
NOTES

The Big Mac Attack: A Critical Affirmation of MacKinnon's Unmodified Theory of Patriarchal Power

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Introduction

For several years now, Catharine MacKinnon has impressed and inspired us in that she has consistently and eloquently articulated much of what we felt and feared: that the condition of women in North American society is intolerable; that the state, because of its acts and omissions, is complicitous in the enforced inequality of women; and that law, more often than not, has been part of the problem rather than part of the solution. However, despite our broad agreement with the general direction of MacKinnon's analysis throughout this period, we each have had, in our own different ways, a sense of discomfort, an inchoate feeling that something was amiss. Yet, we found it difficult to focus and express this dis-ease. Then, as we, from our diverse perspectives, discussed MacKinnon's most recent book, *Toward A Feminist Theory of the State*¹ we began to come to terms with our disquiet, to identify, define and delineate our concerns. The result of these conversations is this collaborative essay which, in the words of Cornell West and bell hooks, aspires to be a "critical affirmation"² of MacKinnon's enterprise.

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¹Cambridge: Harvard University Press, 1989.

²See b. hooks, "Black Women and Men: Partnership in the 1990's" in b. hooks, *Yearning: Race, Gender, and Cultural Politics* (Boston: South End Press, 1990) 203 at 208 & 213 [hereinafter *Yearning*]. hooks captures the key elements of this seemingly oxymoronic concept of critical affirmation in the following way:

[W]e educate one another to acquire critical consciousness, we have the chance to see how important airing diverse perspectives can be for any progressive political struggle that is serious about transformation. Engaging in intellectual exchange where people hear a diversity of viewpoints enables them to witness first hand solidarity that grows stronger in a context of productive critical exchange and confrontation ("Liberation Scenes: speak this yearning" in *Yearning, supra*, 1 at 6).

Our note consists of four parts. Part I presents a brief introduction to the main elements and themes of MacKinnon's argument, particularly as they are synthesized and developed in *Toward a Feminist Theory of the State*. Part II engages in a critique of what we consider to be the simultaneously under and over-inclusive nature of MacKinnon's theory and tentatively offers some remedial suggestions. Through an analysis of MacKinnon's conception of consciousness raising, Part III highlights an internal incoherence that exemplifies the problems we identify in Part II. Finally, Part IV, in the spirit of contextualism, sheds some further light on the perspectives which lay the foundations for our concerns.

I. MacKinnon's Project

In writing the book, *Toward A Feminist Theory of the State*, Catharine MacKinnon sets herself a daunting task: to formulate a feminist theory of power; power that is omnipotent and omnipresent; power that fuels law, state and society as we know it; power that is, simply and overwhelmingly, male power. In her preface, MacKinnon's aim is starkly and boldly stated. She writes, this book "is about what *is*, the meaning of what is, and the way what is, is enforced."³ For MacKinnon, "what is" is a society constituted and scarred by male domination and female subordination through sexuality and gender. This situation is sanctioned and promoted by both state and laws as they legitimate and disseminate male power.

The book is a response to what MacKinnon suggests is feminism's failure to articulate a theory of socio-politico-legal power. To say that hers is an ambitious endeavour is an understatement. MacKinnon deserves admiration and respect for taking on this formidable responsibility which can be seen as both onerous and potentially inspiring, especially given that the final product is perspicacious, impressive and praiseworthy. *Toward a Feminist Theory of the State* is a book full of valuable MacKinnonesque insights and analyses. The author has an enviable writing style,⁴ one that combines rigorous evaluation with biting irony, caustic cynicism and a healthy disrespect for the academic enterprise. By and large, MacKinnon's themes are well developed and integrated and her reconceptualizations and recategorizations of old debates are particularly illuminating. The result is compelling reading and innovative arguments that paint a grim picture of an inequitable, unjust society in which male dominance is institutionalized and female inequality is entrenched. *Toward a Feminist Theory of the State* will never allow readers to think about the world in quite the same way again. It is, in itself, a mode of consciousness raising.

³*Supra*, note 1 at xii.

⁴We have quoted extensively from MacKinnon's text for two reasons. First, MacKinnon's phraseology is difficult to improve upon, indeed almost addictive. Second, given that we offer a critique of her work, we want to ensure absolute accuracy.

It is, of course, impossible to do justice to the depth and sophistication of MacKinnon's analysis in a note. Therefore, in this part, we shall briefly highlight what we consider to be some of the crucial elements of her argument, concentrating on those which we will further pursue in Parts III and IV.

Toward A Feminist Theory of the State is divided into three sections which correspond to MacKinnon's three central inquiries into I) Feminism and Marxism, II) Method, and III) The State (and Law). The sections are interrelated, and each section works as a building block to the next.

In Section I, MacKinnon addresses the problem of marxism and feminism through commentary on Marx and Engels, through what she calls a marxist critique of feminism and through an examination of attempts at synthesizing the two. According to MacKinnon, marxism and feminism are both theories of power, but the two have separate histories, and that which is pivotal to the former, work, is distinct from that which is fundamental to the latter, sexuality. As a consequence of these differences, marxism initially did not adequately address feminist concerns. Later efforts at synthesis were not successful and, MacKinnon argues, will never be successful if they continue to ignore the centrality of sexual violence perpetrated by men against women. The only approach that has come close is that of the "wages for housework" theory, but close only counts in horseshoes, and so even this does not go far enough for MacKinnon.

Significantly, Chapter three's title, "A Marxist Critique of Feminism," is misleading, given its actual content. The chapter does not venture into the intricacies of marxist philosophy in an attempt to study the marxist interpretation of feminism. Rather, it largely pertains to MacKinnon's criticism of what, ostensibly, appears to be classical, liberal feminism beginning with John Stuart Mill, and then the chapter develops into an appraisal of various feminists from Simone de Beauvoir and Carol Gilligan to Nancy Chodorow and Susan Brownmiller. Chapter three, therefore, contains important insights into MacKinnon's philosophical stance which we shall return to later.

The second section, Method, presents the crux of MacKinnon's meaningful, thought-provoking, and controversial theorizing. This section moves from a discussion of consciousness raising, to an adumbration of MacKinnon's feminist project with her views on power and her analysis of sexuality.

Through the process of consciousness raising, MacKinnon explains that women move beyond ideas to practice by obtaining "a lived knowing of the social reality of being female."⁵ For MacKinnon, race, class, and or physiology may define one woman from another, but, nevertheless, "simply being a woman has a meaning that decisively defines all women socially, from their most intimate moments to their most anonymous relations."⁶ The crucial realizations

⁵*Supra*, note 1 at 90.

⁶*Ibid.*

emerging from consciousness raising, in MacKinnon's estimation, are that men possess the power to dominate women, or to choose not to and that they as a group benefit from women's subordination.⁷

In Chapters 6 and 7, MacKinnon addresses what she terms feminist method as she deals with the issues of power and sexuality. These discussions, we suggest, lie at the heart of her theory and are pivotal to an understanding of her analysis. She writes:

Feminism has a theory of power: sexuality is gendered as gender is sexualized. Male and female are created through the eroticization of dominance and submission. The man/woman difference and the dominance/submission dynamic define each other. This is the social meaning of sex and the distinctively feminist account of gender inequality. Sexual objectification, the central process within this dynamic is at once epistemological and political.⁸

MacKinnon offers a three-step, cumulative analysis. First and foremost, male power is fundamental. Second, filtered through this prism of male power, sexuality must be understood as neither natural, nor biological, but as a social construct of male power.⁹ Third, gender as a social construction is forged and formatted by this hierarchicalized sexuality. Thus, gender relates backward to sexuality and then to power.¹⁰ As an illustration, MacKinnon lists a series of stereotypically female personality traits and traces them back to sexuality. For instance, female passivity and frailty translate into women's inability to resist sexual advances,¹¹ which structurally and ideologically dovetail with male desire to control and have access to women. She encapsulates her theory in these terms: "Male dominance is sexual. Meaning: men in particular, if not men alone, sexualize hierarchy; gender is one."¹² MacKinnon contends that this feminist theory of sexuality becomes its theory of politics.¹³ She writes:

what is called sexuality is the dynamic of control by which male dominance — in forms that range from intimate to institutional, from a look to a rape — eroticizes and thus defines man and woman, gender identity and sexual pleasure. It is also that which maintains and defines male supremacy as a political system.¹⁴

In the final section of the book, *The State*, MacKinnon applies and concretizes her theory by means of an analysis of the patriarchal liberal state, and hones in on the issues of rape, abortion and pornography. Her penultimate chapter responds to the difference/dominance debate. The book closes with MacKin-

⁷*Ibid.* at 93-94.

⁸*Ibid.* at 113-14.

⁹*Ibid.* at 128.

¹⁰*Ibid.* at 113.

¹¹*Ibid.* at 110.

¹²*Ibid.* at 127.

¹³*Ibid.* at 131.

¹⁴*Ibid.* at 137.

non's articulation of the premises and ambitions of a radical feminist jurisprudence, that is, feminism unmodified.

MacKinnon claims that feminism has not confronted the problem of the liberal state. She argues that the state must be seen for what it is, "male jurisprudentially, meaning that it adopts the standpoint of male power on the relation between law and society."¹⁵ MacKinnon leaves no measure of doubt when she writes that the liberal state "is not autonomous of sex. Male power is systemic. Coercive, legitimated, epistemic, it *is* the regime."¹⁶ MacKinnon discusses rape, abortion and pornography, in terms of her feminist method. Accordingly, laws relating to all these issues are seen, formally and substantively, as embodiments of the male standpoint. MacKinnon suggests that the law of rape, "divides women into spheres of consent according to indices of relationship to men ... Daughters may not consent; wives and prostitutes are assumed to, and cannot but."¹⁷ However, when further unpacked, the discourse of consent is revealed as ideological obfuscation because "men are systematically conditioned not even to notice what women want."¹⁸ Moreover, the crime of rape is defined and adjudicated from the male point of view and, she argues, this results in a legal determination of "whether or not a rape occurred from the rapists' perspective."¹⁹ The alternative, according to MacKinnon, is the feminist interpretation of rape which sees rape not as an act of violence but as an "act of subordination of women to men. It expresses and reinforces women's inequality to men."²⁰

Similarly, abortion policy has never seriously included the woman's perspective. MacKinnon illustrates how women were granted the abortion right as a "private privilege, not as a public right."²¹ The American law on abortion embraces the public/private dichotomy as it frames abortion rights in terms of privacy. MacKinnon determines that abortion rights articulated in terms of privacy work against women, pitting individual women against women's collective needs, and thus do more harm than good.²² She brings her argument full circle by delineating how the law of abortion encapsulates the male construction of sexuality:

The abortion right frames the way in which men arrange among themselves to control the reproductive consequences of intercourse. The availability of an abortion enhances the availability of intercourse.²³

¹⁵*Ibid.* at 163.

¹⁶*Ibid.* at 170.

¹⁷*Ibid.* at 175.

¹⁸*Ibid.* at 181.

¹⁹*Ibid.* at 244.

²⁰*Ibid.* at 182.

²¹*Ibid.* at 192.

²²*Ibid.* at 187-88.

²³*Ibid.*

MacKinnon's unmodified feminist analysis would relate the issue of reproductive control to the broader context of women's unequal sexual, social, economic and political condition.

Pornography provides the most graphic substantiation of MacKinnon's method. For MacKinnon, the laws which regulate pornography obscure more than they reveal because through the moralistic prism of "obscenity" they abstract from the realities of male power and thus work as a liberal, legal guise to preserve male supremacy.²⁴ In MacKinnon's assessment, the ubiquity of pornography proves that "[s]exual terrorism has become democratized."²⁵ As with her analysis of rape, MacKinnon disputes the reduction of pornography to violence.²⁶ She feels that calling pornography violence hides the specificity of women's viewpoint, and "not only abstracts from women's experience; it lies about it."²⁷ She succinctly sums up her objection to equating rape and pornography with violence with her statement:

As with rape, where the issue is not the presence or absence of force but what sex is as distinct from coercion, the question for pornography is what eroticism is distinct from the subordination of women. This is not a rhetorical question. Under male dominance, whatever sexually arouses a man is sex. In pornography, the violence is the sex.²⁸

Chapter 12, the penultimate chapter, addresses the issue of sameness and difference. Moral theory and laws on sexual discrimination often consider equality and gender issues in terms of either sameness or difference. For MacKinnon, this practice "covers up the reality of gender as a system of social hierarchy."²⁹ Ultimately, both the sameness and the difference paths lead to dead-ends. With sameness, women are encouraged to be the same as men. In law, this means that women are formally granted access to what men have through approaches like "gender neutrality."³⁰ With difference, women are encouraged to be different from men and to value what they are, or have been constructed as, distinctive as women. In law, this is doctrinally encoded as the "special protection rule."³¹ In both, women must measure up to the male standard, either in their proximity to it, or their distance from it.

²⁴*Ibid.* at 195.

²⁵*Ibid.* at 201.

²⁶This is not the same as saying there is no connection between pornography and violence. Indeed, drawing on laboratory research, MacKinnon argues that there is a causal connection between pornography and violence against women. *Ibid.* at 196.

²⁷*Ibid.* at 211.

²⁸*Ibid.*

²⁹*Ibid.* at 218.

³⁰*Ibid.* at 220-21.

³¹*Ibid.*

For MacKinnon, the rubric of difference is especially problematic as it becomes a “double standard [that] does not give women the dignity of the single standard.”³² Women are stigmatized as different and “[m]aking exceptions for women, as if they are a special case, often seems preferable to correcting the rule itself.”³³ For instance, women have not been allowed employment in male prisons due to their “womianhood,” *i.e.*, due to their rapability, and yet, the “conditions that create women’s rapability are not seen as susceptible to legal change.”³⁴ Hence, neither sameness nor difference constitute real progress for women as the:

[G]ender-neutral approach to sex discrimination law obscures, and the protectionist rationale declines to change, the fact that women’s poverty and consequent financial dependence on men ... forced motherhood, and sexual vulnerability substantively constitute their social status *as women*.³⁵

The way out, according to MacKinnon, is to conceive of the problem in terms of gender hierarchy, and to see that the “sexes are equally different but not equally powerful.”³⁶

These arguments are brought together in the final chapter which adumbrates her conception of feminist jurisprudence. Here, MacKinnon continues her scathing analysis of law as she writes:

In liberal regimes, law is a particularly potent source and badge of legitimacy, and site and cloak of force. The force underpins the legitimacy as the legitimacy conceals the force. When life becomes law in such a system, the transformation is both formal and substantive. It reenters life marked by power ... Liberal legalism is ... a medium for making male dominance both invisible and legitimate by adopting the male point of view in law at the same time as it enforces that view on society.³⁷

In particular, she argues that liberal legalism’s central legitimizations — objectivity and neutrality — are always and already encoded with the male point of view. Consequently, they are liberal legalism’s most significant political, *i.e.*, male supremacist, achievement because the espousal of objectivity and neutrality render male domination most invisible, most natural, most taken for granted, and therefore most powerful.

However, all is not negation and MacKinnon’s vision of escape from this state, her envisaged reconstitution of the relationship between life and law, is that of feminism unmodified, her methodologically postmarxist feminism.³⁸ To

³²*Ibid.* at 225.

³³*Ibid.* at 226.

³⁴*Ibid.*

³⁵*Ibid.* at 228.

³⁶*Ibid.* at 232.

³⁷*Ibid.* at 237.

³⁸*Ibid.* at 241.

elaborate, her plan is to take advantage of the "crack"³⁹ provided by liberal, legal guarantees of equality,⁴⁰ and, rather than applying sameness and difference strategies, widen the gap by applying her dominance/subordination analysis. Consciousness raising in the seventies uncovered the problem of sex equality and now there is a need to apply this analysis to law.⁴¹ The first stage is an acceptance of the reality of women with respect to sexual inequality, as they experience it. The second stage is a recognition "that male forms of power over women are affirmatively embodied as individual rights in law."⁴² Issues such as rape, reproductive rights and pornography can then be reassessed in light of the sex equality as anti-domination perspective,⁴³ rather than from the standpoint of, for example, the "reasonable rapist."⁴⁴ Consequently, the question of whether statutes are gender neutral or sex-specific would no longer be central. Instead, the significant queries would be: "[D]oes a practice participate in the subordination of women to men ...? [Do statutes] work to end or reinforce male supremacy ... [And, are] they concretely grounded in women's experience of subordination or not[?]"⁴⁵ These procedures would help to bring about the changes MacKinnon strives for, but can barely imagine, in law and life: law that does not dominate life and a society in which men do not dominate women.⁴⁶

II. Finely Focused Feminism: The Dilemma of Under and Over- Inclusion

As this synopsis indicates, *Toward a Feminist Theory of the State* is an important, inspiring book, thick with significance and radiating with reflections that have obviously been through the eighteen year gestation of which MacKinnon speaks. However, in our opinion, there are some serious problems with MacKinnon's ambitious work. These stem, largely, from the fact that she takes it a step too far, her aspirations become too great, her project too large. Rather than building a feminist theory of the state, MacKinnon will not settle for anything less than constructing *the* feminist theory, the one and only feminist framework through which to view our contemporary condition. Her theory comes dangerously close to totalization, for she grows categorical in her methodology, definitive in her analysis and condemnatory in her critiques. As a consequence, we suggest that her theory becomes both under and over-inclusive. By under-inclusive we mean that too much is left unsaid in terms of other feminist theories. By over-inclusive we mean that too much is also left unexplained in terms of MacKinnon's own theory. Specifically, we posit that she has an

³⁹*Ibid.* at 244.

⁴⁰*Ibid.* at 242.

⁴¹*Ibid.* at 244.

⁴²*Ibid.*

⁴³*Ibid.* at 245-67.

⁴⁴*Ibid.* at 182.

⁴⁵*Ibid.* at 248.

⁴⁶*Ibid.* at 249.

excessively broad conception of power, while her prescriptions for a mode of change are curiously sanguine and, we fear, fundamentally ambiguous.

A. *Problems of Under-Inclusion*

To begin with, there is a disturbing strain of orthodoxy within the book. Though it is true that every political activist and academic believes in the correctness of their analysis, and indeed that as an audience we expect conviction, MacKinnon's analysis, at times, seems to go beyond this. It is not just that marxism, liberalism, liberal feminism, socialist feminism, feminist liberationism and critical legal studies are left in the dust of an unmodified feminism, rather it is the sense that there is one, and only one, acceptable analysis. There is no hint that an intellectual enterprise may require an element of corrigibility. For example, referring to previously published versions of sections of the book, she says that this "gave me the benefit of the misunderstandings, distortions, and misreadings of a wide readership."⁴⁷ As we read this, the mistakes lie with all others, while MacKinnon's analysis, emphasis, and communicative skills have been exact from day one, no modification has been required, simply the elaboration of "a sustained theoretical argument."⁴⁸ And yet, we see inconsistencies in her work. For example, if we address the politics of language, MacKinnon castigates male discourse for using terminology like "penetrate,"⁴⁹ and yet, she, curiously, adopts both "penetrate"⁵⁰ and "interpenetrate."⁵¹ Moreover, there are times when one gets the impression that almost no one else counts, for despite her acknowledgements,⁵² the "collaborative intellectual odyssey" has been with her "previous selves."⁵³

Some may counter that the above is a reflection of MacKinnon's assertive, assured style more than her substance, but, on our reading, there is no doubt of her singularity of purpose. MacKinnon's stated ambition for the book is the creation of an "epic theory" along the lines of Sheldon Wolin, one that provides "a symbolic picture of an ordered whole," that is "systematically deranged," a theory that "attempts to change the world itself."⁵⁴ This begs the question, what does MacKinnon mean by theory, and, in light of her condemnation of others, we wonder whether there is an unconscious assumption that epic theory occupies the field, all others being mere pretenders?

⁴⁷*Ibid.* at xi.

⁴⁸*Ibid.* at ix.

⁴⁹*Ibid.* at 273, n. 27.

⁵⁰*Ibid.* at 125.

⁵¹*Ibid.* at 290.

⁵²*Ibid.* at xvi-xvii.

⁵³*Ibid.* at ix.

⁵⁴*Ibid.* at x-xi. MacKinnon cites S. Wolin, "Political Theory as a Vocation" (1967) 63 *Am. Pol. Sci. Rev.* 1079.

In MacKinnon's hands, the pursuit of the ordered whole takes its form through the analysis of male power. The consequence is that other power relations are structurally, though not necessarily intentionally, reduced to second order issues. In the preface, MacKinnon speaks to this issue, but, in our opinion, only superficially, through the technique of confession and avoidance. She admits that the book, "does not try to explain everything" and argues that, "[t]o look for the place of gender in everything is not to reduce everything to gender."⁵⁵ Still, the best that she can offer is that she "does not pretend to present an even incipiently adequate analysis of race and sex, far less of race, sex, and class. That further work ... will take at least another eighteen years."⁵⁶ It is true that one cannot argue everything at once. However, perhaps it is also true that the nature of power relations in modern society are such that they cannot be captured in a holistic epic theory; that the axes of power intersect, intertwine, cross-fertilize, are mutually complementary as well as perhaps being, paradoxically, mutually undermining.⁵⁷ Thus, an explanatorily more thorough methodological approach may be one that is significantly more contextual,⁵⁸ historically sensitive, localized and diversified.⁵⁹ In this way, we might gain a more comprehensive understanding of the interlocking relations between race, class and gender⁶⁰ rather than structurally prioritizing one (which, as we shall see later, seems to suggest something MacKinnon censures, a "women's unity"⁶¹ based on powerlessness) and putting others on hold.⁶² By extension, such an inquiry would have

⁵⁵*Ibid.* at xi.

⁵⁶*Ibid.* at xii.

⁵⁷*E.g.*, bell hooks describes the current condition as a "white supremacist capitalist patriarchy" ("Third World Diva Girls: politics of feminist solidarity" in *Yearning, supra*, note 2, 89 at 92). For a more sustained discussion of the non isolatable nature of the grids of power see E. Spelman, *Inessential Woman: Problems of Exclusion in Feminist Thought* (Boston: Beacon Press, 1988).

⁵⁸Consider, *e.g.* the narrative style that has been adopted by many people of colour. See, for example, P. Monture, "Ka-Nin-Geh-Heh-Gah-E-Sa-Nonh-Yah-Gah" (1986) 2 C.J.W.L. 159; D. Bell, *And We Are Not Saved: The Elusive Quest for Racial Justice* (New York: Basic Books, 1987); K.L. Scheppele, "Foreward: Telling Stories" (1989) 87 Mich. L. Rev. 2073 at 2073-94. Another example might be that of Foucault's genealogical method. See, for example, M. Foucault, "Nietzsche, Genealogy, History" in P. Rabinow, ed., *The Foucault Reader* (New York: Pantheon, 1984).

⁵⁹*E.g.*, bell hooks writes that the "ideal situation for learning is always one where there is diversity and dialogue" ("feminist scholarship: ethical issues" in *Talking Back: Thinking Feminist, Thinking Black* (Boston: South End Press, 1989) 42 at 47 [hereinafter *Talking Back*]). Both of these elements do not seem to be accorded a significantly high priority within MacKinnon's scheme of things.

⁶⁰"Critical Interrogation: talking race, resisting racism" in *Yearning, supra*, note 2, 51 at 59 & 62.

⁶¹*Supra*, note 1 at 5.

⁶²*E.g.*, we are unsure how MacKinnon's analysis could even approximately approach a persuasive explanation of the Canadian state's approaches to immigrant women in the labour market. See, Immigrant Women's Editorial Collective, "Immigrant Women in Canada: The Politics of Sex, Race and Class" (1987) 16 Resources For Feminist Research 3. In other words, the overconcentration

crucial ramifications on any proposed reconstructive agenda.⁶³

In the actual text, MacKinnon appears less guarded in her conception of the relationship between sex and the other axes of power. She claims, "[f]eminism is the first theory to emerge from those whose interest it affirms."⁶⁴ This may or may not be true,⁶⁵ but to simply assert it without reference to, for instance, nationalist theories that reject imperialism, or work by people of colour combating racism, seems just a little too quick and easy.⁶⁶ Or again, in discussing the viability of a socialist feminist jurisprudence, she asserts that the "woman question" is "*the* question,"⁶⁷ clearly ranking gender over class. This reductionism in the body of the text gives us the impression that the preface was written after the circulation and publication of some recent critiques of her work,⁶⁸ without fully grasping that their analyses may require a significant rethinking of some of her key assumptions. Such a reconsideration cannot be achieved by means of a few brief comments and the promise of subsequent inquiry.

Just as class and race tend to become second order issues, those feminist analyses that are distinct from MacKinnon's also fall by the wayside. MacKinnon's epic theory is based upon a narrowly subscribed, singular vision of feminism. She writes, "[t]he challenge is to demonstrate that feminism systematically converges upon a *central* explanation of sex inequality through an

on sexuality will result in taking a "short cut through women's lives" (Spelman, *supra*, note 57 at 187).

⁶³One might want to consider, for instance, Jesse Jackson's rainbow coalition comprised of those who are disempowered. For discussions see, for example, S. Collins, *The Rainbow Challenge: The Jackson Campaign and the Future of U.S. Politics* (New York: Monthly Review Press, 1986) and I.M. Young who suggests that:

[T]his is an idea of political public which goes beyond the ideal of civic friendship in which persons unite for a common purpose on terms of equality and mutual respect. While it includes commitment to equality and mutual respect among participants, the idea of the rainbow coalition specifically preserves and institutionalizes in its form of organizational discussion the heterogeneous groups that make it up ("Impartiality and the Civic Public: Some Implications of Feminist Critiques of Moral and Political Theory" (1986) 5 *Praxis Int.* 381 at 398).

See also, I.M. Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990).

⁶⁴*Supra*, note 1 at 83.

⁶⁵Indeed, surely one of the primary themes of *Toward a Feminist Theory of the State* is that traditional, political theory, written as it is by men, be they left or liberal, affirms the male interest, *i.e.* the domination of women. Furthermore, this historical proposition seems curious in a book that otherwise seeks to be assiduously ahistorical.

⁶⁶Another reality is expressed by bell hooks when she states, "Certainly feminist struggle is not nearly as old as the struggle against racism in this culture" ("interview" in *Talking Back, supra*, note 59, 167 at 171).

⁶⁷*Supra*, note 1 at 12.

⁶⁸*E.g.*, A.P. Harris, "Race and Essentialism in Feminist Legal Theory" (1990) 42 *Stan. L. Rev.* 581; M. Kline, "Race, Racism and Feminist Legal Theory" (1989) 12 *Harv. Women's L.J.* 115.

approach distinctive to its subject yet applicable to the whole social life, including class.⁶⁹ MacKinnon is then unflinching in her specifications of what constitutes feminism, for only radical feminism will do; "Radical feminism is feminism."⁷⁰ And, even more specifically, MacKinnon's understanding of radical feminism is revealed to be her own, self-proclaimed, consciousness raising based, unmodified, post-marxist feminism. This account, she claims, has "special access" to the "collective reality of women's condition."⁷¹ The following provides as concise a statement as any of MacKinnon's stance:

A theory of sexuality becomes feminist methodologically, meaning feminist in the post-marxist sense, to the extent it treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender. Such an approach centers feminism on the perspective of the subordination of women to men as it identifies sex — that is, the sexuality of dominance and submission — as crucial, as a fundamental, as on some level definitive, in that process. Feminist theory becomes a project of analyzing that situation in order to face it for what it is, in order to change it.⁷²

Although we have found much that is enlightening in MacKinnon's theory, this strictly focused, uni-dimensional analysis is dismaying given the polyvocal nature of feminism. One only has to look at the heterogenous nature of the women's movement to understand the reality and necessity of its complexity.⁷³

⁶⁹*Supra*, note 1 at 108, emphasis added.

⁷⁰*Ibid.* at 117.

⁷¹*Ibid.* at 121.

⁷²*Ibid.* at 128.

⁷³Herstory shows us that to effect change in women's condition, whether formally or substantively, heterogeneity is extremely useful, if not, in the final analysis, essential. For example, the suffrage movement in Canada required diversity in order for women to gain the vote provincially and federally. Middle class women doctors in Ontario provided the spark, but farm women in the west were the first to persuade male politicians to grant them the vote. The movement has often been described as headed by white, middle class, Anglo-Saxon women, but the numerous exceptions to this profile, from working class women dressmakers, to Icelandic women emigrés, demonstrate greater complexity and suggest that these differences were in fact a crucial, if unintended, strategy in countering the sophisticated opposition from various sources in the home, the church and the state. See C. Cleverdon, *The Woman Suffrage Movement in Canada* (Toronto: University of Toronto Press, 1974); C. Bacchi, *Liberation Deferred? The Ideas of the English-Canadian Suffragists, 1877-1918* (Toronto: University of Toronto Press, 1983); A. Prentice *et al.*, *Canadian Women: A History* (Toronto: Harcourt, Brace, Jovanovich, 1988); and N. Adamson, L. Briskin & M. McPhail, *Feminist Organizing for Change: The Contemporary Women's Movement in Canada* (Toronto: Oxford University Press, 1988).

A more contemporary example is the rallying by a wide spectrum of Canadian women in order to secure equality provisions in the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B of the *Canada Act 1982* (U.K.), 1982, c. 11. The women who became involved in this process were drawn from traditional women's organizations, radical women's organizations and many organizations in between. Non-partisan Canadian women, as well as prominent female politicians, were incensed into action. Male politicians were both bombarded by phone calls and letters from women working from "without" and pressurized by women lobbying from within the political system. This multi-levelled strategy was, perhaps, the key to

Feminist analyses have grown over the years and must continue to develop, to be open, to recognize and respond to their limitations. Feminism's past, and present, shortcomings with respect to race analysis provide an important example of its ongoing need for openness, sensitivity, malleability and corrigibility. This might be called "the principle of self-reflexivity."⁷⁴

Feminism has tended to be sceptical of "objective" and one-sided, truths for these have characterized male epistemology. In fact, MacKinnon spends a significant part of her book unpacking the inherent maleness of objectivity at its epistemological level thereby revealing the partiality of what counts as reality. She criticizes the "Western philosophical tradition" for its "methodological hegemony" and its "thrust ... to end diversity of viewpoint, so that there can be no valid disagreement over what knowing is right knowing."⁷⁵ However, she then advocates the notion of an epic theory and proceeds to espouse a new "master narrative"⁷⁶ thereby installing an authoritative account of women's reality.

This stance leads her to denounce those people who do not subscribe to her theory and those practices that do not fit with her theorizing. She does this through use of innovative categorization. For example, liberal feminism is written off as *inter alia* "individualistic" and "ahistorical"⁷⁷ and into this liberal feminist paradigm she lumps diverse feminists, who hold wide-ranging views, such as Mary Daly, and Carol Gilligan,⁷⁸ as well as Simone de Beauvoir and Shulamith Firestone.⁷⁹ Socialist feminists, from Alexandra Kollontai to Sheila Rowbotham, fare little better. In MacKinnon's estimation, the former held a distorted, "hybridized"⁸⁰ view of feminism and marxism that ultimately subsumed the problem of women. For MacKinnon, Rowbotham provides the classic example of the "derivation and subordination strategy"⁸¹ in which the analysis of

women's achievement of formal equality rights. See P. Kome, *The Taking of Twenty-Eight: Women Challenge the Constitution* (Toronto: Women's Press, 1983); C. Hosek, "Women and the Constitutional Process" in K. Banting & R. Simeon, eds, *And No One Cheered: Federalism, Democracy and the Constitution Act* (Toronto: Methuen, 1983); and S. Burt, "The Charter of Rights and the Ad Hoc Lobby: The Limits of the Success" (1988) 14 *Atlantis* 74.

For a broader analysis of these and other attempts by women to challenge the male political order, see A. Dobrowolsky, "Promises Unfulfilled: Women and the Theory and Practice of Representative Democracy in Canada" (M.A. Thesis, Dalhousie University, 1990) [unpublished].

⁷⁴For an elaboration and discussion of this idea in the context of human rights discourse, see R. Devlin, "Solidarity or Solipsistic Tunnel Vision: Reminiscences of a Renegade Rapporteur" in K. Mahoney & P. Mahoney, eds, *Solidarity and Interdependence: A Global Challenge* (Proceedings of the International Human Rights Conference, Banff, Nov. 1990) [forthcoming 1991].

⁷⁵*Supra*, note 1 at 106-07.

⁷⁶*Yearning*, *supra*, note 2 at 25.

⁷⁷*Supra*, note 1 at 40.

⁷⁸*Ibid.* at 50-51. She considers them both to be liberal due to their "idealism."

⁷⁹*Ibid.* at 51-54. She sees them both as liberal in their "naturalism."

⁸⁰*Ibid.* at 63.

⁸¹*Ibid.* at 62.

women's condition is granted "more separate validity than ... [before] but it nevertheless reduces women's oppression to a special dimension of the class question."⁸² In the end, MacKinnon resolves that there has never been a satisfactory union of marxism and feminism. This conclusion is not new to the reader as MacKinnon explicitly states in her first chapter:

[S]ocialist-feminism basically stands before the task of synthesis as if nothing essential to either theory fundamentally opposes their wedding ... [Therefore,] [h]owever sympathetically, "the woman question" is always reduced to some other question.⁸³

Those feminist theorists who work on the basis of women's difference from men are also thoroughly critiqued. MacKinnon claims that their efforts

limit feminism to correcting sex bias by acting in theory as if male power did not exist in fact, including by valorizing in writing what women have had little choice but to be limited to becoming in life, is to limit feminist theory the way sexism limits women's lives: to a response to terms men set.⁸⁴

We shall return to the question of difference later. In the final analysis, it seems that almost every other feminist, with perhaps the exception of Andrea Dworkin, has been polluted by malestream assumptions, and only "[f]eminism unmodified, methodologically postmarxist feminism, aspires to better."⁸⁵

Our suggestion is not that MacKinnon is mistaken in her interpretation, but that it is only *an* interpretation and not *the* interpretation. It should not, therefore, have any claims to "special access"⁸⁶ in terms of comprehending women's social reality, for what in fact happens is the opposite. MacKinnon's theoretical rigidity ironically leads to a situation where she disregards the practical and contextual realities of women in favour of the theoretical principle. This occurs even though MacKinnon makes it clear that she respects women's knowledge based on their lived experiences, with, for instance, her faith in consciousness raising as political praxis. Her proclivity toward philosophical intractability is apparent in her characterization of the rape issue. In her analysis, rape should not be seen as violence as distinct from sex, for it is "an act of subordination of women to men ... [and it] expresses and reinforces women's inequality."⁸⁷ This may be theoretically appropriate, but who is to say that given a specific rape incident, we should not accept the fact that a woman might feel the violence and not the sex?

⁸²*Ibid.*

⁸³*Ibid.* at 12.

⁸⁴*Ibid.* at 128.

⁸⁵*Ibid.* at 241.

⁸⁶*Ibid.* at 121.

⁸⁷*Ibid.* at 182.

An even better illustration of this tendency is evident in MacKinnon's analysis of abortion. MacKinnon is wisely critical of using privacy as a legal loophole to gain access to abortion. She suggests that the law of privacy "translates traditional liberal values into the rhetoric of individual rights as a means of subordinating those rights to specific social imperatives."⁸⁸ She goes on to explain that the problem of using the idea of privacy is that it legitimizes the liberal ideology of the public/private dichotomy which, amongst other things, assumes the private realm is free, when in fact it has never been so for women. For women, the private realm has been the sphere of exclusion and domination, the site of violence and abuse.⁸⁹ Therefore, MacKinnon believes that the right to privacy isolates "women at once from each other and from public recourse. This right to privacy is a right of men 'to be let alone' to oppress women one at a time. It embodies and reflects the private sphere's existing definition of womanhood."⁹⁰ Lastly, MacKinnon directs us to Andrea Dworkin's link between abortion and male desire, which identifies the bottom line: "[g]etting laid (is) at stake"⁹¹ that is to say, abortion makes intercourse more accessible for men.

Although we theoretically agree with most of MacKinnon's concerns here, practically, a woman faced with an unwanted pregnancy would use any loophole available to assist her in her immediate circumstances. Perhaps in spite of herself, MacKinnon censures due to her absolute, theoretical considerations, but she does not consider the various contingencies, the grassroots repercussions. The principle is important, but so are the lack of alternatives for women and the importance of some abortion rights, however flawed, in view of the dire consequences of no abortion rights: unwanted children, death due to illegal abortions *et cetera*. This, of course, is not to say that we should not strive for certain goals. Clearly, we must work towards achieving the most liberating circumstances for women in law and in life. Rather, the point is that MacKinnon leaves insufficient room for women to maneuver in their strategies of survival in this male dominated and controlled social order. As a result, the theory seems to be too disconnected from the "politics of location,"⁹² that is, the multiplicities and complexities of women's lives.

B. *Problems of Over-Inclusion*

The foregoing comments highlight the problem of under-inclusiveness in *Toward a Feminist Theory of the State*. MacKinnon's discussion of the concept

⁸⁸*Ibid.* at 187.

⁸⁹For a discussion of how the significance of the private realm may differ on the basis of race or class see b. hooks, "Homeplace: A Site of Resistance" in *Yearning, supra*, note 2, 41.

⁹⁰*Supra*, note 1 at 194.

⁹¹*Ibid.* at 190.

⁹²b. hooks, "Third World Diva Girls: politics of feminist solidarity", *supra*, note 57 at 89; b. hooks, "Choosing the Margin as a Space of Radical Openness" in *Yearning, supra*, note 2, 145 at 145.

of power is an example of over-inclusion. Central to MacKinnon's thesis is her theory of the power of men over women. However, in spite of the foundational status of this argument, and indeed her own claim that one of "the most basic questions of politics" is "the nature of power and its distribution,"⁹³ MacKinnon appears to fudge her analysis of the extent and nature of that power. For example, throughout her discussions, power is portrayed through a multitude of adjectives, descriptions and metaphors.⁹⁴ In our opinion, these cannot be understood as simply a series of attempts to describe the same subject, male power over women. They encapsulate different and not necessarily compatible conceptions of the distribution and very nature of power. If arranged on what we might call a "continuum of oppression" these descriptions of power could range from "control or systemic or hegemonic power" at the lower end, to "omnipotent or total power" at the higher end. At no point does MacKinnon directly address the theoretical issue of the extent of male power, a lacuna that is surprising in what describes itself as an epic theory of that power.

This is not just a question of semantics, because depending on which one of these conceptions more accurately reflects her understanding of the nature and distribution of male power, it will of necessity impact on the viability, indeed even the possibility of feminism. If male power more closely approximates the "total or supreme power" end of the spectrum, then it will be theoretically and practically impossible for feminism to claim "the voice of women's silence"⁹⁵ and "feminism unmodified"⁹⁶ — MacKinnon's feminism — must also be a lie because it too must have been "shoved down (women's) throats."⁹⁷ If, however, male power more closely approximates the "pervasive and hegemonic power" end of the spectrum, then it is possible to understand why and how women resist and thereby provide a theoretical comprehension of the agency of women. It recognizes the possibility of crevices and contradictions within the patriarchal order (including, for example, MacKinnon's own favoured emancipatory strategy, equality doctrine in the Supreme Court of the United States, but also, as we will suggest, other potential sources such as the discourse of difference and the ethic of care) and encourages the search for centres of resistance, and the valorization of modes of feminist power. Hence, much the same critique

⁹³MacKinnon, *supra*, note 1 at 41.

⁹⁴Consider, *e.g.*, the various ways that MacKinnon, *ibid.* portrays power in her book: "dominance" at ix; "social hegemony" at x; "control" at 4; "male supremacy" at 33; "sexism's omnipresence" at 90; "a major part of gender definition" at 92; "encompassing" at 103; "systemic and hegemonic" at 114; "male totality" at 115; "pervasive and tenacious" at 116; "metaphysically nearly perfect" at 116; "closed system" at 121; "omnipotent" at 125; "nearly everywhere" at 130; "largely universal if always in specific forms" at 151; "it is the regime" at 170 [emphasis in original]; "a total system" at 239; and "intractable" at 242.

⁹⁵*Ibid.* at 117.

⁹⁶*Ibid.*

⁹⁷*Ibid.*

that MacKinnon levels against neo-marxists who espouse the relative autonomy thesis⁹⁸ to the relationship between economics and the state, can be applied to MacKinnon's thesis on power: "[W]hat qualifies what is as ambiguous as it is crucial" and thus it is unclear "where to go to do something about it."⁹⁹

MacKinnon's conceptualization of power requires greater clarity and specificity as to the distribution of power within contemporary patriarchal society and perhaps a more acute historical sensitivity to the changing distributions of male power. For example, what makes equality discourse, in the juncture with late twentieth century American liberalism, potentially responsive to the equality as anti-domination thesis? Would such an argument even be comprehensible in, for instance, mid-twentieth century Quebec, when women were denied formal equality in terms of the provincial franchise and "had no value in their own right ... only as mothers" as "their status was directly proportional to the number of children they produced?"¹⁰⁰ What do these different historical conjunctures tell us about the comprehensiveness, or lack thereof, and mutational nature of male power?¹⁰¹

⁹⁸The relative autonomy thesis is an explanatory structure developed by neo-marxists to explain that although the state or law cannot be understood as a simple instrumental reflex of economic relations, that there is a certain independence of legal and political relations from economic relations. In other words, Marxist analysis is still essentially correct in that the independence of law and politics is not absolute, for ultimately, legal and political relations do correlate with the structural requirements of capitalism. For one lucid discussion of the thesis see, J. Fudge, "Marx's Theory of History and a Marxist Analysis of Law" in R. Devlin, ed., *Canadian Perspectives on Legal Theory* (Toronto: Emond Montgomery, 1990) 151 at 155-56.

⁹⁹*Supra*, note 1 at 159. This problem of a lack of precision in defining the nature, extent and distribution of male power, and consequently the viability of a feminist critique, is replicated in relation to her theory of sexuality. The central dynamic of MacKinnon's analysis is that women's sexuality is simply the construct of male power — "what is called sexuality is the dynamic of control by which male dominance ... eroticizes and thus defines man and woman, gender identity and sexual pleasure" (*supra*, at 137). However, a deconstructive reading reveals a more nuanced account. For example, after twenty-five pages of what seems to be an absolutist conception of the male construction of sexuality, this appears to be modified when she says that "so-called women's sexuality largely a construct of male sexuality searching for someplace to happen" (*supra*, at 152, emphasis added). Is it or is it not? If sexuality is not a total male construct, why not? Which part is not? How not? And these questions are intensified on the following page through a fairly cryptic, and perhaps problematic, reference to the parallel between women's sexuality and Black culture when she argues that it both is and is not theirs. At this point, she acknowledges that as a response to powerlessness, oppression and exclusion, it might still be possible to conceive of Black culture and women's sexuality as "a source of strength, joy, expression, and as an affirmative badge of pride ... They may be part of a strategy for survival or even of change" (*supra*, at 153). This ambiguity has deleterious ramifications: first, it suggests theoretical laxity; and second, it provides little guidance as to how feminists (or Black men, or Black feminists) should proceed.

¹⁰⁰D. Lamoureux, "Nationalism and Feminism in Quebec: An Impossible Attraction" in H.J. Maroney & M. Luxton, eds, *Feminism and Political Economy: Women's Work, Women's Struggles* (Toronto: Methuen, 1987) at 58.

¹⁰¹A further omission is that although MacKinnon spends a great deal of time describing the ways in which men dominate and women are subordinated, including rape, battery, sexual harass-

Apart from these historical and quantitative issues of the distribution of power, we also have concerns about MacKinnon's qualitative conception of the nature of power. The common thread running through MacKinnon's long list of adjectives describing the modes of power is that they all reflect an understanding of power as cognate of "power over" which, we think, is a unilateral conception of power.¹⁰² It echoes a Weberian, negative and repressive analysis of power, a lawyerly vision of power,¹⁰³ what Foucault describes as a juridical conception of power.¹⁰⁴ But power is more than simply pervasive and systemic. It is also heterogenous, polymorphous and multifaceted.¹⁰⁵ Power can be understood in the sense of "power to" as well as "power over." "Power to" is power as a cognate of freedom, a progressive, emancipatory and potentially transformative conception of power, a conception which emphasizes the creative, capacity-enhancing, ability-encouraging, variation of power.¹⁰⁶ This is a qualitatively different conception of power. Men may understand and use power in its imperialistic guise in order to dominate women,¹⁰⁷ but that does not mean that

ment, sexual abuse of children, prostitution and pornography, curiously, very little is said about why men behave in this way, except to claim that it fits with the "interest from the male point of view" (*supra*, note 1 at 112). To be sure, the whole book can be read as illustrative of why the subordination of women is in men's interests. But, on occasion, MacKinnon indicates that not all men dominate, and that some might even choose not to do so (*supra*, at 94). If it is in his interest to dominate, why would any man ever make such a choice? Does this suggest that interest is not the same as political perspective and preference, and therefore, that this element of her argument needs greater development? Moreover, at one point, she even mentions that Robert Dahl is one of the world's "ten nicest men" (*supra*, at xvi). Yet, on the basis of her theory of power, it is difficult to see that as a man he could be nice. The personal is the political, is it not? Does the inverse not also hold true, particularly given Dahl's liberalism, and liberalism's complicity in women's domination?

¹⁰²For similar concerns about the prevalence of "generic" statements about power/powerlessness advocated by both sociologists and feminists see A. Duffy, "Reformulating Power for Women" (1986) 23 *Can. Rev. Soc. & Anth.* 22.

¹⁰³See R. Devlin, "Nomos and Thanatos (Part A). The Killing Fields: Modern Law and Legal Theory" (1989) 12 *Dalhousie L.J.* 298.

¹⁰⁴M. Foucault, *Power/Knowledge: Selected Interviews and Other Writings*, trans. C. Gordon, ed. (New York: Pantheon, 1980) [hereinafter *Power/Knowledge*].

¹⁰⁵The following reflections on power are influenced, in part, by the work of Foucault although they aspire to a somewhat different, that is optimistic, agenda than his. See Foucault, *ibid.*; M. Foucault, *Discipline and Punish* (New York: Pantheon, 1984); M. Foucault, *The History of Sexuality* (New York: Vintage, 1988); J. Sawicki, "Foucault and Feminism: Toward a Politics of Difference" (1986) 2 *Hypatia* 23; I. Diamond & L. Quinby, eds, *Feminism and Foucault: Reflections on Strategies of Resistance* (Boston: Northwestern University Press, 1988).

¹⁰⁶See Y. Cohen, "Thoughts on Women and Power" in A. Miles & G. Finn, eds, *Feminism in Canada: From Pressure to Politics* (Montreal: Black Rose Books, 1982) at 263 [hereinafter *Feminism*]; and G. Finn, "Conclusion," *supra*, 299 at 302.

¹⁰⁷We would also point out that women are not the only victims of power in this form. Some men have power over other men on the basis of, for example, class, race or sexual preference. Another example is that, perhaps, humankind in general responds to the environment on the basis of this paradigm.

“power over” is the immutable essence of power. Feminism, we want to suggest, may pose the opportunity to conceptualize and nourish another, emancipatory side of power, a side that expands our horizons rather than curtails them, a side that nurtures our personhood rather than stultifies it, a side that fosters care for inherent human dignity. bell hooks, for example, addresses the possibilities of the power of love:

In reconceptualizing and reformulating strategies for future feminist movement, we need to concentrate on the politicization of love, not just in the context of talking about victimization ... but in a critical discussion where love can be understood as a powerful force that challenges and resists domination.¹⁰⁸

Feminism, rather than working within and thereby reproducing the androcentric interpretation/imposition of power, may be able to challenge the very meaning of power itself.

To be fair to MacKinnon, interstitially, there are suggestions that her analysis and reconstructive vision incorporate a transformed¹⁰⁹ and non-repressive conception of power, but these are disturbingly underdeveloped. For example, when she argues that “radical feminism is developing a theory of male power, in which powerlessness is a problem but redistribution of power as *currently defined* is not its ultimate solution, upon which to build a feminist theory of justice”¹¹⁰ there is a suggestion that there is a radical feminist reconception of power, though we are given no indication as to what it might look like.¹¹¹ Furthermore, the reference to “ultimate” suggests that in the meantime the current, that is male, conception is available for feminist use. Thus, within the transitional period from patriarchal domination to the desexualized egalitarian society a key element of the patriarchal order, power in its repressive mode, is to remain available. Are we to assume that it will eventually wither away? Or, will it be necessary to work towards its transcendence? And what about Audre Lorde’s warning that the master’s tools will never dismantle the master’s house?¹¹²

Further ambivalences in *Towards a Feminist Theory of the State* indicate that we cannot even be sure that if we were to reach MacKinnon’s vaguely envisioned society that there would be a feminist form of power, distinct from power

¹⁰⁸“feminism: a transformational politic” in *Talking Back*, *supra*, note 59, 19 at 26. hooks draws on the work of Paulo Friere who embraces the power of love as he writes: “I am more and more convinced that true revolutionaries must perceive the revolution, because of its creative and liberating nature, as an act of love” (*Pedagogy of the Oppressed*, trans. M.B. Ramos (New York: Seabury Press, 1970) at 77 n. 4).

¹⁰⁹*Supra*, note 1 at 125.

¹¹⁰*Ibid.* at 46, emphasis added.

¹¹¹Another example is to be found in her discussion of the ability of “male power to create the world in its own image ... power to shape reality” (*Ibid.* at 118). See also some passing comments (*supra* at 230).

¹¹²A. Lorde, *Sister Outsider: Essays and Speeches* (Trumansburg, N.Y.: Crossing Press, 1984) 110 at 112.

in its male mode, because, as mentioned earlier, her discussion tends to manifest the essentialist, Weberian, and juridical conception of power. Consider, for instance, her proposition that male power combines, "like any form of power, legitimation with force."¹¹³ The taken for granted assumptions are that male power is but a specific form of power, with which we would agree, and the further assumption, with which we would disagree, is that power, generically, is necessarily repressive. This resonates with the naturalism of which MacKinnon accuses others. Our conceptualization does not capitulate to the liberal idealism of "as if," nor does it indulge in the "analytic wish-fulfillment"¹¹⁴ that feminism can simply reimagine power and that then everything will be fine. Rather, it is to refuse to surrender to the patriarchal, false necessity¹¹⁵ that maleness is all. We therefore criticize MacKinnon on the same basis that she criticizes sexual liberation feminists, in that she "uncritically adopts as an analytic tool the central dynamic of the phenomenon ... [she] purports to be analyzing."¹¹⁶ As a result, MacKinnon may have failed to challenge male supremacism at its core. By espousing an overly inclusive conception of power and by omitting any serious discussion of a feminist reconstruction of power, the assumption of hierarchy and therefore of domination, remains entrenched.

What then might a feminist reconstruction and reconceptualization look like? What has MacKinnon omitted that we would include so as to offer a more sustained and destabilizing challenge to malestream domination? Pursuant to our earlier proposition that feminism must remain faithful to its polyvocal nature, we would argue that equalitarianism though vital, cannot be the sole shining path for feminism, and that, for example, the discourse of "difference" and "the ethic of care" could also be considered as legitimate and potentially fruitful modes of analysis and praxis.

In this book, as in *Feminism Unmodified* and the Buffalo debate,¹¹⁷ MacKinnon devotes especial space to a critique of those (women in particular) who find value in the concept and discourse of "difference" and maintains that the radical feminist approach must focus its attention on equality as anti-domination. Difference, she argues, is a derivative concept, attributed significance by the pre-existing, hierarchy-imposing male order, and therefore irretrievably antithetical to women's interest: "the velvet glove on the iron fist of

¹¹³*Supra*, note 1 at 122.

¹¹⁴*Ibid.* at 135.

¹¹⁵See R.M. Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy* (New York: Cambridge University Press, 1987).

¹¹⁶*Supra*, note 1 at 135-36.

¹¹⁷C. MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (Cambridge: Harvard University Press, 1987) [hereinafter *Feminism Unmodified*]; E.C. Dubois *et al.*, "Feminist Discourse, Moral Values, and the Law — A Conversation" (1985) 34 *Buffalo L. Rev.* 11 [hereinafter *Discourse*].

domination."¹¹⁸ Once again, although this time only briefly, she singles out the work of Carol Gilligan,¹¹⁹ denouncing it for its "liberal idealism," its failure "to situate thought in social reality," and for analyzing "women's situation *as if* equality, in spite of everything, already ineluctably existed."¹²⁰ This critique, we suggest, is somewhat harsh and inaccurate.

First, there is MacKinnon's claim that Gilligan misses women's social reality, and its implicit assumption that MacKinnon has got it. No doubt both women have insights on women's experiences of the world, but by what criteria does MacKinnon dismiss Gilligan's analysis? As far as we can see, none except that it does not fit with MacKinnon's own epic theory. There is no argument that Gilligan's research strategy is flawed, and indeed, when we compare the approaches of MacKinnon and Gilligan as they each attempt to portray women's realities, Gilligan's seems more direct and less mediated, or filtered, than MacKinnon's. Whereas Gilligan's scholarship reports and interprets the results of research specifically designed to tune into women's perceptions, MacKinnon's scholarship, in the tradition of mainstream political theory, tends to be less contextual and more assertive as to what people, and in her case, women in particular, want. This is not to posit that MacKinnon is misinterpreting women, after all she has organized hearings around pornography in Minnesota, but merely to query her self-perceived "special access" to women's social reality. Put simply, it is surprising to us to think that any feminist would want to argue that there is just one social reality for women.¹²¹

Second, MacKinnon argues that Gilligan makes it "seem as though women's moral reasoning is somehow women's"¹²² but this, we think, is a misreading of Gilligan's research, though perhaps not of some of those who have applied her analysis.¹²³ Although, on occasion, Gilligan does identify difference with "feminine,"¹²⁴ she is at pains to point out that she is not talking about a women's morality. At the very beginning of *In A Different Voice*, Gilligan unequivocally states:

The different voice I describe is characterized not by gender but theme. Its association with women is an empirical observation, and it is primarily through

¹¹⁸*Supra*, note 1 at 219.

¹¹⁹See C. Gilligan, *In A Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982) [hereinafter *In A Different Voice*].

¹²⁰*Supra*, note 1 at 51.

¹²¹Charlotte Bunch discusses feminism in terms of a transformational politics, for it strives to change structures as well as people, and in so doing it must take into consideration that "[a] crucial part of this process is understanding that reality does not look the same from different people's perspective" (*Passionate Politics: Feminist Theory in Action: Essays 1968-1986* (New York: St. Martin's Press, 1987) at 338).

¹²²*Supra*, note 1 at 51.

¹²³See e.g., K. Karst, "Women's Constitution" [1984] Duke L.J. 447.

¹²⁴*In A Different Voice*, *supra*, note 119 at 105.

women's voices that I trace its development. But this association is not absolute, and the contrasts between male and female voices presented here to highlight a distinction between two modes of thought and to focus a problem of interpretation rather than to represent a generalization about either sex.¹²⁵

Moreover, in a debate with MacKinnon, Gilligan declared, "I deliberately called it a different voice, I did not call it a woman's voice."¹²⁶ How can MacKinnon not listen to this other woman? Or, is it that she just does not believe Gilligan?

Third, MacKinnon's rejection of the discourse of difference and care on the basis that they reaffirm powerlessness and are part of the package which has been forced upon women by men leads her to charge advocates of such perspectives with being liberal idealists "who do not take social determination and the realities of power seriously enough."¹²⁷ While we think that this critique of difference is an important warning against the dangers of utopianism,¹²⁸ it tends to be overstated. An advocacy of difference need not be based on an essentialist, reductionist vision of male/female nature, absolute, incorrigible, transcendental, reified. Rather, we understand difference to be part of the broader matrix of social relations as culturally¹²⁹ (within which we would include politics) and psychologically constructed. It is a deeply entrenched ideology, but an ideology nonetheless.¹³⁰ The consciousness that the discourse of difference is an ideology — even a pervasive ideology — is therapeutic in that it indicates not only the artifactual nature of the discourse, but also its contingency and mutability, as well as its vulnerability to assessment and valorization. In the spirit of MacKinnon's critical enterprise, we can ask: valued by whom and for what reasons? Where we differ from her is that, echoing her theories of power and sexuality, she sees the discourse of difference as masculinist ventriloquism, and therefore seems to reject it *in toto*. Due to our more expansive conception of power, one that recognizes the possibility of strategies of resistance, while recognizing the historical and political nexus between the discourse of difference and male dom-

¹²⁵*Ibid.* at 2.

¹²⁶*Discourse, supra*, note 117 at 38.

¹²⁷*Supra*, note 1 at 51-52.

¹²⁸See, e.g., S. Ruddick, "Maternal Thinking" and S. Ruddick, "Preservative and Military Destruction: Some Reflections on Mothering and Peace" in J. Trebilcot, ed., *Mothering: Essays in Feminist Theory* (Totowa, N.J.: Rowman & Allenheld, 1983).

¹²⁹See C. Gould, "The Woman Question: The Philosophy of Literature and the Literature of Philosophy" in C. Gould & M. Wartofsky, eds, *Women and Philosophy* (New York: Putnam, 1972); L. Finley, "Choice and Freedom: Elusive Issues in the Search for Gender Justice" (1987) 96 *Yale L.J.* 914 at 932-33; and R.W. Connell, *Gender and Power: Society, the Person and Sexual Politics* (Boston: Allen & Unwin, 1987).

¹³⁰See N. Chodorow, "Gender Relation and Difference in Psychoanalytic Perspective" in H. Eisenstein & A. Jardine, eds, *The Future of Difference* (Boston: G.K. Hall, 1980); A. Jardine, "Prelude", *supra*, at xxv; M. Wittig, "Paradigm" in G. Stambolian & E. Marks, eds, *Homosexualities and French Literature* (Ithaca, N.Y.: Cornell University Press, 1979) 115; M. Minow, "Justice Engendered" (1987) 101 *Harv. L. Rev.* 10 at 31.

ination, we refuse to succumb to the essentialist equation that difference is equivalent to domination and subordination. In short, we see the discourse of difference, like the discourse of equality, as a terrain of feminist struggle, "essentially contestable"¹³¹ and potentially salvageable.¹³²

Fourth, as a matter of feminist praxis, in our experience, the discourse of difference has been a mobilizing influence for many women and to reject it absolutely is to risk abandoning a discursive practice that has been crucial to maintaining the ranks of the women's movement. This is particularly worrisome given the current politico-historical conjuncture when it is claimed by mainstream society that we are now in a post-feminist era. Feminism simply cannot afford the luxury of an exclusivist perfectionism.

It is not difference in and of itself that drives us to resist MacKinnon's polemic, though we do believe that law and politics need to develop a greater responsiveness to this component of our community.¹³³ More expansively, it is our analysis of what the substantive difference of the different voice might be. Rephrased, what is at stake in the debate over difference is not solely whether society should tolerate and encourage diversity, but also, what sort of political morality should guide our agenda? Rather than relating the debate to one of gender difference, we believe that it can be better understood as a debate around two political moralities: an ethic of "indifference"¹³⁴ and an "ethic of care."¹³⁵ The former, we suggest, has been the dominant political morality and is thus, to some degree, responsible for the masculinist disregard for women's integrity. The latter provides the foundational elements of, and the possibility for the expansion of, a political counter-morality that could be used to support substantive equality for women. Insofar as the juridical conception of power tends to devalue the integrity of the victim of power, it correlates with the ethic of indifference. Insofar as the expansive conception of power can contemplate the empowerment of the other, it dovetails with the ethic of care. Viewed in this light, perhaps it is MacKinnon who does not take the realities of power seriously enough in that her own analysis is too uni-dimensional, it too quickly abandons a potential source for the pursuit of women's substantive equality, when more than one route may in fact be necessary. Conceiving of "power to" as a cognate

¹³¹W.B. Gallie, "Essentially Contested Concepts" (1956) LVI Proceedings of the Aristotelian Society N.S. 167.

¹³²For a significantly more nuanced approach to difference see M. Minow, *Making All the Difference* (Ithica, N.Y.: Cornell University Press, 1990).

¹³³See N. Duclos, "Lessons of Difference: Feminist Theory and Cultural Diversity" (1990) 38 Buffalo L. Rev. 325.

¹³⁴In *A Different Voice*, *supra*, note 119 at 22.

¹³⁵See also J. Tronto, "Beyond Gender Difference to a Theory of Care" (1987) 12 *Signs* 644; E.F. Kittay & D.T. Meyers, eds, *Women and Moral Theory* (Totowa, N.J.: Rowman and Littlefield, 1987).

of care is not necessarily indulging in liberal idealism. To the contrary, it might simply provide us with some guidance as to how we might proceed.¹³⁶

Additionally, we want to suggest that, despite MacKinnon's bold statements eschewing the discourse of care as a patriarchal dead end, we detect, once again, a vague ambivalence regarding the relationship between radical feminism and the ethic of care. In keeping with her social constructionist thesis that woman is an artifact, she seems to reject a feminist affinity for care on the basis that "Perhaps women value care because men have valued women according to the care they give."¹³⁷ At first blush, and in the context of the surrounding paragraphs which are a critique of the liberal idealism of the discourse of difference, this may appear to be a repudiation of care as a viable feminist strategy. However, it is worth noting that this is one of the few occasions in MacKinnon's scholarship that she is tentative in her critique, prefacing her comments with a "perhaps." The suspicion that MacKinnon might still believe that care has some role to play in the radical feminist agenda is further reinforced through her critique of contemporary industrial society's version of the feminine stereotype, and the sexual significance of each element of the stereotype: "docile, soft, passive, nurturant, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, made for childcare, home care, and husband care."¹³⁸ In classic MacKinnon style, over the subsequent paragraphs, she proceeds to illuminate the nexus between each of these elements and male sexual desire. What is uncharacteristic is that missing from this deconstruction are the final three elements, all of which revolve around care. We are not suggesting that there is no connection between care and the sexual construction of the female character. We do wonder, however, why MacKinnon is so unusually incomplete in her analysis. Could it be that she does not consider care as totally imposed on women by men and therefore that it may not be completely irretrievable?

It is difficult to express what we are trying to get at here, and this, we think, relates to the way MacKinnon develops her own arguments. In her crusade to develop an epic theory, MacKinnon wants to be as clear and explanatorily com-

¹³⁶To be clear, we want to argue that any connection between women and care is contingent and not sex reductionist. Reference to a different voice helps us to gain a critical distance on the hegemony and partiality of malestream analysis, it is not reification of the feminine essence. It provides us with an opportunity to consider what the substantive difference of a different voice might be and how that can be used both to destabilize the dominance of the male world view, while at the same time cautiously adumbrating some, admittedly corrigible, guidelines as to how we might proceed. The ethic of care is at once a political, legal and moral benchmark that directly challenges the moral relativism of the liberal state.

For further discussion on difference and the ethic of care, see R. Devlin, "Nomos and Thanatos (Part B), Feminism as Jurisgenerative Transformation, or Resistance Through Partial Incorporation?" (1990) 13 Dalhousie L.J. 123.

¹³⁷*Supra*, note 1 at 51.

¹³⁸*Ibid.* at 109.

prehensive as possible. To do this she is driven at times to eliminate discussion of complicating factors. Nevertheless, these interacting elements are like "subjugated knowledges,"¹³⁹ continually threatening to irrupt, to break through the coherence of the totalizing argument. MacKinnon's theory seems caught in this vortex. Our suspicion is that she does have a more comprehensive vision, but driven by the logic of her own theory, she is forced to bury these issues. Still, in spite of herself, they, time and again, tend to resurface. The interment cannot be complete. This, perhaps, explains how MacKinnon can, in the main, ostracize the ideology of difference, and then, at the odd moment, hint at its potential.

Still, there is no denying that in *Toward a Feminist Theory of the State*, MacKinnon, for the most part, shows little restraint in her denunciation of difference and the ethic of care. Given the intensity of MacKinnon's disapprobation of difference, we believe that her theory of power must also be applied to her own preferred agenda, equalitarianism, that is, her ambition to translate and transmute issues such as rape, pornography, prostitution, incest, battery, abortion, and gay and lesbian rights into sex equality issues under law. If it is true that the discourse of difference and the ethic of care are simply male ventriloquism and that male power is omnipresent, how is the discourse of equality, any more than the discourse of difference, not "a response to terms men set?"¹⁴⁰ What is it about equality, and particularly equality as MacKinnon conceives of it, that renders it uncontaminated by maleness? Indeed, even the most cursory reflection on the history of the concept of equality suggests it has been a central preoccupation for the mainstream western philosophical tradition, from Aristotle through Locke, Kant, Marx, Mill, Rawls and now Ronald Dworkin.¹⁴¹ Since difference has been a more marginal concern to our philosophical forefathers, it may be, in fact, less overdetermined by patriarchal assumptions than equalitarianism.

More broadly, why does MacKinnon seem to insist that only equalitarianism is appropriate, thereby embracing the dualistic thought of either/or? Would it not be possible to adopt an "integrative approach"¹⁴² that could draw on the best elements of both traditions? Thus, her critique of the use of difference by Rosalind Rosenberg, an expert who testified in the *Sears v. EEOC* case,¹⁴³ is too facile as it is obvious that the result of arguing a difference analysis in this par-

¹³⁹For a discussion of the "insurrectional" potential of "subjugated knowledges" see M. Foucault, *Power/Knowledge*, *supra*, note 104 at 81.

¹⁴⁰*Supra*, note 1 at 128.

¹⁴¹For a useful discussion of the "phallogocentricity" of traditional equality discourse see C. Littleton, "Reconstructing Sexual Equality" (1987) 75 Cal. L. Rev. 1279.

¹⁴²See A. Miles, "Introduction" in *Feminism*, *supra*, note 106, 9 at 12 for her discussion of "Integrative Feminism"; "The Integrative Feminine Principle In North American Feminist Radicalism: Value Basis of a New Feminism" (1981) 4 Women's Studies Int'l. Q. 481.

¹⁴³*Supra*, note 1 at 223.

ticular context would be continued economic inequality. However, there may be situations in which one would want to draw on the discourse of difference to argue differential treatment in order to achieve equality of results,¹⁴⁴ even if it is only to counteract past discrimination and enforced inequality. This need not be protectionism. Consider, for example, former Chief Justice Dickson's suggestion in the context of religion that:

The equality necessary to support religious freedom does not require identical treatment of all religions. In fact, the interest of true freedom may require differentiation in treatment.¹⁴⁵

Within a patriarchal social order, neither difference nor equality can be uncritically adopted by feminists but, by the same token, neither is necessarily and completely taboo. Much will depend upon the context in which the particular problem arises, both on micro and macro-political levels, an important flexibility that perhaps an epic theory cannot accommodate.

Further, if we are to be in the business of doctrinal revisioning — as MacKinnon appears to be in her last chapter with its analysis of equalitarianism as an interstitial tradition in the American Supreme Court — we would like to propose that such case law could just as easily be interpreted through the prism of the ethic of care. Consider, for example, her reinterpretation of *Brown v. Board of Education*: “*Brown* saw [the feelings of inferiority generated by apartheid] from the standpoint of the Black challenge to white supremacy, envisioning a social equality that did not yet exist.”¹⁴⁶ Could one not also hypothesize that the Court, by holding racial segregation unconstitutional, was translating the ethic of care into constitutional form and providing a remedy for the harm caused by apartheid?¹⁴⁷ Moreover, this approach might avoid a danger inherent in MacKinnon's analysis which implicitly suggests that the Court could by some process of “negative capability”¹⁴⁸ get inside “the standpoint of the

¹⁴⁴For a further discussion of this type of proposal see C. Sheppard, “Equality, Ideology and Oppression” (1986) 10 Dalhousie L.J. 195 at 216-18.

¹⁴⁵*R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295 at 347, 18 D.L.R. (4th) 321.

¹⁴⁶*Supra*, note 1 at 240. We think that it is rather curious that although MacKinnon makes reference to other cases that are more directly related to gender she should take as her star example of deviationist legal doctrine a case that is primarily about race. Of course, Black women would be affected by such a decision, but given the focus of her epic theory, women's status, the choice of case seems inconsistent and raises a host of questions as to the transferability of analysis between gender and race (and class).

¹⁴⁷To be clear, we are not suggesting that the court actually did draw on such an ethos, in the same way as we doubt that it was “really” adopting the stance attributed to it by MacKinnon. The revision of precedent is always a strategy of “as if,” the *ex post facto* construction of a doctrinal paradigm, motivated by the purpose of having your particular interpretation canonized (if only temporarily) by judicial sanctification.

¹⁴⁸See J. Keats, “Letter to George and Tom Keats, 21 December, 1817” in H.E. Rollins, ed., *The Letters of John Keats 1814-1821*, vol. 1 (Cambridge: Belknap Press of Harvard University Press,

Black challenge” a suggestion that we fear is quite dangerous. We doubt that there is any way that an all white, privileged male court could ever really come to terms with the Black standpoint. The pretence that they might be able to do so runs the risk of a white appropriation and encoding of that Black existential reality. This is not to say that the privileged have no role to play in relation to those who have been subordinated. It is simply to attempt to carefully define the nature of the relationship and to minimize the danger of beneficent, neo-imperialism. The ethic of care, in so far as it acknowledges that there are two discrete subjects, the one who cares and the one who is cared for, and in so far as it acknowledges that one has greater resources than the other, does not suggest that the carer be in the position of the cared for. Rather, it demands that the person in the stronger position attempt, so far as it is possible, to understand the needs of the weaker party and to use her or his power to remedy the situation. This recognizes the intersubjectivity of the parties, and encourages a solidarity, but resists the pretence that the carer really knows what it is like to be the cared for.

By extension, we would suggest that each of the other issues such as rape, abortion, pornography and sex discrimination, that MacKinnon argues must be reconceptualized as sex equality issues could also be filtered through a juridical prism of the ethic of care: that the law care for the experience and the perspective of women who are raped, victimized by pornography, discriminated against or require an abortion, and provide remedies accordingly. Our point here is modest. The ethic of care is not necessarily incompatible with MacKinnon’s equalitarianism, indeed it may even be reinforcing, and thus for MacKinnon to close off this avenue is to forgo one of the few reconstructive opportunities that women might have for the sake of a juridical strategy that, even in its best light, has only a tenuous (though hopefully expandable) influence in contemporary North American legal discourse.

As a final point, assuming that MacKinnon’s preference is for the more totalistic conception of male power, it is puzzling how her sex equality approach can escape the male referent that she accuses difference discourse of emulating. According to her thesis, maleness has constructed the world. Would it not then follow that everything women could aspire to must, either formally or substantively, bear the mark of maledom? A more nuanced analysis of power, combined with an openness to the differential dynamic of care, provides, somewhat more optimistically, for the possibility of achieving a feminist future.

III. Reconceptualizing Consciousness Raising: Caution and Creativity

To this point, our focus has been on the simultaneously under- and over-inclusive aspects of *Toward a Feminist Theory of the State*, and particularly

1958) 191 at 193. For a discussion of the “sympathetic possibilities of the imagination,” see W.J. Bate, “Negative Capability” in *John Keats* (Cambridge: Harvard University Press, 1963) 233.

MacKinnon's reluctance to expand her argument so as to be hospitable to other feminist and critical analyses. The power as domination thesis, and its inverse, the equality as anti-domination thesis, appear to be the guiding axes for her argument and the result, we have suggested, is too absolute, too impoverished in its conception of women's agency and ultimately too sparse in its proposals as to where feminism should go from here. To further substantiate these concerns, we want to briefly change the focus of our analysis from a discussion of what else could be included, or what could be modified, to an inquiry into the internal coherence of MacKinnon's own thesis. Our proposition is that although she does not advocate a completely negative prognosis for the condition of women, the positive messages which do emerge are at one and the same time theoretically underdeveloped and overextended. To illustrate these problems we will focus on what MacKinnon considers to be the feminist method: consciousness raising.

To elaborate, on several occasions, as a direct and logical result of her analysis, MacKinnon asks, "What is the feminist account of how women can come to reject the learning portrayed as so encompassing? ... What accounts for some women's turning upon their conditioning?"¹⁴⁹ "How can women, as created, 'thingified in the head,' complicit in the body, see her condition as such?"¹⁵⁰ And:

If the existing social model and reality of sexuality center on male force, and if that sex is socially learned and ideologically considered positive and is rewarded, what is surprising is that not all women eroticize dominance, not all love pornography, and many resent rape ... the truly interesting question becomes why and how sexuality in women is ever other than masochistic.¹⁵¹

We think it is important to note how MacKinnon phrases these types of questions, rhetorically, for effect. In our estimation, these questions are of much greater significance. They go to the very core of her theory. These questions, that echo like a refrain throughout the book, demand that an account of women's agency be provided, they insist on an explanation of even the very existence of feminism, they problematize the possibility of a text like *Toward A Feminist Theory of the State* and the emergence of a feminist academic activist like MacKinnon.

MacKinnon's answer to all of these questions is to be located in her faith in consciousness raising. She traces the politico-historical development of consciousness raising from the coming together of women in the 1960s and 1970s, through the process of the collective recognition that women's powerlessness

¹⁴⁹*Supra*, note 1 at 103.

¹⁵⁰*Ibid.* at 124.

¹⁵¹*Ibid.* at 149.

had been “externally imposed and deeply internalized,”¹⁵² to its transformation into a “way of knowing”¹⁵³ and a validation process,¹⁵⁴ and finally to its articulation of the possibility and necessity of social change so that women can become “shapers of reality as well as shaped by it.”¹⁵⁵

This discussion of consciousness raising goes some way towards helping MacKinnon explain the seemingly partial empowerment of women in the face of, what the rest of her analysis indicates is, an overwhelming male dominance. However, in our opinion, the concept of consciousness raising remains problematic and insufficiently developed to carry the multifaceted and heavy weight that she imposes upon it: “a technique of analysis, structure of organization, method of practice, and theory of social change of the women’s movement.”¹⁵⁶

First, if male dominance was ever as complete as MacKinnon’s theory of power suggests, the critical recognition which she identifies could never have taken place, either because men would not have allowed such gatherings of potentially dissident women, or the internalization would have been so deep that women would have had no inkling that anything was amiss. There would be no contradictory consciousness waiting to be raised. Second, how does MacKinnon know that consciousness raising is not just a dupe, another patriarchal cul de sac for women? How does she know that what women discover through consciousness raising is any less socially constructed than, for example, the discourse of difference?

Third, there is also something disturbingly ahistorical about the centrality that she accords to consciousness raising. Is MacKinnon’s suggestion that prior to the second wave of feminism (which, interestingly, roughly corresponds with her own biography) women had no technique of analysis, structure of organization, method of practice or theory of social change? Surely this falsifies the past or, at the very least, fails to explain centuries long struggles by women against domination and for equality. To take just one example, how could MacKinnon explain that in 1958, Caribbean immigrant women organized “rap sessions” on “maids right out” at the YWCA in Toronto.¹⁵⁷ MacKinnon seems unaware that perhaps one of the most inspiring elements in feminist strategies of resistance is “the struggle of memory against forgetting.”¹⁵⁸

¹⁵²*Ibid.* at 8.

¹⁵³*Ibid.* at 84.

¹⁵⁴*Ibid.* at 87.

¹⁵⁵*Ibid.* at 88.

¹⁵⁶*Ibid.* at 7.

¹⁵⁷T. Das Gupta, *Learning From Our History: Community Development with Immigrant Women* (Toronto: Cross Cultural Communication Centre, 1980). For further examples see, *supra*, note 73.

¹⁵⁸b. hooks, “A Call for Militant Resistance” in *Yearning*, *supra*, note 2, 185 at 185.

Fourth, MacKinnon portrays consciousness raising in an extremely rosy light, but even though this has been an important part of the recent women's movement, we think that she should be careful to acknowledge it has not been an unqualified feminist good. Power struggles have gone on within consciousness raising groups, certain women have dominated and subordinated other women, exclusivist practices have developed, and hierarchies and orthodoxies have been imposed. The Psyche et Po group is one graphic example in France,¹⁵⁹ but experience within the feminist movement more generally suggests that this is not an isolated incident. Male power, as a form of power, may be more pervasive than even MacKinnon believes and to gloss over the problem of feminist abuses of power with a vague and euphemistic acknowledgement that "leadership patterns often emerged"¹⁶⁰ is, in her own words, to fail to take "the realities of power seriously enough."¹⁶¹

Fifth, we are concerned about MacKinnon's tendency to underestimate the incompatibilities and limitations on solidarity within consciousness raising groups, an issue that echoes our earlier criticism of her ranking of sex before race or class. As bell hooks describes, this has significantly curtailed the potential of consciousness raising both as to the specificity of the problems and their possible resolution:

If two women — one poor the other quite wealthy — might describe the process by which they have suffered physical abuse by male partners and find certain commonalities which might serve as a basis for bonding. Yet if these same two women engaged in a discussion of class, not only would the social construction and expression of femaleness differ, so too would their ideas on how to confront and change their circumstances.¹⁶²

Cumulatively, these criticisms indicate that MacKinnon's unidimensional theory of power and her overemphasis on modern radical feminism drive her to factor in too little and, at the same time, expect too much from consciousness raising. Not only would a more cautious analysis of consciousness raising incorporate these criticisms, it might also tentatively suggest that consciousness raising has been a mode of empowerment for women, not just in the sense that it has provided women with an opportunity to recognize and challenge male dominance, but also because it is illustrative of a form of power distinct from the repressive mode. Unfortunately, once again, MacKinnon's theory of power precludes her from accepting either of these possibilities. For example, at one point she opines, "Consciousness raising can also affirm that although women are deprived of power, within the necessity of their compliance is a form of power

¹⁵⁹For a discussion see, C. Duchon, *Feminism in France: From May '68 to Mitterand* (Boston: Routledge and Kegan Paul, 1986).

¹⁶⁰*Supra*, note 1 at 85.

¹⁶¹*Ibid.* at 52.

¹⁶²"feminism: a transformational politic", *supra*, note 108 at 23.

which they possess but have not yet seized.”¹⁶³ As we interpret this, she seems to be saying that consciousness raising, though feminist method, is not feminist power but is simply a vehicle that can help women access that power. We find this frustrating because although MacKinnon comes very close to recognizing consciousness raising as power, she holds back, engaging us with the possibility of acknowledging an already existent, if imperfect, mode of power in its feminist form, but in the end leaving us disappointed.

We, however, want to argue that consciousness raising even as method is, and has been, a form of power for women. More specifically, we contend that in its best moments it is an example of power in a positive light, as women, through a mutual support network, assist each other to recognize and resist their oppression, thus enabling them to claim a non-patriarchal integrity. Consider, for example, MacKinnon’s own description of the significance of consciousness raising: “the collective critical reconstitution of the meaning of women’s social experience, as women live through it”¹⁶⁴ with its “ethic of openness, honesty, and self-awareness.”¹⁶⁵ Does this not sound like the ethic of care at the level of female praxis?

To tie our themes together, we want to propose that if we adopt a more subtle, complex, multidimensional and expansive conception of power we can explain the following paradox identified, but inadequately addressed, by MacKinnon:

With forms of power forged from powerlessness, conditions are resisted, in the radical feminist view, because women *somehow* resent being violated and used, and because existing conditions deny women a whole life, visions of which are meager and partial *but accessible* within women’s present lives and recaptured past.¹⁶⁶

By recognizing that alongside patriarchal dominance there has tenuously existed a feminist conception of power, power to rather than power over, we have the possibility of an explanation of why women have survived, how feminism as an antipatriarchal movement can exist, and even perhaps the inchoate rudiments of what a feminist future might look like and how we might go about achieving it. It helps us make sense of the fact that, on occasion, the law might just respond to the interests of women and not those of men.¹⁶⁷ It takes us one step beyond the proposition that “Feminism criticizes this male totality without an

¹⁶³*Supra*, note 1 at 101.

¹⁶⁴*Ibid.* at 83.

¹⁶⁵*Ibid.* at 85.

¹⁶⁶*Ibid.* at 47, emphasis added.

¹⁶⁷Consider, for example MacKinnon’s own celebrated cause of action, sexual harassment which she argues puts “into practice the analysis argued in this book.” *Ibid.* at 314, n. 2. See more generally C. MacKinnon, *Sexual Harassment of Working Women: A Case of Sex Discrimination* (New Haven: Yale University Press, 1979).

account of women's capacity to do so or to imagine or realize a more whole truth."¹⁶⁸ Therefore, it does not attribute too much credit to men nor too little to women. It does not drive us to proclaim that "there is no such thing as a woman as such; there are only walking embodiments of men's projected needs."¹⁶⁹ And finally, it does not consider women unremarkable, as "[p]eople who are without names, who do not know themselves, who have no culture."¹⁷⁰

IV. Critical Dialogue in the Hope of Solidarity and Subversive Spaces

As we read through earlier drafts of this note, we realized that, although we have been animated and activated by MacKinnon's theory, our analysis appeared disproportionately critical and unappreciative of the genuine contribution that she has made. It would be easy to write off our response as characteristic of the logical process in an interpretational essay, for you criticize that which you find wanting in a particular work, and you adumbrate your, allegedly, improved analysis. On consideration of our present circumstances however, we feel that there is more to it than this. Our concerns are twofold. First, the persistency of our critique is, in part, a response to the tone of MacKinnon's argument. Though we have no problem with the focus of MacKinnon's challenge, a massive offensive on male power (hence, our title), we recoil at the pugilistic impulses that animate her discourse. MacKinnon's adversarial style incites similar writing techniques in return, though we have tried to be wary of reacting too intensely.

Secondly, and more substantively, the book, at times, moves beyond aggressive techniques and controversial content to a point where the reader, feminist or non-feminist, male or female, experiences the pain. We want to suggest that MacKinnon is insufficiently sensitive to the thin line between the therapeutic, and conceivably pro-active consequences of pain, and its paralysing capacity or its reactive backlash.

For some feminists, the anguish arises from, in a sense, bearing too much reality. This is not to say that they are too delicate to handle the gory details, or that they would rather view the world through rose coloured glasses. Instead, the lesson learned by many feminists over the last decade or so has been that too much negation is harmful to the cause. Feminist psychologists and women's health collectives have their hands full with women suffering "feminist burn-out." In the current politico-historical conjuncture, the situation for women is grim and feminists know this, see this, and experience this. The Montreal massacre¹⁷¹ is a horrific example of just how grave the situation has become, but on

¹⁶⁸*Toward A Feminist Theory of the State*, *ibid.* at 115.

¹⁶⁹*Ibid.* at 119.

¹⁷⁰*Ibid.* at 87.

¹⁷¹On the 6th of December, 1989, Marc Lepine entered the Engineering Faculty (the École Polytechnique) of the Université de Montréal and slaughtered fourteen women students after calling them "a bunch of feminists."

much lesser levels, and in many ways, feminists feel the oppression. For them, it is impossible to live a “feminist-free” day and tune out their analyses. Everywhere you turn, from books to videos, from billboards to newspapers, from government officials to judges, sexism, racism, classism, heterosexism *et cetera* are apparent. Therefore, feminists must work on positive strategies, avenues of hope and potential, as well as continue to analyze the repressive powers at large. *Toward a Feminist Theory of the State* offers some respite, and certainly causes less dolor for feminists than MacKinnon’s earlier work, *Feminism Unmodified*. However, as our essay suggests, MacKinnon’s way out must be more clearly delineated. And, as we have also indicated, this, in itself, is not enough. Other sources of inspiration must also be tapped in order to shape a feminist future.

For men, there is little doubt that MacKinnon’s analyses will prove to be a discomforting experience. Insofar as it mainly argues that, despite their best intentions, men are the problem, it might well induce a dismissive and intolerant response. Thus, some may counter that it serves men, and all men, right if they suffer, considering the pain they inflict on women. But, as political realists, we must not forget that men still hold the reins of power and control, and thus, although women comprise over half of the population, to effect large-scale change, women cannot go it alone. Moreover, as bell hooks points out, “the reconstruction and transformation of male behaviour, of masculinity, is a necessary and essential part of feminist revolution.”¹⁷² Thus, after speaking out on their own, it is important for feminists to strike up a conversation with men. This dialogue is necessary, but becomes difficult, if not impossible, when both sides are hurting. A political morality of care may provide the foundation for such a conversation. A starting point might be a discussion of the ways in which male sexuality is also socially constructed (something to which MacKinnon does not even allude) and therefore potentially open to reconstruction in a less dominating form.

What we have offered in this essay is not a trashing job on MacKinnon from without, but an internal critique that embraces the spirit, if not always the specifics or *modus operandi*, of MacKinnon’s enterprise. As a feminist and a sympathetic male, we have both experienced the pain of this book, but also have managed to move beyond it to talk about it. This, in turn, has enabled us to recognize and articulate perhaps our most fundamental disagreement with MacKinnon which is that she does not identify that there is, and must be, more than one way out.

MacKinnon has gone a long way in developing a feminist theory of state and law, but, maddeningly, she throws so much away because of the monolithic and dismissive mode of analysis. It is particularly frustrating given that feminism, and feminist theory, through its appreciation of gender difference, has

¹⁷²“feminist focus on men: a comment” in *Talking Back*, *supra*, note 59, 127 at 127.

taken difference to heart and has consciously determined to keep itself open to multiplicity. This is not the same as liberal pluralism, and it does not result in an "anything feminist goes" mentality. Rather, it represents a positive step away from the authoritarianism, the pursuit of "truth," and the tidy closure of malestream thought. It acknowledges the possibility that some analyses may be mistaken and it accepts and encourages disagreement. As the opening paragraph of Part I of this note indicates, MacKinnon's primary emphasis is on the "is" of male power. Consequently, we feel that she underdevelops a feminist reconstructive programme. We believe you cannot adequately deconstruct the present without some conception, even if it is corrigible, as to where we want to go and how we might get there. This requires the articulation of an "ought," the adumbration of a feminist political morality. And, given the formidable nature of the task, we have argued that "ought" must include more than one viewpoint, more than one right answer. MacKinnon, however, refuses to accept such diversity. Therefore, we suggest that, in spite of the substance of the book which aspires to providing *the* feminist theory of the state, the title more accurately captures MacKinnon's contribution: a progression *toward* formulating such a theory.
