If women were humans, would we be a cash crop shipped from Thailand in containers into New York’s brothels? Would we be sexual and reproductive slaves? Would we be bred, worked without pay our whole lives, burned when our dowry money wasn’t enough or when men tired of us, starved as widows when our husbands died (if we survived his funeral pyre), sold for sex because we are not valued for anything else? Would we be sold into marriage to priests to atone for our family’s sins or to improve our family’s earthly prospects? Would we, when allowed to work for pay, be made to work at the most menial jobs and exploited at barely starvation level? Would our genitals be sliced out to “cleanse” us (our body parts are dirt?), to control us, to mark us and define our cultures? Would we be kept from learning to read and write?

If women were human, would we have so little voice in public deliberations and in government in the countries where we live? Would we be hidden behind veils and imprisoned in houses and stoned and shot for refusing? Would we be beaten nearly to death, and to death, by men with whom we are close? Would we be sexually molested in our families? Would we be raped in genocide to terrorize and eject and destroy our ethnic communities, and raped again in that undeclared war that goes on every day in every country in the world in what is called peacetime? If women were human, would our violation be enjoyed by our violators? And, if we were human, when these things happened, would virtually nothing be done about it? (Catharine MacKinnon, Are Women Human?, 41)

Introduction

When the Philosophy Department faculty were discussing the make up of this year’s Ideas Matter Lecture series celebrating the 60th Anniversary of the United Nations Declaration of Human Rights, I volunteered to make some remarks tonight regarding whether women could rely on the rights articulated therein for protection from the violations women suffer here and abroad and have suffered throughout recorded history. I am familiar with theories of feminism having studied feminist philosophies for some 25 years and teaching it for the past 20 years. What I have not known much about is the status of the protections of women in the law
internationally. I am relatively familiar with the legal standing of women in the United States, for a lay person that is, thanks to a feminist jurisprudence reading group I participated in for a number of years in the 80s. This group was made up of two law professors, an administrative judge, a practicing attorney and a philosopher, me. We brought all of our critical analytic skills to a variety of books, not the least of which was Catharine MacKinnon’s, *Towards a Feminist Theory of the State*. In spite of the depressing conclusions of her arguments, the women of our reading group could not find where she had gone wrong. We would have preferred the conclusions be other than they were but alas our joint analytic skills led us to conclude her work is of the highest quality.

Professor MacKinnon has taught law at the University of Michigan School of Law since 1989, with highly regarded visits here and abroad, and currently serves as the Roscoe Pound Visiting Professor of Law at Harvard Law School. It was the conflict in Bosnia-Herzegovina and Croatia that focused her attention on the plights of women internationally. MacKinnon has represented Bosnian and Croatian women against Serbs accused of genocide since 1992. She was co-counsel, in the lawsuit *Kadic v. Karadzic* and won a jury verdict of $745 million in New York City on August 10, 2000. The lawsuit also established forced prostitution and forced impregnation as legally actionable acts of genocide. Professor MacKinnon has also worked to change laws, or their interpretation and application in Mexico, Japan, Israel, and India. In her view, traditional approaches to human rights gloss over abuses specific to women (e.g., battering and sexual violence), both in wartime and peacetime.

Why might this be? MacKinnon characterizes the state as one where the power of men is organized among men and over women. If the state is a male institution, politically and
socially, “is the international system a counterbalance? Or is it metamale?” (4). By “metamale,” I believe MacKinnon means what I have called elsewhere the “master culture” of patriarchy which transcends other cultural differences. She goes on to ask: if the way the state sees and treats women is the way men in society see and treat women, does international law or, even, The Declaration of Human Rights, challenge this or reproduce it at a higher level? Men violently dominating other men for control of states is called war; men violently dominating women within states is relegated to peace” (5). ¹ This is as much to say that it is usual and ordinary.

Professor MacKinnon’s most recent book is titled, Are Women Human? and other international dialogues, published in 2006. It is this book and my high regard for her keen analysis that has brought me the comments I offer tonight. It has been a challenge to think globally about the shared condition of women so I hope I am able to pass along some worthwhile thoughts on this matter.

Caveats and Definition

For the purposes of my comments tonight, three caveats and a definition are important. First, “Men” and “women” are not universal terms for either MacKinnon or me. When I use the terms “women” and “men,” I should be understood to mean most rather than all. We all know there are exceptions, not only in terms of individuals in some of the cases mentioned, but also between communities, cultures and countries. However, it is true that all of the acts of violence I will mention and those included by MacKinnon in the opening quotation happen to some women, perhaps most women, on the face of this earth with regularity.
A second caveat is that it is quite difficult to raise issues like the one I want to discuss tonight in such highly privileged settings, that is, in an environment where violence against women does not overtly rise to the level listed by MacKinnon. One consequence of this is the quite strong temptation to keep this knowledge at the edge of our awareness. We know it’s there but we can choose not to look at it fully in the face. There may be all kinds of reasons for the suppression of this knowledge, the moving it to the periphery and for me the most present reason is the depth of the sorrow and compassion I feel for my sisters here and worldwide.

Another of the barriers to understanding that arise when talking to privileged women and men about the abuses suffered by the world’s women is that often accompanying ignorance of the facts of the matter is a kind overconfidence that leads to victim blaming. Some people think that those women should just help themselves and refuse to be victims, with no awareness or comprehension of what difference culture, class, race et al make to what is possible for situated women. Often privileged women project their own consciousness and condition on the world’s women and blame them for not getting out of their situations or for doing the kinds of things survival forces upon them.²

A third caveat is important especially since I am discussing what appears as an international condition of women which, although I would argue transcends local cultures, remains powerfully impacted by time and the various cultural milieu. Just as the Human Rights themselves have been argued to instantiate “western” values, I want to acknowledge that culture must necessarily play a role in our discussion.

Finally, when I mention “violence against women” in the context of this talk tonight, I have adopted Professor MacKinnon’s articulation: “By violence against women I mean
aggression and exploitation because we are women, systematically and systemically” (29). By systemic she means socially patterned and by systematically, she means intentionally patterned, both in collaboration with and in the context of poverty, imperialism, colonialism and racism. The aggression is physical, verbal and emotional, unconscious and reckless as well as intentional, threatened and delivered. When this violence is noticed, it is endemic, not exceptional, as well as epidemic and pervasive (29). Such violence against women is overwhelmingly, always underestimated and overwhelmingly, men do it to women. There are culturally specific forms but it is also universal. It is not usually organized into discreet campaigns like the Holocaust or Middle Passage (30). For example, official estimates in the United States are “that one-quarter to one-third of all women are battered in their homes, many seriously. It is possible that the U.S. rates are not the highest in the world – a truly horrible thought” (30). Human rights have almost completely ignored violence against women at home (32). This is a matter that affects us all.

Non-Inclusive Language and Its Effects

Before turning to the UN Declaration of Human Rights, I want to make some general comments about the use of exclusionary language in political documents and the consequences of this fact for those governed by these documents. Language is powerful in shaping the inclusion or exclusion of kinds of people. The American Philosophical Association has required gender neutral language since 1986. It is difficult if not impossible to have scholarly research published these days without taking into account that humans, persons, are not encompassed by the use of “man,” “men,” “mankind” or any of the many other variations,
regardless of the intentions of the author(s). This is for good reasons.³

The Declaration of Independence and Constitution of the United States, including the Bill of Rights, inspirations for the UN Declaration of Human Rights, use gendered language. As a child and young woman, I grew up thinking, mistakenly as it turns out, that I was included in claims such as “All men are created equal.” However, “man” did not then and does not now stand for everyone and was not intended to do so. “Man” didn’t even stand for all men at that time. And the far reaching consequences of this fact are with us today.

One might object that surely today, women are included in the full protections afforded by the United States Constitution but this would be untrue. In the US, gender, unlike race, is not expressly included as a class protected from discrimination/unequal treatment in the Constitution. This is what the Equal Rights Amendment was intended to fix. Since the 1970's, discrimination against women has been closely scrutinized in Constitutional Law cases under a test approaching but still not as rigorous as strict scrutiny, the test applied to discrimination on the basis of race. However, the level of scrutiny for sex discrimination, unlike race discrimination, is dependent on the judges who decide relevant cases and, as University of Oregon Law School Professor Caroline Forell points out, this is a tenuous sort of scrutiny. Because there is no protection for women’s rights in the Constitution itself, it is entirely possible for the gains made by women to be reversed, whether likely or not.⁴

Resistance that arises when one raises issues such as the failure to include women in legal protections is predictable, based on theory. Suzanne Pharr has noted that one of several hallmarks of oppression is what she calls “lack of prior claim. At its simplest, this means that if you weren’t there when the original document (The Constitution, for instance) was written or
when the organization was first created, then you have no right to inclusion. ...(W)hen those who were initially excluded begin asking for or demanding inclusion, they are seen as disruptive people, as trouble-makers....” (Pharr 58). Alas, this is the context in which claims about women’s treatment in law and in practice generally receive a hearing.

**The United Nations Declaration of Human Rights**

For the foregoing reasons, the language used in the Declaration of Human Rights is worthy of a close look. Although at first glance, it may appear that the Declaration is written in inclusive language, it is not. Of the 30 Articles, references to “man,” “men,” “his” *et al* are found in 12 articles as well as in the Preamble. “Women” are mention in one Article and the Preamble, while “motherhood” is mentioned in an additional Article. The remaining articles speak in terms of “everyone” and “no one.” Given the research, one can say that women are effectually “invisible” in the Declaration of Human Rights.

On this subject, the American Philosophical Association guidelines says, “The generic use of 'he' and 'man' are part of the more general problem of women's "invisibility" in philosophic discourse. Some empirical data on sexist language indicate that if women are not *specifically included* (e.g., through using females in examples, or the term "he or she"), even genuinely gender-neutral prose (e.g., using plural pronouns) tends to be heard as referring to males only” (APA Guidelines). The invisibility of women in a document of human rights is notable, given our question tonight, whether women are human.

Catharine MacKinnon notes, for example, the very first Article of the Declaration urges us to “act towards one another in a spirit of brotherhood,” and asks whether men would see
themselves as included if, instead, Article 1 encouraged us to act towards one another in “a spirit of sisterhood”? (Emphasis added, 42).

Articles 23 and 25 are more overtly sexist than most of the others in that they refer to the rights for “everyone” to a life of human dignity, health and well-being for “himself and his family.” How are we to understand these references to include women? The assumption of male heads of household is counterfactual given that many women are the sole managers of families all over the world and were at the time this document was written. Do women have a right to human dignity, health and well-being for herself and her family?

However, what if we imagine that all the articles outlining human rights in the UN Declaration were in fact written in gender inclusive or gender neutral language. Would this alter the gendered nature of the rights in the UN Declaration? I think it is clear that this is also sadly not the case. As MacKinnon says, “The omissions in the Universal Declaration are not merely semantic.” Quoting Richard Rorty, she goes on, “Being a woman is ‘not yet a name for a way of being human’” (43).

For example, Article 23 advocates for “just pay to everyone who works.” However, no where are women paid for the work we do for our families. Is this because, MacKinnon asks, that we are not included in “everyone who works” or is it because that what we do is not “work”? (42). Please note that even though Article 23 is written in a gender neutral manner, it does not include the free labor women do, including but not limited to birthing every person who exists as well as the work involved in nurturing a family in all the ways that matter, i.e., physically, emotionally, spiritually.
As I considered the “ever present, everywhere” nature of this fact, an idea occurred to me. I hope you will bear with me for a moment. Whenever wages for housework is proposed, even hypothetically, the most common counterclaim is that, for example under capitalism, to pay women for housework in addition to paying those working outside the home, often including women as well, would cause an economic collapse. I wonder why not then pay women for our work in the home, as necessary if not more so to viable economic systems, and leave those who work outside the home to work for free? It would keep the same amount of monies in the coffers of a family and in circulation but just who is valued for what kind of work would shift dramatically. Why not? Those who work outside the home, predominantly men worldwide, would likely refuse. Then why is it expected that women work for free? One might object to this analysis by saying that Article 23, urging equal work for equal pay, really only refers to work done outside the home. If so, then this, in and of itself, adds support to the claim that the Declaration of Human Rights is gendered in a way that omits significant concerns of women.

Granting that this kind of approach may be too literal for some, there is another way to raise the question of women’s humanness and I rely here on Professor MacKinnon’s knowledge of the law. Legally, one is less than human when the wrongs she or he suffers do not violate recognized human rights. And, as she points out, there is a circular epistemic problem here. The ability to see what a subordinated group of people is deprived of, subjected to or delegitimized by, first requires that these people are seen as real to those in positions of institutional power. This means they must first be seen as human. However, when nothing is
done in response to violations against a group of people, the status of those so affected is seen as not fully human (3).

Human rights can be seen as responses to atrocities, however, before such atrocities are recognized to be atrocities another paradoxical problems arises. Quite often, the acts are seen as either too extraordinary to be believable or too ordinary to be atrocious. “If the events are socially considered unusual, the fact that they happened is denied in specific instances; if they are regarded as usual, the fact that they are violating is denied: if it’s happening, it’s not so bad, and if it’s really bad, it isn’t happening” (3). Remember here that Professor MacKinnon was lead to her work in international law through the request of Bosnian and Croatian women in late 1991 and, as may be more widely known, rape as a weapon of war was fully developed and employed in that conflict. One can see the aforementioned paradox at work in that horrific context (vii).

Are Women Human?

Legally, according to the good law professor, one is less than human when one’s violations do not violate recognized human rights. Rape in war and peace, she argues, are so familiar that they are beneath notice because so familiar, a case of “if it’s happening, it’s not so bad.” On the other hand, Nazi industrial murder was so horrible as to be considered beyond belief for a good measure of time. In both kinds of cases, those harmed are systematically and effectively rendered to be not fully human, legally and socially. Where this denial is overcome and rights against both extremes are recognized, the violations are called inhuman and the victims then become human. MacKinnon says, “Women are in the midst of this process” (3).
We have a model for this process with which we are familiar and it is related to slavery. Prior to the Emancipation Proclamation, the Civil War and the Civil War Amendments to the Constitution of the United States, forced African immigrants, who we called “slaves,” were, in fact, in law and practice, objects, chattel, property, in effect, bred, auctioned and sold as farm livestock. Clearly, the long practice of slavery falls under the category of violations which were not seen as violating human rights, because slaves were not deemed fully human. It is also a case of something so pervasive as to be seen as usual, or too ordinary to be seen as atrocious. It was the enactment, then, of the Thirteenth Amendment in 1865, banning slavery, that recognized the forced African immigrants as human, and slavery then as inhumane. It is worth noting that the final one of the requisite 38 states ratified the 13th Amendment in 1995 and that is the State of Mississippi. The process of becoming human in spite of race has been long and is ongoing. The same is true for women.

We have yet to acknowledge in our own country the full humanness of women in a like manner, having failed to ratify the Equal Rights Amendment to the Constitution. Furthermore, considering the catalogue of violence against and violation of women with which I began, it becomes clear that women are not yet deemed fully human for one very clear reason and that is this: the wrongs suffered specifically by women qua women are neither explicitly prohibited in law nor protected from in the Declaration of Human Rights. Of course, men are victims of violence worldwide, suffer genocide and other horrific deprivations. However, men do not suffer wrongs locally or universally because they are men. This is the determining distinction. Many or most of the violations of women are simply because we are women. This includes rape, honor killings by her father, brother or some other male relative often because a woman
was a rape victim, being stoned to death, forced marriages of girls to men of all ages contrary to Article 16, which states that “(m)arriage shall be entered into only with the free and full consent of the intending spouses.” The practices of female genital mutilation, acid thrown in women’s faces, not to mention brutal beatings for any kind of perceived wrong whatsoever are sorrowfully not uncommon.

Even if there are laws criminalizing these kinds of wrongs done to women qua women, they are reported, pursued, prosecuted and punished in small percentage of their occurrence. This is true here where we live. For the calendar year 2008, there were 72 cases of sexual assault (Rape, Sodomy, Unlawful Sexual Penetration, and Sexual Abuse) submitted to the Benton County District Attorney for prosecution. What percentage of sexual assaults against women does it seem this 72 cases represent. I don’t know. However I do know that there are far, far more sexual assaults than those reported or prosecuted. Why this is the case is very complex. In part women do not report sexual assaults because the process is so brutal, even if they believe and know they have been raped, even given the availability of sexual assault support, on campus and in the community. I have taught classes where every woman in the class has been sexually assaulted and/or raped. I mention this to support the claim that even when there are laws criminalizing violence against women, there is often a failure to report, pursue, prosecute and punish wrongs done to women qua women.

Special violence to women is rarely included anywhere and is rarely prosecuted. For example, the UN Declaration of Human Rights prohibits slavery in all its forms. Article 4 states: “No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.” However, women are held and traded as slaves today in much of the world
and they are enslaved qua women, for purposes of sex, both procreative and erotically, in addition for menial labor. The increasing worldwide trafficking of women and girls attests to this fact. In such kinds of prostitution, poor women are brought to more wealthy men and if this is not sufficient, sex tourism involves wealthy men who travel to poor women for these purposes.

Article 5 says that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. However, women are battered, tortured and abused in all cultures and all socioeconomic classes, including right here. The Center Against Rape and Domestic Violence in our community has multiple safe houses and yet cannot meet the need of women for protection. That we continue to consider a man’s home as his castle permits abuses to women and children.

Article 12 protects his privacy, family and home from arbitrary interference. In our nation, since the 1970s with the entrance of significant numbers of women to law schools, the laws protecting a privacy that hides these criminal acts have been challenged and some have changed. However, the assumed protection of privacy in many cultures continues to hide the torture and abuse of women and children. As Professor MacKinnon says, there is a process of which we are in the midst.

Are women human yet? Professor MacKinnon argues that even when wrongs are recognized as such, if nothing is done to pursue and prosecute the perpetrators, then the status of those so affected are seen as not fully human (3). In spite of the foregoing arguments, and even if we grant for the sake of argument that women are, in fact, protected against the kinds of violence and violations we have been discussing, the fact is that little is done to pursue and
prosecute the perpetrators of such harms to women. There are many explanations for this sorry state of affairs. As women are not the law makers, in some cases the “crime” is defined in such a way as to make prosecution quite difficult and thus unlikely. In Oregon, for example, the crime of rape requires that the woman has vigorously resisted. The primary evidence for vigorous resistance is injury to the woman. Leaving aside the astonishing fact that this is the only crime that the victim must resist in order for it to be a criminal act, that the victim must be injured in order for evidence of a crime to exist means that a small percentage of rapes are prosecuted. Can anyone doubt that this is not the kind of rape law women would write?

As MacKinnon notes, the de jure/de facto distinction can be seen in its full force in cases like this. De jure, many countries recognize sex equality in legal systems but de facto, there is pervasive social inequality of sexes in reality (10). De facto, rape is widely practiced and permitted while, de jure, it is condemned and made criminal, and not acknowledged as a practice of sex inequality. Sex equality is accepted as a principle, but women’s second-class status continues to be concealed and maintained by pervasive practices (10). Thus, even when laws are designed to protect women as victims of battery, rape, sexual slavery, et al, the laws would have to include consequences that could not be avoided for either failure to pursue or failure to prosecute and appropriately sentence perpetrators, that is, they would have to be responsive to the global lived reality of the violence against women.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

As a result of this recognition and the ongoing horrifying level of crimes against women as women, the Convention on the Elimination of All Forms of Discrimination Against Women
(CEDAW) was enacted December 18, 1979 by the United Nations General Assembly. It is arguable that this is an acknowledgement of the failure of the Declaration of Human Rights in regards to women’s specific condition in the world. CEDAW was the culmination of more than 30 years of work by the UN Commission on the Status of Women, established in 1946 to monitor the situation of women and to promote women’s rights. The Convention, as it is called, articulates gender specific guarantees of human rights to women as a group. It has been in force since 1981, after the 20th country ratified it. As striking as it is shameful, the United States is the only developed country that has not ratified this Convention. In this regard, our country is in the company of only Sudan, Nauru, Palau, Tonga and Qatar.

In its preamble, CEDAW “explicitly acknowledges that extensive discrimination against women continues to exist” and that such discrimination “violates the principles of equality of rights and respect for human dignity.” In addition to entailing an international bill of rights for women, it also contains an agenda for action by countries to guarantee the enjoyment of those rights. This agenda involves a measure of accountability necessary to move the de jure rights to a de facto status. CEDAW defines discrimination against women in Article I: “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment of exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field” (CEDAW article 1).

The Convention requires States to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of
equality with men” (CEDAW article 3). This requirement, to act to bring into being the equal
rights of women obliges the states to work toward modification of “social and cultural patterns
of individual conduct in order to eliminate ‘prejudices and customary and all other practices
which are based on the idea of the inferiority or the superiority of either of the sexes or an
stereotyped roles for men and women’ (article 5)” (CEDAW Introduction).

At least every four years, the parties who have ratified the Convention, are obligated to submit a national report to the Committee on the Elimination of Discrimination Against Women. This committee is mandated in Articles 17 through 30 of CEDAW and provides arguably the accountability needed to begin to break through the forces maintaining discrimination against women in all its forms. The reports are expected to give the measures each reporting state has adopted to give effect to the provisions of the Convention.

Most recently, in its Progress of the World’s Women 2008/2009, UNIFEM notes that the single most important guarantee of women’s rights is the degree to which accountability is built into women’s rights and gender equality (109). However, “despite generous formal guarantees of equality, progress for many women, particularly the poorest and most marginal, has been far too slow.” This publication argues that the “achievement of gender equality depends upon building the accountability of power holders to women so that power holders are answerable for meeting commitments to women’s rights and gender equality” (109).

There has been some progress including notable improvement in national responses to women’s needs in some areas such as education. This shows, the report says, that where there is accountability, progress is possible. The goal, then, is to strengthen accountability which is both a technical and political project which includes seeing that mandates are translated into
practice and “that incentives are created for changes in the ‘deep culture’ of institutions” (Progress 110). And example of the changes needed in the deep culture of institutions involves the specific findings regarding violence against women which notes that “(j)udicial accountability cannot work for women as long as many forms of violence against women are not criminalized and as long as law enforcement practice is not responsive to women’s protection needs” (Progress 113).

Appendix 2 to the Progress report includes a list of “Selected Landmark Resolutions on Gender Equality.” They begin in 1921, with a recommendation by the International Labour Organisation (ILO) on the Night Work of Women in Agriculture, and proceed through 2005’s UN General Assembly’s Resolution on the Elimination of All Forms of Violence Against Women, including some specific crimes. In this selected list are three pertaining to the traffic in persons and exploitation of prostitution, the first in 1949 by the General Assembly. There are also six addressing violence against women, beginning in 1993. (There is a copy of this Appendix available to take with you.)

My response to this list is quite similar to the response I feel when I read Christine de Pizan’s argument against the claim that women want to be raped, written between 1399 and 1429. How can it be that so little has changed for women in the face of direct attention paid to our universal shared condition? As Professor MacKinnon asks, “When will women be human? When?” (43).

Closing
Finally, a closing note: tomorrow is the first observance of World Day of Social Justice proclaimed by the United Nations as part of its 62nd session, November 2007. It will occur regularly after this on February 20th. The proclamation expresses hope that a World Day of Justice will contribute to the further consolidation of the efforts of the international community in poverty eradication, promotion of the full employment and decent work, gender equity and access to social well being and justice for all (UNIFEM).

1 MacKinnon goes on to note, however, that contemporary conflicts among men increasingly are occurring on the basis of group membership (race, sexual orientation, socioeconomic class) and this more closely resembles the treatment of women by men rather than classic armed conflict (5).

2 Sandeshi, a thirty-two-year-old Jat woman, described her painful experience with a forced abortion for sex selection purposes: “It is true that I could not say no to my family members. My husband, his father, his mother, and his brothers and their wives, they were all after me. My parents did not know about it and I think they too would have supported my husband. I could not talk to my parents. I guess I felt that I did not have a choice. I remember the night before the abortion. I was lying in my room; I did not feel well and I didn't want to talk to anyone. I cried all day long and ask for forgiveness from God (Bhagwan). That night was my daughter’s last night. I fell asleep without eating. My daughter came to me in my dreams. I cried and asked for her forgiveness, and she forgave me. She said that I should not blame myself and that it is not my fault. I told her that I was helpless and I am unable to save her. It is very difficult for a mother to say that to her daughter. We promised each other that we would be together again as mother and daughter in our next lives. Yes, we promised and I intend to fulfill that promise. This year, my daughter would have been ten years old.” From Sunil Khanna, Fetal/Fatal Knowledge: New Reproductive Technologies and Family-Building Strategies in India, Belmont, CA: Cengage/Wadsworth Publishing Company. 2009


3 The Generic Use of 'Man' and 'He' The generic use of 'man' and 'he' (and 'his', 'him', 'himself') is commonly considered gender-neutral. The case against the generic use of these terms does not rest on rare instances in which they refer ambiguously to 'male' or 'human being'. Rather, every occurrence of their generic use is problematic.

First, Janice Moulton persuasively argues, in "The Myth of the Neutral 'Man'" (in Vetterling-Braggin, 1981, pp. 100-115; revised from Vetterling-Braggin, et al, 1977, pp. 124-37), that 'he' and 'man' used generically are really not gender-neutral terms at all. ('Person' and 'human' are genuinely gender-neutral.) As evidence, Moulton offers many examples of statements in which 'man' and 'he' unambiguously refer to all humanity, rather than to males alone, yet are false, funny, or insulting. For example, "Some men are female" is irredeemably odd, while "Some human beings are female" is fine. Similarly, "Each applicant is to list the name of his husband or wife" is odd; and even using "his spouse" disquiets more than using "his or her spouse."

Second, empirical evidence supports Moulton's claim that regardless of the author's intention the generic 'man' is not interpreted gender neutrally. Casey Miller and Kate Swift (1976) cite a study in which college students chose pictures to illustrate chapters of a sociology textbook. Those with chapters entitled "Society," "Industrial Life," and "Political Behavior" tended to select pictures of both females and males. However, when the same
chapters were named "Social Man," "Industrial Man," and "Political Man," students of both sexes tended to select pictures of males only. With some chapters the differences [between the two groups] reached magnitudes of 30 to 40 percent. The authors concluded, "This is rather convincing evidence that when you use the word man generically, people do tend to think male, and tend not to think female" (Miller and Swift, 1976, p. 21). This study also finds that the generic 'man' leaves out more than women: "As the image of capitalist, playboy, and hard hat are called forth by the word 'man', so is the other side of the coin called forth by 'behavior' or 'life'--women, children, minorities, dissent and protest" (Miller and Swift, 1976, p. 23).

Third, using the generic 'he' and 'man' is problematic because it often leads us to omit the distinctive elements of female experience and behavior. For example, a sentence beginning, "If a student is conscientious, he is probably a good . . .," will likely be ended with "son"--even though "good son," "good daughter," and "good child" connote different things. If the sentence had begun, "A conscientious student is probably a good . . .," a likely finale would be "son or daughter" or "child."

In sum, there are convincing reasons, both empirical and conceptual, for avoiding the generic 'he' and 'man' and for specifically including females. Hence, it is inadequate to state in an opening footnote that, for the remainder of the letter, article or book, 'he' shall stand for 'he or she' and 'man' for all humanity. What authors intend is not the issue. Good intentions not carried through are not good enough.

4 From personal phone call and emails with Professor Forell 2/12/09.

5 Richard Rorty, “Feminism and Pragmatism,” 30 Michigan Quarterly Review 231, 234 (Spring 1991) (MacKinnon’s central point, as I read her, is that “a woman is not yet the name for a way of being human”).

6 In an email from John Haroldson, District Attorney for Benton County, 2/18/09.

Works Cited


