

The same scholars – Grube, Taylor and Strauss – who reject the abolition of the family as impossible, are those most intolerant of the proposed alternative, in which partners are chosen for each other supposedly by lot but, in fact, for eugenic purposes. Those who reject such proposals as quite impracticable, given human nature, because of their ‘intolerable severity’<sup>74</sup> would do well to consider the position of respectable Greek women. For they were just as controlled and deprived with respect to their sexual lives as both sexes of guardians were to be in the ideal city, and without having available to them the compensations of any participation in life outside the domestic sphere. The Greek woman was not permitted to choose her sexual partner, any more than Plato’s guardians were. Moreover, in her case the partner had not only the absolute right to copulate with and reproduce via her for the rest of her life, but also all the powers which her father had previously wielded over her. Once married, a woman had no condoned alternative sexual outlets, but was entirely dependent on a husband who might have any number of approved hetro or homosexual alternatives, for any satisfaction that he might choose to give her. The extent of the double standard is clearly brought into relief by the fact that the Greek word for adultery meant nothing but sexual intercourse between a married woman and a man who was not her husband. Needless to say, the punishments were very severe. Even if her husband died, a woman had no control over her life or her body, since she was returned to the custody of her father or guardian, who could remarry her at his pleasure. Alternatively to marriage, a citizen could give his sister or daughter into concubinage, whence she could be sent to a brothel, without any reproach to her owner.<sup>75</sup>

If Athenian women of the highest class, living in one of the most highly cultured societies the world has known, could be controlled and deprived to this extent, it is hardly arguable that the exigencies of human nature render the Platonic mating system, with its requirement of supposedly ‘unnatural continence’,<sup>76</sup> impossible to enact. Women’s sexual lives have been restricted throughout the greater part of world history, just as rigidly as Plato proposes to control the intimate lives of his guardians. ‘The claims of eros’ have been ‘simply silenced’ in women with considerable success. It is apparent from much of the history of the female sex that, with a suitable indoctrination and the backing of strong sanctions, human beings can be conditioned to accept virtually any extent of control on their sexual and emotional lives. The point is, of course, that the scholars concerned have used the terms ‘human emotions’ and ‘human nature’ to refer only to men. What seems really horrific to Grube, Taylor and Strauss is that whereas the Greeks, like many other peoples, merely reserved women for the production of legitimate issue and controlled their lives accordingly, Plato has dared to suggest that the sexual lives of both male and female guardians should be controlled for the purpose of producing the best possible off-spring for the community.

The significance of Plato’s abolition of the family is profound, and the proposal has been echoed by a number of subsequent theorists or rulers of Utopian societies that depend to a very high degree on cohesion and unity. As Stanley Diamond has asserted, in an illuminating essay which analyses the significance

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74 Taylor, *op cit*, p 278; see also Grube, *op cit*, p 270, and L Strauss, *The City of Man* (Chicago, 1964), p 117.

75 J Ithurriague, *Les Idées de Platon sur la condition de la femme au regard des traditions antiques* (Paris, 1931), p 53.

76 Grube, *op cit*, p 270.

of Plato's treatment of the family: 'The obvious aim is to disengage (the guardians) from all connections and motives which might diminish their dedication to the State ... Plato clearly sensed the antagonism between State and family, and in order to guarantee total loyalty to the former, he simply abolished the latter'.<sup>77</sup> Moreover, it is important to notice that Plato's revolutionary solution to the conflict was not simply to obliterate the primary ties of kinship, but to extend them throughout the entire ruling class. The guardians were in fact 'to imagine that they were all one family',<sup>78</sup> and it is stressed in many ways that the formation of the rulers into one family is to be no mere formality. Not only are they all to address each other as brother, parent, and so on, but 'it would be ridiculous', Glaucon agrees, 'if they only mouthed, without deeds, the names of kinship'.<sup>79</sup> Thus, the fear and shame associated with violence toward a parent will operate as an unusually strong sanction against attack on anyone at all of the older generation. Likewise, lawsuits and factional disputes will be no more common than they would be within a family, and the city's success in war will be in large part due to the fact that soldiers will be no more likely to desert their comrades than to abandon members of their own families.<sup>80</sup> Indeed, as Gregory Vlastos has concisely stated, 'The ideal society of *The Republic* is a political community held together by bonds of fraternal love'.<sup>81</sup>

For the purposes of this study, the most important consequence of Plato's transformation of the guardian class into a single family is the radical implication it has for the role of women. Jean-Jacques Rousseau, in the course of bitterly attacking Plato both for doing away with the family and for giving equal opportunities to women, reveals in spite of his hostility a very perceptive understanding of the connection between the two innovations. 'I am well aware that in *The Republic* Plato prescribes the same exercises for women as for men,' he says. 'Having dispensed with the individual family in his system of government, and not knowing any longer what to do with women, he finds himself forced to turn them into men.'<sup>82</sup> If we substitute the word 'people' for 'men', since for Rousseau, as we shall see, in many important ways only men were people, Rousseau appears to be right. Scholars who have considered the connection between the first two 'waves of paradox' of Book V – the granting of equal opportunities to women and the abolition of the family – do not, however, agree. Some have stressed the independence of the two proposals, some have maintained that there is probably a causal link between them but have been unwilling to commit themselves on its direction, and at least one has rather dogmatically asserted, without giving any reasons, that it is the emancipation of women which leads to the abolition of the family. For a number of reasons, however, it seems that to the extent that a causal relationship exists between the two paradoxes, its direction is as Rousseau states it.

In the ideal city, since there is no private wealth or marriage for those in the guardian class and living arrangements are communal, there is no domestic role

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77 S Diamond, 'Plato and the Definition of the Primitive', in *Culture in History*, S Diamond (ed) (New York, 1960) p 126.

78 *Timaeus*, 18c–e.

79 *The Republic*, 463c–e.

80 *The Republic* 1, 464d–e, 465a–b, 471c–d.

81 Vlastos, *The Individual as an Object of Love*, p 11.

82 Rousseau, Emile, *Oeuvres Complètes* (Paris, Pleiade Edition, 1909), Vol 4, pp 699–700 (author's translation).

such as that of the traditional housewife. Since planned breeding and communal childrearing minimise the unpredictability of pregnancy and the time demands made on mothers, maternity is no longer anything approaching a full-time occupation. Thus, women can no longer be defined by their traditional roles. However, every person in the ideal city is defined by his or her function; the education and working life of each citizen is dedicated totally to the optimal performance of a single craft.<sup>83</sup> If for the female guardians the relationship to particular men, children and households has ceased to be crucial, there seems to be no alternative for Plato but to consider women as persons in their own right. If they are to take their place as members of the guardian class, each must necessarily share in the functions of that class. Thus Plato had to convince his disbelieving audience that women were indeed able to perform tasks very different from those that society had customarily assigned to them. Since the general climate of opinion was so hostile to this way of thinking, the Socratic assertions that woman's nature is not inferior to man's, and that male and female virtue are the same, must undoubtedly have paved the way for the arguments Plato proceeds to put forward.

The arguments of *Republic* about the nature of women will be analysed in more detail in Chapter 3, but the main points need to be summarised here. Socrates first reminds his audience that they have all firmly agreed that each individual should be assigned work that is suited to his or her nature. But, he says, since no one will claim that there is no difference of nature between the male and the female, they are now in danger of contradicting themselves, if they argue that the female guardians should do the same work as the male. There are, however, we are reminded, many ways in which human beings can differ in their natures, and we by no means regard all of them as relevant in assigning different functions to different persons. Up to this point, Socrates asserts, we have not considered 'what form of different and same nature, and applying to what, we were distinguishing when we assigned different practices to a different nature and the same ones to the same'.<sup>84</sup> But, he continues, is it not reasonable to consider only those differences and similarities that have some bearing on the activity in question? We do not, for example, worry about whether a man is bald or long-haired when assessing his capability to be a good shoemaker. There seems, therefore, to be no reason to consider the difference between the sexes with regard to their procreative function – 'that the female bears and the male mounts' – as relevant in deciding whether they should play equal roles in the ruling class. Socrates lays the burden of proof firmly on whoever should claim that it is. He argues, rather, that since it is the characteristics of the soul that determine whether a person has the requisite nature for a certain pursuit, and since sex is no more related to the soul than the presence or absence of hair, members of both sexes will be skilled in all the various arts, depending on the nature of their individual souls. Thus, though he asserts that women in general are not as capable as men in general, especially in physical strength, individual members of both sexes will be capable of performing all the functions needed by the city, including guardianship and philosophy. The only way to ensure that persons are assigned the jobs for which they are best suited is to assess the merits of each, independently of sex.

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83 *Republic* at 370; this is graphically illustrated by the assertion at 406d–407a, that if one can no longer perform one's task, it is worthless to go on living.

84 *Republic* at 454b, and see 454–456 in general for source of this paragraph.

This argument, simple as it seems, is unique among political philosophers in their assessments of the role of women. It has revolutionary implications. Plato's bold suggestion that perhaps there is no difference between the sexes apart from their roles in procreation is possible only because the requirement of unity within the ruling class, and the consequent abolition of private property and the family, entail the abolition of wifehood and the minimisation of the role of motherhood. Once the door is open, moreover, the possibilities for women are acknowledged to be boundless. The abandonment of traditional sex roles among the guardians is total – even caring for the youngest children is prescribed as work for men as well as women.<sup>85</sup> Plato concludes that, though females as a group are less able, the best of women can share with the best of men in the most elevated of functions involved in ruling the city. The 'philosopher monarchs', as they should always have been called, were to include both sexes.<sup>86</sup>

The overwhelming hostility from male scholars to Plato's first wave of paradox is discussed in an Appendix. However, one charge that has been laid against him must be dealt with here. Leo Strauss and Allan Bloom have claimed that Plato's arguments for the equality of women depend on his 'abstracting from' or 'forgetting' the body, and particularly his 'abstracting from the difference between the sexes with regard to procreation'.<sup>87</sup> Clearly they do not. Plato is very careful to take into account those differences between the sexes that are palpably biological and therefore inevitable – pregnancy, lactation and a degree of difference in physical strength. The mistake these scholars, in the company of millions of other people, make is that of assuming, as Plato very rationally does not, that the entire conventional female sex role follows logically from the single fact that women bear children. The real significance of the treatment of the subject of women in Book V of the *Republic* is that it is one of the very few instances in the history of thought when the biological implications of femaleness have been clearly separated out from all the conventional, institutional, and emotional baggage that has usually been identified with them. Plato's abolition of the private sphere of the guardians' lives entailed as a corollary the radical questioning of all the institutionalised differences between the sexes.

During the course of the argument about the proper education and role of women, Socrates twice indicates that these and the abolition of the family are really parts of the same issue. He talks, first, of the 'right acquisition and use of children and women' and later of 'the law concerning the possession and rearing of the women and children'.<sup>88</sup> In addition, the way the question of the emancipation of the female guardians is raised is in itself significant. Having introduced in an aside the proposal that the guardians will have women and children in common as well as their other possessions, Socrates is challenged, at the beginning of Book V, to justify this important decision. In answer, he embarks on his discussion, first, of the equal education and treatment of women, and second, of the communal breeding and rearing arrangements. It seems, then, that having decided to do away with the conventional role of women by doing away with the family, he feels impelled to make the proposal seem more feasible by demonstrating that, indeed, women are capable of filling many other roles and can be well utilised outside of their traditional sphere. A brief passage from

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85 *Republic* at 460b.

86 *Republic* at 540c.

87 Strauss, *On Plato's Republic, op cit.* Part 2 of *The City and Man*, pp 116–117; Allan Bloom, *Interpretive Essay to the Republic of Plato*, pp 382–83.

88 *Republic* at 451c and 453d.

the *Laws* suffices to indicate how aware Plato was of the danger of freeing women from their confined, domestic role without giving them any alternative function. The example of the Spartans ought, he thought, to be enough to discourage any legislator from 'letting the female sex indulge in luxury and expense and disorderly ways of life, while supervising the male sex'.<sup>89</sup> Thus it was his dismantling of the family which not only enabled Plato to rethink the question of woman's role and her potential abilities but, more accurately, forced him to do so.

Two additional arguments strengthen the case that it is the abolition of the family which leads Plato into emancipating the female guardians rather than vice versa. First, no mention is made of the women of the inferior classes. We are told that among these householders and farmers, private land, houses and other property are to be preserved. The close connection between these things and the private ownership of women and children implies, though we are not specifically told this, that the family, too, is preserved for the lower classes.<sup>90</sup> Moreover, we can have no doubt that one of Plato's primary aims in the organisation of the artesans is maximum efficiency, which presumably implies the best possible use of all members of these classes. In spite of this objective, however, and although the argument in Book V concerning women's talents is applicable just as much to the other crafts as to that of governing the city, there is no suggestion of applying it to any class of women but the guardians. The only possible explanation of this seems to be that, where the family is retained, and women are private wives and functional mothers, their equality with men in other roles is not considered to be an open issue.

Second, as we shall now see, what happens to women in Plato's second-best city – as described in the *Laws* – overwhelmingly confirms our hypothesis. On the subject of women, Plato in the *Laws* shows a marked ambivalence. His dilemma results from his inability to reconcile his increasingly firm beliefs about the potential capabilities of the female sex with the reintroduction of private property and the family into the social structure of his city. On the one hand, having once thought about women as individuals, and as half of society with vast unused talents, Plato seems to have become more convinced than ever, by the time he wrote the *Laws*, that existing practice with regard to women was foolish, and that they should be educated and used, like men, to their greatest capacity. In theory, the radical statements about women from *Republic V* are carried in the *Laws* to new extremes. On the other hand, the *Laws* is a considerably less revolutionary document than the *Republic*; far from being 'a pattern laid up in heaven', whose realisation on earth is so remote a possibility that it is immaterial whether it could exist or not, the second-best city is presented as a much less Utopian construct.<sup>91</sup> The very title of the dialogue, usually translated '*Laws*', is in fact more accurately rendered as 'Tradition'. A significant casualty of this 'realism' is Plato's conception of the role of women. What is proposed for them in general terms is simply not carried out in the detailed institutions of the society, in which they are again private wives and the functioning mothers of particular children.

As we shall presently see, Plato's arguments and conclusions in the *Laws* about the natural potential of women are far more radical than those put forward in the

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89 *Laws* at 806a–c.

90 *Republic* at 417a–b.

91 *Republic* at 592b, *Laws* at 739.

*Republic*. He appears, in fact, to attribute to the different rearing and education afforded the two sexes practically all of the differences in their subsequent abilities and achievements. Pointing to the example of the Sarmatian women, who participate in warfare equally with the men, as proof of the potential of the female sex, he argues that the Athenian practice of maintaining rigid sex roles is absurd. Only a 'surprising blunder' of a legislator could allow the waste of half the State's available resources, by prescribing that 'most irrational' practice – 'that men and women should not all follow the same pursuits with one accord and with all their might'.<sup>92</sup>

However, having made the general proclamation that the law should prescribe the same education and training for girls as for boys, and that 'the female sex must share with the male, to the greatest extent possible, both in education and in all else'; should 'share with men in the whole of their mode of life',<sup>93</sup> Plato's Athenian legislator fails to apply these precepts in many of the most crucial instances. In order to understand the inconsistency between the general statements about women and the very different detailed specifications that are set out with regard to the most important of civic duties, we must consider the effects on women of the reinstatement of the family.

Though it is clearly a source of regret to Plato, he reconciles himself to the fact that the citizens of the second-best city, not being gods or sons of gods, are not capable of holding their property in common. Moreover, the reinstatement of private property, one of the most far-reaching differences between the *Laws* and the *Republic*, brings with it in the same paragraph the reintroduction of marriage and the family.<sup>94</sup> It is clear from the context that it is primarily the need for a property-holding man to have an heir that necessitates the disappearance of the communal ownership of women and children simultaneously with that of other property. However, the identification of women and children together with other possessions was so natural to the Greek mind that no special justification is felt to be necessary. The failure to achieve communism of property means, it seems, that women, too, become private possessions.

The family, moreover, is the very basis of the polity planned in the *Laws*. As Glenn Morrow has noted, 'The State is a union of households or families, not a collection of detached citizens', and 'The vitality of the family in Plato's State is evident at many points in his legislation'.<sup>95</sup> The existence of family shrines, the complex and detailed marriage and inheritance laws, the family's crucial role in the prosecution of criminal justice, and the denial to sons of the right to defend themselves against their fathers – all these provisions indicate the central and authoritative position of the family.<sup>96</sup> The marriage laws are the first to be drawn up, and their implications for the position of women are immediate and extensive. In contrast to the temporary mating system of the *Republic*, in which neither sex had any more freedom to choose or right to refuse a mate than the other, with the reintroduction of permanent marriage, the matter of choosing a spouse is, without any explanation, quite different for women than for men. Marriage is indeed compulsory for all, since procreation is regarded as a universal duty. But whereas a man decides whom he will marry, provided he

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92 *Laws* at 805a–b.

93 *Laws* at 805c–d.

94 *Laws* at 740a–c.

95 *Plato's Cretan City, op cit*, pp 118–19.

96 *Laws* at 866a, 868b–c, 871b, 879c. See G Morrow, *op cit*, pp 120–121.

seeks a partnership that will result in the best offspring for his society, a woman is 'given' in marriage.<sup>97</sup> The 'right of valid betrothal' of a woman belongs in turn to a long succession of male kindred, and only if she has no close male relatives at all is she to have any say in choosing her husband. Ironically, considering this pre-emption of women's choice, Plato refuses to enforce legally the prohibition of unsuitable marriages, since he considers that to do so 'besides being ridiculous, would cause widespread resentment' ...<sup>98</sup> Apparently what was customary for women was considered intolerable control if applied to the choices made by men.

The status of women as determined by the marriage laws is closely related to the fact that women are also virtually excluded from the ownership of property. Even if she has no brothers, a daughter may participate in the inheritance of the family estate only by serving as the instrument through which the husband chosen for her by her father can become her father's heir.<sup>99</sup> The *Laws*, in fact, provides very clear documentation of the essential linkage of property and inheritance to the marriage system and position of women. When a man owns inheritable property, he must own a wife too, in order to ensure a legitimate heir. The fact that women thereby become private wives means that in many ways they are treated as property rather than as persons. They themselves cannot inherit real property, which to a large extent defines personhood within the society (a disinherited son must leave the city unless another citizen adopts him as his heir),<sup>100</sup> and they are treated as commodities to be given away by their male relatives. Given these basic features of the social structure of the city, it is not surprising that Plato, in spite of general pronouncements to the contrary, is not able to treat or use women as the equals of his male citizens. Their status as property seems to pre-empt the execution of his declared intentions.

Although the legal status of women in Plato's second-best city is an improvement on that in contemporary Athens, it is not at all one of equality with men. Glenn Morrow has said that 'it is certainly Plato's expressed intention (though not fully carried out) to give women a more equal status under the law'.<sup>101</sup> The proposed divorce laws, unlike the marriage laws, treat women considerably more equally than did those of contemporary Athens. The criminal statutes enforce the same punishments for the wounding or murder of wives as of husbands, and are generally applied without discrimination according to the sex of either plaintiff or defendants. The most striking instance of equal treatment before the law is in the case of extra-marital intercourse, where the same penalties are extended to offenders of both sexes.<sup>102</sup> This unusual departure from the double moral standard that one might expect to find in a society so firmly based on monogamy and inheritance can probably be explained by Plato's aim to make all the members of his city as virtuous and temperate as possible. It is not that the standards are relaxed for women, after all, but that they are considerably tightened up for men. However, the Athenian concept of women as legal minors is still present in significant ways in the *Laws*. Besides not being eligible to own property, they are not allowed until the age of 40 to give

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97 *Laws* at 772d–773e, 774e.

98 *Laws* at 773c.

99 *Laws* at 923e.

100 *Laws* at 928e–929a.

101 Morrow, *op cit*, p 113.

102 *Laws* at 784b, 929e, 930b, 882c. See Morrow, p 121.

evidence in a court of law or to support a plea, and only if unmarried are they ever allowed to bring an action.<sup>103</sup> Women, then, especially if married, are still to a large extent *femmes couvertes*.

What begins to be revealed through the denial to women of certain important civil and legal rights is strongly confirmed by the roles they are allotted within the official governmental sphere. In the *Republic*, once we have been told that the women of the guardian class are to share with the men in every aspect of ruling and guarding, they are not specifically mentioned as eligible for certain offices, with the implication that they are ineligible for others. The only case where women are specifically mentioned as being eligible for office is at the end of Socrates' account of the philosophers' education. Here, presumably because the very idea must have seemed so outrageous, Plato finds it necessary to remind his audience that everything he has been saying applies equally to all those women who have the necessary abilities.<sup>104</sup> It is most unlikely that the guardian women, if allowed to compete for the highest rank of all, would be excluded from any other office.

In the *Laws*, by contrast, in spite of the general pronouncements cited above, Plato both specifies when a certain function, such as the priesthood, is to be performed by persons of both sexes, and makes particular mention of certain offices being filled by women, frequently with the strong implication that only women are eligible for them.<sup>105</sup> Thus, it is women who supervise married couples, who look after infants, whose role in the educational system is to provide the children's meals and oversee their games – in short, who perform, in positions not of the highest rank, all those domestic, nurturing, child-oriented tasks to which women have traditionally been assigned. On the other hand, there is no suggestion of any women participating in the ranks of the magistracy, or the 'divine nocturnal synod', whose role parallels that of the philosophers in the *Republic*.<sup>106</sup> The children are given their lessons by male educational officers; as for the post of supervisor of education, which is 'by far the most important ... of the highest offices of State' and must be filled by 'that one of the citizens who is in every way the most excellent', it is explicitly laid down that its occupant be male, for he must be 'the father of legitimate children'. This specification adds weight to what is implied throughout the work – that in the second-best city, unless the eligibility of women is plainly mentioned, most offices, and especially high ones, are reserved for men. Moreover, even for those positions for which a woman is eventually eligible, she does not become so until aged 40, whereas a man is eligible from the age of 30.<sup>107</sup>

In spite of the controversial proposal in the *Laws* that, in the interests of order and discipline, even married women should take their meals communally, though segregated from the men, it is clear that Plato was ambivalent about the wisdom, or perhaps the feasibility, of bringing wives out of their domestic seclusion. Thus, for example, when he describes the funeral processions that are to be held for distinguished citizens, women of childbearing age are noticeably omitted from a list in which every other class of citizen has its place. They are

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103 *Laws* at 937a–b.

104 *Republic* at 540c. the fact that Plato's rulers have always been referred to as philosopher kings tends to suggest that the reminder indeed was, and still is, necessary.

105 *Laws* at 741c, 759b, 764c–d, 800b, 813c, 828b, 784a–c, 790a, 794a–b, 795d, 930.

106 *Laws* at 961.

107 *Laws* at 1, 785b.



similarly omitted from the choral competitions.<sup>108</sup> Most remarkable, however, given Plato's previous insistence that neither gymnastics nor riding are improper for women, and that trained women can perform in the military sphere equally as well as men,<sup>109</sup> is the fact that, in detailing the regulations, he proceeds to exempt women almost entirely from military service. From the very beginning, girls are to learn the military arts only 'if they agree to it', whereas such instruction is obligatory for boys.<sup>110</sup> Then, although Plato makes the general provision that men, women and children are all to participate in military training at least one day a month, when the details are spelled out, women after the age of marriage (20 at the latest) are again noticeably absent. They are not included either in races or in wrestling, both of which sports are presented as integral parts of the training. As for horsemanship, it is decreed that 'it is not worthwhile to make compulsory laws and rules about their taking part in such sports', but that women may do so 'without blame', if they like.<sup>111</sup> It should be noted that Plato was certainly not in the habit of making aspects of his educational systems optional – particularly those relating to the defence of the State.

Finally, the term of military service for men is from the age of 20 to 60; 'for women they shall obtain what is possible and fitting in each case, after they have finished bearing children, and up to the age of fifty, in whatever kind of military work it may be thought right to employ their services'.<sup>112</sup> This means that for all the grand assertions about the necessity and rationality of training women equally with men to share in the defence of the State, women are in fact allowed, not compelled, to train up to the age of, at latest, 20, are then excluded from most military activity until they are past childbearing, and are subsequently exempted again at 50. Since in Plato's proposed society men were to have no other condoned sexual outlet than their wives, and since contraception was hardly in an advanced state, this could well mean an expectation of five years of military service from adult women. Surely this was no way to produce Amazons.

Despite Plato's professed intention to have the women of the second-best city share equally with the men in carrying out all the duties of citizenship, the fact that they are private wives curtails their participation in public life for three major reasons. The first is the practical matter of pregnancy and lactation, which is not controlled and predictable as in the *Republic*, where the guardians mate only at the behest of the rulers. The women in the *Laws*, since as permanent wives they are far less able to time or limit their pregnancies, cannot be held liable on a continuous basis for public and especially, military duties. Secondly, the reinstatement of the private household makes each wife into the mistress responsible for its welfare, and it is clear that in the *Laws* a mother is to participate far more in early child care than does the female guardian, who is not even to know which child is hers.<sup>113</sup>

The third reason is that it is clearly inconceivable to Plato that women who are 'private wives' – the private property of the male citizens – should play the same kind of public, and especially military, roles, as the female guardians, who are

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108 *Laws* at 947b–d, 764e.

109 *Laws* at 804e–805a, 806b.

110 *Laws* at 794c–d.

111 *Laws* at 833c–d, 834a, 834d.

112 *Laws* at 785b.

113 *Laws* at 808a, 808e.

not defined in terms of a traditional relationship to a man. Whereas the female guardians can, like the male, exercise naked, the young girls in the *Laws*, must be 'clad in decent apparel', as a maiden who was shortly to become the respectable wife and private property of a citizen could hardly be allowed to be seen naked by the world at large.<sup>114</sup> In fact, Plato expresses at least as much expectation of ridicule for his suggestion in the *Laws* that wives should dine in public, though at segregated tables, as he had expressed in the *Republic* for his proposal that all the guardians of both sexes should exercise together naked.<sup>115</sup> Although he regarded it as even more dangerous to leave women undisciplined than to neglect men, and insisted that women, too, should dine in public, he was well aware that in the kind of society he was planning, there would be enormous resistance to such an idea. Consequently, although he deplored the fact that even the supposedly trained women of Sparta had panicked and run when an enemy invaded their city, and thought it folly that so important a potential for defence as the entire female sex should be neglected, he seems to have found it impossible to hold consistently to his original proposal that women should participate in military activities equally with men. If merely the segregated public dining of private wives could cause a general outcry, there was no knowing what revolutions might be provoked by the proposal that men should mingle with other men's private wives on the battlefield. Despite all his professed intentions in the *Laws* to emancipate women and make full use of the talents that he was now convinced they had, Plato's reintroduction of the family has the direct effect of putting them firmly back into their traditional place.

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114 *Laws* at 1, 833d.

115 Compare *Laws* at 781c–d with *Republic* at 1, 452a–b.

## CHAPTER 8

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### 'TRADITIONAL' JURISPRUDENCE

'Traditional' jurisprudential theories are male theories of and about law, and about law's relationship to society. In this chapter these 'traditional' theories are subjected to feminist critical analysis. In the first part of this chapter, positivist legal theory is considered by feminist scholars Ngaire Naffine and Margo Stubbs. In the paper which follows, Nicola Lacey submits the common assumptions made by positivistic legal scholarship to feminist analysis. Attention is then turned to social contract theories. John Locke, writing in the seventeenth century provides one analysis of the basis of the relationship between citizens and the state. The more recent *Theory of Justice* of John Rawls is also analysed from a feminist perspective. Marxist theory has long occupied both traditional jurisprudence and feminist scholars. In the third part of this chapter Engels' work on the source of women's oppression is considered and critically analysed.

Contemporary jurisprudence is considered in the fourth and final part of this chapter. In the post modern age – characterised by uncertainty and diversity – the 'Grand Theory' has fallen into disfavour. Critical Legal Studies (CLS), the movement which characterises dissatisfaction with past theorising, is considered here. One of the tenets of CLS is its suspicion of rights-based theories. From a feminist perspective this has considerable implications as will be discussed in this part of the chapter.

### POSITIVIST LEGAL THEORY

Positivist scholarship became dominant in the 19th century. Fuelled by the perceived need to identify the characteristics of law and legal systems, positivist scholars seek to portray law in a scientific manner. Natural law thinking, so influential from ancient times, was perceived to cloud people's thinking about law by insisting on lofty moral notions of 'right' and 'good' law.<sup>1</sup> From a positivist perspective, it is not primarily the 'rightness' or 'goodness' of a legal system which is of central importance, but rather the identification of the central concepts in the law as laid down by 'political superiors' to citizens. While John Austin,<sup>2</sup> Hans Kelsen<sup>3</sup> and HLA Hart<sup>4</sup> offer differing analyses of positivism, the central objective is shared. From a feminist perspective, however, positivism has been found wanting.

In *Law and the Sexes*<sup>5</sup> Ngaire Naffine turns attention to legal positivism:

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1 See AP d'Entrèves, *Natural Law*; JM Finnis, *Natural Law and Natural Rights* (Clarendon, 1980).

2 *The Province of Jurisprudence Determined* (London, 1832).

3 See, *The General Theory of Law and State* (Harvard University Press, 1946).

4 *The Concept of Law* (Oxford University Press, 1961).

5 Allen & Unwin, 1990.