

THE NEW POLITICS OF ADULTERY

BRENDA COSSMAN*

Adultery is nothing new. Nor are social sanctions against it. But there is something new in the contemporary cultural politics of adultery, which begins with an ever-expanding definition of infidelity. Once restricted to “natural heterosexual intercourse,” infidelity now extends to a variety of sexual practices.¹ Indeed, these days, infidelity can occur without sexual contact at all. Computer sex, telephone sex, and email flirtations are all included within the ambit of adulterous relationships that violate the marital relationship. As the definition of infidelity expands, so do its practitioners. In several recent exposés of “the new infidelity,” women have increasingly been shown to be equal opportunity cheaters. This expansion of infidelity and infidels has produced a new crisis of adultery; a virtual adultery epidemic has swept the nation.

Crises, in turn, require intervention. The “epidemic” has produced a new emphasis on both prevention and treatment. The first line of protection against adultery is a prevention strategy, based on identifying and minimizing risks. This approach involves a politics of self-discipline, of individuals recognizing and taking responsibility for managing the risks to their relationships.²

* Professor of Law, University of Toronto. Thanks to BJ Wray for her research assistance.

¹ See, e.g., *Bonura v. Bonura*, 505 So. 2d 143, 145 (La. Ct. App. 1987) (holding that a woman who had not had intercourse had committed adultery); *S.B. v. S.J.B.*, 609 A.2d 124, 126 (N.J. Super. Ct. Ch. Div. 1992) (holding that lesbian sex constituted adultery). See also Karen Peterson, *Infidelity Reaches Beyond Having Sex*, USA Today, Aug. 1, 2003, at 8D, available at http://www.usatoday.com/news/nation/2003-01-08-workplace-usat_x.htm, in which infidelity expert Shirley Glass states that “affairs do not have to include sex.”

² Intimacy theorists suggest that, as family life and intimacy come to be associated with more risk and fragility, more care needs to be placed on promoting responsibility within these relationships. See generally ANTHONY GIDDENS, *THE TRANSFORMATION OF INTIMACY* (1992). This increasing emphasis on responsibility is part of a more general shift in governance towards self-discipline and governance of oneself. See, e.g., MITCHELL M. DEAN, *GOVERNMENTALITY: POWER AND RULE IN MODERN SOCIETY* (1999); Michel Foucault, *Technologies of the Self*, in *TECHNOLOGIES OF THE SELF: A SEMINAR WITH MICHEL FOUCAULT* 16-49 (Luther H. Martin et al. eds., 1988); Michel Foucault, *Governmentality*, in *THE FOUCAULT EFFECT: STUDIES IN GOVERNMENTALITY* 87-104 (Graham Burchell et al. eds., 1991); ALAN HUNT, *GOVERNING MORALS: A SOCIAL HISTORY OF MORAL REGULATION* (1999); NIKOLAS ROSE, *INVENTING OUR SELVES: PSYCHOLOGY, POWER AND PERSONHOOD* (1996). As Rose argues,

If prevention fails, then the new politics of adultery shifts to treatment. Despite the wreckage unleashed by adultery, redemption is possible if individuals are prepared to take responsibility for their actions and undertake the hard work of relationship repair. In the new politics of adultery, sex has become a project of self-governance. If the new intimacy has created more choice in intimate relationships,³ then the new politics of adultery is about disciplining individuals to make the right choice, to “just say no” to adultery, or if that fails, to say “I’m sorry.”

This new politics of adultery no longer relies heavily, as it once did, on legal regulation to promote marriage as a monogamous relationship. Adultery remains a criminal offense in a number of states, but it is rarely prosecuted.⁴ Also, since the divorce revolution, divorcing parties are much

individuals are incited to live as if making a *project* of themselves: they are to work on their emotional world, their domestic and conjugal arrangements, their relations with employment and their techniques of sexual pleasure, to develop a ‘style’ of living that will maximize the worth of their existence to themselves.

Id. at 157.

³ Intimacy theorists have identified a transformation of intimacy in which marriage has changed from a life-long status to an increasingly individualized and voluntary relationship designed to promote the happiness of the parties. *See generally* GIDDENS, *supra* note 2; Beck Gernshiem, *On the Way to a Post-Familial Family: From a Community of Need to Elective Affinity*, in LOVE AND EROTICISM 53-70 (Mike Featherstone ed., 1999). Marriage can now be entered into and exited from by choice. This represents a transformation in the terms of intimacy whereby individuals now seek an emotionally rich and companionate relationship. When relationships no longer fulfill their intimacy objectives, they can be dissolved.

⁴ Adultery remains criminalized, most often as a misdemeanor, in the following states: Alabama: ALA. CODE 1975 § 13A-13-2 (West, Westlaw through end of 2005 Reg. Sess.); Arizona: ARIZ. REV. STAT. ANN. § 13-1408 (West, Westlaw through First Reg. Sess. 2005); Colorado: COLO. REV. STAT. ANN. § 18-6-501 (West, Westlaw through 2005); Florida: West’s F.S.A. § 798.01 (West, Westlaw through end of the 2005 First Reg. Sess.); Georgia: Ga. Code Ann., § 16-6-19 (West, Westlaw through 2005); Idaho: ID ST § 18-6601 (West, Westlaw through May 25, 2004); Illinois: 720 ILCS 5/11-7 (West, Westlaw through P.A. 94-300 of 2005 Sess.); Kansas: K.S.A. § 21-3507 (West, Westlaw through 2004); Maryland: MD. CODE, CRIM. LAW, § 10-501 (West, Westlaw through 2005 Reg. Sess.); Massachusetts: MASS. GEN. LAWS ch. 272, § 14 (West, Westlaw through 2005); Michigan: MICH. COMP. LAWS § 750.30 (West, Westlaw through P.A. 2005, No.1-120); Minnesota: M.S.A. § 609.36 (West, Westlaw through 2005 Reg. Sess.); Mississippi: MISS. CODE ANN. § 97-29-1 (West, Westlaw through end of 2005 Reg. and First Ex. Sess.); New Hampshire: N.H. REV. STAT. ANN. § 645:3 (West, Westlaw through end of 2005 Reg. Sess.); New York: N.Y. PENAL LAW § 255.17 (McKinney 2005); North Carolina: N.C.G.S.A. § 14-184 (West, Westlaw through S.L. 2005-275, 277-294 of the 2005 Reg. Sess.); North Dakota: N.D. St. 12.1-20-09 (West, Westlaw through 2003); Oklahoma: 21 OKLA. STAT. ANN. § 871 (West, Westlaw through 2005); Rhode Island: R.I. GEN. LAWS § 11-6-2 (West, Westlaw through January 2004 Sess.); South Carolina: S.C. CODE 1976 § 16-15-60 (West, Westlaw through end of 2004 Reg. Sess.); Utah: UTAH CODE ANN. § 76-7-103 (West, Westlaw through end of 2005 First Spec. Sess.); Virginia: VA. CODE ANN. § 18.2-365 (West, Westlaw through end of the 2005 Reg. Sess.);

more likely to rely on non-fault-based grounds for divorce, such as irreconcilable differences.⁵ Yet, adultery, cheating, infidelity, and affairs remain a cause celebre of marriage crisis and failure. The sanctions against adultery today are more diffuse. Increasingly, television talk shows, magazines, best-selling self-help books, television dramas, and Hollywood films warn us to avoid this road to certain disaster. The meaning of adultery as a violation of marriage is now produced more culturally than legally.

I. FROM ADULTERY TO THE NEW INFIDELITY

Declarations of a “new infidelity” abound in popular culture. In 2004, the cover of *Newsweek* announced “The New Infidelity: The Secret Lives of Wives.”⁶ The article was an exposé of the “epidemic” of cheating women: as many as fifty percent of women polled were said to have had an extramarital affair during their marriage. In *Salon* “the new infidelity” marked the rise of Internet cheating.⁷ Yet others have spun “the new infidelity” as workplace romance,⁸ with the *Wall Street Journal* describing the office as “the new home wrecker.”⁹ The rising number of women in traditionally male-dominated workplaces has resulted in situations where women and men work in close proximity, which has allegedly resulted in a new epidemic of infidelity.

West Virginia: W. VA. CODE § 61-8-3 (West, Westlaw through end of 2005 Third Ex. Sess.); Wisconsin: W.S.A. 944.16 (West, Westlaw through 2005 Act 21, published 7/22/05).

⁵ In Alabama, for example, in 2002, of 24,002 divorces granted, only 101 were granted on the basis of adultery, in contrast to 22,601 granted on the basis of incompatibility. Alabama Center for Health Statistics, Divorces and Annulments By Legal Grounds, 2002, http://ph.state.al.us/chs/HealthStatistics/Tables/2002/AVS02_81.htm. Similarly, in New York State, in 2000, of a total of 59,864 divorces, only 273 were granted on the basis of adultery, in contrast to 36,808 granted on the basis of abandonment (the closest New York State gets to a no-fault ground). NEW YORK STATE DEPARTMENT OF HEALTH, TABLE 50: DIVORCES BY COUNTY OF OCCURRENCE AND LEGAL GROUNDS: NEW YORK STATE 2000, available at http://www.health.state.ny.us/nysdoh/vital_statistics/2000/table50.htm.

⁶ Lorraine Ali & Lisa Miller, *The Secret Lives of Wives*, NEWSWEEK, July 12, 2004, at 46, available at <http://www.msnbc.msn.com/id/5359395/site/newsweek/> (last visited Dec. 8, 2005).

⁷ Andrew Goodwin, *The New Infidelity*, SALON.COM, Feb. 28, 2003, http://www.salon.com/sex/feature/2003/02/28/email/index_np.html.

⁸ Rob Moll, *Workplace Romance: The New Infidelity*, FAMILY.ORG, <http://www.family.org/married/romance/a0026483.cfm> (last visited Dec. 3, 2005).

⁹ Sue Shallenbarger, *Co-Workers Can Wreck a Marriage: At the Office, Divorce is Contagious*, WALL ST. J., Nov. 12, 2003, at D1, available at <http://www.careerjournal.com/columnists/workfamily/20031114-workfamily.html> (last visited Dec. 8, 2005).

With each of these new types of identified infidelities, the category expands. No longer restricted to heterosexual intercourse, infidelity now includes many types of sexual encounters. In fact, infidelity also includes non-sexual encounters, as the harm of adultery has been recast in some instances as a violation of *emotional* intimacy. A 2003 article in *USA Today*, for example, examined “the new infidelity” in the form of emotional affairs.¹⁰ According to the experts quoted, conduct need not even be sexual to count as infidelity.¹¹ This expansion of the category, along with heightened focus on the women and men engaging in such conduct, has produced a perceived crisis of infidelity that sets the stage for the new politics of therapeutic intervention and self-discipline.

A. The New Harm of “The New Infidelity”

The legal definition and the underlying harm of adultery have changed considerably over time, from a narrow concern of illegitimate offspring to a much broader violation of marital emotional intimacy. Historically, adultery was defined to require heterosexual intercourse. The criminal and civil laws sanctioning adultery were not simply focused on prohibiting immoral sexuality, but were also explicitly justified in terms of ensuring that the children of a marriage were the biological offspring of the husband; it was this objective that justified treating a wife’s adultery more seriously than a husband’s.¹² In 1838, the Supreme Court of New Jersey explained this distinction and defined adultery explicitly in terms of the introduction of another man’s blood line into a husband’s lineage: “The heinousness of [adultery] consists in exposing an innocent husband to maintain another man’s children, and having them succeed to his inheritance.”¹³ Indeed, the court pointedly stated that the harm to the husband, which is the “gist” of adultery, lay not in “the alienation of the wife’s affections, and loss of comfort in her company,” but rather in “its tendency to adulterate the issue of an innocent husband, and to turn the inheritance away from his own blood, to that of a stranger.”¹⁴ In some states, women’s adultery was treated more harshly than men’s for the purposes of divorce. Whereas a single act of adultery on the part of a woman was

¹⁰ Peterson, *supra* note 1.

¹¹ *Id.*

¹² For example, criminal adultery was long defined as sexual intercourse with a married woman, and the harm was the potential introduction of a false blood line into the husband’s lineage. Sexual intercourse with an unmarried woman was defined as fornication. See, e.g., *State v. Lash*, 16 N.J.L. 380, 384 (N.J. Sup. Ct. 1838).

¹³ *Id.* at 387.

¹⁴ *Id.* at 388.

sufficient ground for her husband to divorce her, a husband had to be either "living in adultery" or committing habitual adultery for a woman to be entitled to a divorce.¹⁵ This double standard was similarly justified on the basis of the potential adulteration of the husband's bloodline.¹⁶

Over time, the double standard was removed, and adultery for the purposes of both criminal and divorce law was redefined as voluntary sexual intercourse between a married man or woman and a person other than the offender's spouse. In recent years, the requirement of sexual intercourse has also begun to change. Some courts have broadened the definition of adultery to include other types of sexual encounters. For example, in 1987, the Fourth Circuit Court of Appeals of Louisiana held that a wife had committed adultery even though she had not had sexual intercourse.¹⁷ The wife admitted that she had slept "in the same bed with another man, that she had touched the other man's sexual organ and that he had touched hers and that they laid on top of each other."¹⁸ The court concluded that "these repeated acts of marital infidelity constitute adultery."¹⁹

Similarly, in 1992, a New Jersey court considered whether lesbian sex amounts to adultery.²⁰ The court held that, when viewed from the perspective of the injured spouse, an extramarital relationship is "just as devastating to the spouse irrespective of the specific sexual act performed by the promiscuous spouse or the sex of the new paramour. The homosexual violation of marital vows could be well construed as the ultimate in rejection."²¹ The Court concluded that

adultery exists when one spouse rejects the other by entering into a personal intimate sexual relationship with any other person, irrespective of the specific sexual acts performed, the marital status, or the gender of the third party. It is the rejection of the

¹⁵ HOMER CLARK, *THE LAW OF DOMESTIC RELATIONS IN THE UNITED STATES* 328 (1968).

¹⁶ See, e.g., *Franzetti v. Franzetti*, 120 S.W.2d 123, 127 (Tex. Civ. App. 1938). The court explained that the distinction is based on the fact that a married man would have to support children he did not father, while "if the woman is single, her incontinence produces none of this evil, because her illegitimate offspring can be heir to nobody." *Id.* (citing 1 AM. JUR. p. 683, § 3).

¹⁷ See *Bonura v. Bonura*, 505 So. 2d 143, 145 (La. Ct. App. 1987).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See *S.B. v. S.J.B.*, 609 A.2d 124 (N.J. Super. Ct. Ch. Div. 1992).

²¹ *Id.* at 126.

spouse coupled with out-of-marriage intimacy that constitutes adultery.²²

This expansion of the legal definition of adultery to include a range of non-penetrative sex reflects the transformation of intimacy in which marriage has become a relationship about both emotional and sexual intimacy. Pregnancy is no longer the central harm of adultery. Rather, adultery is now framed as a violation of the promise of emotional and sexual exclusivity.²³

This new understanding of the harm of infidelity is leading to an expansive definition where virtually any violation of the emotional or sexual exclusivity of marriage can be seen as infidelity. Infidelity experts, such as Shirley Glass, argue that affairs need not include sex at all.²⁴ “Sometimes the greatest betrayals happen without touching. Infidelity is any emotional or sexual intimacy that violates trust.”²⁵ As Glass explains, “the new infidelity is between people who unwittingly form deep, passionate connections before realizing that they’ve crossed the line from

²² *Id.* at 127. The question of whether same-sex sex constitutes adultery remains a contested legal issue. The Supreme Court of New Hampshire has held that the legal definition of adultery still requires heterosexual sexual intercourse. *See In re Blanchflower*, 150 N.H. 226 (2003). In that opinion, the Court cited an 1838 case, *State v. Wallace*, 9 N.H. 515, 517 (1838), for the proposition that “adultery is committed whenever there is an intercourse from which spurious issue may arise.” *Blanchflower*, 150 N.H. at 225. In contrast, the dissent in *Blanchflower* concluded that same-sex sex does constitute adultery:

It is hard to comprehend how the legislature could have intended to exonerate a sexually unfaithful or even promiscuous spouse who engaged in all manner of sexual intimacy, with members of the opposite sex, except for sexual intercourse, from a charge of adultery. Sexual infidelity should not be so narrowly proscribed.

Id. at 233. In the dissent’s view, “[u]nder our fault-based divorce law, a relationship is adulterous because it occurs outside of marriage and involves intimate sexual activity, not because it involves only one particular sexual act.” *Id.*

²³ For example, psychologist and infidelity expert Shirley Glass has explained the nature of the harm in infidelity as follows:

The infidelity is that you took something that was supposed to be mine, which is sexual or emotional intimacy, and you gave it to somebody else. I thought that we had a special relationship, and now you have contaminated it; it doesn't feel special any more, because you shared something very precious to us with someone else.

Shirley Glass, *Shattered Vows: Getting Beyond Betrayal*, PSYCHOL. TODAY, July-Aug. 1998, at 34, available at <http://www.shirleyglass.com/psychologytoday.htm>.

²⁴ Peterson, *supra* note 1, quoting Shirley Glass. See generally, SHIRLEY GLASS, NOT “JUST FRIENDS”: REBUILDING TRUST AND RECOVERING YOUR SANITY AFTER INFIDELITY (2004), where Glass “sums up her research and that of others.” *Id.*

²⁵ *Id.*

platonic friendship into romantic love.”²⁶ In her view, the transgression comes from the fact that they are sharing more of their “inner self, frustrations and triumphs [with their transgressors] than with their spouses.”²⁷

Many seem to agree. As another infidelity commentator observed in *Salon*, “affairs do not begin with kisses; they begin with lunch.”²⁸ A *Newsweek* poll found that forty-five percent of women and thirty percent of men believed that emotional betrayal was actually more upsetting than extra-marital sexual behavior.²⁹ While often interconnected, emotional infidelity has become as much a violation of marriage as is sexual infidelity. Sex has become an expression of the underlying emotional intimacy, rather than the sine qua non of marriage.

A similar shift is apparent in emerging public debates about another “new infidelity,” namely, whether viewing Internet pornography and participating in cybersex constitutes adultery. Glass specifically connects these two debates, using Internet affairs as an example of infidelity in the absence of sex: “[t]here can be an affair without any kind of touching at all. People have affairs on the Internet.”³⁰ She is not alone. In Dr. Phil’s view, watching Internet pornography is disrespectful of one’s relationship and may cause “negative emotional harm” to a spouse. “It is not OK behavior. It is a perverse and ridiculous intrusion into your relationship. It is an insult, it is disloyal and it is cheating.”³¹

The category of infidelity has thus been expanded to include a broad range of both sexual and non-sexual encounters. No longer restricted to “natural heterosexual intercourse” or to a concern with illegitimate offspring, infidelity is now framed as a violation of the emotional intimacy of marriage. As the category expands to include ever more practices and encounters, so too does its potential frequency, thereby contributing to the popular culture’s declarations of a new crisis of infidelity.

²⁶ *Id.* (quoting Shirley Glass).

²⁷ *Id.*

²⁸ Goodwin, *supra* note 7.

²⁹ See Sharon Begley, *You Must Remember This, A Kiss is but a Kiss: Infidelity and the Science of Cheating*, *NEWSWEEK*, Dec. 30, 1996-Jan. 6, 1997, at 56-59.

³⁰ Glass, *supra* note 23.

³¹ Phil McGraw, *Is Internet Porn Cheating?*, DR. PHIL.COM, <http://drphil.com/articles/article/54/> (last visited Dec. 3, 2005).

Dr. Phil McGraw, in addition to hosting a syndicated talk show, has a doctoral degree in clinical psychology and has been a licensed clinical psychologist since 1978. He is the author of five New York Times bestselling books, including *RELATIONSHIP RESCUE: A SEVEN STEP STRATEGY FOR RECONNECTING WITH YOUR PARTNER* (2001).

B. The New Infidels

It is not only the practices of infidelity that have expanded, but also its potential practitioners. More and more, average spouses seem to be cast as potential infidels, increasingly at risk of falling prey to the seductions of adultery. Consider, for example, the film *Unfaithful*,³² in which Connie Sumner (Diane Lane) is a beautiful, seemingly happily married suburban housewife and mother, who, after a chance encounter on a windy day in New York City, commences an affair with an exotic rare book dealer named Paul Martel (Olivier Martinez). Like the wind that blows Connie off her feet and into the arms of Paul in their first encounter, so too does the affair knock Connie off her moral center. The affair becomes increasingly sexual and emotionally intense as Connie succumbs to her desires. The film is loosely adapted from Claude Chabrol's 1969 film *La Femme Infidèle* by screenwriters Alvin Sargent and William Broyles, Jr.

Continuing this theme of sexual infidelity, Connie's husband, Edward (Richard Gere), becomes suspicious, hires a private detective to follow her, and upon discovering the truth, goes to Paul's apartment to confront him. In a fit of violent jealousy, Edward smashes Paul on the head with a snow globe, killing him almost instantly. Edward must then cover up his crime of passion from the police and Connie, who, slowly and without words between them, realizes what her husband has done. Through sobering silence, Connie recognizes the real threat to her marriage, and the couple comes together, in a combination of fear and marital solidarity, to stare down the threat of discovery.

Director Adrian Lyne is no stranger to portrayals of infidelity.³³ His 1987 blockbuster, *Fatal Attraction*, was also about infidelity with disastrous consequences. In that film, Dan (Michael Douglas), a married man, has an affair with Alex (Glenn Close), a single, professional woman, who rapidly transforms from an attractive sexual predator into a psychotic killer. In this morality tale, although it is the husband who cheats, the real threat to the family comes from the dangerous "other woman." As Linda Singer has argued, the problem that the film frames "is not Douglas's desire . . . but its object. His mistake was to have picked the wrong woman."³⁴

Fast-forward to 2002, and the story of infidelity is a very different one. In *Unfaithful*, it is the wife who cheats, and desire is the problem. Connie has not simply chosen the wrong man; in fact, Paul seems like a

³² UNFAITHFUL (20th Century Fox 2002).

³³ Lyne also directed the films 9½ WEEKS (MGM 1986), FATAL ATTRACTION (Paramount Pictures 1987), INDECENT PROPOSAL (Paramount Pictures 1993), and LOLITA (Guild 1997), all of which are morality tales told through sexual indiscretion.

³⁴ LINDA SINGER, EROTIC WELFARE: SEXUAL THEORY AND POLITICS IN THE AGE OF EPIDEMIC 183 (1992).

rather nice fellow. The problem is Connie's desire and her decision to act on it, which unleashes the destructive powers of jealousy and deceit. While the blame in *Fatal Attraction* was placed squarely on the shoulders of single women, in *Unfaithful*, the blame is shifted into the marital relationship. Now, women, even happy, suburban, stay-at-home moms, must, as much as men, shoulder the risk of, and eventual blame for, infidelity.

Unfaithful is part of an unfolding narrative of another "new infidelity," the infidelity of women, which is increasingly evident in a range of popular media. The 2004 *Newsweek* exposé of women's extramarital affairs as "the New Infidelity" seemed to unleash a wave of interest in the topic.³⁵ An episode of *Oprah* entitled "Secret Sex in the Suburbs" included a segment on women who cheat and an interview with Lorraine Ali, the *Newsweek* reporter who "helped blow the lid off . . . the New Infidelity."³⁶ CBS followed suit with a feature on its morning program *The Early Show*, entitled "When Women Cheat."³⁷

And then there are the books. January 2005 saw the publication of Adrienne Lopez and Stephanie Gertler's *To Love, Honor and Betray: The Secret Life of Suburban Wives*, which focuses on twenty-six married women who have had, are having, or are considering having affairs.³⁸ Hot on its heels, in February 2005, was *Undressing Infidelity: Why More Wives are Unfaithful*, by Diane Shader Smith, which tells the stories of twelve women who "choose to cheat."³⁹ Each of these cultural representations seeks to reveal the "truth" about women's infidelity: women are having extramarital affairs in increasing numbers. While the articles, books, and news stories all acknowledge that statistics about infidelity are unreliable insofar as they rely on self-reporting, the experts all seem to agree that women's infidelity is on the rise and beginning to equal men's in terms of frequency. According to the *Newsweek* article, "[c]ouples' therapists estimate that among their clientele, the number is close to 30 to 40 percent, compared with 50 percent of men, and the gap is almost certainly

³⁵ See Ali & Miller, *supra* note 6.

³⁶ *Oprah: Secret Sex in the Suburbs* (ABC television broadcast Nov. 19, 2004). See also OPRAH.com, Thirty Second Video Clip of the *Secret Sex in the Suburbs* Episode, http://www.oprah.com/tows/pastshows/200411/tows_past_20041119.jhtml (last visited Dec. 5, 2005).

³⁷ *The Early Show: When Women Cheat* (CBS television broadcast Jan. 18, 2005). See also CBS News, Summary of the *When Women Cheat* Episode, Jan. 18, 2005, <http://www.cbsnews.com/stories/2005/01/17/earlyshow/living/main667380.shtml>.

³⁸ ADRIENNE LOPEZ & STEPHANIE GERTLER, *TO LOVE, HONOR, AND BETRAY: THE SECRET LIFE OF SUBURBAN WIVES* (2005).

³⁹ DIANE SHADER SMITH, *UNDRESSING INFIDELITY: WHY MORE WIVES ARE UNFAITHFUL* (2005).

closing.”⁴⁰ On *The Early Show*, infidelity expert Susan Shapiro Barash stated that sixty percent of married women have extramarital affairs.⁴¹

The “discovery” of married women’s affairs as the new infidelity is perhaps a bit paradoxical, insofar as the very legal definition of adultery at one time required that the woman be married. Indeed, the most famous, albeit fictional, adulteress in American literature is Hester Prynne of *The Scarlet Letter*.⁴² Admittedly, Hester’s husband was nowhere to be seen, having abandoned her in the colonies and then refusing to admit his identity upon his return. But, the very commission of the offense of adultery required that the illicit sexual intercourse be with a married woman. Other famous fictional adulteresses, Madame Bovary⁴³ and Anna Karenina,⁴⁴ were also married women. As the legal and social definition was slowly broadened to include sexual intercourse between a married person and someone who was not their spouse, however, the focus on the adultery of married women faded. The stereotype of an affair was more typically one of the married man and “the other woman.” When married women did appear in popular culture as adulteresses, the portrayal was most often one of an overly desirous subject, an evil *femme fatale*. In *Double Indemnity*,⁴⁵ Billy Wilder’s classic 1944 *film noir*, for example, Barbara Stanwyck plays the ultimate adulterous *femme fatale*. She seduces her insurance salesman into helping her kill her husband for the insurance money. She is both heartless and lustful, a deadly combination, for which she and her paramour must ultimately be punished. Adultery and murder again go hand in hand in the 1946 *film noir* *The Postman Always Rings Twice*.⁴⁶ Lana Turner plays Cora, a sexually unsatisfied married woman whose affair leads her and her paramour to kill her husband. As the posters for the film said, “Their [l]ove [w]as a [f]lame that [d]estroyed.”⁴⁷ Both are duly punished: Cora is killed in a car accident, and her lover is executed for her murder. Similarly, in the 1967 film *The Graduate*,⁴⁸ the infamous Mrs. Robinson is played by Anne Bancroft as a desirous, older, married woman who seduces her young next-

⁴⁰ Ali & Miller, *supra* note 6.

⁴¹ *The Early Show*, *supra* note 37.

⁴² NATHANIEL HAWTHORNE, *THE SCARLET LETTER* (1850).

⁴³ GUSTAVE FLAUBERT, *MADAME BOVARY* (1857).

⁴⁴ LEO TOLSTOY, *ANNA KARENINA* (1917).

⁴⁵ *DOUBLE INDEMNITY* (Paramount Pictures 1944).

⁴⁶ *THE POSTMAN ALWAYS RINGS TWICE* (MGM 1946).

⁴⁷ Internet Movie Database, Posters for *The Postman Always Rings Twice* (1946), <http://www.imdb.com/title/tt0038854/posters> (last visited Dec. 11, 2005).

⁴⁸ *THE GRADUATE* (Embassy Pictures Corp. 1967).

door neighbor, Ben (Dustin Hoffman). She is bored, overly-sexed, and ultimately vengeful when Ben falls in love with her daughter. Although she is not a murderess, she is a heartless *femme fatale* who attempts to sabotage Ben's new relationship.

None of these filmic adulteresses is presented as an everyday woman, but rather as an exceptional *femme fatale* whose lust or greed leads her to infidelity. In the "new infidelity," the married adulteress is now the woman next door: she is the suburban housewife or the working mother. As the front inset of the book *Undressing Infidelity* asks and answers: "who are these cheating women? . . . They are your neighbors, your friends, your coworkers. They go to your gym. They shop at your grocery store. They are the women you see every day who seem to have it all."⁴⁹ The bottom line is that the new adulteress is unexceptional. She is everywhere.

C. An Epidemic of Adultery

The discursive effect of the broader definition of adultery and the larger group of infidels is that there is simply more infidelity than ever before. As many of the experts conclude, there is not only a "new crisis of infidelity,"⁵⁰ but it is one that is reaching epidemic proportions.⁵¹ It is often framed in the discourse of disease and contagion; for example, an article in the *Wall Street Journal* announced that "divorce is contagious."⁵² By showing that office divorces can break out in what a study in Ohio called "a measles pattern," the research highlights the need for working couples to take steps to "vaccinate their marriages."⁵³ Peggy Vaughan writes that preventing affairs begins by being aware that "no one is immune."⁵⁴ She adds that "[p]reventing affairs is not like having a one-time inoculation—or even getting occasional booster shots. It's more like taking a pill every day

⁴⁹ Smith, *supra* note 39, at front inset of book.

⁵⁰ GLASS, *supra* note 23.

⁵¹ See, e.g., Ali and Miller, *supra* note 6; Shallenbarger *supra* note 9.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ PEGGY VAUGHAN, THE MONOGAMY MYTH: A PERSONAL HANDBOOK FOR DEALING WITH AFFAIRS 9 (3d ed. 2003). Peggy Vaughan is the founder of the Beyond Affairs Network, an organization established to help individuals who are "dealing with the devastating impact of a spouse's affair." DEARPEGGY.COM, Beyond Affairs Network, <http://www.dearpeggy.com/lbc.html> (last visited Dec. 8, 2005). Although not a clinical psychologist, she is a self-proclaimed infidelity expert, writing and lecturing extensively on the topic for 25 years. Peterson, *supra* note 1.

for the rest of your life.”⁵⁵ Shirley Glass writes, “A happy marriage is not a vaccine against infidelity.”⁵⁶

This discourse of infidelity as a disease is explained in Linda Singer’s work on sexual politics in an age of epidemic. Singer argues that the sex panic created by AIDS has pervaded American social, political, and cultural life, producing a discourse of contagion and epidemic.⁵⁷ The discourse is used to describe “an ever-increasing number of cancers, viruses infecting the body politic through mechanisms of contagion and communicability.”⁵⁸ The discourse is not limited to actual illnesses or diseases, but deployed to describe a broad range of behaviors as socially undesirable, from drug abuse to teenage pregnancy.⁵⁹ Infidelity has been added to the list of contemporary sexual epidemics. As Singer further argues, to label infidelity as an epidemic not only “engages in a kind of rhetorical inflation,” but also mobilizes a particular response.⁶⁰ “An epidemic is a phenomenon that in its very representation calls for, indeed, seems to demand some form of managerial response, some mobilized effort to control.”⁶¹ An epidemic of infidelity demands an intervention of control, a managerial response to minimize the risk of further contagion and contamination.

To call infidelity an epidemic is to set the stage for the urgency of both treatment and prevention. Both require that pleasures be disciplined. The approach demands “a new, more prudential sexual aesthetic” which recognizes the life and death risks associated with undisciplined sexuality, and which places a new emphasis on constraint.⁶² As Singer argues, “there is a new emphasis on domestication and on a kind of restraint emblemized by the recent ‘Just Say No’ Campaign.”⁶³ Just as the discourse of epidemic extends well beyond actual disease transmission, so too do the “just say no”

⁵⁵ Peggy Vaughan, Questions about Monogamy, <http://www.dearpeggy.com/monogamy.html> (last visited Dec. 3, 2005).

⁵⁶ Glass, *supra* note 23.

⁵⁷ See generally SINGER, *supra* note 34; see also SUSAN SONTAG, AIDS AS A METAPHOR (1989).

⁵⁸ SINGER, *supra* note 34, at 27.

⁵⁹ See *id.* Singer continues, “[i]n order to represent a phenomenon as socially undesirable, be it divorce, drug use, single motherhood, teenage pregnancy, one need only call it epidemic.” *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.* at 114.

⁶³ *Id.*

campaigns extend well beyond AIDS and drugs. As the next section argues, the new politics of adultery is just such a “just say no” campaign. It is a politics based first on preventing the spread of this dangerous contagion of infidelity. If that fails, then the new politics of adultery is also a politics of treatment. If infidelity is a disease, then it can be treated with appropriate pseudo-medical intervention. The family “is being repackaged as the latest safe sex prophylactic social device.”⁶⁴ The sexually monogamous marriage becomes the new front line in the war on this epidemic, with individual husbands and wives as the new foot soldiers.

II. FROM EPIDEMIC TO PREVENTION AND TREATMENT: JUST SAY NO

Having established a new crisis or epidemic of adultery, two themes of appropriate responses run through many recent popular culture representations: prevention and treatment. First, individual spouses should take all necessary precautions to prevent infidelity from infecting their relationship. If that fails, then spouses must undertake all necessary steps to treat the infection. This dual emphasis on prevention and treatment is evident in a broad range of recent film and television representations of adultery, where the moral of the story, over and over again, is “just say no.”

A prime example of these themes can be found in the film *Closer*,⁶⁵ an adaptation of a play of the same name by Patrick Marber. Director Mike Nichols explores the destructive nature of adultery through a narrative in which two couples violate the emotional and sexual intimacies of their relationships. Dan (Jude Law) and Alice (Natalie Portman), an unmarried couple, and Larry (Clive Owen) and Anna (Julia Roberts), a married couple, engage in a multiplicity of infidelities. Dan and Anna are attracted to one another even before Anna meets Larry, but they do not consummate their passions until after Anna and Larry marry. Larry and Alice engage in a barbed and ambivalent flirtation. Whether they are attracted to each other or are drawn together by a destructive and jealous energy produced by their partners’ affair is not clear. Anna then leaves Larry; Dan leaves Alice, and Dan and Anna couple. During his post-separation devastation, Larry encounters Alice at a high-end strip bar, where they engage in their own sexual and emotional infidelities. The mutual infidelities are almost complete—but not without one more destructive turn. Larry manipulates Anna into having sex with him “one last time” in exchange for his signature on their divorce papers. Anna is now the double adulteress, violating the sexual and emotional intimacy of her new relationship. Her insistence that the sex was meaningless rings hollow; Dan becomes the jealous victim of

⁶⁴ *Id.* at 186.

⁶⁵ *CLOSER* (Sony Pictures 2004).

adultery, and he cannot get over it. Everyone has now lied and cheated on everyone else, and so begins the move toward treatment. Anna and Larry reunite. Dan and Alice attempt to do so, but Dan's insistence that Alice "tell the truth" about her encounter with Larry produces a final schism. Dan's desire for truth becomes a test that pushes Alice too far, and she leaves. The final scenes reveal that the duplicity went even further: Alice was not even Alice at all, she was really "Jane," and the only person to whom she disclosed that was Larry, who assumed she was simply performing her stripper character.

Closer is a morality tale of the failure to "just say no," with the characters' actions held up as a kind of negative model. They did not say "no"; they failed in prevention, and they suffered the destructive consequences. However, the film also gives its audience brief moments of insight into a parallel, more ethical way of being. For example, in the scene where Dan confesses his affair, he claims that he was unable to control himself. An emotionally devastated Alice insists in response that "[t]here's a moment, there's always a moment; I can do this, I can give in to this or I can resist it."⁶⁶ Alice's argument is that despite attraction and temptation, people must experience an ethical moment when they can still resist and "say no." The film thus acknowledges that relationships will always be confronted by temptation, but an individual has the power to refuse. Alice's is the only voice of morality in a seeming ethical vacuum, where all of the parties give in to all of their temptations. She alone insists on the possibility of saying no, although she too ultimately performs her own betrayals.

Closer is also a story about the possibility of treatment after failure. If individuals make the wrong choice, if they fall prey to the seductions of adulterous desire, they must then face another decision. Individuals can choose to re-commit themselves to their relationship. They can repudiate their adulterous relationship and seek absolution from their spouse by taking responsibility for their actions. In *Closer*, Anna and Larry forgive one another for their respective trespasses and move on. Dan and Alice do not. They remain frozen in deceit and jealousy, where truth-seeking on the road to redemption is not possible. Alice refuses to tell the truth, while Dan has an obsessive need to know. Together, they destroy any possibility of re-establishing trust. The two couples represent the fork in the road after adultery: the violation of trust that destroys the relationship versus forgiveness and recommitment.

The dual emphasis on prevention and treatment is evident in the many cultural representations of adultery in television and film. Both *Oprah* and *Dr. Phil*, for example, have repeatedly featured marital infidelity, with a marked emphasis on the possibility of redemption after the fact. On the *Oprah* episode entitled "Dr. Phil on Adultery," the two address the

⁶⁶ *Id.*

pervasiveness of adultery and the possibility of moving beyond it. "Eighty percent of marriages are affected by infidelity. For the thirty-five percent of couples who stay together after infidelity, rebuilding a relationship and sex life can be difficult, but not impossible."⁶⁷ Dr. Phil tells those who committed adultery, "You made a bad decision, so accept the responsibility."⁶⁸ The road to redemption is all about taking responsibility for one's actions and the consequences of those actions, particularly the emotional impact on one's spouse.

Sometimes, these shows are a performance in shaming. "How I Found Out My Husband Was Cheating," for example, is described as a show about "[b]etrayed women reveal[ing] the moment they found out, and the husbands answer[ing] the unanswerable—why did they cheat?"⁶⁹ The show includes a segment called "Confessions of Betrayal," where men who have committed adultery discuss "why they strayed and risked everything." An entire episode is dedicated to this issue in "Cheating Husbands Confess."⁷⁰ Cheating husbands stand in the spotlight to reveal the "truth" about their decisions. The men speak, and the audience gasps in disapproval. The ritual is a public shaming, a modern-day version of *The Scarlet Letter*, where the cheaters stand in public, marked as bad citizens.

Of course, in the modern version, confession is an entirely voluntary decision. Individuals decide for themselves to come forward and confess their sins on national television. Confession has long been part of the production of truth and the road to redemption, particularly in relation to sex.⁷¹ In the new politics of adultery, redemption similarly begins with confession—first to one's spouse, but also to a broader authority of peers and experts who "judge, punish, forgive, console, and reconcile."⁷² By

⁶⁷ *Oprah: Dr. Phil on Adultery* (ABC television broadcast Feb. 26, 2002). See also OPRAH.com, Video Preview of the *Dr. Phil on Adultery* Episode, http://www.oprah.com/tows/pastshows/tows_2002/tows_past_20020226.jhtml (last visited Dec. 3, 2005).

⁶⁸ *Id.*

⁶⁹ *Oprah: How I Found Out My Husband Was Cheating* (ABC television broadcast Sept. 23, 2003). See also OPRAH.com, Video Preview of the *How I Found Out My Husband Was Cheating* Episode, http://www.oprah.com/tows/pastshows/200309/tows_past_20030923.jhtml (last visited Dec. 3, 2005).

⁷⁰ *Oprah: Cheating Husbands Confess* (ABC television broadcast Nov. 1, 2004). See also OPRAH.com, Thirty Second Video Clip of the *Cheating Husbands Confess* Episode, http://www.oprah.com/tows/pastshows/200411/tows_past_20041101.jhtml (last visited Dec. 5, 2005).

⁷¹ See MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY: AN INTRODUCTION*, 58-67 (1980).

⁷² *Id.* at 62.

confessing the truth of adultery, the adulterers can begin to move forward, either with their old lives, or with new ones. The shows present these men as failed spouses, who are either lucky that their wives have agreed to take them back or are rightly suffering the consequences of their actions through their wives divorcing them. They serve as a warning, a harbinger of the road that lies ahead. The message, once again, is that individuals need to take responsibility for their actions lest their unbridled passions lead them down this road to marital failure. The shaming of the other is all about the conduct of the self: do not do as I did; take responsibility for your actions and your marriage. These television shows are thus a performance in both prevention and treatment. Redemption is possible and begins with the honest confessional, which is the first step toward rehabilitation. But there is no guarantee, and therefore, the better option by far is to avoid heading down this road in the first place.

Having established infidelity as a catastrophic event in a marriage, Dr. Phil also dishes out more prophylactic advice for avoiding such behavior. In his Internet advice column entitled "Affair Proof Your Marriage,"⁷³ Dr. Phil writes that to "[i]noculate yourself against infidelity by making sure you're attentive, involved and plugged in to your marriage" is possible.⁷⁴ The discourse of preventing infection and contamination, of inoculation and vaccination, is never far. Since infidelities result from a breakdown in the intimacy and communication between the partners, Dr. Phil recommends that individuals "turn towards . . . [their] partner — not away."⁷⁵ Spouses must commit themselves to making their marriage a project: "[w]ork on your marriage every single day — not just during the bad times. Wake up each day and ask yourself, 'What can I do today that will make my marriage better?'"⁷⁶

In addition to working on the relationship, there is a command of self-improvement: "[t]ake care of yourself. Eat healthy, exercise and look your best. Feeling good about yourself will radiate and your spouse will notice."⁷⁷ A marriage inoculated from infidelity is a marriage that begins with self-esteem and individual responsibility. These shows exemplify the ways in which self-help, as a mode of self-governance, "operates through . . . the mobilization of self-esteem and self-respect."⁷⁸ Both *Oprah*

⁷³ See Phil McGraw, *Affair-Proof Your Marriage*, DR. PHIL.COM, <http://drphil.com/articles/article/335/> (last visited Dec. 3, 2005).

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ HUNT, *supra* note 2, at 218.

and *Dr. Phil* focus on mobilizing these discourses of self-empowerment. Individuals are called upon to better themselves, which, in this case, means more monogamous and fewer adulterous marriages.

The themes of prevention and treatment, taking responsibility for the well-being of one's marriage, and managing the risk of infidelity are evident well beyond television talk shows. These themes can be found in a number of recent films and television programs, ranging from more serious films such as *We Don't Live Anymore* to the more frivolous but stunningly popular ABC television program *Desperate Housewives*. Both of these cultural representations can be seen as a performance of the new politics of adultery, with infidelity cast as a violation of emotional intimacy, women included as infidels, and a message for their viewers that adultery is a road better not taken.

We Don't Live Here Anymore,⁷⁹ a 2004 film directed by John Curran, explores the dark underside of adulterous desires through a set of infidelities between two married couples. Jack (Mark Ruffalo) and Hank (Peter Krause) are colleagues, jogging partners, and friends. But Jack is sleeping with Hank's wife, Edith (Naomi Watts). Hank is notoriously unfaithful, and Edith appears to have initiated the affair with Jack out of revenge. Jack, plagued by guilt, encourages his own wife, Terry (Laura Dern), into an affair with Hank.

The film presents two possible outcomes of adultery: destruction and redemption. Edith leaves Hank, while Jack and Terry reconcile. Both couples failed to make their marriage a project; both couples have, in *Dr. Phil*'s discourse, "turned away" from their marriages. But Edith and Hank have done so to a point of no return. Hank has no emotional connection to either his wife or his daughter. He is narcissistic to the extreme, connected only to his work and his desires. By contrast, Jack and Terry's relationship is emotionally fraught. Their mutual resentments, jealousy, hatreds, and loves are lived out loud. Their house is a mess, reflecting not only Terry's housekeeping failure, but also the state of their emotional lives. While Jack and Terry are hardly model *Dr. Phil* citizens, their emotional connection to each other and their children is what provides them the life raft back from adultery. At one point, Jack literally looks over the edge: he peers off a cliff from which his two young children are throwing stones into a rushing river below. In that moment, Jack makes the choice to redeem himself. He re-commits himself to his marriage as a project.

We Don't Live Here Anymore is another contemporary morality tale about adultery's symptoms, causes, and consequences. None of the tale is pretty, yet despite the failings of the adulterous characters, not all of them are bad citizens. While warning against the destruction of adultery, the tale also tells a more sympathetic story about how to move on after adultery.

⁷⁹ WE DON'T LIVE HERE ANYMORE (Warner Ind. Pictures 2004).

Just as in Dr. Phil's and Oprah's discourse on adultery, three of the characters find a way to redeem their citizenship. Jack and Terry do that together within their marriage, and Edith does that alone by leaving the void that was her marriage. Although they are imperfect citizens, they have not utterly failed. Hank alone stands as a bad citizen. He fails to see how his selfish pursuit of pleasure undermined his family; he refuses to do the work involved in committing himself to the project of his family or his marriage. Moreover, his adultery is contagious. He is responsible for his wife's and Terry's adultery. He is a carrier of the infidelity virus, threatening to infect not only his own marriage but all of those around him. Hank is emblematic of a dangerous citizen, his actions bordering on a kind of epidemiological sedition.

A more frivolous but not dissimilar depiction of adultery is ABC's 2004 hit television series, *Desperate Housewives*. The comedy-drama explores the dark underside of the lives of four housewives of Wisteria Lane. According to the show's website,⁸⁰ Susan (Teri Hatcher) is a single mother whose cheating husband left her for his younger secretary. Lynette (Felicity Huffman) is a high-powered career woman who has joined the opt-out revolution to stay home with her four out-of-control children and is consequently on the verge of emotional collapse. Bree (Marcia Cross) is a tightly-wound super-mom, whose Martha Stewart ways drive her family to the brink of insanity. Finally, there is Gabrielle (Eva Longoria), a former model who married for money but now longs for passion and is involved in a steamy affair with her seventeen-year-old gardener. The show is narrated by a deceased fifth housewife who mysteriously killed herself after a day of "quietly polishing the routine of . . . [her] perfect life."⁸¹

Conservative commentators have condemned the show for its "celebration" of infidelity and sexual promiscuity. In the words of the American Decency Association, for example, "*Desperate Housewives*' constant barrage of sexual themes and normalization of adultery is one of the worst assaults upon the family."⁸² But *Desperate Housewives* does not celebrate or normalize infidelity. Rather, the show is an ironic representation of the new politics of adultery. Susan's divorce and her subsequent emotional devastation were caused by her husband's affair. Bree's husband's philandering not only results in his having a heart attack, but also the implosion of their marriage. The infidelity of these men is not celebrated but instead condemned. As for female infidelity, while Gabrielle's affair may be the fodder of much water-cooler talk, she is

⁸⁰ *Desperate Housewives*, <http://abc.go.com/primetime/desperate> (last visited Dec. 3, 2005).

⁸¹ *Desperate Housewives: Pilot* (ABC television broadcast Oct. 3, 2004).

⁸² American Decency Association, "Desperate Housewives" Advertisers – October 3, 2004, http://americandecency.org/email_updates/email11.01c.04.htm.

represented as stepping well beyond the bounds of acceptability. Gabrielle may be desperate, she may only be having the affair “to keep from blowing [her] brains out,”⁸³ but her “adultery plus” (adultery plus another heinous form of sexual activity, i.e., sex with a minor) invites shock and moral condemnation from the other characters. She keeps the affair from her friends because she knows they will disapprove. When the gardener’s mother finds out that her son is having an affair and mistakenly accuses Susan, Susan’s moral indignation forces Gabrielle to confess. There is little ambivalence here; even in the fictional world of *Wisteria Lane*, Gabrielle’s affair is morally wrong.

One of the more complicated stories of infidelity is that of Bree’s husband, Rex (Steven Culp). Rex is held responsible for the failure of his marriage because of his choice to look outside to satisfy his fetishistic sexual needs, but Bree is not without responsibility either. Her tightly-wound, obsessive ways have driven an emotional wedge between her family and herself. She is so busy committing herself to the image of Martha Stewart domesticity that she fails to make her family a project. Rex gets points for trying. He tries to make his marriage a project by suggesting that they see a sexual surrogate. Bree reluctantly agrees to participate, but she is unable to dedicate herself to their sexual relationship. In the midst of a sexual encounter, she is unable to stop herself from her obsessive need to clean. Yet, to have an affair that crosses the moral line is Rex’s decision. His too is a kind of “adultery plus.” As if the infidelity alone is not enough, his affair is with a neighbor-cum-S&M mistress who is willing to indulge Rex’s fetishes. Rex pays dearly for his infidelity. He has a heart attack in the midst of a sexual rendezvous, which results in Bree discovering his affair. Bree agrees to nurse him back to health, but only so that she can then divorce him. They do eventually reconcile; Rex works on the marriage, and Bree seems to be on the road to forgive him. But before there can be a happy ending, Rex dies unexpectedly.⁸⁴

In each of these representations, adultery represents a crossing of the line, an unequivocal violation of the marital relationship, notwithstanding how dysfunctional the marriage might already have been. Once the line is crossed, a wave of relationship destruction is unleashed. *Desperate Housewives* may be replete with adulterous affairs, but the message fits clearly within the new politics of adultery. Infidelity is a choice better not taken. Like the films *Closer* and *We Don’t Live Here Anymore*, *Desperate Housewives* tells stories of the consequences of emotional and sexual betrayal.

⁸³ Desperate Housewives, Recaps of Season One, <http://abc.go.com/primetime/desperate/recaps/101.html?photo=1> (last visited Dec. 3, 2005).

⁸⁴ *Id.*

The popularity of *Desperate Housewives* has produced a series of articles and stories in print media about the show and its many issues. Some of these human interest stories have used the show to highlight the issue of female infidelity, attempting to dispel the myth that adultery is male terrain. CBS's *The Early Show*, for example, featured a story entitled "When Women Cheat."⁸⁵ The story opened with an implicit reference to the success of *Desperate Housewives*: "[t]he adulterous woman used to get marked with a scarlet letter. Today, she gets a Golden Globe."⁸⁶ Riding the wave of the *Newsweek* exposé of "the new infidelity" six months earlier, the story focused on the reality of women's infidelity, referencing *Desperate Housewives*.

Infidelity is explained in a scene from *Desperate Housewives* as "[i]t's just sex! It's totally harmless."⁸⁷ But for women especially, "It's just sex" is just unrealistic, according to Dr. Judith Kuriansky, an infidelity expert.⁸⁸ She explains: "The difference is, when women seek an affair, they may think they're looking for just sex, but as soon as the sex happens, their emotions get wrapped into it."⁸⁹ In Kuriansky's view, women are not capable of separating sex from emotion, and as a result, the sex becomes part of a more complicated affair. The message of the story is that infidelity results in marital breakdown. As one woman who had an affair says in the story, "cheating women . . . don't think their husbands will leave them," but, as the story tells us, "[t]hey do."⁹⁰

In this story, *Desperate Housewives* was used as a foil for articulating the new politics of adultery. Infidelity unleashes the forces of destruction. The dialogue of "it's just sex! It's totally harmless" was taken at face value to represent the message of the show, with which the therapist then disagreed. Yet, *Desperate Housewives* is itself a performance of the same politics of adultery. In fact, *The Early Show* story drops the context in which these words are uttered. In the episode from which the dialogue was taken, the women, seated around a kitchen table in their coffee klatch, were reacting to news of Susan's ex-husband's affair with his secretary. The words "it's just sex" are ascribed to the adulterous husband, offered up as a pathetic justification for his behavior. The women collectively scoff, and

⁸⁵ *The Early Show: When Women Cheat*, *supra* note 37.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* *The Early Show* feature quoted Judith Kuriansky, whom it described as a therapist. Dr. Kuriansky is also a professor of clinical psychology at Columbia University Teacher's College. *See id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

one adds that the comment comes straight out of “the philanderers handbook—page one.”⁹¹ This irony disappears in *The Early Show* narrative, and its morality tale of adultery becomes a condonation of adultery that is in turn condemned. The bottom line message of *The Early Show*’s story is precisely the same as that of *Desperate Housewives*: infidelity is bad news.

The new politics of adultery ultimately comes full circle, back to the project of sex in marriage. The best way to immunize a marriage from the risk of infidelity is to work on the multiple dimensions of intimacy, including sexual intimacy. While the infidelity experts seem to agree that infidelity is not simply about sex, they also seem to agree that couples need to be attentive to their sex lives.⁹² Marriage is still about sexual monogamy, but unlike in the past, channeling sex into marriage is now the work of individual couples. Good spouses are those who manage the risk of infidelity and thereby help control the epidemic from spreading further within the body politic. Good spouses make their relationship a project by recognizing the personal and social costs of infidelity and divorce and undertaking the hard work of making their relationship work by working on their relationship.

III. CONCLUSION

The new politics of adultery involves an expansion of the category of infidelity to include more sexual and non-sexual practices, and the category of potential practitioners to include the every-day spouse. As the categories of infidelity and practitioners expand, so does the sense of a crisis or epidemic of adultery: it is everywhere, or at least potentially so. Crises in turn require intervention, and the cultural representations of the new politics of adultery include a new emphasis on the prevention and treatment of infidelity. Individual spouses are being called upon to prevent infidelity from infecting their relationship, and if that fails, they are urged to undergo treatment. With the transformation of intimacy and the divorce revolution, marriage has become a matter of individual choice. Spouses are entitled to enter and exit marriage at will, and the law will no longer stop them. But in the new politics of adultery, these spouses are being told by a range of cultural representations and authorities to make better choices. They must recognize and take responsibility for managing this major risk to their relationship.

Adultery has long been a matter of public scrutiny and private discipline. Traditional cultural representations of adultery framed it as an unequivocally undesirable course of conduct. Yet, unlike in the past, where laws were deployed to prevent and punish adultery, in the new politics of

⁹¹ *Id.*

⁹² See Glass, *supra* note 23; see also VAUGHAN *supra* note 55.

adultery, legal regulation is noticeably absent. In the new politics of adultery, cultural representations seem to have displaced the central role of law, as morality tales are now spun out in films, television dramas, and through a host of “infidelity experts” in books, articles, newspaper stories, television talk shows, and news programs. These experts dish out advice on prevention and treatment of this national epidemic.

While this Article has emphasized the role of cultural representations in the new politics of adultery, announcing the death of law in this politics would indeed be premature. First, recognition of the extent to which the new politics of adultery has emerged in the shadow of the law, particularly in the shadow of the no-fault divorce revolution, is important. The new politics of adultery is a response to the transformation of intimacy through the divorce revolution, wherein individual spouses can choose to enter and exit a marriage at will. The choice that the divorce revolution has given to individual spouses is precisely the choice at which the new politics of adultery takes aim: Be careful. Make better choices. Just say no. And if that fails, at least say you are sorry.

Finally, consideration of the extent to which this new politics of adultery is intended for a viewing audience that appears to be endlessly fascinated with the immorality tales of adulterers is important. Everyone seems to know of the highly publicized celebrity scandal in which Brad Pitt left Jennifer Aniston for Angelina Jolie.⁹³ The scandal is part morality tale of the catastrophic consequences of infidelity for marriage and part obsessive voyeurism into the lives of the rich and famous. In this public performance of taboo and scandal, we can judge, empathize, or envy as the mood takes us. Indeed, that may be where the politics of adultery leads us. We should not have affairs, but we can take a perverse delight in the affairs of others. We can live and love a kind of vicarious adultery while simultaneously condemning it.

Moreover, the politics of adultery bring the narratives of infidelity into public discourse. While seeking to condemn adultery, the politics of adultery may also paradoxically normalize it. After all, one of the messages of the politics of adultery is that everyone is doing it, and some marriages even survive it. The hermeneutic possibilities of the new politics of adultery cannot be foreclosed. In other words, we may identify with Jen, but we may also identify with Brad or Angelina. We may try to work hard on our relationships, like Dr. Phil tells us, or we may follow our adulterous desires. But regardless of the multiple interpretative possibilities, we will undoubtedly continue to ravenously consume the cultural narratives of the politics of adultery, which show no sign of letting up. For example, Jennifer Aniston has gone on to star in a coincidental new film entitled *Derailed*,⁹⁴

⁹³ See, e.g., Inbox Robot, Brad Pitt & Angelina Jolie Newsletter, <http://www.inboxrobot.com/news/BradPittAngelinaJolie> (last visited Dec. 11, 2005).

⁹⁴ *DERAILED* (The Weinstein Co. LLC 2005).

which tells a story of murder and mayhem unleashed when two married people decide to consummate their adulterous desires on a train. Not unlike the politics of adultery more generally, this film is an instance of life imitating art imitating life, where it is not always clear where the cultural representation of adultery ends and its lived experience begins.