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## Catharine MacKinnon, Feminism, and Continental Philosophy: Comments on *Toward a Feminist Theory of the State*—Twenty- Five Years Later

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**Catharine MacKinnon, Feminism, and Continental Philosophy:  
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**Abstract**

Catharine MacKinnon's feminist work on sexual abuse and violence has had a major impact on law and on policy in the United States and internationally. However, her complex theoretical writings, which are a foundation of that work, have yet to be adequately appreciated by philosophy, especially continental philosophy, that tradition with which she identifies her project. I explain her project in continental terms, especially Heidegger's thought, so that we may better grasp the philosophical nature and significance of her work. In doing so, I also open paths by which those within the continental tradition may make it more relevant to the pressing real-world problems that MacKinnon uniquely illuminates, especially pornography, prostitution, and other practices significantly constituted by sexual abuse and violence.

**Keywords:** MacKinnon, feminism, Heidegger, continental philosophy, sexual violence

**Introduction**

It's a pleasure and an honor to comment on and celebrate Catharine MacKinnon's *Toward a Feminist Theory of the State (TFTS)*.<sup>1</sup> I first read this book shortly after it was published twenty-five years ago and have returned to it on numerous occasions, with every reading revealing another layer of depth and

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<sup>1</sup> I presented a version of this paper at the Pacific Division meeting of the American Philosophical Association (April 1–4, 2015), on a panel marking the twenty-fifth anniversary of the publication of Catharine MacKinnon's *Toward a Feminist Theory of the State* (1989). Thank you to Lori Watson for the invitation and opportunity to present these reflections. Also, thank you to the organizers of the annual meeting of the Pacific Association for the Continental Tradition, where I presented a shorter version of the paper (September 24–26, 2015).

relevance. That feature of course reflects the power of major works, but it is also part of their vulnerability. For it takes a long time for writings that so profoundly move the ground under our taken-for-granted understandings to be more widely grasped. This contrasts with many works that attain immediate recognition, only soon to be forgotten as a trend, as outdated, or not as profound as many initially thought.

Hegel remarks on this phenomenon. He notes that some works “after a time [have] no audience left” while others have “an audience only after a time” (Hegel 1977, 45). Referring specifically to MacKinnon, Guido Calabresi, former dean of Yale Law School and senior judge on the U.S. Court of Appeals for the Second Circuit, indicated something of this sort. “[Her work] was so original that law faculties did not understand its significance . . . and MacKinnon ‘didn’t have the patience to write the kind of busywork that we would have understood’” (Strebeigh 1991).

I think (and hope) that *TFTS* and, more generally, MacKinnon’s deeply grounded theoretical *oeuvre* is that kind of work, which will have its eventual audience. It especially needs an audience that appreciates the philosophical project behind the significant real-world impact that her writings and social interventions have already had. For instance, her concept of sexual harassment was adopted by the courts, her rethinking of rape has contributed to rape law reform, and (with Andrea Dworkin) a reconceptualization of pornography yielded the unprecedented feminist civil rights approaches to pornography in the 1980s and early 1990s (MacKinnon 1989, xiv). There remains tremendous need for MacKinnon’s work given the ubiquity of pornography today, growing sex trafficking, and other sexual abuses whose physical and psychological damage and aftereffects often invisibly reverberate throughout late modern life. These are problems that MacKinnon has spent her career confronting through complex analysis and groundbreaking practical means.

Professional philosophy has begun seriously taking up *TFTS*, which I treat here as part of her wider work. Analytic philosophy has led these efforts. Early on, Sally Haslanger, Rae Langton, Martha Nussbaum, Susan Brison, Lori Watson, and others recognized its significance. They have rigorously and more comprehensively engaged it in ways that intersect, for instance, with the philosophy of language, epistemology, moral philosophy, political philosophy, philosophy of law, and early modern history of philosophy. Often, these engagements have made creative use of philosophical concepts to frame MacKinnon’s breakthroughs in new ways, for example, through Austin’s speech-act theory or through Kantian moral philosophy.<sup>2</sup> Other treatments have explicated and elaborated MacKinnon’s insights, such as her analysis of the relationship between objectivity and sexual objectification. They have

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<sup>2</sup> See Langton 2009; Maitra and McGowen 2012.

helped explain her claim that the objective stance has often concealed sexual objectification when that stance has merely mirrored, as truth, the outcome of what men's political and social power over women has so successfully manufactured.<sup>3</sup> These engagements with MacKinnon's thought have variously unpacked her breakthroughs, which has contributed to rendering them more widely intelligible.

Continental philosophy, by contrast, has generally been less receptive to MacKinnon's thought. Here, it hasn't been treated as much and as thoroughly. When it is treated, it is not unusual to find it simplified or mischaracterized. This kind of reception makes it easier to dismiss her work and to evade the philosophical challenges it poses. It especially facilitates evading the ethical summons to confront the very trying and pervasive problems of sexual violence, abuse, and objectification in their variety of forms. In continental feminism, MacKinnon's thought doesn't have that more immediately identifiable place that it has in analytic feminism, a place that might support and make it more realistically possible to engage her thought in continental terms.

One is certainly an odd person out and often falling through the professional cracks when one tries to treat her work within the orbit of continental classics such as works by Hegel, Heidegger, or Arendt. For MacKinnon's thought doesn't yet have a presence within these traditional areas. Meanwhile, trying to create such a presence there is also to go against the grain of what is usually done as continental feminism, such as explicating or using the thought of Beauvoir, Kristeva, Irigaray, Judith Butler, or psychoanalysis. As I will spell out below, MacKinnon's project is unambiguously continental. Undoubtedly, she is also one of the most significant feminist thinkers. Yet it is as if her thought isn't "continental feminism," at least not in the way that it is mainly understood and conducted in academic philosophy today.

In what follows, I address this somewhat perplexing current state of MacKinnon's thought within continental philosophy. There are many ways to approach this topic. For my present purposes, my focus is not to lay out what I consider the numerous simplifications and mischaracterizations of her work and then demonstrate how she actually does *not* say this or that, or how her positions are in fact much more subtle, or how criticisms of positions wrongly ascribed to her are in fact her *own* criticisms, or how she already anticipated and addressed a given criticism. There is of course much benefit to this approach.

My aim instead is to show how classically continental MacKinnon's work is, especially by pointing out some of its connections to Heidegger's philosophy even

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<sup>3</sup> See Haslanger 1993.

though she makes no references to his work.<sup>4</sup> In so doing, I indicate a few of the innumerable ways that continental philosophy might productively engage her thought. I want thereby to help create a bridge that might make it more possible for those in continental philosophy, especially graduate students and researchers, to directly encounter her work instead of attaining “familiarity” with it in a manner filtered by a caricature of it. Facilitating more considered treatment of her thought in what seems its obvious philosophical home will ultimately make philosophy more accountable and relevant to the urgent and difficult contemporary problems that she uniquely illuminates. Pornography, trafficking in sexual slavery, and other sexual abuse and violence that abound in late modern life pose incredible challenges to thinking and desperately need the resources and intervention of philosophy.

### **Continental Philosophy, MacKinnon’s Continental Project, and Heidegger’s Thought**

Continental philosophy is that tradition of mainly European thought from around the time of Hegel onward that seeks to understand the humanistic domain in a manner that is more self-consciously experiential and world-involved. It is grounded in life problems as they are lived in the world. Those working within this tradition also understand their contributions as situated within the history of philosophy. The few among them who are also major thinkers advance their own original theories, but those theories are something like later parts of that common and familiar philosophical story or historical reference point. Of course, not everyone working in continental philosophy today is doing such grounded work that is so directly relevant to real-world concerns; indeed, few are. That few philosophers of every era make breakthroughs of this kind is a separate topic beyond my current scope. My purpose here is only to state salient features of this tradition’s self-concept in some of the ways that it shifts from the more detached major philosophies of the early modern period epitomized by figures such as Descartes and Kant.

Most basically, MacKinnon’s project is continental because it is self-identified as such. It reflects her doctoral training in the history of modern German philosophy and the history of political philosophy. She studied these areas through both the political science and philosophy departments at Yale in the 1970s with prominent continental thinkers such as Shlomo Avineri and Karsten Harries.

MacKinnon’s work is also phenomenological through and through (1989, 38–39), which I understand in a generally Heideggerian sense as theoretical in a manner

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<sup>4</sup> In MacKinnon’s remarks during the panel presentation of this paper, she very emphatically and publicly agreed with how it philosophically situates her work. She stated: “FINALLY someone got it.”

guided by, emanating from, and always anchored in lived experience. Phenomenology is her way of fundamentally questioning, testing, and rethinking governing assumptions about the areas of life she investigates and of putting forth new interpretations that better account for that experience. In addition to being an original thinker, MacKinnon is also an innovative and groundbreaking lawyer, which underscores her phenomenological approach. For in this profession, one is often forced to face the everyday, nitty-gritty reality and details of harms as they are lived in the world. This is how she arrived at deeper theoretical understanding of various forms of sexual abuse. That new understanding in turn guided her proposals for making law more accountable to those harms, which she has accomplished in historic ways.

Accordingly, MacKinnon's theoretical work emanates from the "minutiae of everyday existence" (1989, 38) or, as she says about her specific inquiry into pornography, "how [it] works in everyday life" (MacKinnon 1997, 23). Her complex thought doesn't drift into flights of theoretical fancy that are disconnected from life, as often occurs in philosophy and other theoretical endeavors. The latter is no less an issue with many contemporary continental theorists despite this tradition's self-understanding to the contrary. Indeed, MacKinnon's theoretical and legal work might be considered a model for how to make phenomenology within philosophy, in particular Heideggerian phenomenology, truer to itself. On her understanding, original thinking and innovative law are born precisely in this way. They come from the "ground up," from out of that crucible of the interaction respectively of thought and law with life (1989, xiv). As she states this point elsewhere, "Legal change comes from life, not from the brow of moral readers [detached from the world]" (MacKinnon 2007b, 68). This notion of thinking could have come straight out of Heidegger's philosophy.

A main project of *TFTS* is to offer an original theory of women's social subordination that emanates phenomenologically from most women's experiences of various forms of sexual objectification and violation. Those experiences reflect a dimension of the human condition that is usually hidden and that her analysis—to state the matter in Heideggerian language—aims to "draw out of concealment" (Wrathall 2011). A major component of her theory formation is a constructively critical encounter with the dominant contemporary and historical account of oppression, namely Marxist thought.

This path of theory formation exemplifies Heidegger's idea of philosophy's vocation. Philosophy as such delineates usually hidden dimensions of the human condition through grappling with how they are actually experienced in the world



and through the aid of a constructively critical encounter with philosophy's past.<sup>5</sup> That ground of experience and the new understanding emanating from it guide the thinker in dismantling, at their source, problematic assumptions in philosophy's history that persist into the present-day and contribute to the cover-up of these usually concealed dimensions of the human condition. That ground also orients the thinker toward discovering resources in philosophy's history that she may creatively adapt to this task of illuminating these dimensions. This way of responding philosophically to a contemporary problem that philosophy or theory hasn't addressed or is only beginning to address remains anchored within an identifiable historical tradition.

Heidegger scholar William Lovitt summarizes this idea of philosophy. It is "thinking within the sphere of tradition" (1977, xxxvii) but that, here, elicits the "unthought" from the thought (xxxviii). "As such it is freed by tradition from being a mere thinking back, to becoming a thinking forward . . ." (xxxvii), Lovitt continues, stating that philosophy so understood reshapes the past "in the *next* on-writing of thought" and thus "point[s] to some way or reality needed beyond what is now known" (xxxviii, italics added). Simon Critchley clarifies philosophy as such. It responds to a contemporary crisis "through a critique of present conditions" (Critchley 2001, 72–73) and a relationship to philosophy's past that is not merely that of received experience but "a *critical* confrontation with the history of philosophy and history as such" (68–69, italics in the original). This "appeal to tradition . . . is in no way traditional" but grapples with "what has been unthought within [philosophy's past] and what remains to be thought by it" (69).

Here, a phenomenological approach goes so far as to yield insights that are of the order of groundbreaking thought or philosophy. Phenomenology gathers insights that emanate from lived experience, but as an approach, it is fairly broad. It covers a wide range of such insights, including those gleaned in this way in areas outside philosophy. In exceptional cases, however, the phenomenologist gathers and hones them in a manner that yields an original and notably deep account of the worldly area in question. This is original thinking or philosophy in Heidegger's sense. It is, of course, phenomenological but a distinct and deeper expression of it.

The main and guiding source of MacKinnon's original theory is women's experiences of sexual objectification and violation. They were first more widely revealed through consciousness-raising groups, which were a key element of the

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<sup>5</sup> See Heidegger 2003; Campbell 2012. My review of Campbell's book (Nenadic 2014) draws attention to aspects of it that pertain to Heidegger's idea of philosophy's vocation. It also describes some of the specific ways that Heidegger engages philosophy's past, especially in relation to figures such as Plato and Aristotle, as part of the formation of his own original contemporary thought.

feminist movement in the United States in the 1960s and 1970s, and through the social studies to which they gave rise and that more systematically tracked these phenomena. We may think of these groups as constituting something like a clearing within a larger social context that so effectively denied the reality of these experiences and so successfully pilloried those who would assert that reality. As MacKinnon notes, citing Pamela Allen, “[consciousness raising] ‘clears a space in the world’ within which women can begin to move” (1989, 101). These groups were trusted, open, and free spaces for eliciting, making, and safeguarding such disclosures. In an often pre-articulate and groping way, here women gave voice to, named, and ultimately revealed a pervasive, though usually hidden, pattern of sexually intrusive treatment of women and the varieties of psychological, physical, and other damage that that treatment causes (1989, 83–95). This pattern was so widespread that it was simply thought to be natural, the “way things are” and thus in no need of questioning.

This manner of articulating something that so profoundly affects and limits one’s life may be considered an example of what Heidegger considers phenomenology’s most basic way of recovering usually concealed dimensions of the human condition, that is, of according them the status of being considered real. This recovery occurs through listening to and speaking with others to give language to that experience. Such authentic speaking, as Heidegger calls it, erupts in those moments in which one has been delivered to a heightened awareness and anxiety about one’s existence. Here, one has made a decision to try to come to terms with one’s life and with who one is.<sup>6</sup>

Consciousness-raising groups uncovered the replication within many women’s most private relations, where they were thought to be most free, “a structure of dominance and submission which characterizes the entire public order” (1989, 94). That structure is experienced by each woman thus affected in her “own particular, even chosen, way” (94), which is not to say that all women experience that phenomenon. MacKinnon furthermore elaborates that this condition is often marked by ambivalence. She states:

Realizing that women largely recognize themselves in sex-stereotyped terms, really do feel the needs they have been encouraged to feel, do feel fulfilled in the expected ways, often actually choose what has been prescribed, makes possible the realization that women at the same time do not recognize themselves in, do not feel, and have not chosen this place. (102)

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<sup>6</sup> See especially Campbell 2012, 142, 163, 173; Nenadic 2014, 102–103.

Her analysis accordingly has ample room for both feminist insight into women's condition and recognition that "women's nonfeminist perception of their situation is . . . probably as justified by aspects of the woman's experience as a feminist perception would be" (102). Yet this openness is not such that it undercuts our ability to make some manner of truth claims about women's condition, as relativism does (118). For, as MacKinnon indicates, (phenomenological) analysis of what consciousness raising reveals leads to a recognition that for something to be true about women's condition, it need not be universal in the sense of holding for every single woman or being universal in an absolute way. It also reveals that consciousness of oppression is not inevitable (102).

I think that we may interpret her conclusion as being in line with philosophical criticisms respectively of a Cartesian model of epistemology and a neo-Hegelian teleological metaphysics. Such criticism is the centerpiece of Heidegger's own major phenomenological project, especially his magnum opus *Being and Time*. Generally speaking, Cartesian epistemology assumes that our knowledge of the world can be absolutely certain. That knowledge is said to exhaust the reality of the domains that it is about and therefore to be definitive. Hegel extends such assumptions to the realms of human relations and history. He concludes that human history is governed by the law of freedom's inevitable progress and of our inevitable consciousness of oppression and struggle for freedom as part of that larger law of history. He considers this law to be absolutely certain and to exhaust the reality of the domains of human relations and history.<sup>7</sup> Marx carries over these basic assumptions from Hegel. In light of MacKinnon's phenomenological treatment of women's subordination and her subsequent encounter with Marxism, she is compelled fundamentally to question these assumptions, as I detail below.

Her questioning has significant overlap with Heidegger's famous criticism of this Cartesian and neo-Cartesian epistemology. He recognizes that the world, especially the humanistic domain, does not lend itself to being known in an absolutely certain, exhaustive, and definitive way, however much we may know about the world. There is simply too much variability and flux in life to fix it in this absolute manner. There will always be previously unconsidered experiences that may lead to new understanding of the areas in question. Accordingly, one can have knowledge of these areas without that knowledge having to hold in every single case or be understood in a manner that is absolute and exhaustive. That is, we may distinguish sounder understanding from less sound understanding while still maintaining an openness to the world, namely to other unconsidered experiences. That openness allows us to continue testing, tweaking, or, if need be, completely altering an established understanding in light of newly uncovered experiences or

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<sup>7</sup> See Hegel 1975, 1977.

changed contexts. MacKinnon's treatment of epistemological issues reflects this position. That treatment also places her analysis within the orbit of contemporary continental criticisms of (postmodern) relativism.<sup>8</sup>

On MacKinnon's interpretation, feminism locates women's consciousness of inequality within our resistance to the power of male dominance to so profoundly circumscribe our lives. Consciousness, she states, arises from circumstances of "being shaped in the image of one's oppression, yet struggling against it," a resistance to "the world in [women's] . . . selves as well as toward a future" (1989, 102). The central point of her interpretation of consciousness raising as feminism's method is precisely to capture and appreciate women's power and agency against that to which these political circumstances would limit women. But she does so without minimizing the destructiveness of those circumstances.

Through consciousness raising, oppression that wasn't previously as evident, even as its harms were undoubtedly felt, became more visible. That oppression was concealed especially through the fact that women tend to experience it separately and in isolation, in contrast with how oppressed groups that are together experience their subordination; their "togetherness" makes perception of oppression more discernable and less easily undermined (MacKinnon 1989, 8). These developments revealed that "simply being a woman has a meaning that decisively defines all women socially" even as a woman's particularities, for instance, "race or class or physiology may define her among women" (90).

One must remember that these developments were occurring at a time when it was controversial to even suggest that there is something distinctive about women's social subordination that demands its own discrete analysis emanating from these experiences. Then, it wasn't more widely recognized that women's inequality constitutes a discrete kind of subordination such as inequalities that were more recognized, for instance, race, or class, or anti-Semitism. Indeed, a significant point and outcome of these feminist efforts, especially writings such as MacKinnon's, was *to secure recognition* of the very existence of women's social subordination as a discernable type against varieties of denial that it is. The aim was to place a kind of thread around this area, acknowledging that it has a most basic shape and intelligible demarcations or boundaries. As MacKinnon's work consistently emphasizes, those boundaries, however, have a permeability to them rather than being fixed or sealed up in an absolute way.

MacKinnon sought to contribute to this recognition of the distinct existence of women's social subordination in a manner that was careful not to subsume or otherwise deny the discrete existence of other and intersecting forms of inequality such as those of race or class. That is, she did not want to do what theorists of other

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<sup>8</sup>See Harries 2002; Simpson 2001; Scharff 1997; MacKinnon 2000.

inequalities had often done about women's subordination. In her role in helping to secure an understanding of women's inequality as its own kind, within a contemporary context largely denying that recognition, she was especially attentive to preserve an ongoing openness to the complex context of how a woman or a group of women experience their condition. This attention is evident, among other ways, in her frequent expression of the tremendous need for and the still largely incipient state of theoretically mapping these intersecting inequalities. As she writes:

To look for the place of gender in everything is not to reduce everything to gender. For example, it is not possible to discuss sex without taking account of Black women's experiences of gender. To the considerable degree to which this experience is inseparable from the experience of racism, many features of sex cannot be discussed without racial particularity. . . . Comprehension and change in racial inequality are essential to comprehension and change in sex inequality. (1989, xi–xii)

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.<sup>9</sup> Nevertheless, she respects that *TFTS*

does not pretend to present an even incipiently adequate analysis of race and sex, far less of race, sex, and class. That further work—building on writings by authors of color such as those cited in this volume, stunning efforts in fiction and literary criticism, developments in the social world and advances in political practice and analysis, and recent contributions in the legal arena by women such as Kimberlé Crenshaw, Mari Matsuda, Cathy Scarborough, and Patricia Williams—will take [still more time]. (1989, xi–xii)

Through carefully gathering, distilling, and remaining grounded in the findings of a wide range of women's experiences, MacKinnon embarked on formulating a theory that expressed what these findings suggested were the most salient features of the commonality of women's subordination, a commonality that

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<sup>9</sup> For instance, on behalf of Mechelle Vinson, an African-American woman, in *Meritor Savings Bank v. Vinson*, 477 U.S. 57 (1986). This case pioneered the claim for “hostile environment” sexual harassment as sex discrimination and was ratified by the Supreme Court. See also other examples such as the testimony and analysis in *In Harm's Way* (MacKinnon and Dworkin 1997) and in the texts referenced in note 13.

she did not consider absolutely universal. A significant part of this procedure of theory formation was, as mentioned above, a constructively critical encounter with philosophy's past, a move of course placing her project further in line with Heidegger's philosophy, especially his idea of philosophy's vocation. That is, in this grounded way, she "had it out" with the dominant theory of oppression, namely contemporary and historical Marxism, including here the thought of Engels and others.

Traditional Marxist thought claimed already to account for women's inequality. It thus obviated recognition of women's inequality as a distinct experiential domain demanding its own phenomenologically elicited theoretical responses. MacKinnon describes how, thus grounded, she set out to assess such Marxist claims and the evidence adduced for them.

I began trying to disentangle the economic from the sexual roots of women's inequality: Is it sexism or capitalism [that principally explains the inequality of women as a group, even if not necessarily every woman]? . . . In this form, the question was intractable because it referred to realities that appeared fused *in the world* and the inquiry devolved into a question about the factor to be isolated: Is it sex or class?" (1989, x, italics added)

Out of a very productive encounter with Marxist thought, MacKinnon arrived at a clearer appreciation that, contrary to traditional Marxist assumptions, women's inequality demanded a "theory that could stand on its own" (x). She contrasts this appreciation with the totalizing claims of much Marxist thought that worked against such recognition.

The aspiration to encompass all inequality within a critique of the 'totality' of social life has been a central feature of marxist theory from the beginning. Its ambition for inclusiveness has produced attempts to explain in marxist terms all inequalities marxists have perceived as real. Feminism by contrast has not typically regarded the existence of class, or any other social division or theory, as needing to be either subsumed or dismissed, or as a challenge to the theoretical viability or practical primacy of focus upon relations between the sexes. (1989, 60)

MacKinnon did not find an already existing theory of male dominance that she thought offered an account of it in the way that Marxism did of class. That is, there was no theory "of [the] key concrete sites and laws of motion [of male dominance] . . . of why and how it happened and why (perhaps even how) it could

be ended” (x). Thus assessing that “feminism seemed an epic indictment in search of a theory, an epic theory in need of writing” (xi), she set out to construct one.

MacKinnon’s phenomenological path toward that theory consisted, of course, in gathering the indications revealed by consciousness raising and related sources. It also consisted in canvassing and gathering clues left by historical feminist works by thinkers such as Mary Wollstonecraft, Charlotte Perkins Gilman, and Simone de Beauvoir. The new knowledge revealed by consciousness raising—much of it uncovering the nature of the damage and the pervasiveness of sexually intrusive treatment of women—was not as available to these past thinkers. So, their theories could not emanate phenomenologically from that ground of experience but instead left this dimension of the human condition still largely hidden. Nevertheless, they provided MacKinnon’s project with rich and helpful descriptions of “the variables and locales of sexism and possible explanations for it.” Andrea Dworkin’s thought, which does theorize from this ground, provided even more help (1989, xi).

Thus anchored, prepared, and oriented, MacKinnon could carry out what I claim may be described in Heideggerian terms as a “de-structuring” or “destruction” of Marxist thought, or what, in Heidegger’s earlier work, he refers to as a “destructive retrieval” (Heidegger 2008, 41–49).<sup>10</sup> These are his specific terms for that part of his idea of philosophy’s vocation centered on how the thinker, in constructing her own original theoretical account of a present-day problem, conducts a productive and critical engagement with philosophy’s past as a key step in that theory formation. “De-structuring” or “destructive retrieval” is, of course, phenomenological because the impetus behind the theory formation is that incipient understanding emanating from the experiential domain that is newly being considered. That fledgling understanding then guides the thinker in her encounter with philosophy’s past.

To use Heidegger’s famous idea, this emerging new understanding helps “light up” (2008, 105) problematic assumptions of philosophy’s past that persist into the present-day and are implicated in actively concealing the dimension of the human condition at issue. That emerging understanding likewise “lights up” aspects of philosophy’s past that the thinker may creatively use to help construct that contemporary theory. “De-structuring” in this larger sense refers to a particular and rarer expression that phenomenological inquiry may take, an expression that delivers us closer to original thought. As such, we may consider it an additional element of the connections between MacKinnon’s project and Heidegger’s philosophy.

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<sup>10</sup> On “destructive retrieval,” especially Heidegger’s own “destructive retrievals” vis-à-vis Dilthey and Nietzsche, see Scharff 2014, 164, 226–296.

MacKinnon thus conducts “de-structuring” vis-à-vis Marxism. Specifically, in light of the newly revealed domain of the systematic sexually intrusive treatment of women of which Marxism had no account and that it helped to conceal, MacKinnon wrested out from under Marxist thought both a clearer recognition that these experiences demanded their own account and an articulation of such a theory. She refers to this account as “feminism unmodified.” This is feminism that is qualified neither by Marxism nor by liberalism (another contemporary and historical tradition that she engages in *TFTS*).

That is, hers is a theory of women’s subordination that is not subsumed by and disappeared into these other theories. To be “allowed to exist,” an account of women’s subordination need not remain entirely under their rubric any more than do analyses of racism, anti-Semitism, class, and other inequalities. But “feminism unmodified” does not leave class, race, ethnicity, sexual orientation, or other key dimensions of a woman’s experience behind. MacKinnon consistently and painstakingly insists on the contextual nature of women’s subordination. She recognizes that it cannot be extricated from its intersections with other kinds of subordination as well as with social privilege and other involvements in the world.

One can have a discrete category of understanding, a category that preserves its own integrity, while at the same time remaining contextualized in the world, as part of involvements from which we are never fully extricated. This insistence on distinction within inextricable contextualization furthermore aligns MacKinnon with Heidegger’s project. For this position reflects an elemental feature of his philosophy, especially his criticism of Cartesian and neo-Cartesian ontology in *Being and Time*. Nor does “feminism unmodified” necessarily prioritize subordination based on sex in relation to other intersecting inequalities if circumstances do not phenomenologically warrant that understanding. The context and factual evidence of a given set of circumstances are what will determine whether there is such priority and what the priority may be.

As a good portion of *TFTS* so precisely, methodically, and painstakingly shows, Marxist thought (and liberalism) have not explained women’s subordination but have typically *assumed* and concealed it in one way or another. This recognition is not to say that these traditions might not offer helpful resources for understanding women’s subordination, as they did, for instance, in the formulation of MacKinnon’s own theory. But such approaches have especially left issues of sexual objectification and violence unchanged (1989, 11).

To express this shortcoming in Heideggerian language, these issues pertaining to sexual violation that distinctively and often cross-culturally affect women require a more “historical” approach. This means that the theorist needs to plumb more deeply into life as it is concretely experienced, at least this domain of life. She needs to re-immense inquiry in the world rather than remain on the surface



of these phenomena, where one tends to reconstitute old assumptions in the absence of generative contact with this newly revealed ground under them. MacKinnon provides numerous concrete examples of this difficulty of fit between Marxism's explanations of women's inequality and many women's experiences, especially those centering on sexual abuse and violence. For instance, given that many women's class status is defined through their relations to men, how do we even determine the class status, much less the oppression at issue, when we are speaking about "the middle-class girl abducted into pornography" or "a young runaway fleeing rich suburban incest [and now] being pimped downtown?" (1989, 48).

*TFTS* reflects MacKinnon's efforts to crystallize a theory that "fundamentally identifies sexuality as the primary sphere of male power" (109). Here, sexuality refers to that range of sexual objectification characterized by breaches of bodily and personal boundaries, directed mainly at women, which constitutes a lot of what sexual experience *has been made into* under men's political dominance and is subsequently read off as natural sex difference. Feminism, especially her theory, questions sexuality *as such* in order to confront its limitations on our freedom and life possibilities. As MacKinnon often emphasizes about her claim here—against careless readings of her work—it reflects a general yet clearly discernable pattern without being absolute or all-encompassing. As already indicated, she explicitly rejects that her theory can be all-explanatory or absolutely universal or an absolute science, much less essentialist.<sup>11</sup> I interpret her, in part, to be making this epistemological point when she says that feminism, or at least her working of it, is methodologically post-Marxist (107).

In this vein, "men" or "male," she writes, "is a social and political concept, not a biological attribute, having nothing whatever to do with inherency, preexistence, nature, essence, inevitability, or body as such" (MacKinnon 1989, 114). It refers rather to "a gender group characterized by maleness as socially constructed" (112). She adds that "the perspective from [this] standpoint is not always each man's opinions or even some aggregation or sum of men's opinions, although most men adhere to it nonconsciously and without considering it a point of view" (114). Furthermore, any person, male or female, can inhabit this stance in any of its variety of forms, including the most extreme. For instance, one of the examples that MacKinnon adduces about the sexual use and breakdown of another

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<sup>11</sup> See Cindy Richards, "Fighting a Lie that Just Won't Die," *Chicago Tribune*, May 30, 1999, [http://articles.chicagotribune.com/1999-05-30/news/9906030177\\_1\\_sexual-harassment-databases-journalism-ethics](http://articles.chicagotribune.com/1999-05-30/news/9906030177_1_sexual-harassment-databases-journalism-ethics); and also "Editor's Note," *New York Times*, February 12, 2006, Sunday Book Review, <http://www.nytimes.com/2006/02/12/books/review/editors-note.html>.

human being is that of one woman doing it to another woman (142). This example, however, remains firmly contextualized within the wider and unambiguous recognition that in present political circumstances, this kind of dynamic flows overwhelmingly in the direction of men towards women (and children).

MacKinnon summarizes this phenomenological path of constructing her theory of sexuality, so understood, as the primary sphere of men's political power over women. It emerged "from consciousness raising and other feminist practice on diverse issues including rape, incest, battery, sexual harassment, abortion, prostitution, and pornography" and not "from Freudian conceptions, not from Lacanian roots" (1989, 109). These psychoanalytic theories, Foucault's work, and many later theories in this vein—when it became "customary to affirm that sexuality is socially constructed"—have had little relation to that ground of experience that consciousness raising and later studies uncovered (131). Instead, they have usually left unquestioned this general composition of sexuality that MacKinnon's deeper phenomenological approach on the subject was "dismantling," that is, sexuality that reflects breaches of the bodily and personal boundaries mainly of women.

### **Further Continental Engagement with MacKinnon's Thought**

When we bring MacKinnon's major theoretical accomplishments in engagement with the continental tradition, hidden dimensions of the latter "light up." Indeed, my own grounding in her work prior to my entry into professional philosophy oriented me towards Heidegger's philosophy, towards recognizing connections between the two and the relevance of his thought for feminism. It helped me discern resources within his philosophy to creatively adapt to the task of taking our thinking about the problems of pornography and other sexual abuse and violence to new places. Those resources center on Heidegger's criticisms of ambivalent aspects of modernity, modern freedom, and technology. Now, coming back to MacKinnon's thought with a grounding in the philosophy of Heidegger and other major continental figures, in turn, "lights up" even further ways of engaging the two. Sparks fly as new possible directions and tasks for continental feminist inquiry come into view. Thus moving between MacKinnon's thought and continental classics, they redound on each other.

I have addressed only some of the most basic connections between MacKinnon's thought and Heidegger's philosophy. There are numerous other connections to flesh out here. One such task might be to elaborate ties between MacKinnon's presentation of consciousness raising as feminism's method and Heidegger's phenomenology. That project would anchor consciousness raising in its philosophical tradition while taking that tradition to places where it could be even more directly relevant to real-world concerns. The result could serve as a platform for continuing to further map how phenomenology uncovers usually hidden

dimensions of the human condition in light of even more recent revelations of the role of sexual violation in women's subordination, for instance, in such international contexts as crimes against humanity and genocide.

Given MacKinnon's "de-structuring" of Marxist thought, there are ample opportunities for productive engagement in relation to Marxist philosophy. One scholarly task would be to detail and explicate the complex path of that "de-structuring." That exercise would help render her philosophical project more widely intelligible, thus countering the still predominant simplifications and mischaracterizations of her work. It would also be instructive for showing, via MacKinnon's particular path, a general model for doing theoretical and philosophical analysis that is so directly tied to real problems and ways of changing them. Furthermore, it would show how one arrives at that original thought, in this case concerning contemporary feminist topics, in ways that are consistent with, and thus benefit from, how major philosophers have arrived at it over the ages, which is through a "dialogue" with philosophy's past. Of course, such an approach is not the only way of being philosophically relevant to feminist and other contemporary challenges.

With regard to psychoanalytic theories or Foucault's analysis of socially constructed sexuality, it would be instructive to engage them in light of MacKinnon's theory of the place of sexuality, as manufactured under male dominance, in women's social inequality. That is, it would be intriguing to see a "de-structuring" of these theories in light of the new experiential ground concerning the workings, imposition, and pervasiveness of sexually intrusive treatment of women. This hasn't yet been done more comprehensively, including by feminist versions of psychoanalysis, as *TFTS* argues (57–59, 151–153), and by feminist deconstructions of psychoanalysis that do take these experiences into account but are less theoretical.

There would also be an interesting project of thus engaging Irigaray's work. MacKinnon herself indicates such a task. She appreciates Irigaray's thought but, at the same time, recognizes that it is not connected to this particular ground. The knowledge emanating from that ground was not so readily available to Irigaray, as the work of more systematically drawing these experiences "out of concealment" was happening mainly in North America. In France, such experiences have only very recently been more widely investigated, uncovered, and treated as real against an especially effective denial of their reality. As MacKinnon analyzes: "Irigaray's critique of Freud in *Speculum of the Other Woman* . . . acutely shows how Freud constructs sexuality from the male point of view, with woman as deviation from the norm. But she, too, sees female sexuality not as constructed by male dominance but only repressed by it" (1989, 280). It would be intriguing to see what productive outcomes arise were Irigaray's thought, including her later work, considered in light of what I claim is MacKinnon's phenomenological "de-structuring" of the notion of sexual

difference as one of dominance and her resulting complex understanding of sex equality that does *not* collapse it into sameness. The latter is something that her real-world legal work simply does not permit.

MacKinnon also indicates possible directions for productive engagement with Beauvoir's philosophy. In *TFTS*, she weaves in references to Beauvoir's analyses. Respecting her insights, MacKinnon also offers phenomenological critique of ways that Beauvoir treats certain social conditions as universal givens that are beyond history. An example is Beauvoir's identification of "woman's biology as the source of [women's] subordination." MacKinnon explains: "[On Beauvoir's analysis,] it is not the meaning [that] society has given women's bodily functions but the functions themselves, existentially, that oppress women. . . . A woman's body determines her social being as a pre-social matter" (54). It would be interesting to gather these references in *TFTS* into a more concerted engagement between their respective projects. Another thread of inquiry might be to investigate Beauvoir's treatment of the Marquis de Sade in light of MacKinnon (and Dworkin's) treatment of pornography.

Many other fruitful projects come into view that are too numerous to mention here. The point is that they would be facilitated, and both feminism and philosophy would tremendously benefit, were MacKinnon's thought more present and integrated in teaching and research in continental philosophy, that tradition which her work natively inhabits. For example, it should be taught with Heidegger, Marx, Beauvoir, Hegel, Irigaray, Foucault, and psychoanalysis, among other areas, not to mention taught expressly as a part of continental feminism.

All indications suggest that the main problems that MacKinnon seeks to better understand and change, namely the oppression associated with the physical and internal breakdown effected by sexual objectification and abuse, in all their complexity and despite gains made, have not gone away. Indeed, they are becoming worse, especially through pornography's unprecedented reach and mainstreaming in the Internet age. It is also a fact that the history of philosophy and academic philosophy today still don't have a thinker whose work more systematically addresses these problems in the way that MacKinnon's work does. We won't find these analyses in Beauvoir, Kristeva, Irigaray, Butler, or psychoanalysis, despite how helpful some of their works might be. Instead, those of us in academic philosophy who are working on these problems are drawing significant theoretical sources from MacKinnon's thought. That is where we mainly go if we want to address such problems that are so much of our contemporary landscape that they hardly stand out as such.

In this vein, I want to conclude by briefly revisiting the issue of what a grounding in MacKinnon's work can help reveal to thought and to efforts at seeking practical solutions to contemporary crises. On a trip to Europe in the early 1990s, I

took a copy of *TFTS* to Asja Armanda, a Croatian-Jewish feminist. This was just before the genocidal war in the region when Serbia attacked Croatia, Bosnia-Herzegovina, and Kosovo and committed atrocities not seen in Europe since the Holocaust. Armanda responded practically and philosophically to this crisis and, with her, I soon followed suit. In our work with refugee survivors in the war zone, we phenomenologically elicited and theorized a usually hidden dimension of the human condition that we named “genocidal sexual atrocities” or “genocidal rape.” This crime was not “known” to the world before this genocide and precisely for that reason needed philosophy to make it known. Key sources of theoretical guidance in our work with concentration camp survivors include Armanda’s own remarkable feminist philosophical background on issues of sexual abuse and her knowledge of the Holocaust. Against all odds, she cultivated that understanding through desperately seeking clues outside the closed, Marxist-totalitarian country of Yugoslavia in which she grew up and outside the regime’s official philosophers and its official positions on and by women. These sources also include ones that I brought, especially MacKinnon’s thought on sexual abuse, civil rights, and law as well as African-American feminist thought on the intersections between sex and ethnicity.<sup>12</sup> This is the philosophy that we went to, philosophy that gave us real aid in our own, urgently needed, original thinking and that could help us make a real difference in the world.

However, this fledgling understanding about genocidal rape would have been snuffed out by an unimaginable and relentless campaign of genocide denial and lost to history had MacKinnon not, at my request, agreed to intervene in these events. Specifically, I asked her to represent survivors in a legal action that Armanda and I were pursuing. The three of us soon initiated a landmark lawsuit in New York (*Kadic v. Karadzic*) that would pioneer the crime’s recognition under international law. Through the public voice that MacKinnon gave to making this crime more widely intelligible, we could eventually break through that denial such that this crime is now recognized in the world.<sup>13</sup>

For philosophy to be seriously relevant to such major problems of our time, we need greater availability and deeper consideration of MacKinnon’s thought, especially within continental philosophy. For that is the tradition from which her thought arose: Her work is guided by the phenomenological task of gathering, distilling, and theorizing the insights of a range of feminist practices and writings and is more clearly formulated through productive and critical encounter with philosophy’s past. This original thought, in turn, guided the major legal, policy, and

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<sup>12</sup> Just prior to this period, I had been a student of Angela Y. Davis and had the opportunity even more rigorously to study this area of thought.

<sup>13</sup> See Nenadic 2011; MacKinnon 2007a.

other positive practical changes in the world that MacKinnon has delivered and continues to deliver. These changes are themselves monumental achievements of so many women's agency, changes that now offer new and previously unimagined possibilities of that agency. All of these developments were the outcome of both feminism and continental philosophy. They *are* continental feminism—at its best.

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