
For many feminists involved in the women’s movement in the United States, the late 1980’s has been a time for reassessment, retrenchment and reflection. The final defeat of the Equal Rights Amendment in 1982¹ was emblematic of the disintegration within the movement. Although the amendment was made possible by the mass mobilization of women for women, the amendment was ultimately defeated in large part because of opposition by women (p. 1). Similarly, the hard won right to abortion, announced by the Supreme Court in 1973 in Roe v. Wade,² has generated tremendous opposition by women and is constantly threatened both constitutionally and legislatively.³

For Catharine MacKinnon, looking back on nearly a generation of feminist politics, the gains for women have been mixed and few. Although she recognizes that some advances have been made in the law of sexual harassment, domestic battery and marital rape, she points out that:

[w]omen are poor, and pay is at least as far from being sex-equal as it was before the passage of legislation

¹ As of the final deadline—June 30, 1982—35 state legislatures had approved the equal rights amendment, three short of the number required for ratification. At the start of the 98th Congress in November of 1982, House Speaker O’Neill tried to revive the amendment by again extending the deadline, but his attempt was defeated on the House floor by six votes. Congressional Quarterly Almanac 285–86 (1983).

² 410 U.S. 113 (1973) (declaring a woman’s absolute constitutional right to an abortion during the first trimester of pregnancy; allowing state regulation of abortion with respect to the mother’s health after the first trimester; and allowing state regulation to protect the life of the fetus from the point of viability, which occurs “legally” after the second trimester).

³ MacKinnon persuasively argues that the Court’s decision in Roe to frame the abortion right as privacy, rather than as equality, laid the groundwork for the Court subsequently to take that right away, for all intents and purposes, from those who had least access to it—the poor (pp. 93–102). See Harris v. McRae, 448 U.S. 297 (1980), where the Court found no obligation on the part of the federal government to fund abortions, even assuming that many women might thereby be functionally deprived of access to abortions.
guaranteeing pay equality by law. Women are more and more losing custody of their children, in part because of legal reforms feminists helped put in place. The rape rate is increasing significantly, while the conviction rate for rape is not. . . . To this picture, add the feminist attempt to get civil rights for women exploited by pornographers, an attempt that was opposed by some claiming feminist ground for their opposition, and it begins to seem like time for a real reassessment. (Pp. 1–2) (citations omitted).

Declaring a feminist voice amidst the factionalism is a goal and a challenge for MacKinnon’s work. She describes Feminism Unmodified as “a second look at the second wave of feminism in the United States, after fifteen years of trying to change the status of women by law and every other available means” (p. 1).

Many readers of Feminism Unmodified will find the ideas presented entirely new, despite the fact that the book is composed of speeches given by MacKinnon between 1981 and 1986 and thus, from the author’s perspective does not represent new ground. What is astounding about the book is the nuclear dynamism generated by the ideas in conjunction. Far from the enervated gasps of a political movement in decline, MacKinnon asserts a feminism that is powerful and theoretically sharp.

Feminism Unmodified is at once an argument about how women are subordinated and silenced by male domination and a powerful assertion of women’s power and authority to speak. MacKinnon, more speaker than author, demands relentlessly, speech after speech, that she be heard, that she be believed, that she speaks truth. In constructing the book from speeches, she takes the position of subject speaking at the reader, the audience, as object.

I found Feminism Unmodified impossible to read in one sitting. Each of the sixteen speeches which compose the book left me feeling at once exhilarated and violated by its cataclysmic power. I was aware of MacKinnon’s speech as dialogue and

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4 One of these speeches was originally given as the Francis Biddle Memorial Lecture at Harvard Law School on April 5, 1984, and was published as Pornography, Civil Rights, and Speech, 20 Harv. C.R.-C.L. L. Rev. 1 (1985).
unable to participate in it. Only in reflecting upon my inability to speak her ideas, to access or respond to them, did I understand MacKinnon's conception of silence. For a few brief moments it was MacKinnon who had the power, the authority to say "what is," while I, the reader, unable to speak, was forced to experience "reality." In this way the book gives the reader a taste of the experience it describes—the violence and power of being silenced by force.

*Feminism Unmodified* is divided into three parts and structured around MacKinnon's theory of violation. In the first part, entitled "Approaches," MacKinnon attempts to expose and explain the circumstance of male dominance and female subordination which silences women by depriving them of power. In the second part, entitled "Applications," she argues that because of women's powerlessness and subjective silence, it is wholly contradictory for the law to distinguish sex from sexual harassment or rape by looking to women's "consent." Finally, in the third part, entitled "Pornography," MacKinnon asserts that pornography both embodies and enacts the violation of male domination because it carries the legal sanction of "speech" while it harms and silences women. For MacKinnon, while the injury to women of discrimination, harassment, rape or pornography might be distinguishable by its physicality, the structure of the violation is the same—women are rendered silent by the violence of male power. Under these conditions which deny speech to more than half the population, MacKinnon demands, both through her critique and her suggested law reforms, that we as a society rethink the meaning of "free speech."

In the first part of *Feminism Unmodified*, MacKinnon's critique evolves from an interlocking and interdependent web of theories about knowledge, power, gender and sex, with each strand intellectually and rhetorically inseparable from the other. For many legal readers, accustomed to analyzing texts and reasoning in a more deductive, linear fashion, MacKinnon's critique may cause some frustration. Even if one takes into account the fact that a large portion of the critique is devoted to attacking

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5 For an example of a feminist critique of linear reasoning, see C. Gilligan, *In a Different Voice* (1984).
linear objective reasoning itself, the analysis still seems madden-
ingly circular at times. Yet, as one continues reading, the elab-
orate architecture of her argument materializes and the re-
sulting structure far surpasses any imagined flaws in its 

MacKinnon begins her critique by stating that objectivity,
or the idea of “neutral” truth, is gendered, and it is male6
(pp. 50–51). Power, she argues, places the male in the position
of “knower,” allowing him both to create the world through his
eyes and to describe it as reality. Male power constructs the
world of “is” through objectification. He, as subject, looks out
upon “the world” as object—things are as he sees them.

Through the process of objectification, both man and
woman, as we socially understand them,7 are defined by male
power (p. 52). “Male” is defined by his power as subject—he
views the world; he struggles to comprehend it; his vision has
the force of “truth.” “Female” is defined by her powerlessness
as object—she simply is what he perceives her to be. From
MacKinnon’s perspective, gender is defined by and exists as an
inequality socially constructed by male power and female sub-
ordination. Because women are excluded from the position of
subject, their view of the world is never expressed. Thus, ob-
jectification silences women.

MacKinnon provides a helpful example. In discussing
women faking orgasms, she suggests that

[mens’s] power to make the world here is their power
to make us make the world of their sexual interaction
with us the way they want it. They want us to have
orgasms; that proves they’re virile, potent, effective.
We provide them that appearance, whether it’s real for
us or not. . . . Our reality is, it is far less damaging and

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6 For other feminist critiques of epistemology as “male,” see, e.g., Introduction to
the New French Feminisms (E. Marks & I. de Courtivron eds. 1980); and L. Irigaray,
This Sex Which Is Not One (C. Porter trans. 1985).

7 MacKinnon argues that gender as it is socially constructed does not necessarily
coincide with biological sex. For example, some women can be “social males”—au-
thoritative and powerful—although not male due to biology, and some men can be
“social females”—powerless and subordinated—although they have, as a matter of
biological birthright, access to social maleness. For a discussion of these distinctions,
see p. 52.
dangerous for us to do this, to accept a lifetime of simulated satisfaction, than to hold out the real for them. (P. 58).

From the male perspective the orgasm is "real." The woman’s objectified image projects pleasure, while the woman experiences the image’s falsehood. Her real experience, that of dissatisfaction, is silenced.

Further, MacKinnon argues that if men and women "are" their power inequality, then sex must be inherently unequal (pp. 50–52). Man and woman come together as power and powerlessness, creating a sexual structure of dominance and submission. This structure, in turn, shapes our conception of sex "differences." In other words, we come to believe that male "strength" and female "weakness" or male "aggression" and female "passivity" are real sex differences. In turn, these "natural" differences in male and female strength are often used to justify differential treatment in employment. MacKinnon argues that our conceptions of strength are socially constructed from the condition of male domination and female subordination and that the difference in treatment is a function of the power to value certain attributes above others (pp. 33–45). In other words, sex differences are the result of male power rather than the justification for it.

As this structure of sex difference becomes eroticized, male dominance and female submission come to be what we understand as "sexy." Thus, as MacKinnon puts it: "the sex difference and the dominance-submission dynamic define each other" (p. 50). Women are sexy because they are submissive. Men are sexy because they are aggressive. Therefore, sex is sexy be-

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cause it is unequal. The dominance-submission condition constructs what we understand as sex differences. The erotic, by making these differences (i.e., male dominance and female submission) sexy, constructs sex as an inequality.

If one accepts MacKinnon's position that objectivity is gendered male, then the "objective" or "neutral" position becomes political—both an expression of male dominance and the means by which women are subordinated and silenced. MacKinnon demonstrates how this "neutrality" works through an analysis of current sex discrimination law.

MacKinnon asserts that discrimination law, both statutory and constitutional, cognizes two related theories of gender equality—the "single standard" rule and the "special protection" rule (p. 32). The single standard rule is presumed to be the neutral rule because it proposes that women and men should be treated "the same," when they are "equal." In other words, when women are "equally qualified" or "equally capable," the law should treat them as such (pp. 33–36). The special protection rule, on the other hand, is deliberately "non-neutral" because it recognizes and adjusts for the "real differences" between men and women.

Applying MacKinnon's critique to the "equality as sameness" and the "equality as difference" approach reveals that both implicitly presuppose the conditions of gender inequality they claim to correct. As MacKinnon explains:

Under the sameness standard, women are measured according to our correspondence with man, our equality judged by our proximity to his measure. Under the

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10 For examples of this type of analysis in the case law, see Reed v. Reed, 404 U.S. 71 (1971) (invalidating a statute which required that, as between persons equally entitled to administer a decedent's estate, males be preferred to females); Phillips v. Martin Marietta Corp., 400 U.S. 542 (1971) (holding that, under Title VII of the Civil Rights Act of 1964, an employer may not, in the absence of business necessity, refuse to hire women with pre-school-age children, while hiring men with such children).

11 For examples of this type of analysis in the case law, see Dothard v. Rawlinson, 433 U.S. 321 (1977) (women denied positions as prison guards in male prison because of risk of rape); Michael M. v. Sonoma County Superior Court, 450 U.S. 464 (1981) (upholding a statutory rape law which punished teenage men but not women because women are significantly deterred by the risk of pregnancy). Cf. Geduldig v. Aiello, 417 U.S. 484 (1984) (holding that the lack of pregnancy and childbirth coverage in California's disability insurance system was not a violation of the equal protection clause).
difference standard, we are measured according to our lack of correspondence with him, our womanhood judged by our distance from his measure. (P. 34).

Thus, the “neutral” standard is the male standard. Women cannot be the same as men because gender is defined by women’s subordination. Nor does it make sense to talk about “sex difference” if these differences are socially constructed from the condition of male domination. As MacKinnon ironically puts it, “Feminists have noticed that women and men are equally different, but not equally powerful. Explaining the subordination of women to men, a political condition, has nothing to do with difference in any fundamental sense” (p. 51).

The implication of MacKinnon’s analysis is that legal rules and legal arguments in this area should start to focus on the fact of gender hierarchy rather than trying to discern “real” from imagined differences. Recognizing that legal analyses that focus on sameness or difference are themselves gendered demands a change in legal perspective. As MacKinnon suggests, “If sex inequalities are approached as matters of imposed status, which are in need of change if a legal mandate of equality means anything at all, the question of whether women should be treated unequally means simply whether women should be treated as less” (p. 43). Under MacKinnon’s power equality, women exist as subjects independent of their subordinated gender status as objects. Freed from the silencing oppression of male objectification, women’s speech becomes possible.

In the second part of her book, MacKinnon argues that if one accepts the premise that male domination deprives women of their subjective voice, then it is contradictory for the law to distinguish between sex, sexual harassment and rape by looking to women’s “consent,” the standard for legal analysis under current doctrine. For example, the criminal definition of rape in all fifty states uniformly either allows consent as a defense or defines rape as non-consensual sex.\textsuperscript{12} MacKinnon argues that consent is also considered in sexual harassment cases through

\textsuperscript{12} See S. Estrich, Real Rape (1987). See, e.g., N.Y. Penal Law §§ 130.35, 130.00 (8); Model Penal Code §§ 213.1–213.4.
questions such as whether the woman’s dress or conduct suggested her sexual interest (pp. 110–13). Finally, the legal system often assumes that women who stay in abusive relationships are in some sense “consenting” to the abuse.13

If what is sexy in our society is the subordination of women by men, if sex is defined by its inequality, then all sex is at some level coercive. The law tries to distinguish sex that is coerced by positing a sex that is voluntary—by looking to consent. The law supposes a woman who has the power to create and control sexual situations by speaking her will—saying yes or no. MacKinnon argues that this woman for all intents and purposes does not exist because women’s sexuality is defined through objectification as submission: she is as he sees her; no really means yes; dressing sexily means sexual availability. Thus, the line between “normal” sexuality and sexual harassment or rape becomes largely a question of credibility. Whose story will be taken as true, “the way it was”—the one of abuse or the one of consent?

MacKinnon powerfully demonstrates the credibility bind in discussing Linda Marchiano, once “Linda Lovelace” of the film Deep Throat. Some years after the release of the film, Marchiano related in her book Ordeal14 the torturous conditions under which the film was produced. She described how she was threatened at knife point, beaten, imprisoned and hypnotized in order to make the acts of the film possible. Yet, despite all this suffering, MacKinnon notes, what people remembered was the “smile” on her face (p. 128). MacKinnon stresses that Marchiano’s very presence in the pornography suggests its consensuality. She was in the film, she did the acts, she was smiling. Marchia-

13 For a tragic example of the consequences of this common conception, see Boston Globe, Oct. 19, 1987, Metro Section, at 1, reporting the story of Pamela Nigro Dunn, who was berated by a judge for being unable to handle her family-matters when she sought police protection from her husband. She was shortly thereafter found brutally murdered by her husband.


For sociological analyses of the difficulties and inadequacies of state intervention in this area, see Dobash & Dobash, Violence Against Wives: A Case Against the Patriarchy (1979); S. Schecter, Women and Male Violence: The Visions and Struggles of the Battered Women’s Movement (1982).

14 L. Lovelace & M. McGrady, Ordeal (1980).
no's *Ordeal* could not be "what happened." The film speaks for her, while she lacks the authority—the power—to be believed. The film speaks, Marchiano is silenced.

MacKinnon's critique suggests an entire rethinking of the law of sexual violation, including sexual harassment, violent abuse of women and children, and rape. MacKinnon suggests that under the law's presumption of voluntary sex, an act of rape or harassment asserts its own consensuality. Rather than treating these violations as exceptional debasements, MacKinnon suggests that the law must be structured around an acknowledgement of the coercive politics of sexuality in our culture. The situation might at least be changed for the better if women's speech had credibility—if no meant no, empowered by the state through law. While this would be only a beginning, it would reverse the implicit presumption of consent spoken by the fact of the act. Women would authoritatively speak for themselves.

In the third part of her book, MacKinnon discusses pornography. For MacKinnon, pornography embodies women's subordination by men, in that pornography has the legal and constitutional authority to speak even as it silences and harms women. The very existence of pornography enacts the violation of inequality: men define the picture and women are in it. Women's presence in the pornography suggests that the vision of women portrayed is consensual. The pornography speaks for women as objects. It says women are as men see them—sexually available, powerless, submissive and enjoying it (pp. 171–75).

While MacKinnon offers powerful statistics about the strong correlation between violent forms of pornography and violence against women and children, (pp. 181–85), non-violent pornography is no less a violation from MacKinnon's perspective. Pornography violates women by objectifying them. The coarseness of its content only adds insult to injury. Under these circumstances, MacKinnon argues that the constitutional scheme of drawing a content-based line at obscenity\(^\text{15}\) is wholly

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\(^{15}\) Drawing a line of first amendment protection at sexual speech while excluding obscenity has been the Supreme Court's approach since it articulated this distinction in *Roth v. United States*, 354 U.S. 476 (1957). The modern version of the standard is described in *Miller v. California*, 413 U.S. 15 (1973), holding that the guidelines for
inadequate (pp. 174–75). For MacKinnon, pornography is a powerful example of the state’s complicity in the subordination of women. The state sanctions pornography to speak for women, thereby constitutionalizing gender inequality and silencing women.

MacKinnon and Andrea Dworkin tried to diminish the effects of pornography on women through their much publicized Minneapolis Pornography Ordinance.16 Although the constitutionality of this statute under current first amendment jurisprudence has been much debated,17 the point of the statute is often missed in these discussions. The purpose of the legislation was determining whether a given “work” is obscene are: “(a) whether the average person applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.” Id. at 24 (citations omitted). Compare MacKinnon’s definition of pornography, infra note 16.

16 MacKinnon and Dworkin created their pornography ordinance at the request of the City Council of Minneapolis. The statute was controversial largely because of its broad definition of pornography. The legal definition was as follows:

Pornography is the graphic sexually explicit subordination of women, whether in pictures or in words, that includes one or more of the following: (i) women are presented dehumanized as sexual objects, things, or commodities; or (ii) women are presented as sexual objects who enjoy pain and humiliation; or (iii) women are presented as sexual objects who experience pleasure in being raped; or (iv) women are presented as sexual objects tied or cut up or mutilated or bruised or physically hurt; or (v) women are presented in postures of sexual submission, servility or display; or (vi) women’s body parts—including but not limited to vaginas, breasts, and buttocks—are exhibited, such that women are reduced to those parts; or (vii) women are presented as whores by nature; or (viii) women are presented as being penetrated by objects or animals; or (ix) women are presented in scenarios of degradation, injury, torture, shown as filthy or inferior, bleeding, bruised, or hurt in a context that makes these conditions sexual. Ordinance amending tit. 7, chs. 139, 141, Minneapolis Code of Ordinances Relating to Civil Rights (1983).

Pornography also included “the use of men, children or transsexuals in the place of women.”

The ordinance was passed by the Council on December 30, 1983. It was subsequently vetoed by the mayor, reintroduced, passed again and vetoed again by the mayor in 1984.

17 This debate is largely moot as the statute, passed in Indianapolis, was struck down as content-based speech regulation in a constitutional challenge. American Bookellers v. Hudnut, 598 F. Supp. 1316 (S.D. Ind. 1984), aff’d 771 F. 2d 323 (7th Cir. 1985), aff’d 106 S. Ct. 1172 (1986). For the parameters of the debate, see the opinion of the court (by Easterbrook, J.) in American Bookellers, 771 F. 2d 323. See also A. Dworkin, Against the Male Flood: Censorship, Pornography and Equality, 8 Harv. Women’s L.J. 1 (1985).
to give legal recognition to the violence and harm that pornography inflicts upon women by making the harm compensable as discrimination (p. 175). The statute did not ban pornography, but rather recognized that pornography had costs: protecting pornography as speech comes at the expense of women’s speech. For MacKinnon, a statute such as the Minneapolis Ordinance empowers women because it changes the focus from a discussion of whether a given depiction is reasonable according to “the standards of the community”\textsuperscript{18} to a discussion of the politics and costs of objectification in general. Women are thus recognized independent from their images as objects. The objectified image of woman becomes a political subject for dialogue between men and women, each with his or her own voice. The issue of pornography becomes a question of whose speech and at whose expense.

MacKinnon’s discourse on pornography suggests a rethinking of the meaning of “free speech.” Can speech be truly free under conditions of subordination? What kind of a state sanctions pornography as essential to protecting “freedom,” while the suffering of women like Linda Marchiano goes unheard, unbelieved? By posing these questions, MacKinnon posits a new understanding of the first amendment, one that asserts as its central premise speech as equality—a dialogue where each speaker has the power and credibility to speak not as object but as self.

At its most fundamental level, MacKinnon’s feminism is empowering for women because it believes them. MacKinnon takes women’s stories of abuse, violation, rape and harassment as true, as “what is.” In other words, feminism takes women’s speech seriously, it “unsilences” them. At the level of metaphor, \textit{Feminism Unmodified} is both subject to and breaks through the bind it describes. MacKinnon’s critique of male domination and female subordination is necessary to unsilence women. In order for women to be unsilenced by MacKinnon’s critique, however, that critique must be believed. In order for the critique to be believed, women’s speech must be possible—authoritative, ob-

\textsuperscript{18} This is part of the three-pronged obscenity test laid out by Chief Justice Burger for the Court in Miller v. California, \textit{supra} note 15, 413 U.S. at 24 (1973).
jective speech. To be believed in a world of male domination is to be objective, true, powerful. To some extent feminism unmodified is feminism made "objective"—given the authority of truth. Paradoxically then, MacKinnon's critique, her suggestions for law reform and the metaphor of the book itself expose the powerlessness and silence of women while enacting the possibility of women's speech.

—Dan Danielsen