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Review Essay

Difference, Dominance, Differences: Feminist Theory, Equality, and the Law

THE FEMALE BODY AND THE LAW


Reviewed by Beth Bernstein†

In literary criticism and in philosophy, the attempts to enrich feminist theory by integrating postmodernist and deconstructive insights have been developing for over a decade.¹ In the social sciences and in legal studies, however, such attempts have thus far been relatively few.² This is not altogether surprising, given that much of postmodernist writing concerns itself with informal configurations of power, rather than studies "centered on nothing more than the statement of the law and the

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¹ The terms "postmodernism," "poststructuralism," and "deconstruction" are often used variously to refer to diverse strains of contemporary theory. Specifically, they describe the postures of anti-essentialism and indeterminacy associated with the work of, among others, Jacques Derrida, Michel Foucault, and Jacques Lacan. For a general introduction to postmodernist thinking, see John Sturrock, ed, Structuralism and Since: From Levi-Strauss to Derrida (Oxford U Press, 1979).

² Summary treatments of "postmodernist feminism" can be found in Toril Moi, Sexual/Textual Politics (Methuen, 1985); Rosemarie Tong, Feminist Thought: A Comprehensive Introduction (Westview, 1989); Chris Weedon, Feminist Practice and Poststructuralist Theory (Basil Blackwell, 1987); Irene Diamond and Lee Quinby, eds, Feminism and Foucault (Northeastern U Press, 1988); and the articles in the "Deconstruction Issue" of 14 Feminist Studies (1988).

operation of taboos." A second problem is that the postmodern "dissolution of the subject" often brings with it the negation of the possibility of a "voice" or stance upon which to ground political activity and change.

In her recent book, *The Female Body and the Law*, Zillah Eisenstein, a political scientist, makes an ambitious attempt to come to terms with these difficulties, opening up the domain of feminist political and legal theory (and specifically, the equality/difference debate) to some of the contributions of recent French thinking. In brief, Eisenstein aims towards a reconceptualization of equality which will take into account the specificity of the female body: deconstruction, she argues, is the tool which will allow us to affirm "the biological particularity of the female body without endorsing the historical contingencies of its engendered form" (p 4). It will enable us to subvert the binary opposition "sameness/difference" with a radical pluralist vision of equality, and to replace our "phallocratic" symbolic order by one in which differences abound.

Eisenstein painstakingly works through the epistemological and methodological complexities that ensue, but for all of her diligence, I am

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Drawing upon Foucault's work, Irene Diamond and Lee Quinby conclude: "Given the contemporary political context, legal rights cannot be ignored, but we want to suggest that significant political change does not rest here." Diamond and Quinby, *American Feminism and the Language of Control, Feminism and Foucault* at 201 (cited in note 1). French feminists such as Julia Kristeva, Helene Cixous, and Luce Irigaray—more indebted to postmodernist theory than their American counterparts—have concerned themselves with aesthetic practices and feminine *jouissance* rather than with legal modes of change. Moi, *Sexual/Textual Politics* (cited in note 1); Elaine Marks and Isabelle de Courtivron, eds, *New French Feminisms* ( Schocken, 1981).

4 Mary Hawkesworth summarizes this position in the following way:

The very idea of the "subject" has been castigated for incorporating assumptions about the "logic of identity" that posits knowers as undifferentiated, anonymous, and general, possessing a vision independent of all identifiable perspectives. Indeed, the conception of the knowing "subject" has been faulted for failure to grasp that rather than being the source of truth, the subject is the product of particular regimes of truth.


Embracing this critique, some Critical Legal Scholars have objected to the work of feminist and minority theorists on the grounds that it returns to a "naive" or "primitive" notion of subjectivity and identity. See Critical Legal Studies Past and Future: A Roundtable Debate with Robert Gordon, Thomas Grey, Thomas Heller, Mark Kelman, and William Simon, Moderated and Introduced by Richard Perry, 1 Stan Humanities Rev 85 (1990).


7 All parenthetical page references are to Eisenstein, *The Female Body and the Law* (cited in note 5).

not sure that she arrives at a satisfactory resolution. She rejects the relativising elements of postmodernist theory that are problematic to her analysis, leaving us with a set of important, but not novel, assertions which should not need the vocabulary of postmodernism for their legitimacy. Furthermore, once she leaves the realm of abstraction, her articulations of theory have little bearing on concrete issues.

This review follows the format of Eisenstein's own argument. In the first section, I summarize and evaluate Eisenstein's claims for a feminist deconstructive epistemology and method. In part two, I examine the efficacy of these claims as applied to three public policy issues: sex discrimination law, pornography, and abortion. The final part of this essay considers what feminists might gain or lose by shifting their emphasis (whether from "difference" or "dominance") to deconstruction and "differences."

I. "DECENTERING THE PHALLUS" AND "DECONSTRUCTING DIFFERENCE": EISENSTEIN'S RADICAL PLURALIST EPISTEMOLOGY AND METHOD.

For feminism, the epistemological problem is a real one. As the feminist philosopher Sandra Harding explains, that which "cannot be shown to serve the best interests of social progress by appeal to objective, dispassionate, impartial, rational knowledge-seeking... in our culture... cannot be legitimated at all."

9 Sandra Harding, The Science Question in Feminism 16 (Cornell U Press, 1986).

Feminists must explain how their own politicized research increases the objectivity of inquiry, or they must provide alternative grounds for justifying their claims.

In chapter one, "Politics and/or Deconstruction: Thoughts on Method," Eisenstein introduces her readers to the elements of deconstruction which she believes can be of use for feminist theorizing. "Before we can formulate a new theory of sex equality, we need a new method for thinking about the female body and its gendered expression" (p 6). Deconstruction, she argues, "can lay the basis for a radical democratic and feminist politics based in the open-texturedness of new understandings of power" (p 24). Her epistemological starting points are the basic tenets of postmodernist theory: there is no "natural body" as such, only bodies that are constructed and gendered through social institutions; power is not located exclusively in the state, but rather is multiple, heterogeneous, and diffuse; language is structured by hierarchical binary oppositions and is, thus, politically significant; discourses,10 including legal discourse, reflect and perpetuate these hierarchical differences; science itself is non-neutral, subjective, and politically-embedded.11

9 Sandra Harding, The Science Question in Feminism 16 (Cornell U Press, 1986).
10 See sec I.A., below, for an explanation of Eisenstein's use of the term "discourse."
11 If these premises sound familiar, it might be because feminism, from its inception, has made
A. Language, Discourse, Engendered Law

As Eisenstein argues, language is "phallocratic," meaning that the male body is presumed (often silently) to be the standard by which all else is compared. But the binary pair male/female is not the only operative hierarchy; language is structured into an infinite number of hierarchical, binary pairs, which align neatly with the central male/female opposition—mind/body, culture/nature, reason/emotion, public/private, equal/different, etc. In each case, the former term is privileged, while the latter is held to be not only different from, but inferior to the first. According to Eisenstein, the feminist project must be to dislodge these oppositions, and "... to recognize the ground in between. Difference must mean diversity, not homogeneous duality, if we are going to rethink the meaning of sex and gender" (p 8).

Borrowing the term "discourse" from social theorist Michel Foucault, Eisenstein attempts to transect the split between the ideal and real, or subjective and objective realms. Discourse connotes more than the signs and symbols of language: it also constitutes our experiences. "[I]t moves into the realm of thinking and acting .... Sometimes a discourse is a form of power; sometimes it just expresses a form of power. Discourse is completely tied up with a notion of language, knowledge, and signs as part of the domain of power" (pp 11, 12). Foucault insists that power is dispersed and multiple, rather than concentrated in any given realm. Power, he suggests, operates positively as well as negatively: it is infused in the very structure of the body, sexuality, and family life.

Eisenstein acknowledges these insights, while holding that, as the authorized discourse of the state, legal discourse is nonetheless a significant parallel claims. ("One is not born, but rather becomes a woman"; "The personal is political"; "Western culture is dualistic"; etc) See Simone de Beauvoir, The Second Sex, 259 (Bantam, 1953); Robin Morgan, ed, Sisterhood is Powerful: An Anthology of Writings from the Women's Liberation Movement (Vintage, 1970); Betty Roszack and Theodore Roszack, eds, Masculine/Feminine: Readings in Sexual Mythology and the Liberation of Women (Harper & Row, 1969); Ruth Hubbard, Mary Sue Henifin, and Barbara Fried, eds, Biological Woman—The Convenient Myth (Schenkman, 1982); Adrienne Rich, Of Woman Born: Motherhood as Experience and Institution (W.W. Norton, 1976).


12 The feminist poet Adrienne Rich explains: The rejection of the dualism, of the positive-negative polarities between which most of our intellectual training has taken place, has been an undercurrent of feminist thought. And rejecting them, we reaffirm the existence of all those who have through the centuries been negatively defined: not only women, but the "untouchable," the "unmanly," the "nonwhite," the "illiterate": the "invisible" which forces us to confront the problem of the essential dichotomy: power/powerlessness. Rich, Of Woman Born at 64 (cited in note 11).

13 Foucault, The History of Sexuality (cited in note 3).
locus of power. Law and laws are an example of what she terms “unity in dispersion”:

Focusing on law(s), we see a dispersed, heterogeneous expression of power relations that is related to state activity yet does not necessarily center power within the state. We see the multiplicity of expressions of power—plural views of a hierarchical system . . . . Because of the unity in the hierarchy—in the privilege—it is not significant to examine only the specificity. Laws and the law operate in a heterogeneous viewing of engendered “difference”; the phallus expresses unity in its dispersion (p 20).

According to Eisenstein, the feminist project should be to investigate how liberal law, which presents itself as fair, neutral, and objective, is in fact premised upon the same dualisms which structure language itself, and to determine in what sense these dualisms achieve legitimacy by being equated with “biological fact.”

B. The Pregnant Body and “A Methodology of Differences”

“Biological fact” is a problem for Eisenstein, and it is at least something of an issue for most feminist thinkers. Feminists of all persuasions have taken issue with the construction of “woman” under patriarchy, arguing that under conditions of equality, women would not be or behave as they presently do. But the answer to the question, “To what extent do ‘real differences’ exist, and what should the political and social consequences of these differences be?” is less agreed upon. Feminists have approached the problem from several different perspectives. Some have posited a core of real differences buried beneath a stratum of distorting distinctions, which can be remedied by asserting one’s sameness to men before the law. Others have affirmed that self-same essential core, while doctrinally, their solutions run to the “difference” approach. Still others reject the premise that there is any essential, inherent sexual difference that exists as a natural property of bodies, but disagree as to what the strategic implications of this insight should be. Some postmodern feminists hold that to assert a politics from the perspective of “difference” or even “women” reproduces an already problematic categoriza-

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14 This is the traditional “liberal feminist” position. See Mary Wollstonecraft, A Vindication of the Rights of Woman, Miriam Brody, ed (Penguin, 1975), and John Stuart Mill, The Subjection of Women (MIT Press, 1970). Feminists such as Wendy Williams have more recently argued for women's “sameness” to men before the law. Wendy Williams, The Equality Crisis: Some Reflections on Culture, Courts and Feminism, 7 Women's Rts L Rptr 21 (1982).

15 “Cultural feminists” have been associated with this stance. In the field of moral reasoning, Carol Gilligan's work has been highly influential. Carol Gilligan, In a Different Voice (Harv U Press, 1982); Ellen Dubois, Mary Dunlap, Carol Gilligan, Catharine MacKinnon, and Carrie Menkel-Meadow, Feminist Discourse, Moral Values and the Law—A Conversation, 34 Buff L Rev 11 (1985). See also Section II.A., infra.

16 “In radical feminism, the condition of the sexes and the relevant definition of women as a group is conceived as social down to the somatic level. Only incidentally, perhaps even consequentially, is it biological.” Catharine MacKinnon, Towards a Feminist Theory of the State 46 (Harv U Press, 1989) (“Towards a Feminist Theory”).
tion, when the desired end is heterogeneous pluralism, while radical feminists tend to doubt that we can get there from here, unless women, as women, fight for empowerment and equality.

Interestingly, Eisenstein's analysis both allies her with and distinguishes her from each of these perspectives. Her frequent evocations of heterogeneity, multiplicity, and plurality seem for the most part to be flags of a future utopia, although they bear rhetorically (if not concretely) upon her discussion of strategy and method. What Eisenstein does propose is this: we must acknowledge a sharp distinction between sex and gender (the former a "natural" categorization, the latter merely social) so that while the biological specificity and uniqueness of the female body may be asserted (in all of its multiple and divergent forms) the homogenizing notion of the sex difference may be displaced (pp 36-41).

The problem which remains for Eisenstein is to delineate the border between the realms of sex and gender. For her, as for others who subscribe to this approach, this is no straightforward task. Yet ultimately, Eisenstein argues, there is one immutable feature which divides human beings into two sexes, the pregnant body: "There is no escaping the specificity of the female body when we speak of pregnancy or of the unique capacity of woman as biological reproducer and mother" (p 197). She explains the significance of recognizing this fundamental reality:

The pregnant body decenters the phallus without centering itself; instead, it allows a heterogeneous viewing of equality that recognizes the particularity of the human body and constructs a notion of diversity that is distinctly compatible with equality (p 4).

By affirming biological specificity, a focus upon the pregnant body poses a direct and potent challenge to liberal law and to notions of abstract equality, which presume a sex-neutral, disembodied individual. Simultaneously, Eisenstein contends that her focus avoids the problematic discourse of a singular engendered difference, which might serve to collapse the categories of woman and mother and to reinstitute a reactionary policy of separate spheres. She argues that this refocusing need not establish a new homogeneous standard, "... but rather denies the validity of having one at all. If diversity is privileged in and of itself, it undermines any one preferred standard" (p 2).

Yet Eisenstein meets with only varying success in her attempts to

17 Julia Kristeva, Woman Can Never Be Defined, in New French Feminisms (cited in note 3); Julia Kristeva, Woman's Time, 7 Signs 1 (1981); Irene Diamond and Lee Quinby, American Feminism and the Language of Control, in Feminism and Foucault (cited in note 1); Denise Riley, "Am I That Name?": Feminism and the Category of "Women" in History (U of Minn Press, 1988).


19 Eisenstein problematizes the nature/culture distinction, but ultimately upholds it, arguing that there is a boundary between the two which is permeable and should be interpreted plurally (pp 222-24).
demonstrate how this "methodology of differences" aids in our understanding of the contemporary legal field, or what its implications should be for a feminist political strategy. As I hope to demonstrate below, while this framework proves to be of some use in her discussion of sex discrimination law, its relevance is less apparent regarding issues such as pornography and abortion. In most cases, even in her most subtle and sensitive discussions, this methodology would seem to complicate more than it clarifies.

II. EQUAL PROTECTION, SEX DISCRIMINATION, AND THE PREGNANT BODY

Man is the reference, woman is the difference.
-Emmanuelle de Lesseps

Eisenstein's theoretical claims are most successfully employed in her examinations of equal protection and sex discrimination law, which directly concern themselves with the "problem" of the pregnant body. Her discussions highlight the limitations of Fourteenth Amendment Equal Protection doctrine, where one must be "similarly situated" (to men) in order to merit equal protection. But what happens when women are not similarly situated to men, when, for example, they are pregnant? Various feminists have expressed such concerns. Catharine MacKinnon, for example, has neatly summarized how under equal protection doctrine, women's "options" amount to two sides of the same coin:

The first option I call the "male standard": Women can be the same as men. In law, it is called gender neutrality. The other option I call the "female standard": You can be different from men. In law, it is called "special protection." Either way, men articulate the standard of assessment.

Eisenstein traces the workings of this dynamic through some recent Supreme Court cases, examining the trend during the 1970s to obscure the fact that the female body is also the potentially pregnant body. She demonstrates the absurd conclusions to be reached by this approach, as in *Geduldig v Aiello*, where the Supreme Court held that the exclusion of four pregnant women from a disability insurance system did not constitute gender discrimination because nonpregnant persons could be both men and women. According to the Court, "The program divides potential recipients into two groups—pregnant women and nonpregnant per-

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21 MacKinnon, 34 Buff L Rev at 20, 21 (cited in note 15). See also Pateman, *The Sexual Contract* at 226 (cited in note 3): "[A] good deal of contemporary feminist argument assumes that a choice has to be made between femininity as subordination and the ostensibly sex-neuter 'individual'. In modern patriarchy... these are not alternatives; to choose one is to choose the other too."

sons. While the first group is exclusively female, the second includes members of both sexes.\textsuperscript{23}

This phallic treatment of pregnancy is also evident in the Pregnancy Discrimination Act,\textsuperscript{24} which at first blush might seem to have been a feminist victory. The act mandates that employers treat pregnancy as they would any other "temporary disability," declaring it a civil rights violation "for an employer to refuse to hire a pregnant woman, to terminate her employment, or to compel her to take maternity leave."\textsuperscript{25} Yet Eisenstein strongly objects to the treatment of pregnancy as "any other disability": "By doing so, the act assesses pregnancy within the phal-locratic discourse of duality: difference equals inequality; sameness equals equality" (p 100). We are forced to treat pregnancy as we would treat just any illness or disability, when in fact it is unique. Given the present, engendered state of affairs, "[P]regnancy marks the beginning of a state that lasts as long as motherhood does. Pregnancy leave recognizes only the fact that women bear children. The model of pregnancy as generic temporary disability does not meet the complex needs of women in an engendered society" (p 100).

This is a valid and persuasive argument, but Eisenstein provides us with few clues as to what might be a better strategy for articulating these needs. Although she indicates that sex-specific treatment of pregnancy is a better approach, her comments more frequently take the form of vague, intangible pleas for "a framework that allows plurality and diversity to be valued" (p 108). The following is a typical passage, rich in abstract, theoretical language, but containing few concrete suggestions for actualizing this vision:

In order for the pregnant body not to be a problem, it must be used to reinvent the meaning of equality. The pregnant body is used to relocate the phallus in a series of multiple differences. Bodies are viewed plurally, as are differences. Multiplicity and diversity replace polarity and heterogeneity. Opposition and hierarchy are challenged. Differences will be reconstructed as we pluralize the meaning of the body (p 78).

Towards the end of her book, Eisenstein becomes more specific, emphasizing that "[A] politics of sexual equality that recognizes the female body as the potentially pregnant body has to recognize the importance of abortion and reproductive choice; maternity and paternity leave; infant-care, child-care, and day-care needs; parental sick-leave policy; and related issues" (p 191). Yet even here, she does not explain how her theoretical model will be useful in instilling these changes.

\textsuperscript{23} Id at 497.
\textsuperscript{24} Pregnancy Discrimination Act, 42 USC § 2000e (1978).
\textsuperscript{25} Claire Sherman Thomas, Sex Discrimination 217 (West, 1982).
A. Sexual "Difference" and the Sears Case

In her analysis of the much discussed Sears case,\(^2^6\) Eisenstein points to the ways in which the "difference" model may also be used to justify sex discrimination. In this case, the EEOC accused Sears of discriminating against women in promotions of commission sales staff; Sears maintained that a relatively low percentage of women in commission jobs was not necessarily the result of discrimination, but could be attributed to women's own job preferences (p 110). Feminist historians testified as expert witnesses on both sides, with Alice Kessler-Harris backing the EEOC, and Rosalind Rosenberg arguing on behalf of Sears that "[W]omen's goals and values, as wives and mothers, led to their preference for lower level, noncompetitive jobs" (p 110). The Court decided the case in favor of Sears.

Eisenstein shows how in deciding the case, Judge John Nordberg employed the dualistic framework of difference/discrimination, insisting upon proof of discrimination as the sole causal factor before he would conclude that it had occurred. "Whereas Nordberg was unwilling to reduce women's participation in the labor force to the criterion of sex discrimination, he was willing to reduce their activity in the labor force to one criterion—their preference" (p 115). What was required was a singular, monocausal explanation, and Rosenberg posited one—women's difference—in her testimony. Kessler-Harris's testimony, on the other hand, called attention to the complexity of assessing women's choices. Rosenberg was therefore found to be the more credible witness, while Kessler-Harris was regarded as unconvincing (p 115).

Whether or not one agrees with Eisenstein's (and Kessler-Harris's) stance on the Sears case, her classification of the expert witnesses' positions as more or less complex is troubling. According to Eisenstein, "Rosenberg's analysis does not seem . . . to recognize the complexity of women's choices" (p 112). However, Rosalind Rosenberg claimed that she herself "emphasized the complexity of the world in which women make decisions," and therefore, rejected the temptation to blame employers for "everything she did not like about the condition of women" (p 111). Other analyses employing a "postmodern" framework have also found Rosenberg's testimony the more "open-textured" and therefore, credible.\(^2^7\) My point is that the complex/simple opposition is hardly a viable tool for distinguishing good feminist arguments from bad ones. By employing it, Eisenstein unwittingly erects another dualism akin to those she would disqualify.


B. The Phallus Under Reaganism: Pornography, Abortion, and Sexual Freedom

Related problems arise in Eisenstein's chapters on Reagan-era public policy, particularly concerning the issues of pornography and abortion. Her discussions of neoconservatism and the politics of the New Right are often intelligent, well-argued, and appropriately harsh. Yet she herself lapses into the reductivism that her "methodology of differences" purportedly avoids.28

For example, in reflecting upon pornography, Eisenstein asks a series of rhetorical questions, targeting New Right, neoconservative, and feminist anti-pornographers alike:

"Why didn't the Reagan administration set up a commission to study day care or job sharing or comparable worth?" 
"Why was pornography advanced as the most pressing issue?" 
"How does the concern with pornography bear on the concern with establishing controls on sexuality in general?" 
"On sex 'difference' in particular?" 
"On the pregnant body as the mother's body?" (p 163)

Her answers to these seemingly unanswerable questions are conveyed in a single, neat sentence: the equations of pornography, sex, and violence serve "to reorient the public discussion of sexual expression away from sex equality and toward sex 'difference' in the context of phallocratic heterosexual sex" (p 163).

Although Eisenstein acknowledges a distinction between the New Right and feminist critiques of pornography,29 she remains critical of both projects for reifying the structure of male dominance and female subordination. "[B]oth the radical feminists and the right wing assume that pornography is something men enjoy and women do not, that it is something men do to women, that woman is the victim and man is the aggressor" (p 171). The shared problem is, at bottom, epistemological. Both right wing and feminist critics mistakenly equate sex and pornography, sexual difference and engendered difference, the female body and the mother's body.30 As such, they "let the phallus win" and stand in

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28 Literary and legal theorist Stanley Fish argues that "[T]he differences between ways of thinking... can never be characterized as the difference between closed and open structures, but between structures that are differently (if temporarily) closed... [I]t follows further that one cannot be meaningfully urged to become more flexible or generous in one's thinking; flexibility is not a possible mode of cognitive performance for human beings (male or female)." Stanley Fish, Doing What Comes Naturally: Change, Rhetoric, and the Practice of Theory in Literary and Legal Studies 16 (Duke U Press, 1989). Thus, one cannot fault Eisenstein for the simplifying assumptions of her own discussion, but one can point out that in any argument (feminist, postmodern, or otherwise) a certain reductivism is probably inevitable.


30 By this, I assume that Eisenstein means that those who reject pornography do so in part because they believe woman's proper role to be the maternal, asexual one, and therefore resent
the way of "a truly free radical pluralist sex" (p 172).

What's needed, Eisenstein argues, are multi-faceted, pluralistic interpretations of pornographic texts:

Multiple meanings coexist within pornography, and they crisscross the realms of real and ideal. Females are subjugated by masochistic fantasies, yet some females may feel pleasure in imagining both being subjugated and subjugating others. Because sexual pleasure can be experienced as a liberating feeling (liberation from inhibition) fantasies of subjugation can be emancipatory. Thus, pornography is not a homogenous discourse expressing only women's oppression (pp 163-64).31

However, this evocation of "pleasure" begs the question of subjugation, rather than confronting it. If pleasures are themselves constructed within a framework of women's oppression, then pleasure and subjugation may be mutually reinforcing, not contradictory. It is odd that Eisenstein objects to others' use of totalizing theory, when her own notions of sexuality and pleasure are so remarkably singular and closed.

Following a similar line of reasoning, Eisenstein condenses the knotty, intricate controversies that surround the abortion issue. "[The] legality of abortion significantly affects women's right to sex equality and heterosexual (if not homosexual) freedom. It has allowed individual women the opportunity to exert a certain amount of control over their pregnant bodies, making them less 'different' from men in sexual freedom, rights as wage earners, and other aspects of their lives" (p 183). In this view, it is plain that pro-lifers and other anti-abortionists must be against women's rights to freedom and equality. Yet sociological studies indicate that there is no such unanimity of opinion. As a pro-life woman in Kristin Luker's study of abortion activists explained:

I think having abortion as an alternative ... makes it easier for men to exploit women than ever before. I think they are less inclined probably to take responsibility for their actions or to anticipate the consequences of their actions as long as abortion is available. And I think it makes it harder for women who do not choose to engage in premarital sex to say no, or to be accepted in society, because there's always this consideration that there's something wrong with them.32

... her depiction as a liberated, sexual being. But feminist investigations into the content of pornography have found that motherhood and sexual objectification are hardly opposed: the pregnant body is not infrequently featured in postures of bondage and humiliation. "The maternal does not exclude the whorish; rather, the maternal is included in the whorish as long as the male wants to use the woman." Dworkin, Pornography at 222 (cited in note 29).


32 Kristin Luker, Abortion and the Politics of Motherhood 162 (UC Press, 1984). See also Andrea Dworkin, Right Wing Women 104 (Perige, 1978). "Right Wing women consistently denounce abortion because they see it as inextricably linked to the sexual degradation of women ... They are not dazzled by the promise of abortion as choice, as sexual self-determi-
While Eisenstein may be right in presuming that as things stand, abortion is a necessary precondition for women’s advancement, she avoids some of the larger and deeper dimensions of the problem that other feminists have pointed to—for example, how women get pregnant under conditions of inequality: “Sex does not look a lot like freedom when it appears normatively less costly for women to risk an undesired, often painful, traumatic, dangerous, sometimes illegal, and potentially life-threatening procedure than to protect oneself in advance.”33 Or as Adrienne Rich has put it, “In a society where women always entered into heterosexual intercourse willingly, where adequate contraception was a genuine social priority, there would be no ‘abortion issue.’”34

III. Conclusion

The Female Body and the Law strives to move the focus of feminist discussion away from sameness/difference and dominance/subordination to a pluralist, multiple, and open-ended notion of “differences.” Although Eisenstein is not entirely successful in this regard, the care and attention she devotes to the question of sexual equality, her attempts to disentangle intricate philosophical problems, and the visionary glimpse she provides of a radically egalitarian world are all to be applauded.

Unfortunately, how we are to bring about this “equality that recognizes the richness of differences” (p 206) remains unclear. Eisenstein ultimately concedes that for the present, we must work within the confines of liberal law to achieve our goals, balancing “specificity” or “similarity” approaches depending upon the circumstance:

Phallocratic power—which is plural, dispersed, and sometimes incoherent as well as hierarchical and unequal in its dispersion—sets the limits of sex equality . . . . If the pregnant body is both real (as a biological entity) and ideal (as a social construct), and therefore exists in between those realms, then the discourse of sex equality must remain in between as well—between sex and gender, difference and sameness, and between liberalism and the phallus on the one hand, and deconstruction and feminism(s) on the other. There is at present no place else to be (p 224).

“We are going to feel weary in this domain” (p 221), Eisenstein acknowledges, but perhaps we would feel less so if her analyses were themselves more tangible and straightforward. To those already familiar

33 MacKinnon, Towards a Feminist Theory 186 (cited in note 16). See also Kristin Luker, Taking Chances: Abortion and the Decision Not to Contracept 49 (UC Press, 1975). Luker argues that for women, the use of contraception often results in the loss of an important bargaining position: “If she is frankly expecting sex, as evidenced by her continued use of contraception, she need not be courted on the same terms as a woman whose sexual availability is more ambiguous. For many women, the loss of this bargaining position outweighs all the benefits of contraception.”

34 Rich, Of Woman Born at 269 (cited in note 11).
with postmodernist theorizing, Eisenstein's discussions may come across as unnecessarily labored and redundant, but to those with no prior exposure, they will likely seem inaccessible and unwieldy.

The feminist literary critic Barbara Christian reminds us that deconstructive, Lacanian psychoanalytic, and other anti-essentialist theories did not just emerge suddenly out of nowhere and proceed to revolutionize the intellectual domain; rather, a space had already been created for them, in large part by political movements, including the Civil Rights and women's movements. Without this backdrop—which, in very concrete ways, called the existing reality into question—the claims of postmodernism might never have been made intelligible (let alone acceptable) to the surrounding academic community. As feminists, in addition to questions of difference, dominance, and equality, perhaps we ought to consider whether we want to continue spinning out theories in jargons that exclude the very people who helped to make our space available.

35 See also Newton, 9 Cultural Critique at 93, 94 (cited in note 11); and Terry Eagleton, Literary Theory: An Introduction 149 (U of Minn Press, 1983).