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FROM THE EDITORS

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Edition in Tribute to Catharine A. MacKinnon

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Catharine A. MacKinnon is the Elizabeth A. Long Professor of Law at University of Michigan Law School and holds a long-term appointment as the James Barr Ames Visiting Professor of Law at Harvard Law School. In addition to the influence her work on sex equality and other subjects has had on the academic community, MacKinnon's thinking and writing have had direct and substantial influence on legislation, both domestically and internationally. It would be a challenge to overstate the profound influence she has had on social and legal equality for women over the past thirty-five years. This volume includes reflection on this influence from three accomplished and respectful commentators.

First is Professor Rae Langton of Cambridge University, who draws significantly on the recent UK inquiry on the culture, practice, and ethics of the press (for which she offered testimony) to consider the relationship between speech act theory and the challenges of realizing equality for women, a relationship explored by MacKinnon whose work here inspired Langton.

Next is an essay from Sally Haslanger, professor of philosophy at the Massachusetts Institute of Technology, in which she builds from MacKinnon's view of consciousness raising as a mechanism for challenging unjust hegemonic social ideology to argue that consciousness raising involves a more extensive change in conceptual schemas.

Finally, Don Herzog, who holds the Edson R. Sunderland Professorship of Law at the University of Michigan Law School, aims to show that despite the contrast Professor MacKinnon draws between her own feminist position and the liberal tradition, her feminist views are nonetheless right at the heart of liberalism. Sketching this claim, however, challenges us to refine our understanding of what liberalism is.

In response, Professor MacKinnon acknowledges that while each of the commentators acknowledge to some extent the fact that power constructs social reality, she worries that each fails to operationalize properly this basic insight. Since the question as to whether liberal theory might be squared with her own positions on social equality arises in each of the commentaries, MacKinnon offers an extended and interesting discussion of the topic.

Speech Acts and the Leveson Inquiry into Media Ethics

Rae Langton

University of Cambridge

According to MacKinnon, a sign that says "Whites Only" can be "an integral act in a system of segregation, which is a system of force."¹ She asks us, "Which is saying 'kill' to a trained guard dog, a word or an act?"² Speech, she argues, can enact social hierarchy:

Together with all its material supports, authoritatively saying someone is inferior is largely how structures of status and differential treatment are demarcated and actualized. Words and images are how people are placed in hierarchies, how social stratification is made to seem inevitable and right, how feelings of inferiority and superiority are engendered, and how indifference to violence against those on the bottom is rationalized and normalized.³

On her revisionary definition, pornography is the "graphic sexually explicit subordination of women" that also presents women

dehumanized as sexual objects, things or commodities; enjoying pain or humiliation or rape; being tied up, cut up, mutilated, bruised, or physically hurt; in postures of sexual submission or servility or display; reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture; shown as filthy or inferior; bleeding, bruised or hurt in a context which makes these conditions sexual.⁴

Only Words is a book whose task is to unveil the irony of its title.⁵ MacKinnon is committed to a certain picture of speech and its normative significance. Saying is doing. Speech is not only words. It can enact norms keeping some people out, letting some people in. It can alter facts about permissibility, making violence more acceptable than it would be otherwise. It can help determine social status by authoritatively ranking certain people as inferior, making them count as inferior, and actually making them inferior. Some sexually explicit speech can help determine social status in this way. Other sexually explicit speech, premised on equality, can be entirely different, and would count as "erotica" rather than pornography, in MacKinnon's terms. But pornography, in her sense of that term (which I'll follow here), consists of sexually explicit speech that *constitutes* subordination, as well as depicting and causing it.⁶

When speech is not only words, it can help create hierarchy, as well as describe it. When speech is not only words, giving someone words may not be enough to give them speech. Someone may have words, and yet be somehow silenced: for example, she may say “no” to sex, but have that fail to count as a refusal. MacKinnon’s insights about the politics of speech and silence are what sparked my own first thoughts in feminist philosophy, and have inspired me, and many others, ever since.

This picture of how speech can subordinate and silence can be understood in terms of a speech-act theoretic account of speech. When we speak, we act; to say something is to *do* something, as J. L. Austin would have put it.⁷ When we do things with words, said Austin, we do a number of things. We say something meaningful. That is the “only words” part, which he called a “locutionary act.” (The word “Whites” refers to whites, not blacks, and so on.) Our words have effects, which he called the “perlocutionary act.” (After reading the sign, blacks stay away). And we do something “in saying” those words: we perform what he called an “illocutionary act.” (The sign is a *command*, and also, as MacKinnon puts it, “an integral act in a system of segregation.”)

This perspective explains how someone can be silenced even if she utters the right words: her speech acts can “misfire,” if their felicity conditions are not fulfilled. Building on this idea, I have interpreted MacKinnon as offering a conception of silence as, among other things, “illocutionary disablement.” For example, pornography may sometimes silence someone, not simply by preventing utterance of words, but by undermining a speaker’s capacity to do certain illocutionary things with her words: for example, speech acts of sexual refusal, and testimony about sexual violence.⁸

As I read MacKinnon, her insistence that speech is not “only words” is a rebuttal of a thin, perhaps “locutionary,” conception of what is done with words. It is an insistence on perlocutionary and illocutionary dimensions to speech: perlocutionary effects, such as “feelings of superiority and inferiority,” and “indifference to violence”; and illocutionary force, which ranks people, “demarcates” and “actualizes” social structures of “status and differential treatment,” “rationalizes” and “normalizes” the “indifference to violence.”

MacKinnon’s account of how speech operates is at the core of a feminist theory that has roots in Marxism, but it is, I would argue, compatible with other political perspectives, including liberal ones she would reject. In spelling out connections with Marxism, she draws a striking parallel: “Sexuality is to feminism what work is to Marxism: what is most one’s own, and what is most taken away.”⁹ Work and sex are somehow comparable in the way they shape, and are shaped by, the material and social world, in which we all live as social beings. Certain speech acts—e.g., sexual harassment and pornography—contribute to a socially constructed sexuality, helping to both enact and perpetuate it.

I would like to look here at the significance of this feminist speech act theory for “the culture, practices, and ethics of the press,” the topic of a recent, sixteen-month public inquiry led by Lord Justice Leveson in the United Kingdom. I am drawing on my first effort to address this topic, in invited testimony published as Evidence in the Inquiry.¹⁰ I would like to show how MacKinnon’s perspective on speech helps to vindicate feminist arguments that were presented to the Inquiry, reinforcing their intelligibility, and also showing their harmony with liberal principles about free speech and a free press—principles about which MacKinnon herself may be skeptical.

The Leveson Inquiry

The Leveson Inquiry into the ethics of the press had been prompted by a string of press abuses, including the hacking by *News of the World* journalists of a cell phone belonging to a young murder victim, Millie Dowler. The existing system of self-regulation of media ethics—“The Editors’ Code of Practice,” and the Press Complaints Commission—was widely perceived to have been inadequate. Leveson’s investigation considered gross invasions of privacy of individuals, corrupt relationships between the press, politicians, and police, and the treatment of women and minorities. The Inquiry had certain limits, one significant omission being systematic consideration of speech on the Internet. In his final report, Leveson recommended the introduction of a statutory regulating body. His proposal was rejected by the prime minister, David Cameron, but a new regulatory structure was agreed upon and sealed by Royal Charter in October 2013, which would give recognition and authority to a new independent regulating body. (At the time of writing, the Charter is a target of complaint and legal challenge from many media organizations, who seek to establish their own, alternative independent regulating body, the International Press Standards Organisation.) My focus here will be on evidence about the treatment of women in the media, for it is here that MacKinnon’s work has most immediate application.

Testimony was solicited from a wide variety of representative groups and individuals. The Leveson Inquiry provided an opportunity for a broader debate about prejudice in the media, and among those testifying was a coalition of women’s groups: Equality Now, Object, EAVES (an advocacy group for homeless women), and End Violence Against Women. Their joint submission, widely publicized, offered a detailed study of the objectifying treatment of women in the tabloids (in *The Sun*’s “Page Three” and elsewhere), together with victim-blaming portrayals of sexual violence. Some of the material in the coalition’s study might count as pornography in MacKinnon’s terms, but some would not. Its aim was to draw attention to objectifying pictures and words in the media, including, but not confined to, sexually explicit material. This raises an important question for MacKinnon and other feminists about the possible extension (often raised as a *reductio* by critics) of feminist arguments about pornography to non-explicit, objectifying, or subordinating speech.

There was an amusing irony at one point in the proceedings: sexually explicit material supplied in *Object*’s study, from newspapers visible and available to minors at any news agent, was considered unsuitable for viewing by members of the Leveson committee itself. There could hardly have been a more eloquent sign that, at the very least, a zoning anomaly required attention.

Over this period there was some soul-searching, even from individuals involved in publishing such material. Martin Daubney, longest serving editor of *Loaded* magazine, described his dawning realization that the magazine’s treatment of women was not, as he initially thought, “harmless fun, dictated by market forces,” but instead objectification, a “crass sexualization of women,” which paved the way for a younger generation to accept a pornographic vision which

sells boys the debasing view of women as one-dimensional fakes: fake boobs, fake hair, fake nails, fake orgasms and fake hope. How will these tainted children be able to interact with real women later in life if the first ones they “meet” are on-screen mannequins? By allowing children free access to pornographic images, the next generation of young men are becoming so desensitised, I genuinely fear we’re storing up an emotional time-bomb. Porn

objectifies women, demeans and cheapens them, because it sells a fantasy where men are always in control and get what they want. But real life isn't like that. In porn, women cry, "yes, yes, yes!" but in real life, they often say, "no." Not all men have the intelligence or moral fortitude to understand they cannot take what they want.¹¹

Evidence presented by the coalition was far from being the prime focus of Leveson's attention, but thirteen of his report's 1,957 pages were devoted to media portrayal of women and other social groups. He found that the evidence from the women's groups had "force":

The evidence as a whole suggested that there is force in the trenchant views expressed . . . that the Page 3 tabloid press often failed to show consistent respect for the dignity and equality of women generally, and that there was a tendency to sexualise and demean women. . . . The impact of discriminatory or prejudicial representations of women in the Page 3 tabloids is difficult to judge. There is credible evidence that it has a broader impact on the perception and role of women in society, and the sexualisation of society generally.

While he said it was not his role to take a stand on matters of taste, he emphasized considerations of equality and harm:

Of greater potential concern to the inquiry is the degree to which the images may reflect a wider cultural failure to treat women with dignity and respect and/or a practice which, intentionally or not, has the effect of demeaning and degrading women.

The coalition's study, he said, showed that images and articles about women

apply a demeaning and sexualising lens beyond those who choose to appear in their pages with breasts exposed: even the most accomplished and professional women are reduced to the sum of their body parts.

When Leveson recommended the institution of a legally enshrined independent regulator, he said that this body should have the power to take complaints not only from individuals, but from representative groups:

What is clearly required is that any such regulator has the power to take complaints from representative women's groups. Consideration should also be given to Code amendments which, while protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting and in so doing reflect the spirit of equalities legislation.¹²

This part of his recommendation could presumably be adopted by an independent regulator of any sort, statutory or not, so it is worth keeping in mind for future developments.

Leveson evidence through a speech act lens

Evidence from this coalition of women's groups aimed to spell out the severity and implications of treatment of women in the media, in speech acts that objectify women and trivialize sexual harassment and violence.

Equality Now said that "women and girls in the UK are bombarded with stereotyped images through the media on a daily basis" and that "if similar treatment were routinely meted out to a specific group based on religion, race or sexual orientation, it would not be tolerated." *Equality Now* argued that

"the widespread objectification and sexualisation of women in the UK press" normalizes and promotes "stereotypical and often subordinate roles of women, promoting their second class status in society."¹³ Its submission drew attention to uses of stereotyped images that "treat" women a certain way: so the concern is not merely about words, but about the discriminatory speech acts performed with such material. Its thought experiment—Suppose this treatment were meted out to a specific group on the basis of race?—reveals such speech acts to be discriminatory, even if the bias is rendered partly invisible because of its success.

Object evaluated a series of sexually explicit portrayals of women in the tabloid press, which objectify women and trivialize sexual violence. *Object's* submission called for consistency in the application of zoning norms for such material, so as to conform to expectations that prevail in broadcasting and the workplace. Its recommendation, while supported by considerations of equality, could potentially have wide appeal, given traditional agreement across the political spectrum that such material should be subject at least to zoning.

Both submissions cited further harms to equality that accompany the stereotyping and sexual objectification of women, and cited in support the UK's commitment to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The committee charged with evaluating the UK's compliance with CEDAW had concerns about "stereotyped media portrayals of women and women's roles in the family and in society," and *Equality Now* quoted these, and also CEDAW's recommendations

that policies be strengthened and programmes implemented, including awareness-raising and educational campaigns directed at women and men, and specifically at media and advertising agencies, to help ensure the elimination of stereotypes regarding the roles of women and men in society and in the family, in accordance with articles 2 (f) and 5 (a) of the Convention.¹⁴

A major theme in the evidence presented by the coalition was that speech about women in the media is often in the form of pictures and words that objectify and subordinate women. MacKinnon's work helps us gain a better understanding of what this might mean. Speech acts can subordinate when they rank members of a certain group as inferior, legitimate discrimination against them, and deprive them of powers and rights.¹⁵ Speech acts can sexually objectify when they treat a person as a sex object, reduce her to sexual body parts, treat her as having merely instrumental sexual value, deny or ignore her qualities as a full human being—qualities such as dignity, intelligence, or autonomy.¹⁶ Since sexual objectification is one of the ways in which women can be subordinated, portrayals of women in the media that objectify can subordinate as well, depending on background conditions, including, perhaps, the degree of authority they are taken to have. Speech acts that alter norms about violence and abuse are significant because such treatment is not just harm, but also inequality: an asymmetric pattern of violence and abuse is, if we follow MacKinnon, an aspect of women's subordinate social standing.

The coalition drew attention to material that might well silence, as well as subordinate and objectify. The evidence described articles and illustrations that endorsed rape myths, blamed rape victims, presented violence in a trivializing and titillating way. It is a familiar thought that the speech of some can silence the speech of others, whether by hecklers, or in other ways. When "money talks," the economic interests that drive publication of such material can damage not just equality, but

speech itself, damaging women's powers to perform certain communicative speech acts. This treatment of women in the media might well contribute to illocutionary disablement, undermining capacities to successfully refuse sex, and testify. A woman's "no" may sometimes fail to be recognized as a refusal, to a hearer who has taken on board pornography's myths about women. (That was part of Martin Daubney's concern about the "time bomb" posed by the mismatch between actual women and the fantasized mannequins of pornography.) A woman's capacity to communicate truth about rape may be damaged, when hearers take on board victim-blaming rape myths about women who are "asking for it."¹⁷

MacKinnon's perspective on speech acts and their role in oppressive social structures can help us see the point of the coalition's evidence: it can help us see how these portrayals of women in the media might be speech acts that objectify, subordinate, and silence women.

Leveson evidence through a liberal lens

Are these arguments, thus understood, compatible with liberal commitments to free speech? In debate surrounding the Leveson Inquiry, it has been taken for granted on all sides that norms governing the media should be guided by a respect for free speech and freedom of the press. But as MacKinnon's work helps to show, such commitments need to be informed by an adequate understanding of what speech is, and how it is implicated in structures of social hierarchy. Once this understanding is in place, we can then ask questions about the point of free speech, its relation to freedom of the press, and how this bears on the feminist arguments.

If "to say something is to do something" (as Austin put it), and speech is more than "only words," then it is more than "expression" narrowly construed. Not all speech is on the same footing, since speakers do so many different things with words: tell stories, make promises, make bets, incite violence, and more. Free speech will include freedom to do some things with words, but not others. What speech acts are included under "free speech" depends on its point.

What is that point? MacKinnon is eloquent on the pathologies of free speech, but cagy about its positive value, if any. But in the liberal tradition, two linked proposals have been especially influential. Free speech has been thought to provide the conditions for knowledge and for democracy. These goals are linked, because democracy only works if citizens know what is going on when they deliberate and vote on political matters; hence the disastrous undermining of democracy when the press is in the pocket of politicians. Other rationales for free speech have been raised as well. Ronald Dworkin, for example, has grounded a right to free speech in a more fundamental right to equality, and I've considered elsewhere the implications of feminist arguments for his view.¹⁸ Let's consider here, though, the liberal rationales of knowledge and democracy, taking J. S. Mill as an important touchstone.

Mill defended "freedom of opinion" and "freedom of expression of opinion" in the name of truth, arguing that "the collision of adverse opinions" provides our best hope for the emergence of knowledge. From a feminist standpoint we might have qualms about his ill-founded optimism, and about his thin-seeming conception of speech as "expression of opinion"—which sounds suspiciously like mere "locution," in Austin's terms, or "only words" in MacKinnon's.¹⁹ This latter qualm is misplaced. Mill's idea was not narrow, but expansive, and included not only a diversity of speakers, but attentive hearers as well, as he wrote in *On Liberty*:

[T]ruth has no chance but in proportion as every side of it, every opinion which embodies even a fraction of

the truth, not only finds advocates, but is so advocated as to be listened to.²⁰

Since Mill, many have taken a commitment to free speech to be central to the health of democracy itself,²¹ empowering citizens, as both speakers and hearers, to engage in the political process, question authority, "speak truth to power," and acquire the knowledge needed for intelligent political deliberation and action.

If the point of free speech, on this picture, is knowledge and democracy, there will be implications for the speech acts included under "free speech." They are likely to be communicative speech acts of individual citizens, and speech acts that constitute or enable political participation.

For Mill, speech is constrained by the harm principle. As he wrote, again in *On Liberty*,

An opinion that corn dealers are starvers of the poor . . . ought to be unmolested when circulated through the press, but may incur just punishment when delivered . . . to an excited mob assembled before the house of a corn dealer.²²

The very same "opinion" may provide content for different speech acts: in one context an argument to be debated; in another context an incitement to violence. Putting the point in Austin's terms, the same locution can be a tool to perform quite different illocutionary acts. Mill was hopeful about the power of the press to provide a context for debate, rather than dangerous incitement. We may be less hopeful, given a subsequent history in which an "opinion" about Jew or Tutsi "circulated in the press," or broadcast on the airwaves, has become a tool of murder as readily as if addressed directly to an angry crowd. But it is useful to remind ourselves that liberalism's founding father did not take free speech to include freedom to perform speech acts harmful to others, such as incitement to violence. Nor would he have taken it to include speech acts harmful to social *equality*—or so some have plausibly argued, integrating Mill's *On Liberty* with his work in *The Subjection of Women*.²³ A liberal, Millian perspective on free speech seems compatible with restrictions on harmful speech, including hate speech and other discriminatory speech. Jeremy Waldron has recently defended hate speech regulation in the name of liberal values in his 2009 Oliver Wendell Holmes Lectures:

hate speech regulation can be understood as the protection of a certain sort of precious public good: a visible assurance offered by society to all of its members that they will not be subject to abuse, defamation, humiliation, discrimination, and violence on grounds of race, ethnicity, religion, gender, and . . . sexual orientation.²⁴

So if we are alert to speech as a kind of act, we will see there is both more and less to the "speech" in "free speech" than one might otherwise think. What needs protecting is a certain power to perform communicative speech acts, which is more than "only words," utterable in isolation,²⁵ but also less than a power to do just anything with words, where that "anything" includes speech acts that incite or legitimize violence, that discriminate or subordinate.

Free speech and a free press are often mentioned in the same breath. Is the latter just an instance of the former? I would welcome Professor MacKinnon's comments on their relationship. One might argue it is not, since freedom of the press is a freedom not of individuals but of institutions, one that belongs to bodies like newspapers and broadcasters. When we ask about the point of this institutional freedom, a liberal might argue, with Onora O'Neill,²⁶ that a free press matters not

for its own sake, but for its potential to fulfill the epistemic and political goals of individual free speech, whatever those are on the liberal account. A free press matters because it helps individuals to communicate freely, listen freely, debate freely, and acquire the knowledge they need to live with each other, live well according to their own lights, hold their governments accountable, and participate intelligently in the democratic process. These institutions may fulfill other goals as well: they may amuse and entertain readers and viewers, make money, and promote commerce through their advertising. These other goals will have their importance, but from a liberal viewpoint such goals will be peripheral to the epistemic and political goods distinctive of speech as such.

Something would be rotten in the state of the media if it were deaf on issues that matter to its rationale, and deafening on issues that don't. Norms guiding the media should empower the press on activities that give a free press its point, such as those promoting knowledge and political participation, and encourage responsibility in pursuit of its other goals, such as profit and entertainment.

The Leveson evidence we have been considering argued, as we've seen, that certain widely published material is a threat to women's equality. What is the trade-off, if women's equality is weighed against this sort of exercise of a "free press"? Well, on the face of things, speech acts that subordinate and objectify women do not belong to the rationale of a free press. They do not seem to serve the goals of knowledge and democratic political participation. Such "speech" often does not even pretend to be "news," and its inclusion is not about knowledge, but money. Daubney, the long-standing editor of *Loaded* magazine, commented on its success, in the service of different goals:

In my time, *Loaded* won eight industry awards for journalistic excellence, but its massive success—it sold more than 500,000 copies a month at its peak—was always down to pictures of scantily-clad women. When I became editor . . . I realised all our readers really wanted was acres of flesh.²⁷

If there is a trade-off between women's equality and something else, that something else is money, rather than one of the guiding political goals of free speech. Damaging women's civil standing in pursuit of the Millian goal of knowledge would be bad enough; damaging it just for profit would be worse.

The Leveson evidence from the coalition of women's groups aimed to show how women are objectified and subordinated in the UK media, and we have been looking here at their arguments in the speech act terms inspired by MacKinnon, and considering the implications for a liberal perspective on free speech. We have looked at how such material might well damage not only equality, but also speech, perhaps disabling women's speech about sex, and contributing to sexual violence. We can add now that it also damages the goals central to free speech itself: it damages knowledge (that "fake" and "debasing" vision of women²⁸); and it may well damage democracy, given the difficulties faced by subordinate groups in participating politically as equals, and achieving credibility.²⁹

The upshot is an irony of the kind that MacKinnon herself has often observed. These speech acts that objectify and subordinate women are likely to conflict with the very goals that give a free press its point in the first place.

Notes

1. See Catharine A. MacKinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), 202.
2. *Ibid.*, 156.

3. See Catharine A. MacKinnon, *Only Words* (Cambridge, MA: Harvard University Press, 1993), 31.
4. See MacKinnon, *Feminism Unmodified*, 176.
5. See MacKinnon, *Only Words*.
6. See MacKinnon, *Feminism Unmodified*, 130.
7. See J. L. Austin, *How to Do Things with Words* (London: Oxford University Press, 1962).
8. See my "Speech Acts and Unspeakable Acts," *Philosophy and Public Affairs* 22 (1993), 305–30.
9. See Catharine A. MacKinnon, "Feminism, Marxism, Method and the State: An Agenda for Theory," *Signs* 7, no. 3 (1982): 515.
10. See my 2012 testimony presented to the Leveson Inquiry, at <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/08/Submission-from-Professor-Rae-Langton.pdf>.
11. See Martin Daubney, "The Lad's Mag I Edited Turned a Generation on to Porn—and Now I'm a Father I Bitterly Regret It: A Remarkable Confession from the Longest Serving Editor of *Loaded*," *Daily Mail Online*, June 8, 2012, <http://www.dailymail.co.uk/news/article-2156593/>.
12. See Lord Justice Leveson, *Leveson Inquiry into the Culture, Practice and Ethics of the Press*, 2012, Part F, Chapter 6, Section 8. <http://www.levesoninquiry.org.uk/>.
13. See submissions from *Equality Now*, *Object, EAVES*, and *End Violence Against Women*, at <http://www.levesoninquiry.org.uk/evidence/>.
14. *Ibid.*
15. See MacKinnon, *Feminism Unmodified*, and *Only Words*; also see my "Speech Acts and Unspeakable Acts," and my *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (Oxford: Oxford University Press, 2009).
16. See Martha Nussbaum, "Objectification," *Philosophy and Public Affairs* 24 (1995): 249–91.
17. There are numerous works on this matter; among them see MacKinnon, "Feminism, Marxism, Method and the State"; *Feminism Unmodified*; *Only Words*; *Are Women Human? And Other International Dialogues* (Cambridge, MA: Belnap Press, 2006); and also Miranda Fricker, *Epistemic Injustice: Power and the Ethics of Knowing* (Oxford: Oxford University Press, 2007); Jennifer Hornsby, "Disempowered Speech," in *Philosophical Topics* 23, no. 2 (1995): 127–47; my "Speech Acts and Unspeakable Acts," and my *Sexual Solipsism*; and see Jennifer Hornsby and Rae Langton, "Free Speech and Illocution," *Legal Theory* 4 (1998); and Caroline West, "The Free Speech Argument against Pornography," *Canadian Journal of Philosophy* 33 (2003), and Caroline West, "Pornography and Censorship" (2004), *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/pornography-censorship/>.
18. See Ronald Dworkin, "Do We Have a Right to Pornography?" *Oxford Journal of Legal Studies* 1 (1981), 177–212; and my "Whose Right? Ronald Dworkin, Women, and Pornographers," *Philosophy and Public Affairs* 19 (1990): 311–59.
19. See Daniel Jacobson, "Freedom of Speech Acts? A Response to Langton," *Philosophy and Public Affairs* 24 (1995).
20. See John Stuart Mill, *On Liberty*, 1859. <http://www.gutenberg.org/ebooks/34901>.
21. See Alexander Meiklejohn, *Free Speech and its Relation to Self-Government* (New York: Harper, 1948). <http://digital.library.wisc.edu/1711.dl/UW.MeikFreeSp>.
22. See John Stuart Mill, *On Liberty*, 1859. <http://www.gutenberg.org/ebooks/34901>.
23. See John Stuart Mill, *The Subjection of Women*, 1869, and David Dyzenhaus, "John Stuart Mill and the Harm of Pornography," *Ethics* 102 (1992).
24. See Jeremy Waldron, "Dignity and Defamation: the Visibility of Hate." The 2009 Oliver Wendell Holmes Lectures, 123 *Harvard Law Review* 1596 (2010).

25. See Jennifer Hornsby, “Disempowered Speech”; Jennifer Hornsby and Rae Langton, “Free Speech and Illocution”; my “Speech Acts and Unspeakable Acts,” and my *Sexual Solipsism*; Onora O’Neill, “Ethics for Communication?” *European Journal of Philosophy* 17, no. 2 (2009), and O’Neill’s “Media Freedoms and Media Standards,” *Centre for Ethics and Law Annual Lecture*, presented at University College London, November 28, 2012.
26. See Onora O’Neill, “Ethics for Communication?” and O’Neill’s “Media Freedoms and Media Standards.”
27. See Daubney, “The Lad’s Mag I Edited Turned a Generation on to Porn—and Now I’m a Father I Bitterly Regret It: A Remarkable Confession from the Longest Serving Editor of *Loaded*,” *Daily Mail Online*, June 8, 2012, <http://www.dailymail.co.uk/news/article-2156593/>
28. *Ibid.*
29. See MacKinnon, *Feminism Unmodified, Only Words*, and Fricker, *Epistemic Injustice: Power and the Ethics of Knowing*.

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Liberatory Knowledge and Just Social Practices

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The pursuit of consciousness becomes a form of political practice.¹

I am a deep and longstanding fan of Catharine MacKinnon’s work, both her published work and her activism. Her insights have inspired my research for the past twenty years. One issue I’ve been working on recently is ideology critique, and how consciousness raising offers a basis not only for critique but also social change. As usual, I have turned to MacKinnon for insight.

On MacKinnon’s view, ordinary scientific and philosophical critique is helpful to feminism, but isn’t sufficient as a basis for a feminist movement. “By operating as legitimating ideology, the scientific standard for verifying reality can reinforce a growing indignation [towards sexism], but it cannot create feminism that was not already there. Knowing objective facts does not do what consciousness does.”² But what does “consciousness” do? MacKinnon suggests that consciousness raising is

the collective critical reconstitution of the meaning of women’s social experience as women live through it. . . . Consciousness raising, by contrast [to scientific inquiry] inquires into an intrinsically social situation, in the mixture of thought and materiality which comprises gender in its broadest sense.³

On the next page she continues, “The process is transformative as well as perceptive, since thought and thing are inextricably and reciprocally constitutive of women’s oppression.”⁴

As a rough start we can say, then, that consciousness raising reveals the way in which social thought and social reality are interdependent, offers a critical perspective on the meanings implicit in this thought-imbued reality, and proposes alternative meanings gained from a perspective within the social context in question. Given the interdependence of social thought and reality, a change of meaning can transform the social world. This calls, however, for a new sort of (or at least a new branch of) epistemology:

This epistemology does not at all deny that a relation exists between thought and some reality other than thought, or between human activity (mental or otherwise) and the products of that activity. Rather, it redefines the epistemological issue from being a scientific one, the relation between knowledge and objective reality, to a problem of the relation of consciousness to social being.⁵

MacKinnon is clearly drawing on a Marxist background here,⁶ but rather than turning back to Marx for insight, I’d instead like us to focus on the question: What *should* be thought in those domains where what is thought (at least partly) both determines and is determined by its object, and what role does consciousness raising play in enabling libratory knowledge of the social world?

I. Consciousness and social practice

To begin, let us consider the role of consciousness in the constitution of social practices and social structures. MacKinnon has never been sympathetic to postmodern views that take social reality to be anything less than fully real.

Epistemologically speaking, women know the male world is out there because it hits them in the face. No matter how they think about it, try to think it out of existence or into a different shape, it remains independently real, keeps forcing them into certain molds. No matter what they think or do, they cannot get out of it. It has all the indeterminacy of a bridge abutment hit at sixty miles per hour.⁷

The social world is materially real—there is nothing immaterial about rape—and yet it is also partly constituted by our ways of thinking, feeling, speaking.

I’ve suggested elsewhere that a useful model for understanding how “thought and thing are inextricably and reciprocally constitutive of women’s oppression” (and the social world, more generally) takes social practices to be sets of interdependent schemas and resources.⁸ Roughly, schemas consist in culturally shared concepts and background beliefs that help us interpret and organize information. Both concepts and beliefs, in the sense intended, store information and are the basis for various behavioral dispositions. Resources are things of all sorts—human, nonhuman, animate, or not—“that can be used to enhance or maintain power.”⁹ In social reality, schemas and resources are both causally and constitutively interdependent. Consider food, let’s say, corn, for example. An ear of corn can be viewed as something to eat, as a commodity to be sold, as a religious symbol. In other words, we can apply different schemas to the object, and the schemas frame our consciousness of the object. The different schemas not only offer modes of interpretation, but license different ways of interacting with the corn. Actions based on these different schemas have an effect on the ear of corn—e.g., it might be cooked for food, or the kernels removed to be shipped, or dried

and hung in a prominent place to be worshipped. The effects of our actions then influence the schema. If the corn sells for a good price, its value is enhanced and the farmer may seek ways to grow it more efficiently, possibly investing in new and different varieties.

How does this help us understand women’s oppression? Female bodies are resources: we are valued for our sexual, reproductive, domestic, economic potentiality. The schemas for these different frames situate our bodies within different practices and license different actions. On MacKinnon’s view, the multiple schemas for women have in common that we are submissive or subordinate to those with male bodies and license an erotic response to this subordination. Just as eating, selling, or worshipping corn is not something that just happens “in our heads” but is materially real, so are the social practices that consist of gender schemas and sexed bodies.

Practices depend on shared schemas, but they require individuals to enact and re-enact them. “[S]ocial structures, while they confront us as external and coercive, do not exist apart from our collective actions and thoughts as we apply *schemas* to make sense of the world and deploy *resources* to affect people and things.”¹⁰ This dependence on reiterated human action also allows for revisions of both the schemas and the resources, making individuals potential agents of social change. A corn blight or drought will affect our practices involving corn because the resource will become scarce; environmental or food activism can bring about a change in the schemas for corn that call for and license different actions. Likewise, on one hand, the creation of all-women communities affects our practices materially because men are not there to defer to, and this change in resources, in turn, prompts a reevaluation of our schemas.¹¹ Sometimes we have to act differently in order to think differently. On the other hand, feminist insight can guide action and through the influence of feminist media, literature and film, law and social policy, we change our schemas. Sometimes we have to think differently in order to act differently. Traditional consciousness raising groups offer a context for disrupting both resources and schemas (though, of course, not all consciousness raising occurs in CR groups), and this can alter our practices if the change takes hold. MacKinnon holds that feminist method is consciousness raising: “feminist method is consciousness raising: the collective critical reconstitution of the meaning of women’s social experience, as women live through it.”¹² But what exactly is the epistemology of consciousness raising? How does it provide *libratory knowledge*? How does it contribute creating *more just* social practices?

II. Critique

How does consciousness raising offer a critique of existing practices, and on what terms should we evaluate the critique, if not in ordinary epistemic terms (truth, justification, etc). MacKinnon’s account of consciousness raising has a number of connected elements. Here are some examples of what she says:

Consciousness raising is a face-to-face social experience that strikes at the fabric of meaning of social relations between and among women and men by calling their givenness into question and reconstituting their meaning in a transformed and critical way. The most apparent quality of this method is its aim of grasping women’s situation as it is lived through. The process identifies the problem of women’s subordination as a problem that can be accessed through women’s consciousness, or lived knowing, of her situation. This implicitly posits

that women's social being is in part constituted or at least can be known through women's lived-out view of themselves. Consciousness raising attacks this problem by unraveling and reordering what every woman "knows" because she has lived it, and in so doing forms and reforms, recovers and changes, its meaning. This is accomplished through using the very instrument—women experiencing how they experience themselves—that is the product of the process to be understood.¹³

The point of the [consciousness raising] process was not so much that hitherto undisclosed facts were unearthed or that denied perceptions were corroborated or even that reality was tested, although all these happened. It was not only that silence was broken and that speech occurred. The point was, and is, that this process moved the reference point for truth and thereby the definition of reality as such.¹⁴

Method in this sense organizes the apprehension of truth; it determines what counts as evidence and defines what is taken as verification. Instead of engaging the debate over which came (or comes) first, sex or class, the task for theory is to explore the conflicts and connections between the methods that found it meaningful to analyze social conditions in terms of those categories in the first place.¹⁵

In these quotes (and throughout her discussion), one finds several themes:

- (i) Consciousness raising reveals the workings of social structures "from the inside" and, more specifically, from the point of view of the subordinate—e.g., by "grasping women's situation as it is lived through," "accessed through women's consciousness, or lived knowing, of her situation."¹⁶
- (ii) Consciousness raising disrupts hegemony and renders what is taken for granted explicit, and so subject to criticism. It "unravels and reorders what every woman 'knows'." It calls the "givenness" of social meanings into question.
- (iii) Consciousness raising reveals that how things are is not how they must be because it "forms and reforms, recovers and changes, [social] meaning." It "reconstitutes" the meaning of social relations "in a transformed and critical way." As MacKinnon says elsewhere, "Women's situation cannot be truly known for what it is, in the feminist sense, without knowing that it can be other than it is."¹⁷
- (iv) Consciousness raising isn't primarily a process of uncovering facts; rather, it offers an alternative "way of seeing" that shifts "the reference point for truth," "what counts as evidence," and what categories are apt.

Summarizing these points, we might say that consciousness raising has an *experiential* element, an *unmasking* element, a *contingency* element, and a *new paradigm* element.¹⁸

If what's claimed for consciousness raising, as a method, is that it leads to knowledge and liberation, one might raise concerns about several of these points. Women are not always reliable authorities about their own experience: we are as subject to self-deception, wishful thinking, faulty generalization, and impoverished concepts as anyone; living under oppressive conditions makes self-understanding, if anything, harder. And it is unclear what it means to shift a "reference point for truth" or the "definition of reality as such." Moreover, simply knowing that things can be different and changing how we think now

does not guarantee that the alternative ways envisioned are better or more just.

In responding to such concerns, it helps to situate MacKinnon's views about consciousness raising within a theory of social practices of the sort I sketched above. I'll argue, however, that although MacKinnon is right that libratory knowledge requires a critical disruption of hegemonic categories and methods for reconstituting social meanings that take the details of women's lives seriously, a normative theory is still necessary in order to evaluate the adequacy of the new meanings and the practices they partly constitute.

Recall the model of social practices I've sketched: practices are composed of interdependent schemas and resources. I'd like to suggest that consciousness raising involves a change in schemas. I've characterized schemas briefly, but what are they exactly? Psychologists use the term "schema" to refer to cognitive structures that provide us with heuristics for processing and storing information; these are typically tacit. Schemas consist in concepts and shared background beliefs that make certain phenomena salient, thus affecting attention; they shape memory by selecting from an experience those aspects that fit the schema; they influence information gathering by disposing us to pre-select what is important and what isn't; they have a significant effect on inference patterns and decisions because they bias what information we process and what predictions we make.¹⁹ Although schemas are often described in narrowly cognitive terms, they also integrate emotional and motivational components.²⁰ Sociologists and anthropologists use the term "schema" somewhat differently, emphasizing the ways in which cultures store information in narratives, conceptual dichotomies, shared background assumptions, "common sense," and the like.²¹ A plausible account of schemas, and social cognition more generally, recognizes that it is no accident that there is a parallel between individual cognitive structures and cultural symbols, narratives, and the like.

In the context of consciousness raising, tacit schemas are made explicit and so available for critical reflection (this involves the experiential and unmasking elements). Such reflection invites us to attend to aspects of experience that were ignored or occluded; it allows us to reconsider the inferences we typically draw and expectations we bring to experience (this includes the experiential element and contingency element). The process also involves attempts to explain our selective attention, memory, and scripts for action, and consider how we might perceive, think, and act differently (this includes both the contingency and new paradigm elements). Of course there are better and worse, more and less superficial, plausible and coherent ways of doing this. No one suggests that consciousness raising is infallible, and MacKinnon says explicitly that it is extremely difficult: "Sexism is seen to be all of a piece and so much a part of the omnipresent background of life that a massive effort of collective concentration is required even to discern that it has edges. Consciousness raising is such an effort."²²

But one might hope that we could evaluate the results of consciousness raising by considering the truth or justification for the claims the method yields. But this option seems to be ruled out by MacKinnon's suggestion that truth, evidence, and even "reality" don't remain stable through the process. In a quote we started with, MacKinnon claims that the epistemological issue shifts "from being a scientific one, the relation between knowledge and objective reality, to a problem of the relation of consciousness to social being."²³ But how do we evaluate changes in consciousness with respect to social being? Yet again we seem to be lacking tools for evaluating whether our reflective process has been successful.

The goal of consciousness raising, in slightly different terms, is ideology critique. Although there are huge controversies about the notion of ideology, and critique, an important debate concerns whether ideology should be understood and evaluated in epistemic or practical terms.²⁴ If ideology is a set of beliefs, then it would seem that it should be evaluated in terms of truth, falsity, and related notions;²⁵ if it is a way of being in the world, a set of culturally tutored dispositions, then it should be evaluated in practical, even moral, terms—e.g., does it serve our collective interests to live in this way?²⁶

Progress can be made on this issue by considering the *conceptual* rather than the *attitudinal* aspect of schemas. As mentioned above, schemas provide a way of storing information and include concepts, beliefs, and other propositional attitudes. If we assume that ideology consists of propositions that we (typically) believe, then traditional epistemic critique is warranted. But then it is not clear how or whether pragmatic critique is legitimate, for the aim of belief is truth, and criticizing a belief simply for being impractical or unjust seems problematic. However, if ideology includes concepts, then a combined form of epistemic/pragmatic evaluation is more promising.

How do we evaluate concepts? The first point to note is that concepts, themselves, are neither true nor false—e.g., the concept *loud* is neither true nor false. Instead, the question for concepts is whether it is apt or not. Is the concept apt when applied to a particular object, say, someone's singing? But more generally, we can ask the following: Should we have this or that concept in our repertoire at all? If so, how we should construe it—e.g. should we employ the concept of the *underclass*, and if so, how should it be used?²⁷ Elizabeth Anderson sketches what concept critique involves:

A critique of a concept is not a rejection of that concept, but an exploration of its various meanings and limitations. One way to expose the limitations of a concept is by introducing new concepts that have different meanings but can plausibly contend for some of the same uses to which the criticized concept is typically put. The introduction of such new concepts gives us choices about how to think that we did not clearly envision before. Before envisioning these alternatives, our use of the concept under question is *dogmatic*. We deploy it automatically, unquestioningly, because it seems as if it is the inevitable conceptual framework within which inquiry must proceed. But envisioning alternatives, we convert dogmas into *tools*; ideas that we can *choose* to use or not, depending on how well the use of these ideas suits our investigative purposes.²⁸

In order to create the critical distance that gives us “choice,” critique need not introduce a wholly new concept, but can just suggest a revision or rethinking. Ideology critique disrupts conceptual dogmatism and extends this method further to other representational tools, capacities, and culturally mediated patterns of response; it raises questions about their aptness, what they capture, and, importantly, what they leave out, distort, or obscure.²⁹

So one way to understand MacKinnon when she says that the point of consciousness raising is not to unearth undisclosed facts, but to change the “reference point for truth” and to “[re]organize the apprehension of truth,” is that consciousness raising offers at the very least an expansion or revision of our concepts and, in many cases, demands altogether new concepts. The reference point for truth thereby changes, not because reality is somehow “up to us,” but because propositions can be articulated and evaluated

as true or false that were not available to us to be thought or considered before. Consciousness raising, then, draws on women's experience (or the experience of the subordinated and silenced more generally) to expand the phenomena to be considered and captured by our concepts. It reveals that there are alternative ways of carving the phenomena, and calls upon us to explain and justify why we are working with the concepts we do. And it encourages the formation of new (or revised) concepts that better accommodate the lived experience of women (the subordinate). This, in turn, enables us to access facts (understood and noticed using the new concepts) that were not accessible before, and changes our understanding of reality. Given also that our social practices are partly constituted by the framework of concepts and beliefs we employ, our social world actually changes: we act differently, we related to others and to the material world differently.

Although adding to MacKinnon's epistemology the idea of conceptual critique and situating her view within a theory of social practices provides a way to pull together several strands of her view, the question still remains, when is different better? On what terms do we evaluate whether the new concepts are an improvement, whether the new schema yields more just practices? In some of her work, Elizabeth Anderson suggests that a reflective self-endorsement test is the best tool we have to judge the adequacy of any attitude, framework, or epistemic practice:

Reflective endorsement is the only test for whether a consideration counts as a reason for having any attitude or engaging in any practice of inquiry: we ask, on reflecting on the ways the consideration could or does influence our attitudes and practices and the implications of its influencing us, whether we can endorse its influencing us in those ways. If we can reflectively endorse its influence, we count the consideration as a reason for our attitudes or practice.³⁰

A knowledge practice is rational to the extent that it promotes such critical self-reflections and responds to them by checking or canceling out the unreliable belief-formation mechanisms and enabling the reliable ones.³¹

Admittedly, Anderson is right that *as individuals* all we have in order to determine what attitudes we should hold is a process of critical reflection and something like a self-endorsement test. However, it isn't clear to me that we can be content with this when it comes to the critique of social practices and the schemas that constitute them (and I think Anderson would agree). It may be that I emerge from consciousness raising with a new framework for understanding and acting within my social world. Even if I endorse the change, this new framework may simply throw me from the frying pan into the fire, and more importantly for the purposes of social critique, it may promote yet new forms of injustice. For example, the schema (and its component concepts organizing my experience) that I have endorsed may be those of a misogynist religious sect, or the Tea Party, or even a less problematic but still oppressive social frame. When are the concepts consciousness raising yields apt? When are schemas epistemically and socially acceptable?

My own strategy in this context is to turn to a theory of justice: we should endorse schemas that constitute just social practices. Consciousness raising is not, itself, a theory of justice; ideology critique is only the first stage of a process that requires a normative theory to complete. I cannot find in MacKinnon's discussion an account of the normative basis for social critique, the basis that will reject some changes of consciousness and (and corresponding social being) as inadequate or unjust,

and will justify the practices that constitute a feminist society. Without this, I'm concerned that we will be left with a feminist project that encourages liberation *from* existing oppressive structures, but cannot distinguish our replacing them with new oppressive structures from replacing them with structures that are truly just. I wholly support resistance to utopianism, and find such resistance in MacKinnon: "Take your foot off our necks, then we will hear in what tongue women speak."³² But in the space between critique and utopia, we need a theory of justice to guide us. If the epistemological challenge of linking knowledge and objectivity reality is replaced in the social domain by the challenge of linking consciousness to social being, how do we meet that challenge?

Notes

1. See Catharine A. MacKinnon, "Feminism, Marxism, Method, and the State: An Agenda for Theory," *Signs* 7, no. 3 (1982): 543.
2. See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 101. From the context of this quote (a chapter of her book entitled "Consciousness Raising"), it is clear that MacKinnon has in mind "consciousness raising" and not just awareness when she speaks of "consciousness" as doing something more than "objective knowledge."
3. *Ibid.*, 83.
4. *Ibid.*, 84.
5. *Ibid.*, 99.
6. A famous quote from Marx is useful for context: "In the social production of their life, men enter into definite relations that are indispensable and independent of their will; these relations of production correspond to a definite stage of development of their material forces of production. The sum total of these relations of production constitutes the economic structure of society—the real foundation, on which rises a legal and political superstructure and to which correspond definite forms of social consciousness. The mode of production of material life determines the social, political and intellectual life process in general. It is not the consciousness of men that determines their being, but, on the contrary, their social being that determines their consciousness." See Karl Marx, *A Contribution to the Critique of Political Economy*, Preface (Moscow: Progress Publishers, 1859).
7. *Ibid.*, 123. See also Catharine A. MacKinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), 57.
8. Sally Haslanger, "'But Mom, Crop-Tops Are Cute!' Social Knowledge, Social Structure, and Ideology Critique," *Philosophical Issues* 17, no. 1 (2007): 70–91; and Sally Haslanger, "Ideology, Generics, and Common Ground," in *Feminist Metaphysics: Explorations in the Ontology of Sex, Gender, and the Self*, ed. Charlotte Witt (Dordrecht: Springer, 2011), 179–208.
9. See William H. Sewell, Jr., "A Theory of Structure: Duality, Agency, and Transformation," *The American Journal of Sociology* 98 (1992): 20.
10. See Patricia Ewick and Susan Silbey, *The Common Place of Law: Stories from Everyday Life* (Chicago, IL: University of Chicago Press, 1998), 41. Italics added.
11. See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), 86.
12. See MacKinnon, "Feminism, Marxism, Method, and the State," 543.
13. See MacKinnon, *Toward a Feminist Theory of the State*, 95–96.
14. *Ibid.*, 87.
15. See MacKinnon, "Feminism, Marxism, Method, and the State," 527.
16. See also *ibid.*, 536–27.

17. See MacKinnon, *Toward a Feminist Theory of the State*, 101.
18. Elizabeth Hackett offers an account of MacKinnon's epistemology in terms of Thomas Kuhn's theory of paradigm shifts. Although I am more comfortable with the terminology of schemas, there are important similarities between paradigms and schemas. Note also that I'm not claiming that these are the only important elements of consciousness raising. See Hackett's Ph.D. Dissertation, University of Pennsylvania, 1996.
19. See Jocelyn Hollander and Judith Howard, "Social Psychological Theories on Social Inequalities," *Social Psychology Quarterly* 63 (2000): 342–44.
20. See Tamar Gendler, "Alief and Belief," *Journal of Philosophy* 105 (2008): 634–63.
21. See Sewell, "A Theory of Structure," 1–29. Also see Judith A. Howard, "A Social Cognitive Conception of Social Structure," *Social Psychology Quarterly* 57, no. 3 (1994): 210–27.
22. See MacKinnon, *Toward a Feminist Theory of the State*, 90.
23. *Ibid.*, 99.
24. Terry Eagleton, *Ideology: An Introduction* (New York and London: Verso Books, 2007).
25. Tommie Shelby, "Ideology, Racism, and Critical Social Theory," *The Philosophical Forum* 34, no. 2 (2003): 153–88.
26. Charles Taylor, "Interpretation and the Sciences of Man," in *Philosophy and the Human Sciences: Philosophical Papers 2*, 15–57 (Cambridge: Cambridge University Press, 1985).
27. Roughly, the underclass consists of those who are situated at the bottom of a class hierarchy, below the working class. Sometimes they are characterized as not only unemployed, but unemployable. Controversies about the term include its homogenizing and demonizing tendencies.
28. See Elizabeth Anderson, "Unstrapping the Straitjacket of 'Preference': on Amartya Sen's Contributions to Philosophy and Economics," *Economics and Philosophy* 17 (2001): 22.
29. Miranda Fricker introduces the term "hermeneutic disablement" and discusses the kinds of epistemic and political injustice that arise when our concepts fail us. See Fricker's *Epistemic Injustice: Power and the Ethics of Knowing* (New York: Oxford University Press, 2007).
30. See Elizabeth Anderson, "Feminist Epistemology: An Interpretation and a Defense," *Hypatia* 10 (1995): 53.
31. *Ibid.*, 55.
32. See Catharine A. MacKinnon, *Feminism Unmodified* (Cambridge, MA: Harvard University Press, 1987), 45.

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Is(n't) Catharine MacKinnon a Liberal?

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Catharine MacKinnon likes to describe her view as radical feminism or feminism unmodified or feminism, full stop. And she likes to contrast it to liberal feminism, which she sometimes treats with caustic scorn. But is she right to see a contrast here?

That MacKinnon sees one is of course *some* reason to think there is one. Not because she has proprietary control over the substance of her views or what labels are appropriate—how could she?—but because she's thought long and hard about this sort of thing. Still, she could be mistaken. I'll propose that she is. More than nominalist labeling is at stake in deciding whether her views are liberal. We might want to deepen our grasp of liberalism and of her work. And we might wonder how promising or doomed her political projects are in a largely liberal social order.

It's tempting to construe the question, "Is MacKinnon a liberal?" as putting all the pressure on properly characterizing MacKinnon's views. But it also depends on what we think liberalism is—or, better, recalling that liberalism is a sprawling tradition, what family of views is properly described as liberal. In the span of a short paper, I can't even begin to do justice to MacKinnon's work, let alone to develop and defend a view on how we might grasp liberalism. But I can draw a cartoon of each. I'm confident that the cartoon could be turned into a detailed and nuanced portrait. But it will suffice for my purposes here if I can supply some reason to pause before agreeing that MacKinnon is an opponent of liberalism. I think she's not even on the fringes of the liberal tradition. I think she's right at its heart. And that's what I think despite her crossing swords with such figures as Ronald Dworkin and Nadine Strossen of the ACLU, who see themselves as defending liberalism against her illiberal assault: for I think they're confused, too. Theirs are disputes squarely within the liberal tradition.

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MacKinnon is not alone in thinking that the public/private distinction has underwritten the subordination of women. As she puts it, "liberalism created the private and put the family in it."¹ And, she thinks, this has made the subordination of women socially and politically invisible. I'd object to the uncharacteristic idealism about history that the formulation suggests, but also to its errant chronology. After all, the public/private distinction predates liberalism by centuries: the ancient Greeks relied on it. That aside, I'd urge that there are three public/private

distinctions, not one, and that none of them maps onto the political/nonpolitical distinction.²

How so? *Public* sometimes means "visible or accessible to others," where the others are strangers; *private*, then, is hidden or off limits. As our concepts so often do, this one doubles between descriptive and normative sense. When your eight-year-old is industriously picking her nose and you snap, "don't do that in public!" you mean, "where others can in fact see you." But now suppose that your neighbor in the apartment building discovers—or drills—a hole in the drywall between his living room and your bathroom. In fact, he can see you in it. But he shouldn't be looking. It's fully idiomatic to say that he's intruding on your privacy. That's the normative gloss. Actual vision and metaphors of vision spring readily to mind here. But accessibility is broader than that. A park is public when more or less anyone can walk in. A country club is private when you have to be admitted as a member.

Public can also refer to issues on which you're obliged to pay heed to the interests of some broader collection of others, say your fellow citizens; *private*, then, to issues on which you may suit yourself. We ordinarily think of your consumer choices as private. It's no one else's business what brand of peanut butter you prefer. But that can change. If Cesar Chavez is promoting a grape boycott to help organize the National Farm Workers, your preference for seedless green grapes might well be thought to be no longer a private affair.

Finally, *public* sometimes refers to the government, *private* to other social spheres, especially (these days) the market. Consider asking whether health care should be publicly or privately funded or supplied.

These distinctions are independent. That something is public in one sense has nothing to do with whether it's public in the other senses. When you buy Skippy peanut butter, other shoppers can see it in your shopping cart and the store will keep a digital record of it: it's public in being visible. But it's still private in that you may suit yourself. When you vote, no one else can see your ballot. But you should pay heed to the interests of others, to make a judgment on something like the common good, and not to pursue your self-interest, still less to do whatever you happen to feel like doing. Firms in a capitalist economy are private in the sense that they may pursue their own interests. (But those committed to stakeholders, not shareholders, deny that this is true.) Those with shares bought and sold on the stock market are publicly traded: ownership is open or accessible to strangers. Some of what the government does is publicly visible and ought to be—and transparency helps ensure that the government pay proper attention to our interests and not lapse into contemptible self-dealing. But some of what the government does is properly hidden: take espionage or knotty diplomatic negotiations.

None of these distinctions, I'd argue, maps onto the *political/nonpolitical* distinction. Suppose we take *politics* as the realm of conflict over legitimate authority. That comes in weaker and stronger forms. The weaker form is struggle over whether some authority is using her authority well or badly. The stronger form is struggle over whether the actor actually has authority at all: maybe she's exceeding her jurisdiction, or maybe she's just an interloper with no legitimate authority at all. It's tempting to take the institution of government as the sole locus of authority. But that's a mistake. Social life is shot through with authority. Take bosses and workers, priests and their flocks, teachers and students, parents and children, conductors and musicians, and so on. In all those settings, emphatically including the family, we have conflicts over legitimate authority. For many centuries, husbands have asserted authority over wives—and men and women alike

have argued that that authority is being used badly or that it doesn't properly exist at all.

Nor are women or the family private in either of the first two senses. Sure, some of what happens in your family happens behind closed doors. But by no means all of it. The ancient Athenians, again centuries before liberalism, may have squirreled away their well-born women behind closed doors when guests visited. Various illiberal societies around the globe do more or less the same today—or extend mandatory invisibility outside the home by imposing the veil, keeping taverns or tea houses off limits to women, and so on. But much of family life is and should be open to the inspection of others. And if on some issues your family or its father and husband may do what it or he likes, there are issues on which outsiders will take keen interest and arguably should. Take the exemplary legal and political struggle over the very possibility of marital rape. One view was that husbands can't rape wives because the marriage ceremony counts as permanent consent. Another, and I think the more crucial one, was that the state rules not over individuals as such, but over male heads of household. "A man's home is his castle" was a doctrine of public law, not a squishy cultural sentiment about how glad the wife and kids are to see the weary warrior or worker return home and hide behind the newspaper. It meant that he was sovereign over what happened within those four walls. So the state had literally no jurisdiction, no authority, to second-guess or punish his actions there. And that means in turn that the victory of liberal individualism was a victory for women: it helped make their mistreatment legally visible.

So far, I've relied on conceptual analysis, undergirded with some stylized examples and fragments of historical information. One might wonder whether or to what extent liberals grasped these issues and championed emancipatory possibilities for women. In *The Subjection of Women*, John Stuart Mill announces repeatedly and indignantly that men beat their wives and get away with it. He wants the reader to see this as a scandal of the first order. He wants to expose what has been invisible and unsayable; he wants to turn it into an object of proper public concern; and he wants to insist on its political importance. And he insists that norms of male authority depend on nothing better than a lingering remnant of a long-vanished social world where physical strength actually mattered. I doubt that that explanation is plausible, but no matter here. What matters is that Mill means to unmask male authority as an obsolete absurdity by assigning it a debunking history.

MacKinnon finds much to admire, and much to be irritated by, in Mill's book. I share some of her irritation. When Mill assures the reader that, after all, the equality of women won't dramatically change things, that most women will be happy to continue in sweet subservience, one wants to groan or hurl the book against the wall. The best I can say about that notorious passage is that it can be read, if too generously, as political strategy. If you're concerned, as you should be, that dominant males will try to hang on to their unjust social dominance come what may, it might be helpful to assure them that actually they don't have a whole lot to worry about. Maybe. But I fear that what's really going on echoes the strand of *On Liberty*, which seems peevisly annoyed with the mindless mediocre Mrs. Grundys of the world, and Mill is plaintively demanding that such nonentities leave him and his talented eccentric pals alone. Or, traditional femininity might be fine for Mrs. Grundy, but not for Harriet Taylor.

Still, Mill's work here and elsewhere is splendidly concrete, grounded in a lively apprehension of actual social life. We should remember him in part as the seventeen-year-old arrested for helping the London poor get contraceptives, as the member

of parliament who urged an amendment to the second Reform Bill that would have extended the vote to women.³ (This earned "much merriment" and yielded a caricature in *Punch* captioned "A Feminine Philosopher.") Not that you'd have any idea of such matters from MacKinnon's sketch. She wraps up her commentary on Mill this way: "From Mill to contemporary forms, liberal theory exhibits five interrelated dimensions that contrast with radical feminist theory, clarifying both. These are: individualism, naturalism, voluntarism, idealism, and moralism."⁴

I always worry about such abstract *isms*. But plenty of liberal theory isn't what MacKinnon has in mind here: it isn't invidiously abstract or ahistorical or anything like that. A staple left-antiliberal view, which MacKinnon is gesturing toward here, is that liberalism is a theory of the presocial individual. (Marx's *On the Jewish Question* is the paradigm statement of this view.) I don't believe it. I think liberalism is first and foremost a theory of social order. After the Reformation, it becomes completely implausible to model social order on consensus on moral and religious fundamentals. Instead, liberals offer a theory of social differentiation, on which different institutions have their own logics and what matters is keeping reasonably crisp jurisdictional boundaries among them. Thus Locke's insistence in the *Letter Concerning Toleration* that we separate church and commonwealth: "He jumbles heaven and earth together, the things most remote and opposite, who mixes these societies, which are in their original, end, business, and in every thing, perfectly distinct, and infinitely different from each other." Locke was willing to argue that Catholics were unreliable subjects because they served a foreign prince (the pope), and that atheists were untrustworthy, too: that last because of his curious theory of moral motivation, on which people won't comply with their obligations unless they fear divine punishment.

But those are quirky inessentials in a view that clearly grasps the logic of social differentiation, and later liberals were happy to junk them. So Jefferson, calmer about atheism than Locke was, breezily adopted a deflating harm principle: "The legitimate powers of government extend to such acts only as are injurious to others. But it does me no injury for my neighbor to say there are twenty gods, or no God. It neither picks my pocket nor breaks my leg."⁵ This line of analysis demotes the inspiring confessional state, leading its faithful subjects to salvation, to a pedestrian entity responsible for such humdrum tasks as providing police and filling potholes. The free individual falls out much later in the argument, only after this picture of social order is up and running. The picture explains how there is room for individuals to make unsupervised choices without causing chaos. It turns that ominous figure of early modern England, the masterless man, into the dignified free agent you needn't be a Kantian to know and prize.⁶

So liberalism is sociology way before it can be anything about individuals. Sure, some liberal theorists like to talk about natural rights and social contracts. However you construe such talk, remember that David Hume wrote a *History of England*, that Adam Smith's *Wealth of Nations* and *Lectures on Jurisprudence* are richly learned in history, that Benjamin Constant was far more interested in thinking about the exigencies of French politics and society during and after the Revolution than he was in ruminating about individualism, naturalism, voluntarism, idealism, and moralism. Remember too that plenty of figures outside the liberal tradition are more or less uninterested in thinking hard about actual social life. The distinction between sociological and abstract political theories crosscuts the distinction between liberals and others.

Liberals too were deeply suspicious of all kinds of rules allotting wealth, power, and privileges in ways having nothing

to do with people's talent or work. They declared war on monarchy and aristocracy—recall Tom Paine's punning sneer at the "no-ability." To embrace the career open to talents or equal opportunity was to embrace a radical attack on familiar legal disabilities and privileges. How crazy to ban Jews and Catholics from parliament, as did the English! How absurd to restrict admission to the bar, as did the French, to those who'd accepted the Catholic sacraments! How intolerable to think that race could make people slaves! How pernicious to say that the oldest son of an aristocrat should inherit wealth and title, beggaring the rest of the family! Recall Figaro's blistering address to the count: "Just because you are a great nobleman, you think you are a great genius—Nobility, fortune, rank, position! How proud they make a man feel! What have *you* done to deserve such advantages? Put yourself to the trouble of being born—nothing more. For the rest—a very ordinary man! Whereas I, lost among the obscure crowd, have had to deploy more knowledge, more calculation and skill merely to survive than has sufficed to rule all the provinces of Spain for a century!" No wonder Louis XVI was offended. Yet it doesn't take much to realize that gender, too, has been a system of ascriptive hierarchy, that men have simply taken the trouble to be born male. Like racism, sexism was another illegitimate ascriptive status hierarchy, with those on top basking in illicit privilege and those on the bottom suffering contempt and exploitation.

So consider now the more pointed exploration of gender in Montesquieu's *Persian Letters*, surely a canonical liberal text. (If you have a view on which Montesquieu wasn't a liberal, or this book isn't a liberal text, you'd better have a damned good story about why not. That it says what it does about gender can't count as such a story, lest the claim that liberals are blind to gender domination lapse into an arbitrary stipulation.) The setup of the book is that Uzbek has left his harem or seraglio to explore Enlightenment Paris and the West. It's an epistolary novel, in which various characters write letters to each other. We hear different voices; it isn't always clear what, if anything, Montesquieu means to endorse. But the central thrust of the book is crystal clear. In Paris, Uzbek is a humane liberal. He sees through Parisian complacency and self-congratulation and unmasks folly and abuse. At home, though, Uzbek is a tyrant, and his tyranny gets harsher the longer he's away and the more restless—and openly defiant—his women become. And—here's the crux—the book exhibits his domination of the seraglio as maximally private *and* maximally political. Or, put differently, Uzbek has more or less total power, is totally cruel, and it's all totally invisible and no one outside is supposed to have the slightest interest in it. These women are so private that if they have to go out in public they are squirrelled away in a box; no other man is supposed to be able to lay eyes on them. Only the castrated eunuchs, officially Uzbek's loyal instruments, can. Uzbek is unequivocally their ruler. And his fatuous fantasies are punctured.

Early on, Uzbek writes to Roxana, one of his favorite wives. In loving and repulsive detail, he recalls his first having sex with her—or, as it turns out, raping her. (She carried modesty too far, he says, so he had to take her by force.) Having reminded her of the struggle—such cluelessness!—he adds that he cannot believe that she has any other aim but to please him. But this is very much about the limits of his imagination, not her deepest essence or yearning. At the book's close, Roxana hurls defiance at him. Yes, she sneers, she has been having an affair: she has defeated the garrison security apparatus of his seraglio. She may have lived in a state of servitude, she announces, but she has made herself free; she has reformed his laws by appealing to the laws of nature. She announces she is committing suicide, obviously a grim outcome. But it's not as though Montesquieu thinks that is how women

should exercise agency. It's that she refuses to be trapped and dominated and has only one way out.

Or take the eunuch who writes to Uzbek. Despite being castrated, he sees masculinity just as MacKinnon does: as a matter of social domination. "I always remember that I was born to govern them," he says, "and it seems to me as if I recovered my manhood, on every occasion that I have yet to command them." To be a man is not to have testicles. It is to rule women. Political domination in the private sphere, gender as politics: these are not radical feminist insights unavailable to witless liberals. They were staked out and explored centuries ago in canonical texts of classical liberalism. Again, one might try to show that Mill or Montesquieu wasn't a liberal, or that the *Subjection* or *Persian Letters* isn't a liberal text, or that some startling insights don't really cohere with liberalism. But that would be an extraordinarily steep uphill battle.

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MacKinnon has also indicted law. Far from being neutral or objective or impartial, she's urged, the law systematically embeds a male point of view. That's why, she thinks, it's so hard to secure rape convictions. Like men used to pornography, the law sees women as sexually available, as always already consenting. So courts ask for evidence of physical resistance. They find consent where women are terrified into submitting, where women are too drunk to resist, and so on. Law's systematic bias makes it impossible to grasp what's actually going on, not least what in our culture should make us worry about the preconditions of meaningful consent.

I have nothing nice to say about American criminal law's treatment of rape claims. There are other explanatory accounts of how things have gone so badly wrong: Anne Coughlin has argued persuasively that the modern law of rape takes shape when fornication and adultery are illegal. So ordinarily a woman coming forward to press rape charges is confessing to a crime but pleading duress in defense. And the criminal law has always been very hard on that defense, whatever the crime, whatever the sex of the defendant.⁷ One might wonder why the law continues to be so hard on women after we've given up on punishing fornication and adultery. But her explanation makes better sense of the possibility and actuality of reform. Note too that claims of marital rape are no longer a systematic nonstarter. A full survey would take me too far afield. But consider the judgment of one New York court: "We find that there is no rational basis for distinguishing between marital rape and nonmarital rape. The various rationales which have been asserted in defense of the exemption are either based upon archaic notions about the consent and property rights incident to marriage or are simply unable to withstand even the slightest scrutiny. We therefore declare the marital exemption for rape in the New York statute to be unconstitutional."⁸ MacKinnon's view suggests some deep structural blindness that would make such official pronouncements, or more generally the possibility of reform, mysterious.

That what seems natural or necessary or fair is actually contingent and unfair is one of the oldest moves in the book of social criticism. I wouldn't claim it as a distinctively liberal move. But I would insist that liberals have been as deft as anyone else in making the move.

Gender critiques of the law's pretensions to fairness are also centuries old. Here's one of my favorites. "From the laws and dispositions of men," complained A Peeress of England to her son in 1784, "women are almost in every respect made a second sort of beings." "Do not imagine," she continued,

because the law has put your wife intirely in your power, that it is just or right she should be so. I have heard men boast of that power, as if it was constituted by their merit. Trace that power to its source, and you will find it proceed from the natural propensity Englishmen ever had for tyranny. It was men who made the laws, and those give a man an unlimited power over his wife.

She scornfully indicted the abuses made lawful in England before urging that French law was better:

Any Sir John Brute may lock his wife up, and even beat her; and there is no power to whom a wife can apply to prevent him. He may insult and torment her in any way he pleases—he may never pay her pin money—he may take the lowest prostitute, place her in his wife’s coach, by his side, travel in England with her where she is not known, and call her his wife, whose good name is responsible for every indecent folly the mistress may be guilty of—A husband may lavish all his estates and money upon women of the town, and there is no power to restrain or correct him.⁹

I don’t know who this peeress was, or indeed if the author was in fact a peeress. And her little book doesn’t explore enough other issues in political theory that I’d be confident in any more general characterization of her views. So I wouldn’t claim that, like Mill and Montesquieu, she is a paradigm case of a liberal. Maybe she’s a radical feminist, a critic of liberalism, popping up earlier than we might have assumed possible.

But one of her more famous contemporaries sounds similar tones. Recall Jeremy Bentham’s stinging assault on the “sinister interests” that systematically perverted the legal system. The central worry is that absent clever institutional design, people will pursue their private interests and flout whatever fiduciary obligations or more general social benevolence they should be heeding. The young Bentham assaulted shameless self-dealing by lawyers. He came to extend his attack on sinister interests more broadly, not least to government officials, and eventually to gender: he did sometimes argue for equal rights for women¹⁰ (and, for that matter, for decriminalizing sodomy).¹¹ The form of the argument is the same: behind the wigs and pleadings are indefensible abuses and special privileges, not equality or fairness. And he did extend his underlying psychological concern about self-deception: “Many a woman has in this way had a more correct and complete acquaintance with the internal causes by which the conduct of her husband has been determined, than he has had himself.”¹² Men wouldn’t enjoy the results of introspection, so they avoid it.

Jump forward to the early twentieth century and you find a *Punch* columnist regularly reporting on mock legal proceedings showing the stupid absurdities of English law. Perhaps the most famous report—and its fame is as interesting here as its publication—is *Fardell v. Potts*, where the court decides that English law knows nothing of the possibility of a reasonable woman.¹³ The very same columnist launched his parliamentary career by fighting successfully to liberalize England’s divorce laws. Liberalism didn’t blind him to oppressive gender dynamics in the law. It led him to seize on them and move to reform them.

Is MacKinnon’s critique of law linked to her critique of liberalism? I think so. Here’s how, or anyway here’s one important link: suppose that liberalism’s deep or constitutive commitments commit liberals to defending pornography as a matter of free speech. Now suppose further, as MacKinnon argues, that pornography is a linchpin, maybe the central linchpin, in the social construction of our sense of what it is to be a man (dominant) or a woman (submissive). If pornography

eroticizes inequality and power, and men have had the power to construct law, they will effortlessly construct a legal system blind in various ways to women’s oppression. True, an infamous decision by the seventh circuit struck down the Indianapolis ordinance championed by MacKinnon and Andrea Dworkin, which would have offered a civil remedy for women who could show they’d been injured as a result of pornography.¹⁴ True, leading liberal Ronald Dworkin savaged MacKinnon’s *Only Words*, a brief and searing polemic about the issue.¹⁵ But I find it hard to imagine that liberals are necessarily committed to the stance the seventh circuit and Dworkin took. After all, Canada has upheld laws and convictions based on more or less the same rationale, with reasoning utterly familiar in liberal theories of free speech.¹⁶ American first amendment law permits the regulation of obscenity—emphatically not the same category as MacKinnon’s pornography, in part because the category obscenity exempts work “which, taken as a whole, [has] serious literary, artistic, political, or scientific value.”¹⁷ MacKinnon has forthrightly rejected the exemption: “if a woman is subjected, why should it matter that the work has other value?”¹⁸ But if we construe *subjected* in terms of harm, nothing here need make any liberal balk. MacKinnon offers an elaborate and intriguing account of what’s wrong with pornography. But harms of a quite traditional sort—rape, other violence against women, violations of equal opportunity, and so on—are front and center in her account.

And here’s another puzzle for how MacKinnon’s view tilts towards the view that liberal law has to be structurally blind or entrenched in its rejection of the views she champions. Title VII makes discrimination on the basis of sex illegal in the workplace. We owe to MacKinnon the thought that sexual harassment, even when purely verbal, can qualify as discrimination.¹⁹ The law has formally adopted that view;²⁰ the Supreme Court has upheld it without even pausing over free speech.²¹ This suggests that at least modern American law is not as relentlessly misogynist, as helplessly in the clutches of confused pictures of free speech, as MacKinnon suggests. From a liberal perspective, here is yet another jurisdictional boundary. Bosses have some authority over workers. But that authority does not properly extend to extorting sexual favors. Just as the Lockean state is selectively blind to religion, so the modern workplace can’t disadvantage women just because they’re women.

Other writers too have been interested in how gender socialization underwrites far-ranging social inequality, also in how the process might be hugely powerful even as we’re blind to what’s going on. I won’t apologize for quoting one such account at length:

All the selfish propensities, the self-worship, the unjust self-preference, which exist among mankind, have their source and root in, and derive their principal nourishment from, the present constitution of the relation between men and women. Think what it is to a boy, to grow up to manhood in the belief that without any merit or any exertion of his own, though he may be the most frivolous and empty or the most ignorant and stolid of mankind, by the mere fact of being born a male he is by right the superior of all and every one of an entire half of the human race: including probably some whose real superiority to himself he has daily or hourly occasion to feel; but even if in his whole conduct he habitually follows a woman’s guidance, still, if he is a fool, he thinks that of course she is not, and cannot be, equal in ability and judgment to himself; and if he is not a fool, he does worse—he sees that she is superior to him, and believes that, notwithstanding her superiority, he is

entitled to command and she is bound to obey. What must be the effect on his character, of this lesson? And men of the cultivated classes are often not aware how deeply it sinks into the immense majority of male minds. For, among right-feeling and well-bred people, the inequality is kept as much as possible out of sight; above all, out of sight of the children. As much obedience is required from boys to their mother as to their father: they are not permitted to domineer over their sisters, nor are they accustomed to see these postponed to them, but the contrary; the compensations of the chivalrous feeling being made prominent, while the servitude which requires them is kept in the background. Well brought-up youths in the higher classes thus often escape the bad influences of the situation in their early years, and only experience them when, arrived at manhood, they fall under the dominion of facts as they really exist.²²

The clotted prose gives it away: it's John Stuart Mill, again from *The Subjection of Women*. If this be some invidious individualism, naturalism, voluntarism, idealism, and moralism, well, sign me up. Less polemically, I'd have thought it a grounded account of the social interactions that shape who we are, all for the worse. It's not perfect; in particular, it's missing any account of what the process does to little girls. But it isn't stupid and it isn't somehow a mode of enquiry or analysis unavailable to liberals. It's an attempt to unmask what might seem natural or necessary or divinely mandated as the wretched outcome of a perverse but contingent practice, just as the bit about the law of strength is an attempt to make us see pointless and cruel injustice, not uncontroversial business as usual.

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One last remark. MacKinnon sometimes wonders how, given her views on how deeply and powerfully male supremacy is entrenched, it's possible for her to notice what's going on and to speak and write about it.²³ As she put it in opening an endowed lecture at Harvard, "I am . . . existentially amazed to be here."²⁴ More important, perhaps, she has argued that feminist insights became available because of consciousness-raising, the vintage 1960s and 1970s practice of women discussing the most mundane details of their daily lives: who does the dishes, what happens when he wants to have sex, whether she's happy, and so on. In these discussions, MacKinnon argues, women became aware that their plights were not idiosyncratic, individual, or psychological. They came to see them as shared and so as socially structured. They came to see them as the potential objects of political action. So the discussions were simultaneously of deep epistemological and political significance.

So far so good. But now we want to know just how women came to identify any of these issues as *problems*, and then, more pointedly, as *injuries*. (It's a problem, say, when a big rock happens to slide off a mountain and slam into your head. It's an injury when someone intentionally throws it at you without any justification—or when there's some other story about why an agent has acted culpably, if only by omission, in letting the rock hit you.) What conceptual resources make it possible for women to think, for instance, "I regret having to wash the dishes and do the laundry?" MacKinnon is not likely to say that it's just essential to human nature to react that way. And that's a good thing, because I suppose no one should say things like that. So we need to explain how women come to see such matters as problems. And then what conceptual resources make it possible for women to go on to think, "it is wrong, unfair, unjust, unequal for me to do all this sort of thing while

my husband lazes around. What made that women's work?" That is, we need to explain why these problems aren't mere misfortunes, but instead are injuries.

To that second kind of question, anyway, MacKinnon offers this response: "Why some women take the step of identifying their situation with their status as women, transforming their discontents into grievances, is a crucial unanswered question of feminism."²⁵ I'd propose this answer. There are cultural resources available to support such observations and inferences. We live in a world that now makes routine the thought that we are all free and equal. But that's the vocabulary of liberalism. Behind the miracle of consciousness-raising are not just the canonical likes of Montesquieu and Mill, but generations of men and women who struggled in decidedly liberal causes: to emancipate slaves, to advance the dignity of labor, to get workers and women the vote, to get the state out of the confessional booth and the bedroom, to secure physical security and equal opportunity alike by trying to make the streets safe for women, and on and on. MacKinnon joins all too many in seeing liberalism as a once emancipatory but now exhausted political theory, straitjacketing us from further progress. It's more plausible, alas, to think that liberalism is utopian. Regardless of her self-understanding, regardless of her exchanges with the likes of Strossen and Dworkin, regardless of the seventh circuit's ruling the Indianapolis ordinance unconstitutional, MacKinnon's work seems to me squarely within the liberal tradition.

Notes

1. See Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989), 70.
2. For a more sustained exploration of what follows, see my *Household Politics: Conflict in Early Modern England* (New Haven: Yale University Press, 2013), especially chapters 2, 4.
3. The story is well told in Bruce L. Kinzer, Amy P. Robson, and John M. Robson, *A Moralist In and Out of Parliament: John Stuart Mill at Westminster, 1865–1868* (Toronto: University of Toronto Press, 1992), chapter 4.
4. MacKinnon, *Toward a Feminist Theory of the State*, 45.
5. Thomas Jefferson, *Notes on the State of Virginia*, Query XVII.
6. Here, see my *Happy Slaves: A Critique of Consent Theory* (Chicago: University of Chicago Press, 1989), especially chapters 2, 5.
7. Anne M. Coughlin, "Sex and Guilt," *Virginia Law Review* 84 (February 1998): 1–46.
8. *People v. Liberta*. N.Y.S. 2d 152 (N.Y. Ct. of Appeals 1984), 163.
9. *Letters from a Peeress of England to Her Eldest Son* (London, 1784), 9, 14–15, 120–21.
10. Compare and contrast *Plan of Parliamentary Reform*, in *The Works of Jeremy Bentham*, ed. John Bowring, 11 vols. (Edinburgh, 1843), 3:463; *Radical Reform Bill*, in *Works*, 3:564; *First Principles Preparatory to Constitutional Code*, ed. Philip Schofield (Oxford: Clarendon, 1989), 96–100; "Constitutional Code: Matters Occasioned by Greece," in *Securities Against Misrule and Other Constitutional Writings for Tripoli and Greece*, ed. Philip Schofield (Oxford: Clarendon, 1990), 260; *Constitutional Code*, vol. 1, ed. F. Rosen and J. H. Burns (Oxford: Clarendon, 1983), 29. Bowring reports that Bentham branded James Mill's dismissive views on the abilities of women "abominable": *Works of Bentham*, 10:450.
11. Jeremy Bentham, "Offences Against One's Self: Paederasty," 1785.
12. *Principles of Judicial Procedure, With the Outlines of a Procedure Code*, chapter 4.
13. A. P. Herbert, *Uncommon Law: Being Sixty-Six Misleading Cases Revised and Collected in One Volume* (New York: Putnam, 1930), 11–20.
14. *American Booksellers v. Hudnut*, 771 F.2d 323 (7th Cir. 1985). See Catharine A. MacKinnon and Andrea Dworkin,

- eds., *In Harm's Way: The Pornography Civil Rights Hearings* (Cambridge, MA: Harvard University Press, 1998).
15. Ronald Dworkin, "Women and Pornography," *New York Review of Books* (October 21, 1993), and see the dispiriting exchange between MacKinnon and Dworkin, "Pornography: An Exchange," *New York Review of Books* (March 3, 1994).
 16. *R. v. Butler*, 1 S.C.R. 452 (1992).
 17. *Miller v. California*, 413 U.S. 15 (1973), 24.
 18. Catharine A. MacKinnon, "Pornography, Civil Rights, and Speech," *Harvard Civil Rights – Civil Liberties Law Review* 20, no. 1 (Winter 1985): 1–70, 21.
 19. Catharine A. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (New Haven: Yale University Press, 1979).
 20. 29 C. F. R. § 1604.11(a).
 21. *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986).
 22. *The Subjection of Women*, chapter 4, in John Stuart Mill, *On Liberty; with The Subjection of Women; and Chapters on Socialism*, ed. Stefan Collini (Cambridge: Cambridge University Press, 1989), 196-97.
 23. For a complicated version of the thesis I don't have space to unfold here, see her *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987), 131.
 24. MacKinnon, "Pornography, Civil Rights, and Speech," 21.
 25. MacKinnon, *Toward a Feminist Theory of the State*, 86.

Shakespeare's Sister in Philosophy and Reality: A Response

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"I am talking of the common life which is the real life and not of the little separate lives which we live as individuals . . . if we . . . see human beings not always in their relation to each other but in relation to reality[,] if we face the fact, for it is a fact, that . . . our relation is to the world of reality . . . the dead poet who was Shakespeare's sister . . . will be born."¹

Just as there is no liberal reality, and no conservative reality, there is no feminist reality. There is only what is real.

That doesn't make reality, or theorizing reality, simple or transparent. Angles of vision and political movements, with their philosophical foundations and tendencies, contribute to what can be seen and known and recognized to exist as real, as well as to how it is shaped and constructed and represented, or projected or imagined, with all its greys or nuances or fluidities or immanences or multidimensionalities or uncertainties or mysteries or whatever. Theory and practice, with analysis and empirical research, rules of evidence and burdens of proof in law along with all its doctrines, shape what power will deem real, established, or able to be established. Reality can and does change, too, depending in part on what of it is or can be perceived, and what vision of it is empowered and imposed. It is both tenacious and fragile, as well as of course elusive at times, not to mention contested. But the "it" of it is not just a question of competing heuristics. What I mean here is that there is such a thing as more and less accuracy in approaching the apprehending and conveying the "is" of what is there. It is not as absolute as the notion of truth, but it is not indeterminate either. If it was truly indeterminate, it wouldn't be such a problem.

When a reality that half the human world lives and experiences, hence knows on some level, has been largely left

out of account in authoritative arrangements, precluded from public discourse or even language, as if it did not exist, and hence excluded from the political allocations and institutions of power based on such accounts, including philosophical ones, a lot is missing—missing in what is regarded as the real, certainly in what is authoritatively presupposed as such a basis for law and policy. This is what happens when some people have no legitimacy, no status, no credibility, no voice. This seems to me obvious. Apart from being a political critique, this is also a point about method, about apprehending the knowable.

Once the foundation for what is authoritatively regarded as the real is contested—for example, when a voice for such a group is found and not silenced—essentially new evidence of all kinds is gathered and weighed. A fuller shape of what exists emerges for, to a considerable extent, the first time, at least authoritatively. Its illumination will not be news, strictly speaking, to the formerly excluded, but regarding its information as "knowledge," as part of what can be and is to be known of reality, will be new. Experiences are then respected that previously were denigrated, people and dimensions of life are accorded dignity that formerly were deprived of it, so that the picture of the whole acquires dimensions that were not there before. For anyone who is paying attention, what can be seen and understood as the real changes as a result. It has to. Everything looks different. Or so one would think.

Such a fuller vision of what is, or new light on it so that its shape changes, can also change reality itself because the way people live—affected as it is by the legal, social, cultural, religious, epistemic rules and instructions we live under—can proceed under a new collective realization, including the understanding that what was previously largely missed or overwhelmingly denied is, actually, there. The image of reality that is brought to living, including the creation of social norms and formal rules and unconscious laws of gravity, from intimacy to geopolitics, can be said to be more accurate than before. You can't change what you deny is there. Where denial ends, new possibilities of change open.

This is what feminism has done with the experience of women, and some men, through its focus on and analysis of sex and gender and sexuality, in particular with its exposure and understanding of sexual abuse and its foundational place in life and law and letters. Because this shift has occurred, the reality exposed no longer needs a feminist lens to be seen. Anyone can see it. It is subject to evidence, not faith, not even vision. Either it is there or it is not.

This needs to be said, it seems, because defining "what is feminist"—as if its project is ideological, as if cards are carried and doors monitored, as if the margins of feminism need to be defended and its vantage point guarded, most crucially as if you can only see what it has revealed if you look at the world in feminism's particular way—has never been its point or its project. "What is"—both uncovering what has always been there but not regarded as known (I will never forget reading, early in my work on sexuality in the early 1970s, the phrase "female sexuality, about which so little is known") and changing everything in light of it, once found—is.

If there is no secret handshake, there are of course feminist principles, deriving from this method. Pursuit of the liberation of women, promotion of equality of the sexes, opposition to misogyny, respect for the equal human dignity and worth of women are bedrock. When these are one's priorities, so that contrary rules and norms and prescriptions and perceptions are accordingly challenged that many people and social forces want to hold onto even as they often profess to adhere to these same commitments, one is called radical. The point is to ensure that the critique not be taken seriously, be seen as extreme, even

as the critics often claim credit themselves for whatever they find appealing about the principle or its products, specifically about whatever power thinks it can live with or without today, once appropriately watered down. What power feels threatened by is stigmatized as radical. A notion is called radical to the degree that society's existing distribution of power is based on its opposite. A person is called radical when agreeing with that person could alter who dominates whom.

Feminist method is substantive not formal, concrete not abstract, collective not individual, political not moral.² Its purpose is not to provide a metric for showing how other things or people are or are not feminist, but to get at and establish realities that have been overlooked but are actually there and meaningful, and to make them matter. When this method works, what is contended based on using it is persuasive, even undeniable, because it presents a reality that is lived and recognizable, so that the insight or analysis is concurred in without usually remembering that it was ever not seen or was disagreed with. This happens unless power is staked on the other side and prevails. It is this moment of recognition of reality that is the moment of change in inequality. When most successful, it typically is not recognized as saying anything at all. It is simply taken for granted.

What these principles, animated by this method, call for in practice—the actions and positions and critiques that promote these goals—is a conversation that a political movement exists to encourage. Policing boundaries between feminism and other politics is antithetical to what it calls for. This is true not the least because feminism is no part of a left/right politic. People of all other political persuasions variously agree and disagree on the aforementioned principles, and recognize the realities feminist method uncovers, each from their own reality, for their own reasons. To the extent that feminism is a ground of its own, just as women are both our own group and members of every other group, feminism will, when successful, come to underlie changes in other politics that accord with its principles, as well as retain its own ground, often moving the ground that other people stand on without their realizing it. This is happening now and has been happening globally at least since 1970.

Margin-policing is especially pointless for the application of this method to law. This is not only the case because feminism aspires to redefine the center, to occupy the whole world, but because while there may be feminist-inspired laws, there are no laws that apply only to feminists, or—more to my point here—laws that can be applied correctly only if you look at the world in a feminist way. If the world cannot be seen accurately through its initiatives by essentially anyone, it cannot workably be seen. Laws so generated will work for and apply to everyone, in the reality we all inhabit, or they will not be laws and they will not work at all. In other words, if the point is to change the world, and law in this instance is one powerful way to do that as well as one powerful site in the world that needs to be changed, building walls around a sectarian movement, treasuring its margins even as one is being marginalized, defining precisely how many angels can dance on the head of a feminist pin and what they should wear, is self-defeating as well as a waste of mortality.

In her contribution to this symposium, Professor Haslanger, a philosopher focused on epistemology, is engaged, with precision and insight, in trying to understand all of this through examining the process through which consciousness is created and how it produces social change.³ She asks where she should stand in evaluating what emerges.⁴ Professor Langton here contributes to this process by intervening, as a philosopher, in one crucial concrete sphere of its operation.⁵ Professor Herzog, a philosopher with historical interests working in law,

seems largely to have missed these opening points,⁶ which made them seem worth reiterating. In this, he is far from alone, although few approach the questions he raises with his sophistication and accessibility. The fact that the four of us enter this discussion through varied disciplinary backgrounds, tilling diverse fields day to day, makes our convergence here richer. The engagement of these commentators with my work is serious, productive, and appreciated, providing an opening for these informal reflections.

All three writers acknowledge that power constructs social reality but falter to varying degrees, it seems to me, in operationalizing that insight. Professor Langton seems to have overlooked in these observations (not elsewhere in her work) that sex equality is absent as a foundational value in liberalism as it is practiced. Professor Haslanger might consider that when one is not talking about an ideology, “normative” constructs are not needed. Substance—i.e., recognition of reality—is needed to properly criticize concepts. The missing substance here, as in most liberal thought, is sexual abuse: its systemic reality. One stands inside it. Actually, there is no outside it. It is the place of substance—this substance, not the concept or idea of a reality—that philosophy per se tends to miss. Not the concept of substance. Substance—this substance in particular—itself. And not as an “example” but as a ground, touchstone, and foundation, from which concepts grow, out of which they emerge.

Feminism in this light is thus a theory of power and its social organization and operation and an identification of its substantive ground and consequences that is sufficient for a lifetime of reconstructive theorizing. Everything looks different from here. Consciousness is definitely linked to social being, but the linkage is a real one, not a moral one. Meaning: social ontology, constructing how social life is being lived, not morality in the sense of positioning evaluative thoughts on one side or the other of matters of ought and should.

What views count over others emerges through participating in a collective process of engaged practice.⁷ If one is, or positions oneself in theorizing, alone at one's desk, writing the rules for what counts, one is lost. Maybe just as the human body knows pain when assaulted, the human spirit knows denigration when it happens. Never mind being told that this is what being valued and loved looks like. Once one gets to the ground on this, where experience happens and is not denied, where one woman connects with another and listens, where women see themselves in each other, and each other in themselves, where reality becomes fact and evidence, the genie escapes the bottle. Consciousness thus raised becomes a ripple, then a wave, then a tide, then a tsunami. This is a praxis that you have to actually take part in, be immersed in, be changed by, not just think about or observe or imagine, in order to write about. It is not abstract, as philosophy traditionally tends to be, and it is not individual in the one-at-a-time sense. It is collective and substantive, and far more empirical than normative. What you learn is what is actually going on out there. Feeling at sea, that something to hold onto is missing, when lacking abstraction, individualism, and normativity shows how deep liberalism, in its classical methodological sense, is.

Not that there aren't liberal ways to support work that promotes women's equality or recognizes women's humanity. There are conservative ways to do so as well. The question is, given that liberalism has been the dominant ideology and systemically hegemonic for some hundreds of years, why hasn't the sex equality it supposedly supports happened? What explanation exists for why it has neither systematically seen nor enacted its supposed basic commitments to upending gender hierarchy? If the philosophical question is whether a

given philosophy *can* achieve or accommodate something, when does the time come for it to explain why it *hasn't*? If the philosophical question is *could* a liberal philosophy achieve a real sex equality, where does the question of why “a largely liberal social order”⁸ has not done so fit in? When are we going to be told by liberals—specifically by liberal philosophers—why liberalism has not done what women most urgently need yet?

Not that there is not much to be learned from the liberal tradition—especially, in my opinion, from John Stuart Mill's *The Subjection of Women*, although the contribution of Harriet Taylor might be given more attention. *Subjection* offers a dazzling array of penetrating insights into women's situation that are usually, called different things, claimed for the twentieth century: socialization, stereotyping, adaptive preferences, social conditioning, domestic violence and its dynamics, horizontal hostility, Stockholm syndrome, complicity in one's oppression, male-identification, and more. Mill squarely faces that women are subordinated by and to men in the family, locked in by family law. He understands that this is not individual but group-based. He knows that men in general like it and want it this way. He does not exceptionalize himself or write himself out of his text either:

Whatever gratification of pride there is in the possession of power, and whatever personal interest in its exercise, is in this case not confined to a limited class, but common to the whole male sex. . . . [I]t comes home to the person and hearth of every male head of a family, and of every one who looks forward to being so. The clothopper exercises, or is to exercise, his share of the power equally with the highest nobleman. . . . Men do not want solely the obedience of women, they want their sentiments. All men, except the most brutish, desire to have, in the woman most nearly connected with them, not a forced slave but a willing one, not a slave merely, but a favourite. They have therefore put everything in practice to enslave their minds.⁹

In talking about domination—“But was there ever any domination which did not appear natural to those who possessed it?”¹⁰—and “dominion,”¹¹ Mill pulls few punches. While he clearly sees what we would call the psychological dimensions of women's condition, he comprehends that it is political in the sense of ordering relationships by power, is imposed on the subjected from without, then largely arranges them within. He did not have the evidence we have, so when he said, “If married life were all that it might be expected to be, looking to the laws alone, society would be a hell on earth[.]”¹² he was more right than he knew. Lacking information that emerged in the 1970s, sexual violation is not discussed as such, although it fits with much of what Mill does say.

As evidenced throughout my work, the liberal institutions and social arrangements of power and hegemonic attitudes and legal doctrines that exist on these questions today—in family law, the law of domestic violence, anti-discrimination law—reveal no systematic understanding of what Mill so clearly grasped. Women do not encounter John Stuart Mill in court or in Congress or at the police station. They—not him—are what we are up against. Considering the family as properly private and individual, where sex equality law does not belong; treating domestic violence as a problem of bad men, not of sex discrimination; seeing discrimination as the conscious mistake of an intentional exceptional individual—these notions remain fundamental to liberal legalism's world of abstract individuals, instead of as embodied in the legal, institutional, and social structural reality that gendered flesh and blood women inhabit.

That John Stuart Mill opposed many of the same things feminists oppose today does not make us liberals. That he was a liberal and capable of these insights does not redeem an entire tradition that, empowered, does not effectuate them. It does not make him not a liberal either, although his description of women's situation was arguably less so than anything he wrote. It does make him, with his receptivity to Harriet Taylor's help, a man who was, so far as sex inequality is concerned, far more enlightened from today's feminist point of view than his context would predict, or than his tradition has permitted to be realized then or to this day. That makes him an outlier to the liberal tradition in this respect—an inspired and inspiring outlier to a tradition of thousands of books and articles and case decisions that never once feel the need to mention the subjection of women or to take its reality seriously in anything they say or do.

Within liberalism as it exists in the real world, its ideology of individual freedom and equality encourages women to identify with these goals as values. It also helps deceive women about the degree to which they have been achieved, and to think of themselves more as atomistic isolated individuated beings than as members of the group women. When women hit walls, experience discrimination, they either recognize that they have been deceived, by whom and what, or they rationalize it away, including with self-blame and bravado, for which liberalism (like most religions) provides rich resources. My question is, What liberal institutions are there to realize its promise of freedom and equality for women? In the United States, there is no real rape law, nothing to recognize that women have a human right not to be bought and sold for sex, no true guarantee of equal pay, no effective law against gender-based violence, ever-eroding reproductive rights, and no constitutional equal rights amendment explicitly guaranteeing sex equality. This is reality under liberalism.

With respect, pace Herzog, nobody who works anywhere near the legal system doubts the dynamic impact of the public/private line in and on these issues. Not even most liberals.¹³ It was there in its nod to social reality it presumes it cannot reach when the Supreme Court refused to allow official racism to take a child from her mother: “Private biases may be outside the reach of the law, but the law cannot, directly or indirectly, give them effect.”¹⁴ Similarly, it was there when the enforcement of racial covenants was prohibited—their enforcement (public), not their existence (private).¹⁵ “The Fourteenth Amendment protects against state action, but it ‘erects no shield against merely private conduct, however discriminatory or wrongful.’”¹⁶ It was there when impunity was the legal response to a child being beaten permanently insensate by his father “who was in no sense a state actor. While the State may have been aware of the dangers that Joshua faced in the free world, it played no part in their creation[.]” The “free world” in reference here is the private; the entity being let off the hook in accountability for it is the public. It is there in “the castle doctrine,” drawn from the idea that a man's home is his castle, which allows self-defense with deadly force in the home without having to retreat first.¹⁷ (Your porch is private, in case you were wondering, your shared stairwell public.¹⁸) It is there whenever state action is required before inequality will be stopped, as when the civil remedy provision of the Violence Against Women Act was invalidated.¹⁹ It is there in express doctrine, specifically where sexuality is concerned, regulating “the most private human conduct, sexual behavior, and . . . the most private of places, the home.”²⁰ And it was there—until changed after massive struggle and only in some instances—in the systemic insistence on treating domestic violence, marital rape, and sexual harassment as too private for the public hand of legal accountability to intrude upon.

In powerful overhang of this notion, all these abuses are still given large margins of appreciation in practice, requiring extreme amounts of force or violation to be taken even slightly seriously, typically with impractical to impossible burdens of proof and liability standards (i.e., not that it didn't happen, but either that "nobody" did it, or whoever did will not be held accountable legally).

The public/private line is shot through the most fundamental legal doctrines of jurisdiction, sovereignty, and federalism—what I call the structural private. It is by no means unique to liberalism, of course. Various drawn, it characterizes male dominant legal and social systems more generally. That it exists in legal regimes and societies that are not liberal does not mean that liberalism is not wedded to its version. It is a major way men structure their power over women. It only means that male dominance is bigger than liberalism, and liberalism is no exception to male dominance.

One wonders what has to be there for Professor Herzog to recognize that a public/private line is being drawn. What he seems to miss most is the understanding that the distinction is totally unreal. That is the whole point of the critique. There is nothing truly private about the home; it constructs the social order. Fundamentally, the feminist public, the ground of its politics, is what liberal legalism calls the private for those issues that substantively construct women's status. The line is thus both phony and real, imposed in order to keep male power in place in a social reality that emphatically does exist, while being conceptually illusory and incoherent.²¹ The whole point of the critique of the public/private line in feminism is to expose it for the shibboleth it is in order to redraw the power lines it imposes. Presumably this also serves to show why there is no contradiction between calling out reality as it is and practical work for changing it.

No law of which I am aware is based on Herzog's reading of *Persian Letters*. Much life and culture is based on its facts: rape regarded as a positive outcome, a woman trapped in the home, tries sexuality as freedom, finally sees suicide as the only way out of an oppressive relationship. Maybe a story was the only way these realities could be addressed in Montesquieu's time.

Liberalism excels at criticizing distinctions that are "arbitrary," by which is meant distinctions that do not have a rational basis in that their meanings are illusory or false, in the sense that they do not accord with social reality as it is seen to exist. But when distinctions *do* correspond with power's social distribution—are realities that do exist, thus do have a rational basis in social inequality—it is at sea.²² This is why present discrimination law, predicated as it is on this approach, has not, will not, and cannot produce social equality. Once this critique is understood, liberalism (and conservatism) can potentially respond, but it has difficulty doing so on its own terms, and would not have—and did not—arrive at this critique on its own.

Little wonder. The historic task of liberalism was to oppose the Divine Right of Kings yet provide a basis for the legitimacy of state power, justifying state authority. State authority being a male form of power, it stands to reason that liberals would not criticize its foundations.²³ Liberalism does not have a theory of sex or gender per se either, although capable theorists have put their shoulders to the wheel in an attempt to remedy this lacuna.²⁴ Some philosophers make liberalism look pretty good—for example, Martha Nussbaum on "objectification."²⁵ But there is also Nussbaum's abstract apologetics for prostitution—the place where the rubber of male dominance meets the road of women's systemic specifically sexual subjection—revealing liberalism's blinders, methodologically produced.²⁶ Although Mill transcends liberalism's limits in a number of ways, even turning arguments about the legitimacy of authority to

questioning the legitimacy of men's power over women, few have since, and nothing in liberalism requires it to do so.

There are liberal ways to agree with the harm theory of speech, for example, Jeremy Waldron's book on racist hate speech,²⁷ and liberal ways of opposing it, say Ronald Dworkin on pornography.²⁸ So whose views has liberalism, as institutionalized in laws and processes that liberals largely control, found most consistent with and acceptable to its core? The more important question here is not which philosophers can be cherry-picked to support various outcomes that feminists support, but which position is embodied in the largely liberal institutions we live under.

Liberals are welcome to support the civil rights law against pornography, or a real rape law for a change (one predicated on a social understanding of coercion, to which consent is irrelevant), and the Swedish model on prostitution (criminalizing the buyers, decriminalizing the bought), just as anyone else is. When liberals are the ones who are in the way of such initiatives for the equality and liberation of women—in vast numbers with massive power and organized groups and social institutions as well as the law on their side—what do you call it, philosophically speaking? Once the pornography industry was demonstrated to do the harm it does, a good many good liberals agreed it should be actionable and could be, consistent with the First Amendment.²⁹ Not all sided with the vicious and uninformed Ronald Dworkin by any means.³⁰ But absolutely nothing has been done about the pornography industry under the aegis of liberal legalism except to permit its explosive expansion. Liberals and libertarians join hands to allow this massive industry of harm to the human rights of women in particular to continue and burgeon "as a matter of principle," on the theory that no amount of harm to women can justify depriving men of their pleasure and profits when they take the form of "speech"—the essence of the rationale that invalidated the civil rights ordinance against pornography.³¹ What do you call that "principle"? Misogyny: a deep substantive commitment to male power where it sexually counts. It overrides and undergirds liberalism's far more superficial commitment to its version of sex equality.

Although a full encounter with Rawls is not possible or appropriate here, it seems incomplete to leave him out, as Herzog does. Revisiting Rawls in light of Herzog's commentary, is Rawls's project my project? *Political Liberalism* is an exercise in abstraction,³² an attempt to create a theory thin enough to produce agreement among people with deep disagreements on substantive values, yet thick enough to produce a freedom and equality that would count as real justice. His core concept of "reciprocity" entails defining as public reason what all reasonable free and equal citizens would endorse. The catch being, you first have to be free and equal to be in a position to possess public reason. How you get there, to Rawls, is "not my department," as Tom Lehrer put Wernher von Braun's response to the question of "where we come down" from space.³³ Any philosophical substance, Rawls appears to consider a "comprehensive doctrine" like religion, with which "The Idea of Public Reason Revisited" is primarily concerned to argue has no place in public political reason.³⁴

Is my project this project? My entire project is substantive. His entire project is to repudiate, skirt, avoid, and transcend anything substantive. He can accept some of my arguments, once they are made. But would he ever have gotten to them? Did he ever get to them? Rawls never talks about sexual abuse; neither, systematically, does Susan Okin.³⁵ Rawls acts as if talking about "the family" is all he has to do, but it is not necessarily the same as taking on male dominance, depending on your view of what makes it tick. He never confronts Kate Millet's

analysis that sexual dominion enacted through coitus “provides [patriarchy’s] more fundamental concept of power;”³⁶ or Carole Pateman’s brilliant demolition of social contract theory, showing how it is fundamentally in the service of sexual domination of men over women;³⁷ or me, contending that sexual hierarchy is what the unequal status of the sexes is all about, although he did read my work carefully. Rawls methodologically brackets the very issues most crucial to confront here: the substantive ones, about reality, about what counts as facts, about the actual structure of the social world. His entire method involves eliding substance as running into the barrier of “burdens of judgment.” Assuming past it, given experience, seems precisely how never to get to justice.

Not to mention that looking for reasons that any free and equal citizen would accept for a particular position, “not as dominated or manipulated, or under the pressure of an political or social position,”³⁸ does not make anyone free and equal, that is, in a position to take part in his reasonable discussion. How anyone (philosophy’s presumptuous “we”) gets into a position in which Rawls’s approach could function for them is the screaming prior question. It is, he acknowledges, an ideal theory. Women alas live ineluctably in reality, not in Rawls’s “well-ordered society.” So do a good many men. In our present “non-ideal” world—this right here and now—nothing is constructing or applying the principles of justice as he sees them. Nothing in his work contends with this really. Presumably, the feminist project, which does, would be criticized by him as a “secular comprehensive doctrine” akin to religion, incompatible with democracy and law and antithetical to public reason.³⁹

Rawls’s view that the principles of public reason are “out of place”⁴⁰ in the family is, among other things, surely one of the clearer instances of a public/private line: “at some point society has to rely on the natural affection and goodwill of the mature family members.”⁴¹ This is the point at which a feminist theory of the state begins: the point of the realization that men’s good will and affection cannot be relied upon to promote women’s equality or even to keep women safe. Relying on the good will and affection of someone who has more power than you do, who is unaccountable to any superior power, is precisely how abuses of power continue, not to mention no recipe for challenging the inequalities of power themselves. Someone recently observed to me, in Rawlsian mode, what a good thing it is that we do not have to worry about sex equality: “because men have daughters.” That they have been having them for some time appeared to elude him.

According to Rawls: “If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing.”⁴² Right—except that a lot of people live in precisely that exempt space. So there must be such a thing, for them anyway. When Rawls rejects the public/private line, and “the spheres of the political and the public, of the nonpublic and the private”⁴³ as a distinction, much in the way Herzog does, and also rejects “[g]ender distinctions limiting”⁴⁴ equal and inalienable rights, you hear him talking. But there is nothing in his theory other than his well-intended *ex cathedra* say-so to counter the reality he is talking about. This might work in some philosophy, but it will not work in law.

His effort is to reconcile conflicts among people—which is where the legal system comes in—without addressing material foundations for those conflicts, or what in politics we call their interest in retaining their position. Some liberals do address such matters, but they are not typically philosophers. Rawls’s work is not directed to what it would take to create a reality in which people could get into his system and operate by his rules. He grants that distinctions of gender, among others, can

give rise to conflicts that political liberalism is not primarily concerned with, although he thinks they can be resolved by justice as fairness.⁴⁵ This is punting the question, particularly when he appears to acknowledge that remedying “the gender system’s faults . . . depends in part on social theory and human psychology, and much else. It cannot be settled by a conception of justice alone.”⁴⁶ Arguably, these lacunae extend beneath the floor of his principles of justice, undermining the whole edifice. What is dismissed by this wave of his hand is where feminism lives, the precise terrain it actively engages. Is Rawls’s project our project? His is to build air castles, empty stone atop empty stone into a consistent philosophically defensible edifice. The feminist project is to work to make a whole life real for real women for once in the real as-yet-unequal world.

Everyone draws on elements of traditions around us, even in forging new paths in new directions. While philosophically I experience the claim that I am a liberal as a mistaken appropriation, a deep and uninformed misunderstanding of any reading of my work in theory or in practice, liberals can call me a closet liberal if they want to—if it makes them feel more comfortable, expands their horizons toward meaningful change, changes how and what they think, stiffens their backbones against misogyny, and produces actual support for what real women need when it counts. This, too, has happened. One of the benefits of liberalism this highlights, as well as one of its more infuriating qualities politically speaking and what makes it an academic virtue, is that it does learn. Its nimbleness, capacity to shape-shift while retaining its hegemony, has also made it especially resistant to fundamental change. I don’t say these things about liberalism because I “like to.”⁴⁷ I would like it a lot better if they were not the case.

Why this distinctive desire to claim as being “really” liberal any view that resonates, so that everyone’s good project is liberals’ good project? (“Love Me, I’m a Liberal”⁴⁸ being the anthem here.) Denizens of the Right, you will notice, do not rush to call me sister the minute they hear something out of my mouth that resonates with them. Liberals are distinguished by their good intentions, which makes them particularly sensitive to anything well-intended that is said not to be theirs. Whenever the feminist project succeeds, so laws and attitudes change such that women are less invisible or women’s experiences of powerlessness and abuse are no longer so authoritatively ignored, and even begin to be taken for granted as part of the more accurate image of reality that is acknowledged in the liberal social order, liberals are moved to say that, because the liberal state has recognized this problem or liberal theorists have granted this epistemic position or perception a toehold, even allowed it to exist alongside everything else that still denies its reality, these claims have “really” been “squarely within the liberal tradition”⁴⁹ all along.

In this context, it might be considered that some of Herzog’s views owe more to post-liberalism (including Marx) than to liberalism itself. Apparently Hobbes, Locke, and Rousseau have been bodily forgotten in his denial of the role in classical liberalism of the pre-social individual, from the state of nature to early Rawls’s “original position.” If their “state of nature” is social before it is individual, its “social” is gendered unequal, and it merely points to nature as the basis for its differentiation. In this respect, Herzog understands social determination far better than most of his tradition does. When he then notes of gender that “it doesn’t take much” to realize its place, one is glad he takes it as obvious, even as the uncounted lives of sisters pass before one’s eyes in his minimization of just how much it has actually taken. Professor Herzog understands that social life is relational to the ground, but misses the degree to which the tradition with which he identifies does not fully share

this realization. In this light, as of his rejection of the existence of the private—"I don't believe it for a minute"⁵⁰—the question becomes not whether I am a liberal, but how unadulterated a liberal Herzog is.

Then, when women succeed at anything, it is said to prove what we ask for can be accommodated in liberalism, hence is "really" liberal. Not that we succeeded in changing liberalism, or in changing the world all around the liberals, largely in spite of a good many of them. When some undeniable liberals are brought to glimpse or even support challenges to the reality that their tradition largely formerly obscured and previously failed to see, having created institutions based on a diametrically opposed construct, we are told that this new, now undeniable reality must derive from an insight for which liberalism can claim credit. When they recognize themselves in you, conceding your humanity (oh wow), seeing a reality as denigrating that they did not see at all or as that before, liberals claim you as having been one of them all along. It is especially rich to have liberalism credited for sexual harassment's recognition under Title VII, reflecting no earthly clue as to how it happened or what it took or who did it.⁵¹ I am not about to serve up the tensions between this innovation and pre-existing and still existing law, but trust me, they were and are there. May it be said that all that has happened here is that liberals, and a good many conservatives as well, have been brought to see that we have been right all along, because we are? If they are unconscious of the process, so much the better for the change, if not for credit where due.

Then we are told that we should be grateful that liberalism has made feminist consciousness possible. Consider the conceptual resources that enable the identification of resentment at being a body servant to a man, for instance. Perhaps they include the tediousness and repetitiousness and mindlessness and intrusiveness of the tasks; the indignity and lack of respect while purporting affection; the absence of resources in exchange for how much work it is; perhaps an understanding of slavery, historical and current; and one's secret perception, eventually, that he is not a superior godlike being and you an inferior one. According to Herzog, "[W]e need to explain why these problems aren't mere misfortunes, but instead are injuries."⁵² No, "we" don't. Women know they are being injured. Frequently what is unknown is that life can be any different because it largely is not. (There is that pesky existential verb again.) When women get together, this is what emerges. Mill (from whom one can learn a lot) did not do it, Montesquieu or Thomas Hardy either.

So how hard is it, really, to realize that you aren't the slime you have been told you are because you were born female, when you are surrounded by people who—you see at some point like being slapped in the face—are no better than you, are not a species superior to you, simply because they were born male? Well, it turns out to be a lot more complicated than anyone ever would have imagined, even seeing things from the other side of many breakthroughs in consciousness. But the minute there is that spark of self-respect, or respect for another woman, or you get what really happened to your mother, the whole house of cards starts to fall apart in your mind, hence in the world, or in the world, hence in your mind. Which is why so much energy conspires (that was a metaphor) to keep it in place, to police its boundaries, to punish anyone, woman or man, who calls it out.

Women have seen through this system in societies that are not liberal in any way, as well as in those that are. It is not liberalism's victory when we do. It is our victory—although it sure is a good thing not to be shot at point blank range for insisting on learning to read, or to be murdered by your brother

because your father thinks some man looked at you sideways. When women manage to make change, it is not because we are allowed to. It is not because liberalism was so hospitable or got there first. It is because, this time, we won, bringing Shakespeare's sister ever closer into being.

Notes

1. Virginia Woolf, *A Room of One's Own* (1929; repr., New York: Harcourt, Brace, Jovanovich, 1981), 113-14.
2. This analysis can be found first in *Toward a Feminist Theory of the State* (Cambridge: Harvard University Press, 1989) and is exemplified throughout *Sex Equality*, 2nd ed. (New York: Foundation Press, 2007).
3. This was precisely the project of *Toward a Feminist Theory of the State*.
4. Sally Haslanger, "Laboratory Knowledge and Just Social Practices," in this issue.
5. Rae Langton, "Feminist Speech Acts and the Leveson Inquiry," in this issue.
6. Don Herzog, "Is(n't) Catharine MacKinnon a Liberal?," in this issue.
7. See Catharine A. MacKinnon, "Engaged Scholarship as Method and Vocation," *Yale Journal of Law and Feminism* 22 (2010): 193-205.
8. Herzog, "Is(n't) Catharine MacKinnon a Liberal?," 11.
9. John Stuart Mill, *The Subjection of Women* (New York: D. Appleton and Co., 1870), 18-19, 26-27.
10. *Ibid.*, 20-21.
11. *Ibid.*, 21-22.
12. *Ibid.*, 60.
13. In addition to my work, the literature examining public and private that presumes and analyzes its existence is massive, most but not all of it by liberals. See, for example, Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton: Princeton University Press, 1981); Carole Pateman, *The Sexual Contract* (Cambridge, UK: Polity Press, 1988); Joan B. Landes, *Feminism, the Public, and the Private* (New York: Oxford University Press, 1998); Ruth Gavison, "Feminism and the Private/Public Distinction," *Stanford Law Review* 45 (1992), 1-45; Tracy E. Higgins, "Reviving the Public/Private Distinction in Feminist Theorizing," *Chicago-Kent Law Review* 75 (2000): 847-67; Jeff Weintraub and Krishan Kumar, eds., *Public and Private in Thought and Practice: Perspectives on a Grand Dichotomy* (Chicago: University of Chicago Press, 1997); Andrew Stark, *Drawing the Line: Public and Private in America* (Washington, DC: Brookings Institution Press, 2009); Alan Freeman and Elizabeth Mensch, "The Public-Private Distinction in American Law and Life," *Buffalo Law Review* 36 (1987): 237-57; Carole Pateman, "Feminist Critiques of the Public/Private Dichotomy," in *Public and Private in Social Life*, ed. S. I. Benn and G. F. Gaus (New York: St. Martin's Press, 1983), 281-303; Frank I. Michelman, "Constitutions and the Public/Private Divide," in *The Oxford Handbook of Comparative Constitutional Law*, ed. Michael Rosenfeld and Andras Sajó (New York: Oxford University Press, 2013), 298-317; Susan B. Boyd, "Challenging the Public/Private Divide: An Overview," in *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (Toronto: University of Toronto Press, 1997), 3-33. For a supple exploration of the distinction in international law, see Hilary Charlesworth, Christine Chinkin, and Shelley Wright, "Feminist Approaches to International Law," *American Journal of International Law* 85 (1991): 613-45. For an historical glimpse, see Nancy F. Cott, *Bonds of Womanhood: "Woman's Sphere" in New England, 1780-1835*, 2nd ed. (New Haven: Yale University Press, 1997), 61-62; Barbara Laslett, "The Family as a Public and Private Institution: An Historical Perspective," *Journal of Marriage and the Family* 35 (1973): 480-92.
14. *Palmore v. Sidoti*, 466 U.S. 429 (1984).

15. *Shelley v. Kraemer*, 334 U.S. 1 (1948).
16. *Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263, 354 (1993) (O'Connor, J., dissenting). "Section 1985(3)," she continues, "was 'meant to reach private action.'" *Ibid.* This observation is by distinction from Section 1983, which is used to challenge public action.
17. American Law Institute, *Model Penal Code: Official Draft and Explanatory Notes* (Philadelphia: American Law Institute, 1985), 45.
18. See Joshua Dressler, *Understanding Criminal Law*, 6th ed. (New Providence, NJ: Matthew Bender & Co., 2012), 228-29.
19. *United States v. Morrison*, 529 U.S. 598 (2000), in which the U.S. Supreme Court invalidated the civil remedy Congress legislated for use by persons who had been subjected to gender based violence by other private persons, stating among other things that section 5 of the Fourteenth Amendment would look differently upon a statute empowering their action against public authorities. *Ibid.*, 626. The claimed vitality of the public/private line is present throughout the Court's assertion of authority for this point: "We reached a similar conclusion in the *Civil Rights Cases*. In those consolidated cases, we held that the public accommodation provisions of the Civil Rights Act of 1875, which applied to purely private conduct, were beyond the scope of the §5 enforcement power. 109 U.S., at 11 ('Individual invasion of individual rights is not the subject-matter of the [Fourteenth] [A]mendment'). See also, e.g., *Romer v. Evans*, 517 U.S. 620, 628 (1996) ('[I]t was settled early that the Fourteenth Amendment did not give Congress a general power to prohibit discrimination in public accommodations'); *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1982) ('Careful adherence to the 'state action' requirement preserves an area of individual freedom by limiting the reach of federal law and federal judicial power'); *Blum v. Yaretsky*, 457 U.S. 991, 1002 (1982); *Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 172 (1972); *Adickes v. S. H. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970); *United States v. Cruickshank*, 92 U.S. 542, 554 (1876) ('The fourteenth amendment prohibits a state from depriving any person of life, liberty, or property, without due process of law; but this adds nothing to the rights of one citizen as against another. It simply furnishes an additional guaranty against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society')." *Ibid.*, 621-22.
20. *Lawrence v. Texas*, 539 U.S. 558, 567 (2003). See also *Roe v. Wade*, 410 U.S. 113 (1973).
21. The recent article by Anitai Etzioni arguing that "the frequently employed distinction between the public and the private realms is becoming increasingly obsolete because the two realms are intertwined, move in tandem, and seem to be codetermined" verges on this feminist realization. Amitai Etzioni, "The Bankruptcy of Liberalism and Conservatism," *Political Science Quarterly* 128 (2013): 39.
22. This is demonstrated throughout *Sex Equality*.
23. *Toward a Feminist Theory of the State* argues this.
24. Susan Okin is, of course, foundational and leading. See those works collected in Amy R. Baehr, ed., *Varieties of Feminist Liberalism* (Lanham: Rowman & Littlefield Publishers, Inc., 2004). The best analysis I have seen in this vein is Christie Hartley and Lori Watson, "Is a Feminist Political Liberalism Possible?" *Journal of Ethics & Social Philosophy* 5 (2010): 1-21, arguing that political liberalism cannot be true to its own fundamental precepts without being feminist, meaning committed to substantive sex equality. Another outstanding contribution is Elizabeth Anderson, "What is the Point of Equality?" *Ethics* 109 (1999): 287-337.
25. Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999), 213-39.
26. See Martha Nussbaum, "'Whether from Reason or Prejudice': Taking Money for Bodily Services," in *Prostitution and Pornography: Philosophical Debate about the Sex Industry*, ed. Jessica Spector (Stanford: Stanford University Press, 2006), 175-208. For my discussion of these issues, see Catharine A. MacKinnon, "Trafficking, Prostitution, and Inequality," *Harvard Civil Rights-Civil Liberties Law Review* 46 (2011): 295-96.
27. Jeremy Waldron, *The Harm in Hate Speech* (Cambridge: Harvard University Press, 2012). This book shadows the arguments first created in work against pornography, while carefully avoiding taking any position on pornography itself, dodging the heat and illustrating one difference for liberals between racism and sexism.
28. Ronald Dworkin, "Is there a Right to Pornography?," *Oxford Journal of Legal Studies* 1 (1981): 177-212; Ronald Dworkin, "Women and Pornography," *The New York Review of Books*, October 21, 1993. An excellent analysis of his position can be found in Rae Langton, "Whose Right? Ronald Dworkin, Women, and Pornographers," in *Sexual Solipsism: Philosophical Essays on Pornography and Objectification* (New York: Oxford University Press, 2009), 117-64.
29. Cass Sunstein, Frederick Schauer, Owen Fiss, and Frank Michelman are just a few prominent examples.
30. See "Pornography: An Exchange," *The New York Review of Books*, March 3, 1994.
31. *American Booksellers v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).
32. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).
33. Tom Lehrer, "Wernher von Braun," 1965.
34. John Rawls, "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997): 765-807.
35. A typical example of her few passing mentions of it is: "In addition to increasing the likelihood of the more obvious forms of abuse—physical and sexual assault—the fear of being abandoned, with its economic and other dire consequences, can lead a housewife to tolerate infidelity, to submit to sexual acts she does not enjoy, or experience psychological abuse including virtual desertion." Susan Moller Okin, *Justice, Gender and The Family* (Basic Books, 1989), 152.
36. Kate Millet, *Sexual Politics* (New York: Doubleday, 1970), 25.
37. Pateman, *The Sexual Contract*.
38. Rawls, "The Idea of Public Reason Revisited," 770.
39. His footnote on feminism says he always thought Mill resolved the question of women's place in liberal theory. But his concern in this note is not to understand feminism's potential criticisms of liberalism but to acknowledge that feminist liberals have persuaded him that liberalism can do what feminism claims to do, namely, that "a liberal account of equal justice for women is viable." Rawls, "The Idea of Public Reason Revisited," 787 n. 58.
40. *Ibid.*, 790.
41. *Ibid.*
42. *Ibid.*, 791.
43. *Ibid.*
44. *Ibid.*
45. *Ibid.*, 804-05.
46. *Ibid.*, 793.
47. Herzog, "Is(n't) Catharine MacKinnon a Liberal?," 12.
48. Phil Ochs, "Love Me, I'm a Liberal," 1966.
49. Herzog, "Is(n't) Catharine MacKinnon a Liberal?"
50. *Ibid.*
51. For some of this story, see Fred Strebeigh, *Equal: Women Reshape American Law* (New York: W.W. Norton & Co., 2009).
52. Herzog, "Is(n't) Catharine MacKinnon a Liberal?," 15.