

# APA Newsletters

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## NEWSLETTER ON FEMINISM AND PHILOSOPHY

FROM THE EDITOR, SALLY J. SCHOLZ

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## FROM THE EDITOR

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### First, a word of 'Thanks' to Rosie Tong

Anyone who has studied feminism in the United States in the past twenty years knows at least some of the work of Professor Rosemarie Tong. But her work expands far beyond what might be collected in a text or journal. Rosie is a passionate activist on behalf of women globally, and for the past four years The American Philosophical Association's Committee on the Status of Women (CSW) has reaped the benefits of her inexhaustible energy. While Rosie's work in feminist theory, advocacy, and activism will no doubt continue to flourish, her term as chair of the CSW is coming to an end in July. Those of us who have had the pleasure to work with her on that committee want to say **THANK YOU!** Individually, we have benefited in countless ways from her wisdom, support, skill, and dedication. Collectively, we have felt the impact of her leadership as we worked together to bring about change in our profession and in the world.

There is an old aphorism that says, "if you want to get something done, give it to a busy person." Rosie Tong got a lot done while she was chair of the CSW! She has worked incredibly hard and helped to bring about some big changes in the organization. Her courage, inventiveness, initiative, and follow-through inspired all of us not just to contribute to the workings of the committee but to add our own original ideas to what can and should be done on behalf of women in the profession of philosophy. To be sure, there is more to do, but, as Rosie often reminded our committee, we have got the momentum going—"Let's not lose that momentum!"

In gratitude for her years of service to the APA and the CSW in particular, I invited a few of the past and current committee members to offer some words in tribute to a truly great leader of the feminist movement. While no words can adequately capture the gratitude and honor we feel for having had the privilege to serve on the CSW with Rosie Tong, we offer these thoughts as a symbol of our esteem and admiration:

"Graciously, efficiently, with practical savvy, and always intelligently, Rosie brought to the CSW a determination that, together, we should make a difference for women in the APA, thence in the profession. She brought out the best in each of us by example more than requirement, and—mostly because of her own non-stop work and sense of responsibility—the Committee did indeed get things done, from studies finished up and initiated, to panels prepared, to complex work internal to the APA as an organization. Reports will be made; they will be impressive and helpful in carrying it on—but right now, we want just to say an admiring and warm thank you, Rosie." –Elizabeth Minnich

"Passionate feminist, loving mentor, loyal friend, changing the world one project at a time. The CSW was extraordinarily lucky to have you as chair and will be forever grateful for your accomplishments."  
–Janet Kourany

"Rosie is an excellent philosopher, an incredible organizer, and a tireless advocate for equal rights and justice for everyone, and for women in particular. She has been a quiet dynamo as chair of the CSW, but perhaps what always impresses me most is her cheerful willingness to answer questions, give advice, and commiserate with us. I loved getting to know Rosie and I know the CSW will return to her for advice and support for many years to come." –Jane Kneller

"Rosemarie Tong has been a most insightful and inspirational leader of the CSW these past few years. She is hardworking, clear-sighted, dauntless in the face of bureaucracy, and has an infectious spirit of change, which she cheerfully spreads far and wide. Working under Rosie's guidance reinvigorated me in the service of the profession, motivated me to undertake committee activities with cheer, and helped show us all how philosophy, in practice and in organization, can be made more inclusive, more responsive to membership, and more fun. If only all committee service were like this! Thanks, Rosie, for being a great chair! You have made an indelible mark on the CSW, and the APA is better for it." –Christina M Bellon

"Rosie's generosity of time and energy, her willingness to mentor and advise others, is simply legendary. What's amazing is that she maintains a high level of scholarly output, in a field that requires constant updating, while generously helping others...and then takes on the role of chairing the Committee on the Status of Women, and manages to keep the committee on track, focused, and productive. I want to be just like her when I grow up!" –Ruth Groenhout

**THANK YOU, ROSIE!**

### About This Issue

This issue of the Newsletter features six articles that explore the convergences of feminist theories and disability studies in a special cluster guest edited by Leslie Francis. As many of the authors note, the combination provides a fruitful new avenue for philosophical exploration. In addition, I have included six book reviews, many of which punctuate some of the themes examined in the articles. Sexual morality, enlightenment political norms, women's human rights and status in the legal system, and the contemporary directions of feminist theory make this collection of reviews well worth reading.

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## ABOUT THE NEWSLETTER ON FEMINISM AND PHILOSOPHY

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The Newsletter on Feminism and Philosophy is sponsored by the APA Committee on the Status of Women (CSW). The Newsletter is designed to provide an introduction to recent philosophical work that addresses issues of gender. None of the varied philosophical views presented by authors of Newsletter articles necessarily reflects the views of any or all of the members of the Committee on the Status of Women, including the editor(s) of the Newsletter; nor does the committee advocate any particular type of feminist philosophy. We advocate only that serious philosophical attention be given to issues of gender and that claims of gender bias in philosophy receive full and fair consideration.

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## SUBMISSION GUIDELINES AND INFORMATION

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**1. Purpose:** The purpose of the Newsletter is to publish information about the status of women in philosophy and to make the resources of feminist philosophy more widely available. The Newsletter contains discussions of recent developments in feminist philosophy and related work in other disciplines, literature overviews and book reviews, suggestions for eliminating gender bias in the traditional philosophy curriculum, and reflections on feminist pedagogy. It also informs the profession about the work of the APA Committee on the Status of Women. Articles submitted to the Newsletter should be limited to ten double-spaced pages and must follow the APA guidelines for gender-neutral language. Please submit four copies of essays, prepared for anonymous review. References should follow *The Chicago Manual of Style*.

**2. Book Reviews and Reviewers:** If you have published a book that is appropriate for review in the Newsletter, please have your publisher send us a copy of your book. We are always in need of book reviewers. To volunteer to review books (or some particular book), please send the Editor a CV and letter of interest including mention of your areas of research and teaching.

**3. Where to Send Things:** Please send all articles, comments, suggestions, books, and other communications to the Editor: Dr. Sally J. Scholz, Department of Philosophy, Villanova University, 800 Lancaster Avenue, Villanova, PA 19085-1699, sally.scholz@villanova.edu

**4. Submission Deadlines:** Submissions for Spring issues are due by the preceding September 1st; submissions for Fall issues are due by the preceding February 1st.

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## NEWS FROM THE COMMITTEE ON THE STATUS OF WOMEN

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Dear One and All,

This is my last letter to you as chair of the Committee on the Status of Women. On July 1, 2007, Associate Chair Erin McKenna will swing into full action. The CSW discussed the transition from me to Erin at the CSW meeting held in Washington, D.C., at the Eastern Division 2006 APA Meeting. The meeting was a particularly good one despite the fact that we discussed a very serious issue; namely, why the best available empirical data indicates that women constitute only 21 percent of employed philosophers. Philosophy trails behind the rest of the humanities, in which women constitute 35 percent to 50 percent of their respective professions. Why aren't there as many women in philosophy as women in literary studies, for example? Count on Erin McKenna and the members of the CSW to try to answer this question next year and to report back to you with their findings.

If you get a chance, please do take a look at the CSW webpage. You will find Chris Bellon's most recent update of graduate and undergraduate philosophy departments that have strengths in feminist philosophy and/or that view themselves as female friendly (sensitive to women's family concerns, mentoring needs, tenure and promotion issues, status as philosophers, and so on). If you think your department should be on the list, please let Chris Bellon and/or me know. In addition, please urge your students to consult the list when applying for graduate school or a job.

Under the leadership of CSW member Miriam Solomon, and with the support of David Schrader, executive director of the APA, the CSW will try to secure data about who was hired for the positions listed in the 2006 Jobs for Philosophers. Miriam is preparing a survey for all the departments that listed positions this past year. The National Office of the APA not only will send these surveys to all relevant departments but also make a concerted effort to get a 100 percent response. Knowing who was hired in 2006 and for what positions will give us important gender-related information.

Many panels, receptions, and memorial events honoring Iris Marion Young have already been held, but the CSW urges as many people as possible to attend the CSW panel and reception for Iris at the 2007 Central Division Meeting in Chicago. Janet Kourany has organized a tremendous panel entitled **Celebrating Iris Marion Young: Her Life and Work**. The panel will be chaired by Alison Jaggar. The panelists include Sandra Bartky, Martha Nussbaum, Anne Phillips, and Tanika Sarka. What an impressive cast of women philosophers to honor one of philosophy's treasures! The session will be held on Friday, April 20th, from 9:00am to 11:30am. A reception cosponsored by the CSW, the APA, the University of Chicago, and the University of North Carolina at Charlotte will follow the panel, beginning at 11:30am and ending at 12:15pm.

Not only will my term on the CSW end July 1, 2007, so too will Chris Bellon's and Elizabeth Minnich's. I cannot begin to tell you how often these two women have gone above and beyond the call of duty to improve the status of women in the profession, nor can I adequately express to you what a joy it has been to work with all of the members of the CSW. My last official meeting with the CSW will be in San Francisco at the Pacific 2007 meeting. If you have ideas or concerns you wish the CSW to address at this upcoming meeting, let me know.

Sometimes things do manage to end on a high note. I leave the CSW with a sense of optimism. The members of the CSW are a dynamite, committed team who are, as Aristotle would say, “partners in virtue and friends in action.” Call on them whenever they can be of service to you. They will not disappoint you!

My best,

Rosie

Rosemarie Tong

Chair, Committee on the Status of Women

Distinguished Professor in Health Care Ethics

Director, Center for Professional and Applied Ethics

Department of Philosophy

The University of North Carolina at Charlotte

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## ARTICLES

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### Special Cluster on Feminism and Disability guest edited by Leslie Francis

Initial versions of these papers were presented at the Central Division meetings in 2006, at a Special Session sponsored by the APA Committee on the Status of Women and the APA Committee on Inclusiveness, entitled “Feminism and Disability.” Thanks are due to Anita Superson for organizing and chairing the session. As the papers here illustrate, feminist theory, disability theory, and queer theory have much to learn from and contribute to each other. I hope that this rich dialogue is continued in the APA and in other venues.

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### A Feminist Care Ethics, Dependency and Disability<sup>1</sup>

Eva Feder Kittay  
SUNY-Stony Brook

#### 1.1 Dependence, Deviance, and Disability

Disability and care have a long and uncomfortable relation with one another. The same may be said for disability and dependence. While for some a physical dependence on caregivers enables them to carry on the activities of daily living, for many there is an economic dependence created by an inability to earn an adequate income given prejudice, discrimination, and lack of access to public spaces. There is also a dependence on social services, sometimes blamed as creating needs and thus sustaining the very dependence that these services were intended to relieve, a critique reminiscent of denunciations of welfare provisions more broadly conceived. When it is taken up by disability scholars and activists, the claim is that dependency is “created amongst disabled people, not because of the effects of the functional limitations on their capacities for self-care, but because their lives are shaped by a variety of economic, political and social forces which produces this dependency.”<sup>2</sup> In a work entitled ‘Cabbage Syndrome’: The Social Construction of Dependence by Colin Barnes, the relationship between deviance and disability is linked to the influence of a concept of freedom, which is tied to ideas of self-reliance and the avoidance of dependency.<sup>3</sup>

The default assumption is that a disabled person is a dependent person. Furthermore, the disabled person is identified as deviant—deviant from a norm of typical species functioning (or form), which negatively effects self-sufficiency and social integration. The two presumptions come together, particularly within the Western industrialized nations, for the deviance that is perhaps especially salient is the deviation from one particular norm, that of independence, and hence is a deviance that renders one dependent. In a world in which independence is normative, the person with impairments comes to be isolated through a stigma that is linked to dependence and the need for care.

It is no accident then that the challenge disabled people in the U.S. in the late 1960s and early 1970s mustered against their deviant status was entitled the Movement for Independent Living. This movement, created by people who were young, intellectually capable, white, and largely male, did not interrogate the norm of independence, but affirmed it for a group that had previously been excluded. Their aims were inscribed in the important U.S. antidiscrimination legislation, the Americans with Disabilities Act (enacted in July 1990). That act states: “the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.”<sup>4</sup>

#### 1.2 Care Instrumentalized or Repudiated

I do not think it is unfair to say that groups of disabled individuals who so successfully lobbied for the ADA legislation viewed the provision of care in an essentially instrumental manner—much as most of us view our dependence on farmers. But the social dependence on farmers is taken by most to be relatively innocuous. In the case of care, the dependence has seemed for many with disabilities less benign. Provision that imposes itself on the individual and intrudes into his or her life may be identified with the oppressive forces that have the power to turn the disabled person into a suppliant.

Thus, those excoriated for their part in the “creation of dependency” include not just the state and other institutions responsible for the lack of public access, the persistence of discrimination, the prevalence of need-based services, the labeling of persons as deviant, and the exclusion of disabled people in decision-making. Professional providers of services and care-givers share the blame, as in the following passage from the British Council of Organisations of Disabled People:

...[T]he need to be “looked after” may well adequately describe the way potentially physically disabled candidates for “community care” are perceived by people who are not disabled...which has led to large numbers of us becoming passive recipients of a wide range of professional and other interventions. But, however good passivity and the creation of dependency may be for the careers of service providers, it is bad news for disabled people and the public purse.<sup>5</sup>

Yet coming to the question of disability from the position (or role) of a resolute carer of a disabled person, my daughter, I am invested in the idea that care is indispensable, and even central, to a good life for people with certain sorts of disabilities.<sup>6</sup> Given that people with disabilities are attempting to cast off the perception of the disabled individual as hapless, in need of “looking after,” and are working to retrieve independence in the face of practices and persons who reinforce and heighten the sense of dependence, how should we think about care and the role of caregivers? And is an ethic of care relevant to the development of what we may call an ethic of inclusion

or accommodation that persons with disability may want to embrace?

## 2.1 Basic Concepts of a Care Ethic

When I speak about an ethics of care I am speaking primarily of the conception of ethics that has been developed by feminists wanting to render visible and valuable activities that women have traditionally been charged with, namely, the care and nurture of children, the ill, those with impairments who require assistance, and the frail elderly. While others have gone some distance in developing the ethical framework of the work and relationships of care, most of my remarks will be limited to the feminist scholarship.<sup>7</sup>

The term “care” can denote a labor, an attitude, or a virtue. As labor, it is the work of maintaining others and ourselves when we are in a condition of need. It is most noticed in its absence, most appreciated when it can be least reciprocated. As an attitude, caring denotes a positive, affective bond and investment in another’s well being. That labor can be done without the appropriate attitude. Yet without the attitude of care, the open responsiveness to another that is so essential to understanding what another requires is not possible. That is, the labor unaccompanied by the attitude of care cannot be good care.<sup>8</sup>

Care, as a virtue, is a disposition manifested in caring behavior (the labor and attitude) in which “a shift takes place from the interest in our life situation to the situation of the other; the one in need of care.”<sup>9</sup> Relations of affection facilitate care, but the disposition can be directed at strangers as well as intimates.

## 2.2 A Comparison of Care- and Justice-based Ethics

The characteristics of the care orientation to ethics are frequently expounded by offering a contrast to some more traditional justice-based approaches, especially Kantian-deontological and (to a lesser extent) utilitarian/consequentialist theories. I will give a very abbreviated exposition.

While the moral agent in a justice-based ethic is conceived of as an independent, autonomous self who is equal, or potentially so, to all other moral agents, a care-based ethic conceives of the self as relational and dependent. A care-based ethic speaks of moral relations not only between equals, but among those who are unequal in age, capacities, and/or powers. As moral relations within an ethic of justice are relations between equals, normativity is derived from rights, or duties that we voluntarily take on, usually as a consequence of contractual relationships among those equally situated and empowered. Within a care ethics, in contrast, relations of responsibilities and relationships of trust to those who require our care or assistance are stressed.

Within a care ethics, the reasoned deliberations derived from ethical principles are less central than contextual thinking which is often structured narratively and which will take apt, contextually relevant emotional responses to be as important as rational deliberation. Furthermore, the scope of the deliberations is thought of differently in a care ethics than in a justice-based ethics. Rather than deliberate, as Kant urged, so that maxims of action have universal applicability, and are impartial, an ethic of care sees moral judgments as more circumscribed in scope. Ethical judgments of care may respect the partiality of relations and be relative to various contextual and historical matters.

While within a justice perspective we see the aim of moral deliberation as the means to resolve conflicts and adjudicate between conflicting demands, from the perspective of care we are concerned to maintain relationships and prevent violence

that comes from or results in a failure of relationship. This contrast derives from the more fundamental difference, which is one that asks, “What is moral harm?” Within a justice-based ethics, harm occurs when there is clash between persons. Actions are admissible as long as they avoid interfering with another leading his or her life as he or she wishes, constrained only by the ability of the other to so lead his or her life. In a care-ethics, harm is a consequence of connections that are broken. This is because within a care-based ethics the self is always a self in relationship, and broken relationships constitute a kind of violence to selves.

## 2.3 Limitations of an Ethic of Care with Special Attention to Disability

On the face of it, an ethic of care has a number of serious limitations for people with disabilities. Care ethics has sometimes been asserted to be an ethics based on a practice borne of subjection, women’s enforced work of caregiving. As such, it may be, as Nietzsche would have it, a “slave morality.” It would seem that a slave morality is not one usefully adopted by a group of people who are struggling to emerge from a subordinate status. Moreover, a care-based ethic has been thought most suitable to informal and private domains. Applying it to the situation of disability would appear to favor the more individual, medical model of disability that is out of favor. Even if it is useful to people with disabilities in the informal, private contexts, why suppose that it can address the structural problems that a social model of disability highlights.

And finally, care has been taken to be too closely tied to the very image of dependency that disabled people have in large measure tried to shed. Dependency implies power inequalities and a care-based ethics appears to embrace rather than challenge these inequalities.

Each of these criticisms has been responded to by a number of writers, most recently and comprehensively by Virginia Held in her new book *The Ethics of Care*.<sup>10</sup> But rather than answer these critiques, I will turn these apparent limitations on their head and show how these aspects of care ethics can also be revealed as strengths, strengths that make a care ethics especially valuable to deal with issues that arise with respect to disability.

There are four charges to answer:

### 3.1 Slave Morality?

First, the charge that an ethics of care is a slave morality: to this charge we can reply that an ethic that springs out of practices arising from a subjugated position reveals that the subordinated do have a voice and that it is one that needs to be heard because it can inject new values into a society that fails to treat some of its people well. To aspire to the values of an ethics as practiced by the dominant group may be to involve collusion with the very values that subordinate some persons. For example, in talking about the idea of independence for physically disabled people who require aides to assist them with daily tasks, people with disabilities can inadvertently fall into morally questionable habits that mimic those of privileged groups who have taken for granted caring work, relegating it to unpaid or the worst paid labor.

Wanting to show how problematic the linkage of care, dependence, and deviance is, Mike Oliver writes, “professionals tend to define independence in terms of self-care activities such as washing, dressing, toileting, cooking, and eating without assistance.” Yet, he points out, “Disabled people...define independence differently, seeing it as the ability to be in control of and make decisions about one’s life, rather than doing things alone or without help.”<sup>11</sup> I am suggesting that we still

need to ask: “What about those who do the washing dressing toileting?”

Judy Heumann, one of the founders of the Independent Living Movement, wrote influentially: “To us, independence does not mean doing things physically alone. It means being able to make independent decisions. It is a mind process not contingent upon a normal body.”<sup>12</sup> This suggests that care, if it can be dissociated from the stigma of dependence, is not only compatible with independence of the sort that Heumann alludes to, but is in fact indispensable to it. But at the same time, we also need to consider that at least conceptually, if not strategically, de-stigmatizing dependency, or rendering it a value-neutral feature of the human situation and utilizing the resources of a care ethics will serve both the disability community and the larger community better than an emphasis on independence. For “independence” as the aim of a movement to include disabled people as full citizens of the human community only perpetuates the pernicious effects of the fiction that we can be independent. I suggest that the exploitative nature of care labor is likely to be exacerbated when viewed in the highly instrumental manner indicated by insisting that independence has to do with control and decision-making and nothing to do with needing assistance in carrying out daily tasks.<sup>13</sup> The stress on independence makes it appear as if it would be preferable to have an aide replaced by a machine. Concomitantly, the person providing care comes to be seen as a pure instrument to the achievement of the independence of the disabled person. The fact that there is any relationship of dependency to another person appears as regrettable, insignificant, even if it is an inevitable fact. Annette Baier, addressing the absence of the concerns of domestics and care workers within a theory focused on rights, speaks of these persons as “the moral proletariat.”<sup>14</sup> Where is the independence and control of those who are mere instruments of another’s independence and control? What are we to presume of relationships between the person who gives care and the disabled person in need of that care? Elsewhere I argue when caregivers are devalued, treated instrumentally, they in turn are more susceptible to devaluing those for whom they give care, particularly, but not only, in the case of those with developmental and mental impairments.<sup>15</sup> Is it not better to acknowledge one’s dependency on another? And then find ways to establish a mutually respectful relationship, one based on a genuinely caring and respectful attitude? Is it not better to ensure that relationships of dependency be replete with the requisite affective bonds, ones which can transform otherwise unpleasant intimate tasks into times of trust, and demonstrations of trustworthiness, gratifying and dignifying to both the caregiver and the recipient of care? Is it not preferable to understand relationships of care to be genuine relationships involving labor that is due just compensation and recognition? Note that here care and justice support rather than oppose one another:

Moreover, if by appealing to the nature of moral relationships envisioned within a care ethics we conceive of all persons as moving in and out of various relationships of dependence, through different life-stages and different conditions of health and functionings, the person with an impairment who requires the assistance of a caregiver is not the exception, the special case, but a person occupying what is surely a moment in each of our lives, and also a possibility that is inherent in being human, that is, the possibility of inevitable dependence. We see that we need to structure our societies so that such inevitable dependence is met with the care, resources, and dignity required for a flourishing life. We again recognize that we need social arrangements enabling those who provide care to be similarly provided with the care, resources, and dignity they require for their own flourishing and for the possibility of doing

the work of caring well. Finally, if we see ourselves as always selves-in-relation, we understand that our own sense of well being is tied to the adequate care and well being of another. Caregiving work is the realization of this conception of self, both when we give care generously and when we graciously receive the care we require.

### 3.2 Inequalities?

The second limitation, as critics of care ethics have often pointed out, is that the paradigm of the caring relations invokes relationships of inequality, such as the mother and child relationship. Clearly this is not the sort of relationship that one wants as a model for relationships between adult disabled people and care providers. We can at once grant this, but insist that an ethics that acknowledges inequalities in situation and power are important if we are to avoid turning these inequalities into occasions for domination and abuse on the one hand, and paternalism on the other. Baier, addressing the limitations of a morality that presumes equality, remarks, “This pretense of an equality that is in fact absent may often lead to a desirable protection of the weaker or more dependent. But it somewhat masks the question of what our moral relationships are to those who are our superiors or our inferiors in power.” She goes on to suggest that a morality that invokes this pretense of equality and independence, if not supplemented, may well “unfit people to be anything other than what its justifying theories suppose them to be, ones who have no interest in each others’ interests.”<sup>16</sup> That is, it may leave us without adequate moral resources to deal with genuine inequalities of power and situation that we face daily, and which not infrequently are conditions that certain impairments (apart from social arrangements) impose on us.

To deal with the inequalities that emerge out of the needs that are a consequence of certain impairments we require an ethic that can guide relationships between different sorts of care providers (family members, hands-on care assistants, medical personal) and people with different sorts of care needs. The urgencies of need, whether they arise from medical emergencies, a breakdown in equipment needed for functioning, disabling conditions not addressable by accommodation, are ones that render disabled persons (and not infrequently the carer of a disabled person whose welfare is part of the carer’s own sense of well being) vulnerable. This is, of course, true of each of us, whether or not we are disabled. For instance, we generally come to medical professionals at a vulnerable moment. While paternalism is an inappropriate response on the part of professionals insofar as we may well be able to make or participate in important decisions about our lives, we are likely to require responsiveness to our need and to the particularity of our situation. It is precisely situations such as these that call for an ethic of care and responsibility (on the part of those with greater power and capacity toward those with less), rather than an ethic based on the reciprocity of rights of two equally empowered moral actors.

Another point with respect to the worry about unequal relationships bears on distributive issues. Differences in powers and situation require a positive conception of rights and responsibilities toward those less well-situated or powered. Positive provisions are critical if people with disabilities are to be able to flourish—whether these are ramps, Braille in public areas, wheelchairs, help making one’s home accessible, the service of home-care attendants, or a safe, enriching, stimulating environment in a protective setting. An ethic of care, if and to the extent that it can be made serviceable in the public domain, becomes a stronger justification for positive rights insofar as care is seen as carrying out responsibilities we have for another’s flourishing, not only the protection against undue interference or the mere assurance of equal opportunity.

Many with significant disabilities are not in a position to take advantage of such opportunities, even when accommodations are made. For persons with severe mental retardations, such as my daughter, Sesha, no accommodations can make her self-supporting, regardless of antidiscrimination laws and every equal opportunity that may be legally available to her. Mental retardation poses a special challenge to the justice approaches that have predominated in disability discourse. But even for those who are impaired in ways that are less disabling in our society, positive provision of attendants, equipment, appropriate housing, and nonpublic sources of transportation require an attitude of care and concern that either is not well-captured in legal structures that enshrine principles of justice or must, as Alisdair MacIntyre suggests, undergird formal systems in order for them to function properly.

### 3.3 Taking Care Ethics Public

The above point concerning distributive justice triggers the third critique, namely, that a care ethics is best suited for the private sphere of intimate relations and is not appropriate in the larger realm of public policy. This charge, if it is in fact a criticism, has been addressed by a number of authors. Joan Tronto, for instance, argues that a care ethics, suitably developed, is the appropriate one to justify and guide welfare policy<sup>17</sup>; Sara Ruddick utilizes the ethical basis of “maternal thinking” to develop a peace politics<sup>18</sup>; Michael Slote defends the use of a care ethics to cover the ground usually reserved for justice, including ethical behavior to those who are in different parts of the globe.<sup>19</sup> Virginia Held invites us to imagine what a society that governed social policy on a care paradigm might actually look like, and joins Fiona Robinson in arguing for expanding a care ethics to guide a global ethics.<sup>20</sup> These are only a few of the more prominent attempts to show that an ethics of care need not be confined to intimate relationships. I, too, have argued for a public ethic of care in which care and justice are both transformed in the accommodations a just society must make to be caring and caring relations must make to be just.<sup>21</sup> It is the obligation and responsibility of the larger society to enable and support relations of dependency work that takes place in the more intimate settings.<sup>22</sup> A society that makes adequate provisions for a flourishing life for people with disabilities will be one in which the fundamentals of a care ethic, such as our interrelationships and inextricable connectedness, our vulnerability and dependencies, our requirement of responsiveness to and responsibility for one another are recognized and valued along with our needs for respect and self-determination.

### 3.4 “The Virtues of Acknowledged Dependence”

To the fourth difficulty, that while an ethics of care deals with dependencies the disability community has been working to shed the image of the disabled person as inherently dependent, I suggest that rather than see the emphasis on dependence and connection as limitations, we see the emphasis of these in a care ethics as resources. Gilligan cites two definitions of dependency offered by high-school girls she studied. One arises “from the opposition between dependence and independence, and the other from the opposition of dependence to isolation.”<sup>23</sup> She develops the opposition:

As the word “dependence” connotes the experience of relationship, this shift in the implied opposite of dependence indicates how the valence of relationship changes when connection with others is experienced as an impediment to autonomy or independence, and when it is experienced as a source of comfort and pleasure, and a protection against isolation.<sup>24</sup>

We began the discussion with the question of the relation between care, dependence, and disability. In the definitions offered by these high-school girls we see that where an ideology of independence is dominant, the positive experience of connectedness we can experience through dependence is eclipsed. To the extent that disability discourse aligns itself with that of independence, the understanding of dependence as a contrast to isolation is hard to fathom.

Acknowledging the inevitable dependency of certain forms of disability and setting them in the context of inevitable dependencies of all sorts is another way to reintegrate disability into the species norm, for it is part of our species typicality to be vulnerable to disability, to have periods of dependency, and to be responsible for the care of dependent individuals. We as a species are nearly unique in the extent to which we attend to the dependencies not only of our extended immaturity, but also of illness, impairment, and frail old age. I propose highlighting the commonalities between different conditions of “inevitable dependencies” so that we can recognize that dependency is an aspect of what it is to be the sorts of beings we are. In this recognition, I hope we can begin, as a society, to end our fear and loathing of dependency and, with it, to diminish the stigma that attaches to all forms of disability (even those where dependency is not inevitable).

### 4. Conclusion: Revisiting the Ideal of Independence

Dependence may, in various ways, be socially constructed and unjust, and oppressive institutions and practices do create many sorts of dependence. But if dependency is constructed, independence is still more constructed. We cannot turn away from that fact and sufficiently rid ourselves of prejudices against disability, and certainly not for those whose disability cannot be uncoupled from a need for care.

To mask inevitable dependency and valorize only a particular segment of human possibility strengthens the hand of those who refuse our collective responsibility to take care of one another and helps perpetuate the isolation of those with disabilities.

Among the many precious gifts I have received from my daughter Sesha has been to learn, as Alasdair MacIntyre puts it, “the virtues of acknowledged dependency” and the extraordinary possibilities inherent in relationships of care with one who reciprocates but not in the same coin, one who cannot be independent, but repays with her joy and her love.<sup>25</sup>

#### Endnotes

1. Presented at the Feminism and Disability Panel, American Philosophical Association Central meeting, Chicago, April 27th, 2006. The ideas presented here derive from my paper: “The Idea of Care Ethics in Biomedicine: The Case of Disability” in Christopher Rehmman-Sutter, ed., *Biomedicine and Human Limits* (Amsterdam: Springer Verlag, 2006).
2. Mike Oliver: “Disability and Dependency: A Creation of Industrial Societies.” In *Disability and Dependence*, edited by L. Barton (Philadelphia: The Falmer Press, 1989), 17.
3. Colin Barnes. *The Cabbage Syndrome* (London, New York, Philadelphia: The Falmer Press, 1990).
4. ADA (a), (8). Americans with Disabilities Act of 1990. 101st Congress, PUBLIC LAW 1990, 101-336, 933.
5. BCODP, British Council of Organisations of Disabled People. Comment on the Report of the Audit Commission (London: BCODP, 1987), 3.2 (cited in Oliver 1989, 13).
6. The claim is stated as it is to make it clear that I acknowledge that not all people with disabilities require care different—in manner or extent—from that of those not characterized as disabled, and that due to our human dependence we each have required and are likely at some future time to require



extensive care in order to survive and thrive. More of this in my concluding remarks.

7. Much of this stems from Carol Gilligan's *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982). However, a number of analytic philosophers who do not necessarily align themselves with feminist philosophy have also, of late, taken up work in an ethics of care. There has been a parallel development among some Continental philosophers, beginning with Emmanuel Levinas, who focus on care, although their work has been less influenced by feminist work.
8. See Eva Feder Kittay, *Love's Labor: Essays on Women, Equality and Dependency* (New York: Routledge, 1999).
9. C. Gastmans, Dierckx de Casterlé, and Schotmans. "Nursing Considered as Moral Practice: A Philosophical Interpretation of Nursing" *Kennedy Institute of Ethics Journal* 8 1 (1998): 53
10. Virginia Held. *The Ethics of Care: Personal, Political, and Global* (New York: Oxford University Press, 2006).
11. Oliver, "Disability and Dependency," 14
12. Judy Heumann, Independent Living Movement. <http://www.disabilityexchange.org/newsletter/article.php?n=15&a=134> Berkeley, CA, August 1977.
13. Also see my discussion of Olmstead v. L. C. and E. W. in Kittay 2000. Eva Feder Kittay. "At Home with My Daughter." In *Americans with Disabilities*, edited by Leslie Pickering Francis and Anita Silvers (New York, NY: Routledge, 2000), 64-80
14. Annette C. Baier. "The Need for More Than Justice." In *Justice and Care*, edited by V. Held (Boulder, CO: Westview Press, 1995), 55
15. Eva Feder Kittay. "When Care Is Just and Justice Is Caring: The Case of the Care for the Mentally Retarded," *Public Culture* 13 3 (2001): 557-79
16. Baier, "The Need for More Than Justice," 55
17. Joan Tronto. *Moral Boundaries: A Political Argument for an Ethic of Care* (New York: Routledge, 1993).
18. Sara Ruddick. *Maternal Thinking* (New York: Beacon Press, 1989).
19. Michael Slote. *Morals from Motives* (New York: Oxford University Press, 2001).
20. Virginia Held. "Non-Contractual Society: A Feminist View," *Canadian Journal of Philosophy* 13 (Supplement) (1987): 111-35. Fiona Robinson. *Globalizing Care: Ethics, Feminist Theory and International Relations* (Boulder, CO: Westview Press, 1999).
21. Eva Feder Kittay, *Love's Labor*; "When Care Is Just and Justice Is Caring"; and Kittay, "A Feminist Public Ethic of Care Meets the New Communitarian Family Policy," *Ethics* 111 (2001a): 523-47.
22. Carol Gilligan. "Moral Orientation and Moral Development." In *Women and Moral Theory*, edited by E. F. Kittay and D. T. Meyers (Lanham: Rowman and Littlefield, 1987), 31.
23. *Ibid.*, 31-32
24. *Ibid.*, 14
25. Alasdair MacIntyre. *Dependent Rational Animals: Why Human Beings Need the Virtues* (Chicago: Open Court, 1999).

Central Division Meeting Program)—that is, the published program for the meeting to which I have come with these reflections—breaks with tradition by including program information on disability. Special sections on "access" to meeting rooms and "access" to transportation appear in this publication for the first time.

Through the medium of messages to email lists, one APA member has hailed these sections as a break-through, a welcome to people with disabilities to participate in the APA. There is something odd about her enthusiasm, however. In view of what information actually is given in this issue of the APA Proceedings, the claim that providing it constitutes a welcome to disabled people seems strained. For both the tone and the substance of what is said convey warnings! And warning is an action quite different from, and often antithetical to, welcoming!

These special sections of the program warn mobility limited people of what we cannot do if we wish to participate in the meeting. Unlike our colleagues, we are told, we cannot use the nearest CTA stations, and we also are warned that the path of travel from the much more distant stations that are accessible to us will take us to a hotel door we cannot enter. Unlike all other attendees, we cannot go from meeting room to meeting room on the same floor. With no more time between sessions than our colleagues, we learn from the "meeting room access" section that we must descend from a wing of the third floor in one elevator, cross the lobby, and then wait for another elevator to go back up to another wing of the third floor, just to get from third floor registration to the third floor meeting rooms only fifty or so feet away from registration, a short trip for our colleagues who can climb a few stairs to go from one to the other third floor wing.

Parenthetically, the program does not even warn mobility limited guests that we must allocate at least an extra thirty minutes to eat in the main hotel restaurant. The procedure for securing a meal in the company of our colleagues is formidable: we must place a request to hotel security for a security escort who will take us through a maze to service elevators, then across the breadth of the Palmer House kitchen, and through a back door to the rear section of the restaurant.

It is hard for those of us who face these barriers to experience the warnings about them as welcomes. A wheelchair user (a former philosophy graduate student, now a disability activist) who contributed to a disability and philosophy email list set up for philosophers by Joan Callahan reflects this fact when she reports being more worried than reassured by meeting organizers who include special sections on accessibility. In her experience, avowals that special arrangements for disability have or need to be made often turn out to mean that meeting organizers are content to let inaccessibility be the norm, and to treat accessibility as nothing more than a special provision.

A conversation I recently participated in about the APA's providing reasonable accommodations to people with disabilities at APA meetings illustrates the difference between understanding a meeting service or arrangement to be normal and treating it as a special provision. The conversation concerned the cost of providing a captioning service for hearing impaired APA members at divisional meetings. Captioning service was declared to be "pricey" and the availability of resources to provide it therefore to be questionable. Yet no similar rationing consideration has been applied to data projectors, even though a captioner costs less for the session than a data projector does. Arranging for data projectors is thought of as normal, while arranging for captioners is a special provision.

There is a further puzzle here. What about programs for meetings where the meeting sites and modes of participating

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## Neuroethics, Feminist Ethics, and the Ethics of Disability: Trust at the Center Should Hold

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### Part I: The Conundrum

The 2006 APA Central Division Program (Proceedings and Addresses of the APA, Volume 79, Number 4, February 2006)

in the meeting normally are accessible? Neither warnings about inaccessibility nor directions for obtaining special provisions are needed in such programs. But what a conundrum! Should we prefer the spotlight of recognition because we face barriers, or invisibility and consequent nonrecognition due to barriers having faded away?

Those who embrace the “special section” approach seem committed to the former. In what follows, I will suggest the reasonableness of the latter preference, which seems to me to incorporate a stance that is a requirement of justice.

To consider the plausibility of this claim, compare possible APA meetings in the following three respects that bear directly on participatory justice:

First, in respect to the facts about the meeting site: How welcoming in fact is the meeting site to disabled people? Second, in respect to the informative function of the program, and specifically the information it contains about the meeting site: How welcoming is the program’s description of the site to disabled people? Third, in respect to the affective function of the program: How welcome do the program’s rhetorical elements make disabled people feel?

As to the first comparison, it is a truism (within the contours of participatory justice) that meeting sites enabling disabled people to participate with the same ease (or difficulty) as everyone else will be the most welcoming to them in fact and in justice. As to the second comparison, in justice the true description of the meeting site contained in the program should equally invite the participation of nondisabled and disabled APA members. Equitable access for all (except those who have not paid their membership dues) should be a given, and language that warns of inaccessibility, even if advising how to cope with it, should not be the practice in APA programs—the need to issue such warnings should be unforeseeable and rare.

It follows that special program instructions spotlighting disabled people also should not be the practice—if used at all, they should be rare. Special instructions should be called for only by circumstances well beyond the APA’s control. Given that large U.S. hotels generally comply with ADA requirements, accessible hotel choice is within the APA’s control.

The third comparison addresses the expressivist dimension of the APA meeting program, that is, how welcome the language of the program makes prospective attendees feel. Reference to the expressivist dimension of objects and actions is a familiar move in disability critiques of various social practices. For example, the practice of terminating pregnancies because sonic, chromosomal, or genetic testing predicts the child will be disabled is often accused not only of eugenic oppression aimed at future disabled people, but also of expressive oppression aimed at existing disabled people. This practice is said to send a message to disabled people about their lack of value.

Note, however, that in this case the expressive spotlight is detrimental, not beneficial, to disabled people. Here the prediction of disability not only spotlights the future child but also affects the perception of it so profoundly that nothing about it appears worth welcoming. The expressivist argument’s claim is that when practices spotlight disability as burdensome or even as special or odd, they both devalue disabled people and convey that alarming attitude to them.

Of course, critics of the expressivist argument think it is unreasonable for disabled people to feel the termination of a potentially disabled fetus to be a palpable threat to themselves. But this is too cavalier a dismissal of the moral importance of expressivist effects.

Contrary to the practice of spotlighting disability through prenatal testing the practice of spotlighting disability by warning

about inaccessibility in APA programs has been felt to be welcoming to disabled people, at least to and by some people. This is the conundrum. I think there is a reason for some people to feel this way, and also that it is not unreasonable for them to do so, although, as I eventually will suggest, they are mistaken in doing so.

## Part II: Justice as Trust

I now turn to a theory of justice that can explain what role the expressivist dimension of a practice may seem to play in our obligations in participatory justice. This theory is initially presented in an article by Anita Silvers and Leslie Francis called “Justice As Trust: Disability and the ‘Outlier Problem’ in Social Contract Theory” in the October 2005 *Ethics* (see pp. 40-76 for appropriate citations). The theory is prompted by the many powerful feminist criticisms of idealized philosophical accounts that derive justice from idealized agreements among homogeneously rational social cooperators.

Very briefly, I will lay out the fundamental points to explain why some might think that the expressive function of statements is important to justice for disabled people. If this is the case, APA program language should be more attentive to the affective impact of what programs say. But the same theory will show that the expressive dimension is less important for justice than fans of the expressivist argument contend.

Justice through trust reaches back to social contract theory’s roots. Social contract theory gives a prescriptive account of how social cooperation may be voluntarily sustained. Contemporary versions of social contract theory usually build on a 19th-century reconceptualization of contracting that defines it as a process of mutually advantageous exchange.

On this account, abilities to present one’s viewpoint, to strategize against others so as to promote one’s viewpoint, and to contribute to others so they value one’s viewpoint, are required for successful participation in social contracting. To secure each other’s consent to principles of cooperation, similarly situated, homogeneously able agents bargain with each other in strategic give and take, and only people who can give something worthwhile to others can induce others to cooperatively give over to them.

Against this account, it seems odd, even counterproductive, to think we must be adversarial and bargain against each other in order to strengthen and secure cooperating with each other. A foundational process in which participants practice being constant with each other seems more likely to be effective for stabilizing cooperation. Justice through trust therefore supposes that the benefits of mutual agreement are much better achieved by promoting stable satisfaction of mutual expectations. People who do not trust each other can cooperate only under rules that must be negotiated and then enforced, but the necessities of enforcement elevate transaction costs. Further, trust enhancing systems can be more flexible and responsive to individualized situations than compliance enforcement systems are, and they do not impose operational costs on participants in the same way.

Social contract theories that rest cooperation on acts of bargaining usually portray human cooperation as arising from calculations driven by rational self-interest. But human biology permits, and even promotes, cooperation that is not calculating. There is a biological basis for trust that kicks in more generously the more “approach behavior” can be prolonged. Thus, neither eliciting trust nor trusting need be the outcome of a process of reasoning, though each sometimes is so.

As neuroethics suggests, nonrational biological responses underwrite and enable interactions crucial to justice. For example, positive social signals cause the hormone oxytocin

to be secreted. Consequently, individuals and organizations can contribute to justice through trust whether or not their conduct or practices are the product of rational choice. They can do so by inviting approach behavior, and doing nothing to provoke retreat behavior. Principles of justice neither derive from nor reduce to the mechanisms of human biology, but these mechanisms both enable and constrain our ability to cooperate. For example, although oxytocin enables approach behavior and therefore facilitates trust, its efficacy diminishes if the trust expressed through approach behavior is abused. What social arrangements induce high oxytocin levels is, of course, an empirical matter. The important thing is that social environment affects oxytocin production and oxytocin production affects social environment, so that one reinforces the other.<sup>1</sup>

Social contracting through trust thus is a building process. There will be conditions that, even if the parties are very differently situated and differently abled, facilitate their cooperative interaction and thereby shape agreement among them, as well as practices that nourish their agreement. One such condition is that procedure and practices should be inclusive, for to trust an agreement the parties must have standing in its development. Another condition is that procedure and practices should recognize and respond to people's differences without disadvantaging them for being so, for to trust an agreement the parties must feel free to be (and reveal) who they are while participating in its development. A third condition is that procedure and practices should enable participants to strengthen each other's involvement and commitment, for the parties need to embrace principles or regularities that enable their interactions to be ongoing. To trust an agreement or arrangement between parties, the arrangement must involve principles or regularities that promote the stability of its influence.

These three conditions can be cast into principles of justice, which in the context of justice through trust are understood to guide trust-building practice. Individuals whose social environment is shaped by these principles will be more easily and more reliably trusting and trustworthy than individuals whose circumstances are otherwise. Their approach behaviors will be more habitual, and they will be less likely to rebuff the approach behaviors of other people.

### Part III: The Expressivist Argument

The theory of justice through trust explains the attraction of the expressivist argument. Negative expression distances disabled people by denying the right of people like them to exist, which surely seems to weaken their claim to have standing for justice. Positive expression embraces receivers by foregrounding them with recognition, thereby strengthening their claim to standing. Especially, special mention of disability can have a positive expressive effect when disabled people who feel they have been invisible to an organization take being given special mention as recognition that gives them standing.

Parenthetically, this kind of recognition probably feels especially welcoming to individuals who think their disabilities are not properly appreciated. But if we think about justice in terms of trust-building and trust-erosion, we can see that relying on practices' expressive power for establishing, or denying, standing is problematic.

Think about trust-building in those basic terms of inviting approach and preempting avoidance; concomitantly, think of trust-erosion in basic terms of repelling approach and propelling avoidance. How does expression affect approach and avoidance, which in turn are basic to consigning or precluding standing?

The same expression can invite approach in some people, but repel others. Imagine turning a corner and coming face to face with a very large person who advances, reaching toward you. Many variables affect whether you surge forward towards the individual or turn and run. Is this a friend or stranger? Is he smiling or yelling? Do you view his outstretched arms as promising a welcoming hug, or as threatening a repudiating blow? People will differ as to whether they advance or flee. If you are a neurodiverse person with a certain kind of autism, for example, you may retreat even if the figure is a jolly Santa Claus. And, as welcoming as an open-armed Santa Claus may appear to most of us, if you were a tiny child being placed on Santa's lap for the first time, you might burst into tears.

A similar phenomenon characterizes responses to warnings of inaccessibility. While expressed recognition may be felt as consigning (or precluding) standing, the variability of reactions to the expressiveness of practices makes the expressive dimension unsuited to facilitating stable inclusive interactions among diverse people because the same expression may attract some people while discouraging others. The expressive dimension of a practice undercuts the stability needed to nourish trust, so trust withers when recognition draws too heavily on a practice's expressive dimension.

While the recognition that confers (or denies) standing is a crucial component of just treatment, recognition that confers standing must be other than how a practice makes this or that person, or even one or another group of people, feel. Practices that recognize difference, but in doing so affirm or are complacent about disadvantages arising from difference, neither enable inclusive interactions nor impart stability to agreements about inclusiveness. Consequently, while the practice of including special sections about (in)accessibility in APA programs may acknowledge the existence of disabled people, doing so is far from extending to them the standing required by justice. We will know that disabled people have achieved that level of standing within the APA only when they can be found actively and equally participating in all APA activities.

#### Endnote

1. Benedict Carey. "Hormone Dose May Increase People's Trust in Strangers," *The New York Times*, National Report (Thursday, June 2, 2005), A12

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## Determining the Good By, With, and For Dependent Agents: Insights from Feminism

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This discussion sketches how some feminist themes may help in determining their good by, with, and for people with life-long intellectual disabilities. I emphasize three themes: non-rational forms of knowing, contextualized identity, and relational agency. What I say here is only a beginning, meant to provoke much further thought (both on my part and on the part of others) about fruitful points of connection between feminist theory and disability studies.

In medical decision-making, an area in which these issues have loomed large, but in many other areas of decision making as well, it is important to have a conception of a person's good that can be used in representing him or her.<sup>1</sup> When people have become intellectually disabled in later life, their own prior conceptions of the good can be a starting point for determining a conception of the good that fits the individual closely.

Whatever we ultimately make of precedent autonomy—and there are well-known criticisms that reach as deep as fractured personal identity<sup>2</sup>—it is not available when people have life-long intellectual disabilities.

One alternative is to resort to an objective theory of the good—for example, judgments about what organisms of a particular type need to flourish. Reliance on such Aristotelian<sup>3</sup> or other “objective list”<sup>4</sup> theories of the good may, of course, be tailored relatively closely to the type of individual in question. But it will not be the individual’s own conception of her good, rooted in her own experiences and choices. It will not be, that is, the kind of subjectivized conception of the good that is fundamental in much of liberal theory.

An obvious point to make is that none of us ever meet this picture of an idealized agent. Beyond this point, Anita Silvers and I have argued elsewhere<sup>5</sup> that there is a central confusion in this analysis of liberal theorizing about the good. Mill’s famous claim that an individual is the best judge of her interest, like his equally famous harm principle, is not really one claim, but three. The claims are theoretically separate, although they often appear together. The first claim is that the good is plural: there is no single good for all, but different individuals may have differing conceptions of their good. The second claim is that individuals must determine their conceptions of their good by themselves. This is a view about the need for independence in understanding an individual’s good. The third claim is that conceptions of the good directly or indirectly express psychological states of the individual, such as wants or preferences or experienced values.<sup>6</sup> This is a view that the good is subjective.<sup>7</sup> Anita Silvers and I argue that understanding the good for people with intellectual disabilities places pressure on this three-part conjunction of pluralism, subjectivism, and independence in conceptualizing the good. The solution we have developed requires re-examining the assumption of independence in terms of understanding how people more generally are cooperating, and therefore to a greater or lesser extent dependent agents in constructing their differing, subjective goods. Under this conceptualization, people with intellectual disabilities can participate in practices that are centered on or guided by their own ideas of the good, even though they cannot formulate, articulate, or communicate complex personal ideas. Their conceptions of the good are worked out with the help of trustees working by, with, and for them.

To re-understand agency in this way, however, raises the concern that conceptions of the good formulated by dependent agents are not really theirs. Such conceptions may be paternalism in another guise, developed by well-meaning caregivers, out of the caregivers’ own views about what is best or even right. Consider a caregiver’s judgment that a person with intellectual disabilities is better off working in a sheltered environment that is highly protective rather than applying for a job in the wider employment market. Even worse, such judgments might be exploitative, if trustees bolster judgments that are really based in their own interests by claims about the dependent agent’s interests. Consider a parent’s judgment that a child with intellectual disabilities will find community placement too stressful for herself, when the parent is really concerned that community placement will impose increased worry, stress, and responsibilities on other family members. Or consider decisions to refuse medical treatment because it will be too costly<sup>8</sup>—or decisions to continue medical treatment because a living person can continue to draw disability benefits that are diverted to family use. These concerns about the role of self-interest on the part of representative trustees have led Martha Nussbaum, among others, to contend that social

contract theory cannot ultimately be responsive to dependent agents.<sup>9</sup> These are very deep concerns, but ones about which, I think, feminist insights have much to contribute.

### People with Life-long Intellectual Disabilities

The range of people with life-long intellectual disabilities is very wide. Estimates are that between five and seven million people in the United States currently fall into this category.<sup>10</sup> The majority have IQs between 50 and 70 but many are more profoundly impaired. The imagery of childhood—“retardation,” “developmental delay”—is frequently used in describing this population. In my judgment, this imagery is particularly unfortunate because it suggests that people with intellectual disabilities are on just a slower trajectory towards “normal” adulthood, and consigns them to perpetual childhood if they do not make it up the trajectory. One goal of my work is to understand what an “adult” conception of the good would look like in such cases, but there are important cautions. People with intellectual disabilities frequently are impulsive and have difficulty in engaging in planning or longer-term or more abstract thinking. And people with intellectual disabilities may have difficulties in forming attachments; they may find friendships or love relationships harder to establish, and they may be vulnerable to exploitation.

Consider as an example a case of reproductive decision-making on which I was consulted. The patient was a young woman with autism and obsessive-compulsive disorder (OCD). Newly available treatments for her OCD had recently proved quite successful, and she had begun a trial of living in a community home, learning self-care skills such as taking the bus and shopping. At the time of the consultation, it was still difficult to sort out the relative effects of autism, OCD, and intellectual impairments for her, however. Her treating psychiatrist—to whom she had become quite attached—believed it was likely that she would be able to continue to live in a supported home and eventually have gainful employment. Her parents were understandably worried about the risks of her increased ability to be in the world, and they wanted her to have a hysterectomy, for her own good. Their judgment was based on her vulnerability to sexual predation, as well as the difficulty of menstruation for her and its possibility as a barrier to her independence. She did not want the hysterectomy because she hoped to get better enough to be able to have children some day.<sup>11</sup> She understood that this would be difficult and that menstruation was hard for her. She also voiced emphatically that she knew she should not get pregnant at the present time. But the possibility of having a child was a very important goal for her, and she did not want to lose that capacity. Was sterilization a good for her? How should trustees decide? And who should these trustees be—parents, involved members of the treatment team, an appointed guardian ad litem? In the remainder of this discussion, I sketch how three core feminist themes may be helpful in answering these and related questions.

### Non-rational Knowing

Some feminist epistemologies emphasize forms of knowledge that are not based on either sensory experience or reason. These forms of knowledge include knowing by doing and knowing by emotional attunement. Persons with intellectual disabilities whose conceptual capacities are limited may still know in these ways. They may be able to do things even when they cannot explain what they are doing—humming along to music, for example. They may have feelings that they cannot articulate: happiness in the presence of familiar surroundings or family members, pleasure at sounds, or fear and distrust when people seem threatening to them. These doings and feelings may constitute forms of knowledge for people with intellectual

disabilities, just as they do for those of us who know how to ride bikes or who recognize when an atmosphere in the room has turned sour.

People who serve as trustees for adults with intellectual disabilities may have knowledge of their preferences through observation or reasoning. They may observe expressions of discomfort or agitation, delight or disappointment. Here, too, however, knowledge is not limited to the cognitive. Consider doings: making rhythms together; moving in water together; or drawing together. Or feelings: the warmth of a comforting hug or the shiver at a blood draw. By feeling with people with intellectual disabilities, those who care about them may acquire additional knowledge of their likes and dislikes, what makes them happy or sad.

These forms of knowing may be helpful in my example of reproductive capacity. The young woman may participate in doings: playing with children, diapering them, comforting them. If she cannot participate in these ways, that would be at least suggestive that her claims to want or to like children lack a knowledge basis in her. She may have feelings in the presence of children: happiness or fear. Adults working with her may observe her behavior, of course. But they may also share her doings and her feelings, and gain knowledge of her in these ways as well.

### Contextualized Identity

Many contemporary writers, including feminists, critical race theorists, and communitarians, have emphasized how identities are formed in contexts. People are born and live in communities. In Kwame Anthony Appiah's term,<sup>12</sup> these communities furnish them with scripts. It is important to recognize that claims along these lines can be far too strong—from the idea that identities are never chosen to the idea that people are locked into identities of oppression. Nevertheless, identities are formed in interrelationship with contexts, for people with and without intellectual disabilities.

To deny this for people with intellectual disabilities while maintaining it for people without would deprive the former of an important dimension of life. They would be unable, for example, to identify themselves as citizens of the country in which they live, as members of religious or ethnic communities, as members of occupational groups or clubs. (Let me note in passing the importance of citizenship at the present; legal immigrants entering the United States after 1996 can no longer become eligible for Medicaid unless they become citizens, except under special circumstances.) To be sure, there are difficulties with what this identity might mean for people who cannot articulate it for themselves in even rudimentary fashion. Someone without intellectual disabilities who is brought up in an Amish community may choose in adulthood to leave the community—or so defenders of analyzing *Wisconsin v. Yoder*<sup>13</sup> in light of a "right to an open future"<sup>14</sup> postulate. Someone with intellectual disabilities might not be able to formulate, much less act on, this choice. So when their identities are constructed through scripts, especial care must be taken to ensure that these scripts really are theirs. Care must also be taken to ensure that these scripts are not exploitative.

But this does not mean that contextualized identities are always to be foregone in favor of objective interests. Consider once again the example of reproductive liberty. The young woman in my case came from an LDS (Mormon) family and was an active member of the faith. She understood the importance of motherhood for Mormon women, her sisters, and her own mother. Her desire to have children was rooted in her identity as a Mormon as well as her desire to share the experience of motherhood with her mother and her sisters. There are a variety

of ways in which this script might play out for her; including enabling her to interact with the children of her sisters; the full range of experiences of motherhood may well not prove possible for her. The possibility that she would not be able to experience the script in the way she might want, however, does not mean it is irrelevant for her; Mormon women without intellectual disabilities work out the script in very different ways, too: as working mothers, adoptive mothers, polygamous mothers, aunts, and friends.

The concern on the other side is that these scripts may be exploitative, demeaning or worse. If so, should the strategy be to reject the script in favor of an objective account of the person's interests? To do this is to conclude that someone with intellectual disabilities must be protected from scripts that people without disabilities can work with in their lives. People with intellectual disabilities could never, then, function as adult members of religious faiths that refuse medical treatment, relegate women to subordinate roles, or privilege an afterlife to continued earthly existence. To say that persons with intellectual disabilities are perpetually locked into the best interest standard of decision making we apply to children and cannot become adults in this way is a genuine loss for them. The argument for this strategy is that they cannot choose those scripts on their own—that it is only independent choice that can validate scripts that are regarded as problematic in these ways. The argument thus relies on the assumption that theories of the good must be chosen independently. Here, too, a suggestion from feminist theory, relational agency, may be helpful.

### Relational Agency

Many writers have developed concepts of relational or shared agency.<sup>15</sup> We use decision-making prostheses all the time: notebooks, computers, friends, and family. We act in concert, pursuing shared projects. Even when we seem to be acting on our own, we choose in relation to others—as mothers, children, philosophers, even citizens. Decision-makers for people with intellectual disabilities frequently partner with them in shared projects: as parents, job coaches, or Special Olympics athletes. The suggestion I want to make here is that of partnership in developing accounts of the good, in understanding what the person with intellectual disabilities is experiencing and wants to do and become. This project will need to draw on non-rational ways of knowing and the articulation of contextualized scripts. Pursuing it may enable us to develop liberal-theoretic accounts of the good of people with life-long intellectual disabilities, accounts of the good that are individually tailored and subjectively experienced and in that sense genuinely theirs.

### Endnotes

1. See, e.g., Leslie P. Francis & Anita Silvers, "Liberalism and Individually Scripted Ideas of the Good: Meeting the Challenge of Dependent Agency," *Social Theory and Practice* (forthcoming 2007). This paper presents a fuller account of many of the themes presented here.
2. There are, of course, significant concerns about the level of emphasis to be placed on the exercise of precedent choice. For a criticism of "precedent autonomy," see Rebecca Dresser, "Precommitment: A Misguided Strategy for Securing Death with Dignity," *Symposium on Precommitment Theory, Bioethics, and Constitutional Law, Texas Law Review* 81 (2003): 1823-47.
3. See, e.g., Philippa Foot, *Natural Goodness* (Oxford: Oxford University Press, 2001).
4. The term is Derek Parfit's, *Reasons and Persons* (Oxford: Oxford University Press, 1984), 493.
5. Leslie P. Francis & Anita Silvers. "Liberalism and Individually Scripted Ideas of the Good: Meeting the Challenge of Dependent Agency," *Social Theory and Practice* (forthcoming 2007).

- 6 There are importantly different versions of this view. The relevant subjective states may be understood as wants, desires, preferences, interests, values, or commitments, each understood in terms of psychological states of the individual. Some hold that these subjective states are all there is to a person's conception of the good. Others hold that subjective states such as pleasure make up the domain of a person's non-instrumental values, while the means to them may be objectively determined. Our discussion is meant to apply to all of these versions of subjectivism; where differences matter, they are noted.
- 7 On Liberty, Ch. 3 Mill's commitment to pleasure as the good is in Utilitarianism, Ch. 2 "...the theory of life on which this theory of morality [utilitarianism] is grounded—namely, that pleasure and freedom from pain are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves or as means to the promotion of pleasure and the prevention of pain." The discussion continues with the argument that some pleasures are qualitatively superior to others: "It is quite compatible with the principle of utility to recognize the fact that some kinds of pleasure are more desirable and more valuable than others."
- 8 Objecting to the idea that proxies morally should always act selflessly, John Hardwig defends the view that proxies are entitled to consider their own interests. "The Problem of Proxies with Interests of Their Own: Toward a Better Theory of Proxy Decisions," *Journal of Clinical Ethics* 4 (1993): 20-27.
- 9 Martha Nussbaum. *Frontiers of Justice* (Cambridge: Harvard University Press, 2006), 136-37.
- 10 From the ARC web site, <http://www.thearc.org/faqs/intromr.pdf> (accessed December 2006). The estimate of 3 percent has remained consistent over the past 40 years. See Robert B. Edgerton, *The Cloak of Competence* (Berkeley: University of California Press, revised & updated ed. 1993), 1.
- 11 See Robert B. Edgerton, *The Cloak of Competence*, for a demonstration of the particularly intense burdens of sterilization for formerly institutionalized people with mental retardation.
- 12 Kwame Anthony Appiah. "Liberalism, Individuality, and Identity," *Critical Inquiry* 27 (2001): 305-22.
- 13 *Wisconsin v. Yoder*, 406 U.S. 205 (1972).
- 14 See, e.g., Dena S. Davis, "Genetic Dilemmas and the Child's Right to an Open Future," *Hastings Center Report* 27 (1997): 7-15.
- 15 A particularly good source of these views is Catriona Mackenzie and Natalie Stoljar, eds., *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (New York: Oxford University Press, 2000).

mechanism is built around a historically specific metaphysics of articulateness. Articulateness is a precondition for obtaining the epistemic rank of testimony (not all articulation is testimony but all testimony is necessarily articulate). Deafness is but one of many "inarticulate" disability identities that experiences exclusion from mainstream, normative testimony in ways specific to their perceived physical and cognitive impairments. This lack of full citizenship resulting from a normatively enforced standard of articulateness is common to many marginalized "others" because they literally have the "wrong" bodies. The ubiquitous problem is that society does not take seriously either the speaking or silent voices of the marginalized who are different in terms of race, class, sex, gender, sexuality, and other categories of difference because we are trained to identify claims as knowledge only when they appear articulate.

In 1786 forty-two-year-old Joseph Caulier was tried before the Parliament of Paris, France's highest court, on the charge of rape and found guilty. It is not clear from court records whether the alleged rape occurred; however, what is interesting in this case is that Caulier was deaf and mute. An appeal was made by a team of Parisian legal advocates who sympathized with the deaf-mute's plight. In a second trial Caulier was acquitted on the grounds that because of his lack of language, he was nothing more than a "noble savage" who could not be held responsible to conventional laws. Because Caulier was uneducated and unable to receive an understanding of the law through speech and hearing, he was depicted as little more than an animal: "All that he feels are his needs, all that he knows is the necessity of providing for them, the right to satisfy them. In effect, he has only those faculties that are absolutely indispensable to him for his own individual conservation."<sup>1</sup> Caulier was found to be outside the purview of conventional laws. Because of his "dangerous mental state," however, he was sent to Paris's madhouse, Bicêtre. A noble savage, indeed; one whose "virtuous" behaviors threatened the moral fabric of a stable society.

Caulier was acquitted, as Sophia Rosenfeld rightly argues, because language was a key constitutive element of morality. The acquisition and skillful use of language was not just a basic foundation for understanding and knowing laws, it was also the foundation for having any kind of moral status and for being an included member of society, regardless of one's hearing abilities. Furthermore, as this and an 1800 trial reveal, the acquisition and use of language could only be obtained through a sophisticated and extensive education. At that historical moment, deaf and hearing people alike who did not speak and write well were not only seen as illegitimate, but also as threats to the very moral fabric of civil life. Indeed, as Rosenfeld points out, these trials resulted in arguments that placed an emphasis on language as one criterion for understanding and abiding by civic and moral laws.<sup>2</sup> In late 18th-century France, one's testimonial capacities—whether by sign, speech, or writing—were interwoven with hegemonic forms of language such that one could have civic and moral standing only if one also could use fluently the hegemonic language of the society in which he or she lived. The only speech and/or writing that mattered, therefore, was the articulate kind.

At the end of the 17th century, articulateness becomes the new standard that entwines testimony and language more tightly than ever before. Even as the French Revolution ends and the Napoleonic era begins, the principle of the fluent, educated citizen remains. The close linking of articulateness with testimony, I argue, is a distinct product of the intersection of Enlightenment attitudes towards the deaf with the then-contemporary concerns with establishing languages with greater veridical—and, therefore, democratic—rigor. This

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## An Epistemology of Deafness

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Deaf people have been commonly labeled as "deaf-and-dumb" since the Enlightenment because the idea of rationality in which language and knowledge are paired with the civilized, mature, and rational citizen is exclusionary. As far as Enlightenment philosophers could see, deaf people had no language, so they therefore had no epistemic agency or standing, and thus could not attain full citizenship. My argument is that this subjected position flags an epistemology in which knowledge is tightly bound with the capacity to express oneself in socially sanctioned linguistic ways. I call this epistemic and historic practice the "articulateness metaphysics." This paper gives an account of a hegemonic epistemology of testimony whose fundamental

linkage reveals much about who can have what kinds of testimony in today's millennial courts. Testimony, to our contemporary minds, is supposed to be about evidence, not about language per se. But in the 18th century, we get a welding of human testimony to language—a welding we have not undone today.

I make a deliberate and important distinction between language and testimony. When we think of the term “language,” we typically think of the use of words, spoken or written (some of us think also of signs used by the deaf), to convey thoughts. “Testimony,” on the other hand, needs to be understood more complexly than its standard conception as courtroom speech or as narrative witnessing allows. For example, people with autism who use facilitated communication routinely do not have their testimonies entered as evidence in part because of our models of evidence but also in part because our model of testimony is linked to a narrow conception of legitimate language. Facilitated communication, briefly, is the use of an able-bodied person to “stabilize” an autistic person's unwilled, impulsive movements toward random letters on a specially designed keyboard. Through a closely developed relationship with one specific facilitator, an autistic person can accurately communicate his or her thoughts because the facilitator is able to pull back (not guide) the arm as he or she senses an involuntary movement. Courtrooms do not allow testimony produced in this manner to be submitted as material evidence. I claim that this is so not because scientific studies have shown these testimonies to be unreliable (any cursory examination of the studies will reveal that the laboratory conditions altered, even violated, the conditions in which autistic people can function effectively), but because the practices of both science and courtrooms do not understand or perceive testimony to be testimony—legitimate, credible, reliable—unless it issues from an autonomous, rational, moral, and credible citizen who can use and produce legitimate communication. Of course, this citizen model is normatively constructed. Thanks to the modern conception of articulateness, it is our prevailing model of testimony that determines who merits the status of “having language.”

The prevailing form of testimony in 18th-century France was based on an epistemic model of the testifier (or witness or knower) as someone who was an independent, unbiased, autonomous, rational, and moral agent. One's credibility and reliability as a testifier was entrenched in very specific material and discursive conditions, including race, class, gender, sexuality, ability, and education. In the 18th century, this figure was restricted to the upperclass, educated, European, male elite. Their use of language resulted in testimony. Others' use of language did not merit such respect or attention, since it was dismissed typically as “not language” or, more simply and commonly, as unreliable and biased. The model of testimony driving the legal, scientific, and religious practices of the modern era from the 17th century forward was and continues to be based on a model of the knower/testifier/witness as first and foremost an epistemic subject. This is in contrast to premodernity's model, which based testimonial capacities not on epistemic but on ethical terms. During the Middle Ages and the Renaissance, primarily ethical criteria were used to evaluate testimony; such criteria were rooted in premodernity's emphasis on highly interpersonal and intersubjective networks of social relations. Where the modern testifier is a solitary, autonomous knower of facts, the premodern testifier is an intersubjective agent whose testimonial acts respond to the community ties that bind people together.

A second trial in 1800, in which Abbé Sicard himself participated on behalf of the deaf defendant, reveals not only the complex relationships between language and law that

leading revolutionaries sought to define and codify during the political upheavals of the last quarter of the 18th century; the trial produced at least a three-fold set of implications for the future of deaf people by establishing a new (and, I would argue, distinctly modern) relationship between language, law, and literacy—a relationship whose legacy we still struggle with today. They also helped to firmly establish the contours of our current epistemology of testimony.

A young deaf, male adult, François Duval, was brought to trial after being found guilty of burglary in a lower court. Unlike the earlier trial where deafness was linked with identity of the *hommé de la nature*, this trial represented an abrupt departure from the natural law argument used in earlier trials to obtain acquittals. Neither Sicard nor the defense lawyer made any efforts “to depict Duval as the embodiment of virtue or of natural law.”<sup>3</sup> Instead, something worse happened. Sicard made the claim that people without recourse to conventional language cannot have any kind of morality. In effect, parole, speech, is the basis of humanity and is what distinguishes humans from animals.<sup>4</sup> In seeking Duval's acquittal, Sicard's fundamental claim was that a deaf person is simply unable to “understand either the consequences of his actions for society or his abstract duties as a citizen—until he could be integrated into the conventional language that, in effect, had created these rights and responsibilities in the first place.”<sup>5</sup> Sicard's defense is not based on any natural law argument, despite appearances to the contrary.

Sicard first categorically ruled out the possibility that deaf people have a moral state of any kind prior to the acquisition of language. Second, he claimed that “the law depended upon a linguistic relationship between the state and the individual and, as such, was not absolutely binding, but relative to an individual's ability to understand the specific linguistic abstractions that served to construct its laws.”<sup>6</sup> That is, instead of making arguments based on deaf people's inability to develop beyond the state of nature, Duval's advocates argued that deaf people could not be expected to entertain any moral values—social or natural—at all, again because of their isolation from society and their lack of conventional language. What has happened in this 1800 trial is significant. The claim is that deaf folks are born without any (natural) morality and, because deaf, cannot use the language that surrounds them in the hearing world to achieve a social morality. Language thus becomes the only vehicle to obtain any kind of morality.

In the end, Duval was not acquitted on the grounds that because he was ignorant of the laws, he could not be held responsible; rather, the argument was that because of Duval's isolation from conventional language, he was not an able participant in the (linguistic) social contract, nor did he have any natural moral inclinations. As such, the uneducated deaf person (or, in this case, the deaf person whose education is incomplete, for Duval was a student at Sicard's school) can neither benefit from nor be punished by the law.

In essence, Sicard presented his arguments in such a way as to make language even more vital to one's humanity than was the case for Caulier. For Sicard, language was necessary for both a natural moral order as well as participation in the (linguistic) social contract. Duval, it was argued, should be acquitted and returned to school in order that his moral and linguistic training be completed, to ensure the achievement of his humanity. Duval was indeed acquitted.

The defense arguments made in Duval's trials produced profound implications for the future of testimony in modernity. First, Sicard's arguments, voiced in a legal context during the aftermath of the Reign of Terror and Napoleon's coup d'état in 1799, paved the way for a permanent divide between the



educated and the noneducated in terms of social inclusion, such that only those who were recognized as linguistically competent would have any social, political, ethical, or epistemic agency. Logically following this, a second implication of Sicard's arguments is that a new linguistic hegemony is created such that there is also a divide between the linguistically dominant and the linguistically marginal.

The third implication is testimonial. Earlier, I suggested that it is our hegemonic model of testimony that determines who does and who does not possess competent linguistic abilities. When the French Revolution began, history was actually poised on the brink of recognizing (educated) signing deaf people as not only citizens but as ideal citizens.<sup>7</sup> Part and parcel of the political overhaul of Revolution was a reconfiguration of testimony; one of the fundamental tenets of the Revolutionary fervor that swept many people—nobles and commoners alike—along its path was the opportunity to publicize individual thoughts and beliefs. At stake for the Revolutionaries was the chance to become testifiers, to be able to make claims. In this context, the attraction to sign language as a promising language in which to allow claims to be made public but also to be able to adjudicate amongst them could have led to an acceptance and recognition of sign language as valid, if not hegemonic. However, as the sequence of these deaf men's trials reveals, the persistent link between language, on the one hand, and morality and rationality, on the other, functions as a determining criterion in one's social and civic standing. The historical situations under which this link is forged are crucial in influencing who shall and who shall not have testimonial capacities.

Whether Sicard realized this or not, his arguments in the last trial of 1800 did two things: One, they established the importance of education for deaf people; without written or signed language, they could not have any connections to society. Two, they also established speech as the natural and righteous path to the language that would allow the speaker entrance into the social contract. That is, according to Sicard's logic, speech is the preferable form by which to enter the social (linguistic) contract. If speech cannot be had because of deafness, then education and its concomitant sign language training is the next best option (and, indeed, it is incumbent upon the state to fund efforts to educate the deaf and save them from both themselves and others). Although Sicard intended that the state would recognize the importance of funding deaf schools, by rescuing Duval from the clutches of the court, Sicard quite possibly destroyed any hopes of sign language's ascendancy to legitimacy, thus relegating it forever to a second-class status behind speech as the one thing that distinguishes humanity from animals.

However, I would argue that Sicard was merely reflecting the firm entrenchment of the epistemic model of testimony of his time. That is, the deaf trials show that by the end of the 18th century any lingering traces of the ethical model of testimony characteristic of the medieval era had completely vanished, leaving behind a rigid and narrowly circumscribed epistemic model that privileged autonomous knowing. Sicard's contribution to this autonomous model was to paint a picture of sign language and deaf people as necessarily dependent upon altruistic teachers and a benevolent government, thus rendering deaf people's ways of life incommensurate with the modern model of testimony. The reverse side of this dependence is merely the autonomy in language provided by speech, and only by speech.

The implications of this philosophical history for feminism are clear: One, as feminists have been arguing all along, the Enlightenment was anything but an opening up of discourse for democratic and egalitarian use. What I have demonstrated here

is that we all have been battling against a standard of testimony whose origin point we have not completely understood in terms of its location in an ongoing process of legitimizing different forms of testimony. Two, in taking another look at the Enlightenment as a political-legal manifestation, I offered a concrete way of understanding how Enlightenment thinkers legitimated themselves and how this results in an epistemic model that ultimately is more regulatory and exclusionary for us all, not just the deaf. Third, my examination is not just a theoretical critique; it provides a historical ground to what will later become the feminist disability critique. Understanding the epistemology of testimony in its historical guise of articulateness is but one example of the rich results of bringing disability and feminist theory to work together on a philosophical level.

#### Endnotes

1. Sophia Rosenfeld. *A Revolution in Language: The Problem of Signs in Late 18th-Century France* (Stanford: Stanford University Press, 2001), 162.
2. *Ibid.*, 169.
3. Sophia Rosenfeld. "Deaf Men on Trial: Language and Deviancy in Late Eighteenth-Century France," *Eighteenth-Century Life* 21 (1997): 166.
4. *Ibid.*, 167.
5. *Ibid.*, 168.
6. *Ibid.*, 169.
7. During this period, there were a multitude of studies and investigations seeking a model language that could be universal, accurate, and true to representing reality. The revolutionaries sought a language that would omit interpretation and therefore preclude the possibility of those in power to bend the truth to their will. Such investigations examined linguistic systems of many varieties including Asian languages, hieroglyphics, semaphores, and sign languages.

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## Queer Breasted Experience<sup>1</sup>

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One of the great achievements of feminist theory and activism is its critique of the patriarchal medicalization of the female body, a critique that bears some similarity to the critique of the medical model in disability studies and the disability rights movement. From the perspective of feminism, queer theory, and disability studies, medical models have made visible, categorized, observed, pathologized, and exerted control over the body in ways that have been harmful for all marginalized groups. Feminists have criticized distortions of female bodily processes such as pregnancy and aspects of female anatomy such as the vagina. Instead, feminist theorists and health care practitioners emphasize the need for women to feel proud about what they contend is natural to female bodies. For example, in writing about breast health, Dr. Susan Love points out that feeling comfortable and acquainted with one's breasts enables women to better monitor their own breast health and eases entrance into puberty for young girls. She states, "No part of your body should be foreign to you."<sup>2</sup> To a certain extent, Love is right, and her book undoubtedly has helped many women become better informed advocates for their own breast health. Still, there is something that troubles me about this passage, especially the last sentence: "No part of your body should be foreign to you." What troubles me is an assumption that I will argue also informs many feminist efforts to reclaim and reconfigure the female body on women's own terms—namely, the assumption that the body with which one



is born is one's own and that oppression is the only thing that prohibits this realization and hence a more healthy self-concept and embodiment.

Some feminists have argued that prioritizing the lived connections between one's female body and the world (that is, female bodied experience) can forge a path out of alienation from one's body and hence one's self. From this perspective a feminist project is for women to reclaim their breasts as important parts of their selves. But what are the implications of this feminist project of reclamation for female-bodied people who identify as men and who experience their bodies as male? If not all female-bodied people understand and experience "their" breasts as central to their being in the world and identity, what are we to make of a feminist project of reclamation of alienated female body parts?

This paper seeks to explore these questions in the context of feminist writing about breast cancer and female-to-male transsexual mastectomy. I will argue that from a queer crip feminist perspective, the central question regarding breasted experience, surgery, and identity is not whether or not the desire for prosthesis, breast reconstruction, or mastectomy is a result of false consciousness. The question is: If, following Judith Butler, the sexed body (like gender) is a discursive construction, in what sense, if any, do women have breasts? What does it mean to say that no part of one's body be foreign to one's self? And if there is a part of one's body that is experienced as foreign to one's self, why should the assumed solution be reacquainting oneself with and learning to love the alien body part? In addition to considering the significance of these questions, I propose to reclaim Audre Lorde's *The Cancer Journals* as not simply a feminist model for women who are making decisions about breast cancer treatment, but as a model for a queer crip feminist way of thinking about bodies, embodiments, and identities, as well as the creative possibilities of the queer spaces that are essential for their emergence. A queer crip feminist paradigm reclaims pejorative terms. It exposes and troubles binaries such as male/female, man/woman, normal/abnormal, homosexual/heterosexual, and able-bodied/disabled.<sup>3</sup> The addition of feminist to this framework emphasizes the connection between these binaries and the oppression of women.

Rather than merely describe and critique forms of oppression experienced by women and female-to-male transpeople, this paper considers how a queer crip feminist approach to sexed and gendered embodiment points to possibilities of resistance and creativity. Instead of focusing on how our bodies are our selves, I consider how we make our bodies our selves and, in the process, move toward a more inclusive and transformative feminist politics of the body. My approach draws on the work of scholars such as Michel Foucault, Judith Butler, Jacob Hale, and Simi Linton, who point to the role of queer and disability communities in the reconfiguration of one's embodied self. Foucault, for instance, argued that what the gay liberation movement needed was an "art of life," by which he meant an ethics and politics of becoming, of creating our bodies, communities, relationships, and selves.<sup>4</sup> Foucault's emphasis on the creative, transformative potential of queer communities and politics is echoed in Judith Butler's claim that norms of identity and embodiment make possible certain ways of life while simultaneously excluding others. In order for feminist politics and theory to be transformative, it must be based on an ethics and politics of becoming, open to the on-going process of gender transformation within queer communities. Feminists must, according to Butler, "expand our capacity to imagine the human."<sup>5</sup> Writing about his experiences as a transman in leatherdyke communities, Jacob Hale emphasizes how queer embodied identities are made possible through a queer

community discourse that exceeds theoretical discourse. He writes, "These community discourses sometimes reflect rich and subtly nuanced embodiments of gender that resist and exceed any simple categorization into female, male, woman, man, and thus into homosexual, bisexual, and heterosexual."<sup>6</sup> For Hale, participation in leatherdyke communities disrupts dominant understandings of body parts, such as genitals, that are assumed to settle the question about what sex a person really is and whether one's body is male or female.<sup>7</sup> Writing about the transformative potential of disability communities, Simi Linton contrasts demarcations of disability and able-bodied in the rehab center, where the patients were disabled and the staff members were not, with those in the Center for Independent Living (CIL).<sup>8</sup> The CIL, for Linton, was "a universe" where everyone had a significant impairment, and that bustled with business and noise. It was "a disability underground" where dominant meanings of disability were subverted.<sup>9</sup> These observations by Foucault, Butler, Hale, and Linton illuminate the creative force of queer crip feminist communities, a force that enables the reconfiguration and transformation of the meaning of one's body parts and functions and their relation to one's self.

Audre Lorde once dreamed of an army of one-breasted women descending upon the United States Congress, demanding adequate funds and information for breast cancer prevention, an army of one-breasted women outraged at breast cancer, an undeclared war against women. Lorde raged against the invisibility of women who had survived or who were in the midst of their struggle with breast cancer, an invisibility conditioned as much by the wearing of prosthesis to hide a mastectomy as by the absence of prevention information. As she opted not to wear prosthesis, Lorde searched specifically for the dykes, the black lesbian feminists with breast cancer, but found no role models. Admirably, Lorde transformed the silence, pain, and anger she experienced into *The Cancer Journals* in an effort to deconstruct and reconstruct her experience with breast cancer and mastectomy and provide a model for black lesbian feminists and dykes in general who would have to wage their own battles with breast cancer.<sup>10</sup> To be sure, the most immediate concern for Lorde as she recorded her experiences in her journal was to find a way to inhabit her new, one-breasted body.

Since Audre Lorde, some feminists such as Iris Young have critiqued both the failure to understand how mastectomy damages a woman's subjectivity and how attempts to hide a post-mastectomy body represent conformity to a patriarchal standard of how female breasts should appear and function. Other feminists such as Diane Price Herndl have critiqued what they perceive to be essentialist feminist critiques of surgery. Contrary to Lorde, Herndl chooses breast reconstruction and, in the process, critiques Lorde's decision to forgo prosthesis as based on a notion of a natural body that must be accepted without technological alteration. Arguably, Lorde's one-breasted body is also a body shaped by technology; however, the purpose of this paper is not to speculate about whether feminists should or should not opt for reconstructive surgery or prosthesis. In her interpretation of Lorde's decision to remain visibly one-breasted, Herndl criticizes what she perceives to be Lorde's equation of breast reconstruction or prosthesis with a desire to be a conventionally feminine woman who succumbs to treating her body as an aesthetic object.<sup>11</sup> I suggest that it is, in fact, possible to understand Lorde's choice to remain visibly one-breasted as something other than a choice to identify with a natural, unaltered, essential female body. Both Lorde and Herndl made decisions based on their embodied experience and an embodied identity shaped within the context of different communities. I am interested in what Lorde's account reveals

about the possibility and meaning of queer breasted experience, a possibility that I believe has been overlooked in feminist accounts of breasted experience.

Breasts, like vaginas, are frequently assumed to be a common denominator uniting women across differences of age, class, ethnicity, nationality, and sexuality. To be a woman is to be female-bodied and to be female-bodied is to have breasts. In her essay, "Breasted Experience: The Look and the Feeling," Iris Marion Young offers a phenomenological analysis of breasts and female subjectivity. She argues that, given the centrality of breasts to women's experiences of themselves and their bodies as female, women in a significant sense are their breasts.<sup>12</sup> The ability to make one's own body an unfamiliar and despised object is what Young takes to be one of the many ways in which patriarchy profoundly harms women. Because women are their breasts, the objectification of them, a move epitomized for Young in breast augmentation surgery, is an assault on women's subjectivity, a subjectivity that necessitates being able to be in one's body and to experience that body as one's own. Interestingly, Young makes an exception for breast reduction surgery, a surgery that she argues is based on women's subjective experience of their bodies to the extent that its presumed purpose is to relieve back pain and other discomforts that can accompany having large breasts; on the other hand, she contends that the decision to enlarge breasts is based on satisfying male desire, an experience of one's breasts as objects.

Further, it is the development of breasts, along with the onset of menstruation, that signals the sexual maturity of females in western sociocultural contexts. As Young observes, it is precisely this fact that contributes to many young women's feelings of discomfort, embarrassment, and horror at the development of their breasts. And, while Young problematically does not mention this, these feelings can be even more intense for many butch lesbians and female-to-male transpeople.

What I find troubling about Young's account of female breasted experience is her assumption that all female-bodied people will somehow be liberated, less alienated, if they learn to love their female bodies as they are. Such an assumption ignores the complex relationship between gender identities and sexed bodies and the embodied experiences of many intersexed people, butch lesbians, and female-to-male transsexuals. That female-bodied people may feel ambivalent about their breasts or not understand their breasts as an unambiguous part of their selves is not the result of individual pathology; it is a consequence of living and forging an identity in a society that only recognizes what it can see and, in the face of incongruence, seeks to normalize the body by enforcing symmetry between gender and the body.

Breasts are certainly a visible sign of female identity in Western contexts, so much so that the appearance of "larger-than-normal" breasts on male bodies is considered abnormal and an occasion for medical intervention. In his discussion of male bodies with breasts Sander Gilman points out that of the breast reduction surgeries performed each year, a significant number are performed on men to correct what is perceived to be the gendered bodily abnormality known as "gynecomastia" (woman-breast).<sup>13</sup> Gynecomastia is attributed to body building (especially if it involves the use of steroids) and some intersex conditions. Breasts on what are perceived to be male bodies are considered abnormalities that must be surgically "corrected" because they challenge heteronormative, patriarchal norms of gendered bodily dimorphism and a two-sexed society, norms which specify that females have breasts and males do not.<sup>14</sup>

In the face of the use of surgery and therapy to force unruly bodies into compliance with the norms of gendered

embodiment, what are queer crip feminist theorists to make of the fact that while mastectomy for women with breast cancer and men with gynecomastia is covered by insurance, insurance does not cover bilateral mastectomy for transmen? As Jamison Green and other transmen have pointed out, many transmen experience the presence of breasts on their pre-surgery bodies in much the same way as many men experience what society characterizes as excessive breast tissue on male bodies. Green notes that surgery and hormone treatments did not make his body a male body. His body was always male. Surgery and hormones simply made it possible for others to recognize his body and identity.<sup>15</sup> Many transmen and transwomen have challenged critiques of sexual reassignment surgery (SRS) as an ultimate form of conformity to traditional notions of gender. As Henry Rubin notes, body modification for transmen is not necessarily body mutilation or conformity. Instead, it is an attempt to achieve "intersubjective recognition."<sup>16</sup> Though not all have mastectomies, breast removal is a highly desired surgery for female-to-male transpeople. For many transmen there is a sense of betrayal by the body into which they were born, and it is only through surgical alteration that their bodies can become their selves.<sup>17</sup> Without such surgery and hormone therapy the male identities of transmen will not be recognized by themselves and others; such recognition, Rubin argues, "is the intersubjective principle that guarantees social integration and shared moral principles, as well as individual authenticity."<sup>18</sup> While I am highly suspicious of any claim to individual authenticity or a core self, I think Rubin's principle of intersubjective recognition is useful for a queer crip feminist perspective on identity, breasted experience, and breast surgery.

We make our bodies our selves in the context of communities of support and recognition; because our participation in those communities changes us, it also changes our bodies, even what dominant culture assumes to be an unchanging biological fact about our bodies—our sex. To the extent that an erotic community of women played a significant role in Lorde's decision not to wear prosthesis, Lorde's decision is rooted in queer desire. As she becomes acquainted with her new post-mastectomy body, Lorde is reminded of a lover who died of breast cancer; she recalls touching her lover's mastectomy scar. It is this experience that enables Lorde to look down at her own scar and to see her flesh, to experience this changed body as her body. Lorde does not present her choice as the only possible feminist choice. Instead she writes, "I think now what was most important was not what I chose to do so much as that I was conscious of being able to choose, and having chosen, was empowered from having made a decision, done a strike for myself, moved."<sup>19</sup> Similarly, queer communities are places where the male bodies of transmen are recognized and where it is possible to create one's body and one's self, where one can strive "for that which doesn't yet exist and about which we cannot know how and what it will be."<sup>20</sup>

Throughout *The Cancer Journals* (and her writing generally) Lorde emphasizes movement, change, the never-ending process of self-awareness and transformation. As she struggles with breast cancer and difficult but necessary decisions, Lorde is reminded that she and all who are oppressed were never meant to survive and that in this circumstance survival itself is a form of resistance. She writes, "growing up Fat Black Female and almost blind in America requires so much surviving that you have to learn from it or die."<sup>21</sup> It is the litany, "we cannot live without our lives" that characterizes Lorde's strategy as a queer crip feminist strategy of resistance, a strategy that entails creating spaces of queer recognition, spaces in which queer subjectivity is made possible and nourished. "I am who the world and I have never seen before," she writes.<sup>22</sup> Lorde

chooses asymmetry, a choice made possible in a real and imagined space of one-breasted lovers, friends, and the women she has not yet met. Some transmen choose procedures that will make their always already male bodies more recognizable to others, a choice made possible by counter-hegemonic horizons of sexed and gendered embodiment and identity made possible in queer communities. These are spaces of queer recognition, the recognition of the selves, bodies, relationships, families we choose, not those into which we were born. Those bodies will be variously gendered, functioning, and appearing. Lorde's "rage to live" is fueled by her desire for and experiences with queer bodies and spaces in which recognition is not contingent upon conformity to the norms of oppressive systems. It is a desire for spaces in which subjects are able to achieve intersubjective recognition through an on-going life project of deconstructing and reconstructing (of grappling with) identities and embodiments, for in the end queers cannot live without queer lives.

#### Endnotes

1. My thinking about sex and gendered embodiment owes a great debt to the work of Iris Marion Young. Iris Young contributed so much to feminist thinking about the body, and feminist philosophy will miss her voice.
2. Susan M. Love. *Dr. Susan Love's Breast Book*, 3rd ed. (Cambridge, MA: Perseus, 2000), 25-26
3. Carrie Sandahl. "Queering the Crip or Crippling the Queer?: Intersections of Queer and Crip Identities in Solo Autobiographical Performance," *GLQ: A Journal of Lesbian and Gay Studies* 9 (2003): 37.
4. Michel Foucault. *The History of Sexuality: An Introduction*, Volume I, trans. Robert Hurley (New York: Vintage, 1990), 163
5. Judith Butler. *Undoing Gender* (New York: Routledge, 2004), 228
6. Jacob C. Hale. "Leatherdyke Boys and their Daddies: How to Have Sex without Women or Men," *Social Text* 15 (Fall/Winter 1997): 223
7. *Ibid.*, 230-232
8. Simi Linton. *MyBodyPolitic: A Memoir* (Ann Arbor: University of Michigan Press, 2006), 50
9. *Ibid.*, 65-66
10. Audre Lorde. *The Cancer Journals* (San Francisco: Aunt Lute, 1980).
11. Diane Price Herndl. "Reconstructing the Posthuman Feminist Body Twenty Years after Audre Lorde's *The Cancer Journals*." In *Disability Studies: Enabling the Humanities*, edited by Sharon Snyder, Brenda Jo Brueggemann, and Rosemarie Garland-Thomson (New York: The Modern Language Association of America, 2002), 145
12. Iris Marion Young. "Breasted Experience: The Look and the Feeling." *On Female Body Experience: Throwing Like a Girl and Other Essays* (New York: Oxford University Press, 2005), 204
13. Sander Gilman. *Making the Body Beautiful: A Cultural History of Aesthetic Surgery* (Princeton, NJ: Princeton University Press, 1999), 260
14. *Ibid.*, 259-60
15. Jamison Green. *Becoming a Visible Man* (Nashville, TN: Vanderbilt University Press, 2004), 91-92
16. Henry Rubin. *Self-Made Men: Identity and Embodiment among Transsexual Men* (Nashville, TN: Vanderbilt University Press, 2003), 173
17. Both Green and Rubin make this point
18. Rubin, 14
19. Lorde, 33
20. Foucault quoted in David Halperin, *Saint Foucault: Towards a Gay Hagiography* (New York: Oxford University Press, 1995), 206

21. Lorde, 40

22. *Ibid.*, 48

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## Medical Agency, Political Agency: Transgender Perspectives

### Or, Sexually Based Disability and Sexual Interdependence

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Like the disability rights movement, transgender activists have illuminated the hierarchical social construction of personhood and the significant role of medical pathologization in such categorizing.<sup>1</sup> The transgender movement can contribute a great deal to disability studies' ongoing gender theorizing,<sup>2</sup> particularly illuminating the role of sex, gender, and sexuality in the social constitution of personhood,<sup>3</sup> and the role of gender in constituting ability and disability.<sup>4</sup> There is much for disability studies to learn from a concept of sexually based disability and from considering transgender as a definitive example.

In medical terms, "sexual disability" usually refers to a secondary manifestation of another underlying condition, or to a primary physiological condition. Erectile dysfunction, for example, could fall under either category. In contrast to this biologically reductive way of looking at sexual capacities, I suggest a critical concept of sexual disability,<sup>5</sup> situating it in relation to what I will call "normate sex," and calling for a critical notion of sexual interdependence as a concept that can advance these movements' agendas given their significant commonalities, which these concepts may help to clarify. If a given condition can be seen as a sexual disability in the sense that I advocate, then the primary target for intervention should be social norms and practices rather than individuals, and a critical notion of sexual interdependence likewise calls for intervention into social conditions—significant grounds for solidarity and coalition between the disability rights and transgender movements.

Before going any further, however, I must acknowledge that exploring transgender sexuality through a disability lens may seem a perverse impulse. Transgender<sup>6</sup> cannot be readily assimilated into conventional notions of disability; it is neither a motor, sensory, psychiatric, nor cognitive impairment, nor a chronic illness. Moreover, given cultural perceptions of disability as lack, loss, or pathology, many transgender activists would refuse to be associated with it.<sup>7</sup> The social intolerance arising from normative notions of gender is the problem, not individual gender expression or feelings, which is why many self-identified transgendered people reject the diagnosis of gender dysphoria. Transgender activists oppose normalization, arguing that bodies, minds, behaviors, identities, or pleasures must be shaped in self-determining ways rather than by medically determined sex/gender norms.

Yet from a radical disability perspective, these concerns are all the more reason to proceed. Disability frameworks illuminate the larger social relations through which bodily ideals are constructed and then become the basis for defining the normal. Philosopher and disability theorist Susan Wendell provides a useful notion of disability as "any lack of ability to perform activities to an extent or in a way that is either necessary for survival in an environment or necessary to participate in some major aspect of life in a given society."<sup>8</sup> This notion of disability as a relation of bodies and minds to particular social

environments, rather than a property of individuals, provides a clear rationale for examining transgender from a disability perspective. While signs of change are emerging, conventional sex and gender characteristics, or a convincing approximation of them, are generally necessary for participation in most aspects of mainstream U.S. society, and thus it can be argued that departing from these characteristics is currently a socially constituted disability in this context.

A radical disability perspective illuminates the normalization of bodies in ways that extend far beyond the most unambiguous and obvious manifestations of disability. These insights need to be joined with those of the queer framework underlying transgender activism, which offers a non-hierarchical alternative to the medical model of gender just as the disability movement offers a non-hierarchical alternative to the medical model of the body and physical and mental difference. I have argued elsewhere that both oppression and liberation of particular groups generally involve a significant sexual component.<sup>9</sup> A transgender/disability vantage point is a particularly compelling site for exploring the implications of this claim and the role of conservative sexual norms in oppression more generally, as well as their frequent justifications through medical discourse. If, as disability theorists argue, the lives of disabled people demonstrate that interdependence is not only descriptive of human life but a crucial value for society to promote not only for the sake of inclusion but for broader social transformation, then the experiences of transgendered people indicate the need to recognize sexual interdependence as a fundamental component of this value.

### Normate Sex

Creating a shared language to articulate sexuality-related concerns across diverse social movements and locations is a significant and pressing rhetorical challenge, one I feel is at the heart of all questions of coalition and community. As an initial step in this direction, it is useful to invoke Rosemarie Garland-Thomson's influential conceptualization of the "normate" as:

the veiled subject position of cultural self; the figure outlined by the array of deviant others whose marked borders shore up the normate's boundaries...the social figure through which people can represent themselves as definitive human beings...the constructed identity of those who, by way of the bodily configurations and cultural capital they assume, can step into a position of authority and wield the power it grants them.<sup>10</sup>

While Garland-Thomson's normate is indeed definitively able in body and mind, to define the figure entirely in these terms, she points out, is to miss that the normative body is simultaneously constructed through gender, race, and a complex array of other social categories.

Building on these insights, I suggest the value of a concept of "normate sex" integrating the insights of disability studies and the "new gender politics" of transgender and intersex.<sup>11</sup> The medicalization of transgender reveals the sex- and gender-based sexual binary as well as the presumption of conventional heterosexuality in normate sex, but normate sex has many more dimensions. In a foundational queer theory article, Gayle Rubin identifies a social "hierarchy of sexual value," which establishes what is within "the charmed circle" of sexuality.<sup>12</sup> Normate sex shares significant commonalities with Rubin's "Good, Normal, Natural, Blessed Sexuality"—namely, "Heterosexual, Married, Monogamous, Procreative, Non-commercial, In pairs, In a relationship, Same generation, In private, No pornography, Bodies only [not involving objects], [and] Vanilla."<sup>13</sup> But normate sex is also location-specific, occurring particularly in suburban single-family homes, not in public housing projects,

not in nursing homes or hospitals or rehabilitation facilities. Not just anyone can have it—certainly not men with breasts,<sup>14</sup> Hermaphrodites With Attitude,<sup>15</sup> interracial or multiracial couples, mothers receiving public assistance, chicks with dicks, anyone who is HIV-positive or schizophrenic or uses a wheelchair; young male immigrants from the Middle East, full-bodied women naked in hot tubs,<sup>16</sup> or Bob Dole.<sup>17</sup> In short, sexual hierarchies must be understood as simultaneously hierarchies of class, race, nation, bodies, and minds, among other social group categories.

It is important to understand normate sex as the background that allows sexual disability, including transgender, to emerge as prominent figure. Sexual disability—not to be conflated with medical pathology—is constituted through departing from normate sex—that is, normative sexual identities, desires, or practices, which are linked to the fantasy figure of the normate body and to race, class, gender, age, and other social hierarchies. Standard sex reassignment surgeries emphasize approximating genitalia of "normal" appearance as well as a genital structure allowing for conventional heterosexual intercourse. As a host of feminist analyses have indicated, conventional intercourse, with all its overtones of conventional, hence appropriate, gender identities, sexual identities, and the underlying biology thought to shape them, is surely at the center of the "charmed circle" of "good, natural, normal, blessed sexuality" Rubin describes,<sup>18</sup> leaving other structures, practices, and identities either deviant or unthinkable.

Clearly, then, the medical imperative to bring the transgendered person into normative hetero-masculinity or -femininity is based on a social imperative, one that is a cornerstone of normate sex. The disability movement has recognized and contested the medical/social imperative to bring bodies into conformity because they constitute a disruption to the social body. Yet, as transgender medicalization indicates, this imperative is inescapably intertwined with that which simultaneously regulates/governs identities, sexual practices, sexual desires, and outward manifestations of gender, illustrating the ways in which sexual disabilities are constituted in and through social environments.

### Wrong Bodies and Western Medicine

Transgender is a sexual disability insofar as it challenges gender norms (which are both dimorphic and heteronormative) and therefore becomes the basis for pathologization. Yet many transgendered people actively pursue surgical and other interventions. The movement as a whole challenges the authority of the medical establishment and its rigid gender binary enforced through approved criteria, treatments, and procedures, while at the same time many transgender activists also seek improved care, better information, and enhanced agency in medical interventions. Transgender activists, like disability activists, see medicine as playing a central role in blaming and punishing them for social intolerance and discrimination—identifying them as the problem for failing to be "normal"—yet at the same time many transgender people claim agency in and through medicalization.

Female-to-male (FTM) transsexual theorist Jay Prosser frames the medicalization of gender transition as an expression of transsexual agency, arguing that transsexuals have constructed and shaped this medical framework at least as much as it has shaped them (their bodies, minds, and identities). Using narratives of transsexuals in the U.S. and Europe, he contends that this active role becomes evident through the subjective experience of transsexuals. For Prosser, the language of inhabiting the "wrong body... simply [reflects] what transsexuality feels like," with body image thus "radically split off from the material body."<sup>19</sup> "Somatic non-ownership,"

Prosser argues, is “not a metaphor” but, rather, literal “pretransition bodily experience” for transsexuals,<sup>20</sup> as evident in transsexual narratives such as Raymond Thompson’s, who writes, “It felt as if I came into this world with no physical form to protect me. I was not a solid, tangible being like everyone else seemed to be. I felt vulnerable and alone.”<sup>21</sup> For many transsexuals, then, sex change surgery is not only welcome but so deep a necessity as to be fundamental to selfhood.

At the same time, many transgendered people do not want surgical or hormonal intervention; either they do not feel the need for congruity between gender expression and somatic form (in some cases because their gender identities are not based on a unified sense of gender but, rather, on a shifting play of multiple genders), or they experience a congruity in spite of or because of transgressing conventional gender norms. Others choose some degree of medical intervention while rejecting the full standard package, such as FTMs who have “top surgery” without genital alteration (and sometimes, in order for a surgeon to perform top surgery, are forced to pretend they will later pursue the full intervention).

This range of attitudes toward medicalization makes transgender complicated to consider as a form of sexual disability. Given that many transgendered people eagerly seek medical intervention and, as Prosser shows, did so well before such interventions were medically feasible or available, I think it would be a serious mistake to regard transgender as simply a medically created disability or imposed through broader cultural demands that bodies and gender expressions must coincide. To some critics, wanting sex reassignment surgery signals a need for consciousness-raising rather than a hormone prescription and a surgical appointment—and, even more importantly, a need to change social practices. Yet I would argue that changing punitive gender norms can be compatible with the idea that people who want medical alterations of their genders should be able to get them—and that this deeply felt desire should be seen as one aspect of transgender as a sexually based disability, along with the social/medical pathologization of transgendered people.

Transgender desires for medical intervention do not mean, however, that medicine is immune from criticism in its response to transgender, nor that it has no role in shaping transgender as disability. The psychiatric diagnosis of Gender Identity Disorder, required by physicians in order to legitimate a request for sex reassignment surgery, has often been applied coercively to children and adolescents, causing lifelong harm. Narratives of institutionalization, especially of adolescents, such as Dylan (formerly Daphne) Scholinski’s *The Last Time I Wore a Dress*,<sup>22</sup> offer valuable critiques of this diagnosis and the variety of therapeutic regimes brought to bear on gender expression. Such sources must be used to transform medical diagnosis and practices related to transgender.

### Conclusion: Recognizing and Fostering Sexual Interdependence

Transgender lives demonstrate the relational character of gender; recognition emerges as an important condition for identity individually and collectively, making interdependence possible. Contributors to the anthology *Genderqueer* suggest how lovers’ erotic responses to one another make their genders intelligible,<sup>23</sup> and how intelligibility also emerges through public recognition. What is at stake in this process is not only recognition of individuals’ sexuality or gender expressions; rather, in such recognition is the basic social acknowledgment of personhood that is a necessary condition for interdependence.

As with other movements, constructing a collective identity is one of the conditions that make resistance possible. Yet,

as feminists know very well, collective resistance based on a singular identity can be challenging, and building alliances across differences is even more so. Yet alliances are not waiting to be built from scratch but can be fostered through the connections already present in our lives and our communities. The work of Naomi Finkelstein and Eli Clare, for example, demonstrates that the transgender and disability movements may be distinct but are not separate.<sup>24</sup> These movements indicate the cultural hegemony of the normate in defining personhood, and how medical discourse and social recognition are intertwined; they illustrate the possibility of resistance; and they also suggest the importance of solidarity across difference. Perhaps it is time to succumb to the perverse pleasures and challenges of sexual interdependence.

### Endnotes

1. A longer version of this paper will appear in Anna Mollow and Robert McRuer’s *Sexual Disability* (forthcoming). I thank Robin Meader, Pam Presser, and Karen Sosnoski for their interest, encouragement, and insightful responses to several drafts of this paper. I also thank Pat McGarr, Bob McRuer, Delphine Brody, Cynthia Newcomer, Peg O’Connor, and Lisa Heldke for ongoing discussions of issues related to the paper and helpful responses. Audience comments at the Radical Philosophy Association, Feminism(s) and Rhetoric(s), Society for Disability Studies, APA, and the George Washington University Department of English were also beneficial to me.
2. See Rosemarie Garland-Thomson, *Extraordinary Bodies: Figuring Physical Disability in American Culture and Literature* (New York: Columbia University Press, 1997); and Bonnie G. Smith and Beth Hutchinson, eds., *Gendering Disability* (New Brunswick, NJ: Rutgers University Press, 2004).
3. See Judith Butler, *Undoing Gender* (New York and London: Routledge, 2004).
4. See Eli Clare, *Exile and Pride: Disability, Queerness, and Liberation* (Cambridge, MA: South End Press, 1999), and Naomi Finkelstein, “The Only Thing You Have to Do is Live,” *GLQ* 9.1/2 (2003): 307-19.
5. This critical concept of sexual disability is distinct from Kathryn Pauly Morgan’s notion of “gender disability” as well as her critique of that notion in “Gender Police,” in *Foucault and the Government of Disability*, edited by Shelley Tremain (Ann Arbor: University of Michigan Press, 2005). I take these arguments up in the longer version of this paper forthcoming in Mollow and McRuer.
6. “Transgender” typically refers to living or identifying outside of conventional gender norms, with or without medical intervention.
7. See Sumi Colligan, “Why the Intersexed Shouldn’t Be Fixed: Insights from Queer Theory and Disability Studies,” in Smith and Hutchinson, *Gendering Disability*, 45-60.
8. Wendell, *The Rejected Body: Feminist Philosophical Reflections on Disability* (New York and London: Routledge, 1996), 23.
9. See Wilkerson, “Disability, Sex Radicalism, and Political Agency,” *NWSA Journal* 14.3 (Fall 2002): 33-57.
10. Garland-Thomson, 8.
11. See Judith Butler, *Undoing Gender*.
12. Rubin, “Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality.” In *The Lesbian and Gay Studies Reader*, edited by Henry Abelove, Michele Aina Barale, and David Halperin (New York: Routledge, 1993), 13. While Rubin’s notion of sexual hierarchy is valuable for the reasons I suggest, it is at the same time problematic insofar as she posits sexual hierarchy as operating apart from other social hierarchies, a critique I develop in “Disability, Sex Radicalism, and Political Agency.”
13. Rubin, 13.
14. See Riki Wilchins, “It’s Your Gender, Stupid!” in *Genderqueer: Voices from beyond the Sexual Binary*, edited by Joan Nestle,

- Clare Howell, and Riki Wilchins (Los Angeles: Alyson, 2002), 23-32, 31.
15. See Cheryl Chase, "Hermaphrodites with Attitude: Mapping the Emergence of Intersex Political Activism," *GLQ* 4.2 (1998): 189-211.
  16. In the feature film *About Schmidt* (New Line Cinema, 2002), a naked character played by Kathy Bates invited Jack Nicholson's character into a hot tub with her; a scene spawning many jokes by critics and viewers alike, seemingly premised on the offensive assumption that such a woman could not be sexually attractive or inviting.
  17. Bob Dole's turn as a Viagra representative was likewise the subject of jokes for months after the commercial appeared, reflecting, among other things, widespread discomfort with sexuality among older people.
  18. Rubin, 13.
  19. Prosser: *Second Skins: The Body Narratives of Transsexuality* (New York: Columbia University Press, 1998), 69.
  20. *Ibid.*, 73.
  21. Quoted in Prosser, 73.
  22. New York: Riverhead Press, 1997.
  23. Nestle et al. See, for example, Toni Amato, "Would I Dare?" (223-27), 225.
  24. Finkelstein and Clare, *op. cit.*

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## BOOK REVIEWS

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### **Sexual Morality in Ancient Rome**

Rebecca Langlands (Cambridge: Cambridge University Press, 2006). 399 pp. \$99.00 ISBN: 0-521-85943-3

#### **Reviewed by Elisa A. Hurley**

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In *Sexual Morality in Ancient Rome*, Rebecca Langlands takes the reader on a journey through ancient Roman sources, uncovering the Romans' complicated, sometimes contradictory, attitudes toward sexuality and the relationship between personal virtue and public persona. Langlands' vehicle for this journey is the peculiarly Roman concept of pudicitia, translated loosely as "sexual virtue," but characterized by remarkable "multidimensionality" in the ancient Roman context (32).

This is a self-described book of literary criticism (4): Langlands illuminates the ways in which the formal structures, rhetorical uses, political backdrops, and presumed audiences of various ancient Roman genres—including legendary narratives, exemplar tales, new comedy, popular poems, declamations, and political speeches—impact their meaning, both for the ancient Roman audiences and for modern interpreters. Though Langlands is not wedded to any particular theoretical framework, she makes explicit her sympathy with the Foucauldian idea of a close relationship between individual moral development and external mechanisms of social control (14-15), and argues that the "instability" (365) of the concept of pudicitia across Roman sources demonstrates that this relationship was of concern to the Romans themselves. Furthermore, her study allows us to "listen to the considerable amount that our extant sources have to say about women's as well as men's moral subjectivity" (7), thereby moving beyond the Foucauldian focus on the male

desiring subject and the connection between sexual agency and penetration.

The opening chapter introduces a number of interrelated themes concerning pudicitia, including the question of who protects whose pudicitia, and pudicitia's role in fostering (and undermining) the moral subjectivity of men, women, and children; the relationship and tensions between the appearance and reality of virtue, and between inner virtue and the demand for that virtue's public display; the paradoxical dangers of publicly policing virtue; ambiguity about pudicitia's status as a quality of mind and state of the body; the Romans' gendered virtue concepts; the relationship between the maintenance of individual virtues among the Roman citizenry and imperial elite, on the one hand, and the stability of the Roman state, on the other; the flexible political power of oratorical rhetoric surrounding sexual virtue and vice; and the notion of the Roman individual as a product of social regulation via a range of public moral discourses. While Langlands for the most part makes good on this ambitious list, not all of her proposed themes are ultimately developed in full. In particular, the proposals that the concept of pudicitia provides a unique window into the processes of personal moral development and that the Romans conceived of tight connections between state stability and the visibility of individual pudicitia are given short shrift. So let me instead focus on the two most developed themes: the multiple paradoxes raised by the conception of pudicitia as an individual virtue that must be publicly displayed, and the idea that pudicitia is a locus of engagement with the moral subjectivity of men and women.

Chapter One introduces pudicitia as one of many moral qualities that in ancient Roman culture were perceived as divinely manifested. Langlands explores the ritual cultivation of pudicitia as a "personified abstract virtue" (37), embodied in the form of a goddess who was to be honored by Roman women through the participation in rituals. This "cult of Pudicitia" provides fertile ground for Langlands to explore the central theme of pudicitia as an individual moral virtue that needed not merely to be present but also to be on public display. For example, the cult of pudicitia provided an arena of public competition for honors among women, a practice that revealed two cultural anxieties: 1) how one can prove one's pudicitia to others since, if pudicitia is understood as an inner moral quality, it remains in important respects "unknowable," and 2) how one can call attention to one's pudicitia by striving to show it when, through public behavior, one may attract just the sort of attention from men that threatens to destroy pudicitia. Langlands does a masterful job laying bare these paradoxes, leaving the reader with a vivid sense of the Romans' own struggle to navigate thorny moral terrain.

Chapter Two continues to explore these tensions through the study of the legendary tales of Roman history that formed part of the collective cultural memory of the Romans. The story of Lucretia serves as the vehicle for introducing another central theme: while, with respect to women and children, pudicitia is most often conceived of as the physical characteristic of being unspoiled (and, consequently, as needing guarding by husbands and other male protectors), it is also sometimes conceived of as locus of female moral subjectivity, autonomy, and control. Lucretia, a woman of uncommon virtue whose husband drunkenly brags of her unparalleled pudicitia to a group of his comrades, is coerced into having sex with one of these men by his threats to her spotless reputation. Afterward, Lucretia tells her husband what has happened, demands that her family pledge to avenge her, and then takes her life by "plunging a knife into her own heart" (95). Langlands emphasizes that this is one of few stories that treats a Roman woman as a moral

agent in her own right. As she puts it, “from the moment her pudicitia is threatened, [Lucretia] blooms into subjectivity and activity” (95): during the attack, she refuses to let her reputation be spoiled but chooses instead to allow her body to be defiled (90); she then uses her voice to defend her honor and virtue and call for vengeance from her family (170ff). She acts to bring about her own death, against the protestations of a family who believes that her virtue is still intact, to prove beyond a doubt that she could not have willingly submitted to another man (94); and her courage, integrity, and resolve in taking this action thereafter inspire the men in her family to reform Rome (96). By focusing on her death as an act of power over how she is viewed by others, however, Langlands may ultimately overstate Lucretia’s “agency.” Though her family insists that she need not die to protect her virtue, her choice to kill herself is constrained by the idea that her pudicitia, as in part the quality of being physically untainted, has already been lost. Langlands’ case for Lucretia’s agency is more convincing when she insightfully links her death to the Roman trope of the heroic suicide (181ff).

Chapter Three further probes Lucretia’s story as a means of introducing the genre of Roman exempla, represented by Valerius Maximus’s extensive collection of stories designed for the purposes of moral education. Here, Langlands engages in some of her closest textual analysis, examining the structure of Valerius’s texts and speculating on the didactic purpose of the order in which the exemplar tales are presented. In Chapter Four, Langlands explores the “playful” Roman genres of elegy, poetry, fable, new comedy, and prose “novels.” These popular sources seek to problematize, subvert, and satirize the concept of pudicitia and the premium placed on it by traditional Roman sources. To that end they reveal that many tensions around pudicitia were of concern to the Romans themselves.

Chapter Five introduces another Roman genre that problematizes Roman attitudes toward sexuality, viz., “declamation.” Declamations—a type of oratory exercise undertaken primarily by young men learning the art of rhetoric as they prepare for public life—prove an invaluable source for Langlands, for “they are founded on exploiting to the ends of persuasion, the fact that there are debates and questions throughout Roman ethics about where to draw lines when it comes to pudicitia” (252). Langlands’ exploration of declamations reveals another of pudicitia’s paradoxes: to have one’s pudicitia on the table as an issue, even in the context of its defense, is already to implicate one’s reputation and so, for all intents and purposes, one’s virtue. Up until now pudicitia has been conceived primarily as the feminine virtue analogous to the masculine virtues of war; specifically courage (see especially 45-60). But Chapter Five also marks a shift of focus to pudicitia’s role as a masculine virtue: some of the declamations Langlands canvases involve attempts to redefine pudicitia as implicating the active intentions of adult men toward vulnerable others (274).

Chapter Six looks more closely at masculine pudicitia; the relevant texts are Cicero’s political speeches. What is surprising and what Langlands convincingly highlights, is the extent to which men’s pudicitia also needed to be publicly displayed and policed, and that being promiscuous, committing adultery, and seducing other men’s wives were all seen as undermining one’s civic integrity and political ability and, therefore, as legitimate targets for political attack. Now, it is true that for men, pudicitia was more often a site of agency than it was for women; but this was not universally the case. Langlands reveals the considerable anxiety among the Roman elite about the tainting effects of morally transgressive sexual acts committed against young men on their capacity to become upstanding Roman citizens. We also learn that a man’s failure to prevent himself from committing

sexual debauchery with other men’s wives was a sign not of manliness and virility, as we might expect, but of weakness and effeminacy. Along with her shrewd analysis in Chapter Three and elsewhere of Lucretia’s “masculinization” (174ff), this discussion suggests that, for all the Roman ambivalence around sexuality, sexual subjectivity and moral agency remain very much gendered phenomena.

Langlands’ look at Roman attitudes toward the sexual morality of men continues in Chapter Seven, which introduces sources from the Imperial era and seeks to uncover connections between imperial laws promulgated with the intent of governing the moral behavior of the Roman citizenry and an increasing focus on the personal behavior of the Roman emperors themselves. Unfortunately, this final chapter is the least satisfying of the book, for Langlands misses an opportunity to explore the hypocrisy of much of the imperial era, typified by attempts to crack down on the sexual morality of citizens as a means of strengthening the Roman state, even while emperors like Nero and Caligula displayed new depths of moral corruption and sexual depravity. This is a surprising oversight, considering the extent to which Langlands fruitfully mines contradiction elsewhere.

All but one chapter include excellent conclusions that eloquently reinforce that chapter’s contributions to the book’s central themes; it is therefore surprising, and somewhat disappointing, that the book itself doesn’t have a more comprehensive conclusion. In a text that follows so many thematic strands and uncovers so much complexity, the reader is left wishing she had some sort of critical overview. But this is a relatively minor complaint. Perhaps Langlands refuses to provide a tidy conclusion precisely because it would undermine the richness of what has come before. After all, her explicit goal is to immerse us in the controversy and confusion around sexual ethics in ancient Rome in order to challenge currently accepted models of Roman sexuality as relatively stable and rooted in various “binary opposites” (35, 365). And on that front Langlands delivers: the reader closes the book with a vivid appreciation that sexual morality was a live area of contradiction, debate, and struggle for the ancient Romans, very much as it is for us today.

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## Mary Astell: Theorist of Freedom from Domination

Patricia Springborg (Cambridge: Cambridge University Press, 2005). ISBN 0-521-84104-6

### Reviewed by Jane Duran

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The new work on women philosophers can be divided into two groups, roughly speaking. One focus of retrieval has been on women of more recent times, largely decades in the twentieth century, who are already known as philosophers and whose work, at least to some extent, might be thought to be part of the canon. Simone Weil and Simone de Beauvoir are two such thinkers, and many students of philosophy and of intellectual history are already familiar with their thought before they pick up a newly published book.

The second category of work, however, presents us with an altogether different set of circumstances. A great deal of effort is now being put into articulating and setting out the work of women thinkers from ancient, medieval, or early modern



times, and in many of these cases we not only have little or no familiarity with the work of the woman in question, we may not even recognize her name. New work has burgeoned on the 17th century, in particular, because so many women thinkers were active during this period, and because so many of us do not immediately recognize the names of Mary Astell, Anne Conway, or Catharine Trotter Cockburn.

Patricia Springborg is to be commended for having done the most work on that scintillating political thinker, Mary Astell, and having done it with superlatively high standards. The recently published long work reviewed here is an amalgamation of some of Springborg's previously published thought on Astell—indeed, in the Acknowledgments she notes that she has specifically set out to “reuse material,” and then provides sources (xii). Springborg's work is scrupulously done, and the material on Astell's less-noticed works, such as “A Fair Way with the Dissenters” and “Letters Concerning the Love of God,” is a major aid to any scholarship on this period or to the general project of working on that somewhat troublesome rubric “women philosophers.”

A difficulty with the current work stems partly from the aforementioned use of previously published material, and partly from the sheer tenacity and care of the scholarship. Readers unfamiliar with Astell, a polemicist and pamphleteer whose writings—like those of Anne Conway, for example—were far from unknown during her lifetime, will probably not want to start with this work as an introduction. Readers might be urged to begin, instead, with the relevant chapter in Jacqueline Broad's *Women Philosophers of the Seventeenth Century*, also recently published by Cambridge, or with Springborg's own edited version of Astell's political tracts, published under the title *Mary Astell: Political Writings* (Cambridge, 1996). Most readers will experience difficulty with the facts of history of 17th-century Britain; American readers, to be sure, will probably know little about the Interregnum and have comparatively small interest in the crucial historical data of the Glorious Revolution and Reformation. Springborg excels in these areas and her commentary is necessary for any future work on Astell, often referred to as the “first English feminist.” An introduction to Astell's thought, however, probably requires a bit less scholarship and footnoting and a bit more general commentary, at least for the average philosophical reader on the first go-round.

The more experienced scholar in this particular epoch—or the scholar of women's philosophical thinking who has already been exposed to Astell, particularly if the exposure came from the classics “A Serious Proposal” and “Reflections on Marriage”—will benefit enormously from this new work, with its multiple chapters addressing not only every area of Astell's thought, but its crucial intersections with the work of Hobbes, Locke, Damaris Masham, the Cambridge Platonists, and Judith Drake. Astell's title of “first feminist” is not given for no reason; in “Reflections on Marriage,” especially, she notes that whatever Christian precepts buttress marriage, they do not support the gross inequalities she sees around her; and which were especially salient in some of the aristocratic marriages of her time. But Astell was a Tory; this thinker on women's equality was no emerging liberal when it came to matters of state, and her conservative support of King and Crown has caused more contemporary commentators to blanch. (Indeed, on the first page of text, Springborg notes that, at least for some, Astell “seems already to have disappeared from feminist social and political discussion of the eighteenth and nineteenth centuries” (1-2).) Springborg herself says that, causally speaking, her “High Church Toryism might be suspected.” Whatever the cause, it is far too easy to simply label Astell a feminist. Her political

position is a good deal more complex than that and relies on close readings of the history of contract theory, from the ancients through Filmer and up to her own time. Springborg provides such a reading.

One of the most intriguing chapters in this work (seven chapters, with a separate introduction) is the third, titled “Astell on Marriage, Patriarchalism and Contractarianism” (113-42). This chapter articulates how critically important it is to see Astell as she was—a supporter of a certain interpretation of contracts and contractarianism that had the odd (for today's reader) consequence of asking women to work on their virtues within the confines of their marriages, and asking the larger polity to think closely about the God-driven contract between citizen and monarch. As Springborg writes, “Laying the subordination of women at the door of custom, Astell mocked the language of the Whigs who appealed to an ancient constitution and ancient customary rights. The antiquity of institutions vouched for nothing unless they exhibited reasonableness and congruence with a divinely-ordained social order” (121-22). We may rightly term Astell a “feminist,” but her feminism is melded to a set of doctrines unfamiliar to the contemporary reader; and work such as Springborg's helps to bring this out.

Patricia Springborg is currently the major Astell scholar; and the publication of this compendium of older pieces with new commentary is most welcome, especially given the recent work by Sarah Hutton on Anne Conway (Cambridge, 2005) and the already-cited work by Broad. Taking all three works together, an extraordinary portrait of the intellectual and specifically philosophical life of the 17th century in Britain (and to some extent the Continent) is given. Springborg's work is the most dense of the three, and perhaps the most difficult to read. But then again, Astell was herself a contrary, difficult, and unsettling figure. We need to know more about her life and work, and Springborg is providing a framework for further scholarship.

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## Mill's The Subjection of Women: Critical Essays

Edited by Maria H. Morales (Lanham, MD: Rowman & Littlefield, 2005). 193 pages. \$26.95. ISBN: 0-7425-3518-5.

### Reviewed by Jean Keller

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The essays in Maria Morales' *Mill's 'The Subjection of Women': Critical Essays* insist that we reconsider the significance of Mill's *The Subjection of Women* (hereafter, SW), both for his thought and for feminist philosophy as a whole. Part of the Rowman & Littlefield Critical Essays on the Classics Series, this rich collection provides a wide array of perspectives on this classic work. All essays agree on the importance of Mill's SW and on the fact that it has not received sufficient scholarly attention, but from here the perspectives provided diverge widely. Is Mill a radical feminist visionary, whose vision for the restructuring of marriage and family we have yet to achieve—and would do well to aspire to? Or was he a liberal feminist, more interested in legal reforms, and incapable of seeing the radical implications of his own arguments? Is SW the result of Mill's mature thinking, in which strands of thought developed in such works as *Utilitarianism* and *On Liberty* come to fruition, thereby securing the central importance of this work for Mill scholarship? Or is it a self-contradictory hodge-podge, in which Mill undermines his arguments by trying to respond to too many objectors at



once? Spanning twenty years, the essays in this volume are presented as moments in an ongoing dialogue. One essay makes a compelling case for a particular line of interpretation and then the next stands this reading on its head. The result is a rich dialogue and debate, a compelling and highly readable book, sure to be of interest to scholars, graduate students, and advanced undergraduates alike.

To provide a sense of the broad range of concerns and interpretive strategies addressed in this collection, I will briefly summarize the essays here, highlighting points of connection and divergence.

In “John Stuart Mill’s Liberal Feminism,” Wendy Donner does not address Mill’s *SW* so much as demonstrate that feminist objections to liberalism do not apply to Mill’s particular flavor of liberalism. I assume Morales’s intention in starting her volume with this piece is to demonstrate the broad scope of her book—it will not simply offer new interpretations of *SW* but will use Mill’s feminism to rethink his philosophy as a whole. The first half of this essay, in which Donner argues that Mill’s conceptions of self, individualism, and self-development avoid many of the concerns raised by feminist critics of liberalism (2), is in keeping with this understanding of Morales’ text. But in the second half of the essay, Donner focuses on the feminism/communitarian debate and leaves Mill far behind. This left me with the sense that this essay was an apple among oranges, despite its introduction of several key themes for the volume as a whole: the core value of self-development for Mill, the importance of feelings for his conception of morality, and the complementarity of individuality and sociality.

While Donner discusses Mill’s liberalism in the context of contemporary debates in feminist thought, John Howes defends Mill’s view that men’s and women’s natures are essentially similar against Karl Britton’s 1953 accusation that this is an “eccentric limitation” of Mill’s thought.

Howes proceeds by providing a detailed comparison of relevant passages from chapter 3 of *On Liberty* (hereafter, *OL*) with *SW*. In *OL* Mill depicts individuality as the end product of a process of development that is directed by one’s own, internal forces (17). During Mill’s day women’s nature was, of course, distorted by external constraints. The result of this distortion is that men and women develop in different ways despite their similar natures. According to Mill it is the “second rate people of the two sexes” who are unlike, but it is the “first rate people of both sexes who are similar” (21). In *SW* Mill provides a view of the ideal marriage in which both men and women can similarly cultivate their faculties. Hence, Howes argues, *SW* provides us with the realization of the vision laid out in *OL*.

Susan Moller Okin’s “John Stuart Mill’s Feminism: The Subjection of Women and the Improvement of Mankind” is a tour de force. The oldest of the essays included here, it opened up a new era in Mill scholarship by demonstrating how Mill’s ideas are consistent across his oeuvre and come to fruition in *SW*. Okin first articulates here many of the themes that are then reworked in subsequent essays. Okin reads *SW* as a deeply utilitarian work. While Mill believes that women’s subordination violates the principles of freedom and justice, Okin argues that most important for Mill is how the inequality of women impedes society’s moral, social, and intellectual progress. Okin usefully puts Mill’s arguments in historical context by pointing to major influences on his thought and summarizing his debate with Comte about natural differences between men and women. She concludes by drawing attention to two differences between his feminism and ours: namely, his asexual view of marriage and his belief that women, in choosing marriage, choose their profession. These two views are taken up by subsequent authors.

While Okin depicts Mill at his best, Julia Annas carries out a close reading of the text intent on pointing out repeated inconsistencies in his thought. Whereas the first three essays depict Mill as a liberal philosopher; Annas views him as a thinker who, in his attempt to defend women against any and all objectors, vacillates between the reformist and radical perspectives. She hears evidence of Mill the radical in his claim that we cannot know anything about women’s nature because it has been artificially distorted by an education and upbringing that fosters submissiveness and ignorance. Yet Annas believes Mill repeatedly undercuts this argument. For example, when reviewing examples of female rulers, he argues that women tend to be more practical and intuitive than men. He qualifies this statement by noting that these observations only apply to women in their natural state, not as they could be (58). But in defending the value of women’s intuition as a corrective to masculine tendencies towards abstract reasoning and later, by trying to put women’s purported nervous susceptibility in a positive light, Annas sees Mill as advancing a dangerous claim of gender complementarity akin to that made by advocates of gender inequality who declare, “women are not inferior to men, just different” (59). Annas is led to the conclusion that Mill is confused; he does not understand the radical implications of his arguments for equality and equal liberty.

Keith Burgess-Jackson argues that Mill is a radical feminist. Key to his interpretive approach is reading *SW* as a political treatise in which Mill addresses the public’s concerns regarding women’s equality. In this public venue, Burgess-Jackson argues, Mill is less radical than in his private correspondence. Burgess-Jackson argues against Annas’s view that Mill is confusedly arguing two lines of thought at once. When it comes to Mill’s apparently contradictory claims that a) we cannot know women’s nature, yet b) women’s intuitive nature is better than men’s, we should understand Mill as making a “preemptive move” against anti-feminists who might think feminine qualities put women at a disadvantage in performing public functions (81). Mill simply refuses to assume that masculine qualities are better; Burgess-Jackson sees this as one of Mill’s radical feminist arguments. In response to Okin’s objection that Mill thinks that even liberated women should be responsible for domestic work, Burgess-Jackson responds that these views seem to be some combination of belief that this division of labor is more efficient and a prediction of what women are likely to do; they are not part of his argument for women’s equality.

Like Burgess-Jackson, Maria Morales argues that *SW* is best understood as a radical feminist work due to its analysis of power in her essay “The Corrupting Influence of Power.” She seems to have less investment in this characterization than Burgess-Jackson does, however; Morales primarily wants to show that Mill is not just a “timid reformer.”

Like Okin, Morales develops a strong and sympathetic reading of Mill’s *SW*, seeing it as a work where Mill’s moral arguments come to fruition. Morales describes how, according to Mill, the vice of inequality inculcates one-sided ideals of masculinity and femininity that impede men’s and women’s full self-development, in particular their moral development. By contrast, Mill argues that “other regarding” virtues are those most appropriate to progressive beings (109). By drawing on passages from *Utilitarianism* and *SW* she paints a detailed picture of Mill as providing an other-regarding ethic of love and friendship—which stands in stark contrast to depictions of Mill as the advocate of an arid universalistic utilitarianism.

Mary Lyndon Shanley’s essay echoes themes sounded by previous authors. Like Morales, she notes that neo-conservative and Marxist critiques of liberal individualism for dissolving interpersonal relations and emphasizing instrumental relations

do not apply to Mill; he sees the well-ordered family as being necessary to instituting a just political order (115). His emphasis on egalitarian marriage as necessary to achieve gender equality in the public sphere likewise demonstrates that the changes he advocates extend beyond legal reforms.

Like Okin and Burgess-Jackson, Shanley addresses Mill's views on the division of labor in the domestic sphere. She argues that "Mill's commitment to equality in marriage was of a different theoretical order than his acceptance of a continued sexual division of labor" (127). Given the priority Mill placed on achieving equality and friendship within marriage, she believes he would have altered his ideas on the advisability of a domestic division of labor if they impeded marital friendship. Her most original contribution to this volume is her demonstration of how penetrating and uncompromising Mill's criticism of the institution of marriage was and her claim that, by insisting marriage is like slavery, Mill is able to develop a more complex conception of "free choice" than he had earlier and than is proposed by Hobbes and Locke (117). "The SW exposed the inherent fragility of traditional conceptualizations of choice, autonomy, and self-determination so important to liberals, showing that economic and social structures were bound to limit and might coerce any person's choice of companions, employment, or citizenship" (120).

Susan Mendus turns our attention from Mill's critique of 19th-century marriage to his marriage ideal in "The Marriage of True Minds." She argues that in SW Mill extends the principles of his moral philosophy to his marriage ideal with "morally depressing" results. Marriage, Mill believes, should unite true minds and be a vehicle through which each party strives to achieve moral perfection. Perfectibility, for Mill, consists in cultivating one's human characteristics and minimizing one's animalistic tendencies. Hence, Mill's marriage ideal turns out to be a radical one that is depressingly asexual and intellectualistic. Mendus also criticizes the impracticality of Mill's proposals for change in the public sphere. She worries that the changes to divorce law he advocated would have been disastrous to women and is perplexed that while other feminists advocated opening up new professions for women, Mill remained silent on this issue (153-4).

Interestingly, Mendus comes to Mill's defense with regard to his concept of complementarity. Mendus argues that belief in complementarity is a thread that runs throughout Mill's work and was an insight that resulted from Mill's mental crisis. At this time he realized that the thinker needs to be complemented by the poet, both for personal balance and moral and spiritual development. Explicitly rejecting Annas's views, Mendus argues that it was a contingent fact that a woman proved to be Mill's complementary counterpart. Hence, Mill's ideas regarding complementarity need not be construed in gendered terms.

Nadia Urbanati, in "John Stuart Mill on Androgyny and Ideal Marriage," agrees with Howes and Shanley in reading Mill as proposing a model of androgyny. Mill conceives the differences between men and women in terms of socially determined psychological qualities, as opposed to physical ones. He challenged the idea that reason is masculine and sentiment is feminine, arguing that the most fully developed person (like his wife, Harriet Taylor Mill) has both these qualities. Urbanati, like Mendus, ties this insight into what Mill learned from his mental crisis—that he had been a one-dimensional person because he had only been taught to develop his rational side. Urbanati sees OL and SW as closely connected—the androgyne is the Individual of OL, a sexually blended type (163-4). She defends Mill against the charge that he's overly rationalistic by showing the importance for his thought of both androgyny and the cultivation of the moral passions.

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## Feminism and the Abyss of Freedom

Linda M G. Zerilli (Chicago: University of Chicago Press, 1995). 272 pages. \$22 ISBN: 0226981347.

Reviewed by Sharon M. Meagher

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In her wonderful book *Feminism and the Abyss of Freedom*, Linda Zerilli tells a story of how feminist politics has been framed in ways that subvert its connection to freedom. Zerilli's story opens with an ending—the claim to the end of feminism. While feminism's political claims were once made in the name of "woman," the questioning in the 1990s of the unity of such a subject, of whether anyone could make claims under such a name, has shaken the foundations of feminist politics. But rather than try to rebuild that foundation, Zerilli tells a story that shifts feminism off its foundation and onto the shaky grounds of freedom.

Zerilli prefaces her theoretical story with a personal one that recounts her initial attraction to feminism, "the radical demand for women's political freedom, the right to be a participant in public affairs" (ix). Zerilli argues that feminists find themselves at a political impasse because they have become blinded to freedom, having instead framed their stories in terms of social questions and subjectivity. A freedom-centered feminism, in contrast, requires an account of some "disturbing examples of feminist practices of political freedom: disturbing...because they resist being incorporated into the social- and subject-centered frames that shape most stories of feminism" (26).

Zerilli creatively works with a wide array of 20th-century and contemporary political theorists in telling her counter-story, but her primary partner is Hannah Arendt. Arendt's concept of politics as freedom frames Zerilli's entire account. Perhaps less obviously because not directly thematized (even though Zerilli often uses the language of storytelling), Arendt also guides Zerilli's methodology in that she understands her role as theorist to be that of storyteller; that is, as one who culls meanings and unearths lost treasures from the sedimented fragments of past traditions. The theorist as a sort of storyteller has to exercise judgment because the story will cast a light on events of both the past and the present. Zerilli picks up the mantle of storytelling and retells the story of feminism in light of Arendt's history of political theory.

Although Zerilli acknowledges that Arendt herself was personally opposed to feminism, she argues that Arendt's work provides a useful intervention in feminism, given that the frames that blind feminism are those frames that feminists share with, and have inherited from, the Western political tradition that Arendt criticizes.

The first frame that Arendt identifies is the rise of the social. This may seem an odd conceptual place for feminists to turn for help because it is in her discussions of the social where Arendt appears dismissive of many women's concerns. But Zerilli argues that Arendt's critique of the rise of the social should not be read as a refusal to take up key questions with which feminists are concerned (like the feminization of poverty and domestic violence) but, rather, as a worry that the conflation of the social with the political refocuses the political on the exclusive achievement of social goods. By restricting the political to the social, then, we are limiting politics to matters of instrumentality, that is, to goals that we think can be achieved by some identifiable means. Women, Zerilli argues, have been tied rhetorically to matters of social concern such that feminism is then inextricably connected to the social and loses its ability

to make wider political claims to freedom (especially when such claims are socially inconvenient) (29).

The second frame that feminists have inherited as a legacy of Western political theory is the focus on subjectivity and identity politics. Zerilli argues that even third wave feminists like Judith Butler still operate within a feminism that is fixated on the subject (even if in its negative space) (12). Zerilli argues that the Arendtian concept of politics as world-building, i.e., as necessitating intersubjective sharing between persons and their world circumstances or interests, allows a new story to be told that shifts focus away from the subject and towards freedom.

Arendt is deeply critical of the central role played by the sovereign subject, that is, the solitary, autonomous agent. Zerilli claims that when feminists have questioned subjectivity, whether in exposing the fiction of the autonomous self or in questioning the subjective “we” of feminism, they have then found it difficult to move forward politically, having destroyed “agency,” as it were.

Taking up first the issue of the relationship between theory and practice, Zerilli recounts how feminists have read Judith Butler’s *Gender Trouble*. By way of Wittgenstein and Castoriadis, Zerilli offers an alternative reading of Butler’s book. Zerilli argues that Butler should not be read as either a radical skeptic or a volunteerist. Rather, in the example of drag, we see how changes in the meaning of gender occur “through the projection of a word like women into a new context, where it is taken up by others in ways we can neither predict nor control” (65). Zerilli reads Butler’s example of drag as an example of what Arendt means by the unpredictability of action. If we understand the unpredictability of action, then we shift our focus away from the perspective of the agent, who cannot know fully what she does, and thus avoid the dilemmas of both skepticism and volunteerism.

The story of chapter 1 began with a reading of feminism’s ambivalence towards theory and practice; chapter 2 begins with a reading of feminism’s ambivalence “toward the idea of spontaneous beginning” (67). Zerilli argues that the abyss of freedom and pure spontaneity is covered over by political narratives that purge themselves of the contingent and establish temporal connections between the old and the new. In order to open up feminism to freedom, Zerilli offers a rereading of Monique Wittig’s *Les Guerilleres* in which she employs concepts of political imagination drawn from Arendt, Castoriadis, and Grassi. Zerilli argues that the social, historical, and political domains are animated by our capacity for radical imagination, and that such capacity is not rooted in the subject but in praxis (69).

In the following chapter, Zerilli tells the story of the Milan Women’s Collective, a story often ignored or dismissed by American feminists as essentialist, since the Collective focused on sexual difference. But Zerilli argues that their claims to the category “women” are not made through a claim to knowledge of what woman is but, rather, through a series of promises made to one another in the act of politically coming together in public space.

In chapter 4, Zerilli develops a concept of political judgment based in imagination by developing Arendt’s reading of Kant’s *Critique of Judgment*. Zerilli argues that such an understanding of political judgment allows us to understand how we can make claims that are universally understood and that engage the world without making claims to empirical validity or other truth claims.

Drawing on Arendt’s understanding of politics as freedom, a freedom-centered feminism focuses on a renewed conception of the relationship between theory and practice, new beginnings, promise-making, and judgment. Taken together, Zerilli’s four

recuperative readings work to remove the frames that have caused feminism’s impasse. In each chapter she reads against the feminist interpretative grain to open up new beginnings for feminism. Importantly, this work is a true monograph rather than a collection of single-authored essays on a related topic. The chapters work in close dialogue with one another such that the voices of Judith Butler, the Milan Women’s Collective, Monique Wittig, and Hannah Arendt can be read together and against one another. Each contributes to the whole concept of what it would mean to have freedom-centered feminism rather than a subject-centered one.

Despite Zerilli’s claims that her reconceptualization of feminism in terms of freedom rather than subjectivity breaks with the mainstream tradition of Western feminism, there remain points of continuity worth exploring. Zerilli’s freedom-centered feminism does indeed call for a radical break with a liberal subject-centered feminism that relies on the sovereign, autonomous subject. But there are, for example, some promising alliances that can be built between earlier feminist work that has focused on Arendt’s concept of story as an alternative way of understanding subjectivity and on Zerilli’s shift of focus away from the subject and onto freedom. Arendt’s concepts of narrative and judgment offer the possible bridge here.

The readings of feminist politics that Zerilli skillfully presents suggest the value of retelling stories as a way of enlarging the political domain and creating new political possibilities. Although Zerilli distances herself from some other feminists who might be her allies, she offers a model of how to recuperate both feminists and philosophers like Arendt who until recently were marginalized by mainstream feminists. She demonstrates how we can take on those stories and open up alternative readings. Zerilli is particularly instructive in modeling how to counter existing interpretations with new readings that tickle the political imagination in new ways and reinvigorate politics. And the content of her story enables us to shift perceptions sufficiently to see new political possibilities and new beginnings.

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## **Are Women Human? And Other International Dialogues**

Catharine A. MacKinnon (Cambridge: The Belknap Press of Harvard University Press, 2006). 278 pages. \$35.00. ISBN 0-674-02187-8

**Reviewed by Serena Parekh**  
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*Are Women Human?* takes up the question of the status of women within the international legal system and analyzes the level to which patriarchal norms have been institutionalized as international or even universal norms. In the introduction, Catherine MacKinnon argues that “[I]legally, one is less than human when one’s violations do not violate the human rights that are recognized” (3). It is for this reason that she goes on to answer the title of her book in the negative—women are not yet human because women’s violations do not yet have the political dignity of being human rights violations. Her book is an important contribution to the feminist scholarship that has argued that gender violence ought to be thought of as genuine human rights violations.

This book is divided into four separate parts, each examining a different theme in international law. The first part takes up the way in which violence against women has

been dealt with in international law. Gender violence is not considered a human rights violation because it is not thought to involve the state—it is committed in the private sphere, not the public, and done by private actors, not the state. Yet MacKinnon shows that this way of thinking is both intellectually fraudulent and morally pernicious. It is intellectually fraudulent because the state can be understood as intimately involved with violence against women insofar as the state often fails to protect women from gender violence committed in private. It is morally pernicious because it gives the impression that the state can do nothing about gender violence, which ultimately serves to deny women the protection that is possible under national and international law.

The second part focuses on the theme of formal vs. substantive equality. Formal equality is the sense of equality that we use in the U.S. for the most part. It assumes that women's equality is a matter of being equal to men, that is, having the same opportunities as men. This approach favors and prioritizes equality issues for women who are already most like men, namely, the most privileged women, since it focuses on employment, education, public pursuits, and professional advancement. This view has not improved the lives of the majority of the world's women. On the other hand, substantive equality takes into consideration the actual historical circumstances that lead to inequality and puts measures in place that would make women *de facto* equal to men (and not just *de jure*). This view begins by assuming that there is a deep bias in our institutions and aims directly at overcoming the systematic social subordination of groups. She gives a number of examples of this kind of equality put into legal treaties: The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women and the African Protocol on the Rights of Women. Both documents recognize that women's equality is not going to arise by simply removing laws that discriminate but, rather, by recognizing the historical and social factors that keep women in a subordinate position and taking measures to eliminate them—including in the private realm. In this sense, contrary to stereotypes, women's rights in Africa and Latin America are in some ways more advanced than in North America.

The predominant theme of the third part is the connection between pornography, rape, and nation building. Rape, in war, she argues, carries a special meaning—it is a way of planting a flag, a way of claiming ownership. Because of this, it is systematically tolerated and recognized as a natural and inevitable part of war. Men will only stop raping, she argues, when rape is no longer able to serve as a form of communication, and rapists are thought of as villains rather than heroes, objects of contempt rather than respect, and cast out of the human community instead of being treated like diplomats. Pornography is like a rule book for rape, both in times of war and in times of peace, and thus the two are intrinsically connected. She argues throughout the book that we should reject pornography, not for the usual reasons (that it is immoral or violent) but because of the concrete harm it does to women who are forced to participate in it.

Part four contains the very powerful essay, "Women's September 11th." In it, she argues that after September 11, the international community was able to change laws and policies to combat international terrorism. The U.S. government and their international allies were determined to stop Al Qaeda even though Al Qaeda was a non-state actor, and even attacked the state which sponsored them, Afghanistan, even though the state itself did not commit the terrorism. This was as a result of the deaths of some 3,000 people. Yet, as she points out, this is roughly the number of women who die at the hands of men each year in the United States alone. Yet the response to this

kind of violence has been to say that because the violators are non-state actors, private citizens acting in the private realm, the state can do nothing about it. MacKinnon points out the hypocrisy of this response and is hopeful, though perhaps only mildly so, that we will be able to reform the law to respond to gender violence in the way that we have to terrorism.

This summary does not do justice to the great variety of themes and ideas that are present in the book. However, though there are a number of brilliant ideas, the book also suffers from a number of flaws. First of all, the tone of the book is often biting and fierce, and at times alienating, even to a sympathetic reader. This makes it hard to use in a classroom setting. Take, for example, the story with which she concludes chapter one. MacKinnon tells the story of a group of hundreds of women who killed their rapist with kitchen knives when he was about to be released from police custody. MacKinnon says that this is the day they "took back their humanity" (14). Though this story powerfully exhibits the utter anguish these women must have been experiencing, I think many people would find it surprising, if not disturbing, that murder is a way of regaining one's humanity.

Another aspect that is potentially alienating for readers is the tone MacKinnon takes with respect to men. She comes close at times to insinuating that there is something like a conspiracy of men against women. She implies that world leaders' inability to stop the mass rapes in Serbia have to do with the fact that the world's leaders identify with the rapists: "a lot of other men have a lot of respect of [rape]"; "what you see is that many of the men who run this world recognize something, identify with something in this conflict" (170). When she is discussing why states do not take effective action to control the abuses of women in other countries, she writes, "[w]hen men sit in rooms, being states, they are largely being men. They protect each other; they identify with each other; they try not to limit each other in ways they themselves do not want to be limited" (190). While her point that people in these powerful positions often do not represent women is well taken, it is questionable whether the reasons for this are as intentional and self-serving as MacKinnon suggests.

Finally, readers of this book may be struck by the way MacKinnon argues, or, rather, fails to argue, for her claims. For a number of points—such as why rape as genocide is distinct from other kinds of rape and the argument against formal equality discussed above—MacKinnon's arguments are clear, precise, and almost unassailable. However, there are parts of the book where she relies on suggestion and description rather than argumentation. Take, for example, a fundamental claim she makes throughout this work concerning the role of pornography in the genocidal rapes in Bosnia. Her way of making the connection between rape and pornography is to describe, very vividly, scenes of rape that are linked to pornography. One cannot help but wonder if the connection between pornography and rape is necessary as MacKinnon suggests, or merely contingent. At a certain point in the book, MacKinnon goes to great lengths to describe how sexualized the Nazi Holocaust was, even though this is often denied by Holocaust scholars (209-33). She argues this point successfully. However, if sexual torture occurred in the Holocaust, at a time when pornography was not nearly as violent or as wide spread, it seems to suggest that the relationship between pornography and rape is more contingent. The reader is left wishing MacKinnon had addressed such questions directly.

Despite its limitations, this book goes a long way in supporting the view that gender violence is a human rights violation. It may also bring women one step closer to being human.

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## Law 101: Everything You Need to Know about the American Legal System, 2nd Edition

Edited by Jay M. Feinman (New York: Oxford University Press, 2006). 363 pp. \$28.00. 13 978-0-19-517957-6

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While his claim to supply “everything you need to know about the American legal system” is seriously over-stated, Feinman provides an accessible, engaging discussion of U.S. law. The book tracks the standard first year law school curriculum, featuring chapters on constitutional law, civil procedure, and the law of torts, contracts, property, and crime. Feinman provides a competent sketch of some essential features of each of these areas of law, as well as an account of at least one on-going debate within the legal community relevant to each. This book is not intended for academics. The vast majority of the ground covered, while not common knowledge, would be familiar to most U.S. citizens with an advanced degree. That which is unfamiliar is presented in too superficial a manner to be of academic use, and there are neither footnotes nor a bibliography to guide further reading (though there is a list of cases cited). Even as a popular introduction, however, the book is seriously flawed both stylistically and substantively.

By using vivid actual and hypothetical cases to illustrate his points, Feinman succeeds in rendering complicated ideas understandable. His writing is marred, however, by a number of at best inelegant and at worst ungrammatical sentences. The book also suffers from redundancy. A number of topics are broached more than once, each time as if for the first time (e.g., selective incorporation and the searching of one’s garbage are treated both in the book’s early chapters on constitutional law and on pages 306 and 315, respectively; challenges for cause and preemptory challenges are explained on page 129 and again on page 331). In addition, while legal terms usually are defined when introduced, this practice is not followed consistently. “Punitive damages” occurs on page 1, for example, but is not defined until page 177. A glossary of legal terms would be of great help to the untutored reader.

Unfortunately, the book’s deficiencies are not limited to style. In the course of presenting his overview of the law, Feinman touches on a number of issues of interest to feminists. He treats briefly the Violence Against Women Act, litigation concerning tampons, the Dalkon shield, and DES, women on juries, hate crimes legislation, married women’s property acts, prostitution, and affirmative action; and he discusses at some length equal protection, abortion, pornography, domestic violence, stalking and rape. None of his discussions reveal even passing familiarity with feminist analyses. I will discuss four examples, though many more exist. When discussing equal protection jurisprudence, Feinman states unequivocally that “the government does not have to go out of its way to initiate programs that would correct inequalities that people otherwise suffer” (55). While this is the dominant interpretation of the equal protection clause today, feminist scholars (and other progressive legal theorists) present compelling arguments for an interpretation of the clause on which the government has a duty to bring about substantive, rather than merely formal, equality. Similarly, when discussing obscenity law, Feinman limits his discussion to the tension between the right to free speech and the state’s desire to protect public morals (70-72). No mention is made of the feminist legal analysis that identifies the harm of

pornography as the subordination of women. When discussing debates about the law’s understanding of self-defense, Feinman discusses “battered woman’s syndrome” (276-78). “Battered woman’s syndrome” purports to explain why women, who could escape their abuser, wrongly (but understandably) believe they cannot escape and therefore deem killing their abuser their only means of survival. Two points are relevant here. First, many experts argue that there is no such syndrome; women react in a large variety of ways to battery, so to name one reaction the “battered woman’s syndrome” is misguided. Feinman says nothing about this critique. Second, Feinman misses the opportunity to discuss a deep objection to the current legal understanding of self-defense raised by domestic violence situations. It is well documented both that the most dangerous time for a battered woman is when she is attempting to leave the abusive relationship, and that police often are ineffective in protecting women from their abusers. The current legal standard of self-defense requires that one be in immediate danger when one uses lethal force. A woman who rightly believes that she cannot escape an abusive relationship, and so kills her abuser while he sleeps, poses a much deeper challenge to this standard than does a woman who kills her abuser based on a mistaken belief about her ability to escape. Finally, when discussing rape law, Feinman comments on the legal notion of consent (300-4). In the process, he acknowledges only those laws that require a victim to express lack of consent (e.g., I didn’t consent if I said “no”); he does not mention those laws that equate lack of consent with lack of words or actions that affirmatively give consent (e.g., I didn’t consent unless I said “yes”). Much feminist thought has been devoted to this enormously significant distinction.

One might maintain that it is illegitimate to fault Feinman for failing to include feminist analyses of the issues he discusses, given that he is presenting a mainstream introduction to the law. This objection is undermined, however, by the author’s own characterization of his book. Feinman writes, “the perspective of this book is informed by much of the best scholarship about the law” (4). He then lists five “insights about the law” that summarize that perspective. The fourth reads: “law is a battleground of political conflict”; he construes “political conflict” broadly to include “struggle[s] over social resources and social values” (6). Given the major role feminism has played and continues to play in the “struggle over...social values” in the contemporary U.S., and given the abundance of excellent feminist legal scholarship, Feinman’s failure even minimally to engage feminism is a significant deficiency. Parallel criticisms apply to Feinman’s failure to engage other progressive legal scholarship (e.g., critical race theory or queer theory).

Feinman’s book is troubling to feminist sensibilities for other reasons as well. Despite superficial gestures to the contrary (i.e., Feinman employs feminine pronouns almost exclusively), the book is peppered with unchallenged sexism. At two points, for example, Feinman mentions police efforts to curtail prostitution; in both cases he focuses exclusively on legal action aimed at prostitutes, never on legal action aimed at the buyers (264, 290). During the discussion of rape mentioned above, Feinman writes that it is “perhaps” reasonable to believe that a woman who repeatedly said “no” during a sexual encounter actually consented to the sexual activity (303). He cites as an example of “attorney folklore [that] governs the exercise of preemptory challenges” in jury selection “the idea that women jurors may be jealous of an attractive female party...” (129). Regarding this last example, Feinman not only fails to challenge its sexism in any way, he neglects to mention that excusing a juror on the basis of such “folklore” was declared unconstitutional by the supreme court in 1994 (*J.E.B. v. Alabama* 511 U.S. 127).

Given all this, Feinman's book will be of little interest to feminist scholars, except as an example of how sexist the work of even a seemingly well-intentioned author (remember the pronouns) can be. More troubling, however, and the title notwithstanding this book falls far short of providing "everything [the general reader] needs to know about the American legal system." Instead, it effaces much that progressive scholars find wanting in that system, especially with respect to its treatment of women.

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## CONTRIBUTORS

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