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## Hypocrites and Barking Harlots: The Clinton-Lewinsky Affair and the Attack on Women

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# ESSAY

## HYPOCRITES AND BARKING HARLOTS: THE CLINTON-LEWINSKY AFFAIR AND THE ATTACK ON WOMEN

CHRISTINA E. WELLS\*

Given the status of the participants, the nature of the scandal, the potential political ramifications, and the melée accompanying the recently-released Independent Counsel's report, the unrelenting media coverage of the Clinton-Lewinsky affair is unsurprising. Wallowing in the libidinous transgressions of this country's most powerful leader would prove almost irresistible to a citizenry practically obsessed with sex. Of course, this coverage has provided the President's critics with an unending platform from which to call, depending upon their point of view, for his (a) apology, (b) resignation, or (c) impeachment. Many of the President's detractors, however, have not limited their criticism to his actions. Rather, they have included within their castigation women who still support the President—apparently on the theory that such women are hopelessly stupid or naive (women in general) or outrageously hypocritical (feminists in particular).<sup>1</sup>

As a woman and a feminist, I am tired of it. The notion that women cannot support the President without somehow leaving their principles or intellect behind is simply absurd. Such an idea is also dangerous. At its core, much of this criticism is rooted in and reinforces outmoded notions regarding the role of women in the public and political realm. If successful—and there is reason to fear

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\* Associate Professor, University of Missouri School of Law. Thanks go to Kent Gates, Tracey George and Chris Guthrie for their valuable (and often humorous) insights and comments on this essay. I am also indebted to Tom Huffman who provided superb research assistance under a deadline that could only be considered onerous.

1. A survey conducted the day after the President's public admission of the affair revealed that 68% of women polled approved of Clinton's job performance and believed that he should remain in office although they disapproved of his behavior. See Susan Feeney, *Many Women Back Clinton, Polls Indicate*, DALLAS MORNING NEWS, Aug. 25, 1998, at 1A, available in LEXIS, NEWS Library, DALNWS File. Polls taken after Independent Counsel Kenneth Starr released his report indicate little change in attitudes regarding the President. See Richard Benedetto, *Public Opinion Still Supports the President*, USA TODAY, Sept. 14, 1998, at 6A, available in LEXIS, NEWS Library, USATDY File.

This essay is not an attempt to criticize those women who do not support the President. Everyone is entitled to her beliefs. Rather, this essay simply attempts to debunk the unfair attacks implying that those women who do support President Clinton are unprincipled and irrational.

that it will be, given the public's already ambivalent attitude toward feminism and the women's movement<sup>2</sup>—the denunciation of women's reactions to President Clinton may damage women more than any other recent anti-woman movement.<sup>3</sup>

This essay defends against the wholesale castigation of women who support the President. It reveals that such criticism is wrong and unfair. Specifically, it demonstrates that the critics have unreasonably characterized women's responses to Clinton as hypocritical or extremely naive, rather than as examples of astute political decision-making. The essay further exposes the sexism underlying the critics' arguments, revealing that stereotypes regarding (1) women's role as the keeper of morals and (2) women as non-political or non-rational beings are at the heart of much of the criticism. By reinforcing these stereotypes, the critics pose a greater danger to women than the original scandal itself.

## I. THE FALLACIES IN THE CRITICS' ARGUMENTS

### A. *Is It Sexual Harassment or Consensual Sex?*

One of the most frequent arguments, leveled at feminists in particular, focuses on women's failure to denounce (or to denounce loudly) President Clinton's relationship with Ms. Monica Lewinsky as sexual harassment. It has always been a "core value" of the feminist approach to sexual harassment, we are told, "that a powerful executive who engages in casual sex with a subordinate—no matter how consensual it may seem—has crossed the line into sexual exploitation, if not legal sexual harassment."<sup>4</sup> Feminists who label the Clinton-Lewinsky affair as "consensual," then, are

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2. See Wendy Kaminer, *Feminism's Identity Crisis*, ATLANTIC MONTHLY, Oct. 1993, at 51, available in LEXIS, NEWS Library, ATLANT File.

3. One commentator, for example, has argued that the Clinton-Lewinsky affair demonstrates a need to "restor[e] some sanity" to overreaching sexual harassment laws. John Leo, *It's Time for Doomsday*, U.S. NEWS & WORLD REP., Sept. 28, 1998, at 14. For a survey of recent anti-woman movements, see generally SUSAN FALUDI, BACKLASH (1991).

4. Cynthia Tucker, *Feminists Abandon Monica Lewinsky for Partisan Agenda*, ATLANTA J. & CONST., Aug. 23, 1998, at 5G, available in LEXIS, NEWS Library, ATLJNL File; see also Ginia Bellafante, *Feminism: It's All About Me!*, TIME, June 29, 1998, at 54, 56 (criticizing feminists Gloria Steinem and Susan Faludi for claiming that President Clinton's actions with Ms. Lewinsky were not sexual harassment); Dan Egan, *Hatch: Polls Won't Dictate Decision on Impeachment*, SALT LAKE CITY TRIB., Aug. 30, 1998, at A1, available in LEXIS, NEWS Library, SLTRIB File (discussing Senator Orrin Hatch's criticism of feminists for describing Clinton's relationship with Lewinsky as consensual).

reneging on their principles.<sup>5</sup> As is often the case, this attack on feminism overlooks an obvious fact about the movement: feminists are not a monolithic unit. Pull down from the shelf any textbook on feminism and the law and you will find many different definitions of sexual harassment,<sup>6</sup> ranging from feminists who agree with the above-quoted proposition to those who believe that adults at different levels of a hierarchy can and should be allowed to enter into consensual relationships.<sup>7</sup> Such disagreement is common in any movement that is at least partly scholarly in nature. For example, in the free speech area, scholars disagree substantially on whether the regulation of hostile environment sexual harassment violates the First Amendment.<sup>8</sup> Disagreement arises not because scholars are fickle but because any legal field heavily imbued with social and policy concerns is subject to various interpretations. Interestingly, some prominent male champions of free speech rights argue that regulation of workplace harassment poses few First Amendment problems.<sup>9</sup> Yet, nobody accuses them of abandoning their principles—nor should they. Feminists, however, are not allowed such latitude. It is simply assumed that our refusal to

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5. See Heather R. Higgins, *Is Sexual Harassment "Only About Sex?"*, WALL ST. J., Sept. 15, 1998, at A22; Leo, *supra* note 3, at 14; James Taranto, *Who's A Hypocrite—and Who Cares?*, WALL ST. J., Aug. 4, 1998, at A18; Tucker, *supra* note 4, at 5G.

6. See, e.g., MARY BECKER ET AL., *FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 714-18, 746-69 (1994); KATHERINE T. BARTLETT & ANGELA P. HARRIS, *GENDER AND LAW* 495-558 (2d ed. 1998).

7. The topic of consensual sex within hierarchical structures comes up most often in the context of faculty-student relations, with scholars taking different views of such relationships. Compare Sherry Young, *Getting to Yes: The Case Against Banning Consensual Relationships in Higher Education*, 4 AM. U. J. GENDER & L. 269 (1996) (declaring that, unlike children and mental patients, university students have the capacity to give consent to sexual relations with professors), with Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81, 109-11 (1987) (arguing that a ban on academic sexual harassment is consistent with liberal feminist beliefs).

8. Compare Kingsley R. Browne, *Title VII as Censorship: Hostile-Environment Harassment and the First Amendment*, 52 OHIO ST. L.J. 481 (1991) (asserting that Title VII regulations act to censor workplace speech), and Eugene Volokh, Comment, *Freedom of Speech and Workplace Harassment*, 39 UCLA L. REV. 1791 (1992) (arguing that regulation of hostile environment sexual harassment violates the First Amendment), with Suzanne Sangree, *Title VII Prohibitions Against Hostile Environment Sexual Harassment and the First Amendment: No Collision in Sight*, 47 RUTGERS L. REV. 461 (1995) (arguing that free speech jurisprudence does not preclude regulation of workplace harassment), and Rodney A. Smolla, *Rethinking First Amendment Assumptions about Racist and Sexist Speech*, 47 WASH. & LEE L. REV. 171, 186-87 (1990) (arguing that workplace speech is "transactional" in nature and therefore deserving of less protection).

9. See Smolla, *supra* note 8, at 186-87; Richard H. Fallon, Jr., *Sexual Harassment, Content Neutrality, and the First Amendment Dog That Didn't Bark*, 1994 SUP. CT. REV. 1.

abandon the President results from lack of principle rather than from disagreement with the characterization of his actions.<sup>10</sup>

As further "proof" of feminist hypocrisy regarding the sexual harassment issue, critics point to our willingness to rally around women who similarly accused Clarence Thomas (currently a Justice on the United States Supreme Court) and Robert Packwood (former Senator from Oregon) of sexual misbehavior.<sup>11</sup> Critics find feminists' disparate treatment of these men and President Clinton disappointingly partisan—a lost chance to treat similarly-situated men similarly.<sup>12</sup> For some women, I suspect that partisanship has much to do with their continued support of the President,<sup>13</sup> but there were also very real differences in each situation. Both Senator Packwood and Justice Thomas were accused of persistent sexual advances, even after being rebuffed.<sup>14</sup> This is a far cry from a man who—by Ms. Lewinsky's own account—took part in a consensual relationship.<sup>15</sup> Feminists could legitimately see the incidents as

10. One could, of course, label as hypocrites those feminists who support the President despite a belief that consensual relationships within a hierarchy amount to harassment. One could also call them politically astute. See *infra* Part I.C. Regardless, it is unfair to label *all* feminists as hypocrites—although such broad accusations are common whenever feminists try to make nuanced statements. See Susan Faludi, *Sex and the Times*, NATION, Apr. 20, 1998, at 5, available in LEXIS, NEWS Library, NATION File ("[E]ditorializers have long accused feminists of being rigid sex police guarding a P.C. orthodoxy . . . . But let a feminist come out on their pages with a nuanced and nonpolemical statement and watch how they react—in shrieking Comstockian register.").

11. See Richard Cohen, *A Pass for a Pass*, WASH. POST., Mar. 26, 1998, at A23; Higgins, *supra* note 5, at A22; Tucker, *supra* note 4, at 5G.

12. Feminists

should have judged Clinton, a political ally, by the same standards to which they held [Justice] Thomas and former Sen. Bob Packwood . . . . They have not. And because of that duplicity, some of the most worthy crusades of the women's movement—such as an end to sexual harassment—have been diminished.

Tucker, *supra* note 4, at 5G; see also Mary Leonard, *Silence on Clinton Puts Women Senators at Risk*, BOSTON GLOBE, Aug. 31, 1998, at A1, available in LEXIS, NEWS Library, BGLOBE File (quoting a Republican source as stating "Are these women fair game? You bet . . . . If they treat similar situations differently, then they are hypocrites. At the least, it tells us whether they are speaking from feminist conviction or a partisan perspective.").

13. See *infra* Part I.C.

14. Professor Anita Hill's testimony during the Thomas hearings included allegations of persistent and unwanted sexual comments and requests for dates over a significant period of time. See *Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States: Hearings Before the Comm. on the Judiciary*, 102d Cong. 36-39 (Oct. 11-13, 1991) [hereinafter *Hearings*] (testimony of Professor Hill). At least twenty-three women who worked with Senator Packwood (R-OR) accused him of engaging in unwanted sexual advances. See Hugh Dellios, *Oregon Women See Packwood Case as Test*, CHI. TRIB., Apr. 19, 1993, at 2, available in LEXIS, NEWS Library, CHTRIB File.

15. Interestingly, while decrying the President's actions, many of these critics significantly downplay Justice Thomas' and Senator Packwood's actions, describing them as simple "off-color remarks to a willing listener" or merely "boorish behavior." Higgins, *supra* note 5, at A22; see also Paul A. Gigot, *Year of the Woman Takes on Whole New Meaning*,

completely dissimilar.<sup>16</sup> Yet the critics of feminism imply that we are incapable of such distinctions—that somehow the words “sexual harassment” trigger in us a slavering enthusiasm to crucify the accused man. That some of us have not done so with Clinton must reflect an aberration, rather than a reasoned response or a desire for more information.<sup>17</sup>

Such an implication not only mischaracterizes many feminists' current responses, it misrepresents the past. The feminist outrage in the Thomas incident, for example, had less to do with the allegations of sexual harassment than it did with the Senate Judiciary Committee's treatment of Professor Anita Hill during its investigation.<sup>18</sup> Once the allegations surrounding Justice Thomas became public, women leaders called for hearings, not a public flagellation.<sup>19</sup> They became upset with what they perceived to be

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WALL ST. J., Aug. 21, 1998, at A14, available in 1998 WL 3506314 (claiming Clinton's “admitted behavior [is] far worse than anything Clarence Thomas was even accused of.”); Leo, *supra* note 3, at 14 (lamenting stigmatization of Justice Thomas for “occasionally ask[ing] an employee out, talk[ing] about X-rated movies, and once jok[ing] about a pubic hair on a Coke can.”).

16. See, e.g., Gloria Steinem, *Yes Means Yes, No Means No: Why Sex Scandals Don't Mean Harassment*, MS., May/June 1998, at 62, 62-63 (discussing the differences between the Clinton-Lewinsky scandal and the sexual harassment allegations against Packwood and Thomas).

17. To further the “feminists as hypocrites” argument, critics also point to what they perceive as the feminist refusal to support Paula Jones' and Kathleen Willey's allegations of Clinton's sexual harassment. They refuse to acknowledge, however, that both instances could be simply a case of feminists trying to distinguish between claims with merit and claims without merit. Such a response is hardly odd in light of the politically charged nature of the allegations. See John M. Broder, *NOW Won't Back Appeal of Jones Lawsuit Dismissal*, N.Y. TIMES, Apr. 23, 1998, at A20, available in LEXIS, NEWS Library, NYT File (observing that some feminist leaders thought the Jones case was too “politically charged” to properly test workplace harassment law); Neil A. Lewis, *Group Behind Paula Jones Gains Critics as Well as Fame*, N.Y. TIMES, Jan. 18, 1998, at A18 (noting that the sudden entry of a conservative Christian group into Ms. Jones' lawsuit casts doubt on her motives and those of her lawyers). Given that feminists are often accused of rigid orthodoxy, see Faludi, *supra* note 10, at 5, one would think that attempts to distinguish real from frivolous or as-yet unproven suits would be welcome.

18. Interestingly, many of those same critics have not been terribly kind to Ms. Lewinsky either. See *infra* notes 46-49 and accompanying text. Indeed, almost all of the women involved with President Clinton have come out of these scandals rather the worse for the wear—largely due to “mostly male spin doctors and pundits [who] negatively define and dismiss his prey . . . .” Jill Nelson, *The Pass on Paula: Was It Her Hair or What She Said?*, MS., May/June 1998, at 64, 65 (“Gennifer Flowers is a bimbo, Paula Jones is poor white trash, Monica Lewinsky, an ex-chubette with big hair, in need of love.”).

19. See Judith Resnick, *From the Senate Judiciary Committee to the Country Courthouse: The Relevance of Gender, Race, and Ethnicity to Adjudication*, in RACE, GENDER, AND POWER IN AMERICA 177, 178 (Anita F. Hill & Emma Coleman Jordan eds., 1995) [hereinafter RACE, GENDER & POWER] (discussing various letters sent to the Senate requesting an investigation); Maureen Dowd, *The Thomas Nomination: The Senate and Sexism*, N.Y. TIMES, Oct. 8, 1991, at A1 (noting that many female law professors signed a letter addressed to the Senate leadership asking them to investigate the accusations).

the Committee's unwillingness even to hear the accusations.<sup>20</sup> That emotion turned to understandable outrage after the public witnessed numerous senators imply—without evidence—that Professor Hill was lying,<sup>21</sup> delusional,<sup>22</sup> or a woman scorned.<sup>23</sup> Thus, feminists always have taken—and still do take—into account the context of allegations of sexual harassment, although they may weigh that context differently.

### B. *Is It About Sex or Lying? Or Is It About Lying About Sex?*

Some critics, perhaps believing that the sexual harassment argument is too problematic,<sup>24</sup> take a slightly different approach. They claim that Clinton's public lies and potential perjury are his true transgressions.<sup>25</sup> How, they wonderingly ask, can women possibly support a man with such a propensity for dishonesty, both

20. See Resnick, *supra* note 19, at 178; Adrienne D. Davis & Stephanie M. Wildman, *The Legacy of Doubt: Treatment of Sex and Race in the Hill-Thomas Hearings*, 65 S. CAL. L. REV. 1367, 1369 (1992). For a defense of the Committee's handling of the decision to investigate the allegations, see Christopher H. Schroeder, *Congress Stories*, 65 S. CAL. L. REV. 1531 (1992).

21. Senator Arlen Specter routinely intimated that Professor Hill was lying. See *Hearings*, *supra* note 14, at 58-68 (colloquy between Specter and Hill). Eventually, he accused her of committing perjury, see *id.* at 230-31 (colloquy between Specter and Thomas), even though he did not have "the least bit of evidence to back up his charge." A. Leon Higginbotham, Jr., *The Hill-Thomas Hearings—What Took Place and What Happened: White Male Domination, Black Male Domination, and the Denigration of Black Women*, in RACE, GENDER & POWER, *supra* note 19, at 26, 32.

22. The committee also reviewed an affidavit by and heard testimony from John Doggett, a former acquaintance of Professor Hill, who accused her of fantasizing about men's sexual interest in her as a result of her inability to deal with rejection. See *Hearings*, *supra* note 14, at 97, 554-557. Although several leading experts on the psychology of women debunked the notion that Professor Hill was delusional, some committee members nevertheless reiterated these allegations throughout the hearings. See Louise F. Fitzgerald, *Science v. Myth: The Failure of Reason in the Clarence Thomas Hearings*, 65 S. CAL. L. REV. 1399, 1408-09 (1992).

23. Senators took great interest in a witness who alleged that Professor Hill spoke out against Justice Thomas because of a desire for revenge after being spurned. See *Hearings*, *supra* note 14, at 354-58 (colloquy between Senators Heflin and Hatch and Ms. Phyllis Berry-Myers).

24. Certain members of Congress, for example, apparently avoided focusing on Clinton's sexual transgressions out of fear of having their own peccadilloes exposed. See Howard Kurtz, *Rep. Burton Preempts Article on Personal Life*, WASH. POST., Sept. 2, 1998, at A4; Edward Walsh, *Burton Fathered Child in Extramarital Affair*, WASH. POST., Sept. 5, 1998, at A1.

25. See Cohen, *supra* note 11, at A23; John F. Kavanaugh, *Sex, Lies and Politics*, AMERICA, Aug. 29, 1998, at 13, available in 1998 WL 13368060; John Kolbe, *Impeachment: It's Time We Fulfill Our Duty to Ourselves*, ARIZ. REPUB., Aug. 30, 1998, at B4, available in LEXIS, NEWS Library, AZREP File.

in the moral and legal realms?<sup>26</sup> The clear implication of such criticism is that, somehow, women who support President Clinton are behaving irrationally and lack an understanding of the true political impact of his transgressions.

Assuming that Clinton has lied, potentially even under oath,<sup>27</sup> about what exactly has he lied? He has lied about sex. Therein lies the rub: men lie about sex. Although I do not wish to imply that all men cheat on their significant others, statistics show a greater propensity on the part of men (as opposed to women) to have adulterous affairs.<sup>28</sup> Such statistics are hardly surprising in a society that both reifies women as sexual objects<sup>29</sup> and reinforces sexual prerogatives in men from the time they are born.<sup>30</sup> As the saying goes, "boys will be boys"—especially when they are powerful.<sup>31</sup> Moreover, I suspect that few women fail to understand that many men lie to obtain sex or sexual advantage, whether in the form of an affair or a profession of unfelt love. I also would be

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26. This criticism has been leveled at both men and women who support President Clinton; but the three articles cited *supra* note 25, although ostensibly gender-neutral, clearly focus their attention on women. Critics of women's actions commonly cloak their arguments in gender-neutral language. See *infra* note 52.

27. Although technical arguments may exist that would absolve Clinton of perjury, I believe it is difficult to deny that he attempted to mislead the public.

28. Although surveys differ in actual numbers, their results show that more men than women have affairs. See Jerry Adler, *Adultery: A New Furor over an Old Sin*, NEWSWEEK, Sept. 30, 1996, at 54, 58 (citing a 1994 National Opinion Research Center survey showing that 21.2% of husbands and 11% of wives admitted to unfaithfulness); Eric Zorn, *Infidelity Is Still on the 'A' List of Societal Ills*, CHI. TRIB., Apr. 18, 1996, (Metro), at 1, available in LEXIS, NEWS Library, CHTRIB File (citing a 1993 Janus Report showing that 35% of married men and 26% of married women reported having an affair). Men are also more likely to have repeated affairs. See PHILIP BLUMSTEIN & PEPPER SCHWARTZ, AMERICAN COUPLES 272-73 (1983) (finding that, of married people who have affairs, 71% of men and 57% of women had two or more sexual partners).

29. See Katharine K. Baker, *Once a Rapist? Motivational Evidence and Relevancy in Rape Law*, 110 HARV. L. REV. 563, 602-06 (1997) (discussing the commodification of sex and of women's sexuality).

30. For example, when allegations regarding the "Spur Posse" (a group of teenage boys who engaged in a competition to rack up sexual conquests) came to the fore, one of the boy's fathers commented, "Aren't they virile specimens!" Ellen Goodman, *Unequal Honors*, ATLANTA J. & CONST., Aug. 26, 1993, (Editorial), at A19, available in LEXIS, NEWS Library, ATLJNL File.

31. One leading sociologist has noted that "[b]eing in Congress breeds a sense of entitlement. And powerful people are used to being catered to, used to groupies. They expect people to come on to them. They have strong egos, a sense of risk, of adventure, a need for gratification, for adulation." Edwin Chen, *Can Anyone Cast First Stone at Clinton?*, L.A. TIMES, Aug. 31, 1998, at A1 (quoting sociologist Pepper Schwartz). Although it is impossible to know the actual rate of infidelity or the number of sexual transgressions by powerful men, the numerous public examples of such behavior might cause at least some cynicism among women and the public in general. See *id.* at A1 (reviewing recent sex scandals among politicians).



willing to wager that few women needed the Independent Counsel's report to know that President Clinton was lying in this instance. In the words of one woman, "Duh! What man is NOT going to lie about that?"<sup>32</sup>

I wish this were not the case. Yet despite feminist attempts to illuminate sexual double standards, society is far from imposing on men the same morality as it does on women. That being so, why should women sacrifice the only President in recent years whose agenda has brought about significant progress for women,<sup>33</sup> simply because he has engaged in unseemly behavior that society seems willing to tolerate in other men? If anything, women's willingness to support President Clinton shows not that they do not understand politics but, rather, that they do—and they are unwilling to fall into the political traps laid by their critics.

### *C. Have Women Sacrificed Principle for Politics?*

Some critics recognize that women's willingness to support President Clinton is a political move.<sup>34</sup> These detractors thus fine-tune their criticism. Rather than assume that women misunderstand the political impact of the President's lies, they bemoan women's willingness to sacrifice their principles for partisan politics. Such criticism most obviously targets feminists, who have been routinely accused during this scandal of turning feminism into "nothing more than a sham—not a principled movement at all, but just another partisan clique."<sup>35</sup> However, women in general have not escaped unscathed from condemnation. For example, one commentator sadly observed that, despite the potential harm caused by the President's actions, "large majorities of women don't see sexual betrayal with a White House intern almost the age of his daughter

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32. Benedetto, *supra* note 1, at 6A.

33. President Clinton, for example, appointed a second woman to the Supreme Court (Ruth Bader Ginsburg) and appointed women to the highest ranks within the cabinet (Madeleine Albright, Secretary of State) and law enforcement (Janet Reno, Attorney General). His substantive agenda has included such women-friendly measures as the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601-2654 (1994), a law originally vetoed by then-President Bush. Former Presidents Reagan and Bush also had dismal records regarding the employment of women in federal jobs and women's issues generally. See FALUDI, *supra* note 3, at 257-80. It is no wonder, then, that 68% of women recently polled by the Los Angeles Times approved of Clinton's overall job performance while condemning his personal acts. See Feeney, *supra* note 1, at 1A.

34. See Taranto, *supra* note 5, at A18 (criticizing NOW for deciding against supporting Paula Jones only after polling its state and national leaders: "The personal is political, it seems, except when politics dictates otherwise.").

35. Tucker, *supra* note 4, at 5G; see also *supra* note 5 and accompanying text.

as making the president unfit for the highest honor the people can bestow."<sup>36</sup>

Assuming that such criticism is accurate—that women supporting Clinton are going against their commonly held principles—they nevertheless do not deserve this censure. First, feminism is as much a political movement as a social or theoretical one.<sup>37</sup> The notion that feminists should refrain from politically astute behavior, out of deference to high-minded principles, limits feminism in ways that other multi-faceted movements are not. For example, members of the Christian Right seem to hold family values and personal morality as central tenets of their moral schema.<sup>38</sup> Those tenets have become a powerful political agenda for them as well.<sup>39</sup> But it is certainly not unknown for this group to tolerate, out of political necessity, politicians who violate those tenets. In fact, Ralph Reed, leader of the Christian Coalition, openly admitted that the organization supported Ronald Reagan because he backed their political agenda, despite the fact that his lifestyle did not conform to their moral teachings:

[W]e're not electing the Pope. . . . [Our members are] not judgmental in the sense that they're looking for someone just like them. They'll vote for a Jewish person who agrees with them on all of the issues—cutting taxes and balancing the budget and protecting innocent human life and so forth. And they'll vote against someone who's a born-again Christian.<sup>40</sup>

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36. Suzanne Fields, *The Bad-Boy Presidency*, WASH. TIMES, Aug. 24, 1998, at A19.

37. One definition describes feminism as a movement primarily advocating equal social, political and economic rights for women and men. AMERICAN HERITAGE DICTIONARY 671 (3d ed. 1992).

38. See, e.g., Susan Page, *The 'Cultural Conservatives' Take Center Stage*, NEWSDAY, Feb. 13, 1995, at 15, available in LEXIS, NEWS Library, NEWSDY File (quoting Ralph Reed describing the Christian Coalition as a "pro-family" movement).

39. See Ruth Shalit, *Family Mongers: "Family Values and Politics,"* NEW REPUBLIC, Aug. 31, 1993, at 12, 13-14.

40. Gail Collins, *A Couple of Kingmakers Talking Shop*, N.Y. TIMES, Jan. 11, 1998, (Magazine), at 24, 26 (colloquy between George Stephanopoulos and Ralph Reed). Representative Newt Gingrich also was close to leaders of the Christian Right, especially during his campaign to enact the Contract With America. See Page, *supra* note 38, at 15. Despite widespread discussion of his extra-marital activities, see Kris Mayes, *Peeved Gingrich Sidesteps Sex Claim*, PHOENIX GAZETTE, Aug. 10, 1995, (Metro), at B1, available in LEXIS, NEWS Library, PHNXGZ File; Andrew Miga, *Newt, Suddenly Camera-Shy, Haunted by Family Values Flap*, BOSTON HERALD, Aug. 13, 1995, at 3, available in LEXIS, NEWS Library, BHERALD File, there is little evidence that the Christian Right abandoned him for this reason. Their qualms about Gingrich have less to do with his personal morality than with the perception that he has not zealously implemented their political agenda. See Ron Fournier, *Gingrich Tries to Win Back Religious Right*, CHI. SUN-TIMES, Sept. 14, 1997, at 24, available in LEXIS, NEWS Library, CHISUN File.

Making deals with the devil is thus part and parcel of politics, regardless of the group to which one belongs.

Second, the notion that women cannot or should not engage in political behavior is simply absurd. It ignores the fact that women are rational beings who can legitimately determine that having a President who helps them substantively is more important than taking a possibly pointless moral stand on his admittedly numerous sexual transgressions. It is called self-interest. Men do it all the time with impunity. But that, of course, is part of the problem. Society thinks of self-interest as a man's prerogative. Women, on the other hand, are the keepers of morals. If women do not condemn the President for his transgressions, who will? Indeed, by placing their economic and political concerns first and failing to play their proper role, women are not only cast as hypocrites but also as Jezebels responsible for this country's moral decay.<sup>41</sup>

## II. THE REALITY BEHIND THE CRITICISM

Critics of President Clinton's female supporters have cast their statements as stemming from a solicitude for Ms. Lewinsky, an expression of their moral outrage over her treatment. Senator Orrin Hatch himself has taken up Ms. Lewinsky's cause, as evidenced by his recent statement:

These problems arise out of the way [Clinton] has treated women. It has been amazing to me because I've seen some of the feminist leaders of this country try to justify this as a consensual act . . . . Give me a break. Here is a 21-year old intern, a college girl . . . [.] And here is the most powerful man in the world. There is just no excuse for it.<sup>42</sup>

In defending the scope of his investigation, Independent Counsel Kenneth Starr similarly championed the cause of working women, including Ms. Lewinsky:

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41. One commentator anguishes over "the depth to which public discourse has sunk" in providing "the soapbox from which self-styled moralists proclaim a fat economy and a ready abortion the only ethical issues worth caring about." Kavanaugh, *supra* note 25, at 13. If Mr. Kavanaugh bemoaned the attitudes of women and men equally, he might have a valid point. He does not do so. Rather, he focuses much of his critique on women's replies to the accusations against the President and primarily blames their inappropriate collective response on the desire to preserve the right to abortion. The whore analogy is obvious. See also Cohen, *supra* note 11, at A23 (similarly conflating a discussion of general moral decay with a criticism of women's silence on Clinton's transgressions).

42. Egan, *supra* note 4, at A1 (quoting Senator Hatch).

To excuse a party who lied or concealed evidence on the ground that the evidence covered is only "personal" or "private" behavior would frustrate the goals that Congress and the courts have sought to achieve in enacting and interpreting the Nation's sexual harassment laws. That is particularly true when the conduct that is being concealed—sexual relations in the workplace between a high official and a young subordinate—itsself conflicts with those goals.<sup>43</sup>

Nothing would please me more than to be able to say that those criticizing President Clinton's supporters did so out of genuine concern for the status of women. What a remarkable coup for women everywhere to have such an outpouring regarding their well-being. The problem is, it is not sincere. Senator Hatch, for example, as much as accused Professor Hill of lying during the Thomas hearings.<sup>44</sup> Furthermore, he has interpreted a law that allows sexually assaulted women to sue for a violation of their civil rights based on gender animus as requiring a distinction between men who rape women out of love and men who rape women out of hate:

Say you have a man who believes a woman is attractive. He feels encouraged by her and he's so motivated by that encouragement that he rips her clothes off and has sex with her against her will. Now let's say you have another man who grabs a woman off some lonely road and in the process of raping her says words like, 'You're wearing a skirt! You're a woman! I hate women! I'm going to show you, you woman!' Now, the first one's terrible. But the other's much worse. If a man rapes a woman while telling her he loves her, that's a far cry from saying he hates her. A lust factor does not spring from animus.<sup>45</sup>

Solicitude for women is not evident in these statements; and much as I would like to believe that Senator Hatch has changed his opinion in recent years, I cannot. Given his position as one of

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43. Kenneth Starr, Referral to the United States House of Representatives Pursuant to Title 28 U.S.C. § 595(c), reprinted in *The Starr Report*, N.Y. TIMES, Sept. 12, 1998, at B1.

44. Like Senator Specter, see *supra* note 21, Senator Hatch intimated that Professor Hill falsified her allegations against Justice Thomas; only Hatch did so in a much more colorful way by implying that she stole her story from the book, *THE EXORCIST*. See *Hearings, supra* note 14, at 206 (colloquy between Hatch and Thomas).

45. Ruth Shalit, *Caught in the Act*, NEW REPUBLIC, July 12, 1993, at 12, 14 (quoting Senator Orrin Hatch).

President Clinton's biggest political enemies, his outpouring of emotion for Ms. Lewinsky seems to be merely an astute political tactic. Similarly, although the motives underlying the Independent Counsel's report are less clearly discernible, his willingness to recount with painful exactitude the gory details of Ms. Lewinsky's sexual relationship with the President hardly reflects the concern for women which he exhibits earlier in his report.

Indeed, one would be naive to think that this brouhaha over the Clinton-Lewinsky scandal really has much to do with regard for Ms. Lewinsky. If anything, many of the President's critics objectify her in much the same way that society has always objectified women. Thus, in a recent pseudonymously-penned essay caricaturing the President's actions, the author sardonically intimates that President Clinton could have "selectively interpreted" the Constitution to justify his actions.<sup>46</sup> He could, we are told, have relied on Article II, which "provides that '[t]he President shall have Power to fill up *all* Vacancies . . . .'"<sup>47</sup> Or, the author writes, President Clinton could have relied on the portion of the Constitution providing that "'Bill . . . shall . . . lay any . . . Imports'—language that arguably reaches interns brought in from California."<sup>48</sup> The reduction of this situation to a childish sex joke comes at Ms. Lewinsky's expense, in that she is obliquely referred to as a "vacancy" and an "import," rather than a human being. It is bad enough to reduce Ms. Lewinsky to an object, but the author also cannot resist implying that she is a slut. In his closing statement he urges the President to use selective literalism rather than rely upon expensive defense attorneys: "Put simply, selective literalism is easy and cheap. As such, it should be particularly attractive to President Clinton."<sup>49</sup> Is it any wonder the author wished to remain anonymous? If I were Ms. Lewinsky, I would want to punch him in the nose.

In addition to demonstrating a lack of concern for Ms. Lewinsky, or for women in general, those who criticize women's support of the President reinforce outmoded stereotypes. The core of recent criticism concentrates on women's "unfathomable" silence regarding Clinton's moral offenses, whether characterized as lying to the public or as sexual transgressions. In contrast, although nearly half of the men recently surveyed (forty-nine percent) claimed they were satisfied with President Clinton's explanation of

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46. See Cato Tonic, *The Last Refuge of Scoundrels: Selective Literalism in Constitutional Interpretation*, 78 B.U. L. REV. 67 (1998).

47. *Id.* at 68 (quoting U.S. CONST. art. II, § 2, cl. 3) (emphasis added by Tonic).

48. *Id.* (quoting U.S. CONST. art I, § 10, cls. 1-2).

49. *Id.* at 72.

his relations with Ms. Lewinsky,<sup>50</sup> few of the critics single out male willingness to stand by the President. Their support apparently raises nothing of the panic that comes from women's failure to condemn him. This focus on women's responses to the President's perceived immorality and the implicit characterization of that response as bizarre is rooted in age-old notions of women as the caretakers of society's moral fabric, primarily through their role of preserving the family unit. As Justice Bradley stated in 1872,

[t]he constitution of the family organization, which is founded in divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood . . . . The paramount destiny and mission of woman are to fulfil [sic] the noble and benign offices of wife and mother.<sup>51</sup>

Justice Bradley relied upon such notions to keep women out of the legal profession. But the stereotype also is used frequently to blame women for society's ills. Thus, single mothers are responsible for the increase in teenage crime,<sup>52</sup> working mothers are responsible for children's moral decay generally,<sup>53</sup> and women who seek to become part of the academic community are responsible for the erosion of academic standards.<sup>54</sup>

The thread tying all of these women together is their deviation from the "good mother" norm, as evidenced by their willingness to corrupt the traditional family structure and/or to enter into and try to change man's domain, the workplace. As such, they violate their primary role as moral guardians and become legitimate subjects of

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50. See Feeney, *supra* note 1, at 1A.

51. *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1872) (Bradley, J., concurring).

52. See, e.g., Cynthia A. McNeely, Comment, *Lagging Behind the Times: Parenthood, Custody, and Gender Bias in the Family Court*, 25 FLA. ST. L. REV. 891, 921-22 (1998) (listing problems, including criminal activity, manifested by children of single parents). Ms. McNeely, like so many commentators, speaks in gender-neutral terms, bemoaning the break-up of "the family." As other scholars have pointed out, however, such gender-neutrality is usually a thinly disguised attack on single mothers. See, e.g., Martha L. Fineman, *Images of Mother in Poverty Discourses*, in *POVERTY LAW: THEORY AND PRACTICE* 31, 34-5 (Julie A. Nice & Louise G. Trubek eds., 1997) (explaining that an attack on single motherhood underlies discussions of the "broken family").

53. See, e.g., David Gelertner, *Why Mothers Should Stay Home*, COMMENTARY, Feb. 1, 1996, at 25, available in 1996 WL 9037720 (discussing the connection between working mothers and the decline in children's health and behavior).

54. See, e.g., ROGER KIMBALL, *TENURED RADICALS: HOW POLITICS HAS CORRUPTED OUR HIGHER EDUCATION* xi (1990) (arguing that feminist scholars, inter alia, have as their goals "nothing less than the destruction of the values, methods, and goals of traditional humanistic study."). See also FALUDI, *supra* note 3, at 290-96 (discussing the attribution of various problems in academia to feminist academics).

blame. If the Clinton-Lewinsky scandal has a negative impact on this country—for example, by causing economic strife or political paralysis—be assured that as much of the blame will focus on women's failure to maintain moral standards as on the real culprit whose misbehavior started this whole ordeal. In fact, only one day after the Independent Counsel released his report on the Lewinsky matter, a commentator attributed the current state of affairs partly to "deconstructionists, feminists and radical Afro-centrists [who] have declared truth a relative matter . . . ."<sup>55</sup> Still others blame society's willingness to tolerate Clinton's actions on the reigning "me-first" attitude—a claim they support with specific reference to women's fight for the right to an abortion.<sup>56</sup>

Ironically, critics' claims that women have been silent regarding the Clinton scandal are simply false. Many female political leaders supporting Clinton have condemned his behavior quite publicly.<sup>57</sup> Polls indicate that the average female supporter of the President also denounces his moral transgressions.<sup>58</sup> Thus, women have attempted to hold the President to some standard of morality. They have, however, coupled their condemnation with a political act—one which takes them out of the private sphere of domesticity and into the public sphere of politics. Because of their willingness to abandon a pre-ordained role and to enter the political arena, women's otherwise "appropriate" moral condemnation goes unheard.

The tradition of silencing or ignoring women's public speech goes back to Roman oratorical conventions in which women who spoke publicly were thought to have violated their natural constitution and their chastity.<sup>59</sup> One orator went so far as to describe

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55. Michiko Kakutani, *An American Drama Replete with Ironies*, N.Y. TIMES, Sept. 12, 1998, at A5.

56. See Laurie Goodstein, *Christian Coalition Moans Lack of Anger at Clinton*, N.Y. TIMES, Sept. 20, 1998, at 34.

57. See Barbara Vobejda, *Key Constituency Reverses Itself: Women's Groups Condemn Clinton Behavior, but Support Tenure*, WASH. POST, Aug. 22, 1998, at A8 (noting that Senators Mikulski, Boxer, and Feinstein and Representatives Maloney and Lowey all spoke out against President Clinton's actions).

58. See Feeney, *supra* note 1, at 1A.

59. According to the Roman author, Quintilian,

It is prohibited to women to plead on behalf of others. And indeed there is reason for the prohibition: lest women mix themselves up in other people's cases, going against the chastity that befits their gender, and lest women perform the duties proper to men. The origin comes from Carfania, a most shameless woman, who by immodestly bringing cases and bothering the magistrate provided the cause for the edict.

Amy Richlin, *Roman Oratory, Pornography, and the Silencing of Anita Hill*, 65 S. CAL. L. REV. 1321, 1323 (1992) (quoting Quintilian, *On Pleading*, DIGEST 3.1.1.5 (sixth century A.D.)).

women who spoke in the public realm as "barking," as if they spoke a different and unintelligible language.<sup>60</sup> In modern times, this tradition is reflected in our judicial system's unwillingness to recognize women's complaints of injury as legally cognizable. As Professor Robin West points out:

Just as women's work is not recognized or compensated by the market culture, women's injuries are often not recognized or compensated *as injuries* by the legal culture. . . . Thus, women's distinctive, gender-specific injuries are now or have in the recent past been variously dismissed as trivial (sexual harassment on the street); consensual (sexual harassment on the job); humorous (non-violent marital rape); participatory, subconsciously wanted, or self-induced (father/daughter incest); natural or biological, and therefore inevitable (childbirth); sporadic, and conceptually continuous with gender-neutral pain (rape, viewed as a crime of violence); deserved or private (domestic violence); non-existent (pornography); incomprehensible (unpleasant and unwanted consensual sex) or legally predetermined (marital rape, in states with the marital exemption).<sup>61</sup>

Whether the critics' failure to hear women's moral condemnation of the President stems from an inability (as with our legal system) or a refusal (as with the Romans) to do so, it nevertheless reinforces the notion that women should have no role in political life. As long as women acquiesce and remain in the private sphere, they will be credited with having an appropriate response; but if they couple a condemnation with any public activity, their opinions will be written out of existence.

Whether President Clinton is impeached, resigns, or remains in office, this political crisis, like so many others, will ultimately pass. In some ways, it may actually prove beneficial to women. More women may seek political office as a response to this backlash against them. Or, perhaps reading the Independent Counsel's graphic and sordid account of the President's sexual encounters will help society gain a greater understanding of some feminists' concerns regarding pornography's dehumanizing effect.<sup>62</sup> Unfortu-

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60. See *id.* at 1322 (quoting Valerius Maximus, *On Women Who Have Pled Cases Before the Magistrates* 5.3.1-3 (A.D. 31)).

61. West, *supra* note 7, at 82 (emphasis in original) (footnote omitted).

62. See, e.g., CATHARINE A. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 163, 171-74 (1987) (discussing the effect of pornography on society's treatment and view of women). At least one reporter's description of his response to the Independent Counsel's report mirrored



nately, the critics' assailing of the President's female supporters has the potential to live on well beyond the current dilemma, primarily because they rely on stereotypical images of women that still resonate with many people. That reliance allows them to blame women for any problems associated with this controversy. It further lets them cast women as hypocrites or, better yet, irrational beings. Either way, women are deemed unfit for activity in the public sphere. In the end, the critical response to female support of Clinton sends a clear message: Politics is a boy's game; no girls allowed. This is not a message that *any* woman can afford to leave undisputed.

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my own to pornography: "[I]t is hard to know whether to laugh or cry in reading it." Michael Winerip, *Starr Report Recalls Outlook of a Preacher in Rural Texas*, N.Y. TIMES, Sept. 13, 1998, § 1, at 1.