Women in Leadership Project 1994: Public lecture series

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WOMEN IN LEADERSHIP PROJECT 1994

Public Lecture Series
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Public Lecture Series

EDITED BY
PAULINE CARROLL

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The Women in Leadership Lecture Series has helped to connect women from across the world, across Australia and across the street. The interest, support and encouragement for the ideas expressed and the series concept have been reflected in the audience numbers and their participation.

On behalf of everyone who came to listen and to learn, our sincere thanks to all of the speakers who contributed their time, their views and their support to the Women in Leadership Project.
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SPEAKERS' BIOGRAPHIES

MS HEATHER NIMMO

Heather's plays include One Small Step which, in 1993, won the WA Premier's Book Award in the Special Section and the GIO Australia - Perth Theatre Trust Script Award. The very successful State Theatre Company of Western Australia's production of the play starred Peta Toppano. In 1994 Theatre West took a new production starring Colette Mann to Sydney and Melbourne after a short season at the Perth Playhouse. Heather's newest play is Whispering Demons and is about women and the church. It was produced by the Perth Theatre Company late 1994.

Heather has written a number of plays for children and young people including Fossils and Beijing Spring. Her telefeature Goddess was broadcast on Channel 10 in 1993. She is currently writing a feature for C&M Films.

Heather has an M.A. (English) and teaches writing for the stage at Curtin University of Technology, the Western Australian Academy of Performing Arts and the University of Western Australia.

With her geologist husband, she has lived and worked in many remote areas of Australia.

PROFESSOR REGINA GRAYCAR

Regina Graycar is Associate Professor of Law at the University of New South Wales.

She holds degrees from the University of Adelaide and Harvard University. She is a member of the Australian Law Reform Commission, a member of the Family Law Council, and has been a legal member of the Social Security Appeals Tribunal since 1984.

With Professor Jenny Morgan, she is co-author of The Hidden Gender of Law and is editor of Dissenting Opinions: Feminist Exploration in Law and Society. In 1993, she was awarded a three-year grant from the Australian Research Council for her project: A Labour of Love: Women's Work and Accident Compensation Law.

CAPTAIN C.M. BRAND R.A.N.

Captain Carolyn Brand was born in Paisley in Scotland in 1950 and joined the Women's Royal Naval Service in May 1972. She was trained as a Weapons Analyst, and served for one year in the Fleet Analysis Unit at HMS Excellent, Whale Island, Portsmouth.

In May 1973 Captain Brand attended the Officers' Training Course at the Royal Naval College Greenwich, and was promoted to the rank of Third Officer WRNS, and eventually became a computer manager in the Submarine Tactics and Weapons Group at the Clyde Submarine Base in Scotland.

In 1981, Captain Brand joined the Royal Australian Navy as a Lieutenant and was posted to the Australian joint Anti-Submarine School at HMAS Albatross, Nowra. She served as First Lieutenant at HMAS Lonsdale in Melbourne and, in 1985 was promoted to Lieutenant Commander.

Captain Brand was promoted to Commander in 1988 and was posted as Executive Officer of HMAS Nirimba in 1989. She then took over as Commanding Officer of HMAS Waterhen and as Commander Australian Mine Warfare Forces in January 1992. On promotion to Captain, she assumed duties of Secretary to the Chief of Naval Staff.
SISTER JOAN WINCH A.M.

In 1973, at the age of 38 Joan Winch went to night school to qualify for university entrance and a nursing degree. By 1980 she had completed successfully a Diploma Applied Science and had gained a midwifery and child health certificate.

She started work as the Community Nurse at the Aboriginal Medical Service and in 1983 became involved in a Health Worker Programme looking at the mental health problems facing Aboriginal people.

In 1986 Joan Winch was awarded the Citizen of the Year Award for community work and in 1987 was awarded the WHO Sasakawa Health Prize for the most appropriate Indigenous Programme of the time.

1988 she was awarded the Australia Medal by the Commonwealth Government and the National Woman of the Year Award. In 1993 she became the official trainer for the Health Department of W.A., and was Zonta Woman of the Year.

Joan Winch worked at the Centre for Learning at James Cook University specialising in Aboriginal Health Problems and is working toward a National Aboriginal University by the year 2,000.

She has published a number of articles dealing with subjects such as nutrition, diabetes, absconding from hospital care, health education and leadership skills for youth and community development.

MS MOIRA RAYNER

Ms Rayner is a lawyer, writer, speaker and social commentator who currently works as a consultant to the Australian Institute of Family Studies.

In 1994, she completed a term as Victoria's Commissioner for Equal Opportunity, following an appointment as a Law Reform Commissioner chairing the Law Reform Comission of WA, and acting as a consultant to the Human Rights and Equal Opportunity Commission's Homeless Children Enquiry. For 10 years she was a legal member (including seven years as chair and convener) of the Social Security Appeals Tribunal of W.A. Her speeches, articles and papers have been published in numerous journals, newspapers and magazines. The topics of her writings are varied and include law reform, discrimination, domestic violence, child abuse, juvenile justice, incest, marriage and divorce, and refugee rights.

Admitted to the Bar in 1972, Ms Rayner has been a lawyer both in private and public practice, in WA and Victoria. She holds an LL.B (Hons) from the University of Western Australia and a Master of Arts from Murdoch University.

PROFESSOR MARGARET WILSON

Margaret Wilson is currently the Dean of Law at the University of Waikato, a position she has held since 1990. She has published extensively in the areas of industrial relations, employment equity and women and the law. She is well known in New Zealand as a conference presenter and media commentator.

As a socialist feminist she is politically active and has authored and presented submissions before several Select Committees on Bills before Parliament, including the Government Committee of Enquiry into Equal Employment Opportunity, 1991.

She is also a distinguished teacher and academic with a strong commitment to community involvement.
MS JETTE SANDAHL  
Curator of the Women's Museum, Denmark.  

Jette Sandahl was born in Denmark in 1949 and received her tertiary qualifications from the University of Aarhus, Denmark. In 1979 she finished her Masters degree in Psychology and was awarded a four year research fellowship (1979-1982) to pursue the history and psychology of gender.  

She was one of the people behind the initiative for a women's museum and was a project director when the Women's Museum opened in 1984 as a museum for Danish women's culture and history. In 1988 she was made Curator of the Museum.  

Since 1990, she has served on the executive committee of the Danish Museum Association, where she is co-ordinator of the annual national conference. She has presented the Women's Museum and Danish Museums in a number and variety of national and international contexts.  

She has published widely in Danish on gender and history, and, for the last couple of years, her writing has focused on gender representation in museum collections.
LECTURE ONE

SOME DAY MY PRINCE WILL COME:
THE CINDERELLA COMPLEX
IN THE PLAYWRIGHT AND HER CHARACTERS

Ms Heather Nimmo
Playwrights write words for others to speak so I have asked the actor Faith Clayton to assist me in my presentation tonight. You might like to see her as a kind of animated overhead projector.

Playwrights deal with ideas but also emotions. We use the facts and figures of others and convert them into drama. We don't generate reports. We spend long hours alone creating characters who do largely as we tell them. We try to shock but we also try to make people laugh. We present many conflicting points of view and enjoy endings which are not totally clear. We can always see the other point of view. We are not to be relied on. We tend to write our worst work when we become didactic. All this means - don't expect me to provide any answers in this talk.

She Who Receives and Submits

Simone de Beauvoir says in The Second Sex that 'Woman is the Sleeping Beauty, Cinderella, Snow White, she who receives and submits' (328). The title for my talk tonight, Some Day My Prince will Come is, as some of you might recognise, the title of a song from Walt Disney's animation of Snow White and the Seven Dwarfs (It was the first piece of music I learned to play on the piano). And the subtitle makes mention of the Cinderella complex, which is thoroughly discussed in a book with that title which I haven't read and don't know who wrote (but I'm sure it was an American who is making a fortune on the international lecture circuit. Possibly the same person who wrote the book Women Who Run With Wolves which I also haven't read. I'm waiting for someone to write the book Women Who Run With Hamsters. Maybe I shall).

The Cinderella Complex

The Cinderella Complex was bought to my attention by theatre director Leith Taylor during rehearsals of my play One Small Step, a play about Regina, a thirty something woman who works as a machinist in a shoe factory. The Cinderella Complex is 'a network of largely repressed attitudes and fears that keep women in a kind of half-light, retreating from the full use of their mind and creativity' (31). I bet you didn't know you were suffering from that. Have I made you more anxious? And because I haven't read the book I don't know what the cure is. What keeps women waiting in this half-light? Sitting among the cinders?

First Reading: One Small Step

REGINA: I have this dream sometimes. I'm standing in the street, looking into this shop window and all I can see are shoes. The most beautiful shoes in the world. The shop is closed and I press my nose against the window and look at the beautiful shoes. Suddenly the door flies open and an old woman is beckoning me to come inside. Me? The old woman nods her head.
OLD WOMAN: Your feet are bare.
(REGINA LOOKS AT HER FEET AND REALISES THEY ARE BARE)
OLD WOMAN: Come inside and find yourself a pair of shoes.
(SHE PICKS OUT A PAIR OF SENSIBLE LACE-UPS)
OLD WOMAN: No. Those are not for you. You're not clever enough to wear those shoes.
(REGINA FINDS HERSELF ANOTHER PAIR - SEQUINNED STILETTOs)
REGINA: I'll have these.
OLD WOMAN: No. Those shoes are not for you. You're not beautiful enough to wear those shoes.
(REGINA FINDS ANOTHER PAIR - GREY COURT SHOES)
REGINA: These. I want these.
OLD WOMAN: No. Those shoes are not for you. You’re not powerful enough to wear those shoes.
REGINA: Which ones can I wear?
OLD WOMAN: Your shoes are over there.
(SPOILIGHT ON REGINA’S SHOES. A PAIR OF RED HALF BOOTS WITH HEELS. THE BOOTS ARE SHABBY AND SCUFFED, BUT REVEAL A CHEEKY, RATHER SEXY VITALITY. THE SHOES OF A SURVIVOR, A FIGHTER. SOMEONE WHO IS DOWN BUT NOT OUT.)
REGINA: You said I could choose.
OLD WOMAN: Those are your shoes.
REGINA: No. I’ll go without shoes.
OLD WOMAN: You cannot go barefoot through life.
REGINA: And in my dream I’m being dragged towards those shoes by that horrible old woman. I’m fighting and kicking but I know it’s no use. I can’t escape. These are my shoes and I have to wear them.
(SHE PUTS ON THE RED BOOTS)
I put them on and walk out into the world.

The Empowerment of Women

When I wrote *One Small Step* I wasn’t consciously aware of this complex. I certainly didn’t write the play to illustrate it. It happened quite differently.

I was rung up by a theatre company in Adelaide that I’d never heard of and asked if I was interested in writing a one-woman play about the empowerment of women which could be performed in factories to blue collar women workers during their lunch hour. Since then I have often wondered if Shakespeare worked to such a specific brief. Consider *Hamlet*. A play about the empowerment of a particularly dilatory Danish man to be performed in courtyards during dinner.

Of course I said yes. I said yes because I wanted to work. I wanted to eat. I wanted to go to Adelaide to visit my parents. I was not so much interested in the empowerment of women as the empowerment of woman. That woman being me. At the time I was feeling distinctly unempowered. After the success of my first play *The Hope* and the (relative) failure of my second play *Mean Deeds* I desperately wanted a commission but the Melbourne Theatre Company and the Sydney Theatre Company and theatre companies closer to home, were showing no interest in empowering me. So it was off to Adelaide and the factories.

Second Reading: *One Small Step*

REGINA: The boss wants to make me a supervisor.
(SHE WORKS THE INDUSTRIAL SEWING MACHINE AND SINGS)
Some day my prince will come
Some day my prince will come.
(SHE STOPS WORK)
I don’t want to be a supervisor. Not that I couldn’t do the job. I could do the job better than Mrs Kracov. You don’t have to breathe down people’s necks to get them working. No. I don’t want the job. I told the boss - last Friday it was, a week ago today - I told him. I don’t want to be a supervisor. He says,

BOSS: Regina.

REGINA: That’s me, Regina. He says,
BOSS: Regina, give us a fucking break.
REGINA: He's that sort of a boss. You know, the ones who want to speak the language of the workers.

He says,
BOSS: I'm offering you a promotion.
REGINA: I don't want a promotion. That stopped him in his tracks.
BOSS: For Christ's sake, Regina, why not? Of course you want a promotion. You can do that machinist job standing on your head.
REGINA: I told you.
BOSS: And what about the extra money?
REGINA: He was starting to go purple in the face.
BOSS: You can use the extra money, can't you?
REGINA: Of course I can use the fu - money!
BOSS: Well then?
REGINA: I'm not taking the job.
BOSS: Why not woman?
REGINA: Why not, woman? Have you noticed that whenever a man says, Why not, woman? he's really saying,

If you were a man you'd never act like this. You'd be reasonable. You'd be logical. He means he could deal with the matter in three seconds flat. He wouldn't have to waste time trying to figure out what's going on in your head. I couldn't stop myself. I couldn't hold myself back. Why not, woman? Why not, woman!
(MEEKLY) Because I can't.
BOSS: I don't take 'no' for an answer. I'll give you the weekend to think about it.
REGINA: I don't want to think about it.
BOSS: Talk it over with your husband.

**Power and Gender**

My research included interviews with blue collar workers which were organised by Junction Theatre Company which has strong ties with the union movement. I was picked up from the theatre by a male union official of the Miscellaneous Workers' Union (a union that caters very largely for women), whose first words to me were 'I won't open the car door for you because I know you won't appreciate it'. Then he drove like a maniac - running red lights, changing lanes, abusing other motorists and chain-smoking all the way - to the Royal Adelaide Hospital. I was glad we were heading towards a hospital.

I think he was nervous. I know I was terrified. I think he was nervous that I might be an empowered woman and he believed that empowered women are dangerous women. On the journey - the one that I thought might be my last - I reflected on the minefield that now constitutes male-female relationships. I thought about power. I thought about gender. I thought about all that stuff.

As some of you will know, the word power comes from the Latin verb potare which means 'to be able'. And the implication is that if one is powerful, one is able. Able to do something. One can be a power for good. Or evil. Power holds within it potential. Which one might choose to express at some later date.

Why isn't Regina able to take the promotion? She has children, one of whom is looked after by her mother-in-law who has very different ideas of raising children. And the other is an embryonic juvenile delinquent. She doesn't want to tell other people what to do. She likes to be liked. She hates conflict and will make a joke to avoid it. She doesn't like making plans. She is unskilled. She doubts her own abilities. She has a husband who is often absent. She
wants to please people, especially her husband. She is loving and therefore vulnerable. She doesn’t even know whether she wants to stay working. She’d like another baby. She’s got enough to do already. And, at a very deep level, she is waiting for a prince to come along and put things right. Cinderella. Sleeping Beauty. Snow White.

And, I thought, perhaps these are some of the reasons why there were almost no Australian women playwrights until the late seventies.

**Women Playwrights**

In the past ten years Australian women playwrights have not been spending time sitting in the cinders or sleeping or hanging around with the vertically challenged. In 1982, when I studied Australian drama, there no plays written by women included. (I might add that there were no Aboriginal playwrights or Italian or Greek playwrights on the list. And ten years earlier there wouldn’t have been a course in Australian drama.)

The only women playwright I knew of was Dorothy Hewett.

**Isolation**

Women playwrights haven’t sat around waiting to be rescued. They have organised workshops, conferences, mentoring schemes. In an article she wrote in 1984 for *Meanjin* (150), theatre director Ros Horin details some of these projects which happened in Sydney in the 80’s. She said that ‘the main problem facing women writers (for the stage) is their absolute isolation.’ Playwrights need to hang around with theatre practitioners. It requires a degree of courage to bowl up to someone in a theatre foyer and say you’re an aspiring writer for the stage and could you attend rehearsals. You cannot be a shrinking violet.

If you want more plays written by women, you must also make it easier for women to be commissioned to write plays. The Australia Council has, for some time, had a policy of affirmative action. State departments of the arts have also been sympathetic to programs which nurture the talents and skills of women.

I make reference to figures from the 1991-92 funding of the Australia Council (the most recent ones I could lay my hands on quickly). Out of the 166 individual grants awarded in the performing arts (to playwrights, actors, directors as well as other practitioners) 82 grants went to men and 84 went to women.

The average amount of the grant to individual artists across all art forms was: for males $12,804.92 and for females $13,265.92. Considering that you would be very lucky to receive one grant every two years, you can see that, in general, Fairy Godmothers in the Arts are not noted for their largesse (excluding the ‘Keatings’).

You might also be interested to know that the fairy godmothers - there is of course a committee of fairy godmothers - are artists elected by artists. Although ultimately, the fairy godmother is you and me - the tax payer.

It is something of a mixed blessing to receive a grant, especially a more substantial one. A playwright friend received her first grant after writing probably 20 plays all of which had been produced. In the year of the grant she could complete nothing. She was so overwhelmed by the responsibility of using the money wisely that she became ill and could not write. This is not an uncommon reaction among women.

One might ask why women have not been so well represented on the stage when there is a long tradition of women novelists. Drama is based on conflict and action. And there is likely to be more off-stage than on-stage. A playwright must negotiate with a seemingly endless array of people - artistic director, actors, designer, publicist, general manager, critic and of course audience.

Most importantly, women playwrights broke down their isolation by encouraging each other to take risks. To have a go.
Third Reading: One Small Step

REGINA: Oh no! I can hear feet pounding up the front path. The door burst open and in comes my sister Valma. Power walking.
VALMA: Get up off that couch Reg!
REGINA: I'm watching - She switches off the telly.
VALMA: Get up. I want to talk to you.
REGINA: You want to talk to me Valma, so sit down. I'll get you a beer.
VALMA: You're coming powerwalking with me. We can talk as we walk.
REGINA: I should tell you, I'm a little - just a little - scared of Valma. Especially when she's pacing around the lounge room waving her arms and fists. So I don't say, Piss off Valma. I say, I can't leave the Angel.
VALMA: Where's Sinbad?
REGINA: Out.
VALMA: That boy is always out. He's out to lunch permanently.
REGINA: She says nothing for a minute, but she's still going with the arms and legs and then powerwalks out the door. Whew! I take a quick slug of beer. That was close. I am about to turn the T.V. back on -
(SHE HOLDS UP THE REMOTE CONTROL) when Valma burst back in with Deirdre from next door.
VALMA: Here you are - a babysitter.
REGINA: Next minute she's powerwalking down the street with me following. Like this -
(REGINA DOES A VERY INHIBITED POWERWALK) hoping that none of the neighbours are in their front gardens.
VALMA: Come on Reg, bend those knees, swing those arms.
REGINA: Faces appear at all the windows.
(VALMA WAVES)
VALMA: Hi! Hi!
REGINA: Shut up Valma, I've got to live here.
VALMA: You've got to get your heart rate up.
REGINA: My heart rate is up.
VALMA: You've got to get the blood circulating.
REGINA: My blood is more than circulating. My blood is boiling. Hi, Mrs Maloney. It's a nice night for a walk. Somehow I manage to catch up with Valma.
(VALMA IS STRETCHING)
VALMA: That was just a warm-up, to get started. Now we're really going to step out.
REGINA: So I stepped out. Right into -
(SHE STEPS ON SOME DOG SHIT)
Oh, yuk!
(SHE WALKS, TRYING TO SCRAPE IT OFF)
-Yuk!
VALMA: Stop fooling around, Reg.
REGINA: By now Valma's twenty houses away. I'm going as fast as I can. I can't go any faster. I feel hot breath on the back of my legs. I turn around to see something resembling a wolf. I find I can go a little faster. Val, wait for me!
VALMA: You're taking the job.
REGINA: I play for time. What job?
VALMA: Don't bullshit me, Reg. Mum told me all about it. You've got to take it.
REGINA: I haven't decided yet.
VALMA: You're scared of telling Charlie. You're scared he'll go all Italian on you, like the time you went out with the girls and didn't get home until three in the morning and you threw up on his slip-ons.
REGINA: Sisters really know how to get at you, don't they? You tell your sister something in a weak moment and she never lets you forget it. I don't have to tell Charlie about the job, because I don't want the job.
VALMA: Why not?
REGINA: I don't want to tell people what to do. What if they don't like me any more? I'm gasping for breath now, but Valma's barely puffing.
VALMA: It's about time you took charge of your life.
REGINA: Take charge of my life. I can't even take charge of a supermarket trolley. My life's got wheels that don't go in the same direction. I'm not steering it, I'm just hanging on for dear life. I don't want the job. I don't want the pressure.
VALMA: You're pathetic. Pathetic. All your life you've let yourself be pushed around by men who were all balls and no brains.
REGINA: Charlie's not stupid.
VALMA: Charlie's the best of a bad bunch.
REGINA: I have breath left to gasp, at least none of them were boring and I collapse on the lawn outside the Baptist church. Valma stops dead and I think maybe she's going to kick me to death.

Every woman needs a Valma. Every woman is at some time a Valma. Things are changing. The cost of childcare is now sometimes included in the budget. Plays by women no longer appear in tiny theatres. They make it to the main stage. And I make mention of my play One Small Step and Sally Morgan's Sistergirl which Faith appears in, in a program called World's Best Theatre. You can't wait to be rescued. You have to do it yourself. Even Cinderella did something. Her crying called forth the Fairy Godmother. She was engaged here in networking, which is really a kind of organised crying and nashing of teeth. However . . .

The Concept of Career

In a talk Helen Garner gave here in Perth a few years back she said that she didn't use the word career because she thought it was a masculine concept which did not adequately describe her relationship with her work (I am paraphrasing her). I looked up the meaning of the word career in the dictionary. Career: swift course. Impetus. It doesn't sound like what has happened to most women of my age. Although this may have changed for younger women.

Helen Garner also said that she had never had to work with a man. Her editors were women. The producer and director of her two film scripts were women. It's usually not like that in the theatre.

Actresses

The traditional career path for actresses, or female actors, is from ingenue which is a really a fancy French name for bimbo, to old bag. Although Faith informs me that she went from old bag to old bag, playing her first old bag at the age of seventeen.
Female actors tend to support women playwrights because they often write good parts for women and more parts for women. I made a decision early on that in every play I wrote there would be more or equal parts for women. This decision sometimes forces you to invent more interesting characters. In my farce, Mean Deeds, I need a policewoman. At first I thought of a policeman but the need to have more female characters created the policewoman, wondrously played by Faith. Faced with an armed robber who is unwilling to shoot a woman she retorts "I'd rather be shot than discriminated against".

Censorship

And this brings me to censorship. Because women have so often been represented as Sleeping Beauty, Cinderella and Snow White, or the Wicked Stepmother, the Ugly Sister and the Evil Fairy, women playwrights have wanted to write about noble, assertive, intelligent, witty, in other words, perfect women. A truly mature state will only be reached when women playwrights feel able to write about flawed, nasty women.

The Hardest Task

It has been said that the last thing a fish will become aware of is water. The hardest thing to convince some men of is that they work to an ideology. That the way they see the world is not just the way things are.

Women have been taught to see a man's story as indicative of universal themes. Man stands for men and women. But put a woman centre stage and woman stands for just that, woman. It becomes a woman's story. A domestic story. Not a universal story.

At the surface level, One Small Step is about a woman who works in a shoe factory and is offered a promotion which she finds impossible to accept. But at a deeper level, it is about anyone - male or female - who has to find the courage within themselves to change their lives.

Biological Differences

I just want to make a comment on biological differences between male and female, something there has been a lot about in the paper recently.

Forth Reading: One Small Step

REGINA: It's Sunday morning and I'm doing the vacuuming. Quietly. Have you ever tried to vacuum quietly? I went to Myers and said, I'd like to buy a silencer for my vacuum cleaner. The boy just looked at me. He obviously doesn't have a husband who sleeps during the day. You know what women are not getting from men? (PAUSE) No, it's not that. It's not orgasms. Women today, we're getting plenty of orgasms. Women today, we've got orgasms coming out of our ears. Men seem to see it as a matter of pride to give us an orgasm. Like they invented it. No, what women are not getting today is some help around the house. That's what we're not getting. I mean why do we have to go out to work and do all the work at home? Why does being born female automatically mean that you're an expert in cooking and cleaning? Have you ever thought about that? I have. I mean, if women were born to clean carpets wouldn't we have a nozzle on us somewhere for sucking up the dirt?
Different Models of Power

In an article she wrote in *The Australian* some months ago Beatrice Faust suggested six models of power, for realigning dominant and subordinate whether they are blacks and whites, Croats or Serbs or females and males. I quote:

'The traditional model takes the status quo as given, ignoring the possibility of change.
The segregationist acknowledges the imbalance but denies that change is necessary or desirable.
The meliorist seeks change that will make the imbalance less burdensome without any fundamental upheaval - victim feminism.
The assimilationist rejects the subordinate group, puts on power shoulders and moves into the male world.
The separatist, often lesbian, rejects the dominant group and makes a tolerable life with as little interface as possible.
The hybrid advocates that both groups change reciprocally - men change nappies and women change tyres.'

The Hybrid

I have a lot of time for the hybrid. My play is called *One Small Step*. Some people think this is referring to the one small step Regina must make in accepting the promotion. No. It is the one small step Charlie must make - relinquishing some of his power through talking about his own feelings of inadequacy - which can allow Regina to take her step. And not walk out of the door.

Walking out the door is a last resort. But women are doing this because men will not take the step of acknowledging a feminine culture from which they can gain as much as women.

The hybrid model says that children are important in their own right. Not that they are important so long as I don't have to put my career on hold by looking after them. The hybrid says that creating a home is important. That feeding people in a gracious, pleasing manner is important. And is not gender specific. It is where we don't cling to our notions of either/or, but where we say this and this and this.

I have talked about Cinderella, Snow White and the Sleeping Beauty. Now, like Pollyanna, I write from a spirit of reconciliation. Of understanding.

Like the American short story writer John Cheever,(and I quote from one of his letters)

'One has an impulse to bring glad tidings to someone ... I know almost no pleasure greater than having a piece of fiction draw together disparate incidents so that they relate to one another and confirm that feeling that life itself is a creative process, that one thing is put purposefully upon another, that what is lost in one encounter is replenished in the next, and that we possess some power to make sense of what takes place.' (240)

But I am also a kind of Cassandra, (who foresaw the doom of Troy). I am Pollyanna and Cassandra and I see no contradiction there. It is not either/or. Pain or pleasure. Hope or despair. It is pain and pleasure. Hope and despair.

Pain

A powerful woman, or a woman who is seen to be powerful, can arouse great bitterness and jealousy and anger. Powerful men do also. It is what we call the Tall Poppy syndrome. But women often try to understand this reaction and in the process make themselves vulnerable to it. There is only one way to deal with bullies. You have to fight back. You have to fight fire with fire. And this can be very painful. Especially when you know you have acted honourably. But I guess everyone believes they are acting honourably. Even the most deluded. Especially the most deluded.
When you get into positions where you are involved in decision making you make enemies. That, I believe, is a fact of life. You might say it shouldn’t have to be like that. I say yes. But it is. And perhaps especially in the arts. Volatile personalities combined with real financial insecurity is a potent mixture. Artists are in the rejection business. It’s difficult but no one forces us to do what we do. And twenty years of doing other things means that I feel very grateful I live in a society which pays me to make up stories.

And we must make sure that we don’t become bullies.

I occasionally have access to the Golden Wings Lounge and around 6 o’clock on a Friday night I see this flock of birds with crumpled wings. Businessmen in their creased navy blue and grey suits, far from home, tired. These are what we might consider high fliers but all high fliers have to come down to earth and many times they land with a crunch. I am not suggesting that we should not aspire, to be high fliers. If that is what we wish to do then let’s go for it and let’s do it well.

But there is a lot to be said for hanging around the farmyard having a good scratch and peck.

Mrs G is not a high flier. Some people, I think especially men, see her as a silly old chook, but I see her also as a kind of Sibyl, a sardonic prophet of woman’s Fate.

At the Kalgoorlie races, Bet, the young heroine in The Hope asks Mrs G why men don’t want to talk to women.

**Fifth Reading: The Hope**

MRS G: Might find out things they don’t want to know. I mean, you start off with the weather and did you have a nice day, dear? and before you know it you’re onto the electricity bill and Tommy’s rash and, ‘Where have you been until this time?’ and you’re not talking anymore but yelling and the kids are crying and you’re dodging around the kitchen table trying to keep out of the way of his boots.

(The next race starts)

They’re off. (Quietly) Bottom Drawer. When we were first married George used to talk about the farm we was going to have. About the barns and the tractor and the cow for milk for the kiddies and everything. Real boring he was. But after a bit he wouldn’t talk about it no more and I got to kind of miss it and wish he would start up again. (Speaking faster) Give him the whip! Stick in the spurs! And when he was getting sick and was looking ready to slit his throat I thought it might cheer him up. So I started on about the barns and the tractor and the cow for the kiddies though the kiddies were all growed up except Brian, and George never said nothing for a while. And then he said, real quiet like, “Shut up, Jeanie.” (Shouting) Come on! Come on! I’ve got a winner! Take care of the tucker.

**Waiting**

The irony is that, to some extent, writers - both male and female - have to be like Cinderella in the cinders. Or the Sleeping Beauty. You have to separate yourself from the busy, successful, shoulder pad world. You must put down your pen - or leave the keyboard - and sit. And wait. And submit. And receive.

For a time you must be entirely disinterested. You must not think of future success. You must not strive. You must make yourself humble and become the receptacle for the muse, one of the nine Greek goddesses, the daughters of Zeus and Mnemosyne (Memory).
We all have to be rescued at some time in our lives. We all have to submit. If this doesn’t sound like an argument for reconciling people to their lot, I would say that great power can come from allowing yourself to be vulnerable. I struggle daily to present that kind of character - and usually a female character - as the central character of my drama. To make vulnerability heroic. To make the feminine heroic.

I would like to close with a quote from George Eliot’s novel *Middlemarch*. George Eliot was, as many of you would know, the pen name which Marion Evans adopted so that her writing would be taken more seriously. Here she is describing the idealistic, ardent heroine Dorothea, who struggled with the limitations of her environment, and largely failed.

‘Certainly those determining acts of her life were not ideally beautiful. They were the mixed result of a young and noble impulse struggling amidst the conditions of an imperfect social state, in which great feelings will often take the aspect of error, and great faith the aspect of illusion. For there is no creature so strong that is not greatly determined by what lies outside it....’ (896).

Dorothea didn’t like the shoes she had to wear. They pinched her feet. She could have done so much if only she could have thrown them off. If only there had been a choice for her. Or if she could’ve run barefoot through life.

‘Her finely-touched spirit had still its fine issues, though they were not widely visible. Her full nature, like that river of which Cyrus broke the strength, spent itself in channels which had no great name on the earth. But the effect of her being on those around her was incalculably diffusive: for the growing good of the world is partly dependent on unhistoric acts. And that things are not so ill with you and me as they might have been, is half owing to the number who lived faithfully a hidden life, and rest in unvisited tombs.’ (896)

REFERENCES:

LECTURE TWO

THE GENDER OF JUDGMENTS:

WOULD WOMEN JUDGES MAKE A DIFFERENCE?

Professor Regina Graycar
This discussion brings together some disparate aspects of my work at the same time as it involves a re-engagement for me, from a different place, with research I did some time ago. My work in feminist jurisprudence began in the area of personal injury damages (accident compensation). In 1984 I wrote an article - later summarised under the title “Hoovering as a Hobby: The Common Law’s Approach to Work in the Home” - which looked at how women are compensated for their loss of capacity to work in the home. I read many cases about women who had been injured and about women who cared for others who had been injured. I came across statements in the judgments that seemed counterintuitive and to which my then instinctive, rather than intellectually developed, feminism responded with deep suspicion. One legacy of having started my encounter with feminist jurisprudence through tort case law (i.e., the law of civil wrongs) was a continuing interest in applying feminist perspectives to so-called black letter law, and in particular, to areas of law not usually seen as relevant to women (as compared, say, to an area like family law where women are visible because they are parties). Some of this is evident in the choices made in The Hidden Gender of Law', which tries to reconstruct the categories through which we approach legal problems in order to make law more responsive to women’s lives (for example, by talking about gendered harms, rather than about tort or crime).

This work began to take clearer shape when I was asked to do two apparently unconnected things. The first was to write an article on ‘damages revisited’: the High Court of Australia had granted special leave to appeal in a case involving the damages paid to people for the costs of care where the care is provided ‘gratuitously’, i.e., usually by women family members. I found myself rereading all the old damages cases (there were few new ones since 1984, though amongst that small number, the assumptions did not appear to have changed at all) and started to contemplate ways to understand and explain what the judges were doing when they told us things about women’s lives that made no sense to me.

Around the same time, I was invited to speak on a panel called Women’s Judgments: Can they Make a Difference? There are very few women judges in Australia (and there were even fewer at that time): on the panel were the only woman member of the High Court; the only woman who at that time was a member of a State or Territory Supreme Court; a woman recently appointed to the NSW District Court (the only one in New South Wales) and a woman Queen’s Counsel. So, in addition to reading damages cases, I then set about reading the literature - mostly American, but some Canadian - on gender and the judiciary, concerned largely with the institutional task forces on gender bias in the legal system and with the role of judicial education.

I started thinking about women’s judgments by trying to follow up my curiosity about what judges are doing when they make the kinds of ‘statements of fact’ that I kept coming across in the damages judgments and elsewhere, and by trying to understand something of the process and function of judging and of its gendered nature.

My first response, however, was to the title given to the panel and its focus on women. Why do we not have panels on Men’s Judgments: Can They Make a Difference? Different from what? Of course, what remains unarticulated when we talk about women judges and women’s judgments and whether they will make a difference is that men are presumed to be the benchmark, the standard against which difference is measured. The title of the panel suggested that judging is something that men do; and do in an unproblematic, unquestioned way. No-one questions men’s role as judges. No-one describes the products of their writing as ‘men’s judgments’. We do not use an adjective to describe men who are judges or plaintiffs - we never talk about ‘male judges’ or ‘male plaintiffs’ - they are simply judges, but we (and here I use the royal plural somewhat loosely and, in Australia, inaccurately) are ‘women judges’ (just as we had ‘plaintiffs’ and ‘female plaintiffs’ in a recent edition of a leading Australian torts text).
Adjectives Play an Important Role Here. As Lorraine Code has Suggested:

Although the 'ordinary man' and the 'ordinary woman' may indeed be similarly immobilised by the sociopolitical structures of mass societies, there is a crucial asymmetry in their situations. A man can be marginalized in consequence of his class, ethnicity, or race, his character, circumstances, age, sexual preference, or educational 'inadequacy'. But it is rare, in male-dominated societies, for him to be marginalized primarily because of his maleness. A woman, by contrast, is disempowered in the face of authority and expertise because she is female, in ways that cut across and inform all of the other socially disadvantaged positions she occupies: as a member of an oppressed class, race or ethnic group; as economically or educationally 'inadequate'; as old, unmarried, overweight, or psychologically unbalanced.

In other words, the use of adjectives is not symmetrical: while we use an adjective of gender for women in power roles, ie, 'woman' judge, 'woman' premier, etc, male is never an adjective of power. However, other adjectives (eg, 'poor', 'black', etc) can be used to disempower men.

So every time we use an adjective to describe a woman judge we are implicitly distinguishing her from the norm and reinforcing the underlying assumptions that judges are men and that judging is a male activity. As has been suggested: "The working image of a 'judge', as opposed to 'Justice', has been that of a white man." 7

Just as a discussion of women's judgments ignores men yet at the same time reinforces their centrality to judging, it also conflates the multiplicity of women's lives and experiences by referring to women as if they were an undifferentiated, homogeneous group. Of course, the idea that all women are the same is merely another manifestation of treating women as caricatures (or stereotypes) and exceptions, rather than as real people with a variety of different lives and different backgrounds. Women judges in Australia might have more in common with their white male counterparts than with women who are sole parents living on social security, or with rural Aboriginal women, or with immigrant women doing piece work, and we need to be extremely careful when we speak of women not to fall into this trap.

What we are looking at, as the recent report of the Senate Inquiry into Gender Bias in the Judiciary 8 recognised, is not necessarily the judge himself (or, on rare occasions, herself), but rather at the role of judging, a role that is gendered and implicitly male.

If the proposition that judging is 'male' seems controversial, or indeed, somewhat crude and essentialist, let me illustrate it with some real examples. Let us start by considering the action by a Melbourne solicitor who sought judicial review of a planning tribunal decision on the novel ground that 'the tribunal was pregnant'. He suggested in an affidavit that "the proposition seemed absurd that a tribunal would purport to exercise wide discretions while pregnant" 10. His application included the allegation that the tribunal member, 5 months pregnant at the time of her decision, "suffered from the well-known medical condition ('placidity') which detracts significantly from the intellectual competence of all mothers-to-be". 11 He also lodged an affidavit from a well-regarded medical expert that a pregnant woman "no longer has the clarity of mind and precision of thought she had before pregnancy". 12 Although this case did not proceed, a number of other challenges to white women judges, black women judges, and black men judges, alleging 'bias', have reached the courts, both overseas and in Australia. 13 In one American case, an African-American woman judge 14 (and note that it is necessary to use all these adjectives) challenged for bias in a sex discrimination case and asked to excuse herself, refused to stand aside. She pointed out that each judge in her district had a race and a gender and was therefore equally likely to be partial to one side or another.

In Australia, a male industrial commissioner was challenged for bias after having indicated a belief in the principle of equal pay for women and men; 15 the Chair of the Australian Broadcasting Tribunal was challenged, inter alia, on the basis that she may have discussed a matter with her husband, also a lawyer. 16 Recently, in Canada, a law professor who held a part-time appointment as a human rights adjudicator was removed from hearing a case on the grounds of bias as she had been one of a group of over 100 people who brought an action against a Law School for
systemic sex discrimination. I am not familiar with any formal court challenge being made to a judge or other decision-maker, in Australia, or elsewhere, on the basis that he was white and male and had constrained his decision-making by the adoption of a white male perspective.

The suggestion that judging is an inherently 'male' activity follows from a history of social, political and legal practices and beliefs now deeply entrenched in the substantive body of law that judges work with. Given the fact that women were not even permitted to practise law until well into this century, there is no question that the legal doctrines we use on a day-to-day basis were developed by men, with their problems and concerns in mind, and that they reflect their perspectives on the world. Despite the relatively recent entry into the profession of women, and their increasing numbers, legal doctrines and legal reasoning appear to have remained almost completely impervious to perspectives not those of the (dominant) white middle class male.

Feminist jurisprudence is centrally concerned with the gendered underpinnings of legal doctrines and legal reasoning, with the male standard implicit in the norms that have been so central to legal reasoning, and with the standpoint from which law operates (or what has been described as its purported 'point-of-viewlessness'). What I want to start thinking about is the centrality of epistemology to questions about judging and to the specific issue of whether judgments are gendered, or whether reality might be constructed differently (and the salient point here is that realities are constructed), if judging was not the sole or predominant domain of white men.

We need to pay careful attention to what judges know about the world, how they know the things they do, and how the things they know translate into their activity as judges. Judges have public positions of authority. They have a public power to define the 'private' and it is through this public process, judging, that judges are able, almost literally, to 'create' women's lives. But that creation may bear more resemblance to Frankenstein's sister than to the complex realities of the lives of women:

'Knowledge' of what a woman is, and can do, derives as much from stereotypes, ideology, folklore, prejudice, and intractable misconceptions as it does from efforts to understand how women experience their subjectivity and agency in concrete specifiable circumstances.

Some examples from judgments might help to illustrate these issues. The 1990 decision of the Supreme Court of Canada in R v Lavallée, considered later, is interesting, not least because it involves violence against women in the home (a routine problem for women and a good illustration of the longstanding inadequacy of legal doctrines when dealing with legal problems women experience). As former Justice Wilson pointed out in the case, historically the law not only failed to protect women from battering, but it positively sanctioned this form of abuse through such constructs as the 'rule of thumb' under which it was permissible for a man to beat his wife so long as he did so with a switch no thicker than his thumb. Despite changes to the law, violence against women remains the main concern of women in Australia: it accounted for the highest number of submissions received by the Australian Law Reform Commission in its inquiry on Equality for Women before the Law and was the most frequent issue mentioned in the Australian Council of Women's recent postcard campaign. Domestic violence is the leading cause of injury to women in the United States (and almost certainly in Australia as well).

If what I have said thus far appears to suggest that the problem is that law was developed by men in accordance with their needs and experiences and has neither dealt well with women nor reflected their lives or experiences, then perhaps everything would be different if there were more women judges. But I am not confident that by simply adding women to the bench and stirring we will automatically change the male-centredness of law and legal reasoning. For a number of reasons, such as the ways in which legal education has been conducted until now and the ways in which certain forms of utterances are privileged by law in the construction of what is authoritative, and by corollary, what (or who) lacks credibility, I am somewhat sceptical of the view that simply by women being there, everything will be different. We may just be adding more women to the bench, nothing more, nothing less. The 'institution'
of law remains and its "institutional design is a way of allocating authority across different sets of actors" whilst ensuring that the "legal texts always operate from a particular strategy of framing facts." While there are any number of barriers to women's stories being heard in courts and even if heard, being given credibility and authority, judges' speech is quintessentially authoritative. Judges are speakers whose verdict counts, both generally, in that they have considerable social status, and most particularly in their power to construct realities in the domain of law.

Consider the following:

- A negligence action was brought by a woman who had 4 children, did not want any more, but became pregnant after a negligently performed tubal ligation. The judge described the plaintiff as "... a motherly sort of woman, nice looking but rather overweight ... She is not only an experienced mother but, so far as I am able to judge, a good mother, who has all the proper maternal instincts."

- A custody dispute in the Family Court of Australia involved two parents who were doctors. The judge said: "the major question mark hanging over the wife ... is whether she would be prepared to sacrifice her career for the sake of the children." She was recently remarried and had given evidence that she and her husband planned to have a child, but the judge was not satisfied that she would give up her job and said: "she wants her cake and to eat it too: unremarkable in these days of equality of opportunity". In a decision (subsequently overturned on appeal) the judge awarded the wife (in her late thirties) custody on a conditional basis: if she resigned her job and came back to court pregnant three months later, she would be awarded custody; otherwise, custody would be given to the father who was working full time.

- Discussing domestic work in the context of a damages claim, the judge said: "regard must be had to public mores in Australia and, where a husband [and] wife are both working ... the sharing of domestic burdens with the wife is expected of the husband, even where his wife is perfectly healthy."

- Explaining why juries in rape cases had to be warned about the dangers of convicting on the uncorroborated evidence of the woman: "human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for no reason at all." Or the classic: "[Rape] is a very easy allegation to make. It is often very hard to contradict."

- This last was said in a case which received public attention in Australia, involving a prosecution for six counts of rape by a man of his wife: "There is, of course, nothing wrong with a husband, faced with his wife's initial refusal to engage in intercourse, in attempting, in an acceptable way, to persuade her to change her mind, and that may involve a measure of rougher than usual handling. It may be, in the end, that handling and persuasion will persuade the wife to agree."

- Or, "it does happen, in the common experience of those who have been in the law as long as I have anyway, that no often subsequently means yes."

- And in yet another case, a judge commented that a 17 year old girl who was bashed, raped and had her throat slit was "not traumatised" by the rape because she was "probably comatose at the time", having been knocked unconscious by the offender.

Here comes the quiz: who said these and in what century? Not one of these examples is more than fifteen years old and, significantly, not all of them are delivered by men. While there are many other quotable quotes which would illustrate the point, merely reproducing them might take us only to an analytical dead end. But if
we had more insight into what judges know, how they know it, how this shapes the construction of reality in judgments and how this is all affected by gender, then maybe things could change. Perhaps we can learn something from "the stories judges tell" if we think about the epistemological content of each of them. What are the judges telling us about the things they know about the world? The examples quoted above are deeply politically-coloured statements, (as well as being overwhelmingly 'personal'). The knowledge content of these examples goes something like this: in the first - appearance equals character, and a good mother can never be harmed by motherhood; the second is simple - never trust working mothers; the third, the one about domestic work, says that it is women's work which men help with (it also looks like wishful thinking); the remaining examples tell us both that we do not even need a stated rationale for our belief in women's mendacity and that rape is simply not a serious form of harm.

Further, phrases such as 'as far as I am able to judge', 'human experience has shown', 'experience has taught the judges' and 'in the common experience of those who have been in the law as long as I have', all illustrate the belief by judges in a pre-existing body of 'knowledge' on which they can, at least in part, base their judgments. Yet, while it may be relatively easy to identify and illustrate a clear problem with at least some judges' commonsense understandings of the world and the dissonance between these and how women might experience these events, finding solutions may not be as simple.

But before I go on to speculate on possibilities, there is another (admittedly extra curial) judicial utterance, which may help to explain the process. The judge was on a panel talking about damages for loss of capacity to do domestic work:

*Those, incidentally, who care to dabble in jurimetrics might like to consider what is to be made of this: of the seven wives of the seven judges of the Court of Appeal, three are in full-time professions or occupations, two are in part-time professions or occupations, one was in full-time employment before marriage, and the remaining one in part-time employment before marriage. I would think therefore that all of us have experience of what might be regarded as a more modern way of life, in which household tasks are shared.*

This example is particularly illuminating because the judge articulates how he has actually come to construct his version of reality - what he knows - in a way that is completely counterintuitive and contrary to all (though perhaps not the judge's own) empirical evidence. In fact, he appears to be using his own private 'Gallup Poll' - an empirical study of his and his fellow judges' families - as the 'evidence' upon which he bases his conclusion about men and women and housework. He then extrapolates to the general community: ie, where there is a woman who works, there is a man doing/sharing the housework. This example helps to illustrate that, in one way, people are always talking about themselves and that what they believe to be 'true' is often their own private version of 'reality'. While this judge's so-called 'knowledge' has been gained through his private life, his authority as a judge makes this knowledge a 'public' matter. A judicial opinion, even a comment by a judge outside court, inhabits a public place in a way that women's opinions or stories are rarely able to.

So if a judge can rely on his own private world in drawing conclusions (or perhaps, we should say, in jumping to conclusions), we need also to ask to what extent all judicial decisions draw on that everyday notion that we sometimes call 'commonsense' and to what extent is that a fundamentally gendered concept?

Legal doctrine, not only implicitly, but also quite explicitly, sometimes allows commonsense to be relied on in the place of evidence. It does so through the doctrine of judicial notice, a construct whereby the law absolves the parties from proving by evidence everything necessary to make out a case and allows the court to take judicial notice of certain things considered not to be contentious, things that are "so generally known that every ordinary person may be reasonably presumed to be aware of [them]."

Courts may use this doctrine to incorporate into their judgments commonsense ideas about the world, common assumptions, or indeed, widely held misconceptions. Sometimes, as in the examples used earlier, the judges do not actually mention the doctrine of judicial notice yet seem to be drawing on it when they rely on assumptions and myths
in their decisionmaking. From views about women lying in sexual assault cases, to assumptions about battered women who do not leave relationships, to images of women in disputes concerning companies, and to images of women who are white (or should I say, lace) collar criminals, myths abound. Although it "cannot be assumed that women's experiences are part of everyone's common sense knowledge," it has been suggested that "'common knowledge' is actually male knowledge, and therefore the version of reality that has authority."

Returning to the issue of damages in relation to housework or caring work, how is it that courts frequently comment, without referring to any evidence for this, that housework is increasingly shared? This is despite the existence of a significant body of empirical research which clearly demonstrates that although women have increased their participation in the paid labour market, men's participation in household work has not increased, that is, women still carry the double burden.

Indeed, a survey of housework in American judges' households showed:

Slightly over 82% of men judges had spouses who took the major responsibility for running their household, another 3.8% shared equal responsibility with their spouse. In stark contrast, only 9.3% of women judges had spouses who carried the primary responsibility for the household. Nearly two-thirds of women judges took the primary household responsibility themselves, and another 12.5% shared it equally with their husbands.

It appears that commonsense, like stereotypes, can 'masquerade as knowledge' and is both dangerous and difficult to unmask and dislodge. This is because it usually contains some element of accuracy - again, like stereotypes, commonsense beliefs have a "reality component at their core [which] lends them an unwarranted credibility."

So how (if at all) does this impact on the possibilities for change through women judges or women's judgments? My point is that evidence, judicial notice, and the use of 'commonsense' assumptions by judges, are all bound up in this epistemological question of how judges know the world they construct (with such authority) in their judgments. This is well illustrated by former Justice Bertha Wilson of the Canadian Supreme Court in her decision in Lavallée, where she identifies a problem in our understandings of the world. The issue before the court was whether expert evidence was admissible to assist the court in understanding the actions of Ms Lavallée who had killed her boyfriend after a long history of abuse by him. Justice Wilson commented:

"If it strains credulity to imagine what the ordinary man would do in the position of a battered spouse, it is probably because men do not typically find themselves in that situation. Some women do, however. The definition of what is reasonable must be adapted to circumstances which are, by and large, foreign to the world inhabited by the hypothetical 'reasonable man'."

So, how are courts to understand actions foreign to that world? Justice Wilson relied on expert evidence. She pointed out that: "Where expert evidence is tendered in such fields as engineering or pathology, the paucity of the lay person's knowledge is uncontentious."

Yet the Crown had argued, in effect, that judges and juries did not need assistance to answer questions such as: 'Why would a woman put up with this kind of treatment?' 'Why should she continue to live with such a man?' 'Why did she not leave?' The Court disagreed and in a moving judgment, with which the other members of the Court agreed, Justice Wilson explained that a woman who comes before a judge or jury with the claim that she has been battered and suggests that this may be a relevant factor in evaluating her actions, still faces the prospect of being condemned by popular mythology about domestic violence.

The need for expert evidence in these areas can ... be obfuscated by the belief that judges and juries are thoroughly knowledgeable about 'human nature' and that no more is needed. They are, so to speak, their own experts on human behaviour."
While I am moved by the sensitivity shown by Justice Wilson in this judgment, I am less clear about her solution. Judicial notice (or ‘knowing by osmosis’, as it has been described) may resemble a window that judges try to look through but which has reflective glass in it: so it is really a mirror. When judges look at it, they see what they think is ‘human nature’, ‘human experience’ and ‘ordinary or reasonable people’. What they are really seeing is the society they know and interpret (and they do not see that they are looking in a mirror. This is why the judge who referred to his colleagues and their wives can see the world by reference to them yet think it is the world). In Lavallée the glass in Justice Wilson’s window was clear, but her response, resorting to expert evidence, was analogous, in our metaphor, to asking someone else to go over to the window, look through it (rather than be reflected in it) and tell us what is out there. There might be other, better ways to do this: one possibility is to ask the people out there to come in here and tell us themselves what it is like out there. Or, we could bring people with experiences of ‘out there’ into here, that is, into judging. This may respond to concerns about the dangers of expert evidence such as uncritically delegating the construction of women in these situations to a group of ‘experts’ who are then given authority to determine who is, and who is not, an appropriate ‘battered woman’ with a recognisable syndrome.

My point about trying to look at what it is in legal discourses that constructs reality in such a way that women’s lives are either ignored or distorted is that there must be something more at work here than the biological sex of the judges, the authors of the texts which have the legal authority to make the world in this discipline. The law of evidence seems to be worthy of some scrutiny since it provides the rules that determine whose stories are heard and with what authority. A related issue warranting exploration is the fact/law distinction: as every first year law student is taught, facts and law are supposedly clearly distinguishable phenomena. However, it is misleading to see such a clear distinction between them:

Courts don’t first settle on an interpretation of the facts and then figure out what the law means. The practice of judging simultaneously engages both in an ongoing project of meaning-making, producing a single opinion in which fact and law are woven together in one coherent whole. Constructing the facts and constructing the law are not two separate enterprises, but are mutually implicated in the same project.

The point that facts are embedded in an on-going narrative is largely overlooked and while the ‘commonsense’ and ‘easy to believe’ facts may readily find their way into legal discourses, it may be that they do so at the expense of other ‘facts’ or ‘stories’ which, although they may be more ‘hesitant’ or ‘uncertain’, might, in a world where gender did not determine authoritativeness, have no less claim to credibility.

It has also been suggested that the rules of evidence owe much to the widely held assumptions that ‘truth’ and ‘reality’ both ‘exist’ and are capable of being ‘found’.

Questions about multiple versions of reality are largely ignored in the subject of evidence, in which the greatest concerns are limits to the sorts of statements that might be taken as accurate. Rules of evidence screen out types of information that are thought to be misleading, prejudicial, non-probative, or just plain unreliable. But the rules of evidence are at best probabilistic judgments about categories of information and their likelihood of being false or irrelevant.

In other words, while evidence law presumes a reality which is based upon truths and facts, all of the ‘facts’ found are the outcome of contestation about versions of events, assembled within the constraints of time, place, culture, politics. Moreover, as those who have written about women’s credibility have noted, there are enormous obstacles to women’s stories occupying the same space and with the same authority as the stock stories which underpin the commonsense of deeply gendered legal discourses.

Any conclusion to this would be more a beginning than an end. It does seem clear, however, that some of the most basic legal building blocks need repositioning (or at the very least, some renovation) before women’s lives could
ever be adequately represented in law's discourses and practices. In *The Hidden Gender of Law*, we tried to reconstruct the categories used to define legal problems. We were concerned with the law and its doctrines. Now that I have started to think about judgments as law's authoritative texts, about judicial method, judicial notice and 'commonsense', it may be that we need to focus just as much on the facts as we do on the law. We need to confront the epistemological processes by which legal discourses construct reality and give authority to particular versions of events, while at the same time entrenching and dangerously widening what Scheppele has referred to as the 'perceptual fault lines' of understanding. At the very least, the rules of evidence and their role in the construction of a 'reality' that makes little or no sense to a number of women, must warrant some scrutiny. As Marilyn MacCrimmon has suggested, "only by changing the deeper structures of social knowledge will it be possible to incorporate women's experiences into legal decision making."68

So would women's judgments or women judges make a difference? It seems that until the stories of women's lives can be genuinely told (and heard) in legal discourses, and respected by being given authority (which will not happen until we disrupt law's underlying adherence to a 'commonsense' that reflects a partial view of the world), we will not be in a position to evaluate the potential of women judges and women's judgments because we will continue to match them against the norm of male judges and men's judgments. That project will not even be possible until, to paraphrase Christine Boyle, "*Men and the law*"69 is recognised as the project that it is and has been, instead of continuing to masquerade as people and the law, and until judgments are perceived as texts that all sorts of people write, not just men and some selected other non-men.

4. See nn1 and 2 above

11. Ibid at 42

12. Ibid


15. The Queen v Commonwealth Conciliation and Arbitration Commission and Ors: Ex Parte the Angliss Group (1969) 122 CLR 546

16. Kaycliff Pty Ltd and Ors v ABT (1989) 90ALR310


18. See generally, Greyca and Morgan, The Hidden Gender of Law, n3 above, Chapter 1


20. Code, What Can She Know, n6 above at 177

21. R v Lavallée (1990) 1 SCR 852

22. Ibid, at 872


26. Cf Grant and Smith, n7 above.


28. Ibid at 62

29. Udale v Bloomsbury Area Health Authority (1983) 2 All ER 522 at 526.

30. See Swaney v Ward (1988) FLC 91-928

31. Kealley v Jones (1979) 1 NSWLR 723 at 741

32. R v Sherrin (no 2) (1979) 21 SASR 250 at 254 per King CJ (quoting a judgement of Salmon LJ in R v Henry and R v Manning (1963) 53 Cr App R 150 at 153)


34. In April 1993, the Full Court ruled that Bollen J’s jury direction involving the train story constituted an error of law and a majority of the court found his “routher than usual handling” remark also constituted an error of law: Case Stated By DPP (1993) 66 A Crim R 259

35. Age, 6 May 1993, quoting Judge Bland, County Court, Victoria.

36. The sentence in this latter case was criticised by the Full court on appeal.

37. See, on this point, the contrasting judgements of Justice McLachlin and Justice L’Heureux-Dube in R v Seaboyer; R v Gayme (1991) 2 SCR 577

38. I am indebted to my colleague, T Brettel Dawson, for an alternative to QOs: OOs (outrageous obiter)

40. For discussion about the notion of gendered harms, see Adrian Howe, “‘Social Injury’ Revisited: Towards a Feminist Theory of Social Justice” (1987) 15 International Journal of the Sociology of Law 423 and see also Graycar and Morgan, The Hidden Gender of Law, n3 above, Chapter 11, especially at 272-276
42. See, eg, Michael Bittman, Juggling Time: How Australian Families Use Their Time, OSW, Department of the Prime Minister and Cabinet, 1991; Australian Bureau of Statistics, Women in Australia, Cat No 4113.0, 1993; and Australian Bureau of Statistics, How Australians Use Their Time, Cat No 4153.0, 1994, for irrefutable empirical evidence that in Australian households, women still do the overwhelming majority of work in the home and this is not affected by their participation in paid work outside the home.
43. A point make only too clearly by women of colour who have written critically about the narrow perspective from which white women write of ‘feminism’ and more particularly of ‘Women’: see, eg, the references cited in n8 above.
44. Holland v Jones (1917) 23 CLR 149 at 153 per Isaacs J
46. See, eg, the descriptions of Mrs Lewis in Metal Manufacturers v Lewis (1986) 11 ACLR 122 (on appeal at (1988) 13 NSWLR 315) and compare the treatment of Mrs Morley in Statewide Tobacco Pty Ltd v Morley (1990) 8 ACLC 827 (affirmed on appeal, (1992) 8 ACSR 305)
47. In Western Australia, Robin Sarah Greenburg was convicted of fraud in 1992 for her role in the Western Women fiasco and sentenced to 17 years’ jail (see eg, “‘Feminist’ financier jailed”, The Australian, 9 September 1992, at 1; Jane Hammond, “Con woman jailed for banking on sisterhood”, The Australian, 9 September 1992, at 9; Robert Wainwright, “Prison For Lady Boss”, The Daily Telegraph, 9 September 1992, at 1).
49. Mary Ebers, n24 above, at 117
50. For some Australian examples, see eg Kealley v Jones (1979) 1 NSWLR 723 at 741; Nguyen v Nguyen (1990) 169 CLR 245 at 256.
51. Compare the findings in Juggling Time and sources cited above at n42
52. Elaine Martin, n51 above, at 205-206
53. Code, What Can She Know, n6 above, at 195.
54. Ibid at 192.
55. R v Lavallee (1990) 1 SCR 852 at 874
56. Ibid at 870
57. It is noteworthy that the Chief Justice of SA in his decision in R v Runjanic and Kontinnen (1991) 53 A Crim R 362 described her judgement as “strongly, at times, passionately expressed”: see 53 A Crim R 362 at 369
58. Lavallee (1990) 1 SCR 852 at 871
60. Marilyn MacCrimmon, n48 above, has expressed a similar concern at 46 where she notes: "The eventual goal should be for the woman to tell her story herself. The effect of filtering the woman's experiences through an expert psychiatrist may be that although different perspectives are being incorporated into fact finding, the translation of that experience by the legal system may have the effect of disqualifying that experience.


63. Kim Lane Schepple, "Facing Facts in Legal Interpretation", n27 above, at 60.

64. For a compelling critique of law's claim of truth, see Carol Smart, "Law's Truth/Women's Experience" in Regina Graycar (ed), Dissenting Opinions, Allen & Unwin, Sydney, 1990.

65. Schepple, "Just the Facts Ma'am", n25 above, at 164-165


68. Marilyn MacCrimmon, in "Forum on Lavallee", n48 above, at 44.

LECTURE THREE

COUNTERING THE CULTURAL AND PERSONAL BARRIERS TO LEADERSHIP

Captain Carolyn Brand
It is indeed an honour to have been asked to talk to you tonight on the subject of women in leadership. Having regard to the many distinguished speakers that have contributed to this series of lectures, I would like to say up front that I am neither an intellectual nor an academic. My talk tonight will focus on my practical experience, and my reflections on this experience. So if any thanks are due for my talk this evening it is to the long suffering people that I have lead and managed over the 22 years of my naval career. The recollections tonight will mostly be about the people I've worked with, because it was in leading them I learned, and in learning I earned my stripes.

I title this talk tonight "Countering the Cultural and Personal Barriers" because I have found the strongest resistance to me as a leader to be not in my fellows but in myself. The culture which shaped me also imbued me with clearly defined limitations on the appropriate functions and levels of achievement for women. The folk lore which propagates these limitations are like horoscopes which entice belief, and they tend to become self-fulfilling prophecies. In the course of my talk I will examine some of the limitations, and the folk lore which accompanies them.

May I say from the outset, though, that the culture which limited me was not my family.

Personal Limitations On One's Leadership

Personal limitations on one's leadership potential are serious in any walk of life, but in the military they are entirely disastrous. Leadership in the military is regarded with the greatest of respect and reverence and rightly so - with the right leader goes the responsibility for the lives of those that are lead. Leadership is a very serious matter and it is the principle criterion on which military executives are judged.

The qualities that constitute leadership are, of course, by no means exclusive to the military but apply in every sphere and at every level. I will outline my interpretation of what constitutes leadership later. First I will address what can limit leadership.

Cultural Stereotypes - Women Are Not Warriors

What is it that makes my talking of leadership somewhat different from other speakers? Apart from my accent of course, which as you can tell is from far north Queensland - well not actually - I was born in Scotland, came here 13 years ago and I joined the Royal Australian Navy having completed 9 years in the Royal Navy. It is, of course, that I am a woman in a leadership role in what is popularly regarded as a domain exclusive to men - the military.

However, in this case not Alexander - but rather Artemisia, Queen of Halicarnasus who captained her own flagship at the first major sea-battle in recorded history - Salamis in 480BC. Despite being on the losing side, she escaped with her ship and crew intact by disguising herself as the opposition and sinking one of her ally's ships which, by the way, happened to belong to a particularly unpleasant neighbouring king - so she was not too concerned.

Then there was Queen Maeve of Ireland, a most successful and highly respected leader, who led her soldiers into battle. Given the appropriate circumstances however, she was not averse to negotiating terms for peace by offering the "Friendship of the Thigh."

Catherine the Great of Russia is one of the most distinguished leaders and rulers in history. Born to a German family of lesser nobles, she married most unhappily the heir to the throne of Russia, and on his sudden demise became Empress. During her thirty four years in command, she transformed the face of Russia, not least by conducting campaigns of invasion on behalf of the country which she adopted and loved. Of her it was said "serving her was the most perfect freedom."
More recently, we have seen Golda Meir, Indira Gandhi, Margaret Thatcher and other women lead their governments and countries through turmoil and war. Leadership of the military is certainly not, from either a past or present perspective, the domain of men alone.

Folklore of Leadership

Men Won’t Work for Women

Unfortunately, we still have to rely on the stories of the rich and famous for our examples. But what of, at the more mundane level, the ordinary woman in command of her first platoon? What of my own experience? Well, I had to wait until I came to Australia before I was allowed to command men. In my case it was at HMAS Lonsdale in Port Melbourne where I was sent to be the first Lieutenant.

The First Lieutenant of a ship or establishment is third in charge you might say, and responsible for general maintenance. The First Lieutenant is affectionately known as “Parks and Gardens” and has a “Buffer” or foreman as well as the “Buffer’s party” made up of a group of sailors who carry out the maintenance work. These sailors were posted ashore to spend time with their families and so were being employed on duties that were not their specialisation. You can imagine that the morale of the Buffer’s party was not particularly high. Anyway, I joined HMAS Lonsdale in the sure and certain knowledge that I was going to have some trouble - after all I had been told often enough that men won’t work for women. Well, what I had been expecting happened on the first day - the sailors were late returning to work after lunch. This was the challenge. So I called in the Buffer and told him I wished to see the men in my office in precisely ten minutes time. So the Buffer doubled away and exactly ten minutes later marched in the men. I kept them at attention while I told them in no uncertain terms what I thought of their ideas of punctuality, of what the Navy required of them in return for their pay, the discipline and adherence to regulation. So I “read their horoscope” and then turned to the Buffer and asked him to march them out. Well about three days later one of the sailors came up to me as I was walking around the base and asked “Are you Scottish or Irish ma’am?”, “Scottish”, I replied rather pleased that he was interested enough to ask. “We thought so”, he said. “The other day there when you had us in your office, we knew you were mad about something, but we couldn’t make out what!”

That is when I realised that these people didn’t care whether I was male, female or martian, they were not interested in the slightest in who lead them - only in what they were being lead to do and that was boring and lacking in challenge. So we set about changing that and organised a lot of training for them in everything from helicopter operations to fire fighting to museums!

Women Have To Act Like Men

The next piece of folklore I had to overcome was that you had to act like a man to be successful. In this case I was sent to be second in command of what was the navy’s second largest training establishment - HMAS Nirimba in the western suburbs of Sydney. There were 1200 personnel onboard, 700 of them young sailors under training, men and women of between 15½ and 21. Well I have no children myself, but I know exactly what young people are like. I read about them in the media. They are rowdy, they fight, they beat up old people and they take drugs. I had never worked for a female executive officer which is the title for the second in command on a navy ship or establishment. The ones I had worked for were male, grey haired, always looked angry and would walk around looking very fierce. That’s it, I thought, I will look angry and I’ll keep them all in check by fear. So I did exactly that and wherever I went around the base these young people would greet me with smiles and “How’s it going ma’am?”, “Enjoying the job ma’am?”. After three weeks of this I went back to my office and sat at my desk and thought “Oh my God, I’ve failed - they like me!”
Then the light dawned - I didn't need a role model - I didn't have to act like a man to succeed. I had been given the job because they thought I could do it - my way - and so I did. These young people were keen to contribute to the navy - they were great to work with. In fact if I had emulated the male executive officers I would never have got the results I did.

**Women Are Not Natural Leaders**

The last piece of folklore I recognised only after I left my recent command. I was commander of Australia's Mine Warfare Forces and of the Mine Warfare Base, HMAS Waterhen in Sydney. As such I was responsible for almost 500 people, and the equivalent of about $250m of Australian Defence Assets including 14 ships. Well as you can see, I haven't too much trouble talking to you as an audience, but it amazed me, stand me in front of those 500 people who were my primary responsibility and I found it most difficult to relax. I eventually put it down to the fact that I was a woman and therefore not a natural leader. Still, despite all this, I persevered and I have no idea if this feeling really showed. Much later, after I had handed over my command and left the establishment, I was speaking with the commodore, my erstwhile boss and remarked on this. He said he understood my feelings entirely and it had nothing to do with my being female - it was a function of command. When he had been in command of a destroyer and at a ship's company dance with all the families there he had stepped out to address them and on looking around had been almost overwhelmed by the feeling of responsibility for all those people on his ship and their families.

From all this I learned that the experience of leadership is the same for men as it is for women - we face the same challenges. Perhaps, to a degree, we women are luckier because we are more sensitive to personal indicators and therefore can sense and react quicker to changing conditions or circumstances. On the other hand, that which hampers us is the propaganda, the folklore which distracts us from the reality of our own ability.

**Fundamentals of Leadership**

If leadership is common to women and to men - what are the fundamental personality traits and skills which contribute to one's ability to lead?

In a recent magazine of the United States Navy, a young Marine Captain who is also a lawyer, by the name of Richard W. Thelin, proposed that leadership was made up of a triad of fundamental qualities.

Firstly integrity, *"Without integrity leaders can neither be trusted nor respected. Leaders who are not trusted or respected by their subordinates will not be followed."*

Integrity is your character, your reputation for fairness, your unswerving determination and your taking responsibility for your own actions and decisions. It is never compromising oneself for expediency's sake.

Secondly competency. Basically people will not follow leaders who do not know what they are talking about.

Lastly humanity. This is the art of caring for your people, not in a sloppy sentimental fashion but in a compassionate and strong understanding of who they are, of their strengths and weaknesses.

There is of course nothing exclusively male in any of these characteristics nor is there anything here exclusive to the military experience. Leadership is as natural to women as it is to men.

**Challenges of Leadership**

It is comparatively easy to define the characteristics of leadership, however it becomes progressively more difficult to practice as you move up in seniority. The atmosphere in which you have to exercise your leadership becomes less trusting, more challenging. The competition is fiercer and so the pressures on the quality of integrity grow greater. The temptation to act in an expedient fashion increases. But it is in meeting these challenges and still maintaining your integrity that is the real test of the leader.
Much has been said recently of the decrease in the percentage of women in senior executive positions. Blame has been placed on the unfriendly, alien, exclusive culture created by men at the top of professions and businesses. Yes, without doubt, the culture is pretty appalling. Bernard Tapie the French politician who is presently being pursued by the establishment in a recent speech in the French parliament declared that he “Did not conform to the dominant model” and he ironically referred to the “Climate of fraternity and honest camaraderie in which one works here.”

The culture is there not only to exclude women, but also to exclude men. It is the exclusiveness that is practiced to the detriment of the organisation - the seeds of its own destruction. Look how effective the exclusive organisations are in running the world - no more cold war - just 27 hot ones.

In my experience, it is not only men who practice exclusion but women also are expert in excluding and discriminating. I was the longest serving female sub-lieutenant in the British Women’s Naval Service, in history practically. Why? Because I also didn’t follow the “dominant model”. I wanted to go to sea, to be a warfare officer and that was very threatening. If one did it, it might be required of all and so they froze out the chance. They were successful - but only in losing some of their best talent.

We must be careful that the tendency to exclude does not reappear in the women’s movement. As Naomi Woolf in her book, *Fire With Fire* comments, we must be careful that feminism does not come full circle “from fighting for the right for every woman to speak for herself to imposing a set of behavioural limits almost as oppressive as sexism itself”.

We must not become totally focussed on a glass ceiling, otherwise we will give substance to a figment of the imagination of those who would wish to exclude us. A concept, which will become another obstacle just like the stereotyping, the cultural barrier and the folklore limiting our opportunities to contribute at the highest level. Rather, we should focus on creating a meritocracy in each of our organisations. By allying with those men with merit who are also excluded, we will have far greater chance of creating the environment that fosters real creativity and progress.

**The “Long Count”**

So when can we expect to see this change in the culture of our organisations? We probably need some degree of patience.

Octavio Paz in his book *One Earth, Four or Five Worlds* made reference to the ancient mayas who had “two ways of measuring time, the ‘short count’ and the ‘long count’.”

He went on to explain that French Historians have used this concept and identified the distinction between “long duration” and “short duration” in historical processes. Long duration designates the broad rhythm that, through modifications that are imperceptible at first, alter old structures and create new ones, thus bringing about gradual but irreversible social changes. Short duration on the other hand is the domain *par excellence* of the event; falling empires, nascent states, revolutions, wars, assassinated dictators, etc.

Paz identified feminism as a process which belongs to the realm of the long count-long duration. Although it has lost some of its impetus in the last few years, he states that “It is a phenomenon destined to endure and change history.”

We are in for the long haul. It is good to know that we are part of an extended historical process and we will need all the determination we can muster, all our sternness of purpose to maintain the pressure for change. We must not become so impatient that we act out of expediency rather than measured consideration. We must not betray our integrity. At the end, we should have remained true to our purpose, to ourselves. It is our integrity which makes us true, it is our ability which gives us confidence, and it is our humanity that keeps our sense of humour. All three combine to make us leaders - and we are in for the long count.

I must admit that in my teenage years I always wanted to be an astronaut - little did I know the true nature of the long count down that I would be part of. 1994 and counting.....
LECTURE FOUR

BLACK WOMAN IN A WHITE MAN’S WORLD

Joan Winch
I was born in the 'Depression Years' of the 1930's brought up in the War years of the 1940's. How do you pick out where to start and what particular incident made you say 'That was the turning point in my life, I decided then and there to be a leader'.

I might have to go back further to the time when my parents were married. My mother was taken away from her family in 1907 when she was 2 years old. After years in Aboriginal children's homes and missions she ended up at Mogumber. The only thing my mother knew was she was born in Wongi country, Lakeway (Wiluna) in 1905. Other than that all family ties were lost. All children taken were under the Native Welfare Act - which dictated where and when you could go and whom you had to work for and marry. This was 1933 when it was expected that Aborigines were on their last legs, smooth the 'dying pillow' is how it was put. Genetic engineering was in long before George Orwell's *Brave New World* and 1984. Aborigines were judged by cast. Half cast, quarter cast, octoroons, full bloods. The question was how much Aboriginal blood have you got. That was the measure.

My father came from the South West, his mother was a Nyoongah and his father was an English man from Cornwall and he was not subject to the Native Act. When my father approached the Protector for permission to be married, he was denied. He was 33 and my mother was 28, not mere children. There may have been an ulterior motive as my mother was the House girl of the protector, Mr Neville. Dad covertly had the banns put at St Albans Church Beaufort Street. It was law that the banns had to be read for one month and they were then married. The marriage released my mother from the Native Welfare Act. It was a confrontation with the Protector. My father argued, "Lillian is now my wife and not subject to the Native Act." This story was told over and over again around the fire side. It may have been my first lesson in beating the odds.

I have two brothers, one older and one younger. We were brought up with a strong sense of fair play in the family. A favourite saying of my father was you are as good as anyone, not better. I was lucky to be a good runner and swimmer. Interschool sports gave me a strong sense of achievement when I could win races for the school. At the Gas Works picnic, I won the open race and they decided it was to be run again. I reran and won again. A reminder, as I grew up, that to be Aboriginal and win, you have to try twice as hard. I can still feel that extra bit that has to be squeezed out near the finish, if you wanted to win. Was this the tenacity of an achiever?

I had the rocky road of being the only girl in the family and had to vie strongly to get heard. One brother, Brian the eldest, was quite a genius and had first choice of books and clothes for school, while my young brother was the curly headed baby and remained so for the rest of his life. My father was a disciplinarian and was equally strict with himself in his day to day pattern. Life had a purpose. I was scared of him when I was young, his word was law and I could only whisper to my mother that I didn't like him. He would sometimes turn the table over with all the crockery smashed and no dinner to be had if I as much as answered him back. This was distressing for mum as it was war time and crockery was hard to come by. Dad also was distressed after when he had to dig a hole down the backyard to bury it. If they propagated we could have had whole dinner sets spring up in the back yard. Was this the discipline of leadership? To know when to keep quiet and when to speak up? Timing is always important in achievement.

A sense of family responsibility was instilled into our every day life. We all had a plot of ground to weed everyday after school, chop the wood for the boys, peel the spuds and wash up. When I could first remember about Dad he was without a paid job and got meal tickets for helping to turn a swamp into Langley Park in Perth. Many of the men were on 'Suso' (a sustenance subsistence) at the time. Dad rode his bike from Fremantle to Perth three days and on the other days he would spend the day pulling up onions at Spearwood, and be paid a bag of onions, or he had a quick trip to the Victorian Quay to catch a feed of fish for the family. He was never still, growing fruit and vegies and collecting scrap materials from the tip to make things for the house. Our rent was five shillings a week. Dad got a job at the Fremantle Gas Works in 1939 just before the out-break of World War Two and was man-powered in that job during the war time period. Everyone was evacuated away from the Barracks at Fremantle. We were shifted out to Palmyra.
Another part of my childhood which may have had an impact on my adult life was the Red Cross. We had to know what to do in an emergency. All the children had to carry a small First Aid bag and air raid drill was a daily part of our school life. When the siren blew we had to grab our first aid kit and sugar bag and run to the trenches in the school or to home and back depending on the siren code. The sugar bag was to cover our heads. The perspective was life preservation and immediate response.

My mother worked as a washer woman. This meant hours of scrubbing clothes over large cement troughs with scrubbing boards and large coppers to boil up the clothes. She didn't complain about work. In fact, I felt she liked to do these things. My mother was a good cook and in season we spent the night time cutting up fruit for jam and cauliflower for pickles. This was enjoyable team work. If you have to work, do something you like, otherwise the price is stress. Life was happy when I was young. I did not have a great sense of being different though I was very much aware of being a Nyoongah, with my parents' own interpretation of cultural input.

It was rare to see our relations as Aborigines were not allowed to travel without permits. However, we managed to meet up with our cousins from Katanning when they came back from overseas duties in the army. The lessons here were in equality: on the battle field they were heroes, back in their homeland they were shunned. It seemed incredible that an Aboriginal soldier was not allowed to go into a hotel with his shoulders squared. This did not happen with the American Negro sailors, depicting a pecking order where we were on the bottom rung of the ladder.

My mother died when I was thirteen. It was a hard time for all of us. I left school the following year to take up the responsibilities of housekeeping and gain a place in the work-force. This set the pattern for the rest of my work life. It was here I felt the most discrimination. I wanted to train as a nurse and I felt I kept on banging headlong into patronising head patting. I had been told that I would be able to qualify as a Nurses' Aid. Direction was lacking in myself, and I felt it difficult to hone into a target. I never saw myself as a leader, though I was made company leader in the Girl Guides when I was 14.

What makes a leader and who gives the title? I see myself as a catalyst. Though I was interested in education it seemed impossible until 1972 when the Aboriginal Study Grants were introduced by the Whitlam Labour Government. My daughter Lillian showed me the way into the Education field. It was very difficult as the system of 1948 bore no resemblance to Adult Education of 1974. I found out that University entrance could be had by completing and passing two subjects and a scaling test. Learning was at night school. When I was wondering what I could do at the Western Australian Institute of Technology (WAIT) the nursing program was introduced. I was always interested in nursing and had worked in the field as a nurse assistant. This fulfilled another point of self actualisation. Feeling good about what you do and learning the qualities to develop keeping your goals in sight and targeting in on a special ability. This helps to set down a solid foundation which is necessary for self preservation because there will be plenty of deviations away from target and adjustment has to be made to get back on line.

There will be plenty of times when the going is tough and it seems the problems are insurmountable. For any one achievement there are 100 knockers. Don’t run with the knockers this weakens the effort and very soon you get blurred vision on your goals.

There is a little voice inside the head that throws into the path all the negatives that are voiced from outside. You can’t do it. It won’t work - you'll never get the money, and so on. This conversation within has to be counteracted with a positive approach. Have plan B, C & D on hand. I have learned to listen to my spiritual guides, and when a project has a series of blocks on success, I leave it until things settle and then probably take on a new approach. There has to be confidence in decisions and faith in yourself and staff to carry out the exercise. Another golden rule is never lose touch with the people you have set out to keep. Never break a promise - it will be long remembered.

Aboriginal women have been quicker to take up higher education than Aboriginal men. It is debatable why this is so. One of my theories is in a patriarchal culture, the women are at the lowest end of the ladder. Aboriginal men
have always exerted themselves in the household and this with the up-swing in education for women has been the cause of a lot of conflict and domestic violence in the home. If the woman is rising out of the ashes then there is usually a problem with the men - vice versa, there is usually a more tolerant approach and men usually are happy to have uninformed wives (barefoot and pregnant syndrome). In the work-force it is more subtle; women rarely get into the Managing Director's chair. If there is a vote, women tend to vote against their gender. This could do with some research as to why this happens. Further afield the Aboriginal women's place in the broader society is in a lesser position than her white 'sisters'. Even if the Aboriginal woman has a higher qualification she can be put in a box and taken out, dusted and put on show as 'our' Aboriginal woman. That's okay if we don't confirm there are problems. Don't go along with the game. In the white man's world it is almost impossible for an Aboriginal woman to be the leader at the top. In particular in the medical field, nurses are considered inferior to doctors and not usually worthy of an opinion. Working within the Perth Aboriginal Medical Service with a male Director and mainly male doctors it was almost impossible to make one's voice heard. My father taught me to disregard rules so the messages radiated out to me were deflected away from the psyche. At the negotiating table it is very difficult. Most of the lobbying is done on the social scene or golf courses so when the carve up is considered everything is signed and sealed and only the crumbs are for the taking. It is then necessary to have 'eagle eyes', look at the big picture and target in on the goal. Confusion can reign in that if we want to work towards a program for mothers and babies and the only money available is for the 'abominable snowman investigation', forget it.

The whole area of funding is very frustrating. The organisation can only grow as the funding body sees fit. If you start getting away then the strings are pulled to bring you back to size.

Frustration can change a positive attitude into a negative one, an empowering state into a crippling one. The worst thing a negative attitude does is wipe out self discipline. And when that discipline is gone, the results you desire are gone.

So to ensure long term success, you must learn how to discipline your frustration. The key to success is massive frustration. Look at almost any success and you'll find there's been massive frustration along the way. Anybody who tells you otherwise does not know anything about achieving. There are two kinds of people - those who've handled frustration and those who wish they had!

Sometimes when we start on life's goals if we knew how hard it was going to be many of us would never have started the journey in the first place.
LECTURE FIVE

BEGGING TO DIFFER:
DISSENT, DISGRACE AND DISCRIMINATION IN THE CORPORATE STATE

Moira Rayner
I chose the title for this lecture shortly after I had finished being Victoria’s last Commissioner for Equal Opportunity, in February 1994. It seems appropriate to begin by referring to a ‘dismissal’. Mine.

From 1990 until 1994 I administered State and Commonwealth laws which prohibit discrimination, for Victoria. I received record numbers of complaints which I was obliged to receive and try to resolve by conciliation. In that last year, about 35% of the complaints were made against State, Commonwealth or Local Government and there had been an enormous increase in complaints about discrimination by employers. Victoria had abolished its Industrial Relations Commission and enacted new ‘employee relations’ and public sector management legislation which was far less prescriptive of rights and responsibilities. In the last financial year the complaint rate rose, overall, by 74%. 87% of those complaints were about employment.

Several high-profile complaints had been lodged with me about the discriminatory impact of new Government policies - changes to public transport which disabled people said deprived them of mobility; closures of schools which students and parents said deprived them of educational opportunities because of their race or their sex; and mooted changes to the prison system which women prisoners said would offend against their human rights which had already been infringed in the existing jails.

It was my statutory responsibility to educate the public about the human rights principles which underlie equal opportunity laws. I had run training programs, published the complaints data and spoken and written often about the purposes of anti-discrimination law, why some kinds of unfair treatment were prohibited in public life, and why corporate and institutional practices had to adapt, to take State and Commonwealth discrimination laws into account.

On the 1st March 1994 amendments to the Victorian Equal Opportunities Act abolished my statutory Office and replaced it with a significantly less independent, five-person Commission. It also fundamentally changed the complaints process, by giving respondents - the people or institutions complained against - the power to force public legal proceedings and the risk of punitive cost orders, and to bypass conciliation, at the expense of those who complained. These new powers favour corporations or institutions: those with ‘policies’ they wish to implement, whose affairs are of ‘public importance’, and who have ready access to legal advice and representation.

The changes were widely seen to be a symbol of new intolerance of disagreement with Government policies.

There had been other signs. In a number of other ways traditional checks and balances on executive power had been eroded. In the August 1994 edition of Civil Liberty Spencer Zifcak lists what had already been done before March 1994 to constrain:

**Parliament and the people**: time limits had been placed on debate on particular bills (the new Government had an absolute majority in both Houses); all new parliamentary committees were established with government majority membership; there was a trend to substantive lawmaking by subordinate legislation; a large number of elected Local Government Councils had been replaced with commissioners.

**Courts and judges**: the Government’s bills routinely exclude the jurisdiction of the Supreme Court to entertain applications for judicial review of Government decisions; 11 Accident Compensation Tribunal Judges had been dismissed; there had been attacks on the DPP (who had publicly suggested charging the Premier with contempt over his comments on a pending prosecution). As well, there had been the dismissal of the Industrial Relations Commissioners and failure to re-appoint a number of AAT and Tribunal members. Later in the year pressure caused the resignation of the coroner, and the senior magistrate of the Children’s Court was pressured to resign.

**Quasi-judicial bodies**: the Government had granted itself broad exemptions for cabinet documents through dealing with privatised government business such as the Melbourne Main Events Company under Freedom of Information legislation; had given direct planning responsibility to the Minister for Planning (at the expense of the Administrative Appeals Tribunal); had placed ‘independent’ statutory officers, such as the Ombudsman and other statutory officers on contracts.
Administration: 40,000 public service jobs had gone; private sector management style had been introduced, including contracts terminable on a month's notice without cause; state-owned enterprises had been removed from public sector accountability mechanisms.

There had been ominous signs of a different police approach to peaceful protest: earlier in 1993, the baton charge on parents and citizens outside Richmond College had made news headlines around the world. This was a government committed to free-market objectives, financial accountability, and as few obstacles to that achievement as possible.

**Discrimination**

The theme of my lecture is about the challenge of the decade: how to have both a thriving economy, and a social policy which protects the rights and interests of its most vulnerable members. I use the example of how discrimination laws have operated in Victoria - a State whose government is committed to the achievement of free market ideals and economic achievement - because they are one of the ways in which unimportant individuals, vulnerable and marginalised groups, can ensure their individual interests are not overlooked in public policy.

Discrimination laws are based on the premise that everyone should be treated on their own merits and participate equally in community life. They recognise that there are systemic obstacles to that participation which are objectively unjustifiable and they give individuals a remedy, through conciliation, for being less favourable because they belong to a disadvantaged group.

They are unusual laws. They have to be interpreted broadly, to give effect to their purpose, to protect human rights, as the High Court said in *Waters v. Public Transport Corporation* 1. They provide a different kind of remedy, (mediation or conciliation), which is meant to empower the parties to resolve the complaints themselves. Conciliation succeeds. Between 90 and 95% of all complaints are resolved. Only a tiny proportion of intractable cases go on to a public hearing before a specialist tribunal: this is a last resort.

We have these laws because we have learned that a community which excludes people whose values and behaviours and practices seem sufficiently different to pose a threat to the group might in fact be turning on and hurting itself. A community committed to racial 'purity' or the oppression of religious or political minorities, or intolerant of criticism may destroy the very life we live together to protect: a decency and safety that we receive as compensation for limiting our freedom to live exactly as suits us.

Discrimination laws are rules set by governments to try to strike a balance, as all laws do, between the essential right of individuals to be left alone and to pursue their own interests; and the rights of other individuals who are affected by their neighbours' acts or omissions. These laws and policies are based on human rights principles, the most basic of which are the right to be taken seriously, to be treated with equal respect, and to have as much opportunity as any other citizen to prove what we deserve by way of reward or punishment for effort, and to enjoy the benefits of community. That is really what we mean when we say that we expect our society to be fair.

Let me give three examples of the ways in which discrimination laws contribute to community attitudes.

**The first case** I put to you is one of simple race discrimination in a country town, part and parcel of daily life for most Aboriginal people. This is the story of one family that decided not to put up with it.

In Sale, a small Victorian country town, in 1991 Mr and Mrs Bull, an Aboriginal couple, and their children found themselves, suddenly one weekend, homeless. They could not find emergency accommodation, so they went to the Council for help. The Council worker went to the town's caravan hire company, and tried to make arrangements to hire a caravan for a few weeks, to be parked on private land, while the family found a proper home. The owners of the business refused to hire them a caravan. They said that they simply had a policy that they did not hire their goods to Aboriginals: nothing personal, they said.
The couple contacted the Equal Opportunity Office, and complained that they were the victims of race discrimination, under the Commonwealth Race Discrimination Act. One of my investigators rang the company and explained what the Act said. The owners said they didn’t care.

The Aboriginal couple was left homeless, publicly shamed, and very upset. Conciliation didn’t work. The investigator filed his report. The case was referred to the Human Rights and Equal Opportunity Commission for a public hearing.

The caravan firm admitted to a technical breach of the Race Discrimination Act. The hearings commissioner ordered them to pay damages, which included $20,000 damages for humiliation and hurt feelings and ordered the firm to apologise publicly in an advertisement published, twice, in the local newspaper. The firm had argued that a penalty, and particularly an apology, would ‘just make things harder for Aboriginals’ in Sale. If that were so, the Commissioner said, it was all the more important for the public apology to be made. It was time that the community learned that race discrimination was unacceptable.

The public response was extraordinary. I received many letters seeking to justify the treatment of that couple on the basis of market pressures - if the caravan hirers were known to hire their equipment to blacks, a typical letter said, they would lose their business, because everyone knows what blacks are like. The point was that these people were not bad tenants. There was no defensible reason why they should be refused service. The reason was prejudice. It was an important message to blatant discriminators, and a message of hope to the Aboriginal community.

My second example is a case of indirect discrimination - much more common than the blatant racism of the first. Indirect discrimination is what happens when standard rules or requirements or conditions which seem fair because they apply to everyone, actually have a detrimental impact on one disadvantaged group, because they are unable to meet those requirements.

My example is women prisoners, in correctional systems with a majority male population. All prison systems have a majority male population.

The Victorian Equal Opportunity Act offers another kind of remedy, which recognises that some people can’t use even an informal process and an alternative remedy (conciliation). The Act gives the Victorian Equal Opportunity Board - the equivalent of WA’s Equal Opportunity Tribunal - power to order the Commissioner for Equal Opportunity to investigate serious discrimination allegations where it would not be appropriate for an individual to make a complaint. In early 1991 the Board ordered me to investigate whether or not: ‘in the administration of Barwon Prison acts of discrimination may have been or continue to be committed. The particular areas of administration included:

1. access of female prisoners to their children; and
2. access of female prisoners to educational resources, including the prison library and the shop.’

If I was satisfied that discrimination had happened, and I could not resolve it by negotiation, I had to send the matter back to the Board for a public inquiry, determination and orders to set the matter right.

I visited every prison where women were detained and some men’s prisons in Victoria. My findings, in July 1992, are now a matter of public record.

There were only a few women in Barwon, a maximum security prison built for men, an hour out of Melbourne. Most of the women would not have been at Barwon had it not been for management and crowding problems in Fairlea, the metropolitan women’s prison, I was told. A couple of them were intellectually disabled ‘management problems’. None of these women were a high escape risk. About 80% of them, on average, would have been survivors of sexual and domestic violence. They had different health problems and probably needed different health care arrangements than men. They were much more likely than men to have been primarily responsible for caring for their dependent children, before they were jailed. I found that the standard visiting arrangements (which applied to men and women equally) did not allow women to see their children in practice, because their children were likely to be in foster or alternative care and not available on weekends. I found that women’s visitors, and women
prisoners, were much more likely to be strip-searched than men and that the prison could not or would not explain why this was so.

The women had to be kept segregated from the men. This put them in a prison within a prison - their own single high-walled unit. It was administratively inconvenient to let them out - they shut down the prison when they moved to other parts for medical appointments, study and so on. As a result, they did not move about much. Prison officers resented the women's presence. They were in the habit of making derogatory remarks about them - that 'they hunt in packs', for instance - and to ascribe negative characteristics to all women prisoners. I was told that women had to be more carefully watched because they could conceal more contraband than men - presumably a reference to female bodily cavities. I found these attitudes made their imprisonment more onerous than men's imprisonment. Women were in for different kinds of offences than the men, and for shorter terms. They had measurably less and less satisfactory access to recreation, prison facilities, resources such as computers, the library and appropriate education and training, than men, and they did not have the same range of employment options as the men did, because they were a minority population.

I concluded that women prisoners were, at the time of my investigations, the victims of both direct and indirect discrimination, because they were women.

I could not resolve these matters by negotiation. Matters actually got worse. In early 1993, because two men broke out of the metropolitan remand centre with the help of a (woman) prison warder, security at all maximum security prisons was tightened. Visiting times were cut back. Strip-searching of visitors became routine, and rather than let their children be strip searched many of the women refused to see them at all. Then, there were persistent detailed public rumours that Fairlea, the only metropolitan women's prison, which was much more woman-friendly - was to be shut because it cost too much per prisoner to run (more than for men). We read that all the women were likely to be moved into Jika Jika, the high-technology security building in Pentridge (men's) prison in which several prisoners died some five years before, and which the previous Attorney General had declared unfit for human habitation, and had sworn would never house prisoners again.

Supporters protested: a spokesman for the Minister retorted that 'convicted criminals had no right to complain'. These plans would obviously affect all women prisoners.

In July, 1993 I referred my report to the Board for a public inquiry, because I could not settle the discrimination I had found. To preserve the status quo until the Board could hear all the evidence I also applied for interim orders to prevent the Government moving any women into Jika Jika, and to preserve their access to visitors and to their children, until the matter was heard and determined by the Board. No individual woman prisoner could apply for this order, as no individual woman had complained. Once a prison had been decommissioned it would be very difficult indeed to order that it be re-opened.

There were a number of outcomes, other than a great deal of amazement that I had acted in accordance with my statutory responsibility. The women in Barwon were moved out and into women's prisons within 48 hours (so it wasn't impossible after all). The cost per prisoner in Fairlea, naturally, dropped dramatically (along with the justification for closing that prison). I did not get the interim orders because the Board did not have the power to make them due to a drafting anomaly.

 Nonetheless the women were not put into Jika Jika, because something extraordinary happened which had nothing to do with the law.

When the plight of women prisoners and their children was put to the public, through publicity about the application, as an issue of human rights rather than economic restructuring there was a tidal wave of public revulsion. Women from all walks of life, of all ages and political affiliations, including members of all three parties wrote to and called upon their members, the Cabinet, and their party machines. It became unthinkable that women should be moved into Pentridge. They never were.
There were other outcomes, too. Three months later the Attorney General announced the restructure which abolished my Office, and a month later introduced amendments which exposed complainants who failed to prove their case to mandatory cost orders. To give you an idea of the disincentive this could be to a complainant, in 1993 the Victorian Government paid more than $600,000 in legal fees alone - and no doubt, spent almost the same again in department time to prepare for the case - to defend discrimination complaints brought by children affected by the closure of their schools.

My third example is one of those complaints.

In November 1992 the Victorian Minister for Education decided to close a number of schools, including the Northland Secondary College. At the time it had about 400 students; about 55 were Aboriginal. It was world-renowned for enabling Aboriginal children's success in education and training where others had failed miserably. The reason for the closure was said to be the maintenance bill for the building (about $1.3 million). The parents said they would pay for and carry out the maintenance: the Minister agreed, then his Department reneged. In December 1992 two children complained that the closure of the College meant that they were the victims of indirect race discrimination. The Department, in closing their school, required them to meet white education conditions, and they could not do this because of their special cultural disadvantage as Aboriginal people which had only been addressed successfully in Northland College.

The Equal Opportunity Board restrained the government from closing the College while I tried to conciliate. The media went ballistic. The editors of both major daily papers fulminated that the Aboriginal children should not have complained and the Board should not have granted the interim injunction, because Government economic policy was more important than Aboriginal children's right to an education. Early in 1993 the Government was permitted to stop running the school but had to retain its buildings and assets until the case was determined. There was delay in getting legal representation. All the students dispersed, with a rump teaching themselves in a nearby hall. The Government stopped paying the salary of their teacher's aide, but volunteers kept teaching.

By the end of 1993 all but 3 of the Aboriginal students who, the Department claimed, could get educated at any other school, dropped out of formal education entirely. Finally, in December 1993, after a hearing, the Equal Opportunity Board found that the children had been the victims of indirect race discrimination. The College's whole school approach which involved every student and their parents, and teachers in all the school's activities, and imbued all those activities with an awareness of Aboriginal culture and history, had been removed, to the detriment of these Aboriginal children because of:

- an added cultural disadvantage in relation to their ability to access the public education service in Victoria which is over and above cultural disadvantage which may be suffered by other groups within the community.

It ordered the school re-opened. The State appealed. The Board's orders were set aside in January. The complainants - that is, the children - were ordered to pay the State's legal costs. They appealed. In August, 1994 - almost two years after the closure - they won, in the Victorian Supreme Court. It found that the Victorian government had discriminated against these Aboriginal children because of their race.

The Court said that a government which is currently providing a service which members of a disadvantaged group can use, then cuts it, exposes itself to the risk of indirect discrimination complaints. It added that,

- it might seem surprising that a statutory body such as the [Equal Opportunity] Board with no fiscal responsibility for executing the decision is empowered by the Parliament effectively to resolve the competition between the financial considerations affecting a policy decision of the State and the personal ambitions or desires, however, worthy, of individuals, but the Act does confer that power.
I might add, that this would seem to be the position under most other State and Commonwealth discrimination laws. In other words, the financial concerns and plans of Government must take into account their effect on the human rights that discrimination laws are meant to protect.

I give these three cases as examples in context. In Victoria the Government has a philosophical commitment to the market: the restructuring of the public sector and administration is intended to trim the State in order to liberate market forces in the private economy and to introduce market incentives into the operation of government itself.

This philosophy means that Government is likely to seek advice on its economic values from the private sector; tends to vest greater control in its Ministers, and to reduce their accountability through independent courts and statutory offices which inhibit the exercise of that power. It requires public servants - statutory authorities or not - to adhere to the government's economic agenda, reducing the independence of senior public servants and their opportunity for taking a long-term view. An emphasis on fiscal accountability encourages Government actively to discourage public criticism or opposition to economic reform.

The other context is a disquieting legislative trend in both Victoria and in Western Australia, to limit the opportunities for individuals to challenge Government decisions.

In Victoria it takes effect as privative clauses in legislation which remove the right to seek judicial or any review of particular decisions. The Education Act, for instance, was amended in 1993 to make it impossible for anyone to challenge the closure of a school. This, and many other amendments, actually alter the Victorian Constitution to take away the Supreme Court's jurisdiction entirely.

In Western Australia, recent amendments to the Equal Opportunity Act exempting prisons from its ambit - in other words, allowing a government instrumentality to discriminate lawfully under State legislation - seems to have been the response to the complaints by two HIV positive prisoners that they had been isolated and deprived of access to prison resources and facilities, discriminated against because of their disability.

It is important to point out, I think, that Federal discrimination laws cannot be excluded by State legislation. A few weeks ago, Sir Ronald Wilson, president of the human rights and equal opportunity commission, issued an interim order to protect the rights of another prisoner who had complained of similar problems, under the Commonwealth Disability Discrimination Act. In July the Human Rights Equal Opportunity Commission awarded damages of $20,000 against the Tasmanian Auditor General who sacked an officer because of the symptoms of a disease - schizophrenia - from which he had recovered; in another case the State Rail authority in New South Wales was ordered not to call tenders for the Newcastle University station which it had designed so that students with disabilities could not use them.

In each of the examples I have given, the individuals were about as un-powerful as you can get: an Aboriginal family, two Aboriginal school students, prisoners, people with disabilities. In the first case, a racist policy in an unfriendly country town meant that a public apology was probably more important than the damages, but the damages were necessary to draw attention to the policy. The Barwon/Fairlea case showed what can happen when a wrong is accurately named as a breach of human rights, rather than an inconvenient and anti-social obstacle to Government economic policy. The Northland decision stands for the principle that there are some individual rights, in this case the right of children to access public education, which are as important as micro-economic policy.

The initial editorial and other critical responses to each of these cases were remarkably alike. In each one the financial or economic considerations behind the discriminatory policy decisions were argued to be in themselves, their justification, whatever their effect on particular individuals; the community good required their rights be subordinated to 'our' interests.

And here we come to the core of the policy problem, in a modern, representative democracy. Human rights are, essentially, private and individual, but the public good also requires that they be respected.

We have created a mechanism for creating and maintaining the environment which best promotes our common good by sharing the power to make, interpret and apply the explicit and implicit rules of civilised behaviour among
elected law makers, employed administrators, and independent judges in independent courts. We have learned that 'rights' and values are best protected by making absolutely certain that no one group or person has absolute power, because it is inevitable that such power will be used arbitrarily. We call this the rule of law.

Most of the people of whom, by whom, and for whom, democratically elected representatives govern, have little or no idea of what the rule of law means. Most of us don't even think about it. We tend to judge governments on how well they manage the economic system, though, as Nugget Coombs points out in The Return of Scarcity, (1993), Government only influences, and does not control, the level of economic activity and the patterns of production, on which so much of its social policy depends.

The major policy challenge for the community in the 1990's is to come to terms with the fact that economic and social policy are not seen to be in conflict. We need to have a healthy and productive economy in a society which also protects the rights and interests of its most vulnerable members.

Jan Carter, in a 1993 article, described four contemporary ideologies or beliefs, which have shaped Australia as it is today, and continue to affect the public debate.

The first are the assumptions and values of neo-conservative economics which give prominence to market forces, private sector activity and economic efficiency in all social policy circumstances. The second, is social corporatism, which combines the powerful interests of government, labour and capital in the interests of economic growth: the price of those alliances is, that less powerful interests - such as the welfare lobby - are perceived to be peripheral to the main game. The third is social justice values, which promote the value of redistribution to reduce inequality, a concept which has become somewhat unfashionable in corporate and government circles and is usually promoted by non government organisations like the Brotherhood of St Lawrence and ACOSS, which try to influence and affect economic rationalism and social corporatism, by institutionalising mechanisms for redressing disadvantage in favour of the poor. The fourth trend has been the development and growth of human rights perspectives on social and economic policy. These require equal opportunity and the implementation of economic and social rights for all, not as a matter of social justice or compassion, but as a matter of principle.

Human rights language and concepts have taken their place in public policy in the last five years because we have been relatively active since the 1980's in ratifying international rights agreements such as the International Covenant on Civil and Political Rights, the Conventions on the Elimination of Discrimination against Women, the Elimination of Race Discrimination, the Rights of People with Disabilities, and the Rights of the Child. And those are only some of them.

An essential element of many of these treaties is the right to minimal standards of services and institutions, and you might now observe that all three of the examples I gave were of discrimination in the provision of public and private services: most people think only of employment-related discrimination.

In the 1990's there are few rights to services in Australia, but this is a gap which, it appears, the courts might sometimes rectify, as the Victorian Supreme Court did in the Northland case. There is a widespread philosophical resistance to universal entitlements to public services, such as family allowance, health care, even free education for children, which is remarkably nineteenth century in quality. Individual need does not necessarily ensure access to services: in Victoria, for example, the huge increase in reports of suspected child abuse since mandatory reporting was announced last year has placed great strain on investigation, intervention and support services - demand on some non-government services has increased by 300%. More and more, access to services depends on eligibility hurdles, such as ability to pay, or to be reasonably fluent in English so that requests and appointments can be arranged. If access to services is assessed according to human rights standards, obstacles such as ability to pay, or low relative priority - Aboriginal children in education or women prisoners, for instance - are completely inappropriate. Rights require a universal entitlement to accessible services.
If we are unable or unwilling to enshrine rights into public policy, then discrimination laws can be used by some to bring its defects or unintended effects to public attention, if not provide individuals with a particular remedy. It seems to me that the greatest challenge to this generation is how to incorporate human rights principles explicitly into the community's network of moral and social values and into the policy making process. This is not easy. Recognising rights is costly, creates uncertainties, and limits what corporations and governments can do, as the Courts have found in the Northland and the Waters case. Rights constrain the satisfaction of majority preferences by guaranteeing the protection of minority interests. One section of a community might have to forego benefits or make payments, or accommodate particular groups because of the overall good in protecting their interests. Even if rights are not expressed in legislation, the High Court has reminded us, in decisions about the right to freedom of political speech and communication; children's rights (Marion, Re P and Re K); and the moral and legal claims of Aboriginal people to land ownership (Mabo), that there are some fundamental rights implicit in the social contract which cannot easily be legislated away.

There is resistance to recognising human rights in law and practice. Some believe that endorsing international treaties limits State sovereignty vis-à-vis the Commonwealth, or Australian sovereignty vis-à-vis the United Nations. Perhaps it is time, as (to my amazement) Padraic McGuinness suggested in The Age on 13th September, we legislated to incorporate the whole of the International Covenant on Civil and Political Rights into Australian law. This would give us a detailed charter of rights, including equality before the law, freedom of association, freedom of expression, freedom from discrimination and so on, and enable the Courts to develop a solid body of jurisprudence, rather than a fairly ad hoc development according to the means of a plaintiff.

The right to be treated as an equal will always be resented, so long as individuals are left to complain. It is relatively easy to categorise those who use discrimination laws as persecutors hiding under what Robert Hughes, in Culture of Complaint, portrays as 'the institutionalisation of victimhood'. He says:

*In these and a dozen other ways (referring to 'date rape' and sexual harassment debates) we create an infantilised culture of complaint, in which Big Daddy is always to blame and the expansion of rights goes on without the other half of citizenship - attachment to duties and obligations. To be infantile is a regressive way to defy the stress of corporate culture: Don't tread on me, I'm vulnerable. The emphasis is on the subjective: how we feel about things rather than what we think or can know.*

He objects to what he calls a 'whining, denunciatory atmosphere' and claims that:

*The range of victims available ten years ago... has now expanded to include every permutation of the halt, the blind, the lame and the short... Never before in human history were so many acronyms pursuing identity. It's as though all human encounter were one big sore spot, inflamed with opportunities to unwittingly give, and truculently receive, offence.*

Thus speaks, if I may say so, the voice of comfort and privilege. A black woman wrote in 1992 that she knew that:

*No matter what degree of professional or professor I became, people would greet and dismiss my black femaleness as unreliable, untrustworthy, hostile, angry, powerless, irrational and probably destitute. Futility and despair are very real parts of my response. Therefore it is helpful for me, even essential for me, to clarify boundary; to show that I can speak the language... As a black, I have been given by this society a strong sense of myself as already too familiar, too personal, too subordinate...*

If we do not institutionalise human rights into public and economic policy processes we will continue to create conflict based on simple ways of seeing: women's rights do not diminish men's; children's rights do not take away
parental authority; those who criticise the public affirmations of bigotry or bullying, such as those associated with the Commonwealth Games recently, are neither politically correct or stifling free speech. In Victoria, the Premier described those who complained about the indirectly discriminatory effects of new government policies as 'destroyers of the economy'. In fact, rights debates frame and clarify community values. In claiming a human right we assert the human rights of every person: our interests, and the community’s interests, become one.

As the statutory officer responsible for administering discrimination laws in Victoria at a time of significant economic and social stress and restructuring I was well aware of the risks that complainants ran in raising their concerns, and that I ran in voicing or enabling the articulation of dissent.

Adlai Stevenson once defined a free society as one ‘where it is safe to be unpopular’. The right to be different, to articulate human rights claims in the face of economic or free-market imperatives, and the possibility of a remedy if those rights are infringed, is an essential condition for a free and fair society. It is not necessarily a comfortable society, but as Henrik Ibsen said, in An Enemy of the People, ‘A man should never put on his best trousers when he goes out to battle for freedom and truth’.

LECTURE SIX

THE EFFECT OF NEW ZEALAND'S POLICY OF ECONOMIC LIBERALISATION ON EQUAL EMPLOYMENT OPPORTUNITIES FOR WOMEN

Professor Margaret Wilson
I want first to thank Edith Cowan University and the Human Management Division for inviting me to participate in the Women in Leadership Programme. This innovative programme provides an example to all tertiary institutions, not only in Australia but also in New Zealand. Ten years ago I conducted a survey on the Status of Academic Women in New Zealand Universities, and am currently seeking funding to update that research. It appears that gender equality has made little progress in New Zealand over the past ten years, principally because the universities have failed to take institutional responsibility for structural discrimination against women. For example, my own University has yet to appoint a full time equal employment opportunities officer, though the other Universities have taken this step. Also three New Zealand Universities have recently appointed new Vice Chancellors and none were women.

This is my first visit to Perth, although I have been a frequent visitor to Australia over a number of years. I have learnt much from the opportunity to compare our respective industrial relations and legal systems. I have also become a strong supporter of a closer relationship between Australia and New Zealand. There is much to be learnt from each other's experiences. Although our two countries have many differences, with size being the most obvious, we also share similarities, apart from a passion for sports. One of those similarities in the past has been a commitment to a social welfare state. Amongst the fundamental tenets of both social welfare states have been an industrial relations system, that is designed to deliver wage equity across the labour market, and a system of income support for those members of our communities who are without income, or in need.

Although the Australia and New Zealand social welfare systems have always reflected the different economic, social and political environment in each country, they also shared a mutual commitment to an active role for the state in delivering social and economic justice. Unfortunately, both countries also shared a gendered and racial view of societal relationships that discriminated against women and indigenous peoples. Not surprisingly, these views were incorporated into the institutions and structural frameworks that supported the social welfare state. This was evident in the industrial relations system, which incorporated a gender bias of the labour market, and thus prevented women from fully participating within the workforce. The centralised industrial bargaining system administered predominantly by male employers, trade unionists, and state officials incorporated within its regulatory framework of awards and agreements the assumption that the dominant role for men was in the paid workforce, while women's primary role was supporting those men and their children in the unpaid domestic workforce. It is these social assumptions, that have had discriminatory economic consequences for women, and which have been under serious challenge since the early 1970's.

In this lecture I want to explain how New Zealand no longer shares a commitment to an active role for the state in the delivery of economic and social justice. The process of change in the role of the state can be traced through the various campaigns mounted by women over the past 25 years, that challenged the gendered nature of work. In this lecture I want to concentrate on the strategies pursued by women to gain legal recognition of their right, as women, to equal employment opportunities, (EEO) and to use that legal right to change discriminatory managerial practice.

In New Zealand, over the past 100 years, EEO has been a consistent demand from women who have sought equality. EEO has proved a useful concept around which women could organise, because it seemed such a reasonable, fair, and just demand. Precisely what was meant by the concept of EEO has changed over time. These changes in EEO meaning have reflected the larger debate about the meaning attributed to equality. This is not surprising since the whole credibility of EEO as a policy for change, is dependent on the continuing legitimacy of equality as a societal objective.

Women have been exploring the limits and usefulness of this concept since the 19th century, and moved our understanding of equality from the notion that everyone must be the same (formal equality) to an acknowledgement that formal equality avoids the basic question of whether people are in fact equal (substantive equality) which in turn challenged the whole legitimacy of the male experienced based norms on which equality was determined, and sought to define equality in terms of new experiences and values that were inclusive of different experiences,(transformative equality). As the understanding of equality developed, so did the EEO forms and practices.
In the New Zealand context, formal and substantive notions of equality have competed with each other as the basis for policy and legislation. There has never been a serious attempt at transformative equality, and at the moment the policy environment supports the minimalist approach to equality, namely formal equality. It is one of the few areas in New Zealand where policy outcomes are not considered important.

The nature and form of specific EEO initiatives at any particular time have also reflected the ideology of the government or enterprise responsible for implementing an EEO programme. The term EEO is often used generically to describe a wide variety of different initiatives. For example, it may describe a comprehensive programme for institutional change, or it may be used to refer to individual issues, such as child care, equal pay, or parental leave, as being part of a general movement aimed at women achieving equality in employment.

In this lecture, I refer to EEO in the sense of a comprehensive programme for change, which incorporates individual specific initiatives such as equal pay or child care, but which does not see such initiatives alone as being sufficient to effect the changes in employment practice sought through EEO. I use it in this sense, because the lecture will focus on the New Zealand experience surrounding the repeal of the Employment Equity Act and the enactment of the Employment Contracts Act, and establishment of the Equal Employment Opportunities Trust. It is through these institutional arrangements that EEO as an instrument for change can be traced.

The Employment Contracts Act and the Trust illustrate what has been termed a liberal approach to EEO, that is, forms of EEO that are consistent with an open competitive approach to the labour market, where voluntary compliance with equality issues is the preferred approach. In contrast, the Employment Equity Act was an attempt, not wholly successful, to introduce a more radical approach that was designed to produce the specific outcome of more women at all levels of the enterprise. The third approach mentioned in the literature, of using EEO as a mechanism to create new forms of work organisation, has not been tried in New Zealand.

Any narrative of the development of EEO policy over the past 25 years requires an understanding of a number of interrelated policy developments that have evolved in New Zealand during the same period. Central to these developments has been the changing role of the state. The lecture will trace through the changes in EEO policy, the radical shift in the role of the state. For a hundred years it had been accepted by governments and the majority of the people, that the state had an active role in the formation and implementation of economic and social policy. From 1984, this assumption has been successfully challenged by both a Labour and a National government, with the support of significant sections of the community. The state is now seen as having a minimal, but not a neutral role. Its primary role is now assumed to be to provide a framework within which the principles of the market are provided the optimal opportunity to function.

This lecture then will give an account of the effect on EEO policy of a policy regime in which the state's role was dominant, and one in which the rhetoric proclaims a minimalist role for the state. One of the primary lessons to be learnt from both experiences has been that, whether women work under a state or market centred system, they have been policy takers and not policy makers. This does not mean that women have not influenced policy. Women have influenced the policy through their roles of bureaucrats, politicians, unionists and employers. On occasions this influence has been used for opposing policies. For example, the Employment Contracts Act had the vocal support of women in the National government and Employer organisations. What these women have been unable to do so far is influence the market to deliver effective EEO outcomes.

On the evidence available to date, if there are only two options available to women - the state or the market - as providing the institutional framework and mechanism for gender equality, the state would appear to be the best option. This conclusion does not automatically assume however that women in the New Zealand context, should advocate a return to the previous form of industrial relations system. It is important not to forget that that system was also discriminatory to women. Even if, then, such an option was practical, and it is not, it would not be desirable. Women must endeavour to develop a policy that avoids the pitfalls of both systems. Such a policy needs to identify the conditions that provide the optimal environment for the successful implementation of EEO.
There is a need therefore to analyse the experience under both regimes - the state and the market - in order to assess whether it is possible to construct a strategy that will further the advance of the women's equality agenda. Such a strategy would involve not only a new policy approach, but also the means to implement it. For example, over the past 25 years, an important part of the EEO strategy in New Zealand has been increasing the number of women in Parliament and in decision making positions within the bureaucracy.

Before I embark on the narrative of the development of EEO policy in New Zealand, I must note that my analysis of events is based both on research from available sources, and on my observations as a participant in the development and writing of industrial relations policy and gender equality policy between the period 1984 - 1990. My perspective is that of a socialist feminist who has been confronted with the opportunity and the reality of translating ideas and principles into policy and legislation at a time of transformative change to New Zealand's economic and social institutions and practices.

Definitions - What Do The Words Mean Today?

It is essential to this analysis of EEO, to clarify the meaning of the terms and concepts that are the subject of this lecture. It is important not only to assist communication between us, but because the changes in policy in New Zealand can be plotted through the changes in meaning attributed to basic concepts. It is argued in this lecture that central to the repositioning of the state in relation to the question of gender equality is the substitution of the concept of equality with that of equity as the primary social justice objective of the state.

This change may seem theoretical and of little practical importance. I would argue however that this change to the ideological foundation of social policy has had direct consequences for the meaning attributed to the concept of equal employment opportunities. Under a policy that aimed at equality as its outcome, it was possible to develop EEO programmes that required a change in managerial practice. In contrast, a policy that relied on a notion of equity, has made that change in practice optional. The changes to the EEO regulatory framework and to EEO practice have therefore become part of a general shift in the ideological premises on which economic and social policy is now based in New Zealand.

To understand the changes in EEO policy and practice then, they must be examined in the context of other related policies, in particular the industrial relations policy. The reconstruction of an industrial relations system to eliminate an active role for the state has had a direct and detrimental effect on implementing EEO programmes, especially in the private sector. The radical nature of this policy change can also be demonstrated by the shift in terminology from industrial relations to employment relations to describe the nature of the relationship.

This shift in terminology reflects the substitution of collective bargaining with that of the individual contract as being the expected outcome of negotiations over wages and conditions between employers and employees. The individualisation of industrial relations has had the consequential effects of marginalising trade unions as influential institutions in the development of policy generally. This redefinition of the role of trade unions has had the further consequence of leaving many vulnerable employees without representation at a time when there is radical renegotiation of employment contracts.

I argue in this lecture that the removal of the state from an active role in policy areas where the intended outcome is economic and social equality, has placed at risk many of the advances women had achieved during the previous 25 years. Amongst those advances, for example, had been the requirement for employers, employing over 50 employees, to introduce an EEO programme.

In the course of this lecture, I shall describe the process whereby the state has steadily withdrawn from policy development in areas that affected the employment relationship generally and, in particular, affected the interests of women, who sought to advance the women's equality agenda. I shall also endeavour, in the course of this discussion,
to demonstrate the dependence of the concept of equal employment opportunities on the traditional industrial relations framework that was founded on an acceptance of tripartism as the preferred method of industrial relations decision making.

Equality and Women

The concept of equality has always been a central element of the women's agenda. Since the 1890s, women in New Zealand have sought to legitimise their claims on legislators and decision makers for change in their status and role by an appeal to equality. Since their appeals mainly sought a change in the law to establish a right, or confer the allocation of a state benefit, it is not surprising that their appeal would rely on the concept of equality. The common law system, which was incorporated as part of the constitutional arrangement of both Australia and New Zealand, was founded on the tenet that 'all are equal before the law'. As is well known, this is a problematic concept precisely because of the confusion between formal and substantive equality.

The state, or more accurately governments, have however, through their reliance on the legal system to legitimise their actions, accepted the need to protect and promote equality, whatever it may have meant to specific governments. Whatever the precise meaning of the term, the language of equality is found throughout the writings of the early feminists who sought political, social and economic equality for all women. Their specific campaigns centred on the right to vote, the right to participate in education at all levels, and the right to equal pay, decent working conditions and all forms of paid employment.10

In the 1890s, a few women sought recognition for the experience of women, as women, being treated equally. They sought what is now termed formal equality, that is, women receiving the same rights as men. Since the experience of men had been institutionalised through the law, custom, and practice as being the correct or authoritative experience, it is not surprising that women sought to claim the power and authority that was associated with it. Also, the lack of formal legal recognition of the rights of women was seen as a main cause of their inequality. Much of the focus of women's early campaigns then was directed to creating a level playing field on which men and women would be treated as the same, without any distinction being made for their different sex.

A Shift From Formal Equality to Substantive Equality

Once women started to gain equal legal rights, they soon realised that the law alone was insufficient to prevent the discrimination that they experienced. They therefore changed their strategy in the 1970s when there was a renewal of a women's equality movement that accompanied the second wave of feminism. Women focused their campaigns on gaining acknowledgement that sexual difference must be accepted as of equal value, and that that recognition be incorporated within legislation. Women campaigned not only for legal rights however, but also for a qualitative change in their lives. Women therefore sought not only formal equality but substantive equality.

This new approach was evident in the submissions women gave to the 1974 Parliamentary Select Committee Inquiry into the Role of Women in New Zealand Society. The inquiry provided women with the opportunity to formally express their understanding of equality, and how that understanding could be incorporated in legislation and societal practice so women could achieve substantive equality. The conclusion of the Report acknowledged that discrimination was inherent in the social custom and practice of the society and that to redress that discrimination a comprehensive approach was required. The Report concluded:15

*It is apparent that women in New Zealand enjoy equality with men to a greater extent than is the case in many other countries. Specific laws and regulations are not the primary source of discrimination....*
The inequalities that remain characteristic of our society arise mainly from traditional acceptance of the assumption that men and women have essentially different roles, and the reflection of this view on the division of rights and responsibilities in employment, public life, education, and the home....

The committee believes that it is necessary to adopt a comprehensive approach to the establishment of equal rights for women....

It is partly for these ends that we have recommended the establishment of a body which will have continuing responsibility for giving effect to the broad principle of social justice and, specifically, to measures to promote non-discrimination on the basis of sex....

The role of the Government will obviously be critical to the elimination of discrimination against women in New Zealand and establishment of equal rights, both in the sense of setting up the machinery for implementation and also for providing examples for the rest of the community to follow.

I have quoted from the Report at some length because it was the first time a government had taken women seriously enough to convene an inquiry into their status and role in society. In a sense, it marked the beginning of political awareness that the second wave of feminism was bringing with it a serious reassessment of the status of women. The Report itself acknowledged the complexity of the nature of discrimination against women, and of the need for both legal and social change. Most importantly, in the context of this lecture, there was also recognition of the need for an active role on the part of the government. It should be noted that at that time, however, this approach was consistent with the general policy environment that supported an active role for the state in economic and social matters. 12

The women's equality agenda that was outlined in the Select Committee Report on Women's Rights was the basis for a period of legislative activism on matters relating to women. 13 Legislation was enacted to provide women with rights and remedies on matters relating to domestic violence, rape, matrimonial property, dissolution of marriage, equal pay and equal employment opportunities, human rights, abortion and contraception. It was only the Contraception Abortion and Sterilisation Act that could be described as not being enacted in the interests of furthering the women's equality agenda.

The two pieces of legislation that were intended to advance EEO policy were the Human Rights Commission Act 1977, (now called the Human Rights Act) and the Employment Equity Act 1990, that had the distinction of being enacted and repealed in the same year. These two Acts may be contrasted as examples of attempts to enact formal and substantive equality for women. Although the lobbying that led to the enactment of the Human Rights Act was intended to produce an Act of Parliament that addressed structural discrimination against women, the election of the National government at the end of 1975 radically changed the policy environment. While the Labour government had been prepared to at least consider legislating for substantive equality for women, the National government supported the traditional concept of formal legal equality.

The provisions of the Human Rights Act reflected this approach. They created a right not to be discriminated against on the grounds of sex, marital status, religious or ethical belief in specified situations, such as employment public places, and education. The Act also established the Human Rights Commission, which was to oversee the administration of the Act. While the Commission was given the power to undertake education programmes, and to comment on New Zealand's compliance with international obligations, it could not initiate or require positive or affirmative action measures to redress continuing structural discrimination. The Act, then, did not require any systematic programme to redress structural discrimination against women, which is a precondition of instituting substantive equality for women. 14
Employment Equity Act

In contrast, the Employment Equity Act 1990 was an attempt to provide a statutory framework within which women could gain substantive equality in the paid workforce. This Act provided for the establishment of an Employment Equity Commission, that would oversee the implementation of the other two parts of the Act, which dealt with pay equity and equal employment opportunities programmes. The pay equity provisions of the Act provided for a process whereby women’s work would be revalued, and the results of that revaluation would be implemented through the normal processes of collective bargaining under the then Labour Relations Act. The success of the pay equity provisions were dependent on the continuance of a collective bargaining system. The repeal of the Labour Relations Act and the subsequent enactment of the Employment Contracts Act 1991 would have made it impossible for women’s work to have been revalued, even if the Employment Equity Act had not been repealed.

The other substantive part of the Act required employers employing 50 or more employees to develop an EEO programme in accordance with the provisions of the Act. The definition of an equal employment opportunities programme under the Act was

“a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality of opportunity in respect of the employment of any designated group of persons (section 2)

It can be seen from this definition that an attempt was being made to redress past inequitable practices with managerial practices that did not perpetuate past discrimination. The overall purpose of this part of the Act was to provide a permissive, but directive framework for change. It was permissive in that the employers themselves analysed their own managerial practices and set their own targets for change, and directive in that employers had to undergo this diagnostic and reformative process that must result in a change in managerial practices.

Although the Employment Equity Commission was only in existence for a little over two months, it did produce a Report that provided an assessment of the state of EEO programmes in the public and private sectors. This Report provides a benchmark for an assessment of whether such programmes have increased and developed since the repeal of the Employment Equity Act. The Report concluded, after an examination of the data available from private sector enterprises, that:

The State of the Nation project examined changes in the private sector which have arisen from EEO initiatives taken in the voluntary climate which existed prior to the Employment Equity Act. The findings indicate that very little EEO activity has taken place and that which has can be attributed to the few committed and innovative companies which have made significant progress.

....Most activity has focused on establishing an EEO policy statement. A large number of statements have focused on eliminating individual discrimination and treating everyone the same in the workplace. This appears to be the result of misunderstandings and limited awareness of EEO as a management of change process for addressing systemic and structural discrimination.

....With the low awareness of EEO and limited EEO activity within the sector it is necessary to begin some education and training for managers, and develop EEO resources to assist stage one of EEO development.

The reference to 'stage one' is a reference to the programme of development over three years of various measures that were all designed to assist employers to introduce EEO in the least disruptive way. With the repeal of the Commission, no such educative programme was possible.
The Commission also examined the EEO practices and policies in the public sector. The Report noted that in 1984 government employing authorities formally acknowledged their responsibilities for equal employment opportunities. In 1986 a Director was appointed to the EEO unit which was established the next year in the State Services Commission. These moves were followed in 1988 with the enactment of the State Sector Act which, apart from restructuring the public sector, included provisions requiring state sector employers to be good employers which included the provision of EEO programmes within their Ministries and Departments. The Report did note that the restructuring process had appeared to adversely affect the groups covered by the programmes in some departments. The extent of the restructuring may be seen from the fact that the number of people employed in the core public service shrank from around 85,423 in 1985 to around 47,000 in 1990.

The overall conclusion of the Commission in relation to the public sector was that:

*Compared to the other sectors, the public service is reasonably sophisticated in the practice of EEO. However, there is still a range of EEO ability and activity between departments.*

The Commission also supported the retention of the EEO unit, that was situated within the State Services Commission, to assist with the development of the public sector EEO programmes. Although the repeal of the Employment Equity Act means the Commission no longer exists to assist and monitor the progress towards equal employment opportunities in the private or the state sector, the EEO unit has survived the restructuring process and is currently undertaking a survey of the progress made on the implementation of EEO programmes.

**Different Governments’ Approaches To EEO**

It is important to note at this stage that while between 1984 - 1990, the Labour government was introducing a policy of economic liberalisation, in which market principles were to prevail, it also enacted the Employment Equity Act. This apparent policy contradiction can be explained by two factors. The first was the influence of feminist women within the Labour Party and Labour Caucus. Women had been organising within the Labour Party since the late 1960s, developing the women’s equality policy agenda, as well as the strategy to implement it. This strategy had included the election of women to positions of political influence to ensure the progress of legislative change. While the progress was not always straightforward or smooth, it was true that without a woman Minister of Labour, Helen Clark, at the crucial time, the Employment Equity Act would not have been enacted.

The second reason for the enactment of the Employment Equity Act was that women’s issues were not seen as being of sufficient importance to prevent the work on EEO policy development. This work was principally undertaken by the Ministry of Women’s Affairs. It was not until there was a real possibility that the Act may be enacted, that serious opposition was mounted by the officials and the politicians, with the use of the media, who advocated the market approach to economic and social issues. By that time it was too late to stop the Employment Equity Act. There had been a Cabinet reshuffle that altered the balance of power in the Cabinet in support of a curbing of the dominance of the market driven policies. If nothing else, the whole employment equity campaign has been useful in the development of women’s political experience and skills.

It was the change of government in 1990 that prevented the full development of either of the policies of pay equity or equal employment opportunities. With the election of the National government, there was a total change in the policy approach to issues involving equality. The tentative attempts to implement measures to effect substantive equality for women through the removal of economic and social barriers, were replaced by the traditional approach of formal equality through the provision of a permissive legal framework, that permitted but did not require change.

After the National government repealed the Employment Equity Act, it established a Committee to report on the barriers inhibiting women from fully participating in the workforce. This committee recommended the enactment...
of legislation that required employers to develop equal employment opportunities programmes. It did not see the need for similar legislation in the case of pay equity however, which it considered would be addressed by the new Employment Contracts Act.\(^{24}\) Nor did it accept the necessary relationship between pay equity and EEO programmes for women to achieve gender equality in the workplace. The government's response to its committee's recommendation was not positive. The reasons it gave for not intervening in this matter, summarised its general ideological approach to employment related matters. It stated that:\(^{25}\)

> The Government considers that progress towards an equal employment opportunities environment will be most effectively achieved where employers are closely involved in the voluntary promotion of progressive EEO management practices.

> As a first step, the Government supports a non legislative approach to EEO as it is less prescriptive and more reflective of the needs of employers. Therefore the Government is to pursue the establishment of a joint private/public sector Equal Employment Opportunities Trust and financial support for promotion of and research into EEO programmes in the private sector. ... The Government will in time review this voluntarist approach to equal employment opportunities to determine whether it has successfully promoted EEO attitudes and behaviours amongst employers. Should this shared approach fail to deliver the desired EEO outcomes, the need for a legislative approach to EEO may then need to be reconsidered by the Government.

**The Current Policy - Voluntary Compliance**

The National government did establish the Equal Employment Opportunities Trust in 1992. The purpose of the Trust is defined as being:

> to promote to New Zealand employers the implementation of EEO principles and EEO best practice in the workplace as a means of improving their effectiveness, efficiency and competitiveness through the successful management of diversity.

The Trust is essentially an educative body, without many resources to undertake the task. Whereas the Labour government had allocated $3 million to the Employment Equity Commission, the Trust was allocated $100,000 by the National government, and given the task to raise its own funding from donations from employers. Within its first year the Trust attracted 113 members and donations and private funding of over $150,000. The government also made available a sum of $300,000 on competitive bid to promote and conduct research into equal employment opportunities.

It is too early to assess the success of the Trust's work. The trustees and staff obviously have a high level of commitment to fulfilling the objectives of the Trust. The work of the Trust, however, is largely dependent on people who are prepared to voluntarily give of their time and energy. One of the lessons of the women's movement has been that it is difficult to maintain this commitment over a period of time. Adequate resources are required if EEO promotion is not to become a part time optional activity. The National government's policy statement did state however that it would reassess its policy of voluntary compliance if the present arrangement is unsuccessful. The problem for those who seek compulsory compliance in the New Zealand context, is that there has been 150 years of evidence that voluntary compliance has achieved little change for women.\(^{26}\) It seems unlikely on the available evidence that this current example of voluntary compliance will fare any better than those in the past.

The real difficulty with persuading the National government to change its policy is that it is a policy founded on an ideology that is incompatible with the concept of substantive equality. This is why the government relies on the notion of equity, which is a more flexible vaguer concept than that of equality. Precisely what equity means in this context is difficult to define. Ideas of fairness and justice are central to it, but the difficult issue of whose notion of
fairness or justice is not directly addressed. In reality, it is the individual employer's idea of fairness and justice that prevails under the current policy environment of voluntary compliance. The contradictions between the concept of substantive equality and the National government's current EEO policy become obvious when the ideological foundations of the policy are examined.

The National government's EEO policy is based on two premises. The first is that employers should have the freedom to choose how they manage their enterprises. The second is that the advantages of an equal employment opportunities policy, principally increased efficiency, will result in employers becoming equitable as well as efficient employers. In other words, self interest was assumed to lead employers to exercise their choice to employ women at all levels of their enterprises. This rationale demonstrates a naive understanding of the workings of prejudice, but it is consistent with the application of market principles to employment practices.

The Effect of Economic Liberalisation on Industrial Relations Policy

As I indicated earlier in this lecture, there is a close interrelationship between EEO and the industrial relations framework. This interrelationship became apparent in the enactment of the Employment Equity Act, which relied on a centralised system of wage bargaining to implement pay equity. Once this Act was repealed, the infrastructural support that was essential for the delivery of pay equity was removed. As far as the delivery of EEO programmes were concerned, the interrelationship was not so direct.

It was possible to introduce such programmes with or without a centralised statutory industrial relations framework. What was required for the successful implementation of the EEO provisions however, was a statutory requirement that the employers developed such programmes and a procedure for the enforcement of the policy. Perhaps most importantly however, what was required for the promotion of EEO was a policy environment that accepted it was a legitimate expectation of the state to require EEO within all public and private enterprises.

The repeal of the Labour Relations Act 1987, and the enactment of the Employment Contracts Act in 1991, replaced a supportive EEO policy environment with a negative one. The barriers erected to EEO by the Employment Contracts Act are not immediately obvious because the Act does not expressly mention EEO. In fact the whole structure of the Act is designed to provided a minimalist framework within which the employment relationship is to be conducted. The founding principles of the Act are those of the market, in particular the freedom of the parties to negotiate directly with each other, without any third party intervention, including representation by trade unions. The overriding purpose of the Act was "to promote an efficient labour market".27 It is interesting to note that there is no reference in the Act to trade unions, though the parties have the right to appoint a bargaining agent.28

The marginalisation of trade unions from the bargaining process has not only resulted in a decline in union membership,29 and a loss of conditions of employment through concessional bargaining,30 but in the context of EEO, it removed an important advocate for women's equality generally, and EEO programmes in particular. It is arguable that the prominence of EEO on the industrial relations agenda was related to the increasing number of women obtaining positions of decision making in the trade union movement.31

These women, together with women working within the Labour Party, had campaigned for pay equity and EEO since the 1960s. One important outcome of these campaigns was the Employment Equity Act. The combination of its repeal and the enactment of the Employment Contracts Act (ECA) has been described as leaving EEO in a state of disarray.32 This would probably not be the perspective of the Equal Employment Opportunities Trust, but it is fair to conclude that the general economic policy environment is not supportive of EEO initiatives.

Apart from the marginalisation of the trade union movement, as a principal advocate and supporter of EEO, the Employment Contracts Act has had two other major impacts on industrial relations practice that has detrimentally affected EEO. They have been first, the replacement of the collective multi - employer agreement with the individual
employment contract; and secondly, the institutionalisation of the ideology of the market, specifically the concepts of individualism and voluntarism, as the basis for the employment relationship. It is not an exaggeration to describe the ECA as marking a radical fracture with past industrial relations law and practice. The then Minister of Labour, Mr Bill Birch, who was the ideological architect of the legislation, stated that the ECA was intended "to establish an entirely new framework for industrial relations in New Zealand." In this intention, he has succeeded.

The radicalism of the ECA can be best understood if it is contrasted with the previous industrial relations framework. That framework was based on the premise that tripartism was the foundation on which industrial decision making was to be conducted. This notion of tripartism legitimised the role of trade unions and the state as part of the decision making process, whether this involved the enactment of legislation, or the settlement of a specific collective agreement. It also marginalised the individual employee from the process of negotiating wages and conditions of employment.

The rationale for this peripheral role for the individual was that the bargaining strengths of the employer and the individual employee were so unequal, that it had to be balanced through a representative bargaining process, if a fair outcome was to be achieved for the employee. The criticism of this representative system was that it interfered with the freedom of the individual employer and employee to directly negotiate an employment contract that met their specific needs. Apart from being a constraint on individual freedom, tripartism was also attacked as contributing to an inefficient labour market. It was argued that labour costs were artificially inflated or deflated through the state intervening in the process with across the board increases in wages. Tripartism then was criticised by the advocates of change on the grounds of being both inefficient and inequitable.

The leading advocates of change included Treasury officials, and the executives of large enterprises. The executives formed themselves into an organisation called the New Zealand Business Roundtable. The primary purpose of this organisation was to free the New Zealand economy from the shackles of state controlled regulatory frameworks, that were seen, with some justification, to impede New Zealand’s economic development. The cure for the ills of the economy was seen to lie in a free, open and competitive market environment.

The campaign to introduce this programme of economic liberalisation began in the early 1980s and was apparent in statements from the Employers Federation at that time. It was not until the election of the Labour government in 1984 however, that a concerted attempt was made to revolutionise New Zealand’s economic and social life. It was not originally the intention of the advocates of economic liberalisation to reform the political system, except in so far as was necessary to achieve their objective to minimalise the state’s role. It is perhaps therefore an irony that as a reaction to economic liberalisation, the people eventually voted to radically change the electoral system through providing a more competitive market for political parties.

Central to the whole policy of economic liberalisation was the reform of the labour market. According to the theory of reform, the labour market should have been reformed first. The political reality of the time prevented this happening. Both the trade union movement and the Labour Party formed a coalition to try and negotiate changes through the industrial relations system. The result of these negotiations was the Labour Relations Act 1987. This Act preserved the notion of tripartism, but encouraged the trend towards enterprise and industry bargaining. It also preserved the role of trade unions as the primary representatives of the employees in industrial bargaining.

The enactment of the ECA completely changed the statutory framework. Apart from removing the concept of tripartism, and with it trade unions and the state as active participants in industrial relations, the new policy was aimed at abolishing centralised multi-employer bargaining, and, in particular, collective agreements, and replacing them with individual employment contracts. The ECA has been effective in partially achieving this objective. In October 1992, there were 45% fewer employees covered by collective agreements than in the 1989-1990 bargaining round. These figures were quoted in the ILO Report examining the ECA to ascertain if it conformed with the International Labour Organisation Conventions Nos 87 and 98. Although other factors such as high unemployment
and industry restructuring have had an affect on the level of collective bargaining coverage, the primary cause of this change in the nature of bargaining has been the ECA.

**Effect of ECA on Women in Paid Employment**

Before the ECA was enacted, it was predicted that many women in the workforce, especially those in low paid, low skilled occupations would become vulnerable to the effects of the ECA. This fear was based on the ghettoisation of women in occupations that have been traditionally low paid, and which provide little job security. It was also based on the experience of other countries where flexibility had been introduced into the labour market through a change in the regulatory framework. In 1990 the National Advisory Council on the Employment of Women produced a report describing the position of women in the workforce, and the measures that were necessary if the labour market was to become a supportive environment for EEO measures. The ECA did not appear to create an environment that would improve the position of women.

The government at the time had argued that women would be the principal beneficiaries of a more flexible labour market. In one sense they were correct. Fewer women lost their jobs in the restructuring but this was because they were paid lower wages. The price of a job for many women, was even greater insecurity through the casualisation of work, and the removal of conditions relating to leave and overtime payments.

The combined effects of the economic restructuring and the ECA have also been an increase in part time work in some sectors, and the casualisation of work. Women have always been over represented in the part time workforce, but this trend seems to have increased and not because women want part time work. A recent survey into part time work in New Zealand found that 28% of the women surveyed wanted more hours of work. The demand for more hours has risen since the enactment of the ECA. On the research to date then, the overall impact of the ECA on women in paid employment has been generally detrimental to their wages and conditions. For example, in 1993, women’s average weekly earnings were only 74% those of men.

While then the whole programme of economic restructuring has altered the conditions of employment for all employees, women appear to have fared worse. Although it may be still too early to draw any firm conclusion about the effects of the ECA on women, the evidence so far would support the assumption that the Act is not good for most women.

A recent review of the ECA observed that:

*Overall, female employees have fared worse than male employees, experiencing on average lower wage increases and being more likely to be covered by contracts that have penalty rates removed.*

It is in the context of this environment, that it is argued that EEO is unlikely to be a vehicle to advance the equality of women. There is no incentive for employers to introduce EEO programmes. There is very limited opportunity for women to negotiate the introduction of EEO under their individual or collective contracts of employment. It is not a conducive environment in which to argue for innovation and change, when it is a struggle to maintain existing conditions. Especially when the direct benefits of EEO are not obvious to most employers.

**Conclusion**

The basic argument of this paper has been that over the past twenty years women’s issues have been placed firmly on the political policy agenda, including the implementation of EEO programmes within public and private sector enterprises. This policy was best expressed in the Employment Equity Act 1990, which provided for a procedure that introduced pay equity into the normal processes of multi-employer collective bargaining, and also required employers to develop a programme of equal employment opportunities within enterprises employing more than 50 employees.
The repeal of this Act, together with the repeal of the Labour Relations Act 1987, and the enactment of the Employment Contracts Act in 1991, has stopped progress being made on implementing pay equity or equal employment opportunities for women. While the present legislation and current policy environment in New Zealand prevail it is unlikely any progress will be made on EEO policy in the foreseeable future.

In order to conclude on an optimistic note, I would observe that there is a policy vacuum in New Zealand at the moment. This is partially because the full implications of the changes are still being experienced and absorbed. It is also because New Zealand is undergoing a period of considerable political instability. The introduction of MMP has created a political paralysis amongst the present politicians, as the realignment of political loyalties and the formation of new political parties is taking place.

This environment is conducive however for the development of new policies. In the past, for example, in the 1970s during the period of the conservative Muldoon government, women developed the policies and the constituencies to support those policies, which were subsequently partially implemented. Whether another reform movement emerges in New Zealand has yet to be seen. If it does, then there is much to be learnt from the experiences of the recent past.


6. This change in the state’s role is seen in the two briefing papers of the New Zealand Treasury, which spearheaded the transformation. The papers are *Economic Management*, 1984; and *Government Management*, 1987.

7. Although there is little empirical research available, the best statistical evidence available would support this conclusion. See Harbridge, Honeybone, and Kiely, (1994), *Employment Contracts: Bargaining Trends & Employment Law Update*: 1993/94, Industrial Relations Centre, Victoria University of Wellington. Also case study evidence was presented to the ILO Direct Contact Mission that was recently visiting New Zealand to examine whether the Employment Contracts Act contravenes provisions in the ILO Convention 87, dealing with Freedom of Association, and Convention 98 which deals with Collective Bargaining, which would indicate that industries where there are a large number of women have suffered a loss of conditions.

9. The Employment Equity Act 1990 contained this requirement. The repeal of this Act was one of the first legislative acts of the incoming National government in December 1990.


14. A recent judgement of the High Court has confirmed that the Equal Opportunities Tribunal can not order an employer to implement an anti-sexual harassment policy and programme at the branch where a woman was found to be have been sexually harassed. See *New Zealand Van Lines Ltd v. The Proceedings Commissioner*, (1994) High Court, No. AP 83/93.


17. *ibid*, p. 24, 34.


19. It is no longer accurate to refer to the public service. The state sector more accurately describes the nature and function of those employed by the state to provide the government with policy advice. There has been a continuing policy to corporatise or privatise all service delivery functions formally undertaken by the state.


22. *Ibid*, for an account of the crucial role of the Ministry of Women's Affairs. Without the Ministry, it would have been impossible for the employment equity policy to have been enacted.


26. On 19 September 1994, the Labour Opposition introduced into Parliament a Bill to enact the EEO provisions of the repealed Employment Equity Act. Without support of the government, the Bill is unlikely to succeed.


29. See Harbridge and Hince, (1994), A Sourcebook of New Zealand Trade Unions and Employee Organisations, Industrial Relations Centre, Victoria University of Wellington, p 10 which summarises the drop in numbers of unions from 259 to 67 between 1985 and 1993; membership in the same period dropped from 683,006 to 409, 112.

30. See Harbridge, Honeybone and Keily, supra pp 10 - 24 for an analysis of a trend towards the loss of penal and overtime rates, and a cutback on leave arrangements.

31. See, Sarr, Patricia, (1992), Out of the Chorus: The Progress of Women in New Zealand Unions, Wellington, NZ Council of Trade Unions, which traces the rise of women within the trade unions at the same time that the trade unions were being marginalised as a key player in both bargaining and policy formation.

32. supra, Walsh & Dickson, 1994, p 35.

33. Hon W.F. Birch (Minister of Labour who introduced the ECA) - Speech Notes on the first reading of the ECA on 19 December 1991.

34. See Wilson, Margaret, (1984) “Workers, the State and Social Policy: Industrial Legislation in New Zealand” a chapter in Wilkes & Shirley, In the Public Interest: Health, Work, and Housing in New Zealand Auckland, Benton Ross, pp 168 - 180; Brosnan, Smith & Walsh, (1990), The Dynamics of New Zealand Industrial Relations, Auckland, John Wiley, for a general account of the changes that have taken place to New Zealand industrial relations.

35. The best account of the rationale behind the market approach to industrial relations is contained in Brook, Penelope, (1990), Freedom of Work: The Case for Reforming Labour Law in New Zealand. Auckland, Oxford University Press.


38. In a referendum in 1993, the majority of New Zealand voters voted for the abolition of the existing first past the post electoral system and the introduction of an electoral system based on mixed member proportional representation. This system is thought to end single party governments, and to introduce coalition governments.


LECTURE SEVEN

TANGLED UP

IN LOVE

Jette Sandahl
The Women's Museum in Denmark

Over the 10 years that have passed now since the conception of the idea of a Women's Museum in Denmark and since its first tentative physical signs, the museum has proved its vitality and been recognized as a legitimate, if still adoptive child by the museum community.

We Were From the Start an Amorphous Group.

We had the traditions of a new women's movement with radical-feminist roots that enabled us to span some of the traditional barriers of education, age, class, politics among women, and with socialist-feminist roots that would not let us forget or neglect these differences, and we had a disgracefully high rate of unemployment among all groups of women.

So the Women's Museum was formed with the dual purpose of building a museum for Danish women's history and of creating jobs for women.

Collections were to focus on women's history, and the work within the museum was all to be done by women. The public part, the exhibitions, shows, lectures was open to men, women and children, so that everybody was invited to look at a women's interpretation of women's history.

Separatist movements and organizations are often frightening for the dominant powers. They are threatening in announcing a psychological or inner independence. The object is becoming subject.

Some say that ruling groups never voluntarily let go of privilege. Others say that men are truly gender blind and therefore do not understand. And because we are always also tangled up in love, the relationship of gender is probably the most opaque, the most difficult and painful to become aware of or deal with as one of oppression - for both genders.

Women's houses were already there. But the museum was different. It aimed towards an extremely tangible, visible existence, an existence as monumental as they come, as solid, costly and difficult to get rid of, as respectable, self-confident and self-important as a museum.

It was predicted that it would be here today and gone tomorrow.

It was labelled limited in scope.

It was said the name is wrong. It sounded like an act of aggression. The concept was said to be already outdated; it was said that issues of gender had been relevant at some - indefinite - point, but had already been solved, and equal opportunities now reigned.

Only a few extremists have flung the epithet of man-haters. Most of the hostility took the shape of ridicule, which has proved non-deadly.

Retrospectively, in as much as ambivalence and ridicule became a basic fact of life for the museum, disarmament and humour did become one of the main strategies employed by us.

Since the museum does not believe either sex to be innately or essentially good or bad, establishing and maintaining respectful, trusting and trustworthy, non-paranoid relationships with 'mixed' museums, business partners, authorities around us has been part of our policy and daily practice.

For a separatist institution it is extremely important not to be caught up in confusing separate with sectarian. Separatism is not viewed by the museum as an ideal or utopian state.

Seeing a historical need for women to research and interpret our histories and explore our self-definitions within gender-separate contexts does not imply that we view men as villains or as enemies. Rather I suppose, we tend to view gender as historical bearers of abstract entities like 'progress', 'development', 'capital' - or whatever one names these structures or abstract monsters that govern our lives. The masks or values of gender are bred within us at the earliest of times. They are never pure types. Each of us represents a specific individual mix of what has come to be
called femininity or masculinity. The identity of an individual is a specific interpretation of gender. For both genders it is hard work on the part of the individual to escape or modulate the specific pattern of expectation or expression of gender laid down in her or him in primary socialisation.

The older and the more intertwined these patterns are, the more they tend to be naturalized and the more they tend to be internalized, the more important is the possibility of separate interludes or spaces for re-interpretations and de-naturalizations. These re-interpretations and balances are what we can work within now.

Until gender no longer correlates with power, and until we have gotten rid of the way hierarchies of genders inform our social, economic and emotional patterns, we have no way of knowing what might be differences between the two sexes.

**Objects as Subjects.**

The initial and still a main and important source of funding for the women's museum became subsidies for projects for the unemployed. The museum initiative provided a combination of social and cultural work for women of all ages and educational groups. It offered educational employment within a specially conducive, somewhat sheltered environment with a wide variety of tasks and opportunities for training.

The employment of large numbers of women with no previous background in museums -hardly even as users- gave the women's museum a non-elitist base and profile that was truely unique, and came to mark also the collections and exhibitions. Within the museum's gates is represented the diversity and multi-culturalism of women that we set out to document.

Most of the women on short-term contracts are unskilled, but it seems that the general socialisation of girls and women gives an immediate background for work in a historical museum.

Preserving objects and relationships and dealing patiently with people seem basic skills for women. Additional training in working with computers, databases, mechanical and audiovisual equipment is given by the project directors or by one's predecessors. Work organization is easy and informal.

A collective directorate, made up of the curators and project directors who are employed on a permanent basis, has the daily running of the museum, while the supreme authority lies with the general assembly of the women's museum association. These are structures much less hierarchical than the museum legislation permits.

Working in an all-women's experimental environment is for most short-term personnel a very novel experience. It seems to often bridge the gap in self-confidence characteristic of girls and women.

**Methods**

We never believed in objectivity in science.

Or rather, we did not believe an objectivity defined as the opposite of the subjective. We did not believe that things were more truthful, more objective the less they seemed related to one's subjective reality.

We try instead to work within a method that makes conscious use of subjectivity as a unity of emotions and intellect, of thinking and feeling. We work with a rather therapeutic concept of becoming aware of and containing the emotions rather than splitting them off and doing away with them. We aim for a method of knowing emotions and subjectivity and putting them to work -the wishful thinking, the ambivalence, the identifications, anger, sympathy, compassion.

Ideally, transparency takes the place of blind spots, and gives way to both a fuller understanding and fuller intellectual clarity.

**The Personal as Political.**

It was new and unique to define the documentation of women's culture as a museum's field of responsibility. The subject matter was new, but in form and methods we entered what might have already been recognized as a
tradition. More than other cultural institutions such as schools and libraries or theaters, museums are said to be initiated by popular movements. Many museums have started as movements to protest the lack of representation of a specific group, area, craft, vocation within the existing museums. The museum is meant as an affirmation of the identity of this group, as a defence against cultural extinction, as a possibility for interpreting and reinterpreting the qualities that were.

It is intended as an active agent within the specific community, and will understand its documentation as a substantiation of claims and choices in the present and thereby becoming an agency that may facilitate a reorientation towards the future.

Certain trends tend to be common among such new museums: wider definition of what constitute relevant museum objects, a focus on the contextual function of the objects and their interactions with the human community, and an emphasis on the educational communicative aspects of the museum's responsibilities.

Proper Objects Among Other Things

This profile was certainly true of what we did.

The women's museum is a response to the profound changes to women's traditional work, authority and everyday life. Apart from carrying on the species, women's labour has often produced perishable goods, transient objects eaten up by people and by time, so we were prepared for a scarcity of material objects or artefacts.

Basic areas of women's domain are immaterial in nature as is nurturance and as is the handing down of speech and language, of traditions and morals. Neither is women's culture a written one. From the beginning we therefore included the taped oral history as a principal method of documentation and communication. We give oral history or the spoken word the status of objects as we do the written. Likewise photos and slides are used not just to supplement three-dimensional objects, but may be considered independent objects in their own right.

The previously most invisible and most anonymous areas were our programmatic platform for active collecting policies. We wanted everyday objects. Worn, used, mended. The museum established a reputation of telling the unwritten stories, voicing the unspoken and of questioning what had been put to silence. Women took to these themes. Again, identification was an important factor.

The museum is entrusted with objects and stories that women do not consider proper for other museums. They are objects that are not part of the 'official' identity, either of the woman herself as she likes to present herself to society and the public world, or of society as she knows its 'official' national identity. They are personal stories of beating, humiliations and back street abortions. They are the shameful or private objects. The humble things of poverty. The intimate ones of the bodies that are much too lively and bloody and vulgar for our society. It is also the bridal dress that was never worn, because the groom took off, while the bride saved the dress and the dream throughout a lifetime of loneliness. Women have an acute awareness of these objects as expressions of the shadow self, of the unconscious, of what is suppressed.

As a museum we handle objects full of feelings, objects animated by projected feelings. Objects as materialised emotions. We fill them further, with feelings and meanings.

Memories Stick to Objects.

At the museum we try to find the object's symbolic position in the life of a woman, and to follow and trace the economic, social and emotional patterns and contexts of a woman's life through the objects.

'I was standing right by this stove, when I told him I had gotten pregnant', a woman tells. And the stove has become the condensed symbol of her apprehension and her difficult, much too distant relationship to this man.

Or a woman steps into a certain summer's love affair whenever she puts on a certain pair of sandals. She remembers the wind on her thighs when the motorbike picked up speed, hears the sound of the sea and the feeling of
travelling on, of travelling becoming almost a way of life. The shoes are no longer mere things, but contain very detailed memories and imagery. In the self image of this woman these shoes have become metaphors for her youth, when love, erotic generosity and the fluent lifestyle were basic elements of her identity.

The common, shared or typical metaphors emerge through the many different stories. Motherlove, for instance, showing up in the little name tags sown onto children's clothes, before they leave for school or camp, each diminutive label or stitch containing the mother's reluctance of separation, mixed with the pride of seeing the child thrive, grow and ready to go.

**Other Objects Tie Up Strings of Women.**

In one of our large donations from five sisters the maker and the owner of individual objects are very hard to determine. Ownership keeps shifting. Or an object was made by one sister and remade in a new function by another. The objects and their exchanges document the intense, lifelong community and involvement among these sisters, the extensive family arrangements, the pleasure of making and giving gifts, the shared Christmasses, birthdays, Sunday trips and deaths over an 80 year period.

Another large collection is centered in a villa, housing several successive generations of one family. The objects here bear witness to the care put into preserving things in previous periods, also among the well to do. Cups and saucers are riveted, stockings and nightgown are darned and patched, and as such bear witness to a different culture where waste is a shame. The objects keep outliving the people.

Centered on the house, this collection also shows the patterns of women's physical movements within it, as when carrying dirty laundry from the bedrooms on the 2nd floor to be washed in the basement, then taken to the 3rd floor loft to dry, then back into the basement to be ironed and back to the 2nd floor to be put away. Shoes, dresses, bills, tickets, programs and seating plans show women crossing the threshold between the home and the public sphere. The comings and goings within the collection compose a city map of class and gender, and it keeps raising the question: what is work for a woman?

**Backbones**

Spanning work and motherhood, spanning the domestic and the public sphere, and documenting the interrelatedness of these spheres and activities, have been unifying concepts for much of what we have done. Research and the collection of objects have taken place under more specific headings. We tend to look for the ambiguous, the complex, not the simple relationships. Research into women's history makes use of a variety of lenses. Some knowledge supplements male history, some compensates, and some pleads a whole different approach and lets different coherences in women's universes emerge.

Some knowledge expands the contributions to history by anonymous women. Some projects single out the unique and exceptional few, who transcended the conditions dictated by their generation or class.

Again, there was much we never believed in.

We do not believe in talking about woman as the definite and singular term. We use the plural form, and know that it holds variation of class, age, region, education, marital status and what not. Culture, Psychology, History moves through the uneven, moves through concrete differences so pronounced that they sometimes overshadow the likeness.

We hardly believe in history. We think things could have been different. We do not believe in causality or in a history that pretends to be shaped by necessity. Rather we tend to think that at any given moment there are a number of possible outcomes or directions for history to take. Nor do we label history accidental. But choices are made, quite fundamental ones.

Progress tends to be seen as a two-edged sword by women.

Old women laugh shamelessly or shake their heads at the mention of progress.
They say that the mechanical meat mincer, which introduced the crank in household tools, was real progress as was the first mechanical washer. These are admitted as laboursaving devices. The rest, including all the new electric equipment, tends to produce as much work as they save.

The museum treats domestic work as a craft and as a vocation that took years of learning and apprenticeship, and as a field that held both extractive, productive, consumptive and esthetic elements. As late as the middle of the century there was still a pronounced self-sufficiency in terms of vegetables and poultry even in city suburbs.

When their products are long gone, tools are often still there. Tools for heavy physical work, multipurpose and everyday tools, and tools for the rare, very specialised creations. The last couple of decades have seen an immense dequalification of the labour power in the domestic area, when semi-fabricata have been introduced, and regulatory devices increasingly have made obsolete the skills of using the senses of the body to measure and assess age, quantities, temperature, texture, tempo.

Domestic housework is no longer enough to be the back-bone of a woman’s identity. But the insistence with which women bring their household lexica and bring the countless sampling pieces of knitting, embroidery and stitching demand that it be taken seriously as background. Love’s labour, as it has been called, in the border district of nurturance and production. Still necessary, still not done by itself. Shadowwork, whose hours refuse to be reduced but are not counted, neither for the individual nor for the national product.

**Foreground**

If domestic work is the background, what might have been the foreground of a new identity is often snowed under in unsolved dilemmas.

Throughout the century women articulate the vulnerability and the difficulties of combining motherhood and work, which were in the true sense of the word outside the structuring of the labour market. Fewer women than previously can or want to stay out of the labour market. Poor women - and a few others - have always been there. But the specific splits of home and work, the physical placing and the rhythms of the hours, the form that wage labour took in industrialization, was based on a labour power that had wives to take care of its needs and its children.

When women’s needs are translated into a logic that the system can deal with - as rights or laws or agreements - the demands seem narrowed down, strained and filtered beyond recognition. These themes keep cropping up in our research, and over the years the museum has given it a series of different interpretations. When it is not visible on the surface, it is often there as undercurrent, crisscrossed with other currents of culture, politics, power.

**Enlightened intuition**

The women’s museum has chosen to show temporary thematic exhibitions. Exhibitions are a powerful medium. Objects work in museums because they work in real life, they carry and signify meaning - and relationships. Objects become symbols or metaphors for specific activities, epochs, situations, relationships in people’s real lives, and as such they recognize objects in museums. Objects elicit psychological reactions. People interact with things. They enter dialogues with the object, seeing it as similar, comparing it, contrasting it to what is known, to the echo the object arouses in their memories. Objects dig deeply. Spontaneously they elicit memories and stored images that are not easily reached by other means, other languages. Objects speak the language of primary processes. They are analogue. Like dreams they do not know the word not. Objects say also rather than not. Like dreams they heap images on top of each other. They say both and, these many images may contradict each other and the sum total be paradoxical. But objects do not carry negation. They speak literally, positively.

In our exhibitions people talk. Chatter. They gossip and try to tell the attendant or the guide everything. They interpret. If they do not talk, the displays are not working. Different styles appeal to different types of people. Temporary exhibitions let us move freely between styles and types of exhibition languages, from intimate or
monumental reconstructions to highly stylized, abstract designs, from shameless use of copies to a strict adherence to original objects only. It all depends.

Enlightened intuition we have sometimes called the process behind an exhibition design. It is an art form that needs a base of precise knowledge of its subject matter to work. Or it is a body of knowledge that needs an artistic intuition to become other than a book on the wall or objects on shelves or silverplate. The designer has to be at home in her historical material to form her own subjective symbolisms and metaphors to coincide with and to touch other people's imagination. Again, the concrete has to reverberate through the general and typical.

Exhibitions are multilayered beings. They talk to the unity of the intellect and the emotions, to both the heart and the head. We like to work with movement. We like to do a fairly tight and lively choreographing of the movements of people, but also objects. We use revolving stages, conveyor bands and series of speakers and lights to make objects and images float, scoot, twist, run, fade, appear, disappear and reappear and thereby make people turn or bend or almost dance to find or follow them.

We like to use databases and to use highlevel technology in audiovisual presentations. We also deal in crude mechanical tricks. We try to make people laugh, so the hushed voices are reserved for the truly awesome displays and not for the idea of a museum. Laugh, so they are free to deal with the serious and heavy stuff we communicate.

Laugh and talk, so that they get to own the place. Breaking the ice, breaking the distance between museum object, the curator's interpretation and the visitor's perception and reception.

The overall message transmitted from an exhibition depends on the coupling, relative placing, structuring, sequencing of the individual elements and displays. Getting this context right is an intuitive and artistic affair. But when it is disturbed, the result is impoverished.

A complete shift in meta-language happened within our recent exhibition on women inventors, when it was moved to the museum of technology.

Through extensive use of photographs, documents, drafts and drawings, scribblings and oral histories we wanted to emphasise creation as a process as well as the personality of the individual women behind each invention. While documenting inventions step by step from vision to practical implementation or vice versa, we also try to piece together a portrait of the extraordinary women who by definition transcend the thinking and often also the mores of their times. The 2nd edition of this exhibition lost elements that changed not just the tone of voice, but the totality. Only isolated three-dimensional objects were shown, no stories, no portraits as contexts, the principle of chronology was broken. Gone, again, were the women subjects. Gone was the need to create and invent, the hunches and intuition, the immense will power it takes as well as the equally immense opposing forces that women inventors encounter. Gone was the way inventions tend to be embedded in life. Gone was the way that women up through the century and up through the educational systems keep a focus on prevention, health, nurturance. Left was a mass of curiosities and a gender-less technology, where technological innovation seems on one hand completely accidental or on the other mechanical and linear - one invention so to speak giving birth to the next. Lost was the dimension of contemporary women inventors stretching, expanding and working radical change within our traditional concepts of technology.

'Invention is about getting access to the unconscious and tapping the knowledge that is already there', as one of the chemical engineers said. That is also very much what exhibitions are about. Unearthing the buried knowledge is also what the museum is here for.
Assumptions and affirmations

None of what has been described in this portrait of the women's museum could not have been done by men. That assertion is not a contradiction for us. It does not make it a lesser platform for women.

Basic assumptions behind the formation of women's museum were of course, that expanding the knowledge of our history as women from a women's perspective would give important counterweight to the image of women as passive, backwards and inferior that is transmitted by the dominant ideology of bourgeois institutions. It could accentuate the dimensions of change and choices in history, convey a sense of power to intervene in history, influence decisions, effect directions of development. Another basic assumption was that a museum through its specific forms of documentation would be particularly suitable for communication of this insight to a wide audience. Both of these assumptions have clearly proved valid.

The museum has become a point of reference, an axis, turning things much bigger than itself.

Ambiguously, the Women's Museum retains its place as 'symbolic object' within women's identity and within the official national identity.