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AN ESSAY ON THE PIANO, LAW, AND THE SEARCH FOR WOMEN'S DESIRE

Julia E. Hanigsberg

Pleasure in the female is not a requirement.
Margaret Atwood

Does my sexiness upset you?
Does it come as a surprise
That I dance like I've got diamonds
At the meeting of my thighs?
Maya Angelou

INTRODUCTION

The thesis of this essay is a simple one: to have a measure of control over her destiny, to have any choices, a woman must be a sexual agent, a subject of desire rather than an object. How can women exercise any autonomy in any other realms if in their most intimate lives they are unable to voice their desires? I do not mean to suggest

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that sexuality has unlimited explanatory power or that everything about women's domination can be explained by a rearticulation of desire. I do believe, however, that although the issue of sexuality is much discussed, feminist legal theorists have been saying "too much about too little." In this essay I propose that we cannot even know the explanatory power of sexuality as long as women do not have the words to express their own desires.

One reason legal theorists must closely examine desire is that sex is a location of danger for women in this culture. This is not to say that sex is always violence, but that sexual violence (and its pervasive threat) is an everyday fact for women. In addition, sex that occurs under circumstances of problematic consent remains a source of conflict or concern in most women's lives, particularly in the lives of young women. Furthermore, regardless of the experiences of particular women, popular culture defines and confirms certain representations of women by unifying images of sex and violence. The media have become passionate about these issues, both eroticizing and depoliticizing them. In this essay I will discuss director Jane Campion's film The Piano, analyzing how the authoritative parameters of desire are reproduced in a cultural form through relationships both within and outside "the law."

Thinking about women's desire leads inexorably to issues of identity, issues whose complexity transcends the category "women." In discussing women's desire we cannot avoid the question of which women's desire we are considering. Although I do not intend these questions to


4. It is also a source of conflict in the lives of (young) men. There is an emerging body of research on the issue of masculine sexuality and its impact on social theory. E.g., Victor J. Seidler, Unreasonable Men: Masculinity and Social Theory (1994). In addition, I want to note at the outset that in confining this essay to some fairly narrow thoughts about women's desire I do not posit women as victims, nor men as victimizers.

5. For example, representations of sex and violence are regularly used in mainstream advertising. See Ellen McCracken, Decoding Women's Magazines: From Mademoiselle to Ms. 116-17 (1993).

be the subject of this essay, the use of the category “women” suggests a
slippage into false universals and a potentially misleading, implicit “we.”
We must acknowledge that within every coalition and affinity there will
be tension and disunity.7 Nonetheless, there are unities, and still ways
and reasons to discuss “women” without flattening the multiplicity of
subjectivities represented by individual women. In short, although I
take seriously the reality that feminist theory has persistently homoge-
nized women’s experience, I still think that it is both useful and possi-
bile to talk about “women’s” bodies and “women’s” desires without
marginalizing women whose shifting positions in the matrix of class,
race, and erotic preference are different from my own.8 Indeed, it is
particularly necessary to acknowledge women’s diversity in legal settings,
where there is constant pressure to choose a story.9 Such settings are, to
put it mildly, resistant to narratives of fluid subjectivity10 or intersec-
tions of oppression.11

7. See Kathy E. Ferguson, THE MAN QUESTION: VISIONS OF SUBJECTIVITY IN FEMI-
NIST THEORY 160 (1993) (explaining how class, race, gender, and erotic choice—all
differences within identity claims—exemplify potential disunity within a group).

8. My thinking about these issues has been especially influenced by the following texts:
AUDRE LORDE, SISTER OUTSIDER (1984); Maria Lugones, Playfulness, “World”-
Traveling and Loving Perception, 2 HYPATIA 3 (1987), reprinted in WOMEN, KNOWL-
EDGE, AND REALITY (Ann Garry & Marilyn Pearsall eds., 1989); ELIZABETH V.
SPelman, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT
(1988); Teresa de Lauretis, Upping the Anti (sic) in Feminist Theory, in CONFLICTS
IN FEMINISM 255 (Marianne Hirsh & Evelyn Fox Keller eds., 1990); Mary Childers
& bell hooks, A Conversation about Race and Class, in CONFLICTS IN FEMINISM,
supra, at 60; Angela P. Harris, Race and Essentialism in Feminist Legal Theory, in
FEMINIST LEGAL THEORY 235, 254–55 (Katharine T. Bartlett & Rosanne Kennedy
eds., 1991); GAYATRI C. SPIVAK, In a Word: Interview, in OUTSIDE IN THE TEACH-
ING MACHINE 1 (1993); Ferguson, supra note 7; SARA RUDDICK, MATERNAL

9. See Marie Ashe, Zig-Zag Stitching and the Seamless Web: Thoughts on “Reproduction”
and the Law, 13 NOVA L. REV. 355 (1989) (“Committed to categorization, law is
intolerant of porous boundaries (placentas?).”).

10. For a consideration of mobile and pluralistic subjectivity, see Ferguson, supra note
7, at 160.

11. Kimberlé Crenshaw is perhaps the best known theorist to discuss the notion of
“intersectionality,” that is, the notion that multiple oppression constitutes something
greater than the sum of its parts. In particular, Crenshaw addresses the way that
Black women face two-pronged oppression, by virtue of their race and their gender,
and how this multiple oppression poses problems for mainstream constitutional
discourse. See Kimberlé Crenshaw, Demarginalizing the Intersection of Race and Sex:
A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and
Antiracist Politics, in FEMINIST LEGAL THEORY, supra note 8, at 57.
Using *The Piano* as a metaphor, I will consider how legitimated voices of desire for women might change the way that some legal issues of special importance to women are framed. Although these observations are preliminary, I hope to show how giving voice to women's desires may provide some tools to allow legal theorists to re-examine the way in which issues such as procreative decision making, custody, and rape (to name but three examples) are envisioned.

I. *The Piano* and Silence as Subversion

*The Piano* is an interesting metaphor for unspoken feminine desire. Campion's film offers the hypothesis of silence as subversion in the context of a number of relationships, both "legal" and "outside the law." These include a series of bargains and contractual relationships. In the film, Campion takes the Lacanian symbolic\(^\text{12}\) and turns it on its head, metaphorically stating, "if language is the entry into the symbolic, well, you can take your symbolic, I won't play."

This very popular, controversial, and critically acclaimed movie has been the subject of widespread discussion among feminists for its conflicting messages and images, while it has been portrayed by the mass media as a women's or feminist film.\(^\text{13}\) It is not necessary or perhaps


even interesting to debate whether *The Piano* ought to be categorized as “feminist.” The film does, however, offer a startling illustration of the absence of a language of feminine desire and the possibility of resistance, suggesting some difficulties with disengagement as a strategy for the subversion of patriarchy. At the same time, it offers problematic imagery and suggests a reification of racial and gendered stereotypes that should not go unexamined. In addition, the film provides a metaphorical backdrop for this essay’s consideration of the need for feminine/feminist voices to speak the desires of women.

The film’s protagonist, Ada, is a mute young Scotswoman who is shipped by her father to New Zealand in the 1850s to marry Stewart, a Scottish settler whom she has never met. She brings the two things that mean the most to her: her daughter, Flora, and her piano. We know little about Flora’s father, but we do know that Ada was never before married. We hear about the father twice. First, through a fantasy that Flora recounts to Stewart’s sister, in which she talks of her mother’s marriage in a forest with fairies as bridesmaids. Later, Flora, as though it were an oft-recounted bedtime story, asks Ada to tell her about her father and why Ada and he had never married. Ada’s only explanation was that he became frightened and that after Flora was born he was sent away. The relationship between Ada and her daughter’s father is thus outside of “law” and Flora is the lasting legacy of that outlaw desire.41

Upon their arrival in New Zealand, Ada and Flora are deposited on the beach to wait for Stewart, who arrives the next morning. Stewart

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An outlaw becomes an outlaw by existing outside of the law. While this appears to be a somewhat circular argument, it merely asserts that there is no “natural” outlaw who exists prior to the creation of law by a society. That is to say, a body of laws must exist before anyone can be said to be either law abiding and inside the law, or law breaking and therefore an outlaw.

is accompanied by a group of Maori natives and another European settler, Baines, an illiterate man who bears Maori tattoos on his face. Stewart refuses to transport the piano from the beach through the muddy jungle to his farm, ostensibly because it is too cumbersome. Once settled at the farm, Ada takes advantage of Stewart’s absence to find Baines and ask him if he will lead her back to the beach to retrieve the piano. When she is reunited with her instrument, Ada plays while Baines listens and Flora turns cartwheels on the beach.

After Stewart returns, Baines offers to trade him land for piano lessons as well as the piano itself. When Ada hears of the deal the two men have struck, she is furious, but Stewart commands her to give Baines the lessons. For Stewart, the deal is strictly a matter of commerce; for Baines, however, the contract is motivated by sexual desire. Ada soon learns that Baines does not want to learn to play the instrument but prefers to watch her play. The two negotiate their own bargain, whereby she will play and allow him to watch, touch, and gradually unclothe her in exchange for piano keys, allowing her to “buy back” the piano. He wants one lesson for each white key; she haggles, offering one lesson for each black key; and they agree: a bargain is struck, a contract made.

Ada is mute but not deaf. She communicates either through sign language, which Flora is able to translate, or by writing on a pad she keeps around her neck. Her muteness is characterized as a choice; the film opens with the voice-over of the six-year-old Ada, telling us, “I have not spoken since I was six years old. No one knows why, not even me. My father says it is a dark talent and the day I take it into my head to stop breathing will be my last.”

But Ada is not truly silent, for she communicates through her piano. Her music is a rush of expressiveness that is unbounded by and, therefore, threatening to the language of civilization—the language that structures the very bargains between her father and her husband and between her husband and Baines, bargains of which she is the literal object. By refusing to speak she abandons the language of patriarchy and instead is able to express herself in a fashion unmediated by the symbolic. With her piano she transcends the limits of a language for

15. JANE CAMPION, THE PIANO 9 (1993). This is the screenplay to the movie. Recently, a novelization has been published as well: JANE CAMPION & KATE PULLINGER, THE PIANO: A NOVEL (1994) [references in subsequent footnotes are to the screenplay].

16. Of course I mean this metaphorically. She has not in fact given up language since she continues to write and sign. Nor is music itself necessarily a subversive form of expression.
and of men. Instead, she “speaks” with her body through the piano. Her silence is neither passive nor uncomplaining, thus shattering two feminine ideals of patriarchal culture. Her silence is, rather, the expression of active resistance. In her silence Ada protests the stifling of the female voice by reappropriating voicelessness. In this way, Ada fails to fulfill the social expectation of her sexuality as passive. Her desire voices itself passionately through her music.

Much like the Victorian “hysteric,” Ada speaks the mute language of protest. Is it possible to see a liberating motive in her refusal to speak? To express herself verbally would be to capitulate to the language of the patriarchal contract, converting her, paradoxically, into Stewart’s uncomplaining wife. Instead, by speaking through music, Ada steps out of the law of the patriarch, out of “civilization,” to a place where woman’s desire can be “spoken,” if not necessarily heard. Like other “hysterics,” Ada refuses to cooperate dutifully with patriarchal conventions. By playing her instrument, Ada conveys meaning non-linguistically, exploding discursive conventions and failing to conduct herself in the manner expected of her.

Campion’s use of language in The Piano is reminiscent of Lacan’s prioritization of language and the symbolic as a superior mode of communication. According to Lacan, the phallus is the transcendental signifier and the only point of access into the symbolic, which is the domain of language and the law of the father. Woman is thus always Other to language, without access to the symbolic, frozen out, but frozen out from what? A phallocentric discourse in which she is only Other and Lack, a discourse that she has had no part in constructing? According to this analysis, woman can have no language of her own in which to express desire. She must become fluent in the language of

17. Hysteria, a disease thought primarily to affect women, was clinically described in the second half of the nineteenth century, although its origins are ancient. A species of neurosis, its main characteristic is a set of physical symptoms, such as loss of voice or paralysis, with no known physical or medical explanation. See Claire Kahane, Hysteria, Feminism, and the Case of The Bostonians, in Feminism and Psychoanalysis 280, 280 (Richard Feldstein & Judith Roof eds., 1989); J. Laplanche & J.-B. Pontalis, The Language of Psycho-Analysis 194 (Donald Nicholson-Smith trans., 1973). See also Sigmund Freud, Dora: An Analysis of a Case of Hysteria (Philip Rieff ed., 1963).

18. Dianne Hunter, Hysteria, Psychoanalysis and Feminism: The Case of Anna O., in The (M)other Tongue 89, 92 (Shirley Garner et al. eds., 1985).

male desire, because she has no other choice. Not her “mother” tongue, this “other” tongue is the only language available to her.

I do not mean to suggest that Ada’s encounter with an alternative discourse of desire is a simple utopia in which patriarchy is surmounted at the piano keyboard. The desire that Ada expresses, initially through her piano and subsequently in Baines’ bed, is troubling. Their relationship has its genesis in their bargain, a bargain negotiated from positions of power that were vastly unequal. In this way, the film challenges us to question whether a woman can sell her body and still maintain any integrity. If we conclude that she cannot, we must then ask whether the entire story is merely an eroticization of either rape or prostitution or both.

Like a prostitute, Ada haggles. She negotiates the price of what she wants, the piano, with the man who has it. Ada is never passive, never a mere object of men’s desires. She continues to negotiate even after acquiescing to the disturbing bargain. She remains resistant and demands a higher “price” as Baines demands increasingly more from her (that she take off her clothing, etc.).

But the gaze provided by Campion’s camera suggests that what is being depicted may be more subtle than prostitution, foreshadowing the evolution of the relationship. This gaze is surprisingly egalitarian. It views Baines undressed, caressing the piano that is mute without Ada there to play it. It shows him in full frontal nudity, open to the viewer, before a fully clothed Ada—a rare role-reversal for contemporary cinema. Campion seems to suggest that in this relationship Baines is vulnerable as well. Indeed, it is Baines who eventually abandons the bargain. Because he wants to liberate Ada, he is unable to sustain it. He acknowledges the wrong that is the bargain: his conscience keeps him from continuing to fondle an unwilling Ada. He becomes so sick with what he has done that he literally takes to his bed. Only once the bargain is broken does the beginning of mutual desire finally find its place in the relationship between Ada and Baines. Following the rupture of the bargain, they arguably interact as equals: the striptease that was the heart of his half of the bargain is no longer played out—they undress together.20 As long as Baines’ desire for Ada was within the “law,” bound up in contract, it could not be reciprocal; he remained

the representative of white, hierarchical patriarchy, tattoos notwithstanding. Only by abandoning the bargain and not seeking another—not trying to determine their relationship through law—is their desire made mutual. Ada demonstrates her abiding desire for that which is outside the confines of law by rejecting what has been chosen for her as a lawful focus of desire, that is, her husband.

In contrast to Ada’s relationship with Baines, Ada and Stewart never relate as equals. Instead, with Stewart, the quintessential patriarchal relationship is played out. Ada’s connection with him is within “the law.” It is arranged by her father and accorded legal status as marriage: the product of two contracts. Stewart relates to Ada through authority, attempting to bend her will to conform to his wishes. The only way he can interact with her is to cage her: first literally, in the house, which he meticulously boards up when he discovers the true nature of the piano lessons; and later, in an attempted rape in the woods when, ironically, she is saved by the constraining nature of her Victorian clothing.21

The relationships between the characters in The Piano reflect a psychoanalytic discourse that has its origins in the work of Sigmund Freud and Jacques Lacan and that has been adopted and subverted by feminist literary theorists. From the Freudian/Lacanian perspective, at its most basic, women’s desire is the un-seen. There is simply no place for women’s desire—it is the desire that isn’t. Woman is theorized as Lack, her desire marked by absence.22 What is dramatically obvious in the boy is markedly invisible in the girl. While the little boy fears castration, having observed what his father possesses and his mother has (in his imagination) “lost,” the little girl experiences her castration as a fait accompli, the loss that has taken place.23 The little girl’s desire thus turns to the father in the hope of getting what he “has,” and what her mother, to the little girl’s growing disappointment and resentment,

21. Bruzzi, supra note 20, at 238. Bruzzi points out that this clothing plays an important role in the film. Earlier it also protected both Ada and Flora when the hoop skirts provided shelter on the beach upon their arrival in New Zealand. Bruzzi, supra note 20, at 238.

22. For a lucid description of how women are theorized as Lack, see Ellie Ragland-Sullivan, Seeking the Third Term: Desire, the Phallus, and the Materiality of Language, in FEMINISM AND PSYCHOANALYSIS 40, 41–42 (Richard Feldstein & Judith Roof eds., 1989).

lacks. Of course the power represented by the phallus, this mark of desire, is a fantasy, one as elusive to the boy as to the girl: the little boy only has a penis—a mere piece of flesh—not the phallus, the emblem of power. The phallus signifies desire but cannot be “had,” only longed for. Thus, within this phallic order, woman is without desire, without essence, only Lack, always object to the male subject. Her desire is confined to what she does not have and is constituted by envy. The “mature” way for women to confront this envy, the key to femininity according to Freud, is to identify with the father, then to turn to the male object of desire (the husband), and finally to fulfill the desire for the penis by having a child (a boy child being the most compelling penis substitute for obvious reasons).

In Freudian/Lacanian terms, Stewart quickly assumes the phallic role of the potent “other” in Flora’s life. She turns to him, simultaneously abjuring her mother. The vision of the mother/daughter relationship that Campion provides is superficial, ultimately pessimistic, and, perhaps not coincidentally, deeply Freudian. Particularly disturbing to the feminist viewer of the film is the fact that the mother/daughter relationship that is so intimate and intense initially is subsequently disrupted by Ada’s relationship with Baines. At one point Ada literally shuts out her daughter while giving Baines his piano lesson, leaving Flora outside on the porch asking to be let in. Later, Flora looks through the cracks in the wall of Baines’ house, seeing parts of the naked bodies of her mother and Baines intertwined. In the next scene she plays with a group of Maori children, hugging, kissing, and rubbing themselves up against trees in the forest. Stewart sees this, grabs Flora and tells her never to do it again, suppressing both her emerging sexuality and her equally threatening association with the Maori children. He tells her that she has been “shamed” and has “shamed” the tree trunks, instructing her to wash them off.

Flora and Ada become adversaries of a sort. Flora is shut out by her mother’s desire for Baines, the moral being that a woman must choose between intimacy with her child and sexual expression. Yet

27. For discussions of incompatibility of motherhood and sexuality, see, e.g., IRIS MARION YOUNG, BREASTED EXPERIENCE, IN THROWING LIKE A GIRL AND OTHER ESSAYS IN FEMINIST PHILOSOPHY AND SOCIAL THEORY 190, 196–200 (1990); Carol Sanger, SEASONED TO THE USE, 87 MICH. L. REV. 1338, 1356–65 (1989).
when Flora attempts to identify with the desire expressed by her mother, when she is moved by the sight of her mother’s sexuality to an expression of her own desire by engaging in an autoerotic yet communal expression with the Maori, she is punished. She is identified as “shamed” and simultaneously learns that her mother’s behavior is shameful and not to be identified with. It is this experience that leads to Flora’s increasing spurning of Ada—a rejection in response to Ada’s earlier rejection of Flora in favor of Baines. This is a deeply troubling set of events that seems to reify the Freudian assumption that the mother’s sexuality is expressed only through her child. For Ada to express her desire otherwise requires that she reject her daughter. Having a child and expressing desire are antithetical in the world of this film.

Ada insists on continuing to see Baines, and Stewart’s violence escalates far beyond his unsuccessful attempt to cage her: he ultimately resorts to brutal mutilation, metaphorically clipping her wing. Flora plays out her part in this Oedipal drama in almost classical form. She

28. It is significant that while the piano itself functions as the voice of Ada’s desire, her daughter Flora is most often the one who speaks for Ada to the world, including to Stewart, who represents the world of fathers. At the same time, Flora is a clear reminder that desire can exist outside the bounds of the law (having been conceived outside the legal institution of marriage). Although some viewers might consider Ada’s encounters with Baines to be her sexual awakening, Flora reminds us that Ada has subverted the patriarchal structure that tried to control her desire at least once before.

29. In classical Greek mythology, Oedipus is the unknown son of Laius and Jocasta. Laius is told by the Delphic oracle that he will be given a son but that he is destined to die at that son’s hand. Laius attempts to cheat fate upon the birth of his son by ordering a servant to let the infant die of exposure on Mt. Cithaeron. Taking pity on the baby, the servant instead gives him to a shepherd, who later gives the infant to his master, Polybus, the king of Corinth. The child is brought up by the king and queen of Corinth and is named Oedipus. Years later, a drunk accuses Oedipus of not being Polybus’ natural son. Oedipus goes to the oracle at Delphi to find out the truth. The oracle warns him to avoid his homeland since he is destined to murder his father and marry his mother. Determined to follow the oracle’s warning, Oedipus does not return to Corinth and instead goes towards Thebes. On his journey Oedipus is driven off the road by another chariot carrying two men. Angered, Oedipus hits the driver. In the fight that ensues Oedipus kills both driver and passenger. The passenger turns out to be his biological father Laius—the curse is half fulfilled. When Oedipus reaches Thebes he finds the city in distress. Not only is its king dead, but the city is being held captive by the monster Sphinx. The monster has asked a riddle and has threatened to kill all those who cannot solve it. Jocasta’s brother, the regent, offers the throne and his sister’s hand to any man who can answer the riddle and rid the city of the Sphinx. Oedipus solves the riddle and is wed to his mother, thus completing the fulfillment of the
betrays her mother, taking the message that Ada intends for Baines and giving it to Stewart instead. This leads to the pivotal moment of violence in the film: upon discovering Ada’s defiance, Stewart drags her to the chopping block, raises his axe, and savagely chops off her finger.

This same scene represents Campion’s parody of the little boy’s Oedipal complex as well. For the little boy the salient emotion is not envy but fear: fear of castration, of becoming what the girl already is and what she represents for the boy. Whereas the little girl acts out of envy, the little boy’s sexuality is structured around avoidance of punishment. Woman represents his own fear of Lack; it is this very fear that is represented so violently in the scene in which Stewart severs Ada’s finger. Given that playing the piano expresses her voice of desire, he effectively cuts out her tongue. This gesture is Stewart’s attempt to castrate Ada, but he is doomed to fail because, within the Freudian paradigm, she is already castrated and thus has nothing to lose. At the same time and with greater consequences for the narrative, the event represents Stewart’s own lack of phallus. For after this “castration,” paradoxically, it is not Ada who is subdued but Stewart who is emasculated. At this point Stewart stops even the pretense of a fight for Ada’s affection, abandoning a plan to shoot Baines. For her part, Ada remains defiant.


30. Judith Butler calls this “... the spectre of the recognition that it was always already lost, the vanquishing of the fantasy that it might ever have been possessed—the loss of nostalgia’s referent.” Judith Butler, Bodies That Matter: On the Discursive Limits of "Sex" 101 (1993) (emphasis in original).

31. Indeed, what does the one who is always already punished have to fear? This question disrupts both the Freudian construction of the Oedipal complex and Foucault’s assertion that sexuality is constructed through threat and punishment. See Michel Foucault, The History of Sexuality 128 (Robert Hurley trans., 1990). See also Butler, supra note 30, at 102.
Throughout her sexual encounters, Ada is not the passive object of desire. We know that she had a daughter outside of the patriarchal family structure that she was born into and would have been expected to sustain. She chooses to be unfaithful to her husband, risking whatever he might do to her. When she does decide to be intimate with Stewart, it is on her terms, terms by which he cannot abide. In one scene, she strokes Stewart's naked body but recoils when he tries to touch her. In another, she fondles his back and he is unable to continue. He is unable to respond to a communication of woman's desire. An active feminine desire is outside of the discourse of "lawful" sexuality that he inhabits. Frozen out of intimacy altogether by patriarchy's construction of his own sexuality, Stewart is ultimately a pathetic character despite his brutality.

*The Piano* offers a complex and troubling message. It is not a story of Ada's liberation, nor is it simply a story of sexual violation. It is, rather, a tale of choices within a realm of meager options. The film opens up a world of desire in a place of resistance, which Ada fashions by deciding not to speak, by choosing not to be the dutiful daughter and wife, by refusing to give herself sexually to her husband, and by choosing a lover who himself has stepped outside of what the film structures as civilization.\(^{32}\) However, Ada is not able to articulate a new

\(^{32}\) Another troubling aspect of the film is its unproblematized use of racial stereotypes. Baines represents the outsider. Living in the company of the Maori and affecting their style of tattoo, Baines plays the person who has stepped back from civilization, suggesting a move into a more "primitive" culture, closer to nature and to an unconstructed desire. However, Campion's stereotypical perspective suggests an evolutionary view of sexuality that posits non-Western or non-First World cultures as an entry point to sexual freedom and, at the same time, presents the sexual desires of non-European peoples as insatiable and comic. See Jeffrey Weeks, *Sexuality* 21, 39 (1986). Campion romanticizes the Maori people and their domination by the colonists. Campion herself, however, claims that with respect to the Maori she strived for authenticity, casting "real Maori" and relying upon their advice. She explained that "[t]o start with, there was naturally enough a lot of suspicion about the possible abuse of their culture. . . . You have to find the right person to work with. But they're very open to debate and discussion, and you can solve anything." Russell Smith, *The Piano's Virtuoso*, *Dallas Morning News*, Nov. 20, 1993, at 5C. See also *The Making of The Piano*, in Campion, supra note 15, at 142–44. Even Baines' communion with the Maori poses the problem of appropriation. However, the Baines character can be seen as caught between cultures, dissatisfied with the European culture he has rejected, but not a Maori despite his adoption of certain outward symbols of their appearance. The cultural domination of the Maori is not problematized by Campion: they are merely used as backdrop, as desire uncivilized, somewhat like the wild, wet, jungle landscape that the movie captures so vividly. See bell hooks, *Sexism and Misogyny: Who Takes the Rap? Misogyny, Gangsta Rap, and The Piano*, *Z Magazine*, Feb. 1994, at 26.
“speech”; instead, she silences the babble of voices that represent her objectification and exits out of language. Ultimately, this proves self-defeating because there is no medium outside of language, no place of signification where some natural or authentic identity lies.

At the end of the film, Ada and Flora leave New Zealand with Baines to establish a new life together. In a confusing scene they are in a canoe with the piano and several Maori who paddle the craft. Despite Baines’ objections, Ada insists that the piano be thrown overboard, perhaps intending to leave silence behind. The piano is toppled over the edge, and the loose ropes attached to it start to unravel and fall into the sea. Ada slips her foot into the loop of the ropes and is dragged forcefully into the water, pulled by the piano. She is drawn too deep to be rescued by the Maori who dive in after her. She struggles, unable to release herself, and then finally kicks her shoe off, freeing her foot. She floats, suspended corpse-like in the water, then suddenly, as though just awakening, she struggles up to the surface coughing and gasping for air. She declares in a voice-over: “My will has chosen life!”  

But, seemingly, her will has chosen not only life but also to capitulate, to return to a newly constructed family unit, this time headed by Baines. She also returns to “civilization”—to “law”—as represented in the film by leaving the land for an urban setting. The film suggests that the only place for Ada to go is another patriarchal structure, one in which the finger taken by one man is replaced by another, because now Baines has constructed a replacement finger for her out of metal. Even her piano playing is no longer her own. Her music is now mediated through patriarchy: as she plays we hear the tapping of the metal finger on the piano keys. Is this finger, replacing the “castrated voice,” a reappropriated phallus? Can a reappropriated phallus be emblematic of women’s desire or has Ada simply substituted one patriarchally constructed desire for another?

Most disturbing, perhaps, is that we see Ada learning to speak. Can she find a voice within civilization (perhaps some voice of compromise and necessity) or does speaking represent her capitulation to the language and law of the father? The final scenes of the movie suggest the latter. As she practices her speech she is unable even to show her

33. Campion, supra note 15, at 121.
34. This interpretation was suggested to me by Isabel Karpin.
35. Judith Butler explores the notion of a reappropriated phallus in The Lesbian Phallus and the Morphological Imaginary, in Butler, supra note 30, at 57.
face. Veiled and shamed, her face covered by a dark cloth, she attempts guttural sounds in the penultimate scene.

The return to the law, with its accompanying return to language, should not come as a surprise. Desire is not something "out there" beyond law. It is formed and structured in and against law. Law draws the contours of sanctioned sexual conduct, proscribing the bad and, only indirectly, prescribing the good. Any "lawless" desire was only a fantasy that could not possibly be sustained. Indeed, it is difficult to deal with the question of sexuality and the law where the law both represses sexuality and is a prohibition that is generative of sexuality. Put another way, sexuality cannot be discussed without addressing law because law both reacts to sexuality and is constitutive of it.

The final scene of the film, following the ambiguous image of Ada returning to the world of speech under a self-imposed veil, is a dream sequence in which Ada sees herself bound to her piano, floating deep beneath the sea. Ada's voice-over says:

THERE IS A SILENCE WHERE HATH BEEN NO SOUND
THERE IS A SILENCE WHERE NO SOUND MAY BE
IN THE COLD GRAVE, UNDER THE DEEP DEEP SEA.

36. See Foucault, supra note 31, at 36-49. See related discussion in Higgins, supra note 3, at 12; Abrams, supra note 3, at 316.


38. For example, building on a Foucaultian analysis, David Cole has argued that the sexuality produced by social regulation of sexual expression is itself pornographic: "[B]ecause our society has been so obsessed with controlling and regulating sexual expression, we have elevated the aspects of transgression and taboo above all others." David Cole, Playing by Pornography's Rules: The Regulation of Sexual Expression, 143 U. PA. L. Rev. 111, 173 (1994). According to this logic, everything forbidden is more tantalizing. See Nancy Levit, Listening to Tribal Legends: An Essay on Law and Scientific Method, 58 Fordham L. Rev. 263, 302 (1994). Along these lines, one might argue that statutory rape laws make young women more desirable by constructing them as "forbidden fruit." Catharine A. MacKinnon, Toward a Feminist Theory of the State 175-76 (1989). It may also be argued that the Supreme Court's decision in Bowers v. Hardwick, 478 U.S. 186 (1986) (upholding sodomy legislation) played an active role in the solidification of sexual identities, setting homosexuals further apart from heterosexuals and making them more susceptible to vilification. See Kendall Thomas, The Eclipse of Reason: A Rhetorical Reading of Bowers v. Hardwick, 79 Va. L. Rev. 1805, 1829 (1993); Jed Rubenfeld, The Right of Privacy, 102 Harv. L. Rev. 737, 778-81 (1989).

Perhaps the eternal silence of a watery grave is the only option for truly and uncompromisingly exiting from male-structured desire in the paradigm of Ada’s life. But suicide is not an appealing strategy, even when the options are so limited.40

The film suggests the paradox of silence as subversion. As Susan Bordo has pointed out, the strategy of muteness as protest will always involve ambiguity,41 because muteness remains the posture of the silent, uncomplaining woman. In a sense silence is counterproductive and self-defeating, leaving the woman unconnected in a fundamental way to the outside world.42 If, as a strategy, silence is counterproductive, in law it is impossible. To engage with law is to engage with the outside world. To protest the lack of a voice for women’s desires through law requires some engagement with the very language which itself fails to leave room for the articulation of that desire. But to engage with that silence requires a confrontation of the symbolization of woman as Lack. Without subverting the abjected “mother/woman,” we cannot break apart the duality that is characteristic of the patriarchal order. To engage in this subversive exercise requires an exploration of the insight that psychoanalytic perspectives can offer.

II. Desire Un-seen: Beyond Woman as Lack

Law, in its attempts to deal with human behavior, must be sensitive to the origins and motivations of such behavior. The tools for deep inquiry into human interaction and autonomy lie not in legal theorizing in a vacuum, but rather in a kind of theorizing where the boundaries between law and other disciplines are blurred. In particular, theoretical perspectives that directly focus on the human subject and the subject of desire, such as psychoanalytic theory, are helpful.43

40. Interestingly, when I gave an earlier version of this essay at a conference entitled Direction and Distortion: The Centrality of Sexuality in the Shaping of Feminist Legal Theory at Columbia University School of Law, June 6–8, 1994, a number of the women in the audience commented that they thought the movie should have ended at this point, with Ada dead, and that any other ending compromised the integrity of the vision in the film.


42. Bordo, supra note 41, at 176–77.

43. Furthermore, psychoanalytic perspectives are impossible to avoid even for feminists resistant to them, since they have become imbedded in our popular culture. Thus, feminist legal theorists should reappropriate rather than ignore them. The symbol-
This interdisciplinary approach first and foremost values psychoanalytic perspectives on sexuality for their power to explain the construction of sexual desire in late twentieth-century Western capitalist societies. It also sees psychoanalysis as a heuristic model rather than a fixed constellation of categories and terms. True, psychoanalysis has, in certain incarnations, been used to force women into the object position antithetical to autonomy and subjectivity. Nonetheless, this does not minimize the need to know how that process has functioned and what must be done to question current constructions of sexual desire and, finally, to begin to envision new ones. As “classical” psychoanalytic theories are considered, however, their reliance on ahistoricity and their blindness to their own race, class, gender, and erotic biases must be critically examined. Sexuality cannot be abstracted from social forces, and the tendency of psychoanalytic theory to focus on the individual rather than, for example, the construction of women’s desire within the political economy of Western capitalist societies, must be acknowledged. This has been the particularly helpful work of feminist theory in the psychoanalytic framework. Thus, a re-imagination of women’s desire in psychoanalytic terms is necessary to rescue feminine sexuality from the trap of psychoanalytic Lack and to allow law to express women’s desires.

Taking psychoanalytic perspectives into account does not entail a naturalization of sexuality. It has become trite to observe that sexuality is not something essential or ahistorical that is held in check by social structures, but rather is a name given to an historical and social construct that is itself linked to power and regulation. In addition, I am not positing sexuality as a unity, nor do I believe that there is an “authentic” sexuality that merely needs to be uncovered. Even the

ization of psychoanalysis is pervasive in Western culture, and it affects all women. This is particularly true because psychoanalytic perspectives are represented throughout popular culture as well as through the discourse of “pop” psychology and the self-help movement. Though I offer The Piano as an example of the permeation of psychoanalytic perspectives of women’s desire into popular culture, one does not need to wait for “art” films. Many of the same messages about women’s desire (and their construction as Lack) are found in movies such as Fatal Attraction, The Good Mother, Dangerous Liaisons, The Hand that Rocks the Cradle, Basic Instinct and other standard Hollywood fare.


45. See Foucault, supra note 31, esp. at 105–106, 152.
The hegemonic vision of sexuality is itself composed of multiple voices, including "moral treatises, laws, educational practices, psychological theories, medical definitions, social rituals, pornographic or romantic fictions, popular music, and commonsense assumptions," all of which themselves are mutable over time and place. But within the stories of sexual desire the multiplicity of women's voices exploring desire are absent; these voices may entail a multitude of possible pleasures that surely are not limited to heterosexual vaginal intercourse.

This absence of women's voices is perhaps not surprising. From the classic psychoanalytic perspective, which has been dominant in explorations of sexuality in the recent past, women's desire has been posited as wound or Lack. Accordingly, women's sexuality is a "dark continent," undiscovered and undiscoverable. From a feminist perspective, all sexuality is constructed in the context of male supremacy. If desire is socially constructed, how are women's desires constituted given that the matrices of power that mold their sexuality are male, heterosexual, and in North America, largely white?

In acknowledging the construction of sexuality and the role therein played by relations of power, it is necessary to clarify what power, and whose hegemony, rather than to become caught up in endless indeterminacy outside of social context. In this analysis I am sympathetic to Catharine MacKinnon's critique of post-structuralism and acknowledge the patriarchal hegemony of desire that is her focus. I part company with MacKinnon because I see no possibility for emancipatory change in her theory of sexuality. Paradoxically, her theorizing is emblematic of a male voice of desire. For MacKinnon, sexuality is pornography and there is no way out under patriarchy: there is no option for sexual encounters that are not violation; for men not turned on by force and violence; for women who enjoy vaginal penetration and who are not just like Pavlov's dogs salivating at the sound of the bell; or for women who are genuinely hungry and not just conditioned to eroticize their

46. Weeks, supra note 32, at 16.
47. Thus, it makes sense to consider whether it is law, the state, patriarchy, capitalism, Western culture, or something else that is the locus of power. See, e.g., Didi Herman, Rights of Passage: Struggles for Lesbian and Gay Legal Equality 9-10 (1994) (pointing out that the law and the state should not be conflated and that treating the two as monolithic is simplistic); Sandra Morgen, Two Faces of the State: Women, Social Control, and Empowerment, in Uncertain Terms: Negotiating Gender in American Culture 168 (Faye Ginsburg & Anna Lowenhaupt Tsing eds., 1990) (seeing the state as a "primary arena of contestation").
48. MacKinnon, supra note 38, at 137, 141-42.
own domination. The crux of the implications of MacKinnon’s vision of sexuality is that force is sex, not sexualized; that sexuality is the dynamic of control by which male dominance defines man, woman, and sexual pleasure; and that sexuality is socially organized to require sexual inequality.

Yet MacKinnon asks the interesting question that opens up the otherwise closed system that is her paradigm: why, if the reality of sexuality centers on male force and the eroticization of domination, do not all women love pornography, and why do they resent rape? Why is sexuality ever anything other than masochistic for women? She does not answer these questions but instead describes women’s sexual relations with men as revolving inexorably around denial and fear. For example, MacKinnon highlights what she perceives as the difficulty for women in distinguishing between legitimate and illegitimate forms of sexual intimacy: in her view, women are expected to distinguish what is “the socially, epistemologically, indistinguishable. Rape and intercourse are not authoritatively separated by any difference between the physical acts or amount of force involved but only legally, by a standard that centers on the man’s interpretation of the encounter.” Here she conflates what is indistinguishable to whom: the rapist may not know the difference between sexual intercourse and rape, but women do. The law may have a hard time distinguishing because of the lack of a legally “authoritative” difference, but women do distinguish and do not need an authoritative map. MacKinnon cannot claim that most women experience their sex lives as a series of rapes; if her claim is that this is what women experience whether or not they recognize it as such then her position is universalizing and essentialist in the extreme.

I have made this excursus into MacKinnon’s theory of sexuality to demonstrate what I read as an example of the “penetration” of male discourses of desire into feminist theory. By defining desire as always already constructed through the gaze of domination and force, as, in

49. MacKinnon, supra note 38, at 148 (“[D]oes anyone think Pavlov’s dogs were really hungry every time they salivated at the sound of the bell? If it is possible that hunger is inferred from salivation, perhaps humans experience sexual arousal from pornographic cues and, since sexuality is social, that is sexual arousal.”) (footnote omitted).

50. MacKinnon, supra note 38, at 136, 137, 140, 141, 243.

51. MacKinnon, supra note 38, at 149–50. Again, paradoxically, in this way she is both deeply Freudian and Foucaultian.

52. MacKinnon, supra note 38, at 150.
essence, force eroticized (under patriarchy), MacKinnon adopts the patriarchal structure of desire as hierarchy. In MacKinnon's vision women's desires seem to have no place because there is no place outside patriarchy—just as Ada could find no place outside the "law" in which to sustain her desire. In the MacKinnon paradigm, any interpretation of female sexuality is nothing but a valorization of powerlessness, oppression, and lack of choice. By setting up the dominance principle as hegemonic, she reifies dominance, firmly telling us who is on top and who is on the bottom—end of story.53

Perhaps the story is not as pessimistic as that, although admittedly it is easier to suggest questions than answers. Women's desires, as unstable and diverse a category as that necessarily must be, are articulable in ways that remain to be discovered. This articulation is an experimental process involving a reappropriation of language. There is no women's desire articulated by and about women within law. Women are, however, beginning to play with the hegemonic language of desire and are attempting to wrest it from its place of privilege. One example is French feminist Luce Irigaray, whose metaphors construct women's bodies as central to desire.54 Irigaray focuses on (m)other imagery, substituting the umbilical cord for the penis as a signifier of desire.55

Irigaray's use of imagery is disruptive because it rejects the language of things seminal, penetrating, and potent, words that are used without attention to their phallocentrism or to the emphatically male metaphor. She instead finds meaning in the womb, the placenta, and intra-uterine life. This imagery is all the more revolutionary because it forces a confrontation with the maternal body; that is, Irigaray takes what is constructed psychoanalytically as Lack and posits it as having transcendental significance. Irigaray's language suggests that the mother need not be abjected, that girls' sexuality does not have to be founded on a repudiation of those "like" them and does not require turning to the "potency" of the other "with" the phallus.56 Irigaray suggests that the placenta's fundamental role—as the "first house to surround

53. Or, in her now classic articulation: "Man fucks woman; Subject verb object." Mackinnon, supra note 38, at 124.
54. See, e.g., Irigaray, supra note 29; Luce Irigaray, The Bodily Encounter with the Mother, in The Irigaray Reader 34 (Margaret Whitford ed. & David Macey trans., 1991) [hereinafter Irigaray, The Bodily Encounter].
56. Irigaray, The Bodily Encounter, supra note 54, at 44.
may stay with us like a “halo” or “some child’s security blanket” and asks how this interpretation can be represented in culture. Furthermore, she re-examines the Oedipal myth that so seduced Freud, challenging the paramountcy of the phallus. In her version of linguistic feminism, the phallus may be rearticulated as something other than a symbol of power and domination. In Irigaray’s terms the phallus could be a masculine version of another signifier—the umbilical cord.

She suggests:

Where once was the cord, then the breast, there shall come in its time, for man, the penis which binds, gives life to, nourishes and recentres bodies, recalling in penetration, in touching beyond the skin and the will, in the outpouring, something of intra-uterine life, with detumescence evoking the end, mourning, the ever-open wound. This would be a preliminary gesture of repetition on man’s part, a rebirth allowing him to become a sexuate adult capable of eroticism and reciprocity in the flesh.

I offer Irigaray neither as the answer to what “woman’s desire” is, nor to refute MacKinnon’s pessimism; there is no generic woman’s desire and Irigaray cannot possibly speak for the multiplicity of women’s desires. But her insistence on what is known as “feminine writing” is an interesting point from which to consider the possibility of alternatives to patriarchal constructions of sexuality. Although Irigaray’s evocation of the maternal does not necessarily offer a way to exit patriarchy, it does shift the gaze from domination. Rather than repudiating woman’s desire, she recognizes that the socially constructed voice of desire is neither natural nor inevitable and is infrequently our own.

58. IRIGARAY, THE BODILY ENCOUNTER, supra note 54, at 41.
59. IRIGARAY, THE BODILY ENCOUNTER, supra note 54, at 42.
60. IRIGARAY, THE BODILY ENCOUNTER, supra note 54, at 42. For another example of re-imaging the feminine in sexual difference, see the conclusion to DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW 197-205 (1991).
61. For an exploration of the complexities of the use of the maternal as a framework for analyzing abortion, see Julia E. Hanigsberg, HOMOLOGIZING PREGNANCY AND MOTHERHOOD: A CONSIDERATION OF ABORTION, 94 MICH. L. REV. 371 (1995).
III. Living Desire—Women’s Desiring Lives

In the continuum of feminist theorizing, I ally myself with those who posit the centrality of desire. We cannot fully discuss any legal issues that most fundamentally concern women without considering where desire fits. It is not sexuality per se, however, that interests me. Rather, we must find the missing discourse of women’s desires, which has often been absent even as “sex” is incessantly discussed and obsessively dissected.

Legal scholars must be mindful of the importance of sex for women because sex is both produced by and produces the law. Law, with its inherently conservative strain and repressive impulses, continues to presuppose a dominant unified vision of sex. The nuances of identity and the reality of mobile and multiple subjectivities are lost on a system that emphasizes stability, regularity, enforceability, and predictability. Thus, for example, rape laws are ill-prepared to contend with the

62. See Jed Rubenfeld, The Right to Privacy, 102 Harv. L. Rev. 737, 744 (1989) (discussing the predominant focus of constitutional privacy cases on sexuality, “the network of decisions and conduct relating to the conditions under which sex is permissible, the social institutions surrounding sexual relationships, and the procreative consequences of sex”).


64. For example, heterosexuality is generally still treated as the norm and homosexuality as the exception, or less neutrally, the deviant. This presupposition plays itself out in many contexts. For example, the law of domestic abuse assumes that a woman is battered by her male partner. Same-sex battery receives only a passing reference in legal literature, and the tendency seems merely to assimilate it into existing structures. See Mary Eaton, Abuse by Any Other Name: Feminism, Difference, and Intralesbian Violence, in The Public Nature of Private Violence 195, 199 (Martha A. Fineman & Roxanne Mykitiuk eds., 1994).

65. It may seem that law actually is less reliant on stable categories than we might think and that this is demonstrated by the way the law has evolved in its interpretation of identity characteristics over time. Although it is true that over the course of time the law does change in the way it apprehends identity characteristics, at any given moment it presupposes stable categories. For law to be applied, categories that are fixed and stable must be posited. For example, to define when and under what conditions a person has suffered racial discrimination, the law must be able to see concepts such as “race,” “Black,” or “African-American” as stable and relevant categories. See also Kim Lane Scheppele, Just the Facts, Ma’am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth, 37 N.Y.L. Sch. L. Rev. 123 (1992) (discussing the construction and interpretations of facts in legal settings).
complexity of a woman’s sexual desire within a context of conflicting needs and expectations. Particularly (but not exclusively) for a young woman it is not unreasonable that a sexual encounter could be both painful and pleasurable, consensual and coerced, liberating and shaming. Such complexities are ill-understood and find little opportunity for expression in a court of law.66 Law views sexual desire

66. For example, in Michael M. v. Superior Court of Sonoma County, 450 U.S. 464 (1980), the defendant challenged California’s statutory rape provisions. In its decision, the Court failed to see the coercion and complexity involved in a sexual encounter between the eighteen-year-old defendant and the seventeen-year-old complainant. Although Justice Blackmun described the complainant as a willing participant, the trial transcript demonstrates the intertwining of pleasure, power, and desire, and, ultimately, pain and violence:

Q. What happened at the railroad tracks?
A. We were drinking at the railroad tracks and we walked over to this bush and he started kissing me and stuff, and I was kissing him back, too, at first. Then I was telling him to stop —

Q. Yes
A. — and I was telling him to slow down and stop. He said, “Okay, okay.” But then he just kept doing it. He just kept doing it and then my sister and two other guys came over to where we were and my sister said — told me to get up and come home. And then I didn’t —

Q. Yes.
A. — and then my sister and —

Q. All right.
A. — David, one of the boys that were there, started walking home and we stayed there and then later —

Q. All right.
A. — Bruce left Michael, you know.
The Witness: Yeah. We was lying there and we were kissing each other, and then he asked me if I wanted to walk him over to the park; so we walked over to the park and we sat down on a bench and then he started kissing me again and we were laying on the bench. And he told me to take my pants off.

I said, “No,” and I was trying to get up and he hit me back down on the bench and then I just said to myself, “Forget it,” and I let him do what he wanted to do and he took my pants off and he was telling me to put my legs around him and stuff —

Q. Did you have sexual intercourse with the defendant?
A. Yeah.

Q. He did put his penis into your vagina?
A. Yes.

Q. You said that he hit you?
A. Yeah.

Q. How did he hit you?
A. He slugged me in the face.
through a remarkably unified lens of heterosexism, masculinity, and power.

Thus, law is uncomprehending of women's desire. This is not because the law is not mindful of desire, but because the desire produced and constituted by the law is one-sided, simplified, and overwhelmingly the construction of a privileged vantage point. This all-consuming structure of desire in law elides any other conceptions so completely that it seems almost illegitimate to suggest that law should be concerned with desire at all.

In this way, sexuality has a central role in the shaping of feminist legal theory. However, sexuality has most often been confronted only in small doses and in limited places, frequently confined to discussions of pornography. Opening up this discussion to reproductive choices expands the boundaries of the discussion of women's desires and suggests that there is seldom a moment of feminist theorizing when we should not, in some way or another, be addressing issues of desire.

I started this essay by arguing that for women to have a measure of control over their destiny, in order to exercise choice, women must have the ability to act as sexual agents, that is, as subjects with-rather than objects of—desire. Patriarchy, however, has structured women's

Q. With what did he slug you?
A. His fist.
Q. Where abouts in the face?
A. On my chin.
Q. As a result of that, did you have any bruises or any kind of an injury?
A. Yeah.
Q. What happened?
A. I had bruises.
The Court: Did he hit you one time or did he hit you more than once?
The Witness: He hit me about two or three times.


desires as passive and reactive: a woman’s role is to control men’s rampant sexuality. This male sexuality is not merely oppressive because it is hegemonic, it is dangerous. Exerting control is supposed to be the answer to many of women’s “problems,” including rape and unwanted pregnancy. But this is a solution that has been suggested by patriarchy, that takes male desire and heterosexuality to be primordial, and perhaps more fundamentally, this is a “solution” that does not work. A desire that comes from the feminine need not be reactive; it will likely have little to do with “consent” and may have much to do with motherhood, contrary to the myths that see motherhood as antithetical to desire, or that alternatively see motherhood as women’s only possible outlet of activity since they have no desire.68

If women cannot speak their desires, then lawyers have a fundamental problem. Language is our tool. If we do not have the words to say it then a court cannot hear it.69 Even when there are words, courts frequently will not respond.70 To step outside of discourse offers us no solution at all. The hysteric’s silent subversion, while revolutionary in


69. Bruce A. Ackerman, Forward: Law in an Activist State, 92 YALE L.J. 1083, 1084 (discussing “the birth of . . . a professionally stabilized rhetoric that increasing numbers of lawyers will be obliged to master if they hope to translate their clients’ grievances into a language that power-holders will find persuasive”); Julia E. Hanigsberg, Decoding Abortion Rhetoric, 37 McGill L.J. 928, 930 (1992) (book review) (discussing how lawyers are faced with the difficulty of translating women’s private experience of abortion into something that can be heard and understood by courts). See also Marie Ashe, The “Bad Mother” in Law and Literature: A Problem of Representation, 43 HASTINGS L.J. 1017 (1992) (discussing the ability of lawyers to represent clients whose stories they do not understand).

70. For example, in rape trials, fact-finders, while no longer requiring proof of utmost resistance, may still require some evidence of physical resistance in order to substantiate a rape victim’s spoken “no.” Merely having the word “no” in her arsenal is not sufficient for the rape victim in the courtroom setting to prove lack of consent. See Abrams, supra note 3, at 361–67; Susan Estrich, Rape, 95 YALE L.J. 1087, 1124–32 (1986).
some respects and a form of resistance to be sure, fails to address the public nature of legal action. To find a place for women’s desire we must use words.\textsuperscript{71} Doing this will not be easy. Conceiving of women’s desires will involve listening to women, both to what they say about desire and to what they do not say.\textsuperscript{72} It will involve constantly asking the questions, “Who is speaking? And, who is silent?”\textsuperscript{73} Any rearticulation of desire must be responsive to women’s actual experiences. At the same time, this revision must be accepting of diversity and multiplicity. White women, for example, may be surprised to find that theories of desire and patriarchal control thereof that resonate with them may not be compelling to African-American or non-First World women.\textsuperscript{74} The law must be capable of acknowledging that there is no single “authentic” women’s desire and no utopia outside of society to which women may turn to find their “true” desire.\textsuperscript{75}

\begin{itemize}
\item \textsuperscript{71} As Regina Austin puts it in another context: “[T]here are times when low-volume defiance must give way to all-out ‘mouthing off.” Regina Austin, \textit{Saffire Bound!}, 1989 Wis. L. Rev. 539, 576.
\item \textsuperscript{72} Higgins \& Tolman, \textit{supra note 63}.
\item \textsuperscript{73} Marie Ashe, \textit{Conversation and Abortion}, 82 Nw. U. L. Rev. 387, 400 (1988) (reviewing \textit{MARY ANN GLENDON, ABORTION AND DIVORCE IN WESTERN LAW} (1987)).
\item \textsuperscript{74} See, e.g., Barbara Omolade, \textit{Hearts of Darkness, in Powers of Desire, supra note 44}, at 350. For example, although rape law has been theorized as a vehicle for controlling women’s sexuality, for African-American women the rape story is almost the inverse: the African-American woman has been symbolized as unrapeable (thus a slave owner could not legally be conceived of as “ raping” a slave) and at the same time envisioned as the personification of desire, used by advertisers to embody the “animal” instinct. BORDO, \textit{supra note 41}, at 10–11. See also Kimberlé Crenshaw, \textit{Whose Story Is It Anyway? Feminist and Antiracist Appropriations of Anita Hill, in Race-ing Justice, En-gendering Power: Essays on Anita Hill, Clarence Thomas, and the Construction of Social Reality} 402 (Toni Morrison ed., 1992); Jacquelyn Dowd Hall, “The Mind That Burns in Each Body”: \textit{Women, Rape, and Racial Violence, in Powers of Desire, supra note 44}, at 328. The lynching of African-American men in order to preserve white women’s virtue is the other side of this coin. Thus the view of women’s sexuality as precious and deserving of protection, which may appear to underlie some conceptions of rape law, and which is disturbing because it is patriarchal and condescending, may be absent in the case of non-white women.
\item \textsuperscript{75} Ellen Ross and Rayna Rapp use the compelling metaphor of the onion, drawing on the imagery of Clifford Geertz: as we peel away each layer we may think that there will be some notion of authenticity lurking in the center, but instead we find that the whole is the essence. In that sense sexuality cannot be abstracted from those layers that are the social influences that constitute it, including the influence of patriarchy and the institutionalized oppression of women. Ellen Ross \& Rayna Rapp, \textit{See and Society: A Research Note from Social History and Anthropology, in Powers of Desire, supra note 44}, at 51, 54.
\end{itemize}
One purpose of this essay is to begin to consider the meaning of desire in the sphere of procreativity and to draw attention to reproductive decision making in this context. How would the discovery of a woman’s voice of desire influence reproductive decision making? Given that reproduction is mostly the result of vaginal sexual intercourse, it is anomalous that reproductive decision making, including the decision to abort and other decisions made by pregnant women, as well as the state’s impact on such decisions, is not analyzed as an issue to which women’s desire is relevant. One suggestion for reappropriating women’s desire from the realm of the pathological is to re-examine the desire in the maternal.

As Irigaray’s work has done in the context of psychoanalytic theory and literary criticism, an alternative symbolization of women’s desire in law can offer particular insight into reproductive decision making. Finding the unspoken desire may allow us to see women as decision-making agents, rather than as objects of the decision making of men (either the men in their lives or the patriarchal state). For example, rather than seeing women on welfare who become pregnant as irresponsible burdens on the state, or even as child abusers for bringing children into “underprivileged” environments, it may be possible to see pregnancy as connected to the expression of desire within a culture in which women’s corporeal selves are customarily perceived as having only two purposes: as objects of men’s desire or as means of (re)production. Perhaps the rhetoric of reproductive choice is empty without an investigation of the role played by desire. For example, a woman’s interest in motherhood might be considered worthy of legal recognition and protection, regardless of her social status. Or conversely, limiting a woman’s access to abortion, despite her desire not to carry a fetus to term, might be more readily recognized as compulsory child-bearing, rather than a mere restriction on abortion.

Would a voice of women’s desires make a difference in the way we think about abortion and the rhetoric of responsibility? 76 According to

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76. For example, in the early anti-abortion campaign the incidence of abortion was attributed to the “growing self-indulgence among American women.” James Mohr, Abortion in America 108 (1978). Women were likewise accused of seeking abortions because of “the inconvenience incident to pregnancy, fear of the pains and risk of labor, but mainly . . . to avoid the labor and expense of rearing children, and the interference with pleasurable pursuits, fashions, and frivolities.” Andrew Nebinger, Criminal Abortion: Its Extent and Prevention 14 (1870), reprinted in Abortion in Nineteenth-Century America (1974). As another anti-abortion activist put it, “Have you the right to choose an indolent, selfish life,
conventional rhetoric, women who seek abortions have failed to control the sexuality of the men they encounter and have failed to take responsibility for their own sexuality. But what tools are women given for this active “taking” of responsibility—how does an object express her subjectivity? If women no longer bore the burden of controlling “male vice,” would responsibility stop being uniquely their burden?

By situating abortion and pregnancy in the realm of responsibility, they are dislocated from heterosexuality. Along this paradigm, sexual desire for men bears no burdens. “Nature” allows men the “freedom” to express their sexuality unbounded by responsibility for pregnancy. However, heterosexuality for women, even when not procreative in intent, risks motherhood. Patriarchy has insured that “fatherhood” is not necessarily a risk of male sexuality. This brings to mind Joan Nestle’s telling of her mother’s girlhood rape.77 The thirteen-year-old girl is attracted to a good-looking man in his twenties; she wants him and has sex with him. She is later gang-raped by three of his friends and becomes pregnant. Her father threatens to kill her if she aborts the pregnancy that resulted from either her consensual sex or her brutal rape (there is of course no way to know).78 For this girl, the expression of desire attracted not only violence in the form of rape, but additional brutality in the form of patriarchal control of her right to terminate the pregnancy that results. The lesson that this teaches is that desire in women is dangerous, that no expression of women’s desire that fails to

neglecting the work God has appointed you to perform?” Augustus Gardner, Physical Decline of American Women, in Conjugal Sins Against the Laws of Life and Health 199, 225 (1870). A published report of the Ohio Senate special committee introducing anti-abortion legislation deplored women who sought abortions as yielding to the “demands of society and fashionable life.” Reva Siegel, Reasoning from the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection, 44 STAN. L. REV. 261, 316 (1992)(quoting 1867 OHIO SENATE J. APP. 235). This kind of rhetoric is mirrored in the contemporary context. For example, Justice White in Doe v. Bolton described Roe v. Wade as protecting women’s right to terminate a pregnancy for reasons of “convenience, whim, or caprice” or for “no reason at all.” 410 U.S. 179, 221 (1973) (White, J., dissenting). See also Linda C. McClain, “Irresponsible” Reproduction, 47 HASTINGS L.J. (forthcoming 1996) (manuscript on file with author). This denigration of abortion-seeking women may well be a symptom of ambivalence towards the figure of the mother. See Julia E. Hanigsberg, Power and Procreation: State Interference in Pregnancy, 23 OTTAWA L. REV. 35, 44-45 (1991) (describing idealization and demonization of mothers).

77. Joan Nestle, My Mother Liked to Fuck, in Powers of Desire, supra note 44, at 469.

78. Nestle, supra note 77, at 469.
simultaneously control men’s sexuality—a control that power differentials between men and women make impossible—is safe. Would a social recognition of women’s and girls’ desires make sex safer for them?

Because of the lack of a voice of women’s desire in the abortion debate, abstinence is hailed as the only foolproof solution (proposed by the “pro-life” movement) to the abortion “problem.” Absstinence is, seemingly, defined as women, rather than men, abstaining from sexual intercourse. For a heterosexual woman to exert control over her reproductive life, her “option” is to erase herself as a person with desire, to neuter herself. Thus, the only road to autonomy, to the freedom to choose not to carry a child, is to be heterosexually sexless and to live without the companionship of a partner. The underlying assumption is that women do not really desire at all, that sex is not something women need. Abstinence is something we can simply choose, like heeding the latest recommendation to keep our fat intake under thirty percent of our daily calorie consumption—one choice among many. Of course, this anti-abortion rhetoric fails to point out that women’s desire, or lack of it, is not respected by law or by men. The abortion decision highlights the vicious circle that is created by the lack of a voice of women’s desire. A woman cannot fully express sexual desire if she has no access to abortion, because the expression of desire may have the immediate effect of destroying her autonomy and subjugating her body to the needs of an unwanted child.

To take another example, when courts treat lesbians unequally in family law, discriminating against them in issues of custody and visitation, adoption, or access to reproductive technologies, it may be that

79. Forty-seven percent of unintended pregnancies occur in women who are using contraception at the time of the pregnancy. For example, six percent of oral contraceptive users become pregnant within the first year of use. Rachel Benson Gold & Cory L. Richards, Securing American Women’s Reproductive Health, in The American Woman 1994-95 203, 205 (Cynthia Costello & Anne J. Stone eds., 1994).

80. Ironically, in this context women’s agency and ability to control sexuality is assumed.

81. Ellen Willis, Abortion: Is a Woman a Person?, in Powers of Desire, supra note 44, at 473-74. Of course, the pro-life movement does not suggest lesbian sexuality as an acceptable pro-life alternative expression of desire. This suggests a further connection between desire and abortion that needs to be elaborated.


they are being discriminated against not only because of their sexual orientation but also because they are asking to be recognized as mothers while the court has to explicitly confront the fact (or fantasy) of their sexuality. Would a voice of women’s desires force courts to treat lesbians more equally to heterosexual women since the “fact” of heterosexual women’s desires would no longer be rendered invisible? If heterosexual mothers were not seen as devoid of sexuality and were acknowledged to have sex lives, and if this fact were no longer determinative in custody proceedings, the sexuality of lesbian mothers might be less of a stark—and prejudicial—contrast. Rather than lesbian mothers being reduced to nothing but sexuality, the sexuality of all mothers would be a less menacing factor in custody determinations. Indeed, both lesbians and straight women might be treated more equally to men, whose sexuality is seldom held to the same standard of “virtue” as is women’s.  

Finally, finding a women’s voice of desire could change how we perceive the sexuality of teenage girls. The current perception of female teenage sexuality is illustrated by the television show Jacqui’s Dilemma. The “dilemma” of the title is an unwanted pregnancy. The show alternates between a monologue delivered by an actor portraying the white, sixteen-year-old Jacqui and interviews with “real” teenagers (male and female, African-American and white) as well as experts in the field of teenage pregnancy. Not once in the entire hour-long show was the desire of the young women who got pregnant ever mentioned.


85. For a particularly helpful discussion of this topic see Higgins & Tolman, supra note 63.

86. Jacqui’s Dilemma (ABC television broadcast, June 3, 1994).

87. Those who appeared on the program included June Johnson of Planned Parenthood, doctors who perform abortions, then-Surgeon General Joycelyn Elders, representatives of “pro-life” groups, social workers, parents, teachers, and representatives of adoption services.
Jacqui herself described her sexual experience in terms of a combination of fear, pressure from her boyfriend, and surprise when “it just happened.” Other young women who were interviewed talked about wanting to hold on to their boyfriends through sex and believing that if they slept with them, the boys they would return their love.\(^8\) Not one girl mentioned that she wanted sex, pure and simple. In contrast, the boys’ interviews often brought up active desire: wanting sex, “wanting a home run once you’ve gotten to third,” wanting to have fun. Indeed, the fun in sex was uniquely portrayed as the domain of the boys. This is not to say that the boys’ sexuality is portrayed in a positive light. Although they do express agency, the language of sexuality for them is largely expressed in terms of conquest and domination.\(^9\) Nor do I take this to mean that girls do not experience their own desire, but rather, that for the purposes of portrayal of adolescent sexuality in the mainstream media, the desire of girls was invisible.\(^9\) Just as Flora, in The Piano, was

\(^8\) In her discussion of teenage pregnancies among African-American women, Regina Austin observes:

For the females, sex is a means of capturing the affection, exclusive attention, and potential lasting economic assistance of a male partner. Enmeshed in dreamy notions of settling down with a good man, raising a family, and having a fine home, the females endeavor to make a soap opera of real life.

Austin, supra note 71, at 560 (citations omitted).

\(^9\) Austin discusses the African-American fathers of the children of African-American teen mothers:

For the males, sexual conquests substitute for successful economic engagement outside of the confines of the community. “Casual sex with as many women as possible, impregnating one or more, and getting them to ‘have your baby’ brings a boy the ultimate in esteem from his peers and makes him a ‘man.’” Status is accorded to those who make a fool out of the ladies and creatively avoid efforts to make them “play house.”

Austin, supra note 71, at 560–61 (citations omitted).

\(^{10}\) A “positive discourse of desire,” in the way this term is used by Sara Ruddick, is absent. The “negative discourse” is omnipresent. Ruddick describes the latter as “minatory or prohibitive, concepts that say ‘watch out,’ ‘stop,’ ‘don’t.’” The defining aim of this negative discourse is to strengthen and legitimate women’s ‘power to refuse.’” Sara Ruddick, Procreative Choice for Adolescent Women, in The Politics of Pregnancy 126, 133–34 (Annette Lawson & Deborah L. Rhode eds., 1993). In contrast,

[a] positive discourse, of desire, recognizes the pleasures of sexuality and the rewards of sexual intimacy. It speaks of birthgivers’ sense of achievement and the delight many birthgivers take in carrying, giving birth to, and marveling at an emerging, then newborn infant. It talks of good
sanctioned for her expression of autoeroticism in the company of the Maori, prime time family mores seem to suggest that erotic desire in teenaged girls is unseemly. If as a society we were able to acknowledge that active desire on the part of teenage girls is positive, we might see issues of teenage reproduction differently. For example, it might not make sense to restrict access to contraception. However, given the contemporary political culture of the United States, "making sense" does not seem to be a requirement for public policy. Given that access to reproductive services is being eroded for adult women, the possibility of increasing access for teenagers seems utopian in the extreme.

Jacqui's Dilemma was marketed as informational for teenagers, but the messages that it sent are frightening, including the suggestion that sexuality for girls is all about fear, error, and betrayal (for example, thinking a boy will love you if you sleep with him and then finding out that he doesn’t). No other alternative is suggested, and it goes without saying that on network television the expression of sexuality outside of heterosexual sex is not even considered. Perhaps a voice of women's desire would shift the terms of the debate on teenage sexuality, demanding that we reconsider issues such as availability of contraception, access to abortion, and parental consent requirements.

Conclusion

Although the examples I offer are preliminary, I hope that they begin to suggest how legitimated voices of desire for women might help to change the way issues of reproductive decision making are framed. If women can speak their desires, can this change the way that we see moments in relationships with children and the relationships between adults that children foster and describes with respectful appreciation the demanding work of mothering. The central concepts of this positive discourse are enabling, concepts that say "act," "enjoy," "create," and "nurture." Its defining aim is to legitimate and enrich women’s capacity to desire and enjoy.

Ruddick, supra, at 133-34.

91. See supra text accompanying note 27.

92. See, e.g., Jerry Gray, Senate Limits Federal Funds for Abortions, N.Y. Times, Aug. 6, 1995, at Al (reporting Senate vote to bar use of federal funds to pay for abortions for federal workers).

93. Interestingly, the show ends with Jacqui telling us that she has made a decision and that the hard part now will be living with it, but we are never told whether she has chosen marriage, abortion, adoption, or single motherhood.
pregnancy? Will acknowledging women’s desires allow us to focus attention on women rather than their fetuses? Is desire a point of access to women’s ability to control their reproductive lives in the face of overwhelming pressure to make themselves available to heterosexual vaginal penetration? If the debate over abortion and other procreative issues is at least in part about differing world views on the social consequences of women’s sexuality, as many have argued, then a sophisticated analysis of that sexuality would seem to be a prerequisite to a fuller articulation of the meaning of procreative freedom to women.

*The Piano* is a fascinating film because it makes explicit the connection between language and desire. Through the use of the metaphors of life outside of civilization and life outside of speech, it focuses attention on the complexities of women’s desires and the way in which such complexities are not fully articulated in the language of desire as constructed under patriarchy. Ada’s story is challenging and disturbing because it makes explicit the connections between law, commerce, and desire that can be interpreted as the subtexts of our legal system more generally. In *The Piano*, Ada is able to express her desire by exiting from the legal structures that constrain it: she bears a child out of wedlock with little explanation and no justification, she refuses to make herself sexually available to her husband on his terms, and she explores her sexuality in a relationship with a man who himself has tried to find a world outside of European culture by identifying with the Maori culture. By refusing to speak, Ada metaphorically refuses to be complicit in a language of subordination. Her punishment for these transgressions is violent and extreme. Ultimately, the movie does not provide easy answers about whether she has been true to herself as she leaves the world of her husband Stewart for a new life with Baines.

Unlike *The Piano’s* Ada, women have no “outside” of civilization where they can go, mute, to reclaim their sexuality. As I have suggested, even for Ada, this “outside” is problematic and ultimately not as liberating as it might have first appeared. Ultimately, though, the notion of women actually speaking their desires is revolutionary, an idea that

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should challenge complacency in those comfortable with the status quo and inspire hope in those who seek change. It may be the way to restructure women’s reproductive lives, and it certainly is a necessary place to look for inspiration. 

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