

HEINONLINE

Citation:

Phyllis Goldfarb, Creating a New Tango: Re-Imagining Gender, 9 Cardozo Women's L.J. 443 (2003)

Content downloaded/printed from [HeinOnline](#)

Tue Jan 22 21:18:13 2019

-- Your use of this HeinOnline PDF indicates your acceptance of HeinOnline's Terms and Conditions of the license agreement available at <https://heinonline.org/HOL/License>

-- The search text of this PDF is generated from uncorrected OCR text.

-- To obtain permission to use this article beyond the scope of your HeinOnline license, please use:

[Copyright Information](#)



Use QR Code reader to send PDF to your smartphone or tablet device

CREATING A NEW TANGO:¹ RE-IMAGINING GENDER

PHYLLIS GOLDFARB*

It has been a privilege to read the articles written by students in the Feminist Legal Theory seminar at Golden Gate University Law School. It is an even greater privilege to have an opportunity to participate in the seminar in some small way by offering a few thoughts inspired by this extraordinary set of papers.

Each of the articles in this symposium simultaneously applies and creates feminist legal theory. When each author views particular materials and experiences through lenses fashioned by feminists, we remember that the lenses themselves were shaped from collected women's observations and experiences.² In the process of applying them to new data, the lenses are improved, the clarity of the images viewed becoming ever sharper.

Stated differently, the articles contained in this symposium are vibrant examples of the interdependence of insight and experience, of thinking and doing, of philosophy and politics.³ The papers exemplify what we have seen before, that theory is a practice, a set of methods that when applied scrupulously can illuminate anew the world that we inhabit every day.⁴

On a substantive level, each of these articles is engaged in examining

* Phyllis Goldfarb is a Professor of Law at Boston College Law School. She has a B.A. from Brandeis University, an Ed. M. from Harvard University, a J.D. from Yale University and an LL.M. from Georgetown University. She has taught Criminal Procedure, Gender and Legal Theory, and Death Penalty, has administered and taught in the Criminal Justice clinical program, and has represented a number of criminal defendants on a pro bono basis. While Goldfarb's current research focuses on the death penalty and on the impact of various criminal law doctrines and policies in women's lives, her overarching scholarly focus has been on the relationship between law practice and legal theory and the lessons this relationship holds for legal education. Her previous scholarly works include: *Describing Without Circumscribing: Questioning the Construction of Gender in the Discourse of Intimate Violence* GEO. WASH. L. REV. 582 (1996) and *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991), among others.

¹ This metaphor comes from Maria-Victoria Castro's essay, *La Mujer Argentina Que Soy Yo/The Argentinean Woman That I Am* (2003), 9 CARDOZO WOMEN'S L.J. 321 (2003).

² For a description of the process of consciousness-raising in the women's movement as a method of theory-building, see CATHARINE MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 83 (1989).

³ In a previous article, I have elaborated these interdependencies. See generally Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 MINN. L. REV. 1599 (1991).

⁴ *Id.*

and challenging hierarchy as traditionally understood. On the level of method, the decision to write and publish these papers together and to invite professors to comment, is also a choice to use collective action to challenge hierarchy as traditionally understood. As Marshall McLuhan taught us many years ago, and as these feminist theorists have shown us once again, the medium is the message.⁵

Publishing these articles collectively rather than individually not only links arms in solidarity and demonstrates the incoherence of the notion of the individual, but also enriches understanding beyond what can be accomplished by any single paper. This is beautifully illustrated by the three papers comprising Chapter 3, entitled "To Imagine Gender."

In the first paper of the chapter, Marie Galanti uses the social construction of gender roles as a vehicle to understand the trial of Andrea Yates for the murder of her children.⁶ In the second paper, Victoria Alexeeva uses the social construction of gender roles to examine the character of Ally McBeal, television's popular female attorney.⁷ In the third paper, Maria-Victoria Castro uses the social construction of gender roles to examine images of women from Argentina.⁸ While each paper is illuminating in itself, the ideas that emerge from the interstices of the papers reveal that the whole is truly greater than the sum of its parts.

In her article, Marie Galanti explores the pressure placed on Andrea Yates' fragile mental state by the Yates' family structure that embodied gender roles of the most strictly traditional sort. Believing that she was evil when she was unable to shoulder gracefully all the caretaking, homeschooling, and household burdens for her large family, Yates, while gripped by delusion, protected her children from her imagined evil by drowning them. Through the legal system and the media, increasingly conjoined, the American people manifested the high value they place on protecting children and providing good parenting by labeling Andrea Yates a cold-blooded deliberate murderer.⁹ According to Galanti, this act may well

⁵ See generally MARSHALL MCLUHAN, UNDERSTANDING MEDIA (1964).

⁶ See Marie Galanti, *The Andrea Yates Trial: What is Wrong with this Picture?*, 9 CARDOZO WOMEN'S L.J. 345 (2003).

⁷ See Victoria Alexeeva, *Images of Women Lawyers: Over-representation of Their Femininity in Media*, 9 CARDOZO WOMEN'S L.J. 361 (2003).

⁸ See Castro, *supra* note 1.

⁹ The state of Texas sought to have Yates condemned to death. While the jury convicted Yates of capital murder, they spared her the death penalty. Although the state's attorneys formally sought the death penalty, it is unclear whether they actually desired the death penalty. They may simply have desired a death-qualified jury – a jury stricken of people who do not support the death penalty – to decide the matter of guilt or innocence.

Only death-qualified jurors are permitted to sit on a capital case, even for the purpose of determining guilt. This procedure persists despite the demonstration by social scientists that death-qualified juries are more conviction-prone juries, and that among other things, they are more hostile to the insanity defense. The Supreme Court rejected a challenge to this jury

have been a kind of defensive displacement, as the American people also embrace many social policies that fail to protect children and that consistently put them at risk.¹⁰

Despite the saturation of the mainstream media with Yates' legal fate, there was a sameness to the pervasive coverage. Virtually all of the media representations focused exclusively on Andrea's individual culpability. Was she insane or sadistic, villain or victim?¹¹ They were silent regarding structural issues, including the way in which rigidly assigned and idealized gender roles may have exacerbated her isolation and contributed to her mental decline.¹² The fact that the line between the legal system and the entertainment industry is as permeable as it is today, Galanti observes, simply underscores the likelihood that law will operate to reinforce widely accepted values rather than scrutinize them.¹³ Consequently, the spectacle of the Andrea Yates' case reinforced traditional gendered notions of the good and selfless mother who cares for others' needs but needs no caretaking herself.

Victoria Alexeeva's article about the Ally McBeal television character complements Galanti's analysis of the gendered imagery surrounding the Andrea Yates' case. The television portrayal of Ally McBeal, like the portrayal of Andrea Yates, appears to equate womanhood with fulfilling the stereotypical role of wife and mother. According to Alexeeva, Ally McBeal simply puts a twenty-first century twist on the same old traditional stereotypes by making Ally a partner in a law firm. Yet the success Ally achieves comes from her intuition rather than her analysis, as Ally is shown to rely on common sense rather than legal prowess.¹⁴ Moreover, she is unhappy with her unmarried state and hallucinates about babies in ways that distract from and interfere with her work as a lawyer. These and other plot developments suggest that women can find meaning in their lives only within traditional family arrangements and that womanhood means motherhood not career accomplishment.

selection practice in *Lockhart v. McCree*, 476 U.S. 162 (1986). Hence, it is possible that Andrea Yates' prosecutors formally sought the death penalty not because they were invested in obtaining it, but because they wished to select a jury more likely to reject Yates' insanity defense and to find her guilty of murder.

¹⁰ See Galanti, *supra* note 6.

¹¹ Indeed, "Villain or Victim?" was the cover headline of *People Magazine* on February 21, 2002. See Galanti, *supra* note 6.

¹² One representation of a mother who murders her child that is not silent as to structural issues is the novel *Beloved*. See Toni Morrison, *BELLOVED* (1987). Sethe, the escaped slave and protagonist, murders her daughter rather than have her returned to a state of slavery. See *id.* The existence of white supremacy as embodied in the institution of slavery is revealed as inextricably implicated in the mother's act of murdering her child. See *id.* Moreover, Toni Morrison treats Sethe, the murderer, as a complex human worthy of empathy, not as a thoroughly monstrous object worthy only of condemnation. See *id.* In some of the media's accounts, Andrea Yates was portrayed in the latter category.

¹³ See Galanti, *supra* note 6.

¹⁴ See Alexeeva, *supra* note 7.

Andrea Yates, high school valedictorian and champion swimmer, gave up her career to try to fulfill the most demanding ideal of womanhood, only to fall prey to mental illness and hallucinatory states. So too does Ally McBeal, who psychologically abandons her career to the imagery of ideal womanhood, suffer mental instability and hallucinations in the process. Gender hierarchy – dependent on the separation between the public sphere and the private sphere, between the world of work and the world of family¹⁵—is imaginatively recreated in the representations of both the flesh-and-blood Andrea Yates and the celluloid Ally McBeal.

Both Galanti's and Alexeeva's articles explore the objectification of Andrea Yates and Ally McBeal. They illuminate how, to paraphrase Catherine MacKinnon, law and the media view women just as men view women.¹⁶ For Andrea Yates and Ally McBeal, each of whom had internalized our culture's received gender norms, the inability to define themselves may well have been an ingredient in the recipe for mental disturbance. Maria-Victoria Castro's article advances this inquiry, exploring the difficulty and the necessity of self-determination. In developing an alternate construction of gender, she draws from imagery particular to her family's Argentinean culture.

As Castro describes it, an Argentinean woman is valued and achieves goodness only through creating a family.¹⁷ When a woman fails to fulfill her traditional role of wife and mother, she is considered evil.¹⁸ This characterological message resonates with the one that Andrea Yates absorbed so deeply. When she found herself falling short of the womanly ideal, Yates became convinced that she was evil and lapsed into psychosis.

Castro also describes how the tango, the aesthetic expression of Argentinean identity, enacts traditional gender roles of male dominance and female submission.¹⁹ Like the Ally McBeal series and the Andrea Yates' trial, the tango recreates gender hierarchy and marks the absence of female self-determination. Yet Castro's analysis takes us further, as she urges the creation of a new tango, a new metaphor for gender relations.²⁰ She envisions a reconstruction of the tango in which the woman's steps are understood to be identical to the man's steps because men and women are

¹⁵ See generally Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Nadine Taub & Elizabeth M. Schneider, *Women's Subordination and the Role of Law*, THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE (David Kairys ed., 1990).

¹⁶ See Catherine A. MacKinnon, *Feminism, Marxism, Method and the State: Toward Feminist Jurisprudence*, 8 SIGNS 635, 644 (1983).

¹⁷ See Castro, *supra* note 1.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

equal and both are assertive.²¹

Next Castro offers models of self-defined Argentinean women – Evita Peron, Tania (who took up arms with Che Guevara), and Las Madres de la Plaza de Mayo.²² All of them, she tells us, reinvented traditional female roles in a progressive fashion. Castro understands these women as exemplars of the possibility that, despite official backlash, women can create multiple definitions of womanhood and its aspirations.²³

Castro reinterprets the tango as Evita Peron reinterpreted the traditional role of political wife and as Las Madres de la Plaza de Mayo reinterpreted the traditional understanding of motherhood to raise powerful challenges to the established order. Demanding to know the truth of the disappearance of their loved ones and the identities of those responsible for and complicit in the disappearances, even if high-ranking officials, Las Madres — women who have stared down armed attackers in the name of their responsibilities to the memories of their loved ones²⁴ — represent an image of motherhood that is not nurturing, docile, and compliant, but bold, fierce, and courageous. For them, motherhood does not represent submission to traditional roles but becomes a site of critique, confrontation, and resistance.

This is the reworking of gender that Castro asks of herself and of all of us. Among other things, the failure to do so in the past has promoted unbearable tragedy (e.g. the life of Andrea Yates), persistent unhappiness (e.g. the unfulfilled character of Ally McBeal), and emotional conflict (e.g. the teachings of Castro's mother who instilled her daughter with both traditional gender roles and with assertiveness).²⁵ Even finding such a path is only the beginning, for as Castro indicates, we must then acquire the skill of an expert tightrope artist to walk it. Yet this is the challenge and the aim of feminist legal theory, to help clear the space that reveals such a path and to equip us with the ability, the clarity, and the fortitude to walk it.²⁶ The symposium produced by Professor Maria Grahn-Farley's Feminist Legal Theory seminar at Golden Gate University Law School is a step in that direction.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

