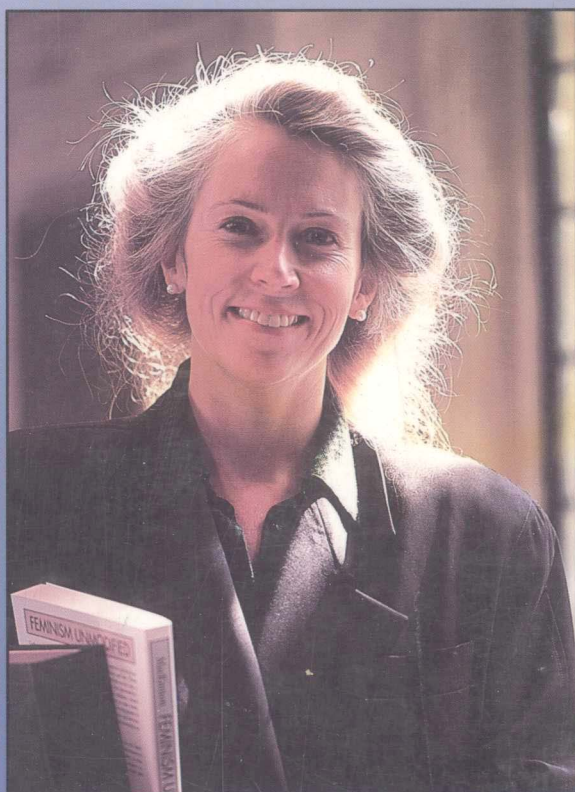


TOWARD A FEMINIST

THEORY OF THE

STATE



CATHARINE A. MACKINNON



**TOWARD
A FEMINIST THEORY
OF THE STATE**

Catharine A. MacKinnon

*Harvard University Press
Cambridge, Massachusetts
London, England*

Copyright © 1989 Catharine A. MacKinnon

All rights reserved

Printed in the United States of America

10 9 8 7 6 5

First Harvard University Press paperback edition, 1991

Library of Congress Cataloging-in-Publication Data

MacKinnon, Catharine A.

Toward a feminist theory of the state / Catharine
A. MacKinnon.

p. cm.

Bibliography: p.

Includes index.

ISBN 0-674-89645-9 (alk. paper) (cloth)

ISBN 0-674-89646-7 (paper)

1. Women—Legal status, laws, etc. 2. Women
and socialism.

I. Title.

K644.M33 1989

346.01'34—dc20

[342.6134] 89-7540

CIP

*Toward a Feminist Theory
of the State*

For Kent Harvey

Preface

Writing a book over an eighteen-year period becomes, eventually, much like coauthoring it with one's previous selves. The results in this case are at once a collaborative intellectual odyssey and a sustained theoretical argument.

This book analyzes how social power shapes the way we know and how the way we know shapes social power in terms of the social inequality between women and men. In broadest terms, it explores the significance gender hierarchy has for the relation between knowledge and politics. In other words, it engages sexual politics on the level of epistemology.

The argument begins with the respective claims of marxism and feminism to analyze inequality as such, moves to reconstruct feminism on the epistemic level through a critique of sexuality as central to women's status, and concludes by exploring the institutional power of the state on the more particularized terrain of women's social construction and treatment by law.

Marxism is its point of departure because marxism is the contemporary theoretical tradition that—whatever its limitations—confronts organized social dominance, analyzes it in dynamic rather than static terms, identifies social forces that systematically shape social imperatives, and seeks to explain human freedom both within and against history. It confronts class, which is real. It offers both a critique of the inevitability and inner coherence of social injustice and a theory of the necessity and possibilities of change.

My original intention was to explore the connections, contradictions, and conflicts between the marxist and feminist theories of consciousness, as they grounded each theory's approach to social order and social change. Through comparing each theory's notion of the relation between the mental and physical forms in which dominance

was enforced, I wanted to compare feminism's explanation for the subjection of women, understood to be the condition Adrienne Rich described in 1972 as "shared, unnecessary, and political," with marxism's explanation for the exploitation of the working class. I thought the women's movement had an understanding of consciousness that could contribute to understanding and confronting social hegemony.

I began trying to disentangle the economic from the sexual roots of women's inequality: Is it sexism or capitalism? Is it a box or a bag? In this form, the question was intractable because it referred to realities that appeared fused in the world. The inquiry devolved into a question about the factor to be isolated: Is it sex or class? Is it a particle or a wave? Chapters 2, 3, and 4 were written in the mid-1970s to explore each theory's answer to the other's questions on these levels. The exercise in mutual critique cleared ground, focused problems, and exposed inadequacies, but it did not solve the world/mind problem each theory posed the other. However essential they are to the theory that emerged, these chapters may for this reason seem groping and comparatively primitive.

My initial strategy assumed that feminism had a theory of male dominance: an account of its key concrete sites and laws of motion, an analysis of why and how it happened and why (perhaps even how) it could be ended. I assumed, in short, that feminism had a theory of gender as marxism had a theory of class. As it became clear that this was not the case in the way I had thought, the project shifted from locating and explicating such a theory to creating one by distilling feminist practice, from attempting to connect feminism and marxism on equal terms to attempting to create a feminist theory that could stand on its own.

Sheldon Wolin had described "epic theory" as a response not to "crises in techniques of inquiry" but to "crises in the world" in the sense that "problems-in-the-world" take precedence over and determine "problems-in-a-theory." An epic theory identifies basic principles in political life which produce errors and mistakes in social "arrangements, decisions, and beliefs" and which cannot be dismissed as episodic. Scientific theories, Wolin argued, attempt explanation and technique; epic theories, by contrast, provide "a symbolic picture of an ordered whole" that is "systematically deranged." Most theories attempt to change one's view of the world; "only epic theory attempts

to change the world itself" ("Political Theory as a Vocation," *American Political Science Review* 63 [1967]: 1079–80). Marx's critique of capitalism and Plato's critique of Athenian democracy were examples.

Seen in these terms, feminism offered a rich description of the variables and locales of sexism and several possible explanations for it. The work of Mary Wollstonecraft, Charlotte Perkins Gilman, and Simone de Beauvoir were examples. It also offered a complex and explosive practice in which a theory seemed immanent. But except for a few major beginnings—such as the work of Kate Millett and Andrea Dworkin—feminism had no account of male power as an ordered yet deranged whole. Feminism began to seem an epic indictment in search of a theory, an epic theory in need of writing.

The project thus became a meta-inquiry into theory itself—Is it feminism or marxism? Is it relativity or quantum mechanics?—requiring the exploration of method presented in Part II. Unpacking the feminist approach to consciousness revealed a relation between one means through which sex inequality is produced in the world and the world it produces: the relation between objectification, the hierarchy between self as being and other as thing, and objectivity, the hierarchy between the knowing subject and the known object. Epistemology and politics emerged as two mutually enforcing sides of the same unequal coin. A theory of the state which was at once social and discrete, conceptual and applied, became possible as the state was seen to participate in the sexual politics of male dominance by enforcing its epistemology through law. In a very real sense, the project went from marxism to feminism through method to analyze congealed power in its legal form, and state power emerged as male power.

As the work progressed, publication of earlier versions of parts of this book (listed on page 321) gave me the benefit of the misunderstandings, distortions, and misreadings of a wide readership. This experience suggests that it must be said that this book does not try to explain everything. It attempts an analysis of gender which can explain the pervasive and crucial place sex occupies as a dimension that is socially pervasive and, in its own sense, structural. It seeks to understand gender as a form of power and power in its gendered forms. To look for the place of gender in everything is not to reduce everything to gender.

For example, it is not possible to discuss sex without taking account of Black women's experience of gender. To the considerable degree to

which this experience is inseparable from the experience of racism, many features of sex cannot be discussed without racial particularity. I attempt to avoid the fetishized abstractions of race and class (and sex) which so commonly appear under the rubric "difference" and to analyze experiences and demarcating forces that occupy society concretely and particularly—for example, "Black women" instead of "racial differences." All women possess ethnic (and other definitive) particularities that mark their femaleness; at the same time their femaleness marks their particularities and constitutes one. Such a recognition, far from undermining the feminist project, comprises, defines, and sets standards for it. It also does not reduce race to sex. Rather, it suggests that comprehension and change in racial inequality are essential to comprehension and change in sex inequality, with implications that link comprehending and changing sexism to comprehending and changing racism. In this light, to proliferate "feminisms" (a white racist feminism?) in the face of women's diversity is the latest attempt of liberal pluralism to evade the challenge women's reality poses to theory, simply because the theoretical forms those realities demand have yet to be created. At the same time, this book does not pretend to present an even incipiently adequate analysis of race and sex, far less of race, sex, and class. That further work—building on writings by authors of color such as those cited in this volume, stunning efforts in fiction and literary criticism, developments in the social world and advances in political practice and analysis, and recent contributions in the legal arena by women such as Kimberle Crenshaw, Mari Matsuda, Cathy Scarborough, and Patricia Williams—will take at least another eighteen years.

This book is also not a moral tract. It is not about right and wrong or what I think is good and bad to think or do. It is about what *is*, the meaning of what is, and the way what is, is enforced. It is a theoretical argument in critical form which moves in a new direction; it does not advance an ideal (sex equality is taken, at least nominally, as an agreed-upon social ideal) or a blueprint for the future.

Some key terms and concepts used in this volume seem to require prophylactic clarification beyond their use. I use the verb *deconstruct* in its ordinary sense, having used it before the deconstruction school made the term mean what it now means. (Deconstruction notwithstanding, reading this preface is not a substitute for reading this book.) I do not defend "subjectivity" over "objectivity" or elevate

"differences" over "sameness" but criticize the method that produces these symbiotic antinomies. To say that feminism is "post-marxist" does not mean that feminism leaves class behind. It means that feminism worthy of the name absorbs and moves beyond marxist methodology, leaving theories that do not in the liberal dustbin.

Much has been made of a supposed distinction between sex and gender. Sex is thought to be the more biological, gender the more social; the relation of each to sexuality varies. I see sexuality as fundamental to gender and as fundamentally social. Biology becomes the social meaning of biology within the system of sex inequality much as race becomes ethnicity within a system of racial inequality. Both are social and political in a system that does not rest independently on biological differences in any respect. In this light, the sex/gender distinction looks like a nature/culture distinction in the sense criticized by Sherry Ortner in "Is Female to Male as Nature Is to Culture?" *Feminist Studies* 8 (Fall 1982). I use sex and gender relatively interchangeably.

The term *sexual* refers to sexuality; it is not the adjectival form of *sex* in the sense of gender. Sexuality is not confined to that which is done as pleasure in bed or as an ostensible reproductive act; it does not refer exclusively to genital contact or arousal or sensation, or narrowly to sex-desire or libido or eros. Sexuality is conceived as a far broader social phenomenon, as nothing less than the dynamic of sex as social hierarchy, its pleasure the experience of power in its gendered form. Assessment of the potential of this concept for analysis of social hierarchy should be based on this understanding (developed in Chapter 9). Connections between courtly love and nuclear war, sexual stereotyping and women's poverty, sadomasochistic pornography and lynching, sex discrimination and prohibitions on homosexual marriage and miscegenation seem remote if sexuality is cabined, less so if it roams social hierarchy unconfined.

This book is not an idealist argument that law can solve the problems of the world or that if legal arguments are better made, courts will see the error of their ways. It recognizes the power of the state and the consciousness- and legitimacy-conferring power of law as political realities that women ignore at their peril. It recognizes the legal forum as a particularly but not singularly powerful one. It does not advance a critique of "rights" per se but of their form and content as male, hence exclusionary and limited and limiting. It is one thing

for upper-class white men to repudiate rights as intrinsically liberal and individualistic and useless and alienating; they have them in fact even as they purport to relinquish them in theory. It is another to reformulate the relation between life and law on the basis of the experience of the subordinated, the disadvantaged, the dispossessed, the silenced—in other words, to create a jurisprudence of change. In this as in all other respects, the title term *toward* is a considered one.

For readers who may be interested, this work has been previously published in fragments and in almost reverse order of its writing. At the same time, much of my other work on specific areas of law presents practical proposals for solving some of the theoretical shortcomings first diagnosed here. The analysis that became Chapter 1—an attempt to conceive the relation between marxism and feminism—was written in 1971–72, revised in 1975, and published in *Signs* in 1982. The ideas for Chapter 12 on sex equality were largely conceptualized in 1973–74. It presents a critique of the “same treatment” versus “different treatment” fixation of sex discrimination law, a resolution to which became the theory of sexual harassment published in *Sexual Harassment of Working Women* (New Haven: Yale University Press, 1979) and adopted by the courts. Chapter 9, written largely in 1981 and published in *Signs* in 1983, criticized the law of rape in a way that has contributed to some rape law reform. Chapter 10 scrutinizes existing concepts and law of abortion in light of the analysis of sexuality and the private as a realm of sex inequality. The argument that legal abortion is a sex equality right awaits affirmative development. Chapter 11 criticizes obscenity law in a way that, together with the work of Andrea Dworkin, provided a basis for the theory underlying the civil rights ordinances against pornography designed first in late 1983. An earlier collection, *Feminism Unmodified: Discourses on Life and Law* (Harvard University Press, 1987), presented spoken versions of some of these arguments at earlier stages. As Lindsay Waters, editor of that volume and this one, characterized the relation between them: “You’ve seen the movie, now read the book.”

This volume presents my argument in its original unity, shape, and order. Hopefully, it exposes the coherence underlying the approach taken in earlier publications. It may also help counter the tendency to reduce a theory’s implications for political understanding to what has been made of it in legal practice.

This book does not aspire to locate itself within academic literatures

or trends or discourses. It aspires to create, on its own terms, a feminist theory of the state; to this end, it uses works that are useful. Most of the groundbreaking contributions to feminist theory were made by the women's movement in the 1970s through practice; some of its insights were published in journals, obscure newsletters, and some books. Major intellectual contributions were made by women based mostly outside universities, women such as Andrea Dworkin, Audre Lorde, Kate Millett, and Adrienne Rich. Other crucial work outside the academy has been done by writers such as Susan Griffin, Robin Morgan, Gloria Steinem, and John Stoltenberg. Some academic work has been essential to this project. Without Diana E. H. Russell's extraordinary research on sexual abuse, the theory of sexuality as advanced in Chapter 9 would not have been possible. Other feminists whose scholarly writings have been especially helpful or stimulating include Kathleen Barry, Pauline Bart, Phyllis Chesler, Nancy Cott, Mary Daly, Teresa de Lauretis, Marilyn Frye, Carol Gilligan, Heidi Hartmann, Alison Jaggar, Gerda Lerner, Kristin Luker, Carole Pateman, Barbara Smith, and Elizabeth Spelman. Most of these women have been active in the women's movement as well as in scholarship, and it shows. Some scholars have attempted to respond to some of the challenges leveled in this book, without yet, in my view, making the criticisms obsolete. The fact remains that, even when exceptions like these are recognized, academic reformulation of feminist insights has too often added little of substance. This has been most true in legal academia. I accordingly reference the original (movement-based) expressions of the ideas I use wherever possible.

Some readers have wondered: If perspective participates in situation and if situation is divided by power, how will we talk to each other? The fact that some people do not like an argument or observation, or feel threatened or uncomfortable or find it difficult, does not make it wrong or impossible or untrue. Many readers (in the Kantian tradition) say that if a discourse is not generalized, universal, and agreed-upon, it is exclusionary. The problem, however, is that the generalized, universal, or agreed-upon never did solve the disagreements, resolve the differences, cohere the specifics, and generalize the particularities. Rather, it assimilated them to a false universal that imposed agreement, submerged specificity, and silenced particularity. The anxiety about engaged theory is particularly marked among those whose particularities formed the prior universal. What they face from

this critique is not losing a dialogue but beginning one, a more equal and larger and inclusionary one. They do face losing the advance exclusivity of their point of view's claim to truth—that is, their power. And we continue to talk about it.

Other earlier readers have had a related problem. Adhering to science as a standard for theory, they have suggested that the theorist must be stripped of commitments, community, experience, and feelings to know the truth about society. If knowledge is located instead in a critical embrace of those same commitments, a recognition of community context, a skeptical grasp of the roots and consequences of experience as well as its limitations, and an attempt at awareness of the social determinations of emotions, these factors are made accessible to theory. Such a theory does not deny that the theorist is determined by the very factors the theory documents for everyone else. Theory becomes a social endeavor inseparable from collective situation. Situated theory is concrete and changing rather than abstract and totalizing, working from the viewpoint of powerlessness to political understanding toward social transformation. This posture places the theorist inside the world and the work, not above or outside them—which, to be frank, is where the theorist has been all along.

It is said that thus speaking from the inside runs the risk of not being compelling to those who are not already convinced. This may be because much prior theory has adopted the position of dominance and needed to disguise that fact to support the illusion that it was speaking for everyone. Whatever its disabilities, speaking from the position of subordination does not have this one. In any event, I accept the risk of the engaged theorist without really believing that many readers are thereby excluded. The alternative has too often been compelling to no one.

My sense that method has something to do with women probably first crystallized with a passing witticism by Leo Weinstein of Smith College that “‘really’ is the feminine expletive.” He also taught political theory and constitutional law at the same time and took my writing seriously. Robert A. Dahl, one of the world's few practicing pluralists and ten nicest men, engaged this project patiently, supportively, and intelligently for a very long time. Paul Brest was the first to think it deserved an audience in the legal academy; Shelly Rosaldo was the first to decide it deserved to be published. Faculty, students,

librarians, and staff at Yale, Harvard, Stanford, Minnesota, UCLA, Chicago, and Osgoode Hall (York University) law schools have contributed to its development. Over my objections to theory books, Lindsay Waters convinced me to publish this one. Ann Hawthorne was the most helpful and least intrusive manuscript editor ever.

The intrepid Karen E. Davis, my research assistant through thick and thin, has been resourceful, dedicated, and persistent beyond belief; her contributions, always crucial, have become increasingly substantive over time. Alison Walsh helped greatly checking citations at a difficult moment. Suzanne Levitt tracked down vast numbers of final fugitive footnotes with intelligence, energy, and astonishing good humor. Anne E. Simon delivered pungently her always valuable insights. The work could not have been completed without the help of Pat Butler, Twiss Butler, Phyllis Langer, and David Satz. My Canadian colleagues—especially Mary Eberts, Christie Jefferson, and Elizabeth Lennon—provided an intellectually rewarding, humanly sensible, receptive, and insightful community in which to explore the implications of these ideas. My parents, to whom this work was dedicated in its earlier incarnation as a doctoral thesis, have been supportive throughout.

Kent Harvey and Andrea Dworkin have been my colleagues and friends. They contributed to this work on every level. My thanks to them, finally, cannot be expressed but can only be lived.

New Haven, Connecticut

May 1989



Surely it was time someone invented a new plot, or that the author came out from the bushes.

—Virginia Woolf, *Between the Acts*

I imagined myself sitting on the end of a beam of light and imagined what I would see.

—Albert Einstein

Contents

Preface ix

I. Feminism and Marxism 1

1. The Problem of Marxism and Feminism 3
2. A Feminist Critique of Marx and Engels 13
3. A Marxist Critique of Feminism 37
4. Attempts at Synthesis 60

II. Method 81

5. Consciousness Raising 83
6. Method and Politics 106
7. Sexuality 126

III. The State 155

8. The Liberal State 157
9. Rape: On Coercion and Consent 171
10. Abortion: On Public and Private 184
11. Pornography: On Morality and Politics 195
12. Sex Equality: On Difference and Dominance 215
13. Toward Feminist Jurisprudence 237

Notes 251

Credits 321

Index 323



I. FEMINISM AND MARXISM