DISAPPEARING MEDUSA: THE FATE OF FEMINIST LEGAL THEORY?*

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Here is all my liberal arts education had to say about Medusa: In Greek mythology, she was a Gorgon, a monster with hair of snakes. Gazing upon a Gorgon would turn a man to stone. The mortal Perseus set out against all odds to kill Medusa, to give her head as a wedding present (to his creepy future stepfather). Perseus prevailed, but only with help from the goddess Athene, who gave Perseus her shiny shield. He could use it as a mirror in targeting Medusa, and would not be turned to stone by gazing upon the female monster.[1] So Medusa's snaky head got lopped off, and the good guys shouldn't have had to worry about her ever after.

Instead, Medusa (in all her incarnations) has caused inestimable consternation about how to deal with the mere potential of female power. J.C. Smith and Carla Ferstman put it this way:

> Jehovah curses her, Saint Paul tells her to keep her mouth shut. Allah counsels disciplining her if she is disobedient. The Buddha tells us to avoid her because she will pollute us . . . . Freud shut his eyes to HER. Jung saw HER and advocated killing her in order to free oneself from HER. Lacan couldn't see HER but always had an uneasy feeling that somehow there was something there he couldn't quite grasp . . . . Nietzsche saw HER, but he couldn't make up his mind whether to play the role of Oedipus, Perseus, or Dionysus and finally went mad. Women who look into the mirror and see HER become frightened and cover HER with a mask. They are afraid that if men see HER and become frightened, they might be mistaken for a Monster and be attacked.[2]

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[1] For a fuller account of the conventional story, see EDITH HAMILTON, MYTHOLOGY 141–48 (1942).

Why does Medusa make both men and women so crazy? Among the many interpretations of Medusa, she carries a few conventional connotations. (1) By turning men to stone, she prevented "the male gaze," thus denying the possibility that women could be defined by men.[3] (2) Her snakes represent unintimidatable self-possession. She had to be killed because, by her very existence, she could expose the contingency of the Law of the Fathers.[4] (3) Her destruction required female complicity, which was amply rewarded. In later Greek poetry, and in contemporary consciousness, Athene is the embodiment of wisdom, reason, and purity.[5] After the murder of Medusa, she carried the head on her "aegis," the shield she carried for her father.[6] (4) Medusa symbolizes female *potential*.[7] Because she was killed, we don't know and are having trouble imagining her full manifestation.

In short, Medusa is the unvarnished, undomesticated—and incomplete—counternarrative to patriarchy.[8] Medusa represents the possibility of a transformatively different consciousness.

Athene and Medusa appear to present the choice between domestication and death. No living woman can turn a man into stone when he looks to murder or beat or rape or ridicule or silence her, *because she is a woman*. It is dangerous even to say that women in a gendered society share a vulnerability to sexual aggression. There are powerful incentives to say that it doesn't really happen all that often, or that it doesn't happen *in any way* because of gender. There is powerful incentive to replicate the masks of femininity, to grind a lens of regularizing, comforting distortion, so that we might not be seen at all. It is much easier to make nice. That is the Athenian strategy, as commonly understood.

As the alert reader has realized, I am going to suggest that something like the alleged Medusa/Athene opposition is happening within feminist legal theory. I don't want to make too much of it. The legal academy is notoriously self-important; the struggles that transpire there are not or-

[2] J.C. SMITH & CARLA J. FERSTMAN, THE CASTRATION OF OEDIPUS: FEMINISM, PSYCHOANALYSIS AND THE WILL TO POWER 284–85 (1996) (emphasis in original).

[3] *Id.* at 236.

[4] *Id.* at 232–39.

[5] HAMILTON, *supra* note 1, at 30. Athene is also seen as aligned with patriarchy because she was not of woman born. Rather, she is said to have sprung "[f]ull-grown and in full armor" from the head of Zeus. *Id.* at 29. *But see* note 27, *infra*.

[6] HAMILTON, *supra* note 1, at 148.

[7] SMITH & FERSTMAN, *supra* note 2, at 133.

[8] *Id.* at 45.

dinarily life and death struggles. The only crucial continuing struggle is that against the legal academic norms of abstraction and self-absorption. I believe *radical* feminist legal theory is among the best examples of crucial resistance.[9] It has actually made a difference, and can facilitate much more change, if we just hang on to that edge.[10]

In feminist legal theory, the Medusas among us—those who relentlessly and unapologetically name male dominance—are often ridiculed,

[9] The work of Professor MacKinnon is rightly regarded as the center of radical feminist legal scholarship, her most theoretically complete books being CATHERINE A. MACKINNON, FEMINISM UNMODIFIED (1987) [hereinafter MACKINNON, FEMINISM UNMODIFIED] and CATHERINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE (1989) [hereinafter MACKINNON, THEORY OF THE STATE]. I regard her work as proceeding in partnership with the non-legal work of Andrea Dworkin. The two books that have most changed me are ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN (1979) and ANDREA DWORKIN, RIGHT WING WOMEN (1983).

I cannot here give full flavor to the theories, but I think most people who identify themselves as radical legal feminists would agree on this much. Because sex is socially constructed as an inexorable difference, an approach to equality that focuses on difference is destined to fail. Indeed, the more unequal women are, the less clearly will systematic abuses to them register on social/legal radar. Within the differences regime, law can see only the tips of the icebergs of abuses. Those can be treated as mere "mistakes" of unwarranted differentiation. But there is no mistake about it. Rather, radical feminism regards gender as a system of male supremacy and female subordination. "Getting at" this system—legally or otherwise—requires unrelenting exposure of its relative invisibility, which in turn requires unrelenting critique of the nearly metaphysically seamless male supremacist claim to knowledge.

Beyond this, radical legal feminists have taken different roads. I have worried more than some about the "why" of male supremacy. *See* Ann Scales, *The Emergence of Feminist Legal Theory: An Essay*, 95 YALE L.J. 1373 (1986); Ann Scales, *Introduction* to SMITH & FERSTMAN, *supra* note 2. Many others have applied the theory to specific male supremacist practices, most famously, the work of MacKinnon and Dworkin on pornography. My favorite article in the "applications" genre is Margaret A. Baldwin, *Split at the Root: Prostitution and Feminist Discourses of Law Reform*, 5 YALE J.L. & FEMINISM 47 (1992).

[10] My editors want me to give examples of "Athenian" legal theory, in contrast to the radical feminist theory described in the prior footnote. There is too much risk of misunderstanding in being specific. I will say that *all* branches of feminist legal theory have had real or perceived Athenian moments whether in liberal feminism, race critical feminism, postmodern feminism, or, indeed, radical feminism itself. Consider within the last category the title of my article, *Feminist Legal Method: Not So Scary*, 2 U.C.L.A. WOMEN'S L.J. 1 (1992). That article emerged when I was asked for what seemed like the thousandth time to describe what feminist legal theory *is*. I secretly wanted the title to be *Feminist Legal Method: I'm Only Gonna Tell You This One More Time.* That would have been arrogant, and a not nice commentary on my audiences' reading habits. The published title was not only "making nice," but was a bit of a fib, as I knew that feminist legal method can be scary as hell.

Having said only that much about "Athenian" legal theory, I must emphasize two other points. First, in my view, the relative "disappearing" of radical feminism is largely accomplished not by feminists but by defenders of patriarchy. *Whatever* can be used to devalue radical feminism is priceless ammunition; that is the point of the story of the mythological transformation of Athene. Second, the phenomenon of "making nice" is not *always* a bad thing, but *is* always, I believe, a painfully complex thing for women, differentially painful and complex for women of various cultures, colors, and histories of sexual abuse.

turned into pornography,[11] and otherwise sought to be silenced.[12] The snakeheads are still out there, for sure. I am not worried about their commitment and resilience.

The two worries raised in this Essay are otherwise. First, I'm concerned that students are led either to settle for a caricature of radical feminism, or else to dismiss it as shrill or not nice or intellectually too dense or academically and politically passé. If true, that is a terrible missed opportunity for them, and for society.

Second, I worry about the conversations that feminists of different visions are *not* often having among ourselves about whether we are in competition and the nature of that real or perceived competition. I would attribute much of the problem to what Barbara Christian has called "the race for theory."[13] Academic advancement and academic fashion are mean regulators of ideas. In contemporary U.S. jurisprudence, yesterday's hot school is displaced by today's hot critique of yesterday's school, which becomes today's school, which is quickly displaced by tomorrow's critique, and so on. In recent years, this displacement effect seems not only commonplace, but always accelerated.

Legal theoreticians, particularly those of us with no pretense to neutrality, have to grow pretty thick skins. But I still think we need to discuss: Is this academic process inevitable? Can we lessen the meanness in the process? Aren't successive progressive schools used against each other to domesticate or destroy each other? Are we missing clear examples of the divide-and-conquer strategy at work?[14] Have feminists noticed that as we are pitted against each other, there is a decidedly non-feminist

[11] For example, in her recent critique of the movie *The People vs. Larry Flynt*, Gloria Steinem notes how Flynt had turned her into pornography for her earlier criticism of *Hustler* magazine. Gloria Steinem, *Hollywood Cleans Up Hustler*, N.Y. TIMES, Jan. 7, 1997, at A17. Recall also, in the largely vituperative response to the publication of CATHERINE A. MACKINNON, ONLY WORDS (1993), the review that began, "[s]uppose I decide to rape Catharine MacKinnon before reviewing her book." Carlin Romano, *Between the Motion and the Act*, NATION, Nov. 15, 1993, at 63.

[12] In her most recent book, Andrea Dworkin describes what, in my understanding, is a tip-of-the-iceberg account of the hostility of U.S. print publishers to her work. *See* ANDREA DWORKIN, LIFE AND DEATH: UNAPOLOGETIC WRITINGS ON THE CONTINUING WAR AGAINST WOMEN 33–34, 70 (1997).

[13] Barbara Christian, *The Race for Theory*, *in* THE POST-COLONIAL STUDIES READER 457 (Bill Ashcroft et al. eds., 1995).

[14] For example, Professor Mark Tushnet has suggested how the "minority critique of the critique of rights," an early aspect of Critical Race Theory, was used to domesticate *both* Critical Legal Studies and Critical Race Theory. With the emergence of the minority critique, he notes, some law school faculty

> amplified the ambivalence present in the critics' works in an effort to domesticate this strand of minority and feminist scholarship, treating it as rejecting (rather than engaging in a political dialogue with) the cls critique of rights. Because of their need to present themselves as politically progressive, [the law faculties] constructed a position to their left but to the right of cls, into which they placed

master narrative (or narrow set of master narratives) that has managed to maintain continuity within itself as well as maintain control of the discourse that *actually decides what the U.S. legal regime is?*[15]

The expanded conversation that I propose will expose more than liberal hegemony. I would expect also to hear about personal hurts and disorientations, particularly among white radical feminists and critical race feminists. Anyone who has followed legal theory in recent years cannot have missed some of this distressing flavor: on one hand, white radical feminists are a bunch of essentializing daughters of privilege; on the other hand, race critical feminists came along (uninvited) and domesticated (or were used to domesticate) a genuinely radical movement. I do not know to what extent this polarity is genuinely felt by female participants in legal theoretical enterprises, or whether this opposition is a contemporary Medusa/Athene story conveniently crafted by more powerful interpreters to defuse, confuse, and oppose both radical feminism and critical race feminism. I do know that these counter-stereotypes are demoralizing and demonstrably false.

As a way of beginning the conversation, Professor Margaret Montoya suggests that, in addition to academic trauma, legal feminists also suffer a failure of *mestizaje*:[16] an inability to further the powerful, inherently subversive miscegenistic relationships among our respective enterprises. There is simply no way to keep all points of view in focus at all times. But the intentional mixing of perspectives can itself be a counter-hegemonic strategy.[17]

That is all I will have to say about my second worry, for now. In this Essay, I simply want to offer my preliminary thoughts on why the insights of radical feminism are crucial to the integrity of feminist legal thought. Specifically, without understanding radical feminism, without embracing Medusa, how can we make sense of this world?

certain minority and feminist scholars . . . . In this way, the constructed "real" cls serves as a useful negative reference point for centrists and liberals.

Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1521 (1991).

[15] For example, in my Jurisprudence class this term, we read the influential article by Herbert Wechsler, *Toward Neutral Principles of Constitutional Law*, 73 HARV. L. REV. 1 (1959), back-to-back with Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. CHI. L. REV. 1175 (1989). These pieces present a striking continuity in jurisprudential position over 30 years. Thus, the powerful mainstream is still obsessing about "judicial activism," and debating it in liberal terms. The other front in this narrow battleground is held by Professor Ronald Dworkin.

[16] Professor Montoya defines "mestizaje" as "the new world Spanish word for hybridity with its implicit emphasis on miscegenation." Margaret E. Montoya, Academic Mestizaje: Re/Producing Teaching, Scholarship and Community Service Latina Style 6 (1997) (unpublished manuscript, on file with the author).

[17] Personal communication with Margaret Montoya (Feb. 28, 1997).

Let me put this in a personal perspective. There were four events that led me, as a young lawyer, to decide to plunge into something that had just been named "feminist jurisprudence." First was the decision of the U.S. Supreme Court in *Dwight Geduldig v. Carolyn Aiello*,[18] decided the year I was admitted to law school, and holding essentially that there is no sex discrimination when pregnant men and pregnant women are treated the same. Nobody at law school could explain that. Second was the losing struggle over the federal Equal Rights Amendment. The proposition was so simple, but the rhetoric in opposition was *so* desperate and convoluted. That, and the foregrounding of women in the opposition, made me realize that the liberalism which was our starting point was too insubstantial to explain or remedy genderized harms. Third, when I was working at an all-female law firm in Los Angeles, we tried in 1979 to certify a class of aerospace workers in a sex and race discrimination case. The judge told us the black women workers among our clients could be counted for purposes of the sub-class complaining about race discrimination or the sub-class complaining about sex discrimination, but not both. The judge's feeling, as I recall, was that to let them be counted for both purposes would be unfairly to give those class members what—for some unexplained reason—would be two bites of what—for some unexplained reason—could be only one apple.[19] There was a lot of explaining to do.

Fourth, I read Professor MacKinnon's first book, *Sexual Harassment of Working Women*,[20] and I began to feel that an explanation (maybe even a better world) was possible. The real kicker was Chapter Five of that volume, where MacKinnon set out the jurisprudence of her theory of sexual harassment. It was there that she first published a detailed account of the impoverishment of what she called the "differences approach" to equality law, and postulated instead the "dominance approach."[21] I spent

[18] 417 U.S. 484 (1974) (holding that state disability insurance program does not violate equal protection clause by excluding pregnancy coverage).

[19] A decade later, the representative disabilities of African American women were persuasively addressed in Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139. Professor Crenshaw's notion of "intersectionalities" has since become an indispensable aspect of feminist and race critical analyses.

[20] CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN (1979). The historical observer will recall that, at the time of its publication, this book was widely proclaimed as the best contemporary work in law, and Professor MacKinnon as the most brilliant and promising of young legal scholars.

[21] *Id.* at 10–41. I think this is the most under-read of MacKinnon's books, which is a shame, because it is foundational not only for the sexual harassment cause of action but for MacKinnon's later work. Chapter Five is also a terrific exposition of equality law on a doctrinal level, as regards both race and sex. For later treatments of the "differences approach" vs. the "dominance approach," see MACKINNON, FEMINISM UNMODIFIED, *supra* note 9 at 32–45; MACKINNON, THEORY OF THE STATE, *supra* note 9 at 215–49.

many hours mapping her dominance approach against everything I knew about law, and testing it against my entire experience of politics and human misery. It rang not only true, but transformative.

I'm not sure why the publication of MacKinnon's first book didn't cause a patriarchal nervous breakdown. I reckon that many lawyers didn't read radical feminist legal theory very carefully. I suspect liberal lawyers assumed that this emerging theory could be confined to a few causes of action like sexual harassment that were susceptible of liberal interpretation—as a matter of emergent "women's rights," *relatively* unopposed by other previously recognized, more sacred, rights.

In any case, I am sure the corner was turned with the radical feminist assault on pornography. More precisely, the symbiotic system of male dominance and female apologism went nuts when the MacKinnon/Dworkin ordinance proposed actually to *do* something about pornography and the proposal proved to be democratically passable.[22] The pornography critique most emphatically could not be conceptualized in liberal terms, so that the underlying theory of male supremacy was forced into consciousness.

At this point, the legal academy really *needed* some other theories to displace radical feminism. The empty pretense to neutrality which was the engine of legal liberalism just couldn't hold the fort anymore. It had already been undermined by Critical Legal Studies, and was directly in the sights of both radical legal feminism and Critical Race Theory. Fortunately for male supremacy, the legal academy was soon saturated with the strategic successor to liberalism: postmodernism.[23] In that most totalizing theory (that claims its authority from being anti-totalization), no oppression can be directly named.[24] Compare these two quotes about the relationship between women and theory:

> I'd argue that it is compatible to suggest that "women" don't exist—while maintaining a politics of "as if they existed"—since the world behaves as if they unambiguously did.[25]

[22] For a description of that struggle, and an argument that it must stay alive, see Ann Scales, *Avoiding Constitutional Depression: Bad Attitudes and the Fate of Butler*, 7 CAN. J. WOMEN & L. (1993).

[23] On how postmodernist analysis reaches the same ends as liberalism, specifically in the context of the pornography debate, see *id.* at 386–91.

[24] Some postmodernist work is not only informative but potentially liberatory. *See, e.g.*, EVE KOSOFSKY SEDGWICK, THE EPISTEMOLOGY OF THE CLOSET (1990). At its extreme, however, postmodernist theory claims that everything is a product of discourse. Killing poverty—discursive. Blood in the streets—discursive. Racial murder—discursive. Women's guts ripped out for sexual pleasure—discursive. At this extreme (and in work influenced by it), postmodernism uses an elitist vocabulary to fixate on obvious problems (i.e., "identity"), to describe what can more powerfully be described otherwise (most spectacularly in the work of Professor Patricia J. Williams), and which vocabulary leads to destructive conclusions (i.e., that all identities are illusory).

[25] DENISE REILY, "AM I THAT NAME?": FEMINISM AND THE CATEGORY OF "WOMEN" IN HISTORY 112 (1988). This position is not solely attributable to Denise Reily. Its philosophical authors were the French feminists; its primary legal exponent in the U.S. has been Drucilla Cornell. My point, following Wittgenstein, is directed to all postmodern feminists: If that is what you believe, "why do you put it so oddly?" LUDWIG WITTGENSTEIN, PHILOSOPHICAL INVESTIGATIONS para. 60, at 29 (G.E.M. Transcombe trans., 3d ed. 1968). To her credit, Reily anticipates exactly the objections I pose in this Essay:

> It might be feared that to acknowledge any semantic shakiness inherent in "women" would plunge one into a vague whirlpool of "postgendered" being, abandoning the cutting edges of feminism for an ostensibly new but actually well-worked indifference to the real masteries of gender, and that the known dominants would only be strengthened in the process.

REILY, *supra* at 5.

> Women's practice of confrontation with the realities of male dominance outruns any existing theory of the possibility of consciousness or resistance.[26]

The reader can guess who, in this juxtaposition, I consider to be Athene and who Medusa. Or, rather, one is the late-Hellenic version of Athene, and the other striving for Athenian wholeness. Athene and Medusa are not really oppositional. Not surprisingly, the earlier African versions of the story were appropriated and transfigured by the Greeks. In the older myths, Athene is a *daughter* of Medusa. Athene was born of the Three Queens of Libya of whom Metis (Medusa) was the destroyer/crone.[27]

"Metis" denotes persons of mixed racial heritage.[28] The word form appears differently—metis/mulatta/mestiza—in the romance languages and in English. But of course, linguistic survival does not guarantee respect. A crucial move in the modern imaging of "woman" was her de-racination and re-racination in a white supremacist mode. Medusa's image is so blood-soaked that it is sometimes hard to see: underneath the gore is not just "woman," but *mestize*,[29] women of all races, all intermingled and all threatened. That part of the story is lost when Medusa is thought of as just another white girl screwed over by white men. On the contrary, the modern version of the Athene/Medusa story must always be seen as a fracturing along racial, as well as gender, lines.

[26] Catharine A. MacKinnon, *From Practice to Theory, or What Is a White Woman Anyway?*, 4 YALE J. L. & FEMINISM 13, 14 (1991).

[27] BARBARA G. WALKER, THE WOMEN'S ENCYCLOPEDIA OF MYTHS AND SECRETS 629 (1983). Zeus's "giving birth" to Athene is part of the patriarchal recasting of the myth, consistent with the usurpation of birth power in all patriarchal mythology. *Id.* at 106–09 (listing 23 transcultural instances of male birth-giving, including the birth of Eve from Adam's rib).

[28] THE OXFORD ENGLISH DICTIONARY 1784 (two-volume micrographic ed. 1971).

[29] *See* Montoya, *supra* note 16.

Athene is a symbol of wholeness, not partiality. Athene's symbol is the triangle, connoting her representation of the Triple Goddess honored by many cultures—Virgin, Mother, and Crone.[30] In the ancient tales, the virgin is not the objectified, pure, and purely non-autonomous virgin goddess of contemporary theology. To the contrary, the virgin symbolizes female self-determination, she who is free of male attachment or obligation.[31] The mother is the source of the world, man, and all other wonders.[32] The crone represents the wisdom of age, including wisdom about mortality.[33] In her association with death, the crone becomes very scary.[34] She gets *really* scary in her Destroyer mode. She is capable of inestimable, unappeasable fury and vengeance.[35]

Athene is an extraordinarily generous patron of humans, as virgin and mother. She makes nice in a big way, *because she is able to*, because she is whole, and because her imminent fury is appreciated. Wearing the Medusa's head on her aegis, Athene puts foremost on her otherwise benign countenance one fundamental part of herself.[36] The aegis is a warning from Athene's crone aspect:[37] *Violators of females will be turned to stone. No excuses excepted.*

It was only a scurrilous hoax perpetrated by late Hellenic mythographers that separated Athene and Medusa, made them enemies, and made willingness to commit suicide/genocide/gynocide the test of "good" womanhood. "In the phallocentric recasting of the myth, Athene is made to pursue vigorously the murder of herself—or rather the Destroyer aspect of her triune nature—via the cardboard character of Perseus."[38] When the non-existence of "woman" (or even relative unimportance of woman) becomes a predicate for recognizing that harms to women *as women* are ever done, we've reached another Athenian crossroads.

The dominant narrative wants us to believe we can't live with Medusa, but in fact we can't live without her. She is part of us. She is black and

[30] BARBARA G. WALKER, THE WOMAN'S DICTIONARY OF SYMBOLS AND SACRED OBJECTS 39–40 (1988).

[31] *Id.* at 198.

[32] *Id.* at 335–36.

[33] *Id.* at 404.

[34] As Professor Jane Caputi notes, "[t]he presence of the Crone is vehemently banished in a culture both terrified of death and in thrall to horror and socially manufactured megadeath." JANE CAPUTI, GOSSIPS, GORGONS AND CRONES: THE FATES OF THE EARTH 223 (1993).

[35] *See id.* at 232–35. Mythological characters are transculturally and transhistorically reincarnated. The destroyer/crone aspect of the Triple Goddess is most dramatically represented in the Hindu goddess Kali, the Black Goddess of the destruction of the universe, the end of time, and chaos. *See* WALKER, *supra* note 27, at 488–94.

[36] *See* WALKER, *supra* note 30, at 81.

[37] *Id.* at 255.

[38] CAPUTI, *supra* note 34, at 163. According to Barbara Walker, "[t]he Perseus story was invented to account for the appearance of Medusa's face on Athene's aegis . . . ." WALKER, *supra* note 27, at 629.

brown and white and lesbian and straight and Jewish and atheist and poor and wealthy and you name it. She is the fire of honesty and the flame of anger. Both our wisdom and our creativity are unanchored without her. The story of the world is incomprehensible without her.

Consider the stories being told in the world right now. Just on the day that I am writing this, January 14, 1997, what passes for "intense media scrutiny" looks like a serious matter of disappearing Medusa. Today, the press reported the official comments from the Citadel—that formerly all male, state-supported military college in South Carolina—regarding the resignation of two female cadets from the class of 2000. Jeanie Mentavlos and Kim Messer said that they had repeatedly received unwelcome sexual advances and intentionally had been made physically ill, battered, doused with flammable liquid and set on fire, and subjected to death threats.[39]

The Citadel's interim president insisted that "gender had nothing to do with the harassment . . . ." He went on to say, "[i]t's not a systematic failure, but a failure on the part of individuals."[40] In all the military "scandals" involving mistreatment of women–Tailhook, the Citadel, the Aberdeen Proving Ground, and, recently, the venerable West Point[41]—the *system* is always in good shape.[42] Mistakes were made; it is not about gender.

Medusa would get beneath the superficial issue of integration of women into the military to question militarism itself. Radical feminists have long known how militarism *requires* pervasive genderization.[43] Lesbian

[39] Alan Sverdlik, *Class Rank, Not Sex Bias, Blamed in Citadel Case*, WASH. POST, Jan. 14, 1997, at A3. Both cadets reported this conduct to their superiors, but nothing was done. They sought to document their treatment with a hidden tape recorder. Male cadets discovered and confiscated the recorder. Judith Havemann, *Two Women Quit Citadel Over Alleged Harassment*, WASH. POST, Jan. 13, 1997, at A1.

[40] Sverdlik, *supra* note 39, at A3.

[41] A male West Point cadet was court martialled on charges of raping a female cadet. A spokesperson for West Point stated that this "doesn't mean there is something wrong with the institution," but "something wrong with this behavior." *Today* (NBC television broadcast, Jan. 24, 1997). That cadet was acquitted of the charges after five hours of deliberation by a panel of seven male Army officers. *West Point Cadet Acquitted of Rape*, L.A. TIMES, Jan. 25, 1997, at 12A.

[42] The female whistle-blowers keep paying the price of that alleged institutional health. The female West Point cadet who brought the rape charges was placed on requested leave. During the court martial, 20 male cadets stood outside the courtroom in a show of support for the defendant. Dianne Henk, *West Point Court-Martial Cadet's Sex-Assault Trial Begins*, RECORD (Northern New Jersey), Jan. 22, 1997, at A4. Jessica Bleckley, the female soldier at the Aberdeen Proving Ground who "sparked" the investigation of Army sexual harassment, has received "an honorable discharge for hardship reasons." *Military Jury Clears West Point Cadet of Rape*, COM. APPEAL (Memphis, Tenn.), Jan. 25, 1997, at A2.

[43] Many studies demonstrate how militarism is designed to uphold masculinity at any cost. *See* CYNTHIA ENLOE, DOES KHAKI BECOME YOU? THE MILITARIZATION OF WOMEN'S LIVES (1983) and sources cited therein; CHRISTINE L. WILLIAMS, GENDER DIFFERENCES AT WORK: WOMEN AND MEN IN NONTRADITIONAL OCCUPATIONS (1989), and sources

feminists are showing how "lesbian-baiting" goes hand in glove with sexual harassment in efforts to drive women out of the military.[44] We need lots of research into the relationship between the military and women of color.[45] We need Medusa's fearlessness to get the whole pathological picture of what the military is and does. It is a life and death matter for everybody, particularly as each year's military budget continues to soak up resources much needed elsewhere.

Also today, January 14, 1997, the horrendous murder last December of six-year-old "beauty queen" JonBenet Ramsey made even more news, when the Boulder Police decided *it was a sex crime*. They figured that out because semen was found near the body.[46] Medusa would identify a number of other sex crimes committed against the child. That little blond white girl was made into a consumable object when just a baby.[47] Since

cited therein. *See also* CAPUTI, *supra* note 34 (tracing the connections among women loathing, hypermasculinity, and nuclearism); Michelle M. Benecke & Kirstin S. Dodge, *Military Women in Nontraditional Fields: Casualties of the Armed Forces' War on Homosexuals*, 13 HARV. WOMEN'S L.J. 215, 232–44 (1990); Ann Scales, *Militarism, Male Dominance and Law: Feminist Jurisprudence as Oxymoron?*, 12 HARV. WOMEN'S L.J. 25 (1989).

[44] Benecke & Dodge, *supra* note 43, at 233, 238. Prior to the institution of President Clinton's "don't ask, don't tell" policy, women were far more often than men discharged from the military for homosexuality. *Id.* at 222. Since the institution of the new policy, the discharge of service members for homosexuality is far higher than before, and women are still disproportionately targeted. Philip Shenon, *New Study Faults Pentagon's Gay Policy*, N.Y. TIMES, Feb. 26, 1997, at A4.

[45] There has been no comprehensive research into how the military treats women of color, except to note their underrepresentation in the officer corps and higher grades. Benecke & Dodge, *supra* note 43, at 243–44. These barriers to advancement persist, though African American women are overrepresented in the military in general. Brenda L. Moore, *From Underrepresentation to Overrepresentation: African American Women, in* IT'S OUR MILITARY, TOO! WOMEN AND THE U.S. MILITARY 115–35 (Judith Hicks Steinhem ed., 1996).

Just as this issue was going to press, the story broke that sexual harassment investigations might have been used to target African American men. On March 11, 1997, five white female soldiers at Aberdeen Proving Ground, at a press conference arranged by the Maryland NAACP, stated that they had been pressured to file rape charges against African American drill instructors. Steven Komarow, *Army Forced Rape Charges, Women Say*, USA TODAY, Mar. 12, 1997, at 01A. Contrary to many reports, most of those women had never accused anyone of rape; only one of them recanted charges of rape. Paul Richter, *Army Accused of Coercion in Sex Probe*, L.A. TIMES, Mar. 12, 1997, at 10-A.

If these charges are shown to be true, they should not be viewed as discrediting the hundreds of credible complaints of military sexual misconduct against women, *see* Editorial, *Don't Lose Sight of the Crime*, S.F. CHRON., Mar. 13, 1997, at A24, but as a brilliant (though familiar) deployment of the divide-and-conquer strategy.

[46] *See* John Bacon, *"The Globe" Sued Over Ramsey Crime Photos*, USA TODAY, Jan. 14, 1997, at 3A. I cannot here fully analyze the publication by *The Globe* (a national tabloid) of crime scene photos and the boycott of that paper, alleged by it to be "censorship." For present purposes, I would suggest that the real reason for public excoriation of *The Globe* was that only it, among all national media, intimated that the child's murder could have been an instance of otherwise normal/normalized sexual practice gone wrong. GLOBE, Jan. 21, 1997 at 24; GLOBE, Jan. 28, 1997, at 23.

[47] Also, on January 13, NBC's "Today" show had a segment on whether beauty

her death, her image has been published thousands of times. Among those, I have seen only two that show her as a child, without makeup and sexualized costuming. Those were surely marketing mistakes.

That child was pimped by her parents, by the pageant industry, and now pervasively by the media. The media has the public fixated on "who did it," as if this crime were extraordinary, rather than explaining why in all crimes like these the class of suspects is really quite huge.

In the meantime, our attention has been drawn to the case of "Girl X," the nine-year-old African American child who, on January 9, 1997, was repeatedly raped, beaten, choked, poisoned with gasoline, and left for dead in a stairwell of the Cabrini Green housing project in Chicago. Girl X has been in a coma since that time.[48] Some commentators have lamented the disproportionate attention paid to the murder of JonBenet Ramsey because of her family's race, wealth, and prestige.[49] And those commentators are undoubtedly right. It is important to expose racial and class disparities in the resources devoted to publicizing, investigating, and prosecuting such crimes.

But it is equally important to point out their similarities. The sexual abuse perpetrated on JonBenet and on Girl X happens every day to lots of girls—and to boys who can be used as girls. We must be able to discuss how the objectification and consumability of children is on a continuum with the objectification and consumability of adult women, and how all of them are targets for normalized abuse. It is awfully hard to have that discussion when pornographers are still celebrated as constitutional heroes.[50]

pageants for children might be a bad idea. *Today* (NBC television broadcast, Jan. 13, 1997). Since then, a number of mainstream media have raised the concern but have tended to focus on the effects of competition on "children," gender-neutral. The relationship to the institution of gender is typically raised but dismissed. Thus, the cover story in *Newsweek* worries that the child pageant industry churns out "champions in . . . the timeless art of catching men's eyes," but goes on to suggest that "maybe we should all lighten up." Jerry Adler, *The Strange World of JonBenet*, NEWSWEEK, Jan. 20, 1997, at 43, 44, 47.

[48] Lee Bey, *Handwriting Match Sought in Girl X Rape*, CHI. SUN-TIMES, Feb. 5, 1997, at 11.

[49] *See, e.g.*, Rita Rose, *Wealth Puts Distasteful Spin on Tragedy*, INDIANAPOLIS STAR, Feb. 26, 1997, at A17.

[50] Medusa is mercifully not completely disappeared in the controversy about THE PEOPLE V. LARRY FLYNT (Columbia Pictures, 1996). Gloria Steinem was the first, at least on a national level, to point out that the film could not have taken a celebratory position toward Flynt if he were a publisher of anti-Semitic or Ku Klux Klan literature. Steinem, *supra* note 11. Among the reviews as of today, only Hanna Rosin has pointed out that Flynt *is* a purveyor of racial hatred, in his consistent publication of racialized pornography. Hanna Rosin, *Hustler*, NEW REPUBLIC, Jan. 6 & 13, 1997, at 20, 21. On how pornography disappears racism by turning hate into "love", see ANDREA DWORKIN, PORNOGRAPHY: MEN POSSESSING WOMEN 209–17 (1981). Dworkin identifies *Hustler* as an exemplar of pornographic imaging. *Id.* at 25–30. On why racialized bodies are a

The facts of gendered abuse are almost too common, too gruesome, and too institutionally normalized to be endured. Facing the facts takes a toll; it is easier to block the sensations, to *turn ourselves* to stone.[51] That way, of course, nothing gets done.

At this point in the history of feminist legal theory, the choice is not between domestication and death. Qualification stops somewhere. We have to name what is happening. We have to not make nice when making nice—particularly through elaborate theoretical devices—misses the point. Only by reappearing and celebrating Medusa can we put our fractured selves and world together again. We have to reclaim Medusa, in wholeness and in solidarity.

sexual turn-on for the patriarchy, see bell hooks, *Eating the Other*, *in* BLACK LOOKS: RACE AND REPRESENTATION 21–39 (1992).

[51] CAPUTI, *supra* note 34, at 156. Professor Caputi refers to this process as "psychic numbing." *Id.* at 29. Caputi analogizes Dr. Robert Jay Lifton's description of the psychological response to the threat of nuclear holocaust to the psychological response to gendered abuse. *Id.* at 132–35. In contrast to psychic numbing, Caputi advocates "psychic activism," a state of mind that is achievable only by reclaiming Medusa. *Id.* at 141, 51, 196–97.

PUBLIC WOMEN AND THE FEMINIST STATE

MARGARET A. BALDWIN*

Let us never cease from thinking—what is this "civilization" in which we find ourselves? What are these ceremonies and why should we take part in them?[1]

I. INTRODUCTION

What does the state care about women? What do women care about the state? This Article takes a long look at both of these questions. I explore the problem posed to feminist political theory by "public women": how a feminist account of state power can comprehend women as public actors and as subjects of governmental significance. My specific interest in the legal treatment of prostitution motivated my exploration of this issue. I wondered why, in the case of prostituted women, state concern for women takes the form of criminal regulation, and whether, from a feminist perspective, state regulation of the practice of prostitution should be promoted or resisted.[2] As I studied the long and extensive debate waged over state criminal prostitution policy,[3] I discerned a general

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[1] VIRGINIA WOOLF, THREE GUINEAS 114 (Hogarth Press 1977) (1938).

[2] I have frequently declared my agnosticism on the issue of the decriminalization of prostitution, *see, e.g.*, Margaret A. Baldwin, *A Date With Justice: Prostitution and the Decriminalization Debate*, 1 CARDOZO WOMEN'S L.J. 125 (1993); Margaret A. Baldwin, *Pornography and the Traffic in Women*, 1 YALE J.L. & FEMINISM 111, 142 (1989), for reasons I hope this Article makes clear.

[3] This debate consists of at least three modern stages, the first of which emerged in reinvestigation of the permissible scope of the criminal law, motivated by the 1957 Wolfenden Report. The report recommended the decriminalization of private adult homosexual acts and affirmed the non-criminal status of prostitution. The report supported these recommendations with the premise that matters affecting only private morality should remain outside the scope of the criminal law. *See* THE COMMITTEE ON HOMOSEXUAL OFFENSES AND PROSTITUTION, THE WOLFENDEN REPORT 24, 173, 187 (1963); *see also* MODEL PENAL CODE § 277 (Tentative Draft No. 4 1955) (recommending that all private consensual sexual relationships be excluded from criminal regulation).