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# The New Chastity and Other Arguments Against Women's Liberation by Midge Decter

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# BOOK REVIEWS

THE NEW CHASTITY AND OTHER ARGUMENTS AGAINST WOMEN'S LIBERATION. By Midge Decter. New York: Coward, McCann & Geoghegan, Inc., 1972. Pp. 181. \$5.95.

This decade has already brought us three landmark decisions by the United States Supreme Court in the area of women's rights, *Reed v. Reed*,<sup>1</sup> *Roe v. Wade*,<sup>2</sup> and *Frontiero v. Richardson*.<sup>3</sup> Moreover, with passage of the Equal Rights Amendment<sup>4</sup> by both houses of Congress and, as of this writing, ratification by 30 states, a book like this one by Midge Decter seems strangely out-of-date.

Decter views the role of women as one largely circumscribed by biology and tradition—"what women have found it given them to be"<sup>5</sup>—and she chooses to view the women's movement of our time as one which threatens the established order in a way not to her liking. As a consequence, the book sets forth Decter's conception of "the movement" in four areas—work, sex, marriage, and maternity and child-care; then, it proceeds to attack Decter's notion of what "the movement" stands for as so many "straw people".

The central thesis of the book is that, contrary to the impression one might get from "a casual glance" at the women's liberation movement, the movement ". . . does not embody a new wave of demand for equal rights [nor] . . . signal a yearning for freedom," but on close examination it "turns out to be about . . . the difficulties women are experiencing with the rights and freedoms they already enjoy."<sup>6</sup> Decter elaborates upon this theme in a fashion disturbing to one trained as a lawyer. Generality follows generality, and is only supported by

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<sup>1</sup> 404 U.S. 71 (1971) (statutory preference for male applicants for appointment as administrator of an estate held unconstitutional).

<sup>2</sup> 410 U.S. 113 (1973) (restrictive abortion laws held unconstitutional as violative of a woman's right to choose whether or not to terminate a pregnancy).

<sup>3</sup> 411 U.S. 677 (1973) (statutes requiring a female member of the armed services to prove the dependency of her husband in order to obtain benefits, even though male members need not prove dependency of their wives, held unconstitutional discrimination; four members of the Court's majority stated further that sex is an "inherently suspect" classification which must be subjected to "strict judicial scrutiny").

<sup>4</sup> H.R. Res. 208, 92d Cong., 2d Sess. (1972).

<sup>5</sup> M. DECTER, *THE NEW CHASTITY AND OTHER ARGUMENTS AGAINST WOMEN'S LIBERATION* 57 (1972) [hereinafter cited as DECTER].

<sup>6</sup> DECTER 43. One wonders how Decter justifies this comment in light of the strong support of most women active in the women's movement for the Equal Rights Amendment.

evidence unworthy of serious consideration or, more commonly, by no evidence whatsoever.<sup>7</sup>

In attempting to discredit the entire women's movement, Decter uses one technique in particular which undermines the thrust of any of the arguments which follow. She invariably tends to lump together all persons who have identified themselves with "Women's Liberation" and to talk about "the movement" as though it stood for one set of unanimously agreed upon ideas, which it clearly does not. At least at one point in the text Decter appears to concede that "the movement" is split into factions with very different ideas on a particular issue; but she then proceeds to state that "the entire movement in the end speaks with a single voice," citing as evidence a quotation from the most radical single work of the many she has just discussed.<sup>8</sup> That sort of analysis strikes this reader as intellectually dishonest, yet it is in precisely this way that Decter tries to hold the entire women's movement for the ideas of a fraction of its adherents.<sup>9</sup>

In addition to thus narrowing her focus to the small core of more radical (and hence more vulnerable) members of the movement, while simultaneously attempting to portray them as representative of the whole, Decter further offends the lawyer-reader by totally ignoring not only the role of law in the traditional treatment of women but also the way in which women striving for equal rights and freedom have increasingly turned to law and the courts—with considerable success—to achieve those ends. A few examples of her most significant failures in this regard should be sufficient.

With respect to marriage, for example, Decter proclaims that it is an institution entered into "for the sake of bringing a much needed

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<sup>7</sup> E.g., "the plain unvarnished fact is that every woman wants to marry." DECTER 124.

<sup>8</sup> DECTER 175-78.

<sup>9</sup> Decter also skews her analysis by largely confining her discussion of "women" to two categories: middle-class married women and middle-class young unmarried women. She shows no interest whatever in the older unmarried woman and her problems, nor does she exhibit any concern for poor women of any age. Perhaps this oversight is the result of her assuming, along with many others, that because the women's movement has been spearheaded by middle-class women, it can be attacked as a middle-class movement which ignores the concerns of non-middle-class women. This is demonstrably false. The women's movement's concern with women's rights to equal job opportunities, equal social security benefits, equal educational opportunities, and tax deductions for home and child-care expenses for working women reveals considerable interest in the problems of low-income women. Similarly, the struggle against restrictive abortion laws, a struggle to which many middle-class women contributed, was not pursued strictly out of self-interest. Middle-class women never felt the harshness of the laws' restrictions to the same extent as poor women, and the unequal treatment of poor women under these laws was objected to from the very beginning of the legal effort mounted against them. See Charles & Alexander, *Abortions for Poor and Non-white Women: A Denial of Equal Protection?*, 23 HASTINGS L.J. 147 (1971).

fixity and security to its female member" and puzzles over the characterization of marriage by "Women's Liberation" as "the very model of exploitation of women by men."<sup>10</sup> But Decter herself goes a long way toward explaining the reasons for such a characterization in an earlier passage of the book in which she notes the "alteration" wrought in a woman's life by marriage: "She is now . . . defined by the fact that she is a wife."<sup>11</sup> At the same time, "[t]his will not at all be true of her husband. . . . A husband is an incidental thing to be. . . . She is his, but he is not her's in anything like the same way."<sup>12</sup> Why this disparity? For one thing,

. . . she takes his name . . . . Moreover, . . . she will be expected to fit her own professional life, if she has one, as well as her social behavior to his needs as the family's major breadwinner. If he must live in a certain place, or in a certain style, or according to a certain routine, so must she.<sup>13</sup>

Most important, according to Decter, she will call upon him for "support and protection," including not only "economic security," but also "care and love."<sup>14</sup>

These elements of marriage are indeed the traditional ones which are a cause of much discontent among contemporary women. Such a formerly unquestioned practice as the wife's taking of the husband's surname is no longer automatically acceded to by all women who marry. Despite unfavorable court decisions, both in the past and more recently,<sup>15</sup> it is becoming increasingly common for a woman to continue to use her maiden name after marriage, and lawsuits to establish the right to do so are continuing.<sup>16</sup>

The question of choice of domicile is another matter in which both law and tradition have kept women from being equal partners in a marriage. Under pressure from women disadvantaged by this legally-sanctioned bias, state legislatures are beginning to reexamine the relevant law and to effect changes in it. California, for example, has recently acted to enable married women to establish residences apart from their husbands, thereby allowing them to qualify for reduced tuition and fee requirements at state colleges and universities.<sup>17</sup>

<sup>10</sup> DECTER 134.

<sup>11</sup> *Id.* at 131-32.

<sup>12</sup> *Id.* at 132.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 133.

<sup>15</sup> See, e.g., *People ex rel. Rago v. Lipsky*, 63 N.E.2d 642 (Ill. 1945).

<sup>16</sup> NEWSWEEK, Aug. 20, 1973, at 49-50. For a discussion of various objections to the automatic substitution of a husband's name for that of his wife, see Hughes, *And Then There Were Two*, 23 HASTINGS L.J. 233 (1971).

<sup>17</sup> San Diego Union, Sept. 9, 1973, at D-10, col. 6.

Shaping of professional lives to meet the needs of husbands is similarly no longer a reflex action on the part of women pursuing important work. Increasingly, partners in marriages in which both husband and wife work accommodate themselves to the demands of each other's professions. It is no longer unusual to hear of couples who move to a new city because the wife, rather than the husband, has been offered a better job there (it recently happened in the case of one woman elected to Congress in 1972 and is an increasingly familiar phenomenon in the academic world) or of husbands and/or wives who commute previously unthinkable distances, sometimes by airplane, in order that both can pursue the best job opportunities open to them.<sup>18</sup>

As for the "support and protection" expected by wives, one need only look at statistics on desertion and other manifestations of unwillingness by husbands to provide either "economic security" or "care and love" to be convinced that marriage is not always the protective umbrella Decter describes it to be. Even if one concedes Decter's argument that women "marry freely and of their own volition" (rather than because society has "in a number of ways trapped them into it"—which she maintains is the position of the women's movement), it does not necessarily follow that women are, for that reason, "concerned with . . . pleasing their husbands."<sup>19</sup> Women who have received little or no training enabling them to work at a well-paid job, who face unequal job opportunities even when they have such training (as Decter herself admits is commonly the case),<sup>20</sup> and who are saddled with the primary responsibility for rearing any children they may have cannot afford to be unconcerned with their husbands' demands, whether they married "freely and of their own volition" or not. A husband who threatens to leave such a woman confronts her with a desperate outcome, especially if he is either unable or unwilling to provide generous support for her and her children when he leaves, because the woman and her children may be forced to go on welfare or otherwise suffer both financially and socially. Unless a woman in this position is fortunate enough to marry a man who can, and in fact does, provide all the "support and protection" as Decter's argument assumes, she may face the unpleasant alternatives of a miserable life either with or without him. This is the sort of "exploitation" to which the women's movement objects; this is the reason for its emphasis upon equal education, equal job opportunity and, when possible,

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<sup>18</sup> See NEWSWEEK, Dec. 10, 1973, at 123-24.

<sup>19</sup> DECTER 135.

<sup>20</sup> *Id.* at 52.

equalization of the burden of child-care. Without these a woman is indeed open to "exploitation" by her husband, and for these reasons most women cannot continue to view marriage as the ultimate goal of their existence.<sup>21</sup>

In discussing childbearing and child-care, Decter asserts:

Once pregnant, . . . there is no carefully prescribed tradition to lend guidance [to a woman] for what she may do. If she is working, she may continue to work, at least for a good while. . . . She is permitted . . . to make as little or as much of the fact of being pregnant as her own private spirit inclines her to.<sup>22</sup>

Here again Decter reveals considerable ignorance of the realities which face American women. Clearly, she is totally unaware of (or has chosen to ignore) the fact that pregnant women who either need or merely wish to continue working are frequently prohibited from doing so.

*Cleveland Board of Education v. LaFleur*, and *Cohen v. Chesterfield County School Board*,<sup>23</sup> two cases challenging such prohibitions, were brought together before the Supreme Court in 1973. Both cases attack school board policies which required pregnant teachers to take unpaid leave for a specified period of time, and both were typical of a host of similar cases which have been brought in other jurisdictions. In striking down the policy of the Cleveland school board, which required an unpaid leave of absence from five months before the expected birth of a child until the beginning of the first school term after the child is three months old, the Sixth Circuit described the policy as "arbitrary and unreasonable in its overbreadth."<sup>24</sup> The Fourth Circuit, sitting *en banc* in *Cohen*, concluded otherwise. The Supreme Court upheld the Sixth Circuit and reversed the Fourth, concluding that "neither the necessity for continuity of instruction nor the state interest in keeping physically unfit teachers out of the classroom can justify the sweeping mandatory leave regulations"<sup>25</sup>

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<sup>21</sup> It is not only deserted women who face an unkind world in the absence of a husband. There is also a high incidence of poverty among households headed by women who have been widowed and divorced. The woman with children to support, even where increased job opportunities exist, is frequently placed below or close to the poverty line because the mere existence of the children may deny her the opportunity of full-time employment. The increased job opportunities available today are still less than totally satisfactory. Jobs open to women tend to be concentrated in the low-paying occupations, in part because women lack the skills for high-paying jobs. Women who have acquired only household skills have few abilities marketable in an industrial economy. D. HAMILTON, *A PRIMER ON THE ECONOMICS OF POVERTY* 68-69 (1968).

<sup>22</sup> DECTER 169.

<sup>23</sup> 414 U.S. 632 (1974).

<sup>24</sup> 465 F.2d 1184, 1188 (1972).

<sup>25</sup> 414 U.S. 632, 647-48 (1974).

adopted by the school boards, and that such regulations violate the Due Process Clause of the Fourteenth Amendment because they employ "unwarranted conclusive presumptions that seriously burden the exercise of protected constitutional liberty," specifically, the right of a female teacher to decide to bear a child.<sup>26</sup>

In still another recent case, Susan R. Struck, an Air Force nurse who faced an automatic discharge from the service when she became pregnant, sought to block her discharge in the courts. Despite her arguments that it is uneconomical and unwise to discharge an officer whose training has been costly to the government merely because she has become pregnant and that at all times during her pregnancy she was ready, willing, and able to perform her duties, Captain Struck lost in both lower courts.<sup>27</sup> She appealed her suit to the Supreme Court, which was able to avoid a decision on the merits by remanding the case for decision in light of subsequent regulations permitting a waiver of compulsory discharge upon application by the pregnant servicewoman.<sup>28</sup>

These lawsuits undoubtedly represent only the tip of the iceberg in this area. If government policies are inhibiting, as these cases demonstrate, the attitudes prevailing in private industry are likely to be even more so. While many employers may be happy to have their competent employees—pregnant or not—work for them whenever possible, the fact remains that there is discrimination against some pregnant women who choose to work throughout their pregnancies. Contrary to Decter's casual assumption, the decision does not always remain with the woman herself.

With respect to sex discrimination in employment in general, Decter's position is that women, far from being excluded from the centers of power in this society, "cannot tolerate the terms imposed upon them by so much of power as they already enjoy"<sup>29</sup> and that "Women's Liberationists" use the notion of "male supremacy" to "excuse" women's retreat from power and responsibility.<sup>30</sup> Instead of proposing to "alter themselves" to fit our present society, they prefer to demand "an alteration of all the present arrangements of society," seeking a new society which "would shape itself to them."<sup>31</sup> These assertions, based upon virtually no supporting authority, are weakened by Decter's own admission that:

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<sup>26</sup> *Id.* at 651.

<sup>27</sup> See 460 F.2d 1372 (9th Cir. 1972).

<sup>28</sup> *Struck v. Secretary of Defense*, 409 U.S. 1071 (1972).

<sup>29</sup> DECTER 52.

<sup>30</sup> *Id.* at 53.

<sup>31</sup> *Id.* at 55.

No doubt women are far from having attained a full parity of opportunity. No doubt they have been discouraged from undertaking the practice of certain professions. No doubt they are in many instances paid less for the work they do than men would be.<sup>32</sup>

She answers this by saying that these are, "however, issues of injustice that lend themselves not to the large-scale analysis of a liberation movement but to the particular and practical application of pressure against the wrongdoers."<sup>33</sup> But, one must ask, the "application of pressure" by whom? Precisely how does an individual who has been "discouraged" from undertaking the practice of medicine or of law or of plumbing, by whatever forces are at work in the society, apply "pressure against the wrongdoers"? Just when does an individual who believes that she is "paid less for the work she does"—as a secretary or as a nurse or as a household worker—"than a man would be" (if men were employed in those jobs), complain about the situation in hopes of improving her condition? The fact is that there is at present no means by which a "particular application of pressure" might be brought which could begin to bring relief to the individuals hurt in these ways. It is perhaps only through a large-scale movement which continually brings such questions of pervasive sex discrimination to the forefront of the public conscience that women can hope to achieve any meaningful change in the traditional patterns of sex-role stereotyping which they face today.

Even in the situation of outright sex discrimination, *e.g.*, where an individual woman employee is aware that she is paid less for identical work performed by male co-workers or where she is passed over for promotion in favor of a less-qualified man, a woman is unlikely to complain unless and until she believes that her complaint will be heard and, even more fundamentally, until there exists a mechanism through which such complaints *can* be heard. Until the passage of Title VII of the Civil Rights Act of 1964,<sup>34</sup> women confronting job discrimination had few means of recourse to government agencies or to the courts; and, even after passage of the act, some time went by before the Equal Employment Opportunity Commission and the courts began to pay serious attention to claims of sex discrimination. The present level of attention given to such claims must be credited in large part to the women's movement, which has not only repeatedly and articulately reminded us that sex discrimination exists and that efforts must be made to eradicate it, but also has assisted innumerable

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<sup>32</sup> *Id.* at 52.

<sup>33</sup> *Id.*

<sup>34</sup> 42 U.S.C. §§ 2000e to e-15 (1964).

women in bringing their individual cases before the appropriate agencies and courts. Decter's contention that

where there is no disagreement as to what constitutes an injustice—as there is none with respect to issues bearing on the rights of women today—the constant vociferous harping on it tends to lead to the suspicion that one is here witnessing the beating of a dead horse.<sup>35</sup>

simply begs the question. There is in fact tremendous disagreement as to whether or not particular infringements upon women's rights to equal job opportunities constitute "an injustice" or not. If there were no such disagreement, the body of case law which has developed under Title VII, the Equal Pay Act,<sup>36</sup> and similar legislation would not exist, nor would the increasing number of challenges brought on constitutional grounds. Decter's logic is questionable in doubting the usefulness of a movement which constantly nags at the conscience of society and confronts it, through the courts and elsewhere, with individual cases of inequality and hardship.<sup>37</sup>

In sum, this reader finds almost nothing worthy of praise in Decter's book. One need not be a "Women's Liberationist", to use Decter's phrase, to acknowledge the value which the current movement for women's equality has already contributed to our lives and promises to add in the future. With the exception of a few more radical members, the movement as a whole does not stand for the ultimate nullification of sexual differences and the triumph of a wholly new order based on the "New Biology", as Decter would have her readers believe.<sup>38</sup> It does stand for the treatment of women as persons entitled to the same opportunities and the same rights to human dignity as men. It stands for the right of all women to choose what sort of person they will be. Is that really asking so very much?

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<sup>35</sup> DECTER 52-53.

<sup>36</sup> Pub. L. No. 88-38, amending 29 U.S.C. § 206 (1963).

<sup>37</sup> For a probing analysis of the failure of the American judiciary to respond readily to contentions of sex discrimination, and the need to continue to confront it with these contentions in hopes of increasing judicial understanding and sensitivity to the serious issues involved, see Johnston & Knapp, *Sex Discrimination by Law: A Study in Judicial Perspective*, 46 N.Y.U.L. Rev. 675 (1971).

<sup>38</sup> DECTER 178-79. It can hardly be questioned that the scientists presently experimenting with the sort of "genetic engineering" and "biological manipulation" which Decter fears are predominantly male. See D. RORVIK & L. SHETTLES, *YOUR BABY'S SEX: NOW YOU CAN CHOOSE* 115-22 (1970).

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