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From Practice to Theory, or What is a White Woman Anyway?

Catharine A. MacKinnon[†]

And ain't I a woman?

Sojourner Truth¹

Black feminists speak as women because we are women

Audre Lorde²

It is common to say that something is good in theory but not in practice. I always want to say, then it is not such a good theory, is it? To be good in theory but not in practice posits a relation between theory and practice that places theory prior to practice, both methodologically and normatively, as if theory is a terrain unto itself. The conventional image of the relation between the two is first theory, then practice. You have an idea, then act on it. In legal academia you theorize, then try to get some practitioner to put it into practice. To be more exact, you read law review articles, then write more law review articles. The closest most legal academics come to practice is teaching—their students, most of whom will practice, being regarded by many as an occupational hazard to their theorizing.

The postmodern version of the relation between theory and practice is discourse unto death. Theory begets no practice, only more text. It proceeds as if you can deconstruct power relations by shifting their markers around in your head. Like all formal idealism, this approach to theory tends unselfconsciously to reproduce existing relations of dominance, in part because it is an utterly removed elite activity. On this level, all theory is a form of practice, because it either subverts or shores up existing deployments of power, in their martial metaphor. As an approach to change, it is the same as the conventional approach to the theory/practice relation: head-driven, not world-driven. Social change is first thought about, then acted out. Books relate to books, heads talk to heads. Bodies do not crunch bodies or people move

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1. BLACK WOMEN IN NINETEENTH-CENTURY AMERICAN LIFE: THEIR WORDS, THEIR THOUGHTS, THEIR FEELINGS 235 (Bert J. Loewenberg & Ruth Bogin eds., 1976).

2. AUDRE LORDE, SISTER OUTSIDER 60 (1984). The whole quotation is "Black feminists speak as women because we are women and do not need others to speak for us."

people. As theory, it is the de-realization of the world.

The movement for the liberation of women, including in law, moves the other way around. It is first practice, then theory. Actually, it moves this way in practice, not just in theory. Feminism was a practice long before it was a theory. On its real level, the women's movement—where women move against their determinants as women—remains more practice than theory. This distinguishes it from academic feminism. For women in the world, the gap between theory and practice is the gap between practice and theory. We know things with our lives, and live that knowledge, beyond anything any theory has yet theorized. Women's practice of confrontation with the realities of male dominance outruns any existing theory of the possibility of consciousness or resistance. To write the theory of this practice is not to work through logical puzzles or entertaining conundra, not to fantasize utopias, not to moralize or tell people what to do. It is not to exercise authority; it does not lead practice. Its task is to engage life through developing mechanisms that identify and criticize rather than reproduce social practices of subordination and to make tools of women's consciousness and resistance that further a practical struggle to end inequality. This kind of theory requires humility and it requires participation.

I am saying: we who work with law need to be about the business of articulating the theory of women's practice—women's resistance, visions, consciousness, injuries, notions of community, experience of inequality. By practical, I mean socially lived. As our theoretical question becomes "what is the theory of women's practice," our theory becomes a way of moving against and through the world, and methodology becomes technology.

Specifically—and such theory inhabits particularity—I want to take up the notion of experience "as a woman" and argue that it is the practice of which the concept of discrimination "based on sex" is the legal theory. That is, I want to investigate how the realities of women's experience of sex inequality in the world have shaped some contours of sex discrimination in the law.

Sex equality as a legal concept has not traditionally been theorized to encompass issues of sexual assault or reproduction because equality theory has been written out of men's practice, not women's. Men's experiences of group-based subordination have not centered on sexual and reproductive abuse, although they include instances of it. Some men have been hurt in these ways, but they are few and are not usually regarded as hurt because they are men, but in spite of it or in derogation of it. Few men are, sexually and reproductively speaking, "similarly situated" to women but treated better. So sexuality and reproduction are not regarded as equality issues in the traditional approach.³ Two intrepid, indomitable women, women determined to write the practice of their lives onto the law, moved the theory of sex equality to include

3. I detail this argument further in *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991).

these issues.

In her case, *Meritor Savings Bank v. Vinson*,⁴ Mechelle Vinson established that sexual harassment as a working environment is sex discrimination under civil rights law. Her resistance to her supervisor Sidney Taylor—specifically, her identification that his repeated rape, his standing over her in the bank vault waving his penis and laughing, were done to her because she was a woman—changed the theory of sex discrimination for all women. In her case, *California Federal Savings and Loan Association v. Guerra*,⁵ Lillian Garland established that guaranteeing unpaid leaves for pregnant women by law is not discrimination on the basis of sex, but is a step in ending discrimination on the basis of sex. Her resistance to her employer, the California Federal Savings and Loan Association, in its refusal to reinstate her in her job after a pregnancy leave; her identification of that practice as illegal treatment of her because she was a woman, gave sex equality law a decisive spin in the direction of promoting equality, away from its prior status quo-mirroring regressive neutrality. The arguments that won these cases were based on the plaintiffs' lives as women, on insisting that actual social practices that subordinated them as women be theoretically recognized as impermissible sex-based discrimination under law. In the process, sexual assault and reproduction became sex equality issues, with implications for the laws of rape and abortion, among others.

So what is meant by treatment "as women" here? To speak of being treated "as a woman" is to make an empirical statement about reality, to describe the realities of women's situation. In this country, with parallels in other cultures, women's situation combines unequal pay with allocation to disrespected work, sexual targeting for rape, domestic battering, sexual abuse as children, and systematic sexual harassment; depersonalization, demeaned physical characteristics, use in denigrating entertainment, deprivation of reproductive control, and forced prostitution. To see that these practices are done by men to women is to see these abuses as forming a system, a hierarchy of inequality. This situation has occurred in many places, in one form or another, for a very long time, often in a context characterized by disenfranchisement, preclusion from property ownership (women are more likely to be property than to own any), ownership and use as object, exclusion from public life, sex-based poverty, degraded sexuality, and a devaluation of women's human worth and contributions throughout society. This subordination of women to men is socially institutionalized, cumulatively and systematically shaping access to human dignity, respect, resources, physical security, credibility, membership in community, speech, and power. Comprised of all its variations, the group women can be seen to have a collective social history of disempowerment, exploitation and subordination extending to the present. To be treated "as a

4. *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

5. *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987).

woman" in this sense is to be disadvantaged in these ways incident to being socially assigned to the female sex. To speak of social treatment "as a woman" is thus not to invoke any abstract essence or homogeneous generic or ideal type, not to posit anything, far less a universal anything, but to refer to this diverse and pervasive concrete material reality of social meanings and practices such that, in the words of Richard Rorty, "a woman is not yet the name of a way of being human"⁶

Thus cohering the theory of "women" out of the practice of "women" produces the opposite of what Elizabeth Spelman has criticized as a reductive assumption of essential sameness of all women that she identifies in some feminist theory.⁷ The task of theorizing women's practice produces a new kind of theory, a theory that is different from prior modes of theorizing in form, not just content. As Andrea Dworkin said quite a long time ago, women's situation requires new ways of thinking, not just thinking new things.⁸ "Woman" as abstraction, distillation, common denominator, or idea is the old way of thinking, or at most a new thing to think, but it is not a new way of thinking. Nor is thinking "as" a woman, as one embodiment of a collective experience, the same as thinking "like" a woman, which is to reproduce one's determinants and think like a victim.

Some recent work, especially Elizabeth Spelman's, could be read to argue that there is no such thing as experience "as a woman" and women of color prove it.⁹ This theory converges with the elevation of "differences" as a flag under which to develop diverse feminisms.¹⁰ To do theory in its conventional abstract way, as many do, is to import the assumption that all women are the same or they are not women. What makes them women is their fit within the abstraction "woman" or their conformity to a fixed, posited female essence. The consequence is to reproduce dominance. While much work subjected to this criticism does not do this,¹¹ one can trace it, surprisingly, in the works

6. Richard Rorty, *Feminism and Pragmatism*, 30 MICH. Q. REV. 231, 234 (1991) ("MacKinnon's central point, as I read her, is that 'a woman' is not yet the name of a way of being human—not yet the name of a moral identity, but, at most, the name of a disability.").

7. ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 158-59 (1988).

8. "[O]ne can be excited *about* ideas without changing at all. [O]ne can think *about* ideas, talk *about* ideas, without changing at all. [P]eople are willing to think about many things. What people refuse to do, or are not permitted to do, or resist doing, is to change the way they think." ANDREA DWORKIN, *WOMAN HATING* 202 (1974).

9. SPELMAN, *supra* note 7, at 164-166, 174, 186. Spelman defines "essentialism" largely in terms of central tenets of radical feminism, without being clear whether the experience "as a woman" she identifies in radical feminism is a social or a biological construct. Having done this, it becomes easy to conclude that the "woman" of feminism is a distilled projection of the personal lives of a few comparatively powerful biological females, rather than a congealed synthesis of the lived social situation of women as a class, historically and worldwide.

10. Spelman implies that "differences" not be valorized or used as a theoretical construct, *id.* at 174, but others, building on her work and that of Carol Gilligan, CAROL GILLIGAN, *IN A DIFFERENT VOICE* (1982), do.

11. The philosophical term "essentialism" is sometimes wrongly applied to socially-based theories that observe and analyze empirical commonalities in women's condition. *See, e.g.*, Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581, 590-601 (1990). One can also take

of Simone DeBeauvoir and Susan Brownmiller.

DeBeauvoir, explaining why women are second class citizens, says:

Here we have the key to the whole mystery. On the biological level a species is maintained only by creating itself anew; but this creation results only in repeating the same Life in more individuals. . . . Her [woman's] misfortune is to have been biologically destined for the repetition of Life, when even in her own view Life does not carry within itself its reasons for being, reasons that are more important than Life itself.¹²

Here women are defined in terms of biological reproductive capacity. It is unclear exactly how any social organization of equality could change such an existential fact, far less how to argue that a social policy that institutionalized it could be sex discriminatory.

Susan Brownmiller argues the centrality of rape in women's condition in the following terms:

Man's structural capacity to rape and woman's corresponding structural vulnerability are as basic to the physiology of both our sexes as the primal act of sex itself. Had it not been for this accident of biology, an accommodation requiring the locking together of two separate parts, penis and vagina, there would be neither copulation nor rape as we know it. . . . By anatomical fiat—the inescapable construction of their genital organs—the human male was a natural predator and the human female served as his natural prey.¹³

Exactly how to oppose sexual assault from this vantage point is similarly unclear. Do we make a law against intercourse? Although both theorists have considerably more to offer on the question of what defines women's condition, what we have in these passages is simple biological determinism presented as a critical theory of social change.

The problem here, it seems to me, does not begin with a failure to take account of race or class, but with the failure to take account of gender. It is not only or most fundamentally an account of race or class dominance that is missing here, but an account of male dominance. There is nothing biologically necessary about rape, as Mechelle Vinson made abundantly clear when she sued for rape as unequal treatment on the basis of sex. And, as Lillian Garland saw, and made everyone else see, it is the way society punishes women for

an essentialist approach to race or class. In other words, a theory does not become "essentialist" to the degree it discusses gender as such nor is it saved from "essentialism" to the degree it incorporates race or class.

12. SIMONE DEBEAUVOIR, *THE SECOND SEX* 64 (H.M. Parshley ed. & trans., 1971).

13. SUSAN BROWNMILLER, *AGAINST OUR WILL: MEN, WOMEN, AND RAPE* 4, 6 (1976).

reproduction that creates women's problems with reproduction, not reproduction itself. Both women are Black. This only supports my suspicion that if a theory is not true of, and does not work for, women of color, it is not really true of, and will not work for, any women, and that it is not really about gender at all. The theory of the practice of Mechelle Vinson and Lillian Garland, because it is about the experience of Black women, *is* what gender is about.

In recent critiques of feminist work for failing to take account of race or class,¹⁴ it is worth noting that the fact that there is such a thing as race and class is assumed, although race and class are generally treated as abstractions to attack gender rather than as concrete realities, if indeed they are treated at all. Spelman, for example, discusses race but does virtually nothing with class.¹⁵ In any event, race and class are regarded as unproblematically real and not in need of justification or theoretical construction. Only gender is not real and needs to be justified. Although many women have demanded that discussions of race or class take gender into account, typically demands these do not take the form that, outside explicit recognition of gender, race or class do not exist. That there is a diversity to the experience of men and women of color, and of working class women and men regardless of race, is not said to mean that race or class are not meaningful concepts. I have heard no one say that there can be no meaningful discussion of "people of color" without gender specificity. Thus the phrase "people of color and white women" has come to replace the previous "women and minorities," which women of color rightly perceived as not including them twice, and embodying a white standard for sex and a male standard for race. But I hear no talk of "all women and men of color," for instance. It is worth thinking about that when women of color refer to "people who look like me," it is understood that they mean people of color, not women, in spite of the fact that both race and sex are visual assignments, both possess clarity as well as ambiguity, and both are marks of oppression, hence community.

In this connection, it has recently come to my attention that the white woman is the issue here, so I decided I better find out what one is. This creature is not poor, not battered, not raped (not really), not molested as a child, not pregnant as a teenager, not prostituted, not coerced into pornography, not a welfare mother, and not economically exploited. She doesn't work. She is either the white man's image of her—effete, pampered,

14. I am thinking in particular of SPELMAN, *see supra* note 7, and Marlee Kline, *Race, Racism, and Feminist Legal Theory*, 12 HARV. WOMEN'S L.J. 115 (1989), although this analysis also applies to others who have made the same argument, such as Harris, *supra* note 11. Among its other problems, much of this work tends to make invisible the women of color who were and are instrumental in defining and creating feminism as a movement of women in the world, as well as a movement of mind.

15. This is by contrast with the massive feminist literature on the problem of class, which I discuss and summarize as a foundational problem for feminist theory in TOWARD A FEMINIST THEORY OF THE STATE (1989). Harris, *supra* note 11, discusses race but does nothing with either class or sexual orientation except invoke them as clubs against others. See, for example, *id.* at 588, n.26 and accompanying text.

privileged, protected, flighty, and self-indulgent—or the Black man's image of her—all that, plus the “pretty white girl” (meaning ugly as sin but regarded as the ultimate in beauty because she is white). She is Miss Anne of the kitchen, she puts Frederick Douglass to the lash, she cries rape when Emmett Till looks at her sideways, she manipulates white men's very real power with the lifting of her very well-manicured little finger. She makes an appearance in Baraka's “rape the white girl,”¹⁶ as Cleaver's real thing after target practice on Black women,¹⁷ as Helmut Newton's glossy upscale hard-edged, distanced vamp,¹⁸ and as the Central Park Jogger, the classy white madonna who got herself raped and beaten nearly to death. She flings her hair, feels beautiful all the time, complains about the colored help, tips badly, can't do anything, doesn't do anything, doesn't know anything, and alternates fantasizing about fucking Black men with accusing them of raping her. As Ntozake Shange points out, all Western civilization depends on her.¹⁹ On top of all of this, out of impudence, imitativeness, pique, and a simple lack of anything meaningful to do, she thinks she needs to be liberated. Her feminist incarnation is all of the above, and guilty about every single bit of it, having by dint of repetition refined saying “I'm sorry” to a high form of art. She can't even make up her own songs.

There is, of course, much to much of this, this “woman, modified,” this woman discounted by white, meaning she would be oppressed but for her privilege. But this image seldom comes face to face with the rest of her reality: the fact that the majority of the poor are white women and their children (at least half of whom are female); that white women are systematically battered in their homes, murdered by intimates and serial killers alike, molested as children, actually raped (mostly by white men), and that even Black men, on average, make more than they do.²⁰ If one did not know this, one could be taken in by white men's image of white women: that the pedestal is real, rather than a cage in which to confine and trivialize them and segregate them from the rest of life, a vehicle for sexualized infantilization, a virginal set-up for rape by men who enjoy violating the pure, and a myth with which to try to control Black women. (See, if you would lie down and be quiet and not move, we would revere you, too.) One would think that the white men's myth that

16. LEROI JONES, *Black Dada Nihilismus*, in *THE DEAD LECTURER* 61, 63 (1964).

17. “I became a rapist. To refine my technique and *modus operandi*, I started out by practicing on black girls in the ghetto . . . and when I considered myself smooth enough, I crossed the tracks and sought out white prey.” ELDRIDGE CLEAVER, *SOUL ON ICE* 14 (1968). “[R]aping the white girl” as an activity for Black men is described as one of “the funky facts of life,” in a racist context in which the white girl's white-girlness is sexualized—that is, made a site of lust, hatred and hostility—for the Black man through the history of lynching. *Id.* at 14-15.

18. HELMUT NEWTON, *WHITE WOMEN* (1976).

19. NTOZAKE SHANGE, *THREE PIECES* 48 (1981).

20. In 1989, the median income of white women was approximately one-fourth less than that of Black men; in 1990 it was one-fifth less. U.S. BUREAU OF THE CENSUS, *CURRENT POPULATION REP.*, Ser. P-60, No. 174, *MONEY INCOME OF HOUSEHOLDS, FAMILIES, AND PERSONS IN THE UNITED STATES: 1990* 104-05 (tbl. 24) (1991).

they protect white women was real, rather than a racist cover to guarantee their exclusive and unimpeded sexual access—meaning they can rape her at will, and do, a posture made good in the marital rape exclusion and the largely useless rape law generally. One would think that the only white women in brothels in the South during the Civil War were in *Gone With the Wind*.²¹ This is not to say there is no such thing as skin privilege, but rather that it has never insulated white women from the brutality and misogyny of men, mostly but not exclusively white men, or from its effective legalization. In other words, the “white girls” of this theory miss quite a lot of the reality of white women in the practice of male supremacy.

Beneath the trivialization of the white woman’s subordination implicit in the dismissive sneer “straight white economically-privileged women” (a phrase which has become one word, the accuracy of some of its terms being rarely documented even in law journals) lies the notion that there is no such thing as the oppression of women as such. If white women’s oppression is an illusion of privilege and a rip-off and reduction of the civil rights movement, we are being told that there is no such thing as a woman, that our practice produces no theory, and that there is no such thing as discrimination on the basis of sex. What I am saying is, to argue that oppression “as a woman” negates rather than encompasses recognition of the oppression of women on other bases, is to say that there is no such thing as the practice of sex inequality.

Let’s take this the other way around. As I mentioned, both Mechelle Vinson and Lillian Garland are African-American women. Wasn’t Mechelle Vinson sexually harassed as a woman? Wasn’t Lillian Garland pregnant as a woman? They thought so. The whole point of their cases was to get their injuries understood as “based on sex,” that is, because they are women. The perpetrators, and the policies under which they were disadvantaged, saw them as women. What is being a woman if it does not include being oppressed as one? When the Reconstruction Amendments “gave Blacks the vote,” and Black women still could not vote, weren’t they kept from voting “as women?” When African-American women are raped two times as often as white women, aren’t they raped as women? That does not mean their race is irrelevant and it does not mean that their injuries can be understood outside a racial context. Rather, it means that “sex” is *made up of* the reality of the experiences of all women, including theirs. It is a composite unit rather than a divided unitary whole, such that each woman, in her way, is all women. So, when white women are sexually harassed or lose their jobs because they are pregnant, aren’t they women too?

The treatment of women in pornography shows this approach in graphic relief. One way or another, all women are in pornography. African-American women are featured in bondage, struggling, in cages, as animals, insatiable. As Andrea Dworkin has shown, the sexualized hostility directed against them

21. This is an insight of Dorothy Teer.

makes their skin into a sex organ, focusing the aggression and contempt directed principally at other women's genitals.²² Asian women are passive, inert, as if dead, tortured unspeakably. Latinas are hot mommas. Fill in the rest from every demeaning and hostile racial stereotype you know; it is sex here. This is not done to men, not in heterosexual pornography. What is done to white women is a kind of floor; it is the best anyone is treated and it runs from Playboy through sadomasochism to snuff. What is done to white women can be done to any woman, and then some. This does not make white women the essence of womanhood. It is a reality to observe that this is what can be done and *is* done to the most privileged of women. This is what privilege as a woman gets you: most valued as dead meat.

I am saying, each woman is in pornography as the embodiment of her particularities. This is not in tension with being there "as a woman," *it is what being there as a woman means*. Her specificity makes up what gender *is*. White, for instance, is not a residual category. It is not a standard against which the rest are "different." There is no generic "woman" in pornography. White is not unmarked; it is a specific sexual taste. Being defined and used in this way defines what being a woman means in practice. Robin Morgan once said, "pornography is the theory, rape is the practice."²³ This is true, but Andrea Dworkin's revision is more true: "Pornography is the theory, pornography is the practice."²⁴ This approach to "what is a woman" is reminiscent of Sartre's answer to the question "what is a Jew?" Start with the anti-Semite.²⁵

In my view, the subtext to the critique of oppression "as a woman," the critique that holds that there is no such thing, is dis-identification with women. One of its consequences is the destruction of the basis for a jurisprudence of sex equality. An argument advanced in many critiques by women of color has been that theories of women must include all women, and when they do, theory will change. On one level, this is necessarily true. On another, it ignores the formative contributions of women of color to feminist theory since its inception. I also sense, though, that many women, not only women of color and not only academics, do not want to be "just women," not only because something important is left out, but also because that means being in a category with "her," the useless white woman whose first reaction when the going gets rough is to cry. I sense here that people feel more dignity in being part of any group that includes men than in being part of a group that includes that

22. ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN 215-16 (1981).

23. ROBIN MORGAN, GOING TOO FAR 169 (1978).

24. Personal communication with Andrea Dworkin. See also ANDREA DWORKIN, MERCY 232, 304-07. (1991).

25. "Thus, to know what the contemporary Jew is, we must ask the Christian conscience. And we must ask, not 'What is a Jew?' but 'What have you made of the Jews?'

The Jew is one whom other men consider a Jew: that is the simple truth from which we must start. In this sense . . . it is the anti-Semite who *makes* the Jew." JEAN-PAUL SARTRE, ANTI-SEMITE AND JEW 69 (George J. Becker trans., 1948).

ultimate reduction of the notion of oppression, that instigator of lynch mobs, that ludicrous whiner, that equality coat-tails rider, the white woman. It seems that if your oppression is also done to a man, you are more likely to be recognized as oppressed, as opposed to inferior. Once a group is seen as putatively human, a process helped by including men in it, an oppressed man falls from a human standard.²⁶ A woman is just a woman—the ontological victim—so not victimized at all.

Unlike other women, the white woman who is not poor or working class or lesbian or Jewish or disabled or old or young *does not share her oppression with any man*. That does not make her condition any more definitive of the meaning of “women” than the condition of any other woman is. But trivializing her oppression, because it is not even potentially racist or class-biased or heterosexist or anti-Semitic, does define the meaning of being “anti-woman” with a special clarity. How the white woman is imagined and constructed and treated becomes a particularly sensitive indicator of the degree to which women, as such, are despised.

If we build a theory out of women’s practice, comprised of the diversity of all women’s experiences, we do not have the problem that some feminist theory has been rightly criticized for. When we have it is when we make theory out of abstractions and accept the images forced on us by male dominance. I said all that so I could say this: the assumption that all women are the same is part of the bedrock of sexism that the women’s movement is predicated on challenging. That some academics find it difficult to theorize without reproducing it simply means that they continue to do to women what theory, predicated on the practice of male dominance, has always done to women. It is their notion of what theory is, and its relation to its world, that needs to change.

If our theory of what is “based on sex” makes gender out of actual social practices distinctively directed against women as women identify them, the problem that the critique of so-called “essentialism” exists to rectify ceases to exist. And this bridge, the one from practice to theory, is not built on anyone’s back.

26. I sense a similar dynamic at work in the attraction among some lesbians of identification with “gay rights” rather than “women’s rights,” with the result of obscuring the roots in male dominance of the oppression of both lesbians and gay men.