

“The Case” Responds

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MacKinnon responds that her theory, while not liberalism in denial or disguise, is engaged in dialogue with liberalism (as well as with other theoretical traditions).

One writes for a reader like Denise Schaeffer. Her analysis of my work (Schaeffer 2001) impressively integrates its epistemic, legal, political, and social dimensions, avoiding common misreadings. Her engagement is serious, careful, supple, lucid, and respectful of the text—largely an exception and a relief, as well as a real contribution. If her article is “part of an ongoing conversation” (p. 706) with liberalism that she sees taking place in my theory, it is a conversation well worth having.

I criticize the liberal tradition¹ for its methodological idealism, meaning the extent to which it interprets material reality as driven by ideas and morality to the neglect of the reverse; for its individualism, meaning its failure to grasp systematically the group-based determinants of inequality; and for its relative blindness to organized power in diverse social forms, so that it often effectively sides with dominance. These tendencies are traced from epistemology to policy on the substantive ground of the status and treatment of women relative to men. Any attempt to reinvent me as a born-again liberal must contend with this, as Schaeffer, who describes much of my analysis unusually well, does with only varying success.

Schaeffer’s project in this article might be variously reformulated as to show that liberalism can respond to feminist criticism and stay liberal, that liberalism is receptive to feminism, or that liberalism would be all feminism needed if it was correctly applied to women. Certainly, liberalism can be feminist and still be liberal. The question is whether that is enough for women. Admittedly, John Stuart Mill’s ([1869] 1975) stunningly insightful and prescient analysis of women’s roles, in a work written with Harriet Taylor that I analyze in some depth, has more to offer women than many works that purport feminism today. But his work is the only classical example drawn on by Schaeffer to any extent. Certainly too, some contemporary liberal scholars, notably Martha Nussbaum (1999), Steven Schulhofer (1998), and Cass Sunstein (1993), contend productively with feminist concerns on liberal terrain. But Schaeffer does not ask why liberalism as a whole, long ruling ideology, needed feminism to notice the humanity of women in the first place, and why it has yet to face either the facts or the implications of women’s material inequality as a group, has not controlled male violence

societywide, and has not equalized the status of women relative to men. If liberalism “inherently” can meet feminism’s challenges, having had the chance for some time, why hasn’t it?

According to Professor Schaeffer, my work “rest[s] on liberal underpinnings” (p. 699); specifically, in her view, I “share[] the liberal preoccupation with choice and consent” (p. 703).^{*} Actually, I do not use or theorize either choice or consent as my own—as I do equality, for example. My work on consent is devoted to critique, to showing that the liberal tradition has not meant what it says it means by these terms or delivered on its promise where women and sex are concerned. While liberal theory uses consent as if it means freedom—to refer to unburdened, open, and unforced selection—it often applies the term in situations that better demonstrate acquiescence in inequality and acceptance of what one has little realistic possibility of refusing. Calling inequality freedom promotes inequality. To say that my “overriding concern [is] with women’s capacity for choice and self-determination” (p. 704) is to proceed as if the terms mean what they pretend to mean, relabeling in liberal terms the systemic sex inequality that I criticize in both liberalism and the legal and social order to which it is integral—a reality that liberalism itself has gone far to rationalize, cover up, and legitimate as consensual and chosen.

Schaeffer at points clearly grasps that I criticize liberalism for failing to live up to its own standards. At other points she claims that its terms are my terms. To point out that liberalism claims to be animated by concerns that, when applied, often do not mean in reality what many of its well-intentioned practitioners purport to mean by them in theory, is not to accept its terms as one’s own. My point has been that the social conditions under which women could have what liberalism claims we have now, under which its ideas might work and its terms might mean what they are supposed to mean, would be conditions of sex equality, a goal that liberalism also claims to embrace but has done as much as any philosophy to preclude, while purporting the contrary. I think we are long past the point where it makes sense to argue that liberal theory will produce sex equality on its own. Whether liberalism would recognize its own concepts if they meant in reality what they are supposed to mean in theory is unclear, since they would no longer support power as currently organized. The peculiar genius of liberalism has been to seem to accommodate fundamental challenges with-

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¹ Although Schaeffer clearly comprehends that liberalism is a classical tradition that underlies much of today’s liberalism and conservatism, given the falsehood widely propagated by others concerning my work that is it allied with the Right, it probably bears repeating that my critique of liberalism is not a defense of conservatism.

^{*}Ed. Note: The author uses empty brackets ([]) to indicate omitted letters in her quotes from Schaeffer’s article.

out fundamentally changing. Schaeffer’s work provides a kind of illustration.

In this vein, Professor Schaeffer mistakes my “women” for liberalism’s “individuals.” To empower women to bring civil claims for sex discrimination, as my work on sexual harassment and pornography does, is not to treat them as liberalism’s “individuals”—quite the contrary. Both sexual harassment and pornography are sex discrimination claims; sex discrimination is a group-based claim. Women who sue one at a time for sex discrimination are suing for harm to them as women, not for harm to them as individuals: They are suing as members of their group, for injury to themselves in their capacity as group members, that is, on the basis of sex. No liberal view of the self is buried in this work.² Deemphasizing the prevalent liberal tendency to elide groups as constitutive of individuality, while missing the inherent group basis of equality claims (see p. 704) makes it possible to minimize the conflict between liberalism and my work on the crucial point of unit of analysis.

No “general (and liberal) conception of the human” (p. 704, note 9)—that is, a conception of people without gender—animates my work. The view that I “posit[] a shared human core that [I] consider[] authentic rather than arbitrary” (p. 704) is ungrounded in my text.³ I do not, and do not need to, posit or assume “that there is something to ‘woman’ that is authentic and real” prior to or apart from society (p. 704). Rather, I argue that by existing social standards and in comparison with men—both, by the way, grounded and culturally specific standards—women, in their status as members of the group women, are violated and unequal. I analyze women and men as socially and politically constituted throughout, an approach that neither reveals nor presupposes “authentic” or “arbitrary” beings but rather exposes thoroughly socially contingent ones. The attempt to shoehorn a feminist analysis into a liberal one fails here.

Liberals often seem unable to interpret the world in other than liberal terms. Schaeffer posits that I “seek[] recourse to a position beyond power and history from which social reality can be evaluated” (p. 704). If I were a liberal, saying what liberals translate me to be saying, this is what I would be doing. But it is not what I do. My analysis is solidly and explicitly grounded throughout in the concrete specific substance of women’s experience, socially located in time and place, a material ground that liberal theorists often dismiss as just the particulars or just the examples or just the applications. But it is the relation between reality and theory that feminism changes—a methodology liberals often miss because it is so profoundly nonliberal.⁴ Moreover, my critique of

objectivity presents a systematic critique of proceeding any other way. There is no “abstract vantage point” (p. 705) in my work, nor does Schaeffer indicate or document where one is to be found. She merely posits it. It is also to impose a liberal framework where none exists to assume that because I assert that some claims about women’s reality are factually wrong, I must be “appeal[ing] to some ‘objective’ standard” (p. 705). Because liberalism has not yet theorized the factual outside objectivity does not mean that I don’t.

To say that I do not “contextualize or historicize the ideals to which [I] appeal[]” (p. 705) is therefore twice wrong. My analysis is thoroughly contextual, grounded, and substantive, and I do not appeal to ideals as such. Liberals tend to assume that a critical analysis has a moral or ideal basis and aims at a moral goal because their analysis does. Schaeffer is thus correct that I do not say why oppression and subordination and inequality are wrong (p. 706), but this is because my analysis is moral or ideal in neither basis nor purpose. It shows that women are a political group—oppressed, subordinated, and unequal—and explores the contours and implications of that reality for theory and politics and law. That reality established, anyone is welcome to defend or contest it.

While Schaeffer’s attempt to reclaim my work for liberalism is thus at key points overdrawn, her own work is part of ongoing efforts to reclaim liberalism as a tool of change for women. But it needs to go farther. If Schaeffer is correct that there is “no inherent reason” (p. 706) liberalism cannot end the harm done to women by the erotization of dominance and subordination, she should explain why it has yet to do so. In reality, liberalism’s ideology of consent and choice has made it impossible effectively to stop the pornography industry, even as some individual liberals and conservatives—both heirs to the liberal tradition—have opposed it because of the harm it does. Professor Schaeffer contends that seeing the harm in sexual objectification requires a change in how women, not harm, are seen (p. 706), but she does not explain why the existing liberal concept of harm has so far been incapable of seeing women as harmed when they are sexually objectified. If Mill’s harm principle exemplifies liberalism, as it does for Schaeffer, and this liberalism is all women need, then it is time for liberals to start applying that principle when it counts, including on the pornography issue. I would gladly cite John Stuart Mill for opposition to pornography based on its harm. But Schaeffer’s soothing and uncharacteristically oblique reassurances that readers can take my work seriously in the abstract but demur on facing or doing anything about its tougher substantive realities—at least this is how I read those passages⁵—leave me unsettled as to the benefits for the most violated women of the liberal-feminist “alliance” (p. 707) she urges.

² Actually, contrary to Schaeffer’s assertion (p. 706), much of the Black civil rights movement’s legal analysis was profoundly nonliberal in the same way, although the compromises and tortured translations into which it has been forced have largely vitiated that foundation or forced it into subtext, much to the detriment of the effective use of law for racial equality. Schaeffer also seems unaware, or not to have systematically considered, that some lawyers and legal activists are or can be Marxists, or otherwise not liberals, including in their practice of law.

³ For my view on this subject, see MacKinnon 1998, 171.

⁴ For further discussion, see MacKinnon 2000.

⁵ “Whether or not we agree with MacKinnon’s presentation of sexuality . . .” (p. 706); “whether or not we accept MacKinnon’s specific prescription . . .” (p. 707).

An oddly static notion of liberalism pervades Schaeffer's analysis, even as her work itself—with others, such as Zillah Eisenstein's tellingly titled *The Radical Future of Liberal Feminism* (1981)—illustrates its potential dynamism. In an analysis of points of convergence that has many virtues, Schaeffer may underestimate both liberalism and women. She seems not to have imagined that feminism may be changing liberalism fundamentally and against its grain, rather than being subsumed under it or having been there in it all along.

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