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Articles

THE RED BOOKLET ON FEMINIST EQUALITY. INSTEAD OF A MANIFESTO.

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Introduction

If feminist legal theory were to face its legacy today, it would see that its tremendous value rests in its means more than in its ends. True, it has produced palpable results for its promoters domestically. It satisfied many feminists' discrete incremental requests, from Women's History Month to a limited right to bear or beget.

While feminism partially satisfied well-identified gendered demands, it has ignored their “base” or frame. I argue that it has ignored basic calls for social justice. As shown here, how gendered demands are satisfied depends on whether basic demands for food and shelter have even been formulated. Once those basic demands for social justice are part of the public discourse, gendered wants can easily become visible, and be formulated in addition to the basic ones, rather than instead of them. Legal feminism needs to see how those basic demands enable the very existence of gendered demands in the same way “grammatical rules are the indispensable base for our free thought[s]” or our conception about the rule of law is the base for our rights-based system.¹ Absent such basic demands, the gendered ones are castrated of the potential influence they can exercise on all their intended beneficiaries and the society at large.

There are some gendered demands which are closely connected to basic ones, and separating them would only stifle the search for a wide-encompassing and long-lasting solution to such complex problems like: how do we improve the life of a jobless battered wife, mother of four, whose husband lost his job as well? Do we argue for removing the wife from the family? It could be done, but it would be without dignity and it would speak badly about the society that tolerates such answers. For all **107* these reasons, I argue that American legal feminism faces both epistemological and ethical problems.

Women find themselves at the top and at the bottom of the social ladder. Those at the top are as interested in preserving the status quo as the men next to them are.² Women at the bottom of the social ladder and living in the slums, like Cheryl Green--the fourteen-year-old Los Angeles gang violence victim--and her mother³--continue their quest for basic survival. Legal feminism has no long-lasting answers for them, except perhaps to start a lawsuit against some perpetrator, because if legal feminism wants to help gendered subjects with specific gendered wants, quite often it ignores their slums.

Internationally, American legal feminism faces similar problems. Women who live in the Third World,⁴ who either migrate to toil in our kitchens, backyards, nurseries, and nursing homes, or die quietly in their homeland, find even fewer answers in this theory. They are even more connected to their families and neighborhoods, and thus their demands are even more complex and more intertwined with those basic ones.⁵ Those demands require deconstructing reality and bringing out the essence of poverty to find long-lasting solutions. So far, American legal feminism has been successful when it offers incremental answers to most non-economic middle-class problems. When it offers economic and social solutions (to employment, motherhood, etc.) it has opened itself to questions about the solutions current feminism seeks. The lack of solutions threatens the fabric of our meek social support of have-nots.⁶ Can we decide who is more deserving? Shall we decide between men and women equally in distress? The time for new answers has come.

This article is structured in eight sections. This brief introduction is followed by a section on “Postmodern Thought and Postmodern Politics,” which connects globalization to postmodern and neo-liberal thought and to the destruction of the Left's discourse on universal meta-narratives. *108 Separate sections will discuss the postmodern aspect of globalization, as well as the impact the rise of postmodern and neo-liberal thought had on the collapse of the Left meta-narrative and the making of poverty into a charitable issue. The next section will offer an analysis of the powerless. It will focus on a conceptual issue: what concept can better re-energize a discussion on how to solve their plight? Could a gendered concept be more helpful than the postmodern genderless “other,” or even the Marxist “exploited class”? The following two sections will summarize the current feminist and human-rights-based theories and point out their strengths and flaws. A separate section will discuss the role of the state in promoting the universal value of human dignity. The final section will analyze how feminism can regain its promise and better the fate of all women. As a method discipline promoting social justice from a feminist moral perspective, (legal) feminism might just achieve its goal of improving women's lives in a world populated by heterogeneous beings of different economic, social, and cultural backgrounds.

I. Postmodern Thought and Postmodern Politics

A. Briefly on Postmodernism

Legal feminism is not alone in its existential crisis. Postmodern theory, which has made legal feminism intellectually possible to a large extent, has also reached its critical existential moment. I argue here that postmodern thought enabled both identity politics and the present globalization, and that both have arguably ignored basic calls for social justice, which require the very meta-narrative identity that politics and the current globalization have replaced.

Postmodernism is an intellectual umbrella which covers a multitude of theories. Their common feature is a well-established fear of making or having “the appearance of making primary statements or of having positive (or ‘affirmative’) content.”⁷ They believe that nothing is what it appears to be: everything is only a segment in a larger context.⁸ As a result, to the extent to which it has not made action impossible,⁹ it has promoted incremental social change for identifiable groups.

In 1990, Terry Eagleton predicted that, within the next ten years, identity emancipatory politics would “bring about the material conditions that would spell their own demise” because they “have some peculiar self- *109 destruct device built in them”¹⁰ by which they lose their legitimacy as oppositional politics. Judging by its results, one may argue that American feminist discourse has reached the limit of its own demise, as there is little controversy surrounding it: women are promoted both by the establishment and the opposition.¹¹ This lack of controversy and the amount of success can be both a reason to rejoice and to worry, especially if it is due in large part to the way feminism has based its successes on its sliced-up subject--the woman and its many postmodern “others.”

Postmodernism is facing a vast array of problems because its core discourse is fraught with contradictions. For example, “the Other” has a two-fold internal contradiction that each day becomes more obvious, with more devastating results for its proponents: it gives identity to “the Other” at the expense of keeping her marginalized. Simone De Beauvoir identified the woman with the famous “other”¹² and feminists obtained many rights on her behalf: de-marginalizing her, but trying to maintain the benefits of the victimized “other” at the same time. Such a strategy, while useful on a small scale, only irritates the “other” members of a potential coalition.

Another perceived handicap of postmodernism is its self-description as the twentieth-century Machiavellian leftist response to what was perceived as left-wing failures: ignoring pluralism and (later) multiculturalism.¹³ Postmodernism lent those concepts mystique and used them to hide the simpler truths behind them. Some may call such an attitude a postmodern sado-masochistic response, as it brought about its own painful demise. Whether consciously or not, when the Left academe became disenchanted with socialism-- especially after the Stalinist terror became a matter of public record¹⁴--it decided to deflate the catastrophe by putting it into a relative world where nothing meant anything anymore. Those embarrassed members of the academe found

it easier to play games, be them Machiavellian, with their audience than to acknowledge that the political side they chose could be inadvertently viewed as barbaric and inhumane *110 because of its association with Soviet fascism. Instead of explaining Russia's successes, they chose to focus on how to minimize Russia's failures. They chose to deconstruct those failures, instead of explaining them in Marxist terms: Marx never thought a socialist revolution could take place in Russia, one of the most feudally backward and corrupted countries at the end of the nineteenth century.¹⁵ Facing the dangers of reducing everything to derision, twentieth-century postmodern thinkers distrusted universal truths more. Scholars, such as Foucault, for example, were keen on relegating Marx to the museum and Marxism to the nineteenth century to make space for their own self-destructive theories.

Postmodernism, as an intellectual Machiavellian¹⁶ game of minimizing the perceived failures of socialism, has been successful. The Left stopped being embarrassed by the Soviet failures and even produced new well-tailored demands, which in time have been answered and have even become part of the mainstream political discourse. Those demands, modest by Marxist standards, have been reached at a big, perhaps too big, cost--a loss of socio-political imagination. Interestingly, though, postmodernism is less subversive from an epistemological standpoint than it would like to present itself. It breeds only one type of skepticism--one that makes bold demands about social justice and equality. Otherwise, its middle-class audience accepts postmodern tenets with little criticism.

Some may point out that postmodern thought enabled American leftist legal thought to diversify and embrace many points of view. I would point out that the best way to conquer and destroy opposition is by enabling division in the ranks. Being skeptical about general truths and by default promoting knowledge whose legitimacy rested in our tribal membership, postmodern thought enabled neo-liberal policies to happen by paralyzing social action. Social action needs some general truths to fight for. Under pressure from the right through the emaciated night-watchman-type of state¹⁷ and from center-left through policies of the limited liberal government,¹⁸ free trade, and laissez-faire,¹⁹ the Left found itself paralyzed and unable to oppose neo-liberal policies that came with an aura of guaranteed success. Consequently, the rich became richer.

*111 Finally, postmodernism finds itself in a critical moment because it denigrates reason and universal values: it opposes enlightenment-based values. Postmodernism vigorously opposes reason both epistemologically and politically. "Reason" became a metaphor, which ridiculed "the man who wishes to be taken seriously as a philosopher."²⁰ However, while postmodern oppositional politics, as Eagleton suggested, moved under the sign of irony, they proved themselves "ineluctably parasitic on their antagonists."²¹

This statement does not require as much explanation as it would first seem because, as explained here, to the extent that identity politics thrive on the value of "the Other," "the Other" is a dynamic community that empties its content as soon as the group receives proper representation within the structures of power. To be successful, postmodern oppositional politics need to represent a relatively well-defined "Other" that can be empowered by the existing structures of power. Paradoxically, the mere success of oppositional politics is their failure: they need a perpetual marginal "Other" to replace a perpetually empowered "former-Other." It becomes very tempting to offer an illusion of success: empower representatives of the "Other" and keep majorities marginalized.

Oppositional politics minoritize minorities, a scholar beautifully acknowledged not long ago.²² However, in doing so, postmodern thought wasted a lot of intellectual energy: too many members of the academe lavished an extraordinary amount of attention on issues, "which are not in the long run all that important."²³ Certainly, deconstructivist postmodernism can be equated with justice at a certain level. Deconstruction, as Stephen Feldman suggests, can become an "unquenchable political desire to reveal violence and deception, to uncover denial, exclusion, and oppression. From this perspective, the law always constructs and suppresses some Other, and deconstructive justice . . . seeks to disclose this suppression."²⁴

But engaging in deconstructivism at the exclusion of everything else can become destructive because it ignores other aspects of reality, such as the billions of have-nots who have more in common than not. The masses live in squalor with no running water, electricity, proper medication, *112 education, etc. Perhaps inadvertently, deconstructivist politics have gravely wounded the

basic human rights claims of those whose interests it tried to represent: women, mothers, wives, sisters, and partners silenced in the myriad of identities of the postmodern Other.

B. Did Postmodern Thought Enable the Current Version of Globalization?

Globalization may mean different things. For the purpose of this article, globalization will cover “economic globalization,” which major enthusiast Jagdish Bhagwati defines as “the integration of national economies into the international economy through trade, direct foreign investment (by corporations and multinationals), short-term capital flows, international flows of workers and humanity generally, and flows of technology.”²⁵ The national players belong to the First, Second, and Third World, with the Second world dwindling into the other two categories (with the death of the Soviet empire and the European Union's enlargement),²⁶ the Third World providing the work force (both at the highest and lowest end), while corporations and multinationals belong to various individuals, mostly from the First World.²⁷

The bigger argument I make here is that by disparaging the leftist meta-narrative, postmodern thought enabled neo-liberalism to creep into our legal imagination, delegitimized a possible comprehensive social critique from a leftist position, and made globalization intellectually possible. In an interesting Hollywoodian twist, globalization brought to the surface the billions of have-nots, forcing us to look at them and acknowledge their misery on our TV screens. Certainly, our Western sensibility cannot comprehend general abstractions anymore, and misery becomes comprehensible only when it is told one story at a time. Nevertheless, its impact, even when marketed as sensationalism, backfired, and the need for a comprehensive critique of equality has become apparent.

Postmodernism, and its slogan that there are no universal truths, delegitimized theories about the superiority of any meta-narrative and subsequently, that of any given culture. To its credit, postmodern thought encouraged a multicultural discourse. This discourse soon legitimized the quest for a global society, where all civilizations were brought together to the table of social and economic prosperity. I accuse postmodern thinkers **113* of short-sightedness. When the present global movement unapologetically became the global governance movement, they did not engage in a forceful critique of what they saw: a movement whose multiculturalism only educated the Old World's shareholders to carve up a portion of the global pillage for few vetted members of other cultures. I know I am making excuses for postmodernism because I do not want to appear unsophisticated, but globalization was never about bringing everybody to the same table of prosperity, it has always relied on corporate governance and shareholders' responsibilities.

Within this postmodern atmosphere, states have been expected to perform weakly, or not at all. They have not been expected to protect their citizens any longer. Corporations insidiously inserted themselves into the service-providing equation, either directly or by sponsoring nongovernmental organizations (NGOs) or even United Nations programs.²⁸ So-called private responsibility has come to be treated as an alternative to the ordinary functions of the liberal welfare state.²⁹ People have been taught to believe that corporations could care for their plights. Impotence has reached the First World too, especially the U.S. government.³⁰ The results have been disastrous.

As neo-liberal policies have taken the state away from the answer, postmodern criticism has done little to oppose such a trend. In fact, postmodern relativism enabled people to believe that an individual posture could be meaningful and that the state is indeed an unnecessary bureaucratic link. For example, in a world where postmodern theories reign, newspapers can run commercials that mix both profit and charity. In a postmodern world, it is not enough to say that actors endorse products. Actors, such as Gary Sinise, cannot accept that they are doing a job endorsing watches by Baume & Mercier, for which they are handsomely paid. Today the advertisement needs to tell a story, and that story is as truthful as Tawana Brawley's:³¹

It's TIME to make a difference. To learn more about how Baume & Mercier and GARY SINISE contribute to programs that improve education for our **114* children, seek to cure cancer and protect the environment, please visit: www.baume-and-mercier.com.³²

Under the stupefied guise of postmodernism, neo-liberal policies have privatized social services, shrunk the state, and offered instead an imperfect solution that has only stabilized the status quo (that is, the private initiative, the “good” corporation, and the charity put together by the shareholders' wives). For all the reasons mentioned above, I connect postmodern thought to the present discourse on the collapse of the state, and that is hard to ignore or forgive, especially in November 2008, when the American people have to make a choice between another Hoover or another FDR administration.

In this process of *reductio ad absurdum*, I argue that postmodernism caused its own demise. It placed a huge question mark over its own relevance: for how long can the academe embrace a theory that only engages in minoritizing issues, exalts “urban heterogeneity,”³³ and serves ever smaller audiences? The more it preached let everybody eat his or her cake, its intellectual secular discourse has become more inaccessible to the disempowered billions who could not afford their daily bread. In this vacuum, the recent *risorgimento* in fundamentalism³⁴ shows the masses have turned their attention to what was easily available: pre-Enlightenment theories, whose discourse, of course, annihilates the academe's. After decades of disparaging the leftist meta-narrative, postmodern thinkers may find it hard to start rehabilitating it. I believe that even if Marxism may be regarded as outdated, its strength remains a beacon to generations to come; short of derision, there can be no legitimate social justice discourse without addressing the plight of the masses.

C. Globalization and the Collapse of the Left Meta-Narrative

Postmodernism rose to prominence on the shoulders of a besieged leftist meta-narrative and the result has backfired. Upon reducing the Left to ashes, postmodernism enabled globalization to present itself as a new phenomenon without any existing theoretical framework of understanding and allowed its sycophants to close debate. Certainly, not all Leftist scholars are postmodernists, only the most prominent ones are. Some have tried to demystify the aura of modernity and progress that legitimized its *115 brutality, calling globalization “Havel's Velvet Revolution in reverse: it is brutally raw capitalism in a legal face.”³⁵ Davis and Neaçu write:

The failure to understand the nature of globalization and, oddly, of globalization's opponents, is a serious and, moreover, astonishing, failure of public debate. Globalization is a political phenomenon whose strategy is to internationalize capitalism through a process of legalization. Globalization, thus seen as a legalized economic phenomenon can be understood as one in which formally rational propositions are first posited as natural, just, or even inevitable, apparently subject to a constraining rational limit (the law of comparative advantage) which is then used to discredit opposition as illegitimate and therefore somehow illicit. What globalization gains from this gambit is the legitimation of its underlying political and economic choices while foreclosing debate. But globalization's underlying assumptions when viewed in that sense become contestable, because they are unexamined, undebated, and undemocratic.³⁶

Others have tried to promote the constant relevance of old theories. Jean-Marc Ferry, for example, recently reminded us that Marx wrote about the perils of capitalist globalization centuries ago.³⁷ Usually described as “a comprehensive theory which articulates the principal lines of historical human development as a whole,”³⁸ Marxism--the theoretical development of Marx's writings--is the meta-narrative the American Left forcefully tried to discard.³⁹ Reasons for ignoring Marxism may range from a general academic misunderstanding regarding its merits, to (intellectual) corruption,⁴⁰ to academic positions that theories are dead.⁴¹

To the extent that it includes specific conceptions of the good life and distributive justice, in addition to a theory of history and an analysis of capitalism, only Marxism can develop a discourse on equality and human dignity. Moreover, it remains the only theory that demystifies the fashionable non-class divisions of today, and helps us understand that “cultural divisions,” as Jon Elster wrote, “are never class-neutral. It is *116 invariably the case that classes are distributed non-randomly over [minority and] cultural groups.”⁴²

However, in a world where community values are ridiculed and individual success extolled by such standards as “15 minutes of fame” or “dying trying to be rich,” it is understandable why there is such little interest in preserving or resuscitating Marxist theory that calls for collective human dignity, while regarding material misery (overworked, underpaid, etc.) as the plague of our society. Moreover, if we were to accept that the turn the new American Left took was partly to avoid damaging connections with Marxism and its international evolution, embracing postmodernist thought at the expense of a coherent meta-narrative fooled no one but itself. If this gesture was made to convert the individualist American public to some newer more tolerant views, the change did not make any converts outside the middle class. Nevertheless, I believe it stultified radical discourse by coercing it to become centrist and unthreatening for the power system.⁴³

Postmodern thought promoted a social critique that did very little to challenge the status quo and the plight of the masses. Postmodern thought successfully replaced the concept of masses with the “other,” which now included both the economically disadvantaged and the sexually repressed, but economically privileged. It de-legitimized social and economic demands on behalf of the disadvantaged because postmodernism created many types of disadvantages. The postmodern disadvantaged Other included the disadvantaged female broker who did not get the same multi-million-dollar deals as her male counterparts, the female faculty members at Harvard, which the University President referred to in passing in one of his speeches,⁴⁴ or the Rutgers female college basketball players with bad hair days.⁴⁵ Postmodern thought encouraged unfocused discourse. Indirectly, it made a mess of a potentially powerful critique because it could not or would not distinguish between basic needs and other needs, or, linguistically speaking, between grammar and style. In the process postmodernism did something close to regicide: it ridiculed reason and made any potential social discourse inconsequential. “Reason” became a *117 metaphor, which ridiculed “the man who wishes to be taken seriously as a philosopher.”⁴⁶

D. Globalization and the Making of Poverty into a Charitable Issue

How is this globalization different from the Cold-War Soviet and American imperialism?⁴⁷ There are no more Soviet minions. When the Soviet empire collapsed, its Third World minions lost their Soviet subsidies.⁴⁸ They found themselves in no position to refuse the economic order promoted by the First World and its own cronies.⁴⁹ This order vies for stability and ignores any demands for social justice. It is bent on co-opting and legitimizing the indigenous rich while it offers private charity to the poor. It thrives on the neo-liberal policies of laissez-faire.⁵⁰

States become individually weak as postmodern thought does not support mass politics and neo-liberal policies are allowed to flourish and destroy the liberal welfare state. As early as the beginning of the last century it became clear that Adam Smith's liberalism hailed in *An Inquiry into the Nature and Causes of the Wealth of Nations*⁵¹ was misapplied. It had ceased to guide those who sought to improve the social order on behalf of all. “It had become a collection of querulous shibboleths invoked by property owners when they resisted encroachments on their vested interests.”⁵² Similarly, John Stuart Mill's free trade and laissez-faire practice⁵³ had been over-prescribed for over 100 years.

Today's world economists and political scientists are hailing two dated British economists as Bible-writers even though the economic and social conditions of the twentieth and twenty-first centuries were inconceivable when those works and their prescriptions were written. For example, laissez-faire was never meant to mean what it means today (ruthless capitalism). The “phrase ‘laissez-faire, laissez passer’ was first used by a French merchant of the eighteenth century, named Gournay, who was pleading for relief from the intricate local customs tariffs [and] guild restrictions.”⁵⁴ Its purpose was to break down the feudal restrictions of *118 more or less self-contained communities which practiced a low degree of division of labor, while now it has come to embody the unanalyzed assumption that the exchange economy can be “free” outside of the jurisdiction of the state.⁵⁵

Of course, we perceive laissez-faire policies on a relative scale as powerful and less powerful. But today even powerful states have decided to ignore their masses and support their corporate structure. As a powerful state, the United States is content with a large military department and hefty subsidies to its already-powerful corporations. Those subsidies take the form of

tax exemptions or debt socialization, as is the case with the government nationalization of Freddie Mac and Fannie Mae. Corporate leaders are accountable only to their shareholders, but their shareholders' wives and children work for international and nongovernmental organizations and help make the pain of the weakest bearable by mediating Western aid and voluntary business codes of conduct.⁵⁶

For the last two decades globalization has meant worldwide sourcing, flexible production, low-cost transportation, and communication within three major scenes of action: “Western Europe with its trading partners in Central and Eastern Europe and Northern Africa; Japan and the little tigers with their partners in Asia; and North America--Canada and the United States--with its engagements in Latin America.”⁵⁷ The market narrative of globalization describes how the traditional distinctions among market tools--between banking, brokerage, business, housing, and consumer credit--are loosened. “New financial instruments are created, as well as new markets in these inventions, and in commodities, stocks in commodities, funds that collect stocks in commodities, as well as markets in currencies and debts.”⁵⁸ All this, as well as the flow of humanity Bhagwati mentions, has been invented only to serve the First World: the United States, Western Europe, and Japan, but its unintentional effects often obscure this obvious reality.

***119** That globalization does not mean equalization of opportunity is shown by the human flow, an exodus, from poor to rich countries. This exodus covers both highly-qualified employable people and menial workers. While the First World's benefit from the first type of migration seems intuitive, data shows that even the latter is beneficial to the receiving countries on multiple levels.⁵⁹

For example, today lower-skilled, undocumented workers perform the badly-rewarded private sphere (domestic)⁶⁰ work that helped liberate middle-class professional wives. They are the maids, who clean and cook, and the nannies, who are reviled figures expected to love their employers' children and offer them their whole soul and body for a mediocre wage with no benefits.⁶¹ Due to those underpaid, often undocumented workers, the receiving “countries can boost their gross domestic product” by allowing middle-class women to perform sophisticated jobs in the public sphere. As a result, those countries can claim “higher rates of workforce participation among women between the ages of 25 and 34.”⁶² However, this middle-class race-crossing gender liberation comes at a high cost to society at large because such importing of household workers, under the current employment circumstances, “drives down wages for the poor and further burdens taxpayer-funded social services,”⁶³ which are already insufficient because the welfare state is dying.⁶⁴

Globalization made discussing poverty chic and its horror marketable. We live in a connected world, so let's read about the world! Newspapers, such as The New York Times, publish op-ed pieces on the plight of destitute people of Africa, whether they are women or “[three]-[four]- and [five]-year-old children,” also “screaming uncontrollably with pain because of worms emerging from their flesh.”⁶⁵ Nicholas D. Kristof tells us in his Times' op-ed that recently President Carter made a trip to Africa where he visited his “projects.”⁶⁶ One of them is “to wipe out the Guinea worm, a horrendous two-foot-long parasite that lives inside the body and finally pops out, causing excruciating pain.”⁶⁷ A fifty-seven-year-old woman had a worm coming out of her nipple; another was coming out her genitals and ***120** “one each coming out of both feet.”⁶⁸ Upon reading such stories we all feel privileged for not living there and less inclined to criticize our incumbents.

In sum, globalization brought more poverty to the already poor and power to the already well-off. But, as Marx acknowledged centuries ago, globalization has also created an insatiable want that the powerful, who have access to a global market today, cannot dream to satisfy without unlimited resources. By its very nature, globalization cannot afford not to support its powerful, which come as well-known entities with identical tastes and needs for everything the market has to offer. However, this new global order rests on the assumption that the masses will always accept living in poverty, which in relative terms can be viewed as more or less intolerable.

As I see it, globalization will soon face its own legitimation crisis as the problem becomes how to keep the masses content in their poverty. The solutions have been varied and mostly had tried to avoid state involvement until the current recession, when

private actors showed either incompetence or unwillingness to help clean up the mess. More and more, rich countries rely on well-publicized charity work and the media successfully selling lottery dreams of one sort or the other to the masses, but those still tumbling in colonial days do not have the same tools. There poverty breeds terrorism, and engaging in legitimizing theories that are unwilling to address the plight of the many only deepens the abyss between us and the surrounding reality. That abyss ended, most recently, with two buildings exploding in the United States. Poverty remains the systemic problem it is, despite the efforts charities make to hide its magnitude from much-needed state-sponsored public intervention.

E. Postmodern Thought and Collective Dignity

Globalization has flourished on so-called genderless and “colorblind neoliberal economic policy.”⁶⁹ As a result, certain segments of Third-World capital stand to profit from this new arrangement.⁷⁰ This effect is not new. The earlier and more primitive form of globalization, colonialism, also encouraged limited prosperity among its more gracious subjects, too, whether in Asia or Africa.⁷¹ Whether at home in the *121 metropolitan area or abroad in the colonies, capitalist globalization is an individual-based success project supported by mass-exploitation.

Globalization comes with its own legitimation process, or the powerful would not be able to enjoy their status publicly. Thus, the vital dichotomy of the world's billions in the hands of a few rich (who are trusted to take care of the rest of the world) and billions of discontented people becomes acceptable. Again, one could say that partially responsible are those who have debased our hopes and expectations: our intelligentsia. Globalization then and now builds on individual success stories: individuals who succeed, or individuals whose corporations succeed, and individuals who are saved by charity (NGOs), or individuals who emigrate and succeed (relatively) in the new country. It tells the sweatshop story and it implies that there is no other solution.⁷²

As this article would like you to believe, globalization was enabled, to a large degree, by the lack of a meaningful critique, which was furthered by prevalent postmodern thought. In the current intellectual climate, for example, it is hard to build a discourse that encourages dignity for all. When individualism is presented as a value that does not need society to develop, but only for consumption power, then individual dignity cannot be understood as needing collective dignity to flourish. That collective dignity is more nationalistic or patriotic than hot-dog-outings on July Fourth.

Moreover, even if we can identify the women, children, and men who toil in poverty on the big screen or in the papers, and we can talk about them as Thai, Indonesian, Afghan, Ghanaian, South African, Brazilian, Iraqi, or those from the former Soviet Union, we start to understand that they all miss one thing--a decent lifestyle. We cannot really understand that there is something more out there than sweatshops for all and asylum for a few. In a theoretical vacuum, the possibility of developing a coherent discourse about the need for collective dignity becomes a utopian enterprise.

In the civilized world, the subjects are divided into the powerful, the corporate owners and their lucky employees on one side and the masses on the other. We are being programmed to expect the state to act as a night watchman and imprison those who violate our rights upon our complaining in legal courts. The result is that those who can afford to hire attorneys can benefit from the state's supervision, while the others will regard the state with suspicion. The trespassing masses only suffer one way or the other from state intervention (fines, lack of services for lack of payment, or even incarceration), and they seem to have no moral or intellectual support in their quest for collective justice.

*122 If we let the prevalent oppositional discourse to involve talks about human rights at the nongovernmental level, with NGOs acting as the so-called enforcers of state-recognized rights, then any meaningful social critique becomes a charade. If we are to believe in the value of human dignity at a societal, or even global level, then, at a minimum, a general social justice discourse needs to be formulated and the state needs to be included. It is my belief that feminism could lead the way for such an enterprise.

II. The Others or the Unrepresented Ones?

A. What Is the Difference between the Masses and “the Other”? Are the Masses the Unrepresented Other?

Globalization can also be viewed as the legal phenomenon that made both Aristotle's discourse on distributive and corrective justice,⁷³ as well as Plato's Parmenidean connection between one and multiple, topical again. Focusing on the latter, one, Alain Badiou translates it as "what presents itself is essentially multiple; what presents itself is essentially one."⁷⁴ If what is the people viewed as a static entity, the multiple, Badiou explains in *Being and Event*, are the same people but viewed as a dynamic entity.⁷⁵ People are very much alike; events, circumstances, and so forth differentiate people, he further clarifies.

It is remarkable to notice that, as in the Middle Ages, circumstances mostly related to the geography of our birth place are those that differentiate us dramatically today too. Whether we are born in the urban or rural places of the world distinguishes those of us who are represented and thus, legally taken care by the state from those of us who are ignored and whose interests are unrepresented by the state (and its supra-governmental structures). Geographically, this is a marginal world⁷⁶ --whether in urban or rural slums in rich countries or poorer countries. The poor live outside the power structure, often in the unregulated world.

I consider group identity based on the individual's relationship with the power structure to be defining, but, I also view group identity stripped of cultural or tribal (race, gender, etc.) characteristics. Group identity only *123 involves how the state represents political and socio-economic interests.⁷⁷ Before me, Alain Badiou pointed out that such a focus had been fought on many levels in a "kind of flabby reactionary philosophy"⁷⁸ of postmodern flavor.

Postmodern theories describe those who are not part of the power structure as "the Other." Isn't "the Other" the one whose interests are not represented by the state? Why would I criticize it? The postmodern discourse about "the Other" has the virtue (flaw) of potentially including everyone who experiences disadvantage, whether it is due to cultural, tribal, or economic reasons. But including everyone who is different from the norm raises the question of "different from whom?" and "who or what is the norm?" Is the norm different in a rich country from the norm in a poor country? How does cultural relativism impact the legitimacy of "the Other"? How does the concept of "the Other" survive if everybody who is not well-tanned, blond, slim, and buff is as much a part of "the Other" as the Cheryl Greens of this world (accidental victims of gang violence) and their mothers (overworked and overburdened)?⁷⁹ Why would we want such a confusing mess? Who stands to gain from it? And moreover, what happens with the concept when it loses its minority implication? What happens when the masses are "the Other?"

If postmodern thought diversified the concept of "the Other," globalization fractured it economically, making some more discriminated against than others. Those are the ones whose interests are not being represented within the existing power structure. In a rational world, by its own nature, the concept of "the Other" cannot be part of the established mainstream power discourse. "The Other is that upon which the 'Law' acts, but which it never completely absorbs, that which remains when the 'Law' has spent itself."⁸⁰ Its legitimacy rests on its marginality, on its distinction from the main, the same one. In a rational world, "the Other" bears the curse of always being marginalized. It denies political success because political recognition annihilates marginality.

The genius of postmodern identity politics, such as feminism, has been to achieve both individual success and mass marginalization. So while some few group members were incorporated in the existing power structure, their own groups would continue to be marginalized so the concept of "the Other" would preserve its legitimacy and fuel the fight.

*124 By exalting difference, "the Other" denies similarities, denies the sameness, and it denies social action to the extent that social action thrives on similarities. We seek change when we are able to see the cake and accept that we want a piece of it. We need to ask those who already have the cake to share it with us because inherently we believe that we all have similar needs (being hungry, etc.) which can be similarly satisfied. In a rational logical world, the Otherness discourse, to the extent that it encourages people to accept remaining separated as "the Other," is a reactionary discourse: it aims to pacify the marginalized people instead of educating them about their rights. However, reality has shown that there are Others among Others. Some can be both part of the political structure and remain proud of being outsiders. Their marginality does not hamper their socioeconomic or even political progress.

An all-inclusive Other, which covers all the characteristics shown here, has the advantage of offering itself as a manageable political tool. The American legal and political system has been able to continuously include interests that do not threaten the existing status quo, while continuously ignoring only one category of “the Other”--the economically disempowered ones. Tribal, cultural, or gendered sub-categories of the postmodern Other, unlike economic ones, can be and have been successfully integrated in the current political status quo.⁸¹ This success raises some questions. Those categories are either superficially marginal or superficially integrated (unless, of course, the Otherness's marginality is not in apposition with re-presentation but with centrality). On one hand, despite their integration within the current power structure, the balance of the existing power structure has not been threatened by their inclusion. On the other hand, despite their integration, they have not lost their Otherness status.⁸² For example, there are women presidents of states and corporations, and their election or appointment only proves that “plus ça change plus ça change rien” (the more things change, the more things stay the same), while they claim political success for the Otherness discourse.

On the other hand, there are some within “the Other” umbrella who continue to be unrepresented. Those are the former slaves, the former serfs, the silenced proletariat, in other words, the current have-nots, whether they are Wal-Mart or McDonalds employees here or abroad, work in Nike or Aldo sweatshops, clean the houses of our prominent Democratic and Republican politicians, such as Zoe Baird or Linda Chavez, help House Speaker Pelosi with her vineyard chores, or become our unwilling partners in sex tourism. While various Other subgroups have been empowered, the *125 have-nots subgroup has remained ignored. Both rich and poor states have equally been depleted of welfare resources to properly care for them.⁸³

International and other nongovernmental organizations (NGOs) cannot properly represent them because they are too numerous, and their needs, while basic (i.e., health care) are too costly to attract any particular lobbying group and their underlying philosophy.⁸⁴ I doubt that there are any lobbying groups for the poor's particular illnesses because for the most part there is not enough profit in either of them to motivate a devoted industry--that is, they are all suffered by people who are too poor to make it worthwhile to pharmaceutical companies. Clearly there are many more people who suffer from AIDS, tuberculosis, etc., than there are clients for Viagra, but these people simply do not have enough economic clout--that is, tuberculosis just is not profitable.

Does this reality mean that intellectual candor requires a conceptual split within the Otherness signifier? Does it mean that a different concept could better define the ones who are truly marginalized because their interests are not represented by the state and thus focus the much-needed political action on satisfying their needs? Could another concept be more useful, both philosophically and pragmatically, in identifying the non-represented ones?

Philosophically, the Otherness discourse is also unsatisfying when regarded within the Otherness-versus-sameness tug-of-war. In this relationship, Nazism is the product of one extreme (the one denying sameness and exterminating “the Other”) and Christianity stands at the other extreme (the one hailing sameness; love “the Other” as yourself).⁸⁵ From this angle it becomes apparent that singular emphasis of Otherness is either a rather reactionary gambit or an unsophisticated intellectual preoccupation, both politically and socially. Under these circumstances, a return to universalism and an all-inclusive human rights discourse, an intellectually rich concept that can be construed dialectically, a negation of *126 particularism, but also as a multiplication of sameness,⁸⁶ seems suddenly attractive and politically useful.

Globalization, the socio-economic phenomenon that has brought the world's poverty to our attention, has also pointed out the impotence of international institutions to deal with poverty because it made it obvious that it lacked any workable solution.⁸⁷ The poor is not “the Other.” The rich are “the Other.” The poor is not a minority concept. The poor are the reality that surrounds us. Certainly defining the poor as “the Other” gives them a marginalized minority status. Such an image keeps both the poor and us, the Left intellectuals, tranquilized--leaving charities to deal with such a manageable problem. Only if the poor see themselves as equal to the empowered, or as an unsatisfied multiplication of sameness of those who are part of the power structure and whose interests are re-presented by the state, will the poor ask for change.

Globalization has reached its pinnacle as the national state, the traditional actor in dealing with poverty, has lost its protective role.⁸⁸ The state, whether rich or poor, has reduced its functions to that of a night watchman of the property of the few. Simultaneously, international and nongovernmental or supra-governmental organizations have gained more legitimacy in dealing with the poor, but their achievements have nevertheless been minimal.⁸⁹ Despite the current morass, the need for a systemic solution in dealing with poverty remains acutely questioned.

Interestingly, while postmodern thought has disabled our intellectual resistance to capitalist globalization, its general discourse has not meaningfully encouraged a universal human rights approach endorsing a comprehensive human development. While Otherness is overly inclusive, the postmodern legal solution to the lack of empowerment is not a holistic but rather a selective one, which does not promote both economic and political rights.

Perhaps this selective approach is due to the fact that the have-nots predate postmodern thought, which does not give them too much attention, and they certainly will outlive it. They will not disappear, even if we continue to ignore them. In rich countries, they will eventually impact the political process in ways we continue to refuse to imagine. In the United States, for example, to a large extent the Democrats have ignored them--the last Democratic president stripped them of the last vestiges of the welfare system⁹⁰--and if they turn toward the Republican discourse for help it is because patriotic and gospel music often is all they get from either party.⁹¹

They need a solution and we have only our imagination to blame for not having found one. Postmodern thought invited us to be skeptical, afraid of anonymity, and then encouraged us to tailor solutions as if they were fashionable suits. It discouraged us from bold answers, though systemic problems need bold answers. All solutions are a matter of circumstances and sometimes these circumstances are socio-economic. Dealing with them sometimes means more than hiding the meekness of imagination and the lack of desire to address endemic socio-economic problems.

B. Are They Voiceless?

The unrepresented one is not invisible. Despite the efforts to hide the poor under talks about comparative advantage and other economically-hopeful jargon, globalization has made poverty available for mass consumption through the media: whether TV, newspapers, or the Internet.

When, at the 2007 ISA Conference on Politics, Policy and Responsible Scholarship,⁹² I presented parts of this article I was still working on an alternative identifier for the unrepresented ones and I used the postmodern concept of "the Other." More than one audience member forcefully reminded me that the global Other is not voiceless, and that calling "the Other" voiceless would be a sign of condescension because it would mean that I don't listen to what "the Other" has to say. The economically-empowered segments of the Third World, such as conference goers, are not the people I am referring to because I do not think they are who they purport to be. They are not voiceless and certainly they are able to make themselves heard. However, assuming that the unrepresented are not voiceless, then they either are talking but no one listens to them, or if someone listens to them, very little has been done about it.

In my view the question about "the Other's" voice becomes one about social and political action. It is not a question of calling one voiceless when she can talk. Showing respect for the starving does not mean letting her speak or being deferential or even being fearful about speaking on her behalf, but doing very little about her starving condition. To a large extent it does not matter who does the talking and shows up at conferences if she can reliably feed herself and her family. Such an outcome, however, needs a dramatic change of the current situation in which emaciated states do not provide decent social services and charity remains a whimsical affair.

C. Are the Poor New?

To the extent that their number is growing, more and more people are unrepresented by their state. To the extent that they migrate and become the problem of a different state, the answer is yes again. They are then a problem for the hosting state. Despite

their growing numbers, individual states ignore them. Currently, the disempowered are too numerous and their socio-economic demands too complex to be solved without significant changes. Such changes depend on individual states' actions to create and implement necessary policies. Those states are too depleted of resources to properly take care of their poor. International organizations cannot cope with them as long as they need individual states' commitments. NGOs are not meant to offer systemic solutions: they are there to observe and advocate on the behalf of the poor. But this does not mean that we should just continue to ignore their plight--or does it?

D. Are They a Socio-Economic Class or Gendered Victims?

Marxism identifies the unrepresented ones with the exploited classes, such as the proletariat. Postmodern theories ridiculed the class concept before replacing it with "the Other" . Revitalizing the class concept is a difficult enterprise; perhaps if we understand how confusing it is to use "the Other" to address the plight of the poor, we would think twice about what discourse we should promote.

There are alternative concepts that come without derided baggage. Martha Fineman uses the concept of "vulnerable subject,"⁹³ and I had thought it a great concept for forging a meaningful social justice discourse until I listened to a conference paper about animals as the most vulnerable subjects, and I realized that it needed more clarity of definition or it risked *129 to becoming a mere "Other" concept. For a while I favored Badiou's concept about the "unrepresented," which underlines the state-based relationship and the lack of proper representation of the interests of certain members of the society by the nation-state. Again, it needs more clarification, before it can forge alliances. A concept that can be used to include only people who have the same economic power would certainly help forge political alliances. For example, those who make less than \$250,000 a year has a clear criterion behind it; or the have-nots, those who need social support (welfare), contains a similarly good criterion. Using Fineman's and Badiou's terminology, the have-nots can be described both as vulnerable and unrepresented by the state.

Despite the hopes of making everyone rich according to their resources by securing comparative advantage on the global market, globalization has not found a way of decently satisfying the poor. Interestingly, postmodern thought and globalization made us aware of the depth of world poverty. The media broadcasts stories about how both the rich and the poor live. The international community offers them charity, sweatshops, and destabilization. Their own states offer them little at home and attempt to compensate by providing the dream of permanent or temporary migration.⁹⁴ The traditional liberal state and its social safety net are waning and the paternalistic soviet state, with few exceptions, has long disappeared. Though equally disadvantaged, the poor's plight is sold as being shaped according to their race, gender, social orientation, and so forth and thus in need of individualized solutions.

In Ecuador, for example, globalization was behind both the fall of the welfare system and the "dollarization" process, a neo-liberal restructuring process whose economic impact goes beyond fostering market initiatives in the Americas: it fostered the replacement of the welfare state with a welfare network supposedly sponsored by NGOs and other private organizations, "but . . . mothered by [the] poor."⁹⁵ Amy Lind, the author of *Gendered Paradoxes*, believes that poor women, especially, "mother" the collapse of the welfare state because they "are primarily responsible for shopping on a daily basis, managing the household budget and caring for children,"⁹⁶ and thus need specific attention and solutions. Certainly, due to the ethic of care that is usually attributed to women, especially in societies of poor environments, women are the ones first asked to come up with caring solutions. But if women cook, wash, and rock the cradle, someone else has to provide the raw materials. The poor rely on an extended family *130 network: mothers, children, fathers, grandparents, and neighbors ultimately create the needed social network of help. We cannot help a mother without helping her children and those helping her.

Undoubtedly, poverty often induces forced social roles with fathers looking for work in the public sphere, failing to find it and then seeking solace in various addictions and domestic violence. Poverty hurts genders differently: it humiliates men in the public sphere and women in the private one. But, that does not mean that poverty hurts only women. Poverty does not hurt only the parents who cannot provide for their children and it would seem absurd to make such a statement. So, without clarifying the general impact that the lack of a decent lifestyle has on all, any critical discourse risks becoming a bit superfluous by looking for distinctions where there are none.

In China, after the illusory promises of the Chinese Communist Party, Pung Ngai tells us, globalization ushered in the dream of modernity: the “great belief in capital and the market.”⁹⁷ But while the capital and its market have reached China--European and Taiwanese factories are open to Chinese workers--globalization's dream of modernity has not delivered a decent lifestyle for them. Chinese men and women work ten to twelve hours a day for about thirty-eight dollars a month and often burn to death in fires⁹⁸ that remind one of the 1911 Triangle Shirtwaist fire. I doubt that we could say that women suffer more if we were to discover that fires often happen in sweatshops and women mostly work in sweatshops while their husbands cannot find any jobs--globalization searches for the cheapest workforce, which is usually female.

The existing intellectual postmodern environment encourages well-tailored solutions. This may be so because of its philosophical belief in small-scale solutions. While human misery has inundated our TV screens, our limited attention span has come to accept media packaging of mass suffering as individually “different.” The media does not want to or cannot point out that stories of wars and epidemic outbreaks or stories of domestic violence have a lot in common. Such presentation requires some abstract analysis of the problem and would likely demand that the media take on a role other than entertaining its viewers.

The media, more often than not, is in the business of entertaining us, its well-off consumers, rather than educating us. Due to its printed stories, we come to believe that state-sponsored functions are unnecessary because each one of us can make a difference. For example, we are told that with a **131* twenty-five dollar donation to unproductive small businesses, such as a TV repair shop in Afghanistan, we can meaningfully help the Afghan economy.⁹⁹ The mainstream media--in press, and through broadcast--further ossifies our imagination which collectively seems incapable of accepting truisms such as increasing taxes to solve our poverty problem or ceasing corporate state subsidies and starting a responsible foreign policy based on human respect. So, if we are in danger of believing in self-delusional individualism, “you too, can be a banker to the poor,” if we can spare twenty-five dollars,¹⁰⁰ as The New York Times tells us, the role of the academe should only be on the rise. Because, as briefly shown below, this individualism is hollow. We are not strong individuals--we are shells taught to discard a community-based approach to endemic social problems.

Globalization, the brainchild of neo-liberalism--itself created by the systemic postmodern disparaging of class politics--has produced disastrous disparities in income and welfare.¹⁰¹ Important to globalization are the binary effects of enriching the few and impoverishing populations at large (despite their secondary identities: gender, age, sexual orientation, etc.). On the run from their impoverished surroundings, migrating workers have options primarily dictated by their education (obtained through economic means) rather than by their gender, race, etc. The educated ones have good chances to retain their status in the new country, while the poor usually become the richer countries' have-nots. For example, Filipinos circle the globe and stop in different countries according to their skills; there are a quarter of a billion of them from Lebanon and Greece (as maids), Saudi Arabia (nurses), to the United States, where they emigrate both to toil and to become part of the technocracy.¹⁰² But despite the newly found human right to travel, the majority of the poor do not have the economic means to migrate¹⁰³ so they must remain where they are, crowding sweatshops or other unpopular work opportunities.

Globalization has made clear that people move for economic reasons. Migrant workers benefit both their old and new homes.¹⁰⁴ For example, annually, Indian immigrants send home twenty-five billion dollars, Chinese immigrants, \$24 billion, and Mexican immigrants twenty-four billion **132* dollars (or three percent of the G.D.P).¹⁰⁵ For twenty-two Third World countries, income created by their citizens working abroad as migrant workers and sending money back home represents more than ten percent of the G.D.P: thirty-two percent for Moldova, twenty-three percent for Haiti, twenty-three percent for Lebanon, and fourteen percent for the Philippines.¹⁰⁶

Globalization certainly proved what Marx foresaw almost two centuries ago when he talked about the internationalization of capital and the expansion of international markets.¹⁰⁷ It made apparent that the working poor, whether in sweatshops around the world, as objects of sex tourism, or as undocumented residents in industrialized countries, represent the most disadvantaged Other. It evidenced that their relationship with the state is the same everywhere. Their interests are not (properly)

represented.¹⁰⁸ Industrial states ignore them--they are illegal--or their own states are too poor to be able to take care of their citizens in need.

Undoubtedly, globalization has singled out women's plight because they are the cheapest workforce: for that reason, they have been able to find work easier whether in sweatshops or in sex shops. With visibility in the public sphere their abuse has been more obvious. Whether they constitute the majority of the victims or not, I believe that alleviating their fate in any meaningful way requires alleviating their families' fate, unless, like the U.S. Supreme Court, we, too, believe that a family member can enjoy being the only one eating at the family dinner table.

In *Bowen v. Gilliard*,¹⁰⁹ for example, the Court was faced with the issue of a minor adjustment in the distribution of welfare benefits in an impoverished American household. The Supreme Court decided that the governmental decision to reduce the family's welfare benefits, in light of the support a member of the family received from his non-custodial parent, was not a wrongful act, as long as it could have been minimally justified.¹¹⁰ In other words, it did not need any corrective action by the *133 judiciary. Moreover, the Court was able to look at that fact as an insulated act, which can be judged outside its larger implications for the family.¹¹¹ By reducing the family's public money by the amount of the child support, the state was punishing the family. Despite its wording to the contrary, I interpret such an insensitive opinion, which only demonstrates how removed from reality Justices are, as sanctioning taking the food away from the child's other siblings because he received support from his father.¹¹²

In other words, the question becomes what practical approach better serves the world's poor? Which approach is more suited to attract attention upon their fate within the current highly public and interconnected world? Are the poor better served if they are offered solutions along racial, gender, or sexual orientation lines, or if they are treated as a disadvantaged group because their socio-economic interests are constantly ignored? Perhaps a power-based discourse would make sense again as the ignored ones' cultural and tribal attributes have become less important than their price: the cheaper they come the more work opportunities are open to them. Jobs are moving around the world in search of the cheapest workforce. Because women represent the majority of the world's population and thus the majority of its poor, certainly they are deeply affected by globalization.

But how would their interests be best served? Shall we treat them as gendered victims or as strong members of a heterogeneous disadvantaged group that is fighting for recognition and the right to live decently within the power structure? Perhaps a class-based discourse would require revitalizing reviled Marxist theory,¹¹³ and a redefinition of the disempowered. But, a class-based discourse involves a discourse around strong individuals who can engage in strikes and demonstrations and survive the repercussions that come from such actions. Class members are not powerless victims. They are individuals who are aware of their potential and are working towards fulfilling it. Under the prevalent conservative view, in the neo-liberal state poverty is perceived as an individual behavioral problem and not a structural one, which implies a wrong done to the poor on a larger social scale. However, these individuals are portrayed as being unable to take care of their wounds, even those provoked by words, such as insults.

As recent events have shown in rejecting a class approach, we seem to endorse a culture of generalized impotence from government to individuals. When an upper-middle-class Don Imus called the middle-class *134 Rutgers' women's basketball team a bunch of "nappy-headed hos," consequences snowballed.¹¹⁴ Imus was fired and both the Left- (VIACOM) and the Right- (FOX) leaning media conglomerates congratulated CBS for doing so.¹¹⁵

Continuing the action-versus-words war, Bob Herbert, a New York Times journalist, recently penned an op-ed piece depicting a one sided view of words as weapons, which mirrors the Left's view of the exchange.¹¹⁶ Oprah Winfrey, the media goddess, put hip-hop music on the map once again by asking for censorship of disrespectful gendered words, such as "ho" and "bitch."¹¹⁷

Why do we assume that women need men who call them hos to be fired or have their speech censored? Is it cheaper for our society to make believe that it protects women when all it offers is censoring speech? Is this the only legal protection we can give women? Wouldn't they be better off being treated as men able of being boorish and klutzy, if they liked it? Are we, as

a society, telling women that all they can hope for is genteel talk? Is this the result of the Otherness discourse which asks for respect of differences that do not cost a dime while ignoring addressing the economic ones that would require investing in schools, hospitals, housing, and jobs?

The debilitated, masculine United States views its role as that of a night watchman. All it can do is correct private wrongs and protect individuals from those private wrongs.¹¹⁸ In countries where the poor are the majority, such as those from the African continent, individual explanations of poverty could not be regarded seriously. Even European countries regard poverty as a systemic problem which continues to remain unsolved because the state has been depleted of resources or has always been too debilitated to help its population.

It is undisputed that women are still mistreated because they are women, children are still neglected, and the elderly are abused. It is undisputed that there are places where female genital mutilation is a socially-accepted practice that enslaves women making it impossible for them to grow to full maturity. Using a one-sided human rights approach, *135 Western countries attempt to help the (potential) victims by unwillingly giving some of them political asylum.¹¹⁹

Asylum, while a wonderful humanitarian solution, has one big disadvantage. It is an individual solution to societal practices. Those violent practices are entrenched in a culture that welcomes them and will continue to do so until violence becomes socially and culturally unwelcome. Such a solution may need generations of men and women to properly grow into their womanhood or manhood with appropriate material, intellectual, and spiritual care. Proper healthcare and education are only a necessary beginning to empower the victims and the perpetrators to place those practices in desuetude.

So how could feminism in general and legal feminism in particular deal with this hemorrhaging reality? My answer is one that requires feminism to rediscover its social justice roots by promoting substantive human rights for all by becoming a feminist method-based discipline. In the 1980s, Eagleton wrote about the virtues of a class discourse, whether it was the Marxist discourse of socio-economic classes or the feminist discourse of gender and sexual politics.¹²⁰ Its virtues rest on the call for action it implied: it assumed that the impoverished social classes spread social alienation to their members and deprived them of their individuality.¹²¹ However, Eagleton reminded us,¹²² the way to cure that alienation is not to deny its existence,¹²³ which is what the academe has been doing for the last few decades. The only way to undo that alienation is to assume that unattractive position (alienation) and reverse it.¹²⁴

“The goal of a feminist politics would therefore be,” Eagleton stated ten years ago, “not an affirmation of some ‘female identity,’ but a troubling and subverting of all such sexual straitjacketing.”¹²⁵

Women are not so much fighting for the freedom to be women . . . as for the freedom to be fully human; but that inevitably abstract humanity can be articulated in the here and now only through their womanhood, since this is the place where their humanity is wounded and refused. Sexual politics, like class or nationalist struggle, will thus necessarily be caught up in the very metaphysical categories it hopes finally to abolish; and any such movement *136 will demand a difficult, perhaps ultimately impossible double optic, at once fighting on a terrain already mapped out by its antagonists and seeking even now to prefigure within that mundane strategy styles of being and identity for which we have as yet no proper names.¹²⁶

Today Eagleton reaffirms Marx's wish for a “society in which the full development of each is the condition of the full development of all.”¹²⁷ Building on this approach, legal feminism might want to stand for a larger promise: protecting women's human rights by enabling the disempowered to live a dignified life, and to feel “fully human.”

A human rights critique which emphasizes socio-economic rights and exposes the limits of a formal human rights discourse is long due. A feminist critique of equality would do just that, as it would promote that the ethics of care and social solidarity are the legitimate successful enterprise. Such a critique would militate for a social-liberal state, because only a strong socio-liberal state has been able to provide basic social services and can be meaningfully held accountable by feminist activists for its failures.

Globalization is on its way to successfully replacing both big modern theories and postmodern thought with a new theoretical hybrid that attacks the traditional institutional relationship between a state and its citizens (see the new cosmopolitanism movement), and thus mollifies social action and discourages social coalitions as unnecessary. While postmodern thought encouraged ridiculing essentialist Marxist theories, currently it miniaturizes communities' requests by offering successes to well-identified group levels, which are perceived as outside any power structure. Such an individualized approach to poverty makes postmodern oppositional politics outdated, too. The current human rights discourse discredits states and relies instead on private charities and nongovernmental organizations supported by private business and well-off individuals. Such a game is tragic in its silliness. Business has always been accountable only to its shareholders, and recently the trend is to remove that barrier, too. ¹²⁸

Postmodernism has produced theories to assuage the elites' quest for meaning, but none of them can successfully promote the cause of the ignored Other: they are too many and much too hungry and ill to be happy with one supper or one band-aid or one pill to cure their many diseases. They do not need unreliable charity; they need social services that can be provided daily and relied upon daily. So far such services have only been ^{*137} provided consistently by state institutions. Where such state institutions have been denied, religious ones--such as those subsidized by Hamas or the Muslim Brotherhood or our own faith-based initiatives--have taken over with their own theoretical attitudes.

Postmodernism has been unable to offer any theoretical framework with which those in need can identify and use in order to propel their own progress. Postmodernism failed them and left them as easy prey for the pre-enlightenment theories that are circulated by the only ones who seem to care. Interestingly, though, the West is unwilling to believe that its neo-liberal policies utterly failed the powerless Other, the disempowered. It seems more willing to empty its philosophical and political identifiers of all identity, as it still uses the term of democracy to define current theocracies. ¹²⁹ Even our current system where either the U.S. Supreme Court or twenty-nine percent of the electorate elects the president can hardly constitute the norm.

The time has come to create a discourse that promotes social change perhaps more than a quest for conversation. Feminism, as a method theory has the power to do just that. Feminism may have to take a stance against the over-inclusive Other and point out that women's discrimination is a complex reality and that its economic disparagement is the issue that has been constantly ignored by the state to devastating results. It is perhaps the most serious challenge to reaching social justice because it requires the most investment. Thus, perhaps it requires the most, not least, attention.

III. Feminist Theories

This section will briefly summarize and explain feminist theories. "In the late 1980s, Rosemary Tong identified the following forms of feminism-- liberal feminism, Marxist feminism, socialist feminism, radical feminism, psychoanalytical feminism, existentialist feminism, and postmodern feminism." ¹³⁰

A. Brief Overview

According to Tong, liberal feminism explains female subordination as rooted in "a set of customary and legal constraints that block women's entrance in the so-called public world." ¹³¹ In other words, Ellen R. Klein explains in *Undressing Feminism: A Philosophical Exposé*, liberal feminism assumes that equality and fairness are meaningful values and that ^{*138} certain obstacles within the social and legal system prevented women from being viewed fairly or equally with men. ¹³² "Only when society grants women the same educational and occupational opportunities it grants men will women become men's equals." ¹³³ However, such a sameness strategy cannot work in a society where most men are not in an envied position.

In addition to liberal feminism, Tong identified Marxist feminism, which understands "women's oppression not so much as the result of the intentional actions of individuals but as the product of the political, social, and economic structures associated with capitalism." ¹³⁴ This account assumes Marx's socio-political materialism as the macro-explanation for "sexism within a given capitalistic society." ¹³⁵ As Klein suggests in *Undressing Feminism*, there are very few who are still embracing this form of

feminism.¹³⁶ Tong found that in the 1980s, many feminists became dissatisfied with the “essentially gender-blind character of Marxist thought” and with its tendency “to dismiss women's oppression as not nearly as important as worker's oppression” and created in response, socialist feminism,¹³⁷ but that appeasement did not last long. Both Marxist and socialist feminism claimed that the gap between the wages of men and women was so great because the marketplace was, in itself, fundamentally sexist and that a change of system was needed.¹³⁸ Both eventually became unpopular and have been replaced by so-called radical feminism.¹³⁹

Tong also identified postmodern feminism, which, as any postmodern school of thought, also rejects traditional assumptions about truth and reality, and splits feminism into even more feminisms, including cultural feminism, multicultural feminism, and gender-inclusive feminism.¹⁴⁰ Each feminism sought legitimacy by being the representative of a different constituency and attacked the legitimacy of any strand of feminism that went beyond its group's identity.

In legal theory, feminism translates into quite a few schools of thought¹⁴¹ whose primary focus is to work on changing law to mirror female experiences. For example, equal treatment theory focuses on *139 obtaining for women equivalent social and political opportunities as men, such as equal wages, equal employment, and equal governmental benefits.¹⁴² Cultural feminism, on the other hand, favors a legal approach that emphasizes biological differences rather than equal formalism.¹⁴³ For example, in *California Federal Savings & Loan Ass'n v. Guerra*,¹⁴⁴ the legal issue was the constitutionality of a state statute that provided for unpaid maternity leave but not similar paternity leave.¹⁴⁵ Cultural feminists supported the pregnancy-disability provision because it emphasized the unique nature of pregnancy, which was viewed as a disability that burdened only women.¹⁴⁶

Another legal theory is dominance feminism, whose primary focus is to work on changing law, specifically workplace harassment, domestic violence, and rape laws.¹⁴⁷ First introduced by Catharine MacKinnon, it reached its apex in the 1980s, with the 1983 municipal antipornography ordinance authored by MacKinnon and Andrea Dworkin--which created a cause of action for sex discrimination for pornography¹⁴⁸--and with the 1986 Supreme Court decision in *Meritor Bank Savings, Inc. v. Vinson*.¹⁴⁹ In *Vinson*, Chief Justice Rehnquist recognized both types of sexual harassment--quid pro quo and hostile environment--exactly as MacKinnon described them in her book, *Sexual Harassment of Working Women: A Case of Sex Discrimination*.¹⁵⁰ Other theories include lesbian feminism, as well as critical race feminism, whose focus is making the law aware of the experiences of two sub-groups, lesbian and racial minority women within the larger gender minority.¹⁵¹

Feminist theories can also be grouped chronologically. The first generation “women's movement” focused on suffrage--the political right to vote: “equality meant sameness.” Sameness relied on the assumption that women can be viewed as essentially the same as men, and thus they should have the same rights, opportunities, and privileges as men.

*140 Originally, the first generation was intertwined with the abolitionist movement. In late 1830s, three national women's antislavery conventions exposed the tension over the role of women within the abolitionist movement,¹⁵² and within the next few years it became clear that the two would eventually pursue their distinct paths to conquer the right to political emancipation, which they did.¹⁵³

Once the suffrage was obtained, feminism entered a quiet period, which was reborn in the 1920s, with the first wave of the movement's second generation. Mary Wollstonecraft brought the sameness movement to a new level with *A Vindication of the Rights of Woman*.¹⁵⁴ Its practical goals were united by a commitment to sameness, being akin to the first generation, but sameness in the social world (not only politically, the right to vote).¹⁵⁵

The second generation's second wave added to the sameness discourse issues of sexuality, reproductive rights, and pregnancy.¹⁵⁶ They challenged the power and legitimacy of the traditional family, where these notions had force-- changing

women's role within the public realm, which had become, by now, part of mainstream culture.¹⁵⁷ The second wave had peaked with the mantra “The personal is political!”¹⁵⁸

Feminists observed that the capitalistic market in the United States is biased against women, i.e., inherently unequal and fundamentally sexist. For them, the cause of this bias lies in the fact that the market does not incorporate what goes on in the private sphere. Had it incorporated women's domestic work and given it value in the public sphere (e.g., it is not part of the gross domestic product (GDP), and it is not on the stock exchange), those feminists believe things would have become fairer. Therefore, to be true equality for women, women's in-home work should be¹⁵⁹ treated exactly like men's out-of-home work. Insisting that women go into the public sphere to seek equality with men is asking them to be men, and this is, according to feminism, inherently unequal.¹⁶⁰

***141** The second generation has also produced a third wave. The third wave has also been described as the diversity stage,¹⁶¹ and its major critique is the concept of “gender essentialism.”¹⁶² As Sommers and Paglia suggest, its focus is less on equality and more on rights based on women's innate differences.¹⁶³ Even at this stage, whose multiple truths are vindicated by a multifaceted feminist theory and make a coalition almost impossible, scholars emphasize that though there are many types of oppression, they are all brought about “solely” as a result of gender.¹⁶⁴

In the midst of the feminist insurgency, in the 1970s, the famous Monique Wittig described the women problem¹⁶⁵ by using Marxism as a point of reference and by pointing out minuses in Engels' work, much like Catharine MacKinnon did in the United States a decade later.¹⁶⁶ Wittig famously challenged Engels's statement that “man is bourgeois, woman, the proletariat”¹⁶⁷ again bringing to mind work done by American legal feminism during the same time. Wittig also pointed out that unlike the proletariat, which is free to sell its work on the market, women could be viewed as a socio-political class of serfs, because like the feudal serf, women were tied to a person, usually their husband, and their domestic work is similar to “servile labor.”¹⁶⁸ Wittig wrote that “[t]he first class opposition that manifested itself in History coincides with the development of the antagonism between men and women in conjugal marriage . . . and the first class oppression, with the oppression of the feminine sex by the masculine sex.”¹⁶⁹ Furthermore, she noted, when women entered the world of paid work they were handicapped because they carried the burden of a priori obligations toward their family, which made them less desirable to their employers, who viewed them as “wage slaves.”¹⁷⁰

Since then, the women problem only has become more complex. Some women can go into the public sphere without being tied up to a priori obligations. Globalization has produced a solution for the liberation of ***142** those women: other women, poor women, can perform the homework for their rich counterparts. Thus, what could have been painted as a woman's problem cannot be painted as such any longer: it has become the poor's problem because its direct beneficiaries are the rich--middle-class and upper-middle-class women and their families.¹⁷¹

As Monique Wittig and other prominent French feminists were writing almost forty years ago, gender issues are inherently complex. Whether we want it or not their solutions revolve around socio-economic answers, and thus their understanding requires both essentialist and separatist tools depending on the angle that is being emphasized. On one hand, Wittig noted while writing along Marxist lines, the goal of the feminist movement was to free all the women, because women will not be liberated until all the women are liberated. On the other hand, she could not stop herself believing that “no one can liberate another, one must liberate oneself,”¹⁷² which sounds biblically enchanting, but aside from one's direct and personal relationship with God, everything else is complicatedly interconnected.

Feminist shortcomings are on display at all moments. For example, though gender repression is a reality that hits the poor first, often the poor views feminism and gender repression as a middle-class syndrome. It is not only a Third-World¹⁷³ perspective that American legal feminism is a theory about the needs of the privileged few. The needs of American affluent women, by global standards, though highly diverse and complex in their many facets-- heterosexual, gay, or transgender, white or not,

homemakers or not, abused single mothers or not, suburban or not--are not seen as major problems outside our borders or our social class.

Perhaps the fact that American legal feminism is unable to treat the diversity in the physics faculty body at Harvard as equally important as the plights of female bankers at Morgan Stanley, who do not earn the million-dollar salaries their male counterparts do, or female Wal-Mart employees, who make thirty percent less than male employees,¹⁷⁴ is going to prevent us from being heard by our intended audience. Only the academe can ^{*143} understand how those three issues may become equally important research topics, while neither the upper class nor the poor can see them fitting together.

What our legal feminism misses acutely is a systemic critique of inequality whose majority victims are women. For example, the fourteen-year-old Los Angeles teenager, Cheryl Green, a recent victim of gang violence, defined herself in a poem entitled *I Am*, as a complex human being, but a being with needs that defied race or gender:

I am black and beautiful

I wonder how I will be living in the future

I hear my dog barking when someone is at the door

I see my mom go through something every day

I want to live in a house and have a car and a good job.¹⁷⁵

Cheryl, like everybody else, wanted to live with dignity. Certainly living with dignity means different things to different people. For Angelina Jolie living with dignity means adopting children from impoverished countries and becoming a member of the Council on Foreign Relations.¹⁷⁶ For J-Lo that means to be an Oscar presenter at the glamorous awards ceremony.¹⁷⁷ For a poor person, a person who has very little, living with dignity means living above poverty, having the minimum necessary. Cheryl dreamed of having a sufficiently "good job" that would enable her to have a house and a car. She did not see her life as inadequate because people did not treat her with proper etiquette, though it might have been. She viewed her life wanting because she lived a life of permanent struggle. Unfortunately for her, and those like her, feminism, or any other postmodern (legal) theory, offers only hopes about etiquette--that people would not kill you out of hate for your identity (gender, sexual orientation, race, etc.). Feminism or any postmodern theory seems less concerned with those who die quietly in their own shacks, as long as no one disrespects their gender, sexual orientation, or racial identity. The millions of Cheryls need both an identity-based emancipation, which gives them the freedom to enjoy their gender, sexual orientation, or race, as well as the freedom to have a good education, which, for the majority, still remains the only road to good jobs and a dignified future.

^{*144} Legal feminism has arguably diverted energies from a systemic analysis of poverty (both of its causes and effects) towards a castrated analysis of the effects of poverty, such as racial hate, for example.¹⁷⁸ More tellingly, as its stance on hate crimes shows, feminism does little to connect hate with poverty. It describes hate as the result of cultural (identity) intolerance. It supported the federal criminalization of a certain level of prejudice against diversity and it thinks that the solution is within reach when it is not.

Hate crimes are far more complex than we would be allowed to believe. It is more than an issue of people hating people who are not like themselves. It is about people who have little (or believe they have little) and are unable to share the meek source of their livelihood with anybody, and especially with those who are perceived as the "chosen victims" of the day. Sharing, like solidarity, is not a moral value high on the list of American moral values. As the death of Cheryl Green from the slums of Los Angeles shows, poverty breathes obscurantism and with it racial or gender-based hate.¹⁷⁹ Feminism needs to address poverty, not the hateful level of prejudice against cultural differences. Of course, Marxism did it before, and thus feminism may fear that if it does so, it may lose its theoretical identity. It is a fear it has to face. Liberation theology does it and it has not lost its identity or mass appeal.¹⁸⁰

As some critics have noticed about affirmative action, feminism may have even become reactionary in the way it is used today to the extent that it has been manipulated by the established power system. Perhaps, as some say, like affirmative action, feminism produced the desired illusion. Affirmative action in universities produces the illusion of meritocracy. Feminism promotes the illusion of change or progress,¹⁸¹ though, as I am trying to show here, the changes society is willing to accept in the name of feminism are limited both in scope and range. They are even reactionary and detrimental to the unrepresented Other who is asked to remain marginalized, though recognized in its gender identity. Only a thin social stratum has reaped the benefits of the feminist legal discourse. They are the women who can afford to be educated, hire nannies, and go into the job market or pay for their abortions.¹⁸² One may wonder if its successes are *145 not a sort of “collective bribe rich people pay themselves for ignoring economic equality.”¹⁸³

Feminism has pushed for change, but the change it has obtained does not seem to be the one it has dreamed of. Feminists have dreamed for a major social impact.

For example, the radical feminist¹⁸⁴ Kate Ellis fought for social equality, and her approach was a method-based approach as well. She used the principle of “social reconstruction” through education,¹⁸⁵ and taught her liberal students that equality cannot be achieved without a dramatic change of the political system.¹⁸⁶

However, the results legal feminism has produced in the United States have been limited. With limited results, the audience has been limited, and it continues to diminish as the right questions are being avoided.¹⁸⁷ While postmodernism satisfies sophisticated elites and it propels to power individuals representing each subgroup of feminist scent, it has obviously ignored majority's interests as well as those of the newly-visible but under-represented Other. And the society at large equally ignores it.¹⁸⁸

B. Is Legal Feminism Postmodern?

This section will briefly discuss the nature of legal feminism and its current postmodern limitations. In *Situating the Self*, Seyla Benhabib expertly explains the alliance between feminism and postmodernism,¹⁸⁹ as grown out of Jean-François Lyotard's treatise on *The Postmodern Condition: A Report on Knowelge*.¹⁹⁰ As Benhabib states “[t]hey are both “critical of the principles and meta-narratives of western Enlightenment and modernity”¹⁹¹ and this is the very reason I view them as outdated and as a constraint posed on our cognitive and moral capabilities within today's capitalist society.

*146 There is no consensus about the nature of American legal feminism. Scholars assert that feminism came late to law,¹⁹² well into the 1980s, and, when that happened, it took the form of liberal feminism.¹⁹³ If liberal theories exist within the constraints of an existing social order, and they are opposed by Marxist or nihilistic and anarchic theories, postmodern theories have an antiessentialist approach to reality that may assume the existing social order. Feminism, to the extent it seeks to obtain for its constituency the rights that belong to men in a capitalist liberal democracy, is a liberal theory.

Siobhan Mullally, for example, preserves the liberal versus postmodern distinction. She asserts that liberal feminism is about building a just and equal society that necessarily requires “the recognition and enforcement of equal rights for women.”¹⁹⁴ One of its tenets was demanding women's rights on the basis of women's capacity for reason.¹⁹⁵

Nancy Fraser and Linda J. Nicholson regard feminism as the other most important political-cultural current of the 1980s, along with postmodernism.¹⁹⁶ For them postmodern thought sought to “develop conceptions of social criticism which do not rely on traditional philosophical underpinnings”¹⁹⁷ while developing its own discourse on legitimization born out of the belief that we can no longer believe in a metadiscourse (read: Marxism) which can capture the truth. Feminism, in those authors' views seeks the same answers like postmodernism. The only difference seems to be praxis: if postmodern discourse is concerned with the status of philosophy, feminists are concerned with “the demands of political practice.”¹⁹⁸ The difference that Fraser and

Nicholson are able to see between postmodernism and feminism, however, is easily erasable if we define them in terms of the meta-discourse they both disavow. Of course, not all postmodern thought is gendered. For example, some have criticized what has been defined as “mainstream postmodernist theory”¹⁹⁹ as “remarkably blind and insensitive to questions of gender.”²⁰⁰

**147* For the purpose of this article, most notable is the feminist pursuit of justice and equality for women, which has often concentrated on particularism, as cultural feminism shows. Such an approach clearly denies universalism and conscribes itself within the bigger family of postmodern theories. To that extent feminism is antiessentialist²⁰¹ and postmodern.

In its rupture with modernity postmodernism stopped requesting rights based on reason. Instead it requested them based on particularism. Particularism pitches collectivities against collectivities and finesses them to individual characteristics. Such an approach has proved destructive for legal feminism because it impedes coalitions and a larger societal appeal.

When feminism deconstructs reality to expose patriarchal oppression it does so, in Derrida's words, as a radicalization within the tradition of a certain Marxism--in “a certain spirit of Marxism.”²⁰² Derrida stated that deconstruction had meaning only as a means of radicalizations. Mary Joe Frug endorsed the postmodern nature of feminism and applauded it for what it was--a useful theory that made women's experiences heard in a society that had the time and means to listen to those stories.²⁰³ MacKinnon applies feminism to the same end.

Gender was not created in our minds after reading philosophy books other people wrote; it was not a Truth that we set out to establish to end academic debates or to create a field or niche so we could get jobs. It was what was found there, by women, in women's lives. Piece by bloody piece, in articulating direct experiences, in resisting the disclosed particulars, in trying to make women's status be different than it was, a theory of the status of women was forged, and with it a theory of the method that could be adequate to it: how we had to know in order to know this.²⁰⁴

The text above is a deconstructionist political manifesto. Feminism deconstructs reality to make space for gender identity and gender politics. Once reality, as such, is deconstructed, feminism, as MacKinnon states, offers a theoretical framework of that reality from women's perspectives. Feminism became the way to gain “access to the reality of [women's] **148* collective experience in order to understand and change it for all of us in our own lifetimes.”²⁰⁵

[Feminism] was a theory of sex inequality and more broadly of sexual politics. In and from the experience of woman after woman emerged a systematic, systemic, organized, structured, newly coherent picture of the relations between women and men that discernibly extended from intimacy throughout the social order and the state.²⁰⁶

Feminism attacked modernism and the Enlightenment universalism. It viewed universalism as mere another “particular [but] from the point of view of power.”²⁰⁷ But sometimes witticism is more destructive than its proponents would expect. Indeed, male writers produced a Western cultural movement called the Enlightenment, and its universal aspiration for betterment, but is that a good reason to disparage its values?

Certainly, some of its methods overlooked how complex real life can be and how many other demands, in addition to basic ones--such as the need for literacy, for example--need to be fulfilled. Bravely, legal feminism has emphasized the value of engaging in emotionality, intuition, and faith as they open up issues that are considered important by many women but have been ignored by the previous focus on reason and rationality.²⁰⁸ But is that a reason to ignore reason and rationality? Wouldn't that be a reproduction of the sins unveiled? Epistemologically, feminism has emphasized that truths come in different flavors, and they do not have to be discovered through reason. Within these multiple truths, like any postmodern school of thought, feminism agrees that sexism and racism are “really evil.”²⁰⁹ They certainly are, but I doubt that their character would change (and become less evil) if we were to dissect them rationally rather than emotionally. Semantically, perhaps, another qualifier, equally powerful, might be used. Thus, it seems to this author that legal feminism is fraught with the same contradictions as any other postmodern theory.²¹⁰

Politically, legal feminism fights multiple battles whose beneficiaries are multiple groups that are identified by their gender-related issues: sexual domination, rape, domestic violence, motherhood, the illusion of equality,²¹¹ etc. It believes that it can obtain better results for each issue if *149 they are separated and dealt with distinctly. Perhaps, but have we inquired what type of results are being obtained? Are those results superficial patchwork or long-lasting structural changes? This desire to avoid the bigger picture in analysis and solutions, this author believes, is another proof that legal feminism is a postmodern school of thought.²¹²

Catharine MacKinnon, one of the stars of radical feminist legal theory, the brand that replaced Marxist feminism, asserts that feminism is not postmodernist because postmodernism is not liberating: it is mostly posture.²¹³ She rightfully understands the dangers postmodernism poses to politics. But denying its postmodern nature does not take care of the problem.

The postmodernist reality corrosion, thus, not only makes it incoherent and useless--the pragmatists' valid criticism--but also regressive, disempowering, and collaborationist.²¹⁴

MacKinnon wants to distance her feminist theory from postmodernism by making women's reality the primordial reality. She deconstructs reality to find the gendered one and then attempts to switch the feminine and the masculine one. Like any attempt to have your cake and eat it too, hers should be commended as well. However, her reality opens itself to the same criticism she bestows upon the patriarchal one. For those who are not members of the lucky identity group, the power switch does not have too much meaning. MacKinnon asserts:

When something happens to women, it happens in social reality. The perspective from women's point of view does not mean that women's reality can only be seen from there, hence is inaccessible to anyone else and can't be talked about and does not exist. Rather, what can be seen from the point of view of the subordination of women has been there all along--too long. We wish it didn't exist but it can't be wished out of existence. Anyone can see it. It can be found. It can be ascertained. It can even be measured sometimes. It can be discussed. Before us, it has been missed, overlooked, made invisible.

In other words, the harm of second class human status does not pose an abstract reality question. In social life, there is little that is subtle about most rapes; there is nothing complex about a fist in your face; there is nothing nuanced about genocide--although many nuanced questions no doubt can be raised about them. These social realities, central to feminism, do not raise difficult first-order reality questions, not any more.

*150 It is the denial of their social reality that is complicated and raises difficult philosophical questions.²¹⁵

MacKinnon has perhaps created the feminist meta-narrative. But what is her feminism about? It is about specific gender-based rights. Gender used to be a marginal space identified with "the Other."²¹⁶ That space existed as such when postmodern thought claimed its rapture with objectivity and neutrality. Then, women's sexuality, for example, was a taboo worth breaking, even when the likes of Andrea Dworkin and Catharine MacKinnon denied its "agency." Then, addressing gender was an enterprise valuable in itself, so the value of the knowledge thus promoted did not matter too much. The truth of statements, such as "sexually women are subordinated to men,"²¹⁷ could easily be ignored. Today, when globalization made apparent that millions and millions of women and millions of members of their families are deprived of basic needs, such statements appear for what they are--observations of limited social value.

Many feminists try to stay outside the philosophical postmodern debate and concentrate their work on the liberal rights discourse. They try to emphasize the dichotomy between the public, world where those rights are being recognized, versus the private world, where most of women's lives take places, and those rights give way to duties.²¹⁸ They talk about an ethic of care that translates into a need to reconcile the existing economic and political structures of the public world with the contribution made by caregivers, which are assumed to be, often rightfully so, women. Representatives of this type are Martha Minow²¹⁹ and Martha Fineman.²²⁰ However, no one in this group uses the ethic of care as a method of analyzing human rights and the basis to

demand substantive human rights for all. If women have an inborn ethic of care, then they can use such an angle to criticize the way human rights are currently implemented. Social **151* justice cannot be created outside equality and dignity. And equality and dignity cannot be ensured if health care and education, at a minimum, are not ensured for all, irrespective of their gender.

This article is about feminism as a method of social critique. It is a call to metamorphose itself from a content-based discipline, whose focus is to deconstruct reality, to expose patriarchal oppression in the surrounding institutions and to become a method-based discipline. It is a call to abandon a postmodern approach to law, which focuses on deconstructing power, to show that patriarchy is everywhere, because, within the new global borders, as Martha Minow said, feminism cannot stand only for women.²²¹ In order to reinvent itself as both relevant and radical, it has to promote a critical angle of human rights that would benefit every single Other, and thus a majority of women.

IV. The Human Rights Discourse

This article's major plea is that feminism needs to re-find its social justice roots. Today's public moral discourse encourages an international human rights discourse. However, its content is unclear. At a minimum, a long due critique should emphasize the need for substantive human rights whose entitlement rests on human reason (a sufficient basis to demand and achieve human dignity) and social solidarity (a gender-based moral value).

Today, the accepted form of social justice the Western liberal discourse promotes is one about human rights. As a liberal product, the human rights discourse is an attack on Marxist theory and an answer to it. Irrespective of its theoretical and practical values, like Marxism, it cannot be ignored, though, and like Marxism, it is far from a successful realization. Ultimately, as with the Marxist theory, states have to be incorporated into the process as they have to recognize and enforce those rights.

Human rights are rooted in human reason and basic needs. This article argues that they can be promoted as a liberal response to satisfying basic needs common to all and thus bypass the damaged discourse about the role of human reason. Again, as mentioned above about the ignored masses, in the current environment of Marxist denial, a constructive critique of this liberal discourse is a worthy, though not sufficient, enterprise. As a result, I argue, feminism may prove more helpful for its cause of promoting social justice for women if it becomes a critique of the social, economic, and legal status quo. Of course, in the process it would have to offer a **152* comprehensive critique of human rights. Such a critique would use feminist methods and values, such as solidarity based on an ethic of care.

A. Formal Human Rights

The human rights discourse is far from uniform. If, in the post-Cold War era, there has been a heightened emphasis on human rights, social justice based on substantive human rights is not “un fait accompli.” The obstacles against a generalized human rights regime are both international and national.

International human rights law emerged during the latter half of the twentieth century. In the aftermath of World War II, members of the United Nations determined that the protection of human rights should be one of the primary goals of their newly created organization.²²² The general perception was that widespread unemployment and poverty caused the political upheavals preceding a war.²²³ Thus, the U.N. Charter recognized the need to implement two types of human rights: civil and political rights, as well as rights that promote economic progress and social development.²²⁴

In order to promote human rights and fundamental freedoms, the United Nations created the Commission on Human Rights in 1946. The Commission's mandate was to draft an “International Bill of Human Rights” that would consist of a nonbinding declaration, convention, and document of implementation. On December 10, 1948, the Universal Declaration of Human Rights was adopted by the General Assembly of the United Nations. The Universal Declaration enumerated both civil and political rights and economic, social, and cultural rights and identified all of these rights as essential for human dignity and development.²²⁵

After the adoption of the declaration, the Commission began drafting a human rights covenant that would be legally binding on member states.²²⁶ A first draft contained only civil and political rights.²²⁷ The General Assembly recommended that an effort should be made to include all the rights into the final covenant, due to their interdependent nature (including *153 economic, social, and cultural rights).²²⁸ However, the commission asked the General Assembly for reconsideration, due to the difficulty of placing rights and obligations of “different kinds” in a single instrument.²²⁹ By a vote of 29 to 25, the General Assembly agreed, concluding that the commission should draft two separate covenants to be submitted for approval simultaneously.²³⁰

The International Covenant of Civil and Political Rights (ICCPR) and the International Covenant of Economic, Social, and Cultural Rights (ICESCR) were adopted in 1966 and came into force in 1976²³¹. The ICESCR recognized that economic, social, and cultural rights were no longer abstracts but essential to human dignity.²³²

However, the United Nations' contradictory approach to human rights is one of the main obstacles for the success of human rights discourse. At the same times as the increasingly-powerful international financial institutions are overseeing the transfer of social policy issues from the United Nations to states, governments are under pressure from the same institutions to move previously public responsibilities into the hands of private actors through privatizing, subcontracting, and outsourcing.²³³ By definition, these private actors, often multinational corporations, sacrifice “community interests” to the dictates of profit and are not bound directly by existing human rights instruments.²³⁴

The result of this contradictory approach, the message that the United Nations still sends, is that the human rights imperative is selective about which rights are promoted. As a result, the rights given “prominence are those that assist free market economic globalization, in short, certain civil and political rights; freedom of speech and information, minimal forms of representative democracy, the rule of law, and the strengthening of civil society.”²³⁵

As scholars have pointed out, the existence of two separate covenants entrenching civil and political rights and economic, social, and cultural rights has contributed to the assumption that these sets of rights are different both in nature and in value.

Understandably, as a result of this lack of clarity, individual states have resisted implementing a unitary human rights regime within their physical *154 borders. Originally, the resistance might have been ideological. “Conflicting ideologies in Soviet and Western bloc countries after the war resulted in different conceptions of what constituted a ‘fundamental’ human right.”²³⁶ Soviet bloc states backed the adoption of a single, comprehensive covenant.²³⁷ The Soviet states championed economic, social, and cultural rights, which they associated with the objectives of socialist society.²³⁸ Western bloc states supported the division of rights into two separate treaties, “thus making clear the ideological and political importance the decision was perceived as having.”²³⁹ Western states promoted civil and political rights as the foundation of democracy.²⁴⁰ Western states viewed economic, social, and cultural rights with suspicion, because many of these rights required an element of wealth distribution.²⁴¹ Unfortunately, by backing such an approach Western states adopted a policy of not undertaking “the obligations arising from social, economic, and cultural rights.”²⁴² Such an international attitude opened their internal politics to fluctuations within the minimally-acceptable level of guaranteed human rights, and ultimately they abandoned the poor (many of them women and children) when the welfare state started to disintegrate.²⁴³

This individualized resistance is not uniform. For example, some developing states resist the spread of “market friendly” human rights by arguing that the right to development must take precedence over individual rights. Taking its cue from these acts of resistance, feminism should offer a critique of human rights that would show why social economic rights are indispensable and further promote a dialogue that re-establishes the role of the state and minimizes the hype surrounding the role of nongovernmental organizations.

B. Are Market-Friendly Rights Human?

Recently, in an attempt to “legitimize the commercial activities of corporations at the cost of other individual rights,”²⁴⁴ the human rights discourse has witnessed the emergence of “trade-related market friendly *155 human rights.”²⁴⁵ This trend seeks to commercialize, inter alia, intellectual property as “trade-related rights,” and present copyright as a human right. While it argues that such copyright expansion is intended to serve the interests of the author and to promote creativity, the main international treaty that is behind this expansion,²⁴⁶ the TRIPS Agreement, does not even make mention of the concept of moral rights. Scholars explain the “moral rights concept” as “probably the only remaining deontological component of copyright law and exclusive to individual authors.”²⁴⁷ In light of the fact that even a superficial analysis of whose interests are behind this expansion would show that media conglomerates are the only beneficiaries,²⁴⁸ understandably some Third World countries have rejected this perverse approach to human rights.²⁴⁹

This development, as Upendra Baxi explains, is an attempt to supplant the paradigm of the Universal Declaration of Human Rights by a human rights paradigm which reverses “the notion that universal human rights are designed for the dignity and well being of human beings and insists, instead, upon the promotion and protection of the collective rights of global capital in ways that ‘justify’ corporate well-being and dignity over that of human persons.”²⁵⁰

The Universal Declaration of Human Rights model assigned human rights responsibilities to states; it called upon the state to construct, progressively and within the community of states, a just social order, both national and global, that could meet at least the basic needs of human beings. The new model denies any significant redistributive role for the state.²⁵¹ *156 This paradigm only compliments the current globalization which thrives on states whose legal regime is strictly enforced or others where such regimes can be easily manipulable. The multinational capital needs both a “soft” state and a “hard” one.²⁵² For example, while a “hard” police state is needed to protect the production of capital in the few chosen First World states, the “soft” state is also needed to be unable to fight the dumping of toxic and dangerous wastes that is the result of production processes that take place in the First or even Third World countries.²⁵³

The multinational capital's understanding of hard and soft state has nothing in common with the liberal definition of a state that encourages welfare and one that does not, because the multination capital discourages welfare policies everywhere. Overall, it can be said that with the dismissal of the strong welfare state, as Dianne Otto remarked, the international human rights regime suffers, too. It is being “downsized as governments divest themselves of the responsibility to provide social services and ensure adequate living and working standards.”²⁵⁴

Empirical social sciences have been exploring how states' commitment to the disempowered works and they suggest that often states do not address inequality effectively without working alongside different movements. Feminist activists have already held states accountable for how they address gender inequalities. It will be interesting whether feminists can further address those issues by demanding stronger state partners which are endowed with more social, economic, and financial resources to distribute among the disempowered Other.

Certainly, a critique of the role of the state cannot ignore the disastrous effect globalization has had on both rich and poor states. It legitimized depleting both of them of social services' resources. The new international order further impoverished poor states in the race for the fastest way of enriching the already rich—the class whose status is never questioned. Without them how can anybody make the case for the superiority of current capitalism over the previous one (the so-called socialist system)?²⁵⁵ Feminism needs to incorporate this basic criticism about this new hierarchy *157 of “birth and wealth,”²⁵⁶ if it wants to gain its relevance with poor women from here and Third World countries.

C. Substantive (Socioeconomic) Human Rights

Currently, the human rights discourse is mostly associated with international law and with the American view of international law. As such, human rights are too often described narrowly as political and civil rights, or in terms of “a right to vote, a right to free speech, a right to assembly.”²⁵⁷ But shouldn't be there a right that no one should die for lack of a five-dollar life-preserving

tool (i.e., a mosquito net)?²⁵⁸ Perhaps a right to information and education and a right to a cleaner environment, and thus to safe water, should become an integral part of our equality discourse.

One of the non-Western critiques of human rights is content based. It asserts that their content is not necessary to better human life, but dictated by political circumstances. As the few examples shown here point out, such a critique is easily tenable. It could become less so, if our perception of human rights were to change, and define them pragmatically as all those rights which satisfy basic human needs, such as the need of people to live healthy lives. Thus, what identifies human rights becomes their nature--indispensable to the needs imposed by the human condition--and not political circumstances.²⁵⁹

International human rights law is facing a legitimization crisis. There are many reasons. They stem from cultural relativism, as well as from their individual or group-based character in various parts of the world.

The international human rights discourse focuses on international treaties and their enforcement, which is mostly seen as Western fundamentalism.²⁶⁰ As mentioned before, international and nongovernmental organizations are part of the paradigm, while states are mostly isolated from this discourse.

Recently the Western international human rights discourse seems to engage the market more than the state, as if there were a choice. A feminist critique of equality would argue that it seems quixotic to compel the market to end violations of substantive human rights if that means a loss of profit without involving the state, absent clear regulations that market *158 (shareholders) would not stop doing what comes naturally to it--making profits.

A feminist critique will attempt to bridge the double dichotomy--the one between domestic versus international rights and the cultural one between the Western world and the rest of the world. Such a critique will emphasize the need to bring about substantive equality. Ann Scales recently analyzed the difference between formal and substantive equality,²⁶¹ giving one hope that members of the American academe, like the many from Third World countries could engage in changing the current human rights expectation. Such a critique will also bring back the state into the equation. Finally it will point out that universalism is not an out-of-date concept because the rights of all individuals to be treated with dignity and the duty of their states to treat them with dignity need to be universal.

I argue that, within their liberal limits, nevertheless social and economic rights need to be first taken care of because their commonality transcends civil and political constructs. They answer needs that transcend cultures and their different readings and alleviate problems that have caused much of the legitimization crisis.

There are feminists who already adhere to this general understanding of human rights.²⁶² Moreover, those feminists also agree that human rights require state intervention.²⁶³ The problem some may have with this approach is that if feminism wants to remain an independent discipline, it cannot transform itself into a human rights discourse. However, that problem disappears if, as I argue, feminism becomes a critique of the legal, social or economic status quo by using specific (feminist) methods.

D. The Role of the State

The state is part of the social-historical-geographical structure of human societies. It is the most symbolically influential institution of those societies; its rules govern the people that live within its geographical borders. Thus, to a large extent its rules represent the general interests of all residents and this general representation legitimizes the current status quo.

The state does not represent the interests of everybody living on its territory. Alain Badiou would poetically demarcate that representation to those who had been recognized as legal by the state: "ce qui a déjà été *159 présenté."²⁶⁴ There are people and interests which have already been constituted and included in the existing power structure. If there are conflicting interests, those which promote the status quo will be re-presented while "the Others" will be partially or totally ignored until the existing status quo is successfully challenged. Abraham Lincoln and FDR are examples of leaders successfully changing the status quo.

Every state is tied to a specific socio-historic moment and, to the extent their functions are to preserve the existing power structure, they are all reactionary. Thus, the question becomes why shall I militate in favor of incorporating the state in a feminist critique of equality? Because there is no other institution which can meaningfully promote the interests of those previously ignored, as both history and the present recession show us. Moreover, internationally speaking:

Except in the European regional regime, supranational supervisory bodies are largely restricted to monitoring how states implement their international human rights obligations. Transnational human rights NGOs and other national and international advocates engage in largely persuasive activity, aimed at changing the human rights practices of states.²⁶⁵

The state has sovereignty over its territory. Whether it is the federal state in the United States and Switzerland, or the national state in France or Haiti, the state dictates what type of justice it favors (corrective or distributive) and the amount of rights its citizens can have at a minimum. Of course there are supra-national organizations, but they are manipulated by the individual member states, as the European Union's failure to adopt a federal constitution in 2005 shows.²⁶⁶

Even the global human rights regime relies on states--"national implementation." As Jack Donnelly reminded us, while norm creation has been internationalized, enforcement of international human rights norms is done by sovereign states, of course with "few and limited exceptions--most notably genocide, crimes against humanity, certain war crimes, and perhaps torture and arbitrary execution."²⁶⁷ None of them cover substantive human rights.

States have a bad reputation in the eyes of all activists. Feminist activists have come to believe that all the state can do is to brutalize rape victims. They believe that is easier to deal with nongovernmental entities. ***160** Perhaps. But those entities have not done too much, or if they did, not for a long period of time and not for large populations.

The emaciated night-watch state has provided little or no welfare services to the disempowered Other, but feminists should inquire into how this abysmal situation can end. That feminists from Third-World African countries doubt their states' ability to provide social services is understandable: most of those states are still rife with corruption backed by First World corporate interests. However, it becomes troublesome when North American feminists ignore their states' ability and potential role in relieving the plight of the have-nots. Thus, I wonder why would legal feminists generally disregard what the state can do for those in need, and I hope that it is not for some theoretical overarching bias, i.e., postmodernism and its distrust of everything that came before its myriad of truths.

It is a well-known reality that within the last three decades politicians have tried to destroy collective entitlements. The Reagan Administration eliminated the Comprehensive Employment and Training Act (CETA) and virtually dismantled the Job Corps, as well as workers' (aerospace) unions in gestures reminiscent of Coolidge, another president oblivious to portents of economic catastrophe.²⁶⁸ The Clinton Administration destroyed the last vestiges of FDR: he kept his campaign promise and ended "welfare as we know it." He signed into law the Personal Responsibility and Work Opportunity Reconciliation Act (Personal Responsibility Act) in 1996,²⁶⁹ which only worsened the plight of those it was intended to help.²⁷⁰ The Bush administration has continued the battle for the least service oriented and least dependable administration when it comes to the interests of the middle and working class: it instituted tax breaks for the rich and their corporations.²⁷¹ But this should only embolden not weaken our demands for social justice. If the state can act this irresponsibly, we can only imagine how whimsical private charities can (and did) prove to be.

Moreover, politics of destruction cannot help those in need. If we denigrate the state and deplete it of any sources, what do we put in its place? Feminists do not believe that poverty is a behavioral problem. We believe that poverty, whether gendered or not, is a symptom of a structural problem of the American society that rewards those who already have at ***161** the expense of those who would like to have. The future of legal feminism depends on how we choose to answer these questions about care: how much do we care about those in need? If we fear that in the process we may lose our identity, then we need to re-invent

legal feminism. Perhaps it can become a theory of global justice (though not necessarily along the lines recently delineated by Martha Nussbaum),²⁷² whose methods will distinguish it from other theories calling for social justice.

V. Feminism: A Method Discipline Which Eschews Neutrality

We have accepted that a theory is feminist to the extent that its content is feminist, or that it believes that women are unjustly unequal to men because of the social meaning of their bodies.²⁷³ This section wants to further articulate the argument that legal feminism can preserve its identity if it becomes a feminist critique of equality, of how states ensure human dignity for all their residents.²⁷⁴

For many of us feminism is no longer a way of thinking confined to persons born female.²⁷⁵ Moreover, it needs to go beyond concentrating on women's experiences as women see them because such a perspective is too divisive. Today, as Gloria Steinem pointed out, is about coalition-building, not about legitimizing minute perspectives. Of course, feminism has been defined as collective and deeply contextual.²⁷⁶ For example, a feminist critique of human rights would preserve both characteristics, as it affects how different states can implement substantive human rights within their geographical borders, and such a critique is both collective and contextual. My feminism is one that does not want to stop until all women can live with dignity.²⁷⁷

Culturally, that may mean different things to different people, but few would deny access to education, healthcare and old age benefits. Criticizing the current implementation of the human rights regime for its lack of care for the disempowered might still be viewed as imperialistic if it imposes some outside content to sovereign populations. But, if such a critique is done from a caring perspective and points out that those populations live in squalor and that their states need to do more for them, then that is at least informative and supportive of the home-bred activists' actions.

***162** No one can deny that feminist-content knowledge has successfully changed the public moral discourse and inspired social action. While the type of action it inspired has always been local, it has been well-defined both geographically--in urban areas, be them countries or regions within a country-- and socially--mostly within the middle class, the public moral discourse it has supported has become borderless. Men have been liberated because showing emotions is publicly acceptable. Men can enjoy being less than ferocious. However, neo-liberal globalization has changed the moral vocabulary, too. Today, the right questions demand a newly directed attention--their focus has shifted away from such tribal postmodern identity politics. They have not chosen a direction yet, which leaves room for coalition-building and goal-searching. But coalitions need theories of larger appeal.

Feminism finds itself today in the same position philosophically that it found itself at the beginning of the twentieth century, when the likes of Bertrand Russell,²⁷⁸ Ludwig Wittgenstein,²⁷⁹ and Moritz Schlick²⁸⁰ repositioned philosophy as a method discipline and not a content one--a discipline that needs to analyze, clarify, and elucidate concepts. To the extent that feminism is a response of the Left academe to Marxist rigidity, it cannot continue as a content-based theory unless it accepts its own epistemological and political demise for some of the reasons briefly mentioned below.

Legal feminism has epistemological limits. As a content theory it has always relied either on existing foundational meta-narratives, either modern liberal theories or radical theories, such as Marxism.²⁸¹ While it purports to thrive on uncovering the male social mystique, more recently feminism has become a brand of minimal social criticism, such as a feminist critique of corporate law or of intellectual property law. This proves my point that there are feminist methods of criticism, though their adaptability to such diverse topics is worrisome. It also proves my critique of the illusion of moral neutrality²⁸² and the need to do something about the waning relevance of legal feminism.

In *Toward a Feminist Theory of State*, MacKinnon has developed a theory of law in the context in which power is gendered.²⁸³ She attempted ***163** to answer questions about state power and how it affects women.²⁸⁴ She considered questions about corrective justice and whether "law [can] do anything for women" within the existing capitalist system, rather than distributive

justice, and thus relied on a liberal theory of the state.²⁸⁵ Her main critique was that the liberal state may appear autonomous of class, “but not autonomous of sex.”²⁸⁶ From this perspective, capitalism becomes the expression of male power, which is only waiting for a feminist critique of how it takes care of its disempowered subjects.²⁸⁷

To the extent feminist thought has grown to expose social reality from a woman's point of view, its essence is that of a theory of knowledge. This theory of knowledge focused on a specific constituency: women (whether that “female point of view” always corresponded to biologically defined membership in the group). With the advent of postmodernism, feminism has embraced the postmodern attitude about knowledge and doubted its rationalist composure. As a result, it has often doubted that true knowledge can be acquired through deduction and induction absent membership to the group whose truth is sought. Legitimacy is often viewed as collateral to biological group membership.

Bertrand Russell defines this type of knowledge as being based on a physical acquaintance with the object.²⁸⁸ I argue that as a result of such a country-club approach to truth, feminism faces its own derision; if feminism can only represent gendered members, its coalition is limited to the gender of that group. Unfortunately, even when membership is the only claim to true knowledge, history has shown that women do not find it too persuasive; as their allegiances are more diverse, many choose to endorse other theories.

Those epistemological limits might explain its undeniable political success. However, its success has been circumscribed to middle-class individuals and their specific issues. Its success has ignored the have-nots. Though its goal is to improve the deprived position of groups based on their gender status, legal feminism proved that it cannot deliver for those in difficult social, economic, and cultural conditions: remember the Cheryl Greens of this world?

I will use one example. A woman can exercise her right to choose to bear or beget a child if she is able to pay for the necessary medical services. As I argued elsewhere,²⁸⁹ exercising her right depends on the economic *164 status of the pregnant woman. Thus, I do not revel in the Roe v. Wade holding,²⁹⁰ because, as the subsequent holding in Harris v. McRae²⁹¹ states, this right belongs only to those who can afford it, as public funds are not to be used for abortions. Even more subversively interesting is the revelation that adult middle-class women--and not the destitute ones--had always been the intended beneficiaries of this new right.²⁹² As pollster Tubby Harrison noted in 1984, poor women were never the intended beneficiary of this new right:

The public opposes the use of federal funds to pay for abortions for poor women by 55% to 42%, with that margin growing to 62% to 36% when the words “women on welfare” are substituted for “poor women” . . . in the case of “poor women,” strong opposition outweighs strong support by a little over 2 to 1; in the instance of “welfare women,” the margin leaps more than 4 to 1.²⁹³

In other words, while feminism ably used the Left's political imagination to achieve palpable political results--such as the right to vote--those results proved to be so connected to the socio-economic status of the beneficiary that, in time, feminist gains have lost their social relevance. What is the right to have an abortion without providing the money to pay for it? What is the right to vote for members of political parties who are more and more ignorant of the have-nots' demands?²⁹⁴

Moreover, to the extent it has promoted knowledge whose truth depended on physical acquaintance-group membership, legal feminism has become more and more divided so its knowledge would have less and less margin for error. By tailoring social demands to group membership, feminism has both become an established source of political power and insulated itself from the society at large. It lost its legitimate Otherness while gaining individual successes by using the Otherness card. Members of the Otherness are part of the legislative, judiciary, and executive powers. Moreover, in the name of success that has subsequently proven relatively ephemeral--see the Supreme Court case law--legal feminism has engaged in division more than in coalition-building at the expense of destabilized Leftist politics. Today, American legal feminism has very little direct *165 connection with those economically deprived, though they need help the most.

Bertrand Russell's simple and clear explanations about the limits of philosophical knowledge offers a useful parallel to the current limits of American feminism generally and those of American legal feminism in particular.²⁹⁵ In its last chapter Russell

underlines that philosophy remains a worthy enterprise because it enables us not with the certainty of true answers but with doubts that “enlarge our thoughts and free them from the tyranny of custom”:

Thus, while diminishing our feeling of certainty as to what things are, it greatly increases our knowledge as to what they may be; it removes the somewhat arrogant dogmatism of those who have never traveled into the region of liberating doubt, and it keeps alive our sense of wonder by showing familiar things in an unfamiliar aspect.²⁹⁶

For Russell, philosophy achieves this tremendous result due to its method. “Descartes' ‘methodical doubt’ . . . is rather the kind of criticism which we are asserting to be the essence of philosophy.”²⁹⁷ Similarly, it can be stated that if feminism abandons its dogmatic knowledge-based attitude and recovers its social critical stance, its rather dim future may change.

Domestic legal feminism is still battling its perennial issue--the right to choose to bear or beget by middle-class women--often translated into the right to have an abortion by the same middle-class women.²⁹⁸ In 1973, legal feminists wrongfully thought that that battle was won in court, with *Roe v. Wade*,²⁹⁹ though the progressive social movements of the twentieth century had incorporated sexual freedom as one of their goals, and as a consequence reproductive rights had become the paradigm of American liberalism.³⁰⁰ This feminist hope proved wrong. As all social gains obtained in court show, including the segregation case *Brown v. Board of *166 Education*,³⁰¹ this right also proved more elusive than expected. What one court decides today another court can, de facto, vacate tomorrow--see *Planned Parenthood v. Casey*³⁰²--and, within a federal system like ours, U.S. Supreme Court decisions still need state-based implementation, whether at the statutory or executive level.³⁰³ Internationally, women are faced with many plagues: genital mutilation, stoning, illiteracy, the AIDS virus, etc.

Legal feminism, the way it is conceived today in the United States, cannot save women who have concerns other than fighting abortion in courts on behalf of women who could fly to Canada and obtain them if need be. Its tools are insufficient. Social and economic inequality is a structural issue: it cannot be achieved one court case at a time. Internationally, its epistemological and political legitimacy is even more questionable. However, if it recovers its critical nature and uses its methods to provide a meaningful critique of human rights, then feminism can provide a meaningful critique of equality and regain its social justice aura.

Feminist scholars have noted the postmodern feminist assault on universal accounts of the human being and human functioning. Martha Nussbaum spoke about the assault on essentialism decades ago and she called for reconciliation between feminism and universal truths.³⁰⁴ Building on her work, this article advocates that instead of the inconsequential 1,001 facets of gender-based issues, feminism needs to refocus its energies on the main issue that was its *raison d'être* in the first place: social justice for women. Social justice for women implies social equality. Social equality requires that women enjoy the same rights as the other members of the society. How those rights reach a decent level may be best achieved through a feminist critique of equality, a critique that uses specific feminist methods.

A. Feminist Methods and A Feminist Ethic of Care

Method, MacKinnon wrote two decades ago, is the way in which we evaluate knowledge: it organizes and filters knowledge, and to a certain degree it becomes tautologous with it.³⁰⁵ For MacKinnon, feminism “converges upon a central explanation of sex inequality through an *167 approach distinctive to its subject yet applicable to the whole of social life, including class.”³⁰⁶ If there is a feminist way of looking at the world, that way may as well be that of a caregiver, that of our grandmothers and mothers', whether biological, adoptive, or just de facto. In their work, feminists such as Martha Minow³⁰⁷ and Martha Fineman³⁰⁸ talk about an ethic of care that translates into a need to reconcile the existing economic and political structures of the public world with the contribution made by caregivers, which are assumed to be, often rightfully so, women.

Of course, today, in industrialized societies where fathers don't have to go hunting or fighting wars, fathers are as much caregivers as mothers because feminism has made domesticity acceptable. However, if an ethic of care can easily cross genders here in America, it is not as easily fungible in cultures different than ours where women are still the main caregivers. It is worth

nothing, though, that critics from those societies may be susceptible to viewing such a critical tool as an imperialistic gesture. The lure of capitalist individualism is an amazing ideological device, and again, as the Soviet experiment has shown, jumping ahead in history is not the best approach to progress.

B. MacKinnon's Consciousness Raising

Feminists have often addressed the issues of feminist methods. Almost two decades ago Catharine MacKinnon spotted the importance of consciousness-raising.³⁰⁹ She defined it as being “the collective critical reconstitution of the meaning of women's social experience.”³¹⁰ Women are viewed not individually, but as a collective being, and feminism is viewed as an analysis of social life into the pursuit of consciousness.³¹¹

MacKinnon's method emphasizes raising consciousness as a political praxis in support of women discovering their sameness in the conditions they faced through marriage, nonmarriage, divorce, or becoming openly lesbian,³¹² and how they fare vis-à-vis men. I suggest that feminism as a method-based theory uses consciousness-raising as a way for women to understand that their fate is vitally related to that of the surrounding populations. Women cannot improve their fate as a collective ignoring the fate of those surrounding them, at least not on a more permanent basis beyond a temporary out-sourcing of sweatshops or sex tourism.

***168 C. Feminist Methods: Minow's Deconstructionist Approach to People as Individuals and Persons**

Almost a decade ago, Martha Minow emphasized the connection between the private and the public sphere: the political need to regard people “simultaneously as individuals and as persons deeply involved in relationships of interdependency and mutual responsibility, and regarding families both as private associations and as entities shaped by social policy and state action.”³¹³ Regarding people both as private entities and public actors, far from blurring distinctions, has the advantage of unmasking relations and responsibilities. A feminism that aims for women's dignity is a feminism that emphasizes the connection between basic care-giving relations and people's physical and emotional well-being. In doing so it inevitably exposes the crucial role the state plays in enabling or denying individual fulfillment.

D. Matsuda's Looking at the Bottom

When Mari Matsuda coined the phrase “looking to the bottom,”³¹⁴ she undertook the painful task to uncover the existing epistemological social hierarchy and asked for something similar to “epistemological redistribution.”³¹⁵ Matsuda promoted:

Looking to the bottom--adopting the perspective of those who have seen and felt the falsity of the liberal promise--can assist critical scholars in the task of fathoming the phenomenology of law and defining the elements of justice. The method of looking to the bottom is analogous to but different from the method of legal philosophers . . . , who have proposed moral theories that call for special attention to the needs of the least advantaged. What is suggested here is not abstract consideration of the position of the least advantaged. The imagination of the academic philosopher cannot recreate the experience of life on the bottom. Instead we must look to what Gramsci called “organic intellectuals,” grass roots philosophers who are uniquely able to relate theory to the concrete experience of oppression. The technique of imagining oneself black and poor in some hypothetical world is less effective than studying the actual experience of black poverty and listening to those who have done so.³¹⁶

While Matsuda believed only in the type of knowledge Russell criticized because its validity rested on physical acquaintance with the object (group membership), the method employed remains useful as a ***169** feminist method which is sympathetic to the disempowered and their needs. It also makes obvious the legal tradition of feminism continues - liberal as well as Marxist theories.

E. Scales's Practicing Solidarity with “the Others”

Ann Scales, for example, devotes an entire chapter in her magnificent new book *Legal Feminism Activism Lawyering and Legal Theory*³¹⁷ to the complex world of feminist method. She examines MacKinnon's raising consciousness³¹⁸ through Minow's "personal reporting"³¹⁹ about what has not been said. She also includes MacKinnon's "claims of knowledge" approach, which deconstructs law to the level of what is "real" or "actual" or "oppressive" from a woman's point of knowledge. All these approaches rest on one epistemological assumption that the truth is gendered. As a result, these methods are content-based.

Anne Scales mentioned another method as well - practicing solidarity with "the Others."³²⁰ For her, this method is about thinking through how legal decisions affect other people. For her, this method is not about how law generally affects the entire community of "the Others."³²¹ It does not imply the aforementioned ethic of care for the plight of "the Other," either. It is strictly pragmatic and emphasizes the waste of energy on issues that may not necessarily warrant such energy poured into them. She uses the "storm same-sex marriages" created in this country to illustrate her method.³²²

I am among many feminist lawyers who believe that the devotion of so much time and so many resources to the goal of marriage was a mistake for many reasons. If a few lawyers and clients had not committed us to the goal of marriage a decade or so ago, who knows what divisions might have been avoided or minimized? Who knows what other legal protections might have been avoided or minimized? Who knows what other legal protections might have been achieved? It stuck in my craw that on the same day that the U.S. Senate passed the Defense of Marriage Act, the employment discrimination on the basis of sexual orientation failed to pass by one vote. Now the marriage advocates are admitting that straight citizens needed to get to know us better before we laid the marriage trip to them. What better way to get to know us *170 than around the water cooler in workplaces where we needn't fear disclosure of our sexual orientations?³²³

However, though Ann Scales does not connect practicing solidarity out of an ethic of care for "the Others," her critique is especially useful. It shows that feminism can survive as a method theory, even when there is no unity about what constitutes a feminist method.

Of course, emphasizing such a universal ethic of care might be seen as coming in direct conflict with the "identitarian categories"³²⁴ initiated by postcolonial cultural studies which have pitted "whiteness" against "blackness" and more recently dug out the gender identities behind these West and East identifiers. While it seems obvious that human beings are not "unitary essences," there are unitary universal values which we all seek. Even though we are products with a multitude of selves co-dependent of our psychic, as well as our material, surroundings, living with dignity is one value that we all understand and seek irrespective of how complex or fragmented our selves may appear. Living with dignity implies being respected as an individual, certainly, and also certainly does not mean to be left alone in poverty. For those who are not born in middle-class affluence, living a decent life requires a lot of social action on many levels.

Recently, Martha Nussbaum defined dignity more abstractly, building on Aristotelian and Marxist terms. However, though she was talking about humans as both political animals and creatures "in need of a plurality of life-activities," she also stressed bodily needs, including the need for care,³²⁵ a need that requires pre-existing social networks that could satisfy it. We need both to care for others and be cared for, and a feminist perspective is best situated to explain both facets of such a need.

Feminism as a method discipline would not destroy feminism, it will not become the Lacanian feminine "the Woman does not exist,"³²⁶ it will only allow feminism to take a respite from its decades-long postmodern flavor and recapture its essence--a radical movement whose purpose is equality and social justice.

*171 VI. Feminist Equality: A Feminist Critique of the Status Quo

A. A Feminist Critique of International Law and Human Rights

Criticism of the status quo has always involved looking at international law. For the cynical reader this may be a sign of how toothless such a critique might be. For the reader of international law, however, internationalist activists exist and, such as Crystal Eastman, often they are radical women lawyers.³²⁷

Thus, it seems only normal that feminists have changed our understanding of international law. As David S. Berry recently noted,³²⁸ feminists have imprinted their content-based criticism of international law and helped its revitalization by forcing it to take into account women's perspectives and concerns. In fact, within the last decade, as Karen Engle recently noted, articles theorizing gender and human rights have proliferated at such an "astonishing rate" that even the thought of counting them in any accurate way would seem to be pointless.³²⁹ It is very likely that feminism will further vitalize international law through a critique of human rights by using a feminist methodology that requires a reevaluation of substantive human rights and the role the state needs to play to implement them.

The trend has been mutual. Some feminists have tried to use international law as a way of revitalizing feminism, too. For example, Martha Nussbaum has used the discourse of human rights to reexamine feminism. She combined the ethics of justice and rights with the ethics of care and sympathy to build a feminism that is "concerned with sympathetic understanding."³³⁰ Nussbaum's argument favors a "truly human functioning"³³¹ approach to society and not a reductionist gender-based perspective. Nevertheless, she is aware of gender disparities and does point out that gender-based deprivation and intimidation can corrupt experience.³³² Perhaps less ambitious than Nussbaum's, this article's thesis is about making feminism relevant socially to all members, and across its gender boundaries.

***172** A feminist critique of equality would take care of so much unquestioned social reality. It would point out the absurdity of relying on the market to better the lives of billions. Feminist legal theories have always been critical of the individual rights' status quo and, irrespective of their focus, tried to bring attention to equality from a woman's perspective and needs. The so-called sameness theory, which demanded that men and women are the same and thus should have the same rights, continues to be heard today as well. Women should share the job market because both men and women need financial means and dignity to survive.

It is interesting to note that often women who are an integral part of the disempowered Other find work more easily than men because the West is more easily persuaded to subsidize work for them. This work is usually in sweatshops. Thus, within "the Other," family globalization made women into breadwinners. Of course, this is only temporary. Globalization designates certain geographical areas as sweatshop centers. When the battle for the cheaper sweatshop moves to another geographical area, women are left with a simple choice: burden their already-impooverished family or prostitute their bodies (prostitution, too, can be viewed as Western aid: without Western sex tourism, prostitution would hardly prosper).

Amy Lind, for example, has magisterially shown in her recent book on Gendered Paradoxes that globalization has actually produced more work for poor women. Globalization has spread neo-liberal policies that foster a weakened state whose social function has been shifted to inadequate private factors whose job is ultimately done by family and community.³³³ Those policies, far from improving poor women's lifestyles have worsened them; absent state support, poor women and their families can hardly survive, though their amount of work has doubled or tripled by doing the job state institutions did in the past. Certainly, those policies have their supporters and beneficiaries and some of them are women, too, though they are mostly middle class and not poor women, whether they live in the Third World's Ecuador, New Orleans, Los Angeles or Harlem.

Professionally-trained and formally-educated, typically middle-class women activists tend to find jobs in the NGO sector, U.N. agencies, foreign government agencies [and they also] tend to be the movement representatives . . . Working-class, poor and rural women have less access to political power and employment.³³⁴

***173** The critique suggested here has a lot in common with cultural feminists because a feminist critique of equality is a critique that incorporates an ethic of care. However, it departs from it because it is not about bringing a woman's face into the meaning of "human" in human rights. It is a critique of how substantive human rights are treated as less important than political

rights, and it is a call to endorse basic substantive human rights; so, for example, as a next step, scholars can focus on derivative, identity-driven needs and ask for new human rights to be added to the pantheon of international human rights.

Those needs are not less important or less immediate. They are, however, impossible to address as long as thirst, hunger, illness, and illiteracy are still endemic. From this point of view, the feminist ethic of care can be the driving critique of how substantive human rights are today understood and applied.

By including what violates women under civil and human rights law, the meaning of “citizen” and “human” begins to have a woman's face. As women's actual conditions are recognized as inhuman, those conditions are being changed by requiring that they meet a standard of citizenship and humanity that previously did not apply because they were women

Thus women are transforming the definition of equality not by making ourselves the same as men, entitled to violate and silence, or by reifying women's so-called differences, but by insisting that equal citizenship must include what women need to be human, including a right not to be sexually violated and silenced.³³⁵

There is no dispute that women should have all the rights that come under the umbrella of human rights.³³⁶ I argue that they should not fight to be the only ones enjoying those rights. Moreover, if they claim more rights, gender-based rights, than the basic rights advocated here as a prerequisite for human living, of course that can be addressed too once women and their partners can have basic needs, such as food, shelter, health care and education, satisfied. Otherwise, it becomes all too easy to discredit feminism as a form of Western-imperialism, as it attempts to impose Western standards (middle-class needs) in “unfamiliar contexts.”³³⁷ If feminism is vulnerable to such criticism, this means that the time has come for feminism to address its legacy. It seems only logical that a *174 method-based discipline, rather than a content-based one, can better survive cultural differences. A feminist critique of equality, which underlines the need for human rights whose main goal is social justice, has more chance to ignite the imagination of the disempowered “other” whose discrete basic needs may be different from country to country. Equality as a rights-based construct is hard to envisage outside the state because states meaningfully recognize and sanction rights, though the state is under attack from both the Right and the Left. For example, the likes of Alain Badiou want to discredit the state and the Balibars and Bourdieus of the West as “politically very weak, for the simple reason that they do not break with parliamentarism,” and they want to preserve the “state-sanctioned structures and rules (parties, elections, trade unions, constitutional amendments. . .).” Indeed, these structures belong to parliamentary-style democracy, but anarchies and dictatorships do not have a good human rights record.³³⁸ Some on the Left tend to discredit the state at the behest of international and supra-governmental organizations. On the Right, conservatives hail the potential humane role of transnational corporations whose gross domestic product (GDP) often is more significant than that of many poor countries. And everybody seems bemused that some Wall Street tycoons' annual incomes³³⁹ reach the GDPs of the bottom fifty-eight of the world's 190 countries.³⁴⁰ Feminists cannot just wait for women tycoons to be in that amoral situation and declare “mission accomplished.”

Feminists do not shy away from raising “the crucial methodological issues about modern political theory and the question of the potentialities of social democratic liberalism for the just resolution of issues relevant to the scope and structure of the welfare state.”³⁴¹ Nicola Lacey noted a few years ago that feminism, like communitarianism or socialism, is a critique of liberalism, which points out that human beings are necessarily and primarily social beings that depend on the community in which they live.³⁴² Developing on Nicola Lacey's observation, this article would add *175 that women are the collectivities that surround them. Social justice for women cannot be achieved without social justice for all.

To the extent social justice depends on rights, a social critique that ignores the state is illogical. Rights cannot exist outside the state. Despite all the well-to-do international conventions, including the Convention of the Elimination of All Forms of Discrimination against Women (CEDAW), which entered into force in September 1981,³⁴³ rights only exist to the extent states recognize and enforce them. For example, states do not need to follow the requirements set forth in CEDAW to eliminate discrimination against women unless they recognize the convention, which sometimes means both becoming a party and ratifying it. The United States, though a party to CEDAW, has not ratified it yet.³⁴⁴

A feminist critique of equality raises the issues of formal equality and the fears of the status quo. However, unlike other critiques that call for a restructuring of the existing social and legal order to recognize women's needs as human needs, I propose a critique that emphasizes women's approach to human rights from an essentialist perspective:³⁴⁵ let's take care of substantive human rights for all, because this is ethical from a woman's perspective. I propose a critique that uses the unique characteristics women bring in each area of activity, especially the magnanimous care for "the Other" that Nancy Levit and Robert Verchick so well summarize in their primer *Feminist Legal Theory*.³⁴⁶

B. A Feminist Critique of the Role of the State

I believe that legal feminism can become more than a middle-class theory if it becomes a feminist critique of equality. Few women live alone. Most are integral parts of societies and societies are more intertwined every day. Legal feminism needs to address the fact that women's plights cannot be substantively changed for better unless the societies around them are better places to live. It needs to become a feminist critique of equality. Equality for women cannot be obtained without raising the issue of substantive equality for all and without involving the state as a guarantor of those rights.

This approach is more easily said than done because under the guise of postmodern politics, the role of the state has been systematically under **176* attack and, for many, the rise of the market and eclipse of the state "has become one of the defining conditions of contemporary social change."³⁴⁷ Postmodernism used language that demanded well-defined social justice. The state was left out and people have begun to expect that the state is unable to secure greater equality and welfare for its citizens, but that the market can take care of their needs.

The idea animating the current framework is by now almost too familiar: the market is the best, if not the only, institution for furthering a host of social goods and objectives. Pundits,³⁴⁸ analysts, politicians, and even many progressive social reformers intoned that the era of the state, the brief Golden Age, which lasted from the end of the World War II until about the mid-1970s, is now decisively over. Those insiders usually forget to explain to their public that the market itself is an institution created and subsidized by each state through its rule of legal fictions.³⁴⁹

Such an attitude is only useful if one expects the demise of humankind. Postmodern thinkers seemed bemused at the idea: man will soon be erased; wrote Foucault, "like a face drawn in sand at the edge of the sea."³⁵⁰ Perhaps it is an amusing thought, but is this a legacy we want to leave as feminists?

C. A Feminist Critique of Fear and of Consumption as its Answer

The feminist critique I embrace is one that wants to rescue feminism from its minority corner and challenges it to offer a comprehensive critique of the malaise of our society that affects all of us, and perhaps especially so women. Fear and consumption are aspects of social malaise that feminism could address in the twenty-first century. In the process, feminism may need to shed its content-based definition and embrace Bertrand Russell's solution to the demise of philosophy as a way to resurrect its future.

A century ago Russell encouraged philosophers to forget about content and concentrate on methodology. Epistemologically, cultural relativism makes feminism into the Tower of Babel³⁵¹ and everything that American feminism had to say has been said and it is quite limited. Otherness is not a set-in-stone concept. If Simone De Beauvoir surprised many when she **177* affirmed in the mid-1900s that womanhood was Otherness,³⁵² today, more than ever, Otherness seems economically defined. Otherness has always been the disempowered, the poor, the one that states have ignored. Of course, they include hundreds of millions of women, but as shown here this is less relevant than legal feminism would have us believe. Women rarely live alone, and without care for their families, any gender-tailored help would seem ill advised. Thus, as argued in this article, perhaps Otherness has outlived its usefulness. Perhaps sameness is more useful because we want to be like the ones whose needs are satisfied, or even because of a different concept which will reintroduce the lack of proper representation of the poor. Moreover, it

seems logical that because feminism stands for an ethic of care, feminism needs to become the theory that reconciles difference and identity, the particular and the universal, the ethical and the political for the twenty-first century.

In a spectacular gambit, globalization, a product of postmodern thought and neo-liberal policies, has changed the meaning of subversive, as it has changed the Left's discourse. As Alain Badiou correctly diagnosed our reality, in an otherwise confused and confusing recent interview, the classical Left-Right dichotomy has changed.³⁵³ However, what Badiou forgot to say is that the only pervasive discourse we face today is that of fear. In politics, it has translated into a race to the middle of the road, so no matter what decisions we make, the results will be similar. We have minimized the fear of the unknown by becoming impotent in our choices.

It has become obvious that in most Western countries the right/conservative ideology is on the rise and center-right values are being perceived as leftist. The Left has abandoned its quest for universal values-- seeming more interested in obtaining prominent positions within the incumbent structures than finding a way to ensure a decent lifestyle for all. Perhaps it has done so afraid of a troubled intellectual legacy crammed with competing tribal identities vying for diluted power, or perhaps it is a calculated economic gambit: writing for property rights pays better than writing against them; heading the International Monetary Fund (IMF) is more prestigious than writing against it. The so-called socialist Dominique Strauss-Kahn found out the answer to this existential problem when he accepted the French President Sarkozy's proposal to head the IMF.³⁵⁴ Either way, the Left has abandoned its principles and as a result subversiveness has suddenly become an intellectual quest for meaning in a world dominated by vacuous gestures.

***178** Simultaneously, globalization has mapped out an unequal world where the haves are few but powerful. It has also created a proportionally slim but influential Ivy League-educated³⁵⁵ class of corporate employees whose wages allow them to produce both intellectual and consumption trends. Their values are forcefully individualist and vaguely hedonist. Their collective nature is mostly satisfied by unsystematic outbursts of sexual energy and their "cultural creativity" is limited to consumption trends³⁵⁶--buying selectively according to the day's fashionable corporate chart from "good" corporations and boycotting the "bad" ones while believing that their individual gesture can save the planet, and thus themselves.³⁵⁷

From a feminine perspective, the coming of age of globalization coincided with the maturation of the American feminine individualism and its intellectual product: the feminine discourse of fear of being a vulnerable community member.

Perhaps because there is no hierarchy of thought and value, we live in total fear. We are taught to be afraid of both: being too different and being too ordinary. Only in America there are seven types of intelligences³⁵⁸ and everybody is bound to have at least one. No one is going to have her heart broken so everybody trains to hide his feelings as early as possible. Both girls and boys have sex before they can experience feelings of attachment or fear of loss and could fight to have a relationship. Relationships seem outdated, and immediacy acclaimed. Community both as a reality and an imagined place is too much to face and we are trying hard to annihilate it.

Artificially, the only relationship which still receives a lot of political attention, media publicity, and state-funding (tax shields, etc.) is the heterosexual family--it is praised for its pro-creative and economic aspects. Before we exalt this institution, we should inquire who can afford to marry³⁵⁹ and who is being sold the dream of an easier poverty if married. Only when we have the answer we could understand the illusionary nature of our only marketed community value.

[P]owerful economic forces at work . . . can make early marriage a prohibitively expensive venture. The real inflation-adjusted median income of ***179** men ages 25 to 34, for example, has not risen in 30 years. According to the Census Bureau, in the early 1970s the median income in constant dollars of men that age was about \$33,000. In 2002, it was about \$31,000. The median income for women ages 25 to 34 in 2002 was about \$22,000. One factor is that millions of reasonably good paying jobs in the manufacturing sector, once available to high school graduates, have disappeared. But, at the same time, the cost of a college or graduate education, so essential to getting a better paying job, has risen to the point where most young adults would be bringing substantial debt to an early marriage. Rather than pooling resources at the outset of marriage, many young couples today face having to pay down combined debts, which is often not equally divided between bride and groom.

What's more, in many parts of the nation the price of housing has become virtually prohibitive for a buyer with less than a six-figure income. The median income in 2002 for married couples ages 25 to 34 was \$57,500. Subtract taxes, and perhaps student loan payments, and not much of the nation's housing stock is affordable, and virtually no homes in a quality suburban school district.³⁶⁰

Organized social interaction outside the workplace and the occasional office retreat seems outdated. We are constantly doing something individually, but thinking--and achieving--very little. Understandably, the less than numerous corporate employees (of mixed genders, though) and their even fewer owners (of lesser gender heterogeneity) seem happy with their privileged situation. Mystifyingly, the masses seem intent on believing that one day they could share the same treatment. Thus, in a religious movement of sorts, we all elevated consumption, which is defined by one's spending power, to the role of architect of our group consciousness: we all own I-Pods, therefore we are all equal.

Consumption has come to define a woman's toughness or frailty as well. We become sitcom stock characters according to how we behave when we encounter our partners on the internet or drinking cocktails in a fancy bar. We discover sexual equality means immediate satisfaction and we are ready to oblige. There is nothing wrong with enjoying life. Moreover, being independent and uninhibited, or taking pains in developing one's individual gifts, is a commendable effort. Unfortunately, this superficial positive result is the result of a long process of erosion of community values which has been accompanied by unleashed atomism.

Atomism, in the Hegelian meaning of abstract individuals, has produced two types of castrated individuals: the corporate employee who revels in her spending power and rejoices in the luxury status of more and more goods that set her apart from the crowd and the gang member whose violence attracts both fleeting media attention and sustained state **180* intervention. Unlike the first type, the latter move outside our lives from seen on TV directly to prison.

In other words, as Jean-Marc Ferry has noted, atomism is accompanied by "massification sociale" (social massification) which denies meaningful relation- and communication-building among those without consumption power because they do not have spaces to either socialize or communicate other than in a violent, aggressive way, usually conducive of state intervention, as the examples of American gang violence, or French suburban (banlieu) violence show.³⁶¹

From a feminist point of view we are witnessing a feminist fait accompli of sorts. The 1960s feminism sought sexual liberation and no one can doubt that it has achieved it: both heterosexual and homosexual women are free to express their sexuality within a more tolerant social atmosphere. So what is left to be achieved? What has been ignored? Collective human dignity, for example, is still absent, as are any collective values. Perhaps, promoting coalition building among the powerless, and making sure that they receive a slice of the pie, may soon become the most subversive leftist attitude one can imagine.

So, this author would have you believe, American legal feminism has reached an existential moment and it needs to regroup and refocus its energies on the society at large, offering a critique that aims for collective dignity.

Undoubtedly, American legal feminism can prove that its strategy has been somewhat successful.³⁶² But if success for some group members has been a satisfying result, today it seems that there is a growing social pressure for a change that goes deeper than one's shadow. The gap between the female haves and female have-nots has grown as deep as the general genderless one.³⁶³ Solving this structural problem requires coalition-building. Gloria Steinem recently noted "most Americans are smart enough to figure out that a member of a group may not [properly re-]present its interests."³⁶⁴ Gloria Steinem seems to say that tribal achievements are not enough anymore, and that tribal membership cannot legitimize knowledge or political action either.³⁶⁵ So what else is there to be done?

I believe that feminist legal theory may solve its troubled legacy, including the legitimacy problems that its content currently faces, if it **181* broadens its re-presentation and becomes a critique of equality that focuses on the interests of the economically

disempowered. Instead of a “me talk pretty one day” approach legal feminism needs to explain how we can all talk pretty as soon as we are properly educated.

Legal feminism can offer a unique critique of equality, if it becomes a method-based discipline, and if it uses feminist methods. In other words, feminist legal theory could achieve more for women--here and abroad--if it stops being a patriarchal critique which assumes that women are subordinated to men, because many of us are not, or if we are the subordinated type, usually our own imagination provides the chain and evolves into a method-based critique of equality. Automatically, by replacing feminist ends with feminist means, legal feminism--or feminist jurisprudence--will broaden its appeal; the latter are naturally less limited as they are not historically, culturally, and geographically conscribed.

As coined by Ann Scales,³⁶⁶ feminist jurisprudence has mostly been a content-based critique of modern jurisprudence.³⁶⁷ Though built upon by feminist insights into women's true nature, interestingly it has been perceived as perpetuating a gender-neutral public morality.³⁶⁸ Whether it happened by accident or not, I argue in favor of a feminist legal theory that stops supporting the chimera of a neutral morality. Public morality usually mirrors the public's social expectations--which today are minimal--and it is always whimsical; for a moment it was outraged that Michael Jackson shared the bed with an adolescent boy, but it did not feel any shame that the boy's mother needed and depended on Michael's money to provide for her son's cancer treatment and for the entire family's livelihood. It briefly accused her of being greedy . . . and the next moment the public moral discourse moved on to Anna Nicole Smith's lifestyle while still missing to get outraged over our Iraqi destruction.

Public morality tends to mirror and promote the hegemonic discourse of the day. Thus, I believe, feminism needs to spell the fiction about its ahistorical, gender- and class-blind character and promote a gender-based mass-oriented public morality. This is a morality of solidarity based on a feminist ethic of care to achieve dignity for all. Women have been accused of being emotional. If caring for the fate of the destitute is emotional, then let's teach our society to embrace emotions and us to be proud of whom we are.

If feminism remains a content-based, women-written theory promoting women's equality to the level of their men, for example, it risks further ^{*182} alienating the very women it currently ignores. The most numerous women are those at the bottom of the social ladder whose men have no enviable rights. For the have-nots, restoring a matriarchal society³⁶⁹ is not necessarily a worthy goal if it switches the gender of those in power and pretends to equalize the rights of the men and those of the women situated at the bottom. Such a change may be even described as irrelevant: to the extent that the wife is the president of the bank instead of her husband the status quo is safely preserved. Similarly, if we give women from different social strata cultural rights according to their specific nature, they will depend on the position those women occupy on the social ladder. Culturally we have different needs and identities according to our material environment.

The only equality worth promoting is one of human dignity for all. In today's language it translates in promoting substantive human rights for all. This may not resonate well around the globe as the Western world has done a lot of damage to the lives of millions. Additionally, it does not matter too much if we are talking about individual human rights or collective human dignity. How to reach the end result is what matters.

There is little argument that equality through legal change--whether formal or substantive--involves state action within the clear limits of a given political system. Legal change as opposed to violent change through wars, whether internal or imperial, has always been connected with the state, because it involves law-making institutions--the legislative, judicial, and executive bodies of each nation-state organization. Of course, there is a lot of distrust in the state. It takes few minutes to read about the corruption in African states, for example, to understand that perhaps the state structure is inadequate in many places but not unnecessary.

In a borderless world, often scholars and activists promote reliance on toothless international and nongovernmental organizations. A feminist critique of equality would deconstruct such a myth and put the state back in its ordinary role as the only potential provider of those rights. In a world dominated by nationless conglomerates whose only accountability is profit to shareholders,³⁷⁰ the state remains the only institution with a history of relative competence, success, and accountability to its citizens and the international community. In many instances the state is an institution whose performance needs to be corrected.

Becoming the stronger voice in ^{*183} providing that needed criticism will be a task up for grabs. A critical discourse of the status quo that uses universal values in human dignity is long overdue, and legal feminism can provide just that.

Of course, my enterprise is not entirely original. Many non-American feminists, including Third-World scholars and activists, are primarily preoccupied with poverty and economic development. They have already noticed internal problems with American (legal) feminism, which they define as a “First World” preoccupation.³⁷¹ For example, Geeta Chowdhry persuasively explains how current Western feminism, while postmodern and based on particularism, does not accurately portray the needs of non-Western women.³⁷² Such an accusation seems paradoxical, when there seems to be an American feminist theory to mirror each subset of gendered needs--often described as a matter of conjecture, but as it will become apparent here, not unfounded.

V. Conclusion

Legal feminism is in crisis, and this article argues that although it is in crisis, its future is not dire, especially if it chooses to promote social justice for all. I argue that it can achieve such a goal if it becomes a method-based discipline, a feminist critique of equality, which would promote a gendered public morality of care and solidarity. Certainly, such a critique would inevitably touch upon how states ensure a decent lifestyle for their citizens.

Today, the Western Left discourse involves, in its more generous aspect, a demand for substantive human rights. Thus, a feminist critique of equality would talk about the strengths and limits of a human rights approach as well as about the virtues of becoming a comprehensive method-based critique of the social and legal status quo.

The state has to remain our main partner on the dance floor: it can ensure public education, healthcare, and can even design the power of the different religious establishments. The only current mechanisms for accountability are against the state.³⁷³

Footnotes

- a1 Dana holds three jobs: one is full-time, Head of Public Services at Columbia Law School Library, and two are seasonal: Adjunct Professor at Barnard College, and Visiting Professor at Pratt Institute. I would like to acknowledge that Martha Fineman is the goddess of social justice discourse and to thank Mira Gaddy and the entire editorial board for their remarkable professionalism. Without Miss Zoe, Izzie, Mickey, and especially, Marcel, nothing would have been possible.
- 1 Slavoj Zizek, *The Secret Clauses of the Liberal Utopia*, 19 *L. & Critique* 1, 13 (2008).
- 2 Mary Jacoby & Brody Mullins, *Democrats Lead by \$100 Million in Money Race*, *Wall St. J.*, July 23, 2007, at A1. Laudatorily, “New York venture capitalist and former American Express Co., Chief Executive, James D. Robinson III, a lifelong Republican, says he is backing Mrs. Clinton. She’s been very involved in business development and sensitive to our issues.” *Id.*
- 3 Randal C. Archibold, *Racial Hate Feeds a Gang War’s Senseless Killing*, *N.Y. Times*, Jan. 17, 2007, at A1.
- 4 According to Aijaz Ahmad, Alfred Sauvy claimed to have coined the term “Third World” in 1953, modeling it on the conception of the French Third Estates. Aijaz Ahmad, *In Theory: Classes, Nations, Literatures* 294 (1992).
- 5 See, e.g., Jason DeParle, *A Good Provider is One Who Leaves*, *N.Y. Times*, Apr. 22, 2007, (Magazine), at 50 (there are about 200 million migrant workers worldwide who provide \$300 billion in support).
- 6 For an excellent overview of how feminism can be easily co-opted into the conservative agenda, see generally [Richard A. Posner, *Conservative Feminism*, 1989 *U. Chi. Legal F.* 191 \(1989\)](#).
- 7 Frederic Jameson, *Postmodernism, or, the Cultural Logic of Late Capitalism* 392 (6th ed. 1995).
- 8 *Id.*
- 9 Ann Scales, *Legal Feminism: Activism, Lawyering, and Legal Theory* 40 (2006).

- 10 Terry Eagleton, Nationalism: Irony and Commitment, in Terry Eagleton, Fredric Jameson & Edward W. Said, *Nationalism, Colonialism and Literature* 26 (1990).
- 11 See Dana Neașu, [The Wrongful Rejection of Big Theory \(Marxism\) by Feminism and Queer Theory: A Brief Debate](#), 34 *Cap. U. L. Rev.* 125, 146-47 (2005) [hereinafter: Wrongful Rejection]; see generally Dana Neașu, [Tempest in a Teacup or the Mystique of Sexual Legal Discourse](#), 38 *Gonz. L. Rev.* 601 (2003) [hereinafter: Teacup].
- 12 See Simone De Beauvoir, *The Second Sex*, at xix-xxxvi (H.M. Parshley trans., Vintage Books ed., 1989) (1949).
- 13 See Seamus Deane, Introduction to Eagleton et al., *supra* note 10, at 18-19.
- 14 For an overview of the Stalinist terror and the West's complicated relationship with it, see generally Dana Neașu, [Advocacy as History? That Takes the Prize!: Gulag: A History by Anne Applebaum](#), 45 *Santa Clara L. Rev.* 213 (2005) (book review).
- 15 See generally Eva Borowska, *Marx and Russia*, 54 *Stud. Ea. Eur. Thought* 87 (2002).
- 16 Stephen R.C. Hicks, *Explaining Postmodernism: Skepticism and Socialism from Rousseau to Foucault* 174 (2004).
- 17 Dana Neașu, [A Brief Critique of the Emaciated State and Its Reliance on Non-Governmental Organizations to Provide Social Services](#), 9 *N.Y. City L. Rev.* 405, 421 (2006).
- 18 See Scales, *supra* note 9, at 64-79.
- 19 Michael H. Davis & Dana Neașu, [Legitimacy, Globally: The Incoherence of Free Trade Practice, Global Economics and Their Governing Principles of Political Economy](#), 69 *UMKC L. Rev.* 733, 756 (2001). See also *Black's Law Dictionary* 892 (8th ed. 2004).
- 20 Anthony Carty, *Post-Modern Law: Enlightenment, Revolution, and the Death of Man* 1, 3 (1990). For more on the connection between feminism and postmodern thought, see, for example, Teacup, *supra* note 11.
- 21 Carty, *supra* note 10, at 3.
- 22 See generally Eagleton, *supra* note 10.
- 23 *Id.*
- 24 Stephen Feldman, *American Legal Thought from Premodernism to Postmodernism* 165 (2000).
- 25 Jagdish Bhagwati, *In Defense of Globalization* 3 (2004).
- 26 For a brief review of the politics behind the European Union enlargement, see, for example, Dana Neașu, [Romania, Bulgaria, the United States and the European Union: The Rules of Empowerment at the Outskirts of Europe](#), 30 *Brook. J. Int'l L.* 185, 185-86 (2004).
- 27 One-hundred-and-seventy of the Global 500 are U.S.-based businesses; France and Germany have less than forty representatives each, Japan tops them with seventy, while Russia has only five and Venezuela one. See *Fortune 500 Companies, Global Edition 2006*, CNNMoney.com, [http:// money.cnn.com/magazines/fortune/global500/2006/](http://money.cnn.com/magazines/fortune/global500/2006/) (last visited Oct. 24, 2008).
- 28 For example, the U.N. Millennium Development Program has a number of sponsoring organizations whose ties to multinational corporations are more or less obvious. See, e.g., U.N. Econ. & Soc. Council [ECOSOC], *The Millennium Development Goals Report 2*, U.N. Doc. E/06/I/18 (2006) (prepared by Jose Antonio Ocampo), available at [http:// mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2006/MDGReport2006.pdf](http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2006/MDGReport2006.pdf).
- 29 See Neașu, *supra* note 17, at 413.
- 30 See *id.* at 413-19.
- 31 Evidence Points to Deceit by Brawley, *N.Y. Times*, Sept. 27, 1988, at A1.

- 32 Advertisement, N.Y. Times, Dec. 10, 2006, (Magazine), at 49, available at http://www.universe-of-luxury.com/baume-mercier/publicites/gary_sinise.html.
- 33 David Harvey, Social-Justice, Postmodernism and the City, 16 Int'l J. Urb. & Regional Res. 588, 589 (1992).
- 34 Michael O. Emerson & David Hartman, The Rise of Religious Fundamentalism, 32 Ann. Rev. Soc., 127 (2006).
- 35 Davis & Neaçu, supra note 19, at 734.
- 36 Id.
- 37 Jean-Marc Ferry, De la civilization Civilité, Légalité, Publicité [Of Civilization: Civility, Lawfulness, advertising] 21-24 (2001).
- 38 E.P. Thompson, Agenda for Radical History, 21 Critical Inquiry 299, 352 (1995).
- 39 See Jon Elster, An Introduction to Karl Marx 4, 83-84 (1986).
- 40 A recent example is offered by the massive incorporation of the so-called socialist intelligentsia by the French Right. President Sarkozy has been able to bribe most of the upper management of the French Socialist Party with powerful, well-paying jobs. See Elaine Sciolino, Socialist Quits French Left to Join Right, N.Y. Times, July 19, 2007, at A3.
- 41 Luminaries such as Terry Eagleton and Henry Louis Gates, Jr., toy with this idea at times. See, e.g., Dinitia Smith, Cultural Theorists, Start Your Epitaphs, N.Y. Times, Jan. 3, 2004, at B7; Emily Eakin, The Latest Theory is that Theory Doesn't Matter, N.Y. Times, Apr. 19, 2003, at D9.
- 42 See Jon Elster, Making Sense of Marx 392 (1985).
- 43 For more on the challenge postmodern and New Left discourse posed on "old" Marxism, see generally Glenn Rikowski, Left Alone: End Time for Marxist Education Theory?, 17 Brit. J. Soc. Educ. 415 (1996).
- 44 Charles Murray, Sex Ed at Harvard, N.Y. Times, Jan. 23, 2005, §4, at 17.
- 45 William C. Rhoden, The Unpleasant Reality for Women in Sports, N.Y. Times, Apr. 9, 2007, at D7.
- 46 Carty, supra note 20, at 3.
- 47 For a description of American and Soviet imperialism in the Cold War, see generally Henry Heller, The Cold War and the New Imperialism: a Global History, 1945-2005 (2006).
- 48 Id.
- 49 Id.
- 50 See Davis & Neaçu, supra note 19, at 733-34.
- 51 See generally Adam Smith, The Wealth of Nations (Bantam Classics ed., 2003) (1786).
- 52 Walter Lippmann, An Inquiry into the Principles of the Good Society 183 (1937).
- 53 See, e.g., John Stuart Mill, Principles of Political Economy with Some of Their Applications to Social Philosophy 610-12 (D. Appleton & Company 1864) (1848).
- 54 Lippmann, supra note 52, at 185.
- 55 See id. at 192.

- 56 See, e.g., U.N. Millennium Project, [http:// www.unmillenniumproject.org/](http://www.unmillenniumproject.org/) (last visited Oct. 24, 2008). The U.N. Millenium Project is supported by the Ford Foundation, Bill and Melinda Gates Foundation and the William and Flora Hewlett Foundation. Id. Charitable work continues to be regarded as a must-do hobby of the rich and famous. See, for example, Madonna's charity project in Malawi, Raising Malawi, [http:// raisingmalawi.org/](http://raisingmalawi.org/) (last visited Oct. 24, 2008), or Clinton's charity, William J. Clinton Foundation, [http:// www.clintonfoundation.org/index.htm](http://www.clintonfoundation.org/index.htm) (last visited Oct. 24, 2008), or of those who aim at becoming rich and famous, such as the newly-discovered American-born princess, Jazmin Grace Rotolo Grimaldi, Grace Kelly's American grand-daughter, who recently bought 30,000 vitamin pills ("comprimés vitaminés") for Fiji's pregnant women, Princess Jazmin Tours Islands, Fiji Times Online, Nov. 21, 2006, [http:// www.fjitime.com/story.aspx?id=52049](http://www.fjitime.com/story.aspx?id=52049).
- 57 Susan S. Silbey, [Let Them Eat Cake: Globalization, Postmodern Colonialism, and the Possibilities of Justice](#), 31 *Law & Soc'y Rev.* 207, 214 (1997).
- 58 Id.
- 59 See, e.g., DeParle, *supra* note 5, at 50.
- 60 For more on the liberal and Marx's and Engles's view of the private/public dichotomy, see Catharine MacKinnon, *Toward a Feminist Theory of the State* 35-36 (1989).
- 61 James G. Forsyth, *Most Valuable Migrants*, *Foreign Pol'y*, Jan. 1, 2007, at 23.
- 62 Id.
- 63 Id.
- 64 See Neaçu, *supra* note 17, at 422-27.
- 65 Nicholas D. Kristof, *Editorial, Torture by Worms*, *N.Y. Times*, Feb. 18, 2007, § 4, at 6.
- 66 Id.
- 67 Id.
- 68 Id.
- 69 Gil Gott, [Critical Race Globalism?: Global Political Economy, and the Intersections of Race, Nation, and Class](#), 33 *U.C. Davis L. Rev.* 1503, 1508 (2000).
- 70 See, e.g., id. (discussing NAFTA and its effects on the Mexican capital).
- 71 For a relevant overall discussion, see generally Niall Ferguson, *Empire: The Rise and Demise of the British World Order and the Lessons for Global Power* (Basic Books 2003).
- 72 Jeffrey Sachs, *The End of Poverty: Economic Possibilities for Our Time* 18 (2005).
- 73 For more on this topic, see Neaçu, *supra* note 17, at 405.
- 74 Alain Badiou, *Being and Event* 23 (Oliver Feltham trans., Continium 2005) (1988) (emphasis in original).
- 75 Id.
- 76 For more on the role of nationality or place of birth in influencing people's basic life chances, see Martha Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* 18-21 (2006).
- 77 Id. at 107.

- 78 See Badiou, *supra* note 74, at xi.
- 79 Archibold, *supra* note 3, at A2. Cheryl Green, a fourteen-year-old girl, was killed by a Latino gang member because of ethnic and racial community tensions in Los Angeles. See *id.*
- 80 Carty, *supra* note 20, at 7.
- 81 See De Beauvoir, *supra* note 12.
- 82 *Id.*
- 83 As a recent New York Times article suggests, and this is only an example of the acceptable trend, the rich and famous enjoy crippling government programs that survive on taxation. See Lynnley Browning, Gimme Tax Shelter: The Stars Have Found a Dutch Home, N.Y. Times, Feb 4, 2007, § 3, at 1, 8 (“The rock powerhouse U2 has transferred lucrative assets to Amsterdam [and avoided paying modest Irish taxes aimed at artists], as have other pop singers and well-known athletes, all of whom have used or continue to take advantage of the Netherlands’ tax shelters.... [In fact,] U2’s tax move to Holland is threatening to tarnish the halo surrounding the well-regarded, affable and articulate Bono, by lending him a whiff of hypocrisy.”).
- 84 Kenneth J. Rothman, Hans-Olov Adami & Dimitrios Trichopoulos, Should the Mission of Epidemiology Include the Eradication of Poverty?, 352 Lancet 810, 811-812 (1998) (asserting that “the epidemiologists responsibility is to work towards the elimination of poverty,” but questioning “whether epidemiologists have the means to eradicate poverty”), available at [http:// km.lsh.is/nam/nfyr/fata.pdf](http://km.lsh.is/nam/nfyr/fata.pdf).
- 85 Alain Badiou, Saint Paul: The Foundation of Universalism 108-110 (Ray Brassier trans., Stanford Univ. Press 2003) (1997).
- 86 For more on otherness/sameness, see generally *id.*
- 87 Robert Wade, Globalization, Poverty and Income Distribution: Does the Liberal Argument Hold? 20 (Destin Studies Inst., Working Paper No. 02-33, 2002), available at <http://www.lse.ac.uk/collections/DESTIN/pdf/WP33.pdf> (reviewing “the sheer magnitude of poverty and inequality” highlighted by globalization discourse, but also asserting that a strong focus on globalization “trends” can “divert attention” from this issue).
- 88 *Id.* at 21 (arguing that the income gap between “rich” and “poor” caused by globalization may “predispose the elites to be more corrupt” in poorer states).
- 89 *Id.* at 20.
- 90 See Neaçu, *supra* note 17, at 422.
- 91 In A Drive from West to East, Jonathan Raban noted how Americans tend to join the rich person's party and turn to religious and patriotic (country and gospel) music:
Less than an hour east of Seattle lies Snoqualmie Pass, and as the road descends, beside the Yakima River, the dry West begins as it means to continue: Douglas firs give way to sagebrush, juniper and piñon pines; on the car radio, rock gives way to country and gospel, then to empty static; bumper stickers change from Democratic to Republican; per capita incomes and house prices sink precipitously.
See Jonathan Raban, A Drive From West to East, N.Y. Times, Apr. 29, 2007, § 4, at 13.
- 92 See International Studies Association (ISA) Annual Convention 2007, <http://isanet.ccit.arizona.edu/chicago2007/> (last visited Oct. 24, 2008).
- 93 Martha Fineman, The Vulnerable Subject: Anchoring Equality in the Human Condition, 20 Yale J.L. & Feminism 1, 6 (2008).
- 94 See, e.g., DeParle, *supra* note 5, at 50.
- 95 Amy Lind, Gendered Paradoxes: Women's Movements, State Restructuring, and Global Development in Ecuador 140 (2005).

- 96 Id.
- 97 Pun Ngai, *Made in China: Women Factory Workers in a Global Workplace 1* (2005).
- 98 Id. at 1-6. See also Clean Clothes Campaign, Nike Case, [http:// www.cleanclothes.org/companies/nikecase.htm](http://www.cleanclothes.org/companies/nikecase.htm) (last visited Oct. 24, 2008).
- 99 Kiva: Loans That Change Lives, <http://www.kiva.org> (last visited Oct. 24, 2008).
- 100 Nicholas Kristof, *You Too, Can be a Banker to the Poor*, N.Y. Times, Mar. 27, 2007, at A19.
- 101 See Davis & Neașu, *supra* note 19, at 734.
- 102 See, e.g., DeParle, *supra* note 5, at 53.
- 103 Id. at 53. For example, ten percent of the 89 million Filipinos live abroad: about 3.6 million are contract workers, 3.2 million have migrated permanently, and 1.3 million live abroad illegally. Id.
- 104 Migrant Workers--Subjects Covered by International Labor Standards, http://www.ilo.org/global/What_we_do/InternationalLabourStandards/Subjects/Migrantworkers/index.htm (last visited Oct. 24, 2008).
- 105 DeParle, *supra* note 5, at 56.
- 106 Id.
- 107 The discovery of gold and silver in America, the extirpation, enslavement and entombment in mines of the aboriginal population, the beginning of the conquest and looting of the East Indies, the turning of Africa into a warren for the commercial hunting of black-skins, signalled the rosy dawn of the era of capitalist production. These idyllic proceedings are the chief momenta of primitive accumulation.
Karl Marx, *Capital*, Volume I, in *The Marx-Engels Reader* 435-36 (Robert Tucker ed., 2d ed. 1978).
- 108 Trotsky, for example, in a cultural context explained that the essence of any social class, and thus its culture, is relational and not its identity. Leon Trotsky, *Literature and Revolution* 193 (1960).
- 109 483 U.S. 587, 596-97 (1987).
- 110 Id. at 601.
- 111 Id. at 608.
- 112 Id. at 606-7.
- 113 See, e.g., Dana Neașu, *The Political Value of Knowledge and the Elite Schools' Curricula: To Ignore or Not to Ignore Marxism?*, 82 U. Det. Mercy L. Rev. 219, 228-29 (2005).
- 114 Bill Carter & Louise Story, *NBC News Drops Imus Show Over Racial Remark*, N.Y. Times, Apr. 12, 2007, at A1.
- 115 See, e.g., *Newly Fired Imus Meets with Rutgers Players*, Cnn.com, Apr. 13, 2007, [http:// www.cnn.com/2007/SHOWBIZ/TV/04/12/imus.rutgers/index.html](http://www.cnn.com/2007/SHOWBIZ/TV/04/12/imus.rutgers/index.html); *Don Imus Fired by CBS Radio for Racist Comments, One Day After MSNBC Drops Show*, Foxnews.Com, Apr. 13, 2007, <http://www.foxnews.com/story/0,2933,265701,00.html>.
- 116 Bob Herbert, *Words as Weapons*, N.Y. Times, Apr. 23, 2007, at A19.
- 117 Kelefa Sanneh, *Don't Blame Hip-Hop*, N.Y. Times, Apr. 25, 2007, at E1.
- 118 For more on this issue, see generally Neașu, *supra* note 17.

- 119 For various sources on this topic, see generally Dana Neaçu, [Gender-Based Persecution as a Basis for Asylum: An Annotated Bibliography 1993-2002](#), 95 *Law Libr. J.* 191 (2003).
- 120 Eagleton, *supra* note 10, at 23.
- 121 *Id.*
- 122 Today Terry Eagleton is trying hard to stop writing and is looking for a “contrascriptive.” See Deborah Solomon, *The Believer*, *N.Y. Times*, Apr. 22, 2007, (Magazine), at 21.
- 123 *Id.*
- 124 *Id.*
- 125 *Id.* at 23-24.
- 126 *Id.* at 24.
- 127 Solomon, *supra* note 122, at 21.
- 128 NGOs have always benefited from this lack of oversight. See Job Christensen, *Asking the Do-Gooders to Prove They Do Good*, *N.Y. Times*, Jan. 3, 2004, at B9. “There are millions of these groups--commonly referred to as nongovernmental organizations or NGO's--worldwide, but few are subjected to that kind of meaningful oversight, say the specialists studying NGO accountability.” *Id.*
- 129 See Ken Silverstein, *Parties of God: The Bush Doctrine and the Rise of Islamic Democracy*, *Harpers Monthly*, Mar. 2007, at 33.
- 130 Ellen R. Klein, *Undressing Feminism: A Philosophical Exposé* 4-5 (2002).
- 131 *Id.* at 4.
- 132 *Id.*
- 133 *Id.* (citation omitted).
- 134 *Id.* (quoting Rosemarie Tong, *Feminist Thought: A Comprehensive Introduction* 39 (Westview Press 1989)).
- 135 *Id.*
- 136 Klein, *supra* note 130, at 4-5.
- 137 *Id.* at 4-5.
- 138 *Id.* at 5.
- 139 *Id.*
- 140 *Id.*
- 141 For more information on the four mentioned here, see Nancy Levit & Robert R. M. Verchick, *Feminist Legal Theory: A Primer* 15-39 (2006).
- 142 *Id.* at 16.
- 143 *Id.* at 18.
- 144 479 U.S. 272 (1987).

- 145 [Id.](#) at 284-86.
- 146 [Brief for Coal. for Reprod. Equal. in the Workplace et al. as Amici Curiae Supporting Respondents at 21, *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 \(1987\) \(No. 85-494\).](#)
- 147 [Levit & Verchick, supra note 141, at 22.](#)
- 148 [Am. Booksellers Ass'n v. Hudnut](#), 771 F.2d 323, 325 (2d Cir. 1985), cert. denied, 475 U.S. 1132 (1986).
- 149 See [477 U.S. 57, 64-65 \(1986\)](#).
- 150 See [id. at 75](#); see also Catharine MacKinnon, *Sexual Harassment of Working Women: A Case of Sex discrimination* (1979).
- 151 See [Levit & Verchick, supra note 141, at 26-31.](#)
- 152 [Judith Wellman, The Road to Seneca Falls: Elizabeth Cady Stanton and the First Women's Rights Convention 52 \(2004\).](#)
- 153 [Id.](#)
- 154 See generally [Mary Wollstonecraft, A Vindication of the Rights of Women \(Dover Thrift ed., 1996\) \(1792\).](#)
- 155 [Id.](#)
- 156 [Levit & Verchick, supra note 141, at 47.](#)
- 157 [Id.](#)
- 158 [Id. at 82](#); see also [Mari Matsuda, Looking to the Bottom: Critical Legal Studies and Reparations, 22 Harv. C.R.-C.L. L. Rev. 323, 391-94 \(1987\).](#)
- 159 [Klein, supra note 130, at 83.](#)
- 160 [Id. at 84.](#)
- 161 [Martha Chamallas, Introduction to Feminist Legal Theory 85 \(2d ed. 2003\).](#)
- 162 [Id. at 86-94.](#)
- 163 See generally [Klein, supra note 130, at 101.](#)
- 164 [Michelle S. Jacobs, Introduction in Feminist Legal Theory: An Anti-Essentialist Reader 1 \(Nancy E. Dowd & Michelle S. Jacobs eds., 2003\).](#)
- 165 See [Monique Wittig, Combat pour la Liberation de la Femme \[For a Women's Liberation Movement\], L'Idiot International, May 1970, at 6, reprinted in On Monique Wittig: Theoretical, Political and Literacy Essays: For a Women's Liberation Movement 21, 22 \(Namascar Shaktini trans. & ed., 2005\).](#)
- 166 See generally [MacKinnon, supra note 60.](#)
- 167 See [Wittig, supra note 165, at 21-27.](#)
- 168 [Id. at 22.](#)
- 169 [Id. at 22.](#)
- 170 [Id. at 27.](#)

- 171 For more on this issue, see Walter Benn Michaels, *The Trouble with Diversity: How We Learned to Love Identity and Ignore Inequality* 117 (2006).
- 172 See Wittig, *supra* note 165, at 27.
- 173 The circumstances surrounding the creation of this term might have disappeared. However, it is this author's opinion that the "Third World" identifier has lost nothing of its powerful symbolism. Indeed, under Soviet ideology, the Third World designated independent (sovereign) countries that, though underdeveloped, were engaged in a developing process mostly financed by the USSR. Today, the meaning the Third World tends to cover is more static: it designates the "countryside" dusty countries of the world, those that are waiting for the First World's, individual or institutional, charity. For ways in which the First World sees its "white man's burden" managed, see generally Sachs, *supra* note 72.
- 174 Michaels, *supra* note 171, at 111.
- 175 Archibold, *supra* note 3, at A1.
- 176 Mary Green, Angelina Jolie Joins Council on Foreign Relations, *People.com*, Jun. 7, 2007, <http://www.people.com/people/article/020041839,00.html>.
- 177 Press Release, Academy of Motion Picture Arts and Sciences, Jennifer Lopez to Make Fourth Oscar Show Appearance (Jan. 30, 2001), available at <http://www.oscars.org/press/pressreleases/2001/01.01.30.html>.
- 178 See generally Archibold, *supra* note 3.
- 179 *Id.*
- 180 For a brief overview see, for example, Humberto Belli & Ronald H. Nash, *Beyond Liberation Theology* (1992).
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- 182 See generally Teacup, *supra* note 11.
- 183 Michaels, *supra* note 171, at 86.
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- 186 Ellis tried to change their views by first undermining the superiority of her students' beliefs. She tried to destabilize their values through relativism in hopes of filling in the void with "correct" leftist principles. I do not know whether she was successful in that particular instance. Hicks, *supra* note 16, at 188.
- 187 See, e.g., Gloria Steinem, *Right Candidates, Wrong Question*, *N.Y. Times*, Feb. 7, 2007, at A19.
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- 191 Benhabib, *supra* note 189, at 203.
- 192 But see, e.g., Scales, *supra* note 9, at 84.
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- 194 Siobhan Mullally, *Gender, Culture and Human Rights: Reclaiming Universalism* xxix (2006).
- 195 *Id.* at 59-68.
- 196 Nancy Fraser & Linda J. Nicholson, *Social Criticism without Philosophy: An Encounter between Feminism and Postmodernism*, in *Feminism/Postmodernism* 19 (Nicholson ed., 1990).
- 197 *Id.* at 21.
- 198 *Id.* at 26.
- 199 Christine Di Stefano, *Dilemmas of Difference: Feminism, Modernity, and Postmodernism*, in *Feminism/Postmodernism* 76 (Linda J. Nicholson ed., 1990).
- 200 *Id.*
- 201 Essentialism can be viewed as the “tendency to reduce a complex person to one trait--the trait drawing that person into membership in a particular group--and then to equate that trait with a particular viewpoint and stereotype.” Martha Minow, *Not Only for Myself: Identity, Politics, and the Law* 34 (1997). For more on this issue, see, for example, *Wrongful Rejection*, *supra* note 11, at 125.
- 202 See generally Jacques Derrida, *Moscou, Aller-Retour* (1995); Jacques Derrida, *Specters of Marx* (Peggy Kamuf trans., 1994).
- 203 Mary Jo Frug, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 *Harv. L. Rev.* 1045, 1048 (1992).
- 204 Catharine MacKinnon, *Points against Postmodernism*, 75 *Chi-Kent. L. Rev.* 687, 688 (2000).
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- 206 *Id.* at 688-689.
- 207 *Id.* at 690.
- 208 Hanne Petersen, *Home Knitted Law: Norms and Values in Gendered Rule-Making* 64 (1996).
- 209 Hicks, *supra* note 16, at 184.
- 210 *Wrongful Rejection*, *supra* note 11, at 125.
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- 212 Hicks, *supra* note 16, at 174.
- 213 See MacKinnon, *supra* note 204, at 700.
- 214 *Id.* at 705.
- 215 *Id.* at 706.
- 216 Costas Douzinas & Ronnie Warrington, *Postmodern Jurisprudence* 15 (1991).
- 217 Catharine MacKinnon, *Feminists, Marxism, Method and the State: Toward Feminist Jurisprudence* 50, 187 (1982) (“the sex difference and the dominance-submission dynamic define” the male-female relationships); see generally Catharine MacKinnon, *Feminism Unmodified Discourses on Life and Law* (1987); MacKinnon, *supra* note 60.
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- 223 *Id.*
- 224 *Id.*
- 225 *Id.*
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- 227 Puta-Chekwe & Flood, *supra* note 222, at 40.
- 228 *Id.*
- 229 *Id.*
- 230 *Id.* at 40-41.
- 231 *Id.* at 41.
- 232 Puta-Chekwe & Flood, *supra* note 222, at 41.
- 233 *Id.*
- 234 *Id.*
- 235 *Id.*
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- 237 Puta-Chekwe & Flood, *supra* note 222, at 41-42.
- 238 *Id.* at 41.
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- 242 Puta-Chekwe & Flood, *supra* note 222, at 42.
- 243 For more on this issue, see generally Neaçu, *supra* note 14.
- 244 Shyamkrishna Balganes, [Copyright and Free Expression: Analyzing the Convergence of Conflicting Normative Frameworks](#), 4 *Chi.-Kent J. Intell. Prop* 45, 93 (2004) (citing Upendra Baxi, *The Future of Human Rights* 146 (2002)).

- 245 For a discussion on the concept of “market friendly human rights,” see generally Baxi, *supra* note 244.
- 246 For a general discussion of the expansion of U.S. copyright law, see generally Michael H. Davis, *Extending Copyright and the Constitution: “Have I Stayed Too Long?”*, 52 Fla. L. Rev. 989 (2000).
- 247 Balganes, *supra* note 244, at 93.
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- 249 Upendra Baxi, *Voices of Suffering and the Future of Human Rights*, 8 *Transnat'l L. & Contemp. Probs.* 125, 163-64 (1998).
- 250 See *id.*
- 251 It calls upon the state (and world order) to free as many spaces for capital as possible, initially by fully pursuing the “Three-Ds” of contemporary globalization: deregulation, de-nationalization, and disinvestment. Putting an end to national regulatory and redistributive potentials is the leitmotif of present-day economic globalization, as anyone who has read several drafts of the Multilateral Agreement on Investment (MAI) knows. But the program of rolling back the state aims at the same time for vigorous state action when the interests of global capital are at stake. To this extent, de-regulation signifies not an end of the nation-state but an end to the re-distributionist state.
Id. at 164.
- 252 *Id.* at 163-64.
- 253 *Id.*
- 254 Dianne Otto, *Defending Women's Economic and Social Rights: Some Thoughts on Indivisibility and a New Standard Equality*, in *Giving Meaning to Economic, Social, and Cultural Rights* 52 (Isfahan Merali & Valerie Oosterveld eds., 2001).
- 255 See generally Davis & Neacsu, *supra* note 19.
- 256 Nussbaum, *supra* note 76, at 32.
- 257 Kristof, *supra* note 65.
- 258 For more on these issues, see generally *id.*
- 259 Even President Carter, or Nicholas Kristof, his *porte-parole*, seems less sure about a right of all to live healthy lives, but he feels that no politician would deny children such a right. *Id.*
- 260 Hami K. Bhabha, *Liberalism's Sacred Cow*, in *Is Multiculturalism Bad for Women?* 79, 79-84 (Joshua Cohen, Matthew Howard, & Martha C. Nussbaum eds., 1999).
- 261 See Scales, *supra* note 9, at 69.
- 262 See generally Nancy Kim, *Toward a Feminist Theory of Human Rights: Straddling the Fence between Western Imperialism and Uncritical Absolutism*, 25 *Colum. Hum. Rts. L. Rev.* 49 (1993).
- 263 See *id.* at 69-71.
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- 265 Jack Donnelly, *The Relative Universality of Human Rights*, 29 *Hum. Rts. Q.* 281, 283 (2007).

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- 267 Donnelly, *supra* note 265, at 283.
- 268 Lou Cannon, *Official Negligence: How Rodney King and the Riots Changed Los Angeles and the LAPD* 12 (1997).
- 269 Personal Responsibility and Work Opportunity Reconciliation Act of 1996, [Pub. L. No. 104-193](#), 110 Stat. 2105 (2000).
- 270 Neaçu, *supra* note 14, at 417.
- 271 See, e.g., John W. Lee III, [Class Warfare 1988-2005 Over Top Individual Income Tax Rates: Teeter-Totter From Soak-the-Rich to Robin-in-Reverse](#), 2 Hastings Bus. L. J. 47, 69-70 (2006).
- 272 In her recent book, Martha Nussbaum articulates a theory of global justice taking the side of disabled and nonhuman beneficiaries. See generally Nussbaum, *supra* note 76.
- 273 MacKinnon, *supra* note 60, at 37.
- 274 A new discussion about determining those to whom the state owes such duties would be interesting.
- 275 See Scales, *supra* note 9, at 83.
- 276 *Id.* at 40-42.
- 277 Ann Scales calls for R-E-S-P-E-C-T. *Id.* at 151.
- 278 Bertrand Russell, *The Problems of Philosophy* 153 (1988).
- 279 Leonid Wittgenstein, *Tractatus Logico-Philosophicus* §§ 4.112, 6.11, 6.111 (Ogden trans., 1983) (1922).
- 280 A.J. Ayer, *Logical Positivism* 107 (1959).
- 281 MacKinnon, *supra* note 60, at 159.
- 282 For more on eschewing neutrality, see Scales, *supra* note 9, at 103.
- 283 See MacKinnon, *supra* note 60.
- 284 *Id.* at 157-70.
- 285 *Id.* at 159.
- 286 *Id.* at 170.
- 287 *Id.* at 67-68.
- 288 Russell, *supra* note 278, at 46.
- 289 See Teacup, *supra* note 11, at 624; Neaçu, *supra* note 17, at 232.
- 290 410 U.S. 113, 164 (1973).
- 291 448 U.S. 297, 326-27 (1980).
- 292 See Neaçu, *supra* note 14, at 233.

- 293 William Saletan, *Bearing Right: How Conservatives Won the Abortion War* 14-15 (2003).
- 294 For a more in-depth discussion of the right to vote and its materiality, see Neaçu, *supra* note 14, at 232-35.
- 295 See Russell, *supra* note 278 at 46.
- 296 *Id.*
- 297 *Id.*
- 298 Neaçu, *supra* note 14, at 233. (“[O]ne may say that what the proponents of this right arguably won in the famous *Roe v. Wade*, they actually lost seven years later in *Harris v. McRae* when they failed to ensure public funds for abortions that would have empowered poor women in their sexual quest for gender equality. However, that is only partially true. Adult middle-class women--and not the destitute ones--had always been the intended beneficiaries of this new right. As pollster Tubby Harrison noted in 1984, poor women were never the intended beneficiary of this new right.”) (internal citations omitted).
- 299 410 U.S. 113, 164 (1973).
- 300 *Wrongful Rejection*, *supra* note 11, at 619.
- 301 349 U.S. 294, 294 (1954).
- 302 505 U.S. 833, 883 (1992).
- 303 See Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change* 107-157, 175-228 (1991).
- 304 See Martha Nussbaum, *Human Functioning and Social Justice: In Defense of Aristotelian Essentialism*, 20 *Political Theory* 202 (1992).
- 305 MacKinnon, *supra* note 60, at 106.
- 306 *Id.* at 108.
- 307 See generally Minow, *supra* note 201.
- 308 See generally Fineman, *supra* note 211.
- 309 MacKinnon, *supra* note 60, at 83.
- 310 *Id.*
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- 339 Jenny Anderson, *Wall Street Winners Hit a New Jackpot: Billion-Dollar Paydays*, *N.Y. Times*, Apr. 16, 2008, at A1.
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- 347 Kerry Rittich, *Feminism after the State: The Rise of the Market and the Future of Women's Rights*, in *Giving Meaning to Economic, Social, and Cultural Rights* 95 (Isfahan Merali & Valerie Oosterveld eds., 2001).
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- 351 See generally Higgins, *supra* note 345.
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- 358 See generally Howard Gardner, *Multiple Intelligences: The Theory in Practice* (1993).
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- 362 See generally National Organization for Women, search: success of American feminism, <http://www.now.org/cgi-bin/search.cgi?q=success+of+american+feminism>.
- 363 *Id.*
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- 367 Robin West, [Jurisprudence and Gender](#), 55 *U. Chi. L. Rev.* 1, 3-4 (1988).

- 368 Gary Minda, *Postmodern Legal Movements: Law and Jurisprudence at Century's End* 128 (1995).
- 369 Some anthropologists believe that matriarchy preceded patriarchy in human evolution. See, e.g., G.A.C. De Moubray, *Matriarchy in the Malay Peninsula & Neighbouring Countries* 36-63 (1931) (discussing primitive societies).
- 370 Robin Pogrebin, *As Corporate Support Shifts Its Focus, Arts Organizations Are Adjusting*, N.Y. Times, Feb. 21, 2007, at E1 ("Corporations are not Medicis; they never have been, they're not supposed to be.... They're not in business to be philanthropic.").
- 371 See *Feminism/Postmodernism/Development* 1 (Marianne H. Marchand & Jane L. Parpart eds., 1995).
- 372 *Id.* at 26.
- 373 This article was finished long before the current economic debacle, but the prospect of a Republican Presidential candidate asking for more state intervention (regulation) and non-intervention (cut taxes and spending) supports its meta-argument--that postmodern discourse has reached its absurd bottom--and its argument for a feminist critique of the major role of the state as creator and regulator of both welfare and the market.

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