LABOR PAINS IN FEMINIST JURISPRUDENCE: AN EXAMINATION OF BIRTHING RIGHTS

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INTRODUCTION

Pregnant women wait and prepare nine months. Some agonize over the details and anticipate the moment when they are able to hold their babies, but for Laura Pemberton things would be much different. The day Laura gave birth, she probably did not expect to be escorted to a hospital, where a judge conducted a hearing in her labor and delivery room and ultimately forced her to undergo a cesarean section. In fact, Laura made a particular plan that would not involve medical intervention; she made arrangements to deliver her baby at home with a midwife.[1]

While Laura's experiences may represent an extreme situation of forced medical intervention, her experience, nonetheless, sheds light on the increasing interference that many women encounter in their particular labor and delivery. With advancements in medicine, pregnant women are no longer required to deliver their babies the way nature intended. Instead, women and doctors can schedule the birth of a baby through elective cesarean sections or other procedures that accelerate a woman's labor. Despite the convenience of scheduling a birth, these advancements provide doctors with incentives that may motivate them to persuade women into a fast and easy birth.[2]

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1. Pemberton v. Tallahassee Mem'l Reg'l Med. Ctr., Inc., 66 F. Supp. 2d 1247, 1249–50 (N.D. Fla. 1999). Further analysis and background on Laura's story appears in Part III of this Note.

2. Artificial induction of labor makes contractions stronger, causing a more painful labor. A doctor may describe a quick labor as "easy," but this term does not necessarily mean the birth is less painful. The doctor, however, can provide pain medication to avoid the excessive pain that induction causes. *See* ADELE PILLITTERI, MATERNAL & CHILD HEALTH NURSING: CARE OF THE CHILDBEARING & CHILDREARING FAMILY 608 (5th ed. 2007); THE BOSTON WOMEN'S HEALTH BOOK COLLECTIVE, THE NEW OUR BODIES, OURSELVES 455 (1992); Sheila Kitzinger, *Birth and*

Some women believe that specific medical interventions, such as a cesarean section, provide physicians an excuse to ignore a woman's birthing plan. As medical malpractice premiums increase for doctors, some doctors feel unable to follow a woman's decision in the labor and delivery room if such a decision presents the slightest risk of injury. The baby's life and health also provide doctors a rather convenient excuse to ignore a woman's decision regarding childbirth. This Note shows that it is not only the medical profession that ignores women's concerns, but also an ostensibly important area of legal scholarship, which looks to improve women's role in society: feminist jurisprudence. This Note addresses the absence of, and the need for, a discussion of birthing rights in current feminist jurisprudence, so all women's experiences may be rightfully recognized.

Part I of this Note traces the historical progression and emergence of feminist jurisprudence from first wave feminism to second wave feminism to understand the focus and scope of the subject matter. Part II discusses birthing rights and the experience of women giving birth in today's hospitals, while Part III analyzes the amount of deference given to a woman's birthing plan. After addressing the scope of feminist jurisprudence and the issues pertaining to women's birthing decisions, Part IV argues that excluding birthing rights from feminist jurisprudence undermines the legitimacy of the subject whose purpose purportedly embraces the experience of women in order to raise awareness in a legal system that ignores the concerns, interests, fears, and harms experienced by women.

I. THE EVOLUTION OF FEMINIST JURISPRUDENCE

Jurisprudence is "the study of the general or fundamental elements of a particular legal system."[3] In other words, jurisprudence addresses questions about law that an inquisitive person might think particularly important.[4] Before and after their enfranchisement, women examined the fundamental elements of law and how women were perceived through the law.[5] From this examination, women

Violence Against Women: Generating Hypotheses from Women's Accounts of Unhappiness After Childbirth, *in* WOMEN'S HEALTH MATTERS 63, 70 (Helen Roberts ed., 1992).

3. BLACK'S LAW DICTIONARY 871 (8th ed. 2004).

4. RICHARD A. POSNER, THE PROBLEMS OF JURISPRUDENCE 1 (1990).

5. *See* GARY MINDA, POSTMODERN LEGAL MOVEMENTS: LAW AND JURISPRUDENCE AT CENTURY'S END 128–29 (1995).

revealed that the law limited women's participation in society.[6] To understand the focus and scope of feminist jurisprudence, the following sections provide an overview of women's examination of the law and how it relates to them. Thus, this Note starts at the beginning of women's fight for a voice in government and society.

A. *The Birth of Feminist Jurisprudence*

The leaders of the American Revolution looked to build a new foundation on the recognition that all men are created equal.[7] Despite this new spirit of equality and basic rights, women and their ideas were left out of the process.[8] While men drafted the Constitution in Philadelphia, women were at home.[9] While representatives drafted the constitutions of the new states, none of them granted women the right to vote after 1807.[10] In a letter to her husband John Adams,

6. *Id.*

7. The quote "We hold these truths to be self-evident, that all men are created equal" from the Declaration of Independence represents the best example of feminist jurisprudence's purpose. THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Feminist jurisprudence rests on the premise that generalized statements about human nature inevitably ignore differences and fail to respond to the interests, values, fears, and harms experienced by women left out of the process. *See* Linda J. Lacey, *Introducing Feminist Jurisprudence: An Analysis of Oklahoma's Seduction Statute*, 25 TULSA L.J. 775, 777 (1990). Women, noticeably absent from the drafting of the Declaration, were obviously not included in the famous quote that "all men are created equal." The quote reflects the absence of women's participation. *See* DAVID MCCULLOUGH, JOHN ADAMS 119–22 (2001) (telling the story of the Declaration's formation). Nonetheless, the quote exemplifies the necessity of women's presence in law, politics, and life for their interests and voice to be included in the political process. It can assuredly be argued that if women were participating at a meaningful level in society during the time of the Revolution, the phrase in the Declaration would be very different.

8. *See* BARBARA ALLEN BABCOCK ET AL., SEX DISCRIMINATION AND THE LAW: HISTORY, PRACTICE, AND THEORY 9–17 (2d ed. 1996) (discussing the absence of references to women in the founding documents of our country). First wave feminism describes the time period when women pursued equality before the Nineteenth Amendment. First wave feminism subsided with the ratification of the Nineteenth Amendment on August 26, 1920. By no means is the discussion of certain feminists in this section an exhaustive presentation of all women who played a vital role in obtaining women's rights.

9. *See* JANET V. LEWIS, WOMEN AND WOMEN'S ISSUES IN CONGRESS: 1832–2000, at 13 (2001).

10. MARY P. RYAN, MYSTERIES OF SEX: TRACING WOMEN & MEN THROUGH AMERICAN HISTORY 153–56 (2006) (discussing the role of women in the founding); JUDITH WELLMAN, THE ROAD TO SENECA FALLS: ELIZABETH CADY STANTON AND THE FIRST WOMAN'S RIGHTS CONVENTION 138 (2004) (stating that only New Jersey had given women the right to vote, but rescinded the right in 1807); HOWARD ZINN, A PEOPLE'S HISTORY OF THE UNITED STATES: 1492–PRESENT 110 (Harper Perennial Modern Classic ed. 2005).

Abigail Adams pleaded for the Second Continental Congress to consider women in this new government.[11] She wrote:

> I long to hear that you have declared an independancy—and by the way in the new Code of Laws which I suppose it will be necessary for you to make I desire you would *Remember the Ladies*, and be more generous and favourable to them than your ancestors. Do not put such unlimited power into the hands of the Husbands. Remember all Men would be tyrants if they could. If perticuliar [sic] care and attention is not paid to the Ladies we are determined to foment a Rebelion [sic], and will not hold ourselves bound by any Laws in which we have no voice, or Representation.[12]

John responded to Abigail's letter sarcastically:

> As to your extraordinary Code of Laws, I cannot but laugh. . . .
>
> Depend upon it, We know better than to repeal our Masculine systems. . . . We have only the Name of Masters, and rather than give up this, which would compleatly [sic] subject Us to the Despotism of the Peticoat [sic], I hope General Washington, and all our brave Heroes would fight.[13]

Accordingly, "[s]ilence, absolute and deafening, is the central theme of the original founders' discussions of women."[14] Mrs. Adams's letter to her husband to "remember the ladies" foreshadows the struggle of women's fight for a voice in government.

The pioneering spirit of America, derived from man's aggravation with an oppressive king, inspired women—aggrieved by the lack of vote and representation—to fight for a role and voice in the new nation.[15] The struggle for women's suffrage arose out of the desire to improve women's position under the law.[16] Men and women were

11. Letter from Abigail Adams to John Adams (Mar. 31, 1776), *in* THE BOOK OF ABIGAIL AND JOHN: SELECTED LETTERS OF THE ADAMS FAMILY, 1762–1784, at 120 (L.H. Butterfield et al. eds., 1975) [hereinafter THE BOOK OF ABIGAIL AND JOHN].

12. *Id.* at 121 (emphasis added).

13. Letter from John Adams to Abigail Adams (Apr. 14, 1776), *in* THE BOOK OF ABIGAIL AND JOHN, *supra* note 11, at 121, 122–23.

14. Sylvia A. Law, *The Founders of Family*, 39 U. FLA. L. REV. 583, 586 (1987).

15. *See* BABCOCK ET AL., *supra* note 8, at 25–28; ZINN, *supra* note 10, at 109; Ruth Bader Ginsburg, *Speaking in a Judicial Voice*, 67 N.Y.U. L. REV. 1185, 1188 (1992).

16. ELLEN CAROL DUBOIS, FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848–1869, at 40 (1978); *see* DALE SPENDER, WOMEN OF IDEAS (AND WHAT MEN HAVE DONE TO THEM) 498 (ARK ed. 1983) (1982).

not considered equals before the common law, and this helped to perpetrate archaic assumptions regarding women's ability and role in society.[17] *Bradwell v. Illinois*, wherein the Supreme Court refused to allow a woman to practice law, exemplifies the common law's perception of women.[18] In *Bradwell*, Justice Bradley stated that nature has always recognized a difference between the sexes and woman's nature makes her unfit for many occupations of civil life.[19] *Muller v. Oregon* provides another example of a court preventing women from deciding their role in society. The Court justified a law limiting the number of hours a woman worked in a day.[20] The Court reasoned that women and men differ in their physicality, functions, strength, and in their capacity to work long days. It stated, "Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained."[21]

Women's exertions for emancipation from archaic stereotypes rooted in the common law were supported by advocates of women's rights, which included Thomas Paine,[22] John Stuart Mill,[23] and Mary

17. *See* WILLIAM BLACKSTONE, COMMENTARIES *433–46 (illustrating that a married woman had a number of legal constraints imposed upon her under the common law); *see also* Muller v. Oregon, 208 U.S. 412, 422 (1908) ("The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, [and] in the capacity for long continued labor, particularly when done standing . . . ."); Minor v. Happersett, 88 U.S. (21 Wall.) 162, 165, 176–78 (1874) (holding that the Fourteenth Amendment does not grant women the right to vote); W.C. Ritchie & Co. v. Wayman, 91 N.E. 695, 701 (Ill. 1910) (upholding a statute that limited the number of hours of work only for women); State v. Buchanan, 70 P. 52, 52, 54 (Wash. 1902) (upholding a statute that limited the number of hours of work only for women in certain industries); Commonwealth v. Hamilton Mfg. Co., 120 Mass. 383, 385 (1876) (upholding a statute that limited the number of hours women could work).

18. Bradwell v. Illinois, 83 U.S. (16 Wall.) 130, 130–31, 139 (1872).

19. *Id.* at 141 (Bradley, J., concurring). Justice Bradley went on to state that "[t]he paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother." *Id.*

20. *Muller*, 208 U.S. at 412, 416–17, 423–24.

21. *Id.* at 422.

22. Thomas Paine motivated many to recognize the importance of their civil rights. Paine stated:

> The principle of an *equality of rights* is clear and simple. Every man can understand it, and it is by understanding his rights that he learns his duties; for where the rights of men are equal, every man must finally see the necessity of protecting the rights of others as the most effectual security for his own.

THOMAS PAINE, DISSERTATION ON FIRST PRINCIPLES OF GOVERNMENT (1795), *reprinted in* THE THOMAS PAINE READER 452, 465 (Michael Foot & Isaac Kramnick eds., 1987); *see also* AN OCCASIONAL LETTER ON THE FEMALE SEX (1775), *reprinted in* THE PORTABLE ENLIGHTENMENT

Wollstonecraft.[24] Sarah Grimke, one of the first Americans to publish essays on women's rights, protested laws that denied her essential rights and a voice in government.[25] Dissatisfied with no voice or representation, Elizabeth Cady Stanton and other women helped form the first women's rights movement.[26] After convening their first convention, they composed a manifesto modeled after the Declaration of Independence. It stated:

> We hold these truths to be self-evident: that all men and women are created equal . . . .
>
> The history of mankind is a history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of an absolute tyranny over her. To prove this, let facts be submitted to a candid world.[27]

READER 586 (Isaac Kramnick ed., 1995) (arguing and pleading for the emancipation of women). This anonymous *Letter on the Female Sex* is widely attributed to Thomas Paine. THE PORTABLE ENLIGHTENMENT READER, *supra*, at 586.

23. John Stuart Mill stated:

> [T]he principle which regulates the existing social relations between the two sexes—the legal subordination of one sex to the other—is wrong in itself, and now one of the chief hindrances to human improvement; and . . . it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other.

JOHN STUART MILL, THE SUBJECTION OF WOMEN 7 (Prometheus Books 1986) (1861). Mill further stated that "[u]nder whatever conditions, and within whatever limits, men are admitted to the suffrage, there is not a shadow of justification for not admitting women under the same." *Id.* at 58.

24. In *A Vindication of the Rights of Woman*, Wollstonecraft argues for the education, emancipation, and economic independence of woman in civil and political life. She states:

> I wish to persuade women to endeavor to acquire strength, both of mind and body, and to convince them that the soft phrases, susceptibility of heart, delicacy of sentiment, and refinement of taste, are almost synonymous with epithets of weakness, and that those beings who are only the objects of pity and that kind of love . . . will soon become objects of contempt.
>
> . . . I wish to shew [sic] . . . that the first object of laudable ambition is to obtain a character as a human being, regardless of the distinction of sex . . . .

MARY WOLLSTONECRAFT, A VINDICATION OF THE RIGHTS OF WOMAN 34 (London, T. Fisher Unwin, new ed. 1891) (1792).

25. BABCOCK ET AL., *supra* note 8, at 35 & n.18. *See generally* GERDA LERNER, THE FEMINIST THOUGHT OF SARAH GRIMKÉ (1998).

26. *See* BABCOCK ET AL., *supra* note 8, at 40–41; DUBOIS, *supra* note 16, at 23.

27. FIRST WOMEN'S RIGHTS CONVENTION, DECLARATION OF SENTIMENTS (1848), *reprinted in* READINGS IN SOCIAL PROBLEMS 440, 441–42 (Albert Benedict Wolfe ed., 1916).

The first women's rights movement objected to the unequal laws that subjected and subordinated women to men: disenfranchisement, the inability to own property or be educated in a formal setting, and limitations on women's role in the public sphere.[28] They argued that "[man] has endeavored, in every way that he could, to destroy [woman's] confidence in her own powers, to lessen her self-respect, and to make her willing to lead a dependent and abject life."[29] Florence Kelly, a labor reformer and women's suffrage advocate, implemented pragmatic arguments in support of women's fight for equality. She argued that women needed the right to vote to protect themselves from exploitation by their employers.[30] Elizabeth Cady Stanton described the need for women's independence and a distinctly feminine voice.[31] Stanton stated:

> The strongest reason why we ask for woman a voice in the government under which she lives . . . is because of her birthright to self-sovereignty; because, as an individual, she must rely on herself. . . . It matters not whether the solitary voyager is man or woman; nature, having endowed them equally, leaves them to their own skill and judgment in the hour of danger, and, if not equal to the occasion, alike they perish.
>
> . . . .
>
> Whatever the theories may be of woman's dependence on man, in the supreme moments of her life, he cannot bear her burdens. Alone she goes to the gates of death to give life to every man that is born into the world; no one can share her fears, no one can mitigate her pangs; and if her sorrow is greater than she can bear, alone she passes beyond the gates into the vast unknown.[32]

28. *See id.* at 443.

29. *Id.*

30. Kelley stated that women constituted about one-fifth of the employees in manufacturing and commerce in the country, opening to them a vast field of industrial legislation directly affecting women as wage earners. Florence Kelley, Address at the Convention of the National American Woman Suffrage Association (1898), *in* UP FROM THE PEDESTAL: SELECTED WRITINGS IN THE HISTORY OF AMERICAN FEMINISM 274, 275 (Aileen S. Kraditor ed., 1968).

31. *See* Elizabeth Cady Stanton, *The Solitude of Self*, THE WOMAN'S COLUMN, Jan. 1892, at 2, *reprinted in* THE ELIZABETH CADY STANTON-SUSAN B. ANTHONY READER: CORRESPONDENCE, WRITINGS, SPEECHES 246 (Ellen Carol DuBois ed., rev. ed. 1992) [hereinafter STANTON-ANTHONY READER].

32. *Id.*, *reprinted in* STANTON-ANTHONY READER, *supra* note 31, at 247–48, 251. Stanton also stated:

Women tirelessly worked to improve their legal position and to obtain the fundamental rights on which the nation was built: life, liberty, and property. These fundamental rights endow people with the freedom to make their own decisions regarding their government so as to avoid exploitation. However, the silence concerning women's fundamental rights in America's founding documents and the presumptuous reasoning regarding women in judicial decisions established a legal system that ignored women's interests in society. Women's inequality stemmed not from just one person, but from an entire legal system that perpetuated generalized notions of women's abilities and inabilities. It was an entire legal system incorrectly defining women and their interests. The efforts of first wave feminists in securing the Nineteenth Amendment laid the foundation of women's meaningful participation in government and provided for the continuation of woman's examination of law.

B. *Second Wave Feminism*

Once first wave feminists obtained the right to vote, it opened the door to attack other inequalities that women still faced in society. Second wave feminism developed in the 1960s through women inspired by the civil rights movement and their dissatisfaction with inequality in the workforce.[33] Publications such as Betty Friedan's *The Feminine Mystique* inspired many women to challenge the despair and discontent that consumed their lives.[34] "[T]he frustrations of many middle-class housewives, trapped in menial

> The young wife and mother, at the head of some establishment, with a kind husband to shield her from the adverse winds of life, with wealth, fortune and position, has a certain harbor of safety, secure against the ordinary ills of life. But to manage a household, have a desirable influence in society, keep her friends and the affections of her husband, train her children and servants well, she must have rare common sense, wisdom, diplomacy, and a knowledge of human nature. To do all this, she needs the cardinal virtues and the strong points of character that the most successful statesman possesses.

Id., *reprinted in* STANTON-ANTHONY READER, *supra* note 31, at 249–50.

33. Deborah L. Rhode, *The "No-Problem" Problem: Feminist Challenges and Cultural Change*, 100 YALE L.J. 1731, 1745 (1991).

34. *See* Patricia A. Cain, *Lesbian Perspective, Lesbian Experience, and the Risk of Essentialism*, 2 VA. J. SOC. POL'Y & L. 43, 48 n.14 (1994); Dana Neacşu, *The Wrongful Rejection of Big Theory (Marxism) by Feminism and Queer Theory: A Brief Debate*, 34 CAP. U. L. REV. 125, 137 (2005); Reva B. Siegel, *Constitutional Culture, Social Movement Conflict and Constitutional Change: The Case of the De Facto ERA*, 94 CA. L. REV. 1323, 1376 n.139 (2006). *See generally* BETTY FRIEDAN, THE FEMININE MYSTIQUE (1963).

tasks and vicarious relationships, found expression in feminist publications and discussion groups,"[35] often referred to as consciousness-raising groups.[36] From them, women recognized that many of their own problems were actually problems in the larger society.[37] From here, women working in the law developed strategies to protect women from gender inequality.[38] These strategies would emerge as a vast and diverse area of legal theory—feminist jurisprudence.[39] The objective of feminist jurisprudence is "to challenge unequal opportunities and the ideology that had legitimated them."[40] Feminist jurisprudence came to rest on the premise that a masculine jurisprudence inevitably ignores and fails to respond to the interests, values, fears, and harms experienced by women.[41]

Feminist jurisprudence "is focused most sharply by the issue of pregnancy."[42] The issue of pregnancy garners much feminist attention because it is one of the "real" differences between men and women, as opposed to archaic assumptions regarding the differences between men and women.[43] Feminist discussions focus on the issue

35. Rhode, *supra* note 33, at 1745.

36. Patricia A. Cain, *Feminist Legal Scholarship*, 77 IOWA L. REV. 19, 24–25 (1991); Cheryl Lynn Wofford Hill, Note, *Restating International Jurisprudence in Inclusive Terms: Language as Method in Creating a Hospitable Worldview*, 27 OKLA. CITY U. L. REV. 297, 319–20 (2002).

37. Cain, *supra* note 36, at 24–25; Hill, *supra* note 36, at 319–20.

38. *See* MINDA, *supra* note 5, at 129.

39. *Id.* at 128.

40. Rhode, *supra* note 33, at 1745; *see also* MYRA MARX FERREE & BETH B. HESS, CONTROVERSY AND COALITION: THE NEW FEMINIST MOVEMENT 27–28 (1985); Jane Sherron De Hart & Linda K. Kerber, *Introduction: Gender and the New Women's History*, *in* WOMEN'S AMERICA: REFOCUSING THE PAST 1, 16 (Linda K. Kerber & Jane Sherron De Hart eds., 6th ed. 2004); Jane Sherron De Hart, *Second-Wave Feminists and the Dynamics of Social Change*, *in* WOMEN'S AMERICA: REFOCUSING THE PAST, *supra*, at 598, 598–99.

41. *See* MINDA, *supra* note 5, at 128–29; Lacey, *supra* note 7, at 780–84.

42. Ann C. Scales, *Towards a Feminist Jurisprudence*, 56 IND. L.J. 375, 376 (1981); *see also* ZILLAH R. EISENSTEIN, THE FEMALE BODY AND THE LAW 98–103 (1988) (discussing how "[t]he pregnant body represents a dilemma for legal discourse"); Herma Hill Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1 (1985) (discussing feminist jurisprudence and the issue of pregnancy); Carol Sanger, *M is for the Many Things*, 1 S. CAL. REV. L. & WOMEN'S STUD. 15, 20 (1992) (noting how the relief of maternal difficulties is included in the feminist political agenda in regard to the workplace, child custody and support, and health care); Wendy W. Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325, 325–27 (1984) (discussing feminist jurisprudence and the issue of pregnancy). Professor Scales's article in 1981 was the first time someone used the phrase "feminist jurisprudence." MINDA, *supra* note 5, at 129.

43. *See* Kay, *supra* note 42, at 2 (arguing that woman's capacity to become pregnant has been used adversely against her to justify unequal treatment); Scales, *supra* note 42, at 425

of pregnancy because of the general unequal impact that reproductive biology has on women in certain spheres of society.[44] The social consequences that feminists attribute to pregnancy include being terminated from employment, excluded from public life, beaten, patronized, or confined.[45] To many feminists, women's reproductive capacity has been the means of subordinating women to men.[46] "[P]rocreation has also provided a crucial occasion, pretext, and focus for the subordination of women to men in society. Many of the social disadvantages to which women have been subjected have been predicated upon their capacity for and role in childbearing."[47] Women are subject to these "social inequalit[ies] at each step in the process of procreation."[48] Andrea Dworkin states:

> In the bizarre world made by men, the primary physical emblem of female negativity is pregnancy. Women have the capacity to bear children; men do not. . . . Since women are most easily distinguished from men by virtue of this single capacity, and since the negativity of women is always established in opposition to the positivity of men, the childbearing capacity of the female is used first to fix, then to confirm, her negative or inferior status. Pregnancy becomes a physical brand, a sign designating the pregnant one as authentically female. Childbearing, peculiarly, becomes the form and substance of female negativity.[49]

("Th[e] historical subjection of women is based upon biological differences between the sexes which resulted in a basic division of labor along domestic and nondomestic lines . . . ."); Williams, *supra* note 42, at 325–27; *see also* RICHARD WIGHTMAN FOX & JAMES T. KLOPPENBERG, A COMPANION TO AMERICAN THOUGHT 235–36 (1995) (summarizing the progression of feminist jurisprudence).

44. *See* Larry Alexander, *What We Do, and Why We Do It*, 45 STAN. L. REV. 1885, 1889–90 (1993).

45. Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1308–09 (1991).

46. *See* Mary Ann Mason, *Motherhood v. Equal Treatment*, 29 J. FAM. L. 1, 3 (1990) ("Historically, there is no doubt that women often have been treated in a separate and severely restricted manner, in large part to secure and promote their role as mothers and homemakers."); Scales, *supra* note 42, at 437 ("The historical institution of motherhood with its many restraints and its destructive ideology, treats women as less than full-fledged humans and in so doing alienates women from the experience itself.").

47. MacKinnon, *supra* note 45, at 1308.

48. *Id.* at 1309.

49. ANDREA DWORKIN, OUR BLOOD: PROPHECIES AND DISCOURSES ON SEXUAL POLITICS 100 (1976).

Thus, to many feminists, the issues of pregnancy and motherhood garner much discussion because of the link between reproductive biology and limitations imposed on women's rights.

Hallmarked as a real success in the struggle for women's equality, the Supreme Court's opinion in *Roe v. Wade* held that a woman has the right to choose whether or not to terminate her pregnancy.[50] The Court reasoned:

> Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it.[51]

Roe's holding allows many women to evade the burdens of pregnancy and motherhood; to many feminists this provides women more power to determine their role in society separate and apart from domesticity.[52] Radical feminists, such as Catharine MacKinnon, argue that "[a]bortion is needed to redress a woman's basic lack of control over the process of reproduction."[53] Radical feminism is one of the main theories discussed in great detail in the legal academy of feminist jurisprudence.[54]

50. Roe v. Wade, 410 U.S. 113, 153 (1973); *see also* S. Dresden Brunner, *Cultural Feminism: It Sounds Good, but Will It Work? Application to a Husband's Interest in His Wife's Abortion Decision*, 22 U. DAYTON L. REV. 101, 101 (1996).

51. *Roe*, 410 U.S. at 153.

52. *See* Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833, 856 (1992) ("The ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives."); Katharine T. Bartlett, *Feminism and Family Law*, 33 FAM. L.Q. 475, 488 (1999) (discussing how society's norms regarding a woman's reproductive capacity is central to woman's oppression and arguing that controlling their reproductive capacities controls their subordination); Pamela S. Karlan & Daniel R. Ortiz, *In a Diffident Voice: Relational Feminism, Abortion Rights, and the Feminist Legal Agenda*, 87 NW. U. L. REV. 858, 893 (1993) (describing how some feminists argue for the need of abortion because pregnancy and motherhood are often used by men to subordinate women).

53. William J. Turnier et al., *Redistributive Justice and Cultural Feminism*, 45 AM. U. L. REV. 1275, 1297 (1996) (citing CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 246 (1991)).

54. *See* Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J.L. & GENDER 277, 286–96 (2008) (providing evidence that radical feminism, a.k.a. "dominance feminism," is more heavily discussed in law school casebooks than all other feminist theories).

C. *Radical Feminism*

Radical feminists view women as a class and not as individual human beings.[55] They claim that as a class, women have been dominated by another class—men.[56] Through this domination, men have socially constructed gender in order to keep their power in a gender hierarchy, which inevitably places women below men.[57] According to radical feminists, men are able to subordinate women through maternity.[58] Therefore, "access to abortion is necessary for women to survive unequal social circumstances."[59]

The methodology radical feminists implement to overcome their continued subordination to man focuses on the deconstruction of woman as constructed by man via consciousness-raising.[60] Catharine MacKinnon has been credited as a feminist who consistently focuses on feminist methodology,[61] and consciousness-raising is essential to

55. Patricia A. Cain, *Feminism and the Limits of Equality*, 24 GA. L. REV. 803, 832 (1990).

56. *Id.*

57. *See* MACKINNON, *supra* note 53, at 109–22, 215–34; Linda Alcoff, *Cultural Feminism Versus Post-Structuralism: The Identity Crisis in Feminist Theory*, 13 SIGNS 405, 406–08 (1988).

58. Robin West explains radical feminists' view of pregnancy and maternity in this way:

> The material, sporadic violation of a woman's body occasioned by pregnancy and intercourse implies an existential and pervasive violation of her privacy, integrity and life projects. According to radical feminists, women's longings for individuation, physical privacy, and independence go well beyond the desire to avoid the dangers of rape or unwanted pregnancy. Women also long for liberation from the oppression of intimacy (and its attendant values) which both cultural feminism and most women officially, and wrongly, overvalue. Intimacy, in short, is *intrusive*, even when it isn't life threatening (perhaps *especially* when it isn't life threatening). An unwanted pregnancy is disastrous, but even a *wanted* pregnancy and motherhood are intrusive. The child *intrudes*, just as the fetus invades.

Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1, 35 (1988); *see also* MACKINNON, *supra* note 53, at 246 (arguing that women are not able to control pregnancy due to various factors like inadequate contraception, lack of information, custom, poverty, and enforced economic dependence, which inevitably allows men to control women); MacKinnon, *supra* note 45, at 1319–20 ("Because pregnancy can be experienced only by women, and because of the unequal social predicates and consequences pregnancy has for women, any forced pregnancy will always deprive and hurt one sex only as a member of her gender."); Turnier et al., *supra* note 53, at 1297 (explaining that radical feminism embraces the idea that women do not control the reproductive process).

59. MACKINNON, supra note 53, at 246.

60. *See id.* at 121; Cain, *supra* note 55, at 835.

61. Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191, 196–97 (1990); *see also* Christine A. Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 STAN. L. REV. 751, 753–54 (1989) (book review) (describing MacKinnon's contribution to feminist jurisprudence as methodological).

MacKinnon's work.[62] The methodology of "consciousness-raising" involves listening to other women's stories and finding commonalities.[63] The purpose of this methodology is to validate the difference in women's experience in order to raise awareness of the "deep emotional, psychological, physiological, and cognitive impact" of women's experiences.[64] Radical feminists' purpose in implementing the methodology of consciousness-raising is to allow women to find a true voice, because a woman cannot speak authentically if she is subjected to man's dominion.[65] MacKinnon argues, "Women are said to value care. Perhaps women value care because men have valued women according to the care they give. Women are said to think in relational terms. Perhaps women think in relational terms because women's social existence is defined in relation to men."[66] MacKinnon believes that the "voice that [women] have been said to speak in is in fact in large part the 'feminine' voice, the voice of the victim speaking without consciousness."[67] In other words, to MacKinnon this "feminine voice" is not an authentic voice: it is a false consciousness, because it is only espousing a masculine definition of what women are and are not.[68] Thus, Catharine MacKinnon and other radical feminists employ the methodology of consciousness-raising to awaken a voice not controlled by man.

The evolution of feminist theories began with women objecting to laws that did not allow them to establish a voice regarding their own government. These women provided a voice and a platform for second wave feminists and brought about feminist jurisprudence, an area focused most notably on the issue of pregnancy. Despite the groundbreaking holding in *Roe v. Wade* and the development of

62. Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 SIGNS 515, 519 (1982); Jeanne L. Schroeder, Abduction from the Seraglio*: Feminist Methodologies and the Logic of Imagination*, 70 TEX. L. REV. 109, 151 (1991); *see also* MACKINNON, *supra* note 53, at 83–125.

63. Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 864 (1990); Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3, 9 (1988); Cain, *supra* note 36, at 24.

64. Bender, *supra* note 63, at 9.

65. Cain, *supra* note 36, at 24–27.

66. MACKINNON, *supra* note 53, at 51.

67. Ellen C. DuBois et al., *Feminist Discourse, Moral Values, and the Law—A Conversation*, 34 BUFF. L. REV. 11, 27 (1985) (statement of Catharine A. MacKinnon); *see also* Cain, *supra* note 36, at 25–27.

68. *See* MACKINNON, *supra* note 53, at 115; Schroeder, *supra* note 62, at 159 n.132 (explaining how MacKinnon believes that real women do not conform to the feminine stereotype if not taught).

certain feminist theories, the inequalities of pregnancy did not end with the dawning of legal abortion. The following section discusses the issues and experiences of women giving birth and the injustices that stem from the birthing process to show the importance of, and the need for, a discussion of birthing rights in feminist jurisprudence.

II. BIRTH

Today, the United States holds the second-worst newborn mortality rate in the developed world, even though the United States has more neonatologists and neonatal intensive care beds than most countries.[69] It was not until the middle of the twentieth century that a majority of women gave birth in hospitals. Prior to this time, most women gave birth at home.[70] At that time, more doctors and women shared the view that birth was less risky if women entrusted themselves to specialists.[71]

69. Jeff Green, *U.S. Has Second Worst Newborn Death Rate in Modern World, Report Says*, CNN.COM, May 10, 2006, http://www.cnn.com/2006/HEALTH/parenting/05/08/mothers.index/.

70. ALTERNATIVE MEDICINE: THE DEFINITIVE GUIDE 870 (Larry Trivieri, Jr. & John W. Anderson eds., 2d ed. 2002). In fact, hospitals were really only available for disadvantaged women in order to provide them proper care away from their impoverished living. RICHARD W. WERTZ & DOROTHY C. WERTZ, LYING-IN 133–35 (1977).

71. An excerpt from *The Century Illustrated Magazine* shows the reason why women and doctors chose hospitals over home births. It states:

> *"But is the hospital necessary at all?" demanded a young woman of her obstetrician friend. "Why not bring the baby at home?"*
>
> *"What would you do if your automobile broke down on a country road?" the doctor countered with another question.*
>
> *"Try and fix it," said the modern chauffeuse.*
>
> *"And if you couldn't?"*
>
> *"Have it hauled to the nearest garage."*
>
> *"Exactly. Where the trained mechanics and their necessary tools are," agreed the doctor. "It's the same with the hospital. I can do my best work—and the best we must have in medicine all the time—not in some cramped little apartment or private home, but where I have the proper facilities and trained helpers. If anything goes wrong, I have all known aids to meet your emergency."*

WERTZ & WERTZ, *supra* note 70, at 132 (quoting CENTURY ILLUSTRATED MAG., Feb. 1926). The quote illustrates a rather significant attitude change regarding birth. Analogizing the birthing process to bringing a broken car into the mechanic implies that pregnancy is something that needs to be fixed. Pregnant women are not necessarily "broken" when they go into labor, but viewing them as such may diminish and even demean a rather important event in a woman's life. Not to mention that it may even diminish a woman's confidence in her ability to give birth the way nature intended.

The transition from home births to hospital births affects the control women have over the birthing process.[72] Of course, the fact that a woman decides to have a baby in the hospital should not affect her decisions regarding labor and delivery. As the Supreme Court stated, "[N]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."[73] Since a person's autonomy is highly respected, all doctors must obtain the patient's consent to perform a medical procedure.[74] A doctor may face medical malpractice or other causes of action such as battery for failure to obtain consent.[75] Informed consent allows one to know what will, and will not, be done to one's own body.[76]

The high standard the Court set regarding a person's medical decisions would appear to protect women's decisions in labor and delivery. However, the advancement of medicine has created numerous options and procedures that may or may not be in accordance with a woman's prenatal plans.[77] One such option includes a natural birthing plan, which allows pregnant women to pursue a birth with as minimal medical intervention as possible.[78] Other options

72. This follows from the obvious fact that a woman has more control in her house regarding where and how she gives birth. Conversely, when a woman gives birth in a hospital, she most likely will be constrained to the bed in a hospital room. *See infra* text accompanying notes 81–84.

73. Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 269 (1990) (internal quotation marks omitted) (quoting Union Pac. Ry. Co. v. Botsford, 141 U.S. 250, 251 (1891)). "[F]reedom from unwanted medical attention is unquestionably among those principles 'so rooted in the traditions and conscience of our people as to be ranked as fundamental.'" *Id.* at 305 (quoting Snyder v. Massachusetts, 291 U.S. 97, 105 (1934)). Thus, it is a fundamental right to choose the type of medical procedure to be performed on one's person.

74. Jay M. Zitter, Annotation, *Malpractice: Physician's Duty, Under Informed Consent Doctrine, To Obtain Patient's Consent to Treatment in Pregnancy or Childbirth Cases*, 89 A.L.R.4th 799, 806 (1991).

75. *Id.*

76. CHILDBIRTH CONNECTION, WHAT EVERY PREGNANT WOMAN NEEDS TO KNOW ABOUT CESAREAN SECTION 3 (2d rev. ed. 2006), *available at* http://www.childbirthconnection.org/pdfs/cesareanbooklet.pdf.

77. *See* THE BOSTON WOMEN'S HEALTH BOOK COLLECTIVE, OUR BODIES, OURSELVES: PREGNANCY AND BIRTH 9–10 (2008); ALTERNATIVE MEDICINE: THE DEFINITIVE GUIDE, *supra* note 70, at 867–74. Many women create a birthing plan according to their choice and preference on how they want to give birth. *See* MOTHERING MAGAZINE'S HAVING A BABY, NATURALLY 102–06 (Peggy O'Mara ed., 2003) [hereinafter HAVING A BABY, NATURALLY].

78. *See* MARSDEN WAGNER, BORN IN THE USA: HOW A BROKEN MATERNITY SYSTEM MUST BE FIXED TO PUT WOMEN AND CHILDREN FIRST 105 (2006). Many women choose a natural birthing plan because scientific evidence indicates that a vaginal birth is safer for a woman and her baby

include induced labor or elective cesarean sections.[79] Because of the numerous medical options available to women in labor, "the informed consent doctrine, medical ethics, and the standard of care all provide that the competent patient has the absolute right to select from among these treatment options after being informed of the relative risks and benefits of each approach."[80] However, women giving birth today seem less informed regarding the medical procedures performed on them during labor and delivery.

In a survey analyzing the actual experiences of childbearing women, 73% of women said that after consulting with their caregiver, they wanted to be the decision makers when it came to giving birth.[81] Furthermore, when asked about the amount of information a pregnant woman should be given about epidurals, inductions, and cesareans, a large majority of women interviewed thought they should know about every complication of the procedures before making their decision.[82] However, these mothers, regardless of whether certain medical procedures had been used on them during their labor, felt they were poorly informed about the adverse effects of a cesarean section or labor induction.[83] Additionally, when asked to identify the adverse effects of a cesarean section, a majority of mothers did not provide the correct answer.[84] The survey indicates the lack of quality information provided to pregnant women and highlights the lack of emphasis placed on the importance of women

except in certain situations. *Id.* at 22. Additionally, the purpose of a natural birthing plan is to defray the unwanted medical intervention, because many obstetricians try to control the conditions of the birthing process with drugs, medical procedures, or "suggested" orders. Of course, nothing can be done to a woman without her consent, but a doctor is still able to give orders by telling the woman to stay in bed or not to walk. Consent is different from control. In the hospital, a doctor can be in control. *Id.* at 104–06.

79. *See generally* HAVING A BABY, NATURALLY, *supra* note 77, at 126–44 (describing the different medical procedures available to pregnant mothers).

80. Bankert v. United States, 937 F. Supp. 1169, 1173 (D. Md. 1996); *see also* Schreiber v. Physicians Ins. Co. of Wis., 579 N.W.2d 730, 734 (Wis. Ct. App. 1998); Roger B. Dworkin, *Getting What We Should from Doctors: Rethinking Patient Autonomy and the Doctor-Patient Relationship*, 13 HEALTH MATRIX 235, 240 ("[M]odern informed consent cases still talk about informed consent as serving the value of patient autonomy.").

81. EUGENE R. DECLERCQ ET AL., LISTENING TO MOTHERS II: REPORT OF THE SECOND NATIONAL U.S. SURVEY OF WOMEN'S CHILDBEARING EXPERIENCES 58 (2006), *available at* http://www.childbirthconnection.org/pdfs/LTMII_report.pdf. The survey's purpose is to compare actual experiences of childbearing women to better understand the many dimensions of the maternity experience. *Id.* at v.

82. *Id.* at 7.

83. *Id.* at 61.

84. *Id.*

being the decision makers during their labor. The following section looks at the cesarean section, a specific procedure that many women might face in labor and delivery, and whether doctors are truly listening to mothers and respecting their right to be free from unwarranted medical attention.

A. *Cesarean Sections: Hail Caesar!*

The number of cesarean sections performed on women in labor has drastically risen in the United States. From 1910 to 1968, the cesarean rate increased slowly from less than 1% to 5%.[85] A report released in 2007 indicates that about one in every three women give birth via cesarean section, representing a 50% increase over the last decade.[86] The cesarean procedure did not become frequent in medical practice until the twentieth century.[87] Before this time, the cesarean procedure was dangerous, used only in emergency cases, and almost always resulted in the death of the mother.[88] A cesarean section entails the surgical opening of the mother's abdomen and uterus in order to remove the baby.[89] The following summarizes the details of the procedure:

> In the morning the woman is wheeled on a stretcher to the L&D (Labor and Delivery) suite, and then to the delivery room . . . . She is told to curl into a fetal-like position to allow a needle to be inserted between the vertebrae of her curved spine. . . .
>
> The woman's bladder is next catheterized and the tube left in the bladder to keep urine draining. During the surgery the bladder is cut away from the surface of the uterus as there is a great risk of perforating or cutting into it if it is full.
>
> . . . .
>
> . . . The surgeon takes a scalpel from the nurse and with one strong and definite motion creates a crescent-shaped incision along

85. NANCY WAINER COHEN & LOIS J. ESTNER, SILENT KNIFE: CESAREAN PREVENTION & VAGINAL BIRTH AFTER CESAREAN 8, 20 (1983).

86. Press Release, Nat'l Ctr. for Health Statistics, Ctr. for Disease Control, Teen Birth Rate Rises for First Time in 14 Years (Dec. 5, 2007), http://www.cdc.gov/media/pressrel/2007/r071205.htm?s_cid=mediarel_r071205.

87. ENCYCLOPEDIA OF CHILDBEARING: CRITICAL PERSPECTIVES 56 (Barbara Katz Rothman ed., 1993) [hereinafter ENCYCLOPEDIA OF CHILDBEARING] .

88. *Id.*

89. *Id.*

> the woman's pubic hairline. . . . With scalpel and forceps—delicate tweezers—the surgeon cuts deeper beneath the subcutaneous tissue, to a thick layer of fibrous tissue that holds the abdominal organs and muscles of the abdominal wall in place. . . . The uterus is now visible . . . .
>
> The uterus of the pregnant woman is large, smooth and glistening. . . . With short careful strokes of a knife, a small incision is made through the thinner segment. Special care is taken not to cut the baby or the membranes surrounding the baby which, if still intact, now bulge through the tiny hole in the uterus. The room becomes silent: the quiet presence of the baby about to be born causes time suddenly to stop.
>
> The obstetrician extends the initial cut either by putting two index fingers into the small incision and ripping the uterus open or by using blunt-ended scissors and cutting in two directions away from the initial incision. . . . In the normal position, the baby's head is down and under the incision, so the obstetrician places one hand inside the uterus, under the baby's head, and with the other hand exerts pressure on the upper end of the uterus to push the baby through the abdominal incision.
>
> . . . .
>
> . . . A baby has been born.[90]

Because a cesarean section involves invasive procedures and pain, why are more women than ever before having cesarean sections, rather than opting for a more natural birth, which women have been doing since the beginning of time?

Numerous reasons account for the increase in cesarean births. More women are choosing to deliver their baby via cesarean section as opposed to needing the procedure for medical reasons.[91] To some women, the cesarean section offers the benefits of delivery without the surprise or pain.[92] Women are able to schedule the birth of their baby without having any medical reason to opt for the cesarean.[93] Electing a cesarean section is being called a syndrome of "too posh to

90. MICHELLE HARRISON, A WOMAN IN RESIDENCE 79–83 (1982).

91. Sora Song, *Too Posh to Push?*, TIME, Apr. 19, 2004, at 58, 59, *available at* http://www.time.com/time/magazine/article/0,9171,610086,00.html; *see also* JENNIFER BLOCK, PUSHED: THE PAINFUL TRUTH ABOUT CHILDBIRTH AND MODERN MATERNITY CARE 49–52 (2007) (discussing some of the reasons behind elective cesarean sections).

92. Song, *supra* note 91, at 59.

93. *Id.*

push," because a greater number of women are finding it more convenient to schedule their birth.[94]

However, elective cesareans do not account for the overall increase in cesareans performed in the United States. A cesarean section provides physicians incentives, even if the procedure is not necessary. One such incentive is fiscal: a cesarean delivery costs approximately twice the amount of a natural childbirth delivery.[95] Secondly, a cesarean takes about five to fifteen minutes,[96] and statistics show that most births now happen between the hours of 9 a.m. and 5 p.m.[97] This obviously shapes physician behavior because the doctor can create a relatively normal schedule, as opposed to an unscheduled birth where a woman could be in labor for hours and possibly through the night. Additionally, as more women have primary cesareans, more repeat cesareans will be scheduled.[98] This leads to the other reason for the increase in doctors performing cesarean sections: "Once a cesarean always a cesarean."[99]

The most compelling reason for physicians to perform a cesarean section involves avoiding medical malpractice suits regarding vaginal births after cesarean sections ("VBAC"). A myth has arisen among doctors and even women that once a woman has a cesarean section, she may only deliver subsequent babies via the cesarean procedure due to the risk of uterine rupture, which can be fatal to both mother

94. *Id.*; TINA CASSIDY, BIRTH: THE SURPRISING HISTORY OF HOW WE ARE BORN 123–24 (2006).

95. *See* PRENATAL CARE: EFFECTIVENESS AND IMPLEMENTATION 292 (Marie C. McCormick & Joanna E. Siegel eds., 1999) (discussing how cesarean sections are much more expensive than vaginal deliveries); STEVEN D. SODERLIND, CONSUMER ECONOMICS: A PRACTICAL OVERVIEW 345 (2001) ("As an economic matter, in all but 10 to 15 percent of births the C-section procedure is more expensive and more dangerous medically than normal birthing—but because it reduces the risk of malpractice suits it becomes the preferred medical procedure."); Childbirth Connection, Charges for Giving Birth by Facility and Mode of Birth, http://www.childbirthconnection.org/pdfs/birthcharges.pdf.

96. ENCYCLOPEDIA OF CHILDBEARING, *supra* note 87, at 58.

97. Wendy Ponte, *Cesarean Birth in a Culture of Fear*, MOTHERING, Sept.–Oct. 2007, at 49, 61, *available at* http://www.childbirthconnection.org/pdfs/cesarean-birth-mothering-ponte.pdf. Much has been written regarding the ethical implications of elective cesareans. This Note does not address that issue. Rather this Note argues that a woman's decision to choose the mode of her labor and delivery should be awarded great deference. Accordingly, attending physicians should not interfere with a woman's birthing plan due to personal physician incentives.

98. *See* BLOCK, *supra* note 91, at 49–50.

99. *See* LOIS HALZEL FREEDMAN, BIRTH AS A HEALING EXPERIENCE: THE EMOTIONAL JOURNEY OF PREGNANCY THROUGH POSTPARTUM 30–32 (1999); RITA RUBIN, WHAT IF I HAVE A C-SECTION? 158–59 (2004).

and baby.[100] However, rupture only occurs in about 0.7% of cases, and the risk of infant death resulting from such rupture is approximately 1 in 2000.[101] However, physicians are unwilling to take the slimmest risk associated with a VBAC, especially with medical malpractice premiums around $150,000 to $200,000.[102] Even though cesarean sections pose similar risks as VBACs, several hundred hospitals in the United States have policies depriving women of a VBAC delivery.[103] When doctors refuse to perform a VBAC for the sake of avoiding a lawsuit or for other reasons, the doctor's decision trumps a woman's power to decide the best method of delivery, ultimately challenging medical ethics and a woman's fundamental right to be free from unwanted medical attention.[104]

100. *See* COHEN & ESTNER, *supra* note 85, at 80–83. The phrase "once a cesarean, always a cesarean" has become almost a hard and fast rule to doctors delivering babies. *Id.* at 80. However, this is assuredly not the case. For example, Michelle Duggar, a mother of eighteen, had undergone a cesarean with one of her pregnancies, but despite the procedure, has delivered thirteen healthy babies through VBAC. The Duggar Family, The Duggars' Most Frequently Asked Questions, http://www.duggarfamily.com/faq.html (last visited May 14, 2010). The problem is that doctors refuse to deliver babies via VBAC despite the mother's wishes because they are afraid of medical malpractice. *See* SODERLIND, *supra* note 95, at 345.

101. Pamela Paul, *The Trouble with Repeat Cesareans*, TIME, Feb. 16, 2009, *available at* http://www.time.com/time/magazine/article/0,9171,1880665-1,00.html; *see also* CRAIG M. PALMER, ROBERT D'ANGELO & MICHAEL J. PAECH, HANDBOOK OF OBSTETRIC ANESTHESIA 146 (2002) (explaining that VBAC, external trauma, uterine distention, fetal malpresentation, and excessive oxytocin stimulation are *less* frequent causes of uterine rupture than others); *cf.* HELEN VARNEY, JAN M. KRIEBS & CAROLYN L. GEGOR, VARNEY'S MIDWIFERY 853–54 (4th ed. 2004) (discussing the various medical situations that may increase the likelihood of uterine rupture).

102. Song, *supra* note 91, at 60; *see also* Paul, *supra* note 101 (noting that some doctors have given up on VBACs because of insurance costs and fear of litigation).

103. Sylvia A. Law, *Childbirth: An Opportunity for Choice that Should Be Supported*, 32 N.Y.U. REV. L. & SOC. CHANGE 345, 357 (2008).

104. "For many pregnant women in America, it is easier today to walk into a hospital and request major abdominal surgery than it is to give birth as nature intended." Paul, *supra* note 101. In other words, some women find it near impossible to deliver their babies the way they want. The problem is that many women do not elect, and want to avoid, major surgery such as cesarean sections. It is rather interesting that doctors are electing cesareans to avoid medical malpractice suits in VBAC cases despite all the risks involved in a cesarean procedure. Additionally, some women find it nearly impossible to find a doctor that will permit a VBAC, and when a woman does it often requires her to travel extensive distances, perhaps even while in labor, in order to deliver her baby according to her best judgment. *See id.* (telling the story of one woman who had to travel a hundred miles to find a doctor who would perform a VBAC).

Assume for hypothetical purposes that a woman does seek professional care to deliver her baby the way nature intended, but in her extensive travel to seek care an accident occurs. This raises the question whether a woman or even her baby might have a cause of action against the doctor that refused to deliver her naturally if the doctor's refusal forced a woman to seek care elsewhere, thus resulting in her and her baby's injuries. All this is quite paradoxical—a doctor who refuses a VBAC to prevent a lawsuit may find himself or herself in court if the refusal contributes to the patient's injuries.

All of these incentives account for the rise of cesarean sections. Better hours and the avoidance of malpractice lawsuits may entice doctors to deliver a sales pitch in place of a medically informed discussion between patient and doctor. The lack of options, such as VBACs, that many pregnant women face in hospitals and the lack of information provided to mothers regarding labor procedures indicate that many women lack adequate information to make informed decisions regarding labor and delivery. Additionally, because doctors act for their own reasons in performing a cesarean section, there is a real question about the amount of deference given to a woman's birthing plan and the effect this has on her fundamental right to be free from unwarranted medical attention.

III. THE CAUSE AND EFFECT OF A DOCTOR'S RECOMMENDATION

The amount of deference awarded to a woman's birthing plan is minimal, arguably nonexistent. Pregnant women face a unique situation in deciding the medical procedure that best serves them and their babies. A doctor who relies on medical incentives as the real reason to force a woman to undergo a cesarean has a convenient excuse—the life of the baby—for performing nonconsensual procedures on women in labor. Such a pretext allows the doctor to ignore a woman's plan because of a state's interest in protecting the life of the baby. This can all be conveniently illustrated through the case of Laura Pemberton, who was mentioned in the introduction of this Note.

Furthermore, according to the new requirements of the American Board of Obstetrics and Gynecology ("ABOG"), a doctor may be denied certification for violating ABOG or American College of Obstetricians and Gynecologists ("ACOG") ethics principles. The ethics principles provide that "[p]hysicians and other health care providers have the duty to refer patients in a *timely manner* to other providers if they do not feel that they can in conscience provide the standard reproductive services that patients request." COMM. ON ETHICS, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, COMMITTEE OPINION NO. 385, THE LIMITS OF CONSCIENTIOUS REFUSAL IN REPRODUCTIVE MEDICINE 1 (2007) (emphasis added), *available at* http://www.acog.org/from_home/publications/ethics/co385.pdf. However, a referral could involve a late-term pregnant woman traveling extensive distances to obtain medical treatment. Because of the timing issues pertaining to labor and delivery, a trained ABOG or ACOG should not recommend a pregnant woman to travel extensive distances or refer the woman to a distant doctor. Thus, if a physician refuses certain reproductive procedures such as VBACs and refers the patient to another doctor located far away, it is quite possible that the physician could lose his or her board certification, which would probably place the physician in a worse position compared to the slim risk of uterine rupture from a VBAC and a possible medical malpractice claim.

Laura, a pregnant woman, wanted to have a VBAC to deliver her baby.[105] Laura made "arrangements to deliver her baby at home, attended by a midwife, without any physician attending or standing by and without any backup arrangement with a hospital."[106] After being in labor for twenty-four hours, Laura sought medical treatment for dehydration and went to Tallahassee Memorial Regional Medical Center.[107] After arriving at the hospital, a doctor advised Laura that she needed a cesarean section.[108] Laura refused and left the hospital.[109] Subsequently, the doctor notified hospital officials, and the chairman of the hospital's obstetrics staff concurred in the determination that a cesarean was "medically necessary."[110] The hospital's attorney, John D. Buchanan, Jr., was temporarily deputized as a special assistant state attorney and obtained a court order requiring Laura to submit to a cesarean section.[111] Buchanan also sought a hearing, and Judge Padovano held one. Hospital officials testified that a "vaginal birth would pose a substantial risk of uterine rupture and resulting death of the baby."[112] A law enforcement officer then escorted Laura back to the hospital pursuant to the judge's order based on his preliminary hearing with the hospital officials.[113] Padovano continued the hearing in Laura's labor and delivery room at the hospital, where she and her husband were able to express their views.[114] The judge then ordered that Laura undergo a cesarean section.[115]

Laura claimed that several of her substantive constitutional rights were infringed when the court required her to undergo an unconsented medical procedure.[116] The appellate court held that the state's interest in securing the life of Laura's unborn child substantially outweighed Laura's personal choice in the situation.[117]

105. Pemberton v. Tallahassee Mem'l Reg'l Med. Ctr., Inc., 66 F. Supp. 2d 1247, 1249 (N.D. Fla. 1999).

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.* at 1249–50.

112. *Id.* at 1250.

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 1251.

117. *Id.*

The court used the holding in *Roe v. Wade* as controlling authority.[118] Under *Roe*, a woman's right to an abortion is limited by a state's compelling interests, one such interest being the protection of potential life.[119] Thus, according to the court in *Pemberton*, Laura's choice in the mode of her delivery did not outweigh the state's interest in preserving the life of the child. The case underscores the lack of deference given to a woman's interests in her birthing plan by the courts and the doctors.

In analyzing the court's decision, there is a glaring omission with respect to Laura's decision regarding the birth of her child. First, the court's rationale incorrectly balanced Laura's substantive due process claims with the State of Florida's interest in preserving the life of the child, derived from the Supreme Court's holding in *Roe*. By using the standard from *Roe*, the court wrongfully analogizes Laura's decision to the situation where a woman decides to end her pregnancy by abortion. The court itself stated that Laura did not look "to avoid giving birth."[120] In addition, the court even recognized that the "baby's birth was imminent."[121] By analogizing Laura's situation to an abortion, the court overvalued the state's interest in the child's life and failed to appreciate Laura's parental right in the care and custody of her child.[122] Additionally, the holding in *Roe* allows states

118. *Id.*

119. Roe v. Wade, 410 U.S. 113, 154 (1973).

120. *Pemberton*, 66 F. Supp. 2d at 1251.

121. *Id.*

122. In the case of abortion, the state faces a direct conflict between the mother's choice and the child's life. In this case, there was no direct conflict; the mother wanted the child to live. Moreover, under *Roe*, the state may not assert its interest in the life of the child when the woman's health is in jeopardy. *Roe*, 410 U.S. at 163–65. "Health" has been interpreted broadly and includes all of the following factors: physical, emotional, psychological, and familial. Doe v. Bolton, 410 U.S. 179, 192 (1973). In this case, the cesarean section carried several health risks. *See infra* note 125. Under *Roe*, this would preclude the state from asserting its interest in the life of the child.

Apart from the mother's health, the VBAC and the cesarean section pose similar risks to the life of the baby. One of the hospital's physicians in this case judged the risk to the baby to be about four to six percent if a VBAC was performed. *Pemberton*, 66 F. Supp. 2d at 1253. This minimal risk does not rise to the level of a compelling state interest when compared to the risk of cesarean section. *See infra* note 125. The court should have looked to precedents regarding parents' right to the care and custody of their children. The Supreme Court stated that "a parent's desire for and right to 'the companionship, care, custody, and management of his or her children' is an important interest that 'undeniably warrants deference and, absent a powerful countervailing interest, protection.'" Lassister v. Dep't of Soc. Servs., 452 U.S. 18, 27 (1981) (quoting Stanley v. Illinois, 405 U.S. 645, 651 (1972)); *see also* Cruzan v. Dir., Mo. Dep't of Health, 497 U.S. 261, 305 (acknowledging that "freedom from unwanted medical attention" is a fundamental right). Absent a powerful countervailing interest, the birthing decision should be

to prohibit a woman from seeking an abortion in the latter stages of pregnancy. Simply put, a state's power under *Roe* is only prohibitive. Conversely, the court's holding in this case goes further than prohibiting an act: it takes assertive measures against a woman's decision by forcing her to undergo a cesarean section. The problem with this type of state action is that women have no option to avoid the procedure, nor do they have the right to appeal the decision.

Furthermore, the court diminished Laura's interest in a VBAC by stating that Laura "sought only to avoid a particular procedure."[123] The court stated, "Bearing an unwanted child is surely a greater intrusion on the mother's constitutional interests than undergoing a caesarean section to deliver a child that the mother affirmatively desires to deliver."[124] The court failed to examine the reasons for Laura's decision, namely the benefits of a natural birth, and the court never examined the benefits of a vaginal birth compared to a non-vaginal birth.[125] If one analyzes the court's rationale in *Pemberton* through the lens of feminist jurisprudence, it appears that the court adopted an approach that ignored a woman's interests, fears, and concerns during birth.

left up to the parents to weigh the competing risks as opposed to a judge or even doctors when the patient seeks only limited care.

123. *Pemberton*, 66 F. Supp. 2d at 1251.

124. *Id.*

125. *See id.* at 1247–57. The court merely examined the likelihood of infant death, based on the testimony of the five physicians from the hospital. *Id.* at 1253. There was no meaningful discussion about the likelihood of maternal death that may result from a cesarean section or even a discussion about the benefits of a natural birth compared to a cesarean section. *Id.* at 1251–54. Reasons for a woman to choose a natural vaginal birth, or even a VBAC, are substantial. Intervention in the natural birthing process cuts off natural hormones, and this can affect the bonding of mother and child and the success of breastfeeding. Ponte, *supra* note 97, at 60. The hormones naturally produced during labor makes it possible to experience a state of ecstasy for women who are not exposed to fearful scenarios. *Id.* Denying a woman a natural, vaginal delivery can and does affect the bonding between mother and child. Additionally, the risks associated with a cesarean delivery run high compared to a natural childbirth delivery. *Id.* at 50. A woman's risk of dying is five to seven times higher with a cesarean section than with a vaginal delivery. *Id.* Women who deliver by cesarean sections are rehospitalized twice as often as women who deliver naturally. *Id.* Additionally, cesareans have higher rates of infertility, ectopic pregnancy, and potentially severe placenta problems in future pregnancies. *Id.* Not only is there risk to physical health, there are also emotional consequences from a cesarean section. If the cesarean was unexpected, many women focus on the way they felt treated during the birth process. ENCYCLOPEDIA OF CHILDBEARING, *supra* note 87, at 57–58. A cesarean requires longer recovery time, which results in a woman being separated from her baby for a longer time, which may affect a woman's confidence in her role as mother. *Id.* at 58. Some women go through a genuine grieving process despite the baby's healthiness. *Id.*

If courts ignore a woman's interest in her birthing plan, doctors can do the same. By providing a justification for forcing a woman to undergo an unconsented medical procedure, doctors, regardless of their true reasons, may ignore a woman's birthing plan if it is not in accordance with their recommendation, ultimately offering negligible deference to a woman's birthing plan.[126] Despite the medical community ignoring a woman's decision, it also appears that feminist jurisprudence fails to address the growing concern of many women regarding these issues. The following section explores why an ostensibly important area of women's studies does not discuss the issues regarding birth in America.

IV. A STORY UNTOLD: THE REASON FOR THE SILENCE

Feminist discussions are informed by their methodology: consciousness-raising.[127] Through consciousness-raising, feminist jurisprudence illuminates important issues pertinent to women in order to raise awareness of the "deep emotional, psychological, physiological, and cognitive impact" of women's experience.[128] As previously discussed, women's decisions and experience in the labor and delivery room are being adversely affected.[129] Feminist jurisprudence, focused most notably on the issue of pregnancy, lacks any meaningful academic discussion regarding women's experience in labor and delivery.[130] Feminism plays a large role in the legal academy; a large majority of American law schools have a course on the subject.[131] Several legal periodicals commit their publications exclusively to feminism.[132] Even the top law school journals, such as

126. *Cf.* John A. Robertson, *Procreative Liberty and the Control of Conception, Pregnancy, and Childbirth*, 69 VA. L. REV. 405, 450–52 (1983) (arguing that, as a matter of policy and ethics, decisions about how, when, where, and with whom a woman experiences labor and childbirth are central female issues that should be protected, but are not).

127. *See supra* Part I.C.

128. Bender, *supra* note 63, at 9.

129. *See supra* Part II.

130. *See supra* Part II; *infra* text accompanying note 139.

131. Owen M. Fiss, *What is Feminism?*, 26 ARIZ. ST. L.J. 413, 414 (1994).

132. *Id.* at 414. The following periodicals are committed exclusively to feminism: *American University Journal of Gender, Social Policy and the Law*; *Berkeley Journal of Gender, Law & Justice*; *Columbia Journal of Gender and Law*; *Duke Journal of Gender Law & Policy*; *Georgetown Journal of Gender and the Law*; *Harvard Journal of Law & Gender*; *Michigan Journal of Gender & Law*; *William & Mary Journal of Women and the Law*; *Wisconsin Women's Law Journal*; *Yale Journal of Law and Feminism.*

the *Harvard Law Review*, publish articles on the subject.[133] Feminist jurisprudence "is the source and locus of the most gripping and demanding theoretical discussions that today take place in the legal academy."[134] To raise awareness of, and ultimately erode, the inequality that women face in labor and delivery, women's birthing experiences must be heard and discussed in this prominent forum.

Laura's case illustrates that women face inequalities with regards to their decisions during pregnancy. Despite feminist jurisprudence's methodology of raising awareness of such inequality, none of the top three case books used in law school courses dedicated to gender and the law address the issue of childbirth—a strictly female issue that derives from pregnancy.[135] The reason for the absence of birthing rights cannot be fairly attributed to the lack of women's interest in giving birth. About 50% of women in the United States will give birth at least once by age twenty-five, while approximately 85% of all women will give birth by the age of forty-four.[136] An unquestionable focus in the subject of feminist jurisprudence is abortion; however, "60% of women having abortions are already mothers and 84% will be mothers by the time they are in their 40s. Moreover, far more women give birth than have abortions each year."[137] Birth, unique only to women, dominates women's life experiences. Despite the major role birth plays in a woman's life and the issues that flow from her decision to give birth, this experience is largely ignored in the academic field, especially when compared to the amount of

133. Fiss, *supra* note 131, at 414; *see, e.g.*, Bartlett, *supra* note 63, at 829; Tracy E. Higgins, *Democracy and Feminism*, 110 HARV. L. REV. 1657 (1997); Cass. R. Sunstein, *Feminism and Legal Theory*, 101 HARV. L. REV. 826 (1988) (book review).

134. Fiss, *supra* note 131, at 414.

135. *See* KATHERINE T. BARTLETT & DEBORAH L. RHODE, GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY (4th ed. 2006); D. KELLY WEISBERG, APPLICATIONS OF FEMINIST LEGAL THEORY TO WOMEN'S LIVES (1996); HERMA HILL KAY & MARTHA S. WEST, SEX-BASED DISCRIMINATION: TEXT, CASES AND MATERIALS (6th ed. 2006); *see also* Nat'l Advocates for Pregnant Women, Writing Contest to Advance Feminist Legal Scholarship on the Importance of Birthing Rights in the Discussion of Gender Equality and Feminist Jurisprudence, http://advocatesforpregnantwomen.org/contest/BirthingRightsContest.pdf.

136. Kay Johnson et al., *Recommendations to Improve Preconception Health and Health Care—United States*, MORBIDITY & MORTALITY WKLY. REP. (Cents. For Disease Control & Prevention, Dep't of Health & Human Servs., Atlanta, Ga.), Apr. 21, 2006, at 1, 2, *available at* http://www.cdc.gov/mmwr/PDF/rr/rr5506.pdf.

137. Nat'l Advocates for Pregnant Women, *supra* note 135; *see also Facts on Induced Abortion in the United States*, IN BRIEF (Guttmacher Inst., New York, N.Y.), July 2008, at 1, 1, *available at* http://www.guttmacher.org/pubs/fb_induced_abortion.html (stating that 22% of all pregnancies, excluding miscarriages, end in abortion).

discussion focused on abortion.[138] Accordingly, since the issue of childbirth plays a key role in a woman's life experience, such an absence of birthing issues in feminist jurisprudence raises the question of why the subject fails to respond to these women's interests, values, fears, and harms in the labor and delivery room.

When lawyers examine law, they ask questions and examine the facts of a legal issue and try to determine the appropriate principles that should be used to resolve the problem.[139] Feminists implement this strategy by asking "the woman question"—whether women and their interests have been left out of consideration, resulting in discrimination.[140] First wave feminism illustrated the "woman question" methodology. During that time period, women found themselves to be locked out of almost every realm of society through laws and customs that prohibited women from contracting, working, and even voting.[141] Men deemed themselves the authority in determining women's government. Women recognized certain realms of society in which they were disregarded and raised their voices to erode such inequalities.[142] From this struggle, women began to find their way into the realms of society that once ignored them. Similar to the inequalities women faced during the early feminist movement, women's voices today regarding their labor and delivery decisions are being supplanted by those of doctors. The fact that many mothers are being denied the fundamental right to avoid unwanted medical attention would be enough for first wave feminists to address and discuss the issues that many women face when it comes to making medical decisions for themselves and their children.[143]

Despite the foundation that first wave feminists laid for women, their potential contribution on this point is largely ignored in feminist

138. *See supra* Part II.B.

139. *See* Bartlett, *supra* note 63, at 836.

140. *See id.* at 837; Heather Ruth Wishik, *To Question Everything: The Inquires of Feminist Jurisprudence*, 1 BERKELEY WOMEN'S L.J. 64, 72–77 (1985).

141. *See supra* Part I.A.

142. *See supra* Part I.A.

143. *See* Richard A. Epstein, *Two Challenges for Feminist Thought*, 18 HARV. J.L. & PUB. POL'Y 331, 345 (1995) (discussing how early feminist efforts were concerned with full equal citizenship and involved libertarian aspirations). Birthing rights are similar to early feminist issues. There is nothing more fundamental regarding the right of individuals to be in control of themselves without restraint or interference. It goes without saying that a woman's right to choose a birthing plan in the best interests of herself and her child is a right that should never be trumped due to a doctor's disconnected motives and incentives. Nor should it be trumped by a masculine jurisprudence that fails to recognize the interests women have in deciding their mode of delivery.

jurisprudence. Instead, much of the discussion regarding women issues today concentrates on radical feminist theories, such as those espoused by Catherine MacKinnon.[144] Unfortunately, the main methodology and the views of radical feminism inevitably ignore the concerns of women giving birth.[145]

Radical feminists' perceptions of motherhood and pregnancy explain the absence of birthing rights in the subject of feminist jurisprudence. Many of these feminists believe that motherhood was and still can be the means of men to control women.[146] Much of feminist jurisprudence addresses the issue of pregnancy and maternity and the need for abortion in order for women to regain control over motherhood.[147] Accordingly, when a woman chooses to not abort, but to give birth, she may be espousing a false consciousness, meaning she is still subject to the subordination of man. Radical feminists implement consciousness-raising only to awaken a voice not controlled by man. By emphasizing or discussing the issues that women face during birth, feminists may think they are emphasizing an ideology they view as the cause of woman's oppression and inequality in life.[148] By deemphasizing a woman's choice in electing motherhood, feminists believe they are bridging the gap of inequality. To emphasize birthing rights would be to legitimize motherhood, an institution that many feminists view as destructive and oppressive. Thus, to certain feminists, an examination of birthing rights is contrary to ending the invidious dominion of men.

Excluding birthing rights from the field of feminist jurisprudence affects the credibility of the subject matter and its ability to continue to grow robustly in the diverse area of legal scholarship. More and more women are distancing themselves from feminism, most likely due to the radical theories that exclude their interests, such as birth, in

144. *See supra* Part I.C.

145. *See* Cain, *supra* note 55, at 832–33; *supra* Part I.C. Radical feminists view women as a class and not as individuals, and they argue that another class, men, has dominated women. By not viewing women as separate and autonomous beings, radical feminist theory ignores the differences among women.

146. *See supra* Part I.B–C.

147. *See supra* Part I.B–C.

148. *See* F. CAROLYN GRAGLIA, DOMESTIC TRANQUILITY: A BRIEF AGAINST FEMINISM (1998) (arguing that the feminist goal is to eliminate motherhood by degrading motherhood socially and financially); *supra* Part I.B–C.

the feminist forum.[149] The exclusion of certain viewpoints chills the ability of women to engage in critical issues that concern their rights in a political and social world. The exclusion of birthing rights from feminist jurisprudence not only disenchants women from engaging the subject's critical issues, but the exclusion also undermines mothers seeking to solve the problems in the labor and delivery room.

Moreover, the exclusion of birthing rights raises a question as to whether feminist jurisprudence is truly focused on eroding inequality or is more focused on setting an agenda of *what constitutes inequality* —allowing certain feminists to play a gate-keeping function of what is and is not important to women's interests. If the latter is the true purpose of feminist jurisprudence, then the subject's purpose fosters the same destructive ideology that allows men to subordinate women. During first wave feminism, a masculine legal system incorrectly defined women's abilities and interests by assuming that woman's role was limited to a sphere of domesticity. Similarly, if certain feminists are the ones controlling the issues of discussion in the subject, they are the ones defining what is and is not important to women. Ultimately, these feminists are incorrectly defining women's interests by ignoring birthing rights.

CONCLUSION

Exclusion of certain viewpoints undermines the proposition that feminist jurisprudence represents the interests of all women and damages the sincerity of the subject matter that addresses the inequalities of woman's experience. Ultimately, the continued exclusion of birthing rights and other important areas of a woman's life experience seriously calls into question the permanence of feminist jurisprudence—a subject that grew out of a rather critical struggle for women's most fundamental rights of *life* and *liberty*.

149. *See* Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99, 100 (2007) (noting that many young women shun the feminist label or go to great lengths to explain how their brand of feminism is different); Angela Onwuachi-Willig, *GIRL, Fight!*, 22 BERKELEY J. GENDER L. & JUST. 254, 256 (2007) (book review) (describing how "feminism" has become a bad word and noting that many women shy away from both feminist language and the feminist movement).