*Public and Private: Feminist Legal Debates* edited by Margaret Thornton (Melbourne: Oxford University Press, 1995) pages i-xviii, 1-282, Bibliography and Index 283-318. Price $29.95 (soft cover) ISBN 0 19 553662 2.

As Carole Pateman has written, the 'dichotomy between the private and the public is central to almost two centuries of feminist writing and political struggle; it is, ultimately, what the feminist movement is about.'[1] Put very crudely, the concern is that the public sphere, 'the sphere of rationality, culture and intellectual endeavour'[2] in which men act, has been consistently valued over the private (domestic) sphere, 'the sphere of nature, nurture, and non-rationality'[3] in which women act. The separation has been of special interest to lawyers, both because law is created in the public sphere and takes the male standard as its universal subject, leaving 'virtually no space for women, Aboriginal people or differently situated others'[4] and because the concept of 'the private' has been used 'to create a zone of non-interference by law'[5] which has worked to women's double disadvantage.

This collection of essays, which had its origins in the Australian National University's 1992 Law and Feminism series, takes issue with a series of distinctions between the 'public' and the 'private' which have provided an epistemological foundation for the subordination of women. In so doing, *Public and Private* builds on a large body of theory which has described the centrality of public/private dichotomies to the functioning of western liberal political and legal systems.[6] Accordingly, the authors offer a series of practical investigations of the ways in which legal separation of the public from the private has worked and continues to work to women's disadvantage. In this sense, the multiplicity of meanings of public/private becomes a kind of *leitmotiv* of the discourse, rather than the specific object of analysis.

*Public and Private* is divided into six parts, the first of which is a succinct introduction by Thornton to the issues surrounding the public/private distinction. The introduction also serves the secondary purpose of situating most of the substantive matter of the other five parts, which include discussions of employment regulation, the law's treatment of female homosexuality, sexual harassment, domestic violence and family law, within a coherent framework. Thornton's overview eschews any suggestion that a rigid dichotomy can be maintained, arguing instead that multiple readings of the ideology of public and

1 Carole Pateman, 'Feminist Critiques of the Public/Private Dichotomy' in Stanley Benn and Gerald Gaus, *Public and Private in Social Life* (1983) 281.

2 Margaret Thornton, 'The Cartography of Public and Private' in Margaret Thornton (ed), *Public and Private: Feminist Legal Debates* (1995) 2, 11.

3 Ibid 12.

4 Ibid.

5 Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (1990) 34.

6 For example, Jean Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (1981); Katherine O'Donovan, *Sexual Divisions in Law* (1985); Frances Olsen, 'The Myth of State Intervention in the Family' (1985) 18 *University of Michigan Journal of Law Reform* 835.

private are possible.

The second part of the book, 'The Public Construction of Private Woman', contains two contributions. The first, from Ngaire Naffine, develops the epistemological consequences of the male as both public and private subject of law. Her piece focuses on the question of domestic violence and, specifically, on those women who seek autonomy and protection through the law while remaining within violent relationships. Her interesting development of the subject avoids the well-trammelled ground concerning why some women do this in favour of a discussion of how the law treats the 'woman' and the legal subject as two distinct entities. The discussion of 'battered woman syndrome' as a form of psycho-pathology, necessitated by the law's inability to treat (common) female responses to (common) 'domestic' violence as reasonable, is very persuasive. Naffine's discussion of the law's construction of woman as 'other' to the male norm is echoed in the second contribution to this part of the book, Rosemary Owens' discussion of the legal responses to outwork; still a predominantly female area of activity. Owens also introduces important issues arising from the emergence of new 'atypical' work relationships which, like the more traditionally understood forms of outwork (for example, clothing piecework), disproportionately engage women in poorly regulated and lowly paid occupations. Her contribution includes an examination of the ways in which public/private rhetoric serves to maintain the conditions under which women are now being reincorporated into home-based work through the development of 'flexible' working arrangements.

The third part of the book, 'Sexuality: The Perennial Conundrum', examines the relationship of the public and the private to questions of morality and, consequently, liberal conceptions of the way in which behaviour can be regulated. Both the contributions in this part deal with examples of what the (male) law has historically regarded as legally irrelevant activity. Gail Mason examines the way that law has tended to ignore female homosexuality. She shows, in particular, how lesbianism has remained outside the public 'marketplace' of the social contract, failing to attract a (male-inscribed) value, except when it has threatened male power. Mason then examines in detail the utility of social visibility as a strategy for lesbians, noting that its effects are, at best, ambiguous. Nevertheless, her assessment is that legal reliance on a 'right to privacy' is likely only to serve to entrench the marginalisation of lesbians. This observation is consistent with the view which Wayne Morgan has argued persuasively in relation to the construction of a gay 'right to privacy' in the Toonen case,[7] and is a very useful corrective for emerging criticisms of postmodernism which argue that such classic and unreconstructed *liberal* rights are essential to the cause of marginalised groups.[8] Mason concludes that visibility is a crucial strategy for lesbians but argues vigorously that cultural, social and economic differences

[7] Wayne Morgan, 'Identifying Evil for What It Is: Tasmania, Sexual Perversity and the United Nations' (1994) 19 *MULR* 740, 751-6. See also Wayne Morgan and Kristen Walker, 'Tolerance and Homosex: A Policy of Control and Containment' (1995) 20 *MULR* 202, 207-9, 215-16.

[8] See most recently Richard Mohr, 'The Perils of Postmodernity for Gay Rights' (1995) VIII *Canadian Journal of Law and Jurisprudence* 5.

must be represented publicly as well, to avoid essentialising *the* lesbian as white and middle-class. Jenny Morgan's contribution examines the emergence of sexual harassment as a form of legally recognisable harm and enquires whether the legislative reforms have been so successful because they unconsciously invoke protection of a fragile feminine morality, rather than protection from gendered harms. She examines three ways in which the public/private split may be discerned in the discourse: firstly, in the legislative acceptance that such sex discrimination is beyond regulation when it occurs in very small (private) workplaces; secondly, in the regulation of harassment *in the workplace*, a tacit acceptance of street harassment which, in turn, acts as a reminder to women that they do not belong 'in public'; thirdly, that harassment claims are usually not taken against co-workers, but only against bosses. Morgan then considers whether the development of mass toxic tort litigation, which recognises group-wrongs, makes tort law worthy of reconsideration as a possible vehicle for seeking redress of workplace wrongs.

Part four, 'The Privatising Impulse', organises three apparently unrelated critiques (of enterprise bargaining, the trend towards an expanded role for the 'private' law of contract in family law dispositions and the appropriateness of mediation procedures in situations of domestic violence) as responses to the 'contemporary imperative of governments'[9] to deregulate and privatise. This could come to be the most telling contribution of the collection, because the arrangement of material squarely addresses the assumptions of privatisation discourse with an analytical tool for identifying the adverse impact that such strategies (almost always) have on disempowered groups within the community and which, arguably, are the main reason for their support by conservative interests. Laura Bennett argues that although centralised structures for negotiating workplace pay and conditions frequently favour men's interests over those of women (which is also the substance of Rosemary Owens' critique of the failure to regulate outwork adequately), the alternative increases women's vulnerability to 'market forces'. Marcia Neave argues that gender inequality will similarly disadvantage women if recommendations to increase the use of cohabitation and separation agreements are effected. Hilary Astor examines the effect of mediation in family disputes on women who are the survivors of violent relationships, concluding that because the language of mediation idealises the family unit, women face enormous obstacles in attempting to raise matters which demand the recognition that their family 'is a place of violence and exploitation'.[10] Archana Parashar's analysis in part five of the silent presence of cultural baggage in family law mediation serves to highlight the force of Astor's argument. Each of these contributions implies a demand that the specific effect on women of supposed 'feminist' reforms be examined in context, rather than in the abstract.

In part five, 'Challenging Conceptions of Public', three contributions seek to redefine the 'public' in a way which acknowledges women's differences. Marga-

[9] Thornton, above n 2, xvi.

[10] Hilary Astor, 'The Weight of Silence: Talking About Violence in Family Mediation' in Thornton, above n 2, 196.

ret Thornton notes the tendency of political discourse to treat women as 'interest groups' and traces the continuing phenomenon of women's treatment as non-citizens. She rejects the possibility of a properly gendered but 'neutral' political discourse but, falls (self-consciously) short of identifying exactly how women's subject positions can be incorporated into the polity. Archana Parashar argues that an adequate reconceptualisation of the polity must allow for cultural differences. Importantly, Parashar recognises that cultural rights and entitlements are a site of contest within groups as much as between them: the claim that the law must recognise 'cultural difference' can (but need not) be merely a cloak under which male interests within a group seek to silence women's voices. Hilary Charlesworth extends the examination of the 'public' and the 'private' into the realms of international law, pursuing insights which she has examined at length elsewhere.[11] This contribution should, however, prove a more accessible introduction to readers who are not familiar with international legal discourse. Charlesworth also engages with arguments from some feminists that analyses based on the public/private distinction(s) should be abandoned because they have not advanced women's claims to equality. She concludes that the main function of challenging public/private dichotomies is that each challenge serves to reveal one aspect of the particularity of male discourse.

The final part, 'Private Knowledge in Public Decision-making', contains an examination by Regina Graycar of the gendered nature of judicial pronouncements. She notes the male context in which female judges' contributions are made and argues that the 'private knowledge' of (male) judges informs their public function, even when powerful empirical evidence might seem to dictate contrary decisions. Graycar concludes that better efforts must be made to ensure that women's knowledge and experiences are reflected in the processes of judicial narrative and decision-making.

Overall, *Public and Private* is a valuable contribution to the study of legal discourse and, most importantly, attempts to ground a range of feminist critiques within a manageable framework. In this respect it should be particularly useful as a resource in undergraduate courses, and will also serve as an invitation to further academic research.

BRENDAN REILLY*

[11] See, eg, Hilary Charlesworth, 'The Public/Private Distinction and the Right to Development in International Law' (1992) 12 *Australian Year Book of International Law* 190; Hilary Charlesworth, Christine Chinkin and Shelley Wright, 'Feminist Approaches to International Law' (1991) 85 *American Journal of International Law* 613, 625-34, 638-43.

* BA (Hons) (Melb), Grad Dip Urban Policy and Research (Swinburne); Student of Law, University of Melbourne.