WOMEN, DIFFERENCES, AND RIGHTS AS PRACTICES: AN INTERPRETIVE ESSAY AND A PROPOSAL

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This essay argues that feminist rights analysis should broaden and diversify its reach to include the rights talk from the everyday lives of all sorts of different women—to look at women's rights at least in part as practices. Women's practices within particular, local contexts become crucial to feminist interpretations of rights because here women articulate the significance of rights (and their denials) for their political and social identities and for their thoughts and acts of resistance and acquiescence to hegemonic forces. In presenting this argument, I offer an interpretation of recent Anglo-American feminist and postmodern, pluralist legal scholarship that together fosters an understanding of rights as practices, as mundane legal claims women make in their day-to-day worlds. I analyze and elaborate these views in order to develop and encourage an interpretation of rights and talk about rights as practices of different women.

Rights contain images of power, and manipulating those images, either visually or linguistically, is central in the making and maintenance of rights. In principle, therefore, the more dizzyingly diverse the images that are propogated, the more empowered we will be as a society.

—Patricia J. Williams (1989:292)

Differences are positive. They are only a problem when a particular standard that denies the pluralism is privileged.

—Zillah R. Eisenstein (1988:33)

Feminism defines itself as a political instance, not merely a sexual politics but a politics of experiences, of everyday life.

—Teresa de Lauretis (1986:10)

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INTRODUCTION

Shirley Dalton of Dellslow, West Virginia, intends to fight for food stamps before she lets her kids go hungry because "we're due that help" (Kahn 1980:35). Wendy, a homeless woman in Boston, looks painfully back on the abortion her mother forced her to have; she says, "I didn't know I had any rights" (Hirsch 1989:91). Darlene Palmer worries about her lesbian daughter's being discharged from the military "with the possibility of prison" if the authorities find out about her lesbianism: "my heart still feels an ache for this injustice which Lori must live with each day" (Rafkin 1987:103). Annie Adams got tired of cleaning white people's toilets she was prohibited from using: "Finally, I started to use that toilet. I decided I wasn't going to walk a mile to go to the bathroom. If you let people know sometimes that you're not afraid, it helps a lot. That's how I survived in the mill" (Byerly 1986:134–35).

These are the neglected voices of rights talk. We hear little from ordinary women about their daily experiences with rights.[1] We should hear more. Each woman expresses her reaction to a denial of what she considers a legitimate expectation in some aspect of her life. Certain expressions are about acquiescence and costs to the individual's sense of who she is. Others are about small-scale, yet meaningful, resistances to domination. Still others are about both acquiescence and resistance. Scholars and legal practitioners, especially those interested in feminism, need to attend to this important sphere of rights talk and the meanings these voices bring to rights talk.[2]

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[1] Rights talk encompasses academics' and practitioners' analyses and pragmatic use. It includes general discussions about what constitute rights and how they are, can, or should be used. In most of its guises rights talk has had a professional character to it; that is, rights talk has been seen primarily as a discourse engaged in by legal professionals and those associated with the legal and scholarly professions. As broad as rights talk has been, it has not generally heeded the rights discourse of ordinary people in their daily routines. This essay argues for the importance of including the discourse of ordinary, nonprofessional women as we consider the future of rights talk. Some scholars, like Martha Minow, have begun the task of envisioning a rights talk that moves beyond the limits of traditional understandings. She explicitly recognizes that the language and symbolism of rights occur outside formal legal institutions and professions where people are engaged in processes of communication and meaning making (Minow 1987a:1862), although she does not include rights talk from everyday life. Kristin Bumiller (1988) does, however, discuss the ways victims of discrimination do and do not make rights claims.

[2] Austin Sarat's analysis of the legal consciousness of the welfare poor is relevant here. He (1990:346) argues:

> Resistance exists side-by-side with power and domination. Thus, when people . . . seek legal assistance or go to legal services they fight the welfare bureaucracy and its "legal order" even as they submit themselves to another of law's domains. They use legal ideas to interpret and make sense of their relationship to the welfare bureaucracy even as they refine those ideas by making claims the meaning and moral content of which are often at variance with dominant understandings.

Sarat's article discusses the everyday legal consciousness of people, although

Feminists interested in women's rights and differences among women and between women and men should broaden and diversify their reach to listen to the daily rights talk of all sorts of different women—African Americans, Latinas, Native Americans, Anglos, the old, the young, the disabled, the poor, the rich, lesbians, bisexuals, and heterosexuals.[3] I mean to invite those concerned about women, differences, and rights to think beyond the contexts of courts, other formal governmental arenas,[4] and political movements to consider the meanings of rights as women routinely experience and articulate them (and their rejection).[5]

Interpreting rights as practices, as legitimate expectations women assert or are denied in their daily lives, opens the door to a rights talk in feminist sociolegal scholarship that takes into account the meanings of rights for different women in various situations. Within this context rights as practices are claims that ordinary people make about what they believe they can justly require or expect for themselves of others and of their situations (see Minow 1987a:1867). Rights as ordinary practices have a fluid quality; people constitute rights claims in their own ways in diverse situations independently of formal state law and courts.[6] Claims can vary from situation to situation, person to person.[7] Understanding this quality, we can ask how women constitute rights in their routine and not so routine lives, how, when, and why they invoke rights discourse (or deliberately do not do so), and what it gains or fails to gain for them. Such an approach challenges feminist and other sociolegal scholars to think of law as contingent (Goodrich

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the discussion and the consciousness remain against the backdrop of the welfare bureaucracy and legal services offices. His research, therefore, shares some of the same concerns as mine but moves less far from the arena of the state and formal legal rules than I am suggesting.

[3] There are many other significant characteristics of difference among women, like religion and physical and mental abilities. My listing is not meant to be inclusive or to exclude any such characteristics.

[4] Neal Milner (1989:648) also argues that "rights language is part of everyday language and not something that has to be used or assessed primarily in the context of the formal legal process."

[5] In issuing this invitation I do not mean to imply that we should not also seek to understand the relationship between rights as practices and rights claimed or denied within governmental institutions and political movements; we should. We should also attend to the interconnections between decentered law and centered, state law.

[6] I use the term "practice" differently from the way Richard E. Flathman does in his book *The Practice of Rights* (1976); his understanding of practice is tied to "sets of actions that recur over time and that are thought to be interrelated or to cohere together in some significant degree" (ibid., p. 12). My use of practice encompasses more random claims and actions that do not necessarily cohere.

[7] In this vein of thinking Susan S. Silbey (1985:15) suggests that "law is located in concrete and particular circumstances where the relations of ends and means are governed by situational rather than abstract or general criteria."

1987:159), plural, multilayered, not exclusively of state institutions or any single or unitary meaning.

The concept of practice speaks to the interconnectedness of social relations and the constitution of personal and group identities and accordingly places rights discourse at least in part within the ever changing realms of women's social positions and subjectivities (see Coombe 1989; Schultz 1989). This perspective moves feminists away from essentialist positions that see only one basic woman's identity played out in various guises toward an appreciation of the profound differences among women, the multiplicity of women's identities,[8] and the changeful character of women's lives (see Alcoff 1989:314-315; Harris 1990).[9]

Further, this approach acknowledges women as "both subjected to social constraint and yet subject in the active sense of maker as well as user of culture, intent on self-definition and self-determination" (de Lauretis 1986:10). This view understands women as oppressed, yet capable of (or engaging in) resistance and active in constituting their own identities within their particular positions in society. The idea of practice, then, advances a complex feminism where we comprehend rights as a dimension of constraint or oppression as well as resistance or empowerment for women as they define and redefine their senses of who they are at any given moment in any given circumstance.

One might consider, for example, the ways in which women are coming to terms with "simple rape" (Estrich 1987).[10] Increasingly women see "simple (or acquaintance) rape" as real rape and argue that women subjected to simple rape are both victims, and therefore disempowered, and women with particular rights, and therein engaged in resistance. Women claim the rights to refuse "pressured" sex and to accuse those "pressuring" them of rape (or attempted rape). To the extent that they construct such rights, they are involved in "struggles over meaning and power" (Minow 1987a:1862) with respect to their bodies and minds. They are struggling over the definition of rape and over women's and men's power and interactions. In these situations women's practices of rights involve them in asserting particular identities as both victims and resisters.[11] This struggle occurs even where courts or for-

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[8] Angela P. Harris (1990:585) criticizes essentialism in feminist legal theory for ignoring the "same voices silenced by the mainstream legal voice of 'We the People'—among them, the voices of black women." She argues for the strengths of a "multiple consciousness" which recognizes the multiplicity of identities of women. See also Matsuda 1989 and King 1989.

[9] We can, then, recognize the complexity of multiple identities among women and even within a single woman. See Audre Lorde's (1984) reflections on her various identities.

[10] See, for example, *Time* (June 3, 1991) magazine's recent coverage of date rape. Nancy Gibb's cover story attests to the growing consciousness of date rape, especially on college campuses.

[11] See Lenore Walker (1989) for an interpretation that suggests that the

mal legal institutions ignore women's claims to redefine rape and to identify themselves as rape victims.[12] Many women involved in this struggle will no longer yield to "pressured sex" because it is real rape, and they will strive to avoid being rape victims (again or for the first time). Other women, not engaged in these resistant practices of rights, will continue to be more readily subjected to simple rape; they have not adopted an identity that enables them to understand simple rape as real rape and to try to assert their right not to be raped in "social situations."[13] Women's understandings of their rights in such situations have meaning for themselves and others. The meanings may empower or continue to victimize them. We need to inquire further into those meanings from the perspectives of both women and the "others" who construct meanings for women.

A consideration of different women's rights as practices supports such inquiries, opens up neglected avenues of rights discourse, and brings us into realms where so much rather routine struggle takes place (see Hunt 1990:325). From such a perspective diverse women's daily experiences are taken seriously—they assume a prominence in how feminists and other sociolegal scholars think about rights.[14] These women's voices can illuminate a multitude of paths of resistance to dominations and generate new meanings of rights. There is, therefore, no single scenario of where this approach to rights leads. It can go in many directions but particularly toward ones that urge those not usually heard in rights talk to come forward.

Examination of how women do and do not draw on rights ideas, images, and idioms and what meaning rights have for their lives—lives conducted mainly in the absence of formal legal claims—holds out certain promises for feminist and other sociolegal scholarship. It has the potential to (1) propagate more rights images; (2) contribute to the decentering, contextualizing, and particularizing of rights discourse; (3) enrich our understanding of wo-

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claiming of victim status can be a source of resistance and ultimately empowerment for battered women who kill their mates.

[12] Carol Smart (1989:49), for one, evinces a strong skepticism about the legal system's capacity to overcome the "phallocentrism which disqualifies women's experience of sexual abuse." This phallocentrism can be seen in the struggles over the legally recognized definitions of "consent," as well as in the legal definition of rape itself.

[13] With this and other examples it is crucial to keep in mind that identity is tied up with social position and subjectivity. In some circumstances social position limits the development of identities that encourage resistance more thoroughly than in others. Also we need to recognize that women's claims to resist are not all that is involved in protecting themselves from simple rape; issues of power and men's recognition of those claims are also critical elements in these situations.

[14] Along similar lines Katharine T. Bartlett (1990:832) argues that what she calls positionality "identifies experience as a foundation for knowledge and shapes an openness to points of view that otherwise would seem natural to exclude."

men's empowering and disempowering discourse on rights; and (4) provide more insights into the relationship between ordinary, especially nonelite, women and rights movements politics. Looking at rights as practices multiplies the voices that contribute to feminist rights talk and shifts our focus somewhat to include spheres of rights discourse often ignored.[15]

In exploring this turn in rights talk, I offer an interpretation of recent Anglo-American feminist and postmodern, pluralistic law literature that presents various arguments relevant to understanding rights as practices among women in their daily lives. Together these arguments point toward a view of law and rights as practices among women. I assemble and elaborate the arguments to bring into the foreground the tendency to conceptualize rights as practices and to encourage further thinking in this direction.

The direction leads toward a positionality perspective that regards law and rights as situated in particular socioeconomic and cultural experiences of women (Bartlett 1990). From this perspective rights are seen (at least in part) as practices which articulate differences and differential expectations between women and men and among women (e.g., Minow 1988a, 1988b), as a potential vehicle for providing a "sense of selfhood and collective identity" (Schneider 1986:622), as "parts of the fabric of social life rather than constraints existing outside or prior to it" (Silbey and Sarat 1987:120), and as "ordinary knowledge" (Messick 1988:639). A feminist jurisprudence sensitive to positionality and women's rights as specifically situated practices is capable of listening to diverse women's stories about rights and their denials or absences as they go about their daily lives.[16]

WHY DISCUSS RIGHTS

In a period of feminist debunking of liberal law and rights as phallocentric (e.g., MacKinnon 1987, 1989; Smart 1989), of postmodernist shunning of universals and generalities (e.g., Nicholson 1990; Ashe 1988), of disenchantment with legal rights strategies as paths to political transformation (e.g., Bumiller 1988), and of critical legal studies critiques of rights (e.g., Tushnet 1984),[17] why does

[15] This move takes us away from conceptual tidiness and will probably be troublesome to those seeking to generate compact theoretical statements about rights. This drawback, however, would certainly seem offset by the inclusion of voices not usually heard in academic rights analysis and more general rights talk.

[16] Vicki Schultz (1989) makes a persuasive case for our need to listen to women's stories in building feminist approaches to the study of law; see her recent article on title VII cases where she relates stories that courts tell about women and work that differ considerably from stories women themselves relate (Schultz 1990). Carolyn G. Heilbrun (1988:44) similarly argues: "Women must turn to one another for stories; they must share stories of their lives and their hopes and their unacceptable fantasies."

[17] Volume 62 of *Texas Law Review* (1984) offers a selection of articles on the critique of rights. Mark Tushnet, for instance, argues that rights are so un-

one wish to plunge anew or again (see Milner 1989) into the sullied waters of rights?[18] After all, traditional rights claims have depended on generalizations and the collapsing of distinctions between women and men and among women which now appear crucial to feminist political identities. They have resulted in failed dreams of liberation or in rejustification of oppressions and have limited vision to the hegemony of liberal legalism.

Several responses seem especially persuasive against reservations about pursuing rights talk. Viewed particularly from the perspective of outsiders—those with little power to claim or exercise rights—shunting rights talk aside is a stance only those with power can comfortably assume. Those exercising rights need not concern themselves with them as much as those unable to do so. Articulating this viewpoint, Patricia J. Williams (1988:57), for example, writes: "For blacks in this country, politically effective action has occurred mainly in connection with asserting or extending rights." She (ibid., p. 61; emphasis hers) contends that "rights are to law what conscious commitments are to the psyche. This country's worst historical moments have not been attributable to rights-*assertion*, but to a failure of rights-*commitment*." Rights by themselves may not provide liberation, but their absence is clearly oppressive to outsiders, for whom they can operate as key defenses.[19] Kimberlé Williams Crenshaw (1988:1385) maintains: "As long as race consciousness thrives, Blacks will often have to rely on rights rhetoric when it is necessary to protect Black interests." If one has not been required to clean toilets and then denied their use because one is a black woman, as Ms. Adams was, it is easier to dismiss the rhetoric of rights.

Rights can at times provide outsiders with a powerful language for pursuing their goals. Rights have a "special resonance" in our society (Rhode 1990a:634) and make stronger claims on the state than do needs or interests (Littleton 1987a:197).[20] Within the

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stable as to be difficult to claim in any effective manner and that rights are empty abstractions that impede progressive social change.

[18] David Fraser (1988:58) contends: "If French feminist discourse and the political experience of the left in America have taught us anything, it is that the kind of fundamental social change envisioned by such utopian projects can and must take place somehow . . . outside the realm of law and 'rights talk.'" Projects can certainly take place outside law, but some will surely take place within law, especially within the broader realm of law that constitutes so much a part of the everyday life of women and men in the United States. I do not argue that rights talk in itself is necessarily transformative or nontransformative. Rights talk needs to be contextualized in local and more general spheres of discourse (in which I include power and violence) to enable us to understand how much particular rights talk resists or challenges hegemonies of gender, race, class, etc.

[19] Mari Matsuda (1989:8) elaborates this perspective: "unlike the postmodern critics of the left, however, outsiders, including feminists and people of color, have embraced legalism as a tool of necessity, making legal consciousness their own in order to attack injustice."

[20] Nancy Fraser presents an interesting analysis of needs discourse and

context of a society dominated by legal discourse, rights have a particularly compelling pull or attraction. Their dismissal is a luxury outsiders cannot currently afford,[21] and those concerned about outsiders should not ignore outsiders' views of rights.

Another argument for pursuing rights talk stems from the belief that rights have the potential for articulating liberatory visions or more immediate political and social alternatives (Campbell 1983; Villmoare 1985). If rights discourse can be thought of as involving meaning making, it is possible to see how, through rights, women could articulate new or different political and social worlds.[22] Such meaning making can, at least in part, "express political vision, affirm a group's humanity, contribute to an individual's development as a whole person, and assist in the collective political development of a social or political movement" (Schneider 1986:590). From this perspective rights discourse might foster interpretive communities, where collective interests and sensibilities could be sustained.[23] Rights talk also has the potential of nurturing feminist identities, providing political vehicles by which to express resistance, and supporting legal and political mobilization (Milner 1989).

Finally, we come to the argument driving this discussion: that there are spheres of rights discourse as yet unexplored by scholars. Moving away from rights talk would preclude those spheres from study and contribute to their continued silencing. Rights ideas, images, and idioms have meanings for women and men as they conduct their daily lives—they matter (Milner 1989:635). Women articulate rights, and they experience denials or subversion of their senses of rights.[24] Lucy Lim, for example, makes a clear

discusses its relationship to rights. She (1989:312–13) argues for the "translatability of justified needs claims into social rights . . . [because she is] committed to opposing the forms of paternalism that arise when needs claims are divorced from rights claims." She believes that "justified needs claims as the bases for new social rights [can] . . . begin to overcome obstacles to the effective exercise of some existing rights" and have the potential to be transformed into "collective self-determination."

[21] Whether rights talk would disappear in some future or utopian society is not what interests me here, although imagining the future is not an unimportant task. My concern is with women, rights, and politics now.

[22] Martha Minow (1987a:1862), for example, "grounds rights in the processes of communication and meaning-making rather than in abstract or enduring foundations."

[23] Iris Marion Young (1990) puts forth a strong case against the ideal of community as both unrealistic in modern, urban societies and as destructive of differences so important to contemporary feminism. The sense in which I mean community here is rather more limited than she has in mind, although I do think her warnings against community as an ideal should be taken very seriously.

[24] Alan Hunt (190:325) insists that "rights can only be operative as constituents of a strategy of social transformation as they become part of an emergent 'common sense' and articulated within social practices." It is important to understand the ways in which rights are constituted within social practices and what the meaning and import are of that constitution for the weak and for the powerful.

claim that she has a "right to a job" in the mine when men, unaccepting of a woman co-worker, complain that she should stay home and take care of her husband (Martin 1988:152). We should listen to her. Academics ought not to dismiss the sphere of everyday rights talk because many, ordinary, nonacademic people like Ms. Lim do not dismiss it.[25]

We should, therefore, continue rights talk and carry it beyond the traditional boundaries of academic research on rights, law, and society into the quotidian lives of women for whom rights talk has palpable significance. From the perspective of women the reasons to pursue rights analysis, albeit it in new directions, are not only sound, they are compelling. Currently feminist legal writings are moving in new, diverse, and sometimes contradictory directions of rights analysis.

FEMINISM AND RIGHTS SCHOLARSHIP: A MOVE TOWARD RIGHTS AS PRACTICES

Much feminist legal scholarship revolves around issues of difference, rights, and equality (e.g., Williams 1984–85; Littleton 198a, 1987b, 1987c; Minow 1987c, 1990). Analyses debate the choice between being treated like men or given special treatment which might result in further disadvantage to women (e.g., Menkel-Meadow 1988:72–75; Scott 1988).[26] How to address and integrate differences between women and men with a goal of equality in mind resides at the center of sociolegal debate on protective labor legislation and pregnancy, for instance (see Rhode 1990b:197–212). Recently, however, certain feminist rights writing has moved away from a concentrated focus on differences between women and men toward new attention to the differences among women.[27] Here I

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[25] This statement and the main argument of this essay raise questions, which I recognize but cannot delve into here, about the relationship between academics and those they listen to and study and about the particular responsibilities involved in this approach to women's rights. For one discussion of these issues see Harrington and Yngvesson (1990:144–48).

[26] Littleton (1987d:1308) presents a compact, feminist interpretation of the core issues of difference and equality: "To summarize, from a feminist viewpoint, current equality analysis is phallocentrically biased in three respects: 1) it is inapplicable once it encounters 'real' difference; 2) it locates differences in women, rather than in relationships; and 3) it fails to question the assumptions that social institutions are gender-neutral, and that women and men are therefore similarly related to those institutions."

[27] Carrie Menkel-Meadow (1989:296) nicely captures the stages of feminist theory as it speaks to differences:

> In what could be called three stages of feminist theory we have moved from "sameness" or traditional equality arguments (women are functionally the same as men) to "difference" claims (women's redemptive qualities in the naming and reclaiming of women's values and activities) to the current strain of poststructural, postmodern diversity theorists who resist essentialism and overgeneralizing that occur when two genders are opposed to each other.

See also Regenia Gagnier (1990), who provides a succinct summary of this shift

explore arguments in both phases of feminist rights literature that make contributions to the idea of women's rights as practices. I consider their potential and limitations with respect to understanding rights at least in part as mundane experiences of diverse women.[28]

Generations of feminists have devoted considerable attention to rights and to issues of difference and universality that rights talk within liberal legalism has necessitated. Nineteenth-century historians like Lucy Maynard Salmon debated what then seemed to be the unavoidable choice between rights' recognizing differences between women and men (and therein granting "special" status of women which could work for or against women) or rights' reaffirming only universal or essentialist categories of sameness between men and women. For Salmon and other early feminists advancement for women was to be found in rights, and the route to those rights was clear: "progress lay in the direction of obliterating rather than emphasizing the differences between men and women" (Scott 1987:104). Others came to see that such an approach has its own liabilities, where differences denied resulted in continued inequality for women.[29]

Issues of differences between women and men continue to occupy center stage of feminist debate (e.g., Vogel 1990). Within fem-

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within feminism at the same time that she raises important questions about the political significance of this change.

[28] My intent in this section is neither to present a general review of the literature on feminism, differences, and rights nor to resolve what Minow (1987c, 1990) calls the "difference dilemma." She (1990:20) characterizes the dilemma in the following way:

> The stigma of difference may be recreated both by ignoring and by focusing on it. Decisions about education, employment, benefits, and other opportunities in society should not turn on an individual's ethnicity, disability, race, gender, religion, or membership in any other group about which some have deprecating or hostile attitudes. Yet refusing to acknowledge these differences may make them continue to matter in a world constructed with some groups, but not others, in mind. The problems of inequality can be exacerbated both by treating members of minority groups the same as members of the majority and by treating the two groups differently.

Instead of trying to resolve this dilemma, I look selectively at particular arguments that shift our understanding of women's rights toward rights as practices. I draw out aspects of the writings most relevant to this approach and discuss where and how they take us in that direction and where they stop short. For a more general review and assessment of the arguments in this area, one might consult, for example, Ann E. Freedman (1983), Frances Olsen (1984), Wendy W. Williams (1985), Ann Scales (1986), Susan B. Boyd and Elizabeth A. Sheehy (1986), Christine A. Littleton (1987a, 1987b), and Carrie Menkel-Meadow (1989).

[29] Joan W. Scott (1987:98) characterizes the problem: "The consequences of such thinking were at once to deny and to recognize difference—to deny it by refusing to acknowledge that women (or blacks or jews) might have a fundamentally different historical experience, and to recognize it by somehow disqualifying for equal treatment those different from the universal figure. . . . The language of universality rested on and incorporated differentiations that resulted in unequal treatment of women in relation to men."

inist sociolegal studies it is difficult to avoid some consideration of this aspect of difference, even for those who think that a focus on differences between women and men is legally limited and politically debilitating. A key question for feminists is what to do with differences especially as they pertain to inequality.

Catharine A. MacKinnon contends that a feminist politics built on the differences between women and men sidesteps the real issue of women's powerlessness. She (1987:39; see also 1989:51) writes: "to affirm difference, when difference means dominance, as it does with gender, means to affirm the qualities and characteristics of powerlessness." For her *the* central legal and political issue is male dominance, not gender differences. A "difference approach," one that concentrates its politics on female-male differences rather than on male dominance, ultimately incapacitates women. Such a politics paints women into a corner of continued inequality and powerlessness, where the male is the primary reference point for law and politics. Here difference, which can be justified, rather than dominance, which cannot, becomes the field of contestation (1987:34). She believes that dominance rather than difference should be the primary focus of feminist politics and law.

In her rejection of a "difference approach," MacKinnon (1989: 248) repudiates "abstract rights" since they "authoritize the male experience." For her the traditional concept of universal, abstract rights is a male standard that secures and legitimates continued male dominance over women. Traditional rights in form and content disempower women. Her alternative to traditional rights is "substantive rights . . . accountable to women's concrete conditions and to changing them" (ibid., pp. 248–49). Women should assert legal claims outside the realm of male rights discourse in order to overcome male dominance. MacKinnon speaks to an understanding of rights that recognizes the male particularity of traditional rights and that is grounded in women's experience. Although she does not elaborate analytically much on just what she means by substantive rights, she clearly seeks to envision new kinds of rights arising from women's experiences that have the potential to resist male dominance.[30] She, therefore, lays important groundwork for an interpretation of women's rights as practices when she confirms that presently constituted rights are particular (to men) to begin with and when she argues for new, substantive rights constituted from women's concrete situations.

Still, MacKinnon's theory remains on essentialist terrain. She is wedded more to *woman* as a general category that can challenge male dominance in law and other spheres than to the significance for feminist politics of differences among women.[31] Despite references to race and class and her statement that "[n]or is feminism

[30] Her antipornography work attests to her own commitment to devising rights from women's concrete experiences.

[31] See Angela P. Harris (1990) on the essentialism in MacKinnon and

objective, abstract, or universal" (ibid., p. 116),[32] her position continually circles back to women's commonalities and thus to wom*an* as the basis of her argument (ibid., p. 38).[33] In her challenge to the universality of traditional rights and in her call for "substantive rights," however, MacKinnon does look toward interpreting rights as constituted within women's experiences.

Ann Scales draws on MacKinnon but speaks from a somewhat different vantage point derived from a particular interpretation of feminist method and law. She agrees with MacKinnon (ibid., p. 248) that the claims to universalism, neutrality, and abstraction that characterize liberal legitimation of law and rights are in themselves male. For Scales (1986:1376), overcoming the "tyranny of [male] objectivity" is an important task for feminist jurisprudence. This task involves (1) rejecting a rights approach, which rests its legitimacy on claims of objectivity and neutral rules and standards; and (2) developing a more concrete, female-based "care-based approach," which is "incompatible" with a rights approach (ibid., p. 1385).

Care-based principles arise in conjunction with a feminist method that entails constant, *de novo* decisionmaking arising out of women's varied experiences, not from a male, objectified standard of neutrality or universality. So, Scales (ibid., p. 1388) repudiates a rights approach as male and, therefore, dominating in its very form and calls for a "concrete universalism" that regards differences as "emergent, as always changing."[34] Her care-based approach requires continual attention to women's lived experiences;

Robin West's work and Marlee Kline (1989) on the tendency toward oversimplification in MacKinnon's theoretical stance.

[32] In *Toward a Feminist Theory of the State* (1989:38) she is explicit about this point:

> Feminism sees women as a group and seeks to define and pursue women's interests. Feminists believe that women share a reality, and search for it, even as they criticize the leveling effects of the social enforcement of its commonalities. Women's commonalities include, they do not transcend, individual uniqueness, profound diversity (such as race and class), time and place. Feminism's search for a ground is a search for the truth of all women's collectivity in the face of the enforced lie that all women are the same.

[33] Commenting on the problems raised by essentialist tendencies in some strains of feminism, Minow (1987c:62–63) observes:

> Yet by urging the corrective of the women's perspective, or even a feminist standpoint, feminists have jeopardized our own challenge to simplification, essentialism, and stereotyping. Women fall into every category of race, religion, class, and ethnicity, and vary in sexual orientation, handicapping conditions, and other sources of assigned difference. Claims to speak from women's point of view, or to use women as a reference point, threaten to obscure this multiplicity and install a particular view to stand for the views of all.

[34] The concrete universal of Scales—listening to others' concrete experiences—could be deemed a feminist universal method. See the growing literature moving consciously away from universalistic or essentialist tendencies in feminism (e.g., Linda Alcoff 1989; Jane Flax 1990a; and Linda J. Nicholson 1990).

their daily, varied lives form the foundation of her feminist vision or law.

Similar in outlook to Scales's idea of care is what Deborah L. Rhode (1988:44) calls the "relational work" which establishes a dichotomy between rights and responsibilities, the latter being *the* feminist way to approach issues (see also Bender 1988). This work, inspired largely by the "different voice" literature (Gilligan 1982; Chodorow 1978; Dinnerstein 1976), suggests that feminist law will be less adversarial (e.g., Menkel-Meadow 1984), more concerned with nurturing relationships among people than with asserting individual rights, and more receptive to all sorts of different voices.

MacKinnon, Scales, and the "relational" thinkers introduce important arguments that any feminist rights jurisprudence or politics must take into account. They contend that rights talk has been constructed by male voices which dominate women in form and content.[35] They warn of a need to avoid male constructions of rights. Scales and the "relational" scholars move further than MacKinnon in questioning whether rights are relevant at all to feminist law and politics; in the end they, unlike MacKinnon, would have us turn our backs on rights talk. But along with MacKinnon, these writings press toward a feminist perspective on law that highlights women's concrete, particular, and varying experiences as legitimate bases for claims in law. Together these arguments prepare the way for an interpretation of rights as women's practices.

With attention to the helpful cautions from MacKinnon, Scales, and the "relational" schools of thought and in accord with the ideas of a care-based system emphasizing responsibility and evolving from women's experiences, other feminists work to expand rights talk. They seek rights talk which (1) denies universalistic language; (2) takes into account power inequalities and divisions; (3) is receptive to new, feminist, care-based ways to approach problems; and (4) makes variability and differences among women a priority.

Pursuing feminist challenges to traditional ideas of rights, these analyses more fully integrate differences among women into their views of rights and law. Such feminists increasingly appreciate the partiality of perspectives (e.g., Bartlett 1990; Flax 1990a, 1990b; Minow 1987b:99) and the situatedness of all discourse (de Lauretis 1990:128). They incorporate this epistemological understanding into their critiques of traditional, abstracted rights as claims of universalized (male) individuals and into their rejection of feminist essentialism. These critiques point toward conceptions of rights based on the concrete claims and expectations of all sorts

[35] It is important to understand that rights have by and large been formulated within a Western, white, heterosexual, class-based male discourse.

of different women; this move, thus, further provides a basis for appreciating women's rights as practices.

Martha Minow (1986:15), for instance, advocates "richer notions of rights" involving duty, relationships, connections; such notions are certainly in tune with a care-based, relational approach in law. She wants us to recognize rights that nurture human interdependence (Minow 1987a:1865 n.15). But she is careful to avoid an essentialist feminist approach to such rights. Indeed such a perspective is antithetical to her response to the "difference dilemma," where she (Minow 1987c:80) entreats judges to admit the lack of neutrality and the partiality of their own viewpoints and where she celebrates experiential differences among people in order to construct "new bases for connection."

Rights can be thought of as providing connections among women if they are understood as elements of everyday life. Minow (1987a:1867) touches on an interpretation of rights that recognizes different people's particular rights claims not only in the context of courts but also "apart from the state," where they may be attempting to create new identities and communities. She (ibid., p. 1867) writes:

> Rights . . . are neither limited to nor co-extensive with precisely those rules formally announced and enforced by public authorities. Instead, rights represent articulation—public or private, formal or informal—of claims that people use to persuade others (and themselves) about how they should be treated and about what they should be granted. I mean, then, to include within the ambit of rights discourse all efforts to claim new rights, to resist and alter official state action that fails to acknowledge such rights, and to construct communities apart from the state to nurture new conceptions of rights. Rights here encompass even those that lose, or have lost in the past, if they continue to represent claims that muster people's hopes and articulate their continuing efforts to persuade.

Implied here is the idea that rights are an aspect of people's daily lives. They have meanings that link people to one another, and they foster mutual responsibility or care-based claims.

This perspective views rights as not just abstracted, universalized claims of individuals vis-à-vis formal state law; they are also interpreted as constituted within the diverse, concrete experiences of various human beings as they go about their normal routines and interact with one another. Many women daily express their reactions to the mundane denials of rights and the effects such denials have on who they are—how they define themselves. Rape victims, for example, confront the issue of rights and self-definition on a continuing basis. As a victim of rape, Kristen Buxton struggles with rights and identity: "Dating is hard . . . . I always think, 'Should I tell him?' I hate to introduce myself as a rape victim, but it's so much a part of my life" (Freeman 1990:104). We be-

come increasingly aware of the need to listen to such voices as they express the meaning of rights not only within the sphere of prosecution and courts but within the context of women's ongoing lives.

Feminist legal literature is beginning to come to terms with rights grounded in particular situations of women—with rights as practices. An awareness of rights talk as a component of women's daily experiences leads toward a confrontation with questions about differences among women (not just between women and men) that occupy such a large part of feminist writing today (e.g., hooks 1989; Lorde 1984; Spelman 1988).[36] As feminist legal scholars proceed to think about differences among women and do more than just add race, class, ethnicity, and other categories of difference to consideration of rights,[37] they may be pulled further toward an interpretation of rights as practices and to the voices that daily live with such differences. Feminist legal scholars have begun to shift rights talk into new spheres where differences and partialities, rooted in women's lived experiences, provide a broader understanding of rights.

Other, related work on postmodernism and practice in sociolegal studies and more general feminist writings contribute additional insights relevant to such rights analysis. This literature also speaks from the epistemology of the partiality of perspectives and knowledge and the situatedness of all discourse. Like the more recent feminist sociolegal work, it recognizes the importance of distinctions and differences and encourages analysis that looks away from unitary and institutional centers of law and rights toward local and more diverse contexts.

POSTMODERNISM, PLURALISM, AND PRACTICES

Various strains of contemporary criticism offer further enlightenment into the concept of practice and into rights as practices. These approaches decenter pictures of legal, social, and polit-

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[36] Deborah Rhode (1990a:638) writes that "feminism must sustain a vision concerned not only with relations between men and women, but also with relations among them."

[37] Elizabeth V. Spelman (1988:167) cautions against the add-on analysis:

> "[A]dding on" race and class means in effect "adding on" women who are not white and middle-class. To add race and class is to talk about the racial and class identity of Black women, or of poor women, but not about the racial and class identity of white middle-class women. Talking about racism and classism thus ends up being talk about something experienced by some women rather than something perpetuated by others: racism and classism are about what women of color and poor women experience, not about what white middle-class women may help to keep afloat. Given the assumption at work in feminist theory that gender identity exists in isolation from race and class identity, proposals to include "different" viewpoints amount to keeping race and class peripheral to feminist inquiry even while seeming to attend to them.

ical universes once focused almost exclusively on the state, written documents, formal institutions and professions, elite traditions, and only massive or organized challenges to those phenomena. Scholars increasingly listen to stories of those outside these established realms and, thus, to many voices which both respond to the centers and make their own worlds as best they can.[38] Like feminist rights talk, these critical perspectives[39] respect the partiality of interpretation and develop understandings of phenomena as practices within local contexts.[40] And they seek out multiplicities of experiences where differences and distinctions assume notable significance.

A decentering perspective suggests that law is not what jurisprudence, in most of its incarnations, has tried to convince us it is, that there is no such thing as *the* law, however conceived. Law is plural and exists in many overlapping spheres of life, some within the realm of the state, others outside it. Boaventura de Sousa Santos (1987:297–98) describes this contemporary view as one of legal pluralism with a "conception of different legal spaces superimposed, interpenetrated, and mixed in our minds as much as in our actions, in occasions of qualitative leaps or sweeping crises in our life trajectories as well as in the dull routine of eventless everyday life." Santos insists on law in many areas and activities. As an aspect of law, rights, then, are more than simply claims made in courts or other formal, institutionalized arenas; they are located in a multiplicity of places.

From the perspective of a society of decentered law, an observer can entertain the argument that rights have a role in the "eventless everyday" lives of women.[41] Rights occupy some of those overlapping legal spaces in various combinations and with different meanings for diverse women. With an understanding that law exists in various sites, we inquire about women's everyday

[38] Boaventura De Sousa Santos (1988:38) elegantly describes this tendency as confronting "the monopolies of interpretation."

[39] Some argue that there is a particular affinity, although an ambiguous one perhaps, between postmodern approaches and feminism since they "seek to distance us from and make us skeptical about beliefs concerning truth, knowledge, power, the self, and language" (Flax 1990b:41) that legitimate (male) Western culture (see also de Lauretis 1990). In challenging the "monopolies of interpretation" (Santos 1988:38), feminists might appear to fall more within than outside the postmodern camp. But many feminists (e.g., Hartsock 1990) reject such a position very often for the political difficulties associated with postmodern views. As Seyla Benhabib (1989:369) sums up the dilemma: "Is not a feminist theory that allies itself with poststructuralism in danger of losing its very reason for being?" There might be such a danger, but it is possible to avoid it, and I think that self-consciously feminist postmodernists are political (Villmoare 1990; Ebert 1991).

[40] In support of decentering efforts, Rhode (1989:316) comments that feminists "need theory without Theory; we need fewer universal frameworks and more contextual analysis."

[41] Of course, how "eventless" the routine articulation of rights (or the absence of such articulation) is requires interpretation, I would argue, with feminist sensibilities.

rights discourse as acquiescence and resistance to their surroundings. Feminist legal scholars are thus prepared to heed voices like that of a woman who answers "she is practically in jail" to the question "Who has it harder in marriage, a man or a woman?" (Komarovsky 1962:59). Certainly the expression of the extreme deprivation of rights associated with jail has palpable meaning for this woman in her everyday life and should be heard.

A decentered conception of law aware of everyday life pulls us toward the peripheries and local contexts of women's lives, their articulations of rights, the resistances to their rights expectations, and the meanings these have for women like Ms. Adams in as mundane activities as cleaning and using bathrooms. In local contexts we witness power struggles over law and rights and "uncover the latent or suppressed forms of legality in which more insidious and damaging forms of social and personal oppression frequently occur" (Santos 1987:299). Attention to situated, specific forms of law reveals not only local, legal oppressions but also women's resistances and countervisions to hegemonic laws, pronounced in new types of rights or in other discourses.[42] We need, therefore, to look for local, daily expressions (and denials) of rights as resistance and/or acquiescence to dominant powers, especially since those expressions are meaningful for the people involved.[43]

Consideration of the local and the contexts within which the local makes sense leads away from grand theory and universal generalizations into study of particularities where scholars become more attuned to the "partiality of our understandings" (Rhode 1989:320) and to the value of women's own many voices. Here postmodern and recent feminist writings appear in consonance with one another, as they highlight the contextuality of interpretation.[44] These perspectives emphasize the "situatedness" (Hawkesworth 1989:330) of women and their rights claims. The notion of

[42] James C. Scott contends that resistances on the part of outsiders or the "weak" may be common. He (1985:328; emphasis his) writes:

> [A]ll of the "routine" and historically common patterns of social subordination and exploitation—slavery, serfdom, sharecropping, or even wage labor—are unlike the concentration camp in that their "victims" retain considerable autonomy to construct a life and a culture not entirely controlled by the dominant class. In other words there are, for each of these groups, situations in which the mask of obsequiousness, deference, and symbolic compliance *may* be lifted. This realm of relatively "safe" discourse, however narrow, is a necessary condition for the development of symbolic resistance—a social space in which the definitions and performances imposed by domination do not prevail.

[43] An expression of right does not necessarily involve resistance; it may be a form of acquiescence. One must interpret the expression of right within a specific context to understand its relationship to hegemonic forces.

[44] Nancy Fraser and Linda J. Nicholson (1990:3) see a conjunction of postmodernism and feminism, where "scholarship has become more localized, issue-oriented, and explicitly fallibilistic." And Elspeth Probyn (1990:179) says: "It is by now axiomatic that feminism is concerned with the specificities of women's existence."

practice contributes to a situated understanding of law and rights (see Brigham 1987).

The concept of practice illuminates the complexity of the relationship among social relations, language, willed activity, and personal identities.[45] The constitution of a woman's identity occurs within her particular social position.[46] And since there is a "diversified field of power relations" and positions (de Lauretis 1990:131), there is no essential identity of "woman." Indeed, there is considerable room to question whether even individual women have a permanent, unitary self (Harris 1990:610–11). There are women's identities, constructed within the social relations and linguistic and cultural configurations they inhabit. The identities are heterogeneous, shifting, sometimes contradictory (de Lauretis 1986:8–9). But they are subjectivities women themselves engage in. Women are not merely passive receptors; they are actors in their own identities.[47] Audre Lorde (1984:137), for example, speaks about the complexity of her own identity and the difficulty of holding its elements together in her own self-definition during the 1960s:

> As a Black lesbian mother in an interracial marriage, there was usually some part of me guaranteed to offend everybody's comfortable prejudices of who I should be. That is how I learned that if I didn't define myself for myself, I would be crunched into other people's fantasies for me and eaten alive.

The concept of practice integrates the inner and outer worlds of women's experiences and assists the observer in seeing diverse maps of social relations and identities expressed in local contexts.

A focus on rights as practices and on their local contexts invites further confrontation with the issues of identity that occupy postmodern and feminist critics. Since rights as practices involve claims about what women want and how they should be treated, the articulation of rights or the overt disdain of rights among women can be viewed as a dimension of their identities. If one accedes to Linda Alcoff's (1989:324) observation that "the identity of a woman is the product of her own interpretation and reconstruction of her history, as mediated through the cultural discursive context to which she has access," rights as practices can be understood as an aspect of her history and, consequently, her identity.

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[45] Rosemary J. Coombe (1989:82) supports this view when she writes "that there is a direct, albeit complex, relation between social life and subjectivity and between language and consciousness."

[46] Linda Alcoff (1989:324), for instance, comments that "the very subjectivity (or subjective experience of being a woman) and the very identity of women is constituted by women's position" in the social relations of the worlds in which she lives.

[47] Again Coombe (1989:83) is helpful: "the social structuration of subjectivity . . . should not and need not entail losing sight of human reflexivity and interpretive activity."

Rights are constituted by women's cultural discourse and thus enter into their understandings and assertions of who they are.[48]

Still, which aspect of identity rights constitute cannot be grasped in the abstract or in any very general terms. Women's identities are, after all, comprised of a "very complex and contradictory set of social relations" (Flax 1990b:52). The complexity and the role of rights in those identities are situated in specific, concrete, local contexts where women form their identities. Women's practices within particular, local contexts become crucial to feminist understandings of rights because here women articulate the significance of rights for their political and social identities and for their thoughts and acts of resistance and acquiescence to hegemonic forces.

An approach drawing on the concept of practice looks to women's everyday legal discourse within the context of the meaning and power they bring to it and the meaning and power imposed on them.[49] Rights are part of women's experiences of acquiescence, resistance, and challenge to hegemonic discourses. So, rights issues arise beyond the formal or professional "juridical field" (Bourdieu 1987), although rights from that sphere may prove part of the contested ground for women as they articulate rights in their daily lives.[50] Katie Geneva Cannon's mother, for instance, engaged in aspects of both acquiescence and resistance and entered contested ground when she took her kids out into the white world. She made sure her children ate and went to the bathroom before going out because jim crowism would not permit them to do either once they left home. She did not challenge the jim crow laws preventing her children's eating and going to the bathroom, but they did go out. Her mother refused to have her children stay home; Ms. Cannon says, "most black kids stayed at home, but we'd get dressed up and we'd go" (Byerly 1986:34).

The idea of practice speaks to relations of domination, resistances and acquiescences to them, and the meanings they have for the routine of women's lives. That women carry with them notions

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[48] Patricia Hill Collins (1990:302) writes about the cultural discourse of black feminists whose thought "specializes in formulating and rearticulating the distinctive, self-defined standpoint of African-American women." She describes the obstacles African American women confront in this demanding process of self-definition, where control is continually contested.

[49] I would add that violence is certainly a dimension of this meaning and power (see Cover 1986). Just as violence is an aspect of direct state action, so, too, it is a dimension of the law outside the direct sphere of the state.

[50] It is important to analyze the relationships between women's rights as practices and rights determined in formal, institutional arenas, between decentered law and law of the modern state. I do not argue that rights as practices in the everyday lives of women are the only rights that need concern feminists or that we should ignore these relationships. They must be explored. Further, there is a need to delve more fully than I can within the confines of this essay into the intersections and divergences of understanding between postmodern and more traditional approaches to law and rights.

of rights and recognize oppression seems undeniable when one begins to listen carefully to their voices. A woman winder tender in a North Carolina textile mill reveals such awareness when she says,

> There was discrimination on every hand. The bossmen would try to date the women. If one got mad they would "send you out to rest." . . . The women that would go with them got the best jobs. They would take you off a job or shift and put you on another. There was no grievance. (Frankel 1984:52)

Such testimony raises further questions about where, when, and how women's practices of rights may both of the decline of old rights and of the development of new rights that challenge (or acquiesce to) dominant phallocentric laws and social relations.[51] It may prove impossible to identify by any permanent, clear, and distinct criteria just which rights challenge and which do not since the meaning and significance of rights depend on the specific contexts within which they are expressed. But the effort to locate new kinds of rights "buried within social arrangements" (Minow 1988a: 59) should not be neglected simply because the ground of rights as practices has a shifting or impermanent quality to it.

CONCLUSION: FEMINIST POLITICS AND WOMEN'S RIGHTS AS PRACTICES

The conceptualization of rights as practices among women integrates differences among women into rights analysis in ways that challenge essentialist thinking and politics and opens a path to multiple voices and perspectives.[52] Through this interpretive turn, rights talk can be seen as a dimension of the social relations and identities of all sorts of different women whose experiences with rights claims and denials may vary across class, race, ethnicity, abilities, and sexual orientation. Rights talk emerges from and is about differences and the way differences are articulated in every-

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[51] Santos (1988:41–42) offers further thoughts about meanings of law and rights and relations of domination:

> As much as we are networks of subjectivities and enter in social relations in which different combinations of forms of power are present we also live in different and overlapping legal orders and legal communities. Each one of them operates in a privileged social space and has a specific temporal dynamic. Since the social spaces interpenetrate and the different legal orders are non-synchronic the particular stocks of legal meanings which we activate in specific practical contexts are often complex mixtures not only of different conceptions of legality but also of different generations of laws, some old some new, some declining some emerging, some native some imported, some testimonial some imposed.

[52] Thinking of rights in this way poses further major questions, for example, about the relationship between decentered law and women and the modern, centered, welfare state. Opening up a dialogue between the more postmodern approaches that appreciate the decentered and the more traditional perspectives that focus on centers of law, rights, power, and politics is an activity worthy of pursuit.

day (as distinguished from professional) legal ideas, idioms, and language. Rights as practices should admit into academic and other elite rights talk the multiple voices of common-sense articulations of expectations that women think should have legitimate standing in their lives.

An approach to rights as practices of diverse women, however, appears to have potential political drawbacks for certain feminists, similar to drawbacks associated in general with postmodernism.[53] Nancy Hartsock (1990:163) cautions that just when women gain some attention for women's issues, the concept of woman, or even women, becomes nothing more than one of a series of decentered ideas, none more politically compelling than the others. And, as Christine Di Stefano (1990:73) points out, the " 'post-feminist tendency' [is] an inclination which is fostered by a refusal to systematically document or privilege any particular form of difference or identity against the hegemonic mainstream." The result is that political opposition capable of flourishing may be very difficult, if not impossible. If one is concerned about feminist rights talk for political reasons (and I am), these warnings should be taken very seriously.

In response to Hartsock's position that decentering renders the subject of woman or women problematic, I would suggest that in an analysis of rights as practices, women's identities and subjectivities *are* prominent. Rights claims are not just formal declarations by courts, removed from women, but are rather wrapped up in women's social relations and identities. There is no single woman's identity; that is true. But women's identities are manifest in their mundane rights claims. And these identities are not just as those of "women" or "woman" but of Hispanic, African American, or Anglo, abled or disabled, poor or rich, young or old women, for example, since their rights claims and identities emerge from their particular willed activities and the social relations in which those activities are embedded. Women are very much subjects within this perspective.

The other criticism is in some ways the more worrisome since it sees decentered analysis as relinquishing interpretation[54] and political stance altogether. The argument here is that it is not possible to sustain feminist politics within such a framework because the commonalities and value and truth claims necessary for politics are absent. This viewpoint arises out of a rather extreme portrait of decentered analysis, and it tends to discount profound differences among women and the powerful meaning of local contexts for any politics. Feminist politics cannot but be based on differences among women, and that means, in Elizabeth V. Spel-

[53] Coombe's (1989:97 n.109) discussion of practice theory is helpful here as are Schultz's (1989:133 n.38) comments on subjectivity and agency within the context of practice theory.

[54] Santos (1988:38) would call this the "renunciation of interpretation."

man's (1988:187) words, that "there are no short cuts through women's lives." Nor are there feminist political shortcuts. Feminist politics is not easy. But to say it is not easy should not be to conclude that such politics is impossible or that it can be engaged in only at the cost of meaningful differences among women.

Feminist rights as practices do not in themselves yield a feminist political rights movement, but this perspective is not uninformative about rights politics. A decentered approach to rights reaffirms some things we already know: that rights mobilization and movements, for instance, are more fractured and hierarchically dominated than we might like to admit (Scheingold 1974, 1988). And as any politics that self-consciously seeks not to recreate dominations, feminist rights politics that reaffirms rights as ordinary practices among all different kinds of women faces many obstacles. It would be better to face that fractured nature of feminist politics, especially if that means that we would also try to overcome the dominations built into much of that fracturing, than to ignore the voices of so many women not traditionally heard in rights talk.

Iris Marion Young (1990:315) suggests that "a liberating politics should conceive the social process in which we move as a multiplicity of actions and structures which cohere and contradict, some of them exploitative and some of them liberating." There can be many ways to poke political holes in the exploitative structures which do not require grand truth claims or many commonalities among women. Women can resist and challenge exploitations in small, quiet ways or in more powerful, boisterous ways; they can come together at some moments and move apart at others. Women like Sue Doro, who went to the Equal Opportunity office in Milwaukee in order to get a job as a machinist, resisted in a quiet way male domination of a UAW union shop job (Martin 1988:256). We should respect and learn from these everyday resistances.

We need not disallow diversity of experiences or rights as practices in order to engage in feminist politics and research. We should see a new found source of strength in differences. Audre Lorde (1984:122) offers encouragement for a feminist politics constructed from differences: "we must recognize differences among women who are our equals, neither inferior nor superior, and devise ways to use each others' differences to enrich our visions and our joint struggles." Differences among women can invigorate feminist law, politics, and research. And, as Jonathan Culler (1989:151) argues, "the power of division is a power of ongoing argument, in which incompatible positions work to focus attention on a set of issues, set the terms of an entire field, articulating a space of exploration and debate." There is power in difference, in the telling of different women's stories about rights assertions and denials.[55]

[55] Teresa L. Ebert (1991:25) writes about a feminist " 'resistance postmodernism' that has refused to abandon the project of emancipation or to allow for the easy dismissal of systems and totalities."

A way to begin the process of understanding women's practices of rights is to listen to women's stories about rights. Such stories should be included in feminist rights talk. Vicki Schultz (1989:145) is correct to argue that "feminists must tell powerful stories: stories of power and pain, of passion and possibility; stories of need and neglect, of creativity and connection." Stories of the meanings of various rights for different women move rights discourse beyond courts and legal professionals into more mundane arenas where "new juridical common sense[s]" (Santos 1989:160) attuned to women's powerlessness, needs, visions, and claims gain recognition and power.

As we become more comfortable with moves away from essentialism in theory, law, and politics and with the telling of women's stories about everyday experiences with rights, we undermine the privileging of state law and legal professionals (both of which are still by and large male-defined). We need to affirm the strengths of differences, contexts, and local spaces for women. Stories of outsiders—women—can then assume a more prominent, persuasive, and powerful place in rights talk.

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