

# WOMEN, LAW AND CULTURE

CONFORMITY, CONTRADICTION  
AND CONFLICT



EDITED BY  
JOCELYNNE  
A. SCUTT



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Editor

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*Editor*

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# 1

## Introduction

Jocelynn A. Scutt

Law and culture are intimately intertwined. Frequently (or even ultimately), laws are based on and in culture, and culture is influenced by law. Both play a major role in social organisation and political structure, and both impact substantially on women. Yet although today women are more likely to be in legislatures, the judiciary and associated professions, women are not the major players in determining the construction, interpretation and application of laws. In some countries, women remain almost wholly outside law-making institutions. Nor do women play the principal part in determining the terms and scope of the dominant culture.

*Women, Law and Culture* explores this reality from the perspective of scholars in different countries, with different ethnic/racial and cultural backgrounds, emphasising the impact of law and culture on women from varying ethnic/racial and cultural backgrounds living in different countries. Many recount and analyse the impact of religion or religious

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culture upon law and women and women's place within the structure of the law. This global perspective is essential to illustrate that 'culture' and 'ethnicity/race' are not confined to 'other': that women's place in the world, whatever country, whatever culture and race/ethnicity, is impacted by the overwhelming control men at all levels exercise over law and culture.

## Part I—Identity & Representation

Through time, women have struggled to establish themselves as human—as 'equal' to men—in law and culture. Today, does women's sense of identity receive support and affirmation through law and culture, or are women represented in ways that challenge women's rights and subvert women's right to be human? How does the law in various cultures and countries impact women and women's rights not only within the formal legal system but in the world outside it, and what of the imposition of law from another culture on a country and particularly on women? These questions are explored from the perspective of popular television culture; women's dance culture—developing, and then subjected to surveillance and control through colonisation; women's lives as sites of conflict and struggle in a 'new' country where 'cover' (the scarf, niqab, burqah) is dictated by culture and country of origin, reacted against by the 'new' country's culture (and sometimes laws), potentially changing character to be a protest adopted by women fighting back against 'foreign' diktats; asymmetry in law imposed through Sharia or Islamic law denying women independent representation and equal rights in home and family; and what agency means for women, when those women and their rights are employed in support of imperialism by foreign governments claiming they must be liberated.

**Robin Joyce** reviews popular culture expressed in Australia's version of 'Big Brother' (BB) and 'The Apprentice' (TA) in the United Kingdom. Australia and the United Kingdom reflect cultural similarities, the dominant culture in both coming from the same source. BB and TA are classified as 'reality' television. Each has 'winners' and 'losers', each features women and men as contestants. BB is the more populist,



with personality and performance in celebrity terms ('I can perform better than you', 'I can stir things up', 'I can out-do you in grabbing the spotlight' or 'I can be "good", the moderator, the calm collected soothsayer . . .'), whilst TA runs on capacity to perform in a business sense. Both programmes play in countries and cultures where laws exist to promote equal opportunity and non-discrimination on race/ethnicity and sex/gender grounds. Yet they exist within an entertainment medium which often relies upon exaggeration of female characteristics, in particular. Hence, this chapter explores at the most basic level the impact of culture on women's place—in the 'ordinary' (although highly artificial) world of BB and the 'business' (although again artificial) world of TA, the influence of cultural constraints and influence or lack of influence of laws directed towards challenging and changing traditional society's allocation of women to defined spheres of life and work. Joyce reveals that performing to a stereotypical female representation (as in BB) operates to undermine women's winning potential, whilst adopting business practices (as in TA) may advantage women not only in being more likely to be taken seriously but in achieving wins.

Moving to popular culture in India, **Anna Morcom** reflects on women and dance culture impacted by foreign culture implanted when imperialism strikes. She explores the way a traditional form of expression developed by women as a women's cultural 'event' encounters laws introduced by a foreign culture and legal system dominated by masculine values. She introduces another element—males as part-time dancers living 'ordinary' male lives with wives and families, yet performing female roles in dance. An important comparison and contrast here lies with the notion that although taught dance by males, dance passes through the female line, woman to woman. Women being dominant in performance and scope of dance, male performers both aped women's dance and influenced it. Ultimately the dance as performance became qualified by laws and cultural interference of an invading or colonising culture which in South India in the 1950s labelled women's dance as unlawful. Was it these laws that 'made' the women's performance 'exploitative of women' (women classed as prostitutes rather than seen as expressing their freedom and creativity through dance), or did the male gaze—for which the dance was at least in part developed—operate to exploit women in any event?

**Susan S.M. Edwards** shifts the debate to the covering-up of women's bodies. She quotes Egyptian feminist writer and philosopher Nawal El Saadawi on Western culture: 'No one criticises a woman who is half-naked. This is so-called freedom . . . The problem is our conception of freedom. Men are encouraged neither to be half-naked nor veiled. Why?' (Cooke 2015) As Saadawi adds:

Liberate yourself before you liberate me! This is the problem. I had to quarrel with many American feminists—Gloria Steinem, Robin Morgan—because I noticed that many of them were oppressed by their husbands, and then they came here to liberate me! (Cooke 2015)

This encapsulates both Edwards' reflection on women and the veil, and the thrust of this book—the recognition that no woman, whatever race/ethnicity, culture or country can position herself as superior to another or others, in that all are impacted by a dominant (male) culture and (male) laws. Edwards illustrates, too, the way in which women can, or may, fight back against external oppression (oppression from another culture applied when women migrate or come as refugees or asylum seekers to a 'new' land) by adopting or retaining a symbol of repression or oppression from 'their own' culture.

**Nahda Shehada** addresses Islamic family law and the dominance of male rights and male right in custody and other aspects of male–female marriage and family dynamics. This enables the reader to see the parallels with Western law, culture and family. British law—providing the foundation for law in Canada, the United States, Australia, Aotearoa/New Zealand (and dominating other colonies, as in Morcam's India)—set father's right above any 'rights' a mother might believe she possessed. Taking as her template the case of Al-Jazeera journalist Rula Amin who was forced to struggle for custody of her child within a legal system privileging 'father right', too, Shehada explores representation and identity under the prism of a strict legal system that limits women's independence and seeks to deny representation in the legal sense: the right to have one's rights recognised and fought for by advocates acknowledging women as equal—and equals. This reflects English common law, where women were obliged to fight, too. Hence, women in countries under British law

campaigns for rights in marriage and family which similarly to the description and analysis provided by Shehada denied women custody/residency or access/visitation rights, and in other respects (property ownership and division, bodily integrity, indeed, the right to be ‘persons’) placed women in a subordination position.

Part I—‘Identity & Representation’ concludes with a chapter by **Shadia Edwards-Dashti** looking at the Middle East and the war on terror (WOT)—advancing a perspective through war and conflict, facilitating reflection on the elements of colonialism and imposition of foreign law on women in their own countries, and how women fight back against control and notions of women’s identity and representation of women as women. She observes that Orientalism continues to influence the West’s view of Middle Eastern women: ‘difference’ is stereotyped, Middle Eastern women being exoticised and sexualised by the Western male gaze which simultaneously robs them of identity and the right to their own ways of representing themselves, by regarding them as lacking agency and requiring ‘liberation’. Edwards-Dashti addresses women’s changing or changed role during war and occupation and whether in these circumstances women are able to assert an identity otherwise smothered by their ‘own’ culture and laws. Does outside imposition and control give rise to women’s development of a new identity or enable underlying characteristics and features possessed by women to become dominant? Ironically, not only does ‘liberation’ bring war, conflict and Western violence on an everyday level, it results in women being more confined and less free, less able to move without fear of attack. When women resist by fighting, as in the case of Kurdish women, they in turn are romanticised by the West as ‘Amazonian warriors’. Meanwhile, their struggle for the right to live in peace and as free and equal human beings is truncated by the rise of ISIS, or Daesh, which the Western war of ‘liberation’ has generated.

## Part II—Space & Place

Women notoriously take up less space in both public and private areas. This is evident on public transport and footpaths: men (particularly younger men) not infrequently sit with legs spread (‘manspreading’)

over the passageway and splayed over two seats (Dougary 2015), whilst in the street they fill the footpath and, particularly as youths or at sporting matches, have a tendency to walk in groups (although younger women, particularly students, appear to adopt this approach at least in university towns). Even in the domestic setting, although the notion of men taking up more space may be disputed, the room of one's own called for by Virginia Woolf [1929] (1989) is less likely than the back-garden shed of his own (Jenn 2013). 'Dad's chair' in the lounge, drawing or sitting room is often a cultural or social feature that crosses national and class boundaries.

On a more confrontational level, *Reclaim the Night* marches address directly constraints confining women to home—attacks in public places, often at night or in deserted areas, but sometimes in the presence of others and in daylight. Women are told to stay out of dark places, even to remain at home behind deadlocked doors to be safe—although as well as constricting women's freedom, this advice is too often misplaced: what use is a deadlock if the attacker has the key? Women have defied the stay at home ukase, taking up space by demonstrating outside the homes and workplaces of men identified as wife beaters (in Japan, for example), or taking to the streets in cars (as in Saudi Arabia) where law or custom denies them the right to drive. Laws advancing women's right to enter university, engage in professions formerly categorised as 'for men only' and take up traditionally male trades and occupations address the question of women's space and place directly, too.

**Karen Buczynski-Lee** addresses this question in culture and law, in relation to women's identity and representation in film—as filmmakers. Taking an historical perspective she looks at newly developing technologies at the turn of the nineteenth into the twentieth century, when women struggled for the vote and to stand for parliament or congress, whilst being classed by the law as non-persons, so disentitled to work in professions where they might influence law and culture and make their mark as identities. She looks at the work of Alice Guy-Blache (Crow 2014) in the film industry and Vida Goldstein [1908] (2008), who employed filmic-technology in her political campaigns, then reflects upon the influence film and television have on women's position today. Fiction (as in *Borgen*, the Danish television production centred

on a woman prime minister) can be followed by fact (as in a woman prime minister—Helle Thorning-Schmidt being elected to the Danish parliament). Buczynski-Lee contends, however, that such changes require laws and quotas, not soft targets and imprecations that those holding power media, particularly film and television, should simply be encouraged to hire and promote women into all behind the scenes roles—as writers, directors, producers, sound or lighting technicians. Once, the industry saw women in prominent roles. Yet once the industry was seen as a place of power, women took second place. Men became prominent. This culture will not change, Buczynski-Lee says, without legislative intervention. The laws to which Robin Joyce referred in her analysis of Australia’s BB and TA UK must be deployed to change the industry at its heart, and the culture that has generated the masculinisation of the industry must be change by the law.

**Gisèle Yasmeen** looks at space and place in the context of the market and public streets and venues in South and Southeast Asia. She reveals similarities and differences in Thailand, the Philippines and India. Colonisation again intrudes, for these countries at various times were subjected to British or US colonisation, with both cultural and legal implications. As in Anna Morcam’s chapter on woman and dance in India, British culture enters into the marketplace influencing women’s lives and livelihoods, just as it imposes itself on women who move from other countries, other cultures, into the United Kingdom, reflected upon by Susan S.M. Edwards for women migrating from the Middle East. The US influence follows on from British imperialism, in turn affecting countries’ culture and women’s lives: women can become caught between two cultures, the foreign and the local, both generated along patriarchal lines. Yasmeen makes the telling point that women’s lives and freedoms vary between cultures and countries: some countries (Thailand and the Philippines) denote some public space as ‘okay’ for women to occupy, whilst others (India) have no tradition of women’s right to (some part of) public space. These differences affect how women engage with public space and how and whether they campaign for more access, and access ‘as of right’ or by law.

**Greta Bird** and **Jo Bird** look at women, aging and the right to space and place within the confines of aged-care. Women being likely to live

longer than men means that social and cultural influences in aged-care homes are highly likely to be gendered. As women are a more vulnerable group during their adulthood, this carries across into aging. This vulnerability can be exacerbated by ethnic/racial 'difference' from the dominant culture. The Birds describe moves to support the aged in care through 'rights guidelines', 'Bills of Rights' or care contracts between individual and institution. They look at various cultural openings for aged-care, accommodating Indigenous Australians and Australians of varying faiths—Christian, Jewish and Muslim. They observe that multiculturalism must be acknowledged within the aged-care sector, if those in aged-care are to be regarded with respect and have the care and consideration to which they are entitled. Ultimately, the question of resources and funding is inevitable: as resources and funding are differentially distributed during women's and men's lifetime, (un)equal pay remaining a global problem (Scutt 2007), can it be expected that with women occupying the major space in aging- and aged-care, differential distribution will 'correct' at this later stage of life?

**Amy Gaudion's** chapter on space and place for women in the US military is a good counterpart to Shadia Edwards-Dashti's chapter addressing identity and representation of women in conflict, engaged (as the Kurdish women) in guerrilla warfare, and women operating under the imposition of military intervention. Gaudion addresses women's role in the formal military and the impact on structures and traditional occupiers of military structures—male military. Her insights into the way laws have had to change to accommodate women in these still untraditional roles, and the way this has made women vulnerable in their (now) rightful (by law) workplaces generates echo of Buczynski-Lee's similar reflections on the law and culture in the context of women's efforts to gain identity and representation through equality in the media industry. Gaudion explores age-old efforts to keep women out of frontline positions, and the changes coming about by the new policy—women in all positions within all levels of the US military (Pellerin 2016). Women gain respect on the one hand for their abilities, yet on the other suffer harassment and sexual assault as intruders, a cultural phenomenon that is global, arising in other professions, other industries (Scutt 1997).

In concluding Part II—‘Space & Place’, **Pragna Patel** looks at culture and religion, focusing on the role of Islam and its place culturally in gender-based harms. Her chapter complements that of Edwards in illustrating the way a new country may impose its culture on women in the name of extending them freedom (just as Edwards-Dashti looked at the ‘liberation’ of women through invasions of Iraq and Afghanistan). Yet, Patel raises another dimension: that of a new country giving imprimatur to the culture and laws of the ‘old’ country—the country from which women have come. She raises the concern that there should be ‘one law for all’, simply as of right and because allowing male voices within minority ethnic communities to speak ‘for’ the community ignores the totality of community—that both women and men are a part, and both women and men count or should count equally. Allowing men to speak for communities is antithetical to women’s rights. Women do not speak from positions of power within minority ethnic communities, when the dominant culture hears only the voices of male leaders within those communities. Women are denied space in the power groupings within their original culture and are now denied space in the new country. Patel is firm in her resolve that religion or romanticism about ‘culture’ cannot—must not—be used as an excuse for actions denying women rights and women’s rights. UK laws should not preserve or support this denial, by supporting fundamentalist notions of religion dressed up as legitimate ‘law’. She refers to forced marriage (FM) and (dis)‘honour’ crimes (Gill et al. 2014) as requiring a proper focus by the British legal system, not a fuzzy approach based in notions of ‘faith’ and supporting communities in retaining ‘their’ culture. That culture is not women’s culture. It locks women into a lack of freedom, denied space and place. Her chapter leads into Part III—‘Bodily & Psychic Integrity’—to which all women are entitled, whatever their faith, ethnicity, race or community standing.

## Part III—Bodily & Psychic Integrity

Law and culture directly impact on women’s bodies, women’s lives and women’s deaths. UN efforts to end violence against women through commitments by all member nations to guidelines, covenants or treaties

recognising violence against women in the public and domestic sphere as unlawful are met by some countries' protestations that this impinges on sovereignty. The principle of 'Duty to Protect' (UN nd) falling upon nations where citizens/residents are subjected to war and state conflict can be used to require nations to take proper steps in law and the administration of justice to save women's lives bodily and psychically when threatened or imposed on by criminal acts. Every human being is entitled to a safety. The state is obliged to provide it.

As violence against women occurs in all cultures and societies, with the major violence against women carried out by male perpetrators—most often men known to their victims (sometimes survivors) whether through marriage, civil partnerships or de facto relationships, other familial relationships (parent, sibling, child—attacks on mothers, grandmothers or sisters)—it is imperative to explore what factors feature across cultures and societies, how or whether the law responds effectively or at all, or whether the law reinforces cultural and social constraints on women that support men in engaging in violence against women. Recognition of the 'war on women' in the domestic setting of the home and the domestic setting of a woman's home country as genocide so long as the state stands by doing nothing, or taking inadequate steps to end it, is vital.

**Patmalar Ambikapathy Thuraisingham** addresses the law's religious underpinnings. She looks at Christianity and its hold on English common law, continuing to influence cultural attitudes and behaviours, particularly for some family men and within the legal system. Her chapter draws upon her experience as a practicing lawyer, first as a solicitor (in the United Kingdom, Malaysia and Australia), then as a barrister in Melbourne and Ballarat (a Victorian country town) and more recently living between Bahrain and Australia. It prompts comparison with Shehada's chapter exploring Sharia law and the denial of equality under that law, and Patel's chapter on violence suffered by women and girls in family settings, in consequence of cultural and religious precepts imposed by fundamentalism. Ambikapathy Thuraisingham explores questions of entitlement in respect to physical and psychological abuse and their broader implications in other aspects of matrimonial and family law, including custody/residency and visitation/access. Asking how the crime of spouse (wife) assault



has become so firmly embedded in English common law, so as still influencing Australian culture and law she cites Roman law's influence as a source. She reflects on why legal, political, religious and public order systems do not adhere to their stated role of supporting and promoting cultural values that deplore violence against women. Words are not enough, she observes. For Ambikapathy Thuraisingham (like Buczynski-Lee) the law must take a firm and active stand in ensuring that women's rights and women's right to freely participate at all levels of society are clear and affirmed.

**Cathryn Goodchild** writes from experience, too—this time, direct experience of domestic abuse within a boyfriend–girlfriend and male–female relationship. She sets this against her exploration of sociological and cultural ‘justifications’ for violence inflicted on wives, female partners and girlfriends by partners who have learned, from boyhood, that their wants, desires and social position take precedence over those of women and girls. She focuses on media projections of women and girls which can be seen and understood against the backdrop of earlier chapters by Joyce and Buczynski-Lee. She reflects upon religion and its manifestations through culture and control, which mirror the control exercised by men who inflict physical, psychological, emotional or economic abuse on their partners. She is adamant that this can be changed through education at all levels and the inculcation of the notion that women and girls are human beings equally entitled to respect—and to their lives.

**Lynette J. Dumble** addresses the situation in India, where violence against women in and on public transport has fuelled campaigns for women's safety and security, and against traditional notions that, being disentitled to appear in or occupy public places, women are responsible for violence enacted against them. She reflects on violence against women generated in the many places and spaces women occupy—yet are denied to do so, safely. In domestic settings, women and girls are at risk, as they are when playing or going about their everyday business in their neighbourhoods, just as on public transport and in public streets women are at risk. Like Yasmeen's reflections on women's advocacy for space in the marketplace so that they can earn a living, and Buczynski-Lee's reflections on women's campaigns in Australia for equal access to

and equal opportunity in media, Dumble describes women's advocacy in India for the right to be in public and to 'be' at home—and be safe.

Writing on their work undertaken in Canada into non-state torture, **Jeanne Sarson** and **Linda MacDonald** recognise the extremes of violence against women reflected in organised institutionalised familial violence, exploitation and abuse. The need for recognition in criminal law of this extreme end of criminal assault at home and other forms of domestic violence is discussed together with the political actions they have taken in highlighting this issue and its cultural, social and legal impact on women and girls. They conclude with reference to their work in bringing the matter to the attention of the UN and the need for a treaty recognising non-state actor torture as torture. This chapter, then, reflects the problem identified in the introduction to Part III—'Bodily & Psychic Integrity' and throughout this volume: law and culture are intertwined and the law must recognise this if it seeks to take positive action to ensure women and girls are able to dwell in a world of freedom.

## Conclusion

Scutt's Conclusion: Up From Under - Women, Law, Culture draws the threads of the Parts and the chapters, putting the issues in a legal context and reflecting on the way women have campaigned over centuries against wife torture (Frances Power Cobbe's seminal nineteenth-century article [1878] (1995)), denial of women's rights and freedom through family law (Caroline Norton's work mid- nineteenth century ([1858] (nd))), refusal to acknowledge women's independent identity (Christine de Pizan (France fifteenth century ([1405] (1999)))) and Mary Wollstonecraft (England/France eighteenth century ([1792] (1999))), leading to substantive and substantial changes. Using the foregoing chapters as a foundation, Scutt illustrates the way women's position socially and culturally continues to influence law and justice, and contrarily how law and justice have changed or attempted to change social and cultural constructs denying women personhood and equality through independent identity and rights. Sometimes, women conform socially and politically, and the law patronises

them in its support, robbing them of independence and identity in the name of protecting them. Sometimes, the law operates contradictorily, conflicting with culture and supporting women's rights. Sometimes, a direct conflict arises in the law, between women's rights and cultural edicts—sometimes, women's rights win out, sometimes, they do not. To be recognised as fully human, a struggle in which women have engaged for centuries, sometimes with support of men, often times without it, culture needs to readjust itself to recognise women as equal players in its making, with an equal right to construct culture as affirming women as human. The law needs to be reconstructed to ensure women's rights to equality—economic, political, social and cultural—are as firmly embedded as their opposites have been—for too long.

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# Part I

## Identity & Representation

# 2

## 'It's Time to Go!' 'You're Fired': Australian Big Brother (2005) and Britain's The Apprentice (2014)

Robin Joyce

### Introduction

Different cultures,<sup>1</sup> programmes and years. A comparison of the way women are treated in Big Brother Australia (BB) and The Apprentice UK (TA) provides insights into how popular culture 'presents' women and how it impacts on women, enabling reflection on how women represent themselves, and women's impact within these artificial yet purportedly 'real' settings. Do different formats and programme aspirations affect female contestants differently from male participants, influencing outcomes? Are women treated differently or do equal opportunity laws and anti-discrimination policies and workplace practices influence

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<sup>1</sup> Reality programmes have their own cultural idiosyncrasies and features. However, features cross national boundaries too, elements being adopted from one country's programme to another, particularly 'tasks'—a central element of BB and TA (for example)—originating in one country appearing on local programmes.

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