

[*Women's Lives, Men's Laws*,
Catharine A. MacKinnon,
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pages]

MacKinnon's Textual Harrassment

By Ilana Mercer

THE BALEFUL INFLUENCE of feminist Catharine MacKinnon on American jurisprudence cannot be underestimated. With relatively few obstacles from the dreaded patriarchy, MacKinnon, professor of law at the University of Michigan, “teacher, writer, and activist,” has been transforming jurisprudence since the 1980s. Her legal conquests, especially in developing sexual-harassment law, are the subject of this volume, which comprises speeches and screeds MacKinnon has disgorged over 25 years.

If “the pale, patriarchal, penis people” have not hindered MacKinnon’s successes, neither has her cold, inflexible, and fundamentally unscholarly mind—the mind of a propagandist and a casuist, in Camille Paglia’s estimation—or her inability to write. The blurbs bedecking *Women's Lives, Men's Laws* promise “the deepest and best feminist writing around,” writing that is “fresh, concise and incisive.” MacKinnon, however, is an obscurantist, tying the English language into such knots as “Who that needs this equality can get it?” and “The rules of everyday life, in this sense, are that law which is not one, the law for women where there is no law.”

Plucked from a legal journal, chapter 12, “Reflections on Sex Equality Under Law,” offers a relatively clear exposition of MacKinnon’s position. First-wave feminists strove for equality under the law, demanding only that existing rights and protections be applied to women. Due to their “assimilationist” approach, MacKinnon dubs them “domesticated

feminists.” Because “[n]o woman had a voice in the design of the legal institutions that rule the social order,” MacKinnon, in opposition to these Aunt Toms, concludes that the law itself is invariably flawed. If to be a woman is to be part of a group that has been and still is institutionally abused, remedies must transform the law and not merely apply it equally.

Women MacKinnon views as a besieged class of helots, men as members of a ruling elite that refuses to let go of patriarchal privilege and power. The former must fight to unseat the latter. And fight MacKinnon does: she hasn’t stopped fighting since her first major victory in 1986. Unfortunately, she fights just like a woman: underhandedly, her weapon of choice being the civil law with its lower burden of proof.

In the landmark *Meritor Savings Bank v. Vinson* decision, the United States Supreme Court applied MacKinnon’s theory of sexual harassment as sex discrimination. The plaintiff, Mechelle Vinson, alleged her supervisor at the bank, Sidney Taylor, sexually harassed her, thus violating Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex. To read MacKinnon’s febrile descriptions, Taylor’s “repeated rapes” consisted in standing over the plaintiff in the vault, waving his *membrum virile* at her and laughing. Court briefs aren’t as comical: they acknowledge the he-said-she-said quality of the case and concede the parties presented conflicting testimony about the existence of a consensual sexual relationship. Still, the paradigm that prevailed—MacKinnon’s—required that these incidents be treated not as if they were “outrages particular to an individual woman” but as outrages that were integral to “her social status as a woman worker.” Thomas Nagel of the *Times Literary Supplement* explains this unintuitive approach: “These are not just injuries to an individual who happened to be a woman: she is subjected to them because she is a woman.”

It was bad enough when under antidiscrimination law employers lost control over their businesses. Worse was in store: the “radical paradigm of sexual harassment as sex discrimination” allowed the prohibition of naturally licit, previously protected speech, based upon no more than a complainant’s subjective feelings of unease. Sexual harassment had been redefined so that women could sue an employer for creating a “hostile work environment” rather than because they had been pressured for sexual favors or experienced physical aggression.

With this twist, the MacKinnonites sundered the already excessively broad tort standard that applied to an intentional infliction of emotional distress. The presumption of innocence and traditional defenses such as a lack of intent to harm, absence of harm, or even the presence of consent, were no longer impediments to initiating charges in civil suits—and increasingly in criminal cases. MacKinnon’s victories thus spelt the defeat of “neutral principles of constitutional law.” Sexual-harassment kangaroo courts are her unique contribution to obliterating the Rights of Englishmen in companies and across campuses. But then, in MacKinnon’s world, now ours, accused men are symbols of a larger sickness for which they must pay by forfeiting their rights.

Indeed, individual liberties have no place in her polemic. To the illiberal MacKinnon, individual rights are but an excrescence of the patriarchy: witness how the First Amendment has been interpreted to allow men their pornography. Privacy is of the same provenance: it only cloaks misogynist machinations. Tellingly, MacKinnon defends abortion not on grounds of privacy or dominion over one’s person but on the basis of inequality:

The effects of women’s inequality in procreation can range from situations in which the woman is prevented from conceiving, chooses to conceive and deeply desires to deliver but the baby dies, or does

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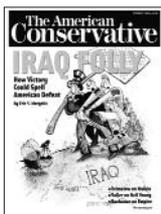
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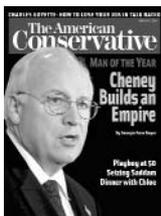
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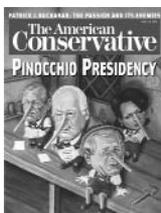


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not choose to conceive but is forced to deliver. ... However difficult an abortion decision may be for an individual woman, it provides a moment of power in a life otherwise led under unequal conditions that preclude choice in ways she cannot control.

To say the puritanical MacKinnon has sex on her mind is an understatement. When it comes to prostitution and pornography, she is a woman possessed, offering up as proof lengthy and lurid descriptions. Dare to suggest that the institution of private property allows men and women alike to determine their exposure to pornography, and you risk this schoolmarm's wrath. A classical liberal like Judge Richard Posner, whose monograph *Sex and Reason* MacKinnon critiques, might argue that third parties have no place in voluntary sexual transactions between consenting adults. But choice and agency are missing from MacKinnon's understanding of women. In effect, Mother MacKinnon is saying that women don't know their own minds. At her mercy, they would be infantilized, becoming wards of the state, incapable of rendering consent. The paternalism MacKinnon proposes is predicated on the sort of state intervention incommensurate with a free society—for which she is unapologetic.

If MacKinnon is not about a free society, neither is she about first principles. Consider her "legal realism." She believes "[l]egal theory should analyze the legal issues in terms of the real issues, and strive to move law so that the real issues *are* the legal issues." What might be viewed as a laudable quest for context proves problematic because MacKinnon's highly idiosyncratic version of reality is the only admissible context. It's her version or no version. While MacKinnon rightly disdains the postmodern take on truth, she also loathes "neutral principalism"—neutrality, objectivity, and equality before the law. Ultimately, MacKinnon's theory of justice is not metaphysical but mercenarily political.

It's also self-contradictory. Implied in her deployment of the law to transform women's daily lives is a belief in change. Yet she treats the patriarchy as though it were cast in concrete. How is it possible to change women's lives unilaterally without altering men's lives as well? I don't expect men's circumstances to move MacKinnon. But is there no significance to the fact that women continue to live longer than men, that many more men commit suicide, that men are more likely to be unemployed and less likely to get another job, and that they are more likely to suffer lethal industrial accidents? Is it of no importance that of the more than 2,100 soldiers who've died so far in Iraq and the more than 15,704 who've been wounded most were men? Not in MacKinnon's static and stony universe.

More pointedly, MacKinnon's theoretical castles-in-the-sky have mocked out of meaning genuine human suffering. As a one-time AIDS counselor in South Africa, this reviewer might be in a position to offer a measure of just what a mad hatter MacKinnon is. Does she know that in one of the more peaceful and prosperous places in Africa a woman—toddlers and babies included—is raped every few minutes? Such trammels of despair are rare in distaff America. Yet there is nothing in MacKinnon's disquisition to demonstrate even remotely she understands the difference between the liberated, sexually overbearing, self-adoring "Girls Gone Wild" of North America and the victims of, say, the sex-slave trade in Thailand, Mauritania, and India.

The strength of ideas rests on their relationship to reality. MacKinnon's unrealistic fulminations against a phantom patriarchy exist in the arid arena of pure thought. There are places where Catharine MacKinnon might pursue her métier more productively. Decamping to Darfur is one option—her work will have relevance there. ■

Ilana Mercer is a columnist for WorldNetDaily.com and the Free-Market News Network.

Christmas Chronicling



This being the Christmas issue—yes, in this magazine we are permitted to use the “C” word—I will tell you about a very religious man, a chronicler of

change and decay, namely Thomas Fleming, editor of *Chronicles*, a monthly review of our culture, or lack thereof. Fleming recently spoke to Derek Turner, editor of *Right Now*, a conservative British publication. Tom is a former university teacher of classics who specialized in Greek tragedy and the technique of lyric poetry; he is also an Aristotelian by philosophy and a Southerner by conviction. In other words, a serious although very humorous man who thinks Paris is the French capital, rather than a talentless publicity-seeking Hollywood celebrity with an IQ lower than her age.

Fleming has often been told that his respectful views on Christianity, paganism, and Darwin are incompatible and that a good Catholic must detest ancient pagans and reject all that science teaches, and to that he answers with two words: “Prove it.” He dislikes fanaticism and ideology. It is the one quality he has taken from the Anglo-American tradition, that of tolerance for other creeds, a very Christian thing in my opinion. “I quite understand why serious ancient pagans were reluctant to give up a tradition that included a richness of ritual and a high intellectual theology.” He thinks Christianity took a wrong turn in the 18th century, when it attempted to reinvent the Church as a universal ideology. He calls Samuel Johnson the greatest conservative writer because “He was painfully aware of human suffering and inhumanity but firmly committed to social order which, however imperfect, improves the possibility of leading a good life.”

He also points out the contradictions of our culture—for example, the Constitution of the United States, which so

many Americans believe to be the answer to every problem in the world, including a place called Iraq. “When they founded Liberia with former American slaves they adopted the US constitution, but I have to say that the history of Liberia has been rather different from that of the United States.” Social, moral, and cultural questions take precedence over political questions, according to Fleming. He no longer believes in political parties or movements in the United States because they are unreliable, and their leaders will say and do anything in order to be elected. “I make friends with individuals rather than groups.”

HE REGARDS **NEOCONSERVATIVES AS “CHARLATANS AND LIARS”** AND DOES NOT BELIEVE THERE IS A SINGLE **NEOCON THINKER** WHO CAN BE TAKEN SERIOUSLY.

Conservatism, according to him, used to have an emphasis on tradition, the nation, our common history, small government, free enterprise, and so on. Needless to say, he regards neoconservatives as “charlatans and liars” and does not believe there is a single neocon thinker who can be taken seriously. “They are nothing but warmed-over socialists, leftists really. The elemental Leftist tendency has always been to oppose the civilized order, just as it opposed Christianity in the 15th century, the aristocracy in the 18th and 19th, and the monarchy. Then it was the free market which had to be eliminated. Today, social Leftism wants to eliminate the family and every semblance of sexual normality. In every generation, the target changes but the revolution rolls on, destroying everything that makes us sane and normal and healthy.”

Amen! Just as Fleming was making his pronouncement about normality and health, the *New York Times* led off its wedding section with a full-page picture and text of two men getting married, normal couples taking a back seat in the following pages.

He is also very sound on Iraq. He points out that the truth is that the U.S. has porous northern and southern borders, and terrorist agents can come across at will. Yet we refuse to do anything about them. Instead, we are fighting a war we can never win and are stirring up terrorism against us. When asked about his policy program in relation to Islam, Fleming concluded that we should disestablish the Islamic governments the Clinton administration imposed in the Balkans and restore Christian areas to Christian control

while compelling the Albanian drug cartels in Kosovo to rebuild the hundreds of churches they have destroyed. Again, like a modern Delphic oracle, but more precise, no sooner had Fleming said that than the *New York Times* revealed that Bosnia is becoming a haven for Islamic militants. Leave it to the *Times* to discover something that even little old me knew was going to happen the moment we started bombing the hell out of the Christian enclaves back in 1998.

Finally, he believes we should allow no more Muslims into the United States and encourage our European allies to begin a humane process of repatriation. Last but not least, we need a fair settlement for the Israelis and Palestinians and to “provide the muscle to enforce it.” It is a fantasy program all right, but once again I can only say, “Amen!” And a very happy Christmas to all of you. ■