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LESBIAN PERSPECTIVE, LESBIAN EXPERIENCE, AND THE RISK OF ESSENTIALISM

Patricia A. Cain*

INTRODUCTION

In the spring of 1989 at the 20th National Conference on Women and the Law, I made a plea for feminist legal theorists to consider lesbian perspective and experience in the formulation of their theories.¹ I argued that ignoring the reality of our (i.e., lesbians’) different experience is to fall into the “essentialist trap.”² In other words, I believed then, as I do now, that it is dangerous to build grand or totalizing feminist theory from the perspective of only a few women.

Two important things have happened since I gave that speech: (1) some people have told me that they perceived my project as one designed to uncover the “essential lesbian” and add her voice to the building of feminist legal theory; and (2) other people, including lesbian lawyers and academics, have pushed far beyond my 1989 challenge and are working on the development of a lesbian legal theory.³

Both of these events trouble me because they appear to embrace the concepts of essentialism that caused me to make my plea for lesbian inclusion in the first place. Lesbian perspective and lesbian expe-

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¹ Professor of Law, University of Iowa. I would like to thank Professors Jean Love and Jane Dolkart for their comments on an earlier draft of this essay. I am also grateful to all the participants at the National Women Law Students’ Association Inaugural Conference: Women in Law Cooperating for Change, for their questions, insights, and continuing dialogue.

² For the published version of these remarks, see Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 Berkeley Women’s L.J. 191 (1989-1990).

rience are no more monolithic than woman’s perspective and experience. It follows logically, then, that theorists who use the categorical term “lesbian” are subject to the same charges of essentialism pressed against theorists who use the categorical term “woman.”

Yet it is perfectly clear to me that as a feminist who sometimes theorizes, and as a lesbian, I am much more comfortable challenging the monolithic and universal character of “woman” than of “lesbian.” While it may be true that the broader category “woman” is more vulnerable to challenge merely due to its breadth, my hesitancy to deconstruct and destabilize the concept “lesbian” cannot be fully explained by the relative breadth or generality of the two terms.

This hesitancy became apparent to me when I spoke at the Inaugural Conference of the newly formed National Women Law Students’ Association at the University of Virginia in February 1994. Time and again I heard myself say: I do not believe there is any such thing as an “essential woman.” For the sake of consistency, I then had to conclude: Nor do I believe there is any such thing as an “essential lesbian.” The “essential lesbian” is certainly not the one described by Simone de Beauvoir in *The Second Sex*, I pointed out. Nor is she the badly dressed person that is sometimes mentioned in Judge Richard Posner’s book, *Sex and Reason*. No, she is not what they describe, I

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5 Beauvoir’s Chapter on “The Lesbian” begins: “We commonly think of the lesbian as a woman wearing a plain felt hat, short hair, and a necktie; her mannish appearance would seem to indicate some abnormality of the hormones.” Simone de Beauvoir, *The Second Sex* 450 (H.M. Parshley ed. & trans., Vintage Books 1974) (1952). Beauvoir herself rejects the “abnormal hormone” part of the description. She continues, after the above quote, by saying that it is wrong to equate the female homosexual “with the ‘viriloid’ woman” and that her “sexuality is in no way determined by any anatomical ‘fate’.” Id. at 451.

6 Posner offers the following explanation for why lesbians dress more poorly than heterosexual women or homosexual men: “Since men are sexually more aroused by visual cues than women are, we expect both men who are sexually interested in men, and women who are sexually interested in men, to dress better than . . . women who are sexually interested in women.” Richard Posner, *Sex and Reason* 106 (1992). Posner does not cite evidence of the fact that lesbians dress poorly other than to note it is a common observation that they do. Id.
said. And then I proceeded to ask: What is she? What is it that is at the core of lesbian experience and existence?

To ask those questions was to suggest the possibility of a coherent answer. And while I continue to resist such questions when the subject is "woman" (because there is no real essence, no real core, because "woman" is a construct), I find myself reluctant to place those quotation marks around "Lesbian," to call her a construct, something not real. I am not alone in this reluctance.7 In this Essay, I attempt to probe the reasons for this reluctance.

In Part I, I focus on the problem of essentialism as it has been constructed and deconstructed within feminist theory generally. In Part II, I turn to a discussion of essentialism as it affects the category lesbian. I address both the meaning of "lesbian experience" and the construction of "lesbian perspective." Finally in Part III, having concluded that it makes sense to speak of lesbian experience and perspective, I question whether it also makes sense to develop a specific "lesbian legal theory" apart from feminist legal theory. I conclude that lesbian legal theory makes the most sense as a project, separate from feminist legal theory, if it focuses on issues of particular significance to lesbians and theorizes about strategies that will improve lesbian existence.

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7 As Diana Fuss has observed:

In general, current lesbian theory is less willing to question or to part with the idea of a "lesbian essence" and an identity politics based on this shared essence. Gay male theorists, on the other hand, following the lead of Foucault, have been quick to endorse the social constructionist hypothesis and to develop more detailed analyses of the historical construction of sexualities.

Fuss, supra note 4, at 98. Fuss offers the following explanation for this apparent difference: "The stronger lesbian endorsement of identity and identity politics may well indicate that lesbians inhabit a more precarious and less secure subject position than gay men. Lesbians, in other words, simply may have more to lose by failing to subscribe to an essentialist philosophy." Id. at 98-99.
I. ESSENTIALISM AND FEMINIST THEORY

The problem of essentialism in feminist theory has been described in different ways by different theorists. Two primary criticisms usually arise in conjunction with the charge of "essentialism:" false universalization and biological determinism.

A. False Universalization

A common way of phrasing the essentialism charge leveled against feminist theorists is to attack feminist critiques that are made from a "woman's standpoint." To assert the existence of a female point of view in contrast to a male point of view tends to make a claim about the existence of a monolithic and universal woman's experience that produces the female point of view. It is easy to understand how this tendency to claim universality for female experience and point of view occurs. When a feminist academic critiques the knowledge of reality embraced by others in her discipline, often she will show that the knowledge was created from a male-centered perspective. She can do that by revealing a different perspective—the perspective of women, or at least of some women, or at least of that single woman. Of course, for the critique to carry any weight as a feminist critique, it must make a claim to truth beyond the perspective of one single woman. Otherwise, the critique would simply be an individual criticism of existing theory that has nothing to do with gender difference or the differences in the lived realities of men and women. Thus, feminist critiques of male reality have claimed to speak in the voice of—if not all women—then at least a majority of women.

8 See, e.g., id. at 2 (describing essentialism as belief in true essence); Spelman, supra note 4, at ix-x (describing essentialism as a problem of exclusion); Martha Minow, Feminist Reason: Getting It and Losing It, 38 J. of Legal Educ. 47, 49-50 (1988) (describing essentialism as false universalization).

9 Martha Minow has explained: "As many feminist theorists are beginning to recognize, our critique runs the great risk of creating a new standpoint that is equally in danger of projecting the experience of some as though it were universal." Minow, supra note 8, at 49.

10 See, e.g., Catharine A. MacKinnon, Feminism Unmodified 86 (1987) (arguing that a female perspective on rape, sexual harassment, and pornography is necessary for feminists theorizing about sex and violence). MacKinnon also points out that because something is true about "woman" does not mean that it has to be true for all women. Id. at 55-56.
When feminist theorists make these sorts of claims they often reify the concept woman in a way that ignores the varying experiences of different women. When other women (i.e., different women) scrutinize these claims and find them not to be a valid claim about their own presumably “female” experience, these other women will often charge the particular feminist theorist with making a false claim about the essential (i.e., universal) nature of “woman.”

Charges by the excluded women then are really claims about false universals, or overgeneralization. The false universal can be based either on socially constructed facts about women’s experience or on biological facts. For example, feminist theories based on woman’s treatment by man as sex object overgeneralize the socially constructed experience of women. Furthermore, feminist theories that claim women are more connected to life than men because women get pregnant, overgeneralize from biological facts that are may be true for some, but not all, women.

B. Biological Determinism

Biological determinism differs from false universalization. Feminists may overgeneralize about the nature of women from biological facts without engaging in biological determinism. In the early

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11 See generally MacKinnon, supra note 10; Catharine A. MacKinnon, Toward a Feminist Theory of the State (1989) (focusing on man’s sexual dominance of woman as that experience is socially constructed).

12 See Robin West, Jurisprudence and Gender, 55 U. Chi. L. Rev. 1 (1988) (arguing that biological differences cause women to be more connected to others than men).

13 For example, in the late 19th century, most women responded to the scientific theories of Charles Darwin and Herbert Spencer by agreeing with the basic premise that women and men had evolved differently. They even agreed with the overgeneralization that women were not as intelligent or creative as men. Darwinian theory explained that women were less intelligent than men because their female ancestors, having been protected by men, had not needed to develop mental prowess. Some women, however, disagreed with conservative thinkers of the day who assumed that natural selection would “biologically determine” that women be intellectually inferior to men forever. Instead, these women argued that changing women’s activities could make women more intelligent. Some 19th century feminists even embraced the biological determinism aspects of Darwinism and claimed that women’s biologically determined essence was, if not superior to man, at least equally valuable in preserving society. See generally Men’s Ideas/Women’s Realities: Popular Science, 1870-1915 1-53 (Louise Michele Newman ed., 1985) [hereinafter Men’s Ideas/Women’s Realities].
stages of the second wave of feminism, most feminists fought the concept of biological determinism (and its relative, social Darwinism) because it had long been used by male theorists to limit the concept of woman. Female biology determined that women would become mothers and caregivers and, that woman, as the weaker sex, would be dependent on man. Patriarchal theories about the roles of the two sexes used arguments from biology to keep women in their subordinate roles.

The role of biology in modern feminist theories varies significantly from theorist to theorist. A theorist may embrace the concept of social construction, while at the same time recognizing that the existence of the individual body, including its biological and physiological limitations, plays some role in the process of constructing a self. For this theorist, the self would not predate society. Rather, the self would be entirely a construct of society. The final construct, however, would depend in part upon the social construction of the body. In this sense, biology plays a role in the construction of the category “woman,” but it need not determine that category.

For a feminist who embraces some form of biological determinism, biology obviously plays a much larger role in the construction process. For example, some feminists take the position that “woman” has an essential nature that is different from man and, further, that

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14 The second wave of feminism began in the “1960s” and is often identified with the publication of Betty Friedan’s book, *The Feminine Mystique*, in 1963.

The first wave of feminism occurred around the turn of the century and culminated in the acquisition of suffrage for women. For details of this early history and its connection to modern feminism, see Nancy Cott, *The Grounding of Modern Feminism* 13-50 (1987).


16 For example, Jean-Jacques Rousseau argued that since women are naturally different from men, they ought not to have the same education. See Jean-Jacques Rousseau ‘Marriage,’ reprinted in *Philosophy of Woman: An Anthology of Classic and Current Concepts* 179, 181 (Mary B. Mahowald ed., 2d ed. 1983) (1956); see also Bradwell v. State, 83 U.S. 130, 141 (1872) (agreeing that the State of Illinois can ban women from the practice of law because “[t]he natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life”) (Bradley, J., concurring).

17 See, e.g., *Fuss*, supra note 4, at 49-53 (discussing the anti-essentialist theories of Monique Wittig).
woman's essential nature is not the nature that has been assigned to her by a male-dominated society. Nor would a feminist reconstruction of her nature unveil her true essence since the essence, according to these theorists, predates society. 18 Woman's essence, in effect, is something real at the core of the self and can only be discovered by peeling back the layers of socially constructed self that obscure the true and natural essence. 19 Feminists who embrace this notion of woman's essence are often accused of biological determinism since the only part of self that predates society is the body. 20

C. What is Wrong with Essentialism?

To the extent essentialism is based on biological determinism, I find myself rejecting it as I reject any deterministic theory. Whereas my body may limit my possibilities as an actor in this world, my body does not predetermine my nature or my essence. For example, my body may determine that I will not ever play for the Los Angeles Lakers, but that limitation on my actions in the world does not prevent me from developing the personality of a star athlete. I create my own self. I create my own essence. And I am perpetually recreating my essence so as not to have my essence limit who I become. 21

18 See, e.g., Luce Irigaray, This Sex Which Is Not One 212 (Catherine Porter & Carolyn Burke trans., Cornell U. Press 1985) (1977) ("How can I say it? That we are women from the start. That we don’t have to be turned into women by them."); see also Robin West, Feminism, Critical Social Theory and Law, 1989 U. Chi. Legal F. 59, 88-96 (1989) (suggesting that certain inner essences of woman are destroyed by patriarchy).

19 See West, supra note 18, at 88-89.

20 See, e.g., Fuss, supra note 4, at 56-57 (summarizing the criticism of Irigaray); see also Joan Williams, Deconstructing Gender, 87 Mich. L. Rev. 797, 845 n.11 (1989) (questioning the biological determinism of Robin West and other feminists).

21 My concept of a self that is forever constructing itself and is not determined by some pre-existing "essence" is rooted in the existential philosophy of Soren Kierkegaard, Jean-Paul Sartre, and Simone de Beauvoir. For existentialist essays by these philosophers, see A Kierkegaard Reader: Text & Narratives (Roger Poole & Henrik Stangerup eds., 1989); The Philosophy of Jean-Paul Sartre (Robert D. Cumming ed., 1965); Beauvoir, supra note 5.

I am less concerned about the essentialism-related charge of false universalization, at least when the theorizing is in the stage of critique, as opposed to proposing solutions. Although I do not believe there is a universal woman’s experience, I do believe the category “woman” is meaningful for creating theory. Some degree of generalization is necessary to theorize. If many white upper-class women in the 1960s understood Betty Friedan’s reference to the “problem that has no name” as a statement about their lives, then that general response tells us something about gender, about the relationship between men and women, or at least about a certain class of men and women. If African-American women, poor women, and lesbians do not respond to that reference (or if they respond differently), then that fact should also tell us something about gender (and about race, class, and sexual orientation).

All women need not respond similarly to an event to make a gender claim about that event. Lesbians, at least many lesbians, might well respond to certain events differently from nonlesbian women. For example, if you are a lesbian woman who is part of a lesbian community and you experience virtually no intimate or professional contact with men, you might well develop a different sense of your body than a nonlesbian woman might develop. You might also experience hierarchies and dominance differently, for although hierarchy and dominance can occur in woman to woman relationships (e.g., personal relationships, employer/employee relationships, teacher/student relationships), the imbalance in power is different when the relationship is freed from the baggage of gendered-power imbalances. The fact that

22 Important feminist works in which the category “woman” is deconstructed and its openness preserved as an aid in moving feminist theory forward include the following: Denise Riley, ‘Am I That Name?’ Feminism and the Category of ‘Women’ in History (Stephen Heath, Colin MacCabe & Denise Riley eds., 1988); Judith Butler, Gender Trouble: Feminism and the Subversion of Identity (1990).


24 The notion of male superiority and female dependence is so embedded in American culture that women often find themselves devalued even when they are the ones with power. For example, female lawyers are sometimes mistakenly believed to be secretaries. At professional social functions, women are sometimes presumed to be the wives of the professionals. Lesbians whose time is spent primarily with other lesbians typically escape experiences in which male superiority is presumed. That is not to say that there are no culturally imposed imbalances of power within the lesbian community. The butch-fem culture of some lesbian communities can contribute to power imbalances. But, it would be an over-
Lesbian and nonlesbian women may respond to situations differently based on their different experiences, does not weaken claims about the gender significance of either response. Indeed, the differences should enrich our understanding of how gender works in society both to the detriment and to the benefit of women.25

Problems, however, do arise when theorists move from generalization to universalization. So long as claims about woman’s experience and perspective are understood to mean “some women” or “many women,” then space will remain for “other women” to make claims about their gendered experiences. The category woman can be claimed by all women without claiming that it means the same for all women. As women, we can each share some piece of the category woman and the meaning of the pieces that we share can shift as our positions in relation to each other shift. Using this approach, one might think of “woman” as a coalition of meanings26 or as a “social collective.”27

simplification of the butch-fem experience to assume that the butch is presumed to be superior to the fem in the same way the male is presumed superior to a female. For a detailed description of butch-fem culture in one lesbian community, see Elizabeth L. Kennedy & Madeline D. Davis, Boots of Leather, Slippers of Gold (1993).

25 For example, it would be interesting to analyze claims about female to female sexual harassment, which although free from gender imbalance, are not always free from power imbalances. Consider the case of Jane Gallop, a nonlesbian feminist theorist, charged by a lesbian graduate student with sexual harassment. Although the harassment claim was dismissed, the administrative panel ruled that Gallop’s relationship with the student (an open lesbian) was amorous (they kissed in public once, but there was no further sexual conduct), and thus in violation of the ban on consensual sexual relations. I do not know the specific facts of this case beyond what has been reported in the news, but given Gallop’s reported explanations for the socializing, which occurred in the company of other students and the kiss (to show the student that she did not disapprove of her lesbianism), I am troubled by the panel’s readiness to find a violation of a consensual sex policy. For reports of this case, see Ron Grossman, Object Lessons: A Kiss Between Student and Teacher Is No Simple Matter These Days, Chi. Trib., Apr. 4, 1994, (Tempo), at 1.

26 As Judith Butler explained:

Gender is a complexity whose totality is permanently deferred, never fully what it is at any given juncture in time. An open coalition... will affirm identities that are alternately instituted and relinquished according to the purposes at hand; it will be an open assemblage that permits of multiple convergences and divergences without obedience to a normative telos of definitional closure.

Butler, supra note 22, at 16. See also Ruthann Robson, Embodiment(s): The Possibilities of Lesbian Legal Theory in Bodies Problematized by Postmodernisms and Feminisms, 2 Law
What we, as theorists, must do, however, to assure the requisite space for "other women," is to keep reminding ourselves that "woman" is a construct and not an essence. We must also bear in mind that the meaning of "woman" is constantly changing and that feminist theorizing should continuously work to destabilize the category woman so that it never becomes too fixed, while at the same time allowing individual women to "assume" a meaningful female identity.

Problems also arise when theorizing moves from critique to solution. When white, middle-class, nonlesbian women identify gender problems in their lives, without considering how those problems exist or do not exist in other women's lives, the resulting critique may be narrow, but it is not necessarily harmful. Once solutions are proposed for the identified gender problem, the narrowness of the critique becomes problematic. For example, unpaid leave so that employees may take care of children or ill family members may guarantee that some women will be able to return to their jobs, but what about those who cannot afford unpaid leave? What about lesbian women whose families (e.g., partner and/or partner's children) are not recognized in the solution and are thus not eligible for the leave?

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27 Iris M. Young, Gender as Seriality: Thinking About Women as a Social Collective, 19 Signs 713 (1994).

28 See Jane Gallop, Feminism and Psychoanalysis: The Daughter's Seduction xii (Stephen Heath & Colin MacCabe eds., 1982) ("I do not believe in some 'new identity' which would be adequate and authentic. But I do not seek some sort of liberation from identity. That would lead only to another form of paralysis—the oceanic passivity of undifferentiation. Identity must be continually assumed and immediately called into question.").

29 Under the Family and Medical Leave Act of 1993, employees are entitled to take unpaid leave to attend to certain family members, including spouses and children. Spouse is defined as "a husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage in States where it is recognized." 29 C.F.R. § 825.113(a) (1993).

The children of a lesbian couple might qualify as family, even as to the nonbiological mother, under the "in loco parentis" provision. "Persons who are 'in loco parentis' include those with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary." Id. § 825.113(c)(3).
Feminist philosopher Maria C. Lugones identifies the essentialism problem as the problem of difference. From her perspective, white theorists have responded to the charge that they were ignoring racial difference by quickly admitting the truth of the charge and then defensively explaining why “white” theorizing was nonetheless valuable, because all theorizing requires some generalization. White, middle-class, nonlesbian theorists acknowledge the problem of difference by dropping footnotes to explain that they are speaking from their own perspective and noting that there are other perspectives and experiences affected by differences of race, class, or sexual orientation. But, according to Lugones, this recognition of difference is not sufficient. Rather, an “interactive step” should be taken in order to form truly inclusive solutions. This step is essential to the formation of inclusive solutions. In other words, it is not enough for feminist theorists to realize that they speak from partial perspectives, they must listen to other perspectives carefully as they theorize solutions.

D. What’s Wrong with Anti-Essentialism?

Although I find the attacks on essentialism persuasive as a matter of pure theory, I can see a potential practical problem with anti-essentialism. To put the matter quite simply, if “woman” is not a stable category, how is it possible to build a political movement around the goal of improving the material conditions of women’s lives? I suppose the short answer is that we have managed to build a political movement. We have either believed or pretended that woman is a stable category which includes all women. That belief or pretense, however,
has not always worked successfully when put to the test in the real world of law. In particular, litigation efforts to gain equal rights for women have failed in the courts to help pregnant women and lesbians. I believe these failures are evidence that legal theorists need to keep pushing for broader theories that will destabilize the category. The resulting identity politics, as Diana Fuss suggests, should produce more inclusive remedies, because it will "militat[e] against the tendency to erase differences and inconsistencies."

III. ESSENTIALISM AND LESBIAN EXPERIENCE

A. Are There Problems with the Category Lesbian?

The argument that feminist theorists have ignored lesbian experience and perspective sounds a lot like the feminist argument that male-centered theories have ignored female experience and perspective. If "lesbian-centered reality" is to "woman-centered reality" what "woman-centered reality" is to "male-centered reality," then presumably my plea for lesbian inclusion could be attacked for its tendency to essentialize lesbian experience. Just as women are different from one another (and significantly so based on such life-differentiating experiences as race, class, and sexual orientation), so are lesbians different from one another. Thus, lesbian-centered theorists must be careful not to universalize lesbian experience. If the critique of feminist theory's

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36 See Valdes v. Lumbermen's Mutual Casualty Co., 507 F. Supp. 10, 11 (S.D. Fla. 1980) (holding that a woman fired because she was mistakenly believed to be a lesbian cannot recover under Title VII unless she can show that the asserted grounds for the firing was a pretext for sex discrimination). Several courts have held that sexual orientation discrimination is not a form of sex discrimination. See, e.g., DeSantis v. Pacific Tel. & Tel. Co., 608 F.2d 327 (9th Cir. 1979). Similarly, courts have held that Title VII does not apply to harassment on the basis of sexual orientation, because sexual harassment is limited only to harassment based on gender. See, e.g., Dillon v. Frank, 952 F.2d 403, 404 (6th Cir. 1992).

37 Fuss, supra note 4, at 104.

38 Lesbian theorist Shane Phelan has argued that the lesbian community's need for unity has led lesbian theorists to ignore difference amongst lesbians. Although the reasons for claiming universal lesbian experience or perspective can be understood empathetically as a desire for solidarity in the face of centuries of subordination, Phelan argues that the desire
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tendency to universalize can be picked up and transferred to lesbian theory without significant revision, then the argument would be that race and class are such significant life-differentiating experiences that white lesbians cannot speak for black lesbians\(^3\) (and vice-versa) and working-class lesbians cannot speak for rich lesbians (and vice versa).

The claim that there is such a thing as lesbian experience, and that lesbian experience would help inform feminist theory, might also be attacked as essentialist because the claim presumes there is such a thing as a lesbian, who is different from other women. In other words, lesbian perspective is a point of view. Who shares that point of view? Women who are essentially lesbian? Women who are born lesbian? And in any event, how do we determine who is a lesbian?

In this essay I do not wish to wrestle with the question of whether one is born a lesbian or not. I do not believe the answer to that question helps feminist theory in any way.\(^0\) Lesbian experience is important to feminist theory because lesbian lives tell us something about an oppression that is different from the oppression that nonlesbian women experience. If feminist theory is concerned with ending all oppressions, as I believe it is, then the oppression of heterosexuality, as experienced by lesbians, must be fully understood.\(^4\)

\(^{3}\) See Anita Cornwell, Black Lesbian in White America (1983) (pointing out some of the differences between being a lesbian in a black community and being a lesbian in a white community). For example, Cornwell points out that the black community is much more conservative about issues surrounding lesbianism, in part because of the role of the black church. Id. at 9-10. See also bell hooks, Talking Back: thinking feminist, thinking black 120-126 (1989) (discussing differing attitudes toward gay men and lesbians in different black communities and pointing out the double standard in her own community where gay men were accepted and lesbians shunned).

\(^{4}\) Whether lesbians are born (essentialism) or made (constructivism) is irrelevant to whether lesbianism is good or bad. See Janet Halley, Sexual Orientation and the Politics of Biology: A Critique of the Argument from Immutability, 46 Stan. L. Rev. 503, 516-529 (1994) (discussing pro-gay essentialism and pro-gay constructivism as being similarly opposed to anti-gay essentialism and anti-gay constructivism).

\(^{4\text{I}}\) For lesbians, two oppressive systems are in force. One system is that of gender subordination. The other is heterosexual privilege. Both of these oppressive systems affect nonlesbian women as well. But, since lesbians are not in sexually intimate relationships with men, the gender subordination that occurs within that intimate sphere is less of a personal concern for lesbians. By contrast, even if gender subordination were ended, heterosexual privi-
Having cast aside the essentialist concern linked to biology (i.e., are lesbians born or made?), I cannot as quickly cast aside concerns of universalization or overgeneralization. Yet, I find myself reluctant to question the existence of the essential or universal lesbian. Why am I more reluctant to deconstruct or destabilize the category lesbian than I am to deconstruct and destabilize the category woman?

1. Answer Number One: The category lesbian is too young to be destabilized.

The category woman has been around (metaphorically) since Eve. It has been loaded with negative content ever since Eve became the first sinner.42 "Woman" has been constructed as a sex object for man, as good mother, as bad mother, as the weaker sex, as the beautiful sex, as the immoral sex, and as the pure sex.43 As Simone de Beauvoir demonstrated in The Second Sex, "woman" has been constructed as "other" than man, as object, not subject.44 Feminists in the United States have been deconstructing that "other" for over 100 years.45 In the process, new and different images (feminist ones) have been created and the possibility of the female subject has been strengthened.46 A political movement has formed around the category "woman," in which women who identify themselves as within the category

42 After Eve's transgression in eating from the tree of knowledge, God commanded: "I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children; and thy desire shall be to thy husband, and he shall rule over thee." Genesis 3:16.


44 Beauvoir, supra note 5, at 139-198.

45 For early feminist arguments about the positive nature of woman and/or her positive role in society, see generally Men's Ideas/Women's Realities, supra note 13 (a collection of articles about woman's difference culled from The Popular Science Monthly between 1870 and 1915).

46 E.g., liberal feminists have argued that women are just as capable in the public sphere as men, thereby helping to create the modern image of the professional woman. See Drucilla Cornell, The Doubly-Prized World: Myth, Allegory and the Feminine, 75 Cornell L. Rev. 644 (1990) (calling for the use of myth to help us create new images of the feminine).
“woman,” struggle to improve the lives of all women. That political movement is responsible for making abortion available to some women, for making some male-controlled jobs available to some women, and for making some governmental resources available to support some mothers who care for their children. Women who have been left out of these political gains and feminists who believe that solidarity and unity are not necessary for political action have challenged the exclusionary results of some “women” attempting to “represent” all “women.”

“Lesbian,” by contrast, has not been around as a category since Eve. Lesbians may have been around, but they have had no words to describe themselves, no lesbian language to make themselves real, to name themselves. And this absence, this silence, appears to have been true for all lesbians, regardless of race, class, or other distinguishing characteristics.

“Lesbian” appeared on the scene after “homosexual,” and even “homosexual” is of recent vintage. “Lesbian,” in its modern incarnation—
tion (i.e., sometime within the past 100 years), meant female invert, abnormal, nymphomaniac,\textsuperscript{52} mannish woman. Unlike “woman,” the term lesbian, was imbued with no positive content by the nonlesbian majority.\textsuperscript{53} Lesbian feminist theorists are still working on the primary deconstruction of this “other” created by the heterosexist and homophobic patriarchal system.\textsuperscript{54} Nor is this deconstruction work easy, as the “tools” that are used in the process are often those of the “master” and therefore unlikely to dismantle the “master’s house.”\textsuperscript{55} The posi-

\textsuperscript{52} For a discussion of the connections made by 19th century physicians between lesbianism, nymphomania, and prostitution, see Carol Groneman, Nymphomania: The Historical Construction of Female Sexuality, 19 Signs 337, 355-57 (1994).

\textsuperscript{53} “Woman”, although irrational and weak, was also (provided she was white and of the right social class) beautiful, caring, and worthy of male protection. Although these feminine values have been used to keep women “on pedestals” or “in cages” (depending on your point of view), they were at least conceived of as “values.” The negative construction of “lesbian” is thus more similar to the negative construction of racial groups than the mixed construction of “woman.”

\textsuperscript{54} See Celia Kitzinger, The Social Construction of Lesbianism (1987) (critiquing the new “gay affirmative” scientific studies of lesbianism concluding that these studies are equally as oppressive as older scientific studies premised on an understanding of lesbianism as a psychological pathology); E.M. Ettorre, Lesbians, Women and Society (1980) (offering a sociological lesbian-centered analysis of lesbianism).


As an example of the difficulty, consider the fact that lesbian couples have been described in a widely cited study as having “sex less frequently by far than any other type of couple. . . .” Philip Blumstein & Pepper W. Schwartz, American Couples 195 (1983). But, what does “having sex” mean to lesbian couples when the phrase is imbued with heterosexist and patriarchal images of individual sex acts that culminate in orgasm? Is having sex the same as intercourse? Does it depend on penetration? On male orgasm? Female orgasm? For a brilliant and witty critique of this question as applied to lesbian couples, see Marilyn Frye, Willful Virgin 109-19 (1992). In particular, she notes that lesbian couples take significantly longer to engage in an activity called “having sex” than heterosexual couples, who can apparently accomplish the task in eight minutes. Id. at 110.
tive image of lesbians that is emerging as a result of this first tier de-
construction\textsuperscript{56} is still new and fragile, too new and fragile for me to
want to start tearing it up, under a second tier deconstruction process,
into race and class and other shards.

When a subordinate group begins to define itself in positive terms,
that process can diminish the negative characteristics that have been
associated with the group by dominant definitions. Compare the pro-
cess that has occurred in the civil rights movement for race equality.
"Negro" and "Colored" became "Black," then "Afro-American," then
"African-American." In response to ugly stereotypes hurled by white
America, the African-American community shouted "Black is beauti-
ful."\textsuperscript{57}

A similar trend has occurred in the women's movement. Man has
defined woman as weak, irrational, and incompetent.\textsuperscript{58} In the early
stages of the second wave of feminism, feminists rejected this male-
constructed description of woman by asserting that woman was just as
competent as man.\textsuperscript{59} Second generation feminists criticized this initial
reconstruction of the meaning of woman because it appeared to reject
feminine values and embrace masculine ones. First generation femi-
nists argued that women were strong just like men; women were ra-
tional just like men. Second generation feminists began to argue that
women were not like men, but that the difference should not limit
woman's possibilities in a male-created world.\textsuperscript{60} Indeed for some of
these feminists the different values attributable to "woman" made her

\textsuperscript{56} But see Kitzinger, supra note 54, at 185-86 (arguing that gay-positive work in sociology
is misleading because it attempts to add lesbians to existing humanistic theories, thereby
forcing them into pre-existing notions of personal development and relationships, rather
than applying lesbian-centered theories to the subject).

\textsuperscript{57} See Kimberlé Crenshaw, Mapping the Margins: Intersectionality, Identity Politics, and
Violence Against Women of Color, 43 Stan. L. Rev. 1241, 1297 (1991) (discussing the em-
powering nature of renaming within the context of African-American history).

\textsuperscript{58} While at the same time, men defined some women as beautiful, caring, and worthy of
protection. See note 53 supra.

\textsuperscript{59} For a short description of "first generation" or "stage one" feminism, see Cain, supra
note 1, at 198-199.

\textsuperscript{60} For a discussion of the tension between first and second generation legal feminists see,
superior to man.61 These feminists accepted the categorization of values as masculine and feminine, but argued that rationality (male) was less valuable than caring (female).62 Under this view, women could be feminine, women could be mothers, women could be women (irrational, but caring), and they could also enter the public sphere and be leaders. They did not have to take on independent masculine roles to be valued. "Woman," as defined by women, was good, and in the eyes of some, superior.

Although "gay is good" became a rallying cry early in the gay liberation movement, the cry was produced primarily by gay men. "Lesbian" was still a silent category, a sub-category of "gay." Lesbians were often rejected by straight women in the women's movement during the 1960s.63 Some lesbians became active in the gay liberation movement when it began taking shape in 1969. But, lesbians were clearly in the minority and had to fight for space that was free from male dominance.64 And many lesbians felt the movement, although "wonderful for male homosexuals, . . . ha[d] no bearing on lesbians."65 Other lesbians embraced separatism and formed lesbian

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61 See, e.g., Nancy C. M. Hartsock, The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism, in Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science 283, 299 (Sandra Harding & Merrill B. Hintikka eds., 1983) (arguing that female experience can produce a feminist standpoint from which one can see that male constructed reality has inverted the "... proper valuation of human activity.")

62 Identification and valuation of the ethic of caring is generally associated with the work of Carol Gilligan and Nel Noddings. See Carol Gilligan, In a Different Voice: Psychological Theory and Women's Development (1982); Nel Noddings, Caring: A Feminine Approach to Ethics and Moral Education (1984). Neither of these theorists, however, should be read to embrace a theory of female superiority, although their work is often cited by others in support of "superiority feminism." See, e.g., Martha Bayles, Feminism and Abortion. The Atlantic, April 1990 at 79, 85 (criticizing the "superiority feminism" view she associates with Gilligan's research).

63 See, e.g., Charlotte Bunch, Not For Lesbians Only, in Building Feminist Theory: Essays from Quest 67, 68 (1981) (explaining that feminists were antagonistic and insensitive to lesbian concerns, in part because they viewed lesbianism as a bedroom issue rather than a political one).

64 See, e.g., Martin Duberman, Stonewall 247-250 (1993) (describing Karla Jay's explanation of the early efforts to obtain a separate women's dance within GLF (Gay Liberation Front), an active organization whose lesbian membership never exceeded 20%).

65 Dolores Klaich, Woman Plus Woman 223 (1974). The quoted passage was a response to a questionnaire asking lesbians what their feelings were about the gay liberation movement.
communities intent on defining themselves free from the oppression of men and of nonlesbian women.66

Lesbians have had very little time to construct positive identities and to affect the meaning of the category lesbian. Only in recent history have individual lesbians begun to speak as lesbians. Lesbians have been too hidden from each other and the risk of speaking out, for many of us, has been too great. Now we have begun to speak and to create a collective identity as well as a notion of the “lesbian” as autonomous self. We are just now creating the sort of “truth” about lesbian identity and subjectivity that western man has spent eons creating for himself. There is a certain perverse irony in the fact that postmodern theory has emerged to question the concepts of identity and subjectivity at the very moment in time that we as lesbians have progressed to this stage of creation.67

Thus, although I am sensitive to the warning that we (i.e., feminists) must all pay attention to difference as we theorize, I recognize my own reluctance to focus on difference within the category lesbian, until I have wrestled sufficiently with sameness. Lesbians are still in the process of discovering our commonalities. Although we certainly know that there must be differences amongst us, lesbian theory must be based on our commonalities. Otherwise, the theory might be interesting, but it would not be lesbian.

2. Answer Number Two: There is a core lesbian experience that creates lesbian identity.

Other responses included “It’s irrelevant to lesbians” and “butted my head against a brick wall concerning the almost completely male chauvinistic movement” and “Hate the maleness of Gay Liberation Front.” Id.

66 See Bunch, supra note 63, at 69.

67 See Phelan, supra note 38, at 141 (quoting a paper by Christine Di Stephano discussing the suspicious emergence of postmodernism); see also Sexual Practice, Textual Theory 5 (Susan J. Wolfe & Julia Penelope eds., 1993):

Poststructuralist discourse has become a dominant force in Anglo-American criticisms at the precise juncture in history when lesbians, women of color, poor and working-class women, and others on the periphery of patriarchy have begun to find a literary and critical voice, to seek social and political equality, to become visible, to establish their identities for themselves, identities that had been denied them within patriarchy and patriarchal discourse.
Maybe there really is a core lesbian experience (in relation to heterosexuality) that we all share despite our differences in race, class, ethnicity, ability, etc. By “core experience,” I mean something more than a widely-shared experience. I mean an experience that is central to who we are as lesbians; an experience that shapes our individual identities in a way that causes us to identify as lesbian, and that unifies lesbians as a category.

By rejecting “woman” as a category that individual women embrace on the basis of some shared core female experience, I have argued that the category “woman” should remain open, should be destabilized, so that all women might claim some piece of it. In my view, if someone claims to be a woman, then we should believe her and include her in the class. We should not embrace definitions that are so fixed that we exclude some women. Nor should we require a single core experience of all individuals to be included in the class, because there is no core experience that includes all women. Yet, now I am suggesting that there might be an identifiable core lesbian experience that will include all lesbians. How can I reconcile my “no core experience” position regarding “woman” with the possible existence of a “core lesbian experience?”

With respect to the category woman, some feminists have argued that our female bodies, our potential for childbearing, and our potential for being sexually dominated by men, are core experiences (or capacities for experience) that unite us as women. Even setting aside

68 For example, fear of rape is certainly a widely-shared experience among women, but it is not an experience that is core to individual identity. The fact that men rape women and sexually abuse them in other ways may be crucial to understanding the way gender hierarchies operate. Fear of rape is real and it permeates everyday experience, often giving women a different perspective on seemingly neutral events. See, e.g., Patricia A. Cain, Feminist Legal Scholarship, 77 Iowa L. Rev. 19, 36-37 (1991).

69 See, e.g., Robin West, The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, 3 Wis. Women’s L.J. 81 (1987); West, supra note 12 (claiming that women’s biological reproductive capacities make them naturally more connected to others).

Several French feminists have focused on the maternal role as the core of the feminine. See Drucilla Cornell, Beyond Accommodation 21-78 (1991) (comparing French feminists Julia Kristeva and Helene Cixous with Robin West). For discussions of the ubiquity of the patriarchal construction of woman as sexual object, see MacKinnon, supra note 10, at 46-62.
the troublesome link to biological determinism that some of these arguments contain, I remain unconvinced that the socially constructed experiences of motherhood (even the feminist reconstruction of motherhood) are central to our identity as “woman.” The reality of motherhood is absent from many female lives. As women, we may all be potential mothers in some sense, but many of us who are in actuality not mothers are not likely to embrace the experience of motherhood (pregnancy, childbirth, nursing, and caring) as central to individual identity. The experience of pregnancy, childbirth, etc. may be central to one’s identity as a “mother,” but not to one’s identity as “woman.” It is an experience that excludes.

I have a different response to theorists who claim that sexual exploitation or domination by men is the core experience which forges a united category purported to be “woman.” While many women do experience some form of sexual exploitation or domination, we experience these events as objects or victims. Some women internalize these experiences and develop an identity (or perhaps, more accurately, a nonidentity) as victim. But, some women resist and claim their own agency. Lesbians in particular remove themselves from spheres of sexual domination by removing themselves from intimate sexual association with men. So do nonlesbian women who elect to remain single and celibate. And I believe there are some nonlesbian women

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70 See Adrienne Rich, Of Woman Born: Motherhood as Experience and Institution (1976) (providing the classic feminist treatment of motherhood and its centrality to female identity).

71 Cf. Cornell, supra note 69, at 57-58 (“If it is the actual experience of mothering that provides the ‘ideal’ of a different way of relating to the Other, some women would inevitably be excluded. Feminism, then, would not rely on the experience of women, but on that of mothers.”).

72 For a succinct description of the problems that arise when a group claims victimhood as its unifying experience, see Daniel A. Farber & Suzanna Sherry, The 200,000 Cards of Dimitri Yurasov: Further Reflections on Scholarship and Truth, 46 Stan. L. Rev. 647, 652 (1994); see also Martha Minow, Surviving Victim Talk, 40 UCLA L. Rev. 1411 (1993) (arguing that the language of victimization causes significant harm to victims).

73 Some lesbian separatists go even further in removing men from their lives. As Marilyn Frye explains: “Most feminists, probably all, practice some separation from males and male-dominated institutions. A separatist practices separation consciously, systematically,...and advocates thorough separation as part of the conscious strategy for liberation.” Marilyn Frye, Some Reflections on Separatism and Power, in For Lesbians Only: A Separatist Anthology 62, 64 (Sarah L. Hoagland & Julia Penelope eds., 1988).
partnered with men who have (re)structured their intimate relationships to reduce, or in rare cases remove, male sexual domination. That does not mean that any of us escape the threat or reality of rape or that we escape experiences of sexual harassment. But, we do escape the constant pressuring from a male partner to engage in sexual activity when we do not want to, the maneuvering towards sexual activity on a first date, and the compliments about our bodies by men who speak as though they have the right to judge our attractiveness. Thus, although there is widely-shared experience, as women, of sexual domination, and although that experience may affect our concept of self, many females do not embrace the experience as central to our identity as individuals or as women. To claim that this experience is core to identity as a “woman” is to exclude some women.74

How can I possibly believe that the situation with lesbians is any different? If there is a core experience that is central to lesbian identity and if I identify that experience, then do I not risk excluding some lesbians who claim to be lesbian, but who do not share that experience or who do not consider it central to their lesbian identity?

74 See MacKinnon, supra note 10, at 305-06 n.6, commenting on lesbian feminist attorney Mary Dunlap’s public pronouncement that she was not subordinate to any man and on Dunlap’s request for other women to join her in that pronouncement. MacKinnon comments that: “Asking women to single themselves out as exceptions to the condition of women amounts to saying, ‘all women who are exempt from the condition of women, all women who are not women, stand with me’.”

This passage demonstrates the trap in theories that argue for a core experience or a closed definition. Experiences and definitions are necessarily derived from our patriarchal past. Those of us who wish to resist and open up new possibilities are either not believed when we recount our realities or we are defined out of the category “woman.”

There are some theorists who take the position that lesbians are not women because “‘women’ has meaning only in heterosexual systems of thought and heterosexual economic systems.” Fuss, supra note 4, at 42 (quoting Monique Wittig, The Straight Mind and Other Essays 110 (1992)).

Although I find Wittig’s point linguistically interesting, I could just as easily say that lesbians are not lesbians because the dominant meaning of lesbian has been determined by heterosexual males. As Urvashi Vaid has said: “Society identifies and defines us only through our relation (or lack thereof) to men—lesbians are masculine, man-haters, the sexual fantasies of straight men.” Urvashi Vaid, Let’s Put Our Own House in Order, in Lesbians, Gay Men, and the Law 566 (William B. Rubenstein ed., 1993).

Surely if lesbians can give meaning to the term lesbian, we can also give meaning to the term woman.
But, what if the core experience of lesbianism is simply this: discovering that you are a lesbian? If a lesbian is someone whose emotional and erotic attention is directed toward another woman, then how can any self-identified lesbian not claim this core experience of having her own attention be so captured? In terms of self-identity, then, becoming a lesbian/discovering you are a lesbian means that a woman has experienced and understands that transformative moment when she realizes her personal erotic attraction to another woman.

The moment, when it occurs in modern times, is transformative because women loving women is not supposed to occur. This world works hard to construct us all as heterosexual. Once we realize the truth of our attraction, we realize our difference from the rest of the world, and our lives are different from that moment on. As Julia Penelope has explained it:

75 There is an additional question that has been much debated in lesbian and gay theory: is it meaningful to identify someone as a lesbian if that person would not so identify herself? What if the person lived before the modern concept "lesbian" was constructed? For example, was Sappho a lesbian? How about Eleanor Butler and Sarah Ponsonby (known as the "Ladies of Llangollen"), two women who "eloped" together from their Irish homeland to Wales in the late 18th century? These questions are at the core of the essentialism versus constructionism debate in lesbian (and gay) studies and are unrelated to the question of whether we are born lesbian or not. I do not wish to debate who was or was not a lesbian or even who is or is not one today. Nonetheless, I do think it is meaningful to think of persons like Sappho and the "Ladies" as lesbians if our images of them are consistent with our understanding of "lesbian" (and my images of them based on what little I know of their lives is consistent with thinking of them as lesbian). See Julia Penelope, Call Me Lesbian: Lesbian Lives, Lesbian Theory 17-36 (1992). Penelope concludes that there is no single possible definition of lesbian that will satisfy everyone, but that it makes sense to talk of lesbians as though we share a common experience. There is, it seems, much truth to the faled phrase: it takes one to know one. Id. at 36.

76 Although my comments in this essay are narrowly focused on lesbian experience and perspective, much of what I say probably holds true for gay male experience. There are some potentially important differences, however. For example, male sex drive differs from that of females. Thus, erotic attractions for males are likely to be more identified as sexual at an earlier age. Also, more gay men report feeling as though they were born gay than do lesbian women, suggesting that the process of "discovering" one's sexual orientation may, on balance, be experienced differently by gay men and lesbian women. See Halley, supra note 40, at 526-528 (discussing the differing reports from gay men and lesbians about whether they chose their sexual orientation or were born with it).

77 In a culture that did not disapprove of women loving women, the realization would not be transformative, except to the extent that individual erotic experiences may be generally transformative.
You feel, well, "different." All you know is that you don't feel the desires, have the aspirations, or seek the same activities that your parents, peers, teachers, and every television show, movie, book, and magazine tells you you're supposed to feel, have, and seek. You don't have a name for the "Lesbian inside you."  

If one wishes to understand the Lesbian experience, one must somehow imagine what it is like growing up into an identity that's unmentionable in any positive or helpful context.  

In the end then, this is the core of lesbian experience: the emotional and erotic attraction to another woman and the recognition that this attraction has occurred. Sexual intimacy need not occur, although the attraction is not lesbian unless it includes a sexual possibility. The feeling of attraction, the recognition of erotic attention, can be constructed differently by different individuals. Some will embrace the feelings positively; some will experience the self-loathing that comes with acceptance of the majority stereotype. Some will experience the attraction as innate and immutable; some will experience it as a matter of choice.  

But, even if the experience of emotional and erotic attraction occurs and is recognized, how is it that this core experience translates

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78 Penelope, supra note 75, at 35.
79 See id.
80 Within the lesbian community there has been much debate over the concept of "political lesbian", i.e., someone who identifies as lesbian because of her feminist politics, but who is not sexual with women. I do not believe you must sleep with women to be lesbian, but I do believe the erotic attraction must occur. Otherwise you may be feminist, but not lesbian. I do believe you can be a celibate lesbian. See Cammermeyer v. Aspin, 850 F. Supp. 910 (W.D. Wash. 1994) (reinstating a self-identified lesbian who had been dismissed from the armed services under the military rules banning homosexuals from military service). In a formal statement, Cammermeyer explained to the court: "I am a Lesbian. Lesbianism is an orientation I have, emotional in nature, towards women. It does not imply sexual activity. . . ." Id. at 913 n.4.
81 For discussion of this phenomenon of accepting the negative stereotypes of the majority, with respect to sexual orientation, race and ethnicity, see Kitzinger, supra note 54, at 32-33, 90-91.
82 Id. at 93-122 (describing results of questionnaires sent to self-identified lesbians as constructions of five to seven different types of lesbian identities).
into the formation of lesbian identity? How do these individualized experiences of erotic attraction and attention translate into a group identity as lesbian, and thus create a meaningful category? In other words, where do we, as lesbians, develop an identity that is specifically “lesbian” and on the basis of which we can claim there is such a thing as lesbian experience?

Clearly lesbians do not have much chance to develop this group lesbian identity in the heterosexual world in which most of us live. In that world, lesbians are not just “other,” we are invisible, non-existent. Instead we develop lesbian identity in lesbian community.83 We tell each other our “coming out” stories and through this storytelling we discover and embrace our identity as lesbians and become part of a larger community of lesbians.

Telling our “coming out” stories is not unlike the process of consciousness-raising that many feminists engaged in during the 1970s.84 As one lesbian explained, after having read an anthology of coming out stories:

I have been struggling with my lesbian identity—am I gay? am I bisexual? is it that I love women or is it just that I hate men, etc? Reading this book has helped me to realize (1) that yes, I do love women and that (2) I don’t have to make excuses for it, that I do not have to take responsibility for other people’s homophobia, that being a lesbian is a positive life-affirming thing, not a sickness.85

As with consciousness-raising, the sharing of coming out stories reveals the common experience of women loving women and unites us as lesbians within a community that believes women loving women is

83 See generally For Lesbians Only, supra note 49, at 1-13 (explaining the importance of lesbian community to the development of lesbian identity).

84 For a discussion of consciousness raising and its role in feminist theory, see Cain, supra note 68, at 24-25.

a good thing. By reading the honest accounts of lesbian attraction and love told by our lesbian contemporaries and by those who came before us, we discover that our individual experience of love and attraction is not idiosyncratic. In this process, we begin to identify as "lesbian," both as individuals and as part of a group.

**B. Lesbian Experience Creates Lesbian Perspective**

I have opined that the category "lesbian" is not only meaningful, but also that it should be protected from the deconstruction process and from the challenge of difference that is currently occurring in feminist discussions of the category "woman." "Lesbian" may be deserving of such protection in part because it is simply a narrower category. It therefore contains fewer differences. But, it also needs protection because it is still in the process of affirmative construction.

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86 See also Frye, supra note 55, at 120-23 (observing that lesbians in their community do not agree on anything, there is no central ethical or political commonality that holds them together, and that it is simply natural for women "to be connected and sustained in community with each other." We should not ask what it is that holds us together, she says. Instead we should be asking what it is that keeps us apart).

87 Often the identification goes beyond the fact that we are all attracted to other women. Acknowledging the attraction often leads to courageous acts of resistance, sometimes preceded by years of confusion and silence. This shared experience of the coming out process, that may entail coming out only to yourself and your own lesbian community, may be truer for lesbians who came of age before gay liberation. Among younger lesbians this experience is still widely shared, for even if homophobia fails to keep us silent, our few numbers keep us separated from each other until we are old enough to seek each other out.


88 As a subset of "woman" at least one difference has been removed. I do not mean to suggest that differences such as race, ability, class, ethnicity, etc. occur less frequently amongst lesbians, although some lesbians do report that their lesbian communities are more heterogenous than other communities. I have been part of many different lesbian communities over the past 25 years (e.g., London, England, Georgia, Texas, California, Wisconsin, Iowa). As a white, middle-class lesbian, I can report that I have noticed less classism and
Lesbian Perspective

I do not mean to suggest a uniform definition of "lesbian" nor to assert general truths about lesbianism that apply to all lesbians. But, to make sense of the concept of lesbian experience and perspective, which I believe is the beginning point in building critical theory, I do encourage theorists to understand that lesbian experience is not just the experience of the erotic attraction to another woman, but it is the self-conscious realization (whether the realization occurs within ten minutes or ten years) of what that experience means in terms of one's individual relationship to the rest of the world.

The transformative moment for a lesbian typically begins in total solitude. There is a recognizable moment when a lesbian first realizes the strength of her feelings and she knows she had better not say a word about it. Some lesbians never speak. They marry men or remain single and never act on the knowledge of the secret they hold within them until death. Yet, I still believe these women are lesbians. Some lesbians never speak except to the women they love and together they hold the secret within them. Those of us who have chosen to speak as lesbians understand the pressure to keep silent.

Once a woman discovers that she is a lesbian, she begins to develop a lesbian perspective on life. That perspective varies based on the life that each individual lesbian lives, her specific circumstances, her geographic location, and her economic security. Those lesbians who have resisted the pressure to keep silent bring that perspective to the critical task of theorizing about a more ethical world in which to live. It is this perspective, based on our lives of resisting, of making life stories for ourselves when there are no earlier stories to guide us, of loving so deeply that we have risked loss of jobs and families, and of being excluded from a community that values only heterosexual couples, that I call lesbian perspective and that I claim has been omitted from too much feminist theory.

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89 See Penelope, supra note 75, at 29, 35.
90 Id. at 31-32.
91 See, e.g., Deborah M. Henson, A Lesbian Feminist Critique of Susan Okin's Justice, Gender and the Family: Lesbian Families with Children as a Non-Heterosexual Model for the Development of Morality and Justice, 4 Hastings Women's L.J. 249 (1993) (speaking from her perspective as lesbian mother and suggesting that feminist theorist Okin consider...
IV. LESBIAN LEGAL THEORY

Although my original plea in 1989 was for the inclusion of lesbian perspective in feminist legal theory, several lesbian lawyers and academics have moved beyond that plea and have begun developing a lesbian legal theory. Given this turn of events, I have had to reconsider my plea for inclusion and now ask the following questions: Should lesbian experience and perspective be folded into feminist legal theory or is there a need for the development of a separate lesbian legal theory? If feminist legal theory, then why not lesbian legal theory? Or, as Ruthann Robson, lesbian legal theory’s most vocal proponent, has so well demonstrated by her own personal accounts, will our colleagues belittle the concept (why not a legal theory for “left-handed Albanians?”) or perhaps attack it as essentialist? Indeed, even I suggested at the beginning of this essay (a suggestion which accurately reflected my comments at the February conference) that the concept of a lesbian legal theory troubled me because of its essentialist potential. And yet now, as in February, I understand that “lesbian” and “woman,” that “lesbian” and “feminist,” are not overlapping categories. We do not, as lesbians and nonlesbians, have the same experiences or perspectives. We may not, in the end, develop the same strategies or goals for attaining the good and ethical life towards which lesbian couples as a possible paradigm for equality within the family rather than focusing on genderless couples).

92 See, e.g., Robson, supra note 3, at 15-26.


94 Robson, supra note 26, at 58.

95 Robson quotes a student response to her lesbian legal theory scholarship on the topic of lesbian couples in family law: “[Y]ou aren’t saying that all lesbian couples are the same... Some lesbians might disagree with your conclusions.” Id. at 59.
we all strive. That fact makes some form of lesbian theorizing necessary.96

For example, as Cheshire Calhoun has recently argued, it is logically possible to end patriarchy (male oppression of woman) without ending heterosexual privilege.97 "Compulsory heterosexuality" is certainly part of the sexist oppression of women so long as women are constructed as sexual objects (or breeders) for men.98 Compulsory heterosexuality is simply one of the tools used to construct the house of patriarchy. But, assume that feminists successfully dismantled that house so that women were no longer constructed as sexual objects for men. Heterosexual women and men, in this new utopia, would participate in sexual and amorous relations freely and equally. However, these ideal couples might well set up new structures that privileged heterosexuality, without making it compulsory or presumed. Lesbian legal theorists, speaking as lesbians, focus on heterosexuality as the system of oppression to be undone.99 We (i.e., lesbians) experience heterosexuality, not as something to be reformed, but as a threat to our existence. We need to develop strategies that allow us to exist peacefully and freely in a world that includes heterosexuality.

At the moment, there is serious disagreement among lesbian legal theorists over what these strategies should be.100 A particularly strong

96 See also Elvia R. Arriola, Gendered Inequality: Lesbians, Gays, and Feminist Legal Theory, 9 Berkeley Women's L.J. 103, 132-139 (1994) (arguing, in a feminist critique of lesbian legal theory, that lesbian legal theory is bad because it dichotomizes “woman” and “lesbian,” thereby canonizing difference and lending support for the ranking of claims of difference).

I agree with much of what Arriola says in her critique. Her points are particularly relevant to her specific focus on the law of discrimination. But she also recognizes the value of "[g]iving voice to minority perspectives." Id. at 134. Lesbian theorizing is based on a perspective that is not only “minority,” but also has only recently been unveiled at all. Thus, for the present I am content to be troubled by the essentialist potential for such theorizing, while supporting the project at least as a temporary corrective to years of lesbian invisibility and silence.


98 See Rich, supra note 41.

99 See, Robson, supra note 3, at 117-127.

100 See Vaid, supra note 74, at 567.
disagreement has arisen around the desirability of legally recognized lesbian (and gay) marriage.\footnote{See infra notes 102-105.} Because marriage has been an important issue in the feminist community generally and because lesbians have a different relationship to marriage than do nonlesbians, the question of lesbian marriage needs to be debated separately by lesbian theorists.

Some lesbians claim that marriage is a patriarchal institution and thus should not be part of our lives.\footnote{The following articles all make arguments against same-sex marriage that go beyond the radical feminist argument that marriage is patriarchal and does not serve women's interest, but the authors are all clearly influenced by the radical feminist position on marriage. See Nitya Duclos, Some Complicating Thoughts on Same-Sex Marriage, 1 Law & Sexuality 31 (1991); Paula L. Ettelbrick, Since When is Marriage a Path to Liberation? in Lesbian and Gay Marriage 20 (Suzanne Sherman ed., 1992); Nancy D. Polikoff, We Will Get What We Ask For: Why Legalizing Gay and Lesbian Marriage Will Not "Dismantle the Legal Structure of Gender in Every Marriage", 79 Va. L. Rev. 1535 (1993).} Professor Ruthann Robson goes even further and argues that lesbians should remain outside the law to avoid domestication, and thus should not even fight for inclusion in the legal category "family."\footnote{Robson, Resisting the Family, supra note 93.} By contrast, some lesbian legal theorists take the position that fighting for the right of lesbians (and gay men) to marry is a worthwhile battle.\footnote{See Mary C. Dunlap, The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties, 1 Law & Sexuality 63 (1991) (favoring the recognition of lesbian and gay marriage to advance the acceptance of same-sex couples within society); Nan D. Hunter, Marriage, Law, and Gender: A Feminist Inquiry, 1 Law & Sexuality 9 (1991) (arguing for the recognition of same-sex marriage as a means of removing the gender imbalances inherent in marriage).} I agree with these latter theorists that lesbian marriage (to the extent it validates woman-woman coupling) is important. But, I do not disagree with many of the arguments on the other side.

Marriage, sex, family, and romantic love are certainly constructs of a patriarchal society.\footnote{See generally Gerda Lerner, The Creation of Patriarchy 212-219 (1986) (discussing how marriage and sex were constructed by patriarchy to enslave women for the benefit of men).} If I were a heterosexual woman, I am certain that I would resist marriage as it is presently constructed. But, as a lesbian, I am unwilling to concede definitional control to institutions...
that purport to describe the best intimate relationships.\textsuperscript{106} Because I value my own intimate relationship and because I choose to participate as a citizen in the broader society, I must fight for lesbian marriage as the lesbian community would ideally construct it.\textsuperscript{107}

Lesbian theory is important because lesbians have a different view of the world. Lesbians, as part of a lesbian community, are working to discover what is ideal for us as lesbians and for our lesbian community. This is an ethical and creative enterprise, and it has very little to do with law. We can theorize ideals outside the rule of law as Ruthann Robson urges us to do.\textsuperscript{108} We can reimagine ourselves undomesticated by law and ask what principles we might bring to bear on the question of marriage and family. But unless we plan a revolution or an "Atlas-Shrugged-style"\textsuperscript{109} exodus to the Isle of Lesbos, we must live in this world with its laws and its legal institutions. Lesbian legal theory, in my view, is about how to realize those ideals in the real world in which we live. Lesbian legal theorists must protect against the essentialist tendencies to universalize experience and perspective and to objectify truth as we debate strategies for realizing the lesbian ideal.\textsuperscript{110}

\textsuperscript{106} Cheshire Calhoun argues that lesbians should not surrender their own right to construct marriage, sex, family, and romantic love by rejecting these constructs as radical feminists have done. I agree. See Calhoun, supra note 97, at 581.

\textsuperscript{107} Whether lesbian marriage should be at the top of the lesbian rights agenda is a separate question. It is impossible to determine the importance of this right until we determine what the right should be. If we are talking about a purely assimilationist right (e.g., we can move into their institution), then I would rank the importance lower than if we are talking about a reformed right (e.g., the right to marry as an alternative to other legally recognized family arrangements, with the right to marry focusing on the couple's right to be together rather than its right to numerous financial subsidies). But, the ranking is purely a question of strategy, i.e., which battles will win us more in the long run?

\textsuperscript{108} See Robson, supra note 3, at 171-185.


\textsuperscript{110} I use the word "the" self-consciously because I believe that the lesbian community, despite its many differences, is capable of widespread consensus with respect to ideals. Julia Penelope describes a similar belief that "... there are aspects of Lesbian experience on which we can ground a self-defined consensus reality." Penelope, supra note 75, at 39. I admit to this belief fully aware of the lack of consensus that occurred at the 1991 National Lesbian Conference. See Vaid, supra note 74, at 567. Perhaps I am overly optimistic regarding our potential to build consensus, but note that my optimism is limited to the formation of lesbian ideals. As a politically active community, I believe we will continue to disagree deeply over strategies.