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BOOK REVIEW

WE HAVE NOTHING TO FEAR BUT GENDER STEREOTYPES: OF KATIE AND AMY AND “BABE FEMINISM”

THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS. By *Katie Roiphe*. Boston: Little, Brown & Co. 1993. 180 pp. \$19.95.

Linda J. Lacey†

INTRODUCTION

(Girls' Chorus)

Tell me more, tell me more.

Was it love at first sight?

(Boys' Chorus)

Tell me more, tell me more.

Did she put up a fight?

...

(Girls' Chorus)

He got friendly, holding my hand.

(Boys' Chorus)

She got friendly, down in the sand.¹

In *The Morning After: Sex, Fear, and Feminism on Campus*,² Katie Roiphe claims that feminists have gone too far in their “fascination” with date rape, sexual harassment, and other forms of sexual oppression.³ She argues that feminists are chasing the same stereotypes their mothers “fought so hard to get away from”⁴ by portraying women as delicate victims and men as sexual predators.⁵ In Roiphe’s world, overwrought fears of men and sex have created a victim culture. This

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¹ JOHN TRAVOLTA & OLIVIA NEWTON-JOHN, *Summer Nights*, on THE ORIGINAL SOUNDTRACK FROM THE MOTION PICTURE GREASE (PolyGram International Records 1978) (used in a scene in which a teenage boy and girl describe the same experience—their summer romance—to a group of their peers).

² KATIE ROIPHE, *THE MORNING AFTER: SEX, FEAR, AND FEMINISM ON CAMPUS* (1993).

³ *Id.* at 5.

⁴ *Id.* at 6.

⁵ *Id.* at 64-65, 162.

victim culture, not date rape or sexual harassment, poses the real threat to women.⁶

Roiphe's book, which has made her the darling of antifeminist conservatives and the media,⁷ reflects many of the conflicts and dilemmas of contemporary feminist jurisprudence. Although critics can easily attack the text as presenting an exaggerated and inaccurate version of feminism on campus,⁸ they cannot so easily vanquish its underlying ideas.⁹ When we strip away Roiphe's mixed messages,¹⁰

⁶ Roiphe is one of several women authors making this argument. See, e.g., Camille Paglia, *Rape and Modern Sex War*, N.Y. NEWSDAY, Jan. 27, 1991, reprinted in CAMILLE PAGLIA, SEX, ART, AND AMERICAN CULTURE 49 (1992); NAOMI WOLF, FIRE WITH FIRE: THE NEW FEMALE POWER AND HOW IT WILL CHANGE THE 21ST CENTURY (1993).

⁷ Roiphe's book has been reviewed in almost every major newspaper and magazine, unusual treatment for a first publication. See, e.g., Julie Phillips, *Nothing to Fear but Fear Itself?*, WOMEN'S REV. BOOKS, Nov. 1993, at 6; Kio Stark, *I'm OK, You're OK*, NATION, Jan. 31, 1994, at 137; Cathy Young, *Boys Will Be Boys*, WASH. POST, Sept. 19, 1993, at X3. Additionally, Roiphe has appeared on talk shows and was the subject of general interest news articles, including a joint interview with the author and her mother. See Barbara P. Noble, *At Lunch with Katie and Anne Roiphe: One Daughter's Rebellion or Her Mother's Imprint?*, N.Y. TIMES, Nov. 10, 1993, at C1; see also Susan Everley-Douze, *Empowering Victims: Tulsa Leaders Dispute Claim That It's Weak To Speak Up*, TULSA WORLD, Jan. 16, 1994, at L1; Mary Gaitskill, *On Not Being A Victim*, HARPER'S, Mar. 1994, at 35; Kris Worrell, *Feminist's Book Questions Backlash*, TULSA WORLD, Oct. 10, 1993, at L5.

The book was also the central focus of a *Newsweek* cover story that accepted most of Roiphe's arguments at face value. Sarah Crichton, *Sexual Correctness: Has It Gone Too Far?*, NEWSWEEK, Oct. 25, 1993, at 52. The article, which was largely critical of feminist perspectives on date rape, attempted to draw an analogy between "political correctness," a favorite (if fictional) bane of the media, and concern about date rape. *Id.* at 52.

⁸ Not only is the book extremely skewed toward elite East Coast schools, which are not typical college campuses, see *infra* note 12, but it presents a world in which all feminists are dominance feminists. This simply does not accurately portray the increasingly postmodern or liberal nature of feminist thought. See *infra* part VI. Additionally, in her chapter on MacKinnon and pornography, ROIPHE, *supra* note 2, at 138-60, Roiphe completely ignores a number of prominent feminists who are critical of MacKinnon's work. ROIPHE, *supra* note 2, at 138-60. See, e.g., Katharine T. Bartlett, *MacKinnon's Feminism: Power on Whose Terms?*, 75 CAL. L. REV. 1559 (1987); Lucinda M. Finley, *The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified*, 82 NW. U. L. REV. 352 (1988) (book review).

⁹ The authors of a major casebook on women's legal issues considered Roiphe's work significant enough to be included in its 1994 supplement. MARY JOE FRUG, WOMEN AND THE LAW 75 (Supp. 1994).

¹⁰ The book represents an odd mixture of conservative criticism of feminism and radical notions of the joys of free sex. Roiphe also displays a strange denial of the reality of violent crime that would be anathema to most "law and order" conservatives. For example, she is highly critical of blue lights placed on the Princeton campus to help prevent rape, claiming that they create a climate of fear: "blue means be afraid." ROIPHE, *supra* note 2, at 28.

Roiphe herself has rejected any claim that the book is conservative: "The image of women I'm talking about is women responsible for their own actions, who control their own sexuality. . . . This isn't an image that is really going to appeal to Pat Buchanan." Noble, *supra* note 7, at C6. Despite these disclaimers, Roiphe's sources in the book, such as author David Mamet and sociologist Neil Gilbert, *id.* at 52-55, are conservative antifeminists. ROIPHE, *supra* note 2, at 52-55, 105-07.

meanspiritedness,¹¹ and East Coast essentialism,¹² three basic themes emerge:

1. The only valid feminist goal¹³ is for women to be treated exactly like men.¹⁴

2. Feminism depicts women as weak, passive victims. This portrayal reinforces stereotypes of women as Victorian virgins.¹⁵

3. Most of contemporary feminism, especially that focusing on pornography, fosters an exaggerated fear of sex. This attitude takes the "fun" out of sexual activity.¹⁶

Variations on these themes have become part of the critiques of cultural and dominance feminism¹⁷ and have accompanied the growth of postmodernism and the resurgence of liberalism in feminist jurisprudence.¹⁸ Arguments that dominance feminists have created a passive, delicate, and sexually fearful female subject are common. As Kathryn Abrams demonstrates in her provocative book review,¹⁹ Roiphe's book is most obviously an attack on dominance feminism, the school of feminist thought heavily influenced by Catharine MacK-

¹¹ In her chapter entitled "The Mad Hatter's Tea Party," Roiphe provides extremely nasty portraits of other graduate students, whom she depicts as either muddled thinkers mindlessly following the "politically correct" line or hypocritical opportunists who choose to be feminists because it is trendy. ROIPHE, *supra* note 2, at 113-37.

¹² Every scene in the book takes place on the eastern campuses of Roiphe's experience. There is nothing wrong with describing the world one knows, but to suggest that this world represents the larger world of college campuses is clearly erroneous. Roiphe portrays the vast majority of students as MacKinnon-influenced dominance feminists. This certainly has not been my experience at the University of Tulsa, where the majority of women students shy away from feminism in even its mildest liberal forms. I suspect my experience is far more typical than Roiphe's. Eastern schools tend to be more liberal and more influenced by feminism than are schools in other parts of the country.

Roiphe's false universalism is, perhaps, excusable—her book is openly anecdotal and with a few exceptions does not pretend to rely on surveys or studies. It is far more troubling when a "news" magazine like *Newsweek* picks up Roiphe's highly skewed description of campus life and presents it as universal fact. The *Newsweek* article describing Roiphe's book, contains phrases such as: "Like political correctness on campus, there's pitifully little room for debate or diverse points of view." Crichton, *supra* note 7, at 52. This type of statement assumes that all campuses are like Harvard and Princeton, a clearly inaccurate world view.

¹³ Roiphe is uncompromising in her view that her brand of feminism is the only valid one; she writes, "It is out of the deep belief that some feminisms are better than others that I have written this book." ROIPHE, *supra* note 2, at 7.

¹⁴ See *infra* notes 62-63 and accompanying text.

¹⁵ See *infra* notes 191-206 and accompanying text.

¹⁶ See *infra* notes 119-32 and accompanying text.

¹⁷ See *infra* notes 25-45 and accompanying text.

¹⁸ See *infra* notes 207-13 and accompanying text.

¹⁹ Kathryn Abrams, *Songs of Innocence and Experience: Dominance Feminism in the University*, 103 YALE L.J. 1533 (1994).

innon,²⁰ the contemporary feminist whose work Roiphe emphasizes.²¹ However, *The Morning After* can also be read as a critique of cultural, or difference, feminism.

Roiphe's attack on feminist views of date rape and sexual harassment implicitly rejects a concept central to cultural feminism: the belief that significant cultural or psychological differences exist between men and women.²² Additionally, her fears about gender stereotyping echo current critiques of cultural feminism.²³ Roiphe's "careless and irresponsible"²⁴ work provides a concrete example of the dangers of these criticisms carried to their ultimate extremes.

I

THE RETREAT FROM CULTURAL FEMINISM AND ROIPHE'S REJECTION OF GENDER DIFFERENCES

Carol Gilligan's *In A Different Voice*²⁵ had an immediate and dramatic impact on feminist jurisprudence, helping to create the school of feminist theory known as cultural feminism, which focuses on gender differences.²⁶ Cultural feminists argue that women and men ex-

²⁰ See, e.g., CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* (1987) [hereinafter *FEMINISM UNMODIFIED*]; CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979); Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635 (1983).

²¹ Roiphe devotes an entire chapter entitled "Catharine MacKinnon, the Antiporn Star" to attacking MacKinnon. ROIPHE, *supra* note 2, at 138-60. Because the chapter consists mainly of an examination of MacKinnon's speaking persona and a repeat of the Victorian theme sounded elsewhere, I do not specifically discuss it in this Review. For a discussion of the Victorian theme, see *infra* notes 191-206 and accompanying text.

²² See *infra* notes 25-45 and accompanying text.

²³ See *infra* notes 191-206 and accompanying text. I do not want to imply that any of the critics of cultural feminism actually share Roiphe's views on subjects such as date rape—I am quite confident that most of them would find Roiphe's fundamental message as offensive as I do.

²⁴ Katha Pollitt, *Not Just Bad Sex*, *NEW YORKER*, Oct. 4, 1993, at 220-24.

²⁵ CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT* (1982). Gilligan's work is a study of the difference in the reasoning of boys and girls, which suggests that boys' reasoning tends to be more hierarchical and girls' reasoning more relational and contextual. *Id.*

²⁶ A partial list of works involving (or discussing) cultural feminism includes Judith Areen, *A Need for Caring*, 86 *MICH. L. REV.* 1067 (1988); Leslie Bender, *Feminist (Re)Torts: Thoughts on the Liability Crisis, Mass Torts, Power, and Responsibilities*, 1990 *DUKE L.J.* 848; Leslie Bender, *From Gender Differences to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law*, 15 *VT. L. REV.* 1 (1990) [hereinafter *Gender Differences*]; Christine A. Littleton, *Reconstructing Sexual Equality*, 75 *CAL. L. REV.* 1279 (1987); Mari J. Matsuda, *Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice*, 16 *N.M. L. REV.* 613 (1986); Carrie Menkel-Meadow, *Portia in A Different Voice: Speculations on a Women's Lawyering Process*, 1 *BERKELEY WOMEN'S L.J.* 39 (1985); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 *VA. L. REV.* 543 (1986); Robin West, *Jurisprudence and Gender*, 55 *U. CHI. L. REV.* 1 (1988).

perience society in significantly different ways.²⁷ Using Gilligan's study of children's problem-solving methods, they contend that men's problem-solving tends to be hierarchical, while women's approach is more relational and contextual.²⁸ Men focus on a socially accepted ethic of justice, according to cultural feminists, while women center on an "ethic of care," which society has traditionally undervalued.²⁹ Cultural feminists believe that qualities associated with caregiving, such as the ability to form and nurture relationships, deserve validation and celebration, instead of dismissal by a patriarchal society. One commentator summarizes this theory as follows:

[M]any [cultural] feminists have argued that the important task for feminists today is not to fit women into a man's world, not to assimilate women into patriarchy, and not to prove that women can function like men and meet male norms, but to change institutions to reflect and accommodate the value that should properly be accorded to characteristics and virtues traditionally associated with women, nurturing virtues such as love, sympathy, patience, and concern.³⁰

Cultural feminists also claim that ostensibly gender-neutral laws create only an illusion of equality because legal actors apply them in ways that systematically disadvantage women.³¹ They call for decision-making processes that ask "the woman question"—what impact will this law have on women?³²

²⁷ As Martha Fineman puts it: "Women's gendered existence is comprised of a variety of experiences—material, psychological, physical, social, and cultural. Some of these experiences may be described as biologically based, while others seem more rooted in culture and custom." Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 37 (1990).

²⁸ GILLIGAN, *supra* note 25, at 6-29.

²⁹ *Id.* at 6-39. Gilligan argues that psychologists have "[i]mplicitly adopt[ed] the male life as the norm, they have tried to fashion women out of a masculine cloth." *Id.* at 6.

³⁰ Another commentator gives a similar explanation of the goals of cultural feminism: This strain of feminist theory has not merely celebrated values traditionally associated with women. It has insisted that these values *be valued* and has demanded changes in occupational structures, public places, and male attitudes. The point has been not simply to celebrate women's experience but to change men's to affect their conduct in work, family, and political contexts.

DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 309 (1989).

³¹ See, e.g., MARTHA L. FINEMAN, *THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM* (1991); Martha L. Fineman, *Implementing Equality: Ideology, Contradiction and Social Change: A Study of Rhetoric and Pursuits in the Regulation of the Consequences of Divorce*, 1983 WIS. L. REV. 789.

³² Heather Wishik breaks down this question into seven parts: (1) What experiences of women are addressed by an area of the law? (2) What assumptions or descriptions of that experience does the law make? (3) What is the area of distortion or denial so created? (4) What patriarchal interests does the mismatch serve? (5) What reforms have been proposed, and how will they affect women's interests both practically and ideologically? (6) In an ideal world, how would women's situation look? (7) How do we get there from here?

Gilligan-influenced feminism,³³ known alternatively as different voice feminism,³⁴ difference feminism,³⁵ relational feminism,³⁶ and cultural feminism,³⁷ became so widespread in the late 1980s that one law review editor remarked that she had never seen an article on feminist jurisprudence that did not mention Gilligan.³⁸ It was inevitable then, that this popular school of thought would have its critics³⁹ and would eventually endure a backlash. Today, critics of cultural feminism far outnumber its proponents.⁴⁰

Critiques of cultural feminism fall into three broad categories:

1. Antiessentialism. Some critics attack cultural feminists for creating an "essential" woman who narrowly reflects only the experiences of white, middle class feminists.⁴¹

Heather R. Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 BERKELEY WOMEN'S L.J. 64, 72-75 (1985).

³³ Gilligan's work was also highly influential in other disciplines. See, e.g., KATHY E. FERGUSON, *THE FEMINIST CASE AGAINST BUREAUCRACY* 159-60 (1984) (social theory); NEL NODDINGS, *CARING: A FEMININE APPROACH TO ETHICS AND MORAL EDUCATION* 96 (1984) (ethical theory); SHARON O'BRIEN, *WILLA CATHER: THE EMERGING VOICE* 57 n.25 (1987) (literary criticism).

³⁴ See Cass R. Sunstein, *Feminism and Legal Theory*, 101 HARV. L. REV. 826 (1988) (book review).

³⁵ See Patricia A. Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803 (1990).

³⁶ See MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION AND AMERICAN LAW* 219 (1990).

³⁷ This is the terminology used by Robin West, *supra* note 26, perhaps the most influential (and criticized) cultural feminist, because it reflects the concept that gender based differences are primarily shaped by cultural forces.

³⁸ Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 803 n.17 (1989). Taunya Banks, in an article written at the height of Gilligan's popularity, referred ironically to an "obligatory reference" to Gilligan. Taunya L. Banks, *Gender Bias in The Classroom*, 38 J. LEGAL EDUC. 137 n.1 (1988).

³⁹ See, e.g., FEMINISM UNMODIFIED, *supra* note 20, at 38-39, 93-102; Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-90); Drucilla Cornell, *The Doubly-Prized World: Myth, Allegory and the Feminine*, 75 CORNELL L. REV. 644 (1990); Mary Joe Frug, *A Post Modern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045 (1992) [hereinafter *Legal Manifesto*]; Mary Joe Frug, *Progressive Feminist Legal Scholarship: Can We Claim "A Different Voice"?*, 15 HARV. WOMEN'S L.J. 37 (1992) [hereinafter *Different Voice*]; Jeanne L. Schroeder, *Abduction from the Seraglio: Feminist Methodologies and the Logic of Imagination*, 70 TEX. L. REV. 109 (1991) [hereinafter *Abduction*]; Jeanne L. Schroeder, *Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence*, 75 IOWA L. REV. 1135 (1990) [hereinafter *Feminism Historicized*]; Williams, *supra* note 38, at 798-822; Joan C. Williams, *Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Essentialism in Feminist and Critical Race Theory*, 1991 DUKE L.J. 296 [hereinafter *Dissolving the Sameness/Difference Debate*]; Joan C. Williams, *Gender Wars: Selfless Women in the Republic of Choice*, 66 N.Y.U. L. REV. 1559 (1991) [hereinafter *Gender Wars*].

⁴⁰ Postmodern feminism, which began partially as a response to cultural feminism, has become the predominant "voice" of feminist jurisprudence. See, e.g., *Legal Manifesto*, *supra* note 39; Williams, *supra* note 38. Additionally, many feminists advocate a return to liberalism. See *infra* notes 207-38 and accompanying text.

⁴¹ The major work in this area is ELIZABETH SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* (1988). Although these criticisms are generally valid, they tend to be somewhat essentialist themselves in their assertions that all cultural femi-

2. Subordination theory. This criticism, articulated most strongly by Catharine MacKinnon, argues that the subordination of women created the different "voice" Gilligan describes and that by validating it, women become collaborators in their own oppression.⁴²

3. Stereotyping. Other critics charge that cultural feminism reinforces traditional conservative images of women.⁴³ They contend that an emphasis on women's positive qualities resembles the romantic paternalism of the Victorian era, which put women on a pedestal⁴⁴ while marginalizing them into a "separate sphere."⁴⁵

Roiphe makes similar arguments in her book. Although she does not explicitly discuss Gilligan's work, her writing is filled with affirmations of liberal ideals⁴⁶ and diatribes against certain exaggerated aspects of cultural feminism.⁴⁷ Roiphe is the ultimate answer to Joan Williams's call for a "Gilligan in reverse."⁴⁸

Like many feminists, Roiphe begins her book with a narrative⁴⁹ of sorts—a discussion of her own family background.⁵⁰ She pictures her grandmother as the classic victim of sexual stereotyping, a woman who "missed" feminism.⁵¹ In contrast, her mother, the author Anne Roiphe, was an early feminist⁵² who refused to let her daughters watch the Brady Bunch because she believed it was sexist and who taught them that there was more to life than becoming a cheerleader.⁵³ Roiphe describes herself as a young student who learned to speak her own mind "instead of worrying what the boy in the third row might

nism is essentialist. According to Leslie Bender, "[B]ecause of preconceived notions in the minds of hearers, . . . many feminist difference theorists have been wrongly heard to make authoritarian, universalist claims." *Gender Differences*, *supra* note 26, at 22.

⁴² FEMINISM UNMODIFIED, *supra* note 20, at 32-45. Although MacKinnon was among the earliest critics of cultural feminism, this line of criticism appears to be losing ground to the postmodern critique.

⁴³ See, e.g., *Different Voice*, *supra* note 39, at 51-60; *Abduction*, *supra* note 39, at 124-41; Williams, *supra* note 38, at 803-06.

⁴⁴ The Supreme Court described romantic paternalism as "put[ting] women, not on a pedestal, but in a cage." *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973) (plurality opinion).

⁴⁵ The cultural feminist stereotype most commonly attacked is that of woman as mother. Joan Williams claims cultural feminists have created an "ideology of domesticity" which, she contends, "encourages women to 'choose' economic marginalization and [to] celebrate that choice as a badge of virtue." Williams, *supra* note 38, at 800, 801.

⁴⁶ See *infra* notes 207-36 and accompanying text.

⁴⁷ See *infra* notes 101-15 and accompanying text.

⁴⁸ Williams, *supra* note 38, at 840.

⁴⁹ Narratives are increasingly important in feminist jurisprudence. See Kathryn Abrams, *Hearing The Call of Stories*, 79 CAL. L. REV. 971, 973 (1991).

⁵⁰ ROIPHE, *supra* note 2, at 3-7.

⁵¹ *Id.* at 3.

⁵² Anne Roiphe is the author of the feminist novel ANNE R. ROIPHE, UP THE SANDBOX! (1970). She is very supportive of her daughter's version of feminism. See Noble, *supra* note 7.

⁵³ ROIPHE, *supra* note 2, at 4.

think.”⁵⁴ With this background of independence and liberal feminist ideals, the version of feminism Roiphe encountered at college surprised and ultimately appalled her. The first time she attended a date rape seminar, she felt

[t]his is not me, this has nothing to do with me. The naive female victim in the film being shown was worlds away. Her fifties-style dates were not the kind of dates my older sisters went on. She was passive and innocent, and overly impressed by the boy's intelligence.⁵⁵

Her mother's liberal feminism opened a world of possibilities for women; Roiphe believes modern feminism limits them.

In the rest of her book Roiphe provides examples of the “evils” of contemporary feminism.⁵⁶ Her targets include Take Back the Night demonstrations,⁵⁷ pamphlets about campus dating and sex,⁵⁸ the anti-pornography movement,⁵⁹ and, most significantly, the concepts of date rape⁶⁰ and sexual harassment.⁶¹ Her narrative has two inconsistent assumptions, which are tied together by her scorn for difference theory.⁶² Roiphe primarily assumes that women are basically the same as men, and that modern feminism has painted an inaccurate stereotypical view of women. Occasionally, however, she seems to acknowledge that some differences do exist. She expresses contempt for these differences and argues that women should strive toward male liberal role models. Women should be tough, autonomous and thick skinned, not passive and overly sensitive. This “Clint Eastwood” approach to feminism⁶³ permeates Roiphe's discussions of date rape and

⁵⁴ *Id.* Despite this statement, Roiphe actually never had to worry about what any boys might think—she and her sister attended private all-girls' schools.

⁵⁵ *Id.* at 5.

⁵⁶ To her credit, Roiphe acknowledges that her hook is “not a scientific survey of campus life, measuring the immeasurable with statistical certainty.” *Id.* at 6-7. Nevertheless, her pattern of jumping from specific anecdotes to universal statements attempts to create the impression that she has indeed provided an accurate depiction of all universities.

⁵⁷ *Id.* at 29-50.

⁵⁸ *Id.* at 58-60.

⁵⁹ *Id.* at 138-60. One of Roiphe's major themes in her section on pornography is that the anti-pornography movement, and its chief proponent, Catharine MacKinnon, are really conservative. *Id.* at 160. It is ironic that Roiphe, whose work has received acclaim from conservative antifeminists, would make this claim. Both MacKinnon and Roiphe do have unlikely supporters for their ideas, but the fact that some right-wing commentators approve of MacKinnon's and Roiphe's positions does not mean that either woman is conservative.

⁶⁰ *Id.* at 51-84. See *infra* notes 64-100 and accompanying text.

⁶¹ *Id.* at 85-112. See *infra* notes 131-61 and accompanying text.

⁶² Roiphe does not explicitly discuss difference theory as a strand of feminism; the colleges she describes seem populated exclusively by dominance feminists. However, as I have discussed, the reasoning of her attacks on various feminist theories about date rape and sexual harassment resemble other authors' attacks on cultural feminism.

⁶³ Abrams, *supra* note 19, at 1547-48.

sexual harassment, both of which reflect an absolute denial of gender differences.

II

ROIPE ON DATE RAPE: IT'S ALL IN THEIR HEADS

Although Roiphe's discussion of date rape is so highly anecdotal and muddled that it frustrates coherent analysis, it can be summarized as containing three basic themes:

1. Reports of an "epidemic" of date rape are highly exaggerated;⁶⁴ women lie about having been date raped.⁶⁵
2. Even women who tell the truth about their "rapes" are really just describing bad sex.⁶⁶
3. Women should not complain about bad sex and verbal intimidation.⁶⁷

All three of these arguments can have concrete, real world results that are highly detrimental to women. Roiphe's goal may have been a theoretical critique of feminist discussion of sex. However, her work will contribute to further trivialization and underreporting of sex crimes against women.

In her contention that reports and statistics about date rape are inflated, Roiphe relies on rather dubious evidence. The figures cannot possibly be true, she surmises, because "if 25 percent of my female friends were really being raped, wouldn't I know it?"⁶⁸ She also describes two women who lied about date rape,⁶⁹ but offers no evidence to indicate that they are anything other than a rare exception.⁷⁰

In one of the rare parts of the book in which she attempts to rely upon empirical evidence, Roiphe attacks the highly publicized date rape study of psychologist Mary Koss.⁷¹ However, her critique is simply a rehash of the arguments made by Berkeley professor Neil Gilbert, who has conducted only limited, dated studies of his own, has never

⁶⁴ ROIPE, *supra* note 2, at 52-55.

⁶⁵ *Id.* at 39-42, 81-82.

⁶⁶ *Id.* at 79-81.

⁶⁷ *Id.* at 67-69.

⁶⁸ ROIPE, *supra* note 2, at 52. Apart from the dubiousness of relying on one's personal experience to challenge empirical studies, there may be reasons why Roiphe's friends may not want to discuss their experiences with her. Societal pressures have traditionally silenced rape victims, and given the meanspiritedness Roiphe displays in discussing her classmates, it is hard to imagine anyone wanting to confide in her.

⁶⁹ *Id.* at 39-42.

⁷⁰ Despite any evidence to the contrary, Roiphe apparently does believe that a large number of women make up stories of rape at Take Back The Night demonstrations. Her strong hostility toward these demonstrations prompts her to write: "It's impossible to tell how many of these stories are authentic, faithful accounts of what actually happened. They all sound tinny, staged." *Id.* at 42.

⁷¹ *Id.* at 51-55.

talked to rape victims, and whose bias against feminist work in the field is well established.⁷² All studies about rape are necessarily open to some scrutiny and criticism because of limited data and differing definitions of rape. However, Roiphe relies exclusively on Gilbert's work without even attempting a fair survey of other available statistics. Even *Newsweek* magazine, in an article highly sympathetic to Roiphe's perspective, states "even the most conservative numbers are horrifying."⁷³ According to the study *Newsweek* cited, 13% of adult women are victims of forcible rape.⁷⁴ A 1990 government-financed study estimated that at least 12.1 million women have been the victims of rape at least once in their lives.⁷⁵ Of these women, only 22% were raped by strangers; 29% were attacked by non-relatives known to the victim, 9% by a boyfriend or former boyfriend, and 9% by a husband or former husband.⁷⁶

Roiphe's second argument, that too many women confuse bad sex with date rape, is the one most quoted by the media. She writes:

People have asked me if I have ever been date-raped. And thinking back on complicated nights, on too many glasses of wine, on strange and familiar beds, I would have to say yes. With such a sweeping definition of rape, I wonder how many people there are, male or female, who haven't been date-raped at one point or another.⁷⁷

At this point, Roiphe is committing exactly the same error of which she accuses feminists—blurring the distinction between the legal definition of rape and rape as a metaphor.⁷⁸ The sweeping definition of date rape she refers to includes "verbal coercion" or "a woman's consenting to unwanted sexual activity because of a man's verbal arguments not including verbal threats of force."⁷⁹ No criminal

⁷² Sharon Johnson, *Rape: The Conservative Backlash*, MS, Mar.-Apr. 1992, at 88; Lynne Henderson, *Rape and Responsibility*, 11 LAW & PHIL. 127, 160-62 (1992). Henderson notes that Gilbert refuses to accept a woman's viewpoint of rape and views coercive behavior as normal and "romantic." *Id.* at 160-62.

⁷³ Crichton, *supra* note 7, at 56. The article uses statistics from NATIONAL VICTIM CENTER & THE CRIME VICTIMS RESEARCH AND TREATMENT CENTER, MEDICAL UNIVERSITY OF SOUTH CAROLINA, RAPE IN AMERICA: REPORT TO THE NATION 6 (1992) [hereinafter NATIONAL VICTIM CENTER SURVEY], which shows that 16- to 24-year-olds are a particularly high-risk group. *Id.*

⁷⁴ *Id.*

⁷⁵ David Johnson, *Survey Shows Number of Rapes Far Higher Than Official Figures*, N.Y. TIMES, Apr. 24, 1992, at A14. The article reports statistics gathered by the National Women's Study. The study was limited to adult women and therefore was estimated to cover less than half of actual rapes. *Id.* (reporting on the survey cited *supra* note 73).

⁷⁶ *Id.*

⁷⁷ ROIPHE, *supra* note 2, at 79.

⁷⁸ *Id.* at 70-76.

⁷⁹ *Id.* at 67. Although Roiphe makes it sound like this definition is universally accepted, she can give only one cite for it—ACQUAINTANCE RAPE: THE HIDDEN CRIME (Andrea Parrot & Laurie Bechofer eds., 1990). This apparently deliberate mischaracterization of the facts is another example of Roiphe's tendency to make authori-

statute or court has officially adopted this definition, and none is likely to adopt it in the future.⁸⁰

Throughout the date rape chapter, Roiphe confuses instances in which feminists and the characters she quotes compare their experiences to rape and instances in which they actually file an official claim that the crime of rape has occurred. According to a recent study, approximately 84% of all rapes go unreported.⁸¹ This statistic illustrates the absurdity of Roiphe's assumption that women "cry rape"⁸² whenever they experience bad sex. Even when false reports are filed, given the lack of willingness of prosecutors to try date rape cases,⁸³ it is unlikely that any one who has simply experienced "bad sex" would have her experience converted into a rape trial.⁸⁴

Roiphe demonstrates her distorted view of the universe of feminism by implying that nearly all feminists blur the line between bad sex and rape.⁸⁵ She ignores voices like that of Robin West, one of the most prominent cultural feminists, who states that "[t]here is a fine line between the feeling of being threatened by an implied threat of

tative statements based on a single, highly dubious source. Roiphe also discusses a New Jersey case, *State ex rel.*, 609 A.2d 1266 (N.J. 1992), which she characterizes as adopting feminist definitions of rape. However, while that case did hold that a threat of physical force was not an indispensable element of rape under its statute's definition, it did not adopt the view that verbal coercion constitutes rape. *Id.* at 1276.

⁸⁰ This distortion of the actual law pervades Roiphe's book. It may seem unfair to criticize an English graduate student for not being a lawyer, but Roiphe discusses the law in such authoritative tones that her inaccurate statements will provide false information to other layperson readers.

⁸¹ See NATIONAL VICTIM CENTER SURVEY, *supra* note 73, at 6.

⁸² ROIPHE, *supra* note 2, at 79-84. The cliché that women falsely "cry rape" for revenge or other illegitimate reasons has ancient roots. In 1778, Sir Matthew Hale, Lord Chief Justice of the Court of the King's Bench, described rape as "an accusation easily to be made and hard to be proved, and harder to be defended by the party accused tho never so innocent." Patricia Lopez, *He Said . . . She Said . . . An Overview of Date Rape From Commission Through Prosecution Through Verdict*, 13 CRIM. JUST. J. 275, 285 (1992). Roiphe reinforces it with her statement that "we threaten to confirm the vision of that eighteenth-century patriarch Henry Fielding when he writes, 'These words of exclamation, (murder! robbery! rape!) are used by ladies in a fright as fa la la da sa are in music only as vehicles of sound and without any fixed idea.'" ROIPHE, *supra* note 2, at 81 (quoting HENRY FIELDING, TOM JONES 471 (Penguin Books 1966) (1749)).

⁸³ See, e.g., Susan Estrich, *Real Rape*, 95 YALE L.J. 1087, 1107-08 (1986); Henderson, *supra* note 72, at 128-29.

⁸⁴ Over 40% of reported rapes are dismissed by prosecutors. STAFF OF SENATE COMM. ON THE JUDICIARY, 103d Cong., 2d Sess., THE RESPONSE TO RAPE: DETOURS ON THE ROAD TO EQUAL JUSTICE (Comm. Print 1993). Even more startlingly, over half of all rape prosecutions are dismissed before trial or result in acquittal and over a quarter of convicted rapists never go to prison. *Id.*

⁸⁵ Roiphe states authoritatively, "'Rape' becomes a catchall expression, a word used to define everything that is unpleasant and disturbing about relations between the sexes." ROIPHE, *supra* note 2, at 80. Later in the same chapter, she does acknowledge that a "few feminists" object to blurring definitions of rape, but she fails to discuss the work of the most influential feminist authors who take this position. *Id.* at 81-82.

force and the feeling of the sheer inevitability of sex. Nevertheless, they are . . . distinctly different experiences.”⁸⁶

If Roiphe’s primary point is that rape is a dangerous metaphor for feminists to use, she does raise a valid concern. Many unsympathetic members of the public already believe that feminists go too far in their definition of rape. I often have male students tell me with absolute authority that Catharine MacKinnon thinks all heterosexual intercourse is rape. When I try to explain that this characterization is an exaggerated summary of MacKinnon’s views, they refuse to believe me. Nevertheless, feminists are not the only ones using rape as a metaphor—people whose houses are broken into often describe their experience as feeling like being raped. A Harvard professor even reacted to being criticized for racial insensitivity by saying, “I felt like a rape victim.”⁸⁷

Roiphe claims that “[t]here is a gray area in which someone’s rape may be another person’s bad night”⁸⁸ but the real ambiguity in sexual encounters⁸⁹ is not due to women who cannot tell the difference between bad sex and rape. Instead, it is created by gender differences in perceptions about consent. A number of commentators have noted that in dating situations the man is likely to believe the woman is consenting when she is not.⁹⁰ I am constantly amazed in my criminal law class at the willingness of most of my male students to find consent in the most unlikely situations, including a case in which a gynecologist forced sexual intercourse on a seventeen-year-old who was receiving her first medical examination.⁹¹ Men raised on the “no means yes” myth may perceive a woman who is resisting as one just playing games. For example, one study of undergraduates showed that while almost 60% of the females surveyed disagreed with the statement “When it comes to sex, females say no but really mean yes,”

⁸⁶ Robin West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN’S L.J. 81, 103 (1987).

⁸⁷ Randall Kennedy, *The Political Correctness Scare*, 37 LOY. L. REV. 231, 240 (1991) (quoting remarks made by Steven A. Thernstrom).

⁸⁸ ROIPHE, *supra* note 2, at 54.

⁸⁹ Author Mary Gaitskill gives a more sensitive description of the ambiguity in sexual situations, and unlike Roiphe, she is willing to provide a concrete example of her own experience of a “bad night.” Gaitskill, *supra* note 7, at 35-36. Gaitskill reports of her own experience that although she felt raped, she “would not have lied . . . in court or in any other context that might have had practical consequences; it didn’t even occur to me to take my case to court.” *Id.* at 36.

⁹⁰ For a thorough discussion of this problem, see Douglas N. Husak & George C. Thomas, III, *Date Rape, Social Convention, and Reasonable Mistakes*, 11 LAW & PHIL. 95 (1992).

⁹¹ *People v. Borak*, 301 N.E.2d 1 (Ill. 1973). Many male students agreed with the majority opinion that because the woman did not struggle or cry out, she had consented. Most of my woman students understood that the teenager was undoubtedly too scared or amazed to resist.

only 27% of the men disagreed.⁹² Less than 33% of the male students questioned disagreed with the statement, "For some females, physical aggressiveness by the male is a necessary prelude to the acceptance of love and affection."⁹³

Gender disparity in attitudes raises the question of what mental state a man must have to commit the crime of rape. Commentators far more familiar with rape law than Roiphe have debated this question. Susan Estrich proposes a reasonable man standard, with negligence as the mens rea.⁹⁴ In contrast, Lynne Henderson takes a cultural feminist approach which acknowledges the differences between men and women.⁹⁵ She recognizes that a woman may think it reasonable to invite a man to her house without that action signaling consent, while a man may consider the invitation automatic acquiescence to sexual intercourse.⁹⁶

Although Roiphe may have raised legitimate issues of "gray" areas regarding date rape,⁹⁷ she seems to assume that the very existence of these gray areas means the crime should not be taken seriously. But every area of the law has "gray areas";⁹⁸ ambiguity is inevitable in so personal a situation and is not a reason to abolish recognition of the crime. Most of the date rape situations actually prosecuted are rela-

⁹² See R. Thomas Dull & David J. Giacompassi, *Demographic Correlates of Sexual and Dating Attitudes: A Study of Date Rape*, 14 CRIM. JUST. & BEHAV. 175, 183 (1987). The fact that over 40% of college women agreed with the statement is troubling evidence of the pervasiveness of the "no means yes" myth, even among its prospective victims.

⁹³ *Id.* at 188.

⁹⁴ SUSAN ESTRICH, REAL RAPE 95-98 (1987).

⁹⁵ Lynne Henderson, *Review Essay, What Makes Rape a Crime?*, 3 BERKELEY WOMEN'S L.J. 193 (1987).

⁹⁶ *Id.* at 217. Henderson also proposes a system of mitigated, middle, and aggravated rape sentencing. Henderson, *supra* note 72, at 176.

⁹⁷ ROIPHE, *supra* note 2, at 54. Another issue which Roiphe discusses briefly, but superficially, is the situation when a woman voluntarily becomes intoxicated prior to intercourse. In criticizing a questionnaire in which women were asked about unwanted intercourse after a man had given them alcohol or drugs, Roiphe asks, with some validity, "Why aren't college women responsible for their own intake of alcohol or drugs?" ROIPHE, *supra* note 2, at 53. One answer may be that sometimes men lie to inexperienced drinkers about the strength of their drinks, but such incidents are probably relatively rare. However, Roiphe's statement that women should be responsible for their own choices to drink or take drugs dodges the harder question: At what point is a woman so intoxicated that she can no longer be considered as giving her consent to sexual intercourse? Most people, with the possible exception of Roiphe, would agree that a man commits rape when he has intercourse with a woman who is passed out and completely unconscious. *But see* Mike Litwin, *Killing a Cheating Wife is Understandable*, TULSA WORLD, Oct. 23, 1994, at O2. (discussing case where a judge said that finding a woman drunk and passed out in his bed was "the dream of a lot of men"). But what about a situation where a man is aware that a woman is conscious, but very intoxicated? Roiphe is correct in stating that the expansion of rape prosecutions to situations where the parties are acquaintances raises difficult questions, and it is quite possible that there will never be universal agreement on their answers.

⁹⁸ In criminal law, for example, the boundaries of self-defense are notoriously difficult to ascertain. *See, e.g.*, WAYNE R. LAFAYE, CRIMINAL LAW § 5.7 (2d ed. 1986).

tively unambiguous. Roiphe ignores the easy cases in her zeal to condemn the hard ones.

Perhaps the greatest harm of Roiphe's oversimplified attack on date rape is that it allows men to continue to validate their behavior and their refusal to take rape seriously. As long as male law students snicker and make dirty jokes when the subject of rape is brought up in the classroom, as long as respected figures like Indiana basketball coach Bobby Knight joke about relaxing and enjoying rape,⁹⁹ date rape will continue to be part of campus culture.¹⁰⁰

III

ROIPEHE ON BAD SEX: WHAT'S SEX FOR THE GANDER SHOULD BE SEX FOR THE GOOSE

Roiphe does not confine her scorn to women who claim to be date raped; she is critical of any woman who claims she was verbally coerced into sex, whether the woman describes her experience as rape or not.¹⁰¹ She writes:

Imagine men sitting around in a circle talking about how she called him impotent and how she manipulated him into sex, how violated and dirty he felt afterward, how coercive she was, how she got him drunk first, how he hated his body and couldn't eat for three weeks afterward There would never be a rule or a law, or even a pamphlet or peer-counseling group, for men who claimed to have been emotionally raped or verbally pressured into sex. And for the same reasons—assumptions of basic competence, free will, and strength of character—there should be no such rules or groups or pamphlets for women.¹⁰²

Roiphe is apparently oblivious to the significant cultural differences in the way men and women learn to perceive sex and love. Most American women receive a steady diet of romantic messages, which teach them that marriage is the only way to true happiness.¹⁰³ This view

⁹⁹ Tom Shales, *Connie Chung, Stressing the Obvious*, WASH. POST, Apr. 25, 1988, at B1, available in 1988 WL 2057146 (discussing Chung's interview with Knight broadcast as a part of *NBC Report on America: Stressed to Kill*, an NBC television broadcast on April 25, 1998).

¹⁰⁰ Lynne Henderson describes the rape culture which permeates our society: "The hatred of women, the devaluation of women, and the patriarchal structure that has silenced women and promoted male aggression seem to be preferable places to search for an explanation." Henderson, *supra* note 95, at 197.

¹⁰¹ Roiphe's chapter on date rape jumps so often from women who claim to have been raped to women who describe bad sex that it is hard to keep track.

¹⁰² ROIPEHE, *supra* note 2, at 68-69.

¹⁰³ See, e.g., Marcia R. Lieberman, "Someday My Prince Will Come": *Female Acculturation Through the Fairy Tale*, COLLEGE ENGLISH 383-95 (Dec. 1972), reprinted in *SEXISM AND YOUTH* 228, 228-43 (Diane Gersoni-Stavn ed., 1974). Disney has updated its heroines to some extent. Belle, the heroine of *Beauty and the Beast*, is a book loving feminist, and the villain of the movie is a macho man. Nevertheless, Belle's happy ending is exactly the same as Sleeping Beauty's—she still ends up with the prince.

inevitably affects their perception of sex. There are numerous studies that establish that women and men experience sex differently. One recent survey of teenagers shows that 81% of sexually active boys surveyed referred to their sexual experiences as pleasurable, as compared to 59% of the girls.¹⁰⁴ Perhaps even more significantly, a majority of the boys surveyed said they were not in love with their partner, while 71% of the girls stated that they were in love.¹⁰⁵ The song from *Grease* which opened this essay continues to reflect American culture. Women think of sex in romantic terms ("love at first sight");¹⁰⁶ men view it as scoring ("did she put up a fight?").¹⁰⁷ Roiphe is right: It is hard to imagine men discussing exploitive sex; it is equally hard to imagine women forming a Spur Posse club and sitting around bragging about the number of men they have seduced.¹⁰⁸

The argument that men and women experience sex differently finds support in one of the basic themes of cultural feminism: Women are more relational than men.¹⁰⁹ It is not surprising that many men regard sex as an autonomous experience, separated from love and even from any sense of the identity of one's partner, and that women experience it as part of a relationship.¹¹⁰

Because she lacks empathy, Roiphe also misrepresents the complexity of women's reasons for submitting to unwanted sex. She portrays the woman who agrees to sex against her will as passive, malleable, having "the mind of an eleven-year-old in the body of a twenty-year-old."¹¹¹ The reality is far more complicated. Roiphe's mother told her that she did not have to pretend to be someone other than herself with a man.¹¹² That was great advice, but Roiphe is amazingly unaware of the fact that millions of mothers continue to give their daughters slightly updated versions of the advice Roiphe's grand-

¹⁰⁴ *Boys Are More Comfortable With Sex Than Girls Are, Survey Finds*, N.Y. TIMES, May 18, 1994, at A16 (quoting a survey done by the Roper Starch and Sexuality Information and Education Council). Sixty-two percent of the sexually active girls also said they should have waited until they were older, as compared with 48% of the boys. *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *supra* text accompanying note 1.

¹⁰⁷ See *supra* text accompanying note 1.

¹⁰⁸ See Garry Wills, *Scoring with the Spur Posse*, N.Y. TIMES, Mar. 30, 1993, at A22; Garry Wills, *Student Posse Embodies Right-Wing Values*, DETROIT FREE PRESS, Apr. 9, 1993, at 11A. On the surface, "do-me" feminism, *infra* notes 119-23 and accompanying text, may resemble male boasting about scoring, but do-me feminists are primarily concerned with sex as a means for their own pleasure, not as a means to impress others.

¹⁰⁹ See, e.g., *Gender Differences*, *supra* note 26, at 31-47; West, *supra* note 26, at 13-42.

¹¹⁰ Of course, my description can be attacked for its own essentialism. There are numerous men who believe in romantic love and numerous women who do not. But the statistical evidence still suggests that the differences in the way men and women view sex are significant and cannot be ignored. See, e.g., ANNE MOIR & DAVID JESSEL, *BRAIN SEX* 99-112 (1991).

¹¹¹ ROIPHE, *supra* note 2, at 68.

¹¹² *Id.* at 4.

mother gave her mother: “[W]hen you’re on a date you should laugh at a boy’s jokes, you should make conversation about the things he is interested in, and you should pretend everything he says is interesting even if it’s not.”¹¹³ Even the most superficial analysis of literature directed at teenage girls provides endless variations on this theme—the woman must do whatever she can to please the man.¹¹⁴ When a woman’s upbringing teaches her that the presence of men in her life defines her happiness and even her identity, verbal coercion becomes significant. The threat of not being loved, of not having a boyfriend, is much more than the gender-neutral “emotional pressure” Roiphe dismisses so readily.¹¹⁵

I belong to Roiphe’s mother’s generation, but unlike Roiphe’s mother, I have not been the model liberal woman. I am glad I have come a long way from the world of Chi Omega, where the highlight of one’s life was a candlelight ceremony honoring the woman fortunate enough to be “pinned”¹¹⁶ or better yet, engaged, but I cannot ignore the continued existence of that world. Feminists should not ignore it either, because I am confident that there are still more would-be brides on college campuses than women who even remotely resemble Roiphe’s caricatures of men-hating feminists.¹¹⁷

For many women raised on traditional visions of love, encounter groups like those Roiphe scorns¹¹⁸ may be the first step toward escape from the concept that they must do whatever is necessary to please men. When Roiphe links her critique of difference and dominance feminism to her intolerant disapproval of women’s honest discussion of feelings about submitting to unwanted sex, she defeats her own goal of urging women to take responsibility for their sexuality.

Even if Roiphe would concede the point that women continue to experience sex differently than men, she would argue that this is not desirable. One major theme of her book, which is in stark contrast to its conservative aspects,¹¹⁹ is an almost wistful vision of the days before AIDS, when sex was fun and uncomplicated. She complains that people today, including herself, think of sex in terms of control, but that “it hadn’t always been like that. In the sixties and seventies, sex was

¹¹³ *Id.* at 4.

¹¹⁴ See, e.g., *50 Things Guys Love*, YM, Feb. 1995, at 3, 50 (“What turns him on? The secrets you need to know.”).

¹¹⁵ *Id.* at 67.

¹¹⁶ Pinning meant accepting a boy’s fraternity pin and was an important pre-engagement ritual. In my sorority, it was considered the point at which one could have sex without losing the boy’s respect; as the fraternity boys used to say, “It takes a pin to get in.”

¹¹⁷ I don’t mean to suggest that wanting to be a bride is incompatible with feminism, but feminist theory should help women realize that while traditional romantic love may be a wonderful experience, it is not the *only* means to happiness.

¹¹⁸ ROIPHE, *supra* note 2, at 66-69.

¹¹⁹ See *supra* note 10.

about expression and orgasm, at least in theory; it was the streamlined optimism of Erica Jong's 'zipless fuck.'"¹²⁰

With her emphasis on the joys of open, uncontrolled sex, Roiphe implicitly attacks cultural feminism's affirmation of the importance of relationships and caring behavior. Cultural feminists celebrate the connectiveness of sex; as Robin West describes it:

Most vital, however, for cultural feminism is the claim that intimacy is not just something women do, it is something human beings *ought* to do. Intimacy is a source of value, not a private hobby. . . . Intimacy is a value for women because it reflects an existentially connected state of being.¹²¹

In contrast, Roiphe's apparent ideal is that of the liberal male—the best sex is autonomous, “free,” unhampered by any sense of connection to one's partner.¹²² Other young women, whom *Esquire* featured as the new “do me” feminists, share Roiphe's view of the empowering aspects of sexual agency.¹²³ These women, also described as “sexual agency” or “sexual empowerment” feminists,¹²⁴ believe in taking the initiative in sexual matters and emphasizing the purely pleasurable aspects of sexual encounters. Do-me feminist Naomi Wolf says, “I am perfectly capable of wanting to be surrounded by adoring, nubile seventeen-year-old soccer players who long to do my every bidding.”¹²⁵ Another do-me feminist laments, “The feminist scholarship of Andrea Dworkin and Catharine MacKinnon is so dull, so Alan Alda. . . . A lot of us just want to go spray-paint and make out with our boyfriends and not worry about oppression.”¹²⁶

¹²⁰ ROIPHE, *supra* note 2, at 168. Along with ERICA JONG, *FEAR OF FLYING* (1973) (the book which contains the “zipless fuck” concept, *id.* at 11-14), Roiphe canonizes GERMAINE GREER, *THE FEMALE EUNUCH* (1972), for its celebration of sexuality and states that Greer's “comments need to be recycled for present-day feminism.” ROIPHE, *supra* note 2, at 84. If Greer's comments really were recycled, Roiphe would probably be more dismayed than pleased. Greer discusses in strong terms the hatred men have for women, an attitude Roiphe despises in modern feminism.

¹²¹ West, *supra* note 26, at 18.

¹²² ROIPHE, *supra* note 2, at 168-72. The central idea of “a Zipless Fuck,” described in the book Roiphe cites with such wistful approval, was that of autonomous unencumbered sex characterized by “brevity” and “anonymity.” JONG, *supra* note 120, at 11-14.

Along with her celebration of free sex, Roiphe offers a typically liberal defense of pornography and heaps scorn on the antipornography feminists. For a thorough explanation of the liberal feminist perspective on pornography, see Nadine Strossen, *A Feminist Critique of “The” Feminist Critique of Pornography*, 79 VA. L. REV. 1099 (1993). The article uses several of the arguments Roiphe uses and quotes Roiphe's views on date rape with approval. *Id.* at 1152 n.208.

¹²³ Tad Friend, *Yes*, *ESQUIRE*, Feb. 1994, at 48. The article contained interviews with a number of women, including Roiphe, who are critical of current dominance feminism.

¹²⁴ *Id.* at 50.

¹²⁵ *Id.* at 50.

¹²⁶ *Id.* at 51.

Anna Quindlen describes this attitude as “babe feminism—we’re young, we’re fun, we do what we want in bed.”¹²⁷ While babe feminist Wolf proclaims, “The male body is home to me,”¹²⁸ Quindlen responds, “I like guys, but *my* body is home to me. That is the point of feminism: I got custody of myself.”¹²⁹

Roiphe views feminists’ discussion about the negative aspects of sex as a return to “the rigidly conformist fifties.”¹³⁰ She fails to understand that the right to refuse sex without being afraid of violence is the starting point for true sexual freedom. For many women, defining sex on their own terms includes a decision to wait for more relational, meaningful sex. Columnist Ellen Goodman explains: “Sexual liberation is no longer a question of whether and how often a woman does it with how many men. . . . It’s being redefined by women who need to feel free from fear, free from pressure, to feel.”¹³¹ When women reject casual sex as unsatisfying, they should not be told they are repressed Puritans or Clarissas in blue jeans.¹³²

IV

ROIPIHE ON SEXUAL HARASSMENT: WHAT’S THE MATTER, CAN’T YOU TAKE A DIRTY JOKE?

Roiphe at least acknowledges that rape does occur in violent “stranger rape” situations¹³³—if a man holds you at knifepoint, she is willing to admit that this is a crime.¹³⁴ However, in her chapter titled “Reckless Eyeballing: Sexual Harassment on Campus,”¹³⁵ Roiphe comes close to denying the very existence of sexual harassment.¹³⁶ Women who claim they are sexually harassed are just oversensitive bad

127 Anna Quindlen, *And Now, Babe Feminism*, N.Y. TIMES, Jan. 19, 1994, at A21.

128 Friend, *supra* note 123, at 49.

129 Quindlen, *supra* note 127, at A21.

130 ROIPIHE, *supra* note 2, at 83.

131 Ellen Goodman, *Frank Talk on Sexual Pleasure*, TULSA WORLD, Friday, Oct. 29, 1993, at 13.

132 Roiphe describes today’s feminists as Clarissas “transported into the twentieth century,” still concerned with traditional views of chastity and still “attaching the same quasi-religious value to the physical act.” ROIPIHE, *supra* note 2, at 74-75. Much of Roiphe’s text reminds me of the “line” fraternity boys used to use during my college days. Women who wouldn’t “put out” were “frigid” or (gasp—even worse) lesbians.

133 Here, Roiphe is following the line of reasoning described by Susan Estrich: Only violent, stranger rapes are considered “real” and taken seriously by the police and public. SUSAN ESTRICH, *REAL RAPE* (1988).

134 In an attempt to contrast “staged” descriptions of rape given by participants in “Take Back The Night” demonstrations and “real rape,” Roiphe describes a friend who was raped by a man with a knife. This brief narrative is the only place in the book in which she expresses sympathy for a rape victim. ROIPIHE, *supra* note 2, at 43.

135 *Id.* at 85-112.

136 While Roiphe does give lip service to the idea that there may be some instances in which sexual harassment can occur, she prefers to broaden these instances into a gender-neutral concept of abuses of power. *Id.* at 104.

sports, "hothouse flowers"¹³⁷ who will wilt in the real world. Her vision of what women should do if they are harassed is uncompromising and macho: "If someone bothers us, we should be able to put him in his place without crying into our pillow or screaming for help or counseling."¹³⁸

This statement both understates the nature of sexual harassment—it is far more than being "bothered"—and mischaracterizes the strength of women's responses. It is not a sign of weakness or crying into one's pillow to file complaints and to sue one's harasser. The woman who chooses to follow this route can count on peer disapproval and possible loss of employment opportunities. The vilification of Anita Hill, hardly a frail "hothouse flower," is an example of what a woman describing her experience can expect.¹³⁹

Roiphe's analysis of sexual harassment is entirely gender-neutral and oblivious to the unequal power relationships between men and women. She does acknowledge that a professor should not offer to trade sex for a grade,¹⁴⁰ but she attempts to turn this clear example of quid pro quo sexual harassment¹⁴¹ into a mere abuse of power, comparing the situation to a professor trading grades for a thousand dollars.¹⁴² This approach fails to understand that sexual harassment is a form of sex discrimination, not just an abuse of power. The underlying idea is simple and straightforward—people should not be subjected to offensively different treatment because of their sex.¹⁴³ In contrast, Roiphe asserts that women should heed the childhood adage: "Sticks and stones may break my bones, but names will never hurt me."¹⁴⁴ This advice attempts to turn women into docile victims

¹³⁷ *Id.* at 109.

¹³⁸ *Id.* at 101.

¹³⁹ See Emma C. Jordan, *Race, Gender, and Social Class in the Thomas Sexual Harassment Hearings: The Hidden Fault Lines in Political Discourse*, 15 HARV. WOMEN'S L.J. 1 (1993).

¹⁴⁰ ROIPHE, *supra* note 2, at 104.

¹⁴¹ See Equal Employment Opportunity Commission's Guidelines on Discrimination Because of Sex, 29 C.F.R. § 1604.11(a)-(g) (1993). The guidelines state:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Id. § 1604.11(a). The first two sections of the definition of sexual harassment constitute quid pro quo harassment. The third section constitutes hostile environment harassment.

¹⁴² ROIPHE, *supra* note 2, at 104.

¹⁴³ See, e.g., CATHARINE MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* (1979).

¹⁴⁴ ROIPHE, *supra* note 2, at 101. Roiphe offers her mother, who was flattered by comments of construction workers, as a desirable model. *Id.* at 102.

of behavior they should not have to tolerate, an ironic position from an author who accuses feminists of turning women into weaklings.

Roiphe also attacks sexual harassment on another ground. In typical liberal language she complains that “[t]he boundaries are subjective, the maps subject to mood. . . . The hostility or offensiveness of a working environment is naturally hard to measure by objective standards. Such vague categorization opens the issue up to the individual psyche.”¹⁴⁵ Roiphe’s implication that courts do not attempt to use objective standards in analyzing sexual harassment cases is incorrect. The Supreme Court has held that sexual harassment is conduct which creates an “objectively hostile or abusive work environment—an environment that a reasonable person would find hostile or abusive.”¹⁴⁶ The majority of lower federal courts use the objective reasonable person standard in sexual harassment cases,¹⁴⁷ although the Ninth Circuit has turned to the reasonable woman standard,¹⁴⁸ a concept Roiphe would undoubtedly abhor.

With her criticism of subjective, contextual decisionmaking in sexual harassment cases, Roiphe rejects the cultural feminist insight that “objectivity” and “neutrality” are just masks for the perspective of the middle class white man. As Leslie Bender explains: “Limited male perspectives are masked, erased, or universalized through techniques of objective, third-person language and author invisibility, but those techniques do not make them less limited in fact.”¹⁴⁹ The phrase “reasonable person” appears objective on the surface, but deciding exactly what type of behavior typifies the reasonable person is inevitably a subjective inquiry, subject to individual biases.

False objectivity may be particularly dangerous in sexual harassment cases because, as cultural feminists understand, men and woman may view workplace behavior differently. For example, a woman who lives with the constant fear of rape may feel threatened by a man who sends her strange notes about his attraction to her, while a man in the same situation might not be afraid.¹⁵⁰ As one court has observed,

¹⁴⁵ *Id.* at 90.

¹⁴⁶ *Harris v. Forklift Systems, Inc.*, 114 S. Ct. 367, 370 (1993).

¹⁴⁷ *See, e.g., Rabadue v. Osceola Refining Co.*, 805 F.2d 611 (6th Cir. 1986), *cert. denied*, 481 U.S. 1041 (1987); *Kirkland v. Brinias*, 741 F. Supp. 692 (E.D. Tenn. 1989), *aff'd*, 944 F.2d 905 (6th Cir. 1991).

¹⁴⁸ *Ellison v. Brady*, 924 F.2d 872, 879 (9th Cir. 1991). For discussion of the merits of the reasonable woman standard, see, e.g., Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and Practice*, 77 CORNELL L. REV. 1398 (1992); Nancy S. Ehrenreich, *Pluralist Myth and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law*, 99 YALE L.J. 1177 (1990); Lucinda M. Finley, *A Break in the Silence: Including Women's Issues in a Tort Course*, 1 YALE J.L. & FEMINISM 41 (1989).

¹⁴⁹ *Gender Difference*, *supra* note 26, at 19.

¹⁵⁰ This example is a brief summary of the facts in *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991). One of the notes said: “I have enjoyed you so much over these past few months. Watching you. Experiencing you from O so far away. . . . Don’t you think it odd

"[M]en and women are vulnerable in different ways and offended by different behavior."¹⁵¹ Gender differences may also influence the offender's understanding of sexual harassment. Nancy Ehrenreich argues, "[S]ome men who engage in (what I would call) harassing behavior do so with neither conscious hostility towards women nor an awareness of the effect of their conduct. . . ."¹⁵² Any meaningful analysis of sexual harassment must take these differences into account; Roiphe's failure to do so limits the usefulness of her discussion.

Because she relies on her own experience so heavily, Roiphe's description of sexual harassment centers primarily on academia. She characterizes it as a world in which overemphasis on sexual harassment creates an "atmosphere of suspicion and distrust"¹⁵³ that ruins the normal teacher-student relationship. The area of academic relationships is one which raises a number of difficult questions, such as whether apparently voluntary student-teacher dating constitutes harassment.¹⁵⁴ Unfortunately, Roiphe's bulldozer analysis is so determined to reject the idea that sexual harassment is *ever* a real problem that it destroys her credibility¹⁵⁵ and therefore does not succeed in generating the thoughtful discussion that the issues deserve.

Roiphe is especially outraged at the idea that women in power can claim to be sexually harassed. After a dubious example of a "teacher's" (really a teaching assistant's)¹⁵⁶ claim that she was sexually harassed by a student, Roiphe proclaims:

Our female professors and high-ranking executives, our congresswomen and editors, are every bit as strong as their male counterparts. . . . To declare that their authority is vulnerable to a dirty joke

that two people who have never even talked together, alone, are striking off such intense sparks. . . ." *Id.* at 874 (ellipses in original). When one of my classes discussed this case, the overwhelming majority of men felt that the note was odd, but not threatening. Most of the women felt that if they had received the note they would have been afraid that the writer would stalk and rape them.

¹⁵¹ *Yates v. AVCO Corp.*, 819 F.2d 630, 637 n.2 (6th Cir. 1987).

¹⁵² Ehrenreich, *supra* note 148, at 1194.

¹⁵³ ROIPHE, *supra* note 2, at 92. Again, Roiphe draws a highly universalist conclusion from her limited perspective. It may or may not be true that this atmosphere exists at Harvard and Princeton. It certainly does not exist at the University of Tulsa, a college which has never had a sexual harassment complaint brought against a professor.

¹⁵⁴ Some feminists argue that even consensual dating perpetuates gender inequality. See, e.g., West, *supra* note 86, at 109-11.

¹⁵⁵ It does so at least among the audience she claims to want to reach—women students and professors. She has a great deal of credibility among hard-core conservatives, who never liked the idea of sexual harassment in the first place.

¹⁵⁶ ROIPHE, *supra* note 2, at 88-89. Roiphe first describes the woman claiming to be harassed as a teaching assistant. Then, in the same paragraph, Roiphe refers to her as a "teacher." Teaching assistants have different positions at different schools, but are often graduate students who do not have any real power over the students with whom they interact. Roiphe is being intellectually dishonest when she compares a student-teaching assistant power relationship to a professor-student relationship.

from someone of inferior status just because that person happens to be a man is to undermine their position.¹⁵⁷

This approach is a nice example of wishful thinking, but unfortunately it does not reflect reality for women in power. Studies of women professors have established that they are vulnerable to the behavior of male students.¹⁵⁸ Male students can use teaching evaluations to critically undermine a professor's authority in the early stages of her career. Harassment may subtly affect a teacher's confidence and concentration and ultimately affect her performance in the classroom. Even tenured professors are not immune to feelings of insecurity when their students and colleagues make them feel objectified because of their sex.

One of the legal fraternities in my school recently held a fundraiser in which faculty members would sit in a chair above a bucket and be "dunked" by students throwing a ball. To publicize this event, students placed large T-shirts bearing the words "Wet T-shirt contest" behind the podiums in our major classrooms. When I imagined teaching in this setting, I pictured the inevitable giggles and snickers that would occur as students whispered about how I would look in a wet T-shirt. The other women teachers on my faculty had the same reaction and the shirts were eventually removed.¹⁵⁹

Of course, Katie Roiphe would characterize our reactions as signs of weakness, but the real sign of weakness would have been accepting the situation without protest. The woman professor who initially complained about the T-shirts was untenured. I was impressed by the courage she showed in raising a controversial and unpopular issue, even in light of the assistant dean's refusal to admit that the T-shirts might have sexual connotations. Ultimately, I found the T-shirt incident to be an empowering occasion for myself and the other faculty women.¹⁶⁰ The creation of the tort of sexual harassment¹⁶¹ has told women that we do not have to accept insulting, demeaning behavior

¹⁵⁷ *Id.* at 90.

¹⁵⁸ See, e.g., Marina Angel, *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 *TEMPLE L. REV.* 799, 832-33 (1988) (documenting male students' negative reactions to female teachers); Joan M. Krauskopf, *Touching the Elephant: Perceptions of Gender Issues in Nine Law Schools*, 44 *J. LEGAL EDUC.* 311, 330-31 (1994); Elyce H. Zenoff & Kathryn V. Lorio, *What We Know, What We Think We Know, and What We Don't Know about Women Law Professors*, 25 *ARIZ. L. REV.* 869, 879 (1983).

¹⁵⁹ The administration offered a gender-neutral reason for the removal of the shirts: Any extremely large "sign" would be disruptive to classes and henceforth the law school would limit the size of any classroom posters.

¹⁶⁰ The incident was also positive because it gave the faculty women a chance to work together. Our victory provides another example of the effectiveness of the group activity that Roiphe so emphatically rejects. See *infra* part V.A.

¹⁶¹ I am not necessarily claiming that placement of the T-shirts constituted hostile environment sexual harassment, although I think a good case could be made to that effect. My point is that the existence of case law on the subject provided support for our conten-

as a "fact of life" as Roiphe would have it. Contrary to Roiphe's assertions, this message is a positive one for women—when we stand up for ourselves against sexist behavior we feel stronger, not weaker.

V

WOMEN AS VICTIMS AND STEREOTYPES

A. The Victimization Theme

Roiphe condemns the "Take Back the Night" demonstration in which women discuss their experiences as rape victims. She writes:

Although the march is intended to celebrate and bolster women's strength, it seems instead to celebrate their vulnerability. The marchers seem to accept, even embrace, the mantle of victim status. As the speakers describe every fear, every possible horror suffered at the hands of men, the image they project is one of helplessness and passivity.¹⁶²

Roiphe's criticism is part of the "I am woman, hear me roar"¹⁶³ rhetoric that is increasingly common among feminists who believe that when women talk about their problems, they portray themselves as weak, powerless victims.¹⁶⁴

This popular proposition denies the reality of the number of incidents of violence against women. As columnist Ellen Goodman points out, one reason women portray themselves as victims is that they so often are. Over four million women are the victims of domestic violence every year, and three quarters of all women will be the victim of some form of violence in their lifetime.¹⁶⁵ At least 13% of women are rape victims,¹⁶⁶ and marital rape remains legal in some form in many states.¹⁶⁷ Calling attention to the staggering number of women who are the subject of violent attacks is an important step toward decreasing the frequency of these attacks. Women's reluctance to seek legal

tions about why we felt uncomfortable teaching in that setting—it also helped keep us from feeling like isolated cranks.

¹⁶² ROIPHE, *supra* note 2, at 43-44.

¹⁶³ The reference is to a song by Helen Reddy. HELEN REDDY, *I Am Woman, on HELEN REDDY'S GREATEST HITS* (Capitol Records 1987).

¹⁶⁴ See, e.g., Paglia, *supra* note 6; Wolf, *supra* note 6. Ironically, although Roiphe decries victimization, her book at times reads like a version of "Take Back the Academy" in which she portrays herself as the victim of authoritative feminists who call her names and reject her unorthodox views. ROIPHE, *supra* note 2, at 6-7.

¹⁶⁵ Deborah L. Rhode, *Feminism and the State*, 107 HARV. L. REV. 1181, 1193 (1994) (citing STAFF OF SENATE COMM. ON THE JUDICIARY, 102d Cong., 2d Sess., *VIOLENCE AGAINST WOMEN: A WEEK IN THE LIFE OF AMERICA*, 11 (Comm. Print 1992)).

¹⁶⁶ Crichton, *supra* note 7. As previously discussed, rape statistics are controversial. See *supra* notes 69-76 and accompanying text.

¹⁶⁷ KATHERINE BARTLETT, *GENDER & LAW* 521-22 (1993); see also Robin West, *Equality Theory, Marital Rape, and the Promise of the Fourteenth Amendment*, 42 FLA. L. REV. 45, 47 n.9 (1990).

recourse for crimes against them has made rape one of the country's most underreported crimes,¹⁶⁸ and for years kept police from taking domestic violence seriously.¹⁶⁹

Women must talk about being victims as long as our culture denies or trivializes their victimization. Despite the severity of their offenses, only 2-5% of accused rapists are actually convicted,¹⁷⁰ and few domestic violence cases result in serious punishment.¹⁷¹ A classic example of society's failure to accept the seriousness of violence against women occurred in the highly publicized murder case of Nicole Simpson, ex-wife of the famous football star O.J. Simpson.¹⁷² Despite undisputed reports of the athlete's history of battering his wife, many Americans persisted in referring to Simpson as a "hero" and cheered "Go, O.J., Go" while he was attempting to evade the police.¹⁷³ Although many people had known about Simpson's history of wife abuse, he never lost his lucrative commercial endorsements or his job as a television sports commentator.¹⁷⁴ The clear message was that the injuries Simpson's wife sustained were not really important, certainly not as serious as if the football star had been caught gambling or taking drugs.¹⁷⁵

Women must also claim victim status to make clear that the crimes committed against them are not their fault. Despite numerous changes in rape laws, the victim is often implicitly asked what she did

¹⁶⁸ RHODE, *supra* note 30, at 246.

¹⁶⁹ DEL MARTIN, *BATTERED WIVES* 93-100 (1977).

¹⁷⁰ RHODE, *supra* note 30, at 246. Conviction rates are much lower for rapes than for other serious felonies. Henderson, *supra* note 72, at 128.

¹⁷¹ *Id.* at 1194.

¹⁷² Michael Fleeman, 'Not Guilty' Says O.J. Prosecution: Simpson Planned Dual Slaying, DAYTON DAILY NEWS, June 21, 1994, at 1A, available in 1994 WL 3876404.

¹⁷³ See, e.g., Ellen Goodman, *Who Tried to Stop Him? Fans and Friends Long Ago Lost Sight of the True Victims in O.J. Simpson's Tragedy*, BOSTON GLOBE, June 22, 1994, at A9; Paul Greenberg, *Yesterday's Hero, O.J.: An Othello For Our Times*, TULSA WORLD, June 23, 1994, at A14; Bob Herbert, *Juice and Reality*, N.Y. TIMES, June 22, 1994, at A11; Anna Quindlen, *Remember Nicole Simpson*, N.Y. TIMES, June 22, 1994, at A11.

¹⁷⁴ Mariah B. Nelson, *Bad Sports*, N.Y. TIMES, June 22, 1994, at A21. Another example of society's willingness to forgive male sports heroes for behavior that it would not sanction in women was the praise heaped upon basketball superstar Magic Johnson, when he announced that he was HIV positive. The public accepted Johnson's revelation that he had slept with hundreds of women without a blink. Alison Muscatine, *Johnson Reveals He Knew Test Results Earlier*, WASH. POST, Nov. 13, 1991, at A1, available in 1991 WL 2108150. While Johnson, unlike Simpson, is a genuinely sympathetic character, tennis star Martina Navratilova nevertheless had a valid point when she stated that if a woman had Johnson's record, she would be condemned immediately as a promiscuous slut. *Navratilova Knocks Magic's Message*, WASH. POST, Nov. 21, 1991, at B2, available in 1991 WL 2106532.

¹⁷⁵ In contrast, tennis star Jennifer Capriati lost millions of dollars in endorsements when she was arrested for a minor marijuana offense. See *Tennis Star's Lawyer Denies Drug Abuse*, DAYTON DAILY NEWS, May 20, 1994, at A4, available in 1994 WL 4305757. Pete Rose found himself ostracized for his gambling. Shirley Povich, *Say Goodbye to Charlie Hustler*, WASH. POST, July 21, 1990, at D7, available in 1990 WL 2119466.

to "ask for it."¹⁷⁶ If she wore provocative clothing, had been drinking, or had a sexual history, juries have often considered her to be the real cause of the crime and acquitted her rapist.¹⁷⁷ Similarly, the victim's provocative conduct is considered a relevant factor in sexual harassment cases.¹⁷⁸ Women who have been battered ask themselves what they did to provoke the behavior and are blamed for staying in the abusive situation.¹⁷⁹

Along with her refusal to acknowledge the compelling reasons for discussing crimes against women, Roiphe also fails to appreciate the strength of the movement against sexual oppression of women. Roiphe is contemptuous of group action and public experiences; she claims that "the individual power of each story is sapped by the collective mode of expression."¹⁸⁰

Roiphe's rejection of group political activity is amazingly ahistorical; it ignores most of the significant gains underrepresented groups have made through collective action. Women working together against date rape have made tremendous strides toward increasing public awareness of the crime.¹⁸¹ If demonstrations about date rape are really just ineffective whimpers of frail women, as Roiphe contends,¹⁸² then it is hard to explain the anger and attention that the issue has generated. The eagerness of the media to highlight comments like "someone's rape may be another person's bad night"¹⁸³ and the hostility directed at Catharine MacKinnon¹⁸⁴ are reactions of a patriarchal culture on the defensive.

Another flaw of the "antivictim" rhetoric is that it reverts to the patriarchal emphasis on keeping a stiff upper lip. This attitude fails to understand the courage that it takes to discuss your feelings in public. It is far easier not to talk about being raped than to expose yourself to people who will not believe you or who will blame you for the rape. Lynne Henderson describes her own experience:

¹⁷⁶ Henderson, *supra* note 72, at 160.

¹⁷⁷ *Id.* at 160.

¹⁷⁸ See Ann C. Juliano, Note, *Did She Ask For It? The "Unwelcome" Requirement in Second Harassment Cases*, 77 CORNELL L. REV. 1558, 1582-87 (1992).

¹⁷⁹ Marta R. Mahoney, *Legal Images of Battered Women: Redefining the Issue of Separation*, 90 MICH. L. REV. 1, 61-63 (1991).

¹⁸⁰ ROIPHE, *supra* note 2, at 36.

¹⁸¹ See, e.g., Susan Estrich, *Palm Beach Stories*, 11 LAW & PHIL. 5 (1992) in which the author states with regard to date rape, "[O]nly a few years ago, it was hard to get anyone to take the topic seriously. Lately, there have been days when it seems as if no one in America was talking about anything else." *Id.* at 5.

¹⁸² ROIPHE, *supra* note 2, at 42-44.

¹⁸³ *Id.* at 54.

¹⁸⁴ A book review of MacKinnon's latest book began, "Suppose I decide to rape Catharine MacKinnon before reviewing her book." Carlin Romano, *Between The Motion and the Act*, NATION, Nov. 15, 1993, at 563.

I do not think I can ever overcome the nasty rumors about me that were spread because I was open about the assault. That may be the price you pay for speaking out, and I understand why other rape survivors find that price too high to pay. . . . But we are doomed to stay in the traps of rape mythology unless we look at what rape really is. Women *and men* must confront the horror, not deny it, and do everything in their power to end it.¹⁸⁵

It may seem contradictory to state that women must proclaim their victimization to stop being victims, but Henderson is right—the only way to end rape is to talk about its impact on its victims.

Roiphe belittles the impact that rape has on women; she proclaims:

The idea that date rape remains with the victim, that it necessarily cripples her, that she can never trust men again, that she must be counseled . . . are part and parcel of the same old ethos of female victimhood. In institutionalizing the assumption that rape is universally life-threatening, feminists are institutionalizing female weakness.¹⁸⁶

Roiphe fails to hear voices like Lynne Henderson's, which summarize the complex emotions women feel after rape:

I was scared—at the least little noise I would jump and sometimes scream; I was in pain; I was furious with men and my vulnerability; I was in mourning. . . . I had never confronted the utter helplessness of rape, of knowing that it just *did not matter* that I existed; that I did not want this; that I was a human being; not a thing to be invaded, punched, or possibly killed.¹⁸⁷

This is not the voice of a whimpering crybaby, but the voice of a strong survivor who has had the inner strength and courage to confront her feelings after rape and deal with them with painful honesty. Roiphe's failure to understand this shows her own weakness, not Henderson's.

Throughout her book, with her disdain for women who seek counseling for emotional problems, Roiphe appears to be asking "why can't a woman be more like a man?"¹⁸⁸ Cultural feminists recognize that men are more likely to deny the existence of emotional injuries and less likely to turn to professionals for help with their problems.¹⁸⁹ But to say this behavior is desirable betrays a lack of understanding of

¹⁸⁵ Henderson, *supra* note 95, at 224.

¹⁸⁶ ROIPHE, *supra* note 2, at 74.

¹⁸⁷ Henderson, *supra* note 95, at 223.

¹⁸⁸ This quotation is from the popular musical, ALAN J. LERNER & FREDERICK LOEWE, *MY FAIR LADY* (1956) (lyrics to the song *Why Can't a Woman Be More Like a Man* heard in Act II, Scene IV).

¹⁸⁹ See *Women in Crisis More Likely To Seek Professional Help*, TULSA WORLD, June 12, 1994, at L1.

the consequences of repressing emotional problems. Who is really stronger, for example, the alcoholic who admits he has a problem and seeks professional help, or the one who continues in a state of denial until his illness has destroyed his life and that of his family?

Although Roiphe claims to hate the supposed uniformity in contemporary feminism, her own version of the desirable new feminist rigidly portrays emotions just like her own. As one commentator notes:

Roiphe and Paglia are not exactly invoking rules, but their comments seem to derive from a belief that everyone except idiots interprets information and experience in the same way. In that sense, they are not so different . . . from those ladies dedicated to establishing feminist-based rules and regulations for sex. Such rules, just like the old rules, assume a certain psychological uniformity of experience, a right way.¹⁹⁰

B. The Stereotyping Theme

Roiphe complains that modern feminism reinforces Victorian stereotypes of women as passive and sweet, as "the naive girl child who trusts the rakish man."¹⁹¹ Roiphe compares date rape pamphlets to "Victorian guides to conduct"¹⁹² and invokes images of Shakespeare's Lucrece¹⁹³ and Samuel Richardson's *Clarissa*¹⁹⁴ to prove this point. Similarly, Joan Williams claims "'relational feminists' . . . reclaim the compliments of Victorian gender ideology while rejecting its insults."¹⁹⁵ This fear of a return to Victorian stereotypes of females may be a straw woman (perhaps actually made out of gossamer), but it is a common critique of cultural feminism,¹⁹⁶ and, as Roiphe's book illustrates, it is one that can be manipulated in dangerous ways. The consequences of a retreat from the important work feminists have done to increase awareness of date rape and sexual harassment are worse than

¹⁹⁰ Gaitskill, *supra* note 2, at 38.

¹⁹¹ ROIPHE, *supra* note 2, at 71.

¹⁹² *Id.* at 66.

¹⁹³ *Id.* at 70 (referring to WILLIAM SHAKESPEARE, *THE RAPE OF LUCRECE* (Penguin Books 1971) (1594)).

¹⁹⁴ *Id.* at 71-72 (referring to SAMUEL RICHARDSON, *CLARISSA, OR, THE HISTORY OF A YOUNG LADY: COMPREHENDING THE MOST IMPORTANT CONCERNS OF PRIVATE LIFE* (AMS Press 1990)).

¹⁹⁵ Williams, *supra* note 38, at 807.

¹⁹⁶ See, e.g., *id.*; *Feminism Historicized*, *supra* note 39, at 1187-1213. Author Rene Denfield is writing a book called *The New Victorians: Why Young Women Are Abandoning the Women's Movement*. Friend, *supra* note 123, at 52. The charge of Victorianism has been leveled at dominance feminists as well as cultural feminists. Author Nadine Strossen describes the anti-pornography movement as "perpetuat[ing] demeaning stereotypes about women." Strossen, *supra* note 122, at 1147. Author Pete Hamill calls dominance feminists the "New Victorians." *Id.* at 1150 n.198 (quoting Pete Hamill, *Women on the Verge of A Legal Breakdown*, PLAYBOY, Jan. 1993, at 186).

the partial reality that these movements may reinforce some stereotypes about women.

The issue of stereotyping of women is far more complex than Roiphe and other critics of cultural feminism acknowledge. As Kimberle Crenshaw and other critical race theorists have demonstrated, the Victorian virgin image was never applied to women of color.¹⁹⁷ There is no single coherent stereotype of women that can be identified and combatted. Further, stereotypes about women often contradict each other. Women are both too passive and castrating bitches, frivolous and lacking a sense of humor. Because stereotypes include joined opposites, when we attack one side of a linked pair, we strengthen its opposite counterpart. The feminist analysis of date rape confronts the stereotypes about women that lead to date rape—women are either angelic virgins or whores,¹⁹⁸ who deserve to be raped¹⁹⁹—and attacks the myth that when a woman says no, she really means yes.²⁰⁰ Feminists' insistence that "no means no" may create images of female purity, but the danger of "no means yes" and other myths about rape²⁰¹ exceed any damage done by outmoded stereotypes. Any abstract threat stereotypes pose to women fades in comparison to the personal injuries sustained by sexual oppression. If Vivienne Rabidue, the plaintiff in *Rabidue v. Osceola Refining Co.*,²⁰² had been given a choice of submitting to her co-worker's epithets of

¹⁹⁷ Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 157 ("Historically, there has been absolutely no institutional effort to regulate Black female chastity."). Similarly, Angela Harris argues that "as a legal matter, the experience of rape did not even exist for black women." Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 599 (1990).

¹⁹⁸ As Lynne Henderson puts it:

[T]he proud female fighting to the utmost is not a 'real man'; she is a particular vision of female 'virtue'—as opposed to the 'fallen' whore. If the victim does not fight, then she must be a fallen whore who consented. Because we expect men to persist in this culture unless the woman does something drastic, it must be a 'seduction' rather than a rape.

Henderson, *supra* note 95, at 204.

¹⁹⁹ Traditionally, criminal law treatises stated that it was a "mockery" to speak of raping a prostitute. ROLLIN PERKINS & RONALD N. BOYCE, *CRIMINAL LAW* 205 (1982). Feminist efforts have generally eliminated these antiquated notions. See Mary I. Coombs, *Crime in the Stacks or a Tale of a Text: A Feminist Response to a Criminal Law Textbook*, 38 J. LEGAL EDUC. 117 (1988).

²⁰⁰ See generally Lois Pineau, *Date Rape: A Feminist Analysis*, 8 LAW & PHIL. 217 (1989).

²⁰¹ These include the myth that all women have rape fantasies (a classic example is Rhett Butler carrying Scarlett O'Hara up the stairs in the movie *Gone With The Wind*), that women cannot be raped if they do not want to be, and that rape victims "ask for it." Henderson, *supra* note 95, at 224. See also Morrison Torrey, *When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions*, 24 U.C. DAVIS L. REV. 1013 (1991).

²⁰² 805 F.2d 611 (6th Cir. 1986), *cert. denied*, 481 U.S. 1041 (1987).

her as “cunt,” “pussy,” and “fat ass”²⁰³ or being called a “Victorian woman,” I have no doubt which harm she would choose.

The critics’ concern about the passive Victorian stereotype seems especially misplaced in light of current perceptions of women and sex crimes. As Lynne Henderson points out, the prevalent “story” of rape is one of male innocence and female guilt.²⁰⁴ The most pervasive stereotype of women today is not the cowering Clarissa, as Roiphe claims, but the “man-hating” humorless “feminazi.”²⁰⁵ This stereotype may eventually change, but its contrast to older stereotypes shows us that we cannot shape our debates about feminist strategy and issues around an exaggerated fear of stereotypes. Leslie Bender provides a powerful answer to the concerns of critics like Roiphe and Williams:

If stereotypes are going to be used against us, as they have been in the past, they will be so used regardless of what we say or do. Those who want to exercise their power by disadvantaging women based on stereotypes did so long before we celebrated women’s cultures and will do so long after, no matter which strategy we select in our struggle for justice for women.²⁰⁶

VI

ROIPIHE’S VERSION OF LIBERAL FEMINISM

As I have discussed, Roiphe’s book echoes many of the current feminist critiques of both dominance and cultural feminism, critiques that have resulted in postmodernism²⁰⁷ becoming the dominant “voice” in current feminist thought.²⁰⁸ Additionally, Roiphe’s work exemplifies a strand of feminist theory that is sometimes combined with postmodernism—a call for a return to a reformulated version of liberalism. This is an idea that Anne Dailey applauds in *Feminism’s Return to*

²⁰³ *Id.* at 624 (Keith, J., concurring in part and dissenting in part). The co-worker also said, “All that bitch needs is a good lay.” *Id.*

²⁰⁴ Henderson, *supra* note 72, at 130.

²⁰⁵ See Diane Rehm, *We Need A Truth Detector*, WASH. POST, June 30, 1994, at A31 (describing television and radio commentator Rush Limbaugh’s characterization of feminists as “feminazis”); see also Ellen Goodman, *What Out—The Straw Feminist Is Back and They Say She’s Mad*, BOSTON GLOBE, Jan. 27, 1994, at A11 (discussing attempts to characterize Lorena Bobbit, who cut off her husband’s penis, as the ultimate role model for feminists).

²⁰⁶ *Gender Differences*, *supra* note 26, at 44.

²⁰⁷ Definitions of postmodernism vary, but there is general agreement that “the postmodern view of the individual or the legal subject opposes the Enlightenment view of the stable coherent self.” BARTLETT, *supra* note 167, at 671. Patricia Smith describes postmodern feminists as “[denying] that categorical, abstract theories derived through reason and assumptions about the essence of human nature can serve as the foundation of knowledge.” PATRICIA SMITH, *FEMINIST JURISPRUDENCE* 6 (1993).

²⁰⁸ See, e.g., MARY JOE FRUG, *POSTMODERN LEGAL FEMINISM* (1992); Cain, *supra* note 35; Jane Flax, *Postmodernism and Gender Relations in Feminist Theory*, 12 *SIGNS* 624 (1987); *Dissolving the Sameness/Difference Debate*, *supra* note 39.

Liberalism,²⁰⁹ her book review of Katherine Bartlett's collection of feminist jurisprudence essays.²¹⁰ Dailey surveys the decline of cultural and dominance feminism and concludes that

to the extent that any one political theme may be said to emerge from the most recent essays in this book, it is a theme closely resembling the liberal principles of diversity. The difference debate has led feminism toward the articulation of a renewed liberalism, a re-deemed liberalism in which the philosophy of possessive individualism characteristic of classic liberalism has been tempered by a principle of empathy.²¹¹

Similarly, at the end of one of her articles, Joan Williams speaks with approval of the radical future of liberal feminism.²¹² This approach is consistent with the "new" liberal feminists, who emphasize that their version of feminism is an attempt to "realize liberalism's full potential,"²¹³ and very different from traditional, patriarchal liberalism.

One major problem with this theory is that once a dominant school of thought has acquired well recognized characteristics, it is difficult to remove these characteristics from the minds of others. Feminists who believe they can transform a thought system based on the concept of individual autonomy into a system that offers "the possibility of political union built upon bonds deeper than self interest"²¹⁴ underestimate the difficulties of such a transformation. Roiphe's book, which consistently advocates individualized solutions to sexual oppression²¹⁵ and rejects group activity such as "Take Back the Night" demonstrations,²¹⁶ is a more realistic example of what happens when one combines feminism with liberalism.

Dailey advocates use of narratives²¹⁷ as a means to "reconstruct the liberal ideal we already have in an attempt to realize its full emancipatory potential."²¹⁸ But the liberal emphasis on abstract "ob-

²⁰⁹ Anne Dailey, *Feminism's Return To Liberalism*, 102 YALE L.J. 1266 (1993).

²¹⁰ FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER (Katharine T. Bartlett & Rosanne Kennedy eds., 1991).

²¹¹ Dailey, *supra* note 209, at 1266-67. For another thought-provoking defense of liberal thought, see Linda C. McClain, "Atomistic Man" Revisited: *Liberalism, Connection, and Feminist Jurisprudence*, 65 S. CAL. L. REV. 1171 (1992).

²¹² *Gender Wars*, *supra* note 39, at 1663.

²¹³ Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617 (1990), reprinted in FEMINIST LEGAL THEORY: READINGS IN LAW AND GENDER, *supra* note 209, at 333, 337.

²¹⁴ Dailey, *supra* note 208, at 1283.

²¹⁵ ROIPHE, *supra* note 2, at 101.

²¹⁶ *Id.* at 29-50. Roiphe writes: "But an individual conversation is worlds away from the spectacle of mass confession. I find the public demand—and it is a demand—for intimacy strange and unconvincing." *Id.* at 43.

²¹⁷ Narratives have become a central part of feminist jurisprudence. See, e.g., Abrams, *supra* note 49; Lucie E. White, *Subordination, Rhetorical Survival Skills and Sunday Shoes: Notes on the Hearing of Mrs. G.*, 38 BUFF. L. REV. 1 (1990); Patricia Williams, *On Being The Object of Property*, 14 SIGNS 5 (1988).

²¹⁸ Dailey, *supra* note 208, at 1285.

jective" truths²¹⁹ is not compatible with the use of narratives. Liberal critics of storytelling are already demanding that storytelling must contain "[r]eason and analysis,"²²⁰ two terms closely associated with traditional liberalism.²²¹ When two fundamentally incompatible approaches to scholarship are blended, the result will probably be more like *The Morning After* than Dailey's emancipatory ideal.²²² Roiphe's book uses narratives to express liberal ideas and although her narratives are not particularly believable,²²³ the liberal press has picked up her themes and restated them in authoritative, abstract terms to represent universal truths.²²⁴

Roiphe's book is not limited to narratives. In many places, she reverts to universal, abstract statements to make her point. Her use of overly broad arguments suffers from the common failure of liberals to consider situations in context. For example, Roiphe argues, "To find wanted sexual attention, you have to give and receive a certain amount of unwanted sexual attention."²²⁵ This statement is hard to refute on its face, but it masks the significant range of unwanted sexual attentions. A man asking a woman "Would you like to go to a movie Friday night?" is a far cry from a man grabbing a woman by her ponytail, forcing her head back and sticking his tongue in her mouth.²²⁶ Both behaviors can accurately be characterized as "unwanted sexual attention" if the woman is not attracted to the man, but

²¹⁹ For liberal defenses of objectivity, see Heidi Li Feldman, *Objectivity in Legal Judgment*, 92 MICH. L. REV. 1187 (1994); Jules L. Coleman & Brian Leiter, *Determinacy, Objectivity, and Authority*, 142 U. PA. L. REV. 549 (1993). Those authors explicitly note the feminist challenge to objectivity and reject it. Feldman, *supra*, at 1187; Coleman & Leiter, *supra*, at 551 nn.7-8.

²²⁰ Daniel A. Farber & Suzanna Sherry, *Telling Stories Out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 845 (1993).

²²¹ As one critic of the approach of Farber & Sherry, *id.*, argues: "This premise assumes precisely what many storytellers dispute, namely, that mainstream, ordinary, and conventional standards are just 'there' and themselves are already justified." Jane B. Baron, *Resistance To Stories*, 67 S. CAL. L. REV. 255, 256 (1994). Baron additionally argues that one of the major goals of storytelling is to question standards like "reason" and "analysis." *Id.* at 259. I agree with this argument and believe it proves the futility of Dailey's attempt to use storytelling to transform liberalism.

²²² I do agree with Dailey that narratives are important to feminist theory. I also agree that they help resolve the conflict between essentialist views of women and the postmodern dissolution of the very category of woman. However, I do not accept the contention that they can accomplish the transformation of traditional liberalism.

²²³ As Kathryn Abrams has noted, Roiphe's narratives suffer from her failure to include herself as a protagonist in her stories. Abrams, *supra* note 19, at 1542-43. They are also simply not as well written or compelling as narratives of feminist authors such as Patricia Williams, *supra* note 217, or Lucie White, *supra* note 217.

²²⁴ See Crichton, *supra* note 7.

²²⁵ ROIPHE, *supra* note 2, at 87.

²²⁶ Senator Robert Packwood has been accused of this type of behavior. See Peter J. Boyer, *The Ogre's Tale*, NEW YORKER, Apr. 4, 1994, at 36, 41. Ironically, Packwood, like Roiphe, continues to characterize sexual harassment as unwanted sexual advances.

no woman should be expected to submit to the second type of unwelcome advance.²²⁷

The only way to counter the seemingly irrefutable logic of Roiphe's type of liberal analysis is with the contextual approach of cultural feminism.²²⁸ Dailey, in her advocacy of a return to liberalism through the use of narratives, recognizes the importance of "a call to context"²²⁹ but fails to recognize that liberalism's commitment to "the rule of law" is, by its very nature, anticontextual.²³⁰

Beyond the use of narratives, Dailey advocates an emphasis on empathy as a guiding force of liberalism and contends that "[f]eminist theory can help us to recognize that we are not alienated souls coming together in a spirit of empty pluralism, but individuals profoundly connected in infinitely complex ways."²³¹ This is a worthy goal, but one that more closely resembles cultural feminism than liberalism. As cultural feminist Robin West has explained, "official" legal liberalism is based on "the inevitability of the individual's material separation from the 'other.'"²³² Moreover, traditional liberalism values this individual autonomy above all else. In contrast, cultural feminists believe that "the creation of value and the living of the good life . . . depend upon relational, contextual, nurturant, and affective responses to the needs of those who are dependent and weak."²³³ Dailey pictures these two opposing viewpoints²³⁴ somehow merging into her version of "em-

²²⁷ Of course, this type of behavior is not just sexual harassment, it is also criminal battery under most states' laws. However, it is the type of battery which is rarely prosecuted.

²²⁸ I do not mean to imply that cultural feminism is the only school of thought which supports a contextual approach. Obviously postmodern feminism is best suited to considering issues in context. Critics who charge all cultural feminism is essentialist, see *supra* note 41 and accompanying text, would disagree with my contention that cultural feminism supports a contextual approach to the law. However, I reject the charge of essentialism when applied to all cultural feminism. See Linda J. Lacey, *Mimicking the Words, But Missing the Message: The Misuse of Cultural Feminist Themes in Religion and Family Law Jurisprudence*, 35 B.C. L. REV. 1, 247 (1993). Many cultural feminists' work is highly contextual. For example, in her innovative article on tort reform, Leslie Bender advocates a contextual approach with her suggestion that persons causing an injury must help their victims. Bender, *supra* note 26.

²²⁹ Dailey, *supra* note 209, at 1277 n.58.

²³⁰ See Gregory Bassham, *Feminist Legal Theory: A Liberal Response*, 6 NOTRE DAME J. L. ETHICS & PUB. POL'Y 293 (1992). The author views feminist legal theory as presenting a challenge to liberalism and argues, "But to pursue lasting gender equality by abandoning the ideal of the rule of law is not only dangerous—for the rule of law is a hard-won and essential protection for both men and women against arbitrary and oppressive state action—but is also likely to prove self-defeating." *Id.* at 304.

²³¹ Dailey, *supra* note 209, at 1283. For a critique of Dailey's approach, see Cynthia V. Ward, *A Kinder, Gentler Liberalism? Visions of Empathy in Feminist and Communitarian Literature*, 61 U. CHI. L. REV. 929 (1994).

²³² West, *supra* note 26, at 5.

²³³ *Id.* at 28.

²³⁴ Postmodern feminists would reject the dichotomy I have created, and perhaps rightfully so. I do not mean to suggest that either version of human nature represents

phatic liberalism," but history has taught us that "the master's tools will never dismantle the master's house."²³⁵ Dominant theories (in this case the patriarchal version of traditional liberalism) have a way of swallowing subordinate, less popular ideas. Roiphe's book, which combines her version of liberal feminism²³⁶ with the narrative technique Dailey advocates,²³⁷ is a graphic illustration of this fact.

Most attempts to combine feminism with liberalism are not as outrageous and dangerous as Roiphe's work.²³⁸ Nevertheless, the popularity of *The Morning After* should give liberal feminists pause and occasion to rethink the merits of their enterprise.

CONCLUSION

Many of the criticisms of cultural feminism at its height were well deserved, but the genre contains fundamental insights which remain valid. There are significant differences in the way many women and men think and experience life. When we ignore these differences, we often do so at the expense of women.²³⁹ We also perpetuate patriarchal values in our legal system, which is based on rewarding the male model and undervaluing feminine traits. The popularity of Katie Roiphe's book in the mainstream media is not surprising since it reinforces a liberal view of the world—a mythical gender blind, gender-neutral world—in which rules shaped by patriarchal liberal thought apply equally to everyone. Within the context of that world, Roiphe's denial of the seriousness of date rape and sexual harassment has a certain logic. Outside of the context of that world, this denial is insulting, outrageous, and dangerous. But escaping from the thought system that makes Roiphe's work ring so true for so many people is not easy. Cultural feminism offers a means of escape, which should not be discarded in feminism's current rush to postmodernism or a new, improved version of liberalism.

"truth" or that they are irreconcilable. I do, however, mean to suggest that two theories which contain these contrasting views as their *central* tenets cannot be merged into a single coherent theory.

²³⁵ Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in *SISTER OUTSIDER* 110 (1984).

²³⁶ Some liberal feminists might question my categorization of Roiphe as a liberal feminist, but that is clearly how she regards herself. ROIPHE, *supra* note 2, at 1-6, 173-74. Moreover, one of the major works of liberal feminism cites Roiphe with obvious approval. STROSSEN, *supra* note 122.

²³⁷ Roiphe's book does not entirely follow Dailey's suggested techniques. Certainly no one could accuse Roiphe of having even an ounce of empathy for people who disagree with her world view.

²³⁸ I am not as unsympathetic to most of Dailey's ideas as I may sound. I agree with much of her article, especially its emphasis on the importance of empathy.

²³⁹ For example, gender-neutral proposals for divorce reform may disadvantage women. See Linda J. Lacey, *Mandatory Marriage "For the Sake of the Children": A Feminist Reply to Elizabeth Scott*, 66 *TUL. L. REV.* 1435 (1993).

The liberal feminist Wendy Williams describes her feelings about Carol Gilligan's "Amy," who has become a symbol of cultural feminism:²⁴⁰

Amy has been important to me; I embrace her, but I am suspicious of her. . . . I know her well enough to know that part of who she is derives from what subordinates and oppresses her. She, with her considerable virtues, is without a doubt the woman gender ideology wants us to be.²⁴¹

In many ways, I feel the same way about Katie Roiphe. She is the woman that the liberal feminism of the seventies taught me to want to be. I admire her toughness and her independence, but I am suspicious of her. I see these new "do-me" feminists with their feeling of invulnerability, and I feel sad. They are so confident, so sure, and ultimately, so vulnerable. Whether they understand this or not, they are also the women that dominant gender ideology wants us to be. Not the gender ideology of Jesse Helms, but the gender ideology of Hugh Hefner. Roiphe's "babe" feminist, who revels in fun sex, is exactly the stereotype that *Playboy* has promoted for so long. Validating objectification of women and patriarchal models of sex should not be the ultimate goal of feminism.

I am also deeply suspicious of Roiphe's lonely vision of women as people who must avoid group identity and group activity at all cost. In describing the life of the first Native American attorney, a man who ran from his roots all his life, Rennard Strickland eloquently concludes:

Until we understand that our story is not an isolated one, we will all continue to be like Yellow Bird, who observed . . . 'I was a stranger in a strange land . . . looking at the multitude that thronged the streets, and passing each other without a friendly sign, or look of recognition even, I began to think I was in a . . . world, where all were strangers and none cared to know.' Until all of us acknowledge that our songs—our stories—are very much the same, we will continue, like Yellow Bird's harpist, to play on broken strings.²⁴²

Perhaps Katie Roiphe will live out her sheltered life playing on broken strings, without ever understanding the strength and joy that come from a common purpose and sharing of experiences and feelings. If she does, she will have missed so much.

²⁴⁰ Gilligan's most quoted study was of two 10-year olds, Jake and Amy, who were asked a hypothetical question about whether a man should steal a drug to save his dying wife. Jake's answer was hierarchial; Amy's answer was more contextual and concerned about consequences—she was concerned that if the man stole the drug, then he might have to go to prison. GILLIGAN, *supra* note 25, at 25-39.

²⁴¹ Wendy W. Williams, *Notes From a First Generation*, 1989 U. CHI. LEGAL F. 99, 107 (footnotes omitted).

²⁴² Rennard Strickland, *Yellow Bird's Song: The Message of America's First Native American Attorney*, 29 TULSA L.J. 247, 262 (1994).