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THE RADICAL FEMINIST CRITIQUE OF SEX AND REASON

Richard A. Posner*

INTRODUCTION

THE three commentaries on Sex and Reason1 to which the editors of the Review have invited me to respond are written from a self-identified feminist standpoint, as is a fourth, similar in many respects, published in the Harvard Law Review.2 There are significant differences in tone and approach among the papers, but they are recognizably of a type. I hesitate to call the type feminist, because that would make of feminism a sectarian, carelessly reasoned, and faintly nasty enterprise, enunciating radical dogma in the guise of combating stereotypes, overlooking convergence of ends in order to impose an orthodoxy of means, ascribing disagreement to gender. Properly understood, feminism as a branch of learning is the study of women in society, with emphasis on the effects on them of social practices and public policies, with due regard for what women themselves (often long ignored) have said or say, with sincere concern for women’s welfare, and with a heavy dose of skepticism about theories of a theocratic or otherwise dogmatic cast that teach that women are predestined to be subordinate to men. On this construal of feminism, John Stuart Mill is a feminist as well as Catharine MacKinnon; Mary Wollstonecraft as well as Andrea Dwor-

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2. Gillian K. Hadfield, Flirting with Science: Richard Posner on the Bioeconomics of Sexual Man, 106 Harv. L. Rev. 479 (1992) (book review). In view of the similarity, I shall take this opportunity to reply to Professor Hadfield as well.

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kin; Martha Nussbaum as well as Martha Fineman. On this construal, rejection of biological and economic science, rejection of the evidence of one's senses, a left-wing vocabulary thick with words like "patriarchal," "hegemonic," "colonizing," and "classism," and dislike of men coupled with suspicion of heterosexuality are adventitious rather than organic characteristics of feminism; they reflect the temporary dominance of radical feminism in the academy. On this construal, MacKinnon's equation of radical feminism to feminism is wrong.4

Although critical of the tone, politics, general thrust, and many details of the four5 critiques of my book, I am nevertheless grateful for them. They identify and illuminate flaws in my treatment of female sexuality and therefore will be valuable to future researchers.

THE AIMS OF Sex and Reason

It would be presumptuous to assume that every reader of this exchange has read Sex and Reason. I cannot reproduce the argument of the book in the compass of this brief reply, but I can say something about the aims and structure of the work that may help readers to orient themselves. Partly for the education of myself and my colleagues in the judicial profession—for we are called upon more and more to decide cases involving sexual conduct—and partly out of a long-standing academic interest in the economics of nonmarket behavior, I set out to write a broad general work on human sexual practices and norms (legal and moral), unified around the theme that sexual behavior is rational in the economist's sense. Given the breadth of the intended work and the fact that there had been little previous economic writing on sex, I could not hope—quite apart from the limitations of my own competence—to accomplish the complete and definitive analysis of the economics of sexuality. I hoped to be able to show that a simple economic model could explain differences and similarities of sexual behavior and norms across different cultures and epochs and also could gen-

4. Catharine A. MacKinnon, Feminism Unmodified: Discourses on Life and Law 137 (1987); see also Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829, 833 & n.8 (1990). Which is not to suggest that radical feminist thought is a monolith, see, e.g., Katharine T. Bartlett, MacKinnon's Feminism: Power on Whose Terms?, 75 Cal. L. Rev. 1559 (1987) (book review), that all works of radical feminism have all the characteristics that I have listed (it is rather that such works bear a family resemblance, in Wittgenstein's useful sense), or that no radical feminists have made significant contributions to the study of sexuality. Apart from MacKinnon's well-known work, see, e.g., Ruthann Robson, Lesbianism in Anglo-European Legal History, 5 Wis. Women's L.J. 1 (1990).
5. Five, with Hadfield's surreply, supra note 3.
erate new, counterintuitive, testable hypotheses concerning the incidence of different types of sexual behavior. The model viewed sexual behavior as the consequence of rational choices made in light of the relevant costs, including search, expected punishment, fertility, and disease costs, and in light of benefits heavily influenced by innate or otherwise unshakable sexual preferences, for example, for same-sex relations or variety in sexual partners. I did not wish to be dogmatically insistent, however, that economics was the key that would unlock the secrets of human sexuality. I recognized the dependence of an economic theory of sexuality on the descriptive and analytical work of psychologists, historians, and sociologists, including specialists in women’s and gay studies. I was also interested in what biology could contribute to an understanding not only of the physiological properties of human sexuality but also of the social dimensions, including differences between male and female sexual behavior and the preference of some men and women for homosexual relations. I wanted to compare scientific and social scientific approaches to sexuality with the moral theories that have been so influential in shaping mores and public policy. And I wanted to evaluate judicial performance in dealing with such issues of policy as what (if anything) to do about homosexual sodomy, surrogate motherhood, abortion, marital rape, pornography, and nude dancing.

The result is a long book, and an eclectic one, though economics occupies center stage. The vastness of my canvas prevents the work from being exhaustive, although some readers may find it exhausting. I discuss the history of "sexology," the evolution of sexual mores from the ancient Near East to the present, the causes and incidence of male and female homosexuality, the effects and political economy of sex laws, the Supreme Court's sexual and reproductive decisions, monogamy and polygamy, adoption and artificial reproduction, eugenics and population policy, pornography and erotic art, divorce, prostitution, discrimination against homosexuals, abortion and contraception, racial differences in sexual behavior, marital and nonmarital rape, child sexual abuse, transvestism, the "social construction" of sex, the changing role of women, the Swedish experiment in sexual egalitarianism, and other topics besides. Although the emphasis is descriptive and explanatory—hence positive rather than normative—I also offer views on a number of normative issues. The orientation that generates these views is libertarian, in the sense in which that word could be used to describe the political philosophy of John Stuart Mill. I argue that adults (gener-
ously defined to include much of the teenage population) should be free to engage in consensual sexual relations and related conduct (such as the consumption of pornography and the formation and enforcement of surrogate-motherhood arrangements) unless there are palpably adverse consequences for nonconsenting third parties. I argue that government should encourage the provision of information that enables people to minimize the adverse consequences of sex—information about contraception, for example, in order to minimize the incidence of abortions and unwanted births.

A book of such wide scope, dealing with so controversial and emotional a subject, and one on which firm data are so difficult to come by, is sure to contain errors (one of which I acknowledge in this reply) and omissions, misplaced emphases, manifestations of bias and insensitivity, incomplete logic, and warps reflecting the limitations of the author's personal experience and the quirks of his psychology. Aligned with none of the vocal schools of sexual theorizing—not the Foucauldian constructionist, nor the radical feminist, nor the Thomist, nor the neoconservative, nor the paleoconservative, nor the Marcusan, nor the gay and lesbian liberationist—but with a branch of economics, the economics of nonmarket behavior, that is controversial even within the economics profession and detested as "imperialistic" by most other social scientists, and with an even more controversial branch of evolutionary biology—sociobiology, the application of Darwinian principles to social behavior—and with a school of ethical philosophy, associated with Mill and other "soft" post-Benthamite utilitarians, which is generally considered unrigorous and passé—a work such as *Sex and Reason* is bound to be as irresistible a target for criticisms as St. Sebastian was for arrows. I am braced for the volley. Students of hagiography will recall that St. Sebastian survived the arrows.

**The Critics**

*Fineman*

Two of the four authors (Fineman and Robson) refuse to engage with my analysis. Fineman begins by saying that I seek to marginalize the family and to push aside the sexual aspects of traditional marriage. She got this idea because I said that the economic literature on the family had largely ignored sex. But I also said that it is an oversight that I set out to rectify. In fact, marriage, divorce, marital sex, procreation, adoption, and many other topics that involve the family are discussed at length in the book. Fineman claims that I brush aside not
only the family, but also moral theories of sex. On the contrary, I explained that those theories, as the principal rivals to social scientific theories of sexuality such as the economic or bioeconomic theory that the book advances, deserve most serious consideration. They are the focus of Chapters Eight and Ten of the book. Bartlett's paper touches on my treatment of them—briefly, but enough to give the flavor.

Having misdescribed the book, Fineman throws up her hands because she finds it permeated by distortion and bias, by inaccurate, stereotypical, and questionable statements, by a smug and assertive tone, and by a pretense to definitiveness and uniqueness. She gives few particulars, and those primarily concern one chapter of the book, the chapter on the biology—not the economics—of sex. One of my claims is that lesbian couples have intercourse less frequently on average than heterosexual couples, who in turn have intercourse less frequently on average than male homosexual couples. She doesn't contend that this is false—and would hardly be likely to do so, because it is a point made by the scholars whom Professor Robson cites as authorities on lesbian sexuality—only that it contains buried assumptions about the meaning of intercourse and its relation to other forms of sexual expression. That is a fair point, and one that I had overlooked; but if for intercourse we substitute number of sexual acts in which at least one of the partners has an orgasm, the relation that I posit between frequency of sexual activity and the presence of a male would still hold. Were it replied that the orgasm is less central to the female than to the male expression of erotic feeling, I would consider this a confirmation of the basic biological point, that the male sex drive is on average stronger than the female. I never suggested that women love less intensely than men. But if orgasmic activity is a less characteristic, urgent, desired, and fre-


7. Lillian Faderman, Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth-Century America 248 (1991) ("lesbians tend to have less sex than heterosexuals or gay men"); Marilyn Frye, Lesbian "Sex," in Lesbian Philosophies and Cultures 305, 313 (Jeffner Allen ed., 1990) (lesbian relationships tend to be "relationships in which there is a lowish frequency of clearly delineated desires and direct initiations of satisfactions"). See also Faderman, supra, at 246-48, 254.

8. Though perhaps not sheer number of orgasms, since women, unlike men, are physically capable of multiple orgasms in close, almost immediate, succession. Robson suggests that lesbian intercourse frequently is multi-orgasmic. Ruthann Robson, Posner's Lesbians: Neither Sexy nor Reasonable, 25 Conn. L. Rev. 491, 494-95 (1993).

quent activity for women than it is for men, this is an important, and plausibly a biologically programmed, difference.

The second claim of mine that Fineman questions is that capacity for breast-feeding is positively correlated with size of breasts. She is right to question it. But it is a trivial aspect of the book’s argument. Last, she takes issue with my reference to the “common observation” that homosexual men and heterosexual women are on average better-dressed than heterosexual men or homosexual women. Her objection is not that my assertion is false but that it is not adequately documented. If documentation is necessary, it is available.

10. This claim, also questioned by Hadfield, supra note 2, at 492 n.33, was based on a single article and is probably incorrect. I am prepared to concede this point on the basis of a literature of which I was unaware when I wrote Sex and Reason. See Joan M. Bedinghaus & Joy Melnikow, Promoting Successful Breast-Feeding Skills, 45 AM. FAM. PHYSICIAN 1309, 1310 (1992); Barbara K. Popper & Constance K. Culley, Breastfeeding Makes a Comeback—For Good Reason, 5 BROWN U. CHILD BEHAV. & DEV. LETTER, Feb. 1989, at 1.

11. Under the heading “Clothing,” in 1 ENCYCLOPEDIA OF HOMOSEXUALITY 246 (Wayne R. Dynes ed., 1990), we read that “[g]ay men have often used clothing to indicate that they were potential sexual partners for other males.” The various types of “signal” clothing used by gay men are then described. Lesbians receive only a brief paragraph, referring to their former preference for “male formal dress” and to a more recent preference for “somewhat shapeless garments and no makeup,” although it is pointed out that “other gay women prefer more elegant dress, of which there are several versions.” Id. at 247. The best social-scientific treatise on fashion that I have been able to find contains an index entry for “Gay males, dress of,” but nothing concerning lesbians. SUSAN B. KAISER, THE SOCIAL PSYCHOLOGY OF CLOTHING AND PERSONAL ADORNMENT 491 (1985). The Kaiser treatise supports another of my challenged sartorial points—that high heels have a symbolic function, similar to that of Chinese foot-binding, of impeding female mobility. Kaiser remarks that women’s shoes are considered attractive only if they appear to be uncomfortable. Id. at 243. A subsequent version of Kaiser’s book, SUSAN B. KAISER, THE SOCIAL PSYCHOLOGY OF CLOTHING: SYMBOLIC APPEARANCES IN CONTEXT (1990), omits all reference to homosexuals’ clothing choices, but retains the reference to uncomfortable shoes. Id. at 88. It would be odd, of course, to describe male formal dress or shapeless garments as “sexy,” yet “sexy” is a recognized category of both heterosexual women’s clothing, Mary K. Ericksen & M. Joseph Sirgy, Employed Females’ Clothing Preference, Self-Image Congruence, and Career Anchorage, 22 J. APPLIED SOC. PSYCHOL. 408, 411 (1992), and gay men’s clothing. Cf. FRED DAVIS, FASHION, CULTURE, AND IDENTITY 35 (1992). So I think the “fashion hierarchy” alleged in my book is supported as well as plausible.

An alternative possibility, however, is that lesbians don’t dress as well as heterosexual women or homosexual men because they have lower incomes, on average, than either heterosexual women or homosexual men. Men generally have higher incomes than women and many heterosexual women are supported, in part anyway, by a man. Sex and Reason touches on the effect of income on sex-related behavior (at pages 133-36), but the touch may be too light, as argued in Martha Nussbaum, “Only Grey Matter”? Richard Posner’s Cost-Benefit Analysis of Sex, 59 U. CHI. L. REV. 1689, 1726-28 (1992) (book review). Finally, if “better dressed” is thought to be hopelessly vague for social scientific research, one can substitute fraction of income spent on clothing, cosmetics, and grooming, perhaps “normalized” by reference to the spending of heterosexual members of the same sex. So one might compare the ratio of lesbian/heterosexual-female spending on clothing, etc., to the ratio of gay/heterosexual-male spending on clothing, etc.
After this, words begin to fail Professor Fineman. She finds a pattern of “misogynistic conceptualization and thought patterns”\textsuperscript{12} that leaves her speechless. She is particularly dumbfounded by my statement that in very poor societies female infanticide may, by reducing the number of adult women, increase the welfare of surviving females. Bartlett makes the interesting and valid point that these survivors’ welfare, broadly construed as it should be to include psychic as well as material well-being, may be reduced by knowledge of the practice. Another valid feminist point is that girls may be too costly to raise, and thus candidates for infanticide, only because the society refuses to allow women to do productive work. Fineman, however, does not question the accuracy or completeness of my discussion of female infanticide on these or other grounds. And I am grateful to her for not suggesting that I favor female infanticide. The misogyny of which she accuses me consists only in my remarking an unpleasant fact; to utter uncomfortable truths is, apparently, to be misogynistic. Similarly, although she does not claim that I am incorrect in suggesting on the basis of economic analysis that most rape (more, even, were it not a criminal offense) is sex theft rather than a political statement about male domination, she implies (with no basis of which I am aware) that the economic interpretation of rape has been employed to the end of advocating the decriminalization of rape; so here, apparently, I have veered from uttering uncomfortable truths to uttering dangerous ones. In any event it is an odd observation. No one proposes to decriminalize theft. Why then would one suppose that characterizing rape as sex theft by emphasizing the economic commonality of the two crimes would arm the advocates of decriminalizing rape? Who are these advocates, anyway? The trend is quite the opposite. Rape-shield laws and the criminalization of marital rape are recent developments. I add that by referring to rape as sex theft I do not deny its violent, and sometimes sadistic, character. Some forms of theft are crimes of violence and rape is one of them. I deny only that rapists are, as it were, agents of the rest of the adult male population appointed to keep women in a state of terrified dependency.

Eventually, Fineman gives up completely on my book and instead ventures to explain the allure of economic analysis. She concludes that its appearance of detached, rational, scientific inquiry facilitates its use in legitimating the status quo, ratifying existing inequities, and in par-
ticular furnishing spurious justifications for "patriarchy, classism, heterosexism, and racism." I do not see how Fineman could derive such a conclusion from my book. The book is critical of restrictions on abortion and contraception, of discrimination against gays and lesbians, and of the institution of marriage, which I argue (and this should strike a sympathetic chord with Fineman) is likely to give way increasingly to contracts of cohabitation that, so far as I'm concerned, homosexuals should be as entitled to make with each other as heterosexuals are. The book also endorses feminist claims about the prevalence of child sexual abuse (most of it of female children), defends the criminalization of marital rape, and has many kind (though also some critical) words to say about the egalitarian policies of Sweden. Obviously, I do not go all the way with radical feminism, but neither do I endorse any social practice fairly describable as patriarchal, classist, heterosexist, or racist.

Robson

Robson announces in her commentary that she will not attempt to refute any of my factual assertions (although she implies that she could do so easily), because the very attempt would somehow endanger the survival of lesbianism, and she describes her scholarly ambition in frankly political terms, as "contribut[ing] toward the survival of lesbians, both as individuals and as identity." She adds a twist to Fineman's criticism of my suggestion that lesbians are on average less well-dressed than heterosexual females and homosexual males by seeming to be personally affronted by the suggestion. This puzzles me. I had not thought vanity such an admired trait in our society that a group judged deficient in it would feel disparaged if the "deficiency" were pointed out. I should have thought that feminists would decry the social pressure on women to dress attractively and applaud rather than deny lesbians' defiance of that norm. I know that some feminists take umbrage when it is pointed out that female crime rates are much lower than male; I do not understand that reaction either.

A number of assertions in Robson's paper baffle me, such as "the

13. Id. at 512.
14. Robson, supra note 8, at 500-01.
15. I keep repeating this qualification, but it is important. Much discrimination arises from (or induces) the erroneous belief that all members of a minority group have the characteristics of the average member. In fact there is a distribution of characteristics around the mean, and thus there can be great overlap between groups even if the means are different.
‘fact’ of lesbians as ‘not very sexual’ may be perceived as a mandate, or at least a reason, to regulate lesbian sexuality.”¹⁰ I thought on first reading this passage that she might be making the not ridiculous point that if lesbians (or simply all women) were believed “naturally” unsexual, then lesbian sex would seem all the more “unnatural.” But the passage will not bear that interpretation. I am equally perplexed by her suggestion that I believe that lesbians “are not very reasonable.”¹⁷ (Later she says, equally without basis, that my analysis could be thought to imply that lesbians are more rational than male homosexuals.) Rational behavior is behavior guided by costs and benefits, broadly conceived. If a person has an intense sexual preference, the benefit the person receives from acting in accordance with that preference may exceed the costs, even if those costs are high, whether because of social stigma, discrimination, or disease risk.¹⁸ Even if the preference is much less intense, even if a person is merely opportunistically homosexual, a homosexual act may, if opportunity beckons, be substituted for a heterosexual one even if society disapproves of homosexuality. Incidentally, Robson’s suggestion that ten percent of women are lesbians is plainly exaggerated, perhaps by as much as an order of magnitude. The ten percent figure that homosexual-rights advocates have tried to convince the public is the true percentage of homosexuals, male and female, is based on a questionable interpretation of Kinsey’s figure for male homosexuals, and is probably three times too high even for males.¹⁰ It is a political statistic.

Robson makes in passing a point heavily emphasized by Bartlett and Hadfield, that despite all my disclaimers my ostensibly economic analysis depends on the truth of sociobiology. That is not so. It is true that some of what I say about homosexuality depends upon my belief that homosexual preference is largely or entirely innate, rather than acquired as a result of personal choice, cultural influences, seduction, advocacy, or rape. But nothing depends on whether it is innate because a gene or complex of genes for homosexuality might somehow enhance inclusive fitness or because some more or less regular percentage of infants are born with or acquire in early infancy a neurological or psychological condition that will, when they reach sexual maturity, cause

¹⁶. Robson, supra note 8, at 496.
¹⁷. Id. at 497.
¹⁸. Here it should be noted that the AIDS epidemic has reduced the cost of lesbian sex relative to heterosexual sex.
¹⁹. POSNER, supra note 1, at 294-95.
them to be attracted to persons of the same sex. Indeed much of my economic analysis of homosexuality, such as the analysis of homosexual search costs mentioned by Bartlett, Hadfield, and Robson, and the analysis of opportunistic or situational homosexuality, is completely independent of theories about the causes of homosexual preference. The same is largely although not entirely true about my discussion of women’s sexuality. For example, it is a fact, whether or not it has a genetic or a cultural explanation, that women generally have pursued a more conservative sexual strategy than men; for the most part, that is all that my analysis of the differences between male and female sexual behavior requires.

Of course, if the reason for the more conservative strategy is cultural rather than biological, it may be an economic reason, and an economic analysis that failed to explain the reason would be incomplete. But most economic analysis is partial, and therefore incomplete, seeking to explain a part of the social world rather than the whole of it. Yet in fact I do seek to explain the difference in male and female sexual strategies in economic as well as biological terms, emphasizing the tendency of the strategies to converge when women’s occupational profile converges with men’s, as in Sweden.

_Bartlett_

As just mentioned, far from arguing that men and women are slaves to their genes in matters of sex, _Sex and Reason_ emphasizes that women’s sexual strategy changes in the direction of the traditional male strategy as women’s occupational profile comes more to resemble men’s. Bartlett is therefore incorrect to say that it is crucial to my theory to regard men and women as subject not to social factors but only to evolutionary forces. The opposite is true: it is crucial to my theory (for example in Chapter Six, which is about the historical—not biological—evolution of sexual behavior) that human sexual behavior and mores have been shaped by economic forces and not merely by biological ones, that is, by culture as well as by nature.

Bartlett nevertheless makes a number of good points, and in a refreshingly civilized tone. I have already mentioned her point about the possible psychological effects of a practice of female infanticide on survivors whom the practice may make better off in a material sense. She makes a related point about the possible psychological effects on

women and children of allowing a market in parental rights. She is also right to observe that some men derive pleasure from thinking that they belong to the superior or at least the dominant sex. And she is right to point out that when I claim to be presenting a “nonmoral” or “morally indifferent” conception of sex I am in fact presenting a conception based on a specific morality, that of John Stuart Mill and other pragmatic libertarians. The idea of a morality of morally indifferent sex is not entirely oxymoronic, however. To regard sex as morally indifferent is to regard it in the same light in which we (or most of us) regard driving cars. Driving is a potentially dangerous activity, to self and to others, but ethical and policy analysis of it is generally not encumbered by taboos, stigmas, or appeals to nature or to the deity. Driving is recognized as useful, pleasurable, rational, and properly subject only to limited constraints of law and social pressure. Purging (so far as possible) the moral charge from sex clears the way for the same sort of “liberal,” vaguely Millian approach to it that comes naturally when we discuss morally indifferent subjects like driving, eating, and playing bridge.

There are, however, a number of inaccurate or misleading statements in Bartlett’s paper, and cumulatively they convey a distorted impression of my book. That my analysis depends on the truth of sociobiology is only one of these statements. It is also misleading to represent me as concluding “that it is appropriate for society to withhold its endorsement of homosexual marriage and disfavor child custody by homosexuals.” I discuss the pros and cons of homosexual marriage without reaching a conclusion, and I conclude that homosexuals should not be forbidden to have custody of children, that the best interests of the child may sometimes be served by such custody, and that the matter should be considered on a case-by-case basis rather than governed by blanket rules. I do not dismiss the moral objections to abortion or suggest that they can be refuted by rational arguments; I suggest that there are inconsistencies in them, but that beyond a point they cannot be profitably discussed. I acknowledge that abortion cannot be rationally justified to an individual who “puts a high (if not the highest) value on fetal life,” but I suggest (as Bartlett here momentarily forgets) that the opponents of abortion in fact do not place the highest

21. This point also is made by Nussbaum, supra note 11, at 1701-09, and by Hadfield, supra note 2, at 489.
22. Bartlett, supra note 20, at 477.
23. Id. at 482.
value on fetal life. If they did they would have to oppose abortion even
when the mother's life was endangered, unless it was certain that she
would die unless her fetus was killed. And they do not.

My book does not argue that homosexuality is "undesirable." But I should not have thought it necessary to give reasons for doubting
that a woman who says that "[d]aughters of lesbians, like freedom
fighters everywhere, need to be enlisted in infancy, and protected
against heterofemininity by words and actions," is automatically
to be assumed a fit parent if her fitness is questioned in a custody contest. I do not describe or define companionate marriage as marriage in
which "the wife must be made desirable (or here, 'companionable')

enough to keep him [her husband]." The passage on which Bartlett
bases this interpretation is an attempt not at describing companionate
marriage but at assessing the impact on it of access to effective contra-
ception. Companionate marriage is described in other chapters. I do
not discount what Bartlett calls "irrational altruism" (altruism not
based on an expectation of reciprocal favors) as a factor in sexual and
family behavior, or deride it as "naive." Nor do I suggest (in contra-
diction to my supposed rejection of nonreciprocal altruism) that female
infanticide is based upon women's willingness to sacrifice themselves
for other women.

I do not consider it "soft and sentimental" to talk about "the wel-
fare of others," but neither do I get much out of such a statement as
"the social conditions that perpetuate women's subservience to men are
unfair and should be changed." Not many people nowadays defend
conditions "that perpetuate women's subservience to men." The prob-
lem is in defining "subservience," identifying the conditions that pro-
mote it, and designing appropriate means of eliminating it. We won't
get far with "a commitment to women's control over their reproductive
decisions . . . or to improving the quality of life for children who are
born," if the commitment involves simultaneously urging the woman's
right to kill her child until the moment of birth and the child's right

24. Id.
25. POSNER, supra note 1, at 419.
27. Id. at 484.
28. Id. at 490. Nor for that matter do I consider it irrational.
29. Id. at 489.
30. Id.
31. That may not be Bartlett's position. For all I know, she would restrict abortion when the
pregnancy is far advanced. But she does not indicate any such qualification of women's right to
"control over their reproductive decisions."
to a high-quality life from the moment of birth forward. I do not say that even so abrupt a discontinuity could not be defended, but Bartlett disables herself from defending it by remarking a few sentences later that "society benefits most when individuals fight rather than give in to whatever tendencies they might have to think of themselves first." One might have supposed that many abortions resulted from women's "tendencies to think of themselves first." Before Bartlett embraces selflessness as the beacon for social policy she may wish to ponder the implications. Many feminists believe that one of the problems of women is that they have been too selfless.

**Hadfield**

Professor Hadfield does not question the pertinence of economics to the understanding of sexuality, but finds everywhere in my book "the pitfalls of a male-centered vision of what sex is all about." Hadfield offers few clues to what a proper economic analysis of sexuality would look like, but I infer, despite some backpedaling in her surreply, that it would treat the oppression of women as the central causal factor in sexual attitudes and behavior. "What sex is all about," in her view, appears to be male domination. She does not quite say this, but unless she believes that I have overlooked the central fact about human sexuality, I cannot understand the dismissive tone of her review.

She observes correctly that I do not discuss all the potentially significant endogeneities in an economic analysis of sexuality. She is right that the sexual practices of women not only are influenced by the occupational choices of women, as I emphasized, but also influence those choices. If women are sequestered in order to assure their virginity (before marriage) or their chastity (after), they will be deprived of opportunities to work in the market. This is an overlooked point in my analysis, but is it an important one? Women do not go out to work because men stop sequestering them; men stop sequestering them because the opportunity cost of sequestration becomes prohibitive. It is unclear to me whether Hadfield would disagree.

In like vein she argues that contraception is a function not only of the cost and efficacy of contraceptive methods but also of a desire to

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34. An endogenous factor, as distinct from an exogenous one, is affected by the variables in the economic model, rather than just affecting them.
limit family size and a taste for particular sexual practices, not all of which are procreative. The first half of this proposition—that the desire to limit family size can induce contraception even if the cost is high, as it was before the invention of modern contraceptives—obviously is true, is indeed a commonplace in the literature on fertility, and is remarked upon in the book. I made clear that contraception must be understood broadly to include nontechnological methods of avoiding pregnancy such as coitus interruptus, occasional abstinence, and the various forms of nonvaginal intercourse, such as oral and anal intercourse. It is true that when I wrote about how the fall in the full price of contraception has facilitated women's liberation from the household, I disregarded the possibility that this liberation would have occurred earlier if people had different preferences regarding contraceptive sexual practices such as oral intercourse. The possibility is of limited significance, given the strong preference, probably genetic, on the part of most men and women for vaginal intercourse. Other elements of endogeneity in the market for contraceptives are more important: the advent of the contraceptive pill lowered the cost of premarital sex and therefore increased the demand for it, but higher demand for premarital sex was also a factor in increasing the demand for the pill. I freely grant that much more can be done with the economics of contraception than I attempted to do in *Sex and Reason.*

Hadfield criticizes me for ignoring the social organization of child care, but that subject is in fact central to my discussion of the evolution of sexual morality in Chapter Six. And in attributing to me the belief that all women in ancient Greece were regarded merely as breeders, she neglects (as should have been obvious from the context) that I was discussing women of the citizen class, who were not permitted to work. Elsewhere the book emphasizes the productivity of women in traditional agricultural societies and discusses the impact of that productivity on sexual mores. Hadfield makes some of the oddest claims, specifically, that I slight women by having an index entry for women but not for men, and by devoting more space to male homosexuality than to lesbianism, and that I give “disproportionate” attention to male homosexuality relative to female sexuality (the disproportion consisting, I

35. POSNER, *supra* note 1, at 151, 267, 270.
37. POSNER, *supra* note 1, at 129, 170.
38. Hadfield, *supra* note 2, at 485 n.16, 490-91. "Posner seems to believe that the central
suppose, in the fact there are so many more women than there are male homosexuals). She should want someone afflicted with “male-centered vision” to confine himself to analyzing relations between males. But it is not true that in my analysis women are merely objects, and not subjects. Hadfield ignores most of my discussion of women and, while pouncing on me for acknowledging that I did not attempt a systematic economic analysis of prostitution, ignores the dozens of index entries under “Prostitution.” What is correct is that because men (apparently in all societies) are more promiscuous than women, women do not incur search costs for sex (streetwalkers are an exception), unless expenditures on enhancing attractiveness, broadly understood, are counted. Putting to one side that important qualification, not remarked by Hadfield, an analysis that focuses on search costs because they are one of the less intractable issues in the nascent economic analysis of sex is bound to seem preoccupied with male behavior. Also, we can learn a lot about heterosexuality by studying relationships in which the “hetero” element is missing. Male homosexual relationships can teach us a lot about what women bring to a relationship, and lesbian relationships can teach us a lot about what men bring to a relationship.

Like Fineman and Bartlett, Hadfield mistakenly believes that biology is the linchpin of my analysis. The mistake is puzzling in view of her complaint that I devote too much space to male homosexuality, for, as I noted earlier, my theoretical analysis of homosexuality (as distinct from my policy advice) is completely independent of whether it has a genetic basis. She undermines the credibility of her own discussion of the biology of sex by confessing, without explaining, her skepticism about biological explanations of human behavior. She seems irritated at the suggestion that women have on average a less overmastering lust, a less intense sexual itch, than men. Why that should be irritating is mysterious to me. As a prop of the ideology of women’s natural subordination to men, the palpably erroneous belief that women are greater slaves to their sexual desire than men has alternated with the equally erroneous belief that normal women lack any sexual desire at all.

phenomenon for which a theory of sexuality must account is the choice of a man’s anus from the range of available options." Id. at 490.

39. “To stop at biology is never really to have started.” Id. at 499.

40. Id. at 489-90.

41. See, e.g., THOMAS LAQUEUR, MAKING SEX: BODY AND GENDER FROM THE GREEKS TO FREUD 3-4, 189-92 (1990). Hadfield appears to endorse the view that I equate lesser sex drive with no sex drive, so that “Posner’s excision of female sexuality from his analysis renders sexual
Hadfield gives a misleading impression of my conception of the evolutionary biology of human sexuality—making my views sound like a mindless celebration of male promiscuity—by using ellipses and by failing to mention my discussion of the costs of that promiscuity. The point she taxes me with omitting—that the larger the optimal paternal investment in child rearing the more costly a promiscuous sexual strategy is for a man—is actually one that I emphasize. And not only in my discussion of the biology of sex. It is fundamental to my discussions of polygamy and of companionate marriage (Chapters Six and Nine).

Toward the end of Hadfield’s review, the cause of her fixation on the biological aspects of my analysis and her emphasis on an esoteric point, the endogeneity of contraception, becomes clearer. She believes that biology and technology are the building blocks with which I construct an alternative explanation to male domination for the relative positions of men and women throughout history, and today. She thinks, not without reason, that I believe that biology, including male sex drive and paternity anxiety, and the high level of child mortality in a society without knowledge of modern medicine and hygiene, goes far to explain the extraordinary subordination of women in many ancient and primitive societies, and that technology, including improvements in medicine and hygiene that greatly reduced infant mortality, in household labor-saving devices, in contraception, and in job opportunities for women, has enabled women in modern Western societies to progress toward full social, political, economic, and sexual equality with men. She appears to consider male power, violence, and exploitativeness more important factors than biology and technology in the history of women and female sexuality. (Does the possibility that women’s liberation from their traditional subordination to men is due primarily to technological advancements made by men rankle so?) She thus views rape as a method of male domination.

A theory of human sexuality that stresses male power and violence is an arguable alternative to my theory and if she had said that I should have given it more attention I could but plead limitations of space, the difficulty of fitting the theory to the standard economic model of human behavior, the theory’s implausibility, and the counter-

love between women logically impossible.” Hadfield, supra note 2, at 491 n.29 (citing—with what had seemed to me apparent approval, though her surreply denies this—Martha Ertman, Denying the Secret of Joy: Book Review of Sex and Reason 1-3 (Sept. 1992) (unpublished manuscript, on file at the Harvard Law School Library)).

42. See, e.g., POSNER, supra note 1, at 95.
evidence that I marshaled and that she ignores. 43 Instead she has said, in effect, that anyone who does not see the social dimensions of human sexuality primarily in terms of a power struggle between men and women is a fool—or a man.

43. Most strikingly, the evidence of female subordination is far greater in societies with little rape or pornography or both than in the United States. See POSNER, supra note 1, chs. 13, 14.