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Feminist Legal Epistemology

Susan H. Williams†

Feminist legal theory, having achieved a degree of recognition (if not acceptance) in the legal academy, has become increasingly introspective. One form of this self-scrutiny is the growing attention to the ways in which feminist theory has focused on white, middle-class, heterosexual women to the exclusion of others. A related form is the turn towards epistemology.

Feminists from many fields have begun to examine with a critical eye their own assumptions about the nature of human knowledge and the social role that knowledge claims play. This examination grows out of a feminist critique of mainstream epistemology and of the science, ethics, and politics that rest on that epistemology. At the heart of this critique is an insight central to postmodern theory: the social construction of knowledge and its consequent context-dependence.¹

Social constructionism carries great promise, both for the critical project of deconstructing mainstream Cartesian epistemology and for the reconstructive project of designing an epistemological foundation for a more inclusive feminist theory. At the same time, however, this postmodern turn in feminist theory poses a serious threat to some of the deepest commitments of feminism, including the basic commitment to recognizing and working to eliminate the oppression of women. Several feminist theorists have attempted to appropriate the useful aspects of social constructionism within the framework of a theory that would neutralize its corrosive threat. While many of these attempts are promising, none has yet adequately described an alternative vision on which a new epistemology could be founded. As a result, the feminist frameworks

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¹ This insight has important implications for three interlocking sets of issues facing feminist theory: epistemological issues, normative issues, and identity issues. I will refer to both the normative and identity concerns, but I will do so through the lens of epistemology. An equally valuable account could be written by focusing primarily on either of the other two issues.
appear to rest, by default, on a "Cartesian echo" that undermines their purpose.

This Article will begin by describing the usefulness of social constructionism to the feminist critique of mainstream epistemology and to the creation of a more inclusive feminism. I will then explain why and how this new epistemology poses a threat to feminist commitments. Finally, I will consider several attempts by feminist theorists to "tame" social constructionism. I believe that important epistemological work remains to be done, and I will try to describe the nature and goal of that work. The possibility of a meaningful alternative epistemology depends upon our ability to explain how standards for judgment can be both socially constructed and sufficient to deal with cultural conflict. Feminist theorists are right in arguing that we must give up our desire for determinate answers to issues of social design, but we can and must be able to say more about what sorts of considerations count in the conversation through which our culture—legal and otherwise—is created.

I. SOCIAL CONSTRUCTIONISM AND A FEMINIST CRITIQUE OF CARTESIANISM

A. Cartesianism

Since the Enlightenment, epistemology, both in and outside of law, has been developing along lines consistent enough to be considered a mainstream tradition. Indeed, this traditional epistemological stance has come to be so widely accepted and so much a part of many of our social institutions that it is almost invisible to us. This mainstream tradition is Cartesianism. ²

Cartesian epistemology presents a picture of the world in which an external and objective reality is available to individual knowers through the use of their reason, sometimes combined with their sense perception. The knowledge attained is universally true, rather than true merely for a particular person in a particular time and place.³ This view gives rise to a series of dichotomies that have formed a mainstay of philosophical speculation and have had a dramatic influence on our cultural imagination. The cumulative effect of the Cartesian vision and its associated dichotomies is a model of knowledge in which to know something is to exercise power over it, to dominate or control it.

Feminist philosophers Alison Jagger and Susan Bordo have com-

² Cartesianism may be best understood as a family of theories rather than as a single theory. There are many issues either unresolved or contested within the range of Cartesian theories. My point is not that epistemology has been totally unified, but that the many disagreements that exist have been fought out largely within the assumptions of Cartesianism rather than as challenges to those assumptions.

³ For a concise description of this epistemological position, see Catharine A. MacKinnon, Toward a Feminist Theory of the State 97 (1989).
piled a useful list of the assumptions that make up the Cartesian model.\(^4\) The first assumption associated with Cartesianism is that reality has an objective nature, that is, a nature independent of human understandings of it. In other words, reality is simply "out there" and its character is unaffected by whether we recognize or understand it.

Second, Cartesianism holds that this objective reality is, at least in principle, accessible to human knowledge. This position, when combined with the first assumption gives rise to the dominant theory about the nature of truth in Western philosophy and culture: the correspondence theory of truth. The correspondence theory holds that a proposition is true if, and only if, it accurately describes the nature of objective reality.\(^5\) Since one of the generally recognized conditions for knowledge is that its content must be true,\(^6\) this theory of truth requires that knowledge can concern only that objective reality which exists independent of human understanding.

Third, Cartesianism assumes that people approach the task of gaining knowledge individually rather than as socially constituted members of particular groups. In the form most relevant to this argument, this "epistemological individualism" means that the tools or characteristics necessary for the pursuit of knowledge exist in individual human beings considered independently of the particular social context in which they may exist. For example, people’s exercise of their sensory organs arguably can be understood without reference to their particular social context, while their aesthetic sense arguably cannot. As a result, sense data would qualify as facts to be known, while aesthetic judgments are seen as matters of taste rather than as matters of knowledge.

Fourth, Cartesianism exhibits a "rationalist bias." That is, it assumes that the primary faculty through which human beings gain knowledge is their reason.\(^7\) In some types of Cartesianism, this faculty is strongly supplemented by the use of the senses, while in other types rea-

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\(^7\) Some feminists have seen this rationalist bias as tied to the division of manual and mental labor, and the preference for mental labor, that gives rise to a hierarchical structure in capitalist systems of production. See Hilary Rose, *Beyond Masculinist Realities: A Feminist Epistemology for the Sciences*, in *Feminist Approaches to Science* 57, 69 (Ruth Bleier ed., 1986).

son is held to be quite efficacious on its own. Empiricism is perhaps the most common and influential version of Cartesianism. Empiricism maintains that all knowledge is derived from experience. See Russell, supra note 5, at 73. Empiricists use statements about appearances or sense perceptions as the basic tools out of which reason can build knowledge. See, e.g., John Locke, *An Essay Concerning Human Understanding* (1964); Clarence I. Lewis, *An Analysis of Knowledge and Valuation* (1946). Rationalists, like Descartes himself, on the other hand, place more reliance on reason acting independent of sense perception as a mechanism for acquiring knowledge. René Descartes, *Discourse on the Method of Rightly Conducting the Reason, and Seeking Truth in the Sciences*, Part IV 62-63 (Anchor Books ed., 1974) (1637). Cartesianism, as I define it, is broad enough to encompass both varieties of theory. Cf. Dennis Patterson, Postmodernism/Feminism/Law, 77 Cornell L. Rev. 254, 266 (1992) (rationalism and empiricism are both foundationalist).

9 Jagger & Bordo, supra note 4, at 3.

10 See Lehrer, supra note 6, at 15.
danger, and ignorance. Nature may be the non-human physical world—the resources and raw materials, along with the plagues and natural disasters—against and over which man stands as the representative of culture. But nature may also be people—the "barbarian" hordes of another nation, the subset of our own population in need of control (e.g. women, the poor, minorities), or even the part of each individual that sometimes threatens to overwhelm his reason. In other words, the nature/culture distinction does not, as it might first appear, mark the boundary between human beings and the rest of existence. It constructs, instead, the boundary between the orderly and productive realm in which reason and objectivity rule and the confused, inarticulate, and possibly dangerous area beyond the wall, which has yet to be subdued. Human beings can, and do, live on both sides of that wall.

These dichotomies, then, spell out with greater specificity some of the implications of the Cartesian assumptions. They point to the values enshrined by that view of knowledge and to the dangers or failures to be avoided.11 One important result of these assumptions and dichotomies is the connection forged in Cartesianism between knowledge and power.

There are at least two ways in which the process of acquiring knowledge is related to control or power.12 The first (and often unrecognized) connection is that control is a necessary aspect of the knower's relation to himself. The activity of gathering knowledge requires the knower to exercise control over those parts of himself and his environment which might interfere with his access to an objective reality. He must restrain his emotions, so that they do not cloud his reason, and he must reduce his particularities—as a judge, for example, assumes an institutional role that distances him from personal experiences that might affect his view of the issue before him—so that he can reach a more neutral or universally valid answer.

The second sense in which Cartesianism links knowledge and control concerns the relationship between the knower and the known: the knower exercises power or control over the known. The external world, the things to be known, are constructed on an analogy to the part of the self to be subdued. Those things are conceived as passive, not in the sense of being inactive, but in the sense of being reactive rather than self-initiating. They are, therefore, subject to prediction and often to manipulation. Reason, which is the key to autonomy and freedom from determinist particularity, is available to the knower but not to the known.

Perhaps the impact of the Cartesian assumptions and dichotomies

11 Because of their extremely deep and pervasive role in Western culture, the dichotomies also illuminate how extensively Cartesian assumptions have broken the bounds of professional philosophy and have permeated popular ideas.

12 See Anna Yeatman, A Feminist Theory of Social Differentiation, in FEMINISM/POSTMODERNISM, supra note 4, at 281, 288.
can be summarized by saying that they posit the thing known as an object, rather than a subject in its own right.\textsuperscript{13} This result frees the knower to exercise power or control over the thing known for his own ends rather than considering and respecting its ends or establishing a community of shared ends, as one would hope he would feel required to do with another subject. Since other people can be among the things known, it is possible of course that a person could act as the object of knowledge at one time and as a knower herself at another time. It is even possible that she could act as knower and known simultaneously. What is not possible is that she should be seen by her knower as standing in a relationship in which knowledge, and therefore power, flows in both directions. That is, to the extent that someone or something is the object of knowledge, she/it must be treated as an object.

Cartesianism, in short, is a system of epistemological assumptions that gives rise to dichotomies and supports a model of knowledge as power. It generates a distant and hierarchical relationship between the knower and the known and promises knowledge with a high degree of certainty and generality. In exchange, it exacts from the knower a sense of deep fragmentation both in himself and in the world more generally. It is this epistemological tradition that feminists, among others, have challenged.

B. The Critique

The social constructionist argument asserts that the creation of knowledge is an activity that takes place only within, and is deeply shaped by, a cultural context.\textsuperscript{14} This emphasis on the particular cultural context is a direct denial of the Cartesian assumption of individualism. It carries implications, however, that threaten every other assumption of Cartesianism as well.

There are at least three senses in which the process of acquiring knowledge is shaped by cultural (and also personal) context. First, the very facts that are taken by Cartesianism to be the materials out of which reason constructs knowledge are shaped by culture. "One thing is clear: making facts is a social enterprise."	extsuperscript{15} Our experience does not come to us in prearranged bundles; rather, facts are made by a process of selection from experience. What we notice and how we organize our experience are both constrained by the conceptual categories that our culture

\textsuperscript{13} See Seyla Benhabib, Epistemologies of Postmodernism: A Rejoinder to Jean-Francois Lyotard, \textit{in Feminism/Postmodernism}, supra note 4, at 107, 110-11.

\textsuperscript{14} See generally, Peter L. Berger & Thomas Luckman, \textit{The Social Construction of Reality} (1966).

\textsuperscript{15} Ruth Hubbard, Some Thoughts About the Masculinity of the Natural Sciences, \textit{in Feminist Thought and the Structure of Knowledge}, supra note 5, at 1.
makes available to us.16 Moreover, this process of acculturation need not be identical for every member of a culture. A society may give different conceptual tools to different groups; for example, women may be taught to notice and identify subtle changes in emotional states while men are not. In addition, the more particular context surrounding an individual—family, neighborhood, religious association, ethnic group, etc.—may add to or alter the cultural impact of the larger society on that individual’s way of knowing. Each person has a potentially unique collection of conceptual categories available for understanding his or her experience.17

This first sense in which knowledge is culturally constructed—the argument that there are no “brute facts” to which human beings have access independent of their culturally contingent conceptual categories18—grows out of the denial of epistemological individualism but also raises serious difficulties for objectivism and the correspondence theory of truth. Even if some reality existed that was independent of human understandings of it, people would not have access to it. The kind of unfiltered, direct knowledge promised by objectivism is simply not available to human beings.

The second sense in which knowledge is socially constructed is that in order to define data and to analyze them, interpreters must make value choices. Experience always underdetermines the “data” that it is used to construct and data underdetermine the theories that they are used to construct. To choose between the alternative interpretations that could be used to explain experience or data, one must rely—explicitly or implicitly—on a value judgment. In traditional science, some value judg-

16 See Naomi Scheman, Individualism and the Objects of Psychology, in Discovering Reality: Feminist Perspectives on Epistemology and Metaphysics 225, 299 (Sandra Harding and Merrill B. Hintikka eds., 1983). Moreover, the orienting assumptions or cultural categories that we use to organize our experience are largely, if not totally, immune to challenge by the data or facts that result. “[O]nce an investigator has adopted a given ontology, this system of orientation determines what is counted as an event; data cannot correct or falsify the ontology because all data collected within the perspective can be understood only in its terms.” Gergen, supra note 5, at 29.

17 The Cartesian method attempts to correct for this particularity by insisting on the replicability of results. That is, someone else must be able to repeat the experiment and achieve the same results in order for them to be considered reliable. This process may correct for some of the more individualized factors that affect perception and recognition—e.g., a particular researcher’s blindness to certain concerns—but it does nothing to correct for very widely shared blindnesses caused by deeply held cultural assumptions or conceptual categories. Sandra Harding, Whose Science? Whose Knowledge? 143-46 (1991); Alison Jagger, Love and Knowledge: Emotion in Feminist Epistemology, in Gender/Body/Knowledge, supra note 4, at 145, 156. It would, at least in theory, be possible to correct for all such cultural frameworks by finding that the results can be replicated by people within every culture in the world (without teaching them our cultural categories). Simply suggesting such a thing makes it plain, however, how hopeless such a task would be. The impossibility of disproof, while not itself a proof, nonetheless reinforces the claim that there is no knowledge outside of a conceptual framework and that conceptual frameworks are, at a minimum, strongly and pervasively influenced by culture.

18 Mary M. Gergen, Toward a Feminist Metatheory and Methodology in the Social Sciences, in Feminist Thought and the Structure of Knowledge, supra note 5, at 87, 92.
ments are explicitly acknowledged. For example, when choosing between two theories, both of which could explain the available data, scientists will prefer the theory that is simpler and more elegant. This is by no means an inevitable choice: one could choose instead (or in addition) to favor the theory that was most general (or most specific), most likely to produce human control over the phenomena at issue (or most likely to produce human respect for those phenomena). Some of the value choices at work in science are, however, less explicit and even more problematic. For instance, scientists long explained the “data” about differences between women’s and men’s analytical abilities by theorizing about biological differences between the sexes. Other kinds of explanations, which are now preferred by many scientists (such as socialization), were ignored because the political and moral values of patriarchy were better served by biological explanations.

Finally, value judgments affect not only the interpretation of facts and the construction or recognition of facts, but also the choice of which issues or questions are worthy of investigation. There is no such thing as a problem in need of study without people who have the problem: “[A] problem is always a problem for someone.” Which problems are studied will depend on whose perspective, concerns, and needs are considered most important by society.

The value judgments inherent in these epistemological choices have important moral and political implications. Different value choices may have a significant impact on the social or political status of various groups of people, on the rights and responsibilities that society is understood to owe its members, and on the social institutions and mechanisms that are seen as most appropriate or effective for promoting those rights and responsibilities. Because of these moral and political implications, the social constructionist critique argues that these value choices are subject to moral and political criticism and justification. The problems one chooses to investigate, the way one describes the relevant data, and the interpretations one places on those data can all be criticized on the grounds that they are shaped by value choices that are morally or politically objectionable. Science, in other words, cannot be separated from morality and politics. It is, instead, always permeated by them. The refusal to recognize that connection does not lead to the elimination of

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20 Sandra Harding, Introduction: Is There a Feminist Method?, in Feminism and Methodology 1, 6 (Sandra Harding ed., 1987).

21 For an application of this critique that discusses such implications, see Martha Chamallas, Feminist Constructions of Objectivity: Multiple Perspectives in Sexual and Racial Harassment Litigation, 1 Texas J. Women & L. 95, 113-17 (1992).
politics and morals from science, but to the immunization of the existing political and moral value choices from criticism.

The interrelation of science, on the one hand, and morality and politics, on the other, strikes a blow at yet another aspect of Cartesianism: its rationalist bias. Reason was distinguished precisely by its distance from emotions and values, and the objectivity and universality which that distance made possible.

Epistemology was often equated with the philosophy of science, and the dominant methodology of positivism prescribed that truly scientific knowledge must be capable of intersubjective verification. Because values and emotions had been defined as variable and idiosyncratic, positivism stipulated that trustworthy knowledge could be established only by methods that neutralized the values and emotions of individual scientists.\(^2\)

The social constructionist critique argues, however, that it is never possible to neutralize emotions and values since they are an integral part of interpretation and interpretation is an inescapable aspect of defining a problem, describing the relevant facts, and theorizing about those facts. Thus, reason, understood in some instrumental and non-substantive way,\(^3\) is simply insufficient (with or without the addition of sense perception) as a foundation for knowledge. Emotion and value—with all their subjectivity and particularity and cultural contingency—are also necessary.

The denial of individualism, objectivism, and rationalism leads directly to the denial of universalism as well. If our ability to theorize and even our ability to perceive are so thoroughly dependent on the emotions, values, and cultural conditioning that vary dramatically from one person to another, then it is foolish to think that we can find answers, or even define questions, that are universal or neutral across people. Such neutrality is unattainable—certainly unattainable in every case, perhaps unattainable in any case. As a result, we may be left with not one, but many equally valid interpretations of reality. Perspectives or points of view must be recognized as potentially valid alternatives, rather than as barriers or failures to be overcome.\(^4\) Knowledge may be personal or

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\(^{22}\) Jagger, supra note 17, at 146; see also Jane Flax, Political Philosophy and the Patriarchal Unconscious: A Psychoanalytic Perspective on Epistemology and Metaphysics, in Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science, supra note 16, at 248.

\(^{23}\) For an interesting account of the development of an instrumental, or “mathematical” conception of reason (and a discussion of the alternatives), see Thomas A. Spragens, Jr., Reason and Democracy 14-56 (1990).

\(^{24}\) "There are and must be different experiences of the world and different bases of experience . . . . We may not rewrite the other's world or impose upon it a conceptual framework which extracts from it what fits with ours. Our conceptual procedures should be capable of explicating and analyzing the properties of their experienced world rather than administering it. Their reality, their varieties of experience must be an unconditional datum." Dorothy E. Smith, Women's Perspective as a Radical Critique of Sociology, in Feminism and Methodology, 84, 93 (Sandra Harding ed., 1987).
social; it is not necessarily universal.

This critique also holds important implications for the relationship between the knower and the known. No longer is the relationship a distant one, in which knower and known are separated from each other by a huge gulf of reason and objectivity and in which knowledge flows only in one direction and in which the known is seen as an object to be manipulated or controlled. Instead, there is no rigid separation of the knower and the known. Obviously, such separation is not possible when the very "facts" about the known are themselves permeated by the identity and context of the knower. In addition, the known—whether it is another human being or some non-human aspect of nature—is seen as active and complex, rather than as passive and needing control.\(^\text{25}\) In other words, the process of influence, and even of knowledge, runs in both directions. Just as the known is defined by the characteristics of the knower, the knower's very identity is altered by the process of coming to understand the known. "The reconstruction of knowledge is inseparable from the reconstruction of ourselves."\(^\text{26}\)

In sum, the social constructionist critique begins by arguing that knowledge is a human, and therefore social, artifact, deeply shaped by the particular social context in which it is created. The argument then goes on to generate conclusions that contradict every premise of Cartesian epistemology. The vision of knowledge that emerges is one in which the known and the knower are intimately connected, indeed mutually defining, and exist only within a particular cultural context.\(^\text{27}\)

**C. The Sense in Which the Critique Is Feminist**

As I have just described it, the social constructionist critique is in no sense unique to feminism. Indeed, some critique along these lines is common to many different schools of thought.\(^\text{28}\) There is, however, a version

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\(^{25}\) See Elizabeth Fee, *Critiques of Modern Science: The Relationship of Feminism to Other Radical Epistemologies*, in *Feminist Approaches to Science*, supra note 7, at 42, 47.

\(^{26}\) Jagger, *supra* note 17, at 145, 164. For example, feminist researchers in the social sciences have adopted several techniques for allowing and encouraging the human subjects to influence (and to learn from) the researcher, including inviting the subjects to contribute to the design of the experiment or to the analysis of the results. See Gergen, *supra* note 18, at 94-101 (describing an experiment on women's attitudes toward menopause); Maureen Cain, *Realism, Feminism, Methodology, and Law*, 14 *Int'l J. Soc. L.* 255, 261-65 (1986) (describing when and how to treat persons as "subjects" of study rather than as "objects").


\(^{28}\) The Cartesian model has been criticized by Marxists, by pragmatists, and by poststructuralists and postmodernists. See Jagger & Bordo, *supra* note 4, at 1. It has also been attacked by interpretivists and deconstructionists in literary theory, and by social constructionists and phenomenologists in the social sciences. See Sondra Farganis, *Feminism and the Reconstruction of Social Science*, in *Gender/Body/Knowledge*, *supra* note 4, at 207, 211; Kenneth J. Gergen, *supra* note 5, at 27.
of the critique that can properly be called feminist because it includes a focus on the relationship between the Cartesian premises, on the one hand, and gender and the oppression of women, on the other hand. The feminist argument is that Cartesian epistemology has been used as a foundation for defining the difference between the genders and justifying the oppression of women.

The difference between the genders is constructed out of the dichotomies that form the popular representation of Cartesianism. This connection between epistemology and gender, although initially puzzling, seems less surprising when one recalls that sex is a traditional metaphor for knowledge in Western culture; sexual union is the model for knowing. Who knows, how one knows, and what is known are all related to gender.

The Cartesian knower is male. The characteristics associated with the knower—objectivity, reason, universality, intellect—are associated with men. The thing known is female; the characteristics associated with the object of knowledge—particularity, emotion, physicality—are associated with women. Indeed, nature itself, as the quintessential object of knowledge, is understood as feminine, and women are understood as more closely connected to nature than men. Even the process of

29 See Jagger & Bordo, supra note 4, at 4.
30 "Gender" is used here, as it generally is in feminist literature, not to describe biological differences, but to describe the socially constructed identities of male and female. This is not to deny that there are biological differences between the sexes, but it is to deny that those differences (in isolation from culture) determine, in any significant way, the highly detailed, complex, and deeply significant gender identities that exist in our society. See Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 Signs 635, 635 n.1 (1983). Indeed, the attempt to separate biology and culture may be futile and misguided: they stand in a dialectical relationship in which each influences the other. See Deborah Rhode, Introduction, in THEORETICAL PERSPECTIVES ON SEXUAL DIFFERENCE 1, 4 (Deborah Rhode ed., 1990) ("For example, we cannot understand sex-based differentials of height, weight, and physical strength without considering the influence of diet, dress, division of labor, and so forth."); Jean Grimeshaw, Philosophy and Feminist Thinking 130-131 (1986); Sandra Harding, Is Gender a Variable in Conceptions of Rationality?, 36 Dialectica 225, 226 n.1 (1982).
31 See MacKinnon, supra note 3, at 128 ("A theory of sexuality becomes feminist methodologically . . . to the extent it treats sexuality as a social construct of male power . . ."). Catharine MacKinnon is one of the most forceful and longstanding proponents of this epistemological critique. See, e.g., MacKinnon, supra note 30.
32 See Evelyn Fox Keller, Reflections on Gender and Science 18 (1985); see also Fee, supra note 25, at 44:

[T]he language and metaphors of the scientific revolution were clear: sexuality was the metaphor for the mediation between mind and nature. Mind was male, Nature was female, and knowledge was created as an act of aggression—a passive nature had to be interrogated, unclad, penetrated and compelled by man to reveal her secrets.

33 See Fee, supra note 25, at 44 (values associated with men are the values and attributes of scientists). Indeed, the Cartesian knower is a particular kind of man: white, middle or upper class, probably heterosexual, and possibly from a very specific ethnic and religious background. In other words, Cartesianism has been used to support other social hierarchies besides gender.

34 See Peggy Reeves Sanday, The Reproduction of Patriarchy in Feminist Anthropology, in Feminist Thought and the Structures of Knowledge, supra note 5, at 49, 53 (describing an article in which a female anthropologist argues that the universal devaluation of women
acquiring knowledge is male. The relation between knower and known is one of separation, a relation of objectivity. Such separation is required for the autonomy of the knowing subject. And masculinity is, of course, defined importantly in terms of autonomy and separation. Femininity, on the other hand is traditionally defined in terms of connection and dependence, characteristics which make the acquisition of knowledge by women perhaps impossible, certainly unfeminine. In other words, the gender dichotomy—male/female—is parallel to, and defined in terms of, the other dichotomies already discussed.

The Cartesian premises and dichotomies do not merely define men and women as different, they also form the foundation for a justification of oppression of women. As I discussed in the section describing Cartesianism, the feminine halves of the dichotomies are seen not only as different, but also as threatening. This threat creates the motivation and justification for the masculine half to control the feminine half and, correspondingly, for men to control women.

The feminist version of the social constructionist critique, then, goes beyond the more general version by pointing out how a particular cultural category—gender—both supports and is supported by the particular epistemological assumptions of Cartesianism. The feminist critique does not simply argue that value judgments and social goals are generally implicit in epistemological choices; it demonstrates how a particular set of values and goals—those of gender distinction and gender domination—are implicit in a particular epistemology. It is this focus that distinguishes the feminist version from other varieties of social constructivism.

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35 See Keller, supra note 32, at 79; Harding, supra note 30, at 238.
36 See supra notes 4-13 and accompanying text.
37 See Harding, supra note 30, at 238.
38 The strongest critic of this position is Joan Williams, who has forcefully argued that the epistemological critique is neither "feminist" nor "feminine". See Joan Williams, Deconstructing Gender, 87 MICH. L. REV. 797, 804, 806 (1989). Despite appearances to the contrary, I do not think Williams would disagree with my argument in text; I believe that her criticisms are aimed at a different contention. She is denying that the new, contextual epistemology is an accurate model for women's traditional, or stereotypical ways of thinking. She believes that the new epistemology is itself highly rational and detached, whereas the traditional view of women is as too emotional for rational thought. To associate the stereotype of female thinking with this new epistemology is, she argues, to "fail[] to come to terms with the extent to which the gender stereotypes were designed to marginalize women" as hopelessly uncerebral. Id. at 805-06. She also points out that the contextuality critique has been developed primarily by men. Id. at 806.

I am not sure that I agree with Joan Williams' description of the contextuality critique as cerebral and detached, or with her dismissal of its connection to empirical work on women's ways of thinking. But the point I am trying to make here is a different one altogether. I am focusing on the negative aspects of the critique, rather than on the positive, alternative epistemology it implies. I am not arguing that the new epistemology matches the way women actually do, or are stereotypically seen to, think. Instead, I am simply pointing out that the contextuality critique makes plain the connection between Cartesian epistemology—seen as a contingent and socially constructed view of reality—and gender. I don't think that Joan Wil-
Thus, the social constructionist argument forms the foundation of a powerful feminist critique of the mainstream tradition in epistemology. With the tools provided by social constructionism, feminists have uncovered the deep connections between our culture's understanding of the human relationship to reality, on the one hand, and our culture's commitment to gender difference and gender oppression, on the other hand. This critique has proven a fruitful starting place for an astonishingly diverse array of arguments, ranging from assessments of the different conceptions of self men and women develop in such a culture to an examination of how power is integral to the construction of sexuality itself. The critique is far too powerful and productive to be easily relinquished.

II. SOCIAL CONSTRUCTIONISM AND AN INCLUSIONARY FEMINISM

In addition to its usefulness in feminism's critical project, social constructionism also provides interesting possibilities for the constructive project of building a more inclusive basis for feminist theory and practice. The problem in recent years has not been explicit exclusion, although history demonstrates that feminists are not immune to such outright prejudice. The more modern manifestations of feminist exclusion are, however, somewhat subtler if no less effective. Three of the

liams would disagree that the Cartesian dichotomies are linked to a dichotomous definition of gender roles, or that the overwhelming bias for one side of those dichotomies helps to justify the oppression of women. Indeed, her own characterization of the traditional female stereotype relies on these dichotomies. See id. at 804. Nor do I think Williams would deny that the central insights of the critique—the social construction of knowledge, the role of moral and political considerations in systems of knowledge, and the denial of universality of knowledge—are useful tools for illuminating the connection between Cartesianism and gender oppression. Indeed, Williams is one of the proponents of this approach, see infra part III.B. I believe, in other words, that her criticism simply is not directed at this argument.

Williams' second point concerns authorship. While the contextuality critique in general—and particularly the positive epistemological program it suggests—may be largely the product of men, the branch specifically focused on gender has been overwhelmingly produced by women. Williams' reference to male authorship is, therefore, further evidence that she is not concerned with the same argument I am.

39 See, e.g., CAROL GILLIGAN, IN A DIFFERENT VOICE 2 (1982) ("[T]hese differences arise in a social context where factors of social status and power combine with reproductive biology to shape the experience of males and females... [m]y interest lies in the interaction of experience and thought"); SHEILA RUDDICK, MATERNAL THINKING 13 (1989) (relying on a "practicalist"—nonuniversalist and nonfoundationalist—conception of truth to describe maternal thinking).

40 See MACKINNON, supra note 3, at 96-98.


43 See, e.g., Patricia A. Cain, Feminist Jurisprudence: Grounding the Theories, 4 BERKELEY WOMEN'S L.J. 191, 197-205 (1989-1990) (discussing the inattention to lesbian experience in various branches of feminist legal theory); see THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR supra note 41, at 63-106 (describing experiences of racism within the women's movement).
most common tactics are: essentialism, the construction of difference as inherent rather than relational, and the failure to seek out (or the tendency to ignore) the voices often muffled by layers of social oppression. Social constructivism is an important antidote to the insidiously exclusionary implications of these elements of feminist theory.

A. Essentialism

Angela Harris has defined gender essentialism as "the notion that a unitary, 'essential' women's experience can be isolated and described independently of race, class, sexual orientation, and other realities of experience." Essentialism may be biologically based, asserting that women share certain experiences and/or characteristics because of the biological facts of sexuality and reproduction. It may also, however, be culturally based, focusing on institutions and ideologies as the factors that generate a specific set of experiences and characteristics shared by women. Regardless of whether it looks to biology or culture, the essentialist hope is to be able to make some assertions about women "as women," without regard to other characteristics that may distinguish us from each other.

The appeal of essentialism is fairly obvious. First, it makes the process of generating feminist arguments much easier. As Elizabeth Spelman puts it, "essentialism invites me to take what I understand to be true of me 'as a woman' for some golden nugget of womanness that all women have as women; and it makes the participation of other women inessential to the production of the story. How lovely: the many turn out to be one, and the one that they are is me." Second, essentialism makes feminism seem emotionally safe for those who get to define womanhood; feminism becomes "a place of comfort, not conflict." Third, essentialism seems to facilitate political movement by defining a broad-based commonality on which to organize.

A social constructionist view, however, illuminates the way in which essentialist theories exclude women who are not part of the white, mid-
FEMINIST LEGAL EPISTEMOLOGY

die-class, heterosexual, able-bodied group that dominates theory-making. There are at least three ways in which this exclusion comes about. First, the essential woman turns out in fact to have a very particular social identity. When we abstract from the differences that might divide us, we are left with a woman who belongs to those social groups that experience themselves as the norm. Second, essentialism ignores the interaction of different types of oppression. It demands that women carve up into separate units what is experienced as an undivided whole. And third, essentialism results in a practical, political focus on those issues of most concern to one group of women. A social constructionist approach helps to unmask each of these exclusionary effects.

1. Who is the essential woman?

An essentialist view of “woman” requires that we somehow isolate “womanhood” from the other aspects of identity that every actual woman also possesses. If race is something that divides us, then we must imagine a woman without race; if class distinguishes some women from others, then we must imagine a woman of no particular social class; and so on for all other lines of division. The idea is to neutralize all other variables so that we can focus on womanhood alone.

This method relies on a concept of race (for example) as a theoretically erasable characteristic of persons. One’s race, like one’s hair color, is simply a fact, a piece of objective reality about which people can have knowledge. Moreover, such characteristics can be abstracted away without interfering with our ability to identify and find meaning in the person remaining. It is, in other words, possible to imagine a person without any particular race, simply by deleting that fact from their biography, just as it would be possible to imagine someone with an unidentified hair color.

On a social constructivist view, however, race is a social concept and practice. Which differences count and what they mean is a matter of culture, and in our culture race is not analogous to hair color. It is not possible for a person to be a member of a culture deeply shaped by a racial hierarchy and have no race. A person without race would no longer be a part of the social world that we inhabit, the social world that is the only source of meaning and knowledge. Race is an institution in

51 There are, of course, other sorts of problems with essentialism as well. See Williams, supra note 38, at 813-21 (discussing the way in which Gilliganesque psychological essentialism can be used against women); Drucilla Cornell, The Doubly Prized World: Myth, Allegory, and the Feminine, 75 CORNELL L. REV. 644 (1990) (discussing the way in which essentialist theories restrict women’s ability to reinvent themselves).

52 Cf. Mary Joe Frug, A Postmodern Feminist Legal Manifesto (An Unfinished Draft), 105 HARV. L. REV. 1045, 1046 (1992) (“Because sex differences are semiotic—that is, constituted by a system of signs that we produce and interpret—each of us inescapably produces herself within the gender meaning system . . .”).
which all persons in our culture participate, albeit in very different ways, so one cannot, even theoretically, be a person without a race.

The essentialist search for race-neutral “Woman” will, however, often avoid this dead-end by accepting as its model the only people who have the luxury of ignoring their own race in a society marked by racial hierarchy: members of the dominant group.\textsuperscript{53} This is not to say that they (we) are actually without race, as the project requires. We are deeply shaped by our whiteness in a society that puts a premium on white skin and our racial identity affects not only our relationships with persons of other races but also our relationships with other members of the dominant race.\textsuperscript{54} But because we experience ourselves as the norm and all others as deviations from that norm, we are free to ignore the impact of race on our identity. We have the privilege of experiencing ourselves as raceless, an experience permanently denied to those who are defined as different from the norm.\textsuperscript{55}

In other words, to have a biography from which race is deleted is not to be outside of the racial hierarchy at all, but rather to occupy a very particular place in it. Thus, when essentialism searches for a woman without race in a society marked by racial hierarchy, it will either fail entirely or it will necessarily use as its model the woman of the dominant race because she is the only one who can afford to be unconscious about her racial identity.\textsuperscript{56} Social constructionism exposes the bias of such a model by pointing out the impossibility of abstracting our way to the essence of womanhood. We cannot eliminate the things that divide us through abstraction.

2. The interaction of gender and other hierarchies

The essentialist project also rests on the assumption that gender is fundamentally separate from other aspects of identity in a way that would make isolation of womanness both possible and meaningful. This assumption depends, in turn, on two views of the person undermined by social constructionism. First, if one views gender, race, etc. as objective aspects of the subject, then one can plausibly (if still not necessarily) assume that each is theoretically distinct from the others. Just as hair and eye color, height and weight, are all logically independent of each other—so that we can alter one without necessarily affecting the others—

\textsuperscript{53} See Harris, supra note 44, at 604.
\textsuperscript{54} See Spelman, supra note 47, at 104-05.
\textsuperscript{55} See Cain, supra note 43, at 208 (describing self-identification of law students in which people of color noted their race and lesbians noted their sexuality but straight, white students did not).
\textsuperscript{56} The same is true for other differences between women: it is the middle class woman who can ignore how she is shaped by class, the heterosexual woman who can ignore sexual orientation, and the able-bodied woman who can ignore the issue of physical capacity.
gender is seen as an independent variable. Second, a view of the self as fundamentally separate from such characteristics, standing as the possessor of them but not constituted by them, facilitates the assumption that one can meaningfully talk about any given characteristic in isolation from the others. After all, no characteristic permeates the self so deeply that it cannot be abstracted away. This view of the self as possessor is, in turn, supported by the Cartesian contention that a knower can and must distance himself from the contingent characteristics that might cloud his objectivity and that the only truly essential characteristic of the knower is reason.

On a social constructivist view, however, gender and race are both social institutions rather than characteristics of individuals. There is, moreover, strong evidence that these institutions are overlapping and mutually defining in important ways. Much of the writing by Black feminists, both old and new, is devoted to explaining how it is that being a woman is different if one is a Black woman rather than a white woman. It is not simply that these writers are both Black and female, it is that their experience of womanness is itself deeply infused by race. Seeing gender as a social institution rather than an individual characteristic makes plain the connections between gender and other social hierarchies that undermine the essentialist project.

In addition, this phenomenon of interconnection is reinforced by seeing certain characteristics as not merely possessions but constituents of the self. As such, they are so deeply implicated in the self that no other characteristic can be independent of them. Such constitutive aspects of identity are not merely added to other aspects of identity, rather they transform and transfuse them. It may be that both race and gender, among other characteristics, are fundamental in this way for most people in our society. A social constructivist vision of the self, which emphasizes the permeability of the boundaries of identity and the social foundations of selfhood, helps to explain how a role in a social institution can become constitutive of, rather than merely a possession of, the subject.

The result of the essentialist effort to isolate womanness, then, is that women who experience these overlapping and interdependent identities are asked to fragment themselves in ways alien to their experience. While this violence to identity may be experienced by all women to some

58 See, e.g., Harris, supra note 44, at 596-601 (describing how many Black women experience (1) beauty standards and (2) the social meaning of rape differently from white women); Pamela J. Smith, Comment, We are not Sisters: African-American Women and the Freedom to Associate and Disassociate, 66 TUL. L. REV. 1467, 1480-90 (1992) (describing the differences in the experiences, past and present, of white women and African-American women).
59 See Audre Lorde, Age, Race, Class, and Sex: Women Redefining Difference, in SISTER OUT-
extent, it is particularly acute for those women who are defined as different from the norm along some axis other than gender. The more pervasive and hierarchical is the norm from which they deviate, the more likely it is that they will not have the luxury of ignoring that aspect of their identity; indeed, that aspect of identity may become fundamental in a way that makes it impossible to separate their gender identity from it. Once again, women who suffer these crosscutting and interdependent forms of oppression will be excluded by an essentialist approach.

3. The political agenda

Finally, it is important to recognize that the risks created by the omissions and assumptions of essentialism extend beyond these theoretical concerns to the very practical issue of political struggle and organization. When "woman" is defined in such a way as to focus on only one group of women, it is the interests of that group that will dominate the political agenda. In the reproductive rights area, for example, the white, middle-class, heterosexual focus has led to an overwhelming allocation of resources to the struggle to secure abortion rights. While this struggle is, indeed, of consequence to all women, there are other issues that may be of equal or greater importance to other groups of women and that do not receive anything approaching the same attention. The abuse of coerced sterilization is a very real threat for women of color but not generally for white women, and the issues surrounding government funding for various reproductive services—including drug treatment for pregnant addicts and prenatal care as well as abortion—are of central concern to poorer women but not to middle class women.

Women need to acknowledge that we have somewhat different policy concerns and we must discuss openly the decision to place priority on particular issues. The essentialist justification obscures these differences and defers this dialogue. The social constructivist challenge to essentialism facilitates the recognition of differences and, therefore, places the issue of exclusion—both in theory and in practice—front and center.

B. Difference and Sameness

The second way in which feminist theory has functioned to exclude
certain groups of women is closely related to essentialism. By framing
the feminist debate in terms of difference and sameness, theorists have
implicitly accepted our society's construction of difference as internal to
the different person. This construction not only facilitates essentialism, it
is also dangerous in its own right.

The "difference/sameness" debate has been a staple of feminist legal
theory for at least a generation now. The focus of this debate has been
on the ways in which women are the same as or different from men, and
the arguments for women's legal rights that can be made on each basis.
As many feminists have begun to realize, however, casting the debate in
these terms implicitly accepts the idea that difference is inherent in the
person, rather than a social construction generated by institutional
arrangements that privilege some people, leaving the others to look "dif-
ferent". Asking how women are different from men focuses attention
on women's characteristics rather than on the ways in which institutions
(like traditional work patterns) privilege certain people (e.g. those with-
out childcare responsibilities) at the expense of others. We are then led
to ask about special rights for the disadvantaged group—with all of the
political and legal difficulties such rights entail—rather than to challenge
the underlying institutions in ways that change the norm against which
"difference" is measured.

The same is true for differences within the group "women". To
cast the issue as a search for women's commonality, the "sameness" of
women that transcends our differences, is usually a way of asking women
of color (for example) to measure themselves against the implicit stan-
dard of white women in the same way that looking for the commonality
between women and men has generally meant asking women to measure
themselves against the implicit standard of maleness. It shifts attention
away from asking about the institutional and cultural structures that cre-
ate a norm and generate those differences of race, class, etc. Instead, the

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62 Patricia A. Cain, Feminist Legal Scholarship, 77 IOWA L. REV. 19, 23 (1991); see also, Catha-
rine A. MacKinnon, Reflections on Sex Equality Under Law, 100 YALE L.J. 1281, 1286-93

63 MARTHA MINOW, MAKING ALL THE DIFFERENCE: INCLUSION, EXCLUSION, AND AMERI-

64 See Joan C. Williams, Dissolving the Sameness/Difference Debate: A Post-Modern Path
Christine Di Stefano, Dilemmas of Difference: Feminism, Modernity, and Postmodernity, in
FEMINISM/POSTMODERNISM, supra note 4, at 63, 72-73 (the choice between difference and
sameness is a choice within the rationalist dichotomies, not outside them).

65 This aspect of the difference/sameness debate may, indeed, appear to be identical to essential-
ism, but—at least as I have defined essentialism—it is not. It would be possible to believe that
differences are internal to the person (the premise of difference/sameness arguments), but to
deny that there is some essential "womaness" that all women experience regardless of race,
class, etc. (the premise of essentialism arguments). In other words, the location of difference is
relevant to, but not identical to, the dependence or independence of various types of
differences.

66 Cf. Cain, supra note 43, at 205-07 (making a similar argument about sexual orientation).
norm is taken for granted as the starting point from which difference is measured. As a result, racism, classism, homophobia and the other social hierarchies that generate those norms are taken for granted as well. It is no wonder that a feminism focused on "sameness" has not been very appealing to women who find themselves on the bottom of these hierarchies.

As Martha Minow has argued, a relational model of difference, based on a social constructivist view, is an antidote to the assumption that difference is inherent in the different person. This model allows us to escape the fixation on sameness and difference by highlighting the issues surrounding the institutional generation of a norm from which difference is measured rather than casting that social process into shadow. As a result, it brings to the forefront the concerns of women defined as different from that norm and leads to a more inclusionary feminism.

C. Inattention and Ignorance

While the theoretical orientations discussed in the previous sections have accounted for much of modern feminism's exclusionary character, it would be misleading to neglect a much simpler basis for that exclusion: the organized women's movement has often failed to take the affirmative steps necessary to bring in the voices of those who suffer from multiple forms of oppression and has sometimes ignored their voices even when they were there to speak. To say this is really to assert nothing more than that a commitment to feminism does not, in and of itself, automatically afford immunity from the various prejudices of our culture.

A commitment to feminism is itself an achievement in our society, purchased with struggle—both external and internal—and often at substantial cost. We should not expect awareness of the racism or classism in our world and ourselves to be an easier achievement than awareness of the sexism was. But, once again, a social constructionist view can help, at least by focusing our attention on the need for such a struggle.

Once we abandon the Cartesian assumption that objective truth is available to any sufficiently rational knower, we are left with the realization that each knower is able to gather knowledge only from within her own socially contingent framework. Every view is necessarily partial, and no escape from our own framework can be completely successful. We simply must depend on other people with different viewpoints to sup-

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67 See generally, Minow, supra note 63.
68 See id. at 95; cf. Harding, supra note 17, at 249-67 (describing how an approach from within a lesbian perspective could illuminate the limitation and biases of social institutions, including feminism).
70 See Smith, supra note 58, at 1472-80 (describing racism in the women's movement).
plement our perspectives. In other words, no effort of objectivity or universality will allow white women alone to generate the knowledge that they could acquire if they listened to women of color. Nor can we rest with our own partial perspective, assuming that it has some claim to truth unavailable to other perspectives. Those very different views of reality have an equal epistemological pedigree, an equal claim to be heard and to guide our practice.

Thus, social constructionism, if taken seriously, is a constant reminder that we must seek out and carefully attend to the voices of those whose social framework gives them a very different perspective from our own. This epistemology gives us no excuse for either universalizing or privileging our own perspective. Social constructionism also helps to combat the tendencies to see difference as inherent rather than relational, and to build essentialist systems of theory on such inherent differences. It insists that we search out and scrutinize the socially constructed norm against which difference is measured. In all of these ways, social constructionism contributes to opening up feminist theory and practice to women who have long been excluded from them.

III. SOCIAL CONSTRUCTIONISM'S THREAT TO FEMINISM

For all of its value, however, the social constructionist position poses some serious threats to feminist projects, both theoretical and political. The first, and perhaps largest, threat is that social constructionism will leave feminists without a standard by which to justify their criticism of gender oppression. The second, related, danger is that it will so "decenter" the subject or self that the concept "woman" will become useless as the basis either for theory or for political organization. And the third difficulty is that the postmodernist turn may lead us to an approach focused on play and critique rather than on useful, purposeful, and responsible transformation aimed at the real suffering of real people.

A. Truth, Judgment, and Justification

In order to see how social constructivism threatens to destroy standards of justification, it is useful to imagine the two extreme cases of cultural coherence. First, if the cultural context is conceived as monolithic and consistent (either generally or for any given individual), then it is difficult to see how an individual can achieve sufficient critical distance from her context to recognize elements of it that may be pernicious. Sec-

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71 See HARDING, supra note 17, at 124 (knowledge seeking requires broad-based participation); Susan R. Bordo, Feminism, Postmodernism, and Gender-Skepticism, in FEMINISM/POSTMODERNISM, supra note 4, at 133, 140 (attending too vigilantly to difference can also be problematic in constructing an other who is an exotic alien, a breed apart).
ond, if the cultural context is conceived as multifaceted and potentially inconsistent, then it is difficult to see what standard an individual could use to choose between conflicting values or interpretations.72

Assume for a moment that we have a society with a unified, consistent culture and that it is that culture which guides the process of knowing (of defining questions, of recognizing and interpreting data, etc.). How would it be possible for us to escape from that culture sufficiently to criticize it, to recognize its destructive elements and to see the possibility of an alternative toward which our society might move? If the very questions we ask and the data we perceive are shaped by those cultural assumptions, how can we ever detach from them sufficiently to compare them to the alternatives and find them wanting? This is the problem that Margaret Radin has called "bad coherence."73

A social constructionist might respond that we never can escape totally, and we can never be certain that we have escaped. Even when we feel that we have broken free of our context, we should always be vigilant to search out the ways in which our cultural assumptions continue to shape our responses. Feminists, in particular, are quite adamant about the need for this type of scrutiny, of ourselves as well as of others. The concepts in which feminist ideas must be expressed reproduce the very cultural categories that feminism means to challenge.74 As Audre Lorde so eloquently put it, how can the tools of the master be used to dismantle the master's house?75

But while total or confident escape may be impossible, feminists in such a consistent culture would have to believe in the possibility of some degree of extra-contextual criticism. If we are truly and completely trapped within our cultural assumptions, then feminism would never be possible in a sexist society. But feminists want to assert both that femi-
nism is possible and that our society is sexist. How can that be? How do we acquire the ability to see the world through a feminist lens if our culture consistently uses a sexist lens? "How is it possible to have an engaged truth that does not simply reiterate its determinants?" How can a critical distance be created?  

Various feminists have suggested several answers to that question. Perhaps the most common answer is "experience". "[Feminism's] project is to uncover and claim as valid the experience of women, the major content of which is the devaluation of women's experience." It is, they argue, precisely the lack of fit between what we actually experience and what our culture tells us we should (or do) experience that creates the possibility of escape. Alison Jagger has described what she calls "outlaw emotions": emotions that are not socially sanctioned but that are experienced because one's social situation makes the cost of the approved emotion too high. For example, there are times when it is simply too demeaning to feel flattered by sexual harassment, and then we feel the outlaw emotions of anger and fear. Outlaw emotions are not only politically subversive, but also epistemologically subversive because they are incompatible with dominant perceptions and values. They create, in other words, a crack in the cultural edifice.

It is true that these emotions and experiences must then be expressed in the conceptual categories provided by our culture and that can cause them to be distorted. Some writers have suggested that this is why feminist ideas may best be expressed through forms—like poetry, metaphor, myth, and fantasy—that allow for more complex and creative meanings to be generated. Feminists must, in a sense, write a new language to name their experience and, through naming, to make that experience real and visible for the first time.

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76 MacKinnon, supra note 30, at 635, 638. MacKinnon goes on to point out that "dis-engaged truth only reiterates its determinants." Id. That is, even when we think we are free, we are not. That may very well be true, but it does not explain how a feminist escape is possible.
77 See Patterson, supra note 7, at 279.
78 MacKinnon, Feminism, supra note 30, at 635. Consciousness raising is one of the primary methods through which experience is transformed into knowledge. See Radin, supra note 73, at 1721; Katharine T. Bartlett, Feminist Legal Methods, 103 HARV. L. REV. 829, 863-64 (1990).
79 See Jagger, supra note 17, at 160.
80 Id. at 161-62.
81 See Drucilla Cornell, Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law 165-196 (1991); Cornell, supra note 51, at 696-98 (discussing how myth plays a significant role in feminist theory by providing a touchstone for identity); J. G. Morawski, Impasse in Feminist Thought?, in FEMINIST THOUGHT AND THE STRUCTURE OF KNOWLEDGE, supra note 5, at 182, 191 ("She is its other, the fantasy side of male reality. Thus to women, fantasy may offer an entrance into her subjectivity. Above all, fantasy predicates transformation. ... At the center of feminist thinking is imagination. ... Although rooted in a negative comprehension of the fixed boundaries of language, writing, and experience, feminist imagination is a positive venture.").
82 See Rose, supra note 7, at 58 ([Naming] brings into existence phenomena and experiences hitherto denied space in both nature and culture.").
This process of creating new meaning through existing language is difficult enough, but it is not the major problem with this approach. The larger issue is how we could come to have the outlaw experiences and emotions in the first place in such a monolithic culture. According to the social constructionist theory, experience, including emotional experience, does not come in prepackaged bundles; we recognize only those experiences that our culture gives us the conceptual tools to recognize. How then can we recognize these experiences when our culture is telling us that they don’t exist? In other words, why are we not all victims of false consciousness, perhaps feeling anger (for example), but suppressing it and not recognizing it as such when our culture tells us anger is not an appropriate response?

Alison Jagger acknowledges that these outlaw emotions stand in a dialectical relationship with critical theory; each gives rise to the other. That is, the critical theory allows us to recognize, name, and thereby make real our outlaw emotions; these outlaw emotions show us the gap between our experience and our cultural assumptions that gives rise to critical theory. The difficulty here is that outlaw emotions cannot be used to explain how critical theory comes into existence if their own existence presupposes the availability of some degree of critical theory. In other words, these experiences and emotions cannot create feminism in a society that is coherently and thoroughly sexist because, unless some feminist conceptual categories are available already, those experiences and emotions will not even be perceived to exist.

To say that these experiences could be perceived in the absence of such concepts is to reject the basic premise of social constructionism itself: that knowledge and experience are always mediated by cultural conceptual categories. If women can recognize sexual harassment as harassment in a culture that sees sexual advances as flattering rather than demeaning or threatening, then why couldn’t male scientists recognize when they are more directly experiencing an objective reality, rather than one distorted by cultural assumptions? A social constructionist cannot escape this difficulty by positing a basis for experience free from cultural categories without risking the whole critique of Cartesianism.

This difficulty with the critique is worth exploring because social constructionists, including feminists, sometimes describe the existing culture as though it were a consistent monolith, at least on certain issues such as sexism and patriarchy. In fact, twentieth century American culture is anything but monolithic. We are presented with a complex

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83 See Jagger, supra note 17, at 150-51.
84 See Robin L. West, The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, 3 Wis. WOMEN’S L. J. 81, 85 (1987) (when you have no social recognition for your pain, you may yourself experience it differently).
85 See Jagger, supra note 17, at 160.
86 See, e.g., MacKinnon, supra note 30, at 638.
and confusing collection of cultural categories, including the influences of many other cultures and many previous eras, some of which are in tension with or in direct contradiction to each other. And this complexity and contradiction exists on gender issues as well. In light of this situation, it is not at all implausible that the seeds of feminism, along with other dissenting positions, can be found in the culture itself, alongside the sexism it opposes. This cultural complexity solves the problem of how we can recognize experience that contradicts some of our cultural categories: we recognize it because it is consistent with, or even required by, other conceptual categories that are also part of our inconsistent culture.

Such an inconsistent culture raises, however, a different problem. If the culture allows for different, even contradictory, answers on questions as fundamental as the nature of gender identities and relations, how can we settle disputes between those who adopt these differing views? Both in relations between private individuals—as in a dispute between a husband and wife over how much housework and child-care the husband ought to do—and in the design of public policies and programs—as in the decision whether to punish sexual harassment as gender discrimination, or whether publicly to fund day care—competing visions would lead to very different results. Where can we find a standard with which to decide between them if our own culture, the only standard available to us under social constructionism, includes both?

The response of some feminists seems to be that such value conflicts are indeed unresolvable and will (and should) remain so. One branch of feminist theorists seems, in fact, to have adopted the irreducibility of multiple viewpoints as a value in itself. It is, however, one thing to accept, even celebrate, descriptive relativism—the claim that we all see the world in different ways—and quite another to accept moral or decisional relativism—the claim that there is no standard to judge between our various visions on moral or other grounds. Feminism, because it must at a minimum reject certain types of oppression of women, cannot accept moral relativism of this kind. It cannot be neutral as between different value systems, some of which oppress women and others of which do not. Seyla Benhabib, who is extremely sympathetic to the

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87 See Patterson, supra note 8, at 307 ("Nothing validates one picture (or a picture about how to choose a picture) over another.").
88 See Smith, supra note 24, at 93 ("There are and must be different experiences of the word and different bases of experience"); Rhoda K. Unger, Psychological, Feminist, and Personal Epistemologies: Transcending Contradiction, in FEMINIST THOUGHT AND THE STRUCTURE OF KNOWLEDGE, supra note 5, at 124, 136; cf. Martha Minow, Foreword: Justice Engendered, 101 HARV. L. REV. 10, 16 (1987) ("Instead of a new solution, I urge struggles over descriptions of reality.").
89 See GRIMSHAW, supra note 30, at 99-100; Farganis, supra note 28, at 217; cf. Rose, supra note 7, at 73-74 (suggesting that the choice between a plurality of discourses and feminism as a truer, better view is itself a dichotomy which should be transcended, but not explaining how to do so).

This is not to say that all value conflicts must be resolvable; some irreducible conflicts
social constructionist project, put the matter this way: we cannot ignore the fact that such conflicts "pose[ ] moral as well as cognitive problems, or that the question of validity inevitably confronts us, and that we cannot extricate ourselves from an answer by gazing in wonderment at the plurality of language games and life-forms."90

Thus, social constructionism seems to degenerate either into simple conventionalism or into a kind of cultural relativism.91 Conventionalism is, in a sexist society, obviously inadequate for feminism. Relativism, whatever one may think of it in general, is also insufficient to meet the purposes of feminism. Feminists must be able to say that gender oppression is wrong, not just that their perspective on it is one valid approach among many.92 To be an acceptable basis for a feminist epistemology, social constructionism must be modified or supplemented to provide some standard for criticism, of both our culture generally and the viewpoints of particular persons or groups within it.93

Social constructivism falls into this dilemma in part because it ultimately fails to escape the Cartesian framework it seeks to challenge. The Cartesian knower has been described as trying to perform the "God trick" by achieving a "view from nowhere,"94 because he seeks to distance himself from any culturally contingent location. In attempting to refute the possibility of such a transcendent position, the social constructionist has described and celebrated a multiplicity of valid (though partial) viewpoints. As Susan Bordo has pointed out,

the question remains, however, how the human knower is to negotiate this infinitely perspectival, destabilized world. Deconstructionism answers with constant vigilant suspicion of all determinate readings of culture and a partner aesthetic of ceaseless textual play as an alternative ideal. Here is where deconstruction may slip into its own fantasy of escape from human locatedness—by supposing that the critic can become wholly protean by adopting endlessly shifting, seemingly inexhaustible vantage points, none

may remain in any moral system. But in order for feminism to claim any transformative potential, it must offer a way to assert that the point of view it provides is superior to (not just equally valid as) the competing sexist viewpoint that is also enshrined in our cultural values. This is one value conflict on which feminism may not remain neutral. See Bartlett, supra note 78, at 879.

90 Benhabib, supra note 13, at 129.
92 See Deborah L. Rhode, Feminist Critical Theories, 42 STAN. L. REV. 617, (1990) (arguing that feminist theory should be committed to promoting gender equality as a normative ideal).
93 See Benhabib, supra note 13, at 122 (arguing that without a justification for certain moral commitments, Lyotard's epistemology leads either to neoliberal pluralism or conventionalist pragmatism). We also need some standards for cross-cultural judgment and criticism. Such judgments are epistemologically parallel to ones within a culture that is itself contradictory or composed of subcultures, but they may raise additional moral issues.
94 Bordo, supra note 71, at 142; Donna Haraway, Situated Knowledges: The Science Question in Feminism and the Privilege of Partial Perspective, 14 FEMINIST STUDIES 575, 584 (1988) ("vision from everywhere and nowhere equally and fully").
of which are 'owned' by either the critic or the author of a text under examination.  

The injunction to celebrate and participate in multiple perspectives, with no prescription for choice among them, denies the "somewhere" that we all do and must inhabit.  "[T]he philosopher's fantasy of transcendence has not yet been abandoned. . . . [Instead, it has] been replaced with a new postmodern configuration of detachment, a new imagination of disembodiment: a dream of being everywhere." Rather than the view from nowhere, we have the view from everywhere.

This lapse into transcendence is caused by the failure of social constructionism to escape from the underlying Cartesian view of objectivity. Having accepted the skeptical dilemma around which mainstream epistemology is constructed—that there must be only one truth or no truth at all—and having rejected the Cartesian attempt to build a foundation for a single truth, social constructionists find themselves with no way to distinguish between truth and falsity in the multiplicity of viewpoints. They have challenged the Cartesian notion that truth must be transcendent and unitary, but only in order to say that such a truth is impossible, not to provide an alternative account of a situated truth that might justify a choice between viewpoints. As a consequence of this "Cartesian echo," they are left with no truth at all and so are insufficient to the feminist task of identifying and resisting the oppression of women.

B. The Nature of the Subject

A second danger to feminism posed by social constructionism concerns the challenge it represents to the Enlightenment concept of the subject or self. The subject, or knower, who emerges from the Cartesian assumptions is clearly separated from the external world that is the object of knowledge and possesses firm identity boundaries. The fundamental aspects of the self are stable and presocial: primarily reason itself.

Social constructionism challenges this concept of the self by showing that subjects are deeply dependent on the social definition provided by culture and deeply fragmented by cultural tensions and contradictions. "Postmodernists ask us to cease thinking of ourselves as having identities and to begin understanding ourselves as sites for competing cultural interpretations." It is this socially defined "subject" that allows the refutation of essentialism and the deconstruction of difference. Social

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95 Bordo, supra note 71, at 142.
96 Id. at 143.
97 See Sandra Harding, The Science Question in Feminism, 107 (1986); Patterson, supra note 8, at 263.
98 See Harding, supra note 17, at 187.
99 See Patterson, supra note 8, at 278.
100 Buker, supra note 91, at 227.
constructionism’s success in blurring the boundaries between inside and outside may, however, call into question the coherence of “the subject” as a concept at all.\textsuperscript{101}

This disintegration of the self creates certain difficulties for feminism. From a theoretical point of view, “[i]f there is no subject, who is left to emancipate?”\textsuperscript{102} The very idea of gender oppression requires that we be able to identify a subject—“women”—which has both epistemological and moral significance.\textsuperscript{103} But if the permeability of identity boundaries leads to their complete collapse, then the subject can no longer function as a meaningful unit for the purposes of either knowledge claims or moral claims.\textsuperscript{104}

Moreover, the concept of gender oppression requires that we be able to identify power arrangements that qualify as “oppression.” The disintegration of the self, however, leads social constructionism to blur the lines of power, seeing power as everywhere, as a discursive background, rather than as a force used by some particular people against others.\textsuperscript{105} After all, when there are no meaningful subjects left, power becomes an attribute of social institutions rather than of persons. Given the continuing pattern of patriarchal violence against women, however, feminists cannot afford to dispense with the notion of power as violence against the subject.\textsuperscript{106} The directionality of power—its use by some particular people against others—is as significant for feminist purposes as its background pervasiveness.

Nor can feminists manage without the subject on a more practical level. Both the small-scale consciousness-raising and the large-scale political organizing that form the framework of a feminist movement depend on a notion of the subject. One of the most pernicious and damaging aspects of gender oppression—and one particularly apparent from the perspective of legal theory—has been the denial to women of the status of subjects or persons.\textsuperscript{107} The reclamation of a self within, a self


\textsuperscript{103}See Patterson, supra note 8, at 260 n.25, 261.

\textsuperscript{104}See Bartlett, supra note 78, at 879-80.

\textsuperscript{105}See FLAX, supra note 101, at 207 (describing Foucault’s theory of power).


\textsuperscript{107}See 1 WILLIAM BLACKSTONE, \textit{COMMENTARIES} *430 (“[T]he husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage . . .”). This denial of personhood is, of course, also one of the hallmarks of the oppression suffered by African American women and men; FLAX, supra note 101, at 219; \textit{see also}, PATRICIA J. WILLIAMS, \textit{THE ALCHEMY OF RACE AND RIGHTS} 153 (1991).
denied by patriarchy, is one of the central achievements of the consciousness-raising method. Indeed, the rise of social constructionism and postmodernism at precisely this moment may appear highly suspicious: just when previously silenced persons have begun to speak for themselves, the concept of the subject and the possibility of truth come under fire.

Moreover, political progress seems to depend on a meaningful subject. "To the extent that feminist politics is bound up with a specific constituency or subject, namely, women, the postmodernist prohibition against subject-centered inquiry and theory undermines the legitimacy of a broad-based organized movement dedicated to articulating and implementing the goals of such a constituency." A political movement must be organized around something. Even if it avoids the potential essentialism of an identity politics, it requires the sorts of subjects that can have interests, or rights, or values that are both minimally identifiable and morally significant. Participants in the movement must see themselves as such subjects in order to motivate action, and other members of the polity must also see them that way if they are to have any impact. The successful deconstruction of subjectivity would undermine such political action.

C. Play versus Responsibility

Finally, social constructionism, poststructuralism, and postmodernism pose a more diffuse, atmospheric problem for feminism. These intellectual movements are sometimes characterized by a desire to "have it any way they want. They refuse to assume a shape for which they must take responsibility." They "replace [Cartesian] metaphors of spectatorship with metaphors of dance; . . . relinquish . . . fantasies . . . soberly fixed on necessity and unity [in favor of] those that are intoxicated with possibility and plurality."

Such a constantly shifting, playful attitude can be exhilarating and liberating. It frees us to reimagine reality in endlessly new and creative ways. It challenges us to attempt to see the world from someone else's

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109 See Flax, supra note 101, at 220; Di Stefano, supra note 64, at 75 (citing Nancy Hartsock, Wendy Brown, and Jane Flax).

110 Di Stefano, supra note 64, at 76.

111 See Jennifer Nedelsky, Reconceiving Autonomy: Sources, Thoughts, and Possibilities, 1 Yale J.L. & Feminism 7,9 (1989) ("The problem, of course, is how to combine the claim of the constitutiveness of social relations with the value of self-determination.")

112 Bordo, supra note 71, at 144.

113 Id. at 145.
perspective. It is undeniably an important part of any project that seeks, as feminism does, to be inclusionary and liberatory.

But this attitude can also be a barrier, a barrier both to an adequate appreciation of difference and to a responsible stance toward the actual suffering of real human beings. If human beings had a truly infinite capacity to assume the perspective of another, real difference would be impossible; we would be transparent to one another. It is our particularity, and the boundedness that it creates, that makes otherness possible. To refuse to recognize (indeed, even to celebrate) that boundedness is to refuse to recognize or celebrate difference. We should, of course, make the effort of understanding, the effort to broaden our individual contexts, but a context that includes everything means nothing, and without meaningful contexts there would be no human diversity to celebrate. We must take seriously the ineradicability of otherness.

Playfulness also fails to take seriously the real pain caused by certain perspectives and cultural contexts. We cannot simply reserve judgment, critiquing and deconstructing existing concepts and contexts but refusing to commit ourselves to some and not others. We should not be willing to adopt every perspective, including that of the wife batterer or child abuser, without making judgments about which are better and worse. The attitude of playfulness is morally inappropriate, indeed irresponsible, when the cost of certain kinds of diversity is paid in suffering. If feminism is committed to taking women's experiences seriously, and if women have experienced much of that suffering, feminism simply cannot adopt this attitude.

Although I have described these three difficulties with social constructionism separately, each is of course implicated in the others. Together they form a whole that threatens to rob feminism of its critical bite and its moral and political force. These are not superficial difficulties; they arise from the same basic components of social constructionism that account for its usefulness to feminism in critiquing Cartesianism and redressing exclusion. The challenge, then, is to find a way to retain the useful aspects while softening the impact of their dangerous implications.

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114 Id.
115 See Iris Marion Young, The Ideal of Community and the Politics of Difference, in FEMINISM/POSTMODERNISM, supra note 4, at 309-10.
117 See HARDING, supra note 17, at 304. But see Frug, supra note 52, at 1047-48 (arguing that the "flip, condescending, and mocking" style of postmodernism should not disqualify it for feminist use).
IV. FEMINIST STRATEGIES FOR RECONCEIVING SOCIAL CONSTRUCTIONISM

Some feminist theorists, both in and outside of law, have accepted this challenge. Three of the most common strategies for reconceiving social constructionism are: first, to adopt a standpoint epistemology; second, to incorporate pragmatist methods and insights; and third, to attempt to define and justify a standard for judgment that is in some sense culturally independent but still not transcendent. In my view, it has been difficult to pursue these strategies successfully because we lack a clear idea of how a solution could be both consistent with the basic premises of social constructionism and sufficient as a guide for resolving conflicting perspectives. While such a guide may never generate certainty, a sufficient standard must provide us with mechanisms for narrowing the legitimate alternatives to a manageable number and with a stock of arguments or concerns through which to evaluate those alternatives. I will suggest that the most promising path in feminist epistemology is one which explores and clarifies the nature of a situated and sufficient form of judgment.

A. Standpoint Epistemologies

In order to deal with a heterogeneous culture, several writers have suggested a sort of procedural basis for deciding between competing viewpoints and values. They claim that women, along with other oppressed groups, have an “epistemic advantage” that gives them a better claim to see clearly than those who are higher up in the social hierarchy. The reason for this advantage is that oppressed groups must understand, and to some extent internalize, the dominant culture in order to survive, but they live simultaneously in a different subculture. In other words, members of oppressed groups find themselves in two different, and often contradictory contexts. This disjunction gives them the distance from each context that allows them to adopt a critical perspective toward it. Such distance is either impossible or much more difficult for members of the dominant group because they live wholly within a majority culture that reflects and legitimates their experience. It is this critical distance that constitutes the epistemic advantage of the oppressed. And it is this advantage that justifies preferring the view-

118 See Jagger, supra note 17, at 162; Farganis, supra note 28, at 217; Bartlett, supra note 78, at 872-77. Bartlett criticizes standpoint epistemology on four grounds: (1) it tends to essentialize women, thereby ignoring important differences and imposing the views of some on others; (2) it ignores the possibility that other “standpoints” may also yield knowledge; (3) it must rely on a doubtful and dangerous false consciousness argument to explain the differences in women’s views; and (4) it creates an adversarial “we/they” politics. Id.

119 See HARDING, supra note 17, at 124, 131-32; Nancy C.M. HartsocK, The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism, in FEMINISM AND METHODOLOGY, supra note 24, at 157, 159-60; Uma Narayan, The Project of Feminist Episte-
point of the oppressed to the viewpoint of the dominant group.

Such a means of deciding between competing claims of value or vision without reference to their particular content would, of course, be very useful. Moreover, if the epistemic advantage is simply a prima facie claim that brings to the center of our attention those perspectives that have been most ignored in a society, this approach has much to recommend it. Nonetheless, I think there are serious difficulties with a standpoint epistemology if it is actually used to resolve disputes rather than merely to frame them.

The first set of difficulties consists of problems of application. First, it is not always easy to tell which group is oppressed and in relation to whom. If two oppressed groups—say, women generally on the one hand and working class or poor men on the other hand—have competing values, how do we decide this issue? Do we ask who is more oppressed in general? Who is more oppressed on the particular issue in question? Do we look for some group that is at the very bottom of the hierarchy and have their views guide us about everything?

Second, it is simplistic, and contradicted by their own accounts, to assert that the members of an oppressed group will all share the same vision or values on any given issue. Feminism has, indeed, been struggling for some time with the reality of diversity among women. When there is disagreement, which oppressed voice should guide us—the majority of the oppressed (because they better represent the whole group) or the minority (because they are even further oppressed and distanced from their context by being dissenters within their own group)?

These practical difficulties are, moreover, compounded by conceptual ones. Being between two contexts or cultures is probably a characteristic of a majority of people in late twentieth-century America rather than a unique experience of some small determinate group that could be called oppressed. In our extremely diverse society, almost everyone will be part of a subculture of one type or another. Not only gender and race, but religion, ethnicity, sexual orientation, economic class, physical challenges, occupation, and many less obvious characteristics can bring a person into contact with subcultures which differ, to varying degrees, from the dominant culture. It is true, of course, that members of groups with certain characteristics—a culture that covers many aspects of life rather than just a few, and a culture that is despised by the majority—may have

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120 See HARDING, supra note 17, at 126 (women as losers in the battle of the sexes didn't get to write the history; we need to add their side to complete it); Mari J. Matsuda, When the First Quail Calls: Multiple Consciousness as Jurisprudential Method, 11 WOMEN'S RTS. L. REP. 7, 9 (1989) (arguing for the need to understand the particulars of the lives of the oppressed).

121 See Deborah L. Rhode, supra note 92, at 624.
a more intense experience of conflict between the two contexts, which may generate more of a critical distance. But that issue is one of degree and will vary with the particular circumstances of an individual; no group can claim a special privilege that is necessarily unavailable to many people.

Perhaps even more importantly, people who experience this conflict of contexts do not necessarily respond by creating a critical distance between themselves and each context. The conflict can lead instead to a rejection of one context and the wholesale adoption of the other, or to dichotomizing one's life so that one culture applies without conflict to certain aspects (e.g. domestic life guided by the values of the "feminine" subculture), while the other culture applies to other aspects (e.g. work life guided by the values of the dominant masculinist culture). Neither of these strategies would necessarily contribute to the achievement of critical distance.

Moreover, the critical distance that can be achieved if one remains simultaneously in contradictory cultures is purchased at a cost. Those who feel themselves to be shaped by a subculture that is despised by the majority often suffer very real emotional scars from that experience. The "oppressed [may be] in fundamental ways damaged by their social experience." Standpoint epistemology may perpetuate a fantasy of innocence, when in fact the oppressed often are not "innocent": their own internal culture is implicated in and shaped by the systems of oppression.

Another price commonly paid by those who straddle two cultures is a "sense of totally lacking roots or any space where one is at home in a relaxed manner." This sense, like the damaging scars inflicted by majority disdain, might itself have certain systematic implications for one's value choices. Those substantive implications may be good or bad, but they would have to be assessed independently in order to determine how they affect the usefulness of this approach. That assessment will require some moral standard that addresses the substantive question of how to choose between different values and visions. Thus, a standpoint epistemology faces both practical and conceptual difficulties and it seems incomplete without the addition of a substantive analysis.

Sandra Harding, one of the most thoughtful proponents of a standpoint epistemology, recognizes these flaws and is attempting to construct a standpoint theory with a standard for a new, "strong" objectivity built into it.

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122 See Narayan, supra note 119, at 266.
123 Flax, supra note 4, at 56.
124 See Di Stefano, supra note 64, at 72; Harris, supra note 44, at 608-09; Cherrie Moraga, La Guera in This Bridge Called My Back, supra note 41, at 27, 27-34.
125 Narayan, supra note 119, at 266.
A feminist standpoint epistemology requires strengthened standards of objectivity. The standpoint epistemologies call for recognition of a historical or sociological or cultural relativism—but not for a judgmental or epistemological relativism. They call for the acknowledgement that all human beliefs . . . are socially situated, but they also require a critical evaluation to determine which social situations tend to generate the most objective knowledge claims.126

In light of this demand for objectivity, Harding distinguishes between a perspective—"which anyone can have simply by 'opening one's eyes' "—and a standpoint—which is "an achievement,"127 an "objective perspective from women's lives that gives legitimacy to feminist knowledge."128 And she endorses a distinction between "'good' and 'bad' belief formation and legitimation," both of which are socially caused but only one of which leads to true or better knowledge.129

The inclusion of a sufficiently well-defined theory of objectivity would solve some of the problems noted above. It would specify which outlooks were entitled to this privilege—only standpoints, not mere perspectives—and it would explain why they were privileged: because they are more objective. Harding’s definition of objectivity, which centers on valuing and being able to assume (temporarily) the perspective of the Other,130 even helps to explain why the oppressed position of certain groups gives their members a greater claim to objectivity: members of oppressed groups learn, as a matter of survival, how to adopt the perspectives of others, so they are more likely to have an objective view.

But Harding has not spelled out the nature of this situated objectivity sufficiently to resolve the difficulties posed by social constructivism. We need to know more about what “good reasons” are or we will have no way to evaluate and choose between the various perspectives of others once we have tried them on. Harding says that good reasons “do not refer to transcendental, certain grounds for belief of the sort claimed by conventional epistemologies [nor do they] privilege what any group of actual, historical humans say about how they see the world . . . .”131 She suggests that they rest instead on some normative values,132 but she neither specifies those values in detail nor attempts to explain their source or justification.

Moreover, the relation of such values to standpoint epistemology is somewhat problematic. If the values are determinate enough, then it is no longer clear what work “standpoints” do. If the goal is to identify

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126 Harding, supra note 17, at 142.
127 Id. at 127.
128 Id. at 167.
129 Id. at 149, n.17.
130 See id. at 151.
131 Id. at 169.
132 Id.
beliefs that are justified by good reasons, rather than by social causes alone, then why shouldn't we address that issue directly? Why do we need to privilege any standpoint at the beginning? For example, if, as Harding suggests, one of these values is a respect for Otherness that attempts neither to deny the existence of the Other nor to exert unilateral control over the Other, then we can use that standard to measure beliefs directly. We do not need to look for groups whose experience is most likely to lead them to this value and then privilege their perspectives. A standpoint epistemology is a clumsy and less reliable path to that goal.

This problem arises because it is simply not clear in what sense this value or standard (i.e. this objectivity) is situated. It is situatedness that the "standpoint" captures. Until we have an adequate description of what it means for a standard to be both independent and situated, we will continue to oscillate between the Cartesian poles of universalism and normative relativism. Although Harding has correctly perceived this Scylla and Charybdis, and carefully avoided both, she has not yet described the path in enough detail for the rest of us to follow her.

B. Pragmatism

Another strategy some feminists have adopted to deal with the difficulties of social constructionism is to embrace pragmatism. Although pragmatism is no more easily susceptible of definition than feminism, I believe it is fair to characterize it as an approach or practice that eschews abstract, general, and transcendent systems of thought in favor of thinking that is contextual and situated (always embodied in particular practices) and instrumental (meant to solve particular problems). While it emphasizes a local specificity that allies it with the social constructionists, the instrumentalism of pragmatic thought keeps it firmly normative rather than skeptical. Our moral positions therefore "reflect[s] not objective truth, but the grammar of what it means to be us," where the boundaries of "us" are themselves normatively contested concepts.

Some pragmatist feminists seem content to rest with this methodological formulation of pragmatism. Joan Williams, for example, suggests the types of questions we must ask ourselves in order pragmatically to assess systems of thought and the social practices in which they are

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133 See id. at 152-56.
134 See Thomas C. Grey, Holmes and Legal Pragmatism, 41 STAN. L. REV. 787, 798 (1989); Radin, supra note 73, at 1707-09.
137 See Radin, supra note 73, at 1726.
embodied. The issues, she contends, are: "what would life have to look like to make this a justifiable choice? . . . [and] [d]o I want to change in the ways I would have to in order to adopt this novel point of view?"  

This formulation of the issues does address some of the difficulties with social constructionism. It recenters a concept of identity, while continuing to insist on a high degree of social construction of self. It does not require coherence in that identity, but it does require that we not be so totally fragmented and without boundaries that we are unable to talk about "who we are." Williams is also very concerned to remedy the apparent lack of seriousness of some postmodern versions of social constructionism. She turns from metaphors of play to the metaphors of pragmatism precisely in order to rid her position of the amoral aestheticism that she recognizes as distasteful to many people.  

Williams' formulation does not, however, address the first difficulty with social constructionism: the lapse into either relativism or conventionalism. She has moved the inquiry to a new level—the level of who we are and want to be rather than what we should do in a specific instance—but she has not specified the kinds of considerations that should be relevant or determinative when we attempt to answer those questions. Again, we are left with nothing to rely on but our culture for these images of identity; if that culture is consistent, then there is no room for a critical stance, and if it is inconsistent, there is nothing beyond it to which we can appeal in order to choose.  

In other words, the pragmatic standard of functionality—what "works"—must itself be filled in by culturally specific concepts. To a Christian Scientist, prayer works as healing and medicine does not because the goal is defined in spiritual as well as physical terms. Instrumentalism implies an end; the means are assessed by how well they serve that end. But pragmatism, defined in this methodological way, does not itself specify the end. It, therefore, may encourage the right kind of moral responsibility, but can provide no epistemological tools with which to fulfill it. This type of methodological pragmatism restates, but does not resolve, the dilemma of social construction.  

Other pragmatist feminists have sought to fill this gap by specifying a normative standard by which to judge various social practices or identities. By far the most common contender for this position is some version of an "anti-subordination" principle: a principle requiring us to recognize and redress imbalances of power and respect, particularly when they fall

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138 Williams, supra note 136, at 138.
139 See id. at 132.
140 To be fair, I don't think Williams intends to address this issue. She seems satisfied that cultural standards—the only ones available—are sufficient to make the arguments that concern her. See id. ("Words were tools even when we thought they were mirrors. The mere admission that they are no more than tools will not cause them suddenly to break.")
along the traditional lines of race, gender, and class.\textsuperscript{141} This approach is the substantive analogue of the more “procedural” attempt to find an epistemological privilege for the viewpoint of those who are oppressed and it often accompanies a standpoint epistemology. The attempt explicitly to provide such a standard represents the third strategy for dealing with the problems of social constructionism.

\section*{C. An “Independent” Moral Standard}

Pragmatists who use a principle like anti-subordination as part of their approach are relying on a strategy of defining an independent moral principle with which to choose between norms and perspectives. The difficulty with such a principle is essentially a problem of description: what sort of thing is it? If the commitment to anti-subordination is a transcendent principle, one that applies across cultures and to all contexts within cultures, the preeminent moral standard against which practices and other norms must be judged, then it seems to violate the very heart and soul of social constructionism. It is not a new epistemology, but simply a different contender within the old epistemological battles.\textsuperscript{142} And it is fundamentally unconnected to the methodology of pragmatism.\textsuperscript{143} If, on the other hand, anti-subordination is a contextually derived and contextually bounded norm, then there is no reason to think that it should apply to every practice we wish to assess, let alone that it would be the most important norm for every practice. Anti-subordination would, instead, be one consideration among many, the relevance and importance of which would have to be judged in particular instances, and how that judgment would be made is itself extremely unclear.\textsuperscript{144}

\textsuperscript{141} See, e.g., Minow & Spelman, supra note 50, at 1632-33, 1650; Radin, supra note 73, at 1711 (describing how attention to the oppressed, including women, can help solve the problem of “bad coherence”); Matsuda, supra note 116, at 1771-2. This principle is not, however, the only one that has been suggested. See e.g., Lynn A. Baker, Just do it: Pragmatism and Progressive Social Change, 78 VA. L. REV. 697, 699 (1992) (“According to [Richard Rorty, Contingency, Irony, and Solidarity (1989)] progressive social change is that which moves a society closer to realizing [Rorty’s] three interrelated aspirations: that suffering and cruelty will be diminished, that freedom will be maximized, and that ‘chances for fulfillment of idiosyncratic fantasies will be equalized.’”) (footnotes omitted).

\textsuperscript{142} This is the position explicitly taken by Mari Matsuda. See Matsuda, supra note 116, at 1771-72. Matsuda suggests that we should simply live with the contradiction between the anti-foundationalism of the pragmatist method, on the one hand, and this foundationalist principle, on the other. I agree that logical consistency should not be the sine qua non of either an epistemology or a moral theory, but I am concerned about how that contradiction may play out in practice. If we do not want to be left with a politics of sheer power, then we must have some idea about how we can persuade each other. Denying one’s interlocutors an intellectual move that one makes oneself (i.e. foundationalism) while simultaneously offering no argument for the fundamental principle one is advocating does not seem to me to be likely to advance the conversation.

\textsuperscript{143} See Baker, supra note 141. (Rorty’s prophetic strand—setting forth his aspirations—is separate from his anti-foundationalism).

\textsuperscript{144} In order to know how to evaluate or choose between norms or perspectives, we need to know what problem we are dealing with and how far our actual situation is from our ideals, \textit{see}
In other words, in order for such a principle to do the work assigned it, it must neither be totally transcendent nor simply one context-specific norm among many. It must, that is, escape the Cartesian echo of one truth or none. The question is, of course, what is left? What else could it be?145

Katherine Bartlett has explored the nature of such an intermediate position.146 Bartlett attempts to design an epistemological stance that will maintain the cultural contingency of the social constructionist argument while salvaging some basis for truth or objectivity that would allow for critique. In her approach, called “positionality,” truth is always partial, incomplete, and founded on experience rather than unitary and transcendent.147 Nonetheless, it is possible to improve your knowledge by attempting to incorporate other perspectives by imaginatively understanding the viewpoints of others.148 Thus, effort, self-discipline, and self-criticism are essential to knowledge.149

This combination is extremely useful in staking out a middle ground. By emphasizing that truth is founded on experience, Bartlett provides grounds for asserting that it is “real”—“in the sense of produced by the actual experiences of individuals in their concrete social relationships”150—and “valid”—“truth claims are significant or ‘valid’ for those who experience that validity.”151 We are justified in relying on such truths as long as we remember that they are provisional and partial. We can hope to resolve disagreement over such truths only through struggles over social reality because there is no standard external to experience to which we can have recourse.152 But resolution, although never certain, is possible by reference to internal truths: “internal truths [are those that] make the most sense of experienced, social existence.”153

At two different points, however, an important piece of the argu-
ment is missing. When searching out and imaginatively entering other perspectives, we are not required to incorporate all viewpoints, but simply to be open to their challenge.\textsuperscript{154} This limit is, of course, essential if positionality is not to degenerate into "a strategy of process and compromise that seeks to reconcile all competing interests."\textsuperscript{155} But if we must make judgments about which perspectives to incorporate and which not, then by what standard are we to assess competing viewpoints once we have tried them on? Similarly, when we struggle collectively over descriptions of our reality, how are we, as a political community, to choose between competing and incommensurate—and equally "valid"—truths? In other words, as a matter of both individual and group decisionmaking, what standards are available from the position of positionality?

Bartlett has provided a useful sketch of the kind of stance we must assume when using or seeking our moral principles, but we also need to know more about what such principles themselves would be like. At some points, Bartlett seems to suggest that there just are certain values that we all can and should agree on that might guide at least some of these choices.\textsuperscript{156} She never provides, however, a clear statement about the source or precise content of these values.\textsuperscript{157} Positionality is an important part of the solution to the problems of social constructionism, but it must be supplemented by an account of the sort of standards available to us.

Many theorists have attempted to define such moral standards; ones that would not collapse into either transcendence or relativism.\textsuperscript{158} Some feminists have built on the work of Jurgen Habermas, which draws on a model of human communication to define methods of and preconditions for participation which, in turn, provide a foundation for moral and political judgments.\textsuperscript{159} Others have suggested a model of human flourishing,\textsuperscript{160} a traditionally feminine ethic of care,\textsuperscript{161} or a post-modern

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  \item\textsuperscript{154} See Bartlett, \textit{supra} note 78, at 883.
  \item\textsuperscript{155} \textit{Id.}
  \item\textsuperscript{156} See \textit{id.} at 883-84, n.235.
  \item\textsuperscript{157} See \textit{id.} at 884-85 (denying that her position is either essentialist—i.e. relying on a universal notion of human flourishing—or relativist).
  \item\textsuperscript{158} For a general endorsement of work on defining these moral standards, see Linda R. Hirschman, \textit{The Book of "A"}, 70 \textit{Tex. L. Rev.} 971, 990 (1992) ("I hope that by showing the methodological and epistemological similarities between Aristotle's work and contemporary feminist thought, I have made legitimate an inquiry into the substantive answers about the human good . . . "). For a very interesting attempt to define such a standard from within an African American critical tradition, see generally Anthony E. Cook, \textit{Reflections on Postmodernism}, 26 \textit{New Eng. L. Rev.} 751 (1992).
  \item\textsuperscript{159} See, e.g., SEYLA BENHABIB, \textit{CRITIQUE, NORM, AND UTOPIA} 253-79 (1986).
  \item\textsuperscript{160} See Jagger, \textit{supra} note 17, at 161; see also GRIMSHAW, \textit{supra} note 30, at 101 (suggesting a moral theory based on "interests" to inform epistemology).
  \item\textsuperscript{161} See generally Joan Tronto, \textit{Women and Caring: What Can Feminists Learn About Morality from Caring?}, in \textit{GENDER/BODY/KNOWLEDGE}, \textit{supra} note 4, at 172.
\end{enumerate}
insight of respect for otherness\textsuperscript{162} as possible foundations for ethical and political values. I will briefly describe two such attempts, building on very different philosophical traditions, in order to show the type of work that remains to be done.

Drucilla Cornell, in her recent book \textit{Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law},\textsuperscript{163} argues that feminist theory should adopt a deconstructionist approach that combines an ethical commitment to respect for otherness with an affirmation of the continually transformed and transformative concept of the feminine. Through a type of feminine writing that constantly challenges and disrupts the established reality by reinterpreting traditional myths of Woman,\textsuperscript{164} we can implement the underlying ethical commitment of deconstruction: bringing in the excluded or suppressed.\textsuperscript{165} In this way, we achieve a utopian moment in which the ethical, the "ought," the "not yet of the never has been,"\textsuperscript{166} generates the "is" of reality rather than the other way around.\textsuperscript{167}

Cornell's approach offers several important contributions to the development of feminist theory, including its emphasis on the importance of affirming the feminine, its persuasive argument for the usefulness of a deconstructive approach, and its endorsement of the appealing principle of respect for otherness. This approach, however, raises again (rather than answering) the epistemological questions I have been asking. What is the source of our creative reinterpretations of the feminine? And how do we choose between competing reinterpretations? What is the source and nature of the principle of respect for otherness? Is it a part of some existing culture (in which case it is an "ought" derived from an "is" and cannot ground the utopian project) or is it supra-cultural (and how could anything be supra-cultural in a deconstructionist epistemology in which "...there are only contexts, ...nothing exists outside context..."\textsuperscript{168})? In other words, the mechanisms through which Cornell attempts to implement her approach seem to replicate the dilemma rather than resolve it.\textsuperscript{169}

Martha Nussbaum has also recognized and addressed these issues. She has suggested that an Aristotelian theory of the virtues could be both

\textsuperscript{164} See id. at 82-107.
\textsuperscript{165} See id. at 109-15.
\textsuperscript{166} Id. at 112.
\textsuperscript{167} See id. at 116-17.
\textsuperscript{168} Id. at 170 (quoting Derrida).
particularist and objective, threading the middle path between such dichotomies. First, she identifies certain areas of life and then defines virtues as choosing or acting properly in those areas. She acknowledges that the answer to the question "How does one act properly in this area?" will be highly context specific; indeed, there may be many equally valid answers for the same virtue in different contexts. But she insists that "[t]he fact that a good and virtuous decision is context-sensitive does not imply that it is right only relative to, or inside, a limited context, any more than the fact that a good navigational judgment is sensitive to particular weather conditions shows that it is correct only in a local or relational sense." Nussbaum's position illustrates certain characteristics that many feminist theories in this category have in common. They seek to define a middle ground denied by Cartesianism. The principles they suggest are not transcendent because they are tied to human experience, subject to constant revision in light of that experience, and susceptible to real cultural variation. They therefore meet the requirements of social constructionism. But they are "objective" enough to provide a basis for some critical bite because they are not simply culturally contingent; they rely on some regularity in human experience at least over some periods of time.

There is, of course, no reason to believe that only one substantive principle will fill this middle ground; it may be that several or even many principles will serve the purpose of dissolving this dilemma. It is not necessary that we have some final, determinate method of resolving all moral or epistemological disagreements. But it is necessary that we have some way of narrowing the field of contending positions to a manageable number and that we have some idea of the considerations that are relevant in arguing about those contenders. The notion of a non-

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171 For a very interesting account of the Aristotelian elements of feminist theory, and how these elements contribute to constructing a middle ground, see Hirschman, *supra* note 158, at 971-90.

172 See Nussbaum, *supra* note 170, at 34-36.

173 *Id.* at 45. In addition, Nussbaum argues that certain ways of conceptualizing areas of life represent features of our common humanity, which cross cultural boundaries and define what it means to be human in so fundamental a way that to change them would be to change the kind of creatures we understand ourselves to be. As a result, these features may provide a foundation for standards of virtue that are valid across cultural lines. Such features might include: our mortality, our dependence on the world outside our bodies for sustenance (physical and emotional), our cognitive and practical reason functions, and some notion of sociability. *See id.* at 48-49, 50.

174 This is not a middle ground between Cartesianism and social constructionism. It is, instead, a middle ground between the poles of the various dichotomies within Cartesianism (e.g. objective/subjective, universal/particular). The dichotomies and Cartesianism itself deny the possibility of such a middle ground. Social constructionism can only help us to escape the Cartesian trap if it can explain or describe this "excluded middle". It is its failure to do so that generates the echo of Cartesianism within social constructionist theory.

175 Indeed, one principle or method, one truth, may always involve domination of some people by others. *See Flax, supra* note 4, at 48-49.
Cartesian middle ground could provide such parameters for debate if it were sufficiently specific.

Such specificity is, however, essential. Without it, it is all too easy to slip back into the Cartesian trap of reading such a principle as either unattainably transcendent or uselessly relativistic. To return to Nussbaum, for example, her analogy to navigation is an extremely interesting beginning, but unless it is taken further it too easily degenerates into another Cartesian echo. It is true that good navigation is not simply good in context or relationally, but that may be because it is possible to spell out some general rules about what sorts of considerations ought to guide good navigation. One cannot know what those rules require in a given case without looking at the particular context, but it might seem that one can know what the rules are without looking at the context. For example, perhaps the rule is that to navigate well one must know in what direction from one's present location one's destination lies. If this rule is derivable from Reason, like some Kantian axiom, then it provides a good basis for distinguishing good and bad navigation regardless of context. A rule that claimed this sort of Cartesian transcendence would, however, be subject to a social constructionist argument pointing out that the rule itself is dependent on context: it only holds when the point of navigation is to get from one place to another, rather than, for example, to find a technically challenging course that will fill a certain number of hours. It presupposes, in other words, a certain social practice in which navigation plays a part. But if the rule itself is context-dependent, culturally specific, then it would seem to lose its justification outside of that social context; it cannot give us the cross-cultural critique that we need. Thus, the navigation analogy may itself be seen through the lens of the Cartesian dichotomy rather than challenging that dichotomy.

This little exercise is not presented as any kind of disproof of Nussbaum's or Cornell's arguments; the fact that an approach can be viewed through a Cartesian lens does not automatically disqualify it. But seeing how a Cartesian view can force such an approach into a replay of our epistemological dilemma demonstrates why analogies and generalities are insufficient. We need to know more about what the middle ground looks like, how it operates, in order to use it effectively. Nussbaum has explored this type of judgment in detail in literary and philosophical contexts in her other work.\(^\text{176}\) We need to continue such exploration in law.

**CONCLUSION**

Feminism may at last be gaining a toehold in the academy but it is currently under fire in our society. Issues about how feminists know

what we say we know, and how to convince others of what we know become increasingly urgent as “feminist” threatens to join the list of political pariah terminology. One of the most pressing questions facing us is how to justify our claims to those interlocutors we must persuade if we are to make any meaningful change in our culture or our laws.

Epistemology is not only abstract theory, it is also politics. It is how we organize political movements that are both inclusive and cohesive; why we need more women in positions of political and economic power; how we make people realize the disastrous human consequences of social policies of oppression or neglect. And epistemology is law as well. It is how we see the inequality in apparently neutral policies; why we fill court papers and law review articles with stories of the impact of legal doctrine on real people; why the gender and race and class of a law professor or a lawyer or a judge matters.

We live in a world of “fractured horizons,” in which we cannot rely on social reality to generate a set of broad-based, shared meanings (least of all a feminist meaning). But we must communicate across those schisms in ways that will persuade those who do not presently see our reality. It may be neither possible nor desirable for us to view these conversations as disagreements that must be settled by reference to some standard that will generate determinate right answers. But we also cannot simply accept our different perspectives as an unbridgeable cultural chasm that leaves us without the possibility of large-scale social change. Communication requires that we be able to set some boundaries on the approaches under consideration in any given discussion and that we be able to say something about what sorts of concerns legitimately motivate a choice between those approaches. This Article has not attempted to spell out what those boundaries or concerns should be, but rather to show how feminist epistemology is presently engaged in this project. I believe that this work of understanding how conversation and persuasion can galvanize change is one of the central tasks of a feminist legal epistemology.