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Lesbians, Legal Theory and Other Superheroes, Book Review of Ruthann Robson's Sappho Goes to Law School: Fragments in Lesbian Legal Theory

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BOOK REVIEWS

LESBIANS, LEGAL THEORY AND OTHER SUPERHEROES

SAPPHO GOES TO LAW SCHOOL. By Ruthann Robson. Columbia University Press 1998 (paper). Pp. xv, 320. \$17.50.

KRIS FRANKLIN* AND SARAH E. CHINN**

Why is Ruthann Robson always talking about lesbians?

A professor at the City University of New York School of Law, Robson is a prolific writer in multiple genres, all of which place lesbian lives at their heart.¹ It's not that she talks only about lesbians, or that lesbians occupy some exalted position in her legal cosmology. Rather, she situates lesbians, and lesbian issues at the center of every one of her works, including her most recent book of theoretical essays, *Sappho Goes to Law School*.²

At the same time, Robson leaves open the question of what "lesbian" itself means, and who can occupy that position. This is a difficult and challenging balancing act—to talk about and advocate for a sexual identity while insisting that what such an identity means remains fluid. Using the contributions of poststructuralist and postmodern theories of identity while

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1. Robson has written legal theory, novels, short stories, and political essays. Her fictional work (*EYE OF A HURRICANE* (1989), *CECILE* (1991), *ANOTHER MOTHER* (1995), *A/K/A* (1997)) mines similar issues—what it means to have moved from a working class childhood into a professional-class life, the experience of teenage prostitution, the challenges of lesbian motherhood, the power parents (particularly mothers) have over their lesbian children, how internal conflict can lead to destruction of oneself and others—through the perspective of lesbian life. Her theoretical work, in *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* (1992), and in numerous law review articles, reorients issues familiar to lesbian and gay legal studies towards a lesbian worldview, for example in her analysis of how sodomy laws do or do not speak to lesbian sexuality.

2. RUTHANN ROBSON, *SAPPHO GOES TO LAW SCHOOL: FRAGMENTS IN LESBIAN LEGAL THEORY* (1998) [hereinafter *ROBSON, SAPPHO GOES TO LAW SCHOOL*]. In this essay, we focus on Robson's theorizing around constructing a lesbian legal theory. *Sappho Goes to Law School* covers more material than that, however: the book contains chapters devoted to discussions of pedagogy and class difference in a lesbian context. Since this book is a collection of essays (or, as Robson terms them, "fragments"), not all the elements cohere into a single argument. Our emphasis on what we see as Robson's predominant goal—the fashioning of a lesbian legal theory—is not meant to imply that these more peripherally connected chapters are unimportant.

honoring the lived experience of lesbians in the United States, Robson forges a new kind of legal thinking: one that takes advantage of what Gayatri Spivak has called “strategic essentialism” for use in a “scrupulously delineated political interest,”³ one that remains wary of the dangers of an essentialism that is either simply about strategy or too naive, and one that imbricates clear-eyed realism and a deep and enduring passion about the value of lesbian lives.

By putting lesbians at the center of legal theory and cultural critique more generally, Ruthann Robson opens up a world that might not otherwise be available to readers, lesbian or otherwise. For this reason, “legal theory” might be an oversimplification of what Robson does in *Sappho Goes to Law School*. Like any new paradigm, Robson’s analysis is not “just theory.”⁴ Rather, Robson is performing a new way of imagining and acting in the world.⁵ In all of Robson’s work, and particularly in *Sappho Goes to Law School*, the theory itself is action: it does the work Robson proposes in imagining a lesbian-centered world by creating that world for us in her text.⁶ That is not to say that Robson slights “theory.” In fact, she emphasizes how crucial being able to theorize lesbians’ place in contemporary culture and law is, and much of her work is deeply theoretical (that is, speculative rather than solution-oriented).⁷ Instead, she *uses* “theory”—at

3. GAYATRI CHAKRAVORTY SPIVAK, *Subaltern Studies: Deconstructing Historiography*, in *IN OTHER WORLDS: ESSAYS IN CULTURAL POLITICS* 197, 207 (1988) (citations omitted).

4. For a more complete (and originary) discussion of how paradigm shifts occur and what they mean, see THOMAS KUHN, *THE STRUCTURE OF SCIENTIFIC REVOLUTIONS* (3d. ed. 1996).

5. See generally J.L. AUSTIN, *HOW TO DO THINGS WITH WORDS* (J.M. Urmson & Marina Sbisa eds., 2d. ed. 1975) (exploring the meanings of performative language as phrases that do, such as “I sentence you to 10 years in prison,” in which the words perform an action, in contrast to words that simply describe).

6. This argument raises a number of issues. First, the debate over the relationship between theory and praxis is an old one, and has been resolved (or not resolved) differently in different fields. In *Sappho Goes to Law School*, Robson is, in a way, following Heidegger, who declared that “thinking acts insofar as it thinks.” What is most interesting, though, is that Robson is writing out of, and creating an entente between, two quite different theoretical discourses, which have divergent relationships to “praxis”: legal theory and poststructuralist philosophy. Traditional legal theory presupposes a transparent relationship with practice: law review articles customarily theorize about an issue in order to recommend policy decisions or judicial or legislative action. Poststructuralist theories have a much more attenuated relationship with praxis, particularly given Jacques Derrida’s pronouncement that “there is nothing outside the text.” JACQUES DERRIDA, *OF GRAMMATOLOGY* 158 (1976). Indeed, Judith Butler has argued that it is limiting to expect theory to have a necessarily dialectical relationship to a specific praxis; rather, theorizing has value in its very abstractness. Judith Butler, Address to the Lesbian and Gay Studies Group at Columbia University (Apr. 12, 1993).

7. This is, in fact, one of the things we find most valuable in Robson’s work. Too often, legal theory assumes that it can only speculate on questions it believes it can answer, or lay out a problem that it believes can be solved. But Robson shows that theorizing without (and *beyond*) “the answer” is both intellectually and political important. Moreover, by posing questions that ordinarily aren’t being asked, and formulating them in the context of lesbian lives, Robson is doing valuable *political* work.

this point such a contentious term that it may well be inadequate for her needs,⁸ perhaps the reason she employs the term “theorizing” rather than “theory”—to mean imagining, naming, expanding our assumptions about the possible.

Throughout the text Robson defines and redefines “lesbian legal theory.” Like lesbians, lesbian legal theory occupies a vexed site between the general and the particular: it is a theory in process rather than a finished product. Therefore, Robson muses, “[s]omewhere between the fragmentation of the unrelentingly particular and the imperialism of the totalizing universal is a place where I can speak a language that might be lesbian legal theory.”⁹ Central to lesbian legal theory is the power of imagination. Robson heroizes the lesbian as locus of the possible, the space in which we can re-imagine and reshape the legal and cultural terrain to make it more livable. Robson offers a bold challenge to legal theory: to grapple with the sometimes gorgeous, sometimes agonizing realities of lesbian life while envisaging a radically alternative reality. “Imaginings that do not take for granted a Supreme Court, or even a constitutional system, or even the ‘rule of law’—these are the imaginings that are the real challenge of lesbian legal theory.”¹⁰

Thus, Robson’s desire to rethink legal theory from the bottom shapes the kind of reading her book requires: analyzing *Sappho Goes to Law School* topic by topic or chapter by chapter is at best counterproductive, and at worst, in direct opposition to Robson’s stated project. For Robson, lesbian legal theory is a process, a methodology. *Sappho Goes to Law School* proposes systematic re-evaluation of legal assumptions, and its readers benefit most from this work by recognizing its focus on the abstract as much as the concrete in law. In the interplay (and gaps) between the terms “lesbian,” “legal,” and “theory,” Robson expands the realm of the possible and explores the limits of the imaginable. We respect the ambition of this project, and out of this respect we frame our discussion of the text methodologically, and draw analogies to a similar project in the political arena, the New York Lesbian Avengers, in order to further examine the possibilities of Robson’s lesbian-focused gestalt.

I.

In order to construct a lesbian legal theory, we need to understand what lesbian world views might look like, since those are the views from

8. For a variety of approaches to the debate over “theory,” see Barbara Christian, *The Race for Theory* 14 FEMINIST STUDIES 67 (1988); JUDITH BUTLER, *Bodies That Matter*, in BODIES THAT MATTER: ON THE DISCURSIVE LIMITS OF “SEX” 27 (1993) [hereinafter BUTLER, *Bodies That Matter*]; Eve Kosofsky Sedgwick, *Paranoid Reading and Reparative Reading; Or, You’re So Paranoid, You Probably Think This Introduction Is About You*, in NOVEL GAZING: READINGS IN QUEER FICTION 1 (Eve Kosofsky Sedgwick ed., 1998).

9. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 64.

10. *Id.* at 14.

which such theory will be generated. By entering into *Sappho Goes to Law School*, the reader takes on a new, lesbian-focused way of looking at the world. For lesbians, this can generate a vertiginous sense of power. After all, how often are lesbians the center of anyone's attention, even our own?¹¹ The nonlesbian reader must make substantial adjustments to her world view in order to even gain entrance into this text. If she is unable to place herself on the margins, and lesbians at the center, the book is unapproachable. Only as a partner in Robson's project of constructing a lesbian-focused theory can the reader fully comprehend the text in front of her.

Robson never announces that she is going to talk about lesbians, she just *does* it. Hence she can let "lesbian" mean any number of things, and do all kinds of work as a signifier of identity. In the opening essays of the volume, particularly *The Specter of a Lesbian Supreme Court Justice: Problems of Identity*, Robson works through what "lesbian" *can* mean. In one of the strongest analyses we have seen of the rewards and pitfalls of identity politics, Robson anatomizes the stakes behind subscribing to a purely constructivist view of identity. On the one hand, she is well aware of the appeal of postmodern theories of identity that reveal and represent the multiple and fragmentary nature of lesbian lives, rather than striving for a unitary, "correct" Procrustean bed of lesbian identity.¹² But she also recognizes that a lesbian legal theory is about *lesbians*, and that we know who we are even if we don't have a singular narrative for all of *what* we are. The problem with poststructuralist and postmodern accounts of identity is that they can erase what it means to be a lesbian in the world, or foreclose lesbians' being able to talk with some authority about our own lives. For

11. Rarely are lesbians even the sole subject of conversation or intellectual inquiry. Instead, the identity "lesbian" often gets subsumed into the phrase "lesbian and gay" (or "les-bi-gay," or "les-bi-gay-trans"). More importantly, even though lesbians are technically half (or a third or a quarter) of this formulation, lesbian-specific focus drops out of the equation; lesbians become simply exceptions to the rule, suffering more but not experiencing differently.

This is a striking change from the place of lesbians in progressive politics up to the early-to-mid 1980s, when lesbians were instead embraced by the term "women." The cottage industries of "women's music," "women's culture," "woman-centered religion," and the like were overwhelmingly produced by, aimed at, and consumed by lesbians. The radical feminist notion of the early 1970s that "lesbianism is the rage of all women condensed to the point of explosion" transmogrified into a consensus that "woman" spoke for and subsumed "lesbian." See generally *RADICALESBIANS, THE WOMAN-IDENTIFIED WOMAN* (1970), *republished in RADICAL FEMINISM* at 240-45 (Anne Koedt, Ellen Levine & Anita Rapone eds., 1973) [hereinafter *RADICALESBIANS, THE WOMAN-IDENTIFIED WOMAN*]. For a rich discussion of the development of "women's culture" and the place of lesbians within it, see ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967-75* (1989) [hereinafter *ECHOLS, DARING TO BE BAD*].

12. This is certainly not a new concern. Over the past twenty years, debate over what lesbian identity means and who it includes has been exciting and heated. With respect to the "lesbian sex wars," see, for example, *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (Carole Vance ed., 2d ed. 1993); *AGAINST SADOMASOCHISM: A RADICAL FEMINIST ANALYSIS* (Robin Linden ed., 1982) [hereinafter *AGAINST SADOMASOCHISM*].

Robson, these theories can mean “a rejection not only of any (pre)determined connections between lesbians and politics, but also of any determinable connections between lesbian identity and anything else, except instability.”¹³

Thus, rather than looking to epistemology for lesbian identity, Robson invokes a complex¹⁴ kind of phenomenology that both incorporates epistemology and does not simply presume the authenticity of “experience,”¹⁵ but that recognizes the interleavings of knowledge, feeling, ideology, affect, and mutuality—a perspective that owes a heavy debt to the work of feminists of color.¹⁶ As Robson observes, “[l]esbian identity is something I have known, have felt, have recognized across a room and across years. It is the river lesbian theorist and poet Gloria Anzaldúa utilizes to describe identities: ‘changing, yet perceptible, flowing . . . the weight of lesbian bodies, bodies in relation, in desire and sex.’”¹⁷

Robson shows us that if we can grasp the complexities of lesbian identity, we will have the key to understanding how identity works in U.S. culture more generally. As many of the feminist and sexuality theories of the past two decades (particularly those generated by white lesbians and women of color) have demonstrated, we cannot understand subordinated social status as singular or “pure.”¹⁸ For too long “woman” was assumed to mean white, straight, middle-class woman, and political and policy goals were set accordingly. However, even a cursory glance at the population of the United States reveals such a paradigm of womanhood to be at best pointless and at worst destructive. Necessarily, Robson acknowledges that lesbians exist at the interstices of a variety of other identities of race, class, ability, education, age, sexual practice, and national origin, to name but a few. But she subverts the ways in which progressive politics has constructed identity as (often) little more than a laundry list of substitutable

13. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 7.

14. This complexity may, in part, account for the diversity of topics the essays in *Sappho Goes to Law School* address, and the occasional disjointedness of the book itself. It is hard to come up with a methodology that can embrace a variety of issues without seeming to skip from one to another—a feeling that the reader gets from the final few essays in the book. However, Robson’s focus and paradigm is a lesbian identity that is largely understood *through difference* and disjuncture.

15. For an important discussion of the ways culture constructs the ways in which we understand our experiences, see Joan Wallach Scott, *The Evidence of Experience*, 17 *CRITICAL INQUIRY* 773 (1991).

16. See, e.g., GLORIA ANZALDÚA, *BORDERLANDS/LA FRONTERA: THE NEW MESTIZA* (1987) [hereinafter ANZALDÚA, *BORDERLANDS*]; *THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR* (Cherrie Moraga & Gloria Anzaldúa eds., 2d. ed. 1983) [hereinafter *THIS BRIDGE CALLED MY BACK*]; *HOME GIRLS: A BLACK FEMINIST ANTHOLOGY* (Barbara Smith ed., 1983); BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* (1992); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS* (1991).

17. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 13.

18. See, e.g., ANGELA Y. DAVIS, *WOMEN, RACE, AND CLASS* (1983); *MAKING FACE, MAKING SOUL = HACIENDO CARAS: CREATIVE AND CRITICAL PERSPECTIVES BY WOMEN OF COLOR* (Gloria Anzaldúa ed., 1990).

attributes. For Robson, “lesbian” inevitably embraces the gamut of subjectivities; indeed “lesbian” encompasses the possibility of all other kinds of identities except for those that seem directly contradictory (and even then maybe not).¹⁹

This isn’t a new idea. For example, in *Where Is Your Body?*, Mari Matsuda tells us to “ask the other question” in examining the ways in which the interrelations between oppressions function as a form of social control.²⁰ “When I see something that looks racist, I ask, ‘Where is the patriarchy in this?’ When I see something that looks sexist, I ask, ‘Where is the heterosexism in this?’ When I see something that looks homophobic, I ask, ‘Where is the class interest in this?’”²¹ Robson’s work is clearly informed by the same political ethic as Matsuda’s, but with a significant difference—Robson *doesn’t* talk about any or all forms of identity, she chooses to concentrate on lesbians alone. Robson implicitly asks: if we can assume that all identities can potentially intersect (but *not* interchange), then why is it that political theorizing rarely, if ever, assumes a lesbian as its subject matter, or that lesbian identity is barely discussed at all? More importantly, why is it that lesbian concerns are considered so parochial and specific that they are usually represented as supplementary and illustrative, rather than constitutive of the paradigms by which we understand ourselves?

Robson’s emphasis on lesbians and lesbian issues still raises two important questions: what is a lesbian and how do we define a lesbian issue? In partial answer to the first question, Robson melds essentialism and postmodernism to acknowledge both the power of the body in determining our sense of self, and the ways in which those selves are not experienced positivistically. On the one hand, lesbianism can be seen to have its ground in the body—the lesbian body that desires, that wants to find itself next to another female body.²² But the body is not itself a knowable essence. Instead, the lesbian body is always *relational*. As Robson argues, “[i]n its

19. For example, heterosexual sex or sexual desire for men does not necessarily preclude women from being lesbians, particularly if that sex is part of a commercial rather than affectional relationship. See, e.g., Judy Edelstein, *In the Massage Parlor*, in *SEX WORK: WRITINGS BY WOMEN IN THE SEX INDUSTRY* 62 (Frédérique Delacoste & Priscilla Alexander eds., 1987) [hereinafter *SEX WORK*]; Joan Nestle, *Lesbians and Prostitutes: A Historical Sisterhood*, in *SEX WORK* 231; JOHN D’EMILIO, *By Way of Introduction: Notes from One Gay Life*, in *MAKING TROUBLE: ESSAYS ON GAY HISTORY, POLITICS, AND THE UNIVERSITY* xliii (1992) (discussing the introduction of sex to his friendship with a lesbian and “what it meant for my gay identity or for Estelle’s lesbian identity”). See also Maria Maggenti, *Falling for a Guy: A Lesbian Adventure*, *THE VILLAGE VOICE*, June 27, 1995, at 25.

20. MARI J. MATSUDA, *WHERE IS YOUR BODY? AND OTHER ESSAYS ON RACE, GENDER, AND THE LAW* 64-66 (1996).

21. *Id.* at 64-65. At the same time, we should also heed Catherine MacKinnon’s articulation of feminism as embracing all women, however *privileged*. Catherine A. MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?*, 4 *YALE J.L. & FEMINISM* 1, 13 (1991).

22. At the same time, although Robson does not refer to this argument, Judith Butler has constructed an important and compelling anti-essentialist account of the body itself,

grossest form, the decision whether or not one is a lesbian can be based on the gender of the person(s) one desires as sexual partner(s). That one's identity may not rest within one's self but rest outside one's self may mark lesbian identity (as well as all sexual identities) as ultimately postmodernist."²³ Robson notes that we cannot "know" lesbian sexuality like we "know" the Federal Rules of Civil Procedure: it is "a possible site of unity and specificity that does not privilege either: a site in which the recognition of lesbianism is possible without its idealized enforcement."²⁴

Much of this definitional work depends on fuzziness, since so often clarity sacrifices recognizing the texture of lesbian lives. Few lesbians are what Robson, in a typical swatch of wit, names "but for" lesbians "who, 'but for' their lesbianism, are perfect."²⁵ As Robson observes, the "but for" lesbian has become a strategic necessity for the mainstream lesbian and gay legal rights movement in order to construct a plaintiff who does not threaten the heterosexual mainstream in her demand (or request?) for civil rights. The "but for" lesbian is squeaky-clean: the plaintiff must be able to prove that "but for" her lesbianism, there could be no imaginable reason that anyone would deny her anything, let alone the most crucial elements of her life and survival—housing, employment, custody of her children.²⁶

This lesbian could possibly be a woman of color, but not a poor woman, and certainly not a woman on public assistance. This lesbian could not have a criminal record,²⁷ or a history of work in the sex industry; she could not be "too" masculine²⁸ or have any emotional or mental illness. This lesbian could not be rowdy or argumentative, a big drinker, or a "bad"

positing that we cannot recognize our bodies outside of discourse, however "real" they seem. See generally BUTLER, *Bodies That Matter*, *supra* note 8.

23. ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 2, at 52.

24. *Id.* at 69.

25. *Id.* at 30.

26. A good example of this phenomenon can be found by examining the "exemplary" status of the plaintiffs in the leading military discharge status. The immaculate behavior and outstanding character of the lesbian (or gay) servicemember is almost always emphasized in the cases in the "winning" cases. See, e.g., *Cammermeyer v. Aspin*, 850 F. Supp. 910 (W.D. Wash. 1994), *overruled sub nom.* *Cammermeyer v. Perry*, 97 F.3d 1235 (9th Cir. 1996). See generally *Steffen v. Aspin*, 8 F.3d 57 (D.C. Cir. 1993); Kenji Yoshino, *Assimilationist Bias in Equal Protection: The Visibility Presumption and the Case of "Don't Ask, Don't Tell,"* 103 *Yale L.J.* 485 (1998).

27. Criminality is a sensitive issue for queer organizing, given the criminalization of homosexual sodomy upheld by the Supreme Court in *Bowers v. Hardwick*, 478 U.S. 186 (1986), and the focus by the gay rights establishment on gaining "equality" through a discourse of normality. Criminality is by definition, non-normative. As Robson argues, "the theorizing of lesbians as criminal defendants may be incompatible with a political agenda of achieving equality. . . . Distance from criminality [for example, through the abolition of sodomy laws] is a necessary condition of equality." ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 2, at 30.

28. *Id.* at 36.

mother.²⁹ These elements would irreparably alter the constructed image of the “but for” lesbian—elements that litigators, fearing complicating the “real” issues in their civil rights cases, are likely to try to edit out from the start.³⁰

And yet lesbians cannot be titrated into one pure elemental identity. We come in complex and indivisible compounds of any number of identities, and as a result, discussions, theories, litigation (even when we win) that require a “but for” lesbian for their success in fact do not necessarily have a meaningful impact on the lives of actual lesbians.³¹ If the standard is the “but for” lesbian, then the majority of lesbians cannot qualify for whatever benefit its litigants gained for “the lesbian and gay community.”³² The obstacle to real success is that the law, as it has been developed in civil rights cases over the past sixty years, depends upon definitional strategies that require, in the language of *United States v. Carolene Products Co.*,³³ “discrete and insular minorities” that are instantly recognizable and immutable, knowable and containable. Lesbianism can be any or none of these things. Legal battles waged to “protect” lesbians have, in fact, misrepresented us: we have been forged into objects of the law rather than shapers of it. Thus, Robson does not define for us what a lesbian is, only what a lesbian can be, can do, to maintain her integrity within a legal system that cannot recognize her on her own terms.

29. As Robson argues, “lesbians can only be mothers if we are very very good girls.” *Id.* at 25.

30. In fact, given the reformist orientation of many agencies bringing such cases, the choice of the “but for” lesbian may not be just about expedience but also be a reflection of the attorneys’ own fantasies of what constitutes the “perfect” lesbian.

31. Ironically, the converse can also occur. For example, in a groundbreaking decision recognizing gay male partnership for the purposes of housing succession in New York City, *Braschi v. Stahl Associates*, 543 N.E.2d 49, (N.Y. 1989), the court established as a matter of fact the existence of a family relationship cognizable in law. In support of this finding of fact, the court illustrated some ways in which the two men’s lives has become intertwined. However, the court’s efforts creatively to search for indicia of family connections has become calcified in subsequent implementation into dyadic relationships whose existence can only be proven by possession of certain (middle class) criteria from the list of illustrative factors cited by the *Braschi* court. *See, e.g.*, New York City Rent and Eviction Regulations, N.Y. COMP. R. & REGS. tit. 9, § 2204.6(d) (1999). For this reason, Robson critiques *Braschi*, seeing in it the normative power of law in “heterosexualizing” queer relationships. ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 2, at 159-61. We would argue, though, that Robson is reacting against the ways in which the decision has been deployed, and in effect, re-written, rather than the ecumenical spirit in which the decision was originally drafted.

32. This friction between the utilitarian value of “good for the community” and the needs of actual lesbians, gay men, bisexuals, and transpeople, is longstanding and ongoing. A recent conflict between the Human Rights Campaign, a mainstream (one might even say right-of-center) lobby and policy agency and the rank-and-file of the queer political community neatly illustrates this point. *See, e.g.*, Alisa Solomon, *Good for the Gays?*, THE VILLAGE VOICE, Oct. 27, 1998, at 58; Edward Walsh, *Gay Rights Group Stirs Flap With D’Amato Nod, One Director Resigns over Board’s Choice*, WASH. POST, Oct. 23, 1998, at A13.

33. 304 U.S. 144, 153 (1938).

This question of how lesbian identity can be recognized by the lesbian and others opens into the more material political question of what qualifies as a lesbian issue. In fact, this question is hardly original; lesbians have been grappling with these issues in comparable theoretical contexts over the course of the past thirty-five years. Defining a "lesbian issue" grew out of the radical feminist movements of the late 1960s that "articulated the earliest and most provocative critiques of the family, marriage, love, normative heterosexuality, and rape."³⁴ Lesbians had long been involved in radical political movements, from the demonstrations in support of Julius and Ethel Rosenberg to the Civil Rights activism of the 1960s, but not *as* lesbians (and not even identifying themselves as lesbians to their comrades in those movements).³⁵

With the development of radical feminism, however, lesbians became increasingly visible, and lesbianism was discussed as a viable mode of women's liberation.³⁶ Radical lesbian groups motivated by charismatic leaders like Rita Mae Brown pushed lesbian liberation to the forefront of the radical agenda.³⁷ One early articulation of the goals that radical lesbian-feminism set out for itself, and the contradictions those aims generated, appears in the groundbreaking Radicalesbians pamphlet *The Woman-Identified Woman*, which was distributed at the 1970 Congress to Unite Women.³⁸ The pamphlet argued that the lesbian experienced the intensification of the oppression of women since "she has not been able to accept the limitations and oppression laid on her by the most basic role of society—the female role. . . . To the extent that she cannot expel the heavy socialization that goes with being female she can never truly find peace with herself."³⁹ Accordingly, lesbian issues were first and foremost *women's* issues: the policing work of femininity, the oppression of heterocentricity, and so on.⁴⁰ The pamphlet imagined lesbians at the vanguard of the

34. ECHOLS, DARING TO BE BAD, *supra* note 11, at 3-4.

35. For narratives that describe first-person involvements in some of these movements in the 1950s and early 1960s, see JOAN NESTLE, *This Huge Light of Yours, in A RESTRICTED COUNTRY* 49, 49-67 (1987); LORDE ZAMI, *A NEW SPELLING OF MY NAME* (1982). This is not to imply that lesbian work in radical movements started with the 1960s.

36. As Echols points out, "opponents of women's liberation were more apt to raise the issue of lesbianism than radical feminists" as a way to delegitimize the movement. ECHOLS, DARING TO BE BAD, *supra* note 11, at 210.

37. The most dramatic example of this was the "Lavender Menace" action, led by Brown, at the second Congress, to Unite Women in 1970. About forty lesbians, enraged at the exclusion of lesbianism from the Congress's agenda, stormed the stage and spent two hours discussing "what it was like to be a lesbian in a heterosexist culture," culminating in the Congress adopting four affirmatively pro-lesbian resolutions. *Id.* at 214-15.

38. See generally RADICALESBIANS, *WOMAN-IDENTIFIED WOMAN*, *supra* note 11.

39. *Id.*

40. As Echols shows, this was in part a defensive strategy on the part of lesbian activists:

Radicalesbians had to persuade feminists that lesbianism was not simply a bedroom issue and that lesbians were not male-identified 'bogeywomen' out to sexually exploit other women. They accomplished this by redefining lesbianism as a primarily political choice and by

movement, but *The Woman-Identified Woman* was written in the context of radical feminism, and was not offered as a specific lesbian agenda for lesbians. Of course, lesbians still faced a number of as-yet unpoliticized issues: mothering and child custody, police harassment in and raids on lesbian bars, and subjection to arrest for cross-dressing, to name a few.⁴¹

The growth of lesbian-feminism in the 1970s had two effects. First was the theory that all women, absent heteropatriarchy, were potentially lesbians.⁴² Second was the development and articulation of specific "lesbian issues" beyond just legitimation by and inclusion in the radical feminist agenda. One element of this definition was lesbian separatism: whatever the lesbian agenda, it could only be achieved by lesbians working in solely lesbian groups. Too often, though, separatism demanded that lesbians exclude any issue as "lesbian" that applied as much, or more, to straight women, even if it affected some lesbians.⁴³

An ongoing legacy of the separatism some radical lesbian-feminists designed was the development of what Echols terms "cultural feminism": the belief that women are fundamentally different from men and that feminism should focus on creating a "women's culture" outside the mainstream.⁴⁴ In her 1973 collection of essays *The Lesbian Nation*, Jill Johnston imagined lesbians as constituting an imaginary radical state, and invoked "the return

locating the discourse within the already established feminist framework of separatism. . . . Moreover, they suggested that far from being male-identified, lesbians, by virtue of their distance from contaminating maleness, were actually more likely to be woman-identified than heterosexual women.

ECHOLS, DARING TO BE BAD, *supra* note 11, at 216. Moreover, Radicalesbians offered an incisive analysis of the power of lesbian-baiting over women who claimed any kind of independence from male power. As they stated, "as long as the label 'dyke' can be used to frighten women into a less militant stand, keep her separate from her sisters, keep her from giving primacy to anything other than men and family—then to that extent she is controlled by the male culture." RADICALESBIANS, WOMAN-IDENTIFIED WOMAN, *supra* note 11.

41. See, e.g., LESLIE FEINBERG, *STONE BUTCH BLUES* 135-47 (1993) (describing the contrast between Jess's oppression as a butch in working-class culture and her lover Theresa's growing involvement with lesbian-feminism and eventual rejection of her femme role). Many of these issues were later taken up a wide variety of political groups, from liberal feminists in NOW to gay men opposing police harassment, to direct action organizations including the Lesbian Avengers.

42. An eloquent and powerfully influential expression of this argument is Adrienne Rich's *Compulsory Heterosexuality and Lesbian Existence*, which coined the phrase "lesbian continuum" to link Chinese marriage resisters, African female sodalities, European women burned as witches, and nineteenth century "romantic friends" to self-conscious lesbian identity. All of these women resisted "compulsory heterosexuality" through creating primary emotional relationship with other women. ADRIENNE RICH, *Compulsory Heterosexuality and Lesbian Existence*, in *BLOOD, BREAD AND POETRY: SELECTED PROSE 1978-1985* 23 (1986).

43. See, e.g., JULIA PENELOPE STANLEY, *Notes on the Edge*, in *WIN*, June 26, 1975, at 9 ("Only a lesbian can have no stake in the social system. . . . Straight women, even those who call themselves 'feminists,' are still tied to men and dependent on their tolerance and goodwill, which is why they cling to issues like equal pay and birth control. A woman who has no vested interest in men wouldn't bother.")

44. *Id.*

to the harmony of statehood and biology through the remembered majesty of women.”⁴⁵ “Lesbian issues” were therefore defined as building institutions for women in general and lesbians in particular—bookstores, record labels, music festivals, health clinics, and the like.⁴⁶ Lesbians retreated into a theory of female superiority as a way to understand how they might construct a non-patriarchal, non-hierarchic world. Too often, however, the ideals of cultural feminism, already hobbled by its insistence on biologically essential gender difference, calcified into policy. Not only were issues defined as lesbian, but lesbian feminists were expected to conform to a set of beliefs about those issues, particularly in terms of sexuality. By the mid-1980s, cultural feminism was dislodged as the dominant voice in lesbian-feminist politics, replaced by a more fluid and contradictory set of understandings of lesbian lives motivated in part by the “sex wars,”⁴⁷ debates about race and racism within feminism,⁴⁸ and in part by the ascendance of poststructuralist and postmodern theories of identity.⁴⁹

In adopting the language and perspective of postmodernist theory, Robson rejects the tenets of cultural feminism even though, ironically, she shares many of its goals. Robson’s formulations of lesbian identity and lesbian issues are heirs to these series of lesbian and feminist movements that struggled to define what it meant to be a lesbian within the context of a progressive feminist critique. While the book rarely if ever explicitly refers to this legacy,⁵⁰ *Sappho Goes to Law School* is implicitly in conversation with and in reaction to the radical and cultural lesbian-feminisms that preceded the text. Thus the text is embedded in the political heritage of this movement.

Although Robson engages in a project drenched in lesbian consciousness, she is averse to limiting lesbian identity or lesbian issues to prescribed

45. JILL JOHNSTON, *Tarzana From the Tree at Cocktails*, in *LESBIAN NATION: THE FEMINIST SOLUTION* 15 (1973).

46. See ECHOLS, *DARING TO BE BAD*, *supra* note 11, at 269-81.

47. See generally LISA DUGGAN & NAN D. HUNTER, *SEX WARS: SEXUAL DISSENT AND POLITICAL CULTURE* (1995). For samples of the debates that constituted the sex wars, and a discussion thereof, see generally *PLEASURE AND DANGER: EXPLORING FEMALE SEXUALITY* (Carole S. Vance ed., 2d ed. 1993); *AGAINST SADOMASOCHISM*, *supra* note 12.

48. See, e.g., ANZALDÚA, *THIS BRIDGE CALLED MY BACK*, *supra* note 16.

49. See, e.g., JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990); DENISE RILEY, “AM I THAT NAME?”: FEMINISM AND THE CATEGORY OF “WOMEN” IN HISTORY (1988).

50. An important exception to this is the conclusion of Robson’s essay *Reflections and Taxonomies: The Feminist Jurisprudence Question*. Robson engages in a rare display of reminiscence in which she remembers “participating in extended and complicated discussions among my fellow students about differences between what we called ‘reform’ and ‘revolution.’ . . . [T]he larger division—and the one that caused the most heated of our arguments—was the degree and rate of change we believed was necessary to achieve what we called ‘liberation.’” ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 86. This kind of discussion is, of course, characteristic of the political debates that have surrounded radical politics and that were typical of the “New Left” in the late 1960s and of radical feminism in the 1970s.

formulae of cultural feminist dogma. Rather, the “lesbian issue” is almost unknowable in its multivalent complexities. In fact, in this postmodern world, the glib answer to the question “what is a lesbian issue?” might well be “every issue,” since we can agree that lesbians can be anyone (except perhaps men, and even then, the long history of transgender and passing women suggests the permeability of even that apparently insurmountable barrier of biological sex⁵¹). But Robson wants to complicate the easy answer. If thinking through lesbian identity can expand, deepen, and enrich our understanding of identity more generally, how can exploring legal questions as *lesbian issues* enhance our sense of how we might construct legal arguments and legal theories more intelligently and sensitively? Indeed, perhaps asking “what is a lesbian issue” is the wrong way to go about things. Perhaps we should be asking, “how can focusing on lesbian realities help us fully understand this issue?”

II.

Robson’s theories of lesbian identity undergird her notion of what is possible in constructing a lesbian legal theory. In many ways, lesbians are an ideal group to theorize through, since our sense of self is constructed so starkly in protest to a cultural mandate that “it is not in the best interest of anyone to be a lesbian.”⁵² We have had to fashion identities for ourselves between the Scylla of invisibility and the Charybdis of prohibition (and, perhaps, the Sirens of “lesbian chic”). Unlike our heterosexual counterparts, lesbians do not have, from childhood on, access to the wealth and detail of cultural narrative to construct our understanding of our lives:⁵³ at the very least we have to shape, massage and even deform those well-worn

51. See, e.g., San Francisco Lesbian & Gay History Project, “*She Even Chewed Tobacco*”: A Pictorial Narrative of Passing Women in America, in *HIDDEN FROM HISTORY: RECLAIMING THE GAY AND LESBIAN PAST* 183 (Martin Bauml Duberman, Martha Vicinus, & George Chauncey, Jr. eds., 1989); LESLIE FEINBERG, *TRANSGENDER WARRIORS: MAKING HISTORY FROM JOAN OF ARC TO RU/PAUL* (1996); MINNIE BRUCE PRATT, *S/HE* (1995).

52. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 25. At least, given the difficulties imposed by homophobic culture, that would not be true if lesbians (or anyone) functioned purely as in what Richard Posner terms “rational actors.” Robson herself, in her chapter *Neither Sexy nor Reasonable*, takes on Posner’s rationalization for lesbianism. In *Sex and Reason*, Posner applies an economic methodology of valuation to sexual choices and variations. See generally RICHARD A. POSNER, *SEX AND REASON* (1992).

53. That is not to say that such narratives do not exist. As the work of anthropologists, historians, and archivists have shown, lesbians have always constructed our own (sub)cultures. For an ethnography examining lesbian and gay community constructions of family in San Francisco, see KATH WESTON, *FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP* (1991). For a groundbreaking longitudinal study of lesbian communities in Buffalo, New York, see ELIZABETH LAPOVSKY KENNEDY & MADELINE D. DAVIS, *BOOTS OF LEATHER, SLIPPERS OF GOLD: THE HISTORY OF A LESBIAN COMMUNITY* (1994). However, a lesbian must usually search for connection to and membership in these cultures, while she must resist the narratives of bourgeois heterosexuality that pretend to understand and explain her. For this reason, the Lesbian Herstory Archives, founded in New York City in 1973, was created to “gather and preserve records of Lesbian lives and activities so that future generations will have ready access to materials relevant to their lives. The process of

stories of development, maturation, family, romance, and community before we can recognize them as our own. *Sappho Goes to Law School* opens up the possibility of lesbians telling our own stories,⁵⁴ and building a polity that accords our narratives the dignity and wholeness that the current social world renders unthinkable.⁵⁵

Lesbian legal theory is not just for lesbians, however. What is remarkable about Robson's work is the unspoken assumption that lesbian legal theory is a crucial set of strategies for anyone who is interested in rethinking how law works.⁵⁶ Robson poses a deceptively simple thesis: the defamiliarization of the mainstream by making lesbian lives the point of reference, the mode for the deconstruction of the master narrative of heteropatriarchy, without seeking recourse in essentialized gender. Certainly, the assumed verities of male and female, masculine and feminine, and the behaviors (social and sexual), family position, location in the workplace, economic worth, and a sense of belonging in public and private space that are articulated to and by gender are dislodged from their accustomed places and set into motion by the presence of the lesbian. In Robson's work, this presence is not contingent or accidental. Instead, here, the lesbian—usually invisible or at least subordinated—becomes an affirmative force for re-envisioning cultural dictates.

gathering this material will also serve to uncover and collect our herstory denied to us previously by patriarchal historians in the interests of the culture which they serve." Lesbian Herstory Archives, *Statement of Purpose* (visited Jan. 28, 1999) <<http://www.datalounge.net/network/pages/lha>>.

54. However, Robson is careful to warn us about the false expectations we bring to telling and reading personal narratives, and the paradoxes inherent in narrative as a mode of explication. See "Beginning from (My) Experience: Lesbian Narratives," in ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 87-112.

55. Lesbians are considered irrelevant or boring when our lives are not superseded by the needs of heterosexuality, to the extent that lesbian writers are implicitly (or even explicitly) discouraged from writing lesbian protagonists. As Sarah Schulman observes of lesbian literature, "Lesbians are really the only remaining writers of American literature who do not appear in their own work." SARAH SCHULMAN, *A Modest Proposal, in MY AMERICAN HISTORY: LESBIAN AND GAY LIFE DURING THE REAGAN BUSH YEARS 272, 275* (1994) [hereinafter SCHULMAN, *MY AMERICAN HISTORY*].

56. In some ways this project is analogous to Richard D. Mohr's in his essay "*Knights, Young Men, Boys*": *Masculine Worlds and Democratic Values, in GAY IDEAS: OUTING AND OTHER CONTROVERSIES 129* (1992) [hereinafter MOHR, *GAY IDEAS*]. Mohr imagines an ideal liberal democracy as paradigmatically represented in the final act of Wagner's *Parsifal*. Mohr argues that the all-male world that ends the opera can be read as an environment of total equality that gay male culture also offers. *Id.* at 138. But Mohr is not interested in a radical re-evaluation of gay men's position in the legal system (or in what might happen to women in this scenario). Moreover, as his arguments against outing show, he is more concerned that the system give him his due as a middle class white man (Robson might say he is a "but for" gay man) than create a truly democratic world. See generally *The Outing Controversy: Privacy and Dignity in Gay Ethics, in MOHR, GAY IDEAS, supra*, at 11-48.

Such a project is particularly valuable in a legal context. Certainly, the courts have not been kind to lesbians as a class in any setting.⁵⁷ However, Robson is not arguing for an illusory “fairness” in treatment by the courts or legislature. She pushes our understanding of the law harder than that. Robson demonstrates that the legal system was constructed with lesbians absent, exiled, excised.⁵⁸ The standards by which the law judges us can do little more than take lesbians into account *ex post facto*. Since individual laws, and the legal system more generally, were not constructed by lesbians, or with lesbian interests in mind, the law inevitably does violence (either passive or active) to the ethical and metaphysical dimensions of lesbian life. After all, “even relatively benign legal categories without a history of violence, such as ‘attorney in fact’ or ‘beneficiary’ do violence to lesbians because they compress lesbian relationships into legal categories rather than lesbian ones.”⁵⁹

Although Robson challenges us to imagine a world without the rule of law, we (and she) cannot deny that that is not the world in which we live.⁶⁰ If we believe in the meaningfulness of law, we are caught in a paradox that lesbian legal theory might help us bear, even if we cannot resolve it. After all, the law (or juridical structures more generally) is the framework within which we understand ourselves. And yet, the law renders lesbians invisible, or, at best, manages to “make room” for us as addenda to a more “general” ruling.

This raises another, more pressing question. Why, then, create a lesbian legal theory in the first place? By looking to the law to understand the place and power of lesbian theorizing, are we not crashing a party to which we have not been invited and from which, if we attempt to enter, we are so often brutally ejected? Moreover, has not feminist jurisprudence covered much of the same material that lesbian legal theory claims as its purview?

57. Commentators have suggested, for example, that lesbians may face harsher penalties than nonlesbians in the U.S. criminal justice system and may be disproportionately represented among women on death row. See, e.g., Victoria A. Brownworth, *Dykes on Death Row*, THE ADVOCATE, June 16, 1992, at 62; Jenny E. Carroll, *Images of Women and Capital Sentencing Among Female Offenders: Exploring the Outer Limits of the Eighth Amendment and Articulated Theories of Justice*, 75 TEX. L. REV. 1413 (1997). Similar observations regarding the unequal treatment of lesbians in civil courts have been made in a variety of settings, most notably in the area of family law. See, e.g., Susan J. Becker, *Court-Created Boundaries Between Visible Lesbian Mother and Her Children*, 12 WIS. WOMEN'S L.J. 331 (1997); Gloria M. Custodio, *The Discourse of Discrimination: How Lesbian Mothers Are Judged in Child Custody Disputes*, 63 REV. JUR. U.P.R. 531 (1994).

58. For an analogous argument in terms of race, showing how the post-Enlightenment ideas of liberty and selfhood within a representative democracy required a population of enslaved Africans (and later segregated and subordinated African Americans) see generally TONI MORRISON, *PLAYING IN THE DARK: WHITENESS AND THE LITERARY IMAGINATION* (1992); DAVID ROEDIGER, *THE WAGES OF WHITENESS: RACE AND THE MAKING OF THE AMERICAN WORKING CLASS* (1991).

59. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 21.

60. *Id.* at 13-14.

As Robson herself argues in her overview of the connections and disjunctures between feminist and lesbian legal theories, often the two can seem so similar as to be indistinguishable.⁶¹ In fact, at conclusion of her chapter on the intersections between feminist jurisprudence and “les-bi-gay-trans legal scholarship,” Robson herself asks, “what are the real differences between feminist jurisprudence and lesbian legal theory?”⁶²

Her answer to this question is surprisingly opaque, but offers the reader an important insight into Robson’s formulation of what lesbian legal theory can mean and do. First, she asserts that lesbian legal theory, if its practitioner does not pay attention to the real meanings of “lesbian,” can be as homogenous or as expansive as any other kind of jurisprudence. Second, she questions the fears and reluctance legal scholars, even lesbians, have about aligning themselves with “solely” lesbian issues:

it seems to me that much of the anxiety surrounding the positing of a lesbian legal theory (including my own anxiety) is the specter of the label *separatist*. To bear the badge of lesbian separatism is to be marked as reactionary, racist, and definitely retrograde. Yet I find it interesting that such anxieties are provoked whenever the term *lesbian* appears without partners or modifiers.⁶³

Robson’s commitment to lesbians seems in part generated by her resistance to those anxieties. She asserts that all theories “at their very best . . . ‘open up the larger question,’” not just lesbian legal theory.⁶⁴ But *lesbian* legal theory, she implies, forces us to face our internalized self-doubt, our belief (created and maintained by the courts, the dominant family, schools, popular culture, and what have you) that lesbians are not worth talking about, are an embarrassment, or are a bunch of narrow, humorless separatists who could not have anything of any value to tell anyone. *Lesbian* legal theory is not only valuable to readers because of its unique perspective on cultural norms but is crucial because unless lesbians talk about our lives (whether as paradigms for theorizing, or at all) no one else will.

One construct that lesbian legal theory is particularly qualified to unpack is the “nonlegal mother” under the third party doctrine in child custody law. The law insists that every child can have only two legal parents, one mother and one father. Everyone else outside this dyad is a “third party,” whose sanctioned relationship to the child is weaker than that of

61. At least, she says certain *kinds* of feminist jurisprudence and certain *kinds* of lesbian legal theory overlap. In fact, Robson’s project is only concerned with the vector in which those two approaches to legal thought converge (and intersect with questions of race, class, and other possible systems of subordination within which lesbians live). See *id.* at 75-86.

62. *Id.* at 85.

63. *Id.* at 85.

64. *Id.* at 86.

the official parents.⁶⁵ Through an etiological interrogation of the cultural meanings of "third," Robson links the doctrine of the third party to the construction of lesbians as the "third sex," abjected from the biologically "natural" and socially sanctioned heterosexual dyad of one man partnered through law and custom with one woman. As Robson argues, "the notion of the third sex/sexual inversion rests upon a strict antipodal relation between gender identity and gender object choice as well as the assumption of heterosexual hegemony."⁶⁶ Although sexology and medical science have jettisoned the idea of the third sex, we still think of gender not just as binary but as *paired* and *opposite*, and "continue to deploy its underlying premise of paradigmatic heterosexuality."⁶⁷

Robson builds a powerfully convincing argument that exposes how deeply the notion of the pathology of the third sex carries over to the delegitimation of the "third party" in child custody cases (with some crucial exceptions that still disadvantage lesbians).⁶⁸ By reading third party doctrine explicitly through a genealogy of representations of lesbians, Robson gets to the heart of what is wrong with child custody rulings. Her critique of the assumption that two is the magic number shows the limited terms under which lesbians can enter into the role of legal parent through second-parent adoption,⁶⁹ and how those terms are anti-progressive and, ironically, anti-lesbian. Lesbians must prove how closely they "satisfy the most traditional and stereotypical terms of the heterosexual marriage mandate: [their] relationship . . . must be long-term, committed, and monogamous."⁷⁰ Their relationship must be dyadic: if Heather cannot have a mommy and a daddy she may only have two mommies.⁷¹ Moreover, "fitness" for second-

65. For a more thorough discussion of this doctrine, see NANCY POLIKOFF, *This Child Does Have Two Mothers: Redefining Parenthood to meet the Needs of Children in Lesbian-Mother and Other Nontraditional Families*, 78 GEO. L.J. 459 (1990).

66. ROBSON, *Sappho Goes to Law School*, *supra* note 2, at 173.

67. *Id.* at 175.

68. The most poignant examples are those in which custody of children is taken away from their legal mothers and awarded to third parties such as grandparents as a condemnation of the mothers' lesbianism. *See, e.g.*, T.K.T. v. F.P.T., 716 So.2d 1235 (Ala. Civ. App. 1998); Knotts v. Knotts, 693 N.E.2d 962 (Ind. Ct. App. 1998); Bottoms v. Bottoms, 457 S.E.2d 102 (1995).

69. Under second-parent adoption, a parent can become the legal guardian of a child without the pre-existing guardian of the same sex having to give up parental rights. In second-parent adoption, the non-biological mother is no longer a third party. Such adoptions have been granted in several states, including Alaska, Illinois, Massachusetts, New York, and Vermont. *See generally* David E. Rovella, *Using Family Values to Expand Lesbian Rights*, NAT'L L.J., Aug. 25, 1997, at A7.

70. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 186.

71. Of course, the fact that Heather *does* have two mommies was itself a cause of controversy among educators in New York City, where Leslea Newman's book sparked debates over what, how, and whether schoolchildren should learn about homosexuality. *See* LESLEA NEWMAN, *HEATHER HAS TWO MOMMIES* (1989). For an account of the controversy, see Josh Barbanel, *Under the "Rainbow," a War: When Politics, Morals and Learning Mix*, N.Y. TIMES, Dec. 27, 1992, at B34.

parent adoption has, as Robson pointedly illustrates, been explicitly linked to economic wellbeing and class status.⁷²

The connection between the discourse of the third sex and the doctrine of the third party means that only a tiny minority of lesbians have access to a relationship with children that mimics the privileges of heterosexuality. The majority of lesbians—single, in short-term or multiple relationships, socio-economically unstable or just working-class—are in fact disadvantaged further by the “advantages” a minute number of privileged lesbians have won for the “community.”⁷³

Robson’s strength in this chapter is to interrogate and deconstruct the *raison d’être* of lesbian and gay impact litigation: that is, winning high-profile cases with “perfect” plaintiffs is good for all of us. These cases, instead, maintain a homogenized vision of “community” that is *not* necessarily in the best interests of the majority of lesbians or, in fact, anyone.⁷⁴ Moreover, Robson is not afraid to poke at the sacred cow of contemporary mainstream lesbian politics and culture: the (long-term, monogamous, committed) lesbian couple. Just as she yokes together the discourse of the third sex and the doctrine of the third party through the reification (and deification) of the heterosexual matrix, Robson reveals the ideological duress on the diversity of lesbian lives imposed by the apotheosis of the lesbian couple.

In the chapter *The Codification of Lesbian Relationships: Examples from Law and Literature*, Robson works through the mythology of the supposedly utopian lesbian dyad. The “rules” of lesbian relationships that she

72. ROBSON, SAPPHO GOES TO LAW SCHOOL, *supra* note 2, at 186-87.

73. This again raises the specter of the “but for” lesbian. More importantly, these cases illustrate the ease with which factors descriptively approved of by one court’s ruling (i.e., monogamy, financial security, middle class status) become interpreted as prescriptively necessary for future success by other litigants. This is similar to the process by which the *Braschi* findings became codified. See discussion *supra* note 31.

For an illustration of how glowing descriptions of lesbian litigants’ professional achievements, normative relationship and financial security can ground a “successful” judicial opinion, see *Adoption of Tammy*, 619 N.E.2d 315 (Mass. 1993) (permitting Massachusetts’ first “second parent” adoption in a lesbian-headed family). This case provides a stark contrast with the language in *Bottoms v. Bottoms*, 457 S.E.2d 102 (Va. Ct. App. 1995) (denying a lesbian mother custody of her children, in favor of the children’s heterosexual maternal grandmother) suggesting that the litigant’s social and economic class factored into the court’s determination that lesbian sexuality precluded satisfactory parenting.

74. This flattening of difference has been particularly noticeable in the debates over same-sex marriage. While disagreements have been open and heated, some proponents of gay marriage have suggested that opposing the fight for marriage is undemocratic and undermines the segment of the community that passionately supports it. This is usually phrased in the following terms: “If you don’t want to get married, fine. But some people do, and no one should stand in their way, particularly since someone else’s marriage doesn’t harm you.” From this position, opposition to gay marriage cannot be understood as a political stance that can strengthen the place of queer people in society. See, e.g., Thomas Stoddard, *Why Gay People Should Seek the Right to Marry*, in LESBIANS, GAY MEN, AND THE LAW (William B. Rubenstein ed., 1993). For further development of this debate, see SAME-SEX MARRIAGE, PRO AND CON: A READER (Andrew Sullivan ed., 1997).

skewers are so basic to the cultural assumptions (that lesbians must either accept and internalize, or consciously reject) of what it might mean to be a lesbian and to be happy, that reading the chapter is a profoundly defamiliarizing experience. All of these axioms—"lesbian relationships are mimetic of the myths of heterosexual marriage and romance"⁷⁵; "lesbian relationships are apolitical"⁷⁶; "lesbian relationships are sexually privatized"⁷⁷; "lesbian relationships are definitional of lesbianism"⁷⁸—reproduce some of the foundational concepts of post-industrial notions of the family as a "haven in a heartless world."⁷⁹

The romance of lesbian relationships re-enacts a number of possibly contradictory but still co-existing ideas: that women's relationships are their whole lives; that sexuality belongs in the private not the public or commercial sphere; that the best relationships are sexually exclusive; that interpersonal relationships are free from ideological influence; that we all want to live "happily ever after." Robson enumerates the ways in which these axioms in fact police lesbians and limit the possibilities of lesbian relationships even as they make us feel safe and authentic if we ascribe to them. Representations of lesbian lives that do not fit this script seem "unrealistic" and relationships that do not fulfill these rules are "not serious."⁸⁰

Robson's use of lesbian literature for some of her examples is instructive in this regard. It is a rare contemporary Anglo-American lesbian novel that does not focus in some important way on its protagonist's romantic

75. In order for lesbian relationships to seem and feel authentic and worthy of respect, Robson argues, they must embody (and broadcast) the assumed goals of heterosexual marriage: sexual exclusivity, the myth of the "soul mate," and longevity. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 115.

76. Insofar as lesbian relationships are legitimated, they are understood as being about only love, desire, and companionship, not constructed around any politically conscious rejection of heterosexual norms or involvement in radical activism. In fact, Robson shows that any such involvement is explicitly punished when lesbians come into contact with the U.S. legal system. *Id.* at 119.

77. In response to the condemnatory representation of lesbianism as only or definingly sexual, so called "positive" images of lesbianism have been evacuated of lesbian content, since any suggestion of intimacy is by definition sexual. Thus TV's "Ellen" kissing her girlfriend was deemed so sexually explicit that the program required a parental advisory notice. Since all lesbian intimacy is representationally equivalent to explicit sex, it must be cordoned off to a private space. *Id.* at 123.

78. As Robson herself notes, this may not be a "rule" as such, but underlies the other axioms she identifies. That is, the subcategory "lesbian relationships" envelops and is seen to define the category "lesbian." *Id.* at 126.

79. See generally CHRISTOPHER Lasch, *Haven in a Heartless World: The Family Besieged* (1977).

80. Robson narrates a discussion she had with "a lesbian who ha[d] some power to insure the publication of her novel *Another Mother*, *supra* note 1. Her interlocutor insisted that Robson put the main character's girlfriend along with her at the center of the novel, rather than relegating her to the sidelines as a necessary but minor character. "'What you don't understand is that this is a serious lesbian novel, and serious lesbian novels are about relationships.'" Robson's insistence that "They don't have to be," is met with incomprehension by both this woman and the book's reviewers. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 128-29.

relationship(s).⁸¹ This is not universally the case, nor has it always been so, particularly with the explosion of experimental lesbian novels in the 1970s.⁸² But lesbian fiction generally takes for granted the salutary effects of commitment and coupledness. Robson finds a significant irony in this perception of consensus because, as she says, it seems to come “at a point in history at which we have an opportunity to expand our experimentation and multiplicitous attempts to construct lesbianism and our relationships.”⁸³ It is not simply that we lose something when we fail to avail ourselves of potential creativity in representing our relationships in law and literature, Robson suggests, but that we (lesbians or not) cannot afford to ignore these possibilities.⁸⁴

Some of the most intense pleasures of this text come from these kinds of moments, when Robson leans into speculation and invokes imagination rather than policy or litigation. Robson wants her readers to participate in a kind of limitlessness of possibility, and cut themselves loose from the strictures of pre-existing legal constructs. This, for her, is the promise of lesbian legal theory, and of theorizing more generally. The trajectory of theory is more than just a set of intellectual points—it can provide a map to alternative ways not just of thinking but of acting in the world.

This is the utopian promise of Robson’s text. The very power of this vision, though, reveals the limits of trying to push theory beyond the realm of what is conceivable (let alone doable) within pre-existing systems. Despite being so imaginative, Robson’s analysis has trouble being at all prescriptive. Several of the chapters work through crucial questions in lesbian legal theory, but there is a paucity of answers. This does not *have* to represent a deficiency in Robson’s project; theory does not need to be programmatic to be valuable, since the laying out of a new paradigm can itself do important cultural work. Nonetheless, if Robson does not define her project in terms of outlining such a program, it’s clear that someone has to. In order for the future to be different from the present theory must

81. This is true even in genres that do not take as their central concern the lesbian romance. For example, mystery and detective novels emerged at the end of the 1980s as the predominant popular genre of lesbian fiction. In these texts, the development of the protagonist’s love life is as important as (and occasionally more important than) and parallel to the solving of the mystery. This is particularly noticeable in novels that form a series featuring a specific detective. See, e.g., the series produced by Sarah Dreher, J.M. Redman, Sandra Scoppetone, and Kate Calloway. These can be usefully contrasted with the novels of Sara Paretsky and Sue Grafton. Both Paretsky and Grafton create believable, competent, and sympathetic female heroes, for whom romantic relationships are incidental rather than central to understanding the characters.

82. See, e.g., JUNE ARNOLD, *SISTER GIN* (Feminist Press 1989); JOANNA RUSS, *THE FEMALE MAN* (1986); GILLIAN HANSCOMBE, *BETWEEN FRIENDS* (1982); JEANETTE WINTERSON, *ORANGES ARE NOT THE ONLY FRUIT* (1985); SARAH SCHULMAN, *SHIMMER* (1998).

83. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 130.

84. *Id.*

provide for the possibility of praxis. Critique of the *status quo* is worthwhile, but beyond critique Robson too often speaks longingly about what could be instead of formulating a programmatic legal system organized around the principles of lesbian legal theory.

The most striking example of this is in her treatment of lesbian family relationships. The very strictures that Robson wants to move beyond in fact frame the central chapters of the book. After laying out in the opening chapters the predicates for constructing a lesbian legal theory, she devotes four substantive chapters to exploring how lesbian legal theory understands different dimensions of lesbian relations, explicitly in the family context.⁸⁵ Thus, a fundamental critique that lesbian legal theory offers—that a lesbian is worth consideration in law in terms of more than her family relationships to others—is somehow undercut by the very attention that Robson pays to family issues. It is as though she were obeying the maxim of her lesbian publisher in paraphrase: “serious lesbian theory is always about relationships.”⁸⁶ This is not necessarily a criticism; in order to critique the hegemony she has to name it. But it does suggest how very difficult it is to break out of the narrowness of the heterosexual matrix. Even as she affirms that lesbian space exists beyond our places in “the family,” Robson provides few opportunities to see what that space might look like and how we might occupy it. Ironically, Robson’s thorough analysis does more to pose rather than answer the difficult question, “what can reading issues as lesbian do?”

III.

This question is difficult to answer, but the lack of a definitive answer has not kept people from trying to engage in lesbian-centered political activism. Hence, we might move from examining theory to considering sites of explicit activism in order to gain a richer and more multilayered solution to this conundrum. Lesbian activists have expended a great deal of time and energy trying to define and address “lesbian issues.” One of the most recent lesbian activist groups to grapple with this question was the Lesbian Avengers.⁸⁷ The Avengers were a direct action organization founded in

85. Robson deals with a variety of issues in the following chapters of *Sappho Goes to Law School*: Chapter 7, *The Codification of Lesbian Relationships: Examples from Law and Literature*; Chapter 8, *States of Marriage*; Chapter 9, *Resisting the Family: Repositioning Lesbians*; and Chapter 10, *The Third Sex, Third Parties, and Child Custody*. *Id.* at 113-95.

86. See discussion *supra* note 80.

87. The Avengers was founded in June 1992 by a group of lesbian activists who had previously been involved in variety of political movements from tenants’ rights to AIDS. These women handed out thousands of cards at the 1992 Lesbian and Gay Pride March in New York that read “Lesbians! Dykes! Gay Women! We want revenge and we want it now.” The Avengers chose as their logo a cartoon bomb with a lit fuse. *The Lesbian Avengers—Part One*, in SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at 279-80. The group was designed around direct action—that is, political activism that tries to accomplish long-term political goals through immediate, specifically targeted activities ranging from street demonstrations, disruptions, sit-ins, barrages of telephone calls and faxes to chosen targets,

New York in the mid-1990s; the original group generated numerous sister Avengers organizations throughout the country and in Europe (thirty-five by the end of 1994).⁸⁸ The Avengers operated out of a politics very similar in focus to Robson's: any woman was welcome in the group, but the actions the Avengers executed were lesbian-focused and devoted to "lesbian survival and visibility."⁸⁹ Like Robson, the Avengers take for granted a shared heritage of radical lesbian organizing and theorizing.⁹⁰ The Avengers designed actions that were lesbian-focused and lesbian-specific, even as the group acknowledged the multiplicity of lesbian identities and issues available to them. Just as Robson identifies part of the task of a lesbian legal theory as "mak[ing] the world of law an inviting one to Sappho" and "ensur[ing] that the law protects and nourishes Sappho rather than silencing, distorting, and appropriating her talents,"⁹¹ the Avengers were dedicated to improving the lives of lesbians, as participants in direct action and as beneficiaries of whatever positive results that action might entail.

In their "handy guide to homemade revolution," *The Lesbian Avenger Handbook*, the New York Avengers⁹² lay out an action-oriented agenda for

vigils, and other ventures that can be assembled using the tools that participant have ready access to.

88. SALLY R. MUNT, *HEROIC DESIRE: LESBIAN IDENTITY AND CULTURAL SPACE* 109 (1998).

89. *THE LESBIAN AVENGER HANDBOOK: A HANDY GUIDE TO HOMEMADE REVOLUTION 5* (Amy Parker & Ana Simo eds., 2d. ed., 1993); *excerpted in* SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at 290 [hereinafter *AVENGER HANDBOOK*].

90. While the Avengers were certainly inspired by the outrageousness of radical feminism (best exemplified in the 1968 New York Radical Women protest against the Miss America contest) see Carol Hanisch, *Two Letters From the Women's Liberation Movement*, in *THE FEMINIST MEMOIR PROJECT: VOICES FROM WOMEN'S LIBERATION 197-202* (Rachel Blau DuPlessis & Ann Snitow eds., 1998) [hereinafter *FEMINIST MEMOIR PROJECT*] and cultural feminism's commitment to lesbian-focused politics, several of the lessons the Avengers learned from earlier movements were along the lines of what *not* to do. The idea (originally voiced by radicals such as Maxine Wolfe in the late 1970s but hardly heeded) that "we not repeat any strategy that had not worked before" was "heresy in the old/new left which fears change more than it fears stagnancy," but became gospel to the Avengers. SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at xvi; *AVENGER HANDBOOK*, *supra* note 89, at 5 (SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at 298). Similarly, the radical feminist focus on consciousness raising and ideological struggle for its own sake was specifically rejected by the *Avengers Handbook*. *Avenger Handbook*, *supra* note 89, at 21 (SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at 290).

Of course, the Avengers did not only learn from lesbian history. We cannot forget the importance of ACT-UP, WHAM!, and WAC for many Lesbian Avengers: all were organizations that relied on snappy visuals, appealing and direct slogans, and media savvy to communicate complex messages. See generally Louise Bernikow, *The New Activists: Fearless, Funny, Fighting Mad*, *COSMOPOLITAN*, April 1993, at 162. Moreover, involvement in ACT-UP taught previously politically active lesbians "to challenge the government directly" rather than assuming no one would bother to listen. SCHULMAN, *MY AMERICAN HISTORY*, *supra* note 55, at 217.

91. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at xv.

92. *The Avengers Handbook* was written and compiled by members of the New York organization primarily to assist new groups in forming. *The Avengers Handbook* did more than lay out the Avengers' philosophy. It also included templates for press releases, poster ideas for fundraisers, sticker graphics, and tips on compiling media resources, among other

lesbian advancement. One of the goals of the Avengers is "to identify and promote lesbian issues and perspectives while empowering lesbians to become experienced organizers who can participate in political rebellion."⁹³ Deftly negotiating the potential for disagreement over strategy and tactics, the *Handbook* acknowledges that the diversity of lesbian communities means that

[a]s a direct action, activist group, the Lesbian Avengers is not for everybody, nor should it be. It is for women who want to be involved in activism, work in community, be creative, do shit-work, take responsibility on a regular basis, have their minds blown, change their opinions and share organizing skills. Other strategies are also valid but the Avengers' reason for existing is direct action.⁹⁴

This philosophy was evident in the way the group operated. The New York Avengers organized dozens of actions, some with as few as five or six participants, some that attracted tens of thousands.⁹⁵ While we cannot describe all of these, a few events encapsulate the Avengers' ethos. Anatomizing these actions can help us understand the Lesbian Avengers' concept of what qualified as a lesbian issue, and the images, rhetorics, and responses that the group imagined clustered around specifically lesbian direct action.

The Avengers' first action, in September 1992, prefigured much of the future demonstrations the group would organize. The Avengers responded to the furious debate then going on in New York about the "Rainbow Curriculum"⁹⁶ by visiting a public elementary school in Middle Village, Queens, located in the school district that had put up the most opposition to implementing the new curriculum. The date chosen for the action was the first day of school. Flanked by a kilted marching band playing "We Are Family," about fifty Avengers, some wearing t-shirts emblazoned with the slogan "I Was A Lesbian Child," handed school children balloons that entreated kids to "Ask About Lesbian Lives."⁹⁷

useful information. The *Handbook* was designed to help new groups become fully independent and functioning. Many Lesbian Avengers groups began with the help of the handbook (and, we assume, subscribed to the Avengers philosophy outlined therein), and the New York group was often regarded as foundational. Although other Avengers groups took on their own specific issues according to their needs, we are focusing on the New York Avengers because this group clearly articulated its goals in the *Handbook*, documented its activities most extensively, and is the group with which we have the most personal experience.

93. ROBSON, SAPHO GOES TO LAW SCHOOL, *supra* note 2, at xv.

94. *Id.*

95. See generally *Lesbian Avengers Eat Fire Too: A Documentary of the First Year* (videotape by Janet Baus and Su Friedrich, 1993); SCHULMAN, MY AMERICAN HISTORY, *supra* note 55.

96. See generally William Tucker, *Revolt in Queens*, AM. SPECTATOR, Feb. 1993, at 26.

97. See Liz Willen, "We Are Family," *Lesbians Chant*, NEWSDAY, Sept. 10, 1992, at 6; Liz Willen, *Parents Fear Loss of Kids' Innocence*, NEWSDAY, Sept. 20, 1992, at 11. See also

As Sarah Schulman observes, "this action was emblematic of the stance that the Avengers were to take."⁹⁸ First of all, the action was both humorous and confrontational. The atmosphere was almost carnival-like, with the balloons and brass band. However, the Avengers were venturing into hostile territory as open and assertive lesbians. More importantly, they took on one of the enduring negative stereotypes about lesbians: that we "recruit" into our ranks by taking advantage of the young. In the planning stages of the action, this stereotype was never far from the surface, and caused long and heated debate.⁹⁹ However, in another characteristic move, rather than running from negative images of lesbians, the Avengers embraced this myth: Lesbian Avenger t-shirts featured the cartoon bomb on the front, and on the back the slogan "We Recruit."¹⁰⁰

The Avengers were not satisfied simply by staring down homophobia and its representatives. Instead, they sought them out, latched onto them, and followed them around. Outraged by the passage by referendum of Colorado's notorious "Amendment 2" prohibiting civil rights protection based on sexual orientation,¹⁰¹ different combinations of about six to sixteen Avengers tailed Wellington Webb, then Mayor of Denver, through the entirety of his two-day public relations visit to New York. Shouting slogans such as, "Boycott the Hate State!" and, "We're here! We're queer! We're not going skiing."¹⁰² Avengers followed him into his hotel, into office buildings, and throughout the city, hijacking the media coverage Webb's staff had arranged.¹⁰³ In a particularly effective intervention, the Avengers crashed an interview Webb had granted the *Village Voice* in his hotel suite, "making his life difficult for the second consecutive day."¹⁰⁴

Lesbian Avengers Communique #1: December 1992, in AVENGER HANDBOOK, *supra* note 89, at 45 [hereinafter *Communique #1*].

98. SCHULMAN, MY AMERICAN HISTORY, *supra* note 35, at 281.

99. *Id.* at 280-81.

100. The t-shirt was specifically inspired by the comments of Mary Cummins, chair of Queens School Board 24. At a hearing on the Rainbow Curriculum, Cummins screamed at a Lesbian Avenger who attempted to speak, "All you want to do is recruit!" Liz Willen, *More Rainbow Squalls; Meeting Explodes; Cummins Attacks*, NEWSDAY, Dec. 18, 1992, at 42; Liz Willen, *Gays Defeat Roadblock; Secure Permit for Queens March*, NEWSDAY, Apr. 14, 1993, at 6. This was later immortalized by the t-shirt slogan.

101. COLO. CONST. art. H, § 30b (1992), and later overturned in *Romer v. Evans*, 517 U.S. 620, 635 (1996).

102. A large coalition of lesbian and gay activists nationwide were organizing a "Boycott Colorado" movement in the wake of Amendment 2. See Anthony Scaduto, *Inside New York; Agita at Breakfast*, NEWSDAY, Dec. 8, 1992, at 13. For a more complete description of the Colorado boycott, see also James B. Meadow, *Colorado Endures Boycotts, Charges of Bigotry; Meetings, Conventions Canceled Their Plans to Voice Displeasure*, Denv. Rocky Mtn. News, May 21, 1996, at 21A; Chance Conner, *Colorado Takes Heat for Antigay Law*, NEWSDAY, Dec. 27, 1992, at 21.

103. Lesbian Avengers Eat Fire Too, *supra* note 95; *Communique #1*, *supra* note 97.

104. SCHULMAN, MY AMERICAN HISTORY, *supra* note 55, at 283.

Several elements link these and similar actions. First, the Avengers acutely understood the larger issues represented in seemingly small incidents. As Schulman points out, Avenger presence meant that “Webb was unable to discuss anything beyond Proposition 2.” He was also forced to acknowledge that Amendment 2 was part of a nationwide strategy by the right.¹⁰⁵ In the same vein, the Queens schoolyard action connected adults’ embarrassment over the presence of open lesbians in their midst with the devastating effects silence over sexual difference could have on all New Yorkers.

Second, both actions translated issues that had many facets into lesbian-specific moments. For example, Amendment 2 affected lesbians, gay men, bisexuals, and transgendered people in Colorado. But the Avengers’ goal was to dramatize the importance of Amendment 2 to *lesbians*, to construct an action for lesbians, by lesbians, embodying a kind of lesbian aesthetic (whatever that might mean), and to give nonlesbians the opportunity to apply a lesbian issue to their own lives. The Avengers expected their audiences to practice a radical empathy with them by seeing lesbians as the standard and nonlesbians as important variations.¹⁰⁶

Finally, both the visit to the Queens schoolyard and the hounding of Mayor Webb were open to anyone. The Avengers deployed several methods of publicizing upcoming events, ranging from elaborate phone trees to poster pasted on lamp-posts to word of mouth. Any lesbian who wanted to learn organizing skills was encouraged, but the actions themselves required no more of the majority of participants than showing up. As Sally Munt observes in her analysis of Avenger strategies, “[b]asing education in the praxis of an action ensures members feel enabled rather than judged inadequate by intellectual debate; it should forge solidarity between differences.”¹⁰⁷ However, as the Avengers *Handbook* itself made clear,¹⁰⁸ these actions were not designed to appeal to the political or aesthetic tastes of all lesbians. They were unapologetically radical, vocal, outrageous, and lesbian.

In many ways, then, the rationales behind these actions are remarkably analogous to Ruthann Robson’s purpose in attempting to limn a lesbian legal theory. The principles of connecting the micro and the macro issues, recognizing the effect that focusing on and empathizing with lesbians can

105. *Id.*

106. This ethos of empathy was particularly important in the work of the Lesbian Avengers Civil Rights Organizing Project (“LACROP”). First in Lewiston, Maine, and then more extensively in Idaho, Lesbian Avengers organized door-to-door advocacy against anti-gay initiatives that were on the ballot. Rather than avoiding direct mention of lesbians and gay men, as local organizers were inclined to do, Avengers spoke to people in person about the meaning of these initiatives for queer people in the area, and the need to empathize with them as queers. Sara Pursley, *With the Lesbian Avengers in Idaho: Gay Politics in the Heartland*, *THE NATION*, Jan. 23, 1995, at 3.

107. MUNT, *supra* note 88, at 116.

108. See text accompanying *supra* notes 87-94.

have for a larger political or theoretical movement, and understanding that theorizing must take all lesbians into account even as they may not be willing or able to participate in those conceptual processes or actions, powerfully link the abstract legal theory of *Sappho Goes to Law School* and the gritty, goal-oriented street politics of the Lesbian Avengers.

Even more striking are the ways in which Robson's critiques of the dominant discourse of lesbian relationships¹⁰⁹ dovetail with Avengers actions around lesbian romance and love. The Avengers' multilayered approach to heroizing lesbian love without reifying the monogamous couple is most fully exemplified by the "Valentine's Day Action," which took place in Bryant Park on February 14, 1993. Lesbian sculptor Dolores Departo created a statue of Alice B. Toklas to accompany the sculpture of Gertrude Stein that was a fixture in the park. The new sculpture was lovingly unveiled for an audience of about a hundred lesbians and others, followed by readings of erotic poetry by lesbian writers and a dramatic recitation of excerpts from Stein's sexually suggestive *Lifting Belly*. While this event could easily have devolved into a sentimental mimesis of the message of St. Valentine's Day—the superiority of coupledness—it was instead an anarchic celebration of lesbian sexualities that culminated in mass waltzing and simulated sex in the falling snow.¹¹⁰ Gertrude Stein and Alice B. Toklas were invoked as foremothers but not "role models." The Lesbian Avengers both reclaimed the lesbian past and insisted on forging their own lesbian sexual present.¹¹¹

The radical democracy of the Lesbian Avengers was one of its greatest strengths; however it could also be a liability. Since the success of actions depended most heavily on lesbian participation, every action required that at least a few Avengers commit to organizing it and others decided to attend. This dynamic served to highlight some of the differences in attention and interest within the group. Often lesbians' interests divided down lines of race, class, and education.¹¹² As a result, the Avengers had little trouble recognizing a wide variety of issues as "lesbian," but had a more difficult time getting other lesbians to invest politically or emotionally in those issues. Since the majority of Avengers were white, actions proposed by lesbians of color that spoke to specific ethnic communities frequently evinced minimal involvement by white Avengers.¹¹³

109. See text accompanying *supra* notes 75-86.

110. This multiplicity of lesbian relationships was announced in the flyer for the event, which invited lesbians to "Celebrate and venerate: the glorious herstory of conventional romantic love! Politically incorrect domestic bliss! Butch genius! Forgotten femmes! Queer biddies at large! Lesbian odd couples/singles! And especially the union of Gertrude and Alice." AVENGER HANDBOOK, *supra* note 89, at 44.

111. Lesbians Avengers Eat Fire Too, *supra* note 95.

112. See MUNT, *supra* note 88, at 111.

113. A specific example of this was a series of actions that was organized around homophobic D.J.s at the Spanish-language radio station Mega-KQ.97.9 FM. The action was organized by experienced, long-time Avengers who were Latina and who had a great deal of

While this was by no means the sole cause of the New York Avengers' eventual decline, it does speak to the challenges, difficulties and rigors of enacting a lesbian praxis in the context of direct action politics. Just as Ruthann Robson finds herself enclosed by the same paradigm she wants to theorize beyond, the Lesbian Avengers were overly optimistic in imagining that its members could enter into lesbian-centered direct action with an ideological clean slate. Lesbians inevitably bring with them social and political expectations of their place in the world, whether explicit or unspoken.

Too often we judge progressive politics by its failures, building a culture of what Jo Freeman in the late 1960s presciently called "trashing."¹¹⁴ A movement's or a theory's shortcomings become the focus of a critique rather than a way of more accurately understanding its goals and theorizing about how those goals can be achieved in a progressive agenda.¹¹⁵ To this extent, it seems mean-spirited to fault Robson and the Avengers for imagining a world they could not possibly inhabit. So, rather than dwelling on the limits of their theories (which is *not* to say that we should not work to understand, learn from, and if possible not re-enact them) we might ask: what is the power of the lesbian political imagination?

IV.

The projects described in this essay have in common an insistence on the instrumentality of imagination. They demonstrate how crucial it is for lesbians to imagine a world that exceeds the bounds of the cultural space we now inhabit. Imagination is more than just daydreaming: it involves fashioning a set of identities that can move us through time and space more effectively than the selves to which we have access. To put it bluntly, we *need* lesbian heroes and the Lesbian Avengers and Ruthann Robson's lesbian legal theory go some of the way towards fulfilling that need.

As Sally Munt has argued, "[h]eroes offer a metaphor of the self in movement, change and process."¹¹⁶ In her recent study *Heroic Desire: Lesbian Identity and Cultural Space*, Munt devotes a chapter to the lesbian

respect in the group. See *Lesbians Strike Back at Hate Radio*, THE PROGRESSIVE, Jan. 1995, at 17, for an account of these actions. However, follow-up actions had less support among the group; many action organizers felt that white Avengers lost interest in the issue.

114. See ECHOLS, DARING TO BE BAD, *supra* note 11, at 67.

115. An early example of this is Marx and Engels' critique of Feuerbach in *The German Ideology*. See KARL MARX & FREDERICK ENGELS, THE GERMAN IDEOLOGY 60-68 (C.J. Arthur ed., 1970). More recently, this problematic was seen in the conflict between anti-pornography and sex-radical feminists. See, e.g., AGAINST SADOMASOCHISM, *supra* note 12, at 4 (arguing that "lesbian sadomasochism is firmly rooted in patriarchal sexual ideology"). For a description of the feminist conflicts over sexuality erupting into pickets and demonstrations picketing at the 1982 Bamard Sexuality Conference, see Joan Nestle, *A Fem's Feminist History*, in FEMINIST MEMOIR PROJECT, *supra* note 90, at 338.

116. MUNT, *supra* note 88, at 2.

hero and how she can help us both recognize the heroism of living as lesbians in a homophobic world and make a meaningful liberationist theory out of the multiplicity of lesbian identities and lesbian issues. The figure of the lesbian hero provides space for

the expression of an authentic personal history which is understood as experience and is loyal to the lesbian's own life trajectory and specific felt needs. However, it also provides a model of the self as a series of intersecting plates, so the ground of the self shifts and recombines with the intervention and chafing of other selves, which sculpt a new self based on intersubjectivity.¹¹⁷

The hero is not flawless nor perfect. The heroes of many cultures, including contemporary Anglo-American popular culture, are freaks of nature, mutants, neither human nor animal, neither male nor female.¹¹⁸ Heroes occupy mythic narratives, but those narratives are necessarily connected to the world as we experience it. As Spencie Love has argued, myths are stories that are not historically accurate, but reflect our experience so well that they might as well be true.¹¹⁹ Munt translates this into a lesbian context, asking "[d]oes it really matter whether it was a diesel dyke who threw the first punch at a police officer outside the Stonewall Bar, way back in the dawn of Lesbian and Gay Liberation, in 1969? The image is symbolic, and has important function as a *legend*."¹²⁰ It is crucial for lesbians that we see ourselves as playing an essential originary role in the Stonewall Riots, a historical moment most often identified with drag queens and gay men. Moreover, Munt argues, the lesbian in this legend is a diesel dyke: the most visible, most abjected lesbian identity.¹²¹

117. *Id.*

118. Contemporary comic book superheroes are the clearest example of this in English-speaking culture. Older heroes like Spiderman, Batman, or Superman represent the merging of the human (or appearance of the human) with the extra-human: animal, extra-terrestrial, genetically mutated. Newer comics like the X-men series explore our cultural fascination with genetic mutation. For a discussion of the cultural meaning of comic books in the U.S., see M. THOMAS INGE, *COMICS AS CULTURE* (1990). For an analysis of the changeability of culture heroes in Native American creation narratives, see WILLIAM E. COFFER (KOI HOSH), *SPIRITS OF THE SACRED MOUNTAINS: CREATION STORIES OF THE AMERICAN INDIANS* (1978). For accounts of the hero as a mixture of human and animal or male and female in ancient Greek and Roman mythologies, see SIR JAMES GEORGE FRAZER, *THE GOLDEN BOUGH: A STUDY OF MAGIC AND RELIGION* (Penguin Books 1996); and OVID, *METAMORPHOSES* (A.D. Melville trans., Oxford Univ. Press 1987).

119. SPENCIE LOVE, *ONE BLOOD: THE DEATH AND RESURRECTION OF CHARLES R. DREW 6-9* (1996).

120. MUNT, *supra* note 88, at 4.

121. The image of the butch as definitional of visible lesbian identity has undergone serious revision in recent years. The work of femme activists such as Amber Hollibaugh, Susie Bright, and Joan Nestle have expanded our understanding of lesbian heroics and femme commitment to lesbian identity and community. For an extended set of discussions of femme visibilities and politics, see *THE PERSISTENT DESIRE: A FEMME-BUTCH READER* (Joan Nestle ed., 1992).

Similarly, the Lesbian Avengers transform the “recruitment” of lesbians into a positive good. It is hardly coincidental that for the 1993 International Dyke March,¹²² New York Avengers designed superhero costumes, complete with capes and shields. This was a conscious identification: the Avenger philosophy assumes that “we’re the superheroes here.”¹²³

Ordinary lesbians dressed up in capes and shiny leotards are not actually superheroes. Nor, exactly, is the lesbian trying to negotiate her way through a hostile legal system.¹²⁴ The lesbian hero is magical, excessive, powerful, possible in a way that actual lesbians cannot presently be: rather than a Lesbian Avenger she is the archetypal Avenging Lesbian. By analogy, then, the everyday lesbian in *Sappho Goes to Law School* is not the hero, although she may perform elements of the heroic. Lesbian legal theory is *itself* the hero here—it “can provide an intricate statement of identity and struggle, and a fantasy of a whole, complex self.”¹²⁵

But Robson’s heroic lesbian legal theory is not a comforting, gentle, nurturing “superwoman.” Like all legendary heroes, lesbian legal theory is a warrior, and warriors must use violence to win justice.¹²⁶ Violence is a crucial element in the fantasy life of the oppressed¹²⁷: how can we expect the powerful to give up power if we do not take it? Valerie Solanas’s *SCUM Manifesto* (originally published in 1968), a radical (although slightly unhinged) tract for women’s liberation, creates a new kind of culture hero, the Society for Cutting Up Men (“SCUM”), a band of “dominant, secure, self-confident, nasty, violent, selfish, independent, proud, thrill-seeking, freewheeling, arrogant females, who consider themselves fit to rule the universe . . . by systematically fucking up the system, selectively destroying property, and murder.”¹²⁸ We can see Solanas’ legacy in a recent imaginary lesbian hero, Diane DiMassa’s *Hothead Paisan*, a neo-punk, Uzi-wielding dyke who castrates rapists, pulps homophobes, and engages in wild, raucous sex with sexually indeterminate lovers.¹²⁹

Like Solanas and DiMassa, Robson does not shy away from the lesbian hero’s relationship with violence. However, Robson’s understanding

122. Contrast the Avengers’ use of the more aggressive term “dyke” with the more mainstream language of “lesbian” in the larger march.

123. *Lesbian Avengers Eat Fire Too*, *supra* note 95.

124. Although, as Munt argues, to “live as a lesbian today, even after twenty-five years of attempted liberation, is still an heroic act.” MUNT, *supra* note 88, at 2.

125. *Id.* at 25.

126. Let us not forget, after all, that the Lesbian Avengers’ logo is a bomb with the fuse lit, just about to explode. See AVENGER HANDBOOK, *supra* note 89 (displaying this emblem on its cover).

127. See FRANTZ FANON, *BLACK SKIN, WHITE MASKS* 60 (Charles Lam Markman trans., 1967) (theorizing that a racist colonial environment creates a series of neuroses and psychoses in the colonized, including self-hatred and violent rage).

128. VALERIE SOLANAS, *THE SCUM MANIFESTO* 25 (1971).

129. See generally DIANE DIMASSA, *HOTHEAD PAISAN: HOMICIDAL LESBIAN TERRORIST* (1993).

of violence is necessarily more nuanced than the (metaphorically and literally) cartoonish violence that Solanas and DiMassi represent. For Robson, violence is a force that can be used in a variety of ways, just as cartoon superheroes choose to use their powers for good, not evil. Robson wants "to claim violence as an attribute of lesbianism . . . the existence of lesbianism as a violent denial of the law's system of heterosexual and male hegemony."¹³⁰ Robson analogizes violence to fire, which can "be both good and bad, helpful or harmful."¹³¹ As she observes, "fire has long been a trope lesbians have deployed to represent our spiky relationship to the dominant discourse, and the links between women, fire and violence exist in a variety of cultures."¹³²

Fire, and the transformation of fire from destructive to empowering, was also a fundamental imaginary for the Lesbian Avengers. An early Avengers action responded to the murder of Brian Mock and Hattie Mae Cohens, a gay man and a lesbian in Oregon whose joint home was firebombed. After a march through New York's Greenwich Village (a neighborhood with a heavy queer population that is also the site of much homophobic violence), the Avengers constructed a shrine to Mock and Cohens, and consecrated their memories by eating fire.¹³³ This action dramatized the membrane between destruction and survival that lesbianism embodies: as Avengers ate fire, other lesbians chanted "we take the fire within us; we take it and make it our own."¹³⁴ Robson encapsulates the immense psychic and spiritual resonance of this action in her use of fire and violence as allegories for the lesbian hero: "Fire and violence. Extraordinary power and exceptional danger; the archetype of human behavior; the possibility of lesbianism."¹³⁵

Sappho is the ideal figure to embody this possibility. While numerous myths have grown up around her, we know very little about her besides the fact that she lived for a while on the island of Lesbos, most likely around 600 B.C.E., and that she was lauded as a poet during and beyond her lifetime.¹³⁶ Sappho is inextricably linked to the Western vision of lesbian identity, as the early label "sapphist" and contemporary term "lesbian" show.

130. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 16.

131. *Id.*

132. *Id.* at 16-17.

133. *Lesbian Avengers Eat Fire Too*, *supra* note 95. Fire-eating became a signature New York Avengers statement. While it was not deployed at every action, it was incorporated in major actions and adopted by Avengers nationwide. The cover photograph of the *Avengers Handbook* is a picture of two women in Avengers t-shirts eating fire.

134. ROBSON, *SAPPHO GOES TO LAW SCHOOL*, *supra* note 2, at 16-17.

135. *Id.* at 18.

136. For the historical information on Sappho, and an analysis of the legends the figure of Sappho has generated, see generally MARGARET WILLIAMSON, *SAPPHO'S IMMORTAL DAUGHTERS* (1995); JOAN DEJEAN, *FICIONS OF SAPPHO 1546-1937* (1989). For translations of Sappho's poetry, most of which exists in fragments quoted in contemporary critical discussions of her work, see *SAPPHO, SAPPHO: POEMS AND FRAGMENTS* (Josephine Ballmer trans., Bloodeye Books 1992).

Moreover, Sappho—living on an island, running a school for girls—can offer an alternative vision of what it is women need to know. In *The Poetics of Sex*, Jeannette Winterson speaks through the voice of Sappho, articulating what it is she can give her students on Lesbos that they cannot get anywhere else: “I like to be a hero, like to come back to my island full of girls carrying a net of words forbidden them. Poor girls, they are locked outside their words just as the words are locked into meaning.”¹³⁷ Just as violence shatters a whole into many pieces, or fire transforms the raw into the cooked, lesbian legal theory unlocks the meanings of words and gives not just lesbians but everyone the key.

Fire burns but we cannot catch hold of it. Sappho existed but we cannot know her. The hero shows us what our lives can be but we can never catch up with her. Lesbian legal theory unlocks meaning and leaves us standing at the threshold. What we see when we cross to the other side is as yet unknowable; all we know is that we have to walk through.

137. Jeannette Winterson, *The Poetics of Sex*, in *THE PENGUIN BOOK OF LESBIAN SHORT STORIES* 417, 418 (Margaret Reynolds ed., 1993).