

Sex, Gender, and Sexuality: The TransAdvocate interviews Catharine A. MacKinnon

By Cristan Williams

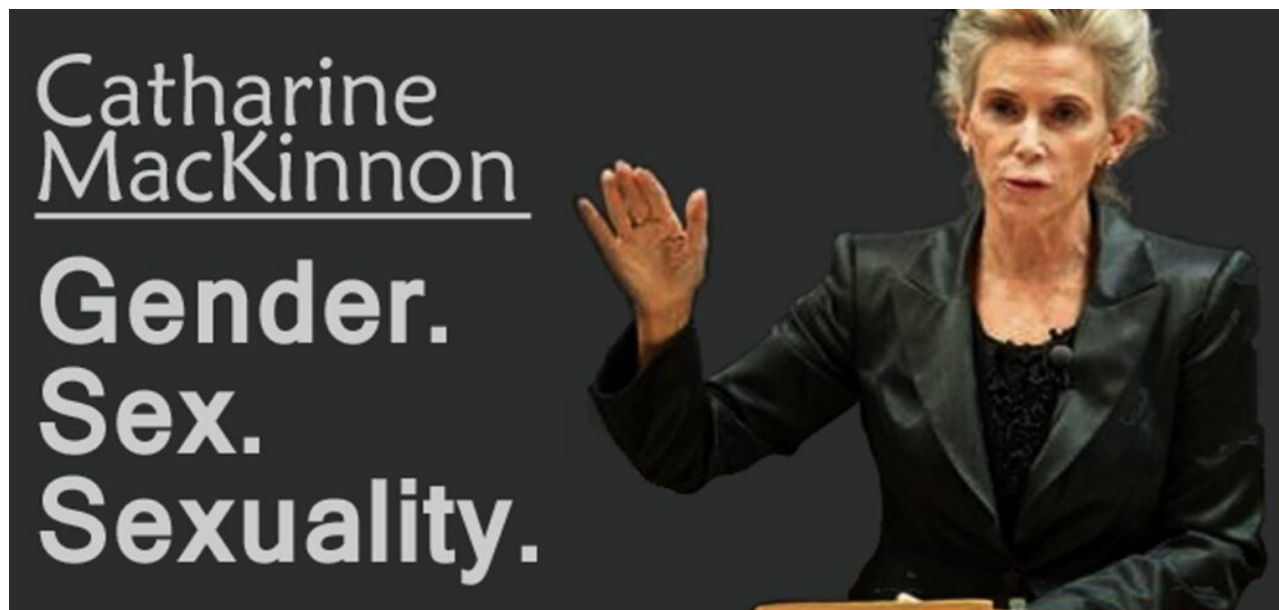
Published April 7, 2015 | Updated March 31, 2026

https://www.transadvocate.com/sex-gender-and-sexuality-the-transadvocate-interviews-catharine-a-mackinnon_n_15037.htm

Abstract

Catharine A. MacKinnon is a lawyer, teacher, writer, theorist, and activist. She is the Elizabeth A. Long Professor of Law at the University of Michigan and James Barr Ames Visiting Professor of Law at Harvard Law School (long-term). She holds a B.A. from Smith College, a J.D. from Yale Law School, and a Ph.D. in [...]

Article



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Professor MacKinnon specializes in sex equality issues in political theory and under international and domestic (including comparative and constitutional) law. Her work on sex inequality, focusing on sexual violation, has had a substantial impact on law and culture in the United States and internationally. Professor MacKinnon practices law, consults on legislation, litigation, and activism. She is among the most widely-cited legal scholars in the English language and the most widely-cited woman.

The following interview occurred over a series of emails between November 2014 and March 2015 and is part of an ongoing TransAdvocate series on feminism.

Cristan Williams: In a world that largely appeals to an asserted natural binary sex essence, trans people and feminists alike have made some observations. The following three quotes touch on this experience. Would you please comment on the experience these three are discussing?

Andrea Dworkin, Radical Feminist: “Hormone and chromosome research, attempts to develop new means of human reproduction (life created in, or considerably supported by, the scientist’s laboratory), work with transsexuals, and studies of formation of gender identity in children provide basic information which challenges the notion that there are two discrete biological sexes. That information threatens to transform the traditional biology of sex difference into the radical biology of sex similarity. That is not to say there is one sex, but that there are many. The evidence which is germane here is simple. The words ‘male’ and ‘female,’ ‘man’ and ‘woman,’ are used only because as yet there are no others.”[1]

Catharine MacKinnon: Andrea’s critique of the bipolar sex/gender binary as rooted in the lie of natural determination is an analysis we have always shared.

Sandy Stone, Trans Feminist: “What I am saying is that one of the ways that people justify oppressing people of any alternative gender or sexuality is by saying that the social norm is natural. That is, it originates in the authority of Nature itself. In other words, it comes from god, an authority to which to appeal. All of this is, in fact, a complete fabrication, a construction. There is no ‘natural’ sex, because ‘sex’ itself as a medical or cultural category is nothing more the momentary outcome of battles over who owns the meanings of the category. There is a great deal wider variation in genetics than most people except geneticists realize, but we make that invisible through language. The way we make it invisible through language is by having no words for anything except male and female. One of the ways our culture erases people is by not having words for them. That does it absolutely. When there’s nothing to describe you, you are effectively invisible.”[2]

MacKinnon: Actually, masculinity and femininity -- terms that refer to the social, meaning gender, rather than the natural, meaning sex -- are recognized in several disciplines as being a series of continua that overlap for more variation than they don’t. But the point made in the quotation is a good one, since there is no relation between the biology of sex and the meanings socially enforced on it, other than the very real consequences of the social system of sexual politics that does that forcing. This does, of course, raise the question: if it is all a social construction, why intervene in the biology of sex? That is a real political question, not a challenge to individual people’s decisions about the social presentation of their bodies, which in my opinion do not have to be justified.

Monique Wittig, Radical Feminist: The ideology of sexual difference functions as censorship in our culture by masking, on the ground of nature, the social opposition between men and women.

Masculine/feminine, male/female are the categories which serve to conceal the fact that social differences always belong to an economic, political, ideological order. Every system of domination establishes divisions at the material and economic level. Furthermore, the divisions are abstracted and turned into concepts by the masters, and later on by the slaves when they rebel and start to struggle. The masters explain and justify the established divisions as a result of natural differences. The slaves, when they rebel and start to struggle, read social oppositions into the so-called natural

differences. For there is no sex. There is but sex that is oppressed and sex that oppresses. It is oppression that creates sex and not the contrary. The contrary would be to say that sex creates oppression, or to say that the cause (origin) of oppression is to be found in sex itself, in a natural division of the sexes preexisting (or outside of) society. The primacy of difference so constitutes our thought that it prevents turning inward on itself to question itself, no matter how necessary that may be to apprehend the basis of that which precisely constitutes it.[3]

MacKinnon: I've always agreed with this position (other than the part about apprehending the basis of what precisely constitutes it, because it is not constituted outside of society) and opposed the ideology so described, in law and otherwise. The questions it raises, again, are, if "sex creates oppression," how does change from one sex to another oppose that oppression? If "there is no sex," how do we describe the gain and stake in changing it?

Williams: I think most contemporary trans people are chiefly concerned about being comfortable in their own bodies and dealing with the lived consequences of coming face-to-face with an imposed politic which attempts to define their experience for them. For trans people, our bodies are contested in the sense of being "real" and certainly any identities which reference the contested body will likewise become politically contested as well. Janice Raymond, the author of *The Transsexual Empire: The Making of the She-Male* (1979) contested the bodies of trans people thusly:

[T]he transsexual becomes a synthetic product. Synthetic parts, such as chemical hormones and surgical artifacts of false vaginas and breasts, produce a synthetic whole. Furthermore, the fact that transsexuals are synthetic products is one clue to their future demise.

Religious media make similar assessments:

Removal of genitals and attachment of artificial ones... does not change reality. The removal constitutes mutilation and the construction of artificial organs with no reproductive function does not alter the gender or sex of the person. In addition, even the physical appearance must be sustained by massive doses of synthetic hormones.

I think that trans people from decades past who were told by doctors to lie to everyone about their trans history certainly weren't presenting any significant challenges to the questions you raise. However, the arc of history is bending towards trans people owning their lived experience and even celebrating it in the face of a male supremacist culture. This change has certainly challenged social structures which seek to reify a natural sex binary. By the 1970s, trans people began challenging anti-crossdressing ordinances across the nation which affected not only trans people, but the non-trans population as well. We are now seeing a world in which the President of the US recognizes trans people in a State of the Union address and journals such as *Nature* are publishing articles which assert:

The idea of two sexes is simplistic. Biologists now think there is a wider spectrum than that... Biologists may have been building a more nuanced view of sex, but society has yet to catch up. True, more than half a century of activism from members of the lesbian, gay, bisexual and transgender community has softened social attitudes to sexual orientation and gender. Many societies are now comfortable with men and women crossing conventional societal boundaries in their choice of appearance, career and sexual partner. But when it comes to sex, there is still intense social pressure to conform to the binary

model.

While the media might discuss the implications of pregnant trans men, I think trans people are at least as critical of gender roles as non-trans people and certainly when it comes to challenging institutionally sexed roles, trans people can be a wrench in the gears of patriarchy.

I'm going to guess that many who read this article are new to the idea of "sex" as "sex class." Some might also be unfamiliar with the notion that while biology and bodies are real, the notion of a natural sex binary is culturally constructed. Would you talk about how you first encountered these radical feminist ideas and how you first reacted to them?

MacKinnon: I generally agree with the analysis above but consider women and men to be sexes. I don't think it adds anything to the understanding that has existed that these are social groups, for at least forty years, to call them sex classes. I don't know why women and men being socially defined groups is coming as a revelation to anyone. It was obvious to all of us in the early women's movement that what we live as "woman" is a social construction of male supremacy, and that the notion that it is based in nature is its most pernicious delusion. Kate Millett's book, *Sexual Politics*, published in 1969, could not be clearer on this point. My particular question was OF WHAT is sex socially constructed? The answer I gave, and still believe, is sexuality. Sexuality is itself not biological, but social, so the constructing is also the constructed, which makes sense since there is no place outside society. Transpeople are doing their best to live and be loved under conditions in which people still pervasively believe the lie that gender is sex-based, meaning biologically-determined.

Williams: Would you talk about the ways you've conceptualized the trans experience? If your views have changed over the years, can you talk about that?

MacKinnon: I have always seen discrimination against trans people as a form of sex-based discrimination. I've taught it that way since 1977; it can be found throughout my casebook *Sex Equality* (2007). One of my earliest clients was a transwoman who was imprisoned in male prison. Her situation was absolutely horrific. My views on this have not changed one iota over time, although they have become more informed as more trans people have written, spoken out, and more discussion has been engaged, and as I have met more and more out trans people (mostly transwomen) all over the world.

My basic feeling, with Simone de Beauvoir, is "one is not born, one rather becomes a woman." How one becomes a woman is not, I think, our job to police, even as everything about that process is worth inquiry and detailed understanding. Having been surrounded by born women who do not identify as women particularly, and reject feminism as having nothing to do with them, it has been inspiring to encounter transwomen who do identify as women, actively oppose violence against women including prostitution (in which those who engage have little choice), and are strong feminists. "Woman" can be, in part, a political identification. To be a woman, one does have to live women's status. Transwomen are living it, and in my experience bring a valuable perspective on it as well.

Williams: How do you work with people who passionately tell you that in order for women to have liberation, "woman" needs to first be defined in terms of a discrete biological group?

MacKinnon: Male dominant society has defined women as a discrete biological group forever. If this was going to produce liberation, we'd be free.

Williams: Raymond makes a point of ensuring that the morality of the natural is withheld when speaking about trans women through phrases like, “male-to-constructed-female” while Mary Daly characterized trans women as being Frankensteinian and Germaine Greer explicitly compared trans women to “Norman Bates in Psycho.” Jeffreys’ morality deems it dishonorable to address trans women as “she” and/or “her”:

“Another reason for adherence to pronouns that indicate biology is that, as a feminist, I consider the female pronoun to be an honorific, a term that conveys respect. Respect is due to women as members of a sex caste that have survived subordination and deserve to be addressed with honour.”[4]

Do you take a moral position on the existence of trans people and if so, can you talk about that?

MacKinnon: I don’t take moral positions. I am a political and legal theorist, not a moral one, and regard moral theorizing as basically solipsistic grandstanding. Statements like the above only strengthen this view. I will observe that, from the standpoint of a political analysis of sexual politics, basing morality in nature is contrary to everything feminism has achieved.

Williams: How do you feel about trans people being covered in the Violence Against Women Act?

MacKinnon: Along with every other form of discrimination on the basis of sex, sex-based violence is inflicted on trans people, who should have every legal remedy. Since the civil remedy was eliminated, no one has it at this point.

Williams: Several studies find that the rate of rape within the trans community is quite high. Here are a few examples of rape incidence among surveyed trans populations:

- 50%: Transgender and intersex survivors of domestic violence: Defining terms, barriers, and responsibilities[5]
- 59%: The transgender community health project: Descriptive results.[6]
- 54%: The health and social service needs of transgender people in Philadelphia.[7]
- 46%: The health and social service needs of transgender people in Chicago.[8]
- 50%: Violence against transgender people: A review of United States data.[9]

Would you comment on this?

MacKinnon: These numbers are quite similar to the real figures for women. It is good there is data to support what many have been saying for decades had to be the case. One hopes more will be done about it.

Williams: I’ve seen some (usually online) feminists assert that trans people and feminism are mutually exclusive. Have you encountered trans feminists before? Can you talk about the ways you’ve observed trans people working to end male supremacy?

MacKinnon: I have encountered transwomen with excellent, clear feminist politics. They are quite a contrast to the many privileged women I am often surrounded by who deny that sex discrimination exists or who assert that prostitution is a liberating choice for women. I’ve encountered transwomen who are prostituting who strongly oppose prostitution, who make clear that they would not be in prostitution if they could be paid to do anything else. And I’m supposed to conclude that the born women who support prostitution are my team? I’ve encountered transwomen who passionately oppose all forms of violence

against women, against anyone, from real experience, and are working to end it. The transwomen I know are very clear that male supremacy is a political system of oppression that they oppose. This is no doubt a select group, but they exist.

Williams: Anti-feminist groups claimed that should the ERA pass, men would be able to access the women's restroom:

"Listening to the opponents of the Equal Rights Amendment, you would think it was designed to... integrate public toilets, legalize rape, outlaw heterosexual marriage... Law professor Paul Freund objected in 1973 to being 'quoted erroneously and out of context by certain opponents of the Equal Rights Amendment' and commented flatly, 'I have not stated, and I do not believe, that the Amendment would require the sharing of restroom and prison cells by both sexes.' Yet in 1975 a huge anti-ERA advertisement in Baton Rouge papers credited him with the allegation that the ERA would integrate bathrooms." [10]

In addition to the ERA's ramifications mentioned by Lybrand and Stewart, Merrill raised the subject of restrooms. "If they can integrate restrooms on the basis of race, why not on the basis of sex?" he asked. [11]

Somewhat similar rhetoric was used against lifting DADT:

"Most concerns we heard about showers and bathrooms were based on stereotype-- that gay men and lesbians will behave as predators in these situations, or that permitting homosexual and heterosexual people of the same sex to shower together is tantamount to allowing men and women to shower together." [12]

When an equality ordinance that is inclusive of trans people is debated, similar rhetoric is deployed:

Would you comment on the use of this "bathroom meme" in politics?

MacKinnon: I had hoped that bathroom panic was fading. The vulnerability people attach to bathrooms could be looked at in a more serious way. But most bathrooms come with stalls with doors that shut, and most people have by now ridden on those avatars of sex equality, the airlines. "Men" in women's bathrooms and "the gay gaze" in the shower are mostly seen as Right Wing or homophobic scare tactics to, respectively, keep women from asserting their right to equality, and heterosexual men from realizing what it can feel like to be looked at with a sexual thought in mind, even if that sexual thought is in their own minds. People also seemed to forget that it is usually gay men who are raped by straight men, including in men's bathrooms, not the other way around. As bathrooms are coming up again in the trans discussion, we could add a third bathroom called Toilet. It would help all the women who never have enough bathrooms, women who are called "sir" in women's bathrooms, and anyone who would be more comfortable in "none of the above."

Where are the men on this question? Are they threatened by transmen in their bathrooms? More generally, where are the men saying that transmen aren't men?

Williams: Personally, I like the idea of adding unisex or family restroom options. It's a solution for people who feel they just can't handle the reality of a trans person entering or exiting a bathroom stall.

Politically constructing trans women as a bathroom boogiemer provides the right a convenient strawman to rally against as a new face of immorality. I'd say that the right clearly understands that this political golem is less effective if we consider that trans men use the men's restroom and would be forced into the women's restroom by legislation seeking to assign toilet access based upon chromosomes. It's probably not helpful to the right's argument for non-trans men to say they don't care about trans men using the men's toilet.

Current political discourse aside, access to public accommodations is an issue for the trans community. For instance:

"I have spent so many hours avoiding public multi-stall bathrooms that I have damaged my bladder and put pressure on my kidneys. The problem was a daily one. I'd think about where I was going what bathrooms I'd have access to, how much I drank during the day, whether I'd be with people who could help stand guard..." - Response to a 2002 survey conducted by the San Francisco Human Rights Commission which found that nearly 50% of transgender respondents reported harassment or assault in a public bathroom.

"We live under the constant threat of horrifying violence. We have to worry about what bathroom to use when our bladders are aching. We are forced to consider whether we'll be dragged out of a bathroom and arrested or face a fist fight while our bladders are still aching. It's an everyday reality for us. Human beings must use toilets... If I go into the women's bathroom, am I prepared for the shouting and shaming? Will someone call security or the cops? If I use the men's room, am I willing to fight my way out? Am I really ready for the violence that could ensue?"[13]

"Police officers often harass or abuse transgender and gender nonconforming people regardless of which sex-segregated bathroom they use. This harassment intensifies when coupled with the stereotyping of trans people as sexual predators. As such, the use of the 'wrong' bathroom . . . often results in arrests for crimes such as public lewdness, public obscenity, or public indecency. Refusing to comply with or simply questioning a police officer's direction as to which bathroom the individual must use can often lead to charges such as resisting arrest or disorderly conduct."[14]

This issue gained some public attention when then-State Rep. Richard Floyd (R) publicly asserted that he would assault trans women who dared to buy clothes in the way that non-trans people do:

"I believe if I was standing at a dressing room and my wife or one of my daughters was in the dressing room and a man tried to go in there -- I don't care if he thinks he's a woman and tries on clothes with them in there -- I'd just try to stomp a mudhole in him and then stomp him dry."

Would you comment on the issue of public accommodations for trans people?

MacKinnon: These accounts are horrible. But the overwhelming fact is, nobody is monitoring who uses what public accommodation. Many women use men's bathrooms when women's are unavailable, which is frequently. Most people don't flash their genitals to gain access to places. Most transgender people successfully live their gender. Nobody can tell. But this evidence above also shows the viciousness of a society that insists that people's bodies conform to their lived identities, or they are at serious risk of violence. The danger is clear.

Williams: Some assert that some women/females can have a penis and that some men/males can have a vagina. What are your thoughts about that?

MacKinnon: I am aggressively indifferent to it.

Williams: Do you think the “sex” binary is a social construct?

MacKinnon: Actually, I first argued that sexuality is a social construct, which is a good deal further along the same lines than this pretty obvious observation.

Williams: In other words, if the very notion of a biological sex binary is constructed, that would necessarily mean that any sexuality predicated upon the myth of the sex binary is also constructed? Are you saying that neither concept exists outside of culture?

MacKinnon: Right. And that culture is among other things misogynistic to the core, and misogyny is sexualized, that is redundant.

Williams: I know that you were falsely accused of claiming that “all sex is rape” (along with similar variants). What do you think people misrepresent most about your theories and why?

MacKinnon: It having taken about 20 years of litigation to establish that that statement is libel, I learned that people -- in this case, originally Rush Limbaugh and Playboy at almost exactly the same time -- create defamatory lies so that audiences will not take seriously work that threatens them (their power, ie their sexuality). Because of my analysis of male dominant sexuality as a practice of sex inequality, especially as deployed in the multi-billion dollar industry of pornography, they saw me as the enemy and set out to destroy me by whatever means were at their disposal. Once the New York Times Book Review voluntarily published its longest correction in history in 2006, saying I not only never said this, and my work did not mean this, but I didn't THINK this (!), it pretty much stopped. Many academics, however, who largely don't read, I am sorry to say, have not kept up. As you recognize, this is only one such misrepresentation.

Williams: Thank you for this interview! I am so very grateful for this opportunity to introduce your views to the trans community!

MacKinnon: I hope that this helps clarify what has already been clear in my work for decades. We all have a lot to do beyond policing “women.”

Professor MacKinnon's scholarly books include *Sexual Harassment of Working Women* (1979), *Feminism Unmodified* (1987), *Toward a Feminist Theory of the State* (1989), *Only Words* (1993), *Women's Lives, Men's Laws* (2005), *Are Women Human?* (2006), the casebook *Sex Equality* (2001/2007), and *Traite, Prostitution, Inégalité* (2014). She is widely published in scholarly journals, the popular press, and many languages, of which she is competent in three in addition to English.

Notes:

[1] Dworkin, Andrea. *Woman Hating*. New York: Dutton, 1974. 175 - 176.

[2] Gabriel, Davina. “Interview with a Transsexual Vampire: Sandy Stone's Dark Gift.” *TransSisters: The Journal of Transsexual Feminism*, March 1, 1993, 21.

- [3] Wittig, Monique. *The Straight Mind and Other Essays*. NY: Harvester Wheatsheaf, 1992. 2.
- [4] Jeffreys, Sheila. *Gender Hurts: A Feminist Analysis of the Politics of Transgenderism*. NY: Routledge, 2014. 9.
- [5] Courvant, D., and L. Cook-Daniels. "Transgender and Intersex Survivors of Domestic Violence: Defining Terms, Barriers and Responsibilities." NCADV, 1998.
- [6] Clements, K. *The Transgender Community Health Project: Descriptive Results*. CA: San Francisco Dept. of Public Health, 1998.
- [7] Kenagy, G. "The Transgender Community Health Project: Descriptive Results." *International Journal of Transgenderism* 8, no. 2/3 (2005): 45-56.
- [8] Kenagy, G. and Bostwick, W. "The health and social service needs of transgender people in Chicago." *International Journal of Transgenderism* 8, no. 2/3 (2005): 57-66.
- [9] Stotzer, Rebecca L. "Violence Against Transgender People: A Review Of United States Data." *Aggression and Violent Behavior* 14, no. 3 (2009): 170-79.
- [10] "Is the ERA Dead?" *Ruston Daily Leader*, June 16, 1977.
- [11] "Opposition mounts to Equal Rights Amendment" *The Anniston Star*, March 25, 1973.
- [12] "Executive Summary." In *Report of the Comprehensive Review of the Issues Associated with a Repeal of "Don't Ask, Don't Tell"*, chaired by J. Johnson, by C. Ham, 13. Washington, DC: Department of Defense, 2010.
- [13] Feinberg, Leslie. *Trans Liberation: Beyond Pink or Blue*. Boston, Mass: Beacon Press, 1998. 68 - 69.
- [14] Gehi, Pooja. "Struggles from the Margins: Anti-Immigrant Legislation and the Impact on Low-Income Transgender People of Color." *Women's Rights Law Reporter* 30, no. 1 (2009): 315-46.

Suggested citation

Cristan Williams. "Sex, Gender, and Sexuality: The TransAdvocate interviews Catharine A. MacKinnon."

TransAdvocate, April 7, 2015.

https://www.transadvocate.com/sex-gender-and-sexuality-the-transadvocate-interviews-catharine-a-mackinnon_n_15037.htm