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# Public and Private - Feminist Legal Debates

EDITED BY MARGARET THORNTON

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*Public and Private - Feminist Legal Debates* traverses some well-trodden ground as well as exploring new connections between law, feminism and notions of public and private. Edited by Margaret Thornton, it is a collection of essays written by feminist scholars working in the areas of law and legal theory. It evolved out of an initiative by the Research School of Social Sciences at the Australian National University. The School invited feminist legal scholars from other institutions to participate, as visiting speakers, in its *Feminism and Law* series. The relationship between the public/private distinction, legality and women emerged as a common theme throughout the series and generated the idea for the collection.

The genesis of the book explains the diversity of material contained within it, ranging from the legal regulation of women outworkers (Rosemary Owens), to the construction of lesbian sexuality in criminal law (Gail Mason), to the failure of human rights law to address the systemic rape of women in wartime in the former Yugoslavia (Hilary Charlesworth). In spite of this diversity, Thornton provides in the preface a useful entry point to the concerns of the book. She gives a brief summary of each of the contributions and points out some connections between them. She also reminds us of the inherent instability of the public/private distinction, as well as the ambiguities of its terms, despite the continuing ideological role it plays in sustaining the ideas and values of liberalism.

Thornton elaborates on these themes in the introductory chapter, "The Cartography of Public and Private", which forms Part One of the book. She explains that the terrain designated by public or by private has constantly

shifted throughout history and continues to shift depending upon the constitution of the polity at any given time. She suggests that the public/private distinction is a marked characteristic of liberal societies and that, despite feminist, post-modern and post-colonial interventions, it remains an organising principle for many discourses grounded in modernity, including law.

The other essays in the collection are grouped together under a number of different headings, each of which emphasises a different aspect of the ongoing feminist debates about how particular notions of public and private embodied in legal thought and practice produce certain understandings and expectations of the appropriate roles and subject positions for women in contemporary Australian society.

The essays in Part Two consider the public constructions of private woman. Ngaire Naffine and Rosemary Owens argue that, in liberal discourse, the public sphere has been constructed as a legitimate site of legal regulation whereas the private sphere is beyond the law's purview. Both demonstrate, using the examples of domestic violence and women outworkers respectively, that this is a legal fiction: private life is still structured by law even in the guise of non-intervention. Law constructs women as private subjects, the very pre-condition of public (male) subjectivity. Law, as the regulator of public sphere activities (relations amongst men), fails to intervene to protect women; instead affirming the illusion of male self-control and autonomy in private sphere activities.

Part Three, entitled "Sexuality: the Perennial Conundrum", contains two articles which consider the relationship of law and sexuality. Gail Mason demonstrates that the distinctions that are commonly used to define lesbian sexuality such as out/in, disclosure/secretcy, masculine/feminine, public/private, are highly vulnerable to subversion. Her purpose in engaging with law is to examine the ways in which legal regulation, or its absence, has produced particular constructions of lesbian identity and existence, which she deliberately sets out to de-centre. She also considers the place of lesbian relationships in the economy of (hetero)sexual exchange. Jenny Morgan looks at a different aspect of the sexual economy. She argues that the legal prohibition on sexual harassment, embodied in anti-discrimination legislation, is not an issue of private morality or "manners", but one of equality for women. She thereby makes public an issue that has often been viewed as a private concern.

The essays in Part Four are a timely reminder of the disadvantageous:

effects that the current privatising impulse has on women. Laura Bennett describes how feminist agitating for greater flexibility in workplace relations has been used tactically by those who support the shift in industrial relations from an arbitration model to a greater emphasis on private bargaining in individual workplaces. She concludes that the move to re-privatise work relations will exacerbate gender inequities and reinforce work-home relationships which are oppressive to women. Marcia Neave and Hilary Astor examine notions of private regulation in family law. Neave cautions that the current trend towards cohabitation and separation agreements, resulting from private negotiations, fails to recognise the unequal bargaining positions within families and the injustices and compromises which may therefore result. Astor draws attention to the silence surrounding the issue of violence in the home, and warns that mediation as the preferred method for dispute resolution following a relationship breakdown, may serve as yet another site of intimidation and control of the target of violence.

Part Five shows how feminist theorising can disrupt established notions of the public as the sphere of masculine endeavour, and of the private as a feminised (and therefore devalued) space. Margaret Thornton gives an overview of her gendered analysis of citizenship, in which she indicates that enfranchised women are not automatically entitled to many of the citizenship rights accorded to their male counterparts. She suggests that an embodied notion of the citizen highlights the masculine character of the body politic and provides a starting point for reconstituting the liberal polity. Archana Parashar argues that Western theorists have failed to include the perspectives of Third World states in their attempts to reconstitute the polity. She suggests that this has particular ramifications for ethnic women living in industrialised countries including Australia, where the culture and religion of ethnic groups are considered to be private issues, and thus irrelevant to the resolution of disputes in family law. Hilary Charlesworth also examines the Western bias inherent in her field of speciality: international law. She argues that international human rights law is both a Western and a gendered construct. She nonetheless suggests that the issue of violence can serve as a common bond between Western and Third World women.

The final Part (Part Six) contains a tentative exploration by Regina Graycar of how private beliefs and understandings of the world inform the way in which judges approach the task of public decision-making. She illustrates her argument with examples of recent judicial statements which contain stereotypical representations of women that bear little resemblance to the complexity and diversity of their lives. She is not persuaded that increased

numbers of women on the bench will necessarily effect the changes to judicial discourse which many feminists promote, without a fundamental change in the character of legal knowledge, including an acknowledgement of the part that a judge's own values play in the decision-making process.

*Public and Private - Feminist Legal Debates* is an eclectic work. It brings together a number of women who have much to say about the operation of public and private as pivotal concepts in the understanding of the relationship between legality and women's lives. Each of the essays contributes to these debates, but the project as a whole also engenders interesting intertextual connections. This book shows, for example, that the issue of violence concerns women working in family law, criminal law and international law. The contemporary imperative of governments to privatise spheres of life impacts on all women's abilities to negotiate suitable working conditions and to resolve family disputes appropriately. Outmoded representations of women continue to pervade judicial writing in all jurisdictions, and it seems that no area of law reflects female notions of subjectivity. The book also shows, however, that feminist interventions continue to pose a challenge to the attitudes and values of liberal legalism, and constantly threaten to disrupt notions of public and private which are unfavourable to women.