protect, value, or seriously regard our experience. Jurisprudence is masculine because jurisprudence is about the relationship between human beings and the laws we actually have, and the laws we actually have are masculine both in terms of their intended beneficiary and in authorship. Women are absent from jurisprudence because women as human beings are absent from the law's protection: Jurisprudence does not recognise us because law does not protect us. The implication for this should be obvious. We will not have a genuinely ungendered jurisprudence (a jurisprudence 'unmodified,' so to speak) until we have legal doctrine that takes women's lives as seriously as it takes men's. We don't have such legal doctrine. The virtual abolition of patriarchy is the necessary political condition for the creation of nonmasculine feminist jurisprudence.

It does not follow, however, that there is no such thing as feminist legal theory. Rather, I believe what is now inaccurately called feminist jurisprudence consists of two discrete projects. The first project is the unmasking and critiquing of the patriarchy behind purportedly ungendered law and theory, or, put differently, the uncovering of what we might call patriarchal jurisprudence from under the protective covering of jurisprudence. The primary purpose of the critique of patriarchal jurisprudence is to show that jurisprudence and legal doctrine protect and define men, not women. Its second purpose is to show how women – that is, people who value intimacy, fear separation, dread invasion, and crave individuation – have fared under a legal system which fails to value intimacy, fails to protect against separation, refuses to define invasion as a harm, and refuses to acknowledge the aspirations of women for individuation and physical privacy.

The second project in which feminist legal theorists engage might be called reconstructive jurisprudence. The last twenty years have seen a substantial amount of feminist law reform, primarily in the areas of rape, sexual harassment, reproductive freedom, and pregnancy rights in the workplace. For strategic reasons, these reforms have often been won by characterising women's injuries as analogous to, if not identical with, injuries men suffer (sexual harassment as a form of 'discrimination'; rape as a crime of 'violence'), or by characterising women's longing as analogous to, if not identical with, men's official values (reproductive freedom – which ought to be grounded in a right to individuation – conceived instead as a 'right to privacy,' which is derivative of the autonomy right). This misconceptualisation may have once been a necessary price, but it is a high price and, as these victories accumulate, an increasingly unnecessary one. Reconstructive feminist jurisprudence should set itself the task of rearticulating these new rights in such a way as to reveal, rather than conceal, their origin in women's distinctive existential and material state of being ...

Reconstructive jurisprudence

The goal of reconstructive feminist jurisprudence is to render feminist reform rational. We must change the fact that from a mainstream point of view, arguments for feminist legal reform efforts are (or appear to be) invariably irrational. The moral questions feminist reforms pose are always incommensurable with dominant moral and legal categories. Let me put it this way: Given present moral categories, women's issues are crazy issues. Arguments for reproductive freedom, for example, are a little insane: Prochoice advocates can't explain the difference between reproductive freedom and infanticide, or how this right can possibly be grounded in the Constitution, or how it is that women can claim to be 'nurturant' and at the same time show blatant disregard for the rights and feelings of foetuses. In fact, my sense, drawn from anecdotal evidence only, is that the abortion issue is increasingly used in

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ethics as well as constitutional law classrooms to exemplify the 'irrationality' of individual moral commitment. Rape reform efforts that aim to expand the scope of the defined harm are also perceived, I believe, as insane. Why would anyone possibly object to nonviolent sex? Isn't sex always pleasurable? Feminist pornography initiatives are viewed as irrational, and the surrogate motherhood issue is no better. There's an air of irrationality around each of these issues.

That air of irrationality is partly real and partly feigned. The reason for the air of irrationality around particular, substantive feminist legal reform efforts, I believe, is that feminist legal reforms are by necessity advocated in a form that masks rather than reflects women's true subjective nature. This is hardly surprising: Language, of course, constrains our descriptive options. But whether or not surprising, the damage is alarming, and we need to understand its root. Arguments for reproductive freedom, for example, are irrational because the categories in which such arguments must be cast are reflective of men's, not women's, nature. This culture thinks about harm and violence and therefore self-defence in a particular way, namely, a Hobbesian way, and a Hobbesian conception of physical harm cannot possibly capture the gender-specific subjective harm that constitutes the experience of unwanted pregnancy. From a subjective, female point of view, an abortion is an act of self-defence (not the exercise of a 'right of privacy'), but from the point of view of masculine subjectivity, an abortion can't possibly be an act of self-defence: The foetus is not one of Hobbes's 'relatively equal' natural men against whom we have a right to protect ourselves. The foetus is unequal and above all else dependent. That dependency and inequality is the essence of foetushood, so to speak. Self-defence doctrine, with its Hobbesian background and overlay, simply doesn't apply to such dependent and unequal 'aggressors'; indeed, the notion of aggression itself does not apply to such creatures.

Rape reform efforts to criminalise simple rape are also irrational, as Susan Estrich has discovered, and for the same reason: Subjectively, 'simple rapes' are harms, but from the point of view of masculine subjectivity, nonviolent acts that don't threaten annihilation or frustration of projects can't possibly be 'harmful'. In both cases, we have tried to explain feminist reform efforts through the use of analogies that don't work and arguments that are strained. The result in both cases is internally inconsistent, poorly reasoned, weak, and ultimately vulnerable legal doctrine.

'Reconstructive feminist jurisprudence,' I believe, should try to explain or reconstruct the reforms necessary to the safety and improvement of women's lives in direct language that is true to our own experience and our own subjective lives. The dangers of mandatory pregnancy, for example, are invasion of the body by the foetus and the intrusion into the mother's existence following childbirth. The right to abort is the right to defend against a particular bodily and existential invasion. The harm the unwanted foetus does is not the harm of annihilation nor anything like it: It is not an assault or a battery or a breached contract or an act of negligence. A foetus is not an equal in the state of nature, and the harm a foetus can do is not in any way analogous to that harm. It is, however, a harm. The foetus is an 'other,' and it is perfectly sensible to seek a liberal sounding 'right' of protection against the harm the foetus does.

We need, though, to be more accurate in our description of the harm. Unwanted intercourse is 'harmful' because it is invasive, not because it is (necessarily) violent. For that reason alone, the harm of intercourse is descriptively incommensurate with liberal concepts of harm. But it is not incommensurate with women's lives. The goal of reconstructive feminist jurisprudence should be

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to provide descriptions of the 'human being' underlying feminist legal forms that will be true to the conditions of women's lives. Our jurisprudential construct – liberalism and critical theory – might then change as well to account for true descriptions of women's subjectivity.

Conclusion: Toward a Jurisprudence Unmodified

The separation thesis, I have argued, is drastically untrue of women. What's worth noting by way of conclusion is that it is not entirely true of men either. First, it is not true materially. Men are connected to another human life prior to the cutting of the umbilical cord. Furthermore, men are somewhat connected to women during intercourse, and men have openings that can be sexually penetrated. Nor is the separation thesis necessarily true of men existentially. As Suzanna Sherry has shown, the existence of the entire classical republican tradition belies the claim that masculine biology mandates liberal values.[185] More generally, as Dinnerstein, Chodorow, French, and Gilligan all insist, material biology does not mandate existential value: Men can connect to other human life. Men can nurture life. Men can mother. Obviously, men can care and love and support and affirm life. Just as obviously, however, most men don't. One reason that they don't, of course, is male privilege. Another reason, though, may be the blinders of our masculinist utopian visionary. Surely one of the most important insights of feminism has been that biology is indeed destiny when we are unaware of the extent to which biology is narrowing our fate, but that biology is destiny only to the extent of our ignorance. As we become increasingly aware, we become increasingly free. As we become increasingly free, we, rather than biology, become the authors of our fate. Surely this is true both of men and women.

On the flip side, the connection thesis is also not entirely true of women, either materially or existentially. Not all women become pregnant, and not all women are sexually penetrated. Women can go through life unconnected to other human life. Women can also go through life fundamentally unconcerned with other human life. Obviously, as the liberal feminist movement firmly established, many women can and do individuate, speak the truth, develop integrity, pursue personal projects, embody freedom, and attain an atomistic liberal individuality. Just as obviously, most women don't. Most women are indeed forced into motherhood and heterosexuality. One reason for this is utopian blinders: Women's lack of awareness of existential choice in the face of what are felt to be biological imperatives. But that is surely not the main reason. The primary reason for the stunted nature of women's lives is male power.

Perhaps the greatest obstacle to the creation of a feminist jurisprudence is that feminist jurisprudence must simultaneously confront both political and conceptual barriers to women's freedom. The political barrier is surely the most pressing. Feminists must first and foremost counter a profound power imbalance, and the way to do that is through law and politics. But jurisprudence – like law – is persistently utopian and conceptual as well as apologist and political: Jurisprudence represents a constant and at least at times a sincere attempt to articulate a guiding utopian vision of human association. Feminist jurisprudence must respond to these utopian images, correct them, improve upon them, and participate in them as utopian images, not just as apologies for patriarchy. Feminism must envision a postpatriarchal world, for without such a vision we have little direction. We must use that vision to construct our present

185 Sherry (1986) 72 *Virginia Law Review*, p 584.

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goals, and we should, I believe, interpret our present victories against the backdrop of that vision. That vision is not necessarily androgynous; surely in a utopian world the presence of differences between people will be cause only for celebration. In a utopian world, all forms of life will be recognised, respected, and honoured. A perfect legal system will protect against harms sustained by all forms of life and will recognise life affirming values generated by all forms of being. Feminist jurisprudence must aim to bring this about, and to do so, it must aim to transform the images as well as the power. Masculine jurisprudence must become humanist jurisprudence, and humanist jurisprudence must become a jurisprudence unmodified.

THE 'WOMAN'S POINT OF VIEW'[186]

Deborah L Rhode

For many women, the request for the 'woman's point of view' provokes an ambivalent response. On one level, it is an improvement over all those circumstances and all those years in which no one thought to ask and no one was available to respond. On another level, the request, which often proceeds from feminist sympathies, risks perpetuating attitudes at odds with feminist commitments. What follows are a few cautionary remarks on the issue of perspective, on the implications of 'woman's point of view' for legal, social, and feminist theory.

One reason for ambivalence on the subject stems from its historical legacy. For most of American history, emphasis on women's distinctive perspective has worked against women's distinctive interests. An obvious example involves the legal profession's traditional response to female entrants. What is perhaps most striking about this response is the utter lack of self-consciousness with which exclusively male decision-makers have coped with challenges to male exclusivity.

Although women occasionally acted as attorneys during the Colonial period, the formalisation of entry standards during the post-Revolutionary period prevented further participation. Despite the laxity of screening procedures during the Jacksonian era, females and felons remained two groups subject to categorical exclusions.[187] The reasons for resistance to women entrants varied, but what bears emphasis is the presumed difference in the sexes' capacity for legal work. In the view of many 19th century jurists, the 'Law of the Creator' decreed that women's nature was to nurture.[188] Divine inspiration revealed that domesticity was destiny; the 'peculiar qualities of womanhood, its gentle graces, its quick sensibility, its tender susceptibility', were not qualities for 'forensic strife'.[189]

Long after women gained formal admission to the Bar, many educators, employers, and bar associations continued to resist the 'clack of … possible Portias'.[190] The stated concerns were manifold, ranging from the risks of unchaperoned intellectual intercourse in libraries to the seemingly insurmountable difficulties of constructing separate lavatory facilities. At least

186 (1988) 38 *Journal of Legal Education* at 38–46.

187 See Deborah L Rhode, 'Moral Character as a Professional Credential' (1985) 94 *Yale LJ* 491.

188 *Bradwell v State* (1872) 83 US (16 Wall) 130, 141-42 (Bradley J concurring).

189 *In Re Motion to Admit Goodell* (1875) 39 Wis 232, 245.

190 Jannette Barnes, 'Women and Entrance to the Legal Profession' (1970) 23 *Journal of Legal Education* 276, 283.

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some of the resistance, however, rested on women's presumed intellectual incapacity and emotional instability. A prevailing assumption was that females were less adept at 'thinking like a lawyer', whatever exactly that meant. Such attitudes were plainly apparent in hiring, promotion, and academic policies. Leading law schools, law firms, and law associations excluded women entirely or relegated them to subordinate roles. In many classrooms, the 'female point of view' was welcome only on special 'ladies' days' or on special issues (eg hypotheticals involving domestic skills or sexual relationships).[191] Employers similarly restricted women practitioners to specialties in which their 'nurturing qualities were thought particularly appropriate (eg family and estate work) and in which their status, financial compensation, and professional influence were likely to remain limited. Minority women were doubly disadvantaged and significantly underrepresented at all professional levels.

This is familiar history. However, more subtle forms of bias remain. Although the last decade has witnessed substantial improvement in the demographic and cultural landscape of the profession, the rhetoric of gender equality does not yet match the reality of women's experience.

Against this historical backdrop, contemporary discussions of the 'woman's point of view' mark an important advance. The phrase has taken on new meanings that reflect broader changes in the landscape of the law and in other disciplines from which it draws. Feminist perspectives are helping to reshape not only legal doctrine and legal education but also their deeper intellectual foundations. Over the last two decades, the number of courses in women's studies has grown from a few hundred to well over 30,000, and related scholarship has increased at a comparable pace. The result has been not only to increase knowledge about women's experience but also to challenge what counts as knowledge. Informed by other developments in critical social theory, feminist scholarship has drawn attention to the biases of traditional paradigms and to the way that data has been constructed, not simply collected. Together with other activists from the contemporary women's movement, feminist academics have helped to alter the categories and consequences of legal decision-making. While much remains to be done, the increasing influence of 'woman's point of view' has advanced our thinking about the premises and processes of the law. It should not in any sense detract from that achievement to raise certain concerns about its future direction. The concerns are not unique to law, but because they have not been aired as fully in legal arenas as in other contexts, a few general observations bear emphasis, first about 'woman' and second about 'point of view'.

Over the last century, American feminists have centred theoretical and political attention on issues related to differences between men and women. Over the last decade, feminists have increasingly realised the importance of focusing also on differences among women. A crucial contribution of recent theory has been its emphasis on diversity of race, class, age, ethnicity, and sexual orientation. Requests for 'the woman's perspective' tend to obscure that diversity, and risk perpetuating a homogenised view of women's identity and a reductive analysis of women's interests. Such requests point up a central paradox for contemporary feminism. Much of the theoretical and political force of the feminist movement stems from its aspiration to identify values and perspectives that grows out of women's distinctive experience. Yet one of the critical lessons of that experience is its diversity, which demands attention to differences as well as commonalities.

191 See Epstein, *Women in Law* (New York, 1976) pp 101–11.

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Requests for a single and singular 'point of view' raise related difficulties. To assume that feminism offers one theoretical stance is to miss a central point of recent feminist theory. Drawing on postmodernist analysis, contemporary feminists stress the inability of any single overarching framework, including a feminist one, to provide an adequate account of social experience. Theoretical approaches claiming such adequacy have often proved too broad and abstract to explain particular ideological, material, and historical relationships. Alternatively, such approaches have been too grounded in specifics to yield generalisable insights and illumine larger cultural patterns. These limitations have encouraged feminists not to renounce theory but rather to emphasise the need for theories for multiple accounts from multiple disciplines at multiple levels that will avoid privileging any single methodological approach.

Yet the importance of such diversity is too often obscured by the popularisation of one strand of contemporary feminist research. This strand encompasses a range of methodologies and perspectives that do not co-exist peacefully under any single label. For present purposes, however, it makes sense to borrow the generic term 'relational feminism' which stresses the importance of relationships in explaining attributes historically linked with women. Theorists such as Nancy Chodorow, Dorothy Dinnerstein, Jean Bethke Elshtain, Carol Gilligan, Susan Griffin, Alice Rossi, and Sarah Ruddick all emphasise certain caretaking traits and values predominantly associated with women. Despite the diversity among such scholars, their work is often presented as emblematic of the 'woman's point of view'.

The usefulness of relational feminism for legal analysis has been explored at length elsewhere and need not be rehearsed here. Most important, this body of work insists that values associated with women be valued and stresses the need for altering existing structures, not just assimilating women within them. It also provides theoretical foundations for legal reforms necessary to accommodate caretaking interests. Yet the contributions of this scholarly framework have not come without cost, particularly given the unqualified way such perspectives have often emerged in contemporary legal and popular publications.

The problem stems partly from limitations in the theories themselves. An obvious example involves Carol Gilligan's *In a Different Voice*, which, of all relational work, has attracted the greatest following in legal circles. Drawing from psychological theory and empirical research on moral reasoning, Gilligan argues that women are more likely than men to use a 'different voice', ie a voice unlike the one that prominent theorists have generally associated with the highest stage of ethical development. In Gilligan's terms, this different, predominantly female voice stresses concrete responsibilities and relationships rather than abstract principles of rights and justice. For purposes of legal analysis, her conclusion is that conventional approaches place excessive weight on rights rather than relationships.

Like other relational work, Gilligan's makes important contributions. It also requires qualifications that are too often overlooked. In part, the difficulties are methodological, and stem from her work's inattention to differences in women's experiences across culture, class, race, ethnicity, and so forth. Related limitations involve the lack of focus on historical, social, and economic forces that mediate these experiences. Such limitations assume greater significance in light of a substantial body of other research that casts doubt on how different the different voice really is. For example, a review of some 60 recent empirical studies involving moral reasoning finds that most reveal no significant gender differences. So too, much contemporary research on leadership styles and

political values discloses less substantial variations between men and women than relational theory would suggest.

In any event, the most critical issue is not empirical or methodological but normative. The extent to which women and men exhibit different values or reasoning styles is far less important than the consequences of stressing such differences in particular contexts. In assessing those consequences, a number of concerns require attention. On a theoretical level, an emphasis on difference risks oversimplifying and overclaiming. Males' association with abstract nationality and females with inter-personal nurturing reflects longstanding dichotomies that have restricted opportunities for both sexes. The celebration of women's maternal instincts by some relational feminists bears striking resemblance to the assertions of anti-feminists over the last several centuries. The claim that women's liberation does not lie in 'formalistic' equality but in 'the recognition of that specific thing in the feminine personality the vocation of a woman to become a mother' reflects the phrasing of Pope Paul VI, but it could as readily be drawn from work of the New Right or the feminist left.

These different constituencies do, of course, offer different explanations and draw different political conclusions from their points of common emphasis. At least some relational feminists, however, including those with leftist backgrounds, advocate women's retention of primary caretaking roles or emphasise the physiological roots of caretaking capacities. Yet much of this work obscures the extent to which ostensibly female characteristics are socially constructed and constrained. Sex-linked traits and values are profoundly affected by forces that are culturally contingent, not biologically determined. If women do sometimes speak in a different voice, it may be one that is more ascribed than intrinsic.

It is, moreover, a voice that speaks in more than one register. Missing from many relational accounts, particularly in popular and legal circles, is any attention to the dark side of difference, to the less benign aspects of women's caretaking roles and values. Mother-child relationships can involve physical abuse and psychological impairment as well as care and commitment. In addition, women's disproportionate family responsibilities may encourage forms of dependence, sex-role socialisation, and parochialism that carry heavy costs. Yet the tendency in too much relational work has been to ignore the downside of difference or assume that its negative aspects will vanish automatically as structures of subordination erode.

That tendency is understandable. Much of what is theoretically and politically empowering about relational feminism comes from its insistence on the positive attributes of women's experience. But that emphasis carries a price, one that escalates when rhetoric outruns experience. Certain strands of relationalism present the same risk of overclaiming that marred the suffrage campaign. Just as some late 19th and early 20th century activists claimed that woman's involvement would purify politics, some contemporary theorists have assumed that her participation will of itself totally reshape the structure and substance of public decision-making. That assumption is problematic on several levels. It finesses the difficult question of how 'woman's voice' will attain such influence. And it ignores the possibility that what will be reshaped is the voice rather than the context in which it is heard. An add-woman-and-stir approach does not of itself ensure transformation of the existing social order.

From a legal perspective, the simple dichotomies between rights and responsibilities that emerge in some relational feminist work present further difficulties. Rights can impose responsibilities and responsibilities can imply

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rights. Often the concepts serve identical ends; ie a right to freedom from intentional discrimination imposes a responsibility not to engage in it. The converse is also true, and privileging one form of discourse over the other is unlikely to reshape the foundations of American law. Our problems stem less from a jurisprudential focus than from an absence of effective strategies for accommodating the needs of independence and inter-dependence.

The 'woman's point of view' can play an important role in developing such strategies, but not if it is equated with some single theoretical stance or perspective. In certain contexts the risks of such reductionism are especially acute. A common example involves circumstances in which females remain significantly underrepresented, and those in positions of power are more concerned about remedying the appearance than the fact of underrepresentation. In such settings, the request for a 'woman's perspective' is best understood as a request for a woman. It just looks unseemly to leave half the race absent from committees, councils, conferences, boards, panels, etc. And it looks equally unseemly, and indeed ungrateful, for the chosen woman to decline, no matter how belated the invitation, how far removed from her interests or expertise, or how overcommitted her schedule. After all, such requests are clearly preferable to the traditional alternative. As Barbara Babcock once noted, when asked how she felt about being appointed an assistant attorney general because she was a woman: 'It's better than not being appointed because I'm a woman.' Those should not be the only alternatives.

Not all attempts to broaden representation fall into the 'oh my God we've got to have a woman' category. Many requests stem from the well-meant desire for more inclusive perspectives. But in too many circumstances, the real desire is not for a female, let alone feminist, participant, but for an honorary male, for someone who is too acculturated, assimilated, or simply polite to draw attention to her gender or to the selection processes that make gender so apparent. The additional irony is that, in such contexts, it is women who end up feeling uncomfortable, rather than the men whose prior decisions have contributed to that discomfort. Under these circumstances, any response is on some level unsatisfying; token participation risks legitimating a selection process that is anything but legitimate, while exclusion risks perpetuating the patterns that perpetuate exclusivity.

Similar conflicts arise when the request is for a point of view, but the motive springs more from intellectual voyeurism than intellectual curiosity. A representative illustration is the academic who is well versed in political and jurisprudential theory but is unacquainted with feminist work and would like a five-minute summary over lunch. The subtle or not so subtle implication is that he has heard 'you girls think differently' and he is interested in knowing a little about why. And a little is what he has in mind. Bibliographic suggestions will not suffice. A condensed version is what he is after, and again it is something of a no-win situation. A little knowledge is a dangerous thing, but the alternative is hardly better. To offer some reductive account that will be interpreted as the feminist perspective does violence to feminist premises. But it does not advance feminist politics to pass up opportunities to arouse curiosity. After all, sometimes one thing does lead to another.

A variation on this theme emerges when somewhat more knowledgeable colleagues become hell-bent on new footnote fodder. The problem comes if they are interested less in feminism than in feminist chic, ie in the latest intellectual fashions. The most obvious example involves individuals who want to keep up with what is being read by the 'in crowd,' not because they intend to read it but

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because they are intent on citing it. All too often the end product has a disturbingly *deus ex machina* flavour. Women's 'different voice' arrives just in time to supply whatever dimensions the author finds important and undervalued in contemporary legal discourse. These dimensions could often just as easily be associated with humanism, socialism, or critical legal theory. The feminism comes largely in the footnotes, in the choice of citations. Instead of famous dead Europeans, these colleagues often want obscure living feminists, and the request for sources often comes attached with a request for a brief overview of the works suggested; eg one-sentence wrap-ups of the positions of Helene Cixous, Luce Irigaray, and Julia Kristeva and their relevance for modern legal theory. Usually this is all needed by yesterday. And frequently the request comes from colleagues who are most sympathetic in principle but least committed in practice to feminist premises. Once again, the situation is not lacking in irony, particularly when the scholarly emphasis on relational values emerges from an individual who often ignores them in collegial relations.

If these sketches have a familiar resonance, it is perhaps because few of us, least of all this author, are entirely free of such patterns in our own interactions with members of underrepresented groups. To break these patterns, we need to acknowledge the importance of 'the woman's (or minority's) point of view' without homogenising or essentialising its content. When a request comes for that perspective, we must offer a response, but not in the form the invitation assumes. The opportunity to provide a point of view is an opportunity to challenge the assumption that any single stance can adequately capture the diversity of our experiences and interests. Only by entering the debate about 'women's views' can we challenge the terms on which it has traditionally proceeded.

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RACE AND ESSENTIALISM IN FEMINIST LEGAL THEORY[192]

Angela P Harris[193]

Methodology

... In this article, I discuss some of the writings of feminist legal theorists Catharine MacKinnon and Robin West. I argue that their work, though powerful and brilliant in many ways, relies on what I call gender essentialism – 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. The result of this tendency toward gender essentialism, I argue, is not only that some voices are silenced in order to privilege others (for this is an inevitable result of categorisation, which is necessary both for human communication and political movement) but that the voices that are silenced turn out to be the same voices silenced by the mainstream legal voice of 'We the People' – among them, the voices of black women.

This result troubles me for two reasons. First, the obvious one: As a black woman, in my opinion the experience of black women is too often ignored both in feminist theory and in legal theory, and gender essentialism in feminist legal theory does nothing to address this problem. A second and less obvious reason for my criticism of gender essentialism is that, in my view, contemporary legal theory needs less abstraction and not simply a different sort of abstraction. To be

192 (1990) 42 *Stanford Law Review* 581.

193 At the time of writing, Acting Professor, University of California at Berkeley.

fully subversive, the methodology of feminist legal theory should challenge not only law's content but its tendency to privilege the abstract and unitary voice, and this gender essentialism also fails to do …

... In feminist legal theory, however, the move away from univocal toward multivocal theories of women's experience and feminism has been slower than in other areas. In feminist legal theory, the pull of the second voice, the voice of abstract categorisation, is still powerfully strong. 'We the People' seems in danger of being replaced by 'We the Men'. And in feminist legal theory, as in the dominant culture, it is mostly white, straight, and socio-economically privileged claim to speak for all of us.[194] Not surprisingly, the story they tell about 'women' despite its claim to universality, seems to black women to be peculiar to women who are white, straight, and socio-economically privileged – a phenomenon Adrienne Rich terms 'white solipsism'.[195] Elizabeth Spelman notes:

> [T]he real problem has been how feminist theory has confused the condition of one group of women with the condition of all … A measure of the depth of white middle-class privilege is that the apparently straightforward and logical points and axioms at the heart of much of feminist theory guarantee the direction of its attention to the concerns of white middle-class women.[196]

The notion that there is a monolithic 'women's experience' that can be described independent of other facets of experience like race, class, and sexual orientation is one I refer to in this essay as 'gender essentialism'. A corollary to gender essentialism is 'racial essentialism' – the belief that there is a monolithic 'Black Experience', or 'Chicano Experience'. The source of gender and racial essentialism (and all other essentialisms, for the list of categories could be infinitely multiplied) is the second voice, the voice that claims to speak for all. The result of essentialism is to reduce the lives of people who experience multiple forms of oppression to addition problems: 'racism + sexism = straight black women's experience,' or 'racism + sexism homophobia = black lesbian experience'.[197]

Thus, in an essential world, black women's experience will always be forcibly fragmented before being subjected to analysis, as those who are 'only interested in race' and those who are 'only interested in gender' take their separate slices of our lives.

Moreover, feminist essentialism paves the way for unconscious racism. Spelman puts it this way:

> [T]hose who produce the 'story of woman' want to make sure they appear in it. The best way to ensure that is to be the storyteller and hence to be in a position to decide which of all the many facts about women's lives ought to go into the story, which ought to be left out. Essentialism works well in behalf of these aims, aims that subvert the very process by which might come to see where and how they wish to make common cause. For essentialism invites me to take what I understand to be true of me 'as a women' for some

194 See eg Catharine MacKinnon, 'On Collaboration', in *Feminism Unmodified* (1987) at pp 198, 204.

195 Rich defines white solipsism as the tendency to 'think, imagine, and speak as if whiteness described the world.' Adrienne Rich, 'Disloyal to Civilisation: Feminism, Racism, Gynephobia' in *On Lies, Secrets and Silence* (1979) at pp 275, 299.

196 E Spelman, *op cit* at p 4.

197 See Deborah King, 'Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Idelogy' (1988) 14 *Signs* at 42, 51.

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> golden nugget of womenness all women have as women; and it makes the participation of other women inessential to the production of the story. How lovely: the many turn out to be one, and the one that they are is me.[198]

In a racist society like this one, the storytellers are usually white, and so 'woman' turns out to be 'white woman.'

Why, in the face of challenges from 'different' women and from feminist method itself, is feminist essentialism so persistent and pervasive? I think the reasons are several. Essentialism is intellectually convenient, and to a certain extent cognitively ingrained. Essentialism also carries with it important emotional and political payoffs. Finally, essentialism often appears (especially to white women) as the only alternative to chaos, mindless pluralism, and the end of the feminist movement. In my view, however, as long as feminists, like theorists in the dominant culture, continue to search for gender and racial essences, black women will never be anything more than a crossroads between two kinds of domination, or at the bottom of a hierarchy of oppressions; we will always be required to choose pieces of ourselves to present as wholeness …

> Our future survival is predicated upon our ability to relate within equality. As women, we must root out internalised patterns of oppression within ourselves if we are to move beyond the most superficial aspects of social change. Now we must recognise differences among women who are our equals, neither inferior nor superior, and devise ways to use each others' difference to enrich our vision and our joint struggles.[199]
>
> *Audre Lorde*

In this part of the article, I want to talk about what black women can bring to feminist theory to help us move beyond essentialism toward multiple consciousness as feminist and jurisprudential method. In my view, there are at least three major contributions that black women have to offer post-essentialist feminist theory: the recognition of a self that is multiplicitous, not unitary; the recognition that differences are always relational rather than inherent; and the recognition that wholeness and commonality are acts of will and creativity, rather than passive discovery ...

The Abandonment of Innocence

Black women experience not a single inner self (much less one that is essentially gendered), but many selves. This sense of a multiplicitous self is not unique to black women, but black women have expressed this sense in ways that are striking, poignant, and 'potentially' useful to feminist theory. bell hooks describes her experience in a creative writing programme at a predominantly white college, where she was encouraged to find 'her voice' as frustrating to her sense of multiplicity.

> It seemed that many black students found our situations problematic precisely because our sense of self, and by definition our voice, was not, 'lateral, monologist, or static but rather multi-dimensional'. We were as at home in dialect as we were in standard English. Individuals who speak languages other than English, who speak patois as well as standard English, find it a necessary aspect of self-affirmation not to feel compelled to choose one voice over another, not to claim one as more authentic, but rather to

198 E Spelman, *op cit*, p 159.

199 A Lorde, *op cit*, p 122.

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