

Michigan Journal of Gender & Law

Volume 4 | Issue 1

1996

A Feminist Theory of Malebashing

Susan H. Williams

Indiana University School of Law

David C. Williams

Indiana University School of Law

Follow this and additional works at: <https://repository.law.umich.edu/mjgl>



Part of the [Law and Gender Commons](#), and the [Law and Society Commons](#)

Recommended Citation

Susan H. Williams & David C. Williams, *A Feminist Theory of Malebashing*, 4 MICH. J. GENDER & L. 35 (1996).

Available at: <https://repository.law.umich.edu/mjgl/vol4/iss1/2>

This Article is brought to you for free and open access by the Journals at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of Gender & Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

A FEMINIST THEORY OF MALEBASHING

*Susan H. Williams**

*David C. Williams***

INTRODUCTION · 36

SECTION ONE: THE DIALOGIC PROBLEM · 38

A. *The Accusations* · 39

B. *The Feminist Response* · 50

SECTION TWO: PROPOSED DEFINITIONS OF MALEBASHING · 51

A. *Ending the Blame Game* · 52

B. *Beasts and Conspirators* · 58

SECTION THREE: FEMINISM, DIALOGUE, AND MALEBASHING · 64

A. *General Feminist Values* · 65

1. The Universal Male Conspiracy Theory · 66

2. The Men-As-Beasts Theory · 70

a. Inherency · 70

b. Beastliness · 78

B. *Discourse Norms* · 81

1. Dialogic Communication · 81

2. Discourse Ethics · 85

a. Habermas · 85

b. A Feminist Reconstruction of Habermas · 88

i. The Generalized Other · 89

ii. The Concrete Other · 91

iii. Feminism and Deontology · 95

C. *Hard Cases* · 97

D. *Deflecting the Conversation* · 101

E. *Conclusion* · 105

* Professor of Law, Indiana University School of Law. J.D., 1985, Harvard Law School; B.A., 1982, Harvard University.

** Professor of Law, Indiana University School of Law. J.D., 1985, Harvard Law School; B.A., 1982, Haverford College.

For their very helpful comments and support, we would like to thank Kathryn Abrams, Gregory Alexander, Alison Baldwin, Lynne Henderson, Steven Heyman, Aviva Orenstein, Lauren Robel, and Robin West. We would also like to thank Connie Douglas for her invaluable research assistance.

SECTION FOUR: FEMINISM AND FEMINISMS • 105

- A. *Liberal Feminism* • 107
- B. *Difference Feminism* • 110
- C. *Dominance Feminism* • 115
- D. *Postmodernist Feminism* • 121

CONCLUSION • 124

INTRODUCTION

Let us offer a scenario familiar to most university faculty. A group of academics gathers to discuss wife beating or deadbeat dads or sexual harassment or date rape. At some point, one of the participants leans back in his/her chair and offers the following observation: "I believe that this phenomenon [wife beating, deadbeat dads, etc.] is a problem, and in general I agree with most of feminism, but I just don't like all the malebashing by feminists when these subjects come up."

This concern about feminist "malebashing" is increasingly common, inside the university and out, but unfortunately, because of the emotions involved, most discussions of malebashing generate more confusion than understanding. When feminists say negative things about men, they often speak in anger and perhaps fear. When men respond, they are often angry, defensive, and perhaps hurt. While this confusion may be understandable, it is still counter-productive. The dialogue is plagued by a failure to answer with precision or rigor the most basic questions about this subject: What is "malebashing," i.e., illegitimate negative statements about men, and how is it different from legitimate negative statements about men? Are feminists in general or feminists of some particular kind necessarily committed to malebashing because of the assumptions of their own positions?

This Article will attempt to address these questions, to consider the justifiability of negative statements about men within feminism. It is not, however, about the justifiability of feminism itself. We assume the general themes of feminism: women deserve equal status, rights, and opportunities; political activism may legitimately seek to advance the interests of women; and legal reform is one legitimate path to improve the lot of women. We do not mean to respond to global criticisms of the feminist project as a whole. We assess only the use, or abuse, of a particular rhetorical strategy within that project.

We will also offer a definition of malebashing only for a particular context—an academic dialogue. Sensitivity to malebashing extends

throughout contemporary society—in the popular press, in casual conversation, on television, in political campaigning. Malebashing and accusations of malebashing within the academic press are therefore part of a broad social dynamic, and cultural trends within the university do not exist in isolation. Nonetheless, we wish to focus on the academic dialogue for the following reasons. First, different fora of social interaction serve different functions and therefore have different internal ethoi. Many speech acts that would be appropriate in a public debate, for example, would not be appropriate at a funeral. As a result, any analysis of malebashing must be forum-specific. Second, the academic dialogue is one of the fora that we know best, and so we feel more confident analyzing its ethos as applied to malebashing. Third, as we will argue below, the academic dialogue is structured, self-conscious, and relatively formal; its maintenance correlatively depends on the self-conscious and formal observation of structured norms. As a result, it is possible to formulate more precise ideas about the nature of malebashing within the academy than might be possible in less structured arenas like politics and the popular media. We also hope and believe that participants in an academic dialogue are more likely to honor such norms than actors in other fora.

Feminist arguments appear in many fora other than the academy, and different definitions of malebashing may be necessary for those different fora. For example, some fora are limited to women. The purpose of these fora may not involve dialogue across gender differences at all; instead they may serve principally to find common ground among women, to engage in perspectival truth-telling, to vent frustration or anger, and so on. Many statements that would be malebashing in the academic press might not be malebashing in these settings. Our definition of malebashing will be applicable outside the university dialogue, therefore, but only to the extent that the purposes and values of those fora resemble the university dialogue as we here analyze it.

We will proceed in four sections. In Section One of the Article, we suggest some of the limits of the current dialogue, popular and academic, regarding feminist malebashing. Section Two considers some definitions of malebashing proposed by male commentators. In particular, some argue that any and all negative statements about men are malebashing because they create hostility. We reject this definition because it would entirely foreclose any possibility of reform or even simple justice. If we can never characterize the behavior of any men negatively, we can never change the oppressive behavior of some men. Some commentators,

however, would characterize malebashing in a more specific way. These writers object principally to two specific images of men: the idea that all men consciously conspire to oppress women, and the idea that all men are brutes by virtue of their social or biological nature. These two images, in our view, might form the basis for a theory of malebashing. In Section Three, we offer a preliminary definition of "malebashing" for the academic dialogue. Finally, Section Four argues that malebashing, thus defined, is not required by any of the types of feminist theory current in the legal literature.

SECTION ONE: THE DIALOGIC PROBLEM

In this Section, we consider some of the deficiencies in the present discussion of malebashing: much of the debate is characterized by stridency and distortion on the part of defensive males and irritated silence on the part of dismissive feminists. This failure of customary discourse norms blocks careful and balanced analysis of the justifiability of malebashing within feminism. The purpose of this Section is not to offer an exhaustive analysis of the substance of the debate. Instead, we mean only to offer the reader a sense of the acrimonious flavor of the debate, of the corresponding need for improvement, and of the particular failures that need to be remedied.

To that end, this Section considers accusations of malebashing made both in the popular press and the academic press, even though we ultimately propose a set of norms only for the latter. We extend our focus in this way for several reasons. First, concern about malebashing is a society-wide issue, arguably part of the general backlash against feminism.¹ Thus, the academic dialogue is part of and legitimates the larger discussion of malebashing. Accordingly, it is important to understand the academic discourse as situated within a more popular discourse. Second, the failure of discourse norms in this area is not limited to academia. It is important to understand that academics feel the same emotions and respond in some of the same ways as everyone else. Third, as we explain below, there has been much more discussion in the popular literature. Indeed, we had some difficulty finding any serious work in the law journals. That difficulty surprised us, because we have observed over the last ten years that anger at perceived malebashing is endemic in the legal

1. See SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (1991).

academy. Its presence may be shadowy and still relatively quiet, but it is nonetheless very significant as an undercurrent in analyses of feminist work, decisions on appointments of feminists, consideration of feminist proposals like sexual harassment policies, and other matters. As long as this resentment of perceived malebashing does not come out into the light, however, we cannot directly address it.

A. The Accusations

The following accusation of malebashing starkly illustrates the failures of the debate:

Attention, men of the Caucasoid persuasion. Have you made a terrible mistake by being born white males? . . . What is going on here? Simple. Like guerrillas moving down from the hills to attack the cities, the race-and-gender people are no longer just sniping from marginal positions on campus and in the art world. With the aid of an ever-credulous press corps, they are now pumping their doctrine into the general culture. That doctrine is that America will increasingly be divided by a truculent tribalism, with nonwhites and white women gang-ing up in a grand alliance to wrest power from white males.²

This passage exhibits the following features that block sensible discussion. First, it is stridently defensive: the barbarians are coming down out of the hills to "gang up" on us, the defenders of Roman civilization, in the name of "truculent tribalism." Second, the passage fails to cite any living, breathing, writing feminist to substantiate these allegations. Accordingly, the author fails to consider what real feminists actually say. Instead, he relies on harsh caricature. Third, he takes the most extreme position that only a very few radical feminists might advocate (a belief in a "truculent tribalism") and ascribes it to the whole of feminism ("the race-and-gender people"). Finally, he fails to consider why some feminists say negative things about men and whether those negative statements might be justified. Instead, he roundly asserts: "It's really indefensible. It's wrong to attack or fire people because of race and gender, even if they happen to be white guys."³ At this point, all of the foregoing distortion

2. John Leo, *The Demonizing of White Men*, U.S. NEWS & WORLD REP., Apr. 26, 1993, at 24.

3. Leo, *supra* note 2, at 24.

comes home to roost: the author insists that feminists are attacking "white guys" simply because they are male and white.⁴ Any consideration of the reasons feminists give for saying negative things about men as a class is lost in the shuffle. The author deals only with a cartoon cutout of a feminist, rather than an actual argument.

While one might expect no better of the popular press, even journals with higher intellectual aspirations publish work that suffers from many of the same problems. Nicholas Davidson, a well-known critic of feminism, opines in the journal *Society* that malebashing—he calls it "female chauvinism"⁵—is inevitable in all forms of feminism.⁶ He begins by recognizing that liberal feminism rests on the claim that there is no essential difference between men and women. He calls this idea "unisexism" and acknowledges that it does not on its face bash males.⁷ But then he makes this startling leap of logic:

The original definition [of feminism] described feminism as 'the theory that women should have political, economic, and social rights equal to those of men.' This theory presumes that women do not, in fact, have rights equal to men. . . . If women do not have rights equal to men, the inescapable conclusion, which no feminist will dispute, is that women are oppressed. . . . From the perception that women are oppressed follows the perception that men are the oppressors. Society is held to be dominated by men for their selfish benefit. Note that the 'oppressed' and the 'oppressor' are moral categories—the oppressed are victims who have done nothing to deserve their fate, the oppressors are villains who have done nothing to deserve their privilege. The theory that women lack equal rights inexorably generates the proposition that women are oppressed and men are oppressors. . . . Reduced to simplest terms, this sets up the following equation: women good, men

-
4. The author's only other reason to avoid malebashing is the danger of backfire. He darkly warns that "white guys" apparently do still hold all of the power and might use it: "At a time of high racial tensions and high immigration, it is distinctly unwise to keep telling native-born whites that nonwhites and immigrants are a unified bloc that's about to take over. . . . Does anybody remember the David Duke scare?" Leo, *supra* note 2, at 24.
 5. Nicholas Davidson, *Feminism and Sexual Harassment*, *SOCIETY*, May/June 1991, at 39, 40.
 6. See Davidson, *supra* note 5, at 39–41.
 7. Davidson, *supra* note 5, at 39–40.

bad—hence women are better than men. Unisexism thus generates female chauvinism, despite the evident contradiction between these two points of view.⁸

Again, Davidson cites no actual feminists to substantiate this tortured argument. Instead, he relies on logical derivation. He begins with the uncontroversial proposition that feminists, by definition, believe in equal rights for women.⁹ From this simple idea, he purports to logically derive his conclusion that all feminists believe all men are villains and all women innocent victims.¹⁰ Unfortunately, none of his logical steps follow from the premise. Attention to the actual writing of real feminists might have saved him from his logical errors.

Davidson's first step is to say that feminists who believe women should have equal rights necessarily believe they do not presently have equal rights.¹¹ That conclusion does not follow from the premise: one could believe that women do have equal rights, and they should have those rights. To be sure, many feminists do not believe women presently have equal rights, but perhaps some feminists do.¹² Therefore, it is not the case that all feminists must follow Davidson even to this first step.

Davidson next argues that if one believes that women do not have equal rights, then one must also believe they are oppressed and men are their oppressors.¹³ Not only that—here the claims start to come thick and fast—women are not at all responsible for the present state of affairs and men are entirely responsible. Further, women (presumably all women, since they all lack equal rights) are victims, and men (presumably all men, since they all have superior standing) are villains.¹⁴ In short, "women good, men bad." At this point, most feminists have already left the train at an earlier stop; Davidson is travelling alone with only a minute subset of feminists and mistakenly concluding that they represent all of feminism. Presumably he made that mistake because he never asked for any of the passengers' names or their views.

8. Davidson, *supra* note 5, at 40–41.

9. See Davidson, *supra* note 5, at 39. It is worth noting that he got this definition from Webster's Dictionary, not from any feminist writing.

10. See Davidson, *supra* note 5, at 41.

11. See Davidson, *supra* note 5, at 40.

12. At a minimum, it seems likely that some feminists believe that women have equal rights in certain areas. For example, some feminists may believe that women have an equal right to vote. Women's votes are not diluted compared to men's, nor are women systematically harassed to keep them from exercising their right.

13. See Davidson, *supra* note 5, at 40–41.

14. See Davidson, *supra* note 5, at 41.

Perhaps the overwhelming majority of feminists agree that some men have acted in ways that oppress some women, to sustain the system of unequal rights. But that limited conclusion does not drag us by force of logic to accept "women good, men bad." First, consistent with their fundamental commitment to equality, feminists may believe that sexism is a system of role socialization that oppresses us all. Under this view, men are victims along with women, even though they may wield more power and disproportionately support the system of unequal rights.¹⁵ Others may believe that men bear some responsibility but role socialization offers a partial moral excuse.¹⁶ Still others may believe that some men are oppressive villains, but they oppress both men (especially gay men and men of color) and women. Still others believe that some or perhaps all women have internalized some or most of the sexism in their society, and so they are complicit in the system of gender hierarchy.¹⁷ Other feminists may believe all or some combination of the above, and still others may not be sure what they think. Of course, some feminists may also adopt the view that Davidson ascribes to them, but to tell, one would need to consult their writings, rather than relying on caricature. In short, the issue of moral responsibility for the present state of affairs may be enormously complex for feminists.

We have discovered only two law review articles about malebashing. Unhappily, both suffer—although to very different extents—from some of the same problems. The central thesis of Brian Bendig's article, *Images of Men in Feminist Legal Theory*,¹⁸ is "that andric imagery [images of men, male, and masculine] is an important resource in feminist legal theory"¹⁹ To support this fairly uncontroversial claim, he analyzes the work of six feminists for over sixty pages, complete with quotation and citation, to demonstrate that they do in fact rest on images of men.²⁰ While we would disagree with many of his interpretations, this section of his article exhibits none of the general vices endemic to discussions of malebashing. Bendig does not adopt a particularly defensive tone; he has actually read the works of a number of feminists and takes their argu-

15. See, e.g., *infra* Section IV.A.

16. See, e.g., *infra* Section IV.A.

17. See, e.g., *infra* Section IV.A. and C.

18. Brian Bendig, *Images of Men in Feminist Legal Theory*, 20 PEPPERDINE L. REV. 991 (1993). In some ways, it is unfair to lump Brian Bendig's article in with the other piece in this section, because it is so different in tone and style.

19. Bendig, *supra* note 18, at 991.

20. See Bendig, *supra* note 18, at 991–1052.

ments seriously; he ascribes the various writers' views to no one but themselves. He is, in short, not tilting at a caricature.

To argue that feminists use images of men in their writings, however, is not an earth-shattering discovery. The real question remains: are those (largely negative) images warranted? In the last two paragraphs of the work, Bendig summarily concludes that the answer is no:

One is struck by the sheer volume of facile and derogatory definitions and characterizations of men, male, and masculine, etc., in feminist jurisprudence. Men are rarely differentiated at all. One is also struck by the indirectness and obtuseness of much of this imagery. . . . Rather than merely providing the possibility of a salutary balance, perhaps this phenomenon has further cluttered the confusion and heightened the crudity of political discourse.²¹

The article ends with this statement, but that is where the discussion should begin. One would like to ask Bendig why he concludes that these characterizations are "facile"? Also, if men are "rarely differentiated," is that because feminists believe that men are all the same or because they are relying on a generalization? If the latter, is the use of that generalization unjustifiable, unwise, or pernicious? If so, why and according to what dialogic norms?

In contrast to Bendig's generally careful if truncated piece, Kenneth Lasson's work *Feminism Awry: Excesses in the Pursuit of Rights and Trifles*,²² is an angry screed. This work is the only extended treatment of malebashing we have found in the legal literature. The publication of the article was, therefore, a significant event in illuminating the distorted dynamics of the academic debate on this subject. As we have suggested above, legal academics do talk about malebashing, even if they do not write about it. Indeed, Lasson himself asserts that more than one of his colleagues fear to talk publicly on the subject because of the anticipated reaction in the academy.²³ For whatever reason, the existing dialogue goes on at an informal, casual, and subterranean level without being exposed to the light and discipline of public inspection. When that discussion finally did surface in Lasson's piece, it exhibited all of the vices of the

21. Bendig, *supra* note 18, at 1052.

22. Kenneth Lasson, *Feminism Awry: Excesses in the Pursuit of Rights and Trifles*, 42 J. LEGAL EDUC. 1 (1992).

23. See Lasson, *supra* note 22, at 5 n.16.

popular discussion of malebashing. Moreover, because of its excesses, the article caused widespread anger among legal feminists, as did the decision of the *Journal of Legal Education* to publish such vitriol. We remember a general sentiment that a feminist ought to respond to Professor Lasson, yet no one did.²⁴ Because we think that Lasson's piece is evidence of a more general problem, we wish to offer a careful consideration of this article here.

Lasson begins by asserting his basic sympathy for some feminists. In particular, he admires the way "liberal and conservative feminists . . . have improved the quality of life for many women in a number of noteworthy ways."²⁵ Radical feminism has, however, gone "[a]wry."²⁶ From this point, Lasson's argument becomes difficult to summarize because in his view, feminism has gone wrong in many ways, and the rest of the piece piles them up without clearly distinguishing them. Two objections, however, stand out. First, radical feminists write poorly.²⁷ Second, radical feminists tyrannize people,²⁸ and they particularly hate men.²⁹ Lasson observes, "[m]any women have thus come to see the feminist movement as antimale"³⁰ He approvingly quotes Phyllis Schlafly on "the feminist agenda—"They hate men and they're out to destroy any man who stands in their way."³¹ He concludes with an admonition: "[Radical feminist legal scholars] should seek to persuade with clarity and concision, telling men why a certain type of new order (not one in which women smash men's faces in) will be good for *them* as well."³²

24. John Siliciano responded, but his is not a feminist analysis. See John A. Siliciano, *Fighting With Angry Women: A Response to Lasson*, 42 J. LEGAL EDUC. 461 (1992). Catharine MacKinnon wrote a letter to the editor in response, but the purpose of the letter was to defend herself against Lasson's more scurrilous charges, not to analyze the article as a whole. See Catharine MacKinnon, Letter to the Editor, 42 J. LEGAL EDUC. 465 (1992).

25. Lasson, *supra* note 22, at 2. Actually, it is not at all clear that Lasson is basically in sympathy with any variety of feminism. At one point, he quotes Phyllis Schlafly approvingly: "The feminist movement has *not* improved women's lot, [and] the polls reflect the fact. The fact that the majority of women do not want to identify with feminists I think is obvious." Lasson, *supra* note 22, at 4 n.12 (alteration in original).

26. Lasson, *supra* note 22, at 1.

27. See Lasson, *supra* note 22, at 23–26.

28. See Lasson, *supra* note 22, at 2–6.

29. See Lasson, *supra* note 22, at 4, 14.

30. Lasson, *supra* note 22, at 4.

31. Lasson, *supra* note 22, at 14 (quoting A.M. Chaplin, *Where Now Feminism?*, BALTIMORE SUN MAG., Dec. 8, 1991, at 12).

32. Lasson, *supra* note 22, at 28.

The most striking quality of this piece is its stridently defensive tone. Lasson himself repeatedly calls attention to this defensiveness. In his biographical footnote, he states that he "is likely to be re-cast as curmudgeon or cur."³³ Indeed, the piece was "originally penned under a pseudonym."³⁴ Later, he foretells that feminists will dismiss his article "as reflecting the misguided misogyny of a society dominated by male chauvinists."³⁵ Out of fear or chivalry, no one has yet spoken up to denounce the feminist monster,³⁶ but Kenneth Lasson is a brave man. With the admiring support of his female research assistant—who urges him to go further in his denunciation of feminism³⁷—he forays out to do battle: "So be it. The time is past due for an intellectually responsible challenge to the radical feminists who have assumed command of the Ivory Tower and the world beyond to which it beckons."³⁸

This defensiveness manifests itself in less overt ways as well. After derogating feminist scholarship (without citation to a single feminist) as "predominantly *ad hominem*,"³⁹ he proceeds to launch a series of highly personal attacks on prominent feminists. For example, he writes: "For reasons of confidentiality, I cannot name the psychologist who (on reading the quoted passage [by Catharine MacKinnon]) delivered his opinion that its author 'needs cognitive therapy.'"⁴⁰ At another point, he derides Naomi Wolf, author of *The Beauty Myth: How Images of Beauty Are Used Against Women*.⁴¹ "Her thesis may be complicated by her own publicity tours, where she appears to be an attractive woman who does not disdain fashionable clothes, jewelry, or makeup."⁴²

33. Lasson, *supra* note 22, at 1 (biographical footnote).

34. Lasson, *supra* note 22, at 1 (biographical footnote).

35. Lasson, *supra* note 22, at 6.

36. See Lasson, *supra* note 22, at 5 n.16.

37. For example, she urged him to publish this article under his own name. Lasson, *supra* note 22, at 1. She also rejects Lasson's view that liberal feminism has improved women's lot: "'Have feminists been spinning their wheels for the last 70 or 80 years,' she asks, 'or what? One Supreme Court justice, a few heads of state, and lots of female law students don't seem like much of an accomplishment compared with what was done [earlier].'" Lasson, *supra* note 22, at 2 n.3 (alteration in original).

38. Lasson, *supra* note 22, at 6.

39. Lasson, *supra* note 22, at 7.

40. Lasson, *supra* note 22, at 26 n.110.

41. NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* (1991).

42. Lasson, *supra* note 22, at 19 n.77 (citing a newspaper article with the remarkable title, *This Pinup Drives Eggheads Wild*, by M.G. Lord, *NEWSDAY*, Oct. 6, 1991, at 36). In addition to this personal attack on Wolf, he launches a similar attack on

Lasson's prose style is also defensively belligerent. He calls the writings of radical feminists "petty mewlings of pouty prima donnas who are intellectually dishonest to boot."⁴³ He cites with approval those who have called radical feminism "a travesty of the intellect,"⁴⁴ "bald ignorance,"⁴⁵ and "pop fascism."⁴⁶ He closes with a command to feminists: "*Get a life.*"⁴⁷

Lasson also exhibits the second dialogic vice: although he quotes from feminists throughout this work, he fails to substantiate a number of crucial and controversial claims about feminism. For example, he asserts that according to cultural feminists, "[d]ifferences between men and women . . . are profound and immutable," and women have "a truer, more caring nature."⁴⁸ In support, he offers a list of "illustrative titles," none of which remotely suggest that differences between men and women are "immutable" or absolute.⁴⁹ Indeed, most of the works listed argue that men can and should come to share more in women's stereotypical virtues and vice-versa.⁵⁰ Similarly, he asserts that according to

Gloria Steinem because she "now admits that she has long had serious problems with the way she looks and suggests that she has always wanted to feel attractive." Lasson, *supra* note 22, at 19 n.77. In case any reader has missed the obvious problem with this line of argument, it is entirely possible to find oppressive the ways images of beauty are used against women, and still (1) find oneself conditioned to respond to that oppression or (2) transcend that conditioning and still want to look attractive.

43. Lasson, *supra* note 22, at 5.

44. Lasson, *supra* note 22, at 6 (quoting Brigitte Berger, *Academic Feminism and the "Left,"* ACAD. QUESTIONS, Spring 1988, at 9, 10, 15).

45. Lasson, *supra* note 22, at 6 (quoting Maureen Mullarkey, *Mullarkey Replies*, THE NATION, Aug. 1/8, 1987, at 93).

46. Lasson, *supra* note 22, at 6 (quoting Mullarkey, *supra* note 45, at 93).

47. Lasson, *supra* note 22, at 29. These are just a few choice selections; the article goes on and on in much this vein.

48. Lasson, *supra* note 22, at 12.

49. Lasson, *supra* note 22, at 12 n.50. The three titles are CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY IN WOMEN'S DEVELOPMENT (1982); MARY FIELD BELENKY ET AL., WOMEN'S WAYS OF KNOWING: THE DEVELOPMENT OF SELF, VOICE, AND MIND (1986); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Woman's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985).

50. See GILLIGAN, *supra* note 49, at 100, 164-74; BELENKY ET AL., *supra* note 49, at 176-89. The third writer, Carrie Menkel-Meadow, declines to speculate about the origin of gender differences, see Menkel-Meadow, *supra* note 49, at 41-42, but she concedes that they might disappear in a world free of gender domination. See Menkel-Meadow, *supra* note 49, at 63.

The only cultural feminist from which Lasson quotes actual language is Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988) [hereinafter West, *Jurisprudence and Gender*]. See Lasson, *supra* note 22, at 13. The remainder appear

radical feminists, "[t]he differences between men and women [i.e., men oppress women but not the reverse] are not just biological . . . but diabolical as well,"⁵¹ without citing a single feminist for the quite controversial proposition that male oppressiveness is rooted in biology.

These misdescriptions affect Lasson's portrait of feminist motives for making negative statements about men. In Lasson's view, feminists are just angry at men for their evil, biological nature, about which men can do nothing.⁵² As a result, feminism becomes nothing more than heated, pointless, "man-hating" denunciations. Again, these are only cartoon feminists, unsupported by citation. In fact, many and probably most feminists believe that patriarchal culture, not biology, creates bad men.⁵³ Indeed, the whole purpose of much feminist analysis is to change the culture so as to produce good men. Moreover, most feminists are careful to note that their analysis does not apply to all men.⁵⁴ In short, men are not inherently wicked according to most feminists. So rendered, feminism would be a harder target for Lasson: he would have to approach feminists as social reformers who say some negative things about some men in order to get them to change, rather than as a group of haridans who simply want to condemn men wholesale.

only as titles, as if one only needed to read the titles to know what they say. See titles listed *supra* note 49.

51. Lasson, *supra* note 22, at 13.

52. See Lasson, *supra* note 22, at 13.

53. Those famous radicals, and alleged malebashers, Catharine MacKinnon and Andrea Dworkin, for example, have both suggested that such impulses are social, not natural. See ANDREA DWORKIN, *INTERCOURSE* 139 (1987); CATHARINE A. MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED* 46, 52 (1987). MacKinnon explains: "The analysis of sex is social, not biological . . . it is to refer to the standpoint from which these acts I have documented are done. By male, then, I refer to apologists for these data." MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED*, *supra*, at 46, 52. In writing of Joan of Arc, Dworkin seems to ascribe responsibility to sex role socialization, not biology: "[She] is an emblem of possibility and potentiality consistently forbidden, obliterated, or denied by the rigid tyranny of sex-role imperatives or the outright humiliation of second-class citizenship." DWORKIN, *supra*, at 84.

54. Neither MacKinnon nor Dworkin, for example, suggests that her analysis applies to all men. See DWORKIN, *supra* note 53, at 66 ("Most women are not distinct, private individuals to most men . . ."); DWORKIN, *supra* note 53, at 64 ("In this view, which is the predominant one, maleness is aggressive and violent . . ."); MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED*, *supra* note 53, at 46, 52-56 (explaining that maleness is not a biological reality but a social construct to which not all men belong); MACKINNON, *On Exceptionality*, in *FEMINISM UNMODIFIED*, *supra* note 53, at 70, 73 (again explaining that maleness is a social construct, not a biological reality).

Lasson's misdescription of feminism leads to his final failure. He neglects to consider whether feminists' negative statements about men are justified. Instead, he casts them as shrill, man-hating gender bigots. They are malebashers and so one need not take them seriously. For example, he finishes his exposition of cultural feminism with the following one sentence paragraph: "In other words, women are nurturing and altruistic, men individualistic and (it may be inferred) insensitive."⁵⁵ This sentence is his whole indictment of cultural feminism. He apparently believes the accusation of malebashing has made his argument for him: they are saying bad things about men; they are malebashers; they must be wrong. In fact, the analysis must start with the question of whether cultural feminists are wrong that the culture generally makes men more individualistic and insensitive. If they are right, should we not think about reforming the culture so that both men and women can experience a full range of human emotions?

Lasson also derides the radical feminist notion that men as a class use power to oppress women as a class, without seriously addressing the argument. He insists that the argument "disregards the power women have over men concerning sex."⁵⁶ For evidence of women's present power over sex, he refers the reader to footnote one of the article, which in turn refers only to the Myth of Lysistrata.⁵⁷ He also observes, "women may actually enjoy making love."⁵⁸ This time, the citation is to some more mythology, one modern survey, and two commentators.⁵⁹ However, Lasson never seriously addresses MacKinnon's central argument that women have been conditioned to enjoy sex even under oppressive conditions. That argument may have problems, but one must at least consider its justifiability.⁶⁰ Next, Lasson observes that radical feminists

55. Lasson, *supra* note 22, at 13.

56. Lasson, *supra* note 22, at 14.

57. See Lasson, *supra* note 22, at 14 n.58, 1 n.1.

58. Lasson, *supra* note 22, at 14.

59. See Lasson, *supra* note 22, at 14 n.59.

60. Lasson does note that MacKinnon makes this argument, and he responds by referring to Robin West: "[T]he argument that the sex act is a form of submission 'fails to capture the phenomenological experience of intercourse as one of positive intimacy . . . not invasive bondage.'" Lasson, *supra* note 22, at 15 n.59 (citing West, *Jurisprudence and Gender*, *supra* note 50, at 46 (alteration in original)). But MacKinnon has argued that women have also learned to experience submission as central to women's experience of their sexuality. See CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 130 (1989) [hereinafter *MACKINNON, FEMINIST THEORY OF THE STATE*].

claim that sexual assault is very common.⁶¹ For that reason, they believe, unlike liberal feminists, that women should get special legal protection, and they believe, unlike the cultural feminists, that "the differences that exist between the sexes are not to be celebrated, but deplored."⁶² Why are all these claims wrong? According to Lasson, "[r]adical feminists thus align themselves with lesbian-rights groups, which likewise attack the notion of a male's right of access to women (and ultimately a rite of passage and conquest)."⁶³ The problem with radical feminists, in other words, is that they are really (or are really like) those man-hating lesbians. No further analysis is necessary.

When Lasson finally does consider the substance of MacKinnon's analysis, he offers only rhetorical questions:

How does one go about proving the negative, that most men do not *oppress* most women? How does one illustrate the likelihood that most men fully understand the horror of rape and abhor, for that matter, *any* aggressively violent behavior against another human being, whether within marriage or not? How does one refute the equation of marriage and prostitution, other than to assert that the experience of all those couples whose marriages are reasonably happy dictates the absurdity of that idea?⁶⁴

By the tone of these questions, Lasson apparently wants us to conclude that one cannot prove any of these claims. Yet paradoxically, in the very same words, he apparently means to insist on their truth, that most men do not oppress most women, that most men abhor rape. He is, in short, committing the sin of which he accuses MacKinnon:⁶⁵ if she assumes general oppression without good evidence, he assumes general absence of oppression without good evidence.

If we consider his questions as real rather than rhetorical, however, Lasson's queries might be the right ones. Do men oppress women? How many? Do men abhor rape? How many? What implications for social policy ought we to derive from the answers to those questions? We must consider these questions seriously and earnestly, not with dismissive

61. See Lasson, *supra* note 22, at 15–16.

62. Lasson, *supra* note 22, at 16.

63. Lasson, *supra* note 22, at 16.

64. Lasson, *supra* note 22, at 18.

65. See Lasson, *supra* note 22, at 18–19.

ridicule. We need a responsible dialogue about the justifiability of negative claims about men by feminists, not a jeremiad against caricatured manhaters.

B. *The Feminist Response*

The typical feminist response to accusations of malebashing has been to ignore them. The reasons for this silence are not hard to guess. First, as described above, many of the allegations are so angry and unbalanced as not to merit a response. Second, these cries of malebashing come suspiciously, "just when women and minority groups are beginning to make some gains."⁶⁶ As one feminist notes, "It almost sounds like a kind of attempt to bring the attention back where it has been—on masculine kinds of concerns."⁶⁷ Finally, compared to other issues facing feminists, the hurt feelings of those who feel bashed may seem unimportant: "'What *do* men want?' women wonder with exasperation. 'They already *have* everything.'"⁶⁸

To ignore the complaints of malebashing entirely, however, is unwise for several reasons. First, while many of these allegations may not merit attention, they have received it. "Feminist malebashing" has become a standard topic in the popular press in recent years.⁶⁹ Once

66. Francine Dube, *Man-bashing: Even the Good Guys Have Stopped Laughing*, OTTAWA CITIZEN, Dec. 4, 1993, at A1.

67. Dube, *supra* note 66, at A1 (quoting Christine Overall, Philosophy Department, Queens University).

68. Andrea Stuart, *Saving the Male*, NEW STATESMAN & SOC'Y, Mar. 20, 1992, at 39.

69. See, e.g., Playthell Benjamin, *White Boy Blues*, SUNDAY TIMES, Apr. 4, 1993, at 9-2; Bob Berkowitz, *Why TV Likes Bad Guys*, PLAYBOY, Nov. 1993, at 38; Joe Bob Briggs, *The Mutant Offspring of Thelma and Louise*, PLAYBOY, Feb. 1994, at 35; Neil Chethik, *Male-Bashing: New Twist on Old Garbage*, THE PLAIN DEALER, Oct. 24, 1993, at 6H; David Cohen, *What a Man's Got to Do*, NEW STATESMAN AND SOC'Y, June 8, 1990, at 30; Dube, *supra* note 66; Dennis Duggan, *Is Your Wife a Buttered Woman?*, NEWSDAY, Oct. 17, 1993, Fanfare Section at 43; Jack Kammer, *On Balance: The Journalism of Gender*, QUILL, May 1992, at 28; Leo, *supra* note 2; Ron Miller, *Female Sexism Runs Rampant on Sitcoms*, ORLANDO SENTINEL, Sept. 15, 1993, at E1; Lance Morrow, *Men: Are They Really That Bad?*, TIME, Feb. 14, 1994, at 53; Ellen Frankel Paul, *Silly Men, Banal Men*, SOCIETY, Sept./Oct. 1993, at 36; Alvin F. Poussaint, *Enough Already! Stop the Male-Bashing and Infighting*, EBONY, Feb. 1993, at 86; Harry Stein, *Tube Boobs*, MEN'S HEALTH, Mar. 1994, at 30; Stuart, *supra* note 68; Fred Tasker, *Man-o-pause or Male Bashing?*, HOUSTON CHRONICLE, May 1, 1994, Lifestyle Section at 15.

Somewhat less commonly, allegations of malebashing have appeared in academic journals as well. See, e.g., Bendig, *supra* note 18; Davidson, *supra* note 5; Richard B.

upon a time, it may have been possible to ignore the charges and hope they would go away, but no longer. Continued silence will only allow the chorus to grow louder. Therefore, it behooves feminists to respond, so as to correct misimpressions and air the contrary argument.⁷⁰ Second, while many basically feminist men may not share the antifeminist venom of Davidson or Lasson, they may nonetheless feel uncomfortable with what they perceive to be some antimale tendencies within feminism. These men are feminism's natural allies, and it would be unfortunate to lose them through failure to respond to the allegations. Third, while some accusations may be groundless, it does not follow that there is no such thing as malebashing or that feminists never engage in it.

The charge of man-hating has dogged feminism from its inception, usually as a way to attack feminism root and branch. We wish to offer instead a sympathetic critique of feminist malebashing from within basic feminist norms. Given that women should be equal to men, that oppression of women has occurred and should stop, and that law and political activism are appropriate routes to that end, we can still ask: what statements about men, if any, should be considered "malebashing"?

SECTION TWO: PROPOSED DEFINITIONS OF MALEBASHING

Accusations that feminists engage in malebashing are very common. Exact definitions of "malebashing" are much less common. Nonetheless, it is possible to discern three definitions proposed by those making the allegations. First, for some, "malebashing" refers to any negative statement about men that is likely to stir rancor—that is to say, any negative statement about men, period. Second, "malebashing" refers to the view that men by their nature are beasts. Third, "malebashing" refers to the belief that men are engaged in a self-conscious and (nearly) universal conspiracy to oppress women. The first definition is so broad as to block all reform or even inquiry, but the other two may offer the basis for a theory of malebashing in academic discourse.

Felson & Stephen R. Felson, *Predicaments of Men and Women*, SOCIETY, Sept./Oct. 1993, at 16; Lasson, *supra* note 22; Warren Shibles, *Radical Feminism, Humanism and Women's Studies* 14 INNOVATIVE HIGHER EDUC. 35 (1989).

70. Such a response may be particularly important in light of the often highly personal nature of the attacks. Accusations of malebashing sometimes suggest that feminists should be dismissed because they are flawed people rather than because of any flaw in their arguments. This "ad femina" attack can warp any attempt at substantive debate. We are grateful to Lauren Robel for pointing out this additional reason for response.

Again, although our proposal is limited to the academic context, we consider in this Section definitions of malebashing that appear in a variety of venues. The different fora offer strikingly similar conceptions of malebashing. This commonality indicates that concern about malebashing is a society-wide problem and should be apprehended as such. Irritation at alleged malebashing is not just a product of overly sensitive academic temperaments, nor on the other hand are detached professors immune from visceral anger on the subject. It is precisely because accusations of malebashing are so widespread that we think it important to address them.

A. Ending the Blame Game

A number of prominent commentators argue that men and women should simply stop saying negative things about each other.⁷¹ In this view, all negative statements about men count as malebashing. Negative statements get in the way of cross-gender dialogue and affection. They unnecessarily create animosity; they roil the waters of heterosexual serenity. It is time now to lay down our weapons, love each other again, accept that sex differences are a mystery, and dance the dance of gender.

Often, these exhortations of peace occur in the conclusions of articles that heatedly denounce feminism. Thus, Professor Lasson ends with a series of directions:

[Feminists] should avoid rash generalizations about men . . . should not make or agree with suggestions that women stifle their femininity . . . should seek to persuade with clarity and concision, telling men why a certain type of new order (not one in which women smash men's faces in) will be good for *them* as well. . . . As sinners, after all, male and female were created alike. Let us all celebrate our similarities as well as our differences. Most men, like Mr. Justice Story, admire women and want to understand them.⁷²

In similar tone, albeit with a sociobiological accent, Davidson instructs:

Ultimately the feminist perspective must be rejected along with the destructive chimeras it generates, and we must go back to

71. See, e.g., Davidson, *supra* note 5; SAM KEEN, FIRE IN THE BELLY: ON BEING A MAN (1991); Lasson, *supra* note 22, at 28; Morrow, *supra* note 69.

72. Lasson, *supra* note 22, at 28.

nature, where men and women, not unisexism and female chauvinism, circle each other like twin stars, in constant tension and mutual dependency. For that tension is the Dance of Life itself, and not an ideological ramble into the absurd.⁷³

Perhaps the leading exemplar of this style of thinking, however, is Sam Keen, whose immensely popular book *Fire in the Belly*⁷⁴ is one of the central texts of the mythopoetic Men's Movement.⁷⁵ The movement's origin lies in experiences with feminism and the changes it has caused in gender relations. Robert Bly, the guru of the movement, endorses feminism *for women*, but he also believes that feminism has made too many men into "flying boys"—immature males without a deep sense of their own masculinity.⁷⁶ What is needed is a movement to bring modern men back into touch with the Jungian animus, the fierce, hairy, but not violent spirit that dwells within every male breast.⁷⁷ Let feminists have feminism, Bly insists, but we men must have our own separate identity as well.⁷⁸ Despite allegations of misogyny,⁷⁹ the movement claims to be

73. Davidson, *supra* note 5, at 44. Lance Morrow concludes a cover story for *Time* magazine in the same way:

If we were to leave off argument and think kindly for a moment, on the premise that men and women will go on mixing with one another in the current mindless and anarchic way, we might spin the thought that good can come of each sex thinking the best of the other, and might see the converse truth: that only bad can come of each one thinking the worst. Tolerance and decency are creative, civilizing traits. A rising standard of expectation—a mutual hope, a sympathetic mingling of desires—will lift all boats. Quite a long time ago—remember?—we used to fall in love.

Morrow, *supra* note 69, at 53, 59. To his credit, and unlike Davidson or Lasson, Morrow recognizes that men share some of the blame for this mutual animosity. See Morrow, *supra* note 69, at 58. Like Lasson, but not like Davidson, Morrow also purports to quarrel not "with Feminism per se, but with feminism incompletely or dishonestly or opportunistically pursued." Morrow, *supra* note 69, at 57.

74. KEEN, *supra* note 71.

75. The movement may be most familiar to the general public in its stereotypical form: men gathering in the woods to beat drums, chant, feel sorry for themselves, and discover the Wild Man within. See, e.g., FALUDI, *supra* note 1, at 304–07. It would appear that Keen himself is not directly involved in the movement, see KEEN, *supra* note 71, at 245, but the movement has certainly adopted him. See E. ANTHONY ROTUNDO, *AMERICAN MANHOOD: TRANSFORMATIONS IN MASCULINITY FROM THE REVOLUTION TO THE MODERN ERA* 1–2 (1993).

76. See ROBERT BLY, *IRON JOHN* 2, 57 (1990). See also FALUDI, *supra* note 1, at 306–08.

77. See BLY, *supra* note 76, at 222–23, 227, 233, 237.

78. See BLY, *supra* note 76, at x, 234–36.

79. See, e.g., FALUDI, *supra* note 1, at 309–12.

profeminist and to reject oppressive conceptions of manhood while also proclaiming pride in a healthy and whole masculinity.⁸⁰

Keen's argument follows the same general outline. He professes admiration for what he calls "prophetic feminism," but he denounces "ideological feminism."⁸¹ The difference between the two is "largely a matter of mood, tone of voice, focus, emphasis, feeling-tone."⁸² Not surprisingly, the different "tone[s] of voice" involve differing attitudes toward men. Prophetic feminism offers a "vision of what women may become and a celebration of the feminine."⁸³ Ideological feminism, by contrast, "is animated by a spirit of resentment, the tactic of blame, and the desire for vindictive triumph over men that comes out of the dogmatic assumption that women are innocent victims of a male conspiracy."⁸⁴ In short, prophetic feminism celebrates women; ideological feminism denigrates men.

On closer inspection, however, the difference is not so simple. Prophetic feminism also says some very negative things about men:

Western culture has been dominated by patriarchy . . . [, which] is rooted in hierarchy, obsession with power, control, and government by violence. [Furthermore,] [w]arfare, rape, and ecological destruction of "Mother" nature are rooted in patriarchal habits of thought and modes of social organization; misogyny and gynophobia . . . form the subtext of Western "his-tory."⁸⁵

If all of these perspectives are "enlightening,"⁸⁶ then what could ideological feminism say that is so much worse? Apparently, the difference is the degree of guilt: "This type of [ideological feminist] demonic theory of history renders men responsible for all of the ills of society, and women innocent."⁸⁷ Men are not wholly guilty, and women not wholly innocent,⁸⁸ and prophetic but not ideological feminism realizes this truth.

80. See BLY, *supra* note 76, at x, *passim*.

81. KEEN, *supra* note 71, at 195.

82. KEEN, *supra* note 71, at 195.

83. KEEN, *supra* note 71, at 195.

84. KEEN, *supra* note 71, at 196.

85. KEEN, *supra* note 71, at 196.

86. KEEN, *supra* note 71, at 196.

87. KEEN, *supra* note 71, at 200.

88. See KEEN, *supra* note 71, at 205-06.

Still, if patriarchy and misogyny really have gripped Western culture, then presumably men must share more of the blame and do more of the changing to correct the situation. At one point, Keen seems to be moving toward this conclusion. He observes, "[t]he task of reasonable men and women, and courts of law, is to try to weigh innocence and guilt on a scale that ranges from zero to one hundred percent depending on the degree of freedom, insight, and range of opportunities that exist."⁸⁹ At the top of the guilt list stand "public officials who are graduates of Ivy League universities."⁹⁰ At this point, then, we might expect that Keen On Malebashing would conclude: be aware of degree differences; don't criticize men indiscriminately; don't criticize men unless they deserve it; don't demonize.

In fact, however, Keen concludes that feminists should not criticize men *at all*. Keen advises that reasonable men and women must weigh guilt on a judicial model, but he also recommends a seemingly inconsistent psychotherapeutic model in which guilt is an irrelevant and dangerous concept: "Perhaps the greatest single advance in psychological and social theory in the last fifty years has been the emergence of systems-thinking. Group therapy, family therapy, the Alcoholics Anonymous movement are all based upon the discovery that power, responsibility, action, blame are shared by all participants within a system."⁹¹ In the end, this therapeutic model wins Keen's allegiance:

Men have begun to feel their unique form of the pain of victimization that has led to other liberation movements among women and minorities. Until recently, we have all been unconsciously playing assigned roles in a drama that we were not aware of having created. THE SYSTEM is running us all. . . .

. . . .
. . . .

[O]ur depression can turn into a sense of empowerment when we begin to look carefully at the way men and women interact in a codependent way to maintain the system.⁹²

89. KEEN, *supra* note 71, at 205.

90. KEEN, *supra* note 71, at 206.

91. KEEN, *supra* note 71, at 204.

92. KEEN, *supra* note 71, at 207.

Keen proposes that our task should be to cooperate in "Ending the Blame Game."⁹³ He explains ten rules of the blame game,⁹⁴ the most important of which are the last two. Rule nine is that "[t]he interactions between the active-aggressive (traditionally male) and the passive-aggressive (traditionally female) partners in the game are symmetrical and equally 'powerful.'"⁹⁵ Rule ten is that the game is over "when either player jumps out of the horizon of the game and begins to examine the social system that keeps both genders defined in a hostile-dependent, mutually exclusive, competitive way."⁹⁶ Like the blame game itself, the solution is essentially therapeutic and personal, not political: "[t]he fastest path to ending the blame game is a committed relationship in which two people agree to work together at the process of becoming conscious and compassionate."⁹⁷ Ultimately, Keen offers us the obligatory reference to the mystery of gender, the dance of gender, and the hope that we can just go back to loving one another:

The question of gender is penultimately a problem, but ultimately a mystery. . . . Throughout the eons of history we move toward becoming fully human only through a sexual dance of men and women. . . .

. . . .
. . . .

Love increases the mystery of the self and the other. . . . Strangers in the night, opposites joined in a passionate dance, keeping step to an echo of a distant harmony we must strain to hear. Moving toward and away from each other; two becoming one becoming two becoming one, ad infinitum.⁹⁸

At this point, Keen has travelled very far from his starting premises. It turns out that western culture has not been dominated by patriarchy; it has been dominated by codependency in which everyone is a victim and everyone is equally powerful. Keen's departure from the degree-of-guilt idea is especially interesting. In repudiation of radical feminism, Keen reasonably argues that we should pay attention to degrees of guilt;

93. KEEN, *supra* note 71, at 208.

94. See KEEN, *supra* note 71, at 208-09.

95. KEEN, *supra* note 71, at 209.

96. KEEN, *supra* note 71, at 209.

97. KEEN, *supra* note 71, at 210.

98. KEEN, *supra* note 71, at 218-20.

as between men, some are less guilty than others. But in apparent anticipation of the response that men as a class are more guilty than women as a class, Keen responds that we should abandon the whole idea of relative guilt as between the genders: "[i]t serves no useful purpose to argue about who suffers most."⁹⁹ So from the radical feminist claim that all men are guilty alike, Keen rushes to the opposite pole: guilt is beside the point. In effect, there are no guilty men and no guilty women.

Keen's most profound shift, however, involves the basic purpose of gender theory analysis. In admiring prophetic feminism, he admires a movement that boldly analyzes gender as a political construct and offers political reforms. As Keen admits, "Western culture has been dominated by patriarchy," and the solution is to break the power of the patriarchy.¹⁰⁰ Over the course of the next thirty pages, however, Keen shifts to a very different purpose: apparently the key goal of gender analysis is not to correct power imbalances, not to right injustice, not even to describe the present condition of gender relations—any of which might lead to some negative statements about men—but rather to promote gender reconciliation.¹⁰¹ Let us argue no more, blame no more, hurt no more. Instead, let's dance. It'll be better. You'll see. Davidson, Lasson, and Morrow reach essentially the same conclusion: "Quite a long time ago—remember?—we used to fall in love."¹⁰²

All of these writers, then, implicitly adopt a criterion for malebashing. The test is not whether negative statements about men are false or unjust; the test is whether they will increase hostility between the genders. If men are easily offended—as at least some men are—then almost all negative statements about men will increase hostility and, thus, are malebashing. The basic message to feminists is clear: stop criticizing men because it only makes everyone upset. It is difficult not to hear in this message a yearning for a simpler day before women started protesting injustice and *asking men to change*.

Admittedly, sweet talk about dancing and mysteries and love sounds appealing. But such talk may obscure a harsher reality. In the real world, in conventional dancing, men lead and women follow. It is easy to sit patiently before a mystery if you experience the mystery as empowering. And as a group, men may hate and abuse women more than they love

99. KEEN, *supra* note 71, at 211.

100. KEEN, *supra* note 71, at 196–207.

101. See KEEN, *supra* note 71, 211.

102. Morrow, *supra* note 69, at 59.

them. Or at least all those things may be so; we will not know unless we look. And we cannot look if every controversial statement about men is rejected as "malebashing" on the grounds that it stirs rancor. This point, so basic to modern feminism and so obvious, bears repeating. One cannot know whether, to what extent, and in what way women are oppressed until one actually looks. When one looks, one might discover some not nice things about men, things that men do not like to think about themselves or other men, things that men did not know about themselves or other men. To correct oppression, one must examine how widespread it is and by what mechanisms it continues. All this examination may make for depressing reading, perhaps some shame, perhaps some rancor—and all of those results may be unfortunate. But without the examination, we can never have justice. Reform always brings some rancor. If we rule statements out of bounds because they cause controversy, we have abandoned the search for equity.¹⁰³

Feminists, of course, have dialogic responsibilities as well, and we will examine those in later sections. There are good and bad ways to make rancor-producing statements. Some rancor-producing statements are dialogically illegitimate, though not because they produce rancor. And feminists must pay attention to the forum in which they are speaking to know when certain statements are appropriate. But all of these claims rest on a crucial distinction: some negative statements about men are legitimate, and others are not. Davidson, Keen, Lasson, and Morrow would apparently block *all* such statements at the door of the party on the grounds that they are upsetting the guests.

B. Beasts and Conspirators

A blanket condemnation of all negative statements about men, then, is unwarranted, but a more specific definition of "malebashing" might be possible. Among those who allege malebashing, two particular attacks on men seem to rankle most: men are beasts by nature (as a result either of biology or inevitable social conditioning); and men are engaged in a universal, conscious conspiracy to oppress women.

103. Keen's movement from a political to a personal analysis of gender is a particularly vivid example of this danger: he completely ignores the feminist argument that the personal is political. In so doing, he—like Lasson, Davidson, Morrow, and others—urges us all to improve our personal relationships, rather than to break the power of patriarchy. And so systematic gender power imbalances suddenly disappear into the private and individual world of the personal, where we can all just love each other if we are giving, caring, and compromising enough.

The idea that men are beasts and cannot help themselves did not originate with modern feminism. It has been prominent in various religious traditions, especially a feminized protestantism, for some time in this country.¹⁰⁴ It has been widely shared by a variety of women, not just self-proclaimed feminists.¹⁰⁵ It has even been adopted by opponents of feminism, although for conservative ends. Since men are beasts, the argument goes, women must tame them by acting in traditional ways. Otherwise, society will fall apart, with violent rogue males wandering the landscape.¹⁰⁶

Despite its prevalence, the charge arouses particular animosity when it comes from the mouths (or is placed in the mouths) of feminists. We have already seen Professor Lasson allege that according to feminists, gender differences are "immutable" and "biological."¹⁰⁷ We have also seen that Lasson makes this claim without citation and in direct contradiction to some of the feminists against whom he makes the allegation.¹⁰⁸ This allegation seems to emerge not from the pages of any feminist writing, but from some deep fantasy image of the "Man-hating Feminist." Similarly, Lance Morrow declaims, "[here's] the tone exactly: Men-are-animals-I-don't-care-if-they're-not-doing-anything-at-the-moment-they're-thinking-about-it-and-they-will-when-they-have-the-chance."¹⁰⁹ The attitude is aptly captured in the much resented charge that men suffer from "testosterone poisoning":¹¹⁰ men rape, kill, plunder the environment, dominate others, engage in alienated relationships, all by force of hormones (or as an inevitable consequence of social conditioning—the result is the same as long as men have no control over the process).

It is easy to understand why men resent this point of view. It casts them as villains by nature, and there is nothing they can do about it. Men are thus not actually responsible in a volitional sense for these failings, and generally such an incapacity would excuse moral actors in

104. See, e.g., TED OWNBY, *SUBDUING SATAN: RELIGION, RECREATION, AND MANHOOD IN THE RURAL SOUTH 1865-1920* (1990).

105. See JUDITH LEVINE, *MY ENEMY, MY LOVE: MAN-HATING AND AMBIVALENCE IN WOMEN'S LIVES* 138-84 (1992).

106. See GEORGE GILDER, *NAKED NOMADS: UNMARRIED MEN IN AMERICA* 27-28, 75-76 (1974); GEORGE GILDER, *MEN AND MARRIAGE* 39-40 (1986).

107. Lasson, *supra* note 22, at 12-13.

108. See *supra* notes 48-53 and accompanying text.

109. Morrow, *supra* note 69, at 54.

110. E.g., Tasker, *supra* note 69, at 15.

our legal system.¹¹¹ But the men-as-beasts view nonetheless blames men for their nature, and the reason is not hard to surmise. The whole idea that responsibility must rest on volition applies only to free, rational, moral actors. When, because of unusual circumstances, such actors lack moral capacity, they are excused. But men are not such actors; they are brutes. Men's beastliness is not just a periodic eruption into an otherwise benign nature, furnishing an excuse for occasional immoral acts. Rather, men are so depraved that they are not even responsible moral actors; they are beastly through and through. One blames them in the way that one would blame a rabid dog, not a Kantian self. Under this view, feminist writing is simple denunciation of men rather than an attempt to engage them in conversation. The feminist future allows only two possibilities: since men are hopeless, you could leave them, forming separatist societies,¹¹² or you could kill enough of them to get them under control.¹¹³

The universal-conspiracy view rankles as much as the men-as-beasts view. Sam Keen, for example, argues that the universal-conspiracy view is the basis of ideological feminism:

[I]deological feminism [rests on] the dogmatic assumption that women are the innocent victims of a male conspiracy. . . . "Patriarchy" is the devil term, the code word for the evil empire of men, the masculine conspiracy that has dominated human history since the time of the fall. All of the great agonies of our time are attributed to the great Satan of patriarchy.¹¹⁴

At its most extreme, this conspiracy theory argues that all men consciously conspire to oppress women, so as to advance the interests of men as a class:

Violence is described as being a *tool*, as it were, in an arsenal of devices and strategies that are somehow tailor-made for the defence of male domination, and the choice of one tool rather than another is a consequence of *conscious monitoring* by men, of the progress of the "struggle" to maintain women's subor-

111. See David C. Williams & Susan H. Williams, *Volitionalism and Religious Liberty*, 76 CORNELL L. REV. 769 (1991).

112. See Morrow, *supra* note 69, at 59; Shibles, *supra* note 69, at 39 (citing one actual feminist).

113. See KEEN, *supra* note 71, at 199 (citing one actual feminist).

114. KEEN, *supra* note 71, at 196-97.

dination. This kind of instrumentalism sometimes reduces to a highly implausible species of conspiracy theory¹¹⁵

Again, it is easy to understand why men, even feminist men, resent this view. Most men do not experience themselves as having so much power, and many men do not consciously oppress women. One writer protests:

I know that I have at times been oppressive like many men, and that domestic violence is a problem in many relationships. But I'm far from sure that most men either have or experience the power that feminism assumes they have. The traditional oppressor (ie [sic] the colonialist, the Nazi, the coal mine owner) has tangible individual power over those he controls and they can't escape. I may, willy nilly, have been part of the patriarchal order since my barmitzvah but I don't think that has made me as much in control of my life, love and work as most feminist analyses blithely assume.¹¹⁶

Under this analysis, feminist conspiracy theories fail to (1) pay heed to men's account of their own experiences, (2) draw a moral distinction between those who benefit indirectly and unintentionally from patriarchy and those who consciously and conspiratorially advance it, and (3) explain how those who indirectly benefit from patriarchy are thereby guilty of anything, since they cannot stop benefitting as long as they live in a patriarchal society. As a result, even those who try to do good (or at least not do bad) are held to account for the actions of the real conspirators.

The men-as-beasts view and the universal-conspiracy view both portray men as villains but in very different ways. In the men-as-beasts view, men effectively have no agency.¹¹⁷ Driven by biology or social conditioning, they cannot change their nature. They are mindless

115. A. Mark Liddle, *Feminist Contributions to An Understanding of Violence Against Women—Three Steps Forward, Two Steps Back*, 26 CANAD. REV. SOC. & ANTH. 759, 763 (1989) (emphasis in the original).

116. Cohen, *supra* note 69, at 31.

117. In the term "agency" we mean to include two analytically severable concepts: moral freedom and practical power. Therefore, "agency" broadly refers to the ability to shape one's own life, because one has both an incompletely determined will and some power to effect that will. In this sense, agency might be synonymous with meaningful self-determination. Thus defined, agency lies on a continuum; it is not an absolute concept.

animals. In the universal-conspiracy view, by contrast, men have enormous scope of agency. They hold all the power in society, and they freely and deliberately act to promote patriarchy. They are cunning, ingenious conspirators.

The rebuttal to each view also dwells on issues of agency, but again in quite different ways. To the men-as-beasts view, many men want to respond: "Biology is not destiny. I am not condemned by hormones or social conditioning to be a brute. I have enough conscious agency to make myself into a good man." To the universal-conspiracy view, many men want to respond: "I don't have that much control, so I'm not responsible. I'm part of a patriarchal culture, and I may get benefits from that culture, I may even still hold some sexist attitudes from my upbringing. But I didn't make that culture and I don't know how to get out of its snare altogether. How could I not receive patriarchal benefits from a patriarchal culture? And how could I ever wholly escape the training of my childhood?"

At an analytical level, then, the two views are very different. At the level of emotional threat and argumentative structure, however, the two views seem to be quite similar. Whether men are brutes or universal conspirators, all or substantially all men participate in the oppression of women, in more or less the same way if not always to the same extent. The message is loud and clear: Do not excuse yourself—no more "present company excepted." Many men may be prepared to indict others but wish to excuse themselves and their loved ones: "[A] lot of men feel they have been swept into a net where they don't belong and they consider it unfair."¹¹⁸ So, in response to the men-as-beasts view, they say: "I'm not like that because I have more agency." In response to the universal-conspiracy view, they also say: "I'm not like that because I don't have that much agency."

As a result, when men respond to one of these two views, they often could as well be responding to the other, because for emotional purposes the two are not very different.¹¹⁹ For example, Lance Morrow objects

118. Dube, *supra* note 66, at A2 (quoting Donald Whyte of Carleton University).

119. As usual, television may capture the emotional outlook best. In a recent Murphy Brown episode, sober and decent Jim Dial exclaims: "I have never raped, pillaged or burned anyone! Do you know what it's like being 55, male and white these days, and being blamed for everything from slavery to the destruction of the ozone layer?" Stein, *supra* note 69, at 30. He feels blamed here for the actions of others. He wants to claim that he is not like that. But it is not clear why he is being blamed—because he is a conspirator or a brute or both?

specifically to the men-as-beasts view, but his objection could also be made to the universal-conspiracy view without changing a word: "The psychology produces a technique of gender slur that might be called Worst Case Synecdoche: All men are assumed to be as bad as the very worst among them."¹²⁰ Nicholas Davidson elides the two views when, again without citation, he insists that feminists see men as "omnipotent [i.e., universal-conspiratorial] and inevitable [i.e., beasts-by-nature] villains."¹²¹

This similarity may be most apparent in the response to the feminist analysis of rape. The *locus classicus* of conspiracy theories is Susan Brownmiller's assertion that rape is "nothing more or less than a conscious process of intimidation by which *all men* keep *all women* in a state of fear."¹²² At the same time, some have attributed to MacKinnon and Dworkin the view that all men are rapists by nature.¹²³ At an analytical level, it makes a great deal of difference whether "all men are rapists" because of biology or conspiracy, but at an emotional level, it makes much less difference. The key response to both views is that men are not all the same.¹²⁴

In short, the allegations of malebashing proceed on two levels. On the first, analytical level, some men assert a quite specific charge against feminists: feminists claim that men are brutes or conspirators, and such claims are not true. On the second, emotional level, the cry is much more direct: "It's not true of me—leave me a doorway to dignity out of this hostile territory." Much of the discourse about malebashing may really be about this emotional subtext. Perhaps such a subtext is inevitable because, understandably enough, men feel accused and hence defensive in response to allegations of universal male perfidy. Discerning this emotional response, feminists may feel overly inclined to discount protestations of malebashing. Indeed, the point in charges like Brownmiller's may precisely be to leave men no out.¹²⁵ These feminists might say to men: "Don't be too quick to excuse yourselves. Examine

120. Morrow, *supra* note 69, at 58.

121. Davidson, *supra* note 5, at 43. Inadvertently, Davidson here poses the ancient theological conundrum: if you are truly omnipotent, how can anything you do be inevitable?

122. SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 15 (1975).

123. See, e.g., Morrow, *supra* note 69, at 58.

124. See, e.g., KEEN, *supra* note 71, at 205–06 (on universal-conspiracy); Morrow, *supra* note 69, at 58 (on men-as-beasts).

125. See *supra* text accompanying note 122.

your own conduct and attitudes with care; virtually everyone is contaminated with patriarchal attitudes.” Moreover, once the escape valve is opened, it may be hard to stem the flood of avoidance. The chain of reasoning is not hard to imagine: “I’m not like that so these statistics can’t be true.”¹²⁶ If my friends and I are good men, there must be more; we cannot be the only ones. So if there are some good men, there must be many. From there, the next step is easy but significant: If many men are good, isn’t it likely that most men are good?¹²⁷ If most men are good, then men could feel proud of being men again. No more would we/they have to bemoan, “Sometimes I feel bad being a guy.”¹²⁸ And if all of that is true, wouldn’t it really be better to dance and forget this whole thing? And so we retrace Sam Keen’s flight: from asserting that not all men are guilty, we race to the conclusion that all men are not guilty.

As tempting as it is to continue on this emotional level, we will not come to a clearer view of malebashing as long as we do so. It may be perfectly understandable that some feminists may make universal accusations so as to command male attention. It may also be perfectly understandable that some men may seek to turn aside that accusation without examining their own conduct or attitudes. But this game of attack-and-defend, this strictly instrumental use of words, does not in the long run advance analysis. Accordingly, we intend in the next section to take seriously the analytical element and ignore the emotional subtext of the men-as-beasts and universal-conspiracy views. These two views may offer the basis of a feminist theory of malebashing.

SECTION THREE: FEMINISM, DIALOGUE, AND MALEBASHING

Although it cannot be the case that all criticisms of men are off-limits for feminists, it may nonetheless be true that certain types of criticism are inappropriate or illegitimate, at least in an academic dialogue. In this Section, we explore two different sources of constraints on criticism of men. First, in subsection A., we argue that feminism’s own assumptions and commitments give rise to certain limits on the types of legitimate criticism. We argue that feminist values require a rejection of

126. Dube, *supra* note 66, at A2 (quoting Eileen Saunders of Carleton University, who argues that “[p]ersonalizing the problem” in this way is “denying the problem”).

127. Remember Lasson’s assertion of faith that “most men” “abhor” rape and “do not oppress most women”—protesting at the same time that one could never prove such a thing. Lasson, *supra* note 22, at 18.

128. Dube, *supra* note 66, at A2 (quoting a twenty-two year old male).

the views of agency inherent in the two versions of malebashing we have identified: the men-as-beast argument and the male conspiracy theory. Second, in subsection B., we describe how dialogic norms—particularly those dialogic norms adopted by some feminists—generate similar constraints on the participants in a scholarly conversation. These two subsections are largely independent. Either one alone, if persuasive, should suffice to make the case that certain kinds of criticism of men are illegitimate in an academic dialogue and may justifiably be called malebashing.

Finally, in subsection C., we consider how a definition of malebashing based on these two sets of values might actually function. This subsection discusses the application of norms concerning malebashing to these “intermediate” claims. The norms we suggest provide a basis for criticizing some of these intermediate claims as akin to malebashing. Nonetheless, we also believe that in such cases men have an obligation not to deflect the conversation from the merits of the feminist argument at issue to a debate over whether the feminist speaker is engaged in malebashing.

A. General Feminist Values

The two types of attacks on men we identified earlier define the end points of a continuum of positions on the issue of agency. The conspiracy theory implies that all men make a conscious choice to promote patriarchy in general and/or to oppress and dominate the women in their lives in particular. This theory assumes full, individual agency exercised in a deliberate and calculating way. The men-as-beasts approach, on the other hand, implies practically no individual agency at all. Men are so completely at the mercy of either biology or social conditioning that they are simply incapable of choosing to alter their behavior. These two extreme positions on agency are, however, inconsistent with some of the deepest and most widely shared commitments of feminist theory. They are, therefore, inappropriate within a feminist argument in academic discourse.¹²⁹

129. As we mentioned in the Introduction, it is possible that different norms might apply in other contexts, such as a consciousness raising group or a political rally. *See supra* pp. 2–3. Our argument in this Section is devoted exclusively to the context of scholarly dialogue and debate.

1. The Universal Male Conspiracy Theory

The possibility of absolute and unconditioned individual agency is at odds with the common feminist commitment to the analysis of gender as a social construct that shapes the consciousness of individuals. This shaping may take place through the processes of identity formation in early childhood,¹³⁰ the development of sexual identity in later childhood or adolescence,¹³¹ or the experiences of sexually mature adulthood.¹³² Feminists have spent considerable time and energy examining the ways in which the social construction of gender constrains and damages women. Indeed, it is a central tenet of modern feminist theory that gender identity is not simply a freely chosen individual characteristic, but a system of social relations backed by meaningful sanctions.¹³³

Part of the constraint of gender is, of course, purely external, such as the barriers to entry and success in many professions¹³⁴ and the widespread violence against women.¹³⁵ But some of the most important constraints become internalized in ways that affect agency. For instance, women may define themselves in ways that make certain professions either unattractive or difficult, even as external barriers are coming down.¹³⁶ Or women may respond to the threat of violent expropriation

130. See generally NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHO-ANALYSIS AND THE SOCIOLOGY OF GENDER* (1978).

131. See generally EMILY HANCOCK, *THE GIRL WITHIN* (1989).

132. See MACKINNON, *Linda's Life and Andrea's Work*, in *FEMINISM UNMODIFIED*, *supra* note 53, at 127, 127–29 (on the relationship between the experience of pornography victims and women generally); Martha R. Mahoney, *Legal Images of Battered Women*, 90 MICH. L. REV. 1, 18 (1991); Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WISC. WOMEN'S L.J. 81 (1987) [hereinafter West, *Hedonic Lives*].

133. See MARTHA MINOW, *MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERICAN LAW* 194 (1990).

134. For discussions of such barriers in the legal profession, see Ann J. Gellis, *Great Expectations: Women in the Legal Profession*, *A Commentary on State Studies*, 66 IND. L.J. 941, 941, 947, 949 (1991); Marina Angel, *Women in Legal Education: What It's Like To Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799, 801–03 (1988); Deborah Round, Note, *Gender Bias in the Judicial System*, 61 S. CAL. L. REV. 2193, 2202 (1988).

135. Between two and four million women are beaten by their partners each year. See Council on Scientific Affairs, *Violence Against Women: Relevance for Medical Practitioners*, 276 (23) JAMA 3184–89 (1992).

136. See Lani Guinier et al., *Becoming Gentlemen: Women's Experiences at One Ivy League Law School*, 143 U. PA. L. REV. 1, 42–43 (1994); Catherine Weiss & Louise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1313–20 (1988); Sue

by defining themselves as "giving selves" as a way of defusing the experience of threat: you cannot harm me by taking from me what I freely give to you.¹³⁷

In such situations, it is no longer meaningful to speak of external or internal constraints. The point is that culture permeates; it exists both within and between people. It is also no longer meaningful to speak in terms of full or simple individual agency. No feminist would say that the woman who has defined herself as a giving self in a violently sexist society has simply "chosen" to support that patriarchal culture. The sort of unconstrained choice assumed by this model of agency is impossible in the world made visible from this feminist perspective.

Perhaps it is easiest to see the constraints of culture when they lead to "choices" that come at a great cost to the individual agent, as in the acceptance of violence. It may be less obvious that cultural constraints are at work where the "choice" is one that seems to serve the agent's interests. It is undoubtedly the case that many men, perhaps even all men, sometimes act in ways that perpetuate the gender hierarchy in which they dominate. But there is no reason to believe that those actions are the product of autonomous individual choice (of the kind necessary to support a conscious conspiracy) rather than of social conditioning. Indeed, while it is certainly possible that some men make conscious choices to support patriarchy as a means of serving their own interests,¹³⁸

V. Rosser, *The Relationship Between Women's Studies and Women in Science*, in *FEMINIST APPROACHES TO SCIENCE* 167 (Ruth Bleier ed., 1986). One of the most striking and controversial examples of this phenomenon is found in the testimony of the historian Rosalind Rosenberg in the *Sears* case. *EEOC v. Sears Roebuck & Co.*, 628 F. Supp. 1264 (N.D. Ill. 1986), *aff'd*, 839 F.2d 302 (7th Cir. 1988). Joan C. Williams, *Deconstructing Gender*, 87 MICH. L. REV. 797, 813-15 (1989). Sears was accused of gender discrimination because women were underrepresented in its higher paid commission sales force. Williams, *supra*, at 813. Sears defended by presenting Rosenberg's testimony that women chose not to pursue these higher paying jobs because of their commitments to home, family, and non-confrontational interactions. Williams, *supra*, at 814-15. One need not find such evidence an acceptable defense to a Title VII action in order to admit that social constraints based on gender can be internalized in this way.

137. See West, *Hedonic Lives*, *supra* note 132, at 94.

138. By asserting that some meaningful choices are possible, we are explicitly refusing to abandon individual autonomy entirely. As we will explain in the discussion of the men-as-beasts criticism, see *infra* text accompanying notes 144-86, a view that sees social construction as simply destiny is also in tension with some deep feminist commitments. Human agency and motivation is, in other words, a complex and multifaceted thing. We believe that the degree of social constructionism required by a feminist analysis of gender does not demand that we ignore or oversimplify this complexity.

it is plain that many men act in ways that promote gender hierarchy without any conscious choice at all, simply because that is the way they understand their own gender identity. Both in terms of external and internal constraints, men's gender roles are backed up by the same sorts of cultural forces as women's.¹³⁹ This is not to say, of course, that these gender roles cause equal harm to both groups. It is merely to say that they both *are* gender roles, categories socially constructed and enforced rather than simply the products of conscious, individual choice.¹⁴⁰

The point is that the conspiracy theory rests on a simple notion of autonomous agency that has been abandoned by feminist theory. There are, of course, many difficult, related issues over which feminists disagree—for example, whether there is some biological basis for gender identity¹⁴¹ and whether some less extreme concept of autonomy would be useful or necessary for women.¹⁴² Regardless of how one decides such issues, however, if one recognizes gender as (at least in part) a social construct that shapes individual consciousness, then one cannot accept

139. See, e.g., R.W. CONNELL, GENDER AND POWER 183–88 (1987) [hereinafter CONNELL, GENDER AND POWER]; ROBERT L. GRISWOLD, FATHERHOOD IN AMERICA: A HISTORY 261 (1993); ROTUNDA, *supra* note 75, at 291–92.

140. A rejection of the conspiracy theory does not necessarily free men from moral responsibility for the existence of a patriarchal system. First, men who are not conscious conspirators are not necessarily less blameworthy than men who are. It is possible that a man who beats his wife without any conscious thought of contributing to gender hierarchy is more morally culpable than one who works for the passage of legislation restricting women's work options for the explicit reason that it will help to maintain patriarchy. As this example suggests, there are many ways to measure moral blameworthiness. Conscious promotion of inequality is certainly relevant, but it is not necessarily dispositive. Second, even men who are not morally culpable for the system of patriarchy may nonetheless have a moral responsibility to work to change that system. Even if one is not morally culpable for causing a certain injustice, one may have a moral responsibility to correct it because one continues to benefit from it or because of one's position of power. See generally Cheshire Calhoun, *Responsibility and Reproach*, 99 ETHICS 389 (1989) (arguing that people may be subject to reproach and held responsible for moral failings even when they are not individually blameworthy under traditional notions of responsibility). Arguments about what moral responsibilities men bear for sexism are not malebashing as long as they do not ascribe the types of agency that we discuss in the text.

141. See West, *Jurisprudence and Gender*, *supra* note 50, at 20–27 (describing a "material" rather than cultural explanation for women's difference from men and exploring the unwillingness of many legal feminists to accept this explanation).

142. See generally Susan H. Williams, *A Feminist Reassessment of Civil Society*, 72 IND. L.J. 417 (1997) (proposing a feminist model of autonomy); Jennifer Nedelsky, *Reconceiving Autonomy: Sources, Thoughts and Possibilities*, 1 YALE J.L. & FEMINISM 7 (1989) (discussing both the difficulties with and the need for a feminist vision of autonomy).

the claim that gender hierarchy is a consciously chosen conspiracy by all men.

The conspiracy theory is also in tension with another widely shared value of feminist theory: the insistence on listening to people's own accounts of their experience. Many men report that they do not experience themselves as choosing to be the conscious manipulators of patriarchal power. First, they do not feel nearly as powerful as that scenario implies.¹⁴³ Second, they experience themselves as trying, however imperfectly, to promote gender equality rather than gender hierarchy.¹⁴⁴ If feminists are truly committed to listening to how people actually experience their lives, they must take these accounts seriously.¹⁴⁵

Taking these accounts seriously does not, of course, mean uncritically accepting the speaker's initial assessment of his own situation. Men may have more power than they are aware of, and even those who believe that they are trying to promote equality may be doing far more for the cause of hierarchy than they realize. If we use women's consciousness raising groups as a model, then to take men's accounts seriously may mean using such accounts as the starting point rather than the ending point of analysis.¹⁴⁶

Nonetheless, if men's accounts of their experience are considered part of the starting point, along with women's accounts of their experience, then the conspiracy theory has a large strike against it. Even if many men have more power and do more harm than they realize, their own accounts of their motivations surely raise extremely serious questions about the existence of a *conscious* conspiracy.¹⁴⁷ Unless we believe they

143. See KATHLEEN GERSON, *NO MAN'S LAND: MEN'S CHANGING COMMITMENTS TO FAMILY AND WORK* 13-14, 147-50, 265-68 (1993); MARK GERSON, *A CHOICE OF HEROES: THE CHANGING FACES OF AMERICAN MANHOOD* 14-16, 127, 131 (1982); GRISWOLD, *supra* note 139, at 237-39.

144. See GERSON, *supra* note 143, at 15, 158-64, 166-67, 266-67; GRISWOLD, *supra* note 139, at 223-25, 245-47; cf. ROTUNDA, *supra* note 75, at 9.

145. Feminists are, of course, committed to listening to women, but they should also be concerned with listening to men's accounts of their experience. Because women's voices have been silenced for so long they may have an additional claim to be heard that men's voices do not share. Nonetheless, the basic demand to take seriously people's accounts of their own experience arises from a simple notion of respect for persons that applies to men as well as women.

146. See Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 863-64 (1990).

147. One might, of course, still claim that there was an *unconscious* conspiracy; that is, that promoting patriarchy is these men's actual motivation even if they are unaware of it consciously. As to this claim, men's own accounts might be relevant evidence but

are simply lying, then it is not possible that these men are consciously attempting to promote patriarchy. Taking people's accounts seriously must mean at least that we start with a presumption that they are not lying.¹⁴⁸

2. The Men-As-Beasts Theory

The second kind of attack on men that we identified involved the claim that men are incapable of being other than patriarchal brutes. This men-as-beasts theory suggests that, because of either biology or cultural training, all men engage in some set of evil or destructive behaviors: dominating women, exhibiting violent aggression on a large scale (war) or a small scale (spousal and child abuse), destroying the environment, or simply being unable to have a truly giving relationship. The point is that such behavior is hard-wired, so that efforts by individual men to avoid this destiny are transitory and marginal at best, futile at worst.

a. Inherency

Like the conspiracy theory, this men-as-beasts theory is inconsistent with some extremely important and widely shared feminist commitments. First, just as feminism cannot do without some degree of social constructionism, on the one hand, it also cannot function within a world-view of simple and complete determinism, on the other. Feminism's rejection of determinism is clearest in the case of biological determinism. Indeed, the claim that biology is destiny has been one of the major targets of

they would certainly not be dispositive. This contention might be worth arguing about, but it is simply not a conspiracy theory in the sense we are using that term: it does not imply the kind of autonomous individual choice that makes the conspiracy theory objectionable from within the feminist perspective. Indeed, it may be just an example of the social construction discussed above. Thus, the meaning of such a "conspiracy" is entirely different from the meaning of the conspiracy theory as we have described it.

148. It is hard to even imagine the kind of evidence one would need to show that all men are lying when they say that they are not consciously trying to promote patriarchy. Indeed, it is not clear that such a proof is practically possible, although it may be logically possible. Our point here, however, is simply that a feminist commitment to listening to people's accounts of their experience requires that the burden of such a proof rest on the proponents of conspiracy theories. Until that onerous burden is met, we must assume that not all men are lying.

feminist criticism in the twentieth century.¹⁴⁹ Obviously, if women are fated by their (reproductive) biology to be dependent on men, then patriarchy would be close to inevitable.¹⁵⁰ The feminist program of greater equality for women has, as a matter of both history and logic, rejected the claim that biology determines behavior and character in any simple, deterministic way.¹⁵¹ To the extent that the men-as-beasts claim rests on such biological determinism, it is in tension with this long-held position.

Complete cultural determinism raises somewhat more complicated issues, but it too is ultimately unacceptable from a feminist point of view. According to a thoroughgoing cultural determinism, women along with men should be utterly incapable of escaping their sex roles. Indeed, if social conditioning were so simply and completely determinative, a woman in a sexist society should not even be able to see, let alone adopt, a feminist view.¹⁵²

Feminists, however, want and need to claim both that ours is a sexist society and that feminism is possible. There are, of course, many ways to reconcile the reality of cultural influence with the possibility of feminism. First, one could point out that our culture, while undoubtedly sexist, is not monolithic: it provides resources on which feminists may

149. See, e.g., Ruth Bleier, *Sex Differences Research: Science or Belief?*, in *FEMINIST APPROACHES TO SCIENCE* 147 (Ruth Bleier ed., 1986).

150. "[C]lose to inevitable" rather than simply inevitable because there are ways of treating even dependent persons with equal respect. Indeed, once we recognize that all people are interdependent, those relations of dependence may themselves become the basis for claims of respect and rights. See MINOW, *supra* note 133, at 299–306 (assessing arguments against children's rights).

151. Feminists have rejected not only global determinism (i.e., patriarchy as biological necessity) but also trait-specific determinism (e.g., female passivity as biologically determined). See, e.g., RUTH BLEIER, *SCIENCE AND GENDER* 73 (1984) (suggesting that woman's "nature"—including passivity, sensitivity, nurturing—is a result of patriarchal assignment of functions, not the cause); Bleier, *Sex Differences Research*, *supra* note 149 (discussing research comparing visuospatial processing and mathematical ability between men and women). Some modern feminists may, of course, believe that biology has some impact on gender differences, see *infra* text accompanying note 327, but they generally resist the idea that this impact is independent of cultural influences. See, e.g., Deborah L. Rhode, *Introduction*, in *THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE* 1, 4 (Deborah L. Rhode ed., 1990) ("For example, we cannot understand sex-based differentials of height, weight, and physical strength without considering the influence of diet, dress, division of labor, and so forth.").

152. For a discussion of Catharine MacKinnon, who is sometimes accused of this type of complete social determinism, see *infra* text accompanying notes 341–64.

draw in challenging gender hierarchy. Second, one could argue that the actual experiences of women, and the pain caused by those experiences, provide a source and motive for seeing gender in a new way.¹⁵³ Whatever the merits of or difficulties with these arguments,¹⁵⁴ they will not suffice to make the men-as-beasts view acceptable. After all, the same mechanisms that allow women to embrace feminism should allow men to escape their ordained gender roles. In other words, the simplistic determinism implicit in the men-as-beasts theory is an unworkable stance for feminism, and the more subtle arguments that feminists make (to maintain social constructionism while avoiding simplistic determinism) are in conflict with the men-as-beasts claim.

The first feminist path away from simple determinism is to point out that our culture is extremely varied, including strands that pull in different directions and that are, at times, even inconsistent. While a great deal of that culture incorporates notions of gender roles that promote male domination, feminists have nonetheless found support for gender equality in such varied cultural sources as liberal equality values,¹⁵⁵ Marxist analysis,¹⁵⁶ and even traditional feminine moral virtue.¹⁵⁷ Even if patriarchy is the dominant cultural pattern, women are able to recognize its flaws and reject it because the culture also contains secondary themes that provide a conceptual foundation for that contrary view.

If such resources are available to women, however, they are also available to men. Indeed, most feminists *need* to be committed to the idea that men can escape the sexist assumptions of their culture. If feminism is to have any practical impact in a world characterized by patriarchy, men must be convinced to give up some of their power. Unless women are planning to form separatist societies, and maybe not even then,¹⁵⁸ they must rely on the cooperation of at least some men to

153. See, e.g., Alison M. Jaggar, *Love and Knowledge: Emotion in Feminist Epistemology*, in *GENDER/BODY/KNOWLEDGE: FEMINIST RECONSTRUCTIONS OF BEING AND KNOWING* 145, at 160 (Alison M. Jaggar & Susan R. Bordo eds., 1989); Catharine MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence*, 8 *SIGNS* 635, 635 (1983) [hereinafter MacKinnon, *Feminism, Marxism*].

154. For a fuller discussion of these approaches, see Susan H. Williams, *Feminist Legal Epistemology*, 8 *BERKELEY WOMEN'S L.J.* 63, 83–89 (1993).

155. See *infra* text accompanying notes 284–97 (discussing Wendy Williams and liberal feminism).

156. See Catharine A. MacKinnon, *Feminism, Marxism*, *supra* note 153.

157. See LYNN SHERR, *FAILURE IS IMPOSSIBLE: SUSAN B. ANTHONY IN HER OWN WORDS* 295–96 (1995) (citing an 1898 speech).

158. Obviously, separatist feminists could theoretically maintain that men cannot escape

achieve their goals. If men were truly unable to embrace some feminist goals, then most forms of feminism would be pretty theories with little chance of changing the realities of people's lives. Modern feminism's commitment to tying theory to practice and its concern about making a real difference in the world¹⁵⁹ require that we not write off (the presently more powerful) half of humanity.¹⁶⁰

patriarchy without endangering their political agenda. There is some serious question, however, whether meaningful numbers of such separatist societies could successfully exist as a practical matter within or alongside unreconstructed patriarchal ones. In any event, non-separatist feminists cannot completely give up on men if they wish to achieve any practical goals. We believe it is fair to characterize non-separatist feminist theories as the majority.

159. See Elizabeth M. Schneider, *The Dialectics of Rights and Politics: Perspectives from the Women's Movement*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* 301, 304–05 (Martha Fineman & Nancy Thomadsen eds., 1991). See generally *Symposium: Feminism in the 90s: Bridging the Gap Between Theory and Practice*, 4 *YALE J.L. & FEMINISM* 1–190 (1991).

160. One response some feminists might make to this argument is that women have an epistemic advantage when it comes to escaping their society's dominant views precisely because they are at the bottom of the hierarchy. People who are oppressed find the majority myths of their culture constantly disproved by their own experience. Slaves know, for example, that slavery does not make them happier than freedom. And women know that sexual harassment is not flattering, but threatening. See Jagger, *supra* note 153, at 162. The dissonance caused by these experiences gives those on the bottom the motive and the ability to question the received truths of their culture. Men, being dominant in our gender hierarchy, are less likely to find their preconceptions challenged by their experiences and are, therefore, less able to escape their gender roles.

There is little doubt that those who suffer the most have the most incentive to question the existing order. The difference between women and men in this regard is, nonetheless, no reason to believe that men are simply incapable of such questioning. Women may be more likely to escape the dominant culture, but men can do so in exactly the same way, even if they lack women's epistemic advantage and so might not escape in the same numbers. It appears, for example, that men also experience some hardships and contradictions that might cause them to question their gender roles. Certainly, many men have experienced serious pain because of the limits their gender role places on their relationships with their fathers, see GRISWOLD, *supra* note 139, at 266–67, their life partners, see ROTUNDA, *supra* note 75, at 292–93, and their children, see GRISWOLD, *supra* note 139, at 248–50. Some men may find, for example, that their "autonomy" is alienating rather than exhilarating. See ROTUNDA, *supra* note 75, at 6, 292–93. Some may even discover that a woman may be emotionally stronger or more stable than they are themselves and that relying on such strength is reassuring rather than threatening. See GERSON, *supra* note 143, at 167–70. Such experiences could be the discordant notes that lead men to reassess their preconceptions. Since it is possible for some men to escape in the same way as women, the men-as-beasts theory, which requires that men cannot escape at all, is not consistent with this feminist view.

In fact, some men have embraced feminist goals. John Stuart Mill, for example, rejected the subordination of women because it violates liberal equality principles.¹⁶¹ Ken Karst has drawn on both liberal and communitarian theory as a foundation for his staunch support for feminist goals.¹⁶² Derrick Bell has put his ideas on the connection between racism and sexism into action by renouncing his position at Harvard Law School because the faculty would not hire an African-American woman.¹⁶³ More generally, in the last two decades, feminist men have developed a critique and analysis of oppressive, socially constructed definitions of masculinity.¹⁶⁴

It is not only in the exalted realms of theory and academia that men have managed to escape from sexist assumptions. Daily life is full of examples, large and small, of men rejecting some aspect of patriarchal ideology: the man who glories in his daughter's athletic or scholastic achievements; the man who promotes a woman worker rather than her male competitor; the man who votes for a woman judge or legislator; the man who takes equal responsibility for the burdens and joys of child-rearing. These examples do not in any way diminish the reality or oppressiveness of patriarchy, but they do demonstrate that men, like women, can sometimes use the conflicting strands of their culture to escape from sexist assumptions.¹⁶⁵ Indeed, in recent years, the call to "reconstruct" or "transform" cultural notions of masculinity has become widespread.¹⁶⁶

161. See JOHN STUART MILL, *THE SUBJECTION OF WOMEN* (2d ed. 1911).

162. See, e.g., KENNETH KARST, *BELONGING TO AMERICA* 105-24 (1989); Kenneth L. Karst, *Woman's Constitution*, 1984 DUKE L.J. 447 (describing two kinds of reconstructions of the construct of "woman" in the law).

163. See generally DERRICK A. BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1994).

164. See generally R. W. CONNELL, *MASCULINITIES* (1995); MICHAEL MESSNER, *POWER AT PLAY* (1992).

165. See CONNELL, *GENDER AND POWER*, *supra* note 139, at 278-93; GERSON, *supra* note 143, at 22-37, 260-68; GERSON, *supra* note 143, at 236-62; GRISWOLD, *supra* note 139, at 269; ROTUNDA, *supra* note 75, at 1-2, 7-9.

166. See CONNELL, *GENDER AND POWER*, *supra* note 139, at 286-93; GRISWOLD, *supra* note 139, at 257, 261; GERSON, *supra* note 143, at 233-62; Michael S. Kimmel, *The Contemporary 'Crisis' of Masculinity in Historical Perspective*, in *THE MAKING OF MASCULINITIES* 121 (Harry Brod ed., 1987); Anthony McMahon, *Male Readings of Feminist Theory: The Psychologization of Sexual Politics in the Masculinity Literature*, 22 *THEORY & SOC'Y* 675, 691 (1993). See generally BLX, *supra* note 76; KEEN, *supra* note 71.

A reader might be tempted to reply that such exceptional men only prove the rule that the rest of their fellows are hopeless beasts. Proponents of the men-as-beasts view might, therefore, try to save their position from our critique by a simple modification of their position: perhaps not *all* men are beasts, but the overwhelming majority are. Such an alteration in the argument, however, changes the nature of the discussion in a very significant way. The claim that men are beasts can no longer be an analytical claim—that it is inherent in the nature of men to be beasts. It must now involve empirical evidence and observation and, as such, it is subject to qualification and quantification.¹⁶⁷ How many men are beastly, and in what ways? And, of course, how many are not? What is it that allows some men to escape and what could we change to increase their numbers? This discussion is one in which men can be full participants, without renouncing their masculinity at the door. It is a discussion that demands attention to context and to individuals and to evidence rather than to abstract and universalizing conceptions of gender. As a result, this position is meaningfully more respectful of men's agency than the simple men-as-beasts claim, while still being completely consistent with the commitments of most modern feminisms.

The men-as-beasts theory also violates the feminist commitment to the recognition and acceptance of diversity, including diverse models of gender identity. The variations in female gender identity are mirrored by variations in male gender identity. As a result, an approach that insists that all men share some particular version of "toxic masculinity" is insensitive to this variation and inconsistent with this commitment.

Feminist theory has often addressed "women's experience" as though all women were the same. Women of color, working class and poor women, lesbians, and others have, however, been speaking out with increasing volume about the dangers of this assumption.¹⁶⁸ These women

167. We do not mean to privilege empirical methodologies by emphasizing the non-analytic quality of this modified claim. As the questions for investigation we suggest in the text clearly indicate, these issues are prescriptive as well as descriptive and will require explicitly normative arguments along with statistical or experiential ones. The point is simply that such arguments are opened up rather than foreclosed by this change in the nature of the claim.

168. For a small sample of this literature, see Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990); THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherrie Moraga & Gloria Anzaldua eds., 1983); Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989-90) (examining feminist legal theory from a lesbian perspective); Laurie Nsiah-Jefferson, *Reproductive Laws, Women of Color, and Low-Income Women*, 11 WOMEN'S RTS. L. REP. 15 (1989).

do not merely claim to experience sexism combined with some other form of oppression (e.g., racism, classism, homophobia). Their argument is much more profound. They argue that what it means to be a woman is different depending on factors like one's race or class or sexual orientation.¹⁶⁹ In other words, there are multiple constructions of femaleness and femininity. To assume that there is only one such construction, shared by all women regardless of their other differences, is to falsify the gender experiences of many women and force them into a unitary mold at the cost of violence to their identities. Feminists have taken to heart this criticism from within the ranks. A debate continues to rage over the extent to which it is either legitimate or useful to speak of "women" as a category at all,¹⁷⁰ but that debate is not relevant to our limited point. Even the proponents of such a general category usually admit that, at least on some important subjects, there will be variations in the meaning of gender identity, variations that track other cultural divides.¹⁷¹

The same sort of variation exists in male gender identity. Identifiable cultural factors, such as race, class, sexual orientation, religion, and others, have an impact on the construction of masculinity, just as they do on femininity.¹⁷² Indeed, given that gender roles are usually constructed in relation to each other, it would be quite astonishing if variation in one role were not matched by variation in the other. The men-as-beasts theory ignores such cultural variations in masculinity.

There is a second source of diversity within gender models as well. Even within the "majority" (i.e., white, heterosexual, middle-class) model, feminists have found multiple femininities.¹⁷³ The cultural symbols of

169. See Harris, *supra* note 168, at 596–601; ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 114–32 (1988).

170. Compare, for example, Martha L. Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 26 (1990) (arguing for "the theoretical and political necessity of establishing the differences between men and women"), with Linda Nicholson, *Interpreting Gender*, 20 SIGNS 79, 99 (1994) ("My argument thus points to the replacement of claims about women as such or even women in patriarchal societies with claims about women in particular contexts.").

171. See, e.g., Fineman, *supra* note 170, at 39–41; Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13, 15–22 (1991).

172. See, e.g., CONNELL, *GENDER AND POWER*, *supra* note 139, at 184, 274–76; MITCHELL DUNEIER, *SLIM'S TABLE: RACE, RESPECTABILITY, AND MASCULINITY* (1992); GRISWOLD, *supra* note 139, at 252–54.

173. See generally SUSAN BROWN MILLER, *FEMININITY* (1984); NANCY J. CHODOROW, *FEMININITIES, MASCULINITIES, SEXUALITIES: FREUD AND BEYOND* (1994).

womanhood range, in traditional terms, from Eve to the Virgin Mary and include many outright inconsistencies.¹⁷⁴ These variations are important to feminist theory for many reasons. First, they sometimes create a catch-22 in which women are damned no matter what they do.¹⁷⁵ Second, they sometimes create a tension through which a creative reinterpretation can slip in, offering a new view of femininity.¹⁷⁶ Finally, they provide individual women with the opportunity to exercise some selection among the variations, which allows them to design a model of femininity with which they can live.

Once again, the same type of variation exists within the "mainstream" model of masculinity. Here, too, the conventional pictures cover an enormous range that includes numerous contradictions. Various writers propose different typologies. Based on extensive interviews with contemporary men, Kathleen Gerson discovered three general orientations toward masculinity: conventional breadwinners, "autonomous" men who avoided the encumbrance of long-term partners and children, and involved fathers with egalitarian spousal relationships.¹⁷⁷ Exploring cultural history, Barbara Ehrenreich argues that the 1950s endorsed a single notion of masculinity—the Establishment Man committed to work, wife, and children.¹⁷⁸ Since that time, however, different groups of men—the Playboy movement, the Beatniks, "health care reformers," and others—have created new ideals of free and uncommitted masculinities.¹⁷⁹ Focusing on ideal types, Mark Gerzon has proposed that traditional culture enshrined five types of masculinity—the Frontiersman, the Soldier, the Breadwinner, the Expert, and the Lord—and contemporary

174. In these two roles, for example, woman is cast, on the one hand, as temptress and source of physical sin and, on the other hand, as the symbol of spiritual purity.

175. Imagine, for example, the dilemma of the woman who asks the rapist who breaks into her bedroom to wear a condom. If she adheres to the traditional model of virtuous femininity and does not make this request, then she risks sexually transmitted disease and an unwanted pregnancy. If, on the other hand, she does make the request, then she may propel herself into the other traditional model of the promiscuous woman and later find it difficult to convince a prosecutor, judge, or jury that she was in fact raped. See Carla M. da Luz & Pamela C. Weckerly, *The Texas 'Condom-Rape' Case: Caution Construed As Consent*, 3 U.C.L.A. WOMEN'S L.J. 95, 95 (1993).

176. See generally DRUCILLA CORNELL, *BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW* 79–118 (1991).

177. GERSON, *supra* note 143, at 8–12, 23–37, 260–62, 274–75.

178. See BARBARA EHRENSREICH, *THE HEARTS OF MEN: AMERICAN DREAMS AND THE FLIGHT FROM COMMITMENT* 14–28 (1983).

179. See EHRENSREICH, *supra* note 178, at 42–87.

culture has juxtaposed to these a number of new types—the Healer, the Companion, the Mediator, the Colleague, and the Nurturer.¹⁸⁰ While all of these writers propose different typologies, however, they all agree that modern masculinity exhibits diversity, not uniformity.¹⁸¹

The men-as-beasts approach fails to grapple with the complexity and inconsistency of gender identity. It avoids this complexity only by abstracting from the actual circumstances in which such identities operate, whether those circumstances involve the crosscutting influence of other sorts of social oppression (like racism) or the myriad of social contexts that emphasize one or another of the standard variations on gender. By refusing to acknowledge these variations and inconsistencies, the men-as-beasts approach contradicts the deep feminist commitment to recognizing and accepting diversity.¹⁸²

b. Beastliness

The men-as-beasts claim has two parts: first, the idea that all men are inherently, inescapably something; and second, the idea that the thing they are is beastly. Up to this point, our arguments have been directed primarily at the first aspect of the claim. The concerns about agency and diversity that we have raised are primarily criticisms of the first part of this claim. It is, however, important to explore the second part of the claim as well. Obviously, not every criticism that takes the form “all men are inherently and inescapably ‘x’” is illegitimate. For example, “all men breathe air” should be acceptable to feminists and non-feminists alike. Which sorts of characteristics, when attributed to

180. See GERZON, *supra* note 143, at 13–45, 121–53, 217–29, 236–62.

181. See GRISWOLD, *supra* note 139, at 243–47, 268–69; ROTUNDO, *supra* note 75, at 286–87. More broadly, masculinity varies across history, see GRISWOLD, *supra* note 139; ROTUNDO, *supra* note 75, and across cultures, see DAVID D. GILMORE, *MANHOOD IN THE MAKING: CULTURAL CONCEPTS OF MASCULINITY* (1990).

182. It is logically possible to imagine a men-as-beasts theory that did not suffer from this flaw. Such a theory would have to carefully and sensitively examine the multiple masculinities constructed by various cultures, both the mainstream and the subgroups, and conclude that they all shared some trait. In order for that trait to qualify as the foundation for a wholesale condemnation of men as beasts, however, it would have to be (1) extremely damaging, (2) applicable to broad areas of behavior, rather than limited to very narrow circumstances, and (3) unbalanced by other more positive traits. And all of these factors would have to hold true for every one of the cultural variations examined, both across and within each subgroup. In the absence of such a difficult proof, the men-as-beasts theory simply papers over the diversity and complexity of gender roles.

men in this essentialist way, violate feminist commitments and can reasonably be called malebashing?

The arguments we have presented suggest that attributions of inherent and inescapable sexism or patriarchy are unacceptable. Could feminists, however, legitimately argue that while men can free themselves from most of patriarchy, they nonetheless possess a single or small number of inherent sexist characteristics? For example, men might be convinced to adopt virtually all of the feminist agenda but still refuse to see the need to compensate women for traditionally female work like housekeeping. Is such a view of men malebashing?

In our opinion, the attribution of inherent sexist characteristics to men might not be malebashing, but only if those characteristics are peripheral to patriarchy and radically different from other sexist characteristics. Feminists are not necessarily committed to the belief that cultural or biological determinism does not exist, just that it does not make patriarchy inevitable and gender equality impossible. If an inescapable male sexist characteristic is not to foreclose a non-sexist future, it must have two features. First, the characteristic must be relatively peripheral to patriarchy, however that concept is defined. If the characteristic were central to patriarchy, then to that extent patriarchy would be inevitable. Second, there must be a reason why this particular characteristic is so completely determined (by culture or biology) when other aspects of patriarchy are not. If the reasons for its determinism did apply to other aspects of patriarchy, then, once again, feminist reform would become impossible.

There is some tension between these two requirements and so the number of characteristics that will satisfy both is likely to be very small. If a characteristic is uniquely inescapable (thus satisfying the second limit), one would expect it to be basic, foundational, or central to male identity (thus violating the first requirement). But if feminism is to have any impact, it must be able to change exactly such central or basic characteristics. In other words, a feminist who believes that feminism can make a difference in people's lives should avoid ascribing any significantly patriarchal characteristics to men as inevitable and inescapable.¹⁸³

183. It is possible, of course, for a feminist to adopt the tragic view that complete gender equality will never be achieved. If, however, feminism is to be a practical, political movement, as most feminists seem to want, see, e.g., Joan E. Hartman & Ellen Messer-Davidow, *Introduction: A Position Statement*, in (EN)GENDERING KNOWLEDGE: FEMINISTS IN ACADEME 1, 1, 5–6 (Joan E. Hartman & Ellen Messer-Davidow

Therefore, the beastly characteristics that would qualify as malebashing (if ascribed in an inevitable and inescapable way) are any and all characteristics significantly related to patriarchy. Given how broadly many feminists define patriarchy, this category could include quite a lot. For example, feminists have argued that patriarchy is related to male separateness,¹⁸⁴ violence,¹⁸⁵ domination,¹⁸⁶ capitalism,¹⁸⁷ militarism,¹⁸⁸ colonialism and economic exploitation,¹⁸⁹ lack of respect for the environment,¹⁹⁰ certain theological positions,¹⁹¹ particular conceptions of science and rationality,¹⁹² and much more. Nonetheless, some may argue that an ascription of *any* negative personality trait qualifies as malebashing. Shouldn't it be illegitimate to claim, for example, that all men are inevitably and inescapably slob, even if slovenliness is unconnected to patriarchy?

The widely shared feminist commitments we have discussed in this section will not justify calling such a claim malebashing. Because we have focused on the common concerns of a broad cross-section of feminist theories, we have generated a definition of malebashing that centers on

eds., 1991), then some meaningful progress must be possible even if perfect equality is unattainable.

184. See, e.g., NANCY J. CHODOROW, *FEMINISM AND PSYCHOANALYTIC THEORY* 148–49 (1989); Sandra Harding, *Is Gender a Variable in Conceptions of Rationality?*, 36 *DIALECTICA* 225, 234 (1982).
185. See, e.g., Joan S. Meier, *Notes From the Underground: Integrating Psychological and Legal Perspectives on Domestic Violence in Theory and Practice*, 21 *HOFSTRA L. REV.* 1295, 1300 (1993); Michelle J. Anderson, Note, *A License To Abuse: The Impact of Conditional Status on Female Immigrants*, 102 *YALE L. J.* 1401, 1421 (1993).
186. See, e.g., Williams, *supra* note 154, at 63–64, 67, 73–74.
187. See, e.g., Iris Young, *Beyond the Unhappy Marriage: A Critique of the Dual Systems Theory*, in *WOMEN AND REVOLUTION: A DISCUSSION OF THE UNHAPPY MARRIAGE OF MARXISM AND FEMINISM* 43, 58 (Lydia Sargent ed., 1981).
188. See, e.g., BETTY A. REARDON, *SEXISM AND THE WAR SYSTEM* 14 (1985); Ann Scales, *Militarism, Male Dominance, and Law: Feminist Jurisprudence as Oxymoron?*, 12 *HARV. WOMEN'S L.J.* 25, 26 (1989).
189. See, e.g., Chandra Talpade Mohanty, *Introduction: Cartographies of Struggle*, in *THIRD WORLD WOMEN AND THE POLITICS OF FEMINISM* 14–15 (Chandra Talpade Mohanty et al. eds., 1991).
190. See, e.g., Josephine Donovan, *Animal Rights and Feminist Theory*, in *ECOFEMINISM* 167, 174–81 (Greta Gaard ed., 1993); MARIA MIES & VANDANA SHIVA, *ECOFEMINISM* 2–3, 14–15 (1993).
191. See, e.g., Joanne Carlson Brown & Rebecca Parker, *For God So Loved the World?*, in *CHRISTIANITY, PATRIARCHY AND ABUSE: A FEMINIST CRITIQUE* 1, 3 (Joanne Carlson Brown & Carole R. Bohn eds., 1989) (discussing original sin and perpetual virginity).
192. See, e.g., Williams, *supra* note 154, at 64–68.

issues of gender hierarchy rather than on the many other issues that some, but not all, of these theories would share. We believe that this definition is sufficient to provide a useful critique of certain criticisms of men and is all the more powerful because of its very broad base. For these reasons, the definition in this section can stand on its own.

It is possible, however, to develop the definition further by turning to theories concerned with the nature of a respectful dialogue, including some feminist theories. This move narrows the foundation of the criticism in terms of the number of feminists who subscribe to its assumptions, but at the same time it broadens the foundation by exploring the reasons that certain conceptions of agency are unacceptable independent of the feminist commitment to gender equality. In so doing, it provides a more general standard for malebashing, disconnected from the particular concern of gender hierarchy. This more developed definition is the subject of the next subsection.

B. Discourse Norms

We base our model of malebashing not only on basic feminist values but also on general discourse norms. In particular, to carry on a persuasive and non-oppressive dialogue, participants must exhibit moral respect for one another, across difference. Such respect, in our view, requires recognition of both (1) the general capacity for self-determination shared by all humans and (2) the individual and varying life circumstances of different interlocutors. We make this argument from two sets of norms: commonsense notions of dialogic communication and formal discourse ethics.

1. Dialogic Communication

The following propositions are relatively uncontroversial. First, scholarly journals and especially law reviews serve essentially dialogic functions. One of the more important of these functions is persuasion: the writer seeks to persuade his/her readership of his/her views, and then readers seek to rebut or modify those views, also by persuasion. Second, scholarly journals do not or should not serve antidialogic functions, i.e., writers should not knowingly engage in misleading political propaganda. Third, other fora may serve other functions, i.e., the purpose of a political rally is not the same as the purpose of a law review article. Fourth, the purpose of a forum generates some forum-specific norms for

proceeding, i.e., applause may be appropriate at a concert but not a funeral. Fifth, men as well as women read scholarly journals and participate in the dialogue created therein. As a result, writers for such journals should treat men and women as participants in a joint scholarly dialogue.

Those propositions, while fairly broad, have some important limits. First, we do not mean to argue that academic journals are not or should not be political; prescriptive argument is always political. Rather, we mean to claim that the politics of law reviews should be of a certain kind—dialogic. Second, such dialogue need not appeal to notions of objectivity or disembodied reason or unmediated truth. Rather, at least one aim of prescriptive dialogue is the sharing, discussing, and mediation of different and situated perspectives.¹⁹³ Third, while we claim that some fora, like law reviews, rest on a dialogic ethos, we do not mean to claim (nor do we mean to deny) that all political institutions need be modelled on dialogic lines.¹⁹⁴

To claim that these propositions are uncontroversial, of course, is not to say that they could not be controverted. In particular, some radical feminists might argue that all social institutions rest on power, not dialogue. As a result, contributions to (or interventions into) those institutions should proceed from a strictly instrumental agenda. We offer three responses to this argument. First, the feminists who make this argument are *making an argument*; at least some of the time, they attempt dialogically to persuade—or so they present themselves.¹⁹⁵ Second, as we have argued above, feminism must take as one of its aims the persuasion of those with different perspectives. If dialogue is to occur anywhere, scholarly journals, with their internal dialogic ethos, are very

193. See, e.g., Martha Minow, *The Supreme Court 1986 Term, Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987).

194. We base these claims about the dialogic function of academic journals on the shared understanding of those who contribute to them. We do not know of any focussed study exploring this understanding. As a result, we can only appeal to the self-understanding of those who read this article (readers of and writers for law reviews) and to the purpose evident in every scholarly article that we have ever read: dialogic persuasion. We believe, however, that this appeal is not controversial.

195. Catharine MacKinnon furnishes a good example. She argues that social reality rests primarily, perhaps exclusively, on power relations. Gender, in particular, is not about sex but about power. See MACKINNON, *Desire and Power*, in FEMINISM UNMODIFIED, *supra* note 53, at 46, 52. And yet one of MacKinnon's primary political activities is analytical writing about the construction of gender. In addition, in conferences she often self-consciously seeks to invite dialogue among participants. See MACKINNON, *Desire and Power*, in FEMINISM UNMODIFIED, *supra* note 53, at 46, 46–47. Plainly, she hopes that her analysis will dialogically persuade us to change power relations.

likely candidates. And indeed, across the spectrum, many feminists denounce a non-dialogic form of communication as stereotypically and oppressively "masculine."¹⁹⁶ Third, a contributor to a journal may, of course, choose to disregard dialogic norms. There is no law imposing such norms on the participants; only the self-understanding of the participants does that. But to ignore dialogic norms is nonetheless to violate the internal ethos of the institution. A certain form of that behavior, when directed at men, may legitimately be described as "malebashing."

If one accepts the claim that scholarly writing is dialogue, the reasons for our model of malebashing become apparent. The purpose of a normative dialogue across difference is to express, discuss, and persuade. Such a purpose implies a certain status for the participants. First, they must be able to change in response to the dialogue; they cannot be beasts by nature. Otherwise, the dialogue is pointless. Second, their individual life circumstances matter; they must be able to bring their own perspectives to the discussion and have those perspectives recognized. They cannot, in other words, all be assimilated to a stereotypical image, such as the Universal Conspirator or the Great Whore. Otherwise, the dialogue is not a dialogue—or at least not a dialogue between actual persons, as opposed to a dialogue between images. Those two claims can be understood as demands of respect. To respect an interlocutor, one must seek to understand how and why that speaker's perspective differs from one's own, and to acknowledge the interlocutor's ability to modify his/her conduct, desires, etc., as a result of discussion. Without respect, dialogue is impossible. It becomes simply an exercise in solipsism or power.

Notice that this argument does not assert that men are not beasts by nature or universal conspirators. Rather, it asserts that in dialogue, one cannot treat one's interlocutors as such. It is inconsistent with the nature of the discussion to portray men in either of the ways that we have described. Indeed, if one really believed that men were Beasts by Nature or Universal Conspirators, it is unclear why one would bother writing about it in academic journals, as opposed to other, more active interventions. To enter the world of scholarly commentary at all is to believe in the possibility of persuasion and therefore to attribute a certain status to one's readership.

196. See *infra* text accompanying notes 218–65 (discussion of Habermasian feminists); MACKINNON, *Desire and Power*, in FEMINISM UNMODIFIED, *supra* note 53, at 46, 52; Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 VA. L. REV. 543 (1986).

Again, these strictures seem to us to be relatively uncontroversial, even if they are not always honored. And again, we should stress the limits of our argument. First, we do not mean that in dialogue one must be passionless or polite or even civil. Second, we do not mean that all perspectives are entitled to equal weight on all issues. Rather, we mean only that treating all members of a group as if they shared exactly the same perspective is disrespectful. Third, we do not mean that it is wrong to make generalizations about gender. Rather, we mean only that one must be prepared to recognize variations from those generalizations.

Finally, the parameters that we have constructed set up a very broad continuum of acceptable theories of agency. On the one hand, while participants must possess enough agency to change in response to the discussion, much may still be heavily determined by social or biological structure, and they need not possess anything like metaphysical free will. Indeed, all that is really necessary is the capacity for reflexive mediation—the ability self-consciously to reflect on the forces (like dialogue) conditioning one.¹⁹⁷ The appropriate, the necessary, attitude toward agency is belief in the capacity to respond to dialogue.

On the other hand, we enter into dialogue because we believe we can learn from the different perspectives of others. In other words, we are limited by circumstances; we cannot each see everything from our own situation. Our perceptions, and therefore our identities, are in part a product of social and biological structure, not just attributes freely chosen by a rational intelligence out of a transparent world. The appropriate, the necessary, attitude is patient recognition that humans are finite creatures limited by circumstance.

Those two claims together amount only to a cliché in late twentieth century thought: we are in part a product of our circumstances and in part a product of our own choices. That cliché rules out only the extremes of the agency continuum: complete transcendent free will and complete determinism without the possibility of self-reflection. There is, however, no absolute or bright line demarcating the poles. In this sense, this discourse norm—like any discourse norm—must function not as a determinate rule but as a regulative ideal. At some point on this contin-

197. Indeed, it is even possible to concede that the dialogue itself may be nothing more than one force among others conditioning the individual, and the individual chooses among those forces based on some congerie of other conditioning forces. All that is necessary is that the dialogue can have some effect; the individual (however constituted—as free or as a product of circumstances) can reflect on the dialogue and change accordingly.

uum, as one approaches the poles, negative statements about men effectively deny men participation in the dialogue, by denying either their agency or their perspective to an excessive degree. When that happens, we have strayed into the territory of malebashing.

2. Discourse Ethics

We have based the preceding analysis on a commonsense appeal to the self-understanding of law review contributors. The work of discourse ethicists allows us to formulate these claims in a more formal and rigorous way. Jürgen Habermas is perhaps the preeminent discourse theorist, but we rely primarily on the work of writers who have modified Habermas' theories to reflect feminist insights.

a. Habermas

Habermas seeks to ground the legitimacy of government in an "ideal speech situation"—a practical discourse carried on under certain ideal conditions.¹⁹⁸ In particular, the ideal speech situation rests upon reflexivity (the ability of each participant to question and to criticize),¹⁹⁹ and upon symmetry conditions (the ability of each participant to employ different speech acts, such as contesting, prescribing, reconceptualizing, or moving to different levels of discourse).²⁰⁰ In Habermas' view, the great benefit of this speech situation is that it allows the better argument to prevail of its own weight; *power* will not determine who participates or which claims are accepted.²⁰¹ Through this speech situation, we can move beyond "normatively ascribed" forms of social ordering (forms that

198. JÜRGEN HABERMAS, *Discourse Ethics: Notes on a Program of Philosophical Justification*, in *MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION* 41, 88 (Christian Lenhardt & Shierry Weber Nicholsen trans., MIT Press 1990) (1983).

199. See Jürgen Habermas, *Moral Development and Ego Identity*, in *COMMUNICATION AND THE EVOLUTION OF SOCIETY* 93 (Thomas McCarthy trans., Beacon Press 1979) (1976).

200. See Jürgen Habermas, *Towards a Theory of Communicative Competence*, 13 *INQUIRY* 360, 371–72 (1970) [hereinafter Habermas, *Communicative Competence*].

201. See Habermas, *Communicative Competence*, *supra* note 200, at 371–72; JÜRGEN HABERMAS, *LEGITIMATION CRISIS* 110 (Thomas McCarthy trans., 1975) (1973) [hereinafter HABERMAS, *LEGITIMATION CRISIS*]. See also Nancy S. Love, *Ideal Speech and Feminist Discourse: Habermas Re-Visioned*, 11 *WOMEN & POL.* 101, 113 (1991); Lorenzo C. Simpson, *On Habermas and Particularity: Is There Room for Race and Gender on the Grassy Plains of Ideal Discourse?*, 6 *PRAXIS INT'L* 328, 330 (1986).

unreflexively rely upon a cultural tradition) to "communicatively achieved" forms (forms that are the product of ideal discourse).²⁰²

Habermas and other discourse ethicists ascribe enormous philosophical significance to the concept of the ideal speech situation. Habermas himself seeks to find in it a legitimate basis for government. His defense of the ideal speech situation, moreover, is semitranscendental: to begin a dialogue about norms, we must believe that consensus is possible, and consensus is possible only "under conditions that neutralize all motives except that of cooperatively seeking truth."²⁰³ As a result, the concept of the ideal speech situation is inherent in the pragmatics of language. Seyla Benhabib believes that the ideal speech situation can provide not only a theory of governmental legitimacy but also "a universalist and postconventionalist perspective on all ethical relations: it has implications for familial life no less than for the democratic legislatures."²⁰⁴ Rejecting transcendentalism, Benhabib seeks to ground communicative ethics not in the pragmatics of language but in the (admittedly historical and contingent) "moral presuppositions of the cultural horizons of modernity"²⁰⁵ arrived at through the "processual generation of reasonable agreement about moral principles via an open-ended moral conversation."²⁰⁶

For our present purposes, we need ascribe no such pervasive significance to discourse norms. Rather, we look to discourse theory only to answer the following question: in a forum (like scholarly journals) the purpose of which is discourse, what norms will best advance that purpose? Accordingly, we need not rely on communicative ethics to provide legitimacy for government or substance to ethical life. Nor need we make discourse norms a regulative ideal for all political fora or social integration as a whole. Other fora may reflect other patterns of proceeding, and those patterns may produce important truths. But discourse serves important ends as well. We wish now to consider how it best does so, how it generates claims to which we should give some normative weight.

202. JÜRGEN HABERMAS, *THE THEORY OF COMMUNICATIVE ACTION* 70 (1984) [hereinafter HABERMAS, *COMMUNICATIVE ACTION*].

203. HABERMAS, *COMMUNICATIVE ACTION*, *supra* note 202, at 19. *See also* SEYLA BENHABIB, *SITUATING THE SELF: GENDER, COMMUNITY AND POSTMODERNISM IN CONTEMPORARY ETHICS* 29–30 (1992). *But cf.* Marie Fleming, *The Gender of Critical Theory*, 13 *CULTURAL CRITIQUE* 119, 132 (1989).

204. BENHABIB, *supra* note 203, at 39.

205. BENHABIB, *supra* note 203, at 30.

206. BENHABIB, *supra* note 203, at 37.

Habermas has proved attractive to a number of feminist writers, for good reasons. His belief in the intersubjective construction of the self,²⁰⁷ his hope for a discursive rather than monological form of political reasoning,²⁰⁸ and his conviction that the women's movement—virtually alone among modern political movements—offers a genuinely emancipatory and nondefensive program,²⁰⁹ all mesh with feminist values and commitments.

On the other hand, Habermas also retains certain concepts—especially universalizing reason—traditionally associated with patriarchal liberalism. Habermas argues that practical discourse may take cognizance only of generalizable interests, defined thus: “all affected can *freely* accept the consequences and the side effects that the *general* observance of a controversial norm can be expected to have for the satisfaction of the interests of *each individual*.”²¹⁰ Practical discourse may formulate a norm based on such a generalizable interest, because it proceeds from consensus. Habermas exiles more particular interests, however, from his practical discourse. They are not part of the domain of justice, or of public morality. They must find a home in the private sphere or in aesthetic-expressive discourses,²¹¹ because they are intersubjectively irreconcilable.²¹²

Feminists may initially suspect such reliance on universalizing reason and the public/private distinction because of the historical pedigree of those concepts. Traditionally, much political theory associated reason and the public sphere with men, and affectivity and the private sphere with women.²¹³ Habermas intends no such association, however, and there is no reason that we should not take him at his word. He believes men and women should participate equally in the ideal speech situation. Yet at the

207. See Love, *supra* note 201, at 114.

208. See Isaac D. Balbus, *Habermas and Feminism: (Male) Communication and the Evolution of (Patriarchal) Society*, 13 NEW POL. SCI. 27, 31 (1984); Fleming, *supra* note 203, at 131; Iris Marion Young, *Impartiality and the Civic Public*, in FEMINISM AS CRITIQUE 57, 68 (Seyla Benhabib & Drucilla Cornell eds., 1987).

209. See Love, *supra* note 201, at 111; Nancy Fraser, *What's Critical About Critical Theory?*, in FEMINISM AS CRITIQUE, *supra* note 208, at 49.

210. JÜRGEN HABERMAS, *Discourse Ethics: Notes on a Program of Philosophical Justification*, in MORAL CONSCIOUSNESS AND COMMUNICATIVE ACTION, *supra* note 198, at 41, 93.

211. See Fleming, *supra* note 203, at 135 (citing SEYLA BENHABIB, CRITIQUE, NORM AND UTOPIA: A STUDY OF THE FOUNDATIONS OF CRITICAL THEORY 338–39 (1986)).

212. See HABERMAS, LEGITIMATION CRISIS, *supra* note 201, at 108. See also Simpson, *supra* note 201, at 330.

213. See Young, *supra* note 208, at 64.

same time Habermas ignores the gender subtext of this claim. Even if women could theoretically participate in the public sphere, under present circumstances they face significant material obstacles to doing so. Habermas completely fails to recognize the importance of this fact.²¹⁴

Suppose, however, that we could purge Habermas of all of these problems; suppose that we could imagine a public sphere that proved equally accommodating to men and women in their use of universalizing reason. Many feminists would still reject such a model of public life, on the grounds that moral judgment must refer not only to the universal but also to the particular and contextual. To abstract away details is to lose relevant moral information about the moral context. Drawing heavily on the work of Carol Gilligan,²¹⁵ these writers have argued that moral life involves two "voices" or ethics. One, the stereotypically masculine voice, takes as the central moral problem "how to resolve the competing claims of unrelated individuals pursuing autonomous courses of action."²¹⁶ The answer to this problem is universalizing reason, with its apparatus of abstraction, autonomy, and justice rather than the good life; in short, an ethic of justice and rights. The other voice, the stereotypically feminine one, is an ethic of care and responsibility. This voice takes as the central moral problem how to maintain and create connection and communication among persons and to satisfy the needs of particular individuals.²¹⁷ The answer to this problem must be contextual and narrative, with concern for and awareness of the particular persons involved.

b. A Feminist Reconstruction of Habermas

A number of feminist writers have sought, explicitly or implicitly, to bring Gilligan and Habermas together.²¹⁸ Among these, Seyla Benhabib has produced perhaps the most substantial and detailed body of work.²¹⁹ In Benhabib's view, for discourse to yield morally significant results, it must be "an actual dialogue among actual selves who are both 'generalized others,' considered as equal moral agents, and 'concrete

214. See Fraser, *supra* note 209, at 42–56.

215. See GILLIGAN, *supra* note 49.

216. Balbus, *supra* note 208, at 29.

217. See, e.g., Balbus, *supra* note 208, at 30.

218. See, e.g., BENHABIB, *supra* note 203; Fraser, *supra* note 209; Young, *supra* note 208.

219. See BENHABIB, *supra* note 203.

others,' that is individuals with irreducible differences."²²⁰ Corresponding to this claim that in dialogue we are both "generalized" and "concrete" others, Benhabib proposes two substantive discourse norms: first, "we ought to *respect* each other as beings whose standpoint is worthy of equal consideration (the principle of universal moral respect [for generalized others]) . . .";²²¹ second, "[w]e ought to treat each other as concrete human beings whose capacity to express this standpoint we ought to enhance by creating, whenever possible, social practices embodying the discursive ideal (the principle of egalitarian reciprocity [for concrete others])."²²²

i. The Generalized Other

In the standpoint of the generalized other, Benhabib seeks to retain some of Habermas' attachment to universalism:

The standpoint of the generalized other requires us to view each and every individual as a rational being entitled to the same rights and duties we would want to ascribe to ourselves. In assuming the standpoint, we abstract from the individuality and concrete identity of the other . . . [W]hat constitutes his or her moral dignity is not what differentiates us from each other, but rather what we, as speaking and acting rational agents, have in common.²²³

Traditional moral and political philosophy may find Benhabib's refusal to disavow universalism to be the most congenial part of her thinking, but for reasons that we have already discussed, many feminists may find it the most suspect. It is important, therefore, to stress that Benhabib's universalism is very different from that of, say, Kant²²⁴ or even Rawls.²²⁵

Perhaps most importantly, Benhabib emphatically denies that universalism is the sum total of moral and political philosophy.²²⁶ The function of the generalized standpoint is thus *not* to exile "non-universal" facts or phenomena—emotions, conceptions of the good life, needs,

220. BENHABIB, *supra* note 203, at 169.

221. BENHABIB, *supra* note 203, at 31.

222. BENHABIB, *supra* note 203, at 31.

223. BENHABIB, *supra* note 203, at 158–59.

224. *See* BENHABIB, *supra* note 203, at 161–64.

225. *See* BENHABIB, *supra* note 203, at 161–70.

226. *See* BENHABIB, *supra* note 203.

values, particular circumstances—from public discussion.²²⁷ Indeed, the dialogue that Benhabib has in mind is radically open, without reliance on any of the traditional binary oppositions. Benhabib's universalism thus does not derive from a distrust of nature, passion, Woman, or particularity.²²⁸

Instead, Benhabib's universalism seeks only to promote respect for persons, to recognize universal moral personhood. The function of the generalized standpoint is essentially discursive: "All argumentation entails respect for one's conversation partners; such respect belongs to the idea of fair argumentation; to be a competent partner in such a conversation then entails recognizing the principle of equal respect."²²⁹ Equal respect is thus a presupposition of dialogue, in that "communicative ethics sets up a model of moral conversation among members of a modern ethical community for whom the theological and ontological bases of inequality among humans have been radically placed into question."²³⁰ Members of such a community may theoretically challenge the principle of equal respect, but they must convince the other members of their point of view, in a conversation conducted according to the principle of equal respect. We may, in other words, hypothetically examine the principle, but we cannot suspend it.²³¹ The target of Benhabib's universalism is thus not the emotional, the particular, or the female, but the "racist, the sexist, or the bigot," who would argue that "some individuals on account of certain characteristics should be effectively excluded from the moral conversation."²³²

This discursive norm of equal respect precludes the view, discussed above, that men are beasts—whether as a result of biology or inevitable social conditioning. That claim quite drastically denies them the status of a generalized other. Beasts lack rationality, agency, moral competence, and moral dignity. That claim denies any commonality between men and women. There is no point in speaking to them, because they cannot behave otherwise. There is no point in listening to them, because they can only voice the verities imposed on them by genes or society. They are an entirely unequal class that "on account of certain characteristics

227. See BENHABIB, *supra* note 203, at 50–51.

228. See BENHABIB, *supra* note 203, at 26, 50–51.

229. BENHABIB, *supra* note 203, at 31.

230. BENHABIB, *supra* note 203, at 32.

231. See BENHABIB, *supra* note 203, at 32–33.

232. BENHABIB, *supra* note 203, at 32–33.

should be effectively excluded from the moral conversation."²³³ One might hold the view that men are beasts, but not in an open discursive forum. In such a forum one could theoretically examine such a notion, but it must quickly be rejected as inconsistent with the "pragmatic rules necessary to keep the moral conversation going" ²³⁴ In short, from the standpoint of discourse theory, the view that men are beasts must be rejected as malebashing.

ii. The Concrete Other

While Benhabib seeks to retain some of Habermas' universalism, she denies it is the whole of moral and political philosophy. She explains: "The standpoint of the concrete other . . . requires us to view each and every rational being as an individual with a concrete history, identity and affective-emotional constitution."²³⁵ As concrete other, we must each seek to "comprehend the needs of the other, his or her motivations, what she searches for, and what s/he desires,"²³⁶ and correspondingly we may each expect to "feel[] recognized and confirmed as a concrete, individual being" ²³⁷ Traditional political philosophers may be relatively uncomfortable with this contextualism, but many modern feminists may find it the most congenial part of Benhabib's thinking.

As for the generalized other, Benhabib's justification for the standpoint of the concrete other is essentially dialogic. Importantly, Benhabib means her discourse norms to apply in actual, real-world conversations.²³⁸ She does not intend that lonely moral philosophers should engage in an internal dialogue or thought experiment that vaguely resembles a conversation.²³⁹ Her discourse model may set substantive limits on the outcomes of various discourses (i.e., we may not violate the conditions necessary to continue the dialogue, such as universal respect and egalitarian reciprocity), but the discourses themselves must be concrete and contextual; the theoretical model of discourse alone will not generate answers.²⁴⁰ In short, moral discourses are nothing more than "the

233. BENHABIB, *supra* note 203, at 33.

234. BENHABIB, *supra* note 203, at 32.

235. BENHABIB, *supra* note 203, at 159.

236. BENHABIB, *supra* note 203, at 159.

237. BENHABIB, *supra* note 203, at 159.

238. *See* BENHABIB, *supra* note 203, at 169.

239. *See* BENHABIB, *supra* note 203, at 24.

240. *See* BENHABIB, *supra* note 203, at 34–37, 53–55.

continuation of *ordinary moral conversations* in which we seek to come to terms with and appreciate the concrete others' point of view."²⁴¹

If moral discourses are actual discourses, then as participants in such dialogues, we are always and simultaneously both generalized and concrete others.²⁴² To ignore that we are concrete others would be to abandon the dialogic ideal, for several reasons. First, we learn and use the skills and habits necessary for all moral conversation in concrete settings with concrete interlocutors. There is simply no such thing as a generalized conversation:

In conversation, I must know how to listen, I must know how to understand your point of view, I must learn to represent to myself the world and the other as you see them. If I cannot listen, if I cannot understand, and if I cannot represent, the conversation stops, develops into an argument, or maybe never gets started. Discourse ethics projects such moral conversations, in which reciprocal recognition is exercised, onto a utopian community of humankind. But the ability and the willingness of individuals to do so begins with the admonition of the parent to the child: "What if others threw sand in your face or pushed you into the pool, how would you feel then?"²⁴³

Second, a dialogue among generalized others is not a dialogue at all, because generalized others are really all the same person. By definition, they share all the same qualities—reason, universal rights, etc.—and they have no other characteristics. For this reason, Benhabib denies that Rawls' original position²⁴⁴ is a discourse model of political philosophy:

If all that belongs to them as embodied, affective, suffering creatures, their memory and history, their ties and relations to others are to be subsumed under the phenomenal realm, then what we are left with is an empty mask that is everyone and no

241. BENHABIB, *supra* note 203, at 52.

242. See BENHABIB, *supra* note 203, at 164.

243. BENHABIB, *supra* note 203, at 52–53.

244. The original position is an imaginary device proposed by Rawls to generate rules of justice. See JOHN RAWLS, A THEORY OF JUSTICE 11 (1971). The members of the original position are behind a "veil of ignorance," i.e., they do not know about the individual situation in society. RAWLS, *supra*, at 12. As a result, according to Rawls, they can develop evenhanded rules of justice without self-interest clouding their judgment. See RAWLS, *supra*, at 12. To determine rules of justice, therefore, we should ask what rules people would adopt in the original position. See RAWLS, *supra*, at 11–12.

one. . . . In Kantian moral theory, moral agents are like geometricians in different rooms who, reasoning alone for themselves, all arrive at the same solution to a problem. Following Habermas, I want to name this the "monological" model of moral reasoning.²⁴⁵

Third, Kantian/Rawlsian universalism of this sort suppresses crucial relevant moral information about persons. Because people in the original position are all the same person, they cannot engage in a conversation, but they can engage in "the silent thought process of a single self who imaginatively puts himself in the position of the other" ²⁴⁶ According to Rawls, Kant, and Kohlberg, that thought process is "the most adequate form of moral judgment."²⁴⁷ Benhabib radically denies this claim, on the ground that people in the original position lack the necessary information to perform this thought process. Such people are without ends, conceptions of the good, or human ties:

At this point we must ask whether the identity of the human self can be defined with reference to its capacity for agency alone. Identity does not refer to my potential for choice alone, but to the actuality of my choices, namely to how I, as a finite, concrete, embodied individual, shape and fashion the circumstances of my birth and family, linguistic, cultural and gender identity into a coherent narrative that stands as my life's story. . . . The self is not a thing, a substrate, but the protagonist of a life's tale.²⁴⁸

As a result, we cannot judge moral situations without full information about the context and the actors, and people in the original situation do not have that kind of information:

Can moral situations be individuated independently of our knowledge of the agents involved in these situations, of their histories, attitudes, characters and desires? Can I describe a situation as one of arrogance or hurt pride without knowing something about you as a concrete other? Can I know how to distinguish between a breach of confidence and a harmless slip

245. BENHABIB, *supra* note 203, at 161, 163.

246. BENHABIB, *supra* note 203, at 163.

247. BENHABIB, *supra* note 203, at 163.

248. BENHABIB, *supra* note 203, at 161–62.

of the tongue, without knowing your history and character? Moral situations, like moral emotions and attitudes, can only be individuated if they are evaluated in light of our knowledge of the history of the agents involved in them.²⁴⁹

. . . .

[In the original position, i]nstead of thinking from the standpoint of all involved, that is instead of reversing perspectives and asking ourselves "what would it really be like to reason from the standpoint of a black welfare mother?" we are simply asked to think what distribution of material goods would be most rational and reasonable to adopt, if we did know in a general way that our society is such that one may be a black welfare mother of three children out of wedlock living in a rapidly decaying urban neighborhood. There is no moral injunction in the original position to face "the otherness of the other," one might even say to face their "alterity," their irreducible distinctness and difference from the self.²⁵⁰

If we take individuals seriously as concrete others, then we cannot adopt the view that men are universal conspirators. That view reduces men, in all their variability, contextuality, and multiplicity, into a single generalized other with only one set of characteristics: (1) he (not they, for there is effectively only one) self-consciously desires to promote the interests of men as a class; (2) he self-consciously seeks to oppress women in order to do so; and (3) he self-consciously conspires with other men to promote these ends. Claiming that all men conspiratorially seek to promote the patriarchy through the oppression of women fails utterly to "view each and every rational being as an individual with a concrete history, identity and affective-emotional constitution."²⁵¹ Some women may experience men as universal conspirators, and that experience is important. At the same time, in discourse, "I must learn to represent to myself the world and the other as you [the alleged universal conspirator] see them. If I cannot listen, if I cannot understand, and if I cannot represent, the conversation stops, develops into an argument, or maybe never gets started."²⁵²

249. BENHABIB, *supra* note 203, at 162–63.

250. BENHABIB, *supra* note 203, at 166–67 (citation omitted).

251. BENHABIB, *supra* note 203, at 159.

252. BENHABIB, *supra* note 203, at 52.

Moreover, like selves in the original position, universal conspirators are "defined with reference to [their] capacity for agency alone."²⁵³ Men have will, power, and the capacity for choice. Since women are oppressed, men—as a class, a conspiracy—must be the oppressors. But, as Benhabib points out:

Identity does not refer to my potential for choice alone, but to the actuality of my choices, namely to how I, as a finite, concrete, embodied individual, shape and fashion the circumstances of my birth and family, linguistic, cultural, and gender identity into a coherent narrative that stands as my [particular] life's story.²⁵⁴

To ignore the particularity of each man is malebashing.

iii. Feminism and Deontology

Benhabib describes her communicative ethics as deontological.²⁵⁵ Traditionally, deontological theories have served to exile women and the concerns of women from serious discussion, through a series of binary oppositions—public over private, justice over the good life, reason over emotion. For this reason, many feminists have come to distrust deontological theories.²⁵⁶ Benhabib's theory is, however, deontological in the weakest possible sense. In so describing her theory, Benhabib means only that her discourse model itself, principally in its norms of universal respect and egalitarian reciprocity, constrains outcomes.²⁵⁷ One may not deny an interlocutor fundamental personhood or refuse to recognize his/her concrete individuality. Otherwise, the discourse should proceed under no constraints. In particular, Benhabib recognizes that deontological theories have traditionally excluded women through binary oppositions, and she argues that discourse should address public and private, justice and the good life, reason and emotion alike.²⁵⁸

To be sure, some feminists who rely on Habermas argue for a discussion that *sounds* more open, less constrained, than Benhabib's. We suspect, however, that in practice they would not disagree with

253. BENHABIB, *supra* note 203, at 161.

254. BENHABIB, *supra* note 203, at 161–62.

255. See BENHABIB, *supra* note 203, at 73–76.

256. See, e.g., discussion of Young and Fraser *supra* text accompanying notes 211–17.

257. See BENHABIB, *supra* note 203, at 44, 73–76.

258. See BENHABIB, *supra* note 203, at 26, 50–52, 108–11, 155–62.

Benhabib's central claim that the discourse must be respectful and egalitarian. Thus, Iris Marion Young calls for a Habermasian discourse that rejects the traditional dichotomies, a "heterogeneous public with aesthetic and affective, as well as discursive, dimensions,"²⁵⁹ a public dialogue that accepts the differences and particularities of individuals and groups.²⁶⁰ At the same time, Young maintains that any such public must "include[] [a] commitment to equality and mutual respect."²⁶¹ Similarly, Nancy Fraser agrees with Benhabib about the importance of communicatively achieved contexts of interaction.²⁶² Unlike Benhabib, Fraser emphasizes that such contexts are the product of political struggle,²⁶³ based on an "ethic of solidarity" discovered among specific individuals and groups.²⁶⁴ She agrees with Habermas (and Benhabib), however, that all interlocutors must be equal in the discourse: "In so far as Habermas's endorsement of universalism pertains to the metalevel of access to and control over the means of interpretation and communication it is well taken. At this level, women's struggle for autonomy can be understood in terms of a universalist conception of distributive justice."²⁶⁵

A feminist discourse, in short, must honor the constraints of respect and equality. A feminist discourse must recognize that denunciation of men as beasts or universal conspirators is malebashing and inconsistent with the nature of the discourse itself. At the same time, however, a feminist discourse insists *only* on the constraints of respect and equality. It places no other limits on the discussion, so that within those constraints the discourse may range at will.

We have suggested that the argument based on feminist commitments is largely independent of this argument based on discourse norms: either framework can stand alone. Nonetheless, it is possible to see a connection between these two approaches. The various feminist commitments that we identified arise both from the underlying goal of gender equality and from the practical realities of the political movement. Both of these foundations can be understood in terms of discourse norms. Political organization and reform in a democracy can, obviously, be seen as an exercise in political dialogue. Less obviously, gender equality can

259. Young, *supra* note 208, at 59.

260. See Young, *supra* note 208, at 73-76.

261. Young, *supra* note 208, at 76.

262. See Fraser, *supra* note 209, at 53.

263. See Fraser, *supra* note 209, at 53-54.

264. Nancy Fraser, *Toward a Discourse Ethic of Solidarity*, 5 PRAXIS INT'L 425, 429 (1986).

265. Fraser, *supra* note 209, at 54.

also be seen in terms of respect for both women's rational agency and their concrete experiences and identities. Using one or both of these frameworks, it is possible to identify a small but meaningful category of criticisms that could legitimately be called malebashing.

C. Hard Cases

Feminist commitments and discourse norms can both be used as frameworks to define the concept of malebashing. Within both of these frameworks, the two kinds of claims that we have identified, men-as-beasts and universal conspiracy, are illegitimate and properly excluded from the conversation. These claims qualify as malebashing because they represent the poles on a continuum of agency. Both poles are unacceptable from within certain commitments of feminism and from the perspective of dialogic norms generally. Claims that occupy these poles are, therefore, definitionally and automatically malebashing because of their content.

This definition of "polar" malebashing is fairly narrow, and a narrow construction is entirely appropriate. To rule something "polar" malebashing is to rule it dialogically out of bounds *ab initio*. Such statements should not be made, nor need they be answered. This "show-stopper" effect accurately describes how claims of malebashing tend to function presently and one of our major purposes in this paper is to argue that the class of claims that can legitimately be disposed of in this way is extremely small. The only justification for cutting off the dialogue in this way is that the narrowing norms are fundamental either to the feminist project in general or to the dialogue itself. Thus, claims that fall at the poles of this continuum of agency are properly dismissed as malebashing, whereas claims between the poles must be considered, discussed, and analyzed.

For example, to claim that men are beasts (or that women are irrational) is beyond the dialogic bounds because it denies them agency. But to claim that many or most or some men have abused women is not polar malebashing, because this claim does not deny men the ability to change. By the same token, even to claim that men have more of a natural inclination to brutality than women is not polar malebashing, as long as one also acknowledges that they have the ability to change in response to such a challenge. Such a claim may be wrong, ill-advised, insulting, or pernicious, but it is not definitionally out-of-bounds.

As these examples suggest, however, most of the actual dialogue, particularly in academic discussion, takes place in the intermediate range

between the poles. If our norms had nothing to say about these “intermediate” claims, then their function in actual conversations would be limited. However, the concerns about agency that underlie our definition of malebashing also have relevance to claims that fall between the poles. Unlike polar malebashing, such intermediate claims cannot simply be dismissed based on their clear facial content. Indeed, there may be no clear answer to the question whether particular claims that fall between the poles are malebashing, but the norms that we have suggested can provide a framework for discussion of such claims.

Intermediate claims may violate the norms we have described in two ways. First, we recognize that the dividing line between the poles and the middle of the continuum will not always be clear. While some claims will obviously be out of bounds, and some claims clearly will be safely intermediate,²⁶⁶ other claims may fall extremely close to the poles but not clearly at them. Even if a claim is hedged so as to avoid a pole on the continuum, it may be so close that it still raises concerns under these norms. Thus, suppose a speaker says, “Almost all men are rapists at heart and it takes truly exceptional and extraordinary circumstances for any one of them to escape this fate.” This claim leaves so little agency to male listeners that it is not clear that it meets the requirements of either a meaningful dialogue or an effective feminism. The important point is *that it is not clear*. In other words, one could argue that the amount of agency left is or is not sufficient for any of the dialogic or feminist concerns raised in the previous subsections. This definition of malebashing, then, admittedly contains a gray area in which people may differ over whether a claim meets the suggested standard. Within that gray area, this definition does not resolve the argument, but it does suggest the appropriate issues for discussion.

Second, a claim that looks intermediate on its face may actually fall at one of the poles because of the speaker’s intent or the context or some factor other than facial content. For example, suppose that a speaker asserts that “[m]any men are inherently selfish,” but winks and smiles

266. For example, the claim that men in modern American culture are trained to fear and avoid connection is not malebashing. It neither states nor suggests that such training is either inevitable or inescapable. Nor does it state or suggest that the training is the result of some sort of conscious conspiracy. As we discuss in the text, men have an obligation not to deflect the conversation constantly away from substantive feminist concerns to consideration of their own agency. *See infra* text accompanying notes 272–75. At a minimum, this obligation means men may not assume the worst possible interpretation of a claim regardless of how unlikely or unsupported.

while saying the word "many." If the message in context is, "I really mean all men," then the intonation and gestures have transformed an otherwise intermediate claim into one that violates the norms concerning agency. The point is simply that meaning is constructed from context, speaker's intent, likely audience reception, and a variety of other factors in addition to the facial content of a statement. Since our norms defining malebashing concern the meaning of the statement, all of these factors may be relevant. Therefore, even where the facial content is clearly intermediate, other factors may move a claim to one of the poles.

The difficulty here is that these other factors are extremely complex and highly context-specific. Unlike the facial content of a polar claim, which is so extreme that it can be dismissed with little attention to context,²⁶⁷ issues like motive, intonation, gestures, etc., must be assessed in light of the particular situation in which they appear. While the norms defined in the previous subsections plainly would be relevant to such an assessment, it is not possible to lay down the sort of guidelines that we were able to devise for content alone. Once again, the definition offered would not resolve these cases, but it would highlight the issues to be considered. The judgment whether a particular claim falls at one of the poles on the agency continuum because of some factor other than facial content is, necessarily, an *ad hoc*, highly contextual judgment. That is why these are hard cases.

There is a subset of this class of hard cases that deserves somewhat more detailed treatment. Suppose a speaker cites extremely high statistics on some act of violence by men against women (e.g., ninety percent of all men beat their wives or girlfriends) when she knows that those numbers are false or is recklessly indifferent to their truth.²⁶⁸ The substance of the claim itself is not malebashing under our definition; it does not impute either too little or too much agency to men. Nonetheless, there is a strong argument that the speaker's motive violates the norms we have discussed because her disregard for the truth of the statistics suggests serious disrespect for the agency of her listeners.

267. Obviously, there are limits to such abstract analysis even in the case of facial content. We have, from the outset, limited our discussion to a particular context (academic dialogue) and to certain shared commitments (a basic agreement with feminism). We do not mean to suggest that even content could be analyzed in complete abstraction, only that the level of contextualization necessary to a satisfactory analysis increases substantially when one moves from consideration of content alone to other factors, such as motive or intonation.

268. We are grateful to Steve Heyman for pointing out this interesting example to us.

The difficulty with this argument is that this disrespect for listeners, while a violation of dialogic norms generally, is not malebashing in particular because the disrespect applies to both male and female listeners. If the speaker had knowingly cited false statistics about the poverty rate or the destruction of the environment, she would exhibit exactly the same disrespect toward her listeners, but we would not call it malebashing. Malebashing, in other words, is a subset of the larger category of dialogic disrespect: disrespect is malebashing only when the disrespect is focused on men in particular.

We believe that the claim in the example *is* malebashing because of the speaker's motive, but not because of her disrespect toward the audience generally. When a speaker intentionally slanders a group, any group, he or she is using that group as an object to manipulate the audience. Thus, in addition to the disrespect to the audience, there is also an independent denial of respect to the slandered group. One way of understanding the disrespect is that the members of the vilified group are treated as morally equivalent to objects rather than as persons.²⁶⁹

Treating people as objects by lying about them as a group violates the feminist and dialogic norms we discussed in the previous subsections. Such treatment violates the dialogic norms of recognizing both the "generalized other," which demands equal respect for moral agency, and the "concrete other," which demands respect for persons' specific contexts and life-experiences. Similarly, treating persons as objects based simply on their gender violates some of the foundational commitments of feminism. Such treatment denies or ignores as irrelevant people's own accounts of their experiences. Moreover, this treatment denies or ignores people's ability to reflect on and alter the gender identity that is given to them: their membership in a particular gender group marks them out for treatment as less than fully human, regardless of their own efforts or desires to escape that gender identity. This dynamic, when applied to women, is a large part of what feminism has struggled against. Gender alone should not determine one's moral status in this way. Thus, this sort of intentional misrepresentation is arguably malebashing because the speaker's attitude toward the vilified group violates the defining norms we have identified.

269. In this sense, malebashing is akin to hate speech. For an excellent discussion of how hate speech generally denies the personhood, and therefore violates the rights of its targets, see Steven J. Heyman, *Introduction: Hate Speech and the Theory of Free Expression*, in *HATE SPEECH AND THE CONSTITUTION* ix, xl–lxvii (Steven J. Heyman ed., 1996).

"Hard" cases, then, can be hard either because they fall into the gray area near the poles on the agency continuum or because they require analysis of highly contextual factors like motive, intonation, and circumstance. The norms derived from feminist and dialogic commitments do not provide clear categories to determine what is unacceptable in these hard cases.²⁷⁰ Nonetheless, the norms provide the framework within which the contextual and specific arguments about the legitimacy of such an intermediate claim can take place.

D. Deflecting the Conversation

The norms defining malebashing both explain the exclusion of the two poles on the agency continuum and help to analyze claims falling between those poles. The broad applicability of these norms, however, raises the specter that almost any claim about men by a feminist may be met by a call to consider whether it violates these norms. We have said that feminist claims about men cannot simply be dismissed as malebashing unless they fall into the very limited area at the poles of this continuum. But intermediate claims, even if they cannot be dismissed, may be deflected by arguments about whether they also violate these norms, arguments that the previous subsection suggests are a legitimate subject for discussion. So, for example, a feminist who raises the issue of male violence against women may find herself deflected to arguing about male agency instead and her point about violence may never be heard or addressed.

Such deflection is a very real danger because, for several reasons, it is likely to be an attractive strategy even for men basically sympathetic to feminism.²⁷¹ First, this shift in the dialogue changes the emotional valence in a way that may make it more comfortable for many men. The

270. The poles of the continuum are themselves such categories, available before discussion and generated by the norms we discuss. Thus, the point in the text is just another way of saying that these claims do not clearly fall into one of those poles.

271. There are, of course, some men who will take any opportunity to deflect or derail feminist arguments. To the extent that our approach legitimizes this particular method of deflection, it plainly gives aid and comfort to them as well. We are less concerned about that than about the impact on discussions with less implacably hostile men for two reasons. First, those who define themselves as the enemies of feminism have plenty of other tools beside this one; we don't think we have added meaningfully to their arsenal. Second, even without such deflection, feminist arguments have relatively little chance of persuading this audience.

feminist claim being deflected is, presumably, one that is uncomplimentary to many, most, or all men. Such claims are often experienced by male listeners as accusations of wrongdoing. The issue of male agency, on the other hand, concerns possible wrongdoing by the speaker rather than by the men who are her/his subjects. Thus, the shift in topic may alter the emotional position of the men in the conversation from the accused to the accuser. The best defense is a good offense.

Second, even men who do not feel personally accused, and therefore are not experiencing an emotional need for defense, may simply find the issue of male agency a more interesting topic than the substantive criticism of men being offered by the feminist claim at issue. The issue of male agency could be more attractive for a variety of reasons. This question may well be more abstract and less empirical than the speaker's subject (e.g., violence against women), which makes it easier to discuss based simply on one's own analysis, i.e., no familiarity with any empirical evidence is required. This issue may also be more detached from immediate experience than the speaker's claim and therefore easier to discuss without strong and apparent emotional forces. The shift from a discussion of male violence against women to one of male agency, for example, might feel like a move to more emotionally neutral ground. The question of male agency also connects very directly to larger issues of political, moral, and epistemological theory that may be more interesting to many men in academics.²⁷²

Given these strong incentives, the availability of this argument about male agency may lead to a great deal of conversational deflection. We consider this a very serious problem. The purpose of this article is to help clear away the confusion, charges, and countercharges that discourage real discussion of feminist claims. If our definition of malebashing and the norms that underlie it themselves generate roadblocks, then we are contributing to the problem that we are attempting to solve. In order to avoid this difficulty, some norms that create a duty to listen and respond, rather than deflect, are necessary.

272. In addition, the issue of male agency is about men's own experience rather than about women's experience of men. Perhaps because of our society's greater tolerance for self-centeredness in men, many men may find it more comfortable to talk about their own experiences. For a discussion of self-centeredness in men, see WILLARD GAYLIN, *THE MALE EGO* (1992). There is an old cartoon in which a man and a woman are at a restaurant, presumably on a first date, and the man is saying, "Well, enough about me. Let's talk about what you think of me." We are simply pointing out that talking about what you think of me is usually second-best to talking about what I think of me.

Our approach up to this point suggests that, when a feminist makes a claim about men, it will often be the case that two different conversations would both be legitimate: one about the substance of the speaker's claim and one about the image of male agency inherent in that claim. In this situation, we need some guidance about which of these two conversations should be pursued. When the claim clearly involves one of the poles on the agency continuum, then, as we have suggested throughout, it is appropriate for listeners to point this out and legitimate for them to refuse to engage further with the claim. If, however, we are in one of the intermediate, or "hard" cases, discussed above, then we believe that male listeners have an obligation to defer consideration of the agency issues and focus on the substance of the claim being made.

The source of this obligation is, quite simply, the power differential between men and women throughout our society. Women are still substantially underrepresented in positions of power, including within the academy.²⁷³ Historically, men have had the power to control the agenda and dominate the debate. As a result, women's voices, particularly feminist voices, have often gone unheard. Men, therefore, have a special obligation to make space for and cede some control to those who have traditionally been excluded. As part of that obligation, men, including male academics, have a *prima facie* duty not to deflect conversations away from the substance of feminist arguments and toward issues of male agency.

This duty has two parts. It means that men, who continue to dominate the positions of gatekeeper and agenda setter in academic dialogue, must help to ensure both that feminist arguments actually are heard and that women are given meaningful control over the gateways and agendas themselves. In other words, men in such conversations must cede both time and control in order to redress the existing imbalance. Deflecting a discussion from consideration of a substantive feminist issue to an assessment of the speaker's alleged malebashing violates both parts of this duty. It reduces (or eliminates) the time available for the feminist claim to be heard and it places control of the agenda back in the hands of the speaker's male interlocutors.

The duty we are proposing is not a punishment. The goal is not to penalize men for past wrongdoing, but to correct a present injustice

273. See, e.g., Deborah J. Merritt & Barbara F. Reskin, *The Double Minority: Empirical Evidence of a Double Standard on Law School Hiring of Minority Women*, 65 S. CAL. L. REV. 2299 (1992); Deborah J. Merritt et al., *Family, Place, and Career: The Gender Paradox in Law School Hiring*, 1993 WIS. L. REV. 395.

(albeit one that has historical roots). The burden placed on men by this duty is justified because it directly contributes to providing women with the power and opportunity to be heard that they presently lack. Moreover, we are not proposing that any particular amount of time or percentage of power should be transferred from men to women.²⁷⁴ The duty concerns the attitude of the male participants in the discussion toward their female colleagues, particularly when those colleagues are making critical claims. Thus, the duty is parallel to the obligation on women not to malebash.

Remember, this obligation comes into play only when we are in the intermediate range of claims rather than at the poles. In other words, when a feminist makes a claim that may or may not violate the norms defining malebashing—because of ambiguous contextual factors or because it approaches but does not reach a pole—male listeners should give her the benefit of the doubt, restrain any feelings of insult, and listen to what she is saying. This obligation does not mean that concerns about male agency raised by the claim can never be addressed, but it does mean that such concerns should not be allowed to stand in the way of an adequate opportunity to discuss the substance of the claim.

We do not believe that this is asking very much. The sort of self-restraint and willingness to bear the marginal dignitary harms at issue here is far less than that demanded of women every day by a pervasively sexist culture. Arguments like the one here have been offered to justify much more sweeping alterations in the principle of equal treatment.²⁷⁵ We are merely suggesting that people with privilege have an obligation to be less concerned about the respect due to themselves and more concerned about listening to those who have so often been denied respect.

274. We do not address the question of whether these arguments might also justify a demand for particular quantities of resources because we do not believe that such a demand is necessary to deal with the particular problem of deflection that we are considering. We intend to leave open the question of whether this sort of "quota" might be justified as a solution to other aspects of the problem of group inequality.

In a sense the duty we propose is weaker than such a "quota," because it does not guarantee any specific amount of time or power to women, but in another sense it is stronger. There is no magic number of minutes (or pages in law reviews or female deans) that is sufficient to dissolve the duty. The obligation to listen respectfully and avoid deflection applies to every feminist claim, whether it is the first or the fiftieth.

275. See, e.g., Iris Marion Young, *Polity and Group Difference: A Critique of the Ideal of Universal Citizenship*, 99 *ETHICS* 250, 273 (1989) (advocating special rights for oppressed groups and possible group veto power over certain legislation).

E. Conclusion

Norms derived both from feminist commitments and from dialogic theory provide a definition of malebashing. Under this definition, malebashing occurs when a claim about men falls at the poles of the continuum concerning male agency. Ascribing too little agency or too much agency to men constitutes malebashing. If feminists do engage in accusations that rely on unacceptable forms of agency and gender identity, then it is justifiable to charge them with malebashing and to believe that those accusations require no further response. If, conversely, the criticisms voiced by feminists do not endanger these concerns, then they do not qualify as malebashing. Such criticisms may be factually wrong or strategically unwise, but they are not illegitimate. Regardless of how critical such claims may be of men, they cannot be dismissed as malebashing.

Between these relatively clear cases falls a range of claims that may or may not violate the norms we have described. Some of these cases are hard because the claim falls into a gray area on the continuum near the poles; reasonable people may disagree over exactly how much agency is enough (or too much). Some of the cases are hard because the meaning of the claim depends on contextual factors like motive, intonation, and circumstance. The norms we have described will not offer definitive answers in many of these cases, but they provide a framework within which such intermediate claims can be assessed.

When dealing with one of these intermediate claims, however, the assessment of whether it constitutes malebashing must not be allowed to deflect the conversation from the substance of the claim. Otherwise, arguments about malebashing could largely obliterate serious consideration of many feminist claims. Because of their privileged position in the conversation, men generally have an obligation to avoid such deflection and to listen and respond to the feminist argument made by the claim at issue. In other words, men have an obligation to use their power to open the dialogue to feminist claims rather than to close it.

SECTION FOUR: FEMINISM AND FEMINISMS

Throughout the previous section, we discussed feminist commitments and theories as a whole. That focus may have created the impression that feminism is a unitary and coherent collection of theories. In fact, there are many kinds of feminism and many points of sharp

contention between them. We do not mean to minimize these differences or suggest that these areas of disagreement are unimportant. We do, however, suggest that none of the most commonly held feminist positions requires the type of claims that we have identified as polar malebashing.

Some of those who accuse feminists of malebashing seem to believe that one or more of these types of feminism are inherently or inescapably committed to the extreme versions of male agency that we define as polar malebashing.²⁷⁶ In this Section, we show that all of the major types of feminist theories are consistent with a rejection of these extreme views. Notice that this claim is weaker than the one made in the previous Section. We argued there that the feminist commitments and dialogic norms identified require the rejection of the poles of the agency continuum. The various categories of feminist theory that we will identify in this section, however, need not reject both of the extreme views of male agency that we have defined as polar malebashing. All we are seeking to show here is that none of these categories of theories *requires* such a view of male agency. In other words, accepting the arguments made in the previous Section does not commit one in advance to adopting or abandoning any particular brand of feminist theory. Regardless of the category of feminist theory one adopts, if one is also committed to the feminist themes or dialogic norms discussed earlier, then one can and should reject polar malebashing. We briefly discuss four major categories of feminist legal theories to illustrate this point: liberal feminism, cultural or difference feminism, dominance or radical feminism, and postmodernist feminism.²⁷⁷

It is not possible to discuss all of the feminist theorists, or even all of the feminist legal theorists, in each of these four categories. Moreover, any large scale examination of each school of feminist thought would require an article of its own. Nonetheless, we do not wish to commit the sin with which we charged Professor Lasson in Section Two—failing to

276. See *supra* text accompanying notes 5–14 (discussing Davidson) and 28–31 (discussing Lasson).

277. Although every observer might draw the boundaries of these categories in slightly different ways, the basic schema we will use is quite common. See, e.g., Patricia Smith, *Introduction*, in *FEMINIST JURISPRUDENCE* 4, 4–8 (Patricia Smith ed., 1993) (describing liberal, relational, radical, and postmodern feminisms); MARY BECKER ET AL., *CASES AND MATERIALS ON FEMINIST JURISPRUDENCE: TAKING WOMEN SERIOUSLY* 50–52 (1994) (describing liberal, dominance, and difference feminisms).

examine the work of actual, particular feminists.²⁷⁸ We, therefore, choose one theorist in each category and use her work to show why the assumptions that we believe to be representative of that category are consistent with a rejection of malebashing as we have defined it.

We want to emphasize that this Section is not intended to be a review of the feminist literature to see who, if anyone, is actually engaged in malebashing. We do not wish to add to the name-calling and personal attacks that so often characterize this discussion. Our focus is, instead, on the theoretical frameworks that inform different feminist approaches and the question whether any of them requires polar malebashing as we have defined it. As a result, we do not intend to either indict or absolve any particular feminist writer. Even with respect to the authors we consider in detail, we are not warranting that every statement by these feminist writers in every work they have written is free from polar malebashing. We are arguing, instead, that the aspects of their work that make them representative of a particular school of feminist theory do not require that they describe male agency in a way that qualifies as polar malebashing under our approach.

In addition, this Section addresses only polar malebashing and not "hard" or intermediate claims. As we argued in the previous Section, such intermediate claims can only be assessed in a highly contextual analysis on a case-by-case basis.²⁷⁹ Thus, our argument here only concerns the general theoretical commitments of various feminist frameworks on the general issue of male agency.

A. Liberal Feminism

The first category of feminist theories is liberal feminism. Liberal feminism is liberal in endorsing certain propositions about the relationship between the individual and the state. One such proposition is that what makes humans human is the individual capacity for rational choice. Furthermore, each individual has the same capacity for rational choice. Accordingly, the state should allow each individual to exercise that capacity by protecting individual autonomy to the greatest extent compatible with a like autonomy in every other individual.²⁸⁰ Liberal femi-

278. See *supra* text accompanying notes 48–51.

279. See *supra* Section III.D.

280. See, e.g., ALISON M. JAGGAR, *FEMINIST POLITICS AND HUMAN NATURE* 28–34 (1983) [hereinafter JAGGAR, *FEMINIST POLITICS*].

nism is feminist in asserting that women possess the same capacity for rational choice as men. Women should, therefore, receive the same rights, autonomy, and opportunities for self-fulfillment.²⁸¹

Liberal feminism is also feminist in recognizing that, in fact, society has not generally accorded these equal rights and opportunities to women. Gender differences, among other things, may stand in the way of such equality. In the view of liberal theorists, gender differences are created by social role conditioning. Each individual has the same essential human nature, but society trains men and women to be different through a set of gender norms and expectations.²⁸² The goal of liberal feminism is therefore to eliminate these gender roles, whether expressed in law or other cultural mechanisms, and create an androgynous world, in which each individual is free to develop as an individual.²⁸³

We will use a highly influential article by Wendy Williams as an example of liberal feminism. In *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*,²⁸⁴ Williams offers what she calls an "equal treatment" approach to workplace rules governing pregnancy.²⁸⁵ She argues, against those of the left and the right who would single out pregnancy for "special treatment," that "women affected by pregnancy, childbirth or related medical conditions . . . [should] be treated the same for all employment related purposes . . . as other persons not so affected but similar in their ability or inability to work."²⁸⁶ The approach is thus essentially comparative: pregnancy "creates needs and problems similar

281. See, e.g., JAGGAR, *FEMINIST POLITICS*, *supra* note 280, at 35-39.

282. See, e.g., CONNELL, *GENDER AND POWER*, *supra* note 139, at 33-34, 47-49; JAGGAR, *FEMINIST POLITICS*, *supra* note 280, at 37-38, 193-94. The exact process by which society imposes/encourages/creates these gender roles is often somewhat vague. See CONNELL, *GENDER AND POWER*, *supra* note 139, at 47-50. It does seem clear, however, that liberal feminists have departed from the most extreme liberalism in this belief in social role conditioning. In their view, the individual is not just a presocial substance with given wants, abilities, and desires; rather, identity is to some meaningful extent created by socialization. Liberal feminists are still liberal, however, in positing that the individual in some fundamental way exists apart from these roles and is frustrated by them; that frustration is why liberation is so important. See CONNELL, *GENDER AND POWER*, *supra* note 139, at 47, 53.

283. See, e.g., CONNELL, *GENDER AND POWER*, *supra* note 139, at 33-34, 49, 53; JAGGAR, *FEMINIST POLITICS*, *supra* note 280, at 38-39, 176, 181.

284. Wendy Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N.Y.U. REV. L. & SOC. CHANGE 325 (1984).

285. Williams, *supra* note 284, at 325.

286. Williams, *supra* note 284, at 325 (quoting from the Pregnancy Discrimination Act).

to those arising from causes other than pregnancy."²⁸⁷ Ultimately, Williams says, the equal treatment approach involves a commitment "to uncover commonality rather than difference."²⁸⁸

Williams situates this approach to pregnancy in a larger framework of gender analysis. The law should not use gender as a proxy for other characteristics; instead, it should treat individuals as individuals.²⁸⁹ By using sex as a proxy, traditional gender discrimination sought to perpetuate a system of gender roles in which a husband was the primary breadwinner and a wife was the homemaker.²⁹⁰ The goal is to "break down the legal barriers that restricted each sex to its predefined role and created a hierarchy based on gender."²⁹¹ In place of this system of gender roles, the equal treatment approach seeks to create a world in which individuals and families may order "their lives in a way that best meets their economic and personal needs."²⁹² Ultimately, the approach seeks to "promote an integrated—and androgynous—prototype" of a worker.²⁹³ By stressing the comparability of pregnancy to other conditions rather than its uniqueness, the equal treatment approach to pregnancy helps to promote this androgynous model worker, free of gender roles and free to define him/herself according to his/her own inclinations.²⁹⁴

Williams avoids both of the extreme forms of malebashing that we have described. Liberal feminism directly rejects the notion that men are inherently beasts. In its desire for an androgynous world and its belief in a universal human nature, Williams' liberal feminism posits that men and women are fundamentally the same. Men and women may have different biology, but biology does not affect the capacity for rationality, which is the hallmark of human agency. Men and women are socialized differently, but those social roles are not destiny. Indeed, the basic purpose of liberal feminism is to free individuals from gender role conditioning—through persuasion, consciousness-raising, political action, and the like. In short, neither men nor women are inescapably *anything*, but are rational, choosing beings.

287. Williams, *supra* note 284, at 326.

288. Williams, *supra* note 284, at 326.

289. See Williams, *supra* note 284, at 329–30.

290. See Williams, *supra* note 284, at 329–30, 352–55.

291. Williams, *supra* note 284, at 331.

292. Williams, *supra* note 284, at 354–55.

293. Williams, *supra* note 284, at 363. See also Williams, *supra* note 284, at 369.

294. See Williams, *supra* note 284, at 363, 369.

Liberal feminism is also consistent with a rejection of the idea that men are engaged in a universal and self-conscious conspiracy to oppress women as a class. Individual men do oppress individual women and contribute to the maintenance of a system of patriarchy. They do so, however, as a result of socialization into an oppressive gender identity, not as a result of a calculating desire to promote the interests of men as a class.²⁹⁵ Moreover, the socialization itself is not a product of conscious conspiracy: individual men do not make an autonomous choice to be socialized into a particular gender role *ab initio*.²⁹⁶

Not surprisingly, therefore, it is very hard these days to find an accusation of malebashing directed at liberal feminists.²⁹⁷ The targets of most accusations fall into the next two categories we consider.

B. Difference Feminism

The second category of feminist theory is often called difference feminism. Unlike liberal feminists, who focus on commonality, difference feminists emphasize the ways in which men and women have systemati-

295. Women are in essentially the same situation. They too are socialized into gender roles, and many internalize the sexism inherent in those roles. *See* JAGGAR, *FEMINIST POLITICS*, *supra* note 280, at 37, 193–94. The liberal emphasis on individual autonomy does, of course, leave open the possibility that one might blame individual men (or women) for failing to reject that socialization once they are given an adequate opportunity for enlightenment. *See* Calhoun, *supra* note 140, at 389 (“Thus questions about moral responsibility become very difficult questions about how to weigh the social determinants producing moral ignorance against the individual’s competence to engage in moral reasoning.”). Such blame would, however, be an individualized assessment of guilt in light of particular circumstances rather than a wholesale condemnation of males generally. *But cf.* Calhoun, *supra* note 140, at 390 (arguing that we may be entitled to use moral reproach in “abnormal moral contexts . . . independent of the blameworthiness of individuals”).

296. *See, e.g.*, CONNELL, *GENDER AND POWER*, *supra* note 139, at 49–50.

297. Davidson’s attack on the principle of gender equality is one notable exception. *See* Davidson, *supra* note 5, at 40–41. In general, liberal feminism is so far from malebashing that it has proved immensely attractive to a particular segment in the modern men’s movement. These men argue, with liberal feminists, that gender roles limit and oppress men as well as women. *See, e.g.*, WARREN FARRELL, *THE LIBERATED MAN* (1975); JACK NICHOLS, *MEN’S LIBERATION* (1975). Under the scheme of separate spheres, women suffer, *inter alia*, from being confined to the home and denied the full use of their talents. Men suffer, *inter alia*, from having sole responsibility for the support of a family, being sent off to war, and being forced to repress a significant part of their emotional life. The destruction of such gender roles would set all free.

cally different experiences, activities, and even senses of self and reality.²⁹⁸ They point out that women's ways of experiencing, knowing, and reasoning have largely been ignored or devalued by our dominant culture.²⁹⁹ Their goal is to bring these differences to light and demand that women's experiences, values, and activities be accorded social and legal recognition.

Difference feminists adopt a broad range of positions on the question of the source of these gender differences. Some believe gender differences are a matter of socialization to gender roles under the conditions of a sexist society.³⁰⁰ Others suggest that certain activities, like mothering, may give rise to particular characteristics in those who habitually perform them.³⁰¹ The sexual division of labor then leads to systematic differences between men and women.³⁰² Finally, some appear to see a role for biology, particularly women's capacity to carry a fetus, give birth, and breast-feed, in contributing to the different senses of self and relation that men and women experience.³⁰³

We will examine the work of Robin West as an example of difference feminism in legal theory. In *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*,³⁰⁴ West provides an unusually clear and complete picture of the difference approach. She argues that the legal system has largely ignored or trivialized women's gender-specific suffering (e.g., sexual harassment, domestic violence, rape).³⁰⁵ Moreover, feminist legal theory, which has traditionally taken the form of either liberal feminism or radical feminism, has also failed to seriously examine and incorporate women's experiences of pleasure and pain.³⁰⁶ She suggests that a focus on the way in which women's "hedonic lives" are different from men's might provide a better explanation than either liberal or radical feminism for

298. See, e.g., West, *Hedonic Lives*, *supra* note 132, at 93-94.

299. See, e.g., BELENKY ET AL., *supra* note 49, at 4-6; GILLIGAN, *supra* note 49, at 1-4.

300. See, e.g., EVELYN FOX KELLER, REFLECTIONS ON GENDER AND SCIENCE 70, 88-89 (1985); Carrie Menkel-Meadow, *Portia Redux*, 2 VA. J. SOC. POL'Y & L. 75, 83 (identifying biological essentialism, socialization, and oppression as possible causes of gender difference and asserting: "I do cast my vote in favor of a claim that difference is socially derived . . .").

301. See, e.g., SARA RUDDICK, *MATERNAL THINKING* (1983).

302. See RUDDICK, *supra* note 301.

303. See West, *Jurisprudence and Gender*, *supra* note 50, at 20-21.

304. West, *Hedonic Lives*, *supra* note 132.

305. See West, *Hedonic Lives*, *supra* note 132, at 81-82.

306. See West, *Hedonic Lives*, *supra* note 132, at 83-84, 86-88.

why the legal system dismisses women's suffering: women's pain is ignored because it is not understood by men; it is not understood by them because it is different from the pain that they experience.³⁰⁷

West then proceeds to provide a detailed account of how the conceptions of self at the root of liberal and radical feminism are not in accord with the actual pleasures and pains that women feel.³⁰⁸ For liberal feminism, the central issue for the self is autonomy; people choose what will satisfy their own preferences and desires. Consent is, therefore, seen as the primary vehicle for expressing autonomy.³⁰⁹ West argues that many women, however, define themselves as "giving selves," who consent in order to satisfy the desires of others, even at the cost of substantial pain to themselves.³¹⁰ Women become giving selves (at least in part) in order to defuse the experience of fear and danger that arises from the "acquisitive and potentially violent nature of male sexuality".³¹¹ I do not need to feel violated if I freely give to you what you are trying to take from me.³¹² Equating consent and autonomy with happiness, then, fails to grasp the real experience of much of women's pain.

For radical feminism, according to West, the central issue is power and inequality.³¹³ Radical feminism assumes people will be happier in a state of equality, so the major agenda is to shift power from men to women.³¹⁴ West points out that this equation of equality and happiness, submission and misery, while true for much of women's lives, is contradicted by many women's experience of pleasure in sexual submission.³¹⁵ She argues that one can understand the attraction of sexual submission as an expression of trust in the person to whom one gives up control.³¹⁶ In failing to take seriously the potential pleasures of inequality, radical feminism falsifies the experience of women.

West's work avoids the pitfall of the male conspiracy theory. While she does suggest that the liberal focus on autonomy better fits men's

307. See West, *Hedonic Lives*, *supra* note 132, at 85.

308. See West, *Hedonic Lives*, *supra* note 132, at 87.

309. See West, *Hedonic Lives*, *supra* note 132, at 91-92.

310. See West, *Hedonic Lives*, *supra* note 132, at 92-93.

311. West, *Hedonic Lives*, *supra* note 132, at 94.

312. See West, *Hedonic Lives*, *supra* note 132, at 96-97.

313. See West, *Hedonic Lives*, *supra* note 132, at 113.

314. See West, *Hedonic Lives*, *supra* note 132, at 111-14.

315. See West, *Hedonic Lives*, *supra* note 132, at 116-17.

316. See West, *Hedonic Lives*, *supra* note 132, at 129-32.

experience than women's,³¹⁷ she explicitly rejects the idea that patriarchy is simply a matter of men consciously exercising that autonomy to oppress women. She associates this idea with radical feminist legal theory³¹⁸ and argues that her own difference approach would suggest an alternative cause for certain aspects of patriarchy. It is men's inability to understand women's gender-specific suffering that has caused them to ignore and trivialize it.³¹⁹ This inability arises not from some conscious choice to subordinate women, but from the simple fact that men's experience does not include these types of suffering and that women have, by and large, been unwilling (or unable) to talk about their experiences with men.³²⁰ Individual men can and do consciously oppress women, but the system of patriarchy is much more the *cause* of individual choices and preferences (as in the creation of women as giving selves) than the *product* of conscious individual choice.

The greater risk for difference feminism is that it might fall into the men-as-beasts trap. Perhaps the place where West comes closest to the men-as-beasts position is in her article, *Jurisprudence and Gender*.³²¹ We briefly describe this article and then explain why it escapes our definition of malebashing.

In *Jurisprudence and Gender*, West describes the difference between traditional male jurisprudence and feminist jurisprudence.³²² She divides traditional male jurisprudence into liberal legal theory and critical legal theory, and she argues that both are founded on the "separation thesis": the claim that human beings are fundamentally separate from each other.³²³ This thesis gives rise to the hopes and fears of both of these approaches to law.³²⁴ For liberals, the hope is for individual autonomy and the fear is of annihilation of the individual by the group. For critical legal theorists, the hope is to bridge separation through connection and the fear is of failing to do so and remaining isolated and alienated.³²⁵

317. See West, *Jurisprudence and Gender*, *supra* note 50, at 1, 5 (The separation thesis that characterizes both liberal and critical legal theories "constitutes a legitimate and true part of the total subjective experience of masculinity.").

318. See West, *Hedonic Lives*, *supra* note 132, at 84.

319. See West, *Hedonic Lives*, *supra* note 132, at 85.

320. See West, *Hedonic Lives*, *supra* note 132, at 96.

321. West, *Jurisprudence and Gender*, *supra* note 50.

322. See West, *Jurisprudence and Gender*, *supra* note 50.

323. See West, *Jurisprudence and Gender*, *supra* note 50, at 1.

324. See West, *Jurisprudence and Gender*, *supra* note 50.

325. See West, *Jurisprudence and Gender*, *supra* note 50, at 13.

Feminist legal theory, on the other hand, rests on a "connection thesis": "[w]omen are actually or potentially materially connected to other human life."³²⁶ This connection arises, in West's view, from a combination of cultural and material forces, including the biological fact that women carry and give birth to children, as well as the social fact that women generally raise children.³²⁷ The connection thesis generates a parallel but very different set of hopes and fears for feminist theory.³²⁸ For cultural (or difference) feminists, the hope is for intimacy and the fear is of separation when intimacy fails. For radical feminists, the fear is of connection that takes the form of invasion or intrusion and the hope is for sufficient individual integrity to resist or prevent such invasion.³²⁹

This Article, then, develops a schema in which men (but not women) seem doomed to vacillate between the valorization and denigration of their fundamental separateness, but are never able to overcome it. In light of West's clear endorsement of connection as a fundamental moral imperative,³³⁰ this argument could be read as an example of the men-as-beasts type of malebashing. We would like to suggest an alternative reading that shows how even a difference feminism that relies to some extent on biology can avoid the complete loss of agency that characterizes the men-as-beasts type of malebashing.

First, to the extent that West relies on social conditioning (rather than biology) to explain gender differences, it seems clear that she does not see either women or men as trapped within a particular gender model. In the aggregate, men can, of course, change because the social roles themselves can change. If, for example, more men took full responsibility for child-rearing, they would find themselves experiencing a more connected sense of self. In addition, any particular man has at least some capacity for change through new experiences and self-reflection, just as women have come to recognize and reject damaging aspects of femininity through consciousness-raising. Indeed, West's call, in her *Hedonic Lives* article, for women to speak up to men about their different experiences makes sense only if men can listen and change in response to what they hear.³³¹

326. West, *Jurisprudence and Gender*, *supra* note 50, at 14.

327. See West, *Jurisprudence and Gender*, *supra* note 50, at 14.

328. See West, *Jurisprudence and Gender*, *supra* note 50, at 37.

329. See West, *Jurisprudence and Gender*, *supra* note 50, at 36.

330. See West, *Jurisprudence and Gender*, *supra* note 50, at 18.

331. West, *Hedonic Lives*, *supra* note 132. Indeed, one of the major distinctions between a culturally based difference feminism and liberal feminism is that the difference

Adding reproductive biology as part of the foundation for the difference between women and men,³³² also does not force West to the men-as-beasts pole of the agency continuum. She is quite clear that biology is not destiny.³³³ Women may have an easier time adopting a connected point of view, for example, because of their experience of pregnancy, but men could learn to become more connected.³³⁴ Men, like women, have had the experience of being cared for as an infant, and that may be the central experience for forming and valuing connection.³³⁵ Indeed, one of the most important aspects of difference feminism is its claim that traditionally female activities and attitudes of caring must be morally valued for all people, men as well as women.³³⁶ If men were trapped by their biology in a morass of beastliness, making such a moral claim on them would be utterly futile.

Therefore, West's reliance on biology and culture does not commit her to some completely deterministic approach to agency for either men or women. She plainly believes that gender roles and gender relations can be consciously transformed by individuals, even if those roles rest in part on biological realities that are unlikely to change any time soon.³³⁷ It is precisely the hope of such transformation that is the moving force behind her work. Thus, difference feminism is consistent with a rejection of both forms of polar malebashing that we have identified.

C. Dominance Feminism

The third type of feminist theory is "dominance theory."³³⁸ This approach argues that the real issue for feminists is neither sameness (as liberal feminists suggest) nor difference (as difference feminists suggest),

feminist would argue that some aspects of the socially constructed female gender role are valuable and should be maintained.

332. See West, *Jurisprudence and Gender*, *supra* note 50, at 21–27.

333. See West, *Jurisprudence and Gender*, *supra* note 50, at 71 ("[B]iology is destiny only to the extent of our ignorance.").

334. See West, *Jurisprudence and Gender*, *supra* note 50, at 24, 71 ("Men *can* connect to other human life. Men can nurture life. Men can mother.").

335. See West, *Jurisprudence and Gender*, *supra* note 50, at 25.

336. See West, *Jurisprudence and Gender*, *supra* note 50, at 18.

337. See West, *Jurisprudence and Gender*, *supra* note 50, at 46–48, 57–58, 70–71.

338. See, e.g., Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 COLUM. L. REV. 304 (1995). This type of theory is also sometimes called radical feminism.

but power: who dominates whom.³³⁹ Domination and subordination have been so tied to gender that they have become part of the meaning of (hetero)sexuality itself.³⁴⁰ The purpose of feminist legal theory is to unmask this domination in its legal guises and to devise legal strategies for shifting power from men to women.

The best known proponent of dominance feminism in legal theory is Catharine MacKinnon. Her controversial work on the issue of pornography provides a powerful example of the dominance approach. Pornography, according to MacKinnon, is "a form of forced sex, a practice of sexual politics, an institution of gender inequality. . . . [P]ornography institutionalizes the sexuality of male supremacy"³⁴¹ The portrayal of women in pornography as things to be used by men, either with or without overt violence, creates the meaning of sexuality and gender for both men and women.³⁴² According to MacKinnon, "to the extent pornography succeeds in constructing social reality, it becomes invisible as harm."³⁴³ The first task of feminists is to make visible this harm.

The second task for feminists in law is to find legal mechanisms to attack this power imbalance and resist male dominance. MacKinnon, along with Andrea Dworkin and others, drafted a local ordinance to provide such mechanisms to women injured by pornography.³⁴⁴ The ordinance defined pornography as "the graphic sexually explicit subordination of women through pictures or words."³⁴⁵ The ordinance created

339. See MACKINNON, *Difference and Dominance: On Sex Discrimination*, in FEMINISM UNMODIFIED, *supra* note 53, at 32, 32-45.

340. See DWORKIN, *supra* note 53, at 63. Indeed, this model is so pervasive that it may cast a shadow even over many sexual relationships between people of the same gender. See MACKINNON, *FEMINIST THEORY OF THE STATE*, *supra* note 60, at 141-42.

341. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 53, at 146, 148.

342. See MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 53, at 146, 148-49.

343. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 53, at 163, 174.

344. The ordinance was considered in Minneapolis and different versions were adopted in Indianapolis and Bellingham, Washington. STEVEN H. SHIFFRIN & JESSE H. CHOPER, *THE FIRST AMENDMENT: CASES—COMMENTS—QUESTIONS* 181 n.a (2d ed. 1996). It was passed in Indianapolis and found to violate the free speech clause of the First Amendment to the U.S. Constitution by the federal courts. See *American Booksellers Ass'n v. Hudnut*, 771 F.2d 323 (7th Cir. 1985).

345. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in

causes of action: for those who were coerced into performing for the production of pornography; for those who were coerced into exposure to pornography; for those who were assaulted due to pornography; and for anyone who wanted to prevent trafficking in the materials defined.³⁴⁶

This effort to control pornography generated enormous controversy, not only between feminists and First Amendment theorists, but among feminist legal theorists themselves.³⁴⁷ We would like to sidestep this entire controversy and focus instead on the implications of MacKinnon's approach for the question of male agency. Does the dominance theory require either of the extreme views of agency that we have identified as malebashing?

MacKinnon is a favorite target of many of those making accusations of malebashing.³⁴⁸ She often speaks and writes about men as a category, leaving little room for the kind of diversity we mentioned earlier. Moreover, dominance theory seems likely to deteriorate into a conspiracy theory: if men have all the power, then they must be exercising it intentionally to keep women subordinate. Women are always the victims, men always the villains in this picture.

FEMINISM UNMODIFIED, *supra* note 53, at 163, 176; *American Booksellers Ass'n v. Hudnut*, 598 F. Supp. 1316, 1319 (S.D. Ind. 1984). The ordinance also required that the portrayal include one of a list of factors found to create subordination. The list includes women presented as:

(1) . . . sexual objects who enjoy pain or humiliation . . . (2) sexual objects who experience pleasure in being raped (3) . . . sexual objects tied up or cut up or mutilated or bruised or physically hurt . . . (4) . . . being penetrated by objects or animals . . . (5) . . . in scenarios of degradation, injury, abasement, torture . . . in a context that makes these conditions sexual . . . (6) . . . sexual objects for domination, conquest, violation, exploitation, possession, or use, or through postures or positions of servility or submission or display.

Hudnut, 598 F. Supp. at 1320 (quoting INDIANAPOLIS AND MARION COUNTY, IND., CODE ch. 16 (1984)).

346. See *Hudnut*, 598 F. Supp. at 1321–22.

347. See, e.g., NADINE STROSSEN, *DEFENDING PORNOGRAPHY: FREE SPEECH, SEX, AND THE FIGHT FOR WOMEN'S RIGHTS* (1995); Steven G. Gey, *The Apologetics of Suppression: The Regulation of Pornography as Act and Idea*, 86 MICH. L. REV. 1564 (1988); Frank I. Michelman, *Conceptions of Democracy in American Constitutional Argument: The Case of Pornography Regulation*, 56 TENN. L. REV. 291 (1989); Nadine Strossen, *A Feminist Critique of "the" Feminist Critique of Pornography*, 79 VA. L. REV. 1099 (1993).

348. See, e.g., Morrow, *supra* note 69, at 58 (Dworkin and MacKinnon are "the Al Sharpton and Louis Farrakhan of feminism, extremists who are convenient targets for antifeminists.").

MacKinnon's view of agency, however, is more complex and ambiguous than this caricature would suggest. First, she does not fall prey to the conspiracy theory. While some men may be conscious that the pleasure they find in pornography is a result of the eroticization of dominance, MacKinnon is extremely clear that this is not the situation for most men. In her view, the existence of pornography shapes the way men understand gender so that they come to see hierarchy *as equality*. As she puts it, "*This is equality for [women]*."³⁴⁹ Men do not consciously conspire to subordinate women. Rather, they are incapable of seeing that the conditions under which most women live, like the prevalence of pornography, are subordinating. In order for a conspiracy to exist, men would generally have to realize that domination was the result of certain practices and choose to pursue gender hierarchy as their goal.³⁵⁰ In MacKinnon's view, such a realization is extremely unlikely because pornography shapes men's (and women's) understandings of gender and sex.³⁵¹

Indeed, it is far more plausible to interpret MacKinnon as falling at the men-as-beasts pole of the agency continuum than at the conspiracy theory end. The conspiracy theory relies on a model of individual autonomy that MacKinnon has consistently criticized.³⁵² But her "thoroughgoing social constructivism"³⁵³ (e.g., the claim that social constructions, such as the eroticization of dominance, simply *are* reality) could lead her to adopt the position that men are beasts by culture. They are inevitably and inescapably formed by these cultural forces.³⁵⁴ Indeed, this

349. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 53, at 163, 171.

350. Men may, of course, intentionally choose to maintain gender relations as they understand them, but they do not generally (at least consciously) understand them as based on domination and submission. MacKinnon says that "[a]lthough these actions [that keep women in their place] may in some real way be unintentional, they are taken, in some other real way, as meant." MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 60, at 94. In other words, even in the absence of a conspiracy, men can act on an underlying commitment to the existing power arrangement.

351. See MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 53, at 163, 171-74.

352. See, e.g., MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 60, at 94-95.

353. Abrams, *supra* note 338, at 326.

354. It is an outrageous misreading of MacKinnon to suggest, as some have, that she sees men as beasts *by biology*. See, e.g., Lasson, *supra* note 22, at 12-13 (claiming that radical feminists, of whom MacKinnon is his prime example, see differences between men and women as biological). MacKinnon is very clear about her belief that sexuality is socially constructed down "to the ground": that is, there is no presocial,

interpretation of her work is strengthened by the fact that other feminists have criticized dominance theory generally, and MacKinnon in particular, for denigrating *women's* agency by ascribing this deterministic cultural conditioning to them as well. Here too, however, we believe that a careful reading of her work suggests that MacKinnon can and does reject this simplistic view of agency, for men as well as women.

Kathryn Abrams, in a recent article entitled *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*,³⁵⁵ provides a comprehensive account of this critique of dominance theory's perceived determinism from within feminist ranks. As Abrams points out, the impression of deterministic cultural conditioning arises more from the implications of MacKinnon's work than from any explicit endorsement by her.³⁵⁶ MacKinnon emphasizes "the systematic character of women's constraint, [and] the way that choices subjectively experienced as free may reflect women's collusion in their own subordination."³⁵⁷ She consistently ignores the ways in which women might exercise their agency to resist this subordination.

MacKinnon does not, however, reject the possibility of resistance. Indeed, she occasionally explicitly acknowledges its existence. For example, she believes that through consciousness-raising women may not only recognize but resist the sexual domination in their lives.³⁵⁸ In addition, she plainly recognizes that certain feminist activists have exercised their agency to resist domination.³⁵⁹ Nonetheless, she consistently refuses to discuss the ways in which agency and resistance can survive cultural constructionism. If she is not endorsing a completely determinist view of women's agency, then why does she so systematically focus on cultural determinism rather than individual resistance?

Abrams hypothesizes that this focus may have served the strategic purpose of closing off the predictable "present company excepted"

natural gender identity or sexuality for men or women; gender and sexuality are defined and created by social forces. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 53, at 146, 149; MACKINNON, FEMINIST THEORY OF THE STATE, *supra* note 60, at 90-91.

355. Abrams, *supra* note 338.

356. See Abrams, *supra* note 338, at 329.

357. Abrams, *supra* note 338, at 326-27.

358. See Abrams, *supra* note 338, at 327 n.83 (citing MacKinnon on consciousness-raising).

359. See Abrams, *supra* note 338, at 328 n.84 (discussing MacKinnon's acknowledgement of the agency of Andrea Dworkin and Linda Marchiano in resisting domination).

response of many women to the dominance thesis.³⁶⁰ Many women would be prepared to believe that others are trapped by the cultural construction of gender, but that they themselves are not.³⁶¹ Refusing to discuss the ways in which agency survives social constructionism may help force women to face the reality of coercion and subordination in their own lives.

Abrams' interpretation of MacKinnon on women's agency is equally applicable to men's agency. As with women, MacKinnon's language is severely slanted toward emphasizing the social construction of men's sexuality and gender identity. She rarely discusses the possibility that men might resist this conditioning or the mechanisms through which they might develop that resistance. Nonetheless, she does not assert that resistance is impossible and she actually (although rarely) acknowledges examples of such resistance.

For instance, MacKinnon quotes with obvious approval from a young man who testified about his efforts to "repudiate the thrill of dominance."³⁶² He explains that "if women in a society filled by pornography must be wary for their physical selves, a man, even a man of good intentions, must be wary for his mind. . . . [J]ust as a well-meaning German was afraid in 1933, I am also very much afraid."³⁶³ This man has proven able, not only to recognize the evil inherent in gender conditioning (as evidenced by his analogy to Nazism), but also to make efforts to resist it in himself. He (and we) may never escape our sexist culture entirely, but he is also not completely determined by it.

If MacKinnon does recognize the possibility of male resistance to patriarchy, then why does she usually ignore it in favor of the type of generalizations about men that lead to accusations of malebashing? We believe that she does so for the same reason that Abrams suggests she ignores women's agency: to close the escape hatch that her audience would be all too likely to use to avoid the dominance critique. Men, like women, will want to exempt themselves: "Sure gender roles are oppressive to many people, but I have managed to resist them: I am not

360. See Abrams, *supra* note 338, at 329.

361. See Abrams, *supra* note 338, at 328 n.84; see also Frances Olsen, *Feminist Theory in Grand Style*, 89 COLUM. L. REV. 1147 (1989).

362. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 53, at 163, 189 (MacKinnon's description rather than the man's own).

363. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 53, at 163, 189-90.

dominating anybody." By emphasizing how we are captured and downplaying how we can resist, MacKinnon hopes to remove this escape option and force self-scrutiny. One can criticize this approach as either ineffective or not worth the price, but such a strategic choice is completely consistent with a belief that men are *not* culturally destined to be beasts. Thus, dominance feminism, as exemplified by Catharine MacKinnon, does not require either of the two extreme positions we have identified as malebashing.³⁶⁴

D. Postmodernist Feminism

The last type of feminist theory current in present legal literature is postmodernist feminism. Perhaps the best known legal scholar to espouse an explicitly postmodernist feminism was the late Mary Joe Frug. We will rely on her work to represent this category of theorists.

Although postmodernism resists characterization, it is possible to identify certain themes or orientations that postmodern legal feminists share. Frug suggested that one "principle" of postmodernism is that human experience is located "inescapably within language."³⁶⁵ Power (including legal power) is exercised not only through direct coercion, but also through the way in which language (including legal language) shapes and restricts our reality. This makes language a potentially fruitful site of political struggle.³⁶⁶

Frug's second postmodern principle is that gender is not something natural, nor is it something completely determinate and definable. Like all human systems of meaning, it is constantly evolving and capable of infinite variations under individual circumstances. Gender is, therefore, socially constructed and completely inescapable (what would it mean to

364. Our interpretation of MacKinnon suggests that she has chosen to use rhetoric that comes much closer to polar malebashing than her actual position on agency requires. This interpretation raises the question of how one should assess that choice of rhetoric. If our guess as to her reasons for the choice is correct, then one would need to consider whether the strategic value of such rhetoric (if any) is sufficient to overcome the objections to it based on the feminist commitments and dialogic norms we considered in the previous section. In our framework—in which polar malebashing is an extremely narrow class of claims that are so fundamentally illegitimate as to require no response—rhetoric that reaches that point should rarely if ever be justified in an academic, dialogic forum. We do not mean to foreclose the possibility, however, that a different assessment might be appropriate in some other forum or under some extreme set of circumstances.

365. MARY JOE FRUG, *POSTMODERN LEGAL FEMINISM* 126 (1992).

366. See FRUG, *supra* note 365, at 126.

be outside the system of meaning?), but always susceptible to a new interpretation.³⁶⁷ Gender, like other systems of meaning, is less like a cage, and more like a tool: it constrains but never completely determines what one can do with it.

Frug applies these postmodern insights to analyze the way in which legal language constructs the female body. She finds that legal rules and discourse generate three related meanings for the female body. First, the female body is a body that can be terrorized, and is consequently one that has learned to submit.³⁶⁸ Second, it is a body that is “‘for’ maternity.”³⁶⁹ And third, it is a body that is “‘for’ sex with men,” a body that is sexually desirable and sexually vulnerable.³⁷⁰ She traces these three meanings through the legal rules and practical realities regarding prostitution, family and work, and monogamous heterosexuality.³⁷¹ Her argument is that even the aspects of gender that we consider most biological (e.g., the capacity for sexual intercourse or for reproduction) are completely permeated by culturally constructed meanings.³⁷² What it *means* that women carry fetuses, for example, has almost nothing to do with the biology of their uteruses and everything to do with how our society structures workplaces, sexual relationships, and family responsibilities.

What this postmodernist position means for agency is one of the most contested issues in feminist legal theory right now. Certainly postmodernists in general, and Frug in particular, wish to decenter the subject: to point out that an individual actor is less a coherent collection of desires and beliefs and more a location where various cultural systems intersect in unique ways.³⁷³ Does such a view necessarily imply either of the unacceptable poles we identified as malebashing?

As with MacKinnon, who shares some of the epistemological assumptions of postmodernism, there is no real danger of Frug falling into the conspiracy theory trap. Gender is constructed by systems of social meaning in which men and women both participate. Individual

367. See FRUG, *supra* note 365, at 126.

368. See FRUG, *supra* note 365, at 129.

369. FRUG, *supra* note 365, at 129.

370. FRUG, *supra* note 365, at 130.

371. See FRUG, *supra* note 365, at 131–45.

372. See FRUG, *supra* note 365, at 128–29.

373. See, e.g., James Boyle, *Is Subjectivity Possible? The Post-Modern Subject in Legal Theory*, 62 U. COLO. L. REV. 489 (1991); Pierre Schlag, *The Problem of the Subject*, 69 TEX. L. REV. 1627 (1991).

men are formed by those systems. They do not generally consciously conspire to maintain them. Rather, they see them as inevitable and natural. The central point in the postmodernist approach is to demonstrate the ways in which those systems of meaning are constructed rather than simply given, as Frug has tried to do with the meaning of the female body in law. If most men do not see the system of gender as culturally chosen at all, then they can hardly be engaged in a conscious conspiracy to maintain that cultural choice.

Similarly, the thoroughgoing cultural constructionism of the postmodern point of view suggests that men cannot be beasts by biological nature. Nature, in the sense of some presocial gender identity, simply does not exist in the postmodernist world. The real danger for postmodernism is that it will so completely succeed in dissolving the self that no individual agency will remain through which men (or women) could resist the socially imposed meanings of gender.

Postmodernists avoid this complete social determinism by relying on the insights of deconstructionism. They argue that systems of social meaning are always inherently unstable; the ideas they are seeking to suppress are constantly bubbling up to disrupt them.³⁷⁴ These ideas often find entry through the mechanism of interpretation. Although we have only the materials that our culture gives us, that culture is constantly transformed by new interpretations. No repetition is ever exact; there are subtle but important shifts in every reenactment of a cultural pattern, including gender patterns.³⁷⁵ In the space created by interpretation, both individual resistance and political reform become possible.³⁷⁶

Many other feminists have found this reliance on interpretation to be problematic. It appears not to take seriously enough the very real oppression that women suffer: how does one reinterpret rape or spousal abuse?³⁷⁷ It also is clearly related to the emphasis on "style" and the sometimes flippant tone that characterizes much postmodernist writing and that many feminists find disturbing.³⁷⁸ And, if socially constructed systems of meaning are really so completely encompassing, it is not clear

374. See CORNELL, *supra* note 176, at 36–42.

375. See CORNELL, *supra* note 176, at 104–06.

376. See Judith Greenberg, *Introduction* to FRUG, *supra* note 365, at xxviii.

377. See CORNELL, *supra* note 176, at 82, 118; FRUG, *supra* note 365, at 127.

378. See FRUG, *supra* note 245, at 127. For an example of such criticism, see Mari J. Matsuda, *Pragmatism Modified and the False Consciousness Problem*, 63 S. CAL. L. REV. 1763, 1768–71 (1990).

how, in the end, it is possible to generate a truly new interpretation. Where does the new insight or vision come from?³⁷⁹

Whatever its difficulties, however, the reliance on interpretation and techniques of deconstruction is clearly a step away from complete determinism and toward the possibility of individual and collective resistance. If such reinterpretations are possible, then men cannot be predestined by a violently sexist culture to be violent or sexist beasts. Men, like women, have the capacity to find in that culture the seeds of a new vision of gender which will allow them, however imperfectly, to create a new interpretation of their own masculinity. They are not inherently and inescapably beasts.

Thus, all four of the categories of feminist theory that are current in the legal literature are consistent with a rejection of polar malebashing as we have defined it. While it is possible for each type of theory to embrace one or the other pole of the agency continuum, it is also possible for each of them to reject both poles while remaining faithful to the central insights of that theory. There are two important implications that follow from this analysis. First, it is not true that malebashing is an inherent or necessary part of feminism in general or any of these brands of feminism in particular. It is quite possible, and we believe quite common, to produce feminist theory without engaging in polar malebashing. Second, the rejection of these extreme views of male agency does not require feminists to eschew any particular theoretical approach. The whole broad range of current theories remains open to feminists who are committed to avoiding polar malebashing.

CONCLUSION

Although this Article addressed the role of a certain argumentative structure (malebashing) within academic dialogue, we have a more than academic interest in this subject. We recently became the parents of a baby boy and suddenly found ourselves face-to-face with a collection of issues we had never considered in quite the same way before. We face, of course, all of the issues about how to raise a boy to have good attitudes towards women in a deeply sexist society: how do we reduce or counteract the messages about women that he will be bombarded with

379. See Susan H. Williams, *Review Essay: Utopianism, Epistemology, and Feminist Theory*, 5 YALE J.L. & FEMINISM 289, 307-11 (reviewing CORNELL, *supra* note 176).

throughout his childhood? But there are also questions about how to raise him to have good attitudes towards men, including himself.

We find that while the first set of questions presents very difficult practical problems—e.g., which techniques (avoidance, confrontation, example) are most effective?—the goal itself is relatively clear. We may not know what gender attitudes would be in a perfectly just society, but we do have some idea in which direction lie the first steps from here to there.

The second set of questions, however, causes us more confusion. It is not just difficult to know how to instill the appropriate attitudes, it is difficult to know what they are. What are the right attitudes towards men in a violently sexist culture in which they dominate? What if you are a man yourself?

We both think of ourselves as feminists, and it is very important to us that our son someday see himself the same way. But we recognize that it is inevitable (and maybe a good thing?) that he will also someday see himself as a man. It is crucial that he find a positive way to hold both of these self-images, indeed, that he find a way to make them mutually supporting. We do not want a commitment to feminism to mean that he either has to hate himself (because he is one of those evil male creatures) or renounce his masculinity (in order not to be one of those evil creatures). The two images we used to illustrate malebashing throughout this article—the conspiracy theory and the men-as-beasts theory—create precisely this dilemma.

We do not mean to suggest that it is the job of feminists to make men feel good about themselves. Indeed, it may well be part of the job of feminists to make many men feel bad about themselves.³⁸⁰ But it cannot be the case that accepting feminism necessarily blocks any possibility of feeling good about yourself or about being male. There must be room within feminism for some reconceptualization of masculinity that can be both meaningful to actual men in our society and acceptable from a feminist point of view.

This concern has a very pragmatic, or strategic, side as well. It is not just little boys for whom conceptions of masculinity are an issue. Many grown men are also struggling to find a way to bring together their

380. Indeed, the subtle and uncomfortable sense of complicity many men feel when they examine their own behavior and assumptions from a feminist standpoint is an important engine for social change. Creating that discomfort is undoubtedly one of the primary tasks of feminism. We are simply suggesting that feminism cannot require that men never find any comfortable conception of masculinity.

feminist commitments and their inability (or unwillingness) to abandon their own gender identities. A good friend of ours, who is male and very much committed to feminism, once complained about the way he was treated in feminist gatherings where he was the only man. The women would criticize men in the broadest possible terms and then smile at him and say, "present company excepted, of course." They meant to be telling him that they regarded him as having escaped the gender roles they were objecting to, but the implied shadow message was that he was not a "man" as they understood and used that term. He felt that he was being asked to renounce his membership in his gender as the price of admission to these discussions.

If feminists want more men to join our ranks, we need to present them with a view of men that allows them to embrace feminism without hating the gender to which, given the present reality of our culture, they are inevitably connected. Many feminists are presently engaged in projects to reconceptualize, problematize, and multiply the images of "woman." We must be open to similar strategies with respect to masculinity and "man." This cannot, and need not, disable us from criticizing particular images of masculinity that have been dominant in our culture. But we must leave room for, indeed actively encourage, alternatives to those images, alternatives that make the conjunction "feminist men" more like a tautology and less like an oxymoron.

Although this project of reconceptualizing masculinity probably needs to begin with men, it is crucial that feminist women be involved. Men and women are both extremely prone to replicate the damaging aspects of traditional gender identities in this search for a reconceptualization of their own gender.³⁸¹ But feminist women can provide a useful warning to men when the "new" masculinity they are designing feels oppressive to women in much the same way as the old one.³⁸² If the goals of feminism include dismantling the hierarchical gender structure, reducing the violence and repression in women's lives, and increasing women's opportunities in society, then reconceptualizing masculinity is a powerful tool that feminists cannot afford to ignore.

381. This is, of course, the difficulty with the present men's movement's attempt to revitalize masculinity: it is much more an effort to revive existing (and, from women's perspectives, oppressive) conceptions than to design new ones.

382. When women replicate damaging aspects of traditional femininity, however, they most often harm themselves rather than men. Men cannot therefore warn women when women's search for new gender images replicates the old oppression.

This Article has not attempted this project of reconceptualizing masculinity. Our goal has merely been to clear the ground so that this work could proceed. Polar malebashing, as we have defined it, is a way of characterizing men that prevents this project of reconceptualization from ever getting started. If what it means to be a man is that you are consciously committed to dominating women or you are an inherently sexist beast, then there is no room for feminist men. More precisely, the project of reconceptualizing gender identities presupposes that we do not occupy either pole of the agency continuum we have discussed. If we were all perfectly autonomous choosers, a gender identity would have no special power over us. It would simply be one hat we could put on or take off at will. To recognize the importance of conceptions of gender is to recognize the reality and importance of social construction of the self. On the other hand, if we were all completely determined by biology or social conditioning to be whatever our gender required, then we would have no capacity as individuals to reconceptualize or reform our gender identities. We must retain sufficient agency to reflect on our own conditioning and envision alternatives to it.

The project we are describing here, in other words, is one that is useful only if we avoid the extreme autonomy end of the continuum and possible only if we avoid the extreme determinism end of the continuum. By defining malebashing in terms of these positions on agency, we have ruled out of bounds only those criticisms of men that stand as a barrier to the work of reenvisioning masculinity. And we have left open a broad range of feminist theories on which we might draw in this effort.

Thus, even if it turns out that feminists do not often engage in polar malebashing as we have defined it, it is an important conceptual category for us to keep in mind. Realizing why these images of men are so illegitimate as to warrant the epithet "malebashing" allows us to see how we can, and must, participate in the work of constructing livable, and feminist, visions of men. So that, perhaps, when our son is a little older, we will be able to offer him a way (or, better yet, several different ways) to be both a committed feminist and a happy man. ✱

