

BOOK REVIEW

BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW.

By Drucilla Cornell. New York and London:
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Feminism takes as its distinctive focus gender-based injustices, and critically investigates the nature of and remedies for these injustices. Feminism flourishes in diverse fields of thought and practice, and its critical claims — centering on injustices to women — play an increasingly creative and transformative role in redefining the very terms of our moral and legal culture.

The critical analysis of gender-based injustices, like the comparable analysis of the injustices of racism, cannot be sharply demarcated from larger forms of internal and external criticism of long dominant strands of Western culture.¹ Internal criticism is the examination of an injustice in terms of a principle internal to a culture (for example, the principle of liberal equality in American constitutional culture²); internal criticism shows how a certain injustice in fact fails to elaborate consistently or coherently a principle central to that culture. External criticism is the identification of an injustice in a culture in terms of a principle unrooted in the culture but resting on an independent normative standard which may reasonably be used to criticize the culture (for example, the criticism of Greek slavery in light of guarantees of human rights³).

Contemporary feminism cultivates both internal and external criticism because reasonable discourse about the nature and extent of injustices to women builds upon principles implicit in liberal constitutional culture and yet self-critically transforms our understanding of those principles in order to

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1. I explore this theme at great length in a work in progress, David A.J. Richards, *Conscience and the Constitution: Abolitionist Dissent, the Second American Revolution, and the Reconstruction Amendments* (unpublished manuscript on file with author).

2. On the principle of liberal equality, see AMY GUTMANN, *LIBERAL EQUALITY* (1980); on its centrality to American constitutional culture, see DAVID A.J. RICHARDS, *TOLERATION AND THE CONSTITUTION* (1986).

3. On the relatively late emergence in Western culture of serious criticism of slavery, see DAVID BRION DAVIS, *THE PROBLEM OF SLAVERY IN WESTERN CULTURE* (1966).

probe adequately the dimensions of the injustices in question and the appropriate remedies. Like the comparably profound movements opposing slavery and racism, a critical enterprise as profound as feminism not only must assume and even advance the integrity of liberal intellectual and moral standards, but also must question liberalism itself.⁴ After all, leading political theorists of rights-based liberalism (including John Locke,⁵ Jean-Jacques Rousseau,⁶ and Immanuel Kant⁷) all emphatically legitimated conceptions of gender hierarchy, and thus gave an interpretation to rights-based equality that today must be questioned, criticized, and corrected. A central task of feminism, then, must be both to use and to transform liberal argument. Internal and external criticism merge interactively, enabling deeper ethical criticism and cultural transformation.

Injustices to women are so culturally entrenched that feminism has increasingly probed the structures of power that have rendered intractable both the articulation and the remedy of these injustices. Such power structures include the familiar pattern of mother-dominated childhood with its consequences for masculine and feminine identity,⁸ our fundamental religious and ethical vocabulary and concepts,⁹ and our very concepts of self and other.¹⁰ Due to the apparent pervasiveness of gender-based injustices, feminism has

4. See, e.g., SUSAN MOLLER OKIN, *WOMEN IN WESTERN POLITICAL THOUGHT* 10 (1979) (arguing that the political philosophies of four prominent figures in the Western liberal political tradition (viz. Plato, Aristotle, Rousseau, and Mill) are "to a very great extent built on the assumption of the inequality of the sexes"); CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988) (criticizing classical social contract theory as necessarily premised on patriarchy).

5. See generally, JOHN LOCKE, *TWO TREATISES OF GOVERNMENT* (Peter Laslett ed., 1960) (1690). For commentary on Locke's defense of gender hierarchy, see JEAN BETHKE ELSHTAIN, *PUBLIC MAN, PRIVATE WOMAN* 108-27 (1981); OKIN *supra* note 4, at 199-201; PATEMAN, *supra* note 4, at 52-53.

6. See JEAN-JACQUES ROUSSEAU, *On the Social Contract*, in *ON THE SOCIAL CONTRACT, DISCOURSE ON THE ORIGIN OF INEQUALITY, DISCOURSE ON POLITICAL ECONOMY* (Donald A. Cress, ed. & trans., 1983) (1762); for a discussion focusing on Rousseau's treatment of gender, see OKIN, *supra* note 4, at 99-194; see also JUDITH N. SHKLAR, *MEN AND CITIZENS: A STUDY OF ROUSSEAU'S SOCIAL THEORY* (1985).

7. See generally, IMMANUEL KANT, *On the Common Saying: 'This May be True in Theory, but it does not Apply in Practice,'* in *KANT'S POLITICAL WRITINGS* 61-72 (Hans Reiss ed. & H.B. Nisbet trans., 2d ed. 1991). For commentary on Kant's defense of gender hierarchy, see OKIN, *supra* note 4, at 6; PATEMAN, *supra* note 4, at 168-71.

8. See NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978); DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* (1976).

9. See, e.g., MARY DALY, *BEYOND GOD THE FATHER: TOWARDS A PHILOSOPHY OF WOMEN'S LIBERATION* (1973); DAPHNE HAMPSON, *THEOLOGY AND FEMINISM* (1990); SUSANNE HEINE, *WOMEN AND EARLY CHRISTIANITY: ARE THE FEMINIST SCHOLARS RIGHT?* (John Bowden trans., 1987); UTA RANKE-HEINEMANN, *EUNUCHS FOR THE KINGDOM OF HEAVEN: WOMEN, SEXUALITY AND THE CATHOLIC CHURCH* (John Brownjohn trans., 1988); ELAINE PAGELS, *ADAM, EVE, AND THE SERPENT* (1988); ROSEMARY RADFORD RUETHER, *WOMANGUIDES: READINGS TOWARD A FEMINIST THEOLOGY* (1985); ROSEMARY RADFORD RUETHER, *NEW WOMAN, NEW EARTH: SEXIST IDEOLOGIES AND HUMAN LIBERATION* (1975).

10. For a classic statement of the problem, see SIMONE DE BEAUVOIR, *THE SECOND SEX* (H.M. Parshley ed. & trans., Vintage Books 1952) (1949).

urgently raised the question of whether any internal standards of criticism can be trusted. And if these structures are as tainted by injustice as they appear to be, feminism requires the very reconstruction of the fundamental terms of rational and reasonable discourse on which a free society depends.

These concerns lead to methodological self-consciousness, to the idea that the feminist concern with injustice to women requires the construction of new methodologies of reasonable inquiry, investigation, and criticism that will enable us to understand, articulate, and remedy the injustices in question.¹¹ Theoretically ambitious feminist legal theorists have undertaken efforts to construct new methodologies. Catharine MacKinnon, for example, calls for a new epistemology centering on consciousness-raising as a distinctively feminist tool for identifying the oppressive structures of male dominance that deprive women of consciousness itself.¹² Further, she rejects appeals to difference in feminist discourse because such appeals are thoroughly tainted by a history of unjust oppression.¹³ Robin West also works on an ambitious methodological level but disagrees with MacKinnon's substantive proposals. West criticizes MacKinnon's proposals as being in effect too much in thrall to masculinist objectifying ideologies of power. As an alternative approach, West calls for the development by women of narrative methodologies that will give expression to women's hedonic experiences and enable women to articulate in their own voice their reasonable claims for justice. Unlike MacKinnon, West allows for the possibility that some claims of difference may advance, not retard, the cause of justice to women.¹⁴

Drucilla Cornell's *Beyond Accommodation* bravely enters into these intra-feminist wars with yet another methodological proposal. It is not, however, entirely clear what the constructive proposal is. Cornell's vocabulary requires the reader to understand her position as lying somewhere between "essentialist" and "anti-essentialist" positions¹⁵ in a range of discourse not familiar to many even highly educated and well-informed readers. Cornell draws her inspiration from French thinkers who are notoriously opaque; in particular, she draws on the psychoanalysis of Jacques Lacan and the deconstruction of Jacques Derrida. Cornell's constructive use of them is comparably obscure. Many readers may be so puzzled by the undefined vocabulary that they will have difficulty engaging the subtleties of Cornell's constructive position except through a glass darkly. For these readers, Cornell's approach will only confirm the unfortunate impression that feminist theory suffers from its hermetic

11. See, e.g., LORRAINE CODE, *WHAT CAN SHE KNOW?: FEMINIST THEORY AND THE CONSTRUCTION OF KNOWLEDGE* (1991); SANDRA HARDING, *WHOSE SCIENCE? WHOSE KNOWLEDGE?: THINKING FROM WOMEN'S LIVES* (1991).

12. See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 83-105 (1989).

13. See *id.* at 215-34.

14. See Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 *WIS. WOMEN'S L.J.* 81 (1987).

15. DRUCILLA CORNELL, *BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW* 4-6 (1991) [hereinafter cited by page number only].

cultivation in terms that isolate its arguments from larger public discourse. Cornell's argument would have profited enormously from some attempt to introduce the general reader to the concepts and distinctions assumed to be familiar to the audience for the book.

If Cornell's aim is to reach a wide audience, it is regrettable that she has chosen to offer her distinctive feminist methodology in a style modelled on the opacities of Lacan and Derrida, because, at least in the United States, the book will consequently not be taken as seriously as it should be. It is, in fact, a courageous and powerfully argued book that offers superb critical insights into the state of feminist thought today; it should be read by anyone seriously interested in the most important movement of ethical emancipation of our age.

Indeed, to do justice to Cornell's style in the Lacanian-Derridean sections of this book, it may be that Cornell is making a substantive point by her sometimes elliptical, mystifying style — a point not unrelated to her plea for the free expression of the full experience, imagination, and play of the feminine voice. Her appeal to James Joyce's *Finnegan's Wake* at both the beginning and end of the book bespeaks this larger point: Joyce's linguistic creativity — inventing a new language adequate to express our collective Jungian dreaming unconscious — is the model for Cornell's call for new modes of experience and argument that may give expression to the ethical integrity of the feminine voice. The model is artistic creativity in forging a new style, in the way that a composer's harmonic and melodic innovations may give us a new language for imaginative experience theretofore unexplored (for example, anxiety and dread in Alban Berg's *Wozzeck*, or loneliness and erotic longing in Claude Debussy's *Pelléas et Mélisande*).

Feminism, Cornell argues, requires new and variegated styles in which unjustly silenced voices, including sexual voices, may be spoken freely and forthrightly without fear of censure or censorship; and the more sexual and sexy the free and authentic feminine voices, the better. We should at least take seriously the claim that American Puritanism has inflicted its worst ravages on the minds and hearts of American women, whose revenge has been sometimes to become its cruellest ministers. How should women release themselves from this dungeon of cold and ultimately narcissistic and masochistic purity? Perhaps if they could speak freely, as Cornell urges them to speak, about the Lacanian magical Phallus and much else they fear publicly to voice, they would better understand and criticize both the imaginative experience and reality of gender domination, its terrors and seductions. It may be that all of us, women and men alike, are yet unable to acknowledge, let alone dispel, our gender-based fears, anxieties, and humiliations. Perhaps the acknowledgment and the concomitant understanding of gender-based fears will be possible when we develop the creative tools not to reverse positions on the gender hierarchy, but to laugh at and mock the stupefying stupidities of gender hierarchy itself with the courage and playfully unashamed creativity of Cornell's powerfully unorthodox, Joycean voice.

The immense power of Cornell's mind, as clearly a leading feminist legal theorist today, becomes quite apparent when she critically confronts a legal theorist, MacKinnon, whom Cornell takes to have betrayed the cardinal requirement of a properly feminist methodology. Cornell calls MacKinnon's feminism the "politics of revenge"¹⁶ because it merely reverses and does not subvert gender hierarchy. MacKinnon's well-known savagery to feminists who do not share her views¹⁷ (for example, about the prohibition of pornography as the central feminist issue of our time) reveals what Cornell finds so betraying of feminism in MacKinnon's work: her intolerant legitimation of the prohibition on women's speaking in their own voice. MacKinnon supports the prohibition on women's speaking in their own terms about their erotic pleasure and imaginative life in sex.¹⁸ Cornell contrasts MacKinnon's repudiation of sex (as essentially defined by masculine ideology) with the approach of French feminists concerned with recovering and constructing, from within women's erotic, caring, and loving experience (both homosexual and heterosexual), the basis for women's claims of justice in matters central to their authentic ethical vision of a life well and humanely lived.¹⁹

Cornell bases her methodology on two insights. One, no form of oppression (whether black slavery or gender subjugation) wholly crushes our creative moral powers;²⁰ and two, sensitivity to the distinctive and different ethical voice of subjugated groups provides the crucial material from which the critical reconstruction of the meaning of human rights — adequate to the claims of ethical feminism — may proceed. Cornell thus critically challenges not only MacKinnon's attack on difference, but also Nancy Chodorow's object relations theory, the notion that some psychological and developmental differences between men and women are inevitable given our culture and social reality.²¹ If MacKinnon or Chodorow were right, gender identity would be immovably structured by an oppressive power that suppresses any ethical insight or criticism. How, then, could it even be sensible to challenge the conventional moralities of gender identity? But, Cornell reminds us, the entire feminist project of both substantive and methodological criticism continues to probe the conventional morality of gender identity with increasingly powerful

16. Pp. 11, 138-39.

17. See, e.g., MACKINNON, *supra* note 12, at 134-36 (berating "some feminists" for "equat[ing] sexuality with pleasure").

18. P. 156.

19. For an illuminating collection of some of the authors on whom Cornell is drawing, see ELAINE MARKS & ISABELLE DE COURTIVRON, *NEW FRENCH FEMINISMS: AN ANTHOLOGY* (1980). For a feminist statement of reasons for skepticism about the contributions of Michel Foucault and Derrida to feminist theory, see NANCY FRASER, *UNRULY PRACTICES: POWER, DISCOURSE, AND GENDER IN CONTEMPORARY SOCIAL THEORY* 17-91 (1989).

20. For a comparable point about the creativity of black culture under slavery and thereafter, see EUGENE D. GENOVESE, *ROLL, JORDAN, ROLL: THE WORLD THE SLAVES MADE* (1976); see also LAWRENCE W. LEVINE, *BLACK CULTURE AND BLACK CONSCIOUSNESS: AFRO-AMERICAN FOLK THOUGHT FROM SLAVERY TO FREEDOM* (1977).

21. Pp. 50-51; see CHODOROW, *supra* note 8; see also NANCY CHODOROW, *FEMINISM AND PSYCHOANALYTIC THEORY* (1989).

deconstructive tools; and the power and integrity of this project require feminists to take seriously the central need of feminism to enable women to reflect on and explore freely and critically their own experience. The integrity of that project means that some strands of that experience will be subject to criticism and rejection (as the desperate reaction to oppression). Other suitably interpreted strands, however, will constructively emancipate new forms of ethical insight into the proper understanding and elaboration of principles of equal respect for human rights (for example, the fair extension of liberal principles of justice to rights, powers, and obligations within the family and between the family and the state²²). Ethical feminism must start from where women are and resist the imposition of yet another unreal and distorting objectifying model that denies the integrity of their experience as thinking and feeling persons with creative moral powers. From this perspective, it is both paradoxical and self-stultifying to appeal, as MacKinnon does, for a new epistemology based on consciousness-raising and then to reify gender subjugation in an objectifying model of power that displaces and indeed repudiates what should be central to the emancipation of women, namely, the authentic articulation of voice and experience in their own critical terms and vocabulary without fear of censorship by *anyone*.

Cornell infers from her general methodological position that the crucial issue for feminism today must be the articulation and exploration of differences — not the culturally constructed and imposed differences central to unjust gender hierarchy, but the construction by women of whatever articulations and redefinitions of difference give legitimate voice and play to their ethical emancipation as free people. The struggle of feminists to articulate a non-sexist theory and practice of personal love may, as Cornell suggests, be central to this enterprise precisely because the object of their critique must be the rigid gender-coded roles imposed on the conception of lover and beloved by unjust institutions of gender hierarchy. Feminist criticism may reveal a system of sharp gender differences (which men uncritically romanticize as essential to the meaning and power of love²³) as the mystifying ideology that helps explain why so many brutalizing injustices in marriage (for example, the battered wife or marital rape) have remained for so long invisible and unspoken, rationalized by men in terms of a wholly indefensible way of drawing the line between private and public life. To do justice to such ideological evils, feminism must critically construct from within women's experience new conceptions of what are legitimate differences in the sexual politics of love; at

22. See, e.g., SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989) (arguing that the dichotomy between the public and the private spheres is false and that standards of justice must necessarily be applied to the family); cf. David A.J. Richards, *The Individual, the Family, and the Constitution: A Jurisprudential Perspective*, 55 N.Y.U. L. REV. 1 (1980) (applying general moral and constitutional principles to the conflicting rights of children, parents, and society).

23. For a particularly florid and ignorant contemporary example of this genre, see ROGER SCRUTON, *SEXUAL DESIRE: A MORAL PHILOSOPHY OF THE EROTIC* (1986); for criticism, see David A.J. Richards, Book Review, 4 CONST. COMMENTARY 463, 463-70 (1987).

this point, the degendering of love opens a new range of questions and choices and imaginative possibilities in which love can become itself, namely, love — not in its nature rigidly gender defined or rigidly understood as heterosexual or homosexual, but the altogether more personally authenticating, profound, and empowering thing it is and can be.²⁴ Cornell's call for the feminist construction of differences must be understood as part of this exciting emancipatory project of critical theory and practice. It is a call to open our minds and hearts to the moral and imaginative freedoms we have and the responsibilities for humane living they make possible.

Cornell identifies as the central issue for feminism today the emancipation of the creative powers of women in the multiform narratives and modalities necessary for their expression. Her plea is for resistance to any misguided attempt, like MacKinnon's, to impose a Procrustean measure of the objective truth of gender subjugation as the politically correct measure of how feminists must think or feel about the issues of justice central to their liberation. *Beyond Accommodation* is a generous, powerfully argued plea from within theoretical feminism for toleration and mutual respect, for creative and imaginative freedom, for the courage of liberated women to insist on and to explore critically their difference as woman and their differences as women.

24. For a recent exploration of this theme from the perspective of forms of critique implicit in political struggles by gay men and lesbians for their moral and constitutional rights, see JONATHAN DOLLIMORE, *SEXUAL DISSIDENCE: AUGUSTINE TO WILDE, FREUD TO FOUCAULT* (1991).

