

DOES LAW MATTER? DEFENDING THE VALUE OF GENDER-RESPONSIVE LEGISLATION TO ADVANCE GENDER EQUALITY

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Law is a formidable instrument with the power to bring about profound shifts in gender norms. Yet, not all are persuaded that gender-responsive legislation is a valid pursuit. Women-centered legislation, for some, overstates law's potential and is a quest likely to fail given the male-centric nature of law and the tendency for law-making to sit in male hands. What has resulted from this divided view is a dearth of attention to the question of whether law actually makes a difference for women. In response, this article seeks to shift the parameters of the conversation by drawing the lines between gender-responsive law-reform and its effectiveness. In Part I, I set out the three potential roles that law plays in advancing women's rights: the Identifying Role, the Symbolic Role, and the Pluralistic Role. In Part II, I acknowledge law's limits, unpacking feminist theorists' antagonism with law and the tendency of legal systems to uphold deep-rooted inequalities. Law reform may do little to shift power imbalances. In Part III, I grapple with the central task of the article in demonstrating the role of "good laws" in making a positive difference on women's lives. Concrete examples of gender-responsive laws—from Iceland, Spain, and Australia—are offered and appraised in order to gain potential insights for law and policy reform in relation to gender-based violence, paid parental leave, and workplace equality. In Part IV, I extrapolate several explanations for the effectiveness of these laws, and their limitations. In short, this Article demonstrates that there is good in law, that the law can do good for women, and that we do indeed have substantive examples of legislation that have advanced the interests of women as a collective.

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INTRODUCTION

Law has always been and, for some, still remains a noble profession. More than three decades ago, Professor Paula Franzese stood before a hall of graduating law students and described law as "a precious and formidable instrument that can be wielded to accomplish profound good."¹ These graduates were now "guardians of this mighty instrument" and therefore uniquely placed to "alter for the better all that [they] see."² Today, while there may be more doubt as to the nobility of the profession, avid believers in the law's utility are un-

1. Paula A. Franzese, *Reclaiming our Noble Profession*, 22 SETON HALL REV. 307, 307 (1991).

2. *Id.*

likely to question the value of law itself. Yet, the Law and Society Association of Australia and New Zealand (LSAANZ) posed at its 2021 Annual Event three questions that sit at the heart of this Article: (1) What good do laws do? (2) Is there any good in law? (3) And are there any good laws to begin with?³

Discriminatory laws profoundly affect women lives,⁴ in areas as diverse as family law, migration, and financial regulations.⁵ Indeed, numerous multi-dimensional indices have been created precisely to demonstrate the profound gender disparities that exist and persist in today's world,⁶ in part or even often because of the pervasive nature of gender discrimination embedded in law.⁷ Yet, much less has been said about what I term in my scholarship “good” legislation or gender-responsive laws: legislation that makes legislative systems more responsive to explicit and implicit gender issues.⁸ Correctional language in law helps to address situations where women in particular are victimized or made vulnerable; enables a more women-centered legal response; and encourages an active policy response rather than waiting for the passive elimination of discrimination, however long that may take.⁹ Gender-responsive or “good” laws for women facilitate ac-

3. *What is the Good of Law?*, LSAANZ, <https://www.lsaanz.org/s/LSAANZ-conference-programme-26-Nov.pdf> (last visited Apr. 18, 2022).

4. Fareda Banda, *Project on a Mechanism to Address Laws that Discriminate Against Women*, OFF. OF THE HIGH COMM’R FOR HUM. RTS. (Mar. 6, 2008), https://www.ohchr.org/sites/default/files/Documents/Publications/laws_that_discriminate_against_women.pdf. See also Jessica Neuwirth, *Inequality Before the Law: Holding States Accountable for Sex Discriminatory Laws Under the Convention on the Elimination of All Forms of Discrimination Against Women and Through the Beijing Platform for Action*, 18 HARV. HUM. RTS. J. 19, 19 (2005).

5. Mala Htun & S. Laurel Weldon, *Religious Power, the State, Women’s Rights, and Family Law*, 11 POL. & GENDER 451, 451 (2015). See also Asli Demirguc-Kunt, Leora Klapper & Dorothe Singer, *Financial Inclusion and Legal Discrimination Against Women: Evidence from Developing Countries*, WORLD BANK GRP. 2-3 (Apr. 2013), <https://openknowledge.worldbank.org/handle/10986/15553>; Catherine Bridgick, *When Does Migration Law Discriminate Against Women?*, 115 AM. J. INT’L L. 356, 356 (2021).

6. *Women, Business, and the Law 2019: A Decade of Reform*, WORLD BANK GRP. (Feb. 27, 2019) at 2, <https://openknowledge.worldbank.org/handle/10986/31327>. See also *Women Peace and Security Index*, GEORGETOWN INST. FOR WOMEN, PEACE & SEC., <https://giwps.georgetown.edu/the-index/> (last visited Apr. 18, 2022).

7. Jeni Klugman, *Women’s Rights – The State of Play*, in INTERNATIONAL WOMEN’S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN 16, 17 (Ramona Vijayarasa ed., 2021).

8. Ramona Vijayarasa, *Making the Law Work for Women: Standard-setting Through a New Gender Legislative Index*, 44 ALT. L.J. 275, 277 (2019).

9. Natalie Hevener Kaufman & Stephanie A. Lindquist, *Critiquing Gender-Neutral Treaty Language: The Convention on the Elimination of All Forms of Discrimination Against Women*, in WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES 114, 114-115 (J. S. Peters & Andrea Wolper eds., 1994).

countability, in legal and policy implementation, to the specific needs of different sexes and brings different gendered perspectives to how we understand and legislate about social, economic, and political issues.¹⁰ The goal may be the pursuit of a very specific type of law that *positively* discriminates in favor of women,¹¹ what are called a “de jure measure of equality.”¹²

In contrast, gender-regressive law sits in direct opposition to global standards on women’s rights. Contrary to the evidence-based needs and interests of women and girls, such legislation overtly opposes a gender-based response.¹³ Not only are gendered considerations ignored, but the legislation also explicitly or implicitly places women in a less developed state in terms of their social, economic, and political status and overall well-being.¹⁴ Gender-regressive legislation may take the form of overtly discriminatory laws, but it may also entail the drafting of legislation that simply fails to recognize women’s distinct differences in terms of their needs of the law and how they are likely to experience that law, as drafted, when it comes to implementation. It may be where impunity for gender-based crimes becomes normalized¹⁵ or where counselling and mediation is ordered by a court before the granting of a divorce, hindering the rights of women in unequal and potentially violent relationships to exit freely.¹⁶

As countries progress, it is often assumed that jurisdictions will naturally move away from gender-regressive legislation to gender-responsive laws. Some scholars and activists in this space, who acknowledge law’s power, may even take it for granted that law will necessarily bring about much sought-after socio-legal change. This presumption that there is a natural trajectory between law reform and result may explain the dearth of attention to what is good law and whether law indeed makes a difference for women. This Article seeks to take the next step by offering an assessment of whether or not gender-responsive laws deliver on their promise and, if so, the attributes of those laws that have made them effective.

10. Vijayarasa, *supra* note 8.

11. Marie Hyland, Simeon Djankov & Pinelopi Koujianou Goldberg, *Do Gendered Laws Matter for Women’s Economic Empowerment?*, PETERSON INST. FOR INT’L ECON. (Mar. 2021) at 2, <https://www.piie.com/sites/default/files/documents/wp21-5.pdf>.

12. *Id.* at 2.

13. Vijayarasa, *supra* note 8.

14. *Id.*

15. Ramona Vijayarasa, *Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women’s Rights*, 34 HARV. HUM. RTS. J. 37, 75 (2021).

16. *Id.* at 78.

Law reform is neither linear nor guaranteed. In this Article, I do not approach the mammoth task of law reform naively; rather I have drawn lessons from my own experiences in civil society activism. The enormity of the call for gender-responsive legislation may be best illustrated by the experiences of American women in the U.S. military, one that reflects well the ebbs and flows of law reform. For a woman in the U.S. today, her grandmother might have served in the Second World War, as a nurse, a spy, or even a soldier disguised as a man, despite that fact that it was only in 1948 that legislation was passed to formally allow women into the military.¹⁷ Her mother would have been permitted to enter the U.S. military academy only in 1976.¹⁸ As of the late 1990s, despite legislative reform, Department of Defense policy lagged,¹⁹ at one point barring women from serving in infantry, artillery, armor, as combat engineers, and special operations units of battalion size or smaller.²⁰ Even as late as 2013, the army reported that approximately 237,000 positions were closed to women.²¹ Today, a woman, if she chose to follow this path, would face a relatively unwelcoming environment, from disparities in military promotions, exclusion of women from particular roles, and high rates of sexual assault and harassment.²² The traditional, conservative and “macho” nature of U.S. military service reminds us that law reform can only achieve so much.²³

Yet, this example of U.S. women’s experiences of military service is perhaps evidence that now, more than ever before, there is greater momentum and willingness for change. It is under the Biden-Harris administration that the country has introduced a promising National Strategy on Gender Equity and Equality, for which the promo-

17. Lori Robinson & Michael E. O’Hanlon, *Women Warriors: The Ongoing Story of Integrating and Diversifying the American Armed Forces*, BROOKINGS (May 2020), <https://www.brookings.edu/essay/women-warriors-the-ongoing-story-of-integrating-and-diversifying-the-armed-forces/>.

18. *Id.*

19. Eileen Patten & Kim Parker, *Women in the U.S. Military: Growing Share, Distinctive Profile*, PEW RSCH. CTR. (Dec. 22, 2011), <https://www.pewresearch.org/social-trends/2011/12/22/women-in-the-u-s-military-growing-share-distinctive-profile/>.

20. Kristy N. Kamarck, *Women in Combat: Issues for Congress*, CONG. RSCH. SERV. (Dec. 13, 2016), <https://crsreports.congress.gov/product/pdf/R/R42075>.

21. *Id.* at 13.

22. Melissa E. Dichter & Gala True, “*This Is the Story of Why My Military Career Ended Before It Should Have*”: *Premature Separation from Military Service Among U.S. Women Veterans*, 30 *AFFILIA* 187, 188 (2015).

23. Robinson & O’Hanlon, *supra* note 17.

tion of gender equality through law has a central place.²⁴ One of its key pillars is premised on the bold statement that women around the world are currently entitled to only three quarters of the rights enjoyed by men.²⁵ It seeks to contribute to the struggle against inequality both domestically in the U.S. and globally. If fulfilled, the Equal Rights Amendment would not only make gender equality a specific tenet of the U.S. Constitution,²⁶ but the U.S. would no longer be the only global North nation that has not yet ratified the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).²⁷ Advocates for gender-responsive legislation in the U.S. would have a strategy to call upon that prohibits discrimination in housing and employment on the basis of sex, gender, or sexual orientation.²⁸

Moreover, a White House Gender Policy Council, established in March 2021, provides legislative and policy recommendations to the U.S. President. Its role is to provide a sort of gender-audit by evaluating policies and legislation for their potential impact on issues of gender equity and equality and demand an improvement in the collection of data that is foundational for undertaking gender-responsive legislative scrutiny in the first place.²⁹ The question to consider is whether the goal of gender-responsive legislation in the era of the Biden-Harris Administration is pursued for good reason, or merely under the assumption that it is necessarily a good thing? I seek to demonstrate that there is indeed “good reason” for countries to pursue gender-responsive law reform; explaining the “why” is the driver behind this article.

A. *Gender-Responsive Legislation – What is it and for Whom?*

In much of my scholarship, I assess how well law advances the interests of women by utilizing benchmarks from international law.³⁰

24. *National Strategy on Gender Equity and Equality*, WHITE HOUSE 26, <https://www.whitehouse.gov/wp-content/uploads/2021/10/National-Strategy-on-Gender-Equity-and-Equality.pdf> (last visited Apr. 21, 2022).

25. *Id.* at 26.

26. *Id.* at 27.

27. Ramona Vijayarasa, *Quantifying CEDAW: Concrete Tools for Enhancing Accountability for Women’s Human Rts.*, 34 HARV. HUM. RTS. J. 37–80, 38 (2021).

28. *National Strategy on Gender Equity and Equality*, *supra* note 24, at 27.

29. *Executive Order on Establishment of the White House Gender Policy Council*, WHITE HOUSE (Mar. 8, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/03/08/executive-order-on-establishment-of-the-white-house-gender-policy-council/>.

30. Ramona Vijayarasa, *What is Gender-Responsive Legislation? Using International Law to Establish Benchmarks for Labour, Reproductive Health and Tax Laws That Work for Women*, 29 GRIFFITH L. REV. 334, 336 (2021).

Indeed, the failure of many constitutional and legal systems to integrate women's human rights fully into domestic law was the impetus for the United Nations Human Rights Council to establish a working group on discrimination against women and girls.³¹ In May 2019, the utility of the law as a strategy to advance women's rights was politically endorsed at the G7 summit, which declared inclusive laws as "one of the key enablers for equality between women and men".³² In the gender context, we naturally turn to the only United Nations treaty body dedicated to the issue of discrimination against women and girls, the Committee on the Elimination of Discrimination against Women (CEDAW Committee). Of all the Concluding Observations that the CEDAW Committee has made to States Parties, the majority of recommendations call for various forms of law and policy reform as a solution to gender inequality.³³ In a 2021 report, UN Women repeated this sentiment: "Equality in law is crucial to gender equality, as women and girls look to the laws of their State to protect, fulfill and enforce their rights."³⁴

I acknowledge here and throughout this article the extent of push-back against the solution of working *within* the existing legal framework to improve law for women and for other groups of individuals suffering from gender-based harms. Law has, historically "disqualified" feminism as a form of knowledge.³⁵ The pursuit of women-centered legislation has been criticized as an act that fetishizes law's potential,³⁶ on what is possibly a false quest of seeking reform *through* law.³⁷ The very categories of law were made "at a time when women played no part in the law," forcing women to fit their exper-

31. *Working Group on Discrimination against Women and Girls*, OFF. OF THE HIGH COMM'R FOR HUM. RTS., <https://www.ohchr.org/en/special-procedures/wg-women-and-girls> (last visited Apr. 22, 2022).

32. GROUP OF 7, *MAKING GENDER EQUALITY A GLOBAL CAUSE 7* (2019), <https://www.elysee.fr/admin/upload/default/0001/05/2d0396362dbe1fb85faccb8e1f5dbefce5a0b09e.pdf>.

33. Vijayarasa, *supra* note 15, at 74; THE GEORGE INST. FOR GLOB. HEALTH & UNSW AUSTL. HUM. RTS. INST., *LAUNCHING THE CEDAW IMPLEMENTATION MAP ON WOMEN'S HEALTH: PROGRESS ON THE JOURNEY TOWARDS HEALTH AND HUMAN RIGHTS FOR ALL WOMEN 6* (2021), <https://cdn.georgeinstitute.org/sites/default/files/cedaw-a4-report-m-lr.pdf>. The George Institute found in its review of CEDAW compliance by States Parties with health-related general recommendations, the largest portion of recommendations made by the CEDAW Committee related to law and policy reform (26 percent).

34. UN WOMEN & INTER-PARLIAMENTARY UNION, *GENDER-RESPONSIVE LAW-MAKING 12* (2021), <https://www.unwomen.org/sites/default/files/2021-11/Handbook-on-gender-responsive-law-making-en.pdf>.

35. CAROL SMART, *FEMINISM AND THE POWER OF LAW 3* (1989).

36. *Id.* at 68.

37. *Id.* at 67.

iences into a pre-determined frame.³⁸ Law therefore centers men as the norm³⁹ and by either seeking equality in law—expecting women to rise up to the level of men as a result of law reform—or by seeking legislation that acknowledges women’s “difference”—that is, by pursuing law reform that responds to women’s specific interests and needs but continues to situate men as the common core against which all is measured—we have achieved little in shifting this male-centric nature of law and legal systems.

In direct answer to these articulate, passionate, and well-argued (often feminist) critiques of law, this article seeks to make the case for legislation as an effective tool to advance women’s rights and interests nationally. The main argument put forward is that both a sound basis can be identified to defend the utility of gender-responsive legislation, and practical lessons can be extracted from laws that are identified as “good” in order for us to improve how we approach law-making in a way that will count for women. The arguments presented seek to draw a concrete relationship between gender-responsive laws and actual equality. This is not to suggest that other scholars who have attempted this exercise have been neither concrete nor sound in drawing correlations. Part III offers a survey of existing data from studies that have attempted to show a causal link between the law and benefits to women. Drawing on my experiences in designing and implementing an index specifically created to measure the gender-responsiveness of legislation against international women’s rights standards—the Gender Legislative Index⁴⁰—this article seeks to provide a study of gender-responsive laws and their potential impact.

A further question needs to be considered at the very outset of this discussion: for whom is law necessarily good? One aspect of this question requires identifying what we understand to be a “woman’s law” or “gendered perspective” to legislation. I have grappled with this question in other scholarship, in which I respond that regardless of the definition one may adopt, to create a sustainable and robust challenge to systemic inequality, we must demand a gendered perspective across all areas of legislation. In other words, we need to shift away from narrow conceptualizations of what counts as gendered issues and a historic tendency to focus on areas of law that overtly affect women,

38. REGINA GRAYCAR & JENNY MORGAN, *THE HIDDEN GENDER OF LAW* 3 (2nd ed. 2002).

39. *Id.* at 82.

40. Vijayarasa, *supra* note 15, at 70.

such as rape and family law.⁴¹ Present-day constructions of “women’s issues” are a natural result of a long-standing global preoccupation with sexual violence and “victimization” of women.⁴² By contrast, women’s lived experiences demand a scholarly challenge to the erroneous notion that certain areas of law are “neutral,” such as bankruptcy, taxation, or corruption.⁴³ Moreover, gender expertise is required at the legal drafter’s table across a broad spectrum of law.⁴⁴ That is, when asking what good is law for women and girls in all their diversity, we need to examine a much broader body of laws than scholars in this field have traditionally done.

Additionally, my use of the term “women” in this article is a political one.⁴⁵ It is not intended to exclude—for example, non-cis-gender women—or to assimilate—for instance, by placing all women into a monolithic category and failing to acknowledge difference. To the contrary, the category of “women” is intended to challenge essentialist approaches.⁴⁶ It is justified by asking the question “who is left out of current legal frameworks and structures?”⁴⁷ and invites us to consider what gendered harms and gender-based discrimination, more broadly, law perpetuates or fails to address. Much of this gender-based discrimination that law reinforces, or fails to correct, harms a wider set of individuals beyond “women” who similarly suffer from multiple but also gendered inequalities.⁴⁸ However, I do not seek to overstate the reach of this article. International legal scholar Dianne Otto identi-

41. Reg Graycar & Jenny Morgan, *On The Hidden Gender of Law: A Public Talk*, 41 AUST. FEM. LAW J. 29–36, 32 (2015).

42. Ratna Kapur, *Gender, Sovereignty and the Rise of a Sexual Security Regime in International Law and Postcolonial India.*, 14 MELB. J. INT. L. 317, 332 (2013).

43. Elizabeth Warren, *What is a Women’s Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN’S L.J. 19, 23 (2002).

44. RAMONA VIJEYARASA, *THE WOMAN PRESIDENT: LEADERSHIP, LAW AND LEGACY ON WOMEN’S LIVES BASED ON EXPERIENCES FROM SOUTH AND SOUTHEAST ASIA* 67–68 (2022). See also José-Miguel Bello y Villarino, *Women in Anticorruption Laws – The Case for More Gender-Responsive International Treaties*, in INTERNATIONAL WOMEN’S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN (Ramona Vijayarasa ed., 2021).

45. Jaya Ramji-Nogales, *Revisiting the Category “Women”: Research Handbook on Feminist Engagement with International Law*, in RESEARCH HANDBOOK ON FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW 240, 242 (2019).

46. *Id.* at 242.

47. *Id.* at 242.

48. LISA TATONETTI, *WRITTEN BY THE BODY: GENDER EXPANSIVENESS AND INDIGENOUS NON-CIS MASCULINITIES* (2021). See also Elisabeth Greif, *Upward Translations – The Role of NGOs in promoting LGBTI*-Human Rights under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*, 4 PEACE HUM. RTS. GOV. 9 (2020); Darren Rosenblum, *Unsex CEDAW, or What’s Wrong with Women’s Rights*, 20 COLUM. J. GENDER L. 98–194 (2011).

fies how the hard work performed to make international—and I would add domestic—law better for women ultimately seeks to make everyone’s lives “more fully liveable,”⁴⁹ and there is a co-existence between feminist and queer theories’ goals. However, this article’s primary focus is on women and not all sexual and gender minorities.⁵⁰

A focus on “women” in this article seeks to acknowledge that while the world for women today in many countries may be vastly different from several decades ago, there is still much work to be done. The World Economic Forum’s Gender Gap Index has indicated that it will take 108 years to close the global gender gap at the current rate of progress.⁵¹ While a flawed, headline-grabbing statement,⁵² it does remind us how far we have to go. Emphasizing this chasm between where we are and where we want to be is not designed to question the commitment of the many institutions—local, national and international—who have made the achievement of equality between men and women their goal. Rather, it is to illustrate the need for an urgent and more effective solution to accompany the strategies used to date and therefore to better exploit the potential of “good law” to address the problem. We need, therefore, a robust case that “good law” can be the answer.

One final note is needed before continuing. It is important to briefly recall that regulatory theorists do not always perceive of regulation in its commonly understood form.⁵³ Regulation need not be dominating (that is, it need not involve governments and here, we cannot ignore the relevance of softer forms of regulations such as how professional associations and private industries have enacted reforms that advance women’s rights, sometimes at a faster pace, than government-led reforms).⁵⁴ Regulation should also be seen for the well-being

49. Dianne Otto, *Afterword: The Future(s) of Feminist Engagement with International Law*, in RESEARCH HANDBOOK ON FEMINIST ENGAGEMENT WITH INTERNATIONAL LAW, 534 (2019), <https://www.elgaronline-com.ezproxy1.library.usyd.edu.au/view/edcoll/9781785363917/9781785363917.00041.xml> (last visited Sept. 12, 2019).

50. Dianne Otto, *Introduction: Embracing Queer Curiosity*, in QUEERING INTERNATIONAL LAW: POSSIBILITIES, ALLIANCES, COMPLICITIES, RISKS 1–11 (Dianne Otto ed., 2017).

51. WORLD ECONOMIC FORUM, THE GLOBAL GENDER GAP REPORT 2018 (2018), http://www3.weforum.org/docs/WEF_GGGR_2018.pdf.

52. Richard V. Reeves, *100 Years on, Politics is Where the U.S. Lags the Most on Gender Equality*, BROOKINGS (2020), <https://www.brookings.edu/essay/100-years-on-politics-is-where-the-u-s-lags-most-on-gender-equality/> (last visited Mar. 8, 2022).

53. Valerie Braithwaite, *Closing the Gap Between Regulation and the Community*, in REGULATORY THEORY 25 (Peter Drahos ed. 2017).

54. For instance, in Australia, many large corporations offer paid parental leave schemes, for both partners, with greater options for flexibility, in addition to the government-funded paid parental leave scheme. See Natasha Boddy, *Best Workplaces for*

that it can enhance—that is, it is not always about prohibiting behavior but also about protecting our rights.⁵⁵ This article focuses on one aspect of regulation: formal law-making. This is not to dismiss the many non-legal forms of norm-making.⁵⁶ Nonetheless, the debate in this paper is contained. All the three examples offered in Part III—from Iceland, Spain and Australia—are forms of formal, government-led laws that were explicit in their potential to advance women’s rights and have been chosen for their potential to advance other forms of formal, government-led regulation.

I.

THE GOOD OF LAW

This section is focused on the good of law for women. Before exploring the three interrelated roles that law can play (the Identifying Role, the Symbolic Role, and the Pluralistic Role), I reflect here briefly on my own view of the powerful potential of the law, and yet the challenge of bringing together the evidence to demonstrate this potential. When making a case for gender-responsive legislation, an essential first step is to place oneself in a particular camp. In my case, I am a believer in the law’s value. Regardless of its limitations, the law remains a powerful tool—one that may reflect a changed society or help society to change.⁵⁷ The law plays a key role in determining how society functions, can shift norms, set new trends, and therefore shape how people live.⁵⁸ It is this very power of the law that invites us to revisit the law’s potential if we are to legislate better and with women in mind. Indeed, if we are in the business of re-writing the law to correct past harms, we must acknowledge the law’s potential as verified throughout history.

Yet the evidentiary burden for this case is quite an onerous one. How do we know if law works? Numerous studies, from various juris-

New Dads Revealed, AUSTL. FIN. REV. (Dec. 14, 2020) <https://www.afr.com/work-and-careers/workplace/best-workplaces-for-new-dads-revealed-20201214-p56nd1>.

Nonetheless, cumulatively, the Australian scheme remains the subject of much critique, with a 2021 study showing only modest steps towards greater gender equality given that these schemes collectively create and reinforce a normative standard for fathers as ‘supporters’ rather than primary caregivers. See Marian Baird, Myra Hamilton & Andreea Constantin, *Gender Equality and Paid Parental Leave in Australia: A Decade of Giant Leaps or Baby Steps?*, 63 J. INDUS. REL. 546, 562 (2021).

55. Braithwaite, *supra* note 53, at 25.

56. Peter Drahos & Martin Krygier, *Regulation, Institutions and Networks*, in REGULATORY THEORY 1, 3 (Peter Drahos ed. 2017).

57. Donald L. Revell & Jessica Vapnek, *Gender-Silent Legislative Drafting in a Non-Binary World*, 48 CAP. U. L. REV. 103, 110 (2020).

58. Vijayarasa, *supra* note 8, at 276.

dictions, can pinpoint laws that appear to be effective in achieving their intention of advancing one—or several—dimensions of women’s rights. In their analysis of the law, Hyland et al. use three metrics in their efforts to prove that laws to advance gender equality make a difference: rankings in the World Economic Forum’s Global Gender Gap Index, the percentage of female workers in vulnerable employment and women’s representation in parliament.⁵⁹ Drawing correlations across these metrics, their research suggests that when women face lower levels of discrimination in the workplace, such as through employment law reform, countries perform better in the Global Gender Gap Index, have fewer women in precarious employment—that is, fewer women at risk of irregular or non-standard work where they lack social protections such as for workplace injuries, sickness or maternity leave—as well as more women representatives in national parliament.⁶⁰ In other words, law matters. But is this enough evidence to make the case?

Unfortunately, as with any data and any attempt to correlate one intervention with another outcome, evidence can be found to challenge such assumptions. Correlations drawn between religion and gender equality, for example, can be disputed. Hyland et al. suggest that countries where the population predominantly practices Christianity, Buddhism, or Judaism are more gender equal than countries where the main religion is Hinduism, which are less equal; they find the least gender equal countries where the dominant religion is Islam.⁶¹ These findings are supported by *some* feminist, third-world scholars, who defend that Buddhist nationalism in Sri Lanka, for example, is different from other fundamentalisms⁶² and less patriarchal than Hinduism or Islam.⁶³ Yet these scholars are quick to remind us that relations of social and gendered hierarchies and “the model of virtuous and passive womanhood” are “crystallized into permanent institutions” in countries that are Buddhist as much as countries where other religions dominate.⁶⁴ In many countries, regardless of religion, the ideal woman

59. Hyland, et al., *supra* note 11, at 10–11.

60. *Id.* at 11–12.

61. *Id.* at 7–8.

62. Kamala Liyanage, *Sinhala Buddhist Nationalism/‘Fundamentalism’ and Its Impact on Gendered Political Participation in Sri Lanka*, in RELIGIOUS FUNDAMENTALISMS AND THEIR GENDERED IMPACTS IN ASIA 27, 29 (Claudia Derichs & Andrea Fleschenberg eds., 2010).

63. Uma Chakravarti, *The Social Philosophy of Buddhism and the Problem of Inequality*, 33 SOC. COMPASS 199, 200 (1986).

64. *Id.* at 207–208.

is still constructed around the roles of wife and mother.⁶⁵ Returning to the study of Hyland et al., we should feel a sense of wariness in readily drawing correlations between a law, policy, or social-cultural context and better well-being for women.

Before turning to my own evidentiary burden, I first discuss the question of law's potential value in more general terms. In my view, the law plays three pivotal roles, none of which are mutually exclusive: an Identifying Role, a Symbolic Role, and a Pluralistic Role. In the sections that follow, I begin with the Identifying Role, what may be considered the shift towards a woman's standpoint in the law and present, briefly, a period of feminist legal advocacy and reform for women-centered legislation. I move to the law's Symbolic Role before challenging the too-often monolithic approach to "women" that is common to law reform. With this Pluralistic Role, I seek a place in the law for a greater diversity of women.

A. *The Identifying Role: The Law's Eye on Women*

National law can embed women's interests, thereby, placing the eye of the law on women. Such an approach to law-making, including by domesticating international women's rights norms,⁶⁶ acknowledges the evident differences between men and women and addresses women's specific needs and interests when it comes to social, economic, and political issues.⁶⁷ These gendered perspectives should be incorporated into the law by drafting legislation and policies with women and their rights and interests in mind.

This demand for women-centered law-making has had a somewhat fraught history. In the latter part of the 20th century, many jurisdictions witnessed a burgeoning call for gender neutrality in the law. Scholars and legal practitioners began to question why the traditional—and until then largely accepted—legal "he" should also stand in for "she."⁶⁸ The call for gender-neutral pronouns had arrived.⁶⁹ Alternative language in law was required, with a steady uptake of terms

65. KAMALA LIYANAGE, *WOMEN IN HIGHER EDUCATION: PERSPECTIVES FROM THE UNIVERSITY OF PERADENIYA* 33 (1996); VIJEYARASA, *supra* note 44, at 256.

66. Vijayarasa, *supra* note 15, at 40, 70. We cannot ignore the power of international law to set norms, to guide national-level advocacy, to offer frameworks and good practice for draft national laws and for heightening accountability for law reform. See VIJEYARASA, *supra* note 44, 158, 222–223.

67. Vijayarasa, *supra* note 8, at 277.

68. Christopher Williams, *The End of the 'Masculine Rule'? Gender-Neutral Legislative Drafting in the United Kingdom and Ireland*, 29 *STATUTE L. REV.* 139 (2008).

69. See, e.g., Debora Schweikart, *The Gender Neutral Pronoun Redefined*, 20 *WOMEN'S RTS. L. REP.* 1 (1998).

such as “they” and “them” or *both* “he and she,” along with gender-neutral job titles such as “chairperson.”⁷⁰ In many global North jurisdictions around the world, it is difficult today to find legal drafting exclusively using the “male” pronoun⁷¹ and, if done, it is acknowledged as an erroneous approach that excludes women.

However, some scholars have noted the obvious point that a mere linguistic shift was far from what was required to address the widespread gender discrimination that continued to exist in our societies and that is sometimes still—even often—embedded in the law itself. Hence, parallel to this evolution, a more substantive demand developed. The call for “gender-neutral language” was followed by a demand for “gender-neutral legislation.” With the term “gender-neutral legislation,” I refer to legislation that makes no effort and in fact might deliberately avoid making distinctions on the basis of gender or sex to challenge the perception that one gender may benefit more.⁷² This notion of “gender neutrality” continues to carry a positive connotation today.

Yet, in countries, both rich and poor, where governments have adopted gender-neutral language—or even apparently gender-neutral legislation—the result has been “anything but neutral,” facilitating the perpetuation of gender stereotypes and traditional practices.⁷³ The label “gender-neutral” is too quick to forgive what may be a gender-blind response to an issue.⁷⁴ Obvious differences between men and women are ignored when they ought to be considered in the drafting of laws. Moreover, this failure to acknowledge difference is further undermined by “the inherent bias of those empowered to interpret, apply and enforce law.”⁷⁵ To the contrary, women need to be “seen, heard and written as a woman” in the law.⁷⁶

70. Ramona Vijeyarasa, *In Pursuit of Gender-Responsive Legislation: Transforming Women's Lives Through the Law*, in INTERNATIONAL WOMEN'S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN 3 (Ramona Vijeyarasa ed., 2021).

71. For instance, countries in the global South too often retain the male gender pronoun. A stark example is the Constitution of Sri Lanka, a nation that has had two women Heads of States, but whose Constitution refers to the President and Prime Minister as a ‘he’. See VIJEYARASA, *supra* note 44, at 252.

72. Vijeyarasa, *supra* note 8, at 277.

73. Ruth Halperin-Kaddari & Marsha A. Freeman, *Backlash Goes Global: Men's Groups, Patriarchal Family Policy, and the False Promise of Gender-Neutral Laws*, 28 CAN. J. WOMEN L. 182, 185 (2016).

74. Vijeyarasa, *supra* note 8, at 278.

75. Hevener Kaufman & Lindquist, *supra* note 9, at 118.

76. Annabelle Mooney, *When a Woman Needs to Be Seen, Heard and Written as a Woman: Rape, Law and an Argument Against Gender Neutral Language*, 19 INT. J. FOR SEMIOTICS L. 39 (2006). In her article that focuses specifically on rape laws,

It is here, in my view, that the law has the greatest potential—the act, or perhaps even “art” of legislating in response to the, at times, very specific needs of a particular social group. Yet this journey—from men’s law, to “neutrality” to slow acknowledgement of the gender-blind nature of many laws—may have created a false sense that we had successfully transitioned to a collective view that the law does need a woman’s standpoint.⁷⁷ In reality, we lack the evidence that women as a collective are, in practice, enjoying domestic laws that advance their rights. Perhaps lulled into a false sense of security, it is this very protective space that many feminist legal scholars have been left in that invites an assessment that requires us to go further and ask whether law has met our expectations of advancing women’s interests.

B. *The Symbolic Role: Regulating Societal Behavior*

The law is an important regulator of how society behaves. Historically, the law has been known to define families and relationships, and rights and entitlements within those relationships.⁷⁸ Over time, gendered norms and divisions have extended beyond the family, with the law playing its part in defining men and women’s roles at work and in other public spaces. Yet simultaneously, the law has the “symbolic” power to challenge such norms and stereotypes.

My use of the term symbolic is not to be confused with the phrase “symbolic legislation” to describe the enactment of laws merely done to give the people a sense that the government is doing something. Such “symbolic legislation” is often critiqued for disguising the reality that the reforms undertaken are doing little or even potentially regressing and not advancing society.⁷⁹ Rather, I use the term “symbolic” to note that, beyond the impact that a newly enacted law can have once implemented, the very existence of a law influences how society thinks and how society behaves.

Not everyone agrees. Joel Handler, UCLA Professor of Law probably best known for his work on poverty, welfare, and “the law and the poor” contended in his 1978 book, *Social Movements and the*

Mooney argues that gender neutral language alone does not change attitudes. When it comes to the crime of rape of women, gender neutrality may “sanction the current androcentric status quo”. *Id.* at 41. To the contrary, gendering women in rape trials is necessary to “recognising gender as an issue.” *Id.* at 43.

77. MARGARET DAVIES, *ASKING THE LAW QUESTION* 223 (2017).

78. Martha Minow & Mary Lyndon Shanley, *Relational Rights and Responsibilities: Revisioning the Family in Liberal Political Theory and Law*, 11 *HYPATIA* 4, 4 (1996).

79. Amitai Aviram, *The Placebo Effect of Law: Law’s Role in Manipulating Perceptions*, 75 *GEO. WASH. L. REV.* 54, 90 (2006).

Legal System – A Theory of Law Reform and Social Change, that groups who use the law to seek change in relation to environmental regulation, consumer protection, civil rights and social welfare, are generally unsuccessful. Social movements only make incremental and moderate change at best, in a way that, according to Handler, is unlikely to change the basic and political organization of society.⁸⁰ Social change, in Handler's view, requires two fundamental steps, and only one of these can be addressed by law's symbolic role: establishing new standards and revalidating existing ones. The second key aspect is a more notable hurdle for Handler—the law's actual implementation. Handler views the discretion exercised by individual decision-makers as to whether the new rules will be implemented as too easily undermining the symbolic function of law.

Yet a larger body of evidence racks up a notable number of points for the symbolic camp. Indeed, Catherine MacKinnon, renowned American feminist legal scholar best known for her work on pornography as a form of sexual abuse and gender subordination, has cautioned that those who ignore the “consciousness- and legitimacy-conferring power of law as political realities” as doing so at women's peril.⁸¹ Law is not singularly powerful, but it is particularly powerful⁸² and this power—and, in my view, potential—must be acknowledged.

More has been said about the power of the law to change behavior in some fields over others. Many criminal law scholars acknowledge, for instance, that criminal laws can regulate normative systems,⁸³ although the deterrent effect of such criminal laws has certainly been put into question.⁸⁴ When it specifically comes to advancing women's interests through gender-based violence (GBV) legislation, the law's actual and symbolic power are intertwined. Legislation that prohibits violence against women has played an important symbolic role by indicating that such behavior is socially unacceptable, while the associated sanctions may serve a deterrent function. Put (very) simply, laws to address GBV prevent violent men from re-offending and thus protect individual women and, in general terms,

80. JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* 233 (1978).

81. CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* xiii (1989).

82. *Id.*

83. NICOLA LACEY, *Criminalisation as Regulation: The Role of Criminal Law*, in *REGULATING LAW* 144-167 (C. Parker et al. eds., 2004), <https://papers.ssrn.com/abstract=2126521>.

84. Paul H. Robinson & John M. Darley, *Does Criminal Law Deter? A Behavioural Science Investigation*, 24 *OXF. J. LEGAL STUD.* 173 (2004).

prevent future offenders while building a cultural ethos which prohibits domestic violence, in turn protecting women as a community.⁸⁵ Either or both of these levers—that is, both the deterrent effect and the symbolic norm-setting role—may work in practice to reduce the incidence of violence, although drawing causal links remains a challenge.⁸⁶ In the area of GBV, it is therefore a difficult task separating law’s symbolic power from the actual change derived by well-implemented legislation. Ultimately, sanctions for GBV are a “a vital symbolic condemnation of men’s violence.”⁸⁷

Other less typically considered areas demonstrate well the standalone symbolic function of law. Compulsory education has helped shift social views about the need to send *both* boys and girls to school.⁸⁸ International law has played a direct role in the prohibition of polygamy⁸⁹ while simultaneously shifting social attitudes against the practice. In recent times, laws on same-sex marriage demonstrate the power of the law to *help* advance—albeit far from achieve—social and cultural equality for same-sex couples.⁹⁰ For instance, in the U.S., while citizens’ implicit and explicit bias had been changing for some time, local laws enabling same-sex marriage have been found to decrease such bias at roughly double the rate.⁹¹

Kathleen Hull’s work, which has made a fundamental contribution to understanding the implications of same-sex marriage as a goal for the lesbian and gay movement in the U.S., has elaborated in depth on the symbolic function of same-sex marriage legislation.⁹² We cannot overlook the important legal entitlements sought by couples who seek a legal expansion in who has access to the “institution of marriage,” including essential benefits related to tax, health insurance, and

85. Ruth Lewis, Rebecca E. Dobash, Russell P. Dobash & Kate Cavanagh, *Law’s Progressive Potential: The Value of Engagement with the Law for Domestic Violence*, 10 SOC. & LEGAL STUD. 105, 107 (2001).

86. Klugman, *supra* note 7, at 26.

87. Lewis et al., *supra* note 85, at 122.

88. See Yehezkel Dror, *Law and Social Change*, 33 TUL. L. REV. 787 (1958).

89. Comm. on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, U.N. Doc. A/49/38, (1994), <http://www.refworld.org/docid/48abd52c0.html> [https://perma.cc/HQ4H-63D].

90. KATHLEEN HULL, SAME-SEX MARRIAGE: THE CULTURAL POLITICS OF LOVE AND LAW 3 (2006).

91. Eugene K. Ofosu, Michelle K. Chambers, Jacqueline M. Chen & Eric Hehman, *Same-Sex Marriage Legalization Associated with Reduced Implicit and Explicit Anti-gay Bias*, 116 PROC. NAT’L. ACAD. SCIS. U.S. 8846, 8849 (2019).

92. Kathleen E. Hull, *The Cultural Power of Law and the Cultural Enactment of Legality: The Case of Same-Sex Marriage*, 28 LAW & SOC. INQUIRY 629 (2003); HULL, *supra* note 90.

designating one's partner as next of kin in an emergency. Nor can we ignore the notable "social legitimacy" that such legal rights bring. This legitimacy is part of law's perceived cultural power. It is more abstract than the specific tangible legal benefits of marriage but also rooted in those more tangible provisions: "By treating all relationships equally in legal terms, the law has the perceived power to render all relationships culturally similar."⁹³ This "tremendous cultural influence of law" to shape social practice is often what drives opponents to so vehemently object to law reform.⁹⁴ Perhaps this explains, too, the intense opposition, in some nations, to gender-responsive law reform in the first place.⁹⁵

C. *The Pluralistic Role: Representing the Non-Monolithic Woman*

The third approach to understanding the good of law is its potential to advance the interests of those most marginalized and to thereby challenge the notion of "women" as a *single monolithic category*. Adopting an intersectional understanding of discrimination and inequality, where race, class, sex/gender are considered compounding in their impact, is a natural and necessary part of any critique of the law.⁹⁶ Borrowing from MacKinnon, I do not "pretend to present an even incipiently adequate analysis of race and sex, far less of race, sex and class."⁹⁷ Yet it should be self-evident that assessing how well the law works for women—i.e. the law's gender-responsiveness—requires analyzing whether the law works well for a diversity of women; gender alone is simply too limiting as an overarching category.⁹⁸ The law can and should acknowledge and respond to how these identities such as race, disability, or marital status intersect at the micro level in individual experiences while seeking to challenge or breakdown sys-

93. HULL, *supra* note 90.

94. *Id.*

95. See, e.g., Shahra Razavi & Anne Jenichen, *The Unhappy Marriage of Religion and Politics: Problems and Pitfalls for Gender Equality*, 31 *THIRD WORLD Q.* 833 (2010); Sofia Strid, *Patriarchy Fights Back: Violent Opposition to Gender Equality in Online Contexts*, in *VARIETIES OF OPPOSITION TO GENDER EQUALITY IN EUROPE* 57 (2018); O. Avdeyeva, *When Do States Comply with International Treaties? Policies on Violence Against Women in Post-Communist Countries*, 51 *INT. STUD. Q.* 877 (2007).

96. See e.g., Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 *HARV. L. REV.* 1331 (1988); BELL HOOKS, *AIN'T I A WOMAN: BLACK WOMEN AND FEMINISM* (1981).

97. MACKINNON, *supra* note 81 at xii.

98. Leslie McCall, *The Complexity of Intersectionality*, 30 *SIGNS* 1771, 1771 (2005).

tems of privilege and oppression at the macro level (including racism, sexism or classism).⁹⁹

The third potential role of the law is therefore to not just speak to the interests of women as a group but to identify where particularly sub-groups of women may suffer different and more severe forms of discrimination. The term “women” must be understood to encompass women in all their diversity. By acknowledging this difference, my evaluation in this article of the difference law makes requires us to reflect on how particular groups of women, including those women who are most marginalized and excluded, experience law. Discrimination obviously exists not only on the basis of sex, but also gender identity, marital and maternal status, disability, ethnicity, and race, among other identities. The next step in this endeavor is to determine, therefore, not only what good is law but also for whom. Without such an understanding, we risk falling into the trap that has been critiqued elsewhere that women’s lives are not adequately centered in the discussion over and above the legal categories that define the debate.¹⁰⁰

The above three sub-sections have set out the law’s power or at least, its potential in making good law for women. In the following part of this article (Part II), I turn to law’s limits precisely in order to understand and acknowledge law’s own failings. Importantly, we must undertake this exercise in a way that recognizes that such limits may be less overt in many cases. In particular, sex-based distinctions that may even seem to favor women can in other ways reinforce limiting norms about the role and place of women. The U.S. Supreme Court faced this challenge when determining whether to overturn the 1981 ruling in *Rostker v. Goldberg*,¹⁰¹ a decision made when women could not serve in combat roles. The ruling resulted in a requirement that men (and transgender women) register for the Selective Service, but from which women (and transgender men) were found to be exempt. Interestingly, the plaintiffs—two male plaintiffs and men’s rights groups represented by the American Civil Liberties Union—cited a 1973 case argued by Ruth Bader Ginsburg, two decades before she became a Supreme Court justice: Although purportedly protective of women, “romantic paternalism,” what I would capture as decisions driven by stereotypes of women and women’s place and capacity, put

99. Lisa Bowleg, *The Problem with the Phrase Women and Minorities: Intersectionality— An Important Theoretical Framework for Public Health*, 102 AM. J. PUB. HEALTH 1267, 1267 (2012).

100. Reg Graycar & Jenny Morgan, *Law Reform: What’s in it for Women?*, 23 WINDSOR YEARBOOK ACCESS TO JUST. 393, 398 (2005).

101. *Rostker v. Goldberg*, 453 U.S. 57 (1981).

them “not on a pedestal, but in a cage.”¹⁰² In this sense, nuance and care is needed in naming laws as necessarily beneficial for women as a collective. So before undertaking this difficult task of identifying the good of law, in the next section, I navigate through law’s limitations.

II.

ACKNOWLEDGING AND RESPONDING TO LAW’S LIMITS

In many legal systems, the law has historically codified women’s secondary status. To some, therefore, the above assessment of the law’s potential to advance the interests of women—as a collective or as individuals—overstates the law’s influence. In the sections that follow, I acknowledge these limitations as a key concession before I move to the heart of this article: demonstrating what difference “good” laws can make for advancing gender equality. I begin first in Part II (A) by presenting decades of feminist critiques of the limits of the law. In Section (B), I consider barriers to successful implementation of the law that stalls progress on gender-responsive law reform, before I finally consider, in Section (C), other factors that ultimately make gender-responsive law reform unsuccessful.

A. *Feminist Theorists’ Antagonism with Law*

Some feminist theorists, for nearly over half a century, have shown a deep antagonism to the law. Often drafted by men and with men in mind, legislation is neither blind to sex—as it claims to be—nor objective. As Hilary Charlesworth and Christine Chinkin have powerfully argued in relation to international law¹⁰³ and the international human rights system,¹⁰⁴ and Carol Smart with respect to domestic legal systems,¹⁰⁵ the law at best excludes women’s perspectives or, at worst, sustains women’s oppression. Many critical legal scholars would stand by Smart’s eloquent critique of the law as being “[too] deaf to core concerns of feminism.”¹⁰⁶ Why work with a broken system?

While women’s rights and gender equality scholars may keenly pursue law reform, many feminist scholars situate the problem as be-

102. *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

103. HILARY CHARLESWORTH & CHRISTINE CHINKIN, *THE BOUNDARIES OF INTERNATIONAL LAW: A FEMINIST ANALYSIS* 1 (2000).

104. Hilary Charlesworth, *Human Rights as Men’s Rights*, in *WOMEN’S RIGHTS, HUMAN RIGHTS: INTERNATIONAL FEMINIST PERSPECTIVES* 103 (J. S. Peters & Andrea Wolper eds., 2018).

105. SMART, *supra* note 35, at 2.

106. CAROL SMART, *FEMINISM AND THE POWER OF LAW* 2 (1989).

ing the gender-blindness of the legal system, questioning who gets to participate in such law reform and who defines the terms of such participation.¹⁰⁷ Feminist theorists in the 1980s even faced a struggle with feminist theoretical approaches being devalued, including by North American law schools, creating a need to generate “grand” theories in order for them to be valued.¹⁰⁸ In other words, a woman’s standpoint was questioned within legal academic institutions, let alone beyond these respected walls of free thought. What may have been lost was the simple—although strong—perspective that “law is gendered, that law is a manifestation of power, and that law works to the detriment of women.”¹⁰⁹ I agree entirely with this assessment by Martha Fineman, internationally-recognized American legal scholar who has made a profound contribution to feminist jurisprudence. Fineman went on to suggest that the differences among women cannot be accommodated adequately, without merely privileging one or two characteristics; in turn, an overly simplistic picture of women’s gendered lives tends to be offered.¹¹⁰ Her critique questioned, for instance, if a “white woman” who is a “welfare mother” is appropriately placed with the dominant group in society just because she shares their skin color. Moreover, if this is not where she fits, then where does she belong? Once again, law and legal systems lay out crude categories, into which women’s lives rarely fit and if they do, often uncomfortably.

While Fineman validly raises these challenges, I disagree with her suggestion that gender-responsive legislation is merely a type of “tinkering-with-the-law” reform that is condemned to fail because it will merely replicate injustice.¹¹¹ We cannot stop, in my view, by identifying law’s natural biases or by being overwhelmed with the challenge of “placing” the “white welfare mother” along a scale of disadvantage (or as Fineman calls it, a “hierarchy of oppression”) that law seems to demand. Rather, we must believe that by bringing a gender perspective, law reform can and will do more than merely replicate and validate the original rules. Here, I contest Fineman’s suggestion that the law is a “relatively powerless” institution that can seldom “initiate” social change.¹¹²

107. *Id.* at 410.

108. Martha Fineman, *Challenging Law, Establishing Differences: The Future of Feminist Legal Scholarship*, 42 FLA. L. REV. 25, 29 (1990).

109. *Id.* at 29.

110. *Id.* at 40.

111. *Id.* at 32.

112. *Id.* at 33.

Having made these remarks in 1990, Fineman's important work pre-dates significant developments over the last three decades.¹¹³ A pertinent example is Kathleen Hull's work, cited earlier, that elucidates the overwhelming "cultural power" of the law in the context of legalization of same-sex marriage. Law's influence goes beyond the practical rights and benefits that law reform offers to the more abstract "social legitimacy" that the law can provide same-sex couples in jurisdictions that have legalized same-sex marriage: this "tremendous cultural influence of law" to shape social practice is often what drives opponents to so vehemently object to law reform.¹¹⁴ It is not that Fineman does not value this potential power of the law, which Fineman describes as "found in the discourse in everyday life" and "evident in the beliefs and assumptions we hold about the world in which we live and in the norms and values we cherish."¹¹⁵ Rather, Fineman's perspective is a challenge to the wisdom of using the law to actually advance the interests of women.

Like Fineman, Wendy Brown, American political theorist, questions the law's potential as a tool to advance women's interests. Brown argues that the increased calls for state regulation to address issues such as rape and harassment has resulted in little or no critical attention to the role of the law and the state in producing or reproducing and reinforcing the conditions that gave rise to the ubiquitous threat that rape (by men) poses for many women in the first place; moreover, impunity is too often the result.¹¹⁶ As a criminologist, Smart too sees the use of the law to criminalize sexual crimes against women as merely extending the law's power and reach. For women to depend on the highly masculinized institute of the law to protect themselves from rape is effectively to re-empower men.¹¹⁷ As a result of these contestations about power, gender, diversity and the potential of the law, some feminist scholars find ourselves in a fraught position of

113. Some answers can also be found in Fineman's more recent work on vulnerability theory which demands that the state institutions that law and policy creates is more attentive to individual vulnerability and also how this may change over one's life. See Martha Albertson Fineman, *Beyond Equality and Discrimination*, 73 SMU L. REV. F. 51, 55 (2020).

114. HULL, *supra* note 87, at 3.

115. Fineman, *supra* note 108, at 34.

116. WENDY BROWN, *STATES OF INJURY; POWER AND FREEDOM IN LATE MODERNITY* 168-70 (1995).

117. Carol Smart, *The Woman of Legal Discourse*, 1 SOC. & LEGAL. STUD. 29, 30, 40 (1992).

trying to convince fellow feminist theorists of the value of law reform.¹¹⁸

B. *Why Might Law Reform Alone Prove Ineffective?*

It is important to acknowledge that even the very best of laws may fail to deliver expected impact. Entrenched social norms may make legal change simply ineffective. The agencies responsible for enforcing such laws may also be steeped in gender biases.¹¹⁹ Moreover, the very system within which reform is sought may uphold deep-rooted inequalities, leaving those with power little incentive to implement laws that could, ultimately, shift the power imbalance.

First, barriers to implementation may be the most profound challenge for law's effectiveness. The issue of the unimplemented law is evident across a diversity of legislation:¹²⁰ a failure to allocate funds and adapt institutions undermines effective implementation of laws, from gender equality quotas¹²¹ through to evidencing a lack of institutional support for reforms to land rights.¹²²

An unimplemented but "good" law can in fact be harmful. Utpal Bhattacharya and Hazem Daouk, writing in the context of securities law, suggest "no law is better than a good law" that remains unimplemented. Their analysis responds to the power-holders in the system who by virtue of their disregard for the law, end up suggesting to society that they—distinct from others—are in a position to ignore such laws.¹²³ Indeed, Bhattacharya's and Hazem's research suggests that if good laws are adopted in corrupt countries, welfare may decrease if there is little attention paid to ensure the law is implemented,

118. For more see Louise Chappell and Fiona Mackay's excellent article where they write of feminist critical friends who can be both engaged and critical of gendered political, social, economic and military institutions. Louise Chappell & Fiona Mackay, *Feminist Critical Friends: Dilemmas of Feminist Engagement with Governance and Gender Reform Agendas*, 4 EUR. J. OF POL. & GENDER 322, 322 (2020).

119. JENI KLUGMAN, GENDER BASED VIOLENCE AND THE LAW 36, 37-38 (2017), <https://openknowledge.worldbank.org/bitstream/handle/10986/26198/112914-WP-PUBLIC-WDR17BPGenderbasedviolenceandthelaw.pdf> [<https://perma.cc/F5NF-98ZM>].

120. See, e.g., Savitri Goonesekere, *Preface* to VIOLENCE, LAW & WOMEN'S RIGHTS IN SOUTH ASIA 10 (Savitri Goonesekere ed., 2004).

121. Mala Htun, *Women and Democracy*, in CONSTRUCTING DEMOCRATIC GOVERNANCE IN LATIN AMERICA 118-119 (Jorge Domínguez & Michael Shifter eds., 2003).

122. J.D. Ping Li, *Rural Land Tenure Reforms in China: Issues, Regulations, and Prospects for Additional Reform*, LAND REFORM: LAND SETTLEMENT & COOP., no. 3, 2003, at 59.

123. Utpal Bhattacharya & Hazem Daouk, *When No Law is Better Than a Good Law*, 13 REV. FIN. 577, 577 (2009).

that is, to guarantee that “insider traders” do not continue with impunity.¹²⁴

Second, law reform may be ineffective when it contains embedded loopholes or other hidden agendas exist within them. When it comes to child marriage, law reform in Chad, Costa Rica, Ecuador, Guatemala, Malawi, Mexico, Nepal, Panama, and Zimbabwe has raised the minimum age for marriage and eliminated or reduced exceptions that have otherwise allowed child marriage with parental or judicial consent to continue. Simultaneously in other countries, such as Bangladesh, where child marriage remains a pervasive problem, law reform has seen a lowering of the minimum age for marriage when it is combined with parental and judicial consent,¹²⁵ this type of loophole allowing the practice to continue and undermine the momentum that otherwise existed towards progress. Since 2017, it has been permissible to determine that the marriage of a child in Bangladesh would be “in the best interests of the child,” reflecting law’s retrogression on women’s rights through the institution of legal loopholes.¹²⁶

A third issue arises where law reform takes place in one legal domain but without the multi-dimensional law reform required for the reform to be effective. In China, despite legal prohibitions on sex-selective abortion, scholars note a number of factors that undermine the success of legal regulation in this domain, including inconsistencies with existing abortion laws, underestimating the costs and resistance involved and a lack of sufficient public discussion to accompany law reform.¹²⁷

A final issue arises in pluralistic legal systems, when we invest in law reform in one system only. Legal pluralism may be described as the existence of multiple legal systems, within one population or geographic areas. It may result in customary laws operating alongside or even superseding formal laws. Given the extensive attention paid to customary laws’ impacts on women, this article’s focus on “formal” or “State” law may be, rightly, the subject of much feminist criticism. Ambreena Manji, more than two decades ago, challenged the tendency

124. *Id.* at 612-613.

125. QUENTIN WODON, PAULA TAVERES, OLIVER FIALA, ALEXIS LE NESTOUR & LISA WISE, *CHILD MARRIAGE LAWS AND THEIR LIMITATIONS* 3 (2017), <https://pubdocs.worldbank.org/en/134161519943385981/WBL2017-Child-Marriage-Laws.pdf> [<https://perma.cc/X86Y-R5MX>].

126. JENI KLUGMAN, *WOMEN, PEACE AND SECURITY INDEX 2019/2020*, GEORGETOWN INSTITUTE FOR WOMEN, PEACE AND SECURITY 39 (2019), <https://giwps.georgetown.edu/wp-content/uploads/2019/12/WPS-Index-2019-20-Report.pdf>.

127. Jing-Bao Nie, *Limits of State Intervention in Sex-Selective Abortion: The Case of China*, *CULTURE, HEALTH & SEXUALITY* 205, 212-13, 215 (2009).

of the feminist project on law reform to inadequately engage with legal pluralism, thereby providing only a “partial account” of women’s experiences with the law.¹²⁸ Manji’s critique can be linked with other well-founded censures that scholars in this space tend to value formal “western” notions of justice over informal systems, the latter often automatically assumed to run counter to international standards for the rule of law and human rights.¹²⁹

In many respects, traditional legal systems are, practically, beyond the scope of this paper. Nonetheless, scholarship that provides a blanket critique of traditional, customary or informal legal systems for their direct and indirect discrimination against women appear unsophisticated and dated.¹³⁰ While it may be true that such systems, in countries as diverse as Egypt and South Africa, risk a reinforcement of male values and interests that permeate and supersede female interests, we must remember the postcolonial feminist call to apply a more nuanced approach to understanding laws and law reform in pluralist systems. In the same way that Muslim women should not be analyzed as a single category, neither should all pluralist systems be described as “unchanging and closed systems of religious practices and beliefs.”¹³¹

Nor, however, do I wish to dismiss the very real ways that attempts to create a pluralist system of legal justice, in order to better accommodate the diverse interests of a nation’s citizenry, have *often* resulted in systems where women citizens are denied the basic protections that a national constitution or domestic law guarantees others, that is, men.¹³² Indeed, a more positive view sees the value of these non-state regulatory systems as a key “regulatory tool to be galvanized and coopted into particular regulatory agendas.”¹³³ Moreover, failure to give some importance to non-state legal systems in pluralist sys-

128. Ambreena S Manji, *Imagining Women’s ‘Legal World’: Towards a Feminist Theory of Legal Pluralism in Africa*, 8 SOC. LEGAL STUD. 435, 435-36 (1999).

129. Tanja Chopra & Deborah Isser, *Access to Justice and Legal Pluralism in Fragile States: The Case of Women’s Rights*, 4 HAGUE J. ON RULE L. 337, 337 (2012).

130. Brenda Oppermann, *The Impact of Legal Pluralism on Women’s Status: An Examination of Marriage Laws in Egypt, South Africa, and the United States*, 17 HASTINGS WOMEN’S L.J. 65, 65-66 (2006).

131. Lamia Ben Youssef Zayzafoon, *Teaching About Women and Islam in North Africa: Integrating Postcolonial Feminist Theory in the Classroom*, 44 FOREIGN LANGUAGE ANNALS 181, 203-204 (2011).

132. Mark J. Calaguas, Cristina M. Drost & Edward R. Fluet, *Legal Pluralism and Women’s Rights: A Study in Postcolonial Tanzania*, 16 COLUM. J. GENDER & L. 471, 473 (2007).

133. Miranda Forsyth, *Legal Pluralism: The Regulation of Traditional Medicine in the Cook Islands*, in REGULATORY THEORY 233, 235 (Peter Drahos ed., 2017).

tems may be adding fuel to the fire, undermining any belief in the formal justice system in those countries. Miranda Forsyth offers the example of a system that creates a mandatory jail sentence for rape in state courts that in turn creates a tendency for chiefs or local leaders to keep such cases out of the formal criminal justice system altogether.¹³⁴

We are left with a clear sense of the challenge ahead. We are not all believers in the value of the law or even the site of the law as the best place to pursue interventions towards more gender equal nations. Legal systems are fraught and even “good” laws are ineffective if only left to be a good law on the books. Moreover, in identifying examples of good practice gender-responsive legislation in formal legal systems, perhaps our solution is too limited and confined. Nonetheless, it is a solution, even if only a partial solution, worth exploring. Now I turn to the challenge of proving the solution’s potential.

III.

FINDING THE EVIDENCE: DO “GOOD” LAWS MAKE A DIFFERENCE?

Here I grapple with the central task at hand: understanding whether “good” laws make a positive difference on women’s lives. The questions explored in this paper are not necessarily new; rather what is sought is a deeper dive into specific laws and a balanced evaluation that is able to accept simultaneous wins and losses. The paper is set in the context of the very limited literature that can correlate “good” laws for women with actual effectiveness, and it adopts a cautious approach precisely because of the limitations with existing research noted earlier. The additional contribution that this article makes is by grappling with the question of why is it that, in these particular instances, there appears to be a correlation between a law and its impact on women’s lives.

With this task in mind, I begin this Part with a brief survey of existing studies that draw correlations between law reform and its effect on women’s lives. The majority of these examples are drawn from areas of law quintessentially considered when one thinks of women’s rights. This albeit brief survey helps us to begin to understand the depth of the challenge we face in trying to draw correlations between gender-responsive legislation and gender equality. I then present to readers three areas of law reform. Rather than seeking to draw neat correlations between law reform and its impact, these case studies al-

134. *Id.*

low us to extrapolate what may be the “ingredients” or drivers for laws that could be more effective in enhancing women’s rights.

A. *Making a Case for Effectiveness: A Survey of Existing Studies*

Without a doubt, the most visible studies on the impact of gender-responsive laws—and gender regressive ones—is the World Bank’s series of reports, *Women, Business and the Law*.¹³⁵ This series—the 2022 report being the eighth—seeks to draw clear connections between law’s enactment and its effect on women’s lives. They follow a number of studies through the early 2000s that seek to draw such correlations. For instance, mandating a non-discrimination clause in hiring increases women’s employment in formal businesses, on average, by nearly nine percent.¹³⁶ One study of the economic effect of equal pay in the U.S. found that if law reform helped bring women’s remuneration to the same level as men’s, the poverty rate for all working women in the country would be reduced by almost half.¹³⁷ Moreover, mandatory paid paternity leave schemes that encourage a more equitable distribution of child-rearing between parents, on average, increases the proportion of women employed in formal business by nearly 70 percent.¹³⁸ Yet there are obvious limits to this global data, and, while it is important to present a global picture, there is notable value in a more micro-approach that enables an understanding of what in national law reform proves effective.

One such study that offers this micro-lens explores the place of women in the land rights agenda in India. Here Bina Agarwal suggests that the legal right to inherit agricultural land can be correlated with gender equality.¹³⁹ Writing in the early 2000s, Agarwal found that women in the southern states of India, where daughters have a share in joint family property on par with sons, are, in general, more gender equal, while inequality rises as one heads north, where women face greater disadvantage with respect to agricultural land and joint family property.¹⁴⁰ Other studies—also drawing on data from India—demon-

135. *Women, Business, and the Law 2019: A Decade of Reform*, *supra* note 6.

136. MOHAMMED AMIN & ASIF ISLAM, DOES MANDATING NONDISCRIMINATION IN HIRING PRACTICES INFLUENCE WOMEN’S EMPLOYMENT? EVIDENCE USING FIRM-LEVEL DATA 14 (2014), <https://www.enterprisesurveys.org/content/dam/enterprisesurveys/documents/research/Does-Mandating-Nondiscrimination-Influence-Women-Employment.pdf>.

137. WOMEN, BUSINESS AND THE LAW 2022, WORLD BANK GROUP (2022).

138. *Id.* at 97.

139. Bina Agarwal, *Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market*, 3 J. AGRARIAN CHANGE 184, 205 (2003).

140. *Id.* at 204.

strate a notable impact from the *Hindu Succession Act* on daughters' access to inheritance. This is despite what the authors describe as an "anti-female inheritance bias" that is embedded in social values and has held back progress.¹⁴¹ Yet a surprising correlation is also drawn between inheritance rights and women's educational attainment, where higher rates of education were reached by Hindu girls, with no corresponding rise in non-Hindu girls.¹⁴² In other words, the *Hindu Succession Act* appears a "success" both in terms of advancing women's rights to inherit and own property but also shifting norms around the appropriateness of women and girls in these communities accessing education. While appreciating the abovementioned concerns with using data to draw correlations between (legal and other) interventions and gender equality, we see *some* evidence of the gender equalizing effect of gender-responsive legislation.

Yet one key factor in achieving such "success" could be time. When coupled with a series of legal reforms driven towards an end goal, time may simply be needed to make law reform more *effective* in advancing equality. In the case of Rwanda's *Succession Law 1999*, law reform embedded the principle of gender equality in land inheritance and property ownership.¹⁴³ However, the events that followed were also key, including the 2003 Constitution which was endorsed by a national referendum after a prolonged consultation and sensitization process, and the embedding of several key articles of relevance to property rights and gender equality in the Rwandan Constitution.¹⁴⁴ Further steps occurred in 2004 and 2005. Remarkably, by 2006, research showed that although the legal changes were yet to fully permeate what are in reality entrenched gender relations, the new legal rights to land ownership were starting to impact evolving social relations and land inheritance patterns in practice. Concretely, male family heads were fulfilling what they perceived as their obligation to realize the inheritance rights of girls and in some cases, they did so because it is the "right thing to do."¹⁴⁵

141. Klaus W. Deininger, Aparajita Goyal & Hari K. Nagarajan, *Women's Inheritance Rights and Intergenerational Transmission of Resources in India*, 48 J. HUM. RES. 114, 130 (2013).

142. *Id.* at 136.

143. Elizabeth Daley, Rachel Dore-Weeks & Claudine Umuhoza, *Ahead of the Game: Land Tenure Reform in Rwanda and the Process of Securing Women's Land Rights*, 4 J. EAST. AFR. STUD. 131, 131 (2010).

144. *Id.* at 132.

145. *Id.* at 137–38.

B. *Three Case Studies of Gender-Responsive Legislation*

The brief survey above illustrates the need for care to be taken in identifying what change can be “linked” to a law. Understanding the context is essential and perceived improvements are rarely accepted without disclaimer. It may be hard to discern what is incidental change and how to apportion credit where numerous factors may be driving forward change, particularly over longer periods of time. With these disclaimers and lessons in mind, I delve deeper into three areas of legislation. I have not attempted to pinpoint, within each of these examples of law reform, the specific drivers that appear to correlate with the identified change. Rather, across the three examples, we can see common factors that explain *why* these three pieces of legislation might reinvigorate our belief that law does indeed serve a social good. This exercise necessarily entails exploring, too, why it is that certain subjects of legislation bring about the hoped-for change. I present three key explanations extracted from these examples in Part IV, along with one disclaimer.

i. *Iceland’s Paid Parental Leave Scheme*

The introduction of paid parental leave is driven by numerous goals. In the early 2000s, Marian Baird set out four typologies to explain decisions around the existence (or lack of) and nature of funded, legislated paid parental leave: (a) a welfare orientation that uncritically accepts the male bread winner model and uses parental leave to compensate women for their primary, almost exclusive role in society as maternal citizens consisting of “reproduction, care-giving and domestic service” as mothers;¹⁴⁶ (b) the bargaining orientation, where maternity leave is understood as a workplace entitlement over which workers (often women) need to bargain for the right;¹⁴⁷ and (c) a business orientation, where paid maternity leave is largely justified due to the companies’ or businesses’ needs and is negotiated using business case arguments and rhetoric (such as “improving the bottom line” and “competitive advantage”).¹⁴⁸ This article is concerned with the fourth typology, which Baird advocates for: a “new equity orientation,” whereby paid maternity leave is achieved with the rights of women workers at its core.¹⁴⁹ This typology is linked to a shared responsibility for care between a child’s parents, a standard set in international

146. Marian Baird, *Orientations to Paid Maternity Leave: Understanding the Australian Debate*, 46 J. INDUS. RELS. 259, 265 (2004).

147. *Id.* at 266–267.

148. *Id.* at 268.

149. *Id.* at 270.

law¹⁵⁰ and a major driver behind countries that pioneered paid maternity leave, and, subsequently, the notion of allocating part of that leave to fathers.¹⁵¹

Yet despite evolutions in public policies justifying parental leave across the globe, by the late 1990s, there was a clear sense among scholars in this field that little was known about the significance and impact of paid parental leave regulations on shifting behavior and achieving stated goals around equality, at home and at work.¹⁵² This was despite the continuing pursuit of such progressive reforms across many global-North countries, best represented by the EU Directive on parental leave.¹⁵³ Even among Nordic countries, known for decades to be at the forefront of legislation and policies to advance gender equality,¹⁵⁴ evidence of the actual *impact* of different approaches among them is limited. This gap in an evidence-base sits slightly at odds with the widespread pursuit of “father quotas” or “daddy quotas” throughout the region. At the time of print, Denmark was the last of the Nordic countries to provide for such a quota (having abolished a two-week “father quota” in 2002 after it was introduced in 1998).¹⁵⁵ A new rule came into effect in August 2022 that earmarked eleven weeks for each parent of non-transferable leave in Denmark.¹⁵⁶

Nordic countries, therefore, are indeed at the forefront; gathering the evidence of the effect of this good practice is a natural next step. This is an equally valuable endeavor among the nations leading the way, as well as those lagging behind. Yet besides some modeling,¹⁵⁷ the real impact of law reform in the area of paid parental leave among latecomers in other OECD nations, such as New Zealand, Australia

150. Comm. on the Elimination of Discrimination Against Women, *supra* note 89.

151. Guðný Björk Eydal, Ingólfur V. Gíslason, Tine Rostgaard, Berit Brandth, Ann-Zofie Duvander & Johanna Lammi-Taskula, *Trends in Parental Leave in the Nordic Countries: Has the Forward March of Gender Equality Halted?*, 18 CMTY. WORK & FAM. 167, 170 (2015).

152. Gwennaële Bruning & Janneke Plantenga, *Parental Leave and Equal Opportunities: Experiences in Eight European Countries*, 9 J. EUR. SOC. POL'Y 195, 196 (1999).

153. Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on Parental Leave Concluded by UNICE, CEEP and the ETUC, 1996 O.J. (L 145) 6-7.

154. Eydal et al., *supra* note 151, at 168.

155. *Id.* at 176.

156. *Denmark agrees new rules for parental leave*, THE LOCAL DENMARK (Oct. 26, 2021), [https://www.thelocal.dk/20211026/denmark-agrees-new-rules-for-parental-leave/\[https://perma.cc/P69A-NVLF\]](https://www.thelocal.dk/20211026/denmark-agrees-new-rules-for-parental-leave/[https://perma.cc/P69A-NVLF]).

157. GROWING UP IN NEW ZEALAND, POLICY BRIEF 4, EMPLOYMENT AND PARENTAL LEAVE AROUND THE TIME OF BIRTH: EVIDENCE FROM GROWING UP IN NEW ZEALAND, 1 (2014), https://www.growingup.co.nz/sites/growingup.co.nz/files/2019-10/Policy_Briefs/Paid-parental-leave-policy-brief-Nov2014.pdf.

and the U.S., nations that have been among the last to introduce national legislation for paid parental leave,¹⁵⁸ is largely non-existent.

Iceland, one of the Nordic countries praised for their paid parental leave policies, but not an EU member state, introduced a single system of leave in 2000—for birth, adoption or permanent foster care of a child.¹⁵⁹ These revolutionary reforms corrected a previously highly complicated and patchwork system.¹⁶⁰ The scheme expanded over time to offer nine months of paid parental leave, at 80 percent of earnings up to a ceiling payment, with three months reserved for mothers and three months reserved for fathers. Leave could be taken part-time, with a proportionate reduction in payment, until the child reached the age of 18 months.¹⁶¹ In 2021, Iceland further introduced notable amendments, providing a total of 12 months paid parental leave, with five months of non-transferable leave for each parent.¹⁶² Individuals not in the labor market, or working less than quarter-time, still receive some financial benefits from the government.¹⁶³ Iceland’s “father quota” means Iceland has one of the longest non-transferable leave quotas in the world.¹⁶⁴ With over two decades of legislative history that has achieved today’s status for Iceland as a world leader on parental leave, it naturally stands out as a good choice for a case study of gender-responsive lawmaking.

Scholars note that a number of factors enabled Iceland’s law reform. First, leave entitlements that existed prior to the reforms were scant. When the reforms were suggested, therefore, there was no sense that the new provisions would take entitlements away from some (mainly women) in order to give them to others (mainly men). That is, with the existing entitlements already fairly weak, there was largely no debate as to the impact of taking part of the leave already enjoyed by

158. Katherine Ravenswood & Ann-Marie Kennedy, *From Unpaid Maternity Leave to Paid Parental Leave in New Zealand: Changing Approaches in Legislation*, LABOUR HIST. 197, May 2012.

159. Lög um fæðingar- og foreldraorlof [Act on Maternity and Parental Leave], Law No. 95/2000 (2000), <https://www.althingi.is/lagas/nuna/2000095.html>.

160. Thorgerdur Einarsdóttir & Gyda Margrét Pétursdóttir, *Iceland: From reluctance to fast-track engineering*, in THE POLITICS OF PARENTAL LEAVE POLICIES: CHILDREN, PARENTING, GENDER AND THE LABOUR MARKET 159 (Kammerman Sheila & Moss Peter eds., 2009).

161. *Id.* at 162.

162. Lög um fæðingar- og foreldraorlof [Act on Maternity and Parental Leave], Law No. 95/2000 (2000), <https://www.althingi.is/lagas/nuna/2000095.html>.

163. Einarsdóttir & Margrét Pétursdóttir, *supra* note 160, at 162.

164. *Id.* at 160; DANIELLE WOOD, OWAIN EMSLIE & KATE GRIFFITHS, GRATTAN INST., DAD DAYS: HOW MORE GENDER-EQUAL PARENTAL LEAVE WOULD IMPROVE THE LIVES OF AUSTRALIAN FAMILIES 23 (2021). <https://grattan.edu.au/wp-content/uploads/2021/09/Dad-Days-Grattan-Institute-Report.pdf>.

mothers and allocating those resources to fathers.¹⁶⁵ Second, a court ruling had declared the existing provisions which created a difference in entitlements between men and women in parental leave as discriminatory.¹⁶⁶ A judicial decision had therefore set a new norm. Finally, there was already a relatively fervent emphasis on men in Iceland's gender equality discourse.¹⁶⁷ The changes being called for in law therefore had a socio-cultural platform upon which to build.

The law is not perfect, and it is important to acknowledge that even in what is described as one of the world's leading countries on paid parental leave, there is room for improvement. Data from the early 2000s showed that while fathers took the majority of leave reserved for them, only 19 percent in 2005 took any of the period that *parents can share*. By contrast, 90 percent of mothers took some or all of this shared period.¹⁶⁸ Data from 2006 suggests that 88 fathers were taking leave for every 100 mothers, using on average 100 days compared with 185 days for mothers.¹⁶⁹

So has the law made a difference when it comes to the promised advancements in equality at home and at work? One 2013 study declared that the desired division of labor among Icelandic parents has been achieved "mainly because of the law."¹⁷⁰ While acknowledging that it is difficult to isolate the effect of paid parental leave on shared care—given that fathers who are more likely to use it may be more likely to contribute more equally at home—it showed that after the first four months, the involvement of fathers grew more rapidly for children born in 2009 than for those born in 2003.¹⁷¹ By the time the child had reached the age of 15 months, they were more likely to receive equal care from both parents than primarily from the mother.¹⁷² With the introduction of the law on paid parental leave, the proportion of children receiving equal care from both parents during the night rose considerably in a similar manner to the results for daytime care.¹⁷³ Most importantly, by the time the children born in 2009 turned three years old, care was evenly divided between parents in 63

165. Einarsdóttir & Margrét Pétursdóttir, *supra* note 160, at 162.

166. *Id.* at 163.

167. *Id.* at 160.

168. *Id.* at 159.

169. *Id.* at 159.

170. Ásdís A. Arnalds, Guðný Björk Eydal & Ingólfur V. Gíslason, *Equal Rights to Paid Parental Leave and Caring Fathers – The Case of Iceland*, 9 ICELANDIC REV. POL. & ADMIN. 323, 323 (2013).

171. *Id.* at 333.

172. *Id.* at 334.

173. *Id.* at 335.

percent of cases when the father had been on leave for at least three months, but in 41 percent of cases if the father took no leave at all.¹⁷⁴ In other words, the evidence suggests that not only has the law—when implemented and utilized—advanced equality but that the equality has been sustained.

Of course, in light of the evident cautions noted above when it comes to drawing correlations, we must take care with reaching conclusions from data. For instance, evidence from Sweden, which introduced two months' pay for fathers in 2002, shows mixed results; while one study reports limited behavioral change in the household, another study, adjusting for differences in the characteristics of parents born before and after the reforms but using the same measures, found some effects from the law of more gender-equal sharing.¹⁷⁵ Correlation is a further challenge if we accept that changes will occur to gender norms as a result of slow shifts in behaviors, with fathers taking leave acting as a role-models for future leave-takers. At the same time, we know from other fields that role-model effects are, at best, difficult to measure.¹⁷⁶ Nonetheless we cannot dismiss an evident possibility of a snow-balling effect of men taking leave—as a direct result of the law—on other men taking leave in the future.

ii. *Gender-Based Violence Reforms in Spain*

Evaluating the effectiveness of legislation to address GBV is particularly challenging. Drawing correlations proves particularly problematic as many factors, including positive investments in law reform and awareness-raising, can increase reporting and recorded rates of GBV. Higher prevalence rates recorded as a result of an increase in reporting depend on a willingness to report in the first place, which can be a positive outcome of improved regulation. At the same time, patterns of silence may indeed reflect deep-rooted, pervasive discrimination against women in society.¹⁷⁷ We need to acknowledge, too, the

174. *Id.* at 340.

175. WOOD, EMSLIE & GRIFFITHS, *supra* note 164 at 23.

176. For instance, despite an assumption that women in politics may inspire fellow women to participate, the evidence of such a role-model effect is varied. Tània Verge, Nina Wiesehomeier & Ana Espírito-Santo, *The Symbolic Impact of Women's Representation on Citizens' Political Attitudes: Measuring the Effect Through Survey Experiments*, Presentation at 4th European Conference on Politics and Gender (June 2015); *See also* Christina Wolbrecht & David E. Campbell, *Leading by Example: Female Members of Parliament as Political Role Models*, 51 AM. J. POL. SCI. 921 (2007).

177. Sara E. Davies & Jacqui True, *The Politics of Counting and Reporting Conflict-Related Sexual and Gender-Based Violence: The Case of Myanmar*, 19 INT'L FEMINIST J. POL. 4, 4 (2017).

private nature of intimate partner violence and the stigma that may inhibit reporting, particularly among higher socio-economic victims; one study of reporting from the global South has identified such factors as whether one has been previously married or never married, urban status and age as all affecting the likelihood that a woman will report an experience of GBV.¹⁷⁸ Yet obviously and simultaneously, a higher number of reported incidents may be an overt reflection of higher prevalence and failed law reform. Care is therefore needed when reflecting on data.

With this in mind, in this section, I home in on Spain, and specifically, the introduction of the *Spanish Organic Act No. 1/2004 (Organic Act against GBV)*, enacted on 28 December 2004. A piece of legislation that has sought to provide an integrated and comprehensive approach to GBV, it has been described as having had the greatest “impact” on GBV in Spain.¹⁷⁹ Specifically, the evidence suggests that this gender-sensitive legal and policy response has served as a platform for reducing the rates of mortality among women victims of GBV and has seen an overall increase in reporting of incidence of intimate-partner violence.¹⁸⁰ Alongside the law, Spain has instituted a system to assess the risk of re-victimization of GBV.¹⁸¹ Since the introduction of the 2005 law, and this risk assessment approach, while far from ideal, there has been an overall reduction in the absolute number of deaths¹⁸² and recidivism.¹⁸³ Specifically, Spain reported 72 victims murdered at the hands of their partners in 2004 against an

178. Tia Palermo, Jennifer Bleck & Amber Peterman, *Tip of the Iceberg: Reporting and Gender-Based Violence in Developing Countries*, 179 AM. J. EPIDEMIOLOGY 602, 607 (2014).

179. Manuel Calvo-García, *The Treatment of Gender Violence in the Spanish Administration of Justice: Implementation and Effectiveness of the Organic Act 1/2004 on Integral Protection Measures Against Gender Violence*, 16 US-CHINA L. REV. 237, 237 (2019).

180. Erika M. Redding et al., *Gender Inequality and Violence Against Women in Spain, 2006-2014: Towards a Civilized Society*, 31 GACETA SANITARIA 82, 84 (2017).

181. José-Miguel Bello y Villarino & Ramona Vijayarasa, *International Human Rights, Artificial Intelligence and the Challenge for the Pondering State: Time to regulate?*, NORD. J. HUM. RTS. (May 2022).

182. 72 victims in 2004 against an average of 50 victims in the 2016-2020 period. See DELEGACIÓN DEL GOBIERNO CONTRA LA VIOLENCIA DE GÉNERO, MUJERES VÍCTIMAS MORTALES POR VIOLENCIA DE GÉNERO EN ESPAÑA A MANOS DE SUS PAREJAS O EXPAREJAS. DATOS PROVISIONALES. [WOMEN FATAL VICTIMS OF GENDER-BASED VIOLENCE IN SPAIN AT THE HANDS OF THEIR PARTNERS OR EX-PARTNERS. PROVISIONAL DATA], (2022), https://violenciagenero.igualdad.gob.es/violenciaEnCifras/victimasMortales/fichaMujeres/pdf/VMortales_2022_03_09_03-20.pdf [https://perma.cc/ES5L-ZV6T].

183. According to the data provided to the press following the introduction of the risk assessment system, there has been a 25% decrease in the rate of recidivism.

annual average of 50 victims in the 2016-2020 period.¹⁸⁴ In 2021, there were 47 recorded deaths.¹⁸⁵ Data collection in the years to come will be essential to track effectiveness.

With this in mind, I identify the *2004 Organic Act against GBV* as good practice precisely because mortality has reduced. That is, for the abovementioned reasons, I hesitate to draw on data to demonstrate an increase or decrease in the rate of incidence or reporting. However, as distressing as the numbers of deaths of women at the hands of their male partners is as a measure of “success,” these figures nonetheless hint at effectiveness over time. With qualifications, the law, along with a suite of other measures related to gender equality, have been described by the UN Working Group on Discrimination against Women and Girls as “impressive and wide-ranging legislative and institutional frameworks.”¹⁸⁶ In the abovementioned 2021 UN Women and IPU report on gender-responsive law making, the law was singled-out, along with a Welsh law, as good practice.¹⁸⁷

The *Organic Act against GBV* is comprehensive, dealing with all aspects of GBV, including prevention, education, social welfare, legislative and jurisdictional matters. The law looks beyond a narrow focus to the range of other areas impacted when a victim experiences violence. This includes, for instance, acknowledging how a victim/survivor might need to reorganize work, or have geographic mobility

184. Isabel Cepeda, *Fighting Prejudice: Campaigns on Gender Violence in Spain*, J. INT'L WOMEN'S STUD. Aug. 2018, at 17, 20. This example once again raises the notable challenges we face when using data in this field as a determinant of effectiveness. The average cited of 72(sic) victims in 2010 as an outlier seems to contradict the data provided, which notes 71 victims in 2003, 72 in '04, 69 in '06, 71 in '07, 76 in '08, and 73 in 2010. It is worth noting the average over 2016-2020 appears to be 51, and not 50 deaths. See DELEGACIÓN DEL GOBIERNO CONTRA LA VIOLENCIA DE GÉNERO, MUJERES VÍCTIMAS MORTALES POR VIOLENCIA DE GÉNERO EN ESPAÑA A MANOS DE SUS PAREJAS O EXPAREJAS. DATOS PROVISIONALES. [WOMEN FATAL VICTIMS OF GENDER-BASED VIOLENCE IN SPAIN AT THE HANDS OF THEIR PARTNERS OR EX-PARTNERS. PROVISIONAL DATA], (2022), https://violenciagenero.igualdad.gob.es/violenciaEnCifras/victimasmortales/fichamujeres/pdf/VMortales_2022_03_09_03-20.pdf [<https://perma.cc/ES5L-ZV6T>].

185. GOBIERNO DE ESPAÑA, STATISTICAL PORTAL, GOVERNMENT DELEGATION AGAINST GENDER VIOLENCE, <http://estadisticasviolenciagenero.igualdad.mpr.gob.es/> (last visited, May 12, 2022).

186. Statement, UN Working Group on Discrimination Against Women and Girls, UN Working Group on the Issue of Discrimination Against Women in Law and in Practice Finalizes Country Mission to Spain, (Dec. 19, 2014), <https://www.ohchr.org/en/statements/2014/12/un-working-group-issue-discrimination-against-women-law-and-practice-finalizes> [<https://perma.cc/A47Q-KAPW>].

187. UN WOMEN & INTER-PARLIAMENTARY UNION, *supra* note 34, at 80.

issues.¹⁸⁸ Maybe to the surprise of many readers in the Anglosphere, Spain's law is gender-specific law, that is, it is not a law about domestic violence, or intimate partner violence, but a law explicitly focused on *violence against women* in a domestic setting. That is, male victims cannot access protection under this law; it is solely for the protection of female-identifying victims:

1. The purpose of this Act is to combat the violence exercised against women by their present or former spouses or by men with whom they maintain or have maintained analogous affective relations, with or without cohabitation, as an expression of discrimination, the situation of inequality and the power relations prevailing between the sexes. (. . .) 3. The gender violence to which this Act refers encompasses all acts of physical and psychological violence, including offenses against sexual liberty, threats, coercion and the arbitrary deprivation of liberty.¹⁸⁹

More is said about the gender-specific nature of the law in Part IV.

As noted above, using prevalence to show the effectiveness of GBV laws is a notable challenge and it is worth further interrogating some of this data. The data suggests an increase in reported incidents across Spain in the years after the law's enactment, possibly due to greater "visibility" of GBV in the country as a result of the law, and a clear decrease in the number of accusations from 2009 onwards, until 2016 when again there was an upward spike in reported incidents.¹⁹⁰ There has also been a modest increase in early detection.¹⁹¹ As noted above, simultaneously, mortality from GBV has declined.¹⁹² Some research affirms that "with regards to the most dramatic acts of gender

188. MAR CAMARASA, SURT, NATIONAL REPORT – SPAIN, 6. http://www.surt.org/gvei/docs/national_report_spain_def.pdf [<https://perma.cc/4KGT-BT6V>].

189. In English, the law has sometimes been referred to as The Comprehensive Law of Protective Measures against gender-based violence related to couples. See INMACULADA MONTALBÁN HUERTAS, CONSEJO GENERAL DEL PODER JUDICIAL, ACCESS TO JUSTICE OF VICTIMS OF GENDER-BASED VIOLENCE – SPAIN, 1-2, <https://www.ohchr.org/documents/HRBodies/CEDAW/AccessToJustice/SpanishGeneralCouncilForTheJudiciary.pdf> [<https://perma.cc/WD4S-AY5A>]; Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género [Law on Comprehensive Protection Measures against Gender Violence], 313 BOE-A-2004-21760 Art. 1 (2004), <https://www.boe.es/eli/es/lo/2004/12/28/1/con>. The original Spanish reads: 1. La presente Ley tiene por objeto actuar contra la violencia que, como manifestación de la discriminación, la situación de desigualdad y las relaciones de poder de los hombres sobre las mujeres, se ejerce sobre éstas por parte de quienes sean o hayan sido sus cónyuges o de quienes estén o hayan estado ligados a ellas por relaciones similares de afectividad, aun sin convivencia.

190. Calvo-García, *supra* note 179 at 238.

191. *Id.* at 240.

192. Bello y Villarino & Vijayarasa, *supra* note 181.

violence, the rigour stipulated in the legislation is being maintained,”¹⁹³ although this is further contested below.

As in the case of Iceland above, this law is not a perfect one. The law created Violence against Women Courts (*Juzgados de Violencia contra la Mujer*).¹⁹⁴ Eighty percent of cases before this court have seen a conviction, 60 percent of those being in a negotiated processes where the accused accepted the guilty plea and the punishment agreed upon after a period of negotiation.¹⁹⁵ In the view of one senior Spanish judge, the six hundred thousand complaints lodged with the Violence against Women Courts illustrates the reality that “women have placed their faith in Justice and confirms that training and specialization of professionals in gender-based violence offers good results.”¹⁹⁶ That report also reiterates a 77 percent conviction rate.¹⁹⁷ Yet this data does not accommodate for the very high number of cases dismissed before going to court, which some researchers argue, if considered, shifts the conviction rate down to as low as 20 percent.¹⁹⁸ This is low. In terms of regulating a complex issue, we are therefore left with a sense of some global good practice but with evident limitations.

Law reform can bring change but arguably law reform works best when it is an iterative process. A law’s review, after a certain period of enactment, opens the possibility for refinement and ironing out errors in legal language and practice that are inhibiting the law from achieving optimum levels of change. Many laws, in fact, include a period of review. Yet given that the *Organic Law against GBV* went through its review in 2008 by the Commission on Equality’s within whose purview the review fell,¹⁹⁹ we may be further inclined to argue that for law to do good and be good for women, regular intervals of review and revision must be considered and perhaps compulsory in certain areas of law—a costly but worthwhile public investment.

193. Calvo-García, *supra* note 179, at 254.

194. Ley Orgánica 1/2004, de 28 de diciembre, de Medidas de Protección Integral contra la Violencia de Género [Law on Comprehensive Protection Measures against Gender Violence], 313 BOE-A-2004-21760 Art. 1 (2004), <https://www.boe.es/eli/es/lo/2004/12/28/1/con>.

195. Calvo-García, *supra* note 179 at 248.

196. MONTALBÁN HUERTAS, *supra* note 189, at 1–2.

197. *Id.* at 2.

198. Calvo-García, *supra* note 179, at 248.

199. UN WOMEN & INTER-PARLIAMENTARY UNION, *supra* note 34, at 81.

iii. *Labor Legislation: Australia's Workplace Gender Equality Act*

In 2012, Australia introduced a Workplace Gender Equality Act (WGEA) at the federal level.²⁰⁰ It stands out for its inclusion among the three case studies for being a relatively recent law. Yet its newness to the legislative landscape offers the potential for us to consider how laws are enacted and reformed over time to achieve more gender-responsive outcomes.

The WGEA replaced the 1999 Equal Opportunity for Women in the Workplace Act,²⁰¹ and this shift in focus from “women” to “gender equality” is a key point discussed below. The amended law sought to promote equality of opportunity between men and women in the workplace. This approach has included removing barriers to women’s participation, eliminating discrimination, including in relation to family and caring, and fostering workplace consultation. By substituting “trade union” for “employee organisation,” the law also sought to facilitate the involvement of a wider set of representatives of women workers.²⁰² The act also makes references to a host of international instruments, including CEDAW²⁰³ and ILO Conventions.^{204,205}

In some respects, the law was enacted in a very top-down manner through a parliamentary debate that ignored the 26 submissions received in response to the parliamentary inquiry on the draft Equal Opportunity for Women in the Workplace Amendment Bill 2012 (Cth) (Amendment Bill).²⁰⁶ The amendment bill was passed as drafted, with no additional amendments, which lowered initial expectations and opened the way to concerns that it would do little to reform the system that existed prior to 2012.²⁰⁷ The renamed law, the Workplace Gender Equality Act, was ushered in. Yet the law does seem to have exceeded expectations. One of its key features is the requirement to disclose information and evaluate performance against *set standards*, an ap-

200. Workplace Gender Equality Act 2012, 2016 (No. 91, 1986) (Austl.).

201. Equal Opportunity for Women in the Workplace Act 1999, 1999 (No. 91, 1986) (Austl.).

202. Workplace Gender and Equality Act, *supra* note 200, at 3.

203. CEDAW, as discussed earlier, is the only global treaty dedicated to international women’s rights and is among the most ratified of all the nine human rights treaties.

204. The International Labour Organisation Conventions are legally binding treaties, ratified by member states, that set out the basic principles and rights at work.

205. Workplace Gender and Equality Act, *supra* note 200, at 5(9).

206. Carolyn Sutherland, *Reframing the Regulation of Equal Employment Opportunity: The Workplace Gender Equality Act 2012*, 26 AUSTL. J. LAB., no. 1, 2012, at 2.

207. *Id.* at 3-4. A 2009 review of the *Equal Opportunity for Women in the Workplace Act* received one hundred and thirty-six public submissions. The renamed law, the Workplace Gender Equality Act, was ushered in.

proach that has proven both to be an effective one and that may offer the evidence needed to measure, to some extent, *WGEA's* impact.

This data-driven approach accompanied by the law's creation of an oversight body specifically responsible for assessing compliance with the law and for promoting women's equality at work, the Workplace Gender Equality Agency,²⁰⁸ has been a gamechanger.²⁰⁹ First, it has enabled employees to demand a better performance on the gender front from their employers.²¹⁰ Second, its reports have provided an array of data from which scholars and policymakers are drawing.²¹¹ The law is one of a few in Australia that explicitly seeks to better understand the situation of women workers, most laws in the industrial relations space being written in gender neutral terms.²¹² It requires affected employers to lodge reports which give evidence against certain gender equality indicators, such as on equal remuneration between men and women.²¹³

Yet the current data shows a notable and persistent gender pay gap in Australia: in non-public sector organizations with 100 or more employees, the gender pay gap for full-time annualized base salary was 16.2 percent, and 21.3 percent for full-time annualized total remuneration as of March 2020.²¹⁴ So the law has only gone part of the way towards achieving a much-needed change, as was evident from the law's review which was released in March 2022.²¹⁵ It is unsurprising that Recommendation 2 in the law's review report, out of four headline recommendations, seeks the publishing of an organization's

208. Workplace Gender and Equality Act, *supra* note 200, at Part III (8A).

209. Emma Dawson, Tanja Kovac & Abigail Lewis, *Measure for Measure: Gender Equality in Australia*, PER CAPITA (March 2020), https://percapita.org.au/our_work/measure-for-measure-gender-equality-in-australia.

210. Belinda Smith & Monica Hayes, *Using Data to Drive Gender Equality in Employment: More Power to the People?*, 28 AUSTL. J. OF LAB. L. 191 (2016).

211. Marzena Baker, Muhammad Ali & Erica French, *Effectiveness of Gender Equality Initiatives in Project-Based Organizations in Australia*, 44 AUSTL. J. MANAG. 425, 442 (2019).

212. Anna Chapman, *Employing the Law for Women: Gender, Work and Legal Regulation in Australia*, in INTERNATIONAL WOMEN'S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN 72, 76 (Ramona Vijeyarasa ed., 2021). Chapman notes that the vast majority of anti-discrimination and equality legislation in Australia in this space have been drafted in gender-neutral terms. What may surprise some is that this gender-neutrality has generated a wide body of claims made by men and men's groups alleging sex discrimination, although most commonly outside of the context of work.

213. Workplace Gender and Equality Act, *supra* note 200, at 3.

214. Dawson et al., *supra* note 209, at 41.

215. DEPT. OF PRIME MINISTER AND CABINET, *Review of the Workplace Gender Equality*, <https://ministers.pmc.gov.au/payne/2021/review-workplace-gender-equality-act> (last visited Dec 1, 2021) (Austl.).

gender pay gaps at an *employer level*, not just at an industry level as currently happens, to accelerate action and to close these gaps. In other words, industry-wide data (and aggregates and averages) risk hiding employer-specific gender pay gaps that need to be identified and published. Simultaneously, this gap between where we seem stuck and what the law was intended to achieve speaks to a bigger challenge in Australian society. Lifetime gender equality gaps are, in large part, driven by the lack of career advancement for women and the higher proportion of women in part-time work.²¹⁶

Moreover, when evaluated against law's potential, this law probably falls far from its pluralistic potential. Under the provision of the Act, the Workplace Gender Equality Agency collects data related to women and men; age, location and non-binary data are collected only on a voluntary basis.²¹⁷ There remains a notable and concerning gap when it comes to data depicting the workplace experiences of Culturally and Linguistically Diverse Women (CALD), who face high rates of unemployment, underemployment, and workplace pay inequities.²¹⁸

The *WGEA* as a case study may suggest that a law works better in playing its part in the struggle for gender equality if it does not try to do much, meaning the most significant “pain points” are the focus of legislation.²¹⁹ Importantly, monitoring is a task that can become (too) onerous depending on what a law is trying to achieve. In the case of this one, perhaps those being regulated may be more compliant if there were just a small set of compliance issues on the table.²²⁰ This does not necessarily mean that the law has to be a compromise; arguably, its drafting in this way would require those advocating for the law to invest the time in determining what is the most necessary change that needs to be envisaged to get from today's workplaces (A) to workplace equality (Z). In a somewhat “chicken and egg” fashion, this approach to legislation requires that at the outset, we believe that law

216. Dawson et al., *supra* note 209, at 41.

217. WORKPLACE GENDER EQUALITY AGENCY, *Gender Equality and Intersecting Forms of Diversity*, <https://www.wgea.gov.au/gender-equality-and-diversity> (last visited May 26, 2022).

218. RAMONA VIJEYARASA, SUBMISSION: REVIEW OF THE WORKPLACE GENDER EQUALITY ACT (Nov. 2021), <https://www.pmc.gov.au/dr-ramona-vijayarasa-university-technology-sydney>; DEP'T OF THE PRIME MINISTER AND CABINET, *WGEA REVIEW REPORT* (Mar. 2022), <https://www.pmc.gov.au/resource-centre/office-women/wgea-review-report>.

219. WORKPLACE GENDER EQUALITY AGENCY, *WGEA Review Report: Review of the Workplace Gender Equality Act 2012* 7, 9 (Dec. 2021), https://www.pmc.gov.au/sites/default/files/publications/wgea-review-report_1.pdf.

220. *Id.* at 9.

matters, we know what aspect of a law can drive forward equality, and we have the data at hand to identify and prioritize the most significant “pain points.”

Time simply means that we are somewhat limited in our knowledge of this law’s potential.²²¹ This is evident in the outcomes of the law’s review.²²² Yet the very process of embedding into legislation a periodic review, as with Spain’s Organic Act, is an essential tool in the achievement of gender-responsive laws. The review report actually called for a further review five years from the point where any legislative changes are introduced to the existing law.²²³ In several respects, therefore, we are left “watching this space.” Our evaluation arrives, therefore, at a mixed review, and a clear need for this law to be reformed, but also as part of a much broader sweep of reforms.

IV.

HOW TO MAKE LAW COUNT: THREE POINTERS FOR THE ACHIEVEMENT OF GENDER-RESPONSIVE LEGISLATION

This murky terrain leads us to a sense that perhaps rather than seeking concrete correlations between a law and its effect, a more pertinent, practical and useful question to ask is what factors appear to enhance law’s effectiveness in achieving its final outcomes. That is, if we draft law a particular way, can it count more in furthering gender-responsive goals?

In the following section, I set out three pointers for the achievement of gender-responsive legislation. These are not mutually exclusive concepts. Moreover, as a study of three specific pieces of legislation across three different jurisdictions, they may be limited in their universal applicability. Disclaimers are therefore also offered in Part IV(d). Nonetheless, these recommendations offer a solid starting point for the possibility of enacting legislation that can reinvigorate law’s potential to shift norms and practice in favor of women’s rights.

A. *The Technical Drafting of Legislation*

The technicalities of legislative drafting make a fundamental difference. When it comes to parental leave, key questions need to be considered, including whether parental leave is a family or individual

221. Baker, Ali & French, *supra* note 211, at 426.

222. DEPT. OF PRIME MINISTER AND CABINET, *supra* note 215.

223. WGEA Review Report: Review of the Workplace Gender Equality Act 2012, *supra* note 219, at 96.

right and whether the leave will be paid or unpaid.²²⁴ Iceland's paid parental scheme stands out both for how it articulates *in law* a shared, joint right and for the non-transferable nature of the majority of paid leave on offer. Moreover, the leave scheme is generous. According to *Per Capita*, an independent progressive think tank dedicated to fighting inequality in Australia, international experience tells us that fathers will take up leave—making shared care at home a reality—if leave entitlements are generous, there is flexibility as to when it can be taken and when leave is provided equally to mothers and fathers and cannot be transferred between parents.²²⁵ Iceland's law mirrors this evidence.

By contrast, when Australia updated its laws that govern paid parental leave, we saw an example of how poor technical legal drafting can turn a gender-responsive *intention* in law into an ineffective or limited piece of law reform. Australia was relatively slow to introduce paid parental leave—when compared to other OECD nations—enacting the *Paid Parental Leave Act* in 2010, which provides 18 weeks of paid leave after birth or adoption.²²⁶ Rather than fostering a notion of shared care, with allocated leave for both parents, the Australian approach has been to name “birth mothers” as “primary carers.”²²⁷ While fathers can be a secondary recipient of paid parental leave, this is only after they become the primary carer and only after the primary carer—the mother—transfers it to them. As a result, according to the Australian Institute of Family Studies, in 2017, 95 percent of primary carers were mothers. There has been a marginal improvement—in 2019-2020, according to the Australian Workplace Gender Equality Agency, with around 6.5 percent of primary carers being fathers as of 2019-2020,²²⁸ a small rise from 5 percent in 2017.²²⁹ These figures are disappointing at best, and stark when one compares them to Iceland.

224. Bruning & Plantenga, *supra* note 152, at 196.

225. Dawson et al., *supra* note 209, at 60.

226. Paid Parental Leave Act 2010 (No. 104, 2010) (Austl.).

227. Marian Baird & Gillian Whitehouse, *Paid Parental Leave: First Birthday Policy Review*, 38 AUSTL. BULL. LABOUR 184 (2012); Marian Baird, *Comment: Women and Work – How Useful is the Law?*, in INTERNATIONAL WOMEN'S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN 82 (Ramona Vijayarasa ed., 2021).

228. WORKPLACE GENDER EQUAL. AGENCY, *Parental Leave*, <https://www.wgea.gov.au/parental-leave> (last visited Nov 25, 2021). See also WORKPLACE GENDER EQUALITY AGENCY, *Gender Equality and Men*, <https://www.wgea.gov.au/gender-equality-and-men> (last visited May 26, 2022).

229. Emma Walsh, *Fathers and Parental Leave*, AUST'L INST. FAM. STUD. (2018), https://aifs.gov.au/sites/default/files/7_fathers_and_parental_leave_1905.pdf.

Moreover, as we know, legislation has a trickle-down effect. The perception created by equating “primary carers” with women may be the reason that Australian men are not taking up the opportunity to access two weeks of paid leave under the *Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act*.²³⁰ As in, ineffectual drafting in one law has rendered another related law ineffectual.

The importance of the technical wording of law resonates too when it comes to the Australian *WGEA*. The law reflects a notable name change. The previous law in force (Equal Opportunity for Women in the Workplace Act 1999) was centered around workplace equality *for women*; it changed to a law centered around gender equality at work, that is, it included men but named women as disadvantaged at work when compared to men. Moreover, this seemingly minor shift in wording sought to acknowledge that for women to be equal in workplaces, a refined approach was needed that would promote workplaces that actually accommodate either parent of whatever gender to participate at home in shared care.²³¹ The law spoke to the evident limitation that Australian men were not taking leave for care—partly as a result of the significant shortcomings in Australia’s *Paid Parental Leave Act* of 2010 discussed above—which results in women being more often absent from Australian workplaces and often returning after leave to part-time work.

Australia’s newer *Workplace Gender Equality Act* by contrast reflected what scholars of psychology describe as a shift from being a “women’s issue” (where the focus is on the consequences felt by women based on women’s and society’s decision-making) to a collective effort that acknowledges discrimination against women or men’s roles in preserving such inequality.²³² Soft law regulations to date had proven largely ineffective in improving workplace gender equality, with little evidence of systematic organizational learning, exacerbated by the lack of firm targets and external benchmarking.²³³ The new law responded by introducing clear targets, external benchmarking and by drawing public attention to those employers who fall short.

230. Paid Parental Leave and Other Legislation Amendment (Dad and Partner Pay and Other Measures) Act 2012, (No. 43, 2012) (Austl.).

231. Sutherland, *supra* note 206, at 4.

232. Stephanie L. Hardacre & Emina Subašić, *Whose Issue Is It Anyway? The Effects of Leader Gender and Equality Message Framing on Men’s and Women’s Mobilization Toward Workplace Gender Equality*, *FRONT. PSYCHOL.*, Dec. 2018, at 2.

233. Johanna Macneil & Ziheng Liu, *The Role of Organizational Learning in Soft Regulation of Workplace Gender Equality*, 39 *EMPL. RELAT.* 317, 317 (2017).

These lessons must be borne in mind if we are to ensure that a law does not create new inequalities or exacerbate old ones because of its drafting. For instance, Australia and the United States are the only two high-income countries from the OECD region that do not consider an absence from work *due to a role as carer of children* when calculating pension benefits.²³⁴ Countries like the U.S. that have a weak legislative approach to paid parental leave place women at greater risk of economic insecurity and even homelessness in older age because of the “child penalty.”²³⁵

When it comes to what makes GBV laws “effective,” as noted earlier, a notable challenge rests with evaluating this effectiveness. Yet, many GBV laws also carry a common challenge related to the technical drafting of law. Gender neutral domestic violence laws exist in many, perhaps most, jurisdictions, including Indonesia²³⁶ and Sri Lanka,²³⁷ while a handful of countries from around the world, such as the Philippines, choose to opt for explicit legislative recognition of women as the primary victims.²³⁸ The Philippines’ law is, by and large, modelled on Spanish approaches. Radhika Coomaraswamy, former UN Rapporteur on Violence Against Women, its Causes and Consequences, in a report issued a quarter of a century ago, defined domestic violence as that which “occurs within the private sphere, generally between individuals who are related through intimacy, blood or law.”²³⁹ The UN Rapporteur went on to note that despite gender-neutral terminology, domestic violence is “nearly always a gender specific crime, perpetrated by men against women.”²⁴⁰ In other words, GBV is not a gender-neutral problem, but we continue to enact gender-neutral laws in response.

Adhering to Coomaraswamy’s informed analysis of the nature of GBV, some women advocates, myself included, see value in a women-specific or non-gender-neutral law. Such a shift would better

234. WORLD BANK GROUP, *supra* note 137, at 33.

235. Henrik Kleven, Camille Landais, Johanna Posch, Andreas Steinhauer & Josef Zweimüller, *Child Penalties Across Countries: Evidence and Explanations*, VoxEU (May 14, 2019), <https://voxeu.org/article/child-penalties-across-countries-evidence-and-explanations>.

236. Elimination of Violence in the Household, 2004 (No. 23 of 2004) (Indon.).

237. Prevention of Domestic Violence Act, 2005 (No. 34 of 2005) (Sri Lanka).

238. Anti-Violence Against Women and Their Children Act of 2004, 2004 (Republic Act. No. 9262) (Phil.).

239. Radhika Coomaraswamy (Special Rapporteur), *Report of the Special Rapporteur on Violence Against Women, its Causes and Consequences, Radhika Coomaraswamy, in accordance with Commission on Human Rights Resolution 1994/45*, U.N. Doc. E/CN.4/1996/53 (Feb. 5, 1996).

240. *Id.*

respond to the realities of the heightened risk of violence facing women when compared to men in heterosexual relationships and ideally can be achieved in a way that simultaneously acknowledges the violence facing sexual and gender minorities, including but not limited to, within the family and interpersonal relationships. Coomaraswamy's report goes part of the way in guiding national governments in their law reform.²⁴¹ This is far from an uncontroversial position to take but a pertinent reminder of the need for bold, context-appropriate and disruptive approaches in how we draft law for gender-responsive laws to be effective.

B. *A Shifting in Social Norms*

For law to be gender-responsive in its effect, it needs to challenge old norms and establish new ones. This is well-illustrated by laws that guarantee paid parental leave. The most notable flaw with Sweden's paid parental scheme was that the right to paid leave was transferable between partners rather than limited to a set number of weeks or "quota" allocated to each partner. These guaranteed or carved out weeks of leave for fathers has been termed, in a very heteronormative manner, the introduction of "daddy months."²⁴² For a gender-responsive law to shift social norms, it needs to avoid exceptions or loopholes. A reform in Sweden in 2006 subsequently introduced two non-transferable leave periods, along with nine additional months to share.²⁴³ This amendment has seen a steady increase in fathers taking leave.²⁴⁴ The lion's share of paid parental leave is still taken by mothers, making it more difficult for women, too, to compete on an equal basis with men in the labor market, but progress is being made.²⁴⁵

What makes Iceland's law reform particularly good practice was that its primary goal was centered around women's rights—to increase

241. *Report on Violence Against Women*, *supra* note 239. Coomaraswamy's report is focused exclusively on domestic violence as a gender-specific form of violence directed against *women* and does not address the needs and interests of other sexual and gender minorities.

242. Ann-Zofie E. Duvander, Tommy Ferrarini & Sara Thalberg, *Swedish Parental Leave and Gender Equality: Achievements and Reform Challenges in a European Perspective*, INST. FOR FUTURE STUD., 20 (Nov. 2005), [http://www.framtidsstudier.se/filebank/files/20051201\\$134956\\$fil\\$U8YIJLRaAaC7u4FV7gUmy.pdf](http://www.framtidsstudier.se/filebank/files/20051201$134956$fil$U8YIJLRaAaC7u4FV7gUmy.pdf).

243. Linda Haas & C. Philip Hwang, *The Impact of Taking Parental Leave on Fathers' Participation in Childcare and Relationships With Children: Lessons from Sweden*, 11 CMTY. WORK FAM. 85, 85 (2008).

244. Eleonora Mussino & Ann-Zofie Duvander, *Use It or Save It? Migration Background and Parental Leave Uptake in Sweden*, 32 EUR. J. POPUL. 189, 191 (2016).

245. Duvander et al., *supra* note 242, at 21.

equality in the labor market and reduce the gender pay gap, as opposed to an issue of family policy or welfare concerns for working mothers and their newborns that initially drove law reform at the end of the 19th Century and start of the 20th centuries.²⁴⁶ In this respect, it reflected the fourth typology in Baird's parental leave analysis discussed above. As with the example of gender-specific GBV legislation, ambition and boldness are needed to truly shift social norms. Nordic countries with generous leave schemes for fathers, such as Sweden, Norway, and Iceland, have a greater portion of fathers taking leave when compared to other culturally similar countries, such as Denmark, with less generous schemes.²⁴⁷ Obviously, the "use it or lose it" approach to non-transferable leave has also been key in driving change.²⁴⁸

Australia's *Workplace Gender Equality Act* in many respects has also been a norm-changer, described by one scholar as a shift from a focus on processes to outcomes.²⁴⁹ The amended law emphasizes bringing about change, including specifically to the "gender" composition of workplaces and employer's governing bodies. It seeks stronger reporting on equal remuneration between men and women, assessing the actual availability of flexible work practices for both men and women. It demands wider consultation by employees on gender equality issues.²⁵⁰ In other words, the law went from its previous iteration of employer self-reporting on what employers are doing to what change employers are actually initiating and whether or not women and men are experiencing the benefits, with practical evidence of outcomes.

There are many lessons here for lawmakers, particularly for those who want to utilize law reform to drive forward specific change. Technical drafts must ensure that the language of the law corresponds clearly, neatly, and sometimes ambitiously with the law's stated purpose.

C. *A Socio-Cultural Context Ripe for Reform*

The socio-cultural context proves fundamental for effectiveness. Countries such as the U.S. and Australia may have sought to prohibit pregnancy-related discrimination but did not necessarily require employers to grant adequate paid leave for long periods of time. In turn,

246. Einarsdóttir & Margrét Pétursdóttir, *supra* note 160, at 160.

247. Dawson, *supra* note 164, at 10.

248. *Id.* at 10.

249. Sutherland, *supra* note 206, at 5.

250. *Id.* at 6-7.

they have struggled in their efforts to introduce government-funded, adequate, and effective parental leave schemes.²⁵¹ By contrast, many European nations—particularly the Nordic ones—introduced paid parental leaves schemes decades ago. Sweden, for example, introduced paid parental leave for women and men in 1974, while Norway first introduced its arrangements in 1993.²⁵² Reforms in recent times, therefore, sit within a backdrop where socio-cultural norms have slowly changed with regard to leave taking and shared care, in part, due to some of these laws. Moreover, “good” laws in the region are inspiring change; in early 2021, Finland introduced 164 days of parental leave, to each parent, regardless of gender.²⁵³

Context is obviously key and the introduction of Spain’s law against GBV was set in a cultural climate where society was “prepared” for the new law, having followed a period of information, education and communication campaigns in media outlets.²⁵⁴ From the date of implementation of the Organic law, different sensitization campaigns were also used to improve social perception of the problem of GBV. In addition to the main goal—to provide information and sensitize society to the issue of GBV, different campaigns had their own goal. For instance, in 2007, campaigns were used to promote a societal rejection of abusers and create critical consciousness, while a 2011 campaign focused on involving society in establishing an end to gender violence as a common goal.²⁵⁵

The Australia *WGEA* too was introduced in an environment in which the Australian community and government both recognized that workplace equality was a necessary target.²⁵⁶ Some scholars have gone so far as to say that with a growing demand for skilled labor in Australia and the importance of international competitiveness of Australian organizations, gender equality was *high* on the government’s

251. Mikel A. Glavinovich, *International Suggestions for Improving Parental Leave Legislation in the United States*, 13 ARIZ. J. INT. & COMP. L. 147, 147 (1996); Marian Baird, *Parental Leave in Australia: The Role of the Industrial Relations System*, 23 L. CONTEXT: SOCIO-LEG. J. 45 (2005). These early studies demonstrated weaknesses and a piece-meal approach to reforming law and introducing benefits, often in very gendered ways that did not ‘auger well for future developments.’ *Id.* at 45.

252. Bruning & Plantenga, *supra* note 152, at 202.

253. Iliana Magra, *Finland Plans to Give All New Parents the Same Leave*, N.Y. TIMES (Feb. 6, 2020), <https://www.nytimes.com/2020/02/06/world/europe/finland-parental-leave-equality.html>.

254. Cepeda, *supra* note 184, at 19.

255. *Id.* at 21.

256. Louisa Manfre, *The Workplace Gender Equality Act 2012 (CTH): Rethinking the Regulatory Approach*, 2 (Nov. 1, 2013) (L. Honors thesis, University of Sydney) (on file with the University of Sydney Law School).

agenda.²⁵⁷ This stated government goal was directly reflected in the law's drafting: it contains an explicit statement that the law was sought "to improve the productivity and competitiveness of Australian business through the advancement of gender equality in employment and in the workplace."²⁵⁸ The importance of this "ready" legislative environment is further evident if one compares the lack of success of other gender equality workplace laws in other jurisdictions. For instance, scholars have reported a lack of conviction behind the gender pay reporting initiative under the UK's 2010 *Equality Act* as a factor that has undermined its success in addressing the 18.4 percent gap in average earnings between men and women in workplaces in England, Scotland and Wales as of 2018.²⁵⁹ Within these contexts, we need to be conscious, too, of the interrelationship between electoral outcomes and government support for or contra an agenda, along with budgetary implications that pose opportunities and challenges.²⁶⁰

It is perhaps this cultural readiness that encouraged extra-legal mechanisms in Australia that have enhanced the *WGEA*'s effectiveness. For instance, the Workplace Gender Equality Agency has introduced an Employer of Choice Award, "an innovative attempt by an agency to foster an [Equal Employment Opportunity] market as a complementary way to drive gender equality."²⁶¹

Yet an important disclaimer is needed here, too. A natural response when one calls for a ready socio-cultural and political environment is to ask, justifiably, "how long can we wait?" Moreover, some laws that have proved effective in shifting norms can be considered non-organic and even top-down. One clear example is law reform that enables a legal right to marriage among same-sex couples and the reduction in homophobia that has resulted from such reform.²⁶² Consider too the legalization of cannabis or legal prohibitions on FGM,²⁶³

257. Baker, Ali & French, *supra* note 211, at 426.

258. Workplace Gender and Equality Act, *supra* note 200 at 2A(e).

259. Jennifer Gardner, *Equality for the Few: A Critical Analysis of the Equality Act 2010 (UK) From the Perspective of Gender Equality in the Workplace.*, at iii (May 2018) (M.S. thesis, Umea University) (on file with the Department of Law, Umea University).

260. For example, favorable electoral results in Belgium and Spain created windows of opportunity for legal reforms on same-sex marriage in Belgium in 2003 and in Spain in 2005. See David Paternotte & Kelly Kollman, *Regulating Intimate Relationships in the European Polity: Same-Sex Unions and Policy Convergence*, 20 Soc. POL. 510, 524 (2013).

261. Smith & Hayes, *supra* note 210, at 3.

262. Judit Takács & Ivett Szalma, *Homophobia and Same-Sex Partnership Legislation in Europe*, 30 EQUAL. DIVERSITY & INCLUSION: INT. J. 356 (2011).

263. Female Genital Mutilation, sometimes called Female Genital Cutting (FGC) involves the removal of some or all of the external female genital.

albeit the latter carrying the risk that groups who adhere to the practice will be marginalized and simply will “transform” or “re-invent” FGM without terminating it.²⁶⁴ Some reforms are enacted with an expectation that the law itself will help foster a socio-cultural environment readier for change.

D. Rollbacks and Backlash: Reminding Ourselves of Law’s Limitations with the Three Case Studies in Mind

We cannot tread this terrain naively. The benefits emerging for the advancement of women’s rights can easily be rolled back. The October 2008 collapse of the Icelandic banking system and the severe economic recession that followed directly impacted the extent to which fathers took parental leave. Father’s use of parental leave declined, while mothers progressively took longer leave, a result that appeared to be related to the substantial lowering of the maximum payment available for parental leave.²⁶⁵

Spain’s law too evinces a concern with roll-backs which have undermined the law’s potential in a significant and highly problematic manner. In 2010, the Spanish Ministry of Equality was dissolved and its functions assigned to the Ministry of Health, Social Affairs, and Equality; in 2014, the mandate of the Women’s Institute was transformed into an entity responsible for all forms of discrimination, changes which reduced institutional gender visibility, specificity and focus.²⁶⁶ With this political context, along with the economic crisis, the law has “not succeeded in making inroads into the culture of “machismo” and the social influence of patriarchal religious attitudes,” nor has it “reduced the level of violence against women, in all its forms, which remains a matter of grave concern to all stakeholders.”²⁶⁷ As with the global situation on GBV during and after the COVID-19 pandemic,²⁶⁸ Spain’s initial data suggests an increase in GBV.²⁶⁹

264. Tammary Esho, Steven Van Wolputte & Paul Enzlin, *The Socio-Cultural-Symbolic Nexus in the Perpetuation of Female Genital Cutting: A Critical Review of Existing Discourses*, 24 AFR. FOCUS 53, 54 (2011).

265. Heida Maria Sigurdardottir & Ólöf Garðarsdóttir, *Backlash in Gender Equality? Fathers’ Parental Leave During a Time of Economic Crisis*, 28 J. EUR. SOC. POL’Y 342, 347 (2018).

266. UN Working Group on Discrimination against Women and Girls, *supra* note 186.

267. *Id.*

268. Nobuhle Judy Dlamini, *Gender-Based Violence, Twin Pandemic to COVID-19*, 47 CRIT. SOCIO. 583 (2021).

269. Roberto Rodriguez-Jimenez, Natalia E. Fares-Otero & Lorena García-Fernández, *Gender-Based Violence During COVID-19 Outbreak in Spain*, PSYCH. MED. at 1 (2020).

Moreover, while many of the above examples speak to the experiences of the women collective, further interrogation of the data shows that certain groups are left behind. We are seeing change, but we must recall our earlier question, for whom? The lack of entitlements and enjoyment of rights embedded in law for women at the margins persists across all three areas of law reform. When it comes to entitlements to parental leave in Sweden, students, the unemployed, and those parents who are newly arrived in Sweden, considered to have a weak attachment to the labor market, are excluded. Ultimately, the law was designed to foster labor market equality;²⁷⁰ these individuals obtain parental leave at a lower rate that is not sufficient to be the sole source of income.²⁷¹

In Spain, a 2012 review of the Organic Law's effectiveness noted the need too to ensure that vulnerable groups of women such as migrants, older women, and women in rural areas are benefiting from the law.²⁷² The Australian *WGEA*'s] most fundamental flaw, in the eyes of some, is the failure to demand disaggregated data collection, resulting in the treatment of women as a single identifying group. In this process, one can imagine certain groups of women from a diversity of language backgrounds and national origins, as well as certain organizations and industries, flying under the radar, as noted earlier with respect to CALD women. By contrast, the law should require data to be provided by employers that is disaggregated by multiple identities, going beyond sex to include age, race, nationality/country of origin, migration status, disability, and gender identity.

CONCLUSION

So where does this leave us and where to from here? First, is there any good in law? Well, obviously, yes. Law is not all powerful, but law has played a fundamental part in the shift from highly unequal societies in its treatment of women to communities moving towards greater equality in many domains. From issues such as equality within the family, domestic violence, equal pay, workplace leave, and the extension of rights in marriage that challenge the heteronormativity of the institution of the family, law has been pivotal.

Does law do any good for women? This depends, most fundamentally on a law's stated purpose, its drafting, and its enforcement. Across numerous *obvious domains*—gender-based violence, family

270. Bruning & Plantenga, *supra* note 152, at 202.

271. Duvander et al., *supra* note 242, at 19.

272. Claudia García-Moreno, *Violence Against Women: The Spanish Response*, EUROHEALTH 18(2), 2012 at 13, 15.

law, land law, education—and some less obvious domains that need further consideration—for instance, taxation laws that require the filing of taxes as individuals and not family units in a way that otherwise can be highly discriminatory against unmarried or non-heteronormative family structures²⁷³—law has done good for women. If we are left concluding that there is little good in law, one may wonder why there is so much backlash in response to gender-responsive legislation if such law reform is largely ineffectual.²⁷⁴ It is not hard to imagine that the fear of law reform among certain groups—like pro-life activists—is driven by an acknowledgement of what a significant difference law reform can make. In certain domains of legal advocacy—sex work²⁷⁵ and women’s reproductive health²⁷⁶ might most readily come to mind—the backlash to law reform can be profound and without doubt, significantly boosts the case that law reform will (almost always) make a difference.

A more challenging task is to reflect upon what can be extracted from these “good laws” for application elsewhere. For a comparative law scholar such as myself, quite a lot. Moreover, as a scholar of gender equality and the law in South and Southeast Asia as well as Australia, these lessons have the potential to advance equality in the global North as well as global South. Moreover, while the examples used in this discussion are from OECD-nations, not for an instant should we assume that there is limited good practice in the global South. The Philippines, for example, has offered victims of domestic violence a paid leave of absence from work of up to ten days since 2004,²⁷⁷ an example of both *leading* legislation and good practice.

273. Miranda Stewart, *Comment: Tax, Gender Equality and Sharing the Costs of Care*, in INTERNATIONAL WOMEN’S RIGHTS LAW AND GENDER EQUALITY: MAKING THE LAW WORK FOR WOMEN, 140 (Ramona Vijayarasa ed., 2021).

274. Halperin-Kaddari & Freeman, *supra* note 73.

275. See Jo Doezeema, *Now You See Her, Now You Don’t: Sex Workers at the UN Trafficking Protocol Negotiation*, 14 SOC. & LEGAL STUDS. 61 (2005) for an example of global mobilization against international law reform in favor of sex work.; See also Melissa Farley, “*Bad for the Body, Bad for the Heart*”: *Prostitution Harms Women Even if Legalized or Decriminalized*, 10 VIOLENCE AGAINST WOMEN 1087 (2004); Eddy Meng, *Mail-Order Brides: Gilded Prostitution and the Legal Response*, 28 U. MICH. J.L. REFORM 197 (1994); Judith R. Walkowitz, *The Politics of Prostitution*, 6 J. WOMEN CULTURE & SOC’Y, 123 (1980).

276. *The Abortion Rights Debate*, in 402 ISSUES IN SOC’Y (Justin Healey ed., 2016); Achalie Kumarage, *Genderizing Life, Choice, and Rights: Asking the Woman Question in the Abortion Debate*, 26 VA. J. SOC. POL’Y & L. 137 (2019); Prudence Flowers, *The Purists and the Pragmatists: The Right-to-Life Movement and the Problem of the Exceptional Abortion in the United States, 1980s–2010s*, 78 WOMEN’S STUD. INT’L F., Jan.–Feb. 2020, at 1.

277. Anti-Violence Against Women and Their Children Act of 2004 (Republic Act No. 9262) (Phil).

Both the “gender” performance of Australia and the U.S., as illustrated with examples throughout this article, are unnecessary reminders that being an OECD nation cannot be equated with necessarily enacting more gender-responsive laws.

Law arguably has the most potential to advance gender equality when the political climate is right. Many advocates of law reform wait quietly behind the stage, waiting for the curtains to open on a less conservative, pro-rights government, willing and able to take up the call for a gender-responsive legislative agenda. All government agencies need to be on board. After all, this discussion has demonstrated the need for data as well as gender-sensitive legislators and budgeters if gender-responsive laws are going to be designed, debated, enacted, and implemented. The Biden-Harris administration is a pertinent example of this type of government emerging on stage that can foster gender-responsive law reform; initial indicators suggest a legal and policy environment that will be maximized for the gender equality reforms it can bring.²⁷⁸

For instance, the U.S. joins just a handful of countries in enacting a women-centered, gender-specific law on GBV—the *Violence against Women Act*.²⁷⁹ By contrast, a public-funded parental leave scheme that may meet the approach of some of the Nordic nations discussed in this article seems far off. Such an achievement would require the foresight to draft provisions that offer generous and non-transferable leave for both parents. This would thereby not only address the woefully inadequate present-day system of a twelve-week period of unpaid leave that exists in the U.S.²⁸⁰ but would allow the U.S. to enact a law that seeks to advance gender equality between men and women, within homes and at work, as the core goal. Moreover,

278. COAL. FOR A FEMINIST FOREIGN POL’Y IN THE U.S., *THE BIDEN-HARRIS ADMINISTRATION’S FIRST 100 DAYS: TOWARD A FEMINIST FOREIGN POLICY?* (2021), https://www.icrw.org/wp-content/uploads/2021/04/FFPUSA_100-day-scorecard_04.21.pdf.

279. *Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA)*, THE WHITE HOUSE (Mar. 16, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vawa/>.

280. Emily Bergmann, *Parental Leave in the United States: Why the United States Should Follow France in Implementing Mandatory Paid Paternal Leave*, 9 CHILD & FAM. L.J. 159, 165 (2021). There is no statutory paid maternity, paternity or parental leave in the U.S. The provision of 12 weeks unpaid leave is found in the Family and Medical Leave Act. U.S. DEPARTMENT OF LABOR, *Fact Sheet #28: The Family and Medical Leave Act*, U.S. DEPT’ T LAB. (2012), <https://www.dol.gov/sites/dolgov/files/WHDL/legacy/files/whdfs28.pdf>.

the research shows that Americans support paid family leave benefits for both mothers and fathers.²⁸¹

To enact such good laws for women, we therefore need a social cultural context ready for change in which a law can be passed that is technically designed with women's rights in mind and with the goal of shifting social norms. These are not the ingredients to necessarily make perfect laws. Where such "perfection" is achieved, we may want to describe law reform as not merely "gender-responsive" but in fact "gender-transformative." However, across these three "good laws" discussed in this article, they have all proven beneficial for women, despite their imperfections. Law reform can and will continue to perform these dual roles in our societies: fulfill its profound capacity to reflect societal change but also aid society in advancing its gender equality goals.²⁸²

281. *Id.* at 160.

282. Vijayarasa, *supra* note 70, at 4.

