

Feminism, deconstruction and the law

RP: Perhaps you could begin by saying something about the Critical Legal Studies movement in the USA. What is its relationship to feminism? And where do you see your own work as fitting in?

Cornell: Regrettably there's very little organized presence of either Critical Legal Studies or what were called the 'femcrits' in the legal academy in the United States in 1994. In the late seventies and early eighties when I was a law student, there was something that was called the Conference of Critical Legal Studies, and it had the effect of being a movement. We had yearly conferences; there was a sense of political intervention in the academy, as well as academic discourse promoted by critical legal studies. The femcrits came out of a confrontation of feminists with critical legal studies over the impossibility of feminists being heard. In 1982 or '83, there was a conference run by women which led to the establishment of the femcrits. For several years the femcrits were an organized presence, but all that has been dispersed. There are still women who would consider themselves as writing in feminist jurisprudence, and there are still people who would consider themselves associated with the Conference of Critical Legal Studies, but the experience of movement has disappeared. There was some repression, meaning that people were fired – myself and Clare Dalton being two examples, although there are many more.

RP: From law schools?

Cornell: Yes, Clare and I were denied tenure within one week of each other. It was seen by people in the Conference of Critical Legal Studies as a response to our association with them. I'm a leftist, so when I became a law professor I affiliated with the left that was available to me, but my own intellectual and political history is very different from the Conference of Critical Legal Studies.

RP: How did you come to be a lawyer?

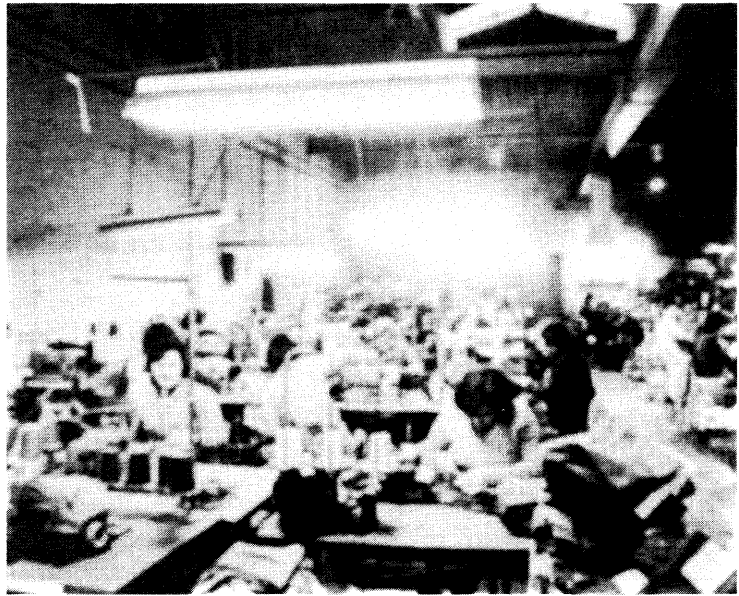
Cornell: I was a student radical and a feminist very early on. I was active in civil rights activities in high school from the age of sixteen. I went on to college, but I dropped out for a while and went to study Marxism in Germany, in 1969, when there was still a great deal of uproar at the Free University, which is where I went. I considered myself a Left Hegelian. Then I came back to Berkeley, briefly; then went to Santa Barbara. I went to study Heidegger in Freiburg and I ended up at Stanford, where I became involved in the student movement. I joined a Marxist-Leninist organization, since I had decided that if feminism was going to be a truly popular movement it would have to go into factories and organize.

RP: What was the organization?

Cornell: Venceremos. At the time, it was closely associated with the Black Panther Party.

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Anyway, we – that’s me and the man in my life – joined Venceremos, and we were very involved in the organization. He was a conscientious objector and worked at Pacific Studies Center, and I went to work in a factory, staying in factory work, with a brief spell doing clerical work in New York, until I went back to graduate from college by correspondence from Antioch. So I have a very different trajectory from most academics.



RP: Do you view this as a productive period?

Cornell: I consider it one of the most productive periods of my life. As I look back now, it’s one of the things that I’m most proud

that I did, because I was a real union organizer. My entire experience, philosophically, of the question of race, and its relationship to gender, was influenced by relationships with African-American women of such overwhelming quality that they’ve marked me for life. I’m not the same white girl I would have been had I not had that experience. It was utterly transformative for me. It has shaped me in ways that I can’t even describe, including giving me visions of loyalty and possibilities of solidarity between women that I have not experienced before or since. It probably even influenced the distinction I make in my writing between femininity and feminine sexual difference, because I was confronted with a richness of possibility of feminine sexual difference that I couldn’t even dream of, as a white girl.

RP: Does your critique of McKinnon come out of this?

Cornell: Very much so, and my critique of a certain strand of object relations theory too. It made me understand that I am white. I live every day knowing I’m white now. Whatever I think of my femininity, my womanhood, it’s white. I didn’t know that before my union days. I came to understand that even the deepest recesses of how I had been scarred by the wound of femininity were inseparable from my whiteness. I also came to understand that there could be true solidarity between African-American women and white women based, paradoxically, on an understanding of that difference.

Obviously, since I was a union organizer, class was very much part of that experience too. We had a view that struggles between men and women in the community, and the need for women to take up struggles when necessary, should be done through direct organization, rather than through the intervention of the state. I’ll give you an example from my consciousness-raising group. Muriel’s man did not pay his child-care payments, and we knew that he worked at Harlem Hospital. So rather than proceed through law, we took our consciousness-raising group down to Harlem Hospital and passed out leaflets calling on all the women, our sisters, to join with us in expressing their extreme dissatisfaction with this man’s behaviour. And we explained that we were doing this because we didn’t want to join with the ‘white man’s’ law, but this man’s behaviour was extremely disruptive of any real solidarity. It was a huge success. The man was pelted with food in the cafeteria, he had smoke bombs put in his locker, and the last I heard he was still paying his child-support payments. So this experience involved the idea that there were other creative mechanisms than the legal. We certainly rejected the idea that law was the way to handle intercommunity conflicts.

RP: So how did you end up a lawyer?

Cornell: It must be the cunning of reason. I got very sick during the last years of my union work and I just burned out, physically. So I decided I would graduate from college. I intended to

be a mathematician. I lost my nerve. I'd published some poetry by that time, so I decided to be a writer and support myself as a lawyer who worked for unions. It was the most practical I ever got. Twelve years later, I'm still a law professor. But I never saw feminism getting involved in legal reform as its main focus. Once I became a law professor I joined the left that was present, but I didn't see that as my primary realm of political activity.

FROM HEGEL TO DERRIDA

RP: So where did the Derrida come from? You are associated with a feminist application of deconstruction to legal theory. What is your philosophical background?

Cornell: I am totally self-trained, but I started reading philosophy quite seriously in high school – to the point where I had read a great deal of Hegel by the time I entered college. I started taking German in high school so that I could read Hegel in the original and I continued German through college. But for me philosophy wasn't an academic enterprise; it was a deep and profound struggle to come to terms with the world, so that I could find a way to live in it. I didn't think 'I am a Hegel scholar'; I thought 'I am a Left Hegelian, with a particular take on Hegel' – to the point where a number of the women in my consciousness-raising group decided that they wanted to have a subgroup where we read *The Phenomenology of Mind* together. So for me Hegel was a living presence and our Harlem Hospital activity was very influenced by our collective reading of *The Phenomenology of Mind* – even in its rhetoric: the struggle for recognition. For me philosophy was about changing the world, and about how you came to terms with how the world could be changed. I have none of the elitist presuppositions about who can be a philosopher. Like I said, I read *The Phenomenology of Mind* in my consciousness-raising group and all of those women were working-class women.

RP: And the Derrida?

Cornell: I went the Adorno route. I was one of the very few law professors who focused on teaching Hegel's *Science of Logic*. Since I was a Hegelian, there was no escaping whether or not the logic was 'true'. That had to mean something. And in three years of teaching Hegel's *Science of Logic* I could not defend any workable concept of absolute knowledge as truth. I had already been deeply influenced by the Frankfurt School, by their notion of ideology critique, by negative dialectics. (One of my dreams had been to study with Adorno.) This was a possible trajectory for finding the truth in Hegel, because Adorno is very much within the problematic of Hegel's *Science of Logic*. I took negative dialectics as far as it could go. *The Philosophy of the Limit* opens with my reading of Adorno's *Negative Dialectics*. My interest in the ethical came way before I decided to become a law professor. These were ideas I was having in the late 1970s.

RP: This is the piece called 'The Ethical Message of Negative Dialectics'? So your approach to deconstruction was anticipated there, as an ethical reading of Adorno? This is interesting, because *Negative Dialectics* is so often read, especially by Habermasians, as an impasse, the end of the road for the first generation of the Frankfurt School, a work with nowhere to go.

Cornell: If there is one goal which has guided me throughout this period of my life, it has been taking the ownership, the appropriation, of Critical Theory away from Habermas and returning it to its radical underpinnings. I do not believe that negative dialectics leads us into the impasse. Philosophically, my interest in the ethical came out of my engagement with Adorno. It was there that I realized that what I had been struggling to articulate through Hegel was not ethics as *Sittlichkeit*, ethics as ethical life, but the concept of responsibility before 'what is not yet'.

I was still Hegelian at this time, so even if 'what is not yet' is there as a negative presence, or a messianic 'now', I was searching for a different way of understanding the emancipatory moment as it was historically produced in its different formations, but also inevitably there. That's what I call the *quasi-transcendental meaning of the limit*. So I was already struggling for something like 'the ethical' as I used it later on, when I read it through Levinas. Although I've backed off Levinas

a bit now, because it's too sanctimonious for the radicalism of what I mean by the limit, and the idea of the thereness of the emancipatory moment as both impossible and, because it's impossible, always unerasable.)

Regarding Derrida, I was initially concerned that the experience of deconstruction did not carry enough analysis of the force of the beyond as the ethical. So my first encounter with Derrida was quite critical. But later, reading Derrida and Benjamin and Adorno together, I came to see the absent presence of the ethical in Derrida's work.

RP: There seem to be two things that are distinctive about your reading of Derrida. On the one hand, it is self-consciously opposed to the sceptical, nihilistic reading which is common in some parts of the American academy. On the other hand, it's much stronger than what others take to be the ethics of deconstruction, by which they often tend to mean little more than an ethics of reading. You want to claim something which is much more ethically substantive.

Cornell: *Specters of Marx* – that is my Derrida: the force of the absence of a historicity that marks emancipation as 'something' that can't ever either be erased or fully actualized. He says there (p. 75) :

It was then a matter of thinking another historicity – not a new history or still less a 'new historicism', but another opening of event-ness as historicity that permitted one not to renounce, but on the contrary to open up access to an affirmative thinking of the messianic and emancipatory promise as promise: as *promise* and not as onto-theological or teleo-escatological program or design. Not only must one not renounce the emancipatory desire, it is necessary to insist on it more than ever, it seems, and insist on it, moreover, as the very indestructibility of the 'it is necessary'.

As someone who was trying to struggle with the truth of Hegel's *Science of Logic*, I was looking for a way to justify the indestructibility of the 'it is necessary' of the emancipatory desire. If there is one theme that has guided me philosophically, it has been that search.

RP: This sounds like a generalization of something which appears in Adorno only in relation to art: the promise of happiness. Your reading of Derrida, your Derrida, would recover that promise within the temporal structure of all experience. Is that right?

Cornell: The difference between the negativity of Adorno's view of art and Derrida's understanding of impossibility as what always makes the 'it is necessary' indestructible is the difference between their understandings of time. On my reading of Derrida, time, or more precisely temporality, keeps open the 'not yet', but as part of experience. There is never any reason – there can't be – in this real world of ours, for us to give up on our emancipatory desire.

RP: But in the Adornian context, isn't the affirmation in the act of producing the object?

Cornell: But the production is always of an art. It absolutely rejects the world as it is. Adorno could only see the promise of happiness as a narcissistic return to some kind of imaginary fantasy of childhood, perhaps his own. The world that had denied the happiness had to be abjected. Art maintained the possibility of redemption in abjection, not in political action. For Adorno, the promise of happiness is only the promise of happiness, not the destiny of responsibility. Whereas Derrida's 'it is necessary' means that we are infinitely responsible before the other and, indeed, the otherness of the 'not yet' – a theme he sounds over and over again in the Marx book. In the way I read the philosophy of the limit, it is the quasi-transcendental moment which makes the messianic hope indestructible. That means there can be no reason for giving up. *Specters of Marx* is so powerful for me because it is as far as Derrida has come in putting the present absence of the 'not yet' before us.

Interestingly enough, in his 'two examples of the diverse spirits of Marxism' (and he wants to say we could live up to those spirits in many different ways), one is to intervene in constitutionalism, and fight for human rights. He sees that as a feasible way of being true to one

of the spirits of Marxism. The ways we live out this emancipatory desire, and attempt fidelity to it, could be very diverse. What can't be legitimated is the idea that there is one truth to what the political can be, and that there are limits on political possibility which can tell us now that this emancipatory desire is unnecessarily Utopian, in the bad, unrealizable sense.

Adorno's placement of the hope of redemption in the abjection of the artist's work was itself a capitulation to what, in a lovely phrase, he called 'the ideology of lesser expectations'. This led him away from the insight (which is so central to *Specters of Marx*) that because of the impossibility of there ever being a truth to the content of emancipation, the emancipatory desire is both necessary and indestructible – because of the impossibility of a full actualization. This is a very different concept of impossibility from the one Adorno has.

THE PHILOSOPHY OF THE LIMIT

RP: Your renaming of deconstruction as a philosophy of the limit returns it to the Kantian tradition. Doesn't it thereby risk losing the measure of its philosophical specificity? You use the term quasi-transcendental, for example, but you also write about the immanence of alterity and iteration. Isn't it one of the advantages of Derrida's Heideggerianism that it gets rid of the whole problematic of the transcendental, which always produces an opposition to the empirical – all these dualisms – returning us instead to something like a pre-transcendental category of transcendence, read now as immanent, through the ecstatic structure of temporality? The idea of the quasi-transcendental doesn't seem complex enough to grasp that.

Cornell: There are enormous problems with the idea of immanence in transcendence in any reading of Derrida, because it is almost impossible to articulate it without returning to Hegel, in a strong sense; without returning to the idea of actuality as possibility, to that sense of immanence. I believed that the truth of Hegel that had to be held onto was that actuality and reality had to be rethought. Let's start there, with Derrida and Hegel, and what Derrida says about 'hauntology': time is out of joint.

Temporality means that the very categories of immanence and transcendence are shaken up, because there is no concept of the here-and-now. When time is out of joint, the dislocation of the emancipatory desire, meaning its impossibility of ever being located, is its infinite possibility. Immanence and transcendence take us back to a relationship between actuality and the real which is, for me, inadequate.

RP: But doesn't the idea of the transcendental take us out of temporality altogether?

Cornell: Well, yes it does, in Kant, that's undeniable; but it depends what we do with Kant. For many years now, I've been struggling with Rawls's attempt to redefine Kantian constructivism in a way which is consistent with a certain Piercean critique of metaphysics. (I'm not sure that Rawls would put it that way, but this is me reading Rawls.) I'm interested in whether what I call the philosophy of the limit, and what Rawls calls Kantian constructivism, could have some kind of alliance. I've been struggling to articulate what that alliance might be via an engagement with Charles Pierce.

However, we're going to have to specify the political role Kantian constructivism plays, because for me feminism is very much about emancipatory desire and impossibility, and it goes way beyond what Rawls claims for the proper sphere of his Kantian project. What I see as the truth of the quasi-transcendental is that time is introduced, but not as what we think of as time. It's much closer to some of the conceptions of temporalization to be found in the new physics.

RP: I found your essay on temporality and legal interpretation in *The Philosophy of the Limit* extremely interesting, but I wonder if there's anything specifically deconstructive about your position. Wouldn't Heidegger's notion of existential temporalization from *Being and Time* do just as well?

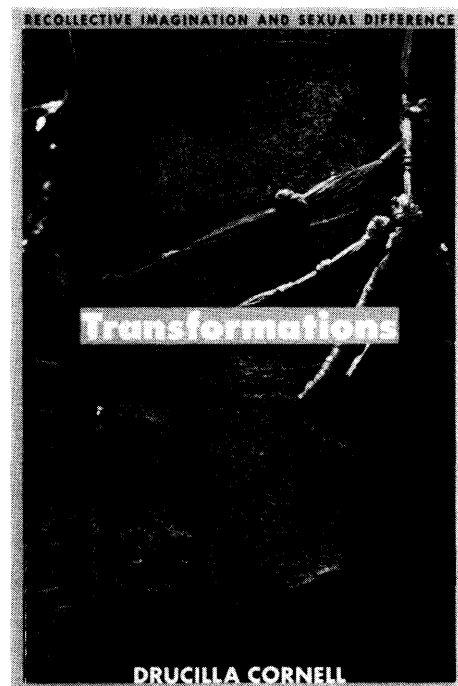
Cornell: No, I don't think so at all. I agree with Derrida that sometimes what is most ancient is the only way to know what is most new: *différance*. The way that I read Derrida as a philosopher of the limit is that there could never be a system that could so self-enclose itself that it would not be delimited by its Other. The concept of delimitation, which is a way of thinking about the relationship of transcendence to immanence, is inherent in *différance*. A field of significance which frames itself will always delimit itself, and thereby produce, in that sense of what it means to be a delimitation, its Other. There's no simple return to Kantian metaphysics, but for me there is no simple getting rid of Kant either.

In the United States, Kantianism has gone in two interesting directions: the political constructivism of Rawls and the meta-notion of validity developed by Pierce. If there's such a thing as Piercean philosophy, it's this meta-view of validity. Now, there's a moment in *Specters of Marx*, when Derrida talks about living out the diverse spirits of Marx, when he evokes a concept of practical reason that's very close to Pierce. The concept of the limit of theoretical reason is extremely important for the way in which what is traditionally called practical philosophy has to be rethought, in all of its *theoretical* claims.

RP: This raises a rather different question about limits: not the limit as the production of the possible, infinite possibility, but the limit of what you can do with deconstruction. It is connected to Derrida's use of the idea of the iterative as an opening up of possibilities. My problem is this: you have a philosophical argument for the fact that there is this space of infinite possibility (although no project can ever be fully actualized in it), but you don't have anything to put in it, since your sense of the limit warns that it is both erroneous and dangerous to try to fill the gap philosophically. So what goes in it? Politics goes in it. But what's the basis of the politics? What are the principles? What are the aims? How do we justify them? We seem to get into a kind of stalemate through the philosophical opening up of a practical space, the terms of which don't allow us to use philosophy to justify the way in which we occupy it.

Cornell: I don't think that's true. This takes us back to my own trajectory. I read Derrida at a particular moment, as a Left Hegelian who'd gone out to actualize the ideal and found some major limits to the process of actualization! I had no intention of giving up on being a radical, but I needed to rethink the philosophical basis of my radicalism. Derrida has helped me elaborate the complexity that has to be part of any understanding of being that undermines the simple divide between being and non-being. Hegel's fundamental mistake in *The Science of Logic* is to start as if being, even as indistinguishable from nothing, could be the primary category for investigation. Instead, Derrida begins with temporalization. The result is a 'hauntology' that effectively undermines the traditional categories of transcendence and immanence, and demonstrates the experience of deconstruction as the experience of delimitation of the possibility of any coming together of philosophical presence.

If by philosophical principle you mean what Reiner Schürmann, I think correctly, reads the philosophical tradition to mean – a principle grounded in the truth of being – then of course there's no way to occupy the philosophical space left open by Schürmann's brilliant reading of Heidegger, and his replacement of principle with anarchy. What I was left with at the end of *The Philosophy of the Limit* was this indestructible emancipatory desire, as it is necessary, and always possible, because it's impossible. So what does that mean, practically? We can't proceed through Hegel's *Science of Logic* to ground the principles of ethics in the truth of being. What can we do? This is where Charles Pierce comes in. We can begin to rethink the very idea of practice at the level of what we call law. This is a very Piercean project. What are the different fields of



significance? What are the claims that can be made for objectivity, and validity, and reason, within those fields of significance? Knowing these fields of significance can never be philosophically totally bounded doesn't mean they can't be analytically distinguished. So the question becomes: How can you develop a practical philosophy that already assumes the distinction between theoretical and practical reason, as the basis of enlightened tolerance?

RP: My worry is to do with the relationship between this philosophical discourse and the construction of social theory. The key term here is 'theory'. Can the idea of theory survive the rigours of a deconstructive pragmatism? Some people still use the term, but it seems peculiar to describe Derrida as having a 'theory' of any kind. One effect of Derrida's influence in the social sciences (marginal though it is, if growing) has been a certain liquidationism in social theory, a certain delegitimation of theory construction as philosophically naive. This may not be justified, philosophically, but it is very much a part of the intellectual culture of deconstruction in the Anglo-American context. What are your views about this?

Cornell: Let me be very clear. A critique of the limits of theoretical reason, and of the possibility of uncovering principles in the ground of the truth of being, or some other notion of objectivity, does not mean that the field of practical reason is necessarily influenced in any particular direction. To fail to note that is to fail to note the disjuncture between registers of thought, and, more specifically, the distinction between theoretical and practical reason.

Habermas is trying to think a pure view of practical reason, theoretically; deconstruction tells you why you can't do that. Pierce already understood that there is no such thing as a pure view of practical reason. Derrida's delimitation of the possibility of such a project means that Habermas's project is no longer philosophically justified. That's true. Meanwhile, however, Rawls's Piercean Kantian constructivism need not be *touched* by this overarching critique of theoretical reason. To be honest, I never considered myself a deconstructionist. I read Derrida out of my Hegelian trajectory. My question is how to think difference as it's relevant to sexual difference, and the field of practical reason that I think has to be 'filled in' – the space of feminist legal reform.

FEMININITY AND THE FEMININE

RP: Let's get back to that. Could you explain your distinction between femininity and the feminine?

Cornell: For me the feminine is identified with femininity as understood through Lacan's symbolic analysis of a cultural order based on patriarchal lineage, with a family triangle that dominates because of patrilineage. The feminine 'is' the paradox of being the objective other that does not have any adequate symbolization. In its place is the objectification of the psychical fantasy of woman. Women are forced to identify, or disidentify, with these fantasy structures. One problem for second-wave feminism was that we went back and forth between identification, non-identity and dis-identification. We were caught up with what it would mean to dismasquerade the masquerade.

RP: So you accept the Lacanian masculinization of the symbolic?

Cornell: Partially. For example, I see law as an example in which the masculinization of the symbolic is so close to being complete that feminist interventions have found it very difficult to avoid simply replicating the psychical fantasy of woman.

RP: But isn't it *always* complete, for Lacan, in principle? And doesn't this have certain restrictive consequences for possible political strategies which run counter to your use of Derrida? In *Beyond Accommodation*, for example, following Irigaray's inverted Lacanianism, you say: 'Mimesis is the only strategy.' Yet if one accepts the Derridean critique of Lacan – which I take to be consistent with the ethical impulse of your work – a whole range of refigurations of gender becomes possible, beyond those confined by the

concept of mimicry. There seems to be a tension here.

Cornell: There is a tension, but I see my own work as much more involved in the tragedy. Let me clarify what I mean. I think there is a deep and profound engendering on the level of the work of culture; but I also think that reconfiguration is always possible within it. My reading of Derrida into Lacan is about the truth that cannot be true, the reverse of the truth, which is fiction. Unlike one reading of Judith Butler in *Gender Trouble*, I have much more militantly insisted that there is a *wound* of femininity, and that wound of femininity is something which has to be marked in its tragedy. So while I would now elaborate the possibilities of reconfiguration much more expansively than I did in *Beyond Accommodation*, I remain – at least for today – more Lacanian than some queer theorists. I want it both ways. My phrase to describe the normalization of heterosexuality as inseparable from imposed femininity is ‘het hell’ (maybe this is Judith Butler’s ‘heterosexual hegemony’). I believe there is such a thing as het hell. I believe that femininity is profoundly inscribed in het hell, and I believe that it has overwhelming cultural implications.

RP: So het hell is a specific type of normative heterosexuality which is socially inscribed at the level of the psyche. But is it fixed in early life or can it be changed?

Cornell: It can be changed but only with the greatest difficulty, because it is a materialization of the system of gender, and I do believe that it is a system. The system operates to enclose itself by materializing this reality of gender. You see it in law all the time.

RP: But isn’t this talk of system – your recent use of Luhmann’s systems theory – quite different from the Lacanian symbolic? Doesn’t it operate at a quite different level of analysis?

Drucilla: Absolutely. But Lacanianism has two advantages here: (i) it gives us a symbolic analysis while still allowing us to socialize a psychoanalytic critique (although it doesn’t give us the tools to do it); and (ii) it enriches the concept of the field of significance with the play of unconscious fantasies, with a very different take on individual investment. The struggle to disinvest and make yourself truly unreadable in terms of gender categories is long and arduous. I think it’s possible, and I think it’s the only hope for everybody, in Adorno’s sense of a promise of happiness. The more unreadable you become, the better. But it’s a long struggle, and you don’t know for sure when you’re doing it and when you’re not!

RP: There are a couple of phrases that crop up a lot in your work which seem to mark an uneasiness about this. One is the ‘feminine imaginary’ – which is an odd expression because your theoretical position suggests that the imaginary is always feminine, so there seems to be a redundancy there; the other is ‘feminine sexual difference’ – which is a strange way of referring to sexual difference if the feminine is only one side of the difference.

Cornell: Now I prefer the feminine *within* sexual difference. I believe that there is a system in which the feminine within sexual difference has been reduced through the psychical fantasy of woman. In Luhmann’s sense, we have a field of observation in which we cannot even see the diversity of actual women. Look at bell hooks’ books. Why are certain women seen as beautiful? This is a question that she returns to. For her that question is inseparable from something I started this interview with: the way in which the psychical fantasy of woman is coloured through all these notions of attractiveness, as white. What I want to try to do, what I’m struggling to do, within the feminine, within sexual difference, is to come up with words that separate femininity from the need to open up the field of significance that has marked us all as woman.

I don’t think anyone escapes. I don’t think there’s anyone who started their life as the unreadable other. It’s an achievement, and a big one. You need an account of what you are making yourself unreadable against; and paradoxically, the feminine within sexual difference is the affirmation of the feminine, so the category of the feminine as femininity would ultimately transform itself. This is a deconstructive moment. We can’t leap over gender hierarchy without

having to struggle within the wound of femininity. To erase the feminine is not only a philosophical mistake; it's a political mistake which will reinscribe the repudiation of the feminine, a repudiation inseparable from the reinscription of gender hierarchy.

RP: How does this relate to gay and lesbian politics? One objection to the Lacanian underpinning of this affirmation of the feminine within sexual difference is that it is fixated with one dimension of sexual politics: the heterosexual dimension.

Cornell: I am rethinking my answer to this question. For now, let me say that a classic example of the dephallicization of the familial triangle occurs when two lesbian mothers insist on the name mummy. I know several couples who have done that. I consider it both a demand for the restructuring of the family, a dephallicization of the way in which the triangle plays out, with the two parents and the child, a resymbolization of the mother, a resymbolization of the other lover, and a political challenge to the very idea of the feminine as designatable as the unsymbolizable other.

Two mothers is an impossibility in the symbolic Oedipal scheme, but it's precisely that kind of imagined impossibility that I see as making this act so profoundly disruptive of the symbolic fantasy of heterosexual family life. Traditional Freudian ego psychology would say that there can't be two mothers. I completely disagree: and this is not just the case with a lesbian couple. An adopting mother is always in a relationship with another mother. You can deny it, you can repress it, but you're in a relationship with another mother.

SEXUAL DIFFERENCE AND THE LAW

RP: Perhaps we could move on to the relationship between sexual difference and the law. In the case of abortion, you defend it in terms of the right to bodily integrity. Now, on the one hand, this seems to fall within a conventional liberal conception of the legal subject, in the sense that it's an ungendered right; but on the other hand, it's gendered in its application – it has specific consequences when applied to women because of their different bodies. Is this as far as legal theory can or should go in recognizing sexual difference?

Cornell: Well, we have to ungender rights. Let's take the question of gay and lesbian rights before the law. For me, sexual difference is at stake in discrimination against any form of sexuality – transsexual, transvestite, whatever the person means to claim as their sexuality. There was the case of the pilot who decided to add breasts but not be castrated. This provoked a huge debate about whether or not he was a man or a woman. But he was fired because he chose to imagine his sexual difference in a different way. I call for legislation against discrimination on the grounds of any form of sexuate being. The gender comparison through which sex-discrimination law has been articulated so far is conservative of the very idea of sexual difference.

In the case of the pilot, the pleading had to be that he was 'really' a woman for purposes of the law in order to have standing to sue for sex discrimination. My argument is that part of the legal conservatism of feminism is indissociable from the conscious decision of legal feminists to separate feminism as a struggle for equal rights for women from sexual radicalism. We have to militantly deny that move within legal reform and call for equality for all forms of sexuate being. Otherwise, analysis of gender hierarchy will not only reinscribe symbolically limiting conceptions of feminine sexual difference, which won't allow its explosive power; it will also reinscribe the conservatism that there's a good feminism (meaning not queer feminism) and a bad feminism. That conservatism has been a conscious part of legal reform in the United States in my lifetime. It's a big thing for me. Feminist legal reform must go back and make up for the wrong direction that was taken.

Now, in terms of my position on abortion, I don't think the right of bodily integrity exists because we actually have bodily integrity. I think it exists because we need to have our imaginary projection of ourselves as a person protected. My concept of the imaginary is both

psychoanalytical and phenomenological. What the right of bodily integrity means in the arena of abortion is that the woman has the right to imagine her own pregnancy, and the state has no right to impose any meaning on it. That means she can mourn, because she imagined it as a baby; or she can be indifferent to it. It's not the state's business to ask her. There is no inherent meaning to pregnancy. Of course, we have these fantasies associated with pregnancy – killing mothers and the like – but they should not be imposed by the state. The bottom line is that women have the right to have an abortion, in good medical facilities, fully paid for by the state all the way through to the cutting of the umbilical cord, and no one can stop them. In a way, it's 'liberally argued', within the concept of bodily integrity; but once you turn the meaning of maternity over to women you open up all kinds of different possibilities – including the legal recognition that Mamma Barbara and Mamma Patty are actually two mothers, and that it's wrong to make one the birth mother and one the adopting mother.

There should be no need for adoption for lesbian mothers, because the meaning they give to their act of maternity already makes this their baby. So if you really took it seriously, this argument wouldn't just affect straight women, and it wouldn't just affect abortion, it would affect the whole way that maternity is constructed and governed by the state. We have to take these issues away from the state and turn them back into the politics of our lives. Why does the child have to belong to only one mother? Where do we get all this from? We get it from the enforced patriarchal triangle. But as an adoptive mother I can imagine a different relationship with the 'birth mother'. I should be allowed to actualize it.

RP: How does this fit into your notion of transformative legal interpretation? Given the existing legal tradition, are there not fairly strict hermeneutical constraints on how transformative your interpretations can be? What if you want legal interpretations that are more transformative than the hermeneutical resources of your legal tradition allow?

Cornell: Law is inherently a conserving system; but the right of bodily integrity is an enormously powerful one in our culture. It will help women lawyers and women justices see pregnancy and maternity differently. You can take the right of bodily integrity, change the elaboration of its defence, come up with a much more radical articulation, and create a paradox within the hermeneutical field itself. Transformative interpretation elaborates the right in a disjunctive and paradoxical way, and that disjuncture, that paradox, opens up the field.

However, as somebody who's not arguing before the court, I also want to make a political point. What I'm ultimately saying is that all law can do is help zone out certain encroachments on our politics. When we look to law for the substantive transformation of this hermeneutical field, we are severely mistaken. Law is inherently limited: not just by the fact that it distributes force and coercion, but by the fact that its field of hermeneutical significance is by definition a conservative system. However, we can intervene in some of the traditional hermeneutical parameters offered to us, to protect an imaginary domain in which most of queer and feminist politics has to take place. I have written a book on legal reform, but what I hope is that it will get women back in the streets again, because the rights of abortion, and medicaid for abortion, and good services for abortion, are not going to be won on the level of the courts. And they're certainly not going to be protected there. When we marched for it, we got it. When we stopped marching,



we've seen nothing but curtailments. Legal reform is not at the heart of feminist politics.

RP: But you still need a positive evaluation of the resources of the existing tradition.

Cornell: Not really. The traditional legal resources turn on the backdrop of Lacan's symbolic: the absolute taken-for-grantedness of the heterosexual nuclear family. And the absolute taken-for-grantedness of the heterosexual nuclear family means that any call for women to have the governing power over their own maternity is a radical demand, even if it is liberally expressed. What it shows is that there's enormous tension in the liberalism that publicly articulates itself with its 'private foundations' in the heterosexual matrix. I'm actually very uncomfortable with the word 'liberal', because in the United States it really means law in economics. Dworkin's liberalism, Rawls's liberalism, do not dominate. What dominates is Hobbesian liberalism.

RP: Despite your emphasis on interpretation, you never refer to hermeneutics in your books. But isn't transformative legal interpretation a kind of critical hermeneutics?

Cornell: No. Interpretation has to proceed much more through what Habermas fears: paradox and performative contradictions. The legal field blocks off legal engagement as part of the public domain from the thoroughgoing challenge to the status of femininity. You can't simply enter the feminine internally. You can enter it from the standpoint of bodily integrity, yes, but when you plug the feminine into it the right starts going haywire. It's like a television that doesn't work. It can't mean anything. For critical hermeneutics, on the other hand, there is a field of significance and everything is within it. (Maybe this is the Lacanian moment that I won't give up about the feminine.) The symbolization of the feminine within sexual difference is not within the hermeneutical field of legal significance at this time, yet feminist jurisprudence has continuously tried to operate within the encoded definitions of femininity that are part of that hermeneutical field.

RP: So you associate hermeneutics with a Gadamerian sense of the given?

Cornell: I don't think that you can take it away from that. Part of the reason I was attracted to Luhmann was that I wanted to talk about the systemization of meaning, the materialization of meaning, but I also wanted to talk about its violent bordering against certain forms of inclusion. What happens when you start to introduce the feminine as a legal subject in kinship systems is that you find there's no place for it in this field of meaning. There's no place for the articulation of the feminine other as equal subject in the law, at this time, without utterly exploding the current conjuring of the heterosexual matrix, and the concept of the subject. It's that basic to our legal system.

POLITICS AND SOCIETY

RP: Perhaps we could move on to the question of the relationship between the law and society. There has been a wide-ranging debate in Britain over the last decade about the virtues of a written constitution. In Britain, at present, there's no distinction between constitutional and statute law. Partly in reaction to Thatcherism, there has been a growing left-liberal movement in favour of a written constitution and a Bill of Rights. The suggestion being that if there had been a Bill of Rights, the Thatcher government could not have restructured the state in the way in which it did, because there would have been constitutional barriers to, for example, the removal of certain trade-union rights. What is your view about such arguments?

Cornell: Well, I've thought about it a lot in the course of my life as a union organizer, because I was quite an anarcho-syndicalist in my youth. I always had deep suspicions about relying on law as anything other than a practical weapon for political movements, particularly trade-union movements. But overall in a long process of thinking about it, I've concluded that the consolidation law offers can help prevent exhaustion. It's difficult to fight the same battle over and over again. However, I also think that constitutional history, as invested in by Federal Court judges, kept

some of Reagan's economic 'reforms' at bay. I really do. At that time, the Left was very weak in this country, and keeping certain repressive measures at bay has left open a little more space. The legalization of feminism (its increasingly concern with legislative reform) has to do with the sense of overwhelming powerlessness that took place in the United States during the Reagan period.

At the same time, there are serious weaknesses in the United States, because of the power of law in the popular imagination. People think that law does much more good to men and women on the street than it actually does. For example, in the fight against sex discrimination, the expense of a law suit makes it almost impossible for any ordinary woman, or man, to fight back legally.

RP: What forms do you see radical social movements taking now, accepting the limitations and the conservative character of the law, and the connection of the whole US party system to big capital?

Cornell: There is some discussion about trying to develop a third party, but it's never worked before in the United States, because this is such an entrenched tradition. Our union movement has been practically destroyed – that's a case where law did nothing to protect it. We don't really have, at this point in history, a popular place of mobilization. It's hard to tell whether a revival of the union movement is possible. Right now, every year the United States loses union members. It's down to 11 per cent of the workforce and falling. The unions are enormously conservative. The political unions I worked in never really succeeded in overcoming the anti-communism of McCarthyism. This is a really very powerfully reactionary country. Still, I believe we must continue to struggle. For example, as feminists, we should have backed the union effort by Una Zel Wiegiers in the pornography industry, rather than focusing primarily on legal regulation of the industry. As a form of popular organization, the idea of a union is clearly not dead.

RP: And do you think feminism exists as a social movement in the United States at this time?

Cornell: Yes. It's such a profound phantasm that it's endlessly attacked! It may not be anything you can belong to, but we know who we are when we're attacked. We know the enemy. So yes, it exists but it's lost its organizational force. The legalization of feminism has now become the focus of the attacks: 'they're trying to control sexuality, they're trying to regulate pornography, etc'. It's affected what I call the long and arduous struggle to become unreadable. That's what Judith Butler and I share: the aim is to be so unreadable that what our gender is could, in fantasy at least, be untranslatable.

What happened with the decline of the solidarity of the 1970s is that many women reverted to traditional forms of normative heterosexuality. In my new life as a mother, in playgroup, I'm the only mother who works. There's no subsidization of child care in the United States. When it is not endlessly contested, and when alternative forms of the most basic sense of support are not provided, the engendering system reasserts itself. You can see how little feminism has reached into the cultural encodings of women. But I am commanded in my responsibility to my daughter to continue to hope and to affirm my political activism.

**Interviewed by Peter Osborne
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