

## Excerpts from MacKinnon/Schlafly Debate

Catharine A. MacKinnon

### Introduction

In the waning months of the most recent attempt to ratify a federal Equal Rights Amendment (ERA), I twice debated Phyllis Schlafly, its leading opponent since 1973<sup>1</sup>—once at Stanford Law School<sup>2</sup>, once in Los Angeles.<sup>3</sup> The argument printed here is from my presentations. I had not been actively involved in the ratification effort, had not spoken on ERA before, and had been persuaded to modify my criticism of its leading interpretation<sup>4</sup> because I did not want to undercut its chances for approval. I still do not know if it was right to remain silent while the debate on the meaning of sex equality was defined in liberal terms, thereby excluding the issues most central to the status of women and the issues most crucial to most women. Pursuing an untried, if more true, analysis of sex inequality risked losing something that might, once gained, be more meaningfully interpreted. Acquiescence in this calculation overcame the sense that ERA's theory, and strategies based on it, would not only limit its value if won, but insure its loss—a conviction that grew with each setback. By spring 1982, there seemed little to lose, even from the truth. ERA *meant* the equality of women, to those who urgently sought it, to those who abhorred it, and to those who found it obvious if not entirely redundant. So it seemed important to say what the equality of women might mean, and what is in its way. Now that the same ERA has been reintroduced,<sup>5</sup> although its interpretive history can be different, the substantive issues addressed here, and the strategic assessments, remain open.

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1. See C. Felsenthal, *Sweetheart of the Silent Majority* (1981); Rhode, *Equal Rights in Retrospect*, 1 *Law & Inequality: A Journal of Theory and Practice* 1 (1983).

2. Stanford Law School, Stanford, California, January 26, 1982.

3. School of Theology, Claremont, California, March 16, 1982.

4. Brown, Emerson, Falk & Freedman, *The Equal Rights Amendment: A Constitutional Basis for Equal Rights for Women*, 80 *Yale L. J.* 871 (1971). For the criticism as modified see C. MacKinnon, *Sexual Harassment of Working Women* 114-115 and 264 n.55 (1979).

5. H.R.J. Res. 534, 97th Cong., 2d Sess., 128 Cong. Rec. H4109 (daily ed., July 14, 1982); S.J. Res. 213, 97th Cong., 2d Sess., 128 Cong. Rec. S8240 (daily ed. July 14, 1982).

**Opening Statement:**

I am here to discuss the meaning and future of women's rights. Mrs. Schlafly claims to speak as a woman, to and for all women. So do I. She claims to speak from the woman in all women. So do I. She claims to speak about what women know from our own lives. So do I. And about our deepest fears and aspirations.

We bring you two views on what woman's situation is. The differences between us require asking one of the most important and neglected questions of history: What is it to speak as a woman? Who speaks for women?

I speak as a feminist, although not all feminists agree with everything I say. Mrs. Schlafly speaks as a conservative. She and I see a similar world, but portray it differently. We see similar facts but have very different explanations and evaluations of those facts.

We both see substantial differences between the situations of women and men. She interprets them as natural or individual. I see them as fundamentally social. She sees them as inevitable or just—or as inevitable, therefore just?—either as good and to be accepted or as individually overcomeable with enough will and application. I see women's situation as unjust, contingent, and imposed.

In order to speak of women as a feminist, I need first to correct Mrs. Schlafly's impression of the women's movement. Feminism is not, as she implicitly defines it, liberalism applied to women. Her attack on the women's movement profoundly misconstrues feminism. Her critique of the women's movement is an artifact, an application, of her long-standing critique of liberalism, just as her attack on the ERA is an artifact of her opposition to the federal government. Women as such are incidental, a sub-plot, not central, either to liberalism or to her critique.

Liberalism defines equality as sameness. It is comparative. To know if you are equal, you have to be equal to somebody who sets the standard you compare yourself with. According to this, gender difference is the evil of women's situation because it enforces the non-sameness of women to men. Feminism—drawing from socialist feminism lessons about work and privilege, from lesbian feminism lessons about sexuality, from the feminism of women of color lessons about racism and self-respecting communities of resistance—does not define equality this way. To feminism, equality means the aspiration to eradicate not gender differentiation, but gender hierarchy.

We stand for an end to enforced subordination, limited options, and social powerlessness—on the basis of sex among other things. Differentiation, to feminism, is just one strategy in keeping women down. Liberalism has been subversive for us in that it signals that we have the audacity to compare ourselves with men, to measure ourselves by male

standards, on male terms. We *do* seek access to the male world. We *do* criticize our exclusion from male pursuits. But liberalism limits us in a way feminism does not. We also *criticize* male pursuits, from women's point of view, from the standpoint of our social experience as women.

Feminism seeks to empower women on our own terms. To value what women have always done as well as to allow us to do everything else. We seek not only to be valued as who we are, but access to the process of the definition of value itself. In this way, our demand for access becomes also a demand for change.

Put another way, Mrs. Schlafly and I both argue that in a sense "women are not persons," but with very different meanings. When the Right affirms women as women, it affirms woman's body as a determinant of woman's existing role as her rightful place. Feminists criticize the social disparities between the sexes that not only exclude women from personhood as that has been defined, that not only distort woman's body and mind inseparably, but also that define personhood in ways that are repugnant to us. Existing society's image of a person never has represented or encompassed what we, as women, with women's experience, either have had access to or aspire to.

Mrs. Schlafly opposes feminism, the Equal Rights Amendment, and basic change in women's condition, as if the women's movement's central goal were to impose a gender-free society, as if we define equality as sameness. This is not accurate. Our issue is not the gender difference, but *the difference gender makes*, the *social meaning* imposed upon our bodies. What it means to be a woman or a man is a social process and, as such, is subject to change. Feminists do not seek sameness with men. We more criticize what men have made of themselves and the world that we, too, inhabit. We do not seek dominance over men. To us it is a male notion that power means someone must dominate. We seek a transformation in the terms and conditions of power itself.

I have asserted that women's place is not only different but inferior, that it is not chosen but enforced. To document that, I need to ask: What *is* women's situation? Because it happens to each of us in isolation, one at a time, it looks individual, even chosen. Mrs. Schlafly teaches that if we follow the rules for woman's role, are energetic, cheerful, diligent, "positive" and make smart choices, the world is ours. To confront her requires us to ask not only what happens to women who step out of women's place, but also what happens to us *in* that place. What about women who do not seek different bargains with society, but live out society's traditional bargains for women, the bargain she defends?

I want to share with you a body count from women's collective experience.

We all start as little girls. One of 100 of us, conservatively estimated, is sexually molested as a child by her father. When brothers,

stepfathers, uncles, and friends of the family are included, some estimate the rates rise to 1 in 4. As we grow, we are pressured into sex for popularity and out of sex for virtue, and told not to go crazy with this or we will be institutionalized. And we are, for behavior that is not punished, is even encouraged, in little boys. I would like Mrs. Schlafly to explain that.

Any one of us can be raped on the street at any time; conservatively, we are at a rate of one every six minutes. A recent random study in San Francisco showed 44% of women have been victims of rape or attempted rape at least once in their lives, not counting in their marriages. The chances are worse for women of color. What does Mrs. Schlafly propose to do against rape? What is her position on rape in marriage? Is there any such thing, or is it women's duty to submit? Could that be part of why rape is so prevalent? In the same random study, only 7.8% of women reported experiencing *no* sexual assault. How does Mrs. Schlafly's vision of society account for or respond to this?

Women are systematically beaten in our homes by men with whom we are close. It is estimated that between one third and one half of married women experience serious violence in their homes—some studies find as many as 70%. Four out of five murdered women are killed by men; between one third and one half are married to their murderers. When you add boyfriends and former spouses, the figures rise. Mrs. Schlafly's defense of the family reinforces the guilt that keeps women in these vicious, emotionally and physically deadly situations. We should stay, stick it out, do more of what he wants, maybe it will get better. Believe him when he repents. But how does she explain men's violence toward us? Will she tell us it is just "some men," they are deviant exceptions? A third to a half of them? Or will she tell us to be grateful—the family civilizes men, think how much worse it could be? I say the family legitimizes violence to women and calls that civilization.

Most women work outside the home as well as inside it—in the female job ghetto, in high-heeled, low status jobs with low pay. Mrs. Schlafly purports to be for equal pay for equal work, but unequal pay is a function of the traditional male-headed family she defends, in which a man's higher wage is justified because he supports a family. A woman's wages are extra. This is part of why women's work, even when we head families, as increasingly we do, brings home 53 to 59 cents to the average male dollar. Even adjusted for education and years worked, women make less. How does Mrs. Schlafly explain this?

Marriage is women's destiny, a destiny she defends and seeks to extend. Now, three of five marriages end in divorce after about 5 years, leaving the woman with approximately one child, approximately no income, and a standard of living drastically below that of her former husband. Who among us can afford Mrs. Schlafly's "choice" of exclusive home and motherhood? The privileged few, mostly white and upper class

women. Why doesn't she demand a wage for the housework she vaunts—and with it social security, pension rights, and disability insurance for *her* work, not his. Every right she seeks for homemakers is based on the man's work, not the woman's. Doesn't she know that housework *is* work? The government doesn't have to pay for it: private business or families can.

In this context, it is instructive to ask: What is woman's best economic option? In 1981, the average streetwalker in Manhattan earned between \$500 and \$1,000 a week. Aside from modeling (with which it has much in common), hooking is the only job for which women as a group are paid more than men. Check that out in terms of what we are valued for. A recent study shows that the only difference between hookers and other women with similar class background is that the prostitutes earn twice as much. Thirteen percent of us are or have been prostitutes. She can "reject" it if she wants. But instead of calling us immoral, why doesn't Mrs. Schlafly target the social conditions that make prostitution women's *best* economic option?

Now consider how similar prostitutes' condition is not only to that of women who make a more permanent sex-for-survival exchange, but to those of us who must make it daily. Sexual harassment on the job amounts to that, except we have to do all that other work too. A study of the federal workplace found 42% of all female employees reported being sexually harassed in the preceding two years, 17% severely. Mrs. Schlafly tells us that virtuous women, with rare exceptions, are seldom harassed. In the federal workplace study alone, the women reporting sexual harassment make a group the size of Denver, Colorado. Does she think we ask for rape too?

While all this goes on, poor women suffer botched abortions, and Mrs. Schlafly works to return us to the days before 1973 when illegal abortion was the leading cause of maternal death and mutilation. None of us can afford this risk, but it is disproportionately borne by women of color. In New York in 1970, half of the women who died from abortion-related causes were Black; 44% were Puerto Rican. Mrs. Schlafly works to make abortion once again criminal, or as burdened a choice as it can be made, without in any way empowering women to refuse forced sex. Why doesn't she ask whether women really have power over the sex act when she blames *us* for getting pregnant? What is her position on contraception? What is she doing to make abortion unnecessary?

The feminist view of women's situation comes to this: across time and space, there is too much variance in woman's status, role and treatment for it to be biological, and too little variance for it to be individual. In this view, women and men appear biologically more alike and socially more different than is generally supposed. Our social *treatment* certainly is different—the difference between power and

powerlessness. Woman's commonality, which includes our diversity, comes from our shared social position. This is our explanation of our situation. I want to know: Does Mrs. Schlafly think rape, battery, prostitution, incest, sexual harassment, unequal pay, and forced maternity express, to use her phrase, "the differences reasonable people wish to make" between women and men? Are they sex differences? If not, how does she explain them?

Feminists are the first to take women's situation seriously from women's standpoint. We have exposed the outrages of forced sex and forced motherhood. Women respond to feminism: before, I thought it was my fault. Mrs. Schlafly says, it is your fault. Women respond to feminism: before, I thought I was alone. Mrs. Schlafly says, you are alone.

Now I want to consider with you the role of the law in the future of women's rights. The law alone can not change our social condition. It can help. So far, it has helped remarkably little. The way the crime of rape is defined, and what we have to prove to have ourselves believed, do not fit our experience of the injury. The reality is that not only married women, but also women men know or live with, can be raped at will. Men know this. Rape is not illegal, it is regulated. When a man assaults his wife, it is still seen as a domestic squabble, as permissible; when she fights back, it is a crime. On the other hand, it has been empowering to women that sexual harassment has become illegal. It has meant that a woman who resists a man's incursions knows she is not alone, that someone besides her thinks that access to her body is not automatically his right. The law has also helped women not to be considered criminals when we need to end a pregnancy. We punish ourselves enough.

I see the ERA in this context. The law—like the hunt, warfare, and religion—has been a male sphere. The values and qualities of these pursuits have defined both the male role and public life. They have defined what power means.

The feminist question for the future of women's rights is: If we acquire and use these forms of power, including economics (the modern equivalent of the hunt), the use of physical force (of which war is a form), and the tools of law (the secular religion), will we use them differently? Will we use them as women, for all women? The final issue is not whether biological males or females hold positions of power, although women must be there. The issue is: What are our identifications? What are our loyalties? To whom are we accountable?

Women who oppose the ERA see it as making them neutered "persons" yet fear they will be treated as women. This is not an illusory fear. Women say to the state: We do not trust you to give as much as you take. Feminists concur. But opposing the ERA on this basis plays on these fears without confronting that it is an unequal society—a society that the ERA in woman's hand could improve—that makes these fears rational. I

am for the ERA. I think it is progressive if not transformative. It is one of many small initiatives we can use. Whenever I hear the Right attack it, I am more for it than I was before, because they think it will be so far-reaching. The reality—and I do not concede the ERA is dead—is more modest. It would give women a place in the Constitution, strengthen some gains we have made, and provide one basis for going further.\*

I am clear that everything we need will not be accomplished by the ERA, and not by law alone. For instance, the future of women's rights will have to mean an end to pornography—not its containment or suppression or regulation, but an end to the demand for eroticizing women's degradation. I mean a world in which men are no longer turned on by putting women down. I would like Mrs. Schlafly to address herself to the question: Why do they want it? Until the day women's bodies do not sell cars, cosmetics are not a necessity to the success of a woman's image, and we are not humiliated and tortured for male pleasure, women will have no rights.

The ERA is most positive when we remember what it is part of, when we remember what it would be like to have rights worth having. Not only that we be allowed to play with the boys, but to question why the point and ethic of sports is competition. Not just to be taken seriously, but why the definition of merit is membership in an elite. Not only to be able to survive, with dignity and sexuality intact, but to be able to measure achievement other than in dollars, and to inhabit our bodies and express our sexuality in ways that are not scripted out of scraps of stereotype. We want not only to be able to defend ourselves, but not to have to, every

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\* Excerpts from specific examples discussed:

ERA would probably compel the military to be gender-neutral on some level. I am against involuntary conscription. I think if a war is truly called for, people will mobilize. I also think a male-only draft is profoundly anti-male. Every man drafted would have a 50% chance of not being if women were. This discriminates against men. Studies show women can be trained. It is also profoundly inconsistent for Mrs. Schlafly to be involved in defense policy while maintaining women have no place in the military. We have had enough of policies made by people who are categorically exempt from the personal consequences of those policies.

As to the civilian effects of the military—it trains men in violence. Battered women complain their husbands learned abusive skills in the military. Don't they want us to learn to kill?

To the issue of gay marriages. I doubt the ERA would be interpreted to legalize them, although I would not be against that. Most marriages would continue to be heterosexual; persons secure in their heterosexuality would not be threatened by the availability of this option. I do wonder, though, why gay men and lesbians would want marriage, even as feminists are exposing some of its problems as a social institution. I understand the desire to legitimate unions, and the legal consequences are not minimal. I do think it might do something amazing to the entire institution of marriage to recognize the unity of two "persons" between whom no superiority or inferiority could be presumed on the basis of gender.

minute of every day, and to change the conditions that have made the test of strength not whether one can bring forth life, but whether one can end it.

To the end we remember where we are going—and, in Monique Wittig's words, "failing that, invent"\*\*\*—I propose we ponder a further step. I call it the women's rights amendment. It reads: the subordination of women to men is hereby abolished.

### Excerpts From Rebuttal

Look: Women resent the society that defines rape as something other than what we feel violated by, that does not believe us when we protest that violation, that looks to make it all right by asking whether we deserved it or desired it or enjoyed it. We resent the society that protects pornography as freedom of speech without considering that it is also terrorist propaganda that silences women, or, as the Right would have it, suppresses it without addressing why men want it, while defending the social relations that require it. This is a society that turns away from the beating of women in the home, calls it a haven, and affirms the family to which it is endemic. It resists paying women for housework, the work most of us do, saying our reward is commendation and appreciation. We would like to be able to eat that. It resists equal jobs for us, and equal pay when we do the same or comparable work, yet refuses to see the connections between our options: work for nothing at home, little in the marketplace, a little more (at least for a while) in the street. We resent having motherhood forced on us by unwanted sex, being deprived or discouraged from using contraception, guilt or poverty keeping us from abortions, and then being saddled with the entire care of children—alone. We want to be able to *want* our children. We resent being blamed for what men do to us, being told we provoked it when we are raped or sexually harassed, living in constant fear if we face the fact that it could happen to us at any minute, becoming willing, shrunk the size of a life trying just not to be next on the list of victims, knowing that most men could probably, statistically, get away from it. We have had enough of the glorification of this heterosexuality, this erotization of dominance and submission, while woman-centered sexual expression is denied and stigmatized.

I would like to return to the issue of who speaks for women and ask a feminist question to answer it. How do our lives express our analysis? Mrs. Schlafly tells us that being a woman has not gotten in her way. That she knows what she is saying because it happened to her. She could be one of the exceptional 7.8%, although who's to know. I do submit to you,

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\*\*\* Wittig, Monique. *Les Guerillères*. 89 (Avon 1973).



though, that any man who had a law degree and graduate work in political science; had given testimony on a wide range of important subjects for decades; had done effective and brilliant political, policy and organizational work within the party; had published widely, including nine books, was instrumental in stopping a major social initiative to amend the Constitution just short of victory dead in its tracks; *and* had a beautiful accomplished family—any man like that would have a place in the current administration. Having raised six children, a qualification not many of them can boast of, and if so probably with less good reason, did not make the difference. I would accept correction if I am wrong, and she may yet be appointed. She was widely reported to have wanted such a post, but I don't believe everything I read, especially about women. She certainly deserved a place in the Defense Department. Phyllis Schlafly is a qualified woman.

I charge that the Reagan administration has discriminated against Phyllis Schlafly on the basis of her sex. Not that—in her phrase for women men victimize—she's "running with the wrong crowd." She has been excluded by an image of women as unfit for the things she is good at, rejected by the men she helped put in power, unfairly presented as shrewish and uncongenial and odd and cold by the press. But, like many women, although on a grander scale than most, and taking many of us with her, she has also been enlisted as a participant in her own exclusion. She has actively furthered the image of women as properly outside of official power, as at best volunteers, a role she continues to play—although notice she had to *leave home* to defend its primacy to her as a woman—so that now she has no explanation for her exclusion other than her own less than totally "positive woman" attitude. They took her for what she said, not for what she did.

For it is the values of the traditionally male spheres that define the underlying continuity, the central coherence, the guiding preoccupations of Mrs. Schlafly's life: the hunt—material success individually, economic policy on the political level; warfare—triumph in competition in her personal life, defense policy on the national level; religion and morality—the virtues of motherhood and family life, and the pursuit of traditional social values on the level of social design, as in her opposition to abortion, and her career in law, the secular religion.

Before she decided that feminists create the problems we fight, back in 1967, she knew sexism when she encountered it. When she was attacked for her six children as a disqualification for a party post, she placed a cartoon in her book *Safe—Not Sorry* showing a door labelled "Republican Party Headquarters," with a sign reading "Conservatives and Women Please Use Servants' Entrance." Now the Conservatives are in. Are women still to use the back door?

I am not saying that her finger near the nuclear trigger would make

me feel particularly safe. Just that by the standards set by the men in the job, she should be there. I privately believe she has been trivialized by her association with women's issues. I'm saying, her analysis of her own experience is wrong. Their foot is on her neck, too, and I, for one, am willing to give her this chance to change her mind.

### Excerpts From Closing Statement:

How do you know when a group is on the bottom? It may be some indication when they can be assaulted and authorities ignore them; physically abused and people turn away or find it entertaining; economically deprived and it is seen as all they are worth; made the object of jokes and few ask what makes the jokes funny; imaged as animal-like, confined to a narrow range of tasks and functions, and told it is all harmless or inevitable and even for their benefit as well as the best they can expect, given what they are. These are all true for women. In addition, we are excluded from inner circles and then rejected because we don't know the inside story; told we can't think and had our thoughts appropriated for the advancement of others; told the pedestal is real and called ungrateful and lacking in initiative when we call it a cage, and blamed for creating our conditions when we resist them. When a few of us overcome all this, we are told we show that there are no barriers there, and are used as examples to put other women down. She made it—why can't you? We are used as tokens while every problem we share is treated as a special case.

"Look around you," as Mrs. Schlafly says. If the fact that women are physically less able than men is proven by our comparative absence in physically demanding roles, why isn't the fact that women are not as smart as men proven by our comparative lack of presence in tenured faculties, Congress, the courts, executive board rooms, university presidencies, editorships of newspapers and publishing houses? Why don't the few women who achieve athletically prove that *any* woman can, just as Mrs. Schlafly tells you the tokens in the roles I have mentioned prove that we are all capable of such achievements, if only we would try? She says "any woman can"—I say, "*All* women can't" so long as those who make it are the privileged few. The feminist question is not whether you, as an individual woman, can escape women's place, but whether it is socially necessary that there will always be somebody in the position you, however temporarily, escaped from *and that someone will be a woman*. You can't claim to speak for 53% of the population and support changes for a few.

Let's return to the question of personhood and rights. Women of the Right know women are socially not persons, too. Either they acquiesce in this, or are fearful of the brutal realities of life as "person," knowing they will still be *treated as women*. No wonder they want protection. But male

supremacy is a protection racket. It keeps you dependent on the very people who brutalize you so you will keep needing their protection. Feminists know that protection produces the need for more protection—and no rights of your own. I have often wanted to ask Mrs. Schlafly: Why are you so afraid of our freedom? Now I am beginning to see that if you assume, as she does, that sex inequality is inalterable, freedom looks like open season on women. We deserve better, and will have it. I personally promise you, Mrs. Schlafly, that the only question for the future of women's rights, as with the ERA, is *not* whether or not, but when.

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#### **Sexual Harassment**

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