VOIX DE FEMMES EN DROIT | VOICES OF WOMEN IN LAW

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CONTOURS

VOIX DE FEMMES EN DROIT | VOICES OF WOMEN IN LAW

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EDITORIAL TEAM 2015–2016

Chantelle Dallas is a first-year student at McGill Law from Jamaica. She is passionate about the empowerment of black women, especially through the law. Her primary interests are human rights and international development.

Vanessa Di Feo is a first-year student at McGill Law. In addition to her role as English editor of *Contours*, she is heavily involved with CARL/L'ACAADR McGill. She is interested in the empowerment of women in leadership and law.

Élodie Fortin en est à sa troisième année à la faculté de droit de McGill en plus d'avoir ajouté une mineure en politique à son cursus universitaire. Elle occupe le poste de VP contenu et promotion de la revue *Contours*. Curieuse, elle s'intéresse à plusieurs domaines de droit, mais préfère essentiellement le droit public international et le droit pénal international. Elle est particulièrement sensible à la dignité humaine.

Jinnie Liu is a third-year law student at McGill. She has been involved with *Contours* since her first year here. She hopes that *Contours* will be a platform where women will be able to freely release their thoughts and artistic expressions about the law. Working towards this vision, Jinnie endeavours to make the publication a platform where women in law from all walks of life inspire each other through creativity and intellectual rigour.

Andréanne Poirier est une étudiante de première année en droit et est la VP finance de *Contours*. Elle a comme intérêts le droit commercial et la finance. Elle est passionnée par la position des femmes dans la société, tout particulièrement en milieu corporatif.

Maya Soren is the Design Editor for *Contours* and in her third year at McGill Law. She holds a Master's degree in Art History and has a background working in art galleries and museums. She is interested in a range of legal areas in both public and private law including property, criminal, family, and aboriginal law as well as indigenous laws and legal pluralism.

Romita Sur is a first-year law student and the VP Organization of *Contours*. She has a keen interest in intersectionality and the law, specifically how it applies to women of colour. She is passionate about diversity, social justice, human rights, and international relations.

Suzanne Zaccour en est à sa troisième année de droit, et bien sûr à sa troisième année avec *Contours*! Elle est une militante et une blogueuse féministe. Elle s'intéresse aux droits des femmes, particulièrement dans leur intersection avec le droit criminel et le droit de la famille.

INTRODUCTION

Contours est une revue bilingue publiée annuellement par des étudiantes de la faculté de droit de McGill. Nous sommes heureuses de vous inviter à en lire la quatrième édition.

Ayant grandi dans un monde où les petites filles doivent se tenir bien sages, nous avons appris que seuls les garçons pouvaient s'exprimer avec passion et déborder d'énergie. Il nous fallait rentrer dans un moule formé par des stéréotypes persistants sur ce que devait être notre comportement. Ayant résisté aux carcans du moule, nous nous sommes affirmées dans notre différence. Nous avons créé notre propre moule avec nos propres règles. Avec *Contours*, nous encourageons les femmes à prendre leur place. Nous luttons pour que nos voix soient entendues. Nous voulons donner aux femmes le pouvoir de s'affirmer. Ce désir d'unir nos voix et d'être écoutées qu'est né *Contours : Voix de femmes en droit*.

Since its inception in 2012, the fundamental idea of *Contours* has stayed the same: it still maps and shapes the contours of debates, concerns, and aspirations around the intersection of women and the law. It is a space for all self-identified women to share their stories, and for everyone to discover the plurality of our experiences.

Cette année encore, nous avons invité les femmes de la faculté de droit à partager leurs réflexions sur ce qui les touche, les fâche, les intéresse et les inspire. L'engouement toujours grandissant que suscite la revue nous confirme l'importance d'un tel projet. En 2015, près de 60% des personnes admises à la faculté de droit de McGill étaient des femmes. Pourtant, les conversations, les revues, les plans de cours et les cabinets restent encore aujourd'hui dominés par des hommes. Notre engagement auprès de *Contours* est notre façon à nous de nous rendre visibles pour transformer le milieu juridique. *Contours* est notre point de départ pour aspirer à mieux de nos milieux académique et professionnel.

We believe in the power of personal narratives to shape collective knowledge. We know that sharing is an act of courage and we are grateful to our authors for revealing new facets and perspectives on women's complex relationship with the law.

Contour
noun | con·tour | \ˈkän-tu̇r\

Full Definition of ***Contour*****, Merriam-Webster:**

1. an outline especially of a curving or irregular figure
2. the general form or structure of something
3. a usually meaningful change in intonation in speech

From its very beginning, *Contours* had a clear goal:
"to map and shape the contours of debates, experiences, concerns, and aspirations around the intersection of women and the law."

Now that this project is in its fourth volume, this goal has become further entrenched in us. We have developed a stronger sense of what kind of pieces, or *chef d'oeuvres*, we are looking to help create for our publication and we have also succeeded in growing deep roots within our law school. As a third-year student who has been involved with *Contours* since her very first semester at McGill Law, it is with great delight that I realize most of the people I converse with know about our project and its goal. Likewise, last fall, it was also with great delight that I learned that several new students were eager to join the *Contours* executive team, and they had not even started their first day of law school. After almost four years of relentless effort and outreach, our goal is finally embedded within the McGill Law community and it is my hope that it has the momentum needed to keep propelling forward.

It should also be noted that this year, we have been discovering new dimensions of what *Contours* is all about. First, as the first Merriam-Webster definition suggests, a contour can be an outline of a "curving or irregular figure". After discovering many of this year's pieces, upon reading this definition, I thought to myself, "Right, law isn't a regular figure after all." It may not even be a normal, tangible thing. It is constantly changing, and it even embodies *irregular* anomalies. I think about the lack of intersectionality in law, and why this *irregularity* matters (Romita's article, p. 66). I think about the *irregular* results that criminal law leads to in gang rape cases (Odeta's article, p. 25).

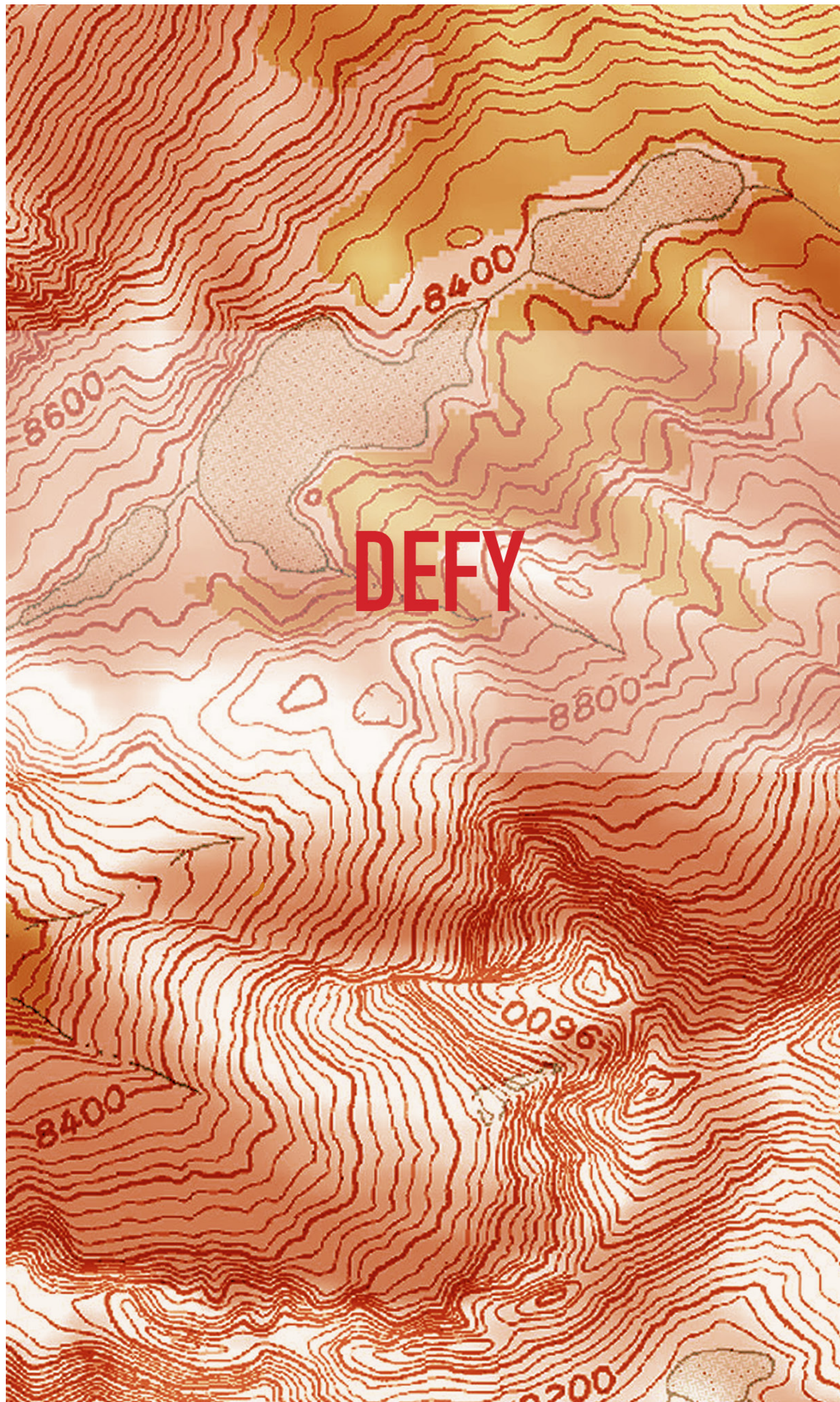
Moreover, what if that thing that we are trying to outline is not the law, but a thought? Another dimension of *Contours* is the outline of a thought of a woman in law. This thought, the ever-fleeting, the forever-curving, the uncatchable, unless the woman pins it down on paper. Then, *Contours* is also about a space where women realize how their fleeting thoughts, their "normal everyday experiences", can yield an inspiring, lasting reflection. I think about conversations in a car (Andréanne's article, p. 21). I think about how a Facebook conversation can become a tipping point leading a woman to reveal a culture in which women face micro-aggressions on a daily basis (Rebecca's article, p. 12).

Finally, as the third Merriam-Webster definition suggests, a contour may also be a "meaningful change in intonation in speech". Since the very beginning *Contours: Voices of Women in Law* has meant to represent changes in the intonation of law. A refusal to continue to speak the dominating male language, to be buried under men's voices. Now these "contours" have grown stronger and louder within the legal community, but the *Voices of Women in Law* have themselves changed intonation since the beginning of the project. Beginning with the premise of "women's voices advocating for women in law", this meant representing only certain kinds of women's voices without intonations by women from a diversity of groups – women from minority communities and trans women, for instance. I think about the female migrant workers, whom mainstream feminism has failed to protect (Nigah's article, p. 41). I think about the lack of consideration for women whose assigned sex at birth does not match their gender (Philippa and Lauren's article, p. 80). As we make space for our intonations and allow them to change, we always need to remember that women's voices come in different melodies.

While we continue to strengthen the mission that has driven us since the foundation of *Contours*, we endeavour not only to reshape the contours of law within our communities, but also to reshape our own intellectual and discursive contours, as we discover more intonations of our voices. We very much hope that you will join us in this growth.

Bonne lecture,

Jinnie Liu



THE FLIRT

BY MIREILLE FOURNIER
STUDENT AT McGILL FACULTY OF LAW

"Who the hell smiles to people on the subway?" asked my older male friend as someone passed us in the escalator and said "hi" to me randomly. He rolled his eyes in exasperation every time something like this happened while we were together. Dan is a sweet and patient guy, but sometimes my character just gets under his skin in ways that I cannot predict. I remember that the night we became friends, someone – a woman – made a joke about me smiling so much, and he said something like "She smiles when we talk about ideas." Back then, maybe two years ago, smiling sounded like a good thing. Perhaps that is why I keep doing it.

"Why do you always smile so much? You always look so proud of yourself! How can you always be so proud of yourself?" said that Dan as he saw me arriving at the café — to see him, of course. (I was not smiling at the group of middle-aged zombies drinking their coffee in the bleakness of Tuesday morning.) "What do you mean?" I wanted to ask, "Can't I just be happy to see you?" I did not ask that because I thought he would find that flirtatious, and tell me to cut the bullshit already. We had serious business to attend to. I must admit I was puzzled by his question.

Back from some time spent abroad, I was anxious to see Dan again. He is someone I like to share experiences with. A long time without talking to him made me fear that stories would be lost because I would forget them before he could hear them. He asked me how men were back there, so I told him. Entitled. Insistent. Invasive. Inescapable. He laughed. "Have you seen yourself? I don't know any woman who smiles as much as you do... You bring that on. Have you seen the way you act with everyone? Just how exactly is anyone supposed to know if you're actually interested?"

I tried to change the conversation topic. I felt annoyed.

"I WONDER WHAT HAPPENS IN LIFE TO WOMEN WHO SMILE TOO MUCH. IS THIS WHY PEOPLE LIKE THEM AT FIRST? THEN WHAT? ARE THEY TOLD, "YOU'RE NOT SERIOUS ENOUGH?" "TOO FRIENDLY?" "NOT PROFESSIONAL ENOUGH?""

We spoke of other things. I described a woman I knew there, someone I thought I would like to be "when I grow up" (if I ever do). "Do you see her the way I see her?" I asked. "She's such a woman! And she's beautiful on top of it!" I smiled. "You can never be like her," he said. "She's not like you. She's not nearly as flirtatious as you." It was true. I do not know what happened these past couple of years. I went from being the woman who smiles when we talk about ideas, to being the woman who smiles too much. Who is arrogant. Who is not self-aware, and cannot mind her place.

I wonder what happens in life to women who smile too much. Is this why people like them at first? Then what? Are they told, "You're not serious enough?" "Too friendly?" "Not professional enough?" Then what is next? Are their words not taken seriously? Are they dismissed for their arrogance? Is their behaviour entirely re-cast to fit a certain script of how women communicate "what they want?" What about Shirley Temple in the 1939 film *Little Princess*? Does she smile and put her perfectly shaped little hand on her father's shoulder just because she is after something? Does she do it because she was taught that this is what little princesses do?

LAYERED LADY

BY KATHERINE RICHARDSON
STUDENT AT McGILL FACULTY OF LAW

DES VACHES ET DES FEMMES

PAR SUZANNE ZACCOUR
ÉTUDIANTE EN DROIT À McGILL

Était-il moral de violer sa femme en 1975? Était-il moral de fouetter une esclave en 1830? Les penseuses critiques du droit ont depuis longtemps établi la distinction entre « légal » et « moral ». Ce qui est légal est déterminé par une classe privilégiée comme ce qui est acceptable dans une société qui est le produit de son époque. La loi est ainsi influencée par des impératifs politiques et économiques qui n'ont que peu à voir avec l'éthique. La morale, elle, s'appuie — si l'on adopte une perspective utilitariste — sur une appréciation de la souffrance. La souffrance individuelle peut être aléatoire, comme lorsqu'on est impliqué·e dans un accident de voiture. Cependant, à grande échelle, elle peut être dirigée vers des groupes de personnes ciblés. Ces groupes historiquement désavantagés sont ainsi les premières victimes d'actes immoraux (le viol ou l'esclavage, par exemple), tout en étant exclus de la sphère politique habitée par ceux qui en bénéficient. Une simple compréhension de l'opposition des intérêts de ces groupes explique la dissemblance du moral et du légal. Pour cette raison, de nombreuses personnes préfèrent leur boussole morale au respect strict des lois, allant jusqu'à pratiquer la désobéissance civile.

Or, que se passe-t-il lorsque le cadre juridique influence précisément l'évaluation de la souffrance? Si le droit convainc la propriétaire d'esclaves que la personne noire ne souffre pas, alors elle peut se convaincre que son mode de vie est moral. Bien que tout le monde comprenne et accepte la distinction entre moral et légal (avec Rosa Parks comme exemple iconique), celle-ci comporte des limites en ce que ces deux pôles normatifs sont culturellement et socialement conditionnés. On peut alors se demander s'il est même possible de vivre moralement dans une société légalement inégalitaire.

Cette interrogation s'applique parfaitement à une réflexion sur les droits des animaux — ou les responsabilités humaines corrélatives. Légalement (et malgré des réformes récentes), les animaux non humains demeurent des choses — susceptibles, donc, d'être objets de propriété des êtres humains. Comme les femmes et les enfants il n'y a pas si longtemps, le groupe qui les domine (les humain·e·s) leur refuse le statut juridique de personne. Mais ce n'est pas seulement le statut de personne qui est crucial, puisque c'est la capacité à souffrir qui guide la moralité. Ainsi, le droit se construit une fiction qui lui permet de nier la souffrance des animaux, alors que la capacité à souffrir est si essentielle à la survie de l'espèce qu'on peut se demander comment elle peut être aussi fréquemment remise en question. Les animaux domestiques bénéficient d'une certaine protection légale contre la cruauté humaine, mais celle accordée aux animaux de ferme est infiniment plus ténue. Les impératifs économiques posent ainsi une limite au droit qui, à son tour, envoie le message qu'il est moral de consommer de la viande. Le droit va jusqu'à redéfinir la souffrance, cette notion qui nous est instinctivement connue, pour mieux protéger cette fiction. Par exemple, la *Loi sur le soin des animaux* manitobaine prévoit une certaine protection des animaux en détresse, mais précise que « [p]our l'application de la [...] loi, un animal n'est pas réputé en détresse à la suite d'un traitement, d'un procédé ou de toute autre circonstance qui se produit dans le cadre d'une activité acceptée[1] ». Une façon comme une autre de légitimer la torture.

Chez les quelques personnes qui choisissent le régime alimentaire végétarien parce que cette construction ne les convainc pas, une autre séparation entre souffrance et non-souffrance s'opère. On considère alors que le porc élevé pour sa viande souffre, mais que les vaches et les poules exploitées pour leur lait ou leurs œufs ne souffrent pas (comme si le bœuf haché n'était pas, de toute façon, aussi de la vache hachée). Ainsi, dans une théorisation hautement sexiste, on décide que l'exploitation sexuelle — l'exploitation des fonctions liées à la reproduction qui génère les œufs et le lait — n'en est pas vraiment une, un peu comme on pleure les soldats tombés au combat en ignorant les victimes de viols de guerre. On va jusqu'à se convaincre que la vache « aime » qu'on la mette enceinte à répétition pour lui prendre son lait. Encore une fois, le parallèle est évident avec le blâme des victimes de viol dont on prétend qu'elles ont « apprécié l'expérience » et même qu'elles l'ont « demandé » (*asked for it*). Linda McCartney, autrice et photographe états-unienne, a écrit que si les abattoirs étaient vitrés, tou·te·s seraient végétarien·ne·s, mettant en

1 *Loi sur le soin des animaux*, CPLM 2012, c A84, art 6(2).

lumière le processus d'invisibilisation de la souffrance qui nous permet d'agir en contradiction avec nos valeurs. Or, ce n'est pas seulement à nos yeux qu'on doit cacher la souffrance, mais aussi au droit.

Traditionnellement, la *common law* ne reconnaissait pas les dommages psychologiques — c'est-à-dire que la souffrance mentale, l'émotion ou la peine n'étaient pas en soi de la souffrance compensable aux yeux du droit. Bien sûr, ce n'est pas un hasard si cette souffrance était considérée comme typiquement féminine. La femme qui souffre est nécessairement fabulatrice ou hystérique — dans tous les cas, sa détresse ne vaut pas la peine que l'on s'y attarde. En première année de droit, on étudie l'arrêt *Miller v Jackson*[2] dans lequel une femme poursuit un club de cricket parce qu'elle reçoit des balles perdues sur son terrain à répétition. Une balle de cricket, c'est dangereux, surtout pour le jeune enfant de la plaignante, et pourtant ses craintes sont balayées du revers de la main par le célèbre juge Denning (dissident) qui la présente subtilement comme folle, dérangée, hystérique : « *Mrs. Miller is a very sensitive lady who has worked herself up into such a state that she exclaimed to the Judge: "I just want to be allowed to live in peace. Have we got to wait until someone is killed before anything can be done?"* » Plus encore, le juge rejette la faute sur la demanderesse — construire une maison près d'un terrain de cricket, quelle idée? Si elle y avait mis des vaches, on n'en serait pas là. Le temps fort du jugement est surtout l'Ode au cricket que déclame le juge Denning — qu'importe le danger pour la sécurité de Mme Miller si cela permet aux jeunes hommes d'occuper leurs dimanches?

Partout où l'on regarde, on constate que le plaisir des hommes est plus important que la sécurité des femmes. Les désirs des hommes doivent être à satisfaction immédiate, quelles que soient les conséquences, d'où le viol, la pornographie, la prostitution ou la consommation de viande. Aujourd'hui, la *common law* a ouvert sa porte aux dommages moraux, mais la laisse toujours entrebâillée par crainte d'être submergée par des réclamations de personnes qui ne sont que peinées.

Aujourd'hui, en droit, c'est la souffrance animale qui ne jouit d'aucune reconnaissance. En corolaire, en morale, c'est le plaisir de manger de

2 *Miller v Jackson*, [1977] EWCA Civ 6 (BAILII).

« LE TEMPS FORT DU JUGEMENT EST SURTOUT L'ODE AU CRICKET QUE DÉCLAME LE JUGE DENNING – QU'IMPORTE LE DANGER POUR LA SÉCURITÉ DE MME MILLER SI CELA PERMET AUX JEUNES HOMMES D'OCCUPER LEURS DIMANCHES? »

la chair animale qui prévaut sur la vie et la sécurité des animaux. Et sacrifier le plaisir immédiat du goût de la viande — et du déploiement de virilité qui accompagne l'ingestion d'une montagne de bacon — est si impensable que les scientifiques en sont rendus au développement de viande *in vitro*! Tant que la souffrance animale nous restera invisible (sans parler des torts causés à l'environnement), l'élevage industriel restera normalisé.

Que l'on parle de droits des femmes ou de droits des animaux, le droit et la morale se justifient mutuellement dans la création de constructions de l'esprit en vertu desquelles le plaisir de l'homme est au sommet hiérarchique — au-dessus des femmes dans la pyramide sociétale, au-dessus des animaux dans la chaine alimentaire[3].

3 Cet article est librement inspiré d'une présentation de la Professeure Heather McLeod-Kilmurray, intitulée « *Ecofeminism and Industrial Livestock Production* », présentée au 3e Colloque de la Revue internationale de droit et politique du développement durable de McGill, « Les femmes et le développement durable ».

ASHES AND AFTERMATH

BY ROMITA SUR
STUDENT AT McGILL FACULTY OF LAW

A poem about the unfair hatred and discrimination of innocent people of colour in the wake of terrorist attacks.

Homes displaced
Lives altered in a blink of an eye
A year after 9/11
They say they don't see race
But some white teenager told my mother to go home
Do you even know her?
Do you know that if strength would ever manifest, it would emerge in my mother's scars?
The woman you cussed
This woman who crossed the oceans carrying an appetite of fire
Fire, ash, smoke, destruction
Fueled by hate and fear
Destroying spiritual safe spaces
Because to colonizers, we are all terrorists
You are ignorance
To you, we don't exist, and our lives are shattered by loss of safety
Community broken and in chaos
Law says the burning of a temple is a hate crime
The perpetrators couldn't differentiate it from a mosque
Because that makes it so much better
But the law isn't just to most people
It's been 10 years
Only now have the perpetrators been charged
But what about the scars and trauma of the community
Is no one going to be accountable for that?
Community has tried to be strong, leaning on each other
As unity and solidarity is what will challenge these injustices and systems
An attack on one is an attack on us all

We will not be silenced
Oppression does not have a place in this world
And simply because we matter

MISSING VOICES

BY ROMITA SUR
STUDENT AT McGILL FACULTY OF LAW

A poem about how the media misrepresents and underrepresents the stories of minorities, of people of colour, of life outside the West.

43 students missing and murdered on Mexican land
Countless black men, women, and children being shot
Bombings by the West in the Middle East
Muslim women being violated
Yet no big headlines, little news coverage
Where is the media?
Where are the NGOs?
Where is International law?
Yet I also see
Someone flailing her arms about while shouting in a heavy accent
Nothing but a mockery
Our lives are not your soap opera
Our lives are ours
So we demand
Where is our justice?
Who will recognize our loss?
We will show you
We will make you see us
We will make our voices heard

UNFORTUNATELY IT WAS JUST ANY OLD KIND OF DAY

BY REBECCA KAESER REISS
STUDENT AT McGILL FACULTY OF LAW

I met my friend Kathy at university. Though Kathy and I still hang out, I do not really know any of her other friends, so when I went to her engagement party, I had to be proactive about introducing myself. I ended up meeting many people, including one of her fiancé's groomsmen, A. When speaking to A, I mentioned that I was a law student. After some small talk, I conceded that it was quite a challenging program, "but that's fine." "I think *you're* pretty fine," he responded. I had known this guy for less than 5 minutes! "I must have misheard him!" I thought to myself as I turned away to sip my mimosa.

I had a weird feeling about A, so I excused myself to go sign the guestbook. My efforts at getting away were unsuccessful. After signing the guestbook, A inquired about who my date might be. I responded that, since guests were not told to bring dates, I had come by myself. He was clearly interested in my relationship status, and asked if my (assumed) boyfriend was jealous that I was at a party. A most welcomed interruption came when a friend of his asked for his phone number. "So did you take down my number?" he asked me when his friend turned away. I said no, then excused myself and went to the washroom. When I got back, A reappeared beside me instantly. Uncomfortable, I said I was hoping to talk to Kathy.

While waiting for Kathy to have a spare moment, I spoke with other people near me (unsurprisingly including A). Eventually, I got to talk to Kathy, and we were joined by A (again!). We discussed politics, austerity, and various things that interested us, though it seemed that A did not have much to say on these matters.

It started to get late, so I said my goodbyes. When I went to say goodbye

“THIS IS NOT AN UNCOMMON EXPERIENCE. MANY OF MY FRIENDS HAVE EXPERIENCED SIMILAR AND MORE FRIGHTENING ENCOUNTERS. IT IS NOT ABNORMAL FOR WOMEN TO BOND WHILE TALKING ABOUT THESE EVERYDAY AGGRESSIONS, WHICH CAUSE US WORRY AND STRESS, AND TAKE UP SPACE IN OUR HEADS AND OUR HEARTS. CHANCES ARE, A MAJORITY OF STUDENTS IN THE FACULTY HAVE EXPERIENCED THIS. IT IS NOT OKAY.”

to Kathy’s fiancé, he apologized for A hitting on me, and said that he hoped that it had not spoiled my day (A had been telling people about it earlier). Looking back, it is comforting to know that my instincts were right and there really was something going on. The only thing left to do before leaving was to get my coat. I did not even have an arm in my coat sleeve when A appeared from the opposite direction. He said, “Hey, I think you’re really cool so if you’re single, I’d really like to get your number.” I started feeling nervous and uncomfortable, since he was standing between me and the exit. I really did not want to deal with him again. I ultimately told him I was not dating at the moment and did not give out my phone number (not lies). He continued: “Well, like, I’m not looking for anything serious.” I had no response. “What I really like about you is how you’re so down to earth,” he added. “Well that’s really kind of you, but I really have to go now. Bye!” I said as I hurried past him and out the door.

I thought the whole thing was over. I was wrong. On Monday, I received a Facebook message and a friend request from him. His first message was: “Hey Rebecca, the sun is shining in our favour today.” Confused, I responded, “It is very nice out.” The next day, he added: “You seem to enjoy the cold.” I found this statement odd; I did not know how to respond. A friend thought that either A was implying I was cold for refusing his advances, or that he was “negging” me. Apparently, this is a common pick-up technique. Men will say something negative about women, expecting to be contradicted when the women then try to get their approval. Who knows, I responded, “I wouldn’t say so, no!” to his contention. Then, I received another message. It was short enough that I could read it in the preview: “Really, well I can keep you warm on a cold

lonely night ;).” I shuddered, my skin crawled, and I had butterflies in my stomach (NOT the good kind). Then, I started to get really angry. Had I not said no? How could he think I would want to hear that? Why does he make me feel so uncomfortable and unsafe? Will he try to harass me further if I say something (or nothing)?

This is not an uncommon experience. Many of my friends have experienced similar and more frightening encounters. It is not abnormal for women to bond while talking about these everyday aggressions, which cause us worry and stress, and take up space in our heads and our hearts. Chances are, a majority of students in the Faculty have experienced this. It is not okay.

My encounter with A occupied my thoughts, but nothing in my life slowed down. Consider this, and then consider how it felt when the newspaper, not long after, discussed how Camp J bullied and belittled a young victim of sexual assault. Think how angry it made me when my classmates and professors questioned the place of feminist and other critical non-male, non-white voices in our curriculum! Unfortunately, I am not surprised.

Below, I will reproduce my response to A.

Rebecca Kaeser Reiss – 9:05pm

I generally try not to dignify unwanted advances and borderline sexual harassment with a response. I find however, that I cannot simply say nothing. It astounds me that you think this would be an acceptable thing to say to a woman you barely know. What’s worse, you said it to a woman who already told you she was not interested. Women are often afraid to be rude or impolite because they are afraid of men’s reactions and the consequences that could come of them. Generally, it doesn’t go farther than calling us disparaging names but when it comes to virtual strangers it’s hard to tell someone’s propensity to violence and anger. You following me to the coat room at the engagement party and blocking the exit made me uncomfortable. It is difficult in the spur of the moment to come up with the right words to refuse someone’s advances while staying civil and polite. I think it is this concern that makes men think

it's ok to assume a woman saying "no thank you" means "maybe, please convince me." This is not the case. No definitely doesn't mean maybe. Persisting in your advances made me feel unsafe. Your sideways comments about me being "fine" after knowing me for less than 5 minutes felt disrespectful and cheap, as was your abnormal interest in my relationship status. I enjoy meeting new people, but I don't enjoy feeling like I am being "cruised," seen as a piece of meat, or as a tool to someone else's sexual gratification. I hope you will consider my words and my thoughts. They are not malicious, but they are honest, and I do believe they are clear.

Finally, I hope that we can acknowledge that we all come to class with full lives and experiences of all sorts, most of which many will never know about. I also hope that we can be allies to each other, and interact with each other guided by empathy.

JUST AN ORDINARY KIND OF DAY

BY MARÍA RODRÍGUEZ MOTTA
STUDENT AT McGILL FACULTY OF LAW

MUSINGS ON CLOTHING, GENDER, AND LAW

ANONYMOUS

I'm appearing in Chambers (motions court) for the first time soon. I know exactly what I should wear — my black suit with a white silk shirt with black details. It is my most professional and chic ensemble. It is the most likely to make me feel like I fit in with all the other lawyers in the room.

I've been thinking a lot about clothing lately. Clothing and appearances. The messages that clothing sends; the judgments that are made based on appearances. As a woman and an articling student it seems like these issues are always on my mind. I work in a small firm with one owner — a man — and ten other lawyers, all but one of them women. What does it say that the two men wear suits to work every day but most of the women do not?

I go to a CBA Social Justice Section meet-up. Hardly anyone is in a suit. Lots of sweaters. I think, *Yes, these are my people.*

My friend tells me that during her summer at a Big Law firm in Toronto she is never not wearing a suit jacket, and neither is anyone else. "Business casual is just an invitation for disaster," she says with certainty. "There are too many ways to go wrong."

I go to a CBA Intellectual Property section social event and everyone is in flashy suits. They all ask "Where are you?" Meaning, "What firm do you work for?" There are only a handful of IP firms in Vancouver and I am not working at any of them, so answering this question feels awkward

"CHOOSING THE RIGHT OUTFIT TO COUNTERACT THE "HYSTERICAL FEMALE" TROPE IS KEY."

to me. Like it's really obvious that I don't belong in their club. I wish I had worn my blazer instead of this black shirt.

I show up to the courthouse for my first Chambers appearance early. I'm meeting my supervising lawyer here at 9:30. I'm nervous because, due to an extraordinary number of laundry malfunctions this week, I had to wear a light grey suit instead of the black suit I had planned. I'm not sure light grey is appropriate — court seems like a black suit kind of place. I watch all the other arrivals while I wait for my supervisor, and sure enough, everyone (except those who are obviously not lawyers) are in black, navy, and the occasional dark grey. My supervisor appears at 9:40, also in black. How out of place do I feel? More importantly, will the Master (judge) take me less seriously as a result of the lighter coloured suit?

Another friend has been a lawyer at a non-profit litigation firm for about five years. He recently cut his hair into a mohawk. It looks fantastic. He is planning to enjoy the mohawk for the next month only, because he has a Chambers hearing in about a month and he will have to lose the mohawk before then. I ask him if he's sure it would be a problem. He's not, actually. It would depend on what the client wanted of course, but the really interesting question is whether or not the *judge* would hear him. If he combed it back instead of making it stand up? Maybe. We're not sure.

I strategize with a friend about what she should wear to her hearing at the *Régie du logement* later this week. Her apartment had bedbugs almost constantly for the better part of a year, but her landlord will likely say that there were no bedbugs and that she is making it up, or that she was imagining them. Choosing the right outfit to counteract the "hysterical female" trope is key. But she doesn't want to seem like an over-eager and litigious law student either. The power suit from summering in Toronto

is out. What about a cardigan? Could be perfect, but my friend doesn't own a cardigan, and makes it a policy not to wear them. The reason? "I've never heard anyone talk about a 'power cardigan,'" she proclaims.

My co-worker asks if I have ever noticed that sometimes, there seems to be reverse discrimination when it comes to appropriate office wear. Like, have I ever noticed that it is considered appropriate for black women to wear braids to the office, but if she, a white woman, wore braids it would be seen as unprofessional? Or how Indian women can wear henna but white women can't? I stare at her for a moment trying to fathom how to answer this question before deciding on what feels like a cop-out: "No, I have never noticed that." The topic is dropped.

My Toronto friend tells me how her opinions of law firms were shaped by the height of the shoes the women in the firm wore. Everyone in heels over three inches? Not the firm for her. My friend has very short hair and wears pant suits. Sometimes, in meetings, clients have addressed both my friend and the male associate with her as "sir." No one but my friend appears to have noticed.

My manager wears skin-tight pleather pants and four-inch heels. In the office! I shouldn't care. I am a feminist. I am, in principle, opposed to policing what other women wear. But I still find myself inwardly cringing, and feeling like her outfit is wildly inappropriate. Is this internalized patriarchy?

Back to the Chambers appearance: all the lawyers are in their suits, and all the court staff are dressed business casual. Interesting. Outside of this place, those suits may indicate some sort of power. Inside, they hold power too, but not as much as the courthouse staff. I hold my breath as I hand over my order to be vetted by the Registry. If the form is wrong, I won't be able to have this order signed by the judge later. It's a minor inconvenience, perhaps, but it will feel like a failure. It is the Registry clerk's call. His suit-less self has all the power. He has some questions about the form. Thankfully, my supervisor is there to answer them, and

the order's form is approved.

After the Registry, we go upstairs and the suits (all dark grey, black, and navy, except for me of course) line up in the courtroom. One by one we tell the courtroom clerks our name, the matter we are appearing for, and the length of time we expect to take. The clerks are full of questions, and full of control. It is they who set the schedule; they who call us up, one by one; they who demand that we provide materials for the judge; they who will send some of us to other rooms to be heard by other judges. We all wait, thousands of dollars of collective billable time, for the court staff to decide our procedural fate. They, with their shrugs-over-tank-tops-and-skirts, facial piercings, and even large, visible tattoos, hold the power, while we, with our suits and shiny shoes, do not.

In the end, I lose the application. Next time I'll wear black.

CONVERSATIONS D'AUTOMOBILE

PAR ANDRÉANNE POIRIER
ÉTUDIANTE EN DROIT À L'UNIVERSITÉ McGILL

Les alliés?
Lui : Des fois, j'ai l'impression que c'est moi que tu attaques personnellement quand tu parles des hommes qui ont fait quelque chose de répréhensible, comme si j'étais le coupable. Je ne suis pas comme eux!

Elle : En effet, tu n'es pas comme eux et c'est pour ça que c'est frustrant. Je te considère comme mon allié et une personne que je respecte. Si tu ne fais rien et que tu es neutre, tu sembles être l'un d'entre eux. Quand je te fais part de mon expérience, c'est pour que tu comprennes et que tu deviennes un agent de changement. J'aimerais que tu sois comme un agent infiltré, que tu changes la *game* en utilisant ton statut de privilégié pour faire bouger les choses. Je ne te parle pas de mon expérience pour devenir émotive et t'accuser. Je te parle pour que tu comprennes mes sentiments et ma frustration devant des phénomènes que je juge injustifiés. Mets-toi à ma place : aimerais-tu ça si tu apprenais que de nombreuses violences envers des hommes restaient impunies, voire tolérées ? Laisse-moi en douter!

Aujourd'hui, je suis allée à la banque me magasiner un prêt étudiant
Elle : Même si j'ai eu un montant appréciable pour ma marge étudiante, je ne peux arrêter de me demander s'ils m'ont moins donné puisque je suis une femme.

Lui : Je pense que t'exagères un peu…

Elle : Peut-être, mais les banques sont là pour faire de l'argent. D'après les

statistiques, on sait que les femmes font moins d'argent que les hommes pour le même travail et le même poste. Donc, la banque a sûrement pris en compte cette information dans son évaluation des risques. Ce n'est pas du cas par cas, c'est basé sur la masse générale. Dans tous les cas, les statistiques sont contre moi.

Sollicitation bien choisie
Un homme s'approche et demande de la monnaie à mon compagnon.

Elle : À chaque fois qu'il y a une personne qui quête, c'est immanquable, elle te sollicite, toi. C'est sexiste et c'est comme de la mauvaise vente! Être mise à l'écart, ça m'enlève l'envie de lui donner de l'argent ou même d'essayer de t'influencer pour que tu lui en donnes. C'est exactement comme certains hommes font dans le cadre de leur travail, quand ils ne parlent qu'à l'homme du couple, même s'il est question des actifs ou du problème de la femme.

Lui : Je sais, c'est vraiment niaiseux de leur part. Ils s'aliènent une partie de leur clientèle. Éventuellement, ces femmes en auront sûrement assez et se présenteront chez leurs compétiteurs.

Les agressions?
Lui : Des fois, il suffit d'être au mauvais endroit au mauvais moment. C'est sûr que de se promener tard la nuit ça n'aide pas, surtout si tu viens de sortir et que tu es habillée sexy.

Elle : Tu sais, la plupart des agressions ne prennent pas place dans une ruelle sombre comme tout le monde se l'imagine. En effet, la majorité du temps, c'est quelqu'un que tu connais ou qui est en position de pouvoir par rapport à toi. Tu penses peut-être qu'on exagère, mais je peux nommer sur mes doigts les filles qui n'ont jamais eu à subir une agression quelconque. Moi, ça m'est arrivé en plein jour : c'était dans un autobus bondé après l'école. L'homme a mis sa main en dessous de ma jupe d'école. J'avais 14 ans et il était deux heures de l'après-midi.

Lui (en blaguant) : En tout cas, moi, j'aimerais ça me faire complimenter à tout bout de champ dans la rue.

« TU SAIS, C'EST FRUSTRANT QUAND TU Y PENSES, MAIS JE NE FERAI PROBABLEMENT JAMAIS AUTANT D'ARGENT QU'UN HOMME. »

Elle : Peut-être que tu trouverais ça flatteur au début ou peut-être même tout le temps, mais il reste que : *I'm not asking for it*. Il n'y a rien qui dit dans mon habillement ou dans mes manières que je veux recevoir ces commentaires-là. Ce n'est pas parce que j'ai une poitrine qui semble plaire aux hommes qu'automatiquement, je veux me faire complimenter ou être déshabillée du regard. Ce n'est pas une équation certaine! Ce n'est pas écrit quelque part que cet homme anonyme, croisé au hasard dans la rue, a un droit sur mon corps. Il n'en a pas.

Lui : T'as raison et c'est vrai ce que tu dis! Il n'a pas le droit de te dire ça ou de te toucher sans avoir vérifié ton consentement. Ça ne doit pas être plaisant!

L'équité salariale et le sexisme

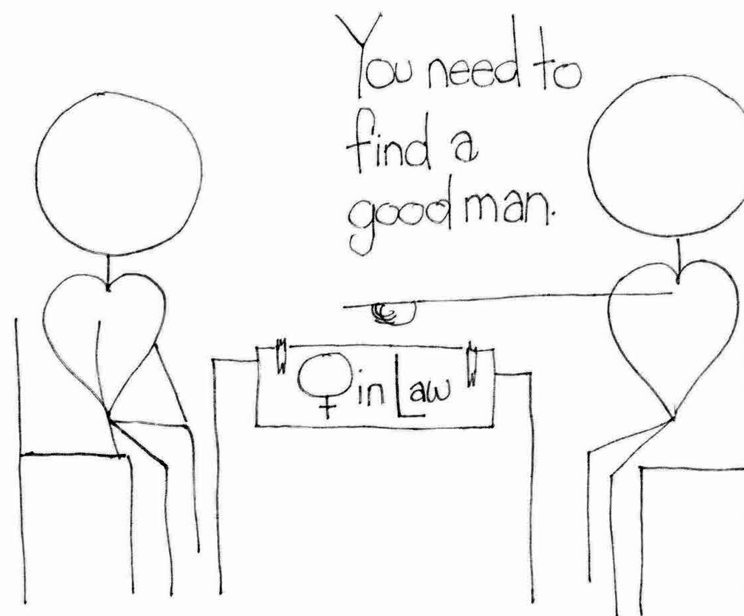
Elle : Tu sais, c'est frustrant quand tu y penses, mais je ne ferai probablement jamais autant d'argent qu'un homme.

Lui : Pourquoi tu dis ça? T'es la meilleure, tu vas faire autant d'argent qu'un homme.

Elle : Bien non! Il faudrait que je sois au moins deux fois plus assidue et douée pour espérer gagner le même salaire qu'un homme moins bon que moi. C'est comme si je partais avec un boulet lourd de stéréotypes dans une course. Je dois travailler plus fort pour me démarquer.

Lui : Arrête de dire ça! Tu vas leur montrer que tu es la meilleure et tu auras droit aux mêmes privilèges.

Elle : Je ne pense pas que ça fonctionne comme ça, même si je suis douée. Je vais devoir me taire quand mon patron dira que je suis douée malgré que je sois une jeune femme. Me démarquer sera sûrement un processus long et fâchant. Je vais sûrement devoir travailler de manière acharnée pour espérer être simplement considérée égale à un homme. Et oui, je crois que c'est si pire que ça.



YOU NEED TO FIND A GOOD MAN

BY NICOLE DAWN DUNBAR
STUDENT AT McGILL FACULTY OF LAW

GANG RAPE CASES AND THE MITIGATING CIRCUMSTANCES OF OPPORTUNISM

BY ODETA E. RIZEA
STUDENT AT McGILL FACULTY OF LAW

My latest research, related to the topic of women and the law, involved a comparative study of the sentencing stage between Canadian and American gang rape case law,[1] research that was an integral part of *Special Topics in Law: Sexual Assaults Offences* course.[2] Gang rape is an aggravated sexual assault that does not discriminate against class, but discriminates against gender. Consulted case law shows that complainants are always females.[3] While analyzing how trial judges balance the denunciatory purpose[4] and the fundamental principle of sentencing[5] along with aggravating and mitigating factors[6] in sexual assaults with multiple offenders, without infringing upon convicts' rights and denying their entitlement to the principle of parity,[7] I became aware of an additional pressing issue common to both jurisdictions. Half of the consulted cases reveal a *gang rape pattern*,[8] which emerges through a subtle, yet undeniable, degree of planned and deliberate actions of the assailants.[9] The main components of the aforementioned *pattern* include: the instigator, the circumstantial and geographical background where the said offence took place, and finally, the role that alcohol, drugs and pornographic movies play in this pattern that ultimately leads to the most violent of sexual assaults. The insurmountable hurdle for Crown Prosecutors is an evidentiary one, namely the lack of probative evidence to show offenders' planned and premeditated actions.[10] To address this issue, the following short article intends to demonstrate that whenever factual settings reveal orchestrated gang rapes, in order to avoid undermining the nature and gravity of aggravated sexual assault offences, defense should be stomped from arguing offender's opportunistic character as mitigating circumstances.

To say that the offender is simply an opportunist and not a calculated premeditating individual flies in the face of the nature and gravity of aggravated sexual assault when the totality of the evidence hints towards the offenders' organized actions, their setting the stage for a gang rape to occur.[11] For instance, a victim may be lured onto the offenders' domicile by one of the assailants, provided with alcoholic drinks and illegal substances, invited to playfully wrestle with the assailants, and made to watch a pornographic movie. This sequence depicts the typical *gang rape pattern* and prelude to a horrifying sexual assault.[12] The pattern continues until the catalyst for the gang rape occurs: one of the offenders decides to either push the victim in a closet, or bedroom, and starts

1 My research is based on the following cases: *R v Dhillon*, 2006 BCCA 531 (available on CanLII), *R v Dow*, 1994 CanLII 6993 (NB CA), *R c Virgile*, 2007 CanLII 1229 (QCCQ), *R v Michel*, *Michel and Marlowe*, 2005 NWTSC 94 (available on CanLII), *R v Steward*, 2001 SKCA 40 (available on CanLII), *Alvarez v State* (1989), 767 S.W.2d 253 (Tex Ct App), *Miranda v State* (2012), 391 S.W.3d 302 (Tex Ct App), *Wheelock v U.S.* (2013), Not Reported in F.Supp.2d (Wis Dis Ct), *People v Funtanilla* (1991), 1 Cal.App.4th 326 (Cal Ct App), *People v Morrow* (2013), Not Reported in Cal.Rptr.3d (Cal Ct App), *People v Robles* (2015), Not Reported in Cal. Rptr.3d (Cal Ct App), *People v Singh* (2013), 109 A.D.3d 1010 (NY Sup App Div). This case law excludes gang rapes that occurred in the Army/Forces, prisons or penitentiaries as well as gang rapes that were followed by the death of the victim.

2 Fall semester 2015, taught by Me Sara Henningsson.

3 *Supra* note 1.

4 *Criminal Code of Canada*, RS C 1985, c C-46, at s 718(a). *Criminal Code* will be hereafter abbreviated as CCC.

5 s 718.1 CCC.

6 s 718.2 CCC.

7 s 718.2 CCC.

8 I came up with this term.

9 The cases that I refer to include: *R v Dhillon*, 2006 BCCA 531 (available on CanLII), *R v Dow*, 1994 CanLII 6993 (NB CA), *R c Virgile*, 2007 CanLII 1229 (QCCQ), *Alvarez v State* (1989), 767 S.W.2d 253 (Tex Ct App), *Miranda v State* (2012), 391 S.W.3d 302 (Tex Ct App), *Wheelock v U.S.* (2013), Not Reported in F.Supp.2d (Wis Dis Ct).

10 *R v Michel*, *Michel and Marlowe*, 2005 NWTSC 94 (available on CanLII) at 5.

11 *R c Virgile*, 2007 CanLII 1229 (QCCQ) at para 3, *R v Dhillon*, 2006 BCCA 531 (available on CanLII) at paras 13-14.

12 *Supra* note 9.

raping her while others are pinning her down, and/or also raping her and/or fighting over who gets her next.[13] The threats, the violence, the cruelty and brutality, the gang activity and the vulnerability of the victim are all inherent to this offence.

Finally, gang rape cases do not revolve around the issue of consent, but around common intention and deliberate actions of the assailants. Case law makes it abundantly clear that the victim at no point in time consented to any sexual activity with the assailants, even though the victim's capacity to consent has been vitiated with alcohol and/or drugs by the offenders.[14] Hence, assailants' active efforts to impair the victim's capacity to consent through drugs and alcohol point towards two important elements in criminal law: common intention[15] of offenders and planning and deliberation[16] of acts. First of all, in sexual assaults with multiple offenders, establishing assailants' liability under section 21(2) CCC is a straightforward process. All offenders in the previously mentioned cases fulfill the "intention in common" criterion: they have common intention, unlawful purpose and they know or ought to have known of the probable commission of the offence.[17] They are clearly parties to the offence, hence, they are held liable. Second of all, proving the "planned and deliberate" element in gang rape cases is somewhat of a thorny issue from an evidentiary stand. The Supreme Court of Canada (SCC) held that "in criminal law [...] the expression 'planned and deliberate' means the carefully thought out design which precedes the carrying out of an unlawful act. So it is the commission of an unlawful act after having thought about it. It is an act which is planned and desired."[18] This definition echoes the *gang rape pattern* previously discussed. It is undeniable that from a practical

13 *Ibid.*
14 *Supra* note 9. This is particularly problematic in cases where the victim is under eighteen years of age. See: *R v Michel*, *Michel and Marlowe*, 2005 NWTSC 94 (available on CanLII) at 6-7, *R c Virgile*, 2007 QCCQ 1229 (available on CanLII) at para 11, *People v Robles*, Not Reported in Cal.Rptr.3d (2015) at page 1, para 1.
15 *R v Briscoe*, 2010 SCC 13, [2010] 1 SCR 411.
16 *R v Nygaard*, [1989] 2 SCR 1074, *R v Aalders*, [1993] 2 SCR 482. See also s 231 CCC.
17 S 21(2) CCC, *R v Kirkness*, [1990] 3 SCR 74 at 105-111, *R v Briscoe*, 2010 SCC 13, [2010] 1 SCR 411 at paras 7 and 17.
18 *R v Aalders*, [1993] 2 SCR 482 at 503.

"TO SAY THAT THE OFFENDER IS SIMPLY AN OPPORTUNIST AND NOT A CALCULATED PREMEDITATING INDIVIDUAL FLIES IN THE FACE OF THE NATURE AND GRAVITY OF AGGRAVATED SEXUAL ASSAULT."

perspective, the lack of probative evidence needed to demonstrate offenders' *planning* and *premeditation* of an alleged orchestrated gang rape remains a considerable hurdle for the prosecution in these cases. Nevertheless, offenders' acts should be considered as deliberate. The SCC concluded that while *planned* could be defined as a "scheme [that] was conceived and carefully thought out before it was carried out", *deliberate* referred to an action that was "not impulsive".[19] The meaning of *deliberate* leaves no room for opportunism as a mitigating factor. More so, deliberation combined with offenders' common intent excludes unwary, thoughtless, imprudent and spontaneous acts, therefore rejecting the possibility for defense to argue assailants' opportunistic character in gang rape cases that foreshadow a setting of the stage.

Gang rape victims do not benefit from an escape similar to that of the complainant in *Sansregret*. They cannot "hold out some hope of reconciliation" to avoid physical injury by the accused.[20] This is why sentencing judges take the time to underline that one "cannot imagine anything more degrading than a gang rape to a female or anything more shattering to a female's sexual integrity. This is indeed a very serious sexual assault and there is bound to be emotional trauma to the complainant for many years."[21] The nature and the gravity of this offence are obviously considered as aggravating factors and the offence itself, as "deserving of a significant sanction so as to demonstrate society's abhorrence of the conduct and deter others from committing similar offences."[22]

19 *R v Nygaard*, [1989] 2 SCR 1074 at 1084.
20 *Sansregret v The Queen*, [1985] 1 SCR 570 at para 2.
21 *R v Dow*, 1994 CanLII 6993 at 2 (NB CA).
22 *R v Michel*, *Michel and Marlowe*, 2005 NWTSC 94 (available on CanLII) at 3. The specific pattern is inapplicable to cases where the victim was kidnapped (see *R v Michel*, *Michel and Marlowe*, 2005 NWTSC 94 (available on CanLII)) or met the assailants randomly in a public place prior to the aggravated sexual assault (see *People v Robles* (2015), Not Reported in Cal.Rptr.3d (Cal Ct App)).

MY BRILLIANT FRIEND

BY CLAIRE BOYCHUK
STUDENT AT McGILL FACULTY OF LAW

Women, ambition, and friendship

> "My experience as a novelist… culminated, after twenty years, in the attempt to relate, in a writing that was appropriate, my sex and its difference. But if we have to cultivate our narrative tradition, as women, that doesn't mean we should renounce the entire stock of techniques we have behind us. We have to show that we can construct worlds that are not only as wide and powerful and rich as those constructed by men but more so. We have to be well equipped, we have to dig deep into our difference, using advanced tools. Above all, we have to insist on the greatest freedom."
>
> - Elena Ferrante[1]

Last fall I read the Italian novelist Elena Ferrante's Neopolitan series, which has exploded the literary world's understanding of friendship between women. The world of Ferrante's protagonist, Lenù, is not constructed by power, money, or prestige, but orbits around the triumphs and expectations of her best friend, Lila. Lenù leaves violent Naples on a scholarship to a prestigious Italian university. Meanwhile, Lila, despite her dazzling brilliance, is denied the opportunity to pursue further education and becomes entangled in an abusive marriage. Throughout the four-book series, Lenù and Lila's lives expand and contract relative to one another, creating a narrative that is intensely *relational*.

Like Lila, my friend Cassandra has an ability to make any subject come alive. At seventeen, we shared a history class, and my first impression was that she alone had authored the twentieth century. Mao, Stalin, and

1 Sandro & Sandra Ferri, "Elena Ferrante, Art of Fiction, No. 228" the Paris Review, online: <www.theparisreview.org/interviews/6370/art-of-fiction-no-228-elena-ferrante>.

“IN ALL THESE MOMENTS, CASSANDRA AND I NEVER DISCUSSED GRADES OR THE PLACES WE’D GO. THERE WAS NOTHING INSTRUMENTAL ABOUT OUR FRIDAY NIGHTS SEARCHING THE LIBRARY STACKS FOR ANOTHER ACCOUNT OF THE FIRST WORLD WAR. WE SIMPLY WANTED TO KNOW.”

Zhou Enlai were names so familiar in past lives. The intonations of her Brazilian Portuguese bled through her English, making it more forceful and somehow more convincing. Looking up from *A History of Modern Russia*, she would say, with profound exasperation, “Staaaa-lin, what was he dooo-ing?”

On weekends, Cassandra and I would stay up until the early hours of the morning watching the same autobiography of Salvador Dali on repeat, discussing surrealism and entropy. Over the holidays, when I visited Cassandra in her hometown in Brazil, I lugged the 800-page *Search for Modern China* along with me, reading it between long bus rides, family visits, and coastal adventures. Naïve and baffled by the title, I was frustrated by the fuzziness of modernity. Somehow Cassandra’s impatient intellect had unleashed mine, and when I returned to school I handed in papers that furiously questioned linear cultural development, the inevitability of war, and discarded theories of peace. As I look back now, I see a friendship that shaped the course of my life.

In all these moments, Cassandra and I never discussed grades or the places we’d go. There was nothing instrumental about our Friday nights searching the library stacks for another account of the First World War. We simply wanted to know.

For many years, I didn’t see Cassandra. Our lives were unfolding on different continents. I settled on law in Canada; she finished graduate school in Israel. Last year we crossed paths in Europe. She was working on a novel and studying the phenomenon of ISIS with the same consuming fascination. Like Ferrante’s protagonist Lenù, seeing my old friend forced a critical reflection on the values that are assumed — and those that are vacated — in my own legal education.

For those of us who move laterally through life — friends and family anchoring past and future — a relational narrative feels truthful. Which is perhaps why, though Ferrante’s violent and impoverished Naples is worlds away from Montreal, I easily slipped into the skin of the narrator. By book four I felt the edges between my own thoughts and those of Lenù become blurry. Ferrante’s world straddles public and private spheres, academic achievement, political violence, and failed parenting. Ferrante reveals that a life held in a constellation of relationships is no less complex than one propelled by unbending individual ambition.

Ferrante’s fiction also resonates with the work of feminist scholar Carol Gilligan, whose experiments suggested that “male and female subjects held different ethical worldviews. The male ethics tended towards the clear application of rules, whereas the female ethics was more ‘relational’ and based upon an ‘ethic of care’ that is informed by the relationships between people rather than abstract principles.”[2] As I attempt to articulate my own ethical worldview and future ambitions as a law student, I see these voices as offering an alternative to purely liberal conceptions of self — one in which learning and exchange, self-expression and interdependence can hold centre-stage.

One way that I have been fortunate enough to come to understand these ideas is through my connection to Cassandra. It is not surprising that Ferrante’s first novel is entitled *My Brilliant Friend*.

2 Margaret Davies, “Unity and Diversity in Feminist Legal Theory” (2007) 2:4 Philosophy Compass 650 at 655.

SEARCHING

BY KATHERINE RICHARDSON
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FEMMES INDIENNES ET PROTECTION DU DROIT À L'ALIMENTATION : DES AVANCÉES LACUNAIRES

PAR JESSICA DUFRESNE
TITULAIRE D'UNE MAÎTRISE EN DROIT INTERNATIONAL DE L'UQÀM

Les femmes de partout dans le monde sont, encore à ce jour, fréquemment victimes de discriminations affectant plusieurs de leurs droits fondamentaux et, incidemment, leur accès à une nourriture en quantité suffisante[1]. Ces discriminations perdurent alors même qu'ont été développés un nombre important d'instruments internationaux visant à assurer le respect de leurs droits[2]. Celles-ci découlent parfois de lois discriminatoires, mais plus souvent de normes sociales ou de coutumes liées à certains stéréotypes sur le rôle des hommes et des femmes, qui perpétuent la marginalisation de ces dernières quant à leur rôle dans la prise de décision à tous les niveaux tout comme, de façon plus générale, à l'accès à l'éducation[3].

1 UN Women, *World survey on the role of women in development* 2014 - Gender equality and sustainable development (2014), en ligne: <http://www.unwomen.org/~/media/headquarters/attachments/sections/library/publications/2014/unwomen_surveyreport_advance_16oct.pdf > à la p 7.
2 Par exemple, le PIDESC, le PIDCP et la *Convention internationale sur l'élimination de toutes les formes de discrimination à l'égard des femmes* (CEDEF), textes auxquels l'Inde est partie.
3 Conseil des droits de l'homme, *Rapport soumis par le Rapporteur spécial sur le droit à l'alimentation*, Olivier De Schutter : Droits des femmes et droit à l'alimentation, A/HRC/22/50 (2012) au para 2.

Les raisons des discriminations contre les femmes en Inde sont tout aussi multiples et complexes, mais viennent fondamentalement du fait que les normes sociales rigides ayant toujours cours dans ce pays se perpétuent de génération en génération. Ainsi, la vaste majorité des femmes sont confinées au second rang, et ce, malgré le fait qu'elles déploient toutes leurs énergies aux tâches domestiques et à la survie du ménage[4]. À titre d'exemple, la pratique discriminatoire du « *rotational eating among women*[5] » a toujours lieu dans bon nombre de foyers indiens. Il n'est donc pas surprenant que le plus récent rapport du *National Family Health Survey* démontre que plus du tiers des femmes du pays souffrent de déficience énergétique chronique, alors que plus de la moitié des femmes âgées de 15 à 49 ans souffrent d'une déficience en fer leur causant de l'anémie[6]. En Inde, ce sont les femmes seules qui subissent le plus directement les contrecoups de la discrimination basée sur le genre, dès lors que, dépourvues de toute protection, de sécurité, voire de contrôle masculin, leur solitude choque la société patriarcale qui les mène à l'exclusion[7].

Dans cet état, le veuvage mène à une importante stigmatisation sociale dans la plupart des communautés ethniques et religieuses, mais de façon plus marquée encore chez les hindoues[8]. La femme veuve, quel que soit son âge, n'est pas traitée avec respect, et la société lui inflige d'importantes restrictions : « *The common restrictions on residence, ownership, remarriage and employment place a widow in the most*

4 Saxena, N.C., « Hunger, Under-nutrition and Food Security in India » (2004) Indian Institute of Public Administration, Document 44 à la p 26 [Saxena].
5 Pratique consistant à faire manger en premier lieu les hommes, puis à laisser les restants de table aux femmes qui, se retrouvant souvent avec des quantités insuffisantes de nourriture, doivent manger selon un cycle de rotation. Sulkanya Pillay, « India Sinking: Threats to the Right of Food, Food Security & Development in an Era of Economic Growth » (2009) 27:1 Windsor Y.B. Access Just. à la p 146.
6 Fred Arnold et al, «Nutrition in India» (2009) *National Family Health* (NFHS-3), en ligne : <http://www.rchiips.org/nfhs/nutrition_report_for_website_18sep09.pdf> aux p 49 et 58.
7 Commissioners of the Supreme Court, «Eighth Report of the Commissioners of the Supreme Court: A Special Report on the Most Vulnerable Social Groups and their Access to Food» rapport de *PUCL v. UOI & Ors. Writ Petition* No. 196 of 2001 (2008) à la p 15 [*Report*].
8 *Ibid*.

« LA VASTE MAJORITÉ DES FEMMES SONT CONFINÉES AU SECOND RANG, ET CE, MALGRÉ LE FAIT QU'ELLES DÉPLOIENT TOUTES LEURS ÉNERGIES AUX TÂCHES DOMESTIQUES ET À LA SURVIE DU MÉNAGE. »

economic, social and physically vulnerable group of women within a given population[9] ». Après la mort de leur mari, les veuves sont considérées comme un réel fardeau et, malgré qu'elles doivent traditionnellement être prises en charge par la famille de l'époux, elles se retrouvent plus souvent laissées à elles-mêmes ou encore renvoyées dans leur famille natale, lorsque celle-ci est en mesure de subvenir à leurs besoins[10]. Certaines sont même abandonnées dans des villes saintes lors d'un pèlerinage effectué par les membres de leur famille. De plus, alors que les veuves ont, en Inde, le droit légal d'hériter des propriétés de leur défunt époux, il en est autrement dans la pratique. En effet, le droit des successions est encore majoritairement régi par le droit traditionnel ou coutumier; ainsi, les femmes sont pour la plupart exclues du concept de droit de propriété[11]. Sans avoirs propres, les veuves n'ont d'autre choix que de se tourner vers la recherche d'un emploi qui leur permettra de subvenir à leurs besoins, mais elles se heurtent alors encore une fois à l'exclusion sociale due aux tabous qui leur sont associés, majoritairement liés au fait qu'elles n'aient plus d'homme à leurs côtés. En effet, la stigmatisation associée au statut de veuve entraîne un traitement inéquitable à leur égard sur le marché du travail, ce qui rend la quête d'un gagne-pain plus ardue[12]. En outre, la plupart des femmes vivant seules sont systématiquement isolées de ce marché en raison de la surcharge de travail domestique qu'elles doivent accomplir. Les femmes seules qui réussissent à trouver du travail à l'extérieur de la maison sont de plus confrontées aux pratiques discriminatoires en ce qui a trait aux tâches qui leur sont assignées, de même qu'aux disparités salariales[13].

9 The Guild of Service, « Status of Widows of Vindravan and Varanasi: A comparative Study » (2002), en ligne:
<http://griefandrenewal.com/widows_study.htm>.
10 *Report*, *supra* note 7 à la p 16.
11 *Ibid* à la p 18.
12 *Ibid*.
13 *Ibid* à la p 19.

Les femmes célibataires subissent aussi des discriminations en raison de la nature patriarcale de la société indienne, et le constat demeure malheureusement le même auprès des femmes mariées, qui sont elles aussi victimes d'actes d'humiliation, de violence et de privations au sein du couple. En effet, les croyances culturelles et sociales demeurent ancrées quant à l'idée qu'il s'agisse du devoir de la femme de continuer à vivre avec son mari malgré ces situations d'abus, sous peine de se voir ostracisée en cas de séparation[14]. Ces discriminations ont cours alors même que plusieurs lois indiennes encadrent la protection des femmes. Ainsi, « si l'Inde est l'un des pays qui a fait le plus de lois pour les femmes, c'est celui où l'écart entre la loi et la réalité est le plus grand[15] ». Cette dissonance s'expliquerait par le fait que la religion joue un rôle déterminant dans la vie de la femme, de « son activité économique [à] sa vie sociale, son mariage, sa naissance et sa mort[16] » et que celle-ci primerait sur la législation au quotidien. Bien que l'Inde soit partagée entre plusieurs religions[17], l'appartenance à l'une ou l'autre des communautés religieuses ne semble pas être à elle seule la source des discriminations. En effet, des études régionales ont permis de démontrer que ce sont plutôt une multitude de facteurs tels que la pauvreté, l'analphabétisme et la ruralité qui, liés aux traditions religieuses, mènent à un traitement inférieur de la femme[18].

Il paraît donc évident que les femmes sont généralement beaucoup plus susceptibles de devoir faire face à la pauvreté et à ses corolaires, dont fait inexorablement partie la malnutrition. Ainsi discriminées, elles doivent davantage lutter pour accéder à la sécurité alimentaire et faire preuve de créativité pour y parvenir. Rationnement, substitution de denrées de base par des aliments moins coûteux mais plus pauvres en nutriments et diminution du nombre de repas par jour ne sont que quelques-unes des

14 *Ibid* à la p 16.
15 Christian Morrison avec la collaboration de Silke Friedrich, « La condition des femmes en Inde, Soudan et Tunisie » (2004) Centre de développement de l'OCDE Document de travail no 235 à la p 15.
16 *Ibid*.
17 Les religions majoritaires en Inde sont l'hindouisme (90%), l'islam (13%), le christianisme (4%) ainsi que, de façon plus minoritaire, le sikhisme, le bouddhisme, le jaïnisme et le judaïsme. Voir Joseph Yacoub, « Inde : conflits ethno-religieux » (2003) 14 Cités à la p 70.
18 *Report*, *supra* note 7 à la p 20.

tactiques qu'elles empruntent pour tenter de contrer la faim[19].

Plusieurs des programmes alimentaires mis en place par le gouvernement indien dans la mise en œuvre de son plan global de protection du droit à l'alimentation pourraient pallier ces carences et permettre aux femmes, plus particulièrement aux célibataires et aux veuves, d'accéder à la sécurité alimentaire, mais il s'avère que ceux-ci demeurent trop souvent hors de leur portée. Ainsi, la plupart des programmes d'aide s'adressent directement aux ménages et délivrent les rations alimentaires au nom du père de famille, de sorte qu'en cas de séparation ou du décès de celui-ci, la femme se retrouve sans ressources[20]. Concernant le programme spécifique du *National Family Benefit Scheme*, qui permet aux femmes dont le mari est décédé de recevoir une aide ponctuelle de 10 000 roupies, il s'avère très peu fonctionnel dès lors que sa gestion des plus bureaucratiques empêche la plupart des bénéficiaires potentielles d'en profiter[21]. Les femmes enceintes ou allaitantes pourraient néanmoins se rabattre sur l'*Integrated Child Distribution Scheme* ou sur le *National Maternity Benefit Scheme*, qui leur permettraient d'obtenir les nutriments et les soins de santé nécessaires pour qu'elles-mêmes et leurs enfants en bas-âge aient accès aux denrées nécessaires, mais la méconnaissance qu'ont la plupart des femmes dans le besoin des différents programmes d'aide alimentaire laisse planer le doute quant à leurs portée et succès réels.

Ainsi, c'est principalement l'autonomisation des femmes, de façon à leur donner les moyens de connaître et de revendiquer leurs droits et, surtout, de croire en la possibilité de le faire, qui apparaît comme la clé de la résolution du problème bien ancré de la faim auprès de ce groupe vulnérable. C'est d'ailleurs là que se trouve le principal défi des différentes ONG qui œuvrent à la défense des droits des femmes tout comme, plus généralement, du droit à l'alimentation[22].

19 *Ibid*.
20 *Ibid* à la p 22.
21 *Ibid*.
22 Saxena, *supra* note 4 à la p 27.

MY TRUE CALLING

BY ALEXANDRA IANNARINO
STUDENT AT McGILL FACULTY OF LAW

As a Health Science student in CEGEP, I was intrigued by all things scientific, and was intending to pursue a career in medicine. In an attempt to reaffirm that medicine was my calling, I participated in a humanitarian trip with MEDLIFE to Peru, where I worked in mobile clinics within several underprivileged communities. When shadowing physicians at the clinic and later building a staircase for a community, I was able to interact with the locals and witness the camaraderie between the villagers. What resonated with me was the amount of joy and laughter they had to share with us. In spite of their poverty, people were rich in spirit and showed us, volunteers, much kindness and gratitude. When working at the tooth brushing station at the clinic, I met a ten-year-old Peruvian girl named Marisol who had a lasting impact on me. After giving a demonstration, I offered her a toothbrush, and she responded with such a grateful smile. She gave me a hug and expressed how thankful and excited she was to be able to brush her teeth properly for the first time. As I hugged Marisol, I felt the true impact that could be made by providing health services and by imparting our knowledge of health awareness.

I believe that every human being has the right to health care; however, this vital necessity is unavailable to many. The lack of human and financial resources, as well as legal and social obstacles, are a substantial threat to impoverished, underdeveloped populations. By travelling to Peru, I was sensitized to the shortage of health services in underprivileged areas of the world, and realized the indispensable value of health care. When I spoke to the Peruvian locals, they informed me that the government did not spend the money it had promised on essential health care and infrastructure, such as secure staircases. As a result, the community's development was hindered. The thought that there was inequality in health care distribution partially due to the inaction of the government invoked in me a desire to help and defend those who are voiceless against this injustice. The knowledge that I gained on the humanitarian trip prompted my own personal growth and allowed me to realize my true calling.

> “AS I HUGGED MARISOL, I FELT THE TRUE IMPACT THAT COULD BE MADE BY PROVIDING HEALTH SERVICES AND BY IMPARTING OUR KNOWLEDGE OF HEALTH AWARENESS.”

After much reflection, I determined that I was driven by the injustices resulting from the lack of health care services rather than by offering the health care services themselves. As a result, I applied to law school. I felt at the time that a career in law would provide me with the tools and the opportunities necessary to change the lives of many people in unfortunate predicaments.

Now, after finishing my first semester in law school, I've learned that law is a creative and powerful force that can be used to change situations for the better. The thought that I, as a lawyer, will one day improve lives by being of service to those who feel powerless against injustice continues to bring me much fulfillment.

CAREGIVERS: THE FORGOTTEN FEMINIST STRUGGLE

BY NIGAH AWJ
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Thousands of women enter Canada every year with temporary, nominative employment visas to work in the homes of privileged families. A growing number of studies have raised concerns about the conditions foreign caregivers in Canada will face. While mainstream feminism concerns itself with aspirations of wealthy, white, Western women, these vulnerable women are forgotten. Caregivers' work is undervalued and they suffer from their exclusion from labour and social protections other workers enjoy. Their work generates wealth for employers as it allows them to work outside the home. Our government facilitates exploitation instead of dealing concretely with the crisis of social services we are facing.[1] Permitting, and even sanctioning, through legislation what is essentially modern servitude does not fix the problem of our skewed priorities and willingness to allow others to suffer for them.

The Live-in Caregiver Program (LCP)[2] was established in 1992 as a federal initiative to help hire workers from foreign countries in order to fill the gap in domestic services aggravated by the inaccessibility to many Canadians of affordable and adequate services.[3] These sectors are suffering from a lack of funding, and a lack of prestige. Being a housekeeper or a nanny is not a glamorous career, not the type aspired to by the majority of Canadians. The government has failed to recognize that foreign caregivers had been fulfilling these jobs long before the establishment of the program. It is they who permit others to live their "American Dream". We cannot ignore the perpetual need in the Canadian economy for the type of work caregivers provide. The LCP now permitted caregivers to enter Canada with their employer's nomination. The only hope they had then to gain permanent residence status in Canada was through their employer's declaration of their hours and pay. They had to complete 24 months on a 48-month work permit in order to be eligible for permanent residency. All the power over caregivers' lives was placed squarely in their employer's hands. If caregivers changed employers or resigned, they would lose their chance at residency. Thus, the declarations could easily be leveraged abusively in the employer-employee relationship. Caregivers could not but accept whatever working conditions they faced. After efforts from the women it affected, the LCP was abolished in November 2014. However, instead of improving the situation through subsequent concrete legislation, the government left a void! There is no longer a specific program for foreign caregivers; they now fall under the Temporary Foreign Worker Program (TFWP).[4] Under this program, it is much harder for caregivers to obtain permanent residency. Their uncertain immigration status makes it hard for caregivers to negotiate the terms and conditions of their lives.

Institutional racism dwells in these laws, since they target women of colour who are non-nationals.[5] Among these are the migrant women from the Philippines. They are given very restrictive work permits that give a lot of power to their employers and reduce their lot to something akin to slavery. They suffer abuse, violence, and human rights violations in disproportionately high amounts due to the social construction of race in which they fall close to the bottom of the hierarchy.[6] In her book, *Domesticity and Dirt: Housewives and Domestic Servants in the United States, 1920-1945*,[7] Phyllis Palmer explains "whiteness" as the sense of

1 Abigail Bakan & Daiva Stasiulis, *Negotiating Citizenship: Migrant Women in Canada and the Global System* (Toronto: University of Toronto Press, 2005).
2 Government of Canada, "Live-in caregivers" (Last modified 5 December 2014), online: <www.cic.gc.ca>.
3 Caregivers' Association of Québec, "Issues and Problematics of Immigrant Caregivers", online: <aafqweben.wordpress.com>.

4 *Ibid*.
5 *Supra* note 1.
6 Nandita Sharma, "Immigrant and Migrant Workers in Canada: Labour Movements, Racism and the Expansion of Globalization" (2002) 21:4 Canadian Woman Studies 18.
7 Phyllis Palmer, *Domesticity And Dirt: Housewives and Domestic Servants in the United States*, 1920-1945 (Philadelphia: Temple University Press, 1989).

“RACIAL OPPRESSION COMBINED WITH CLASS OPPRESSION CREATED A DISTINCT HIERARCHY AMONG WOMEN IN WHICH ONE GROUP CAN USE THEIR MONEY AND POSITION TO BECOME EDUCATED AND THEIR FREE TIME TO FIGHT FOR “WOMEN’S RIGHTS,” BUT ONLY AT THE EXPENSE OF THE OTHERS.”

racial superiority middle-class housewives felt when they hired others to do their “caring.” They were relieved of domestic labour and assured the time to attend to their social status. Domestic work is the work that makes all other work possible. For too long, feminist writers have not discussed the role of domestic workers in the revolutionary process and how it maintained class divisions among women. Racial oppression combined with class oppression created a distinct hierarchy among women in which one group can use their money and position to become educated and their free time to fight for “women’s rights,” but only at the expense of the others.

It is clear that caregivers do not enjoy the freedoms (supposedly gained in the name of all women) that their employers do; just as they did not when the early 20th century suffragettes were out marching. The world is in a situation where many people see fleeing their homelands as the best option. The second they arrive in a country like Canada, their role has already been decided, and so are our expectations of them. Current policies justify and perpetuate our distancing from them. “Migrant workers are other, migrant workers are less,” the policies shout each time we leave women in a position too vulnerable to negotiate for a better position in life. In this way, these women “continue to be historically constructed features of modern state ideology that is widely and inaccurately accepted as fact, rather than an ideological construct.”[8]

The international community has already recognized how vulnerable migrant domestic workers are. “A 2009 survey of 70 countries by the International Labor Organization (ILO) found that 40 percent did not guarantee domestic workers a weekly day of rest, and half did not impose

8 Abigail Bakan & Daiva Stasiulis, “Negotiating Citizenship: The Case of Foreign Domestic Workers in Canada” (1997) 57 Feminist Review 112.

a limit on normal hours of work for domestic workers. Without legal protection, domestic workers are at the mercy of their employers.”[9] On June 2011, ILO members voted to adopt the ILO *Convention Concerning Decent Work for Domestic Workers*, which establishes the first global standard for domestic workers and entitles them to the same basic rights as those available to other workers in their country. The new standards oblige governments to protect domestic workers from violence and abuse by regulating private employment agencies that recruit and employ domestic workers, and to prevent child labour in domestic work. Unfortunately, but unsurprisingly, Canada has not ratified this convention. Instead of providing funding for child care and/or elderly care for Canadian families, or enforcing protection of caregivers’ labour rights, the Canadian government is complacent with the exploitation of cheap migrant labour. This hierarchy of supply and demand creates a “vicious circle of racism and resistance.”[10] Canada’s LCP, and now TFWP, institutionalize and facilitate the exploitation of migrant domestic workers. It is clear that migrant workers are considered to be undesirables, and yet the demand for their services is high. Women and feminists must not be complicit in this matter. We cannot enjoy our rights, freedoms, and opportunities at the expense of others!

9 Human Rights Watch, “*The ILO Domestic Workers Convention*” (2013), online: <www.hrw.org>.
10 Ellie Tesher, “Foreign Domestics Need Our Help”, *Toronto Star* (October 16 1996).

FALLEN

BY KATHERINE RICHARDSON
STUDENT AT McGILL FACULTY OF LAW

LE CORDON OMBILICAL NE SE COUPE PAS : OBSERVATIONS SUR LE RÔLE D'UNE MÈRE ENVERS SON ENFANT MAJEURE[1]

PAR SARA ANDRADE ET ÉLODIE FORTIN[2]
ÉTUDIANTES EN DROIT À McGILL

« *Ça arrive pas dans la vie d'une mère qu'elle aime moins son fils. La seule chose qui va arriver, c'est que je vais t'aimer de plus en plus fort, et c'est toi qui vas m'aimer de moins en moins.* »

–Diane Desprès (personnage, *Mommy* de Xavier Dolan)

Ces paroles reflètent un principe enraciné dans l'imaginaire collectif, celui de l'amour inconditionnel d'une mère envers son enfant. Pourquoi ne peut-on pas envisager que l'enfant devienne étrangère à sa mère, que la mère et l'enfant aient une personnalité et des valeurs incompatibles, que cet amour se dissipe? Une femme est-elle obligée de rester mère toute sa vie? Ou y a-t-il place pour une cessation de relation complète volontaire? La récente discussion sur le rôle des mères porteuses nous invite à nous questionner plus largement sur le rôle des mères au sein et au-delà de l'institution de la famille. Cet article explore les obligations des parents envers l'enfant majeure dans une situation financière précaire, en droit québécois.

1 Le féminin est utilisé sans discrimination des genres pour alléger le texte.
2 Nous tenons à mentionner que ceci n'est que la réflexion préliminaire de deux jeunes femmes sans vécu de la maternité.

Au Québec, l'âge de la majorité est établi à 18 ans. Bien que l'établissement de ce seuil relève de l'abstraction, il s'agit d'un point tournant où une pléthore de droits et d'obligations bien concrètes est générée. C'est à cet instant qu'une personne est libérée de l'autorité parentale qui l'encadrait jusqu'alors; elle est indépendante d'un point de vue décisionnel. Cependant, selon le *Code civil du Québec*[3], ses parents maintiennent leurs obligations en lui devant encore une pension alimentaire dans certaines circonstances. Par exemple, le programme d'aide financière de dernier recours au gouvernement considère qu'une enfant de 18 ans qui a quitté le foyer familial reçoit encore de l'aide de ses parents jusqu'à ses 21 ans[4]. En cas d'un refus de contribution, le ministre est alors subrogé aux droits de l'enfant pour faire fixer une pension alimentaire ou pour la faire réviser, à moins que l'enfant ne décide d'exercer son recours contre ses parents[5]. Ainsi, alors que l'ensemble des droits parentaux sur l'enfant disparaissent à sa majorité, le droit conserve une présomption légale de contribution et d'appui pécuniaire.

La position des parents semble se tenir en déséquilibre. Même si le parent n'accepte pas le mode de vie de cette jeune adulte, elle se retrouve à le cautionner financièrement. À titre d'exemple, pensons à une enfant toxicomane. Pour ses parents, il s'agit d'un dilemme moral que de participer financièrement à un mode de vie néfaste pour leur enfant, ayant perdu le statut juridique nécessaire pour intervenir dans son processus décisionnel. Elles ne peuvent l'obliger à aller en cure de désintoxication ou en thérapie, par exemple, puisqu'elles sont dévêtues de leur autorité parentale. Nous acceptons que le lien de filiation sur lequel est fondé cette obligation pécuniaire soit le plus fort qu'on puisse reconnaître. Il semble également juste que le droit public ne veuille déplacer le fardeau

3 Art 586 al 2 CcQ.

4 À 18 ans, l'enfant qui n'est pas mariée, qui n'a pas d'enfants, qui n'a pas travaillé à temps plein pendant au moins deux ans, qui a récemment quitté sa demeure familiale et qui n'a pas vécu sept ans sans avoir fréquenté un établissement scolaire se verra refuser une prestation gouvernementale : ses parents sont donc encore financièrement responsables d'elle pendant un maximum de trois ans. La présomption est écartée dans certaines situations. Par exemple, l'adulte qui démontre que ses parents sont introuvables n'est pas réputée recevoir de contribution parentale. *Loi sur l'aide aux personnes et aux familles*, RLRQ 2005, c. A-13.1.1, art 55(f), 57.

5 *Ibid*, art 63.

financier vers l'ensemble de la population dès le passage à l'âge adulte des enfants en difficulté financière. Reste que la préservation du devoir parental nourrit une responsabilité morale implicitement imposée par la société.

Par ailleurs, avec l'acceptation de l'homoparentalité et des compositions familiales hétérodoxes, le rôle traditionnel associé au genre de chaque parent est délaissé. Ainsi, la loi articule les obligations de manière dégenrée. Par contre, une distinction sociale persiste; le niveau d'acceptabilité de certains comportements varie de la gent masculine à la gent féminine. Par exemple, lorsqu'une mère refuse la garde de ses enfants, son geste est instinctivement qualifié d'abandon, d'un comportement digne d'une mauvaise mère. On ne peut prétendre que la pression sociale est semblable pour un père qui ferait pareil. De même, comme mentionné récemment par la juge St-Pierre dans le jugement de la Cour d'appel du Québec portant sur l'adoption d'un enfant d'une mère porteuse, la réaction à la vue d'une mention de « mère non déclarée » sur l'acte de naissance génère un niveau d'étonnement qui est absent à la lecture de « père non déclaré »[6]. Malgré l'indifférenciation des genres par le droit au sein de la parentalité, nous croyons que la société accorde encore aujourd'hui un rôle particulier à la mère. Ce rôle demeure présent dans l'imaginaire collectif, de telle sorte que la mère se voit attribuer une plus grande responsabilité morale que le père.

Nous en arrivons à l'observation qu'à l'intersection entre le droit privé et le droit public naissent des obligations morales, socialement perçues comme maternelles, envers l'enfant majeure : celle de maintenir un contact non seulement avec son enfant adulte, mais également avec le père de l'enfant pour assurer sa contribution; celle d'intégrer l'enfant à une vie adulte saine; celle de l'encourager, de la soutenir, de l'aimer. Ces obligations ne se veulent pas restreintes à une période fixe; plutôt, le législateur présume et promeut la notion de cohésion familiale, de bonne foi et d'harmonie au sein de la famille, ne voulant intervenir qu'en dernier recours. L'établissement d'une contribution parentale considérable semble viser à dissuader la gestion financière du ménage par l'État[7].

6 Adoption — 161, 2016 QCCA 16.

7 Environ 40% du salaire net de chaque parent est présumé être dû à l'enfant. *Règlement sur l'aide aux personnes et aux familles*, c A-13.1.1 r. 1, art 154.

« NOUS EN ARRIVONS À L'OBSERVATION QU'À L'INTERSECTION ENTRE LE DROIT PRIVÉ ET LE DROIT PUBLIC NAISSENT DES OBLIGATIONS MORALES, SOCIALEMENT PERÇUES COMME MATERNELLES, ENVERS L'ENFANT MAJEURE : CELLE DE MAINTENIR UN CONTACT NON SEULEMENT AVEC SON ENFANT ADULTE, MAIS ÉGALEMENT AVEC LE PÈRE DE L'ENFANT POUR ASSURER SA CONTRIBUTION ; CELLE D'INTÉGRER L'ENFANT À UNE VIE ADULTE SAINE; CELLE DE L'ENCOURAGER, DE LA SOUTENIR, DE L'AIMER. »

Toujours est-il que le droit conçoit le projet parental comme un engagement outrepassant l'âge de la majorité de l'enfant. Lorsque les moyens financiers du parent sont limités, la cohabitation semble être l'unique situation économiquement viable. Ainsi, le droit semble obliger la cohabitation d'adultes qui ne se sont pourtant jamais choisies, même si elles ont atteint un stade d'incompatibilité. De cette discussion se dégage l'idée inexacte qu'une mère est responsable de ce que son enfant devient.

Bref, il est clair que l'unité familiale forme la cellule d'entraide la plus solide au sein d'une société. Il serait toutefois intéressant de repenser le rôle parental légal et social envers les enfants majeures. La vision de la maternité engendre un déséquilibre important pour la femme en l'astreignant à une responsabilité morale inconditionnelle envers ses enfants même lors de situations difficiles[8]. Peut-être que si nous avions un sentiment de communauté plus développé, il pourrait être plus facile de concevoir l'habilitation de ces nouvelles jeunes adultes comme une responsabilité collective. Après tout, chacune est non seulement un produit de son foyer, mais également de la société dans laquelle elle participe.

8 La quantité de forums de discussion en ligne au sujet de mères vivant inquiètes et se culpabilisant d'avoir mis leur enfant à la porte est considérable.

DOROTHY SMITH: EXPLORING INSTITUTIONAL KNOWLEDGE AND STRUCTURE THROUGH THE EVERYDAY EXPERIENCES OF WOMEN

BY ANNA MCINTOSH
STUDENT AT McGILL FACULTY OF LAW

This year marks the 90th birthday of Dorothy Smith, one of Canada's most prominent sociologists. For those who have taken an introductory course in sociological theory, Smith may have been the only Canadian and one of few women to make it onto the syllabus. Despite her significant contributions to sociology, however, her work is less well known outside of this discipline. Smith describes sociology as both explaining the world and being capable of transforming it, two functions with parallels to law. Thus, while this piece focuses on sociology, the relevance of Smith's insights could be extended to law and/or the study of law.

Smith began her career at Berkeley, where her experience was profoundly marked by being a woman. In the 1960s, almost no women were hired in departments of sociology. Women who were hired received lower salaries and less stable positions, and were not taken as seriously by male colleagues.

Smith experienced a sense of discord as she navigated between her life as a sociologist and her life at home. Her academic field purported to offer a comprehensive set of tools for analyzing and understanding the world. However, when Smith returned home to do housework and spend time with her children, she would find this reality not reflected in the

conceptual paradigms of sociology. Smith felt uneasy about "sociology's claim to be about the world we live in, and, at the same time, its failure to account for or even describe the actual features [women] experience."[1]

Smith explored how sociology excludes women's experiences. She concluded that the most significant problem was not insufficient numbers of women sociologists or lack of research on women, but a more basic issue with how sociology approaches the world.

Smith noted that sociologists "observe, analyze, explain and examine [the] world as if there were no problem in how it becomes observable to them."[2] In other words, they observe the world as if their perceptions revealed an objective state of things, without problematizing how their social role influences their perceptions. Sociologists often appear to assume that they observe the world as objective outsiders, as if positioned behind the clear glass window of a science laboratory, when in fact the image this glass window offers is coloured by the sociologist's place in society.

Smith argued that rather than describe an objective reality, sociological accounts of the world serve to reflect and reproduce existing social structures. Where knowledge has been developed almost exclusively by men, these accounts of the world reflect men's points of view and their social realities, while silencing the voices of women.

Building on these reflections, Smith articulated an alternate sociology: instead of claiming to describe the world from a neutral standpoint, sociology should consciously operate from the standpoint of women. Sociology should be a sociology *for* women. It should seek to explore social structures, as well as the organization of social relationships starting from the everyday experiences of women themselves.

Smith dedicated much of her career developing a methodology for understanding social structures from the bottom up. This approach can be used by women and other marginalized groups to critique and transform

1 Dorothy E Smith, The Conceptual Practices of Power: A Feminist Sociology of Knowledge (Boston: Northeastern University Press, 1990) at 27.
2 *Ibid* at 16.

society. She called this methodology institutional ethnography.

Institutional ethnography traces the process by which women's experiences are translated into stories told about women (whether women in general or a specific woman) in institutional contexts. For Smith, women's "lived actuality" is starkly different from what institutions label as the "facts" or "what actually happened." Lived actuality is women's experiences. In contrast, facts are the product of institutional practices such as eliciting information by questions or recording events according to categories and codes. These questions and coding procedures involve male and institutional bias. Thus, institutional accounts present women's experiences in a way that is actionable, but not necessarily meaningful to the women involved.

Institutional ethnography further explores the ways that institutional accounts of women's experiences determine how women are treated within systems. Smith's work investigated how accounts of women within the medical system, the legal system and the educational system trigger rules and procedures for dealing with specific categories of women, such as those who, respectively, suffer from "mental illness", experience domestic violence, or are single mothers incapable of supporting their child's education in ways expected of them. These procedures, while sometimes intended to help women, place additional burdens on women and often do them more harm than good.

Wilson and Pence's study of indigenous women's experiences with the legal system in the United States[3] provides an insightful application of Smith's institutional ethnography. When indigenous women who are victims of domestic violence contact emergency services, the issues they face are segmented into categories (e.g., police, child protection, chemical dependency, mental health) to be addressed by different agencies. Each of these agencies focusses primarily on treating the woman in a way that meets its own administrative requirements, rather than on understanding her and responding to her needs.

3 Alex Wilson & Ellen Pence, "U.S. Legal Interventions in the Lives of Battered Women: An Indigenous Assessment" in Dorothy E Smith, ed, *Institutional Ethnography as Practice* (Lanham: Rowman & Littlefield, 2006) 199.

“RESEARCH SUCH AS THIS DEMONSTRATES THE DAMAGE THAT CAN BE DONE WHEN WOMEN’S EXPERIENCES AND NEEDS DO NOT CONSTITUTE THE STARTING POINT FOR INSTITUTIONAL ACTION AFFECTING THEM.”

The results are problematic. Different agencies frequently demand contradictory courses of action: a divorce court, a child protection court and a counseling program may impose contradicting structures on the relationship between a woman, her abuser and their children. The narrative and the timing of institutional action often do not reflect women’s interests: a court hearing months after an assault generally fails to attend to deeper contextual causes of the assault or support the woman at the time she needs it most. Furthermore, an agency’s administrative requirements may in fact fail to protect women. For example, when correctional facilities attempt to contact women three times prior to releasing their abuser, this does not translate into actual protection. These calls can be made in quick succession to simply fulfill an administrative obligation, and are often made shortly before the abuser’s release.

Research such as this demonstrates the damage that can be done when women’s experiences and needs do not constitute the starting point for institutional action affecting them. It also creates new opportunities for women and other marginalized groups to advocate for change, and recognize that misdirected institutional action reflects a problem with institutions, rather than with them, personally.

Dorothy Smith’s approach exemplifies courageous and caring thinking. Courageous thinking, because Smith placed her career at the margins by reversing the established ways of understanding in her discipline. Caring thinking, in that Smith strove to redefine the objective of her discipline as giving a voice to, and validating the experiences of, women and other marginalized groups in society.

LA FEMME, CETTE MOITIÉ DE COUPLE

PAR SUZANNE ZACCOUR
ÉTUDIANTE EN DROIT À McGILL

« [L]’homme quittera son père et sa mère pour s’attacher à sa femme, et les deux deviendront un seul être[1] ». L’extrait est de la Bible, mais, avec ses « L’enfant, à tout âge, doit respect à ses père et mère[2] » et « [les époux] se doivent mutuellement respect, fidélité, secours et assistance[3] », on penserait presque le retrouver dans notre *Code civil*. Il y a plus de 25 siècles, des hommes ont écrit de la femme : « On la nommera compagne de l’homme, car c’est de son compagnon qu’elle fut tirée[4] ». Cela est resté vrai jusqu’au 2 avril 1981, date à laquelle la législatrice québécoise a décrété que « [c]hacun[·e] des époux[·se] conserve, en mariage, ses nom et prénom[5] ». Ce changement survenait 53 ans après que la Cour Suprême du Canada ait unanimement décidé que les femmes n’étaient pas des « personnes » au sens des textes constitutionnels[6]. Aujourd’hui, ce passé semble bien lointain. En 2016, nous savons tou·te·s que les femmes sont des personnes, qu’elles existent indépendamment de leur mari et même, comble de l’impertinence, que certaines vivent sans homme. Pourtant, à contrecourant dans une

1 La Genèse 2, 24, *La Bible, Ancien et Nouveau Testament, avec les Livres Deurérocanoniques*, Traduite de l’hébreu et du grec en français courant, Société Biblique Canadienne, 1995, Imprimatur avec l’autorisation de la Conférence des évêques catholiques du Canada janvier 1986, Approuvé par les Comités confessionnels du Conseil supérieur de l’éducation du Ministère de l’Éducation du Québec, *Société biblique française* – 1982 [Genèse].
2 Art 597 CcQ.
3 Art 392 CcQ.
4 Genèse, *supra* note 1 au chapitre 2, verset 23.
5 Art 393 CcQ.
6 *Reference re meaning of the word “Persons” in s. 24 of British North America Act*, [1928] S.C.R. 276.

« POURTANT, À CONTRECOURANT DANS UNE PROVINCE OÙ LES TAUX DE MARIAGE CHUTENT DRAMATIQUEMENT DEPUIS DES DÉCENNIES, NOTRE DROIT S'ENTÊTE ENCORE À ENCHAINER LES FEMMES AUX HOMMES. »

province où les taux de mariage chutent dramatiquement depuis des décennies[7], notre droit s'entête encore à enchainer les femmes aux hommes.

Marie-toi

Les féministes seront les premières à affirmer qu'une femme n'a pas besoin d'un homme. Certes. Mais encore faut-il qu'elle ait accès à l'indépendance financière. Alors qu'il est de bon ton de s'écrier, offusqué·e, que les femmes à la maison, c'est terminé, celles-ci continuent d'être volées par une société qui les exploite au profit d'une classe d'hommes riches. La femme qui, à 3 minutes, porte son premier habit rose; à 2 ans, reçoit sa première balayeuse en cadeau; à 3 ans, lit *Chloé joue à faire le ménage*; à 12 ans, se convainc qu'elle est nulle en mathématiques[8]; à 14 ans, commence à acheter elle-même ses produits soumis à la taxe rose[9]; à 17 ans, apprend un métier dévalué; à 25 ans, prend un congé de parentalité; à 26 ans, retourne au travail à temps partiel; à 28 ans, change d'emploi pour accommoder les opportunités de carrière du conjoint... Cette femme-là, n'est-elle pas poussée dans les bras d'un homme qui sera, lui, surrémunéré? La suite logique n'est-elle pas de se marier?

Si la femme cohabite avec l'homme sans se marier, le droit les considère comme étrangère et étranger, c'est-à-dire qu'il et elle ne se doivent pas

7 Anne Binette Charbonneau, « Les mariages au Québec en 2014 » (2015) 41 Coup d'œil sociodémographique - Institut de la statistique du Québec, en ligne : <http://www.stat.gouv.qc.ca/docs-hmi/statistiques/population-demographie/bulletins/coupdoeil-no41.pdf>.
8 Isabelle Dautresme, *Orientation : stop aux clichés sur les différences filles/garçons!* (2014), en ligne : l'Étudiant <http://www.letudiant.fr/college/6e/orientation-des-filles-et-des-garcons-pour-mettre-ko-les-cliches.html>.
9 Catherine Martellini, *Taxe rose : et au Québec?* (2014), en ligne : les affaires <http://www.lesaffaires.com/mes-finances/consommation/taxe-rose-et-au-quebec/574363>.

d'aliments[10]. La femme qui se sacrifie pour l'épanouissement professionnel de son conjoint, comme c'est souvent le cas, est donc laissée démunie au moment de la rupture. Bien sûr, cette situation pourrait aisément être corrigée par le gouvernement, qui établirait que les ex-conjoint·e·s de fait peuvent se devoir une pension alimentaire. Un tel changement serait d'ailleurs cohérent avec une politique d'austérité, parce qu'il réduirait le nombre de femmes prestataires de l'aide sociale. Mais personne ne semble s'intéresser à cette « austérité féministe ». Alors, on reproche aux femmes qui s'appauvrissent à la rupture d'avoir « choisi » de ne pas se marier. Le message que le droit envoie aux femmes, c'est que la bonne ménagère se marie pour se protéger — mais alors elle devient la « femme de » et se retrouve enchaînée à son homme.

Reste mariée

Il est difficile de croire qu'encore aujourd'hui, le divorce consensuel n'existe pas. « Je ne veux plus être mariée » n'est pas suffisant. Il faut prouver l'adultère ou la cruauté intolérable, ou encore avoir vécu séparément pendant au moins un an[11]. L'union civile (une imitation québécoise de l'institution du mariage), par contraste, est moins religieuse que le mariage, et permet la dissolution par une « déclaration commune notariée[12] ». Pourquoi un tribunal devrait-il se mêler des motifs de divorce des époux·se, si ce n'est pour les dissuader de se séparer? Certain·e·s prétendent que le délai obligatoire d'un an de séparation avant de pouvoir obtenir un divorce sans faute permet d'éviter que les individu·e·s se marient et divorcent à répétition, sur un coup de tête, et encombrent le système. Mais alors, pourquoi ne pas imposer une période d'un an avant un deuxième mariage avec la même personne, plutôt qu'avant le divorce?

On laisse quand même aux époux·se l'option de la séparation de corps, plus immédiate, mais qui demande tout de même le passage devant les tribunaux. Il faut encore une fois soumettre la cause de la séparation au tribunal, à moins que les époux·se n'arrangent entre elleux les conséquences de leur séparation — et lavent leur linge sale en famille. Comme pour le mariage qui est plus immédiat que le divorce, la

10 Art 585 CcQ à contrario.
11 *Loi sur le divorce*, LRC 1985, c 3 (2e supp), art 8.
12 Art 521.12 CcQ.

séparation de corps demande un jugement, tandis que la reprise de la vie commune qui y met fin est simplement factuelle. Unissez-vous, qu'ils disaient!

Bref, des détails juridiques ralentissent le processus de séparation pour en diminuer le nombre, dans une optique hétérosexiste du *better together.*

La prison dorée de la famille

Rien n'est plus beau que la famille; c'est pourquoi la femme, même (enfin) divorcée, doit rester proche de son ex-époux. En effet, les tribunaux québécois accordent la garde partagée de l'enfant de façon quasi automatique lorsque les parents sont en désaccord[13] — une mésentente qui peut camoufler de la violence conjugale. C'est drôle comme il est de l'intérêt de l'enfant d'être balloté entre ses deux parents lorsqu'ils sont séparés, alors que, quand ils sont ensemble, le père peut être purement décoratif. C'est ainsi que l'enfant doit avoir un « maximum de communication » avec chacun de ses parents après le divorce — la *friendly parent rule*[14] — tandis qu'au moment de changer les couches du nouveau-né, le père n'a que cinq semaines de congé de paternité non transférables. Si l'on peut avancer qu'il est à l'avantage des femmes de prendre l'écrasante majorité du congé de parentalité — pour bien s'habituer à leur rôle de principale pourvoyeuse de soins… —, les droits des pères post-séparation menacent manifestement l'autonomie des mères. La garde partagée (et même la garde exclusive avec des droits de visite au père) pose des frontières aux mères. Celles-ci ne peuvent déménager à leur guise, doivent avoir des contacts fréquents avec leur ex, même violent, et deviennent vulnérables à toutes sortes de nouvelles violences et manipulations[15]. Le lobby masculiniste des droits des pères a rendu presque impossible la rupture nette pour les femmes suite à une union qui a fait naître un enfant. Ainsi, les mères n'échappent jamais vraiment au couple.

Presque des personnes

Il y a beaucoup à dire sur la culture populaire romantique et hétéronormative. Il suffit de compter le nombre de fois où une femme entend la question « pis, as-tu un *chum*, là? » pour réaliser à quel point la femme demeure, malgré les avancées féministes, une moitié de couple dans l'imaginaire social. Néanmoins, le cadre juridique, informé par la culture populaire mais surtout par ses traditions, a aussi sa part de responsabilité dans les embûches nombreuses auxquelles se heurtent les femmes qui recherchent l'autonomie. Conserver leur nom ne fait pas encore tout à fait des femmes des personnes à part entière.

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13 Marie Christine Kirouack, « La jurisprudence relative à la garde : où en sommes-nous rendus? » dans Barreau du Québec, Service de la formation permanente, ed, Développements récents en droit familial (Cowansville: Yvon Blais, 2007) 665 à 722–5.
14 *Loi sur le divorce*, LRC 1985, c 3 (2e supp), art 16(10).
15 Denyse Côté et France Dupuis, « Garde partagée et violence conjugale : un bon mariage? » (2011), en ligne : l'ORÉGAND <http://www.oregand.ca/files/gardepartagee-depliant-2011.pdf>.

SHE IS A LIVING TREE

BY LUCIA WESTIN

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My image is inspired by the two images from the Privy Council's decision on the "Persons Case" (*Edwards v AG of Canada*). First, Canada as a "mistress in her own house" and second, her Constitution as a "living tree". Here, I apply these images in reference to women instead. I wish to represent the robust life that is possible when girls are given the room and nurturing they need to flourish, as well as the freedom to be who they naturally are. The "living tree", upon which the female figure is climbing, grows up out of the home. This is to represent both that women have potential beyond the home, and that they need the space and opportunity to grow beyond confining stereotypes. At the same time, it places value on the home, an area traditionally associated with a woman's territory, as it is seen as a source from which the tree has sprung.

WHAT I WISH I KNEW BEFORE STARTING LAW SCHOOL

ANONYMOUS

In September 2015, I started the most recent chapter of my life: law school. This chapter, for all law students, was made possible through sacrifices, hours of hard work, and endless perseverance. Acceptance to law school made all of the hardships that I endured worth it. Why? I was finally on my way to realizing my dream of becoming a lawyer!

Before starting law school, I read countless books on how to prepare, how to tackle fact patterns, how to write using the IRAC method, and on many other "necessary skills" that these advice books boast. Before starting law school, I had a plan. Like many plans, it did not play out as I thought it would. For this, I am truly glad!

If I could go back in time and restart 1L, I would have done a lot of things differently.

I certainly would not have read books like *Getting to Maybe* or *1L!* Law school is a diverse experience. My experience has been very different than my colleagues' because we all come from varied backgrounds and hold unique perspectives. My colleagues and I hold undergraduate and graduate degrees ranging from Theatre Arts and Music to Neuroscience! Reading cookie-cutter books about law school was a mistake – the authors of those books are different than my peers and myself! Moreover, they did not study law in a bilingual and transsystemic way at McGill University! Reading these books over the summer brought me one thing: a feeling of anxiety that built up throughout my first semester as a law student. Although I was able to do all of my work, reading those books and overthinking my learning strategies did more harm than good. I worked hard, but it was not my absolute best.

Indeed, I wish I had not taken everybody's advice so personally. Everyone I knew was beyond kind in giving me plenty of advice. I am grateful that so many people were rooting for me to succeed and were supportive of my goals, but the truth is that all of the advice I got was extremely confusing. Some said to do the readings. Others said to never do the readings, and to rely on Pubdocs (bad idea). Some said to join study groups. Others said to work alone. The list goes on! Needless to say, I tried all of this advice, rather than staying true to myself and continuing the work habits that had worked for me in the past. Of course, the advice probably worked for those who gave it to me, but (again) everybody is different! Everyone learns differently. If I could go back in time, I would graciously take the advice under consideration, but I would never lose sight of who I am as a student and which strategies help me learn best.

While staying true to yourself during law school is very important, it is also necessary to keep an open mind about your future. Some are lucky. They know from the very beginning of law school that they want to practice in a specific area of law, or become a professor at a world-renowned university. The rest of us – not so much! My advice to myself six months ago would have been "don't let uncertainty about the future stress you out or demotivate you." When speaking to a lawyer the other day, I received some advice that I have decided to follow. He suggested that law students, whether in 1L or 4L, keep an open mind. Do not try to force yourself into a specific niche. Your career picks you, because your natural strengths will make you a perfect candidate in a certain area of law. By keeping an open mind and exploring your interests and strengths throughout your legal studies, you will find your way. The moment I started trusting this morsel of advice, law school became somehow easier and more inspiring.

Law school has also taught me not to be afraid of failure. If you do fail, do not let it get under your skin! It stings to fall short of your personal expectations, but we are future jurists. We are here to learn from our mistakes in order to be the very best we can possibly be. I know that I was really disappointed when I got my first B (in my entire "straight-A" academic career). The most important thing I have learned with regard to grades is that assignments, exams, and in-class exercises are pedagogical tools. They push us to think deeper, read more closely, and write more

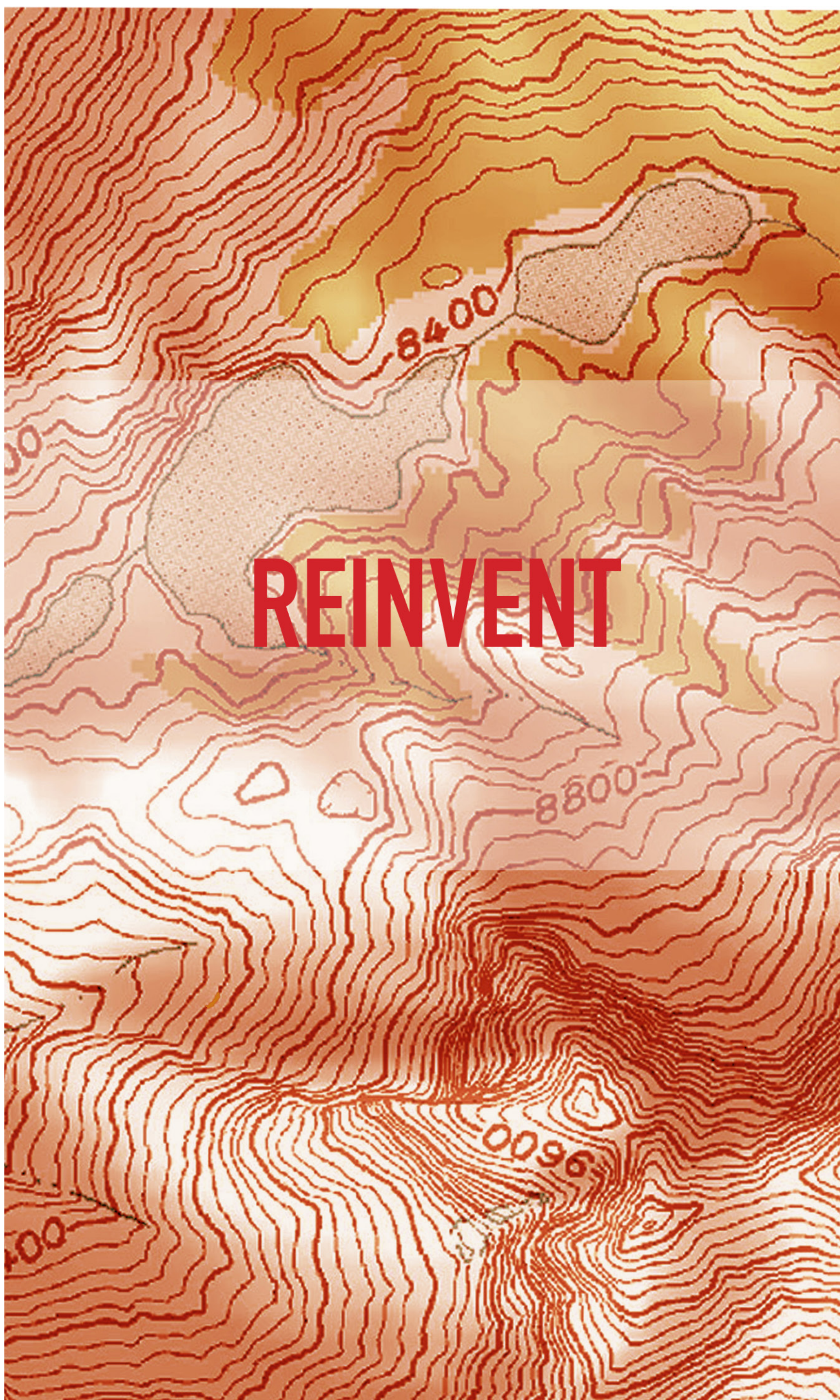
"TO LEARN THAT SOCIAL INEQUALITIES ARE BUILT INTO LEGAL SYSTEMS AROUND THE WORLD HAS LED ME TO TRULY REFLECT ON WHAT I WANT TO ACCOMPLISH AS A JURIST AND HOW. I AM STILL WORKING ON THAT ONE. . ."

concisely. These tools challenge and motivate us, making our academic experience rewarding.

Finally, the most shocking lesson that I learned in law school is that the legal system is not what I thought it was. Yes, I am only in 1L. I still have not learned everything there is to know about legal systems around the world! However, I have learned that they are deeply flawed. I have discovered that the law can be a creative tool to normalize and continually reproduce social inequalities and relationships of oppression. This realization has been very difficult for me to come to terms with, especially as a woman. To learn that social inequalities are built into legal systems around the world has led me to truly reflect on what I want to accomplish as a jurist and how. I am still working on that one...

Essentially, my first year at McGill Law has been a rigorous experience, both academically and emotionally. I have learned so many lessons, and I know that I will learn a great deal more. I look forward to further exploring the law and my future as a jurist.

Here's to the empowering gift of knowledge, and many lessons to come!



WHY INTERSECTIONALITY MATTERS IN LAW

BY ROMITA SUR
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Intersectional analysis asserts that race, class, sexuality, age, ability, and gender are interlocking yet independent sites of possible oppression that are simultaneously experienced. A lack of intersectionality continues to minimize the experiences of marginalized folk and creates injustices within the legal system. The concept of intersectionality should be crucial within law as it allows us to examine how our multiple identities simultaneously create our whole selves. Hence, when working with certain populations, it is important to be mindful in understanding how dominant culture impacts their lives based on their identities.

Time and time again we have been witnessing how law has failed in addressing cases regarding racism. Some of these cases include police brutality, where there has been a pattern of non-indictments against white police officers. We have seen this with the deaths of Eric Garner, Michael Brown, Sandra Bland, and countless others. We can see with cases of sexual assault and domestic violence against women of colour that race is not even discussed when examining power dynamics. Kimberlé Crenshaw, a legal scholar who is specifically credited for raising the importance of intersectionality in law, discusses how women of colour are often reluctant to call the police or be involved in the legal system when they experience violence. They are reluctant due to their private lives being scrutinized and due to a control of the police force and legal system that is often hostile.[1] In many cases, individual cases of violence are also taken as a "cultural" or a "community" problem.

Law is still rooted in patriarchal and white supremacist values. For example, when it comes to cases of rape, women are still seen as property

1 Kimberlé Crenshaw, "Mapping the margins: Intersectionality, Identity Politics, and Violence against Women of Colour" (1993) 43:1241 Stan L Rev 1253.

and blamed for the violence that has happened to them. Crenshaw discusses how women are put on trial to see if "they are innocent victims [or were] asking for it."[2] In many cases, a woman's sexual history is also examined when it comes to cases regarding sexual assault even though this is not required according to the Criminal Code. This creates an environment of victim blaming, which not only impacts the field of law, but also the society as a whole. Women of colour are also oftentimes portrayed as more sexual beings. By intersecting race with norms of women's sexuality, we can see how stereotypes and misconceptions about women of colour are framed within the law.[3] This is just one example of how intersectionality matters in law.

Although this article addresses the lack of intersectionality in law, I think it is also important to address why intersectionality is not talked about as much by legal professionals. A big part of this falls on law schools. We learn law from a Western perspective, where the majority of the authors that we read are white males. Intersectionality needs to be taught at law schools through works by people of colour, including Indigenous people. As intersectionality is a term coined by a black woman based on black women's experiences, we should be learning texts that are by them versus a white male's interpretation of what intersectionality looks like. Learning about intersectionality will not only strengthen a student's understanding of law, but it will also provide law students with an idea of how their work impacts different populations and how they can advocate for their clients better. For example, addressing intersectionality would mean having a discussion on how law often fails and how that impacts people from marginalized communities. Further, in classrooms, addressing intersectionality would mean that when exploring concepts of Islamic law, discussions on terrorism do not take up most of the lecture. It would be important to be aware of how these discussions impact Muslim students and students of colour, as well as how people understand Islamic law.

Another example would be, when talking about Aboriginal peoples and constitutional law, Aboriginal peoples' experiences and autonomy should be discussed rather than the current practice of simply analyzing

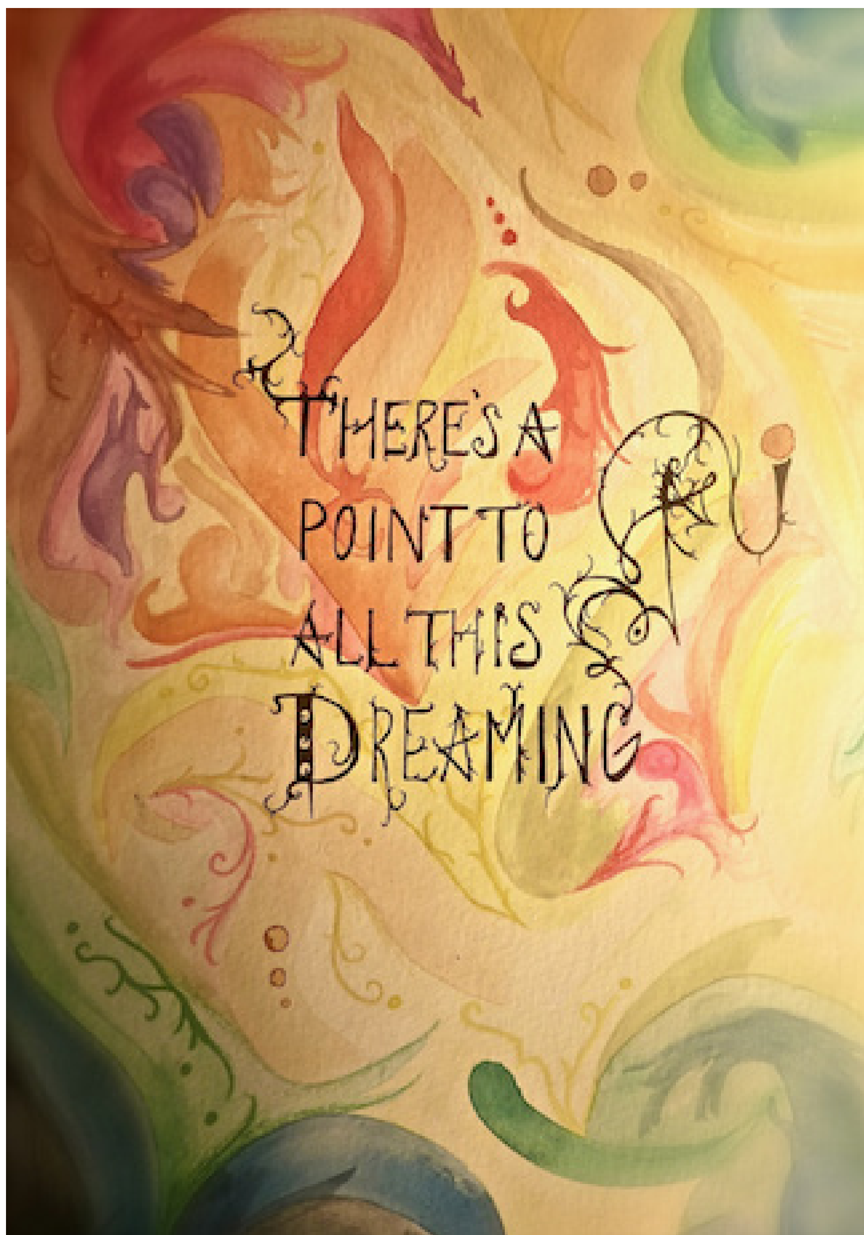
2 *Ibid* at 1246.
3 *Ibid*.

"INTERSECTIONALITY SHOULD BE PART OF THE GROUNDWORK IN LEGAL EDUCATION, SO THAT STUDENTS GRADUATING WILL BE MORE REFLECTIVE AND AWARE OF THEIR ACTIONS IN THE FUTURE AS PRACTICE LAWYERS WORKING WITH DIVERSE CLIENTS."

which section of the Constitution their claims fall under. Looking at different perspectives from the right sources would challenge us to think critically and examine situations through different lenses. It would also align with law schools' goals in terms of access to justice.

One reason for the lack of intersectionality is that many lawyers do not have an awareness of this concept. Since it is not discussed in their education, people do not question many of the injustices that happen or how these injustices impact those around them. For example, in 2014, an article published in the Toronto Star featured 10 citizens who expressed their experiences of the legal system. They were unable to access lawyers, unable to afford legal services, and many had to represent themselves.[4] Many of the citizens who addressed these issues were racialized individuals living in poverty. Taking an intersectional approach in this situation would be really important in understanding their experiences and how your work affects them. Intersectionality should be part of the groundwork in legal education, so that students graduating will be more reflective and aware of their actions in the future as practice lawyers working with diverse clients.

4 Carol Goar, "Stinging Message to Canada's Judges", Toronto Star (21 September 2014), online: <http://www.thestar.com/opinion/commentary/2014/09/21/stinging_message_to_canadas_lawyers_goar.html>



THERE'S A POINT TO ALL THIS DREAMING

BY KATHERINE RICHARDSON
STUDENT AT McGILL FACULTY OF LAW

AU-DELÀ DES CATÉGORIES? – LES NOUVELLES NORMES EN MATIÈRE DE CHANGEMENT DE SEXE[1]

PAR MARIE MANIKIS ET IVANA ISAILOVIC
PROFESSEURE DE DROIT À LA FACULTÉ DE DROIT DE McGILL
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Le Gouvernement du Québec a adopté, en octobre 2015, une loi modifiant le *Code civil* qui élimine l'obligation de subir une opération chirurgicale pour changer l'identité sexuelle sur l'acte de naissance. Afin de faciliter le processus, le nouveau règlement accompagnant cette loi prévoit que, pour effectuer le changement de sexe, aucune expertise médicale (à moins que la personne souhaite, après le changement, un retour en arrière) ou apparence physique spécifique ne soient nécessaires. Depuis le 1er octobre 2015, seules des déclarations assermentées, faites par le demandeur et par une personne qui le connaît depuis au moins un an et atteste le sérieux de la démarche, sont nécessaires. Cette décision est certainement un pas vers l'avant pour notre société, notamment pour les personnes trans dont le genre ne correspond pas au sexe assigné à la naissance et qui voudraient procéder à un changement de sexe officiel au courant de leur vie. Pour l'instant, la procédure n'est pas accessible aux mineurs et aux étrangers (non-citoyens canadiens ou domiciliés au Québec depuis

1 Dans cet article, nous utilisons les termes « sexe » et « genre » de manière interchangeable. Nous reprenons ainsi les termes utilisés par le législateur québécois, mais nous ne souhaitons pas ici élaborer sur le débat relatif à la définition des deux termes.

moins d'un an), ce qui soulève des questions de discriminations.

Cette évolution suit une dynamique plus globale : de nombreux pays ont aussi éliminé l'obligation de stérilisation ou d'intervention chirurgicale pour se conformer à l'apparence du genre choisi. Récemment, un jugement de la Cour européenne des droits de l'homme a décidé que l'obligation de stérilisation, en tant que condition du changement de sexe, est contraire à la Convention européenne des droits de l'homme et notamment à l'autonomie dont dispose l'individu pour prendre des décisions concernant son corps.

Au Québec, non seulement cette reconnaissance législative a d'importantes conséquences sur la vie des gens qui ne s'identifient pas au sexe qui leur est assigné à la naissance, mais elle est également révélatrice du caractère artificiel de la catégorie juridique « sexe » définie par l'État. De plus, elle reflète le caractère binaire du genre dans notre société, que la loi présuppose et renforce. Même si l'accent est désormais essentiellement mis sur la définition personnelle et que la catégorie juridique étatique est malléable, les questions suivantes subsistent : pourquoi ne pas simplifier également le retour vers le sexe d'origine, et pourquoi nous limiter, comme société, à deux sexes possibles ou même à des catégories sexuées tout court?

Cette loi nous invite aussi à (re)penser à la situation actuelle des personnes intersexes au Québec. Celles-ci ont des caractéristiques à la naissance qui ne permettent pas de leur attribuer facilement le sexe masculin ou féminin. Par conséquent, elles subissent très souvent des interventions chirurgicales plus ou moins esthétiques à la naissance au nom de la « normalisation », alors même que leur vie ou leur santé n'est pas en danger. Si l'on accepte comme prémisse que le genre est une question d'identité personnelle et que l'intégrité physique des individus doit être protégée, comment peut-on maintenir cette situation pour les personnes intersexes, lesquelles subissent encore des interventions chirurgicales ou hormonales sans leur consentement au nom de la « normalité »?

« POURQUOI NOUS LIMITER, COMME SOCIÉTÉ, À DEUX SEXES POSSIBLES OU MÊME À DES CATÉGORIES SEXUÉES TOUT COURT? »

Quant au changement de sexe, certains pays reconnaissent une troisième catégorie au sein de la catégorie juridique « sexe » dans certaines situations. Par exemple, l'Allemagne a reconnu la possibilité pour les parents des enfants intersexes de choisir la catégorie de sexe « indéterminé » afin d'éviter des procédures chirurgicales et hormonales et de laisser l'individu choisir son sexe au cours de sa vie. L'Australie et la Nouvelle-Zélande ont reconnu la catégorie « neutre » dans les passeports (sous preuve médicale d'intersexualité ou de transition en Australie), et la France vient également de retenir l'idée du sexe « neutre » dans une récente décision judiciaire. L'Inde a officiellement reconnu la catégorie « E » (eunuque), qui inclut des personnes intersexes de naissance ou des personnes nées sous la catégorie « homme », mais étant parfois castrées et s'habillant avec des vêtements féminins. Ces personnes sont environ 5 à 6 millions en Inde. Similairement, le Pakistan et le Népal ont reconnu la catégorie « autre ».

Ces différentes mesures doivent bien sûr être examinées à la lumière des contextes particuliers dans lesquels elles ont été prises. Toutefois, il convient de remarquer que la catégorie « neutre » n'est pas sans présenter de problèmes. C'est en effet méconnaître la réalité des personnes intersexes qui est plurielle, tant au niveau des expressions de genre que de leurs besoins. Ainsi, le terme « neutre » amène à remettre en question la réification des catégories.

Au final, ces débats démontrent le caractère fluide et instable de la catégorie « sexe » par laquelle l'État et les différentes institutions définissent leur rapport à l'individu. Serait-il souhaitable d'envisager une société où les cases traditionnelles ne seront pas cochées à la naissance? Est-ce que les normes changeraient pour autant?

THE PERPETUATION OF UNSUSTAINABLE DEVELOPMENT BY THE PATRIARCHAL CONCEPTION OF ANIMALS AND WOMEN

BY JINNIE LIU
STUDENT AT McGILL FACULTY OF LAW

How Patriarchy Towards Animals, Which is Similar to Patriarchy Towards Women, Impedes Sustainable Development by Glorifying a Carnivorous Diet

Mmmh, a Bleeding Plant Burger?!

The Impossible Foods just invented a curious thing: the Impossible Burger. It is juicy, smells like beef, feels like meat, and tastes just like any other succulent burger.[1] However, the Impossible Burger is entirely plant-based.

The inventor, a Silicon Valley startup, exists for the purpose of producing sustainable, plant-based foods.[2] Initiatives like these are highly relevant for sustainable development, given the turn that the 21st century has taken. First, the infamous documentary *Food, Inc.*[3] has shown us the inhumane industrial practices that pervade livestock production. We now know the ethical costs of sustaining our eating habits. Second, even if we

1 Tim Bradshaw, "Food 2.0: the future of what we eat", *Financial Times* (31 October 2014), online: <www.ft.com>.
2 The Impossible Foods, company website, online: <impossiblefoods.com>.
3 Food, Inc., 2008, Documentary film (Los Angeles, California: Magnolia Home Entertainment, 2009).

ignore animal suffering and ship the thought onto another planet — a far, far away industrial production world invisible to us when we shop for our packaged meat — we can no longer deny that animal farming is unsustainable environmentally. According to the United Nations, livestock production needs roughly 30% of the world's ice-free landmass and produces around 14.5% of all greenhouse gas emissions.[4]

Given these 21st century issues, innovators like the Impossible Foods are valuable because they can potentially revolutionize our diets for the better. Fortunately, such companies have already gathered much support. By 2015, venture capital firms and even Bill Gates have provided the Impossible Foods with 74 million dollars in funding.[5]

Nonetheless, despite the scientific success and the financial support from the enthusiastic business community, one tremendous obstacle remains for initiatives like the Impossible Foods: culture.[6] In an article about plant food companies, the Economist remarked, "[E]ven if the scientific hurdles of making plants taste like meat and other animal-based products are overcome, the bigger obstacle these companies face may be cultural."[7] Likewise, in the same article, Patrick Brown, the Stanford University biochemist who founded the Impossible Foods, talks about gender preferences to explain why marketing plant-based foods to carnivores is difficult. His view is that "meat has a masculine bent to it", and that one cannot "sell it the same way they sell lettuce".

In essence, stereotypes, gender perceptions, and how these two shape our relations with animals are significant obstacles to overcome before society moves towards a meat-free lifestyle. Ultimately, these problems may all come down to one thing: patriarchal thinking. That is, the thinking that underlies both the way men relate to animals and the way men have historically related to women.

4 *The Economist*, "Silicon Valley gets a taste for food", The Economist (7 March 2015), online: <www.economist.com>.
5 CNBC, "2015 CNBC's Disruptor 50", CNBC (12 May 2015), online: <www.cnbc.com>.
6 *Supra* note 4.
7 *Ibid*.

But Nah Thanks, Plant-Based Burgers Are Emasculating!

Gender perceptions and stereotypes can impede the changes needed for sustainable development. With the stereotypical North American man who wakes up to his sizzling bacon, it can be counterintuitive for members of the male community to entirely replace their diets with plant-only nutrition. Statistics on veganism seem to evidence such reluctance. The Huffington Post reported in an article that in 2014, 79% of vegans were women (so our George Laraque is one of the few vegan men!).[8]

Likewise, in a dissertation authored by Jessica Cuming at University of Portsmouth,[9] the author concluded that gender significantly shapes the experience of veganism, influences a person's motivation in their conversion to veganism, and affects the reactions of other people to a person's vegan diet.

For instance, an entirely vegan man may have his masculinity challenged by his male counterparts, while his diet will be more readily accepted by his female friends. Veganism simply does not have the "masculine bent" to it.

Further, domination and hierarchal thinking[10] also prevent the total replacement of meat in patriarchal men's diets. Such thinking is a "virile" thing. Historically, men have placed themselves above animals. They hunted them, exposed them as trophies, used them as transport vehicles, and used them to satisfy their physical needs. This cultural "legacy" — in addition to being similar to the way these men treated women! — contributes to make the idea of veganism counterintuitive for them.

In short, from a social perspective, a large-scale diet change is probably a distant goal for now. This is so because the stereotypical, yet cultural, association of meat with masculinity still affects half of the population.

8 Taste Editors, "Veganism Is A Woman's Lifestyle, According To Statistics", *Huffington Post*, *Huffington Taste* (1 April 2014), online: <www.huffingtonpost.com>.
9 Jessica Cuming, "Gender and veganism: men's and women's perspectives on being vegan" (2012) University of Portsmouth Dissertation.
10 Heather McLeod-Kilmurray, "Ecofeminism" (McGill International Journal of Sustainable Develop-ment Law and Policy's 3rd annual colloquium, delivered at the Faculty of Law, McGill University, 15 January 2016) [unpublished].

Root of the Problem: Sexualized Perspective of Animal Food, Gender Inequality, and Ultimately, Patriarchy

The association of meat with virility may lead us to the root of our unsustainability problem: patriarchy. This brings up an interesting intersection between gender inequality and men-animal domination. In her book *The Sexual Politics of Meat: A Feminist-Vegetarian Critical Theory*,[11] Carol Adams pins this phenomenon down eloquently. Noting that eating meat is equated with virility in many cultures, she draws the connection between animal slaughtering and violence against women. She also elaborates the link between objectification of women and objectification of animals, whilst explaining "the carnivorous" diet by pointing to patriarchal thinking.

In essence, equating meat-eating with virility is a sexualized conception of animals, which stems from the patriarchal thinking that also underlies the men-women dynamic. As mentioned, men relate to animals like they have historically related to women. Both are treated as objects and are referred to with terms that separate them from their natural identity. For instance, just like women are chicks and bitches instead of "women," cows are not cows: they are *cattle*.[12] Moreover, in the hierarchal, patriarchal thinking, men place themselves above animals just like they have placed themselves above women. This, for them, justifies the mistreatment of animals as things to be slaughtered and eaten.

The implications may be the following: since the sexualized conception of animals exists in parallel to the gender inequality issue, so long as gender inequality persists, the tendency to place men above animals and use animals like consumption objects will not be coincidental. Both sexism and animal objectification stem from patriarchy. The former may have caused the other, or at least reinforced it, but one thing is certain. So long as there is patriarchy, there will be no sustainable development for women or for animals. Stabbing a bloody steak with a fork will be a lingering habit, since it is a bloody manly thing to do, just like taking hold of a woman. Stereotypical, but the stereotype is there and it affects us.

11 Carol J. Adams, *The Sexual Politics of Meat: A Feminist-vegetarian Critical Theory*, 20th anniversary ed (New York, NY: Continuum, 2010.
12 *Supra* note 10.

“THOSE FAMILIAR WITH FEMINIST LEGAL THEORY WILL BE FAMILIAR WITH THIS “INSTITUTIONALIZATION” ARGUMENT (E.G., CATHARINE MACKINNON’S WORK). JUST LIKE THE FEMINIST LEGAL THEORY POSITS THAT GENDER INEQUALITY IS EMBEDDED IN OUR LEGAL SYSTEM ITSELF, ECOFEMINISM POSITS THAT THE PATRIARCHAL PERSPECTIVE OF ANIMALS IS INHERENT IN ENVIRONMENTAL LAW. IN BOTH CASES, PATRIARCHY IS INSTITUTIONALIZED.”

Root of the Problem from a Legal Perspective: Ecofeminism

The connection between gender inequality and our conception of animals is also coined in the legal community: ecofeminism. In January 2016, the McGill International Journal of Sustainable Development Law and Policy, a law and policy review within the McGill Faculty of Law, organized a colloquium on Women and Sustainable Development. Heather McLeod-Kilmurray, an ecofeminist legal scholar who spoke as a panelist, presented the enlightening approach of ecofeminism. In short, ecofeminist analysis identifies the intersections between the male-female relationships and the human-nature relationships. Like Carol Adams’ book, this analysis reveals the connections and causes between the objectification of animals and the objectification of women. It is propounded that men’s conception of nature is one of patriarchy, hierarchical thinking and domination. And this conception pervades men’s relationships with both women and animals.

Now, the law can be a tool for change. So why do we not use the law to solve the problem by condemning patriarchal attitudes towards animals and women? This is because, currently, the law is part of the problem.[13]

Unfortunately, in our legal systems and our policies, patriarchy is still institutionalized. Just like women have been men’s property in many laws, certain laws of the food industry use denaturing and objectifying terms

13 Heather McLeod-Kilmurray, “An Ecofeminist Critique of Canadian Environmental Law: The Case Study of Genetically Modified Foods” (2008) 26 Windsor Rev Legal Soc Issues 129.

for animals. For instance, US’ *Humane Methods of Slaughter Act* refers to pigs as swine and cows as cattle. Similarly, in private law, any student who has sat in introductory property law classes has probably encountered the notion that animals are one’s property.

Those familiar with the feminist legal theory will be familiar with this “institutionalization” argument (e.g., Catharine MacKinnon’s work). Just like the feminist legal theory posits that gender inequality is embedded in our legal system itself, ecofeminism posits that the patriarchal perspective of animals is inherent in environmental law.[14] In both cases, patriarchy is institutionalized.

Now What?

We have begun with the association of meat-eating with masculinity, and have tried to explain this sexualized conception of animal food. In short, the association exists because men have traditionally related to animals just like they have related to women. The association exists because of patriarchal thinking.

Although it is ultimately uncertain whether gender inequality caused patriarchal thinking with animals, these intersections are enlightening. The gender inequality perspective at least informs us on the manner in which men tend to relate to animals. One dynamic is informative of the other. Likewise, examining the intersections allows us to conclude that *both* gender inequality *and* patriarchal thinking with animals will perpetuate unsustainable development. Environment, then, is also a gender issue. So long as women are treated as inferiorly, there will be no sustainable development because the tendency to treat animals in a similarly objectifying manner will likely still exist. Each of these mistreatments is worthy of consideration because each shows the presence of a harmful domination thinking that perpetuates oppression towards both women and nature. Each of them are symptoms of patriarchy, and both need to be eliminated.

14 *Ibid*.

WOMEN'S BATTLE

BY NIGAH AWJ
STUDENT AT McGILL FACULTY OF LAW

مبارزه زن

گذشت آن روزها که متاع و بازیچه هوس بودی
گذشت آن روزها که در قید و بند مرد بودی
گذشت آن روزها که محروم و مجبور و مظلوم بودی
گذشت آن روزها که در قید ظلم و ظلمت بودی

بر خیز و پاره کن زنجیر ظلم و بندگی
نریز اشک دیگر بس کن
تبدیل اشک به آتش کن
بسوزان دنیای حقارت و تحقی
بلند کن صدای قدرت و قوت
بر پا کن طوفان شهامت بر ضد ظلم و حقارت
بالا کن بیرق آزادی
بدرخش مثل آفتاب روشن
بال و پرت را باز کن
بپربه آسمان های دور و بلند پرواز کن
که نرسد سنگ های سنگساران به تو
فخرکن به خود و زن بودن را آغاز کن
نگاه اوج

WOMEN'S BATTLE

Gone are the days when you were treated as an object of sex
Gone are the days when you were a prisoner of men
Gone are the days when you were deprived, vulnerable and oppressed
Gone are the days when you were caged to tyranny and darkness.

Stand up now and break the chains of oppression and slavery
Stop the tears, it is enough.
Turn your tears to fire.
Burn this world of inferiority and humiliation
Raise the voice of strength and power
Start the storm of courage against injustice and humiliation
Raise the flag of freedom
Shine like the brilliant sun
Open your wings
Fly so high into the skies far away
That the stones thrown by men cannot reach you
Be proud of being a woman.

PEE IN PEACE

BY LAUREN PHIZICKY AND PHILIPPA DUCHASTEL DE MONTROUGE
STUDENTS AT McGILL FACULTY OF LAW

Think back to the last time you really, really, really had to go. What if there were no washrooms, no 24-hour McDonalds, no shopping malls nearby? Now, imagine this happened daily. For individuals who do not identify with one of the mutually exclusive gender options that public washrooms offer — either women's or men's — finding a washroom that they feel comfortable using can be a daily discomfort. Their discomfort of needing to go is compounded by concern that choosing either of the two gendered bathroom options might lead to verbal or physical altercations. As a result, trans and gender non-conforming people often attempt to suppress their need to use a public washroom, which can have both negative physical and emotional ramifications.

While gender-specific washrooms are presently the norm in public buildings, norms evolve. Not long ago, there were washrooms, drinking fountains, benches and waiting rooms in parts of North America that were labeled "Whites Only." In the last century, these norms of racial segregation evolved from being widely accepted to being seen as a shameful part of our history. We must learn from our past mistakes of treating people differently when it was neither necessary nor right. This past experience should inform how we perceive and proceed with the current situation of washrooms divided by mainstream gender.

The current situation of having washrooms divided into two gendered options is outdated, unnecessary, and quite frankly, discriminatory towards those who do not identify with one of the two gender options on offer. "MEN" on one side, "WOMEN" on the other. The pictograms used to designate the bathrooms — with pants on one side and a skirt on the other — serve to reinforce stereotypes about how individuals of either gender should look and dress, and the choice between two genders ignores the fact that not everyone fits into the socially constructed binary

of men and women.

McGill is one of several universities that have attempted to rectify this situation by creating more single-stall washrooms to be designated as gender-inclusive. However, introducing this third option for those who do not identify within the gender binary is still stigmatizing, as it isolates individuals into a new category of “other.” It again serves to further isolate people. In our society, the ubiquitous sign that designates that there are washrooms nearby is a pictogram of a person in pants and a person in a skirt. In reality, this image should be of a toilet, but it is not. As a result, even washrooms that are designated as gender-free — those which are generally single-stall units — are still designated by the standard sign of both a “man” and a “woman,” reinforcing again that these are the socially acceptable categories. But gender is much more complicated than that. This socially constructed binary system is exclusive and discriminatory towards those who do not identify with either of these stereotypes, and simply want a space where they can be comfortable to pee in peace. Which got us thinking: why do bathrooms need to have any categorization at all?

Bathrooms are ubiquitous and act as a frequent reinforcement of the mistaken assumption that there are two mutually exclusive gender options for a person to identify with. However, in reality, gender is much more flexible than bathrooms and stereotypes would lead us to believe. In discussing this issue, we have been repeatedly faced with the opinion that although people might fall somewhere on a gender spectrum, there is still *clearly* a “right” or “wrong” bathroom for each of those people to be in. Despite the label that differently-gendered people choose to use, by looking at them naked, surely each person could be slotted into one of these two boxes. This belief incorrectly implies that all individuals are cisgender, meaning that their gender (most commonly designated as masculine or feminine) matches their sex (most commonly designated as male and female). This also mistakenly implies that gender is a fact that can be determined by others. This is simply not true.

Sex does not fall as clearly into a male/female dichotomy as most people think it does. Scientifically speaking, XX chromosomes are commonly associated with women, and XY with men. However, while it is true that these chromosomes often trigger the development of typically

female or male-associated physical and social characteristics, it is not always so cut and dry. Individuals can have different chromosomal makeups, which result in them developing both physical and social characteristics that are neither entirely masculine nor feminine. Alternatively, they can have either XX or XY chromosomes, but not develop the associated masculine or feminine traits due to hormone insensitivities. While the science on this matter is a bit complicated, the conclusions are rather simple: both sex and gender cannot be cut into two neat options. The dichotomies of male/female and masculine/feminine are social constructs, and they have been incredibly convenient for classifying people. However, now that we know what we do about the diversity that can exist in both gender and sex, continuing to propagate these binary systems is unacceptable. These false binaries have alienating consequences for anyone who does not fit within their confines. Science aside, should everyone not feel free to choose who they wish to be? Something as silly as a washroom should not be able to constantly undermine a person’s identity.

Individuals who fall somewhere on the spectrum — those who identify as genderfluid, genderqueer, or a myriad of other gender options — often feel that there is no “right” choice for them to choose when it comes to using a washroom. This can be an incredibly stressful situation for these individuals. Gendered bathrooms are an almost hourly reminder to anyone who does not identify within the gender binary that they are considered “different” by society. If an individual walks through what others consider to be the “wrong” door, at best, they might be stared at as people wonder “what they are.” At worst, they might be attacked.

As it stands, our cultural norms and societal structures do not accommodate this minority, and this results in discrimination that leaves these individuals significantly worse off when compared with the rest of the population. There are few, if any, statistics about differently-gendered people. Forms that are used to collect information often do not give individuals the option to choose anything other than M or F. Some more evolved forms include a transgender option, but this does not solve the categorization issue for all differently-gendered people. The statistics that we do have about transgender people, however, are chilling. Transgender people are more likely to live in poverty, experience unemployment, and be subjected to verbal threats or harassment. More concerning still is

that 77% of trans respondents in an Ontario-based survey had seriously considered suicide and 45% had attempted suicide, compared with 1.6% of the general population. The level of exclusion and otherness felt by trans people likely contributes significantly to the prevalence of these negative experiences. Inclusive washrooms are only a start, but given their ubiquitousness in everyday life, we felt that these were a good area to tackle first.

People often roll their eyes when we bring up this subject. They just cannot see this washroom "issue" as being the big deal that we are making it out to be. As cisgender women ourselves, we have never experienced any type of discomfort upon choosing a public washroom to use. But we did not have to look far to find many people who had. The What's Underneath Project is a YouTube series that features stories of individuals who challenge society's perceptions of gender identity. In one video, writer and musician Nikkiesha McLeod describes how she feels most vulnerable when she needs to use a public washroom, and how she was once attacked by a girl's boyfriend for being in the women's washroom. Another video features iO Tillett Wright, who was assigned female at birth but lived as a boy between the ages of 6 and 14. She currently identifies as a woman, but has androgynous looks and style. Although iO identifies her sex as female, she emphatically states that none of the gender labels fit her. She describes how when she uses the women's washroom, she alters her behaviour to act more "girly" and "smiley," and how when she uses the men's washroom, she hunches over, moves quickly, and avoids eye contact.

There is no functional reason why individuals need to be externally categorized by gender when all they are trying to do is pee. However, in our conversations with others, we have been emphatically challenged on this point. People are wary of the safety issues that would arise if all people used the same washrooms. Most raised concerns that this set up would increase the risk of physical and sexual abuse, primarily towards women. These defences almost perfectly echo those used by proponents of racial segregation, those who said that having black men around white women would lead to rape and argued that allowing black families to move into white neighborhoods would lead to an increase in crime and violence. We strongly reject the idea that we should be maintaining the

"AS SOCIETY BECOMES MORE AWARE OF GROUPS THAT ARE MARGINALIZED, IT IS EVERYONE'S RESPONSIBILITY TO ADAPT OUR STRUCTURAL AND CULTURAL PERCEPTIONS TO MATCH OUR NEW UNDERSTANDINGS. GENDER HAS LONG BEEN A BATTLEGROUND FOR EQUALITY, AND ALONGSIDE WOMEN'S CONTINUED FIGHT FOR EQUALITY, A NEW GENDER-BASED STRUGGLE HAS DEVELOPED: INDIVIDUALS WHOSE GENDER IDENTITIES STRAY FROM THE STANDARD BINARY SYSTEM."

current flawed bathroom divisions for this reason or any other like it. Our society is increasingly rejecting calls for girls to dress more modestly to avoid distracting boys or being assaulted — rejecting the idea that a woman might be "asking for it" based on what she wears. The same goes for sharing washrooms. It is not the job of binaried bathrooms to keep women safe, nor do we believe that they would be any less safe in shared washrooms. It is up to us to eliminate rape culture and reduce these risks by targeting the potential perpetrators, not by trying to shelter the potential victims.

Prior to proposing a policy change for gender-inclusive washrooms, we recognize that it is essential to educate those in our community about why this policy change is needed. Focusing on awareness, empathy and inclusiveness through education is the first step to positively transform the McGill community culture and eventually bring change to the broader societal culture in North America. We all need to understand what it feels like for those whose gender identity is not widely recognized and to recognize the challenges and discomfort people face daily when they have to do something as simple and fundamental as going to the washroom.

As society becomes more aware of groups that are marginalized, it is everyone's responsibility to adapt our structural and cultural perceptions to match our new understandings. Gender has long been a battleground for equality, and alongside women's continued fight for equality, a new gender-based struggle has developed: individuals whose gender identities stray from the standard binary system.

We propose that public washrooms should be gender-inclusive spaces where all people can #PeeInPeace. These spaces would ideally be outfitted with multiple floor-to-ceiling stalls, which would provide added privacy for all users. This set up would effectively challenge and ultimately eradicate society's false assumptions about gender as a binary, which would increase inclusiveness for all individuals.

Our biggest challenge is the lack of awareness that people have about how diverse gender identities can be. In general, the idea of sharing a public washroom makes people nervous, and this is a difficult hurdle to overcome. The majority of us take our access to public washrooms for granted, and we hope that more people will come to realize that non-gendered bathrooms will create a safer and more egalitarian system for everyone. This is where you come in. It is time to break the silence, start conversations and get actively involved in changing attitudes. Because really, shouldn't everyone be able to #PeeInPeace?

To the best of our ability, this article uses language that is intended to be sensitive to all individuals. At various points, we employed common vocabulary and phrases that might be seen as reinforcing stereotypes and norms, but we did this with the larger goal of clarity and succinctness in mind. We apologize to anyone who may take offense at our choices.

AVONS-NOUS OUBLIÉ DE SENSIBILISER LES FEMMES AU FÉMINISME?

ANONYME

Je remarque que les dernières années de militantisme féministe ont permis une plus grande sensibilisation des hommes. Bien que ma perception ne s'alimente que d'anecdotes, il faut avouer que le discours féministe a réussi à capter un plus large auditoire masculin. Même si j'admets être entourée d'hommes éduqués qui ne sont nullement une représentation juste de la société actuelle, je suis plutôt optimiste et rassurée par l'effet de la sensibilisation des hommes de mon entourage. J'observe que le silence qu'ils adoptent dans certaines situations n'est pas dû à un désintéressement, mais qu'ils tentent plutôt de laisser l'entière place aux femmes pour s'exprimer sur certains sujets. Malgré cette réjouissante impression, il en est tout autrement pour les femmes qui m'entourent.

Le message d'unicité qui a été créé derrière « la femme » semble avoir engendré un discours de l'expérience féminine au singulier. Plusieurs femmes n'arrivent pas à saisir la multiplicité des expériences féminines. Bien que ces observations se dressent sur plusieurs expériences personnelles, celle qui démontre le mieux cette affirmation est sans doute les différentes réactions qu'engendra le résultat positif de mon test de grossesse à l'automne dernier. Jeune universitaire, je n'avais pas planifié ou désiré une grossesse à ce moment de ma vie. L'expérience fut bouleversante. Bien que je défende ardemment le droit à l'avortement, le choix ne me sembla pas être si facile. Quoique l'avortement représente un soulagement et une évidence pour certaines femmes, mon expérience fut empreinte d'une période de cogitation plus mouvementée. En plus du doute et du choc de la nouvelle, les hormones de la grossesse ont été particulièrement violentes dans mon cas. À environ deux mois de grossesse, mon corps avait déjà commencé à s'adapter au développement

> « JE NE SAIS PAS SI LA DÉSENSIBILISATION DE MES AMIES À CERTAINES RÉALITÉS FÉMININES DÉMONTRE UN ÉCHEC OU UNE RÉUSSITE DU FÉMINISME. »

d'un autre être. Ces douleurs physiques affectèrent mon moral de manière à ébranler tous mes repères. Je ne m'étais jamais sentie si désorientée et bousculée. Le choix était important et je devais le prendre rapidement.

J'ai décidé de me confier à certain·e·s de mes ami·e·s pour me libérer de cette inquiétude qui grugeait presque toute mon énergie. Le contraste entre les réactions des hommes et celles des femmes a été étonnant. Pour la plupart des femmes, le choix que la vie m'imposait ne semblait pas être si crucial. En fait, ma situation leur semblait une pure banalité. Il n'y avait pas vraiment de discussion entourant le choix de la continuation ou de l'interruption de grossesse. L'intervention leur semblait être l'unique voie possible. Alors qu'elles n'avaient jamais vécu cette épreuve, mes amies croyaient comprendre parfaitement la situation.

Attention, je suis une défenderesse du droit à l'avortement, puisqu'il s'agit d'un droit fondamental qui permet une réelle prise de pouvoir des femmes sur leur corps et sur leur situation familiale. Toutefois, le droit à l'avortement est aussi un droit au choix. Il ne peut pas être perçu comme la solution évidente. Il ne doit pas servir à nier le senti particulier que l'on vit lors de la grossesse.

À l'inverse, mes amis de genre masculin optèrent pour une position d'écoute, ne désirant jamais s'insérer dans ma prise de décision. Ils comprenaient qu'il leur était impossible de comprendre ma situation et que la meilleure chose était de me soutenir dans ce mélange de craintes, de doutes et de confusion. La réaction du potentiel père de l'embryon logé en moi m'a également étonnée. J'avais le libre choix absolu. Il a réussi à m'offrir de l'appui dans mes incertitudes et du réconfort dans mes angoisses. Même s'il était nécessairement impliqué dans la situation, il avait saisi que le choix me revenait et que son rôle consistait à me faire me sentir bien. Finalement, je me sentais bercée par les hommes et bousculée par les femmes.

Je ne sais pas si la désensibilisation de mes amies à certaines réalités féminines démontre un échec ou une réussite du féminisme. D'un côté, je suis soulagée de voir que les femmes ont réellement réussi à détacher la maternité d'un absolu féminin. Je me réjouis de voir que l'avortement représente de moins en moins un enjeu, et davantage une réalité bien acceptée et intégrée dans le discours. Pourtant, je me questionne sur cette vision d'unicité des expériences féminines. Il pourrait être dangereux de croire que les femmes arrivent à comprendre les réalités féminines des autres femmes uniquement parce qu'elles sont du même genre, au même titre qu'une femme blanche ne peut réellement saisir les difficultés que subissent les femmes racisées. L'imposition d'une vision stricte des choix bénéfiques pour les femmes est en opposition avec les buts fondamentaux du féministe : l'indépendance et la liberté de choix de chaque femme.

SAYS WHO? THE POWER AND STRUGGLES OF USING WIKIPEDIA IN SHAPING COLLECTIVE KNOWLEDGE

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Just under a year ago, Wikipedia's Arbitration Committee ("ArbCom", made up of thirteen men and one woman), perhaps unwittingly, took a stand in the ongoing antifeminist controversy and culture war that is GamerGate.[1] The committee made the decision to sanction a number of editors, including five anti-GamerGate feminists. These prominent editors, while not outright banned from editing Wikipedia, were forbidden from contributing to any pages pertaining to GamerGate, as well as articles relating to "gender or sexuality, broadly constructed."[2] According to Wikipedia editor Mark Bernstein, "*every* feminist active in the area [was] sanctioned... No sanctions at all were proposed against any of GamerGate's warriors, save for a few disposable accounts created specifically for the purpose of being sanctioned."[3]

The ArbCom decision represented a fascinating convergence of discussions around the representation of women in technology and video games, women's presence on Wikipedia, and the power of Wikipedia in the collective shaping of knowledge. Perhaps because Wikipedia can be written and edited by anyone with access to a computer and the internet, it has

1 Andy Cush, "Wikipedia Purged a Group of Feminist Editors Because of Gamergate", *Gawker* (23 January 2015), online: <www.gawker.com>.
2 Mark Bernstein, "Infamous" (20 January 2015), *MarkBernstein.org* (blog), online: < www.markbernstein.org/>.
3 *Ibid*.

the power to present a more diverse collection of knowledge than traditional encyclopedic texts that are largely produced by hegemonic publishing companies. This knowledge-shaping, however, is political. Different social groups, genders, classes, and races are liable to have different impressions and understanding of events, figures, and movements, which can result in heated disagreements over how they should be documented. The best way to ensure that stories are being told as effectively as possible is to ensure that there is a multiplicity of voices represented in Wikipedia's editors. If the editing community is diverse, ideas can be put forward in a context where they are representative as opposed to marginalized, and there is less of a likelihood that they will appear radical and subject to censorship.

GamerGate, for those who are not yet acquainted, is a reactionary "social movement" that started almost two years ago. In August 2014, the internet-based game distribution site *Steam* published Zoe Quinn's game *Depression Quest*, which is a choose-your-own-adventure game about her struggles with mental illness. The game received critical acclaim but angered many male gamers who did not feel it deserved the attention it was getting.[4] Shortly after its Steam release, Quinn's ex-boyfriend Eron Gjoni published a 10,000-word diatribe detailing their failed relationship and claiming that Quinn had cheated on him with multiple men, including a prominent video-game reviewer, in order to get good reviews for *Depression Quest*. This opened up floodgates of harassment and death threats directed at Quinn as well as her family members, and any other members of the video game industry who dared to vouch for her.[5] Quinn's home address, phone number, and the phone numbers of her family were posted online, a practice known as doxxing, and she was ultimately driven from her home for fear of her life.[6] In the midst of all this, the movement coined and began using the hashtag "gamergate," which was purportedly meant to be about "ethics in gaming journalism," but was actually about chasing women and anyone who supported them out of the gaming industry on the basis of their gender. In the years since, the movement

4 Jay Hathaway, "What is Gamergate, and Why? An Explainer for Non-Geeks", *Gawker* (10 October 2014), online: <www.gawker.com> [Hathaway].
5 Zoe Quinn, "5 Things I Learned as the Internet's Most Hated Person", *Cracked* (16 September 2014), online: <www.cracked.com>.
6 Hathaway, *supra* note 4.

has grown and many prominent women in the games industry, as well as anyone who dares to speak out against GamerGate, have been doxxed, have received death threats, and have been mercilessly harassed. The primary fear for GamerGate supporters is that as women, specifically feminists, enter the games industry, they will "ruin games" by lobbying the industry to produce content that is more diverse in terms of the characters, narratives, and messages. GamerGate supporters see video games as a protected space, and the threat of feminists or other SJWs (Social Justice Warriors) encroaching on this space is terrifying.[7]

Video games, like Wikipedia, and many other cultural products linked to STEM (Science, Technology, Engineering, Mathematics) disciplines are overwhelmingly male dominated. Only 11.5% of games industry jobs are filled by women, and among these women, the vast majority find themselves in marketing, public relations, and publishing positions as opposed to jobs that involve working directly on video game content. Women hold only 10-12% of design and artist jobs, and only 5% of programming jobs. Game writers, of which 30% are women, are the only partial exception to the rule. In addition, the salaries of women working in the games industry are on average $9000/year lower than those of their male counterparts, even when they have been working in the industry for the same amount of time.[8]

Wikipedia's statistics are similarly unequal. As one of the top ten most visited websites, and the top visited encyclopedia, Wikipedia plays a huge role in shaping collective knowledge. Unfortunately, however, over 80% of its editors are white and male, which has led to systemic racial and gender biases in articles that get published.[9] It is unsurprising, given these statistics, that ArbCom chose to censure the feminist editors. For the committee, the "incivility" demonstrated by these editors would appear problematic and anomalous in a context where they are the

7 Thomas Anderson, "Why Feminists Want To Destroy Gaming", ReturnofKings (24 October 2015), online: <www.returnofkings.com/>.
8 Traci Fullerton et al, "Getting Girls into the Game: Toward a "Virtuous Cycle" in Yasmin B Kafai et al, eds, *Beyond Barbie and Mortal Kombat: New Perspectives on Gender and Gaming* (Cambridge: The MIT Press, 2011) 161 at 164.
9 "Wikipedia: Wikipedians" in *Wikipedia*, (8 December 2015), online: < en.wikipedia.org/>.

"SLOWLY, THE VIDEO GAME INDUSTRY AND THE MAKEUP OF WIKIPEDIA'S EDITORS ARE BECOMING MORE DIVERSE. WHILE THIS MEANS A PERIOD OF TENSION, THE RESULT CAN BE ONE WHERE CULTURAL PRODUCTS ARE NOT ASSOCIATED WITH A SINGLE GENDER, AND WHERE ALL PEOPLE FEEL WELCOME IN A CONTEXT IN WHICH THEY CAN SHAPE SOCIETY AND KNOWLEDGE."

minority opposing voice.[10] GamerGate demonstrates the violent backlash that can occur in the face of social change, but it also shows that things are changing. Slowly, the video game industry and the makeup of Wikipedia's editors are becoming more diverse. While this means a period of tension, the result can be one where cultural products are not associated with a single gender, and where all people feel welcome in a context in which they can shape society and knowledge.

As jurists and feminists, we can participate in this push. The legal profession and scholarship have been largely shaped by hegemonic values, and this, too, is represented in Wikipedia articles. We can learn to edit Wikipedia and contribute in meaningful and concrete ways to changing the story. We can also serve as advocates for marginalised voices, pushing male-dominated spaces to listen to diverse narratives, and helping those who have been oppressed to find creative means to share their perspective.[11]

10 Adi Robertson, "Wikipedia denies 'purging' feminist editors over Gamergate debate", *The Verge* (28 January 2015), online: < www.theverge.com/>.
11 Sections of this piece come from two other papers: one submitted as a final paper for Foundations, and a Term Paper completed in summer 2015 with Professor Moyse.

“SORRY JOHANNE, WE JUST COULD NOT FIND ANY (WOMEN)!”

BY JOHANNE POIRIER
PROFESSOR AT McGILL FACULTY OF LAW

I had just arrived in an African capital, to take part in an international conference, notably on “Diversity”. It was a major 3 day event, with Heads of States, etc. Each day, the 600 participants from around the globe were divided into some 15 round tables. At the end of each day, 15 Rapporteurs would report to 5 Chief Rapporteurs, in charge of the 5 major themes of the Conference. Those Chief Rapporteurs would then each summarize the day’s conclusions to the Plenary, before the 600 participants.

As soon as I landed, organizers came to me to say “Johanne, we have a major problem: one of the Chief Rapporteurs is sick and cannot make it. We need someone to replace him rapidly. Could you prepare the statements for the end of each day, from the workshop reports? We could then get a couple 'local experts' to read them to the Plenary.” I normally do not refrain from helping colleagues who face these kinds of difficulties, but I was a little puzzled. The rather worried organizers suggested that I write the statements on a theme I had not prepared, and have two (obviously) male “local” personalities read them? I turned to an older – male, African – colleague and asked: “Do I understand well that they think these (black, male) colleagues cannot write? And that I (the white, female) cannot speak?” He reinforced my instinctive reaction: “That is so hugely patronizing, Johanne, to all of you.” By then, I had understood that of the 20 or so speakers at the 3 daily Plenaries, *not one* was a woman.

I went back to the organizers: “You could not find *any* woman to report and/or speak at the plenaries?” The answer just stunned me: “But you

were not available, Johanne!” I had, indeed, declined to act as one of the Chief Rapporteurs, due to prior commitments. But I was clearly not the only woman able to do the job. And, frankly, for an international conference held in Africa, there ought to be African women speaking, not a white Westerner.

This said, we were facing a bit of an emergency: one of the themes did not have a Chief Rapporteur. So I agreed to step in, but with 2 conditions.

First, I would work in a team with the two local experts. We would draft the statements together (in a rush, at the end of each day, from the workshop reports) and would each deliver one statement at each of the 3 plenaries… I stood up, very humbled, at the First Plenary, as the only (white!) woman to address the dignitaries and the participants from five continents.

Second, I asked the organizers if we could hold a “Women’s Networking Lunch” the next day. I had made a similar request several times in the past, to the same organization, without any response. This time, they were quite willing to accommodate what some of them must have perceived as my “whims”.

Over 60 women showed up for our Networking Lunch, which had only been announced once, the night before. I set up white boards, with “titles”, so that we could have a bit of a sense of the competences around the room. I wrote down “politicians”, “lawyers”, “doctors”, “civil servants”, “professors”, “NGO managers”, “diplomats”, “journalists”, etc. Amazingly, several women put their names under several lists. They were “doctors AND ministers”, “journalists AND professors”, “diplomats AND lawyers”, “mayor AND engineer”. And, as we all introduced ourselves to each other, several insisted “and I am a mother and a grand-mother”.

In short, at least 60 of the 600 participants were women (not brilliant in itself, of course). Yet, these were 60 women with an impressive array of competences, expertise, and even “formal titles” (ambassadors, etc.). But none had been considered able to deliver a statement at a plenary, even in a last minute situation, and even with someone’s help to draft the statement. My amazing lunch partners kept telling me: “Don’t worry:

this *always* happens to us" (this being ignored/bypassed in public events, despite the fact that their expertise was clearly put to use *sur le terrain*).

This was some 10 years ago. Social networks were almost in their infancy and keeping in touch has not been as simple as I would have liked. My hope that I would no longer hear "but we could not find any (women), Johanne" has not entirely been met. Some of my (male) peers, from way back then, get it. I actually received the strongest (and I dare say the most effective!) show of support from an older (white) male colleague, who had experienced the undeniably constructive impact of women in peace-making. Others are still bemused, puzzled, or annoyed, not quite getting what "sex equality" has to do with major constitutional design issues. Dealing with this expressed or implicit bewilderment is also a constant work-in-progress. But I soldier on, insisting, again and again, that gender equality be on the radar of any event and organizations I am involved in.

The atmosphere at the Networking Lunch was constructive, joyful, even mischievous. I had turned my anger into action, and met a number of courageous, impressive, generous and funny women in the process. It remains one of the most moving and transformative moments of my working life.

RECLAIMING POWER

BY ROMITA SUR
STUDENT AT McGILL FACULTY OF LAW

WOMEN IN BLACK AND WHITE

BY SHAUNA VAN PRAAGH
PROFESSOR AT McGILL FACULTY OF LAW

January 2016 and January 1989

Twenty-five years ago, as a doctoral student in law at Columbia University, I sat down to write *Stories in Law School: An Essay on Language, Participation and the Power of Legal Education*, an article that explored the potential for effective storytelling as a way of teaching, learning and immersing oneself in law. I drew on my experience as a law student, looking ahead to what I hoped would be a lifelong identity as a law professor, and reflecting on the complex ways in which our many identities intertwine with our understandings, our responsibilities, and our actions as compassionate and constructive jurists. Today, humbled by the fact that today's law students continue to read that first published piece of work, I turn further back to an essay I wrote in 1989 for a third year law school seminar. Below, I share reproduced excerpts with today's students who create, write for, and read *Contours*, and from whom I continue to learn day after day. In the spirit of *Stories in Law School*, it tells a story, draws on the stories of others, and aims to articulate insights into the power and passion of a feminist search for self and community.

"*Every Friday [in 1988-1989], women dressed completely in black gather in French Square in the centre of Jerusalem and, from 1 – 2 p.m., stand in a circle facing outward to the busy traffic heading home for Sabbath preparations, and silently hold black signs saying simply "End the Occupation". This is a demonstration like no other in Israel. Women in Black, numbering approximately eighty participants on any given Friday, protest without chants or violence, speeches or songs. They use their presence as women as the medium by which their message is presented… [I]t is the nature of that voice that rings out in the personal story of empowerment through Women in Black told by Susan Zeller, a volunteer at the Israel Women's Network in the summer of 1988. As one of Susan's co-workers at the Network, I watched and listened as she worked out her involvement with feminism and Israeli peace politics.*

…

Women in Black provides a community for the women who take part. The bonds among the women are strong – through their common dress, their touching each other and holding out a hand to newcomers like Susan, and their communal protection from some of the passers-by who shout, jeer, even spit.
…

Usually, when we think of the individual and the community, we think of an entrenched and insoluble dichotomy. At certain times and for certain purposes, a person's state of being is that of an individual, free to do as he pleases without constraint. At other times and for other purposes, he is a member in a larger community, the objectives of which may clash with personal aims…But this vision of the tension between the individual and the collective offers no substantive comprehension of real people. It portrays individuality as a way of being but ignores the enterprise of understanding the nature of individual selfhood and the capacity for becoming autonomous. Feminist theory is, however, well equipped for embarking on exactly such an enterprise. And, apart from having the credentials and perspective perhaps best suited for rethinking autonomy, feminist theory must recognize this project as vital to its own development.
…

I want to ask why finding my own meaning for "I" is so crucial for me as a feminist, and for feminism in general…If we see potential in an ethic of care as an alternative, positive basis for legal and political theory – and I do see such potential – we have to decide where care for self fits into the priorities of this ethic. Otherwise, helplessness, entrapment and loss of self-identity can masquerade as positive care, connectedness and community. And women surely know the possibility of oppression by a collective with shared values, and that of breakdown and pain within a relationship.

What do I want for myself? … It may be that there exists no easy straightforward answer to my query to myself. But I do know that if I answer that question from the perspective of others – even very close, related others – I am frustrated with my inability to articulate my own answer. And I also know that the self-determination, self-confidence, or autonomy I have felt at different times in my life has been exhilarating

and freeing. Freeing not in the sense of isolating myself from responsibility, care and important people relations, but rather in the sense of knowing and being happy with myself and the direction in which I choose to travel. …

Autonomy and connection seem to exist in a mutual conducive and integrated relationship. The collective support of Women in Black represented a lifeline to Susan Zeller – a lifeline that signified a newfound independence and confidence as an individual woman. As she wrote, "Even when I am not at a Women in Black demonstration, when I stand alone in whatever color clothing, I am confident of my abilities and my thoughts, and I feel free to translate them into action. For me, as for most, Women in Black is much more than a peace rally – it is a lifeline". At the same time, a group like Women in Black cannot guarantee individual empowerment simply by holding out an offer of membership. If Susan had joined the circle of women demonstrators without an individual strength and conviction about her involvement in Israeli politics, or perhaps without a wish to explore her feminist beliefs and practice, she might have left on that first Friday confused and, in effect, dissolved by the interaction rather than empowered by it. But the sense of autonomy she felt had been fostered by her involvement with Women in Black was a realized fruition of the choice that she, as a true individual prepared to interact with the group, had made when she dressed in black on her first Friday in Jerusalem that summer.

What is so threatening about this new sense of self, a new language, and a new sphere in which relationships and the collective are taken seriously? When Women in Black demonstrated, the attention they got from many passers-by was directed not at their political beliefs and message. Rather it was directed to their womanhood. Men called the women prostitutes and shoved models of black widow spiders in their faces. The women were reprimanded for not being home where they belonged on a Friday afternoon only a few hours before the Sabbath dinner should be ready. Women's participation in what is thought of as the public sphere is threatening. And Women in Black, standing woman next to woman, staring at the people in their cars and on the buses – a seemingly invincible wall of women's bodies – is very threatening.

Not only is autonomy inseparable from personal experience and feeling, but feminist thought and practice are equally inseparable from women's experience and feeling, both on an individual and a collective basis. To rethink autonomy we have to maintain the tension between the individual and her community, allow the individual time and space for personal transformation, infuse individuality and empowerment with connectedness and interdependence, and emerge with a concept of autonomy that co-exists with, informs, and relies upon collectivity. …

It seems to me that we cannot hope to transform the meaning of 'self', 'self-determination', or 'autonomy' unless we look to experience. That is why one woman's story about Women in Black may tell us more than any amount of abstract theorizing. If we listen to Susan's voice, we open our ears to one woman's language and its expression of self-value and self-confidence. But we also introduce a forum for many women's voices whose stories of life are waiting to be told. Audre Lorde writes that poetry is not a luxury but a necessity of our existence. Poetry, like women's voices, distills life's experiences and names our ideas, hopes, dreams and actions. When women's voices speak, they do so in a language that weaves the fabric of feminist change. Their stories, then, can never be a luxury.

I have one more story to tell. I didn't join Women in Black because this was my first time in Israel and my two months were spent getting acquainted with the country and with Jerusalem and the Israel Women's Network. Susan had spent almost two years in Israel on previous occasions and she was ready to stand up and be heard as a participant in the working of the country. I went to Israel on my own, knowing no one there, but somehow feeling that my connection with the country would be formed and cemented this summer and that the Israel Women's Network would provide a supportive grounding for me as I explored Israel both from within an office concerned with the status of women and from without, travelling the length and breadth of the tiny state. I was right. With the strength we both displayed in putting the constraining expectations of those at home and school behind us, and choosing an alternative path, we came to Israel and forged new connections with the Network, and with other women, that cultivated in us a sense of self-determination – a feeling of autonomy that both results from and strengthens our feminist

beliefs and concerns. We both left Israel with a self-understanding that made us feel more certain, articulate, assertive and alive.

If I think of one symbol that best illustrates for me an attempt to live our lives under a feminist quality of light, I think of Women in White, a demonstration in the Israeli Knesset on June 6, 1988 – the day I first landed in Jerusalem. On that day, women from all over the country – Jewish, Muslim and Christian – gathered with squares of fabric on which they had sewn, embroidered or painted messages of peace in Hebrew, Arabic and English. Dressed in white they carried the peace cloth, made by connecting the squares, into the Knesset and presented it to the Prime Minister with their hopes for peace. Each individual square was beautiful and strong on its own. Connected to other peace squares, each took on a new meaning and a new strength. And, when all the squares were stitched together and carried by individual women connected by a vision, the cloth was extremely powerful and empowering, impressive, wonderful and convincing. Each participant could leave the demonstration inspired, her sense of self-value heightened. Each observer must have felt awe for the dimensions and importance of the project.

Women in White spoke in a new, different voice, previously unheard. They reached across the divide from women's homes to the seat of government. The energy of the community of Women in White empowered individual women, and individual women joined together to form that vital community. The expression, dedication and the strength of Women in White form the link between that group and the weekly Women in Black demonstrators. The togetherness of these individual women, whatever colour they wear, is crucial for powerful action. And autonomy happens with action. The capacity for autonomy is partly composed of feeling and emotion but it is partly action, a change in direction, a decision to connect, a motivation to move. Feminism, too, has these components. As we redefine and embark on individual searches for autonomy, we join hands in a collective demonstration for change – a demonstration that offers and demands both inner strength and society's transformation".

As I write these words for *Contours* on January 9, 2016 – exactly 27 years after the January 9, 1989 date typed on the cover page of my seminar paper excerpted above – I realize that individual searches for autonomy

never end. And there continue to be countless ways in which women and men, young and old, participate in our many communities and collective projects. I also realize that my own path as a teacher and perpetual student is perhaps precisely what I had in mind – without knowing it – as a young feminist jurist keen to try on black, white, and every other colour we can imagine together.

CONTOURS AIMS TO MAP AND SHAPE THE INTERSECTION OF WOMEN AND THE LAW. IT IS A SPACE FOR WOMEN'S EXPERIENCES, CONCERNS, DEBATES, AND ASPIRATIONS AND AN INVITATION FOR US ALL TO BE IN CONVERSATION.

NOUS ENCOURAGEONS LES FEMMES À PRENDRE LEUR PLACE ET À S'AFFIRMER. NOUS LUTTONS POUR QUE NOS VOIX SOIENT ENTENDUES ET POUR DONNER À TOUTES LES FEMMES LE POUVOIR DE S'ÉPANOUIR.

BECAUSE THE STORIES WE TELL DETERMINE WHAT WE THINK ABOUT WHAT HAPPENS, WHICH DETERMINES WHAT HAPPENS NEXT.

DEFY. DISCOVER. REINVENT.

SOLUTIONS rubiks