GENDER AND INTERNATIONAL LAW:

WOMEN AND THE RIGHT TO DEVELOPMENT

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Part I

I have been attending a conference on the Role of Consent and the Development of International Law at the End of the Twentieth Century. This has been attended largely by male international lawyers, academics in particular. They are all from the West. No one representing the developed world was present. You could count the number of women giving papers on the fingers of one hand. It was an interesting experience, but my interest in it would be very different from the male attendees. I must for the sake of bridging the gap between the past three days activities, and today when the word "gender" is introduced to the equation, talk about the conceptual or methodological approach that might be brought to the study of International Law to make it both rigorous and sophisticated at once. There has been debate this week you will understand, that either you are rigorous or you are sophisticated, not both. And so I want to address myself to some of these matters as quickly as I can.

It has not been unusual this week to hear international lawyers say, "Oh but that is a question of politics." There has been an insinuation that international law exists in a vacuum. That these academics serve most of their lives in an oxygen tent. To say or even to suggest that international law is unsullied by politics is a characteristic that can only be declared by those whose interests are totally guided by those in power. Only those people have the luxury of suggesting they need not have a concern for politics. I would be extraordinarily distressed (for it would be a statement of disturbing alienation) to hear any women, or any male other than a white man from the developed world, speak in such a way.

As I've sat through papers and in the question and answer sessions that followed, I've heard that "law is a digester of social reality", that "we would not want to assimilate law to social reality, that law is part of social reality". All of this took place with the analogy of a soccer field you understand. About whether or not we were backs or forwards or offside or in the crowd. I took the liberty of asking a question that came from right outside the stadium which was, "What was actually meant by social reality?" And in a characteristic dismissal, which I recall as being typical of my treatment as a first year law student, I was advised

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by Professor Alain Pellet, who had used all these phrases, that I should ask a sociologist.[1] That was the full extent of the response.

Professor Douglas Johnston, who delivered a paper on multi-disciplinary approaches to international law, began with the liberal (small l) affirmation of declaring that we all had a certain predisposition towards our feelings about international law.[2] To have a previous position in a multi-disciplinary sense can mean a number of things. First of all it's a declaration of your politics. How you approach a subject. And so it is a declaration of your conceptual consciousness, about what you do recognise, and where your points of ignorance or unconsciousness appear. The pre-disposition which we were given at this point was the academic pedigree that he had been schooled in these English Universities and these Scottish ones and these US ones, and these US ones had been the ones that had most influenced him. I was curious that predisposition at this point did not declare gender, class, religion, politics, that a predisposition was at that point confined to a total academic pedigree. So from outside the soccer field again, I asked the simple question, "To what extent would the speaker like to expand on his pre-disposition?". I was told that this was not a relevant question, that if I was in the least bit interested, his grandfather did this, and his father did that, but this was fairly boring for everybody else and they weren't really interested. I was. You notice that he only named his patriarchal line. He told me straight away what his predisposition was. He didn't have a grandmother or a mother.

You notice, you hear, and one of the tricks of the questions of gender and international law is to hear what is in the silence, because international law and the law of human rights concerning gender is about silences. That is what we are listening for. And silences are overwhelmingly what I have heard in this week.

The introduction of a gender perspective to international law requires asking all the fundamental questions all over again; looking carefully at language, making connections, not making assumptions, and taking great care to see clearly what is said or written. It requires a view from outside the cocoon of patriarchy.

For example, his paper, "Reflections on the Role of Consent", Professor Don Greig writes: "If one does not recognise the exercise of *political judgment*, not only in the making of *rules,* but also in their *scope and application*, one is forced back to the position adopted by Bull... In his view 'when the law is violated, and a new situation is brought about by the triumph, not necessarily of *justice* but of *force*, *international law* accepts this new situation as legitimate, and concurs in the means whereby it has been brought about'. There is the obvious point that it

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1 Pellet A: Comments during the presentation of his paper at the Conference on the Role of Consent and The Development of International Law at the End of the Twentieth Century. Canberra 14-17 August 1990 (hereafter 'the Conference').

2 Johnston D, Comments at the introduction of his paper at the Conference.

is society itself, rather than the *law*, which sanctions the changes thus affected"[3] (my emphasis).

The view from the other side of the cocoon, the view from a gender perspective, finds this a strictly cerebral form of discussion. "Political judgement" is exercised by male governments everywhere. Whatever the rhetoric of "representative democratic government", the practice is yet to be found. *Men* make the rules and the law, and decide their scope and application. *Men* also determine the nature and scope of justice, whether from their overwhelming presence in academia, on the bench, in international tribunals, or on human rights committees. Force (which under no circumstances would I describe as a "triumph") is a universal tool of patriarchy, largely it appears because patriarchal society (generally described as "society" in the context of international law) does not have the imagination to seek other means for the resolution of disputes. International law, law itself, is defined by patriarchs, and it is patriarchal society which sanctions changes, however they occur.

The questions, from a gender perspective, are not then about the role of consent, but about its very nature, the presumption involved in assuming that the majority of the world's population, unasked, not referred to, invisible, taken for granted, have "consented" to anything. It does involve asking just what is the nature of "justice", of "political power", of "society".

It is not as if such questions are entirely beyond the parameters of consideration. In fact, Professor Greig reaches them in his paper, but he does not press hard enough in exploring how much further his questioning might go, how exploded the so-called foundations of international law might be if gender were introduced to the equation. At one point, in discussing the concept of an "international society" he asks: "Is there in reality 'a society' and, if there is, does it exist because of some implied (social) contract to which states have in some way consented"[4]. At another point, and in a clear reflection of feminist thought, he writes: "Law is seldom, if ever... ideologically neutral. Human rights norms. cannot claim to be an exception. They are as much a product of the political process as norms in other areas of international law".[5]

Yes, but why doesn't Greig push on to describe whose political process produces them. He is certainly familiar with Denis Lloyd's description of "norms" as "regulations setting forth how *men* are to behave"[6] (my emphasis), and in international law that's precisely what norms describe: how *men* are to behave. The Universal Declaration of Human Rights makes this absolutely clear in Article One: human beings "should act towards one another in a spirit of *brotherhood*".[7] More than half the people on the planet are physically incapable

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3 Greig D, "Reflections on the Role of Consent", page 157 above.

4 Ibid text at p126.

5 Ibid text at p142.

6 Lloyd, *Introduction to Jurisprudence* (1959).

7 A Universal Declaration of Human Rights.

of that particular spiritual relationship. It is not as if there are not other men who are prepared to tread just a little further than Greig. The Hon. Mr Justice Dumbutshena, Chief Justice of the Supreme Court in Zimbabwe, said recently: "It is time to question some of our male-defined legal principles, such as 'national', 'objective' and 'neutral'. We all need a balanced legal consciousness. Abstract legal concepts, such as causation, duty and fault arise from concrete recognizable human experiences. Man is socially constructed and can therefore alter social practices and policies that may have adversely affected a disempowered group such as women."[8]

The concepts at issue are not just a matter of "add women and stir". Nothing alters in the power dynamic of who chooses, who judges, who defines, who rules, who imposes, until the whole is exposed to questioning at the most basic of levels. It writes a new vision with which to read any sentence that might hitherto have appeared non-controversial. Since he refers to "norms", let us take, as a further example Vaughan Lowe's contention that "the principles of equity are as universalisable as those of justice. They do not give untrammelled discretion to override the law, but *represent* rather *a body of norms* capable of remedying lack of subtlety and flexibility which may affect systems of laws".[9] Well, perhaps in patriarchs they do, but women question most seriously this presumed universality of "equity" and "justice".

Before I leave examples of the problems of reading and writing with one hand clamped firmly over one eye, let me discourse on this a little more. I return to Greig's paper. In a paragraph contrasting Bull and Oakeshott's view of the nature of the state, or a society of states, Greig comments that Oakeshott's view of the State "can only be translated into an international setting where a group of States unify their activities in order to pursue common ends".[10] Greig then comments "It can hardly hold true for the entire community. For example, there is no external threat to the community as a whole".[11]

As a feminist, there is no way on earth I could say that. The community of states, the community of those who hold power in states, the community of those who hold power in multi-laterals, the community of those who hold power in all institutions which condition culture, are a threat to my community of women. And they are a threat to the community of the aged, and they are a threat to the community of children, and this is not even to acknowledge that acid rain, ozone layer depletion, global warming, or radioactive fallout are for example, threats to the entire international community. This seems to me to be a particularly narrow observation. Certainly in context the observation is made as a debating point, but the observation, that discussion of consent or human rights in a States context

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8 Hon Mr Justice E Dumbutshena, "Human Rights in the Twenty First Century", Report of the Ninth Commonwealth Law Conference, 604.

9 Lowe V, "The Role of Equity in International Law", page 73 above.

10 Greig D, Ibid text at p129.

11 Id.

omits entire communities who are not the least bit represented by any of this rhetoric, is avoided.

Throughout the papers presented during the past three days at this conference on The Role of Consent and the Development of International Law at the end of the Twentieth Century, we have had a great deal of concern about whether international law and human rights law is determined by custom, *jus cogens*, general principles, domestic law or international covenants that trickle down into international law. Just like "trickle down" theories in economics, the problem with dividing the cake horizontally is that the icing never hits the bottom layer. Precisely the same people, i.e. patriarchs, determine each one of the options. For the majority of the people on the planet, this is the point. Even if we want to look to practice, and look to reality in the possibility that that is where general principles about human rights come from, I am nervous about whose reality we are describing. In one discussion session, Professor Oscar Schachter pressed this approach, saying that he could be ecumenical about principles, and that he found them in the church or the Mosque or wherever else. His examples were all patriarchal institutions. You won't find my principles in any such institution. You might find my principles gathering water at the well, you might find my principles sitting in a circle around the water hole doing the laundry, you might even find my principles at the check-out counter in the supermarket, but you won't find my general principles about human rights in a patriarchal institution, as ecumenical as you want to be.

Let me conclude this introductory session with reference to an example of international law seen as successful and frequently discussed in this conference, and that is the outlawing of purse sein fishing nets. As I listened, I thought, "Well if you don't observe social reality, and if politics sullies our approaches to international law, and if we are at the same time congratulating ourselves about the latest convention on purse sein nets, for example, what is international law then to record?" The fact that Australia and New Zealand were about to go into national elections where "green" was certainly the most important political expedient, is totally obliterated from the reality that perhaps this is one of the reasons why we happened to achieve that convention with such speed. I expected that connection to be made. It wasn't. I did not expect the next connection to be made, because I am not familiar with the fact that international jurists spend a great deal of time shopping. If they did, they would have known, most certainly as the Japanese knew, that tuna fish cans were piling up in supermarkets in the US, in Canada, in Australia, in New Zealand. There was a major consumer boycott, to such an extent that supermarkets were now having to tell companies that they could no longer stock tuna. That's part of the social reality of international law, and it was woman, the forgotten, the invisible, exercising their rights to halt such an appalling practice. Will the annals of international law really (and solely) claim this Convention as a victory for diplomats and lawyers?

Part II

Over the past 40 years since 1949 at least eight conventions and declarations directly affecting the rights of woman have been adopted by member-states of the United Nations. These include the suppression of traffic in persons and exploitation of prostitution, equal remuneration for work of equal value, political rights of women, nationality of married women, protection of women and children in emergency and armed conflict, participation of women in promoting international peace and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women.

Supervision of these declarations and conventions, along with the International Covenant on Civil and Political Rights, and the International Covenant on Economic Social and Cultural Rights, is assigned to a group of persons nominated by their nation-states, voted upon by nation-states, who, it is said, then serve "in their personal capacities" examining reports submitted by nation-states. These groups seldom have any power to impose sanctions or censure a State Party in any manner.

The omission of women from consideration in the key international covenants is glaringly obvious when you have learned how to read them unfettered by blinkers. The extent of the misunderstanding of the mainstream was highlighted by a comment by Philip Alston during the presentation of his paper. He claimed that "some rights are quite clear because of the details of Conventions. For example, you can move very quickly into the detail of the ILO Conventions on the right to work". In fact, it seems to me that one of the most glaring tools of continual enslavement of more than half of the human species finds its focus in the inadequate international patriarchal concept of "work".

Let me explain with four examples. Consider Tendai, a young girl in the Lowveld in Zimbabwe. Her day starts at 4.00 am when, to fetch water, she carries a 30 litre tin to a borehole about 11 kilometres from her home. She walks bare foot and is home by 9.00 am. She eats a little and proceeds to fetch fire wood until midday. She cleans the utensils from the family's morning meal and sits preparing a lunch of sudsa for the family. After lunch and the cleaning of the dishes, she walks in the hot sun until early evening, fetching wild vegetables for supper before making the evening trip for water. Her day ends at 9.00 pm after she's prepared supper and put her younger brothers and sisters to sleep. Tendai is considered unproductive, unoccupied and economically inactive. According to the International Economic System, Tendai does not work and is not part of the labour force.

Kathy, a young middle class Australian housewife, spends her days preparing food, setting the table, serving meals, clearing food and dishes from the table, washing dishes, dressing her children, disciplining children, taking the children to day care and to school, disposing of garbage, dusting, gathering clothes for the washing, doing the laundry, going to the gas station and the supermarket, repairing household items, ironing, keeping an eye on, or playing with the children, making beds, paying bills, caring for pets and plants, putting away toys,

books and clothes, sewing or mending or knitting, talking with door to door sales people, answering the telephone, vacuuming, sweeping and washing floors, cutting the grass, weeding, clearing the bathroom and kitchen, putting her children to bed. Kathy has to face the fact that she too, fills her time in a totally unproductive manner. She is economically inactive. Economists record her as unoccupied and not working.

Ben is a highly trained member of the US military. When last spoken to he was regularly descending to an underground facility, where he waits with a colleague, for hours at a time for an order to fire a nuclear missile. So skilled and effective is Ben, that if his colleague were to attempt to subvert an order to fire, Ben would, if all else failed, be expected to kill him to ensure a successful missile launch. Ben is in paid work, he is economically active. His work has value, and contributes as part of the nuclear machine to the nation's growth, wealth and productivity. That's what the International Economic System says.

Mario is a pimp and a heroin addict in Rome. He regularly pays graft. While Mario's services and his consumption and production are illegal, they are, nonetheless, marketed. Money changes hands. Mario's activities are part of Italy's hidden economy. In a nation's bookkeeping not all transactions are accounted for, but at the end of any year, it's possible to measure the black market. So many nations, including Italy, regularly impute the minimal value for the hidden economy in their national accounts. So Mario's illegal services and production and consumption activities are recognised and recorded as work. That's what the International Economic System says.

When I consider the right to work, first of all, what I am interested in is the right for the majority of the human species to have the majority of what they do recorded as work. It is quite clear that "work" is any activity culminating in a service or product which one can buy or hire someone else to do, even if pay is not involved. The system which writes these rules, the United Nations System of National Accounts (UNSNA) is quite explicit in that definition, and so is the ILO, up to a particular point. *Housework* is specifically excluded from the definition of work, and then nowhere is housework defined, so that housework becomes the generic term for everything that women do in an unpaid capacity. This is not because there is not flexibility in the international system defining work, in fact the boundary of production is able to be shifted with ease by statisticians and policy makers in any country.

The boundary of production is most usually shifted when a country which is a least developed country has found that some over-eager statistician wishes to start counting the black market, or some of the rural work that women do, and if they're not careful, their GDP will rise to such an extent that they will no longer be a least developed country, and remain entitled to all kinds of concessionary loans. On the other hand, if you are somewhere like Thailand, and you are seeking to have even more loans from the World Bank or the IMF, the boundary of production will be neatly shifted to include the entirety of prostitution, pornography, female sexual slavery, trafficking in drugs, trafficking in children

and anything else that demonstrates that you have an income generating capacity sufficient to repay the loan. The boundary of production also works in places like Kenya on basis of tribes, so that in one tribal area, when men carry water, even though it is unpaid, the carriage of water is considered a productive and economic activity. This is because if the men weren't carrying water they would otherwise be engaged in an economic activity. In another tribal area, when women carry water, it is considered housework, and so it does not count as work. Such is the flexibility of the boundary of production in the right to work. What most women on the planet would like is not simply recognition of the fact that they do the most work on the planet, *and that it is work*, but a lot of them would like the right not to do so much of it.

Just how do UN Conventions deal with this situation. Can we find a rationale? Keeping the daily working activities of Tendai and Kathy clearly in our minds let us look at the following from the Universal Declaration of Human Rights.

Article 23

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

2. Everyone, without any discrimination, has a right to equal pay for equal work.

3 Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

4. Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

"Everyone", that is, except women doing "housework". These rights for "everyone" are repeated in the International Covenant on Economic, Social and Cultural Rights.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;
(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy work conditions;
(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of senority and competence;
(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

When you think about it then, this work, undefined housework, falls very quickly into another article of international covenants. But because it is called housework, we dare not call it slavery. The definition of slavery you will remember, is the right to appropriate the unpaid labour of others. Housework is the appropriation of the unpaid labour of others. It may occur in the exchange of bride wealth, or in the exchange of dowry. It occurs, this slavery, in the practice of sati, cultural law, you will recall, the expectation that a widow will heave herself on the funeral pyre, long after they told us the burning of witches had finished. It occurs in rural areas of India, of Nepal, of the Philippines, of Bangladesh, of Thailand, of too many places in the sale of the young girl, usually of a child, to the city, supposedly as a maid. The sale of this young woman is into yet another form of slavery, as a prostitute, as a maid who is frequently raped, as a person to be used in pornographic videos. The slavery is complete if any of you ever have the stomach to see it, and I've only had the stomach for it once, to spend a night in the brothels of Bangkok, where you will see twelve year old girls chained on catwalks, totally naked, identified only by numbers, and for sale to men, mostly European, and Asian and Thai, well dressed, carrying Gucci bags. In 1984 when I was in Bangkok and one brothel burned down, they found the skeletons of six girls aged between 12 and 16 chained to the bed in the ashes.

We know very well of the sale of children overseas, whether it's from Romania or South Korea. We know it in Romania because of political upheaval, we know it from South Korea because they had to stop the trade during the Olympic Games. It wouldn't have looked good if the press who were going to get into South Korea in such numbers had been able to uncover it.

In case you're feeling complacent that somehow or other this enslavement is something that happens in the (so called) developing world, consider the rights of women in the division of matrimonial property, consider the rights of women and the awards of maintenance in the West. In maintenance, Courts award for the purchase of clothing or the purchase of food and then somehow or other miraculously expect clothing to be washed, ironed, darned or food to be processed and to arrive on the table. Apparently no work whatsoever takes place in the purchase, processing, the furnishing and the continued maintenance and repair of items for which maintenance is awarded. The Courts enshrine the right to appropriate the unpaid labour of others.

What do these man-made human rights instruments have to say about all of this? Article 4 of the Universal Declaration of Human Rights says;

Article 4

> No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

This sentence is repeated as the first one under Article 8 of the International Covenant on Civil and Political Rights, and is followed by "2. No one shall be held in servitude" and "3(a) No one shall be required to perform forced or compulsory labour". There is a caveat (which I'm sure some patriarchs would use to excuse their participation in enslavement) in Article 8.3 (c)(i) states that the term "forced or compulsory labour" shall not include "any work or service which forms part of normal civil obligations". Perhaps they would attempt to argue that "housework" is a civil obligation, despite their concern at another moment to highlight the public-private sphere and confine women and "housework" to the private arena.

Just to ensure that the home is the castle where "he" remains King, articles on enslavement should be read in conjunction with Article 17(1):

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

(which I have heard used to defend marital rape) and Article 23(1):

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

This last assertion in Article 23 is highly debatable, particularly while the word "family" remains undefined. But non-definition in international law is clarified by the use of the "norm" that is, the insertion of the word "patriarchal" before the word "family". Numerically, based on global percentages, the patriarchal family is no more the "norm" than it is "natural" or "fundamental". Undoubtedly it is "fundamental" to patriarchal power, but those of us who care about female sexual slavery and the abuse of children are familiar with the fact that more than two-thirds of such violent exploitation of women and children occurs within this so-called "natural" patriarchal bastion.

It is inside the home that most of the "Work" of the world occurs, defined by the UNSNA as "leisure". It is inside the home that most of the world's forced labour occurs, despite the general acceptance "that freedom from forced labour (in other words, prohibitions on slavery) is building on customary international law".[12] It is overwhelmingly men from this "natural" and "fundamental" unit who are the "clients" of women held in female sexual slavery. It is not an accident, as Andrew Brynes reports, that "Various anti-slavery conventions (including those which cover trafficking and forced prostitution) have a weak, almost non-existent supervisory and enforcement mechanism".[13]

In International Forums, the hope for the majority of the human species that there might be any right of appeal in our demand for rights has a very hollow ring. Multi-lateral institutions are appointed by the same people who give us nation States. In some countries they literally are the uncles and brothers of Presidents and Prime Ministers, in others they're just the people who paid the most to the last election campaign. The supposed place for us is CEDAW, a committee where only nation States are allowed to report on the situation of their women. We cannot take a class action to the International Court of Justice. Class actions are not available in an approach to the Human Rights Committee. The ILO Conventions operate on a tripartite system of employers, workers and nation states. The attendees are always overwhelmingly male. Those who do the majority of the work the majority of the time on the planet are unwelcome, they are not "workers". They might have some hope in the fact that States are privileged in the system, ratification of Conventions is voluntary and can be agreed by States alone. But as yet, the representative democratic state is a

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12 Adelman S, "International Labour Standards and the Third World: The Need for a New Theoretical Approach", Report of the Ninth Commonwealth Law Conference, 568.

13 Brynes A, "Women, Feminism and International Human Rights" in this volume, p219 note 49.

dream. Here again we reach for the descriptive "norm", for this is the patriarchal state.

In this field of international human rights, we are going to be forced back to the various changes that we can attempt to make in domestic law. Most commissions of human rights in the Western world, you will notice, have recommendatory powers but seldom the power to order massive damages, and very often that's the only language that men in power understand. They have discretionary powers of course to recommend, occasionally, but that doesn't take us terribly far. Perhaps the most recent positive piece of information that I can leave you with is the marginal success that has been achieved recently in the Supreme Court of Canada, and this was a challenge that relates to the charter of rights and freedoms, under section 15, which says that "everyone is equal before and under the law and has equal protection and benefit of the law". In *Andrews* v *The Law Society of British Columbia*[14] the Women's Legal Education and Action Fund, (LEAF) contested this section. You will not be surprised to know that a great deal of the opinion for them was written by Kitty McKinnon.

Ever since Aristotle said equality is treating likes alike and unlikes unlike, equality law has been a law of sameness and difference. If you're the same, you're entitled to be treated differently. If you are different you could be treated differently, and equality as a principle does not really apply to you. Equal treatment for the different consists in being treated better, that is where you get some compensation for your unfortunate condition. The point is, you are not equal.

This approach has meant that one must first be equal socially before one can be equal legally. Being treated as a second class citizen from birth makes it impossible for most socially disadvantaged people to be relevantly the same as the socially advantaged, or social inequality would be toothless and extinct. So this approach does not and cannot produce a social equality, yet it has been fundamentally unchallenged for two thousand years. In *Andrews* v *The Law Society of British Columbia*, LEAF challenged this theory of equality with its own. LEAF argued that social inequality is not fundamentally about sameness, or difference. After all to take the example of gender, men do not have to be the same as anyone to be entitled to their social position. And men are just as different from women as women are from men without making them just as disadvantaged. Obviously, something other than sameness and difference is at work here. While some argued that women submerge any differences from men and argue sameness, others have sought to value women's distinctness from men and argued differences. LEAF saw that neither approach made sense of women's experience. Women suffer from social subordination, systematic abuse and deprivation of social power, resources and respect, because we are women. Due to social inequality, women are not in the same situation as men, nor are these differences we wish to affirm. LEAF thus argued that equality for the purposes of the new equality provision in the charter of rights, under Section 15 should be

14 [1989] 1 SCR 143.

understood as a matter of socially created systematic historical and cumulative advantage and disadvantage. The Supreme Court of Canada accepted the essentials of LEAF's equality theory, over-ruling Aristotle. and opening at that point unprecedented possibilities for equality under the law of disadvantaged groups. Those of us who are watching are now holding our breath to see what the government will do with this.

To those of you who are truly concerned about principles for human rights law for the 21st century. may I suggest that *Andrews* v *The Law Society of British Columbia* should now be your starting point.