

# Michigan Journal of International Law

---

Volume 24 | Issue 1

---

2002

## A Ghost is Haunting Europe

Maria Grahn-Farley

*University of California Humanities Research Institute*

Follow this and additional works at: <https://repository.law.umich.edu/mjil>



Part of the [European Law Commons](#), [Human Rights Law Commons](#), [Law and Gender Commons](#), and the [Law and Politics Commons](#)

---

### Recommended Citation

Maria Grahn-Farley, *A Ghost is Haunting Europe*, 24 MICH. J. INT'L L. 169 (2002).

Available at: <https://repository.law.umich.edu/mjil/vol24/iss1/3>

This Book Review is brought to you for free and open access by the Michigan Journal of International Law at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Journal of International Law by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

## BOOK REVIEW

# A GHOST IS HAUNTING EUROPE†

Maria Grahn-Farley\*

RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURES. (Kevät Nousiainen, Åsa Gunnarsson, Karin Lundström, & Johanna Niemi-Kiesiläinen eds.). Burlington, Vermont: Ashgate Dartmouth, 2001. ix + 373.

A ghost is haunting Europe today, the ghost of fascism. The European elections have been haunted by fascist political success. Fascism in Europe is as alive today as it was in the 1930s.<sup>1</sup> Neo-nazi and

---

† © 2002 by Maria Grahn-Farley. All rights reserved.

\* Andrew W. Mellon Post-doctoral Fellow, University of California Humanities Research Institute's Sawyer Seminar Program on Redress in Social Thought, Law, and Literature (2002–2003). Visiting Adjunct Professor, Golden Gate University School of Law (2001–2002). Former member of the National Board of Rädda Barnen (Save the Children, Sweden). LL.M., Gothenburg University School of Economics and Commercial Law, Sweden. Maria Grahn-Farley is a Swedish lawyer from Gothenburg University, now living in the United States.

I want to thank the *Michigan Journal of International Law* for their editorial work. I also want to thank my husband Anthony Paul Farley for always taking time and always being supportive.

1. The Swedish evening paper, *Aftonbladet*, wrote that the French election in April was a disgrace to the democratic system. Jean-Marie LePen, the well known French fascist, convicted of promoting Hitler propaganda, qualified for the presidential election. *Jean-Marie Le Pen är ett anfrätt gammalt lik*, [*Jean-Marie Le Pen Is a Corroding Old Corpse*], AFTONBLADET, Apr. 23, 2002, <http://www.aftonbladet.se/vss/nyheter/story/utskrift/0,3258,158249,00.html>; *Shock Success for French Far Right*, BBC NEWS, Apr. 22, 2002, <http://news.bbc.co.uk/1/hi/world/europe/1942612.stm> (The far right leader described the Holocaust as a “detail in history.”); see Interview by Gwen Ifill with Mario Calvo-Platero, U.S. editor, *Il Sole 24 Ore*, Daneil Serwer, U.S. Institute of Peace, and Alexander Stille, author (May 15, 2001), at [http://www.pbs.org/newshour/bb/europe/jan-june01/italy\\_5-15.html](http://www.pbs.org/newshour/bb/europe/jan-june01/italy_5-15.html) (noting that a major fear regarding the election of right-wing billionaire Silvio Berlusconi as prime minister of Italy is that he controls 90 percent of Italy’s media, including the three largest television stations and the State-owned media); Breffni O’Rourke, *The Netherlands: The Ghost of Pim Fortuyn Haunts Dutch Elections*, EU BUSINESS, May 16, 2002, <http://www.eubusiness.com/news/stories/811/81075.html> (“Results [of the election] show the newly formed anti-immigrant party of murdered Dutch politician Pim Fortuyn finished second . . .”). Austria even had political sanctions imposed on them for including the fascist Freedom Party, in the coalition ruling government. *EU Mission Holds Talks in Austria*, BBC NEWS, July 28, 2000, <http://news.bbc.co.uk/1/hi/world/europe/855893.stm>. Every major European city has seen angry male Neo-Nazi youth marching up and down the streets. On September 14, 2002, about one hundred Nazis marched the streets of Karlskrona in Sweden. The Nazis also participated in the local elections of Karlskrona. *Karlskrona buade ut nazisterna* [*Karlskrona Booed the Nazis*], DAGENS NYHETER, Sept. 14, 2002, <http://www.dn.se/DNet/road/Classic/article/0/jsp/print.jsp?&a=55402>. Their anger was primarily directed against immigrants but they also have a deeply rooted sexist ideology. *Id*. For a discussion on gender and the right wing, see Collette Guillaumin, *Sexism, a Right-Wing Constant of Any Discourse: A Theoretical Note*, in RACISM, SEXISM, POWER AND IDEOLOGY 171, 171–75 (1995).

fascist activities haunt Europe and threaten its future. The recent French presidential election is but one example of the ghost of fascism haunting Europe once again.<sup>2</sup> The welfare state in its different forms has provided Europeans with a certain amount of material certainty. "Material certainty" in this context refers to a substantial sense of safety, comfort, and psychological well-being experienced by a person. This experience is generated by the provision of economic opportunity and social services such as free education, free healthcare, pensions, and jobs, aimed at promoting the well-being of the individual and her community. The material certainty guaranteed by the welfare state has been an important aspect of how Europeans survive and cope with everyday life. The material certainty provided by the welfare state has also played a key role in keeping the ghost of fascism at bay.

Globalization and formation of the European Union have weakened the welfare state, creating material uncertainty for many. In contrast to material certainty, material uncertainty describes the discomfort, sense of insecurity, and fears experienced by an individual under chaotic circumstances, where the individual's well-being is exposed to the whims of chance. Under conditions of material uncertainty, people create such certainties as they are able. The replacements that now haunt Europe have taken the form of fascist anti-woman and anti-immigrant anger. This fascist anger seeks the certainty of a hierarchy where women and immigrants reside at the bottom of the social order. This hierarchy is known as fascism, which is cultivated in the rich absence of the material certainties provided by the welfare state. Fascism is a form of certainty.

The Nordic countries, Denmark, Finland, Iceland, Norway, and Sweden, are the most gender-equal in the world.<sup>3</sup> The Nordic countries are also the most advanced social welfare states in the world, but Nordic advances in social welfare and gender equality are under threat. *Responsible Selves: Women in the Nordic Legal Cultures* is a response to this threat. The brown shirts of the 1930s once again are marching across Europe, gathering more support than they have since the end of the Second World War and fall of the Third Reich.<sup>4</sup> The steady sound of

---

2. Jean Marie LePen Is a Corroding Old Corpse, *supra* note 169, <http://www.aftonbladet.se/vss/nyheter/story/utskrift/0,3258,158249,00.html>.

3. The Nordic countries are Denmark, Sweden, Iceland, Finland, and Norway. The Scandinavian countries are Sweden, Denmark, Norway, and Finland. Greenland is a colony of Denmark. The term "gender" is to emphasize the social aspects of the understanding of the female and male.

4. Lisa C. Ikemoto has observed similar trends within legislation in the United States. In 1942, the United States put 120,000 Japanese-Americans in internment camps. They were seen as a military risk to the society. She describes internment as parallel to the legislation of the last decades during which Californians have voted to approve several laws that directly or indirectly target people of color in the United States. In 1996, Californians voted for laws such

boots can be heard as the brown shirts march from one country to another across Europe. As with all fascist politics, the social debate is about limiting the rights of women by controlling their sexuality and their reproductive choices.<sup>5</sup> Instead of labeling it as sexism it is called neoliberalism. Once again the debate involves the importance of *Lebensraum*;<sup>6</sup> it is about creating “clean” areas for the right people, that is, the “pure,” rightfully European people. Instead of referring to racism, the debate contemplates xenophobia, and rather than referring to bloodlines we refer to culture. This discourse is directed against the newcomers, the immigrants to “Fortress Europe.” Once again there is a debate about European, male control over the lives of both European and immigrant women.<sup>7</sup>

### I. AN ETHICS OF AMBIGUITY

In previous articles I have discussed the importance of embracing ambiguity, and even that there is an ethics of ambiguity.<sup>8</sup> I argued that there are ethics of resisting the need to label people, and of refusing to label people according to the features of their bodies.<sup>9</sup> The articles stated that there is an ethics of embracing ambiguity and resisting demands to

---

as Proposition 209, a constitutional amendment that became article I, section 31 of the California Constitution, which ended affirmative action in university admissions. The same year American legislators also voted in approval of the well-known “Three Strikes” laws, imposing mandatory and lengthy prison terms for people convicted of a third criminal offense. These laws have had a strong effect on people of color. See Lisa C. Ikemoto, *In Sisterhood*, 2 MICH. J. RACE & L. 513, 513–14 (1997) (reviewing MARI MATSUDA, *WHERE IS YOUR BODY?* (1996)); see also Judy Scales-Trent, *Racial Purity Laws in the United States and Nazi Germany: The Targeting Process*, 23 HUM. RTS. Q. 259 (2001).

5. Guillaumin, *supra* note 169, at 171–75.

6. *Lebensraum* (“living space”) was the term that Hitler used to justify Germany’s expansion into and annexation of the Rhineland, Sudetenland, East Prussia, and Memel.

7. I use the term “European” to refer to what in the United States has been called “white” or “Caucasian.” The term “European” refers to the imagined existence of something that can be called European or white. The European does not exist, nor does the woman. For further readings on the intersection between the “European” and “gender,” see Maria Grahn-Farley, *Not For Sale!*, 17 N.Y.L. SCH. J. HUM. RTS. 271 (2000); Maria Grahn-Farley, *An Open Letter to Pierre Schlag*, in *CRITICAL RACE FEMINISM* (Adrien Katherine Wing ed., 2d ed., forthcoming 2003).

8. Maria Grahn-Farley, *The Law Room*, 36 NEW ENG. L. REV. 29 (2001); Maria Grahn-Farley, *A Theory of Child Rights*, 57 U. MIAMI L. REV. (forthcoming 2002); Maria Grahn-Farley, *A Child Perspective on the Juvenile Justice System*, 6 J. GENDER RACE & JUST. 297 (2002).

9. Grahn-Farley, *The Law Room*, *supra* note 8; Grahn-Farley, *A Theory of Child Rights*, *supra* note 8; Grahn-Farley, *A Child Perspective on the Juvenile Justice System*, *supra* note 8.

categorize people according to gender and race.<sup>10</sup> This does not entail disregarding the negative effects of a society, or its laws, organized around constructed concepts of race and gender. Detrimental labeling and identity construction must constantly be questioned.<sup>11</sup> An “ethics of ambiguity” is neither colorblind nor genderblind. To the contrary, it is an ethics of seeing how race and gender are constructed.

The ethics of ambiguity goes beyond ethics of feeling or experiencing ambiguity; it is an ethics of making ambiguity possible. Ambiguity is different from uncertainty, in that it can only exist where uncertainty does not. The welfare state demonstrates that there is a connection between material certainties, safety based on material circumstances, and people’s feelings of safety.

Certainty and uncertainty are both human constructs. Our ambiguities and our certainties, each, are human-chosen realities. Both certainty and uncertainty, as well as ambiguity, are constructed. The certainty or uncertainty that an individual experiences is usually a certainty or an uncertainty that has been constructed by others. The fact that the decisions about one’s certainties and uncertainties are outside of one’s control makes people create certainties that give relief to their fear of the uncertain material realities of their lives.

The ability to experience certainty or uncertainty is highly dependent on material circumstances. Without material certainty, it is difficult to fearlessly embrace ambiguity. High unemployment rates, attacks on educational systems, and crises in healthcare sectors turn the material certainties of people’s lives into uncertainties. What was a material certainty, such as the ability to receive a full pension that covers the expenses of old age after retirement, is becoming an uncertainty. The ability to send a child to any public school for a safe and fulfilling education that prepares her for adulthood is a material certainty that has come close to being, and sometimes is, plunged into uncertainty. The ability of a young person approaching adulthood to obtain a decent job was a material certainty that has now transformed into an uncertainty.<sup>12</sup>

When the uncertainties of life, such as pensions, education, employment, and healthcare become unbearable, people create other forms of certainty. They generate those certainties that are within their power to

---

10. For additional background regarding the theory espoused in my articles, see Guillaumin, *supra* note 1, at 171–75; SIMONE DE BEAUVOIR, *THE ETHICS OF AMBIGUITY* (Bernard Frechtman trans., 1996) (1948).

11. On questioning fascism see, Anthony Paul Farley, *Lacan & Voting Rights*, 13 *YALE J.L. & HUMAN.* 283 (2001).

12. Kirsten Ketscher, *From Marriage Contract to Labour Contract: Effects on Care Duties and Care Rights*, in *RESPONSIBLE SELVES: WOMEN IN THE NORDIC LEGAL CULTURES* 155, 155 (Kevät Nousiainen et al. eds., 2001) [hereinafter *RESPONSIBLE SELVES*].

construct. These certainties are created out of ideologies that designate women and immigrants as the people who should occupy the places of uncertainty at the bottom of the social hierarchy. These uncertainties of everyday life are constructed by people outside of the control of those who have to live with these uncertain pensions, uncertain educational opportunities, uncertain employment opportunities, and uncertain healthcare. Those who live with the uncertainties that have been created by others will, in turn, create certainties that are out of control of those who created the uncertainties. The certainties that are being created are certainties constructed out of anger against women and immigrants. Those who have been made uncertain are now creating replacement certainty for themselves by making it certain that women and immigrants will be placed below them in the social hierarchy.

We can see this being played out in Europe, where the same politicians that made all the decisions dismantling the welfare system are now helpless spectators of the new fascist waves washing over Europe. The streets and the voting booths around Europe are filling with angry, young, unemployed, and poor European men. These are people for whom the material uncertainties have become unbearable and who therefore now create their own certainties around ideologies of sexism and racism. In order for an ethics of ambiguity to avoid being yet another elitist project, it must be an ethics that strives to provide the ability for ambiguity by arguing for a material certainty in people's everyday lives.

## II. RESPONSIBLE SELVES

The anthology, *Responsible Selves: Women in the Nordic Legal Cultures*, could not have been more timely. *Responsible Selves* is a critique of the welfare state and its dealings with the women in it. At the same time, it is supportive of the overall function and goals of the welfare state and the material certainties that follow from it. The topics of this anthology have never been more important to discuss. The United Nations named Sweden the most gender-equal country in the world in 1995.<sup>13</sup> In comparison to other countries, the Nordic countries have greater equality between men and women in terms of education, social status, and health.<sup>14</sup> *Responsible Selves* is the first Nordic Legal Feminist anthology to be written in the English language by female Nordic legal scholars. The anthology's essays are interesting from a legal as well as a

---

13. Eva-Maria Svensson, *Sex Equality: Changes in Politics, Jurisprudence and Feminist Legal Studies*, in RESPONSIBLE SELVES, *supra* note 12, at 71, 71.

14. Kevät Nousiainen & Johanna Niemi-Kiesiläinen, *Introductory Remarks on Nordic Law and Gender Identities*, in RESPONSIBLE SELVES, *supra* note 12, at 1, 1.

cultural perspective. They are also extraordinarily interesting in the way that they serve to document a uniquely dynamic political period in Nordic national as well as regional, contemporary history. *Responsible Selves* gives a snapshot picture of how the Nordic countries are both adjusting to and resisting the impact of globalization<sup>15</sup> mostly as exercised through the European Union.<sup>16</sup>

The authors of *Responsible Selves* are influenced by an international feminist discourse.<sup>17</sup> They also clearly bear traces of Scandinavian Realism, a specific Nordic legal theoretical tradition.<sup>18</sup> *Responsible Selves* is like a fabled treasure which, once found, raises the question of why it took so long to begin the search. The Nordic countries of Denmark, Finland, Iceland, Norway, and Sweden have often been described as model countries for women's issues and gender equality. Considering the prominent status the Nordic countries have in the international community due to their social policies and well-developed welfare states, it is high time that women's experiences in these welfare states and their social policies be expressed in the English language and available to a broader audience than speakers of the Nordic countries' languages.<sup>19</sup> In the same manner that the Third World feminist scholars introduced a more complex image of themselves in recent years, so too have the Nordic feminist scholars in this anthology.

### III. EQUAL TO WHOM?

Eva-Maria Svensson's essay deconstructs the very presumption of Sweden as a gender-equal country. Svensson states that Sweden is not a gender-equal country and argues instead that both the international community and the Swedish people themselves, not just the women, have bought into a myth that stands in the way of substantive gender

---

15. See Susanne Fransson, *Collective and Individual Strategies: Women's and Men's Wages*, in *RESPONSIBLE SELVES*, *supra* note 12, at 195, 195-96.

16. Denmark, Sweden, Iceland, and Finland are members of the European Union. Norway is not a member of the European Union.

17. Catherine Barnard, Joanne Conaghan, Clare McGlynn, and Sally Sheldon from the United Kingdom provided comments on the work and the project. Kevät Nousiainen et al., *Preface* to *RESPONSIBLE SELVES*, *supra* note 12, at ix.

18. For a comparative study of the Scandinavian Legal Realists and the American Legal Realists, see MICHAEL MARTIN, *LEGAL REALISM* (1997).

19. Norwegian, Swedish, and Danish-speaking people can understand each other's languages without much difficulty. Icelandic has the same Scandinavian language roots as Norwegian, Swedish, and Danish, but cannot be so easily understood by the other Scandinavians because Icelandic has been more isolated from external influences and therefore retained more of its Viking origins. Finnish belongs to a totally separate language group from the Scandinavian languages.

equality.<sup>20</sup> Svensson points out that the political goal of gender equality is treated, too often, as an objective description of the present time. This self-deception, she argues, is harmful. It prevents a real debate on how best to work to fulfill the normative hope for a future gender-equal society.<sup>21</sup>

Svensson points out the discrepancy between Sweden's explicit political goal of gender equality, and the legal community's reluctance to rank gender equality as a goal important enough to deserve a good debate. Women's broad participation in national, as well as local, party politics can partly be explained by the fact that Nordic women, through their connection to the welfare state, traditionally have been more inclined to be politically active than women in many other countries. The legal community, however, is more male-centered and therefore also more hesitant and even hostile toward feminist issues.

Gundrun Nordborg and Johanna Niemi-Kiesiläinen describe in their essay the hostility of the legal community in Sweden toward feminist issues and toward women in general. This hostility was clearly demonstrated in the drafting procedures of the new anti-domestic violence law titled "Women's Peace."<sup>22</sup> This law has its roots in a Swedish cultural tradition, where the concept of women's peace functioned almost as a medieval version of hate crime against women. A hostile act of a man against a woman with whom he has an intimate relationship was considered to be a crime in itself, and to be more severe than if they had not been in a relationship. "Women's Peace" was an attempt to codify the psychodynamic process of abuse itself. The argument was that it is more than the actual beating or abusive act that, by law, should be regarded as a crime constituting domestic or child abuse.<sup>23</sup> There were attempts to

---

20. Svensson, *supra* note 13, at 71.

21. See also Åsa Gunnarsson, *The Autonomous Taxpayer and the Dependent Caregiver: The Effects of Division Between Tax Law and Social Law*, in RESPONSIBLE SELVES, *supra* note 12, at 173, 188.

22. The Uppsala Law Faculty involved itself in the debate and argued strongly against the law. Gundrun Nordborg & Johanna Niemi-Kiesiläinen, *Women's Peace: A Criminal Law Reform in Sweden*, in RESPONSIBLE SELVES, *supra* note 12, at 353, 361. It is highly unusual for law faculties in the Nordic countries to involve themselves in this manner in the political parts of the legislative process.

23. On attempts to describe the process of domestic violence and the shortcoming of law's ability to deal with the process of intimate violence in the United States, see Linda Mills, *Killing Her Softly*, 113 HARV. L. REV. 550, 596 (1999). Mills describes the harmful effects upon the women living in situations of domestic abuse when mandatory intervention is used. Instead of mandatory intervention she argues for a "Survivor-Centered Model." Zanita Fenton argues for the use of narrative: "The judiciary has the power and authority to use story as a means of re-creating norms, to alter our concept of violence in society, and to affect the power structure that permits and conditions private violence." Zanita Fenton, *Mirrored Silence: Reflections on Judicial Complicity in Private Violence*, 78 OR. L. REV. 995, 1059 (1999).



revive this medieval concept in domestic violence law by women's movements and politicians, but these attempts met strong resistance from both the legal academic community and the legal community in general, which finally led to a legal codification that was weaker than the medieval cultural meaning of the concept.<sup>24</sup>

Svensson argues that, "Democracy relies on law to be legitimate and in harmony with the values that are considered important in society."<sup>25</sup> She proposes that the legal community has to instill jurisprudence with a sense of responsibility.<sup>26</sup> One way of making jurisprudence ethical, Svensson suggests, is to transform the legal education: The jurists of the future have no use for knowledge about specific rules in a changing and international world. Instead, they have to be sensitive to human relations and familiar and comfortable with expressing conflicting values and interests. The jurists of the future must take responsibility for their recommendations and decisions.<sup>27</sup>

Svensson's argument has strong resonance with, and might inform, theorists such as Martti Koskenniemi, Peter Goodrich, and Kathryn Abrams. Specifically, there is a strong resonance with what Finnish legal theorist Martti Koskenniemi has called the lawyer's "hazardous leap."<sup>28</sup> The hazardous leap takes place when a lawyer cannot hide behind the structures of law or of politics to find the one solution to the problem she has been asked to solve. There is no "one" solution to be found in the structures of law or politics because every justifiable argument can always be countered with another equally justifiable argument. According to Koskenniemi, the "one" solution to be found is only the one that was chosen.<sup>29</sup> Peter Goodrich has written about how important it is not only to challenge the judgments through dialogue "but also through the consciousness of the body that judges, a consciousness of its history, traumas, and other marks of passage or biography."<sup>30</sup> Kathryn Abrams points out that it is not only classroom performance that shapes the future lawyer. Abrahms argues that the texts of law that a law school

---

24. Nordborg & Niemi-Kiesiläinen, *supra* note 22, at 369–70.

25. Svensson, *supra* note 13, at 96. Scandinavian legal culture stresses the need to mind the gap between law and politics, that is, to make certain that there is no gap. The roots of this tendency to make certain that the legal and the political remain the same are deep within the tradition. That tradition, which has a long history, developed into Scandinavian Legal Realism between 1900 and 1950. Scandinavian legal culture has grown out of Scandinavian Legal Realism. Scandinavian Legal Realists include Alf Ross, Axel Hägerström, and Wilhelm Lundstedt.

26. *Id.*

27. *Id.*

28. MARTTI KOSKENNIEMI, FROM APOLOGY TO UTOPIA 496 (1989).

29. *Id.*

30. See Peter Goodrich, *Europe in America*, 101 COLUM. L. REV. 2033, 2071 (2001).

student encounters during legal education are as influential as classroom performance.<sup>31</sup>

Svensson argues for a reimagination of the context of law and that this reimagined law has to be more in tune with its social context. For Svensson, that social context is one in which the politicians have made gender equality into an important social goal. It is the duty of the lawyer in a democratic society to participate in this reimagination in order to bring law closer to the political.<sup>32</sup>

#### IV. A MINORITY POSITION

*Responsible Selves* is written in a defiant tone. The anthology is the result of a three year process of collaboration between Nordic feminist legal scholars. The Nordic collaboration made it clear to the participants that they shared a specific Nordic feminism.<sup>33</sup> The anthology has many parallels with what in the United States has been called the Third World women's approach,<sup>34</sup> a term that refers to the scholarship written by women in the Global South. It also parallels critical race feminism,<sup>35</sup> a term that refers to the scholarship written by feminists of color within the United States. The Nordic women, like the Third World women and the critical race feminists, are opposing the Western women's monopolization of the feminist discourse.<sup>36</sup> This type of critique is similar in form to Angela Harris's response to what she deems Catharine MacKinnon's

---

31. See generally Kathryn Abrams, *Race and Races: Constructing a New Legal Actor*, 89 CAL. L. REV. 1589 (2001) (book review).

32. It would be interesting to imagine in the Nordic law schools the type of socially aware clinic described by Phyllis Goldfarb in her work on the "Postmodern Legal Clinic." See Phyllis Goldfarb, *The Postmodern Law Clinic*, 57 U. OF MIAMI L. REV. (forthcoming 2002); Phyllis Goldfarb, *A Clinic Runs Through It*, 1 CLINICAL L. REV. 65 (1994); Phyllis Goldfarb, *Beyond Cut Flowers: Developing a Clinical Perspective on Critical Legal Theory*, 43 HASTINGS L.J. 717 (1992).

33. Nousiainen et al., *supra* note 17, at ix.

34. See generally DECENTERING THE CENTER: PHILOSOPHY FOR A MULTI-CULTURAL, POSTCOLONIAL, AND FEMINIST WORLD (Uma Narayan & Sandra Harding eds., 2000); GLOBAL CRITICAL RACE THEORY (Adrien Katherine Wing ed., 2000).

35. See generally CRITICAL RACE FEMINISM (Adrien Katherine Wing ed., 1997); CRITICAL RACE FEMINISM, *supra* note 7.

36. Madhavi Sunder's work on sexual harassment is a good example of this type of work. Sunder analyzes the way the Western concept of sexual harassment plays an interesting part in the development and expression of women's efforts in India to define their own notions of national and cultural identities in the public as well as in the private sphere. Sunder simultaneously points to the fact that both Western and Indian cultures are cultures in flux and that the concept of what is Western is increasingly universalized. This process of change is both complex and context-dependent. Madhavi Sunder, *In a "Fragile Space": Sexual Harassment and the Construction of Indian Feminism*, 18 LAW & POL'Y 419, 419-20 (1996).

monolithic perspective.<sup>37</sup> Harris argues that MacKinnon's failure, shared by others, lies in seeing gender only in relation to men and not seeing gender in relation to race, class, and sexual identity.<sup>38</sup> For Harris, race, class, and sexual identity strongly affect the gendered relationship between men and women. Harris concludes that gender must therefore be examined in its relationship to race, class and sexual identity as well as in the relationship between men and women.<sup>39</sup> The Nordic women have now made a similar argument by showing that the relationship between women and the State also affects the gendered relationship between men and women.

The Nordic authors themselves describe the position from which they write as a minority position.<sup>40</sup> The Nordic women in *Responsible Selves* explain how their experiences differ from, or are not included in, what is generally called "feminism." Anu Pylkkänen gives an informative historical exposé of the way that the situation of Nordic women differs from the situation of other Western women. The Nordic cultures never developed as strong a division between the family and the market as did the liberal, social contract theory-inspired Western countries.<sup>41</sup> Finland, Pylkkänen observes, is in many aspects still more highly influenced by a local agrarian culture than the more abstract market economic culture. Pylkkänen explains that this is due, in part, to the fact that Finland was a Swedish province until 1809 and an autonomous part of Russia between 1809 and 1917.<sup>42</sup> Finland's existence as a province of Sweden, and later under Russian control, resulted in Finland's never developing as dominant a bourgeoisie as existed in Sweden, for example. The lack of a well-developed bourgeoisie led to less of a division between the genders. Men and women in Finland's more agrarian culture existed in a closer interdependent relationship than did men and women in the bourgeoisie culture, with its more defined separation between the family as being "female" and the market as "male."<sup>43</sup>

---

37. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, in *CRITICAL RACE FEMINISM* 11 (Adrien Katherine Wing ed., 1997).

38. *Id.*

39. *Id.*

40. Nousiainen & Niemi-Kiesiläinen, *supra* note 14, at 13. Iceland has the smallest population with 300,000 inhabitants and Sweden the largest with almost 9,000,000 inhabitants. It is only Sweden and Denmark that have a substantial immigrant population and the diversity that comes with that. The ethnic minorities in the Nordic countries are the Romany people and the Sami people, the latter being the indigenous people of Finland, Norway, and Sweden. Greenland, which is a colony of Denmark, has an Inuit native population.

41. Anu Pylkkänen, *The Responsible Self: Relational Gender Construction in the History of Finnish Law*, in *RESPONSIBLE SELVES*, *supra* note 12, at 105, 108-09.

42. *Id.* at 105.

43. See Frances E. Olsen, *The Family and the Market*, 96 *HARV. L. REV.* 1497 (1983).

*Responsible Selves* gently opposes a Western feminism that claims to represent a universal experience of women but, in reality, only describes the experiences of the middle-class white women of the United States, the United Kingdom, and sometimes Continental Europe. The Nordic women would add to the above description English-speaking, and might also add common-law trained and liberal. The most significant difference between the Western feminists and the Nordic feminists is their relationship to the State. Lisbet Christoffersen, Kirsten Ketscher, and Åsa Gunnarsson directly address women's relationship to the welfare state in their essays.<sup>44</sup> Christoffersen points out a change in Danish law, where the two previously separated identities of being an autonomous individual in the marketplace and a subordinate within a community (in relationship to the State) are merging together. What comes, instead of a split between public and private identity, is a subject that is forced to be responsible to the self, not only as a private person, but also in relationship to the State.<sup>45</sup> Ketscher describes how the Danish welfare state has changed the meaning of care. Women are expected to perform fewer unpaid caregiving duties. At the same time men have been seen as valuable caregiving resources. Care itself has become more visible by its emergence into the public space of the job market as paid labor.<sup>46</sup> Gunnarsson concludes that Swedish women, through the welfare state, have been let into the previously male-dominated job market. Men, on the other hand, have not entered the previously female reproductive work sphere to the same extent.<sup>47</sup>

Kevät Nousiainen writes that the Nordic women exist as women, and as scholars, within what social theorists have labelled as a social democratic welfare state.<sup>48</sup> The social democratic welfare state is better described as communitarian than liberal. The culture of the social democratic welfare state emphasizes the similarities between women and men more than the differences between the genders. The result has been that Nordic feminist scholarship does not center around the polarization of gender or the gender dichotomy, as does so much of Western

---

44. Lisbet Christoffersen, *The Changing Position of the Individual in Danish Welfare Law*, in *RESPONSIBLE SELVES*, *supra* note 12, at 131, 131; Ketscher, *supra* note 12, at 155; Gunnarsson, *supra* note 21, at 173. For an informative American comparison of the role of the family as a unit between the market and the State, see Martha Albertson Fineman, *Why Marriage?*, 9 VA. J. SOC. POL'Y & L. 239 (2001); *see also* Katie Scrivner, *Domestic Violence Victims After Welfare Reform*, 16 WIS. WOMEN'S L.J. 241 (2001).

45. Christoffersen, *supra* note 44, at 149.

46. Ketscher, *supra* note 12, at 168-69.

47. Gunnarsson, *supra* note 21, at 188.

48. Kevät Nousiainen, *Transformative Nordic Welfarism: Liberal and Communitarian Trends in Family and Market Law*, in *RESPONSIBLE SELVES*, *supra* note 12, at 25, 35.

feminism.<sup>49</sup> The Nordic feminists, instead, are questioning the very presumption that men and women are equal, meaning the same, and struggling with what is hidden or concealed by that presumption. Karin Lundström, for example, writes about the “underlying notion of women’s double roles in contrast to men’s single role.”<sup>50</sup> Women are seen as both being the same as men at the same time as they are seen as being different from men.

## V. A MALE STANDARD

Johanna Niemi-Kiesiläinen, Minna Ruuskanen, Ulrika Andersson, and Gudrun Nordborg each address one of the effects of the emphasis on similarities between the genders according to a male standard. One of the more tragic effects of only seeing similarities is the invisibility of gendered violence and law’s inability or unwillingness to address intimate violence as gendered. Intimate violence is “gendered” in the sense that in most cases of intimate violence the violence is directed toward the woman in the relationship.<sup>51</sup>

Niemi-Kiesiläinen clarifies the difference between a liberal and a welfare state approach to domestic violence, arguing that the liberal State deals with domestic violence mostly through the criminal law system.<sup>52</sup> She observes that the welfare state has been more hesitant to deal with domestic violence but when it does deal with domestic violence it does so by advocating for treatment of men and women in workshops, help-lines, support groups, and therapy, and not by focusing on right or wrong.<sup>53</sup> Niemi-Kiesiläinen points out that neither system has been successful in addressing and preventing intimate violence.<sup>54</sup>

Ruuskanen’s essay is very informative from an American perspective. The general Western myth of the woman as vulnerable and feeble is

---

49. Nousiainen & Niemi-Kiesiläinen, *supra* note 14, at 11.

50. Karin Lundström, *The ECJ’s Conditional Release of Women*, in RESPONSIBLE SELVES, *supra* note 12, at 263, 282.

51. Johanna Niemi-Kiesiläinen, *Criminal Law or Social Policy as Protection Against Violence*, in RESPONSIBLE SELVES, *supra* note 12, at 289, 289; Minna Ruuskanen, *The “Good Battered Woman”: A Silenced Defendant*, in RESPONSIBLE SELVES, *supra* note 12, at 311, 311; Ulrika Andersson, *The Unbounded Body of the Law of Rape: Intrusive Criterion of Non-Consent*, in RESPONSIBLE SELVES, *supra* note 12, at 331, 331; Nordborg & Niemi-Kiesiläinen, *supra* note 22, at 357–58.

52. Niemi-Kiesiläinen, *supra* note 51, at 303.

53. *Id.* at 304.

54. There is a middle ground within the feminist legal academic community in the United States. See Zanita E. Fenton, *Domestic Violence in Black and White*, 8 COLUM. J. GENDER & L. 1 (1998); Phyllis Goldfarb, *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence*, 64 GEO. WASH. L. REV. 582 (1996); Mills, *supra* note 23.

not an image in which the Nordic woman recognizes herself. The Nordic myth about the woman is that she is strong and independent.<sup>55</sup> Ruuskanen writes that this myth is partly correct. The situation for women in Finland, in comparison to many other women around the world, is relatively equal to the situation of men.<sup>56</sup> The image of the Nordic woman as strong and independent also makes it difficult to recognize a woman that lives in a situation of intimate violence because strength and victimization are two images that seldom go well together.<sup>57</sup>

Andersson's essay gives a good critique of the male perspective in Swedish rape law. The male perspective is expressed by the fact that in a rape trial it is the woman's behavior that is examined rather than the behavior of the man who raped her. The male perspective is manifested in the law's focus on the rape victim and whether she did or did not give consent.<sup>58</sup>

The Nordic feminists are not only differentiating themselves from the Western feminist discourse; like their fellow feminist scholars among the women of the Global South and the women of color in the United States they are creating a more complex image of themselves. The Nordic feminists emphasize that they have many similarities with each other, such as all being civil-law trained. The anthology also shows the English-speaking world that Nordic women are much more complex than they have hitherto been described as being. This is one of the themes of *Responsible Selves* that might need some explanation for readers unfamiliar with the Nordic countries.

The Nordic countries share a culture that aims at similarities instead of at differences, making it more difficult for scholars to develop methods of showing and explaining differences.<sup>59</sup> It is in this area that Nordic feminist scholarship has made one of its largest contributions to legal cultures and to feminism in general.

The Nordic feminists are in the process of building a new school of legal thought in which differences can be addressed and demonstrated outside of the theoretical frames that stress dichotomies or polarities. They have begun the project of shifting the breaking point between similarities and differences within a communitarian framework. What these feminists are proposing is to make difference a normal and natural part

---

55. Ruuskanen, *supra* note 51, at 311, 316.

56. *Id.*

57. *Id.* at 317.

58. Andersson, *supra* note 51, at 347.

59. Deborah W. Post, writing from the individualistic perspective, has addressed the same balance that the Nordic women are addressing from the communitarian perspective. See Deborah W. Post, *Appropriation & Transculturation in the Creation of Community*, 20 B.C. THIRD WORLD L.J. 117, 119 (2000).

of the communitarian framework. The Nordic feminist school is a great resource for everyone concerned with recognizing the differences while valuing similarities and strengthening the solidarity that can exist between different classes and groups. The Nordic feminist school is also a resource for feminists participating in the discourse between the Global North and the Global South and between the white feminists and critical race feminists in the United States. The Nordic feminist school is a resource because it is about valuing and identifying the similarities without repressing and disregarding the importance of differences.

Hopefully the Nordic feminist school will continue beyond *Responsible Selves*. It will be interesting to see how Nordic feminism will draw inspiration from the international feminist discourse on sexual identities. A future collection would benefit from an in-depth discussion of same-sex relationships,<sup>60</sup> especially considering that the Nordic countries were among the first countries to enact laws for same-sex partnerships.<sup>61</sup>

Another important theme that challenges the future value of Nordic feminism is how it will address, debate, and develop theories and methods for the welfare state to respectfully incorporate the large immigrant populations of Sweden and Denmark. Sweden and Denmark are truly multiethnic and multicultural societies, thanks to the diverse group of immigrants from a variety of countries in recent decades. The immigrants of the Nordic countries come from a variety of places including Chile, Iran, Iraq, Somalia, Turkey, and the former Yugoslavia. With the immigrants' arrival and the Nordic societies' hesitance in adjusting to a new multicultural situation come all the tensions and possibilities that follow true diversity.

Ketscher discusses the fact that many immigrant women from the rural areas of their countries of origin are left behind by the welfare state, or rather, not allowed into job market relationships with the welfare state. Instead, immigrant women, many of whom lack knowledge of the Swedish or Danish languages, are often left to depend on their marriages and husbands as their main source of economic, as well as emotional, protection.<sup>62</sup> Many of these women are left to the marriage contract and excluded from the labor contract with the State to which the Nordic women have access.<sup>63</sup>

For many immigrant women it is not only a question of access to the labor contract with the welfare state, but also a question of whether the welfare state will be able to interact with, and meet, them in respectful

---

60. Nousiainen & Niemi-Kiesiläinen, *supra* note 14, at 1, 12.

61. *Id.*

62. Ketscher, *supra* note 12, at 159–60.

63. *Id.*

ways that take into consideration their unique cultural experiences in addition to recognizing the new culture they now share with the Nordic women. This new culture is Nordic communitarianism, which might, to a newcomer, confusingly overemphasize the similarities between different people.

The most important challenge for the supporters of the welfare state, including Nordic women whose relationship to the welfare state is ambivalent, is to develop the welfare state into an entity that culturally fits the new habitants of the Nordic countries. Now that Nordic women are questioning their own relationship to the welfare state it is suitable to include in that debate questions regarding how the welfare state can serve the needs of, and protect, immigrant women as well as Nordic women. Angela Harris, in an address to the law faculty at Cornell University, comments on the dangers that come with being seduced by a form of equality that presumes sameness:

Above all, the language of equality seduces us away from the realities of social power, and into an imaginary land where groups of people can be laid side by side to see if they're similarly situated, and then they can be made equal. Equality discourse, then, inherently brings us into a vexed relationship with history.<sup>64</sup>

This, too, is the challenge and the opportunity for Nordic feminism.

## VI. THE WELFARE STATE IN TRANSFORMATION

The title *Responsible Selves: Women in the Nordic Legal Cultures* is an illustrative one in that it captures the social transformation of the Nordic welfare state. It refers to changes the Nordic countries are experiencing through globalization in general, and specifically the impact of the European Union on subjects within the Nordic countries, especially on women. Both globalization and the European Union have directly affected the status of the welfare state. Historically the nation-state has related to its subjects as objects of sovereign State power; initially under the Crown and later under the *Rechtsstaat*.<sup>65</sup> This relationship is now changing both through the welfare state itself and through an expanding liberalization and privatization of previous State responsibilities. With these changes Nordic women's ambivalent relationship to the welfare state has become more significant, and it has

---

64. Angela P. Harris, *Foreword: Beyond Equality: Power and the Possibility of Freedom in the Republic of Choice*, 85 CORNELL L. REV. 1181, 1186 (2000).

65. Christoffersen, *supra* note 44, at 131, 148.



become more important to place the debate over the future of the welfare state in a wider context.

On the one hand, the welfare state has been the guarantor against female dependency on males, and, on the other hand, it has gendered women through their dependency on the State. The welfare state is the largest employer of women in the Nordic countries. Through their earnings from work within State administrations and healthcare systems, Nordic women have been better able to negotiate their relationship with men than have many of their counterparts in the United States and the United Kingdom.<sup>66</sup> At the same time that the welfare state allows Nordic women to negotiate their relationship to men, it also has provided a gendered, segregated job market. Susanne Fransson, Ruth Nielsen, Lotta Wendel, and Karin Lundström address the construction of gender through the job market. The focus of their analyses is on the way gender (women) is defined through the relationship to the welfare state. This relationship also determines women's relationship to the public sphere.<sup>67</sup>

In the liberal State many of the tasks that are seen as women's tasks are performed by women within the private sphere of the family house.<sup>68</sup> In the welfare state many of these tasks are performed by women within the public sphere, as employees of the welfare state.<sup>69</sup> The division of labor in the liberal State is negotiated between the individual woman and the individual man in a heterosexual family. In the Nordic countries this negotiation is moved into the public sphere by the welfare state.<sup>70</sup> Lotta Wendell addresses, through the history of the legal regulations for doctors and nurses, the ways that labor law itself is gendered and contributes to a gendered job market.<sup>71</sup>

Nordic women, relative to other women, are economically liberated from male providers. However, they are more dependent on the welfare state as their employer. The welfare state has been under attack during

---

66. See Gunnarsson, *supra* note 21, at 173.

67. See Fransson, *supra* note 15, at 195; Ruth Nielsen, *The Enforcement of EU Sex Discrimination Law in Scandinavia*, in RESPONSIBLE SELVES, *supra* note 12, at 223, 223; Lotta Wendel, *Doctors and Nurses: The Gendered Right to Practice*, in RESPONSIBLE SELVES, *supra* note 12, at 243, 243; Lundström, *supra* note 50, at 263.

68. Olsen, *supra* note 43, at 1497 *passim*.

69. Wendel, *supra* note 67, at 243. Wendel describes the gender-segregated job market and also the way that the gender-segregated workplace values the male professions over the traditional female professions, specifically male doctors and female nurses.

70. *Id.*

71. "The right to practice . . . was initially designed according to the legislators' understanding of sexual difference . . . This 'pre-law' explanation relies upon assumptions that the formation of gender is performed *before* the law. After the initial legislative step was made, it should, however, have been irrelevant to speak of any formation of gender *before* the law, since the directly gender-related division and subordination was clearly articulated *within* the law." Wendel, *supra* note 67, at 257.

the last few decades from the neoliberal market economy that got free range globally after the fall of the Iron Curtain. The neoliberalism of the European Union has put the welfare state under increased pressure. As a consequence of these influences, women's relationship to the welfare state is now in transformation.

The title, *Responsible Selves*, alludes to this transformation from being both subjected to and protected by the State to an increased client-provider relationship wherein the client is seen as autonomous in its relationship to the State. Within this client-provider relationship, women are receiving less protection from the welfare state than before. This trend means that women have to become "Responsible Selves" whether they want to or not.

It is important for the Nordic feminist school of legal thought, which has had its English language debut in this anthology, to persevere. It also is important that the Nordic feminist school find a place and method for differences without losing the connecting factors of similarities. The future of the welfare state may depend on their success, and the welfare state is the best hope against a fascist future.

It is important for the survival of the welfare state that it adapt and accept the fact that even though it is geographically located in the Nordic States, its citizens are truly global. The goal and the strategy of the welfare state has always been universal reallocation of resources and it is time that women as well as immigrants within the welfare state benefit in the same universal way that Nordic men have benefited from the welfare state. The success of the welfare state has been dependent on solidarity and coalitions across specific interest groups and among individuals. Women have benefited more from universal transfers between the State and its citizens than through group claims based on identity. However, Nordic women have not benefited as much as Nordic men from the welfare state.

Karin Lundström's essay highlights the ideological clash between the welfare state's communitarian approach and the European Union's "economic liberal ideas where the only rationality is the individual maximization of the economic profit, the female half of the population is deemed to be imbued with a primary, altruistic inclination which is predominant over the economic one."<sup>72</sup> Lundström describes how the politically liberal European Union affects the lives of the Nordic women. The success of the welfare state has been dependent on the fact that women joined forces with workers, and the class struggle then mirrored the women's struggle and the workers' struggle. However, it is time that the coalitions abandon their own internal gender hierarchies and begin

---

72. Lundström, *supra* note 50, at 281.

the incorporation of the immigrants that make the welfare state possible. Ruth Nielsen's essay shows how the labor unions have been successful when using a collective approach in negotiations about wages but have been less able to address sex-discrimination on the job market.<sup>73</sup>

### CONCLUSION

Until recently, the welfare state provided its citizens with the material certainty that makes an ethics of ambiguity possible. The welfare state is in crisis partly because of its reluctance to turn to its "others," women and immigrants, for advice and cooperation. The failures of the welfare state have been most visible in its inability to deal with the needs of its women and immigrants. Instead of looking at women and immigrants as the problems of the welfare state, it is time for the welfare state to recognize that the key to its very survival is to be found within its ability to address and adjust to the needs of the women who are in a relationship with the welfare state and the immigrants who are being excluded from a relationship with the welfare state.

If the welfare state fails to produce material certainties such as pensions, education, jobs, and healthcare universally, the alarming sight of the brown shirts and the noise of marching boots will soon make it impossible to hear any other discourse. It is critical for the survival of the welfare state that it prove itself capable of dealing with, and adjusting to, the circumstances of Nordic women and their sisters and brothers among the immigrant groups.

---

73. Nielsen, *supra* note 67, at 239. Reginald Alleyne, writing from an American perspective, notes the shortcomings of American labor unions in addressing sexual harassment grievances. See Reginald Alleyne, *Arbitrating Sexual Harassment Grievances: A Representation Dilemma for Unions*, 2 U. PA. J. LAB. & EMP. L. 1 (1999).