The Politics of Sex: Analyzing the Relationship between the State and Gender Identity and Desire

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The Politics of Sex:
Analyzing the Relationship between the State and Gender, Identity and Desire

by
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ABSTRACT

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The disenfranchised experiences of women are central to feminist understandings of identity. Crucial to this understanding is the question of what is the cause of female oppression and how to remedy the situation. This introduces the concept of state power and its relationship to women. The state, as the seat of legal and political power, has the ability to serve as both protector and oppressor.

The thesis is devoted to exploring feminist perspectives and critiques on state power such as arguments for state intervention in the protection of women through concrete action such as gender-specific laws. Opposing this view is the perspective that political solutions can both overthrow AND codify existing social conditions. Ultimately, the state represents a problem of power because it has the capacity to act as both the protector and oppressor of women. These perspectives frame the thesis, which addresses a wide range of topics, including:

Sexuality and desire as it relates to social equality, sexual violence and the role of the state in responding to it, equality in relation to male political power, and the concept of feminist jurisprudence.

These topics form an analysis of contemporary feminist debate and the experiences of women. As a collective, the chapters contextualize modern understandings of female perspectives and attempt to strike a balance between primary discourses surrounding topics of contention. The thesis as a whole aims to further feminist
discussion and understanding on the diversity of female perspectives and how to respond to these understandings of the female condition.
The disenfranchised experiences of women are central to feminist understandings of female identity. Crucial to this understanding is the question of what causes this oppression and how to determine a means to remedy the situation. The process of finding a lasting solution introduces the concept of state power and its relationship to women. The state, as the seat of legal and political power, has the ability to serve as both protector and oppressor. This role of power begs the question of the extent to which the state is responsible for female oppression and if state solutions to this oppression can be found.

Contemporary feminist debate tends to view the state in one of the aforementioned two ways. Therefore, the role of the state in forming a gender equitable society remains an unresolved issue, one this thesis aims to address. Viewing the state as either protector or oppressor opens a set of theoretical and practical problems regarding the lives of women. Therefore, the speculative question is whether or not feminist politics and the lived experiences of women benefit from a palpable state presence in responding to calls for gender equality. Furthermore, how is this relationship between the state and gender equality conceptualized? The nebulous relationship between state power and the formation of a gender equitable society has left feminist thinkers with a number of theoretical questions regarding how to confront the social ills suffered by women. What is at stake is not merely a theoretical problem. How the role of the state is theoretically conceived has a very real impact on the lives of individuals. This is not politics only in theory, but as it relates to the lived experience of women. For example, feminist thinker Ruth Milkman poses the question, “Are women’s interests best served by public policies that treat women and men identically, ignoring the social and cultural differences
between them? Or should we view those differences positively and seek greater recognition and status for traditionally female values and forms of behavior?” (Milkman 375). The question she asks is an important one. In what manner can state power be effectively used to meet female needs? Complicating the issue is the dichotomy associated with vocalizing rights and the power of the state. Whether we view the state as an oppressor or protector determines whether or not women turn to the state for redress from sexual violence, or if single mothers seek state-sponsored welfare. The implications of addressing the questions of this thesis is not limited to theoretical inquiry, but explores the experiences of women whose lives are directly impacted by state power.

This task has been aided by a genealogy of political thinkers who have reconsidered state power and the formation of individual identity and sexuality. Guiding the construction of the paper is noted feminist, Catherine MacKinnon, who argues heavily for state intervention in the protection of women through concrete action such as gender-specific laws, which, according to her, offer a greater level of protection. According to MacKinnon, the state should take responsibility for its role in shaping the sexuality and condition of women in society. The existence of pornography, for example, ensures that women are seen as subordinate to men. In her argument, state power should be used instead to emancipate women from their condition of social oppression through legal codification.

Running alongside this argument is the perspective of Wendy Brown, who differs in her perspective on how to respond to female oppression. While she does not verbalize solutions as succinctly as MacKinnon, she unveils crucial considerations, such as the diverse, multi-faceted reality of female perspectives – not all of which conform to
MacKinnon’s views. She points out that political solutions can both overthrow AND codify existing social conditions. As she articulates, “the more highly specified rights are as rights for women, the more likely they are to build that fence insofar as they are more likely to encode a definition of women premised on our subordination in the transhistorical discourse of liberal jurisprudence” (Brown 2002: 422). In other words, explicitly articulating rights in legal code runs the risk of entrenching social conceptions of female vulnerability in political terms. Ultimately, the state represents a problem of power because it has the capacity to formalize social conceptions of female vulnerability, in addition to its dual identity of protector and oppressor. While the language of law allows for the protection of women, it also holds the power to confine them to traditional conceptions of gender. As such, women cannot necessarily expect liberation from an oppressive state. Furthermore, she takes into consideration the existence of multiple perspectives and acknowledges that what is seen as oppressive from one perspective may be seen as liberating by another. For instance, in regards to the aforementioned example of pornography, one perspective may argue that pornography represents sexual oppression while another perspective may argue that it is sexually liberating. Therefore, Wendy Brown’s perspective demonstrates that contemporary feminist concerns are not as straightforward as MacKinnon’s analysis might suggest.

These two main perspectives frame the thesis, which addresses a wide range of inter-related topics, organized based on the scope of the debate. Ideas introduced first will be those based on social normative values, then transitioning to the role of state power and then understandings of equality and justice as it relates to both social and political understandings of the female condition.
While much of this thesis is devoted to exploring the diversity of feminist perspectives and feminist critiques on state power, questioning the role of the state as it relates to gender equality is not only a feminist inquiry. It has also been conceptualized by queer theorists, such as Michael Warner and psychoanalysts, such as Jessica Benjamin. Therefore, this formative question is critical because it not only addresses the status of women, but also society as a whole and how an individual’s identity is socially formed. Therefore, queer theorists exploring sexuality and psychoanalysts considering the formation of identity also have a stake in how state power is constructed and reconstituted in social contexts.

Therefore this thesis has also required a reconsideration of the manner in which political power is distributed and how it is expressed in different contexts. As a result, the chapters of this thesis are organized around the different manners in which state power informs both political and social experiences of individuals.

Chapter one, titled, “The Politics of Sexuality and Desire,” focuses on individual expressions of desire as how it relates to social equality. This section addresses the dichotomy between private and public aspects of sexuality and how this shapes individual identity. Both feminist thinkers and queer theorists attempt to explain not only this dichotomy, but also how an individual’s identity is shaped by normative social values and then reflected through the state in the form of explicit dictation of what is acceptable and what is not. This explicit dictation is realized through the legal endorsement of social norms such as heterosexual marriage. This explicit endorsement of heterosexual norms
dismisses the possibility of an alternative mode of being and reinforces social expectations on the citizen through the pervasiveness of state power.

The chapter addresses a variety of issues, the first being desire itself, how it is formed and how it sculpts individual identity. The central issue is what is “normal” and what the consequences are for individuals who fall outside this traditional conception of what normal is. The concept of desire as it relates to social norms informs social understanding of gender roles and identity. The chapter’s analysis confronts this concept and raises the question regarding how political approval of normative expressions of sexuality impacts female identity and gender roles in political and social spheres.

Chapter two, “Sexual Violence,” confronts the role of the state in responding to instances of sexual violence and encoding legal protection for women. The nature of atrocities against women and to what extent women are constructed as being violable is central to the chapter’s inquiry. An important aspect to this is the role of the state in responding to demands for justice and codifying legal protection for women. This role is especially significant in the language of law and the manner in which the state articulates the rights of women. This question of language is particularly evident when determining whether gender neutral or gender specific laws best meet the needs of women. Feminist thinker Catherine MacKinnon heavily advocates for gender specificity to express the rights and the protection of women in clear and explicit terms. However, Wendy Brown counters this by stating that to be this explicit is to confine women by this definition. In other words, legally explicit expressions of female vulnerability hold the ability to entrench traditional notions of women as victims. Therefore, it is uncertain whether or
not the state should be involved in addressing and preventing sexual violence and how this would effectively be achieved.

In addition to exploring the dichotomy between gender-neutral and gender-specific laws, the chapter explores the role of the state and how viewing the state as the protector and final arbiter of justice forms a very specific relationship between state power and women. The nature of this relationship is central to understanding the nuances of legal and theoretical arguments for state involvement in women’s lives in order to address sexual violence. Therefore, when discussing how the power of the state can be used to address the vulnerability of women, context matters. Rights law and the language through which it is constructed define the context through which crimes of sexual violence are understood. This conceptualization is vital not only to prevent sexual violence against women, but also to address the option of political, social and legal recourse available to victims.

The third chapter, “The Law of Equality – Feminist Jurisprudence” addresses the role of jurisprudence as a means to remedy social ills. An exploration of a feminist theory of state and political solutions to female oppression aims to explain the state’s capacity to resolve the problem of justice in a patriarchal society. This chapter also explores understandings of equality and to what extent difference is translated into dominance. The manner in which women’s status is defined in relation to men’s is explored, in addition to the nature of political power as how it relates to male and female identity.

In essence, this chapter looks at the over-arching issue of the role of state power in upholding individual rights and promoting the establishment of a gender-equitable
society. Feminist theory conceptualizes state power as both a tool for justice and a tool for oppression. The goal of feminist jurisprudence is to confront the law and its approach to gender in order to rework legal approaches to gender rights and the manner in which concrete laws can advance the position of women. However, this is not only a theoretical question. This conceptualization of the state as to how it relates to sexuality and identity plays out in a number of very real ways, such as obscenity laws and laws regulating prostitution. Therefore, how the state regulates personal expression holds the possibility to encode and entrench social normative values. As a result, state power becomes problematic. While the state can be viewed as a protector, there is a limit to how state power can be used to emancipate the oppressed. The issue then becomes how to establish concrete protection while maintaining an understanding of vague universal ideals. This balance helps to construct an understanding of justice as to how it relates to social and political power and the manner in which state power holds the possibility to act as a mechanism of oppression.

The final chapter, “Re-Imagining Gender,” aims to address the larger question formulated by previous chapters. While previous chapters present a number of paradoxes and theoretical conundrums, this chapter’s purpose is to suggest alternatives. Alternative conceptions of gender, sexuality and identity offer the possibility of a new understanding of gender relations. Current understandings of state power determine how gender equality is addressed and the available options to confront social and political vulnerability.

Therefore, re-imagining state power, along with sexuality and individual identity, changes the conversation of how to encourage the development of an equitable society.
Re-imagining these traditional conceptions allows for the re-examining of social and political contexts and how gender fits into these contexts. One manner to address the dichotomies raised by previous chapters is to re-consider the manner in which we understand the relationship between gender and state power. Through this reconsideration, new possibilities can be imagined in order to establish the rights of women and to address the vulnerabilities that they experience.

These topics, while diverse, collectively form a comprehensive analysis of contemporary feminist debate and how it relates to the lived experience of women, as well as theoretical conceptions of sexuality, identity, and gender. To accomplish this task, a consideration of multiple feminist perspectives is required in order to assess and respond to the female condition in relation to a patriarchal state. Ultimately this thesis lends itself to contemporary feminist discourse and aims to frame modern debate of significant feminist concerns. As a collective, these chapters both contextualize and frame modern understandings of female perspectives and attempt to strike a balance between the primary running discourses surrounding these topics of contention. The thesis as a whole aims to further feminist discussion and understanding on the diversity of female perspectives and how to respond to these understandings of the female condition. Furthermore, it confronts the numerous questions raised by opposing views within the feminist community regarding legal protection and the encoding of rights for women. As political philosopher Kenneth Baynes correctly surmises, “[Rights] are at least in part a function of the sociopolitical system in which a more or less determinate set of rights operates […] This profoundly complicates the status we can grant rights as the guarantor
of interests and subjects” (Baynes 457). As he expresses, rights are a function of both the political and social contexts in which they are formed. As such, the process of encoding gender rights in an effective manner is not as straightforward as simply legally expressing the interests of women. Instead, this process is a product of the complicated relationship between the state and the sociopolitical formation of gender, identity and desire. This thesis aims to bridge the gap posed by Kenneth Bayne’s assertion through assessing the dichotomy presented by the problem of state power as how it relates to the status of women.
Chapter One – The Politics of Sexuality and Desire

I. Introduction

The sexuality of the individual, how it is shaped and how it is expressed is integral to the development of the self. There are two primary aspects to human sexuality, the private and personal and the public, where sexuality is ultimately dictated by societal norms and pressures. Several feminist and queer theorists attempt to explain and understand this dichotomy and how an individual’s identity is shaped by normative social values and then reflected in turn through the state in the form of a dictation of what is acceptable and what is not. Therefore, what is “natural” or “authentic” about sexuality remains in question.

This chapter will explore different interpretations of sexuality and the manner in which it defines the lives of women both privately and publicly. While sexuality and expressions of sexuality are generally understood as social constructs, the state regulates any expression of sexuality that deviates from the norm. The state regulates sexual behavior in a number of ways, such as marriage laws or the legal recognition of same-sex couples. Through the ability of state power to legitimize or de-legitimize the expression of individual sexuality, individual identity becomes inherently political. Furthermore, the political enforcement of a singular accepted expression of sexuality entrenches traditional gender roles and norms. In this chapter, I turn to feminist and queer theorists who explore what effects state and social regulation of sexuality has on an individual’s identity. Theories such as those proposed by Judith Butler, Michael Warner, and Jessica Benjamin will be explored. Judith Butler explores the relationship between kinship, the state, and
desire through a theoretical exploration of Sophocles’ play *Antigone*. The relationship between Antigone and her uncle, King Creon narrate the relationship between state power and an individual’s identity. King Creon represents the oppressive nature of the state, which is met by the defiance of Antigone. The play – and Butler’s analysis – explore the relationship between the state and its role in recognizing another on both an individual level and as a citizen. Michael Warner explores the role of the state in desire, sexuality and shame, particularly as it pertains to the LGBT community to explore how social values become politically enforced to suppress individual expression of sexuality. Meanwhile, Jessica Benjamin explores how desire is formed and the manner in which it sculpts human identity, societal bonds and interactions, and sexual domination. The dynamic between these three theorists paint a picture of how state power can define individual identity and how individual identity fits within a social and political context. In this manner, individual identity becomes defined by the traditional sexual and gender roles that state power imposes on individuals.

The chapter will explore the nuances of these ideas to address the issue of human sexuality as it relates to societal norms which become reflected through the state through the tacit endorsement of approved heteronormative expression and the simultaneous disavowal of an alternative mode of being. This endorsement can be manifest in a variety of ways, such as the legal entrenchment of norms, and the rights of homosexuals and ultimately enforces societal expectation on the citizen through state power.

The relationship between politics, sexuality, and desire manifests itself in several different contexts, both social and political. The first aspect of this relationship stems from desire itself, how it is formed and how it sculpts human identity and the manner in
which societal norms shape female sexuality. Michael Warner informs this analysis through his exploration of what it means to be “normal” and the affect it has on the individual who does not conform to this standard. This idea of desire and societal expectations informs societal understanding of gender roles and the dichotomy of public and private life, political freedom and the social definition of identity. The subsequent issue that this social definition raises is the tension between the social and personal definition of identity, resulting in the concept of taboo in a society that disallows sexual variance. These interlocking ideas ultimately formulate a relationship between sexuality and state power, where the social sphere is reflected through the state. Female sexuality becomes regulated through state statutes of pornography and prostitution while heteronormative values as they are enforced by the state impose state power upon all citizens.

This analysis raises the question of how the political endorsement of a socially accepted form of sexuality impacts female identity and the manner in which male and female power is dealt with in the political sphere. Furthermore, an understanding of the manner in which socially accepted forms of sexuality dictate political life allows us to imagine an alternative way of framing desire. An alternative understanding of desire would in turn restructure social comprehension of acceptable sexual variance and the manner in which state power enforces its will on individual identity.

II. Desire

Desire is in many ways the motivation for human action. An individual’s desire and sexuality is closely linked to the way they identity themselves and display this
identity to others. Therefore, the recognition of an individual’s sexuality desire is closely tied to the recognition of an individual’s identity. To deny an individual the acknowledgement of their desire as legitimate is to undermine their identity. The legitimacy of an individual’s desire is sculpted by social norms, in addition to state recognition of the display of this identity as legitimate. An exploration in the development of desire lends itself to an analysis by Jessica Benjamin, who interprets the progression of desire as beginning in infancy. Benjamin’s assertions are that desire stems from an affirmation of self: individuals seek an affirmation of their own identity and search for mutual recognition in other individuals. This relates to the overarching idea that one’s identity is closely based on the recognition of the self. Benjamin begins her analysis with the earliest form of this recognition through the mother-child bond of joint identity. However, as the child becomes older, they either identify or disidentify with the mother. For example, she argues that female children can identify with the mother based on sexual similarity, while male children are unable to do so. As a result, male children disidentify with the mother, and all other females, shaping an early example of male-female disassociation. This, she claims, is the origin of complementary, yet unequal, sexual roles. Ultimately, the gender difference that is realized between male children and their mothers result in gender dominance because of the individual search for self-recognition, in addition to the reinforcing of gender roles through traditional divisions of labor within the family itself. According to her analysis, desire lends itself to either mutual recognition or self-assertion. Mutual recognition – which the male child seeks from his mother – is the process by which the self is able to realize agency and authorship in a tangible way through a confirmation of our own identity as being similar to another’s
When male children are unable to receive the mutual recognition they seek from the mother because of their inherent sexual differences, they in turn assert their own separate identity. This later results in male domination due to the fact that when “opposites can no longer be integrated; one side is devalued, the other is idealized” (Benjamin 50). The inability to maintain the balance between mutual recognition and self-assertion results in this splitting where male and female become two unequal sides of an interlocking whole.

The implications of this are vast. Not only do Benjamin’s assertions develop into a larger theory on adult sexuality and domination, but it also defines sexuality in terms of an immutable biological difference in gender, as well as historical social gender roles which confine women to the role of motherhood. This would suggest that the unequal roles of men and women are deeply socially ingrained and in some ways, psychologically inherent, disallowing an alternative interpretation of sexuality, desire and social gender roles. However, a nuanced interpretation of female desire potentially counteracts this. The sexual liberation of women has allowed for an interpretation of desire that does not immediately associate female sexuality with motherhood. This opens up social dialogue to imagine alternative forms of desire and sexual roles. If Benjamin’s assertions are true and human sexuality is rooted in disassociation with the mother figure, separating female sexuality from motherhood allows us to imagine alternative expressions of human sexuality and desire and in turn a greater variance in human identity and the social norms which influence it. She explores this idea through The Story of O., which can be read as an allegory for recognition through a total renunciation of the self, illustrated through a
tale of female submission. It is not only a tale of female submission, however, but also an exploration in how sexual expression and dominance is rooted in a desire for recognition.

In Benjamin’s analysis, because the dominant force grants recognition to the subjugated, both the dominant and submissive forces are given meaning through a process of mutual recognition: “A condition of our own independent existence is recognizing the other” (Benjamin 53). The need for recognition as a term of an individual’s existence creates an interdependence where each relies on the other for their own recognition and existence. Because each is looking for recognition in the other, sexual relations are not necessarily uniquely about dominance, but the manner in which mutual recognition is achieved. If one side is completely dominated, it is no longer a separate entity that can grant the dominant force recognition, and vice versa. However, she acknowledges a larger problem develops from the refusal on one individual to accept interdependence as a form of recognition. This refutation of interdependence manifests in dominance, which can be seen in a larger societal context through socially constructed gender roles and the manner in which they define our identity.

Similarly, Michael Warner addresses the issue of domination when he posits that morality begins with the controlling of others. He illustrates this through the examples of prohibition, regulation and norms. Therefore, in this sense, the state represents a dominating force with the ability to regulate behavior. Sexuality, and more specifically, sexual shame, is political. Warner argues that there are certain individuals, such as members of the LGBT community who stand at greater risk to be “beaten, murdered, jailed” for their sexual identity and forced to be “burdened by furtiveness […]”. They will find it hard to distinguish the social shame from its politics, their personal failings from
the power of alien norms” (Warner 3). The relationship between social norms and their political nature make it difficult for individuals to distinguish the social shame imposed on them from the political delegitimization of their identity. This creates a separation between those who conform to politically and socially legitimate sexual norms and those who do not, decreasing sexual variance and entrenching a singular understanding of sexuality and desire.

According to Warner, this sort of judgment based on one’s sexuality and sex life promotes the creation of a social hierarchy of sexuality and the politics of sex through the social understanding of an accepted expression of sexuality and the state enforcement of this expression. This culminates in a unique form of oppression and is demonstrated through the state’s delegitimization of sexual behaviors which deviate from the socially accepted norm. As expressed earlier, one’s sexuality is a crucial aspect of identity. To enforce a given norm as the only legitimate form of desire devalues alternative forms of desire, sexuality and individual identity. In essence, society and the state are able to deny one’s identity through the entrenchment of a singular accepted form of desire. Warner coins this oppression as a “politics of identity”. He states: “sexual orientation is fundamental to one’s personality and is not mere sexual behavior” (Warner 29). In effect, there is a difference between identity and sexual practices, despite the tendency to define an individual through their sexual behavior. State power has the ability to impose an accepted form of sexual identity by regulating the display of behaviors that deviate from accepted normative behaviors. In this manner, state power gives legitimacy to a singular, socially accepted identity while others are delegitimized. Warner explores this concept through the example of the Supreme Court case *Bowers v. Hardwick*, which addressed
the Georgia sodomy law that became viewed uniquely as a “homosexual sodomy” statute, despite representing a form of sexual behavior which is able to be performed regardless of orientation (Warner 30). However, the act became associated with an identity. Georgia was capable of banning the act because of its connection to an identity that did not fit the accepted norm. This is similar to the military “Don’t Ask, Don’t Tell” provision, which made both behavior and identity equally punishable. Both these example illustrate the manner in which an accepted form of expressing sexuality and desire is imposed upon the general public.

In essence, these acts of denying recognition deprive individuals of the self-affirmation Benjamin claims they seek. The relationship between individuals of mutual recognition and self-affirmation is paralleled by the relationship between the citizen and the state. Just as individuals can grant or deny recognition to others, the state can grant or deny recognition as well. However, this denial by the state does not only deny one’s identity as an individual, but as a citizen. However, Warner demonstrates that a limited sexual variance in society is ultimately reflected through state action. The state codifies legitimate modes of expression and thereby delegitimizes any identity that does not meet this edict. Warner argues that this in turn results in an individual’s goal to redeem their own identity, through acts such as repudiating sex in order to separate identity from sexual practices. This repudiation represents an inherent desire for conformity and normalcy that is ultimately impossible for those who do not fit the accepted norms. This desire to meet the enforced standards is unsurprising when one examines how political power is distributed. The desire for the state’s recognition is based in its ability to deny one’s identity. Desiring the state’s recognition is to desire the legitimization of one’s
identity. While this desire is not unwarranted, it also establishes the state as holding the power to grant or deny recognition to an individual much in the same way Benjamin explores how dominance develops from the recognition of a dominant force. Those who are part of the “normal” group play to a larger audience and have the tacit understanding and support of the state and society, whereas those who differ are stigmatized. A hierarchy of power emerges from this, based on the manner in which one displays their “normalcy” to the larger public audience.

This deep desire to be “normal” and to represent the “mainstream” raises a question: what constitutes normal? It can be said that everyone deviates from an expected norm in some way, yet there is still an accepted mode of being. What constitutes this and what does it imply for the individual’s desire to conform to it? What is normal is defined by what should be (Warner 57). This idealized version of the self is what serves as a norm and because it is idealized, it invites our conformity to it. The desire to be normal is essentially the desire to legitimize oneself. However, this view – that normal is what is legitimate – only establishes shame and delegitimizes the identity of other who deviate further from the norm. In this manner, alternatives become unimaginable and what is “normal” becomes further entrenched into our political and social psyches.

Society needs a new standard of dignity and self-identification. The accepted idea that there is a norm to which one must conform devalues the identity of individuals who do not meet this accepted identity. When an individual is unable to gain recognition from the state or society, there is no means for the assertion of individual identity that will be accepted and recognized by larger society or state power. When this affirmation is denied, the state and society embody an oppressive force. Jessica Benjamin examines
how this affects an individual’s sexuality and results in the oppression of women through the assertion of a male identity while Michael Warner examines how state involvement in sexual identity promotes a culture of shame. Both demonstrate how oppressor and oppressed represent opposite sides of an interlocking whole when the dichotomy of “normal” and “deviant” is allowed to perpetuate. Society as a whole needs to reimagine an alternative understanding of gender roles, sexuality, and desire in order to acknowledge alternative forms of identity. If one cannot imagine an alternative understanding, the result is the perpetuation of gender and sexual hierarchy that allows for the oppression of those who do not meet the defined normative values.

### III. Gender Roles

The sexual hierarchy discussed by Warner and the opposing gender explained by Benjamin both introduce the concept of a political understanding to gendered social roles. Warner introduces the idea that an accepted norm inherently creates a hierarchy in which those who do not meet the ideal are delegitimized. This can be understood in gendered terms if we accept Benjamin’s analysis that the conception of the individual is male. An individual being with autonomy and recognition is capable of exerting political power and gaining acceptance with a larger public audience. Benjamin’s description of male-female relations as an interlocking whole imply that gender roles are fixed, as the implication is that they cannot both occupy the same role of self-assertion at the same time. Therefore, we are left with the social hierarchy presented by Warner in which a given norm is idealized while all deviations from that norm is met with shame and a devaluation of individual identity. This social definition of identity and political power
have serious implications for state-approved relationships, represented through marriage, the public versus private life and the sphere of the home, in addition to how these aspects relate to political freedom.

While Benjamin proposes that men and women represent two corresponding halves to the understanding of sexual identity, this is not truly where sexual domination arises. According to her argument, domination is more closely related to the balance between the assertion of the self and the mutual recognition that allows the self and other to be equals (Benjamin 12). Domination itself occurs when this balance cannot be maintained and the opposites are unable to be integrated with one another. As a result, they are no longer different, but corresponding halves, but one side attempting to dominate the other. Once this balance is broken, one side becomes idealized while the other is devalued. Gender difference translates into gender dominance. Masculinity comes to represent authority while femininity is devalued. This subject-object relationship represents a sort of gender polarity that establishes male domination as inherent and promoted the repudiation of femininity (Benjamin 184).

Yet the material world is not fixed in binary and this aspect our understanding does not necessarily mean that gender roles are understood through a fixed duality. Warner explores gender roles as a spectrum with individuals naturally deviating in some way from the norm. If we expand upon this idea of a spectrum, Warner’s conception of hierarchy develops. Individuals strive to conform to the standard norm because it is what is seen as legitimate. Being normal is a means to establish that legitimacy, but only through the delegitimization of others. A “hierarchy of shame” develops that is a product of the structure’s political nature. Warner uses this hierarchy to discuss gay and lesbian
politics. Normative political and social conceptions of gender and sexuality delegitimize the identity of individuals in the LGBT community and closely associate the gay rights movement with the shame of sex (Warner 49). He describes the movement’s politics as being defined by a permanent condition of embarrassment. However, the individuals who comprised the movement became involved primarily because of their investment in a world without stigma associated to their sexual identity. In its efforts to gain the acceptance from a public that viewed the movement as one of sexual deviancy, the movement disassociated itself from sex, attempting to delineate between sex behaviors and identity. The tension between one’s values and the pressure to relinquish these values to gain acceptance only further underlines the separation between legitimate and illegitimate. Ultimately, normative values represent a larger societal problem of being unable to imagine alternative understandings. Society has thus far been unable to conceive a world where men and women are integrated and variance in sexual identity is socially acceptable.

These normative values are often accompanied with either acceptance or repudiation by the state. The state has the power to legally codify and formally entrench social values. This power manifests in a variety of ways and contributes to the formal establishment of gender norms, sexual roles and approved sexuality. For example, Lori Marso asserts that marriage is a force that allows for the reproduction of gender norms. An exploration of the “bourgeois respectability” marriage grants its participants frames marriage as a significant aspect to social identity. Marriage can be understood as representing the state’s approval of heteronormative standards and forces gender norms on individuals. It is seen as integral to the female identity of wife and mother regardless
of individual identity. In this manner, marriage entrenches sexual norms of behavior. However, the institution of marriage is only able to do so because of its legitimizing aspect. Marriage provides a dimension of legitimacy on sexual relations that celebrates a circumscribed understanding of intimate relationships. However, this legitimizing aspect is very alluring for individuals Michael Warner would describe as “outcasts,” such as homosexuals, who suffer from social scorn that labels their relationships as illegitimate and shameful. What does the legitimizing power of marriage mean for gay couples that do not conform to the heteronormative values on gender? A problem arises when we view marriage as a right. As Marso illustrates, understanding marriage as a civil right can ultimately reinforce normative standards. While marriage as a state right presents individuals with the rights and protection of the state, it also eclipses our ability to imagine an alternative conception of social relationships.

Judith Butler explores the concept of an individual living outside traditional norms in her analysis of the play Antigone. Antigone serves as a lens to analyze state power because it explores the relationship between characters as a means to analyze state power. The story of Antigone follows a young woman who defies the edict of uncle, King Creon and buries the dead body of her brother. Creon is the state and through his role of representing state power, has the ability to legitimize or delegitimize others through granting or denying them recognition. This denial sculpts their identity as an individual and a citizen. Parallels can be drawn from this representation to theorize the relationship between state power and the citizen. Therefore, an analysis of Butler’s exploration of the dynamic between Antigone and her uncle – who is also the state – has important implications for the understanding of gender roles in relation to state power.
Like Benjamin, Butler discusses the concept of recognition and identity: “dying, indeed, from the premature circumscription of norms by which recognition as human can be conferred, a recognition without which the human cannot come into being but must remain on the far side of being” (Butler 81). Ultimately, human beings are robbed of identity through the assignment of roles by larger society. Not only are robbed of an identity: they are deprived of one. They are given no recognition, so they cannot be. According to Hegel’s analysis of Antigone, she has no political identity and no place within citizenship because she is not capable of offering or receiving recognition (Butler 13). This lack of recognition is created by virtue of her birth. She is both female and the product of an incestuous relationship, meaning she is invalidated in both the private and public sphere. She exists beyond these two spheres and challenges to traditional order. Antigone can be interpreted as an example of feminist political power, though she also represents the larger issue of the oppression of an individual by the community, despite her defiance of it. Butler explores this issue through Antigone by demonstrating that Creon is able to deny Antigone formal recognition and suppress her efforts at defiance through her punishment and eventual death sentence. Ultimately, the community maintains itself by suppressing individualism and promoting the normative values it enforces on the public.

Given the complexity of the relationship between normative gender roles and the ability of the state to endorse these roles, the idea of political freedom becomes a tenuous one. Can political freedom truly exist if, as Butler asserts, society sustains itself through the oppression of the individual? The political sphere acts as a mirror to the social one. If this is true, not only do our understandings of sexuality and social hierarchy need to be
re-imagined, but also our conception of state power and the manner in which it reflects social values. While Benjamin describes male-female relationships as opposite sides of a whole in which male dominance asserts itself, this relationship is not a fixed one. Benjamin’s psychological analysis implies that the gender dynamic is in some way inherent, yet she acknowledges that much of male-female relationships are socially constructed, as well as psychological. Therefore, Warner’s social conception of hierarchy is not fixed and can be restructured to incorporate sexual variance and multiple identities, as opposed to the singular normative identity that is held to be the ideal. Re-imagining the social and political order opens us to an alternative way of being. The gender roles imposed by society are not necessarily fixed and are ultimately subject to reinvention. However, a major obstacle to this process of re-imagining is the role of shame in exploring alternatives to the norm. Ultimately, social conceptions of normalcy have a dominant characteristic, which devalues alternatives through the imposition of a singular, accepted identity.

**IV. Sexual Shame**

Deviations from the social norm inevitably have consequences for an individual’s notion of identity. As discussed earlier, a norm can be understood to be an idealized version of identity. Because it is purported as the accepted ideal, it demands conformity to it. Those who fail to conform are devalued and their identities are disparaged. As will be explored in this section, this results in a very specific form of shame. It is not only the shame of sex, but also the shame of sexual identity. Society has certain barriers in place, which it uses to enforce normative expressions of sexuality, through constructions of
taboo. These taboos, such as homosexuality or incest not only construct and accepted expression of sexuality and desire, but also negate all other expressions as illegitimate and even place shame and humiliation on their expression. The state in turn mirrors these values through formal means, such as state sanctioned relationships, through marriage and the establishment of LGBT rights. While, as Warner expressed, all individuals deviate in some way from the norm, the amount of shame increases with level of deviancy, known as the “hierarchy of shame”. This shame acts as a force of oppression, not only dictated what should not be, but what should be.

The idea of sexual deviance is in essence a problem of sexual difference. The struggle for recognition is ultimately a tale of coming to terms with difference (Benjamin 181). Benjamin articulates the expression of sexuality and difference in terms of the guilt that is associated with desire when there is a lack of recognition. She explains this in terms of the “Oedipus riddle,” where she describes the sense of guilt one experiences at shameful unconscious desire as being inevitable (Benjamin 141). Warner echoes this statement in his claim that only immutable, genetic sexuality is seen as legitimate, necessitating conformity to the established heteronormative values. All other expressions of sexuality are subject to scrutiny and judgment, which comprises the politics of sex and the shame associated with sex. He asks if sex and dignity are incompatible.

For homosexuals whose expression of sexuality counters the accepted norm, it is difficult to distinguish one’s identity from the shame of sexual behavior. He states: “The prevailing ideas of sexual identity being what they are […] stigma covers us all, at least in some contexts. As a consequence, people try to protect their identities by repudiating mere sex” (Warner 30). Not only is stigma difficult to separate from identity, it also
assigns an identity. Stigma assigns individuals to “a class, a recognizable kind of person,” regardless of an individual’s behavior (Warner 31). While individuals may attempt to separate stigma from sexuality, Warner illustrates that the two are deeply entwined. By attempting to challenge this shame based on one’s identity as being separate from sex causes the shame of sexual behavior to be reinforced. And because sexuality is viewed as being so closely linked to identity, one’s very identity is stigmatized. A problem with the official gay movement, as Warner asserts, is that it has attempted to separate the politics of identity from the politics of sex rather than directly confronting the sexual shame which assigns individuals an identity of stigma and shame (Warner 31). Therefore, it is not possible to reclaim identity by repudiating sex. Even if sexuality is not integral to identity, it is socially viewed to be integral to identity; meaning identity politics is inextricably linked with the politics of sexuality. The moralizing dialogue that individuals are subject to tells them that their sexuality must conform to the norm and that if it does not, that they fail to meet the idealized social identity. This selective legitimacy places a value on individual identity. There is one legitimate expression of sexuality and all other conceptions become suspect and taboo.

This concept of taboo is explored by Judith Butler in her analysis of Antigone, the daughter of Oedipus whose existence and her love for her brother eclipse traditional understandings of the bonds of kinship. Antigone is seen defiant not only in her actions against the edict of King Creon, but also her very existence and identity. As the product of an incestuous relationship, her very existence defines the socially accepted norms of kinship. As a result, her actions are understood within this context and her actions to bury her dead brother reinstate kinship as a form of scandal. Because Oedipus is both father
and brother – and in this sense, Oedipus and her brother Polyneices are interchangeable – her love for her brother is colored by her incestuous history. In essence, Antigone as a product of incest establishes “punishment [that] precedes crime” (Butler 77). It is further illustrated through her defiance of King Creon and her love for her brother. Her punishment is to live a life outside the bounds of accepted society. She is seen as in conflict with socially accepted forms of kinship and is labeled as deviant and marred by shame and humiliation. Her insolence towards King Creon and formal state edicts only serves to underline this defiance. She can therefore be understood as a subversive force, outside both the laws of kinship and the laws of the state.

Butler explores the concept of incest as taboo because it is a variation of the norm and therefore inspires revulsion and disgust. She states that this revulsion is similar in many ways to the humiliation society places upon homosexuals, who, because of their own variation from the norm, have a similar identity of shame (Butler 71). This horror is in essence “a moralized sexual horror” that is directed towards all taboo relationships because they defy the accepted sexual norms. Warner echoes this sentiment in his analysis of shame that accompanies sex. He argues that sexual shame is inherently political through the manner in which this shame’s moralizing dialogue imposes its will on individuals. The publicity of sex establishes gay sex as abnormal and therefore offensive to the public. The shame and taboo of homosexual relationships establishes itself through the assertion that it is to protect community values and legitimate concern of obscenity. This moralizing dialogue is entrenched through the state. Public concern about obscenity manifests in obscenity laws and social disapproval of alternative forms of relationships develops into state-sanctioned relationships through marriage. This
distribution mechanism of rights and privileges ultimately establishes an accepted norm and defines all others as shameful and taboo and defines an individual’s relationship with state power.

This expression of public concern exacts a very specific type of oppression upon the individuals it scrutinizes. State power has the ability to dictate not only behavior, but also the expression of individual identity. This action of repression is exacted in the name of protecting the community or traditional, legitimate values. Michael Warner addresses this phenomenon in his analysis of the New York City gay scene and the process of “zoning out sex” within the community. The process became apparent in 1998 after Rudy Guiliani’s zoning law limiting adult establishments. Warner argues that the law has many gray areas; meaning even gay bookstores were targeted (Warner 150). Despite the gay community feeling persecuted, Warner describes the law as popular with the left and right and labeled “a victory” (Warner 151). This aspect of the public culture of sex leaves individuals vulnerable for public scrutiny. Their sexuality is no longer their personal identity, but a public, political one. This inherently changes the nature of sex and the relationship individuals have with their own sexuality. Their sexuality is no longer their own. It is public concern over obscenity. It is a social issue. It is a political issue. The state has the power to legitimize and validate relationships. It does so, and regularly, through marriage. Marriage allows the state to regulate relationships through deciding who is allowed to marry and who is not (Warner 92). It is problematic not only because of the symbolism marriage carries through its culture of legitimacy and privilege: it is in essence state validation. Furthermore, this legitimization becomes entrenched as the only way to bring validation to a relationship once deemed shameful. As Lori Marso
illustrates, viewing marriage as a civil right is one way to afford individuals the protections provided by state institutions, but its reinforcement as a means to gain legitimacy renders “all other choices suspect” (Marso 152). This state sanctioning of both validation and shame sculpts the individual’s relationship with the state. Those who are denied state validation are not afforded state rights and protection. Rather, they are subject to state oppression and denial of personal identity.

Sexual identity and desire is closely linked with individual identity. A problem arises when this identity becomes subject to state regulation. This form of regulation and sanctioning can cause deep distress for individuals who feel their personal identity and relationships are invalidated by state power. This establishes the state not only as an oppressive force, but also a mirror for the social sphere, reflecting social hierarchy, gender divisions and traditional values regarding sexuality and class. In this manner, the state regulates not only behavior, but also an individual’s intrinsic identity. The social conceptions of sexuality and desire need to be re-imagined, as does the relationship between individuals and the state to promote a standard of dignity that protects the identity of citizens from state persecution.

V. Conclusion

The formation of an individual’s identity is deeply informed by social and political context. Human sexuality, which has both private and public dimensions, is not only informed, but also governed by the social and political context in which it forms. Social norms that govern the formation of individual sexual identity then become
reflected through the state as legal regulation of sexual expression. Feminist and queer theorists explore this development as to how it is related to accepted forms of sexual expression. Furthermore, that which is seen as a deviation from the norm is interpreted as shameful. Norms, which are socially constructed as an idealized expression of identity, demand conformity to them by virtue of their standard of the ideal. Anything less than this ideal is seen as being deficient. Therefore, there are several aspects to the relationship between politics, sexuality, and desire. These aspects range from individual sexual identity to social and political regulation to the adherence to a standard of normalcy. In this manner, the state becomes a dominant force not only in public life, but private life as well.

The implications of a standard of normalcy are vast. Not only do these social and political standards govern individual identity and expression, but they also govern social and political interaction between individuals. State institutions such as marriage dictate which individuals can enter into state-sanctioned marriages and receive the benefits that are associated with it. Understanding how socially accepted forms of sexuality inform political regulation of private life frames desire in a markedly political context.

This regulation sets the precedent for the establishment of the state as a tool of legal regulation of social issues. Therefore, it is unsurprising that many women turn to the state for the solution to issues like sexual violence. The following chapter explores the role of the state in preventing and protecting women from sexual violence, in addition to providing a legal framework for recourse. However, as will be explored, this establishes state power as a dominant force in the lives of women. This domination introduces a series of issues that raises a paradox of encoding rights for women in such a way that
they are defined by their vulnerability. Therefore, it is important to be cognizant of the
social and political relationships that formulate individual sexual identity and how this
identity is affected when the state becomes involved.
Chapter Two: Sexual Violence

I. Introduction

While individual sexual behavior is deeply informed by social and political contexts, the question remains of the extent to which the state should be involved in the personal lives of individuals. In terms of the formation of individual sexuality, the presence of the state acts as a regulating force dictating the adherence to prescribed heteronormative standards of behavior. However, this establishes the state as a regulating force for sexual behavior, setting a precedent for state involvement for issues such as sexual violence.

Yet it is uncertain whether or not the state should be involved in preventing sexual violence against women and how this would effectively be achieved. When encoding legal protection, a high level of specificity runs the risk of legally entrenching the status of victimization assigned to women. At the same time, gender-neutral laws that promote women as equals are constructed in vague terms that potentially allow crimes of sexual violence against women to perpetuate.

This chapter explores the dichotomy of encoding legal protection against women and whether or not the state is able to effectively protect women from the sexual violence they experience. Furthermore, it examines the role of state power and how viewing the state as a protector frames the relationship between women and the state in a very specific way. Feminist theorists Catherine MacKinnon and Wendy Brown present the possibilities associated with formulating legal protection against sexual violence. While MacKinnon advocates for encoding strict legal protection, Brown raises the issue of
politically and legally entrenching the relative vulnerability of women and what this would imply for the social and political status of women.

Understanding the nuances of theoretical and legal arguments for state involvement in preventing sexual violence is central to addressing the issue of violence against women. In regards to rights law and encoding protection, context matters. The language of law and how it sculpts both political and social lives of women defines the context within which crimes of sexual violence understood. This understanding is vital to preventing sexual violence against women and addressing paths of social, political, and legal recourse.

II. Theorizing Sexual Violence

It goes without saying that feminists agree that sexual violence is a terrible reality women face. However, questions remain over what constitutes this violence, what this violence means for the status of women, and who is responsible for preventing it. Resolving the questions regarding theoretical understandings of sexual violence has ramifications for women beyond theory and ultimately affects their lived experience. The understanding that develops from how sexual violence is assessed ultimately determines the manner in which this problem is remedied. Framing sexual violence and potentially viewing women as victimized by this violence defines the manner in which they can interact with political power to remedy their situation. Viewing women as being in a position of relative weakness or as lacking personal autonomy alters our perception of their ability to ameliorate their situation. Personal autonomy, or the ability to make decisions, defines what power is. When women are viewed as lacking this autonomy they
are acting from a position of relative powerlessness. Furthermore, because sexual violence is generally understood to be a crime committed on women by men, this power dynamic becomes a gendered one. As a result, this gendered power dynamic becomes understood as a relationship between relative female powerlessness and male power dominance. Dominant male power has the ability to eclipse the female perspective and establishes male political power. This dominant political power has the ability to remedy the reality of sexual violence or to perpetuate the subjugation of women and the manner in which this reality is approached is informed by social understandings of sexual violence. Therefore, as a society, our inherent understanding of sexual violence and what it means for women, men, and society as a whole, determines how we perceive the relative victimization of women relative to male state power.

Susan Brownmiller asserts that “[Rape] is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear” (Brownmiller 15). This line of thinking extends rape beyond the physical act of violation, to the assumption that rape defines political and societal relationships between men and women. It is this understanding that assigns men and women their social roles as victims and perpetrators, respectively. In Brownmiller’s line of thinking, the universal male has the power to consciously use rape and sexual violence as a tool for oppression by which he subjugates women. However, even if we accept this line of reasoning, we might still ask who is responsible for preventing it, or if its “universality” undermines the possibility for change.

By contrast, Katie Roiphe questions whether or not rape and sexual violence are representative of female oppression. She argues that women are do not require protection,
legal or otherwise, because they are not victims. While rejecting the understanding that sexual violence is indicative of oppression may be seen as undermining the ability to remedy sexual violence, it offers an alternative understanding and perspective to sexual violence. By rejecting a gendered view of socialized norms such that men are rapists and women are victims, Roiphe defines women as separate from their perceived identity as violable. This fundamentally removes gender hierarchy from social relations and by extension alters the understanding of sexual violence and how to respond to it.

Catherine MacKinnon advocates yet another perspective on sexual violence. According to MacKinnon:

> Sexual violence seems assimilated to the difference between the sexes, so a woman is not considered treated unequally when she is victimized [...] Women being defined as rapable, raping them doesn’t violate them; it merely treats them as women. (MacKinnon 2006: 107)

Here MacKinnon implies that women are defined as being rapable. Through being subjects of sexual violence, their identity is changed to fit the understanding that women are victims. The change in how female identity is viewed results in defining women as being rapable while men are defined as perpetrators. Because women are defined as rapable, rape becomes decriminalized. It is no longer a violation. This argument asserts that women are systemically oppressed as a group and that they are politically and socially defined by this oppression. Like Brownmiller, MacKinnon claims all men – universally – oppress all women.

However, in constructing this argument, MacKinnon herself is assigning a role to women. In her argument, she establishes women as victims and then uses it as the basis of her argument. Furthermore, MacKinnon’s definition of sexual violence against women
as both systematic and group based gives woman’s suffering a universality by which both women and men are defined by specific roles. Men, universally, are the oppressors while women are in need of protection. What does this understanding do for the identity of women? While MacKinnon may be voicing a genuine assessment of women’s oppression, the specific language she employs codifies who women are and who men are. Through MacKinnon’s construction, rigid roles are assigned: Women are victims. Men are oppressors.

While MacKinnon’s work is both powerful and compelling, it is compelling precisely because it is framed in such constrictive terms. MacKinnon paints both men and women with such a broad stroke that they are universally defined by the roles she constructs. While she acknowledges that there is stratification within gender, the strong assertion remains that individual identity is first gender, then race or class. This itself implies that roles are assigned from birth. Women are automatically victims because they are women. It is this stark assessment that Wendy Brown takes issue with. While MacKinnon seeks to frame a problem and propose solutions, Brown on the other hand seeks to reveal the multidimensional aspects to the construction of the female identity as victim.

Taking a different approach to understanding and theorizing female identity, Brown acknowledges the power of language and law that MacKinnon overlooks. Brown points out that “the more highly specified rights are as rights for women, the more likely they are to build that fence insofar as they are more likely to encode a definition of women” (Brown 2002: 422). In other words, by encoding a particular perspective, it becomes entrenched as the only accepted understanding to the extent that it becomes
definitive. MacKinnon’s definition of women would therefore be based solely on their identity as victims. As a result, all women are forever established and codified by their ability to be victimized. When rights are so specific as to address a particular condition, this condition is established as the reality. The identity of women is constructed to be “rapable”. Ultimately women’s rights are closely tied to their identities, and therefore subject to normative values. Women’s rights are defined within the context of their own victimization.

Yet Brown also acknowledges that this argument cuts both ways. While gender-specificity introduces a set of problems in establishing an identity for women, gender-neutrality does as well. As MacKinnon acknowledges, the more broad and gender-blind rights law is, the greater the probability that it will not be employed to the benefit of women. The greater the neutrality, the greater the likelihood that women’s needs will be eclipsed by male dominance. In effect, the vague aspect to gender-blind law permits a broader interpretation and allows for a dominant perspective to prevail without the possibility of legal recourse for alternative, subjugated views. In other words, MacKinnon argues that without strict legal protection for women, male political power will be able to dominate. Because the male perspective is seen as dominant, without paths to legal recourse, the female perspective will remain subjugated. Therefore, gender-neutrality also holds the potential for entrenching women as victims by perpetuating their oppression by the dominant male state.

Brown introduces a problem that may not be solvable. Her analysis presents a duality for women, each of which come with their own complications. The critique of MacKinnon’s argument for gender-specificity reveals that addressing male power is not
as simple as introducing stricter legal protection. However, MacKinnon’s argument that
gender neutrality allows for the perpetuation of male dominance remains. Therefore,
addressing the pervasive nature of this gendered division of power becomes more
complicated. Furthermore, Brown’s argument establishes the existence of multiple
perspectives. While MacKinnon speaks of women in universal terms, Brown asserts that
what oppresses one woman may be empowering to another (Brown 2002: 424). For
example, while one feminist perspective may understand pornography as sexually
oppressive, another may assert that it is sexually liberating. These competing feminist
perspectives introduce multiple ways of framing the issue of sexual violence. What does
it mean for women as a whole when one perspective is encoded while the other is not?
When speaking of women as universal, as MacKinnon does, one disallows the
consideration of race or class. As Brown articulates, is possible to be oppressed by
multiple forms of social power at once. Which form of oppression is acknowledged as
being the “most oppressive”? Furthermore, addressing multiple forms of oppression
sequentially overlooks the race or class within gender. One is not only oppressed by these
formations, but also defined by them. Therefore, it is important to recognize the
implications that arise from framing domination based on these identities.

Perhaps the complexities of sexual violence are far too complex to be
encompassed with one overarching theory. MacKinnon’s argument is so powerful
because it is so straightforward. When analyzing MacKinnon’s theories, it is an open-shut
case. It is so difficult to take issue with her assertions because they are so succinct.
However, the broad terms in which she discusses women introduces its own form of
oppression. Gender specificity establishes women as violable. The role of language
frames the manner in which we think about women, their identities, and their oppression. At the same time, Brown’s argument does not offer a solution. Women are therefore left with a dilemma of choosing between a broad understanding of female oppression with a limited solution, or a full understanding of female oppression without a clear solution at all. Ultimately, the reality of women’s lived experience may be too diverse to be encapsulated within current understandings of theorizing sexual violence.

III. Sexual Violence as Lived Experience

Wendy Brown and Catherine MacKinnon propose two sets of conclusions regarding interpreting sexual assault and its role in the lives of women. The fundamental disagreement is rooted in the identity of women as it is defined by patriarchal society and the victimization women experience because of it. While these two contrasting theories seemingly address the implications regarding applying theory to the lived experience of sexual violence, it is important to realize that there is no single version of female experience in regards to sexual violence. The diversity of women’s lived reality in relation to sexual violence may not be completely encompassed by the limitations of theoretical application. In many ways, the application of theory to the lives of women does not match the nuances of lived experience and its impact on women individually and socially.

To adequately theorize the lived experience of sexual violence, it must be recognized that context matters. It makes a difference whether one is discussing sexual violence on college campuses by individuals or perpetuated as state policy. Furthermore, within this scale of sexual violence, when discussing lived experience, one is discussing
more than the theoretical understanding of women, but the individual. Within women as individuals, there is a multidimensional aspect of race, class and ethnicity. This fundamentally changes the theoretical understanding of sexual violence because there is an aspect of diversity to female experience and our consideration of this diversity is limited by our application of theory. The distinctions between MacKinnon’s understanding of sexual violence versus Brown’s, for example, demonstrate that there is no singular, universal theory that addresses sexual violence. Therefore, our ability to understand the lived experience of women is determined by the kind of theory available to us.

One might discuss the aforementioned example of sexual violence on college campuses as one particular context. In this circumstance, a violation occurs between two individuals and the issue boils down to consent and circumstance. External factors such as alcohol or drugs add layers of complexity to understanding. Even with these factors there are further complications. Did the woman ingest these substances by choice? Does this change how we view the violation? Should it? Katie Roiphe questions whether or not women can even be seen as victims in this context. She asserts that women are responsible for their own alcohol and drug consumption, that as adults they are capable of being responsible for their own well-being. She dismisses the need for active consent as infantilizing, claiming:

- this apparently practical, apparently clinical proscription cloaks retrograde assumptions about the way men and women experience sex. The idea that only an explicit yes means yes proposes that women, like children, have trouble communicating what they want (Roiphe 62).
While in many ways Roiphe can be seen as dismissing a legitimate crisis on college campuses, she also introduces an interesting aspect to sexual violence. Her attack on feminist orthodoxy suggests that contemporary theoretical understandings of sexual violence may be limiting to the individual female identity. Wendy Brown speaks of the complications that arise from encoding one perspective over another. Does encoding the perspective that women are victims even within their own personal relations with the opposite sex limit their own sexuality, as Roiphe seems to assert? Not only does this perspective potentially limit what Roiphe refers to as “sexual ethos,” or the socially accepted expression of sexuality, but it also places women in a role of victims unable to assert their own desires.

Yet at the same time, Roiphe’s argument does not erase the violence that women experience. Roiphe overlooks the reality of sexual violence on campus because it does not meet her understanding of sexual violence as being forcibly violent. Simply because sexual violence occurs at a fraternity party or in a dorm room, does not change that the lived experience is characterized by the individual as sexual assault. Through arguing against this view, Roiphe gives us the reassurance that women are more than victims, but her perspective diminishes and belittles the complexity of the reality that women experience. Furthermore, even if Roiphe prefers to ignore the widespread oppression women experience, it does not alter the fact that even at the individual level, women are defined by their social roles. Race, class and context matter in characterizing sexual violence for individuals. Male dominance and the presence of masculinity is a factor even on college campuses, as are the factors of race and class. These factors are palpable presences in individual interaction and define the nature of social relationships between
individuals. As a result, the understanding of rape in this context is far more complex than her analysis would imply. Therefore, the remaining issue becomes how to address differences in scale regarding sexual violence and how to adequately theorize the lived experience of sexual violence at the individual level.

A singular theory cannot be perfectly implemented in instances of lived experience, because the universal application of one theory does not encapsulate the multiple individual understandings of women in relation to sexual violence, including those that take on highly symbolic meaning. Theorist Kristin Bumiller discusses the implications of sexual violence when these acts take on symbolic significance in society. She cites the Central Park jogger case as an example of “expressive justice,” where the case became highly publicized. In this process, the act of sexual violence and the trial that followed became more about public spectacle than true “administrative justice” which would seek to find a legitimate form of redress. The legal ramifications of the case, which will largely be discussed later, had more to do with the symbolic portrayal of the victim and the perpetrators than responding to demands for justice. This powerful symbolism was derived largely through the racially charged dimension of the case and the depiction of the white woman who had been sexually assaulted by a group of minority teens.

In relation to theorizing sexual violence, the portrayal of the victim was very much one of constructed identity. During the trial, the victim was constructed both medically and legally to become a “terrain of verifiability” (Bumiller 46). The individual identity of the woman was separated from her body and the two were seen as separate. The crime becomes one of pure physical violation and the individual is no longer given a voice but is instead defined by the physical events that took place. Through the legal
process of attempting to establish the guilt of the minority teens “beyond a reasonable
doubt,” the individual identity and experience of the woman was viewed as far less
consequential than the evidence of the assault that her body could provide.

At the same time, during the Central Park Jogger case, the victim was given an
intensely symbolic role, due in part to the context of the events that transpired. The
woman, while going on her daily morning jog, had been attacked and sexually assaulted.
A group of minority teens were charged with the crime. Because the victim was a young,
white woman who has been sexually assaulted by a group of Black and Hispanic
teenagers, the case took on a tone of racial transgression. This perspective was
constructed in part through the effort of the prosecutor, Elizabeth Lederer, who built a
racial and sexual narrative to the crime to frame the woman as a symbol of violated
innocence. In the process of the case, the defendants had been framed as specifically
targeting a white woman, evoking racially charged images.

The iconic representation of the victim as a “white symbol” brings in a morally
symbolic aspect to the case that lends itself to racialized understandings of theories on
sexual violence. Yet the racial aspect to sexual violence is often seen as secondary (if it is
addressed at all) to the gendered aspect of the crime. However, in the case of the Central
Park jogger, the issue of race was what lent the case to such inflated public spectacle. Yet
at the same time, it was not only the racial aspect that was the central aspect to the case,
but the role both race and gender played together. Race and gender became entwined
throughout the course of the case because of the emotionally powerful image of a white
woman being victimized by minority men. This evocative imagery stirred racially
charged sentiment, though this aspect to the case was largely ignored throughout the
course of the trial. As a result, the case became more of a political opportunity for publicity and catharsis than a means to respond to the need for justice.

Yet it is unclear the extent to which race had a role in the actual crime itself. Based on available testimony, it was speculated that the sexual assault of the white jogger was largely a crime of opportunity and not directed from a position of racial hatred. Later, it became apparent that the minority teens were not even guilty for the crime they were charged with, yet they spent over a decade in jail for it. Therefore, a dichotomy exists between the actual events that transpired and the social understanding of what these events mean. In this, the victim is robbed of her individual identity because of the symbolic portrayal and the justice that is later carried out is of questionable merit due to a dubious understanding of the crime.

As a result of the breakdown between actual events and how these events were portrayed, the crime and the trial can be seen largely as the general public imposing socialized understandings of sexual violence and race relations. Because the case itself was so heavily constructed, it suggests that there may be a difference between theorized understandings of what sexual violence means and how this sexual violence is portrayed and understood in the context of society. In this particular incident, the case being constructed as highly racial suggests there exist certain nuances to sexual violence that are largely manufactured – in this case, these nuances were based largely in historical racism and social understandings of black men as sexually violent and intimidating – clouding our understanding of the relationship between sexual violence, and the socially defined role of women.
The duality of theoretical and societal understandings of sexual violence does not diminish even in different contexts. Sexual violence can range from the individual to the systematic, such as during the Serbian-Bosnian conflict, which resulted in the mass violation of thousands of women. While theory may frame women as being universally oppressed through attempting to conceptualize a singular female perspective, this still differs from systematic sexual violence in the context of state conflict as it is actually experienced by women. The context of sexual violence during war gives the crime a unique dimension that does not exist during times of peace, even when discussing rape as a systematic tool of oppression not only because it involves a state actor, but also because sexual violence becomes a tool to undermine an entire ethnic group.

Widespread rape is not the same as systematic rape during war because of the context of the conflict. Widespread rape on an individual level does represent individual violation and vulnerability, but this understanding changes during wartime. Rape as a tool for war is not only an individual violation, but also a societal one. Despite being removed from the fighting women can still be targeted as part of a concentrated war effort. However, unlike men they have no substantive way to defend themselves from soldiers passing through conquered territory. Women are removed from the violence of battle because they are socially defined as vulnerable. Because they are seen as vulnerable, they are targeted for exploitation. This understanding of female vulnerability plays a direct role in their exploitation.

Therefore, sexual violence during wartime is directed at women not just individually but at the societal level where all women of a particular group are targeted because they are perceived as being uniquely vulnerable. Not only are they defined as
individually vulnerable, but socially as well in the sense that their violation also diminishes the “honor” of their husbands and families. Furthermore, through rape and forced impregnation, a wedge is driven through the society and undermines the social stability of women and their communities. As a result, sexual violence becomes not only a weapon of intimidation but also an enacted war policy with the intent to destroy an entire community. When rape becomes a policy in this manner, it is not only the individual, systematic act of rape, but also an organized system to dehumanize an entire population. Yet this process of dehumanization is not only limited to women. It is socially pervasive and undermines the community as a whole, men included. Furthermore, there are even more pervasive implications when rape is understood as a form of violence that can be exacted not only on women, but also on men. Sexual violence does not only originate from a gendered understanding of male-female relations. From this nuanced understanding of sexual violence, one is forced to acknowledge that there exists a specific and distinct ethnic dimension to rape and that this dimension is equally pervasive as the traditional gendered understanding. This form of sexual violence has very powerful social implications for women. When women are targeted in this manner, it later becomes impossible for them to rejoin their community due to pregnancy, psychological and physical trauma and social stigma. All of these factors contribute to the systematic elimination of an ethnic group.

When discussing sexual violence as a tool of violence against an ethnic group, it is not only women who are victimized. This in turn alters our perception of rape, its importance and what it means for a community as a whole. This particular type of sexual violence further differs from certain theoretical understandings of rape because sexual
violence on an individual level differs from rape as a systematic war effort. This systemized violation is:

rape under control. [...] It is rape as an instrument of forced exile, to make you leave your home and never want to come back. It is also rape to be seen and heard by others: rape as spectacle. It is the rape of misogyny liberated by xenophobia and unleashed by official command. It is rape to shatter a people, to drive a wedge through a community to destroy it. It is rape as genocide (MacKinnon 2006: 38).

Realizing that rape can also be used as a tool towards genocide alters the theoretical understanding of what rape is and what it can do and reveals that there is no singular theoretical understanding of sexual violence. It is not only a tool to oppress women, but society as a whole. Sexual violence can be used as a tool to oppress an entire ethnic group. This interpretation of sexual violence does not eclipse the suffering experienced by women, but it does transform how it is understood. In this context, women become a target to undermine an entire ethnic group. Women are seen as the means to target an ethnic group because they are defined as vulnerable. It is because of this understanding that women are systematically targeted as a means to genocide. Therefore, while MacKinnon recognizes that rape becomes a tool for ethnic cleansing, she does not articulate that the identities that are violated are both individual and collective. Women who are targeted for sexual violence as a means to ethnic cleansing are twice oppressed: both racially and through gender. Wendy Brown expands upon this idea and asserts that it is in fact impossible to separate race and gender. Furthermore, to try to do so is to ignore the multiple discourses that define women’s lived experiences (Brown 2002: 427). The intersection of these modes of oppression defines the societal role of women and our
understanding of women’s interaction with male society. Not only are women systematically oppressed by society, they can be targeted as the means to undermine it. They are ascribed the role of the most vulnerable and their individual violation is defined by its impact on the group as a whole.

During the Bosnian-Serbian conflict, sexual violence clearly became a part of a strategy of ethnic cleansing. Through rape, the Serbs were able to oppress an entire people. It is generally accepted that rape can become a tool through which men oppress women. However the Bosnian-Serbian conflict reveals that the violation of women can be used in such a manner that enables men to oppress other men. Therefore, in this context, rape is not only about individual violation, but collective violation as well. By targeting the women of an ethnic group, that entire ethnic group is targeted. Women are defined as being vulnerable and in turn become the targeted victims of ethnic cleansing. This differs from other understandings of rape as being responsible for the oppression of women. It instead suggests that rape is not only sexual; it is ethnic. Sexual violence can be used as a means to target an entire population through its victimization. The two concepts are entwined and rape becomes defined more by the violence of the act as it is directed at a group than by its sexual nature. As a result, women are not targeted just for being women. They are targeted because they are vulnerable. They are constructed as vulnerable not only because of their gender, but because of their collective and social identities.

Yet to unequivocally accept this understanding of sexual violence is to overlook the other half of the story. Feminist Cynthia Enloe argues that just as women are socially constructed, so too are men. Male identity is socially defined in much the same way
female identity is. While women are assigned the role of victim, men are assigned the role of oppressor and expected to conform to a socially constructed masculine ideal. As such, men can be seen as stratified in much the same way women are. Acknowledging this reality fundamentally changes how we view sexual violence. Not all men in the Bosnian conflict took up arms. Not all men committed murder. Not all men committed egregious acts of sexual violence. What does it mean to understand that maleness is not always the primary factor in male action? Not all men, even those who have been indoctrinated into military culture, commit rape (Enloe 111). The implied affect of socialization adds an ungendered aspect to gender violence. While sexual violence as a demonstration of masculine traits is informed by social understandings of gender, the violence deviates from MacKinnon’s assertion that rape is something that all men commit against all women. Sexual violence is ultimately a crime of oppression, indicative of power relations. During war, these power relations become defined through militarized gender roles. To define all women as victims and all men as oppressors limits this understanding of the affect of military socialization and what it means for male-female relations.

Understanding the variation in context of sexual violence changes not only the theoretical understanding of its underlying causes but also our perspective on how to remedy the situation. In light of the variation in how sexual violence is employed to subjugate women, alter their societal roles, and undermine their ethnic groups, how does one codify legal protection? When choosing how to codify protection, perspective matters. Not only does this codification seek to redress women’s vulnerability, but it also entrenches societal understanding of what sexual violence is, its affect on women and
how it defines the role of women in society. If no one theoretical understanding of sexual violence can encapsulate the multiple female – and male – perspectives and experiences in regards to sexual violence, how can we construct singular, universal laws to address it?

IV. Encoding Protection

It is generally socially understood that the attainment of justice is a sought ideal. However there remains the question of who is ultimately responsible for upholding this ideal and defending it when it is violated. In regards to women’s rights, it is widely debated whether or not the state should be responsible for upholding the ideals of gender equality within jurisprudence. While the state can be seen as protector, it can also be seen as culpable for the injustices suffered by women. Furthermore, in terms of encoding protection, the perspectives of gendered rights beg the question of what it means to codify one perspective over all others. In a sense, recognizing one perspective over another inherently limits competing perspectives and bounds the agency that women have in responding to their disenfranchised reality. However, even in terms of carrying out this justice, there remains the issue of how equitable encoding this protection is. While justice holds the possibility for remedying the condition of women, it also holds the possibility of empty, symbolic justice in which women receive false recourse for their grievances. Given the diversity of theoretical perspectives on safeguarding women’s rights, it is unclear how to codify these multiple viewpoints in order to offer genuine protection from the violation of their inherent rights as citizens.
Gender inequality itself can be seen as the manifestation of a difference in political power between men and women. When women are deprived of their basic rights, it is demonstrated in their lack of political recourse. According to MacKinnon, this would necessitate state involvement, as the state is the seat of political power. The base logic is that there exists a political basis to the sexual inequality experienced by women and that this in turn calls for an active state role:

Why isn’t this political? The abuse is neither random nor individual. [...] It is still systematic and group based. It defines the quality of community life and is defined by the distribution of power in society. It would seem that something is not considered political if it is done to women by men, especially if it is considered to be sex (MacKinnon 2006: 22).

Here MacKinnon articulates how male privilege in society is reflected in legal norms. By arguing that sexuality, when exploited, is not a legal violation, she asserts that male power is established as political power. This exploitation directly results in the subjugation of women and their limited path of recourse. However, despite the implication that the male state is responsible for female oppression, she is of the opinion that justice is found through state means and encoding legal protection. Ultimately, MacKinnon hopes to seek state involvement in order to codify this protection. However, the issue arises whether or not this understanding of sexual violence necessitates state involvement. When sexual violence is understood as something committed by men towards women, the crime is defined as a gender conflict, which would lend itself more to a societal understanding of sexual violence. However, when one acknowledges that the gendered aspect of sexual violence is based in the relative political powerlessness of
women, the oppression of “all women by all men” becomes political. Once one acknowledges that in this manner, the state facilitates and perpetuates the oppression of women, it begs the question if seeking solutions from the state truly advances the cause of women. The constructed reality of women occurs both socially and politically. MacKinnon counters this through the assertion that “this is the law of pornography, the law of battered women’s self-defense, the law of rape. Why isn’t this state involvement?” (MacKinnon 2006: 24). Given that it is implied that the legal system exists to maintain the ideal of justice, viewing the law as the solution for recourse seems almost intuitive. However while, as MacKinnon states, it is undoubtedly state involvement, this does not necessarily frame the state as the savior of women from male oppression. While the state can be the cause of women’s oppression, MacKinnon argues that the state is ultimately responsible for upholding their rights. It is this responsibility of the state towards its female citizens that necessitates gender specific protection. However, despite the compelling nature of MacKinnon’s argument, it is not certain that women should be turning to the state. The political vulnerability of women and their relative powerlessness to men casts doubt on whether or not women should be regarding the state as responsible for their protection at all. If the nature of sexual violence establishes women as victims and in a position of political powerless towards male dominance, the state in facilitates this subjugation. Therefore, the productive solution may not be to seek political recourse from the institution that facilitates female oppression. MacKinnon even declares, “Every nation has its fascists; the question is, are they running your government?” (MacKinnon 2006: 172). It is curious that with her stark assessment of state leadership that she would rally so heavily for state involvement in rectifying the violence suffered by women.
By contrast, Wendy Brown takes the viewpoint that sexual violence cannot necessarily be rectified by the state because the state is complicit in this oppression. While she agrees with MacKinnon that the state may be responsible for the protection of women, she asserts that women cannot reasonably go to the state for solving the issue of sexual violence. However, this is not due only to the doubt over whether or not the state can be viewed as responsible for the protection of women’s rights. She argues that women are uniquely oppressed because socially constructed norms are formally recognized by a patriarchal state, which has the power to legally encode the societal role of women. Going to the state to codify protection holds the possibility for ascribing women to a victimized role and entrenching the pre-existing social conditions that inherently lead to the sexual violence against women. In Wendy Brown’s view, the state can further facilitate oppression when one perspective is encoded over another. In this sense, women may not be able to achieve freedom through going to the male state. Furthermore, she asserts that the reversal of suffering is not freedom (Brown 7). Encoding legal protection may act as a means to distribute political power, but it does not necessarily offer recourse from state oppression. Societal norms play a critical role in determining who receives political power and who is subjugated by it. Seeking state solutions to female oppression equates to the “initial figurations of freedom [that] are inevitably reactionary in the sense of emerging in reaction to perceived injuries or constraints of a regime from within its own terms” (Brown 7). The state establishes the terms by which it interacts with women and their suffering. Women are already interacting with state power from a position of relative powerlessness and vulnerability. Seeking justice through the state will not succeed in solving the issue of female
oppression; it can only succeed in reconstituting it by acknowledging one perspective over another.

When women negotiate with the state, they negotiate on the state’s terms. They operate under state understanding of women’s suffering and oppression. Women face the challenge of confronting their own oppression through the state because the state can be seen as complicit – or even culpable – for the subjugation of women in society. The state has the power to sculpt reality. MacKinnon acknowledges that it is male definition that sculpts reality (MacKinnon 1991: 224). The male state sculpts and entrenches societal norms. The law codifies these norms and establishes them as fact. Therefore, seeking state protection holds the very real possibility of reinforcing women’s position as victims. Ultimately, the social and political reality of women is a constructed one. As a result, the overlying issue is not only the theoretical underlying causes of female oppression but also how to address the lived reality of sexual violence and how to codify protection from it.

However, codifying protection from sexual violence comes with its own set of complications. We could accept MacKinnon’s line of thinking that gender-specificity offers a more comprehensive protection for women. Her argument is that by recognizing the specific ways in which women have their rights denied to them, women would have a clear path of recourse. As such, women would theoretically be able to hold the state accountable for the injustices suffered and legally hold their oppressors accountable. Yet even if we assume that the state can theoretically be held accountable for the injustices suffered by women, it cannot be ignored that gender-specificity also potentially limits the possibility for equality. What does it mean to encode this gender-specific perspective? Especially in codifying legal protection, language matters. When marrying a gender-
specific perspective with jurisprudence, an implied societal role is assigned to women. Therefore, in a sense, women are assigned to a state of vulnerability, which then defines their identity as women.

This perspective is discussed by Wendy Brown as she addresses the implications of encoding one female perspective over another. According to her analysis, both possibilities introduce complications. While gender-neutral laws can establish the persistence of female exploitation by masculine state power, gender-specific laws define women as violable. Furthermore, she asks the question of what it means to encode one female perspective over another, thereby discounting the ignored perspective. As her analysis reveals, there is no singular female perspective. What one woman finds oppressive, such as pornography, another woman may find liberating. By choosing to encode one of these perspectives would this not, in a sense, deprive these women of their own autonomy? While entrenching one perspective may liberate and establish one view, it obscures all others because it has been acknowledged as the primary perspective. As a result, it may be impossible to encode a gender-specific protection that acknowledges and respects multiple female perspectives.

Even in encoding these protections, the state capacity to resolve issues is limited. Ultimately, the state is faced with the challenge to create order and respond to demands for justice while maintaining its own position of power. This lends itself to two distinct possibilities. One is the possibility for what Kristin Bumiller calls “administrative justice,” or true justice that serves the victims and solves the problem as it is presented. The other possibility is “expressive justice,” which is classified more as a political opportunity for publicity than a true form of redress. In this form of justice, the legal
system is little more than a public spectacle by virtue of its largely symbolic nature. Bumiller asserts that expressive justice is the natural response of the state when faced with demands for justice and that the state seeks to “reassure an anxious public by demonstrating its ability to protect citizens” (Bumiller 36). In this way, the state is able to maintain its monopoly of power over gender inequality and gender-based crimes. By mounting a symbolic campaign for justice, the state is able to legitimate its own power through a false demonstration of legal capacity. While by contrast, administrative justice does offer the potential for legitimate redress of social inequalities, the justice system is still operating within a socially inequitable society. As a result, the justice that is carried out will be inherently limited by the realities of the society within which it operates.

When demanding justice for gender inequalities, women should be aware of the dual nature of the state. While the state can be seen as protector, it can also embody the role of oppressive male power. Ultimately, the state represents a problem of power. The exertion of this power, and by extension the oppression of women, is closely tied to maintaining this state power. As a result, it may not be possible to entrust female interests to a state that represents masculine power. Therefore, while the state may be seen as responsible for upholding and defending the rights of its citizens, its inherently unequal structure suggests that this struggle for equality may have to occur outside the political realm as well as within it.
V. Conclusion

The lived experience of women is very much related to the conceptual understandings of social and political dimensions of sexual violence. When confronting the reality of sexual violence, it is important to consider how our theoretical understanding of male-female relationships and the role of the state inform how we view solutions to sexual violence.

Within modern contexts, there are two primary conclusions regarding interpreting sexual assault and its role in the lives of women. The conclusion advocated by Catherine MacKinnon calls for gender specificity, rigorously revising the law to specifically address the vulnerability of women. However, Wendy Brown counters this conclusion with the concept that gender specificity establishes a rigid understanding of female vulnerability and establishes the state as a dominant power in the lives of women. This intrusive state force defines the identity of women through legal regulations and understandings. Therefore, a paradox emerges in regards to legally encoding protection.

This paradox will be explored in the following chapter, which analyzes the manner in which political and social responses to sexual violence and gender inequality defines gender roles between men and women. While there is a need for justice, problems arise when establishing the state as the final arbiter of justice. This state power defines the private lives of women and even their socially understood personal identities. Therefore, encoding legal protection does not perfectly address the needs or concerns of women and does not offer recourse from state oppression. The state establishes the terms through which it negotiates with women. In this sense, women are negotiating from a
position of relative vulnerability. Seeking justice in the state does not perfectly solve the
issue of female oppression, though as will be explored, does present women with a
number of difficult choices when it comes to encoding protection in a way to successfully
address the oppression experienced by women.
Chapter Three: The Law of Equality – Feminist Jurisprudence

I. Introduction

Previous chapters discussed the role of the state in regards to the legitimization of sexuality and desire and addressing sexual violence. This chapter addresses the larger issue of state power in upholding citizen’s rights and establishing an equitable society. It is impossible to imagine alternative expressions of state power without a fundamental understanding of how state power constructs or hinders the evolution of an equitable society. MacKinnon explores this issue in what she coins “feminist jurisprudence”. Feminist legal theory acknowledges that in many ways, the law has been instrumental in the historical subjugation of women. Feminist jurisprudence is an exploration in reworking the law and its approach to gender and how the formation of concrete laws can advance the rights of women.

The relationship between sexuality and state power plays out in a number of ways ranging from obscenity laws to regulating prostitution and pornography. The manner in which the state regulates these expressions codifies and entrenches heteronormative values. Therefore, the relationship between the state and equality becomes a problem of power. Political power can be used both for protection and oppression and there are significant limits on the language of rights to democratic ends.

As such, encoding equality is far more nuanced than MacKinnon’s concrete argument would suggest. Theorists such as Wendy Brown and Judith Butler explore the nature of political power and the implications of a regulating political force. The process of encoding gender equality in many ways establishes female dependence on the state for
protection. This dependence changes our understanding of social and political life and the extent to which the state promotes the rights of women or emphasizes the normative values that have historically prevented women from achieving equality with men. Furthermore, this understanding deconstructs notions of a neutral and objective state power that upholds a universal standard of individual rights.

Feminist jurisprudence as it is framed by MacKinnon deals with codifying protection. This is given context by theoretical rights issues in addition to national woman’s rights issues such as the Sears Case. The complications of legal redress are aptly demonstrated through the 1984 Sears Case, which dealt with a discrimination claim. However, counter-claims asserted that a lack of women in high-paying positions was due to their personal choice, and not any discrimination on the part of Sears. While the case itself was a fairly straightforward discrimination complaint, it raised a host of complicated issues which divided the feminist community. This division points at not only the surface issue of gender discrimination, but the interpretation of gender roles and how to legally address these social distinctions. Therefore, the formative question that is raised is whether or not the legal code should incorporate social and cultural differences between individuals.

The tension between whether or not to incorporate difference into gender equality has been demonstrated in previous sections and has been a largely divisive issue within the topic of feminist jurisprudence. The theoretical and political dimensions of the debate played out in the Sears trial through testimony that asserted that women were unlikely to prefer or qualify for commission sales positions (Milkman 375). While it was also argued that women’s interests are ultimately formed by what is made available to them, the
claim that Sears had denied women opportunities ultimately failed. Even though the court ruling agreed with the claim that women’s interests are best served by law that treats men and women as equal. However, controversy remained from the assertion that gender inequality arises from sexual difference. The following argument was that public policy should therefore take these differences into account when sculpting the law. Yet despite this argument, examples of the theoretical divide on articulating rights demonstrate that the reality is not so simple. Even during the controversial Sears Case, feminist thinkers and activists submitted briefs supporting both sides of the issue. The divisive force of the Sears Case alone within the feminist community demonstrate the difficulties and nuances involved with theorizing gender equality and conceptualizing a concrete way to address the legal rights of women.

Despite the complications associated with encoding legal rights, several feminist thinkers recognize the need for feminist jurisprudence and what political philosopher Kenneth Baynes refers to as “the abstract universal” simultaneously. That is to say that the ultimate goal is to balance both concrete protection and the understanding of vague universal ideals. By striking and maintaining this balance, an understanding of justice and how it relates to political and social power emerges. While the state holds the power to institute protection of woman’s rights, it is also the mechanism for the political and social subjugation of women.

II. Political Power

Rights can be thought of in several ways. While they can be seen as protection and resistance from state oppression, they can also be complicit in what Kenneth Baynes
coins “the expansion of disciplinary power” (Baynes 453). The manner in which rights are constructed enforces state power as the arbiter of justice and as responsible for the articulation of civil liberties. Furthermore it is the very existence of the state that allows for the legal promotion of social and political rights. Therefore, rights and liberties have a markedly political dimension in that they rely on political recognition for their existence. Rights are seen as primarily a function of an individual’s inherent liberties outside the realm of politics. They are seen as de-politicized and inherent, yet they remain deeply interwoven into politics. Despite being seen as natural, rights are intensely political because they rely on the affirmation of the political community for their recognition (Baynes 457). Because of this deeply political link, rights are both political and social yet the institutionalization of rights comes with many limitations. There is a “sharp opposition between the concrete particular and the abstract universal” (Baynes 459). This is the conflict one is faced with regarding the law of equality, and more specifically, gender specificity regarding rights law.

This sentiment is echoed by Wendy Brown when she states that rights can “serve as mitigation – but not a resolution – of subordinating powers” (Brown 2002: 422). While rights are a function of social and political power, the defense of individual rights does not truly eclipse state power. In many ways, state power is actually established through their defense. To establish political power as responsible for upholding rights entrenches the state as a dominant force. Therefore, understanding this dominant political power as representing male power establishes the political subjugation of women.

As discussed earlier, the domination of women is both politically and socially constructed. For example, political and social oppression can be seen as originating from
sexual difference. As a result, women have been historically denied equality with men. Therefore, male political power is not only politically and socially understood; it is a historical construct with female identity being eclipsed by the male state. Male and female differences, to an extent, are “consolidated through the ontological disavowal of certain activities, vulnerabilities, and labor” and can be culminated through “their displacement onto women” (Brown 2002: 429). Wendy Brown analyzes the extent to which this division is oriented towards the subjugation of women. She states that in light of this male-female dynamic, gender specific rights can have the affect of reinforcing traditional conceptions of gender identity. In this way, masculine power is further entrenched and the female experience is marginalized, whether that experience is sexual assault or motherhood.

Given this balance between male and female power, it is important to consider what ideological concepts like freedom and justice would look like, especially within pre-constituted expressions and organizations of state power. For example, liberal defenders of democracy may assert that this particular form of governance is freedom from oppression and encroachment of individual rights. However, even democracy is simply another way in which political power is distributed (Brown 1995: 5). While progressive pushes have pressured the state to safeguard the rights of the socially disadvantaged, the state still fundamentally represents a problem of power. Ultimately, state interests dominate and the political order that facilitates freedom still comes with rules, regulations, and domination.

For women who have been subjugated by a dominant male state, this poses a unique problem. Given the power of the state, legal protection in many ways codifies the
very domination that it aims to prevent. In this sense, justice becomes more about punishment against perpetrators than about rectifying the disenfranchised position of women. Ultimately, women may be in need of greater social equality and protection than the legal protection that is capable of reinforcing state power.

In this manner, sexual inequality is pervasive, and according to MacKinnon, may be universal (MacKinnon 1989: 105). Female powerlessness relative to male political power is defined by the gendered social system that reinforces their lack of individual autonomy. In this dynamic, the personal is political. The relative powerlessness in woman’s personal life is comparable to her relative powerlessness in her public life. The social meanings of gender and sex define gender inequality. Male power is the power to define and enforce these inequalities through the aggressive male sexual role, cultural male dominance, and the social understanding that masculinity is synonymous with power (MacKinnon 1989: 127). Female political powerlessness is demonstrated through their lack of choice and their inability to negotiate their own identities, which are defined as a function of their biology. If political power can be understood as the power of choice, women are subject to the male domination that deprives them of personal choice, and by extension political power. Gender becomes “a social system that divides power” (MacKinnon 1989: 160). As such, gender is inherently a political system.

The relative social powerlessness of women is therefore translated as their relative political powerlessness. Inequality becomes not only a social issue, but also a political and legal one. According to MacKinnon, in legal terms the state is male through its adoption of “the standpoint of male power on the relation between law and society” (MacKinnon 1989: 163). In other words, the status quo of male and female power
relations is maintained through state legislation and the legal legitimization of socially constructed normative values. State power is embodied through law and in this manner, state power becomes a male, oppressive force. This embodiment protects male power through reinforcing existing male control over women and protecting the status quo.

Given the role of the state in reinforcing male power, the issue then becomes how to confront gender inequality. Gender inequality is both socially and politically constructed and reduces women to their socially imposed identities originating from sexual difference. However, the protection or expansion of women’s rights is a dubious solution when considering the nature of state power. Through turning to the state to remedy woman’s relative inequality, its power is reinforced, as is its role as a disciplinary power. Viewing the state as the arbiter of justice is to vest it with political power. Political power, which is in many way masculine, jeopardizes potential paths of recourse for women. This political powerlessness is demonstrated through historical male dominance and viewing masculinity to be synonymous with power while women are deprived of personal autonomy as a result of biological differences. The political system of gender facilitates sexual inequality. The lives of women are defined by this division of power, and state legislation defends these norms. Therefore, the question remains of how to address how sexuality plays a role in political power and how to encode equality given the nature of state power.
III. Sexuality and State Power

The formation of gender hierarchy can be seen as having its roots in sexual difference. Difference becomes translated as dominance, politicizing sexual identity. In essence, this phenomenon of difference as dominance serves as an enforcement mechanism for male dominance by reinforcing traditional normative values (MacKinnon 1989: 216). Male dominance is both social and political and serves as the basis for sexual inequality. Therefore, it is important to consider this relationship between masculine power and the state when conceptualizing the laws of gender equality. When the state constructs law, it not only constructs and enforces individual rights, but also accepted norms. This idea of codifying heteronormative values was explored earlier through Michael Warner’s analysis of sexual variance and sexual shame. However, Catherine MacKinnon analyzes the role of the state in outlawing the sexual domination of women - through its expression of pornography and prostitution - as a means to undermine the subjugation of women. According to her conceptualization of state power, sexuality is central to dominance. The social construction of female sexuality and the sexual dominance of women are later translated into the general political subordination of women. Yet, as analyses by Wendy Brown demonstrate, her version of encoding equality comes with its own set of implications, demonstrating the complexity of the relationship between the state and individual rights and identity.

In this context, sexuality both constructs and is constructed by power. The social interactions between genders are power relations that are constituted as political. They are political because they reflect the authority of male dominance. In this way, “sexuality
“[...] is a form of power” (MacKinnon 1989: 113). Individuals are divided and defined by gender and the imposition of this identity constitutes gender inequality. The relative powerlessness of women defines sexual relations between men and women. Pornography is a process through which woman’s sexuality is exploited and sold. Prostitution is a process through which women become objectified through their physical bodies being bought and sold for sex. The existence of both of these forms of oppression codifies and perpetuates forms of behavior between men and women. According to MacKinnon, pornography contributes to the attitudes and behaviors of discrimination.

If sexuality is constructed, then pornography, which exploits sexuality, is part of that construct. This, by extension, makes pornography implicitly political. When sex and pornography become political, they become a matter of hierarchy and power. This would suggest that the issue of pornography is a state issue. However, because political power is understood as being male by virtue of masculine authority, the state becomes an oppressive force that reinforces the sexual exploitation of women. According to MacKinnon’s argument, this oppression manifests in a number of ways. She argues that because pornography is politically accepted and not functionally illegal, the state is giving its tacit approval of its existence. This blurs the line between female victimization and female identity (MacKinnon 1989: 113). Woman becomes synonymous with her violability. She becomes an object to be used and acquired. This not only establishes sexual exploitation as acceptable, but supports its perpetuation. Because women are sexually objectified, a social understanding of sex and gender relations is being imposed upon them. This constitutes women as sexually available for men and in turn, defined as sexually violable.
Not only does pornography define female sexuality and identity, it also establishes the state and masculine political power as an oppressive, exploitative force. That state, in a sense, serves male interests. However, the question remains what the role of the state is in sexual politics. Law regarding sex and obscenity aims to control the public image of sex. However, even if pornography is publicly repudiated, it remains a good for private consumption. Furthermore, pornography is often protection as a right to sexual expression. In this manner, the state “preserves both the value and the ability to get what it purports to devalue and restrict access to” (MacKinnon 1989: 214). Even with obscenity law, pornography remains an accepted and legitimate practice. This provides state authorization for pornography as an accepted reality. This, coupled with pornography’s power to define female sexuality and identity, forms an expression of gender inequality. Sexual relations are politically defined, and so is pornography, as it both reflects and defines sexual interaction. However, the issue at hand is not only sexual interaction, but also the political and social status of women.

The solution to MacKinnon’s conceptualization of pornography and gender relations is more gender specific laws and regulations. By her logic, through codifying explicit protection to end the expression of sexual exploitation, the state can no longer be complicit in the subjugation of women. Her approach emphasizes that because gender difference is the basis for gender inequity, these differences should not be masked by the law of gender neutrality, but taken into account by it in the formation of gender specific codifications. Her argument emphasizes the point that it is only by recognizing these sexual differences and the impact they have on gender relations, can the state remedy the situation and provide women with paths to recourse.
However, at the same time, it should also be considered that emphasizing women’s difference to men through law comes with a set of complications when attempting to achieve rights equality. Through gender specificity and emphasizing sexual difference, the result is emphasizing the very sexual dominance that has historically precluded the achievement of gender equality. Furthermore, MacKinnon’s argument in many ways represents a simplification of social life. Even the feminist perspective is given context through social situations. Wendy Brown explores this point of view in her analysis of MacKinnon’s assertions regarding pornography. To reduce political inequality to the sexual differences between men and women is to devolve every feminist issue to sexuality. In this manner, women are in a constant state of violation. She argues that the complexity of sexuality cannot be reduced to the dynamic of sex roles between men and women and to do so is to oversimplify social roles. Furthermore, for women to turn to the state as the solution to their exploitation is to encourage a female dependence on the state as a protector (Brown 1995: 168). In this sense, to legally codify gender specificity is to also encode the social construction that necessitated it and to emphasize female powerlessness. This too, assigns a specific role to women. Therefore, the relationship between sexuality and state power is not as straightforward as specifying greater legal protection for women. Ultimately, encoding equality has far greater implications for the state of women and their relationship with power, masculinity and the state.

While MacKinnon’s analysis of gender inequality as how it relates to sexuality provides an option to women for political forms of empowerment, it is not without its complications in terms of encoding equality. As Wendy Brown points out, the relationship between social expressions of sexuality and encoding sexual equality is in
many ways a paradoxical one. Gender specificity can be both at once “politically essential and politically regressive” (Brown 2002: 432). Therefore, in order to progress socially and politically with encoding gender equality, these paradoxes must be addressed.

IV. Articulating Rights and Encoding Equality

The relationship between encoding gender equality and the state is a paradoxical one. As Wendy Brown articulates, the legal specificity that Catherine MacKinnon advocates has the power to be both politically progressive and regressive. This paradox originates from the aspects of state power and the implications of women turning to the state in order to seek redress for social and political ills. Therefore, the language of rights becomes important when encoding equality. The gender specificity that MacKinnon defends both protects women and entrenches their identity as victims, whereas gender neutrality operates in vague terms that allows for the perpetuation of female victimization. Wendy Brown and Kenneth Baynes analyze this dimension to rights language as well as the social function of rights. In the same vein, Kristin Bumiller looks at the implications of this theoretical paradox in the lives of rape victims and battered women who turn to state support services. Ultimately, the complications of articulating rights and redressing the inequality suffered by women must be overcome if gender equality is to be realized. In establishing feminist jurisprudence, it is important to understand the implications of the language of rights in encoding gender equality.
The value of rights language for women is an obscure one. Wendy Brown explores this concept in her analysis of means to encode equality. One concept she explores is the idea of an individual both wanting and needing rights. In this manner, even if an individual’s rights remain unfulfilled, they still shape our desire because “we are constrained to need and want rights” (Brown 2002: 421). In other words, even when rights are not obtained, we are still constrained and defined by our desire to attain them. She points out that this lack of attainment by women is largely historical. Furthermore, the lack of redress of these ills throughout history up until modern day demonstrates that rights often do not offer a resolution to domination. While she admits that rights may ease the vulnerability of women, they “vanquish neither the regime nor its mechanisms of reproduction” (Brown 2002: 422). Therefore, while on an individual level, codifying equality may provide a form of redress to the violation of individual rights, it does not solve the origin of the problem or subvert the social and political domination that facilitated it. The paradox of rights does not originating in lessening its affects. She argues that there is nothing inherently wrong with mitigating the effects of inequality. Instead, the problem arises with the formulation of rights and if their specific formulation challenges the dominating force or simply regulates it. While the challenging of this force would allow for an escape from subordination, the regulating aspect would simply “build a fence around us at that site” (Brown 2002: 422) and continue to define us as victimized. This is where the previously mentioned gender specificity versus gender neutrality debate plays a critical role. The importance of language in vocalizing gender rights is demonstrated through this duality. Highly specified rights fence women in through their power to encode a definition and then assign it universally to women. However, as
Catherine MacKinnon rightly points out, gender neutrality fails to adequately address the needs of women or prevent the violation of their rights by men. This is where the paradox arises because rights are never employed absent of a normative context. Therefore, women would be deeply defined by gender-specific rights, which have the power to define them as victims and subordinate to men. At the same time, gender-neutral rights allow the continued violation of female rights, also entrenching the subordinate status of women. This has resulted in what Kenneth Baynes coined an “increasing skepticism and suspicion about the value of rights” (Baynes 452). Rights as they are currently conceived often simply reiterate preexisting expressions of power. As Kristin Bumiller demonstrates, this plays out in a very real way for women who are struggling against a male dominant state.

This struggle against the male dominant state becomes further complicated when women seek help from the state. Bumiller confronts these complications and how they relate to crime control and state services to victims of rape and battery. She argues that while the goal has been to expand victim services, it has also had the effect of authorizing “legal, medical, and therapeutic interpretations of victims’ experiences and needs” (Bumiller 96). In this manner, while the main objective may have been to empower women, the individual needs of these women are also muted by dominant state discourse of imposed interpretations of victims’ needs. This dynamic is reminiscent of the paradox presented by Wendy Brown. While a lack of victim services would leave women vulnerable, their expansion also imposes a state-sanctioned interpretation of female victimization. Furthermore, Bumiller points out that women who go to the state seeking aid become dependent upon it. This dependence allows the state assert its authority over
women because they are dependent upon the state to provide for them in order to escape violence and seek redress for the violation of their individual rights (Bumiller 97). In addition, because the state is providing these services, the state also creates the structural conditions that facilitate the dependence of women. These structural conditions are realized through state sanctioned and organized support. However, because the individual rights of these women have been violated, they are not in a position to resist the state’s dominance. In encoding equality, these victim services and reforms to victim services often either fail to address or aggravate the victimization of women by furthering their dependence on the state. Yet at the same time, without access to these victim services and rights, women would remain in a state of victimization. Therefore, when encoding equality, especially in regards to physical violation, the individual aspects of women’s situations and the systematic social disadvantage women experience must be accounted for.

The paradoxical nature of encoding gender equality leaves us with a conundrum that may not be solvable within the current social and political context. Imagining a mean to address this context is the concept behind feminist jurisprudence. Feminist jurisprudence attempts to imagine a means to use rights language and encode gender equality. However, as Wendy Brown and Kristin Bumiller demonstrate, the language of rights is complicated and brings into question the very legitimacy of rights law. While the state is seen as a protector, it is also an imposing, dominant force. The use of certain language when encoding rights not only encodes a certain understanding to female victimization and identity, it also promotes female dependence on the state for protection. However, to disregard the specific rights language that potentially offers protection is to
further facilitate the perpetuation of the status quo and the victimization of women. This paradox remains a theoretical battle without a clear solution. The question then becomes how feminist jurisprudence deals with modern feminist debates and tries to redress the social and political ills of women. Ultimately, there may not be a clear answer and the issue of encoding equality will remain a paradoxical one in light of current understandings of male-female dynamics and state power.

V. Feminist Jurisprudence

Confronting the paradox of encoding gender rights in order to incorporate a feminist perspective is the general goal of constructing feminist jurisprudence. Feminist jurisprudence is the integration of feminist theory to the legal system with the objective to both explain how the law has played a role in the subordinate status of women and to ameliorate this status through changing the law and its treatment of gender equality. However, as Kristin Bumiller and other feminist thinkers demonstrate, the involvement of the state in establishing gender equality complicates the objective of subverting male dominance. At the same time, Catherine MacKinnon rightly articulates the danger of the vagueness of gender-neutral law. Operating outside of the state is to operate outside of the dominant legal power, limiting paths of redress. Therefore, sculpting feminist jurisprudence is a difficult task when encoding rights. This difficulty can be seen through the theoretical conflict over vocalizing individual rights. In addition, the difficulty of encoding rights can also be actively demonstrated in the modern legal system, such as during the controversial Sears Case of 1984, which dealt with the claim that the
underrepresentation of women in high-paying commission sales positions was not due to discrimination, but the preferences of the female workers themselves. When sculpting feminist jurisprudence, the base logic is that because there is a political basis to sexual inequality, state involvement is necessary. However, within society’s current context, this involvement presents additional complications.

Involving the state in order to confront the political subjugation of women is a perilous endeavor. While the state represents the formative legal entity, it ultimately represents the problem of power. Masculine power plays a pivotal role in the subjugation of women. Therefore, when women turn to the state for legal recourse, they are essentially seeking freedom from the very force that is responsible for their oppression. Given women are operating from a position of relative powerlessness, negotiating on the state’s terms may be a fruitless endeavor. At the same time, without this negotiation, women’s options for pursuing political equality are narrowed. Being of the opinion that equality is achievable through state action, Catherine MacKinnon argues that sexual violence is a product of sex inequality. This sexual inequality itself is based in a difference of political power between men and women. She claims that this political basis inherently necessitates state involvement:

Why isn’t this political? The abuse is neither random nor individual. […] It is still systematic and group based. It defines the quality of community life and is defined by the distribution of power in society. It would seem that something is not considered political if it is done to women by men, especially if it is considered to be sex (MacKinnon 2006: 22).
Here MacKinnon critiques the lack of political action in regards to gender inequality. This gender inequality manifests in a number of ways ranging from sexual violence to the political disenfranchisement of women. However, this disenfranchisement is not simply the problem of an overly powerful state, but an exclusively masculine one that targets and disenfranchises women, specifically. This political imbalance between genders is directly involved in the relative powerlessness of women to men. However, because as discussed earlier, political power has been historically constituted as male, it is not considered to be a political problem. Yet in the terms which MacKinnon uses to frame the situation, it is undoubtedly political. However, this does not meet that political action will solve the problem. As Wendy Brown articulates, negotiating politically “frequently recycle[s] and reinstate[s] rather than transform[s] the terms of domination that generated them” (Brown 2002: 7). In other words encoding individual rights can mitigate the effects of a dominant state, but does not subvert state power. Instead, the terms in which an individual negotiates with the state is altered, even if the mechanisms of power are left unchanged. Therefore, the goal of feminist jurisprudence of reworking the law to alter the legal notion of gender is far more complicated than it seems. Ultimately, state power is not so easily subverted or altered.

The goals of feminist jurisprudence appear fairly straightforward at first glance. In essence, the objective is to example the role of law in the subjugation of women and to alter the law to incorporate the female perspective in regards to gender inequality. However, the problem arises through not only the difficulty of establishing a singular female perspective, but how to go about incorporating this perspective. Previous sections
have outlined the theoretical struggle of vocalizing rights. The language of rights leaves women with a paradox that is not easily solved. Modern examples of this dynamic are played out in the legal system, such as during the Sears Case. These examples and voices from the contemporary feminist debate demonstrate that while feminist jurisprudence may seek legal redress for women, the reality is far more nuanced than might appear. Both the characteristics of a dominant masculine state, as well as the paradox of introducing a gendered perspective leave women caught in a paradox that is not easily solved.

VI. Conclusion

As demonstrated, contemporary feminist debate centers on the language of rights and the process of encoding equality. Gender inequality, originating in many ways from sexual difference, plays out not only socially, but also politically. Sexuality, which can be interpreted as being socially constructed, manifests not only through social interactions, but also through political actions and the legal system that facilitates the subjugation of women. The manner in which the state regulates these social and political interactions has the power to codify and entrench historical normative values and gender differences.

While political power can be used for protection, it can also be a tool of oppression. As such, there is a limit to the ability of rights law to effectively promote equality. Therefore, solving the problem of equality is not as straightforward as making laws more gender-specific. On the contrary, gender specificity can reinforce female vulnerability. Furthermore, looking to the state to resolve the problem of gender
inequality bolsters state power and solidifies its role as protector. In this manner, women become dependent upon the state for the redress of social ills.

Feminist jurisprudence looks to the state to alter the role the state has played in the subjugation of women, yet this is not so easily done. Both Wendy Brown and Kenneth Baynes point out that within the current context, the paradox between gender-neutrality and gender-specificity will continue to perpetuate. While the state holds the power to formulate the protection of women’s rights, it is also capable of instituting the political and social subjugation experienced by women. In light of this reality, the resulting conclusion is to imagine an alternative conception of social and political male-female relations, feminist jurisprudence, and the role of the state in negotiating these relationships. This process of re-imagining, which will be explored in the following chapter, allows for the conception of alternative understandings of male-female political relationships. Given the paradox associated with encoding legal protection against the social ills experienced by women, re-imagining the social and political context of male-female interaction, in addition to reconsidering the formation of traditional gender roles, is critical to responding to gender inequality in socially and politically effective ways.
Chapter Four: Re-imagining Gender

I. Introduction

Women are confronted with numerous challenges when it comes to addressing the relative inequality they experience in their social and political lives. Previous chapters have demonstrated that in regards to sexuality, sexual violence, and interacting with the state on these two matters, there are numerous issues that arise. The nature of state power defines how gender inequality is addressed in relation to sexuality and sexual violence and the options that are presented to women to confront their socially and politically understood vulnerabilities.

An analysis of the relationship between gender equality and the state reveals a duality that arises: encoding legal protection through political means or opting for a gender-neutral approach. This dichotomy presents women with a choice when encoding protection. However, both choices have significant drawbacks within modern understandings of gender relations.

Therefore, re-imagining gender and traditional male-female relationships allows us to re-examine the social and political contexts of gender relations. While previous chapters addressed specific issues, this chapter analyzes the larger issue of context, using the work of theorists explored in earlier chapters. One possibility to address the dichotomy of encoding rights is to consider the manner in which we understand gender and state power. A re-evaluation of this relationship opens up a new realm of possibility for women in terms of their rights and addressing the vulnerabilities the experience.
II. Re-thinking Sexual Identity

Biological conceptions of gender inequality have asserted that sexual dominance has its origins in sexual differences. In this sense, both men and women become defined by their social roles by virtue of their biological origin. By basing this sexual dominance in immutable biological identity, gender roles become part of an individual’s inherent identity that defines the social and political lives of men and women. Both Jessica Benjamin and Judith Butler challenge the immutability of biological identities to reveal how they impact the lives of women. At the same time, their explorations of alternative interpretations of the origins gender divisions allow for re-imagining gender binary and redefining gender in flexible terms, as opposed to the rigid confines of biology. This exploration allows us to re-conceive gender roles and imagine alternatives to the pre-conceived norms that define the lives and identity of women. This is not to say that sexual difference does not exist and impact the lives of individuals in very real terms. Instead, this process of redefining gender roles is placing traditional conceptions of biological identity in a different context. By rethinking the context in which individuals function, one is able to question prescribed gender identities. This re-imagining is a crucial first step to reforming how gender inequality is confronted on social and political levels.

Unequal gender relations can be imagined as male and female roles as being two unequal halves of a whole. Jessica Benjamin conceptualizes male and female roles as being socially understood in this manner based on historical gender divisions. The gender dominance that manifests is an expression of a failure of integration and mutual recognition between the two halves. In other words, when there is a lack of mutual
recognition of the separate male and female identities, dominance occurs because one side is devalued while the other is idealized. The origins of this process, she argues, is an imbalance between the assertion and recognition of individual identity that originates as early as infancy when male children disidentify with the female mother based on sexual differences. When this disidentification occurs, the female identity is devalued while the male identity is idealized through the assertion of the male child’s identity when he is unable to achieve mutual recognition with the mother. In this manner, Benjamin states that the masculine identity is the “mirror that reflects the self as it wants to be” (Benjamin 100). In other words, the masculine identity is idealized through disassociation with the mother’s female identity and the assertion and dominance of male authority. The assertion of the male identity is based in the struggle to maintain an individual identity in spite of the disassociation with the mother (Benjamin 181).

However, despite the appearances of a fixed gender polarity, Benjamin makes it clear that this development of a divided gender duality is not the only possibility. She argues that women themselves can subvert this polarity by choosing to assert their own subjective identities. By rejecting an assigned identity and establishing individual subjectivity, women create a new possibility of gender relations. Rather than engaging in the struggle against masculine dominance, women are able to “offer men a new possibility of […] becoming alive in the presence of an equal other” (Benjamin 221). In other words, women can reframe their own social roles to alter the traditional conceptions of complementary, but unequal roles. She further argues that this possibility has become plausible in a modern sense through the female demand for equality and the growing social acceptance of gender equality. This substantive change makes this possibility
“more than a utopian abstraction” (Benjamin 221). Instead, these developments are material progress towards altering the traditional norms of male and female interaction. She acknowledges that the reality of biological difference is inevitable in a way, but she states that it is not inevitable that this difference will reduced to a male-female binary. The social re-imagining that she advocates is already in progress. She points out that the body of work offered by feminism offers a new possibility of imagining gender. In terms of the problem of recognition being translated as dominance, feminism allows for a new possibility of mutual recognition by confronting the unequal reality of male-female relationships. Uncovering this reality and understanding is a means to confront it and the defining effect it has on social relations. In this manner, theoretical alternatives can be realized as social progress.

Judith Butler echoes the sentiments of Jessica Benjamin in her analysis of gender relations as how they relate to patriarchal family structures. She argues that despite biological differences, family structure and relationships are dependent upon social practices and norms. According to Butler, “there is no symbolic position of Mother and Father that is not precisely the idealization and ossification of contingent cultural norms. To treat these variable norms of presuppositions of culture […] is to divorce the psychoanalysis of sexual difference fully from its sociological context” (Butler 2004: 158). In other words, Butler acknowledges that there is a psychological and biological component to sexual difference, but that it is closely linked with cultural and social understandings. By revealing the cultural aspect to the symbolic understanding of masculine and feminine roles, it is possible to have a scope of understanding beyond the preconceived notions of social normativity. As Butler illustrates, to treat variable norms
as fixed is to restrict the imagining of alternatives. In this manner, alternatives that defy the symbolic conceptions of family life, such as gay couples or single mothers, are seen as being illegitimate. Theoretically re-imagining these normative values is the first step in the process of challenging traditional ideals. Butler states that it is crucial to have a theoretical framework that allows for alternatives (Butler 2004: 159). To not allow for these alternatives is to devalue the implementation of expressions of identity that defy traditional values. By realizing that gender divisions are largely cultural, it is possible to re-imagine how these roles define social life. Like Benjamin, Butler realizes that a theoretical framework that allows for cultural re-imagining makes a very real difference in the lives of individuals and the implementation of gender roles. A theoretical framework that allows for these differences would no longer stigmatize homosexual relationships, single mothers, or other social realities as deviations from an idealized norm. In this manner, theoretical dialogue that confronts these realities has a very real impact on the construction of gender roles and social values.

Both Judith Butler and Jessica Benjamin analyze symbolic gender roles as a starting point for the development of sexual dominance and gender inequality. The norms that govern social interaction fail to accurately encapsulate the nuances of an individual’s identity. When one reconsiders these traditional norms, it is possible to re-imagine the traditional notions of identity. Theoretical re-imagining, along with a reconsideration of the real imbalances of social life, is a first step to understanding and confronting social and political gender roles. New theoretical frameworks that allow for material alternatives and deviations from the traditional accepted norms allow this progress to occur. In this sense, the feminist theory and gender politics that has emerged in recent
years questions and reconstitutes traditional understandings of social roles to reflect real life. This reconstitution is a vital building block for challenging gender norms that define female identity.

III. Social Conceptions of Gender Identity

What is and is not socially acceptable in many ways defines individual identity. Normative values define what is acceptable and what expressions of individual identity fall within this norm. Ultimately, these norms have a markedly definitive quality and assign a rigid understanding to individual identity. To fall outside the accepted norm is to invite criticism and shame. Michael Warner uncovers this concept of accepted expressions of identity as how they relate to homosexual expressions of sexuality and desire. The heteronormative values that purport a singular accepted form of individual expression define the lives of all individuals, as there are inevitably deviations from any norm. However, the further one is from the norm, the greater scrutiny one is subjected to. Confronting this reality and understanding how it is applied to social relations establishes a means to imagine an alternative to heteronormative roles. An alternative theoretical framework allows us to re-imagine social roles as they relate to all individuals. This theoretical understanding defines not only the social acceptance of sexual identity, but also the manner in which this understanding is encoded in both political and legal terms.

In Michael Warner’s terms, controlling the sexuality of others is the basis of understanding morality. This, he argues, is the origin of regulation, norms and
prohibition, as well as the deep sense of cultural shame that is associated with sex. However, he argues that this sexual shame is political when sexual behavior and gender identity becomes regulated. This sexual politics defines the identity of all individuals whose sexual identity is not seen as legitimate. The shame associated with this illegitimacy imposes the concept of a genetic heteronormative sexuality that is seen as the only legitimate expression of sexual identity. This social understanding of sexuality informs political regulation of sexual expression and by extension, mandates a legitimate identity. He argues that this theoretical idealizing of a sexual norm has very real implications, particularly for the homosexual community, which has experienced the regulation and “zoning out” of their expression of sexual identity.

Warner examines the social persecution of gay sexuality through the public concern over obscenity and scrutiny of the “public culture” of sex (Warner 171). This has resulted in the disappearance of gay bars, sex shops and other public forms of gay sexual expression. This disappearance has been defended as protecting “community values,” causing Warner to express nostalgia for the gay neighborhoods in New York City that were heavily regulated to the point of disappearance. While he feels that this process has resulted in gays being forced to “return to the closet,” there is no clear solution to the concerns he voices. The publicity of sex in many ways contributes to its being viewed as abnormal and while the zoning out of gay sexual expression has regulated individual sexual identity, this regulation was in many ways prompted by the public culture of sexuality. Furthermore, as Warner himself explores, members of the gay community have disassociated themselves from the public expression of sexuality due to the efforts of the gay movement to be seen as more than gay sex. The public versus private nature of sex
fundamentally changes how sexuality is socially viewed. Rethinking social understandings of sexuality is met with this division. Sexual expression is viewed as being separate from the public sphere, despite being regulated by social understandings of individual sexuality. Michael Warner calls for a “new standard of dignity” (Warner 74), referring to the social stigma and shame that is assigned to those who deviate from the accepted norm.

However, redefining this standard is not only a social process, but an inherently political one as well. When homosexual identity becomes the target of social censorship, the state is involved. Furthermore, it is state involvement that has the power to regulate and legitimize homosexual relationships through the institution of marriage. At the same time, Warner is not immediately accepting of the idea of homosexual marriage because it is a mechanism that allows the state to regulate personal relationships. In addition, marriage is used as a means to distribute many rights and privileges (Warner 89). Through this mechanism, marriage becomes a means to achieve state validation and integrate into the culture of marriage, which legitimizes personal relationships. While this might beg the reaction of promoting gay marriage, this is not Warner’s immediate response. It is true that marriage would give the legitimacy that homosexuals, who have been exposed to social stigma, seek. However, Warner also states that this possibility would also be a means for marriage to “tame” homosexuals into conforming to an accepted norm (Warner 141). Therefore, the re-imagining that Warner seeks cannot be achieved through either social or political means alone, but through both. It is not a simply matter of legalizing gay marriage or allowing the expansion of sex shops, but also of rethinking the relationship between social norms, public persecution of deviations
from that norm, and the selective legitimacy that the state offers. As opposed to finding a means to fit homosexual identities into current conceptions of sexuality and sexual norms, cultural acceptance of alternatives to heteronormative identity needs to be established.

What is normal dictates what should be. The idealization of this norm demands conformity to it and invites shame upon those who fail to do so. The shame experienced by the gay community has resulted in the de-sexualization of the gay and lesbian movements. The shame associated with supposedly “deviant” sexual practices has resulted in the attempt to separate sexual identity from sexual practices. Michael Warner illustrates the manner in which social norms dictate individual identity and the need to re-conceptualize our understandings of individual sexual identity. The manner in which current understandings define individual identity has caused Warner to call for a new way of understanding sexuality in order to break the association between what differs from the norm and what is considered shameful (Warner 74). However, this new standard of dignity is not only a theoretical conception; it also requires a social implementation and acceptance of alternative forms of expression. The increasing acceptance of the gay movement has demonstrated that reframing traditional understandings of sexuality is possible, yet social idealizations of a norm still exist. Therefore, altering conceptions of heteronormative values requires not only social acceptance by political action as well. The regulation and “zoning out” of sex experienced by members of the heterosexual community is political action, which necessitates state involvement. However, as has been demonstrated, the involvement of the state also introduces the threat of a state-enforced selective legitimacy. Because it is unclear how to reframe social understandings
in a manner that promotes sexual identity, a question then becomes raised as to how the state responds to a call for a “new standard of dignity” in light of the subjectivity of personal sexual identity. Concrete state response to an undefined standard is a dubious venture due to the wide variance Michael Warner attributes to sexual identity. Therefore, this new standard, in practice, may be realized through state recognition of homosexual rights as a means to de-stigmatize non-normative sexual relationships. As a result, re-imagining desire is not only a social reconstruction, but an inherently political one as well.

IV: Political Alternatives to Establishing Gender Equality

Codifying solutions to gender inequality has presented women with a paradox. As explored in earlier chapters, a problem arises when navigating between gender specificity and gender neutrality. The law of equality is forced to mediate between these two sides and each presents its own problems that need to be addressed. Wendy Brown, a prominent voice in exploring this dichotomy, does not offer a clear solution, but does suggest that traditional ways of conceptualizing political solutions to gender equality need to be rethought. This assertion directly conflicts with Catherine MacKinnon’s argument, which is staunchly for gender specificity in the law in order to protect women. While this position runs the risk of regulating sex and the sexual lives of women, she offers a clear solution to the social and political ills women face. She examines this process of codifying protection and its successes not only on the national level, but the
international level as well. Yet Kristin Bumiller also demonstrates how this form of regulation has hurt women and failed to achieve the progress that has been sought. The work of these theorists demonstrates the issue of state power when establishing political solutions and alternatives. While the state is traditionally viewed as the arbiter of justice and equality, the paradox faced by women reveals that an invasive state force in the lives of women often fails to deliver the equality it promises.

Wendy Brown characterizes traditional conceptions of reversing and subverting male power to be largely reactionary. In other words, much of feminist responses to male power have emerged from a reaction to injuries suffered as a result of an oppressive regime (Brown 1995: 7). However, she stresses that simply subverting and reversing this oppression would not be the attainment of freedom. She states while “workers [may] dream of a world in which work has been abolished, blacks [may] imagine a world without whites, feminists [may] conjure a world either without men or without sex” (Brown 1995: 7) this would effectively be a mirrored reversal of suffering, not reconstituting the mechanism of oppression. Therefore, it is not possible to undo the suffering of women simply by legally regulating sexual exploitation and punishing those who violate these regulations. This manner of approaching political inequality establishes the law as a mechanism for punishment, not the liberation of women. Formatting state power in this manner does not establish justice for women, but in many ways expands the pervasiveness of state power by vesting it with the power to impose laws and establish rights. Given the nature of state power, how can one be expected to confront the paradox facing women? The solution instead may be to balance between social equality and protection as a means to bypass the effect of the law codifying the powerlessness of
women it is aiming to prevent. The subjectivity of the social life makes the law a blunt instrument to confront the ills suffered by women. It is possible to alter social conceptions of gender equality by exploring if and how women are so relentlessly victimized by gendered constructions. In addition, examining subjective identity as to how it relates to political argument begins a collective discourse that allows us to explore options for the redress of female suffering. While this blurs the line between state and civil society, it also attempts to avoid placing the issue of resolving gender inequality solely in the hands of an oppressive state. In this manner, a potential partnership can be formed between political action and social discourse. It is possible to articulate and examine social progress outside the bounds of state power. In this manner, it is possible to resituate social and political boundaries.

By contrast, Catherine MacKinnon relentlessly advocates that gender inequality is irreducibly political. She argues that it is state policy that promotes and facilitates the suffering of women and as such, the solution is a straightforward one. This is the basis for MacKinnon’s campaign to increase regulation and codify protection against the collection of women’s social and political ills. MacKinnon asserts that legal equality is the tool for revealing social conditions and reforming them (MacKinnon 2006: 107). However, she does not offer a solution to the fact that this manner of confronting gender inequality expands state power. MacKinnon both views the state as an oppressive entity in that it facilitates the suffering of women, and also the solution to female oppression through politically codifying equality. However, this duality may not be easily solved by legal regulation. Despite MacKinnon’s solution of turning to the state, she also states that thus far, equality law has largely succeeded in giving men access to rights that have been
historically uniquely female, such as mother’s benefits, child custody, and alimony – without succeeding in providing women the equality they seek (MacKinnon 2006: 73). Therefore, the law may not be able to capture the nuances of social life and gender inequality as elegantly as MacKinnon envisions, despite her proposal of a concrete solution.

Kristin Bumiller recognizes this obstacle when examining the effect of state power in the lives of women. In her work examining the recent political campaigns against sexual inequality, she views the expansion of state power as problematic to achieving gender equality. The expansion of state power and the establishment of the state as the protector and arbiter of justice establish a dependence on the state for the women who seek help (Bumiller 96). This dependency is established through welfare, dependence on shelters, and social services. In essence, the state-sanctioned system of support has expanded patriarchy in both the public and private spheres. The expansion of male state power is accomplished through “creating the structural conditions in which women are dependent or require protection for both their material and psychological needs” (Bumiller 97). In other words, the state plays an integral role in creating a category of dependent women who are subject to its political power. This not only exacerbates female vulnerability, but also places them in a position of social disadvantage. In response to this expansion of state power and its invasion into the lives of women, Bumiller contrasts state support with the days of social support, when women’s shelters were run by organized groups of women and there was a larger network of female social support. In this manner, care was a response to individual female needs as opposed to a rigid state framework of victim support. While it is decidedly more social
than political in nature, it provides “opportunities for meaningful choice and autonomy [which] remain elusive for “victims”” (Bumiller 131). While Bumiller also explores political solutions and universalizing gender equality through legal means, such as CEDAW, the Committee on the Elimination of Discrimination Against Women, she also acknowledges that a balance must be maintained between social support that does not exacerbate the victimization of women, and political solutions to inequality.

Ultimately, the state represents a problem of power. Women, who are deprived of social and political capital, are in a position of relative vulnerability when attempting to negotiate with the state to politically voice their suffering. The paradox of gender neutrality versus gender specificity may be impossible to resolve, but it may be possible to bypass the problem it presents. Wendy Brown articulates examining individual subjective identity and the importance of understanding the limits of law to capture the nuances of social life. While MacKinnon might simply respond by codifying legal solutions, Bumiller demonstrates that it is far more importance to balance between social solutions and political ones. As Wendy Brown articulates, state power is an intrusive force and codifying political solutions in many ways expands the power of the state. This sentiment is echoed by Kristin Bumiller, who suggests rethinking the effectiveness of the law in achieving universal gender equality by reframing the manner in which social support systems can be used to provide the support that the state fails to deliver.
V. Reconceptualizing Feminist Politics and the Defiance of State Power

When confronting state authority in order to re-imagine the effect of state power in the lives of women, it becomes necessary to question and defy the role of the state in the social sphere. A division between the personal and political limits the expansion of state authority, but also reframes the role of the state. When the state represents the absolute rule of law, individual autonomy is curtailed, establishing the state as an oppressive force. Judith Butler explores the process of defying state power in her political analysis of the play *Antigone*. In the play, Antigone is in direct confrontation with King Creon – who represents state power and patriarchal male authority – over the illegal burial of her brother, which invites an analysis of the spheres of social kinship and political rule. While Antigone has been traditionally viewed as an inherently political figure, Bonnie Honig, in an alternative analysis, views the play as an interpretation of sororal power and allegiance between women as a means to question male state power. These two analyses provide two means to imagine questioning male state power. While Butler’s Antigone represents political and social defiance, Honig’s Antigone is a story of sororal allegiance to create a new social and political order. Both analyses provide us with a means to question and re-frame state power and the role it plays in the lives of women.

The defiance of Antigone against King Creon over the burial of her brother questions not only traditional conceptions of power, but also social understandings of kinship. Antigone’s defiance is viewed as particularly subversive because she is outside the laws of both kinship and the state. By virtue of her incestuous family history, she
defies the laws of kinship and through her action as a political figure, transgresses the 
laws of the state. This brings her directly in conflict with King Creon, who represents 
state power, because the role of law is to limit subversive threats to its own power. 
Because Antigone is a woman, and the daughter of incest, she is seen as having no stake 
in state power because she is deprived of a place in the social and political order (Butler 
2000: 13). Therefore, Antigone operates outside the spheres of both kinship and politics. 
Her independence from these spheres allow her to challenge Creon’s rule and prompts 
the Chorus to characterize her actions as “manly” through mimicking supposedly “male” 
language and behavior (Butler 2000: 10). In this manner, Creon is “unmanned” by her, 
because he is challenged by an individual who falls outside the realm of the spheres of 
kinship and state power, which as the representation of state power, he is able to exert his 
authority. However, by saying no to the sovereign power, she removes herself from the 
community of these spheres, later leading to her death. Through this analysis, Butler is 
able to demonstrate the tension that arises through the defiance and questioning of state 
power. To defy state authority is to remove oneself from the community of the social and 
political spheres, but also to acknowledge the possibility of undermining the sphere of 
politics without entering into it. However, this defiance also challenges the role of the 
state as the final arbiter of justice. This implies that individual power and state power are 
two concepts that are in opposition to one another in that the expansion of one causes the 
reduction of the other. While Butler uncovers the deep tension that is created through 
questioning state authority, she also reveals this questioning as a possibility to reframe 
state power and its impact on the personal lives of the citizen. In this manner is it possible
for women to reclaim their own autonomy. By recognizing the pervasive aspects of state power, its authority is limited.

While *Antigone* may be traditionally framed as a story of political and social defiance, Bonnie Honig offers a different interpretation. Rather than framing Antigone as a political martyr, Honig describes her as acting in solidarity with her sister Ismene. By the two acting in concert, a sort of public is formed, despite Antigone never taking any steps to mobilize one (Honig 32). Generally speaking, Ismene is thought of as the apolitical character that highlights the exceptional nature of Antigone. However, Honig shows that Ismene is far more calm and calculating than her dramatic sister, making her a more effective political actor who is able to engage in a dialogue with King Creon (Honig 34). Antigone, who is more of a defiant actor accepts death over submitting to his rule. However, despite Ismene’s calm demeanor, Honig illustrates evidence to support that she was the first to attempt to bury Polyneices. While Creon accuses Ismene of doing so, this is overshadowed by his rage over Antigone’s flagrant disobediance. Furthermore, Ismene openly states that she did it, while Antigone simply chooses to refuse to deny her crime (Honig 43). This further highlights Antigone’s defiance because she not only refuses to admit to the crime, but also defies Creon’s power by refusing to accept the criminal nature of her act and submit herself to his power. However, despite the two different modes of political defiance, the two are essentially acting in tandem to subvert Creon’s authority. The two different approaches illustrate two possibilities for women. To act in an effective political manner while living under state power or to openly defy its authority and risk destruction in the process. The coalition between the two offers the possibility of alternative politics. Instead of Antigone’s political martyrdom, the unity
between Antigone and Ismene propose sororal communion as a site of agency and a means to reconsider patriarchal rule. Such an allegiance between women creates a new stage of political action. To embrace Antigone as a model for feminist politics is to be confronted with the tension between individual and state power and to invite the destruction of heroic martyrdom and defiance. In modern terms, this would mean to embrace social cooperation between women as a means to form a public in order to challenge patriarchal authority in much the same way Bumiller discusses a network of female social support. By changing the social framework in which individuals operate, the role of political power is transformed, in addition to how individuals negotiate with state power.

When women are interacting with the state, they are acting from a position from relative vulnerability because they are negotiating on the state’s terms. Because the state has the power to define and regulate individual identity and rights, its power over individuals is pervasive and defines the terms of political negotiation. Butler illustrates the conflict this creates through analyzing the political action of Antigone, who operates outside the spheres of political and social order to confront the authority of King Creon. However, political and social defiance is not the only option available to reframe state power. This option may even be ultimately destructive, as illustrated through the demise of Antigone in her political martyrdom. Honig’s interpretation of Antigone instead offers the option of creating a community of sororal cooperation. In this manner a public to question and challenge state power is formed and is able to be politically effective. Such an alliance would restructure social understandings of gender and feminist politics in order to rethink state power. This process of reconsidering state power allows for a
dialogue, much in the same way Ismene is capable of negotiating with King Creon, while Antigone is not. Ultimately, viewing Antigone’s defiance as a model for feminist politics exacerbates the conflict between female identity and state power. However, the cooperation between Ismene and Antigone hint at an alternative understanding to political action and a new form of feminist politics.
Contemporary female questions struggle with imagining the construction of a gender equitable society and how one would functionally be achieved. Crucial to this understanding is the cause of female oppression and how it can be addressed through social and political means. Therefore, the presence of the state is central to understanding the issue at hand. Generally speaking, the state may be thought of as a simple and straightforward solution to addressing political and social vulnerability. However, as the chapters of this thesis indicate, the issue is far more complex.

Initially in the course of this thesis, I had assumed that I would be writing from a position of advocating state involvement. My early exposure to Catherine MacKinnon had made me far more sympathetic to the concrete legal responses she suggests. While to an extent, I still sympathize with her approach and tend to support her legal propositions, I realize that the legal changes she so adamantly defends are typically not as successful as one might hope. For example, Kristin Bumiller explores the extent to which legal protection and state services have protected women’s interests through examining the Central Park Jogger case along with statements from women who utilize state welfare. Rather than promote the interests of women, state power seems to establish itself as an intrusive force in the lives of women. In the case of achieving the vague ideal of “justice,” the state is established as the final arbiter of the law with the last say on official punishment and legal recourse. State power expands through vesting it with greater power to defend women. While the goal to protect women’s interests and provide paths of recourse for women is MacKinnon’s ultimate objective, gender inequality built on a complex relationship of social, political and historical values is not so easily subverted.
Furthermore, the state’s position of provider and protector invite the dependence of women, further stunting the quest for individual autonomy. Bumiller’s analysis of the welfare system as how it relates to women demonstrates that in many cases, women’s needs are not fully met, yet they become increasingly dependent upon state support. She points to past methods to distribute social support such as women’s centers that had previously been run by organized groups of women. This form of social support had been more equipped to deal with the issues confronted by women on an individual level. However, this return to the past is in opposition to MacKinnon’s legal push for what she would consider social and political progress.

While this conflict was surprising, it was not the only one I discovered. Feminist literature confronts a host of seemingly unsolvable paradoxes, such as the one proposed by Wendy Brown regarding encoding legal protection. As she so succinctly illustrates, while gender specific language in legal code does hold the possibility for the expanded protection of women, this is rarely the case. Furthermore, legal code that so specifically defines the vulnerability of women succeeds in confining women to this role by legally and politically entrenching social normative values. At the same time, gender neutrality, which, in its vagueness is able to uphold abstract universal ideals, leaves women without the protection of state power. Without this protection, the vulnerability of women is allowed to perpetuate, even if they are not being defined by that vulnerability in the same manner gender specificity would produce. This paradox being brought to light challenged what had previously been my unwavering support for Catherine MacKinnon’s legal arguments. However, while she does provide a succinct solution to gender inequality, her
solutions do not address the deeper, structural and theoretical issues associated with constructing a gender equitable state.

This theoretical conundrum ultimately left me caught up in the same conflict that has been the subject of debate within contemporary feminist literature. To unravel its complications, I began an analysis at what I view as the most individual level, the formation of personal gender identity and sexuality. The purpose of the chapter on sexuality and desire was to establish how the formation of an individual’s identity is defined by social and political contexts. What was discovered was that individual identity is not only formed through social and political contexts, but regulated through them as well. The social norms that govern individual expression are in turn reflected through the state regulation of individual behavior. Feminists and queer theorists point to the construction of gender norms that govern individual action. Furthermore, these norms function as an idealized mode of being. Norms are socially and politically established as an idealized expression of individual identity, and because they are pre-established as being ideal, demand conformity to them. That which is seen as deviant from the norm is seen as shameful, with greater shame imposed on greater deviations. This standard of normalcy is central to the complicated relationship between social values and the state. It introduced to me the problem of state power and how it directly impacts not only theoretical understandings, but also the lived experiences of individuals. However, it was important to note that this state regulation set the precedent of establishing the state as a tool for the legal regulation of social issues.

In essence, this understanding established the state as the solution to issues such as sexual violence. It was important in analyzing the issue of sexual violence to consider
the social and political dimensions that dictate the lived experiences of women because ultimately, our theoretical understandings inform how we view sexual violence and what solutions are functionally viable. This brought me to the paradox between Wendy Brown and Catherine MacKinnon regarding encoding legal protection for women against gender inequality. The issue was further complicated by the advocacy of Katie Roiphe, whose surprisingly adamant assertions that women did not need – and in the case of women raped on college campuses, deserve – legal protection elicited a visceral personal response. But the issues proposed by these theoretical conflicts are important ones. The role of law and state power in addressing sexual violence in any context is both informed by and defines gender roles between men and women. Furthermore, it raised the issue of whether or not the state should be so deeply involved in the private lives of women. It was here that I formally diverted from my support of Catherine MacKinnon, as it should be noted that encoding legal protection does not perfectly address the needs or interests of women, nor does it protect women from state oppression. Seeking justice in the state should be done with caution, as it does not succeed in solving the issue of female oppression, but instead offers a number of possibilities for addressing gender inequality, each with its own complications.

This process of encoding equality is a central issue of contemporary feminist debate. While previous chapters had established the question of state power and how it relates to gender equality, the concept of feminist jurisprudence begged the question of whether or not the state was responsible for the oppression of women and if state solutions could be found. For me, it seemed oddly paradoxical that one might seek protection and liberation from the same power that is seen as oppressive. This
complication revealed the dual nature of the state as both oppressor and protector and opened a set of theoretical and practical questions regarding addressing the vulnerability of women. I discovered that while the state holds the power to formulate the protection of women’s rights, it is also capable of perpetuating the relative state of vulnerability women experience.

This penultimate conclusion is what established the need for a chapter addressing imagining alternatives to current understandings of gender identity, legal protection, and the role of the state in negotiating these concepts. In light of the paradoxes revealed by contemporary feminist literature, it became necessary to challenge not only current arguments regarding gender equality, but also the understandings these arguments were established upon. By reconsidering these roles, it was possible to reconsider possible solutions in order to respond to gender inequality in a productive manner. This exploration of alternatives compiled solutions proposed by theorists that dealt with calling for revising social norms in concert with revising the legal code. For example, challenging heteronormative values established an alternative framework, which allowed for the re-imagining of social roles. This fundamentally changed how political responses were considered. While the paradox between gender-specificity and gender-neutrality was unresolved, re-imagining social values held the possibility of bypassing the issue altogether. For example, Kristin Bumiller suggests that while the state is an intrusive force, this intrusion can be counteracted by reframing how social support systems can be used to provide the support that the state is unable to. Bonnie Honig echoes this statement by suggesting an alternative feminist politics of sororal cooperation. In essence, she advocates forming a public that questions and challenges state power and social
understandings of gender roles. This reconsideration of state power opens up a dialogue to negotiate with the state without compromising female interests.

While the solutions I found were not as satisfying as Catherine MacKinnon’s charged assertions, I feel they are far more reasonable in that they address the social and political complexities of gender equality. While it might be more straightforward to combat gender equality by attempting to legally encode these aspects, women’s interests would not be effectively served. Instead, it is necessary to re-imagine the larger system within which we operate. Reconsidering identity, social roles, and political power confronts the issue of gender inequality on multiple levels and holds the possibility of a new sociopolitical order. However, the manner in which this functionally could be brought about remains elusive. Yet despite the elusive nature of gender inequality, contemporary literature shows the progress made within the past decade alone and holds promise for re-imagining the social and political definitions of male-female relationships.


