

# The Incredible Woman: Power and Sexual Politics.

## Volumes 1 & 2

### Review Article\*

#### Introduction: Central Themes

The forty-one chapters of these two volumes are a collation of articles, essays and speeches by feminist lawyer and activist, Jocelynn Scutt. The collection, spanning a period of twenty five years, examines, in a range of contexts, aspects of women's engagement with Anglo-Australian law, politics and the economy.

On the theme of the volumes, Scutt posits that 'Anglo-Australian legal history has consistently denied credibility to women' and that 'by fashioning standards and rules based on men's social, political and economic circumstances, the law has ruled women to be incredible'. She suggests that the essays:

“...[H]ighlight the many ways in which women lack credibility in the legal system, and the ways that this lack of credibility is infused into many areas of law and society.”<sup>1</sup>

Because of the diversity of the subject matter of the chapters, the various political environments within which they were originally prepared and the differing audiences to which they were initially directed, it is difficult to locate Scutt's work within a single genre. And, as Scutt acknowledges, the age of some of the material gives it an 'historical interest, rather than a contemporary impact'. Although the collection, taken as a whole, might fairly be criticised for a lack of rigour and methodological 'purity', one should remain mindful of the political purposes for which each chapter was initially written and situate these within the writer's broader activist strategy. The life of a public intellectual, with its attendant exposure and personal risk, is not always to be envied. Scutt's contribution to the various debates in which she has participated should be congratulated and her tenacity, continuing productivity and

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<sup>1</sup> Scutt, J, *The Incredible Woman: Power & Sexual Politics*, Artemis Publishing, Melbourne, 1997, vol. 1, p xiii.

activism in often unsupportive, if not hostile, environments applauded.

Apart from a frequent use of distracting neologisms, Scutt's writing style is accessible, although at times strident.<sup>2</sup> Its accessibility is often achieved, however, at the cost of philosophical exegesis and by resort to generalised pronouncements, such as:

"Collective man possesses power over woman through laws which deny women the personal autonomy which is extended to men."<sup>3</sup>

And:

"Women can survive only [if they] understand the way male society operates. Male survival is in no way linked to a knowledge of female society."<sup>4</sup>

Although Scutt recognises that ideology, power and law are not 'static in content or operation', her frequent references to 'patriarchal law' and her claim that the legal system operates as a 'weapon against women', seem to suggest that the oppression of women by law occurs in an orchestrated and systematic fashion. But in spite of her claim that 'anti-woman bias pervades patriarchal law', Scutt acknowledges the 'decisive' role of law in improving the circumstances of women:

"Women are beginning more often, and collectively, to acknowledge the political nature of the legal system, not only as a weapon against women and women's interests, but as a mechanism that can be used to gain a platform for women's demands, as well as, sometimes, concrete redress."<sup>5</sup>

A strategic dilemma for feminists is that any recourse to law will reinforce its place in the 'hierarchy of discourses' and will give the rule of law further unintentional legitimisation,

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<sup>2</sup> Of interest to lexicographers, perhaps, is Scutt's persistent use of such compound nouns as 'humanbeings', 'humanrights', 'paidworkers', 'sexualbeings', 'powergroups', 'paidworkplace', and 'husbandcare'.

<sup>3</sup> Scutt, already cited, n 1, p 134.

<sup>4</sup> Scutt, J, *The Incredible Woman: Power & Sexual Politics*, Artemis Publishing, Melbourne, 1997, vol. 2, p 72.

<sup>5</sup> Scutt, already cited n 1, p 183. Scutt admits law reform to be her 'abiding concern'.

'fetishizing law rather than deconstructing it.'<sup>6</sup> The risk of framing politics within a dominant rhetorical system is that it reproduces, albeit inadvertently, dominant conceptions and regimes of 'truth'.<sup>7</sup> But as Margaret Davies acknowledges, 'sometimes we may consciously have to adopt a position which is internal to that of the ruling ideology in order to survive'.<sup>8</sup>

It is, however, overly simplistic to dismiss law as an instrument of patriarchal power and Scutt's notion that law represents male interests in a uniform and co-ordinated fashion requires interrogation.

Because the origins of oppression are not always easy to locate and the ways in which power is both exercised and resisted in any given context cannot be reduced to a single cause, the attempt to identify and name oppression can be a difficult and precarious endeavour:

"Like the aims and objectives of power, the goals of resistance do not arise in the first instance from the choice or decision of an individual subject. They are given or immanent in the complex strategical situation of a specific socio-historical moment."<sup>9</sup>

Scutt's central project, organised around the theme of 'sexual politics', emerges as the realisation of women as fully autonomous, rights-bearing political subjects. She suggests that 'for several hundred years...women have fought strongly for the law to recognise women as autonomous beings' and that:

"Laws, whether by parliamentary action or judicial interpretation, should not be introduced which curtail,

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<sup>6</sup> Thornton, M, "Portia Wandering in the Groves of Academe and Wondering What to do about Legal Education" (1991) 9 (2) *Law in Context* 9.

<sup>7</sup> For a psychoanalytic critique of discourse formation in law, see Milovanovic, D, *Postmodern Law and Disorder*, Deborah Charles Publications, 1992.

<sup>8</sup> Davies, M, *Asking the Law Question*, Law Book Company, Sydney, 1994, p 14.

<sup>9</sup> Cheah, P, & Grosz, E, "The body of the law: notes toward a theory of corporeal justice", in Cheah, P, Fraser, D, & Grbich, J, *Thinking Through the Body of the Law*, Allen & Unwin, Sydney, 1996, p 21.

explicitly or implicitly, the rights of women to operate as independent and autonomous humanbeings."<sup>10</sup>

Such sentiments are predicated on the existence of a knowing subject which is prior to and independent of the objects of knowledge, the rational autonomous being of Enlightenment discourse. In this discourse, the 'self' is presented, not as fragmented and constituted intersubjectively in interaction with others, but as unitary and isolated. But as Judith Butler has suggested, the subject does not enter into the realm of the political; rather, the subject is produced by the political itself:

"[T]he subject is an accomplishment regulated and produced in advance. And is as such fully political; indeed perhaps *most* political at the point in which it is claimed to be prior to politics itself."<sup>11</sup>

Scutt's appeal to the subject also seems to require that all women participate in a common political identity called 'woman'.<sup>12</sup> While there is a pragmatic appeal to such 'identity politics', the value of essentialism as a political strategy has been the subject of some debate. Any approach which creates representative categories of 'woman' can result in static prescriptions and the erasure of difference. This is so even where the strategy is nuanced by recognising a set of, purportedly inclusive, identities.<sup>13</sup> The strategy of exclusionary solidarity is a legacy of 'first wave' feminism. The challenges for contemporary feminists are informed by an awareness that, despite their commonalities, there is no automatic or transparent interest or identity among women. When identity and experience itself is understood as culturally conditioned,

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<sup>10</sup> Scutt, already cited n 1, p 239.

<sup>11</sup> Butler, J, "Contingent Foundations: Feminism and the 'Question of Postmodernism', in Butler, J, & Scott, J, (ed), " *Feminists Theorise the Political*, Routledge, 1992, p 67.

<sup>12</sup> Although Scutt acknowledges that there are "significant and important differences" in the discriminations and disadvantages suffered by women, she insists that "we are all altogether in the one battle." : Scutt, already cited n 4, p 7. Her frequent references to 'the Women's Movement' also suggests homogeneity in the concerns of women.

<sup>13</sup> The problem with this form of identity politics, Trinh Minh-ha suggests, is that it can reduce identity to a place within a hierarchy of oppressions, and individuals become recognisable only as their category of difference, e.g. women who are migrants, lesbian, indigenous, differently abled, etc. The result of this form of identity politics is that, in the name of representation, it stand to be complicitous with some of the worst forms of tokenism and stereotyping: Trinh Minh-ha, *Women, Native, Other: Writing Postcoloniality and Feminism*, Indiana University Press, 1989.

any purportedly authoritative speaking position collapses. It is towards the articulation and political recognition of differences that a more globally oriented feminism has now shifted. As these developments demonstrate, feminism does not give rise to a single politics that is articulated everywhere at every time in the same way:

“Consistency is sought horizontally and locally, as it were, rather than vertically, implying a genuine plurality in theories and an eclecticism in methods.”<sup>14</sup>

Scutt's politics, however, proceed from an emphasis on women united in collective action against an (identifiable) common oppression. The goal is equality:

Women are ever on the look-out for the 'holy grail' that will deliver to us our birthright: a real chance to compete on equal terms with men, and thus to achieve whatever it is we believe we ought.”<sup>15</sup>

Her political orientation is not free from ambiguity, however. On the one hand, is a liberal insistence on the rights of the autonomous, self-determining individual:

“Any approach which denies women's independence and autonomy, and our rightful place as humanbeings rather than sex objects or mother-icons, cannot be appropriate.”<sup>16</sup>

And on the other, she attacks the 'rhetoric of choices', which leads her to suggest that the 'choices' available to women are never free from coercion.<sup>17</sup> This leads to her prescriptive opposition to a range of practices which impact upon corporeal femininity such as pornography, surrogacy and reproductive technology, a position which sits uncomfortably next to her autonomy thesis:

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<sup>14</sup> Pickering, J, *The Authority of Experience: Essays on Buddhism and Psychology*, Curzon Press, 1997, p ix.

<sup>15</sup> Scutt, already cited n 4, p 59.

<sup>16</sup> Scutt, already cited n 1, p 325.

<sup>17</sup> Scutt suggests that 'autonomy for women will not come about because those who have a stake in power differentials as they are assert that women are autonomous and that all choices women make are free from coercion'. id, p 282.

"Any approach which adopts unthinking resort to the rhetoric of 'choices' in a world where women are limited by the very essence of male dominance, male power, white supremacist governments and multinational corporations, spells further colonisation of women's bodies."<sup>18</sup>

Chilla Bulbeck also identifies the fragility of the 'free choice' model when she suggests that:

"An unquestioning acceptance of the freely choosing individual often conceals the fact that western women's wants and desires are quite possibly deformed by the patriarchal structures in which women find their subjectivity."<sup>19</sup>

Because of the diversity of its subject matter, a comprehensive review of all material contained in the two volumes will not be attempted. What follows is a critical engagement with portions of the text from which a central themes emerges, that is, woman as a rights-bearing autonomous subject. Acknowledging that Scutt's is a political project, however, one needs to be mindful that a critique of her work should not become just a philosophical or intellectual exercise and that overly esoteric concerns do not undermine a commitment to everyday praxis. As Diane Elam suggests, the two ways of thinking should be set alongside of each other because 'in contemporary Western society, being a woman is just as much a philosophical as it is a practical problem'.<sup>20</sup> At one extreme is a recognition that a philosophical insistence on indeterminacy can hamper effective political action and, at the other, that strategic identification with a definitive subject position is a precarious, and far from emancipatory, enterprise.

### Duties of Care: Autonomy and Interrelation

In most of her essays, Scutt privileges individual autonomy over mutual interdependence. Indeed, after reading *The Incredible Woman*, one could be forgiven for concluding that Scutt regards all relationships of interdependence as necessarily oppressive. Ever reluctant to admit to women's personal limitations and desires for connection, Scutt seems to

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<sup>18</sup> id, p 325.

<sup>19</sup> Bulbeck, C, *Re-Orienting Western Feminisms: Women's Diversity in a Postcolonial World*, Cambridge University Press, Cambridge, 1998, p 79.

<sup>20</sup> Elan, D, *Feminism and Deconstruction*, Routledge, 1994, p 2.

suggest that a woman's commitment to care, service and altruism will guarantee her subordination:

“But ultimately the question is what does altruism mean for women in a world where the prime expectation is that women's destiny is motherhood, and that women ought to be, or are altruistic beings.”<sup>21</sup>

While Scutt does acknowledge that human interdependency exists, it is commonly represented in negative terms. Note, for example, her suggestion that many women seek male-female relationships for 'private protection from public harm'<sup>22</sup> and the assertion that 'demands on women to be yielding and giving to others, unmindful of their own wants and needs, bolsters an already unequal relationship between women and men',<sup>23</sup> and further, that 'motherhood is gaining ground as the means whereby women are subjected to the control of men.'<sup>24</sup> Throughout her work, sexual interdependency, motherhood and reproduction are presented as sites of struggle for women. In common with many other western feminists, Scutt appears to regard motherhood and other affective relationships as forms of dependence which diminish women, rather than as processes which construct, empower and enable them. As Chilla Bulbeck suggests, such predominantly western, ideas about maternity probably have less to do with anything inherently disempowering about motherhood, but rather:

“[I]t might reflect the isolated nuclear family with little kin support, the lack of power or prestige that is accorded to mothers and older women, and the almost one dimensional focus on economic resources to access status and power in many anglophone societies.”<sup>25</sup>

Indeed, women's access to status and power in the public domain is the focus of much of Scutt's work, with motherhood and other affective relationships appearing as intrusive limitations to the achievement of autonomy. This may be partly due, suggests Chilla Bulbeck, to the western tendency to

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<sup>21</sup> id, p 261.

<sup>22</sup> id, p 144. Note also Scutt's suggestion that 'the rules which dictate women's lives...are a part not only of women's relation to the state, but of women's personal relationships', id, p 134.

<sup>23</sup> id, p 263.

<sup>24</sup> id, p 250.

<sup>25</sup> Bulbeck, already cited n 19, p 99.

regard motherhood as an individual accomplishment rather than a social one. Note, for example, Scutt's suggestion that:

"This distancing of women from our role as mothers is equally as dangerous as seeing women only as mothers. The problem is that we as women have not been able to establish our own vision of ourselves as fully human, with a unique quality of giving birth to life, a capacity which is wholly female. The countervailing strength of the dominant culture interposes."<sup>26</sup>

Scutt's insistence upon the 'fully realised' (woman) subject appears to be predicated on the idea that there is an essential female identity which exists outside of culture. But human subjects are not unitary entities; they are historically situated and context dependent. Because of this, Scutt's dependence on the rational, definable and single self is problematic and requires interrogation, as does her suggestion that:

"[W]omen of ethnic or racial minority background...are whole humanbeings who have particular characteristics that are an essential part of them."<sup>27</sup>

Her emphasis on women's individual identity can be contrasted with that in many non-western cultures where the notion of 'self' is subsumed to communitarian impulses. Bulbeck gives the example of how women in rural China, when asked questions about their status or personal welfare, were frequently either 'completely nonplussed' by the question or responded in terms of the family's welfare.<sup>28</sup> Similarly, she relates that in Western Samoa there is no translation for the English word 'self' and no absolute reference point for personal identity outside of the social context.<sup>29</sup>

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<sup>26</sup> id, p 323. See also her statement that so long as the foetus is a part of a woman's body, then it is her personal responsibility towards her own body which is in question. As long as other (non-pregnant) persons are entitled to move about in the world without differential restrictions, Scutt says, then pregnant women should have the same entitlements: id, p 239.

<sup>27</sup> Scutt, already cited n 4, p 165.

<sup>28</sup> Bulbeck, already cited n 19, p 57.

<sup>29</sup> See the autobiography of Samoan woman, Sia Figiel, *Where We Once Belonged*, Viking Press, 1997, where the story is told of emerging from a culture where there is only 'we' into one where self identity is paramount. Note also that in Buddhist philosophical traditions, transcendence of the ego is at the centre of all practice, and dualistic distinctions between 'self



While it would be naive to assert that affective ties do not impact upon a woman's 'independence', and that caring for others may not restrict the choices available to her, what needs to be questioned is the way in which many, notably western, feminists persist in privileging self-interested individualism over communitarian and familial responsibility. Coupled with this is a tendency to elevate individual achievement and certain forms of social and economic participation over others. In this approach, to use Sandra Berns' words, 'autonomy remains the ruling ideal, altruism and community the subversive counter-voice.'<sup>30</sup>

The notion of autonomy endorsed by Scutt has been the subject of critical scrutiny by a number of contemporary theorists.<sup>31</sup> It has been suggested to be an impossible one, connected with the Cartesian attempt to conceptualise the self, a self which is necessarily fragile, de-centred and fragmented. It also derives from the Kantian notion of autonomy as a rational exercise in the pursuit of one's own self-chosen goals.<sup>32</sup>

Alison Assiter suggests that, for political purposes, a broader understanding of the notion of autonomy is required. Rather than regarding autonomy as an achievement of one's wants and 'rights', it should be understood, she suggests, as 'impartiality in the review of one's moral principles and values'.<sup>33</sup> In this second respect, it means attempting to take the needs of as many 'others' as possible into account in determining appropriate moral or ethical principles.

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and 'other' are understood to be illusory.

<sup>30</sup> Berns, S, "Through the Looking Glass: Gender, Class and Shared Interests. The Myth of the Representative Individual" (1993) 11(1) *Law in Context* 95 p 97.

<sup>31</sup> See, for example: Assiter, A, *Enlightened Women: Modernist Feminism in a Postmodern Age*, Routledge, 1996; Bulbeck, C, *Re-Orienting Western Feminisms: Women's Diversity in a Postcolonial World*, Cambridge University Press, Cambridge, 1998; Elan, already cited n 20; Griffiths, M, *Feminisms and the Self: The Web of Identity*, Routledge, 1995; Pettman, J, *Worlding Women: A Feminist International Politics*, Allen & Unwin, 1996; Harasym, S, (ed), *Gayatri Chakravorty Spivak, The Post-Colonial Critic: Interviews, Strategies, Dialogues*, Routledge, 1990; Yeatman, A, "Voice and representation in the politics of difference" in Gunew, S, & Yeatman, A, (ed), *Feminism and the Politics of Difference*, Allen & Unwin, 1993.

<sup>32</sup> Kant, I, *Critique of Pure Reason* (trans Norman Kemp Smith), Macmillan, 1956.

<sup>33</sup> Assiter, A, *Enlightened Women: Modernist Feminism in a Postmodern Age*, Routledge, 1996, p 107.

This latter conception of autonomy, rather than viewing the individual as an isolated 'rational' being, recognises the network of relationships and dependencies in which individuals are involved. It involves both critical reflection on the desires and moral principles of others, and reflection on one's own motivations and behaviours.

While it may be the case that the unconnected individual has choices unavailable to the interconnected 'self', such independence may be achieved at the price of personal alienation. As Alison Mackinnon has commented, 'it is still mainly women who have to solve the contradiction between care and autonomy':

"We are far from resolving the contradictions of commitment to motherhood and the freedom from responsibilities required for single minded immersion in professional work."<sup>34</sup>

This tension between autonomy and connection has been considered by a number of contemporary theorists, including Sandra Berns, who examines the ways in which responsibility to self can conflict with responsibility to others. While engaging in such a struggle, she suggests, women become 'psychological transvestites':

"When autonomy and connection conflict, the strategies used to maintain their integrity conflict as well. If the autonomous person struggles to maintain his identity (through exclusion)...the connected women struggles to transform the existing web of relationships and her identity within it through a strategy of inclusion."<sup>35</sup>

Berns argues that the state simultaneously protects the autonomous individual and rejects the claims of the interconnected self, and, like Assiter, suggests that the exercise of basic liberties should be evaluated within a context informed by a concrete ideal of connection and human relationships.

Similarly, Rosalyn Diprose exposes a central paradox in the liberal notion of possessive individualism. Not only, she says,

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<sup>34</sup> Mackinnon, A, *Love and Freedom: Professional Women and the Reshaping of Personal Life*, Cambridge University Press, Cambridge, 1997, pp 224-225.

<sup>35</sup> Berns, already cited n 30, p 107.

is the structure of language such that each person, while being a 'I' for themselves, is also a 'you' for others, but, social exchange itself necessarily demands a negation of autonomy:

"While the law exists to preserve autonomy and freedom within social exchange, social exchange rests on negation by consent of autonomy and freedom as they are understood within this paradigm."<sup>36</sup>

The 'tortured relationship' between conventional liberalism's insistence on the self legislating subject and the realities of women's interdependencies and affective ties has also been examined by Pauline Johnson. Any attempt to interpret feminism's own objectives in terms of principles and formulations directly borrowed from political liberalism, she suggests, is a 'limited ambition' since it is one which merely demands the end of discriminatory practices which thwart the access of women to the range of life choices already made available by contemporary socio-political institutions.<sup>37</sup>

In her discussions of the economic politics of a woman's place, Scutt displays such a 'limited ambition'. Her focus is upon formal equality in the workplace, chiefly women's access to (status enhancing) employment and equal remuneration. In her chapter on equal pay, for example, Scutt suggests that, 'if a system is to maximise benefits, then groups should not be treated differentially'. While access to, and participation in, sites of public power is politically significant for women, the danger is that such strategies often pay insufficient regard to the psychic alienation which, for many women, is the handmaiden of formal equality. Little attention is given to substantive issues affecting women's ability to survive, and prosper, in workplace environments, particularly women who attempt to combine such public participation with interpersonal and/or familial obligations. While many women are able to do so, there is much evidence to suggest that it may be achieved at significant psychological and physical cost :

"Women themselves are caught in a cleft stick between the minimum of social rights they can obtain: getting out of the house, acquiring economic autonomy, having

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<sup>36</sup> Diprose, R, "The gift, sexed body property and the law" in Cheah, P D, Fraser & Grbich, J, (ed), *Thinking Through the Body of the Law*, Allen & Unwin, 1996, p 125.

<sup>37</sup> Johnson, P, *Feminism as Radical Humanism*, Allen & Unwin, 1994, p 69.

some social visibility, etc., and the psychological or physical price they have to pay for that minimum, whether they know it clearly or not."<sup>38</sup>

It is not enough that women have access to pre-existing institutional structures, nor is the provision of affordable and accessible child care the solution to caregivers' participation in the paid workforce as some feminists seem to suggest. To substantially address gender-based economic disparities, substantive change within institutional cultures themselves must occur to better incorporate the needs and priorities of women's lives. As Luce Irigaray has argued:

"These new economic conditions are an incentive to rethink the whole organisation; otherwise we sanction the fact that, in order to achieve a minimal freedom, women must submit to the imperatives of a culture which is not theirs."<sup>39</sup>

Although she shares Scutt's essentialist concern with the 'alienation of female identity', Irigaray also interrogates the 'alienating mediations' of the equality thesis. 'To increase their capital and socio-cultural patrimony', she argues, women are forced to submit to men's means of production and to 'enter on to the circuits of labour':

"There is still almost no type of work which allows a woman to earn a living like any male citizen without alienating her identity in issues and working conditions which are adapted to men alone."<sup>40</sup>

Scutt's essays fail to address these concerns. Although she acknowledges that women may be 'forced to fit themselves into categories which do not speak their reality', she also appears to equate economic equality with the achievement by women of privileged status on the 'circuits of labour', a potentially alienating and far from emancipatory project.

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<sup>38</sup> Irigaray, L, *The Irigaray Reader*, (M. Whitford, ed.), Blackwell, 1994, p 207.

<sup>39</sup> *ibid.*

<sup>40</sup> *ibid.*

## 'Rights' and Wrongs

Allied with her, sometimes ambiguous, orientation towards self-legislating autonomy, is Scutt's emphasis on individual rights over collective goals:

"The task ahead is to make the law shift, change and focus on the realities of all who have a right to access it, and all who have a right to gain support through it."<sup>41</sup>

While she does acknowledge the importance of not allowing 'romantic or sentimental notions of rights and responsibilities' to dictate decision-making, Scutt fails to interrogate the liberal assumptions underlying rights discourse itself.

Although recognising 'differences', Scutt envisages a future in which all men and women are equal persons before the law and are citizens with the same collection of rights recognised and defended by the State:

"Women must recognise our power and the control we have over the future. In this future, women and the men will live as equal citizens, with equal rights, whatever our background and our history, whatever our race or ethnic origins, our differences and our commonalties. In this future women will be credible. Women's truth, women's truths will be recognised."<sup>42</sup>

Rights discourse, accompanied by possessive individualism, is a hallmark of the western liberal tradition. This tradition, it has been argued, has as its focus the rational self-possessed individual, independent of family and state. As Chilla Bulbeck suggests, the focus of western rights rhetoric is on 'I want' rather than 'I owe'. She contends that this opposition between self and society is a western construction, and that while white western women usually understood themselves as individuals with personalities and a sense of their rights, 'third world' women are more likely to regard themselves as members of a community connected to society through roles and responsibilities.<sup>43</sup> Within this latter notion, personhood is

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<sup>41</sup> Scutt, already cited n 4, p 167.

<sup>42</sup> id, p xvii. One might add 'whether living or dead' to the above list. In her discussion of Alyssia Dibble's 'rights in death' Scutt takes rights discourse to a rather perplexing extreme: see Scutt, J, already cited n 1, Chapter 7.

<sup>43</sup> Bulbeck, C, already cited n 19, p 58.

achieved, not by a rights-bearing autonomous subject, but rather, is constructed through and varies with kin relationships, sex, age and other factors.

As Bulbeck's research demonstrates, in a number of non-western cultures rights are not necessarily about being equal or the same. Women's 'rights' may include acceptance and guarantees of their differences, so that rights are more likely to be framed in terms which include obligations or commitment to others:

"Thus sexual interdependence is not seen as oppression, as white western feminists so often see it, but as right, as a process which constructs the person rather than diminishes her."<sup>44</sup>

While Scutt recognises that western feminism might be regarded by migrant and refugee women as a bourgeois intervention that puts women before the priorities of poverty, racism, human rights and class struggle, she nevertheless neglects to interrogate the normative assumptions of rational self-possessed individualism nor the equality thesis itself. On the contrary, she argues that the legal system treats women differently and that we must 'work to overcome this'.

Scutt's failure to properly consider obligations beyond rights or to explore the tension between individual rights and collective obligations, results in a strategic poverty predicated on the notion that that only autonomous individuals have the capacity for agency and intention. It is important, however, that contemporary feminisms move beyond such assumptions and develop more complex and subtle political actions and social understandings.

Diane Elan, for example, suggests that we should shift away from rights-based politics based upon presumably universal notions of what it means to be a human subject. Politics, she says, is not simply a matter of according or balancing rights among individuals. Indeed, she argues that a distributive notion of justice which assumes the prior existence of those to whom justice is distributed as self-evident entities is inherently unjust:

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<sup>44</sup> id, p 78.

"Rights are like gateways: the fact that they seem to open onto vistas of liberty can lead one to ignore the fact that one has to stoop, bend and contort oneself in order to fit through them."<sup>45</sup>

Similarly, Luce Irigaray argues that the question of women's rights is one that should be thought of within the perspective of sexual difference rather than that of equality. It is, she says, unjust to talk of women's access to equal privileges, rights and responsibilities and to talk of their equal access to the law in terms of the disembodied abstract of universal human or civil rights. These rights, and the laws formulated to ensure them, neutralise women's particular and differential social roles, reducing them to terms which have been formulated by and are relevant to men alone. Rather, she recommends that sexual difference be given an ontological privilege and that we require a recognition, enshrined in law, custom and citizenship, of women's identity as a genre distinct from the male genre:

"Women and men are not equal. And the equality strategy, when it exists, should always aim at the recognition of difference."<sup>46</sup>

## Conclusion

The privileging of individual agency and individual voice is largely a product of liberal western discourse. It is an approach which underlies much of Scutt's work and one which emphasises the rational and autonomous rights-bearing subject over the interconnected social 'self'. In her failure to acknowledge the status of some of her liberal interpretations, Scutt's political strategy, perhaps inadvertently, may confer legitimacy on social structures and practices which are hostile to women.

Contemporary feminism has developed beyond the search for an authoritative speaking position. Scutt's sometimes strident manifestos and her neglect to adequately explore or articulate issues relating to aspects of women's interdependencies can do women a disservice. Similarly, any emphasis on law reform, such as Scutt's, which attempts to incorporate women within a

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<sup>45</sup> Elan, already cited n 20, p 78.

<sup>46</sup> Irigaray, already cited n 38, p 206.

singular idea of justice can deny the particularities of women's lives and result in what Diane Elan calls an 'abyssal politics'.<sup>47</sup>

Contemporary feminists should heed Carol Smart's imperative that law be engaged with for purposes other than law reform and with a clear insight into the problems of legitimising a mode of social regulation which is deeply antithetical to the myriad concerns and interests of women.<sup>48</sup> If not, Scutt's demands for formal equality for self-legislating individuals is, for many women, rather like rearranging deck chairs on the Titanic.

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<sup>47</sup> Elan, already cited n 20, p 25.

<sup>48</sup> Smart, C, *Feminism and the Power of Law*, Routledge, 1989, p 164.