

Essay

CUNNING STUNTS: FROM HEGEMONY TO DESIRE A REVIEW OF MADONNA'S *SEX*¹

KATHERINE FRANKE*

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I

INTRODUCTION

What is sex? Is it an accidental or contingent property that every person can be said to have? I am brunette and female, but the Pope is bald and male. Or, is sex more constitutive, that is, an essential part of *who we are*? In this respect, the claim is often made that women experience the world differently than men. Or, is sex something *we do*?

If we consider sex as an adjective, can we or should we be able to manipulate it like a new hair style? Or does the notion of sexual malleability trivialize the significance of sex when considered as a noun? Lastly, is sex a verb that acts on us, constitutes us, harms or taints us?²

The answer to all these questions must be yes.

Feminist theory reveals that a seemingly simple question about the definition of sex demands a sophisticated answer, one informed by a critical investigation of power relations, discursive practices, and epistemological standpoints. In attempting to describe both what a woman is and how we can come to know her, feminists have struggled to determine just where description stops and inscription begins. Given the complexity of these inquiries, it is hardly surprising that the many people who consider themselves feminists cannot reach consensus on these or on other complex matters such as equality

1. MADONNA, *SEX* (1992). The book is unpaginated. References to it will be to page numbers, with page numbering starting at the first page following the cover.

* J.D., 1986, Northeastern University; LL.M., 1993, Yale University; J.S.D. candidate, Yale University.

2. "If to preserve this vessel for my lord From any other foul unlawful touch Be not to be a strumpet, I am none." WILLIAM SHAKESPEARE, *OTHELLO* act 4, sc. 2, lines 81-83 (New Cambridge 1942).

and sexual liberty. We have fought viciously among ourselves over such issues as whether to favor a paradigm of equal or different treatment,³ the role of pornography in women's oppression,⁴ and whether *Roe v. Wade*⁵ was correctly decided.⁶

Why does such vituperative disagreement exist among supposed sisters in the struggle to dismantle the vestiges of patriarchy? I believe the answer lies not in deconstructing patriarchy, an enterprise that has consumed the hearts and minds of so many feminists, but in responding to the rarely asked question about the nature and meaning of sex. The question demands serious consideration of metaphysical, epistemological, and semantic arguments with respect to whom it is we are liberating, how we may know her, and how we can speak about her truthfully. Feminist theory, particularly feminist legal theory, often finds false currency in over-attention to the power of men in women's lives while neglecting the need for ostensive theory: to whom and with what kind of digit are we pointing when we say "set her free"? Such an impoverished notion of both the subject and object of feminist discourse has, not surprisingly, left feminist theorists at loggerheads when imprecise theory meets real life: does equality demand similar or different treatment from men? are abortion rights a matter of privacy or autonomy? will sex ultimately destroy us or set us free? And so the fight is engaged.

Given the profound and fundamental differences in our understanding of the feminist project, it does not seem possible to think of ourselves as part of a coherent movement. Indeed, our inclination to cling to the myth of feminist identity politics could be seen as dispositive proof of our failure to understand the complexity and comprehensiveness of the regime that we are at once oppressed by and reify.⁷ Is it possible that the utility, or worse, the concept of

3. See, e.g., Linda J. Krieger & Patricia N. Cooney, *The Miller-Wohl Controversy: Equal Treatment, Positive Action and the Meaning of Women's Equality*, 13 GOLDEN GATE U. L. REV. 513 (1983) (advancing an equal treatment model); Ann C. Scales, *Towards a Feminist Jurisprudence*, 56 IND. L.J. 375, 444 (1981) ("[G]enuine sexual justice cannot be achieved unless decisionmakers comprehend that the degraded status of woman is and always has been a function of the reproductive division of labor."); Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 2 DUKE L.J. 296 (1991) (proposing a post-modern alternative to the equal/different treatment dichotomy); Wendy Williams, *The Equality Crisis: Some Reflections on Culture, Courts and Feminism*, 7 WOMEN'S RTS. L. REP. 175 (1982) (arguing for a different treatment paradigm).

4. See, e.g., Nan D. Hunter & Sylvia A. Law, Brief Amici Curiae of Feminist Anti-Censorship Taskforce, Et Al., *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985) (No. 84-3147), *aff'd*, 475 U.S. 1001 (1986), *reprinted* in 21 U. MICH. J.L. REF. 69 (1987-1988); ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1989).

5. 410 U.S. 113 (1973).

6. See, e.g., Rhonda Copelon, *Losing the Negative Right to Privacy: Building Sexual and Reproductive Freedom*, 18 N.Y.U. REV. L. & SOC. CHANGE 15 (1990-91); Ruth B. Ginsburg, *Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade*, 63 N.C. L. REV. 375 (1985).

7. Judith Butler could be interpreted as expressing this view in a recent essay. See Judith Butler, *Imitation and Gender Insubordination*, in *INSIDE/OUT: LESBIAN THEORIES, GAY THEORIES* 13, 14 (Diana Fuss ed., 1991) ("I'm permanently troubled by identity categories, consider

identity politics has come to an end? Much is at stake when we undertake to answer the question, what is sex?

Then comes Madonna, quite literally. With *Sex*⁸ she provides us with her answer to the question, What is sex? In this work, Madonna goes public with *her* sexuality, *her* fantasies, *her* description of and prescription for pleasure.⁹ Through the depiction of her sexuality in photographs and text, she observes: "A lot of people are afraid to say what they want. That's why they don't get what they want."¹⁰

It is unclear what Madonna intends us to make of this work she calls *Sex*.¹¹ What *can* we make of it? Is it a book? Is it an event? Is it a performance? Can these really be her fantasies? If they are, what do they mean? Are they supposed to turn us on? What if they do? What if they don't? By claiming that she is depicting her own fantasies,¹² does she radically assert herself as sexual subject or does she engage in harmful auto-subordination by reproducing her own oppression as sexual object? Is *Sex* anything more than Madonna's best effort yet to make fistfuls of money from pop culture's fascination with her narcissism? Finally, who cares?

Even the way the book is packaged holds potential sexual meaning. It comes wrapped in a silver mylar bag (no shrink wrap for Madonna). On the front of the bag is an image of Madonna's orgasmic face, closed eyes adorned lusciously with dark false eyelashes, moist lips slightly parted, and mouth open just wide enough to see her tongue planted suggestively on the roof of her mouth. "MADONNA SEX" runs across her left cheekbone. The photograph on the back of the wrapper is less easily identifiable, but with a little effort, one can make out Madonna's breasts cupped in her own hands, hard nipples held between her fingers. Next to her left hand, on the side of her

them to be invariable stumbling-blocks, and understand them, even promote them, as sites of necessary trouble.").

8. MADONNA, *supra* note 1.

9. *Id.* at 2.

10. *Id.* at 121.

11. Whatever Madonna's intentions, the work represents the most recent example of an ongoing effort among popular performers to contest conventional sex, gender, and sexual scripts. See, e.g., MARJORIE GARBER, VESTED INTERESTS: CROSS-DRESSING & CULTURAL ANXIETY 357 (1992) ("Liberace, pianist, singer, tap dancer, and fashion plate, clearly regarded himself as a direct influence upon the pop stars of the eighties, citing Prince, Michael Jackson, Boy George, and Madonna as among those who had learned from him about 'escapism and fantasy.'") (quoting LIBERACE, THE WONDERFUL PRIVATE WORLD OF LIBERACE 171 (1987)); *id.* (" 'There was a time,' he reminisced, 'when one woman might say to another "May I borrow your lipstick?" Now, it's not unusual for one male rocker to say to another "May I borrow your eye liner?" '") (quoting LIBERACE, *supra*, at 222); *id.* (" 'I was the first to create shock waves,' he said. 'For me to wear a simple tuxedo on-stage would be like asking Marlene Deitrich to wear a housedress.'") (quoting BOB THOMAS, LIBERACE 243 (1987)). Madonna has even been called the female Andy Warhol of the nineties, a conscious and inspired manipulator of pop culture, who will do for women's sexuality what Warhol did for gay male sexuality, making what was previously unspeakable "hip." JoAnn Wypijewski, *Pictures from an Exhibition*, THE NATION, Dec. 14, 1992, at 744, 748 (reviewing MADONNA, SEX (1992)).

12. MADONNA, *supra* note 1, at 2.

rounded breast, punctuating the voluptuousness of the masturbatory moment is printed: "WARNING! ADULTS ONLY! EXCLUSIVE! SPECIAL CD INSIDE." This warning is followed by the book's price and a fairly large bar code. Lest we think that we are being allowed a peek at Madonna's private sexual fantasies, the bar code, in particular, reveals that what we are viewing is akin to a public performance of sex that refuses to hide its commercial character. Prospective buyers can't even leaf through the goods in the bookstore to see if it turns them on. The mylar jacket thus serves as the first of many signals indicating who's in charge here.¹³

The pages of *Sex* are spirally bound between hard aluminum covers and contain a collage of text and photographs that, taken either collectively or as discrete images or ideas, presumably signifies sex. Some may conclude that the rigid permanence of *Sex* is to the vulnerability of its mylar jacket as the stable core of unmodified female sexuality is to the accommodating "ideational envelope"¹⁴ known as fetishized woman. Others may observe that although the manifestation of Madonna's sexuality in *Sex* is tangible and rigid, the ideas being represented are far more fluid and plastic.

Madonna begins the book with an introductory statement or disclaimer:

This book is about sex. . . . These are fantasies I have dreamed up. Like most human beings, when I let my mind wander, when I let myself go, I rarely think of condoms. My fantasies take place in a perfect world, a place without AIDS. Unfortunately the world is not perfect and I know that condoms are not only necessary but mandatory. Everything you are about to see and read is a fantasy, a dream, pretend. . . . And by the way, any similarity between characters and events depicted in this book and real persons and events is not only purely coincidental, it's ridiculous. Nothing in this book is true. I made it all up.¹⁵

We thus know a few important things about what Madonna wants us to understand about the book. To the extent she creates images or text in which she plays with power and danger as part of her pleasure, she does so consensually and erotically, in a perfect world unspoiled by AIDS. Subordination, domination, golden showers, voyeurism, butch, femme, exhibitionism, homosexuality, heterosexuality, group sex, cross-dressing, and animals are all fair game in Madonna's fantasy world. Here, desire is the handmaiden of the sex/gender

13. The mylar sheath or condom in which the book is enveloped has one further significance. Purchasers can't return the book once its jacket has been slit open, torn back, or gently removed. In effect, then, the very opening of the book diminishes its value. She forces a reading of the book into a complicitous act of consumption. She makes you take it; she makes it yours.

14. Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS 515, 529 (1982) ("Feminist inquiry into [the materiality of women's lives] began with a broad unmasking of the attitudes that legitimize and hide women's status, the ideational envelope that contains woman's body.").

15. MADONNA, *supra* note 1, at 2.

power play. It is a world that has filtered out acceptable from unacceptable danger:

Sex was like a game to her like Jeopardy! or Hollywood Squares, like Monopoly or Trivial Pursuit. Her body was a weapon, not a fatal weapon, more like a stun gun, more like a fun gun. She did it to remind everybody that she could bring happiness or she could bring danger, kind of like the lone ranger, only the horse she rode in on was high. She was an avenger of the libido dead, a sister of mercy, our lady of head.¹⁶

Whether one finds Madonna's images exciting, boring, irrelevant, thought-provoking, offensively self-indulgent, or a prime example of how women's sexuality is merely a fetishized construction of the masculinist economy of power, *Sex* provides an interesting opportunity to consider the possibility of a female sexual subject.¹⁷ In other words, is it possible for Madonna, or for any woman, to describe a set of fantasies as her own? What does it mean or what can it mean when a woman says that she has certain types of desires?

Sex and much of Madonna's other work¹⁸ challenge head-on the norms that render certain expressions of women's sexuality unspeakable. For this reason, the importance of Madonna's work¹⁹ does not depend on whether she is engaging in a conscious effort to broaden the scope and meaning of women's sexuality within the dominant discourse or merely has a good nose for exploiting popular culture to economic advantage. Whatever she's up to, she has had a profound effect on popular culture.

II

FEMALE SEXUAL AGENCY

Feminist theorists have devoted significant attention to the question of a true or objective female sexual subject.²⁰ Similarly, many feminist legal theorists have endeavored to develop "a jurisprudence built upon feminist insights

16. MADONNA, *supra* note 1, at 102.

17. See MANDY MERCK, PERVERSIONS 85 (1993) ("Madonna may seem to be the most self-authored sexual artifact of this (or any other) time, but her career coincides with the feminist reevaluation of long-held positions on pornography, fashion and sexual conduct.").

18. See *infra* notes 96-97.

19. In recent years a growing number of academics have looked to Madonna as a significant subject of scholarly inquiry. See, e.g., THE MADONNA CONNECTION (Cathy Schwichtenberg ed., 1993); D. David Bourland, Jr., *Sex: A Review of Reviews*, 50 ETC.: REV. GEN. SEMANTICS 96 (1993); Pico Iyor, *The Contagion of Innocence*, 9 NEW PERSP. Q. 34 (1991); Jane Miller, *Madonna (Traces of Struggle and Desire)*, 17 PLOUGHSHARES 221 (1991); M. Carmen Africa Vidal, *The Death of Politics and Sex in the Eighties Show*, 24 NEW LITERARY HIST. 171 (1993).

20. See generally MARY F. BELINKY, BLYTHE M. CLINCHY, NANCY R. GOLDBERGER & JILL M. TARULE, WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND (1986); NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978); DIANA FUSS, ESSENTIALLY SPEAKING: FEMINISM, NATURE & DIFFERENCE (1960); CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT (1982).

into women's true nature, rather than masculine insights into 'human' nature."²¹ If such an objective female exists, how would she express herself and how would we recognize her if we saw her? These questions have generated a wealth of literature analyzing the nature of desire, gender, sex, and sexuality, and whether such fundamental concepts are the products of biology, social construction, language, a masculinist or phallogocentric hegemony, or any combination thereof.²² While disagreeing about the validity of either these questions or the possible answers to them, virtually all radical feminists agree that notions of femininity and masculinity (i.e., gender) are socially constructed.²³

It is important to distinguish this basic agreement about gender from the general acceptance by most contemporary feminist legal scholars of the stability of the male and female sexual categories.²⁴ The normative future of feminist legal theory lies in extending the deconstruction of gender and sex roles to sex itself, thereby forcing a crisis of category altogether.

The new work of radical feminists assumes that deconstruction of gender has already taken place and asks how we reconstruct notions of woman, knowing, sexuality, power, and agency.²⁵ This reconstructive project has produced profound disagreement about the task of feminist theory and practice. Some scholars argue that we must endeavor to uncover and liberate our objective, true selves from the mark of culture by transcending masculinist con-

21. Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 3-4 (1988).

22. See, e.g., SIMONE DE BEAUVOIR, *THE SECOND SEX* (H.M. Parshley ed. & trans., Vintage Books 1974) (1949) (arguing that gender is acquired); JUDITH P. BUTLER, *GENDER TROUBLE* (1990) (developing a conception of sexed, gendered, and sexual identity as performative rather than essential in nature); *FEMINISM AS CRITIQUE* (Seyla Benhabib & Drucilla Cornell eds., 1987) (reconstructing the relationship between 20th century Marxism and feminism); CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987) (concluding that our experience of woman as male sexual fantasy is produced by a hegemonic male gaze); *SEX AND SCIENTIFIC INQUIRY* (Sandra G. Harding & Jean F. O'Barr eds., 1987) (stating that socially constructed biological differences underlie the essentialization of sex differences); MONIQUE WITTIG, *THE LESBIAN BODY* (David LeVey trans., Peter Owen 1975) (1973) (arguing that language can be used to overthrow the idea of sex as a mode of domination).

23. See, e.g., BUTLER, *supra* note 22, at 6-7, 36-38; CYNTHIA F. EPSTEIN, *DECEPTIVE DISTINCTIONS; SEX, GENDER, AND THE SOCIAL ORDER* (1988); *GENDER/BODY/KNOWLEDGE/FEMINIST RECONSTRUCTIONS OF BEING AND KNOWING* (Alison Jagger & Susan R. Bordo eds., 1989); NAOMI WOLF, *THE BEAUTY MYTH* (1991); Susan W. Baker, *Biological Influences on Human Sex and Gender*, in *WOMEN: SEX AND SEXUALITY* 175 (Catherine R. Stimpson & Ethel S. Person eds., 1980).

24. See, e.g., BUTLER, *supra* note 22, at 8-9, 33, 128-31; THERESA DE LAURETIS, *TECHNOLOGIES OF GENDER: ESSAYS ON THEORY, FILM, AND FICTION* (1987); ANN FAUSTO-STERLING, *MYTHS OF GENDER: BIOLOGICAL THEORIES ABOUT WOMEN AND MEN* (1992); DONNA J. HARAWAY, *SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE* (1991); THOMAS LAQUEUR, *MAKING SEX: BODY AND GENDER FROM THE GREEKS TO FREUD* (1990); SERENA NANDA, *NEITHER MAN NOR WOMAN: THE HIJRAS OF INDIA* (1990).

25. See, e.g., *DISCOVERING REALITY: FEMINIST PERSPECTIVES ON EPISTEMOLOGY, METAPHYSICS, METHODOLOGY, AND PHILOSOPHY OF SCIENCE* (Sandra Harding & Merrill B. Hintikka eds., 1983); NANCY FRASER, *UNRULY PRACTICES: POWER, DISCOURSE AND GENDER IN CONTEMPORARY SOCIAL THEORY* (1989); MARY JO FRUG, *POSTMODERN LEGAL FEMINISM* (1992); DENISE RILEY, "AM I THAT NAME?": *FEMINISM AND THE CATEGORY OF "WOMEN" IN HISTORY* (1988); JOAN W. SCOTT, *GENDER AND THE POLITICS OF HISTORY* (1988).

struction, as if stripping away layers of paint.²⁶ Others view gender as a secondary characteristic that marks a prior human subject, working within the existing discourse in order first to subvert and destabilize it, and then to construct it anew.²⁷ Still other writers conclude that to posit a true or authentic sexuality existing prior to or behind power is not only politically unwise but also culturally incoherent.²⁸ These different perspectives on the ontology of a pregendered subject provide useful theoretical lenses through which to view both Madonna's *Sex* and the debate surrounding the feminist project of reconstruction.

A. Essentialism: A View From Solid Ground

Essentialist feminists maintain that feminist inquiry must concern itself with the discovery and liberation of an essential woman who lurks beneath a world constructed by men.²⁹ These theorists remain committed to a situational metaphysics that considers the oppression of women as stemming from a masculinist economy that shapes how women come to know ourselves.³⁰

Catharine MacKinnon argues that "gender has no basis in anything other than the social reality its hegemony constructs."³¹ On this account, feminists should strive towards "a broad unmasking of the attitudes that legitimize and hide women's status, the ideational envelope that contains woman's body."³² MacKinnon's ontological references to "woman's body,"³³ "women's point of

26. The work of Catharine MacKinnon and Robin West represents this tradition within the legal community. See, e.g., MACKINNON, *supra* note 22; MacKinnon, *supra* note 14; Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1983), reprinted in FEMINIST LEGAL THEORY 181 (Katharine T. Bartlett & Rosanne Kennedy eds., 1991) [hereinafter MacKinnon, *Toward Feminist Jurisprudence*]; Catharine A. MacKinnon, *Not a Moral Issue*, 2 YALE L. & POL'Y REV. 321 (1984) [hereinafter MacKinnon, *Not A Moral Issue*]; Catharine A. MacKinnon, *Pornography, Civil Rights and Speech*, 20 HARV. C.R.-C.L. L. REV. 1 (1985) [hereinafter MacKinnon, *Pornography, Civil Rights and Speech*]; Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987) [hereinafter West, *The Difference in Women's Hedonic Lives*]; West, *supra* note 21.

27. See, e.g., MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* (1990); WITTIG, *supra* note 22; Kimberlé W. Crenshaw, *Race Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988).

28. See, e.g., BUTLER, *supra* note 22, at 4-5; THERESA DE LAURETIS, *ALICE DOESN'T: FEMINISM, SEMIOTICS, CINEMA* (1984); FUSS, *supra* note 20; JULIA KRISTEVA, *THE KRISTEVA READER* (1987); TORIL MOI, *SEXUAL/TEXTUAL POLITICS: FEMINIST LITERARY THEORY* (1985); GAYATRI C. SPIVAK, *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* (1987); MONIQUE WITTIG, *THE STRAIGHT MIND* (1992); Barbara Johnson, *Metaphor, Metonymy and Voice in Their Eyes Were Watching God*, in BLACK LITERATURE & LITERARY THEORY 205 (Henry L. Gates, Jr., ed., 1984).

29. E.g., MacKinnon, *Pornography, Civil Rights and Speech*, *supra* note 26, at 11.

30. See, e.g., GILLIGAN, *supra* note 20; Ruth Colker, *Feminism, Sexuality, and Self: A Preliminary Inquiry into the Politics of Authenticity*, 68 B.U. L. REV. 217 (1988) (reviewing MACKINNON, *supra* note 22); West, *supra* note 21.

31. MacKinnon, *Pornography, Civil Rights and Speech*, *supra* note 26, at 13.

32. MacKinnon, *supra* note 14, at 529.

33. *Id.*

view,"³⁴ "women's experience,"³⁵ and to what women "really want"³⁶ evidence her underlying belief in the existence of a metaphysically distinct female subject, a raw and undominated essence raped by the sexist hegemony that dominates and shapes the world. From her privileged standpoint outside, beneath, or above the dominant discourse, MacKinnon concludes that women can only experience themselves as male sexual fantasies and that "pornography constructs what a woman is as what men want from sex."³⁷ MacKinnon's central and most powerful insight is of woman as fetish. This notion underlies her now famous syntactic analysis of sex-based power relations: "Man fucks woman; subject verb object."³⁸

Robin West similarly believes in the essential female subject, focusing on the specific material and existential conditions of women's lives that are ignored by a masculinist jurisprudence.³⁹ For West, a woman's essence is grounded in her unique capacity to menstruate, experience penile penetration, become pregnant, and breast feed.⁴⁰ These female faculties make up West's conception of the experience of femininity.⁴¹ West thus answers the question, "What is a woman?," by pointing to a set of material and existential events. This set, however, fails to capture the lives and experiences of a great number of people who think of themselves as women. Her classification of women as menstruating, penetrated, pregnant, breast-feeding persons suffers from the same narrowness of perspective as that of the ungendered human at the core of masculinist jurisprudence. By referring frequently to "women's true nature,"⁴² "women's humanity,"⁴³ "women's subjective lives,"⁴⁴ and "women's conception of value,"⁴⁵ West echoes MacKinnon's reliance upon the metaphysical and moral authenticity of a singular, coherent female subject who, according to West, "officially values intimacy" while really harboring "subjective desires to the contrary."⁴⁶

In fact, distinguishing objective values from subjective desires is no easy task. West tells us that the violent nature of male sexuality causes women to "define themselves as 'giving selves' so as to obviate the threat, the danger, the

34. MACKINNON, *supra* note 22, at 88, 91, 160; MacKinnon, *Toward Feminist Jurisprudence*, *supra* note 26, at 182; MacKinnon, *Not a Moral Issue*, *supra* note 26, at 323, 344.

35. MacKinnon, *Toward Feminist Jurisprudence*, *supra* note 26, at 182.

36. MACKINNON, *supra* note 22, at 83.

37. MacKinnon, *Pornography, Civil Rights and Speech*, *supra* note 26, at 17.

38. MacKinnon, *supra* note 14, at 541.

39. West, *The Difference in Women's Hedonic Lives*, *supra* note 26, at 81-83; West, *supra* note 21, at 3; *see also* Scales, *supra* note 3, at 444.

40. West, *supra* note 21, at 3.

41. Unfortunately, some of West's writing fail to distinguish clearly between the experience of femininity and the state of being female, or between a conception of sex as an essential part of women's true nature as opposed to an accidental property of female humans. *See id.* at 4, 42, 53.

42. *Id.* at 4.

43. *Id.*

44. *Id.* at 54.

45. *Id.* at 28.

46. *Id.* at 53.

pain, and the fear of being self-regarding selves from whom their sexuality is taken.”⁴⁷ Because women “respond to this fear by *re-constituting* themselves in a way that controls the danger and suppresses the fear,” and because “men do not experience the fear of violent sexuality as a part of their self-definition,” women and men “live in two separate realities.”⁴⁸ The outcome of both West’s and MacKinnon’s essentialist metaphysics is a female faux-sexuality that allows us to believe that what hurts us feels good and that what subjugates us fulfills our erotic desires.

The essentialist viewpoint reasons that sex (meaning woman) is to gender (meaning feminine) as the real is to the experienced, as the raw is to the cooked. Women share an epistemological standpoint and a phenomenological history defined by our bodies and the oppressive hegemony created by the men in power. Thankfully, MacKinnon and West have escaped its merciless grasp by discovering that what women consider real, natural, and inevitable (albeit unpleasant) is, in fact, constructed and oppressive. From this vantage point, MacKinnon in particular has set out to shine a light upon the possibility of transcendent agency.

For the essentialist, “woman” is a unitary and coherent entity; it denotes an intelligible and transcendent pregendered ontological subject. In order to liberate the identity of the true female from the mark of culture, however, MacKinnon and West must completely transform meaning and signification for female agency to emerge. They diagnose the problem as epistemological impairment: women’s inability to know our real selves and our inclination to confuse the object of male sexual desire with a true female sexual subject. This essentialist critique of sexism proposes a radical rethinking of our understanding of consent, equality, and autonomy and has garnered tremendous support from many women who see in it a reflection of our own experiences.

For essentialists, no doubt, *Sex* represents proof of the metaphysical perfection of the patriarchal construction of women’s desire. Madonna’s public declaration that her fantasies (involving subordination, masochism, bondage, heterosexuality, exhibitionism, and rape) can feel good, make her feel sexy, and give her pleasure is for them a prime example of how women’s sexuality and desire are products of a violent male sexual fantasy:

In pornography, women desire dispossession and cruelty. Men, permitted to put words (and other things) in women’s mouths, create scenes in which women desperately want to be bound, battered, tortured, humiliated and killed. Or, merely taken and used. This is erotic to the male point of view. Subjection itself, with self-determination ecstatically relinquished, is the content of women’s sexual desire and desirability.⁴⁹

47. West, *The Difference in Women’s Hedonic Lives*, *supra* note 26, at 94.

48. *Id.* at 94-95.

49. MacKinnon, *Not A Moral Issue*, *supra* note 26, at 326.

On this account, it is incoherent for Madonna to say that these are her fantasies⁵⁰ and really *mean* it, because women lack the epistemological balls, as it were, to have fantasies of their own.⁵¹

But then, Madonna and MacKinnon come at this issue from completely different perspectives. All Madonna wants to say is something about herself: these are *my* fantasies, you go get your own.⁵² MacKinnon wants to tell Madonna and all women what their fantasies are, or should be.⁵³ Madonna learns about herself by playing with herself: "I love my pussy, it is the complete summation of my life. It's the place where all the most painful things have happened. But it has given me indescribable pleasure. My pussy is the temple of learning."⁵⁴ MacKinnon, on the other hand, achieves self-knowledge by leaving her body and pleasure behind. In fact, MacKinnon stands squarely against the idea that we "can fuck our way to freedom."⁵⁵

While resort to a theory of a transcendent, metaphysical woman is attractive in many respects, it is also vulnerable to criticism at numerous

50. MADONNA, *supra* note 1, at 2.

51. MacKinnon is also unable to see any possibility for female sexual agency in lesbianism: Lesbian sex, simply as sex between women, does not by definition transcend the erotization of dominance and submission and their social equation with masculinity and femininity. Butch/femme as *sexual* (not just gender) role playing, together with parallels in lesbian sadomasochism's "top" and "bottom," suggest to me that sexual conformity extends far beyond gender object mores.

MacKinnon, *supra* note 14, at 534 n.42. Joan Nestle, a lesbian-femme theorist, has powerfully challenged this hegemonic notion of lesbian sexuality:

A fem is often seen as a lesbian acting like a straight woman who is not a feminist—a terrible misreading of self-presentation which turns a language of liberated desire into the silence of collaboration. An erotic conversation between two women is completely unheard, not by men this time but by other women, many in the name of lesbian-feminism.

Joan Nestle, *The Fem Question*, in PLEASURE AND DANGER 232, 236 (Carole S. Vance ed., 1984); see also LESLIE FEINBERG, *STONE BUTCH BLUES* (1993) (chronicling and celebrating the power, pleasure, and pain of the life of a stone butch).

52. See *Nightline: Interview with Madonna* (ABC television broadcast, Dec. 3, 1990) ("The feminists' point of view? Well, I would like to point out that they're missing a couple of things, because . . . I may be dressing like the typical bimbo . . . but . . . I'm in charge of my fantasies."), quoted in Mary Jo Frug, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045, 1053 (1992).

53. MacKinnon's message to Madonna is similar to lesbian-feminism's judgment of femmes as the "Uncle Toms of the movement." Nestle, *supra* note 51, at 236.

Politically correct sexuality is a paradoxical concept. One of the most deeply held opinions in feminism is that women should be autonomous and self-directed in defining their sexual desire, yet when a woman says, 'This is my desire,' feminists rush in to say, 'No, no, it is the prick in your head; women should not desire that act.' But we do not yet know enough at all about what women—any women—desire. The real problem here is that we stopped asking questions so early in the lesbian and feminist movement, that we rushed to erect what appeared to be answers into the formidable and rigid edifice that it is now.

Id. at 234.

54. MADONNA, *supra* note 1, at 75.

55. MACKINNON, *supra* note 22, at 219. As Mary Jo Frug has stated, "[i]t seems indisputable that Madonna's version of the female sexualized body is radically more autonomous and self-serving than MacKinnon's interpretation . . ." Frug, *supra* note 52, at 1054.

junctures.⁵⁶ In effect, it amounts to the easy way out. First, MacKinnon provides an inadequate explanation of just how she was able to slip through the "metaphysically nearly perfect"⁵⁷ net of the masculinist epistemology. She explains that "women live in the world pornography creates. We live its lie as reality . . ." ⁵⁸ How are we to appreciate or trust MacKinnon's truth-telling? Since we have all been so profoundly alienated from our true selves, it is unclear how MacKinnon was able to escape the dehumanizing (or dewomanizing) effect of male hegemony. We are supposed to take it on faith that she has successfully avoided the reification of her own oppression and hasn't just repackaged it in forceful, persuasive, and dynamic rhetoric. MacKinnon provides no account for how we can pierce the veil of our ontological ignorance for even a moment and take a peek through the thick mist of hegemony at our true selves.⁵⁹ Indeed, MacKinnon has set up a metaphysical framework under which any argument with the normative priority of her essentialist subject is labeled either impossible or proof of false consciousness.

It would be unfair, however, to deny the revolutionary power of MacKinnon's central insights. In combining a traditional, realist metaphysics with more contemporary notions of social construction and hegemony, she has brilliantly deconstructed the concept of woman as male sexual fantasy. What she has done (although she does not use this terminology) is expose a metonymic⁶⁰ model of woman as male sexual fantasy by laying bare the role that the male gaze plays in giving meaning to what we know as woman.

Her mistake lies in substituting an objectivist metaphysics for the metonymic model of woman as sexual object. MacKinnon's discourse on transcendental meaning and truth is a step back from her dazzling insights about male hegemony, for central to her conclusions about women's true nature is the traditionally realist assumption that "[i]f human beings are to have real

56. "MacKinnon's answers are crisp, radical, elegant, and eloquent, if also dated, essentialist, and somewhat unsatisfying." Carrie Menkel-Meadow, Book Review, 16 *SIGNS* 603, 603 (1991) (reviewing CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989)).

57. MacKinnon, *Toward Feminist Jurisprudence*, *supra* note 26, at 182.

58. MacKinnon, *Not a Moral Issue*, *supra* note 26, at 335.

59. MacKinnon has answered by referring to "the feminist concept of the personal as political." MacKinnon, *supra* note 14, at 534. "[W]omen's distinctive experience as women occurs within that sphere that has been socially lived as the personal . . . so that what it is to know the politics of women's situation is to know women's personal lives. . . . Its claim to women's perspective is its claim to the truth." *Id.* at 535-36. This defense of the methodology of consciousness-raising provides no answer, however, for how MacKinnon or any woman can step outside of the language and culture that have produced the notion of woman as male sexual object. Given the importance and power of hegemony in her theory, how can more talk in a bankrupt language allow women to make authoritative and intelligible claims about truth? Placing the female subject in epistemological receivership, that is, in a regime that highly regulates discourse, fails to address the underlying flaws in the system.

60. Metonymy, a basic characteristic of human cognition, refers to situations in which a subcategory or stereotype of a larger category stands for the category as a whole. See GEORGE LAKOFF, *WOMEN, FIRE AND DANGEROUS THINGS: WHAT CATEGORIES REVEAL ABOUT THE MIND* 77-90 (1987) (discussing metonymic models of cognition).

knowledge, then the idiosyncrasies of human organisms had better not get in the way."⁶¹

Both MacKinnon and West are unwilling to view sex in a manner that admits the power and truth of metonymy. In fact, each author substitutes her own metonymic model of woman for the one constructed by the male gaze. By doing so in the name of a real world that creates objective truth conditions, they cut off an array of epistemological possibilities. They erect an ideological portcullis that blocks all avenues of self-knowledge that deviate from those available under either the male or the official feminist gaze.

Indeed, the essentialists engage in the same "epistemological imperialism"⁶² of which they accuse men. By insisting upon the normative priority of a female subject who holds a unitary and univocal point of view outside our identity constructed by male hegemony, MacKinnon and West have constructed a metaphysical model that "deploys precisely the imperialist strategies that feminism ought to criticize."⁶³ By grounding the legitimacy of their theory upon transcendent truth about women's nature, they have replaced a transcultural notion of patriarchy with their own colonizing epistemology. Like the post-structuralist theorists, MacKinnon and West view gender as a performance in which women act out their own subordination but do not participate in writing the script. Unlike the post-structuralists, however, the essentialists argue that the task of feminist practice is to transform our lives from fiction to fact, from script to nature.⁶⁴ For instance, MacKinnon suggests that the passive, unidirectional nature of women's relationship to language is as ineffective as a woman in a theater shouting to stop a pornographic movie.⁶⁵ In response, MacKinnon suggests that the projector be turned off. Yet, women are no less silenced once the theater has been closed. We are just left sitting in the dark. Her assertion of a pregendered or unsigned *I* thus seems quite impossible absent greater elaboration. In this respect, MacKinnon's theory creates much heat, but sheds little light on the possibilities for women's sexual agency.

One fundamental question remains unanswered in MacKinnon's work: is her assertion of a pregendered, or resignified, *I* possible or even intelligible? In fact, MacKinnon's theory points not toward the liberation of a de-hegemonified woman, but toward the dissolution of a coherent notion of woman altogether. Once we disrobe the woman of the cultural and patriarchal adornments that give the terms *female* and *feminine* meaning, who remains? Why call it *woman*? The term *woman* may thus become unintelligible once

61. *Id.* at 174.

62. BUTLER, *supra* note 22, at 13, 35, 142-47.

63. *Id.* at 147.

64. "I say, give women equal power in social life. Let what we say matter . . . Take your foot off our necks, then we will hear in what tongue women speak." MACKINNON, *supra* note 22, at 45.

65. CATHARINE A. MACKINNON, ONLY WORDS 6 (1993).

abstracted from its culturally coherent, albeit oppressive, context.⁶⁶ To aggressively inscribe a true *female* subject in the discursive space that is uncovered by MacKinnon's deconstruction of the male gaze reveals her overidentification with male power. Such profound insights about the nature of women's oppression demand a more sophisticated account of the relationship between power and identity.

B. Post-Structuralism: A Strategic Perspective on Sex

For post-structuralist feminists, essentialism simply fails to go far enough. To assume, uncritically, the integrity of a pre-discursive agent is to fail to grasp the constitutive nature of signification.⁶⁷ Constructionist theorists argue that any claim for an acontextual, ahistorical *I* is both impossible and incoherent. "If identity is asserted through a process of signification, if identity is always already signified, and yet continues to signify as it circulates within various interlocking discourses, then the question of agency is not to be answered through recourse to an 'I' that preexists signification."⁶⁸

Without succumbing to the dead-end, solipsistic nihilism of some of the pioneering French post-structuralists, feminist and queer theorists have recently begun to consider female sexual agency not as a matter of transcending patriarchal hegemony, but as a subversive, discursive strategy.⁶⁹ Building on the work of Derrida⁷⁰ and Foucault,⁷¹ Judith Butler,⁷² Barbara Johnson,⁷³

66. Numerous writers have objected to MacKinnon's myopic metaphysics, arguing that her deconstruction of male social power fails to recognize the hegemonic dynamics of racism, heterosexism, classism, as well as the ways in which these practices do more than merely accumulate additional burdens on top of our primary experience of oppression as women. See, e.g., Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191, 202 (1989-90) (criticizing MacKinnon's neglect of lesbian experience); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 157 (critiquing the white feminist attempt to view sexual identity as more primary than race or class based identity); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 591 (1990), reprinted in FEMINIST LEGAL THEORY, *supra* note 26, at 235, 242 (criticizing MacKinnon's marginalization of black women).

67. See, e.g., BUTLER, *supra* note 22, at 4 ("The suggestion that feminism can seek wider representation for a subject that it itself constructs has the ironic consequence that feminist goals risk failure by refusing to take account of the constitutive powers of their own representational claims."); Linda Alcoff, *Cultural Feminism versus Post-Structuralism: The Identity Crisis in Feminist Theory*, 13 SIGNS 405 (1988) (discussing the progression in feminist theory from essentialism to post-structuralism to the recent work on subjectivity by Teresa de Lauretis and Denise Riley, among others); Butler, *supra* note 7, at 13-14.

68. BUTLER, *supra* note 22, at 143. *Always already* has become the oft-vilified motto of Derridian post-structuralism, sometimes sloppily used in deconstructive theory as a foundational substitute for essentialism. For an interesting discussion of the use and abuse of *always already* in deconstructionist theory, see FUSS, *supra* note 20, at 15.

69. See, e.g., INSIDE/OUT: LESBIAN THEORIES, GAY THEORIES, *supra* note 7.

70. See generally JACQUES DERRIDA, OF GRAMMATOLOGY (Gayatri C. Spivak trans., Johns Hopkins University Press 1976) (1967); JACQUES DERRIDA, WRITING AND DIFFERENCE (Alan Bass trans., University of Chicago Press 1978) (1967).

71. See generally MICHEL FOUCAULT, THE ORDER OF THINGS: AN ARCHEOLOGY OF THE HUMAN SCIENCES (R.D. Laing ed., Vintage Books 1973) (1966). Michel Foucault chal-

and Monique Wittig⁷⁴ (among others) have challenged feminists to recognize how language has the power to create social reality. Each day we rise and “do gender” in how we dress, speak, interact with others, and understand ourselves. We participate in and construct a signifying economy in which we perform daily according to the juridical rules that give meaning and boundaries to terms such as woman, female, and sex. Understanding the public, performative, and historical aspects of gender and sex is thus essential to the possibility of female sexual agency.

The conception of sex as a process finds its roots in Simone de Beauvoir’s claim that one is not born a woman, but rather becomes one.⁷⁵ If this is true, then women cannot be said to have an ahistorical truth before the mark of linguistic signification. Post-structuralist feminists thus charge that the essentialist call to transcend language in order to discover woman’s real essence is fundamentally incoherent.⁷⁶

Construction is not opposed to agency; it is the necessary scene of agency, the very terms in which agency is articulated and becomes culturally intelligible. The critical task for feminism is not to establish a point of view outside of constructed identities . . . [but] to locate strategies of subversive repetition enabled by those constructions, to affirm the local possibilities of intervention through participating in precisely those practices of repetition that constitute identity and, therefore, present the imminent possibility of contesting them.⁷⁷

Unsatisfied by the essentialists’ commitment to a humanist vision of a core volitional agent, post-structuralist feminists conceive of human subjectiv-

lenged the idea of sexed subjects by proposing a raw, original sexuality that is recontextualized through power relations into the male and female sexes. MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY VOLUME 1: AN INTRODUCTION* (Robert Hurley trans., Vintage Books 1980) (1976). His model is unsatisfactory, however, for it assumes that power and sexuality are ontologically distinct. Like the essentialist feminists, Foucault misconstrued the inherent relationship between power and sexuality, between power and desire. Feminist post-structuralists have built upon Foucault’s analysis but have rejected the idea that “the agency of repression and the object of repression be ontologically distinct. Indeed, repression may be understood to produce the object that it comes to deny.” BUTLER, *supra* note 22, at 93.

72. JUDITH P. BUTLER, *BODIES THAT MATTER* at x (1993) (“[T]he materiality of sex is constructed through a ritualized repetition of norms.”).

73. Barbara Johnson, *Thresholds of Difference: Structures of Address in Zora Neale Hurston*, 12 *CRITICAL INQUIRY* 278 (1985) (a white female academic exploring how Hurston, a Black female novelist, understands what it means to be colored).

74. Monique Wittig, *The Mark of Gender*, *FEMINIST ISSUES*, Fall 1985, at 3, 5-6. Gender is an effect produced by a heterosexual, male system of signification that comprises a coercive contract between language and bodies. The category *gender* therefore enslaves.

75. DE BEAUVOIR, *supra* note 22, at 301. Drucilla Cornell argues that de Beauvoir’s theory of “becoming” is grounded in a conception of the subject that, like MacKinnon’s, is essentially masculine. DRUCILLA CORNELL, *BEYOND ACCOMMODATION* 191-93 (1991).

76. BUTLER, *supra* note 22, at 4-5.

77. *Id.* at 147.

ity as an "emergent property of a historicized experience."⁷⁸ In other words, identity is produced through our experiences, both as subjects and objects of social construction. Drucilla Cornell and other post-structuralists believe that feminism should deconstruct sex into its constitutive acts and locate those acts within the compulsory framework that regulates the social appearance of sex.⁷⁹ Rather than searching for points of exit from social construction, then, the feminist project should be to discover points of entry. Construed in this way, consciousness is a strategy, a historical practice of deliberately manipulating meaning through the use of juridical, linguistic, and semiotic tools.⁸⁰ Consciousness is thus not a pre-discursive foundation that renders experience possible but rather the effect of experience.

With these ideas in mind, does Madonna's *Sex* facilitate or deconstruct her own objectification? In a sexual economy in which certain terms must have static meaning for heteromascularity⁸¹ to retain its power, one can interpret Madonna to be playing with the meanings of sex, pleasure, heterosexuality, consent, and the female body. Through hyperbole, syncopation, exaggeration, and the proliferation of inharmonious depictions of desire, Madonna has created a cacophony of meaning that destabilizes the dominant construction of female sexuality.

Like MacKinnon, Madonna proposes an impossible fantasy. But Madonna's fantasy is only impossible in the sense that she sets out to write the unspeakable, portray the unthinkable, and sing the unheard of, whereas MacKinnon amplifies the power of patriarchal images of women by rendering them ineffable. Whereas MacKinnon wants to shut down the discourse, Madonna challenges it head-on. She does so by repeating words and engaging in practices (which MacKinnon would find harmful and dangerous), declaring them sex. Madonna challenges the juridical power of dominant meaning from within the framework of that discourse. From within, she presents a stronger challenge than MacKinnon can from without.

The legal treatment of homosexuality provides a good example of how danger can always be found in the unspeakable.⁸² Many sodomy statutes

78. Alcoff, *supra* note 67, at 431.

79. Drucilla Cornell & Adam Thurschwell, *Feminism, Negativity, Intersubjectivity*, in *FEMINISM AS CRITIQUE*, *supra* note 22, at 143, 143.

80. "By seizing the opportunity to interpret and reinterpret the many levels on which pornography's meaning operates, while attacking coercion, we can have a role in redefining sexuality through what may be the only means available." Susan E. Keller, *Viewing and Doing: Complicating Pornography's Meaning*, 81 *GEO. L.J.* 2195, 2242 (1993).

81. *Heteromascularity* refers to the unstable object lying at the intersection of compulsory heterosexuality and sexism. For a thoughtful discussion of the interrelationship between heterosexuality and masculinity, see EVE K. SEDGWICK, *BETWEEN MEN: ENGLISH LITERATURE AND MALE HOMOSOCIAL DESIRE* (1985); EVE K. SEDGWICK, *TENDENCIES* (1993).

82. Of course, homosexuality is not alone in its relegation to the margins of speakability in an attempt to stabilize the integrity of "normal" sex. Women's sexuality and sex between people of different races have long been policed through the inarticulate prosecution of deviance—inarticulate in the sense that the law need not expressly state what it prohibits when euphemism or innuendo communicates coherently. See, e.g., *State v. Daniel*, 75 So. 836, 836 (La. 1917)

make no effort to define the particular kinds of acts they seek to criminalize. Rather, they refer to culturally coherent yet phenomenologically vague events such as the “infamous crime against nature,”⁸³ “the abominable and detestable crime against nature,”⁸⁴ or “unnatural and lascivious acts,”⁸⁵ to name only a few. Significantly, several courts have upheld these statutes in the face of challenges on vagueness grounds,⁸⁶ in one case holding that “the charge was too horrible to contemplate and too revolting to discuss.”⁸⁷

The unspeakability of the crime of homosexuality, that is, the crime of deviance from compulsory heterosexual norms, is evident in such bastions of legal tradition as Blackstone and the United States Supreme Court. Quoting from the touchstone of legal meaning and history, Chief Justice Burger cited Blackstone on “‘the infamous crime against nature’ . . . an offense of ‘deeper malignity’ than rape, a heinous act ‘the very mention of which is a disgrace to human nature’ and ‘a crime not fit to be named.’”⁸⁸

By criminalizing unmentionable acts on the correct assumption that we all know what behavior the law is designed to proscribe, the law performs an act of juridical circumcision—a purification of meaning and negation of deviance. “We won’t say it. Therefore it doesn’t exist.” Yet, the rendering of such sexual behavior as outlaw necessarily includes an affirmation of that same behavior. Indeed, the coherence of permitted behavior is fully dependent upon the existence of the prohibited “other”: deviance is necessary to the constitution and invention of normalized heterosexuality, masculinity, and femininity.⁸⁹ In this sense, it is as if acts proscribed by law lurk just below the surface of “proper” discourse, tempting us, while marginalized and repressed through linguistic, behavioral, and juridical enforcement. The unthinkable is thus fully within the culture, but fully excluded from the dominant culture. Norms regulating the meaning of gender and sexual orientation fall squarely within this notion of speakability and unspeakability. In this regard, heterosexuality is made “original” and “natural” through an ongoing process of

(“Concubinage is a term of such generally known meaning that it was not necessary for the Legislature to give it a legislative definition in the law condemning concubinage between a white person and a colored person.”).

83. ARIZ. REV. STAT. ANN. §§ 13-1411 to -1412 (Supp. 1988).

84. FLA. STAT. ch. 800.02 (1987).

85. MASS. GEN. L. ch. 272, § 34 (1986).

86. See, e.g., *Blake v. State*, 124 A.2d 273 (Md. 1956) (holding that the statutory term “unnatural or perverted practices” is not unconstitutionally vague and uncertain); *Commonwealth v. LeRoux*, 421 N.E.2d 1255 (Mass. App. Ct. 1981) (section prohibiting “unnatural and lascivious acts” did not fail to put defendant on notice that conduct was prohibited).

87. *Baker v. Wade*, 553 F. Supp. 1121, 1148 (N.D. Tex. 1982).

88. *Bowers v. Hardwick*, 478 U.S. 186, 197 (1986) (Burger, C.J., concurring) (quoting 4 WILLIAM BLACKSTONE, COMMENTARIES *215).

89. See Jonathan N. Katz, *The Invention of Homosexuality*, 20 SOCIALIST REV. 7 (1990) (discussing the late 19th-century effort to stabilize dominant meanings of sexuality through the invention of a “homosexual” category, which occurred prior to the invention of a “heterosexual” category).

compulsive, almost obsessive, linguistic, behavioral, and juridical repetition.⁹⁰ This form of meaning is grounded in a coerced compulsive truth.⁹¹

In another sense, certain sexual norms have been repeated so frequently and so pervasively that they no longer need to be spoken. They have, by virtue of their compulsive and compulsory repetition, become true, natural, assumed, and beyond question. Through unchallenged repetition over time, they have rendered their negation unintelligible. Into this category fall the meanings of male and female. That sex is determined by biology, genitalia, nature is beyond doubt. The work of repetitive significance has been done. To deny the truth of "all humans with penises are men" is to utter something unintelligible, akin to denying that "all bachelors are unmarried men." This form of unspeakability—even unthinkability—is a constructed tautology.⁹²

The task for post-structuralist theory is to identify and deconstruct the unspeakable and/or unspoken, in both the senses described above. It is in our definitions of effability that the policing of meaning and ultimately oppression take place:

It becomes important to recognize that oppression works not merely through acts of overt prohibition, but covertly, through the constitution of viable subjects and through the corollary constitution of a domain of unviable (un)subjects—*abjects*, we might call them—who are neither named nor prohibited within the economy of the law. Here oppression works through the production of a domain of unthinkability and unnameability.⁹³

C. Beyond Essentialism: Reconstructing Desire

"I'll teach you how to fuck."⁹⁴

"I wanted to be a slut at 16, but the costs were too high.

90. See Butler, *supra* note 7, at 21 ("[H]eterosexuality must be understood as a compulsive and compulsory repetition that can only produce the *effect* of its own originality.')

91. This notion of truth that depends upon the systematic demarcation and coercive discipline of deviation for its ongoing legitimacy is related to Pierre Bourdieu's theory of orthodoxy. See Richard Terdiman, *Translator's Introduction*, in Pierre Bourdieu, *The Force of Law: Toward a Sociology of the Juridical Field*, 38 HASTINGS L.J. 805, 812 (Richard Terdiman trans., 1987) ("[Orthodoxy is] correct, socially legitimized belief which is announced as a requirement to which everyone must conform. Orthodoxy thus implies some degree of external control.')

92. Bourdieu's notion of *doxa* parallels this stronger idea of unspeakability. See Bourdieu, *supra* note 91, at 848:

The law, an intrinsically powerful discourse coupled with the physical means to impose compliance, can be seen as a quintessential instrument of normalization. As such, *given time*, it passes from the status of 'orthodoxy,' proper belief explicitly defining what ought to happen, to the status of 'doxa,' the immediate agreement elicited by that which is self-evident and normal. Indeed, *doxa* is a normalcy in which realization of the norm is so complete that the norm itself, as coercion, simply ceases to exist as such.

93. Butler, *supra* note 7, at 20.

94. MADONNA, *supra* note 1, at 6.

Now, I can at least dress like one and hope."⁹⁵

In *Sex* Madonna challenges head on the myth of unspeakability. Throughout the book she overlays images of dominance and submission, sex and violence, risk and safety, pleasure and pain, and consent and coercion. At times, frames from the photographer's contact sheets are spliced, taped, or stapled together to create an almost cinematic quality. The slight variations between the frames produce the effect of movement across sexual categories from lesbian to straight, from male to female, from butch to femme, from S/M to Vanilla, and from group scenes to masturbation. Where one category ends and the next begins is often unclear.

The idea of discursive repetition is not new for Madonna. Her music and her videos are replete with references to cross-dressing,⁹⁶ juxtapositions of irreverent words and images with venerable ones,⁹⁷ and a surface play of gender, race, and sex where intersexual and interracial differences are erased through identical costuming, repetitive motions, and thematic word- and image-play.⁹⁸ When viewed through a post-structuralist lens, these characteristics of Madonna's work challenge the essentialist urge to stabilize whatever it is that constitutes woman or women's desire.

Madonna uses her body as a metafeminine prop to mock static notions of gender, sex, and sexuality. In this way she uses pastiche to reveal the plasticity of those notions.⁹⁹ Pastiche refers to a copy of a copy, a laying bare of the constructed, performative nature of the so-called original through the use of repetition, exaggeration, and proliferation. In contrast to parody, which purports to be a copy of an implicated original, pastiche denies the possibility of a true original. By expressing an excess of femininity, Madonna asserts "that femininity is a device" and "takes simulation to its limit in a deconstructive maneuver that plays femininity off against itself—a metafemininity that reduces gender to the overplay of style."¹⁰⁰ Madonna's occasional appropriation of the Marilyn Monroe look exemplifies this sort of deconstruction, exposing Monroe's status as male fantasy. Madonna's conscious and deliberative overplay of femininity demonstrates that femininity is performative in the first instance.

Male drag expresses the same idea, exploding the notion that gender iden-

95. Lisa Duggan, *The Anguished Cry of an 80's Fem: "I Want To Be A Drag Queen"*, *OUT/LOOK*, Spring 1988, at 62-63.

96. See, e.g., MADONNA, *Justify My Love*, on THE IMMACULATE COLLECTION (Sire Records 1990); MADONNA, *Vogue*, on VOGUE (Sire Records 1990) [hereinafter MADONNA, *Vogue*]; MADONNA, *Express Yourself*, on LIKE A PRAYER (Sire Records 1989).

97. See, e.g., MADONNA, *Papa Don't Preach*, on TRUE BLUE (Sire Records 1986); MADONNA, *Like A Virgin*, on LIKE A VIRGIN (Sire Records 1984).

98. MADONNA, *Vogue*, *supra* note 96.

99. Frederic Jameson originated the idea of *pastiche* in post-modern theory. See Frederic Jameson, *Postmodernism and Consumer Society*, in THE ANTI-AESTHETIC: ESSAYS ON POSTMODERN CULTURE 111, 113 (Hal Foster ed., 1983).

100. Cathy Schwichtenberg, *Madonna's Postmodern Feminism*, in THE MADONNA CONNECTION, *supra* note 19, at 129, 134.

tity is the rightful property of one or another sex. It challenges the notion of an inner truth of sex of which gender identity is merely an external expression.

At the most complex, [drag] is a double inversion that says "appearance is an illusion." Drag says "my 'outside' appearance is feminine, but my essence 'inside' [the body] is masculine." At the same time it symbolizes the opposite inversion: "my appearance 'outside' [my body, my gender] is masculine but my essence 'inside' [myself] is feminine."¹⁰¹

Male drag creates a juridical dissonance when it locates femininity on the male body and speaks the unspeakable. The drag shticks of comedians like Milton Berle and Jerry Lewis were funny to many people because they consisted of men wearing the "wrong" costumes, but they posed no threat to the dominant culture's understanding of sex and gender.¹⁰² As clowns, their comedic exaggeration showed they did not really mean anything by it.¹⁰³

However, Madonna's pastiche means something else altogether. Not many people think it's funny. A woman in female drag says something quite different than a man who dons a dress, wig, and nails. A man in female drag imitates some "other," while a woman in female drag appears to imitate herself. When a woman consciously exaggerates and manipulates femininity and female sexuality, the pastiche changes from seeming humorous to virtually unintelligible.

One series of photographs in *Sex* depicts Madonna interacting with ac-

101. ESTHER NEWTON, *MOTHER CAMP: FEMALE IMPERSONATORS IN AMERICA* 103 (1972).

102. To some degree, drag has been accepted as an existing form or style of dress, though it clearly remains outside the cultural center. For instance, it seems to be integrated into contemporary women's fashion. A recent issue of *Essence* borrowed from drag to make a point about fun fashion:

We sisters know what they mean when they talk about "Gender-Bender" fashion. It's borrowing your man's hat, but giving it a flirty, one eyed tilt. Or flashing open a tailored jacket for a glimpse of something sheer underneath. We've come a long way since the days when we had to play it straight to get a foot inside the executive suite. Now we can take care of business in clothes with sass as well as class.

Mister Sister, *ESSENCE*, Nov. 1992, at 82 (introduction to fashion spread of female models in "men's clothing" with a "feminine flair"). A recent issue of *Vanity Fair* exploited a similar melange of bodies, gender, and beauty. The cover portrayed a teddy-clad model, Cindy Crawford, giving a shave to k.d. lang, a female singer, who was dressed in a man's suit and had her face (her "beard") covered with shaving cream. *VANITY FAIR*, Aug. 1993.

103. See JUDITH P. BUTLER, *BODIES THAT MATTER* 126 (1993):

[Julie Andrews in *Victor Victoria*, Dustin Hoffman in *Tootsie*, or Jack Lemmon in *Some Like It Hot* are] drag as high het entertainment, and though these films are surely important to read as cultural texts in which homophobia and homosexual panic are negotiated, I would be reticent to call them subversive. Indeed, one might argue that such films are functional in providing a ritualistic release for a heterosexual economy that must constantly police its own boundaries against the invasion of queerness, and that this displaced production and resolution of homosexual panic actually fortifies the heterosexual regime in its self-perpetuating task.

(footnote omitted).

tress Isabella Rossellini, who is dressed in a man's suit.¹⁰⁴ These pictures go beyond a reverse male drag, for the fantasies they represent create erotic havoc at the three-way intersection of a decontextualized female body, sexual re-orientation, and a fluid mapping of masculine and feminine identity. In effect, Madonna is borrowing from lesbian femmes who have said they like their boys to be girls. When a woman dressed as a man desires another woman dressed as a woman (or not dressed at all), the object of her desire is different than that of a man who lusts after a woman. In other words, Madonna's fantasies allow us to question whether the object of lesbian/butch desire is an entirely different female/femme than the object coveted by heterosexual/masculinity.

Madonna both eludes the feminist label¹⁰⁵ and escapes the rhetoric of feminism. Claiming the label "Boy Toy" early in her career was a strategic move similar to the one made by film director Marlon Riggs, who speaks of "negro faggotry" in order to evade both the understanding of homosexuality by gay white males and the understanding of race by proponents of black power.¹⁰⁶ This practice of self-signification has a quality similar to the structure of the game show "Jeopardy!". As your host, Madonna is giving you the answer: sex. It's up to you, the reader, to figure out the question.

Madonna's ability to see humor in anyone or in anything being taken too seriously is evident throughout *Sex*. Very early in the book, among a series of scenes with Madonna and two S/M lesbians,¹⁰⁷ appears a photograph of the three of them laughing, perhaps at themselves or at the idea that anyone would take too seriously their power play.¹⁰⁸ In this photograph, Madonna seems to express visually what Judith Butler has observed about pastiche: "[T]here is a subversive laughter in the pastiche-effect of parodic practices in which the original, the authentic, and the real are themselves constituted as effects."¹⁰⁹

Weaving together photographs, text, and music, *Sex* and Madonna's other work¹¹⁰ represent both a conscious construction and constructed consciousness of desire. If consciousness is a strategy, then identity is an attitude, and gender is a fashion statement. By liberating desire from language, gender from bodies, and sex from labels, Madonna creates a sexual subject through a process similar to that described by Linda Alcoff and Teresa de Lauretis. According to Alcoff, de Lauretis argues that "language is not the sole source and

104. MADONNA, *supra* note 1, at 87-89, 91.

105. Camille Paglia, the feminist that feminists love to hate, wants to claim Madonna as the ultimate feminist of the 1990s. See, e.g., Camille Paglia, *Flashpoint*, *Us*, Dec. 1992, at 18; Camille Paglia, *Madonna—Finally, A Real Feminist*, *N.Y. TIMES*, Dec. 14, 1990, at A39. But see Ellen Goodman, *No Sermon, Madonna, If You Cut the Propaganda*, *L.A. TIMES*, Sept. 23, 1986, § 2, at 5 (criticizing Madonna's song, "Papa Don't Preach," for not alerting teenage women to the perils of early motherhood).

106. *Tongues Untied* (PBS television broadcast, Jul. 16, 1989).

107. MADONNA, *supra* note 1, at 7-15.

108. *Id.* at 11.

109. BUTLER, *supra* note 22, at 146.

110. See *supra* notes 96-97.

locus of meaning, that habits and practices are crucial in the construction of meaning, and that through self-analyzing practices we can rearticulate female subjectivity.”¹¹¹ In *Sex*, Madonna may be creating just such a subjectivity:

I don't think that you have to have a language in common with someone to have sexual rapport. . . . Sex can overcome the language barrier because it's all body language anyway Sometimes when you can't speak it kind of frees you up. They're whispering all this shit in your ear and they could be talking about the theory of relativity for all you know. They could be calling you a cunt bitch whore from hell. They could be saying, "As soon as you come I'm going to kill you," and you're yelling, "Yes! Yes!"¹¹²

Sex does not deliver a unifying or whole description or explanation of Madonna's sexuality. Rather, like post-structuralist feminists, Madonna deconstructs the substantive appearances of gender and sex into their constitutive acts. With each turn of the page, we discover a new scene with new actors, who seem to be saying, "Let's try this. Ooh, that feels good!" As a reader, I feel almost like the straight men from Wall Street who frequent Sally's, a well-known transvestite/transsexual hooker bar in Times Square in New York City, on their way back to the suburbs in the evening. For two bucks up at the bar you can slip your hand up a girl's skirt and cop a feel. The excitement, for some, is in the mystery of what they will find at the top of her thigh. For the regulars, the sexual thrill involves the overlay of illusion, the destabilized erotic possibilities of a man feeling up either a man dressed as a woman, a former man dressed as a woman, a man dressed as a lesbian, or a woman. In this setting, as in *Sex*, the sexual subject, stripped of reductive labels, is able to play with unconstrained desire. Sexual identity becomes a matter of accessories.¹¹³

The message from Sally's and *Sex* is that desire is not confined by a system of mutually exclusive categories and labels, such as heterosexual and homosexual, male and female. Sexuality is much more complicated. It is, as Janet Halley writes, a continuum from desire, to particular sexual acts or be-

111. Alcott, *supra* note 67, at 431.

112. MADONNA, *supra* note 1, at 95.

113. The yoking of sexual identity and fashion is certainly not a new idea for gay men and lesbians, who have always relied heavily upon dress as a code or signal to find one another and to reflect sexual style:

Although there is persistent folklore about how homosexuals look, act, or behave, the truth is that one of the problematics—and survival tactics—of homosexuals is to be able to perform and “unperform” (“signify” and “pass”) membership: a cluster of tactics homosexuals share in common with African Americans, though perhaps inverted. A major mode of signifying for modern homosexuals has been to subvert or hyperperform signifiers of gender. Likewise, strict attention to gender signifiers (especially those that match one's biological sex signifiers) have constituted a major form of “passing.”

Cindy Patton, *Embodying Subaltern Memory: Kinesthesia & the Problematics of Gender & Race*, in THE MADONNA CONNECTION, *supra* note 19, at 87.

haviors, to internal naming of identity, to external or public labeling.¹¹⁴ This conception of sexuality allows us to see desire as both separate from and related to the power inherent in the dominant discourse that makes external labeling possible. What we desire or fantasize about may thus not “fit” with our private definitions of our sexuality.

The shotgun precision of the public labeling of sexuality, which tells women that they are heterosexual and defines what they like to do, suffers from an epistemological imperialism that denies the possibility of female sexual agency. Are we to locate our “true” sexuality in our private erotic desires, in those desires we choose to act upon with our sexual partner(s), in the labels we give ourselves, or in the labels the external world gives us? If a self-defined lesbian, subject to the overwhelming cultural power of compulsory heterosexuality, fantasizes about and gets turned on by the idea of being fucked by a man, can we still say anything meaningful about the term *lesbian*? What is the difference between the heterosexual woman who closes her eyes and fantasizes about a woman performing oral sex on her every time her boyfriend goes down on her and the lesbian who gets off on looking down and seeing a woman between her legs?¹¹⁵

What is it, after all, that we are liberating?

This question is what makes *Sex* and sex especially interesting. In her book, Madonna strips away category and reveals particular practices and her own personal desires. If the power of heteromascularity derives from its ability to deploy reductive and stable signifiers of masculinity and femininity, Madonna challenges that power by destabilizing the coherence of gender, sexual orientation, and sex. She does so by playing off of the dominant discourse, by using pastiche to illustrate that her desire is to “normal” sexuality as a copy is to a copy, and to show that the idea of a true or real sexuality is a lie:

The big lies. “I love you.” Everybody loves you when they are

114. Janet E. Halley, *The Politics of the Closet: Towards Equal Protection for Gay, Lesbian, and Bisexual Identity*, 36 UCLA L. REV. 915, 932-63 (1989).

115. Even more interesting, confusing, and challenging to essentialist notions of sexuality is the increasingly popular phenomenon of on-line computer sex. With a modem and a computer, people can log on to sexual cyberspace in which they can select from a wide menu of sexual encounters in what are called “public rooms.” Once in a room, the participants flirt and proposition one another until exiting to “private rooms” in pairs or groups to “have sex.” This new medium for sexual encounters provides entirely new possibilities for anonymous sex, fantasy, and manipulation of the sexual subject. Lesbians can and do pass for gay men in the gay rooms, straight men frequently pass for women in the lesbian rooms, and gay men pass as straight women in the heterosexual rooms. Not surprisingly, many straight men in the heterosexual rooms and many women in the lesbian rooms are concerned with ferreting out imposters through strategic questioning and testing. The straight men are afraid of having a homosexual experience via computer sex with a man passing as a woman, while the lesbians take issue with straight men trying to invade their women-only space. This hostility to the manipulation of sex and orientation on the part of some straight men and lesbians is tremendously interesting since it occurs in a context defined by the power of anonymous sexual fantasy. It attests to both the potency of homophobia and the degree to which lesbians feel assaulted by straight males’ presumptuous sexuality.

about to come. Then there's I won't come in you—that's the biggest lie. Believe that one and you'll buy the Brooklyn Bridge. Then there are guys who say "I have never fantasized about being with a man." They are lying. And the least offensive men I've been with in terms of their sexual politics and how they view me as a woman have been men who have either slept with men or at least kissed or held a man once. It opens up your thinking. You don't think that women are less than you are. And of course there's "This won't hurt a bit."¹¹⁶

Both radical essentialist and post-structuralist theorists recognize the lies that try to pass as truths about gender, sex, and sexuality. They part company, however, in their prescriptions for what to do with the lies once they are exposed. The essentialists' political mission is to tell the truth from a single, epistemological standpoint outside the male hegemony and without the language that produces the lies. For the post-structuralists, telling the truth is impossible without language, and all language creates its own truth. The feminist task is thus to disrupt univocal posturing through the subversion of any and all language available to us. If language has the power to create what is socially real, then we must talk and perform our way out of a reality that maims us and leaves us partial beings. *Sex* seems to be at least partial proof that this can work. Madonna declares that *Sex* is about "fantasies I have dreamed up"¹¹⁷ and then proceeds to act them out, write them down, and sing them to us. What else *could* she do?

III CONCLUSION

In a movement in which some (straight) feminists annually protest the *Sports Illustrated* "swimsuit issue," and some (lesbian) feminists rush out to buy it the day it hits the newsstands, what values can all feminists share when it comes to liberating women's sexuality?¹¹⁸ At the very least, most feminists would agree that female sexuality is profoundly influenced by male sexuality. But how do we go about discovering what we truly desire? Radical essentialism provides unsatisfactory and incomplete answers to this question. Presuming a transcendent, univocal, and universal female experience, essentialism neither accounts for its own normative priority, nor legitimately speaks for all women.

Feminist post-structuralism approaches the authenticity of the female experience in a different manner. Social theorists like Judith Butler and Joan

116. MADONNA, *supra* note 1, at 63.

117. *Id.* at 2.

118. I am not prepared to say, however, that women's failure to agree on the genesis of sexual oppression can be reduced merely to differences in sexual orientation, although I do believe that lesbians and straight women experience sexism quite differently. Even among lesbians there is little agreement about matters such as gay marriage, sado-masochistic sex, or the significance of butch and femme.

Scott propose a more dispersed constellation of power relationships, which constructs a multiplicity of meanings and possibilities for women's lives and which offers the opportunity for female agency:

Within these processes and structures, there is room for a concept of human agency as the attempt (at least partially rational) to construct an identity, a life, a set of relationships, a society within certain limits and with language—conceptual language that at once sets boundaries and contains the possibility for negation, resistance, reinterpretation, the play of metaphoric invention and imagination.¹¹⁹

The play of metaphoric invention and imagination describes what Madonna is up to in *Sex*. Perhaps we can find the most liberated and exciting forms of female sexual experience through a kind of hermeneutic vampirism, whereby we rummage through past and present sexual iconography and suck what life we can out of the unsuspecting world around us. By feeding ourselves with the stolen souls of the only sexual forms available to us, we hold in our hands the power to shape and transform what has shaped and transformed us.

119. SCOTT, *supra* note 25, at 42.