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GENDER IN STATUTORY LANGUAGE: A LOOK AT ITS USE AND MISUSE

*by Martha Traylor**

Language is a tool to convey meaning; language is also sometimes the meaning itself. This being a paraphrase of Marshall McLuhan's "the media is the message" is not sheer chance. Language in legislation is more than merely the medium by which lawmakers express the ideas they have decided should become law. Language gathers to itself ideas and, as used in legislation, creates "laws" sometimes beyond those intended or indicated by the lawmakers.

This article is a preliminary look at a study of gender language used in laws on the state and federal level and how such gender language in and of itself casts the mold of the law many times apart from and in addition to the intention of the legislators. Gender language in a law can create bias in the implementation of the law, whether legislatively intended or not. Societal roles of men and women are productive of and are reinforced by gender language in the statutes of the society in which they function.

The old circuitous system, the archtype of a closed circle of cause and effect, whose analog is found so frequently in societal studies, appears again in the process of legislation. Biases and sex roles existing in a society produce legislation. The language used in the legislation, apart from the intent of the legislators, further

* Associate Professor of Law, Seton Hall University School of Law. The author has served as Legal Chairperson of the Philadelphia Chapter of the National Organization of Women (NOW) and also as a member of and counsel for Legislative Study Commissions in the Indiana State General Assembly.

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reinforces the biases and sex roles which produced it. Pinning down the source of the bias can sometimes be as elusive as chasing the wind.

"Gender language" is, very simply, words which convey a definite meaning or relation to either male or female. English is in many ways more simple than those languages closer in generation to Latin and Greek because nouns are seldom given a sex with which pronouns and other modifying words must agree to be grammatically correct. Genders assigned to nouns in Spanish, French, and Italian often do not have any apparent relationship to gender roles in society and serve only to designate which modifying forms are customarily used. Some English words, however, have gender meanings drawn from centuries of use and custom in societal sex roles and relationships.

The research design of this study is based on the occurrence of these particular gender words. With the help of computer searches, a group of laws was selected from state statutes to be the particular focus of this study.

This study is based upon a computer read-out of the statutes of Pennsylvania.[1] The computer was directed to select those statutes which contained the following words: boy, boys, man, men, male, males, masculine, feminine, girl, girls, woman, women, female, females, gender, genders, sex, sexes, discriminate, discrimination, discriminatory, husband, husbands, wife, wives, widow, widower, dower, illegitimate, bastard and bastardy. These key words were chosen either because of their innate connotation of male or female or because they refer to situations involving particularly one sex or the other. This narrowed greatly the body of law to be considered. It is, of course, possible that other laws now in effect do discriminate on a gender basis and might still not be caught in the net of these gender words. However, this list includes all salient gender words usually found in legislation and this computer search probably turned up a very high percentage of laws which discriminate because of their use of gender language.[2] Similar computerized searches in other states chosen randomly show a consistent pattern of laws containing gender language.

[1] Pennsylvania statutes have been found to be representative of state statutes in general in this regard, although the study is continuing on other states' statutes and federal statutes.

[2] Laws which discriminate on the basis of sex and contain no gender language will be the basis of a continuation of this study and will emphasize peculiar gender biased implementation by courts.

Discriminatory Gender Language

Sex roles in society in the United States are undergoing serious turmoil and change. Laws, which were not discriminatory when written, may discriminate today for that reason.

Even allowing for the inevitable lag between the gathering of thought in a society into a decision to legislate and the legislation itself, some laws are obsolete because of the gender language they contain when enacted. Society itself imposes certain meanings on words. When society's norms change, the laws remain printed in statutes and reinforced by long-gone judicial decisions. The language of the law changes even more slowly than the spoken language of a society and specific words and phrases can acquire several layers of meaning before new words and phrases come into mode to express the aggregate of new meanings needed by society. Such is particularly true of words relating to human sexuality. Almost always it is the laws whose gender language reflect the societal norms of a previous era that discriminate the worst. Obsolescence is the prime source of discrimination in this context, next only to the socio-economic make-up of the legislators themselves.

Our language and our laws have roughly the same history. Sources from Anglo-Saxon derivatives control both our jurisprudence and language as we speak it in the last quarter of the twentieth century in the United States. The Napoleonic Code also contributed some influence to our law, and our language likewise contains many French and Spanish cognates. These sources were adapted to the peculiar social, economic and ecological millieux which was to prevail in the United States. All sources of North American jurisprudence established and reinforced over and over again male superordinate mythology. The equality of women recognized on the frontier and in rural areas of the United States seldom found its way into the written judicial decisions in the first two hundred years of the United States. Male dominance moved into Congress and onto the bench in the United States with the few well-educated men who began the legal structure, who had learned their lessons well from the Inns of Court and decisions based on Common Law.

Aberrations such as John Stuart Mill's *On the Subjection of Women,*[3] written in the nineteenth century, were few and little heeded. Mill addresses the question of legislation directly when

[3] JOHN STUART MILL, ON THE SUBJECTION OF WOMEN (1869).

he asks why, if women are naturally subordinate, it is necessary to write so many laws to keep them that way. This impelling need of early male legislators to reiterate, time and again, the subordinate status of the female is nowhere more apparent than in state statutes throughout the United States. The renascence of feminism in the past decade has pulled into even more stringent focus the faulty fit of some laws to present day social norms, while the corollary new view of the male role in today's society calls into focus another series of gender based statutes.

The research design of this study consists of an analysis of those statutes included in the above described computer read-out and in similar read-outs from various other states. Each statute was read for its surface meaning as a law and then evaluated with respect to its discriminatory effect when implemented by the judicial system. Very little litigation is reported in written decisions on this particular type of discrimination. Each law was also read and analyzed in view of impending or present Equal Rights Amendments[4] and statutes which specifically guarantee civil rights.

Early in the research, an overall pattern became clear. Laws fall generally into three categories.

Intentional Discrimination

First are those which are written by the legislatures with a direct expressed intent to discriminate on the basis of gender. Rationale for this sort of discrimination was usually legitimate at the time because of its congruence with prevailing social norms, or at least those of the legislators. Legislators have been, both on state and federal levels, overwhelmingly male and white, usually politically and socially conservative,[5] and from what sociologists consider "upper-status people".[6] This, combined with Puritan ethics and Victorian stringencies, makes for a blend of attitudes which finds a defined, separate place for women.[7] These are the laws which specifically state that one gender or the other shall be allowed or denied certain privileges which are granted or denied either implicitly or explicitly to the opposite gender. Poll tax statutes are classic examples in this category, although eventually deemed unconstitutional due to their discrimination between races. Laws

4 Pennsylvania has had an Equal Rights Amendment to its state constitution for almost a decade, although such state amendments were defeated in 1975 in New Jersey and New York.

5 R. BENDIX & S. LIPSET, CLASS STATUS AND POWER 61 (1953).

6 R. LANE, POLITICAL LIFE 220 (1959).

7 J. BARBER, THE LAWMAKERS, RECRUITMENT AND ADAPTATION TO LEGISLATIVE LIFE (1965).

regulating the work a woman may engage in outside the home are also cogent examples here.

Such a law was at issue in *Muller v. Oregon.*[8] The law prohibited the employment of women "in any mechanical establishment, or factory, or laundry" for more than ten hours per day. This case was famous for the Brandeis brief.[9] Brandeis had taken the case only after Joseph H. Choate, a well-known and prestigious lawyer who had "successfully blocked the march of Communism" in the Income Tax Case of 1895, refused a retainer, saying that he saw no reason why "a big husky Irish woman should not work more than ten hours in a laundry if she and her employers so desired."[10] The *Muller* case gave impetus to the use of gender language to deliberately create a different legal status between the sexes.[11]

Perhaps only about one quarter or less of laws which discriminate on the basis of gender fall into the above category. Discrimination in any form has become unfashionable, requiring legislators to explain to their constituents why they write a law that discriminates. Also, now that suffrage has lost its gender bias, constituencies tend to probe more closely into the underlying reasons for such legislation than in previous history.

Another important factor in the decline of legislation which discriminates deliberately on a gender base is the Civil Rights Acts of 1964.[12] Almost all existing litigation on gender discrimination leans heavily on this act and its descendants.

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[8] 208 U.S. 412 (1908).

[9] In addition to traditional methods of legal citation and support, Brandeis included facts and statistics on women's health and social concerns which were previously not considered in deciding legal questions.

[10] A. MASON & W. BEANEY, AMERICAN CONSTITUTIONAL LAW 330 (1967).

[11] Such laws have been consistently upheld. *See, e.g.*, Radice v. New York, 264 U.S. 292 (1924); Riley v. Massachusetts, 232 U.S. 671 (1914).

Support for the rationale that men and women belong in different categories under law was drawn from the reasoning in *Muller* in an amicus curiae brief filed on behalf of several labor organizations, including Union Women's Alliance to Gain Equality. Brief for Alameda County Central Labor Council as Amicus Curiae at 23-25, Homemakers, Inc. v. Division of Industrial Welfare, No. 73-1786 (9th Cir., filed June, 1973). The brief explains that while it would be desirable to protect both sexes, a law requiring premium overtime for women workers can stand even if it is not applied to men: to the extent that the law increases women's wages, "it is similar to affirmative action programs, benign quotas, and funding of minority opportunity programs".

R. GINSBURG, CONSTITUTIONAL ASPECTS OF SEX BASED DISCRIMINATION (1974).

[12] 18 U.S.C. §§ 241-2, 372, 2384; 28 U.S.C. §§ 1343, 1443, 1446; 42 U.S.C. § 1981 *et seq.* (1964).

Latent Discrimination

The second category into which such laws fall is one which does not necessarily rise from specific legislative intent to discriminate. However, the use of gender language in this category discriminated patently or can be applied discriminatorily by a court. This is the most difficult category to identify and reform because effective discrimination can be so subtle and elusive. Our ears are tuned to the masculine forms. This is the "right" way to say our thoughts; we even think in masculine forms. Semanticists, lawyers, and English teachers assure us that, of course, "mankind" includes every human person. But does it? When lawyers apply the strict interpretations of language as they are taught to do, do masculine gender words really include those of the feminine gender?

By far, the largest proportion of laws containing gender language fall into this category. The delineations between the first and second categories are usually discernable: here there is no overt intent apparent in the law to create separate groups. Sometimes, however, intent of the legislators is lost in implementation, one way or the other, and some laws may fall into both categories.

A classic example within this second category is the case of *Bradwell v. The State,*[13] which refused to allow a woman the right to practice law. Bradwell's application for a license to practice law in Illinois was denied by the Illinois Supreme Court. An Illinois statute provided that "no person shall be entitled to receive a license (to practice law) until *he* shall have obtained a certificate from the court of some county of *his* good moral character. . ." (Emphasis supplied). Both the Illinois Supreme Court and the United States Supreme Court pointed to the gender language of "he" and "his" as indicating that the law applied only to men. Here the courts did overtly what is very often done unconsciously. This phenomena is by no means unheard of today. In *Bradwell* the Court says:

> If we were to admit them (women) we would be exercising the authority conferred upon us in a manner which, we are fully satisfied, was never contemplated by the Legislature . . . In view of these facts, we are certainly warranted in saying that the legislature gave to this court the power of granting licenses to practice law,, it was with not the slightest expectation that this privilege would be extended to women.[14]

[13] 83 U.S. 130 (1873).
[14] *Id.* at 132-33.

Another most interesting example of confused gender language implication is extant in New Jersey. The statutory provisions[15] under which the Commissioner of Institutions and Agencies is appointed and granted certain administrative powers were originally written with neuter and male word forms. Recent revisions[16] not only retained male forms, but actually changed neuter forms to male forms. It is interesting to note that this transmutation took place during the incumbency of a female commissioner.

Drafting of the entire section in non-gender forms could have been accomplished by simply putting the sentences into the passive voice, i.e., "The entire time of the commissioner shall be devoted to . . .", rather than "He shall devote his entire time to . . ."

Attempts to Avoid Discrimination

The third category of statutes which use gender language are those which are specifically written not to discriminate. This requires clever, and sometimes sophisticated, draftspersonship. The statutes are still few, but represent a new awareness on the part of legislators of previous traps into which predecessors fell. Words and phrases like "chairperson", "prudent person", and "ladies and gentlemen of the jury" which sounded stilted, self-conscious and somehow "wrong" a few years ago are melting back into the flowers in the wallpaper by common usage.[17]

Perhaps the most invidious statutes with respect to rights abridged because of gender language are the penal codes. Perhaps worst are those regarding the crime of rape. Women historically were not treated as victims, but as criminals themselves, and the idioms used delineate this attitude clearly. Statutes which allow sexuality and the moral "reputation in the community" as admissible evidence in a rape case have few counterparts in allowing the sexuality and moral reputation of the man in the community to be brought before the court.

Some recent revisions of penal codes substitute "person" for "woman" or "man", and spouse for "husband" or "wife", and this certainly is a step forward, but more subtle idioms must also be changed.

Other legislation which falls into this third category are laws which use gender language in a traditional way but scrupulously state that the law is meant to apply to both men and women. Many

15 N.J. STAT. ANN. § 30:1-8; N.J. STAT. ANN. § 30:1-12.

16 N.J. STAT. ANN. § 30:1-8 (Supp. 1976-77); N.J. STAT. ANN. § 30:1-12 (Supp. 1976-77).

17 There are some gender designations which should be totally discarded, such as "lady lawyer" or "male secretary".

times this is attempted by a saving clause to the effect that "male" shall include female and/or neuter. There is a variation in the effectiveness of such saving clauses, some being incorporated in the law at the point of use of the gender language and some being buried in unobtrusive clauses tacked on the very end of the statute many times as an afterthought. Also, almost all states now have a general statute directing that masculine forms in all statutes shall be read to include both "feminine and neuter". Just how effective these general construction statutes are is of some serious question. If the legislators intended no discrimination to be incorporated into the implementation of the law, why did they feel the need to include the masculine-equals-feminine-equals-neuter saving clause at all? Or was that merely tacked on by some legislative intern who considered it good drafting?

A Cross-Section of Gender Language

A small class of laws contain no relevant gender language, but depends on other legislation and judicial decisions to be cleansed of gender discrimination. Such are laws which require sureties, determine the make-up of juries, or appoint a decedent's representative.

The industrial revolution and advancing technology have been potent societal forces in pushing gender language laws into obsolescence. For example, a law which prohibits "more than three *men* on a swinging scaffold at one time"[18] was written in an era when the presence of a woman on such a contraption was not even contemplated. However, today, would it not be possible by legal logic to infer that this law allows as many women as possible to crowd onto the scaffold? Certainly, such reverse logic has been used by courts in the other gender direction.

What would happen today should a swinging scaffold fall carrying three women workers down with it? Would the various forms of insurance and statutory compensation apply? Would liability under this statute be upheld by courts? Does the fact that telephone repair people now have safety belts designed to both male and female dimensions or that the United States Army is now designing uniforms to be worn by pregnant women automatically change this type of law or possible judicial interpretation of it? Can a legislature count on a court in the future to make the intellectual leap from "men" to "human" or "person", particularly without prodding from aware counsel? How likely is it that such

[18] 53 P.S. § 4203.

laws will be implemented without discrimination given the fact that the great majority of judges are male and are immersed by their professional training and experience in the male dominance syndrome?

It is not always women, by any means, who are discriminated against. Laws allowing courts to assume jurisdiction of children under certain circumstances and provide support for them heavily discriminate against men. Children left with a father whose mother has deserted them are often denied help from governmental social agencies because the laws speak only of children of women whose husbands have deserted them.

Gender language also causes discriminatory implementation by its placement in a clause. For example, "persons who are feeble-minded, *non compos mentis,* imprisoned or *femmes covert*". Another is "except in cases of infants, married women and lunatics". Compare this, if you will, with the way the gender language is used in the phrase "men of prudence, discretion, and intelligence".

One can almost be certain that if a law contains the word "widow", the law will discriminate against "widowers". Many advantages are given to a surviving female spouse both intentionally and inadvertently by gender language, the need for these advantages is very often just as great for a surviving male spouse. Laws regarding inheritance, taxes, custody of children and welfare benefits are all replete with gender language discrimination of this type.

Codes regulating public schools bloom with gender language which will often qualify the statute for the first as well as the second category of discrimination by use of gender language. Very often, where girls are now allowed in "male" subjects such as shoptraining and agriculture, or boys are allowed in homemaking classes, it is the local school administration which allows it. Such flexibility is not apparent yet in legislation on the subject.

Some statutes specifically require the inclusion of both genders in a class such as a regulatory body. Governing boards of administrative agencies sometimes require that there "shall be five persons, two of whom shall be women". At first reading, this seems to be a step away from male dominated policy-making bodies, but it can also be interpreted to read, "five persons, only two of whom may (or shall) be women" giving the statute a different slant Examples also can be found where the statute states its require-

ment in the number of men, so the discrimination of this type can work against both sexes.[19]

A particularly interesting area of law includes those statutes whose provisions reflect and reinforce superstitions. In a state where mining is an important part of the economy, such as Pennsylvania, the Anthracite Coal Mine Act[20] and the Bituminous Coal Mine Act[21] specifically prohibit the employment of women in and around mines unless the work consists of clerical duties and takes place in an office. The superstition that a woman in a mine is bad luck goes far back into folklore and myth. Men have, for centuries, refused to go back into a mine where a woman may have wandered. Women in the society surrounding the mining industry observe the superstition very carefully. However, with the development of more advanced work technology, mining is now coming within the range of women's physical capabilities, and a new age of woman, pushed by economic necessity, may choose to go into the mines. Blue collar women's consciousness of their status is rising. With accelerated technology, this situation is not at all out of range of possibility in the next few decades. This is an extreme category of gender based laws, truly based wholly on male models and participation and buttressed by social mores and superstitions. Women have gone into mines; Eleanor Roosevelt did in the thirties. A few women civil engineers have worked on construction of important mass transit tunnels recently. No disasters occurred. It just may be that the very maleness of these laws will become their weakness, and the gender language will have to be discarded.

Representation in Government Affairs

Almost all statutes written about juries speak of "five or seven men" or "twelve good and true men". Recent judicial development has progressed to requiring that women be somewhere in the group from which a specific jury is drawn, but the semantics of the statutes are still male and should be revised in many places.

Composition of governing commissions of government agencies is another area in which laws written in the male idioms are being used to play games with discrimination. These statutes use male idioms almost exclusively. Here is the very center of policy making

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19 In one instance in the author's knowledge, the appointees to such a board included the required women, but since the statute spoke of a "chairman", the appointing judge refused to name a woman as chair, citing the specific gender language of the statute as in the Bradwell v. Illinois example.

20 52 P.S. § 70-272.

21 52 P.S. § 701-299.1.

bodies of government and a good number include no women. Half the population is not represented in the very groups most important in creating policy for the entire population. Boards and commissions which manage social services, schools, museums, and those which dispense welfare, control vast public funds. The make-up of their membership is a crucial issue. Statutes construed narrowly based on their masculine language could lead to gross discrimination. As women's expectations of becoming participating citizens rise, those who are members of these commissions and who now control their power, patronage, and public funds, may retreat behind the safety of the male language. Groups in power rarely give up power easily.

On the other hand, one finds some laws well-written in this respect, specifically anticipating that some of these positions or even all may at times be filled by a woman. Examples emerging in several states are the statutes designating the composition of prison control boards. For a long time, women's prisons were operated exclusively by men; now, however, many states specifically require some members of their boards to be women and adjust their noun and pronoun form accordingly. Some specifically require female wardens. The presence of men guards in women's prisons is a double problem for women; treatment of prisoners has at times been extremely inhumane. Hopefully the progress toward change in this area will continue.

All legislation to alter gender language should be undertaken with careful consideration of the three significant statutory steps which have been taken in the last century specifically to write into statutes the equality of women.

The first was the Nineteenth Amendment, granting women the right to vote, in 1920. There is more than a shred of evidence in the legislative and social history leading up to the adoption of this amendment to indicate that those who wrote it expected to confer upon women equality under the law in a much wider area than just the right to vote.[22] Certainly, at least more than a few of the legis-

[22] An examination of the history of the passage of the Nineteenth Amendment suggests that viewing it as a sweeping emancipation proclamation is not so far fetched. Historians of the suffrage movement point out that male America was willing to compromise on every issue except this one, and that suffrage came to symbolize far more than the granting of the vote itself. Suffrage came to mean not just another new right, but instead a *qualitative* change in the women's role in society. With the vote, women would exercise independent judgment in the real world, and would not live only in the shadow of their husbands—safely locked away in the home. In a word, women would be full citizens, a citizenship specifically denied them in Minor v. Happersett, 88 U.S. (21 Wall.) 162. Thus, just as the Civil War and the Wartime Amendments erased Dred Scott, the

lators who adopted the suffrage amendment expected a fuller measure of equality of men and women to ensue. For various sociological reasons, the Amendment was construed very narrowly by the courts. The feminist movement waned. There were so few feminist lawyers going into the courts to litigate the issue that the implementation of fuller equality through this means never materialized.

The second step was the Married Women's Property Act. The third was the Civil Rights Act of 1964, which prohibited discrimination in employment on the basis of sex. Again, a mere writing of these laws did not cause the rights to exist; few litigators pushed them in the courts and as Leo Kanowitz says, "The interpretative role of judges reared in the tradition of 'natural male dominance' " played a crucial part in preventing these three statutes from establishing female equality.[23]

Times are changing. Even Justice Black in *U.S. v. Yazell*[24] characterizes male dominance in legal rights as a "primitive casts system".

The Reasonable and Prudent Man

The "prudent man" doctrine produces statutes where gender language is crucial. A "prudent man" is held up all through American law as that to which all should aspire. The doctrine is ancient in the Anglo-Saxon legal system and vestiges probably will remain for a long time after the gender language is expunged. Courts seem particularly reluctant to part with this doctrine; first, because it is easy to apply and second, what male-oriented judge in his right mind would admit that he is not a prudent man? Examples are: "three honest and discrete men", "the court shall appoint six disinterested and judicious men" and a particularly obnoxious one in Pennsylvania[25] says men shall be appointed to

> Nineteenth Amendment finally overturned Minor v. Happersett. The new will of the nation was that the analogies of *Minor* should end—women should be free, and not comparable to the pre-war slave.
>
> The importance of viewing the Nineteenth Amendment in this new light is that it opens almost limitless possibilities for the development of a new law of women. It offers a chance for the courts—prodded by the women's movement and its lawyers—to move away from the straight jacket of the Fourteenth Amendment with its "state action" limitations and "reasonableness" standard.

W. Hodes, writing in WOMEN'S RIGHTS LAW REPORTER, Spring, 1972, at 11.

23 KANOWITZ, WOMEN AND THE LAW 40 (1969). *See also* Warran, *Husband's Right to Wife's Services*, 38 HARV. L. REV. 421, 423 (1925), wherein the author states:

> The interpretation of (married women's acts) frequently fell into the hands of judges who, as young lawyers, had been educated in the legal supremacy of the husband.

24 382 U.S. 341 (1966).

25 15 P.S. § 4306.

decide whether to use materials from adjoining land for the construction of a railroad "if the owner of the land shall be a *femme covert* or *non compos mentis*".

Railroad laws exhibit an exquisite effort to include all possible persons, when they state that "he, it, or they," may locate railroads. Granted, this is in Pennsylvania, an 1831 Act, and is partially repealed as to business corporations. However, if an effort is made to use gender language to include some classes and deliberately leave out others, namely women, it would be only a slight further step for legislative draftspeople to use their demonstrated gender language ability and make the law fair for all.

Another variation of the prudent man doctrine lies in a law which directs a public servant to carry out his duties "with impartiality to all men". Does this mean he owes a lesser duty to women? The drafters probably thought not, but many women have been treated with less care by public servants when they had no "man to speak for them".

Statutes regarding state militia are precise and explicit in their application only to males and abound with male gender language. An exception is usually made for traditional roles of nurses. Men shall serve; women may serve. This, actually, in the present time, discriminates against both men and women. "All able bodied male citizens" are accorded both a privilege and a duty to participate in the traditional male-dominated war-violence syndrome and are accorded even the privilege of dying for it, to the exclusion of women. Who is really discriminated against here? The military world can scarcely be described without using exclusively male word forms. Perhaps this is the way women should leave it.

However, it is not unusual to find the portions of military statutes which deal with pensions well written with regard to gender word forms. This is partly due to these sections being generally more recent than the remainder of the statute. Also in this category are statutes which deal with credit toward civil service appointments for military service.

The computer, being the dumb beast of burden that it is, included in its read-out a statute prohibiting female dogs to run at large. This in one sense discriminated against female dogs, but in another sense, protects one of the most exploited females alive. Discrimination and protection have a way of sometimes opposing and sometimes reinforcing one another. Many times the discrimination-protection coupling is based solely on the gender language in which the law is written.

Conclusion

1. All statutes which contain gender language can be roughly classified into three areas.
   A. Statutes which are written deliberately to discriminate on the basis of sex and which purposely use gender language to convey this meaning. Perhaps one-fourth of all statutes which use gender language fall into this category.
   B. Statutes which use gender language and discriminate thereby on the basis of sex, but are probably not written with an express legislative intent to create a different and often unequal status for each sex. The greatest number of statutes using gender language fall into this category. It is very difficult with respect to some statutes to determine if they were written with specific intent to discriminate, so that the boundaries between this category and the A category are sometimes obscure.
   C. Statutes which use gender language, but do so in a way to express a specific intent not to discriminate. It is in this category that new and inventive legal draftspersonship is most apparent.
2. It is very difficult to separate legislative expressions of societal norms which imply subtle sex-based discrimination into blatantly discriminatory statutes on the one hand, and poor legislative drafting on the other hand.
3. Much legislative revision is needed of statutes using gender language to eliminate obsolescence and build in flexibility to accommodate changing societal norms with respect to gender.

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AUTHOR'S NOTE: A great body of feminist literature written within the last century has been read by the author. Only those writings which lay the theoretical foundation for the subtleties of societal bias and those which specifically refer to gender language are included in this list of references. Many more have influenced my hypothesis making; no group of such writings can be said to be exclusively pertinent.

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