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# FEMINISM'S SEARCH FOR THE FEMININE: ESSENTIALISM, UTOPIANISM, AND COMMUNITY

Susan H. Williams†

Drucilla's article, *The Doubly-Prized World: Myth, Allegory, and the Feminine*,<sup>1</sup> is itself an allegory. It tells a certain story about feminism's search for the nature of the feminine and about how that concept can be used to construct not only a feminist critique of existing social and legal institutions, but also a positive program for a more feminist world. In telling this story, particularly in drawing the contrast between the essentialist theories she criticizes and her own approach, Drucilla has provided us with characters and a plot that represent one of the major dilemmas facing us as we work to define a feminist jurisprudence. I will first describe enough of Drucilla's paper to highlight the story I think she is telling. Then I will comment briefly on that story and the dilemma I believe it represents.

The stated goal of Drucilla's paper is to show how we can use the "should be"—the implicit normative claim—in accounts of the feminine to shape, as she says, "a new choreography of sexual difference."<sup>2</sup> The problem she perceives is that this attempt has often taken one of two forms, both of which are deeply troubling. First, some writers have defined the feminine by reference to some naturalistic or essentialist description of Woman.<sup>3</sup> This is troubling because essentialism historically has been one of the most effective tools for justifying the exclusion and restriction of women.<sup>4</sup> Second, some writers have defined the feminine by reifying the experience of actual women. The difficulty with this approach arises from the fact that women's experience, as women have described it, is

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<sup>1</sup> Drucilla Cornell, *The Doubly Prized World: Myth, Allegory, and the Feminine*, 75 CORNELL L. REV. 644 (1990).

<sup>2</sup> See *id.*

<sup>3</sup> See *id.* at 646 (identifying Michele Montrelay, Julia Kristeva, and Robin West as essentialists).

<sup>4</sup> See *id.* at 645, 654; see, e.g., *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130, 141 (1873) (The Supreme Court upheld Illinois's refusal to grant a woman a license to practice law. The majority found that the issue fell within the realm of state discretion. In his concurrence, Justice Bradley offered a different reason: "The paramount duty and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator.").

astonishingly diverse.<sup>5</sup> In the inevitable process of selecting some part of it as "inherently feminine," the experience of some women (often poorer women and women of color) has been excluded.<sup>6</sup> Drucilla examines the work of two writers—Robin West and Julia Kristeva—and argues that both, in varying degrees, succumb to the temptation of finding the feminine either in biology (particularly the experience of or potential for motherhood) or in the actual experience of women, as defined and described by a privileged subset of women.<sup>7</sup>

Despite these dangers inherent in the search for the feminine, Drucilla refuses to abandon the search. She rejects the position, argued forcefully by Catharine MacKinnon, that to celebrate the feminine is to contribute to and perpetuate our own oppression. This position, Drucilla points out, relies on the assumption that the feminine is entirely and inescapably bound up with reality "as it is seen and constructed through the male gaze."<sup>8</sup> Drucilla rejects this assumption for two related reasons. First, "reality" can never be reduced to just one view of it; alternative visions are always possible. We construct reality, and can "deconstruct" it, through the use of such visions.<sup>9</sup> Second, the particular vision that MacKinnon expounds is very much a male view of reality. The view of the *inherent* oppressiveness of being feminine rests on an image of the self as maintaining clearly defined boundaries against the world. It is the feminine openness to the other that is seen, from this perspective, as a loss of self and therefore as oppression. But there are other, more feminine, perspectives from which this openness appears to be an opportunity for intimacy and joy, an opportunity that is lost irrevocably when one insists on defending the boundaries of the self against all others.<sup>10</sup>

In Drucilla's story, then, we find ourselves unable either to abandon the search for the feminine or to define the feminine in a way that avoids the dangers of essentialism and cultural myopia. Drucilla offers a way out of this predicament, a way that she calls

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<sup>5</sup> For a sampling of this diversity on only one topic, see, e.g., PAT CALIFIA, *SAPPHISTRY: THE BOOK OF LESBIAN SEXUALITY* (1980); ANDREA DWORKIN, *INTERCOURSE* (1987); MARIA MARCUS, *A TASTE FOR PAIN: ON MASOCHISM AND FEMALE SEXUALITY* (1981).

<sup>6</sup> See Cornell, *supra* note 1, at 645, 672.

<sup>7</sup> Drucilla does, however, believe that we can build on Kristeva's account to construct an escape from essentialism. If the psychoanalytic account is interpreted allegorically (perhaps not the interpretation that Kristeva herself would proffer), then it can lead to precisely the sort of post-modernist view that Drucilla is proposing. See *id.* at 659-60. But if Kristeva's analysis is accepted literally, rather than interpreted as an allegory, then, Drucilla argues, it falls into the trap of essentialism. See *id.* at 667-68.

<sup>8</sup> *Id.* at 686.

<sup>9</sup> *Id.* at 687.

<sup>10</sup> See *id.* at 689-92.

ethical feminism.<sup>11</sup> She argues that we do not need an essentialist account of Woman to achieve either the critical or the reconstructive tasks of feminism. Instead, the only necessary account of Woman is an account of what is excluded from our present legal and social system.<sup>12</sup> She suggests that we can show that our present social definition of women functions so as to make certain harms to them invisible, perhaps even inexpressible. The deconstructionist notion of the *differend* describes what is thus made culturally invisible. Therefore, women's experiences, of harm and also of joy, are the *differend*.<sup>13</sup>

If the content of this excluded feminine experience were to become too definite, too permanent, this approach could also result in an essentialist definition of Woman. But Drucilla avoids this danger by arguing that the concept of Woman as *differend*, like the experience of actual women, is so full of meaning that it can give rise to multiple interpretations.<sup>14</sup> In the absence of an outside referent like nature or biology, no one interpretation can claim exclusivity based on its correspondence to an absolute truth. The space for diversity—the “difference” which is central to both post-modernism and feminism<sup>15</sup>—is thereby assured.

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<sup>11</sup> See *id.* at 645.

<sup>12</sup> See *id.* at 669-70. Although Drucilla does say that this negative approach could provide a basis for the legal recognition of women's experiences, I suspect that she does not believe that it is entirely sufficient to achieve either the critical or the reconstructive tasks of feminism. The reconstructive project of envisioning a new choreography of sexual difference requires a creative imagining of a world that does not exist, an imagining guided by a full normative account of gender. The negative approach described in text lacks both the imagination and the normative power to ground this project. Its imagination is limited to the shapes and shadows of the present world: it sees only the present system of gender and the *differend* excluded by society's definition of women. And its normative scope extends only to the condemnation of such exclusion. It is, therefore, inadequate to the reconstructive task.

The negative approach is also inadequate to the critical task of demonstrating what is wrong with the present system of gender. This negative account simply asserts that the present definition of women makes it impossible for the law to see and take seriously certain events, events which are experienced as harms by women. But all social and legal systems screen out some views of reality and privilege others. The charge that a system of gender suffers from such a partial blindness cannot, alone, be a meaningful criticism, because any alternative system will also suffer from an inability to see some views of reality. To criticize the bias of a particular system, we need more than a descriptive account of the content of the bias and a condemnation of the fact of bias; we also need a normative account of why that particular blindness is a morally objectionable one. Drucilla, of course, recognizes this need. The independent ethical system on which ethical feminism relies, see *infra* notes 21-23 and accompanying text, is her response.

<sup>13</sup> *Id.* at 669.

<sup>14</sup> See *id.* at 675.

<sup>15</sup> See, e.g., Drucilla Cornell, *Post-Structuralism, the Ethical Relation, and the Law*, 9 CARDOZO L. REV. 1587, 1588 (1988) (“[T]he entire project of deconstruction . . . is driven by . . . the aspiration to a nonviolent relationship to the Other, and to otherness more

From this analysis comes Drucilla's endorsement of the use of myth. Myth is a part of our existing culture—a culture which we, after all, can never entirely escape—but it is also constructed of metaphoric language; language that contains more meaning than can be captured by any single interpretation.<sup>16</sup> Transformed by a new interpretation, one from the perspective of the *differend*, myth can become the vehicle for the representation of the unrepresentable. It can, therefore, function simultaneously as an indictment of the cultural system in which this interpretation is inexpressible, and as a vision of a new choreography of sexual difference in which such expression would be unproblematic.

But if the myths of Woman, like women's lives themselves, are subject to multiple interpretations, how are we to choose between the various conceptions of the feminine these interpretations offer? As I noted before, Drucilla rejects the possibility of any ultimate objective truth about Woman drawn from nature or biology on which we could base a choice among interpretations. No interpretation, therefore, is truer than any other. Some, nonetheless, are better. We judge various interpretations not on the basis of truth but on the basis of ethical and political standards.<sup>17</sup> Drucilla does not spell out what those standards should be—that, of course, is a separate project—but such standards cannot be derived from the interpretations themselves since they are used to judge those interpretations.<sup>18</sup> Instead, she must turn to some independent philosophical position to define which interpretations of the feminine are better, ethically or politically, than others.

The story, then, is one in which women, and perhaps particularly women who are concerned about law, are searching for a normative perspective from which to engage in both criticism and reconstruction of the present system of gender. Some, like MacKin-

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generally, that assumes responsibility to guard the Other against the appropriation that would deny her difference and singularity.”); Christine A. Littleton, *Restructuring Sexual Equality*, 75 CALIF. L. REV. 1279, 1284-85 (1987) (equality as acceptance of differences and equalization of the social consequences attached to them); Audre Lorde, *The Master's Tools Will Never Dismantle the Master's House*, in SISTER OUTSIDER 110, 111 (1984) (“Difference must be not merely tolerated but seen as a fund of necessary polarities between which our creativity can spark like a dialectic.”); Martha Minow, *The Supreme Court, 1986 Term—Foreward: Justice Engendered*, 101 HARV. L. REV. 10, 11-17 (1987) (analyzing the treatment of difference in Supreme Court cases).

<sup>16</sup> See Cornell, *supra* note 1 at, 696-98.

<sup>17</sup> See *id.* at 681.

<sup>18</sup> As my conclusion will make clear, I do not believe that standards for judgment must always be drawn from outside the culture—or cultural artifacts—which they are used to judge. I do believe, however, that the statement in the text accurately reflects Drucilla's view that the ethical (which is the source of such standards) must have a basis independent of the real (which is what such interpretations are claiming to be). See Cornell, *supra* note 15, at 1626.

non and perhaps also the liberal feminists, reject any notion of the feminine as the basis for such a normative perspective.<sup>19</sup> Many, however, accept the need to define the feminine, but within this group there is a deep division. Some feminists look to an essentialist conception of Woman, arguing that the legal system has unjustifiably ignored and devalued that perspective. Others, including Drucilla, look to some independently defined notion of ethics or politics to find the "should be" in the potentially infinite interpretations of the feminine.

If we ask these women where, ultimately, their normative standard comes from, we find that Drucilla and MacKinnon and the liberal feminists can be fairly specific about the nature of the independent philosophical systems on which they rely. Once they have described their systems, we are left, of course, with the same endeavor that philosophy has forever pursued; that is, the attempt to justify some particular system of ethics: liberal, Hegelian, Marxist or whatever.<sup>20</sup> But what can the essentialists say in answer to the question, "Where do your ethical standards come from?"

Notice, first, that the essentialist would probably not even recognize this as an entirely legitimate question. The image of women searching for a normative perspective, choosing either an essentialist or a liberal or, as Drucilla calls her view, an ethical position, would seem terribly implausible to the essentialist. She would say, instead, that women do not choose or even search for a normative perspective; they are born with one. They may, of course, need to examine their own experiences closely and in conjunction with other women in order to describe in any systematic way what that perspective is, but they use it, they live within it, even when they are unconscious of its description. The focus, from the essentialist's

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<sup>19</sup> Although Drucilla has not discussed liberal feminists in her article, I believe that they are most closely related to MacKinnon in Drucilla's classification system. Liberal feminists might be described as those who look to the normative premises of the legal system itself and argue that those values have been neglected or distorted in the treatment of women. They are, therefore, distinct from the essentialists in that they look to an independent ethical system for their perspective rather than to the experience of women or some notion of the feminine. Liberal feminism is also distinct from Drucilla's ethical feminism, and related to MacKinnon's position, because it does not use its ethical system to find and celebrate a view of the feminine but rather to criticize the existing system of gender directly. Unlike MacKinnon, liberal feminists need not find femininity degrading, but they do find it irrelevant to their critique, in a way that Drucilla claims not to.

<sup>20</sup> As the liberal feminists would be quick to point out, their independent system needs to be justified, if at all, in a very different way from Drucilla's or MacKinnon's. Because liberalism is the "official" ideology of our legal system, liberal feminists are able to criticize the system's treatment of women on its own terms. They do not need an argument about the ultimate justice of the liberal view when what they are criticizing is the hypocrisy of a society that claims to accept liberalism. They do, of course, need such an argument when they are responding to other types of feminists.

perspective, then, is not on searching through various descriptions of the feminine to find the "should be" that is validated by an independent ethical system. Instead, the emphasis is on encouraging society generally, and perhaps women in particular, to value the ethical system already inherent in their experience and their being.<sup>21</sup>

If we insist, however, on asking for a source of the essentialist's ethics, what will she say? The essentialist has not offered some larger philosophical system by way of justification; she has offered instead an account of women's experience. Her claim must therefore be that her ethic derives from that experience. What women are, or what the feminine is, must be what is good, or at least an often ignored aspect of the good. The "ought to be," then, is derived from the "is." This is, of course, fairly explicit in the work of writers like West who seek to infuse value into the experience of women, and thereby into women's experience of themselves.

This story makes clear to us what is most fundamentally wrong with an essentialist approach, in Drucilla's view.<sup>22</sup> In our search for a normative notion of the feminine, Drucilla wants us to scan the heavens rather than the earth. No account of what women actually

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<sup>21</sup> As Drucilla would surely want to point out, the very project of identifying an inherently feminine viewpoint and ethics depends on a pre-existing political and ethical framework. Such a framework is necessary, first of all, to justify engaging in such a project. But, perhaps more fundamentally, such a framework is necessary in order to make it possible to implement the project. Without a pre-existing framework for defining which evidence and experience we will look at and what will be our criteria for identifying something as inherently feminine, we cannot even begin the task. This is simply a specific application of Drucilla's argument that any judgment about an "is" depends on a prior judgment (or assumption) about what "ought to be." See Cornell, *supra* note 1, at 656. I agree with this argument entirely. The claim in text is *not* that the essentialist differs from Drucilla in her ability (or desire) to deal with reality as somehow independent of ethics. Rather, the essentialist differs because she searches for the ethical by way of the reality which it generates and maintains, instead of looking for some ethical system which is independent of reality.

<sup>22</sup> Drucilla offers at least three objections to essentialism. First, an essentialist approach seems to lock men out of whatever is defined to be an "essentially" female experience. See *id.*, at 672-73. Second, essentialism has been used in the past to lock women into the same thing. See *id.* at 653. And third, essentialism seems to look to some notion of reality—whether biological, social, or psychological—to define a normative standard. In other words, it derives the "ought to be" from the "is."

Surely Drucilla is right to be concerned about the potentially procrustean effects of an essentialist theory on both women and men. But I believe that a sophisticated essentialist account, like West's, can offer substantial protection against this potential. To the extent that biology is not destiny—that "essence" is defined by social and psychological structures as well as biological ones—women and men are both freed from the essentialist straight-jacket. As Drucilla points out, none of us is so purely feminine or masculine that we do not share some of the experiences and world views of the other gender. See *id.* at 672-73. Essentialism need not mean that the female experience is necessarily inaccessible to men nor that it is or should be predominant in all women, but only that it is shared by many women and is experienced by them as a matter of gender.

The third objection is, of course, the one discussed in text.

are, either biologically or socially, should confine the account of what they should be.<sup>23</sup> That would be to deny the doubly-prized world, the "not yet of the never has been," the potential for utopian thought.

I think this story is an allegory about one of the central dilemmas facing feminist legal theory. Feminism wants to claim that women's experience should be recognized and valued by the legal system and by society generally. But what, in the confusion and variety of human life, *is* women's experience? And why should it be valued when other people's experiences, the experience of the child molester for example, are not and presumably should not be? Drucilla's story seems to suggest that feminism has only two ways to answer these questions. On the one hand, it can point to some essentialist definition of Woman to identify the feminine experience and argue that simply by virtue of being essential this experience is deserving of respect. On the other hand, it can point to some independent moral theory that validates that experience as good.<sup>24</sup>

This latter path does not, of course, entirely answer the first question; our independent ethical theory does not tell us what makes some experience feminine, only what makes it good. The *differend*, which is the source of the feminine for Drucilla, includes

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<sup>23</sup> Drucilla emphasizes the biological basis of such essentialist theories: their insistence that biology is, if not destiny, at least the foundation for character. *See id.* at 646, 647-48. She recognizes that some writers, including West, are ambiguous about the extent to which social structures shape the meaning of biology and, therefore, shape how biology determines character. *See id.* at 649. Nonetheless, Drucilla insists that West's approach is fundamentally biological. *See id.*

It is interesting to consider whether the meaning of essentialism changes when its basis shifts from biology to society. Is a character structure based on a biological sexual identity *more* essential (or essential in a different way) than one based on a socially constructed sexual identity? It may be that Drucilla adopts this biological interpretation of West because she believes that all essentialist theories must be based, ultimately, on biology.

For the purposes of Drucilla's story, however, it should not really matter whether the essentialist relies on biology or society. In either case, she is subject to the criticism which is central to Drucilla's argument: both types of essentialism derive the "ought" from the "is."

<sup>24</sup> From this perspective, Drucilla's ethical feminism can be seen to share a certain orientation with MacKinnon's feminism unmodified. Although Drucilla finds value in the feminine and in women's experience, that value is assessed from the perspective of an ethical system independent of women's experience. MacKinnon *also* has such an independent philosophical system: Marxism. *See* Catharine A. MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635 (1983). MacKinnon's system finds little to value in women's experience, since it is an experience of subjugation, but certainly sees much to be learned from it. Indeed, as Drucilla recognizes, one of MacKinnon's great contributions has been to insist that we listen to and believe women's accounts of their own suffering. *See* Cornell, *supra* note 1, at 985; *cf.* CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED* 179-86 (1987). MacKinnon and Drucilla, then, share a similar insistence on looking outside of women's experience, and outside of the concept of the feminine, for the ultimate grounding of value.



everything excluded by our social categories; surely not all of that is feminine, but nothing tells us which is and which is not. This inability to determine the feminine is, of course, a strength of the approach rather than a weakness, when seen from the perspective of the ethical feminist. After all, the feminine is a concept capable of infinite variation and interpretation. The central project is not to define the feminine, but to define the good; the feminine is, it seems, only a rather loosely contained set of data that we can use in our search for a general ethical theory.

The dilemma is that each of these two positions seems to serve some, but not all, of the goals of a feminist theory, and each involves serious drawbacks. The essentialist position promises a proud account of our identity as women and a validation of our experience as women—both important goals of feminism as a social movement.<sup>25</sup> But by virtue of its reliance on some notion of reality to found its ethics, it loses the critical distance that Drucilla is justifiably concerned about preserving. That critical distance is what allows the space for diversity and leaves open the possibility of utopian thought. While these critical achievements may be important for any philosophical position, they hold special significance for feminism. The repression of difference and the apparent inevitability of social conventions are two of the most important restrictions on women against which feminism has struggled. It would be truly ironic to discover that it had incorporated them within itself.

Drucilla's approach, conversely, offers a strong and independent foundation for the critical and utopian projects. It leaves ample room for difference, indeed, it encourages creativity and experimentation in the construction of the feminine. But Drucilla's ethical feminism fails to grapple with feminism's role in helping women to identify their own experience and to use that experience as the grounding for value. As Robin West has argued, we have spent too long measuring our own experience against some independent, and frequently alien, standard, and all too often we have ended by rejecting ourselves.<sup>26</sup>

I see Drucilla's story, then, as an allegory depicting feminism as trapped between the horns of a dilemma, unable to unify its goals of validating women and their experience on the one hand while maintaining the critical distance necessary to tolerance of diversity and

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<sup>25</sup> These goals are, of course, ones with which not all feminists would agree. MacKinnon, for example, believes that such validation is nothing more than self-deception and makes us complicit in our own oppression. See generally C. MACKINNON, *supra* note 24. Drucilla, however, seems to acknowledge validation as an important function of feminism. See Cornell, *supra* note 1, at 686.

<sup>26</sup> See Robin West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81, 115-16, 144-45 (1987).

change on the other. Ethical feminism, as Drucilla describes it, seems to settle for one horn of the dilemma and to abandon some of the important goals of feminism. Essentialism may well do the same. If there is indeed no way to bring together a substantive feminine identity and a critical distance, then it may be that Drucilla is right and that it is more important that we choose to retain our critical perspective. But first we must be certain that the conflict between our goals is real and irreconcilable.

There is a large and growing body of literature to which we might look in our attempt to grasp both horns of this dilemma. It strikes me that feminism's predicament is very similar to the one facing political theorists attempting to revive a republican, or more broadly a communitarian, political tradition.<sup>27</sup> One great virtue of communitarianism is its ability to give people a sense of connection,<sup>28</sup> but that connection seems to require an assertion of group identity and the validation of that identity.<sup>29</sup> This is, of course, a type of essentialism; it attempts to define the essence of a people, a society, a community. And it suffers from the same dangers as feminist essentialism: it often devalues diversity, sometimes to the point of destroying it, and it closes up the critical distance between individual and society that makes change and growth possible. On the other hand, that critical distance can itself be damaging because it may rob people of a sense of connection and confirmation.<sup>30</sup> An ethical feminism that relies on a transcendent philosophy, like the one Drucilla proposes, can lead to similar alienation and self-doubt precisely because it strictly maintains that critical distance.

Many writers, male and female, are attempting to resolve this dilemma in the context of communitarian theory. They are searching for a type of contextual criticism that will be grounded always in the values of an actual community, rather than in some transcendent ethical philosophy, but will nevertheless allow the distance for dissent and diversity.<sup>31</sup> This type of criticism draws on the inherent

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<sup>27</sup> See generally, e.g., Frank I. Michelman, *The Supreme Court, 1987 Term—Foreword: Traces of Self-Government*, 100 HARV. L. REV. 4 (1988); Cass R. Sunstein, *Beyond the Republican Revival*, 97 YALE L.J. 1539 (1988).

<sup>28</sup> See generally Kenneth L. Karst, *Equality and Community: Lessons from the Civil Rights Era*, 56 NOTRE DAME LAW. 183 (1980).

<sup>29</sup> See WILSON C. McWILLIAMS, *THE IDEA OF FRATERNITY IN AMERICA* 7-8, 50 (1973).

<sup>30</sup> Cf. ROBERT A. NISBET, *COMMUNITY AND POWER* 3-19 (1962) (describing the alienation caused by individualism); MICHAEL J. SANDEL, *LIBERALISM AND THE LIMITS OF JUSTICE* 180-82 (1982) (arguing that deontological liberalism—which preserves the distance between the self and its ends and therefore maintains the critical distance between individual and society—makes a certain type of friendship and community impossible).

<sup>31</sup> See generally, e.g., RICHARD J. BERNSTEIN, *BEYOND OBJECTIVISM AND RELATIVISM* (1983); RICHARD RORTY, *THE CONSEQUENCES OF PRAGMATISM* 160-75 (1982); Hannah Fenichel Pitkin, *Justice: On Relating Public and Private*, 9 POL. THEORY 327, 345-49 (1981).

tensions in any cultural category to open the space for conflict within an acknowledged and largely accepted framework. Some parts of this approach, particularly its linguistic and epistemological underpinnings, already have been absorbed by feminist theory.<sup>32</sup> Drucilla's article, with its story about feminists in search of the feminine, suggests to me that feminists have much to contribute to, and perhaps also still much to learn from, this aspect of communitarian theory.

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<sup>32</sup> See generally, e.g., SHEILA ROWBOTHAM, *WOMAN'S CONSCIOUSNESS, MAN'S WORLD* (1973); Jean Bethke Elshtain, *Feminist Discourse and Its Discontents: Language, Power, and Meaning*, in *FEMINIST THEORY: A CRITIQUE OF IDEOLOGY* 127-45 (Nannerl O. Keohane, Michelle Z. Rosaldo, Barbara C. Gelpi eds. 1981); Sandra Harding, *Conclusion: Epistemological Questions*, in *FEMINISM & METHODOLOGY* 181-89 (Sandra Harding ed. 1987); Ann C. Scales, *The Emergence of a Feminist Jurisprudence*, 95 *YALE L.J.* 1373 (1986); Suzanna Sherry, *Civic Virtue and the Feminine Voice in Constitutional Adjudication*, 72 *VA. L. REV.* 543 (1986).