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FEMINISM AND THE FALSE DICHOTOMY OF VICTIMIZATION AND AGENCY*

ELIZABETH M. SCHNEIDER**

During the last twenty years, feminist activists and lawyers have attempted to transform societal understandings and to shape legal definitions of several interrelated harms against women: woman-abuse, rape, sexual harassment, and pornography. In each of these areas, feminist redefinition of harm has been premised on a theoretical framework of gender subordination in which women are primarily viewed as victims.¹ However, as feminist work on these issues has developed, tensions within feminism and conflicts among feminists have emerged concerning women's victimization.² In this essay, I suggest that feminist work has too often been shaped by an incomplete and static view of women as *either* victims *or* agents, and argue that what I have previously identified as the false dichotomy between women's victimization and

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** Professor of Law, Brooklyn Law School. An earlier version of this essay was presented at a panel on "Victim Feminism" at the Law and Society Association 1994 Annual Meeting. I am grateful to Martha Fineman, Tom Grunfeld, Susan N. Herman, Minna Kotkin, Sylvia Law, Betty Levinson, Martha McClusky, and Martha Minow for materials, conversation and comments and to Suzanne Brackley and Stephanie Manes for research assistance. A Brooklyn Law School Faculty Research Grant generously supported my research and writing. This essay is part of a larger project on tensions within feminist legal theory and practice.

1. This theoretical framework has been called "dominance feminism." "Dominance feminism" is used "to describe that strand of feminist (legal) theory that locates gender oppression in the sexualized domination of women and the eroticization of that dominance through pornography and other aspects of popular culture. . . . Catharine MacKinnon would probably be described as the primary—and most visible—exponent of this theory" but there are a "range of feminists who have worked theoretically and, often through political practice, to raise consciousness about male sexualization of and aggression against women." Kathryn Abrams, *Songs of Innocence and Experience: Dominance Feminism in the University*, 103 YALE L.J. 1533, 1549 (1994) (reviewing KATIE ROIPHE, *THE MORNING AFTER* (1993)).

2. For an historical perspective on feminist conflict on a variety of different issues see generally, *CONFLICTS IN FEMINISM* (Marianne Hirsch & Evelyn Keller eds., 1990), Nadine Taub, *Thoughts on Living and Moving With the Recurring Divide*, 24 GA. L. REV. 965 (1990). For more recent examples of conflict on the theme of victimization and agency see *infra* note 26 and accompanying text; see also Tamar Lewin, *Feminists Wonder If it Was Progress to Become 'Victims'*, N.Y. TIMES, May 10, 1992, § 4, at 6.

women's agency is a central tension within feminism.³ I briefly examine themes of victimization and agency and the vacillation between these extremes in feminist legal theory and practice generally, and situate the pornography debate, the subject of this Symposium, within this larger context.

I first explored the dichotomy between victimization and agency in feminist legal work in a 1986 article examining women's self-defense work and the problem of expert testimony on battering.⁴ This article examined the theme of victimization as it had emerged in expert testimony in homicide cases involving battered women who had killed their assailants—testimony on what had become known as “battered woman syndrome”⁵—and raised serious questions about “battered woman syndrome.”⁶ I suggested that although the development of expert testimony on battering by feminist litigators had been important because it described the common experiences of battered women, educated the courts, and thus helped battered women in getting justice, it was also problematic.⁷ Expert testimony that emphasized, or is understood to emphasize, only the helplessness or victimization of battered women was necessarily partial and incomplete because this testimony does not address the crucial issue of the particular woman's action, or her agency—namely how that battered woman acted to save her own life. Judges and juries evaluating the self-defense claims of battered women who have killed their batterers are looking at women who have been both victims and actors. In spite of their victimization these women have mobilized their resources to keep themselves and their children alive, and ultimately acted to protect themselves. I suggested that this emphasis on victimization had the

3. Elizabeth M. Schneider, *Describing and Changing: Women's Self-Defense Work and the Problem of Expert Testimony on Battering*, 9 WOMEN'S RTS. L. REP. 195, 197, 220 (1986) [hereinafter *Describing and Changing*]; see also Elizabeth M. Schneider, *Particularity and Generality: Challenges of Feminist Theory and Practice in Work on Woman-Abuse*, 67 N.Y.U. L. REV. 520, 548 (1992) [hereinafter *Particularity and Generality*].

4. See *Describing and Changing*, *supra* note 3, at 220.

5. Expert testimony on battering was developed to explain the common experiences of, and the impact of, repeated abuse on battered women. “The goal was to assist the jury, and the court in fairly evaluating the reasonableness of the battered women's action. . . . [E]xpert testimony was predicated on an assumption that battered women's voices would not be understood or were not strong enough to be heard in the courtroom.” *Id.* at 198. “In most of the cases in which expert testimony on battering has been presented, the expert has testified concerning battered woman syndrome, a pattern of severe physical and psychological abuse inflicted upon a woman by her mate.” *Id.* at 202.

6. *Id.* at 216.

7. *Id.* at 221.

potential to lock lawyers and judges into stereotypical thinking that may prevent them from understanding the reasonableness of the individual battered woman's act.⁸ I argued that in order to present an appropriate explanation of her act, defense lawyers must be sensitive to both victimization and agency; the woman's action has to be put in the context of her victimization.⁹

My central point was that although an appreciation of women's experiences as victims was necessary and important, an exclusive focus on women's victimization was incomplete and limiting because it ignored women's active efforts to protect themselves and their children, and to mobilize their resources to survive. At the same time, I argued that an exclusive focus on women's agency, reflected in the emphasis on why the woman had not left the battering relationship, was shaped by liberal visions of autonomy, individual action, and individual control and mobility, which were equally unsatisfactory without the larger social context of victimization.¹⁰ I sought to explode the false and disabling dichotomy between notions of victimization and agency in feminist theory and practice.¹¹ Concepts of women's victimization and agency are both overly simplistic; both fail to take account of the oppression, struggle, and resistance that women experience daily in their ongoing relationships.¹² I concluded that:

[P]ortrayal of women as *solely* victims or agents is neither accurate nor adequate to explain the complex realities of women's lives. It is crucial for feminists and feminist legal theorists to understand and explore the role of both victimization and agency in women's lives, and to translate these understandings into the theory and practice that we develop.¹³

I have continued to explore this theme of victimization and agency as it has emerged in other dimensions of legal reform work on battered women.¹⁴ The battered women's movement has begun to grapple with

8. *Id.*

9. *Id.*

10. *Id.* at 222.

11. *Id.* at 221-22.

12. *Id.* at 220-21.

13. *Id.* at 221 (emphasis added).

14. See *Particularity and Generality*, *supra* note 3.

the limitations of the concept of victim.¹⁵ The term "battered woman survivor" is now used, and there is a developing literature that details the active efforts of "battered woman survivors."¹⁶ Resource and advocacy materials on battered women now emphasize the human strengths and capacities of battered women who struggle to survive, protect themselves and their children, and keep their families functioning.¹⁷

Yet, the victimization/agency dichotomy persists and pervades legal reform work for battered women. We can see this in the societal focus on women having to leave the battering relationship, and in the problems of battered women who are mothers. First, there is a common perception that a battered woman should have left the violent relationship. The question is always, "Why didn't she leave?" This view trivializes the woman's victimization, the physical harm that she has suffered, and the trauma that she has experienced; it also does not take account of the complexity of the relationship, the social, psychological, and economic factors that impeded her, and the risk of death that she faces in leaving.¹⁸ The exclusive focus on a particular form of agency—exit—renders invisible all the other active efforts that the woman may have made to protect herself and her children.¹⁹ Battered women who are mothers are viewed as primarily responsible for the harms to which their children are exposed, and their own victimization is often not understood;²⁰ they may be denied custody of their children or have their parental rights terminated

15. See *id.* at 550. See also Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398, 1428 (1992) (describing the different strategic characterizations of a battered woman in an advocacy context as "victim" or "reasonable woman").

16. See *Particularity and Generality*, *supra* note 3, at 550 n.125 (citing to recent materials that reflect the change in treatment of battered women).

17. See *id.*; see also EDWARD W. GONDOLF & ELLEN R. FISHER, BATTERED WOMEN AS SURVIVORS: AN ALTERNATIVE TO TREATING LEARNED HELPLESSNESS (1988); LEE A. HOFF, BATTERED WOMEN AS SURVIVORS (1990); JAN BERLINER STATMAN, THE BATTERED WOMAN'S SURVIVAL GUIDE: BREAKING THE CYCLE 87-100 (1990).

18. See *Particularity and Generality*, *supra* note 3, at 557-59. Martha Mahoney has described battered women's fear of "separation assault, the violent attacks batterers make when women attempt to leave relationships." Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work, and the Confirmation Hearings*, 65 S. CAL. L. REV. 1283, 1304 (1992).

19. See Mahoney, *supra* note 18, at 1303-04. Mahoney explains that if exit remains a focal point, we will fail to examine a more important act of agency, staying, and the tremendous "will, strength and determination" that may accompany such a decision. *Id.* at 1304.

20. See *Particularity and Generality*, *supra* note 3, at 555-57.

because they are viewed as passive in having failed to protect their children from abuse when they may have made active efforts to do so.²¹

When I first considered the theme of victimization and agency in feminist theory and practice, I saw parallels in feminist work on battering and pornography.²² I suggested that work on anti-pornography ordinances developed by Catharine MacKinnon and Andrea Dworkin²³ reflected a similarly dangerous emphasis on the exclusivity of women's victimization.²⁴ I perceived that these anti-pornography ordinances were animated by a view of heterosexual sexuality as victimization that dismissed women's participation and pleasure as sexual actors.²⁵ As the anti-pornography movement has developed, this view of women as victims has become only more pronounced.²⁶

Today, the theme of feminism as victimization dominates popular culture.²⁷ Despite feminist legal struggles on many diverse fronts in

21. *See id.*

22. *See Describing and Changing*, *supra* note 3, at 220-21.

23. *See, e.g.*, Minneapolis, Minn., Ordinance (Dec. 30, 1983) (amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 139); Minneapolis, Minn., Ordinance (Dec. 30, 1983) (amending MINNEAPOLIS, MINN., CODE OF ORDINANCES tit. 7, ch. 141) (each passed twice by the city council, and vetoed each time by the mayor). *See also* American Booksellers Ass'n v. Hudnut, 771 F.2d 323 (7th Cir. 1985), *aff'd*, 475 U.S. 1001 (1986), *reh'g denied*, 475 U.S. 1132 (1986) (Indianapolis, Ind. ordinance held unconstitutional).

24. *See Describing and Changing*, *supra* note 3, at 221 n.186.

25. *See id.*

26. *See id.* at 220-21; *see also* Lisa Duggan et al., *False Promises: Feminist Anti-Pornography Legislation in the U.S.*, 38 N.Y.L. SCH. L. REV. 133 (1993); Carole S. Vance, *More Danger, More Pleasure: A Decade After the Barnard Sexuality Conference*, in PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY at xxii (Carole S. Vance ed., 2d ed. 1992), *reprinted in* 38 N.Y.L. SCH. L. REV. 289 (1993); Nadine Strossen, *A Feminist Critique of "The" Feminist Critique of Pornography*, 79 VA. L. REV. 1099 (1993); Carlin Meyer, *Sin, Sex and Women's Liberation: Against Suppressing Porn*, 72 TEX. L. REV. 1097 (1994).

27. There has been an extraordinary amount of media attention to the theme of feminism as victimization. *See generally* Sarah Crichton et al., *Sexual Correctness: Has It Gone Too Far?* NEWSWEEK, Oct. 25, 1993; Lewin, *supra* note 2, at 6. Much of this recent attention has been promoted by the publication of Katie Roiphe's *The Morning After* (1993) and Naomi Wolf's *Fire With Fire* (1993), particularly since both authors are highly mediagenic. In addition, Katie Roiphe has been given special attention by such influential newspapers as *The New York Times*, which excerpted a portion of her book as its Sunday Magazine cover story. *See* Katie Roiphe, *Date Rape's Other Victim*, N.Y. TIMES, June 13, 1993, § 6, at 26. The *Times* also devoted a Sunday Book Review cover story to a review of *The Morning After* and has featured her in other articles. *See* Wendy Kaminer, *What is This Thing Called Rape?*, N.Y. TIMES, Sept. 19, 1993, § 7

recent years, anti-pornography work has predominantly shaped media attention.²⁸ Recent public attention to the important issues of sexual harassment initiated by the Anita Hill - Clarence Thomas hearings,²⁹ and "date rape"³⁰ has also highlighted women's claims of gender

(Book Review), at 1; see also Katie Roiphe, *All the Rage*, N.Y. TIMES, Nov. 29, 1993, at A17 (editorial about how Lorena Bobbitt's act of violence symbolizes the anger and frustration of the women's movement which sometimes erupts in "unexamined rage"); Barbara Presley Nobel, *At Lunch With Katie and Anne Roiphe: One Daughter's Rebellion or Her Mother's Imprint?*, N.Y. TIMES, Nov. 10, 1993, at C1 (interview with Katie Roiphe and her mother, Anne Roiphe); Christopher Lehmann-Haupt, *Divergent Views of Rape as Violence and Sex*, N.Y. TIMES, Sept. 16, 1993, at C15 (discussing Katie Roiphe's views).

28. This is largely because the media has lionized Catharine MacKinnon as the primary feminist legal thinker and spokeswoman. See, e.g., Fred Strebeigh, *Defining Law on the Feminist Frontier*, N.Y. TIMES, Oct. 6, 1991, § 6 (Magazine), at 28 (interviewing Catharine MacKinnon and tracing the development of her theories on pornography). See also *The First Amendment, Under Fire From the Left: Whose Free Speech? A Discussion by Two Leading Authorities, Moderated by Anthony Lewis*, N.Y. TIMES, March 13, 1994, § 6 (Magazine), at 40 (featuring Catharine MacKinnon debating Floyd Abrams, a prominent defender of the First Amendment, on the issue of pornography).

29. See *Hearings on the Confirmation of Clarence Thomas to the Supreme Court of the United States Before the Senate Committee on the Judiciary*, 102d Cong., 1st Sess. (1991). At his Senate confirmation hearings, Clarence Thomas was accused of sexual harassment by Anita Hill, a former aide. See Joseph P. Kahn, *Susan Faludi Lashes Back; 'Backlash' Author is Angry as Ever, But Heartened by a Renewed Fervor for Feminism*, BOSTON GLOBE, Oct. 13, 1992, at 57 (stating that the hearings "focused the country's attention on sexual harassment in the workplace"); Deborah Sontag, *The Changing Face of Harassment*, N.Y. TIMES, Nov. 2, 1992, at B3 (noting that the hearings "helped redefine sexual harassment as a volatile issue").

30. "Date rape" or "acquaintance rape" has received tremendous national attention because it is increasingly recognized as a common form of rape, and because of many highly publicized cases such as those involving William Kennedy Smith and Mike Tyson in which the rape victim and the accused had some prior relationship. In addition the Antioch College "date rape" code has been the source of much discussion and humor.

Antioch College, a small liberal-arts school in Ohio, instituted a strict sexual-offense policy in 1992 in response to a number of sexual assaults on campus. The code requires students engaging in sexual relations to obtain their partner's consent for each individual act of intimacy and sex. Although there are some who view the consent policy as a step in the right direction, others, taking it to its literal extreme, have described it as reading "like a *Saturday Night Live* routine." Indeed, *Saturday Night Live* has satirized the policy in one of its sketches. See Jane Gross, *Combating Rape on Campus in a Class on Sexual Consent*, N.Y. TIMES, Sept. 25, 1993, at 1; *Saturday Night Live* (NBC television broadcast, Oct. 2, 1993). See also Jeff Giles & Stanley Holmes, *There's a Time for Talk, and a Time for Action*, NEWSWEEK, Mar. 7, 1994, at 54, 55 (mocking the policy as "[reeking] of political correctness"); Jason Vest, *The School That's Put Sex to the*

subordination, and has been heard as emphasizing women's experiences of victimization.³¹ Not surprisingly, we are now seeing a backlash against women as victims.³² These views have been fueled by two recent books, Katie Roiphe's *The Morning After*³³ and Naomi Wolf's *Fire With Fire*,³⁴ which attack "victim feminism"³⁵ and have received extraordinary media attention.³⁶

Test; At Antioch a Passionate Reaction to Consent Code, WASH. POST, Dec. 3, 1993, at G1 (stating that the policy had become "something of a national joke"). *But see* Eric Fassin, *Playing by the Antioch Rules*, N.Y. TIMES, Dec. 26, 1993, § 4, at 11 (suggesting that even if the Antioch rules make people uncomfortable at first, it is more important to wait and see if they help improve relationships between men and women, and that such rules are necessary in the "absence of cultural consensus"); Ellen Goodman, *Behind the Sexual Liberation Struggle*, BOSTON GLOBE, Oct. 28, 1993, at 10 (describing the policy as a positive effort "to rewrite the dialogue about sexual relations" and concluding that the sexual "checklist" is not so much an "impediment to sex" as it is a "prerequisite for a lifetime of mutual pleasure").

31. Both sexual harassment and "date rape" are the subjects of both Katie Roiphe and Naomi Wolf's books. *See infra* notes 33-41 and accompanying text. *But see* Lewin, *supra* note 2, at 6 (quoting Professor Martha Mahoney of the University of Miami Law School saying "Anita Hill never said she was a victim or that she was terrorized. She spoke as someone who had been trying to do her job and get on with her life. She talked about her struggle and the context of her struggle. But what she was heard as, and judged as, was someone claiming victim status because that's the only way we're heard at all.").

32. *See, e.g.*, Anna Quindlen, *Victim and Valkyrie*, N.Y. TIMES, Mar. 16, 1994 at A21:

There has been a backlash against feminism, a backlash that teaches that there has been too much emphasis on the belief, bad for women and men alike, that to be a woman is to be beleaguered and under attack. Those who deride victim feminism insist that the point of the women's movement is to make women feel powerful, strong, in control of their own lives, and not to cast men as the enemy. With this goal, we cannot disagree. But such Valkyrie feminism coexists uneasily with the facts of our lives, lives in which their scars are the price some women pay simply for being female.

Id.

33. KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* (1993).

34. NAOMI WOLF, *FIRE WITH FIRE: THE NEW FEMALE POWER AND HOW IT WILL CHANGE THE 21ST CENTURY* 141 (1993) (noting the recent emergence of "victim culture" critics, who have attacked feminists for focusing on women as mere victims).

35. *See* ROIPHE, *supra* note 33, at 51-112, 138-60; WOLF, *supra* note 34, at 135-42, 191-97.

36. *See* note 27, *supra*. *See also* Margaret Emery, *Feminism Under Fire*, TIME, Sept. 20, 1993, at 86 (reviewing Katie Roiphe's *The Morning After*); Deirdre English, *Take Back the Fright*, N.Y. NEWSDAY, Oct. 10, 1993, at 37 (reviewing *The Morning*

In both books the authors criticize feminist work on "date rape," sexual harassment, and pornography as "victim feminism"³⁷ and offer "power feminism"—premised on women's individual agency, choice, and exercise of responsibility—as the alternative.³⁸ Roiphe and Wolf argue that feminist emphasis on victimization in these contexts reinforces sex-stereotypical views of women as fragile and passive.³⁹ But their complaint of "victim feminism" and solution of "power feminism" are simplistic in failing to grapple with the systematic nature of women's subordination and women's active efforts to resist such subordination. Regretfully, they also demonstrate a lack of compassion for women, particularly women who are not in situations where they can assert "power feminism."⁴⁰ Both books underscore the fundamental inadequacy of focusing on *either* victimization *or* agency (reconceived as "victim feminism" or "power feminism") to capture the complexity of struggle in women's lives and highlight the way this false dichotomy leads to problematic extremes.⁴¹

After); Linda Bird Francke, *Woman the Conqueror*, N.Y. TIMES, Nov. 28, 1993, § 7 (Book Review), at 9 (reviewing Naomi Wolf's *Fire With Fire*); bell hooks, *Color Roiphe Privileged, Says Black Feminist*, N.Y. NEWSDAY, Oct. 27, 1993, Pt. 2, at 57 (reviewing *The Morning After*); Michiko Kakutani, *Helpful Hints for an Era of Practical Feminism*, N.Y. TIMES, Dec. 3, 1993, at C29 (reviewing *Fire With Fire*); Karen Lehrman, *Fire With Fire*, NEW REPUBLIC, Mar. 14, 1994, at 40 (reviewing *Fire With Fire*); Adele M. Stan, *Women Warriors*, N.Y. TIMES, Dec. 17, 1993, at A39 (Op-Ed); Cathy Young, *Women Writers Disagree on Rape, Porn and Victimhood*, S.F. EXAM., Jan. 18, 1994, at A21. As of spring 1994 a computer search on the topic of victim feminism turned up more than 1000 articles in national magazines and newspapers.

37. See ROIPHE, *supra* note 33, at 51-112, 138-60; WOLF, *supra* note 34, at 135-42, 191-97.

38. For purposes of this discussion, I deal with both of these books together, although there are differences between them. Katie Roiphe's book is anecdotal, based on her experiences as a Harvard undergraduate and Princeton graduate student, and is clearly written from the vantage point of an observer of the women's movement. Naomi Wolf writes as a feminist, and sees her book as a manual for feminist work in the nineties. However, both fall into similar traps of simplifying themes of victimization and agency in feminism and seeing them as opposites. See ROIPHE, *supra* note 33, at 29-50; WOLF, *supra* note 34, at 135-42, 305-21.

39. See ROIPHE, *supra* note 33, at 29-50, 85-112; WOLF, *supra* note 34, at 149, 185.

40. See ROIPHE, *supra* note 33, at 51-112; WOLF, *supra* note 34, at 135-42, 180-214.

41. See ROIPHE, *supra* note 33, at 29-50, 85-112; WOLF, *supra* note 34, at 135-42, 161-79.

Debates within feminism about pornography reveal a similar vacillation. For MacKinnon and other "porn-suppression" feminists,⁴² "sexuality is a realm of unremitting, unequalled victimization for women. Pornography appears as the monster that made this so."⁴³ Yet, "[f]eminist theorists have also argued that the sexual terrain, however power-laden, is actively contested. Women are agents, and not merely victims, who make decisions and act on them, and who desire, seek out, and enjoy sexuality."⁴⁴

There are several problems with this dichotomy between victimization and agency, and the historic vacillation between these theories in feminism. First, the conception of *both* victimization and agency is too narrow and incomplete. Second, victimization and agency are not extremes in opposition; they are interrelated dimensions of women's experience.

Women's victimization is a real dimension of women's subordination. But as Martha Minow has recently suggested, victimization claims are both deeply embedded in our culture and inevitably contradictory.⁴⁵ On the one hand, victimization claims make powerful appeals for sympathy, solidarity, compassion, and attention.⁴⁶ On the other hand, claims of victimization can be interpreted as attempts to avoid responsibility, to suppress the societal and structural dimensions of discrimination, to emphasize a fixed and limited sense of identity, and to undermine the strength and capacity of individuals.⁴⁷ I suggest that although victimization claims may always be problematic, and are viewed with great social ambivalence, these contradictions are particularly profound in the area of gender. Victim claims for women trigger deep stereotypical assumptions of passivity, purity, and protectiveness, as well as deep resentment. Concepts of agency are also limited and problematic. Traditional views of agency are based on notions of individual choice and responsibility, individual will and action: perceptions of a world composed

42. Carlin Meyer uses the term "porn-suppression" feminists. See Meyer, *supra* note 26, at 1097 & n.3.

43. Duggan et al., *supra* note 26, at 162.

44. *Id.* at 162-63.

45. Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1430-31 (1993) (describing how victim claims present a series of dilemmas).

46. *Id.* at 1415 (describing some attractions of claims of victimhood as "obtaining sympathy, relieving responsibility, finding solidarity, cultivating emotions of compassion, and securing attention").

47. *Id.* at 1429.

of atomized individuals, acting alone, unconstrained by social forces, unmediated by social structures and systemic hardship.⁴⁸

Women's victimization and agency are each understood to exist as the absence of the other—as if one must be either pure victim or pure agent—when in fact they are profoundly interrelated.⁴⁹ Neither victimization nor agency should be glorified, understood as static, viewed in isolation or perceived as an individual or personal issue, for gender subordination must be understood as a systemic and *collective* problem—one in which women experience both oppression and resistance.⁵⁰ Indeed, Martha Fineman has suggested that, because of the influence of the “dominance” strand of feminist theory which has emphasized women's sexual subordination and minimized systemic problems such as economic discrimination, single motherhood, and

48. Mahoney, *supra* note 18, at 1314. Recognition of the mass appeal of the language of agency and “power feminism” can be seen in the National Rifle Association's effort to sell guns to women with advertisements telling women “how to choose to refuse to be a victim.” See *Ms.—Is This Power Feminism? The Push to Get Women Hooked on Guns*, *Ms.*, May/June 1994 (special edition-cover story); see also Melinda Henneberger, *The Small-Arms Industry Comes on to Women*, *N.Y. TIMES*, Oct. 24, 1993, §4, at 4 (reporting on charges made by women's groups that the NRA's message increases the risk of violence against women and cynically appropriates feminist language); Ann Jones, *Living With Guns Playing With Fire*, *Ms.*, May/June 1994, at 38; Ellen Neuborne, *Cashing in on Fear: The NRA Targets Women*, *Ms.*, May/June 1994, at 46.

49. Martha Mahoney, *Victimization or Oppression? Women's Lives, Violence and Agency*, in *THE PUBLIC NATURE OF PRIVATE VIOLENCE* (Martha Albertson Fineman & Roxanne MyKitiuk eds., forthcoming 1994). Mahoney is critical of “prevailing social and legal concepts of agency.” She says,

In our society, agency and victimization are each known by the absence of the other; you are an agent if you are not a victim, and you are a victim if you are in no way an agent. In this concept, agency does not mean acting for oneself under conditions of oppression; it means being without oppression, either having ended oppression or never having experienced it at all. This all-agent or all-victim conceptual dichotomy will not be easy to escape or transform.

Id. See also Abrams, *supra* note 1, at 1552-56.

50. Dorothy Roberts has recently explored the idea of resistance to oppression and detailed the development of “resistance theory that restores the critical return of human agency, while recognizing the constraints of structure.” Dorothy E. Roberts, *Deviance, Resistance and Love*, 1994 *UTAH L. REV.* 179, 182-83. Resistance theory examines the way in which individuals accommodate, mediate and resist dominating social practices; for individual oppositional actions “reflect the broader dialectical relationship between social structure and human agency.” *Id.* at 183.

welfare, there is an overly personal, individual and "self-help" dimension to this recent resurgence of victimization/agency rhetoric.⁵¹

Feminist work should reject these extremes and should instead explore the interrelationship between, and simultaneity of, oppression and resistance. I urge a more textured and contextual analysis of the interrelationship between women's oppression and acts of resistance in a wider range of women's circumstances. We must seek to understand both the social context of women's oppression, which shapes women's choices and constrains women's agency and resistance, and also recognize women's agency and resistance in a more nuanced way. This means that we reject simple dichotomies, give up either/ors, learn to accept contradiction, ambiguity, and ambivalence in women's lives, and explore more "grays" in our conceptions of women's experience, rather than seeing only "blacks" and "whites." We should try to capture this more honestly in the feminist legal theory and legal practice that we develop.

There are promising examples of these efforts in recent feminist scholarship, work which provides a fuller, richer picture of the simultaneity of oppression and resistance and gives a deeper and more textured meaning to the concept of women's agency. For example, Angela Harris has analyzed the insufficiency of the victim/agency dichotomy for women of color.⁵² Martha Mahoney has explored the interrelationship between oppression and resistance for battered women, and has examined the concept of exit in battering and sexual harassment as an example of the limited notion of agency.⁵³ Dorothy Roberts' work

51. Martha Fineman emphasized this point in her presentation at the panel on "Victim Feminism" at the Law and Society 1994 Annual Meeting. The Feminism and Legal Theory Workshop at Columbia Law School that Fineman organized in June 1994 was entitled "Direction and Distortion: The Centrality of Sexuality in the Shaping of Feminist Legal Theory." One of the themes that emerged at the Workshop was the way in which feminist theoretical focus on sexuality as an issue had given a more personal and individual cast to recent feminist work. Even issues such as sexual harassment have been understood much more as sexual (individual), rather than workplace (collective). See Carlin Meyer, *Sexuality and the Workplace* (June 1994) (unpublished manuscript, on file with author). See also Katha Pollitt, *Subject to Debate*, NATION, Feb. 21, 1994, at 224 (describing "victim feminism" as a class phenomenon).

52. See Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 601 (1990). Angela Harris challenges the essentialism of Catharine MacKinnon's work, and "dominance theory" generally; she suggests that "[b]lack women have simultaneously acknowledged their own victimization and the victimization of black men by a system that has consistently ignored violence against women by perpetrating it against men." *Id.*

53. Martha Mahoney's work explores this interrelationship in a number of different contexts. See Martha R. Mahoney, *Exit: Power and the Idea of Leaving in Love, Work and the Confirmation Hearings*, *supra* note 18; Martha R. Mahoney, *Legal Images of*

on motherhood and crime details the meaning of both oppression and resistance,⁵⁴ and Kathryn Abrams has examined these issues in a number of different contexts.⁵⁵

Feminist struggles on the issue of pornography must be understood in this larger framework. A more textured perspective on the interrelationship between victimization and agency means that we understand that sexual images of women may have many different meanings that reflect both women's oppression and women's resistance. Although women are not merely sexual victims, women's assertion of sexual pleasure and agency is complex because women's sexuality is shaped by women's experiences of rape, sexual harassment and abuse, and severe limits on reproductive freedom. In the pornography context, there is tension between the recognition that coercion extends beyond traditional

Battered Women: Redefining the Issue of Separation, 90 MICH. L. REV. 1 (1991); Martha R. Mahoney, *Victimization or Oppression?*, *supra* note 49; Martha R. Mahoney, *Whiteness and Women*, In *Practice and Theory: A Reply to Catharine MacKinnon*, 5 YALE J.L. & FEMINISM 217 (1993).

54. Dorothy Roberts has explored these issues of oppression and resistance in a number of contexts primarily relating to motherhood. See Dorothy E. Roberts, *Deviance, Resistance and Love*, *supra* note 50; Dorothy E. Roberts, *Motherhood and Crime*, 79 IOWA L. REV. 95 (1993); Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality and the Right of Privacy*, 104 HARV. L. REV. 1419 (1991).

55. Kathryn Abrams' work has consistently emphasized these contradictions. See Kathryn Abrams, *Ideology and Women's Choices*, 24 GA. L. REV. 761, 795 (1990) (suggesting that rather than attempting to explain women's actions as stemming from either victimization or agency, feminists should "explore multi-causal explanations of controversial choices made by women"). In her insightful review of Katie Roiphe's book, which discusses the victimization and agency dichotomy, Abrams addresses the need for feminists "to integrate the more complex accounts of human nature and agency that have informed recent theoretical discussions into popular and legal debates." Abrams, *supra* note 1, at 1556.

Although this task is only now in its inception, it is possible to sketch its general outlines. It will require, first, mobilizing the appropriate imagery in describing the lives of women. Contradiction and complexity, shifting combinations of choice and restriction, will need to be depicted in concrete terms that a range of audiences can understand. This task will also require interpretive framework that emphasizes that such complex, constrained images are not exceptional or pathological: though the particular constraints may be specific to the circumstances of a group, the distance from a condition of unencumbered autonomy is more widely shared. Finally, feminists will need to address the features of the legal world that make accounts of partially compromised autonomy, or complex, divided identities difficult to accommodate or comprehend.

Id. at 1556-57 (citations omitted).

liberal concepts of choice and the desire to grant women a sense of empowerment and agency to make choices. Feminists have finally begun to explore the varied dimensions of women's sexual agency and pleasure under constraints of sexual oppression. At such a moment, we should not fall back on familiar and tired characterizations that do not capture the richness and complexity of this struggle. Sexual images, like sexuality itself, may simultaneously be a source of women's experiences of victimization and oppression, and a site of women's agency and resistance.⁵⁶ If we examine both of these dimensions simultaneously, our work will be more meaningful, and will be more grounded in, and more reflective of, the experiences of women's lives.

56. See generally PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY, *supra* note 26; BAD GIRLS AND DIRTY PICTURES: THE CHALLENGE TO RECLAIM FEMINISM (Alison Assiter & Avedon Carol eds., 1993); SEX EXPOSED: SEXUALITY AND THE PORNOGRAPHY DEBATE (Lynne Segal & Mary McIntosh eds., 1993); see also Celia Barbour, *Looking at Pictures*, N.Y. TIMES, April 23, 1994, at 25 (arguing that women deserve to create their own sexuality, and a "pornography of their own" might help).

