Construction of Gendered Legal Personhood in the History of Finnish Law

by

Anu Pylkkänen

Persons and Selves of Modern Law

Introduction

In common law, women were not classified as legal persons until 1930.[1] In the German legal tradition, the territories influenced by Roman Law, *ius commune*, had recognized women as legal persons already in the early 19th century, but this development was later slowed down by the regulation of marital authority and of the husband's right over the wife's person in the German Civil Code, BGB, in 1896.[2] In Finland, unmarried women gained legal independence in 1864, when the guardianship of women under 25 was abolished. But it was only by the 1929 Marriage Act that married women were given full legal personhood, much later than they received political rights, universal franchise and eligibility, which had happened already in 1906. The egalitarian ethos of legal modernization did indeed contain also deeply rooted patriarchal[3] undercurrents, and thus it was not without tension such developments took place. In order to understand some of the contemporary problems linked with full implementation of equality, it can be useful to look at the modern person construction when it was first developed.

As Ngaire Naffine has argued, the modern legal personality can be understood in several ways. One way of regarding it is to emphasize legal personality as an entirely formal one without any substantive meanings. Such a notion takes the unique subjectivity, coherent personality and individual moral judgment of each and everyone as its point of departure. Another, more substantive understanding sees elements such as the bodily features or rational capacities of a person as intrinsically attached in it.[4] Persons do not predate law but are constituted by it, by other discourses and by social practice. It is exactly the gendered meanings, directly or indirectly attached to the formal and neutral conception of legal personality, that have been subject to feminist critique. By providing a historical account of the development of modern law in Finland, it will be argued that the formal, non-substantive

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[1] Janice Richardson, *Selves, Persons, Individuals: Philosophical Perspectives on Women and Legal Obligations*, Aldershot, Ashgate, 2004, 43-44.

[2] Ernst Holthöfer, "Die Rechtstellung der Frau in Zivilprozess" in *Frauen in der Geschichte des Rechts*, ed. by Ute Gerhard, München, C.H. Beck Verlag, 1997.

[3] It will be specified below how patriarchy was understood in Finland at that time.

[4] About the distinctions amongst legal persons, see Ngaire Naffine, "Who are Law´s Persons? From Cheshire Cats to Responsible Subjects" in *Modern Law Review* 66:3, 2003, 346-367

and less polarized conception of legal personality has been prevalent until the modern times, together with a communal or structural framework of both egalitarian and patriarchal features. The meanings attached to legal personality *per se* have been insignificant. On the other hand, the social structures themselves have been gendered and segregated, thus creating an unequal framework in the formal disguise. The broader question related to legal personality is whether it should be the construction of legal personality as such (liberal model), the social structures (communal model), or both, that must be tuned towards greater gender sensitivity in order to implement equality to the full. The argument that I am making in this paper is that by retaining formal legal personality and the natural person's separateness and keeping alive an egalitarian and proactive policies, the gendered differentiation of or essentialism linked to the legal person construction itself could be avoided, thus recognizing and protecting an unlimited human variety and unique selves (liberal communitarian model).

The very idea, or ideal type, of modern law as a formally equal system was to be neutral in respect to the persons whose rights and relations it regulated. Persons were to predate law, and it was no longer understood as belonging to the law's purview to define whom and of what kind, or in which social position or rank the persons are and how their rights reflect their position. ´Person' was to signify the very meaning of the word *persona*: a mask, a formal way to present oneself to the external world but protecting the unique subjectivity of each and everyone irrespective of predefined social position. Law in its positivistic form was created as a closed system that did not intervene in the social world. Legal personality implied only the variety of rights and obligations that law regulated. Law was not to interfere with the lives of individuals, whose supposedly authentic will and rational choice were given legal validity in construing legal relations, consent and contracts. The formal notion of legal person was 'an empty slot' that allowed in principle an unlimited human variety of unique selves whose freedom and autonomy law protected. Legal personality was seen as universal, and individual self was in a fundamental way shaped by and onto the notion of individual ownership of rights. As will be demonstrated below, the rights themselves are inherently gendered and thus indirectly shape the personality as gendered. This fact does not deny, in principle, the promise of indefinite and all-encompassing legal personhood, but in practice, the historical development of law has reproduced the gendered nature of law in a way that has proved to be quite difficult to challenge.

The standard image of abstract and neutral legal personality has of course never gone unchallenged. As soon as it had emerged, the critique started to proliferate. The earlier critiques such as those of Marx, Nietzsche and Freud were later complemented by the anti-huma-

nist critique and by understandings of discursive personhood.[5] Persons do not predate law but law constitutes persons.[6] Gender and personhood are seen today rather a construction,[7] a process[8] or a performative[9] than some pre-existing social and legal encounters and discourses. The transcendental self and foundational biology have been challenged. Another tendency is to put the omitted attributes of persons back to the law and create new subject positions on the basis of group identity. The multiplicity and intersectionality of personhood and identity are currently subject to legal implementation especially in regard to anti-discrimination law. The earlier invisible differentiation of identities is being made visible by enforced anti-discrimination and positive measures in relation to discriminated social groups. Such groups are defined on the basis of person-related attributes such as sex, sexual orientation, ethnicity, religion, or disability – even though the legal rights discourse still has the universal individual as its core concept.[10]

The person constructions of modern law do not form a systemic whole. On the one hand, today as hundred years ago, the notion of coherent personality is the basis for much of the central legislation. There would not be legal obligations or guilt in the sense we understand them unless it were so. On the other hand, such coherent understandings are being deconstructed and multiplied, taking distance from fixed and universal meanings. But doing so in some areas of law does not necessarily mean that all the foundational subjects are subject to critical scrutiny in the same way. Intersectionality may quite well be a legitimate approach when it comes to issues of marginalization, but the norm itself, the modern subject, may remain untouched. This paper aims at an analysis on how the legal representations of person have created norms and construed gender in one specific culture. The broader Nordic and European framework, as well as feminist theory, are used as mirrors to highlight some of the specific features of the Finnish history of law.

Feminist Critique

Feminist critique has maintained that the seemingly universal, equal and neutral law was created and is gendered and biased in its very construction. The 'empty slot' of legal

[5] Vivien Burr, *Social Constructionism*, London, Routledge, 2003.
[6] Costas Douzinas, *The End of Human Rights*, Oxford, Hart Publishing, 2000.
[7] Joan Scott, *Gender and the Politics of History*, Revised edition, New York, Columbia University Press, 1999.
[8] Drucilla Cornell, *The Imaginary Domain: Abortion, Pornography and Sexual Harassment*, London, Routledge, 1995; Drucilla Cornell, *Transformations: Recollective Imagination and Sexual Difference*, New York, Routledge, 1993.
[9] Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity*, New York, Routledge, 1990; Judith Butler, *Bodies that Matter: On the Discursive Limits of 'Sex'*, New York, Routledge, 1993.
[10] Martha Minow, *Making All the Difference: Inclusion, Exclusion and American Law*, Ithaca, Cornell University Press, 1990.

person was not empty at all but has been filled in certain gendered ways by giving a certain type of shape to legal relations. The claim of Law to draw boundaries between itself and the social world in order to remain neutral in regard to it has been rendered suspect.[11] It has also been maintained that trying to become legal persons merely makes women assimilate into the male norm and masculine symbolic order. Such notions have also led to certain pessimism in regard to how and whether the issues of inequality and discrimination can be resolved at all with legal methods.[12] Why bother with legal reform when such reconstruction does not alter the fundamental understandings of what law and legal persons are? Feminism has contributed to our current understanding that law is not neutral in regard to subjectivity. The boundaries of law and other discourses are not clear-cut but law does indeed constitute much of how we exist in the world. We are not completely 'free' to define ourselves and we cannot achieve knowledge irrespective of our place in the discursive system – in other words, any claims on authenticity or authentic will are construed by law and even at their best quite relative.

As much as law claims neutrality to individual differences, as much these differences are hidden underneath its formal guise. Law does not talk about difference but its principles and concepts are nevertheless based on and intertwined with them, notably on sexual difference and public/private difference, often on ethnic or religious difference as well. Gender is a construction of (legal) language imposed upon individuals. The attributes or faculties attached to the legal person – rationality, autonomy and possessiveness – are supposedly male ignoring the more relational aspects of personhood. The whole concept of legal personality as atomistic and unencumbered self has been suggested to be a distinction between sovereign selves and the Others who do not fulfill the criteria of persons. For the 'founding fathers' of modern law, women were non-selves without bounded existence as possessive individuals. Women did not fit to the image of selves, subjects and agents who are independent, acquisitive and in full command of selves, personhood, labor and property. Women were defined as opposites, as negations, as someone lacking of full legal personhood and consequently lacking legal recognition of their fundamental rights.[13] The whole development of modern law can be characterized as a continuing tension between what is visible and valid in the eyes of the law and what remains silent, without voice or recognition. Repeated attempts to break up the silence, to

[11] See for example Ngaire Naffine, Rosemary J Owens (eds.), *Sexing the Subject of Law*, Sydney, Sweet & Maxwell, 1997; Margaret Davies, *Asking the Law Question: The Dissolution of Legal Theory*, 2nd edition, Sydney, Lawbook Co, 2002, 197-256; Margaret Davies, Ngaire Naffine, *Are Persons Property?: Legal Debates about Property and Personality*, Aldershot, Ashgate, 2001; Ngaire Naffine, "In praise of legal feminism" in *Legal Studies*, vol 22, no 1 (2002), 95-100.

[12] Carol Smart, *Feminism and the Power of Law*, London and New York, Routledge, 1989.

[13] On the history of European legal writing on women and law see for example Ute Gerhard, *Debating Women's Equality: Toward a Feminist Theory of Law from a European Perspective*, New Brunswick, New Jersey, and London, Rutgers University Press, 2001.

deconstruct the biased person construction and to be recognized as legal persons who also own rights have characterized the process of women, somewhat later other marginalized groups, in the campaign for equality. Simultaneously, it has also been subject to much criticism whether gaining status as legal persons is at all a good thing if it means either assimilating into the male norm or accepting sexual difference in the sense of ontological femininity.

The problem of essentialism and adverse impact of category politics has evoked most of the debates amongst feminist legal scholars during the past decades. If liberalism is challenged by its gender-blindness, a trap of essentialist femininity could easily suppress the multiplicity of identities amongst women and may also reiterate traditional gendered patterns.[14] Several ways out of this problem have also been provided. In feminist legal science, one of the most fruitful solutions is that of Drucilla Cornell. She sees personality as a process, something yet to come. To protect such a process, three conditions should be protected by law: 1) bodily integrity; 2) access to symbolic forms sufficient to achieve linguistic skills permitting the differentiation of oneself from others and; 3) the protection of the imaginary domain.[15] 'The imaginary domain' is understood as a possibility for women to evaluate and represent who they are, in short, as a right to self-representation that is free from 'internal tyrants' of the imaginary domain. Such an understanding disassociates itself from coherent notion of personhood, avoids essentialism, and regards personality and difference as constructed through language but also takes into account the bodily dimension of human existence. To speak about a process opens for a discussion of the harms of discrimination that is not necessarily linked to ontological meanings of personhood as a fixed entity but rather on the effects of social practices (and eventually, legal interpretations). Furthermore, such an understanding does not equate female with ontological 'feminine' nor see equality as assimilation. If personality is seen as construed, it should provide possibilities for creating unique subjectivity without being trapped by the fear of neither assimilation nor essentialism. But seeing personality as construed does not mean either that some fundamental rights such as protection of life, health and integrity should not be protected in the very classical sense of human rights.

Inclusion and Differentiation in the Formal Language of Law

Universal legal conceptions simultaneously exclude and include differences, or, people in different positions. However abstract and neutral, the modern concept of legal

[14] Margaret Davies, *Asking the Law Question*, (note 11).
[15] Drucilla Cornell, *The Imaginary Domain* (note 8). Cornell´s ideas are discussed in detail in Janice Richardson, *Selves, Persons, Individuals* (note 1).

personhood has indeed in a profound way excluded 'the others' by either attaching attributes to the persons or by defining the boundaries of what human action is legally recognized as valid or invalid respectively – and how. At the same time, it has included differences by its demand of adapting to the norm.[16] Inclusion does not only signify affiliation and integration but also assimilation and indirect discrimination. Including difference in the legal constructions of personality is thus a multi-level and multifaceted process. Legal conceptualizations have included differences by creating norms and paradigms which people with legal (or, political) claims have been compelled to adapt. Notions of universal subjects are built on inherent distinctions between what is legally valid and represented and what remains misrepresented in law – i.e., the subtext or undercurrent of the neutral and universal law. In particular, the exclusions lie in the internal inconsistencies, gaps and incongruence inherent in legal texts: definitions can be excluding without overtly expressing it. For example, even if and when consent is required as a prerequisite for a valid contract, law does not necessarily ask what the context of giving such consent is. If it is not a question of coercion or fraud, the social position or personal commitments, especially in regard to familial or intimate relations, are not interesting to the law. The integrity of the legal principle, reliance interests and predictability of consent (and of course, women's legal personhood![17]) is enforced through excluding any contextual or substantive interpretations, but as a consequence, many cases of inequality and exploitation may also be excluded. Justice is blind, but behind the 'veil of ignorance' there is also indirect adverse impact. Thus, silence can also speak.

The inclusive and differentiating elements of modern law in regard to gender can be summarized as follows: the law creates paradigms and norms in which people have to adapt to if they want to gain legal recognition – the promise of equality thus being based on assimilation rather than affiliation. The principle of equal treatment is understood as formal, focusing on equality of opportunity rather than substantive equality of outcome. Furthermore, the law often disregards the needs of private sphere and intimate relations by treating predominantly the relations of public sphere and the market and demanding observation of the Generalized Other – instead of the particular relations and needs of particular persons in the private sphere. Against the universalism and generalizations of law, women, care and intimacy are often seen as exceptional or particular, based on difference rather than shared humanity, and defined as

[16] Joan Scott, *Gender and the Politics of History*, (note 7).

[17] On the 'dilemma of choice' see Gillian K. Hadfield, "An expressive theory of contract: from feminist dilemmas to a reconceptualization of rational choice in contract law", *University of Pennsylvania Law Review*, vol. 146 (1998), 1235-1285. On the gendered construction of intention and contracts, see Margaret Thornton, "Intention to Contract: Public Act or Private Sentiment?", in *Intention in Law and Philosophy*, Ngaire Naffine, Rosemary Owens and John Williams (eds), Aldershot, Burlington USA, Singapore, Sydney, Ashgate, 2001, 217-237.

belonging to a specific sphere with specific type of regulation treating that very difference. Womanhood does not 'fit' in the image of universality but remains in the margins. It is not represented in the abstract language of law. If trying to do so, adapting to the male norm is inevitable and the claim for equality loses its foundation. If all people are similar, what is the problem? If they are different, should they not then be treated differently according to the Aristotelian maxim? Much of the feminist philosophy has been dealing with this equality/ difference dilemma or paradox.

Sexual Relation and Sexual Difference in Modernity

Feminist critique has mainly focused on the regulation of marriage and sexual relation as the locus of producing and reproducing sexual difference.[18] One of the most influential and provocative feminist legal theorists, Catharine A. MacKinnon, has regarded the sexual relation as *the* relation of power and dominance that reproduces the subordinate position of women and silences them.[19] In the history of law, there are ubiquitous notions of the subordinate status and incomplete individuality of the woman, who, according to Hegel "has her substantive destiny in the family, and to be imbued with family piety is her ethical frame of mind".[20] The asymmetrical understanding of personhood was inherently linked with how a sexual relation was conceptualized. Passion was a male prerogative and the asexual woman could enhance male subjectivity by her love towards him. J.G. Fichte thought in 1796 that a woman regains the level of free individual only "in making herself the means to satisfy man …and she receives her whole dignity back again only by thus making herself the means to satisfy man from love for a particular one".[21] A woman was considered asexual and docile by nature, geared towards recognizing the unique self of the man and the satisfying the male desire but not having that very desire herself – and neither requiring the same recognition of self as the desiring man. The sexual relation was seen by many authors in some sense as reciprocal – instead of seeing the woman as a property of the man only – but the personhood of woman was understood to come into existence only through a man who was the primarily dynamic sexual actor. According to Niklas Luhmann,[22] love is one of the adaptive codes of

[18] Carol Smart, *The Ties that Bind: Law, marriage and the reproduction of patriarchal relations*, London, Boston, Melbourne and Henley, Routledge & Kegan Paul, 1984; Katherine O'Donovan, *Family Law Matters*, London, Boulder, Colorado, Pluto Press 1993; Carol Pateman, *The Sexual Contract*, Cambridge, Polity Press, 1988.
[19] Catherine A. MacKinnon, *Feminism Unmodified: Discourses on Life and Law*, Cambridge, Massachusetts, Harvard University Press, 1987.
[20] Quoted in Joan Landes, 'Hegel´s Conception of the Family', in *The Family in Political Thought*, ed. by Jean Bethke Elshtain, Amherst, The University of Massachusetts Press, 1982, 138.
[21] Quoted in Gerhard, *Debating Women´s Equality* (note 13), 30.
[22] Niklas Luhmann, *Love as Passion – the Codification of Intimacy*, Cambridge, Polity Press, 1986.

modernity in which individuals started to gain shape and recognition as unique and authentic selves enjoying full autonomy. Individual identity was a process in which one had to 'create' the self without pre-given foundations. Love as communicative system reinforced the process of individuals enjoying recognition of their unique selves. The distinctively modern understanding of love is in its self-referential nature: love referring to love itself and effecting love irrespective of other functions. Love as a symbolic code encouraged people to have the appropriate feelings. Such a notion is of course one-sidedly seen from a male perspective.

Apart from the nature of self and the sexual relation as such, also the gendered hierarchy and division of labor in marriage as well as the impunity of violations in intimate relations are focused in most feminist critique. The very slow process of securing fundamental human rights to life, health and integrity of all women worldwide irrespective of their gender and family status bear witness of the difficulty in seeing women as owners of their selves. Even in the Nordic countries, where progressive and proactive equality policies have been pursued for several decades, the issue of tackling violence against women is still to be resolved in the seemingly egalitarian social and legal systems .

In the following, some characteristics of the legal developments in the 19th-20th century Finland are discussed in the light of the afore-mentioned debates and concerns. It will be demonstrated how conceptualizing legal personality in its gendered form is not universal but depends on the historical tradition and context. In Finland, the formal understanding of equality and the inclusive process of nation-making contributed, on the one hand, to some empowering reforms, yet on the other hand, it ignored the gendered power structures to the detriment of women especially when it came to the protection of their person. In short, the formal conceptualization of personhood was intertwined with some more communal and collective goals and values that were at least partly patriarchal.

Legal Modernization and Constructions of Persons in Finland

Introduction

I argue that the liberal self – emphasizing aspects such as autonomy, protection of privacy and self-determination – was not established to the full in the Finnish legal discourse until in the end of the 20th century. Even if the basic tenets of liberal rule of law were introduced in the Finnish Constitution of 1919, it was only after the adherence to the European Human Rights Convention in 1989, that the liberal concept has been consequently implemented in the law and can be seen today as the 'thread' intersecting major areas of law. The

legal conceptualization of personality has been strikingly formal and equal, showing very little if any mechanisms of differentiation according to gender. Simultaneously, there has been and to some extent still exists a historical legacy of the collective and more communitarian undercurrent that is of relative egalitarianism when it comes to participation in wage labor but which also has strong patriarchal features especially the lack of protection of personal integrity. Egalitarianism does not signify reciprocity of rights and responsibilities here. In a country of late and rapid modernization, the legacy of the pre-modern patriarchal structures has influenced law and policies up until the late 20th century, and, together with the aims of the inclusive nationalistic project, they shaped the understandings of equality as an equilibrium rather than absence of discrimination. Difference has not been created exactly in the same way as in the Western liberal legal cultures, that is, the axis of sexual difference in constructions of personality or marriage, or by defining clear-cut public/private boundaries. Due to a very weak influence of a distinctive liberal notion of gender differentiated legal personality and public/private distinction in the first place, the more collective and communitarian (ethical) gender-neutral or genderless framework has remained as the undercurrent of law. Consequently, law has, quite paradoxically, both an explicitly formal concept of personhood and more substantive contents of equality than just defining formal boundaries and principles of equal treatment. Such a substantive notion of equality as a societal and collective phenomenon has to some extent contributed to enhancement of the position of women as members of the nation, whereas it has ignored the more private power relations and abuse. Protection of individuals has always been intertwined with some more communal interests, and the relation of individual rights (constitutionalism) and popular sovereignty (common values amongst the majority culture within the nation state) has seldom if ever been specified in the legal discourse.

From Natural Law to Positivism

When facing the challenges of modernization in the mid-19th century, especially the creation of modern market economy, Finland still had the 1734 Swedish Law Code in force. The understanding of legal personality in that Code reflected more or less the understandings of Natural Law, in which gender was seen as a natural and pre-social faculty and legal relations between the sexes as emanating from property relations. On the other hand, even if the (male) individual and citizen began to emerge in the 18th century from the more collective structures based on social rank, they were not free to constitute the world or make individual moral judgments at that time. A pre-given social order and a moral and religious framework

shaped in a fundamental way one's existence in the world. However, due to the quite thin layer of learned legal culture, the Natural law understandings of legal personality intertwined with some even more ancient traditions linked with collective households. For example, the understanding of women as completely loosing their legal personality as they did according to the Natural Law theorists and in the common law (coverture) was not the prevailing one. The personal relation between husband and wife was not a property relation *per se*, but it was significantly shaped by the aim to increase his legal powers over her property. However, the social rank and possession of hereditary estate could secure a woman some rights as well when entering or dissolving marriage. Even the medieval institution of *jus clavum*, the rights of the household mistress, was kept in force up to the 1929 Marriage Law.

I argue that the Finnish law on person was moved directly from Natural Law to positivism,[23] and that the enlightened ideas, if any existed, did not affect the law to any greater extent. It is quite interesting that a late 18th-century treatise on civil rights, '*Twistemåls lagfarenheten utur Sweriges Rikes lag och Stadgar*' (1794) by Lars Tengwall still maintained that it was the social rank that was the determinant factor of a person's legal status. Despite the explicit aim of Tengwall to present Locke's ideas, the contents of the book reflected however the status bound legal system, not a system based on liberties. In other words, the development of universal (male) subjects was considerably delayed, and consequently, also the construction of women as the silent Others was insignificant. The concrete and material relations linked to real estate, social rank and patriarchal and hierarchical social structures still defined much of what was understood as legal personality. Even if the privileges of the estates were diminishing in the late 18th century, the status bound legal notions were not replaced by notions of universal subjects until in the 19th century. For example, it was only in the 1860s that the physical disciplining of servants was abolished on the grounds of protecting the integrity of the individual person. Legal science as such was extremely scarce until the late 19th century, and enlightened ideas were presented first and foremost in the area of economy. Even when modernized, the law retained some of the undercurrents of the pre-modern law. The understandings of legal personality based on status at birth and rank on the one hand, and the moral and religious framework of positive law on the other hand, were the elements that only very late were replaced by the principles of universal freedom, ownership of rights, individual moral judgment and positivist understanding of law. When the natural law type of ontology

[23] The late development of the modern legal science in Finland has been explained by both educational and political causes. See Lars Björne, "Brytningstiden. Den nordiska rättsvetenskapens historia del II 1815-1870", *Skrifter utgivna av institutet för rättshistorisk forskning grundat av Gustav och Carin Olin. Serien I: Rättshistoriskt bibliotek LVIII*, Lund 1998, 202-203.

was discarded in the second half of the 19th century, and law started to define just the conundrum of free legal relations and no longer the status of persons, some new methods to create coherence in the legal system emerged. The general principles and concepts of law, *allgemeine Lehren*, formed the 'scaffolding' of the system of positive norms that gave the image of a coherent and consistent systemic whole, however flawed this aim was in reality. One of these concepts was the notion of coherent personhood in the sense of Romanticism. A notion of a person's unique self, her individual fate and emotions, and her authorship of own life were in the background of legal modernization. Such a depiction of person was clearly masculine. However, law itself gradually began to see 'person' as just a formal legal device without a substantive content such as individual characteristics.

Basically the Finnish modernization of law followed the developments in the continent. The modern legal science was adopted from Germany, and the influence of the German Historical School was quite significant. When it comes to legal rhetoric on sexual difference, however, not all if anything was adopted from Germany. The German law on person, *Personenrecht*, that included a husband's right to the wife's person, did not figure at all in the Finnish doctrine. The Finnish lawyers only very seldom described sexual difference based on ontological femininity. Their primary interest was to modernize the law on marital property and adapt it to the emerging capitalist market. Equality rhetoric was more prevalent than difference rhetoric, albeit predominantly focusing on the interests of the nation and the family rather than those of women. However, from the 1860s onwards, women gradually gained subject positions both in regard to law and politics. This fact does not mean that there would not have been tensions. If not law, other discourses and disciplines such as medicine took the floor to define what sexual difference was in the modern, qualitative sense: as a polarity or oppositional positioning of men and women as individuals. The campaigns to accommodate women to the ideas of modernity were not always easy ones, but still it can be maintained that equality rhetoric was the significant form of argumentation in the debates, however much it merely concealed patriarchal power structures.

To understand the paradoxical features of Finnish history of law, the weak gender differentiation and the inclusive egalitarianism, one has to bear in mind that Finland was modernized very late, from the second half of the 19th century onwards. Its history of legal science is quite young and the legal academic community was extremely small up until the 20th century. The shift towards a positivistic understanding of law was a relatively rapid process in which the pre-modern, more or less collective institutions were transformed to suit to the modernizing society and capitalist market. Yet the transformation did not happen over-

night. The emblematic figure of modern law, the free and autonomous individual whose choice and moral judgment are the cornerstones of law, was not introduced at some single point. Nor was there any consequent application of the principles of freedom, autonomy, and universal rights, because not only gender (or rather, marital status), but also ethnicity and religion were understood as justified causes to restrict them.[24] Despite the positivistic turn and formal notions, law was closely intertwined with many substantive meanings linked to the Finnish nationalistic project.

Finland was at that time an autonomous Grand Duchy of Russia that had retained its Swedish legislation from the 18th century. There was no modern civil code, but The National Law Code of 1734 was step by step modernized with individual laws enacted by the national Diet from the 1860s onwards. The Swedish legislation on women's rights enacted a few decades earlier was seen as the example to follow, but ideas of equality were also adopted from feminist debates, both Nordic and international. The ethical reasoning in the sense of Natural Law was substituted by a positivist legal order implying both the moral autonomy of individuals and the values and priorities of a people within a nation state in the second half of the 19th century. However, both the Hegelian ethical frame in the sense of *Sittlichkeit (sedlighet*) and the substantive notions related to the nation state and national culture formed a discourse that dominated over liberal notions on individual, autonomous moral reasoning and formally equal treatment of persons.

Women were accommodated in law and polity as formally equal or nearly equal subjects *because* they were mothers, not *as* mothers who would be totally subjugated to the marital authority. Sexual difference laid not so much in the subject construction as such as in the social structures. Women had an important role as educators in families, in which the economic power belonged predominantly to men up until the 1929 Marriage Act.. Families were regarded as the locus of national language and culture upholding the ethical basis of the nation. The purity of family life was the ground for national survival.[25] Because of their educating role and because of their access to the public sphere in the process of nation-making – as members of popular movements, as participants in literary and popular debates and as active party members – women had a direct link to the nation and were included in it directly, not just via their husbands.

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[24] Anu Pylkkänen, "Constructions of Legal Persons in a 'Communitarian' Context: the Modernisation of Law in Finland", in *New Challenges for the Welfare society*, Vesa Puuronen et al., (eds.), Joensuu, Institute of Carelian Studies, Joensuu University, 2004, 63-85.

[25] On the Hegelian ideas in Finland, see Marja Keränen, "Modernity, Modernism, Women" in *Finnish 'Undemocracy': Essays on Gender and Politics*', ed. by Marja Keränen, Jyväskylä, The Finnish Political Science Association, 1990, 123-124.

Up until the 1890s, ethics was described as *Sittlichkeit,*[26] but soon afterwards (after issuing the 1889 Penal Code and its regulation on sexual crimes as crimes against *sedlighet*), *sedlighet* came to signify sexual morals only. For women, the issue of ethics was most of all a question of sexual morals. The ethical campaign of the first-wave feminism, much in accordance with what in Sweden had been initiated by the Fredrika Bremer Society, was against the moral double standard. Temperance was also an important part of creating citizenship. The feminist organizations were active in initiatives to abolish prostitution in 1888 and onwards.[27] In short, the national project was based on ethical considerations. The 'legacy' of these debates seems to be the emphasis and expectation of ethical responsibilities and ethical superiority of women. This notion was brought up by the women's organizations themselves. The downside of such policy might have been that women were made invisible as persons when the communal values and needs were prioritized. On the other hand, the campaign of making women 'economic women' by the side of 'economic man' especially in regard to family maintenance also emphasized rather the communal interests than the establishment of possessive selves. However, for the first bourgeois feminists, it was germane to base legal personality on independent property rights, however much the context of such independence was in the family, the general welfare ('societal mothering') and ethical issues.

Tradition of formal equality has since been a persistent one. When Finland became an independent country, its first Constitution 1919 was based on the principles of the rule of law and legal equality. The understanding of fundamental rights was, however, still quite formal, and the constitutional impact on the whole legislation was rather limited. Rights discourse and efficient anti-discrimination were implemented in the 1990s, but up until that time, also equality was understood in a formal way.[28] State feminism 'allied' with the state in regard to issues of working life, public social services and equality legislation, but debates on sexual difference or bodily and personal integrity of women were conspicuously rare.[29] One can say that despite the strong tradition of first-wave feminism, which was and still is praised for its victories such as the early vote for women, the issue of gender inequality has not been adequately

[26] Robert Montgomery, *Finlands Allmänna Privaträtt* (The general civil law of Finland), Helsingfors, 1889-1895.
[27] Pirjo Markkola, *Synti ja siveys: naiset, uskonto ja sosiaalinen työ 1860-1920* (Sin and Chastity: Women, Religion and Social Work 1860-1920), Suomalaisen kirjallisuuden seuran toimituksia 888, Helsinki, 2002, 186-199.
[28] Supra note 24.
[29] On the developments of equality politics and reform in the 1960s-1980s, see Solveig Bergman, *The Politics of Feminism: Autonomous Feminist Movements in Finland and West Germany from the 1960s to the 1980s*, Turku, Åbo Akademis Förlag – Åbo Akademi University Press, 2002 ; Anne Maria Holli, *Discourse and Politics for Gender Equality in Late Twentieth Century Finland*, Acta Politica, 23, Department of Political Science, University of Helsinki, 2003.

addressed in law and public policy until in the present day. Nor has the question of the gendered nature of legal personality been analyzed in depth so far.

Equal Treatment and 'Genderless Gender'

In the 19th century law making, equality issues were discussed mainly in regard to three legislative cases: the abolition of the guardianship of women (1864), the marital property reform (1889) (including inheritance reform 1878), and the reform of the Penal Code 1889. The parliamentary reform (1906) was understood as one concerning fundamental rights of women. The discussion on the nature of female subordination was almost never done on a personal level but more often than not by referring to the needs of a whole, be it the family, the nation, or other communities. If and when sexual difference was discussed, it often happened in surprisingly equal terms. Finland was one of the few countries in the 19th century to criminalize female homosexuality on equal terms with male homosexuality. This choice was made due to the principle of equal treatment, thus reflecting the undifferentiated and weakly polarized sexual code of the agrarian society. In most of the other European countries such a criminalization was unthinkable, because it would have been an indirect recognition of women's capacity to autonomous sexual desire.[30] Also male marital infidelity was punished according to law (but seldom in practice), which was quite unusual at that time, when in many countries only the wife could commit adultery. In Finland, it was the formal equal treatment and the collective structures such as family economy that mattered most in the legal sphere, not the doctrines of fundamental sexual differentiation based on biology. When the crime of fornication was discussed in the Finnish Diet in 1888, it was stated that "one shows greater respect to woman by acknowledging she is responsible for her deeds in the like manner and to the same degree as a man".[31] However, notions of biological sexual difference did exist in the 19th century especially in medicine that had adopted many of its ideas from abroad. Male sexuality was seen as uninhibited but females as asexual and in charge of restricting the male libido.[32]

In literature and popular debate, notions on difference and notions of equality prevailed depending often very much on the social rank or the political party of the participants of debate. The genre of depicting romantic, often asymmetrical, sexual relations was quite insig-

[30] Jan Löfström, "A Premodern Legacy: The "Easy" Criminalization of Homosexual Acts Between Women in the Finnish Penal Code of 1889" in *Scandinavian Homosexualities: Essays on Gay and Lesbian Studies* ed. by Jan Löfström, New York, London, The Haworth Press, Inc., 1998, 53-79.
[31] Jan Löfström, "A Premodern Legacy" (note 30), 67.
[32] Arja-Liisa Räisänen, *Onnellisen avioliiton ehdot* (The Conditions of Happy Marriage), Bibliotheca Historica, 6, Helsinki, 1995.

nificant as such, even though literature from other countries, both romantic and realist, was known and read as well. Realism, even naturalism, was the dominant style of literature at that time. Some of the most significant Finnish novels and poems like *Seitsemän veljestä* (Seven Brothers) by Aleksis Kivi or *Yksin* (Alone) by Juhani Aho described rather the anxiety of modern male subjectivity (often connected with experiences of loneliness and disappointment in love) and transgressions of the pre-determined social and moral order than romantic or passionate sexual relations. Modern masculine identity was in a process of being shaped, and women were used as the mirrors of such struggles. In other words, there was no hegemonic masculinity to be challenged, but the modern male and female individuation were shaped at the same time, distancing themselves from the pre-modern patriarchy based on hierarchical and collective social structures. The modern public sphere was only in the process of developing, and the access was relatively open for both men and women. The links between cultural debate, politics and law were quite direct. Women organizations could indirectly influence the law-making process even though women were not represented in the Diet. They took an active role in public and legal affairs both directly and through male allies.

Women writers were active in describing the lives of women in a realistic way and taking actively in part of the contemporary debates like those concerning women's rights and sexual morals. It was quite unusual in the European perspective that even women wrote novels and plays on adultery and female sexuality. The demand for similar moral standard for men and women was understood as an issue of equality: men and women should have the same obligations and consequently, same rights. Many of women activists had a rather two-pronged approach: to emphasize women's roles as mothers but also to discuss moral double standard, inequality and need for legal reforms. One of the most influential women writers, Minna Canth, received both praise and criticism for her naturalist and critical approach to the contemporary social problems. She was one of the leading figures of women's campaign for emancipation inspired by foreign impulses, for example Herbert Spencer and John Stuart Mill. Canth criticized any notions of ontological difference in men's and women's capabilities and demanded both better education and full legal rights for women. Inequality was not determined by nature but by the unequal social and legal system. Furthermore, her point was to emphasize women's rights to property and education being necessary as such, in order to make women subjects and full members of society irrespective of the needs of the families or

the nation. Debates amongst male protagonists had rather emphasized the interests and needs of others, not those of women themselves.[33]

The late modernization of law and the nationalistic project were the two important factors that contributed to the (seemingly) egalitarian understanding of women as legal persons. Late modernization signified a less developed differentiation of the legal personality and a more blurred boundary between the public and private spheres. These factors created a public space in which the individuation of both men and women was in the process of being developed simultaneously. On the other hand, within the nationalistic movement, women had a comparably open access to the public sphere as nationals, even though not necessarily without controversy and opposition.

Inequality and Equality in Marriage

Modernity can be characterized as a project of differentiation and individual freedom: individuation, reflective self-identity and freedom of constraints in the social order, moral framework and standard meanings. Individual ownership, authorship and moral judgment were introduced. Equality in the sense of equal treatment (formal use) became gradually the leading principle of law. But was the modern project the same for both men and women? The two prerequisites of such freedom as they were understood at time (and in many ways still are), namely the possession of self, and self-determination, as well as the power to define and articulate one's relation to others, were seriously lacking amongst women especially when it comes to sexual self-determination and protection of integrity. According to the 19th century legal science, it was beyond perception that a husband could rape his wife – thus to criminalize marital rape was considered as unnecessary.[34] When women lacked strong status as bounded persons and when their selves and sexual identities were regarded as being devoted to the needs of others (but not necessarily just own family members), not even the relatively successful campaign for economic individuation could alter the fundamental hierarchy of the genders and the impunity of violations. An understanding of the intrinsic intertwinement of the interests of women and the family, the nation and other communities was developed, thus making the sexual difference in regard to personal integrity invisible. The legal notion of per-

[33] Päivi Lappalainen, "Koti, kansa ja maailman tahraava lika; näkökulmia 1880-1890-luvun kirjallisuuteen" (Home, nation, and the staining dirt of the world: perspectives on the literature of the 1880s and 1890s), *Suomalaisen kirjallisuuden seuran toimituksia*, 789, Helsinki, 2000, 141-151, 179-185; Pirjo Lyytikäinen, "Vimman villityt pojat. Aleksis Kiven Seitsemän veljeksen laji" (The boys of 'Sturm und Drang'. The genre of the novel Seven Brothers by Aleksis Kivi), *Suomalaisen kirjallisuuden seuran toimituksia* 997, Helsinki, 2004, 16, 24, 54-56, 128-129, 162; *Taisteleva Minna: Minna Canthin lehtikirjoituksia ja puheita 1874-1896*' (The Fighting Minna: articles and speeches of Minna Canth 1874-1896), Helsinki, SKS, 1994, 75-113.

[34] Jaakko Forsman, *Föreläsningar öfver de särskilda brotten* I (Lectures on Specific Crimes). 4th edition, Helsingfors, 1924, 117.

sonhood was thus inherently gendered when failing to protect women as individuals irrespective of their family status.

Family was indeed understood by the first feminists as the arena of individuation. The first phase of creating women legal persons was to detach them from private and intimate dominance (husband's authority, *målsmanskap*) in the family, even though the emphasis was on economic relations rather than personal or sexual. Independent income and property were seen as crucial, not just for equality but also because of survival. Besides the national narrative, the narrative, even the myth, of responsibility and strong women was significant.[35] On the one hand, family was seen as the locus of patriarchal power in the elite women's campaign for rights in the 1860s-1880s, and on the other hand, as one of the foundational planks of the emerging national culture. It seems as if the rhetoric of empowerment was more widely deployed than that of oppression. It was generally understood to be empowering for women if their roles as mothers and conveyors of national language and culture were recognized. One dimension was the family economy, another, education. The issue of same education for boys and girls was resolved successfully in the reforms of basic education in the 1860s – not without tensions, though. Education on the whole was an important part of the nationalistic project. Swedish speaking elite families started to educate their children in Finnish. Nation was understood strongly as being created by national culture, mainly through language. The majority of women activists saw their interests and those of the state to coincide in the family. If women's rights were enhanced, not only women but also families could be better served as well as the nation. In 1889, marital legislation was partly reformed so that wives could manage their own income – in order to help them maintain the family if the husband failed to provide for it. When the reform of marital property rights was discussed in the Diet in the 1880s, representatives of the farmers maintained that "a household's success is entirely dependent on the continuous care and attention of the household mistress". The image was not that of a docile and privatized wife but of the working matron of an agrarian household now transformed into the maternal figure in the nationalistic culture.

Most of the feminists of that time also thought that women would better look after the moral standards of the society as well were they allotted political agency and individual rights even within the family. Feminism did not try to abolish the family but to bring women as wives and mothers on an equal footing with men. This emphasis dominated the whole devel-

[35] Anu Pylkkänen, "The Responsible Self: Relational Gender Construction in the History of Finnish Law", in *Responsible Selves: Women in the Nordic Legal Culture*, in Kevät Nousiainen et al. (eds.), Aldershot, Ashgate, 2001, 105-128.

opment that was to lead to a harmonized Nordic Model of Marriage in the 1910s and 1920s.[36] The important dissenting voice was, however, that even women should be treated as autonomous subjects, not just wives and mothers with primary responsibilities within the family. Debates on legal reform were rather divided in this issue, as the modern notion of qualitative sexual difference was also brought up in the Diet against the demands for reform – but there were also male critiques of such qualitative differentiation. The Diet was divided into four Estates of the State and the opinions varied a lot depending of the collective interests of each Estate. In some issues, the farmers were the more progressive ones, in some others, the nobility. In the end of the 19th century, political parties were formed and their leaders became important figures. It must also be pointed out that the feminist movement itself was by no means a uniform one. Women of upper and working class had often very little in common with, even if they united their campaigns on some main issues. Maybe the weak sexual polarity was depicted in the identification of female politicians with political parties rather than with women as a category. But when it was question of uniting the nation, such distinctions became less visible. In 1905, a Parliamentary Committee stated as grounds for the female vote: "Women have participated in the campaign [against Russian repression] as much as men have; in addition, their moral capacity is stronger than men's".

Since the 1870s, Nordic lawyers had gathered in the Nordic lawyers´ meetings in order to discuss the ways in which law should be modernized in the Nordic countries. Especially amongst the Danish and the Norwegian legal scholars, the legal independence of the wife was advocated, and subsequently, some important reforms took place in these countries in the 1890s. Somewhat later, the liberal Danish law professor Viggo Bentzon chaired the Scandinavian committee for law reform that was initiated in 1910, and he also wrote a treatise on the law on person (*Den Danske Personret* 1904) and on marriage (*Den Danske Familieret* 1910) that both reflected egalitarian ideas. Finland and Sweden seem to have been more traditional, as the husband's marital powers, *målsmanskap,* was not abolished until a few decades later, even though the marital economy was partly modernized even in Sweden and Finland in the course of the 19th century. In Sweden, the abolition of marital authority evoked a lively debate in the 1910s, whereas in Finland, the marital law was finally enacted as based on legal equality without any debate at all in the 1920s.

The Finnish 19th-century legal science relied considerably more on older traditions and communal interests than the liberal and reformatory influences that already characterized the

[36] Kari Melby, Bente Rosenbeck, Anu Pylkkänen, Christina Carlsson Wetterberg, *Äktenskap och politik: moderniseringen av äktenskapet i Norden 1909-1929*' (Marriage and Politics: Modernisation of Marriage in the Nordic countries 1909-1929), forthcoming (Makadam).

'West-Scandinavian' legal science and legal policy debates. The 19th-century lawyers emphasized primarily the status of family as an institution in the interests of the nation state. Robert Montgomery wrote in his treatise of private law[37] that family is an important social institution and that the regulation of family and marriage is derived from the interests of the whole society. Such regulation could also include rights to the other spouse's person. However, Montgomery did not discuss the gendered power structure or sexual difference in marriage unlike the German sources from which he had adopted most of his thinking. Unlike Kant and Hegel, who both thought in their respective ways that marriage is based on some kind of reciprocity – even if their seemingly egalitarian thinking actually was not egalitarian at all but was marred by the notions of the subordinate status and incomplete individuality – Montgomery was mostly interested in the institution of marriage, not in the relation of the spouses. The nature of personal relationship in marriage was seen as shaped by the ethical relations of responsibility. Any power the family members (notably the husband) enjoyed in regard to property had to be used to the advantage of the interests of the family and all family members (who lacked efficient methods to contest his acts). When elsewhere in private law, obligation was only the downside of rights, in the realm of the family, obligation dominated. When discussing legal personality, Montgomery referred again to the ethical nature of marriage and the interests of the family life.[38] He maintained that the power in the family must be concentrated in the hands of one person and not be divided amongst the spouses in order to avoid conflict and disharmony. Much of this all is familiar to us from the German texts, and especially the Hegelian emphasis on family as an ethical institution seems to come quite close. However, there was no such doctrine and norm of qualitative and naturalized sexual difference and gender hierarchy in marriage (*der Mann is die Haupt der Ehe*) that was so central to the German authors. The only legitimizing ground for such a statement in Montgomery was that a man as a rule was more adept (*anlagd*) than the woman to run the household. In this sense, the Natural Law understandings of family economy as a whole in the husband's exclusive control seem to be repeated, but it also may reflect the relatively undifferentiated division of power in the traditional agrarian household, which was now being contested and replaced by more modern models. As the rights of the household mistress (*ius clavum*, *husfrudöme*) never had lost legal relevance, signifying the importance of a joint household of the type *das ganze Haus*, one refrained from using strong expressions when justifying the male supremacy. Yet another aspect worth noticing here is that in Germany, the late 19th-century doctrine on marriage was a much stronger response to the legal independence of married women that had already taken place in

[37] Robert Montgomery, *Finlands allmänna privaträtt*, (note 26), 272-273.
[38] Robert Montgomery, *Finlands allmänna privaträtt*, (note 26), 314-315.

some German areas in the early 19th century.[39] In Finland, the modernization of law took place much later and the doctrines borrowed from Germany faced a reality in which the bourgeois culture was very thin and in which the feminist movement and other social movements were already directing developments towards greater emancipation – even though many of the significant legal changes took place only in the 1920s.

In his lectures on marriage law[40] Rabbe Axel Wrede was more explicit and said that the institution of marriage bases itself on sexual difference (*olikheten i kön*) but he regarded marriage from a teleological perspective: the function and aim of marriage is to provide help and support for each of the spouses, as well as to bring up children. For him, the ideal of marriage existed, which the legal regulation can advance by removing any obstacles from the realization of such an ideal. Consequently, it was against the ideal of marriage and its ethical dimension to allow people to divorce whenever they wanted, but if the ethical basis of marriage, love, disappeared, divorce was possible.[41] One could not realize love through law but the aim of law could nevertheless be to favor love in marriage. One can read from such emphases that here 'love' does not mean 'love' in the romantic sense but rather much closer to an obligation as in the Canon Law doctrine of conjugal debt. Wrede did not discuss the power structures within marriage, violence or abuse as grounds for dissolution, nor did he discuss in any greater detail the legitimacy of male supremacy in economic (and personal) matters. Clearly such an understanding failed to see family members as individuals – family was a sphere where general principles of civil law were not applied.

Towards Egalitarian Marriage Law

The reform of marriage law began in earnest in 1907 when 19 women MPs entered the unicameral Parliament. They took in unison the initiative to abolish the husband's authority in the family. The discrepancy between political rights and subjugation in the family was striking. However, the Government took the German BGB as the starting point when, in 1911, it gave a report on the general guidelines of the reform. That report was highly dissatisfactory for women. Again, women were united in their critical comments. Because of political instability, steps were not taken further until after the independence (1917), when Finland decided to reject the German model and to join the Scandinavian legal harmonization that had started in 1910. The Scandinavian marriage law reform had already resulted in egalitarian

[39] Supra note 2.
[40] Rabbe Axel Wrede, *Föreläsningar öfver Giftermålsbalken* (Lectures on the Marriage Code), Helsingfors, 1903, 3-4.
[41] Rabbe Axel Wrede, *Föreläsningar öfver Giftermålsbalken*, (note 40), 206-207.

legislation both in Sweden and in Norway (somewhat later in Denmark), and Finland accepted that model more or less without questioning its premises. The Nordic Model of Marriage was based on several radical principles: individual ownership of property, free divorce, shared responsibility for family maintenance ('dual-breadwinner model') and deferred community.[42] Individual rights, equality of spouses, and private discretion were the new guiding principles. Finland diverged from the Nordic model only by not allowing divorce through legal separation and by establishing the marital age of women at 17. The issue of marital power structures did not evoke any debate in the Parliament in the 1920s, and the Act was finally passed in 1929.

The new Marriage Act thus introduced equality in marriage, made married women full legal subjects and connected family issues to the emergence of early welfare. But did it end patriarchy? The answer is in the affirmative if we think patriarchy as the pre-modern mode of social organization that in fact had prevailed in the mostly agrarian society up until the 20th century. The hierarchical power of the household master (*husbonde*) that covered both marriage and in-laws in the traditional household of the society of estate (*das ganze Haus* model) was replaced by individual freedom and egalitarian decision-making between the spouses. Ownership was made individual, self-determination and personal choices freed from gender and familial constraints. But was this all? If patriarchy is understood as an unlimited male power in (intimate) interpersonal relations and in social institutions, it was not ended. Interventions in the private sphere in cases of violence and abuse were not considered necessary- in fact there was almost total silence on violence. The notion of marriage was based on harmony and collaboration between the spouses.

One important aspect was indeed missing: the protected integrity of women was not focused in the campaigns. The marital rape exemption was never questioned. Violence issues on the whole were neglected. The economic individuation dominated over issues linked to body and sexuality. It was the sameness model and assimilation to the image of 'economic man' in the public sphere and the market that was important, not the more private areas where difference and inequality were produced. During the whole 20th century, the private sphere was subject to social and legal intervention in the interests of the nation (for example, in regard to maintenance, welfare and eugenic control), but not in regard to the protection of individuals. Not surprisingly, then, that when the gendered violence issues finally were brought to the agenda in the 1990s, it was difficult to respond to the concerns: women had already lived almost a hundred years of the supposedly independent life of economically and

[42] *The Nordic Model of Marriage and the Welfare State*. Nord 2000:27. Copenhagen, Nordic Council of Ministers, 2000.

socially strong individuals who were difficult to be visualized in the position of victim.[43] The tradition of seeing conjugal violence as a private matter has indeed been of great longevity. Only in 2004 was all violence in the private sphere made subject to public prosecution without exceptions, and in 2005, it became possible to ban the perpetrator from home. Maybe it is possible to say that as of date, patriarchy no longer exists as the undercurrent of the otherwise equal legislation - which does not say much of how and if the popular attitudes have changed.

Conclusion

In conclusion, I would summarize the explanations of a formal and gender-neutral personality constructions in the Finnish legal modernizations as follows: on the one hand, the legacy of a pre-modern emphasis on status bound positions and hierarchical structures, and on the other hand, the late development of individuality and learned culture, as well as the insignificant distinction of public and private spheres contributed to a situation in which gender differentiation also remained weak or at least ambiguous. Consequently, women gained access to the public sphere and education, and were allowed to have a voice of their own, however much restrained it might have been in some respects. The process of creating the nation and the emphasis on economic individuation was shared both by men and women, whereas the personal relations and their gendered elements were much less discussed. The development was ambiguous in the sense that economic individuation was enhanced at the same time as many of the patriarchal structures forming the modernizing law's environment were not addressed.

This paper has argued that feminist theorizing should observe the different legal traditions: the models are not universal but always contingent and historical. However, it has also been an argument for the liberal conception in the sense of consequent inclusion of women as persons and individuals related in the fundamental human rights. As the Finnish example demonstrates, not even the seemingly 'easy' accommodation of women in law in the national context can be successful unless the issues linked to personal integrity and human dignity are taken seriously with explicit gender sensitivity. When feminists in many other cultures have challenged the gender division of personhood and the assimilating notion of equality, in Finland the problem has been almost the reverse: quite an abundance of equality rhetoric and proactive policies but an inefficient enforcement of the protection of personal integrity. In my mind the demand for deconstruction and multiplicity does not necessarily have to require 'the death of subject' or fading of the bodily existence of individuals as men

[43] Minna Ruuskanen, "The "Good Battered Woman": A Silenced Defendant" in *Responsible Selves: Women in the Nordic Legal Culture*, ed. by Kevät Nousiainen et al., Aldershot, Ashgate, 2001, 311-329.

and women, who should be treated equally. I think that we can without controversy see personality as construed, as a process, or as a performative, without compromising the demand of seeing the protection of persons and their fundamental human rights as the cornerstone of legal systems. If done with a critical approach and gender sensitivity, such inclusion in the purview of law does not necessarily need to imply any ontological meanings attached to women, or assimilation, or uncritical reconstruction of the prevalent gendered social and legal concepts.[44] The current legal discourses are undeniably in many way inconsistent in their claim for equality and often have negative disparate effect despite their claim of formal and neutral stand, but that does not have to make law a completely useless tool in achieving change. The formal understanding of personhood could also be taken advantage of and utilized in and empowering way. The way in which legal language and critical assessment are employed can have powerful effects, even if there are also always limitations.[45] But if law is left outside as an object of critical scrutiny or as a tool for change, can other discourses or tools replace it?

[44] The French *parité* movement has been an attempt to refigure universalism in this sense. See Joan Scott, 'French Universalism in the Nineties', in *differences: A Journal of Feminist Cultural Studies*, 15.2, 2004, 32-53. For a discussion on women as epistemic subjects see Heidi E. Grasswick, "Individuals –in-Communities: The Search for a Feminist Model of Epistemic Subjects", *Hypatia* 19.3. (2004), 85-120.

[45] Ngaire Naffine, "In praise of legal feminism", (note 11), 75-77; Ngaire Naffine, "Who are Law's Persons?" (note 4).