

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

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

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

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

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

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

Is(n’t) Catharine MacKinnon a Liberal?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Notes

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

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