

Carole Pateman

The Disorder of Women



THE DISORDER OF WOMEN

For my mother
Beatrice Kate Bennett

The Disorder of Women

*Democracy, Feminism and
Political Theory*

CAROLE PATEMAN

Polity Press

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- 1 'The Disorder of Women': Women, Love, and the Sense of Justice. In *Ethics*, 91 (1980), pp. 20–34. Copyright © 1980 by the University of Chicago.
- 2 The Fraternal Social Contract. In J. Keane, ed., *Civil Society and the State: New European Perspectives*, London and New York: Verso, 1988.
- 3 Justifying Political Obligation. In A. Kontos, ed., *Powers, Possessions and Freedom*, Ontario: University of Toronto Press, 1979.
- 4 Women and Consent. In *Political Theory*, 8 (May 1980), pp. 149–68. Copyright © Sage Publications, Inc.
- 5 Sublimation and Reification: Locke, Wolin and the Liberal-Democratic

- Conception of the Political. In *Politics and Society*, 6 (1975), pp. 441–67. Copyright © Butterworth Publishers.
- 6 Feminist Critiques of the Public/Private Dichotomy. In S. Benn and G. Gaus, eds, *Public and Private in Social Life*, London and New York: Croom Helm, 1983.
 - 7 *The Civic Culture: A Philosophic Critique*. In G. Almond and S. Verba, eds, *The Civic Culture Revisited*, Boston: Little Brown & Co., 1980.
 - 8 The Patriarchal Welfare State. In A. Gutmann, ed., *Democracy and the Welfare State*, Princeton: Princeton University Press, 1988.
 - 9 Feminism and Democracy. In G. Duncan, ed., *Democratic Theory and Practice*, Cambridge: Cambridge University Press, 1983.

Introduction

The essays in this volume were first published between 1975 and 1988 and they appear here in their original form. All the essays deal with aspects of democratic theory and the social conditions necessary for democracy, and several refer to the classic contract theorists, in particular to Locke and Rousseau. My perspective on democratic theory and my reading of the texts has changed in some fundamental respects during these years. The impetus for this theoretical development came from the revival of the organized feminist movement, which provided a new, and in many ways extremely disquieting, view of democracy and political life. Theoretical inquiry is an important part of contemporary feminism and the new feminist scholarship is beginning to reveal that sexual difference and the subordination of women are central to the construction of modern political theory.

Mainstream political theory has also flourished, and over the past five years or so there has been a revival of interest in democratic theory, especially in radical or participatory theory. But democratic theory, like the wider body of political theory, for the most part remains untouched by feminist argument. Feminist theory has been part of the development of modern political theory from the seventeenth century, although feminist writings are excluded from the canon of texts studied under the heading 'political theory'.¹ The existence of feminist argument is not so remarkable in itself, and feminism has always stood in a critical relation to the theories of famous writers. But women were not present in universities in earlier periods, and political theory has not always been a professional discipline, conducted from within the confines of academia. The new development is a sweeping challenge by feminist scholars to the central assumptions and presuppositions of academic political theory. One

impetus for the challenge has come from feminist reinterpretations of the classic texts. Some parts of the books admitted to the canon are rarely studied; the sections and chapters that deal with relations between the sexes and the political significance of sexual difference are typically either omitted or merely mentioned in passing, since these matters are dismissed as peripheral to the real business of political theory.

Most current work in political theory repeats the standard readings of the texts, ignores the copious empirical evidence collected by feminist investigators about women's position in all areas of social and political life and shows no interest in the broader body of feminist theory that ranges from epistemological questions and analyses of reason and rationality to arguments about the phallus as a signifier and the institution of heterosexuality. This is not to say that the revival of the organized feminist movement has had no impact at all on political theory. The movement has raised numerous issues that political theorists have been able to use in their discussions of, say, rights (e.g. does the foetus have rights?), or justice (e.g. is there a form of injustice that happens to affect women in particular?) or labour (e.g. is there a connection between domestic labour and capitalism?). Such discussions are based on the view that existing theoretical frameworks and modes of argument, whether liberal theories of rights, Rawlsian theories of justice or Marxist theories of capitalism, are entirely adequate to deal with the concerns of feminists. Feminism may generate new issues for discussion, but the underlying assumption is that questions which have been taken up as 'women's issues' can be embraced and incorporated into mainstream theory. For political theorists, feminism raises no distinctive problems of its own and poses no fundamental challenge to the familiar terms of argument.

To discuss 'women's issues' is not the same as engaging with or contributing to feminist theory. Feminist theory brings a new perspective to bear on the relation between 'women's issues' and the staple diet of political theory. Feminists are concerned with democracy and citizenship, with freedom, justice, equality and consent. They are vitally interested in power and the problem of how government can be legitimate, but what feminists mean by 'power' and 'government' and the understanding of these two terms in orthodox political theory is very different. Feminist theory is distinctive because it has raised a new problem; or, more precisely, feminist theorists insist that a repressed problem lies at the heart of modern political theory – the problem of patriarchal power or the government of women by men. Political theorists have deliberated about power and government for at least two thousand years; in the modern period they have engaged in controversies about the legitimacy and justification of the power, for example, of masters over slaves and servants, the rich over the poor, governments over citizens, capitalists

over workers, elites over masses, the vanguard party over the proletariat, and technocrats and scientists over laymen. In the texts of the famous theorists there are also discussions of the power of men over women, but contemporary political theory does not acknowledge this form of jurisdiction as *political* power and pays no heed to feminist theorists who attack the legitimacy of patriarchal government.

Contemporary political theorists are able to admit the relevance or significance of feminist questions and criticisms only with great difficulty. Such matters are systematically excluded from their theorizing by the modern patriarchal construction of the object of their studies, 'political' theory itself. Political theorists base their inquiries on the assumption that their subject lies in the public world of the economy and state and that the private realm of domestic, familial and sexual relations lies outside their proper concerns. The classic social contract theorists were of crucial importance in the development of this view of political theory, not least because their arguments about the political meaning of sexual difference were an integral part of the emergence of the idea of a modern 'civil' society that is divided into two contrasting spheres of social life. Contemporary theorists, however, do not examine the texts to see how the classic contract theorists constructed the two categories of public and private; rather, they now read the texts in the light of the structure of argument established in the texts themselves. The political implications of a social order divided between private and public arenas are precluded from critical investigation.

In mainstream political theory, the public sphere is assumed to be capable of being understood on its own, as if it existed *sui generis*, independently of private sexual relations and domestic life. The structure of relations between the sexes is ignored and sexual relations stand as the paradigm of all that is private or non-political. Yet, as attention to the classic texts would show, the meanings of 'private' and 'public' are mutually interdependent; the 'public' cannot be comprehended in isolation. Properly to understand the conception of a public world and the capacities and characteristics that are required to participate within it demands, at the same time, an understanding of what is excluded from the public and why the exclusion takes place. The 'public' rests on a particular conception of the 'private' and vice versa. When the 'public' is analysed in isolation, theorists are able to assume that nothing or no one of significance is excluded; or, to make this point differently, theorists work on the assumption that the public world, and the categories through which it is presented in theoretical argument, are sexually neutral or universal, including everyone alike. On the contrary, the 'individuals' who are so prominent in political theory are sexually indifferent only to the extent that they are disembodied.

I have, along with other theorists, criticized the abstract character of the individual who peoples the pages of much democratic theory, but this criticism has usually been blind to the fact that abstraction from the body is also necessary if the 'individual' is not to be revealed as a masculine figure. One of the major themes that runs through my more recent essays is that women, womanhood and women's bodies represent the private; they represent all that is excluded from the public sphere. In the patriarchal construction of the difference between masculinity and femininity, women lack the capacities necessary for political life. 'The disorder of women' means that they pose a threat to political order and so must be excluded from the public world. Men possess the capacities required for citizenship, in particular they are able to use their reason to sublimate their passions, develop a sense of justice and so uphold the universal, civil law. Women, we learn from the classic texts of contract theory, cannot transcend their bodily natures and sexual passions; women cannot develop such a political morality.

In the story of the creation of civil society through an original agreement, women are brought into the new social order as inhabitants of a private sphere that is part of civil society and yet is separated from the public world of freedom and equality, rights, contract, interests and citizenship. Women, that is to say, are incorporated into the civil order differently from men. But women's inclusion within the private sphere is not the whole story. Women have never been completely excluded from participation in the institutions of the public world – but women have been incorporated into public life in a different manner from men. Women's bodies symbolize everything opposed to political order, and yet the long and often bitterly contested process through which women have been included as citizens has been structured around women's bodily (sexual) difference from men. Women have been included as 'women'; that is, as beings whose sexual embodiment prevents them enjoying the same political standing as men. Women's political position, before and since we have won citizenship, is full of paradoxes, contradictions and ironies, but both women's exclusion from the public world and the manner of our inclusion have escaped the notice of political theorists.

One reason for this blindness is the standard interpretation of the classic texts. In the seventeenth century the notion that men or 'individuals' are born free and equal to each other, or are naturally free and equal, began to gain wide currency, and the idea has now become fundamental to political theory. The classic contract theorists first formulated general theories of social and political life that depended upon the premise of freedom and equality as a birthright, and their texts still inform and help to constitute political theory in the late twentieth century

– but in an emasculated form. The terms ‘men’ and ‘individuals’ in their texts are now read as generic or universal, as inclusive of everyone. But this is a misreading. The classic contract theorists (with one notable exception) argued that natural freedom and equality were the birthright of one sex. Only *men* are born free and equal. The contract theorists constructed sexual difference as a *political* difference, the difference between men’s natural freedom and women’s natural subjection.

The exception among the contract theorists is Hobbes.² Hobbes proclaims that in the natural condition women are men’s equals and enjoy the same freedom. But commentaries on the texts have nothing to say about the opposition between Hobbes and the other theorists on this fundamental point, or about the importance for their theories of this striking difference in views about men and women. Almost as soon as the idea of natural freedom and equality was formulated, feminist critics began asking, in Mary Astell’s words, ‘if all Men are born Free, how is it that all Women are born Slaves?’³ How, if God had made humankind, and endowed them with rationality and other capacities, or how, if freedom and equality were natural attributes of humans, could such a division between the two sexes be justified? Political theorists have not yet acknowledged the existence or relevance of these feminist questions.

The preceding paragraphs have, of course, been written with the benefit of the hindsight available from over a decade of work on these and related questions on my part. The earliest essays reprinted in this volume contain various references to a problem about women revealed in the texts of political theory, in empirical data and in contemporary argument, but I had not then appreciated quite how fundamental and far-reaching the problem was. My discussions remain framed within prevailing assumptions about the character and scope of political theory. For example, the arguments in the long-standing controversy between advocates of a liberal view of democracy and their radical critics – such as myself – were, and remain, vigorous on both sides. Yet today, from a different vantage point, I am conscious that there are assumptions and premises that unite the antagonists as strongly as those that divide them. Consider the argument about whether the economy and the workplace are private or public and whether democracy in the workplace is feasible or desirable: neither side in the debate questions the exclusive concentration on what I call (in ‘Feminist Critiques of the Public/Private Dichotomy’) the class conception of ‘private’ and ‘public’. Nothing of significance for democracy is seen in the patriarchal opposition between the ‘public’ (economy/state) and the ‘private’ (domestic, conjugal and intimate life), an opposition which is both presupposed and repressed by democratic theorists. The current revival of interest in participatory democratic theory has, so far, gone only a small way in changing this.⁴

I would not have included the earlier essays here if I now thought my arguments completely misguided. I still believe that they capture some important dimensions and problems of contemporary political theory and political life. But I have also included them to provide a concrete illustration of the difference that a feminist perspective makes in political theory. For example, I drew the distinction between the class and patriarchal conceptions of the private and the public partly from a (re)reading of Locke's theory. In the earliest piece published here, 'Sublimation and Reification', I was also concerned with Locke, the private and the public. The essay examines the question of the characterization of the 'political' in liberal-democratic theory, and whether only a liberal-democratic political order is (as is sometimes claimed) appropriately called 'political'. I argue, drawing on an interpretation of Locke's theory, that although liberal theory postulates that individuals have a natural political right, the assumption is always made that the right must be given up. The 'political', represented by the state, then stands over and above the governed, who interact in a depoliticized private sphere. Citizenship is divorced from daily life and becomes what Marx called a 'political lion skin', worn only occasionally and somewhat reluctantly. Yet, as my later analyses of the contract theorists and the development of citizenship show, the political lion skin has a large mane and belonged to a male lion; it is a costume for men. When women finally win the right to don the lion skin it is exceedingly ill-fitting and therefore unbecoming.

In the same essay, I argued that Rousseau's theory provides a clear alternative to Locke's arguments (and I used Rousseau as the exemplar of a participatory democratic theorist, in *Participation and Democratic Theory*). Following standard accounts of his arguments, I overlooked the fact that Rousseau declares that political order depends on the exclusion of women from citizenship. Rousseau's 'democracy' is a masculine preserve in which the political right of self-government is exercised only by men. Nor can his theory simply be revised to include women. The meaning of 'political' and 'democracy' in Rousseau's theory depends upon the meaning he gives to manhood and womanhood. Fully to understand what it means to be an active citizen who is master of himself requires the mirror provided by the private sphere that lies outside citizenship, a sphere in which women are mastered by men. To dismiss Rousseau's or the other contract theorists' arguments about the political significance of sexual difference as irrelevant or merely peripheral to their theories, is to disregard a fundamental feature of the original contract said to create the modern world of citizenship. Women's political disorder means that they must be *excluded* from the original agreement.⁵ The original contract is a masculine or fraternal pact.

In my analysis in 'The Fraternal Social Contract', I have amended my earlier argument about the lack of any common bond uniting 'individuals' participating in the economy and the practice of contract. They do have such a bond, a bond consolidated through the original contract; they are united by the interests that they share *as men* in their jurisdiction over women, interests that are protected by the laws and policies of the state. The story of the original contract, political theorists argue, is still important because it allows us to interpret our political institutions correctly as institutions in which the freedom of all is secured. To admit that the story tells of women's subjection as well as men's freedom requires a major transformation of the terms of political inquiry. So it is hardly surprising that students of politics have had enormous difficulty in seeing women's struggles against that subjection, for example, to reform marriage law, to ensure the public and private safety of women and girls, to achieve temperance, to enter higher education, to gain entry to a variety of occupations, to improve their working conditions or to improve the health and welfare of mothers and children, as falling within 'politics'; even the womanhood suffrage movement is neglected.

Until recently, political scientists frequently portrayed women as apolitical, and democratic theorists have asked few questions about empirical studies, such as *The Civic Culture*, that found that women were less likely to feel politically competent or to be active citizens than men. Most empirical studies have focused on conventional, electoral politics in which women have occupied a peripheral position, so that such findings are to be expected. Women, like men, are capable of making a rational assessment of the operation of a political system in which empirical findings show that the benefits of participation tend to go to the better off. In my criticism of *The Civic Culture*, chapter 7, I argue that the gap between the large number of citizens who achieve high scores on scales measuring political competence and the rather small number, drawn largely from the middle classes, who participate can be explained by the fact that working-class citizens reason that it is not worth being active. Similarly, women can perceive that participation helps men more than women, so that it is rational for them to abstain from political activity.

The civic culture is divided along sexual as well as class lines – although, as I discuss in some detail in chapter 7, this is not the way in which the data are presented in the study itself. Ironically, one of the major weaknesses of empirical democratic theory was the interpretation of the empirical findings on which its proponents laid so much stress, an aspect of this genre of theorizing oddly neglected by many of its critics. Because empirical theorists reduced political culture to an aggregation of individual characteristics, they could not explain the social patterns of participation revealed in their data. They merely accepted the social

distribution of political activity and inactivity as given or natural; it merely happened that the 'uncivic' citizens, those on the apathetic side of the nice balance between apathy and participation that constituted a civic culture, were disproportionately drawn from lower socio-economic status (SES) groups and women.

Another explanation I offer for the lower activity of working-class citizens, drawing on my argument in *Participation and Democratic Theory*, is that they are systematically deprived of a political education. They do not have the same opportunities as middle-class citizens to learn how to participate; most importantly, as *The Civic Culture* confirms, they are less likely to have opportunities to participate in the workplace. My hypothesis about the link between workplace participation and wider political activity has now received some empirical support (though less research has been undertaken on this question than one might suppose).⁶ If the absence of industrial democracy provides a reasonable explanation for the lower political activity of working men, does it also explain the sexual division of the civic culture? In one sense it does; as I note in chapter 9, 'Feminism and Democracy', women in paid employment are likely to be in the low-status, low-skilled jobs that are associated with low political participation. Even in professional occupations, women are concentrated at the lower ends of the occupational hierarchy. In another sense, the argument fails. As in *The Civic Culture*, a 'social fact' is being taken for granted instead of being treated as a problem that requires investigation; in this case, the fact that the public division of labour is sexually segregated.

Men and women do not usually work together; most women in paid employment are concentrated together in a few occupations (typically, they are also supervised by men, and men are likely to be their union leaders and representatives). The sexual segregation of the labour force has been remarkably persistent during this century. The question of *why* this is the case is rarely raised in discussions of workplace democracy, since silence is invariably maintained about this aspect of working life. Students of workplace democracy have little to say about the exclusion of women from certain occupations and the continued separation, even in new 'high tech' industries, of men's from women's work. Women have been in paid employment since the early development of capitalist factories, but it does not follow that they have been incorporated into the workforce in the same way as men. Arguments about and explanations of work and citizenship that centre on male workers – or 'the worker' – cannot, as is usually supposed, merely be extended to women. Women and men stand in a different relation to the work which is undertaken in workplaces. Women do not have the same status as workers as men.

Few questions are asked about the category of 'work' in discussions of

industrial democracy. Once again, the tacit assumption is that theoretical argument about the public world (the workplace) can proceed independently of any consideration of the connection between the public and the private. John Stuart Mill (that rare being, a feminist theorist admitted to the canon of political theory, albeit his feminist writings are rarely referred to in standard discussions) provides an instructive example here. In 'Feminism and Democracy', I discuss how Mill's failure to bring together his support for democratic cooperation in the public workplace with his attack on the private tyranny of husbands undercuts his arguments for women's citizenship. The interdependence of public and private – or work and housework, the worker and his wife, men and women – is clear enough when critical attention is given to the 'wage'. The wage is not merely payment for a (sexually neutral) worker's labours, but a 'family wage', i.e. payment that enables a man to support an economically dependent (subordinate) wife and minor children. The wage received for public 'work' presupposes a private world of women and unpaid labour. Recent empirical investigations by feminist scholars also show that the 'worker' is a man, and the workplace is male territory. Women workers are not seen as 'workers' in the same sense as men, by either men or women.⁷ 'To go to work' is part of what it means to be a man. To be a woman in a workplace has a rather different meaning, as indicated by the widespread practice of what is now called sexual harassment.

Democratic theorists have concentrated on the link between men's participation in the workplace and their wider political participation. They have had nothing to say about men's position as husbands or breadwinners and how that is connected to their citizenship – or to women's citizenship. The terms of the fraternal pact and the patriarchal criteria for participation in the public world have been embodied in the structure of the workplace and in the structure of the state. Women are now citizens, but the continuing uncertainties and paradoxes of our citizenship have been illustrated in the large body of empirical and theoretical research by feminist scholars into the welfare state. Political theorists still manage to write on the 'normative justification' of democratic citizenship in the welfare state without taking any account of women, the 'feminization of poverty' or feminist arguments.⁸ They are still silent about women's indirect constitution as citizens of the welfare state as men's (workers') dependents, and about the fact that women have not been called upon to make the same 'contribution' to the welfare state as men.

Men's 'contribution' derives from their construction as free and equal 'individuals'. As 'individuals' all men are owners, in that they all own the property in their persons and capacities over which they alone have right

of jurisdiction; they are self-governing. Work and citizenship come together around the criterion of ownership. A 'worker' is a man who contracts out a specific piece of the property in his person, namely his labour power, and, as owners, all men are able to be incorporated on the same footing as citizens of the welfare state. One of the main arguments advanced by democratic theorists in defence of the welfare state is that all 'individuals' (workers) make a 'contribution' that allows them to be 'insured' against times when they are unable to participate in the labour market. Thus the welfare state provides the resources that (in principle) enable all men to enjoy their citizenship, even if their material circumstances are impoverished through, say, unemployment. All men are thus entitled by right of citizenship to the resources that enable the equal worth or equal enjoyment of their citizenship to be maintained.

The attack from the right on public provision of resources over the past decade has brought renewed interest in political theory in arguments justifying citizenship in the welfare state. But neither these discussions nor radical democratic theory pays attention to the question of women and self-ownership or to women's 'contribution' to the welfare state. The 'contribution' exacted from women by the state has reflected the political significance given to sexual difference. In the case of the welfare state, as I argue in 'The Patriarchal Welfare State', the irony is that women have been required to contribute welfare. The welfare in question is the private, unpaid 'welfare' provided by women in their homes for the young, the aged, the sick and infirm, and for their husbands. More generally, the demands made upon women by the state have always taken a form suited to those held to have their own private tasks and whose status as citizens is thus ambiguous and contradictory. Women's 'contribution' is not seen as part of, or as relevant to, their citizenship, but as a necessary part of the private tasks proper to their sex. Political theorists have not pondered about this state of affairs, even though the complex question of the demands placed upon women and the paradoxes surrounding their public standing is of considerable importance for a problem central to political theory: the issue of what, if any, political obligation is owed to the state by citizens.

There is a large literature on political obligation in the democratic state, but the question of women's obligation in a political order structured by patriarchal power is conspicuous by its absence. This is not the only omission in the discussions. Exactly why there is any general problem at all about political obligation is rarely made explicit, even though the standard discussions are concerned with justifying the power of the state and the obedience of citizens. If there were no problem about what the state may rightfully demand of citizens, the effort devoted to formulating justifications would be pointless. The problem, as I argue in chapter 3,

'Justifying Political Obligation', arises because of the premise that men are born free and equal, or self-governing. If all men have this standing, then it follows that there are no natural relations of superiority and subordination among them and, therefore, any government of one (or one group) by another must be conventional, created by men themselves. The postulate of natural freedom and equality entails that the *only* acceptable justification for government is that men agree to being ruled; they signify their agreement, for example, by making a contract of government or consenting in various ways to be governed. Men must consent to be governed by other men – but women are subordinate to men by nature. Natural sexual dominion is excluded from the conventional relations studied in political theory. Patriarchal government requires no justification.

The ultimate test of men's political obligation, political theorists agree, is that they will, if necessary, be prepared to give up their lives in defence of the state. It has been widely believed that women cannot, and would not be willing to, bear arms, an argument that was central to the fierce opposition to women's enfranchisement and that still finds echoes in the contemporary opposition to women in combat positions in the military. Women do not share men's ultimate obligation. The question of what the corresponding duty might be for women has not been asked by contemporary political theorists, and I have not asked it in these essays, but the answer is not hard to find. Women's duty must be suited to their sex. Men's duty to die for the state is matched by women's duty to give birth for the state.⁹

I argue in Chapter 2, 'The Fraternal Social Contract', that birth symbolizes the reasons why women must be excluded from political life, but women's natural capacity has also been one of the major mechanisms of women's inclusion into the political order. Modern states take an enormous interest in, and are greatly concerned about, the quantity and quality of their population and, as mothers and potential mothers, women are the objects of this interest. 'Motherhood, like 'masculinity' and 'femininity', has a patriarchal political meaning in modern political life, embodying the paradoxes and ironies of women's relation to the political world. The peculiarity of the duty to give birth for the state, like women's 'contribution' of welfare, is that it is a political duty that can be performed whether or not women are citizens. Since at least the 1790s, women have demanded that the performance of their duty should be part of citizenship (although the demand has clearly never been made at sufficient volume to catch the ears of political theorists). The performance of women's duty is vital for the health of the state, yet the duty lies outside citizenship – indeed, motherhood is seen as the antithesis of the duties of men and citizens.

These reflections suppose that men are politically obliged, but the embarrassing question always remains of exactly how, when and in what form the necessary agreement to be governed has been given. No satisfactory answer has been provided to this question and, I argue in 'Justifying Political Obligation', an answer cannot be found without some major theoretical and political changes. But if there is an intractable problem about men's political obligation, the problem of women's obligation is even more complex and difficult. On what grounds can women's political obligation be justified? Women have not been incorporated as citizens in the same way as men; women's 'contribution' is deemed to be private, nothing to do with citizenship; and the benefits of the welfare state have usually been distributed to women not in their own right as citizens, but as dependents of men, as private beings. Once the question of how women agree or consent to be governed is asked, the problem becomes even more difficult. 'Consent' as discussed in democratic theory is about the manner in which (it is held) agreement is given through various (public) indicators of explicit or tacitly given consent, such as voting, the receipt of benefits from the state and participation in fair institutions. Democratic theorists pay no attention to the fact that consent is also held to constitute the relation between the sexes.

For women, consent is something which is at least as, if not much more, important in private as in public life. The problem which I address in 'Women and Consent' is whether, given the patriarchal construction of what it means to be men and women and the present structure of relations between the sexes, 'consent' can have any genuine meaning in private or public life. Unless refusal of consent is possible, talk of consent is pointless. I draw attention in the chapter to the conflicting set of views that are held (in theory and practice) about women and consent. Women's consent in sexual matters is, at one and the same time, both vital and irrelevant, a contradiction that arises from women's exclusion from the category of 'individual' or owner of property in the person. Women's lack of ownership was illustrated very clearly in the common law doctrine of coverture. In the mid-nineteenth century, when a woman married she ceased to have an independent existence; she disappeared from juridical and civil view under the 'cover' of, or into the ownership of, her husband, who gained 'conjugal rights', i.e. right of sexual access to her body whether or not she was willing. Married women have now reappeared as civil beings, but the law of coverture lingers on in marriage. Recent legal reforms in, for example, many states in Australia and the USA have made marital rape a criminal offence, but in other legal jurisdictions, notably in Britain, to consent to become a wife is to give up the right to refuse consent to conjugal relations.

In sexual relations more generally, a woman's refusal of consent – her

utterance of the word 'no' or other clear indications of refusal – is systematically invalidated; her refusal is reinterpreted as 'yes'. The view is still widespread that a woman's refusal to consent to sexual intercourse is never to be taken at face value; we all know, do we not, that when women say 'no' what they really mean is 'yes'? If doubts arise on this score they have to be firmly held to survive the message conveyed, for example, by the multi-million dollar sex industry or verdicts in the courts in rape cases. Evidence available since I wrote 'Women and Consent' shows that enforced submission continues to be interpreted as consent.¹⁰ Court cases also reveal a good deal about the modern patriarchal construction of masculinity. In a recent case in Britain, a man who sexually assaulted his mentally retarded step-daughter, aged 12, was merely put on probation because, according to the judge, his wife's pregnancy led 'to a lack of sexual appetite in the lady, and considerable problems for a healthy young husband'.¹¹ The judge could not have made it plainer that men's government over women, and what it means to be a 'man', includes right of sexual access to women's bodies, a right that precludes refusal by women. How, then, can the practice of consent exist in any genuine sense?

The problem about consent is not confined to relations in the private sphere. I have already mentioned sexual harassment, and men's right of sexual access is upheld in the capitalist market through prostitution and other sectors of the sex industry.¹² The question of women's consent is also of direct importance for democratic theorists' arguments about citizenship. Discussion, speech and deliberation are seen as central to democracy; for example, Michael Walzer states that 'what counts is argument among the citizens. Democracy puts a premium on speech . . . Citizens come into the forum with nothing but their arguments.'¹³ And, according to Benjamin Barber, 'give each citizen some control over what the community will mean by the crucial terms it uses to define all the citizens' selves and lives in public and private, and other forms of equality will follow.'¹⁴ But neither theorist has anything to say about the reinterpretation by men of women's refusal of consent. How are women to join in the debate between citizens if their words are meaningless? How can there be participatory democracy when consent is the prerogative of one sex?

This volume may help to explain why, in political theory, feminist argument is to a large extent developing on a parallel track to mainstream discussions. Political theory (and political science) is probably more resistant to feminist argument than some other disciplines because of the character of the orthodox understanding of the subject matter of 'political' inquiry. The power of men over women is excluded from scrutiny and deemed irrelevant to political life and democracy by the

patriarchal construction of the categories with which political theorists work. Not surprisingly, feminists and political theorists frequently talk past each other. Feminism does not, as is often supposed, merely add something to existing theories and modes of argument. Rather, feminism challenges the patriarchal construction of modern political theory, and to engage with feminist criticisms political theorists have to be willing to think again about fundamental premises of their arguments. The feminist challenge is particularly pressing in the case of radical democratic theory which argues for the active participation of all citizens, but has barely begun to acknowledge the problem of women's standing in a political order in which citizenship has been made in the male image.

Democratic theorists have not yet confronted the implications of the patriarchal construction of citizenship and so they provide little or no help in elucidating or solving the complex dilemma facing women. The two horns of Wollstonecraft's dilemma (as I label it in 'The Patriarchal Welfare State') are, first, that within the contemporary patriarchal order, and within the confines of the ostensibly universal categories of democratic theory, it is taken for granted that for women to be active, full citizens they must become (like) men. Second, although women have demanded for two centuries that their distinctive qualities and tasks should become part of citizenship – that is, that they should be citizens as women – their demand cannot be met when it is precisely these marks of womanhood that place women in opposition to, or, at best, in a paradoxical and contradictory relation to, citizenship. Women are expected to don the lion's skin, mane and all, or to take their place among, and indistinguishable from, the new men postulated in radical democratic theory. There is no set of clothes available for a citizen who is a woman, no vision available within political theory of the new democratic woman. Women have always been incorporated into the civil order as 'women', as subordinates or lesser men, and democratic theorists have not yet formulated any alternative. The dilemma remains. All that is clear is that if women are to be citizens as *women*, as autonomous, equal, yet sexually different beings from men, democratic theory and practice has to undergo a radical transformation.

The possibility of such a change is more open at the end of the twentieth century than ever before. Patriarchal institutions are less solid than they once were, familiar political arguments look increasingly inadequate in the face of current economic and political changes and feminists have turned the patriarchal separation of private and public into a political problem. But there are anti-democratic trends too, and there can be no confidence or certainty that the outcome will be one that feminists desire. Feminists face the added difficulty that the transformation they seek reaches into the meaning of 'masculinity' and 'femininity', into