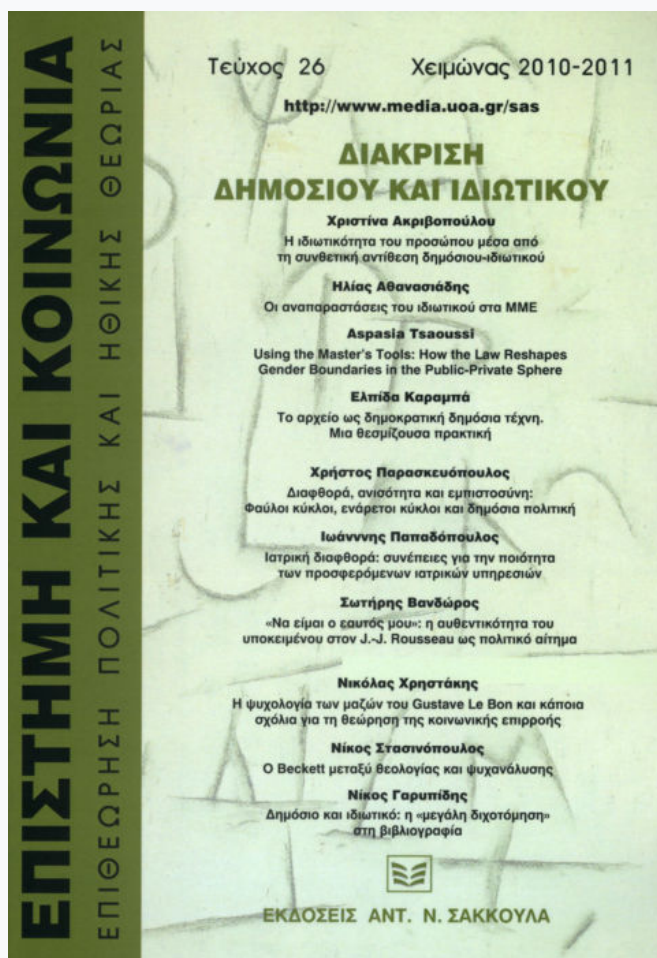


## Επιστήμη και Κοινωνία: Επιθεώρηση Πολιτικής και Ηθικής Θεωρίας

Τόμ. 26 (2010)

Διάκριση δημόσιου και ιδιωτικού



### Using the master's tools: How the law reshapes gender boundaries in the public-private sphere

Aspasia I. Tsaoussi

doi: [10.12681/sas.830](https://doi.org/10.12681/sas.830)

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### Βιβλιογραφική αναφορά:

Tsaoussi, A. I. (2015). Using the master's tools: How the law reshapes gender boundaries in the public-private sphere. *Επιστήμη και Κοινωνία: Επιθεώρηση Πολιτικής και Ηθικής Θεωρίας*, 26, 57-79. <https://doi.org/10.12681/sas.830>

# Using the Master's Tools: How the Law Reshapes Gender Boundaries in the Public-Private Sphere

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Aspasia I. Tsaoussi\*

*Men are taught to apologize for their weaknesses,  
women for their strengths.*

Lois Wyse

*The Master's tools will never dismantle  
the Master's house.*

Audre Laudre

According to an old stance, very popular among second-wave feminists, you cannot use the Master's tools to dismantle the Master's house. In other words, you cannot change structural gender inequalities by enforcing the rules that 'the Master' put in place; you will only be reifying patriarchy. This article aims to prove that patriarchy can be beat in its own game. Through extensive legislative changes that have occurred in the past four decades in developed nations of the world, the status of women has improved dramatically. The law has provided powerful tools, establishing new models of behavior for men and women in both the private and the public sphere. Once these spheres were distinct and separate; today they have meshed together, their boundaries effaced, changing women's lives regardless of ethnicity or culture.

## 1. Introduction

The differences between men and women can be divided into biological (or sex-linked) on the one hand and social (psychological and/or cultural) differences on the other. In this sense, sex can be either male or female; gender can be feminine or masculine. All these differences have been amply explored and documented in what is now an impressively voluminous literature from all disciplines

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\* Lecturer in Sociology of Law (Faculty of Law, School of Law, Economic and Political Sciences, Aristotle University of Thessaloniki), LL.M., PhD. (University of Chicago Law School) <Aspasia\_tsaoussi@yahoo.com>

in the social sciences. Sex/gender classifications have proven to be very useful in research and in teaching about gender issues.

We will define *sex characteristics* as attributes of men and women that are created by their biological characteristics, and *gender characteristics* as attributes that are culturally associated with being female and male (Jacobsen 1994: 5-6).

Gender characteristics are influenced by law in a dynamic interrelationship: Law shapes gender –and gender shapes the law. Laws send powerful messages to social actors, influencing them to change their behavior. The power of the message lies precisely in its ability to affect roles, expectations and actual, manifested behavior. Men and women can be induced by law to revise and rethink their attitudes, or reject their existing attitudes altogether, shaping new ones. For women particularly, the law has a literal and direct empowering effect. There is ample bibliographical evidence to support this statement. However, what is the most interesting about this effect is at the same time elusive to capture in research, as it is reflected not just in women's revealed preferences (which can be 'measured' and evaluated) but also in their attitudes and self-perceptions.

In this paper we argue that the interconnection between law and gender creates a continuum which cuts through the private and the public spheres, blurring traditional boundaries. The law has created seismic shifts in the allocation of civil, political and economic rights of women. It has allowed them access to privileges that they had been denied for centuries, e.g. the privilege of a higher education. In our analysis of 'empowerment through law', we adopt the view that most of the legal (stricto sensu) or 'rights' battles fought by women in the post-war era in western democratic states were won on 'sameness' grounds.<sup>1</sup> Emphasizing women's similarities to men's has proven to be a winning strategy in many fields of law, most characteristically in constitutional law, in family law, in employment law. By participating in mass numbers in institutions such as the market and the workplace, women have achieved a high degree of assimilation. As paradoxical as it may seem at first glance, 'fitting in' in a 'man's world' has also allowed women to have a better sense of who they are and what they want. 'Although women's interests as women are cross-cut by class, race, and ethnic differences, all women have some things in common' (Johnson 1988: 25).

We<sup>2</sup> tend to forget how sexist our societies were four decades ago –and we perhaps take for granted how our societies would have looked like if they had remained segregated along the gender divide in culture, education and the professions. We also tend to forget how sexist non-western societies remain today. So it is important to define how broad a circle we draw in our perspective: are we discussing women's problems on the local, national, or global level? When the

lens changes, so do the recommended solutions for women's empowerment. At the same time, the public-private dichotomy reveals itself in the many facets of state-society interaction. This is one of the reasons underlying the exigency of interdisciplinary accounts of women's rights.

## 2. The Public/Private Sphere

The private and public sphere dichotomy has greatly troubled the social sciences. A long line of thinkers have associated the public sphere with the distinctively human, and the private with the natural.<sup>3</sup> They have conceived of the family as representing particularistic and hence inferior concerns, often in conflict with the superior and more universal concerns of the public sphere (Held 1990: 102). In classic political philosophy, Locke had carved out deep divisions between the two spheres, removing private roles and their influence on social inequalities from the purview of civil life (Minow 1990: 150). Contemporary philosophers such as Rawls have echoed Locke, who presumed the private authority of parents in the family. Feminist scholars (e.g. Okin 1987: 42) have argued that Rawls tacitly follows Kant in excluding women from the generic category of free and rational persons.<sup>4</sup> Masculinity was identified with reason and femininity with sentiment, desire, and the needs of the body.<sup>5</sup> Our societies are still ordered around gender.

Men are the world leaders, killers, policemen, military, private security. Women are the housekeepers, child care givers, they are low paid and work as repairers of the consequences of violence, nurses, psychologists and social workers (Connell 2002).

Constitutional law has stepped in as the great equalizer of the two spheres in many fields of law and social reality, grounding equality on the idea that people could take one another's place in intellectual exchange, in jobs, or in political office if they were disassociated from contexts of family, religion, class, or race and if each one had the same opportunities and experiences (Pole 1978: 293-294). But the problem with this approach is that 'the pretense of universal inclusive norms in the public sphere obscures the power of assigned differences in the private sphere' (Minow 1990: 152). On the basis of these differences, women, children and disabled people have historically been denied participation in the governance structure of the public sphere (*id.*)

The exaltation of the domestic sphere was expressed in the 'cult of domesticity' (also known as 'the cult of true womanhood'), a prevailing view among upper and middle class white women in Great Britain and the United States during the nineteenth century. According to Barbara Welter (1966), 'True Women' were to hold the four cardinal virtues: piety (they were believed to be more religious

and spiritual than men); purity (of heart, mind, and body); submission (held in 'perpetual childhood' where men dictated all actions and decisions); and domesticity. At the time, domesticity referred to a crucial division between work and home, encouraged by the Industrial Revolution. Men went out in the world to earn a living. Home became the woman's domain where a wife created a 'haven in a heartless world' for her husband and children. As Lewis (1991) notes, the 'ideal' mother was widely regarded as someone who puts unpaid care before paid work –the antithesis of the ideal worker.

Recent research (e.g. Gambles et al. 2006) confirms that work and family have come to be regarded as separate spheres, with paid work associated more with men and family more with women. The figure of the 'ideal' worker has been described as the employee who was nurtured in this masculine work environment and learned to prioritize work before all. This 'ideal' worker is the one displaying stereotypically 'male' attributes such as aggressive go-getting characteristics. However, the workplace and home life experience of many women in paid employment is not fragmented into two distinct spheres, but a work-life continuum in which the two spheres mesh into one. Arlie Russell Hochschild (1989) was the pioneering sociologist who wrote about 'the second shift': women continue to be overburdened with domestic responsibilities and child rearing duties. This has been identified as a significant reason why fewer women participate in political life and assume decision-making roles.

We advance the thesis that in contemporary globalized socio-economic settings, it is difficult, if not impossible, to distinguish the boundaries between the private and the public in individual women's lives. The two spheres intermesh in myriads of ways on a daily basis, endlessly morphing into a single, multidimensional sphere that for each woman is simply 'her reality'. Therefore, messages from one sphere filter through to the other in not always predictable fashion. To use an example, a change in voting laws that favors women (public sphere) will be linked to changes in women's choice of profession (public sphere), choice of spouse (private sphere), preference for a smaller family size (private sphere), and so on.

Similarly, young post-adolescent women living in a fundamentalist regime with restrictive and discriminatory laws against women think and act in ways vastly different from those adopted by women of the same age and the same religious minority living in western nations. Religious laws pose serious disincentives to women for running contrary to 'traditional' sexual mores. A stark example is stoning, the frightening punishment prescribed by Muslim law for people who commit adultery. This punishment is usually performed only on women, be-

cause according to the law, a man can have an infinite number of temporary marriages (*sigheh*) and therefore can claim that the woman who he had a relationship with (provided that she was single) was his temporary wife.

### 3. The Privatization of the Public Sphere

We will now look to some aspects of social life that historically belonged in the realm of the 'private sphere' but have recently and increasingly entered the public sphere. Legal regulation is our main criterion for selecting these key areas, in which we have an interesting meshing of private responsibility and public policy.

#### 3.1 *Abuse behind closed doors: The privatization of domestic violence*

Some of the most controversial topics in legal theory and practice are those connected to women's sexuality: abortion, prostitution, sexual harassment, pornography, rape, sex tourism. Feminist writers have asserted that the social subordination of women and sexuality are closely connected. Much empirical work has attempted to show the pervasive and systemic quality of these practices. 'The theoretical work considers the implications of the fact that legal and social systems tend to treat them as infrequent or marginal' (Sunstein 1990: 9). We should consider that sexual harassment has been recognized as a legal category since the mid-1980s or so, and that marital rape was not treated as a crime until the 1990s. Since then, the changes have been precipitous. In 2006, it was estimated that spousal rape could be prosecuted in at least 104 countries. In Eastern Europe and Scandinavia, spousal rape was considered illegal before 1970, but other countries from the western world outlawed it much later, mostly in the 1980s and 1990s. In the US spousal rape is illegal in all 50 states. Several developing countries have outlawed it in the 2000s.

Sexual violence in all its manifested forms may take place in the domestic sphere: sexual harassment, wife beating, child molestation, rape, forced prostitution, trafficking. In the past four decades, there have been outstanding empirical analyses produced by feminist legal scholars that shed light on the many nuances of this phenomenon. When Susan Brownmiller first published *Against Our Will* in 1975, there was little social awareness of male violence against women. Since the mid 1970s, violence against women and children has reached epidemic proportions. Although the conventional wisdom conceptualizes such violence as the pathological product of a criminal or demented mind, what follows from feminist and social-cultural analysis is that many forms of female brutalization (esp. rape

and wife beating) are an exaggeration of male dominance and female objectification (Bem 1993: 163).

Commodification theory has offered valuable insights in the attempt to understand the objectification of women. In a recent anthology (*Rethinking Commodification: Cases and Readings in Law and Culture*), Ertman & Williams (2005) bring together an interdisciplinary collection of essays that revisit the traditional legal questions posed by earlier authors, such as Anderson (1995) and Radin (1996): What is the price of a limb? A child? Ethnicity? Love? In a world that is often ruled by buyers and sellers, those things that are often considered priceless become objects to be marketed and from which to earn a profit. Not only are there willing buyers for body parts or babies, but some desperately poor people would be willing sellers, while better-off people find such trades abhorrent. Radin observes that many such areas of contested commodification reflect a persistent dilemma in liberal society: we value freedom of choice and simultaneously believe that choices ought to be restricted to protect the integrity of what it means to be a person.

More recently, in *Battered Women and Feminist Lawmaking*, Schneider (2002) covers the theoretical dilemmas of feminist analyses of battering, feminist legal practices and strategies in domestic violence cases, and the possibilities for change through feminist lawmaking, including discussions of the 'Violence Against Women Act.' The 'battered woman syndrome' is an empowering legal defense in the hands of female litigants. However, sociological research has revealed that in practice, it is in the hands of judges to respond to abused women with indifference or impatience, or whether they now treat battering as a serious crime. In *Battered Women in the Courtroom*, James Ptacek (1999) examines the types of violence that women report to the courts and analyzes how judges exercise their authority in restraining order hearings. He also considers class and racial dimensions of wife battering by drawing on cases from both white and African American communities. It becomes clear that judges have a crucial impact on women's efforts to escape the social entrapment of violence.

Worldwide and daily, domestic violence spills over onto society. 'Gendercide' is an untold war taking place in many parts of the developing world, particularly in China, India and Pakistan. As Kristof and WuDunn (2010) report, more girls have been killed in the last fifty years, precisely because they were girls, than men were killed in all the wars of the twentieth century. If we adopt a global perspective, we realize the urgency of more refined models that adequately capture the complexity of female sexuality and its multivariate expressions in the public sphere, e.g. through advertising and the media. Violence against women is a hu-

man rights issue with broad societal repercussions. It is a classic social problem that can be solved and alleviated with increased social awareness on the part of lawmakers, judges, scholars, practitioners, and social service providers.

### 3.2 Abortion

Abortion is one of the most striking examples of a 'private sphere' act that has broad and quite public ramifications: the individual woman's decision to have an abortion has an impact (economic, psychological, etc) on third parties in her immediate family surroundings, and on the aggregate level, abortion rights have sparked heated public debates. Abortion is also directly or indirectly linked to policy issues such as reproductive health and the waning birth rate. In the US, few social policy issues have been as controversial as abortion,<sup>6</sup> where abortion rights were recognized by the landmark Supreme Court decision of *Roe v. Wade* (1973).<sup>7</sup> In Europe also, abortion has been a contested issue, with European Union member states all having legislation that permits and regulates abortion. A less obvious pattern emerges if we turn to the history of abortion law and policy in the formerly socialist countries of Central and Eastern Europe.<sup>8</sup>

Doctors, demographers, historians, moral philosophers and political scientists have offered rich insights on abortion politics. Seen from the standpoint of feminist legal analysis, abortion law reform remains one of the most defining 'victories' of the women's rights movement.<sup>9</sup> It represents a triumph of universal human rights over religious beliefs that aim to keep women enslaved within their own bodies. The legal regulation of abortion gave women the ability to control their reproductive freedom, to select the optimal family size, and to pace the frequency of their pregnancies. As is the case with all rights, abortion rights can be abused. In many countries, because of poor sexual education and misinformation, abortion is used as last-resort contraception among teenagers.

Also, empirical research reveals that in the United States, the access of women from disadvantaged social minorities to legal (and safe) abortions is often compromised in practice (Rose 2006). Since *Roe v. Wade*, there have been many restrictions threatening abortion care coverage in the name of 'health care reform.'<sup>10</sup> The right-to-life movement has succeeded in accumulating local and national policies that restrict access to abortion while enhancing fetal protections. In recent years, violence at abortion clinics has escalated beyond control, placing the reproductive rights of women from lower socio-economic strata at further peril.



### 3.3 Pornography and the constitutional right of free speech

In her much-discussed book *Only Words* (1994), University of Michigan law professor and renowned feminist legal scholar Catharine MacKinnon excludes pornography and hate propaganda from forms of expression that should be constitutionally protected. She argues that First Amendment concerns for free speech should be balanced with Fourteenth Amendment protection of equality and advocates a new model for freedom of expression, in which free speech does not most readily protect the activities of Nazis, Klansmen, and pornographers, while doing nothing for their victims. MacKinnon argues that pornography subordinates and degrades women and incites sexual harassers, wife beaters, child molesters, rapists and clients of prostitutes.

The late Andrea Dworkin had joined her in building a strong case against pornography, inciting fervent reactions within the legal feminist camp, most famously by libertarian feminists such as Nadine Strossen, a New York University law professor who heads the American Civil Liberties Union. In her acclaimed book *Defending Pornography*, Strossen (2000) argued that free speech has long been a strong weapon to fight misogyny and she criticizes the fuzzy legal theories behind censorship. She ascribes feminist panic over sexual expression to a surge in 'cultural feminism'.<sup>11</sup> Strossen believes that MacKinnon and Dworkin's proposed legislation to fight pornography seriously misreads evidence of its effects on men and ignores more influential media images like advertising, as well as the complexity of female sexuality. In practice, as recent Canadian cases have shown, such censorship laws have had negative unintended effects, namely they have been used to seize lesbian, gay and feminist material.<sup>12</sup>

Striking a better balance in constitutional law is the key towards safeguarding the constitutional rights and freedoms of women. In the recent *Constituting Equality*, Susan Williams (2009) collects essays that address the fundamental question: 'how would you write a constitution if you really cared about gender equality?' To give a satisfactory answer, one needs to look at governmental structure (particularly electoral gender quotas); rights provisions; constitutional recognition for cultural or religious practices that discriminate against women; domestic incorporation of international law; and the role of women in the process of constitution-making.

#### 4. The Publicization of the Private Sphere

##### 4.1 Women and Work

Over the past few decades, the work environment has invaded the private sphere, piercing through a previously impenetrable bubble. Women's mass entry into the workplace has been characterized as a 'subtle revolution' (Smith 1979). Global economic trends like the recent financial crisis have forced men and women to redefine their roles in both the domestic and the public sphere. In order to do so, and beginning in the 1990s, most men reevaluated what it means to be successful, both on the job and in the home (Kimmel 2000). Traditional symbols of manhood like wealth, power and status still exist, but it seems that the new organization man has indeed emerged –it is the one who wants to be an involved father with no loss of income, prestige, and corporate support, and no diminished sense of manhood (*id.*).

The rise of women's participation in the labor force has resulted in the prevalence of dual-earner families. As of 2002, 78% of employees were members of dual-earner families, compared to 66% in 1977 (Korabik et al. 2008). Women have developed their educational profile, have pursued their careers ambitiously and created female-dominated fields, including social work, nursing, education, personal services and many others (Jones et al. 2006). The history of employment discrimination law is intertwined with the recognition of women's employment rights during and after pregnancy.

Despite these advancements, women still face difficulties in their professional and personal lives derived mainly from the puritan work ethic that still exists and the family role expectations. In fact, there is a strong cultural and societal resistance in identity issues and patterns, causing problems to both sexes in work-life integration. The prevailing assumptions about gender roles and their relation to work and family, primarily the masculinization of work and the feminization of the family contribute to the clash of work-family programs and company cultures (Jones et al. 2006).

Women are still considered to be the main care providers within the family and are responsible for childcare as well as eldercare. The intensified pace of work and the extensive work hours blur boundaries in women's role between the two domains and result in conflicts regarding expected performance and optimal outcomes. Schwartz (2000) points out that 'women who compete like men are considered unfeminine and women who emphasize family are considered uncommitted' and describes a reality where the rate of turnover in management po-

sitions is two and a half times higher among top-performing women than among men. Women are also expected to demonstrate career interruptions, plateauing and absenteeism in higher proportion than men.

#### *4.2 Women in Law*

Feminist legal jurisprudence has enriched our understanding of the law, approaching essential topics in jurisprudence, such as the nature and justification of law, judicial reasoning, the connection between law and equality, and freedom and justice.<sup>13</sup> At the same time, the movement of women into the legal profession has been identified as 'one of the great under-noticed revolutions of our time' (Epstein 2001: 733). As late as 1967, men outnumbered women twenty to one in American law schools. The Vietnam War with its sad loss in deferments acted as a stimulus for women interested in studying law: law schools admitted women to avoid plummeting enrollments. However, women's entrance into the profession met with resistance, both from the general culture and from within the legal profession.<sup>14</sup> Judges would not hire women as law clerks. Courts permitted discrimination against pregnant women and dismissed early sexual harassment cases as 'games played by the male superiors'. Firms asserted a right to discriminate against women. Against the odds, case-by-case, women fought to reshape the law (Strebeigh 2009).<sup>15</sup>

#### *4.4. Family Law*

The family sphere has changed scope, form and content over time. Family realities have undergone profound transformations in recent decades. Since 1970 the number of households composed of married couples with children has been declining faster than any other type of household, while households consisting of single parents, persons living alone, and unrelated persons have all risen. Legal definitions of 'family' have been expanded to include the new forms of family life.<sup>16</sup> Legislators around the world have attempted to structure family law statutes that are more representative of actual patterns of family living observed in social reality.

Family law was also restructured to accommodate the social trend of women's mass entry into paid employment. Women, including mothers of young children, have entered the workforce, crossing the once-unbridgeable barrier between woman's domestic sphere (woman's responsibility for reproduction), into the public sphere (man's responsibility for production). Employment law was similarly premised on the realities of women's economic life cycle: pregnancy and

child-rearing. The law's sensitivity and responsiveness to gender inequality in family policies has been expressed with legislative initiatives in social security, parental leave, and childcare, to name a few (Rhode 1991: 111).

The dividing lines we draw to make sense of gender in our social reality define this reality. Prejudiced beliefs and attitudes lie brewing under the surface of everyday social relationships, where even educated young men and women, the future gatekeepers, uncritically repeat conventional wisdoms about masculinity and femininity, perpetuating the very half-truths that will hurt them in the future. Notions about 'proper' gender roles intermingle with challenges to women's preferences that are deeply-rooted in some collective subconscious.

## 5. New Directions

### 5.1. *Feminisms and the Law*

'Second Wave feminism' is a term used to describe the Women's Liberation Movement that peaked in the 1970s.<sup>17</sup> Although Second Wave feminists also varied in their objectives, the Second Wave focused on activism, as the goals on the feminist agenda of that time were heavily debated issues such as sex discrimination law, abortion rights, and the attempt to ratify the Equal Rights Amendment.<sup>18</sup>

With the rise of the second wave of the feminist movement in the 1960s, a great outpouring of feminist economics appeared, dealing with issues of labor force participation, household work, earnings differentials, occupational segregation, the feminization of poverty, and the economics of child care (Mutari & Figart 2003: 7).

Third Wave feminism is a philosophy that emerged in the 1990s. Like all feminism, the Third Wave focuses on the economic, political, social, and personal empowerment of women. This newer form of feminism focuses more on the *individual* empowerment of women and less on activism.<sup>19</sup> It celebrates women's journeys to build meaningful identities in the complex contemporary world. Many Third Wave feminists continue along the tradition of activism generated by the Second Wave, but the core of the particular movement is more oriented towards individual empowerment than it is towards activism and social change. After the third wave of feminism, we have arguably entered the 'constructive criticism' stage, in which 'an ethics of criticism' can help us redraw our maps of the feminist movement (Hirsch & Keller 1990:379).

Naomi Wolf, one of the most zealous advocates of power feminism, has called attention to the mistakes of 'victim feminism' (Wolf 1994). Feminism draws its

power from a women's rights movement that represents women across class, income and race. Rigid dogmatic lines of past decades, as accentuated in the 'schools' of feminist legal thought, should give their way to flexible schemes permeated by critical thinking. What dominated previous decades was the call towards educated women to participate in politics and the professions in greater numbers. Governments and individual women responded to this call, resulting in many legislative changes that were positive changes for women's rights and political representation as well as for human rights more broadly. Today the focus has shifted towards policies that will enable both sexes to achieve a better work-life balance.

The law is a tremendous source of power in reifying injustices of the past, because of its dual function: law in books and law in action. Law in books recommends the kinds of changes that could affect roles and rights in the two spheres. Law in action contributes to effecting these changes: for example, when courts implement statutes directed towards effecting gender equality, rights are redistributed and roles are reshaped. Other social institutions that impact the structure of daily life in the private and the public domains obviously influence the function of the law. Profound and sweeping re-orderings in the economy, in education, and in the family are needed before we can assert that a particular society has move towards actual gender equality. Feminist economists have highlighted many of the gaps that must be filled on our way to 'gender justice'. Some decades ago, they had already identified the main obstacles that women faced on their struggle for economic parity with men. For example, Barrett (1982: 164) wrote that the economist's standard remedies for economic inequality (income redistribution and human capital development) are clearly not enough when they do not strike at gender roles in the family economy (a major use of women's economic time but not of men's) and at the gender-based property rights that tradition has conferred to certain activities.

## *5.2. The Global Perspective*

The 1990s marked a shift in the international development agenda in the direction of rights and democracy. This brought about many positive changes in women's rights and human rights on a global scale. In much of the world, however, these advances were not matched by significant progress in the achievement of greater social justice. Rising income inequalities, coupled with widespread poverty in many countries, have been accompanied by record levels of crime and violence. Meanwhile the global shift in the consensus over the role of the state in welfare provision has in many contexts entailed the down-sizing of public ser-

vices and the re-allocation of service delivery to commercial interests, charitable groups, NGOs and households. Since the year 2000, a number of excellent contributions to the cross-cultural dimension of gender analysis have been published.

For example, Molyneux & Razavi (2003) collect and examine case studies from Latin America, sub-Saharan Africa, Middle East, East-Central Europe, South and South-east Asia to show how the dominant 'rights' approach of contemporary liberalism exists (and is resisted) in developing and post-transition societies. Reviewing this literature reveals that rights liberalism has failed to provide a 'one size fits all' solution to the multifarious problems of developing societies. Cultural peculiarities are too many and too deeply embedded in social relations for any general framework of values to capture and accommodate. Yet it is our understanding that these societies are in a state of transition towards a rights-based overarching goal. Women in developing nations are still battling for formal equality. Their agenda includes issues such as the assurance of women's safety; reproductive rights and health care for mothers and children; equal access to employment, and public resources (including education, social services, and economic benefits); and last but not least, women's access to political institutions and positions of authority (Henderson & Jeydel 2009).

Several economists have argued that the economic empowerment of women is the key for economic progress and prosperity in the second and third world. Kristof & WuDunn (2010) have recently posited that it is impossible for countries to climb out of poverty if only a fraction of women (9% in Pakistan, for example) participate in the labor force. They argue that China's meteoric rise was due to women's economic empowerment: 80% of the factory workers in the Guangdong province are female; six of the 10 richest self-made women in the world are Chinese. The authors reveal local women to be the most effective change agents in their communities.

Feminist economists have shed light on another serious issue relating to women's experience. According to Ehrenreich & Hochschild (2004), the current discourse on globalization, according to the authors, has little to say about the 'migration of maids, nannies, nurses, sex workers, and contract brides' since, to most economists, these women are just individuals making a go of it. The positive effects of their labor are sometimes noted: the money they remit to home countries is a major source of foreign exchange, and the work they do in the host country enables a large pool of upwardly mobile First World women to pursue productive careers. However, the negative consequences, which can include emotional hardships caused by leaving children behind as well as physical strains, are rarely acknowledged. Ehrenreich & Hochschild (2004) point out that in previous

centuries the developed world imported natural resources, and now it imports women, ideally, 'happy peasant' women who can care for the elderly and disabled, lovingly raise children and provide sexual services for men.

The dialogue between feminist theorists and activists of the developed and the less developed parts of the world is hindered by real obstacles, such as religious dichotomies<sup>20</sup> and cultural stereotypes that women of the West have about Middle Eastern and Far Eastern women. But it seems that even in states governed by religious fundamentalism, the age of women's empowerment has risen. In Malaysia, members of 'Sisters in Islam' are challenging current sexist interpretations of Islamic theology and traditional law. Throughout the Arabic-speaking world, satellite TV stations like Al-Jazeera have spawned 'new Scheherazades' – women journalists and hosts whose voices have a powerful impact on the public discourse (see esp. Nouraie-Simone 2005).<sup>21</sup>

In Iran, hundreds of women are producing blogs, sharing their ideas in an Islamic republic that still limits women's expression. These role models break sharply with the past and act as trail-blazers for the future. In *The Politics of Women's Rights in Iran*, Arzoo Osanloo (2009) explores how Iranian women understand their rights. After the 1979 revolution, Iranian leaders transformed the state into an Islamic republic. At that time, the country's leaders used a renewed discourse of women's rights to symbolize a shift away from the excesses of Western liberalism. In her ethnographic study, Osanloo reveals that the post-revolutionary republic blended practices of a liberal republic with Islamic principles of equality, yielding a hybrid discourse that draws on both liberal individualism and Islamic ideals.

Educated women who have studied in universities of the West and go back to their home countries are endowing their societies with the beneficial returns of their investment in human capital. Receiving a higher education shields women from linguistic and cultural-social insularity. They are able to participate in international networks, and gain a broader perspective of the issues that need to be resolved. Through their increased political participation and awareness, women become the fuelling force behind growing economies – 'the real wealth of nations' (Eisler 2008). According to the Human Development Reports of the United Nations Development Program:

Human development is about much more than the rise or fall of national incomes. It is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. People are the real wealth of nations. Development is thus about expanding the choices people have

to lead lives that they value. And it is thus about much more than economic growth, which is only a means –if a very important one– of enlarging people's choices.

Their involvement with international Non-Governmental Organizations devoted to gender equality represent a sort of 'quiet activism' capable of effecting revolutions. Feminist social theorist and activist Riane Eisler pleads a convincing case for creating a 'caring economics'. Departing from the thesis that we inherit and inhabit a social world that masculinity has built by consistently devaluing and subordinating the feminine, she goes on to show the socially and ecologically destructive flaws inherent in both capitalist and socialist economies. Eisler's ambitious outlook rejects the masculine 'dominator' mentality that has brought us to our present juncture and argues for a feminine 'partnership' mentality that can help us redefine key concepts such as 'value' and 'needs'. The author cites the most recent economic data and addresses the need for a more equitable and sustainable economic system, offering numerous relevant examples of places where efforts to practice a caring economics have succeeded both in preindustrial and modern societies, such as the Nordic nations.

The empowerment of women is a broadly endorsed strategy for solving a host of difficult problems, from child poverty to gender violence to international development. A recent multidisciplinary volume (Elliot 2007) offers thoughtful critiques of the notion of empowerment based on studies in twenty countries in all regions of the world. Empowerment is placed in the context of models of the market and of community, showing how contradictions in these models as they are enacted provide both spaces and constraints for women. The analyses consider opportunities for women in the context of globalization, resurgent nationalism and politicized religion, cultures of masculinity, and the HIV/AIDS epidemic in Africa. They discuss how initiatives at national or global levels are transformed by local cultures and power structures, and demonstrate the fruitfulness of tensions between universal values of human rights and contextualized understandings.

The Millennium Development Goals, adopted at the UN Millennium Summit in 2000, are the world's targets for dramatically reducing extreme poverty in its many dimensions by 2015 income poverty, hunger, disease, exclusion, lack of infrastructure and shelter –while promoting gender equality, education, health and environmental sustainability (UN Millennium Project 2005).<sup>22</sup> These bold goals can be met in all parts of the world if nations follow through on their commitments to work together to meet them. Achieving the Millennium Development Goals offers the prospect of a more secure, just, and prosperous world for all. Philosopher Martha Nussbaum, in her widely influential treatise *Women and Human Develop-*



ment (2001), called for a global feminism to address the deplorable conditions of women in the Third World. Building on Amartya Sen's capabilities model, Nussbaum's approach centers on a 'quality of life' criterion that can constitute one of the core values of a feminist global ethics in the ongoing debate between Western and Third World feminists.

### 5.3. *Erasing the Lines that Women Draw for Themselves and Other Women*

The success stories of women 'who made it' in their chosen profession reveal that cultural stereotypes about gender are very much alive today... Rising to the top entails having a set of innate abilities (like natural talent or a high IQ), the determination to set high goals, the stamina to persevere through adverse circumstances, personality traits like confidence and self-respect, and lots of hard work. Yet labeling addressed towards successful career women, leaders or pioneers in their fields, has not ceased. Many men and a surprisingly large number of women underestimate just how special it is to triumph over the social handicap that is gender in many societies. All other obstacles aside (the wage gap,<sup>23</sup> the glass ceiling, the glass cliff, to name a few), women are indeed 'required to meet a higher standard' (Valian 1998: 214).<sup>24</sup>

The assignment of guilt on successful women is the standard penalty that society relishes on them: 'you may be president of the company, but you're single'. If you're not single, you're divorced. If you're married, you're childless. If you're married with children, no doubt you're a bad mom. Society never rests until it slaps you across the face with these guilt trips, cleverly disguised as 'the necessary cost' of professional success and higher social status. Highly educated women who are pursuing their ambitions 'cannot ignore the messages from every side that it's risky for women to try to become too successful' (Babcock & Laschever 2003: 98). Nothing is more disheartening than telling an over-achiever that her achievement is *diminutive* because it is in fact costly for the people she loves. Many women fall straight into this trap and retreat quietly back into the domestic sphere, never fully reaping the well-earned returns from a long-term investment in their education and their workplace.

Living happily ever after in the domestic sphere is possible only if it is the result of free choice.<sup>25</sup> So is living freely and creating fully in the public sphere. Women do not all dream the same dream. White upper-middle-class women do not have the same aspirations as black working-class women. Women need to identify the limits of the spheres, and then acknowledge their own limits.<sup>26</sup> The next step is to develop a more expansive, empathetic understanding of other

women's limits. No mechanism is more effective for adjusting our expectations of others than 'putting ourselves in *their* shoes'. The final step is to erase those lines that stand in the way of women's solidarity. Bra-burning is over, and activism realistically depends on a woman's inclination, income, profession and time available for investing in a social cause. But what each woman can do quietly, in her everyday reality, in her own home, community, circle of friends and workplace, is to support other women. Not *all* other women –but those who merit support. We can forge social networks with other women, we can build social capital together, we can learn from each other. By working together, we will learn to respect our differences. We will thus lay the foundation for more tolerant, non-violent societies.

## 6. Conclusion

In recent decades, legal concepts of femininity and masculinity have been re-defined in an attempt of alignment with the radically altered conceptions of personal and professional life. The private and the public sphere have shifted and overlapped in myriads of new ways –but they are still there, posing new challenges as well as age-old dilemmas to all those who wish to strike a balance between them in order to live a happy, meaningful life. At the same time, there is a new generation of reflective young adults struggling to carve out a life for themselves in largely uncharted waters. Recent sociological accounts illustrate that young men and women remain uncertain and skeptical about the possibility of juggling career ambitions and romantic commitment (Gerson 2009).<sup>27</sup> In times of change, the institutions that will survive are those endowed with the greatest flexibility. The family has survived as one of the most ancient institutions because it has shifted in form, size and meaning across time and space. In addition, individual families that did not just survive but also prospered were those whose members did not adhere to rigid gender roles, but were able to adjust behaviors based on their families' particular circumstances, which are bound to change over the life course.

We have attempted to show that law is a powerful tool in the hands of individuals and groups which desire to succeed and prosper. Law possesses the mechanisms that enable individuals to adapt successfully to new models of behavior. Law also precipitates and facilitates social change. It helps social actors choose the roles and behaviors that accommodate the complexities and nuances of their life. In its conceptualization of the abstract individual who is the holder of rights, the law has expanded to include individuals previously excluded from the public sphere. In recent decades, the law has afforded social minorities such as

women and disabled persons the opportunity to seek formal equality, economic parity, and cultural visibility. It has empowered disadvantaged groups by giving them the tools that are needed to dismantle the parts of the house that were crooked, antiquated and dilapidated. The new house that is being constructed is built on more solid foundations. The Master's tools *will* after all dismantle the Master's house, if this house is to accommodate more rights-owners at the dawn of a new century.

## Notes

1. It is our understanding that the solution to women's inequality does not lie in emphasizing difference. Writing on sameness and difference, Deborah Rhode (1991: 32) makes an astute observation: 'There was no consensus within the movement on the extent to which women were different from men and required different treatment. Nor was there agreement on the extent to which women faced common problems requiring common action'.

2. 'We' refers quite generally to men and women of western democracies.

3. Aristotle, Kant, Hegel, Lévi-Strauss, Arendt.

4. Women are presumed not to be heads of households, and non-heads of households lack direct participation and representation.

5. Cf. Rousseau, whose social contract excluded women from the public realm of citizenship because they were seen as the caretakers of affectivity, desire, and the body.

6. For a lucid evaluation of abortion policies in the US, see recently Levine (2007), who also provides an insightful economic analysis of fertility.

7. It is certainly no coincidence that Supreme Court Justice Thurgood Marshall, the first African American to serve on the US Supreme Court was an advocate of abortion rights. It is similarly not coincidental that Justice William Brennan, his most frequent ally on the Court, consistently joined him in supporting abortion rights and opposing the death penalty (indeed, the pair rarely voted at odds).

8. See David (1999), who comprehensively chronicles the interaction of public policies and private reproductive behavior in the 28 formerly socialist countries of Central and Eastern Europe and the USSR successor states.

9. For an application of comparative methodology to assess variations in state feminism and feminist movement success, see the abortion-related research in *Abortion Politics, Women's Movements, and the Democratic State*, edited by McBride Stetson (2002).

10. For an update, see the Press release of the National Organization of Women commemorating 37 years since *Roe v. Wade*: <http://www.now.org/press/01-10/01-21.html>.

11. Within the feminist camp, the cultural strand of feminism was viewed as a response to 1970s setbacks to more tangible feminist projects like the ERA.

12. The anti-pornography laws that were passed in Canada and which are being used as models for new laws elsewhere are so strict (e.g. they even view porn in which women play no part at

all as degrading to women) that they can be (and have, in some cases, have been) used to ban medical textbooks, the Bible, various works of art, books on health issues, AIDS education/awareness literature, gay and lesbian fiction, even feminist literature.

13. See indicatively Bartlett & Kennedy's *Feminist Legal Theory: Readings in Law and Gender* (1991), Weisberg's *Feminist Legal Theory: Foundations* (1993), Smith's *Feminist Jurisprudence* (1993), Becker et al.'s *Cases and Materials on Feminist Jurisprudence: Taking Women Seriously* (2006), Chamallas' *Introduction to Feminist Legal Theory* (2003), Levit & Cerchick's *Feminist Legal Theory: A Primer* (2006).

14. For examples from European countries and a discussion of in-group pressures in the legal profession, see esp. Tsoussis (2008) for a study of gender roles in legal practice. See also the recent empirical analysis of Feidakis & Tsoussi (2009) on gender competitiveness in legal negotiations.

15. Strebeigh's compelling book *Equal: Women Reshape American Law* (2009), offers a thorough account of leading women's rights cases in the US. Through painstaking research, Strebeigh narates the 'story behind the story' of the lawyers, litigants, and judges who made history.

16. One such expanded definition denotes a family as 'a unit bound by support and common values'.

17. One of the most influential authors of second wave feminism was Betty Friedan, whose work is highly representative of the philosophy and ideology of the era. In her landmark book *The Feminine Mystique* (1963), Friedan eloquently expressed the collective experiences of dissatisfied housewives across the United States. She was one of the leading figures of the women's movement: she co-founded the National Organization for Women (NOW) in 1966, urging the passing of the Equal Rights Amendment.

18. Read more at Third Wave Feminism: Personal Empowerment Dominates This Feminist Philosophy <http://www.suite101.com/content/third-wave-feminism-a20276#ixzz14PMR8VP2>

19. Most women who identify themselves as Third Wave feminists or who are drawn to this philosophy are young. Many are part of the Generation X demographic (born roughly between 1966-1976) or are from Generation Y (born roughly between 1977-1997). Some Third Wave feminists are the children of Baby Boomers who participated in the Women's Liberation Movement of the 1960s and 1970s.

20. Hudud laws in Malaysia, for example, which were adopted by the Kelantan State in 1993, appear to be a major issue for Muslim women (Jaggar & Young 2000: 543).

21. A native of Iran, Fereshteh Nourae-Simone is a Scholar-in-Residence at the Center for Global Peace at American University. She is the founder of the Women International Network for Community Leadership and a Member of the Board of Directors of the Women International Center for Democracy and of Nonviolence International.

22. The UN Millennium Project was commissioned by United Nations Secretary-General Kofi Annan to develop a practical plan of action to meet the Millennium Development Goals.

23. The wage gap remains an insurmountable obstacle, especially for women who are fully employed in the private sector. Analyzing the gender pay gap in the US, Blau & Kahn (2000) looked at both gender-specific factors, including gender differences in qualifications and discrimination, and overall wage structure, the rewards for skills and employment in particular sectors. Declining gender differentials in the U.S., and the more rapid closing of the gender pay gap in the

U.S. than elsewhere, appear to be primarily due to gender-specific factors. However, the relatively large gender pay gap in the U.S. compared to a number of other advanced countries seems primarily attributable to the very high level of U.S. wage inequality.

24. Valian (1998) looked at the earnings and advancement of both men and women in six occupations: sports, law, business, academia, medicine, and engineering. She found that men earn more money and attain higher status than women in each of these professions.

25. Not all women want the same things. Not all women want 'a right to fight'. As noted by Elshtain (1992: 117), 'many women who do not identify as feminists yearn for a return to traditional complementarities in which they were provided for, looked after and sheltered from the grim realities of the "rat race" and the shocks of political combat'.

26. In the words of self-made millionaire and international pop idol Madonna Ciccone, 'I'm tough, I'm ambitious, and I know exactly what I want. If that makes me a bitch, okay.'

27. In this interesting sociological study, Gerson uses life history interviews with 120 men and women living in the New York area to examine how young adults, 'the children of the gender revolution', reconcile their hopes for more egalitarian relationships with the realities of inflexible institutions. While most hoped for egalitarian relationships, they also expected these goals to be unattainable and created gendered fallback positions, in which men were more likely to pursue a neo-traditional approach to forming families while women were more likely to seek autonomy if egalitarian relationships could not be found.

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