Review Essay: Utopianism, Epistemology, and Feminist Theory


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How can we describe the suffering of women, as well as women's strengths and triumphs, without essentializing “Woman”? How can we build a movement around the commonalities of women without ignoring the diversity of women? In her recent book, Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law, Drucilla Cornell presents a way out of this dilemma facing current feminist theory. The escape route is through deconstruction and a particular type of feminine writing that constantly challenges and transforms the meaning of sexual difference. “If there is a central tenet in this book, it is that the condition in which the suffering of all women can be ‘seen’ and ‘heard,’ in all of our difference, is that in which the tyranny of established reality is disrupted and the possibility of further feminine resistance and the writing of a different version of the story of sexual difference is continually affirmed.”

Cornell begins by criticizing the work of Robin West and Catharine MacKinnon, describing them both as essentialists and explaining why their very different approaches fail to meet the ethical needs of feminism. She uses their failures as guideposts to mark the cliff-edge of essentialism and then she carefully traces a path that can avoid this precipice. She insists that we must affirm the feminine (rather than repudiate it, like MacKinnon), but the affirmation must be metaphoric (unlike West's) to avoid reinstating rigid gender identities. The book is devoted to explaining how such an affirmation of the feminine is possible and what it would mean.

Beyond Accommodation is an ambitious and impressive book. Cornell has identified a very important problem in feminist theory and has offered a subtle, detailed, and persuasive part of the solution. The book is required reading for anyone concerned about issues of essentialism and epistemology in feminist theory. Cornell’s writing style is a little dense and difficult, but the insights she offers make it worthwhile reading. Her mastery of the literature on

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deconstruction and French feminism is obvious, and she conveys its meaning in prose that is generally far more comprehensible than the original texts.

This review will first sketch the major arguments made in Beyond Accommodation and then offer some responses and suggestions. My primary concern centers around Cornell's treatment of West and MacKinnon and how it is tied to some of the remaining ambiguities in her own work. I believe that Cornell's commitment to a difficult and not fully explicated conception of creative utopianism leads her to underestimate the ultimate utility of West's and MacKinnon's approaches. Cornell has a choice, however, about how to understand the nature of the creativity and ethical commitments that constitute her utopianism. I will argue that one of her options is to better accommodate the insights of West's and MacKinnon's work while remaining faithful to her own commitments, both epistemological and ethical.

I. A Sketch of Beyond Accommodation

A. The Argument Against the Essentialization of Motherhood: West and Kristeva, Lacan and Chodorow

Mention womanhood and many people are likely to immediately think of motherhood. It is, therefore, unsurprising that efforts to describe what is most essential about women or women's experience have often turned toward one or another aspect of mothering. Cornell argues that Robin West's use of motherhood presents a fairly simple version of essentialism, as does the object relations theory that is often associated with the work of Nancy Chodorow. Cornell prefers the work of French feminist Julia Kristeva, which is based on the psychoanalytic theories of Jacques Lacan. But even these more sophisticated efforts ultimately devolve into essentialism.

Cornell defines essentialism as "map[ping] the feminine onto femaleness."2 In other words, essentialism makes the claim that whatever it is that makes a person female (an identifiable member of a particular gender) will also necessarily create in that person certain psychological or experiential characteristics (femininity, however defined).3 This definition leaves open the possibility of both biologically based essentialism—where what makes one female is certain physical structures or capacities, like having a uterus that can gestate a fetus—and non-biological essentialism—where what makes one female is occupying a certain social or cultural role, like mothering.

3. For alternative definitions of essentialism in feminist theory, see ELIZABETH V. SPELMAN, INESSENTIAL WOMAN ix (1988) ("an essential 'womanness' that all women have and share in common despite the racial, class, religious, ethnic, and cultural differences among us"); Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 585 (1990) (gender essentialism is "the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience").
Given this definition, Cornell categorizes Robin West as an essentialist. According to Cornell, West posits a female nature that generates the shared feminine experience upon which the feminist legal critique is based. She links West’s approach to object relations theory in psychoanalysis, which argues that the process of being mothered by women generates systematic differences in the sense of self and relation developed by male and female children. In object relations theory, a male child’s sense of self is founded on difference and separation from the primary caretaker, who is female. The female child, on the other hand, can continue to feel connected to her mother without risking her sense of gender identity. As a result, women grow up with a more connected sense of self in which separation is the great threat, while men grow up with a more autonomous sense of self in which losing one’s clear boundaries is the great threat. While Cornell is very sympathetic to the practical goal served by West’s essentialism, she is extremely suspicious of the epistemological underpinnings of such a position. According to Cornell, West believes that she must give expression to female experience in order to articulate the harms to women that are presently obscured by our legal and cultural categories. Cornell agrees that women’s experience must be expressed, but argues that one cannot rely on some natural, essential Woman to ground this experience. Such a foundation is unavailable once we recognize that language is not a mirror, reflecting a given reality, but that reality is itself a social artifact, created, in part, by the language we use to describe it. In other words, the interpretation that is an inevitable aspect of knowledge formation is deeply permeated by the cultural values and concepts encoded in the language through which that knowledge is expressed. If essentialism requires that we reach behind language to some preexisting essential reality about women, then it rests on a view of language that Cornell believes has been discredited.

Cornell finds a more appealing approach in the work of French feminist Julia Kristeva. Kristeva also relies on mothering to define the feminine, but

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4. Pp. 25-26. Cornell recognizes the ambiguity over whether West is a biological essentialist. Id.
9. For a fuller explication of this argument, see Richard Rorty, Philosophy and the Mirror of Nature 129-312 (1979); Susan H. Williams, Feminist Legal Epistemology, 8 BERKELEY WOMEN'S L. J. 63, 68-72 (1993).
10. See Robin West, Feminism, Critical Social Theory and Law, 1989 U. CHI. LEGAL F. 59, 87 (questioning whether the denial of “a concrete, given, natural, precultural self” matches women’s experience); id. at 95 (“The critical female self knows herself as a fantastic, un-lived, unspeakable, unspoken alternative . . . . This anti-symbolic, uncultured, natural, loving, female self knows herself . . . . as one who must be reclaimed from denial, fear, oppression and loathing.”).
she grounds her analysis in the psychoanalytic theory of Jacques Lacan rather than in object relations theory. Lacan suggests that linguistic consciousness and identity are produced in the infant's process of separation from the Mother. This process generates both loss (of the infant's sense of primordial connection to the world) and gain (of a place in the symbolic order by which human beings give meaning to the world). The symbolic order is represented by the phallus and, through its association with the penis, by the Father. The loss or lack is represented by the Mother. For Kristeva, the activity of mothering allows women to heal the primordial loss by becoming mothers.

Cornell sees some serious difficulties with Kristeva's approach, and indeed with the Lacanian theory on which it is based, but she thinks it is ultimately preferable to object relations theory and to West's approach. Kristeva slips into essentialism by tying maternity and the feminine too closely to a biological capacity. Nonetheless, Cornell believes that Kristeva's approach allows for change and for male participation in the feminine in a way that object relations theory does not. Because object relations theory reduces psychic structure to social relations, Cornell argues that it sets up two different, indeed incommensurate, realities for men and women and makes it difficult to see how change could gain a foothold. Cornell believes that Lacan, on the other hand, can explain why men might want to change the social order that appears to be in their favor: they pay for their dominant role with castration (i.e., subjection to the Father, the law, the symbolic order). Moreover, the basic experience of separation is very similar for both men and women, creating some meaningful psychic common ground. And, finally, the process of mothering—through which the rift is healed—is, in theory, available to men as well as women.

Despite these advantages, however, Kristeva and West both falter in Cornell's view because of their reliance on motherhood as the central experience of femininity. Cornell points out that this focus ignores the fact that not all women mother and that, even among those women who do, motherhood does not mean the same thing to everyone. Indeed, unwanted pregnancies and issues of class and race, among other factors, can change the meaning of motherhood significantly.

This inability to recognize the diversity of female experience arises from the deeper failure of these theories: dereliction. This concept, which is central to Cornell's critique, points to the capture of a discourse by the masculine symbolic order. In dereliction, an attempt to challenge and escape from a

12. P. 43.
13. Id.
17. Pp. 57-59.
18. The symbolic order is masculine because it represents the world as seen from a male-gendered perspective: woman stands for lack or loss and the phallus represents the symbolic order which gives
dominant conceptual system results in recapture by that system. Dereliction
leaves women unable to understand themselves except through the masculine
perspective institutionalized in that order. By relying on motherhood as
central to femininity, (which is, of course, the primary way in which men see
women in either a Lacanian or an object relations scheme) both Kristeva and
West have succumbed to dereliction. They have cast women in the role
designated by the masculine order, whether that is the role of nurturer or the
role of representative of a lost, pre-symbolic state of connection. By accepting
such a role they have foreclosed the option of a new fantasy of gender
relations.

B. MacKinnon and the Denial of the Feminine

One might attempt to avoid this dereliction by eschewing the project of
defining any positive conception of the feminine. Refusing to embrace the
feminine, whether or not it is defined by motherhood, ensures that one cannot
be co-opted into endorsing some version of present gender relations in the
guise of an ideal of femininity. This is the path adopted by Catharine
MacKinnon. Unfortunately, according to Cornell, this approach also falls
victim to a form of essentialism and dereliction.

Unlike the object relations theorists, MacKinnon does not accept the old
“language as mirror” epistemology. Instead, she whole-heartedly embraces the
view that there is no reality outside of our conceptual systems, no external
standard which we can use as a benchmark for truth. Femininity, then, simply
is whatever it is within our present system of gender relations. And that
present system is fundamentally a system of gender oppression. Thus, to affirm
femininity is to be complicit in our own subordination.

Cornell sees this position as essentialist because it completely equates
femaleness with femininity. For MacKinnon, to be female is to occupy the
subordinate position in the gender hierarchy; thus, the feminine is defined by
subordination. This use of some aspect of present existence (subordination) to
define the feminine denies that concept any transformative power. The
feminine is completely captured by the existing systems of meaning. This
reduction of the potential to the actual is the heart of essentialism for
Cornell.

MacKinnon’s refusal to search for an ideal or look beyond the present
system of gender relations creates other difficulties in addition to essentialism.
She carefully avoids endorsing any alternative image of gender relations as an
ideal toward which we should move, preferring a pragmatic or “realist”

meaning. Women are objects rather than subjects in this scheme. See pp. 37-40.
20. P. 63.
22. P. 126.
approach. But without such an ethical ideal, Cornell contends, MacKinnon’s argument is robbed of much of its critical edge. MacKinnon does, of course, have an implicit ideal that guides her criticism: an ideal of freedom in comparison with which she is able to say that the present gender hierarchy is wrong and that women should have more power. This critique is limited, however; it leaves the hierarchy in place and simply advocates that we struggle for position within it. MacKinnon has no critical perspective from which to challenge the underlying arrangement in which gender is defined in terms of unequal power relationships. Such a challenge, Cornell contends, could never come from within that patriarchal system. It would need to come from those perspectives excluded by the system; that is, from the feminine that MacKinnon rejects. Without such a challenge, feminism becomes revenge—an attempt to reverse the hierarchy and put women on top—rather than the reconstruction of gender into some non-hierarchical form. Finally, MacKinnon’s reluctance to embrace the feminine leads her to yet another failure. Shorn of any basis for an alternative, she is left to rely on the concept of the subject or self embedded in the masculine symbolic order. This concept sees the self as fundamentally inviolable, having firm boundaries that cannot be penetrated without violence to the subject. MacKinnon and Andrea Dworkin adopt this view of the self in their descriptions of heterosexual intercourse in order to explain the danger, damage, and humiliation of “being fucked.” They argue that being fucked violates your very personhood, because to be a person is, most fundamentally, to be “unfuckable.” This vision of the self is, of course, deeply gendered. As Cornell points out, there are other ways to understand the penetration of one’s boundaries besides as violation. Selfhood could also be understood as encompassing a receptivity to otherness in which interpenetration is seen as potentially joyful rather than threatening. Once again, by refusing to explore the feminine, MacKinnon has left herself with no option but to accept the conception of the self generated by the present, masculine, symbolic system.

Thus, Cornell argues, this effort to abandon the feminine entirely does not lead away from essentialism and dereliction, but back to them. MacKinnon has essentialized femininity by limiting its possible definitions to what it is within the masculine perspective which constructs our reality. She has, therefore, been captured by that perspective, unable to escape its definition of gender as a power hierarchy or its definition of the self as inviolable. This dereliction leaves her without the critical and ethical foundation on which to construct an

23. P. 130.
24. P. 129.
25. P. 132.
26. P. 130.
alternative view of gender and the self, because such a foundation must come from the feminine.29

III. FEMINISM, DECONSTRUCTION, AND UTOPIANISM

How, then, to escape the trap of dereliction, as well as the danger of essentialism, and avoid abandoning the feminine altogether? Cornell argues that deconstruction provides the key because it recognizes the unfinished and disruptive element in all linguistic and conceptual systems. Deconstruction, therefore, opens the door to a type of feminine writing that challenges the present system of gender relations on the basis of an ethic of justice and a new choreography of sexual difference.

Deconstruction "has been variously presented as a philosophical position, a political or intellectual strategy, a mode of reading" or a technique of literary criticism.30 It is closely associated with the work of Jacques Derrida. Although any attempt to define deconstruction would itself be subject to a deconstructive critique,31 I will risk a brief explication that seeks only to help in understanding Cornell's use of deconstruction. In deconstruction, a text is examined in order to demonstrate its gaps and contradictions.32 “[D]econstruction is the vigilant seeking-out of those ‘aporias’, blindspots or moments of self-contradiction where a text involuntarily betrays the tension between rhetoric and logic, between what it manifestly means to say and what it is nonetheless constrained to mean.”33 This technique identifies that which is excluded or suppressed by a text or philosophy and shows how the hegemony of the text or philosophy relies on that suppression or exclusion.34 “Derridean deconstruction exposes the limit of any system of ideality established as reality, whether that limit be evoked as the supplement, the margin, . . . or indeed as Woman.”35

In the context of Cornell's argument, deconstruction helps us to see that, however rich our symbolic system and however powerful the institutions that support it, we are never completely captured in the way MacKinnon suggests.37 Our difficulty—and for Cornell also our salvation—lies in the fact

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29. P. 164 (“If we do not bring the ‘feminine’ reality from the ‘rere’ to the front, we will be imprisoned in the genderized reality that MacKinnon so eloquently describes, in which everywhere we look, we find the man.”).
30. JONATHAN CULLER, ON DECONSTRUCTION: THEORY AND CRITICISM AFTER STRUCTURALISM 85 (1982). But see CHRISTOPHER NORRIS, DERRIDA 18 (1987) (asserting that, according to Derrida, deconstruction is neither a method, technique, nor type of critique).
31. See NORRIS, supra note 30, at 19-20.
33. NORRIS, supra note 30, at 19.
34. By “hegemony of the text,” I mean the way in which the text claims to be or tries to be supreme or complete—to tell the whole story.
35. See CULLER, supra note 30, at 86.
37. P. 107 (subject is never just hostage of its surroundings because they can never form an unshakable
that language, and particularly metaphorical language, inevitably contains a surplus of meaning through which prescription and interpretation enter.\footnote{38} In other words, to apply a conceptual category to something is to make a prescriptive claim about it, to assert that it belongs in a certain place in our conceptual scheme.\footnote{39} That claim has normative assumptions and implications in many cases. For example, asserting that "Man" is a rational animal assumes, among other things, that it is both meaningful and desirable to distinguish reason from emotion, and implies both that women are somehow less human than men and that rationality is the most important characteristic that distinguishes human beings from other animals. All of these are controversial normative claims. Moreover, this reading is only one of many possible interpretations. Deconstruction shows us how language is constantly open to such reinterpretation and normative challenge.

It is not possible to resolve these normative and interpretive clashes by referring to some reality behind and independent of language, like nature or biology.\footnote{40} Cornell agrees with Derrida that "there are only contexts, that nothing exists outside context . . . but also that the limit of the frame or the border of the context always entails a clause of non-closure."\footnote{41} In other words, knowledge is a human activity that takes place only within social and conceptual systems; we can never step outside of those systems to acquire some knowledge that is true in a more universal or transcendent sense. Nonetheless, every social and conceptual system has limits, a border in time or space beyond which other systems, other contexts apply. Thus, we are never totally captured by the systems we inhabit because they are subject to invasion and transformation. There is nothing outside of culture, but no one culture can capture the universe and make itself immune to disruption.

All of this has implications for the Lacanian theory. Lacan sees Woman as the symbolic order makes her—the representation of lack or loss—but, in fact, the concept of Woman as Mother disrupts that order and can never be totally captured by it.\footnote{42} Indeed, Woman is deeply subversive of the symbolic order, being a kind of gateway through which the unspoken and unspeakable, the repressed, can rise up to challenge the order.\footnote{43}

The claim, then, is that nothing exists outside of symbolic systems, and yet these systems are constantly open to reinterpretation and disruption. One difficulty with this claim is that it seems to suggest that reality is whatever we
create it to be through our interpretations and reinterpretations. Could we then simply eliminate gender oppression by "reinterpreting" our situation? Cornell explicitly denies this implication. "Our oppression is not a fiction" but it is also not all of reality.\textsuperscript{44} She insists that "reference" does not disappear entirely; we must tie our revolutionary interpretations to "reality."\textsuperscript{45}

At this point in the argument, Cornell parts company with Derrida. While Derrida dreams of an understanding of nonsexual difference, Cornell argues that we must begin from the present situation of sexual difference and affirm the feminine.\textsuperscript{46} A gender neutral approach is ineffective in her view because no sexually neutral position is available within our system of gender identity.\textsuperscript{47} Our present system is one of hierarchy and in order to challenge it, there must be a stage of overturning that hierarchy.\textsuperscript{48} This cannot be done if we ignore gender categories altogether. Thus, the challenges and reinterpretations posed by feminism must include an affirmation of the feminine.

The great value of deconstruction for feminism arises because, in Cornell's view, the deconstructive approach rests, ultimately, on an ethical insight that points to a utopian ideal. The ethical insight is that justice involves recognizing the claims of those who are excluded by the categories of our present symbolic system; justice is bringing the outsider in.\textsuperscript{49} Therefore, practicing deconstruction (understood as the process of undermining existing symbolic categories by bringing to the surface the excluded and suppressed) is doing justice, and justice is the ethical force behind deconstruction.\textsuperscript{50} When seen from this perspective, the denial of new possibilities and new interpretations is revealed as a political and moral act rather than simply an epistemological position—an act that is fundamentally unjust.\textsuperscript{51} Deconstruction is utopian in that it points to the inevitable beyond; it asks us about the "not yet of the never has been" through which justice is gradually, if always imperfectly, actualized.\textsuperscript{52} Feminism needs this utopian orientation, Cornell argues, if it is to be more than simply a reversal of power in the gender hierarchy.\textsuperscript{53}

Cornell advocates using a particular kind of feminine writing to incorporate this utopian ideal into feminism. The writing is feminine because it explicitly attempts to affirm the feminine rather than to seek some gender-neutral standard or ideal. It is utopian, in the deconstructive sense, because it

\begin{itemize}
\item \textsuperscript{44} P. 82. \textit{See also} p. 118.
\item \textsuperscript{45} P. 82.
\item \textsuperscript{46} Pp. 99-100.
\item \textsuperscript{47} P. 93.
\item \textsuperscript{48} Pp. 95-96. Cornell asserts that this phase is structural rather than temporal. We will never pass out of this stage completely because the hierarchy will continually reassert itself, but we can move beyond it in our theorizing.
\item \textsuperscript{49} P. 109.
\item \textsuperscript{50} Pp. 111-15.
\item \textsuperscript{51} P. 109.
\item \textsuperscript{52} P. 112.
\item \textsuperscript{53} P. 116.
\end{itemize}
challenges the present system of gender identity by reinterpreting gender, imagining it in a new way that brings in the excluded and suppressed. Cornell argues that this kind of writing is often created in the reinterpretation and retelling of myths that speak to the significance of Woman. These myths are part of the symbolic order into which we are thrown, the context in which we find ourselves, but they are also metaphors that offer a foothold for transformation. Cornell, therefore, suggests that we think of "the feminine as allegory." 54

Cornell concludes by asserting that, since feminism is all about this utopian re-imagining, it must reject accommodation of the existing symbolic order. Repudiating the feminine is, she believes, part of that symbolic order; indeed, one of the few constants across human cultures with gender hierarchy is that they devalue whatever is defined as feminine. 55 Thus, to join in that repudiation would be to succumb to dereliction, to accommodate once again. 56 Moving beyond accommodation means embracing the feminine, not as an essentialist category, but as a doorway to otherness, disruption, and justice. Only through an acceptance of otherness, only through the welcoming of the other as other, only through justice, can we approach love. 57

II. A RESPONSE

I believe that Cornell has put her finger on a central problem in contemporary feminist theory and has offered a creative and valuable solution. My assessment of her work is, therefore, more in the form of a friendly amendment than a critique. I think she can more effectively achieve some of her own goals by modifying her analysis of West and MacKinnon and by filling in some of the ambiguous aspects of her own position.

Cornell recognizes that her approach cannot be a complete solution to the problems she describes, nor does she intend it as such. She explicitly acknowledges the value of other, complementary projects in feminist theory, including "the articulation of the determinate situation of women within our legal and political context, and . . . the genealogical exposure of how we are formed as objects within the masculine symbolic." 58 The first of these projects is a reasonable description of much of Robin West’s work, and the second of Catharine MacKinnon’s.

Cornell wants to deny that her own project excludes these others, or vice versa, because she sees value in them all. Unfortunately, her descriptions of

54. P. 107. In other words, Cornell proposes that “the feminine” is not biology or psychology or sociology, but rather a matter of symbolism and interpretation.
55. P. 9.
56. Pp. 204-05.
57. Pp. 173-78 (describing feminist writers’ attempts to break through to an acceptance of otherness on which romantic love could be founded).
58. P. 171.
West and MacKinnon suggest that accepting her assumptions necessarily leads to discrediting these other two approaches. While I believe that many of Cornell’s criticisms are both valid and important, I also think that she can be more open to the insights of these other theorists without jeopardizing her own project.

Moreover, if Cornell’s brand of ethical feminism is to be a viable alternative, or even a supplement, to existing theories, there are some further questions she must address. It is not yet clear to me how Cornell’s own approach escapes the problems of essentialism and dereliction that she identifies in other theories. Depending on how she addresses those issues, West’s and MacKinnon’s approaches will look more or less plausible as complementary projects. My suggestion is that the general direction in which Cornell should further develop her own approach is one that accommodates the important insights of these other feminist theorists.

A. Robin West and Object Relations Theory

Cornell associates West with the object relations school of psychoanalytic theory. This school of thought, most clearly represented in the work of Nancy Chodorow, suggests that identity is set early in childhood through a process in which the child makes his or her relationships with others into the internal, psychological objects through which it identifies itself.\(^{59}\) In societies where the primary caretaker is almost always a woman, boys and girls will follow rather different paths in this process of identity formation. For boys, this process will involve a necessary and fundamental separation from the female mother.\(^{60}\) Indeed, their masculine identity must be defined not only as separate from but in opposition to the feminine mother. Girls, on the other hand, do not need such a radical separation. Because they share their gender identity with their mothers, they can continue to feel connected, can continue to blur the boundary between self and other, without risking their sense of identity.\(^{61}\)

There are several objections to the arguments Cornell raises against object relations theory. First, this theory is not as simplistically dichotomous as Cornell suggests. It is possible to believe that the female gender of the primary caretaker creates different experiences of self for male and female children without seeing those different experiences as an unbridgeable chasm. The gendered identities represent two different models, certainly, but many people have elements of both. Those mixtures may create tensions and inconsistencies,

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but consistency has never been the hallmark of human character. The theory points to meaningful differences that correlate with gender; it does not, however, require that there be no points of overlap in actual persons.

In addition, object relations theory does indicate why men would have an incentive to change a system of patriarchy that seems to favor them. The process of acquiring and defending the separated identity of a “man” in this theory is an extremely painful one. Male identity, unlike the female sense of self, is seen as constantly under attack, very fragile, and thus a source of great anxiety. It is, moreover, a barrier to the kind of closeness that all human beings need and desire. Thus, men have an incentive to change the social institutions that leave them anxious and lonely.

Finally, Cornell criticizes object relations theory for making gender identity and gender hierarchy seem rigid and unchangeable. She believes that Lacanian psychoanalytic theory is more flexible and hopeful. It is true that object relations theory reduces psychic structure to a product of social structure, but I think that makes it more hopeful rather than less so. Social structure, particularly the institution of female mothering, is something we can change. Indeed, there has been some small but meaningful alteration already in the degree to which men act as caretakers for children. The Lacanian view of gender identity, on the other hand, is much less amenable to change. Patriarchy itself would have to be wiped out before men and women would stop associating women with lack and men with the symbolic order. And when we finally reach the end of patriarchy, the dynamic of separation and linguistic consciousness may require that someone other than women take the role of representative of that lost connectedness, simply substituting some other type of hierarchy for patriarchy. Lacanian theory seems to suggest that hierarchy is inherent in the very nature of human consciousness. I agree that there are difficulties with object relations theory, but I do not believe that the comparison of these two approaches yields such a clear conclusion in favor of Lacanian theory.

62. See West, supra note 10, at 87-88.
63. I think some of the best evidence for this cultural shift may be found in the increasing frequency with which men are portrayed as caring for young children on television commercials. See, e.g., television commercials for Osco Pharmacy, Velveta cheese, Nestle’s Toll House chocolate morsels, Prudential Insurance. This is not to say that men are sharing equally in child care responsibilities, but only that some part of the next generation of children may grow up thinking of their fathers as caretakers along with their mothers.
64. See Mary Jo Frug, A Postmodern Feminist Legal Manifesto (An Unfinished Draft), 105 HARV. L. REV. 1045, 1070 (1992) (“[A] fundamental premise of post-Freudian, Lacanian theories of self [is] the premise that domination and subordination are an inevitable aspect of human relations.”). This inevitability arises from the nature of linguistic consciousness. In order for linguistic consciousness to occur, we must separate from the prelinguistic connectedness. A hierarchy is generated because language is always suppressing this never-quite-vanquished sense of something lost. If it is necessary to have a “signifier” for that loss, and if it is necessary that the signifier be another person (so that our relationship with her can be a constant reminder of the connection we have lost), then it would seem that Lacanian theory suggests that human hierarchy is an inevitable concomitant of linguistic consciousness.
It is also unclear to me why Cornell favors Lacanian theory over object relations theory, given that she ultimately embraces a deconstructive version of Woman that undermines the Lacanian reading. Cornell cannot accept object relations theory as the whole story, of course, because it does not leave much room for alternative interpretations of gender identity, but she could certainly recognize it as one part of a complex system of identity creation. I believe that she is unwilling to do so because this theory suggests that social structure generates the normative conceptual systems (i.e., the “is” generates the “ought”). In other words, our normative imagination is limited by the reality of our existing culture. Such a causal ordering violates the creative utopianism that she wants to recommend. As I will suggest in the final section, however, the complex nature of that creativity should—indeed, I think, must—leave room for many different types of relationship between “is” and “ought.”

Furthermore, it is not clear to me that West’s work should be categorized as part of the object relations school at all. West focuses far more on events later in life as central to the development of women’s connected sense of self: menstruation, sexual intercourse, pregnancy, lactation and breast feeding. These occur far too late to be included in the pre-Oedipal object relations stage of development. Moreover, Chodorow and other object relations theorists tend to emphasize the social institution of female mothering as the source of the gender differentiated sense of self, while West tends to emphasize the biological capacity to mother as the source. These differences indicate that West is not in any simple sense an object relations theorist.

It would, on the other hand, also be a mistake to treat West as a simple biological essentialist. She has written that biology is destiny only if we are unaware of it, that is, biology never comes to us straight up, it is always refracted through culture. It is only if we are not self-conscious about our particular culture’s vision of biology that we will be unable to escape it.

West is one of the few people who does not shy away from the label “essentialist” so there is little point in arguing that she is not one. Nonetheless, I think there is reason to believe that West’s form of essentialism is not as threatening to Cornell’s project as the label might imply. West suggests that there is some presocial reality to which we can refer as a normative standard by which to critique our society’s description of the self. This position must, to some extent, commit her to the old “language as mirror” epistemology that is directly in conflict with the assumptions of the deconstructive approach Cornell endorses. West has added an interesting twist to this approach, however: she argues that we can maintain our skepticism about particular claims to knowledge or truth without embracing an explicitly anti-essentialist

65. See infra note 105.
66. See West, supra note 7, at 20-25.
67. See id. at 71.
68. See West, supra note 10, 96.
position. In other words, we may believe that there is an objective reality, a truth of the matter, about women’s nature or human nature, but we do not believe that anyone has undistorted access to that truth. The result is a commitment to keep searching, never to rest easy with our present answers. If that commitment to the provisional, unfinished nature of our knowledge is made explicit, then West’s essentialism might well leave room for the constant challenge so central to Cornell’s ethical vision.

What is at stake for Cornell in her rejection of West’s approach? I believe that both writers share a desire to give substance and detail to the ideal of the feminine and to embrace that ideal. The central difference seems to be that Cornell wants that process to proceed through imagination and creation, while West sees it as fundamentally a process of description of an already existing reality. In other words, West sees a presocial, natural reality generating the normative standard for critique, while Cornell wants the normative standard (an ethical commitment to Otherness) to generate a reinterpretation of our cultural constructs. (For Cornell, the “ought” must generate the “is” rather than the reverse.) As with object relations theory, it is the creative element of Cornell’s utopianism that is disturbed by West’s approach.

B. Catharine MacKinnon

Although I believe that Cornell’s criticisms of MacKinnon are more damaging than her critique of West, there are once again aspects of MacKinnon’s work that can and should be salvaged. As with West and object relations theory, however, such a reconciliation between MacKinnon’s and Cornell’s approaches is made more difficult by the particular view Cornell seems to have adopted of the nature of creativity, the relationship between “is” and “ought.”

The heart of Cornell’s critique of MacKinnon is that we are not so totally captured by our dominant culture as MacKinnon suggests. Cornell points out two specific difficulties arising from MacKinnon’s position. First, such total capture robs MacKinnon of an ideal she can use to criticize the existing system of gender hierarchy, leaving her merely struggling for position within it. Second, total capture means that MacKinnon must adopt the masculine vision of the self as impermeable, as having fixed and inviolable boundaries. While both of these arguments are insightful and important, they do not justify rejecting MacKinnon’s approach entirely.

It is true that MacKinnon refuses to endorse a picture of gender relations toward which we should strive or an image of feminine identity undistorted by gender hierarchy. In that sense she does, indeed, seek to avoid the use of ideals in her arguments. But ideals can take forms other than imaginative reconstructions; they can also take the form of principles or fundamental

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69. See id. at 96-97.
commitments. When those forms are considered, it is plain that MacKinnon has some ideals and that they are in fact the basis for her critique of patriarchy. Cornell recognizes this when she attributes an ideal of freedom to MacKinnon. Just because MacKinnon refuses to describe an alternative system of gender relations does not mean that she is unable to criticize the existing one. It is true that one can have no basis for critique without some ethical commitment, but it is not true that one is similarly disabled by the lack of an idealized goal or endpoint. MacKinnon's normative resources are sufficient to show, first, how our system is violating its own professed ideals (or, perhaps more accurately, how those ideals are defined in ways that undermine their professed meanings) and second, how our system of gender hierarchy violates the implicit norms of freedom and non-domination she brings to bear. Cornell is correct that MacKinnon cannot, or will not, tell us what to put in its place, but she has, of course, made many suggestions for specific changes that will improve the system. I think the problem is not that MacKinnon has no ethical ideals to guide her critique, but that, in Cornell's view, she has the wrong ones.

This substantive disagreement surfaces in Cornell's second criticism: that MacKinnon has adopted a masculine and limiting view of the self as inviolable. This is an extremely valuable insight, and one that should move us to search our own experience for alternative models of the self. But it should not blind us to the element of truth in the masculine model that MacKinnon adopts.

A self with impermeable boundaries is subject to a variety of destructive patterns of thought and behavior, but so is a self with boundaries that are too permeable. First, the danger of such permeable boundaries can be seen in the pain that led many women to join consciousness raising groups and engage in the difficult search for selves that had been lost or suppressed. Moreover, the valuing of a permeable subject can mask destructive self-sacrifice. First, it can be used by others to support a demand for sacrifice, as men have traditionally demanded of women. Second, women may use it themselves to excuse other-directed action that is actually an attempt to defuse domination. For example, the danger of expropriation by violent male sexuality may lead women to define their boundaries as more permeable so as to avoid feeling violated. Finally, some feminists have suggested that knowledge, as well as love, are only possible if the self retains some separation from the other, albeit a less distant and unbridgeable space than in the masculine view.

72. See id. at 81-214 (discussing rape law, abortion law, sexual harassment, and pornography).
73. See Jean Grimshaw, Philosophy and Feminist Thinking 104-05 (1986).
74. Robin West makes this point with respect to defining oneself as "giving": if you give something away freely, then you need not feel violated when someone takes it from you. See Robin West, The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, 3 Wisc. Women's L. J. 81, 93-94 (1987). I believe that the same dynamic may apply to the sense of permeable boundaries that leaves one open to expropriation.
75. See Keller, supra note 61, at 99.
primordial soup in which all distinctions are erased is a medium in which neither love nor knowledge has any meaning.

Cornell recognizes that the extreme opposite of fundamental separation—the inability to distinguish self and other—is dangerous. It is only in the masculine imagination that mother and child are bonded in a primordial unity; feminine writing shows the otherness as well as the connection in motherhood. Indeed, the most basic ethical impulse in Cornell’s work is to let the Other be the Other, to ensure that violence to identity is not imposed as the price of connection. Thus, MacKinnon’s emphasis on boundaries—while incomplete and distorted if offered as a total vision of the self—is consistent with an important element in Cornell’s own approach. I think that Cornell could appreciate it for this role, even while she points out its shortcomings.

Thus, the two specific problems that arise from MacKinnon’s lack of an ideal of the feminine are not, in fact, insuperable. It is, instead, the underlying structure of her approach that is the central difficulty from Cornell’s point of view. MacKinnon, like the others Cornell criticizes, does not appear to leave room for the type of creative reimagining that Cornell sees as essential to the deconstructive feminist project. For MacKinnon, masculine ideology is reality, and we are the products of that reality. There is none of the open-textured quality of metaphor through which the suppressed can slip into our consciousness. MacKinnon believes that the reality of our conceptual system generates the ideals that we can bring to bear, and that MacKinnon, therefore, keeps to a minimum. As a result, the feminine can mean nothing except what it means in the dominant, masculine, conceptual system, so that Cornell’s creative utopianism seem impossible.

C. Deconstruction and Creative Utopianism

Cornell’s primary concern in this book is to show that feminism cannot repudiate the feminine, but must, instead, affirm and transform it. I have tremendous sympathy for this project as a pragmatic matter. As Cornell points out, we live in a society marked by gender distinction and hierarchy. If we do not affirm the feminine, we do not thereby avoid being shaped by it; rather, we simply abandon this inevitable aspect of our identity to the devaluation imposed by a masculine system. At least while our society continues to be so deeply gender-based and misogynist, a part of the feminist project must be

76. P. 22.
77. P. 113.
78. I am intentionally leaving open the possibility that the ultimate goal is an androgynous society in which gender is simply not an important distinction, not a significant aspect of identity. See Richard A. Wasserstrom, Racism, Sexism, and Preferential Treatment: An Approach to the Topics, 24 U.C.L.A. L. REV. 581, 603-15 (1977). I do not think it is necessary to reject androgyne as a goal in order to recognize the practical importance of affirming the feminine under our present circumstances.
to give women a positive way of understanding what it means to be a woman. This project is crucial both psychologically and politically.

Cornell wants to take this argument a step further and say that affirming the feminine is also crucial theoretically: it is required to avoid essentialism and dereliction. Here too, I am sympathetic. These are two of the most pressing problems in the development of feminist theory and it is extremely important to discover ways of avoiding or minimizing them. In order for Cornell's approach to solve those problems, however, there are some vague points that must be clarified and difficulties that must be ironed out. In discussing those problems, I will first mention a couple of concerns about the potential essentialism of affirming the feminine. Then I will turn to the more difficult issues surrounding dereliction. I do not pretend to have an answer as to how to avoid dereliction, but I see at least two different paths that Cornell could take to find such an answer. Only one of those paths leaves room for the other projects that she says she values, the projects that West and MacKinnon (among others) are pursuing and which I believe are crucial to feminism.

There is a more general and a more specific problem involved in essentialism. The general problem is that essentialist theories of Woman tend to create rigid gender roles and identities that are used to repress and limit women and that exclude the experience of many actual women. The more specific problem is that the people most often excluded by such theories are usually the people at the bottom of the social hierarchy because of their race, class, religion, sexual orientation, or physical disability. In other words, the exclusions are systematic rather than arbitrary and they mimic the other types of oppression in our culture.

The more general problem of essentialism arises for Cornell because the metaphors through which the reinterpretation and affirmation of the feminine take place can create a gender identity that may be new, but is so rigid that it closes off deconstructive utopianism. This danger is, I think, fairly well addressed in Cornell's book. According to Cornell, essentialist foreclosure can be avoided by feminine writing "as long as the attempt to specify the feminine is understood as proceeding through a process of remetaphorization that never fully captures Woman. There is always more to write." After all, if we keep in mind that we are "imagining, not describing," then we should not be surprised that the process is endless and subject to constant variation. Cornell concludes that "to affirm[,] that in a bipolarized society of gender identity, Woman signifies, particularly through myths, does not mean that the feminine can be reduced to a set of shared characteristics or properties."
This is, of course, no guarantee that the representations of Woman generated by feminine writing will not be used as an essentialist weapon against women. It is precisely the threat of such misuse that has caused many feminists to be wary of affirming the feminine, particularly through the medium of existing cultural materials like myths. Cornell neither shies away from this danger nor minimizes it. Her answer—that the misuse is not inherent in her approach and that the gain is worth the risk—is, I think, the only answer available to any theorist. She cannot offer a guarantee because no guarantees exist. Any theory with enough power to be useful can also be misused. The most that we can ask, up front, is that the misuse not be inevitable—necessary to the very benefit we hope to gain from the theory—and that the benefit appear to be worth the risk.83

On the more specific problem with essentialism, I think Cornell needs to say more. The danger is that the mythic reconstructions she endorses may ignore the real and meaningful differences among women, making the experience of only a subset of privileged women into the touchstone for Woman.84 Cornell argues that if we recognize that the universal in a myth is always told through and in the particular context, then we will see that the different contexts occupied by various women in our society will generate new interpretations of those myths.85 There is, in other words, no universal to essentialize that exists outside of particular women’s experiences and retellings.

Certainly this response leaves the door open to interpretations by women who are traditionally excluded, but I wonder if a trace of essentialism remains. Essentialism may creep into this deconstructive feminism subtly through the use of myth itself. Cornell suggests that the special value in the process of reinterpretation of myth—as opposed to writing fiction generally—lies in the constancy of myth, which allows it to function as a source of deep meaning and significance.86 That constancy, and therefore the power of the retelling of a myth, arises largely from the repetition and familiarity of the original versions. If Cornell is advocating the reinterpretation of myth as the primary mechanism for affirming the feminine, then she may be asking all women in our society to express their experiences through the myths that are a part of familiar, mainstream culture. They can, of course, reinterpret those myths in light of their own subcultures and experiences, but the basic framework would come from the dominant cultural tradition.87

83. It then becomes a practical and empirical question whether we have estimated the usefulness and danger accurately. On this issue, people can and do disagree with Cornell about the strategic value of affirming the feminine. See, e.g., Joan C. Williams, Deconstructing Gender, 87 MICH. L. REV. 797, 813-20 (1989) (describing the misuse of images of femininity, including EEOC v. Sears, Roebuck & Co., 628 F. Supp. 1264 (N.D. Ill. 1986), aff’d, 839 F.2d 302 (7th Cir. 1988)).
84. P. 194.
85. See p. 195.
87. Cornell provides examples of the use of the Medea myth in TONI MORRISON, BELOVED (1987) and CHRISTA WOLF, CASSANDRA (1984). Both confirm that Western culture is the source of the myths Cornell has in mind.
This would be a form of cultural imperialism. Despite the broad, perhaps inexhaustible range of interpretations possible, a given myth cannot adequately express all experience; nor can a given collection of myths. Unless we believe that the myths of all cultures are parallel and essentially\(^\text{88}\) equivalent, then there will be experiences expressible in the mythology of non-Western cultures that are not expressible in Western mythological terms.\(^\text{89}\) Moreover, women who find other traditions more congenial will be encouraged to express their experience in terms of Western myths if they wish to participate in this mythic reinterpretation of the feminine. If, on the other hand, Cornell extends the category of myth to cover myths from all cultures, no matter how foreign to the audience, then the distinction between reinterpreting myth and simply writing fiction of any kind becomes blurred. In order to avoid this hint of cultural imperialism, Cornell needs to explain how the special value of myth might apply in the context of a myth from a culture largely unknown to the audience.

Assuming that Cornell’s approach can avoid essentialism by generating a wide and diverse range of reinterpretations, the question remains, from where are these new interpretations coming? How do we generate a reinterpretation that truly disrupts the established order rather than suffering from dereliction? Or to put the question in MacKinnon’s terms: “How is it possible to have an engaged truth that does not simply reiterate its determinations?”\(^\text{90}\) Cornell suggests a couple of answers to this set of questions, but I believe there is some important work left to do here.

First, Cornell insists that although we are cast in the gender roles of our society, we do have the ability to play those roles differently.\(^\text{91}\) Just as language is always open to new interpretation, never completely captured by its usage up to a given moment, so also the past and present—of either a given individual or a whole culture—never completely determine the future.\(^\text{92}\) Even if the lines and acts of our character are set for us in advance, “[s]tyle is . . . affirmative.”\(^\text{93}\) The very process of performance opens the door to disruption.\(^\text{94}\) Cornell recognizes that this argument may appear to be facile and individualistic. The creativity involved, when described as a matter of “style,” looks arbitrary, easy, and highly individualized. It seems to ignore

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\(^{88}\) I use the word advisedly.

\(^{89}\) Perhaps the origin myths of some Native American cultures provide an example. They involve a connection to a sacred landscape that is largely missing from the Western tradition. See David C. Williams & Susan H. Williams, *Volitionalism and Religious Liberty*, 76 Cornell L. Rev. 769, 794-95 (1991).


\(^{91}\) P. 106.

\(^{92}\) P. 104.

\(^{93}\) P. 106.

\(^{94}\) Indeed, Cornell argues that it is precisely this acceptance of our context, while recognizing its limits, that constitutes the “dual gesture” so important to Derrida’s vision of deconstruction. Pp. 170-71, (quoting *Jacques Derrida*, Limited Inc. 116 (1988)).
the reality of suffering and the need for women to work together to end gender
subordination. Nonetheless, Cornell believes that this insight is central
because it shows us how we can generate challenge and disruption despite the
fact that we are already caught within conceptual systems. Our choices are not
limited to accepting or rejecting the categories of a system; we can also
transform them.

This argument explains how a new interpretation is possible, how it can
slip in between the cracks of our determining culture, but it does not explain
the source or content of such a new interpretation. In other words, when I
prepare to act my role, and I wish to infuse it with a style that brings in
something new and challenging, where do I find the content of that challenge?
The most obvious sources are other aspects of my own culture or other human
cultures. The difficulty with these sources is that they do not help much with
the feminist project. Much of the content of existing cultures would lead to
interpretations that would confirm, rather than disrupt, gender hierarchy.

Another possible source appears in Cornell’s oblique suggestion that
women’s position as excluded from the symbolic order gives them access to
a different perspective from which new interpretations can be generated. In
the context of her argument against tradition-centered inquiry (a la Alisdair
MacIntyre), Cornell contends that it is precisely because women are in the
socially pathological position of being in rupture and discontinuity with our
society that we can affirm the feminine differently. This argument suggests
that people who find themselves largely excluded from the symbolic order may
have an advantage in generating alternative interpretations of the artifacts of
that order. They must see things differently because they find themselves
devalued and denied in the mainstream interpretation.

This argument resembles “standpoint epistemology,” a common theme in
feminist theory, but Cornell’s position is more limited and therefore
somewhat stronger. Like advocates of standpoint epistemology, Cornell argues
that those excluded from the dominant culture can and do develop alternative
perspectives critical of that culture. Unlike the standpoint epistemologists,
Cornell does not argue that such alternative perspectives have any prima facie
epistemic advantage over the dominant culture. Nonetheless, some of the
arguments against standpoint epistemologies apply to Cornell’s more limited
claim as well. In order to fulfill the feminist deconstructive purpose, these
alternative perspectives must not only be different, but must disrupt the
gender

95. P. 106.
96. Id.
97. P. 111.
98. Standpoint epistemologists argue that people who are members of disfavored subcultures have an
epistemic advantage because they must understand both their own culture and the majority culture in order
to survive. Since they stand, as it were, with one foot in each world, they have the critical distance
necessary to evaluate both. See SANDRA HARDING, WHOSE SCIENCE? WHOSE KNOWLEDGE? 124, 131-32
(1991); Hartsock, supra note 61, at 159-60; U. Narayan, The Project of Feminist Epistemology:
hierarchy. Yet, the source of these perspectives is the experiences of particular people within a particular conceptual system. If we take seriously Cornell's claim that the conceptual system generates the reality, including experience, then it is difficult to see where these people will find the new conceptual categories necessary to understand their own experiences in a different way. In other words, a new experience seems to be as much the product of a new perspective as the source of it. Thus, to rely on experience as the source of creative disruption is simply to push the question back a step and ask how experience can escape cultural determinism.

There is, moreover, a deeper objection that applies both to experience and to cultures, internal and external, as a source for creative disruption. It is important to note that Cornell's argument about creative reinterpretation goes a step further than the earlier argument that all contexts have boundaries that allow them to be disrupted from without. It is true that no one conceptual system is universal (they all have boundaries), but what exists beyond those boundaries is just other conceptual systems. Thus, whatever influences the individual, either from inside or outside her own dominant culture, is still part of some existing conceptual system. The argument for creative disruption seems to require, however, that the content of new interpretations not be determined by any existing conceptual system. Indeed, this claim is central if the normative power of the new interpretation is not to be derived from the “is,” an existing conceptual system.

Assuming that there is an answer to the problem of where the creative new interpretations come from, there is the further difficulty of deciding which interpretation will guide decision-making. In the realm of literature, it is possible to adduce endless reinterpretations without choosing among them, but in the realm of law and policy, decisions must be made which affect peoples lives. If this process of affirming the feminine is to have any impact on law, then some reinterpretations must be used to guide policy decisions. A practical use of the reinterpretations is suggested by Cornell's approval of West's efforts to describe women's experiences in a way that makes plain their relevance to legal doctrine. But if we are to use the reinterpretations of the feminine, then we must be able—at least provisionally—to choose between them. We must be able to say that some of them are better than others, at least for a given purpose at a given moment.

Some of these decisions can, and must, be made through a highly contextual process, a process that takes seriously the qualifiers “for a given purpose at a given moment.” For Cornell, however, this category of decisions must be limited. Such pragmatic, contextual decision making must accept the basic definition of purpose and context offered by the culture within which it takes place. It can challenge some aspects of the definition, but it must leave enough in place to serve as the standard for such a contextual decision.

99. See Williams, supra note 9, at 86.
Cornell, however, wants the process of reinterpretation to be able to generate precisely the type of deep and broad challenge that highly contextual decision-making would not allow. Thus, the instances in which a choice between reinterpretations could be made through a contextual decision-making process must be limited if we are to leave room for sweeping transformation.

How else can we decide between competing interpretations of the feminine? Cornell does have a central ethical insight that can guide us in evaluating different interpretations: respect for Otherness, inclusion without assimilation. This is an extremely attractive ethical stance and one with which many feminists and others would agree. It is, of course, only one possible ethical standard among many. Various feminist theorists have suggested other standards, including human flourishing or a traditional feminine ethic of care. There are several requirements facing any such standard.

First, an ethical standard must be specific enough to guide decision-making. It need not be completely determinative, but it must rule out some options in some cases and it must suggest the kinds of considerations one should use in deciding among the remaining options. Unless it has the ability to limit the field of inquiry and to guide the discussion of options, a standard is functionless.

Second, we must be told something about the epistemological status of the proposed standard. Is it offered as an explication of what ethics and morality mean within a particular conceptual system? If this is the status of Cornell's principle, then it seems to undermine the very deconstructive process it is supposed to ground because that conceptual system can (indeed should) itself be challenged and disrupted. If, on the other hand, the standard is intended to be supra-cultural—independent of any particular culture and therefore appropriate for judging any cultural context—then it seems to contradict Cornell's commitment to an epistemology in which nothing exists outside of a cultural context.

Finally, such a standard must describe its own limits, if it has any. There are many perspectives that we attempt to exclude from our own culture which I believe Cornell would not wish to include. Perhaps adults who sexually molest children are an example. Such an Other is not, I presume, someone that Cornell intends to offer inclusion without assimilation. It is possible Cornell would respond that the principle of inclusion and respect for Otherness only applies to those who themselves respect Others. That response would raise

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102. I am using "culture" to mean the combination of conceptual systems and social institutions in which a group of human beings live.
103. This would, of course, itself be a kind of limit, although one internal to the standard itself. It is not necessary that a standard limit itself in this way; our own constitutional commitment to free speech extends even to those who would keep others from speaking if they could. See Collin v. Smith, 578 F.2d
the question of in what way and to what degree adults who wish to engage in sexual acts with children fail to respect the children’s Otherness, and whether we are willing to refuse respect and inclusion to other people who fail in the same way in relation to adults. I am not suggesting that there are no answers to these questions, merely that until they are considered we cannot know whether the standard has any limits.

Specifying the nature and scope of the kind of principle Cornell has outlined, along with the source of reinterpretative content, is an enormous and difficult task, and I am not criticizing her for not dealing with it in this book. I raise these issues for two other reasons. First, I believe that the book opens the door to further work along these lines that would prove extremely interesting and valuable, and I hope that Cornell will pursue it. Second, I believe that some of the difficulty of these issues stems from the same source as Cornell’s fundamental disagreement with West and MacKinnon: her commitment to a particular kind of creative utopianism.

West and MacKinnon, despite their many differences, share a view that the content of our ethical imagination can be derived from some existing reality. For West, that reality is a natural (presocial) sense of self, and the process of deriving ethical commitments from it is hopeful and promising. For MacKinnon, that reality is the ideology embedded in our social system, and the restriction it places on our ability to imagine a new form of gender relation is painful and oppressive. For both of them, however, ethics is grounded in and in some sense determined by reality.

Cornell, however, attempts to escape from such determinism through two mechanisms: the creative process of generating new interpretations and the transcendent principle of respect for Otherness. The principle of respect for Otherness, to the extent it is supra-cultural, provides a foundation for ethics that is not part of any existing system of concepts or institutions. It is, in a sense, a self-generating “ought”—an “ought” that is not derived from any “is.” The process of creative reinterpretation functions similarly. This process is the mechanism through which existing conceptual systems are disrupted. If the source of that disruption were simply the experience or concepts gained within a conceptual system—either the one being challenged or some other one—then the “ought” of the ethical challenge would be founded on an “is,” the existing conceptual system that generated it. That is why Cornell insists that there is always an additional element—style or

1197 (7th Cir. 1978) (striking down ordinances designed to block Nazi marchers), cert. denied, 439 U.S. 916 (1978).

104. This is the sense in which the “different (moral) voice” of women is, in MacKinnon’s view, simply the voice you hear when someone has his “foot on your neck.” Feminist Discourse, Moral Values, and the Law—A Conversation, 34 BUFF. L. REV. 11, 28 (1985) (edited transcript of discussion, Catharine MacKinnon speaking).

105. As such, this principle is parallel to the transcendent principles offered by other ethical systems, like reason for Kant. See generally IMMANUEL KANT, FOUNDATIONS OF THE METAPHYSICS OF MORALS (L.W. Beck trans., 1969).
performance—that is not determined by the roles and categories we are given. This element is the creative force behind reinterpretation. And this element is also an uncaused cause, an "ought" that is not derived from any "is."

The uncaused, ungrounded nature of these two mechanisms is crucial for Cornell because it is the foundation of the utopianism of her theory. It is also, however, the source of the extremely problematic nature of the two mechanisms. Because they ask for a causal element outside of cultural conceptual systems, they seem in tension with her underlying epistemological assumptions. Cornell needs to offer a convincing account of how such an uncaused cause could exist, particularly within the epistemology she adopts, in order to make her approach plausible. Cornell not only posits this problematic causation, she also wishes to privilege it over the types of causation relied on by West and MacKinnon. She argues that only this creative project can escape the twin pitfalls of essentialism and dereliction. One difficulty with this argument is that, until the nature of that creativity is clearer, it is not at all apparent how her approach escapes these pitfalls. More fundamentally, there are at least two different paths that Cornell might take in attempting to spell out the source of creativity and the nature of her ethical principle. One of those paths may lead to the privileging she suggests, but the other should not.

The first path is the one I have already attributed to Cornell: the search for an uncaused cause, an undetermined creativity and a supra-cultural ethics. If such things could be convincingly described, they might very well be entitled to a privilege over more determined and culturally bounded norms. They might also, however, require major revisions in the epistemological assumptions that Cornell has so far accepted.

The second path is to see the differences at issue here as matters of degree rather than distinctions of kind. For example, the difference between creativity and determinism may simply be a difference in the degree of complexity in the causal sequence. It is not that anything is uncaused, but that the influences on a given human being are so many, varied, and interacting that at some point it becomes meaningless to ascribe causality to any useful subset of those influences. At that point, we call what happens creativity. Similarly, we might say that while no principles, ethical or otherwise, are truly culturally independent, some apply across a wider range of cultures than others. The difference between principles with varying scope is not a difference of kind, but one of degree.

This second path denies Cornell's two mechanisms their privileged position because it sees them simply as forms of more general phenomena of causality,

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106. In that sense, it is parallel to traditional notions of free will as inconsistent with causal determinism. See Isaiah Berlin, Four Essays on Liberty xii (1969); Francis H. Bradley, Ethical Studies 6-7 (1927); Morton White, Oughts and Cans, in The Idea of Freedom 211, 215-16 (Alan Ryan ed., 1979).
of which West's and MacKinnon's accounts are also forms. There is no reason to think that any one of these forms will necessarily be superior to the others as either an explanation of gender relations or as a means of transforming those relations. The most plausible position is that each approach, with its attendant form of causality and its corresponding critique of gender hierarchy, will be appropriate to some problems or projects.¹⁰⁷

It is important to note that this path, while it deflates the privileging of these mechanisms, does not eliminate the ethical significance of creativity and broad principles like respect for Otherness. Even if creativity is understood as complex determinism, the very complexity may have moral significance. It is the complexity that allows the only experience of freedom that human beings know. Moreover, a complicated and varied system of causality may be the condition in which the greatest inclusion and adaptability is possible for each human being. Given that no social or conceptual system can include everything, a certain amount of confusion and contradiction may create the space for individuality and transformation that Cornell is concerned with preserving. In other words, even on this more modest reading, the creativity involved in reinterpretation—and the social and conceptual conditions that sustain it—are significant in terms of Cornell's own ethical commitments.

Similarly, the breadth of an ethical principle is itself morally significant. A principle that applies across time and space to many human cultures may reveal what many, most, or all human beings share. Such widely shared behaviors, characteristics, or concepts may form a basis for understanding across other differences and through difference itself.¹⁰⁸ A broad principle is, therefore, valuable within Cornell's project.

This argument is not meant to foreclose the possibility and desirability of a different kind of experience, in which one comes to have new concerns through contact with difference. But understanding must begin with communication and communication must begin with some shared concepts and concerns. Ethical principles of broad applicability are morally significant because they point toward such shared concepts and concerns.

It is unclear to me from this book which of these two paths Cornell would choose to follow. Her rhetoric seems to lean toward the first path, but I believe that her epistemological commitments incline toward the second. The latter path seems more promising to me, not least because of its greater openness to and appreciation of the contributions of feminists using very different approaches to the problems of gender hierarchy.

¹⁰⁷. Which raises another interesting, and I hope fruitful, question: how do we tell when to use which argument?
¹⁰⁸. Something shared need not be the same for all those who share it. I mean to point here not to similarity but to something more like congruence: a sense of being able to understand an alien practice or concept from the inside in terms of concerns that are already meaningful to you. By "from the inside" I mean as someone within the culture containing it might understand its function and meaning, rather than as an outsider.
III. CONCLUSION

*Beyond Accommodation* is a fascinating and powerful account of a very original feminist theory. It should, and I hope will, spark further discussion of issues central to the present stage of feminist theorizing. I have suggested some of the choices that may lie ahead in such a discussion, and why I believe that a particular direction may be a fruitful one for exploration. Cornell’s book argues with grace and passion that, while we continue this exploration, we must not lose sight of a crucial moral imperative: the refusal to accommodate a system of gender hierarchy that repudiates the feminine.