

# THE FREE WOMAN

## AN ESSAY IN LIBERTARIAN CULTURAL ANALYSIS

WILLIAM STODDARD

### I Libertarianism and Feminism

Since the revival of feminism in the 1960s and 1970s, most of its adherents have looked primarily to the state to advance women's interests. In doing so, they have taken positions ranging from a moderate 'liberalism' (in the current American usage) that would simply provide anti-discrimination laws and child care subsidies to a radicalism that would collectivize the entire economy. Few have questioned the idea of a benevolent state, or looked to voluntary dealings between private individuals as a haven for women's freedom. As a result, many libertarians have looked on feminism with the same skepticism that feminists have shown toward libertarianism, even while adhering to the principle of equal rights for men and women as a basic application of the libertarian ethic. Yet, in fact, not only are the two positions natural allies - vitally important in this decade when both liberty and sexual equality are threatened by social and moral conservatism - but libertarianism indeed implies a feminism in some ways more radical than any other.

The tension between the two derives from the idea of *equality*. Political theorists from many diverse viewpoints consider equality and liberty as distinct and sometimes opposed ends. Feminists, in seeking equality - equality of opportunity, of result, of condition - have been ready to consider liberty a lesser aim, one that often has to be set aside. Thus, feminists have proposed such ideas as *comparable worth*, under which a legally defined theory of the value of work would be imposed on employers and would override the entire system of pay rates established by voluntary contract. Going even farther, such developments as feminist opposition to pornography sometimes seem to reflect a hostility to liberty that is not even justified by any obvious appeal to equality.

Yet this is not the only interpretation of equality. Libertarianism has long had an alternative one: *equal liberty*, or in modern terms *equal freedom of choice*. Under this conception, all individuals, male or female, would be equal in possessing a system of rights guaranteeing their control over their own persons and property and the enforcement of whatever contracts they made with each other. Whatever differences emerged among them would then be the result of their own choices and values. In the short run, people's values might still reflect indoctrination with an imposed system of values; but in the long run new values would evolve that would encourage full realization of each person's capabilities. Differences would then reflect choice and not compulsion. In the libertarian view they would be unobjectionable if not positively desirable.

From a feminist viewpoint, equal freedom of choice should at least seem a vast improvement on traditionalist ideas that would confine

women to a legally defined separate and inferior sphere. In fact, it does more. It solves two problems that standard feminist theory has numerous difficulties with: the problem of women's special needs and interests, and the problem of diagnosis of abuses of women.

Some feminists still adhere to the idea that women and men should occupy the same social roles and receive the same treatment, at least on the average. Others believe that women, as a result of their distinct sexual and reproductive functions and the psychological traits that result from them, have special needs that cannot be met by such a concept of equality - that require *equal* legal protection of *different* social roles. In the state-oriented terms of conventional feminism, this dilemma is unresolvable. The first alternative threatens to fit women into male-defined 'masculine' roles unsuited to them; the second to become a rationalization for creating a 'separate but equal' ghetto little different from old-fashioned *kinder, kuche, kirche*. Whichever version is adopted, some women would rebel at having it imposed on them. But in rejecting the whole logic of *imposition* that typifies statist solutions to problems, libertarianism avoids this difficulty. The libertarian approach would allow each woman to choose for herself which model of freedom to follow, and to negotiate on her own terms for the conditions that would meet it. The resulting pluralistic feminism would allow a richer discovery of new possibilities than would any system that imposed one approach on all women. In fact, this diversity is one of the central values of libertarianism and one of the things that would make life in a free society richer than life in any present society.

Feminism also faces the problem of deciding what practices in our present society represent abuses of women. This is in fact just one case of a general problem that confronts all radical movements. In cutting away diseased tissue, a surgeon has to avoid removing healthy and functional organs - but which is which? From a libertarian viewpoint, the basic answer is to look at whether a practice is the result of voluntary choice, or of coercive imposition whether by the state or by private violence tolerated by the state. All of the second group of practices are under suspicion of being abuses, and libertarians would stop their imposition. Some of the first might also be indirect responses to the narrowing of opportunity brought about by coercion - for example, women's eagerness to accept even the harshest marriage contracts of past centuries was a result of the forcible closing of other economic opportunities to women - but libertarianism would not forcibly prevent women from making such choices, or indoctrinate them into the desirability of alternatives; it would rely on the experience of freedom to abolish them.



25 Chapter Chambers, Esterbrooke Street,  
London SW1P 4NN  
www.libertarian.co.uk  
email: admin@libertarian.co.uk

Director: Dr Chris R. Tame  
Executive Editor: Brian Micklethwait  
Webmaster: Dr Sean Gabb

**FOR LIFE, LIBERTY  
AND PROPERTY**

### Libertarian Alliance Pamphlet No. 10

ISSN 0953 7783 ISBN 1 870614 42 9

A joint Libertarian Alliance/British Association  
of Libertarian Feminists publication.

© 1989: Libertarian Alliance; British Association  
of Libertarian Feminists; William Stoddard.

William Stoddard is an American libertarian writer.

The views expressed in this publication are  
those of its author, and not necessarily those of the  
Libertarian Alliance or of the British Association  
of Libertarian Feminists, or of their Committees,  
Advisory Councils or subscribers.

BRITISH ASSOCIATION OF  
**LIBERTARIAN  
FEMINISTS**

Chairwoman: Judy Tame

In short, from a libertarian perspective, the state as such is *the* source of sexual inequities and of the oppression of women.

## II Women and the State

The characteristic activity of the state, according to such social theorists as Max Weber and Norbert Elias, is the monopolization of violence. This monopolization is never completely successful. Individuals always retain at least the power to inflict harm on one another with blows and kicks - whose seriousness any abused wife can testify to. In some countries they are allowed possession of much deadlier means of attack. However, the state characteristically has the power to overwhelm any individual opponent, and modern states control the majority of the means of violence in their societies through their police and armed forces. In addition, through their control of the legal system and of education, modern states are able to produce a widespread belief in the illegitimacy of violence exercised by persons other than agents of the state, while preserving the belief that exactly comparable violence performed by such agents is routine and no matter for concern.

Now, one of the recurring facts about the human species is that violence is a typically male activity. Men are characteristically physically stronger than women and thus better able to inflict damage. They also tend to be more temperamentally inclined to use this capability than women are to use theirs. Women certainly *can* perform violent acts. However, even in contemporary Western societies, where sex roles are unusually fluid and where there is active institutional encouragement of some aspects of sexual equality, the majority of military personnel (and usually *all* combatant personnel), the majority of police, and the majority of violent criminals are men. More specifically, men in their teens or early twenties are the single most violent subgroup of the human species. And this pattern occurs as well in societies throughout history and in surviving preliterate societies.

This observation would suggest that the state, as the organized agency of violence, would be predominantly male. As it happens, this is exactly what we find. There are and have been states controlled by women - through hereditary succession in the past, through elections in the present. Even those states, though, have relied mostly on men to perform acts of violence or force; the heads of most administrative agencies have been men; and their legislatures have been composed predominantly of men.

This does not mean that states have to act *for* men and *against* women. In fact, because states depend for their survival not only on violence but on that violence's being perceived by the general populace as legitimate, they often invest some of their resources in protecting the interests of people who do not control them. But the historical record does show that most states have imposed more restrictions and inflicted more injuries on women than on men. In addition, they have often tolerated men's private violence toward women - in forms from wife-beating to the unpunished rape of 'unchaste' women - with their monopolization of law enforcement leaving those women no way to protect themselves.

The past hundred or so years have seen an increase in women's rights and a more equal treatment for women by the state. But this has been accompanied by less favorable developments. For example, the establishment of medical licensure and the resulting limitation - or, in some countries, outlawing - of midwifery has compelled women to accept medical control of birth. The establishment of social welfare agencies has brought many poor women under state regulation of their lives. In these and other ways, state action has meant expanded paternalism toward women. That such paternalism is no longer exercised by the arbitrary acts of one man or another, but is a consistent policy, is of little benefit to the women subjected to it.

## III The Ethic of Chastity

Through most of history, and to a lesser degree today, state control of women has been centered on their sexual and reproductive functions. In acting this way, the state has given the force of law to a specific moral code: the ethic of chastity.

The ultimate source of this code is the custom of patrilineal inheritance. Men have been the owners of property in most civilized

societies. In general, they have wanted that property to remain in the family after their deaths. This has usually meant that property has been inherited from father to son. But paternity, unlike maternity, can easily be uncertain. To make it certain has required an elaborate system of restrictions, whose goal is this: that during any continuous period of her fertile life, a woman's sexual activity should be performed with one and only one man.

Perhaps many women might prefer this if left to themselves. However, men have not been willing to trust to their natural inclinations. Rather, they have chosen to make sexual exclusivity a matter of rights for men and duties for women - rights and duties enforceable by law or by legally sanctioned private violence. In effect, they have chosen to treat a woman's sexual and reproductive capacities as property, to be owned *not by the woman herself* but by some man. Such property has had tremendous value; its exchange has bound together powerful male lineages through all of history. And through all of history, the crucial virtue for a woman has been to recognize the value of this property and to be a reliable custodian of it. This virtue has been called *chastity*. Women who possess it have been somewhat protected, as valuable assets; women who lack it have been abused.

Chastity has not usually been so important a virtue for men. If a woman has sexual relations with the wrong man, she may call the inheritance of a household's assets into doubt; but if a man has sexual relations with the wrong woman, at worst he will produce bastards who have no *right* to inherit, even if they are sometimes treated generously by their fathers or other kin. Accordingly, a woman's unchastity was punished severely, while a man's was often covertly admired - except by the male kin of the woman he was unchaste with.

This double standard was only one aspect of the system of unequal roles that was marriage. In its traditional form, marriage was a contract by which a man gained possession of certain rights - traditionally called *consortium* - over a woman's sexual and reproductive abilities. Naturally, he had to pay for those rights, normally by assuming some obligation to support and protect the woman. She was therefore not supposed to support herself, though she was expected to work under the man's direction. The man had the right to safeguard her chastity by force, and commonly as an extension of this and of his right to control her labor he also had the right to punish her physically - just as he could punish his children, servants, or domestic animals. Further, since he had purchased her sexual and reproductive capacities, he had the right to use them as he chose - the reasoning behind the traditional rule that a wife could not bring charges of rape against her husband.

At the same time, any other contract under which a man exchanged material benefits for possession of woman's sexual reproductive capacities was classified as prostitution. In general, the law does not enforce such contracts; they are considered contrary to public policy. In other words, a woman could only gain an enforceable claim to support by accepting the contract of marriage, on terms dictated by the state or by customs which the state enforced.

In fact, what the law has traditionally protected in women has not been their freedom of choice, but their chastity. In other words, it has protected a valuable piece of property belonging to some man. The traditional law of rape, for example, specified that a woman's history of unchastity could be introduced as evidence against rape charges. That is, a woman who would have sexual relations with *one* man not her husband supposedly would have sexual relations with any man whatever. The law cared nothing at all about her freedom of choice. In giving up chastity, she ceased to have anything the law cared to protect. The unfaithful wife, the mistress, the prostitute, the self-supporting woman who chose to have a lover, all faced the prospect of the law saying to them, "Come on, we know what you are."

This central assumption was surrounded by other legal restrictions and popular prejudices. The stereotype of the divorced woman as promiscuous was one. The treatment of illegitimacy as shameful for the illegitimate child was another. When formal adoption became widespread, the common belief that children should not be

told that they were adopted was due at least partly to the recognition that many adopted children were illegitimate.

The effect of this legal policy was to coerce women into chastity, if not through overt legal requirements - and many ages had exactly such requirements - then through terror of legalized private male violence against unchaste women. Having 'a reputation' meant having no legal recourse against any man's sexual coercion. When Susan Brownmiller argues in *Against Our Will: Men, Women, And Rape* that rapists are in effect intimidating women on behalf of men generally, her claim is valid at least as a description of the policies of a male-dominated state as embodied in laws still in force when she wrote *Against Our Will*, even though not all men were either potential rapists or willing beneficiaries of this system of intimidation.

The problem of rape is not limited, though, to unchaste women. All women are in danger of it, and have to restrict their lives for fear of it. The ethic of chastity may even encourage rape, paradoxically. After all, when women are taught to withhold sex from men as a means of controlling them, men will naturally feel some resentment; and when chastity is a valuable resource, attacking or destroying it is a convenient release for hostility either toward women or toward better off men who have more access to women. A man who thinks in terms of chastity is likely to be strongly concerned with women's choices and preferences, and therefore is less likely to hesitate at overriding them by force.

The old laws have been moderated, at least in some jurisdictions. Some married women are no longer subject to enforced sexual intercourse with their husbands; some sexually active women need no longer fear that, if they are raped, their sexual histories will be recounted before a jury to prove that they were unchaste and therefore fair game; some women who spend time with men need not fear that they will be accused of 'leading them on'. So far as these changes have gone, the law now attempts to protect freedom of choice for both men and women, rather than having a special system of 'protections' for women's chastity - protection of women not as free individuals, but as possessions.

In popular attitudes, though, less has changed. Despite the new openness of the 1960s, old customs remained present, if submerged. Now, at the end of the 1980s, they are reemerging. In particular, the anti-abortion movement is implicitly a pro-chastity movement as well, since one of the underlying rationales for hostility to abortion is that, by freeing women of the fear of unwanted pregnancy, it frees them to be sexually active with men if they choose to. Now 'family values' advocates favor a reestablishment of the traditional family, not by individual choices, but by laws that restore its old coercive underpinnings. And throughout this time, popular attitudes have still favored gestures of chastity - if only in the modified form of serially monogamous premarital heterosexual intercourse followed by serially monogamous marriage - and have condemned women with multiple sexual partners and women who chose other women rather than men as sexual partners.

Even more strongly, popular culture preserved the positive side - as it was traditionally defined - of these customs and symbols: the institution and rituals of marriage. Brides are still 'given away' by their fathers to their husbands, recalling a time when a woman's virginity was her most - perhaps her only - valuable possession. Even the charivari, the noisy ritual designed to release excitement over the bride's defloration by joking and by noisemaking to cover her presumed cries of pain or pleasure, survives in various forms, ranging up to elaborate practical jokes. And after all these rituals, men and women still enter a married state in which unequal roles are typical. The husband will earn most of the money; the wife will have most of the responsibility for housekeeping and childrearing. If they divorce, she can expect to be responsible for raising the children, often with little financial support from him even though he will probably earn much more than she.

There is nothing inherently objectionable about this or any other form of partnership for cohabitation and the support of children, if it is freely chosen. But this one is not. A woman must take the terms of partnership defined by the marriage laws of her jurisdiction, or have no enforceable terms at all. The law simply does not

create a range of institutional frameworks to fit the wishes of any couple or group - as it does, for example, with business ventures. Given the inherent costs and risks of raising children, it takes courage for a woman to do so with no enforceable commitments from anyone else - though, ironically, the enforceability of the marital commitment has also been diminished severely.

Neither has the sexual revolution succeeded in abolishing the ethic of chastity. Rather, as Karl Marx predicted in the *Economic and Philosophical Manuscripts of 1844* (showing much more foresight than in his economic and political projections), the old set of rules under which women's sexuality was the property of one man has been replaced by a new set under which it is property open to use by all men. Men are legally forbidden to obtain access to it by force, but emotional pressure and manipulation are common in relations between the sexes. We are today a long way from Marx's conception of a society where women's sexuality, like men's was not *property* at all.

#### IV Other Inequalities

The feminist movement has pointed out numerous other areas where women and men are treated unequally. Many of these are at least in part results of the ethic of chastity and its implications.

Ideologically, the ethic of chastity defines women in terms of their biological ability to reproduce. All other qualities are secondary. The crucial virtue a woman must have is to manage her sexual and reproductive powers the right way; if she lacks this, nothing can make up for the lack. This emphasis supports a view of women as lacking other capacities, or having them less developed than they are in men. In addition, by treating women more as valuable assets than as volitional beings, the ethic of chastity further encourages a view of them as less than human. Men, the controllers of women, are in this view the norm.

Psychologically, this same viewpoint discourages women from *developing* such capacities as rationality, independence, productivity, and self-reliance. After all, they are told consistently that they lack these qualities or that these qualities have no value for them. They are rewarded for preserving their chastity and, at the same time, making themselves alluring to men. Most of the women they might take as models have pursued this paradoxical and difficult role. This creates an added barrier to their attaining autonomous adulthood, over and above the barriers that men already face.

Economically, women face four sources of difficulty. In the first place, because of the psychological impact just described, many of them do not fully commit themselves to economic self-reliance, or develop skills to support themselves. In the second place, many employers subscribe to the ideological devaluation of women and are reluctant to hire or promote them. In the third place, labor unions in many occupations and industries specifically chose to exclude women from skilled and well-paid jobs - and were allowed by state policies to restrict entry into these jobs through closed shop contracts, even if an employer did not want to accept such a contract. In the fourth place, state policy for many years was based on preserving a special social role for women, one surrounded by 'protective' legislation that often worked mainly to keep women out of many jobs. After World War II, for example, the United States government specifically decided that women's labor was no longer wanted in industry, because *men* needed industrial jobs - and men had to support families, while women were meant to stay home and raise children. An underlying but unspoken assumption behind all this was that such jobs weren't 'ladylike' - partly because they put women into rough masculine environments where their chastity might be endangered. That this was not a purely idle concern is shown by the now recognized problem of sexual harassment at the workplace - though concern with such harassment quite appropriately focuses more on its danger to women's freedom of choice than on its danger to chastity.

In sum, many of women's disadvantages in current societies are partly products of the ethic of chastity. Some of these disadvantages take the form of coercion by the law or by legally tolerated violence, which could be eliminated by new and better laws. Others are distortions in individuals' voluntary choices based on

their expectations of what type of environment they will have to live in, and need to be eliminated over time by individuals who make new voluntary choices. But all of them would ultimately cease to exist in a society that respected women as independent human beings who could make their own decisions without special guidance from men.

## V Free Women

What kind of life, then, would free women lead? How would a society founded on equal freedom of choice treat women?

For a start, the most basic sphere in which women would have freedom of choice is their own bodies. Each woman would own and control her own body and all its capacities, including the sexual and reproductive ones. This control would include the right to decide for herself whether to contracept or to abort. The legal changes that have given women this right in present societies are from a libertarian viewpoint one of the few areas of real progress in recent years.

Women would also have freedom of association: the right to enter relationships with one another and with men as they chose, to give those relationships any forms that were mutually agreeable, and to have any resulting mutual obligations enforced as binding contracts. There would be no barriers to a woman's pursuing any occupation she chose. Equally there would be no barriers to her forming a sexual relationship with anyone else she chose, man or woman, one or several. Such a relationship might be called 'marriage' or it might not; in either case, its terms would be settled by agreement between the partners - who might be of any number or sex - and whatever they were they would be equally enforceable. They would also be dissolvable by any partner's choice to withdraw, with the partnership's assets and obligations divided among the partners on terms they specified in advance, or if no terms were specified then according to the standard rules of equity. No terms whatever would be imposed on any participant in a relationship except as a result of their agreement to those specific terms.

As one implication of this, women would have primary responsibility for the costs of pregnancy or of avoiding it. A woman would be free to get a man's agreement - in writing or before witnesses if she chose - to share such costs before having sexual relations with him, and such agreements would be enforced. She would be free before any sexual act to ask the man involved to take responsibility for contraception, rather than doing so herself. Her right to set her own terms in this way would be safeguarded. However, if she made no agreement, and if she became pregnant through not contracepting or through contraceptive failure, she would be solely responsible for the costs of abortion, or of bearing and giving a child up for adoption, or of raising it - and the decision as to which to do would be solely hers. If her child's father chose out of good will to share the costs, she would be free to accept, but he would not be forced to do so - especially not to pay the costs of a decision he found unacceptable.

An implication of the right to set the terms for a relationship is that women could include *financial* terms if they chose. By implication, they would be free to sell their sexual services to a willing buyer. In other words, prostitution would be legal - and prostitutes would not be vulnerable to rape because of their 'unchastity', or to physical abuse by clients or pimps because of being outside the law, or to extortion conducted by corrupt police forces. It might be hoped that pimping would be obsolete. 'Prostitution' would not in fact be sharply distinguished from 'marriage' or from any other sexual relationship; there would be a continuum.

Whether economically based sex - whether in the form of prostitution, or concubinage, or of marriage - would persist is hard to predict. The link between sex and reproduction, and the high costs of raising children, make it likely that women would want *some* commitment from men to share in the costs of raising children. Men in turn would probably form such commitments only with women they were sexually involved with and whose children they might be fathers of. There could be a wide range of institutional forms given to this type of commitment. It might not usually take the form of an exchange of sex for money or financial claims. Such exchanges - or the less explicit ones that make up the custom of

dating - depend in part on a scarcity of heterosexual opportunities in relation to men's demands on them, which is a result in part of women's adhering to the ethic of chastity. Without that ethic, women might become as interested as men in heterosexual intercourse - which would tend at least to make it equally likely that either sex would be rewarding the other materially, and perhaps to limit the role of material rewards and increase that of physical attraction or emotional affinity.

This tendency would be encouraged by the expansion of economic opportunities for women. With no legal barriers to their ownership of property or their pursuing any occupation they chose, and no licensure laws or unilaterally imposed closed shops to make entry into some occupations difficult, they would be able to work and earn their own livings. Employers would be under pressure to reward them fairly for doing so, as the free competition libertarians envision would allow any employer to profit by offering more favorable terms to any underpaid segment within the labor force. Over time, a system of pay rates determined by free competition would come to treat women and men equitably. At the same time, women could ask men to take up the majority of the financial responsibility for a household in exchange for being relieved of the majority of the responsibility for raising children - or *vice versa*.

In the long run, more basic cultural changes seem desirable. In particular, a shift from patrilineal to matrilineal inheritance would improve the situation of women greatly. Under the matrilineal system, when a woman died, the standard heirs to her property would be her children of both sexes, her daughter's children of both sexes, their daughters' children of both sexes, and so on; then her mother's sons and her mother's other daughters and their descendants; then inheritance would be traced back to her mother's mother, her mother's mother's mother, and so on, and all their descendants. A man's heirs would be his mother's other children and his sisters' children. Inheritance from father to child would be minor and would not create the incentive for men to control women's sexuality to ensure it - and it would almost never be in doubt who a *woman's* children were. Inheritance between men would be from a man to his sister's son, not to his own son. Any man would be free to declare his own children as his heirs and himself to be their father, but it would be solely his decision; the law would not make it for him.

It may seem improbable that such a change could be created in Western societies. But an equally major change was needed to establish the patrilineal system, a change in which men in effect imprisoned women in the men's households and declared any women who remained free to be fair targets for rape and other violence. That system, which we take as normal, is in fact the product of both past and present coercion, and for it to collapse all that is needed is to end that coercion. Women's physical safety should be fully protected. This protection should no longer be surrounded with conditions - not if he was her husband, not if she was sexually active with other men, not if she was 'inviting' his advances. It should be recognized as a basic human right, one that makes it possible for women to pursue other rights without fear.

The past decades have seen a number of advances in this direction. In particular, the repeal of old restrictions on choice of sexual partner and sexual activities, the repeal of laws against contraception and abortion, the growing recognition of a wife's right to freedom from her husband's violence and of a sexually active woman's right to choose her own sexual partners are all favorable steps. So are the increased economic activity of women and the resulting cultural images of their competence and self-reliance, even though libertarians regret the use of state intervention to *compel* employment of women. But the areas of freedom now open to women need to be extended, and even more urgently they need a legal and institutional framework - one based on the right of individual women to make their own choices. And, in the immediate present situation, efforts need to be made to defend what has already been gained against conservative efforts to 'defend' the family by making it compulsory. Libertarianism and feminism have a common interest in seeing these things come about; an alliance between them would profit both.