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# PACE LAW REVIEW

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## Dyson Lecture

### Crystal Eastman

Sylvia A. Law†

This is an ominous, historic moment for women. Let me cite three bits of evidence.

First, Susan Faludi's wonderful book, *Backlash*,<sup>1</sup> documents how the media and power elites have reacted against the small gains for equality that women have achieved in the past two decades. The book was a best seller for months, and stood number two, next to Gloria Steinem's *Revolution from Within*.<sup>2</sup> Even *Time* — an important contributor to the backlash — was pressed to respond.<sup>3</sup> But *Time*'s response continued in the best backlash tradition.<sup>4</sup>

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† Professor of Law, New York University School of Law. Address given March 12, 1992 for the Seventh Annual Dyson Distinguished Lecturer Presentation at Pace University School of Law.

1. SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1991).

2. GLORIA STEINEM, *REVOLUTION FROM WITHIN: A BOOK OF SELF ESTEEM* (1992).

3. Nancy Gibbs, *The War Against Feminism*, *TIME* (March 9, 1992), at 50 (cover story).

4. The *Time* article subheading asserted: "In popular culture, in politics — and among ordinary women — a backlash has hit the women's movement." Gibbs, *supra*

Second, the Supreme Court gutted women's core right to control their bodies, protected by the Constitution since 1973.<sup>6</sup>

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note 3, at 50. A core point of Faludi's book is that the media falsely attributes backlash sentiments to ordinary women. Faludi, *supra* note 1. Nothing in the *Time* article substantiated its depiction of a backlash among ordinary women. Indeed, *Time* reported that 82% believe that they have more freedom than their mothers and 57% believe that there is still a need for a strong women's movement. Gibbs, *supra* note 3 at 54. On the other hand, most women do not characterize themselves as "feminists." It is, however, difficult to interpret this answer, in that the media has tended to define "feminist" in pejorative terms. To *Time's* credit, it does quote Rebecca West's wonderful 1913 comment: "I myself have never been able to find out precisely what feminism is. I only know that people call me a feminist whenever I express sentiments that differentiate me from a doormat, or a prostitute." *Id.* at 51. Nancy Cott, in her classic book, *The Grounding of Modern Feminism*, offers a more serious definition. She says that feminism encompasses three key elements: a commitment to equality (or opposition to gender hierarchy); an understanding that gender is socially constructed; and a group identification with the situation of women as women. NANCY COTT, *THE GROUNDING OF MODERN FEMINISM* 4 (1987).

5. In *Planned Parenthood v. Casey*, 112 S. Ct. 2791 (1992), seven Justices voted to approve a Pennsylvania statute requiring that physicians give women information designed to discourage abortion, wait twenty-four hours, and in the case of a minor, obtain parental consent. The Court struck down a spousal notification requirement. *Id.* at 2829-2830. Only Justices Blackmun and Stevens reaffirmed *Roe v. Wade's* holding that abortion restrictions may be justified only if they are narrowly designed to promote compelling state interests. Chief Justice Rehnquist and Justices White, Scalia, and Thomas denied any constitutional protection against state regulations that discourage abortion or make it more difficult and costly to obtain. *Id.* at 2855-73 (Rehnquist, J., concurring in part and dissenting in part). Justice Blackmun observed: "I am 83 years old. I cannot remain on this Court forever, and when I do step down, the confirmation process for my successor well may focus on the issue before us today. That, I regret, may be exactly where the choice between two worlds will be made." *Id.* at 2854-55 (Blackmun, J., concurring in part and dissenting in part).

If the ultimate holding was predictable, the analysis the Court used to reach it was filled with surprises. The opinion, written jointly by Justices Souter, O'Connor, and Kennedy, held that "the essential holding of *Roe v. Wade* should be retained and once again reaffirmed." *Id.* at 2804. At the same time, the joint opinion offered an entirely new standard for determining whether a state restriction on fundamental liberty is constitutional.

Traditionally, if an individual liberty is recognized as "fundamental," the state actions restricting it must survive "strict scrutiny." *Id.* at 2817. The state legislation that impinges on fundamental rights must be drawn in narrow terms and further a "compelling state interest." *Id.* The joint opinion in *Casey* rejected this traditional approach and set forth a new standard for evaluating state laws that restrict the exercise of a woman's fundamental rights. "An undue burden exists, and therefore a provision of law is invalid, if its purpose or effect is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability." *Id.* at 2821.

The woman's constitutional right to choose was resoundingly affirmed, but the states are now allowed to adopt measures that effectively curtail many women's exercise of the right, particularly those women who are most vulnerable: the poor, the unsophisticated,

We have not yet seen the full impact of the Court's decision to deny women the right to control our bodies and lives. However, it is clear that women's bodies will be a political battleground for the coming decade. Many will suffer and many will die.<sup>6</sup>

Third, the most pervasive and tragic manifestation of the danger women face today is economic and quite silent. Even the *New York Times* and the Congressional Budget Office now recognize that the 1980s saw an enormous transfer of wealth and income from the poor to the rich.<sup>7</sup> Unemployment is pervasive and widely understood.<sup>8</sup> Many who work full time remain poor.<sup>9</sup> The economic situation of women and their children deteriorates.<sup>10</sup> Right wing politicians make these women and children the scapegoats for all of our social and economic ills,<sup>11</sup> and more moderate voices do not offer challenging responses.<sup>12</sup>

the young, and women living in rural areas. Chief Justice Rehnquist, dissenting, said that the joint opinion "retains the outer shell of *Roe v. Wade*, but beats a wholesale retreat from the substance of the case." *Id.* at 2855 (Rehnquist, J., concurring in part and dissenting in part). "It creates a Potemkin Village." *Id.* at 2866.

See also *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989) (upholding a Missouri law that declares that a "fetus is a human being from the moment of conception and prohibits abortions in public hospitals, even where they are privately financed).

6. See Rachael Pine and Sylvia A. Law, *Envisioning a Future for Reproductive Liberties: Strategies for Making the Rights Real*, 27 HARV. C.R.-C.L. L. REV. 407 (1992).

7. The *New York Times* reported that from 1983 to 1989 the wealthiest one percent of American families increased their net worth by six percent, and owned a larger share of the total private wealth. During the same period, the net worth of the lower 99 percent of the population fell by one percent. Sylvia Nasar, *Fed Gives New Evidence of 80's Gains by Richest*, N. Y. TIMES, Apr. 21, 1992, at A1.

The Congressional Budget office found that between 1977 and 1989, the average pre-tax income of families in the top one percent increased 77 percent from \$315,000 to \$560,000, while the typical American family's income increased only four percent to \$36,000 and the income of the bottom 40 percent of families declined. Sylvia Nasar, *The 1980's: A Very Good Time for the Very Rich*, N.Y. TIMES, May 12, 1992, at A1.

8. Michael deCourcy Hinds, *Graduates Facing Worst Prospects in Last Two Decades; Jobless Glut the Market*, N.Y. TIMES, May 12, 1992, at A1.

9. Jason DeParle, *Report, Delayed Months, Says Lowest Income Group Grew*, N.Y. TIMES, May 12, 1992, at A-15 (18% of full time workers remained poor).

10. See Childrens' Defense Fund, *Vanishing Dreams* (1991). For a longer range view, see MIMI ABROMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* (1988).

11. George Bush waived federal requirements that impeded Wisconsin's implementation of a program to reduce welfare grants to women who have more than one child. "Bush opposes even counseling poor women about abortion. In his world, a welfare recipient who became pregnant with a second or third child . . . would be helpless to act." Editorial, BOSTON GLOBE, Apr. 15, 1992 at A22.

12. President-elect Bill Clinton stated, while campaigning, that while programs like

During perilous times such as these, it is important to look to history. A long-term perspective can help us avoid despair. History suggests concrete lessons of practical strategy. Most important, the struggles of individuals who have gone before offer us a source of inspiration.

Crystal Eastman was born in 1881.<sup>13</sup> She was denied the right to vote until she was almost 40 years old, when in 1920 the United States passed the Nineteenth Amendment. For her entire life, birth control information was deemed obscene and people were prosecuted for distributing it.<sup>14</sup> Throughout her lifetime, the federal courts were only an obstacle to progressive reform.<sup>15</sup>

Even though she lived in a world that denied her the most basic right of suffrage, Eastman always had a grand vision of feminism. "Life," she said, "is a big battle for the complete feminist."<sup>16</sup> In 1919, she wrote a statement for the First Feminist Congress in New York, which encompassed the five basic claims of feminism.<sup>17</sup>

that in Wisconsin "unfairly penalized children," he, as President, would also grant a waiver to existing federal regulations. *American Political Network, Inc.*, The Hotline, Apr. 17, 1992.

13. See Sylvia A. Law, *Crystal Eastman: NYU Law Graduate*, 66 N.Y.U.L. Rev. 1963 (1991).

14. See *United States v. One Obscene Book Entitled "Married Love,"* 48 F.2d 821 (S.D.N.Y. 1931); *United States v. One Book Entitled "Contraception,"* 51 F.2d 525 (S.D.N.Y. 1931) (prosecution for distribution of books by Marie Stopes on contraception); *United States v. Dennett*, 39 F.2d 564 (2d Cir. 1930) (prosecution of Mary Ware Dennett for publication of pamphlet explaining sexual physiology and functions to children). See generally ELLEN CHESSLER, MARGARET SANGER (1992).

15. *Lochner v. New York*, 198 U.S. 45 (1905) (denied the state authority to set minimum working hours and defined the spirit of Eastman's era).

16. CRYSTAL EASTMAN ON WOMEN AND REVOLUTION (Blanche Wiesen Cook, ed. 1978). Eastman saw feminism, peace, and economic justice as connected. She said:

[T]he true feminist, no matter how far to the left she may be in the revolutionary movement, sees the woman's battle as distinct in its objects and different in its methods from the workers' battle for industrial freedom. She knows, of course, that the vast majority of women as well as men are without property, and are of necessity bread and butter slaves under a system of society which allows the very sources of life to be privately owned by a few . . . But as a feminist she also knows that the whole of woman's slavery is not summed up in the profit system, nor her complete emancipation assured by the downfall of capitalism. If we should graduate into communism tomorrow . . . man's attitude to his wife would not be changed.

*Now We Can Begin*, THE LIBERATOR, December 1920.

17. Resolution at The First Feminist Congress in the United States, New York,

First, Eastman protested the denial of the vote and the absence of women in public office.<sup>18</sup> Second, she decried discrimination against women in employment, both public and private, and in the unions.<sup>19</sup> Third, she objected that "women are still denied by law the right to scientific knowledge necessary to control the size of their families."<sup>20</sup> A year earlier she had said,

Feminists are not nuns. We want to love and to be loved, and most of us want children, one or two at least. But we want our love to be joyous and free — not clouded with ignorance and fear. And we want our children to be deliberately, eagerly called into being, when we are at our best, not crowded upon us in times of poverty and weakness. We want this precious sex knowledge not just for ourselves, the conscious feminists; we want it for all the millions of unconscious feminists that swarm the earth — we want it for all women.<sup>21</sup>

Fourth, Eastman demanded economic security for women who care for children.<sup>22</sup> Finally, she protested the familiar double standard: society's condemnation of women who trade sex for subsistence and its simultaneous toleration of the men who buy their bodies.<sup>23</sup>

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March 1, 1919, printed in *THE LIBERATOR*, May 1919, reprinted in Cook, *supra* note 16, at 49.

18. She said, "Four-fifths of women are still denied the elementary political right of voting. Only one woman has held a seat in the United States Congress. Only twenty-one women are sitting in our 48 state legislatures. With rare exceptions all the higher executive offices in both state and federal government are, by law or rigid precedent, open only to men. In only six states do women sit on juries." Cook, *supra* note 16, at 49-50.

19. She stated, "In all government work, federal, state, county and city, — (notoriously in public school teaching), women are paid much less than men for the same work. In private industry, where it is estimated that twelve million women are now employed, the wages of women, both skilled and unskilled (except in a few trades), are on a scale of their own, materially lower than the wages of men, even at work where their productive capacity is equal or greater. Most of the strong labor unions, except in trades where women are in the majority, still close their doors to women workers." *Id.* at 50.

20. *Id.*

21. Crystal Eastman, *Birth Control in the Feminist Program*, *The Birth Control Review*, January 1918, reprinted in Cook, *supra* n. 16 at 47.

22. "[N]othing has been done in this country by way of maternity insurance or by giving to a wife a legal right to a share of her husband's earnings in recognition of her services as houseworker and nurse, to modify that dependence. And the vital importance of potential economic independence has yet to become a recognized principle of modern education for girls." Cook, *supra* note 16, at 50.

23. "Laws, judges, courts, police, and social custom still disgrace, punish and "regu-

Since the birth of feminism in the 19th Century, feminists have sought these five essential goals: 1) the right to political voice, 2) equality under law, 3) control of reproductive capacity,<sup>24</sup> 4) economic security,<sup>25</sup> and 5) end to sexual exploitation of women and the sexual double standard.<sup>26</sup> The contemporary feminist agenda is remarkable similar.<sup>27</sup>

When Eastman graduated from New York University Law School in 1907, she did not first focus on explicitly feminist issues. The suffrage movement was then in a long period of doldrums. Eastman needed a salary. Paul Kellogg, her close friend and the Director of the Russell Sage Foundation, offered her a two-month job in Pittsburgh, putting together an investigation of workplace deaths.<sup>28</sup>

Eastman didn't want to leave Greenwich Village. Through her life, she considered it her spiritual home. The first time she visited there, as a college student, she wrote to her brother Max that she had found the Greenwich Settlement House where the "cranks," "reformers" and "every up and coming radical" gath-

late" the woman prostitute and leave uncensured the man who trades with her — though in case of all other forbidden vices the buyer as well as the seller suffers if caught." *Id.*

24. In the 19th Century, the feminist claim to reproductive freedom was enunciated as a demand for "voluntary motherhood," i.e. patterns of behavior that would allow women to choose whether and when to bear children. See LINDA GORDON, *WOMEN'S BODIES: WOMEN'S LIVES: A SOCIAL HISTORY OF BIRTH CONTROL IN AMERICA* (1977).

25. At different times feminists assign these four core objectives different priorities and articulate claims in different ways. Until women won the vote in 1920, feminists placed highest priority on the political franchise. *Declaration of Sentiments* (First Women's Rights Convention, 1848), reprinted in BARBRA BABCOCK, ET. AL, *SEX DISCRIMINATION AND THE LAW*, 2 (1975). But the other elements — bodily integrity, equality, and economic security — have also always been part of the feminist program.

26. 19th Century feminists sought to extend spiritual "female" standards of sexuality to men. Gordon, *supra* note 24, at 99-100. Some contemporary feminists still seem to seek that goal. See, e.g., Catherine MacKinnon, *Not a Moral Issue*, 2 *YALE L. & POL'Y REV.* 501, 511 (1984). Others seek to allow women access to more active sexual roles traditionally reserved to men. See *Powers of Desire: The Politics of Sexuality*, Ann Snitow, Carol Stansell and Sharon Thompson editors, (1983).

27. In 1992, nearly 1,000 women gathered to celebrate the 25th anniversary of the National Organization for Women. Subjects of concern included: economic and political empowerment, health and reproductive rights, domestic relations, and women's status in the workforce. Modern feminism, unlike its earlier form, also expresses concern about the mistreatment of homosexuals and racial minorities. Penny Pagano, *Silver Celebration: NOW Anniversary Meeting Fuels Spirit of Feminism*, *CHICAGO TRIBUNE*, Jan. 26, 1992, at 13.

28. S. Law, *supra* note 13.

ered. She continued:

I love New York so for the people that are there and the thousands of things they do and think about. Of course I don't mean the rich ones that drive up and down Fifth Avenue, nor the very poor ones, who merely make me sad. But all the interesting between ones who really know how to live, — who are working hard at something all the time; and especially the radicals, the reformers, the students, — who really live to help, and yet get so much fun out of it, — because they are open-minded, and eager over every new movement, and because they know when it is right for them to let go and amuse themselves and because they can laugh, even at themselves. It seems to me there are so many more of such people in New York than anywhere else.<sup>29</sup>

But she went to Pittsburgh.<sup>30</sup> Workplace safety was becoming an increasingly important social issue. Progressive journalists reported that more American industrial workers were killed and injured than in similar European enterprises. Insurance, either public or private, was virtually nonexistent in the United States. The law, and American society, assumed that these deaths and injuries were the fault of the workers.

Eastman loved the work. She was moved by the tragedy of the injured workers and their families, engrossed by tours of mills and factories, and engaged by industrialists, insurance experts, and fellow investigators and journalists. The two month project expanded to two years, and several investigators were hired to work under Eastman's supervision. She produced a book that vividly presented facts, offered concrete proposals for reform, and addressed the "political reality" of the era. One scholar described the book that Eastman produced as "a truly pioneering adventure, the first major attempt to survey in depth the entire life of a single community by team research."<sup>31</sup>

Eastman's central proposal for reform focused on the need for workers' compensation, presenting arguments remarkably

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29. Letter from Crystal Eastman to Max Eastman (Feb. 18, 1905), Crystal Eastman Collection, Schlesinger Library, Radcliffe College, Box 6, Folder 168. See also S. Law, *supra* note 13, at 813.

30. Eastman's work in Pittsburgh is described in my New York University Law Review article, *supra* note 13 at 822-831.

31. CLARKE A. CHAMBERS, PAUL U. KELLOGG AND THE SURVEY: VOICES FOR SOCIAL WELFARE AND SOCIAL JUSTICE 36-37 (1971).

similar to those offered decades later in support of no-fault auto insurance.

Eastman's empirical work provoked political response. Early in 1909, New York became the first state to consider workers' compensation. Governor Charles Evans Hughes appointed Eastman as the only woman on the state commission. Again, Eastman needed a salary. The commission elected her as Secretary, the only salaried position, and she drafted the law that became the nation's first workers' compensation statute.

When Eastman began her Pittsburgh work in 1907 the broad consensus was that the most limited form of workers compensation was both politically and constitutionally impossible. By 1910, that consensus had been turned on its head. In retrospect, the workers compensation program advocated by Eastman appears quite conservative. One lesson I take from this aspect of Eastman's work is the importance of the grand vision and aspiration, — even at a time when the smallest steps of progress seem impossible.

The next chapter of Eastman's life drew her directly into the struggle for the feminist agenda. Somewhat ironically, it was passion for a man that led her to shift her focus from work place safety to suffrage. In 1910, she fell in love with an insurance salesman from Milwaukee. Her family thought he was inappropriate, and Eastman was not eager to leave New York for Wisconsin.<sup>32</sup> But she followed her heart. Again, the need for a salaried position consistent with her core social values led her to take on the task as the Executive Director of the 1911 Wisconsin suffrage campaign.<sup>33</sup>

By then, the suffrage campaign already had been underway for six decades.<sup>34</sup> There had been 480 campaigns in thirty-three

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32. MAX EASTMAN, ENJOYMENT OF LIVING 340-41 (1948) (Crystal's developing relation with Wallace Benedict and family's disapproval), 357 (Crystal's dread of Milwaukee).

33. COOK, *supra* note 16, at 10.

34. The year 1848 saw the first formal claim for women's suffrage in the United States, with the Seneca Falls Declaration. ELEANOR FLEXNER, CENTURY OF STRUGGLE: THE WOMEN'S RIGHTS MOVEMENT IN THE UNITED STATES, 71-77 (1968). In each of the next 12 years, women gathered to develop strategy. *Id.* at 81. During the Civil War these women put aside their campaign for suffrage to work for the abolitionist cause, and were bitterly disappointed when their allies in the abolitionist cause did not include women's suffrage in the 15th Amendment that extended the vote to former slaves. At the end of the war,

states just to get the issue submitted to the voters. Only seventeen of these campaigns resulted in actual referenda. Only two referenda were successful, those in Colorado (1893) and Idaho (1896).<sup>35</sup> The campaign Eastman led in Wisconsin was sophisticated, high-energy and broad based. It failed.<sup>36</sup> So did her marriage. She returned to New York.<sup>37</sup>

Undaunted, she worked with others to provide new leadership, energy, and strategies for the suffrage movement. The new leadership shifted focus from a state-by-state campaign to concentrate on a federal amendment, and introduced more militant direct action tactics in support of suffrage. In 1912, Eastman and her colleagues persuaded the National American Woman's Suffrage Association to press for a federal amendment. They organized hundreds of marches and demonstrations, including a parade of 5,000 women the day before Wilson's inauguration in 1913. Some women chained themselves to the White House, while others conducted a dignified lobby within.<sup>38</sup> Dissatisfied with both the Republican and Democratic Parties, in 1914, Eastman and her friends organized the New York Woman's Peace Party and persuaded Jane Adams to preside over the National Woman's Peace Party.<sup>39</sup>

Just as the Civil War interrupted the drive for suffrage in the 19th Century, World War I slowed the suffrage campaign in the early 20th century. The war divided the suffrage movement. Some supported the war effort in the hope that at war's end

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suffrage activity resumed at the state level. In 1869, Wyoming became the first state to grant women the right to vote. *Id.* at 159-62. Through the 1870's and 1880's, women sought the right to vote through legal challenges, demonstrations, and political work. *Id.* at 164-170. Although both the text of the Constitution and the underlying political philosophy of the nation supported woman's suffrage, the Supreme Court's rejection of women's claims "demonstrate that the time was not yet ripe for woman suffrage. To try to bring it about by judicial fiat was long step ahead of social realities." *Id.* at 170.

35. FLEXNER, *supra* note 34, at 228.

36. Eastman, *Report on the Wisconsin Suffrage Campaign* (1912), Cook, *supra* note 16, at 69.

37. A letter from Theodora Youmans to Alice Curtis describes a visit to Crystal Eastman in New York, Dec. 9, 1913. Papers of the Wisc. Woman's Suffrage Ass'n, Box 2, Folder 4.

38. FLEXNER, *supra* note 34, at 263.

39. Phyllis Eckhaus, *Restless Women: The Pioneering Alumnae of New York University School of Law School*, 66 N.Y.U. L. Rev. 1996 (1991).

President Wilson would lend his support to the suffrage cause.<sup>40</sup> Most of the new leadership opposed the war.<sup>41</sup>

The impending war led Eastman to focus first on pacifism and then on civil liberties. In 1914, she helped create and became the executive secretary of the American Union Against Militarism (AUAM).<sup>42</sup> The group quickly gained a large popular membership and an elite leadership with ready access to national decision-makers. In 1916, Eastman's efforts averted a war with Mexico.<sup>43</sup>

In 1917, the United States entered the European war and passed the Espionage Act, which made it a crime to criticize the war effort or to counsel conscientious objectors.<sup>44</sup> Eastman, Roger Baldwin and Norman Thomas created a new AUAM committee, the Civil Liberties Bureau, to represent those arrested under the new law.<sup>45</sup> Crystal's brother Max, who was then the editor of *The Masses*, was one of those prosecuted. Judge Learned Hand reversed his conviction, in a decision that has since come to be seen as the beginning of modern first amendment law.<sup>46</sup> The new Civil Liberties Bureau, instituted in the passion of wartime, alienated many of the more conservative members of the AUAM. The American Civil Liberties Union is its direct successor.<sup>47</sup>

After the war the suffrage campaign heated up again. The adoption of the 19th Amendment in 1920 was never a foregone conclusion. At every stage it passed by the narrowest of margins. In January 1918, the proposed amendment was voted out of the House without a single vote to spare. Three members were car-

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40. FLEXNER, *supra* note 34, at 283-84.

41. *Id.* at 284.

42. SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES: A HISTORY OF THE ACLU 11 (1990).

43. Many U.S. soldiers had been killed in an initial skirmish in a covert invasion in Mexico. Eastman got the news out to peace activists through a communication tree and newspaper advertisements. Letters poured into the White House. Historian Arthur Link writes that Wilson "was shaken and deeply moved. Not slowly, but almost at once, good sense returned to official circles in Washington." ARTHUR LINK, *WOODROW WILSON AND THE PROGRESSIVE ERA 1910-1917*, at 142 (1954).

44. WALKER, *supra* note 42, at 14.

45. *Id.* at 16-18.

46. *Masses Publishing v. Patten*, 244 Fed. 535 (S.D.N.Y. 1917), *rev'd* 246 Fed. 24 (2d Cir. 1917).

47. WALKER, *supra* note 42, at 16-17 (1990).

ried from their hospital beds to vote yes. A fourth left his wife's death bed, at her insistence, to vote yes — he then returned home for the funeral.<sup>48</sup>

The final battle came in Tennessee. Mrs. Carrie Chapman Catt, head of the National American Suffrage Association, came with an overnight bag in response to an SOS and stayed for two months.<sup>49</sup> The swing vote was provided by the youngest representative, from a rural, anti-suffrage constituency. His mother was a staunch suffragist. She wrote him, "Don't forget to be a good boy and help Mrs. Catt put 'Rat' in Ratification."<sup>50</sup>

Two elements were critical in finally winning the vote: a disciplined national organization with the plans and resources to conduct a campaign through conventional political channels and a more demonstrative wing able to utilize tactics to make the suffrage claim vivid and concrete. Both practical political effort and a grand vision were key.

Many in the suffrage movement saw the vote as an end in itself, — not Eastman. For Eastman, the vote was just one piece of a much larger vision. When women had won the vote, she worked for the equal rights amendment, access to birth control and for greater freedom from gender constraint in personal and family arrangements.

Why did it take so long for women to win the vote? Why was the Equal Rights Amendment (ERA) rejected? Why are women's core rights to reproductive freedom and control of their bodies still precarious?

Many active opponents of suffrage, equality and reproductive freedom were, and still are women. One late 19th century woman's anti-suffrage group declared,

we believe that above all the materialistic activities of life lies the realm of love and faith, that spiritual world in which the higher interests of humanity center, and that it is in this domain of domestic affections, of ethics and of religion, that the development of the highest womanly capacities is to be found.<sup>51</sup>

Similarly, opposition to the ERA in the 1970's centered on a be-

48. FLEXNER, *supra* note 34, at 291-92.

49. *Id.* at 322.

50. *Id.* at 323.

51. QUOTED IN: WILLIAM O'NEILL, *FEMINISM IN AMERICA: A HISTORY* 57 (1989).

lief that formal equality would denigrate and diminish the position of the traditional homemaker.<sup>52</sup> Sociologist Kristin Luker's study of activists in the contemporary abortion dispute shows that the core of the debate poses a conflict between those who believe "that motherhood is the most important and satisfying role open to a woman," and those who believe "that motherhood is only one of several roles, a burden when defined as the only role."<sup>53</sup>

Luker's characterization of activists in the abortion debate is equally applicable to the earlier battles for suffrage and formal equality. Abortion opponents "believe that men and women are intrinsically different."<sup>54</sup> As a result of these intrinsic differences, "men are best suited to the public world of work, and women are best suited to rear children, manage homes, and love and care for husbands."<sup>55</sup> Abortion is wrong because "*by giving women control over their fertility, it breaks up an intricate set of social relationships between men and women that has traditionally surrounded . . . women and children . . . and supports a world view that deemphasizes (and therefore downgrades) the traditional roles of men and women.*"<sup>56</sup>

Pro-choice advocates, by contrast, reject the notion that the range of human characteristics, talents, virtues, vices and desires is assigned strictly on the basis of gender. They reject the notion that the state should use gender to prescribe the range of human

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52. Ann E. Freedman and Sylvia A. Law, *Thomas I. Emerson: A Pioneer for Women's Equality*, 38 CASE WESTERN RES. L. REV. 539, 546-47 (1987-1988).

53. KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD, at 214 and more generally at 159-75 (1984). See also ROSALIND PETCHESKY, "[A]bortion is the fulcrum of a much broader ideological struggle in which the very means of the family, the state, motherhood, and young women's sexuality are contested." ABORTION AND WOMEN'S CHOICE (Verso ed. 1986) at i (emphasis in the original). David M. Smolin, writing from an anti-abortion perspective, characterizes the conflict as "between two traditions of human relations: an older tradition in which obligations enrich relationships, and the newer autonomy tradition in which legal obligations demand persons and diminish relationships." David M. Smolin, *Why Abortion Rights are Not Justified by Referenced to Gender Equality: A Response to Professor Tribe*, 26 JOHN MARSHALL L. REV. 621, 635 (1990).

54. LUKER, *supra* note 53, at 159. David Smolin asserts that women possess an "inherently more relational sexuality," and that allowing abortion demeans this inherent difference. *Supra* note 52, at 639.

55. LUKER, *supra* note 53, at 160.

56. *Id.* at 162. (emphasis in the original).

experience available. Reproductive and family roles are not primarily natural, but rather a matter of choice. A woman need not be a mother to have a full, humanly connected and satisfying life. Involuntary motherhood denies the full personhood of women who otherwise would choose not to bear a child. State imposed motherhood demeans the moral and social contributions of women who do the work of nurturing the next generation. When childcare is seen as "natural," rather than hard work, voluntarily assumed, it is difficult to attach a high social and moral value to it. In addition, pro-choice advocates do not see moral problems in using technology to enhance human experience. They place higher value on planning their lives and seek to have children in circumstances that enhance the opportunity and contribution of both parent and child.

These are diametrically different world views. They are the world views that animated support for and opposition to women's suffrage and the ERA. Pro-choice advocates won these earlier battles in ways that are both fundamental and incomplete. The struggle over abortion is but the latest chapter in an on-going dispute about the meaning of gender, sexuality and family.

There is much more to say about Eastman's remarkable life. She was a socialist, a singer, a mother of two, twice a wife, a friend to many and a person who knew how to have fun.<sup>57</sup> We need people like her to continue the work on the large agenda that she envisioned almost a century ago.

In closing, let me quote from an obituary: "She was simple, direct, dramatic. Force poured from her strong body and her rich voice, and people followed where she led . . . In her personal as in her public life her enthusiasm and strength were spent without thought; she had no pride or sense of her own power. . . . Her strength . . . her rich and compelling personality — these she threw with reckless vigor into every cause that promised a finer life to the world."<sup>58</sup>

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57. See CRYSTAL EASTMAN: ON WOMEN AND REVOLUTION, (Blanche Wiesen Cook, ed. 1978), *supra* note 16. This volume collects some of Eastman's papers and the introduction provides a brief biography of her life.

58. Freda Kirchwey, *Crystal Eastman*, THE NATION, Aug. 8, 1928 (Obituary).