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Jeanne L. Schroeder

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CATHARINE'S WHEEL: MACKINNON'S PORNOGRAPHY ANALYSIS AS A RETURN TO TRADITIONAL CHRISTIAN SEXUAL THEORY*

JEANNE L. SCHROEDER**

I. INTRODUCTION

Catharine MacKinnon is widely considered to be one of the most radical and uncompromising feminist theorists writing today. Indeed, she has named her approach "feminism unmodified."¹ In this essay, I argue that this perception is incorrect. In her anti-pornography analysis, MacKinnon turns her back on the radical transformative potential of her own insights and embraces a deeply reactionary theory of the flesh—the very approach to sexuality that has served to underpin American gender roles. What at first blush appears to be a postmodern sociological theory,² can be seen upon closer scrutiny to include a modern liberal theory of the individual sutured onto a premodern Christian concept of the body. MacKinnon's theory of pornography functions as a mechanism to link these three very different ways of thinking about human nature. Her analysis devolves into a conservative paean to the potency of masculinity as traditionally conceived.

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** Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University.

1. As reflected in the title of her influential collection of speeches, CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* (1987).

2. What is, or is not, "postmodernist" is a matter of debate. I do not purport to develop a comprehensive or non-controversial definition of that term in this essay. When I say that MacKinnon's sociological approach is seemingly "postmodern," I mean that it purports to be anti-essentialist and anti-objective in its concentration on the social construction of reality.

But is it postmodern? At least one writer has recently questioned whether "feminism [can] survive the postmodern critique of reason." Dennis Patterson, *Postmodernism/Feminism/Law*, 77 CORNELL L. REV. 254, 255 (1992). Patterson's choice of words is unfortunate—especially if you define feminism, as I do, as the demand of women for dignity and membership in society. He is correct, however, in that many contemporary legal feminists (including MacKinnon) have not yet internalized postmodern theory, although they sometimes ostensibly adopt postmodern terminology.

In this essay I use the term "modern" to include political philosophies emphasizing reason and individual autonomy starting from the various forms of liberalism during the Enlightenment, continuing through Marxism and into the twentieth century.

II. PORNOGRAPHY AS SEXUALITY, NOT VIOLENCE

MacKinnon's central analysis of pornography is a critique of sexuality;³ not of violence, violent sex, or sexualized violence.⁴ Sexuality, to MacKinnon, is not a matter of biology⁵ but of politics.⁶ In

3. A thorough explication of MacKinnon's theory is beyond the scope of this essay. I analyze her anti-pornography proposal at greater length, and contrast it to that of Cass Sunstein, in Jeanne L. Schroeder, *The Taming of the Shrew: The Liberal Attempt to Mainstream Radical Feminist Theory*, 5 YALE J.L. & FEMINISM 123, 135-62 (1992) [hereinafter Schroeder, *Taming of the Shrew*].

4. MacKinnon insists that so-called sexual violence, or violent sex, must be analyzed, first and foremost, as an example of sex. See CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 173-74 (1989) [hereinafter MACKINNON, THEORY OF THE STATE]. This is not because she trivializes the violence in these incidents or because she does not recognize that rape is worse when the woman is killed or physically tortured, rather than "merely" psychologically injured. She argues that scholars who emphasize the violent aspect of sexual violence in order to distinguish rape from "normal" heterosexual intercourse thereby insulate gender hierarchy from criticism.

As I explain more fully in Schroeder, *Taming of the Shrew*, *supra* note 3, at 142-43, MacKinnon calls for an analysis of rape and pornography as part of a continuum of "normal" sex. Lying at the extremity of this spectrum, rape and pornography serve as exemplars, as epitomes, of sex.

5. See CATHARINE A. MACKINNON, *Difference and Dominance: On Sex Discrimination*, in FEMINISM UNMODIFIED, *supra* note 1, at 32, 41 ("If this differential [between the sexes] were biological, maybe biological intervention would have to be considered. If it were evolutionary, perhaps men would have to evolve differently. Because I think it is political, I think its politics construct the deep structure of society."). See also CATHARINE A. MACKINNON, *Desire and Power*, in FEMINISM UNMODIFIED, *supra* note 1, at 46, 52 ("The analysis of sex is social, not biological.").

6. See CATHARINE A. MACKINNON, *Introduction: The Art of the Impossible*, in FEMINISM UNMODIFIED, *supra* note 1, at 1, 8 ("Gender is an inequality of power, a social status based on who is permitted to do what to whom."); see also CATHARINE A. MACKINNON, *Desire and Power*, in FEMINISM UNMODIFIED, *supra* note 1, at 46.

By political, I mean here questions of power. The feminist theory of power is that sexuality is gendered as gender is sexualized. . . . In other words, 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.

Id. at 50.

Thus, "[t]o explain gender inequality in terms of 'sexual politics' is to advance not only a political theory of the sexual that defines gender but also a sexual theory of the political to which gender is fundamental." MACKINNON, THEORY OF THE STATE, *supra* note 4, at 13 (footnote omitted). See also *id.* at xiii, 3, 41, 113, 242 (arguing that sexuality and inequality are fundamentally intertwined, both socially and politically). See generally *id.* at 215-234 (arguing that gender inequality is essentially inequality of power between men and women, not a biological difference).

what initially reads like a typical postmodernist social theory, MacKinnon insists that there is no "reality" external to human society. There are only social constructs. She also takes the corollary of this view seriously and literally. What society constructs is "real"—not in an objectivist and essentialist manner, but in the sense that this is the only meaning that the word "real" can have in a postmodern world.⁷ That is, whether or not there could ever be a theoretical distinction between purely biological sex and social gender, such a distinction is at best meaningless as a practical political matter, and at worst misleading, in that it gives an aura of naturalism and inevitability to the status quo.⁸

MacKinnon's approach is that in order to analyze the political nature of sex, we need to look at our society's starkest and most undiluted depictions of sex, i.e., pornography. What pornography depicts is the subordination of women by men.⁹ In other words, according to

7. See CATHARINE A. MACKINNON, *Afterword*, in FEMINISM UNMODIFIED, *supra* note 1, at 215, 223 ("Then there are the interpretation people, for whom social reality has no fixed, determinate reality. Society is all mental. Pornography, too, is just a fantasy. But if it is only mental, in a world in which *everything* is only mental, why isn't it as real as anything else?").

8. Critiquing one approach toward gender differentiation, MacKinnon states: The view is that there are real differences between the sexes, usually biological or natural. Upon these differences, society has created some distorted, inaccurate, irrational, and arbitrary distinctions: sex stereotypes or sex roles. To eliminate sex inequality, in this view, is to eliminate these wrong and irrational distinctions. The evil and dynamic of sexism here is the twisting of biological males and females into masculine and feminine sex roles.

CATHARINE A. MACKINNON, *Women, Self-Possession, and Sport*, in FEMINISM UNMODIFIED, *supra* note 1, at 117, 117. See also MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 117 ("[T]he equality of women to men will not be scientifically provable until it is no longer necessary to do so.").

As I have argued elsewhere, MacKinnon's approach has great surface similarities to the psychoanalytic theory of sexuality associated with Jacques Lacan in that Lacanians also do not generally distinguish between gender and sexuality because our conscious selves can only experience our anatomical reality mediated through language and the unconscious. See Jeanne L. Schroeder, *The Vestal and the Faces: The Feminine and Property in Psychoanalysis and the Law*, 15 CARDOZO L. REV. (forthcoming 1994) [hereinafter Schroeder, *The Vestal and the Faces*]; Jeanne L. Schroeder, *Subject: Object*, 47 U. MIAMI L. REV. 1, 112 (1992) [hereinafter Schroeder, *Subject: Object*].

9. That is, men possessing women, as Andrea Dworkin describes pornography in the title of her book. ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1981). In other words, "pornographic meaning that the woman is defined as to be acted upon, a sexual object, a sexual thing—the viewing is an act, an act of male supremacy." CATHARINE A. MACKINNON, *Linda's Life and Andrea's Work*, in FEMINISM UNMODIFIED, *supra* note 1, at 127, 130. See also CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146, 148 ("In pornography,

MacKinnon, not only is the subordination of women sexual, but sexuality is the subordination of women.¹⁰

The harm of pornography, first and foremost, is that it is one of the primary vehicles by which sexuality is constructed.¹¹ In a masculinist society, sexuality does not exist separate from the gender hierarchy—it is

women desire dispossession and cruelty Subjection itself, with self-determination ecstatically relinquished, is the content of women's sexual desire and desirability. Women are there to be violated and possessed, men to violate and possess them").

Pornography, in the feminist view, is a form of forced sex, a practice of sexual politics, an institution of gender inequality. In this perspective, pornography, with the rape and prostitution in which it participates, institutionalizes the sexuality of male supremacy, which fuses the erotization of dominance and submission with the social construction of male and female.

MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 197 (footnote omitted).

10. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

Force is sex, not just sexualized; force is the desire dynamic, not just a response to the desired object when desire's expression is frustrated. Pressure, gender socialization, withholding benefits, extending indulgences, the how-to books, the sex therapy are the soft end; the fuck, the fist, the street, the chains, the poverty are the hard end.

Id. at 136.

11. See Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991) [hereinafter MacKinnon, *Reflections*]:

Pornography, which sexualizes gender inequality, is a major institution of socialization into these roles. The evidence suggests that women are targeted for intimate assault because the degradation and violation and domination of women is eroticized, indeed defines the social meaning of female sexuality in societies of sex inequality.

Id. at 1302-03; Catharine A. MacKinnon, *Pornography as Defamation and Discrimination*, 71 B.U. L. REV. 793, 796 (1991) [hereinafter MacKinnon, *Defamation and Discrimination*] ("Pornography has a central role in actualizing this system of subordination in the contemporary West"); see also CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146, 148-9 (describing pornography, in the feminist view, as a practice of sexual politics that institutionalizes male sexual supremacy, and thus, female subordination); CATHARINE A. MACKINNON, *Francis Biddle's Sister: Pornography, Civil Rights, and Speech*, in FEMINISM UNMODIFIED, *supra* note 1, at 163, 172-74 (arguing that pornography goes beyond the context of film, pictures, or words—pornography "eroticizes hierarchy, it sexualizes inequality"). See generally MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 195-214 (distinguishing between pornography and obscenity, and arguing that obscenity laws are concerned with morality and implicate First Amendment concerns and do nothing to address the impact of gender inequality implicit in pornography).

the gender hierarchy.¹² Pornography is the eroticization of domination and submission.¹³ In pornography, women are deprived of their individuality and are collectivized as non-persons.¹⁴ Masculine personhood is established by the destruction of feminine personhood.¹⁵

12. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 113 ("Sexuality, then, is a form of power. Gender, as socially constructed, embodies it, not the reverse. Women and men are divided by gender, made into the sexes as we know them, by the social requirements of its dominant form, heterosexuality, which institutionalizes male sexual dominance and female sexual submission.") (footnote omitted). For a small sampling of other places where MacKinnon makes this point, see *id.* at xiii, 41, 58, 130-31, and the chapters entitled *Sexuality* and *Sex Equality: On Difference and Dominance*. See also CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146, 148-49 (stating that because sexuality is a social construct, pornography becomes a "sexual reality" unto itself; it is not human sexual liberation, as liberal analysis would have us believe).

13. See, e.g., CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146, 160-61 (stating that—because under male dominance, whatever sexually arouses a man is sex—rape and violence, as forms of this sex, are concededly erotic to some women, and that it would be unusual if this were not so); MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 138-40, 197-98, 209-11 (arguing that pornography is essentially an institution of gender inequality and that the way women are portrayed in pornography defines the ways that men can treat women, i.e., as subordinates).

14. See CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146:

The trouble with this [liberal,] individuated, atomistic, linear, isolated, tortlike—in a word, positivistic—conception of injury is that the way pornography targets and defines women for abuse and discrimination does not work like this. It does hurt individuals, not as individuals in a one-at-a-time sense, but as members of the group "women."

Id. at 156.

MacKinnon makes this point again, in virtually the same language, in MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 208. I discuss this aspect of MacKinnon's thought in Jeanne L. Schroeder, *Abduction From the Seraglio: Feminist Methodologies and the Logic of Imagination*, 70 TEX. L. REV. 109, 195-96 (1991) [hereinafter Schroeder, *Abduction From the Seraglio*].

15. See CATHARINE A. MACKINNON, *Not a Moral Issue*, in FEMINISM UNMODIFIED, *supra* note 1, at 146.

Pornography dispossesses women of the power of which, in the same act, it possesses men: the power of sexual, hence gender, definition. Perhaps a human being, for gender purposes, is someone who controls the social definition of sexuality. . . . It is only to the extent that each of these values is accepted as human that their negation becomes a quality of, and is eroticized in and as, woman. Only when self-respect is accepted as human does debasement become sexy and female; only when the avoidance of pain is accepted as human does torture become sexy and female. In this way, women's

This is done psychologically and socially in the case of "normal" heterosexual relationships even as it is done literally and physically in the case of snuff films. For MacKinnon, psychoanalytical theory's traditional twinning of Eros and Thanatos is literal, not symbolic.

Consequently, the anti-pornography legislation that MacKinnon co-authored¹⁶ is not merely an anti-crime bill to rein in sexual violence—although it does have this aspect.¹⁷ Her critique goes to all heterosexual relationships and the gender hierarchy. The legislation is part and parcel of the strategy that has recognized sexual harassment as an actionable form of sexual discrimination, that seeks to make rape similarly civilly actionable as discrimination, and that seeks to have the law analyze abortion rights in terms of equality rather than the right to privacy.¹⁸ The articulated goal of the legislation is to subvert the heterosexual status quo.¹⁹

MacKinnon's argument is not based on proximate causation between any specific work of pornography and any specific act of sexual violence. To understand the centrality of the concept of pornography, and indeed the definition and role of pornography, in MacKinnon's analysis, however, one must delve deep into her theory of personhood and sexuality. That theory, in a modern liberal way, identifies subjectivity with autonomous, unconstrained individuality, and in a premodern Christian way, identifies sexuality with both femininity and the loss of selfhood. This leads inexorably to the rejection of sexuality in the form of a disparagement of the feminine.

The power of MacKinnon's analysis, for me, flows precisely from the fact that it accurately explicates the misogyny of traditional Western

sexuality as expressed in pornography precisely negates her status as human.

Id. at 158-60. See also MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 122 ("Woman through male eyes is a sex object, that by which man knows himself at once as man and as subject."); *id.* at 123 ("The eroticism that corresponds to the male side of this epistemology . . . its sexual ontology, is 'the use of things to experience self.' Women are the things and men are the self.") (footnote omitted).

16. For a description of the ordinance, see Catharine A. MacKinnon, *Pornography, Civil Rights, and Speech*, 20 HARV. C.R.-C.L. L. REV. 1, 1-2, 22-60 (1985). For the text, see Andrea Dworkin, *Against the Flood: Censorship, Pornography and Equality*, 8 HARV. WOMEN'S L.J. 1, 24-28 (1985).

17. See Dworkin, *supra* note 16, at 24-28.

18. See generally MacKinnon, *Reflections*, *supra* note 11.

19. Consequently, MacKinnon argues that pornography is discrimination and cannot adequately be addressed as group defamation. See MacKinnon, *Defamation and Discrimination*, *supra* note 11, at 804.

theories of sexuality that undergird our legal system.²⁰ The corresponding fundamental weakness of her theory, however, may lie in her failure to recognize the traditional nature of much of her analysis. Consequently, MacKinnon risks replicating, rather than critiquing, the very oppression she so desperately wants to prevent.²¹

III. MACKINNON AND AUGUSTINE

A. *Sexuality as Loss of Subjectivity in MacKinnon*

When I say that MacKinnon's theory of sexuality is deeply Christian, I am not accusing her of attacking pornography or sexuality as morally repugnant.²² Rather, I mean that she adopts a theory similar to that strain of traditional Christian theology that holds that involuntary sexuality and subjectivity are mutually inconsistent, and that identifies involuntary sexuality with the feminine.

I am also not suggesting that MacKinnon has studied and consciously adopted the theories of the Fathers of the Church. I am suggesting, rather, that there are striking parallels between her theory and Christian theology. This should not be surprising. MacKinnon is trying to analyze the sociology of sexuality in contemporary America. I believe it self-evident

20. As I have explained elsewhere, the misogyny of traditional Christianity is not a new feminist overlay. See Jeanne L. Schroeder, *Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence*, 75 IOWA L. REV. 1135, 1136-47, 1189 (1990) [hereinafter Schroeder, *Feminism Historicized*]. The Doctors of the Church and medieval theologians were themselves expressly and admittedly misogynist—they taught that not merely the subordination, but the degradation of women was divinely ordained as the curse of Eve. *Id.* at 1203-4. The institutions of marriage and motherhood were intended by God to be humiliating and punishing to women. *Id.* at 1204. Consequently, the language used by traditional Christian theologians to describe women and women's position sounds strikingly like the language used by contemporary feminists. *Id.* at 1207. The difference is that the theologians thought they were describing a holy system and we think we are describing an unjust system. *Id.* at 1201.

21. I make a similar argument in Schroeder, *Feminism Historicized*, *supra* note 20, at 1189.

22. MacKinnon repeatedly defends her theories against charges of moralism. See, e.g., CATHARINE A. MACKINNON, *Afterword*, in FEMINISM UNMODIFIED, *supra* note 1, at 215, 225. Rather, her similarity with Augustine is that neither is concerned with the sinful nature of the sexual acts but in the meaning of sexuality.

Consequently, the reason why the religious right insisted on including an anti-pornography plank in the 1992 Republican Party Platform may be based, not merely on moral approval, but on similarities between the traditional Christian theology of sexuality and the theory underlying the regulation.

that, to date, Western Christianity has been the single greatest factor in the development of American sexual behavior and attitudes.²³ MacKinnon should be congratulated, therefore, because her examination of American sexuality has resulted in a description of the Christian theology that underlies it. I criticize her for not recognizing the similarity. Consequently, she risks embracing and reinstating, rather than rejecting, the very theory which has arguably been the bulwark of the oppression of women.

As I have stated elsewhere, although MacKinnon herself refuses to describe clearly the positive vision of subjectivity that she believes women lack,²⁴ this vision can be dimly glimpsed through her negative descriptions of what is objectionable about the objectification of women. What MacKinnon seems to be seeking is choice.²⁵ But MacKinnon does not seek choice as mere voluntarism (in the sense of an ability or necessity of choosing between two or more alternatives, albeit under constraints). Rather, she seems to seek choice in the sense of "will."²⁶ That is, she seeks pure, unfettered autonomy, free from any and all restrictions, social, psychological, or biological. Mere voluntarism differs from the concept of will in that, if I act voluntarily, nobody else makes me do something. In an act of will, even I do not *make* myself do something. Rather, I act autonomously, and perhaps arbitrarily.²⁷

23. I state this as an empirical matter. It is not intended to denigrate other, non-European and non-Christian factors in American culture, or to suggest that this state of affairs is good, bad, or indifferent. I am merely stating that, rightly or wrongly, American culture has been dominated by Christianity and Euro-centrism. The only way we can intelligently analyze American culture is to become more, not less, familiar with the intellectual antecedents in Western culture, so that we can recognize its unconscious influence on us.

24. See Schroeder, *Abduction From the Seraglio*, *supra* note 14, at 193-200.

25. See *id.* at 195.

26. Probably the best description of this ultra-liberal concept of "free will" is contained in Hegel's introduction to *The Philosophy of Right*. Hegel, of course, argues that this concept of free will (which is similar to the conception of the autonomous individual who is the essential human being of liberal philosophy) is the most minimal, abstract concept of what it could be to be a person. It contains its own contradictions and must eventually be sublated into a richer and more complex conception of human subjectivity that contains both moments of autonomous individuality and communitarianism. See generally GEORG WILHELM FRIEDRICH HEGEL, *ELEMENTS OF THE PHILOSOPHY OF RIGHT* 25-64 (Allen W. Wood ed. & H.B. Nisbet trans., Cambridge University Press 1991).

27. I thank my colleague Arthur Jacobson for this characterization. For an excellent description of the radically negative and contentless essence of the liberal concept of abstract will, see HEGEL, *supra* note 26, at 39-40.

Sexuality is central to MacKinnon's theory of subordination. This is not because the physical biological act of intercourse has any particular significance. Rather, sexuality must be conceptualized in terms of the social meaning given to it.²⁸ In this light, feminine sexuality is the ultimate sign of women's lack of will: the lack of feminine subjectivity. This is precisely because feminine sexuality is compelled and nonvoluntary for women as a social matter. The problem with heterosexuality for women is that it is not *chosen by us*.²⁹ Not only is heterosexuality mandatory in our society,³⁰ but women cannot even control specific

28. See Schroeder, *Taming of the Shrew*, *supra* note 3, at 136-39.

29. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

Realizing that women largely recognize themselves in sex-stereotyped terms, really do feel the needs they have been encouraged to feel, do feel fulfilled in the expected ways, often actually choose what has been prescribed, makes possible the realization that women at the same time do not recognize themselves in, do not feel, and have not chosen this place.

Id. at 102. "The point is not how well women conform to this standard but that there is such a standard and women do not create it." *Id.* at 92. "Women, who are not given a choice, are objectified; or, rather, 'the object is allowed to desire, if she desires to be an object.'" *Id.* at 140 (quoting ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* 109 (1981)). "To be sexually objectified means having a social meaning imposed on your being that defines you as to be sexually used, according to your desired uses, and then using you that way. Doing this is sex in the male system." *Id.* "Women's complicity in their condition does not contradict its fundamental unacceptability if women have little choice but to become persons who then freely choose women's roles." *Id.* at 124. "Sexuality is to feminism what work is to marxism: that which is most one's own, yet most taken away." *Id.* at 3. "To be deprived of control over work relations in marxism, over sexual relations in feminism, defines each theory's conception of lack of power per se." *Id.* at 4.

If one looks at liberal meanings of personhood through a feminist political analysis of what pornography does to women, the inadequacy of the liberal dehumanization critique becomes clear. In a feminist perspective, pornography dehumanizes women In the same act, pornography dispossesses women of the same power of which it possesses men: the power of sexual, hence gender, definition. The power to tell one who one is and the power to treat one accordingly. Perhaps a human being, for gender purposes, is someone who controls the social definition of sexuality.

Id. at 209.

30. See *id.* at 183 ("What is it reasonable for a man to believe concerning a woman's desire for sex when heterosexuality is compulsory?"); *id.* at 3-4 ("Heterosexuality is its social structure, desire its internal dynamic, gender and family its congealed forms, sex roles its qualities generalized to social persona, reproduction a consequence, and control its issue."); see also *id.* at 178-79 (stating that heterosexuality is a fusion of males and females whose outcome is gender, with the acted upon feminized and the actor masculinized). Even homosexuality, in a masculinist-heterosexual society, is seen to be a reaction to, and perhaps a reflection of, heterosexuality. See *id.* at 141-42.

individual acts of heterosexual intercourse.³¹ Heterosexuality is figuratively thrust upon us, just as men are literally thrust into us during heterosexual intercourse. Not only can we not say no even if we want to; even when we say yes, we are not choosing but merely acquiescing in the inevitable.³²

For MacKinnon, biologically female persons do not possess feminine sexuality, even as social constructs; rather they become objects of male sexuality.³³ That is, MacKinnon considers voluntary sexuality to be the antithesis of subjectivity. As men are subjects, women, as men's alterity, must also be *men's* sexuality.³⁴ As described in Lacanian psychoanalytical terms, only men can *have* the Phallus (be the desiring subject); women can merely *be* the Phallus (be the desiring subject's object of desire).³⁵

Consequently, for MacKinnon, in this society women need abortion not so that we can gain control over our bodies, but because in this society we have no control over our sexuality. Or, more accurately, women's

31. See Schroeder, *Taming of the Shrew*, *supra* note 3, at 166-67.

32. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 149-50 ("Faced with no alternatives, the strategy to acquire self-respect and pride is: I chose it.").

33. As in Christianity, women are seen as sex, made into sex. See Schroeder, *Feminism Historicized*, *supra* note 20, at 1191-93. "Men define women as sexual beings; feminism comprehends that femininity is sexual." MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 125. However, this does not mean that there is such a thing as female sexuality. Rather, female sexuality is male sexuality objectified and forced onto women. "Sexuality is to feminism what work is to marxism: that which is most one's own, yet most taken away." *Id.* at 3. "[A] women [sic] is identified as a being who identifies and is identified as one whose sexuality exists for someone else, who is socially male. . . . Considering women's sexuality in this way forces confrontation with whether there is, in the possessive sense of 'women's,' any such thing. Is women's sexuality its absence?" *Id.* at 118. "Specifically, 'woman' is defined by what male desire requires for arousal and satisfaction and is socially tautologous with 'female sexuality' and 'the female sex.'" *Id.* at 131. "Women's sexuality is, socially, a thing to be stolen, sold, bought, bartered, or exchanged by others. But women never own or possess it, and men never treat it, in law or in life, with the solicitude with which they treat property. . . . The moment women 'have' it—'have sex' in the dual gender/sexuality sense—it is lost as theirs." *Id.* at 172.

34. As I have argued elsewhere and shall return to below, traditional Roman Catholicism also teaches that men symbolize the spirit and women the flesh, so that women are men's sexuality. See Schroeder, *Feminism Historicized*, *supra* note 20, at 1192.

35. See ELIZABETH GROSZ, JACQUES LACAN: A FEMINIST INTRODUCTION 71-72 (1990) (discussing how, in psychoanalytic theory, the terms "man" and "woman" are sexual positions we take up and are not synonymous with biologically male and female human beings).

sexuality is by definition not our own.³⁶ If women are permitted to have abortions so that we may engage in more heterosexual intercourse, we would not be controlling our bodies.³⁷ Rather, we would be submitting to a sexuality that is not ours but that has been constructed by others and forced upon us.³⁸ Women need abortion as a remedy because sexuality—our understanding of and relationship to our bodies—is thrust upon us. Abortion, therefore, restores choice by permitting women to reject the *consequences* of heterosexuality. It is a rejection of sexuality as lack of choice.³⁹ By restoring choice, abortion helps to construct

36. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

Sex does not look a lot like freedom when it appears normatively less costly for women to risk an undesired, often painful, traumatic, dangerous, sometimes illegal, and potentially life-threatening procedure than to protect oneself in advance. Yet abortion policy has never been explicitly approached in the context of how women get pregnant; that is, as a consequence of intercourse under conditions of gender inequality; that is, as an issue of forced sex.

Id. at 185-86. See also *id.* at 112 (stating that "women who need abortions see contraception as a struggle not only for control over the biological products of sexual expression but also over the social rhythms and mores of sexual intercourse"); CATHARINE A. MACKINNON, *Privacy v. Equality: Beyond Roe v. Wade*, in *FEMINISM UNMODIFIED*, *supra* note 1, at 93, 94-96 (stating that sexual intercourse cannot be presumed co-equally determined).

37. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

Even before *Roe v. Wade*, arguments for abortion under the rubric of feminism have rested upon the right to control one's own body, gender neutral. This argument has been appealing for the same reasons it is inadequate: socially, women's bodies have not been theirs; women have not controlled their meanings and destinies. Feminists have tried to assert that control without risking pursuit of the idea that something more than women's bodies might be at stake, something closer to a net of relations in which women are gendered and unequal.

Id. at 189 (footnotes omitted). Consequently, men often support abortion rights because it makes women more available to men. See *id.* at 190.

38. See MacKinnon, *Reflections*, *supra* note 11, at 1300 ("Similarly, when convenient to do away with the consequences of intercourse (meaning children), women get abortion rights. Women can have abortions so men can have sex.") (footnote omitted).

39. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 184 ("Abortion's proponents and opponents share a tacit assumption that women significantly control sex. . . . Feminist investigations suggest otherwise. Sexual intercourse, still the most common cause of pregnancy, cannot simply be presumed coequally determined."); *id.* at 186 ("The abortion choice should be available and must be women's, but not because the fetus is not a form of life. Why should women not make life-or-death decisions? The problem has been that if the fetus has *any* standing in the debate, it has more weight than

subjectivity—make women into persons.⁴⁰ The issue of whether abortion would be necessary, or ethically acceptable, in a society where sexual equality existed cannot be known at this time; and is irrelevant to the issue of abortion in *this* society.⁴¹

MacKinnon's critique of the legal definition of rape, and indeed most areas of liberal sex law, is similarly rooted in her analysis of women's lack of control over sexuality.⁴² Criminal law distinguishes between rape and intercourse on the basis of consent.⁴³ But this distinction incorrectly assumes that women are ever capable of meaningful consent to

women do.”).

40. See MacKinnon, *Reflections*, *supra* note 11, at 1315 (“Now place the legal status of the fetus against the backdrop of women’s tenuous to nonexistent equality. Women have not been considered ‘persons’ by law very long; the law of persons arguably does not recognize the requisites of female personhood yet.”).

Short of achieving sexual and social equality—short of changing the context—abortion has offered the only way out. However difficult an abortion decision may be for an individual woman, it provides a moment of power in a life otherwise led under unequal conditions which preclude choice in ways she cannot control. In this context, abortion provides a window of relief in an unequal situation from which there is no exit.

Id. at 1317.

41. See *id.* at 1327.

If authority were already just and body already autonomous, having an abortion would lose any dimension of resistance to unjust authority or reclamation of bodily autonomy. Under conditions of sex equality, I would personally be more interested in taking the man’s view into account. . . . The privacy approach might make more sense.

Id. (footnote omitted).

42. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

The law on women’s situation produced in this way views women’s situation from the standpoint of male dominance. It assumes that the conditions that pertain among men on the basis of sex—consent to sex, comparative privacy, voice in moral discourse, and political equality on the basis of gender—apply to women. It assumes on the epistemic level that sex inequality in society is not real. Rape law takes women’s usual response to coercion—acquiescence, the despairing response to hopelessness to unequal odds—and calls that consent. Men coerce women; women “consent.”

Id. at 168.

43. See *id.* at 177 (“Having defined rape in male sexual terms, the law’s problem, which becomes the victim’s problem, is distinguishing rape from sex in specific cases. The adjudicated line between rape and intercourse commonly centers on some assessment of the woman’s ‘will.’”); see also *id.* at 172 (“The law, speaking generally, defines rape as intercourse with force or coercion and without consent. . . . In a critique of male supremacy, the elements ‘with force and without consent’ appear redundant. Force is present because consent is absent.”) (footnote omitted).

heterosexual intercourse.⁴⁴ The legal definition of consent in rape law is *designed* so that most sexual assaults are excluded from the definition.⁴⁵

For MacKinnon meaningful consent is identified with the exercise of will by a totally free and autonomous individual subject. Insofar as will is constrained, voluntary action is, by definition, not consent. I would agree with MacKinnon that women's lives and sexuality are extremely constrained in masculinist society.⁴⁶ I question, however, her implication that constrained consent fails to reflect sufficient voluntarism to make such consent meaningful—that it imposes no responsibility on the person consenting. Indeed, if we are all socially constructed, how could any of us ever be capable of the type of act of will that MacKinnon seeks? As I have discussed elsewhere,⁴⁷ and as I will return to shortly, despite MacKinnon's ostensible rejection of objective truth, a liberal strain—an essentialist conception of the subject—in fact underlies her writings.

44. See *id.* at 182 ("If sexuality is relational, specifically if it is a power relation of gender, consent is a communication under conditions of inequality.").

When sex is violent, women may have lost control over what is done to them, but absence of force does not ensure the presence of that control. Nor, under conditions of male dominance, does the presence of force make an interaction nonsexual. If sex is normally something men do to women, the issue is less whether there was force than whether consent is a meaningful concept.

Id. at 178 (footnote omitted). See also *id.* at 181 ("Measuring consent from the socially reasonable, meaning objective man's, point of view reproduces the same problem under a more elevated label.") (footnote omitted).

45. See MacKinnon, *Reflections*, *supra* note 11, at 1300 ("The notion of consent here, the law's line between intercourse and rape, is so passive that a dead body could satisfy it.") (footnote omitted).

46. Unlike MacKinnon, however, I also believe that men are constrained in masculinist society and are not the free-willed, acting subjects described by MacKinnon. This is not to imply in any way that men are not relatively more empowered than women in our society, that our legal system does not recognize accurately either the relative difference in the degree of constraint imposed on men and women in our society or the degree of constraint that exists in the average sexual encounter, or that our laws do not need to be changed accordingly.

Specifically, I agree that it is bizarre to analyze abortion in terms of whether a woman, by engaging in intercourse, is consenting to pregnancy, because such an analysis probably does not reflect the conscious mental state of the women involved. In many, if not most, cases, such "consent" could only be deemed "constructive consent," a legal fiction designed to justify a pre-existing conclusion rather than a finding of fact.

47. See Schroeder, *Abduction From the Seraglio*, *supra* note 14, at 193-200; Schroeder, *Subject: Object*, *supra* note 8, at 107-11.

1. Sexuality as Loss of Subjectivity in Augustine.

Sexuality plays as central a role in Augustine's theory of sin as it does in MacKinnon's theory of subordination.⁴⁸ It is the involuntariness of sex which concerns him. Sexuality is the ultimate sign of our lack of integrity—the symbol of our imperfection.

As Peter Brown so brilliantly explains, Augustine's contribution to the Christian theology of sexuality was his reconceptualization of the theological meaning of post-lapsarian sexuality.⁴⁹ Unlike many of the other Church Fathers who emphasized sexuality in theology, Augustine did not see a necessary rift between the spirit and the flesh.⁵⁰ Some earlier theologians taught either that Adam and Eve did not have sexuality before the Fall, or that, perhaps, their sexuality was different in that they did not experience sexual love or pleasure.⁵¹ In the Garden, these theologians speculated, Adam and Eve lived together in an entirely rational, nonemotional, individualistic way, like angels.⁵²

In contrast, Augustine believed that humankind was created by God to be social.⁵³ Marriage and childbearing are necessary parts of society.⁵⁴

48. See *infra* notes 49-112 and accompanying text.

49. See PETER BROWN, *THE BODY AND SOCIETY: MEN, WOMEN AND SEXUAL RENUNCIATION IN EARLY CHRISTIANITY* 387-427 (1988). Brown traces the development of the Christian concept of sexuality from its origins in Jewish and Roman cultures, which accepted sexuality and emphasized the importance of the family in religious life, to the Christian preoccupation with virginity. Augustine synthesized the theories of previous theologians and created a theory that became the orthodox Christian theology of sexuality and that combined both the Christian concept of celibacy and the Roman concept of society. See *id.*

50. See, e.g., SAINT AUGUSTINE, *THE CITY OF GOD* (Marcus Dods trans., Modern Library 1950) [hereinafter AUGUSTINE, *THE CITY OF GOD*]; SAINT AUGUSTINE, *CONFESSIONS* (R.S. Pine-Coffin trans., Penguin Books 1961) [hereinafter AUGUSTINE, *CONFESSIONS*].

51. See, e.g., BROWN, *supra* note 49, at 93-96, 295; Schroeder, *Feminism Historicized*, *supra* note 20, at 1190.

52. See BROWN, *supra* note 49, at 399-400.

53. See SAINT AUGUSTINE, *The Good of Marriage*, in *TREATISES ON MARRIAGE AND OTHER SUBJECTS* 9 (Roy J. Deferrari ed. & Charles T. Wilcox et al. trans., Fathers of the Church, Inc. 1955) [hereinafter AUGUSTINE, *Good of Marriage*]:

Since every man is a part of the human race, and human nature is something social and possesses the capacity for friendship as a great and natural good, for this reason God wished to create all men from one, so that they might be held together in their society . . . And so it is that the first natural tie of human society is man and wife.

Consequently, social love in the form of intimate friendship between Adam and Eve,⁵⁵ as well as physical pleasure in reproduction, are parts of the original Creation, and therefore good.⁵⁶ Pre-lapsarian life in the

Id. at 9. See also BROWN, *supra* note 49, at 399-400 (suggesting that, as opposed to the early Christian ideal of the ascetic hermit who in solitude tried to achieve individual spiritual perfection, Augustine's ideal was—as expressed in the title of his greatest work, *The City of God*—a holy community).

54. See AUGUSTINE, *Good of Marriage*, *supra* note 53, at 9 (“A consequence [of the joining of man with wife] is the union of society in the children who are the only worthy fruit, not of the joining of male and female, but of sexual intercourse.”). See also BROWN, *supra* note 49, at 401-03.

55. Augustine believed that reproduction, rather than friendship, was the primary reason for the creation of woman. See BROWN, *supra* note 49, at 402-03. He thought it was self-evident that if God had intended to provide a companion for Adam primarily for friendship or to help him work, He would have created a second man. See Schroeder, *Feminism Historicized*, *supra* note 20, at 1191-92.

Nevertheless, the friendship between husband and wife was, to Augustine, more significant than their sexual relationship. “[B]ecause He came to the marriage when invited, there is merit in inquiring why it is a good. This does not seem to me to be a good solely because of the procreation of children, but also because of the natural companionship between the two sexes.” AUGUSTINE, *Good of Marriage*, *supra* note 53, at 12 (referring to Christ's recognition of marriage through attendance at the wedding at Cana).

56. As man was created with both spirit and flesh, he was intended to experience both mental and physical pleasure:

For neither was it a paradise only physical for the advantage of the body, and not also spiritual for the advantage of the mind; nor was it only spiritual to afford enjoyment to man by his internal sensations, and not also physical to afford him enjoyment through his external senses. But obviously it was for both ends.

AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 458.

“[B]ut it is quite clear that they were created male and female, with bodies of different sexes, for the very purpose of begetting offspring . . . and it is great folly to oppose so plain a fact.” *Id.* at 469. “And it is by this original example, which God Himself instituted, that the apostle admonishes all husbands to love their own wives in particular.” (referring to *Ephesians* 5:25). *Id.* at 470.

Augustine argued that Adam and Eve “had been placed in Paradise for a probationary period, so that they should learn to experience and to accept, with unswerving obedience and with open-hearted gratitude, the full range of the joys of fully physical, fully social and . . . fully sexual beings.” BROWN, *supra* note 49, at 400-01 (footnote omitted). Augustine, however, did think that Adam and Eve would only be sexually active during the younger portion of their lives in order to have children. Having performed this function, they would remain together in continent friendship when they were older. That is, although Augustine thought that Adam and Eve felt sexual desire and that this was proper, he, like other Christian theorists, was incapable of “articulating the possibility that sexual pleasure might, in itself, enrich the relations

Garden differed from life after the Fall not in that the former was spiritual and the latter fleshy, but that the former was one of unity and the latter of conflict.⁵⁷

In Eden, Adam and Eve's wills were originally totally in harmony with God's will, they were totally in harmony with each other, and their flesh was totally in harmony with their spirits.⁵⁸ Spirit and flesh, like man and woman (which, Christian theology taught, symbolize spirit and flesh, respectively⁵⁹), were created to live in an unending, harmonious, conjugal embrace.⁶⁰ It is true that this harmony, like the

between husband and wife." *Id.* at 402 (footnote omitted). *See also id.* at 407, 418.

57. Augustine's theory of sexuality became Catholic orthodoxy. Consequently, the commonly held impression that traditional Christian theology was based on a stark soul-body duality is a misimpression. To the Christian theologian, the body was not a prison for the soul; instead, human beings were essentially embodied. For excellent discussions of the importance of the body in medieval spirituality, see CAROLINE WALKER BYNUM, *The Female Body and Religious Practice in the Later Middle Ages*, in FRAGMENTATION AND REDEMPTION: ESSAYS ON GENDER AND THE HUMAN BODY IN MEDIEVAL RELIGION 181, 222-35 (1991) [hereinafter BYNUM, *The Female Body*]; CAROLINE WALKER BYNUM, *Material Continuity, Personal Survival and the Resurrection of the Body: A Scholastic Discussion in Its Medieval and Modern Contexts*, in FRAGMENTATION AND REDEMPTION, *supra*, at 239 [hereinafter BYNUM, *Material Continuity*].

58. *See* AUGUSTINE, *Good of Marriage*, *supra* note 53, at 10. Augustine asks, and answers in the negative, the question whether "if our first parents had not sinned, they would have had children in some other way, without physical coition, out of the munificence of the almighty Creator, who was able to create them without parents." *Id.* *See also* AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 456 ("Their love to God was unclouded, and their mutual affection was that of faithful and sincere marriage; and from this love flowed a wonderful delight, because they always enjoyed what was loved."); BROWN, *supra* note 49, at 405 ("Adam and Eve had originally enjoyed a harmonious unity of body and soul. Their bodies had followed the dictates of their wills with the same loving and familiar concord as they themselves had followed the will of God."); *id.* at 407 ("For Adam and Eve, will and sexual delight had run together in perfect concord.").

59. *See* Eleanor Commo McLaughlin, *Equality of Souls, Inequality of Sexes: Woman in Medieval Theology*, in RELIGION AND SEXISM: IMAGES OF WOMAN IN THE JEWISH AND CHRISTIAN TRADITIONS 213, 216 (Rosemary Radford Ruether ed., 1974) [hereinafter McLaughlin, *Equality of Souls*] (describing "the patristic dualism that identified *vir*, the male, with spirit, and the female polarity with the earthward drag of the body").

60. *See* BROWN, *supra* note 49, at 405 ("Adam and Eve had originally enjoyed a harmonious unity of body and soul. Their bodies had followed the dictates of their wills with the same loving and familiar concord as they themselves had followed the will of God."); *id.* (noting Augustine's description of the relationship between body and soul as a "sweet marriage-bond") (footnote omitted). *See also* AUGUSTINE, *THE CITY OF GOD*,

harmony of heaven, was one of hierarchy, with spirit/man governing flesh/woman. But this hierarchy was based on mutual love, devotion, and complementarity, not on domination and subordination. "For there could have been in both sexes, even without such intercourse, a kind of friendly and genuine union of the one ruling and the other obeying."⁶¹ The movements of Adam and Eve's sexual organs were subject to the voluntary control of their spirits, just as the movements of our arms and legs are today.⁶² Their spirits were created to rejoice innocently in the excellence and pleasure of their flesh acting in perfect accordance with their will.⁶³

supra note 50:

As happy, then, as were these our first parents, who were agitated by no mental perturbations, and annoyed by no bodily discomforts, so happy should the whole human race have been, had they not introduced that evil which they have transmitted to their posterity, and had none of their descendants committed iniquity worthy of damnation; but this original blessedness continuing until, in virtue of that benediction which said, "Increase and multiply," the number of the predestined saints should have been completed, there would then have been bestowed that higher felicity which is enjoyed by the most blessed angels . . .

Id. at 457 (quoting *Genesis* 1:28).

61. AUGUSTINE, *Good of Marriage*, *supra* note 53, at 9. See also Schroeder, *Feminism Historicized*, *supra* note 20, at 1151-52, 1163-64 (noting that medieval theologians and lawyers recognized the spiritual equality of men and women as emanating from the original creation, but thought the earthly inequality and hierarchy between them to be the divine and just punishment of men and women for original sin).

62. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50:

Do we now move our feet and hands when we will to do the things we would by means of these members? do we meet with no resistance in them, but perceive that they are ready servants of the will . . . ? and shall we not believe that, like as all those members obediently serve the will, so also should the members have discharged the function of generation, though lust, the award of disobedience, had been awaiting?

Id. at 470-71. See also *id.* at 472 ("The man, then, would have sown the seed, and the woman received it, as need required, the generative organs being moved by the will, not excited by lust."); *id.* at 475:

In such happy circumstances and general human well-being we should be far from suspecting that offspring could not have been begotten without the disease of lust, but those parts, like all the rest, would be set in motion at the command of the will; and without the seductive stimulus of passion, with calmness of mind and with no corrupting of the integrity of the body, the husband would lie upon the bosom of his wife.

63. See *id.* at 474-75:

No sadness of any kind was there, nor any foolish joy; true gladness ceaselessly flowed from the presence of God, who was loved "out of a pure

The Fall was the moment of irreparable rift.⁶⁴ Adam and Eve separated from God by turning their wills away from God's will.⁶⁵ This resulted in disharmony not merely between God and man, but between man and man, man and woman, and spirit and flesh.⁶⁶

Sexuality and death are linked because they are the two ways that the rift between spirit and flesh (symbolizing as well the rift between God and man, and man and woman) is physically manifest: in death the spirit is involuntarily deprived of its beloved spouse, flesh;⁶⁷ in sex, the spirit loses its harmonious governance over rebellious flesh.⁶⁸ Death comes to us at the end of our lives, and we can try not to think about it. Sexuality, on the other hand, is always with us.

heart, and a good conscience, and faith unfeigned." The honest love of husband and wife made a sure harmony between them. Body and spirit worked harmoniously together, and the commandment was kept without labour. (quoting 1 *Timothy* 1:5). See also BROWN, *supra* note 49, at 407 ("[T]he married intercourse of Adam and Eve, had this occurred before the Fall, would have been an object lesson in the balanced rapture with which all human beings might have used the physical joys showered upon them by their Creator.").

64. Or, more accurately, a rift which was irreparable by man alone, but redeemable by Christ.

65. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 460; BROWN, *supra* note 49, at 416.

66. See BROWN, *supra* note 49, at 418 ("They were beings estranged from Him and from each other as surely as their own sexual feelings were now estranged from their own conscious selves."). The disharmony between God and man necessitates the redemption of man by Christ's Incarnation, Crucifixion, and Redemption.

The violence of society was also a result of the Fall. See *id.* at 405 ("Men and women had not fallen 'into' society from an angelic state of Paradise; they had swept even society into their fall: 'Man . . . has become antisocial by inner corrosion.'") (quoting HENRY CHADWICK, *AUGUSTINE* 68 (1986)).

As I have described before, the rift between man and woman was thought to be manifest through the deformation of the loving harmonious hierarchy of the Garden into the punishing hierarchy of domination and subordination imposed upon Eve as her punishment for instigating the Fall. See Schroeder, *Feminism Historicized*, *supra* note 20, at 1151-52.

67. AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 413-14, 416.

68. See *id.* at 471 ("But now the soul is ashamed that the body, which by nature is inferior and subject to it, should resist its authority."); *id.* at 422:

For the soul, revelling in its own liberty, and scorning to serve God, was itself deprived of the command it had formerly maintained over the body. And because it had wilfully deserted its superior Lord, it no longer held its own inferior servant; neither could it hold the flesh subject, as it would always have been able to do had it remained itself subject to God.

See also BROWN, *supra* note 49, at 416.

According to the Book of Genesis, upon eating the fruit of the Tree of Knowledge of Good and Evil, Adam and Eve "knew that they were naked."⁶⁹ Augustine interpreted this not merely as their recognition of their sexuality, but as their recognition of their sexuality as something other than themselves.⁷⁰ Thus, immediately upon his disobedience, Adam experienced an involuntary erection.⁷¹ The primordial parents saw this and felt sexual shame.⁷² The measured, sober emotion of social love in accordance with will was replaced with uncontrollable lust. The significance of sex was no longer merely biology, it was its religious and social meaning.⁷³

Involuntary sexual events such as erections, vaginal secretions, menstruation, and wet dreams (not to mention spontaneous sexual desire and erotic fantasies) continually attack both the young and the old—even the holiest and most chaste hermits and consecrated virgins.⁷⁴ The horror of sex is precisely that we do not choose it—our bodies constantly mock

69. *Genesis* 3:7.

70. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 465 (stating that before the Fall "They were naked and were not ashamed"—not that their nakedness was unknown to them, but because nakedness was not yet shameful, because not yet did lust move those members without the will's consent; not yet did the flesh by its disobedience testify against the disobedience of man.") (quoting *Genesis* 2:25).

71. See BROWN, *supra* note 49, at 417; see also AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 422 ("They experienced a new motion of their flesh, which had become disobedient to them, in strict retribution of their own disobedience to God."); *id.* at 440:

If the motion of concupiscence in the unruly members of our first parents arose out of their sin, and only when the divine grace deserted them; and if it was on that occasion that their eyes were opened to see, or, more exactly, notice their nakedness, and that they covered their shame because the shameless motion of their members was not subject to their will

72. See BROWN, *supra* note 49, at 416; see also AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 422 ("For, as soon as our first parents had transgressed the commandment, divine grace forsook them, and they were confounded at their own wickedness; and therefore they took fig-leaves . . . and covered their shame; for though their members remained the same, they had shame now where they had none before.").

73. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 444 ("For the corruption of the body, which weighs down the soul, is not the cause but the punishment of the first sin; and it was not the corruptible flesh that made the soul sinful, but the sinful soul that made the flesh corruptible.").

74. See BROWN, *supra* note 49, at 406; see also AUGUSTINE, *CONFESSIONS*, *supra* note 50, at 234 (discussing how he was particularly tormented by his personal inability to control his erections or nocturnal emissions after years of a celibate life).

us with their obscene humor.⁷⁵ God made post-lapsarian sexuality serve as a constant reminder of our shame in our turning away from God.⁷⁶ It is the badge of our sin. By constantly thwarting our will, it shows us that the will that we thought was so important that we (in the form of our primordial parents) preferred it to the will of God is a pitiful, laughable illusion.⁷⁷

Post-lapsarian sexuality serves even more specifically as the Christian symbol of woman's degradation. This is appropriate insofar as it was traditional Catholic teaching that although woman, as human being, is spiritual in that she was created in the image of God, woman, as woman,

75. Not only lust, but impotence, is a mark of our lack of control:

But even those who delight in this pleasure are not moved to it at their own will, whether they confine themselves to lawful or transgress to unlawful pleasures; but sometimes this lust importunes them in spite of themselves, and sometimes fails them when they desire to feel it, so that though lust rages in the mind, it stirs not in the body. Thus, strangely enough, this emotion not only fails to obey the legitimate desire to beget offspring, but also refuses to serve lascivious lust; . . . it is divided against itself . . .

AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 465. See also BROWN, *supra* note 49, at 417.

76. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 466 (stating that even "conjugal intercourse, sanctioned as it is by law for the propagation of children, legitimate and honourable though it be" is always experienced as shameful); *id.* at 466-67:

Before the bridegroom fondles his bride, does he not exclude the attendants, and even the paranymphs, and such friends as the closest ties have admitted to the bridal chamber? . . . [A]ll right actions wish to be set in the light, *i.e.* desire to be known. This right action, however, has such a desire to be known, that yet it blushes to be seen. . . . And why so, if not because that which is by nature fitting and decent is so done as to be accompanied with a shame-begetting penalty of sin?

77. See BROWN, *supra* note 49, at 416, 418 (noting that Augustine called sexuality the *poena reciproca*, or just punishment, the human body serving as a "tiny mirror, in which men and women could catch a glimpse of themselves" as fallen creatures).

symbolizes the flesh.⁷⁸ The status of sexuality, therefore, is also always the status of woman.

As I have stated, before the Fall, Eve was inferior to Adam, but not subjugated. She loved Adam through her free will and enjoyed her own excellence, as a complement to his.⁷⁹ Eve, whose role was to follow, led Adam in the Fall, thereby doubly sinning in her dual nature as both human soul and female body. As a result, women are doubly cursed in our dual sexuality as both lover and mother.⁸⁰ We bear children in pain.⁸¹ We

78. I discuss early Catholic theology of women more thoroughly in Schroeder, *Feminism Historicized*, *supra* note 20. A brief, but excellent, introduction to this subject is McLaughlin, *Equality of Souls*, *supra* note 59. See generally BYNUM, *The Female Body*, *supra* note 57, at 206; CAROLINE WALKER BYNUM, *HOLY FEAST AND HOLY FAST: THE RELIGIOUS SIGNIFICANCE OF FOOD TO MEDIEVAL WOMEN* 261 (1987) [hereinafter BYNUM, *HOLY FEAST AND HOLY FAST*]. For a controversial account of the same issue, see UTA RANKE-HEINEMANN, *EUNUCHS FOR THE KINGDOM OF HEAVEN: WOMEN, SEXUALITY AND THE CATHOLIC CHURCH* (Peter Heinegg trans., Penguin Books 1990) (1988). This book received the gift of extraordinary pre-publication publicity when John Cardinal O'Connor—without having read the book—condemned it as “dirty” and “preposterous.” See Josh Getlin, *Clashing With Her Church*, L.A. TIMES, Feb. 11, 1991, at E1.

It should be noted that I have frequently defended Ranke-Heinemann's work in conversation from the charge that she is too angry with the Catholic Church with the “witticism” that it is impossible for a woman to be *too* angry with the Church. Nonetheless, the polemical tone of her writing is off-putting and detracts from its persuasiveness.

79. Consequently, Augustine insisted on the dignity of the originally created female body and insisted that the female saints would retain their femininity after the resurrection and would not, as some theologians had suggested, be “rewarded” in heaven by being turned into men.

For my part, they seem to be wiser who make no doubt that both sexes shall rise. For there shall be no lust, which is now the cause of confusion. For before they sinned, the man and the woman were naked and were not ashamed. . . . And the sex of woman is not a vice, but nature. It shall then indeed be superior to carnal intercourse and child-bearing; nevertheless the female members shall remain adapted not to the old uses, but to a new beauty, which, so far from provoking lust, now extinct, shall excite praise to the wisdom and clemency of God, who both made what was not and delivered from corruption what He made.

AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 839.

80. That is, Eve sinned both in her capacity as a human being by turning away from God and in her capacity as a woman by taking the active role and leading man in the Fall.

Satan, through the serpent, chose to tempt Eve rather than Adam, because he realized that the superior man could not be deceived, but the weaker woman could be. Adam was not even deceived by Eve. Rather, he loved her so much that he knowingly chose to follow her to perdition rather than be parted from her. He sinned in doing this

are now forcibly dominated by man, even as we are damned to desire man and his domination.⁸² Both of these sexual roles were institutionalized as marriage: the only permissible outlet for female sexuality. Post-lapsarian marriage consequently was conceptualized by the Church as being intentionally degrading to women. It is the holy instrument of God's curse of Eve.⁸³

because he was following his own will, and that of Eve's (and the serpent's), rather than the will of God. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50:

"And Adam was not deceived, but the woman being deceived was in the transgression;" but he speaks thus, because the woman accepted as true what the serpent told her, but the man could not bear to be severed from his only companion, even though this involved a partnership in sin. He was not on this account less culpable, but sinned with his eyes open.

Id. at 459 (quoting 1 Timothy 2:14). See also Schroeder, *Feminism Historicized*, *supra* note 20, at 1156 ("[W]omen . . . were defined exclusively in relationship to their sexual nature and reproduction.").

In contradistinction, some theologians suggested that because of Eve's inferior nature, her action in the Fall was not as heinous as Adam's. That is, if Adam had not followed Eve, woman might have been punished, but mankind might not have been damned. See *id.* at 1193 n.217.

81. See Genesis 3:16 ("I will greatly multiply your pain in childbearing; in pain you shall bring forth children.").

82. See *id.* ("[Y]et your desire shall be for your husband, and he shall rule over you.").

83. See Schroeder, *Feminism Historicized*, *supra* note 20, at 1163 n.84. The Catholic Church has recently rejected the traditional view that the subordination of woman is the divinely ordained curse of Eve. God's words in Genesis are now interpreted not as a curse but as God's prediction of the debased nature of human life in the state of sin. The subordination of woman is an evil that humans should fight to overcome in the same way as we fight to overcome the other evils predicted in this passage (which include snakebite, hard labor, and death). See Peter Steinfels, *Anger and Praise Follow Pope's Letter on Women*, N.Y. TIMES, Oct. 2, 1988, § 1, at 8 (describing Pope John Paul II's Apostolic Letter *On the Dignity of Women*).

This story is not, of course, the only Christian response to the female body. Caroline Walker Bynum has suggested that later medieval women theologians developed an alternative, and perhaps feminine, theory of the female body as Christ's body. See BYNUM, *HOLY FEAST AND HOLY FAST*, *supra* note 78, at 260-61. Both man and woman, *qua* human beings, are both true spirit (having been created in the image of God), but *qua* sexuated beings they symbolize the spirit and the body respectively. See *id.* at 262. The doctrine of the Incarnation teaches not only that Christ is true God, but also that he became a true, embodied human being. Woman—symbolizing both spirit and human body—is more fully Christlike than man, who only symbolizes spirit. The female body, therefore, can give us access to the divine. See BYNUM, *The Female Body*, *supra* note 57, at 205.

But even if these holy women used intentionally sexual imagery to describe the religious ecstasy of their mystical marriage to Jesus, and sought God through extreme

MacKinnon's focus on sexuality, and her identification of sexuality with the elimination of the personhood of women, lies within this Christian tradition. It identifies subjectivity with unconstrained will.⁸⁴ It sees the involuntariness of sexuality as a thwarting of will. If sex is involuntary, then we have no will, and we cannot be the freestanding individuals that we seek to be. Sexuality, therefore, is a form of death—an involuntary destruction of our personhood. To be a true person, one must make sex voluntary—that is, freely chosen at the deepest level.

2. How Sexuality Became Alienation.

Of course, even if MacKinnon's conclusion that the involuntariness of sex results in the loss of subjectivity is within the Christian tradition, MacKinnon and Augustine explain the cause of this process differently.

Augustine was a theologian. He taught that humans lost their true selves by turning away from God. Our true will, our true selves, can only be achieved by returning to God, by submitting our wills to God's will in order to reestablish prelapsarian harmony. Mankind, with stunted wills, cannot do this alone. The harmony of God and man can only be established through Christ, who is both true man and true God.⁸⁵ This will also eventually bring about the reestablishment of the harmony between flesh and spirit in the bodily resurrection of the Last Judgment.⁸⁶

MacKinnon would, of course, substitute societal structures for divine Creation. She believes that her social construction theory shows that biological determinism is a misconception.⁸⁷ Rather than sexuality being our religious understanding of the flesh, it is our social understanding of

carnal experiences (frequently in the form of bizarre eating and fasting practices), they, as their male counterparts did with respect to women, rejected physical sexual union with actual men, and glorified virginity and chastity. See BYNUM, *HOLY FEAST AND HOLY FAST*, *supra* note 78, at 76; BYNUM, *The Female Body*, *supra* note 57, at 202.

84. Of course, in the Christian story, free will, unconstrained by sin, would always be in perfect accord with God's will.

85. See AUGUSTINE, *THE CITY OF GOD*, *supra* note 50, at 346-47.

86. The only exceptions to this were, of course, Jesus and the Virgin Mary. As her titles "The Immaculate Conception" and "Alone of All Her Sex" imply, Mary alone was free from Original Sin from the moment of her conception. Consequently, she never experienced the disjunction of body and soul that plagues all other mortals. See BROWN, *supra* note 49, at 407. See generally MARINA WARNER, *ALONE OF ALL HER SEX: THE MYTH AND THE CULT OF THE VIRGIN MARY* 81-86 (1976).

87. See *supra* text accompanying notes 4-8; see also Schroeder, *Taming of the Shrew*, *supra* note 3, at 135-38 (arguing that MacKinnon's theory of sexuality is not a matter of biology but of politics).

biology and gender.⁸⁸ As a human invention, sexuality is by definition artificial.

3. Male. Subjectivity.

MacKinnon takes a further step not necessitated by her analysis that may well be antithetical to her theory of social construction. She concludes from her observation that the biological aspect of the flesh does not preordain any specific social order of sex, that the flesh cannot serve as *any* meaningful constraint on sex. How then can she account for the involuntariness (i.e. constraining aspect) of sex without God or nature and at the same time preserve the concept of human will?

She does this by distinguishing between the personhood and effective will of man and woman, and by adopting what seems to be an instrumental conception of psychology that leaves no room for the unconscious.⁸⁹ That is, her concept of subjectivity and will requires some human being to experience and wield will. She concludes that *men*, as a social class, have will. By taking this step, she can then explain women's lack of will as the result of men's will to power. Women's involuntary sexuality is voluntarily imposed upon them by men acting as a class. MacKinnon can be seen, therefore, to overlay a postmodern veneer of the subject as a social construct upon a combination of a premodern conception of the flesh and a "merely" modern concept of an autonomous acting subject.

MacKinnon's discovery that inherent feminine sexuality does not exist is not based merely on the postmodernist cliché that there is no objective reality "out there." Rather, she not only notes that sexuality is socially constructed, but also finds it necessary, *and meaningful*, to ask who does the constructing and of what sexuality is constructed.⁹⁰

88. See *supra* notes 5, 8.

89. See *supra* text accompanying notes 33-35; see also Schroeder, *Taming of the Shrew*, *supra* note 3, at 162-63 (noting that MacKinnon approaches the role of heterosexual intercourse from a sociological or political standpoint, emphasizing group experience to the exclusion of individual experience).

90. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 131 ("Post-Lacan, actually post-Foucault, it has become customary to affirm that sexuality is socially constructed. Seldom specified is what, socially, it is constructed of, far less who does the constructing or how, when, or where.") (footnotes omitted).

The questions "who" is doing the constructing and "of what" is sexuality constructed presuppose a liberal, essentialist theory of the subject and the body that both Foucault and Lacan expressly rejected. "How?", "when?", and "where?" are hardly unasked questions. One can disagree as to their success, but Foucault's and Lacan's works revolve primarily on proposing answers to these questions.

By asking these questions, however, MacKinnon reveals that she is in fact rejecting, rather than accepting, a postmodern theory of the social construction of sexuality. MacKinnon's theory, like liberalism and Marxism, presupposes a pre-existing acting subject. But Michel Foucault's theory of social construction is precisely that *no one* constructs sexuality—power lacks an acting subject.⁹¹ Asking what sex is constructed of presupposes a pre-existing authentic sexuality that can be distorted.⁹² Foucault, consequently, argued as I do, that combining a concept of power that is wielded by an active subject (whether the liberal concept of individuals, the Marxist concept of classes, or the feminist concept of genders) with a concept of authentic sexuality leads inevitably to a liberal, Romantic/Christian theory of sexuality.⁹³ MacKinnon's concept of will, a modern theory of the subject, requires that someone be doing the constructing. Consequently, for her, the observation that men are socially advantaged by the sexual hierarchy demonstrates that men are in control of sexuality and impose sexuality on women.⁹⁴

One of the most interesting things about MacKinnon is that even though she presents no account of the unconscious, she seems, at first blush, to come to the same conclusion as Jacques Lacan: Woman does not exist.⁹⁵ That is, the subject is always psychoanalytically identified with

91. That is, Foucault argued that the modern (i.e., liberal or Marxist) concept of the subject was dead. While there can be victims of domination, there are no perpetrators. See Charles Taylor, *Foucault on Freedom and Truth*, in *FOUCAULT: A CRITICAL READER* 69, 75-76, 83-84, and 90-91 (David C. Hoy ed., 1986). Foucault particularly targeted marxism. *Id.* at 85.

92. *Id.* at 78.

93. *Id.* at 77-79, 83-84.

94. See *supra* text accompanying notes 29-34.

95. That is, Woman with a capital "W", the Feminine. See *MACKINNON, THEORY OF THE STATE*, *supra* note 4:

If women are socially defined such that female sexuality cannot be lived or spoken or felt or even somatically sensed apart from its enforced definition, so that it is its own lack, then there is no such thing as a woman as such; there are only walking embodiments of men's projected needs. Under male supremacy, asking whether there is, socially, a female sexuality is the same as asking whether women exist.

Id. at 119.

For excellent introductions to Lacanian theory, see *GROSZ, supra* note 35, and *FEMININE SEXUALITY: JACQUES LACAN AND THE ÉCOLE FREUDIENNE* (Juliet Mitchell & Jacqueline Rose eds., Jacqueline Rose trans., 1982). Drucilla Cornell has also published several articles containing insightful, albeit idiosyncratic, accounts of Lacanian theory. See, e.g., Drucilla Cornell, *Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward A Feminist Theory of the State*, 100 *YALE L.J.* 2247 (1991) (book review) [hereinafter Cornell, *Sexual Difference*]; DRUCILLA CORNELL,

the masculine, and the feminine is always identified with the lack of subjectivity.⁹⁶ Women are the object of male subjectivity. On second look, however, one can see that the apparent lack of psychological sophistication in her theory and her loyalty to classical liberal conceptions of individuality cause her to interpret this in a literal-minded way.

To repeat, MacKinnon argues not merely that society has the power to make ideas into reality, but that our ideas *are* our reality.⁹⁷ When Lacan said that psychologically we imagine the subject as masculine and

BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW (1991) [hereinafter CORNELL, BEYOND ACCOMMODATION]; Drucilla Cornell, *The Doubly-Prized World: Myth, Allegory and the Feminine*, 75 CORNELL L. REV. 644 (1990) [hereinafter Cornell, *Doubly-Prized World*]; Drucilla Cornell & Adam Thurschwell, *Feminism, Negativity, Intersubjectivity*, 5 PRAXIS INT'L 484 (1986). Also of interest is the work of Lacanian heretic Luce Irigaray. See LUCE IRIGARAY, *SPECULUM OF THE OTHER WOMAN* 133 (Gillian C. Gill trans., 1985).

Of course, I, not MacKinnon, am drawing this similarity between her thought and Lacanianism. I do not believe MacKinnon ever cites Lacan (except in one passing reference cited in note 90, *supra*) or Kristeva. (She does cite Lacanian heretic, Irigaray, but not for this point.)

96. And so, Grosz describes Lacan's analysis of what it might mean when a woman says "I" when subjectivity is associated in the symbolic of our consciousness with the masculine:

[I]n so far as she speaks and says 'I', she too must take up a place as a subject of the symbolic; yet, in another, in so far as she is positioned as castrated, passive, an object of desire for men rather than a subject who desires, her position within the symbolic must be marginal or tenuous: when she speaks as an 'I' it is never clear that she speaks (of or as) herself. She speaks in a mode of masquerade, in imitation of the masculine, phallic subject. Her 'I', then, ambiguously signifies her position as a (pale reflection of the) masculine subject; or it refers to a 'you', the (linguistic) counterpart of the masculine 'I'.

GROSZ, *supra* note 35, at 71-72.

Lacan's concept of the subject is not the autonomous, freestanding individual of liberal philosophy. Rather, it is the psychoanalytical concept of the Ego, which only exists in symbolic relation to the Other. That is, subjectivity is always inter-subjectivity. The development of the subject is one of the primary topics of Lacan's first seminar. See JACQUES LACAN, *THE SEMINAR OF JACQUES LACAN: BOOK I. FREUD'S PAPERS ON TECHNIQUE 1953-1954* (Jacques-Alain Miller ed., John Forrester trans., W.W. Norton 1988); JACQUES LACAN, *THE FOUR FUNDAMENTAL CONCEPTS OF PSYCHO-ANALYSIS* 203 (Jacques-Alain Miller ed., Alan Sheridan trans., W.W. Norton 1978); Schroeder, *The Vestal and the Faces*, *supra* note 8.

97. See Schroeder, *Taming of the Shrew*, *supra* note 3, at 140-41; MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 125. Consequently, one of the reasons why MacKinnon thinks that group defamation is an inadequate way of analyzing pornography is that truth is a defense to defamation. See MacKinnon, *Defamation and Discrimination*, *supra* note 11, at 804. The power of pornography is that it can make its lies empirically true; it says women are non-human, and then dehumanizes them. See *id.* at 807-09.

the feminine as lack, he was talking about the myths that inhabit our psyches. He meant that all human beings experience the "castration experience" as infants when they realize that they are not one with the Phallic Mother.⁹⁸ The "Phallus" is the term for the symbolic object of desire.⁹⁹ Psychologically, we conflate the fact that male human beings have penises with the idea that men possess the Phallus—i.e., have subjectivity.¹⁰⁰ In contrast, women, symbolically, can only *be* the Phallus—i.e., the object of desire. But, to Lacan, no human being can ever regain the Phallic Mother who is lost in the Infantile Imaginary.¹⁰¹ No man ever achieves his desire, and no woman can ever satisfy his desire. The more a woman seeks to satisfy male desire, to become the object of desire, the more she is objectified and loses her individualized subjectivity. She is seen, and experiences herself, as lack.¹⁰²

This psychoanalytic and linguistic error has tragic or, perhaps more accurately, pathetic psychological consequences for both men and women.¹⁰³ Feminists influenced directly by Lacan—including Judith

98. See Cornell, *Doubly-Prized World*, *supra* note 95, at 660-61.

99. See JACQUES LACAN, *ÉCRITS: A SELECTION* 285-91 (Alan Sheridan trans., W.W. Norton 1977) (1966).

100. The feminine, which is psychologically identified with the lost Phallic Mother, can only be experienced as lack. Consequently, "Woman" (i.e., the feminine) "does not exist" (i.e., is experienced as lack). See Cornell, *Doubly-Prized World*, *supra* note 95, at 661.

101. See *id.* at 662 (discussing Lacan's theory of separation from the Phallic Mother).

102. This specifically describes the "narcissistic" woman. Lacan's theory tries to explain why men and women so often love out of phase—they are both fighting over the same "thing." As men seek to acquire the woman-phallus, they are always disappointed. Insofar as the loving man tries to fill his woman's lack and give her the Phallus by giving her the penis in intercourse, he experiences lack and the symbolic loss of his penis. He turns from the woman. In turn, intercourse is always also a disappointment to women because it makes apparent that the penis is no substitute for the Phallus. Her lack will never be filled, and she desires even more. Grosz gives a brief synopsis of the Lacanian analysis of typical sexual relations in GROSZ, *supra* note 35, at 115-46. See also Schroeder, *The Vestal and the Faces*, *supra* note 8.

103. Such consequences are especially applicable to psychoanalytic theory, which sees sexuality as a linguistic construct that is constructed in infancy in the mirror and oedipal stages and which is incorporated in our very ability to speak and understand language, risks *seeming* to be inevitable (if not biological). However, as Grosz explains, Lacan's theory does not explain the origin of patriarchy; rather, it presupposes patriarchy as an existing social structure and at most tries to explain its reproduction. See GROSZ, *supra* note 35, at 69. Consequently, Lacanian theory suggests the possibility of change. See *id.* I read Grosz's analysis (developed through her reading of Irigaray) as saying, in effect, that Lacanian theory is a theory of language and psychology, and not a theory of

Butler, Drucilla Cornell, Elizabeth Grosz, Luce Irigaray, Julia Kristeva, and Renata Salecl—explore what it could mean to write an affirmative myth of the feminine as subject, as something other than lack, from this psycholinguistic starting point.¹⁰⁴

MacKinnon, in contradistinction, does not view male subjectivity as psychoanalytical myth-making. Masculinity has the power to make its myth into reality.¹⁰⁵ Men really do have the Phallus; Women really are

anatomy that can be empirically verified. It is a story that we tell about ourselves. Its "truth" resides in its explanatory power. But, it is a story told by men, and is not necessarily the only possible "true" story which can be told.

104. This is the concern of those feminists who have been influenced by Continental psycho-linguistic theory. See, e.g., JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990); Cornell, *Sexual Difference*, *supra* note 95; DRUCILLA CORNELL, *THE PHILOSOPHY OF THE LIMIT* (1992); CORNELL, *BEYOND ACCOMMODATION*, *supra* note 95; Cornell, *Doubly-Prized World*, *supra* note 95; GROSZ, *supra* note 35; IRIGARAY, *supra* note 95.

105. See CATHARINE A. MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED*, *supra* note 1:

[M]en's power to *make* the world here is their power to make us make the world of their sexual interaction with us the way they want it. . . . Now I want to say something about the use of the verb "to be" in feminist theory. If the analysis I have given is right, to be realistic about sexuality socially is to see it from the male point of view. . . . Because male power has created in reality the world to which feminist insights, when they are accurate, refer, many of our statements will capture that reality, simply exposing it as specifically male for the first time. For example, men say all women are whores. We say men have the power to make this our fundamental condition. So feminism stresses the indistinguishability of prostitution, marriage, and sexual harassment. See: what a woman "is" is what you have *made* women "be." That "is" women, as men make women mean. They have the power to; they *do*—otherwise power means nothing.

Id. at 58-59.

MacKinnon often emphasizes the way in which men construct sexual reality: "Male dominance here is not an artificial overlay upon an underlying inalterable substratum of uncorrupted essential sexual being. . . . Pornography is not imagery in some relation to a reality elsewhere constructed. It is not a distortion, reflection, projection, expression, fantasy, representation, or symbol either. It is sexual reality." CATHARINE A. MACKINNON, *Not a Moral Issue*, in *FEMINISM UNMODIFIED*, *supra* note 1, at 146, 149.

See also MACKINNON, *THEORY OF THE STATE*, *supra* note 4:

Because male power creates the reality of the world to which feminist insights, when accurate, refer, feminist theory will simply capture that reality but expose it as specifically male for the first time. For example, men say all women are whores; feminism observes that men have the power to make prostitution women's definitive condition. Men define women as sexual beings; feminism comprehends that femininity is sexual. Men see rape as intercourse; feminism observes that men make much intercourse rape. Men say women

the Phallic Mother. She says that, in a masculinist society, only men can become true human beings.¹⁰⁶ Women are not merely treated as unequal, they are actually made into nonpersons.¹⁰⁷ How?

As we have seen, for MacKinnon, the ultimate symbol of personhood (as in Augustinian theory) is control over sexuality; the ultimate symbol of nonpersonhood is to be controlled by sexuality. "Perhaps a human being, for gender purposes," she writes, "is someone who controls the social definition of sexuality."¹⁰⁸ Women, she argues, are involuntarily subjected to heterosexuality and are dehumanized. Insofar as men benefit from this sexual hierarchy, and insofar as society is a construction of

desire to be degraded; feminism sees female masochism as the ultimate success of male supremacy and puzzle (and marvel) over its failures. The feminist use of the verb "to be" is this kind of "is."

Id. at 125 (footnote omitted); *id.* at 104 ("Male power is a myth that makes itself true."); *id.* at 123 ("Women's sexualness, like male prowess, is no less real for being mythic. It is embodied."). See also Schroeder, *Taming of the Shrew*, *supra* note 3, at 136-38.

106. See MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 103 ("[W]omen are in fact not full people in the sense men are allowed to become.").

If a woman feels anger at not being treated as a full person, this surely refers to social definitions of personhood, possibly even liberal ones, to which men routinely experience entitlement without being subjected to class-based critique. Similarly, feelings of loss of control over one's life may reflect a social standard of self-actualization that requires control as a means to it.

Id. at 52.

It becomes clear, from one horror story after another, that men's position of power over women is a major part of what defines men as men to themselves, and women as women to themselves. Challenge to that power is taken as a threat to male identity and self-definition. Men's reaction of threat is also a challenge to women's self-definition, which has included supporting men, making men feel masculine, and episodically being treated better as a reward.

Id. at 92.

107. See *id.* at 89 ("[W]omen are systematically deprived of a self and . . . that process of deprivation constitutes socialization to femininity."); *id.* at 103 ("[W]omen are damaged . . . are in fact not full people . . ."). See also *supra* note 15.

108. The context of this quote is:

[T]o say that pornography is "dehumanizing" is an attempt to articulate its harm. But "human being" is a social concept with many possible meanings. . . . In a feminist perspective, pornography dehumanizes women in a culturally specific and empirically descriptive—not liberal moral—sense. In the same act, pornography dispossesses women of the same power of which it possesses men: the power of sexual, hence gender, definition. The power to tell one who one is and the power to treat one accordingly. Perhaps a human being, for gender purposes, is someone who controls the social definition of sexuality.

MACKINNON, *THEORY OF THE STATE*, *supra* note 4, at 209.

human subjectivity, men as subjects must be creating sexuality to continue their own status.

Perhaps the most pervasive realization of consciousness raising was that men as a group benefit from these same arrangements by which women are deprived. Women see that men derive many advantages from women's roles But the major advantage men derive, dubious though it may seem to some, is the process, the value, the mechanism by which their interest itself is enforced and perpetuated and sustained: power. Power in its socially male form. It is not only that men treat women badly, although often they do, but that it is their choice whether or not to do so.¹⁰⁹

Consequently, if men are subjects, they must control sex. Sexuality is, therefore, seen to be voluntary to men, and imposed by men upon women.

A theory of sexuality becomes feminist methodologically, meaning feminist in the post-marxist sense, to the extent it treats sexuality as a social construct of male power: defined by men, forced on women, and constitutive of the meaning of gender.¹¹⁰

By voluntarily imposing their sexual will upon women, men constitute their subjectivity by objectifying women.¹¹¹ As MacKinnon so eloquently explains, "Man fucks woman; subject verb object."¹¹²

Having conceptualized feminine sexuality as objectification through the imposition of masculine sexuality by male subjects, MacKinnon needs a mechanism to explain this function. As we have seen, she does not explore psychoanalytic theory, which traces this process to early childhood, probably because such a theory does not recognize any consciously acting agent. Rather, her theory of pornography serves this purpose. Pornography is defined by MacKinnon as the eroticization of gender hierarchy; and, therefore, it is the means by which sexuality is constructed. That is, the sexuality that is constructed is defined as the dominance of men and the subordination of women. If we wish to maintain a belief that some humans have subjectivity in the sense that sex is voluntary, and if men are advantaged by the sexual status quo, it seems to follow that pornography represents the masculine will to power. For

109. *Id.* at 93-94.

110. *Id.* at 128.

111. *See id.* at 121-25.

112. *Id.* at 124.

women to achieve subjectivity, therefore, they must destroy the mechanism of the masculine will to power—they must gain control of, and destroy, pornography.

IV. REWRITING THE FEMININE

And so we see, MacKinnon's theory of pornography is based on a premodern (Christian) concept of sexuality as the symbol of our lack of subjectivity, combined with a modern concept of the subject as the autonomous, freely acting individual capable of exercising will, and a postmodern concept of the self as a social construct. That is, the flesh robs us of our selfhood because it is involuntary, but humans are self-actuating individuals who act according to free will, but we are all social constructs. Pornography is seen as the necessary linchpin that connects these three very different dimensions: men, acting as free subjects, use pornography to construct and impose sexuality upon women, thereby robbing women of their subjectivity. This necessitates a tautologous notion of pornography and sexuality which conflates all sexual discourse and acts within the annihilation of the personhood of woman. For MacKinnon, all intercourse must be rape, all love must be hate, all erotica and romance must be pornography. Eros and Thanatos are seen not merely as twins, but as one and the same. The personhood of woman can only be conceived as the political act of destroying sexuality through the control of its constructing mechanism—pornography.

This lack of a potential positive image of the female self and this stark, bipolar duality of masculine subjectivity and feminine objectification, makes the possibility of an affirmative feminist program problematic, to say the least.¹¹³ Because MacKinnon conceives of politics strictly as one group's power over the other, her program often seems to devolve into reversing the structure of gender hierarchy. Drucilla Cornell has tellingly referred to MacKinnon's theory as the "politics of revenge."¹¹⁴

It is hard to see how this reversal and revenge are to be achieved. If pornography is continuous with all sexual discourse in masculinist society, if rape is continuous with all heterosexual intercourse, such a strategy risks devolving into total silence. Without a positive conception of the

113. As I have written elsewhere, I believe that MacKinnon does implicitly have an affirmative liberal agenda, despite her repeated denials. But she does not rely on an essentialist concept of "the feminine." Rather, she has an essentialist concept of "the human," which seems to correspond to the liberal concept of the human (i.e., autonomous individuality), which is also the current stereotype of the masculine. See Schroeder, *Abduction From the Seraglio*, *supra* note 14, at 193-200.

114. CORNELL, BEYOND ACCOMMODATION, *supra* note 95, at 11.

feminine, MacKinnon's "unmodified" feminism degenerates into total annihilation. It is an annihilation of the feminine as well as the masculine, as the feminine, for MacKinnon, is merely a creation of the masculine. Moreover, the politics of revenge, without a politics of creation, is merely a recognition of the power of the status quo.

In this view, MacKinnon's critique of pornography is a reaffirmation of pornography's power; an unending rewriting of the old myth of male subjectivity. A negative program reconstitutes the status quo by denying it without offering alternatives. MacKinnon's program reconstructs masculinity as dominance and femininity as subordination by paying express homage to the awesome and terrifying power of the penis. In the words of Zillah Eisenstein, "To equate sex and gender in [MacKinnon's] fashion . . . is to let the phallus win."¹¹⁵

A deconstruction of masculinism and reconstruction of sexuality requires more than MacKinnon's paeon to the power of masculinity and her denial of sexuality. It requires the positive, contradictory, and impossible task of rewriting the feminine—and with it, the masculine. Consequently, although MacKinnon starts as one of the most powerful prophetesses of the cycle of the oppression of women, ultimately she is unable to break out of that cycle. She has defined away her own feminine voice as silence.

The Catharine's wheel throws out sparks and fire as it spins, but it always revolves again and again back to its starting place.

115. ZILLAH R. EISENSTEIN, *THE FEMALE BODY AND THE LAW* 172 (1988).