THEORIZING CONNECTION

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This article examines feminism and "connection" in relation to pregnancy and abortion. Noonan focuses her analysis on Robin West's article "Jurisprudence and Gender." She argues that West's work dangerously portrays certain facets of feminist legal theory. She contends that West's portrayal of radical feminism functions to establish abortion as women's inability to adjust to the consequences of connection. This paper specifically addresses the separation thesis, connection, abortion, including gender essentialism and motherhood.

Le présent article examine le féminisme et la notion de «connexion» en regard de la grossesse et de l'avortement. L'auteure dirige son analyse sur l'article de Robin West «Jurisprudence and Gender». Elle soutient que les travaux de West présentent certaines facettes de la théorie féministe du droit sous un jour dangereux. Selon elle, le tableau que West fait du féminisme radical sert à présenter l'avortement comme résultant de l'incapacité d'adaptation des femmes aux conséquences de la connexion. Elle étudie plus particulièrement la thèse de la séparation, la notion de connexion, l'avortement, l'essentialisme fondé sur le sexe et la maternité.

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I. INTRODUCTION

Perhaps not surprisingly, women's experience of pregnancy is increasingly a focus for feminist theorizing in law. Pregnancy graphically demonstrates the poverty of liberal legalism.[1] The Supreme Court of Canada's refusal to extend unemployment insurance benefits to Stella Bliss[2] prompted feminist legal theorists to question the efficacy of legal

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1. For a lengthy consideration of the law's relation to the pregnant body see Z. Eisenstein, *The Female Body And the Law* (Berkeley: University of California, 1988).

2. *Bliss* v. *Attorney General of Canada*, [1979] 1 S.C.R. 183. While there were provisions in the *Unemployment Insurance Act* which permitted some women to qualify for unemployment insurance, Stella Bliss had not worked long enough to qualify for these benefits. She, therefore, sought to challenge a section which denied unemployment benefits to women who had given birth or were just

formulations which refuse to reflect the specificity of pregnancy. It was in the face of juridical unwillingness to accommodate the uniqueness of this condition that feminist critiques of "gender-neutral" rule application began to gain currency.[3] Desiring to curb the extension of legal rules formulated with men as their referent which were fundamentally designed to target other problems, for example sickness or disability provisions, many feminists argued tenaciously for legal recognition of the specificity of pregnancy.[4]

However, positing a female experience of pregnancy, which had no counterpart in male existence, implicitly endorsed a universalized account of that state. Seeking to recognize the specificity of women whilst adhering to aspirations of grand or totalizing accounts risks affirmation of the "unshakeable hegemony of legal theory."[5]

Monolithic accounts of pregnancy, abortion, or motherhood may be inherently pernicious. At a minimum they generalize and thereby risk projecting an ethnocentric account of those processes. At best they achieve results which while desired in one area, create insurmountable difficulties in others. Evidence of such tension is in stark relief in the struggle to secure access to abortion services and to render available the various procedures contemplated by the "new reproductive technologies." The paradox which

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about to do so. In rejecting the claim that women were treated unequally by virtue of this provision, the Court suggested that "any inequality between the sexes in this area is not created by legislation but by nature" (at 191-92). For a thorough discussion of this case, see B. Baines, "Women, Human Rights and the Constitution" in Doerr & Carrier, eds., *Women and the Constitution* (Ottawa: Canadian Advisory Council on the Status of Women, 1981) Chapter 2.

3. Failure to provide "special treatment" for women in the work place during pregnancy would mean that women would be forced to bear the cost of having children, whilst men would absorb none of it. Treating both sexes the same i.e. not adopting maternity leave policy would thus force women to choose between work and parenthood. Refusal to accommodate to women's specificity evidenced by applying a "neutral" rule thus creates a situation which impacts negatively only on women. See B. Symes, "Equality Theories and Maternity Benefit" in Mahoney & Martin eds., *Equality and Judicial Neutrality* (Toronto: Carswell, 1987). See also C. Sheppard, "Equality, Ideology and Oppression: Women and the Canadian Charter of Rights and Freedoms" in C. Boyle et al., eds., *Charterwatch: Reflections on Equality* (Toronto: Carswell, 1986).

4. Whilst there are a number of diverse perspectives which have emerged in pursuit of a theory of sexual equality, many feminist legal theorists have favored recognition of the specificity of pregnancy. See E. Wolgast, *Equality and the Rights of Women* (Ithaca: Cornell University Press, 1980) Liberal feminists, like Wendy Williams have steadfastly been opposed to treating pregnancy "differently" on the basis that acknowledging women's specificities will invariably perpetuate existing inequalities. See W. Williams, "The Equality Crisis: Some Reflections on Culture, Courts, and Feminism" [1982] Women's Rights Law Reporter 7.

The technique of pursuing equality as a strategy rather than as a goal, may overcome some of the significant limitations of seeking to find a sexual equality theory which is sufficiently flexible to be applied in the myriad of contexts women may seek to challenge. For cogent analyses of the benefits of stressing (in)equality see K. Lahey, "Feminist Theories of (In) Equality" [1987] 3 Wisconsin Women's Law Journal 5; C. MacKinnon, *Feminism Unmodified* (Cambridge, Harvard University Press, 1987); and for a thorough discussion of all these issues see D. Majury, "Strategizing In Equality" in Fineman and Thomadsen, eds., *At the Boundaries of Law* (New York: Routledge, 1991) 320.

5. K. Lahey, "On Silences, Screams, And Scholarship: An Introduction to Feminist Legal Theory" in R. Devlin, ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery, 1991).

ensues from unequivocally embracing "choice"[6] is heightened by the fact that some "cultural feminists" have shaped feminist theory around reconceptualizing motherhood. Though it is beyond the scope of this paper to assess the full import of this work, my fear is that certain formulations of cultural feminist theory[7] carry the potential to diminish the importance of continued commitment to the abortion struggle and to inhibit the feminist critiques of new reproductive technologies.

My concern though is more particular, and my agenda more targeted than this initial formulation discloses. It is the tale increasingly told, specifically by Robin West, about the radical feminist's relation to "connection" with which I wish to take issue.[8] In particular, the phenomena of pregnancy and the experience of abortion have become the focal points through which very particular accounts of radical feminism have been constructed. My primary purpose is essentially two-fold: to expose Robin West's construction of radical feminist theory[9] and the implications this carries for the development of feminist legal theory; secondly, to discuss the ramifications that West's formulations of motherhood within cultural feminism may have on the current abortion debate.

I believe that there are potential dangers lurking within Robin West's cartography of feminist legal theory. The picture of radical feminism presented operates to constitute abortion as women's inability to accommodate to the consequences of connection. Largely divorced from the context of the dynamics of institutionalized heterosexuality, and the disparate material composition of women's reproductive lives, radical feminism is abjected in favor of the romantic and logocentric story of connection perfected, namely

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6. Dianna Majury has eloquently explored this paradox in relation to abortion and new reproductive technologies. The use of "choice" in relation to reproduction generally opens the door to a view which stresses that new reproductive technologies should not be regulated. In other words, expanding access to these services merely expands the range of the reproductive choices available to women. D. Majury, "At the Feminist Impasse: Choice of Law" (Paper delivered at Queen's University, January 1991). See Also E. Kingdom, "Legal Recognition of a Woman's Right to Choose," in J. Brophy & C. Smart, eds., *Women in Law* (London: Routledge & Kegan Paul, 1985).

7. The material with which I am concerned is principally legal in nature, particularly that propounded by Robin West. Her view of cultural feminism differs significantly from that articulated by L. Alcoff who argues:

> Cultural feminism is the ideology of a female nature or female essence reappropriated by feminists themselves in an effort to revalidate undervalued female attributes. For cultural feminists, the enemy of women is not merely a social system or economic institution or set of backward beliefs but masculinity itself and in some cases male biology. Cultural feminist politics revolve around creating and maintaining a healthy environment – free of masculinist values and all their offshoots such as pornography – for the female principle. Feminist theory, the explanation of sexism, and the justification of feminist demands can all be grounded securely and unambiguously on the concept of the essential female.

See L. Alcoff, "Cultural Feminism Versus Post-Structuralism: The Identity Crisis in Feminist Theory" (1988) 13 *Signs* 405 at 408. There is remarkably little clarity around such classifications, and generally, as in the text above, certain feminisms are deliberately constructed in ways which seek to reveal limitations. For a fuller discussion of various definitions of cultural feminism see note 18.

8. R. West, "Jurisprudence and Gender" (1988) 55 Univ. of Chicago Law Rev. 1.

9. As I will argue below, I take the central feature of radical feminism to be an analysis of power. Its virtue then is that it concentrates on the structural imperatives operating to uphold phallogocentrism and women's positionality within the present socio-symbolic orders.

motherhood. Cultural feminism and motherhood thereby become the sanctioned and sanitized version of feminist legal theory and abortion and radical feminism its exiled dark side.

Perhaps this paper assumes its identity primarily as a doleful admonition from the land of the exiled. In an era in which the last vestiges of *Roe* v. *Wade* are subject to constant judicial erosion, West's articulation of the connection thesis may result in its hastened demise. Rather than posing an intrinsic challenge to what might be called the separation story, West's connection thesis, in salient respects, colludes with the liberal underpinning of that narrative.

II. STORY ONE: SEPARATION THESIS – AD HOMINEM HOMUNCULUS[10]

Liberal legalism's construction of the abortion story is by now so discursively entrenched that it creates an illusion that it is self-evident.[11] Simply stated, it involves a weighing of the rights of the pregnant woman against the rights of the fetus, which in this country, may be articulated in and through a formulation of State interest.[12]

This construction of the abortion issue as the "clash of absolutes"[13] which pits mother against foetus (or foetus against mother) operates to constitute the problem in very particular ways. As Donna Greschner points out, the exclusion of women in framing the terms and vocabulary of the abortion debate predetermines its outcome.[14] In her view, it is the invocation of the discourse of rights which is at the centre of this problem:

> [t]he masculine language and concept that permeates and has especial significance in legal discourse on creation is rights. The traditional, male-stream formulation of rights is that of trumps attaching to separate individuals. A person is separate from and independent of all others, possessing rights as a means of stopping others from infringing upon his space, his autonomy, his freedom to do what he wants. Visualizing the foetus as a miniature man fits perfectly and circularly with the ascription of rights to the foetus: if the foetus is a separate man, he must have rights, and if a foetus has rights he must be a

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10. The *Random House Dictionary of the English Language*, 2nd ed., unabridged defines homunculus as follows:
    1. An artificially made dwarf, supposedly produced in a flask by an alchemist.
    2. A fully former, miniature human body believed, according to some medical theories of the 16th and 17th centuries, to be contained in the spermazoon.
    3. A diminutive human being.
    4. The human fetus.

11. The text in this section is largely drawn from previous work. See S. Noonan, "What the Court Giveth: Abortion and Bill C-43" (1991) 16 Queen's Law Journal 321.

12. See S. Noonan, "What the Court Giveth: Abortion and Bill C-43" (1991) 16 Queen's Law Journal 321. In *Morgentaler, Daigle, Borowski* and *Sullivan* the Court has declined to extend *Charter* protection to the foetus. However, I have argued that this does not end the issue given that the interests of the foetus were articulated through an elision with "State interests."

13. L. Tribe, *Abortion and the Clash of Absolutes* (New York: Norton, 1990).

14. D. Greschner, "Abortion and Democracy for Women: A Critique of *Tremblay* v. *Daigle* (1990) 35 McGill Law Journal 633.

separate man. Either way, the foetus has rights that always override, or must at least be balanced against, the conflicting rights of mothers.[15]

There can be little doubt that efforts to create foetal rights have been mounting, as have the tenacity and virulence of anti-choice demonstrators. Efforts to control women's reproduction through various forms of legal regulation have ranged from deploying child welfare and mental health provisions through to direct attacks on clinics in which abortion services are provided.[16]

None of these incidents can be viewed in isolation or held in abeyance in weaving our stories related to reproduction. In an age of new technologies where the essence of what defines parenthood is uncertain, constructions of the female body as hostile to the foetus are part of a larger move toward undermining the role of a mother and rendering her contribution to the reproductive process invisible or pernicious. As Hester Lessard suggests, in the abortion context the separation thesis pits rapacious self-interested women against helpless embryos.[17]

The relevance this holds for legal doctrine must be underscored. The foetus thereby enters legal discourse constructed as a unique entity with a separate legal status.[18] This serves to reinforce its situation within an economy in which the foetus is increasingly displaced and detached from the pregnant woman. That a foetus in fact relies on the body of its mother for survival is thereby obviated and obscured. Mediated in this fashion, the foetus unambiguously achieves centrality as a potential "victim" bearing interests which warrant protection.

The reification of the foetus central to this paradigm masks the material conditions of pregnancy and, specifically, women's role within reproduction. Under this account the woman is invisible save as womb *qua* entity. Such an abstraction so distorts the condition of pregnancy as to be other-wordly. While the relationship between foetus and mother is not symmetrical, neither is it necessarily antagonistic. As Shelley Gavigan explains:

Feminists both acknowledge the fundamental unity of woman and foetus and insist that the relationship is not symmetrical. Indeed, feminist insistence upon pregnancy as a 'relationship' between a pregnant woman and a foetus is as significant as the insight that this relationship is neither symmetrical nor inherently antagonistic. Feminists are thus currently engaged in a concerted struggle to resist the

15. *Ibid.* at 652.

16. See *C.A.S. of Belleville* v. *Linda T. and Gary K.* (1987), 7 R.F.L. (3d) 191 (Ont. Prov. Ct. Fam. Div.) and *Re R.* (1987), 9 R.F.L. (3d) 225 (B.C.S.C.). For a discussion of these cases and this area more generally, see I. Grant, "Forced Obstetrical Intervention: A Charter Analysis" (1989) 39 University of Toronto Law Journal 217; and S. Alter Tateishi, "Apprehending the Fetus EnVentre Sa Mere: A Study in Judicial Sleight of Hand" (1989) 53 Saskatchewan Law Review 113.

17. H. Lessard, "Relationship, Particularity and Change: Reflections on *R.* v. *Morgentaler* and Feminist Approaches to Liberty" (1991) McGill Law Journal (forthcoming).

18. A disturbing example of this is contained in a Louisiana statute dealing with human embryos which was drawn to my attention by Kathleen Lahey. The statute recognizes in vitro human ovum as juridical persons which can, among other things, sue and be sued. *Status of Human Embryos*, Louisiana Statutes Annotated, Title 9, Book 1, Code Title 1, chapter 3, sections 121-133.

> emerging if not yet prevailing image of pregnant women as menacing vessels, an imagery offensive to the integrity and moral agency of pregnant women. But feminists have also had to contend with the new invisibility of pregnant women in this campaign...[19]

It is only through the endorsement of the premise of abstract "separation" that an embryo, from the moment of conception, can bear interests which warrant protection.[20]

When the interests of the foetus are translated into rights talk, the entitlement of the foetus to use a woman's body to ensure its continued life is effectively presumed. The foetal right to life is represented for its own best interest as entirely distinct from the practical meaning and content of women's lives. Given that under existing doctrinal hierarchies the right to life is viewed as sacrosanct, interference with women's subjective lives becomes reduced to temporary inconvenience. Christine Overall neatly identifies this process as the covert assumption of foetal rights advocates, namely,:

> That the foetus has the right to the use of the women's body, that that right should be legally protected, and hence that the pregnant woman has an obligation not to abort and to permit any and all interventions in her body that are medically necessary for the sake of the foetus.[21]

If we can identify the separation story as the story of malestream theory, what promise does feminist theory which begins from the inextricable connectedness of mother and foetus hold?[22]

III. STORY TWO: STORIES OF CONNECTION

From the publication of Carol Gilligan's celebrated treatise, *In a Different Voice*,[23] much feminist legal theory has sought to locate and give expression to women's unique ontological and epistemological experiences. In any search for "difference," pregnancy epitomizes the most striking example of the potentially disparate experiences of men and women. Subsequently described as "cultural feminism," this work takes as its point of departure women's experience of connectedness with, and hence sense of responsibility for, other human beings.[24] While there are a number of accounts of the "connection"

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19. S. Gavigan, "Beyond *Morgentaler*: The Legal Regulation of Reproduction" in J. Brodie, S. Gavigan & J. Jenson, eds., *The Politics of Abortion* (Toronto: Oxford University Press, 1992).

20. See the discussion by M. McConnell and S. Noonan of the Law Reform Commission of Canada's report on *Crimes Against the Foetus* in (1989-1990) 3:2 Canadian Journal of Women & The Law 660-672.

21. C. Overall, "Mother/Foetus State Conflicts" (1989) 9 Health Law in Canada 101.

22. Here I will be examining *legal* theory. It is certainly the case that excellent feminist work on abortion beginning with the premise of connection is available in other disciplines. See, for example, C. Overall, *ibid.*

23. C. Gilligan, *In a Different Voice* (Cambridge: Harvard University Press, 1982).

24. There are many current taxonomies of feminism. Largely there is little consistency among them. I am adopting the term cultural feminism here as it is used by Robin West in "Jurisprudence and Gender" namely to signal a particular "official" account of women's experience of connection.

However, there are many other definitions of cultural feminism. Josephine Donovan suggests that contemporary cultural feminism reflects the view that "traditional" women's culture can be applied to the public realm to curb "destructive masculine ideologies." Stressing the cultural nature of these

thesis, cultural feminism celebrates a "self that is situated and relational, that views identity and moral choice as a function of particular relationships and changing, contingent responsibilities."[25] Connectedness and responsibility are posited as a site of difference from men whose ontological and epistemological experiences are characterised by separation and autonomy.

Gilligan herself was less concerned to construct a theory of female ontology than to account for gender deficiencies in the formulation of Kohlberg's theory of moral development. Essentially, she sought to demonstrate how women render moral decisions from a position which recognizes the "web" of relatedness of moral agents. Judgments given by women in response to moral dilemmas reflect an ethic of care predicated on concern for the particular context of relationships and responsibilities in which a legal situation arises. Men, on the other hand, render decisions characterized by the abstraction of rights premised on notions of individual autonomy and separation:

> This is what I mean by two voices, two ways of speaking. One voice speaks about equality, reciprocity, fairness, rights; one voice speaks about connection, not hurting, care, response.[26]

IV. CONNECTION REVISITED

In the work of Robin West, Gilligan's account of the connection thesis is reformulated.[27] Rather than locating the subjective experience of connection in psychology or observable disparities in moral reasoning, West seeks to ground women's subjective experiences based in the materiality of pregnancy, or the potential for pregnancy. Her formulation of this materiality is as follows:

> Women are not essentially, necessarily, inevitably, invariably, always, and forever separate from other human beings: women, distinctively, are quite clearly "connected" to another human life when pregnant. In fact, women are in some sense "connected" to life and to other human beings during at least four recurrent and critical material experiences: the experience of pregnancy itself; the invasive and "connecting" experience of heterosexual penetration, which may lead to pregnancy; the monthly experience of menstruation, which represents the potential for pregnancy; and the post-pregnancy experience of breast-feeding. Indeed, perhaps the central insight of feminist theory of the last decade has been that women are "essentially connected", not "essentially separate," from the rest of human life, both

traditions, it is suggested that men too can absorb these feminine values. See J. Donovan, *Feminist Theory* (New York: Continuum, 1988).

On the other hand, A. Echols,"The Taming of the Id: Feminist Sexual Politics, 1968-83," in C. Vance, ed., *Pleasure and Danger: Exploring Female Sexuality* (Boston: Routledge, 1984) 50 seems to identify cultural feminism with sexuality constrained by danger. Interestingly, different accounts of this "sharp" divide end up employing the same names under different labels. See also note 5, *supra*.

25. H. Lessard, *supra*, note 17.

26. C. Gilligan, in E. Dubois, et al., "Feminist Discourse, Moral Values and the Law -- A Conversation" (1985) 34 Buffalo Law Review 11 at 44.

27. R. West, "Jurisprudence and Gender," *supra*, note 8.

> materially through pregnancy, intercourse, and breast-feeding, and existentially, through the moral and practical life.[28]

Certainly there is much to be said in favor of analyzing pregnancy from a perspective which acknowledges the connectedness of mother and foetus and the dependency of the latter upon the former. At a minimum, it accords with the physiological accounts of that state. In this respect, it seems preferable to regard pregnancy as an instance of connection. However, the connection thesis propounded by West rather than furnishing the theoretical basis for a reformulated account of pregnancy, effectively positions abortion as the dark, dank subterranean story of women's reproductive lives.

Of these four connecting experiences, it is pregnancy and intercourse which provide a window for current feminist legal theory. In truth, West's project in "Jurisprudence and Gender" is a somewhat larger mission: she seeks to provide an account of the whole of legal theory which seeks to explain the inconsistencies and points of departure between masculine jurisprudence, namely liberalism and critical legal theory, and feminist legal theory as evidenced through cultural feminism and radical feminism. The "sharp" distinction between these two feminisms she says is traditionally expressed as follows: "According to one group of feminists, sometimes called 'cultural feminists,' the important difference between men and women is that women raise children and men don't. According to a second group of feminists, now called 'radical feminists,' the important difference between men and women is that women get fucked and men fuck...."[29]

In reformulating this distinction, West urges that all feminist theory can be situated in relation to her connection thesis. However, her textual strategies construct disparate hierarchical status in accordance with the type of feminism endorsed. More precisely stated, it is in relation to the stance embraced vis-a-vis the connection thesis that one can assess adherence to either official or unofficial feminist story lines.

> According to cultural feminism, women's connectedness to the other (whether material or cultural) is the source, the heart, the root, and the cause of women's different morality, different "ways of knowing," different genius, different capacity for care, and different ability to nurture. For radical feminists that same potential for connection – experienced materially in intercourse and pregnancy but experienced existentially in all spheres of life – is the source of women's debasement, powerlessness, subjugation and misery. It is the cause of our pain, and the reason for our stunted lives. Invasion and intrusion, rather than intimacy, nurturance and care, is the "unofficial" story of women's subjective experience of connection.[30]

It is somewhat ironic that in the move to render radical feminism thoroughly unofficial, and abortion marginal to women's reproductive lives, West fails to disclose why the landscape of feminist legal thought should be reduced to simple binary opposition. And so I feel forced to ask, what purpose does this taxonomy serve?

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28. *Ibid.* at 2-3.
29. *Ibid.* at 13.
30. R. West, *supra*, note 8 at 29.

In fact, the textual strategies West pursues are designed to set a very distinct cast on the visage of feminist legal theory. In this context, it is the abjection of radical feminism, I suggest, that lies at the heart of this enterprise.[31]

V. STORY THREE: TALES OF ABORTION (OR LESBIAN TRASHING AND BABY BASHING)

In order to illustrate these claims, it is necessary to outline West's methodology. West provides personal accounts of women's experience of pregnancy drawn from the amicus brief filed in the *Thornburgh*[32] case by the National Abortion Rights Action League. The following excerpts are among those furnished by West:

> "During my Pregnancy," one women [sic] explains, "I was treated *like a baby machine — an incubator without feelings.*" "Then I got pregnant again," another woman writes.
>
> This one would be only 13 months younger than the third child. I was faced with the unpleasant fact that I could not stop the babies from coming no matter what I did... *You cannot possibly know what it is like to be the helpless pawn of nature.*
>
> I am a 71 year old widow.
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> "Almost exactly a decade ago," writes another, "I learned I was pregnant... I was sick in my heart and I thought I would kill myself. *It was as if I had been told my body had been invaded with cancer.* It seemed that very wrong."
>
> One woman speaks directly, without metaphor. "On the ride home from the clinic the relief was enormous. I felt happy for the first time in weeks. I had a future again. *I had my body back.*"[33]

My intention is not to contradict the discrete "moments-of knowing"[34] furnished by West. Nor is it to question her assertion that the condition of pregnancy may fundamentally alter many women's sense of themselves. There is much to be said for giving expression to subjective experience within a discourse which favours and legitimates objective accounts.

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31. Applying Kristeva's concept of abjection seems particularly apposite because it graphically captures both the expulsion and revulsion which the text "Jurisprudence and Gender" attempts to construct. Loosely speaking, abjection refers to the process of bodily expulsion which constitutes the boundaries of the subject. In other words, it refers to the process of establishing the clean and proper boundaries of a social body which are necessary in order to assume a position as a speaking subject in the symbolic order. The processes of bodily expulsion attest to the provisional nature of the symbolic's grasp over semiotic drives. The abject thus occupies the space between subject and object. It can never be fully expelled but hovers at the boundaries threatening to disrupt. See J. Kristeva, *Powers of Horror: An Essay on Abjection* (New York, Columbia University Press, 1982).

32. *Thornburgh* v. *McRae*, 476 U.S. 747 (1986).

33. *Ibid.* at 31.

34. Kathleen Lahey identifies "moments-of-knowing" as part of the intersubjective process of exchange known as consciousness raising. See K. Lahey, "...Until Women Themselves Have Told All That They Have To Tell..." (1985) 23 Osgoode Hall Law Journal 519 at 533.

However, the subjective accounts provided disclose little about the speakers or the contexts within which the various subjective understandings of pregnancy were formulated. Clearly, the race and class of the speaking subjects are absent. Patricia Williams stresses that hegemony in theoretical legal understanding is not created solely through the existence of objective voices which express universal truth:

> ...the supposed existence of such voices is also given power in romanticized notions of "real people" having "real" experiences — not because real people have experienced what they really experienced, but because their experiences are somehow *made* legitimate — either because they are viewed as empirically legitimate (directly corroborated by consensus, by a community of outsiders) or, more frequently, because those experiences are corroborated by hidden or unspoken models of legitimacy.[35]

Legitimacy is achieved in West's text in several distinct respects. First, the text by the strategies it deploys attempts to present a single palatable position for feminism. Secondly, in constructing a voice that appears to speak for all women, we must question the unspoken models of legitimacy that may be invoked, namely the omission of race and class information does not mean that the material presented is race or class inclusive. In particular, she ignores, in her "material" analysis, the very real material circumstances which effectively undermine the formal legal right to abortion. Finally, the significance she attaches to the women's stories of pregnancy is couched in terminology and categories which are more likely to correspond to a lawyer's subjective experience of that condition.

VI. FEMINISM, ABORTION, AND MOTHERHOOD

There is little doubt that feminism has not achieved a coherent consensus on the significance of mothering in our lives, nor do I believe this is possible. While radical feminism has always stressed the structural imperatives toward compulsory heterosexuality and the institution of motherhood, it is specious to deliberately construct an image in which motherhood is not part of the landscape of radical feminist or lesbian lives. Such a strategy is frequently employed by anti-choice demonstrators who seek to portray pro-choice activists as baby bashers.

This is substantially the image West creates. For instance, her treatment of radical feminism and pregnancy consists solely of accounts by women of their experience of unwanted pregnancy. It follows that the experience of motherhood in radical feminism is thereby characterized as one absence, dread, and pathology. West is critical of radical feminist work which seeks to assuage the distinction between rape and sexual intercourse.[36] She extends the radical feminist insight that it is false to speak of

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35. P. Williams, *The Alchemy of Race and Rights* (Cambridge: Harvard University Press, 1991) at 9.

36. West states, "Women often, and perhaps increasingly, experience heterosexual intercourse as freely chosen intimacy, not invasive bondage. A radicalism that flatly denies the reality of such a lived experience runs the risk of making itself unintelligible and irrelevant to all people, not to mention the audience that matters most; namely, those women for whom intercourse is not free, not chosen, and anything but intimate, and who have no idea that it either could be or should be both." at p. 46.

As Catharine MacKinnon stresses we should not cling to some false notion of consensual and unconsensual pregnancy: "Women often do not control the conditions under which they become pregnant; systematically denied meaningful control over the reproductive uses of their bodies through

consensual and unconsenual sex (in the context of culturally enforced heterosexuality and the sexualization of dominance and submission) to pregnancy. Accordingly, under her account radical feminists valorize abortion and fear motherhood.

West generates an account of feminist theory in which abortion and radical feminism are conflated and, in effect, countervailing cultural feminism and motherhood. The accounts provided of unwanted pregnancy are juxtaposed against the joys of motherhood.

The radical feminist argument that "pregnancy is a dangerous, consuming, intrusive, invasive assault on the mother's self-identity" she suggests "best captures women's own sense of the injury and danger of pregnancy...."[37] She draws the view that radical feminism presents pregnancy as something of an existential assault from the writings of Shulamith Firestone. West suggests, "modern radical feminism is unified among other things by its insistence of the invasive, oppressive, destructive implications of women's material and existential connection to the other."[38] It begins, "not with the eighties critique of heterosexuality but in the late sixties, with Shulamith Firestone's, angry and eloquent denunciation of the oppressive consequences for women of the physical condition of pregnancy."[39]

From there West moves into a consideration of radical feminism as demonstrated in the writings of Firestone[40] (pregnancy) and Andrea Dworkin[41] (intercourse). This textual linking of pregnancy and intercourse is of course not counter-intuitive, nor unrepresentative of radical feminist work, but neither in this context is it innocent. First, it begins by privileging as sex, intercourse. It is penetration alone, sexual intercourse, or its (dare I say natural) consequences, which create connection. While West acknowledges that the focus of her discussion is heterosexuality, she ultimately excludes any sexuality which does not take the phallus as its point of reference. As a result lesbian sexuality or other women-centred sexuality seemingly does not qualify as "connection." Nor, does any form of women-centred intimacy more broadly defined merit this label. Unsurprisingly then lesbian descriptions of pregnancy and motherhood are absent from these accounts.

Less obliquely stated, the problem stems from West's insistence on reading against the grain by substantially isolating discussions of pregnancy and abortion from the radical feminist theoretical framework of culturally enforced heterosexuality. And here I must

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sex it is exceptional when they do. Women are socially disadvantaged in controlling sexual access to their bodies through socialization to customs that define a woman's body as for sexual use by men. Sexual access is regularly forced or pressured or routinized beyond denial. Laws against sexual assault provide little to no real protection. Contraception is inadequate or unsafe or inaccessible or sadistic or stigmatized. Sex education is often misleading or unavailable or pushes heterosexual motherhood as an exclusive life possibility and as the point of sex. Poverty and enforced economic dependence undermine women's physical integrity and sexual self-determination." C. MacKinnon, "Reflections on Sex Equality Under Law" (1991) 100 Yale Law Journal 1281 at 1313.

37. R. West, *supra*, note 8 at 30.

38. *Ibid.* at 28.

39. *Ibid.*

40. S. Firestone, *The Dialectic of Sex* (New York: Morrow, 1970).

41. A. Dworkin, *Intercourse* (New York: Free Press, 1987).

be clear. Although West includes passages from Dworkin's *Intercourse*[42] which focus upon the physical dimensions of the act of intercourse, she misses entirely the point MacKinnon makes in relation to that which circulates under the sign of sex, namely the power dimension which is expressed in and through heterosexual intercourse:

> Sexual violation symbolizes and actualizes women's subordinate social status to men. It is both an indication and a practice of inequality between the sexes, specifically of the low status of women relative to men. Availability for aggressive intimate intrusion and use at will for pleasure by another defines who one is socially taken to be and constitutes an index of social worth. To be a means to the end of the sexual pleasure of one more powerful is, empirically, a degraded status and the female position.[43]

In other words it is precisely the structural imperatives toward the institution of heterosexuality in the context of women's positionality within the present socio-symbolic orders that I believe radical feminism best speaks.[44] West's seeming reluctance to acknowledge this, in the end, makes the choice of abortion appear more like a failure to accommodate to the consequences of "connection," or perhaps expressed more starkly, a "ms.-managed womb."[45]

VII. GENDER ESSENTIALISM

The various textual conflations and juxtapositions serve to situate cultural feminism as the tenable position for feminist legal theory. It is one thing to present an argument in favor of cultural feminist legal theory, but quite another to enlist logocentric support for that position by invoking romantic notions of motherhood. The sentimentality at play in West's work serves to constitute abortion as women's inability to embrace connection. In large measure, the success of this strategy rests upon the exclusion of the gross disparities in women's reproductive lives.

While allegedly seeking to capture complexity, the text relies upon monolithically "phenomenological" accounts of pregnancy which are unperturbed by considerations of sexual orientation, race, class. Her methodology is beset by "gender essentialism"[46] In commenting on "Jurisprudence & Gender" Angela Harris remarks:

> West's claims are clearly questionable on their face insofar as the experience of some women – "mothers" – is asserted to stand for the experience of all women.... West argues that the biological and social

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42. *Ibid.*

43. C. MacKinnon, *supra*, note 29 at 1302.

44. See for example C. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge Harvard University Press, 1989). But radical feminism is also concerned with analyzing the structures of male power, more broadly defined. See H. Eisenstein, *Contemporary Feminist Thought* (Boston: G.K. Hall, 1983).

45. E. Manion explains, "even for feminists of the present generation who accept abortion, to have one is an admission of failure, for we grew up assuming that fertility is manageable and it is our job to manage it. E. Manion, "A Ms.-Managed Womb" in Kroker and Kroker, eds., *Body Invaders* (Montreal, CultureTexts, 1987).

46. A. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 Stanford Law Review 581 at 589.

> implications of motherhood shape the selfhood of all, or at least most, women. This claim involves at least two assumptions. First, West assumes (as does the liberal social theory she criticizes) that everyone has a deep, unitary self that is relatively stable and unchanging. Second, West assumes that this "self" differs significantly between men and women but is the same for all women and for all men despite differences of class, race, and sexual orientation: that is, that this self is deeply and primarily gendered.[47]

Feminists writing out of their experience as women of color have stressed the relational nature of identity and the inability to separate gender and race in any simplistic manner.[48] It is problematic that West seeks to ground a theory of women's difference, the material conditions of pregnancy or the potential to become pregnant, without stressing the situatedness of the perspective presented.

Futhermore, empirical evidence of disparate experiences of reproduction is widely available. In a national survey of American court-ordered obstetrical interventions, twenty-one court-ordered caesareans were examined. Refusal by the women to submit to the procedure was thought by some to be "callous or irrational."[49] It was acknowledged by the authors of the report that the women who were most likely to be subjected to this process were "women more likely to be subject to various forms of discrimination."[50] The statistical data on the women who were forced to undergo this procedure was as follows: "Eighty-one percent were black, Asian or Hispanic. Forty-four percent were unmarried, and 24 percent did not speak English as their primary language."[51]

Emily Martin has undertaken an analysis of the birthing experiences of black working-class women and compared them with those of white women. Her conclusion was that, "a woman's class background, together with her race, profoundly affects the kind of birth experience she will have in a hospital."[52]

In Canada, an early 1970's study reveals that native women were sterilized at a rate five times higher than non-native women. A significant disparity emerges when one examines the rates of sterilization of the mentally disabled women, particularly historically.[53]

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47. *Ibid.* at 603.
48. *Ibid.*; K. Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" [1989] University of Chicago Law Forum 139; Patricia Williams, *supra*, note 34; Audre Lorde, *Sister Outsider* (Freedom: The Crossing Press, 1984).
49. V. Kolder et al., "Court-Ordered Obstetrical Interventions" (1987) New England Journal of Medicine 1192 at 1194.
50. *Ibid.* at 1195.
51. *Ibid.*
52. E. Martin, *The Woman in the Body* (Boston: Beacon Press, 1987) 148.
53. See W. Mitchinson, "The Medical Treatment of Women" in Code & Dorney eds., *Changing Patterns: Women in Canada* Burt, (Toronto: McClelland & Stewart, 1988).

Multinationals operating in Third World countries often prefer employees who have undergone sterilization procedures.[54] For example, in Brazil women are asked for proof of sterilization even though legislation has been adopted granting women four months maternity leave.[55] The private sector in the United States often disguises this by refusing to hire women of child-bearing years.[56]

Unquestionably in the United States where access to abortion services for working class and poor women has been subject to constant judicial erosion, the notion that Women experience either pregnancy or abortion in any shared way seems hopelessly inaccurate. The Supreme Court in *Rust*[57] has just affirmed that women receiving service in Title X clinics can receive no information, counselling, or referral with respect to abortion, even when specifically requested.[58] As a consequence, many women who are unaware of the nature of a clinic's funding are unable to secure the requisite information. Full information will be available only at a non-Title X clinic. Affirming an earlier pronouncement, Chief Justice Renquist declared, "[t]he financial constraints that restrict an indigent woman's ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortion, but rather of indigency."[59]

The trend to erode access to abortion for poor women has been compounded by the refusal of State-funded medicare programmes to cover the cost of even medically necessary abortion services.[60] The Supreme Court of the United States has stressed that the State has the authority "to make a value judgment favoring childbirth over abortion, and to implement that judgement by the allocation of public funds."[61] Similar disparities in access to abortion services are present in Canada.[62]

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54. See A. Fuentes & B. Ehrenreich, *Women in the Global Factory* (Boston: South End Press, 1983) 13.

55. See P. Williams, *ibid.* note 35 at 32.

56. *Ibid.*

57. *Rust* v. *Sullivan*, 111 S.Ct. 1743 (1991).

58. Under Title X of the *Public Health Service Act* 42 U.S.C. s. 300(a) both profit and nonprofit organizations can establish and operate voluntary family planning projects which focus on low income families. This provides approximately $140 in grants to 4,000 clinics which serve approximately 4,300,00 poor women (N.Y. Times, July 31 1987) at A1, col.1, cited in McCarthy, *supra*, note 330. State, city, and municipal health departments may receive funds from this source, as well as Planned Parenthood, hospitals, and community health organizations. During the waning years of the Reagan administration, regulations were promulgated which would remove Title X funding from any clinic which included abortion as a method of family planning. Moreover, any project receiving these funds could neither refer a pregnant woman to someone who would provide an abortion, even upon request.

59. *Harris* v. *McRae*, 449 U.S. 297 at 316 (1980).

60. *Harris* v. *McRae*, 448 U.S. 297 (1980).

61. *Maher* v. *Roe*, 432 U.S. 464 at 474-75 (1977). See also *Webster* v. *Reproductive Health Services*, 109 S. Ct. 3040 (1989).

62. Access to abortion services remains a significant problem. In its brief before the Parliamentary Legislative Committee on Bill C-43, C.A.R.A.L. addressed the specific inequities in access to abortion:
- P.E.I. has no access to abortion whatsoever
- Newfoundland's regular service is limited to one doctor in St. John's
- New Brunswick has no services north of Moncton

Although West would acknowledge that not all women essentially, transculturally, and transhistorically experience pregnancy in any one way,[63] the voices she chooses to speak do not give expression to the gross disparities in women's economic and social positions. In short, the limited nature of her material analysis does not begin to capture the complexities of women's reproductive lives. Poverty effectively divests many women, and particularly many women of colour, from the right to legal abortions. As Angela Davis has stressed:

> The renewed offensive against abortion rights that erupted during the latter half of the 1970s has made it absolutely necessary to focus on the needs of poor and racially oppressed women. By 1977 the passage of the Hyde Amendment in Congress had mandated the withdrawal of federal funding for abortions, causing many state legislatures to follow suit. Black, Puerto Rican, Chicana and Native American Indian women, together with their impoverished white sisters were effectively divested of the right to legal abortions.[64]

Moreover, the structure of public funding produces the incentive for women to opt for sterilization:

> Since surgical sterilizations, funded by the Department of Health, Education and Welfare, remained free on demand, more and more poor women have been forced to opt for permanent infertility. What is urgently required is a broad campaign to defend the reproductive rights of all women — and especially those women whose economic circumstances often compel them to relinquish the right to reproduction itself.[65]

In short, the focus on subjective attitudes obfuscates the material factors which play a role in shaping moral decisions.[66] The absence of these factors is especially puzzling given the cultural feminist insistence on contextual analysis. But this is partly the point, the alleged presence of the "context" is in fact highly selectively constructed.

- One Hospital in Halifax performs over 80% of Nova Scotia's abortions
- 70-80% of abortions in the province of Quebec are done in Montreal
- Access in Ontario is concentrated in the southern cities. 50% of all abortions in Ontario are performed in Toronto
- Women from all over Manitoba travel to Winnipeg to obtain an abortion
- Saskatchewan women living outside of Saskatoon have little chance of obtaining an abortion in their own province
- Northern Alberta women must wait four to five weeks to obtain an abortion in Edmonton. If a woman is more than 14 weeks pregnant, she cannot find an abortion in the province of Alberta
- Access in B.C. is very precarious because of the election of anti-abortion activists to hospital boards of directors. For example, the Nanaimo hospital board recently voted to halt all abortion as of January 1, 1990.

63. While West acknowledges this point she does not build it into her theory which in effect renders this concession invisible and nearly meaningless. Patricia Cain makes the same point when she suggests that, "[f]eminist legal theorists must be careful not to confuse 'standpoint critiques' with existential reality." P. Cain, "Grounding the Theories" (1989) 3 Berkeley Women's Law Journal 191.

64. A. Davis, *Women, Race & Class* (New York: Vintage Books, 1983) at 206.

65. *Ibid.*

66. R. Petchesky, *Abortion and Women's Choice* (Boston: Northeastern Press, 1990) 373.

Additionally we should be dubious of the degree to which West's articulation of women's experience of pregnancy is assigned to legal categories and terminology. For example, one might question her claim that women's sense of an unwanted pregnancy is as an "injury."[67] This could be taken to reflect, beyond legal fetishism, that particular accounts may correspond more directly with her own world-view.

In this respect it is indeed noteworthy that West's phenomenological accounts of unwanted pregnancy are drawn from a legal brief. She neglects to address the potentially distorting impact of the transliteration of women's experiences. The danger of distortion is particularly acute where accounts are drawn from materials generated for trial and subsequently assigned to existing legal categories.

The end result in her analysis is to render an account in which abortion becomes suppressed in favor of the official, and happier, story of motherhood. Once abortion is no longer the project or concern of all women, and radical feminist analysis is marginal, this move, intended or not, permits revisitation of the promulgation of liberal contractual discourse in the name of apple pie and...

VIII. STORY FOUR: MOTHERHOOD

Marie Ashe writes:

> Law reaches every silent space. It invades the secrecy of women's wombs. It breaks every silence, uttering itself. Law-language, jurisdiction. It defines. It commands. It forces.
>
> Law as the seamless web we believe and die in. I cannot think of a single case involving legal regulation of motherhood without thinking of all. They constitute an interconnected network of variegated threads. Abortion. "Surrogacy." Supervision of women's pregnancies. Exclusion of pregnant women from the workplace. Termination of the parental rights of indigent or battered women. Enforcement of the "relinquishments" for adoption executed by confused and vulnerable women. Forced Caesarean sections. Policings of home births. Following the thread which is any one, I find it intertwined with each of the others. When I loosen a single thread, it tightens the others. Each knotted and entangled in fabrications of a legal doctrine; each attached to notions of neutrality and generality.[68]

Unquestionably, there is about the legal regulation of women's reproduction a certain seamless monotony. However, striving to preserve the seamlessness of legal doctrine, is precisely the pernicious trap that pits abortion against other facets of motherhood including new reproductive technologies. It is the allure of maintaining consistency against which we must struggle. As many feminists have pointed out, if choice is what women have been demanding in relation to abortion, then the advent of a full panoply of technological devices and procedures merely expands women's access to choice.[69]

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[67] R. West, *supra*, note 8 at 30.

[68] M. Ashe, "Zig-Zag Stitching and the Seamless Web: Thoughts on 'Reproduction' and the Law" (1989) 13 Nova Law Review 355.

[69] See E. Manion, *supra*, note 4.

Simply retaining the standard of the right to choose in relation to all reproductive technologies will merely reinforce existing socio-symbolic disparities.[70]

While West acknowledges that radical feminism's focus on invasion and intrusion has something to tell us about women's reproductive lives, the text constructs it principally as a marginal and subterranean story. Her focus is on finding liberating images of intercourse and motherhood to take us beyond critique to a stage of founding a reconstructive enterprise. The seeming ease with which she is willing to transcend extant material conditions in an era in which the right to abortion is clearly under attack is quite simply dangerous.

Central to West's project is the salvaging of freedom, autonomy, choice, and equality in relation to intercourse and motherhood. She exhorts us to make "quantum leaps" outside the realm of patriarchy where we will find these ideals protected by law through a reconstituted notion of harm:

> Feminism must envision a post-patriarchal world, for without such a vision we have little direction...In a utopian world, all forms of life will be recognized, respected, and honored. A perfect legal system will protect against harms sustained by all forms of life, and will recognize life affirming values generated by all forms of being. Feminist jurisprudence must aim to bring this about, and, to do so, it must aim to transform the images as well as the power. Masculine jurisprudence must become humanist jurisprudence, and humanist jurisprudence must become a jurisprudence unmodified.[71]

This rhetoric, however, is virtually indistinguishable from that generated by the prevailing liberal legal order. It is precisely the critique of and scepticism toward that order which radical feminism lends to feminist jurisprudence. For this reason, radical feminism's contribution to law is of vital importance to the development of sound feminist legal theory. The discourse of liberalism including choice may have rhetorical or political purchase, but as an analysis of lived conditions, we sacrifice significantly when we disregard concrete dynamics of power.

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70. This argument is supported by a number of women's organizations. The submission from the Canadian Research Institute for the Advancement of Women to the Canadian Royal Commission on New Reproductive Technologies explains the impact of choice on those whose choice is structurally constrained in the following manner:

> The fact the new reproductive technologies enter women's lives within the context of already existing social pressures and prejudices further complicates their impact on women. The easy rhetoric of commercial clinics about "reproductive alternatives" and the "increased choice" offered by reproductive technologies rings false when women's "choices" are often motivated by necessity. Choice means very little when sophisticated procedures are too costly for most women, yet everyday technologies (like ultrasound and amniocentesis) are used whether they are medically indicated or not. While some women are now feeling pressured to undergo experimental procedures, many women may be losing their option to choose not to undergo potentially dangerous "routine" procedures. In a society in which infertility remains a social stigma, motherhood is often presented as the only acceptable "choice." Women may feel compelled to become mothers regardless of the costs to their health.

71. R. West, *supra*, note 8 at 72.

There seems little doubt that West's attempt to abject radical feminism is part of a larger attack being waged in the name of sexual and reproductive liberalism. Janice Raymond explains that it has become fashionable to stress female agency and complicity, particularly in relation to sex. Under this new regime, it seems no longer possible to examine the ways in which women's choices are structured, constrained, coerced, or impaired by patriarchy. This sexual liberalism is now being carried to the reproductive realm.[72] Raymond explains:

> We all know that because women have been constrained or influenced by a social context that fosters pornography, prostitution, and surrogacy does not mean that women are determined by that social context. But the sexual liberals caricature the antipornography and antisurrogacy feminists as subscribing to a brand of social determinism. The liberals would have it that no one can talk about constraints or influences without lapsing into determinism. This is a convenient reductionism achieved by liberal discourse for the purpose of valorizing both the sexual and reproductive trade and traffic in women's bodies.[73]

It has been suggested that "[i]n the postmodern condition, women's bodies are the prime afterimage of a strategy of body invasion which occurs in the inverted and excessive language of contractual liberalism."[74] It is a discourse in relation to sexuality which looks for consensus in rape, sees women's free agreement to participate in the production of pornographic imagery, can discern only the agreement between abuser and abused to reproduce,[75] and could witness juridical appropriation of a woman's body in the name of "surrogacy."[76] It is a discourse in which abortion is relegated to the domain of nasty radical feminists who live in existential dread of loss of control.

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72. An excellent review and critique of this literature is found in the recent collection entitled *Sexual Liberals and the Attack on Feminism*," D. Leidholdt and J. Raymond, eds. (New York, Pergamon Press, 1990).

73. J. Raymond, "Sexual and Reproductive Liberalism" in *Sexual Liberals and the Attack on Feminism, ibid* at 106.

West certainly has now begun to stress complicity in relation to pornography. See R. West, "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory" in Fineman & Thomadsen, eds., *At the Boundaries of Law* (New York: Routledge, 1991).

74. Kroker & Kroker, "Body Probes" in *Body Invaders* (Montreal: Culture Texts, 1987) at 97.

75. In the reporting of the Chantal Daigle case, commentators frequently averted to the fact that she and Tremblay had "agreed" to have a child. Similarly, a contractual analysis was urged on behalf of a husband who sought to prevent his wife from securing an abortion. For a discussion of this case see S. Martin, "Using the Courts to Stop Abortion by Injunction: *Mock* v. *Brandenburg*" (1990) 3 C.J.W.L. 569.

76. A surrogacy contract is again before the Courts. In October, 1990, Judge R. Parslow of Orange County Superior Court ruled that the woman who bore the child had absolutely no parental rights to it. One wonders whether the issue of race added a dimension to the adamance with which the judge asserted that the black birth mother was only "providing care, protection, and nurture during the period of time the natural mother . . .was unable to care for the child." The judge stressed that the birth mother is like a "foster parent," "a gestational carrier," or "a host in some sense." The "natural" white parents were those from whom the sperm and egg, later implanted after in vitro fertilization, were taken. This case is under appeal. See 13(9) *National Law Journal*, (Monday Nov. 5, 1990).

The Ontario Advisory Council on Women's Issues has recommended that all reproductive contracts should be null and void. If these proposals were implemented, where a child is born as a result of an alleged agreement, the birth mother would be the only legal parent. See Presentation to the Royal Commission on New Reproductive Technologies, Oct. 1990.

IX. CONCLUSION

I concede to having provided something of a caricature of West's work, and by extension cultural feminism. I think that I have been unfair in the sense that West wishes to explore paradoxes in feminist theory without simply collapsing them. Her desire to explore the limitations and potential of both cultural feminism and radical feminist theory is ambitious and laudable. However, her textual strategies undercut her stated objectives. In the end, I do not think that feminism can afford an "official story," particularly not one that loses sight of power and powerlessness.

At least in principle, power and domination lie at the heart of much analyses of race and class, as well as gender, oppression. This is not to lay claim to the pretense that radical feminism has been free of the exclusions perpetrated by other white feminists or has not relied on its own brand of essentialism.[77] Rather it is to suggest that feminism can no longer afford to project, white middle class, heterosexual women's experiences into universalized accounts, even when they are generated in the name of providing *real* women's experiences. This entails resisting efforts to endorse totalizing representations of those experiences. It is exactly such accounts that the law seeks. Therefore, we must be wary of feminist theory which promulgates official stories, for the insights feminism has to offer are not reducible to prescriptive formulaic taxonomies. We would be wiser to continue to pursue the task of formulating a multi-textured, complex, feminist jurisprudence,[78] whatever its attendant conceptual and political difficulties, than yearning for a return to a revamped humanist enterprise.

77. See A. Harris, *supra*, note 46.

78. I think this work is emerging through the scholarship of feminist theorists of color which stresses multiple consciousness as jurisprudential method. See A. Harris, *supra*, note 46; P. Williams, *supra*, note 35; M. Matsuda, "When the First Quail Calls: Multiple Consciousness as Jurisprudential Method" (1989) 11 Women's Rights Law Reporter 7.