



REVIEWS

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PUBLIC AND PRIVATE FEMINIST LEGAL DEBATES

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THE debate about the dichotomy between the public and private spheres of life received a good deal of attention in the 1980s. After a period of reflection, this debate is enjoying a resurgence. Feminists have made an important contribution to that debate, and continue to do so. Drucilla Cornell's latest book, *The Imaginary Domain*,¹ is evidence of the continued importance of public and private as analytical concepts to those who engage in legal and political debates. What is fascinating is how those writers who, in the past, scorned liberalism even in its critical forms are now drawn to positions of boundary-setting. Although boundaries are being drawn in new and imaginative ways, and denied under circumstances of abuse or hurt in the erstwhile private sphere, nevertheless some protection of the private life against totalitarianism is acknowledged.

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1 Cornell, *The Imaginary Domain* (Routledge, London 1995).

The collection edited by Margaret Thornton is an important contribution to the debate around private and public. Although the book is addressed principally to feminists, it has a wider significance for scholars interested in legal and political philosophy. In her chapter Thornton offers a useful cartography of public and private, observing that, despite their work on the destabilisation of boundaries, feminists do not necessarily wish to dismantle the barriers. Much of this chapter is concerned with women's work in the home, which "counts for nothing".

Thornton's argument is developed by Rosemary Owens in a significant chapter on the peripheral worker, working from home for wages, but unprotected by law. Owens attributes the construction of outworkers as outsiders in labour law to the ideological construction of a distinction between private and public. In so doing she offers a very different argument to that of Cornell's *Imaginary Domain*, and a salutary reminder of these forgotten workers. Although Cornell argues that citizens should be free to bring their private identities into the public sphere, her argument is dependent on an analytical and political distinction which Owens challenges. The contrast between these two approaches points to the complexity of concepts which have been destabilised, and which require further demolition in the case of homeworkers, but which retain analytical force.

A radically different argument is contained in Ngaire Naffine's brilliant exposition of Derrida's "metaphysics of presence", as applied to women's legal subjectivity. Naffine argues that law can only deal with woman as man's other, and that the rational, knowing subject of law can only be a person of the male sex. This chapter concludes with a discussion of the construction by women of a female legal subject, in order to claim a presence and participation in a public vision of ourselves. An interesting development of this theme is given by Gail Mason's chapter on lesbian sexuality, which brings out the tension between the construction of opposites: being "out" as dependent on being "in", the notions of an original and a copy, and the idea of multiplicities. Just as Naffine discusses femininity as parody, Mason discusses Monique Wittig's argument that the lesbian is not a woman. This illuminates certain constructions of woman in law, but the argument is made more complex by the reflective discussion on constructions and hierarchies which occur within lesbian communities. Most valuable is Mason's discussion of the silence and invisibility of lesbians, which relates back to the metaphysics of absence.

Silence is again the theme in Hilary Astor's paper on violence. This is a chapter of great interest which raises so many questions that it might have benefited from more space. Paradoxically there is a silence about silence. Analysis of the idea of silence reveals the difficulty of drawing conclusions from absence. Expression is not necessarily confined to speaking. Silence may arise from the lack of language in which to express one's thoughts and feelings, or from the refusal to use language one regards as imposed or colonial. Silence may result from not being heard because those addressed speak a different language, or because one is not listened to. Astor concentrates on motives such as fear and

shame, and on those who are silenced through violence. This rightly leads her to question the mediation movement in family law.

Laura Bennett discusses enterprise bargaining as an example of how feminist argument can be harnessed to justify changes in work practices which reinforce gender inequities. Her argument is that destabilising polarities as an ideological move must be accompanied by empirical research on the effects on actual women. Marcia Neave supplies the empirical data to ground her fascinating argument about private order in family law. In so doing she avoids some of the traps contained in a polarisation of the concepts of public and private. In drawing on the ideal of human flourishing, Neave deploys an Aristotelian argument to challenge reliance by neoclassical economists on market concepts to explain human relationships. This is an important reminder of ethical aspects of relationships.

The place of the private in the public sphere is raised by Jenny Morgan in her chapter on sexual harassment, in which she tackles the argument that women's complaints stem from a form of moralising, an evocation of the Puritan tradition. Expression of hostility to feminism in the United States points to suits for sexual harassment as evidence of "oppressive power". Comparison with Cornell's treatment of the *Imaginary Domain* reveals that, while Morgan sees the public-private dichotomy as imploded by the cause of action for sexual harassment, Cornell grounds her argument in an ethical regard for women as re-imagining themselves and working through a project of selfhood. For Cornell this is an issue about power, the power to project one's imaginings. Whilst this reader agrees, she is left with nagging questions as to limitations on projection in time and space, and the mutual respect for one another of the projectors and the projectees.

A similar issue is raised in Regina Graycar's chapter on the gender of legal judgments. Whereas it is inevitable that the private persona of the judge will form part of the judging process, Graycar's answer is that all sorts of people should be judges and that judgments should be perceived as texts that all sorts of people write. This emphasis on variety inevitably raises the perennial question of difference. Archana Parashar contributes a thoughtful and stimulating paper on differences amongst women, with particular emphasis on ethnicity and the third world. Her argument is that the concept of multiculturalism does not contain within itself directions for use. It may be used in a non-oppressive manner, but if so it must be inclusive. This paper warns of the dangers of exclusion, under the guise of respect for culture as a private matter, in discussions of re-conceptualisation of women's identity in civil society. Such exclusion is possible at a variety of levels. Parashar looks to concepts, definitions, delimitations and language. Taking examples of the positioning of religion and culture as private matters, and of models of rights, she argues that discussions which do not take account of third world countries are exclusive. Parashar's arguments are salutary, particularly where she discusses the privatisation of family dispute resolution through the mediation movement, which may allow for local 'solutions' to take account of culture. This is a rewarding paper. It would have been interesting had this issue been joined with some of the other writers in the collection.

Hilary Charlesworth's contribution is sympathetic to the universalist approach advocated by Parashar. This paper examines the significance of the distinction made between public and private in international law. In analysing the gendered nature of public international law, Charlesworth's point is precisely that it is not universal. Examples include distinctions made between: the protection afforded to combatants and non-combatants in war; the categorisation of rape as a lesser offence against prisoners of war; the restriction of human rights law to the public sphere of the formal economy. This is a paper of critique which maps gendered dualisms. The vision of the future which it proposes is a transformation of legal doctrine, categories and language.

Examination of visions of a reconstituted public sphere in which citizens are embodied in many forms, different from one another, yet sharing equal citizenship, is an important theme in a collection such as this. Margaret Thornton is doubtful of the possibility of achieving a common political identity, as a solution to the conundrum of how particular identities can be expressed within generalities continues to elude us. Instead of a portmanteau idea of a universal citizen Thornton advocates acknowledgment of embodied subject positions in a reconstituted diverse and multicultural polity.

It is evident from this review that the collection is strong on analysis, and that it contains suggestions for a reconstitution of those various spaces labelled, as a shorthand, public and private. It does not contain a blueprint, and nor in my view should it. As the papers on sexuality and ethnicity reveal, many more voices must be listened to before democratic reconstitution can take place. This is not to argue that there is no place for projection of an imaginary better world. Starting from critical analysis of exclusive ways of seeing, of the positioning as "other" of those silenced because of background, culture or form of embodiment, this collection opens up the possibilities of reconstruction. As the analysis reveals, stratifications can be found within cultures positioned as "other" by the dominant culture. In other words, territorial claims about the private can be used for purposes of dominance, even by those who are themselves dominated in other spaces. We have to survey the territory before we make claims about reconstitution. On that task, this collection makes an excellent start.