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Zig-Zag Stitching and the Seamless Web: Thoughts on “Reproduction” and the Law*

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Abstract

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KEYWORDS: reproduction, law, thoughts

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Marie Ashe**

Whenever I read law relating to women and motherhood, I find myself sickened. When I read *Roe v. Wade*¹ I am filled with anger; when I read the *Baby M*² trial court decision, I am enraged. When I hear women referred to as "surrogates," I have the same reaction as arises when I hear women called "bitches" or "sluts." Feelings of humiliation, of indignation, of desperation, of horror, of rage. Reading *A.C.*³, I feel something close to despair.

Often, in the last several weeks, I have set aside my notes and readings concerning motherhood and law. I leave them with a sense of hopelessness. Often I have picked up some needlework — sewing, embroidery, needlepoint, knitting — seeking respite from the feelings that overwhelm me, restoration. The rhythm of my fingers becomes a rhythm of my inner being, a peace in my breast. A dropped stitch. A gentle flutter. A minor interruption of rhythm and pattern. I pick it up easily, drawing it into the larger design. I exist in a silent space. Untroubled.

Law reaches every silent space. It invades the secrecy of women's wombs. It breaks every silence, uttering itself. Law-language, jurisdiction. It defines. It commands. It forces.

Law as the seamless web we believe and die in. I cannot think of a single case involving legal regulation of motherhood without thinking of all. They constitute an interconnected network of variegated threads.

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1. *Roe v. Wade*, 410 U.S. 113, *reh'g denied*, 410 U.S. 959 (1973).

2. *In re Baby M*, 109 N.J. 396, 537 A.2d 1227 (1988), *reversing in part*, 217 N.J. Super. 313, 525 A.2d 1128 (1987).

3. *In re A.C.*, 533 A.2d 611 (D.C. 1987), *vacated and reh'g granted*, 539 A.2d 203 (1988).

Abortion.⁴ "Surrogacy."⁵ Supervision of women's pregnancies.⁶ Exclusion of pregnant women from the workplace.⁷ Termination of the parental rights of indigent or battered women.⁸ Enforcement of the "relinquishments" for adoption executed by confused and vulnerable women.⁹ Forced Caesarean sections.¹⁰ Policings of home births.¹¹ Fol-

4. See *Roe v. Wade*, 410 U.S. 113 (1973); *Doe v. Bolton*, 410 U.S. 179, *reh'g denied*, 410 U.S. 959 (1973); *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52 (1976); *Maher v. Roe*, 432 U.S. 464 (1977); *Harris v. McRae*, 448 U.S. 297 (1980); *Akron v. Akron Center for Reproductive Health*, 462 U.S. 416 (1983); *Thornburgh v. American College of Obstetricians and Gynecologists*, 474 U.S. 747 (1986); and *Reproductive Health Svcs. v. Webster*, 851 F.2d 1071 (8th Cir.), *prob. juris. noted*, 109 S. Ct. 780 (1989).

5. See *Baby M*, 109 N.J. 396, 537 A.2d 1227.

6. See *People v. Pointer*, 151 Cal. App. 3d 1128 (1984).

7. See *Oil, Chemical and Atomic Workers v. American Cyanimid Co.*, 741 F.2d 444 (D.C. Cir. 1984). For discussion of the troubling issues raised by *American Cyanimid* and related cases, see Becker, *From Muller v. Oregon to Fetal Vulnerability Policies*, 53 U. CHI. L. REV. 1219 (1986).

8. See, e.g., *West Virginia Department of Human Services v. Tammy B.*, No. 18217, Slip op. (1988), upholding termination of maternal rights of a battered woman.

9. See, e.g., *Lemley v. Barr*, 343 S.E. 2d 101 (W. Va. 1986), in which the West Virginia Supreme Court of Appeals reviewed a trial court's ruling denying the claim to custody of a natural mother who, during her own minority, had relinquished her child for adoption but had sought to regain his custody five days after that relinquishment. After analysis referring to the provisions of the Uniform Child Custody Jurisdiction Act, the court determined that the trial court ought to have given full faith and credit to an Ohio court judgment that had determined the adoption of the child invalid. Nonetheless, the West Virginia Supreme Court failed to order a return of custody to the natural mother.

10. See *Jefferson v. Griffin-Spalding Co. Hosp. Auth.*, 247 Ga. 86, 274 S.E. 2d 457 (1981), and related (largely unreported) cases discussed in Rhoden, *The Judge in Delivery Room: The Emergency of Court-Ordered Caesareans*, 74 CAL. L. REV. 1951 (1986). See also Kolder, Gallagher, & Parsons, *Court-Ordered Obstetrical Interventions*, NEW ENG. J. MED. 1192 (May 7, 1987). That article reports results of a national survey finding that court orders for Caesarean sections had been issued in 11 states, for hospital detention of pregnant women in 2 states, and for intrauterine transfusion against the desire of a pregnant woman in one state. The authors further note the class and racial implications of the policies expressed in such judicial intervention into pregnancies: "Eighty percent of the women involved were Black, Asian or Hispanic; 44 percent were unmarried; and 24 percent did not speak English as their primary language. All were treated in a teaching hospital clinic or were receiving public assistance." The survey showed strong support by medical practitioners for judicially-ordered interventions. The authors note: "Forty-six percent of the heads of fellowship programs in maternal-fetal medicine thought that women who refused medical advice and thereby endangered the life of the fetus should be detained. Forty-seven percent supported court orders for procedures such as intrauterine transfusions." *Id.* at 1192.

lowing the thread which is any one, I find it intertwined with each of the others. When I loosen a single thread, it tightens the others. Each knotted and entangled in fabrications of legal doctrine; each attached to notions of neutrality and generality.

Work on the seamless web. Writing of women, of mothers, of language and law. Rather different from passing threads through my fingers, working them into subtle or dazzling color. More like the impossible task of the miller's daughter.¹² Except — not merely to spin into golden thread a room full of straw. Beyond that, to work the threads into some recognizable shape, some better fit.

We have been weaving forever. And, apparently forever, our work has been assigned and defined by others. The work of victims: *She knows not what the curse may be/And so she weaveth steadily/ And little other care has she/The Lady of Shalott*. Work lacking inherent value: That of Penelope. Work of unfounded pride: That of Arachne. Ancillary work: That of Ariadne. Work of destruction: That of Medea.¹³ Regulation and definition have always already assessed our work and our nature.

Some women have objected, of course. Our words have been moanings and screamings. And poems. *Christ, what are patterns for?*¹⁴

During each of the past thirty-five winters, I have — depending on the size of that winter's bed — either folded at its foot or spread over its width a counterpane worked by my maternal grandmother.¹⁵ I never met my grandmother. She lived all her life in the West of Ireland and

11. See *Bowland v. Municipal Court for Santa Cruz Judicial Dist.*, 18 Cal. 3d 479, 556 P.2d 1081, 134 Cal. Rptr. 630 (1976), and *Smith v. State ex rel. Med. Licensing Bd.*, 459 N.E.2d 401 (Ind. Ct. App. 1984), both operating to proscribe the practice of lay midwifery, and *Leigh v. Bd. of Registration in Nursing*, 395 Mass. 670, 481 N.E.2d 1347 (1985), upholding suspension of nursing license of registered nurse who practiced midwifery and attended home births.

12. J. GRIMM, *THE COMPLETE GRIMM'S FAIRY TALES* (Padraic Colum, ed.) (1972).

13. A. TENNYSON, *The Lady of Shalott*, in *THE COMPLETE WORKS OF ALFRED LORD TENNYSON* (1893). For accounts of Penelope, Arachne, Ariadne and Medea see R. GRAVES, *THE GREEK MYTHS* (1960).

14. A. LOWELL, *Patterns*, in *COMPLETE POETICAL WORKS* (1955).

15. Julia O'Donnell Cahill (1882-1966).

has been dead more than half my lifetime. Besides her coverlet, I have one other gift of hers. A horn rosary. A deep moss green. I have removed the crucifix and I wear it sometimes as a necklace. Its holiness, to me, resides in her having made it a gift.

I remember the first winter when her coverlet came to me. I was, at that time of lesser sophistication, dubious about its color: a mingling of yarrow and goldenrod. Its warmth was extraordinary. Its great weight, its heaviness: transformative. Sleeping beneath it I am not merely warmed, but flattened, altered, changed in my being: I winter below the frost line.

This year I have found its yarns frayed and worn in several places. I have begun to wonder whether I will be able to repair it. I would like to give to my own daughter my grandmother's work, this text inscribing her touch and her bodily being, blessed by her eyes, recording the rhythm of breath and heartbeat, the scent of her lap.

Does the strongest of stitching come from our bodies? The mother of Snow White stained her sewing with blood.¹⁶ What if we wrote with words from the deepest parts of our bodies, our selves. Helene Cixous and Luce Irigaray recommend, and simulate, writing with milk and with blood.¹⁷ Which makes for a different *écriture*.¹⁸ A writing inscribing lineaments of female bodies. Marked by our varying rhythms and cycles. Our stitches will seldom be straight.

Zig-zag stitchings and zig-zag thought. Useful (as in buttonholing) for definition; (as in edging seams) for strength; (as in embroidery) for beauty.

It has seemed to me that the major attributes of legal discourse concerning women and mothers are these: it originates in men; it defines women with certainty; it attempts to mask the operations of power; it silences other discourse.¹⁹ I take as given: Law that silences

16. See J. GRIMM, *supra* note 12.

17. H. CIXOUS (with CATHERINE CLEMENT) *THE NEWLY BORN WOMAN* (1985); L. IRIGARAY, *SPECULUM OF THE OTHER WOMAN* (1985) and *THIS SEX WHICH IS NOT ONE* (1985).

18. Jones, *Writing the Body: Toward an Understanding of l'Ecriture feminine*, in *THE NEW FEMINIST CRITICISM*, 361-77 (E. Showalter ed. 1985).

19. For a most powerful discussion of these features of Western tradition and its figuration of the "Other" as feminine, see A. JARDINE, *GYNESIS* (1985).

any discourse is without warrant.²⁰

PRIMIGRAVIDA

My first birthing happened eighteen years ago. I was a *primigravida*.²¹ I had read all I could find concerning pregnancy. I was therefore able, upon hearing myself referred to as a "prima," on the morning of October 31, 1970, at Newton-Wellesley Hospital, to recognize that what was meant was "*primigravida*," a women for the first time gravid, heavy and ripe with child. I was, however surprised to find myself so-called by someone I had not expected to meet. The doctor whom I had come to consider "my obstetrician" made no appearance that Saturday morning. I arrived at the hospital at 6:30 a.m., at which time a labor room nurse called my doctor's office and reached the physician, unfamiliar to me, who arrived at 6:50. He examined me briefly and went to the phone at the nurses' station fifteen feet from my bed. It was 7:00. I'm not sure I'll be able to make it by 9:00, he said. I'm stuck here with a *prima*. It may be a while.

I had never given birth before (I was a *prima*). I had no idea how long the process would take. I knew he was in a hurry. I knew that the "*prima*" reference was relevant to his weekend plans, that "*primas*" often take longer in labor than "*multis*."

At 7:10 I felt a change. The grinding and tearing pain abated. The nurse shouted to someone, She's ten centimeters dilated. The doctor left the nursing area. I felt a sensation of incredible pressure, without pain, and a headiness. The nurse wheeled my labor room bed through a short hallway, through the double doors of the delivery room. She positioned it alongside a narrow table. Climb across, she said. I felt utter astonishment. She spoke matter-of-factly. Did it happen that other women were able, at this stage of their labors, to climb with agility from one table to another? I don't think I can do it alone, I told her. She helped me across.

The table was extremely narrow and hard. It was like lying on an

20. See R. BARTHES, ROLAND BARTHES (1977).

21. A woman who is pregnant for the first time. STEADMAN'S MEDICAL DICTIONARY (5th ed. 1982).

ironing board. She lifted up silver stirrups for my heels, and drew loose white cotton stockings over my legs, over my thighs. There were other people in the delivery room then. I was unable to recognize them; they were robed in green, masked and gloved.

I recognized the doctor's voice as he spoke to the nurses. Push whenever you feel the urge, the nurse said to me. I felt the urge, and I pushed. Can I raise myself up on my elbows, I asked them. That won't work on this table, the nurse said. Just push again, now, it won't be long. I pushed again and uttered a long, low moan, lasting the duration of the push. There's no need for that kind of noise, he said. I felt humiliation and fury. Damn it, he said, she's not pushing hard enough. Get me a forceps.

I pushed again, my back and shoulders against the table. I liked its resistance to me. *I felt you slip down.* Stop, stop, he said. Stop pushing now, I have to numb you for the episiotomy. I tried not to push. He had a hypodermic needle between my knees and pricked it into my vagina. It hurt. I need to push, I told them. *I could feel you like a ball of fire between my thighs. I reached down to touch my own flesh, to comfort myself, to slow your passage slightly, to let you out easily.* Keep your hand away from there, he said. That's a sterile area. I needed to push again. He slit my vagina. Then he backed off. *You slipped out gently. (You were so beautiful.) I cried and I laughed. I could not take my eyes off you, Anna.* It was 7:30 a.m.

A.C. was a *prima*, too, it appears. Primigravid and, in the court's words, *in extremis*.²² She was dying.

I think that when people are dying they call up in imagination the times of their childhood, times of having felt nurtured. I imagine that at my own death I will be less a "mother" than I am at this moment, and much more nearly a "child." My good friend Jennifer died of cancer at age 34, leaving her two young daughters. On the day of her death I visited her. She did not recognize me. Her mother was with her, and when Jennifer spoke at all, she spoke, in fragments, of her childhood. She did not speak, at that dying time, of further sacrifices that she might make for her daughters, for whom she had sacrificed

22. See *infra* note 44 and accompanying text.

much in her life.

As my father died, slowly, last year, I found, each time I visited him, that his thoughts and preoccupations turned, progressively, to earlier and earlier times of his life. He cared not so much about the experiences of yesterday as about the experiences of eighty years ago.

As A.C. submitted to the pain of her dying, as she passed through that deep and solitary inner experience of body and soul, she was offered — by medicine and law — not comfort but additional trial by torment. The representatives of medicine and law found it impossible to tolerate the mysterious unboundaried commingling which constituted the being of Angie Carder. What nature and her own strong desire and intent joined together, they set asunder. Finding insufficient her sharing the strength of every dying breath with her child-to-be, they violently wrenched from Angie Carder that not-ready-to-be-born being who died almost immediately thereafter. A forced abortion. The abortling passed from blissful water, through bloody fire, through hostile air. To earth with the flesh of her mother.

For Angie Carder, *primigravida*, maternity was mandatory, at the time when she was most incapable of it, at the time when she herself most needed mothering, the time of her being, "*in extremis*". No representative of law and medicine mothered Angie Carder. Her own mother's intercession on behalf of Angie was ignored by medicine and law. Angie's own mother and Angie. The abortling and Angie. Each forcibly separated from the other. Angie's dying body cut, bled, stitched and scarred. Marked by the mutilation of a *rite de passage*. Followed by final passage. Newspaper accounts reported that Angie and the aborted being were reunited at their funeral. *Pietà manqué*. And the grandmother grieving. *Pietà* within *pietà*? Not precisely.

Did the judges understand these things? Should they have known? Could they have known? Is it a mystery in its very essence? An Eleusinian mystery? Is there something we ought to have said, or ought to begin to say, to alter legal understanding of women: our bodies, our selves.

MULTIGRAVIDA

After my first hospital birthing, I considered birthing my second child at home. In 1972, in Boston, I found a nurse who had previously attended home births, but had ceased to do so in anxiety about possible prosecution; a physician willing to attend a home birth but located two hours from my home. Unable to find anyone with medical training, within a reasonable distance, I gave birth again in the hospital. That second experience was more pleasant for me. I had learned from the first. A physician who practiced alone and committed himself to being present — in person and not by proxy — at his patients' deliveries attended my birthing. I arrived at Newton-Wellesley Hospital at 6:00 p.m. on a Saturday evening, September 9, 1972.

Calm, peaceful and in no hurry, my doctor urged me to adopt whatever posture felt most comfortable, and to do whatever felt best as I birthed my child. I did those things. As the episiotomy performed at my daughter's birth had presented the most painful aftermath of that birth, leaving me "uncomfortable," as they say, for several months, I had early specified that I wanted no episiotomy. While accomplished at abdominal massage, the doctor either did not know or was not comfortable with perineal massage. He therefore consulted me as my son's head crowned and presented itself, and told me that he felt he needed to perform an episiotomy. Deferring to his judgment, I consented to that procedure which he performed without administering anesthesia. Its execution caused me no pain, but I wondered about its necessity. (I did not stop wondering when, later, the doctor told me that he, too, had questioned the real necessity of that "very slight cut," but that he had never not performed an episiotomy at any birth he had attended. I felt that I had to do it, he said.)

Then you were born. Your blue eyes wide open. David. You looked at the world.

Settled comfortably, though for a short stay, in my hospital bed, I asked the nurses to bring you to room with me. They refused, at first, saying I needed to rest. Argument. Confusion. Then they brought you in. I kept you then in my bed, happy to be with you. Much more at rest with you close to me than when you were afar. Just as now, David.

In the morning an older nurse peeked into our room, laughed at the two of us — David warm and snug against my thigh, I sitting up crocheting a shawl. *She looked at you and you looked back at her. Your eyes followed her face and her hat as she moved above you. He's*

beautiful, she said. And he's just incredibly alert. I can see that you've had a natural birth, she said, just by looking at you. I wish all women would.

The reality of multigravid-ness does not undo the singularity of each pregnancy. Pregnant in the fall of 1980, I felt for the first time the pressures of unanticipated physical problems associated with pregnancy; the related financial uncertainties — loss of wages and concern about employment security; and the workplace stresses that arise from men's ambivalences about pregnant women.

Preparing for a party at our home in the week before Christmas, at the start of my fourth month of pregnancy. House cleaning. Cooking. Feeling energetic and well after three months of exhaustion and nausea. Later that evening chatting with friends in my kitchen. Blood. On my thighs, my knees, my ankles. I leave the party. Go up to my bathroom, my bed. I weep in frustration at the bright red blood that covers my legs. At the fragments of bloody tissue. The call to the doctor. Three days in bed. A trip to the doctor's office. The urine test. Still positive. Still pregnant. Four weeks on my back in my bed while the bleeding continued, its causes unknown. Wondering whether it would abate. Wondering how long they would hold my job for me. Wondering about the mortgage payments. *Wondering what was happening to you. Your father brought me drinks, meals, kept me company. Whenever I got out of my bed, I hunched over, around you (you were a you to me, then, someone threatening to leave) to keep you within.* Then, cessation of bleeding, for reasons unknown. The ultrasound scan. *My first vision of you. Underwater. Swimming. I laughed when I saw you.*

Feeling well and strong, I returned to my work - as a public defender. Enjoying the high levels of energy that have marked the later stages of all my pregnancies. No indication of problems. Assigned to co-counsel the defense of a capital case set for trial in mid-May. Our defendant charged with the murder of his wife. We estimated a ten-day trial to end by the end of May. The trial in fact lasted four weeks — ending just a few days before the birth of my child.

— Incident with the prosecutor — I ask him to refer to me, before the jury, as "Ms." not as "Mrs." I can't understand that, he says, given your condition.

— My colleague needs an excuse for his tardiness. I hope you don't mind, he tells me, but I've told the judge we'll be late because

you don't feel well. I do feel well. I feel fine. I mind his use of my pregnancy, of my being.

— At counsel table, the defendant hunches beside me. Weary, subdued. A colleague observes, several days into trial: That's a nice touch — the pregnant woman and the accused murderer sitting together. Looks good for the jury. I don't like his comment. It objectifies me. And my relationship with my client. I do like the defendant. I don't change my seat.

— Our psychiatric expert flies in from California. His national reputation: defense of marital murders. We gather for trial preparation. Start out, he tells me, by asking me if he loved her. Just ask: Did he love his wife? I consider his proposal. I've given much thought to direct examination, to tying what the expert can say to the facts and our theory. I propose a different approach. His face gets red. He stands up from the table. He addresses my colleague. He says: I *hate* macho mothers.

The confinement of pregnant women to categories. Mandated vulnerability.

HOME BIRTHS

The last three of my five birthings have occurred at home. Each time, I have been fortunate to find good and generous friends to help me through the births. Each time, I have felt it necessary to conceal with great care the identities of the women who midwived for me, not to disclose their names to the lawyers with whom I worked or to the doctors whom I consulted, in order to protect them against the possibility of criminal prosecution.

In the city in which my third and fourth children, Tony and Michael, were born, in 1981 and 1983, a lay midwife had, only a few years before, been criminally prosecuted. She had been charged with manslaughter when a baby whose birth she had attended subsequently died. On her attorney's advise she had accepted a plea agreement that involved her pleading guilty to the criminal charge of practicing medicine without license and had been sentenced to a probation that required her leaving the state and no longer practicing midwifery. While I needed and welcomed the help of my friends, then, I feared the possibility that their understanding and generosity might have negative

consequences for them.

Each birth was attended by a friend who had herself birthed at home. Each was without any formal medical training. They extended care which I had never received in a hospital. Warm herbal compresses; massage that assured both no episiotomy and no tearing as my babies were born; calm, privacy, peace. Neither of those women had had extensive experience assisting births. Each of them was extremely intelligent, very well-informed, caring, and understanding of women's needs for dignity and respect. The births were unqualifiedly joyous occasions.

The pressures against birthing at home, in the sites where our mothers and grandmothers birthed, are enormous. Friends and family so take for granted the definitions of pregnancy and birthing articulated by medicine and enforced by law that they are unable to understand the choice of home-birth except as a kind of recklessness. Beyond those pressures, both parents and birth attendants feel acutely the pressures constituted by the threat of law. Criminal prosecution looms as a possibility for lay midwives in many states, and deprivation of medical or nursing licenses threatens medically-credentialed persons who participate in home birthing. As was the experience of Vickie Smith. And of Janet Leigh.²³ That operation of law demonstrates the legal buttressing of the strictest forms of medical regulation. It precludes women's defining the degree to which we will treat our pregnancies and birthings as medical constructs. It precludes access to any middle ground — to the kind of home birthing with medical support that was successful in Great Britain for many years, for example.

Three days after the murder trial ended, on June 25, 1981, my good friend hurried from court for Tony's birthing. She changed her lawyer clothes and got out her supplies. We spread out the sterilized sheets, the sterile scissors, the sterile shoestring. After two hours of labor — with laughter and joking — Tony came forth to his family and friends. *Last night, before our friends arrived, you lettered a sign for the door. "WELLCOM," it said. Do you recall your own welcome? Your sister stole you away at once, to hold you, wrapped in your blanket, to present you to all her friends on our street. Your brother was*

23. See *Smith v. State ex rel. Med. Licensing Bd.*, 459 N.E.2d 401 (Ind. Ct. App. 1984) and *Leigh v. Bd. of Registration in Nursing*, 95 Mass. 670, 481 N.E.2d 1347 (1985).

solemn. He touched you tentatively. I have never felt anything so soft, he said.

Committed to categorization, law is intolerant of porous boundaries (placentas?). It constrains and imposes the arbitrarily narrow limits within which birth attendants must operate to avoid criminal sanction, limiting not only places and conditions under which birthing women conduct our labors but imposing rigid restrictions upon the work that may be undertaken by intelligent, caring and supportive attendants.

The choice of home birthing is further pressured, not only by those constraints, but also by the reality of vindictive or violent reprisals by medical institutions. It is well-known that physicians unwilling to perform home-births frequently attempt to obtain from patients information about other professionals who may be supporting home-birth practice. Medical professionals censor and constrain one another's choices. Beyond that they punish. Retaliation? Deterrence?

* * * * *

In writing of Michael's birth and its aftermath, I noted the following:

Michael was born shortly before midnight on Sunday, December 11, 1983, after a few hours of light labor and four hours of hard labor. The midwife brought her four-week old baby and nursed him beside my bed, encouraging me all the while. My husband boiled water, prepared compresses, anticipated what I might need or desire. I kept my favorite Fra Angelico "Annunciation" by my bed to look at during the hard times. I laughed when Tim put Kay Gardner's "Emerging" onto the tape deck. The amniotic sac never broke, and Michael emerged within it. A tiny snip, a gushing of water. The sac slipped over his shoulders. Michael shrieked, enraged at his sudden transport from water to air. He knotted his fists, filled his lungs, and complained. Then he quieted. Waxy, solemn and perfect.

After the birth, we all massaged my abdomen, to encourage the passing of the placenta. I could feel that the placenta had detached from my uterine wall, that the uterus had begun to contract. The bleeding that normally follows the separation of the placenta occurred and ceased. But the placenta did not emerge spontaneously. Realizing

that it would have to be removed and not wanting to attempt its removal myself, I decided to wait until morning and to visit my obstetrician at that time.

I lay awake all through the night, as is my habit following a birth. In the morning I felt splendid — though eager to be rid of the still-retained placenta. At the foot of the stairs I found the Christmas tree, decked out by Anna, David and Tony while Michael was being born.

It was very cold and the roads were icy, but we warmed the car and bundled Michael well. We drove to the clinic at which both my obstetrician and my pediatrician had offices.

Some nurses stopped while we waited in the lobby, admiring Michael. The pediatrician came out to see him. He looks great, he said. I don't want to pry at all, he said, but I wonder who was with you during the birth? I know your husband was there. But was someone else with you? I gave him no names.

The obstetrician said that it was necessary to remove the placenta immediately. I questioned the urgency, inquiring whether it might be possible to go into the hospital later in the day, where anesthesia would be available for the procedure. He assured me that the nitrous oxide he could deliver at the Clinic would be sufficient. A nurse brought in an "Informed Consent" form. I made some changes on it before signing it. A flurry of consultations. Nurses and doctor. They were angry with me.

My back on a narrow table again. The nurse. The doctor. All masked. The table was cold. The stirrups again. The nurse placed something over my mouth and nose. She told me to breathe in deeply. I did so. I lifted above the table. Like swimming in air.

My son David was reading Tolkein. *The Lord of the Rings*.²⁴ I read along with him. Do you like these books? he asked me. I really do, he said. I like them too, I told him. Except — that there are no women in them. Or hardly any. Does that matter?

Dark riders surrounded me. They were my enemies.

The nurse leaned over my head, over my face. I think it was the nurse. Her mouth and her nose were covered. I knew by her voice that she was a woman. I saw only her eyes. I wished that she would connect

24. J.R.R. TOLKIEN, *THE LORD OF THE RINGS* (1974).

them to mine. But she didn't.

Last night, at the most difficult time of the labor, I said to the midwife: Please remember to keep looking directly into my eyes. Remind me to look at you. She did so.

This nurse will not look into my eyes.

When I breathe in the gas I am lifted away from the table, from what feels like a floor. They won't let me climb off the table, so I know I can't trust them. The nurse speaks soothingly. She says to relax, to breathe deeply. But I know that I should not do that. I struggle to push the mask away from my face. She holds me down, pushing it back over my mouth and nose. I struggle with her. I begin to scream.

I fear them. I think of my baby outside in his father's arms. Pain twists through me. I think of my newborn outside in his father's arms. I feel they are trying to kill me. My children will have no mother. I push the mask away again and the pain fills my ears and my throat and my eyes. The cells I never knew of. And flies out of me and I fly out of me. There is nothing I would not do to escape this pain.

I thought I had reached the farthest borders of pain last night, giving birth to my son. I had not. This pain destroys me.

If only the nurse would look at me, I would trust her, if she would just meet my eyes. I can see her eyebrows and the brown silky hair escaped from her cap and her mask. Her hair makes me soften. I recognize her. She is like me. Why won't she look at me?

The Tolkein riders pass by me again.

I scream to them then, How much longer? Just tell me how much longer, I beg them. I push his hand away. He is pressing something steel inside me. Please stop, I beg him. He doesn't answer. He drives the steel object more deeply. His face is covered like hers. Then he speaks: We have to do this. I beg him to stop. Just lie still, he says. We have to do this.

And I ask her then. How much longer. Please tell me how much longer. That will help me to bear it. But she won't answer. And I think it will never stop, till I die. I think they are killing me, slowly.

When she presses the mask against me I move into dreams. The room fills with struggle. I look for my allies. I want to trust her. I don't want to be all alone here. This is what torture is.

Someone is speaking. There is no woman here. There are no women in here. That one behind the mask is not like you. I hear horrible laughter. I push the mask away and I scream. I call them screams. But they were not screams from my throat. They were calls from every ravaged part of my body. They broke out of my breast, my heart, my lungs, my womb, my being. I could not bear to hear them. I could not bear to acknowledge who was making those sounds. Was it I?

An auger is working within me, without me, about me. It is slow and relentless. I wish I could faint. But I have to fight them.

I think I am in the earth or I am the earth and a plow is churning and ripping through me. When will it end? Her arm is thin but she's strong and she presses against me. I want them to stop. And mostly I want her to look at me. Directly. To make me believe she believes that they have to do this. But she won't look at me. She looks away. She is ashamed. Is she ashamed of me, of my howling and begging before him? Or is she ashamed of herself? How can I know. I want to think she's ashamed of me, of my weakness, of my crying in pain. I'm sorry, I say. But please stop, please, please, please stop. Please stop this.

There are no women here. And I turn my face away from her and away from him. Away from no mercy. And my cheek touches the table, still cold, and the cold is a mercy.

And they stop. He pulls out his tools and drops them onto the counter. They clang. And he rolls off his gloves. He slips the mask down. It hangs around his neck. We had to do it, he says. He turns and goes out.

She helps me to sit. She is silent. I want to leave there. I want to get out of that room. She gives me some water. I ask her, Is it always like this? Couldn't he have given me anaesthesia? Did it have to be done this way?

She shrugs.

Let me see how much you are bleeding, she says. But I won't let

her touch me. Not much, I say, and I draw up my knees. I'm ready to go, I tell her. Are you sure?, she asks me. She hands me a soft cotton pad, white and clean. I press it between my thighs. It feels gentle. I get up and get dressed.

The doctor comes in. Are you ready to go?, he says. We had to do it, he says.

I feel confused. Well, I guess I'm sorry I screamed so much, I tell him.

I go out to my baby. *You were sleepy and solemn-eyed. Michael. Magical. Born in your caul. We took you home.*

My friend came to see me, a nurse. I told her about it. Why do you think he did that? she asked me. Another friend came by, a nurse also. I told her my story. He raped you, she said. I hated those words. I did not want to hear them. Or to say them. But they were true. He raped me.

* * * * *

On July 25, 1986, at 1:30 a.m., I sat in my rocker. Awaiting the midwives. I did not want to stand, to hurry the progress of my labor, before their arrival. By 2:00 a.m., all three had come in. I cannot recall ever feeling more cared-for than I was by them and my husband in the following hours.

They inspired me with their gentleness, confidence, patience and strength. Most amazingly, when, in the short intermissions between intense contractions, I thanked them, they laughed and thanked me. I never doubted their gladness in being with me.

A brief, intense labor. Encouraged by a plurality of female voices; kindness of hands that touched when I needed touching, that otherwise left me alone; understanding and courage communicated through eyes familiar with the extremities of birthing. When I stood up, in the final phases of my labor, interrupting my pushing to walk about, they laughed with me. My husband's strength supporting my back. Their bearing with me. Their confident, intelligent, patient waiting through the strenuous exertion of the end of our labor.

Their gifts of body and mind blessed me that night, and, in my memory, continue to bless me. I wish that all women, in our birthings, could feel such support and such comfort.

They delighted in you. In your scent of womb-water. Your satin. Your color. Your plumpness. Your strength. For a week you were nameless. I kept you beside me. I gazed at you, sleeping and waking. Waiting for your name to disclose itself to me. Devin.

"MORTAL DECISIONS"

The "ordinary" medico-legal regulations of pregnancy and birthing (restricting time, place and manner of conducting pregnancy and of giving birth) are so pervasive that we often fail to recognize them as in fact regulations — particular cultural variants, perhaps, of a general and universal regulation of female sexuality and female personhood.²⁵ The "extraordinary" regulations that have recently become apparent in abortion regulation as well as in requirements — including major surgery — imposed upon pregnant women by courts, are in fact not different in kind from the "ordinary" regulations. Nonetheless, the suddenness of their introduction or the inadequacies of the theoretical structures within which they have been discussed have disclosed their problematic nature.

The rhetoric surrounding both discussion of abortion and discussion of recently intensified regulation of pregnancy in the name of "fetal" protection has tended to polarize into divisions about the relative "rights" that should attach, respectively, to women and to "fetal life." There has often seemed no common structure within which proponents and opponents of various regulatory schemes might speak meaningfully and understandingly with one another, with respect for our different experiences.

One of the most striking features of "pro-life" rhetoric is its recognition of abortion as a deathly act — the extinguishment of some form of human life — and its exposure of underlying experiences of horror — generally transmuted into self-recrimination and moral certitude — in the reports that pro-life women produce in recounting their abortion experiences. I have been struck, correspondingly, by the absence from most "pro-choice" rhetoric of a discourse of death as well as of discourses of horror or guilt. Pro-life advocates have accurately recognized in pro-choice discourse a practice of abstraction that tends to obliterate or to erase the realities of bloodiness and violence attached to abortion. Women who consciously experience abortion become familiar with

25. Concerning the notion of a taboo relating to all sexual expression see G. BATAILLE, *DEATH AND SENSUALITY: A STUDY OF EROTICISM AND THE TABOO* (1962).

those realities and respond variously to them; women whose anaesthetized experiences of abortion distance us from awareness of the bloody violence of abortion sometimes discover in post-abortion experiences reminders of the death-dealing power that is exercised in abortion. Both kinds of recognition — that occurring during the course of abortion and that arising later — may evoke a range of differing responses in different women.

Abortion is not merely a “moral” — but also a “mortal” decision. The failure of pro-choice discourse to so recognize it — to acknowledge the violence intrinsic to abortion — has constructed impediments to our speaking truly and deeply — and more variously — of what abortion means to us. It has discouraged our discoveries — beneath rhetoric and sloganeering, and beneath the obfuscation of medico-legal discourse — of the reality of common bodily experience underlying the various interpretations of different women.

The same failures of discourse have affected discussions of the proper legal treatment of pregnancy in general. The *A.C.* court properly characterized the judgment to be made in that case as a “mortal decision.”²⁶ In that characterization, it hints at the questions that lie at the heart of all “reproduction”-related matters presented as legal issues: Who will be permitted to exercise the power of extinguishing certain forms of human life? May women be entrusted to exercise such power? Ought the choice of mortality by women — or the willing assumption of certain risks of death — be tolerated by law?

I ask myself: What does it mean to put to death, intentionally, a living thing?

Sheltered, like most urban people, from the realities of death-dealing that underlie daily life, I have seldom consciously accomplished the death of another being whom I have recognized as “like” me, seldom executed clearly “mortal” decisions. In the summer of 1983, during one of my pregnancies, our dog, Flash, gave birth to a litter of pups. A Monday in July. A midwestern summer afternoon. Brilliant, glaring sunlight. Oppressive heat. I watch Flash dig a deep trench alongside the foundation of our house, in the afternoon sun. She works with a kind of determined ferocity. I observe her with interest, coming, gradually, to recognize in her frenzy a preparation for her imminent birthing.

26. See *In re A.C.*, 533 A.2d 611 (D.C. 1987), *vacated and reh'g granted*, 539 A.2d 203 (1988).

I take some soft towels and newspapers into the garage to make a nest for her, hopeful that she will come into that cool, dark place which, to me, seems more comfortable than the place she has selected. I call her into the garage and pet her. I close the door so that she won't go outside again. I leave her, to take a nap.

My son comes into my room in excitement. He sits on the edge of my bed. Flash has seven puppies, he tells me, but I think there's something wrong with one of them. . . It's not moving. In my weariness, I am not eager to go down to the dog. I tell David that I'll come soon. I rest a bit longer and then go downstairs. David meets me in the kitchen. There are eleven now, he tells me. I groan silently and go out to see Flash.

She lies on the towelling. Her eyes slightly glazed. I count eleven pups: two appear lifeless; nine squirm about. I sit on a bench and watch her deliver three more, lick them off, chew on and swallow their sacs. She looks exhausted.

I pick up the lifeless pups and wrap them in paper towelling. Put them into a shoe box. I find Flash's water bowl, fill it up, bring it to her. She drinks, lying still in her sodden nest. Using the backyard hose I fill up an old laundry tub. I then select five pups and carry them one at a time, to the tub. I drop each one into the water.

I am inexperienced at death-dealing. I don't want to watch the pups drown. I don't want my children to watch them. I drag the tub to the side of the house. I cover it with a metal lid. Cowardly, then, I leave them.

Later, in early evening, I return to uncover the tub. I lift each pup, in fascinated horror, out of the tub. I wrap each in paper towels. I am too tired and too sick to bury them. I place them, in a plastic bag, in the trash can, to be carried away in the morning.

I have never felt a continuing guilt, a profound regret, a deep mis-giving about that "mortal decision." But it has remained in my memory — a grave act. I have not forgotten the weight of these small, wet, stiffened forms in my hands.

Is what I did there "right" or "wrong"? It is neither. It is only what I have done. Another woman might have done differently. Even performing what appeared an identical act, she might have done differently. The farm woman drowning kittens as a matter of course may have an experience different from mine. Another woman might have felt unable to intervene in any way to cause the deaths of the helpless pups. In acting decisively I spent little or no time in reflection. What I

did was what seemed to me proper, if somewhat unpleasant.

For those of us living in cities, even the care of our animals is ordinarily so medicalized — so delegated to medical practice — that in our closest contact with animal life we are generally removed from the more immediate contact with animal death that has characterized human experience in other times and places. We are seldom required to confront very directly — by our own agency or observation — the choices that present themselves to us because of the limitations of life, because of the reality of death underlying all life and encroaching upon it. We formulate moral theory in places removed from the physical realities of our death-dealing decisions. Because of our distance from those physical realities we often fail to feel — in our flesh and bones — the shudder of horror that ordinarily arises at witnessing sudden, willfully accomplished transitions from the state of individual existence to a state of undifferentiation.

Anthropologists and ethnologists report the existence of an area defined as “sacred” surrounding the intentional dealing of death — the sacrifice of animal or of human life.²⁷ I wonder whether those accounts have some relevance for our understanding of the processes underlying present formulations of abortion law — *Roe v. Wade*²⁸ as well as more restrictive state statutory schemes — and the formulations expressed in *A.C.*²⁹ Certainly, the medicalization of our “reproductive” processes has significantly distanced most of us — including legislators and judges — from the immediacy of the female bodily experiences of pregnancy, birth, and abortion. That distancing has obscured the horror and fear that — ethnologists theorize — arises universally in the face of female violence and that seeks to control and regulate women’s “mortal decisions” for the reason that such decisions remind us of our frailties: our dependence upon the flesh and minds of our mothers; the finitude of our bodily lives; the constant imminence of a death that may swallow us up.³⁰ Is it possible to speak of experiences of abortion and other “mortal decisions” in a different discourse, outside the language of law and of medicine?

Many writers have theorized the powerful ambivalences about

27. See G. Bataille, *supra* note 25.

28. *Roe v. Wade*, 410 U.S. 113, *reh'g denied*, 410 U.S. 959 (1973).

29. *In re A.C.*, 533 A.2d 611 (D.C. 1987).

30. See *Semiotics of Biblical Abomination*, in J. KRISTEVA, *POWERS OF HORROR: AN ESSAY ON ABJECTION* (1980).

death which, displaced against maternal bodies, have motivated the pan-cultural subordination of women through regulation of the broad range of our activity currently subsumed under the term "reproduction." They have noted, as a most striking attribute of discourse regulating women's activity, its unfounded confidence about the nature of "woman" and of motherhood — a confidence that purports to justify its own exercise of power.³¹ Such ambivalence about maternal bodies resides in women as well as in men. Barbara Johnson,³² in a dense and powerful discussion of the rhetoric of abortion expressed in women's poetry, has found evidence that not only medical technologists but pregnant women ourselves seem unable to speak of abortion in voices free of identification with the "fetus." She finds in the pronomic usages embodied in those texts evidence not only of the non-binary nature of the pregnancy experience but also of the reality of a recollective identification with the experience of pre-natality, of "fetal" being.

Such rhetorical and psychological analyses point to the difficulty of speaking of abortion in ways that adequately utter its subjective realities, its meanings for our personhoods. They invite deeper exploration. It seems to me that the departure point for such exploration must be women's own accounts of our experiences, uttered with a commitment of faithfulness to the truths of female bodies suppressed in the dominant discourse. To the degree that women produce such writings, we may avoid the abstraction that has characterized and limited the work of certain cautious and sensitive male commentators presently writing about female "reproductive" experiences. To the degree that we avoid essentialism we will recognize the undesirability of *any* regulation of abortion.³³

If the purpose of contemporary feminist critique is to expose and explore profound and powerful ambivalences — most strongly ex-

31. See *id.* See also D. DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* (1976) and N. CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS OF THE SOCIOLOGY OF GENDER* (1978).

32. B. Johnson, *Apostrophe, Animation and Abortion*, in *A WORLD OF DIFFERENCE* (1987).

33. See R. GOLDSTEIN, *MOTHER-LOVE AND ABORTION* (1987). This work confronts seriously the inadequacy of binaristic models of pregnancy that imply separate and separable existences of a pregnant woman and her "fetus". Goldstein proposes a "dyad" model to do greater justice to the reality of pregnancy which is neither unitary nor dual. A serious limitation of Goldstein's work, however, lies in his taking for granted that regulation of abortions that occur late in pregnancy does not work intolerable harm on the pregnant woman, the "representative of the dyad."

pressed in the medico-legal discourse of women — it will succeed, however temporarily, only to the degree that its own discourse departs from or ruptures through the dominant rhetoric, expressing a different knowledge. Thus, women's critiques of the prevailing discourse must be marked by a tentativeness, a newness, a preciseness, an insistent refusal to venture into abstraction unconnected to the common experiences of very different women, and a firm rejection of simplistic and violent categorizations. Our alternative discourse must be capable of responding persuasively to the question by which we must judge not only medico-legal but every discursive account of women: How do you know what you claim to know?

I have experienced a number of spontaneous abortions — miscarriages — and one intentional abortion. Of the latter experience, I am able to say with certainty that its physical and emotional aftermaths have been far more severely negative than I had been led by any medical practitioner to expect. Of the actual surgical procedure I can say virtually nothing. I was anaesthetized during the procedure, which took place quite early in my pregnancy, and therefore had no real awareness of what was done to my body. Like a woman anaesthetized in childbirth, I experience a gap between the physical trauma to my body and my waking consciousness thereof.

In the miscarriages that I have sustained, my experience has been quite other. In those situations, I have always been very much aware — and, in all those cases, distressed by — my changing body. In all those cases I have wished that the pregnancies would continue, and have grieved their endings as losses.

One of my miscarriages occurred early in the fourth month of a pregnancy. It was a slow and lengthy process, a persistent progress that exhausted and defeated me, that left me saddened for months. I remember vividly the completion of that miscarriage, which occurred during a night in the middle of November, six years ago. I had visited my doctor when the abortion first threatened and had received and followed her standard advice. She had warned me of what I might expect, as the slight bleeding indicating the possibility of miscarriage developed into more steady indications: the passage of bloody tissue about the size of an orange, accompanied by severe cramping. I felt that passage — a kind of minor birthing, accompanied by the twisting and grinding pains of childbirth, though of lesser intensity and lesser duration. That tissue,

crown. Your dress of white linen. Your name, that I sometimes whisper, known only to you and to me. You do not break the windows and shake the walls of my house.³⁵ Does that mean that you have forgiven me? But you visit me often. I am glad that you come. Except — there is so much I wish. A funeral rite that I cannot perform without feeling your flesh in my fingers, without touching our common blood. In your presence, words fail. How great is the power of flesh that binds us together. Be with me.

The haunting words of *The Water-Lily*: Ah, the waking is sad/For the tears that it brings/And she knows 'tis her dead baby's spirit that sings:/Come, mamma! Come! Quick! Follow me!/Step out on the leaves of the water-lily.³⁶

* * * * *

What I have known of abortion led me, for a long time, to generalize, to think, with Gwendolyn Brooks, that "Abortions do not let you forget. You remember the babies you got that you did not get."³⁷ It led me, in overgeneralization, to believe that the choice of abortion is always a difficult and troubled moral decision. However, in recent years I have come to recognize that even that generalization may be without foundation. That *my* experience is not the experience of every woman. That grief is not necessarily the prevailing emotion attached to abortion.

I have become familiar with accounts of my friends — and of other women — that express the enormous relief they have felt at bringing body into harmony with mind through abortion, at restoring their bodies to the unitary, non-pregnant states that conformed with the definitions of selfhood articulated by those women at the times when they chose abortion. Such accounts have begun to be offered to courts making abortion decisions. Consider, for example, the following:

"Almost exactly a decade ago, I learned I was pregnant . . . I was sick in my heart and I thought I would kill myself. It was as if I had been told my body had been invaded with cancer. It seemed

35. See T. MORRISON, *BELoved* (1987).

36. H. LAWSON, *The Water-Lily*, in *THE SELECTED WORKS OF HENRY LAWSON* (1957).

37. G. BROOKS, *supra* note 34.

that very wrong."³⁸

"On the ride home from the clinic, the relief was enormous. I felt happy for the first time in weeks. I had a future again. I had my body back."³⁹

Whatever our commonalities, each individual woman is a singular body. And each singular body is the site of a singular subjectivity, a unique personhood. My experience is not identical to those of my sisters. For some women, abortion is nothing other than a relief, it appears, while for others it becomes nothing other than a kind of dying — suicidal if not murderous.⁴⁰

Different constructions of bodily experience. Different stitchings of web. When I hear varying narratives and when I recognize the various truths in different accounts, I ask whether *any* legal regulation of "reproduction" can avoid a perpetration of violence upon women. I wonder if there is any possibility of "equality" where regulation rests upon essentialist notions of gender and sexuality.⁴¹

A.C., AGAIN

Theorists sometimes identified as "cultural feminists" have often proposed that female experience gives rise to an ethic of "caring" that differs from the dominant ethic of "rights" constructed out of the profound alienation of men from their mothers' bodies.⁴² Other femi-

38. Amicus Brief for the National Abortion Rights Action League, et al., *Thornburgh v. American College of Obstetricians and Gynecologists*, Nos. 84-498 and 84-1379 (on file at Nova Law Review). For the Supreme Court opinion see 476 U.S. 747 (1986).

39. *Id.*

40. See A. RICH, *OF WOMAN BORN* 272-274 (1976).

41. For feminist critiques incorporating anti-essentialist themes or perspectives, see Ashe, *Mind's Opportunity: Birthing a Post-Structuralist Feminist Jurisprudence*, 38 SYRACUSE L. REV. 1129 (1987); *Law-Language of Maternity: Discourse Holding Nature in Contempt*, 22 NEW ENG. L. REV. 521 (1987); Scales, *The Emergence of Feminist Jurisprudence: An Essay*, 95 YALE L.J. 1373 (1986); and Dalton, *Where We Stand: Observations on the Situation of Feminist Legal Thought*, BERKELEY WOMEN'S L.J. 1 (1988).

42. Major representatives of "cultural feminism" include Carol Gilligan, author of *IN A DIFFERENT VOICE* (1982) and Elizabeth Wolgast, author of *EQUALITY AND THE RIGHTS OF WOMEN* (1980). Such writers have pointed out the reality that certain

nist writers have critiqued the "caring" emphasis as merely a variant on rhetorics that operate to justify traditional self-victimization of women.⁴³ I ask: What ethic relating to "reproduction" ought to be reflected in law?

In reading of *A.C.* and of Angie Carder, I have found one clear expression marked by the attributes that, I suggested above, will characterize powerful deconstructive and reconstructive feminist critique — attributes of clarity, newness, faithfulness to bodily experience, rejection of abstraction, and refusal to be reduced or simplified to facilitate categorization. That expression comes closer to uttering what I find a persuasive feminist ethic than any other voice I have heard in discussion of *A.C.* and related cases. It is the voice of Angie Carder's mother, Nettie Stoner.

Nettie Stoner, at the time of the *A.C.* hearing, was a woman who had already known much physical suffering. She had lost both her legs in an accident that had occurred nine years before. That loss had enabled her understanding of her daughter Angie's experience of amputation two years later, incident to treatment of her cancer. So intimately did Nettie Stoner understand her daughter's experience that she recognized the recurrence of Angie's cancer during pregnancy, before that recurrence had been recognized by her diagnostic physicians. Likewise, she felt certain that the "fetus" would not survive, as a healthy child, the court-ordered surgery performed upon Angie Carder.⁴⁴

Nettie Stoner testified at the hearing before the trial court that ordered her daughter's submission to Caesarean section. The following is an account of the testimony she gave in response to questioning by the court-appointed "lawyer for the 'fetus'."⁴⁵ It is testimony that arises out of maternal knowledge — a particular, local knowledge — that expresses an ethic characterized not by the sentimentality expected of and tolerated in mothers, but by a cold-eyed, unflinching strength, a clear recognition of the impossibility of finally avoiding

habits or ways of being — whether natural or culturally ingrained — tend, on the average, to distinguish women from men. They have seen the valuation and protection of such differences as the proper role of law.

43. See *Feminist Discourse, Moral Values and the Law: A Conversation*, 34 *BUFFALO L. REV.* 11 (1985).

44. D. Remnick, *Whose Life Is It Anyway?*, *THE WASH. POST MAGAZINE*, Feb. 21, 1988, at 18, 20.

45. Assumption of "fetal personhood" may be implied by the appointment of an attorney to represent the "fetus" as well as by the *A.C.* court's reference to "a patient . . . in fetal state." *In re A.C.*, 533 A.2d 611 (D.C. 1987).

death:

When it was time for the court to hear from Nettie, everyone leaned forward a bit to hear about Angie.

"She wanted to live long enough to hold that baby," Nettie began. "She did not want me to have to take care of that baby. She told me that. She wanted to live to hold that baby."

Mishkin: "This is terribly difficult for you, I know, and I'm sorry to have to ask you some questions, but I think it's important at least to get some sense of how you, as a family, would be able to cope if there were a live baby to come out of this. Do you have, for example, is there medical insurance? Is there any way that you have or are you totally stranded?"

Nettie: "Nobody. Nobody would insure a baby. Nobody would insure my daughter. Nobody."

Mishkin: "So there is no family insurance that would cover the baby's care?"

Nettie: "No. That doesn't even enter into it. I don't care about the money. It's just that I know there will be something wrong with this baby. I can't handle it. I've handled [Angie] and myself."

Mishkin: "I understand."

Nettie: "Nobody else can love a child like that and I know what it would be. No."

Mishkin: "Would you — would you even have the resources to handle a healthy baby?"

Nettie: "No."

Mishkin: "If the baby was not compromised?"

Nettie: "Not really. Rick, her husband, they have only been married eight months. I mean, he hasn't even had her long enough. How is he going to cope with a baby? They don't have any family, just Rick and his mom. It's me and I'm in a wheelchair. I can't put that burden on us anymore. Angela is the only one that wanted that baby to love. She said she wanted something of her very own."

Mishkin: "Would you consider placing the baby for adoption?"

Nettie: "Never. Never."

Mishkin: "What would you do if the baby survived?"

Nettie: "Who wants it?"

At this point, Mishkin recalls, some of the people in the room seemed shocked at Nettie's bluntness. "I'm sure it was out of stress," Mishkin says. She pushed on.

Mishkin: "I guess I'm asking you a terribly difficult question, but I'm trying to determine. . ."

Nettie: "I would take care of the baby. I would never put it up for adoption. I would do the best I could, but we don't want it.

Angela wanted that baby. It was her baby. Let the baby die with her."

Rick [Angie's husband]: "Please."

Nettie: "It's hers."

Mishkin: "I have no further questions."⁴⁶

Nettie Stoner's voice speaks of honoring life by honoring death. It accepts ambivalence. In discourse that "some" might find "shocking," that others dismiss as arising "out of stress," she honors a truth of maternity. Nettie Stoner speaks of both the limitations and the enormous power of mother-love. She expresses the truths that "fetal life" depends utterly upon the life and will of a pregnant woman; that sometimes "fetal" death and maternal death — human deaths — are the best life has to offer; and that "Death is the mother of beauty."⁴⁷ I hear in Nettie Stoner's words the enduring and insistent assertion that legally-endorsed violations of women's bodies in the name of "life" — hateful legal constructs that impose "love" and "self-sacrifice" upon women as our duties — are perverse. That in its alienation from nature law works harms far more destructive than the deaths that arise out of nature or out of the natural limitations of women.

These words spoken by Nettie Stoner from her wheelchair echo with power, with passion, with honest love. I honor her "mortal decision."

When will her thought, her decision, find expression in law that explicitly lets women be — in our limitations and in our differences, law that leaves us alone?

The self-accounts of mothers and of all women — pregnant, birthing, aborting, suffering violations or growing in power — constitute utterances closer to the reality of women's experiences than does any formulation of law or of medicine. While our generalizations and extrapolations from those experiences may be in conflict, when we attend to one another we discover truths that, rising out of our natural and acculturated bodies, do not conflict. How to work those yarns into the fabric of a law that calls itself "humanist"?

46. The preceding account of the hearing testimony is borrowed directly from D. Remnick, *supra* note 44.

47. *Sunday Morning*, in W. STEVENS, THE COLLECTED POEMS OF WALLACE STEVENS (1982).

Again, I remember my grandmother. What I know of her is limited. Fragmentary. I know that she gave birth to and mothered eight children. How did she feel about her motherhood? Did her pregnancies, her birthings, her child care, tax or delight her? Did they do both? In a culture in which both church and state constrained her choices, did she feel free to state openly the full range of her feelings, her thoughts, her desires?

I know that she worked very hard to care for her children. To supplement the livelihood earned by hard labor on their small farm, she sewed, embroidered, and smocked. I recall in my own imagination my mother's memory of trying on dresses that her mother fitted and sewed for wealthier children. I know that my grandmother felt the losses my mother felt — limitations and exclusion — in a world that defined in constricting ways the scope and the value of women's work. A world in which my own beautiful, talented immigrant mother did rich people's housework. With dignity. With pride. With great self-respect. With only a trace of the raging that I express?

I wonder about the thoughts and feelings my grandmother never put into her speech. Some of them whisper to me from her coverlet. Others I cannot ever hear.

I want a law that will let us be — women. That, recognizing the violence inherent in every regulation of female "reproduction," defines an area of non-regulation, within which we will make, each of us, our own "mortal decisions."

There is a kind of embroidery called cut-work. It is executed by the careful placement of smooth satin stitch and the excision of fabric within the area outlined by that stitching.⁴⁸ The cut-work opens up spaces within the fabric. Openness itself constitutes, then, both part of the fabric and non-part. It requires both needle and scissors. Construction and deconstruction. Within — and against — patterns of sameness, it inscribes difference.

48. For a discussion of cut-work technique, see E. WILSON, ERICA WILSON'S EMBROIDERY BOOK 251 (1973).