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## The World as She Found It

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# THE WORLD AS SHE FOUND IT

Ann Scales\*

“Genius is talent set on fire by courage.”<sup>1</sup> One can find hundreds of definitions of “genius.” The definition just quoted, however, best describes Professor Catharine A. MacKinnon, and one that I think she would allow.

Having depended upon Professor MacKinnon’s achievements for over a quarter of a century in my own work, they have become part of me. I cannot parse her work. I cannot concisely describe all of MacKinnon’s contributions to legal practice and intellectual history. Instead, please allow me to make a few interconnected observations about Professor MacKinnon’s work and person. I am privileged to call her a friend, and over the years the personal and professional MacKinnon have fully merged for me.

ONE: MacKinnon is absolutely brilliant. No one agrees with everything she has to say. But given her remarkable depth and scope, I have yet to meet the critic who can fairly — without stereotype, misstatement, or selective quotation — show precisely where she is wrong. She has, on occasion, stimulated shrill and rigid disagreement among some people. Perhaps that comes with the unique territory MacKinnon occupies. To combine that much insightful talent with that much unrelenting courage (who else has personally taken on both the prostitution and pornography industries?) is likely to get a girl into hot water. She, often in collaboration with the late, great Andrea Dworkin, made it possible for scores of others of us to participate in building a new and relentless feminism. Inherent in MacKinnon’s work is the admonition to embrace solidarity in fullness, even at our own expense. Even if it means having to reexamine what we think turns us on.<sup>2</sup> It requires solidarity with all people everywhere, particularly those who are feminized, those who are systematically tortured, traded, abused, diminished, and otherwise treated as the raw materials for eventual consumption as highly-processed things.

The controversies that MacKinnon has engendered are of no less historical importance than the controversies caused — and new thinking stimulated — by the likes

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\* Professor of Law, University of Denver College of Law. I extend my thanks to the editors and staff of the University of Tulsa Law Review for organizing this symposium. I extend special thanks to my dear cousin, Judy Burnham. Because of an injury, I was unable to attend the event in Tulsa on March 5, 2010. Cousin Jude delivered the speech on which this essay is based. My title is stolen from BRUCE DUFFY, *THE WORLD AS I FOUND IT* (1987), a marvelous novel about another great intellect, Ludwig Wittgenstein.

1. Collection of Henry Van Dyke Quotations, BRAINY QUOTE, [http://www.brainyquote.com/quotes/authors/h/henry\\_van\\_dyke.html](http://www.brainyquote.com/quotes/authors/h/henry_van_dyke.html) (last visited Feb. 1, 2011) (Van Dyke was a nineteenth-century American poet and essayist).

2. CATHARINE A. MACKINNON, *WOMEN’S LIVES – MEN’S LAWS* 266 (2005).

of Darwin, Marx, and Freud. Catharine will be regarded as one of the greatest thinkers of the late twentieth and early twenty-first centuries. Again, no one has to agree with everything she says, but, as Andrea Dworkin once said to me, one cannot regard oneself as an educated person without reading and understanding MacKinnon.

TWO: Thus, and here I particularly admonish law students, it is necessary both to read and re-read MacKinnon. It is not always easy going, nor should it be. But it will clear a lot of stuff up. For example, in my experience, U.S. law schools are content to let students believe that there is a metaphysical, ineluctable conflict between the values/constitutional guarantees of “liberty” and “equal protection” — that is, between liberty and equality. Perhaps law schools and law professors thrive on this dichotomy,<sup>3</sup> which I believe to be entirely fictional.

Any progressive legal thinker is now able to debunk this fiction: liberty is equality, and equality is liberty, depending on point of view. Both concepts are always part of an interpretive competition, almost always between those who have power and those who do not.

Professor MacKinnon is the most significant interlocutor — ever — in this allegedly insurmountable conundrum. It ain’t about the existence of God, you guys. It is not even a moral issue. She has taught lawyers a whole new understanding of the concept of equality — and what a mere “concept” could mean in the world — even when, perhaps particularly when, people are not technically “similarly situated.”<sup>4</sup>

THREE: Could I emphasize once more the necessity of attentive readings of MacKinnon? I can recall the very moment I was transformed by it. In 1981, I was sitting in the faculty library at the University of New Mexico School of Law, where I was a young teacher. I engaged fully with chapter five of MacKinnon’s first book, *Sexual Harassment of Working Women*.<sup>5</sup> In that chapter, MacKinnon first developed her ideas contrasting the usual “difference” theory of equality with her “dominance” theory of equality. Over many hours, I re-read all the cases she cited, mapped them out per her contentions, and realized how powerful her insight was. This moment was comparable to the moments — yes, real education often comes in *moments*, and they are something to live for — when I got Nietzsche, when I understood Wittgenstein, and when (in 1979, at midnight in the fancy library at my first law-firm job) I realized how law practice actually works.

FOUR: Of many quotable MacKinnon quotes, this is my favorite: “It is common to say that something is good in theory but not in practice. I always want to say, then it is not such a good theory, is it?”<sup>6</sup>

3. For contemporary law students, another dichotomy has recently been salient — that between “liberty” and “security.” Another fiction, this dichotomy is *Realpolitik* on Viagra. More than that is beyond the scope of this short tribute.

4. Here, of course, I refer to MacKinnon’s groundbreaking work regarding pornography, prostitution, sexual harassment, rape, asylum, and international sex crimes. That is, from the traditional point of view, men and women are dissimilarly situated regarding these matters. In MacKinnon’s practice and theory, these are all matters of sex equality. See, e.g., Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281 (1991).

5. CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION* 101-41 (1979).

6. Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J.L. & FEMINISM 13 (1991).

Though some people have a stake in denying this, I think most intelligent people knew it. But it was MacKinnon who said it and explained it. In this immortal utterance, she was in a sense summarizing her life's work. Reality dictates theory. Theorizing by itself is a hobby, or a way to get tenure. The world that MacKinnon found as a young person — and as a doctoral and law student — was not about theory. She was able to discern the layers in a world of suffering, described those, and developed brilliant remedies. Hundreds of suffering women *and* men came to her in desperation and in trust. She has, more than anyone I have ever known, justified that trust.

FIVE: Professor MacKinnon is a lifelong learner and a person who uses her learning to better the lives of others. (In how many languages can she teach, litigate, and translate legal texts?) Her turn in recent years to international law is all about finding new horizons. She spends time with her clients abroad. She learns everything she can about their lives and histories. She wins for them.

Her mind is capacious. She is, as she once said to me, a “need-to-know kind of gal.” It makes her fun to hang out with. Just as she can describe a winning approach to a pending case, she can engage in a lively discussion about who will be the next cover person on *People* magazine. In both, she is eerily accurate.

SIX: Catharine MacKinnon is generous. Students, co-counsel, lawyers, scholars, and those around the globe persecuted because of sex know this to be so. She will give of her time and expertise to anyone who has even a quotient of commitment that she has.

Sometimes, young law professors ask me whether they should send a draft of a scholarly paper to Professor MacKinnon for comment. I always say, do so, and she will read it and comment upon it. But *be prepared for that*.

I was not fully prepared on an early Saturday morning in 1994. I was minding my own business, watching Bugs Bunny as any competent public intellectual would be doing. Catharine called me at home. She had received a draft copy of an article I was writing about “obscenity” in Canada. Specifically, I was writing about the aftermath of *R. v. Butler*, the 1992 Canadian Supreme Court decision which redefined “obscenity,” in essence, as sexually explicit speech that harms women and those who are treated as women.<sup>7</sup> Over the next three hours, Catharine and I discussed that draft thoroughly. I did not agree with everything she suggested, but the eventual paper<sup>8</sup> and my understanding were both enhanced. It was an intense learning and bonding experience.

I still wonder, though, whether Elmer Fudd outwitted Bugs on that particular Saturday morning. Does anyone happen to know? I suspect not, as Elmer would have been on the cover of *People* magazine, and Catharine would have predicted that.

SEVEN: Professor MacKinnon seems indefatigable. She and I have been working on many of the same projects for thirty years. Now, when I am asked to give a talk about feminism, I am always tempted to title it, “I’m Only Gonna Tell You This One More Time.” MacKinnon, however, seems to be always out there, in her many books, articles, lectures, and guidance to various international organizations. Her discipline is

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7. *R. v. Butler*, [1992] 1 S.C.R. 452 (Can.).

8. Ann Scales, *Avoiding Constitutional Depression: Bad Attitudes and the Fate of Butler*, 7 CANADIAN J. WOMEN & L. 349 (1994), partially reprinted in Becki L. Ross, ‘It’s Merely Designed for Sexual Arousal’: Interrogating the Indefensibility of Lesbian Smut, in FEMINISM AND PORNOGRAPHY 264, 297-98 (Drucilla Cornell ed., 2000).

inspirational.

EIGHT: I believe Professor MacKinnon knows who she is. Her work demands confidence. It is a gift to know a woman of our generation who has it. At the same time, she can be very humble. Catharine believes that anyone could have done what she has done.<sup>9</sup>

I am not sure about this. I introduced Catharine to an audience in 2007, noting that if I were writing her biography, I would call it “Indispensability Unmodified.” The next day she pooh-poohed that, saying, “Nobody is indispensable.” Perhaps it is true *in theory* that nobody is indispensable. *In practice*, a world without Catharine MacKinnon is unimaginable to me. Was somebody saying something about the silliness of the distinction between theory and practice?

NINE: I want to note some things about Professor Catharine A. MacKinnon, the person. She is hilarious. Her great sense of humor — in her work and in person — sustains me through difficult times. She is also a bunch of fun. I wish the two of us had more occasions to explore this crazy old world together. I cannot imagine a more informative and inspiring companion.

She is a loyal friend. She is particularly loyal to the women who have come to her in degradation and in pain. And here, by “women,” I mean women of all colors, classes, nationalities, and creeds. I also mean men who are degraded on the basis of sex. All are welcome to her, and she will always stick by them. Catharine MacKinnon is the definition of an “honorable woman.”

Thank you, sweet girl, for all that you are and do. It is my honor to work with you.

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9. See, e.g., Catharine A. MacKinnon, *To Quash a Lie*, SMITH ALUMNAE Q. (Alumnae Ass’n Smith C., Northampton, Mass.), Summer 1991, at 11. (speech to Smith students upon receiving a Smith College Medal) (“What I’m wondering at this moment is what makes all the things that you were just told I’ve done worth recognizing? In particular, why did it take so long for someone, anyone, to have done them, because anyone could have.”). See also Catharine A. MacKinnon, Graduation Address: Yale Law School, (June 1989), in 2 YALE J.L. & FEMINISM 299, 299 (1990) (“I must say, this is not something I ever imagined doing. I may share . . . the sense of incredulity expressed by Cher when she won the Academy Award: ‘If I can get this, anyone can do anything.’”).