
Beyond Accommodation: The legacy of feminist critique and the search for justice

Toni A.M. Johnson*

In this short reflection on Drucilla Cornell's work, I focus on the journey that her search for both a symbolic and substantive form of justice has taken and the influence that her particular conception of justice has had on my own work. Beginning with her analysis in *Beyond Accommodation* (1991) and its theoretical debt to postmodernism, I indicate the legacy that this postmodern reliance has in relation to her later works, *The Imaginary Domain* (1995) and *At the Heart of Freedom* (1998).¹ These later works, flagged as a theoretical departure from the postmodern critique that informed *Beyond Accommodation*, chart Cornell's move towards liberalism. This brief analysis of her journey seeks to highlight three things. Firstly, that the insights of deconstruction are still prevalent in these later, more liberally-informed analyses. Secondly, Cornell's shift towards liberalism nevertheless pursues similar questions, concerns and conversations to those posed in her earlier writing. Thirdly, in taking those conversations in new directions, Cornell has created a legacy of analysis that traverses methodological and theoretical boundaries. I claim it is Cornell's attempts to rethink the possibilities of justice that inspire her to engage with multiple theoretical and methodological traditions in order to rethink legal futures; it is these legal futures which bear purchase for my own engagement with her work, chiefly her concept of the 'imaginary domain'.

Cornell as a 'thinker of the future'²

Cornell's explicit reliance on, and productive relationship with, Derrida's notion of *différance* and Levinas's ethical responsibility to the Other in *Beyond Accommodation* has contributed to her unique form of postmodern feminist engagement. In *Beyond Accommodation* these theoretical foundations were put to use via critiques of certain strands of feminist analyses of gender equality, namely the work of Catharine MacKinnon, Robin West and to a more muted degree Julia Kristeva and Luce Irigaray.³ Cornell's concern lay with the essentialist nature of these critiques and the effect that such essentialism had in its exclusivity and oppression of other actors. Cornell's analysis also extended to a broader critique of law and justice, thinking beyond the possibilities of the current system and delving into the place of myth and metaphor in the reinscription, rewriting and re-evaluation of the feminine.⁴ The political project that resonated and continues to resonate throughout Cornell's works

* Lecturer in Law, University of Leicester, UK. toni.johnson@leicester.ac.uk.

¹ Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (Routledge, London 1991); *The Imaginary Domain: Abortion Pornography and Sexual Harassment* (Routledge, London 1995); *At The Heart of Freedom* (Princeton University Press, Princeton 1998).

² This sub-heading draws on the recent collection of essays by Renee Heberle and Benjamin Pryor entitled *Imagining Law: On Drucilla Cornell* (State University of New York Press, Albany 2008) which contains a contribution by Cornell called 'Thinking the Future'.

³ See Chapter One of *Beyond Accommodation* (1991).

⁴ Cornell (1991) 86.

is a search for an understanding of sexual freedom and a corresponding conceptualisation of justice.⁵

Throughout her works Cornell posits justice as an ideal, as aspiration, as inherently elusive and always ‘to come’. The nature of Cornell’s exploration ties these ‘possibilities’ of justice to questions of judging and judgment, to equality and the law, to the impact of Lacanian psychoanalytic theory, to the place of women in the symbolic as compared to the imaginary and to the nature and composition of language. The critical response and critical reflections on language found in deconstruction have informed her political position and profoundly influenced her revisionary legal projects.⁶

For Cornell language is far from neutral. It is influenced by and invested in multiple cultural and contextual referents.⁷ Furthermore, language perpetuates new cycles of meaning, whereby meaning is neither static nor containable. As Susan Williams has written, ‘language is a social artifact, created, in part by the language we use to describe it...the interpretation that is an inevitable aspect of knowledge formation is deeply permeated by the cultural values and concepts encoded in the language through which that knowledge is expressed’.⁸ When this system of language production is viewed in the context of the legal system it becomes apparent that the linguistic system upon which law rests, a system that brings us influential definitions of ‘justice’, ‘liberty’, and ‘equality’, is deeply invested and entrenched in the linguistic precedents, histories and contexts via which meaning is given. Thus, the possibility of the legal system providing a way of contesting ‘encoded’ language would seem, if not impossible, certainly challenging.⁹

In *Beyond Accommodation*, Cornell takes up this challenge by addressing this linguistic bind. Drawing on Derrida, Lacan and Levinas, she explores the nature and language of law. She considers the way the legal system has both gained and continues to gain from and function via that empowered status through the oppression and exclusion of alterity/the Other. Cornell specifically addresses the position of women’s engagement with law and language, considering how it constructs women, and the social violence that is caused by the linguistic exclusivity of those constructions. Cornell’s turn to deconstruction is an exploration of the way in which women are positioned within language and consequently within law. It is her intent to deconstruct the linguistic foundations of that order and acknowledge the necessity of exposing that order if any notion of justice or ethical response to the Other is to bear legitimacy.

Cornell’s call to deconstruct gender, as part of a response to engaging with justice in *Beyond Accommodation*, *The Imaginary Domain* and *At The Heart of Freedom*, continues to provide key insights for a radical and transformatory politics. Cornell

⁵ Cornell (1991) 141-2; Cornell (1998) 60.

⁶ Cornell also notes her role as union activist as informing her analysis. For more see Cornell, *Moral Images of Freedom : A Future for Critical Theory* (Rowman & Littlefield Publishers, Plymouth 2008).

⁷ Cornell (1991) 109.

⁸ Susan H. Williams, ‘Review Essay: Utopianism, Epistemology, and Feminist Theory’ (1992-93) 5 *Yale Journal of Law and Feminism* 289 at 291.

⁹ Cornell (1991) 109.

notes 'it is time to deconstruct the gendered opposition that pervades western reason, and so to reinvent the model of the *legal subject*'. Cornell's project in the *Imaginary Domain* and *At the Heart of Freedom* is an engaging attempt in how to manifest this new *legal subject*.¹⁰ The 'imaginary domain' is not just about addressing the position of women within the symbolic and within the imaginary. Cornell's project is much wider in terms of the way in which it seeks to touch the very foundations of gender for both men and women and their status as bearing legal personhood.

Cornell's vision of an alternate legal system, as developed through the imaginary domain, feminism and deconstruction, provides a new way of thinking about personhood. She writes:

Our emancipation from state-imposed sexual choices and from their reinforcement by the basic institutions of society demands much greater social equality than we have now...When all persons have this right to the imaginary domain, states can no longer force women to play the role of primary caretaker in families, either directly by law or indirectly by the manipulation of social institutions.¹¹

Cornell's development of the 'imaginary domain', deployed as a psychological space in which to reimagine personal understandings of gender and sexuality, and bearing the protection of law, was a revolutionary reimagining of legal personhood. Within the conceptual framework of the 'imaginary domain', law is the social mechanism that protects the version of 'private' life envisaged by the individual. Law does not determine the form of the imaginary domain, but protects the individual's right to it and the conditions in which that private life can be lived out. Furthermore, the conceptual framework of the imaginary domain has at its heart a concept of 'freedom' rather than formal equality. For Cornell, the freedom to orient ourselves as individuals, to create our own visions and versions of 'the good life', is at the heart of the imaginary domain. Subsequently, the freedom to become a person is dependent on the minimum conditions of individuation; namely, the conditions necessary in order to 'transform ourselves into the individuated beings we think of as persons'.¹² Cornell's use of 'freedom' rather than 'equality' is part of a critique of formal equality provisions that she claims are based on an aspiration to particular positions of privilege. Cornell argues that these positions of privilege are normative and delimited constructs of identity that stifle the imaginary possibility of those who occupy them and those who wish to ascend to them.¹³

The imaginary domain gives vision to new ways of thinking about intimate life and intimate futures. For Cornell, the imaginary domain:

allows the sexual imago in and through which we come to represent ourselves
... it is the psychic space in which we are allowed to freely imagine ourselves

¹⁰ M.J. Clark, 'Deconstruction, Feminism, and Law: Cornell and MacKinnon on Female Subjectivity and Resistance' (2005) 12 *Duke Journal of Gender, Law and Policy* 107 at 122.

¹¹ Cornell (1998) xi.

¹² Karin Van Marle, 'In Support of a Revival of Utopian Thinking, the Imaginary Domain and Ethical Interpretation' (2002) 3 *Journal of South African Law* 501 at 506.

¹³ Cornell (1998) 6.

as sexuate beings, representing ourselves as persons who define our own moral perspectives in matters of sex, love and intergenerational friendship ... It allows for imagined modes of relationships that help us give body to the ways we wish to set up our intimate relationships.¹⁴

The emphasis on the ability of individuals to shape their own lives outside of and unhindered by legislative constructs of appropriate familial formations encouraged me to take advantage of the theoretical premise of the imaginary domain in order to reconceptualise the position of lesbian and gay refugees and the contexts from which they had fled. Relying on the *freedom* associated with the imaginary domain provided a theoretical site to rethink and reframe identity within the legal structure of the *Refugee Convention*. In lieu of taking a more radical position that would call for a practice of no border regulation and the rendering of law as moot, I instead relied on a new language of law. This reliance upon a new theory of legalism on which the right to legal personhood turned, a legal personhood that called for freedom rather than equality was intrinsically shaped by Cornell's 'imaginary domain'.

Cornell's version of intimate relationships has been significant for LGBT refugees, particularly in its engagement with and response to sexuality's boundedness within nationalist politics and identity politics. Her version of 'freedom' is able to assert itself within these controlling structures, toying with the language of rights and deploying alternative definitions deeply influenced by Derridean understandings of the 'slippage' and 'seepage' inherent in language. Cornell's 'right' to 'freedom' is dependent upon a legal system that recognises the absolute agency and legal personhood of the individual, irrespective of their gender or sexuality. I argue that recognition of a specifically Cornellian version of legal personhood leads to an inviolable responsibility on the part of the UK asylum court. Social and state behaviours that preclude, discriminate against, or persecute non-normative intimate relationships/family forms, directly counter the ethos of the imaginary domain and would therefore establish eligibility for refugee status. Additionally, the imaginary domain I claim, troubles the *Refugee Convention's* understanding of identity as fixed. The 'imaginary domain' would allow for a more open conceptualisation of the grounds of the *Convention*, providing an understanding of identity that does not function on the basis of immutability or the compartmentalization of identity traits, but on the indivisibility of gender, race, religion, class and how these facets are informed by context, by politics and by self-conceptualisation.

Thus, *The Imaginary Domain* and *At the Heart of Freedom* are, in part, an analysis of the way in which law and politics gives legal weight and legal validity to particular, essentialised identities and the psychic impact this has on understandings of the legitimacy, worth and self-worth of individuals and their relationships. Law's traditional denial of legitimacy to particular groups, namely women, people of colour, lesbians and gay men, or those in non-traditional relationships, can make individuals and others view their status and their relationships as inadequate or unworthy of respect. These processes of inclusion and exclusion on a macro scale have an intimate effect on the microcosm of intimate familial/individual practices. Thus, the place of deconstruction and new formulations of law and legal personhood, such as

¹⁴ Cornell (1998) 43.

that found in the imaginary domain, become incredibly important in linking practices of acknowledgement, both legal and social, with the practice of developing an anti-essentialist politics that does not seek to inscribe particular traits as bearing superior status or a status which would eclipse other facets of identity.

Cornell's legal reformist project of the imaginary domain, which has at its heart a desire to give individuals the freedom to 'create ourselves as sexed beings, as feeling and reasoning persons', provides a useful tool to both engage with law whilst at the same time trying to deconstruct the language that gives law its power.¹⁵ The imaginary domain gives individuals the space to conceptualise their optimum vision of private life and legally protects the practice of living out that life.

Cornell's feminism aligned with deconstruction's breadth of openness to the Other, to language, and the ethical, underpins Cornell's analysis and ensures that her work still sits at the cutting edge of a radical social transformatory philosophy. Cornell's analysis refrains from any definitive conceptualisations or limitations placed on identity, with such impositions and assumptions viewed as a violent assertion. These tropes inform *Beyond Accommodation*, *The Imaginary Domain* and *At the Heart of Freedom* and underpin Cornell's conception of law, which is informed by a feminist, ethical, postmodern analysis. Cornell is a thinker of the future. Her traversal of different theoretical traditions is an indication of the way in which she strives to develop new paths towards the interpretation of language, create new modes of understanding processes of inclusion and exclusion, and contest methods of categorisation. In searching for justice, Cornell looks to the possibilities of the future, the unbridled nature of that future, refusing to settle for the present.¹⁶

Bibliography

M.J. Clark, 'Deconstruction, Feminism, and Law: Cornell and MacKinnon on Female Subjectivity and Resistance' (2005) 12 *Duke Journal of Gender, Law and Policy* 107.

Drucilla Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (Routledge, London 1991).

Drucilla Cornell, *The Imaginary Domain: Abortion Pornography and Sexual Harassment* (Routledge, London 1995).

Drucilla Cornell, *At The Heart of Freedom* (Princeton University Press, Princeton 1998).

Drucilla Cornell, *Moral Images of Freedom : A Future for Critical Theory* (Rowman & Littlefield Publishers, Plymouth 2008).

Renee Heberle and Benjamin Pryor, *Imagining Law: On Drucilla Cornell* (State University of New York Press, Albany 2008).

¹⁵ Cornell (1998) ix.

¹⁶ Adam Thurschwell, 'On The Threshold of Ethics' (1993-94) 15 *Cardozo Law Review* 1607 at 1611.

Adam Thurschwell, 'On The Threshold of Ethics' (1993-94) 15 *Cardozo Law Review* 1607.

Karin Van Marle, 'In Support of a Revival of Utopian Thinking, the Imaginary Domain and Ethical Interpretation' (2002) 3 *Journal of South African Law* 501.

Susan H. Williams, 'Review Essay: Utopianism, Epistemology, and Feminist Theory' (1992-93) 5 *Yale Journal of Law and Feminism* 289.