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CATHARINE A. MacKINNON

are women human?

and other international dialogues

THE BELKNAP PRESS OF HARVARD UNIVERSITY PRESS
Cambridge, Massachusetts, and London, England ••• 2006

On Torture

Torture is widely recognized as a fundamental violation of human rights.¹ Inequality on the basis of sex is also widely condemned, and sex equality affirmed as a basic human rights value and legal guarantee in many nations and internationally.² So why is torture on the basis of sex—for example, in the form of rape, battering, and pornography—not seen as a violation of human rights?³ When women are abused, human rights are violated; anything less implicitly assumes women are not human. When torture is sex-based, human rights standards should be recognized as violated, just as much as when the torture is based on anything else.

Internationally, torture has a recognized profile.⁴ It usually begins with abduction, detention, imprisonment, and enforced isolation, progresses through extreme physical and mental abuse, and may end in death. The torturer has absolute power, which torture victims believe in absolutely and utterly. Life and death turn on his whim. Victims are beaten, raped, shocked with electricity, nearly drowned, tied, hung, burned, deprived of sleep, food, and human contact. The atrocities are limited only by the torturer's taste and imagination and any value the victim may be seen to have alive or unmarked. Verbal abuse and humiliation, making the victim feel worthless and hopeless, are integral to the torture having its intended effect. Often torture victims are selected and tortured in particular ways because they are members of a social group, for example, Jews in 1977 Argentina.⁵ Torturers also exploit human relationships to inflict mental suffering; a man will be forced to watch his wife being raped, for example. Victims are forced to drink their own urine, to eat their own excrement.

This speech was given at an international conference on human rights on November 10, 1990, in Banff, Alberta, Canada. It was originally published as "On Torture: A Feminist Perspective on Human Rights," in *Human Rights in the Twenty-first Century: A Global Challenge* 21 (Kathleen E. Mahoney and Paul Mahoney, eds., 1993).

Sometimes drugs are forcibly administered that alter personalities and make bodily or mental control or even self-recognition impossible. Torture is often designed as a slow process toward an excruciating death. Even when one survives, events move and escalate toward death, which is sometimes wished for to escape the agony. One is aware that one could be killed at any point. Many are.

What torture does to a human being is internationally recognized. Its purpose is to break people. People change under such extreme pressure, studied under the rubrics of brainwashing, post-traumatic stress, and the Stockholm syndrome. Long-term consequences include dissociation, which promotes survival but can be hard to reverse. What one learns being tortured, and what is necessary to survive it, can make living later unbearable, producing suicide even after many years. The generally recognized purpose of torture is to control, intimidate, or eliminate those who insult or challenge or are seen to undermine the powers that be, typically a regime or a cadre seeking to become a regime. Torture is thus seen as political, although it often seems that its political overlay is a facilitating pretext for the pure exercise of sadism, a politics of itself.

When these things happen, human rights are deemed violated. It is acknowledged that atrocities are committed.⁶ While there is no ultimate answer to the question "Why do they do it?" and in the context of torture little agonizing over the question, nothing stops the practice from being identified and universally opposed as a crime *ius cogens*.

With this framework in mind, consider the following accounts:

"Linda Lovelace" was the name I bore during the two and one half year period of imprisonment beginning in 1971. Linda "Lovelace" was coerced through physical, mental and sexual torture and abuse, often at gunpoint and through threats on her life to perform sex acts, including forced fellatio and bestiality so that pornographic films could be made of her.⁷

Ms. "Lovelace" then describes encountering Chuck Traynor, a pimp, as follows:

[W]hen in response to his suggestions I let him know I would not become involved in prostitution in any way and told him I intended to leave he beat me up physically and the constant mental abuse began. I literally became a prisoner, I was not allowed out of his sight, not even to use the bathroom, where he watched me through a hole in the door. He slept on top of me at night, he listened in on my telephone calls with a .45 automatic eight shot pointed at me. I was beaten physically and suffered

mental abuse each and every day thereafter. He undermined my ties with other people and forced me to marry him on advice from his lawyer. My initiation into prostitution was a gang rape by five men, arranged by Mr. Traynor. It was the turning point in my life. He threatened to shoot me with the pistol if I didn't go through with it. I had never experienced anal sex before and it ripped me apart. They treated me like an inflatable plastic doll, picking me up and moving me here and there. They spread my legs this way and that, shoving their things at me and into me, they were playing musical chairs with parts of my body. I have never been so frightened and disgraced and humiliated in my life. I felt like garbage. I engaged in sex acts for pornography against my will to avoid being killed. Mr. Traynor coerced me into pornography by threatening my life first with a .45 automatic eight shot and later with an M 16 semi-automatic machine gun which became his favorite toy. I was brutally beaten whenever I showed any signs of resistance or lack of enthusiasm for the freaky sex he required me to act like I enjoyed. The lives of my family were threatened. Each day I was raped, beaten, kicked, punched, smacked, choked, degraded or yelled at by Mr. Traynor. Sometimes all of these. He consistently belittled and humiliated me. I believed Mr. Traynor would have killed me and others if I did not do what he demanded of me. I didn't doubt he would shoot me. I made myself go numb as if my body belonged to someone else . . . Simple survival took everything I had. I managed to escape on three separate occasions. The first and second time I was caught and suffered a brutal beating and an awful sexual abuse as punishment. The third time I was at my parents' home and Mr. Traynor threatened to kill my parents and my nephew if I did not leave immediately with him. The physical effects of this are still with me. During my imprisonment my breasts were injected with silicone which has since broken up and has been dangerous and painful. All of the surface veins of my right leg were destroyed because I used it to protect myself from the beatings. My doctor told me that because of the abuse, it was unsafe for me to have another child so I had an abortion when I wanted to have the child. It took a long time to even begin to deal with the mental effects. A person can't be held prisoner for two and one half years and the next day trust society, trust the people who have put me there and just go on with the life that you once thought was yours.⁸

Now consider this account:

My name is Jayne Stamen. At one time I thought there was no one who could help me to get away from my husband. There wasn't a day that

went by I didn't think was my last as he totally lost control. He slept with a gun beside him every night as he promised he would kill me and then shoot himself if I didn't submit to his obsession of slavery and bondage and beatings during sex. I was raped 11 times between March '84 and November '86. I had four broken hands during my marriage, caused by my husband. I was put into the hospital in traction for two weeks due to a beating by him. I walked with a walker several months after that. When I was raped by Jerry, I was always tied to my bed. Tied where my legs were spread apart. He tied me with nylon cords and extension cords. I even got tied up while I was sleeping at times. He would then penetrate me with objects such as his rifle or a long necked wine decanter or twelve inch artificial rubber penises. He would shave all of the hair off my private area as he said he wanted to "screw a baby's cunt." He would slap me while I was tied, call me all sorts of horrible names. I broke my arm on two occasions trying to get away from him. When he would watch porno movies on our VCR, he would tell me to do exactly what the women in the movies had done to the men. I would tell him to forget it and then he would continue to slap me around until he'd get so angry that I was afraid he'd beat me so hard he'd kill me. At times he'd grab a large knife he kept in the drawer beside our bed and he'd hold it to my face or breasts and tell me to do as he said or he'd cut me up. If I didn't act like I was enjoying pleasing him he'd threaten me again and then replay the scene he wanted acted out from the movies. I had no place to run as I never had any money of my own. He cut off the phone which was my only contact with the outside world. He would make me visit him when he finished his mailman routine and give him a blow job on the public street while people were passing by. I really wanted to die.⁹

Now consider this composite account of the systematic violation of a woman named Burnham by a man named Beglin, her husband: Beglin was watching an X-rated movie on cable television in the family room. He entered the bedroom, threw her on the bed, and bound her. He ripped off her clothing and began taking photos of her. He then sexually assaulted her. Crisis center workers and an emergency room doctor testified that her wrists and ankles were marked from being tied to the bed by ropes. He forced her sixty-eight different times to have sex with neighbors and strangers while he took photographs. She was forced through assault and holding their child hostage to stand on the corner and invite men in for sex and to have sex with the dog. He beat her so that she was nearly killed.

She testified to episodes of torture with a battery-charged cattle prod and an electric eggbeater. She was asked about photographs in an album showing her smiling during the sexual encounters. She said that her husband threatened her with violence if she didn't smile while these photographs were taken.¹⁰

In the accounts by these women, all the same things happen that happen in Amnesty International reports and accounts of torture—except they happen in homes in Nebraska or in pornography studios in Los Angeles rather than prison cells in Chile or detention centers in Turkey. But the social and legal responses to the experiences are not the same at all. Torture is not considered personal. Torture is not attributed to one sick individual at a time and dismissed as exceptional, or if it is, that maneuver is dismissed as a cover-up by the human rights community. Torture victims are not generally asked how many were there with them, as if it is not important if it happened only to you or you and a few others like you. With torture, an increase is not dismissed as just an increase in reporting, as if a constant level of such abuse is acceptable. Billions of dollars are not made selling as entertainment pictures of what is regarded as torture, nor is torture as such generally regarded as sexual entertainment. Never is a victim of torture asked, didn't you really want it?

A simple double standard is at work here. What fundamentally distinguishes torture, understood in human rights terms, from the events these women have described is that torture is done to men as well as to women. Or, more precisely, when what usually happens to women as these women have described it happens to men, which it sometimes does, women's experience is the template for it, so those men, too, are ignored as women are. When the abuse is sexual or intimate, especially when it is sexual and inflicted by an intimate, it is gendered, hence not considered a human rights violation. Torture is regarded as politically motivated; states are generally required to be involved in it. What needs asking is why the torture of women by men is not seen as torture, specifically why it is not seen as political, and just what the involvement of the state in it is.

Women are half the human race. To put the individual accounts in context, all around the world, women are battered, raped, sexually abused as children, prostituted, and increasingly live pornographic lives in contexts saturated more or less with pornography.¹¹ Women do two-thirds of the world's work, earn one-tenth of the world's income, and own less than one-hundredth of the world's property.¹² Women are more likely to *be* property than to own any. Women have not even been allowed to vote until very recently and still are not in some countries. Women's reproduc-

tive capacities are systematically exploited. While the rate and intensity of these atrocities and violations vary across cultures, they are never equal or substantially reversed on the basis of sex. All this is done to women as women by men as men.

Data contextualizes this, and a few selected examples show it with more texture. In the United States, 44 percent of all women at one time or another are victims of rape or attempted rape; for women of color, the rates are higher.¹³ In 1988, 31 percent of murdered women were killed by husbands or boyfriends.¹⁴ In egalitarian Sweden, one woman is battered to death every week to ten days.¹⁵ Dramatic increases in the rate of reported rape are debated there; the debate is over whether the increases are "real" or "merely" reflect an increase in reporting. Where women are chattel or have only recently even legally emerged from the condition of being chattel, as is the situation in Japan, what can rape mean? If a woman exists to be sexually used, to what sexual use of her is the right man not entitled? Sweden, the United States, and Japan are all saturated with pornography. In the United States, women disappear on a daily basis—from their homes, from supermarket parking lots. Sometimes they are found in ditches or floating down rivers. Sometimes we dig up their bones along with those of ten or fifteen other women ten or fifteen years later. Serial rapists and serial murderers, who are almost always men, target women almost exclusively.

Why isn't this political? The abuse is neither random nor individual. The fact that you may know your assailant does not mean that your membership in a group chosen for violation is irrelevant to your abuse. It is still systematic and group-based. It defines the quality of community life and is defined by the distribution of power in society. It would seem that something is not considered political if it is done to women by men, especially if it is considered to be sex. Then it is not considered political because what is political is when men control and hurt and use other men, meaning persons who are deserving of dignity and power, on some basis men have decided is deserving of dignity and a measure of power, like conventional political ideology, because that is a basis on which they have been deprived of dignity and power. So their suffering has the dignity of politics and is called torture.¹⁶ Women as such are not seen as deserving of dignity or power, nor does the sexuality that defines us have dignitary standards, nor is women's belief in our own dignity given the dignity or power of being regarded as a political ideology. The definition of the political here is an unequal one, determined on the basis of sex such that atrocities to women are denied as atrocities by being deprived of political meaning.

Often the reason given for not considering atrocities to women to be torture is that they do not involve acts by states. They happen between nonstate actors in civil society hence are seen as not only unofficial but unconscious and unorganized and unsystematic and undirected and unplanned. They do not happen, it is thought, by state policy. They just happen. And traditionally, international instruments (as well as national constitutions) govern state action.

First of all, the state is not all there is to power. To act as if it produces an exceptionally inadequate definition for human rights when so much of the second-class status of women, from sexual objectification to murder, is done by men to women without express or immediate or overt state involvement. If "the political" is to be defined in terms of men's experiences of being subjected to power, it makes some (but only some) sense to center its definition on the state.¹⁷ But if one is including the unjust power involved in the subjection of half the human race by the other half—male dominance—it makes no sense to define power exclusively in terms of what the state does when it is defined as acting. The state is only one instrumentality of sex inequality. To fail to see this is pure gender bias. Often this bias flies under the flag of privacy, so that those areas that are defined as inappropriate for state involvement, where the discourse of human rights is made irrelevant, are those "areas in which the majority of the world's women live out their days."¹⁸ Moreover, the fact that there is no single state or organized group expressly dedicated to this pursuit does not mean that all states are not more or less dedicated to it on an operative level or that it is not a deep structure of social, political, and legal organization. Why human rights, including the international law against torture, should be limited by it is the question.

Second, the state actually is typically deeply and actively complicit in the abuses mentioned, collaborating in and condoning them. Linda "Lovelace" describes her escape from Mr. Traynor: "I called the Beverly Hills police department and told them my husband was looking for me with an M 16. They told me they couldn't be involved with domestic affairs. When I told them his weapons were illegal, they told me to call back when he was in the room."¹⁹ She testified before a grand jury in an obscenity case involving one of the films made of her. The grand jury looked at the films and asked her how she could have ever done that. She said because a gun was at her head. It did nothing.²⁰ As Linda Marchiano, she later tried to have an ordinance passed that would have made it possible for her to bring a civil action against the pornographers for damages for everything they did to her and to remove the pornography of her from distribution.²¹ This ordinance, a sex equality law, was invalidated by the United States courts

as a violation of freedom of expression, even though the court of appeals that invalidated it recognized all of the harms pornography did to women and agreed that it actually did those harms. This court held that pornography must be protected as speech in spite of its harm to sex equality—indeed, *because* of these harms, inasmuch as the value of the speech for purposes of protection was measured by the harm it did to women and to their equality.²² When this result was summarily affirmed by the U.S. Supreme Court, the U.S. government legalized an express and admitted human rights violation on the view that the harm that pornography causes is more important than the people it hurts.²³ This is certainly state ratification of her abuse. It also raises the question, if someone took pictures of what happens in prison cells in Turkey, would they be sold as protected expression and sexual entertainment on the open market, with the state seen as uninvolved? The pornography of Linda continues to proliferate worldwide.

Jayne Stamen wrote her account from the Nassau County Correctional Facility in New York, where she was imprisoned. She was convicted of manslaughter in Jerry's killing by three men she supposedly solicited. Evidence of "battered women's syndrome" was excluded from her trial, to the reported accompaniment of judicial remarks such as "I'm not going to give any woman in Nassau County a license to kill her husband" and "Jerry Stamen is not on trial here but Jayne Stamen is."²⁴ Prosecution and jailing are state acts. Can you imagine a murder prosecution by a state against a torture victim who killed a torturer while escaping? If you can, can you imagine Amnesty International ignoring it?²⁵

In the *Burnham* case, the conviction for marital rape that the wife won at trial was overturned on appeal because of the failure of the judge below *sua sponte* to instruct the jury that the husband might have believed that Ms. Burnham *consented*.²⁶ There was no standard beyond which it was regarded as obvious that a human being was violated hence true consent was inconceivable. No recognition that people break under torture. No realization that anyone will say anything to a torturer to try to make it stop. When women break under torture, we are said to have consented, or the torturer could have thought we did. Pictures of our "confessions" in the form of pornography follow us around for the rest of our lives. Few say, that isn't who she really is, everybody breaks under torture. Many do say, he could have believed it; besides, some women like it.

This is the *law* of pornography, the *law* of battered women's self-defense, the *law* of rape. Why isn't this state involvement? Formally, its configuration is very close to the recent case *Velásquez-Rodríguez v. Hon-*

duras,²⁷ in which a man was violently detained, tortured, and accused of political crimes by a group that was allegedly official but was actually a more or less unofficial but officially-winked-at death squad. He has never been found. What was done to him was legally imputed to Honduras as a state under international law mostly because the abuse was systematically tolerated by the government. The abuse of the women described was not official in the narrow sense at the time it happened, but its cover-up, legitimization, and legalization after the fact were openly so. The lack of effective remedy was entirely official. The abuse was done, at the very least, with official impunity and legalized disregard. The abuse is systematic and known, the disregard is official and organized, and the effective governmental tolerance is a matter of law and policy.

Legally, the pattern is one of national and international guarantees of sex equality coexisting with massive rates of rape and battering and traffic in women through pornography effectively condoned by law. Some progressive international human rights bodies are beginning to inquire into some dimensions of these issues under equality rubrics—none into pornography, some into rape and battering.²⁸ Rape is now more likely to look like a potential human rights violation when it happens in official custody.²⁹ A woman's human rights are more likely to be deemed violated when the state can be seen as an instrumentality of the rape. Yet the regular laws and their regular everyday administration are not seen as official state involvement in legalized sex inequality.³⁰ The fact that rape happens is regarded by some far-thinking groups and agencies as a violation of a *norm* of sex equality. But the fact that the *law* of rape protects rapists and is written from their point of view to guarantee impunity for most rapes is officially regarded as a violation of the *law* of sex equality, national or international, by virtually nobody.

High on my list of state atrocities of this sort is rape law's defense of mistaken belief in consent. This permits the accused to be exonerated if he thinks the woman consented, no matter how much force he used. This is the law in Canada, New Zealand, and the United Kingdom, as well as some parts of the United States, including California, where the *Burnham* case was adjudicated. Another example is abortion's unconstitutionality, as in Ireland. A further example is the affirmative protection of pornography in the United States, including under the case in which Linda "Lovelace" participated.³¹ Of course, the United States, an international outlaw of major proportions, is not bound by most of the relevant international agreements, not having ratified them. But other countries where the pornography of her, and others like her, is trafficked are. I would also include

in this list of state atrocities the decriminalization of pornography, first in Denmark, then in Sweden. Those were official state acts, however beside the point of the harm to women their prior pornography laws were. No pornography laws at all is open season on women with official blessing. So is the across-the-board legalization of all participants in prostitution.

Why are there no human rights standards for tortures of women as a sex? Why are these atrocities not seen as sex equality violations? The problem can be explained in part in terms of the received notion of equality, which has served as a fairly subtle cross-cultural template for the legal face of misogyny. The traditional concept is the Aristotelian one of treating likes alike and unlikes unlike—mostly likes alike. In practice, this means that to be an equal, you must be the same as whoever sets the dominant standard. The unlikes unlike part has always been an uncomfortable part of equality law, really an internal exception to it, so that affirmative action, for example, is regarded as theoretically disreputable and logically problematic, even contradictory. The Aristotelian approach to equality, which dominates worldwide, never confronts several problems that the condition of women exposes. One is, why don't men, particularly white upper-class men, have to be the same as anyone in order to get equal treatment? Another is, men are as different from women as women are from men: equally different. Why aren't they punished for their differences like women are? Another is, why is equality as well satisfied by equalizing down as up? In other words, if equality is treating likes alike and unlikes unlike, if you get somebody down in the hole that the unlikes are in, in theory that is just as equal as elevating the denigrated to the level of the dominant standard set by the privileged.

The upshot of this approach is what is called in American law the "similarly situated" test, a concept that is used in one form or another around the world wherever law requires equality.³² As applied to women, it means if men don't need it, women don't get it. Men as such do not need effective laws against rape, battering, prostitution, and pornography (although some of them do), so not having such laws for women is not an inequality; it is just a difference. Thus are these abuses rendered part of the sex difference, the permitted treating of unlikes unlike. Because there are relatively few similarly raped, battered, or prostituted men around to compare with (or they are comparatively invisible and gendered female), such abuses to women are not subjected to equality law at all. Where the lack of similarity of women's condition to men is extreme because of sex inequality, the result is that the law of sex equality does not properly apply.

Sex inequality, in this view, is not simply a distinction to be made prop-

erly or improperly, as in the Aristotelian approach. It is fundamentally a hierarchy, here initially a two-tiered hierarchy. Inequality produces systematic subordination, as in the situations of the women discussed.³³ The Canadian Supreme Court in its *Andrews* decision and cases following has come closer than any other court in the world to beginning to recognize this fundamental nature of inequality, leading the world on the subject.³⁴ To be consistent with equality guarantees in this approach is to move to end sex inequality. Wherever the law reinforces gender hierarchy, it violates legal equality guarantees, in national constitutions and in international covenants as well.

Understanding inequality as hierarchy makes the torture of women because of sex an obvious human rights issue, obscure only because of its pervasiveness. In this light, laws that prohibit what women need for equality, such as restrictions on abortion, and unenforced laws, such as the law against battering, which can make violence women's only survival option, need to be rethought. They violate human rights. Laws that don't fit the violation, such as the law of self-defense, rape, and obscenity in most places, violate human rights. All are affirmative state acts or positive omissions that discriminate on the basis of sex and deny relief for sex equality violations. The lack of laws against the harms women experience in society because we are women, such as most of the harms of pornography, also violates human rights. Women are human there, too.

If, when women are tortured because we are women, the law recognized that a human being had her human rights violated, the term "rights" would begin to have something of the content to which we might aspire, and the term "woman" would, in Richard Rorty's phrase, begin to become "a name for a way of being human."³⁵

feminized the rights and the victims (no matter their sex) become, and the less likely international human rights will be found to be violated, no matter what was done.

How "indeterminate" is this reality? It is not characterized by "ephemerality," "discontinuity," or "fragmentation."¹¹ How much "radical rethinking"¹² does the fact of a genocide need? Do we want "chaotic"¹³ war crimes trials? The theory developed here has not had the luxury of withholding commitment or refusing to be pinned down, nor can it rest on the margin unless it plans to give up women's lives. Are there some "easy categories"¹⁴ here we need to resist? Here, as usual, women's particularity is not in conflict with our commonalities; the deeper the particulars go, the more commonality we find.

That is to say, some of the disavowal of the project of theorizing the reality of women's lives in these papers is disturbing. Against this disavowal, this analysis is offered in the engaged spirit that otherwise animates the papers: as bottom-up theorizing directed toward a change in the still cold heartland of international law and its institutions, where genocidal rape remains condoned.¹⁵

Are Women Human?

The Universal Declaration of Human Rights defines what a human being is.¹ In 1948, it told the world what a person, as a person, is entitled to. It has been fifty years. Are women human yet?

If women were human, would we be a cash crop shipped from Thailand in containers into New York's brothels?² Would we be sexual and reproductive slaves? Would we be bred, worked without pay our whole lives, burned when our dowry money wasn't enough or when men tired of us, starved as widows when our husbands died (if we survived his funeral pyre), sold for sex because we are not valued for anything else? Would we be sold into marriage to priests to atone for our family's sins or to improve our family's earthly prospects? Would we, when allowed to work for pay, be made to work at the most menial jobs and exploited at barely starvation level? Would our genitals be sliced out to "cleanse" us (our body parts are dirt?), to control us, to mark us and define our cultures? Would we be trafficked as things for sexual use and entertainment worldwide in whatever form current technology makes possible?³ Would we be kept from learning to read and write?⁴

If women were human, would we have so little voice in public deliberations and in government in the countries where we live?⁵ Would we be hidden behind veils and imprisoned in houses and stoned and shot for refusing? Would we be beaten nearly to death, and to death, by men with whom we are close? Would we be sexually molested in our families? Would we be raped in genocide to terrorize and eject and destroy our ethnic communities, and raped again in that undeclared war that goes on every day in every country in the world in what is called peacetime?⁶ If women were human, would our violation be *enjoyed* by our violators? And,

This analysis was originally published in *Reflections on the Universal Declaration of Human Rights* 171 (Barend van der Heijden and Bahia Tahzib-Lie, eds., 1999).

if we were human, when these things happened, would virtually nothing be done about it?

It takes a lot of imagination—and a determinedly blinkered focus on exceptions at the privileged margins—to see a real woman in the Universal Declaration's majestic guarantees of what "everyone is entitled to." After over half a century, just what part of "everyone" doesn't mean us?

The ringing language in Article 1 encourages us to "act towards one another in a spirit of brotherhood." Must we be men before its spirit includes us? Lest this be seen as too literal, if we were all enjoined to "act towards one another in a spirit of sisterhood," would men know it meant them, too? Article 23 encouragingly provides for just pay to "[e]veryone who works." It goes on to say that this ensures a life of human dignity for "himself and his family." Are women nowhere paid for the work we do in our own families because we are not "everyone," or because what we do there is not "work," or just because we are not "him"? Don't women have families, or is what women have not a family without a "himself"? If the someone who is not paid at all, far less the "just and favorable remuneration" guaranteed, is also the same someone who in real life is often responsible for her family's sustenance, when she is deprived of providing for her family "an existence worthy of human dignity," is she not human? And now that "everyone" has had a right "to take part in the government of his country" since the Universal Declaration was promulgated, why are most governments still run mostly by men? Are women silent in the halls of state because we do not have a human voice?

A document that could provide specifically for the formation of trade unions and "periodic holiday with pay" might have mustered the specificity to mention women sometime, other than through "motherhood," which is more bowed to than provided for. If women were human in this document, would domestic violence, sexual violation from birth to death, including in prostitution and pornography, and systematic sexual objectification and denigration of women and girls simply be left out of the explicit language?

Granted, sex discrimination is prohibited. But how can it have been prohibited for all this time, even aspirationally, and the end of all these conditions still not be concretely imagined as part of what a human being, as human, is entitled to? Why is women's entitlement to an end of these conditions still openly debated based on cultural rights, speech rights, religious rights, sexual freedom, free markets—as if women are social signifiers, pimps' speech, sacred or sexual fetishes, natural resources, chattel, everything but human beings?

The omissions in the Universal Declaration are not merely semantic.

Being a woman is "not yet a name for a way of being human,"⁷ not even in this most visionary of human rights documents. If we measure the reality of women's situation in all its variety against the guarantees of the Universal Declaration, not only do women not have the rights it guarantees—most of the world's men don't either—but it is hard to see, in its vision of humanity, a woman's face.

Women need full human status in social reality. For this, the Universal Declaration of Human Rights must see the ways women distinctively are deprived of human rights as a deprivation of humanity. For the glorious dream of the Universal Declaration to come true, for human rights to be universal, both the reality it challenges and the standard it sets need to change.

When will women be human? When?

Postmodernism and Human Rights

For an American feminist . . . reading *The Newly Born Woman* is like going to sleep in one world and waking in another—going to sleep in a realm of facts, which one must labor to theorize, and waking in a domain of theory, which one must strive to (f)actualize.

—Sandra M. Gilbert¹

It has been over a quarter of a century since, according to Mary Joe Frug, “MacKinnon . . . launched feminism into social theory orbit.”² In the context of the women’s movement practice at the time, my thought in taking up method was that women’s situation lacked and needed a full-dress theory of its own, and that the experience of women had a distinctive contribution to make to political theory, including on the epistemic level. Back then, my view was that the relation between knowledge and power was the central issue that women’s situation and formal theory posed for each other, and that sexuality was where this issue was crucially played out.³ Almost thirty years later, the discussion launched then is far from finished.

I

Feminism’s development as theory is impelled by the realities of women’s situation. Women’s lives, the women’s movement has found, have contours with content. Centrally, women’s lives were found to have been lived mainly in silence, of which existing theories were ignorant. Almost totally

These thoughts were originally a talk given in Valencia, Spain, to the seminar on Feminism and Politics for the International University Menéndez y Pelayo (UIMP), University of Valencia, on July 4, 1996. They were first published as “Points Against Postmodernism,” 75 *Chicago-Kent Law Review* 687 (2000).

silenced has been women’s sexual violation by men. Beginning in the early 1970s, direct engagement with this social reality—not reality in the abstract, *this* reality in the broken-down immediate socially lived-out concrete—exposed the regularities and widespread extent and trauma of sexual abuse in childhood, the pervasiveness of rape and other sexual assault, the torture and shame of battering, the routine existence of sexual harassment at work, in school, and on the street, and the endemic abuse constituted by pornography and prostitution. The extent and nature of these practices and their place in sexual politics, hence politics, were uncovered and examined. Once this genealogy and its continuity with sexuality more generally were established, nothing from the state to interest groups to culture to intimate relations looked as it had. One implication was that both knowing and the known had to be remade to contend with the role of male power in constructing them.

This practical confrontation with the specific realities of sexual and physical violation created feminist theory, including so-called high theory, in form and content. That these realities were gendered was not assumed, posited, invented, or imagined. Gender was not created in our minds after reading philosophy books other people wrote; it was not a Truth that we set out to establish to end academic debates or to create a field or niche so we could get jobs. It was what was found there, by women, in women’s lives. Piece by bloody piece, in articulating direct experiences, in resisting the disclosed particulars, in trying to make women’s status *be* different than it was, a theory of the status of women was forged, and with it a theory of the method that could be adequate to it: *how* we had to know in order to know *this*.

This particular theory, so built, was a theory of sex inequality and more broadly of sexual politics. In and from the experience of woman after woman emerged a systematic, systemic, organized, structured, newly coherent picture of the relations between women and men that discernibly extended from intimacy throughout the social order and the state. Our minds could know it was real because our bodies, collectively, lived through it. It therefore socially existed. Nor did its diversity undermine its reality; it constituted it. We said: this happens. The movement quickly became global as women everywhere identified sex inequality in their own experience and its place in denying them whole lives.⁴ This particular coherent reality was not an example of what a new way of thinking about knowing or a new angle of vision produced by way of data; it was a specific reality that, collectively conscious, called for a new way of thinking about knowing.

Everything about this theory was, to repeat, particular. It was not general. It was concrete. It was not abstract. It was specific and grounded. It was not a uniform homogeneous unity. It was a complex whole. The point of the discussion of method in *Toward a Feminist Theory of the State* was to articulate the consequences of this new knowledge and the way it was apprehended for theory—specifically for the kind of philosophy that thought that a thought had to be general and abstract, meaning free of particularity of position or substantive social content, not experienced—in order to be validly theoretical. And to connect this new information on what took place in women's lives, silenced by prior theory, to law: law as a state practice, one that has also claimed its validity in putting generality and abstraction into a particular lived form backed by power and authority. The point was to take women's experience seriously enough—both the how and the what of it—to end the inequality. The process was to get to the bottom of the theoretical constructs that had covered it up and defined its reality as theoretically invalid and empirically nonexistent or at most marginal, and had institutionalized that theory and its products as governing norms in law.

"Women" was not an abstract category. "Women" in feminist theory, in contours and content, was thus, as a theoretical matter, formally largely new. Its content was the substantive experience that women in all their particularities and variations had. Not because the theory corresponded to this reality, but because it *was constituted by it*. This was not a general theory of particulars, it was a theory built of these particulars: a particular theory. It was built on, and accountable to, women's experiences of abuse and violation. Its grounded construction and engaged accountability were not a posture it adopted or a flag it flew. They were what it was made of, what it did. It did not purport to be the one true account of how everything really is. It claimed to be accurate and accountable to the social world that constituted it. It related to the reality it theorized in this new way.

Feminism did call for rethinking everything. For one simple instance, the distinction drawn since the Enlightenment between the universal and the particular was revealed to be false, because what had been called universal was the particular from the point of view of power. For another, the subjective/objective division was revealed to be false, because the objective standpoint—or so I argued in *Toward a Feminist Theory of the State*—was specifically the view from the male position of power. That is, those who occupy what is called the objective standpoint socially, who also engage in the practice from that standpoint called objectification—the practice of making people into things to make them knowable—their

standpoint and this practice are an expression of the social position of dominance that is occupied by men. This standpoint is not positionless or point-of-viewless, as it purports to be; it does not simply own accuracy and fairness, as many believe; it embodies and asserts a specific form of power, one that had been invisible to politics and theory but, by feminism, lay exposed as underlying them.

This theory was not an affirmation of the feminine particularity as opposed to the masculine universal. It was not a claim to female subjectivity or a search for it. It saw that these concepts, and the purported divide between them, are products of male power that cannot see themselves or much else. Until exposed, these concepts looked general, empty of content, universally available to all, valid, mere tools, against which all else fell short. Feminism exposed how prior theory was tautologous to its own terms of validation and could hardly be universal because it had left out at least half the universe.

Neither did feminism precisely lay claim to the territory that women had been assigned under this system. More, it was its claim to us that we sought to *disclaim*. We were not looking for a plusher cell or a more dignified stereotype. We were not looking to elaborate the feminine particularity as if it was ours; we had been living inside its walls for centuries. We were not looking to claim the subjectivity or subject position to which we had been relegated any more than we sought to oppress others by gaining access to the power to objectify and dominate that we had revealed as such. All this would have left what we were trying to challenge squarely in place; by comparison with our agenda, it was playing with, or within, blocks. Identity as such was not our issue. Inside, we knew who we were to a considerable extent. Gender identity—the term introduced by Robert Stoller in 1964 to refer to the mental representation of the self as masculine or feminine—situates women's problem in the wrong place.⁵ Our priority was gaining access to the reality of our collective experience in order to understand and change it for all of us in our own lifetimes.

My own work provides just one illustration of how this philosophical approach of theory from the ground up has been productive in practice. This theory, applied, produced the claim for sexual harassment as a legal claim for sex discrimination.⁶ So now, when a woman is sexually harassed and she speaks of it, that is not simply a woman speaking in a different voice or narrating her subject experience of her situation. She is saying what happened to her. And what happened to her, when it happens, is now authoritatively recognized in law as inequality on the basis of sex, that is, as a violation of women's human rights. The civil remedy under the

Violence Against Women Act used the same logic to recognize that rape and battering can be practices of sex discrimination.⁷ Similarly, Andrea Dworkin's and my proposed law that pornography be recognized as a practice of sex discrimination is based on the realities of the experience of women violated through the making and use of pornography. Under it, women's testimony about their abuse through pornography would be recognized as evidence, so that pornography is legally seen to do the injuries that it does in reality.⁸ The same approach produced the argument, adopted by the Second Circuit, that when rape is an act of genocide in fact, it is an act of genocide in law. That is, sexually violating women because they are women of a particular ethnic or religious community aims to destroy that community.⁹

Just these few examples of the practice of this theory show a two-pronged transformation taking place. By including what violates women under civil and human rights law, the meaning of "citizen" and "human" begins to have a woman's face. As women's actual conditions are recognized as inhuman, those conditions are being changed by requiring that they meet a standard of citizenship and humanity that previously did not apply because they were women. In other words, women both change the standard as we come under it and change the reality it governs by having it applied to us. This democratic process describes not only the common law when it works but also a cardinal tenet of feminist analysis: women are entitled to access to things as they are and also to change them into something worth our having.

Thus women are transforming the definition of equality not by making ourselves the same as men, entitled to violate and silence, or by reifying women's so-called differences, but by insisting that equal citizenship must encompass what women need to be human, including a right not to be sexually violated and silenced. This was done in the Bosnian case by recognizing ethnic particularity, not by denying it. Adapting the words of the philosopher Richard Rorty, we are making the word "woman" a "name of a way of being human."¹⁰ We are challenging and changing the process of knowing and the practice of power at the same time. In other words, it works.

Feminism made a bold claim in Western philosophy: women can access our own reality because we live it; slightly more broadly, living a subordinated status can give one access to its reality. Not reality with a capital R—this particular social reality. Since women were not playing power games or trying to win academic debates, we did not claim privilege. We simply claimed the reality of women's experience as a ground to stand on

and move from, as a basis for conscious political action. As it turned out, once rescued from flagrant invisibility, women's realities could often be documented in other ways, and nearly anyone proved able to understand them with a little sympathetic application. Women turned the realities of powerlessness into a form of power: credibility. And reality supported us. What we said was credible because it was real. Few people claimed that women were not violated in the ways we had found or did not occupy a second-class status in society. Not many openly disputed that what we had uncovered did, in fact, exist. What was said instead was that in society, nothing really exists.

II

During the same twenty-five-year period that this theory and practice have been ongoing, a trend in theory called postmodernism has been working on undoing it. Its main target is, precisely, reality. Postmodernism, I will argue—or more narrowly, the central epistemic tendency in it that I am focusing on—derealsizes social reality by ignoring it, by refusing to be accountable to it, and, in a somewhat new move, by openly repudiating any connection with an "it" by claiming "it" is not there.

Postmodernism is a flag flown by a diverse congeries, motley because lack of unity is their credo and they feel no need to be consistent. Part of the problem in coming to grips with postmodernism is that, pretending to be profound while being merely obscure (many are fooled), slathering subjects with words, its self-proclaimed practitioners fairly often don't say much of anything.¹¹ Another part of the problem is that some commentators credit postmodernism with ideas that serious critical traditions originated and have long practiced. For example: "Balkin has been one of the few legal writers willing to explore postmodern issues such as the social construction of reality, the role of ideology, and the problem of social critique."¹² Jack Balkin does explore these themes, calling that work postmodern, but legal feminists have been exploring them in depth for about thirty years, as have Marxists and some legal realists, beginning long before, to name only some. A further part of the problem is that postmodernism steals from feminism—claiming, for example, that the critique of objectivity is a postmodern insight—and covers its larceny by subsuming feminism as a subprovince of postmodernism.¹³

In any event, the appellation "postmodernism" does cohere a constellation of recent tendencies and sentiments in theory. To trace my particular theme, I analyze three issues that are central to women, politics, and theory

to see what postmodernism has made of feminism's methodological breakthrough just described. These three issues roughly parallel Jane Flax's discussion of postmodernism as revolving around the death of man, the death of metaphysics, and the death of history.¹⁴ I do not criticize all that is called postmodern or defend everything said by its detractors; in particular, the American mutation I focus upon is distinguishable from some European poststructuralists whom the Americans appropriate for a patina of authority. Far from attempting to tar them all with this brush, I invite anyone to disidentify with what I describe and to stop doing it any time.

A. "Women"

Postmodernism's rejection of universals has been described by Lyotard, defining postmodernism, as "incredulity toward metanarratives."¹⁵ In its feminist guise, this theme runs under the criticism of "the grand narratives" of feminist theory,¹⁶ questioning in the name of "differences" whether "women" exist and can be spoken of or died with "man." As Mary Joe Frug articulated this point: "I am in favor of localized disruptions. I am against totalizing theory."¹⁷ Antiessentialism is one facet of this objection: the view that there is no such thing as "women" because there are always other aspects to women's identities and bases other than sex for their oppressions. The defense of multiculturalism is another facet of it: there is no such thing as women in the singular; there are only women in the plural, many different particularized, localized, socially constructed, culturally modified women, hence no "women" in what postmodernists imagine is the feminist sense.

If anyone does "grand narratives," I suppose I do, so I think that I'm entitled to say that I don't know what they're talking about. As to "totality"—a bloated, overfed, but also oddly empty term—what is one against when one is "against totalizing theory"? Why doesn't anyone say what is meant by the term? Why aren't there footnotes to the charge?¹⁸ One imagines that it is a reference to Marx and Freud. It is apparently a synonym for "universal," but, just to begin with, no analysis that is predicated on a gender division can be a universal one in the usual sense.

Feminism has also never, to my knowledge, had what is called a "monocausal" narrative;¹⁹ at least I haven't. We do not say that gender is all there is. We have never said that it explains everything. We have said that gender is big and pervasive, never not there, that it has a shape and regularities and laws of motion, and that it explains a lot—much otherwise missed, unexplained. It is a feature of most everything, pervasively denied. That does not mean that everything reduces to gender, that it is

the only regularity or the only explanation, the single cause of everything, or the only thing there. It is also worth repeating that sexual politics, in feminism, is not an overarching preexisting general theory that is appealed to in order to understand or explain, but a constantly provisional analysis in the process of being made and remade by the social realities that produce(d) it.

The postmodern critique of feminism seems to assume that the "women" of feminist theory are all the same, homogeneous, a uniform unit. I do not know where they got this idea either. Not from me. They don't say. This notion that everyone must be the same to have access to the label "women" is not an idea that operates in feminist theory to my knowledge. That uniformity is a standard theoretical property of a category does not mean that it is feminism's concept of women. Women, in feminist theory, are concrete; they are not abstract. They are not sex or gender, they are marked and defined and controlled by it. Gender, in feminist analysis, is also observed to be powerfully binary in society, but not exclusively so; power divisions are observed to exist within sex-defined groups as well as between them, so also in the feminist theory of gender.

Feminism in one sense started the critique of universality as currently practiced by showing how women are left out of the human episteme. We took the critique of society as socially constructed to a new depth by showing how even something often thought by others to be biological—sexuality—is social and draws power lines. Feminism does not "assume,"²⁰ but rather builds, its "women" from women who socially exist. When feminism makes its "women" from the ground up, out of particularities, from practice, rather than from the top down, out of abstractions and prior theory, the so-called essentialism problem cannot occur.²¹ The claim that feminism is essentialist also serves to obscure the formative role of women of color and lesbians, among others, in every part of the feminist theory discussed. They as much as any, and more than most, created the women's movement's, and feminism's, "women."

Postmodernism natters on about how feminism privileges gender,²² but seldom says what that means either. If to privilege gender means that feminism arranges gender at the top of some hierarchy of oppressions, the allegation is false, at least as to me. I don't do hierarchy. If these critics mean that feminists think gender matters a lot, and often read situations in terms of dynamics of gender hierarchy, and refuse to shut up about gender as a form of domination, they're right. They should say why, in each instance, we are wrong to do so, why its place in our analysis is unearned. Male supremacy "privileges" gender; we criticize it.

A related argument is that feminism "essentializes" gender. One concept

of antiessentialism (there are many) is defined by Tracy Higgins as "the rejection . . . of the idea that particular characteristics can be identified with women over time and across cultures."²³ It seems to me that this presents an empirical rather than a conceptual question. Do characteristics exist that can be identified with—meaning found in the reality of—the status of women across time and place, including by those women themselves? Women report the existence of such regularities: sex inequality, for one. It is either there or it is not. One does not oppose the observation that it is there in the name of an idea that rejects thinking that it is there. Once it has been found to exist, to say it isn't there, show it isn't there—show, for example, that female genital mutilation is a collective delusion or harmless or a practice of equality. Women worldwide say that society after society contains practices that treat them unequally to men. To contest this, find a society where they are equal, where unequal practices do not exist. To contest the documentation of common characteristics of women's status across time and place, show they are not there. Of course, social reality has to exist to pursue this. What the postmodernists seem to be saying here is that they don't like the idea that women are unequal everywhere. Well, we don't like it either.

Much of what has animated the critique of the so-called essentialism of feminist theory is the criticism that feminism is racist—that the image of "the feminine" in feminism, according to this critique, has a white woman's face. This criticism applies to the racism of the academy that calls itself feminist but refuses to credential women of color as theorists or appropriates their work as part of its pluralism while itself doing nothing any differently than it did before. It also applies to the racism of the media that presents itself as sympathetic but does not, for example, show how women of color formed feminism since its beginning and continue to do so today. It best criticizes the feminist face of liberal elitism that passes for feminism in some quarters, including in the women's movement. But unlike "essentialism," which sounds like you're talking theory, racism is an ugly, academically nonpresentable, and risky political word that pisses off white people. So instead of saying that something or someone is racist, which they often are, we get the obscure philosophical swear word "essentialist," or we hear that feminists do not take "difference" into account.²⁴

Nice neutral word, difference, and it has all that French credibility. Never mind that differences can simply be fragmented universals. It doesn't improve one's ability to analyze hierarchy as socially constructed to add more pieces called differences if the differences are seen as biolog-

ically determined to begin with. You can have a biological theory of race just like you can have a biological theory of gender, and you've gotten equally nowhere in terms of dismantling social hierarchy. Put another way, if women don't exist, because there are only particular women, maybe Black people don't exist either, because they are divided by sex. Probably lesbians can't exist either, because they are divided by race and class; if women don't exist, woman-identified women surely don't exist, except in their heads. We are reduced to individuals, which, of all coincidences, is where liberalism places us. With its affirmation of women's commonalities in all their diversity, it is feminism that rejects the view that "woman" is a presocial, that is, biologically determined, category and the notion that all women are the same. Feminism and essentialism cannot occupy the same space.

The postmodern attack on universality also proves a bit too much. Inconveniently, the fact of death *is* a universal—approaching 100 percent. Whatever it means, however it is related to culturally and spiritually, whatever happens after it, it happens. Much to the embarrassment of the antiessentialists, who prefer flights of fancy to gritty realities, life and death is even basically a binary distinction—and not a very nuanced one either, especially from the dead side of the line, at least when seen from the standpoint of the living, that is, as far as we know. And it is even biological at some point. So the idea that there is nothing essential, in the sense that there are no human universals, is dogma. Ask most anyone who is going to be shot at dawn.

Multiculturalism is a politically normative version of the anthropological notion of cultural relativism premised on the view "that all cultures are equally valid."²⁵ The postmodern version of the multiculturalist critique assumes that the speaker takes their own culture and its values to be valid and criticizes other cultures from the standpoint of their own. Feminism, however, questions the cultural validity of subordinating women to men anywhere. Feminism does not assume that "other" cultures²⁶ are to be measured against the validity of their own, because feminism does not assume that anyone's culture, including their own, is valid. How could we? Defenses of local differences, as they are called,²⁷ are often simply a defense of male power in its local guise. Male power virtually always appears in local guises; one might hazard that there *are nothing but* local guises for male power. The fact that they are local does not improve them.

Two criminal cases in which a multicultural so-called cultural defense was employed show this multiculturalism's dynamic, particularly its erasure of indigenous women, in operation. In *Chen*,²⁸ a Chinese immigrant man

who beat his wife to death with a claw hammer was defended on the grounds that his rage and violence at the imagined infidelity of his wife were normal in his culture of origin. In another, *Rhines*,²⁹ an African American man was accused of rape through physical force and verbal abuse of an African American woman. His defense was that he mistakenly believed that she consented to the rape because Black people are routinely violent and yell at each other.³⁰ Presumably the racism of these assumptions is apparent, although the defenses were made in the name of opposing the racism of white culture in punishing these men for raping women of color and beating them to death. The African American woman in the rape case was very clear that she was raped. If African Americans yell at each other, she might be the first to know what it meant and not be silenced by it into acting as if she wanted to have sex, or so he could think.

I would also like to know in what culture some men *don't* kill their wives for perceived infidelity (or just because . . .), and in what culture men are *not* supported in culturally specific ways in believing that force is part of sex. (Let's move there.) What postmodernism gives us instead is a multicultural defense for male violence—a defense for it wherever it is, which in effect is a pretty universal defense. Pornography also provides an excellent cultural defense to rape in most Western cultures: the more pornography is consumed, the more difficult it is for men to know that they are using force when they force women into sex—so they *will* culturally believe that women consent to sex no matter how much force is used.³¹ Why are we coming up with a multicultural defense for *each* culture in which men specifically and particularly are permitted to believe rape is sex, instead of looking at the assumption that rape happens in a man's mind rather than in a woman's body in all of them? None of this would be possible if the dissenting women of each culture—the women who say, I was raped—were credited with knowing the reality of what was done to them.

B. Method

Postmodernism as practiced often comes across as style—petulant, joy-riding, more posture than position. But it has a method, making metaphysics far from dead. Its approach and its position, its posture toward the world and its view of what is real, is that it's all mental. Postmodernism imagines that society happens in your head. Back in the modern period, this position was called idealism. In its continuity with this method, to offer a few examples, postmodernism has made the penis into “the

phallus,” and it is mostly observed to signify.³² Women have become “an ongoing discursive practice”³³ or, ubiquitously, “the female body,”³⁴ which is written on and signified but seldom, if ever, raped, beaten, or otherwise violated. Racism and homophobia are elided “differences” in disguise.

Abuse has become “agency”—or rather challenges to sexual abuse have been replaced by invocations of “agency,” women's violation become the sneering wound of a “victim” pinned in arch quotation marks.³⁵ Instead of facing what was done to women when we were violated, we are told how much freedom we had at the time. (For this we need feminism?) Agency in the postmodern lexicon is a stand-in for the powerless exercising power; sometimes it means freedom, sometimes self-action, sometimes resistance, sometimes desire. We are not told which of these is meant, precisely, or how any or all of these things are possible under the circumstances. It would be good to know. Oddly missing in this usage is what an agent legally is: someone who acts for someone else, the principal, who is pulling their strings.

Domination, postmodernists know exists, but they don't tell us how or where or why. It is something that no one does or has done to them but somehow winds up in “gendered lopsidedness.”³⁶ What we used to call “what happened to her” has become, at its most credible, “narrative.” But real harm has ceased to exist.

So whole chapters of books with “pornography” in their titles can be written without ever once talking about what the pornography industry concretely does, who pornographers are, or what is done to whom in and with the materials.³⁷ There is no discussion of how pornography exploits and mass-produces sexual abuse. There is not even an extension of the early work on the scopophilic drive by Foucault, Lacan, and Irigaray (who are even French)—an analysis that is readily extendable to describe the aggressive appropriation and trafficking of women in pornography.³⁸ Nor have I noticed the multiculturalists out there opposing the spread of pornography from Scandinavia, Germany, and the United States on grounds of cultural imperialism, and it's taking over the world. The point of postmodernism is to get as far away from anything real as possible.

Postmodern feminists seldom build on or refer to the real lives of real women directly; mostly, they build on the work of French men, if selectively and often not very well.³⁹ Foucault, for instance, studied some real practices, though he mostly missed gender, which from the standpoint of feminism is a rather big thing to miss. Foucault's elision of gender, feminist postmodernists try endlessly to fix, but his actual engagement with reality—“I'm an empiricist”⁴⁰—they have totally abandoned. Feminist post-

modernism is far, far away from the realities of the subordination of women. All women should be so fortunate.

C. Reality

It is my view that it is the *relation* of theory to reality that feminism changed, and it is in part a reversion to a prefeminist relation of theory to reality that postmodernism is reimposing. This is not about truth. Truth is a generality, an abstraction of a certain shape and quality. Social realities are something else again. Postmodernism has decided that because truth died with God, there are no social facts. The fact that reality is a social construction does not mean that it is not there; it means that it is there, in society, where we live.

According to postmodernism, there are no facts; everything is a reading, so there can be no lies. Apparently it cannot be known whether the Holocaust is a hoax, whether women love to be raped, whether Black people are genetically intellectually inferior to white people, whether homosexuals are child molesters. To postmodernists, these factish things are indeterminate, contingent, in play, all a matter of interpretation. Similarly, whether or not acts of incest happened or are traumatic to children become fogged over in "epistemological quandaries" as beyond thinking, beyond narrative, beyond intelligibility, as "this event that is no event"—as if survivors have not often reported, in intelligible narratives, that such events did happen and did harm them.⁴¹ That violation often damages speech and memory does not mean that one was not violated—on the contrary. Recall when Bill Clinton, asked about his sexual relationship with a young woman intern, said that it all depended on what "is" means. The country jeered his epistemic dodge as a transparent and slimy subterfuge to evade accountability: get real. The postmodernists were strangely silent. But you can't commit perjury if there are no facts. Where are these people when you need them?

What postmodernists want, I have come to think, apart from to live in their heads instead of in the world (that old dodge), is to vault themselves out of power methodologically. They want to beat dominance at its own game, which is usually called dominating. They want to win every argument in advance. Also, if everything is interpretation, you can never be wrong. Feminism has faced that you know what is real not by getting outside your determinants (which you can't do anyway) but by getting deep inside them with a lot of other people with the same foot (or feet) on their necks. Abdicating this, feminism's source of power, postmodernism has swallowed the objective standpoint while claiming to be off on a whole new

methodological departure. Then postmodernists sigh and admit that they might have to concede partiality,⁴² meaning admitting only knowing part. What, again, was the alternative? Totality? What's wrong with partiality—except from the objective standpoint, which thinks it means you can't be right? Who said there is either the whole or a part? Postmodernism keeps becoming what it claims to supersede.⁴³

If feminism is modernist—which is highly problematic, because it is as much a critique of modernism⁴⁴—and postmodernists want to be postfeminist, they have to take feminism with them and go further. They often claim to. To be postmodern in this sense, the insights of modernism and its critics into the inequalities of sex, race, and class must, it seems to me, be taken on board before they can be gone beyond.⁴⁵ Instead of superseding these insights, postmodernists routinely elaborately deny them, ignore them, act as if they are not there. This is premodern, as if feminism never existed. On the question of continuity, whether postmodernism has much if anything to say that modernism didn't is also worth asking. The great modern Gertrude Stein wrote in 1946: "[T]here aint any answer, there aint going to be any answer, there never has been an answer, that's the answer."⁴⁶ How is postmodernism post that?

What I mean to say on the question of reality in theory is this: When something happens to women, it happens in social reality. The perspective from women's point of view does not mean that women's reality can only be seen from there, hence is inaccessible to anyone else and can't be talked about and does not exist. Rather, what can be seen from the point of view of the subordination of women has been there all along—too long. We wish it didn't exist, but it can't be wished out of existence. Anyone can see it. It can be found. It can be ascertained. It can even be measured sometimes. It can be discussed. Before us, it has been missed, overlooked, made invisible.

In other words, the harm of second-class human status does not pose an abstract reality question. In social life, there is little that is subtle about most rapes; there is nothing complex about a fist in your face; there is nothing nuanced about genocide—although many nuanced questions no doubt can be raised about them. These social realities, central to feminism, do not raise difficult first-order reality questions, not any more.

It is the *denial* of their social reality that is complicated and raises difficult philosophical questions. Understand that the denial of the reality of such events has been a philosophical position about reality itself. Unless and until it is effectively challenged, only what power wants to see as real is granted reality status. Reality is a social *status*. Power's reality does not

have to establish itself as real in order to exist, because it has the status as real that power gives it; only the reality of the powerless has to establish itself as real. Power can also establish unreality—like the harmlessness of pornography or smoking—as reality. That doesn't make it harmless. But until power is effectively challenged on these lies—and they are lies—only those harmed (and those harming them, who have every incentive to conceal) have access to knowing that that is what they are. So it has taken us all this time, and a movement that has challenged male power, to figure out that women's reality is also a philosophical position: that women's reality exists, including women's denied violation, therefore social reality exists separate from its constitution by male power or its validation by male knowledge.

This analysis raises some questions about postmodernism that are not simply a report on my current mental state: Can postmodernism stop the rape of children when everyone has their story, and everyone is presumably exercising sexual agency all the time? Can postmodernism identify fascism if power only exists in microcenters and never in systematic, fixed, and determinate hierarchical arrangements? How can you oppose something that is always only in play? How do you organize against something that isn't even really there except when you are thinking about it? Can postmodernism hold the perpetrators of genocide accountable? If the subject is dead, and we are dealing with deeds without doers,⁴⁷ how do we hold perpetrators accountable for what they perpetrate? Can the Serbian cultural defense for the extermination of Croats, Bosnian Muslims, and Kosovar Albanians be far behind? If we can have a multicultural defense for the current genocide, because that's how the Serbs see it, why not a German cultural defense for the earlier one? Anti-Semitism *was* part of German culture. Finally, for another old question, if you only exist in opposition, if you are only full in opposition to the modern,⁴⁸ it has determined you. Don't you need an account of how you are not merely reiterating your determinations? From postmodernists, one is not yet forthcoming. The postmodernist reality corrosion thus makes it not only incoherent and useless—the pragmatists' valid criticism⁴⁹—but also regressive, disempowering, and collaborationist.

There *is* reality to many of the postmodernists' favorite concepts, although they seldom talk about it. Take their "fragmented self."⁵⁰ In the material world they largely refuse to engage or countenance, the fragmented self is a multiple personality. Multiplicity is created through extreme, usually sexual, torture at a very young age.⁵¹ Postmodernists ought to have to confront the human pain of the ideas they think are so much

fun.⁵² Take being nomadic. My Bosnian women clients are refugees. Will Rosi Braidotti's *Nomadic Subjects* help them get through the day?⁵³ Being a real nomad can include being forced to flee your own country for your own survival as your family is exterminated in front of you. Postmodernism celebrates interculturality as a liberating head trip for its cultural rootlessness and multiple possibilities. The actual experience can be something else again. But then, Rosi did say homelessness got fun only after she got tenure.⁵⁴

One final example puts together these points about postmodernism on women, method, multiculturalism, and therefore social reality. It centers on a question, large in Western philosophy, of whether the world exists independently of our ideas of it. This has been a big male problem. An introduction to the postmodern collection *Dominating Knowledge* by Stephen Marglin addresses it by stating that the material world has objective reality but the social world does not.⁵⁵ His example is that although he knows the earth is round (he doesn't say how), people used to think it was flat; in human society, according to him, there is no reality, hence no knowing, like that.⁵⁶ The idea is, if you believe the social equivalent of the world is flat—like, say, that women are inferior to men—it is. In society, there is no reality; there is only what is thought to be real.

To illustrate this, he discusses the subject of "human sacrifice" in a society that believes in its necessity:

Imagine the priestess called upon to explain the consequences of a failure to sacrifice the requisite virgins in the requisite manner. She might well say, "Society will fall apart. Our women and our land will become barren because our men will become impotent as lovers and ineffective as cultivators." *And she will be right.* Believing themselves to be impotent in the hammock and inefficient in the field, the men will be unable to perform in either context. The birth rate will decline, and the harvest will fail. Society *will* fall apart. . . . [B]eliefs bring about the very conditions that will make these beliefs come true.⁵⁷

What we have here is a multicultural sexual and economic rationalization for the murder of little girls. We also have a situation in which men's erections can be dependent on killing female children. Male impotence occupies the status of a fact; erections, I guess, exist. What I want to say about this sort of thing is that no one is asking the girls. The description of "the way things are" is from the position of a man who is about to kill a child. Of course, in this example, it's put in the mouth of a woman. Women often serve male power and do have power over children, but

postmodernists have to portray women actually having power that men largely have in order to confuse people about power. (That they want to avoid being called sexist in the process, we have accomplished.)

My point is this: what happens to the virgin being sacrificed is independent of what she thinks about it. *She* may think that the crops will grow just as well if she is alive tomorrow as if she is killed today. She may even think her human rights are being violated. It makes no difference to the reality of her getting killed today. No matter what she thinks about it, she will be—*be*—dead. This seems to me very simple: the reality of people who don't have power exists independently of what they think. The social constructs that control their lives very often are not their constructs. What women think doesn't tend to make things be the way we think because we don't have the social power to do them or to stop them. Any woman who doesn't know this, in my opinion, has not pushed very hard on the walls around her and other women or has been, so far, very privileged and very lucky.

The reason that it doesn't appear to men (especially men of the theory class) that the world exists independently of their minds is because they largely do have the power to do whatever happens in their minds. If they want, in their minds, to kill her, they can do that in the world. If they want it to give them erections, it will. So they naturally don't know what comes first, it or them. What this means is that women are the ones who know something about social reality as such, which is the extent of its independence of mind. If social reality is independent of *our* minds, it's independent of mind, and men just think it isn't because of their social location.

Women are in a position to know this to the extent that reality does not respond to us. What we know is that the power to make reality be real is a product of social power to act, not just to imagine. We know that reality is about power because we can imagine change all day long and nothing is any different. This is a criticism; it is not an inevitability. We can collectively intervene in social life, but not if we deny that it is there or what makes it be there. We can even imagine, long enough to organize to stop these men, what could happen if some such girls got away with their lives and the crops kept right on growing. Stephen Marglin is not asking this girl if society will fall apart if she lives. We are. We are, if you will, an improbable movement of the escapees and survivors of such sacrifice.

Yes, society is largely made of people's consciousness of social relations. That doesn't mean that everyone's consciousness constitutes social reality equally. As long as social reality is a product of inequality, and postmodernists refuse to contend with social inequality methodologically, postmod-

ernism will go on adopting the methodological position of male power, and the politics of the women's movement of the 1970s will be dead, in theory. Meantime, women in the world will go on fighting to change the unequal social realities of women's lives as if postmodernism did not exist.

III

If it is to contribute to feminism's future, postmodernism has, I think, some questions to answer. What is its account of itself? How convenient to repudiate account-giving when it seems to have none, at least no presentable one. What are its grounds? Now this is an aggressive question. Thinking grounds matter, they repudiate as "foundationalism." But what are the sexual and material preconditions for this theory? David Harvey traces the economic and cultural forces of late-twentieth-century capitalism that, in his analysis, have produced, read determined, postmodernism.⁵⁸ What does this suggest about their ability to promote change? What is postmodernism's project? How linear, how teleological, how serious. To whom and what is it accountable? I say it is accountable to academic hierarchy. Who else can afford this theory?

Postmodernism appropriates its methodological pretensions and gestures from feminism, but it doesn't practice them. Its reality position is closer to the premodern, certainly the prefeminist, a throwback to before the feminism initially described. So it's forward to the past: to yet another set of abstractions with no accountability to subordinated peoples' reality and an implicit but total accountability to power, with familiar if fancier reasons for doing nothing—radical-sounding, but with the same origins, a dislocated elite, and the same consequences, a disengaged theory, that corrodes material resistance to power.

Postmodernism's analysis of the social construction of reality is stolen from feminism and the left but gutted of substantive content—producing Marxism without the working class, feminism without women. It's an abstract critique of abstract subjects. The hall of mirrors (that's plural) that much of postmodernism substitutes for any attempt to grasp a real social world is an ultimate collapse into liberalism's relativism regresses. As mildly put by Alan Sokal and Jean Bricmont, "relativism is an extremely weak foundation on which to build a criticism of the existing social order."⁵⁹ Once postmodernism's various acts of theft and sellout are exposed, what is left is a pose, an empty gesture of theatrical anarchism (to which Marx's critique applies), a Hegelian negation of the status quo (and just as determined by it), liberalism's terrible child (many liberals look plenty grounded

and engaged by comparison), a precious politics of abdication, complacency, and passivism.

I do know this: we cannot have this postmodernism and still have a meaningful practice of women's human rights, far less a women's movement. Ironically, and how postmodernism loves an irony, just as women have begun to become human, even as we have begun to transform the human so it is something more worth having and might apply to us, we are told by high theory that the human is inherently authoritarian, not worth having, untransformable, and may not even exist—and how hopelessly nineteenth-century of us to want it.⁶⁰ (That few of the feminist postmodernists, had it not been for the theory of humanity they criticize, would have been permitted to learn to read and write—this is perhaps a small point.)

The reason postmodernism undermines a practice of human rights is not because it corrodes universality. Human rights in the real world are proving far less attached to their Enlightenment baggage than are the intellectuals who guard its theory. The reason is, the reality of violation is the only ground the violated have to stand on to end it. Power and its pretenders think they can dispense with ground because they are in no danger of losing theirs or the power that goes with it. Postmodernism vitiates human rights to the extent it erects itself on its *lack* of relation to the realities of the subordinated because it is only in social reality that human violation takes place, can be known, and can be stopped.

This analysis in turn raises a question feminism has not had to answer before, as critically as we do now, because we never had a theory class before: what is the place of the academy in the movement? Postmodernism, empty as much of it is, is taking up a lot of feminist theoretical energy in this one world that we all go to sleep in and wake up in. Postmodernism is an academic theory, originating in academia with an academic elite, not in the world of women and men, where feminist theory is rooted. In the early 1970s, I (for one) had imagined that feminists doing theory would retheorize life in the concrete rather than spend the next three decades on metatheory, talking *about* theory, rehashing over and over in this disconnected way how theory should be done, leaving women's lives twisting in the wind. Too, theorizing about little except other theories of theories provides little experience on how to do it.

My feeling is, if the postmodernists took responsibility for changing even one real thing, they would learn more about theory than everything they have written to date put together. Instead, as practiced by postmodernists, the job of theory, as the blood sport of the academic cutting edge, is to

observe and pass on and play with these big questions, out of touch with and unaccountable to the lives of the unequal. Their critically minded students are taught that nothing is real, that disengagement is smart (not to mention career-promoting), that politics is pantomime and ventriloquism, that reality is a text (reading is safer than acting any day), that creative misreading is resistance (you feel so radical and comfortably marginal), that nothing can be changed (you can only amuse yourself). With power left standing, the feminism of this theory cannot be proven by any living woman. It is time to ask these people: what are you *doing*?