

POSNER'S LESBIANS: NEITHER SEXY NOR REASONABLE

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POSNER's lesbians dress badly, are apt to be homely, and rarely engage in sexual activities. Posner does offer some consolation: estimates of these poorly dressed, homely, and undersexed creatures have been greatly exaggerated, and those who do exist tend to be creative.¹ Because of my own work on lesbians in law and legal theory,² I am always interested in legal thought that includes a treatment of lesbianism, however scant the treatment might be.³ It is difficult to sustain

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1. RICHARD A. POSNER, *SEX AND REASON* 91, 99, 106, 123, 294, 304-05 (1992).

2. RUTHANN ROBSON, *LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW* (1992) [hereinafter ROBSON, *LESBIAN (OUT)LAW*]; Ruthann Robson, *Incendiary Categories: Lesbian/Violence/Law*, 2 *TEX. J. WOMEN & L.* (forthcoming 1992) [hereinafter Robson, *Incendiary Categories*]; Ruthann Robson, *Embodiments: The Possibilities of Lesbian Legal Theory in Bodies Problematized by Postmodernisms and Feminisms*, 2 *LAW & SEXUALITY* (forthcoming 1992); Ruthann Robson, *Lesbianism in Anglo-European Legal History*, 5 *WIS. WOMEN'S L.J.* 1 (1990); Ruthann Robson, *Lesbian Jurisprudence?*, 8 *LAW & INEQUALITY* 443 (1990); Ruthann Robson, *Lavender Bruises: Intra-Lesbian Violence, Law & Lesbian Legal Theory*, 20 *GOLDEN GATE U L. REV.* 567 (1990) [hereinafter Robson, *Lavender Bruises*]; Ruthann Robson, *Lifting Belly: Privacy, Sexuality & Lesbianism*, 12 *WOMEN'S RTS. L. REP.* 177 (1990); Ruthann Robson & S.E. Valentine, *Lov(h)ers: Lesbians as Intimate Partners*, 63 *TEMP. L.Q.* 511 (1990).

3. By devoting a commentary to Posner's lesbians, I do not wish to convey the impression that Posner's work does anything other than marginalize lesbians. Lesbianism is mentioned rarely, usually in a sentence or two, and always as a comparison to male homosexuality or heterosexuality. The one chapter on homosexuality is almost exclusively about male homosexuality; lesbianism is mentioned as a deviation from this "norm."

Posner's response to this commentary similarly marginalizes lesbianism, in this instance by conflating it with feminism. Richard A. Posner, *The Radical Feminist Critique of Sex and Reason*, 25 *CONN. L. REV.* 515 (1993) [hereinafter Posner, *Radical*]. Posner's conclusion that the present commentary is written from a "self-identified feminist standpoint," *id.* at 515, is erroneous. The standpoint is explicitly and exclusively lesbian. For a discussion of the distinction between lesbian legal theory and feminist legal theory, see ROBSON, *LESBIAN (OUT)LAW*, *supra* note 2, at 20-23.

Posner's marginalization of lesbianism and conflation of lesbianism and feminism serve his strategy of demarcation: there are (good) feminists and there are (bad) radical feminists, the latter being identified with lesbianism. See *infra* note 24.

interest, however, when confronted with Posner's legal treatment of lesbians. *Sex and Reason* is merely a rehearsal of the most superficial stereotypes of lesbians.

If I were to follow Posner's own methodology, I would assess the stereotypes that masquerade as facts for their accuracy, or at least their non-falsifiability.⁴ This effort would enable me to make conclusions about the viability of Posner's theory of lesbians within his theories of sex. It is tempting to accede to Posner's methodology. Engaging in factual refutation can be satisfying as well as fun. For example, in refuting the "fact" that lesbians dress badly,⁵ I could meticulously footnote articles about the lesbian style wars and fashion features in lesbian/gay magazines like *Out!* I could also analyze the current co-optation of lesbian style into recent issues of *Vogue* and *Mirabella* as well as the historical appropriation of lesbian style in 1920s Parisian fashion. Yet succumbing to such a temptation trivializes the precarious state of lesbians within the legal system, even as it is demonstrated by the law's response to lesbian apparel.

For example, although Posner does not explicate what it means for anyone to be a "bad" dresser,⁶ among those likely to be placed in this category is a woman whose dress does not reach sufficient levels of femininity. The gendered nature of valuations of dress can be dangerous

4. See POSNER, *supra* note 1, at 5-7. Posner equates the rejection of his methodology with a failure to engage with his analysis. Posner, *Radical*, *supra* note 3, at 518. My analysis would be merely derivative, however, if it simply acceded to the assumptions of his analysis. One assumption that I do not share is that it is analytically worthwhile to argue about "facts" such as that lesbians "on average" are bad dressers, without examining the legal and social conditions that construct such an inquiry, determine its terms, and result in certain consequences. Similarly, I decline to argue about many of the suppositions in Posner's response, some of the most offensive of which have not survived the editing process of his response.

5. As expressed by Posner:

Then there is the common observation that homosexual men and heterosexual women are better dressed than either heterosexual men or homosexual women. Since men are sexually more aroused by visual cues than women are, we expect both men who are sexually interested in men, and women who are sexually interested in men, to dress better than either men who are sexually interested in women or women who are sexually interested in women.

POSNER, *supra* note 1, at 106.

6. Yet Posner does pontificate on the symbolism of dress:

There are beautiful and ugly bodies, young and old ones, strong and sickly, sturdy and deformed, but a covering of clothes conceals these differences in our animal endowments, redirecting attention from the animal parts to the divine part, our soul. The concept of clothing as egalitarian and spiritual is difficult to recapture in an age when clothing is used to mark economic differences and to heighten animal charms, yet it lives on in the few schools that still require their pupils to wear uniforms.

Id. at 226.

for lesbians. In some cases, for example, gender nonconformity in dress has been used as evidence not only to prove lesbianism, but also murder.⁷ Posner does not discuss such cases, or any other ways in which lesbian dress might be constructed and valued in the social and legal realms. A book with the stated ambition to present a theory of sexuality that “explains the principal regularities in the practice of sex and in its social, including legal, regulation”⁸ must do better than simply positing lesbians as bad dressers.

Unfortunately, the example of dress is characteristic rather than atypical of Posner’s work. Posner never explores the social and legal meaning of the stereotypes he advances and never examines the assumptions upon which such stereotypes depend. Instead, Posner’s theoretical grounding for sexual stereotypes is a compost of sociobiology and law and economics: bioeconomics. On such a theoretical ground, lesbians stand as neither sexy nor reasonable.

Lesbians are not very sexy because, in terms of sociobiological theory, we do not have to be. Optimal sexual strategies—in pursuit of reproducing one’s genes as many times as possible—result in a gendered divide. For men, promiscuity is the method of maximizing reproductive success. For women, the selection of an appropriate mate will maximize success (“Would he stick around after impregnating her? Had he the willingness and the ability to protect her and her offspring?”), but only if she is monogamous (“a man would be reluctant to extend protection to a woman who was likely to end up carrying other men’s children”).⁹ I leave it to others to dispute Posner’s sociobiological “facts” that women need men for protection and that men are fixated on biological fatherhood. I am here interested in Posner’s “natural” conclusion that men thus possess a strong sex drive, while women possess a weak one, and the consequences of that conclusion for lesbians. According to Posner, couple two women and their weak sex drives will dilute the possibilities for passion: “lesbian couples have intercourse less frequently, on average, than heterosexual couples do, while male couples have intercourse more frequently than heterosexual couples do.”¹⁰

Like many of Posner’s “facts” about lesbians, this one is unsus-

7. See *Perez v. State*, 491 S.W.2d 672 (Tex. Crim. App. 1973). See also Robson, *Lavender Bruises*, *supra* note 2, at 571-74 (discussing the use of dress as evidence against lesbian defendants).

8. POSNER, *supra* note 1, at 2-3.

9. *Id.* at 91.

10. *Id.*

ported by a reference. Elsewhere in *Sex and Reason*, however, Posner does cite the notorious Blumstein and Schwartz study, *American Couples*, the usual authority for the proposition that lesbian couples are less sexual than other couples.¹¹ When Posner does cite the study, he notes that it “surprisingly” found that the “male homosexual cohabitations were more durable than the lesbian ones.”¹² Posner is surprised because he would expect the lesbian couple, with their weaker sex drives, to be more faithful and content than a male couple. He asserts that “since there is less sexual strain in a lesbian union, the prospects for stable lesbian marriages are better.”¹³ Yet Posner does not bother to refute the study’s finding about the relative instability of lesbian couples, even though this finding is inconsistent with his sociobiological theories. This lack of refutation must be contrasted with his effort to refute the study’s finding that “male homosexual cohabitations [are] more stable than heterosexual cohabitations.”¹⁴

Nevertheless, the “fact” that “lesbian couples have intercourse less frequently” than other couples merits some interrogation. I might agree with it; I might even argue that lesbians never have intercourse. As usually understood, “intercourse” as a sexual term connotes penile penetration of a vagina. Posner himself, elsewhere in *Sex and Reason*, specifically limits “intercourse” to such a definition, although admitting of a “lesbian simulacra of intercourse such as the penetration of the vagina by an artificial penis.”¹⁵ Yet, in all my private and public conversations with countless lesbians, in all my listening to lesbians argue about sex and politics, in all my reading of lesbian theory, novels, stories, articles, letters, and poetry, and even in my own sexual encounters, I cannot remember ever having heard even a single lesbian ever describe a sexual relation with a woman as “having intercourse.” Whether lesbians are including a dildo within their particular sexual practices or not, they simply do not use the word “intercourse” to describe sexual relations among themselves.

I am not simply suggesting that Posner is guilty of poor or inconsistent word choice. I am also suggesting that “intercourse”—and even “sex”—may not be as neatly quantifiable a phenomenon as Posner as-

11. PHILIP BLUMSTEIN & PEPPER SCHWARTZ, *AMERICAN COUPLES: MONEY, WORK, SEX* (1983).

12. POSNER, *supra* note 1, at 306 n.41.

13. *Id.* at 306.

14. *Id.*

15. *Id.* at 21. Posner also writes: “[V]aginal intercourse is a close substitute for sodomy, but one available only to heterosexuals.” *Id.* at 291.

sumes. For example, in a critique of the *American Couples* study, lesbian theorist Marilyn Frye ponders the violence done to lesbian sexual experience as lesbians attempted to answer survey questions about how frequently they “had sex”:

My guess is that different individuals figured it out differently. Some might have counted a two- or three-cycle evening as one “time” they “had sex”; some might have counted that as two or three “times.” Some may have counted as “times” only the times both partners had orgasms; some may have counted as “times” those occasions on which at least one had an orgasm; those who do not have orgasms or have them far more rarely than they “have sex” may not have figured orgasms into the calculations; perhaps some counted as a “time” every episode in which both touched the other’s vulva more than fleetingly and not for something like a health examination. For some, to count every reciprocal touch of the vulva would have made them count as “having sex” more than most people with a job or work would dream of having time for; how do we suppose those individuals counted “times”? Is there any good reason why they should *not* count all those as “times”? Does it depend upon how fulfilling it was? Was anybody else counting by occasions of fulfillment?¹⁶

Frye’s posing of the question of fulfillment leads her to examine the methods by which heterosexual couples counted times they “had sex”: “By orgasms? By *whose* orgasms?”¹⁷ Referring to another finding that 85% of long-term married heterosexual couples report it takes them eight minutes to “have sex,” Frye speculates that “in a very large number” of those “times” the woman did not experience orgasm. Frye further speculates that neither the woman’s pleasure nor her orgasms were pertinent in most of the heterosexuals’ counting and reporting of the times they “had sex.”¹⁸

Just as Frye’s ultimate point is not that the *American Couples* study is incorrect, my point is not that Posner’s “fact” that lesbian couples have “less intercourse” is inaccurate, or at least falsifiable.¹⁹

16. Marilyn Frye, *Lesbian “Sex,”* in *LESBIAN PHILOSOPHIES AND CULTURES* 305, 307-08 (Jeffner Allen ed., 1990). This essay originally appeared at 35 *SINISTER WISDOM* 46 (1988) and is reprinted in *MARILYN FRYE, WILLFUL VIRGIN* 109 (1992).

17. Frye, *supra* note 16, at 308.

18. *Id.* at 306.

19. As stated, I do not adopt Posner’s methodology, and thus, do not attempt to falsify Pos-

The problem with Posner's theory is much more profound. Just as Frye concludes that the *American Couples* study employs a simplistic male perspective on what it means to "have sex," I am arguing that Posner's work reflects an overly simplistic and exclusively male perspective on what it means to "have intercourse" or "sex." One consequence of such a perspective is that inaccurate facts might be deduced, but more importantly the perspective determines what facts will be deduced: I am not as worried about wrong answers as about erroneous questions. An inquiry that seeks to quantify lesbian sex and compare it to quantified heterosexual or gay male sex is misguided in its inception. As Marilyn Frye states, it does "violence" to lesbian existence.²⁰

Further, this quantification of lesbian sexuality protrudes into other areas of inquiry. For example, the conclusion that lesbians are not very sexual forestalls any serious inquiry into the existence of laws prohibiting lesbianism or the prosecution of lesbians for sexual transgressions. Posner simply repeats the cliché that, historically, lesbianism was rarely, if ever, criminalized and lesbians were rarely, if ever, prosecuted.²¹ As I have argued elsewhere, there is evidence of both the existence of criminal penalties and the imposition of those penalties, including executions.²² There is also evidence that lesbian sexuality was punished under other rubrics, such as vagrancy or prostitution, within a system of social and legal regulation that punished all expressions of women's sexuality—including lesbianism—as generic deviancy.²³

The linking of all unacceptable sexual expression on the part of women, including lesbians, is not merely an historic link. If one takes seriously Posner's claim that much of the social hostility towards "homosexuals" presently encoded in legal regulation needs to be, at the very least, reconsidered, then the "fact" of lesbians as "not very sexual" may be perceived as a mandate, or at least a reason, to regulate lesbian sexuality. Another sort of deviance is created, justifying legal regulation of sexual lesbians, not for their lesbianism but for their "excess" sexual expression. Such a legal regime imposing limits has the capacity not only to justify punishment, but also to domesticate lesbian

ner's factual conclusions and thereby discredit Posner's theories of lesbians within his theories of sex.

20. Frye, *supra* note 16, at 307. See also Robson, *Incendiary Categories*, *supra* note 2 (discussing the various types of violence done to lesbians).

21. POSNER, *supra* note 1, at 70, 300.

22. ROBSON, *LESBIAN (OUT)LAW*, *supra* note 2, at 29-45; Robson, *Lesbianism in Anglo-European Legal History*, *supra* note 2.

23. ROBSON, *LESBIAN (OUT)LAW*, *supra* note 2, at 29-45.

existence and sexuality, by making us believe that the legalized version of lesbian sexuality is the correct, or only, one.²⁴ As lesbian theorist Joan Nestle reminds us:

It is tempting to some Lesbians to see themselves as the clean sexual deviant, to disassociate themselves from public sexual activity, multiple partners, and intergenerational sex. While this may be the choice for some of us, it is not the reality of many others, not now and not in the past. Lesbian purity, a public image that drapes us in the cloak of monogamous long-term relationships, discrete at-home social gatherings and a basic urge to recreate the family, helps no one. . . . [B]y allowing ourselves to be portrayed as the good deviant, the respectable deviant, we lose more than we will ever gain. We lose the complexity of our own lives²⁵

The complexity of lesbian lives, including lesbian sexualities, is lost in *Sex and Reason*. Our sexualities are obscured by a morass of sociobiological theory that prefers the simplistic to the complex. We emerge as stereotypes crafted with a male perspective, when we emerge at all. It is no wonder that Posner's lesbians are not very sexy.

According to Posner, not only are lesbians not very sexy, we are not very reasonable. Lesbians are not very reasonable because in terms of law and economics theory, we do not act rationally to maximize our benefits and reduce our costs.²⁶ Obviously, given the social and legal

24. For a discussion of the theory of domestication, see ROBSON, LESBIAN (OUT)LAW, *supra* note 2, at 18-19. An example of domestication, as well as the law's potential to demarcate good lesbians and bad ones based upon sexual activities, occurs in the "marriage" debates that occur within the legal arena and within lesbian communities. One persuasive argument is that marriage creates such a divide, defining "married" lesbians as good lesbians, monogamous partners whose sexuality is circumspect, and nonmarried lesbians as bad lesbians, predators whose sexuality is excessive. See *id.* at 125-27.

Although Posner professes to be baffled by such an argument, Posner, *Radical*, *supra* note 3, at 522-23, his own rhetoric demonstrates this demarcation strategy. In the opening paragraphs of his response, Posner opines that, "properly understood," feminism encompasses (good) feminists like John Stuart Mill, but that there exists a "temporary dominance" of (bad) radical feminists, like the present commentators, who are "sectarian," "faintly nasty," and careless reasoners. *Id.* at 515-16. The bad feminists do not agree with Posner; one assumes that good feminists welcome his perspectives. As an intellectual, Posner has the ability to work toward the eradication of the dominance of "radical feminists" through his theorizing. As a member of the federal judiciary, Posner has the ability to enforce his assumptions about lesbian sexuality through his judgments.

25. JOAN NESTLE, A RESTRICTED COUNTRY 123 (1987).

26. Although Posner explicitly states that the law and economics portion of his theory is not dependent on an acceptance of sociobiological theories, POSNER, *supra* note 1, at 110, much of his evaluation of benefits and costs is linked to "facts" supported by sociobiological rationales.

regulation of lesbian and gay male sexual expression, it does not maximize one's benefits and reduce one's costs to pursue "homosexuality." Posner shares his conclusion that "even in a tolerant society the life prospects of a homosexual—not in every case, of course, but on average—are, especially for the male homosexual, grimmer than those of an otherwise identical heterosexual."²⁷ Grimness, like so many other qualitative and subjective judgments, is accorded an almost quantifiable precision. Yet the irrational unhappiness of homosexual choice leads Posner to the conclusion that society should not place legal and social obstacles in the "path of the homosexual," but should "remove those obstacles in order to alleviate gratuitous suffering."²⁸ Posner's seemingly rational response to the irrational choice of homosexuals dissipates, however, in the subsequent passages. Posner's focus here, as in so much of *Sex and Reason*, is exclusively male, and in this case he focuses on male homosexuality. I quote at length, in order to convey Posner's cost-benefit rationalizations:

It becomes a reason for repression only if repression can change homosexual preference, incipient or settled, into heterosexual preference at acceptable cost and thereby make persons who would otherwise become or remain homosexuals happier. There is no reason to think that repression, psychotherapy, behavior modification, or any other technique of law or medicine can do so in a large enough number of cases to warrant the costs

Maybe we should just be patient; science, which has worked so many wonders, may someday, perhaps someday soon, discover a "cure" for homosexuality. I suspect, however, that most persons who are already homosexual will not want to be cured, not because they are oblivious to the advantages of being heterosexual but because being homosexual is part of their identity. . . . But if the hypothetical cure for homosexuality were something that could be administered—costlessly, risklessly, without side effects—before a child had become aware of his homosexual propensity, you can be sure that the child's parents would administer it to him, believing, probably correctly, that he would be better off, not yet having assumed a

27. *Id.* at 307.

28. *Id.* at 308.

homosexual identity.²⁹

As this passage indicates, part of Posner's tolerance is predicated upon an assumption that homosexual preference is innate. Yet as is made clear by the passage's continuation, Posner does not subscribe to a theory of immutable preference for all homosexuals. According to Posner, parents may be able to prevent the "formation of homosexual preference" by "discouraging gender-nonconforming behavior *at its outset* (later is too late)," including not "condoning 'sissyish' behavior in infancy."³⁰ Posner's underlying thesis is that while a person's sexual preference is given, not chosen, the decision to engage in a particular act is a rational choice made in light of pertinent costs and benefits.³¹

Unlike their male counterparts, however, Posner's lesbians rarely possess any innate preference. This lack is explained by sociobiological theories of evolution,³² one empirical study of sexual preference concordance in twins,³³ and a gendered congenital disparity.³⁴ The minimal numbers of women with a preference toward lesbianism maximizes the "search costs" of those lesbians. A comparison of such search costs with the benefits to the searcher grounds the relationship between sex and rationality from the law and economics perspective. As Posner hy-

29. POSNER, *supra* note 1, at 308. A portion of the omitted text is a parenthetical referencing Foucault's well-known conclusion that homosexuality first became linked to identity in the nineteenth century, citing 1 MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION* 43, 101 (Robert Hurley trans., 1978). Another portion of the omitted text attempts an analogy between Jewish identity and "homosexual" identity, accomplishing only an offensive digression:

Jews are conscious of the advantages of converting, changing their name, and otherwise obliterating as far as possible the traces of their ancestry; and many Jews might if asked say that they would rather have been born into another group. But most of them do not convert, because (I conjecture) their being Jewish is part of their identity, so conversion would have a taste of death to it—like replacing one's body with another, albeit handsomer, one.

POSNER, *supra* note 1, at 308.

30. *Id.* at 308-09.

31. *Id.* at 87.

32. Posner states: "Women who shun men cause a reduction in the birth rate, that rate being limited by the number of wombs, not by the number of penises; so in the evolutionary era, when there was no artificial insemination, lesbian preference would have tended to be selected out." *Id.* at 99. "[G]enetic explanation for lesbianism is weak, because in the evolutionary period, which apparently was characterized by a high degree of interpersonal violence, to have additional male protectors may well have done more for a child's chances of survival than to have additional female protectors." *Id.* at 102 (footnote omitted).

33. Posner cites a study that found "no twin concordance among female homosexuals," but admits that "the sample of female twins was very small (four pairs)." *Id.* at 102 n.40.

34. "Maybe the wires accidentally get crossed at birth in some more or less stable percentage of newborns, especially boys because of the greater complexity of the male reproductive system." *Id.* at 101 n.35.

pothesizes (again equating homosexuality with male homosexuality), if “a village of one hundred persons contains a single homosexual,” then “as long as he confines himself to the village, his search costs for a homosexual relationship will be infinite, unless other homosexuals visit the village. He can travel to other villages, but his search costs will still be high since they include the cost of travel.”³⁵ Posner uses the centrality of search costs for sex to explain homosexual urbanization, but presumably urbanization is no remedy for lesbians because Posner concludes that only 1%—and not 10% as is widely accepted—of women are lesbians.³⁶ Lesbians are thus confined to a global village in which search costs approach the infinite, and thus the irrational. Further, the benefits of any successful search are not high because Posner’s lesbians are not very attractive, adding to the irrationality of the entire endeavor.³⁷

Yet lesbians may be the most rational women of all. According to Posner, women who dislike men may turn away from men and become practicing lesbians, “opportunistic” rather than “real” (innate) lesbians.³⁸ Thus, the fear that if “legal and social inhibitors of homosexual activity are relaxed, young men and women will succumb to the blandishments of homosexual sex and a homosexual style of life” is “misplaced” in the case of men but is “a little more plausible with respect to women.”³⁹ This deliberate commitment to lesbianism could—and perhaps, should—be subject to social and legal control.⁴⁰

Posner, however, maintains throughout *Sex and Reason* that lesbianism, as well as other “deviant” sexual practices, should not be subject to rigorous legal and social control. For some conservatives this may be cause for Posner’s censure; for some liberals this may be cause for Posner’s acceptance. My own criteria for assessing any work that considers lesbianism within the context of law is whether such work contributes toward the survival of lesbians, both as individuals and as

35. *Id.* at 126.

36. *Id.* at 128, 294-95.

37. Although “homely women should have relatively better lesbian than heterosexual opportunities because women tend to place less value on good looks in a sexual partner than men do,” *id.* at 123, Posner sets the value of sex with an “attractive” person higher than the value of sex with an unattractive person.

38. *Id.* at 179.

39. *Id.* at 299.

40. Thus, although Posner does not explicitly so conclude, because lesbians are more rational than gay men, the law could criminalize lesbianism as a rational deterrent, while not similarly criminalizing male homosexuality.

identity.⁴¹ Ultimately, Posner's work does neither.

While it may be soothing that Posner eschews the prosecution of lesbianism and proposes sex as a morally indifferent subject, his sociobiological grounding is disturbingly sexist and heterosexist. Posner's lesbians exist as aberrations in an evolutionary scheme that mandates that attractive women serve strong men. The law and economics version of sexuality and law is a laissez-faire one; generally the law should not interfere, either positively or negatively, with lesbianism.⁴² In fact, such interference is not necessary because Posner's lesbians, as neither sexy nor rational, can be expected to price ourselves out of the sexual market, and out of existence.

Fortunately, Posner's lesbians are not the lesbians I have known, read about, or theorized. For an exposition of lesbian life and theory that is not simply formulaic, a reader would do well to consider other texts.⁴³ Perhaps a future commentary in the *Connecticut Law Review* also would do well to consider other texts: ones that advance, challenge,

41. As I have written elsewhere, I am ultimately concerned about how the law impacts upon lesbian survival:

By survival I mean two things. First, the very daily survival that depends upon the necessities of life like food, shelter, work, safety and love. The law denies, or makes very difficult, this type of survival when the rule of law sanctions discrimination in employment and housing, removal of our children, and toleration of violence against us.

Second, I mean our survival as lesbians. The law denies, or makes more difficult, this less tangible sort of survival when it defines our lesbianism for us, when it promises us protection and acceptance if we can argue ourselves into its categories.

ROBSON, *LESBIAN (OUT)LAW*, *supra* note 2, at 11-12. I do not disagree with Posner's assessment of this project as "frankly political." Posner, *Radical*, *supra* note 3, at 522. However, Posner's own project of extending his economic theories to the realm of sexualities is similarly political, though perhaps less frank.

42. Posner posits certain exceptions, notably the law's permissible deprivation of custody to any lesbian mother who believes lesbianism (or male homosexuality) would be a plausible option for her child. POSNER, *supra* note 1, at 419.

43. Some recent volumes include LILLIAN FADERMAN, *ODD GIRLS AND TWILIGHT LOVERS. A HISTORY OF LESBIAN LIFE IN TWENTIETH CENTURY AMERICA* (1991); SARAH LUCIA HOAGLAND, *LESBIAN ETHICS: TOWARD NEW VALUE* (1988); JULIA PENELOPE, *CALL ME LESBIAN: LESBIAN LIVES, LESBIAN THEORY* (1992); MINNIE BRUCE PRATT, *REBELLION: ESSAYS 1980-1991* (1991); JUDITH ROOF, *A LURE OF KNOWLEDGE: LESBIAN SEXUALITY AND THEORY* (1991). Some of the many recent important anthologies include, *DYKESCAPES: SHORT FICTION BY LESBIANS* (Tina Portillo ed., 1991); *INVERSIONS: WRITING BY DYKES, QUEERS AND LESBIANS* (Betsy Warland ed., 1991); *LESBIAN PHILOSOPHIES AND CULTURES* (Jeffner Allen ed., 1990); *LESBIAN TEXTS AND CONTEXTS* (Karla Jay & Joanne Glasgow eds., 1990); *OUR LIVES: LESBIAN PERSONAL WRITINGS* (Frances Rooney ed., 1991); *PIECE OF MY HEART: A LESBIAN OF COLOUR ANTHOLOGY* (Makeda Silvera ed., 1991); *POLITICS OF THE HEART: A LESBIAN PARENTING ANTHOLOGY* (Sandra Pollack & Jeanne Vaughn eds., 1987). There are also many significant, informative, and enjoyable novels and volumes of short fiction available at any feminist, lesbian/gay or independent/progressive bookstore.

and provoke our theorizing rather than one that invites us only to entertain or refute its insipid stereotypes.