

FEMINISM UNMODIFIED. By Catharine MacKinnon. Harvard University Press, 1987. Pp. 308. (\$25.00)

[T]o participate in defining the terms that create the standards, to be a voice in drawing the lines. This has been at the heart of every women's initiative for civil equality from suffrage to the Equal Rights Amendment: the simple notion that law . . . respond to women as well as to men.¹

It is to this project that FEMINISM UNMODIFIED is directed by Catharine MacKinnon and the resulting work is a powerful exposition of her analysis of the legal and political meanings and practices of gender, sexuality, speech and equality in our social relations. MacKinnon presents a provocative and challenging feminist perspective, the basic concepts of which promise to stir Canadian jurisprudence. As such, it is an important contribution to on-going debate and an unfolding feast of her analysis and its applications. That said, it must be conceded that while more accessible than some of her earlier theoretical work,² this is a demanding and controversial book which calls upon readers to explore the frameworks and categories by which they see and live in the world for "a feminism that seeks to understand women's situation in order to change it must . . . identify, criticize and move those forms and forces that have circumscribed women in the world and in the mind".³

The papers in this book are "engaged works" originating from speeches with an audience as the "material condition under which it suddenly becomes possible to want to say something, to know what one wants to say and to see a way to say the one thing that needs to be said".⁴ They are also "engaged" in the sense used by MacKinnon to denote feminism as emerging from the concrete conditions of women as a sex, claiming "no external ground or unsexed sphere of generality or abstraction beyond male power, nor transcendence of the specificity of each of its manifestations".⁵ This is theory in the midst of the dynamics of socially structured relations.

The essays in the collection are organized into three general sections which develop MacKinnon's stated themes. The first theme is that the social relation between the sexes is organized so that men may dominate and women must submit and that this relation is sexual — in fact it is sex. Issues of equality then are issues of power and powerlessness. She argues that men sexualize inequality, that sexual violation is a sexual practice and that gender inequality is a fundamental social conflict rather

¹ P. 228.

² See especially C. MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory* (1982) 7 SIGNS 515; C. MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence* (1983) 8 SIGNS 635 [hereinafter *Feminist Jurisprudence*].

³ P. 15.

⁴ P. 215.

⁵ *Feminist Jurisprudence*, *supra*, note 2 at 638.

than an irrational aberration. MacKinnon's second theme revolves around the concept that gender is a hierarchy imposed by force and that discussion of gender as a difference deriving from god, nature, society, the unconscious or the cosmos obscures and legitimates such force. She seeks to recast the debate and aspirations of equality into a matter not of the "gender difference, but of the difference gender makes⁶ . . . feminists have noticed that women and men are equally different but not equally powerful".⁷ In support of this theme she cites and frequently repeats truly chilling statistics of women's sexual violation in the United States. She locates sex discrimination in practices of subordination and constructs equality strategies as being those which promote equalization of the positions of men and women.

Weaving throughout these themes is MacKinnon's epistemological exploration of the relationship between questions of power and questions of knowledge. This was one of the focuses of her now classic SIGNS articles on approaches to theory and feminist jurisprudence⁸ and it is built upon in *Desire and Power*.⁹ She argues that the power to define the world affects what is known and how it is known. It is central to her analysis that male power has made the world as it "is", that it has constructed both "social life and knowledge about it".¹⁰ Thus, she argues that the male point of view has become the standard for "point of viewlessness" and objectivity the male situated standpoint socially: "Objectivity is the epistemological stance of which objectification is the social process, of which male dominance is the politics, the acted out social practice."¹¹

It follows from this that MacKinnon argues that women have been defined by men on their terms and that this definition is enforced in social relations, "the gaze that constructs women as objects for male pleasure".¹² It is here that tensions (a dialectic?) become apparent. First, if "female power" is a contradiction in terms, male power almost completely monolithic, and social relations so structured that "exploitation . . . produces grateful complicity in exchange for survival",¹³ then change and the incorporation of the point of view of women becomes virtually impossible in terms of this theory. Second, the apparent hope of the historical specificity and contingency of this power/knowledge construct must be placed alongside MacKinnon's unqualified statement that "women's inequality has never not existed".¹⁴ MacKinnon is left with the conjecture of "how sisterhood became powerful when women were powerless".¹⁵

⁶ P. 9.

⁷ P. 51.

⁸ *Supra*, note 2.

⁹ P. 46.

¹⁰ P. 50.

¹¹ *Ibid.*

¹² P. 53.

¹³ P. 61.

¹⁴ *Feminist Jurisprudence*, *supra*, note 2 at 638.

¹⁵ P. 3.

It is appropriate to note here that MacKinnon views her arguments as being political rather than biological. She argues that gender has been socially constructed and reinforced and the "male" and "female" into which it is divided are used by MacKinnon as "adjectives" rather than as nouns: "I'm not saying that genitals have viewpoints."¹⁶ The strength of this view lies in its avoidance of biological determinism or an easy and false valorization of women. However, it also provides a theoretical basis to criticize the voices of some women and, indeed, of some feminists as "speaking male".

This is one of the controversial features of her work: the demand for a feminism "unmodified by pre-existing modifiers. . .".¹⁷ Elsewhere she has stated that "radical feminism is feminism. Radical feminism — after this, feminism unmodified."¹⁸ Apart from the primacy thus claimed for radical feminism, the "modifiers" she rejects include liberal, socialist, marxist and presumably psychoanalytic. These are regarded as derivative approaches which lack the capacity to revision the world. Her specific claim for this "feminism" is that unlike "modified feminisms" it does not compromise in its social vision or accept existing conditions of inequality: "Having located a ground for women's equality within conditions of women's inequality, they speak feminism in the liberal voice, feminism in the left voice. But feminism in its own voice does not speak this way."¹⁹

Much of the content of MacKinnon's unmodified feminism is common ground among feminists: a commitment to believing women's accounts of their experience, seeking to empower women "on our own terms, to value what women have always done as well as to allow us to do everything else. We seek not to be valued as who we are but to have access to the definition of value itself."²⁰ However, the inherent exclusivity of MacKinnon's unmodified feminism runs contrary to growing recognition of the value of a diversity of feminisms, of avoiding theoretical universalization and of struggling for change in the relations between women of differing races and classes.²¹ MacKinnon's "take it or leave it" approach may tend to polarize the very debate which her analysis could stimulate. A breathtakingly eloquent example of this possibility is

¹⁶ Pp. 52, 77.

¹⁷ Pp. 16, 60.

¹⁸ *Feminist Jurisprudence*, *supra*, note 2 at 639.

¹⁹ P. 16.

²⁰ P. 22.

²¹ In the Canadian context, see S. Boyd and E. Sheehy, *Canadian Feminist Perspectives on Law* (1986) 12 J. OF LAW AND SOC. 283; A. Miles, *Feminism, Equality and Liberation* (1985) 1 CAN. J. OF WOMEN AND LAW 42. In *Feminist Jurisprudence*, *supra*, note 2 at 638, n. 8, MacKinnon suggests that "lesbian feminism, the feminism of women of colour and socialist feminism are converging in a feminist politics of sexuality, race and class, with a left to right spectrum of its own. This politics is struggling for a practice of unity. . . ." This point is not further developed in FEMINISM UNMODIFIED.

the essay *On Collaboration*²² in which MacKinnon assails feminists organizing against her pornography initiatives.

Equally, the centrality of sexuality as the site of domination and the erotization of gender inequality as the process of creating social differentiation between the sexes is a unique feature of MacKinnon's feminism: "Feminism is a theory of how the erotization of dominance and submission creates gender, creates woman and man in the social form in which we know them."²³ From this basis, each social relation is returned by MacKinnon to sexual practice with male supremacy acting primarily through sexual violation and sexual access on male terms.

For example, MacKinnon does not address the family except to cast it as the "congealed form" of the organized expropriation of women's sexuality.²⁴ Heterosexuality is seen as an enforced and compulsory structure of the oppression of women which organizes women's pleasure so as to give them a stake in their own subordination: having good heterosex, just like having a good job in capitalism is a bonus which does not remove the essential structural oppression of the undertaking.²⁵ Arguing a right to abortion using privacy has the effect of reinforcing the public-private split and ensuring male sexual access to women on unchanged terms of male controlled sexuality.²⁶ Equally, while the connections between her theory of sexuality and race and class are referred to as an "urgent question", her work does not as yet address these questions either explicitly or independently from her analysis of the functioning of white male sexual supremacy. Race and class are recognized as interacting with gender in constructing inequalities, but are related only to the "sexualization of racial and ethnic attributes"²⁷ or the obtaining of class status "through sexual relations with men".²⁸ Thus, a tribal rule excluding Native American women and their children from full participation in the tribe if they marry out of it is regarded as guaranteeing to native men exclusive sexual access to native women.²⁹ The economic realities of women are referred to in footnotes but are regarded as deriving from the sexual organization and valuation of labour.

These are crucial insights but many feminists would argue that they too are partial. MacKinnon gives scant attention to a dialectic around masculist ideology or the possibility of legal, political and social structures as being non-monolithic, wrought with contradiction and necessarily containing counter-hegemonic elements. Many feminists locate the po-

²² P. 198.

²³ P. 50.

²⁴ P. 49.

²⁵ P. 60.

²⁶ P. 93ff.

²⁷ P. 2.

²⁸ *Ibid.*

²⁹ P. 67.

tentiality for change in women's condition in such factors.³⁰ If MacKinnon's insights are taken together with other factors, they have the potential to enrich understanding of the complexity, inconsistency and historical specificity of the constitution of social relations of inequality. Much could be lost if they are taken alone.

The hegemony of male sexual supremacy also relates to the possibility of "being" for women. As noted above, it is one of MacKinnon's basic positions that as men have defined the world, women and sex from their own point of view, women do not exist independently from such definitions and speech within it is not possible.³¹ Thus, MacKinnon expresses herself as being "existentially amazed" to be speaking³² and meditates on her existence and identification as a woman in the face of its impossibility: "for women in pornography, the self is . . . a persistent illusion".³³ In this world, "just to get through another day, women must spend an incredible amount of time, life and energy closed, fearful and colonized trying to figure out how not to be next on the list".³⁴ The issue for MacKinnon then becomes "not why women acquiesce but why we ever do anything but".³⁵

The risk of this is not so much the creation of static stereotypes of victimization, but that in the name of description a theory is built premised on a non-being, passivity and powerlessness of women in the face of a masculist state and its institutions including law. The existence of an embryo of an alternate paradigm is inconceivable. In particular, MacKinnon rejects the work of Carol Gilligan,³⁶ which suggests that a voice or world view which differs from that which forms the basis of current masculist models of moral reasoning exists in our society. Gilligan refers to this as a "care" framework characterized by a valuing of responsibility and relationship in contrast to the dominant "justice" framework emphasizing rights and separation. This "justice" framework is the current language

³⁰ See, e.g., S. Boyd, *From Gender Specificity to Gender Neutrality? Ideologies in Canadian Child Custody Law* in S. Sevenhuijsen and C. Smart, eds., *THE POLITICS OF CUSTODY* (London: Routledge and Kegan Paul, forthcoming 1988); S. Gavigan, *Bringing on the Menses: The Criminal Liability of Women and the Therapeutic Exception in Canadian Abortion Law* (1986) 1 CAN. J. OF WOMEN AND THE LAW 279 [hereinafter *Bringing on the Menses*]; S. Gavigan, *Law, Gender and Ideology* in A. Bayefsky, ed., *LEGAL THEORY MEETS LEGAL PRACTICE* (Edmonton: Academic Printing and Publishing, 1988); M. Cain, *Gramsci, the State and the Place of Law* in D. Sugarman, ed., *LEGALITY, IDEOLOGY AND THE STATE* (New York: Academic Press, 1983).

³¹ P. 51.

³² P. 163.

³³ P. 159.

³⁴ P. 7.

³⁵ Pp. 61, 161.

³⁶ C. Gilligan, *IN A DIFFERENT VOICE* (Cambridge: Harvard University Press, 1983). See also E. Kittay and D. Meyers, eds., *WOMEN AND MORAL THEORY* (Totowa, N.J.: Rowman and Littlefield, 1987); M. Belenky et al., *WOMEN'S WAYS OF KNOWING* (New York: Basic Books, 1986).

of power and boundary of discourse in our society.³⁷ Yet Gilligan found both women and men to be aware of *both* frameworks. Significantly, her subjects tended to focus on one voice and this was particularly true for men who tended to focus on the "justice" framework. This may suggest a participation by advantaged white men in the power of society and the ability to limit themselves to the use of only one "voice" in order to secure participation. Women tended to focus on the care framework or to be "bilingual", that is, able to reason in both frameworks. Gilligan made a particular comment on this bilingualism among the few black women in her study. She hypothesized that they experienced/spoke against inequality in the disregard shown for their individual rights (justice framework) and at the same time worked to establish and hold together their community (care framework).

Two interesting implications or aspects of this work arise in relation to MacKinnon's approach. First, Gilligan has argued that the alienation and disassociation inherent in the justice framework has resulted in a destructive distortion of social and institutional relations of harm to both women *and* men. To this extent her work supports MacKinnon's view that the dominant voice in our society has been imposed, is incompletely human and is necessarily destructive. Second, Gilligan argues that the "care" framework organizes the world in a fundamentally different way than the "justice" framework and that, far from facilitating the justice framework, the care framework is in tension with it.³⁸ MacKinnon, however, regards the different voice as being merely "morality in a higher register" and that

women value care because men have valued us according to the care we give them. . . . I say, give women equal power in social life. Let what we say matter, then we will discourse on questions of morality. Take your foot off our throats and then we will hear in what tongue women speak.³⁹

This assumes that the care framework is directed to maintaining or caring for the "justice" framework or the conditions of male dominance. However, if the two are in contradiction or tension, the "care" framework has some potential for reconceptualization of our social relations and shattering the hegemony of the dominant justice framework which has "nurtured" masculist supremacy and alienation.⁴⁰ This potentially explains rather than denies a dynamic by which male speech can drown

³⁷ See generally S. Salter, *Inherent Bias in Liberal Thought* in S. Martin and K. Mahoney, eds., *EQUALITY AND JUDICIAL NEUTRALITY* (Toronto: Carswell, 1987).

³⁸ See further *ibid.*

³⁹ Pp. 39,45.

⁴⁰ MacKinnon criticizes what she calls the "magical approach" to social change which imagines the future we want and "implements" it by pretending it already exists (*Afterword*, p. 219). However, just as books can ruin a girl and reality ruined the emperor's infatuation with his new "clothes", women's voices may ruin the hegemony of women's silence.

out and silence women's speech and leaves open the possibility that women can indeed speak. Another way of putting this is that the male world view while *defining* may not *determine* women's lives and that the history of much masculist law and practice has also been the history of women's resistance to it.⁴¹ Indeed, MacKinnon's own activism seems to be in this *genre*.

This is the stuff of dilemma and while it does not paralyze MacKinnon, some inconsistencies between her structural theory and her theory of practice almost inevitably creep in. Her analysis and her critique of liberal legal assumptions of prior equality as promoting the travesty of freedom without equality or justice, demands nothing less than structural transformation. Her analysis of hegemony of male sexual supremacy suggests both impossibility and futility in engaging with the institution founded upon it. And yet, MacKinnon is intensely engaged with initiatives for legal change which start within the present structure and she accepts that change and empowerment are possible through such engagement.

One example concerns MacKinnon's initiatives around sexual harassment. In the United States sexual harassment has become established in principle as sex discrimination. In *Sexual Harassment: Its First Decade in Court*,⁴² MacKinnon probes the question of whether sexual harassment law "designed from women's standpoint and administered through this legal system can do anything for women".⁴³ The answer advanced is a qualified and limited yes. Women, she argues, have been empowered through a naming of their experience and delegitimizing the harassment of it through law, "it is a reason to demand that the promise of 'equal protection of the laws' be *delivered upon* for us".⁴⁴ It is implicit in this that the legal structure has the capacity to do so and that the demand is worth making. This sits uneasily with some of her critique of the legal system. Equally, it seems that male adjudicators have immense difficulty in accepting that what a woman considers to be sexual harassment is just that and not affection or consensual sexual interaction. MacKinnon concedes that the delivery has been unreliable with rulings on law being more favourable than rulings on fact, but she refuses to draw the conclusion that such behaviour supports her theory more than her practice. She retains an optimism that this kind of work may provide an opening for future development, "sometimes even the law does something for the first time".⁴⁵

This contradiction or dilemma is also apparent in her conceptualization and activism against pornography. Materials concerning pornography develop MacKinnon's third theme. The basis of her work is her analysis that pornography is a key means of actualizing domination and

⁴¹ *Bringing on the Menses*, *supra*, note 30.

⁴² P. 103.

⁴³ P. 105.

⁴⁴ *Ibid.*

⁴⁵ P. 116.

difference, "pornography turns sex inequality into sexuality and turns male dominance into the sex difference".⁴⁶ This, she argues, turns inequality between men and women into "those twin icons of male supremacy, sex and speech and a practice of sex discrimination into a legal entitlement".⁴⁷ Pornography, then, is of central importance in the oppression of women and in the definition of women and of sexuality. She argues that the regulation of pornography is not a moral issue of "free speech" because it is both a speech which silences women and an act which harms women. MacKinnon argues that it is instead a political and ideological issue:

[I]f pornography is a practice of the ideology of gender, inequality and gender is an ideology, if pornography is sex and gender is sexual, the question of the relation between pornography and life is nothing less than the question of the subordination of women to men.⁴⁸

Having constructed so urgent an imperative, MacKinnon has been particularly active and prominent in continuing efforts in the United States to introduce civil remedies by which women might hold pornographers responsible for harm emanating from pornography. This has focused on an ordinance defining pornography as sex discrimination and giving various causes of action to women for coercion into pornography, forcing pornography onto a person, assault due to pornography and trafficking in pornography. In crafting the Ordinance, working for its passage in municipalities and unsuccessfully arguing its constitutionality before the courts, MacKinnon has used the "twisted tools" of the legal system with enormous technical expertise and the apparent belief that such engagement will work social change to fundamental social relations as defined by her. Again, the evidence of this is discouraging. Her essay, *The Sexual Politics of the First Amendment*,⁴⁹ is an excellent contextual review of *American Booksellers v. Hudnut*,⁵⁰ which struck down the Ordinance on the grounds that although pornography harms women, it has value as speech because it is "political speech" which is effective at doing what it does. Is this then the equation of power and knowledge?

The point of this review is not to challenge MacKinnon's strategy as her efforts are of critical importance, but to ponder whether her theory has at once made her (and our) task both too simple and too difficult. If all reduces to sexual practice as violation, the richness of understanding of the complex interactions of factors and the possibility of inconsistent actualization of interests in social institutions is lost. If male/sexual hegemony is complete, engagement with law and the quest for change in gender and sexual relations seems like "spitting into the ocean". And,

⁴⁶ P. 3.

⁴⁷ *Ibid.*

⁴⁸ P. 46.

⁴⁹ P. 206.

⁵⁰ 771 F.2d 323 (7th Circ. 1985), *aff'd* 106 S. Ct. 1172 (1986).

of course, MacKinnon herself is intensely engaged in the quest. MacKinnon's work raises perennial questions about the possibility of being, the empowerment of women, the tension between utilizing and challenging the method of the law and pursuing effective strategies. Ultimately the answers and the strength of MacKinnon's work may lie in helping us to explore and to engage with the complexity and internal contradictions of heteropatriarchal inequality rather than indicating any simple choices. Throughout this book MacKinnon explores the meaning of the collective experience of women in conditions of constructed differences and inequality and probes the relationships between the state, law, power and social change. It is a compelling conversation with which engagement is highly recommended.

*T. Brettel Dawson**

* Department of Law, Carleton University.