

January 2013

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### Recommended Citation

Jane Caputi, Ann Scales Imagines Us: From the Eco-Pornographic Story to the Medusan Counternarrative, 91 Denv. U. L. Rev. 65 (2013).

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**Ann Scales Imagines Us: From the Eco-Pornographic Story to the Medusan  
Counternarrative**

ANN SCALES "IMAGINES US": FROM THE ECO-  
PORNOGRAPHIC STORY TO THE MEDUSAN  
COUNTERNARRATIVE

JANE CAPUTI<sup>†</sup>

Wherever in this city, screens flicker  
with pornography . . .

[W]e also have to walk . . .

No one has imagined us. We want to live like trees,  
sycamores blazing through the sulfuric air,  
dappled with scars, still exuberantly budding . . ."

—Adrienne Rich<sup>1</sup>

ABSTRACT

Drawing upon the MacKinnon/Dworkin understanding of pornography, Ann Scales introduced a feminist application of "ecological pornography" in her 1990 article *Feminists in the Field of Time*. She critiques Mount Rushmore as a "scar" on the sacred, a form of ecological pornography which proselytizes "nature as being enhanced by being mutilated in the image of what white males think nature ought to be and do." Ecological pornography is enacted in popular culture, where images of the Earth, animals, and land are cast into the convention of sexually subordinated, demeaned, used, marginalized, consumed, and violated women (and those used in the place of women). In a subsequent article, Ann Scales invokes the ancient Goddess Medusa as signifying "the unvarnished, undomesticated—and incomplete—counternarrative to patriarchy." She calls for the reclaiming of "Medusa, in wholeness and in solidarity." Wholeness is key to solving the crisis of ecological devastation, founded in the splitting of culture from nature, with elite humans seen as over and above nature and all oppressed deemed "closer to nature." A related hierarchical splitting is that of life over death. Professor Scales's Medusan counternarrative understands time not as linear, but as

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† Jane Caputi, Professor, Center for Women, Gender and Sexuality Studies, Communication & Multimedia Studies, Florida Atlantic University. I thank Ann Scales for twenty-odd wonderful years of most precious friendship and sisterhood. I thank Nancy Ehrenreich for organizing the memorial service for Ann, the subsequent Symposium, and this special issue. I thank Catharine MacKinnon and Andrea Dworkin for their Medusan mentations, inspiration, and leadership, and Shannon Gilreath for helpful discussions of the ideas in this article.

1. ADRIENNE RICH, *Twenty-One Love Poems: No. 1*, in *THE DREAM OF A COMMON LANGUAGE: POEMS 1974–1977*, 25 (1978).

a continuum. In the former, death is feared as termination, leading patriarchal men to seek immortality, in part by conquering nature. Professor Scales opens *Feminists in the Field of Time* by naming the ecologically pornographic story conveyed by Mt. Rushmore. She concludes by imagining us as whole, as “mere specks in the plasma of the universe,” but nonetheless “part of something entire,” something enduring.

#### TABLE OF CONTENTS

INTRODUCTION.....	66
I. ECOLOGICAL PORNOGRAPHY .....	67
II. EVERYDAY ECOLOGICAL PORNOGRAPHY.....	70
III. MARGINALIZED AND FEMINIZED MEN IN ECOLOGICAL PORNOGRAPHIC REPRESENTATIONS .....	72
IV. WHORES BY NATURE/NATURE AS WHORE.....	73
V. ECOLOGICAL PORNOGRAPHY AND RAPE OF LAND AND PEOPLE.....	75
VI. ECOLOGICAL PORNOGRAPHY AND THE PATRIARCHAL PARADIGM .	77
VII. THE MEDUSAN COUNTERNARRATIVE .....	78
<i>A. Scars and the Sacred</i> .....	80
<i>B. Wholeness, Endurance, and Eternity</i> .....	82

#### INTRODUCTION

I am at the point in life where something that just yesterday looked like an everyday—if uncommonly cherished—object, today looks more like something infinitely precious, irreplaceable. One of these is a souvenir coffee mug from Wimminfest '92, a festival that used to be held annually in Albuquerque. It lists the names of the musicians as well as the speakers, the latter including “Jane Caputi and Ann Scales.” Sometime in April 2012, I was looking at the mug and realized that I didn’t want to risk anymore its everyday use. I took it out of my cupboard and placed it on a shelf reserved for sacred things. Now I wonder: Was this a premonition regarding my impending loss?

Ann Scales died on June 24, 2012, some twenty-two years after we first met. Both of us were teaching at the University of New Mexico (UNM) in Albuquerque—she in the Law School, I in American Studies. When the culture theorist and poet Gloria Anzaldúa came to UNM to give a talk, Ann and I both attended, and that is when we first met, immediately connecting, not only as friends of the very first order, but also as sisters/collaborators vowing to “stand shoulder to shoulder” ever afterward.

One of our first collaborations was the Wimminfest talk, which we built upon an illustrated presentation I had been doing called *The Por-*

*nography of Everyday Life*.<sup>2</sup> As a framework for this presentation, we drew upon the work of Andrea Dworkin and Catharine MacKinnon, who wrote an ordinance that defines pornography as the “sexually explicit subordination of women, graphically depicted” as well as “men, children, or transsexuals in the place of women.”<sup>3</sup> They define this subordination as being enacted by women “presented dehumanized as sexual objects, things or commodities” or in “postures of sexual submission.”<sup>4</sup> Such subordination also is enacted when “[W]omen’s body parts . . . are exhibited, such that women are reduced to those parts, . . .” and when women are presented as whores by nature” and in “scenarios of degradation, injury, abasement, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual.”<sup>5</sup> There has been enormous controversy over this definition and the ordinance based upon it.<sup>6</sup> My purpose here is not to go over that ground. Rather, I want to suggest some of the ways that this framework holds great value in revealing how a complex of related injustices subordinates women and those used in the place of women, whom we might think of as *womenkind*,<sup>7</sup> a group including feminized and marginalized human groups, as well as all the other-than-human beings we lump under the term *nature*.

### I. ECOLOGICAL PORNOGRAPHY

This complex speaks directly to my theme here,—“ecological pornography,” which Professor Scales invoked in a 1990 article, as she narrated a particularly heartsickening moment of epiphany:

Last summer, I drove from Boston to Albuquerque. On the way, I traveled through South Dakota to see the Badlands and the Black Hills. The trip made me heartsick. The history of South Dakota is the

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2. I have continued to elaborate this concept in a film and article. See THE PORNOGRAPHY OF EVERYDAY LIFE (Berkeley Media 2006); see also Jane Caputi, *The Pornography of Everyday Life*, in GENDER, RACE, & CLASS IN MEDIA, 311, 311–18 (Gail Dines & Jean M. Humez eds., 3d ed. 2011).

3. See IN HARM’S WAY: THE PORNOGRAPHY CIVIL RIGHTS HEARINGS 428–29 (Catharine A. MacKinnon & Andrea Dworkin eds., 1997) [hereinafter IN HARM’S WAY].

4. *Id.* at 428.

5. *Id.* at 428–29.

6. See, e.g., Lisa Duggan, Nan D. Hunter & Carole S. Vance, *False Promises: Feminist Antipornography Legislation*, in THEORIZING FEMINISMS 311, 311–24 (Elizabeth Hackett & Sally Haslanger eds., 2006).

7. *Womenkind\** includes female humans, other humans (intersexed or transgender) who identify (as Ann Scales might see it, “in wholeness and in solidarity”) with and as women, and reaches out to those who are identified and treated as women against their wills. See Ann Scales, *Disappearing Medusa: The Fate of Feminist Legal Theory?*, 20 HARV. WOMEN’S L.J. 34, 46 (1997). I include the asterisk because I intend *womenkind\** to be a temporary word, one meaningful only for as long as patriarchal cultures continue to ordain hierarchical and oppositional meanings of sex and gender, setting up a class—*men*—formed by deliberate separation from and annihilation (physical and symbolic) of the class, *women*. The meaning of *womenkind\** is informed by background meanings of the word *kind*, including: “a natural grouping without taxonomic connotations . . . a group united by common traits or interests.” WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 1243 (Philip Babcock Gove et al. eds., 1986). *Womenkind\** conjures solidarity around both traits and interests.

history of many Indian peoples, particularly the Great Sioux Nation, who have suffered countless inequities, including treaty violations and massacres such as the one at Wounded Knee. The South Dakota air reeks of it. At the same time, the South Dakota land cries out with its fantastic, ever-diminishing prairies and enchanting mountains. South Dakota is a sacred, and perhaps irretrievably scarred place.

The culmination of my nausea was visiting Mount Rushmore. I could not stop myself from going there. Mount Rushmore leaps like the proverbial sore thumb out of a wondrous part of the Black Hills. The attraction is not the mountain, but its defacement. The image is familiar: enormous carved faces of dead United States Presidents George Washington, Thomas Jefferson, Abraham Lincoln, and Theodore Roosevelt. I was disgusted—and not just because I am profoundly ambivalent about these Presidents' roles in United States history. Mount Rushmore is ecologically pornographic. Just as pornography portrays women as enjoying abuse, Mount Rushmore portrays nature as being enhanced by being mutilated in the image of what white males think nature ought to be and do.<sup>8</sup>

In her footnotes, Professor Scales mentions that some folks are thinking of adding the face of Ronald Reagan to Mt. Rushmore.<sup>9</sup> Never one to pull her punch, she opines, well, why not; “[a]s long as we are defacing,” we might as well add the faces of Edward Teller, the “Father of the H Bomb”;<sup>10</sup> Ivan Boesky, the prototype for the “greed is good”<sup>11</sup> Wall Street criminal;<sup>12</sup> and Richard Speck, one of the most notorious mass sex killers, who, in 1966, invaded a dormitory to torture and murder eight women, six of whom were student nurses and two of whom were registered nurses<sup>13</sup> from South Chicago Community Hospital.<sup>14</sup>

In this brief story, Professor Scales gives a unique and deliberately feminist interpretation of the then nascent concept of ecological pornog-

8. Ann C. Scales, *Feminists in the Field of Time*, 42 FLA. L. REV. 95, 95 (1990) (footnotes omitted).

9. *Id.* at 95 n.2.

10. See *Edward Teller, Ph.D., ACAD. ACHIEVEMENT*, <http://www.achievement.org/autodoc/page/tel0bio-1> (last updated Dec. 11, 2013, 21:04 EST) (crediting Edward Teller as the “Father of the Hydrogen Bomb”).

11. The line, “[G]reed, for lack of a better word, is good,” was uttered in Oliver Stone’s 1987 film *Wall Street* by the character Gordon Gekko. WALL STREET (Twentieth Century Fox Film Corp. 1987).

12. See Myles Meserve, *Meet Ivan Boesky, the Infamous Wall Streeter Who Inspired Gordon Gekko*, BUS. INSIDER (July 26, 2012, 1:53 PM), <http://www.businessinsider.com/meet-ivan-boesky-the-infamous-wall-streeter-who-inspired-gordon-gecko-2012-7>.

13. The names of the women murdered by Speck are: Gloria Jean Davy, Patricia Ann Matusek, Nina Jo Schmale, Pamela Wilkening, Suzanne Farris, Mary Ann Jordan, Merlita Gargullo, and Valentina Pasion. One woman, Corazon Amurao, survived by hiding under a bed. See Edward C. Burks, *Speck Is Guilty and Faces Death: But the Judge Can Soften Jury’s Recommendation with Prison Sentence*, N.Y. TIMES, Apr. 16, 1967, at 1.

14. Scales, *supra* note 8, at 95 n.2.

raphy.<sup>15</sup> She identifies an underlying identity between white patriarchal heroes and villains.<sup>16</sup> She points to the reversal<sup>17</sup> underlying the claim that women enjoy abuse.<sup>18</sup> I interpret Scales' comments to mean that an "attraction" like Mount Rushmore is actually a defacement. Hence, we can draw from her critique to suggest a connection between the defacement of the mountain that resulted in Mt. Rushmore to the defacements that characterize much of what passes for feminine attractiveness (achieved through cosmetic surgeries, hair taming potions, foot-binding fashions, relentless depilations, starvation dieting, skin bleaching, and so on). Professor Scales, most significantly, I believe, suggests in this piece that there is a connection among *gynocide*,<sup>19</sup> *genocide*, and *ecocide* (the destruction of earth and earth beings). In this way, she is expressing an "ecological feminist" perspective. Karen Warren defined ecological feminism as "the position that there are important connections between how one treats women, people of color, and the underclass on one hand and how one treats the nonhuman natural environment on the other."<sup>20</sup> These oppressive, shared paradigms, of both treatment and perception, structure an ecological pornography of everyday life, where the Earth and non-human nature generally are put in "scenarios of degradation, injury, [and] abasement," positioned as objects, commodities, victims, and defined as

15. The first to use the term probably was Jerry Mander in 1972, who intended the term to be synonymous with greenwashing (disinformation that promotes as environmentally friendly that which is actually harmful). For more information, see Bart H. Welling, *Ecoporn: On the Limits of Visualizing the Nonhuman*, in *ECOSEE: IMAGE, RHETORIC, NATURE* 53, 54 (Sidney I. Dobrin & Sean Morey eds., 2009).

16. I am referring here to Professor Scales's commentary suggesting that the notorious criminal, Richard Speck, also be added to the faces on Mount Rushmore. Scales, *supra* note 8, at 95 n.2.

17. Reversal is a concept developed by radical feminist theologian and philosopher Mary Daly. Reversal is the "fundamental mechanism employed in the world-construction and world-maintenance of patriarchy; basic method employed in the making of patriarchal myths, ideologies, institutions, policies, and strategies . . . Examples a: the absurd story of Eve's birth from Adam. . . ." See MARY DALY & JANE CAPUTI, *WEBSTERS' FIRST NEW INTERGALACTIC WICKEDARY OF THE ENGLISH LANGUAGE* 93 (1987).

18. *Id.* at 95.

19. Many theorists and activists use the word *femicide*, defined by Diana E. H. Russell as "the killing of females by males *because* they are female" and as "lethal hate crimes." Diana E. H. Russell, *Introduction to FEMICIDE IN GLOBAL PERSPECTIVE* 3, 3-4 (Diana E. H. Russell & Roberta A. Harnes eds., 2001). Femicides are motivated by misogyny as well as influenced by masculinist notions of manhood and resulting distortions taking form around honor, love, pride, pleasure, envy, religion, culture, and sense of ownership of women. Femicides take many forms, including honor killings, witch-burnings, selective destruction of female fetuses and infants, boyfriends and husbands killing their girlfriends and wives, and stranger sex killings. For a full discussion, see *FEMICIDE: THE POLITICS OF WOMAN KILLING* (Jill Radford & Diana E. H. Russell eds., 1992). Other theorists and activists prefer *gynocide* to convey the full historical weight of these atrocities. Mary Daly first spoke of *gynocide*. MARY DALY, *BEYOND GOD THE FATHER: TOWARD A PHILOSOPHY OF WOMEN'S LIBERATION* 194 (1973). So did Andrea Dworkin. ANDREA DWORKIN, *WOMAN HATING* 95 (1974). Mary Daly and I define *gynocide* as "the fundamental intent of global patriarchy: planned, institutionalized spiritual and bodily destruction of women; the use of deliberate systematic measures (such as killing, bodily or mental injury, unlivable conditions, prevention of births), which are calculated to bring about the destruction of women as a political and cultural force." MARY DALY & JANE CAPUTI, *WEBSTERS' FIRST NEW INTERGALACTIC WICKEDARY OF THE ENGLISH LANGUAGE* 77 (1987).

20. Karen J. Warren, *Introduction to ECOFEMINISM: WOMEN, CULTURE, NATURE* xi, xi (Karen J. Warren ed., 1997).

“whores by nature.”<sup>21</sup> These practices and definitions are enacted and reflected in everyday popular culture, readily apparent when images of the Earth, animals, and land are compared to conventional representations of women (and those used in the place of women).

## II. EVERYDAY ECOLOGICAL PORNOGRAPHY

When internationally famous fashion photographer Juergen Teller used Victoria Beckham in an ad for Marc Jacobs’s designs, he didn’t present her as “a glamorous celebrity,” but as “an abstraction, a living doll;”<sup>22</sup> in other words as a sexualized object. For one photo, she is dumped into a shopping bag; we see only her bare, high-heeled legs flopping spread-eagled over its side. A similar image of the planet appears in an ad for Chaseshop.com. The setting is outer space, where the Earth, now also just another commodity, is stuffed into a brown shopping bag. The tag line urges us to “[s]hop the [w]orld.”<sup>23</sup>

Everyday pornography regularly shows women as victims of all kinds of glamorized and sexualized abuse, up to and including murder, particularly in fashion imagery, and most explicitly in slasher films and all kinds of serial killer cult offerings.<sup>24</sup> Concomitantly, the Earth often is positioned in ways that suggest victimization by a rapist, sex murderer or both.<sup>25</sup> For example, a serial killer trading card<sup>26</sup> pornographically fantasizes a leering Richard Speck holding a knife against the skin of a young, svelte, pretty blonde nurse (none of his actual victims were blonde).<sup>27</sup> She is bound with ropes and dressed only in a fetish-type bra.<sup>28</sup> A similar structure can be found in an ad for InterContinental Hotels: it depicts an orange, whose peel is carved into the familiar shapes of the continents.<sup>29</sup> A knife rests up against its now Earth-identified skin.<sup>30</sup>

Years ago, Ann gave me an ad, which she perceived as perfectly illustrating ecological pornography. The ad for a Nissan Patrol GR appeared in *British Esquire*; it showed a mountain wilderness area and in-

21. IN HARM’S WAY, *supra* note 3, at 428. For a discussion of everyday pornography involving animals, see CAROL J. ADAMS, *THE PORNOGRAPHY OF MEAT* (2003).

22. Cathy Horyn, *When Is a Fashion Ad Not a Fashion Ad?*, N.Y. TIMES, Apr. 10, 2008, at G1.

23. This ad appeared as a full page in the *New York Times*, sometime around 2002.

24. JANE CAPUTI, *THE AGE OF SEX CRIME* iii (1987).

25. This was also the underlying gallows humor in the classic Stanley Kubrick film, *Dr. Strangelove, Or: How I Learned to Stop Worrying and Love the Bomb*, where the aptly-named Air Force General, Jack D. Ripper, sets into motion world nuclear destruction. *DR. STRANGELOVE, OR: HOW I LEARNED TO STOP WORRYING AND LOVE THE BOMB* (Columbia Pictures Corp. 1964).

26. BARI KUMAR & SAMANTHA HARRISON, *Richard Speck*, in *52 FAMOUS MURDERERS* (Mother Prods. 1991).

27. Pictures of all of the victims can be found at the *Murderpedia* website. Juan Ignacio Blanco, *Richard Franklin Speck*, MURDERPEDIA, <http://www.murderpedia.org/male.S/s/speck-richard-photos.htm> (last visited Jan. 18, 2014).

28. See KUMAR & HARRISON, *supra* note 26.

29. This ad is from the early 1990s.

30. *Id.*



corporated a stick-on replica of the SUV, removable by the viewer.<sup>31</sup> The copy read: “Stick it where the hell you like.”<sup>32</sup> This underlying cultural project of masculine sexual subordination of a feminine or feminized landscape, so evident here, is even more explicitly stated in a caustic cartoon by David Levine, depicting Henry Kissinger on top of and *fuck-ing* a prone woman whose head is planet Earth.<sup>33</sup> It was Kissinger who gave us the aphorism: “[Power] is the great aphrodisiac.”<sup>34</sup> The pornographic paradigm (with both personal and planetary implications) of such sexualized and gendered-masculine power is perfectly expressed in that most telling word, *fuck*. The first two meanings of *fuck* as a verb are (1) “to engage in heterosexual intercourse involving the penetration of the penis into the vagina with (a person),” and (2) “to harm irreparably; finish; damage; spoil; botch; (chiefly in *passive*) to put into a difficult or hopeless situation; doom.”<sup>35</sup>

Perhaps nature is understood through feminine metaphors like Mother Earth only because culture has been defined as separate and masculine. Or, perhaps, the Earth and what we generally call Nature in some non-heterosexist and non-dualistic way we can barely imagine, does represent a maternal principle; one that contains female and male and everything else in between or beyond.<sup>36</sup> Certainly, oral traditions around the world have long associated nature with a sacred feminine principle (one that includes the masculine), the maternal *and* sexual source of life, nurturance, death, transformation, and renewal.<sup>37</sup> Some contemporary environmental justice organizations deliberately invoke this association. For example, the group “Hands off Mother Earth,” (H.O.M.E.) describes itself as a “global campaign to defend our one precious home, Planet Earth, against the threat of geoengineering experiments.”<sup>38</sup>

Eco-pornographic representations continue this association, but now are linked in ways that frame anyone defined as “closer to (feminine)

31. See Jane Caputi, *Everyday Pornography*, in GENDER, RACE, AND CLASS IN MEDIA 434, 437 (Gail Dines & Jean M. Humez eds., 2d ed. 2003) (internal quotation marks omitted) (describing the advertisement).

32. *Id.*

33. David Levine, Cartoon, *Screwing the World*, NATION, Feb. 25, 1984, at 215.

34. See Hedrick Smith, *Foreign Policy: Kissinger at Hub*, N.Y. TIMES, Jan. 19, 1971, at 1.

35. THE F-WORD 83, 88 (Jesse Sheidlower ed., 3d ed. 2009).

36. See, e.g., PAULA GUNN ALLEN, GRANDMOTHERS OF THE LIGHT: A MEDICINE WOMAN'S SOURCEBOOK 180–83 (1991); VANDANA SHIVA, STAYING ALIVE: WOMEN, ECOLOGY AND DEVELOPMENT 40 (Zed Books Ltd. 1988). We also might ponder all the variations of “Mother” and “mothering” that do not follow a completely female and/or biological relationship (for example, the “Mothers,” such as Angie Xtravaganza, of the intentional families and their affiliated “Houses” created by gay and transgender Latino and Black New Yorkers, who are the subject of the 1990 film *Paris Is Burning*). PARIS IS BURNING (Miramax Films 1990).

37. For an analysis of this in Pueblo Indian literature, see Patricia Clark Smith & Paula Gunn Allen, *Earthy Relations, Carnal Knowledge: Southwestern American Indian Women Writers and Landscape*, in THE DESERT IS NO LADY 174, 174–96 (Vera Norwood & Janice Monk eds., 1987).

38. ETC Grp., *About*, HANDS OFF MOTHER EARTH, <http://www.handsoffmotherearth.org/about/> (last visited Dec. 20, 2013).

nature” as inferior.<sup>39</sup> For example, in numerous popular representations, young, desirable white women are cast on the floor, signifying their abjection by associating them with the “lower,” earthy sphere. Sometimes women are represented literally *as* the ground (as in an ad for car audio speakers that shows one such figure prone, her skin covered with road maps).<sup>40</sup> Desirable, young, white women appear most often because, in the United States, they still pass as the “universal” woman, as well as the trophy-object elite men, at least publicly, most want to possess. When a dark-skinned woman is subjected to the same identification with nonhuman nature, land, or with animals, there are different inflections.

Alice Walker once made the intersectional<sup>41</sup> observation that although white women are represented as “objects” in pornography, black women are represented as “shit.”<sup>42</sup> This is also true in everyday pornography including everyday ecological pornography. Each year, the men’s magazine *Esquire* names a “sexiest woman alive” and features her in a photo spread. In 2010 and 2012, white women were named and they were shown posed in conventional ways stressing their availability—in lingerie or laid out on a bed.<sup>43</sup> But the Jamaican Rihanna, who was named in 2011, received different treatment. For her photo spread, Rihanna is naked, and, in most of the pictures, she is outside and on the ground.<sup>44</sup> Dirt particles are shown clinging to her skin, and she is covered with sticks and other sorts of debris, even what looks like washed-up seaweed.<sup>45</sup>

### III. MARGINALIZED AND FEMINIZED MEN IN ECOLOGICAL PORNOGRAPHIC REPRESENTATIONS

Occasionally a marginalized and often feminized man plays the role of the land. For example, a series of 2010 Old Spice ads that claim that their product will allow you to “become one of the freshest smelling places on Earth” feature a dark-skinned man, Isaiah Mustafa, who is shown as literally a place on Earth, his skin embedded with features most U.S. consumers would associate with “exotic-vacation” type lands.<sup>46</sup> I

39. Susan Griffin, *Split Culture*, in *HEALING THE WOUNDS: THE PROMISE OF ECOFEMINISM* 7, 7–8, 11–12 (Judith Plant ed., 1989).

40. JENSEN AUDIO, *Advertisement*, FEEL THE RAW NAKED POWER OF THE ROAD (c. 1999).

41. *Intersectionality* involves dealing with the intersections and interactions of multiple oppressions, resulting in, for example, sexism being experienced differently by women of different, and differently privileged, ethnicities. See generally Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 *STAN. L. REV.* 1241 (1991).

42. Alice Walker, *Coming Apart*, in *TAKE BACK THE NIGHT: WOMEN ON PORNOGRAPHY* 95, 103 (Laura Lederer ed., 1980) (internal quotation marks omitted).

43. Ryan D’Agostino, *Minka Kelly: Is the Sexiest Woman Alive*, *ESQUIRE*, Nov. 2010, at 120; Ross McCammon, *The Sexiest Woman Alive 2012*, *ESQUIRE*, Nov. 2012, at 118.

44. Ross McCammon, *The Sexiest Woman Alive Is Rihanna*, *ESQUIRE*, Nov. 2011, at 110.

45. See *id.*

46. Old Spice, *Fiji*, ADS OF THE WORLD, [http://adsoftheworld.com/media/print/old\\_spice\\_fiji](http://adsoftheworld.com/media/print/old_spice_fiji) (last visited Dec. 21, 2013).

cannot recall any such instances of seeing a white man positioned with the earth or land until very recently in an illustration for an article in *Rolling Stone* on “Gangster Bankers, Too Big to Jail.”<sup>47</sup> This article detailed the impotency of U.S. and British justice agencies in stopping the abuses of HBSC, “the storied British colonial banking power” that helped to launder money for Mexican drug mobs, various terrorist organizations, and “countless common tax cheats.”<sup>48</sup> The illustration depicts a miserable, diminutive white man, whose head is planet Earth.<sup>49</sup> He is dressed in a buttoned-up shirt and bow tie (adopted in 2013 as a symbol of the marriage equality movement),<sup>50</sup> bound with ropes, held down, and threatened by a huge, conventionally masculine, big-nosed and phallic, white man who pushes a large gun into his eye.<sup>51</sup> This image still employs the conventional “feminization” of the Earth, but now with homophobic bullying as the metaphor for the gendered and implicitly sexual domination.

#### IV. WHORES BY NATURE/NATURE AS WHORE

One part of the MacKinnon/Dworkin definition of *pornography* that some find particularly problematic is the one that identifies pornography as presenting women (and those used in place of women) as whores by nature. For example, Duggan, Hunter, and Vance find that this term (along with *sex object*) negates the reality of women as autonomous sexual agents.<sup>52</sup> I find this criticism perplexing, for isn’t it, rather, being defined as a whore by nature that does precisely that? The designation *whore by nature* means that women are the very embodiment of *sex* in a context where sex is stigmatized, put squarely on the “wrong” side of that invidious—and foundational—culture/nature divide.<sup>53</sup> That culture/nature divide is one of several related hierarchal dualisms: male/female; top/bottom; mind/body; pure/dirty; light/dark; and spirit/flesh. In this framework, “the man” (with variations based on intersecting factors like race or sexuality) is identified with all the favored sides, paradigmatically *culture/mind*, whereas “the woman” (again with intersecting factors intervening) is *nature/body/sex*, understood to be inherently antithetical to *mind*. Historically, this definition of women as utter carnality, veritably as whores by nature, has supported the religious per-

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47. Matt Taibbi, *Gangster Bankers: Too Big to Jail*, ROLLING STONE, Feb. 28, 2013, at 51.

48. *Id.*

49. *Id.*

50. See Ashley Lee, *Jesse Tyler Ferguson Promotes Marriage Equality in New York with New Bow Tie Collection*, HOLLYWOOD REPORTER (Feb. 28, 2013), <http://www.hollywoodreporter.com/news/jesse-tyler-ferguson-promotes-marriage-425068>.

51. Taibbi, *supra* note 47.

52. Duggan et al., *supra* note 6, at 317.

53. For ecofeminist critiques of the culture/nature divide, see Griffin, *supra* note 39, at 7–17; VAL PLUMWOOD, *FEMINISM AND THE MASTERY OF NATURE* 41–68 (1993).

secution of women as witches.<sup>54</sup> It has criminalized sexually autonomous women, while also absolving rapists who contend that their victim, all along, was asking for it. It allows pimps (of any ilk) to contend that it is women who commodify ourselves, that women are veritably made to be used<sup>55</sup> and used up (rather like the long-suffering female tree in that perennially popular children's story, *The Giving Tree*, by Shel Silverstein).<sup>56</sup>

I bring up that sorry story deliberately; for nature, though often understood through a sexist lens as an all-loving and forgiving "Mother," is simultaneously understood and treated as a "whore." Sometimes, nature is the "Pretty Woman"<sup>57</sup> type whore, the one a wealthy, white man might even marry. We see this, for example, in the touristic promotion of exotic "island therapy,"<sup>58</sup> or some conservationist exhortations to preserve those "[l]ast [g]reat [p]laces."<sup>59</sup> Other times, nature is the bitch type of whore, the one who will trick and ruin you with tsunamis, hurricanes, and so on. But, mostly, nature is treated in consumerist and militaristic cultures as the quintessentially cheap and dirty whore (*dirt*, of course, is a synonym for *earth*)—the one who is always available; the one whom you don't really even have to pay; the one with no power to set limits on what you can do to her; the one who gets so used up she ends up wasted, dumped, and unmourned.<sup>60</sup> Meanwhile, Nature, that paradigmatic whore by na-

54. The Dominican priests who wrote the quintessential, officially papal-approved, witch-hunting and torturing manual, *The Malleus Maleficarum* (1484), avowed that "all [witchcraft] comes from carnal lust, which is in women insatiable." HANS PETER BROEDEL, *THE MALLEUS MALEFICARUM AND THE CONSTRUCTION OF WITCHCRAFT* 26 (2003) (alteration in original) (quoting André Schnyder, *MALLEUS MALEFICARUM, KOMENTAR ZUR WIEDERGABE DES ERSTDRUCKS VON 1487*, at 40 (1993)).

To conclude. All witchcraft comes from carnal lust, which is in women insatiable. See *Proverbs* xxx: There are three things that are never satisfied, yea, a fourth thing which says not, It is enough; that is, the mouth of the womb. Wherefore for the sake of fulfilling their lusts they consort even with devils.

THE *MALLEUS MALEFICARUM* OF HEINRICH KRAMER AND JAMES SPRENGER 47 (Montague Summers trans., Dover Publ'ns 1971) (1928).

55. Andrea Dworkin originally theorizes the meaning of women being defined as whores by nature. She writes: "The metaphysics of male sexual domination is that women are whores. . . . One does not violate something by using it for what it is: neither rape nor prostitution is an abuse of the female because in both the female is fulfilling her natural function. . . ." ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 203 (1989).

56. See SHEL SILVERSTEIN, *THE GIVING TREE* (1964).

57. I am referring to the 1990 film, *Pretty Woman*. In this film, Julia Roberts plays the "pretty woman," who is ultimately able to leave prostitution and marry a rich capitalist. *PRETTY WOMAN* (Touchstone Pictures 1990). The beginning of the movie refers to a decidedly less lucky, and perhaps less "pretty," prostitute, whose murdered body has been found, tossed in a dumpster. *Id.*

58. This is the title of a tourism promoting piece, aimed at American travelers. Adam Pitluk, *Island Therapy*, GOHUB, <http://hub.aa.com/en/aw/therapist-pim-blue-steel-door-dirk-jan-recourt> (last visited Dec. 21, 2013).

59. The rhetoric of saving the "[l]ast [g]reat [p]laces" is employed, for example, by The Nature Conservancy. See, e.g., Jay Harrod, *Arkansas: Saving the Last Great Places Under Earth*, NATURE CONSERVANCY (Apr. 2006), <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/arkansas/explore/saving-the-last-great-places-under-earth.xml>.

60. I am thinking here of one of the opening scenes, referring to a murdered prostitute, whose body is found in a dumpster in the 1991 "comedy" *Pretty Woman*, the fate that the "pretty" prostitute

ture, is expected to demonstrate that proverbial “heart of gold;” willing, despite all maltreatment, to keep accepting and recycling wastes (even the most toxic) and to continue to provide such essential “services” as nourishment (spiritual and physical), shelter, clean air, and water.

In her last, unfortunately unfinished, article, *The Burden of Uncertainty: “Chemical Body Burden” as Sex Discrimination*, Professor Scales takes up the theme of environmental pollution in relation to cancer, but still within a framework critical of pornography, writing at the outset of this piece that “pornography is the glue that holds the worldwide oppression of women together.”<sup>61</sup> Upon first reading this, I countered, saying that I believed it to be religion that performs that function. But, on reflection, there really is no debate when we grasp the underlying *identity* of patriarchal religion and pornography. I consider this in detail elsewhere,<sup>62</sup> but briefly, we can note the ways that both collaborate to support the culture/nature divide. For patriarchal religion, “God the Father” is male, though asexual, disembodied, and heavenly—pure spirit. There is no female divine and women are dogmatically inferior to men due to their alleged tendency to sin and innate carnality (whorishness). For patriarchal pornography, the same structure adheres: Women are “body” and “sex” in a cultural context that understands these as degraded, as matter divorced from and even antagonistic to spirit. Pornography, thought of in this way, is not deviant. Rather, it is the secret twin of patriarchal religion.

#### V. ECOLOGICAL PORNOGRAPHY AND RAPE OF LAND AND PEOPLE

Since Professor Scales first wrote about ecological pornography, other scholars and activists also have elaborated this concept. In a 2009 article, Bart Welling defines “ecopornography” as those practices of visual culture (particularly voyeuristic nature photography) that appear beautiful, but actually obscure abuse.<sup>63</sup> Like Professor Scales, Welling links ecopornography to the “genocidal oppression of native peoples and the colonization of their lands by European settlers . . . .”<sup>64</sup> Andrea Smith, in her book *Conquest: Sexual Violence and American Indian Genocide*, analyzes the ways that “colonial relationships are themselves

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seems to escape by marrying a much older and very rich man. PRETTY WOMAN (Touchstone Pictures 1990).

61. Ann C. Scales, *The Burden of Uncertainty: “Chemical Body Burden” as Sex Discrimination* 7–9, 32 (Nov. 15, 2011) (unpublished manuscript) (on file with the Denver University Law Review).

62. See Jane Caputi, *Re-Creating Patriarchy: Connecting Religion and Pornography*, 1 WAKE FOREST J.L. & POL’Y 293 (2011).

63. Welling, *supra* note 15, at 53–55, 57. For example, many photos of creatures, like the near-extinct Florida panther, suggest that this is a beautiful, free animal in the wild but actually the scene is a posed one with a captive animal. The panther’s habitat has been largely destroyed, building highways through it and cars and trucks regularly kill the remaining panthers. Their visage, then, is put on a license plate with a plea to “save” them. See *id.* at 54, 63.

64. *Id.* at 57.

gendered and sexualized,”<sup>65</sup> including ways that are sexually violent, encompassing rape, murder, and mutilation. These actions, Smith argues, established the “ideology that Native bodies are inherently violable—and by extension, that Native lands are also inherently violable.”<sup>66</sup> This founding atrocity is then mined for humor in the work of a *Playboy* cartoonist,<sup>67</sup> showing two Pilgrim men at the first Thanksgiving, off to the side of the feast and raping Native women, with one remarking, “You know, this might be the start of a great American tradition.”<sup>68</sup>

Smith further analyzes the ways that colonizers represent themselves as masculine and hence “naturally” dominant, while representing those they conquer as naturally inferior—feminine, animalistic, savage, more nature than culture, and marked by filth, “sexual perversity,” and “unbridled sexuality,” in short, as innately “whorish.”<sup>69</sup> Smith writes that “Native peoples are constantly equated with nature, which is in turn equated with unbridled sexuality.”<sup>70</sup> She compares the abuse of prostitutes with colonizers’ abuse of Native Americans, noting that “prostitutes are almost never believed when they say they have been raped because the dominant society considers the bodies of sex workers undeserving of integrity and violable at all times.”<sup>71</sup> Scholar and activist Haunani-Kay Trask also shows such connections, taking the institution of prostitution as paradigmatic of oppression, in that it defines the female “as an object of degraded and victimized sexual value for use and exchange.”<sup>72</sup> Trask finds this analogous to “the utter degradation of our culture (Hawaii) and our people under corporate tourism.”<sup>73</sup> In that system, the tourist is told: “Everything in Hawaii can be yours, that is, you the tourist, the non-native, the visitor. The place, the people, the culture, even our identity as a ‘Native’ people is for sale. Thus, Hawaii, like a lovely woman, is there for the taking.”<sup>74</sup>

In 2010, Professor Scales gave a speech honoring the work of Catharine MacKinnon, whom she unwaveringly and profoundly esteemed. Professor Scales defines the essence of MacKinnon’s work as requiring “solidarity with all people everywhere, particularly those who are femi-

65. ANDREA SMITH, *CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE* 1 (2005).

66. *Id.* at 12.

67. *PLAYBOY*, Nov. 2007, at 130. The name of the cartoonist is written on the cartoon but is illegible.

68. *Id.* (internal quotation marks omitted).

69. SMITH, *supra* note 65, at 10, 129.

70. *Id.* at 129.

71. *Id.* at 10.

72. HAUNANI-KAY TRASK, *FROM A NATIVE DAUGHTER: COLONIALISM AND SOVEREIGNTY IN HAWAI’I* 185 (1993).

73. *Id.* at 185, *quoted in* SMITH, *supra* note 65, at 125.

74. For a classic ad promoting this ideology, see one photographed by Edward Steichen for Matson Cruise Line, which appeared in the November 1, 1941, issue of *Vogue* magazine on the inside back cover. See ONLY SKIN DEEP: CHANGING VISIONS OF THE AMERICAN SELF 373 (Coco Fusco & Brian Wallis eds., 2003).

nized, those who are systematically tortured, traded, abused, diminished, and otherwise treated as the raw materials for eventual consumption as highly-processed things.”<sup>75</sup> And, as the logic of an ecological feminist critique demands, “raw materials” themselves should never be treated as “raw materials;” that is, as objects for instrumental use. The association between “those who are feminized” (beginning with women) and raw materials dates back to the historical origin of patriarchy.

#### VI. ECOLOGICAL PORNOGRAPHY AND THE PATRIARCHAL PARADIGM

Historian Gerda Lerner provides an analysis of the development of patriarchy as a historical system, by analyzing how it developed in one form in the ancient Near East from the third to the first millennia B.C.E.<sup>76</sup> The key element was men’s appropriation and control over women’s sexual and reproductive capacities, which effectively turned women into a form of raw material, into a resource to generate wealth for men.<sup>77</sup> This equation of women with property, Lerner argues, led not only to the institutions of marriage and prostitution, but also to the invention of slavery as well as private ownership of land.<sup>78</sup> Land/Nature, like women, was redefined, turned from creative source into (exploitable) resource, “raw material.”<sup>79</sup>

These foundational constructs inform an Annie Leibovitz cover for the November 2012 issue of *Vanity Fair*.<sup>80</sup> It features Daniel Craig as the latest James Bond, but invokes the 1964 Bond film *Goldfinger* and the Ian Fleming novel on which it was based.<sup>81</sup> In the novel, the villain, the obscenely wealthy Goldfinger, is basically a hoarder. A popular reality-TV show features mostly poor and cluttered women as those abject beings, but in truth, it is the wealthiest men who manifest that obsession. Goldfinger, like Christopher Columbus, is marked by an “obsession with gold”<sup>82</sup> and Goldfinger expresses this mania through both hoarding and sexual domination. He pays women to submit to being painted gold and then to have intercourse with him.<sup>83</sup> This allows Goldfinger to feel that he is “possessing gold . . . marrying it.”<sup>84</sup> Usually, he leaves the women’s backbone skin exposed so that they don’t epidermally suffocate—but not always.<sup>85</sup> Goldfinger retaliates against Bond for having sex with his mistress by having her painted gold all over, killing her.<sup>86</sup> Presumably, he

75. Ann Scales, *The World as She Found It*, 46 TULSA L. REV. 7, 7 (2010).

76. GERDA LERNER, THE CREATION OF PATRIARCHY 8–9 (1986).

77. *Id. passim*.

78. *Id. passim*.

79. *Id. passim*.

80. VANITY FAIR, Nov. 2012, at cover.

81. IAN FLEMING, *GOLDFINGER* (Penguin Books 2002) (1959).

82. LAURENCE BERGREEN, COLUMBUS: THE FOUR VOYAGES 179 (2011).

83. FLEMING, *supra* note 81, at 162.

84. *Id.* (internal quotation marks omitted).

85. *Id.* at 162–63.

86. *Id.*

also rapes her first. The image of this “attractive,” raped and murdered golden woman went on to become the most recognizable icon associated with Bond.<sup>87</sup> The Leibowitz photo shows Craig’s smirking face set against the backdrop of a svelte, curvy, and sectioned golden female body, his head placed literally over her sex.<sup>88</sup> Women, defined as whores by nature, have long been told that we are “sitting on a gold mine.”<sup>89</sup> Men, variously, seek to stake their claim. The message transmitted here is that male sexual gratification—as well as status, wealth, and power—all derive from possession of women/slaves/stuff/land. This gratification is a kind of necrophilic one, as it requires, one way or another, that a being is killed into a thing; something also evident in Mount Rushmore, where the living, “sacred, and perhaps irretrievably scarred”<sup>90</sup> mountain has been defaced and replaced by a monument intended to immortalize not only those particular presidents, but the white, masculinist ego and its conquests.

## VII. THE MEDUSAN COUNTERNARRATIVE

To continue our collaboration, and at her suggestion, Ann and I developed and co-taught two interdisciplinary courses at the University of New Mexico in 1994–95.<sup>91</sup> Ann was a consummate teacher—knowledgeable and always prepared, but equally dazzling when something unexpected came up. She put forth an ideal of teaching in “a matrix of unconditional love,”<sup>92</sup> and in my experience, she realized that goal. During the 2013 Symposium on her work held at the University of Denver, Professor Nancy Ehrenreich told the audience that she once had asked Professor Scales for the secret of her successful teaching. In reply, Professor Scales quipped: “I give a lot of handouts.”<sup>93</sup> How apt, I

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87. To deliberately pay “homage” to this icon, the Bond film, *QUANTUM OF SOLACE* (Eon Productions 2008), included a scene showing another of Bond’s sexual partners drowned in oil, with her dead, oil-covered body laid out on a bed in a manner identical to the *Goldfinger* scene.

88. *VANITY FAIR*, *supra* note 80, at cover.

89. “Sitting on a gold mine” is an idiomatic phrase meaning to be “in control of something very valuable.” Farlex, *Sitting on a Gold Mine*, THE FREE DICTIONARY, <http://idioms.thefreedictionary.com/sitting+on+a+gold+mine> (last visited Dec. 21, 2013). Many women are told that we are literally “sitting on a gold mine,” which is understood to mean that female sexual and reproductive powers have commodity value, whether in virginal status ensuring proper marriage or as something to be prostituted. For example, one blogger states:

Ever since I can remember my grandmother has told me that I am sitting on a gold mine. Even at a young age I knew what she was talking about because she had no problem whatsoever elaborating. I grew up knowing that my “gold mine” was precious and that no matter what, I should take the best care of it at all costs! She told me to wait until I was married to a man who loved me with all of his heart. To save it as a gift.

Raylina Robinson, *Sitting on a Gold Mine*, PARDON MY AUDACITY (June 3, 2013), <http://uniqueluxury.wordpress.com/2013/06/03/sitting-on-a-gold-mine/>.

90. Scales, *supra* note 8, at 95.

91. The first, in the UNM Law School, was “Pornography, Sexual Representation, Culture”; the other, taught through American Studies, was “Sex, Gender and the Law.”

92. Scales, *supra* note 8 at 95, 112.

93. Nancy Ehrenreich, Professor, Sturm Coll. of Law, Opening Remarks at the University of Denver Sturm College of Law Symposium Honoring the Work of Ann Scales: On “Having Fun and Raising Hell” (Mar. 30, 2013).



thought; for Ann so generously doled out the only real currency—love and attention—to her students. She was, moreover, witty, charismatic, and impassioned in the classroom, inspiring many students with a life-long commitment to social justice.

Ann always made it real, feeling herself obliged “to name what is happening.”<sup>94</sup> To show just how sacred that task is, she wrote a piece called *Disappearing Medusa: The Fate of Feminist Legal Theory?*, warning against the ways that legal theory can work to silence and quash the transformative powers of feminism.<sup>95</sup> Medusa, an ancient Serpent Goddess who signifies wisdom and the sacredness and powers of nature,<sup>96</sup> including the death power, is defamed in patriarchal myth as an ugly and terrifying monster, needing to be slain by a hero. The hero’s “death defying” act is then rendered in numerous, often vividly sexualized, depictions. One of the most egregious is *Perseus and Medusa*,<sup>97</sup> a sculpture by Benvenuto Cellini that shows the hero holding the decapitated head and trampling on her fallen body.<sup>98</sup> The popular arts regularly rehash this ritual scarring of the sacred. Medusa is stalked and killed, for example, once again in the popular film, *Clash of the Titans*, in both the 1981<sup>99</sup> and 2010<sup>100</sup> versions. Meanwhile, popular representations, from slasher films through fashion displays and corporate advertising, regularly display similar scenes of decapitation and dismemberment of women as well as the Earth.<sup>101</sup>

Obviously, because this ritual re-enactment (literal and symbolic) of her death and debasement continues to be performed, Medusa is not so easily disposed of. Rather, she still is present, relevant, potent, and threatening. Professor Scales explains exactly what it is about Medusa that makes her so dangerous:

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94. Scales, *supra* note 7, at 46.

95. *Id.* at 37–38.

96. The serpents associated with Medusa appear throughout world sacred narratives as manifestations of “the holiness of nature” and “the principle of life itself,” which necessarily includes death. JEAN CHEVALIER & ALAIN GHEERBRANT, *A DICTIONARY OF SYMBOLS* 845 (John Buchanan-Brown trans., Penguin Books 1996) (1969); *see also* JOSEPH CAMPBELL & BILL MOYERS, *THE POWER OF MYTH* 45 (Betty Sue Flowers ed., 1988).

97. This piece was sculpted from 1545–54. Michael Cole, *Cellini’s Blood*, 81 *ART BULL.* 215, 215, 232 n.10 (1999).

98. The statue stands in the Piazza Signoria in Florence. MARY D. GARRARD, *BRUNELLESCHI’S EGG: NATURE, ART, AND GENDER IN RENAISSANCE ITALY* 286 (2010). Cellini’s commission did not include sculpting Medusa’s body, but he took that on, gloating that he had based the figure upon that of his mistress. *Id.* The sculpture itself, art historian Mary Garrard writes, is a work of “unparalleled gender violence . . . a gory decapitation [in which] . . . Perseus triumphantly displays Medusa’s head and its dripping ligaments, his feet planted on her twisted body. From her neck a gruesome mess of blood and gut erupts . . . Cellini’s debasement of the feminine is complete.” *Id.*

99. *CLASH OF THE TITANS* (Metro-Goldwyn-Mayer 1981).

100. *CLASH OF THE TITANS* (Warner Bros. 2010).

101. I elaborate in Jane Caputi, *The Pornography of Everyday Life*, *supra* note 2, at 311–18, and in my forthcoming film, tentatively titled, *Our Planet/Ourselves: Connecting the War on Womenkind\* to the War on the Earth*.

By turning men to stone, she prevented “the male gaze,” thus denying the possibility that women could be defined by men. . . . Her snakes represent unintimidatable self-possession. She had to be killed because, by her very existence, she could expose the contingency of the Law of the Fathers. . . . Her destruction required female complicity, which was amply rewarded. . . . Medusa symbolizes female *potential*. . . .

In short, Medusa is the unvarnished, undomesticated—and incomplete—counternarrative to patriarchy.<sup>102</sup>

Professor Scales closes this piece by urging us “to reclaim Medusa, in wholeness and in solidarity.”<sup>103</sup> This language directs us to the need to heal the broken and fragmented consciousness that produces the culture/nature divide and related hierarchical dualisms. Finally, a key feature of the assault on Medusa is her *disarticulation* (dismemberment), including her decapitation, which philosopher Hélène Cixous recognizes as a *silencing*.<sup>104</sup> Reclaiming Medusa, Professor Scales loudly took on patriarchy’s “sacred” institutions—not only pornography, but also football, which, she recognized as a sport that “normalize[s] and encourage[s] harms to women, including educational and sexual harms.”<sup>105</sup>

#### *A. Scars and the Sacred*

Ann was not only an ideal person to hash out ideas with, but also a true friend whom I trusted implicitly. She was a most valued advisor in any number of realms—intellectual, political, legal, emotional, and spiritual. She had exceptional wisdom, humor, compassion, strength, and resilience. She also grappled with serious depression and had scars left by sexual harms inflicted on her when she was young, by familial and social homophobia, and by cancer. She lost her only sister as a teenager to that disease and then received her own diagnosis of breast cancer a few years before her death.

In *The Burden of Uncertainty: “Chemical Body Burden” as Sex Discrimination*, Professor Scales sought to establish a legal framework for victims of environmental sexism, resulting in cancer:

My interest here is the burden on the element of causation-in-fact, especially in the context of toxic torts, and with special attention to breast cancer.

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102. Scales, *supra* note 7, at 35 (footnotes omitted).

103. *Id.* at 46.

104. Hélène Cixous, *Castration or Decapitation?*, 7 SIGNS 41, 49 (Annette Kuhn trans., 1981). For elaboration see Susan Griffin, *Split Culture*, in HEALING THE WOUNDS: THE PROMISE OF ECOFEMINISM 7, 7–17 (Judith Plant ed., 1989); VAL PLUMWOOD, FEMINISM AND THE MASTERY OF NATURE 59–60 (1993).

105. Ann Scales, *Student Gladiators and Sexual Assault: A New Analysis of Liability for Injuries Inflicted by College Athletes*, 15 MICH. J. GENDER & L. 205, 208 (2009).

Here, I propose a judicial burden-shifting doctrine on the element of causation in cases of injuries sufficiently correlated with exposure to approximately 80,000 “ordinary chemicals,” those chemicals that pervade our daily lives in multiple ways, from food to plastics to fabrics to cosmetics to household cleaners. Focusing particularly on ordinary “endocrine disrupting chemicals,” I will refer to this problem henceforth as “Ordinary Chemical Exposure,” or “OCE.” Moreover, I will argue that such a burden-shifting doctrine in OCE cases [is] justified by our social commitment to eliminate sex discrimination.<sup>106</sup>

Cancer of the reproductive and sexual organs is specifically a matter of environmental injustice, Professor Scales and others argue.<sup>107</sup>

The title, *The Burden of Uncertainty: “Chemical Body Burden” as Sex Discrimination*, could not help but reflect Ann’s own pain of living with a cancer diagnosis as well as the toll of the various treatments—radiation, pharmaceutical, and surgical—that she bore. It also reflected her awareness, which she discussed in the 1990 article, that her mother had been dosed with what probably was the drug DES during her two pregnancies.<sup>108</sup> Both daughters then ended up with cancer. As I reflect on Ann, her life and her work, I realize newly the profundity of the insight that she received that day from the Black Hills; the awareness that patriarchy, “perhaps irretrievably,” scars the sacred.<sup>109</sup> But Ann, like those “sycamores blazing . . . dappled with scars, still exuberantly budding,” invoked by Adrienne Rich,<sup>110</sup> also continued to bud, to dazzle, to open out and flower, despite her pain. One of her favorite compliments was to tell someone that “the Goddess shines through you.” And, of course, that was eminently true of her.

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106. Scales, *supra* note 61, at 3–4. Scales notes that her proposal owes much to the “Environmental Racism” or “Environmental Justice” movements. *Id.* at 4 n.7 (internal quotation marks omitted).

107. For example, certain ethnic groups (for example, Mexicans, because so many work in pesticide-laden fields) as well as adult women (with variations resulting from their ethnicity and region) have far higher blood levels of what is known as “Ordinary Chemical Exposure.” This is due to a variety of reasons including women’s greater store of body fat, as well the feminine gender role requiring daily interactions with chemical-laden beauty and household cleaning products. For more information on this issue and the concerns of environmental justice, see STACY ALAIMO, *BODILY NATURES: SCIENCE, ENVIRONMENT, AND THE MATERIAL SELF* 116–18 (2010).

108. DES is the common designation for Diethylstilbestrol, which is a synthetic form of estrogen. Doctors prescribed it to pregnant women between 1940 and 1971 to prevent miscarriage, premature labor, and other complications associated with pregnancy. Numerous health problems are known to be associated with the daughters and sons of these women, including greater risk for a variety of cancers, including breast cancer. For more information see the fact sheet on this drug and its relation to cancer on the website for the American Cancer Institute. *Diethylstilbestrol (DES) and Cancer*, NAT’L CANCER INST., <http://www.cancer.gov/cancertopics/factsheet/Risk/DES> (last updated Oct. 5, 2011).

109. Scales, *supra* note 8, at 95.

110. RICH, *supra* note 1, at 25.

*B. Wholeness, Endurance, and Eternity*

Now on to another of her enduring pieces, one that makes me laugh more than cry, an article on how to survive what Ann calls “Legal De-Education.”<sup>111</sup> The article is brimming with choice advice applicable to most any school (or situation) we find ourselves in. Once again, telling that Medusan counternarrative is requisite: “Taking a stand and saying what you really see is a tough assignment. When anyone who is committed to liberation does that, love her for it.”<sup>112</sup> Professor Scales continues, reminding her readers that it is okay to disagree, even with her, even with the ideas in that very article. And, she says, “[i]f we can’t agree, or I’m being obstinate, go ahead and call me a bitch, then give me a hug and let’s make plans to collaborate in the future.”<sup>113</sup>

Reading this, at first I want to say, “damn,” more than anything I wish that I could. But even without her actual, living presence in my life, Ann is and always will be an essential part of me; someone I can’t completely lose, for she indelibly changed me for the better, changed me for good.<sup>114</sup> She continues to inhabit, inform, and transform my consciousness and my spirit and she always will. Re-reading *Feminists in the Field of Time*, Ann’s reflections on this very phenomenon newly caught my attention.

In this piece, Professor Scales explores the legal and spiritual implications of the patriarchal linear, progressive sense of time, enshrined in the Mount Rushmore monument that “portrays puny, genocidal United States history as more important than the timelessness of the Black Hills.”<sup>115</sup> She draws on the philosopher Julia Kristeva, who finds that women’s sense of time is “measured by cycles, gestation, biological rhythms, and cosmic events,” and is one where time is viewed as “an illusion, as not really passing.”<sup>116</sup> Professor Scales continues:

I recognize these approaches in the wise women I know. They acknowledge that they are “in the field of time,” in the sense of living a life bounded by birth and death. However, they see birth and death as mere markers in a much larger cycle. They pursue their daily tasks and make plans in accordance with linear time measurement. But these are practical accommodations, not expressions of allegiance.

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111. Ann C. Scales, *Surviving Legal De-Education: An Outsider’s Guide*, 15 VT. L. REV. 139 (1990).

112. *Id.* at 161.

113. *Id.* at 162.

114. At the memorial for Professor Scales at the University of Denver on September 21, 2012, her former student, Julie Nichols, eulogized her magnificently by invoking the song “For Good” from the musical *Wicked*. Elphaba and Glinda sing to each other in love and enduring commitment about the effect they have had on each other: “I do believe I have been changed for the better / And because I knew you . . . I have been changed for good.” KRISTIN CHENOWETH & IDINA MENZEL, *For Good*, on *WICKED* (Decca Broadway Records 2003).

115. Scales, *supra* note 8, at 96.

116. *Id.* at 109.

These women could not endure life except in their conviction that they—that all of us—are part of an expression of eternity.<sup>117</sup>

Although Professor Scales writes of “life,” she is referring not only to the general phenomenon, but to the experience of life for women in a pornographic culture; that “city” where, as Adrienne Rich puts it, “screens flicker with pornography,” but where “we also have to walk.”<sup>118</sup> Professor Scales finds that it is an awareness of ourselves as part of eternity that makes this endurable.<sup>119</sup> Significantly, she speaks of *eternity*, not *immortality*.<sup>120</sup> The drive for immortality is a distinctively patriarchal and egocentric one.<sup>121</sup> It manifests in that obsessive need to make a mark—a *scar*—on the sacred, mountains, and otherwise.<sup>122</sup> It is expressed mythically in horrific heroism like Gilgamesh’s razing of a primal forest,<sup>123</sup> as well Perseus’ assault on Medusa. It motivates blood sacrifice, resulting in genocide, gynocide, and ecocide.<sup>124</sup> It takes religious form in what ecological feminist philosopher Val Plumwood calls patriarchal “heavenism,”<sup>125</sup> and philosophical and scientific forms in the “live-forever” aspirations of contemporary post-humanists and synthetic biologists.<sup>126</sup> Professor Scales recognizes that this lust for immortality is based in the egotistic denial that all of us are “mere specks in the plasma of the universe.”<sup>127</sup> In the linear, patriarchal sense of time, death is feared as the end of the line; as termination.<sup>128</sup> But, an ecological understanding instead knows death as a continuum of being, what Professor Scales invokes as *eternity*, which is always “here and now.”<sup>129</sup> A Medusan sense of time realizes the impossibility of isolating either a beginning or an ending; it recognizes the cycle of existence as a timeless process of birth,

117. *Id.* at 110.

118. RICH, *supra* note 1, at 25.

119. Scales, *supra* note 8, at 110.

120. *Id.*

121. *See id.* at 96; NANCY JAY, THROUGHOUT YOUR GENERATIONS FOREVER: SACRIFICE, RELIGION, AND PATERNITY 144–45 (1992).

122. Scales, *supra* note 8, at 96.

123. ROBERT POGUE HARRISON, FORESTS: THE SHADOW OF CIVILIZATION 13–18 (1992).

124. I elaborate on gynocide and the quest for immortality in Jane Caputi, *The Gods We Worship: Sexual Murder as Religious Sacrifice*, in GODDESSES AND MONSTERS: WOMEN, MYTH, POWER, AND POPULAR CULTURE 182, 182–206 (2004).

125. For an ecofeminist philosophical analysis of patriarchal fear of death, as well as the articulation of a counternarrative, see Val Plumwood, Visiting Fellow, Fenner Sch. of Env’t & Soc’y, Austl. Nat’l Univ., Canberra, Remarks at Harvard Forum on Religion and Ecology: Tasteless: Towards a Food-based Approach to Death 3 (Oct. 2007), available at <http://valplumwood.files.wordpress.com/2008/03/tasteless.doc>.

126. This is particularly obvious in contemporary post-human discourse, exemplified by such thinkers as Max More and Raymond Kurzweil. I offer an extended discussion of this in Jane Caputi, *Feeding Green Fire*, 5 J. FOR STUDY RELIGION NATURE & CULTURE 410, 430 (2011). For its representation in advocacy for synthetic biology, see GEORGE CHURCH & ED REGIS, REGENESIS: HOW SYNTHETIC BIOLOGY WILL REINVENT NATURE AND OURSELVES 219–220 (2012).

127. Scales, *supra* note 8, at 112.

128. *See* Plumwood, *supra* note 125.

129. CAMPBELL & MOYERS, *supra* note 96, at 67. Much of Ann Scales’s orientation in *Feminists in the Field of Time* seems influenced by the thought of Joseph Campbell on such concepts as eternity and “the field of time.”

growth, decline, death, transformation, and renewal. There is loss, and we greatly mourn those we love, but there is no actual “passing away” in the same ecological sense that there is no “away” for us to safely dispose of toxins like nuclear waste. Everything really *is* everything.<sup>130</sup> Everything is one ecosystem; everything is inescapably interconnected.

While fear motivates the drive for immortality, a sense of happiness and wholeness accompanies immersion into eternity, as beautifully expressed by Willa Cather, describing a young boy’s epiphany in an actual, earthy field—a pumpkin patch:

I kept as still as I could. Nothing happened. I did not expect anything to happen. I was something that lay under the sun and felt it, like the pumpkins, and I did not want to be anything more. I was entirely happy. Perhaps we feel like that when we die and become a part of something entire, whether it is sun and air, or goodness and knowledge. At any rate, that is happiness; to be dissolved into something complete and great. When it comes to one, it comes as naturally as sleep.<sup>131</sup>

Ann Scales opens her profound piece *Feminists in the Field of Time* by naming the heart-sickening, egotistical, and ecologically pornographic story conveyed by Mount Rushmore. She concludes by taking up Adrienne Rich’s challenge to begin the work of “imagin[ing] us,”<sup>132</sup> which I take as those of us, Lesbian and otherwise, who seek a world other than patriarchy. Professor Scales thus imagines us in solidarity and in wholeness, as “mere specks”<sup>133</sup> to be sure, but “part of something entire . . . something complete and great,”<sup>134</sup> something enduring, something scarred, but still, irretrievably, sacred.<sup>135</sup>

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130. LAURYN HILL, *Everything Is Everything*, on THE MISEDUCATION OF LAURYN HILL (Ruffhouse Records 1998).

131. WILLA CATHER, *MY ÁNTONIA* 11–23 (Barnes & Noble Books 1994) (1918).

132. RICH, *supra* note 1, at 25.

133. Scales, *supra* note 8, at 112.

134. CATHER, *supra* note 131, at 12.

135. I am grateful to Kathryn Boundy for sharing her insights with me on how “scars must be made part of the sacred past/present.” E-mail from Kathryn Boundy to author (Aug. 30, 2013, 12:59 PM) (on file with author).