Law and Sex

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In *Feminism Unmodified*, a collection of speeches given between 1981 and 1986, Catharine MacKinnon talks of law from the perspective of feminism. MacKinnon does not approach her topic as a lawyer with a uniquely legal perspective on feminism; she brings, instead, a distinctively feminist approach to law. Nor is the feminism from which she speaks grounded in the standard political theories: MacKinnon disclaims and attacks the Marxist approach to feminism, the socialist approach to feminism, and, most emphatically and repeatedly, the liberal approach to feminism that has been embraced by many lawyers in their effort to use law to eliminate discrimination on the basis of sex. MacKinnon’s goal is to define feminism on its own terms. That is what she means by “unmodified.” This book both exemplifies and discusses the difficulty, and the considerable success, of her project. It is a rough, powerful, important work.

MacKinnon talks about law, and about the effect upon women of trying to talk in legal language. Although she herself is, in at least some of these essays, talking to lawyers, and although lawyers typically adopt a language of neutrality, MacKinnon herself makes no pretense of neutrality or disinterest. These are political speeches. They are concerned with the way law works as a system of power, a system that reinforces the supremacy of men over women. To adopt the language of law as if it represented not politics, but neutrality or a claim to a disinterested justice, would be to give up her claim from the beginning. It would cede to law the very status she contests. Yet the costs of MacKinnon’s choice to talk about law from the standpoint of feminist politics — the personal and political costs, particularly the loss of credibility — are high. That is a chief theme of this book:

My work is considered not law by lawyers, not scholarship by academics, too practical by intellectuals, too intellectual by practitioners, and neither politics nor science by political scientists.

. . . [A]s for me, I notice that law gives me some credibility, but that being woman-identified takes it away. The law gives male credibility; female identification erases it. [pp. 132-33]

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How do you persuade as a feminist lawyer? Must you choose between a language of neutrality, which provides credibility but disables you from saying those things you most need to say, and a feminist language, which allows you to say those things at the cost of being believed? In MacKinnon’s view, a central tactic of male supremacy is to deny credibility to women who speak as women. The central task of feminism is, in the face of this, to articulate a woman’s point of view. The law has responded to the voice of the disempowered in the past. MacKinnon calls on it to do so once again.

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The speeches in this collection build upon two earlier, more formal articles, both published in *Signs*. In these articles MacKinnon began to elaborate her view of the explanatory power and distinctive methodology of feminism. This methodology, consciousness-raising, consists most basically in believing women’s descriptions of their own experience. It also requires of women, however privileged they may be, that they identify with women, that they remain loyal to and accountable to women, rather than to the system that has given them a comparative advantage (p. 77). When you listen to women, MacKinnon testifies, the world assumed by law does not exist (p. 169). What is left out by law is the systematic domination of women by men in public and, most importantly, in private life. That domination, MacKinnon argues, is based on sex: “[F]eminism is built on believing women’s accounts of sexual use and abuse by men” (p. 5).

Two-thirds of the essays in *Feminism Unmodified* apply the perspective of women to specific legal questions. From that perspective, much that is not currently perceived as harm based on sex, or even as harm at all, becomes visible as sex discrimination. An example — one in which MacKinnon’s efforts in making discrimination visible as discrimination have already achieved remarkable legal success — is sexual harassment. From a male perspective, sexual harassment is not the infliction of an injury, but a natural biological response. From a perspective that claims to be untainted by gender, to be objective and neutral, sexual harassment might not look like sex discrimination if both men and women are harassed, or if both find the tactics offensive. From a woman’s point of view, sexual harassment is one of many instances in which women are treated in a degrading, demeaning manner because of their sex. It is a way of reinforcing women’s subordinate status. Ten years ago MacKinnon wrote a book in which

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she argued that sexual harassment was a practice of sex discrimination.\textsuperscript{3} This characterization, which was greeted with much skepticism when it was first articulated, now has been accepted, without dissent, by the Supreme Court.\textsuperscript{4}

Repeatedly in this collection of speeches, MacKinnon redescribes as sex discrimination practices which have been thought of as neutral, objective, or based on biological differences. A key part of this argument is her critique of the law's approach to questions of inequality. The great gains in legal equality made by women since the early 1970s rest in large part on the argument that women should be treated the same as men to the extent that they are the same as men. Since many women, at least those educated like men, seem to be the same as men for most public purposes, this argument has been tremendously effective in breaking down barriers created by reliance on stereotypes and overgeneralizations. The lawyers who made this claim appealed to an image of women as autonomous, independent, and as capable of accomplishment as any man. This strategy has been most effective in gaining women access to previously segregated institutions. To close the door to these independent, fully capable women would be irrational.

The strategy creates problems when the grounds for difference in treatment are fertility, or pregnancy, or women's responsibility for child care, for discrimination on these bases appears to reflect real differences and thus to be "rational." To the extent that lawyers arguing on behalf of women insist that women be treated like men in spite of pregnancy or reproductive potential, their claims, under the equality analysis, look like a request for affirmative action or preferential treatment. The capacity to bear children becomes a difference from men, a disability, something to be compensated for, rather than something that is a valuable part of one way of being human.

MacKinnon treats the legal strategies which focus on similarity and difference between the sexes as a single strategy with "two alternate paths to equality" — "be the same as men," or gender neutrality; and "be different from men," or special protection (p. 33). What the two paths share is the assumption that questions of equality are to be approached by comparing women to men: "Concealed is the substantive way in which man has become the measure of all things" (p. 34). This legal strategy, the "differences approach," assumes that legal questions of equality can be resolved by logic, without reference to politics. MacKinnon associates this effort to avoid politics with liberalism's assumption that all adults, men and women, are free from coercion in the absence of government interference, able to make choices

\textsuperscript{3} C. MacKinnon, Sexual Harassment of Working Women: A Case of Sex Discrimination (1979).

completely voluntarily and to determine their life direction. The legal strategy, the liberal assumption that underlies it, and the feminists who make claims in these terms, are the main objects of attack in her book.

MacKinnon argues that gender discrimination is a question of dominance, rather than of distinction: "To feminism, equality means the aspiration to eradicate not gender differentiation, but gender hierarchy" (p. 22). The systematic subordination of women by men cannot be solved by drawing more appropriate distinctions. Just as the legal arguments made by liberal feminists drew on precedent from race cases that challenged segregation and exclusion by refusing to permit classifications based on race,\(^5\) MacKinnon points to precedent from race discrimination law that describes the problem as "white supremacy," rather than irrational differentiation.\(^6\) Even though the attention of feminist lawyers in the 1970s was directed primarily at the exclusion of women from male institutions, segregation, MacKinnon argues, is not at the core of women's problems. MacKinnon is much more concerned with what happens when women live with men.

MacKinnon's approach, which sees the achievement of equality as tied essentially to the overthrow of male dominance and gender hierarchy, assumes that men and women are different in a system of male supremacy. The "differences approach" leads to a dead end, for it is insensitive to the way in which gender differences are socially constructed. Women are not "similarly situated" in our society — specifically, they are not autonomous and independent. Liberal feminism assumes that, once the stereotypes are swept away, we will have left only some irreducible biological differences in gender that can be rationally taken into account because they reflect differentiation that is neither inaccurate nor irrational. MacKinnon argues that nothing, not even biology, is irreducible in that way. The so-called biological differences among the sexes are given meaning — in fact, created — by social practices, including the practices of law (p. 173). This is not the familiar argument that we cannot know what is attributable to biology until we eliminate social inequities. MacKinnon asserts that we cannot get beyond social readings of gender to an unbiased, neutral view of difference. The key question then becomes: What has been the social construction of sex differences, and how has the law contributed to it?

MacKinnon's position is that the key to understanding the social meaning of gender, and thus the key to understanding male dominance, is what society has made of sex. The link between dominance and sex is simple and direct: We have been taught to believe that

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women enjoy sexual dominance, that they are naturally subordinate in this most basic of biological activities and therefore naturally subordinate in all aspects of life. In linking dominance with sex, rather than with economic or class interests,7 or with psychological conditioning,8 MacKinnon has been powerfully influenced by the work of the philosopher and novelist, Andrea Dworkin (pp. 129-31, 149, 173). In Dworkin's analysis "sexuality itself is a social construct, gendered to the ground. Male dominance . . . is not an artificial overlay upon an underlying inalterable substratum of uncorrupted essential sexual being" (p. 149). The social construct of sexuality is that women are objects for male use. One consequence of "believing women's accounts of sexual use and abuse by men" is to blur the distinction that the law has drawn between impermissible forms of dominance, such as rape, and everyday relationships between men and women. The testimony that MacKinnon hears, from women "who have lived through or worked hands-on with violence against women," from former prostitutes, and from former pornography victims like Linda Marchiano, capture more of women's situation for MacKinnon than does most feminist writing (pp. 216-17). In one of her Signs articles, MacKinnon has argued that the legal definition of rape legitimates the forcing of sex upon women. It does so by defining rape from a male point of view, as consisting of those forms of coercion that the men in the legislatures are unlikely to use.9 Sex that does not fit into the legal definition of rape is assumed to be consented to, to be voluntary. But the legal definition, MacKinnon argues, ignores most of the ways in which sex is actually forced upon women. These include, but are not limited to, economic coercion, the more subtle physical coercion created by limited options and women's trained passivity, and violence assumed to be consented to because the woman did not scream and fight, as well as the pervasive coercion that flows from being called frigid, or repressed, or anti-male, if a woman says no.

Some of the most cherished victories of the women's movement are called into question by MacKinnon's description of male supremacy. For example, she redescribes the significance of Roe v. Wade,10 the case that held state prohibitions of abortion to be unconstitutional.

7. MacKinnon rejects those theories that "appl[y] the objectivist strain in marxism to women and call[ ] that marxist feminism." P. 60. But she draws upon another strain in Marxism, one which "is more critical of the necessary situatedness of its own standpoint." P. 59. She describes her approach as "methodologically postmarxist" in that it "treats women as a social group." P. 60. MacKinnon's argument that "the molding, direction, and expression of sexuality organize society into two sexes" is explicitly parallel to the Marxist analysis of society as fundamentally constructed of the relations of people through work. Pp. 48-49.

8. MacKinnon criticizes theorists such as Carol Gilligan and Susan Griffin, who build upon psychological analyses of women's situation in order to identify some "real" woman's perspective or sexuality that exists outside of and is distorted by male culture. Pp. 38-39, 148-49.

9. Feminism, Marxism, Part 2, supra note 1, at 646-55.

The Supreme Court in *Roe* based its decision on a theory of freedom of choice in private matters, rather than a theory of sex discrimination. MacKinnon challenges this reasoning, which assumes that women are free to make choices about private matters unless they are subject to government coercion. MacKinnon argues that it is in private matters that women may be least free. Again, the comparison to men as a standard has skewed the legal question: "the equality issue has been framed as a struggle for women to have sex with men on the same terms as men: 'without consequences'" (p. 98). The result, although it has undoubtedly helped many desperate women, has also furthered male power over women: "So long as women do not control access to our sexuality, abortion facilitates women's heterosexual availability. In other words, under conditions of gender inequality, sexual liberation in this sense does not free women; it frees male sexual aggression" (p. 99). A decision that looks like a victory for feminism also serves — may have been possible only because it also serves — the dominance of man.

Both the arguments in support of *Roe* and the arguments against it assume that the normal, typical, sexual relationship between men and women in our society grows out of the free choice of both parties. MacKinnon argues that that is true only from a male perspective. For women, sex is almost universally compulsory. And what sex means, what it acts out, is domination by men and submission by women. It is not a sufficient answer to this claim to point out that many women enjoy sex. MacKinnon would respond that they are trained to that preference, and that it is not surprising that women try to make the best of their situation. The real power of MacKinnon's claim turns not on individual preferences, but on the social meaning of sex. For a man, sex is consistent with, even essential to, a public image of power and prestige. For a woman, sex is inconsistent with authority; it is a sign that someone has exercised power over her. Socially, sex is not seen as enhancing a woman in her various roles, but as defining her limitation to a single role. The social meaning captures what MacKinnon asserts: that sex is forced on women. In elaborating what sex means to women, MacKinnon links women across class lines. For poor women, forced sex may take the form of economic coercion into abusive marriages, unwanted pregnancies, pornography, and prostitution. Elite women may or may not have more economic independence, but they too, MacKinnon argues, are victimized because of their sexual identity.

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Because sexuality and its social meaning as dominance and subor-
dination are central to MacKinnon's theory, the practices that create that meaning are first on MacKinnon's agenda for legal change. Foremost among those practices, she argues, is pornography. MacKinnon argues that pornography, like sexual harassment, is a manifestation of sex discrimination. Like rape, pornography is not separate from normal sexual relations. In fact, MacKinnon claims, pornography is a cause of sex discrimination, and it determines sexual relations. Almost half of *Feminism Unmodified* is about pornography. Her critique, which builds explicitly and with admiration on the work of Andrea Dworkin, may change forever the way in which the subject is viewed by lawyers. It is also the area in which MacKinnon is most under attack in her claim to be speaking for women.

Before Dworkin and MacKinnon came on the scene, the law, most liberals, and most lawyers regarded pornography from the point of view of the pornographer; pornography was primarily a question of free speech, and the essential harm was that inflicted by government censorship upon the speaker. MacKinnon looks at pornography from the point of view of the woman who is the subject of the pornographer's speech. From this perspective, what is troubling is not obscenity, bad taste, or offensiveness. What is troubling is pornography's subordination of women. MacKinnon is not simply concerned with violent pornography, for the very concept of violence incorporates a male standard of what is coercive. Pornography that portrays sex as violence toward women is a large part of the problem, but violence is only one way in which women are subordinated (p. 187). MacKinnon is also concerned about pornography that dehumanizes women and pornography that portrays humiliation or submission as central to the sexual role of women.

Defined this way, pornography is the central practice of male supremacy. It illustrates the link that MacKinnon sees between male dominance and sexuality. Pornography legitimates the domination of women by men by making this domination appear natural, an expression of innate sexual urges in both the man and the woman. It defines what is thought to be sexual freedom, and teaches that it is acceptable for men to dominate women because women, biologically, enjoy being dominated (p. 91). Pornography teaches what sex is and what women are. The prevalence of similar messages in nonpornographic areas of


13. Under her definition, pornography is "the graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities; enjoying pain or humiliation or rape; being tied up, cut up, mutilated, bruised, or physically hurt; in postures of sexual submission or servility or display; reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture; shown as filthy or inferior; bleeding, bruised, or hurt in a context that makes these conditions sexual." P. 176.
society, such as advertising and art, only reinforces MacKinnon’s point that “normal” sex has been created in pornography’s image. MacKinnon’s legal response is an ordinance, drafted by MacKinnon and Dworkin, which gives women who can establish that they have been injured in the production of, or as a consequence of, pornography, a cause of action against the pornographer, and, in some cases, a right to have the material removed from the market. By casting the legal action as a civil rights suit brought by the victim, rather than as government-initiated regulation, the MacKinnon-Dworkin proposal builds the woman’s perspective into the legal process. The harm to the individual woman who is in the courtroom as the plaintiff is the center of the suit.

The first amendment objections to the ordinance have prevailed in court, but MacKinnon challenges these constitutional constraints as reflecting, again, a male perspective. First amendment law, she argues, protects individuals against government oppression because that oppression is what men fear (p. 207). It assumes that in the absence of government coercion, the speaker can say whatever is on his mind, that freedom from the state is total freedom. Women’s experience is different. Their oppression takes place in private, and it comes from men rather than from the state. “[T]he free speech of men,” in particular the speech of pornographers, “silences the free speech of women” (p. 156). It discourages women from speaking, and when they speak it makes what they say not credible. To the extent that the core first amendment value is tolerance of others’ views, it is a habit of mind that women do not need to learn. Women are trained to be tolerant of and to adapt to male ways of seeing the world. What women need to achieve is the confidence to insist on their own voice.

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In form as well as in content, this book is about speaking from women’s experience and the effort to achieve credibility for what is said. This is an issue of immediate, as well as theoretical, importance for MacKinnon. In *Feminism Unmodified* her ideas are not presented as a finished whole. Instead, they are developed over time, through speeches which begin tentatively in the early 1980s and build throughout the decade toward more certainty and more anger. In her earliest essays, for example, she is uncertain about the proper response to pornography. Four years later, after innumerable debates over her ordi-

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14. The version of the ordinance adopted by the city of Indianapolis also permitted suits by men, children, or transsexuals who could “prove injury in the same way that a woman is injured.” *Indianapolis, Ind., City-County General Ordinance No. 35 16-17(b)* (1984), quoted at p. 294.


16. Censoring pornography has not delegitimized it; I want to delegitimize it. What would do that is unclear to me at this time. Maybe there is a way. There needs to be. It is
nance, and after watching its quick demise at the hands of the federal courts, she is furious — at the federal judges and, even more so, at other women, particularly women lawyers, who claim to speak as feminists yet oppose her proposal. We see how her ideas and her speaking strategies develop in response to responses, and in many different contexts, before groups with a variety of agendas.

It is not clear whether the versions of the speeches that appear in the book represent written texts from which MacKinnon would speak, or whether they are transcripts from taped presentations. Some seem quite clearly to be texts written for publication, others are so full of references to the particular occasion that they seem to have been put down undigested on the page. She says that "they were all spoken first without a written text," though some were later revised (p. 1). They are all deliberate political acts, as well as essays in theory. The most formal is the Biddle lecture given at Harvard in April of 1984. Others are portions of panel discussions in which MacKinnon participated, with the contributions of the other panelists excised, but with an occasional brief question from the floor included. There seems to have been virtually no editing for publication. There is considerable repetition; and there are some frustrating omissions. Occasionally MacKinnon refers to positions that other people have taken in the course of the conference or panel discussion at which the speech was given, or to political maneuverings that preceded her speech, but these are not explained in any detail. Even when her speech is a fierce attack on another perspective, as in On Collaboration, she seems so suspicious of her opponents' arguments and motives that she does not communicate what they are saying. Despite occasional statements by MacKinnon that she is interested in dialogue (e.g., p. 46), hers is the only voice that you hear in these pages. The voices of other women are included only through MacKinnon's retelling of their stories or her fury at their failings.

MacKinnon is simultaneously mesmerizing and infuriating. She is provocative, grating, moving, defensive, devastating, repetitive, relentless. Even her written words often capture the passion and cadence of a preacher. Although she is explicitly political, she refuses to conform to the expectations of any particular style of discourse, even the discourse of conventional politics. One of her characteristic techniques is to build an argument elliptically, through a chain that appeals to an understanding of connections that are developed more fully elsewhere:

17. "My best guess is that [the MacKinnon-Dworkin pornography] law takes the point of view that women do not enjoy and deserve rape, and [Judge Easterbrook] saw that as just one point of view among many." P. 211.
"Pornography turns sex inequality into sexuality and turns male dominance into the sex difference. . . . [P]ornography makes inequality into sex, which makes it enjoyable, and into gender, which makes it seem natural" (p. 3). She is witty, and funny, and sharp: "Lawyers considering whether anything can be done for a woman . . . rarely conclude that they should confront or change the law. They look at cases the way surfers look at waves" (p. 13). And: "[T]o consider 'no more rape' as only a negative, no more than an absence, shows a real failure of imagination. Why does 'out now' contain a sufficiently positive vision of the future for Vietnam and Nicaragua but not for women" (p. 219)? MacKinnon exaggerates, though not without basis, and she makes her points through redefining terms in surprisingly broad, though not inaccurate, ways. She is deliberately shocking: "Pornography strips and devastates women of credibility, from our accounts of sexual assault to our everyday reality of sexual subordination. . . . Even if she can form words, who listens to a woman with a penis in her mouth" (p. 193)? She can be conclusory and vague. She plays language games. For example, the word "pornography" becomes a verb, something that is done to women, as in "[t]he film Deep Throat, in which Linda was pornographed . . . ." (p. 128). Perhaps MacKinnon's most distinctive pattern is the juxtaposition of extremely academic, abstract arguments with crisp, biting sentences:

Along with the rape and prostitution in which it participates, pornography institutionalizes the sexuality of male supremacy, which fuses the erotization of dominance and submission with the social construction of male and female. Gender is sexual. Pornography constitutes the meaning of that sexuality. Men treat women as who they see women as being. Pornography constructs who that is. Men's power over women means that the way men see women defines who women can be. Pornography is that way. [p. 148]

For MacKinnon, speaking for women means speaking about sex, specifically, about sex as forced upon women. Feminism Unmodified is about credibility — about the credibility of women who testify to sexual abuse, and about MacKinnon's own credibility when she speaks for these women. Her point is that the very effort to speak about these matters in this way calls into question the credibility of the speaker.

18. For example, she describes an Equal Employment Opportunity Commission ruling that a sexual harassment complainant had not met the burden of proof without a corroborating witness as saying "a woman's word is worthless. Usually all the man has is his denial." P. 113.

19. For example, she asks why she is not believed when she says that "only 7.8 percent of women have never been sexually assaulted." P. 171. Her figure "includes all the forms of rape or other sexual abuse or harassment . . . noncontact as well as contact, from gang rape by strangers to obscene phone calls, unwanted sexual advances on the street, unwanted requests to pose for pornography, and subjecting to peeping Toms and sexual exhibitionists (flashers)." P. 233. Under this definition it is amazing that any woman has escaped from sexual assault. But MacKinnon's point is made: Women feel that they have not been victims of sexual assault only because they accept so much of it as "normal", as something that must simply be tolerated to get along in the world.
That is one of the damaging effects that she attributes to pornography (p. 193). In her most recent speeches and in the afterword, where she writes directly about her experiences as a speaker, MacKinnon struggles explicitly with the hostility, the dismissals, and the attacks that her lectures have elicited. She is most concerned, perhaps because most surprised, when those attacks have come from women.

For the past two decades, feminist theory has elaborated upon the basic insight that "the personal is political." MacKinnon's claim is to have captured the essential meaning of that phrase in drawing the connection between political power, manifested in the system of male supremacy, and the sexual relations between men and women. Feminism Unmodified is an elaboration of the consequences of drawing that connection. But it is also an exploration of the connections between the "personal" and the "political" in another sense. In these essays, which are the texts of political speeches, MacKinnon is often very personal. One of her strategies is to engage her audience and her foes directly by naming names and making personal accusations. She also addresses explicitly, throughout the time period of these speeches, the hostile reactions that have been directed against her and her colleagues personally. One not uncommon response to MacKinnon's tactics, especially among people exposed to these ideas for the first time, is to try to evade the political point by focusing on the person of the speaker — to ask whether she likes sex, or to speculate about her sexual preference.

Why do MacKinnon's essays evoke not only disagreement, but such extreme hostility? Why are they so unsettling, even to people who are committed feminists?

Despite her evident distress and even surprise at the strength of the resistance she has encountered, MacKinnon would say that the resistance simply establishes the force of her argument. She is correct. It is dangerous for a woman to speak about sex and to call it coerced. At best, what she says will be trivialized — for instance, reduced to a debate about her own sexual practices. At worst, she will be hounded and hated. The very strength of the negative reaction becomes evidence of one of MacKinnon's main themes: that it is important to those who have a stake in the existing system that women's point of view be denied credibility.

MacKinnon claims that the legitimacy she gains through law is taken away because of her identification as a woman (pp. 132-33). But part of the problem — this is another one of her themes — is that she cannot simultaneously identify herself as a woman and as a lawyer in any conventional sense. She would claim that the things she has to say

20. See, e.g., pp. 141-42, p. 260 nn.13-14 (Professor Charles Nesson); p. 220 (Judge Ellen Bree Burns).

cannot fully be said in lawyers' language. To some extent, her arguments can be made with traditional legal techniques. She can point to analogous claims that have been recognized by the courts in the past, especially in the racial discrimination cases. In those cases, harms that were once ignored have been made visible. More specifically, MacKinnon rejects the legal strategy that holds up the ideal of a gender-blind system, and, in doing so, she can rely on the acceptance in race cases of the idea that a color-blind government is inadequate to achieve true equality after centuries of abusive treatment.\(^\text{22}\)

But in many significant ways, MacKinnon deliberately refuses to speak like a lawyer, or even like a traditional academic. She refuses to feign neutrality or disinterest. She even refuses to make a pretense of stating the other side's position. She claims that the matters of which she speaks are not matters about which one can or should be neutral and objective, that the standards of objectivity and neutrality are techniques used to conceal the fact that reality has been constructed from the male point of view. In a world created according to the male point of view there is no way that one can talk about what happens to women without sounding strident and hysterical — that is the way in which the testimony of women is made unbelievable. Again, the very hostility MacKinnon evokes becomes evidence in support of her claim.

MacKinnon's analysis is powerful and coherent. But she has made other choices as well, choices not so obviously required by her agenda. She is often offensive and cruel to individuals and groups who disagree with her. This is one way in which she refuses to respect the line between the personal and the political. One of the last essays in this collection is called On Collaboration. It is not about MacKinnon's collaboration with Andrea Dworkin, Linda Marchiano, and other women whom she repeatedly and graciously acknowledges throughout this book. It is about collaboration in the World War II sense. The essay is directed at women lawyers who do not support MacKinnon's proposed pornography ordinance. These women are not called "women lawyers," or "feminists," except with a sneer (pp. 200, 202). They are called, repeatedly, "women lawyers who identify as feminist."\(^\text{23}\) MacKinnon is a woman who has found anger empowering, and she is angry at those who find anger debilitating, or who are not


\(^{23}\) E.g., pp. 201, 202, 205.

What law school does for you is this: it tells you that to become a lawyer means to forget your feelings, forget your community, most of all, if you are a woman, forget your experience. Become a maze-bright rat. Women lawyers as a group have not been much of an exception to this, except that they go dead in the eyes like ghetto children, unlike the men, who come out of law school glowing in the dark. Women who defend the pornographers are defending a source of their relatively high position among women under male supremacy, keeping all women, including them, an inferior class on the basis of sex, enforced by sexual force.

... I... really want you on our side. But, failing that, I want you to stop claiming that
driven by the same anger. To her, those women seem less courageous. It may well be impossible to talk about what MacKinnon has to talk about without being angry, very angry, but it is not theoretically clear that one must also be cruel.

The cruelty in MacKinnon’s voice may serve a purpose. It communicates her view that the stakes are high and that action must be taken. It refuses to allow the reader to fall back on neutrality; it insists on a reaction. It refuses to adhere to the line between emotion and intellect. But one unfortunate consequence of her anger is to muddy the effectiveness of her point about credibility. Resistance to what she has to say can be explained as itself resistance to dominance, resistance to MacKinnon’s own bullying tone, rather than as a refusal to hear testimony from the experience of women.

There is another, more troubling way in which resistance to MacKinnon feels like resistance to dominance. MacKinnon claims to speak for women, to be articulating a “woman’s point of view,” yet she is not listening to all women. Some women are not worth listening to because they have been given access to power, and they have chosen to “defend... their relatively high position among women under male supremacy” (p. 205). Others are indifferent because of “sexual self-interest” (p. 14). At the beginning of the 1980s, MacKinnon is tentative in her claims about pornography. But four years later, women who oppose her ordinance are “siding with the pornographers” (p. 205).

As MacKinnon ruefully acknowledges, “To put it mildly, people take sex personally” (p. 218). And not all women would accept MacKinnon’s characterization of sex as representing their perspective. Women, as well as men, do not want to be told what sex is for them. MacKinnon’s response, which is powerful, is that those women who do not agree with her description of what sex is under conditions of male supremacy are not being sufficiently critical about the ways in which their own preferences have been formed by their limited options. They “are trying to make the best of a situation that they think (not without reason) they cannot change” (p. 14).

The issue of who speaks for women, and as women, arises in other contexts. Indeed, the claim of the book is to have articulated the only pure, “unmodified,” feminism — the only feminism uncorrupted by male theories and perspectives. However compelling MacKinnon’s

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your liberalism, with its elitism, and your Freudianism, with its sexualized misogyny, has anything in common with feminism.

P. 205.

24. The opening essay, appropriately enough, represents MacKinnon’s side of a debate with Phyllis Schlafly and raises immediately the question of which of them speaks on behalf of women. MacKinnon handles this gracefully and powerfully, by making the case that Schlafly has been underappreciated by her own political colleagues, that Schlafly has herself been a victim of discrimination. Pp. 29-30.
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theory may be, and I think it very compelling, it is unfair to ask women to accept a single perspective about either feminism or sex. Women have had too much practice in accepting a position that has been handed to them. As MacKinnon, despite her certainty about her own position, does understand (p. 48), we are in the middle of the project of describing what life has been and is for women. One of the great pleasures of feminist theory has been that it complicates accepted views by adding previously unheard perspectives. It is not yet time for women to give themselves over to a single, even though new, description. And it is especially troubling that in so much of what MacKinnon says she seeks to distance herself from women who disagree. Women have also had too much practice in being the Other.

To a disturbing extent, MacKinnon has borrowed from the tools of male dominance in her writing. There is the occasional abstruse, academic sentence. There is the claim to truth, or at least to the correct theoretical perspective. And there is cruelty. It is true that she uses these tools in the service of ideas that are just beginning to be heard in our culture, especially in our legal culture. Her aggression is explicitly in the service of bias and argument, of a particular perspective; she does not disguise her political claim as a description of the natural, and inevitable, order of human life. Moreover, even though her effort to include the voice of women seems to exclude some women's perspectives, the testimony she does include comes from the least powerful, and thus least heard, women in our society. But ironically, MacKinnon's argument may be most effective among academics, who can appreciate its insight, its intelligence, and its coherence, and among lawyers, who understand the need for action and the need to argue from a particular position for specific change. It may be least effective politically among the general population, for its divisiveness and anger will seem like more of the same male politics to many women who will not listen long enough to question whether they have been trained to be suspicious of women who refuse to be conciliatory. MacKinnon raises the uncomfortable question of what feminist politics must be to be effective.

Finally, I think that there is a way of misreading MacKinnon that both evokes hostility from some and misdirects the attention of others whom she has moved and persuaded. One criticism of MacKinnon is that she must not like sex. Another is that she must hate men. These are interesting charges. Again, the mere fact that they are made supports MacKinnon's basic thesis: Why are the charges relevant, even if true? And, in particular, why does it cast doubt on what a woman has to say if she shows contempt for men, when we have shown so much tolerance for men who express contempt for women? To say that a woman hates men is to cast doubt on her rationality and her judgment. But similar comments about women from Oxford dons or White House aides indicate at the most bad taste, a certain unfortu-
nate crudeness, rather than lack of fitness for office. We live in a society in which it is acceptable to disparage women, but unacceptable to disparage men.

In any case, MacKinnon cannot be charged with contempt for men. Nor can she be taken to urge feminists to become separatists or to forgo all sexual relations with men. To read her in either way is to trivialize what she means by “[t]he personal is political.” She takes care to make it clear that she is not talking about individual men, even when she mentions them by name (pp. 164, 212). She is concerned about the injuries that pornography does to men as well as to women (p. 189). MacKinnon is not claiming a biological ground for men any more than for women. She is talking instead about what men have been trained to be and about what they have to gain from their place in the social hierarchy. The difference between men and women “is that men have power and women do not” (p. 51). Here is MacKinnon speaking to men directly, in a speech given at a rally held “to grieve and protest a series of rapes” (p. 81):

I think you need to remember that we love you. And that as a result it's often very unclear to us why you are so urgent. It's unclear to us why you are so pressured in seeking sexual access to us. We want you not to denigrate us if we refuse. We want you to support us, to listen to us, and to back off a little. Maybe to back off a lot. [p. 83]

And MacKinnon acknowledges her desire for what sex can be: “a sexuality of one's own yet with another, both of whom are equally present because yes is meaningful because no is meaningful” (p. 217). The problem, she says, is that “many people want to believe they already have this more than they want to have it” (p. 217).

The point of seeing the political implications of our personal, sexual relations is precisely to emphasize the political. The point is that there is no “private,” noncoerced sphere of choice for women (p. 100). It is easiest to respond to MacKinnon’s characterization of male-female relationships by trying to work out the best one possible in your own life. That is no small achievement. But to read MacKinnon that way is to trivialize her message. She does not mean to offer a blueprint for individual relations. She is talking about sex, but she is talking about it in order to bring about political change. That is why pornography comes so high on her agenda. She sees making pornographers pay their victims as a way to redistribute wealth and political power, as well as a way to change the language which legitimizes power relations. The point is to see how power and politics structure what seems to be only personal, and how political and legal action may be a path to change. MacKinnon does have a personal message for women, but it is not about better sex. It is a demand upon women with power in our society, a claim that they see what they have in common with less powerful women.

* * *
We are in a time in which it is hard to see the common interest of women. Some women have been able to move into positions of prestige, influence, and wealth. They have the education, the money, the intellectual skills, the confidence, and the opportunities that used to be reserved for men. Other women are, if anything, worse off than they ever were. They are thrown by economic circumstance into prostitution and pornography, or confined by economic and other fears to marriages with abusive husbands. Or they are poor and isolated in households and communities of unskilled and uneducated women and children. MacKinnon belongs to the empowered group. She is a woman who has power and opportunity, but her political mission is to articulate what it feels like for women who are less privileged. Her message is hard to hear, because it claims that what women have in common is that they are all victims. MacKinnon looks straight at what happens to the least powerful women in our society, and then appeals to those moments in which powerful women share their vulnerability. Although different women are affected in different ways, all women, MacKinnon argues, lose because sex means male dominance in our society.

Women have been uncertain whether legal tools can be devised that cannot be used against them. It has been hard to make specific suggestions for change precisely because the ways in which women are subordinated are so various and so pervasive. Can equal opportunity for women who can make it on male terms be preserved if other women, more economically vulnerable women, persuade the courts that their interests deserve special protection? Will laws banning pornography be turned against lesbians or heterosexual women who are trying to define a new, more empowering women's sexuality? Is there a way to protect a woman's reproductive freedom without denigrating those women who find their only source of self-respect in motherhood and pregnancy?

MacKinnon might respond that these are false dilemmas, created by the effort to maintain credibility by sounding neutral (p. 165). The way to ensure that the tools of law are not used against you is to insist on being heard on your own terms.

25. Thus feminists disagreed over the appropriate resolution in a case challenging a state statute that required employers to provide women with an unpaid maternity leave. California Fed. Sav. & Loan Assn. v. Guerra, 107 S. Ct. at 693-94. Some saw the statute as the beginning of a new wave of protectionist legislation based on stereotypical, or overgeneralized views of women. Others thought it a necessary protection if women, like men, were to combine the exercise of their reproductive rights with work.
