21 N.Y.U. Rev. L. & Soc. Change 33, 95 n.273 (1994) (quoting Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right to Privacy*, 104 Harv. L. Rev. 1419, 1437 (1991)). Similarly, Nancy Fraser and Linda Gordon have noted the double bind created by the "culture of poverty" attacks on Black "matriarchal" families. In this anti-welfare discourse, public assistance was attacked through the representations of Black AFDC claimants as "pathologically independent with respect to men and pathologically dependent with respect to government." Fraser and Gordon, 19 Signs at 327 (cited in note 83).

92. In a fascinating reshaping of psychoanalytic theory to account for cultural differences in the child rearing practices of Hindu society, Stanley Kurtz offers some conceptual resources (most specifically a re-focus on "the group") for understanding and re-valuing matrifocality in Black and Latin families and combatting the misogyny in psychoanalytic discourses of the



In Part II.B, I turn to the virgin/whore dichotomy in order to explore its relationship to the practice and ideology of rape, particularly in Latin culture. I then re-read the psycho-social meaning of this dichotomy through the missing image that Jungian psychoanalyst Nancy Qualls-Corbett has called the "sacred prostitute." I use this image to examine the cultural implications of the fact that feminine sexual identity in its culturally prevalent forms is one-dimensional and devoid of any spiritual or sexual depth. The result is a commodified femininity that feeds the discourses of female provocation and responsibility for male sexual assault.<sup>93</sup>

In each instance, my goal is to circulate alternative narratives of feminine identity. These narratives of powerful mothers and sacred prostitutes should be widely disseminated in antiracist and feminist struggles aimed at helping individuals construct more empowered sexual identities. These alternative narratives may also help us to reform public policies and transform the stereotypes through which legal agents define substantive law<sup>94</sup> and enforce its prescriptions in individual cases.<sup>95</sup>

"Overwhelming Feminine." See generally Kurtz, *All the Mothers are One* (cited in note 83) (discussed in notes 152-63 and accompanying text).

93. The dominant white culture's lack of positive and respectful images of female sexual desire, in general, and maternal sexual desire, in particular, is profoundly disempowering for straight women of color. AFDC recipients have been routinely penalized for their formation of sexual relationships, see Law, 131 U. Pa. L. Rev. at 1258-59, 1325 (cited in note 60); Fraser and Gordon, 19 *Signs* at 330 (cited in note 83), even as attacks on such public assistance programs are conducted largely through the strategic deployment of images of maternal sexuality as socio-pathological, see Roberts, 5 *Colum. J. Gender & L.* at 146 (cited in note 60). Within the discourses of asexual motherhood, straight mothers are vulnerable to attack either because their sexual desire for men is deemed inconsistent with their status as mothers or because their motherhood is inconsistent with their sexuality as women. Moreover, the cultural paradigm that splits the images of mother and whore does not protect such women from being *both* mothers *and* whores, partly because of white racism. See generally bell hooks, *Ain't I a Woman: Black Women and Feminism* (South End, 1981). This image of women as both mothers and whores is also partly a result of the practices and discourses through which men have expressed their resentment towards female sexual autonomy. See generally Ann Ferguson, *On Conceiving Motherhood and Sexuality*, in Joyce Trebilcot, ed., *Mothering: Essays in Feminist Theory* 174 (Rowman & Allenheld, 1983) (explaining that the status of motherhood has declined in part because "[white w]omen's increasing economic independence from men and increased sexual permissiveness . . . has weakened men's ability to impose sexual double standards on women").

94. See Part VI (discussing the images of sexual identity and race deployed in the wars on welfare and custody battles).

95. See generally notes 27-40 and accompanying text (discussing the rape processing patterns produced by the discretionary decisions individual legal agents routinely make based on culturally dominant narratives of race and sexuality). More specifically, consider how Patricia Bowman's credibility in the William Kennedy Smith rape trial was diminished, rather than bolstered, by her status as a mother. As one media commentator said of her: "She didn't really explain why, as so devoted a mom, she was out on the town until almost dawn and didn't

A. *Images of the White Mother: Powerless and Overpowering*

In the discourses of white feminism and of the white men's movement, the white mother frequently appears as the passive, selfless, subordinate mother, a well-meaning woman who is nevertheless too weak to give her children the direction and security they need to develop self-confident and other-affirming identities. Alternatively, the white mother appears as the overbearing, invasive, devouring mother, who inflicts the primordial wound of humiliation on her boy-hero and her girl-princess.<sup>96</sup> White women write, for example, of the "fear of becoming [their] mothers," of the way "the tradition of the mothers . . . produces the consciously articulated struggle of the daughters, albeit in conflict, anger and pain,"<sup>97</sup> of their "rage at the sex-role socialization, sexual repression and loss of self-boundaries that their connection with their mothers has produced in them,"<sup>98</sup> of the daughter's "resistance to love and tenderness, and her horror at sexuality," which emerge from her earliest realizations that "the inevitable path via love and sex to motherhood involves loss of pride [and] loss of control."<sup>99</sup> According to Gloria Joseph and Jill Lewis:

There is a first-level anger at the mother for seemingly not having struggled enough, not having demanded and refused more. This anger is painfully linked, in the absence of consciously articulated messages about oppression of

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call home once to check on the kid." Coombs, 2 Tex. J. Women & L. at 300 (cited in note 43) (quoting columnist Mike Royko).

96. See generally Chodorow and Contratto, *The Fantasy of the Perfect Mother*, in Thorne and Yalom, eds., *Rethinking the Family* at 54 (cited in note 79) (noting a recurrent pattern in feminist analysis blaming mothers and motherhood for any number of social, psychological, and political ills). It is important to emphasize that my point is not so much to attribute these different images of mother to all white/Black/Latin sons and daughters or to suggest that white mothers are in fact "weak" or "invasive," or that Latin/Black mothers are in fact "strong" and "affirming." As Martha Mahoney has pointed out, battered white women are often represented as "pathologically weak" when they may in fact have made heroic efforts to escape a bad situation—only to be overwhelmed by power. Mahoney, 90 Mich. L. Rev. at 4-18, 61-63 (cited in note 13). Conversely, Latin mothers are often represented as "long suffering" and oppressed. See David T. Abalos, *Latinos in the United States: The Sacred and the Political* 66-67 (U. Notre Dame, 1986); Comas-Diaz, 16 J. Community Psych. at 23 (cited in note 83); Alarcón, et al., eds., *Chicana Critical Issues* at 173 (cited in note 2). Instead, my purpose is to examine the scripts of motherhood that are deployed in the discourses of different social groups. The fact that white culture has no *positive* images of strong mothers (maternal strength is coded as "overwhelming" and "emasculating") has psychoanalytic/social significance for the formation of the subject/subject relations and the implementation of public policies necessary to secure female sexual autonomy. Nevertheless, it is interesting to note who draws upon what images and for what purposes.

97. Joseph and Lewis, *Common Differences* at 143 (cited in note 2).

98. *Id.* at 139.

99. *Id.* (quoting Agnes Smedley, *Daughter of Earth* 139 (Feminist Press, 1987)).

women, with the daughter's realization that her imagining of her mother as someone who was limitless clashes with a reality of someone who seems to have "chosen" limits.<sup>100</sup>

If some white women feel betrayed by their mothers' weakness, white men (at least those who speak through the men's movement) hate them for their power.<sup>101</sup> Douglas Gillette, for example, explains male fear of intimacy as an artifact of the coping mechanisms through which men try to protect themselves from what he calls "The Overwhelming Feminine."<sup>102</sup> In his account, male violence and emotional withdrawal are simply variations of the different strategies men "adopted as boys for coping with what feels to them like the invasive and overwhelming powerful feminine."<sup>103</sup> These men were raised in a hostile feminine environment, in which their mothers acted out their "own fears of mistreatment or abandonment by the masculine, and even more primordially, by [their] own mother," by attacking their sons.<sup>104</sup> These attacks might take different forms, ranging from "subtle attempts to undermine her son's masculine pride and exuberance to rageful displays of jealousy when he begins to date."<sup>105</sup>

The white mother's power appears, in this account, as a dangerous threat to her son's masculinity and his prospects for developing positive heterosexual relations. Gillette continues:

In their present relationships, many men often find their inadequately drawn boundaries overrun by their women. Their boundaries are inadequately drawn because their mothers did, in fact, invade them and seek to merge with them

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100. Id. at 141.

101. The men's movement, like the feminist mother-bashers, has a wealth of material to draw on. See Chodorow and Contratto, *The Fantasy of the Perfect Mother*, in Thorne and Yalom, eds., *Rethinking the Family* at 54-75 (cited in note 79). The authors note that "[b]laming the mother[,] . . . a major theme in feminist writings, has a long social history." Id. at 60-61. This history includes "19th century cultural ideology about motherhood" and "post-Freudian psychological theory," as well as "David Levy's *Maternal Overprotection*, the Momism of Philip Wylie and Erik Erikson, literature on the schizophrenogenic mother, Joseph Rheingold's analysis of maternal aggression as the primary pathogenic influence on the child, Philip Slater's discussion of the oedipally titillating, overwhelming mother, and Christopher Lasch's account of the mother 'impos[ing] her madness on everyone else.'" Id.

102. See Douglas Gillette, *Men and Intimacy*, in Harding, ed., *Wingspan* at 52-59 (cited in note 58).

103. Id. at 55.

104. Id. at 53.

105. Id.

and to submerge the boy's ego and Self, thus rendering the boy's task of constructing legitimate psychological boundaries extremely problematic.<sup>106</sup>

According to Peter Middleton, this emphasis on the mother's power over her young son provides the perspective from which:

Masculinity . . . can be viewed as a defensive construction developed over the early years out of a need to emphasize difference, a separateness from the mother. In the extreme this is manifested by machismo behavior with its emphasis on competitiveness, strength, aggressiveness, contempt for women and emotional shallowness, all serving to keep the male secure in his separate identity.<sup>107</sup>

Middleton recognizes, however, that feminists have been skeptical of the enthusiasm with which the men's movement has embraced Chodorow's theory of identity formation as separation from the mother.<sup>108</sup> Not only does this embrace smell of "the ideological use of psychoanalytic theory to pressurize women back into motherhood, by blaming mothers for creating the psychic structures of masculinity,"<sup>109</sup> it also slides easily into male self-pity and self-exoneration. "[T]his kind of argument can then provide a kind of Achilles heel explanation

106. Gillette does not lay all the blame for male emotional dysfunctions on the white mother. "An additional factor in the generation of boundary issues is that their fathers were not present enough to show their sons how to consolidate their masculine identities or to empower them to exercise the *legitimate* masculine (and human) prerogatives of Self-affirmation and defense of psychological territory and integrity." Id. at 55.

107. Peter Middleton, *The Inward Gaze: Masculinity & Subjectivity in Modern Culture* 128 (Routledge, 1992) (quoting Andrew Metcalf and Martin Humphreys, eds., *The Sexuality of Man* 24 (Plute, 1985)).

108. Id. See generally Chodorow, *The Reproduction of Mothering* (cited in note 77). See also Dinnerstein, *The Mermaid and the Minotaur* at 54 (cited in note 77). According to Benjamin, both Chodorow and Dinnerstein conclude from their analyses of female mothering that: "if both men and women raised children, both would become associated with primary oneness. Presumably, then, the child could not resolve the ambivalence toward the earliest parent by splitting the two parents. This would mean that males would no longer have to break that bond in order to identify with their own sex, and thus they would not have to repudiate and denigrate the maternal. They would retain the value of nurturance and empathy." Benjamin, *The Bonds of Love* at 217 (cited in note 10). Benjamin rejects this claim, arguing that:

The reorganization of parenting in individual families cannot wholly eliminate the effects of binary opposition—though it can mute the splitting that underlies it, weaken the conviction that it is a function of gender, and sequester it in fantasy. The core feature of the gender system—promoting masculinity as separation from and femininity as continuity with the primary bond—is maintained even when mother and father participate equally in that bond. . . . [Thus] it is equally important to grasp the deep structure of gender as a binary opposition which is common to psychic and cultural representations.

Id. at 218.

109. Middleton, *The Inward Gaze* at 128 (cited in note 107).

for the adult man's behavior, in which it seems as if it were the mother to blame somehow for messing up the making of her heroic son."<sup>110</sup>

It may be that men suffer from "terrible isolation and loneliness," and it may be that they find it "difficult to respond to the needs and wants of others . . . because [they] can so easily discount their own emotional needs and wants." Nevertheless many feminists have felt "that the emphasis on emotional expression and development" associated with the men's movement and its most articulate spokesmen, "was sidestepping important issues, and was potentially self-indulgent and self-exonerating."<sup>111</sup> Rather than excusing men's sexual oppression of women, the emotional emptiness and isolation that ensue from the lies men live simply appear as the product of the practices through which men maintain their dominance. Lying, emotional withdrawal, and sexual dominance may be experienced internally as strategic self-preservation, perhaps even from some "Overwhelming Feminine," but they operate externally as mechanisms of control.<sup>112</sup>

When men withdraw emotionally, they constitute themselves as moving targets. There is nothing to engage, therefore there is no one for women to lay any claims on. While women certainly make illegitimate claims upon men, there are many legitimate claims women might make on them: claims for assistance that require self-sacrifice; claims for encouragement and recognition that require a man to relinquish his position at the center of the universe and make room for the woman, and for her projects, dreams, and aspirations; and claims

110. *Id.* at 124.

111. *Id.* at 126 (discussing feminist critiques of the use of emotion in men's movement literature, especially Victor Seidler's work). "Men do suffer, but this suffering cannot justify their treatment of others." *Id.* at 125.

112. My own experience is that lies and withdrawal are the strategies preferred by so-called "feminist men," the ones who consciously disclaim any interest in the prerogatives of male supremacy. These men are in fact much harder to deal with interpersonally than some men who openly claim these prerogatives. The latter can sometimes be confronted and in some contexts educated into loving and respectful mutuality, that is, when they are (though misguided) basically honest with themselves and genuinely care for the women they believe they can and ought to dominate. The former can rarely be confronted because they project their passive-aggressive assaults through the smoke and mirrors of their lies. See generally Gerald Schoenewolf, *Sexual Animosity Between Men and Women* 48-49 (Jason Aronson, 1989). Schoenewolf calls these men "passive narcissists" and explains:

Passive narcissists appear to be submissive to the women they marry, and sometimes they even proclaim themselves to be "new men" or feminists. On an unconscious level, however, they are acting out sexual animosity by withholding their feelings . . . [T]he passive has contempt for women, but he may or may not be conscious of it and will never admit it. He manifests a gentle, intellectual, or spiritual persona: He is a "good boy" . . . He seems to be the perfect man, always deferring to the woman; yet he seldom gives them what they really want—his genuine feelings.

*Id.*

for nurturance and understanding that require a man occasionally even to swallow his pride without losing his dignity or self-assurance.<sup>113</sup>

Lies, violence, and emotional withdrawal mean that some men are never constructively engaged in distinguishing between legitimate and illegitimate claims women make upon them. All claims inconsistent with a man's own objectives and desires are perceived and coded as a threat to his masculinity. In this way, these men constitute themselves as victims of an overpowering, castrating force, even as they thereby abdicate any responsibility to assist, nurture, or respond to the legitimate claims of women.<sup>114</sup> This construction of the claims

113. I want to emphasize that this Article is not a proposal to ground female sexual liberation on the psychological and spiritual actualization of individual men. I focus on the dynamics in interpersonal relations, not so much because I believe "the personal is political" (which I do), but because it is in these interpersonal interactions that the political is personalized. The practices through which we construct our individual lives and relationships are "political" precisely because they are so very "scripted" by the dominant narratives our culture produces. Individuals are, in part, what we try to become. What we try to become may not be *determined* by the dominant cultural narratives that presume to show us what we *ought to be*. But, for better or worse, these narratives do raise the costs of enacting alternative identities or "lifestyles." This is either because they "drown out" other narratives that circulate in subordinate subcultures or because of the way these narratives organize the circulation of power in our interpersonal relations and social institutions. See, for example, JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 97-103 (cited in note 9) (illustrating that power is not something individuals have, but something they exercise from different positions, these positions being constituted in part by institutions and in part by the cultural narratives that other people are enacting); Bartky, *Foucault, Femininity*, in Diamond and Quinby, eds., *Feminism & Foucault* at 61-81 (cited in note 49) (illustrating the relationship between cultural images of commodified femininity and the social practices these images call us to enact).

114. John Stoltenberg provides an analysis in which he calls this posture "the ethic of male sexual identity," where men blame women for frustrating objectives they should never have had in the first place. John Stoltenberg, *Refusing to Be a Man: Essays on Sex and Justice* 19 (Breitenbush, 1989). Stoltenberg calls this "reversal of moral accountability . . . 'the rapist-ethics mindfuck,'" in which men impute "'oppressiveness' to anyone who refuses to give in, ignoring the word 'no,' disregarding completely the reality of anyone who is not fawning and flattering and full of awe for our masculine prerogative." *Id.* at 19, 24. A particularly blatant example of this moral reversal is when a man blames a woman for "making [him]" rape her. Stoltenberg recounts the words of one rape victim:

There he was, a man who had the physical power to lock me up and rape me, without any real threat of societal punishment, telling *me* that *I* was oppressive because I was a woman! Then he started telling me he could understand how men sometimes go out and rape women . . . He looked at me and said, "Don't make me hurt you," as though I was, by not giving in to him, forcing him to rape me. That is how he justified the whole thing. He kept saying that women were forcing him to rape them by not being there when he needed them.

*Id.* at 19. For an innovative and compelling critique of the ways men have attempted to manipulate access to the victim position in order to preserve the prerogatives of sexual dominance, see Martha T. McCluskey, *Fear of Feminism: Media Stories of Feminist Victims and Victims of Feminism on College Campuses*, in Martha A. Fineman and Martha T. McCluskey, eds.,

made upon him allows a man to hide from himself (and anyone who believes his lies) the fundamental selfishness in his relations to the women in his life, a selfishness expressed sexually through dominance or impotence.<sup>115</sup>

From this perspective, lying, withdrawal, and violence are all different faces of the Stoltenberg "mind-fuck,"<sup>116</sup> tactics through which these men appropriate women's sexuality even as they avoid any personal responsibility to respond to women's needs and desires. The image of the Overwhelming Feminine allows them to blame their selfishness on their mothers, if not on their women.<sup>117</sup> In short, the problem with the Overwhelming Feminine theory of male emotional withdrawal, deception, and sexual exploitation is that the reason men cannot renounce these practices may have less to do with their mothers and more to do with their own determination to distort and suppress any interaction that might require them to take risks or make sacrifices for women.

At the same time, these images of mothers as both weak and overwhelming are played against the narratives of "the good mother,"<sup>118</sup> that is, of the white, middle-class mother, the sweet, well-meaning, loving woman who importantly is attached to and dependent upon a male sexual partner (preferably her husband).<sup>119</sup> These narratives of the good (but dependent) mother code the struggle for economic autonomy, independence, and self-realization of any woman

*Feminism, Media and Law* (Oxford U., forthcoming, 1996) (analyzing the rhetorical deployments of the victim position in the debates over university sexual harassment policies).

115. See Parts III.C and V.A.

116. Stoltenberg, *Refusing to Be a Man* at 24 (cited in note 114).

117. See generally Chodorow and Contratto, *The Fantasy of the Perfect Mother*, in Thorne and Yalom, eds., *Rethinking the Family* (cited in note 79).

118. Ironically, but not insignificantly, the white mother who works is made just as vulnerable to attack through the discourse of "maternal deprivation," as the white mother who stays home with her children is vulnerable to the discourse of "maternal omnipotence." As Chodorow and Contratto explain, both narratives are based on an ideology of motherhood produced by infantile fantasies that simultaneously idealize mothers as the source of "all good and evil," even as they blame mothers for their inevitable failures to realize these ideals. *Id.* at 65. These narratives, in turn, are reflected in legal debates over women's rights to have and direct their children. See, for example, Marlee Kline, *Race, Racism and Feminist Legal Theory*, 12 *Harv. Women's L. J.* 115, 128-34 (1989) (discussing Susan Boyd's analysis of the ways images of motherhood have been used to deprive employed women of the right to custody of their children). For an excellent review and criticism of recent assaults on women deployed through the discourse of the "good mother," see Benjamin, *The Bonds Of Love* at 198-218 (cited in note 10) (criticizing the hypocrisy through which the new wave "defenders of the private sphere" attack feminism for encouraging "hyper-individualism" in women even as they defend the individualist ethos for men: "[Women's] role is to produce autonomous individuals (boys), who can balance their public and private lives, not to be such individuals").

119. See Fineman, *The Neutered Mother* at 161-66, 231-36 (cited in note 60) (analyzing this image).

who refuses motherhood or any mother who insists on maintaining "a full life for herself outside the home" as selfish neglect of her children. By contrast, the white, middle-class father is absolved of any similar obligations.<sup>120</sup>

The material impact on women's lives when they acquiesce in this double standard and allow their choices to be driven by the psycho-social pressures of "the good mother" narratives is, at least in the discourses of white feminism, economic subordination, increased dependence, and greater vulnerability to their male partners.<sup>121</sup> The image of "the good mother"—attached to and dependent upon a dominant male figure—also plays into the anti-welfare rhetoric that keeps poor mothers poor and thereby increases their sexual vulnerability to individual men.<sup>122</sup> Cumulatively, these narratives help construct a society in which women's sexual vulnerability is continually reproduced by the interpersonal practices, legal institutions, and public policies through which our sexuality is repeatedly assaulted and suppressed.

### *B. Mothers in Matrifocal Perspective: Powerful and Oppressed*

This Section explores the images of mother in Black and Latin culture. These images reflect common elements that are directly attributable to the fact that, in both cultures, motherhood is experienced as the central element in a matrifocal network of extended familial relations. Drawing on the key elements of Stanley Kurtz's brilliant re-reading of psychoanalytic theory as applied to Hindu child-rearing practices,<sup>123</sup> I argue that matrifocal extended families have more potential for constructing a subject-to-subject heterosexuality than the male-headed nuclear families that are so popular in white,

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120. M. Rivka Polatnick, *Why Men Don't Rear Children*, in Trebilcot, ed., *Mothering at 27* (cited in note 93) (quoting Sandra and Daryl Bem: "No matter how much he loved his children, no one would expect him to sacrifice his career in order to stay home with them on a full-time basis—even if he had an independent source of income. No one would charge him with selfishness or lack of parental feeling if he sought professional care for his children during the day").

121. *Id.* at 28. Polatnick explains that, "[f]or a period, at least, parenthood means that... whatever vocational or professional skills she may possess may become atrophied.... During this period of retirement the woman becomes isolated and almost totally socially, economically and emotionally dependent upon her husband.... She loses her position, cannot keep up with developments in her field, does not build up seniority." *Id.*

122. See Fineman, *The Neutered Mother* at 114-18 (cited in note 60).

123. See generally Kurtz, *All the Mothers are One* (cited in note 83) (discussed in notes 153-63 and accompanying text).



American patriarchy. These images of motherhood—of maternal power and agency—offer more empowering identities for women, even as the daily experience of extended family interdependence provides the building blocks for developing unappropriating sexual relationships. Motherhood does not have to involve the elimination of effective agency, nor is it necessary for sexual intimacy to include the abdication of sexual autonomy. Motherhood is currently experienced this way because of the legal doctrines, public policies, and cultural narratives through which women's maternal identity and sexual autonomy are socially constructed.<sup>124</sup>

In a fascinating study of "matrifocality" in Indonesia, Africa, and Black America, Nancy Tanner uses cross-cultural analysis to criticize the biased understanding of matrifocality in Black American culture.<sup>125</sup> Daniel Patrick Moynihan invoked this biased understanding in a 1965 federal government report entitled *The Negro Family: The Case for National Action*. The report used highly inconclusive census material to posit the "breakdown of the Negro family" and attributed this breakdown, along with low school performance and higher arrest and welfare rates among nonwhites, to the prevalence of matriarchy in Black families.<sup>126</sup>

Tanner notes the ethnocentrism and sexism embedded in this report, stating that it "a priori assumes that there is no distinctive Black American kinship system, and that whatever there is, is an imperfect and disorganized variant of the white middle-class family system."<sup>127</sup> By way of contrast, Tanner notes the central role Black

124. See Part VI (criticizing the images of mother and female sexuality embedded in American welfare policy and divorce law).

125. Nancy Tanner, *Matrifocality in Indonesia and Africa and Among Black Americans*, in Michelle Zimbalist Rosaldo and Louise Lamphere, eds., *Woman, Culture & Society* 129, 150-51 (Stanford U., 1993).

126. See also Fraser and Gordon, 19 *Signs* 327 (cited in note 83); Theresa L. Amott, *Black Women and AFDC: Making Entitlement Out of Necessity*, in Linda Gordon, ed., *Women, the State and Welfare* 280, 290 (U. Wisc., 1990). Amott discusses a report published by the Reagan Administration attacking AFDC for being an "enabler—a program which enables women to live without a husband or a job." *Id.* This argument assumes that welfare "was the cause of poverty and family breakup rather than the effect since welfare set up . . . incentives for people to have children, to avoid marriage, and to stay out of the labor force." *Id.* The argument not only ignores the racial and gendered structure of economic opportunity, it also presupposes that the male-headed nuclear family is socially, psychologically, and economically more viable than matrifocal extended family networks. Compare notes 152-63 and accompanying text.

127. Tanner, *Matrifocality*, in Rosaldo and Lamphere, eds., *Woman, Culture* at 152 (cited in note 125). This account was revisited in the work of William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* 20-21 (U. Chicago, 1987). Compare Kimberlé Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *Harv. L. Rev.* 1331 (1988) (criticizing Wilson's assumptions).

women play in Black families, a role described in Joyce Ladner's study of young Black women:

The strongest conception of womanhood that exists among all preadult females is that of how the woman has to take a strong role in the family. . . . All of these girls had been exposed to women who played central roles in their households. . . . The symbol of the resourceful woman becomes an influential model in their lives. . . . In sum, women were expected to be strong, and parents socialized their daughters with this intention.<sup>128</sup>

According to Tanner, Ladner's work illustrates the positive cultural factors underlying the central position of Black women in the Black American family. There is a clear expectation that a woman should be a strong, resourceful mother with a structurally central position. This image of female agency and maternal centrality is, according to Tanner, a basic and positive feature of the Black American kinship system, in which there are extended and flexible kinship networks. Male and female children are equally socialized to be active, resourceful, and assertive, and women's family roles have a special importance. Through these relationships, women offer each other solidarity, childcare, and other assistance, often sharing common residences and resources.

While white racism translates the resourcefulness and agency evidenced by "[s]tatistics showing the participation of Black women in the labor force and their educational attainments"<sup>129</sup> into further evidence of the breakdown of the Black family, Tanner responds:

[T]o assume that Black women will cease having strong self-images, will cease regarding themselves and being regarded as in some sense the backbone of the family, and will retire from their jobs and their participation in religious and political activities if and when Black men no longer face economic and political discrimination, is to ignore the positive cultural factors supporting the various roles of Black women.<sup>130</sup>

From this perspective, Moynihan's attack on Black matriarchy is little more than an ethnocentric "scholarly legitimization of a popular (and of course racist) stereotype of the Black man as somehow less a man because the Black woman is a strong and resourceful

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128. Tanner, *Matrifocality*, in Rosaldo and Lamphere, eds., *Woman, Culture* at 151 (cited in note 125) (quoting Joyce A. Ladner, *Tomorrow's Tomorrow: The Black Woman* 131-32, 135 (Doubleday, 1971)).

129. *Id.* at 152.

130. *Id.* at 154.

woman."<sup>131</sup> Nevertheless, this counterpositioning of female power and male powerlessness deflects attention from the racist practices through which racially subordinated men are denied economic and educational opportunities and are subjected to discriminatory discipline by state officials such as police officers and public school officials. This perspective deploys sexist stereotypes that attempt to make male power depend on female powerlessness, rather than acknowledging the extent to which racial equality depends upon increased economic and educational opportunities for both men and women.

In Latin culture, the image of the mother shares similar characteristics and resonates power: *cualquiera es padre, pero madre solo hay una*.<sup>132</sup> For example, in a fascinating account of the narratives of masculinity and femininity that circulate in Colombia and the Caribbean, Peter Wade writes:

The most central concept of femininity . . . sees women as a stable force. In the Pacific region, for example, the mother is symbolized as the guayacán de esquina, a house corner post made from a very hard and durable tropical wood which supports the whole structure of the house.<sup>133</sup>

Penelope Harvey strikes a similar theme in her ethnographic study of sex and violence in the Southern Peruvian Andes:

Images of motherhood are strong, positive and pervasive and present women as those who are most able to form close bonds with their children and take re-

131. *Id.* at 152. Tanner is quick to rebut this assumption as sexist and unsubstantiated: "Matrifocality can and does exist with the socialization of men and women with strong achievement motivation and entrepreneurial orientation. . . . The cross-cultural materials examined here give no indication of any causal link between matrifocality and low status or achievement for men." *Id.* Similarly, in Latin culture, the matrifocal structure of family life facilitates men in enacting the scripts of *parrandero*, see note 140, a practice through which men maintain the relations that will secure economic assistance for themselves and their families in times of need. See Wade, *Man the Hunter*, in Harvey and Gow, eds., *Sex and Violence* at 126 (cited in note 14) ("[A] man's economic situation is linked to *parranda* because by socializing in this way he makes crucial contacts for economic favours, aid, loans, information, and so on").

132. Literally translated, this saying reads: "Anybody can be a father, but there is only one mother." Both clauses, however, resonate multiple meanings. The saying conveys the idea that the relationship between a father and child is much more attenuated than the relationship between a mother and child by referring implicitly to the ease with which men "father" children. The male ejaculation is implicitly portrayed as a minimal investment and hence inherently promiscuous as compared to the female pregnancy. At the same time, the two clauses juxtapose the paternal and maternal roles. The first clause portrays the paternal role as a minimal involvement that any man can fulfill in relation to any child, in contrast to the maternal role, which the second clause portrays as a fundamental commitment to the child's well being that only a mother would assume.

133. Wade, *Man the Hunter*, in Harvey and Gow, eds., *Sex and Violence* at 118 (cited in note 14).

sponsibility for them and the immediate environment in which they are raised. A woman shows her love for a man by having his children and bringing them up. It is motherhood that confers adult status and motherhood that places women firmly in a world of sexual differentiation and complementary agency.<sup>134</sup>

To be sure, patriarchal relations are embedded in these maternal images of agency and power. They invite women to assume, as mothers, the substantial burdens and personal sacrifices involved in providing such stability.<sup>135</sup> The image of mother as a stable force creates a space that diffuses the negative consequences of the man's lack of parental responsibility. Paternal irresponsibility, if not affirmatively condoned by the image of maternal stability and responsibility, is nevertheless rendered less threatening in cases where the mother as a stable force is an available image. Indeed, the conservative hysteria over white feminism, with its emphasis on increasing women's freedom from domestic responsibilities, is a reaction that presupposes that men cannot, will not, or should not assume any significant responsibility for making the home a stable, nurturing environment for children.<sup>136</sup>

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134. Penelope Harvey, *Domestic Violence in the Peruvian Andes*, in Harvey and Gow, eds., *Sex and Violence* 73-74 (cited in note 14).

135. As Wade explains:

The central feminine position of stability and support is viewed positively by both men and women, but there are significant differences. For women, it is a position the negotiation of which necessarily involves commitment and sacrifice, and which may have aspects which are forced onto her by her male partners' impermanence and the weakness of her own position within the labour market. The positive value that attaches to it is therefore closely connected to a sense of personal sacrifice for, and investment in, her family. . . . Men, in contrast, may approach this feminine position from a different angle, viewing it for what it does for them as men. They may assert that they owe everything to their mothers who bore and raised them, rather than their father who was a more shadowy figure. Capitalizing on positive images of women as stable and domestic, men try to present a picture of women as people over whom they have control, and who will submit to men's demands.

Wade, *Man the Hunter*, in Harvey and Gow, eds., *Sex and Violence* at 119-20 (cited in note 14).

136. See, for example, Benjamin, *The Bonds of Love* at 198-206 (cited in note 10). Latin culture resists the increased educational and occupational opportunities women enjoy as a result of the white feminist movement as "Americanization," but not so much out of fear that children will suffer if women do not sacrifice themselves to ensure stability in the home. Like the Black women Patricia Hill Collins describes in *Black Feminist Thought* (cited in note 83), Latin women routinely work for wages or in family businesses, leaving their children securely in the care of the women's own mothers or grandmothers. Instead, "Americanization" is resisted because careerism and ambition in women is viewed as a play for *the other sphere*, a move that is as threatening to women's claim to predominant authority *within* the home as it is to effective male agency outside the home. Careerism in women is also viewed as a position that commits women to an individualistic independence that impedes and therefore threatens the

The Latin image of maternal strength and reliability suppresses the practices through which women enact an alternative identity of the woman as individual: the Western, capitalist, economic free agent.<sup>137</sup> The positive value associated with this Latin image of mother comes at the expense of individual independence or, more precisely, at the expense of individual freedom from the obligation to respond to the needs of children, husbands, and other dependents. Nevertheless, the difference between the Latin images of mother and the dominant images of the white mother are explained by the fact that lack of individual freedom (even from gendered obligations) is not the same as lack of power, autonomy, or agency. As Penelope Harvey writes of Latin culture in the Peruvian Andes,

As mothers, women are responsible for the running of the home, and to be worthy of respect a woman must show herself to be hard-working in this regard. Men are not expected to display aptitude or interest in the day-to-day maintenance tasks such as serving food or cooking. This ability in women is thus seen as something worthy of respect. . . . A lively clever woman will represent the interests of her household behind the scenes in informal networks and in the subtle manipulation of the man over whom she has some influence. An ideal woman is quick-witted (*viva*), hard-working (*trabajadora*), tender (*cariñosa*) and attractive (*simpática*)—a quality which combines physical and moral attributes. There is no ideal of passive receptive femininity. A bad woman is one who is not effective because she is lazy (*floja*), stupid (*sonsa*), or uses her abilities for anti-social purposes (*mala*).<sup>138</sup>

Given these narratives, Latin children do not experience the Latin mother's lack of freedom from gendered obligations the same way the white mother appears coded in white feminist and psychoanalytic theory. Put differently, the mother's lack of agency and subjectivity independent from the superior authority of an otherwise absent father is a decidedly white, Anglo image.<sup>139</sup> Indeed, many Latin

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relationships of interdependence through which family members make claims upon and make themselves available to reciprocate the assistance of other family members.

137. For an excellent discussion of this image and the impact of its deployment in legal rhetoric on the interests of women involved in abusive home and/or work relations, see Mahoney, 65 S. Cal. L. Rev. at 1283 (cited in note 4). Martha Fineman has also examined the negative impact of this image on the interests of poor women. See Fineman, *The Neutered Mother* at 115-17 (cited in note 60); Fineman, 46 U. Miami L. Rev. at 660-62 (cited in note 11).

138. Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 74 (cited in note 14).

139. In her particularly insightful analysis, Penelope Harvey explains the ambiguities of power and violence in Latin culture:

During my stay in the village I had many conversations with women about their marital relationships. I was struck by the fact that their toleration of actions, which I found horrifying, was not based in a sense of shame or passivity; they talked with pride about how they fought back and were perfectly willing to complain to others about their

daughters and sons grow up believing their mothers will have the final way, if not the final word. For example, appealing for paternal intervention in the disciplinary regimens established in the home (matters such as bedtimes, television hours, curfews, and dating) is often deemed futile and likely to backfire. Latin mothers commonly expect to set the rules for their children and expect these rules to be obeyed by their children and enforced by their husbands. Many Latin fathers readily embrace the role of background enforcer and rarely intervene of their own initiative because proactive interventions may invite claims for continued involvement and because the narratives of Latin masculinity make intervention in such matters problematic.

The practices through which Latin men enact masculine identities substantially reduce their standing to intervene or countermand the will of Latin mothers in the home. Peter Wade discusses the images of masculinity that circulate in Colombia and the Caribbean, images of *el mujeriego*, *el hombre parrandero*, and *el buen padre, buen marido*, which call men to fulfill competing lifestyles that are in significant tension.<sup>140</sup> Constructing a powerful or strong masculinity depends largely on achieving a balance among the different value systems embedded in these different masculinities. "The point is, of course, that the two realms are intimately interdependent, since a man's success as party-goer and womanizer is partly dependent on him keeping his mujer principal happy, or failing that, submissive in the domestic realm."<sup>141</sup>

Thus, in the songs Wade analyzes, the message is that the strong and vital man gets to have it all because, despite his philandering, he can keep his woman happy. For Wade, keeping her happy means satisfying her sexually and providing economic support for her

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treatment. The difference between their attitude and mine was that they appeared to accept this confrontational aspect of their relationships as one of the unpleasant consequences of falling in love and forming a stable partnership. Furthermore, . . . I often witnessed them retaliating and giving as good as they got in domestic fights.

Id. at 66.

140. See Wade, *Man the Hunter*, in Harvey and Gow, eds., *Sex and Violence* at 117 (cited in note 14). *El mujeriego* is the womanizer, a man "engaged in the sexual conquest of women even when based in a relatively stable conjugal union." Id. *El hombre parrandero* is "the fun-loving drinker and dancer who is always ready to party with his male friends and stay up all night, drinking rum, listening and dancing to music, telling jokes and stories." Id. *El buen padre, buen marido* is the good husband, the good father, the man who takes care of his family, educates his children, and keeps his wife "happy." Id.

141. Id. at 123. Thus "a man whose children are known to be going hungry because he spends too much money on *parrandas* and other women is liable to lose prestige (although perhaps not as much as if he did not go out with his friends)." Id. at 130.

and their children. Thus "the sex he has with his *mujer principal* is in fact a duty he owes her, rather than an expression of his sexual dominance."<sup>142</sup> An additional reading is that keeping her happy means deferring to and enforcing her authority in the home. From this perspective, male deference and respect for female authority in the home is, in Latin culture, the *quid pro quo* for male freedom from the home, a freedom both men and women have some interest in preserving.<sup>143</sup>

Many Latin mothers are further empowered by relations of female solidarity. Like the images of Black mothers, and unlike the images of white, middle-class mothers, Latin mothers enjoy the support of other women, thereby increasing their authority and the felt legitimacy of the power they exercise in the home. As Oliva Espin explains:

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142. *Id.* at 122. Penelope Harvey notes a similar theme in Peruvian culture: "Married women are assumed to experience sexual desire and their husbands should ideally control that desire through satisfying the woman's needs. Indeed, men frequently joke about the strain that women put them under in this respect, constantly demanding their sexual services." Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 75 (cited in note 14). But see Part III.C (discussing the virgin/whore dichotomy in Latin culture). Latin culture "resolves" the apparent difficulties generated by these conflicting representations of female sexual desire: A woman's sexual desire is expressed outside the rhetorical structure of the virgin/whore dichotomy only if and when it is inscribed within the structure of married motherhood. Motherhood marks a woman's sexual maturity, manifesting the expression of a woman's sexual desire for *her husband*, but a woman only acquires the right to such desire through marriage. At the same time, the virgin/whore dichotomy remains a rhetorical resource readily available to discipline expressions of female sexual desire that threaten a husband's security in his exclusive access to his wife. Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 75 (cited in note 14) ("The most distinctive aspect of male attitudes towards sexuality is their exaggerated concern with female infidelity. Indeed, female infidelity appears to be far more threatening to men than male infidelity is to women").

143. Here is another example of the relationship between male powerlessness and male abuse. Just as male respect for female authority is a tactic used in successfully negotiating the competing imperatives of being a man in Latin culture, male abuse appears as the tactic of a weak masculinity, i.e., the man who cannot successfully negotiate these different claims. His wife objects to his *mujeres*, his *parrandas*. She resists. She is not happy. Because he cannot keep her happy, he must keep her submissive, and he does this with violence. Wade, *Man the Hunter*, in Harvey and Gow, eds., *Sex and Violence* at 131 (cited in note 14). Wade's account is valuable because it highlights the fact that male violence is not simply an artifact of the ways in which masculinity is defined in opposition to the feminine, see, for example, Stoltenberg, *Refusing to be a Man* at 31-34 (cited in note 114), but also a product of the conflict among different narratives of masculinity. Both men and women are disadvantaged when cultural narratives privilege masculinity at the expense of and in opposition to femininity. See, for example, *id.*; Benjamin, *The Bonds of Love* at 183-98 (cited in note 10). But men and women are also both disadvantaged when the narratives of pornographic masculinity (consumption, abuse, emotional withdrawal, and narcissism) and commodified femininity gain predominance over more life-affirming narratives.

Latin women experience a unique combination of power and powerlessness which is characteristic of the culture. The idea that personal problems are best discussed with women is very much part of the Hispanic culture. . . . There is a widespread belief among Latin women of all social classes that most men are undependable and are not to be trusted. [And yet], many of these women will put up with a man's abuse because having a man around is an important source of a woman's sense of self-worth. Middle-aged and elderly Hispanic women retain important roles in their families even after their sons and daughters are married. Grandmothers are ever present and highly vocal in family affairs. Older women have much more status and power than their white American counterparts, who at this age may be suffering from depression due to what has been called the "empty-nest syndrome."<sup>144</sup>

The important point is that these cultural differences create a context in which Latin children tend to view maternal power quite differently from the images projected in the psychoanalytic accounts of white motherhood.<sup>145</sup> In sharp contrast to the fear some white men express of being absorbed and infantilized by maternal pampering,<sup>146</sup>

144. Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 155 (cited in note 9).

145. Black daughters' accounts of their mothers suggest similar themes. See Joseph and Lewis, *Common Differences* at 96-103 (cited in note 2). When asked what they most respected about their mothers, the daughters responded: "She works a job she hates so I can have this fine education." Id. at 96. "Ambition, perseverance and the refusal to take shit from anyone (with the exception of my father)." Id. "I respect my mother's ability and strength as a woman. (My mother reared eight children without the ample support she should have gotten from my father and only a strong woman can do such.)" Id. at 97. "Her courage to continue working with the bullshit that society gave her. The bullshit my father gave her. Her courage to raise all seven of her children. Just for her being herself." Id. "Her ability to manage money and making ends meet on her low wages." Id. "Her knowledge and strength of character." Id.

Clearly, the other side of admiration is fear: "When my mother gave me a certain look, fear would run all through me in seconds." Id. at 98. More than one daughter said that she feared her mother's "quick temper," her "terrible temper," her "beating my behind," her "physical strength, which seemed overwhelming," her "using the strap." Id. at 98-99. One daughter summed it up like this: "If she says that what she says goes in her house, I know I better respect her wishes." Id. at 99. Nevertheless, these expressions of fear coexist with expressions of deep appreciation, gratitude, love, and admiration for the very same mothers they feared because: "How much she really loved us and did for us when we were children. She was always around when we needed her," because she was "trustworthy, hardworking and thrifty," because of "[h]er determination in bringing us up," because she "was able to be relatively optimistic in the face of shoveling through tons of bullshit; she could laugh; she was very open in her pride of me," because she was "very open and we can express opinions about everything. She is dependable and shows a lot of concern for her entire family." Id. at 98-99. Indeed, it may be that "her wishes" were respected not so much out of fear but because of what she gave, "Her sense of humor, perseverance, determination. Her belief in the conviction that you never say you 'can't' do something. You try first. Her outspokenness, her ability to make friends wherever she goes (without even trying)." Id. at 98-99.

146. Douglas Gillette argues that this reaction is the consequence of being raised in "a hostile feminine environment." See Gillette, *Men and Intimacy*, in Harding, ed., *Wingspan* at 53 (cited in note 58). See also notes 97-110 and accompanying text.



Latin boys, like their fathers, are routinely catered to in the home, in part, because Latin images of masculinity make male domestic labor a cultural taboo<sup>147</sup> and, in part, because no Latin mother wants to raise her son to be a wimp.<sup>148</sup>

Cross-cultural analyses of matrifocal kinship relations suggest that strong and positive mother/child bonds are staple features of matrifocal family structures and are formed in relation to both daughters and sons.<sup>149</sup> In Latin culture, this bond is formed through the culturally pervasive practices of celebrating children, indulging their childhood, and protecting their innocence. It is commonplace for Latin children to express deep love and respect for the mothers who raised them. As adults, Latin sons continue to "respect and revere their mothers, even when they may not show much respect for their wives or other women. As adolescents they may have protected their mothers from their fathers' abuse or indifference. As adults they accord their mothers a respect that no other woman deserves, thus following their fathers' steps."<sup>150</sup>

Latin daughters are raised to identify with their mothers. Moreover, while daughters are encouraged and indeed compelled to serve their fathers and brothers, the psycho-social meaning of that service is ambiguously situated at the intersection of two competing discourses. As entitlements of male supremacy, these services reinforce male superiority, but, as evidence of male dependence on female capabilities, the domestic services Latin women provide men are invested with an element of female superiority not conveyed in any accounts of the white family. As a result, the Latin woman often indulges, but she does not expect to depend upon the male whom she is raised to believe is emotionally and psychologically undependable.<sup>151</sup>

147. See, for example, Margaret Randall, *Women in Cuba: Twenty Years Later* 18-20, 149-51 (Smyrna, 1981).

148. Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 157 (cited in note 9). Indeed, it is often "[t]he mother herself [that] teaches her sons to be dominant and independent in relations with other women." Id.

149. See, for example, Tanner, *Matrifocality*, in Rosaldo and Lamphere, eds., *Woman, Culture* at 136-37 (cited in note 125). According to Tanner, the "mother-child bond is strong and persistent. . . . The relationship with the mother . . . lasts throughout the individual's life. . . . The mother is seen as a bulwark of strength and love to whom one can always turn." Id. (quoting Hildred Geertz). "Mothers may divorce and remarry several times; children remain with their mothers." Id. at 137.

150. Espin, *Sexuality and Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 157 (cited in note 9).

151. See, for example, Comas-Diaz, 16 *J. Community Psych.* at 21 (cited in note 83).

In a fascinating re-reading of Hindu child-rearing practices,<sup>152</sup> Stanley Kurtz offers a conceptual framework for re-examining and re-valuing the psycho-cultural impact of numerous practices pervasive in Latin culture. While there are significant differences between Hindu and Latin (as well as among Latin) cultures, Latin children in traditional extended families (not disrupted by revolutions, assimilation, or other social upheavals) are raised more like Hindu children than white, American children precisely because they are raised into their families, rather than into the individualistic independence of white children in American culture.<sup>153</sup> Put differently, like similar Hindu practices, Latin child-rearing practices are connected to the cultural emphasis on the family and the child's membership in that group.

In white, Western psychoanalytic theory, the familial interdependence these practices produce are coded as pathological and regressive. As adults, Latin sons and daughters routinely make significant personal sacrifices in order to promote the interests or meet the needs of their parents or other family members. These sacrifices, when interpreted through the lens of American individualism, are often deemed evidence of failed individuation or excessive familial entanglement in the individual's life. One cannot properly understand or evaluate these practices, however, without taking account of the culturally specific normative commitments that define the objectives of maturation and the meaning of family in Latin culture.<sup>154</sup> As Kurtz notes:

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152. See generally Kurtz, *All the Mothers are One* (cited in note 83). There are no comparative psychoanalytical studies of Latin child-rearing practices that are even remotely comparable in quality and depth. Consequently, my discussion is guided in large part by the extent to which Kurtz's analysis of Hindu child-rearing practices illuminates the practices and normative positions I have experienced, expressed, and observed in my own and other Latin families. While comparative psychoanalytic anthropology would do well to expand and apply Kurtz's approach to the study of Latin culture, my purpose is a more limited effort to present a perspective from which the cultural specificity and biases of the psychoanalytic theories of motherhood deployed in white feminism and the white men's movement can be more clearly observed. See Part III.A.

153. See, for example, Comas-Diaz, 16 *J. Community Psych.* at 26 (cited in note 83) (discussing DeGranda's account of identity crises triggered by "the confrontation of the traditional Puerto Rican values [of] the extended family, interdependence, cooperation, and personalism (the value of personal relationships over impersonal ones) with opposing American values such as the nuclear family, individualism, and competition").

154. For example, as Stanley Kurtz explains, the emphasis on familial interdependence in Hindu culture promotes different subject/subject relations: the Hindu we-self. Kurtz, *All the Mothers are One* at 263 (cited in note 83) (noting how the Indian notion of "we-self" alters the meaning of women's career commitments. These careers "are undertaken for the sake of the larger family. This greatly reduces the feeling of tension between the obligations of career and child care").

However compelling the psychoanalytic account of development, it will be impossible for us to retain it as a universal model without consigning most of the world to a state of relative pathology. . . . [O]ther cultures [most notably Black, but also Latin] appear to be failing their children on any number of counts from the perspective of psychoanalysis.<sup>155</sup>

Kurtz discusses three types of practices that illustrate how children are raised to experience themselves as members of an interdependent extended family. These practices illustrate the ways in which other family members assert their claims of relationship even as the natural parents minimize their special ties to the child and the normative positions these practices reflect. The first practice is a game Hindu (and Latin) adults often play with children. The child is given a gift and immediately asked to return it to the giver. Both the giving and the requested return are routinely accompanied by an assertion of the kinship relationship that connects the child to the adult. If the child returns the gift, he is praised for his self-sacrifice and generosity. If the child refuses to return it, he is praised for his cleverness. His refusal to return the gift is interpreted as an appropriate assertion of his right to receive and retain the benefits conferred by his family. In either case, the interaction is coded to further consolidate the child's sense of belonging to an interdependent group. For even as the child is expected to renounce his individual desires at the request of other family members, he is also entitled to insist on a reciprocal flow of benefits and assistance from other members of the family.<sup>156</sup>

A different but related Hindu practice, also pervasive in Latin culture, is the practice of indulging children to a degree deemed "pathological" by white, American standards, which emphasize individuation and independence rather than familial interdependence and solidarity. Kurtz notes that Hindu mothers almost never refuse their children's repeated requests. As Kurtz explains, however, rather than reinforcing the child's narcissistic self-centeredness, this form of maternal indulgence is one of the ways children learn their place in the family. The child gets what he wants, but only after making repeated requests. Granting the child's requests teaches the child that his

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155. *Id.* at 252. For a compelling analysis of how this ethnocentrism translates into racist adoption policies, see Perry, 21 N.Y.U. Rev. L. & Soc. Change at 33 (cited in note 91). For a critical (and relatively "Americanized") perspective on familial interdependence in Latin culture, see David Abalos, *Latinos in the United States* at 62-80 (cited in note 96).

156. Kurtz, *All the Mothers are One* at 79-82 (cited in note 83). As Kurtz notes, from this position "a child's greatest weapon against his parents is a refusal to take, for such a refusal indicates an exit from the basic understanding of mutual entitlement that holds the group together." *Id.* at 80.

needs will be satisfied in the family and that, consequently, membership in the family is valuable to him. At the same time, the mother's resistance to the child's requests and the child's need to repeatedly assert them teaches the child that there are some wants he should sacrifice for the sake of others in the family.

The third set of practices construct and reinforce the practices of "multiple mothering," that is, the practices through which other women in the family assert a right to participate in the care and guidance of the children in the extended family.<sup>157</sup> Through these practices, the child's natural mother complies with other family members' expectations that she will restrain affectional displays toward her own child, particularly in the presence of the child's grandmothers.<sup>158</sup> These rules of restraint reinforce the idea that the child belongs to the family, not just to his natural mother. Thus compliance with these rules is a way of consolidating group bonds by relinquishing what would be deemed a selfish preference of the natural mother for her own child.<sup>159</sup>

What Kurtz's analysis illuminates is an alternative framework for understanding how child-rearing practices designed to consolidate extended families impact the child's identity formation and affectional positions. Unlike the child's individuation in the male-headed nuclear family, Kurtz's analysis emphasizes the

task of drawing the child out of the initial tie to the mother and into participation in a form of social life in which the group [the family] is the normative center. One might call this general pattern of development separation-integration in contrast to our own developmental norm of separation-individuation.<sup>160</sup>

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157. "*Si es tu hijo, es mi nieto! . . . sobrino! . . . ahijado!*" ("He may be your son, but he's my grandson! . . . nephew! . . . godchild!") are all common refrains familiar to many Latin mothers in which the claims of interest and *of right* of the child's *othermothers*, to use Patricia Hill Collins's wonderful expression, are embedded. Collins, *Black Feminist Thought* at 129-32 (cited in note 83). According to Kurtz, "[t]he presence of alternate caretakers in many cultures acts in complex and varied ways to break the initial attachment to the mother and to move the child along a path to maturity whose outcome is neither individual independence in the Western sense nor a simple continuation of symbiosis and dependence." Kurtz, *All the Mothers are One* at 259 (cited in note 83).

158. Kurtz, *All the Mothers are One* at 260 (cited in note 83) ("[W]hile a Tamil woman may freely show affection for the children of her siblings and in-laws within the joint family, her strong *anpu* (love) for her own children must remain unseen—particularly when her in-laws are nearby").

159. *Id.* at 104.

160. *Id.* at 261.

These child-rearing practices, which focus on the child's integration into the family rather than his individuation from the mother, promote affectional positions that are different from the "individualized, empathetic attention that makes up much of what [Americans] call love."<sup>161</sup> Love is coded as compliance with the obligations to and sacrifices for one's family; it is sharply distinguished from the preferential desire expressed in sexual relationships and the affection expressed in friendships with nonfamily members.

In short, Kurtz's analysis of Hindu child-rearing provides a framework for understanding the limitations of the mainstream psychoanalytic theories deployed in feminist and anti-feminist rhetoric. These theories impose a culturally specific model of development that defines maturation as individuation. They also presuppose the normative commitments of individualism, in which preferential one-to-one relationships take priority over the bonds of solidarity that consolidate a group. These presuppositions make it difficult to appreciate the positive elements of alternative family structures and child-rearing practices that emphasize the individual's membership in extended family networks.

Indeed, my point is that Kurtz's work offers two perspectives from which the most distinctive features of matrifocal family arrangements—that is, the value placed upon maternal authority and extended family interdependence—make the matrifocal extended family a more fruitful starting point for the formation of subject-to-subject heterosexuality than the male-headed nuclear family. This is, initially, because the experience of being raised by strong maternal figures in an extended family offers a perspective from which the child's identity formation does not depend upon individuation from a devalued feminine so much as integration into a broader group in which the feminine is still present and powerful. The second perspective focuses on the strategies that encourage the child to relinquish his self-centeredness in order to participate more fully in the relations of reciprocal assistance and renunciation that sustain the family.

Read against the narratives of mainstream psychoanalytic theory, the child-rearing practices used to promote individual self-renunciation and group integration in Latin extended families offer better building blocks for nonappropriating heterosexual relationships in American society. The ever-present possibility of replacing familial interdependence with an individualistic marked-mediated

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161. *Id.* at 260.

independence creates a space in which extended family relationships can be experienced as an affirmative choice. These freely chosen practices of self-renunciation and multiple interdependence may, in turn, help the individual recode erotic love in nonpossessory terms.<sup>162</sup>

The more immediate point, however, is that re-valuing the matrifocal extended family is a crucial step in displacing the cultural enshrinement of the nuclear male-headed sexual family in public policies.<sup>163</sup> This displacement is crucial to reforming policies, like welfare eligibility rules, which make it increasingly difficult for single mothers to maintain their families as viable economic units, or legal doctrines, like "the best interests of the child," which are used, in child custody proceedings, to punish women for their nonmarital sexual relationships. These policies and legal doctrines reflect a general pattern in which state power enforces a general preference for the male-headed nuclear family and disciplines women who cannot or will not conform to this preferred family arrangement. These policies also promote women's continued dependence on individual men and thereby increase women's sexual vulnerability.

### C. *Images of Female Sexuality: In and Beyond the Virgin/Whore Dichotomy*

The virgin/whore dichotomy is a culturally dominant narrative that is repeatedly asserted in the formulation of legal rules that govern the processing of rape cases. The dichotomy also operates in a de facto fashion in rape processing practices. For example, rape-shield statutes that exclude evidence of a rape victim's prior sexual conduct are designed to prevent juries from using such evidence to conclude that the victim consented to the sexual assault.<sup>164</sup> This prohibited inference is based on the notion that women who engage in consensual, nonmarital sex are either generally promiscuous, and

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162. As Kurtz notes: "[I]n the Western notion of love, as incorporated by psychoanalysis, we have a relationship in which the individual remains the normative center. We feel loved when we feel loved for ourselves—for what is individual or particular in us. . . . [I]t follows that true love must be a love of one for one, for to be loved for one's unique self means to be loved in preference to another." *Id.* at 254-55. But "[i]f the truest love were not the love of one for one, then the loss of a given love would cause little pain nor would it even be necessary to come to trust in the reliability of the beloved. On reflection, then, the notion of one-to-one love, so vital to psychoanalysis, seems to reflect the larger presence of the individualism characteristic of Western cultures." *Id.*

163. See, for example, Fineman, *The Neutered Mother* (cited in note 60) (discussed in Part VI).

164. Coombs, 2 *Tex. J. Women & L.* at 283 n.19 (cited in note 43).

hence more likely to have consented in the case at issue, or they are deemed generally disreputable, and hence more likely to fabricate rape accusations. These notions are easily interpreted as a further specification of the virgin/whore dichotomy. At the same time, continued controversy over the appropriate scope of rape-shield statutes<sup>165</sup> suggests that legal reforms designed to eliminate racist and sexist images of female sexuality from the criminal justice system will only be partially successful. Full success requires altering the substantive content of these images, for example by achieving broader participation of women and minorities in the production of popular culture. It also requires reforms to change the relations of dependence through which many women's sexual vulnerability is most immediately constructed.

Read as narratives of heterosexuality, the virgin/whore polarities are images of female sexual identity that encourage men and women to enact a variety of familiar scripts. In Latin culture, these narratives are even more pervasive and the dichotomy more rigid than in white, Anglo culture. This is true largely because of the profound influence of Catholicism, which emphasizes the importance of virginity for all unmarried women.<sup>166</sup> The narratives organized around this dichotomy support social practices that destroy female heterosexual autonomy and threaten women who dare express non-marital sexual desire.<sup>167</sup>

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165. See Sakthi Murthy, Comment, *Rejecting Unreasonable Sexual Expectations: Limits on Using a Rape Victim's Sexual History to Show the Defendant's Mistaken Belief in Consent*, 79 Cal. L. Rev. 541, 542 (1991) (commenting on a case holding that evidence of a victim's promiscuity was not barred by a rape-shield statute if it was offered to support the defendant's assertion that he reasonably but mistakenly believed that the victim consented to sex); *Recent Cases*, 106 Harv. L. Rev. 951, 974 n.38 (1993).

166. Espin, *Sexuality and Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 151 (cited in note 9); Alarcón, Castillo, and Moraga, eds., *The Sexuality of Latinas* at 147 (cited in note 76). See also Kathryn Gravdal, *Ravishing Maidens: Writing Rape in Medieval French Literature and Law* 22 (U. Pa., 1991). Gravdal writes:

The Church fathers are well known for calling women to a virginal life. Most patristic thinkers propounded the idea that woman is the objective correlative both of the sexual body and of human sinfulness. A woman could be saved from her inferior female nature only by renouncing sexuality and becoming like a man, through virginity. A woman accedes to sanctity by prizing her chastity so highly that she dies for it. Sexual assault is one of the preferred methods of promotion to female martyrdom in early Christian hagiography.

Id.

167. Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 151 (cited in note 9). "[B]y upholding the standard of virginity as the proof of a woman's honorability, the church, and later the culture in general, further lowered the status of women who cannot or will not maintain virginity. This also fostered the perspective that once an unmarried woman is not a virgin, she is automatically promiscuous." Id.

An example of the operation of the dichotomy is the pervasive male practice of preying on women, particularly virgins.<sup>168</sup> Getting to them before anyone else does purportedly makes men more macho, a practice which is then invoked to legitimate and explain the necessity for imposing strict restrictions on young women's freedom.<sup>169</sup> Indeed, these narratives simultaneously reflect and reproduce a cultural environment where any nonmarital sex is coded as the vehicle through which women are degraded (and degrade themselves), even in the eyes of their lovers.<sup>170</sup>

The mutual incompatibility of a sexual identity structure that codes masculinity as the aggressive pursuit of sex and femininity as an equally active rejection of sex feeds the culture of rape and sexual domination. Because women must always say no, even when they really want to say yes, men must take the initiative and overcome the no that really means yes.<sup>171</sup> Indeed, Latin popular culture routinely codes rape as the means of last resort in a man's desperate and frustrated attempts to express true love.<sup>172</sup>

168. See Olivia Harris, *Condor and Bull: The Ambiguities of Masculinity in Northern Potosi*, in Harvey and Gow, eds., *Sex and Violence* at 40-65 (cited in note 14).

169. See Espin, *Sexuality and Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 157 (cited in note 9). For a definition of machismo and an analysis linking it to the experience of masculine inadequacy generated by economic and social subordination, see Comas-Diaz, 16 *J. Community Psych.* at 22-23 (cited in note 83).

170. Espin, *Sexuality and Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 157 (cited in note 9) ("Women . . . are seen as capable of surrendering to men's advances, without much awareness of their own decisions on the matter. 'Good women' should always say no to a sexual advance. Those who say yes are automatically assumed to be less virtuous by everyone, including the same man with whom they consent to have sex").

171. See, for example, Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 72 (cited in note 14). Harvey writes: "[Y]oung [Peruvian women] will never admit to having willingly had sexual relations with men. They always say they were tricked into it—'he deceived me' (me engaño). Active resistance is expected and is often understood by the men as an expression of desire." Id.

172. Although popularized representations of rape reflect cross-cultural similarities, particularly as intercultural exchange increases, the emphasis in the rape narratives circulating in Latin popular culture is not that women enjoy being injured and degraded, but rather that rape is an appropriate way to overcome a woman's unreasonable rejection of "a good man." See, for example, *El Ladron de Mi Amor*, a very popular soap opera aired in Miami, Florida from 1985 through 1986 in which a lower-class man rapes and impregnates an upper class woman. The rape is portrayed as the expression of the man's overwhelming desire for the woman, which is frustrated by a class structure that purports to elevate the woman beyond his reach. The man is portrayed as a fundamentally "good man," since he educates himself out of his lower-class status to become a prominent lawyer and eventually marries the woman he raped, ultimately winning her love.

Put differently, Latin cultural narratives will implicitly (and in some instances explicitly) applaud rape as a legitimate means of appropriating a woman. For example, if the man's sexual desire is an expression of genuine love for the woman, and the woman's rejection is viewed as *unreasonable*, as when it is an expression of class prejudice or submission to familial objections.



The popularity of these rape dramas can only be understood as a response to the ubiquity of the virgin/whore dichotomy.<sup>173</sup> The logic of this dichotomy—in which mutual and consensual sex automatically makes women into whores—means that complicity in enacting the scripted narratives of a rape, or seduction, becomes the only acceptable vehicle through which women can enjoy otherwise immoral sex without incurring moral blame or dishonor, while men enjoy ego gratification from enacting the subject position of overwhelming sexual prowess. For many Latin women, the virgin/whore dichotomy means that sexual intimacy, at least outside (and at times even within) the bonds of holy matrimony, is only possible at the cost of reinscribing narratives of male sexual dominance and female lack of sexual agency or desire. The costs to women can be staggering.<sup>174</sup>

Practices that define female sexuality as submission to male sexual prowess can blur the line between sexual domination and sex-

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Rape is, therefore, an image that codes male sexual desire as socially uncontrollable and ultimately irresistible. The physical and psychological harm inflicted on women is sublimated by representing rape as the means through which male agency liberates true love from the restraints imposed by female acquiescence to socially imposed expectations.

173. For an intriguing analysis of the popularity of Harlequin romances, see Ann Barr Snitow, *Mass Market Romance: Pornography for Women is Different*, in Snitow, Stansell, and Thompson, eds., *Powers of Desire* at 245-63 (cited in note 8). Discussing an unpublished talk by Peter Parisi, Snitow writes: "Harlequin romances are essentially pornography for people ashamed to read pornography. . . . [T]he reader's qualms are allayed when the novels invoke morals, then affirm a force, sexual feeling, strong enough to override those morals. . . . [T]he books' sexual formula (which sexualizes male dominance) allows both heroine and reader to feel wanton again and again while maintaining their sense of themselves as not that sort of woman." *Id.* at 254-55. See also Coombs, 2 *Tex. J. Women & L.* at 305 (cited in note 43) (discussing bodice ripper romances).

174. Female complicity in enacting the scripts of sexual submission is often deployed as ammunition in anti-feminist attacks on legal reforms designed to protect women from sexual abuse. See Estrich, 95 *Yale L. J.* at 1127-41 (cited in note 54). Estrich explains the legal requirement in rape cases of proving the victim's physical resistance, defined initially as "utmost resistance" and later as "reasonable resistance," as a function of the no-means-yes approach to female sexuality. *Id.* She criticizes this requirement, correctly I think, by focusing on its implications for women's sexual autonomy: "Were the purpose of the consent requirement really to afford autonomy to women, there is no reason why a simple but clearly stated 'no' would not suffice to signify non-consent. Viewing women as autonomous human beings would mean treating them as persons who know what they want and mean what they say. A woman who wanted sex would say yes; a woman who did not would say no." *Id.* at 1127. This is certainly an acceptable account of what sexual autonomy could mean for women. The "real" problem, however, is identifying the most effective forms of legal intervention, as many women do not experience themselves to have either the freedom to say yes or the power to say no. This happens because of social, economic, and physical power differentials that advantage men, and also because of the cultural images (like the virgin/whore dichotomy) women often internalize. In this context, legal interventions that target the substantive elements of rape (as opposed to the production of popular culture and the public policies and private practices that reinforce women's economic and social subordination) are perhaps more likely to trigger the organization of backlash resistance than to achieve sexual autonomy for women. See, for example, *Recent Cases*, 106 *Harv. L. Rev.* at 969 (cited in note 165).

ual intercourse for both men and for women. While women know when we have been raped,<sup>175</sup> we often do not know what to do about it, particularly in on-going relationships where the lines between interpersonal connectedness and individual autonomy are constantly renegotiated. When female sexuality is enacted as submission to male sexual desire—a defensive position Latin women may take to avoid occupying the whore side of the dichotomy<sup>176</sup>—this line-drawing becomes even more complicated because interpersonal intimacy depends upon the woman's abdication of sexual autonomy. A woman's subsequent assertions of autonomy are consequently seen as a direct threat to interpersonal intimacy that must be reestablished through enforced submission. Accordingly, the woman's resistance increasingly loses its significance each time she capitulates. To the extent this dynamic of sexual dominance and submission is driven by the specter of the virgin/whore dichotomy, female sexual autonomy depends on shattering its cultural power. The image and narratives of the sacred prostitute, as presented in the discourse of Jungian analytical psychology, offer an alternative discursive regime that could advance this struggle.

Read through Jungian psychoanalytic theory, the virgin/whore dichotomy and the narratives it supports project impoverished archetypal images of women.<sup>177</sup> Jung believed that

every man [and woman] carries within him [or herself] the eternal image of woman, not the image of this or that particular woman, but a definite feminine image. This image is fundamentally an unconscious hereditary factor of primordial origin and is engraved on the living system of man, an imprint or "archetype" of all the ancestral experiences of the female.<sup>178</sup>

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175. See Coombs, 2 *Tex. J. Women & L.* at 280 n.9 (cited in note 43) ("[W]hen I refer to women's 'true stories' I am claiming, first, that women's assertions that they were sexually violated are almost always an accurate representation of what they felt").

176. See, for example, Espin, *Sexuality in Hispanic/Latin Women*, in Vance, ed., *Pleasure and Danger* at 156 (cited in note 9) ("To enjoy sexual pleasure, even in marriage, may indicate lack of virtue"); Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 72 (cited in note 14) (noting the female practice of denying sexual desire: *me engaño* (he tricked me)).

177. Not only does this dichotomy invite individual men and women to enact impoverished sexual identities, it is also deployed to restrict and subordinate women precisely because of their sexuality. See Gravdal, *Ravishing Maidens* at 21 (cited in note 166). This is evidenced by the ease with which LaFree's categories of conformist and nonconformist female gender-role behavior slips into the virgin/whore dichotomy. See notes 27-40 and accompanying text.

178. Frances G. Wickes, *The Inner World of Choice* 180 (Prentice-Hall, 1976) (quoting Carl Jung).

This image of woman is the individual's anima. It is the feminine side of the psyche, which organizes the way individual men and women think about actual women as well as the way they feel about those aspects of their own selves which they identify as feminine.<sup>179</sup>

In a provocative historical account and psychoanalytic analysis of the sacred prostitute, Nancy Qualls-Corbett develops a thesis that connects the practices of male sexual dominance and impotence to the internalization of impoverished images of femininity or, more specifically, of an anima that suppresses the unity of spirituality and sexuality, leaving only the split-image feminine that is inscribed within the virgin/whore dichotomy. This split-image is expressed by men in relations of sexual domination in which female sexuality is simply an instrument for a superficial and narcissistic self-gratification. The woman becomes the man's whore-object, to be used on demand. Alternatively, men may express this split-image feminine in relations of sexual impotence in which female sexuality is repudiated. Here the woman becomes the inner-boy's mother/wife, to be sexually suppressed and avoided. Women also internalize the split-image feminine, which degrades female sexuality, expressing it in the extremes of self-destructive promiscuity and other-destructive sexual refusal.

In Qualls-Corbett's account, the sacred prostitute is presented as a feminine image, which "while not synonymous with an anima" is nevertheless "relevant to every stage of development of man's [or woman's] inner woman."<sup>180</sup> She is the image in which the feminine "offers pleasure, excitement and vitality, a personification of both spirituality and earthiness. She is a lover whose beauty is exciting, whose virginal nature brings forth new life and leads to Wisdom—which is more than simply intellect."<sup>181</sup> Rather than reading the sacred prostitute as an archetype or analyzing it as a psychological phenomenon, I read it as an alternative narrative of feminine sexual identity in order to re-examine the male/female relations inscribed within the virgin/whore dichotomy.<sup>182</sup>

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179. Carl G. Jung, *The Development of Personality* 198 (Princeton U., R.F.C. Hull, trans. 1972); Wickes, *The Inner World of Choice* at 180-202 (cited in note 178).

180. Qualls-Corbett, *The Sacred Prostitute* at 104 (cited in note 12).

181. *Id.*

182. The Jungian theory of archetypes has a quasi-metaphysical element, projecting the image of transpersonal psychic structures in relation to which individual psyches are constituted. Thus Qualls-Corbett writes:

An archetype is a pre-existent form that is part of the inherited structure of the psyche common to all people. These psychic structures are endowed with strong feeling tones. The archetype, as a psychic entity, is surrounded by energy which has the ability to activate and transform conscious contents. When the archetype is constellated, that is, activated, the release of that specific energy is recognized by consciousness and felt in

The sacred prostitute and the ritual practice of sacred prostitution originated in the ancient matriarchies that flourished before the one male God of Judeo-Christianity. In these societies,

nature and fertility were the core of existence. . . . Desire and sexual response experienced as a regenerative power were recognized as a gift or a blessing from the divine. Man's and woman's sexual nature and their religious attitude were inseparable. In their praises of thanksgiving or in their supplications, they offered the sex act to the goddess revered for love and passion. It was an act, honorable and pious, pleasing to both the deity and mortal alike. The practice of sacred prostitution evolved within this matriarchal religious system and thus made no separation between sexuality and spirituality.<sup>183</sup>

The ritual practice of sacred prostitution had many variations, but its core elements were: "the goddess [of love and passion], the stranger who comes to the temple, the sacred marriage itself, and the sacred prostitute."<sup>184</sup> These elements provide material with which to generate alternative narratives of the psycho-spiritual significance of feminine sexuality that can inform women's collective and interpersonal struggles to transform the misogynist practices of patriarchal heterosexuality. According to Qualls-Corbett, the goddess of love and passion was known by different names at different times and in different places.<sup>185</sup> To the Greeks, she was Aphrodite. To the Romans, she was Venus. Whatever her name, the goddess of love was associated with beauty and feminine grace. She was the only goddess sculpted nude in classical sculptures. She was called "the lover of laughter," "the golden one," gold being something that symbolized freedom from pollution and clarity of consciousness, something bright and lucid. She was also considered virginal. The cultural dominance of the virgin/whore dichotomy makes this hard to understand today. To associate the image of passion with virginity seems paradoxical, but "in Latin *virgo* means unmarried, while *virgo intacta* refers to the lack of sexual experience."<sup>186</sup>

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the body through the emotions. Thus, for example, when the archetype of the goddess of love is constellated, we are imbued with the vitality of love, beauty, sexual passion and spiritual renewal.

Id. at 14. I do not follow this formulation simply because reading the image of the sacred prostitute as an alternative narrative of feminine sexual identity covers enough ground for my purposes.

183. Id. at 30-31.

184. Id. at 57.

185. Id. at 57-58.

186. Id. at 58.

As Qualls-Corbet explains, "the virginal attribute of the goddess simply means she belongs to no man; rather she belongs to herself."<sup>187</sup> She was not seen as a counterpart to other gods. She existed in her own right, as one-in-herself, and was true to her own nature. The myths involving the goddess also emphasize the "goddess'[s] emotions—joy and pleasure, yet also her pain and grief."<sup>188</sup>

In the ritual practice of sacred prostitution, the sacred prostitute is the human embodiment through which the goddess energies of love and passion are accessed and expressed. The stranger who comes to the temple "to worship the goddess of love in intercourse with the sacred prostitute was in ancient times viewed as an emissary of the gods, or even the god in disguise."<sup>189</sup> Just as the sacred prostitute is an aspect of the anima that brings the joy and laughter through which the male comes to feel "honor for, and devotion to, the mystery of the feminine,"<sup>190</sup> the male stranger is "an aspect of . . . the animus, the contrasexual side of a woman's psyche—an inner man," who "facilitates her transition from the innocence of maidenhood to the realization of her full feminine nature."<sup>191</sup>

The positive stranger animus . . . guides her into the conscious realization of her femininity. She then has the ability to make choices that do not compromise it. . . . Whatever she undertakes, she does so with confidence, without regression, submissiveness or a feeling of inferiority to a patriarchal system. . . . She neither has to compete with men nor adopt masculine qualities. . . . The woman who has come to know the presence of the masculine power within is her own authority and stands constant to her feminine nature. She may not be able to change the patriarchal system which surrounds her, but, more importantly, she doesn't allow the system to change her.<sup>192</sup>

In the temples of the goddess of love, "the sacred prostitute's primary offering to the goddess was her welcoming of the stranger. . . . Intercourse with her was a regeneration through the mystery of sex. . . . The flesh and the spirit were united, each supporting each other." This "sacred marriage" is an archetypal motif

187. *Id.* at 58-59.

188. *Id.* at 60. "Loss and death, unrequited love and abandonment, are all part of [the goddess's] realm. Indeed, only by these dark shadows does her golden brilliance become a complete creation, smiling its immortal smile as well as looking on death with immortal eyes. Permanence is of Hera's [the maternal] world, not Aphrodite's [the lover's world]. What belongs to her is a deep acceptance that passionate love does not last forever; and an equally deep acceptance that man is made to love." *Id.* (quoting Arianna Stassinopoulos and Roloff Beny, *The Gods of Greece* 83 (Abrams, 1983)).

189. *Id.* at 74.

190. *Id.* at 107.

191. *Id.* at 75-76.

192. *Id.* at 78.

that is manifested on three levels: interpersonally when there exists a deep, abiding love between two people; intrapersonally when the opposition of masculine/feminine is reconciled at the intrapsychic level—the psyche integrates its contrasexual side; and transpersonally when the physical union becomes the vehicle through which the experience of divine love is received and contained within the self.<sup>193</sup>

According to Qualls-Corbett, heterosexual “dis-ease,” expressed actively in the practices of male sexual dominance and passively through male sexual impotence, is the fruit of the patriarchal degradation of female sexuality and feminine beauty. This is a degradation expressed in and through the virgin/whore dichotomy. As Carl Jung noted:

The overwhelming majority of men on the present cultural level never advance beyond the maternal significance of woman, and this is the reason why the anima [the internal feminine image men project onto women] seldom develops beyond the infantile, primitive level of the prostitute. Consequently prostitution is one of the main by-products of civilized marriage.<sup>194</sup>

This degradation is directly related to the cultural ascendance of the virgin/whore dichotomy, which was the singular contribution of Christianity.

On the one hand, the feminine was untouchable because it was elevated to the extreme heavenly heights; on the other it was debased as wicked and vile. The image of the sacred prostitute, simultaneously deeply spiritual and joyfully sexual, was completely unviable.<sup>195</sup>

There is a culturally dominant image of sexuality that can be contrasted to the pornographic sexuality surrounding the image of the whore and the asexuality of the virgin. That image is “romantic love.”<sup>196</sup> This image of romantic love is reinforced by the narratives

193. Id. at 79, 83-87.

194. Id. at 93 (quoting Carl G. Jung, *Civilization in Transition* 40 (Princeton U., R.F.C. Hull, trans., 2d ed. 1970).

195. Id. at 49. See also Gravdal, *Ravishing Maidens* at 22 (cited in note 166). For an account that suggests that “Christian” misogyny is a post-Christ development, see Elaine Pagels, *The Gnostic Gospels* 66-69 (Random House, 1979) (recounting the nature and extent of Mary Magdalene’s activities and status as a disciple of Christ).

196. See Joseph and Lewis, *Common Differences* at 263-64 (cited in note 2). “[T]he White daughter of the dominant culture is shaped in the anticipation and dream of ‘love and marriage.’ What we learn is: The right one will sweep you off your feet. He will be special, exceptional . . . . Love will somehow give structure and meaning to your life, whatever the social realities you live through (and the sexist terms of the union). . . . Whatever else women

and images of commodified femininity, the consumption and (self-) disciplinary regimens to which women are invited in order to make themselves romantically attractive to men. Unlike virginal femininity, commodified femininity is sexual, but (unlike pornographic femininity, which targets the male subject) its target is the female subject. Thus the sexuality it projects is calculated to invite women's consent and allegiance, but not without significant costs to women.

The romantic love ideologies transcend the sexual—and offer no resolution to the dichotomy of the incompatible images which judge and condemn women's enactment of sexual freedom while fetishizing their sexuality. Emotion is emphasized and sexuality is represented in a mist. The emotions that are encouraged emphasize abandonment, loss of self, the pleasure of being uncontrollably overwhelmed by the male presence and redefining your whole world in terms of him. It is a celebrating of powerlessness. The pleasure is in the giving up of power and autonomy to become a part of what is made to appear as the “natural universality”—the male centered unit.<sup>197</sup>

Put differently, romantic love is the feminine side of sexual desire because the expression of raw sexual desire makes women too vulnerable to male sexual aggression, precisely to the extent they have not progressed beyond the virgin/whore dichotomy.

By contrast, the symbolic images of the goddess of love and her human expression in the sacred prostitute project a sense of feminine beauty that links sexual desire to the experience of reverence. These images express the unity of sexuality and spirituality. Michael Ventura discusses a related image. Speculating on the cultural and spiritual significance of Neolithic-era images of “the Great Goddess” sculpted onto carvings of an erect penis, Ventura writes:

We can only guess at what they meant by carving the Great Goddess onto the cock. Was it the Goddess tattooing her claim onto the very maleness of men? Was it the man finding a passion in sexuality that couldn't be wholly satisfied by the physical, a yearning in him for something of the spirit to mix with his passion? Or was it the meeting not only of the divine and the physical, but of the masculine and the feminine *cohabitating the cock itself*?<sup>198</sup>

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may hope to achieve, our culture reinforces the longing for a unique, synthesizing, romantic connection (with a man) which should result in monogamous bonding and the institution of marriage.” Id.

197. Id. at 264.

198. Ventura, *Notes on Three Erections*, in Harding, ed., *Wingspan* at 44 (cited in note 58). Ventura continues: “If the cock is also feminine, then where does ‘feminism’ hide and where does ‘macho’ run? . . . The erection, which the feminist and the macho alike have seen as such a one-note, one-purpose organ, is less a sword than a wand.” Id. Ventura then adds:

According to Qualls-Corbett, the lost image of the sacred prostitute, which unifies sexuality and spirituality, produces a compulsive need for control in both men and women.<sup>199</sup> If sex is not an act of reverence and joy, then it is an act of domination and consumption. Internalizing the image of the goddess, however, can help women escape the equally destructive polarities of promiscuity and sexual withdrawal. Through this image, the woman grows to appreciate the spiritual dimensions of feminine sexuality and develops the integrity that enables her to be both true to herself and affirming of others.<sup>200</sup>

The woman who is virgin, one-in-herself, does what she does—not because of any desire to please, not to be liked, or to be approved . . . not because of any desire to gain power over another, to catch his interest or love, but because what she does is true. . . . She is what she is because that is what she is.<sup>201</sup>

The image of the goddess of passion is also an aspect of the man's anima, the internal feminine image that would lead a man to

Every erection is, in affect, a dream. It rises from a dream, it is sustained by a dream, it seeks to penetrate a dream. . . . There are the man and the woman and all that each is and all that they want to be and all they pretend to be and all that they think they are and all that they see in each other. . . . And the link through which these aspects pass, the connector, is the erection. Again: the wand.

Id. at 45. My point here is precisely to embrace Ventura's interpretation of the image of the goddess. While the white feminist movement has done much to show that women's sexual pleasure is not limited to the experience of male penetration, see, for example, Cornell, 100 Yale L. J. at 2267 (cited in note 4) (discussing sex as kissing and caressing), the idea that men are the only ones who experience their heterosexuality through erections and intercourse simply dismisses the extent to which (at least some) women do too. See Joseph and Lewis, *Common Differences* at 214-15 (cited in note 2) (Betty's comment, quoted in note 58).

199. Qualls-Corbett, *The Sacred Prostitute* at 67 (cited in note 12). "The neglect of the goddess results in a sterile, abrasive encounter with life; dullness and lack of purpose creep in. A compulsive need for power replaces the joy of love. When feminine nature is valued, not seen as a toy to be played with but as an energy to be embraced, psychic life blossoms and becomes fruitful, bringing a new perspective." Id.

200. Id. at 62. "The woman conscious of the goddess cares for her body with proper nutrition and exercise and enjoys the ceremonies of bathing, cosmetics and dress. This not just for the superficial purpose of personal appeal, which is related to ego gratification, but out of respect for the nature of the feminine. Her beauty derives from a vital connection to the Self." Id. Compare Bartky, *Foucault, Femininity*, in Diamond and Quinby, eds., *Feminism & Foucault* at 81 (cited in note 49) (describing the ways in which the commodification of feminine sexual identity distorts women's relation to their own femininity and enslaves them in the narratives and disciplinary practices of commodified femininity); Duncan Kennedy, *Sexy Dressing, Etc.* 162-213 (Harvard U., 1992) (illustrating the ways in which women's dress and personal appearance are interpreted through the lens of male sexual narcissism); Timothy Beneke, *Intrusive Images and Subjectified Bodies: Notes on Visual Heterosexual Porn*, in Kimmel, ed., *Men Confront Pornography* at 168, 172 (cited in note 58) (interpreting women's sexy dress/persona through the lens of male sexual inadequacy).

201. Qualls-Corbett, *The Sacred Prostitute* at 62-63 (cited in note 12) (quoting Esther Harding, *Woman's Mysteries* 125 (Harper & Row, 1971)).



value those aspects of himself that make erotic spirituality possible and protect him from an obsession with masculinity. For men, the image of the goddess offers the narrative elements necessary to establish reverence and respect for, rather than fear and resentment of, the power of feminine sexuality. According to Fred Small,

most men do not perceive women as powerless, in part because women hold the power of rejection. . . . We are trained from childhood to believe that real men get sex from women, that if we do not get sex from women we are not men, we are nothing. Women can deny sex to men, thereby denying our manhood, our existence. Men do not want to hurt women. Men hurt women only when they have been fooled into believing with all the force of hallucination that they must hurt women in order to save their own lives.<sup>202</sup>

Timothy Beneke strikes a similar theme by connecting male sexual violence to the male experience of women's sexuality as a power that humiliates them.<sup>203</sup>

From this perspective, male sexual violence is coded as revenge, an assault directed not so much at women as at the sexiness of women, at that aspect of women that makes men want and feel powerless before us. Interviewing men on the subject of rape, Beneke reports frequently hearing men say in one way or another: "I have been injured by women. By the way they look, move, smell, and behave, they have forced me to have sexual sensation I didn't want to have. If a man rapes a sexy woman, he is forcing her to have sexual sensation she doesn't want. It is just revenge."<sup>204</sup>

The ritual practice of sacred prostitution offers numerous counter-narratives through which this hostile male posture toward feminine sexual beauty can be understood. This hostility is not an expression of genuine sexual longing. Rather it is a symptomatic frustration inherent in the posture of appropriation, a posture in

202. Fred Small, *Pornography and Censorship*, in Kimmel, ed., *Men Confront Pornography* at 77 (cited in note 58). Small continues:

Playboy offers men a dream vacation from this system. In its pages, women are not aloof and rejecting, but welcoming and sexually accessible. . . . In these purposefully constructed images, women greet us with flattery and invitation, with airbrushed smiles that speak eager, delighted consent; they are not powerless, they freely surrender their power of rejection; they are not coerced or hurt; they are on our side. They seem to say to us: "I want sex with you. Therefore, you are a man."

Id.

203. "Stealing images of women's bodies is a troubled activity that pervades many heterosexual men's adolescent and postadolescent social experience . . . [experienced by men] . . . as a chronic, fearful, humiliated stance toward women that often pervades men's daily social experience of sexual longing." Beneke, *Intrusive Images*, in Kimmel, ed., *Men Confront Pornography* at 170 (cited in note 58).

204. Id. at 171.

which men seek to acquire and control anything and everything they value for themselves. The image of the goddess of love projects an image of feminine sexual beauty that cannot be appropriated by individual men. Men are able to enjoy the beauty of the goddess through the experience of sexual intercourse with her sacred prostitute. Yet even then the stranger's access to the human woman is neither permanent nor exclusive.

The ritualized intercourse between the stranger and the sacred prostitute codes sexual longing and fulfillment as non-possessory and transpersonal. Neither the male nor the female can acquire the other through sex. The narrative elements of the ritual instruct men to enjoy and revere the sexual energy and sensations they have through their experience of women's sexuality, without feeling entitled to appropriate or compelled to degrade the individual women who trigger these sensations. The fact that men cannot always get what they want does not mean that they are not men. It simply means that women are not to be had. In these narratives, sexual ecstasy is the nonappropriable gift of the goddess, and the sexual beauty of the human woman is a further instance of her divine manifestation.

Conversely, the fact that the human man would leave after the ritual intercourse, did not mean that the sacred prostitute was abandoned or alone. The stranger was always with her, integrated into her own self and embodied in the others that would follow. She did not access the goddess through any one particular man, but rather through the masculine energy any man could embody. While the sacred prostitute in this ancient ritual was expected to give herself to any stranger who went to the temple, this element did not degrade her or reduce her status because only the reverent were expected to go there. More importantly, intercourse with the strangers did not degrade the prostitute because it was precisely through the giving of her body that she worshipped the goddess and manifested her healing, enlivening energies.

In discussing the images of women and the missing image of the sacred prostitute, my point is not to suggest that a critique of culturally dominant images of female sexuality is enough to change the dynamics of a misogynistic heterosexuality.<sup>205</sup> On the contrary, the

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205. See, for example, bell hooks, *Teaching to Transgress: Education as the Practice of Freedom* 47 (Routledge, 1994) ("Many times people will say to me that I seem to be suggesting that it is enough for individuals to change how they think. And you see, even their use of the *enough* tells us something about the attitude they bring to this question. It has a patronizing sound, one that does not convey any heartfelt understanding of how a change in attitude

use of alternative feminine images has the most transformative potential precisely at the point where the material empowerment of women proves to be insufficient. The fact that sacred prostitutes were, in ancient times, accorded social status and education speaks to the material reality underlying the rituals of sacred prostitution.<sup>206</sup>

Thus, the sacred prostitute's freedom to enact the ritual intercourse with any particular man was profoundly connected to the human woman's material independence from that man, as well as to the social honor that her status as the goddess's medium afforded her. By contrast, under conditions of social and political subordination to men as well as economic and interpersonal dependence upon men, women cannot change the dynamics of heterosexual relationships simply by internalizing the image of the sacred prostitute or by enacting the narratives of feminine sexuality that are related to her image. These narratives can, however, help women define the kinds of relationships and personal autonomy that are worth the wanting and the struggle. The first and foremost elements of this autonomy are the freedom to love the men who honor and respect our sexuality, the power to reject the ones who do not, and, through this autonomy, the ability to shatter the power of the virgin/whore dichotomy.

As counter-narratives, these images provide important conceptual and rhetorical devices for combating the anti-feminist forces that use the virgin/whore dichotomy to attack women's search for sexual fulfillment and personal autonomy. Public policies, legal doctrines, and law enforcement practices that enforce women's economic dependence<sup>207</sup> and define our sexual morality in terms of whether or not we belong to some particular man<sup>208</sup> deprive women of the material and psycho-social equality that would enable us to express the spontaneous, joyful, and nonappropriating sexuality of the sacred prostitute. The circulation of these alternative images might help

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(though not a completion of any transformative process) can be significant for colonized/oppressed people. Again and again Friere has had to remind readers that he never spoke of conscientization as an end in itself, but always as it is joined by meaningful praxis").

206. In the code of Hammurabi, special legislation protected the rights and good name of the sacred prostitute; she was protected from slander, as were her children, by the same law which upheld a married woman's reputation. Also by law, [she] could inherit property from her father and receive income from the land worked by her brothers. If dissatisfied she could dispose of the property in ways which she saw fit. Considering the role of women at the time, this was an extraordinary right.

Qualls-Corbett, *The Sacred Prostitute* at 37 (cited in note 12).

207. See Part VI (discussing the impact of welfare eligibility rules and child-custody adjudication practices on women's sexual autonomy).

208. See, for example, notes 28-38 and accompanying text (discussing the deployment of gender-role stereotypes in the processing of rape cases); Murthy, 79 Cal. L. Rev. at 550 (cited in note 165).

create the conditions under which we could express our sexuality without fear of rape, harassment, or other forms of coercion through which men attempt to appropriate our sexuality for themselves.

#### IV. AGAINST "MACHISMO": IN DEFENSE OF MATERNAL POWER AND FEMININE SEXUAL SUBJECTIVITY

My analysis thus far has focused on the ways in which different images of women, as mothers and as sexual beings, circulate in the dominant narratives of white, middle-class culture, both in its feminist and anti-feminist manifestations. In this Part, I emphasize two very simple, but crucial points. The first point is that male supremacy is a network of self-referential, normative positions that are often consciously embraced or unconsciously expressed as much by women as by men. Thus, an important part of what it will take to secure women's sexual autonomy is to recognize and combat the ideological pull of those male supremacist discourses that attack both maternal power and the subjectivity of feminine sexuality.

Section A focuses on the obstacles any feminist intervention must inevitably confront when using Black and Latin images of maternal power to promote changes in the legal regulation of motherhood. Section B explores the ways in which women's attitudes toward each other's heterosexuality generates obstacles in our struggle to achieve genuine sexual autonomy. This struggle must be as much about the freedom to say yes as it is currently about the power to say no.

The second point emphasizes that the successful circulation of alternative images of feminine identity depends on the circulation of alternative images of men, masculinity, and male power. Even if popular culture were to embrace images of women as powerful mothers and sacred prostitutes, the increased circulation of these images would not generate the social changes necessary to reform either the legal regulation of motherhood or the racialized sexism expressed in the rules of sexual accessibility.<sup>209</sup> This transformation will not occur until the dominant culture begins to circulate alternative images of men, a theme I explore more directly in Part V.

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209. See notes 34-37 and accompanying text.

*A. Machos, not Mothers, Make Machos*

The most important objection raised against using the images of maternal power in Black and Latin culture to change the legal regulation of motherhood has been the prevalence of "machismo," particularly in Latin culture. This objection, however, reflects a failure to understand the broader significance of Kurtz's psychoanalytic analysis of the child-rearing practices in matrifocal extended families. In fact, my point is not that Black or Latin culture is any less crippled by the ideology and practices of male supremacy. Rather, my point is that male supremacy cannot be so readily explained as inherent in the psycho-dynamics of female mothering precisely because male supremacy thrives in cultures where child-rearing practices are organized differently from the symbiotic one-to-one relationship of the mother and infant. This symbiotic relationship characterizes the traditional nuclear family of white, middle-class suburbia and drives the anti-mother narratives I examined in Part III.A. The fact that an ideology of male supremacy exists in both cultures despite their different child-rearing practices is a crucial point for feminists to understand because it suggests that this ideology is not grounded in the mother/infant relationship.<sup>210</sup> A number of insights follow from this realization.

First, the fact that male supremacy has been explained as a defensive response to maternal power, despite the existence of machismo in cultures with very different familial structures,<sup>211</sup> supports the hypothesis that male supremacy does not originate from the practice of female mothering.<sup>212</sup> This observation encourages inquiries along two lines, both of which are likely to produce more fruitful trajectories for promoting women's sexual autonomy. The first is the search for alternative explanations of the psycho-cultural origins of the ideology and practices of male sexual dominance. Once we see the

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210. Though some feminists may welcome theories linking male-supremacist masculinity to female mothering because this linkage supports their struggles to make men assume more responsibility for domestic work and child care, the legal doctrines and public policies that undermine maternal power also increase many women's sexual vulnerability. See Part VI (discussing the link between welfare policies and divorce law reform proposals that undermine maternal power and the assault on women's sexual autonomy).

211. See, for example, Jose Sanchez Parga, *¿Por que golpearla?* (Ecuador, 1990) (articulating a controversial apology linking domestic violence in Andean culture to "a family structure in which mothers are all-powerful in the home, excluding their husbands and creating excessive emotional bonds with their children"), discussed in Harris, *Condor and Bull*, in Harvey and Gow, eds., *Sex and Violence* at 42-43 (cited in note 14).

212. See, for example, Benjamin, *The Bonds of Love* (cited in note 10) (responding to Chodorow and Dinnerstein).

inadequacy of theories that explain male supremacy as a defensive reaction to maternal power, we further the search for alternative explanations. For example, it may be that machismo in Black and Latin culture is a defensive response to the economic, social, and political subordination produced by race discrimination and economic exploitation.<sup>213</sup>

Deconstructing the supposed link between maternal power and male supremacy is also important because it clears the way for more affirmative narratives of maternal power. These narratives provide the ideological foundation needed to secure the policies and legal doctrines that support child-rearing practices and familial arrangements that do not compel women to depend on individual men. Protecting motherhood from the socioeconomic imperatives that currently reinforce women's dependence on men is probably the single most important reform needed to reduce many women's sexual vulnerability and increase our sexual autonomy.

*B. Transforming the Macho Within Us: Female Sexuality, Subjectivity, and Solidarity*

Like representations of maternal power, the representation of female heterosexuality as an object of the male gaze is an important place for feminist resistance because it lies at the root of a divisive dynamic between women, that is, the way women respond to the sexuality of other women. While men routinely view feminine sexual expression as an exercise of power over them<sup>214</sup> and bond around their ability to rape women,<sup>215</sup> women do not bond around their ability to

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213. See, for example, Comas-Diaz, 16 *J. Community Psych.* at 22-23 (cited in note 83). See also note 264 and accompanying text (discussing the racial dimension in the practices of pornographic masculinity). Needless to say, the meanings and effects of Latin machismo will not be adequately understood until Latin families and child-rearing practices are subject to the careful comparative analysis of psychoanalytic anthropologists like Stanley Kurtz. See note 152.

214. See, for example, Beneke, *Intrusive Images*, in Kimmel, ed., *Men Confront Pornography* at 168 (cited in note 58).

215. Gang rape effectuates male bonding for a variety of purposes, ranging from the punishment of nonconforming women, see, for example, Gayle Rubin, *The Traffic in Women: Notes on the "Political Economy" of Sex*, in Rayna R. Reiter, ed., *Toward an Anthropology of Women* 163 (Monthly Review, 1975) (describing how women "are frequently kept in their place by gang rape when the ordinary mechanisms of masculine intimidation prove insufficient"), to the expression of otherwise repressed homoerotic affinities, see Menachem Amir, *Patterns in Forcible Rape* 184 (U. Chicago, 1971). See generally Mariah Burton Nelson, *The Stronger Women Get, The More Men Love Football: Sexism and the American Culture of Sports* (Harcourt Brace, 1994).

attract men. Indeed, feminists do not view being sexy and acting sexy as a power over men that all women share and need to protect. Instead, women often respond to female sexual expression as an invitation to be objectified by the male gaze and overpowered by male aggression. The question, of course, is why?

Certainly part of the answer is that men have succeeded in representing themselves as victims of, and their sexual aggression as the uncontrollable response to, female sexuality.<sup>216</sup> For women to claim the right to be sexy and yet be free of male aggression is to claim the right to sexual subjectivity.<sup>217</sup> The cultural deployment of ideological and material resources, however, represents female sexuality as an object of male desire rather than the expression of a subject position. When women accept this representation, they view other women's sexuality as competition for the male gaze and are as ready as men to condemn women who flaunt their sexuality through dress, conduct, or other assertions of autonomy. For example, women condemn rape victims who are deemed to have "flaunted" their sexuality as much, and possibly more, than men.<sup>218</sup>

Female sexuality is not represented in our culture as an expression of female subjectivity, and women's desire for men is usually coded as female desire for male dominance. The ways in which female sexual identity is commodified for male consumption make it easy to understand why women tend to disown or disapprove of expressions of female sexuality.<sup>219</sup> Such sexual expressions trigger a response that aligns women with the imagined subjectivity of the male viewer, through which the woman becomes a provocation or an object to be appropriated, rather than the imagined subjectivity of the woman, for whom any particular man may or may not be a desired object. From the perspective of a female subject desiring men, the assault on a woman who has acted intentionally to attract male sexual attention is a direct assault on the subjectivity of female sexuality. When a woman is attacked for being sexual, the attack reinscribes the fact that we are not the subjects of our own desire. Being sexual makes us objects of male desire, which in turn entitles men to respond

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216. See generally Kimmel, ed., *Men Confront Pornography* (cited in note 58); Gravdal, *Ravishing Maidens* (cited in note 166).

217. See note 200 (discussing the difference between ego gratification based on "personal appeal" and women's respect for their own femininity).

218. See LaFree, *Rape and Criminal Justice* at 213, 217-18 (cited in note 1) (quoting female jurors). LaFree suggests, however, that "jurors' gender role attitudes are more important than their personal characteristics for understanding their perceptions of rape." *Id.*

219. See the discussion of Catharine MacKinnon's *Feminism Unmodified* in note 252 and accompanying text.

to us as objects of desire and, additionally, makes us responsible for whatever form that response takes.<sup>220</sup>

The assault on a woman who is sexual is thus an attack on any woman who claims the right to sexual subjectivity, the right to determine how she will express her sexuality.<sup>221</sup> Women see this clearly when we empathize with a woman who has been falsely accused of acting sexually, despite taking all the steps deemed warranted to avoid sending off sexual messages. But if women accept the idea that being sexual turns other women into objects of male desire and their bodies into appropriate targets for male aggression, then we can only be sexual when men say we can be sexual and safe.<sup>222</sup> Female sexuality exists for the men who desire women, rather than for the women who desire men. Heterosexuality is thereby reinscribed as a subject/object, rather than a subject/subject relation.

The next Part of this Article examines the images of men currently projected in the dominant cultural narratives of masculinity and male power. The analysis explores the hostility of these narratives toward female power in general and female sexuality in particular. Circulating positive images of maternal power and female sexuality will further women's struggles to create empowered sexual identities. Indeed, as I argue in Part VI, these images may also help us reform policies that currently increase women's economic dependence on and hence our sexual vulnerability to individual men. Nevertheless, the actualization of women's sexual autonomy depends at least as much on changing the way men think about women as it depends on changing the way women think about ourselves. At the same time, the way men think about women is driven by the way they think about men. Put differently, even when women achieve empowered sexual identities and economic independence, we will continue to confront the practices of male sexual dominance as long as the images of pornographic masculinity remain prevalent in the culture. Thus, changing the way men think about women depends on changing the way men think about themselves.

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220. This is the Stoltenberg "mind-fuck." See Stoltenberg, *Refusing to be a Man* at 24 (cited in note 114).

221. To claim this right does not mean to have the power. In a rape culture, the claimed authority only expresses a subjective state of mind, rather than an objective reality to the extent that male aggression is a permissible response to this kind of female behavior. See Coombs, 2 *Tex. J. Women & L.* at 277-93 (cited in note 43).

222. Indeed this is the intended message. See Kennedy, *Sexy Dressing* at 172-73 (cited in note 200).



V. IMAGES OF MEN: IN AND BEYOND THE SPIRITUAL PATHOLOGIES OF  
ENACTING A MASCULINE IDENTITY

To be a man in America is to be aggressive and dominant, to consume and appropriate. Men must play these roles with complete conviction and unshakable certainty that wanting what they want and getting what they want is a sex-given right.<sup>223</sup> In this Part, I criticize these images of male sexual identity, arguing that they are driven by the narratives of pornographic masculinity, of sex and dominance, just as the narratives of commodified femininity drive women to enact scripts of love and submission. Moreover, just as the images of commodified femininity strip women of sexual depth so that expressions of sexual desire make them appear less feminine, the images of pornographic masculinity strip men of spiritual depth so that expressions of spiritual desire make them appear less masculine.

While these images of masculinity are peddled by pornographers and attacked by feminists as narratives of male power, I completely reject the idea that these narratives empower men in any meaningful way. By contrast, I explore the images of power and narratives of masculinity found in the Jungian archetypes of the mature masculine.<sup>224</sup> Like the images of the powerful mother and the sacred prostitute, these images do not circulate in the public discourses of white America. My purpose is to show why we are all the worse for their absence.

A. *The Images of Pornographic Masculinity*

Beginning in the 1970s, with the important work of Andrea Dworkin and Catharine MacKinnon,<sup>225</sup> feminists have attacked the images disseminated by the pornography industry. These images project narratives of masculinity that make male dominance and sexism sexy. According to John Stoltenberg:

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223. See Stoltenberg, *Refusing to be a Man* at 16-17 (cited in note 114).

224. Moore and Gillette, *King, Warrior, Magician, Lover* at 49-141 (cited in note 19) (providing alternative accounts of masculine power organized around four Jungian archetypes of masculinity).

225. See generally Andrea Dworkin, *Pornography: Men Possessing Women* (G.P. Putnam's Sons, 3d ed., 1981); *American Booksellers v. Hudnut*, 598 F. Supp. 1316 (S.D. Ind. 1984), 271 F.2d 323 (7th Cir. 1985), affirmed 475 U.S. 1001 (1986); MacKinnon, *Feminism Unmodified* at 163-97 (cited in note 4) (presenting the feminist legal and social theory driving efforts to regulate pornography as a practice of sex discrimination).

[P]ornography does make sexism sexy; . . . [it] define[s] what is sexy in terms of domination and subordination, in terms that serve us as men . . . because it serves male supremacy, which is exactly what it is for. . . . [T]hose of us who live in this setup as men . . . recognize—in the world and in our very own selves—the power pornography can have over our lives: It can make men believe that anything sexy is good . . . that our penises are like weapons. It can make men believe—for some moments of orgasm—that we are just like the men in pornography: virile, strong, tough, maybe cruel. It can make men believe that if you take it away from us, we won't have sexual feelings.<sup>226</sup>

Just as a man may rape a woman in order to orgasm or to participate in a practice he believes degrades women, a man consumes pornography for the same reasons.

The essence of pornographic masculinity is the negation of femininity in men through the domination and appropriation of women's femininity. Similarly, male sexual aggression is the male desire to enact a form of masculinity that draws its essence from opposition to the feminine.<sup>227</sup> Still, the question is whether pornography empowers men.

Certainly, the public display of pornography, like the private enactment of pornographic narratives, is as much an expression of male supremacy as it is an assault on the subjectivity, autonomy, and integrity of women.<sup>228</sup> But accounts of the private consumption of

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226. Stoltenberg, *Pornography and Freedom*, in Kimmel, ed., *Men Confront Pornography* at 60-71 (cited in note 58). The problem is that Stoltenberg's exhortations, "We've got to be telling [x, y, & z] that it's not okay," do not sound compelling precisely because they do not answer Duncan Kennedy's question—what's in it for men? See Kennedy, *Sexy Dressing* at 126-30, 142-47 (cited in note 200) (using a cost-benefit analysis to identify men's interests in transforming laws and law enforcement practices that perpetuate women's vulnerability to men). The only compelling answer requires a substantive notion of true power (versus the illusion of supremacy). It must address subject/object relations and explain why we should value and desire them, when a subject/object relation is so familiar, superficially gratifying, and difficult to escape.

227. Stoltenberg, *Refusing to be a Man* at 31-34 (cited in note 114). Stoltenberg explains: People born with penises must strive to make the idea of male sexual identity personally real by doing certain deeds, actions that are valued and chosen because they produce the desired feeling of belonging to a sex that is male and not female. . . . To achieve this male sexual identity requires that an individual *identify with* the class of males—that is, accept as one's own the values and interests of the class. A fully realized male sexual identity also requires *nonidentification with* that which is perceived to be nonmale, or female. . . . His identity as a member of the sex class "men" absolutely depends on the extent to which he repudiates the values and interests of the sex class "women."

Id. *Contrast this account to the account of masculinity (the relation of man to woman) in the images of the King, Warrior*. See notes 279-306 and accompanying text.

228. See generally U.S. Department of Justice, Attorney General's Commission on Pornography, Final Report 197-223 (1986) (including the testimony of Andrea Dworkin and a number of victims of "porn rape" and detailing the consequences for the victims: forced sex,

pornography suggest that there is also a decidedly negative impact on the men who consume it. Indeed, these accounts suggest that what pornography institutionalizes is the illusion of male supremacy. Some men act out the scenarios, relations, and events depicted in the pornography they consume.<sup>229</sup> More men probably use it as a substitute for sex with real women.<sup>230</sup> Consider, for example, the marked difference between the images of male sexuality in pornography<sup>231</sup> with the image of men consuming pornography:

He keeps them in the closet. In piles. Their poses are improbable and promising, no flesh is hidden. It is late afternoon, sounds of the freeway drift through the room. His wife is working, she will not see him. He is tired. He may or may not know he is depressed. He goes to the closet. He rummages through the piles, looking for one that will spark him, that will let him go. Through the hundreds of magazines, not one can satisfy him. . . . He drives through stoplights, his mouth clamped on a joint. Into a parking lot. Pulls in beside the spray-painted scrawl—"Porn Hurts Women." Rushing past, he enters. . . . Picking up the magazines wrapped in plastic, the man tries to guess by the covers what lies inside. Never quite sure, stoned, he takes nearly an hour to make his choice. . . . He asks for quarters. Heads back to the video booths. . . . He is looking for the perfect film, the blonde that will stun him with her moans, the whimpering that sets off a trembling inside him, released by a cock of monstrous proportions, which dwarfs his own with envy, with the certainty that only here, here in this booth, its damp sticky floor, its private dark, can he possess this image, let it consume his life. He unzips his pants and slips in the quarter. The reel rolls, music and moaning, ending abruptly. Five minutes. Another quarter. Five minutes. Another quarter. Again, again, from booth to booth, the hour slips by. He does not want to come. He wants to hold it, the tension as long as he can. He leaves the store with three magazines which he cannot help but begin unwrapping in the car. He stops himself. He knows he needs to nurse their charge. One time through and he will need another. He drives home with one hand on himself.

Up in his bedroom, he undresses, spreads the magazines on the bed, lies beside them. He studies each image, noting each position, the expression on each face. He reads the captions, how the women tell the men how they want it, how they can't get enough. He is still trying hard not to come.

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torture, murder, imprisonment, suicide, prostitution, not to mention psychological trauma and venereal disease).

229. *Id.*

230. For example, in the Commissioner Statement of Judith Becker, Ellen Levine, and Deanne Tilton-Durfee, the Commissioners expressed sympathy for the victims, but were unwilling to generalize that the production and consumption of pornography causes or even encourages porn rape because of the "near impossibility" of finding "people willing to acknowledge their personal consumption of erotic and pornographic materials and comment favorably in public about their use. . . . Since such material is selling to millions of apparently satisfied customers, it seems obvious that the data gathered [that is, the porn rape victims' testimony] is not well balanced." *Id.* at 541.

231. See, for example, Stoltenberg, *Pornography and Freedom*, in Kimmel, ed., *Men Confront Pornography* at 60-61, 63, 65 (cited in note 58). See generally Dworkin, *Men Possessing Women* (cited in note 225).

An hour later he hears his wife drive up. He picks up the magazines, he pants, runs to the washroom, worried she will find him, angered by her arrival, disrupting his peace. He will rush his orgasm. He will not feel satisfied. He will feel the hours he has wasted, the shame emerging. He will say he needs to take a shower. The magazines are in the bathroom. Already they are not enough.<sup>232</sup>

In this account, consuming pornography is hardly a vehicle for actualizing masculine power. On the contrary, the image of the husband desperately trying to orgasm before his wife gets home from work is simply pathetic. Why, for example, isn't he waiting for his wife, so they can have sex together?<sup>233</sup> Since most men who consume pornography refuse to discuss it honestly and openly,<sup>234</sup> it is hard to know why, or even how many of them are masturbating in the bathrooms of America. What we can know is that rather than doing the hard work it takes to develop the real power of the King, Warrior, Magician, and Lover,<sup>235</sup> pornography encourages these men to retreat into the fantasy world of sexual dominance.<sup>236</sup> If they accept that invitation, they risk addiction to the consumption of images, an addiction that serves capitalist profit, rather than male sexual fulfillment.<sup>237</sup> David Mura puts it this way:

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232. David Mura, *The Bookstore*, in Kimmel, ed., *Men Confront Pornography* at 133 (cited in note 58).

233. It is the image of a man whose sexual identity is so fragile that intercourse with a real flesh and blood woman is coded as potential confrontation and repudiated in favor of masturbation. The consumer of images is unable to sustain an erection. Interestingly, Robert Staples argues that "porn is a white man's problem—a particular kind of white man's problem." Robert Staples, *Blacks and Pornography: A Different Response*, in Kimmel, ed., *Men Confront Pornography* at 111 (cited in note 58). According to Staples, a 1970 presidential commission "found that the typical consumer of porn was a white male and that blacks were under-represented among the purveyors of erotica." Id. Staples attributes this asserted difference in pornography consumption to the fact that "[b]lacks have traditionally had a more naturalist attitude toward human sexuality, seeing it as the normal expression of sexual attraction between men and women." Id. at 112. Whatever the merits of these arguments (and they are worth further exploration), race is undeniably a prominent theme in the deployment of pornographic images where racial stereotypes of unrestrained sexual desire are graphically coded as male bestiality and female insatiability, and are used to debase both men and women. See Dworkin, *Men Possessing Women* at 153-60 (cited in note 225) (describing scenes from a Mexican jail). For further discussion of the racial dimensions of "pornographic masculinity," see notes 264-72 and accompanying text.

234. See note 230 (indicating that millions of men consume pornography, but hardly any of them testify).

235. See Part V.B.

236. Drucilla Cornell puts it well: "[P]ornography is what wimps need, not what men want." Cornell, 100 *Yale L. J.* at 2270 (cited in note 4).

237. See David Mura, *A Male Grief: Notes on Pornography and Addiction*, in Kimmel, ed., *Men Confront Pornography* at 124-25 (cited in note 58). Mura writes: "[T]he addict to pornography desires to be blinded, to live in a dream. . . . Those who are addicted to pornog-

The addiction to pornography is not fun. Underneath all the assertions of liberty and "healthy fun" lie the desperation and anxiety, the shame and fear, the loneliness and sadness, that fuel the endless consumption of magazines and strip shows, x-rated films, visits to prostitutes. If addicts portray themselves as hedonists or carefree, this portrayal is belied in those moments and feelings they do not let anyone else see. Like all actors, they mistake their life on stage as being truest and most real. What happens offstage cannot possibly have a bearing on who they are.<sup>238</sup>

Men, like women, long for sexual and spiritual unity.<sup>239</sup> The narratives of pornographic masculinity are designed, however, to make men think they are lesser men for wanting it. These narratives encourage men to act out their relations to women<sup>240</sup> in ways that benefit a profit-oriented system of exchange at their own expense as human beings<sup>241</sup> and even as men. From this perspective, feminists do themselves and men a serious injustice by contributing to the notion that pornography reflects or produces male power. We should stop. This formulation only makes men want it more. More

raphy attempt to erase the distinction between art and life. On the one hand, the addict knows, at some level of consciousness, that the world of pornography is unreal. . . . Like all addicts, the addict to pornography dreams then of ultimate power and control. When reality invades this dream and causes doubts, the addict thinks: I have nothing else. I have, all my life, done my best to destroy through my addiction whatever could replace this. Thus the addict returns to the inertia of the dream." *Id.*

238. *Id.*

239. The endless consumption of pornographic images derives from the mistaken assumption that one can feed a spiritual hunger through a desire for control, distance, and eventual destruction. Such a desire is not a desire of the flesh. As so many have pointed out, pornography is not primarily a sensual experience. Instead, the consumption of pornography is, in its profoundest sense, an intellectual and emotional perception which is based on repression and false premises. Since one's spiritual hunger can never be satisfied by such means, the addict can either keep consuming pornography in greater amounts, hoping that somehow quantity will change its quality, or else he can give up pornography and seek a different sustenance. [The real thing.]

Mura, *A Male Grief*, in Kimmel, ed., *Men Confront Pornography* at 135 (cited in note 58).

240. The pornographic image of the woman: all surface, no depth; complete devotion, no boundaries, no struggle. See *id.* at 123. Mura writes: "A man wishes to believe there is a beautiful body with no soul attached. [Why does he wish it? Because that soul may lay reciprocal claims upon him.] Because of this wish, he takes the surface for truth. There are no depths. . . . Only the surface can be known and loved, and this is why the image is so easily exhausted, why there must be another. What is this danger that lies beneath the surface? How can it hurt him? It reminds him of the depths he has lost in himself." [The lies he has lived]. *Id.*

241. See Joel Kovel, *The Antidialectic of Pornography* in Kimmel, ed., *Men Confront Pornography* at 164 (cited in note 58). Kovel writes: "Can one imagine any genuine resistance, any critical capacity whatsoever, germinating in the sex shops? Pornography is good for business. . . . A nation of pornography consumers is no different, politically speaking, than a nation of heroin junkies. It is not hard to envision the video-display terminals at the office of the future being programmed to show pornography—soft-core, no doubt—during lunch breaks. . . . [T]he main point of distinction between the erotic and the pornographic [is precisely this]: that the latter represents sexuality firmly under the control of capital while the former dissolves capital." *Id.* (emphasis added).

importantly, it is simply not true. What pornography does do is glorify a male sexual identity that makes huge profits for porn capitalists off of men's fantasies and despair. This cycle harms individual men as much as individual women, destroying interpersonal solidarity at its sexual core.<sup>242</sup>

The pornographic narratives of masculinity oppress and exploit men as men because these narratives urge men to enact a form of masculinity that is impossible for self-conscious human beings to sustain except at great emotional and interpersonal cost. The will to dominate means a constant anxiety and insecurity over the inability to dominate. Emotional withdrawal means frustration and loneliness. It means never saying what you really feel, never giving or asking for love, tenderness, or understanding, never sharing or compromising or accepting the challenge to change. It means getting what you want with lies, manipulation, false and hypocritical accusations, and temper tantrums.<sup>243</sup> To the extent that a man needs love and understanding, the narratives of pornographic masculinity will make him feel less like a man. The men in those narratives demand submission but do not need love, making ordinary men think, "if they are men, then I am not."<sup>244</sup>

At the same time, the cost to men of attempting to enact a pornographic masculinity is more than emotional. It is practical and concrete and has a direct bearing on the kind of women these men are likely to "attract." Men who suppress their need for intimacy and love

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242. See Cornell, 100 Yale L. J. at 2250 (cited in note 4) ("MacKinnon's reduction of feminine sexuality to being a 'fuckee' endorses this fantasy as 'truth' and thereby promotes the prohibition against the exploration of women's sexuality and 'sex' as we live it and not as men fantasize about it").

243. This has been termed the Stoltenberg "mind-fuck." See notes 114, 220 and accompanying text; Stoltenberg, *Refusing to be a Man* at 24 (cited in note 114). From this posture, every interaction is an assertion of power rather than an effort to build relationships.

244. These images of masculinity, like the images of women's sexual morality, serve to facilitate the imposition of a capitalist labor discipline. See Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 Stan. L. Rev. 1, 33-34 (1988). Observing the similarities in the attitudes of young Chicano and other low-status male workers, Professor Austin notes that images of masculinity perform a multi-purpose function: dignifying menial manual labor, sublimating brutality, reinscribing sexual difference, and justifying the sexual division of labor. It does this even as it claims the male workers' consent to abuse, "the brutality of the working situation is partially re-interpreted into a heroic exercise of manly confrontation with *the task*. Difficult, uncomfortable or dangerous conditions are seen, not for themselves, but for their appropriateness to a masculine readiness and hardness. . . . [I]n the machismo of manual work the will to finish a job, the will to really work, is posited as a masculine logic and not as the logic of exploitation." *Id.* at 33 (quoting Paul Willis, *Learning to Labour: How Working Class Kids get Working Class Jobs* 150-51 (Saxon House, 1977)).

and live off interpersonal strategies of deceit and coercion are not particularly attractive partners. Certainly, these men have nothing to offer women who prioritize emotional engagement and sexual intimacy over the economic support or social status most men offer most women. These men offer nothing precisely because coercion and emotional withdrawal—the tactics used to get what they want without expressing need, dependence, or vulnerability—circumvent the reciprocity inherent to intimacy.

In this interpersonal context, a man's refusal to express his needs appears, in some instances, as a refusal of intimacy and, in others, as a manipulative ploy serving a selfish refusal to open himself to reciprocal requests for support and understanding.<sup>245</sup> Such requests are threatening to men precisely because they cannot be satisfied by emotional withdrawal or male domination; instead they require a man to reach out beyond himself and meet the woman's needs. Because such men have nothing to offer, the women who do stay, stay either because they have given up trying to achieve the emotional and sexual intimacy these men cannot give, or they stay because of fear and a lack of feasible alternatives.<sup>246</sup>

### *B. Jungian Archetypes of Mature Masculinity*

A central theme in my discussion of culturally dominant images of motherhood and female sexuality has been to explore some of the ways in which race, class, and culture drastically alter how women perceive different images of female autonomy, and whether they are experienced as liberating or oppressive. Just as these differences affect our investments in alternative images of motherhood and female sexuality, they also influence the way we respond to alternative images of men and masculinity. In this Section, I explore some alternatives to the narratives of pornographic masculinity and interrogate these alternatives by examining the

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245. Rivaka Polatnick provides a good example and label for this interpersonal dynamic. They are the tactics through which men deploy "the principle of least interest." As Polatnick explains: "By propogating the belief that women are the ones who really desire children, men can then invoke a 'principle of least interest:' that is, because women are 'most interested' in children [or, one might add, in marriage, in 'the relationship' or indeed in anything else], they must make the most of the accommodations and sacrifices required to rear them [or to maintain the relationship]." Polatnick, *Why Men Don't Rear Children*, in Trebilcot, ed., *Mothering* at 27 (cited in note 93). Put differently, emotional withdrawal, lack of interest in, and/or "fear of commitment" to marriage or children are self-serving, albeit effective, strategic maneuvers through which men shift the practical burdens of sustaining these relations to women. *Id.*

246. See generally Mahoney, 90 Mich. L. Rev. at 1 (cited in note 13) (discussing separation assault).

kinds of power they invite men to enact in their lives. My purpose is to explore the impact these alternative narratives could have on women's interests, both as feminists and as heterosexual desiring subjects.

This search for alternative narratives of masculinity is an important project for feminists because cultural narratives are the resources individuals use to construct their identities and relationships. The things we do in order to be who we are, in turn, are the practices through which some narratives become culturally dominant while others are suppressed.<sup>247</sup> These narratives are also the resources officials use to interpret events and apply legal norms.<sup>248</sup>

At the same time, the search for acceptable images of masculine power cuts into the heart of one of the most intensely divisive intrafeminist debates over female sexual desire.<sup>249</sup> Women's heterosexual desire became a fundamental problem in feminist legal theory when radical feminists resuscitated an idea, as old as the early Christian hagiographies of the female saints,<sup>250</sup> that women's sexual desire for men is completely incompatible with their struggle for equality, dignity, and autonomy. The most notable proponent of this position in recent feminist legal theory has been Catharine MacKinnon.<sup>251</sup> Professor MacKinnon believes that:

Sexual desire in women, at least in this culture, is socially constructed as that by which we come to want our own self-annihilation. That is, our subordination is eroticized in and as female; in fact, we get off on it to a degree, if nowhere near as much as men do. This is our stake in this system that is not in our interest, our stake in this system that is killing us. I'm saying femininity

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247. See notes 71-73, 113 and accompanying text.

248. Narratives perform this function in the processing of rape cases. For example, LaFree quotes numerous jurors whose comments suggest they were reacting to rape allegations through narratives of pornographic masculinity—the overwhelming sexual needs that make all men victims of female provocation: “Come on! Girls think they know so much these days. They try to lead a man on and then they get so far he can't step and the woman hollers rape.” Male sexuality is represented as inherently dangerous and men as always ready for sex—carelessness indicating evidence of consent: “You don't get in a car at midnight with two complete strangers and not expect to do something.” A Black female told LaFree that the victim “put herself in a position for it. She asked for it and got it. *It's a poor man who turns down anything for free.*” LaFree, *Rape and Criminal Justice* at 148 (cited in note 1) (emphasis added) (quoting jurors).

249. For one account of the history of this debate, see Kate Ellis, *I'm Black and Blue From the Rolling Stones and I'm not Sure How I Feel About it: Pornography and the Feminist Imagination*, 14 *Socialist Rev.* 103 (1984). For an additional account, see Pesquera and Sugura, *There is No Going Back*, in Alarcón, et al., eds., *Chicana Critical Issues* at 99 (cited in note 2).

250. See Gravdal, *Ravishing Maidens* at 22 (cited in note 166).

251. See Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *Signs* 515, 531 (1982); MacKinnon, *Feminism Unmodified* at 54 (cited in note 4).



as we know it is how we come to want male dominance, which most emphatically is not in our interest.<sup>252</sup>

This image of female sexual desire prompted vigorous objection from feminists who rejected MacKinnon's reduction of female sexual identity to victimization by men. As Drucilla Cornell points out: "The possibility of feminine desire . . . that is irreducible to being fucked by men and liking it is foreclosed by MacKinnon's analysis."<sup>253</sup>

Indeed, this reduction constitutes little more than an outright rejection of and hostility towards feminine sexual difference. According to Cornell, MacKinnon accepts current male fantasies of women and our sexuality as reality,<sup>254</sup> even though "[t]he celebration of the feminine 'sex' and women's sexuality . . . suggests that our sexuality is not represented by any of the current male fantasies of woman and sex within patriarchy."<sup>255</sup> In order to celebrate this feminine sexual difference, Cornell uses the work of Luce Irigaray to deploy the positive image of lesbian love-making in which Irigaray celebrates the loss of boundaries experienced in sexual intimacy.<sup>256</sup>

The problem with Cornell's response is that even if women do not agree with MacKinnon's formulation that "what men think is sex, women think is rape," it does not follow that images of lesbian love-making can guide or sustain the practices of a deeply intimate subject-to-subject heterosexuality.<sup>257</sup> Indeed, Cornell's response to

252. MacKinnon, *Feminism Unmodified* at 54 (cited in note 4).

253. Cornell, 100 Yale L. J. at 2266 (cited in note 4). Cornell continues: "We are left instead with a disjuncture between sex and freedom. To quote MacKinnon [quoting Ti-Grace Atkinson] . . . 'I do not know any feminist worthy of the name who, if forced to choose between freedom and sex, would choose sex. She'd choose freedom every time.'" Id. at 2266.

254. Id. at 2270. MacKinnon's approach means that "a feminist perspective is impossible as anything other than the recognition of the totalization of the masculine viewpoint. Therefore, the most we can do is simply reverse the meaning of the totality, rather than challenge it in the name of the feminine. In MacKinnon's reality, what men see as sex, women see as rape." Id. at 2266. Indeed, not only does she accept male fantasies of female sexuality as reality, these are the fantasies of wimps. Cornell puts it quite well: "A man who needs to imagine a woman in chains is no man at all: 'pornography is what wimps need, not what men want.'" Id. at 2270.

255. Id. at 2267.

256. According to Cornell, "Irigaray beautifully imagines two women making love as an alternative to MacKinnon's vision of 'getting fucked.' As Irigaray writes, '[n]o surface holds. No figure, line, or point remains. No ground subsists. But no abyss, either. Depth, for us, is not a chasm. Without a solid crust, there is no precipice. Our depth is the thickness of our body, our all touching itself. Where top and bottom, inside and outside, in front and behind, above and below are not separated, remote, out of touch. Our all intermingled. Without breaks or gaps.'" Id.

257. Cornell is careful not to accept MacKinnon's construction of feminine sexual identity as an accurate representation of heterosexuality: "Nor am I arguing that the practice of heterosexuality is reducible to MacKinnon's and Dworkin's view of 'sex' as 'intercourse' or of

MacKinnon's argument may be particularly troubling to straight women of color. As straight women, our sexual orientation means that celebrations of feminine sexuality that ignore the male term, even as they glorify images of merged identity, may not be helpful to our struggles for sexual autonomy. This is true because the problem heterosexuality creates for women is not so much the problem of achieving the sense of oneness and loss of boundaries that Irigaray's image celebrates.<sup>258</sup> Instead, the problem is one of achieving the social and interpersonal conditions under which a woman, having experienced that loss of boundaries with a man, can reassert her individuality, autonomy, and separation from that man without triggering male aggression or depression.<sup>259</sup>

If our sexual orientation makes it difficult to accept images of sexuality that ignore men, our racial and ethnic identities make it hard to accept images of men that threaten or degrade their masculinity.<sup>260</sup> Part of being straight means loving and wanting men.<sup>261</sup> Part of being colored means understanding the degree to which men experience their oppression as assaults on their

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'intercourse' as 'getting fucked.'" *Id.* at 2270. The image she offers of sexuality is, however, extremely problematic if offered as a path toward non-subordinated/ing heterosexuality.

258. See notes 95-96, 172-75 and accompanying texts (discussing the psycho-sexual dynamics of sexual intimacy).

259. See, for example, Mahoney, 90 Mich. L. Rev. at 93 (cited in note 13). Mahoney's image of "separation assault" is a powerful concept that can incorporate the many ways men resist the expressions and activities through which "their women" assert an individuality separate from them. Why is this the crucial problem? Because men's needs need to be reconstructed. Males and females are emotionally and psychologically caught in a subject/object structure rather than the subject/subject structure of interpersonal relation. See notes 85-86 and accompanying text (discussing a psychoanalytic theory of sexual dominance). See generally Benjamin, *The Bonds of Love* at 75-84 (cited in note 10); West, 3 Wis. Women's L. J. at 118-33 (cited in note 4) (discussing the problem of erotic submission). To have needs that only another subject can satisfy means to have needs that do not depend on appropriation for satisfaction. The need for intimacy can be satisfied without appropriation. All it presupposes is an ability to trust and the will to be trustworthy. Yet even that trust must be qualified, not because we fear that the other will intentionally betray us, but because we recognize and accept the finitude and ultimate mortality of the other. Intimacy is the one need that we cannot satisfy for ourselves or by ourselves. In order to recognize and accept our dependence without abdicating our autonomy, we need to redefine intimacy as the trust that holds two subjects together as the boundaries they draw are lost and redrawn without fear.

260. Latin women routinely tend to value and desire "masculinity" in men. Indeed, the way Latin women insult men is by suggesting that "they are no longer sexually active, an insult which hinges on the perceived failure to display effective male agency." Harvey, *Domestic Violence*, in Harvey and Gow, eds., *Sex and Violence* at 74 (cited in note 14). Absent positive and non-misogynistic images of masculinity, however, see, for example, Part IV.B, the difference between "masculine" and "macho" may be a line too fine for our own good.

261. Part of wanting men means wanting their desire. Linda King, *Erotic Code*, in Grewal, et al., eds., *Charting the Journey* at 221 (cited in note 2).

manhood.<sup>262</sup> Putting these two positions together may mean listening to what men say about their struggles to construct self-confident and other-affirming masculine identities. Their work suggests that there is a direct connection between male abuse of women and the complete lack of any positive, affirming images of masculinity, images that do not make male power depend upon female subordination.<sup>263</sup>

For example, Abdul JanMohamed reads the abuse of women depicted in Richard Wright's novel *Native Son* as a means of resisting the effects of white racism, that is, "the 'feminization' or 'infantilization' of the Black man within a phallogentric system."<sup>264</sup> According to JanMohamed, "Wright proceeds from the perspective of a protagonist so profoundly castrated that he experiences himself as an

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262. See Comas-Diaz, 16 J. Community Psych. at 23 (cited in note 83); Joseph and Lewis, *Common Differences* at 215 (cited in note 2) (describing the ego gratification Black women provide to Black men through sex). Certainly my position is not that women should use sex to build male egos. My point is simply that the fact that they do cannot be explained away as the expression of a desire for self-annihilation. Another interpretation might be that these women recognize precisely what men so often fail to see: that their interests are better served by practices that promote their partners' self-confidence and self-esteem. Sexual intimacy can often do both.

263. Writing generally about changing expectations in (white) working-class and middle-class homes, Victor Seidler notes that as white women "are forced to work outside the home," they are "increasingly making demands upon men to share in the housework." Victor J. Seidler, *Recreating Sexual Politics: Men, Feminism & Politics* 44 (Routledge, 1991). According to Seidler, the tensions generated by these demands appear to stem from the culture's failure "to provide a way of helping men to a redefinition of their identity as men. Often men feel threatened by this new independence of women, feeling the need to reassert their own power and show 'who's boss.' Often much energy is taken up within these domestic struggles." *Id.* The only certain thing is that images of pornographic masculinity are not going to do the job.

264. JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 107 (cited in note 9). Other writers draw similar connections between the sexual abuse of women and the frustrations caused by racist restrictions on minority male economic opportunities. See, for example, Schechter, *Women and Male Violence* at 236 (cited in note 14) ("[Racially subordinated] men seek to compensate for this lack of [economic and political] control by intensifying their identification with sexual aspects of manhood. Often this means sexual domination, which easily manifests itself in rape, battering and other forms of violence against women"). Robert Staples contrasts the low rate of pornography consumption by Black males to the high rate of rape prosecution against Black males in order to make a suggestive (though highly problematic) argument that "it is the denial of economic rights, not porn, that is in large part responsible for rape in this country." Staples, *Blacks and Pornography*, in Kimmel, ed., *Men Confront Pornography* at 113 (cited in note 58). According to Staples, "a porn commission without a political axe to grind might have concluded that when other expressions of manhood such as gainful employment and economic success are blocked, those men will express their frustration and masculinity against women. . . . Such a conclusion, [however], would not go down well with the Reagan administration, whose policies have led to the burgeoning number of unemployed black males." *Id.* at 112-13. Staples's argument resonates with other evidence connecting rape to male experiences of masculine inadequacy even though his premises and inferences are highly problematic. Black rapists may be overrepresented in criminal proceedings simply because of white racism/sexism, the idea being that white men rape more often than criminal statistics have registered. See LaFree, *Rape and Criminal Justice* at 43-46, 239-40 (cited in note 1).

already 'feminized' Black male who needs to (re)assert his 'manhood' through rape and murder."<sup>265</sup>

Although JanMohamed rejects the fundamental premise of *Native Son*, namely that "the protagonist can become a 'man' through rape and murder and overcome the racialization of his subjectivity," his analysis suggests that violence against women is a vehicle through which racially subordinated men can reclaim their masculinity.<sup>266</sup> JanMohamed argues that "the violent 'appropriation' of [the white woman's] sexuality not only allows Bigger to enter into a system of 'exchange' with white men and become their 'equal'; it also permits him to enter the symbolic realm and possess the phallus."<sup>267</sup>

This is the logic that explains how raping women becomes a vehicle through which racially subordinated men reclaim their masculinity. If being a man means having the power to rape women with impunity, then laws and public interventions that protect women from rape, particularly those that operate in racially biased ways, deny racially subordinated men their right to be men. The law, read now as the white man's law, constitutes them as less than men and preserves the rights of manhood, that is, "the right" to rape with impunity, exclusively for white men.<sup>268</sup> In this logic, rape is used not only to show that racially subordinated men are indeed men (because they are able to rape), but that their manhood exceeds the white racist efforts to emasculate them. From this subject position, they claim the will to assert their manhood even if it costs them their life or their liberty, although the fact that most rapes are intraracial means they usually risk neither.

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265. JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 108 (cited in note 9). "Every time [Bigger] felt as he had felt that night, he raped. But rape was not what one did to women. Rape was what one felt when one's back was against a wall and one had to strike out, whether one wanted to or not, to keep the pack from killing one. He committed rape every time he looked into a white face . . . . But it was rape when he cried out in hate deep in his heart as he felt the strain of living day by day. . . . The knowledge that he had killed a white girl they loved and regarded as their symbol of beauty made him feel the equal of them, like a man who had been somehow cheated, but had now evened the score." Id. at 109-10 (quoting Richard Wright, *Native Son* 155, 213-14 (Harper & Row, 1940)). See also Sapphire, *Wild Thing*, in Miquel Algarín and Rob Holman, eds., *Aloud: Voices from the Nuyorican Poets Cafe* 266, 266-74 (H. Holt, 1994) (the poet "feel[s] good baby/[he] just did/the wild thing," but he's still impoverished, illiterate, (maybe) retarded, and nowhere nearer to free).

266. JanMohamed, *Racialized Sexuality*, in Stanton, ed., *Discourses of Sexuality* at 108 (cited in note 9).

267. Id. at 110.

268. See LaFree, *Rape and Criminal Justice* at 237-39 (cited in note 1).

In a thoughtful and profoundly affirming interpretation of Alice Walker's novel *The Color Purple*, Professor Steven Hobbs offers a very different account of what being a man really means.<sup>269</sup> His reading of Walker's novel examines the dynamics of dominance and submission that almost destroy the marriage between Harpo and Sofia. Hobbs attempts to resolve the tensions this dynamic generates by projecting an image of masculine power that can engage female subjectivity in a way that respects women's dignity, autonomy, and equality, while preserving what is male about men. Hobbs writes of Harpo's marital problems:

Initially, [Harpo] is very happy with married life, joyfully sharing the responsibilities of the household. His dilemma begins with his belief that he has to rule his house just as his father had. He believes that Sofia is to obey him and let him take the lead. To Harpo, Sofia is unbowed, unbreakable, and overly bossy . . . [She] fits the stereotype of the domineering Black woman so much maligned by history and scholars.

For Harpo, his only chance for redemption, from being viewed as "less of a man" was by beating Sofia into submission. But Sofia refuses to be whipped by anyone; she fights back with determined self-preservation. Consequently, their marital relationship turns into one physically bruising fight after another with no winners. The beatings stop when Sofia takes her children and leaves.<sup>270</sup>

According to Hobbs, Harpo's situation is "illustrative of a struggle that a Black man may face in defining his role within his family."<sup>271</sup> When Harpo asks his father what he should do about Sofia, he is asking, "How can I be a man?" The problem is that the question already presupposes an expectation that Sofia should obey him—that her refusal to obey is a challenge to his manhood, rather than a simple assertion of her autonomous subjectivity—her separateness from him. In this formulation, the very elements that make her a subject to herself, make her a challenge to him—namely her independent objectives and desires. Framed this way, his manhood comes to depend upon his ability to control her. If he can make her do what he wants and not what she wants, then he will be "a man."<sup>272</sup>

Hobbs rejects this image of manhood, which calls men to invest in controlling women, in favor of the alternative image of "a do-right kind of man," an image of masculine power that calls men to develop

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269. See generally Steven H. Hobbs, *Gender and Racial Stereotypes, Family Law, and the Black Family: Harpo's Blues*, 4 *Intl. Rev. Comp. Pub. Pol.* 35 (1992).

270. *Id.* at 40.

271. *Id.* at 39.

272. *Id.*

the strength of character that will enable them to love, respect, and accept the women in their lives. According to Hobbs:

Acceptance is also a vital part of respect. A man cannot have control over the dreams, desires and personality of his woman. He cannot mold her in his image with physical violence or emotional intimidation. He respects her right to bodily and emotional integrity. In offering respect, love and protection, he does right by her.<sup>273</sup>

The image of the do-right kind of man presupposes and offers the promise of resolving the tensions inevitably generated by an image of male sexual identity that makes male power depend on female powerlessness. Hobbs's advice to men is thus a complete inversion and repudiation of the basic assumptions that drive Harpo's father to advise Harpo to beat Sofia.<sup>274</sup> Rather than seeking his "manhood" in a struggle to render his woman powerless or submissive, Hobbs's advice is to accept, respect, and to "recognize that within her and with her you can achieve great strength."<sup>275</sup> Male and female power is represented as co-equal, complementary, and synergistic.

This alternative vision of the relationship between male and female power is profoundly affirming and pregnant with possibilities. In a provocative defense of masculinity, Robert Moore and Douglas Gillette insist that the mature masculine is not wantonly violent or abusive. They propose an alternative account in which the central opposition at the root of male dominance is not an opposition between masculinity and femininity, male and female, but rather between mature and immature masculinities.<sup>276</sup> Drawing on Carl Jung's understanding of the Archetypal Self, they articulate four psychological con-

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273. Id. at 44-45.

274. For somewhat different advice, see asha bandele, *In Response to a Brother's Question about What He Should Do When His Best Friend Beats Up His Woman*, in Algarín and Holman, eds., *Aloud* at 392 (cited in note 265).

275. Hobbs, 4 Intl. Rev. Comp. Pub. Pol. at 44 (cited in note 269).

276. Moore and Gillette, *King, Warrior, Magician, Lover* at xvii-xix (cited in note 19). The authors distinguish "Man psychology" from "Boy psychology," arguing that patriarchy is not the expression of a "deep and rooted masculinity," but rather the expression of "Boy psychology." Id. at xvii. According to the authors, "Boy psychology is everywhere around us, and its marks are easy to see. Among them are abusive and violent acting-out behaviors against others, both men and women; passivity and weakness, the inability to act effectively and creatively in one's own life and to engender life and creativity in others (both men and women); and, often, an oscillation between the two—abuse/weakness, abuse/weakness." Id. at xvi-xvii. "Patriarchy . . . is an attack on *masculinity* in its fullness as well as femininity in its fullness. . . . The patriarchal male does not welcome the full masculine development of his sons or his male subordinates any more than he welcomes the full development of his daughters, or his female employees." Id. at xvii.

figurations that constitute the fundamental structures of a mature masculine psyche. They call these configurations the archetypes or primordial images of the King, Warrior, Magician, and Lover. These archetypes are the psychic energies that, in dynamic relationships, constitute "the blueprints for the calm and positive mature masculine," a masculinity that is "nurturing and generative, not wounding and destructive."<sup>277</sup>

Rather than reading these archetypes of masculinity as psychological phenomena, I read them as alternative narratives of masculine power, which invite men to enact a different kind of male sexual identity than the one I have been attacking as pornographic masculinity. Reading these images as narratives that feminists may want to see widely disseminated in mainstream culture, we can examine the kinds of relationships these narratives encourage, without retreating into an individualistic psychology of male dominance.<sup>278</sup> Whether individual men will have the emotional strength and internal discipline to enact alternative sexual identities is not directly relevant to my analysis. Instead, the question is whether the realization of particular narratives of masculinity would be a good thing for women, thus warranting our investment in increasing their cultural circulation. At the same time, men's struggles to enact alternative sexual identities will be facilitated the more culturally prevalent these alternatives become.

In their account of mature masculinity, Moore and Gillette describe the core energies expressed in and through the four archetypal

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277. *Id.* at 6. My own sense is that these energies are critical for mature femininity as much as for mature masculinity.

278. I must emphasize (again) that this is not a proposal to ground female sexual liberation on the psychological and spiritual actualization of individual men. Instead, by focusing on the circulation of cultural images, my goal is to provide an account (and political trajectory) that simultaneously recognizes the socially contingent position of individual psychic life, that is the cultural forces and power relations in which an individual's efforts to achieve spiritual/psychological actualization are always embedded, even as it recognizes the importance of psychic integrity to individual happiness. See, for example, Seidler, *Recreating Sexual Politics* at 46 (cited in note 263). According to Seidler:

Adorno and Marcuse had already realized in the 1930s that the "individual" no longer existed in bureaucratic capitalism. . . . [However,] [s]tructuralist Marxism has completely misunderstood the situation. It has attacked the "individual" as essentially a bourgeois conception. . . . Its influence remains tacit in many of the discussions around post-modernity wherein identities are seen as in constant flux. The importance of the Frankfurt School was that it at least recognized the erosion of identity as a significant problem. As men, we can live in fear, losing touch with our individuality. We can fear moving so far out of touch with our "selves" that we cannot find a way back. We lose a sense of connection with different aspects of our experience. But with so much social theory, the "self" is treated as an essentialist fiction so that critical issues of identity can barely be recognized.

*Id.*

images. Their discussion first examines the archetypes in the positive fullness of their mature expression and then turns to their shadow expressions in an immature masculinity. The image of the King calls men to live relations of internal order and other-affirming generativity through the practices of discernment, generosity, and the recognition and honoring of the goodness and excellence of others.<sup>279</sup> Accordingly:

The King archetype in its fullness possesses the qualities of order, of reasonable and rational patterning, of integration and integrity in the masculine psyche. . . . It defends our own sense of inner order, our own integrity of being and of purpose, our own central calmness about who we are, and our essential unassailability and certainty in our masculine identity. It looks upon the world with a firm but kindly eye. It sees others in all their weaknesses and in all their talent and worth. It honors them and promotes them. It guides them and nurtures them toward their own fullness of being. It is not envious, because it is secure, as the King, in its own worth. It rewards and encourages creativity in us and in others.<sup>280</sup>

These energies are contrasted to the energies of the Shadow King, the active Tyrant, and the passive Weakling.<sup>281</sup> Each shadow expresses a destructive distortion of the King archetype. The Tyrant actively perverts the King energies, leading a man to prioritize his self-interests, repudiate the search for the right, and seek self-affirmation by abusing others. The Tyrant does so because "he lacks inner structure, and he is afraid—terrified, really—of his own hidden weakness and his underlying lack of potency."<sup>282</sup> Rather than conferring recognition and honoring others from a position of security in his own goodness and excellence, Tyrant Kings act out a narcissistic selfishness enforced through expressions of rage.<sup>283</sup>

The Weakling is the passive side of the Shadow King. Lacking internal order and other-affirming compassion, the Weakling simply wants to be adored even as he expresses a chronic sense of inadequacy through self-serving self-pity and passive-aggressive assaults on others. The difference between these variations of the King archetype is

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279. Moore and Gillette, *King, Warrior, Magician, Lover* at 49-62 (cited in note 19).

280. *Id.* at 61-62.

281. *Id.* at 63.

282. *Id.* at 64.

283. These people really feel they are the center of the universe (although they aren't centered themselves) and believe others exist to serve them. Instead of mirroring others, they insatiably seek mirroring from them. Instead of seeing others, they seek to be seen by them. *Id.* at 67.



the difference between "[r]ealistic greatness" as opposed to "inflation and grandiosity."<sup>284</sup> It is the difference between maturity and immaturity, and not a difference between male and female.

The Warrior archetype, like the King, is first described in its mature expression and then in its shadow forms, the Sadist and the Masochist. The Warrior is characterized by appropriate aggressiveness, discernment, and transpersonal commitments, which together constitute effective agency exerted for the sake of a greater good.<sup>285</sup> According to Moore and Gillette:

If we are accessing the Warrior appropriately, we will be energetic, decisive, courageous, enduring, persevering, and loyal to some greater good beyond our own personal gain. . . . [A]t the same time that we are "detached," [we will] be warm, compassionate, appreciative, and generative. We will care for ourselves and others. We will fight good fights in order to make the world a better and more fulfilling place for everyone and everything. Our war making will be for the creation of the new, the just and the free.<sup>286</sup>

Thus the Warrior represents effective and goal-directed engagement with life. The active and passive forms of the Shadow Warrior reflect the ways in which these energies can be perverted by immaturity. While the Warrior destroys in order to create, the Sadist has a "passion for destruction and cruelty . . . a hatred of the 'weak,' of the helpless and vulnerable."<sup>287</sup> Rather than expressing any genuine, effective male power, the destructive energies of the Sadist are driven by a man's internal insecurity about his own phallic power, a fear that makes him hate "everything supposedly 'soft' and relational . . . . His desperate fear of this leads him to wanton brutality."<sup>288</sup>

The Masochist is the passive expression of the Shadow Warrior. This image refers to instances in which men accept their own victimization.<sup>289</sup> Unlike the Warrior, the Masochist assumes a position of powerlessness in relation to others. A man living under this Shadow is incapable of defending himself or others who depend upon him because he lacks the determination to confront evil and the energy to stop it. He is incapable of establishing genuinely intimate sexual relationships because intimacy depends on a dynamic balance

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284. *Id.* at 70.

285. *Id.* at 79-87.

286. *Id.* at 95.

287. *Id.* at 90.

288. *Id.* at 90-92.

289. "The Masochist projects Warrior energy onto others and causes a man to experience himself as powerless. The man possessed by the Masochist is unable to defend himself psychologically; he allows others (and himself) to push him around, to exceed the limits of what he can tolerate and still keep his self-respect." *Id.* at 94.

between individual self-assertion and renunciation. This is a balance the Masochist cannot maintain because, unlike the Warrior, he lacks the will to assert himself in a positive and directed manner.

If we are under the power of the Masochist, we will take far too much abuse for far too long and then explode in a sadistic outburst of verbal and even physical violence. . . . We will dream but not be able to act decisively to make our dreams come true. . . . We will lack the capacity to endure the pain necessary for the accomplishment of any worthwhile goal . . . . We will look at the task ahead and be defeated before we start. We won't be able to "leap into battle."<sup>290</sup>

The last two archetypes are the Magician and the Lover. The Magician is "the knower" and "the master of technology."<sup>291</sup> This archetype refers to energies expressed in a man's knowledge, insights, and observations, his thoughtfulness and his ability to detect evil when it masquerades as goodness.<sup>292</sup> It refers to the energies that enable a man "to detach from the inner and outer storms and to connect with deep inner truths and resources."<sup>293</sup> In its active form, the Shadow Magician appears as The Manipulator. In its passive form, the Shadow Magician is the Denying Innocent One.<sup>294</sup>

The Manipulator perverts the Magician's knowledge and powers of observation for his own self-interests.

A man under this Shadow doesn't guide others, as a Magician does; he directs them in ways they cannot see. His interest is not in initiating others by graduated degrees—degrees that they can integrate and handle—into better, happier and more fulfilled lives. Rather the Manipulator maneuvers people by withholding from them information they may need for their own well-being.<sup>295</sup>

An intimate relationship with a man possessed by this Shadow is impossible because he lies. Unlike the Magician, he cannot be trusted.

The Denying Innocent One is the passive form of the Shadow Magician. This image refers to the energies expended to preserve the illusion of mastery without actually engaging the tasks it takes to

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290. *Id.*

291. *Id.* at 98.

292. *Id.* at 100.

293. *Id.* at 108.

294. *Id.* at 111, 115.

295. *Id.* at 111.

achieve genuine mastery.<sup>296</sup> Like the Manipulator, the Denying Innocent One seeks his own self-interests, but pursues them “behind an impenetrable wall of feigned naiveté.” According to Moore and Gillette:

Such men are slippery and illusive. They do not allow us to engage them frontally . . . thus keeping us off balance by seducing us into an endless process of questioning our own intuitions about their behavior. If we challenge their “innocence,” they will often react with a show of tear-jerking bewilderment. . . . But we will not be able to escape the uneasy feeling that we have been manipulated. And, in that feeling, we will have detected the *active* pole of the Magician’s Shadow behind the smokescreen of “innocence.”<sup>297</sup>

The Lover is the archetype of relatedness, both empathetic and sensual. It is expressed by a man’s playfulness, spirituality, and passion. For the man who is accessing these energies,

all things are bound to each other in mysterious ways. . . . The Lover’s connectedness is not primarily intellectual. It is through feeling. The primal hungers are felt passionately in all of us, at least beneath the surface. But the Lover knows this with a deep knowing. Being close to the unconscious means being close to the “fire”—to the fires of life.<sup>298</sup>

The Lover’s spirituality is the energy that enables a man to intuit “the ultimate Oneness of all that is” and leads him to want to experience that Oneness in his relationships with others.<sup>299</sup> Like the sacred prostitute, the Lover conveys an image of sexuality in which the experiences of reverence and joy are intimately intertwined.

The Shadow Lover appears, alternatively, in its active and passive forms as the Addicted Lover and the Impotent Lover.<sup>300</sup> The Addict energies reflect the perversion of relatedness and sensuality by a lack of boundaries and intolerance toward limits. The Addict is lost in “the pleasure of the moment”<sup>301</sup> and is, consequently, “eternally restless.”<sup>302</sup> Unlike the Lover, a man possessed by the Addict is un-

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296. The Innocent One “wants the power and status that traditionally come to the man who is a magician. . . . But he doesn’t want to take the responsibilities that belong to a true magician. He does not want to share and teach. . . . He does not want to know himself, and he certainly doesn’t want to make the great effort necessary to become skilled at containing and channelling power in constructive ways. He wants to learn just enough to derail those who *are* making worthwhile efforts. . . . The Innocent One *hides* the truth for the sake of achieving and maintaining his own precarious status.” *Id.* at 115.

297. *Id.* at 115-16.

298. *Id.* at 122.

299. *Id.* at 124.

300. *Id.* at 131.

301. *Id.* at 136.

302. *Id.* at 135.

able to sustain a deeply intimate sexual relationship, for while the Lover desires "Oneness," the Addict wants "the ultimate and continuous 'orgasm,' the ultimate and continuous 'high.'"<sup>303</sup> Consequently,

[e]ach time his woman confronts him with her mortality, her finitude, her weakness and limitations, hence shattering his dream of *this time* finding the orgasm without end—in other words, when the excitement of the illusion of perfect union with her (with the world, with God) becomes tarnished—he saddles his horse and rides out looking for renewal of his ecstasy. . . . He ends by looking for his "spirituality" in a line of cocaine.<sup>304</sup>

The passive form of the Shadow Lover is the Impotent Lover. A distorted inversion of the Lover's connectedness and enthusiasm for everything and everyone, the Impotent Lover experiences life in an unfeeling way. He is sterile, bored, and listless.<sup>305</sup> Like the Addict, the Impotent Lover seeks to escape the limitations inherent in human relatedness. While the Addict seeks his liberation by relating sexually to any woman who crosses his path, the Impotent seeks it through sexual withdrawal.<sup>306</sup> Neither is capable of sustaining a genuinely intimate sexual relationship.

Ultimately the images projected by these four archetypes constitute a masculinity directly opposed to the images of male power projected in the narratives of pornographic masculinity. These archetypes call men to enact sexual identities that are generative and generous, decisive and empathetic, goal-oriented and compassionate, playful and respectful of boundaries. They convey the image of agency and mastery in the service of fruitfulness, excellence, and the affirmation of others. They are images that facilitate the tasks involved in constructing "a do-right kind of masculinity" and, in this sense, they further the objective of female autonomy. Why?

The answer is found not only in the substantive content of the images, but also in the strength they call forth. To enact these archetypal narratives, men must trade their delusions of superiority and

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303. Id. at 136.

304. Id.

305. Id. at 138.

306. In short, the man's sex life goes stale:

His sexual and sensual sensitivity has been overwhelmed by other concerns. As his sexual partner becomes more demanding, he withdraws even further into the passive pole of the Lover's Shadow. At this point, the opposite pole of the archetypal Shadow may "rescue" him by propelling him into the Addict's quest for the perfect satisfaction of his sexuality beyond the mundane world of his primary relationship.

Id. at 139-40.

dominance for the demanding task of making excellence and mastery a reality in their lives. This kind of strength is completely different from the pseudo-power of male dominance.<sup>307</sup> Genuine effort presupposes the willingness to acknowledge deficiency, to confront inadequacy in order to transform it rather than be destroyed by it.

Male excellence and mastery are hardly oppressive of female autonomy. It is rather the ways men try to hide (rather than correct) their lack of excellence and compensate for (rather than overcome) their lack of mastery that make them deceive, manipulate, suppress, and abuse us. Unlike the narratives of pornographic masculinity, the archetypal narratives of mature masculinity portray masculine power as abundance, the ability to confer benefit, and to lead without dominance. The King is not feared but beloved as a wise and fruitful facilitator. The Warrior is decisive and effective; he destroys what needs to be destroyed in order to promote what needs to be promoted—that is, he does not allow himself or others who depend upon him to be consumed by evil. The Magician uses his gift of knowledge to enlighten and initiate rather than to manipulate and obscure. The Lover understands the spiritual dimensions of sexuality and is capable of deep, intimate connection with others. True power is, from all perspectives, just the opposite of dominance and oppression.

## VI. LEGAL REFORMS: WELFARE WARS AND CUSTODY BATTLES

The purpose of my analysis has been to identify the legal interventions most likely to secure women's sexual autonomy in the feminist struggle against rape. Gary LaFree's analysis of rape processing patterns was used, in Part II.A, to explain why feminists may need to redirect their struggles away from the substantive elements of rape

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307. In the narratives of pornographic masculinity, men assert power without hesitation, self-consciousness, or reflection, and it certainly makes no difference whether they are alone or observed by others. See Stoltenberg, *Refusing to Be a Man* at 16-17 (cited in note 114). Thus Stoltenberg writes:

[T]o act out convincingly a male sexual identity requires:

- \* an unfailing belief in one's own goodness and moral rightness of one's purposes, regardless of how others may value what one does;
- \* a rigorous adherence to the set of behaviors, characteristics, and idiosyncrasies that are appropriately male (and therefore inappropriate for a female);
- \* an unquestioning belief in one's own consistency, notwithstanding any evidence to the contrary—a consistency rooted, for all practical purposes, in the relentlessness of one's will and in the fact that, being superior by social definition, one can want whatever one wants and one can expect to get it.

law to a broader struggle over the ways discretionary power is legally organized and practically deployed in the processing of rape cases. Legal reforms that reduce the opportunity for unchecked discretion are crucial to severing the link between rape processing patterns and the cultural logics of white supremacy and male supremacy, a link that is otherwise likely to survive any feminist redefinition of the substantive elements of rape.

At the same time, these institutional reforms are after-the-rape interventions that do not address many of the instances in which women's sexual autonomy is assaulted and our sexuality is appropriated by men. To this end, Part II.B articulated three categories of rape and emphasized the need for feminists to supplement their legal struggles with a more generalized struggle against the policies, practices, and legal doctrines that socially construct women's sexual vulnerability.

This Part examines how culturally dominant images of maternal power(lessness) and female sexual morality organize two areas of public policy that are directly implicated in the social construction of women's sexual vulnerability. Section A examines how these images of women appear in the formulation of welfare policies that increase poor women's dependence on male wage earners and penalize them for their sexuality. Section B examines the gendered structure of parental rights and obligations constructed through child custody laws and practices. In both instances, state power operates to reduce women's sexual autonomy and increase women's sexual vulnerability. Similarly, images of maternal power(lessness) and sexual immorality are used to justify the economic dependence and enforced subordination effected by these forms of state action.<sup>308</sup>

Indeed, both examples illustrate two important and related points: first, women's sexual vulnerability could be significantly reduced by reforming the public policies through which it is constructed; second, the social production of women's sexual vulnerability is effected by the strategic deployment of these images in many contexts. Welfare reform and child custody proceedings are only two illustrative examples of my point that the circulation of images constitutes a deployment of power both different in kind from and constitutive of

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Id.

308. This focus on the deployment of images of women in welfare and family law is not coincidental. Carol Brown has aptly described these systems as the two faces of patriarchy, the public and the private. See Carol Brown, *Mothers, Fathers and Children: From Private to Public Patriarchy*, in Sargeant, ed., *Women and Revolution* at 239-67 (cited in note 2).

other forms of power.<sup>309</sup> As a result, feminist legal interventions will be most effective to the extent they circulate counter-images that can combat the cultural logic, as well as the institutional impact of these patriarchal images of women and men. Effective interventions depend, however, not only on our ability to identify the ways in which dominant cultural images are currently used to construct women's sexual vulnerability, but also on our ability to take a critical look at the substantive content of the "feminist" counter-images we embrace.<sup>310</sup>

#### A. *Images of Women in the Wars on Welfare*

In this Section, I examine how recent policy initiatives "to end welfare as we know it" have deployed images of maternal power(lessness) and female sexuality.<sup>311</sup> The debate over welfare reform is organized around a general consensus that links women's poverty to three fundamental causes: women's efforts to raise their children independent of a dominant male partner, women's expression of nonmarital sexuality, and poor people's general unwillingness to work.<sup>312</sup> This consensus about the causes of poverty has, in turn, defined the parameters of debatable reform, reducing the difference between the various welfare reform proposals to "nothing more than arguments over the size of benefits, the definition of aid-worthiness, and the means used to inculcate proper behavior. . . . [The parameters of this debate have the effect of excluding arguments]

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309. See note 52 and accompanying text.

310. *Id.* See also Part VI.B (assessing gender-neutral parenting models proposed by some feminist reformers).

311. The Work and Responsibility Act of 1994 ("WARA"), H.R. 4605, 103d Cong., 2d Sess. (1994), was introduced in Congress on June 21, 1994. President Clinton claimed WARA was designed to "end welfare as we know it . . . to change it from a system based on dependence to a system that works toward independence . . . to change it so that the focus is clearly on work." Backer, 30 *Harv. C.R.-C.L. L. Rev.* at 339 (cited in note 60). However, Clinton's bill was only one of many welfare reform proposals on the table before the the Republicans won control of the House, passing their own welfare reform bill on March 22, 1995. This bill was entitled the Personal Responsibility Act of 1995 ("PRA"), H.R. 4, 104th Cong., 1st Sess. (1995). The President has since vetoed the Personal Responsibility and Work Opportunity Act of 1995, which reconciled these two bills. See *Presidential Veto Message: Welfare-to-Work Provisions Cited in Veto of Overhaul*, 54 *Cong. Q. Weekly Rep.* 103 (Jan. 13, 1996) (outlining President Clinton's objection to the bill on the grounds that it was designed to meet a budget target rather than to enact real reform).

312. See generally Backer, 30 *Harv. C.R.-C.L. L. Rev.* at 339 (cited in note 60); Law, 131 *U. Pa. L. Rev.* at 1299 (cited in note 60).

about the ability of the socio-economic system to achieve a substantive result, such as the eradication of poverty."<sup>313</sup>

At the same time, this consensus draws ideological ammunition from culturally dominant narratives of motherhood and female sexual identity. These narratives condemn women's struggles for sexual autonomy by racializing maternal power and sexual subjectivity through images such as the castrating matriarch and the pregnant inner-city teenager.<sup>314</sup>

Even a casual review of recent welfare reform legislation illustrates how racialized images of maternal power and female sexuality rationalize policies that will likely force poor women into greater economic dependence on individual men. Economic dependence increases women's sexual vulnerability to the men upon whom they are forced to depend. In this sense, poor women's sexual vulnerability is an artifact of public policies designed around the dominant cultural understandings of white, American patriarchy. These understandings locate the economic viability of families in the image of the male-dominated nuclear family, rather than in alternative images of empowered motherhood or female sexual autonomy. Empowerment and autonomy mean, in this context, access to the socioeconomic resources women need to raise their children and freedom from unwanted pregnancies and the forms of coercion that produce them.<sup>315</sup>

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313. Backer, 30 Harv. C.R.-C.L. L. Rev. at 353, 344-52 (cited in note 60) (proposing and discussing seven assumptions defining the ideological parameters of welfare reform). The acceptable "cures" for poverty depend, in part, on its presumed causes. If women are poor because they are unwilling to work, stand by their man, or step having children, then the solution is to implement policies that pressure them into altering their own behaviors which are responsible for their poverty. If women are poor because there are no jobs available to them, the available jobs do not pay a living wage, or the costs of securing child care exceed the wages paid by available jobs, then the kinds of policies needed to end poverty become a more complicated and potentially transformative question. Sylvia Law made this point more than ten years ago in her path-breaking article. See generally Law, 131 U. Pa. L. Rev. at 1249 (cited in note 60).

314. Put differently, women who assert maternal power and sexual subjectivity are penalized because they offend patriarchal expectations and also because they are acting "too much like Black women." See Reberts, 5 Colum. J. Gender & L. at 148 (cited in note 60). Dorothy Roberts made this point powerfully in answering Martha Fineman's question about why popular cultural understandings so readily accept the idea that single motherhood is one of the main causes of poverty despite abundant evidence to the contrary. According to Roberts, "Part of the answer is the popular association of single motherhood with Black women. Welfare policy penalizes Black single mothers not only because they depart from the norm of the father-headed family, but also because they represent rebellious Black culture. To some extent, then, welfare policy punishes white single mothers because they act too much like Black women." *Id.* at 148.

315. For an excellent account of the kind of reforms needed to achieve maternal empowerment, see generally Catharine A. MacKinnon, *Reflections on Sex Equality under Law*, 100 Yale L. J. 1281 (1991).



A comparison of the Work and Responsibility Act of 1994 ("WARA"), the Clinton Administration's welfare bill, and the Personal Responsibility Act ("PRA"), the welfare bill passed by the House of Representatives pursuant to the Republican "Contract with America," illustrates the limited parameters of reform.<sup>316</sup> Both bills reflect "a major attitudinal shift: poor women are now deemed to make better workers than mothers."<sup>317</sup> Accordingly, neither bill assures poor, single mothers access to the socioeconomic resources necessary to raise their children by themselves. On the contrary, both bills tell poor mothers to get a husband or get a job—any job. In this respect, the bills only differ in the extent to which they help single mothers cope with the child care responsibilities and educational limitations that restrict women's access to adequately paying jobs.<sup>318</sup>

The specific provisions that induce all poor mothers to work outside their homes and induce all single mothers to marry are detailed elsewhere.<sup>319</sup> My point here is simply to illustrate how welfare reformers deploy racialized images of maternal power(lessness) and female sexuality to legitimize the economic and psychological violence directed at poor, single mothers by recent welfare reform proposals. These policies compel women to abandon their children in order to work in dead-end jobs at sub-poverty level compensation. To do so, they must leave their children alone at home, in state-run day care facilities staffed by other AFDC recipients, or in whatever private facilities are available to impoverished mothers.

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316. See generally Backer, 30 Harv. C.R.-C.L. L. Rev. at 339 (cited in note 60). But Sylvia Law's article shows the long history of welfare policies linking the elimination of poverty to the male-dominated nuclear family. Law, 131 U. Pa. L. Rev. at 1252-61 (cited in note 60).

317. Backer, 30 Harv. C.R.-C.L. L. Rev. at 361 (cited in note 60).

318. For example, while WARA would have required states to provide child care services, *id.* at 384, and job training programs, *id.* at 381 n.210, the PRA provides for neither, *id.* Indeed, the PRA authorizes states to administer their programs in ways that only increase the economic hardships of the unskilled and uneducated. Thus, states are authorized to pay lower benefits to parents under 21 who have not graduated from high school or obtained a high school equivalency degree. *Id.* at 384. If the lower benefit levels are supposed to provide *incentives* for young mothers to finish high school, the question remains what will provide the means for them to do so. Additionally, the PRA does not require states to provide job training programs because poor mothers are deemed incapable of benefiting from them. As one PRA proponent expressed it: "The complete lack of effectiveness of government training programs is especially salient given the very low cognitive ability levels of many mothers on AFDC." *Id.* at 381-82 n.210 (quoting Personal Responsibility Act: Hearings on H.R. 4 before the House Committee on Economic and Educational Opportunities, 104th Cong., 1st Sess. (1995) (prepared testimony of Robert Rector, the Heritage Foundation) ("Rector Statement")).

319. See *id.* at 372-95 (cited in note 60); Roberts, 5 Colum. J. Gender & L. at 142-44 (cited in note 60). See generally Joel F. Handler, "Ending Welfare as We Know It"—*Wrong for Welfare, Wrong for Poverty*, 2 Georgetown J. on Fighting Poverty 3 (1994).

In order to produce a consensus that these policies are rational responses to the problem of poverty, proponents must persuade us that poor, single mothers make better workers than mothers.<sup>320</sup> The first step is to locate the economic viability of families in the image of the male-dominated nuclear family. This makes it easier to ignore systemic unemployment, inadequate public education, and the impact of sexual harassment and discrimination on women's access to higher education, high paying jobs, and commercial credit.<sup>321</sup> The increased hardship that poor mothers and children will experience as a result of the proposed welfare reforms is characterized as a self-induced phenomenon. Poor mothers will simply have to suffer the consequences of their own behavior, that is, their willful refusal to conform to the traditional family model. Poor mothers can conform to this model either by refraining from nonmarital sex or by marrying men who will help them provide for their children.<sup>322</sup>

For example, one proponent of the PRA argued that the fundamental goals of welfare reform should be reducing illegitimacy and restoring marriage.<sup>323</sup> However, given the many problems currently plaguing the male-headed nuclear family, most notably male unemployment and domestic violence, welfare reformers need more ammunition to justify the burdens their reforms will impose on poor mothers and their children.<sup>324</sup> Welfare reformers need, in effect,

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320. For a critical analysis of this contemporary development in welfare policy, see Dorothy E. Roberts, *The Value of Black Mothers' Work*, 26 Conn. L. Rev. 871 (1994).

321. As Larry Catá Backer notes, for traditional reformers, "[c]lassism, racism, sexism, ethnocentrism, and heterosexism . . . have 'nothing to do' with welfare." Backer, 30 Harv. C.R.-C.L. L. Rev. at 397 (cited in note 60). For an excellent review of the ways sexual harassment limits women's access to higher paying skilled and unskilled employment, see Marion Crain, *Women, Labor Unions, and Hostile Work Environment Sexual Harassment: The Untold Story*, 4 Tex. J. Women & L. 9 (1995).

322. Both WARA and PRA link the eradication of poverty to the promotion of marriage and explicitly condition benefit levels and eligibility in some way or another on the parents' marital status. For example, under the PRA, mothers under 18 years of age will be denied AFDC payments for an illegitimate child unless they marry the child's biological father or a man who adopts the child. Backer, 30 Harv. C.R.-C.L. L. Rev. at 338 (cited in note 60). States are also given the option of prohibiting AFDC payments and housing benefits for mothers between the ages of 18 and 20, unless the mother is the legal or biological parent of another child not born out of wedlock. *Id.* WARA would promote marriage by making AFDC-UP a permanent and mandatory program in states receiving federal funds. *Id.* at 387. Since AFDC-UP makes benefits available to two-parent families, it eliminates one program-driven disincentive for poor parents to marry. *Id.* at 388 n.242. WARA also encourages marriage by forgiving child support arrearage in instances where poor "[p]arents conform to the traditional family model and marry or remarry." *Id.* at 393 n.269.

323. *Id.* at 381-82 n.210 (cited in note 60) (quoting Rector Statement) (cited in note 318).

324. Indeed, the objectives driving this push to make poor mothers work outside their homes are particularly curious given the fact, for example, that a primary source of work pro-

to discredit single motherhood as a viable alternative to the male-dominated nuclear family.

Welfare reformers attempt to discredit single motherhood by deploying their rhetoric along two trajectories. First, they attack the female-headed family as inherently pathological and project the image of "fatherless children" as irreparably deprived. In doing so, WARA proponents pay some lip service to the fact that "many single parents do a heroic job of raising their children."<sup>325</sup> PRA rhetoric is, by contrast, more vicious.<sup>326</sup> This difference, however, is purely cosmetic because both proposals operate within the same ideological framework. This ideology believes poverty is caused by the inherent inadequacies of the "fatherless family," rather than by the political inadequacies of a socioeconomic system that continues to produce poverty, unemployment, and illiteracy. The reformers' message is clear: single mothers are simply incapable of raising healthy, well-adjusted, and self-disciplined children—not primarily because they are poor, but because they are single. Accordingly, welfare policies

jects under WARA will involve staffing the day care facilities the Act provides for. Hence, "recipients would still be receiving a standard amount of alms in return for which they would be expected to care for dependent children." *Id.* at 393 n.270. This suggests that WARA's drafters believe paying women to take care of *other women's* children is, in itself, more conducive to the work-ethic and family values than paying them to take care of *their own children* by themselves. The PRA and its proponents attack these AFDC-staffed day care centers from a different perspective. The government should not spend any money to facilitate women's ability to handle the conflicting demands of dependent child care and wage labor. Women can find a husband, give up the children they cannot care for to adoption or orphanages, give up their freedom by living in supervised residential group homes for unwed mothers, or suffer the consequences of their own sexual activity. See *id.* at 388-89 n.246.

325. See *id.* at 386-87 n.235. Despite this lip service, the White House assessment is this: "Poverty, especially long-term poverty, and welfare dependency are often associated with growing up in a one-parent family." *Id.* Of course, the unaddressed problems begin with another question: What else is poverty "often associated with?"

326. PRA drafters unabashedly blame single parenting for the high incidence of criminal activity in poor, minority neighborhoods. "[T]he likelihood that a young black man will engage in criminal activities doubles if he is raised without a father and triples if he lives in a neighborhood with a high concentration of single-parent families." PRA § 100(3)(o). The PRA also notes that "the greater the incidence of single parent families in a neighborhood, the higher the incidence of violent crime and burglary." *Id.* § 103(p). The rhetorical force of these viciously unfair assaults on poor, single mothers draws significant impetus from the increased circulation these themes have enjoyed in the mainstream media. See, for example, Paul Magnusson and Howard Gleckman, *Reforming Welfare*, *Bus. Week* 58 (June 13, 1994) ("A shocking number of today's inner-city population is growing up without fathers, without their incomes, and without the stability of a two-parent family. . . . The result is a downward economic spiral") (quoted in Backer, 30 *Harv. C.R.-C.L. L. Rev.* at 385 n.229 (cited in note 60)). In a recent work, George Gilder has described the "fatherless child" in this manner: "Like other fatherless youths, black boys are less responsible, less able to defer gratifications, less interested in achievement, more prone to crime, and even, as other studies have shown, lower in I.Q. than boys from intact families of either race." George Gilder, *Men and Marriage* 80-81 (Pelican, 1992) (quoted in Backer, 30 *Harv. C.R.-C.L. L. Rev.* at 399 n.299 (cited in note 60)).

that enable the female-headed family to survive the hardships of poverty are viewed as only exacerbating the more fundamental problem of fatherlessness itself.<sup>327</sup>

The second rhetorical trajectory welfare reformers use to discredit single motherhood traces the origins of the female-headed family to the image of irresponsible and promiscuous sexual activity, which welfare benefits only encourage. The Republican "Contract with America" makes the point like this:

Currently, the federal government provides young girls with the following deal: Have an illegitimate baby and taxpayers will guarantee you cash, food stamps, and medical care, plus a host of other benefits. . . . It's time to change the incentives and make responsible parenthood the norm and not the exception.<sup>328</sup>

This image of sexual irresponsibility is created by projecting images of pregnant teenagers and nonstop breeders.<sup>329</sup> The assumption that both groups of women are intentionally deciding to have (more) children "in order to 'cash-in' on welfare benefits" justifies the denial of assistance.<sup>330</sup> Additionally, both images draw much of their venom from their racialization.<sup>331</sup> This rhetorical emphasis on female

327. Fineman, *The Neutered Mother* at 110-18 (cited in note 60).

328. Ed Gillespie and Bob Schellhas, eds., *Contract with America: The Bold Plan by Rep. Newt Gingrich, Rep. Dick Armey, and the House Republicans to Change the Nation* 75 (Republican National Committee, 1994).

329. "Breeders" are poor women who continue to have more children while they are on welfare, thus triggering the need for measures like the family cap. See Jennifer S. Madden, *Family Caps Threaten Women and Their Children*, 10 Berkeley Women's L. J. 171, 171-75 (1995). See WARA § 502 (permitting states to limit benefit increases for children born to parents already on AFDC); PRA §106(a) (prohibiting states from paying benefits for any child born to an AFDC recipient or to a woman who received benefits during the ten months prior to the child's birth).

330. See Carla M. da Luz and Pamela C. Weckerly, *Will the New Republican Majority in Congress Wage Old Battles Against Women?*, 5 U.C.L.A. Women's L. J. 501, 528 (1995). The authors cogently attack these assumptions, citing evidence that "teenage mothers account for approximately five percent of AFDC recipients" and suggesting alternative reasons for teenage pregnancy, including forced sex. *Id.* The authors also cite studies illustrating that "teenage motherhood varies inversely with AFDC benefit levels; Mississippi offers the lowest welfare benefits, yet has the second highest rate of unwed pregnancy." *Id.* at 529. These studies suggest that eliminating welfare benefits will not reduce teenage pregnancies because teenage girls do not get pregnant in order to obtain welfare. *Id.*

331. Roberts, 5 Colum. J. Gender & L. at 148-49 (cited in note 60); Backer, 30 Harv. C.R.-C.L. L. Rev. at 348 n.42 (cited in note 60). The images of the pregnant teenager and non-stop breeder are decidedly racialized despite the fact that the teen pregnancy epidemic did not start until white teenage pregnancy increased and Black teen pregnancy decreased. See da Luz and Weckerly, 5 U.C.L.A. Women's L. J. at 528 n.133 (cited in note 330). Similarly, the "breeder" is usually associated with the Black/Hispanic mother of four with another on the way, despite the fact that there are more white women on AFDC than either Black or Hispanic. See Backer, 30 Harv. C.R.-C.L. L. Rev. at 397-98 (cited in note 60).

sexual promiscuity deflects attention from the fact that the work requirements and reduced benefit levels in both WARA and the PRA will eventually make it more difficult for all poor, single mothers to raise their own children effectively.

The images celebrating maternal power and matrifocal extended families discussed in Part III would reorganize the welfare debate around very different proposals by shifting the major points of reference. First, the narratives of maternal power and stability focus attention on the fact that women, particularly lower-class, minority women, are often compelled to compensate for paternal powerlessness. While male poverty is an image strikingly absent in the welfare rhetoric that proposes to end poverty by promoting marriage and enforcing child support obligations,<sup>332</sup> female-headed households are often one of the coping mechanisms through which women respond to male poverty and abuse.<sup>333</sup>

More importantly, these images of maternal power provide resources for dismissing the assumption that female-headed households are inherently pathological. Re-valuing single motherhood is certainly a matter of acknowledging the empowering and inspiring ways in which poor women often experience their own motherhood.<sup>334</sup> But it is also a matter of seeing the ways in which matrifocal extended families are not simply coping mechanisms. They are, on the contrary, alternative child-rearing arrangements that are potentially psychologically and economically superior to the male-dominated nuclear family so favored by white, American patriarchy.<sup>335</sup> From this perspective, the problem plaguing the welfare poor is not fatherlessness, particularly not when fathers are themselves poor or

332. According to Backer, "[WARA] concentrates on the need to force fathers to support their children . . . only because, for WARA drafters, that obligation represents a substantial source of cash. To further the collection of this mother lode of funds, WARA even establishes procedures for automatically reviewing and updating child support awards. *The problem is that these men often do not have sufficient resources to support their children.*" Backer, 30 Harv. C.R.-C.L. L. Rev. at 394 (cited in note 60) (emphasis added). See Roger J.R. Levesque, *Targeting "Deadbeat" Dads: The Problem with the Direction of Welfare Reform*, 15 Hamline J. Pub. L. & Pol. 1, 32-33 (1994). These child support proposals "fail to address poor fathers' lack of resources and their inability to lift children out of poverty." *Id.* at 34 (quoted in Backer, 30 Harv. C.R.-C.L. L. Rev. at 394 n.278 (cited in note 60)).

333. "As an economic cushion, AFDC does offer poor women some choice which, however limited, increases their bargaining power at home and on the job . . . For women in particular, the social wage offers additional protection against entering into or remaining in marriages regardless of their safety or security." Mimi Abramovitz, *Regulating the Lives of Women: Social Welfare Policy from Colonial Times to the Present* 314 (South End, 1988) (quoted in Backer, 30 Harv. C.R.-C.L. L. Rev. at 389 (cited in note 60)).

334. See, for example, Roberts, 5 Colum. J. Gender & L. at 149-51 (cited in note 60).

335. See notes 150-60 and accompanying text (discussing the cultural logic and psychoanalytical impact of child rearing practices in matrifocal extended family arrangements).

abusive. The problem is poverty itself. Policies that deny single mothers necessary resources in the hopes that this will pressure women into marriage may increase women's sexual vulnerability to any man who offers to help out, but they will not end poverty. On the contrary, such policies only deflect our attention from the need for systemic reforms, which the scapegoating of welfare mothers seems determined to displace.

### *B. Images of Women and Men in Child Custody Battles*

Welfare reform debates constitute only one social space in which dominant cultural images of maternal power(lessness) and female sexual morality are used to rationalize public policies that increase women's vulnerability to men. The welfare debates show how these images reinforce policies that leverage women's poverty into enforced relations of dependence on dominant male partners. Similarly, child custody controversies illustrate how these images rationalize legal doctrines that leverage women's desire to raise our children into enforced compliance with judicial expectations of maternal deference to paternal prerogatives and judicial norms of female sexual "morality."

Subsection 1 of this Section draws on Professor Karen Czapanskiy's impressive analysis of the ways in which child custody laws construct a gendered structure of parental rights and obligations.<sup>336</sup> Through this gendered structure, state power operates to undermine women's potential for autonomy, both as mothers and as sexual subjects. Significant restrictions are imposed on women's maternal authority and sexual autonomy in order to preserve for men the opportunity, but not the obligation, to be "fathers" to their biological children.<sup>337</sup> Through these restrictions, motherhood is

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336. See generally Karen Czapanskiy, *Volunteers and Draftees: The Struggle for Parental Equality*, 38 U.C.L.A. L. Rev. 1415 (1991).

337. See *id.* at 1420-21, 1436-38. Although current legal discourse pretends to regulate custodial arrangements in non-gendered terms by referring to the parties regulated as the custodial/non-custodial parent or, in joint-custody cases, as the residential/non-residential parent, these gender-neutral formulations obscure the sexism embedded in the social relations maintained through custody laws: the custodial/residential parents who appear in the court documents are almost always mothers, while non-custodial/non-residential parents are almost always fathers. Ignoring the gendered structure of this social reality simply deflects attention from the fact that custody laws are important instruments through which state power participates in the subordination of motherhood. Fineman, *The Neutered Mother* at 88-89 (cited in *noto* 60). Moreover, as Martha Fineman has persuasively argued, gender-neutral

constructed as a position of vulnerability and ever-present exposure to coercive intervention.

Subsection 2 is a critical contribution to the feminist debate over alternative solutions. Starting from a common understanding that the structure of parental rights and obligations constructs motherhood as a position of gendered responsibilities and vulnerability, feminist legal scholars have offered two alternative reform trajectories. The first trajectory, represented in Czapanskiy's analysis and the work of Professor Barbara Stark, would alleviate these hardships by using images of the "egalitarian family" and "gender-neutral parenthood" to shift some of the burdens of mothering to fathers.<sup>338</sup> The second trajectory, most powerfully articulated in the work of Professor Martha Fineman, would pursue legal reforms that empower women to fulfill their maternal responsibilities by securing mothers' access to the economic resources and decision-making autonomy with which mothers could quite happily and effectively raise their children on their own.<sup>339</sup> My intervention draws on the images of maternal authority in Black and Latin cultures to explain why feminists advocating these competing alternatives can view each others' proposals as decidedly anti-feminist. In order to understand the stakes in this debate, we need to understand the different cultural logics in which the alternative images of motherhood that rationalize these competing proposals are nested.

#### 1. Locating Women's Vulnerability in the Gendered Structure of Parental Rights and Obligations

Professor Czapanskiy's analysis of the legal doctrines applied in resolving disputes over the care and custody of children provides compelling evidence that the structure of parental rights and obligations is both gendered and hierarchical. Her analysis shows how women's maternal autonomy and authority are legally restricted to preserve the prerogatives of what she calls "volunteer fatherhood." Volunteer fatherhood refers to the legal doctrines that enable men to

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terminology hides the extent to which the debate over custody reform trajectories is precisely a debate about the future of "motherhood." *Id.* at 76-89.

338. Czapanskiy, 38 U.C.L.A. L. Rev. at 1416 n.4 (cited in note 336) (proposing to use the gender-neutral image of parenthood to reconceptualize legal doctrines and practical arrangements through which parental rights and responsibilities are enforced in a variety of child custody contexts). According to Czapanskiy, "[a] central goal of the reconceptualization is to eliminate the notion that mothers and fathers, as a matter of nature, are different in relation to their children." *Id.*

339. Fineman, *The Neutered Mother* at 177-81, 233 (cited in note 60).

assert paternal rights over and against maternal preferences, without establishing effective mechanisms for mothers to enforce paternal responsibilities on reluctant fathers. The correlative of voluntary fatherhood is what Czapanskiy terms "draftee motherhood." Draftee motherhood imposes on mothers the obligation to defer to fathers' discretionary assertions of paternal prerogatives and enables men to enforce this maternal obligation in court.<sup>340</sup>

According to Czapanskiy, the volunteer fatherhood/draftee motherhood dichotomy organizes a legal structure in which men enjoy rights without responsibilities, while women are required to assume responsibilities without corresponding rights. This structure is evidenced by cases in which mothers have been denied the authority to make significant life-choices for themselves and their children in order to preserve the opportunity (but not the obligation) for fathers to maintain even minimal relationships with their children.

One example of constricted parental self-determination is found where a custodial parent can be denied the right to move the child to another location if the move will interfere with the visitation rights of the noncustodial parent. . . . The self-determination issues may be quite substantial for the parent, however: she may want to relocate with a new spouse or partner, she may want to return to the support of her family of origin, or she may be unable to find employment or educational opportunities without relocating.<sup>341</sup>

Another example is found in the use of state power to police the sexual relations of custodial parents, both before<sup>342</sup> and after di-

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340. For example, Czapanskiy's analysis of the rights of unwed parents illustrates the way the correlatives of "volunteer fatherhood" and "draftee motherhood," are constructed in and through the procedural and evidentiary standards that distinguish paternity actions from legitimation proceedings. While paternity actions are usually brought by mothers to impose financial obligations upon reluctant fathers, legitimation proceedings are usually brought by fathers to assert paternal rights over and against the will of mothers and/or their current husbands. According to Czapanskiy, "[t]he mother-initiated paternity action . . . is accompanied by strict procedural and evidentiary burdens. Their purpose is to protect the man from having fatherhood wrongly thrust upon him. The father-initiated legitimation proceeding . . . usually is accompanied by more lenient procedural and evidentiary burdens." Czapanskiy, 38 U.C.L.A. L. Rev. at 1430-31 (cited in note 336). As a consequence, unwed mothers have less power than unwed fathers to impose upon the other parent of their child the obligation to share parenting responsibilities. *Id.*

341. *Id.* at 1436-37.

342. For example, Professor Fineman cites a number of recent cases indicating the extent to which marital infidelity can impact the determinations made on issues relating to divorce, alimony, and child custody. See Fineman, *The Neutered Mother* at 168 n.7 (citing *Silver v. Silver*, 1992 WL 157489 (Conn. 1992) (holding that the wife must answer questions on deposition relating to adultery because, although no longer a crime, it is relevant to the issue of divorce, alimony, and child custody); *Farris v. Farris*, 532 So. 2d 1041, 1043 (Ala. 1988) (holding



voiced.<sup>343</sup> Although some courts have refused to modify custody awards based on a custodial parent's sexual relations with third parties, others have agreed to such modifications.<sup>344</sup> The custodial parent's vulnerability is further exacerbated by the fact that custody determination and modification proceedings turn upon fact-sensitive assessments of "the best interests of the child," a standard that is both indeterminate and subjective.<sup>345</sup> Custody decrees can also be repeatedly reopened and modified at the court's discretion or upon a showing of "changed circumstances."<sup>346</sup> The cumulative effect of these legal doctrines is that custody laws become the vehicle through which state

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that the wife's adultery justified the denial of alimony and custody to the wife); *Adams v. Adams*, 374 S.E.2d 450, 452-53 (N.C. 1988) (holding that the husband's adultery was grounds for requiring him to pay alimony).

343. See generally Annotation, *Custodial Parent's Sexual Relations with Third Person as Justifying Modification of Child Custody Order*, 100 A.L.R.3d 625 (1995); Nancy B. Shernow, Comment, *Recognizing Constitutional Rights of Custodial Parents: The Primacy of the Post-Divorce Family in Child Custody Modification Proceedings*, 35 U.C.L.A. L. Rev. 677 (1988).

344. The legal standard for determining whether a custodial parent's sexual relations with third parties warrants modification of custody varies across jurisdictions. See 100 A.L.R.3d at 629-88 (cited in note 343); Shernow, 35 U.C.L.A. L. Rev. at 699-700 (cited in note 343). For example, some states use "the best interests of the child" standard, while others apply a rebuttable presumption of unfitness. This presumption can be overcome if the custodial parent marries her lover or ends the relationship. But see *Jarrett v. Jarrett*, 78 Ill.2d 337, 400 N.E.2d 421 (1979), in which the state supreme court held that the mere fact of non-marital cohabitation by the custodial parent established a conclusive presumption of unfitness, warranting modification of custody.

345. Sylvia A. Law and Patricia Hennessey, *Is the Law Male?: The Case of Family Law*, 69 Chi.-Kent L. Rev. 345, 348 & n.15 (1993) (noting that an overwhelming majority of states apply some version of the "best interests of the child test"). The "best interests" test involves the assessment of numerous complex factors, such as the "moral fitness of the parties," their financial status, the quality of the home environment, and the need for stability in the child's life, and often "requires a prediction about the future." *Id.* at 348-50. According to the authors, "[c]ases tried under a 'best interest' standard usually require expert testimony because the underlying facts are not easily observed . . . . The 'best interest' standard favors the party with the greatest resources to mount an expert-based claim. In most cases that is the man." *Id.* at 350.

346. Traditional custody modification analysis operates on the principle that a custody decree is never final or permanent because the overriding concern is "the best interests of the child." Courts retain jurisdiction over child custody issues and have the discretion to order modifications that they consider to be in the child's best interests at any time until the child becomes an adult, subject only to review for abuse of discretion. See Joan G. Wexler, *Rethinking the Modification of Child Custody Decrees*, 94 Yale L. J. 757 (1985) (criticizing the opportunities for abuse and harassment created by legal standards that permit repeated motions for custody modification); Shernow, 35 U.C.L.A. L. Rev. at 694 (cited in note 343) (same). Some jurisdictions now follow section 409 of the Uniform Marriage and Divorce Act. Section 409 has two provisions. Provision (a) prohibits motions to modify a custody decree within two years after its date, absent evidence that "the child's present environment may endanger seriously his physical, moral or emotional health." Uniform Marriage and Divorce Act § 409 (1987). Provision (b) permits modification upon a finding of "changed circumstances" only if (1) the custodian agrees, (2) the child has been integrated into the petitioner's family with the consent of the custodian, or (3) the child's present environment seriously endangers his physical, mental, moral, or emotional health. *Id.*

intervention is available to enforce maternal deference to paternal prerogatives and compliance with judicial norms of female sexual morality. On pain of losing custody of their children, women are subjected to judicial orders regulating their sexual activities,<sup>347</sup> as well as constant surveillance by their children's fathers.<sup>348</sup>

The justification for the denial of maternal autonomy is always "the best interests of the child." The idea is that having both parents involved in the child's life *is* in the child's best interests.<sup>349</sup> Czapanskiy's analysis demonstrates, however, that "the best interests of the child" really translates into "the discretionary preferences of the father." While the custodial parent's (almost always the mother's) obligation to facilitate visitation is enforced through a variety of legal procedures, ranging from modification of custody to contempt proceedings, the noncustodial parent's (almost always the father's) failure to visit his children and the burdens this imposes on mothers and children go completely unremedied.<sup>350</sup> Indeed, paternal immunity from any legal obligation to exercise visitation rights for the benefit of children or to provide personal services to their children is so well-established that it has almost never been litigated. One exception Czapanskiy discusses is the case of *Louden v. Olpin*.<sup>351</sup> This case is

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347. See, for example, *McKim v. McKim*, 440 So. 2d 562, 563-64 (Ala. App. 1983) (deciding that the trial court's decision to transfer legal custody of a teenage girl from her divorced mother to the state social services agency was properly based on the fact that the mother had violated an order directing her to refrain from permitting men to visit her).

348. See, for example, *Hulm v. Hulm*, 484 N.W.2d 303, 305 (S.D. 1992) (upholding the trial court's "novel approach" denying the father's custody modification petition based on the mother's agreement to reform the behavior that triggered the father's petition: allowing a male friend to spend nights in her bedroom when the daughter was in her apartment, and her lack of cooperation in raising the child Catholic. According to the court, the father would simply have to revive the issue if the mother continued or resumed inappropriate behavior).

349. See generally Annotation, *Propriety of Awarding Joint Custody of Children*, 17 A.L.R.4th 1013 (1982).

350. Czapanskiy, 38 U.C.L.A. L. Rev. at 1472-80 (cited in note 336) (criticizing the lack of remedies and proposing practical reforms). Other commentators have noted similar and related problems. Amy Hirsch notes: "Joint legal custody rarely imposes additional responsibilities on the nonresidential parent while at the same time enabling him to exercise effective veto power over decisions of the caretaker. It also forces battered women to have continued contact with abusive spouses, providing opportunities for continued violence. There is also evidence that support orders are substantially lower in joint custody cases, even where the actual child care arrangements are no different from sole custody with visitation." Amy E. Hirsch, *Income Deeming in the AFDC Program: Using Dual Track Family Law to Make Poor Women Poorer*, 16 N.Y.U. Rev. L. & Soc. Change 713, 738-39 (1987-88).

351. 118 Cal.App.3d 565, 568, 173 Cal.Rptr. 447, 449 (1981). Thus, Czapanskiy quotes the California Appeals Court:

Under the Uniform Parentage Act, the father has a privilege of visitation. Appellant wishes us to extend that holding to include a reciprocal right on the part of the child in that she may compel the noncustodial parent to visit. This we decline to do. There is

notable only because it expressly acknowledges that however much paternal visitation rights may be enforced against mothers for the sake of "the child's best interests," visitation rights are a paternal privilege, not a child's legal right.

The restrictions imposed through the best interests of the child doctrine on maternal autonomy appear all the more hypocritical given evidence that post-divorce ruptures in the father/child relationship are better explained by fathers' weak attachments to their children than by mothers' efforts to obstruct this relationship.<sup>352</sup> Indeed, mothers frequently wish their former husbands would play larger roles in raising the children. On the other hand, fathers tend to become increasingly disinterested in maintaining these relationships. They tend to assert denial of visitation complaints only in response to support enforcement proceedings.<sup>353</sup> As Czapanskiy persuasively argues, the fact that mothers and children have limited avenues for enforcing the nonfinancial responsibilities of parenthood on reluctant fathers shows the extent to which fatherhood is legally constructed as a voluntary enterprise. The law is more concerned with protecting the father's interest in his children (or in dominating and harassing his former wife), than in the children's right to their father's care and involvement in their lives.<sup>354</sup>

Through this legal structure, motherhood is constructed as a position of vulnerability that cuts across the class and racial stratification between women. Significant decisions mothers make can be unmade through state intervention at the father's request. Women's freedom and maternal decision-making power are legally restricted

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neither statutory nor case law to support such a contention. . . . The court cannot compel a noncustodial parent . . . to care for and love and visit with the child. The court can only compel the parent to provide monetary support. . . . Respondent has been designated as the father and he has duties and obligations to fulfill, but the fact remains that the court cannot order him to act as a father. While it is true that the state has a public policy interest in wanting parents and children to be together, it still remains that the court cannot order the family to stay together. Appellant argues that compelling the father to visit now will make him love the child and in time his visits will become voluntary. This may or may not occur, but in any event it is not up to the courts to make such a decision.

Czapanskiy, 38 U.C.L.A. L. Rev. at 1436 n.72 (cited in note 336).

352. Czapanskiy notes a number of studies evidencing both points. Czapanskiy, 38 U.C.L.A. L. Rev. at 1449-50 & nn.116-23 (cited in note 336).

353. Czapanskiy reports of her review of nearly four hundred cases: "In almost every case, the denial of visitation had not been raised until the noncustodial parent had already been sued for child support. That is, in almost no case did the noncustodial parent seek enforcement of a right to visitation before there was a monetary claim." *Id.* at 1450-51 n.123.

354. *Id.* at 1442-46.

for the benefit of men who cannot be legally compelled to assume the day-to-day responsibilities of caring for their children.

## 2. Contested Solutions: From Gender-Neutral Parenting to Matrifocal Families

Most feminists would agree that the gendered structure of parental rights and responsibilities imposes debilitating restrictions on women's autonomy, both as mothers and as sexual subjects. Nevertheless, the different images of motherhood reviewed in Part III of this Article suggest radically different solutions. For example, Czapanskiy locates the solution to women's maternal subordination in the image of gender-neutral parenting, which she develops by invoking the ethical framework articulated in the political philosophy of John Rawls. Professor Barbara Stark advocates a similar solution, grounding her proposals in the white feminist psychoanalytic theories of motherhood also reviewed in Part III.<sup>355</sup> In both proposals, the image of gender-neutral parenting is used to promote policies aimed at liberating women by requiring fathers to undertake the parenting responsibilities ordinarily assumed by or imposed upon mothers.

In a path-breaking re-visioning of Anglo-American family law, Professor Martha Fineman advocates a very different reform trajectory.<sup>356</sup> Fineman proposes to deregulate and privatize the sexual relationship that currently constitutes heterosexual marriage as the legal foundation of the family. Fineman suggests reorganizing the legal family around the Mother/Child, rather than the Husband/Wife, relation.<sup>357</sup> Fineman's proposal offers a provocative vision of the kinds of legal doctrines and public policies that could simultaneously promote the family and reduce women's sexual vulnerability to men. These reforms would locate the solution to women's subordination in policies that reinforce maternal autonomy by ensuring mothers access to the resources necessary to raise their children and by eliminating the legal avenues through which voluntary fathers are able to trigger state interventions that undermine women's freedom.

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355. See notes 85-108 and accompanying text.

356. See generally Fineman, *The Neutered Mother* (cited in note 60).

357. *Id.* Fineman successfully defends her decision to invoke the culturally loaded image of Mother in order to identify the primary familial relation. As she explains, however, Mother is for most practical *legal* purposes a metaphoric image, which organizes the legal incidents of family around any caretaker-dependent relation and acknowledges that some men can be Mother. *Id.* at 233-36.

The vehement opposition the “maternal empowerment” trajectory tends to trigger depends upon the conjured images of individual women locked into predetermined social roles and gendered identities and upon the image of paternal rights subjected to maternal discretion. Indeed, one of the many strengths in Fineman’s analysis is that it proposes radical reforms in which the ideological points of contention are more fundamental than any debate over operational specifics.<sup>358</sup> Approaching this debate in terms of its relevance to the feminist struggle against rape, the task is to assess which trajectory is more likely to secure women’s rights to sexual autonomy and the expression of sexual desire, without fear of rape, harassment, or other forms of coercion. While we may now see how that question relates to the issue of which reform trajectory is more likely to liberate motherhood from the cultural expectations and legal doctrines that promote the male-dominated nuclear family, my purpose in this Subsection is to suggest how the images of maternal authority and the practices of matrifocal extended families described in Part III.B might be deployed in this debate.

Viewed through a cultural logic of matrifocality, the images deployed in support of gender-neutral parenting warrant resistance because they are highly destructive of identity positions and normative commitments through which interpersonal relations are constituted as familial relationships rather than contractual arrangements. Czapanskiy’s work is particularly valuable because, by expressly invoking the Rawlsian original position,<sup>359</sup> it helps illuminate the ways

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358. For example, Czapanskiy suggests a number of practical reforms that could be used as much to reinforce maternal authority as to effectuate the new substantive legal obligations of gender-neutral parenting. These practical suggestions include proposals to make visitation and care-taking responsibilities a right enforceable against nonresidential parents for the benefit of their children; to off-set financial support obligations against care-taking work and vice-versa; to require parenting plans that specifically delineate the allocation of care-taking work as between residential and non-residential parents; to establish progressively coercive remedies for the non-performance of care-taking responsibilities, for example, by requiring nonresidential parents to pay residential parents for babysitting services or by increasing support awards to compensate the residential parent for doing the parenting work that should have been done by the non-performing parent. Czapanskiy, 38 U.C.L.A. L. Rev. at 1474-76 (cited in note 336). The appeal of these practical solutions suggests that the difference, at least initially, between feminist reform trajectories is not so much in the operational specifics, but in how the law conceptualizes parents. As Czapanskiy, herself observes: “A question about how the law conceptualizes parents . . . addresses a large problem, not a specific detail, and thus is capable of carrying a large burden of expressiveness about law and society.” *Id.* at 1463.

359. According to Czapanskiy, parental rights and obligations *should be* gender-neutral because that is the arrangement most likely to emerge as the negotiated outcome if one imagined that all individuals were asked to design the rules governing family relationships without knowing what position they, themselves, would eventually occupy in the family. See *id.* at 1463-65 (“According to [Rawlsian] methodology, a fair method for designing a good society would be to deny the designers knowledge of what position they would find themselves in once the society

in which the image of gender-neutral parenting displaces "separate spheres ideologies."<sup>360</sup> Professor Czapanskiy, however, replaces these ideologies with the equally contingent and highly problematic ideology of "abstract individualism." In this ideology, a person's identity as an individual purportedly displaces the gendered specificities, socioeconomic positioning, and historical contexts that are partly imposed upon and partly negotiated by particular men and women. As individuals defined primarily by the faculties of reason and will, men and women are expected to renegotiate inherited traditions and social patterns, replacing them with the freedom and fluidity of contractual arrangements.

It is certainly true, and much of my Article is an attempt to explore the transformative potential embedded in the fact, that an individual's identity is constructed through the negotiation of culturally contested images and identity-enforcing narratives and practices. Moreover, an important task for feminists is to identify those images that can further the ultimate objectives of securing women's autonomy and reducing our sexual vulnerability to men. The question, however, is whether these objectives will be better achieved by promoting the image of gender-neutral parenting or by reconfiguring the substantive content of gendered identity positions.

The answer depends initially on recognizing that these alternative approaches look very different, depending on the ideological position through which they are viewed. From inside the ideology of abstract individualism, gender-neutral parenting looks like the triumph of reason over custom, the fluidity of individual freedom tempered by self-legislated commitments. From the outside in, however, gender-neutral parenting looks like another victory for the commodity form in which all interpersonal relations are increasingly divorced from the normative imperatives of self-sacrifice and interdependence and reconceptualized as negotiable contractual arrangements. Conversely, from inside the cultural logic of matrifocality, legal reforms aimed at promoting maternal autonomy look like a victory over the patriarchal devaluation of female power, opening up possibilities for the cultural production of new images of women and narratives of

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were created"). The problem with this approach is that it presupposes an ideological disposition towards conceptualizing inter-familial commitments and obligations as fluid and negotiable.

360. The common element in proposals promoting gender-neutral parenting is an attack on the dispositions, expectations, and self-representations inscribed in what is called "a separate spheres ideology." See *id.* at 1460. See also Stark, 38 U.C.L.A. L. Rev. at 1504-08 (cited in note 61).

empowered femininity; from the outside in, this reform trajectory appears to reimpose the gendered scripts that feminists have struggled to escape.

The important point is not that these ideological positions may be fundamentally incommensurable, but rather that "abstract individualism" is an identity position that is much more feasible for some women than for others. Inhabiting this position depends on access to resources and exposure to ideas and practices that are differentially constituted across class and culture—including access to the liberal colleges that purport to critique all inherited social relations (except the commodity form). Rather than exploring the impact of different cultural values, personal experiences, and socioeconomic resources on women's inclination to negotiate and our ability to enforce gender-neutral interpersonal arrangements with men, proponents of this reform trajectory simply assume that "the ideology of separate spheres" is in cultural decline and that its ultimate demise would be universally beneficial.<sup>361</sup> Even its proponents acknowledge that this assumption is still unsubstantiated by the lived experiences of most women.<sup>362</sup>

This assumption can be directly contested by recognizing the feminist possibilities embedded in a "maternal empowerment" trajectory. Fineman argues in favor of designing public policies that ensure single mothers access to the socioeconomic resources and autonomy they need to raise their children by themselves because this trajectory could eliminate many of the socially constructed vulnerabilities to which motherhood currently exposes individual women. The effort to develop an appreciation of the cultural logic of matrilocality would further progress in this direction by increasing our exposure to the counter-narratives of maternal power and authority. This would be a significant development because the ideology of freedom through abstract individualism is only one of the imperatives driving feminist proponents of gender-neutral parenthood. The other impera-

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361. See Czapanskiy, 38 U.C.L.A. L. Rev. at 1460 (cited in note 336). See also Stark, 38 U.C.L.A. L. Rev. at 1504-08 (cited in note 61).

362. On the one hand, Czapanskiy claims this ideology is in decline. See Czapanskiy, 38 U.C.L.A. L. Rev. at 1460 (cited in note 336). On the other hand, she is clearly aware that this ideology still organizes much of what she calls "modern America," citing evidence and discussing the impact of the "second shift" responsibilities still shouldered by large numbers of "modern" women. *Id.* at 1452-57. Czapanskiy, however, acknowledges the gendered structure of individual habits and preferences only to dismiss them through the ideology of abstract individualism. See *id.* at 1464-65 ("[O]ne must ask whether gender socialization and patriarchal privilege animate such [gendered] preferences more than human impulses untainted by power relations").

tive is what Professor Stark has called "the hostility of both sexes toward the 'all-powerful mother.'"<sup>363</sup>

Like Czapanskiy, Professor Stark advocates gender neutrality in the allocation of parental rights and obligations, focusing specifically on post-divorce custody determinations.<sup>364</sup> According to Stark, women's socioeconomic subordination is not produced by divorce,<sup>365</sup> but by a system in which the gendered division of labor forces women to assume the primary responsibilities of caring for children at their own expense.<sup>366</sup> Thus, she concludes that divorce would have a less devastating impact on women and children if the division of labor in the workplace and the family were gender-neutral. Joint custody arrangements and other legal reforms promoting gender-neutral parenthood are a means toward that end.

Stark's analysis is particularly valuable (and disturbing) because it is grounded in the feminist psychoanalytic theories of motherhood examined in Part III.A.<sup>367</sup> Her approach precludes "maternal empowerment" reform proposals like Fineman's because the psychoanalytic theories that drive her arguments preclude the possibility that the gendered division of labor might have a less devastating impact after divorce if women's mothering were socially valued and supported independently from the male-dominated nuclear family. In Stark's formulation, gender-neutral parenting is a feminist imperative, not simply because it would help to alleviate women's socioeconomic subordination (by shifting the socioeconomic burdens of motherhood onto men), but more significantly because it would liberate us from the psycho-sexual dysfunctions purportedly engendered by exclusive female parenting. Thus Stark argues that:

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363. Stark, 38 U.C.L.A. L. Rev. at 1521 (cited in note 61).

364. See *id.* at 1483 (criticizing the gendered structure of post-divorce custody arrangements using feminist psychoanalytical theory).

365. According to Stark, "the most egregious consequence of divorce is that it perpetuates and exacerbates the effects of patriarchy, or, to use Gayle Rubin's apt phrase, the sex/gender system. *What is most deplorable about the legal process of divorce is that it masks this. It is the sex/gender system, rather than divorce, that is responsible for women's impoverishment.*" *Id.* at 1493 (emphasis added).

366. Stark notes that, "[u]pon divorce, women usually get physical custody of the children, and the attendant expenses and impediments to their own career advancement and financial autonomy. Men are charged with some continuing financial responsibility, although their payments usually taper off, and they are rarely expected to assume a significant care-giving role." *Id.* at 1493-94 (footnotes omitted).

367. According to Stark, "divorce law not only incorporates, but is structured by, subconscious notions of gender. If we are to constructively recast rights and responsibilities under divorce law, we have to understand the 'dreams'—the subconscious reality—in which they begin." *Id.* at 1487 (footnotes omitted).



Although joint custody raises troubling questions for most of us, it becomes increasingly appealing, individually and collectively, as gender roles become more fluid. We recognize the problems associated with exclusive female parenting. It not only puts women in a precarious financial situation, but impedes the development of an autonomous "subjective" self. For children, sole female custody after divorce not only reinforces gender stereotypes and misogyny, but results in often severe material deprivation, since they share in the "feminization of poverty."<sup>368</sup>

By proposing to read child custody practices through "psycho-feminist" theory, Stark's work provides an excellent point of departure for re-reading both current custody laws and feminist reform proposals through Stanley Kurtz's psychoanalytic account of matrifocal extended family arrangements.<sup>369</sup> These two alternative readings support very different law reform trajectories because they project very different visions of the kinds of family structures and child care arrangements most likely to promote female autonomy and reduce heterosexual misogyny. Indeed, read against Kurtz's cross-cultural psychoanalytic analysis, Stark's work makes it easier to see how the image of gender-neutral parenting is a fundamentally misguided and decidedly misogynistic "solution" to the same misogyny it seeks to combat.

First, while Stark is careful to object to compulsory joint custody,<sup>370</sup> her arguments provide substantial ammunition for those forces that have made it a policy preference—even over maternal opposition.<sup>371</sup> According to Stark, "[t]he focus here is on the reasons parents reject such [joint custody] arrangements."<sup>372</sup> But if, as she argues, the intrapsychic structures produced by female mothering drive individual women and men into making destructive life choices that reproduce women's subordinate position in the sex-gender system, then laws and policies that promote male mediation of the mother/child relationship, including compulsory joint custody and the recent welfare attacks on single motherhood, may certainly be coercive in the short run. Nonetheless, these reforms are ultimately justifiable because they will, in the long run, prevent the formation of in-

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368. Id. at 1525.

369. See Part III.B.

370. Stark, 38 U.C.L.A. L. Rev. at 1521 n.189 (cited in note 61) ("The movement to encourage joint physical custody is wise but the movement to permit courts to impose joint custody is not" (quoting David L. Chambers, *Rethinking the Substantive Rules for Custody Disputes in Divorce*, 83 Mich. L. Rev. 477, 479 (1984))).

371. See generally Annotation, 17 A.L.R.4th at 1013-28 (cited in note 349) (collecting cases).

372. Stark, 38 U.C.L.A. L. Rev. at 1521 n.189 (cited in note 61).

trapsychic structures that originate in our experiences of psycho-sexual individuation from the all-powerful mother.

Second, while Stark acknowledges that her analysis focuses on "the typical pattern in middle-class families in the West of babies attended by one lone mother,"<sup>373</sup> the important task is to show how her arguments would be affected by a more informed appreciation of the impact of exclusive female mothering in the non-nuclear, extended family networks her analysis tends to marginalize. As I argued in Parts III.B, IV.A, and V.A, this analysis suggests that heterosexual dis-ease, the psycho-sexual dynamics of male dominance and female submission, and the fear of female power are better explained by the narratives of pornographic masculinity. They are driven by the socioeconomic structures that organize the competition for power and status between men.

From this perspective, the impact of exclusive female parenting depends entirely on the social relations in which it is practiced. Located in the context of the male-dominated nuclear family, exclusive female parenting may be the vehicle through which women are subordinated to men. Located in the context of matrifocal extended family arrangements, however, exclusive female parenting is one of the vehicles through which children are raised into a deep appreciation and respect for maternal authority and commitment to familial interdependence. This is because separation from the mother means integration into a broader network of social relations in which female power is present and pervasive, rather than individuation into the delusion of individual independence, achieved through a devaluation of the feminine and the increasing commodification of all social relations.

Indeed, a fuller understanding of the cultural logic of matrifocality suggests that women's subordination is not so much a product of exclusive female parenting as a product of the social context in which motherhood is practiced. In the cultural logic of matrifocality, exclusive female parenting is the vehicle through which women acquire and exercise power, construct and enjoy relations of female solidarity, and promote respect for and allegiance to maternal authority. From this perspective, women's autonomy, both as mothers and as sexual subjects, is much more likely to emerge from the "maternal empowerment" trajectory, which advocates reforms designed to

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373. Id. at 1496 n.68 (quoting Benjamin, *The Bonds of Love* at 75 (cited in note 10)).

ensure women access to the socioeconomic resources they need to raise their children independently of men, if they so choose, than from policies designed to promote gender-neutral parenthood.

Equally important, a clearer understanding of the cultural logic and psychoanalytic impact of matrifocal extended families also suggests that the maternal empowerment reform trajectory may help reconstruct the terms upon which men and women interact as heterosexual desiring subjects. This cross-cultural analysis suggests a very different account of the origin of male supremacist narratives of pornographic masculinity. In this account, fear and resentment toward women and the urge to dominate women is not so much a function of the mother's power as of her powerlessness, both as a mother and as a wife, in the male-dominated nuclear family. When women command real power in the family, maternal authority is respected and cherished. Indeed, from this perspective, rather than being the origin of male supremacist ideologies and practices, maternal empowerment is a potential solution because the pornographic attack on feminine sexual beauty, maternal authority, and the devaluation of femininity are means men use to maintain the socioeconomic and coercive relations through which they continue to subordinate and dominate each other.

In short, in the cultural logic of matrifocality, proposals promoting gender-neutral parenthood are most problematic precisely because they are grounded in arguments that embrace abstract individualism as a universally authentic identity (Czapanskiy's approach) and indulge mainstream culture's psycho-sexual fear of female power (Stark's approach). Neither abstract individualism, nor the repudiation of female power are likely to reconstruct motherhood in ways that secure women's freedom from sexual coercion and appropriation because these ideologies are the foundations upon which the practices of commodified femininity and pornographic masculinity are culturally constructed.

## VII. CONCLUSION

This Article explores various problems that the feminist struggle against women's sexual oppression presents for some straight women of color. Starting from a common interest in eliminating the subordination of women because of our sex and sexuality, I suggest a number of ways the feminist struggle for women's sexual autonomy can be more sensitive to the differences that class, race, and sexual

orientation make in the way women experience this struggle and envision the objective of sexual autonomy. A genuinely inclusive feminism must seriously consider the ways women's heterosexual desire and their intraracial solidarity with men influence how they experience the feminist legal interventions designed to liberate them.

Initially, I make this point by examining how empirical patterns in the processing of rape cases can simultaneously reflect and reinscribe the logics of male supremacy and white supremacy through the exercise of discretionary power. Feminist legal reforms that attempt to alter the substantive criminal elements of rape are unlikely to change these processing patterns because much of the discretion exercised is inherent in applying any formal legal standards to complex factual events. Legal reforms that target the case processing system, particularly the points at which culturally dominant narratives of race and sexuality penetrate discretionary decision making are more effective legal strategies for altering racist and sexist rape enforcement patterns.

A further problem is that even the most unbiased rape processing system will not eliminate rape so long as women are easy and acceptable targets for male sexual aggression. Consequently, the legal struggle for women's freedom from rape must be conceptualized as a struggle that extends beyond reforming the criminal justice apparatus. Feminists should also target the production of popular culture as well as the economic conditions, public policies, and legal doctrines that construct women's sexual vulnerability.

Along the way, I provide a critical account of the ways in which culturally dominant narratives of race and sexual identity, as well as psychoanalytic theories of mothering and motherhood, are deployed in various discourses to understand the interpersonal practices of sexual dominance and the legal arrangements that support these practices. I call these the narratives of commodified femininity and pornographic masculinity. My discussion exposes their cultural contingency by comparing various images of sexual identity in Black and Latin cultures and argues that their cultural dominance should be combatted by circulating alternative narratives. I draw these narratives from the work of various Jungian psychoanalysts.

These counter-narratives offer alternative resources through which individual men and women may begin to construct the terms of a nonmisogynistic heterosexuality, that is, a heterosexuality in which male power does not depend upon female powerlessness and subordination. Wider circulation of these alternative narratives could help

alter the enforcement patterns in rape cases. These counter-narratives could also help reconstruct the public policies that make many women experience their sexuality as a vulnerability. There are no easy answers in the feminist struggle for women's sexual autonomy, only more or less redemptive trajectories.