Books

BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION AND THE LAW, by Drucilla Cornell, Routledge, New York, 1991, pp239, ISBN 0 415 90106 5 $29.95.

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Introduction

In the current critical climate where the word "deconstruction" has become a fashionable catch-cry for theoretical demolition and anti-foundationalism, jokes or denigrating cries of concern for the prospective targets of so-called deconstruction are common. Can we "do it" to the Bible or the Koran? Can we do it to the law? Some legal academics respond by lamenting that the diverse enterprises of Critical Legal Studies (CLS)[1] amount to an impudent deconstruction of legal theory and the law; impudent because the methods employed are inappropriate to "legal reason".[2] It is difficult to take this hysteria seriously since in many instances, the charge against the deconstructive truancy of CLS proceeds by a glib identification of CLS with deconstruction. The charge is then shored up by a crude polemic against the imagined perniciousness and terrorism of "postmodernist" "deconstructionism" as a method of rhetorical reading. (In fact, the relationship between CLS and the work of Derrida is a complex and fertile topic. I mark the absence of more extended argument by a cryptic assertion: much of the self-avowedly "deconstructionist" discourse of CLS may not be deconstructive; but CLS as a series of events is deconstructive.[3]

Both the denunciation and celebration of "deconstructionism" in legal theory are especially misguided because the themes of "deconstructionism" bear little resemblance to the texts of Derrida, in particular, his argument that an infinite idea of justice as the experience of absolute alterity "is the very movement of deconstruction at work in law and the history of law, in political history and history itself".[4] One of the central virtues of *Beyond*

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1 CLS is primarily a North American network of radical legal scholars approaching legal discourse and institutions from various critical and political perspectives. See Schlegel, J H, "Notes Toward an Intimate, Opinionated, and Affectionate History of the Conference of Critical Legal Studies" (1984) 36 *Stanford LR* 391 and Tushnet, M, "Critical Legal Studies: A Political History" (1991) 100 *Yale LJ* 1515. For a bibliography of CLS work up to 1984, see Kennedy and Klare, "A Bibliography of Critical Legal Studies" (1984) 94 *Yale LJ* 461.

2 See for instance the overly brief discussion of CLS as an attack on traditional jurisprudence in the revised edition of Murphy, J G, and Coleman, J L, *Philosophy of Law — An Introduction to Jurisprudence* (1990), at 51-55; and also Carrington, P, "Of Law and the River" (1984) 34 *J Leg Ed* 222, who denounces CLS scholarship as impenetrable and nihilistic.

3 Cf Derrida, J, "Force of Law: The 'Mystical Foundation of Authority'" (1990) 11 *Cardozo LR* 920, at 929-933, reprinted in Cornell, D, Rosenfeld, M and Carlson, D G (eds), *Deconstruction and the Possibility of Justice* (1992).

4 Id at 965.

Accommodation is that it presents a rigorous reading of Derrida's work in the register of ethico-political philosophy, thereby correcting much misunderstanding about deconstruction and its place in legal scholarship. But more importantly, Drucilla Cornell, a leading fem-crit in CLS,[5] deftly appropriates the ethical imperative of deconstruction and transforms it into an "ethical feminism". For Cornell argues that the suffering of women, a consequence both of the poverty of legal thought and of positive legal structures, cannot be alleviated by realist or essentialist feminist legal theories which fail to affirm the feminine as an ethical horizon which is perpetually deferred. In this review essay, I chart the main points along Cornell's innovative path, paying special attention to her use of deconstruction and French feminist theory for the benefit of a readership that may be unfamiliar with these discourses.

Feminism and the dilemma of essentialism

As Cornell observes in her Introduction, the central dilemma of feminist legal thought and of feminist theory in general is the question of essentialism:

> If there is to be feminism at all, we must rely on a feminine "voice" and a feminine "reality" that can be identified as such and correlated with the lives of actual women; and yet at the same time all accounts of the feminine seem to reset the trap of rigid gender identities, deny the real differences between women (white, heterosexual women are repeatedly reminded of this danger by women of color and by lesbians) and reflect the history of oppression and discrimination rather than an ideal or ethical positioning to the Other to which we can aspire. (p 3)

The rest of the book argues that attempts to elaborate the specificity of women as they are constructed by social structures — Cornell's typecase is the law — need not maintain an essentialist position.

Essentialist feminism can be described as a feminism which claims to retrieve a bedrock sexual identity or immutable sexual essence (Womanhood) that has been obscured by patriarchal oppression. There is a fundamental theoretical connection between essentialism as a general philosophical position and rationalist explanations of positive law. For whether positive law is theorised in terms of the idea of existing rules which bind a given community (Hart) or as the self-conscious determination of right that gives it an objective existence as law (*Gesetz*) as in Hegel, the normative aspect of positive law is always seen as the realisation of an essentialised prescription. Positive law embodies the possible coincidence of what should be (essence) with what is (existence) in a future present society.

Cornell never explicitly mentions the essentialist nature of positive law in this book but it is implicit in her astute understanding of the ethical imperative in deconstruction.[6] The ethical poverty of positive law lies in the freezing of

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5 The fem-crits are a major splinter-group of feminist legal scholars within CLS and apart from Cornell, also include Frances Olsen, Martha Minow, Mary Joe Frug and Clare Dalton. For an account of the reasons behind this split, see Menkel-Meadow, C, "Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School" (1988) 38 *J Leg Ed* 61.

6 But see also, Cornell, D, "Time, Deconstruction, and the Challenge to Legal Positivism: The Call for Judicial Responsibility" (1990) 2 *Yale JL Humanities* 267; "The Violence of the Masquerade: Law Dressed up as Justice", *Cardozo LR* 11 (1990) 1047 and "From the

justice into an essence that is present-at-hand. It is a commonplace in feminist jurisprudence that this (in)justice, as it is embodied by the law, perpetuates gender hierarchy even as (or because) it masquerades as a function of neutral reason. But if feminist legal theory's political critique of law is that it objectifies and essentialises women in a violent manner, feminist legal theory must also reckon with the necessary violence of its own essentialism, its own legislative constitution of the female subject as a ground for axiology.

The neutral subject before institutions of positive law is produced by the law which posits subjectivity as such as self-identical, universal et cetera. Likewise, the sexual identity "woman", the necessary foundation of any feminist theory, is inescapably structured by the law of female identity. In this broad sense, law is no less than the principle of unity latent in any conception of identity, however public or private. Given the undoing of the dichotomy between public and private spheres in CLS,[7] the patriarchal constitution of women as subjects with limited access to the law must be seen in an uneven but continuous line with the law which prescribes or posits the essence of being-Woman. It is crucial for feminist theory to acknowledge this unavoidable internal complicity with the law. Otherwise, an external political critique of the law as an instrument of repression simply remains within the same formation of power-relations.

Cornell describes the complicity between the ethical violence of institutions of positive law and the transcendental violence of the law of female subjectivity as the inseparability of the situational sexism endured by women in the current legal system from the law of the replication of existing gender identity (p 9). Any struggle for change in the long haul must go beyond anti-sexism and displace the existing rules of gender hierarchy. But since an essentialist theory of woman merely legitimises the rules of gender identity by reversal, this feminist displacement can only be effected by affirming the feminine as sexual difference rather than as sexual identity or essence.

The ethical imperative in deconstruction

To grasp the fundamental implications of Cornell's argument for legal theory, we must understand her critique of essentialism within its philosophical context: the posing of the question of Being in Heidegger's fundamental ontology and its radicalisation in Derrida's deconstruction of essence. For Heidegger, Being withdraws in its presencing as determinate or positive being. Yet, Being can only ever appear in its dissimulation as being. Heidegger's critique of prescriptive ethics and, by implication, positive law, considers the very valorisation of value as a depletion of the worth of Being.

> To think against "values" is not to maintain that everything interpreted as "a value" ... is valueless. Rather, it is important finally to realise that precisely through the characterisation of something as "a value" what is valued is

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Lighthouse: The Promise of Redemption and the Possibility of Legal Interpretation" (1990) 11 *Cardozo LR* 1687. All revised and reprinted in Cornell, D, *The Philosophy of the Limit* (1992).

7 Freeman, A and Mensch, E, "The Public-Private Distinction in American Law and Life" (1987) 36 *Buffalo LR* 237, Horwitz, M, "The History of the Public-Private Distinction" (1982) 130 *U Pa LR* 1423 and Kennedy, D, "The Stages of the Decline of the Public-Private Distinction" (1982) 130 *U Pa LR* 1349.

> robbed of its worth ... [W]hat is valued is admitted only as an object for man's estimation. But what a thing is in its Being is not exhausted by its being an object, particularly when objectivity takes the form of value ... [T]hinking in values is the greatest blasphemy imaginable against Being.[8]

Derridean deconstruction is no more than the persistent tracking of this irreducible disclosure-in-effacement of Being. No more but also no less and that is a lot. For if Being can only present itself in its own contamination, then there "is" always more than what there is in the present.

The contamination of presence is inseparable from the question of time. For presence can only maintain itself as presence if it presupposes and therefore retains the trace of anterior and posterior presents, that is, by differing/deferring itself through its own temporalisation. Therefore, essence as full presence must always refer to a "more" beyond itself (this is the "Beyond" of Cornell's title) and this beyond is never arrestable in a future present because the copula is always already open to supplementation. Deconstruction fastens onto the moment when essence itself becomes anti-essentialist in its temporalisation.[9] Derrida's concept-metaphor of textuality, as in his much misunderstood statement that "there is nothing outside of the text", does not therefore suggest that nothing exists outside words or rhetoric but alerts us to the complex and undecideable textile which "is" reality.[10] As Cornell notes,

> The "real world" cannot be erased precisely because it is a textual "effect". Deconstruction reminds us, in other words, how the real world "is"; it does not deny its pull on us, even as it insists that it is a pull, which in turn implies the possibility of resistance. (p28)

The deconstruction/temporalisation of essence or reality carries a sustained ethico-political charge insofar as it reveals that the possibility of social transformation necessarily inheres in the structure of referral through which social reality is instituted. In recent work, Derrida has fleshed out the unethical opening of legal culture by speaking of the aporia between law (droit) and justice; of positive law as an unavoidable violation of an incalculable and limitless justice.[11] The final section of Chapter 2 of *Beyond Accommodation*, "Justice and the Call of the Other", is the most lucid account of the ethical moment in Derrida available in English.[12] Cornell calls

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8 Heidegger, M, "Letter on Humanism", in *Basic Writings* (1977), at 228. See also Heidegger's discussion of *Dikè* as *adikia* in Heraclitus in *Early Greek Thinking — The Dawn of Western Philosophy* (1984), at 40-50.

9 Strictly speaking, the deconstruction of essence is not simply anti-essentialist as Cornell would have it but the suspended difference between essentialism and anti-essentialism.

10 Derrida, J, *Of Grammatology* (1976), at 158: "There is nothing outside of the text [there is no outside-text; *il n'y a pas de hors-texte*]". For an astute legal interpretation, see Schlag, P, "'Le Hors de Texte, C'est Moi': The Politics of Form and the Domestication of Deconstruction" (1990) 11 *Cardozo LR* 1631.

11 See above n1; and Derrida, J, "The Other Heading: Memories, Responses and Responsibilities", in *The Other Heading — Reflections on Today's Europe* (1992), at 4-83; *Du Droit à la philosophie* (1990); "The Politics of Friendship" (1988) 85 *The Journal of Philosophy* 632; and "The Laws of Reflection: Nelson Mandela, in Admiration" in Derrida, J and Tlili, M (eds), *For Nelson Mandela* (1987), at 13-42.

12 See also the more extended discussion in Cornell, *The Philosophy of the Limit* (1992). For another comprehensive but merely descriptive account of deconstructive ethics, see Critchley, S, *The Ethics of Deconstruction* (1992).

Derrida's ethics of temporalisation "the unerasable trace of utopianism in political and ethical thinking" (p107). Its crucial lesson is a sense of responsibility of such immense rigour that it would be an injustice to say that justice can be known and realised once and for all, as when legal rhetoric compounds justice with law (p114). In Cornell's succinct words, temporalisation as justice is "the not yet of the never has been" (p112). Justice is always to come (*à venir*) and is forever beyond our description.

Although such an idea of justice may seem abstract to the point of obscurantism, we should remember that it is rooted in the most intimate moment of the interpersonal. The aporia of justice and law is a version of the aporia of the intersubjective relation to the Other that Derrida inherits from Levinas' critique of the egoism of Kantian ethics where the other only partakes of the ethical relationship insofar as the other is equivalent to the self-same. Furthermore, this point goes to the heart of rights-talk which is generally characterised as neo-Kantian.[13]

When Derrida speaks of justice as the unpresentable and impossible experience of absolute alterity which recasts or refounds law and politics, he is alluding to Levinas' argument that any claims to intersubjective experience or understanding of the other as another self is a violation of the absolute alterity of the other as Other.[14] To be just to the Other is to answer to an Other who is absolutely singular. And yet, when the relation to the Other passes through the universality of the law, we have immediately become unjust because this singularity has been compromised by the universal form of the law. In this irresolvable bind, justice itself is entirely Other or at least the infinite and unappeaseable call of the Other and not the calculated proportion of distributive justice (p113). As Cornell notes, deconstruction exposes "the presumption of a determinant certitude of a present justice ... because justice itself operates on the basis of an infinite openness to the Other" (p 113). We cannot arrive at justice, but, in responding to its call, we must strive to denounce concrete injustices.

A feminist deconstruction of West and MacKinnon

Cornell's typecase of concrete injustice is the violation of woman's alterity in patriarchal law. She argues that a feminism which remains either at the level of combating sexism or of legal reform is limited because its logic — the conflation of justice with the legal system — necessarily limits radical transformation. The role of law in maintaining gender hierarchy is never questioned in a fundamental way since women are merely incorporated into the existing system as legal subjects who are not gender-marked. But in the case of the anti-sexist fight against devaluing women's work, so-called

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13 Cf Gabel, P, "The Phenomenology of Rights-Consciousness and the Pact of the Withdrawn Selves" (1984) 62 *Texas LR 1563.*

14 Levinas, E, *Totality and Infinity* (1969), at 86: "The Other alone eludes thematization....The welcoming of the Other is ipso facto the consciousness of my own injustice — the shame that freedom feels for itself. If philosophy consists in knowing critically, that is, in seeking a foundation for its freedom, in justifying it, it begins with conscience, to which the other is presented as Other, and where the movement of thematization is inverted. But this inversion does not amount to 'knowing oneself' as a theme attended to by the Other, but rather in submitting oneself to an exigency, a morality".

neutral/neutered justice is achieved at the cost of translating women's worth by an equal measure to men's worth. Similarly, legal reform involving women's harms result in the anomaly where

> The resultant harm to women either disappears, because it cannot be represented as a harm within the law, or it is translated in a way so as to be inadequate to our experience. (p60)[15]

For Cornell, the deconstruction of the immutability of social reality and Derrida's infinite idea of justice are useful tools for feminist legal theory because they describe the condition of possibility of a feminist transformation of the legal system to express sexual difference beyond the existing rules and conven tions of gender hierarchy. This would allow women to litigate as women, sexuate beings with sexuate rights.[16]

But more importantly, Cornell realises that the call of justice is also turned inward in an address to feminism. Justice is the appeal of the Other to which feminist jurisprudence itself must ceaselessy respond.

> Justice is beyond calculation, but we must calculate, participate, if we are to meet the obligation to be just. This call to participate, to calculate, to defend, takes on a specific meaning for women lawyers and law professors for we are the ones, given where we are situated, who are called by other women to give justice, to represent them. We are called by the other women to serve justice. We are also called by justice to be just and thus to recognize, to articulate, the injustices of this system of law and of right as it relates to women. But we must also recognize that as we articulate injustices against justice, we do not presume to define justice once and for all ... As we work within the law we are also called to "remember" the disjuncture between law and justice that deconstruction insists upon. (p116)

These are admirable words which constitute a persistent check to the will to power of a dogmatic feminism that would fetishise absolute alterity into the sexual essence or identity, "woman". For the ethical imperative also subsists in the alterity between women and therefore internally divides the corporeal signature of "woman". An ethical feminism must remember this internal trait and affirmatively mould it into a figuration or metaphorisation of the feminine as a perpetually deferred horizon of redemption.

This aporetic relationship between the feminine and existing woman in Cornell is thus a feminist appropriation of the aporia of justice and positive law in Derrida; of the ontological difference between Being and determinate being in Heidegger. In Chapters 1 and 3, Cornell demonstrates with striking polemical rigour that the conflation of the feminine with women in Robin West and Catherine MacKinnon can only lead to unethical consequences.

Both West and MacKinnon are important objects of critique because although they see themselves in polemical polarity, they actually inhabit two sides of the same essentialist coin. West's critique of legalism (and its liberal

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15 Mary Joe Frug argued this more extensively in "A Postmodern Feminist Legal Manifesto (An Unfinished Draft)" (1992) 105 *Harv LR* 1045. Reprinted in Frug, M J, *Postmodern Legal Feminism* (1992), at 125-153.

16 For an elaboration of sexuate rights, see Irigaray, L, "The Necessity for Sexuate Rights" and "How to Define Sexuate Rights?", in Whitford, M (ed), *The Irigaray Reader* (1991) and Cornell, D, "Gender, Sex and Equivalent Rights", in Butler, J and Scott, J, (eds) *Feminists Theorize the Political* (1992).

feminist guises) and her feminist reconstructive jurisprudence are both founded on a biological or natural determination of feminine difference.[17] For even though West (following the object-relations psychology of Nancy Chodorow[18]) argues that the feminine attitude of mothering can be existentially shared between the sexes and should be affirmed as an ethically superior value in public life, she also ascribes mothering as the proper nature and essence of woman to be revealed in consciousness-raising. Conversely, MacKinnon's militant rejection of the ideal of sexual difference as the ultimate ideological ruse of sexual oppression reduces the feminine to the objectification of female sexuality by the male gaze.[19] Both West and MacKinnon are essentialist to the extent that the feminine is seen to be exhausted in its presencing as actual woman in specific contexts.

Against MacKinnon and with West, Cornell applauds the need to ethically affirm feminine difference. She stresses that a feminism which is conceived only as a struggle for political power simply replicates the dichotomous structure of gender hierarchy (p35). At stake is a shift in the representation of feminine reality that can have immense legal implications because "such shifts allow us to see modes of behaviour as "harms" to women that were formerly thought to be outside the parameters of the legal system" (p61). For instance, to expand the scope of litigation so as to redefine sexual harrasment as a legal wrong necessarily involves changing the representation of feminine desire.

But Cornell is also alert to the fact that West's attempt to give women a legal voice as women by essentialising the feminine runs the risk of repeating another structure of exclusion. For West's privileging of the experience of actual mothering and childbirth as the ethical truth of woman can also serve to legislatively silence other women. Indeed, West's grounding of the feminine in the biological objective reality of all women is erroneous because in a Foucauldian register that Cornell does not use, West presupposes that the materiality and concrete experience of sexed bodies can exist outside its crafting by micro-technologies of power-knowledge. Given the irreducible imbrication of reality and representation, the most vigilant form of feminist resistance to a system of gender-representation is not lodged in an objective sexual reality outside gendering but rather in challenging all attempted enforcements of an exclusionary and privative reality. And for Cornell, the force of this challenge comes from affirming the feminine; not as a more truthful reality compared to patriarchal legality, but as an interior supplement to the incompletion of woman's present reality. If Foucault speaks of resistance as something internal to power,[20] deconstructive feminism situates this internal resistance in a constitutive beyond[21] which escapes phenomen-

17 West, R, "The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory" (1987) 3 *Wisconsin Women's LJ* 81 and "Jurisprudence and Gender" (1988) 55 *U Ch LR* 1.

18 Chodorow, N, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (1978).

19 MacKinnon, C, *Feminism Unmodified: Discourses on Life and Law* (1987) and *Toward a Feminist Theory of the State* (1989).

20 Foucault, M, *Discipline and Punish* (1978) and *The History of Sexuality — Vol 1* (1980).

21 The phrase "constitutive beyond" or "constitutive outside" is a term which Derrida employs against Hegelian dialectical logic to designate that which is excluded for any

ological thematisation because it is at once inside and outside legal reality. Cornell is trying to bring to view the structure of referral which institutes reality. In this scene of reality in its endless making or *poiesis*, the thematic opposition between metaphor and reality cannot hold. Resistance can occur through the creative movement of metaphorisation by which objective reality presents itself. For instance, through this power, crimes against women can be refigured into a new legal reality, as in the example of "date-rape" (p63).

In Ch 3, Cornell also employs the undoing of the opposition between metaphor and reality to reveal the limits of MacKinnon's Marxist-feminist realism. MacKinnon's unmodified criticism of female sexuality as false consciousness is more sobering than West's recuperation of a feminine voice outside power. But because, like West, MacKinnon completely identifies the feminine with women (the sexualised object of oppression), MacKinnon's fight against sexism must involve the repudiation of the feminine. Yet, ironically, in her feminist rejection of the feminine, MacKinnon covertly privileges the objectifying gaze of patriarchy by accepting the world that it constructs as the true world which can only be dismantled by a seizing and reversing of phallocentric juridical power. Such is the ethical poverty of her unmodified feminism. As Cornell notes, "to despise the metaphors of Woman, as MacKinnon does, is once again to despise ourselves as we have been "taught" to" (p147). By contrast, Cornell's demonstration that woman's reality "cannot be separated from the fictions in life and in theory for which she is embodied" gives the lie to a simple thesis of the unmodifiablity of gender hierarchy (p129) and carries the hope that reality can be transformed by affirming these metaphors of the feminine and displacing them into a beyond.

Sexual difference as the fundamental question of ethical philosophy

I have not lingered with the details of the critique of MacKinnon nor discussed the critique of Gilligan[22] because while these and the critique of West may seem to be Cornell's disciplinary task as a legal theorist, the importance of these critiques resides in the underlying ethical project that is their basis. If we read Cornell only in terms of a situational intervention into feminist legal theory, then we will have grossly understated her project. In an exhortatory passage, Cornell writes:

> Ethical feminism "envisions" not only a world in which the viewpoint of the feminine is appreciated; ethical feminism also "sees" a world "peopled" by indviduals, "sexed" differently, a world beyond castration. Through our "visions" we affirm the "should be" of a different way of being human. The "goal" of ethical feminism, which "sees" the "should be" inherent in the feminine viewpoint, is not just power for women, but the redefinition of our fundamental concepts, including power. Feminine power should not, in other words, be separated from the different, ethical vision of human "beings" sought after in the feminine, understood as a redemptive perspective. (p131)

I suggested earlier that Cornell's aporia between the feminine and woman was a feminist appropriation of Derrida, Levinas and Heidegger on ethics and

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economy to posture as internally coherent.

22 Gilligan, C, *In a Different Voice: Psychological Theory and Women's Development* (1982).

justice. To fully contextualise how this aporia can lead to the claim that ethical feminism involves "the redefinition of our fundamental concepts", we need to turn to French feminist philosophy, particularly Luce Irigaray's ambitious attempt to generalise sexual difference into the fundamental ground for transforming ethical relations and gendering in the entire social sphere. If what follows seems too ethereal for a legal readership, let me note that Cornell's critique of West and MacKinnon stresses the poverty of a feminist legal theory that fails to consider sexual difference philosophically.[23]

To reiterate, Levinas' and Derrida's critique of Kantian and Hegelian ethics and legal philosophy focuses on the violation of the alterity of the Other when ethico-legal relations are seen to subsist between a subject and an other recognised as an other self identical to the universal ethical subject. It is Luce Irigaray's further contention that sexual alterity, as an incarnation of absolute alterity, is also violated when sexual difference is computed only in terms of two different but determinable sexual identities.

> What the other is, who the other is, I never know [Levinas' formulation contra Kant and Hegel]. But the other who is forever unknowable to me is the other who is sexually different from me. This surprise, marvelling, wonder in the face of the unknowable should return to its place: that of sexual difference ... Wonder keeps the two sexes uninterchangeable in regard to the status of their difference. It maintains between them a free, and attracting space, a possibility of separation and union ... There would never be an overstepping of the interval. There would never be accomplishment of consummation ... One sex is not entirely consumable by the other. There is always a remainder.[24]

Let us not read too impatiently and unjustly. Irigaray thinks sexual difference as an unbridgeable interval that precedes and exceeds or remains after the constitution of sexual identity. Sexual difference is a relationship prior to the existence of its relata which it constitutes. In this way, sexual difference is an incarnation of the ethical relationship to the wholly other prior to and yet presupposed by positive sociality. The universal and autonomous ethical and legal subject is always contaminated by sexual alterity. Hence, sexual difference as a remainder that is inaccessible to phenomenological experience — recall that for Derrida, justice is the experience of the impossible — can be a basis for the perpetual ethical regeneration of the entire social sphere. But this remainder which is implied by sexual self-identity is foreclosed by our current hierarchical system of gender representation in which the feminine is defined as the negative mirror-image to the masculine. It is thus that the transformation of gender hierarchy has fundamental implications that ethics and theories of justice — Cornell mentions Rawls' theory of constitutional essentials — can only ignore at the risk of being unethical.[25]

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23 In "The Postmodern in Feminism" (1992) 105 *Harv LR* 1076, Barbara Johnson also observes that Cornell and Mary Joe Frug are engaged in a critique of single-issue feminisms.

24 Irigaray, L, *Éthique de la Différence Sexuelle* (1984), at 20 (working translation by Caroline Sheaffer-Jones and Elizabeth Grosz). *"Fécondité de la caresse"*, the final chapter of Irigaray's book, is a critical reading of Levinas on sexual love. See also Irigaray, *Je, Tu, Nous — Toward a Culture of Difference* (1992) and *J'aime a toi* (1992). I have benefitted from discussing Irigaray with Elizabeth Grosz and Gayatri Spivak.

25 Cf Spivak, G C, "French Feminism Revisited: Ethics and Politics" in Butler and Scott

Cornell's more extensive commentary on Irigaray and Hélène Cixous[26] occurs mid-way in Ch 3 and the whole of Ch 4. Reading Irigaray against MacKinnon, Cornell observes that Irigaray's thinking of sexual difference as difference is coextensive with an affirmation of the feminine beyond the frames of patriarchal reality. On the masculine side of the difference, this involves an acknowledgement of vulnerability and non-mastery in the face of the sexual alterity of woman as part of the relationship which gives masculine identity. On the feminine side, women must begin to affirm the feminine. This is not to

> posit a countervailing essence that is ours but to expose that ... [t]he intertwinement of the masculine and the feminine belies the very structure that would define the other as an ontological truth or one against the other so that the masculine is privileged as the self-determining term that unites the pair. The feminine as Other remains ... But feminine writing also indicates that the remains of the current system of gender representation are feminine precisely as they are remains, outside the system (p142-3).

Ethical feminism involves the difficult double-gesture of remembering a responsibility to the sexual other anterior to the responsibility pertaining to principles of freedom and autonomy and of affirming the other as that which gives me myself.

Phrased in this way, the feminine can no longer be seen as the essential sexual identity common to all women. Rather, the feminine is the constitutive interval between women. Cornell argues in Ch 4 that the feminine as a perspective of redemption is variously an imaginative universal for being otherwise (per Cixous) and an ethical threshold which delimits and overflows the poverty of reality (per Irigaray). It is the site of difference through which the feminist can give and also receive the gift of being-woman to and from the other woman only because they are held apart in their non-substitutability. The feminine is therefore the source of an ethical injunction to the feminist self to protect the otherness of the other woman in terms of racial, national and class background. This is a productive warning to the sanctioned ignorance and benevolence of single-issue feminisms, be they elite-academic or radical-militant.

The crucial point to be made about the universal value of ethical feminism is that in rewriting the feminine through the female body, Irigaray embodies the ethical relation to the Other in woman's fecund carnality beyond actual mothering. Cornell correctly observes that Irigaray's deliberate sexualisation of the ethical relation overturns the denial of the flesh that is conventionally associated with a moral subject (p185). Feminine carnality embodies a proximity to the Other that does not appropriate it or sublate it into the self. Irigaray designates this ethical relation by the paradoxical locution "sensible transcendental". This is a universal ethical principle that is self-divided rather than integrated; other-bound rather than self-legislating. It is also future-directed and not caught in the present. This principle represents no less than the suspension of the traditional jurisprudential categories of individualism versus communitarianism, *Gesellschaft* versus *Gemeinschaft*. A more

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(eds), *Feminists Theorize the Political* (1992).

26 Cixous, H and Clement, C, *The Newly Born Woman* (1986).

elaborate account would also have to consider the interesting philosophies of pre-positive community recently emerging from France such as those of Jean-Luc Nancy and Jean-Francois Lyotard.[27]

It is indeed an immense feminist gesture to paleonymically appropriate the ethical universal of Other-love, the non-figurable itself, by means of a figure of woman's embodiment. I began by writing that the ethical imperative in deconstruction is lodged in the moment where law and politics are recast. Today, the most concrete hope for such a re-casting comes from the call of the feminine across the boundaries of nation and race, class and caste.[28] Here are Cornell's words:

> Put very simply, the politics of feminism needs [the] poetry [of the feminine] for the redefinition of the goal of feminist politics, and indeed, of the very content of politics itself. Politics is now not only the struggle for survival within patriarchy, as important as that struggle obviously is, but also the struggle through the dream for a new world, a different future. (p185-6)

27 See Nancy, J-L, *The Inoperative Community* (1991); "Of Being-in-Common", in *Community at Loose Ends* (1991); "Sharing Voices", in Ormiston and Schrift (eds), *Transforming the Hermeneutic Context* (1990); and Lyotard, "*Sensus Communis:* The subject in *statu nascendi*", in *Who Comes After the Subject?* (1991); "*A l'insu* (Unbeknownst)", in *Community at Loose Ends* (1991); *Peregrinations: Law, Form, Event* (1988); "Judiciousness in Dispute; or Kant after Marx" in *The Lyotard Reader* (1989). Ernesto Laclau and Chantal Mouffe's redefinition of democracy is also pertinent here.

28 See Cheah, P, "Situations of Value: A Conversation with Gayatri Chakravorty Spivak on Feminism and Cultural Work in a Neo-Colonial Post-Colonial Conjuncture", *Australian Feminist Studies* (forthcoming, 1993).