

GENDER CONSTRUCTION AND THE LIMITS OF LIBERAL EQUALITY

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I. Introduction

This article will suggest a possible answer to the puzzling question of why despite the egalitarian principles upon which Western liberal democracies are allegedly predicated sex discrimination in these societies persists and sex discrimination on the basis of religion and culture is most often even countenanced and protected.¹ One type of answer could be to question the premise on which the question is based, namely to ask whether and to what extent liberalism is indeed egalitarian. Ronald Dworkin argues that not only liberalism but all plausible modern political theories are egalitarian theories that are based on the idea that each person matters equally and that as a result government is required to treat its citizens with equal concern and respect.² Nevertheless, Dworkin insists “the liberal conception of equality is a principle of political organization that is required by justice, not a way of life for individuals, and liberals, as such, are indifferent as to whether people choose to...behave as liberals are supposed to prefer.”³ This distinction between equality and justice in the public sphere and freedom in the private sphere is fundamental to our understanding of the limits of liberal justice and equality. The equality espoused by modern liberalism is political equality owed to citizens by the government rather than private equality that reflects each person’s individual conviction that all persons are equal and are therefore entitled to be treated equally in all spheres of life and by every other person. A basic critique of liberalism is that it relies on social and economic hierarchy for its existence,⁴ and critics of liberalism, such as feminists, critical race theory scholars and third world scholars have all argued quite persuasively that liberalism is anything but egalitarian.⁵

1. See generally Gila Stople, *Countenancing the Oppression of Women: How Liberals Tolerate Religious and Cultural Practices that Discriminate Against Women*, 12 COLUM. J. GENDER & L. 154 (2003). As will become evident later, the scope of this article is restricted to a discussion of Western liberal countries that are influenced by the Judeo-Christian tradition, although these insights are probably applicable to other countries as well.

2. WILL KYMLICKA, *CONTEMPORARY POLITICAL PHILOSOPHY: AN INTRODUCTION* 3-4 (Oxford Univ. Press 1990); Ronald Dworkin, *What is Equality? Part 3: The Place of Liberty*, 73 IOWA L. REV. 1, 7-8 (1987).

3. Ronald Dworkin, *Liberalism*, in LIBERALISM AND ITS CRITICS 60, 77-78 (Michael Sandel ed., 1984).

4. E.g., Gil Gott, *Identity and Crisis: The Critical Race Project and Postmodern Political Theory*, 78 DENV. U. L. REV. 817, 842 (2001).

5. See, e.g., Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 326-27 (1987). Describing the critical legal studies perspective, Matsuda says:

The movement known as Critical Legal Studies is characterized by skepticism toward the liberal vision of the rule of law, by a focus on the role of legal ideas

In reality, equality of opportunity in most contemporary liberal theory and practice resides side by side with a hierarchy established by a person's achievements in society. Liberal society is as much hierarchical as it is egalitarian. The core difference between liberal society and an aristocratic society is that while in the latter the position of the individual in the hierarchy is determined by birth and is unchangeable, in the former the position of the individual in the hierarchy largely depends on demonstrable skills that one possesses and is attributed to her choices and merits. Consequently, it is believed that each individual can change her position in the hierarchy by altering her choices and through hard work. While this belief reflects the egalitarian nature of liberalism it simultaneously reflects its hierarchical nature because it serves to justify hierarchy by shifting the responsibility for its existence to the individual. A similar, though perhaps more pronounced tendency of attributing a person's achievements and failures exclusively to their own doing, can be found in Christian religious conservatism.⁶ Thus, the interplay between the fundamental liberal tenet that all persons are free and equal, the fundamental liberal distinction between the public and the private sphere, and the hierarchical structure of liberal society, especially capitalist liberal society, in which one's position in the hierarchy can be attributed to one's choice and merits (assuming that formal equality of opportunity is secured), can account at least in part for the persistent acceptability of inequality in general and of sex inequality in particular.

A second type of answer to the question of how sex inequality can persist in an egalitarian liberal society would be to focus on sex equality and to argue that there is something fundamental, both psychologically and socially, about gender that can explain the persistence and acceptance of

in capturing human consciousness, by agreement that fundamental change is required to attain a just society, and by a Utopian conception of a world more communal and less hierarchical than the one we know now.

Id. at 326-27 (citations omitted). See also SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989) [hereinafter OKIN, *JUSTICE, GENDER, AND THE FAMILY*]; CAROLE PATEMAN, *THE SEXUAL CONTRACT* (1988) [hereinafter PATEMAN, *THE SEXUAL CONTRACT*]; Kimberlé Williams Crenshaw, *Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988) (discussing the role of liberal ideology in the perpetuation of racial discrimination through adherence to formal equality and embrace of legitimating hegemonic visions, while criticizing other Critical Legal Studies scholars for focusing their criticism exclusively on liberal ideology, neglecting the role of racism as a hegemonic ideology); Chantal Thomas, *Causes of Inequality in the International Economic Order: Critical Race Theory and Postcolonial Development*, 9 TRANSNAT'L L. & CONTEMP. PROBS. 1 (1999) (a critique of liberalism from the perspective of postcolonial development theory).

6. See Michael J. Leiber et al., *Religion, Discriminatory Attitudes and the Orientations of Juvenile Justice Personnel: A Research Note*, 33 CRIMINOLOGY 431, 432-33 (1995).

discrimination against women.⁷ The manner in which societies, both liberal and non-liberal, structure themselves according to gender is a powerful sustainer of sex discrimination. The division of labor between men and women exemplifies this discrimination by distinguishing the feminine private sphere of the family and the masculine public sphere of the market, politics, and the state. Similarly, the gendered structure of individuals of both liberal and non-liberal communities is the result of well-orchestrated gender construction of the person. This is an even more powerful sustainer of sex discrimination than the structure of gender within societies, as it promotes the concept that all observable differences between the sexes that would otherwise count as discrimination are natural and freely chosen.

I argue that both answers are true and that it is their combination that explains the perseverance of women's inequality and its legitimization. The persistence of women's inequality cannot be attributed solely to the gendered structure of society and of the self because in reality discrimination persists in liberal societies on many bases other than gender, such as race, ethnicity and religion. Nevertheless, the persistence of women's inequality cannot be attributed solely to the inegalitarian nature of liberalism because there is a sense in which discrimination against women is treated very differently than discrimination on other forbidden bases. The difference between discrimination against women and other forms of discrimination is in the degree of legitimacy that discrimination against women is accorded and especially when it is linked to religious and cultural norms⁸ and it is this legitimacy that can be at least partially explained by the gendered structure of the liberal society and the liberal self. Thus, the in-egalitarian nature of liberal theory itself, at least with respect to women, is simply part and parcel of the gendered structure of society and of the individual, on both the theoretical and the practical level. Similar to all other theories, liberal theory exists and develops within a certain social framework. At its inception, liberal theory applied exclusively to men and relied for its coherence on the relegation of women to the private non-political sphere.⁹ With time, as women fought for their equal inclusion in the public sphere and in political theory, liberal theory has undergone major changes in order to accommodate this inclusion. Nevertheless, feminists have been constantly pointing out that these changes, even if significant, are insufficient to ensure women's right to equality, neither in

7. Following the conventional feminist distinction between sex and gender I will use sex as referring to the biological differences between men and women and gender as referring to the culturally inculcated differences between the sexes.

8. See Stopler, *supra* note 1, at 155-56.

9. PATEMAN, *THE SEXUAL CONTRACT*, *supra* note 5, at 90-91.

theory and especially not in practice.¹⁰ In an attempt to contribute to this critique, I argue in this article that the gendered structure of liberal society and of the liberal self are reasons why the liberal society most often tolerates discrimination engendered by religious and cultural norms against women; therefore, this gendered structure within which we all operate serves as a framework within which different roles, different obligations and different paths for men and for women, in both liberal and non-liberal societies, seem natural and inevitable and therefore in no need for reform.

As a framework for my argument, I introduce in Part II the largely unknown story of the creation of Adam and Lilith. According to this story, hints of which are found in the book of Genesis, Adam and Lilith were created simultaneously when one body was cut into two equal parts. Their ways parted when Lilith refused to submit to Adam, claiming that she was his equal. I contrast this story with the story of the creation of Adam and Eve, which is the founding myth of the Western world. I argue that contrasting Eve with Lilith and reflecting on Lilith's destiny can help us understand why sex equality in many liberal societies today is far less than equal. I further claim that the suppression of the story of Lilith's creation as well as Lilith's subsequent demonization, helps shed light on the social and psychological mechanisms that are responsible for the persistence of sex discrimination in Western civilization. My use of Eve and Lilith and their respective stories should be understood as purely symbolic. These two dichotomous cultural symbols represent, on both the conscious and subconscious levels, the do's and don'ts of being a woman in the Judeo-Christian tradition and can therefore serve to highlight the limits of sex equality in Western liberal democracies today. In Part III, I turn to an analysis of the construction of the gendered self—how are women constructed to be Eve and to recoil from being Lilith? I discuss the importance of community to the individual and argue that the individual is constructed to a large extent through interactions with those closest to her and with her community. I then present the work of two important feminist psychologists, Carol Gilligan and Nancy Chodorow, to describe the gendered construction of the self that occurs in all liberal societies. I claim that it is this gendered construction of women and men as feminine and masculine that ensures both the persistence and the masking of sex discrimination. Finally, in Part IV, I discuss some implications this analysis might have for Western liberal societies.

10. *E.g.*, OKIN, JUSTICE, GENDER AND THE FAMILY, *supra* note 5; *See generally* PATEMAN, THE SEXUAL CONTRACT, *supra* note 5.

II. Eve, Lilith and the Image of Woman in Western Civilization

A. *Adam & Eve*

The biblical myth of Adam and Eve is one of the most powerful myths of Western civilization, which has defined the relationships between men and women on both the theoretical and the practical level for generations and until this very day.¹¹ According to the myth, told in the book of Genesis, after creating Adam, the man, from the dust of the earth, God decided to create a helpmate for him.¹² Consequently, he put Adam to sleep and from his rib he created his helpmate, which Adam then named Woman.¹³ After Woman ate from the Tree of Knowledge and seduced Adam into eating as well, they were both banished from paradise and Adam renamed the woman Eve, for she was to be the mother of all living.¹⁴ The creation of Eve from Adam's rib has been interpreted for thousands of years to denote the God given inferiority of woman.¹⁵ An additional justification for women's inferiority, especially in the Christian tradition, is found in Eve's responsibility for the fall of Adam, which was interpreted as the responsibility of all women to the advent of evil in the world.¹⁶ Woman's punishment for the fall is comprised of her eternal subjugation to her husband, the restriction of her sexuality strictly for purposes of procreation within the conjugal relationship, and the pain of child bearing.¹⁷ In Christian thought, woman's role as a submissive wife and mother is not only her punishment, but also her only means of salvation.¹⁸

11. *E.g.*, MARY DALY, BEYOND GOD THE FATHER 44-45 (Beacon Press 1985)(discussing generally how the myth of Adam and Eve has created a way of thinking about the relationship between men and women, and then expounding on the effect of specific portions of the myth and their effect); ORIT KAMIR, EVERY BREATH YOU TAKE—STALKING NARRATIVES AND THE LAW 30 (2001); GERDA LERNER, THE CREATION OF PATRIARCHY 182 (1986).

12. *Genesis* 2:18 (King James Version).

13. *Genesis* 2:21-23.

14. *Genesis* 3:6-20.

15. LERNER, *supra* note 11, at 183.

16. ROSEMARY RADFORD RUETHER, SEXISM AND GOD-TALK: TOWARD A FEMINIST THEOLOGY, 167-68 (1993).

17. LERNER, *supra* note 11, at 196; *see Genesis* 3:16.

18. 1. *Tim.* 2:12-15. "But I permit not a woman to teach, nor to have dominion over a man, but to be in quietness. For Adam was first formed, then Eve; and Adam was not beguiled, but the woman being beguiled hath fallen into transgression: but she shall be saved through her child-bearing, if they continue in faith and love and sanctification with sobriety."

B. The Suppression and Demonization of Lilith

Considering the centrality of the Adam and Eve myth in the Judeo-Christian tradition, it is striking as well as telling what little attention is paid throughout the ages to the alternative myth of creation, which is hinted to in the book of Genesis—the myth of the creation of Adam and Lilith. There are two contradictory versions of the creation myth in the book of Genesis. One is the Adam and Eve myth, in which woman is secondary to man, created from his rib and destined to be a subordinate wife and mother. The second appears in the first chapter of Genesis and tells a very different story of the creation of man and woman.¹⁹ According to the second creation myth, which appears ahead of the Adam and Eve myth in the text but was written after it,²⁰ man and woman were created simultaneously, as one. “God created man in his own image. In God’s image he created him; male and female he created them.”²¹ This verse is the basis for an egalitarian myth of creation, that of the creation of Adam and Lilith, his first wife and twin sister. According to this myth, God created the first human double with two faces and then sawed it in the middle separating the first human into two completely equal human beings, male—Adam, and female—Lilith.²² Soon, however, Adam and Lilith quarreled when Lilith refused to submit to Adam and rejected his demand that she lie beneath him during sexual intercourse, declaring herself to be his equal. When Adam tried to compel her obedience by force Lilith left him, refusing to return.²³ After Adam’s first wife Lilith refused to return to him God created Eve, Adam’s second wife, this time making sure of the success of the match by creating Eve out of Adam’s rib and making her his subordinate. This can serve as an explanation as to why upon first seeing Eve, Adam is quoted in the bible as saying: “*this time* bone from my bone and flesh from my flesh.”²⁴

While the egalitarian myth of the creation of Adam and Lilith has been largely suppressed and forgotten, only to be resurrected in modern times by the occasional (mostly Jewish) feminist, the image of Lilith that has endured through the ages is that of Lilith as a she-devil, a female stalker, a seductress and a baby snatcher.²⁵ Kamir argues that the image of Lilith as the she-devil was created with the rise of the new male-oriented

19. *Genesis* 1:27.

20. KAMIR, *supra* note 11, at 29; LERNER, *supra* note 11, at 182.

21. *Genesis* 1:27.

22. KAMIR, *supra* note 11, at 36-39.

23. Lilly Rivlin, *Lilith, in WHICH LILITH?: FEMINIST WRITERS RE-CREATE THE WORLD’S FIRST WOMAN* 4, 7 (Enid Dame et al. eds., 1998).

24. KAMIR, *supra* note 11, at 36 (emphasis added); *see also Genesis* 2:23.

25. KAMIR, *supra* note 11, at 19-20.

Sumerian, Babylonian, and later, Hebrew monotheists in order to suppress the powerful image of the ancient Sumerian Great Goddess.²⁶ Male-dominated societies' need to diminish the power of the Goddess led to the adoption of a strategy that Kamir calls "divide, tame and demonize."²⁷ As a result, the all-powerful female Goddess was slashed into two distinct feminine images: the Goddess's life-giving, motherly traits were transmuted to Eve, the domesticated and powerless feminine figure, while the Goddess's wisdom, sexuality, strength, and intimate connection with death were vilified and demonized and bestowed upon Lilith, the bloodthirsty she-devil.²⁸ Through this cultural maneuver, evident within Western culture to this day, women were taught to regard Eve, the domesticated female, as their role model, and to fear Lilith, the she-devil, as their mortal enemy.²⁹

Historically, the creation of Lilith as the she-devil predated the egalitarian myth of Adam and Lilith. It is even plausible that the former was a prerequisite for the latter's survival. It was only through its association with the she-devil Lilith that the egalitarian Lilith continued its suppressed and significantly deformed existence. Thus, to the extent that Lilith's image as Adam's first wife continued to exist throughout the ages, it served as a patriarchal creation to demonstrate the dangerous consequences of women's aspirations to equality. For example, according to the Alphabet of Ben Sira, the first "official" compilation of the myth of the creation of Lilith, God formed Lilith just as he formed Adam, only instead of using pure dust he used filth and sediment, and consequently, "[f]rom Adam's union with this demoness sprang innumerable demons that still plague mankind."³⁰ Despite its reference to Adam and Lilith's union, which is responsible for the introduction of demons into the world, the Alphabet continues to say that Adam and Lilith could not find peace together because of her refusal to lie beneath him during intercourse and that after Adam tried to force his will on her, Lilith uttered the magic name of God and left him.³¹ Thus a woman's aspiration to equality both produces eternal evil and destines her to loneliness and misery. The demonization of Lilith has served as a powerful tool in the hands of the patriarchal social order. As Kamir explains, "Lilith's devilish image terrifies men, causing them to fear undomesticated, nonpatriarchal women, while demonstrating to women the horrible price of condemnation and isolation to be paid for choosing such a non-traditional feminine

26. *Id.* at 20-30.

27. *Id.* at 23.

28. *Id.* at 20.

29. *Id.* at 24.

30. Rivlin, *supra* note 23, at 7.

31. *Id.*

existence.”³²

Within Christianity, the demonic seductress Lilith was transformed from a mythical creature to an internal flaw in each and every woman, in each and every Eve.³³ While Lilith fails to appear officially in Christianity, in the Middle Ages she was sometimes portrayed as the snake who seduces Eve into eating from the Tree of Knowledge.³⁴ In this role Lilith represents Eve’s free sexuality, which is responsible for the fall and which should never again be allowed to raise its head.³⁵ Similarly, it can be argued that Lilith the snake represents Eve’s aspiration for equality. By eating from the Tree of Knowledge Eve intentionally upsets the natural hierarchical order from God to man to woman, which is dependent on Adam and Eve’s ignorance and obedience to God. Eve’s unforgivable sin, to which she is driven by her inner Lilith, is trying to achieve equality in direct defiance of God’s Word. Thus, Lilith resides in each and every woman and as her punishment for the fall each woman has to fight and conquer her own internal Lilith. Mary, the ideal virgin woman in Christianity, is the only one who is, and who could ever be, completely free of Lilith.³⁶ Every other woman, every Eve, has to fight her inner Lilith. Those who fail, like witches, can be regarded as possessed by the devil and can therefore be persecuted and killed.³⁷ In her internal fight against the devilish Lilith within her each and every woman is called upon to engage in a continuous struggle against everything that Lilith represents, namely women’s equality, free sexuality, and independent strength and wisdom. In Christianity, egalitarian Lilith no longer exists and even demonized Lilith is rarely mentioned. Instead, demonized Lilith is transformed into an abstract idea of evil present in each woman. Lilith’s ability to empower is lost while her utility to disciplining behavior gains new depths.

32. KAMIR, *supra* note 11, at 5.

33. *Id.* at 57-58.

34. Christopher L. C. E. Withcombe, *Eve and the Identity of Women*, Ch. 7 (2000), available at <http://witcombe.sbc.edu/eve-women/7evelilith.html> (last visited Feb. 12, 2004) (discussing how in the Middle Ages Lilith gained popularity among lay Christians (especially in Germany) as a man-devouring creature, an envious estranged wife and mother who covets other people’s children and threatens to steal them unless prevented by charms.) Rivlin, *supra* note 23, at 8.

35. LERNER, *supra* note 11, at 196. Lerner does not mention Lilith in her book and she refers to the snake as representing the free sexuality of the fertility Goddess. As explained earlier, in Hebrew monotheism Lilith has taken on those traits of the Goddess rejected by Hebrew patriarchalism such as free sexuality.

36. KAMIR, *supra* note 11, at 58.

37. *See Id.* at 51-63.(discussing the similarities between the images of witches in Medieval and Renaissance Europe and the image of Lilith, and on the witch hunts organized by the church as a means of frightening men and women into conformity and submission.)

C. *The Eve & Lilith Duo as a Control Mechanism*

It is my argument that recounting and analyzing the suppression of the egalitarian story of Lilith's and Adam's creation and the demonization of Lilith can give us insights into the control mechanisms that Western culture employs to preserve the patriarchal social order that persists today. Clifford Geertz suggests that culture should be viewed as a set of control mechanisms—plans, recipes, rules, instructions—for the governing of behavior.³⁸ Eve as a role model for all women is precisely such a control mechanism. The suppression of the egalitarian myth of the creation of Lilith and Adam and the demonization of Lilith is part and parcel of this control mechanism, and arguably it is the more important part, because Lilith's suppression and demonization has prevented the creation of an alternative to Eve. The absence of an imaginable alternative is the “feature of male hegemony, which has been most damaging to women and has ensured their subordinate status for millennia.”³⁹ In the remainder of this article I will show not only that Western society is built in both theory and practice on the model of woman as Eve, but also that even today women's and men's selves are conditioned to embrace woman as Eve and to reject everything that Lilith stands for through the process of gender construction. Without denying that Western society has made tremendous progress towards achieving equality for women, I argue that this progress is still within the framework of woman as Eve, which implies that woman is still first and foremost wife and mother and that woman and man are two different types of human beings with different obligations and consequently with different rights. It is this framework that the social structure of most Western societies assumes and supports⁴⁰ and it is within this framework that society defines and shapes the gendered selves of both men and women. The alternative framework—Lilith and Adam as two equal halves of the same whole, two equal human beings with similar obligations and similar rights—conflicts with the current social structures in most Western democracies and is similarly at odds with the gendered construction of the Western self. Thus, symbolically speaking one could say that only when the myth of Adam and Eve will cease to be the official creation myth and will be replaced in the Western psyche by the egalitarian myth of Lilith and Adam would Western societies be ready to make the theoretical and practical changes needed in order to live up to their commitment to

38. CLIFFORD GEERTZ, *THE INTERPRETATION OF CULTURES* 44 (1973).

39. LERNER, *supra* note 11, at 223.

40. Perhaps with the exception of Scandinavian countries such as Norway and Sweden. Christina Bergqvist, *Childcare and Parental Leave Models in EQUAL DEMOCRACIES? GENDER AND POLITICS IN THE NORDIC COUNTRIES* 121-122 (Christina Bergqvist et al. eds. 1999).

women's full equality. In the meantime, contrasting the Adam and Eve myth with the Lilith and Adam myth is important because by alerting us to the road not taken (woman as Lilith) it highlights the serious limitations of the road that was taken (woman as Eve) and suggests that the choice of road was and still is far from inevitable.

D. Liberal Theory as Predicated on Eve

One example of the way in which the structure of Western society is predicated on the myth of Adam and Eve can be found in the development of liberal theory. By way of illustration, let us consider for a moment the development of liberal theory in light of the story of the creation of Adam and Lilith. In Filmer's seventeenth century classical patriarchy, liberalism's predecessor, the political rights of the monarch and of the father were based on their paternal rights over their subjects/sons, which were derived from Adam's God-given paternal and political right over his sons.⁴¹ In order to establish the father's sole and absolute power over his sons Filmer relied on Adam's God-given dominion over the woman, which enabled Adam and every monarch and father after him to claim exclusive ownership of both their wives and their sons.⁴² Thus, the threat that the egalitarian Lilith posed to seventeenth century political theory is evident. Without Adam's dominion over the woman, which is clearly rejected in the story of Adam's and Lilith's creation, the entire political system up to the seventeenth century, with its basis in the absolute paternal power of monarchs and fathers, loses its justification.

Even more importantly, a similar fate awaits classical liberalism on its encounter with Adam and Lilith as equal persons. While classical patriarchy was characterized by a strict hierarchy between father and sons, monarch and subjects, classical liberalism is based on a voluntary social contract between free and equal men. However, just as classical patriarchy was based on Adam's dominion over Eve and on Eve's role as submissive wife and mother, so too is classical liberalism. This is because classical liberalism is based on a division between the public political sphere in which men participate and contract as free and equal persons. It is also based on the private familial sphere in which paternal power is maintained and in which women are kept in a state of subjection that is perceived as natural and as extraneous to the public political sphere.⁴³

Contrary to classical patriarchy in which the personal was the

41. PATEMAN, *THE SEXUAL CONTRACT*, *supra* note 5, at 82-83.

42. *Id.* at 86-87.

43. *Id.* at 90-91.

basis for the political (the paternal power of the father was the basis for his political right and hence the basis for a society established on natural hierarchy), in liberalism, the personal is severed from the political in order to allow the personal to continue to be predicated on natural hierarchy. Men's right to keep women subordinated in the private sphere while keeping the public sphere of freedom and equality for themselves is justified by Locke on the basis of the order of God and of the laws of nature⁴⁴ and hence is predicated on Adam's dominion over Eve and on Eve's submissive role as wife and mother.⁴⁵ This is best exemplified by the notorious doctrine of coverture that has defined married women as a legal non-entity well into the end of the nineteenth century and whose traces continue to exist in Western liberal societies to this very day.⁴⁶ The doctrine of coverture stipulates that "[b]y marriage the husband and wife are one person in law: that is, the very being, or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection, and cover, she performs everything; and is therefore called... a *femme-covert* . . . her husband, [is called] her *baron*, or lord."⁴⁷

Obviously, if the story of Lilith and Adam, which establishes complete equality between man and woman and denies the husband any conjugal right over his wife had been the "official" creation story, neither classical liberalism nor the doctrine of coverture could ever have existed. Additionally, as discussed in Part IV, modern liberal theory has yet to correct this serious flaw in liberal thinking. The recognition of equality and freedom that liberal thinking promises to all persons in the public sphere cannot be ensured unless these promises also extend into the private sphere. Currently, it is the discrimination in the private sphere that sustains the seriously flawed equality found in the public sphere.

III. Self, Community, and Gender Construction

A. *The Formation of the Self*

The first step in assessing the impact of community on the self is formulating an account of the ways in which a person's self, or identity, is formed. Charles Taylor defines identity as "a person's understanding of

44. ZILLAH R. EISENSTEIN, *THE RADICAL FUTURE OF LIBERAL FEMINISM* 42 (1993).

45. *See Id.* at 41.

46. Reva Siegel, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860-1930*, 82 *GEO. L.J.* 2127 (1994). Siegel points to "wife's work," i.e., unpaid house work, as one of these traces.

47. I SIR W. BLACKSTONE, *COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR VOLUMES* 442 (Garland Publishing, Inc., 1978)(1783).

who they are, of their fundamental defining characteristics as a human being”⁴⁸ and argues that identity is created through a dialogical process.⁴⁹ According to Taylor, “we become full human agents capable of understanding ourselves, and hence of defining our identity,” through a dialogical process in which we acquire the various modes of human expression such as the languages of art, gesture, love and the like.⁵⁰ Forming an identity is not a process that a person can accomplish on her own, but rather a dialogical process in which she is introduced to the various modes of human expression through interactions with others who matter to her—her “significant others.”⁵¹ Thus, “[w]e define our identity always in dialogue with, sometimes in struggle against, the things our significant others want to see in us.”⁵² Furthermore, the making and sustaining of our identity remains dialogical and crucially dependent on our relations with the ones we love and with the people around us throughout our lives.⁵³

Historically, a person’s identity in status societies was largely determined externally by the social category into which the person was born. In democratic societies, an ideal of inwardly generated identity has developed, according to which each person has the need, and the right, to discover her own original way of being her own authentic self.⁵⁴ As already explained this discovery is not worked out in isolation but negotiated through a partly overt, partly internalized, dialogue with others.⁵⁵ This ideal of the authentic self discovered through dialogue with others has given a new and crucial importance to recognition.⁵⁶ In forming her own original identity, each person is dependent not only on the recognition given to her or withheld from her by her significant others on the intimate level, but also on the equal recognition given to her by the larger community.⁵⁷ Thus, the denial of equal recognition can inflict real damage to the extent that it is internalized and can be seen as a form of oppression.⁵⁸

If the forming of identity is a dialogical process dependant on one’s interactions with and recognition from significant others and the larger

48. CHARLES TAYLOR, *MULTICULTURALISM: EXAMINING THE POLITICS OF RECOGNITION* 25 (1994).

49. *See Id.* at 32.

50. *Id.*

51. *Id.*

52. *Id.* at 32-33.

53. *Id.* at 33-34.

54. CHARLES TAYLOR, *THE ETHICS OF AUTHENTICITY* 47 (1991).

55. *Id.*

56. *Id.* at 47-48.

57. *Id.* at 49.

58. *Id.* at 49-50.

community, and if our culture determines the boundaries of the imaginable,⁵⁹ but is at the same time pervasively gendered,⁶⁰ then it is hardly surprising that even in Western liberal societies men's and women's identities are highly gendered and that this leads to the persistence and acceptance of sex discrimination. In order to better understand this claim it is important to explore the feminist psychological literature analyzing the formation of gendered identities, feminine and masculine, in the Western world. In the coming pages I will introduce the writings of Carol Gilligan and Nancy Chodorow, two of the most renowned writers on the psychology of women. Chodorow's focus on mothering and Gilligan's focus on the contradiction between patriarchy and democracy make their writing especially pertinent to my analysis.

B. *The Work of Nancy Chodorow*

1. The Reproduction of Mothering

According to Nancy Chodorow the reproduction of mothering is a central and constituting element in the social organization and reproduction of gender and in the persistence of women's subordination.⁶¹ "Women's mothering is central to the sexual division of labor. Women's maternal role has profound effects on women's lives, on ideology about women, on the reproduction of masculinity and sexual inequality, and on the reproduction of particular forms of labor power."⁶² The contemporary reproduction of mothering occurs through "social-structurally induced psychological processes" in which "[w]omen, as mothers, produce daughters with mothering capacities and the desire to mother... [but] produce sons whose nurturant capacities and needs have been systematically curtailed and repressed."⁶³ Chodorow rejects the popular assumption that women's mothering is the result of nature and of biological differences between men and women.⁶⁴ Similarly, she rejects as "profoundly limited" the feminist explanations for women's mothering which attribute it to girls' socialization into wanting to do "girl-things" or to the power differences

59. Avishai Margalit & Joseph Raz, *National Self-Determination*, 87 J. PHIL. 439, 449 (1990).

60. See Marilyn Frye, *Sexism*, in MARILYN FRYE, *THE POLITICS OF REALITY: ESSAYS IN FEMINIST THEORY*, 17-40 (1983).

61. NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING—PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* 6-7 (1978) [hereinafter CHODOROW, *THE REPRODUCTION OF MOTHERING*].

62. *Id.* at 11.

63. *Id.* at 7.

64. *Id.* at 13-30.

and the social control men exercise over women.⁶⁵ She sees these explanations as “profoundly limited” because they are based on the assumption that women’s mothering is a product of behavioral conformity and individual intention while ignoring the much deeper psychological processes involved in the formation of identity that drive women to mothering and men away from it.⁶⁶

Instead, Chodorow argues, “[w]omen’s capacity for mothering and their ability to get gratification from it are strongly internalized and psychologically enforced, and are built developmentally into the feminine psychic structure... through the developmental situation in which they grow up [being mothered by women].”⁶⁷ Chodorow further explains that “[l]egitimizing ideologies themselves, as well as institutions like schools, the media, and families which perpetuate legitimizing ideologies that contribute to [the] social reproduction [of women’s mothering] They create expectations in people about what is normal and appropriate and about how they should act.”⁶⁸ Thus, explains Chodorow, “[s]ociety’s perpetuation requires [only] that *someone* rear children, but our language, science, and popular culture” all make it “hard to separate out parenting activities . . . from women themselves,” while the economic system makes the mother the most rational and often the only possible choice.⁶⁹

The “asymmetrical organization of parenting” and its effects on the child’s and later the grownup’s “unconscious psychic structure and process” are at the heart of Chodorow’s psychoanalytic theory.⁷⁰ According to her theory, “the most important feature of early infantile development is that this development occurs *in relation to* another person,” which is typically the mother.⁷¹ Thus, a mother is an infant’s first love object and the character of the infant’s early relation to her profoundly affects its personality and self identity.⁷² Chodorow posits that these effects are different for girls and for boys.⁷³ As infants in the pre-Oedipal stage, both boys and girls develop a deep attachment to their primary caretaker, the mother, and only a secondary attachment to their father. The resolution of the Oedipus complex within this asymmetrical family structure results in “the development of different relational capacities for girls and boys.”⁷⁴ The resolution of a boy’s Oedipus complex entails a

65. *Id.* at 31.

66. *Id.* at 31-32.

67. CHODOROW, THE REPRODUCTION OF MOTHERING, *supra* note 61, at 39.

68. *Id.* at 35.

69. *Id.* at 35-36.

70. *Id.* at 49.

71. *Id.* at 77.

72. *Id.* at 77-78.

73. CHODOROW, THE REPRODUCTION OF MOTHERING, *supra* note 58, at 92-93.

74. *Id.* at 92.

break-up with his mother and a repression of his feelings toward her in exchange for “identification with his father, and the superiority of masculine identification and prerogatives over the feminine.”⁷⁵ Conversely, a girl’s Oedipus complex does not entail such a break up and “psychoanalytic research demonstrates the continued importance of a girl’s external and internal relation to her mother and the way that her relation to her father is added” to her relationship with her mother and does not substitute it.⁷⁶ Significantly, Chodorow points out that the different ways in which boys and girls experience the Oedipus complex are due not only to their own attachments but also to those of their mothers. While mothers tend to see their girls “as more like, and continuous with, themselves,” they “experience their sons as a male opposite” and are more likely to push them out of the pre-Oedipal relationship.⁷⁷

Thus, while boys are more likely “to have had to curtail their primary love” and engage in individuation and in the “firming of experienced ego boundaries.... girls emerge [from the Oedipal period] with a stronger basis for experiencing another’s needs or feelings as their own.”⁷⁸ Chodorow explains that “girls do not define themselves in terms of the denial of pre-Oedipal relational modes to the same extent as boys. Therefore, regression to these modes is less likely to be threatening to their ego.”⁷⁹ Growing girls come to define and experience themselves as continuous with others while boys define themselves more as separate and distinct from others.⁸⁰ Because of their different resolution of the Oedipus complex women’s relational world becomes more complex than men’s.⁸¹ “[W]omen remain preoccupied with ongoing relational issues” while men’s relational issues tend to be more repressed.⁸² “Masculine personality, then, comes to be defined more in terms of denial of relation and connection (and denial of

75. *Id.* at 93-94. As will become clear in my account of Gilligan’s theory, Chodorow and Gilligan view the Oedipus complex in very different ways. Whereas Chodorow believes the Oedipus complex and its resolution is a necessary step in human development, but suggests that its adverse effects on masculinity can be avoided through a symmetrical organization of parenting, Gilligan views the Oedipus complex as a patriarchal creation meant to bring about a breakup in relationship between mother and son in order to initiate the son into patriarchy. Notwithstanding their clear difference of opinion on this fundamental matter, and although I find Gilligan’s view to be far more plausible, I think both theories can contribute enormously to our understanding of gender construction in a world in which mostly women mother and in which breakups in relationship between mothers and their young sons are, for whatever reason, a widespread phenomenon.

76. THE REPRODUCTION OF MOTHERING, *supra* note 61, at 92-93.

77. *Id.* at 166.

78. *Id.* at 166-67.

79. *Id.* at 167.

80. *Id.*

81. *Id.*

82. *Id.* at 169.

femininity), whereas feminine personality comes to include a fundamental definition of self in relationships.”⁸³

According to Chodorow, “because girls identify with their mothers and because mothers are present girls can form a personal relationship with the object of their identification which enables them to “develop through particularistic and affective relationships to others.”⁸⁴ In contrast, the relative absence of the father makes it more difficult for boys to “develop personal identification with him and they are left to develop a positional identification with aspects of the masculine role” through identification with cultural images of masculinity and with men chosen as masculine models.⁸⁵ At the same time, as part of their masculine identification boys “tend to deny identification with and relationship to the mother and reject what they perceive as the feminine world.”⁸⁶ Furthermore, Chodorow claims that “[w]omen’s mothering and men’s relative absence produce a psychological and ideological complex in men concerning women’s secondary valuation and sexual inequality.”⁸⁷ Due to a child’s helplessness and a mother’s omnipotence in the early stages of the child’s life, both boys and girls develop alongside their attachment to their mother a fear of her power over them.⁸⁸ Boys combat this fear through identification with masculinity and male superiority, the disparagement of women and their capabilities, and the rejection of any qualities that might be considered feminine.⁸⁹ Conversely, because girls are the same gender as their mother, they are less likely to develop a fear of all women and are more likely to develop and retain hostility in their relationship to their mother that may also turn into self deprecation.⁹⁰

Chodorow posits that the different relational capacities and forms of identification acquired by women and men prepare them to assume their respective roles in a gendered and sexually unequal society—women primarily within the familial sphere of reproduction and men primarily within the public non-familial sphere of production.⁹¹ “Women’s roles are basically familial and concerned with personal, affective ties” (even when they are done outside of the home, in the labor market).⁹² “By contrast, men’s roles as they are defined in our society are basically non-familial,” and although most of them are husbands and fathers they are defined

83. *Id.*

84. *Id.* at 175-76.

85. *Id.* at 175.

86. *Id.* at 176.

87. *Id.* at 185.

88. *See Id.* at 181.

89. *Id.* at 180-81.

90. *Id.*

91. THE REPRODUCTION OF MOTHERING, *supra* note 61, at 178.

92. *Id.*

primarily by their non-familial roles.⁹³ In a society in which tending to the familial, in both the private and the public sphere, is devalued, whereas the public non-familial sphere is the locus of power and of status, the psychological reproduction of mothering serves to perpetuate women's inequality, while at the same time justifying the continuing inequality by linking it to women's free choice (of mothering).⁹⁴ Chodorow argues that because "[p]sychologists have demonstrated unequivocally that the very fact of being mothered by a woman generates in men conflicts over masculinity, a psychology of male dominance, and a need to be superior to women," women's inequality cannot be resolved unless and until parenting is shared between men and women.⁹⁵ She suggests an equal sharing of parenting could potentially resolve the problems that women's exclusive mothering produces for both genders.⁹⁶ Both masculinity and femininity could gain if children could be taken care of from the outset by men as well as by women and establish an individuated sense of self in relation to both.⁹⁷ Masculinity would no longer be tied to the denial of relationship and dependence and the devaluation of women, while women would have fewer problems with individuation.⁹⁸ Similarly, "[c]hildren would not develop fears of maternal omnipotence and expectations regarding women's unique self-sacrificing qualities."⁹⁹ Finally, people would be freer to choose those activities which they desire irrespective of their gender because the dichotomy between feminine and masculine activities would cease to exist.¹⁰⁰

2. Observed Gender and Personal Gender

Chodorow's account of the reproduction of mothering has been criticized as essentializing the way women are and the differences between women and men.¹⁰¹ In response, Chodorow argues that not only is her account not an essentialist one, but also that taking individual psychology into account is necessary for feminist theory in order to avoid the pitfalls of essentialism. Thus, Chodorow claims that contrary to some feminist

93. *Id.*

94. *See Id.* at 215-19.

95. *Id.* at 214.

96. THE REPRODUCTION OF MOTHERING, *supra* note 61, at 218.

97. *Id.*

98. *Id.*

99. *Id.*

100. *Id.*; *see also* Vincent Duindam & Ed Spruijt, *The Reproduction of Fathering*, 12 FEMINISM & PSYCHOL. 28 (2001).

101. *See, e.g.,* Cynthia Burack, *Re-Kleining Feminist Psychoanalysis*, 12 FEMINISM & PSYCHOL. 33 (2002) (discussing a critique of *The Reproduction of Mothering* as inapplicable to black women).

assumptions “gender cannot be seen as entirely culturally, linguistically or politically constructed, rather there are individual psychological processes in addition to culture, language and power relations that construct gender for the individual.”¹⁰² Each person’s subjective gender identity is a fusion of personal meaning created emotionally and subconsciously, and cultural meaning.¹⁰³ Chodorow further states that the “perception and meaning of gender are psychologically created.”¹⁰⁴ Thus, “people use available cultural meanings and images, but they experience them emotionally and through fantasy... [individuals] thereby create new meanings” which are uniquely their own.¹⁰⁵ However, Chodorow explains, while each person creates a meaning of gender which is uniquely their own, “it is certainly the case that aspects of gender identity and unconscious gender fantasy draw upon language, cultural stories, and interpersonally transmitted emotional responses themselves conveyed by people (in the first instance parents and other caretakers) with their own personal-cultural sense of gender.”¹⁰⁶

Chodorow argues that in order to understand how gender can connote those common traits which are more typical of women or men as a group, while at the same time being individually constructed by each person, one should distinguish between “observed gender” and “subjective gender.”¹⁰⁷ Observed gender refers to “observed differences in features of psychic or mental life or aspects of personality, character, or behavior that tend to differentiate or characterize the sexes.”¹⁰⁸ Some aspects of observed gender that contribute to the reproduction of women as mothers are women’s relational capacities, their greater ease with dependency and intimacy and their more diffuse ego boundaries in contrast to men.¹⁰⁹ “Subjective gender” on the other hand refers to “personal constructions of masculinity and femininity—elements consciously or unconsciously linked to the sense of self as gendered” such as gender identifications and fantasies about one’s gender.¹¹⁰ Chodorow states that her account of the psychological processes that contribute to the reproduction of women’s mothering is an account of observed gender which describes generalizable, empirically predictable features of personal gender and of self-construction in a family where women mother, and that it describes empirically

102. Nancy Chodorow, *Gender as Personal and Cultural*, 20 SIGNS 516, 517 (1995).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.* at 518.

107. NANCY CHODOROW, *THE POWER OF FEELINGS* 103 (1999)[hereinafter CHODOROW, *THE POWER OF FEELINGS*].

108. *Id.*

109. *Id.* at 104.

110. *Id.*

discovered connections.¹¹¹ This account is a generalization about the ways in which many women and men operate psychologically and experience and define their selves.¹¹² “[W]ithout thinking that all women differ from all men in certain ways or that all women must traverse the same path to end up at the same necessary femininity, we can nonetheless point toward aspects of intrapsychic experience that with some regularity seem to go into constructions of gendered subjectivity.”¹¹³ Thus, although each person creates their own personal meaning of gender, in a society in which mostly women mother, mothering is devalued and men are mostly absent from the home, participating in the highly valued public sphere, we can expect to find a pattern of the reproduction of women’s mothering and of sexual inequality which is both the result of and the cause for the gendered structuring of the self. As Chodorow observes, *The Reproduction of Mothering* can be read both “as an account of the social determinants or construction of the psyche” and “as an account of how psyches produce social and cultural forms.”¹¹⁴

C. *The Work of Carol Gilligan*

1. In a Different Voice

In her influential book, *In a Different Voice*, Carol Gilligan points out that mainstream psychological literature uses male psychological development as the standard for human development and labels women, who in most cases do not fit that standard, as deviants.¹¹⁵ In contrast, Gilligan focuses on the study of women’s identity formation and moral development and argues that through such a study one can uncover important aspects of human development that have hitherto been at best ignored, and at worst, considered as breakdowns in development.¹¹⁶ Gilligan stresses that the association of the different voice she uncovers with women is an empirical observation which is neither absolute nor inevitable.¹¹⁷ Although this voice is more typical of women, it exists in both women and men to varying degrees, just as the “standard” voice, which is more typical of men, exists in both sexes to varying degrees.¹¹⁸

111. *Id.* at 110.

112. *Id.* at 111.

113. CHODOROW, *THE POWER OF FEELINGS*, *supra* note 107, at 112.

114. *Id.* at 110.

115. CAROL GILLIGAN, *IN A DIFFERENT VOICE—PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* 1, 2 (2d ed., 1993) [hereinafter GILLIGAN, *IN A DIFFERENT VOICE*].

116. *Id.*

117. *Id.*

118. *Id.*

While she does not make any claims as to the origins of these observed differences between the identity formation and moral development of men in general and those of women in general, Gilligan nonetheless states that “[c]learly, these differences arise in a social context where factors of social status and power combine with reproductive biology to shape the experience of males and females and the relations between the sexes.”¹¹⁹ Thus, the construction of both the male and the female self is clearly and deeply influenced by the social context in which it occurs.

In her recent writing, Gilligan makes a clear connection between men’s and women’s different voices—their different ways of understanding human relations and reacting to them—and patriarchy.¹²⁰ She posits that gender is a powerful lever of initiation into patriarchy because it “affects our feelings about our bodies, our selves, and also our relationships with other people, triggering the emotion of shame.”¹²¹ The perpetuation of patriarchy requires men and women to behave in certain gender specific ways into which boys and girls are initiated, boys at the age of four or five and girls in adolescence.¹²² The dichotomy between masculine and feminine is preserved through a series of culturally embedded splits: “mind/body, thought/feeling, self/relationship, culture/nature, all of which have been gendered and hierarchically arranged: mind, thought, self and culture are gendered masculine and elevated; body, feelings, relationships, and nature are considered feminine and like women, idealized and devalued.”¹²³ On the basis of her empirical observations of boys and girls, Gilligan explains that the initiation into patriarchy is achieved through a process of dissociation in which boys and girls are taught not to know what they know from their own experience, but instead to conceal their core selves, even from themselves, putting on the respective cloaks of manhood and womanhood.¹²⁴ This dissociation becomes the basis for human development in a world in which development is identified with gender binaries and with the Cartesian split between mind and body, thoughts and emotions, self and relationships.¹²⁵ Patriarchal masculinity is bound to gender duality and to a hierarchy of men over women and is framed within a paradigm of loss that is

119. *Id.*

120. Gilligan, *Knowing and Not Knowing: Reflections on Manhood* (May Gender Lecture on Masculinities, University of Cambridge, May 22, 2003)(transcript of lecture on file with the author)[hereinafter Gilligan, *Knowing and Not Knowing*]. A revised version of the lecture was published in *PSYCHOTHERAPY AND POLITICS INTERNATIONAL*, 2(2) 99-114 (2004).

121. *Id.* at 3.

122. *Id.*

123. *Id.*

124. *Id.* at 5.

125. *Id.* at 6.

symbolized by the Oedipus tragedy.¹²⁶ Gilligan questions the fundamental assumption in psychological theory that human development is dependant on the proper resolution of the Oedipus complex through separation and individuation and posits that “the Oedipus tragedy [is] the quintessential story of patriarchy,”¹²⁷ and its casting as the basis for human development is merely a means of ensuring the continuation of patriarchy.¹²⁸ “The sacrifice of relationship is the ritual of initiation into patriarchy”¹²⁹ and dissociation is “the psychic mechanism that allows survival in patriarchy, an adaptation to the splits in relationship among and between men and women.”¹³⁰ Gilligan maintains that while manhood in patriarchy requires men to forgo relationships in order to maintain their voice, womanhood in patriarchy requires women to mute their voice in order to maintain relationship.¹³¹ Consequently, Gilligan suggests, the way to fight patriarchy is by shedding the cloaks of manhood and womanhood and by rejecting the patriarchal story which tells us that love is tragic and that it is impossible to stay in relationship and maintain your voice at the same time.¹³²

The different paths of human development that society prescribes for men and women have a profound impact on their morality and on their understanding of human relations. According to Gilligan women’s morality is characterized by sensitivity to the needs of others, and an assumption of responsibility for taking care of others. This leads to their reluctance to judge, and to their tendency to attend to voices other than their own, and to include in their judgments other points of view.¹³³ Women define themselves in the context of human relationship and judge themselves in terms of their ability to care. Gilligan notes that while women’s roles in society have typically been those of nurturers, caretakers and helpmates of men, these capacities have been undervalued and interpreted as proof of women’s weakness in a society which equates personal autonomy with maturity.¹³⁴ At the same time, studies show that the qualities that are deemed necessary for adulthood, such as the capacity for autonomous thinking, clear decision making, and responsible action, are associated with masculinity and are deemed undesirable in a woman.¹³⁵

126. Gilligan, *Knowing and Not Knowing*, *supra* note 120, at 6.

127. CAROL GILLIGAN, *THE BIRTH OF PLEASURE* 207 (2003) [hereinafter GILLIGAN, *THE BIRTH OF PLEASURE*].

128. *Id.* at 74, 207.

129. *Id.* at 72.

130. *Id.* at 10-11.

131. *Id.* at 17.

132. *Id.* at 18-19.

133. GILLIGAN, *IN A DIFFERENT VOICE*, *supra* note 115, at 16-17.

134. *Id.* at 17.

135. *Id.*

Thus, society signals to women that they should not exhibit qualities such as autonomous thinking and clear decision making if they want to be considered feminine, while at the same time making it clear that women's lack of such qualities is a reflection of their weakness and inferiority.¹³⁶

Another double bind for women, which Gilligan discusses, is the perceived conflict between femininity and success which often leads women to fear success and try to avoid it in order to avoid the threat of social rejection and loss of femininity.¹³⁷ Women's ambivalence towards competitive success can also be attributed to their greater awareness of the fact that when achievement is directly competitive one person's success comes at the expense of another's failure.¹³⁸ Gilligan presents a study that has analyzed men's and women's perceptions of danger and violence through an analysis of stories written to pictures portraying both situations of achievement and situations of affiliation. The study has shown that while men tended to perceive danger more often in situations of intimacy, women tended to perceive danger more often in situations of impersonal achievements.¹³⁹ Men's stories portrayed danger most often in their stories about intimacy which depicted dangers such as entrapment, betrayal, being caught in a smothering relationship or humiliated by rejection and deceit.¹⁴⁰ Conversely, women wrote about danger most often in their tales of achievement in which they described the danger of isolation and the fear that if successful they will be left alone.¹⁴¹ Thus, while men see danger more often in connection and relationship women see danger more often in separation and competition.¹⁴²

According to Gilligan, while women tend to think about moral conflicts and their resolution in terms of maintaining and strengthening a web of human relations, men tend to think of the resolution of conflicts in terms of a hierarchy of competing rights in which the more important right should prevail. Although these views of morality are certainly different, Gilligan explains that they are complementary rather than opposed.¹⁴³ The images of hierarchy and web "convey different ways of structuring relationships and are associated with different views of morality and self."¹⁴⁴ Whereas men tend to wish to be alone at the top of the hierarchy and to fear that others might get too close, women tend to wish to be at the

136. On the double bind as the hallmark of oppression, see Marilyn Frye, *Oppression, in* FRYE, *supra* note 60, at 1, 2.

137. GILLIGAN, *IN A DIFFERENT VOICE*, *supra* note 115, at 14-15.

138. *Id.*

139. *Id.* at 41-42.

140. *Id.*

141. *Id.*

142. *Id.* at 42.

143. *Id.* at 33.

144. GILLIGAN, *IN A DIFFERENT VOICE*, *supra* note 115, at 62.

center of a web of connections and to fear being too far out on the edge.¹⁴⁵ “These disparate fears of being stranded and being caught give rise to different portrayals of achievement and affiliation, leading to different modes of action and different ways of assessing the consequences of choice.”¹⁴⁶

2. The Oedipus Complex and the Loss of Love as a Patriarchal Tool

Because male-centered psychological theory sees separation as the hallmark of human development, the continuity of relationships in girls’ lives is construed as a developmental problem.¹⁴⁷ Gilligan explains that Freud sees the birth of the self in the infant’s realization that it can only achieve external sources of gratification such as the mother’s breast through cries for help.¹⁴⁸ This realization leads the infant to understand that it is separate from the mother and to begin a search for autonomy in an attempt to ensure that it has control over all the objects necessary to secure its needs and its happiness.¹⁴⁹ Thus, this primary separation, which arises from the infant’s disappointment and is fueled by its rage, creates a self whose relations with others must be protected by rules designed to contain this explosive potential.¹⁵⁰ This pattern of relationships is then replicated in relationships in the family, the state and society.¹⁵¹ According to Freud, the single exception to the “primary mutual hostility of human beings” can be found in a mother’s relationship to her male child, which does not arise from separation but from a primary bond between other and self.¹⁵² However, this unique type of love cannot be reciprocated by the child because such love would make the child dangerously dependent on his mother and expose him to extreme suffering in case of rejection.¹⁵³ Thus, according to Freud, only women have an experience of love which does not have separation or aggression at its base, a love that is based on a bond between self and other and is motivated by what he terms an “altruistic urge.”¹⁵⁴

However, as Gilligan points out, Freud’s assumption that the aggression-separation-autonomy cycle is the inevitable form of human development (and therefore will inevitably and justly be recreated in

145. *Id.*

146. *Id.*

147. *Id.* at 39.

148. *Id.* at 46.

149. *Id.*

150. *Id.*

151. *Id.*

152. GILLIGAN, IN A DIFFERENT VOICE, *supra* note 115, at 47.

153. *Id.*

154. *Id.*

family, state and society), should be turned on its head.¹⁵⁵ Consequently, one could argue that while it is factually true that the aggression-separation-autonomy cycle is constantly replicated in family, state and society, this replication is neither inevitable nor just. It is merely Freud's and his successors' attempts at explaining observed male behavior in patriarchal society and their definition of observed female behavior as a deviation in no need of explanation that has led them to conclude that aggression, separation and autonomy are foundational to human existence. Instead, by taking seriously the alternative mode of being, which in patriarchal societies is more commonly observed in women, one can begin to view the perpetuation of the aggression-separation-autonomy cycle as being far from inevitable and as being the result of the operation of an ideological, moral system, (namely patriarchy) rather than as representing the essence of the human existence.

Challenging Freud's view that aggression and violence are the inevitable basis of all human relations, Gilligan posits that violence is inextricably tied to patriarchal masculinity. In a patriarchal world, where manhood is inseparable from hierarchy and from the gender binary and is thus extremely susceptible to shaming, violence is a means through which men attempt to "undo shame and restore manhood."¹⁵⁶ Many women, sensing the threat of violence, refrain from directly challenging the patriarchal order.¹⁵⁷ Thus, by freeing manhood from patriarchy—by releasing men from the need not to be women and from the need to be at the top of the hierarchy in order to prove their masculinity—"manhood is freed from the kinds of shaming that can be redressed by violence."¹⁵⁸

According to Gilligan, the dichotomous and hierarchical construction of gender that she describes, which results in violence and separation and in the loss of love, relationship and pleasure, is the means through which patriarchy is perpetuated.¹⁵⁹ "The trauma that is inherent in patriarchy and that fuels its continuation is a break in relationship with women and boys on the part of both women and men."¹⁶⁰ The way out of patriarchy is through resistance to gender construction and to the dissociation and loss of relationship it entails.¹⁶¹ This is why, Gilligan argues, "[i]t is essential to include the psyche in our discussions of gender because it brings in voice and the possibility of resistance, otherwise missing from the nature/culture

155. *Id.* at 48.

156. Gilligan, *Knowing and Not Knowing*, *supra* note 120 at 1-2.

157. *Id.* at 2.

158. *Id.* at 11.

159. *Id.* at 3.

160. GILLIGAN, *THE BIRTH OF PLEASURE*, *supra* note 127, at 19.

161. *Id.* at 227.

debate.”¹⁶² Gilligan suggests that resistance to the sacrifice of relationship that is the ritual of initiation into patriarchy will erode patriarchy.¹⁶³ If mothers will continue to openly love their sons without fearing for their sons’ masculinity, and if fathers will establish intimate relations with their sons and daughters instead of hierarchical relations (father over children, men over women), then love and relationship will no longer entail hierarchy and loss, and patriarchy will erode.¹⁶⁴

IV. Why is Liberal Equality Unable to Ensure Women’s Equality in a Gendered Community?

A. *Patriarchal Liberalism*

Gilligan and Chodorow’s theories are both based on analyses of Western liberal societies, especially the United States, and the women and men residing in them. Both these analyses show that even in Western liberal societies, with their promise of equality for all, there are deep psychological, structural, social and cultural mechanisms that facilitate the persistence of women’s inequality. The gendered construction of the self, which is the end result of the combined forces of these mechanisms, ensures that the disparities between men and women persist, while at the same time masking their pernicious nature even from those most damaged by them, by presenting them as stemming from free choices and natural tendencies.

Gilligan is constantly intrigued by the potential conflict between patriarchy and democracy. She asks “in the move from monarchy or aristocracy or oligarchy to democracy, is manhood the unresolved problem? How can manhood be established in the absence of hierarchy?”¹⁶⁵ She further asks whether the battle between democracy and patriarchy is the war of the twenty-first century.¹⁶⁶ For her what love and democracy have in common is that they both defy hierarchy by giving everybody an equal voice.¹⁶⁷

I am curious about the connection between love and democracy, the intimate joining of private and public life. Both love and

162. Gilligan, *Knowing and Not Knowing*, *supra* note 120, at 8.

163. GILLIGAN, *THE BIRTH OF PLEASURE*, *supra* note 127, at 72-73.

164. *Id.* at 73.

165. Gilligan *Knowing and Not Knowing*, *supra* note 120, at 1.

166. *Id.* at 2.

167. “[L]ove is the psychic grounding for a democratic society—not an idealized love, but the actual gritty pleasure of living in relationship.” GILLIGAN, *THE BIRTH OF PLEASURE*, *supra* note 128, at 208.

democracy depend on voice—having a voice and also the resonance that makes it possible to speak and be heard. Without voice, there is no relationship; without resonance, voice recedes into silence.¹⁶⁸

However, if Gilligan's and Chodorow's work show us anything, it is that formal political equality and women's inequality can and do co-exist remarkably well together, and that what Carole Pateman terms "patriarchal-liberalism" both constructs and is constructed through our gendered self.¹⁶⁹

Liberalism, capitalism and the liberal capitalist states are all masculine creations. This is a problem not only because of the unequal representation of women, which can allegedly be corrected through equal opportunities or affirmative action, but mainly because these masculine structures exhibit all the failings that patriarchal masculinity exhibits. This presents a serious obstacle for women, who in a patriarchal gender system are much more likely than men to even recognize these features of the capitalist liberal system as faults rather than as merits. Consequently, "many women seriously question the values and procedures of our current institutions. The ways they are required to operate and to treat colleagues and their own families conflict with deeply held values."¹⁷⁰

If we examine the liberal capitalist state in light of Gilligan's images of hierarchy and web and the two kinds of ethics she identifies—the ethics of equality and justice and the ethics of responsibilities and care—we discover that the liberal capitalist state is thoroughly masculine, and what is known to us as liberalism should, following Pateman, more accurately be termed patriarchal liberalism. The public sphere in the liberal capitalist state is hierarchical and based on formal equal opportunity and on the principles of justice as the rules determining each person's place in the hierarchy. The private sphere differs from the public sphere in two important and somewhat contradictory ways. On the one hand, as the sphere of women, it is a non-hierarchical sphere where care is given and responsibilities are being carried out through a web of relations and interconnectedness. On the other hand, with respect to the relations between the sexes the private sphere contains a very clear hierarchy—man over woman, husband over wife—which is perceived as having its foundation in nature and as being unchangeable.¹⁷¹ Consequently, the spheres themselves are hierarchically arranged with the public sphere (men's sphere) firmly on top. This structure fits comfortably with modern

168. *Id.* at 232.

169. CAROLE PATEMAN, *THE DISORDER OF WOMEN*, 120 (1989)[hereinafter PATEMAN, *THE DISORDER OF WOMEN*].

170. JEAN BAKER MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* xii-xiii (1986).

171. PATEMAN, *THE DISORDER OF WOMEN*, *supra* note 169, at 121.

patriarchal masculinity as presented by both Chodorow and Gilligan. While modern patriarchal masculinity can accept the authority and superior hierarchical position of other men, it has a basic need to devalue women and to perceive them as inferior.¹⁷² Accordingly, while the liberal state deems it necessary to open hierarchical positions in the public sphere to the free competition of (publicly) equal persons, the hierarchy in the private sphere is perceived as natural and as extraneous to the state. The move from a status society to a democratic society has stopped short at the entrance to the private sphere. As the gendered construction of men and women makes patently clear, sex still determines the status of individuals in democratic societies in very important ways.

B. Who Cares?

The liberal capitalist state intentionally abstains from taking upon itself any care responsibilities under the assumption that these are strictly a private matter, to be resolved in the private sphere, and not a matter for the state. Welfare in countries such as the United States, which are identified as liberal residualist welfare states, delivers only meager benefits on the basis of need and as a last resort.¹⁷³ This structure of liberal capitalist states can be clearly traced back to their explicitly patriarchal past, when only men were allowed to compete in the public sphere while women were strictly confined to the private sphere where they were assigned to take care of everybody's needs.¹⁷⁴ While the formal barriers for women's participation in the public sphere have been removed, both the structure and the ideology of the capitalist liberal state have remained thoroughly patriarchal in that they assume, maintain and rely on the existence of a relational web that provides care in the private sphere in order to maintain a carefree hierarchical public sphere in which formal equality of opportunity and the principles of justice prevail.

Just as with any pyramid, whose stability depends on the solidity of its basis, the structure of the capitalist liberal state is entirely dependent on the fortitude of the private sphere and its ability to carry out the care responsibilities that the state refuses to take upon itself. In a non-gendered community this need could allegedly be met in a gender neutral way. However, whereas Chodorow's analysis shows us how Western societies intentionally reproduce women's mothering and discourage men from

172. CHODOROW, *THE REPRODUCTION OF MOTHERING*, *supra* note 61, at 180-90; Gilligan, *Knowing and Not Knowing*, *supra* note 120, at 6.

173. GOSTA ESPING-ANDERSEN, *THE THREE WORLDS OF WELFARE CAPITALISM* 26-27 (1990).

174. PATEMAN, *THE DISORDER OF WOMEN*, *supra* note 169, at 179-209 (in this chapter, "The Patriarchal Welfare State," Pateman analyzes and explains this history).

assuming care responsibilities, Gilligan shows how patriarchal construction of self and society ensures that those same qualities that enable women to function as care-givers, such as preferring cooperation over competition and attending to the needs of others, present serious obstacles to their advancement in the public sphere. Furthermore, the fact that the public sphere is structured as a competitive pyramid, while the private sphere is structured as a web, is neither accidental nor innocent. It is not accidental because as already mentioned the public sphere was historically structured by men, for men. It is not innocent because the lack of attempt to change the competitive structure of the public sphere necessarily results in the perpetuation of women's inequality. The separation and opposition between the public and the private sphere in liberal theory and practice is neither accidental nor innocent just as the separation and opposition between man and woman in patriarchy is neither accidental nor innocent, as the former is a direct result of the latter.¹⁷⁵

As Gilligan rightly argues, the two different moral ethics that she identifies—the ethics of justice and the ethics of care—are not opposed but rather complementary. In order to “un-gender” Western societies and the men and women who inhabit them, it is necessary to combine the pyramid and the web, the ethics of justice and the ethics of care. Such a combination would entail an ethics that recognizes both that *all* people have rights as individuals and that *all* people have significant care responsibilities toward others, and that the state has the duty to ensure that these responsibilities are carried out in a way that does not prejudice the rights neither of the care givers nor of those who need the care. To date, the most serious attempt to implement such a change has been made in Nordic countries.¹⁷⁶ Nordic countries are “characterized by a strong public sector that provides social services of various kinds. Family policies make up an important part of the welfare system in all Nordic countries.”¹⁷⁷ The bulk of child care, as well as elder care and other forms of publicly provided care, is financed by public means.¹⁷⁸ In accordance with the vision guiding family policies in Nordic countries, “parents [a]re seen as economically independent individuals, both with obligations and rights in respect of their children as well as the labor market.”¹⁷⁹ This means that to varying degrees Nordic countries implement parental leave and child care policies that allow both parents to share equally in both production and reproduction.¹⁸⁰ A pertinent example is the introduction of the “father’s

175. *Id.* at 119-20.

176. See Bergqvist, *supra* note 40.

177. *Id.* at 121.

178. *Id.*

179. *Id.* at 124.

180. *Id.*

quota,” which is a period of parental leave which can only be used by the father. With the introduction of the “father’s quota” the percentage of fathers using their paternity leave has increased dramatically.¹⁸¹ While these policy reforms have not yet revolutionized people’s practices, and women still carry most of the care responsibilities, they have significantly contributed to the equality between the sexes in the Nordic countries, which as international comparisons show, are the most advanced in the world in this respect.¹⁸² Furthermore, these reforms have created an extremely important shift in the conceptualization of the worker by making the conflict between production and reproduction not only the problem and responsibility of women, but also those of men, and consequently, of society as a whole.¹⁸³ A useful contrast can be drawn with Pateman’s description of patriarchal liberalism in which “[i]t is ‘forgotten’ that the worker, invariably taken to be a man, can appear ready for work and concentrate on his work free from the everyday demands of providing food, washing and cleaning, and care of children, only because these tasks are performed unpaid by his wife.”¹⁸⁴ If Chodorow’s analysis is right, then the increased participation of fathers in the care of their children will set in motion psychological changes in both the masculine and the feminine psyches that would gradually end the reproduction of women’s mothering and the devaluation of women. Nevertheless, this change cannot be achieved on a large scale without active state participation.

C. *Justice and Love*

Contemporary political philosophers are wary of recognizing the connection between equal rights and care responsibilities, between justice and love. This is best demonstrated in the longstanding and still unfinished debate between political philosophers and feminist theorists with regard to the applicability of principles of justice in the family. In her writings Susan Moller Okin has critiqued important political philosophers such as Rawls and Sandel for refusing to apply the principles of justice to families.¹⁸⁵ For

181. *Id.* at 130. In Norway for example the percentage of fathers using the paternity leave has increased from 4 to 55 percent. Prior to the introduction of the “father’s quota” this period of parental leave could have been used by either of the parents and was subsequently used more frequently by the mother.

182. *Id.* at 123.

183. *Id.* at 124.

184. PATEMAN, *THE DISORDER OF WOMEN*, *supra* note 169, at 132.

185. See OKIN, *JUSTICE GENDER AND THE FAMILY*, *supra* note 5, ch. 2 (criticizing Sandel for concluding that justice is a social sphere in which justice is inapplicable, and stating that while it seems like Rawl might support the idea that justice may be applicable to the family sphere, it is not a primary value); Susan Moller Okin, *Justice and Gender: An Unfinished Debate*, 72 *FORDHAM L. REV.* 1537 (2004) (again criticizing Sandel’s position that families

example, Okin criticizes Sandel for arguing that families are beyond or above justice because they are characterized by nobler virtues such as love, and for suggesting that the application of the principles of justice to the family is undesirable because it would lead to “the loss of certain ‘nobler virtues and more favorable blessings.’”¹⁸⁶ Okin rejects the claim that the application of principles of justice would result in the loss of love and argues that justice is needed as an essential moral foundation even in social groupings such as families, which are governed by moral virtues such as love, affection and generosity.¹⁸⁷ Reflecting on the claim that justice should not apply to families, Okin concludes a recent article with the words: “But having spent much time thinking about justice and its applicability or lack of applicability to families, some of us are not sure that this is at all evident. We still ask: ‘Why not?’”¹⁸⁸

Not surprisingly, this debate maps exactly on the theoretical split between public sphere—justice/equality on the one hand, and private sphere—love/care responsibilities on the other. Okin calls this split into question by claiming that introducing justice and equality into the family is essential in order to ensure the proper functioning of the loving family and the adequate implementation of care responsibilities. Conversely, Sandel adamantly defends this split between justice and love, threatening that the mixing of the two would lead to the loss of love. Analyzing this argument from the gender perspective allows us to suggest a possible answer to Okin’s query “Why not?” By reminding ourselves of the masculine need for the perpetuation of a strict hierarchy between the sexes as a prerequisite for love and relationship, which both Chodorow and Gilligan identify as prevalent in the Western psyche, we can get a glimpse into how a seemingly neutral political philosophy is both structured and used in the service of the often unacknowledged masculine need for the perpetuation of hierarchy.¹⁸⁹

D. *Back to Eve and Lilith*

We have seen that woman as Eve—wife, mother and subordinate—is an integral part of the typical Western masculine psyche, which is based on hierarchy and on gender binary. Woman as Eve is also an essential part of the typical Western feminine psyche, which is based on the need to care

do not need justice and criticizing Rawls for his inconsistent and incomplete theory of justice in the family) [hereinafter *Justice and Gender*].

186. OKIN, *JUSTICE GENDER AND THE FAMILY*, *supra* note 5, at 28.

187. *Id.* at 29.

188. Okin, *Justice and Gender: An Unfinished Debate*, *supra* note 1855, at 1567.

189. CHODOROW, *THE REPRODUCTION OF MOTHERING*, *supra* note 61, at 180-90; Gilligan, *Knowing and Not Knowing*, *supra* note 12020, at 6.

and to be in a relationship. Similarly, Eve, the devalued wife and mother, is the basis for Western political philosophy and practice, which dichotomize justice and care, the public and private, and whose structure is based on their hierarchical ordering and their opposition. Conversely, Lilith is diametrically opposed to both the patriarchal masculine and the patriarchal feminine psyche, being a woman whose individuality and equality are more important to her than her relationship with Adam; who is assertive and independent and refuses to become a submissive wife; who reneges on her care responsibilities by never becoming a mother (and even threatening other people's babies). Equally, Lilith threatens the foundations of Western political philosophy and practice, which is based on the premise of women's acquiescence to their fundamental and perpetual role as reproducers of the species and as care givers and nurturers of children and men.

A good example of the hold the image of woman as Eve has on the Western psyche, including the feminist psyche, can be found in John Stuart Mill's *The Subjection of Women*, which is described by Susan Okin as "the only major work of feminist theory written by a man who is generally considered a great theorist within the Western political tradition."¹⁹⁰ In this classical argument for women's equality both in marriage and outside of it Mill assumes that even once equality is established and women have equal educational and occupational opportunities, most women would still choose marital dependence and caring for their families over pursuing a career that might conflict with their domestic obligations.¹⁹¹

Like a man when he chooses a profession, so, when a woman marries, it may in general be understood that she makes choice of the management of a household, and the bringing up of a family, as the first call upon her exertions, during as many years of her life as may be required for the purpose; and that she renounces, not all other objects or occupations, but all which are not consistent with the requirements of this.... These things, if once opinion were rightly directed on the subject, might with perfect safety be left to be regulated by opinion, without any interference of law.¹⁹²

Okin, in her introduction to Mill's text rightly argues that "[c]ontemporary feminists are unlikely to agree with Mill that justice in the family can readily coexist with the traditional division of labor between the

190. Susan Moller Okin, *Introduction*, to JOHN STUART MILL, *THE SUBJECTION OF WOMEN* v (Susan Moller Okin ed., Hackett Publishing Co. 1988)(1869) [hereinafter *Introduction*].

191. PATEMAN, *THE DISORDER OF WOMEN*, *supra* note 1699, at 129.

192. JOHN STUART MILL, *THE SUBJECTION OF WOMEN* 51-52 (Susan Moller Okin ed., Hackett Publishing Co. 1988)(1869).

sexes.”¹⁹³ Precisely for this reason, it is quite striking to observe how Mill’s assumption, which goes against any acceptable theory of equality, reflects, to a large extent, a prevalent situation in the Western world, and especially the capitalist Western world. In the Western capitalist world, and in the United States in particular, many (and perhaps most) married women who do work merely hold a job (frequently part-time) while only their husbands pursue a career, and those women who can afford not to work, renounce work altogether and devote their time to raising their children and taking care of the home. Thus, in the United States, factors such as the affluence of the country, the rigid requirements of the highly competitive job market, the social and cultural expectations from women and the gendered structure of the self, combine to keep many highly educated and professionally trained women at home with their children. Consequently, the United States has one of the lowest labor force participation rates for college educated women in the developed world.¹⁹⁴

While the modern Eve can have the best education and even hold a high-powered job for a few years, once she marries and has children she is expected, and most often expects herself, to renounce her career for the sake of raising her children. As in other countries in the world, motherhood is considered a sacred institution.¹⁹⁵ Furthermore, it is not only for the sake of the children that society needs women as Eves; men too need Eves if they want to successfully climb up the pyramid. A survey of chief financial officers in American corporations found that eighty percent were men with stay-at-home wives.¹⁹⁶ “The presence of a wife at home to care for family and personal matters is almost as much a requirement for success in business today as it was a generation ago.”¹⁹⁷ Furthermore, even if one might think that the new Eve is a new kind of wife and mother that enjoys equality, unlike the old oppressed wife and mother, facts such as those indicating that the single biggest risk factor for poverty in old age is motherhood, and that mothers in forty-seven of the fifty states in the United States “do not have an unequivocal legal right to half of the family’s assets” prove otherwise.¹⁹⁸ The rigid dichotomy between the public and the private spheres, between the sphere of justice

193. *Introduction*, *supra* note 190, at xiv.

194. ANN CRITTENDEN, *THE PRICE OF MOTHERHOOD* 17 (2001) (citing female university graduates’ labor participation rates provided by economist Agneta Stark of the University of Stockholm during a 1997 interview in Stockholm).

195. *Id.* at 1.

196. *Id.* at 17-18 (citing Michael W. Trapp, Roger H. Hermanson, and Joseph V. Carcello, *Characteristics of Chief Financial Officers*, 9 CORP. GROWTH REPORT 17-20 (1991)).

197. *Id.* (quoting Charles Rodgers during an interview in Cambridge, Massachusetts in October 1994).

198. *Id.* at 1, 6.

and the sphere of care leaves women no choice but to be Eve: “What look like female values are regulations of society at large: to protect, conserve, love and rescue life. It is because these are demanded as actions and attitudes from individual women and not from a social structure that women are oppressed.”¹⁹⁹

If the structure of the patriarchal liberal state requires women to be Eve—to be attached to men, to take care of them and of their children—then women that are independently strong and with a free sexuality, Liliths, are perceived as bad and as selfish.²⁰⁰ Even today judgments of selfishness have an enormous power in women’s thought due to the notion that virtue for women lies in self sacrifice.²⁰¹ According to Gilligan, the central flaw in typical women’s morality in a patriarchal society is their failure to include their own selves and their needs and wants as factors in their moral decisions.²⁰² Empirical research shows that many women find it hard to even identify what their real needs and wants are.²⁰³ This puts into stark relief the deep opposition that exists between the independent, determined, and selfish Lilith, and the feminine psyche in the patriarchal liberal state. As Naomi Wolf explains, the need to resurrect Lilith stems from the fact that “Lilith is the ultimate autonomous woman; and in a world that attacks as narcissists and as monsters of selfishness women who think too highly of their own individuality or their own needs, it’s good to have a figure who can serve us, essentially, as a goddess of the female self; as a reminder that individual character, even to the point of eccentricity, in a woman, is something to honor.”²⁰⁴

E. The Role of Patriarchal Religion in Sustaining the Patriarchal Liberal State

One of the most puzzling phenomena, at least from an egalitarian feminist perspective, is the undeniable hold patriarchal religion has on so many women. Nevertheless, it seems that the previous analysis can offer a possible explanation to this hold, as well as a glimpse into the ways in which the capitalist liberal state makes use of allegedly private external agents, such as patriarchal religion, in order to maintain its patriarchal structure. Prior to the ascendance of liberal theory no theoretical separation

199. Frigga Haug *Daydreams*, 162 NEW LEFT REVIEW 51, 64 (1987).

200. ARIELLA FRIEDMAN, ANNY OAKLEY WON TWICE—INTIMACY AND POWER IN FEMALE IDENTITY 55, 129-33 (2001).

201. GILLIGAN, IN A DIFFERENT VOICE, *supra* note 1155, at 131-32.

202. *Id.* ch. 5; FRIEDMAN, *supra* note 200, at 41-42.

203. FRIEDMAN, *supra* note 200, at 41-42.

204. Naomi Wolf, *Introduction, WHICH LILITH?: FEMINIST WRITERS RE-CREATE THE WORLD’S FIRST WOMAN* (Enid Dame et al. eds., 1998), *supra* note 23, at xii-xiii.

existed between the public and the private sphere. Both spheres were governed by the rules of religious patriarchy which gave the king and the fathers complete control over people's lives. In the Lockean move to separate the public sphere from the private sphere and to create a sphere in which the principles of justice will prevail and in which all men will participate as free and equal, religion and the natural hierarchy it establishes were relegated to the private sphere. Where the patriarchal religion offers relative comforts such as hierarchical love, care, and compassion. Patriarchal liberal theory and practice firmly separated the ethics of justice from the ethics of care, leaving care responsibilities in the hands of mothers and of religious charities whose operations were based on women volunteers. Taking into account the gendered construction of the self and women's closer affinity to an ethics of care, patriarchal religion's appeal for women becomes clear. As is apparent from the previous analysis, until and unless the patriarchal liberal state assumes care responsibilities and changes its capitalist competitive structure, it will not hold a genuine promise of equality for most women, nor will it supply them with the relational web that many of them seek. In contrast, while patriarchal religion will remain hierarchical and will continue to deny women equality (with the sanction of the justice-driven liberal state), the hierarchical love that it offers women, the importance it places on care responsibilities and its assistance in their fulfillment, and its emphasis on creating and maintaining webs of relations, will continue to appeal to many women.

Gilligan posits that "it has become possible to envision a democracy that is not patriarchal; it is more difficult to imagine a love that is passionate without becoming tragic."²⁰⁵ However, I would like to suggest that it is exactly our inability to envision a love that is passionate without becoming tragic, that prevents us at this stage from being able to envision a democracy that is not patriarchal.²⁰⁶ It is this inability to imagine a love without tragedy, loss and hierarchy that makes the love offered by patriarchal religion so appealing to many. As Gilligan notes, and as the famous feminist slogan "the personal is the political" connotes, patriarchy

205. GILLIGAN, *THE BIRTH OF PLEASURE*, *supra* note 1287, at 232.

206. Carole Pateman, perhaps the most forceful feminist critic of liberal theory, posits that we are still unable to envision a liberalism which is not patriarchal.

[W]omen and men, and the private and the public, are not necessarily in harmony. Given the social implications of women's reproductive capacities, it is surely utopian to suppose that tension between the personal and the political, between love and justice, between individuality and communality will disappear with patriarchal-liberalism. . . . The feminist total critique of the liberal opposition of the private and the public still awaits its philosopher.

PATEMAN, *THE DISORDER OF WOMEN*, *supra* note 169, at 136.

is at the same time a most personal psychic phenomenon and a public structural phenomenon. Consequently, its defeat requires a simultaneous change in both public structures and personal psyches. Gilligan suggests resistance to the break in relationship with women and boys on the part of both women and men as a way to defeat patriarchy in the personal psyche; Chodorow suggests the institution of symmetrical parenting, and Nordic countries are struggling with reforms in public structures meant to achieve just that. It is quite possible that the gradual implementation of these strategies would indeed lead in the long run to the long awaited demise of patriarchy, and it seems obvious that, at least as far as changes in public structures are concerned, liberal states should be seen as duty bound to implement such changes. Nevertheless, as long as such changes are not implemented, the continuing and ever growing role of patriarchal religion in the patriarchal capitalist liberal state is to be expected notwithstanding the discrimination against women that patriarchal religion openly practices. This is so both because patriarchal religion fulfils the personal psychic need generated by patriarchal gender construction for tragic hierarchical love, and because the patriarchal liberal state has an interest in promoting and protecting patriarchal religion as an unofficial means of facilitating and enforcing women's role as caregivers.²⁰⁷

V. Conclusion

In this article, I have suggested a possible answer to the puzzling question of how is it that despite the explicit promise of equality for women present in each and every Western liberal democracy, that sex discrimination persists and is often even legitimated and protected, especially when it is based on religious and cultural motivations. I have used the empirical psychological observations regarding the gendered construction of the self in Western liberal democracies made by Chodorow and Gilligan and the subsequent theories they have developed, as well as the historical unfolding of the myths of Eve and Lilith, and the patriarchal origins and structure of liberal theory, as building blocks for my argument. I have argued that the failure of liberalism to deliver on its promise of equality for women is due both to the gendered structure of liberal theory and society and to the gendered construction of the self in Western liberal societies, which is both shaped by and shapes the structures of these societies and the theories supporting them.

The dichotomy between the public sphere in which free and equal men compete pursuant to the principles of justice, and the private sphere in

207. It seems entirely plausible to argue that there is a causal link between the low levels of religiosity in the Nordic Countries and their extensive egalitarian welfare regimes.

which women are expected to renounce equality and justice and are expected to graciously accept their responsibility to care and to love, is at the basis of the structure of the patriarchal liberal state. The very same dichotomy is at the basis of the construction of the masculine and feminine selves in these societies. The patriarchal gender construction that occurs mostly in the extraneous private sphere serves to both obscure and perpetuate the unacknowledged patriarchal nature of the state. Thus, while the patriarchal liberal state is purportedly committed to ensuring equal opportunities to all women should they “choose” to compete in the public sphere on similar terms with men, the entire structure of the state depends on women’s allegedly free choice to prioritize their care responsibilities. Consequently, patriarchal liberal states are heavily dependent on private agents of patriarchal gender construction, such as religions, cultures, and families in order to ensure that both women and men continue to embrace Woman as Eve and reject Lilith. These private agents of patriarchal gender construction guarantee that the ancient road to Lilith and Adam as two completely equal halves of the first human with equal rights and identical responsibilities remains untaken even as the twenty-first century unfolds.

