

May 2017

Feminism and Economic Inequality

Katharine T. Bartlett

Follow this and additional works at: <https://lawandinequality.org/>

Recommended Citation

Katharine T. Bartlett, *Feminism and Economic Inequality*, 35(2) LAW & INEQ. 265 (2017).
Available at: <https://scholarship.law.umn.edu/lawineq/vol35/iss2/8>

Feminism and Economic Inequality

Katharine T. Bartlett[†]

Introduction

Economic inequality was a key issue in the 2016 presidential campaign¹ and probably influenced the election of Donald Trump.² It is an issue that is profoundly significant to the growing number of individuals—disproportionately women and minorities—who find themselves on the wrong end of the increasingly bi-modal economic spectrum, and raises serious concerns about the erosion of the “American dream”³ and the stability and viability of our democracy.⁴ Economists, political theorists, sociologists, and

[†]. A. Kenneth Pye Professor of Law, Duke University School of Law. It is a great privilege to have participated in this symposium honoring the most influential legal feminist scholar of our time—Catharine A. MacKinnon. Thank you to the editors of *Law & Inequality: A Journal of Theory and Practice* for their many efforts to make it happen.

1. *E.g.* Josh Boak, *Why Income Equality Matters in This Election*, PBS NEWSHOUR (Aug. 18, 2016, 1:24 PM), <http://www.pbs.org/newshour/rundown/income-inequality-matters-election/>; David Lauter, *Income Inequality Emerges as Key Issue in 2016 Presidential Campaign*, L.A. TIMES (Feb. 5, 2015, 4:00 AM), <http://www.latimes.com/nation/la-na-campaign-income-20150205-story.html>; Kenneth T. Walsh, *Class Wars: Presidential Candidates Will Capitalize on the Electorate's Frustration.*, U.S. NEWS & WORLD REP. (Jan. 8, 2016, 6:00 AM), <http://www.usnews.com/news/the-report/articles/2016/01/08/this-election-is-about-class-struggle>.

2. Zsolt Darvas & Konstantinos Efstathiou, *Income Inequality Boosted Trump Vote*, BRUEGEL (Nov. 9, 2016), <http://bruegel.org/2016/11/income-inequality-boosted-trump-vote/>.

3. *See* David Leonhardt, *The American Dream, Quantified at Last*, N.Y. TIMES (Dec. 8, 2016), <https://www.nytimes.com/2016/12/08/opinion/the-american-dream-quantified-at-last.html> (summarizing research comparing earnings of those born in 1940, nearly all of whom made more than their parents, with those born in 1980, only half of whom made more than their parents).

4. *See* Florian Jung & Uwe Sunde, *Income, Inequality, and the Stability of Democracy—Another Look at the Lipset Hypothesis*, 35 EUR. J. POL. ECON. 52, 52 (2014); Jedediah Purdy, *Wealth and Democracy*, NOMOS (forthcoming), draft at http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=6196&context=faculty_scholarship; Erika Eichelberger, *The Head of the IMF Says Inequality Threatens Democracy. Here Are 7 Charts Proving She's Right.*, MOTHER JONES (May 28, 2014, 9:59 AM), <http://www.motherjones.com/mojo/2014/05/imf-christine-lagarde-income-inequality>; Ray Williams, *Why Income Inequality Threatens Democracy*, PSYCHOLOGY TODAY (Aug. 12, 2015), <https://www.psychologytoday.com/blog/wired-success/201508/why-income-inequality-threatens-democracy>. This is not a new concern. *See, e.g.*, Edward N. Muller, *Democracy, Economic Development, and Income Inequality*, 53 AM. SOC. REV. 50, 50 (1988) (finding strong causal association between income equality and democratic regime stability over time).

media pundits have kept the issue in the headlines.⁵ Yet, despite an impressive strand of earlier feminist work that made economic analysis central to an understanding of women's subordination,⁶ few feminist legal scholars in recent years have had much to say about it.⁷ Indeed, one of the central criticisms of feminism today is

For a descriptive analysis of the growing discontent with democracy globally, see Roberto Stefan Foa & Yascha Mounk, *The Democratic Discontent*, 27 J. DEMOCRACY 5 (July 2016). See also David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1, 4 (2014) (describing the tension between neoliberal market imperatives and "democratic demands"); Wolfgang Streeck, *The Crises of Democratic Capitalism*, 71 NEW LEFT REV. 5, 5 (2011) (arguing that "the 'Great Recession' and the subsequent near collapse of public finances [is] a manifestation of a basic underlying tension in the political-economic configuration of advanced-capitalist societies").

5. See, e.g., Robert J. Shiller, *Today's Inequality Could Easily Become Tomorrow's Catastrophe*, N.Y. TIMES (Aug. 26, 2016), <https://www.nytimes.com/2016/08/28/upshot/todays-inequality-could-easily-become-tomorrows-catastrophe.html>; Peter Georgescu, *Capitalists, Arise: We Need to Deal With Income Inequality*, N.Y. TIMES (Aug. 7, 2015), <https://www.nytimes.com/2015/08/09/opinion/sunday/capitalists-arise-we-need-to-deal-with-income-inequality.html>. Even the Pope has spoken. Zachary A. Goldfarb & Michelle Boorstein, *Pope Francis Denounces 'Trickle-Down' Economic Theories in Sharp Criticism of Inequality*, WASH. POST (Nov. 26, 2013), https://www.washingtonpost.com/business/economy/pope-francis-denounces-trickle-down-economic-theories-in-critique-of-inequality/2013/11/26/e17ffe4e-56b6-11e3-8304-caf30787c0a9_story.html?utm_term=.64cddd3eafdd0; Alexander C. Kaufman, *Pope Francis: 'Inequality is the Root of Social Evil'*, HUFFINGTON POST (Apr. 28, 2014, 2:52 PM), http://www.huffingtonpost.com/2014/04/28/pope-francis-tweet-inequality_n_5227563.html.

6. Some of the classic feminist works addressing class and economic inequality from the 1970s include ZILLAH R. EISENSTEIN, *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* (1979); SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX* (1971); JULIET MITCHELL, *WOMEN'S ESTATE* (1973). For a close differentiation of alternative feminist visions that take account of feminism's relationship to class oppression, including Marxism, radical feminism, and socialist feminism, see generally ALISON M. JAGGAR, *FEMINIST POLITICS AND HUMAN NATURE* (1983). On the relationship between Marxism and feminism, see Heidi I. Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in *FEMINIST FRAMEWORKS: ALTERNATIVE THEORETICAL ACCOUNTS OF THE RELATIONS BETWEEN WOMEN AND MEN* 172 (Alison M. Jaggar & Paula S. Rothenberg eds., 2d ed. 1984) ("The 'marriage' of marxism and feminism has been like the marriage of husband and wife depicted in English common law: Marxism and feminism are one, and that one is marxism.").

7. Among the exceptions are feminist legal scholars in the field of labor law. See, e.g., Marion Crain, *Unionism, Law, and the Collective Struggle for Economic Justice*, in *WORKING AND LIVING IN THE SHADOW OF ECONOMIC FRAGILITY* 101 (Marion Crain & Michael Sherraden eds. 2014). Feminism has been criticized for some time for its inattention to economic inequality issues. See, e.g., Amelia Gentleman, *Inequality in the Pursuit of Feminism*, N.Y. TIMES (Apr. 9, 2013) ("[F]eminism... has failed working-class women by focusing obsessively on equality in the boardroom and the faltering race to break the glass ceiling."). This failing is not limited to feminist scholars. Despite its commitment to issues of equality, even this journal, *Law & Inequality: A Journal of Theory and Practice*, has not made wealth or income equality a priority. Indeed, scanning the table of contents for this journal for the past 20 years, I was surprised to find not a single

that feminists have too often ignored the pocketbook issues of the working class, such as labor protections, wages, safety-net issues, and health care, in favor of advancing the social issues of the more well-off, like abortion rights, environmentalism, and transgender bathrooms.⁸ Even when class issues take center stage, most progressives have focused on the poor and not the working class.⁹

This Article celebrates the foundational work of Catharine A. MacKinnon by identifying the theoretical tools she has given feminist legal scholars that would be useful in bringing economic inequality to center stage. It does not itself develop a full theory of economic inequality—that is both beyond any expertise I bring to the table and the page limit I have been given. What it does, instead, is to review the current relationship between legal feminism and economic inequality issues, outline the deficiencies in this relationship, and suggest the relevance of the work of

article dedicated specifically to the issue. A 2007 conference on wealth inequality sponsored by the UNC Center on Poverty, Work, and Opportunity stands out for its attention to economic inequality. See *Wealth Inequality and the Eroding Middle Class: A Conference of the University of North Carolina Center on Poverty, Work and Opportunity and the American Constitution Society for Law and Policy*, 15 GEO. J. ON POVERTY L. & POL'Y 411 (2008). More recently, see *Law and Inequality: An American Constitutional Society Conference at Yale Law School October 16 and 17, 2015*, 35 YALE L. & POL'Y REV. 233 (2016). Neither of these conferences specifically addressed feminism.

8. See, e.g., Kathleen Geier, *Inequality Among Women Is Crucial to Understanding Hillary's Loss*, THE NATION (Nov. 11, 2016), <https://www.thenation.com/article/inequality-between-women-is-crucial-to-understanding-hillarys-loss/>; see also JEFFREY BERRY, THE NEW LIBERALISM: THE RISING POWER OF CITIZEN GROUPS (1999) (describing a shift from the “materialism” of leftist groups in the past to “post-materialism” of today’s left, which is focused on social causes); JACOB S. HACKER & PAUL PIERSON, WINNER-TAKE-ALL POLITICS: HOW WASHINGTON MADE THE RICH RICHER—AND TURNED ITS BACK ON THE MIDDLE CLASS 145–46 (2010); Gentleman, *supra* note 7 (contending that feminists have been too focused on the glass ceiling and not focused enough on working-class women); Dani Rodrik, *The Abdication of the Left*, PROJECT SYNDICATE (July 11, 2016), <https://www.project-syndicate.org/commentary/anti-globalization-backlash-from-right-by-dani-rodrik-2016-07> (“Economists and technocrats on the left . . . abdicated too easily to market fundamentalism and bought in to [sic] its central tenets”).

9. As an example, Joan Williams explains that Obamacare—the greatest progressive achievement of the last eight years—gave health insurance to the poor while failing to provide subsidies to members of the working class who were not considered poor enough for state subsidies, and their insurance rates went up. Over a quarter of poor families receive child-care subsidies which are, Williams states, largely unavailable to the working class, which serves to breed enormous resentment of the poor by the lower middle class working poor. Joan C. Williams, *What So Many People Don't Get About the U.S. Working Class*, HARV. BUS. REV. (Nov. 10, 2016), <https://hbr.org/2016/11/what-so-many-people-dont-get-about-the-u-s-working-class>.

Catharine A. MacKinnon to move toward a more unified thinking about gender and economic inequality.

I. The Statistics

The statistics are familiar and not disputed. The top 1% of households in this wealthy country pull in one-fifth of the nation's income,¹⁰ and own nearly 42% of the nation's wealth.¹¹ As the U.S. economy has grown over the last thirty-five to forty years, economic inequality has only increased. From 1980 to 2014 the average national income grew by 61% yet the average income of earners in the bottom 50%, adjusted for inflation, has actually fallen.¹² During this same period, income rose an average of 121% for those in the top 10%, 205% for the top 1%, and 636% for the top 0.001%.¹³ Nearly 70% of the gains in income since 1980 have gone to those in the top 10% of the income scale, the lion's share of those to the top 1%.¹⁴ Today, the average income-earner in the top 1% earns eight times more than the average worker in the bottom half—a disparity comparable to some of the world's poorest economies such as the Democratic Republic of Congo, Central African Republic, and Burundi.¹⁵

II. Economic Inequality as a Woman's Issue

When it is said that economic inequality is a woman's issue, what is generally meant is that women are disproportionately poor. And, of course, they are. Women are 32% more likely to be poor than men, and single mothers are twice as likely to be poor as single fathers.¹⁶ In part, this is due to the gender gap in wages. Women's median weekly earnings amount to only 82.5% of men's

10. THOMAS PIKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 296 (2014).

11. Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data* 24 (Nat'l Bureau of Econ. Research, Working Paper No. 20625, 2014), <http://www.nber.org/papers/w20625.pdf>.

12. Thomas Piketty et al., *Economic Growth in the United States: A Tale of Two Countries*, WASH. CTR. FOR EQUITABLE GROWTH (Dec. 6, 2016), <http://equitablegrowth.org/research-analysis/economic-growth-in-the-united-states-a-tale-of-two-countries/>.

13. *Id.*

14. *Id.*

15. *Id.* For further detailed data and analysis, see Saez & Zucman, *supra* note 11.

16. TIMOTHY CASEY, *WOMEN'S POVERTY IN THE UNITED STATES*, 2013 1 (2014), <https://www.legalmomentum.org/resources/women%E2%80%99s-poverty-united-states-2013>.

earnings working the same hours in the same occupations.¹⁷ Moreover, women are concentrated in jobs that are the least well paid, such as secretarial and personal care services, as compared to the relatively highly paid job categories of construction and repair services.¹⁸ Even within the same industry groups, women are over-represented in the lower-paying job categories. In the legal profession, for example, women make up only 33% of lawyers, while they comprise over 87% of paralegals and legal assistants.¹⁹ Women also have the least control over the terms of their employment. Some 30% of women face mandatory overtime they do not want, while many others are forced to accept part-time rather than full-time employment.²⁰

Another sense in which income inequality might be said to be a woman's issue is that women's political rights appear to correlate with the health of their nation's economy. A major United Nations study in 2014 reported that societies with low measures of women's equality have lower growth and weaker economies, as compared to countries with higher measures of women's equality.²¹ While this association suggests that improving the rights of women might reduce poverty,²² the matter is more complex. First, it is not clear that the link between women's rights and growth economies is causal; it may be that healthier economies produce greater measures of equality, but not vice versa. Second, even if gains in the rights of women facilitate economic growth, this does not mean that the benefits of economic growth will flow proportionately to women. Thomas Piketty in his book *Capital in the Twenty-First Century* makes a compelling case that, without the especially rapid growth associated with wars or great economic shocks, or without significant government

17. The figure is lower among African-American women (90%) and Hispanics (89%). U.S. BUREAU OF LABOR STATISTICS, WOMEN IN THE LABOR FORCE: A DATABOOK 2-3, 61 tbl.16 (2015), <https://www.bls.gov/opub/reports/womens-data-book/archive/women-in-the-labor-force-a-databook-2015.pdf>.

18. *Id.* at 51, 55, 58, 69, 70, 71 tbls.14 &18.

19. *Id.* at 37 tbl.11.

20. See Deborah Dinner, *Beyond "Best Practices": Employment Discrimination Law in the Neoliberal Era*, 92 IND. L.J. 1, 53-54 (forthcoming Spring 2017).

21. See U.N. Secretary-General, Framework of Actions for the Follow-up to the Programme of Action of the International Conference on Population and Development Beyond 2014, ¶ 4, U.N. Doc. A/69/62 (Feb. 12, 2014), http://www.unfpa.org/sites/default/files/pub-pdf/ICPD_beyond2014_EN.pdf.

22. The link between women's political rights and economic vitality is the premise of advocacy efforts to address poverty by strengthening the rights of women. See, e.g., MARIA SHRIVER, THE CTR. FOR AM. PROGRESS, THE SHRIVER REPORT: A WOMAN'S NATION PUSHES BACK FROM THE BRINK 2 (Olivia Morgan & Karen Skelton eds. 2014).

interventions, economic wealth tends to become increasingly concentrated in the hands of those who already have it.²³ Economies may grow alongside improvements in women's rights, but women are not necessarily the beneficiaries of this growth.

A third sense in which it might make sense to say that economic inequality is a woman's issue is that women's subordination is part of a larger complex of interrelated subordinations in which each system interacts with and reinforces the other. By this analysis, women's subordination shapes and is shaped by the logic and reality of an economic system that creates vast amounts of income inequality. The supporting ideology of this economic system is, at once, patriarchal and capitalist. It is also racist; as with sex, race is a differentiating factor that this complex of interrelated social systems, including the economic system, has converted into a basis for subordination.²⁴

When we view gender and class (and race) as interwoven and mutually reinforcing dimensions of the same set of subordinating systems, the problem is not only that economic inequality happens to fall disproportionately on women or even that the effects of the gender and class systems are cumulative, each making the other worse. The problem is also that, structurally, one subordination feeds off and helps to support the other. "Class power produces gender power," MacKinnon writes, suggesting that the converse may also be true.²⁵ Because of the relationships between systems of subordination, a change in one system of subordination "ordinarily creates movement, tension, or contradiction in the other."²⁶ The systems also help to legitimate one another. By supporting a *particular* hierarchy, each system helps to validate the *idea of* hierarchy, making the idea of winners and losers seem increasingly inevitable.

23. Piketty's theory is that wealth becomes more concentrated in the hands of a few as the rate of return on capital exceeds the growth rate of the economy. Unless economic growth is strong enough to exceed the rate of return on capital, the benefits of economic growth flow toward those who already have wealth, rather than to lift the boats of all. See PIKETTY, *supra* note 10, at 26. Piketty's work shows that this is a historical trend made worse by current economic conditions, not an isolated exception. *Id.* at 22–25 (summarizing those factors in which economic circumstances of groups converge and those factors that cause greater and greater divergence associated with the process of accumulation and concentration of wealth); *id.* at 270–85 (providing historical analysis showing that accelerating levels of inequality are the norm rather than the exception).

24. See Hartmann, *supra* note 6, at 180.

25. CATHARINE A. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 31 (1989).

26. See Hartmann, *supra* note 6, at 180.

It is this interactive model of subordinating systems that shapes the vision and analysis of this Article.

III. Feminists and Economic Inequality

Feminists have addressed issues of class and income on multiple fronts. For example, they have advocated for family-friendly workplaces to reduce the cost to women of getting pregnant and being the primary caretakers of their children.²⁷ They have supported affirmative action to remedy past discrimination.²⁸ They have pushed the principle of equal pay for equal work.²⁹ They have urged the protection of women's reproductive rights,³⁰ safety from rape and domestic violence,³¹ and freedom from sexual harassment³²—all of which improve

27. See, e.g., ANNE-MARIE SLAUGHTER, UNFINISHED BUSINESS: WOMEN MEN WORK FAMILY 207–08 (2015); JOAN C. WILLIAMS, RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER 1–2 (2010); Herma Hill Kay, *Equality and Difference: The Case of Pregnancy*, 1 BERKELEY WOMEN'S L.J. 1, 2 (1985); Joan C. Williams, *Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years After the PDA*, 21 YALE J.L. & FEMINISM 79, 79 (2009); Joan C. Williams & Nancy Segal, *Beyond the Maternal Wall: Relief for Family Caregivers Who Are Discriminated Against on the Job*, 26 HARV. WOMEN'S L.J. 77, 79 (2003).

28. See, e.g., Susan Sturm & Lani Guinier, *The Future of Affirmative Action: Reclaiming the Innovative Ideal*, 84 CAL. L. REV. 953, 955 (1996).

29. See, e.g., Martha Chamallas, *Women and Part-Time Work: The Case for Pay Equity and Equal Access*, 64 N.C. L. REV. 709 (1986); Deborah Thompson Eisenberg, *Shattering the Equal Pay Act's Glass Ceiling*, 63 SMU L. REV. 17 (2010); Joan C. Williams & Veta Richardson, *New Millennium, Same Glass Ceiling? The Impact of Law Firm Compensation Systems on Women*, 62 HASTINGS L.J. 597 (2011).

30. See, e.g., Linda Greenhouse & Reva B. Siegel, *Casey and the Clinic Closings: When "Protecting Health" Obstructs Choice*, 125 YALE L.J. 1428, 1432 (2016) (arguing that state regulations with no health justification that make it necessary for abortion clinics to close violate the Supreme Court's protection of abortion rights); Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 955 (1984) (arguing that women's reproductive rights are fundamental to women's equality); Reva B. Siegel, *Sex Equality Arguments for Reproductive Rights: Their Critical Basis and Evolving Constitutional Expression*, 56 EMORY L.J. 815, 817 (2007) (discussing the "critical understandings and normative commitments" of a "sex equality approach to reproductive rights").

31. See, e.g., MACKINNON, TOWARD A FEMINIST THEORY OF STATE, *supra* note 25, at 171–183 (identifying the patriarchal bias in determinations of coercion and consent under the law of rape); Susan Estrich, *Rape*, 95 YALE L.J. 1087 (1986) (discussing myths and biases within criminal rape law); Elizabeth M. Schneider, *The Violence of Privacy*, 23 CONN. L. REV. 973 (1991) (analyzing the negative effect notions of privacy have on familial violence toward women).

32. See, e.g., CATHARINE A. MACKINNON, THE SEXUAL HARASSMENT OF WORKING WOMEN (1979) (arguing that sexual harassment is sex discrimination); Kathryn Abrams, *The New Jurisprudence of Sexual Harassment*, 83 CORNELL L. REV. 1169, 1172 (1998) (arguing that sexual harassment is a form of sexual discrimination that "preserve[s] male control and entrench[es] masculine norms in the workplace"); Katherine M. Franke, *What's Wrong with Sexual Harassment?*, 49

women's economic circumstances. They have also pursued a number of family law reforms with direct economic benefit for women.³³

In all of these areas, feminist reform efforts have had a favorable impact on women's material circumstances. Yet, as has often been noted, these efforts have helped some women more than others.³⁴ One reason for this is that the underlying theory for these efforts has been largely a theory of gender, not class or economic subordination. Thanks in large part to the work of Catharine A. MacKinnon, feminists understand how gender works as a system of subordination. They understand less about economic subordination. They recognize that there is a system of women's gender subordination that has economic consequences and, increasingly, that sex and race subordination are connected. But they have not adequately considered the critical role that class subordination plays in reinforcing and legitimating other forms of subordination, including subordination based on sex.

IV. The Search for a Theory

Among those who consider economic inequality a severe societal problem, it is too often thought of as an unfortunate circumstance that someone—the state, private individuals, or charitable organizations—should do something about. This impulse is fundamentally a moral one. Moral arguments have helped to mobilize public opinion on a number of issues,³⁵ but they

STAN. L. REV. 691, 762–71 (1997) (arguing that sexual harassment serves as an underlying factor in the construction of women's femininity and men's masculinity).

33. See, e.g., Joan Williams, *Do Wives Own Half? Winning for Wives after Wendt*, 32 CONN. L. REV. 249 (1999) (arguing in favor of property division rules at divorce that better take account of women's contributions to the marriage).

34. For an example of the critique, see Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) and Dorothy Roberts, *Spiritual and Menial Housework*, 9 YALE J.L. & FEMINISM 51 (1997); see also CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 37 (1987) ("The women that gender neutrality benefits, and there are some, . . . are mostly women who have been able to construct a biography that somewhat approximates the male norm.").

35. Women's suffrage and the civil rights of African-Americans, for example, used moral arguments to advance their campaigns. See Megan Gibson, *I Am Woman, Hear Me Roar: The Suffrage Movement*, TIME (Aug. 12, 2011), http://content.time.com/time/specials/packages/article/0,28804,2088114_2087975_2087964,00.html; Andrew Mach, *Martin Luther King Jr.: 8 Peaceful Protests that Bolstered Civil Rights*, CHRISTIAN SCIENCE MONITOR (Jan. 15, 2012), <http://www.csmonitor.com/USA/2012/0115/Martin-Luther-King-Jr.-8-peaceful-protests-that-bolstered-civil-rights/Montgomery-bus-boycott-1955-56>. The "Moral Monday" movement in North Carolina has been less successful. The movement

tend to speak only to those who share the same moral premises. Without a compelling explanation for and diagnosis of a problem that matches the desired prescription—i.e., a theory—moral rhetoric lacks both grounding and the power to persuade.

Anti-stereotyping analysis is one potential source of that theory. Stereotypes about women have been used to explain and justify many restrictions on women, and exposing those stereotypes has led to the elimination of many of these restrictions, especially in the public sphere.³⁶ Similarly, eliminating stereotypes about the poor—that they are lazy, irresponsible, and cheat the government whenever they can—can improve policy solutions with respect to welfare programs, housing, state control of women's reproductive decisions, and education.³⁷

As powerful as anti-stereotyping analysis has been in improving opportunities for many women, however, generalizations about women, and about the poor, are not always false, nor are they necessarily the main problem. It is a fact, for example, that women bear a disproportionate share of caretaking responsibilities and that they are especially vulnerable to rape and domestic violence.³⁸ Stereotypes lay beneath these facts, but at so deep a level that it is not particularly helpful to think in terms of women's present reality being due primarily to mistaken assumptions about them. As Catharine A. MacKinnon has long stated, the problem for women concerns less whether they are

protests gubernatorial and legislative actions in that state that, in addition to limiting voting rights, abortion rights, and the rights of the LGBT community, have widened the income gap between rich and poor, including the former governor's refusal to extend Medicaid benefits for the poor and a ramping up of support for school vouchers while the public education system continues to slide. See Bob Geary, *Pat McCrory's Refusal to Extend Medicaid Is a Moral Failure*, INDY WEEK (Aug. 5, 2015), <http://www.indyweek.com/indyweek/pat-mccrorys-refusal-to-expand-medicare-is-a-moral-failure/Content?oid=4627343>.

36. See Cary Franklin, *The Anti-Stereotyping Principle in Constitutional Sex Discrimination Law*, 85 N.Y.U. L. REV. 83, 86 (2010); Ruth Bader Ginsburg, *Gender and the Constitution*, 44 U. CIN. L. REV. 1, 42 (1975).

37. See Barbara Ehrenreich, *Time to Wake Up: Stop Blaming Poverty on the Poor*, SHRIVER REPORT (Jan. 13, 2014), <http://shriverrreport.org/time-to-wake-up-stop-blaming-poverty-on-the-poor-barbara-ehrenreich/>.

38. See MICHELE C. BLACK ET AL., NAT'L CTR. FOR INJURY PREVENTION & CONTROL, NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2010 SUMMARY REPORT 1–2 (2011), https://www.cdc.gov/ViolencePrevention/pdf/NISVS_Report2010-a.pdf; BUREAU OF LABOR STATISTICS, AMERICAN TIME USE SURVEY—2015 RESULTS 2 (2016), <https://www.bls.gov/news.release/pdf/atus.pdf> (finding that on average women spent more time than men on housework, food preparation and cleanup, household management, and caring for and helping household members, including children, and non-household members).

different from, or the same as, men—the question that anti-stereotyping analysis tries to answer—than how they can equalize their power in order to more freely define themselves and pursue their own life courses.³⁹

The reality is that women are subject to a complex web of traps and contradictions that normalize their relative lack of autonomy and make it seem like the natural order of things. Women are valued only through their association with activities that are themselves not highly valued because of women's association with them. Women are raped because they are vulnerable, and vulnerable because they are raped. These facts of subordination are reinforced by stereotypes but not fully determined by them.

Stereotypes are also not the only, or even the main, problem with being poor. Here, too, the problem is not that stereotypes are never true,⁴⁰ but that the poor lack resources, opportunity, and autonomy.⁴¹ Economic inequality, like gender subordination, is a matter of power, not perception.

Even if anti-stereotyping analysis had the potential to unsettle many of the foundations of power inequities, that potential has corroded over time. Legal historian Deborah Dinner has shown how business interests hijacked the anti-stereotyping principle in order to advance a deregulatory agenda and unravel legal protections for labor.⁴² It is a sign of the success of the business agenda, Dinner argues, that courts have consistently limited the anti-stereotyping principle to the claims of individuals barred from opportunities because of inaccurate assumptions made about them, and failed to apply the principle when it might have eliminate inequities targeted against classes of working women.⁴³ This curtailment is partly explained by the fact that earlier worker protections for women were based on traditional stereotypes about women that served as pretexts for keeping women in their place—giving both stereotypes and worker

39. See MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 218 (“[G]ender is more an inequality of power than a differentiation that is accurate or inaccurate.”); *id.* at 229 (“Stereotyping—inaccurate or exaggerated misreflections—is the archetypal liberal injury.”).

40. See J.D. VANCE, HILLBILLY ELEGY: A MEMOIR OF A FAMILY AND CULTURE IN CRISIS (2016) (chronicling self-defeating behaviors in which many poor people engage).

41. See Ehrenreich, *supra* note 37.

42. See Dinner, *supra* note 20, at 5.

43. *Id.*

protections a bad name.⁴⁴ But when courts found these protections to be unconstitutional, advocates abandoned them in favor of an individual-centered anti-stereotyping principle, instead of reshaping them to support a more robust, gender-neutral set of protections for the working class. This individualized approach helped highly educated women get good jobs, Dinner contends, but has done little for women in low paying, highly fungible and often unsafe jobs.⁴⁵

An alternative way to theorize economic inequality is as a product of race and/or gender subordination. Through statistics showing racially skewed prison populations, a two-tiered education system, high minority unemployment figures, and low minority marriage rates, critical race scholars have shown how race—and racism—determines winners and losers in all aspects of life.⁴⁶ Likewise, by documenting disparities in wages, the gendered effects of divorce, disproportionate child care expectations between men and women, and rates of sexual violence, feminist theorists have tied various types of gender inequalities to systematic bias against women.⁴⁷

Although these race and gender critiques powerfully show how both racism and sexism stack the deck against women and minorities, they describe the effects of subordination rather than explain its means of operation and success. Sex and race critiques prove what motivates—explicitly or implicitly—those who exercise power in society,⁴⁸ and predict which particular people occupy the lowest rungs in social relations.⁴⁹ This evidence alone, however, does not show how racism and sexism have been normalized, nor how these systems cover their tracks as systems. A fuller

44. *Id.* at 1.

45. *Id.* at 5.

46. See, e.g., RALPH RICHARD BANKS, *IS MARRIAGE FOR WHITE PEOPLE? HOW THE AFRICAN AMERICAN MARRIAGE DECLINE AFFECTS EVERYONE* (2011) (examining the consequences of marriage decline among African Americans); Olatunde C. Johnson, *Disparity Rules*, 107 COLUM. L. REV. 374, 374 (2007) (identifying and analyzing racial disparities and the “complex mechanisms that sustain contemporary racial inequality”).

47. See, e.g., DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* 1 (1989) (analyzing how the law “reflects, reinforces, [and] challenges persistent patterns of inequality”).

48. See, e.g., Susan T. Fiske, *Stereotyping, Prejudice, and Discrimination*, in 2 *THE HANDBOOK OF SOCIAL PSYCHOLOGY* 357 (Daniel T. Gilbert et al. eds., 4th ed. 1998) (analyzing theories of discrimination); Linda Hamilton Krieger, *The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity*, 47 STAN. L. REV. 1161 (1995) (discussing processes of unintentional discrimination).

49. See Hartmann, *supra* note 6, at 180.

economic theory would show not only how power is distributed along race and gender lines, but also how those who benefit under that distribution of power get away with it.

What both anti-stereotyping analysis and theories of sexism and racism lack is direct engagement with the principles and processes by which the economic system creates and sustains unfair social hierarchies. Karl Marx exemplified this engagement in explaining how capitalism creates a class system under which those endowed with capital are allowed to expropriate the work of others and reinvest the profits for their own gain, thereby ensuring the expansion and normalization of their economic supremacy.⁵⁰

The global economic system has evolved substantially since Marx's time as state institutions and practices helped to manage or soften the effects of capitalism and economic conditions after World War II sustained sufficiently rapid economic growth to even out its excesses.⁵¹ Globalization, technological change, deregulation, and the privatization of public functions have weakened those constraints,⁵² as have state policies committed to preserving and strengthening "free" markets.⁵³ Capitalism is no longer a pure system, but current conditions and the ideology that helps to sustain those conditions borrow directly from that system.

The ideological grounding of today's economic system is often referred to as neoliberalism, or market libertarianism. Neoliberalism is a set of arguments and premises that, according to David Grewal and Jedediah Purdy, are "united by their tendency to support market imperatives and unequal economic power in the context of political conflicts that are characteristic of the present historical moment."⁵⁴ The alternative terminology of market libertarianism is more descriptive of the ideology's reliance on free markets. For present purposes, the two ideologies are the same. Both hold that society collectively benefits from unregulated markets because they are the most efficient means through which equilibrium is established between what people,

50. KARL MARX & FRIEDRICH ENGELS, *THE COMMUNIST MANIFESTO* 69–70 (Joseph Katz ed., Samuel Moore trans., Simon & Schuster 1964) (1888); Hartmann, *supra* note 6, at 173.

51. See PIKETTY, *supra* note 10, at 266, 376.

52. See generally PAUL MASON, *POSTCAPITALISM: A GUIDE TO OUR FUTURE* (2015) (discussing how changes in information technology have impacted capitalism).

53. See WOLFGANG STREECK, *BUYING TIME: THE DELAYED CRISIS OF DEMOCRATIC CAPITALISM* (Patrick Camiller trans. 2014).

54. Grewal & Purdy, *supra* note 4, at 2.

pursuing their own preferences, are willing to pay for what other people, pursuing their own self-interest, are willing to sell.⁵⁵ This efficiency depends upon strong property rights and the absence of government intervention.⁵⁶ Any state tampering with market mechanisms, neoliberals insist, will interfere with the natural mechanisms that make markets so efficient.⁵⁷

Neoliberalism has a political dimension as well as an economic one. It opposes intervention by the state not only because that interference hinders economic efficiency but also because it diminishes the liberty of the individual to make choices based on his or her own preferences, to exercise his or her own initiative and reap the benefits and losses of that initiative, to keep what he or she has earned, and to spend it as he or she pleases.⁵⁸ The efficiency and liberty rationales work together: the freedom of individuals to pursue their own preferences and goals maximizes the wealth and welfare of the community.⁵⁹ When markets are so rationalized, it follows that the basis of the state's legitimacy is more its ability to enable and improve individual agency in the market than to facilitate the common welfare.⁶⁰

V. Market Libertarianism and Feminism

Feminists have attacked the premises of neoliberalism and market libertarianism from various vantage points. Feminist sociologists describe the reality that market-supporting policies have produced—in particular, the increasing gap in economic security between rich and poor, the disproportionate poverty of women and children, and the inability of many people to get by on the resources they have available.⁶¹ Politicians argue that ignoring the poor is not “who we are,”⁶² and appeal to our self-

55. *Id.* at 6.

56. *Id.*

57. *See id.* at 173.

58. *See, e.g., id.* at 13 (“[I]n the picture of economic life that neoliberalism celebrates, the touchstone act of personal choice is . . . the consumer purchase.”); *see also* Martha T. McCluskey, *Constitutional Economic Justice: Structural Power for “We the People”*, 35 YALE L. & POL’Y REV. 273 (2016) (arguing that the constitutional vision of economic minimalism “has supported and rationalized economic inequality by defining constitutional freedom and justice in terms of individualized choice”).

59. *See* Dinner, *supra* note 20, at 9; Grewal & Purdy, *supra* note 4, at 10–11.

60. Dinner, *supra* note 20, at 10.

61. *See* KATHRYN J. EDIN & H. LUKE SHAEFER, \$2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA (2015); *see also* BARBARA EHRENREICH, NICKEL AND DIMED: ON (NOT) GETTING BY IN AMERICA (2001).

62. David Rutz, 46 *Times* President Obama Told Americans “That’s Not Who

interest with arguments that the absence of a genuine opportunity to work hard, play by the rules, and live decently threatens democracy.⁶³ Political theorists point out that there is no such thing as an unregulated market, and that government decisions about what to legislate, whom to tax, and how to spend are value choices that help some people at the expense of others.⁶⁴ Critiques of neoliberal theory, including feminist economists and legal scholars, challenge the assumption that all actors in the system are self-interested and profit-seeking.⁶⁵ They also challenge the assumption that tastes are exogenous rather than cultivated within and by the terms of the system.⁶⁶ They question theories of value that accept that what is paid for something is the true measure of its value,⁶⁷ assumptions about the efficiency of free markets,⁶⁸ and theories of deadweight loss alleged to be caused by market interference.⁶⁹ They reject the dichotomy between the state and the market that underlies free market ideologies,⁷⁰ as

We Are", WASH. FREE BEACON (Nov. 30, 2015), <http://freebeacon.com/politics/46-times-president-obama-told-americans-thats-not-who-we-are/>.

63. See Jung & Sunde, *supra* note 4; Purdy, *supra* note 4; Eichelberger, *supra* note 4; Williams, *supra* note 4.

64. See, e.g., Alex Marshall, *Capitalism and Governments Are Friends After All*, BLOOMBERG (Sep. 25, 2012, 4:18 AM), <https://www.bloomberg.com/view/articles/2012-09-13/capitalism-and-government-are-friends-after-all> (arguing that government is "responsible for every aspect of the market economy"); see also MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* 230 (2004) ("[T]he market does not exist independent of law A system of background or default rules is required in order that competitive and voluntary transactions . . . can take place.").

65. See, e.g., Paula England, *Separative and Soluble Selves: Dichotomous Thinking in Economics*, in FEMINISM CONFRONTS HOMO ECONOMICUS: GENDER, LAW, & SOCIETY 32, 41 (Martha Albertson Fineman & Terence Dougherty eds. 2005) ("Assuming selfishness in markets fails to account for men's altruism toward other men in market behavior, altruism that may work to the disadvantage of women.").

66. *Id.* at 39–40.

67. See Neil H. Buchanan, *Playing with Fire: Feminist Legal Theorists and the Tools of Economics*, in FEMINISM CONFRONTS HOMO ECONOMICUS, *supra* note 65, at 61, 64–66; see also Katharine B. Silbaugh, *Commodification and Women's Household Labor*, in FEMINISM CONFRONTS HOMO ECONOMICUS, *supra* note 65, at 338, 338 (criticizing the assumption that domestic labor should be unpaid).

68. See Buchanan, *supra* note 67, at 66–68, 85; see also Ann Laquer Estin, *Can Families Be Efficient?: A Feminist Appraisal*, in FEMINISM CONFRONTS HOMO ECONOMICUS, *supra* note 65, at 423, 440 ("Feminist theorists cannot use or accept efficiency-based arguments for family policy, because they are based on a descriptive theory premised on the continuation of the traditional gender system in marriage and in the world outside the family sphere.").

69. See Buchanan, *supra* note 67, at 66–68, 85.

70. See, e.g., Martha T. McCluskey, *Deconstructing the State-Market Divide: The Rhetoric of Regulation from Workers' Compensation to the World Trade Organization*, in FEMINISM CONFRONTS HOMO ECONOMICUS, *supra* note 65, at 147,

well as prevailing societal myths about independence and autonomy.⁷¹

These critiques provide a corrective to some of the factual mistakes of neoliberalism, much as feminists in earlier days corrected some of the mistaken stereotypes about women. This work is invaluable to an understanding of how the economic system, like the system that subordinates women, rests on various attractive-sounding fictions that do not bear up under critical scrutiny. What they do not fully provide, however, is an explanation of how a system built upon such weak foundations survives. How did we come to think so highly of a system that has produced such inequalities, and how does such an unequal society continue to sustain itself?

What feminists are missing with respect to economic inequality is what Catharine A. MacKinnon gave us in *Toward a Feminist Theory of the State* when she explained how a democracy built on the liberal principles of equality and freedom manages, despite its high-sounding ideals, to systematically subordinate women.⁷² Given the foundational nature of that explanation and its potential parallels to economic inequality, it makes sense to dissect the components of MacKinnon's analysis and see what parts of it might be useful for a companion feminist theory of economic inequality. Accordingly, the next section reviews the basic elements of MacKinnon's theory of women's subordination. The result is not in itself a complete theory. There remain a number of normative issues to work out concerning such matters as what constitutes an unacceptable level of economic inequality, and what the precise relationship between gender and economic equality is or ought to be. Still, MacKinnon changed the way we think about theory as well as the way we think about gender. The power of her analysis makes her theory a good place to start to build a feminist theory of economic inequality.

VI. Catharine MacKinnon's Theory of Women's Subordination: The Basics

The theory of women's subordination in *Toward a Feminist Theory of the State* contains a number of important components. Some of these, themselves derived from Marxist critiques of

147–48 (arguing against the neoclassical assumption that markets operate independently of government).

71. See, e.g., FINEMAN, *supra* note 64 (challenging the myth of autonomy and arguing in favor of a collective responsibility theory of dependency).

72. See MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 25.

capitalism, are readily available to a contemporary theory of economic inequality, although this theory need not necessarily be the specific, totalizing system of Marxism. Others require more translation and adaptation. This section sets forth the basic components of MacKinnon's theory, with suggestions for their utility to a feminist theory of economic inequality.

First, at the heart of *Toward a Feminist Theory of the State* is a robust theory of how the exercise of power disguises itself as natural, good, and obvious. The phenomenon that power exercises itself through principles sounding in general welfare was extensively developed in the context of class struggle by Karl Marx, whom MacKinnon explicitly credits. MacKinnon's novel contribution was to apply to *sex* the principle that social and political arrangements that appear to be givens are, in fact, the result of how power is distributed in society.⁷³ Previously, sex was off limits to this kind of analysis because it was widely assumed that sex is a dimension of social relationships that is inherent, biological and fixed. MacKinnon showed that sex, too, is a reality constructed through social relations.⁷⁴

One does not need to be committed to Marxism to see the centrality of this insight to a critical theory of economic inequality. Just as feminism is about the distribution of power between men and women, and only derivatively about sex differences and stereotyping, class and economic inequality are about how power is distributed, rather than any inherent differences between rich and poor.

Second, MacKinnon pointed out how power disguises its own exercise through a specific set of social activities. For this, again, she draws heavily on analogies to Marxist theory. Marx theorized that power is allocated according to one's position in the wage-work system. Owners of the means of production exploit workers by paying them less than the value of what they produce. They then accumulate the profits of that exploitation, thereby elevating themselves to a position from which they can continue to exploit those who work for them.⁷⁵ MacKinnon recognized that the meaning of sex and the social relations it creates are similarly determined according to how power is allocated within the sex system. "Sexuality is the social process through which social relations of gender are created, organized, expressed, and directed,

73. *Id.* at 3.

74. *Id.* at 40.

75. See MARX & ENGELS, *supra* note 50, at 69–70.

creating the social beings we know as women and men . . . ”⁷⁶ “As work is to Marxism,” MacKinnon writes, “sexuality to feminism is socially constructed yet constructing . . . ”⁷⁷

MacKinnon also insisted, as did Marx and other critical theorists, that the relevant unit of social theory analysis is the group, not the individual.⁷⁸ This centrality of the group is sometimes hard to recognize, insofar as power in a liberal system is exercised through an ideology of the individual. MacKinnon helped to show that women, despite their enormous diversity as individuals, were affected similarly as women.⁷⁹

Fourth, MacKinnon’s theory is a theory of the state. The state oversees who counts, whose interests matter, and what rules control how much people get and at whose expense. Even when the state purports to leave people alone, it distributes resources and allocates power in the way it chooses to regulate, tax, and spend. The exercise of its power determines what is legitimate, and that legitimacy, in turn, both justifies and conceals the exercise of power.⁸⁰ Law is both power itself, and power’s mask.⁸¹

The problem of economic inequality implicates a number of issues relating to the state that MacKinnon did not explicitly address, since class was not her primary concern. These issues include whether, or to what extent, economic inequality is even a problem. As Jedediah Purdy observes, if the purpose of the state is to guarantee an individualistic, free market-based economic regime, then the economic inequality produced within that regime is not really a problem.⁸² If, on the other hand, the state is committed to the democratic principle of full and equal citizenship, economic inequality “predispos[es] political judgment in favor of the present economic regime” and is thus a serious concern.⁸³

76. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 3.

77. *Id.*

78. *Id.* at 38.

79. *See id.* (“[N]o woman escapes the meaning of being a woman within a social system that defines one according to gender. . . . Women’s diversity is included in this definition, rather than undercutting it.”); *see also* CATHARINE A. MACKINNON, WOMEN’S LIVES, MEN’S LAWS 86 (2005) (“An analysis of women that is predicated on women’s experience is based on observed social conditions, hence can assume no uniformity of gender, biological or otherwise, because women’s concrete social experience is not uniform.”).

80. *See* MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 237.

81. *See id.*

82. Purdy, *supra* note 4, at 1.

83. *Id.* at 12.

Whether and to what extent economic inequality is a problem also depends, Purdy explains, upon what goods are freely available, without purchase.⁸⁴ If education, health care, and other basic securities are already guaranteed by the state, economic inequality is not the same kind of problem as when even the most basic goods must be purchased in the market.⁸⁵ Both of these factors suggest that current levels of economic inequality are unacceptable, but there remains the question how much inequality is too much.

A fifth component of MacKinnon's theory of women's subordination is an account of how victims participate in their own subordination. Women, she argues, often buy into the terms of the social reality that constructs them.⁸⁶ Indeed, for MacKinnon, the genius of the system of sex subordination is its ability to convince the women exploited by it to accept the system as natural, fair, and good.⁸⁷ So, too, are the victims of the economic system often its biggest supporters.⁸⁸

Sixth, and critical to MacKinnon's theory because it offers a glimpse of the way out of the seemingly airtight system of male supremacy that she describes, including the co-option of its victims, MacKinnon takes an approach to knowledge that does not pretend that knowledge can stand apart from commitments, experience, and feelings. MacKinnon writes:

Feminism does not begin with the premise that it is unpremiered. It does not aspire to persuade an unpremiered audience, because there is no such audience. Its project is to uncover and claim as valid the experience of women, the major content of which is the devalidation of women's experience.⁸⁹

This understanding of knowledge as an interested, iterative process supports an appreciation of politics as local, and gives

84. *Id.* at 15.

85. *Id.*

86. See MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 115.

87. *Id.* at 115–17 (discussing the apparent contradiction between the feminist account of women's subordination and some women's embrace and defense of their place in a male-dominated system).

88. How else might we explain the support for Donald Trump in the 2016 U.S. presidential election by White, non-college educated women, by a twenty-seven-point margin—61% to 34%—despite the lack of any clear alignment between these women's economic interests and the goals of a Trump administration? See *2016 Election Exit Polls*, WASH. POST (Nov. 29, 2016), <https://www.washingtonpost.com/graphics/politics/2016-election/exit-polls/>; see Geier, *supra* note 8.

89. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 116.

meaning to the adage that the personal is political. It is an understanding that is also key to how an economic system supported by high-minded principles might eventually, through the collective telling of the experiences of its victims, be undone.

Finally, MacKinnon's theory explicitly addresses the relationship between feminism and other forms of subordination, including class subordination.⁹⁰ Nearly half of *Toward a Feminist Theory of the State* is devoted to the relationship between feminism and Marxism. MacKinnon asks how two social processes can both be so fundamental, and whether they are complementary or cross-cutting.⁹¹ She asks to what extent capitalism is predicated on sex inequality, and whether male dominance is a creation of capitalism or capitalism is one expression of male dominance.⁹² She asks what "it mean[s] for class analysis if a social group is defined and exploited through means that seem largely independent of the organization of production" and, conversely, what "it mean[s] for a sex-based analysis if capitalism might not be materially altered if it were fully sex integrated or even controlled by women."⁹³

MacKinnon does not answer all of these questions. Her focus throughout *Toward a Feminist Theory of the State* is the delivery of a theory of feminism, much of which she explains through its parallels to the materialist methods of Marxism, without attempting to propose a full synthesis of the two.⁹⁴ For MacKinnon, it is important that feminism retains its own identity because, as a historical matter, when feminism has merged with other movements, it has tended to become submerged within the other movement.⁹⁵ But she also goes on to discuss the various terms on which feminist theory and a critique of capitalism might

90. See, e.g., MACKINNON, FEMINISM UNMODIFIED, *supra* note 34, at 2 ("We urgently need to comprehend the emerging pattern in which gender, while a distinct inequality, also contributes to the social embodiment and expression of race and class inequalities . . .").

91. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 4.

92. *Id.*

93. *Id.*

94. The chapter that comes closest is entitled *Attempts at Synthesis*, and explores three alternative models for reconciling feminism and Marxism: "equate and collapse," "derive and subordinate," and "substitute contradictions." *Id.* at 60–80.

95. See *id.* at 11; see also Hartmann, *supra* note 6, at 172 (stating similarly that "[r]ecent attempts to integrate Marxism and feminism are unsatisfactory . . . because they subsume the feminist struggle into the larger struggle against capital.").

relate to one another, finding most promising an approach she calls “substitute contradictions,” in which the “category identified by each theory is taken as valid by the other and methods are cross-applied.”⁹⁶

MacKinnon provides some of the key methodological tools and insights necessary to achieve a feminist theory of economic inequality. These insights suggest important connections between sex and class subordination. They demonstrate that class mobility for women does not free them of the constraints of gender and, likewise, that freeing women from gender constraints does not necessarily free them from class-based or race-based subordination. They indicate that inequality is not necessarily the accidental byproduct of a system but often its intended consequence. They show how subordination can rationalize the system that produces it by appearing to prove who deserves to win, and thus how having losers vindicates winners.

The job for a feminist theory of economic inequality is to use these and other insights to explode the rationalizations that sustain the interlocking and overlapping systems of sex and class subordination and thereby to delegitimize the vast inequalities these systems have produced.

VII. Targeting Inequality, Not Poverty

In developing a feminist theory of economic inequality, it is important that the target of the theory be inequality rather than poverty. The terms are often used interchangeably, but they are not the same thing.⁹⁷ Some philosophers say that poverty refers to an absolute measure of welfare, sometimes referred to as biological poverty, or what is necessary to stay afloat physically or medically. Economic inequality, in contrast, is about relative resources. It is sometimes called social poverty, to highlight its grounding in social relations rather than some given or natural order.⁹⁸ But the distinction between biological and social poverty

96. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 63.

97. See generally JONATHAN WOLFF ET AL., JOSEPH ROWNTREE FOUNDATION, A PHILOSOPHICAL REVIEW OF POVERTY (2015), <https://www.jrf.org.uk/report/philosophical-review-poverty> (scroll to bottom of page; under “Download” heading, click “Full Report” button) (providing a breakdown of the numerous ways in which poverty has been understood by philosophers).

98. See YUVAL NOAH HARARI, SAPIENS, A BRIEF HISTORY OF HUMANKIND 266 (2015); see also Brenda Shaw, *Poverty: Absolute or Relative*, 5 J. APPLIED PHIL. 27, 27 (1988) (“Poverty can be defined objectively and applied consistently only in terms of the concept of relative deprivation.”).

is misleading. First, minimum standards of adequate food, shelter, education, and other related basic needs change over time, shifting both up and down. Who would think today that families can meet their basic subsistence needs in the U.S. on the average income in tribal cultures who live off the land? (Or, one might ask, the minimum wage?) Second, although it is true that poverty speaks to the amount of resources while economic inequality speaks to their distribution, poverty definitions are, themselves, choices society makes about how much is enough. What constitutes poverty is a judgment call, not an absolute measure. Poverty is a relationship between people who hold different positions of power,⁹⁹ just as equality is.¹⁰⁰

The distinction between poverty and inequality matters because it affects the reasons for acting and thus whether, and what kind of, action is called for. Poverty is generally understood as an unfortunate circumstance that, by virtue of it being unfortunate, we have a moral obligation to address. There may also be self-serving, pragmatic reasons relating to the prevention of the costly problems of crime and teenage pregnancy, which are often associated with poverty.¹⁰¹ But from Franklin D. Roosevelt's New Deal and Lyndon Johnson's War on Poverty¹⁰² to contemporary defenses of the economic status quo,¹⁰³ programs designated as poverty programs have been considered a

99. See TEPPU ESKELINEN, PUTTING GLOBAL POVERTY IN CONTEXT: A PHILOSOPHICAL ESSAY ON POWER, JUSTICE AND ECONOMY 20 (2009) (stating that poverty is brought about by political structures or social arrangements rather than ethical failures or accidents); see also MARSHALL SAHLINS, STONE AGE ECONOMICS 37 (1974) (stating that "poverty is not a certain small amount of goods," but "a relation between people.").

100. See Samuel Scheffler, *Choice, Circumstance, and the Value of Equality*, 4 POLITICS, PHIL. & ECON. 5, 17 (2005).

101. See Morgan Kelly, *Inequality and Crime*, 82 REV. ECON. & STAT. 530, 530 (2000) (finding a correlation between inequality and violent crime, although not property crime); Melissa Schettini Kearney & Phillip B. Levine, *Why Is the Teen Birth Rate in the United States So High and Why Does It Matter?* 18–19 (Nat'l Bureau of Econ. Research Working Paper No. 17965, 2012), <http://www.nber.org/papers/w17965.pdf> (finding that poverty causes higher rates of teenage pregnancy).

102. See Dylan Matthews, *Everything You Need to Know About the War On Poverty*, WASH. POST (Jan. 8, 2014), https://www.washingtonpost.com/news/work/wp/2014/01/08/everything-you-need-to-know-about-the-war-on-poverty/?utm_term=.e9c3f0460ef4; Peter Marcuse, *Poverty or Inequality: Does It Matter?*, INEQUALITY.ORG (Jan. 28, 2015), <http://inequality.org/why-economic-language-matters/>.

103. See, e.g., Deirdre N. McCloskey, *Growth, Not Forced Equality, Saves the Poor*, N.Y. TIMES (Dec. 23, 2016), <https://www.nytimes.com/2016/12/23/business/growth-not-forced-equality-saves-the-poor.html> ("What matters ethically is that the poor have a roof over their heads and enough to eat. . . . Equalizing possession of Rolexes does not.").

manifestation of voluntary generosity toward those most in need of help from others.

Viewing the problem as one of inequality and maldistribution redefines the problem, suggesting not only that some people do not have enough, but also, as a direct result of the inequities that cause some people to have too little, that some people have too much. The underlying inequities create an obligation that transcends charity. They create a mandatory obligation on the part of those who have enjoyed favoritism under the existing systems of privilege. When the problem is simply poverty, it can be addressed within the terms of the existing economic system; people who have too much can voluntarily shift some of their bounty to those who don't have enough. But if the problem is that some people have been the beneficiaries of a system that is rigged in their favor, the only real solution is that the seemingly beneficent assumptions of the system be exposed and discredited, and the system changed.

Being charitable toward others may imply something positive about the quality of a person's character, and also reflects that person's vision of the kind of society in which he or she wishes to live. Charity is a virtue, but not one that necessarily implies any negative judgment about the existing political and economic system. A justice-based view of income inequality also expresses a commitment about the kind of society we should have,¹⁰⁴ but, in contrast to a charity-based view, it *does* imply a negative judgment about the existing political and economic system and a need for action.

Conclusion

Catharine A. MacKinnon did not ask for empathy on behalf of women. She did not say "have a heart, you will feel better if you treat women better, if you pay them as much as you pay men, if you do not beat them up or rape them; do us a favor, please do not force them into prostitution and the pornography industry." Instead she developed a critique that named the system, explained how it sustains itself through power and the illusion of freedom, identified its victims, and named its perpetrators. She made the link between women's victimhood and the complex system of

104. See, e.g., Arthur MacEwan, *An End in Itself and a Means to Good Ends: Why Income Equality is Important* 8 (Ctr. for Soc. Policy, Working Paper No. 2009-2, 2009), http://scholarworks.umb.edu/csp_pubs/25/ (making the case for income equality as an end in itself because "it is a foundation for the type of social relations that we consider desirable").

principles and power relationships that produces that victimhood. This critique was harder to ignore and did not leave room for charity or volunteerism. It was an imperative.

So, too, with economic inequality. As “feminism has unmasked maleness as a form of power that is both omnipotent and nonexistent, an unreal thing with very real consequences,”¹⁰⁵ so a robust critique of market libertarianism unmasks a system that is advanced as free and best for us all and reveals that system as a man-made, exercise of power, with the very real and unjust consequence of wealth concentration in the hands of the few at the expense of the rest. The systems of subordination work together. So should their critiques.

105. MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 25, at 125.