

BOOK REVIEWS

Moral Images of Freedom: A Future for Critical Theory. By Drucilla Cornell.
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A PHILOSOPHER OF HOPE

When I think about Drucilla Cornell's work, I think about a philosopher who, because of the breadth and depth of her interests, has few equals in the academy — and certainly none in the South African legal academy. When I think about the content of her work — and *Moral Images of Freedom* is no exception — I am regularly reminded of the oft-cited quote from Hillel:

'If I am not for myself, then who will be for me?
If I am not for others, who am I?
If not now when?'

That dense maxim captures the complexity of Professor Cornell's thinking — and partially explains why so many readers are attracted to her work and yet have difficulty locating her place in contemporary thought.

If I am not for myself, then who will be for me?

Anyone with a passing familiarity with Professor Cornell's notions of 'sexuate being' and 'the imaginary domain' are aware of her recognition of individual difference and the respect such difference must command in our politics. But there is also an obligation that attaches to the first line of Hillel's quote: It requires an ethic of conviction; it imposes an obligation. In standing up for our individual selves, we are standing up for and recognizing others — or in modern parlance 'the other'. Anyone familiar with Professor Cornell's work on Kant and dignity knows that her view of the categorical imperative — and our own dignity jurisprudence — requires more than merely refusing to treat others as means. It demands that when we legislate for ourselves we acknowledge that we are also legislating for others. Individual conviction — and freedom — is never divorced from a broader ethical responsibility and the freedom of others.

If I am not for others, then who am I?

At the most basic level, both Hillel and Cornell recognize the 'thrownness' of our being: that is, we are born into a world in which 'meaning makes us', as much, if not more, than we, as individuals, make meaning. But again, the notion captured in this second line is not about some abstract notion of how the individual self is constructed. Once again, Hillel and Cornell are

profoundly occupied with our duties and responsibilities — ethical and political — with respect to others. Professor Cornell describes herself, in *Moral Images of Freedom*, as a ‘socialist’. In an age where capitalism has few real opponents, that description alone might be enough to set her apart. But those familiar with her career know well that Professor Cornell has been — and must remain — a communist: and to be a communist is not merely to be a radical. It presupposes a commitment — as does Hillel’s second line — to some form of strong political solidarity. For all her talk of ‘freedom’, Professor Cornell cannot be confused with some garden variety classical liberal — a Berlin or a Hayek. Her politics — and the unyielding rigour and vigour with which she has defended them — have indeed cost her relationships and membership within what remains of the US Communist Party. What a pleasure it must be for Professor Cornell to arrive in a country where the Communist Party still exists and plays a role in the shaping of this country’s politics.

If not now, when?

Once again anyone who has read *Moral Images of Freedom* — or Professor Cornell’s other work — knows that she is not a philosopher committed to defending desiccated abstract principles. The injunction — ‘If not now, when’ — reminds us of the urgency of moral and political action. Moreover, this urgency is not to be found primarily in political campaigns that occur once every four or five years. For Hillel, and for Cornell, that urgency attaches to every action and every interaction with another. It turns the everydayness of being into a challenge to be better human beings and to do so by recognizing the humanity of every person we encounter. Professor Cornell’s reading of Derrida’s notion of ‘hospitality’ in *Moral Images of Freedom* has the truly startling power to transform the work of one of modernity’s most important thinkers — work that is often misunderstood as politically disengaged and pessimistic — into something that reinforces the urgency associated with the imperative ‘If not now, when?’

ON CRITICAL LEGAL THEORY AND CLARITY

Having connected three strands of Professor Cornell’s thought in this manner — which does not pretend to offer deep insight into her entire, nuanced body of work — I think it important to note that her work speaks quite clearly, and accessibly, for itself. I note its accessibility because there are those in the academy who would dismiss critical theory because so much writing in this vernacular appears opaque. Professor Cornell’s work suffers no such disability. Indeed, one characteristic of her work that raises it above the work of other critical theorists is that she possesses the remarkable capacity to make transparent the meaning of authors such as Derrida and Heidegger — authors whose writing is, at some level, *intentionally* designed to remain inaccessible for those of us who take the words we read quite

literally. And for that effort alone, we owe Professor Cornell a great, and ultimately, undischageable debt.

ON THE JEWISH QUESTION

My connection of Hillel to Cornell — great thinkers both, though separated by over two millennia — prompts a question — one that might not occur to a member of a more general South African audience, but one that does immediately present itself to an American-South African reader: what kind of Jew — of Irish extraction — is Drucilla Cornell?

This question — what kind of Jew is Drucilla Cornell? — is neither as odd or as mischievous as it might first sound. Though it is, given the background of the author of this review, somewhat idiosyncratic.

It is a question that immediately formed in my mind after reading the subtitle — *A Future for Critical Theory* — and the first several pages of the introduction. Not only does Cornell introduce her work by immediately referencing critical theorists such as Walter Benjamin and Jacques Derrida, but critical theory itself is, invariably, associated with the Frankfurt School — with Adorno and Horkheimer, Arendt and Marcuse — a school that traces its lineage back to Marx. But the book's strongest sections — after its move, quite convincingly, to place Kant at the beginning of critical theory — are her analyses of Derrida and Cassirer.

But what have these philosophers to do with my question? Well, aside from all being Jewish — with the notable exception of Kant — they are Jews of a particular stripe. They are, as Marx's prescient essay 'On the Jewish Question' makes clear, outsiders. Moreover, they are outsiders with a rather dark, pessimistic view of politics and history. Benjamin's suicide on the Franco-Spanish border in 1940 presages the Holocaust; Adorno and Horkheimer's post-war, post-Holocaust *Dialectic of the Enlightenment* is the Ur-text for all those who believe that every new form of emancipation brings with it new and ever more terrible forms of domination. And who, reflecting back on the horrors of the twentieth century — from the mass killings in Stalin's Russia, Hitler's Germany, and Mao's China — to the more recent genocide in Bosnia, Rwanda and Dafur, and the imperialist and the internecine destruction of Iraq, can really gainsay their observations. Our own Constitution (Constitution of the Republic of South Africa, 1996) — in s 12's right to Freedom and Security of the Person — recognizes quite expressly the damage that the state (and its surrogates) can wreak in both the public and the private domain.

But the rather pessimistic view of politics — and lets add, as well, of normal constitutional democracies — is certainly not the only modern secular Jewish tradition. There is another set of voices — admittedly of more recent vintage — that express optimism about the possibilities of life and of politics and of meaningful change in a constitutional democracy. Anyone with an even passing familiarity with American constitutional law of the last generation and a half knows the degree to which Jews have gravitated

towards — and influenced — this domain in extraordinary numbers. Why have the Tribes, the Michelmans, the Sunsteins, the Dworkins, the Posners, the Fishes, the Klares, the Ellmanns, the Abels, the Greenbergs, the Henkins, the Dorfs, the Feldmans — many of whom have been deeply engaged in South Africa's own struggle and transition — come to treat constitutional law as a form of modern secular Talmud? Moreover, why do they remain so resolutely optimistic about the possibility of transformative constitutions? As a Jew drawn to law and philosophy — and ultimately to constitutional law in particular — I viewed my commitment to law as reflective of a commitment to the possibility of social change. Whether I have worked as a law guardian for children, as a clerk on the UN Human Rights Committee, as an advisor to the Landless People's Movement, or as an editor of a treatise on South African constitutional law, I remain convinced of, and optimistic about, the possibility of positive change. I could not do or be what I am, were that not the case. Without interrogating my teachers and elders of American extraction, I cannot tell you what motivated them. But I can tell you this: the difference between the pessimism of the critical theorists of Europe and the optimism of the constitutional lawyers of the United States has everything to do with our emancipation in the United States after World War II. I am a member of the very *first* generation of Jews in the West to know no real *political* limits on what I can be or do. (Well, perhaps the Presidency remains just beyond my grasp — but if an African-American now stands a reasonable shot at America's highest office, the day might come when a Jew might make a similar run.)

So when I ask — what kind of Jew is Drucilla Cornell? — I am asking the following two-fold question: is she a hopeful insider who believes in the possibility of real emancipation through the law, and constitutional law in particular? Or does she remain an outsider, consigned to the role of gadfly, resigned to the fate of modernity to produce newer and ever more harmful forms of domination wrapped up in the false consciousness of constitutional democratic thought worked out against the background of late capitalism?

Professor Cornell's body of work, as well as her politics, is far too rich and complex to be reduced to the simplistic Cartesian either/or that I have articulated here. But I think there are hints about her direction — both in *Moral Images of Freedom* and in her recent choice to become a legal academic in South Africa.

ON CORNELL'S CONCEPTION OF CRITICAL THEORY

Simply by virtue of being a critical theorist, and remaining within that tradition, Professor Cornell marks herself as an outsider. Indeed, to be Derridean in any sense of the term requires that one be subversive — with respect to texts, in politics, about law.

And yet, as I have been at some pains to point out, she is not a garden-variety critical theorist. Her notions of the 'imaginary domain', her commitment to the Kantian conception of the self as priceless, of infinite

worth, her commitment to an idealized form of Marxism, her belief that ubuntu can be lifted from its conservative patriarchal context, makes Professor Cornell a quintessential philosopher of hope. And it is, ironically, the philosophy of hope that places her on the outside of certain current streams in post-modern thought.

However, to truly understand this work, to truly appreciate it, one must come to grips with how her reading of Kant, Heidegger, Cassirer and Derrida informs her understanding of black nationalism, radical feminism and an unstinting commitment to a certain brand of Marxism. And one must understand — the excluded middle of her book — the absence of her engagement with critical thinkers such as Arendt and Marcuse (also Frankfurt School Jews) who, like Professor Cornell, never gave up on the possibilities of modernity.

Kant, Heidegger, Derrida and Cassirer: reason, hospitality and difference

For some readers of this work, the notion that Kant is the avatar of the New Critical Theory might come as something of a shock. Kant, a moral conservative who took his tea and his afternoon cathartic at exactly the same time every day, does not exactly spring to mind as the potential source of a revolution in contemporary moral, political and legal philosophy. But Cornell, in the very first pages of her work, makes clear why Kant plays such a central role (at 1–2):

‘Within the ideal of socialism we are reminded that it is up to us to make our own history, no longer needing to project outward our own *end-making* capability as something that originated beyond us. But, of course the horror of World War II — the terrifying erasure of so many lives during the Holocaust — shook the optimism that socialism had sparked and made it seem like it was no longer a possibility. Much to this point, some of the great thinkers of the Frankfurt School — such as Theodor Adorno, Max Horkheimer, and Herbert Marcuse — came to despair against the possibility of any moral image of the world that could claim even a small degree of freedom from within the virtual bombardment of the phantasmagoria of advanced capitalism.’

Now there is more than enough to quibble with in these opening sentences. Are six million Jewish deaths, and 12 million total deaths in Nazi concentration camps, best described as ‘erasures’ — marks simply removed from a page? Was the phantasmagoria of advanced capitalism what led Hitler — a fascist — and Stalin — a communist — to conduct a sustained military campaign for which they alone (excluding the Allies) are accountable for some 50 million deaths? These odd turns of phrase might be entirely off-putting if they were not bracketed by Cornell’s real concern: the despair that socialists experience in attempting to provide a worldview sufficiently compelling to displace ‘the phantasmagoria of advanced capitalism’. Moreover, Cornell makes quite clear that her targets are not classical liberals in love with an invisible, miracle-making hand: they are her fellow travellers: ‘In my earlier work I renamed deconstruction the philosophy of the limit in order to read Jacques Derrida against a certain reception to postmodernism

in the United States which put deconstruction paradoxically on the side of disillusionment of the possibility of practical philosophy and thus in alliance with the meta-narrative of advanced capitalism as the true end of history' (at 3; see also Drucilla Cornell *The Philosophy of the Limit* (1992)). Well then, if one wants to draw on a body of work quite optimistic about the possibilities of practical philosophy then one must, as Cornell does, begin with Kant. However, her use of Kant, as she is quick to point out, is not in the service of a reconceptualization of his classically liberal politics. She remains committed both to deconstruction and to the philosophy of the limit. But Cornell has placed a new Kantian gloss on this commitment (at 6):

'In my continued steadfast defense of the philosophy of the limit as a defense of the possibility of our increasingly ethical being in the world, the heart of this book contains a steadfast defense of the role of aesthetic ideals in political theory. Such a work is in no way meant to undermine the importance of critiquing hegemonic meanings and symbols that dominate our lives. But, as Nietzsche tells us repeatedly, the idea of genealogy originates in an act of imagination or fabrication. A Nietzschean genealogy . . . is not a positivist account that ever reaches beyond the fundamental Kantian insight that the world is given to us in the reproductive imagination and then reconceived and reworked by us in the productive imagination. . . . Once deconstruction . . . [is] read in the ethical light I advocate[], we are left with our responsibility to not only critique the status quo, but also practically and theoretically reconfigure the great ideals of justice, freedom and equality.'

No one familiar with Cornell's work should be surprised by her steadfast defense of the centrality of the aesthetic in the political realm. What may surprise many readers are the commonalities between her approach and the approach of the late twentieth-century's most famous political philosopher, John Rawls. Both Cornell and Rawls are, in the end, Kantian constructivists. Both Cornell and Rawls are very much alive to the heterogeneity of modern nation states and the limits such heterogeneity places on our politics. They do not, of course, end up at the same terminus. Cornell's aesthetic notion of the 'imaginary domain' places meaningful constraints on her Marxism. (See Drucilla Cornell *The Imaginary Domain: Abortion, Pornography and Sexual Harassment* (1995).) Rawls's 'overlapping consensus' places meaningful constraints on the thickness of his progressive liberalism (John Rawls *Political Liberalism* (1993)). But, lest you think I am over-egging the pudding about the philosophical connection between these two great contemporary theorists, Cornell herself writes (at 27):

'Rawls seeks to give sensuous form to the great Kantian notion of our freedom as moral persons who seek to regulate their behavior through an appeal to the kingdom of ends. There is a sense, then, in which Rawls insists on the imagination in helping us to represent to our empirical selves why acting justly can speak to us as human beings who seek fulfillment in our day-to-day lives. Rawls never wrote of the veil of ignorance as an aesthetic idea, but I am suggesting here that his insistence on the role of the veil of ignorance in Kantian moral theory . . . is exactly the kind of role Kant allows for aesthetic ideas in giving shape to the great ideas of reason that can never be

conceptualized. From the very beginning of his work Rawls is explicitly concerned with the role of the imagination as a way to shape the noumenal self so that it can rest in accord with what he calls his empirical theory.’

Lest one miss the point of this long quote: Cornell quite rightly identifies our own wonderful South African Constitution as an act of fabrication and imagination. As a constitutional academic who regularly makes reference to the moral salience of everyday life in South Africa and the need for imagination in responding — through action and through law-making — to this moral salience, Cornell’s conception of the relationship between the aesthetic, the political and the constitutional could not hit closer to the mark. (In other writings, I have grounded my own constitutional politics, in large part, in the capability theories propounded by Amartya Sen. See S Woolman ‘Dignity’ in S Woolman et al (eds) *Constitutional Law of South Africa* (2 ed, Original Service, December 2005) ch 36; S Woolman *The Selfless Constitution: Experimentation & Flourishing as the Foundations of South Africa’s Basic Law* (forthcoming 2008). Cornell captures her connection with Sen as follows: ‘Amartya Sen has rightly claimed that his own theory of equality of well-being and capability is consistent with the moral *image* of the world and the broad deontological *spirit* of critical philosophy found in Kant’ (at 33).)

So Cornell, Rawls, Sen and Kant are all concerned with how our imagination connects ‘the categorical imperative to our natural inclinations . . . our everyday desires’ and our constitutional politics (at 29). But the crucial question, it would seem, is how does this common connection of the imaginary domain to the constitutional domain in the classical liberalism of Kant, in the welfare state liberalism of Rawls, and in the deontological capability politics of Sen differ from the connection of the imaginary domain and the constitutional domain in the critical theory and Marxism of Drucilla Cornell?

Cornell spends a significant amount of time discussing the reworking of Kant by Heidegger (at 39–63). She concludes that the two appear to share a notion that the ‘regulative ideal of a kingdom of ends . . . is never present but always an aspiration for struggle, that yields a moral image of the world in which we can be not only different but also better in the sense of living more justly together’ (at 62). Far more illuminating, for this reader, however, is Cornell’s reworking of Derrida’s notion of ‘hospitality’. I must admit that until I had read Cornell’s explication of this line of thought that I had been skeptical about Derrida’s status as a philosopher. Derrida himself quite seriously claimed that he was *not* a philosopher: and by that he meant he resisted the systematization of thought that closed down new lines of investigation. Derrida preferred to offer negative descriptions of deconstruction — ‘what deconstruction is not, or rather *ought* not to be’ — to prevent misunderstandings of himself and the term. (See Jacques Derrida ‘Letter to a Japanese friend’ in D Wood & R Bernasconi (eds) *Derrida and Différance* (1985) 1–3.)

Cornell changed all that. As Cornell notes, almost all the major industrialized democracies in the world are home to large communities of

people who have fled their home countries 'because of the inhospitable behavior of the state' (at 67). 'For Derrida', she writes, 'hospitality is tested in our openness to the stranger who seeks shelter amongst us' (ibid). This phrase immediately reminded me of the last two lines of Hillel's injunction: 'If I am not for others, then who am I? And if not now, when?' The inextricable link between Hillel's ethics and Derrida's politics was driven home by Cornell's next observation (at 70):

'We are always, in a profound sense, guilty of giving too little and arriving too late. Derrida is serious when he writes that none of us is in a position to have a good conscience.'

Hillel would be the first to concur with that assessment. His tripartite injunction is just that: an injunction. Hillel, like Derrida, was well aware that while everyday life constantly places us in situations in which we are required to live up to the demand for hospitality, the thrownness of being and the dirtiness of the world into which we are born, make it impossible to discharge, in every given situation, the call for hospitality or the demand for urgent action captured in the phrase 'if not now, when'. The best we can do is consistently remind ourselves that we remain 'responsible to the context into which we are thrown . . . damaged as that context is by the horrific reality of the twentieth and twenty-first centuries', while also reminding ourselves that the 'great ideals of humanity, freedom and equality are never obsolete' (at 72).

If Cornell, Derrida and Hillel are singing from the same songbook, what of Cornell's final critical theorist — Ernst Cassirer? Cassirer, Cornell claims, likewise 'defends the possibility of transformation and our responsibility for the world in which we live.' (Cornell, 77) What distinguishes Cassirer — and Cornell — from other critical theorists is their rejection of incommensurability, and the concomitant rejection of the proposition that we occupy symbolic systems absolutely resistant to translation. In Cornell's words (at 80):

'Cassirer . . . contributes to the continuing debate of commensurability and incommensurability and suggests that by grasping architectonic forms of language we can understand not only how human language designates, but also the fact that different languages designate differently. By struggling with our experience of forms of designation, we can potentially open ourselves to the world of others as they have signified the worlds they are living in.'

Like Cornell, Hillel and Derrida, Cassirer remains open — hospitable — to the world of others and does not foreclose, as so many deconstructionists do, the possibility of cross-cultural understanding through weak, knee-jerk forms of relativism. However, Cassirer and Cornell recognize that such understanding requires immense amounts of work. Anyone familiar with Cornell's efforts to connect ubuntu and dignity, and thus traditional systems of South African law with contemporary systems of constitutional law, understand that her ubuntu project requires a sustained archeological and etymological effort to create a system of symbols capable of translation and a

system of symbols that does not privilege — uncritically — one system of law above another.

Freud, Marcuse and Arendt: The therapeutic Jews and the excluded middle

What happens next in Cornell's *Moral Images of Freedom* is difficult to fathom. Her ruminations on critical theory and its place in the philosophical canon come to a complete, grinding halt. One might have thought that the philosophical canon — and especially the tradition of critical theory — worked out in the 70 years between the publication of Cassirer's oeuvre and the publication of Cornell's work requires further reclamation. But aside from Cornell's insights into Derrida's notion of hospitality, the remainder of *Moral Images of Freedom* is oddly silent. From high theory, Cornell moves directly into discussions of black existentialism, the revival of socialism and the need for transnational feminist solidarity.

Cornell does not explain this move — but an explanation is on offer. I am going to suggest — very, very speculatively — that the history of critical theory from the end of World War II onwards does not supply Cornell's new project with the materials she requires for the transformative political or constitutional projects she endorses. Much of modern critical theory — and deconstruction — owes its philosophical debts to Freud and more recent proponents of Freudian analysis such as Jacques Lacan. Much of modern critical theory — Marxist in inclination — had, until 1989, to grapple with the depredations of Communism under the Soviet Union and China.

Two philosophers — both of the Frankfurt School — feature prominently in this troubled, silent, middle space: Herbert Marcuse and Hannah Arendt. In *Eros and Civilization* (1955), Marcuse writes that fantasy (or phantasy)

'plays a most decisive role in the total mental structure: it links the deepest layers of the unconscious with the highest products of consciousness (art), the dream with the reality; it preserves the archetypes of genius, the perpetual but repressed ideas of the collective and individual memory, the tabooed images of freedom' (Marcuse op cit 140).

Marcuse's Freudian turn leads him to conclude, according to Richard Bernstein, that 'critical theory itself is no longer adequate for keeping alive the tabooed images of freedom' (Bernstein *Philosophical Profiles* (1986) 184). Such a position hardly makes Marcuse a desirable resource for the reclamation of critical theory and Cornell's transformative political or constitutional projects. The same may be said of Arendt's Aristotelian turn. In *On Revolution* (1962), Arendt writes approvingly of Greek and Enlightenment conceptions of freedom:

'Their public freedom was not an inner realm into which men might escape from the pressures of the world, nor was it liberum arbitrium which makes the will choose between alternatives. Freedom for them could only exist in public; it was a tangible, worldly reality, something created by men to be enjoyed by men rather than a gift or a capacity, it was man-made place or market-place which antiquity had known as the area where freedom appears and becomes visible to all.' (Arendt op cit 120–1)

While the notion that genuine freedom is only achieved in a public space where people deliberate about and then determine the course of human affairs echoes Kant's and Cornell's recognition of human beings as capable of both self-actualization and self-governance, the limits of the Greek polis or the early American republic to an elite group of propertied men makes such a conception of freedom unattractive to a Marxist committed to anti-colonialism, anti-racism, anti-sexism and anti-egalitarianism. Arendt can hardly be said to help herself when she concludes that

'Nothing we might say today could be more obsolete than to attempt to liberate mankind from poverty by political means; nothing could be more futile and more dangerous.' (Arendt op cit 110)

Arendt may have been absolutely correct in 1962 in the context of the Cold War. However, her honesty hardly makes Arendt an attractive source for critical theory in a post-cold war context in which the state clearly possesses the resources for the very form of liberation Arendt rejects.

Modern Marxism: Rooting out inequality and creating the conditions for freedom

I must admit that the last third of *Moral Images of Freedom* holds the least interest for me. But this ennui has little to do with the arguments made in these pages. My lack of interest flows from the fact that the last three chapters reflect the application of Cornell's well-conceived future for critical theory to black existentialism, socialism and feminism. Cornell's hard, novel work as a philosopher of hope had already been accomplished in the preceding 100 pages.

CONCLUSION

Of course, that Drucilla Cornell is a philosopher of hope does not automatically align her with the native optimism of secular Jewish-American constitutional law scholars. Her critique of American race, sex and class relations borders on the virulent — and here too marks her as an outsider. (Professor Cornell's hackneyed identification of the genocide that occurred in Nazi Germany, in Rwanda, in Bosnia, and now Sudan, with the Palestinian-Israeli conflict, in a throwaway line, is, for me the only sour note in the book.)

As I noted at the outset, Drucilla Cornell resists categorization. And really, what are categories good for but the most indolent form of thinking? I think it enough to say — in answer to the question I posed: what kind of Jew is Drucilla Cornell? — that she is a philosopher of hope and imagination. That depiction brings us full circle, back to Hillel, and a story that illustrates exactly what it means to be a philosopher of hope.

The Talmud tells us that a non-Jew visited Hillel's great contemporary Shammai and asked 'Teach me all of the Torah while standing on one foot.' Shammai took a ruler and drove his questioner away. The same gentleman then approached Hillel and asked the same question. Hillel replied: 'Do *not* do unto others as you would *not* have others do unto you. That is the whole

Torah; the rest is commentary. Go and learn!” That, to my mind, describes what it means to be a philosopher of hope — an unrelenting commitment to the repair and transformation of this world, and a seemingly indefatigable patience with those of us who take somewhat longer to arrive at right answers about what is true and what is good. And that, quite accurately, describes Drucilla Cornell and the purpose of this book.

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