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# Review Essay

## Categorical Discourse and Dominance Theory

TOWARD A FEMINIST THEORY OF THE STATE By Catharine A. MacKinnon. Cambridge: Harvard University Press, 1989. Pp xvii, 330. \$25.00.

Reviewed by Angela Harris†

### I. INTRODUCTION

In the Preface to *Toward a Feminist Theory of the State*,<sup>1</sup> Catharine MacKinnon describes her project as an analysis of “how social power shapes the way we know and how the way we know shapes social power in terms of the social inequality between women and men” (p ix).<sup>2</sup> MacKinnon’s “dominance theory” is about the link between power and knowledge in the context of gender: the ways in which “[e]pistemology and politics emerg[e] as two mutually enforcing sides of the same unequal coin” (p xi).

As MacKinnon notes, “Writing a book over an eighteen-year period becomes, eventually, much like coauthoring it with one’s previous selves” (p ix). Reading this book is sometimes a bit like going on an archaeological dig—finding fragments of earlier articles juxtaposed with newer material that reflects quite different premises and concerns. One constant, though, is the language that MacKinnon uses to describe the way gender operates. The language of dominance theory is what R. W. Connell might describe as “categorical” discourse.<sup>3</sup> That is, MacKinnon

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<sup>1</sup> Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harv U Press, 1989).

<sup>2</sup> All parenthetical page references are to C. MacKinnon, cited in note 1.

<sup>3</sup> See R. W. Connell, *Gender and Power* 54-61 (Stan U Press, 1987). I owe a great many of the thoughts expressed in this review to this extremely lucid and insightful book.

treats gender as a social system that divides human beings into two internally homogenous categories, women and men. The categories are rigidly separated; you can be either male or female, but not a little of each. MacKinnon also treats gender as a system that is isolated from other systems of power relations, such as race and class.

The strength of categorical discourse is that it provides a compelling corrective to liberal individualist thinking. The tendency of liberal feminism is to see male domination as an external force irrationally imposed on some individuals and not on others; once the force is removed, the preexisting equality will be restored. MacKinnon's argument is rather that the very construction and maintenance of the categories "male" and "female" does harm, and does harm to the group called women. By refusing to use the language of individualism—by making her subject "women" and not individual female persons—MacKinnon forces the reader to think in terms of group status.

The weakness of categorical discourse is twofold. First, categorical discourse understates or even suppresses the existence of complexity, contradiction, and paradox within its categories. In the discourse of dominance theory, there is no way to talk about differences among women, or among men, except in terms of degree—more or less squashed by, or benefited by, male domination. Categorical discourse is thus congenial to a drift toward essentialism—the notion that women and men have an inherent, universal "essence" that can be captured and described.<sup>4</sup> Efforts to capture this essence, I have argued, end up coding the theorist's own biases and assumptions as essential.<sup>5</sup>

Second, categorical discourse is conducive to telling stories that are all middle, with no beginning or end. MacKinnon describes *Toward a Feminist Theory of the State* as a book "about what *is*, the meaning of what is, and the way what is, is enforced. . . . [I]t does not advance an ideal . . . or a blueprint for the future" (p xii). Although this strategy avoids the twin dangers of nostalgia and utopian thinking, it leaves dominance theory oddly static for a theory meant to change the world. As Heather Wishik has written, one of the fundamental questions of feminist jurisprudence is, "In an ideal world, what would [women's] situation

<sup>4</sup> See Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan L Rev 581 (1990).

<sup>5</sup> *Id.* at 591-92. See also Deborah Rhode, *Justice and Gender* 84 (Harv U Press, 1989). In this important book, Rhode makes the argument pithily:

Feminism gains its power from the claim to speak on behalf of women and to identify common values, perceptions, and interests growing out of women's experience. Yet that experience also teaches that gender is mediated by other patterns of inequality involving race, class, age, ethnicity, and sexual orientation. On a descriptive level, dominance-oriented paradigms that divide the world solely along gender lines ignore the ways that common biological constraints are experienced differently by different groups of women. On a prescriptive level, no theory adequate to challenge gender subordination can avoid addressing the other forms of inequality with which it intersects.

look like?"<sup>6</sup> But it is difficult to address this question within categorical discourse.

The categorical discourse of *Toward a Feminist Theory of the State* reflects and determines its audience. This book, like much of MacKinnon's other work, seems aimed at persuading the unpersuaded: in particular, the feminist clinging to the notion that male domination is an external force of oppression aimed toward individuals, and not the creation and maintenance of a hierarchy of groups. But the problems many (primarily academic) feminists are struggling with at present involve just the issues of complexity within groups and visions of a better world that are difficult to articulate within categorical discourse. It is perhaps this perception that has caused another (academic) reviewer to refer to *Toward a Feminist Theory of the State* as "dated."<sup>7</sup>

At times it appears that MacKinnon has explicitly chosen not to address this second audience.<sup>8</sup> Yet at other times throughout the book MacKinnon seems to want to transcend categorical discourse. She repeatedly calls for a feminist analysis that is historical, contextual, and concerned with contradiction and paradox. To this extent, the book seems in tension with itself.

In the remainder of this review essay, I discuss the uses and limits of categorical discourse, as applied in this book to the issues of consciousness raising, Marxism and feminism, sexuality, and politics.

## II. THE USES AND LIMITS OF CATEGORICAL DISCOURSE

### A. Consciousness Raising

Christine Littleton has argued that the central contribution of MacKinnon's work is in the elaboration of consciousness raising as feminist method.<sup>9</sup> Consciousness raising occupies a place in practice equivalent to that of categorical discourse in theory: its aim is to get women to stop thinking of themselves as individuals who happen to be female and start thinking of themselves as individual members of the class "women." In this sense, the uses and limits of consciousness raising reflect the uses and limits of categorical discourse.

<sup>6</sup> Heather Wishik, *To Question Everything: The Inquiries of Feminist Jurisprudence*, 1 Berk Women's L J 64, 75 (1985).

<sup>7</sup> Wendy Brown, *Consciousness Razing*, The Nation 61 (Jan 8/15, 1990).

<sup>8</sup> For example, MacKinnon writes, "This book is . . . not a moral tract. It is not about right or wrong or what I think is good or bad to think or do" (p xii).

<sup>9</sup> See Christine Littleton, *Feminist Jurisprudence: The Difference Method Makes*, 41 Stan L Rev 751, 753-54 (1989).

Although in this section I follow MacKinnon's practice of describing consciousness raising as a "method," rather than a "theory," consciousness raising in dominance theory seems to have a determinate content: "believing women's accounts of sexual use and abuse by men." See Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* 5 (Harv U Press, 1987). It is this vision of consciousness raising that is the subject of this section.

## 1. The Uses of Consciousness Raising

The method of consciousness raising grew out of the practice of women's consciousness raising groups ("C-R groups") in the early 1970s. In these groups, as MacKinnon recounts, women shared stories about what it's like to be female, and in the process of this sharing a new, critical consciousness developed. Gradually, women who participated in C-R groups became "conscious of their oppression as common rather than remaining on the level of bad feelings" (p 86).

Specifically, what arose from consciousness raising was "the substance of radical feminist analysis" (p 90). This is an analysis with four key points:

First, women as a group are dominated by men as a group, and therefore as individuals. Second, women are subordinated in society, not by personal nature or by biology. Third, the gender division, which includes the sex division of labor which keeps women in high-heeled low-status jobs, pervades and determines even women's personal feelings in relationships. Fourth, since a woman's problems are not hers individually but those of women as a whole, they cannot be addressed except as a whole. In this analysis of gender as a nonnatural characteristic of a division of power in society, the personal becomes the political (p 95).

Consciousness raising, then, is about the way in which individual women become part of women as a collective entity: a "sex for itself" (p 105).

The power of consciousness raising as feminist method lies in its rejection of individualist thinking. Out of individual experiences and feelings, women in C-R groups collectively built "a carefully detailed and critically reconstructed composite image . . . of women's experienced meaning of 'being a woman' " (pp 88-89). MacKinnon's own prose echoes this movement. In this discussion she builds from quotes by individual women to a paragraph about a new being, "woman":

Woman's self concept emerged: who she thinks she is, how she was treated in her family, who they told her she was (the pretty one, the smart one), how she resisted, how that was responded to, her feelings now about her life and herself, her account of how she came to feel that way, whether other group members experience her the way she experiences herself, how she carries her body and delivers her mannerisms, the way she presents herself and interacts in the group (p 88).

Consciousness raising makes male dominance visible for the first time. It also makes liberal feminism impossible. As Littleton has argued, "The analysis that constitutes [liberal feminism's] feminism—that 'women' constitute a class, not simply an aggregation of individuals—is betrayed by its liberalism—that women really 'are' individuals, and that only individuals, not classes, have rights against, and responsibilities to, other individuals."<sup>10</sup> Consciousness raising demonstrates that there is

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<sup>10</sup> Id at 760.

nowhere to hide from male domination, for it exists even in the depths of her most cherished possession, her "self." Thus, consciousness raising reveals "how women are systematically deprived of a self and how that process of deprivation constitutes socialization to femininity" (p 89).

Yet consciousness raising also thereby creates a paradox which makes change seem both possible and imperative: "It is not only one's current self one is understanding, but the self that understands what one has become *as* a distortion" (p 103). The vertigo of glimpsing the gap between who you are meant to be and who you are, and the extent of your own involvement in your self-distortion and self-creation, paves the way for real change. "Consciousness raising, through socializing women's knowing, transforms it, creating a shared reality that 'clears a space in the world' within which women can begin to move" (p 101).

## 2. The Limits of Consciousness Raising

Consciousness raising as feminist method also has its limitations, however. As MacKinnon concedes, the theory of consciousness raising does not fully transcend the liberal individualism it challenges. MacKinnon describes this problem as a dilemma in the claim for equality:

[U]nderstanding women's conditions leads to the conclusion that women are damaged. If the reality of this damage is accepted, women are in fact not full people in the sense men are allowed to become. So on what basis can a demand for equal treatment be grounded? If women are what they are made, are determined, women must create new conditions, take control of their determinants. But how does one come to know this? On the other hand, if women go beyond the prescribed limitations on the basis (presumably) of something outside their conditions, such as being able to see the injustice or damage of inequality, what is the damage of inequality? (p 103)

Without some presocial or free individual self to serve as a reference point for recognizing and criticizing domination, radical feminism itself seems to have nowhere to stand.<sup>11</sup>

Another, to me more troubling, limitation of consciousness raising relates to its underlying assumptions. As Littleton has noted, MacKinnon's methodology relies on both the primacy and the unity of women's experience.<sup>12</sup> Consciousness raising does not address the problems that arise when that primacy and/or unity is ruptured. These problems, however, have lately become pressing for many feminists.

An example is the present struggle within academic feminism to understand issues of class, race, and sexual orientation in relation to gen-

<sup>11</sup> Thus, Ruth Colker argues for the concept of an "authentic self." See Ruth Colker, *Feminism, Sexuality, and Self: A Preliminary Inquiry into the Politics of Authenticity*, 68 BU L Rev 217, 220-21 (1988).

<sup>12</sup> Littleton, 41 Stan L Rev at 763 (cited in note 9).

der. In insisting on the primacy of "women's" experience, consciousness raising treats these other social processes as separate and independent, though perhaps "intersecting" with gender; but some feminists, notably feminists of color, are unhappy with the notion that their woman self is even separate from, let alone more primary than, their other parts of self. The focus of consciousness raising on the unity and primacy of women's experience thus distorts the experience of women who simultaneously move within other relations of domination. Once the moment of consciousness raising is past, the repeated invocation of unity and primacy does not heal these very real and deeply felt divisions among feminist women.<sup>13</sup>

MacKinnon discusses one manifestation of the rupture of unity: what happens when women, having critically analyzed their situation as women, fail to adopt radical feminist analysis? As MacKinnon puts it, "A theory that explains how some women come to be critical does not explain why others, who are for all purposes of the analysis identical, are not critical" (p 103). But MacKinnon does not take this question further, and the question of division within women's experience remains unaddressed.

It is interesting that MacKinnon takes as her illustrations of consciousness raising stories from C-R groups of the late 1960s and early 1970s, a time when the second wave of feminism was busy with the first stage of constituting itself as a movement. Her consciousness raising stories are all told in the past tense. But the question arises: what should be the feminist method for the 1990s, for those of us who are already feminists and are struggling among each other toward change? Is there a method to complement the C-R group and take over when the C-R group reaches its limits? "Consciousness Raising" the chapter, as well as consciousness raising the method, stops with the notion of a "vision of the possibility of equality" (p 104). Feminism needs a methodology that can help us make this vision real.

## B. Feminism and Marxism

In the first four chapters of the book, collectively entitled "Feminism and Marxism," MacKinnon sets dominance theory against two challenges: liberal feminism and classical Marxist theory (not, curiously, any of the various neo-marxisms that have evolved since Marx). The categorical discourse of dominance theory is effective at uncovering the

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<sup>13</sup> Consciousness raising has other limitations as well. For example, Colker is concerned with the partiality and malleability of the process. See Colker, 68 BU L Rev at 245 (cited in note 11). R. W. Connell argues that traditional C-R groups could not deal very well with unconscious processes. See Connell, *Gender and Power* at 231 (cited in note 3).

weaknesses of liberal feminism, but in the competition with Marxism the limitations of categorical discourse become clear.

### 1. The Uses of Categorical Discourse

In one of the liveliest chapters in the first section of *Toward a Feminist Theory of the State*, “A Marxist Critique of Feminism,” MacKinnon skillfully uses categorical discourse to undermine liberal feminism. She first sets liberal feminism against an alternative, “radical feminism”: “Liberal feminism takes the individual as the proper unit of analysis and measure of the destructiveness of sexism. For radical feminism, although the person is kept in view, the touchstone for analysis and outrage is the collective ‘group called women’ ” (p 40). A related difference between the two approaches is in their analysis of male domination.

To liberal feminism, the problem of sex inequality is that law and custom divide the sexes into two arbitrary and irrational gender roles that restrict human potentialities. To radical feminism, sex is a systematic division of social power, a social principle inseparable from the gender of individuals, enforced to women’s detriment because it serves the interest of the powerful, that is, men (p 40).

MacKinnon shows that the problem with liberal feminism is that its individualist approach can never satisfactorily explain the pervasiveness of sexism. Theories based on the individual, such as socialization theory, fail to capture both the strength and the depth of male domination.

In contrast, the categorical discourse of dominance theory is able to explain the persistence of male domination very simply, as the result of unequal power relations. Gender is not just a “role” that individuals play; nor is it a biological (that is, “natural”) distinction that is taken advantage of by some people to the detriment of others. Rather, gender is “a material division of power” (p 58). By taking gender as completely social, dominance theory is also able to escape the trap of liberal naturalism, in which the thing to be explained—the division between the sexes—is assumed as part of the explanation (pp 54-59). Categorical discourse, then, simply does a better job than individualist discourse at describing and explaining male domination.

### 2. The Limits of Categorical Discourse

When Marxism and dominance theory meet, one categorical theory meets another. In dominance theory, the primary category is gender; in Marxism, it is class. “Feminism and Marxism” is in part a meditation on the problem, how can these two theories coexist? For Marxism and feminism

do not mean to exist side by side, pluralistically, to ensure that two separate spheres of social life are not overlooked, the interests of two discrete

groups are not obscured, or the contributions of two sets of variables are not ignored. They exist to argue, respectively, that the relations in which many work and few gain, in which some dominate and others are subordinated, in which some fuck and others get fucked and everybody knows what those words mean, are the prime moment of politics (p 4).

In an attempt to synthesize the two theories, MacKinnon examines the wages for housework movement and argues that it represents the most successful attempt to link Marxist and feminist theory. " 'Wages for housework' analysis synthesizes the feminist insight that relations between women and men in the home are social relations with the Marxist analysis that the 'social relations of production' underlie all other social relations" (p 68). It neither subordinates feminist nor Marxist theory in its analysis, but incorporates both.

As MacKinnon makes clear, wages for housework poses problems for Marxist theory. She suggests that the answer to the dilemma of coexistence posed in the first few pages lies in the need to reformulate both the theory and its subject.

[Wages for housework theory] forces reexamination both of housework from a marxist point of view and of marxist economics from women's point of view, suggesting that not only must women be included in an analysis from which they have been omitted, not only that any analysis that leaves women out is distorted and partial, but also that it is necessary to recast the vision of the totality to be explained (p 80).

MacKinnon never takes the parallel step with regard to feminism by suggesting that feminist theory may also emerge altered from wages for housework theory. Yet if we need, as R. W. Connell suggests, a new view of capitalism as a system that does not only allocate work, but shapes its nature and organization,<sup>14</sup> the categories of feminist theory as well as the categories of Marxist theory may have to be altered. The resolution of feminism and Marxism thus may lie not in trying to conform two "total" theories, but in redefining the domain both theories attempt to understand, and thus redefining the theories themselves.<sup>15</sup> As a consequence, dominance theory as well as classical Marxism may have to alter or abandon categorical discourse in order to understand and incorporate a gendered system of work. But because much of the power of dominance theory lies in this discourse, MacKinnon leaves the implications of the wages for housework movement suspended in air.

Categorical discourse is also limited by the difficulty of incorporating history within its terms. MacKinnon stresses the value of historicity and context, praising Marxist theory as theory that "critically analyzes society's dynamic laws of motion in their totality, materiality, and histo-

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<sup>14</sup> Connell, *Gender and Power* at 102-04 (cited in note 3).

<sup>15</sup> Thus, Connell suggests that the " 'sexual division of labour' can no longer be seen as a structure in its own right. It must be seen as part of a larger pattern, a gender-structured system of production, consumption and distribution." Id at 103.

ricity, combining determinacy with agency, thought with situation, complexly based on interest" (p 39). Yet dominance theory as expressed in this book is oddly ahistorical. Though classical Marxist theory must rely on the ahistorical notion of the inevitability of class struggle to get its story going, it provides a powerful story that takes us all the way from the dawn of time to utopia. Dominance theory, in contrast, is lacking in any kind of historical context.

The premises on which the narrative of classical Marxism is based are now highly questionable; for example, MacKinnon rightly criticizes Engel's functionalist attempt to place male domination into human history (p 21). But MacKinnon's own approach—not to place male dominance into a historical context at all—also has significant costs. This reluctance to examine the past may be based on the fear of falling into sentimental nostalgia of the "when God was a woman" kind, which she effectively criticizes as naturalist (p 51). Similarly, her reluctance to imagine a future may be based on the recognition that such attempts are likely to be ludicrous, given the extent to which our imaginations themselves are shaped by patriarchal domination. Yet, as Ursula K. LeGuin has pointed out:

We cannot ask reason to take us across the gulfs of the absurd. Only the imagination can get us out of the bind of the eternal present, inventing or hypothesizing or pretending or discovering a way that reason can then follow into the infinity of options, a clue through the labyrinths of choice, a golden string, the story, leading us to the freedom that is properly human, the freedom open to those whose minds can accept unreality.<sup>16</sup>

Without a sense of history, altering male domination seems an impossibly heroic task. However flawed they be—and they will inevitably be flawed in the judgment of later generations—attempts at imagining the beginning or end of patriarchy at least give us a sense of hope, and a reference point against which we can judge our efforts.

### C. Sexuality

In the three chapters collectively called "Method," MacKinnon explores the realm of gender and sexuality. The uncompromising power of categorical discourse is especially dramatic in these chapters: sexuality is one of the realms in which the notion of a free, uncoerced, private self is most difficult to relinquish, and yet dominance theory demonstrates how problematic this notion is. But in this area, as in the others MacKinnon examines, categorical discourse also has its limitations, namely a tendency to flatten the richness of present experience and to miss historical complexity and change.

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<sup>16</sup> Ursula K. LeGuin, *Dancing at the Edge of the World: Thoughts on Words, Women, Places* 45 (Grove, 1989).

## 1. The Uses of Categorical Discourse

MacKinnon's argument is that sexuality is by no means private and personal. Nor is it "natural," reducible to an asocial or presocial "pleasure." Rather, sexuality and gender, which she sees as interchangeable (p 110), are purely social structures, divisions of power. "Sexuality" as we know it, is predicated on the domination of women. To be labelled a "man" is to be a being with the upper hand over a "woman." This is not a "battle of the sexes"; it is a ritual in which the results are a foregone conclusion. As MacKinnon has written elsewhere, "Man fucks woman; subject verb object."<sup>17</sup>

The aspect of dominance theory most threatening to liberal individualist thinking is its claim that sexuality as we understand it is eroticized inequality. The heterosexual ethic, MacKinnon argues, gets its kick, its sexiness, from the power relation: from men exercising their power over women. The paradigm experience of sexuality, then, is the sadomasochistic relationship: "Hostility and contempt, or arousal of master to slave, together with awe and vulnerability, or arousal of slave to master—these are the emotions of this sexuality's excitement" (p 136).

MacKinnon's observation about male sexuality is that men get pleasure through hatred and the expression of hatred.

To be clear: what is sexual is what gives a man an erection. Whatever it takes to make a penis shudder and stiffen with the experience of its potency is what sexuality means culturally. Whatever else does this, fear does, hostility does, hatred does, the helplessness of a child or a student or an infantilized or restrained or vulnerable woman does, revulsion does, death does. Hierarchy, a constant creation of person/thing, top/bottom, dominance/subordination relations, does. . . . All this suggests that 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. Male sexual desire is thereby simultaneously created and serviced, never satisfied once and for all, while male force is romanticized, even sacralized, potentiated and naturalized, by being submerged into sex itself (p 137).

Part of the persuasive power of this analysis lies, again, in its uncompromising use of categories. MacKinnon will not let the liberal reader protest that her own personal sex life is fine; she insists on abolishing the public/private split and bringing sexuality into the realm of politics, forcing the reader to abandon the evasions of naturalism and individualism.

Another less obvious attribute of dominance theory's persuasive power in this context is in its reliance on liberalism's own tropes. For

<sup>17</sup> Catharine MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *Signs: J of Women in Culture and Society* 515, 541 (1982).

example, in the passage quoted above, MacKinnon uses the powerful liberal trope of naturalism to support her argument. In evoking the image of a male erection, MacKinnon uses the presocial/asocial quality ascribed to desire in liberal theory to support a theory that rejects this explanation of sexual feeling.

By leaving the reader no rhetorical space to think about a “private” sexuality, and by using liberal theory’s own naturalism against it, dominance theory seeks to reimagine sexuality and gender as social and collective, not natural and individual.

## 2. The Limits of Categorical Discourse

As everyone knows by now, MacKinnon finds in pornography the critical engine for the process that continually defines domination as erotic and coercion as free choice.

To say that pornography sexualizes gender and genders sexuality means that it provides a concrete social process through which gender and sexuality become functions of each other. Gender and sexuality, in this view, become two different shapes taken by the single social equation of male with dominance and female with submission. Feeling this as identity, acting it as role, inhabiting and presenting it as self, is the domain of gender. Enjoying it as the erotic, centering upon when it elicits genital arousal, is the domain of sexuality. Inequality is what is sexualized through pornography; it is what is sexual about it (p 143).

But pornography and sexuality are more complex than categorical discourse can take account of; and it is in this complexity that opportunities for change arise. For example, in *Hard Core: Power, Pleasure, and the “Frenzy of the Visible,”*<sup>18</sup> Linda Williams traces the development of the pornographic film in America, and describes the way in which it evolved from positing the male viewer as pure subject and the female body as pure object—a woman spreading her labia for the camera—to the more complicated position of seeking to understand and contain women as subjects within a broader phallogentric discourse. Williams emphasizes that this story does not mean that pornography does not harm and degrade women; but it does show how even a damaging discourse can be forced to give ground on its own terms and turf when confronted with feminist practice. There is no room for this slightly more complicated story in MacKinnon’s structuralist description of sexuality as completely male.

Williams’s work also suggests that masochism, which has often been treated as the norm for women because of their supposed lack of sexual agency, is more complex than the simple abject powerlessness MacKin-

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<sup>18</sup> Linda Williams, *Hard Core: Power, Pleasure, and the “Frenzy of the Visible”* (U of Cal Press, 1989).

non conceives it to be. To a certain extent, masochism is not a submission to but a subversion of patriarchal law, "a devious act of defiance."<sup>19</sup> Women who enjoy sadomasochistic pornographic films, Williams suggests, may be identifying with both the S and the M position; sadomasochism involves an "oscillation between active and passive and male and female subject positions, rather than fixing one pole or the other as the essence of the viewer's experience."<sup>20</sup> If this is the case, then male and female sexuality may not be so easily severable into activity/passivity and power/powerlessness. The complexity and fluidity of this experience, however, cannot be accommodated by categorical discourse.<sup>21</sup>

Categorical discourse also misses the complexity and richness of contemporary sexuality outside the context of S/M. As others have noted,<sup>22</sup> MacKinnon's account of sexuality flattens it to the point that the very existence of female pleasure is put in doubt. MacKinnon comes close to saying that all women's experiences of sexual pleasure are inauthentic, for "women are sexual, meaning that women exist, in a context of terror" (p 151). She does acknowledge, in a peculiar analogy, that women's sexuality is like black culture: "both can be experienced as a source of strength, joy, expression, and as an affirmative badge of pride" (p 153). One assumes, however, that both are irredeemably colonized by oppression.

Categorical discourse also has little room for the lives of lesbians and gay men.<sup>23</sup> MacKinnon devotes almost no time in these chapters to homosexuality, simply speculating, "It may also be that sexuality is so gender marked that it carries dominance and submission with it, whatever the gender of its participants" (p 142).

MacKinnon's argument is a powerful antidote for the view that sexuality is somehow natural and free, an island in a sea of inequality and domination. But the categorical discourse of dominance theory leaves sexuality looking oddly static, unpleasurable, and unchangeable. Moreover, the reader is not offered any glimpses into the past or future. For example, what might love and sexual pleasure look like, loosed from domination? Would androgyny, or a kind of polymorphous perversity, be the norm? Dominance theory refuses to speculate. The result is an analysis that comes very close to sexual essentialism. Without a sense of horizontal or vertical space, it is easy to fall into the supposition that male sexuality is somehow "naturally" and universally violent and

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<sup>19</sup> Id at 213.

<sup>20</sup> Id at 217.

<sup>21</sup> See also Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *Wis Women's L J* 81, 118-33 (1987) (discussing female masochism and the erotic appeal of submission).

<sup>22</sup> See, for example, Lucinda M. Finley, *The Nature of Domination and the Nature of Women: Reflections on Feminism Unmodified*, 82 *Nw U L Rev* 352, 381-82 (1988).

<sup>23</sup> See Pat Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 *Berk Women's L J* 191 (1989).

founded on power and inequality. In this way, dominance theory becomes vulnerable to the very kind of thinking it rejects.

MacKinnon acknowledges that there may be “truly rare and contrapuntal glimpses” of a liberated sexuality (p 154), but she ends with a quote from Ti-Grace Atkinson saying that given a choice between freedom and sex, feminists would choose freedom every time (p 154). The only vision given post-liberal feminists, then, is a world without sexual pleasure. The revolution, it seems, must be total or not occur at all.

#### D. Politics

In the final section of *Toward a Feminist Theory of the State*, called simply “The State,” MacKinnon addresses the problem of locating and describing law, and the state, within feminist theory. As she notes:

Feminism has not confronted, on its own terms, the relation between the state and society within a theory of social determination specific to sex. As a result, it lacks a jurisprudence, that is, a theory of the substance of law, its relation to society, and the relationship between the two. Such a theory would comprehend how law works as a form of state power in a social context in which power is gendered. It would answer the questions: What is state power? Where, socially, does it come from? How do women encounter it? What is the law for women? How does law work to legitimate the state, male power, itself? Can law do anything for women? Can it do anything about women’s status? Does how the law is used matter? (p 159)

MacKinnon’s answer to these questions is ambiguous. On the one hand, MacKinnon describes the state as “male,” which within her categorical scheme would seem to imply that it has nothing for women. On the other hand, she argues that the state and the law contain contradictions that can be seized by feminists seeking change. In this section, then, there is a tension between the argument of dominance theory and its discourse.

#### 1. The Uses of Categorical Discourse

In MacKinnon’s view, “The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender—through its legitimating norms, forms, relation to society, and substantive policies” (p 162). As with sexuality, the mechanism is not merely open violence but also mystification: liberal theory defines “the state of nature” as male domination, and then asserts that the state cannot and may not alter what is natural.

Speaking descriptively rather than functionally or motivationally, the strategy is first to constitute society unequally prior to law; then to design the constitution, including the law of equality, so that all its guarantees

apply only to those values that are taken away by law; then to construct legitimating norms so that the state legitimates itself through noninterference with the status quo. Then, so long as male dominance is so effective in society that it is unnecessary to impose sex inequality through law, such that only the most superficial sex inequalities become *de jure*, not even a legal guarantee of sex equality will produce social equality (pp 163-64).

MacKinnon's analysis is elegant as she travels through the law of sex discrimination, the abortion controversy, rape, and pornography, showing how in each instance, the deeper and more pervasive the oppression, the less visible it is to law.

The strength of dominance theory is in its recognition of power relations, which make visible structures of male domination that are invisible to liberal individualism. For example, liberal legalism cannot comprehend sex discrimination except as an eccentric and individual "moral lapse" (p 230). The insistence on proving intent ensures that where male domination is the most severe and pervasive, it will also be the most invisible. The insistence on "neutral principles" as a solution to sex discrimination similarly fails to address women's experience of pervasive inequality. "If differentiation were the problem, gender neutrality would make sense as an approach to it. Since hierarchy is the problem, it is not only inadequate, it is perverse" (p 232). Dominance theory makes clear that male domination is enforced by law, to the extent that law presumes the equality it tries to create.

## 2. The Limits of Categorical Discourse

Though the categorical discourse of dominance theory serves as a brilliant rejoinder to liberal legalism, it falters when MacKinnon begins to address possibilities for change. For example, MacKinnon writes that "[f]ormally, the state is male in that objectivity is its norm" (p 162). Objectivity is male because it maintains male hegemony: it "ensures that the law will most reinforce existing distributions of power when it most closely adheres to its own ideal of fairness" (p 163). The state is also "male jurisprudentially, meaning that it adopts the standpoint of male power on the relation between law and society" (p 163).

The problem with defining the state as male, however, is that this label fails to account either for the complexity within the state and its relation to citizens or for the possibility of change. For example, the description of the state as male leads one to think of it as both internally homogenous and as set in opposition to women. But the victims of state violence are often men. Men's bodies are used as cannon fodder in wars; men are more likely to be killed by the police than women. This picture shows us something more than a male state working to repress women; it reveals a complex set of often contradictory social forces within masculinity itself. R. W. Connell argues that there are several "masculinities"

operating in society, which both support and subvert each other.<sup>24</sup> The state is not so much a summation of these masculinities as a contested territory.

Calling the state “male” also tends to obscure MacKinnon’s other major point: that law as the mouthpiece of the state contains valuable contradictions that can be seized by feminists. This point is particularly emphasized in the thirteenth and final chapter, entitled “Toward Feminist Jurisprudence.” Here MacKinnon attempts to explain how the state and law, though “male,” nevertheless contains within it the seed of its own de(con)struction—the principle of equality.

Equality understood substantively rather than abstractly, defined on women’s own terms and in terms of women’s concrete experience, is what women in society most need and most do not have. Equality is also what society holds that women have already, and therefore guarantees women by positive law. The law of equality, statutory and constitutional, therefore provides a peculiar jurisprudential opportunity, a crack in the wall between law and society (p 244).

As MacKinnon acknowledges, “An alternative approach to [the] mainstream view threads through existing law” (p 242): inequality as hierarchy is a thinkable thought within our system, and that is why feminism can exist in the first place. But categorical discourse thus tends to obscure opportunities for change, which in turn contributes to the static quality of dominance theory.

### III. CONCLUSION: A FEMINISM FOR ALL SEASONS?

*Toward a Feminist Theory of the State* arrives at a strangely unsettled juncture in the second wave of American feminism. Academic feminists are struggling to meld and subvert the traditional categories of gender, race, and class, and to find new ways to capture the richness of human experience. Outside the academy, though, only one out of five American women identifies herself as a “strong supporter of the women’s movement,”<sup>25</sup> and the country seems poised to enter a new period of repression directed toward women’s bodies.

Faced with these very different potential audiences for feminist theory, what should theorists do? Perhaps the answer lies not in trying to

<sup>24</sup> Connell argues that

[w]hen the state is considered as a repressive apparatus [as opposed to a constitutive force], it is clear that the main objects of physical repression are men. . . . However, the state is not all of a piece. The military and coercive apparatus has to be understood in terms of relationships between masculinities: the physical aggression of front-line troops or police, the authoritative masculinity of commanders, the calculative rationality of technicians, planners and scientists. . . . [This] suggest[s] that the state is not inherently patriarchal, but is historically constructed as patriarchal in a political process whose outcome is open.

Connell, *Gender and Power* at 128-29 (cited in note 3).

<sup>25</sup> Lewis H. Lapham, *Harper’s Index*, Harper’s 19 (March 1990).

construct a single Grand Theory, a single feminist myth, but in telling many different stories.<sup>26</sup> MacKinnon is suspicious of proliferating feminisms, seeing them as “the latest attempt of liberal pluralism to evade the challenge women’s reality poses to theory” (p xii). But a monolithic feminism, a feminism for all seasons, I suspect, can never achieve the theoretical task MacKinnon would set for it: a “situated theory [that] is concrete and changing rather than abstract and totalizing” (p xvi), that involves “a recognition of community context, a skeptical grasp of the roots and consequences of experience as well as its limitations, and an attempt at awareness of the social determinations of emotions” (p xvi). I suspect as well that a single feminist theory cannot persuade all the many different audiences it must move in order to change the world. If this is so, dominance theory is not wrong or misguided—only (necessarily) incomplete.

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<sup>26</sup> For example, Vicki Schultz suggests that different people may be moved by different types of accounts: sometimes categorical discourse persuades; sometimes poststructuralist discourse does. See Vicki Schultz, *Room to Maneuver (f)or a Room of One's Own? Practice Theory and Feminist Practice*, 14 *Law and Social Inquiry* 123, 145-46 (1989).