THE MALE IDEOLOGY OF PRIVACY:

A Feminist Perspective on the Right to Abortion

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> In a society where women entered sexual intercourse willingly, where adequate contraception was a genuine social priority, there would be no "abortion issue".... Abortion is violence.... It is the offspring, and will continue to be the accuser of a more pervasive and prevalent violence, the violence of rapism. —Adrienne Rich
> *Of Woman Born: Motherhood as Experience and Institution*
> (Norton, 1976), pp. 267, 269

In 1973, Roe against Wade held that a statute that made criminal all abortions except to save the mother's life violated the constitutional right to privacy.[1] In 1980, Harris against McRae decided that this privacy right did not require public funding of medically necessary abortions for women who could not afford them.[2] Here I argue that the public/private line drawn in *McRae* sustains and reveals the meaning of privacy recognized in *Roe*.

First, the experience of abortion, and the terms of the struggle for the abortion right, is situated in a context of a feminist comprehension of gender inequality, to which a critique of sexuality is central.[3] Next, the legal concept of privacy is examined in the abortion context. I argue that privacy doctrine affirms what feminism rejects: the public/private split. Once the ideological meaning of the law of privacy is connected with a feminist critique of the public/

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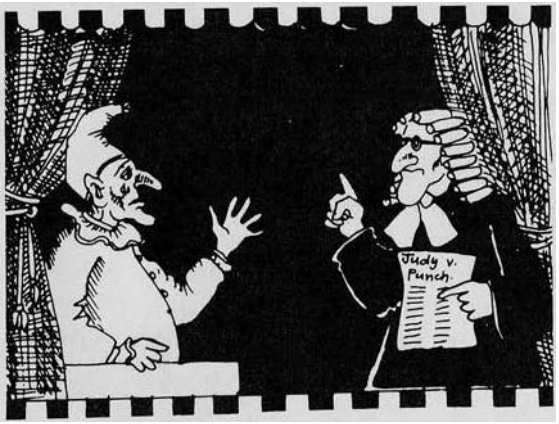
private division, the *Roe* approach looks consistent with *McRae*'s confinement of its reach. To guarantee abortions as an aspect of the private, rather than of the public, sector is to guarantee women a right to abortion subject to women's ability to provide it for ourselves. This is to guarantee access to abortion only to some women on the basis of class, not to women *as women,* and therefore, under conditions of sex inequality, to guarantee it to *all* women only on male terms. The rest of this is an attempt to unpack what I mean by that.

I will neglect two important explorations, which I bracket now. The first is: what are babies to men? Sometimes men respond to women's right to abort as if confronting the possibility of their own potential nonexistence —at *women's* hands, no less. Men's issues of potency, of continuity as a compensation for mortality, of the thrust to embody themselves or the image of themselves in the world, seem to underlie their relation to babies, as well as to most everything else. The idea that women can undo what men have done to them on this level seems to provoke insecurity sometimes bordering on hysteria. To overlook these meanings of abortion to men as men is to overlook political and strategic as well as deep theoretical issues, is to misassess where much of the opposition to abortion is coming from, and to make a lot of mistakes. The second question I bracket is one that, unlike the first, has been discussed extensively in the abortion debate: the moral rightness of abortion itself. My view, which the rest of what I say on abortion reflects, is that the abortion choice should be available and must be *women's,* but not because the fetus is not a form of life. The more usual approach tends to make whether women should make the abortion decision somehow contingent on whether the fetus is a form of life. Why shouldn't women make life or death decisions? Which returns us to the first bracketed issue.



Cartoons from Sour Cream, *Sheba Feminist Publishers, 183 Swaton Rd., London E3*

The issues I will discuss have largely not been discussed in the terms I will use. What has happened instead, I think, is that women's embattled need to survive in a system that is hostile to our survival, the desperation of our need to negotiate with whatever means that same system will respond to, has precluded our exploration of these issues in the way that I am about to explore them. That is, the terms on which we have addressed the issue of abortion have been shaped and constrained by the very situation that the abortion issue has put us in a position to need to address. We have not been able to risk thinking about these issues on our own terms because the terms have not been ours— either in sex, in social life in general, or in court. The attempt to grasp women's situation on our own terms, from our own point of view, defines the feminist impulse. If doing that is risky, our situation as women also makes it risky not to.

So, first feminism, then law.

Most women who seek abortions became pregnant while having sexual intercourse with men. Most did not mean or wish to conceive. In contrast to this fact of women's experience, the

repeat offenders, high on the list of the Right's villains, their best case for opposing abortion as female sexual irresponsibility. Ask such women why they are repeatedly pregnant, they say something like, the sex just happened. Like every night for over a year.[6] I wonder if a woman can be presumed to control access to her sexuality who feels unable to interrupt intercourse to insert a diaphragm; or worse, *cannot even want to*, aware that she risks a pregnancy she knows she doesn't want. Do you think she would stop the man for any other reason, such as, for instance—the real taboo—lack of desire? If not, how is sex, hence its consequences, meaningfully voluntary for women? Norms of sexual rhythm and romance that are felt interrupted by women's needs are constructed against women's interests. When it appears normatively less costly for women to risk an undesired, often painful, traumatic, dangerous, sometimes illegal, and potentially life-threatening procedure, than it is to protect oneself in advance, sex doesn't look a whole lot like freedom. Yet the policy debate in the last twenty years has not explicitly approached abortion in the context of how women get pregnant, that is, as a consequence of sexual intercourse under conditions of gender inequality, that is, as an issue of forced sex.

Now, law. In 1973, Roe against Wade found the right to privacy "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."[7] Privacy had previously been recognized as a constitutional principle in a case that decriminalized the prescription and use of contraceptives.[8] Note that courts implicitly connect contraception with abortion under the privacy rubric in a way tha parallels the way I just did explicitly under the feminist rubric. In 1977, three justices observed, "In the abortion context, we have held that the right to privacy shields the woman from undue state

intrusion in and external scrutiny of her very personal choice."[9] In 1980, the Supreme Court in Harris against McRae decided that this did not mean that federal Medicaid programs had to cover medically necessary abortions for poor women.[10] According to the court, the privacy of the woman's choice was not unconstitutionally burdened by the government financing her decision to continue, but not her decision to end, a conception. The Supreme Court reasoned that "although the government may not place obstacles in the path of a woman's exercise of her freedom of choice, it may not remove those not of its own creation."[11] Aside from holding the state exempt in any issue of the distribution of wealth, which is dubious, it was apparently a very short step from that which the government had a duty *not* to intervene in, as in *Roe,* and that which it has *no* duty to intervene in, as in *McRae*. That this discinction has consistent parallels in other areas of jurisprudence and social policy—such as in the distinction between negative and positive freedom[12] and in the state action requirement[13]—does not mean that the public/private line that forms their common dimension is not, there as well as here, the gender line. The result of government's stance is also the same throughout: an area of social life is cordoned off from the reach of explicitly recognized public authority. This does not mean, as they think, that government stays out really. Rather, this leaves the balance of forces where they are socially, so that government's patterns of intervention mirror and magnify, thus authorize, the existing social divisions of power.

The law of privacy, explicitly a public law *against* public intervention, is one such doctrine. Conceived as the outer edge of limited government, it embodies a tension between precluding public exposure or governmental intrusion on the one hand, and autonomy in the sense of protecting personal self-action on the other. This is a tension, not just two facets of one whole right. This tension is resolved from the liberal state's point of view—I am now moving into a critique of liberalism—by delineating the threshold of the state as its permissible extent of penetration (a term I use advisedly) into a domain that is considered free by definition: the private sphere. By this move the state secures what has been termed "an inviolable personality" by insuring what is called "autonomy or control over the intimacies of personal identity."[14] The state does this by centering its self-restraint on body and home, especially bedroom. By staying out of marriage and the family, prominently meaning sexuality, that is to say, heterosexuality, from contraception through pornography to the abortion decision, the law of privacy proposes to guarantee individual bodily integrity, personal exercise of moral intelligence, and freedom of intimacy.[15] What it actually does is translate traditional social values into the rhetoric of individual rights as a means of subordinating those rights to social imperatives.[16] In feminist terms, applied to abortion law, the logic of *Roe* consummated in *Harris* translates the ideology of the private sphere into individual women's collective needs to the imperatives of male supremacy.

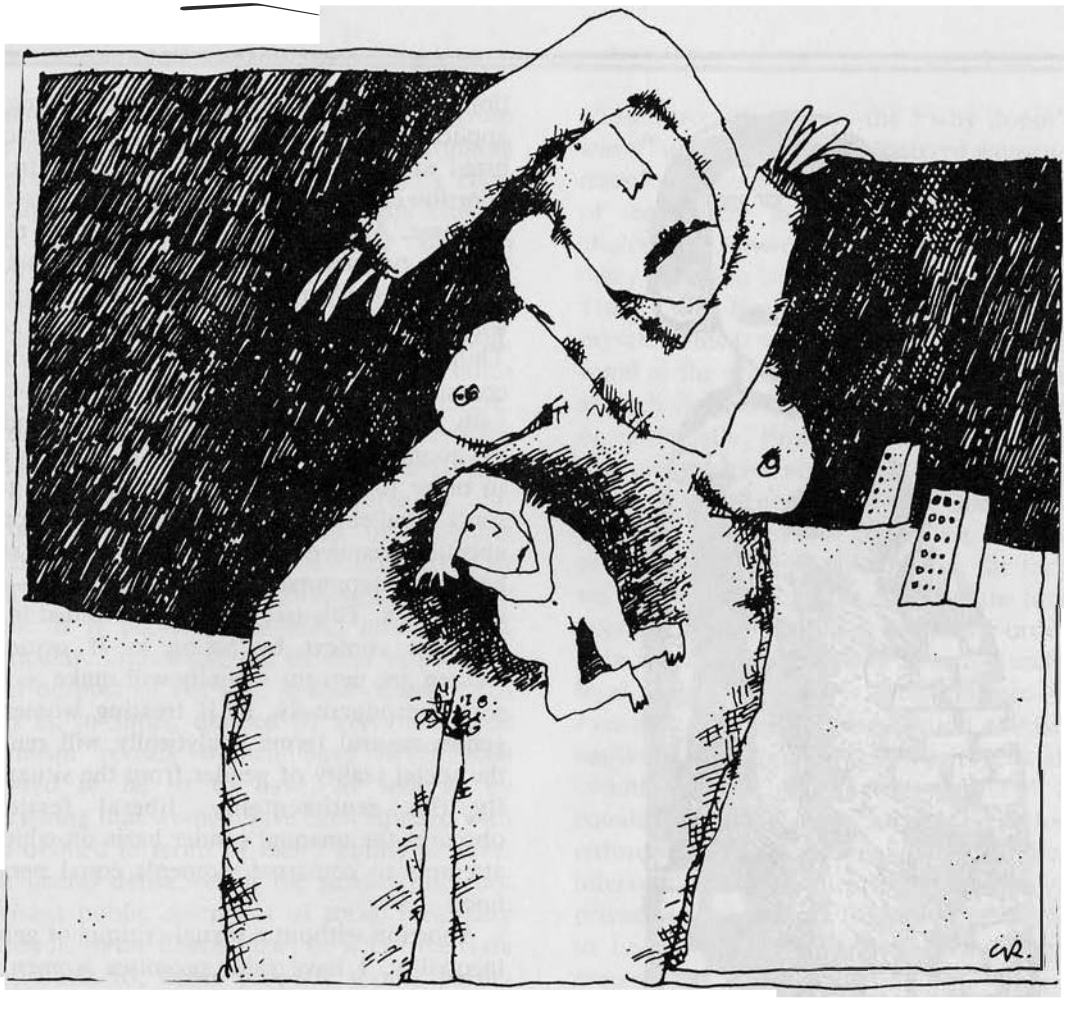
This is my ten-year retrospective on Roe against Wade. Reproduction is sexual, men control sexuality, and the state supports the interest of men as a group. If *Roe* is part of this, why was abortion legalized? Why were women even imagined to have such a right as privacy? It is not an accusation of bad faith to answer that the interests of men as a social group converge here with the definition of justice embodied in law. The male point of view unites them. Taking this approach, one sees that the way the male point of view constructs a social event or

legal notion is the way that event or notion is framed by state policy. For example, to the extent possession is the point of sex, illegal rape will be sex with a woman who is not yours unless the act makes her yours. If part of the kick of pornography involves eroticizing the putatively prohibited, illegal pornography—obscenity—will be prohibited enough to keep pornography desirable without ever making it truly illegitimate or unavailable. If, from the male standpoint, male is the implicit definition of human, maleness will be the implicit standard by which sex equality is measured in discrimination law. In parallel terms, the availability of abortion frames, and is framed by, the extent to which men, worked out among themselves, find it convenient to allow abortion—a reproductive consequence of intercourse—to occur. Abortion will then, to that extent, be available.

The abortion policy debate has construed the issues rather differently. The social problem posed by sexuality since Freud[17] has been seen as the problem of the repression of innate desire for sexual pleasure by the constraints of civilization. Gender inequality arises as an issue in the Freudian context in women's repressive socialization to passivity and coolness (so-called frigidity), in women's so called desexualization, and in the disparate consequences of biology, that is, pregnancy. Who defines what is seen as sexual, what sexuality therefore is, to whom what stimuli are erotic and why, and who defines the conditions under which sexuality is expressed—these issues are not available to be considered. "Civilization's" answer to these questions, in the Freudian context, instead fuses women's reproductivity with our attributed sexuality in its definition of what a woman is. We are, from a feminist standpoint, thus defined as women, as feminine, by the uses to which men want to put us. Seen this way, it becomes clear why the struggle for reproductive freedom, since Freud, has not included a woman's right to refuse sex. In the post-Freudian era, the notion of sexual liberation frames the sexual equality issue as a struggle for women to have sex with men on the same terms as men: "without consequences."

The abortion right, to the extent it has been admitted to have anything to do with sex, has been sought as freedom from the unequal reproductive consequences of sexual expression, with sexuality defined as centered on heterosexual genital intercourse. It has been as if it is biological organisms, rather than social relations, that have sex and reproduce the species, and sex itself is "really" a gender-neutral, hence sex equal, activity. But if you see both sexuality and reproduction, hence gender, as socially situated, and your issue is less how more people can get more sex as it is than who, socially, defines what sexuality—hence pleasure and violation is, the abortion right becomes situated within a very different problematic: the social and political problematic of the inequality of the sexes. As Susan Sontag said, "Sex itself is not liberating for women. Neither is more sex. . . . The question is, what sexuality shall women be liberated to enjoy?"[18] To address this for purposes of abortion policy, from a feminist perspective, requires reconceiving the problem of sexuality from the repression of drives by civilization to the oppression of women by men.

Most arguments for abortion under the rubric of feminism have rested upon the right to control one's own body, gender-neutral. I think that argument has been appealing for the same reasons it is inadequate. Women's bodies have not socially been ours; we have not controlled their meanings and destinies. So feminists have needed to assert that control while feeling unable to risk pursuing the sense that something



more than our bodies singular, something closer to a net of relations, relations in which we are (so far unescapedly) gendered, might be at stake.[19] Some feminists have noticed that our "right to decide" has become merged with an overwhelmingly male professional's right not to have his professional judgment second-guessed by the government.[20] But most abortion advocates have argued in rigidly and rigorously gender-neutral terms.

Consider, for instance, Judith Jarvis Thomson's celebrated hypothetical case justifying abortion, in which a gender-neutral abducted "you" has no obligation to be a life support system for the famous violinist ("he") one is forcibly connected to. On this basis, "one" is argued to have no obligation to support a fetus.[21] Never mind that no *woman* who needs an abortion, no woman period, is valued, no potential an actual woman's life might hold would be cherished, comparable to a male famous violinist's unencumbered possibilities. In the crunch, few women look like unborn Beethovens, even to sex-blind liberals. Not to mention that the underlying parallel to rape in the hypothetical—the origin in force, in abduc-

tion, that gives it weight while confining its application to instances in which force is recognized as force—is seldom interrogated in the abortion context for its applicability to the normal case. And abortion policy has to be made for the normal case. While the hypothetical makes women's rights depend by analogy on what is not considered the normal case, Thomson finds distinguishing rape from intercourse has "a rather unpleasant sound" principally because *fetal* rights should not depend on the conditions of conception. My point is that in order to apply even something like Thomson's parallel to the usual case of need for an abortion requires establishing some relation between intercourse and rape sexuality—and conception. This issue has been avoided in the abortion context by acting as if *assuming* women are persons sexually will make us persons reproductively, as if treating women in gender-neutral terms analytically will remove the social reality of gender from the situation. By this sentimentality, liberal feminism obscures the unequal gender basis on which it attempts to construct women's equal personhood.

Abortion without a sexual critique of gender inequality, I have said, promises women sex with men on the same terms as men. Under conditions under which women do not control access to our sexuality, this facilitates women's heterosexual availability. It promises *men* women on male terms. I mean, under conditions of gender inequality, sexual liberation in this sense does not free women, it frees male sexual aggression. Available abortion on this basis removes one substantial legitimized reason that women have had, since Freud, for refusing sex besides the headache. Analyzing the perceptions upon which initial male support for abortion was based, Andrea Dworkin says: "Getting laid was at stake."[22] The Playboy

Foundation has supported abortion rights from day one; it continues to, even with shrinking disposable funds, on a level of priority comparable to its opposition to censorship. There is also evidence that men eroticize abortion itself.[23]

Privacy doctrine is an ideal legal vehicle for the process of sexual politics I have described. The democratic liberal ideal of the private holds that, so long as the public does not interfere, autonomous individuals interact freely and equally. Conceptually, this private is hermetic. It *means* that which is inaccessible to, unaccountable to, unconstructed by anything beyond itself. By definition, it is not part of or conditioned by anything systematic or outside itself. It is personal, intimate, autonomous, particular, individual, the original source and final outpost of the self, gender-neutral. Privacy is, in short, defined by everything that feminism reveals women have never been allowed to be or to have, as well as by everything that women have been equated with and defined in terms of *men's* ability to have. The liberal definition of the private does not envisage public complaint of social inequality within it. In the liberal view, no act of the state contributes to, hence properly should participate in, shaping its internal alignments or distributing its internal forces, including inequalities among parties in private. Its inviolability by the state, framed as an individual right, presupposes that it is not already an arm of the state. It is not even a social sphere, exactly. Intimacy is implicitly thought to guarantee symmetry of power. Injuries arise in violating the private sphere, not within and by and because of it.

In private, consent tends to be presumed. It is true that a showing of coercion voids this presumption. But the problem is getting anything private perceived as coercive. Why one would allow force in private—the "why doesn't she leave" question raised to battered women—is a question given its urgency by the social meaning of the private as a sphere of equality and choice. But for women the measure of the intimacy has been the measure of the oppression. This is why feminism has had to explode the private. This is why feminism has seen the personal as the political. In this sense, for women as such there is no private, either normatively or empirically. Feminism confronts the reality that women have no privacy to lose or to guarantee. We have no inviolability. Our sexuality is not only violable, it is, hence we are, seen in and as our violation. To confront the fact that we have no privacy is to confront the intimate degradation of women *as* the public order.

In this light, recognizing abortion under the legal right to privacy is a complicated move. Freedom *from* public intervention coexists uneasily with any right which requires social preconditions to be meaningfully delivered. If inequality, for example, is socially pervasive and enforced, meaningful equality will require intervention, not abdication. But the right to privacy is not thought to require social change to be meaningful. It is not even thought to require any social preconditions, other than nonintervention by the public. The point for the abortion cases is not only that indigency, which was the specific barrier to effective choice in *McRae,* is well within public power to remedy, nor that the state, as I said, is hardly exempt in issues of the distribution of wealth. It is rather that Roe against Wade presumes that governmental nonintervention into the private sphere in itself amounts to, or at the least promotes, woman's freedom of choice. When the alternative is jail, there is much to be said for this argument. But the *McRae* result sustains the meaning of the privacy recognized in *Roe:* women are guaranteed by the public no more

than what we can secure for ourselves in private. That is, what we can extract through our intimate associations with men. Women with privileges get rights.

Women got abortion as a private privilege, not as a public right. We got control over reproduction that is controlled by "a man or The Man,"[24] an individual man or (mostly male) doctors or the government. In this sense, abortion was not simply decriminalized, it was legalized; *Roe* set the stage for state regulation of the conditions under which women can have access to this right. Much of the control that women got out of legalization of abortion went directly into the hands of men socially—husbands, doctors, fathers. Much of the rest of it women have had to fight to keep from state attempts, both legislative and administrative, to regulate it out of existence.[25]

It is not inconsistent, in this light, that a woman's decision to abort, framed as a privacy right, would have no claim on public funding and might genuinely not be seen as burdened by that deprivation. Privacy conceived as a right from public intervention and disclosure is the conceptual *opposite* of the relief *McRae* sought for welfare women. State intervention would have provided a choice these women did *not* have in private. The women in *McRae,* poor women and women of color whose sexual refusal has counted for especially little,[26] needed something to make their privacy real. The logic of the court's response to them resembles that by which women are supposed to consent to sex. Preclude the alternatives, then call the sole option remaining "her choice." The point is that the woman's alternatives are precluded *prior* to the reach of the chosen remedy, the legal doctrine. They are precluded by conditions of sex, race, and class—the conditions the privacy frame not only assumes, but *works to guarantee.* These women were seen, essentially, as not having lost any privacy by having public funding for abortions withheld, as having no privacy to lose. In the bourgeois sense, in which you can have all the rights you can buy, converging with that dimension of male supremacy that makes the self-disposition money can buy a prerogative of masculinity, this was true. The *McRae* result certainly *made* it true.

The way the law of privacy restricts intrusions into intimacy also bars change in control over that intimacy. The existing distribution of power and resources within the private sphere will be precisely what the law of privacy exists to protect. Just as pornography is legally protected as individual freedom of expression without questioning whose freedom and whose expression and at whose expense, abstract privacy protects abstract autonomy without inquiring into whose freedom of action is being sanctioned, at whose expense. I think it is not coincidence that the very place (the body), the very relations (heterosexual), the very activities (intercourse and reproduction), and the very feelings (intimate) that feminism has found central to the subjection of women, form the core of privacy law's coverage. In this perspective, the legal concept of privacy can and has shield-

ed the place of battery, marital rape, and women's exploited labor, preserved the central institutions whereby women are *deprived* of identity, autonomy, control, and self-definition, and protected the primary activities through which male supremacy is expressed and enforced.

To fail to recognize the meaning of the private in the ideology and reality of women's subordination by seeking protection behind a right *to* that privacy is to cut women off from collective verification and state support in the same act. When women are segregated in private, separated from each other, one at a time, a right *to* that privacy isolates us at once from each other and from public recourse, even as it provides the only form of that recourse made available to us. So defined, the right to privacy has included a right of men "to be let alone"[27] to oppress women one at a time. It embodies and reflects the private sphere's existing definition of womanhood. As an instance of liberalism—applied to women as if we *are* persons, gender-neutral—Roe against Wade reinforces the division between public and private, a division that is not gender-neutral. It is at once an ideological division that lies about women's shared experience and mystifies the unity among the spheres of women's violation, and a very material division that *keeps* the private beyond public redress and depoliticizes women's subjection within it. It keeps some men out of the bedrooms of other men.

There seems to be a social perception that the Right has the high moral ground on abortion and the liberals have the high legal ground.[28] I have tried to sketch a feminist ground, a political ground critical of the common ground under the Right's morals and liberals' laws.

NOTES

1. *Roe v. Wade,* 410 U.S. 113 (1973).
2. *Harris v. McRae,* 448 U.S. 297 (1980).
3. I talk about this in "Feminism, Marxism, Method and the State: An Agenda for Theory," *Signs: Journal of Women in Culture and Society* 7, no. 3 (Spring 1982): 515-44.
4. See D.H. Regan, "Rewriting *Roe v. Wade,*" *Michigan Law Review* 77 (August 1979): 1569-1646, in which the Good Samaritan, by analogy, happens upon the fetus.
5. As of 1973, ten states that made abortion a crime had exceptions for rape and incest; at least three had exceptions for rape only. Many of these exceptions were based on Model Penal Code Section 230.3 (Proposed Official Draft 1962), quoted in *Doe v. Bolton,* 410 U.S. 179, 205-7, app. B (1973), permitting abortion, *inter alia* in cases of "rape, incest, or other felonious intercourse." References to states with incest and rape exceptions can be found in *Roe v. Wade,* 410 U.S. 113, n. 37 (1973). Some versions of the Hyde Amendment, which prohibits use of public money to fund abortions, have contained exceptions for cases of rape or incest. Pub. L. No. 95-205, § 101, 91 stat. 1960 (1972); Pub. L. No. 95-480, § 210, 92 Stat. 1567, 1586 (1978); Pub. L. No. 96123, 109, 93 Stat. 923, 926 (1979); Pub. L. No. 96-536, § 109, 94 Stat. 3166, 3170 (1980). All require immediate reporting of the incident.
6. Kristin Luker, *Taking Chances: Abortion and the Decision Not to Contracept* (Berkeley: University of California Press, 1975), p. 47.
7. *Roe,* 410 U.S. at 153.
8. *Griswold v. Connecticut,* 381 U.S. 479 (1965).
9. *H.L. v. Matheson,* 450 U.S. 398, 435 (dissent) (1981); See also *Whalen v. Roe,* 429 U.S. 589, 599-600 (1977).
10. *Harris v. McRae,* 448 U.S. 297 (1980).
11. *Harris,* 448 U.S. at 316.
12. Isaiah Berlin, "Two Concepts of Liberty," in Berlin, *Four Essays on Liberty* (Oxford, 1969).
13. See Paul Brest, "State Action and Liberal Theory: A Casenote on *Flagg Brothers v. Brooks,*" 130 U. Pa. L. Rev. 1296 (1982).
14. Tom Gerety, "Redefining Privacy," *Harvard Civil Rights—Civil Liberties Law Review* 12, no. 2 (Spring 1977): 236.
15. Thus the law of privacy wavers between protecting the institution of heterosexuality as such and protecting that which heterosexuality is at least theoretically only one instance of, that is, free choice in intimate behavior. For the first proposition, *see,* e.g., *Griswold v. Connecticut* 381 U.S. 479 (1965) (distribution of contraceptives), *Loving v.*

Virginia, 388 U.S. 1 (1967) (marriage partners), *Skinner v. Oklahoma*, 316 U.S. 535 (1942) (male fertility), as well as *Roe v. Wade*. *Doe v. Commonwealth's Attorney*, 403 F. Supp. 1199 (D. Va. 1975) (homosexual conduct not protected, since "no part of marriage, home or family life.") For the second, *New York v. Onofre*, 424 N.Y.S. 2d 566 (1980) (invalidating criminal sodomy statute). It is consistent with this analysis that homosexuality, when protected or found officially acceptable, would primarily be in private (i.e. in the closet) and primarily parodying rather than challenging the heterosexual model. Kenneth Karst attempts to include both approaches to privacy in his formation of "intimate association," yet implicitly retains the heterosexual model as central to his definition of the meaning of intimacy. "By 'intimate association' I mean a close and familiar personal relationship with another that is in some significant way comparable to a marriage or family relationships...but in principle the idea of intimate association also includes close friendship, with or without any such links." K.L. Karst, "The Freedom of Intimate Association," *Yale Law Journal* 89, no. 4 (March 1980), p. 629. On pornography, see *Stanley v. Georgia*, 394 U.S. 557 (1969) and *Lowisi v. Slayton*, 539 F. 2d 349 (5th Cir. 1976). Taken together, these cases suggest that Mr. Stanley's privacy rights encompass looking at pornography regardless of the intrusiveness of its production, while the women depicted in the pornography Mr. Stanley looks at have no privacy rights, if they could not have "reasonably expect-[ed]" privacy to attach when they permitted "onlookers" to take sexual pictures. For a discussion of privacy law in the pornography context see Ruth Colker, "Pornography and Privacy: Towards the Development of a Group Based Theory for Sex Based Intrusions of Privacy," 1, 2 *Law and Equality: A Journal of Theory and Practice* (forthcoming, 1983).

16. This formulation learned a lot from Tom Grey, "Eros, Civilization and the Burger Court," *Law and Contemporary Problems* 43, no. 3 (Summer 1980): 83-99.

17. Nineteenth-century feminists connected the abortion right with control over access to their sexuality. See Linda Gordon, *Woman's Body, Woman's Right: A Social History of Birth Control in America* [New York: Grossman (Viking), 1976]: esp. 100-15.

18. S. Sontag, "The Third World of Women," *Partisan Review* 40, no. 2 (1973), p. 188.

19. Such a relation has at least two aspects: the women/men relation; and woman/fetus relation. To the latter, see Adrienne Rich on the fetus as "neither as me nor as not-me." *Of Woman Born: Motherhood as Experience and Institution* (New York: W.W. Norton & Co., 1976), p. 64.

20. K. Glen, "Abortion in the Courts: A Lay Woman's Historical Guide to the New Disaster Area," *Feminist Studies* 4 (1978): 1.

21. Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no. 1 (1971): 47-66.

22. A. Dworkin, *Right-Wing Women* (New York: Perigee, 1983). *You must read this book.* The support of men for abortion largely evaporated or became very equivocal when the women's movement produced, instead, women who refused sex with men and left men in droves. The fact that Jane Roe was pregnant from a gang rape, a fact which was not part of the litigation (" 'Jane Roe' Says She'd Fight Abortion Battle Again," *Minneapolis Star & Tribune*, Jan. 22, 1983), is emblematic of the sexual dimension of the issue. As further evidence, see Friedrich Engels arguing that removing private housekeeping into social industry would "remove all the anxiety about 'consequences,' which today is the most essential social—moral as well as economic—factor that prevents a girl from giving herself completely to the man she loves." *Origin of the Family, Private Property and the State* (New York: International Publishers, 1973), p. 139.

23. Andrea Dworkin's analysis of the Marquis de Sade's statements on abortion reveal that "Sade extolled the sexual value of murder and he saw abortion as a form of murder...abortion was a sexual act, an act of lust." *Pornography: Men Possessing Women* (New York: Perigee, 1981), p. 96. One woman complaining of sexual harassment said the codirector of the abortion clinic she worked at had asked to be present during her abortion: "He said he had a fantasy about having sexual intercourse with a woman on an examining table during an abortion," she reported. "Woman accuses clinic chief of sexual harassment," *Minneapolis Star and & Tribune*, May 28, 1982. Ponder *Hustler*'s cartoon depicting a naked man masturbating enthusiastically reading a book labeled *Fetal Positions* in the corner of an operating room where a woman lies on the operating table, knees agape in stirrups. A male doctor is holding up what he has just delivered with tongs, saying, "Want a piece of ass, Earl? This one's stillborn." WAVPM Slide Show. This slide show is described in Teresa Hommel, "Images of Women in Pornography and Medicine," VIII, 2 *NYU Review of Law and Social Change* (1978-79): 207 14.

24. Johnnie Tillmon, "Welfare is a Women's Issue," *Liberation News Service* (February 26, 1972), in *America's Working Women: A Documentary History, 1600 to the Present*, ed. Baxandall, Gordon, and Reverby (New York: Vintage Books, 1976), pp. 357-58.

25. *H.L. v. Matheson*, 450 U.S. 398 (1981) (upholding stat-

ute requiring physicians to notify parents of "dependent, unmarried minor girl" prior to performing an abortion), *Bellotti v. Baird,* 443 U.S. 672 (1977) (Bellotti II) (holding that parents may not have absolute veto power over their minor daughter's decision), *Doe v. Gerstein,* 517 F. 2d 787 (5th Cir. 1975), *aff'd* 417 U.S. 281 (1974) (mandatory written consent requirements of husbands' parents unconstitutional). In *Planned Parenthood of Mo. v. Danforth,* 428 U.S. 52 (1976) the Supreme Court held that a state cannot by statute allow a man to veto a wife's abortion choice in part because the state cannot give a husband rights over the woman's reproductive choice that the state itself does not have. This leads one to wonder where the states got their power to regulate (under some circumstances preclude) abortions in the second and third trimesters, where apparently "public" considerations can weigh against the woman's "private" choice. Could states, by statues, allow husbands to veto abortions then? Whether courts can do by injunction what states cannot do by statute is discussed if not resolved in *Hagerstown Reproductive Health Services and Bonny Ann Fritz v. Chris Allen Fritz,* 295 Md. 268, 454 A. 2d 846 (1983). See also, *City of Akron v. Akron Center for Reproductive Health,* 103 S. Ct. 2481 (1983) (invalidating five city ordinances regulating where abortions may be performed (hospitals), who needs written consent by a parent (girls younger than 15), what doctors have to tell women prior to the procedure (e.g., tactile sensitivities of a fetus), when a abortion can be performed (24 hours after consent), and how the "fetal remains" must be disposed of.

26. The following statistics were reported in 1970: 79 percent of New York City's abortion deaths occurred among black and Puerto Rican woman; the abortion death rate was 4.7 times as high for Puerto Rican women, and 8 times as high for black women as for white women. Lucinda Cisler, "Unfinished Business: Birth Control and Women's Liberation," in *Sisterhood is Powerful: An Anthology of Writings from the Women's Liberation Movement,* ed. Robin Morgan (New York: Vintage 1970), p. 291.

27. The classic article formulating privacy as "the right to be let alone" is S.D. Warren and L.D. Brandeis, "The Right to Privacy," *Harvard Law Review* 4 (1890), p. 205. But note that *state* constitutional privacy provisions are sometimes interpreted to require funding for abortions. *Committee to Defend Reproductive Rights v. Meyers,* 29 C. 3d 252, 172 Cal. Rptr. 866, 625 P. 2d 779 (1981), *Moe v. Society of Administration and Finance,* 417 N.E. 2d 387 (Mass. 1981).

28. I owe this conception of public debate to Jay Garfield, Hampshire College, Amherst, Massachusetts.

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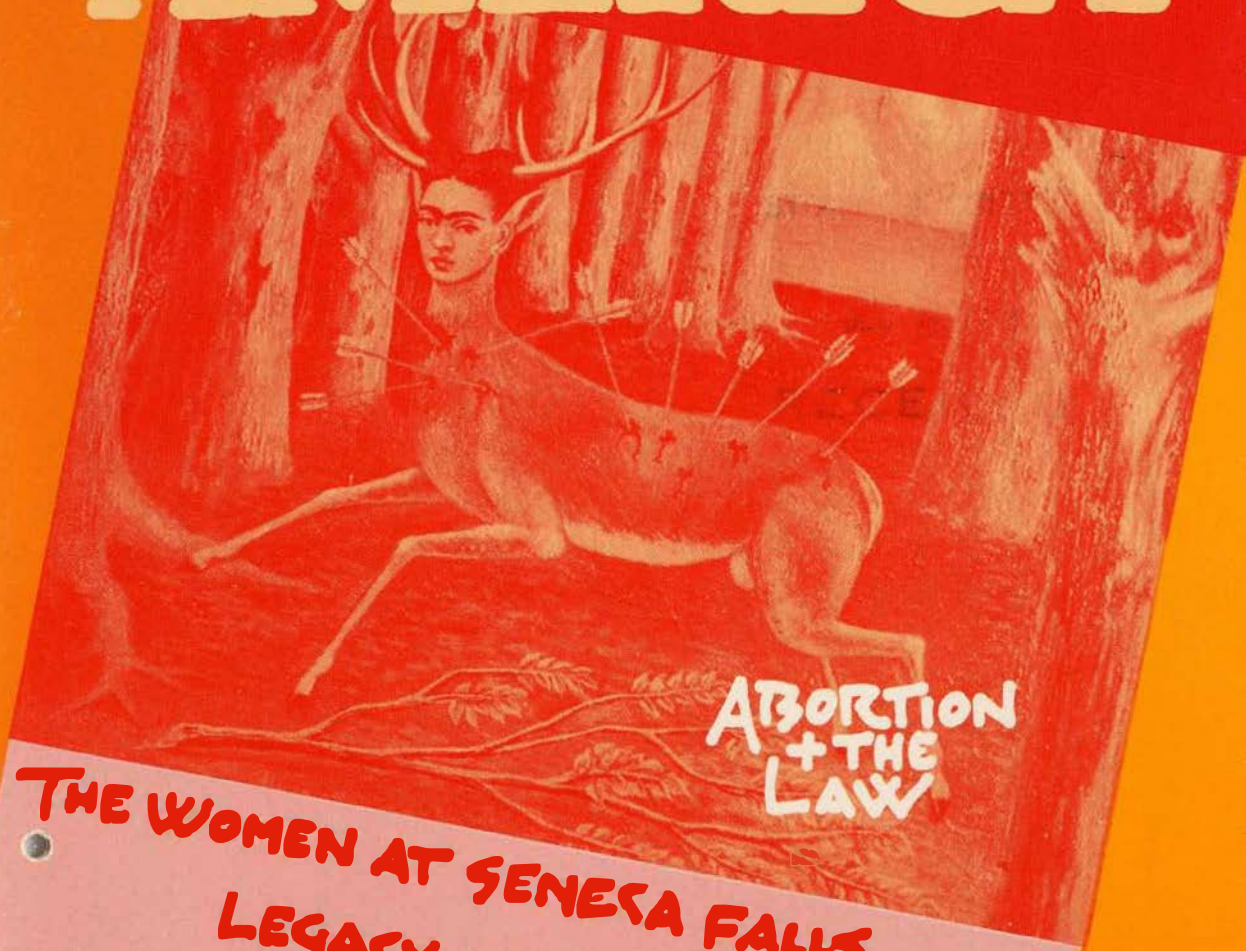

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