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## Response to Five Philosophers: Toward a Feminist Theory of the State Some Decades Later

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**Response to Five Philosophers:  
*Toward a Feminist Theory of the State* Some Decades Later**  
Catharine A. MacKinnon

**Abstract**

In this response to the five philosophers who engaged her *Toward a Feminist Theory of the State* in decades-down-the-road assessments, Professor MacKinnon takes up the central questions in the dialogues they raised on questions of epistemology, method, social construction, racism, and judgment. She re-asserts the centrality of sexuality in gender and sexual abuse in gender inequality and recounts some of the legal consequences of this critique, which she originated.

**Keywords:** gender, women, power, sexuality, sexual subordination, sexual violence, sexual abuse, child abuse, racism, race, epistemology, liberalism, feminism, methodology, method, class, sex, politics, intersectionality, judgment, law, transgender, morality, choice, sexual harassment, rape, prostitution, pornography

Political theorists critical of the gender order deserve, and seldom receive, readings of the seriousness, scope, and depth of engagement brought by these four philosophical papers to *Toward a Feminist Theory of the State*. Writing, one prays for careful readers who will interact with the actual project. Some of us have waited for them a long time. If the person who wrote the parts of this book in around 1972–1975 that are focused upon by these papers could have anticipated this day some forty years later, it sure would have put a smile on her face.

But that would be nothing to the joy of she who has lived through decades of false statements about this work, with few others taking it forward in theory or in practice—the attacks for saying what it did not say, often accompanied by appropriation of the ideas it did advance as the standard for what it lacked. Friends have unsuccessfully urged this combination of distortion, erasure, and theft be taken as a compliment—which is not to say that some philosophers have not engaged this analysis seriously before.<sup>1</sup>

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<sup>1</sup> One of the earliest was Hackett (1996), “Catharine MacKinnon’s ‘feminist epistemology.’” A more recent discussion, following up on her earlier thoughts, is Sally Haslanger (2013), “Liberatory Knowledge and Just Social Practices.” I share the

While a lot of non-reading was going on, a veritable academic cottage industry flourished around Foucault who—at the same time and without contact between us—also analyzed sexuality through a knowledge-power nexus. The major difference between our approaches—together with the fact that mine is explicitly about gender and his is not, a pretty big difference—is that he celebrates hierarchical sexuality and I criticize it. So he vaunts what is, in fact, the existing gender order, virtually without mentioning it in so many words, while my aim is to transform it. As my work along these lines was being at once largely ignored and expropriated, an elaborate literature on Foucault was strenuously attempting to wedge a critical view of gender into his approach to sexuality, so as to produce a usable critique of women’s status in terms of knowledge and power. Go figure.

Apart from the common observation that if a man says something, it is valued, while if a woman says it, it is as if it was not said, this constellation really does make one wonder. If an inconvenient or unsettling problem is ignored, or the subject is changed to something more pleasing to power, or if power is exalted as if it is a solution to a problem the same power has created, does that make the problem go away? Is this academic magic? Is it instructive that no one has ever shown, or ever even tried to show, that sexuality, as expressed in rampant sexual abuse, is not central to male dominance as a gender system? This is not the same as having other priorities. It is to ask, where are the groups of women to whom sexual abuse does *not* occur? How are the links of sexual subordination to oppression such as racism de-linked in reality, not just in denial of reality? If work is only criticized by misrepresenting it, does that mean it may be right? The papers collected here largely get past all this, some in new ways, for the first time. Their engagements, finally, are among the reasons it was written.

*Toward a Feminist Theory of the State* was on an epistemic mission at once political and legal: to theoretically reframe the perceivable realities of women’s lives according to women’s own experiences so they could be seen for the first time, in order to change the politics and laws that construct that reality. At the time it was conceived and much of it was written, there was no such thing as what is today termed academic feminism, although a few scholars (who were footnoted) were beginning to think, research, and write about women’s distinctive situation. There certainly was a women’s movement—diverse, vibrant, engaged, outspoken, activist, and determined. The author imagined that the epistemic mission accomplished, or at least its need revealed in method through the class question, further work for

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disagreement with these two philosophers cogently pinpointed by Ruiz and Dotson at 9–10. Analytic philosophers have also productively used the work to further the analysis of pornography and racist hate speech. See e.g. Ishani Maitra & Mary Kate McGowan (2012), *Speech & Harm: Controversies over Free Speech*.

women, scholarly and practical, would proceed from more accurately reframed realities. This has mostly not occurred. By now, the reverse is closer to the case: more abstract academia in the same old frames, less movement of women. Unforeseen careerism intervened, specifically the building of academic trajectories on unattributed lifting of watered-down ideas, obscurantism, and pleasing power, converged with the pornography wars, a backlash of liberalism and class privilege in support of male power in its most vicious as well as glossiest forms, undermining women's movement on every level. Surviving these forces unintimidated and unbought, these four readings of *Toward* stand out all the more.

Having long since given up hope that *Toward's* actual project would be accurately contextualized intellectually, the acuity and originality of Natalie Nenadic's paper comes as a blaze of light. I do not seek a home for my work other than in women's world, but she has found one for it in continental philosophy, despite the fact that a good many pretenders inhabit the space termed continental feminism.<sup>2</sup> One can also hope that, with any grounding in reality, Professor Nenadic's explication will not result in further decades of attacks based on the aspects of Heidegger's biography that are antithetical to mine, or a sudden enthusiasm now that what I do can be subrogated into a province of what they do. The imaginative projects she outlines take the inquiry ever more deeply into the corners illuminated by her perceptive, precise, and deeply informed analysis.

Susan Brison reveals the costs of silence and the contributions of speech in developing a vigorous defense of the potential of language in a liberatory project for women from sexual violation in particular. What if we all wrote our sexual abuse autobiographies as she did? Her exemplary instance of consciousness raising shows it sets a high standard for one way of philosophizing *Toward* through carrying its project further into the world, building on her stunning *Aftermath*. I am deeply honored by the courage and erudition of Professor Brison's contribution and hope it will be emulated.

The principal purpose of this symposium is to provide these philosophers an extended opportunity to interact with the analysis in *Toward*, to have their say, not for the book's author to gloss the work. That said, it seems to bear repeating, given philosophical training that begins (or purports to begin) with abstractions and reasons to concrete application, or through examples, much as law does, that the method I use is the reverse: it builds concepts from realities. The dialogue with Kristie Dotson and Elena Ruiz's excellent paper suggests the need to consider that this is emphatically the case with the operative "women" in *Toward*. What "sex" or

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<sup>2</sup> In this, I include the postmodernists (mainly from the U.S.) although certainly not all post-structuralists. On postmodernism, see MacKinnon (2006), "Postmodernism and Human Rights," in *Are Women Human? And Other International Dialogues*.

“gender” then means is based on that, derived from that, not the other way around. Neither term can be “universalizing,” if this is how it is methodologically built. Thus, in an investigation that focused on the relation of sex and class—explicitly without purporting to have done the full analysis of the role of race in the status of women that later, better qualified scholars have gone on to build<sup>3</sup>—the “women” of *Toward* are racially specified frequently, as they must be. Sometimes their race is explicitly noted, sometimes not. I really don’t know what more to say about the apparent failure of some (not Professors Ruiz and Dotson) to notice or know who Zora Neale Hurston or Audre Lorde or Carolyn Craven or Johnnie Tillmon or Mechelle Vinson, not to mention Angela Davis, are, when quoted or cited as speaking insightfully and exemplarily as and for women.<sup>4</sup> That they are women of color in no way limits the universality, in the sense of general applicability, of their insights in applying to women. They perfectly and completely represent women. Methodologically as well as politically, they are women, often speaking for or about all women more acutely and with clearer perception than anyone else has. Being of color takes nothing from this. Of course, it partly constitutes it as well.

This approach is not simple or conventional in politics, philosophy, or law; building “women,” then “sex,” out of the concrete women and men who comprise its reality is theoretically unusual. To illustrate this point from one experience, I find that especially analytically trained philosophers who request permission to use portions of my work in their collections for student instruction repeatedly want to eliminate what they call “the examples” or “the social science” or “the stories,” leaving only what they regard as the analysis: the more abstract statements. Stripped of the realities of sexual abuse, the heart of the analysis is gone. The reality is the analysis.

The core argument of *Toward* on method in its relation to liberal jurisprudence is explicated with exceptional lucidity in the Ruiz and Dotson paper. Furthering their recognition of our mutual convergences, notice that the concept “women” in *Toward* is what they call a “coalition.” However, my analysis does not revolve around sameness or “differences,” but treats hierarchies of power—which language actually seems more consistent with their overall approach to “important asymmetries that threaten collaborative engagement” (Ruiz and Dotson 2017, 11), and would give further political edge to their critique. There seems to be something of an operative underlying assumption that unless “differences” are incorporated, a

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<sup>3</sup> See discussion in MacKinnon (2013a), “Intersectionality as Method: A Note,” in the Special Issue of *Signs*, “Intersectionality: Theorizing Power, Empowering Theory.” The other papers in this special issue are highly informative.

<sup>4</sup> These references can be found on pages 125, 171, 237, 272, 275, and 288 in *Toward*.

group such as “women” is presumed all the same within, defined by differences outside or on its “margins.” While that approach to categories is philosophically and legally standard, as well as Aristotelian, it is not at all what I do, as they largely also recognize.<sup>5</sup> The group “women” in my work aims to be made up of all women’s diversities. If a given statement is not accurate in some way of all women, it is not a valid statement. This aspirational standard, we three know, is both utterly massive and always open to correction and falling short.

This group “women” is indeed unstable internally, as they argue, and not necessarily anyone’s home; but the fact is, alas, it is extremely stable externally in the world. In accord with this understanding, “identity” is not theorized in *Toward* because it is not where its politics originate or crucially occur; how one *is identified*, hence treated, in a social system of power is.<sup>6</sup> Nor is “the centrality of sexual

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<sup>5</sup> This critique is the project of Chapter 12 in *Toward*, on sameness and difference, as well as the extended argument of *Sex Equality* (MacKinnon 2001).

<sup>6</sup> My work is thus not part of what is termed “identity politics.” To illustrate, I do not “identify” as “white,” although I am well aware that I am socially identified as white and of the privileges that status confers under white supremacy. “White” as a politics advances racialized dominance. Feminism opposes dominance. For further discussion of my views on this, see, e.g., MacKinnon (1991), “From Practice to Theory, or What is a White Woman Anyway?” and MacKinnon (2002), “Keeping it Real: On Anti-‘Essentialism,’” in *Crossroads, Directions, and a New Critical Race Theory*.

“White feminism,” if not an oxymoron, evokes Nazi women prison guards or something: empowerment of women in the context of the advancement of white supremacy. Undisclosed is how that term (“white feminism”) describes the U.S. 2016 presidential election, which Michelle Obama provided with by far its most feminist content. Should it matter—which I do not think it much does—I do identify as a woman, which among other things means sexualized, gendered, second-class status and global citizenship. What does matter is the work itself, the politics it embodies and promotes, which these papers mainly engage.

Clare Chambers raises the “Who is a woman?” question, one become differently pointed and weighted since *Toward*. Women, a social status, includes transwomen because in the system of male dominance, they are seen and treated as women, coupled with gendered subordination based on their trans-status when visible or known. That they “identify as women,” as specified for a particular group of transwomen in my prior online discussion, is a political designation, not a psychological internal one, much as “woman-identified woman” once was, and for some still is. Similarly, the term “born woman” is simply equivalent to a social status of “being assigned female sex at birth based on viewing one’s external genitalia”

difference (as sexuality)” (Ruiz and Dotson 2017, 4), far less “feminine sexual difference” (5), its focus. It rather criticizes the notion of “difference” as part of the cover-up of the reality of dominance and subordination. “Identity” it avoids, as at best consciousness’s diluted relation.

“Reforming” what is termed “regulating women’s sexual capacities and reproduction” (Ruiz and Dotson 2017, 2) is not its project, nor is loyalty to the state form its precondition. Ending sexual violence is not a move within the regulation of women’s sexuality any more than a critical theory of the state is a move within “state-building” (11). The harms of sexual violence against all women are *Toward’s* primary ground and target; accountability for those harms has animated my work since as well, as the reality of this abuse persists and proliferates along with women’s resistance to it. Confronting the racism of state power when deployed against delusions of sexual assault, and when not deployed against its reality—as has occurred against Black men and been typical when women of color are sexually abused, respectively—is an integral part of that work. Ruiz and Dotson do not contend with these realities, refer to them concretely, or theorize how a distinctively postcolonial antiracist feminism critical of the liberal state would approach them. Reference to “race coalescing in temporally indistinct ways with the experience of gendered subordination”<sup>7</sup> might refer to rape of enslaved women of

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that has, from all that appears, gone unquestioned since. I also regard raped men as among my sisters, an embrace that has so far gone without “criticism.” For illumination along these lines, see Lori Watson (2015), “What Is a Woman Anyway,” in *Logos*.

<sup>7</sup> Ruiz and Dotson, 12. The leading legal and social theorists Kimberlé Crenshaw and Mari Matsuda, as mentioned in the preface to *Toward*, xii, went on to develop the theory of intersectionality that *Toward* at best partly anticipated. Somewhat pre- envisioning this theory, as Nenadic at 10 noted (“MacKinnon very meticulously, deftly, and consistently weaves concrete work on such intersectionality within her analyses. And, of course, that intersectionality is also at the heart of her legal precedents on behalf of women who live these interconnected forms of subordination” while also respecting that *Toward* does not present a unified inequality theory of sex, race, and class), *Toward* discusses whether sexuality can be one’s own in terms of a possible parallel between Black culture and women’s sexuality. Among the failures of such a parallel was observed: “the parallel cannot be at all precise [because] Black women and their sexuality make up both Black culture and women’s sexuality, inhabiting both sides of the comparison. In other words, parallels which converge and interact are not parallels. The comparison may nevertheless be heuristically useful both for those who understand one experience but not the other and for those who can compare two dimensions of life which

African descent by white owners, for one instance—being subordinated through race and gender at the same time. Or, today in perfect continuity, being raped-while-Black by a white man (say, a policeman) with systemic impunity. Rape being a tool of racial dominance does not make it at the same time not a tool of gender dominance. Necessarily, not all the “harms enacted by colonial violence against racialized women” (Ruiz and Dotson 2017, 3) will be sexual. But it is worth noting that original women’s battles for sovereignty over their lands, communities, and bodies in the territory now called the United States have converged in one ongoing fight to amend the Violence Against Women Act to move jurisdiction for sexual assault of Native women into tribal courts.<sup>8</sup> This work is closer to countering the epistemic “*systematic harms*” (4) Professors Ruiz and Dotson rightly see emerging from my method, as marked by sexually racialized and colonial dominance, than to “regulating women’s sexual capacities and reproduction” (2). Complicity with “the very legality of a state formation through which patriarchal power flows” (3) is always a risk of legal engagement, and remains so to some extent even in this attempt to get out from under it.<sup>9</sup>

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overlap and resonate together at some moments and diverge sharply in dissonance at others” (1989, 288). This last phrase strikingly converges with the Ruiz and Dotson analysis quoted above. See also Kimberlé W. Crenshaw (2010), “Close Encounters of Three Kinds: On Teaching Dominance Feminism and Intersectionality.”

<sup>8</sup> Native women worked so that the 2013 reauthorization of the Violence Against Women Act granted tribal court jurisdiction for sexual assault of Native women by non-Native husbands or boyfriends, at least a step in the jurisdictional direction they had urged. They conducted grassroots organizing, spoke with members of Congress about the especially high rates of sexual assault on Native women, and shared their own stories of domestic violence that continued because Tribal courts could not prosecute a non-Native attacker. For a description of their work, see Capriccioso 2012, Majel and Henry 2012, Capriccioso 2013. For documentation of the ongoing (and past) work of Native women fighting against sexual assault by strengthening Native sovereignty, see the various volumes of Restoration Magazine, available at “Restoration Magazine,” *National Indigenous Women’s Resource Center* (<http://www.niwrc.org/restoration-magazine>).

<sup>9</sup> For some of my more extended writing on these themes over time, in case they are of interest, see MacKinnon (1987), “Whose Culture?” in *Feminism Unmodified: Discourses on Life and Law*, MacKinnon (2006), “Sex Equality Under the Constitution of India: Problems, Prospects, and ‘Personal Laws’” in *Are Women Human? And Other International Dialogues*, and “Martinez Revisited,” in *The Indian Civil Rights Act at Forty*, Kristen A. Carpenter, Matthew L. M. Fletcher, and Angela R. Riley (2012).

As a side observation in connection with the emergency of race, notably no one prominently seems to feel the need to establish what racism is fundamentally about in order to combat it. Maybe this is because it is not necessary. But the lack of a sense of urgency on this score, or any notion that the problem of racism cannot really be solved, nor can effective strategy against it be formulated, until this is known, poses an interesting vacuum, despite the existence of some competing explanations.<sup>10</sup> Relatedly, careers are not being made saying it is philosophically impossible and politically fruitless to try to end racism without offering a positive normative vision of the utopia to follow.<sup>11</sup> Yet the “race” in racism is not at all obvious to say the least, contains dramatic diversity, and is not a universal, stable, uniform reality, despite its appalling stability in the real world. There seems to be a suspicion out there that the gender of sexism must be about something valid somewhere, even though there is no such suspicion about the validity of the race in racism.<sup>12</sup> Suppose both are about nothing but the power relations predicated on

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<sup>10</sup> Perhaps I am looking in the wrong place as well as asking the wrong question, but no answer to this precise question could be discerned despite the voluminous literature on race and racism generally, within every existing social discipline and intellectual current and sub-current. See, e.g., Solomos and Murji 2014. For quick overviews from various disciplines, surprisingly useful as entry points are the essays and bibliographies in: *International Encyclopedia of the Social and Behavior Sciences*, 2nd (Amsterdam, 2015; see Moses, Fredrickson, Clair & Denis, Augostinos & Every, and Hervik); *The Encyclopedia of Political Thought*, Michael T. Gibbons, ed. (Wiley, 2014; see Alexander-Floyd); *Encyclopedia of Political Science*, ed. George Thomas Korlan, 1417–1420 (CQ Press, 2011). See also Back and Solomos 2002. Illuminating on historical dynamics is Fredrickson 2002.

<sup>11</sup> We are in accord on this, as most else. Discussing parallels between Latin American liberation philosophy, my work, and theirs, Ruiz and Dotson comment: “MacKinnon, like us, does not need a utopia to strive for something better in the world at hand” (10).

<sup>12</sup> This statement temporally postdates the demise of the virulent racism of “scientific racism” and takes the view that the social belief by white people in the superiority of the so-called white race, and the inferiority of other races, or at least its legitimated public assertion, is largely a thing of the past, which may be a bit optimistic. The contrast being made here, in any event, can be illustrated by comparing a passage from the preamble from the Convention on the Elimination of All Forms of Racial Discrimination (CERD) with the closest equivalent in Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which does not even come close. The CERD preamble states: “Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally

them. Does this exempt racism from the need for specifying its fundamental dynamic or impetus or site?

White supremacy, including through colonialism, is an especially vicious and predominant institutional ideology and reality of it, but it is not the only one. Further philosophy on the ground and motive force of racism, with attention to method, especially given its intra-, trans-cultural, and historical multidimensionality and complexity, would have to be illuminating as part of a “decolonial feminist theory of the state” (Ruiz and Dotson 2017, 3). What is the “race” of racism fundamentally *about*? (Which is not to say that its impact on essentially everything is any mystery.) An embracing theory of inequality that is adequate to sex, race, and class will be closer when an answer on this level is persuasively advanced. That answer was not available to my knowledge in the early-to-mid-1970s,<sup>13</sup> nor did I think I was the right person to determine or define it.

Professors Ruiz and Dotson are surely right that it is impossible for any one person to be completely inclusive (13), even as we also agree that inclusion is essential. One’s reach will necessarily exceed her grasp in this respect. No one is

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condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere” (International Convention on the Elimination of All Forms of Racial Discrimination, Mar. 7, 1966, 660 U.N.T.S. 195). Although CEDAW is based on CERD in many respects, it has no equivalent to this perfect (except for the word “morally,” which could be cut and the passage would say the same thing) statement. CEDAW’s Preamble speaks of the rights of women and the utility of recognizing those rights to various ends, for instance: “Recalling that discrimination against women violates the principles of equality of rights and respect for human dignity, is an obstacle to the participation of women, on equal terms with men, in the political, social, economic and cultural life of their countries, hampers the growth of the prosperity of society and the family and makes more difficult the full development of the potentialities of women in the service of their countries and of humanity” (Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13). But nothing recognizes, as CERD does for racism, that sexism is an empirical flat-out lie. This connects with the discussion of morality in the Chambers paper as well, illustrating the difference between the recognition of factual falsity underlying CERD and the consequentialist utilitarianism of the CEDAW Preamble. The international critique of sexism seems to remain on the liberal level, which racism has escaped.<sup>13</sup> For one quick intellectual update approximating this question, see Valluvan and Kapoor 2016. For some material published around the time *Toward* was being written, see Robert Staples 1967 and Stember 1976. Professor Staples (2006) published his further thoughts in his *Exploring Black Sexuality*.

everyone. No one can substitute for anyone else, far less for everyone else. Going further, dispensing with everyone but oneself in politics is a fascist aspiration, including in theory. In a women's politics, the pose of containing all, of being the ultimate authority, of ending debate, is totalitarian. We each have our own voice and need an ear for the voices of all of us. As to this prospect, in Ruiz and Dotson's brilliant formulation, "oppression . . . provokes ways of knowing it that are neither reducible to each other nor very far apart" (13).

Clare Chambers wants to know if we can have a feminist method that is open in this way and still make judgments. This question is somewhat puzzling after her *Choice* book, in which she nailed down the proposition that alternatives that are constructed by inequality and weighted by power cannot be considered real choices at all in any free sense (Chambers 2008). In any case, she recognized that liberalism uses "choice" to "protect inequality and social constraint" (Chambers 2008, 4), because it does not squarely face the coercive power of social construction. She attempted to reshape liberalism to understand that women are socially constructed to make harmful choices that conform to patriarchal social norms.

But I mean, how is it that one can come to the judgment (she presents her work as normative) that what is presented as a free choice is not really, yet saying that to or about a person—"judgment that is directed *to* women" (Chambers 2017, 4, italics in original)—that they are inaccurate in thinking themselves free in making certain choices, for example—poses a wholly separate problem? Apparently, the issue she is isolating distinguishes between what one may say critically *about* a social situation and that same critique *to* the people in the situation or even about them *as* people in that situation, despite the fact that the purported choice situation is only ever constituted by these very people. Why is this distinct? Because they don't take it well? Or because the situation is abstract and the individual is real? Or because the critic may be "criticized" for "criticizing" them?

What is driving the Chambers analysis, its standard for itself, what successfully answering her question would be, by what measure, is not specified, so it is hard to know. "Feminism," frequently evoked, may be the answer, but what is that here? Feminism is not about how an individual is to live virtuously or be liked or be or feel above criticism. For something to be feminist is not an accolade or a gold star or a secret handshake or an invulnerable soapbox. It is about (do we really need to keep saying this?) ending male dominance and the subordination of women, including the status hierarchy of masculinity over femininity. This calls for real analytic and strategic assessments, which arise occasionally in her piece, but are not its central thrust or concern.

To put this discussion into one reality context in which "choice" is constantly being invoked, perhaps the distinction being made is between criticism of choosing alternate conditions—say prostitution versus starvation—and criticism of the person

said to be choosing between alternate conditions—say women prostituting to avoid starvation. Those of us who work against prostitution neither see this as a choice nor “judge” people being prostituted. At their request, we work *together* to hold their exploiters accountable and to build real alternatives—that is, to move society to provide what they are asking for, toward equality. People in prostitution who do not want to work with us in this way do not (or not until they have been used a few more years . . .). The examples she cites that consider women criticizing other women’s parenting styles as just as dangerous as the sexualization of children, or women judging other women as a plague worse than Donald Trump, have lost any sense of reality. When and how does one learn anything? Significantly, neither the consequences of the sexualization of children nor Donald Trump can be avoided by simply being ignored.

Unlike these examples, the “choice” question in the prostitution application, which is actually driving a policy discussion with real consequences worldwide, originates with people outside prostitution, usually liberal elites, who attack those of us working for abolition of prostitution for moralizing (we are not), so they can defend serial rape (most of it for the profit of others) as independent entrepreneurship. Is there a special problem with “judging” *these* defenders of what they call “her choice” for their elitism and denial of reality, for siding with vicious abuse, and for maintaining their own privileged status above prostituted women, in part by defending their subordination, which defense is typically lavishly rewarded by power?<sup>14</sup> Does the fact some of them are women exempt them from this critique?<sup>15</sup> Chambers does ask this question. But observed in its actual factual setting, the broader question of “judgment” as she frames it does not arise in this instance, because the victims are not being “judged.” Only the skills are. And the perpetrators they are standing in for.

Who is being “judged” for what relation to inequality has to be specified to be clear on her judgment question. The term “judgment” carries triple political/moral/legal meanings that seem to me conflated in the Chambers piece. It can mean a conclusion about a reality of people or happenings based on evidence and analysis, the attachment of negative value to someone or something, or a legal decision (literally, a judgment) under pre-existing standards as to what institutional assessment will be made of what occurred by whom, usually including who is being held responsible for it. My epistemic project works on the first of these levels, its law and politics seamlessly on the third.

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<sup>14</sup> This is all discussed at greater length in MacKinnon (2011), “Trafficking, Prostitution, and Inequality.”

<sup>15</sup> My own view on this can be discerned from MacKinnon (1987), “On Collaboration” in *Feminism Unmodified: Discourses on Life and Law*.

The second, the project of moral philosophers, is of no real interest, although it seems to shape the question Professor Chambers is trying to answer. My reading is that she seeks a grounding not for a view of reality or a determination of responsibility, but for an attribution of moral negativity—specifically one a person can, without being open to such judgment herself, level within the inequality at hand. Or to have it explained why this is not doable. This is an approach fundamentally within liberalism. It can confuse who is doing what to whom and who is where in the infliction of inequality's harms. Ultimately, nothing methodological, in my view, relieves a person of the burden and responsibility of making one's own assessments on any of these three levels and of making one's own arguments persuasive. But I do have a lot to say about reality and liability, including concerning accuracy of assessments of them, and nothing about morality. The grandstanding and pontificating, deciding what is and is not "praiseworthy" (Chambers 2017, 15) or not, and how to be liked by everyone while doing it, is left to the liberals.<sup>16</sup>

It occurs to me at this point to clarify a few basic points. One, the unit of analysis in the Chambers piece is largely the individual,<sup>17</sup> both the person doing the "judging" and the person "judged." Mine is not. Two, biology is an excuse for social oppression for sex as well as for race. No more, no less. Three, Professor Chambers seems to seek direction on how to live as a nice person, saying things that are not regarded as "surprising" (15). My project is a politics of change, calling for treating A as A, rather than not-A. She raises a decent point on this level when she observes that alleviating the emergency of gender for oneself can prolong it for everyone else. This could be (but here is not) the beginning of a very interesting political analysis of *what is*, although it is hardly confined to, or probably even most urgently posed by, the transgender context. Fourth, social institutions are made up of people acting. They don't have to be bad people to take advantage of positions of inequality, they just have to take advantage of positions of inequality, for which they have to be in a position to do so. Fifth, I do not theorize "freedom," including how it can exist under conditions of inequality. (Liberals seem to assume this possibility without ever having accounted for it.) I theorize equality as real freedom's precondition.

Where she says I address her question of judgment directly, I don't. Her conclusion that "judgment is thus particularly fraught" (Chambers 2017, 5) transforms my epistemic critique of objectivity into an answer to a wholly other question. One's social perception is indeed affected by one's social position, but that does not mean a normative critique is necessary in order to have a critique at all (6).

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<sup>16</sup> See MacKinnon (2013b), "Shakespeare's Sister in Philosophy and Reality: A Response."

<sup>17</sup> She becomes more collective toward the end, starting around pages 16–17.

“We are against rape and pornography and sexual harassment and gendered poverty,” she argues, “because women should not be unequal to men . . . because it is *bad* to treat them that way” (6). Actually, these are practices of sex inequality not because they are “*bad*” or because it would be “*good*” to treat women as if we are men’s human equals, but because we are, treated in the practices mentioned as if we are not. If sex inequality is a system of domination and subordination, a social hierarchy of power in the world, sex equality is not first a moral value and seeking it is not fundamentally a normative project in the conventional philosophical sense. Because men *are not* (that is the existential verb) women’s biological superiors, women men’s biological inferiors, sex equality *is* first a fact, denied realization in social orderings. It is the social inequality of the sexes that is normative without grounding, without ever having had to provide a philosophically sound account of itself, almost universally presented as merely reflecting a factual natural “*difference*,” when the differences between the sexes, such as they are, are equal, i.e., equally different, and as such contain no justification for domination or subordination, a thoroughly normative arrangement. The politics of sex equality are thus first rooted in a recognition of reality—the reality of the sexes’ human equality—not fundamentally based on a moral judgment that it would be good to treat the sexes as if they were equally human. We do not have to argue this proposition anymore. Once a sex equality rule exists in law, there is no more debate as to whether it would be “*good*” to treat the sexes equally. That has been decided. The only question is what sex equality means in particular instances. In other words, you do not need a normative position to have this critique. You need a reality position to answer the first question and a legal position to answer the third.

My best guess as to what judgment means in Professor Chambers’ piece, then, is negative moral evaluation: question two. Telling someone they are bad or wrong. There may be something generational here. I have frequently marveled at the intensity with which audiences of young people zealously (and with manifest fear) pursue postures of public tolerance, so as not to be criticized for criticizing anyone. This impulse can be expressed as sudden total silence, as everyone watches their back, or as one after another rising to attack a critic for criticizing, or to defend someone (usually someone with power) who is claimed to be criticized, especially if the imagined target of the criticism is not in the room. One sometimes gets the impression that such people would sit quietly while someone is raped in the next room (this happens all the time, actually), but will throw their bodies in the way of anyone who criticizes someone for raping someone in the next room (this, too, occurs . . .). Or, closer to our discussion, and more complicated in terms of power, will attack anyone who criticizes a person for not reporting that they were raped in the next room. How did “*criticizing*” someone for doing or not doing something become worse than doing the thing or not, criticizing genocidaires harder to justify

than genocide? (The latter is not a random example.) Why is “criticizing” someone the worst thing one can do to someone, or have done to oneself? When, and for whom, did criticism become the end of the world?

In any real discussion of any reality of sexual abuse, for instance, the distinction between the person who has the power to violate and the person who was violated is highly salient. How did the project shift from stopping the behavior, which apparently can be criticized, to stopping criticism of the person engaging in the behavior? My own view is that perpetrators can be “criticized.” And prosecuted. Professor Chambers clearly shares this view. Whether someone is a perpetrator is first a matter of evidence, though, which is a factual question, never to be lightly assumed. It has historically been inflected by racism, which when it occurs, is against the interest of all victims as well as the wrongly accused. Prosecution calls, *inter alia*, for victims to identify perpetrators. Now this is a real criticism. Whether victims who do not report their victimization endanger other possible victims raises serious issues. Given the way survivors are treated by existing institutions, no one other than survivors themselves is in a position to “judge” them negatively for not reporting, in my opinion. But you can’t get to either of those conclusions without knowing (i.e., coming to a conclusion about, not a judgment of) who has the power and who doesn’t, who is violated and who isn’t, and how institutional systems treat survivors and accuseds. The analysis has to be done first concretely—reality is the question, what actually happened, not what or who you think is good or bad—even in philosophy.

Consider now sexual abuse of children more broadly, arguably the foundation of the gender system. The moral question, virtually never asked, is how do we know it is “bad.” The reality question is, how do we know it violates the child? Especially with girl children, how can it be a violation or experienced as such when females are told that being sexually used is an actualization of our existence on this earth? Amazingly, it is frequently experienced as abusive by children even when they have no vocabulary for abuse, have experienced abuse as normal in their lives, and are told it makes them loved and special and valuable. What they often say, then or later, is it just felt wrong. Maybe they mean wrong in Chambers’s moral sense. But more importantly, on the prior level of what is, something was created in them at the very moment something was shattered in them, which is amazing. There was a glimmer of awareness of abusiveness—a miracle, because one is created by abuse. It shapes you neurologically. It shapes you cognitively. It shapes your relationships and life agendas in ways you often have no notion of for decades, if ever. It is a powerful engine of social construction. But there are no lengthy philosophical discourses struggling to explain how “we,” including survivors, know sexual abuse of children is abusive.

Professor Chambers rightly points out that child abuse is generally treated socially as if it is not abuse (2017, 6). In connection with her question, there are also those to whom it has happened who say that it was not the worst thing that happened to them, it was not all that bad, or they really were not harmed by it, and make sympathetic excuses or even justifications for the perpetrator. In one memorable discussion with a survivor, she passed hers off to me as “viel Verkehr, viele Verkehrsunfälle.” In the double meaning: lots of traffic, lots of traffic accidents; lots of sexual intercourse, lots of sexual accidents. I think this trivialization of sexual abuse of children does not relieve those who hear its harms spoken of by survivors, who can identify the dimensions of those harms, the scholarship on which is extensive, from “criticizing” its perpetrators—as a group, certainly, but individually only so long as the victims stand behind and authorize that step. But to be critical of those who say things like this is to fail to grasp some of the consequences of abuse, one of which is its trivialization.

Victims of abuse who do not feel violated, including those who in liberal terms make choices that harm them (or others), while not a target of such a “criticism,” do raise the question of how consciousness change happens—the question of effectiveness, and of who the “you” is doing the engagement, your relation with the survivor, underlining the necessary humility in any serious political work on a human level, and of appropriate role, relationship, and setting. There is no philosophical perch from which to dispense judgment here, if social change is your goal. It does not happen through writing papers or speaking in public. Reaching out to survivors, being there when they reach out to you, and learning from them is not done by “judgment,” which, accurate or not, is an imposition and forecloses productive interaction, real learning on both sides.

Obviously, people who do not feel violated will not be complaining to prosecutors, or maybe even to you. But their existence does not preclude coming to the conclusion that those who know they are hurt by the same behavior are hurt by it, with perpetrators who need to be called out in general if not always in particular. There are plenty of such survivors looking for a response other than the echo chamber of their own silence. Which leads me to want to know what in life leads to the need to answer the question Clare Chambers poses. What makes it urgent? My own view is that the term “choice,” the circumstances in which one can most clearly know it, best applies to decisions *against* one’s determinants, to resistance to social construction. For this, you have to know how you are being socially constructed, what your determinants are. Although no general rules will likely emerge, whatever concretely gave rise to Professor Chambers’s question, or at least engagement with more real situations in which serious consequences are at stake, is likely to hold the keys to an answer.

Should anyone still be wondering whether philosophy matters in an applied and practical way—not the only way it can matter—the philosophical critique in each of the chapters in the second half of *Toward* that built on and embodied the philosophical ground-clearing operation in the first half of the book, became concrete legal changes in the world. The equality chapter became sexual harassment law, in which the sameness/difference theory of equality criticized there turned into the substance of the dominance/subordination theory, which is part of anti-discrimination law. It also became a new theory of equality, substantive equality, an approach largely adopted in Canada, in part in South Africa, and operative in some parts of the international legal arena. The obscenity chapter became the anti-pornography civil rights ordinance as well as laid the groundwork for the Swedish model on prostitution, which criminalizes the buyers and fully decriminalizes those who are bought and sold. The abortion chapter developed into subsequent scholarship that participated in preserving the abortion right. The rape chapter merged with the equality analysis to become the Violence Against Women Act civil remedy, then the international approach to gender crimes as implemented in some respects in the Rwanda Tribunal and the International Criminal Court.<sup>18</sup>

This is not to say that the philosophical analysis preceded the applications in the way a conventional theory/practice divide would suggest. It took actual engagement with the realities on the ground of each issue to produce both the critique and the applied legal intervention. As these four papers realize, the realities uncovered by women challenged epistemic, political, and legal concepts that continue to demand transformation, toward new theory and new practice.

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<sup>18</sup> These experiences and events are discussed and illustrated in MacKinnon (2017), *Butterfly Politics*.

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Professor MacKinnon's thirteen scholarly books include *Sexual Harassment of Working Women* (1979), *Feminism Unmodified* (1987), *Toward a Feminist Theory of the State* (1989), *Only Words* (1993), *Women's Lives, Men's Laws* (2005), *Are Women Human?* (2006), *Sex Equality* (3rd ed. 2016), *Traite, Prostitution, Inégalité* (2014), and *Butterfly Politics* (2017). Empirical studies document that Professor MacKinnon is among the most widely cited legal scholars in the English language.