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FEMINIST MICROENTERPRISE: VINDICATING THE RIGHTS OF WOMEN IN THE NEW GLOBAL ORDER?

*Lucie E. White**

The subject of this symposium is "Law, Feminism & the 21st Century." What are the greatest challenges for feminism in the coming century and how can the law help to meet them? I want to begin this essay by asking that question from two radically different vantage points. The first is very far removed from the usual starting point for feminist analysis, which is the "lived" experience of women's lives. Let us move far away from a place from which we can feel the lines on women's faces, and move to a place from which we can see only numbers, and the patterns that those numbers convey. What are the biggest issues for feminism in the twenty-first century from a place so far away?

One thing that we would see, as the economist Amartya Sen has eloquently shown us, is that something is missing. We would see that the total population of women, across the globe, is inexplicably small. Indeed, at present, according to Sen:

[D]espite the evident biological advantages that women seem to have over men in survival and longevity (when there is some symmetry in the attention they receive on basic matters of life and death, such as nutrition, health care, and medical attention), there is nevertheless a remarkable preponderance of surviving men over surviving women [in many regions of the world].¹

As of 1990, Sen calculated that there are approximately thirty million "missing women" on the Indian subcontinent, and at least thirty-eight million missing women in China.² That comes to more than sixty million missing women in just two regions of the globe. Where have all the women gone, and what does the law have to do with their disappearance?

The answer is straightforward, but the massive wrong that the numbers add up to will not be nearly so straightforward to remedy. In every part of the globe, at every conceivable point in their life cycle, women's lives are foreshortened in multiple ways. Women's lives are foreshortened from the earliest point at which the gender of a fertilized ovum can be detected and the pregnancy can be aborted, to the moment of birth, when failing to connect girl infants to life support is a hard-to-

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1. Amartya K. Sen, *Gender and Cooperative Conflicts*, in *PERSISTENT INEQUALITIES: WOMEN AND WORLD DEVELOPMENT* 123, 124 (Irene Tinker ed., 1990).

2. *See id.*

detect crime. Women's lives are foreshortened by the myriad forms of physical violence that are differentially directed to little girls, pubescent females, and adult and elderly females. Their lives are foreshortened within households and consumer cultures, where calories are distributed and food norms are set. Their lives are foreshortened in sex-work and in new forms of sophisticated cross-border sweatshops that play on gender stereotypes to work new generations of women to the bone. Women's lives are foreshortened by sheer exhaustion, by working too hard in multiple forms of invisible and uncounted labor—double and triple and quadruple burdens—until eventually a woman's body and spirit just give out, and she dies before her time. At least sixty million more women would be here were it simply the case that those most "basic" of matters, like life and death, were distributed across the genders in even-handed ways.

Let us shift, now, to the vantage point that is more familiar in feminist analysis. Let us zoom in on the everyday life of a woman in a large urban center, in the country that is reputed to be the most highly developed and wealthy in the world. What challenges do we see now? A headline in the *New York Times* dated June 26, 1997, reads: "Mother Left Her Children Out of Despair, Police Say."³ The article tells the story of Lori-Ann Williamston, a thirty-three year old African American Navy veteran, high school educated with a solid work history, who is a single mother of two young children. She was doing about as well as could be expected in today's labor market, working fairly steadily at contingent, minimum-wage jobs. But she wasn't coming close to making ends meet for her family on her wages, as every social scientist who has looked closely at the budgets of low-wage single mothers in the United States can confirm.⁴ She and her children were living on the dining room floor of a friend's apartment in Harlem. She was paying her share of the rent with a small welfare stipend that was slated to be cut off under welfare time limits. She was depending on a friend's teen-aged nephew for child care.⁵ As she contemplated the termination of her welfare assistance, according to the news report, she could see no future for her family except destitution.

So what did Lori-Ann Williamston do to prepare for the new century? She packed up her kids in a stroller, with a few extra diapers, some cereal, and formula for the baby, and then left the stroller in the Robert Bendheim Playground in New York's Central Park.⁶ When she was arrested a few hours later, the police concluded that she had been

3. Dan Barry, *Mother Left Her Children Out of Despair, Police Say*, N.Y. TIMES, June 26, 1997, at B3.

4. See KATHRYN EDIN & LAURA LEIN, *MAKING ENDS MEET: HOW SINGLE MOTHERS SURVIVE WELFARE AND LOW-WAGE WORK* (1997).

5. See Barry, *supra* note 3.

6. See *id.*

depressed and had abandoned her children out of despair. She told the police that she knew that when they found her children, they would take care of them.⁷ Perhaps it was appropriate that this African American woman would turn to the police as the best source of housing for her two young daughters, Lacey, who was eight months, and Kiyah, aged three.⁸ The prison system is certainly a large source of food and shelter for African-American men and boys; it is the one clear growth sector of the United States welfare state.⁹

Taken together, these two vantage points on the lives of women signals danger. They signal a danger that is made worse by two current trends in the path of the law. The first trend is a withdrawal of public law from the twin projects of promoting women's equality and resourcing care. This trend can be seen most clearly in the retrenchment of redistributive social welfare laws in advanced industrial nations. But it can also be seen in the political and economic pressures that are being felt in less developed nations to enact laws that enhance rather than diminish gender-linked patterns of wealth inequality. A second ominous trend in the path of law is its continuing ambivalence of liberal legal theory about the law's proper role in ensuring women's safety, dignity, equality, and power within the "private" spheres of the household, the family, and intimate relationships. These two current trends in the law—its world-wide withdrawal from the project of wealth redistribution, and its reluctance to intervene strongly against domestic violence and exploitation—may seem defensible on the basis of good liberal norms. Yet, if left unchecked as we move into the twenty-first century, these trends will converge to produce new levels of risk to women's survival. A failure of redistributive social welfare laws will ensure that lower-skilled women, with caretaking responsibilities, remain at the bottom of the wealth and income distribution all over the world. And a failure of strong legal interventions against domestic exploitation and intimate violence will mean that the survival of all women, particularly those who are poor, will be at grave risk.

One widespread reaction among legal feminists to the ominous convergence of these two trends in the law has been to think small. Feminist legal activists have tended to turn away from the systemic political and economic inequalities that gender entails. They have tended to turn away from the question of law's proper role in shifting "private-sector" and "intra-household" distributions of wealth and power. Instead, all over the world, as the twentieth century closes, feminist legal activists have increasingly turned their attention toward the ground. Increasingly, over the last decades, feminist legal activists

7. *See id.*

8. *See id.*

9. *See generally* Jonathan Simon, *Ghosts of the Disciplinary Machine: Lee Harvey Oswald, Life-History, and the Truth of Crime*, 10:1 *YALE J.L. & HUMAN.* 75 (Winter 1998).

have promoted tactics that women can use from within their highly constrained situations to enhance their own well-being and power.

Two different methods of "bottom-up" economic, social, and political empowerment have become especially popular. One is the method of providing small loans to impoverished women who are organized in support circles. The assumption behind this approach is that these circles will provide social and moral incentives for loan repayment that lenders will accept in lieu of conventional collateral.¹⁰ A second method of "bottom up" economic, social, and political empowerment, which has become popular among feminist legal activists, calls for lawyers with expertise in business development to provide assistance to women in structuring and capitalizing small businesses.¹¹ The two methods are often combined.

Feminist legal activists have embraced these two strategies for women's empowerment on the basis of two implicit theories of change. The first theory is that the new patterns of social interaction that will be created through loan circles or micro-businesses will kindle wider dynamics of individual and social capacity, community organization, and political participation that will enhance women's power and well-being in multiple spheres of their lives. The second theory is that by owning small businesses women will become powerful as market actors. In a weaker version, this theory equates women's well-being with any form of entrepreneurship, regardless of the scope of their power to use their position within the market to express their values. In a more robust version, this theory would envision women entrepreneurs bringing their values and unique perspectives, as women, into the enterprises that they own and manage. Thus, in this version, women's microenterprises would promote gender equity by infusing market transactions and firm practices with norms of care or by producing high-quality care, goods, and services that respond to women's gender-specific needs.

Feminist researchers have provided ample documentation of the powerful effects that these two "bottom up" strategies can sometimes produce. A single loan circle, for example, can sometimes spark a

10. For a recent summary of the substantial social science literature describing and analyzing this strategy, see Jude L. Fernando, *Nongovernmental Organizations, Micro-Credit, and Empowerment of Women*, 554 ANNALS AM. ACAD. POL. & SOC. SCI. 150 (Special Issue, *The Role of NGOs: Charity and Empowerment*, Jude Fernando & Alan Heston eds., 1997) [hereinafter ANNALS].

11. For a recent review of the social science literature on the use of this strategy in international development circles, see, for example, Rekha Mehra, *Women, Empowerment, and Economic Development*, in ANNALS, *supra* note 10, at 136. For description and analysis of the widespread promotion of this strategy by feminist legal activists in the United States, see Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195 (1997) [hereinafter *Small Business and Community Economic Development*]; Susan R. Jones, *Battling Poverty Through Self-Employment: A Legal Guide to Microenterprise Development* (A.B.A. Commission on Homelessness and Poverty, 1997).

creative and self-sustaining social movement when the strategy is deployed in an appropriate sociocultural setting and provided with adequate leadership and support. For instance, in a report published by the Radcliffe College Public Policy Institute, Fauzia Ahmed has documented the phenomenal history of a Bombay loan circle.¹²

The circle began with fourteen women. After several years of regular meetings, the group decided to follow the example of other groups of South Asian women, and pooled their assets. They started a catering business. From this beginning, they launched a cooperative lending project that gradually expanded to include over a hundred thousand women. With their proceeds, the women established a community center that offers health care, legal aid, and business training. Their catering project serves meals to wage workers in their city, and thereby gives these workers a regular place to talk about the problems at their jobs. As the project matures, the core group of women continually identifies new problems, comes up with new ideas, and hammers out new plans of action.¹³

Ahmed noted:

Clearly, the group enabled women to be themselves, to deal with their problems, and to rely on each other for support. In effect, it created a safe space for them, and a sense of belonging which they did not have anywhere else. [Their project] increases women's self-esteem and sense of self-worth.

When women come together and provide support for one another, it is also a powerful means of protection.¹⁴

Ahmed goes on to note that only very recently has the core group of women developed enough mutual trust to discuss the hard issue of intimate violence in their own lives.¹⁵

Thus, some loan circles have catalyzed extraordinary processes of social and cultural change. Such stories may have contributed to the wildfire-spread of the loan circle concept among feminist activists. Indeed, the loan circle strategy has become a standard feature of women's development initiatives in Northern as well as Southern countries. Yet, in spite of its popularity, there is no magic in the loan circle concept that will guarantee extravagant results. As systematic fieldwork is done on the high-volume, low-budget version of the loan circle idea, a very different story is beginning to emerge. First of all, loan circles do not tend to reach the poorest women in the typical economy of a rural village. Second, in many cases, powerful men within

12. See FAUZIA E. AHMED, *BEYOND BEIJING '95: BUILDING THE ROAD AS YOU WALK* (Radcliffe Pub. Pol'y Inst. Working Paper, 1996).

13. Lucie E. White, "Democracy" in *Development Practice: Essays on a Fugitive Theme*, 64 *TENN. L. REV.* 1073, 1085 (1997) (citations omitted) (summarizing Ahmed's report).

14. AHMED, *supra* note 12, at 19-20.

15. See *id.* at 19.

women's household networks will tend to control the use of loan funds unless women are given support to challenge these intra-household dynamics of power. Third, without explicitly earmarked funding, staffing, and fiscal or ideological incentives, loan circles do not tend to engage in activities of mutual support, education, social or individual capacity building, and the like. Rather, the only business of the circle is to ensure, or coerce, full repayment of every loan. The most efficient means of securing repayment is often to enlist women with greater power in the village's political economy to pressure less well-off women to repay their loans. Thus, rather than "empowering" poor women, loan circles can deepen poor women's enmeshment in traditional relationships of domination.¹⁶

The second strategy that feminist legal activists have promoted for enhancing women's economic empowerment at the grassroots level is technical assistance to poor women to start microenterprises. In the United States, this strategy has been widely endorsed among poverty activists in clinical legal education. In the same way that some loan circles have produced far-reaching results, some legal clinicians have set up exemplary programs for politically and socially empowering low-income women through the vehicle of assisting them with micro-business planning.¹⁷ Yet, the paths toward empowerment on which this strategy is premised are unclear. There are very few well-documented examples of how the strategy can positively impact on the economic forces that constrain low-income women's economic opportunity, even when a number of micro-businesses are clustered in a single neighborhood.¹⁸

Too often, the strategy of providing technical assistance to low-income women to start micro-businesses is targeted in ways that appear to produce few sustained benefits. For example, in the United States and elsewhere, governmental funding for low-income women's micro-enterprise development has often been linked to the agenda of steering poor women into child care occupations. Such businesses often operate on a very low profit margin, and are highly likely to fail. Furthermore, for a variety of reasons, such as economies of scale and the social support that several workers can give one another, it is not clear that

16. See Fernando, *supra* note 10, at 161-64.

17. See Jones, *Small Business and Community Economic Development*, *supra* note 11, at 202-08.

18. But see Peter Pitegoff, *Shaping Regional Economies to Sustain Quality Work: The Cooperative Health Care Federation*, in JOEL HANDLER AND LUCIE WHITE, *HARD LABOR: POOR WOMEN AND WORK IN THE POST-WELFARE ERA* (forthcoming 1998). Pitegoff describes how a worker-friendly, large-scale home health care enterprise, rather than a network of microenterprises, had positive effects on labor standards across the home health industry in the New York City metropolitan area. The success of this strategy was dependent on heavy public subsidization of the industry, as well as strong consumer demand for high morale among direct care workers. Query whether a cluster of competing microenterprises within a certain sector might, in some local contexts, have similar effects.

microenterprises provide the best way to deliver child care services, particularly to low-income families. And finally, such programs have often been targeted, indiscriminately, to women who lack the skills or interest to start a business, or to work in the child care field. Indeed, child care is one of the most highly gender segregated and lowest paid occupational categories. Yet, it has repeatedly become a special focus of microenterprise initiatives for the lowest income women.¹⁹

When technical assistance is provided to women to start businesses in any high-cost, low-profit sector, like child care services or labor-intensive production, the enterprises will be caught between a rock and a hard place. Either they will fail or, to survive, they will cut corners on costs associated with labor conditions. The advocates of microenterprise assistance need to specify exactly how it promotes gender equity or women's empowerment to assist individual women to start businesses that must use sweatshop strategies of labor organization in order to stay afloat.

So, what is to be done? In conclusion, I want to offer several thoughts. First, it is crucial for feminists who advocate these "bottom up" strategies to specify, as precisely as possible, exactly how they expect the strategies to promote gender equity or women's empowerment. Having done so, they should think as clearly and honestly as possible about the weakest links in their chains of causation between the strategy and the goal. If loan circles are promoted because such circles can stimulate wide processes of sociocultural change, then the resources for facilitating the circle's educational, support, and consciousness-raising activities must be secured in order for the circle to work. If technical assistance for microenterprises is promoted because such businesses can enhance women's power in a neighborhood's political and economic structure, while revitalizing its social fabric, then the program must have access to a pool of women with a solid base of both vision and skills, and the neighborhood must be in a position to support the range of businesses that these women are likely to start.

As the logic behind each strategy is more clearly articulated, its proponents can begin to seek out the full range of legal and political strategies, in addition to loan circles or microenterprises, through which some or all of those goals can be pursued. For instance, the empowerment goals of loan circles can be pursued through good programs of client participation in the management of state-funded social welfare programs. Historian Annelise Orleck is writing the history of one such example. In her forthcoming book entitled *Gambling with Human Lives: Women, Children, and Welfare*, Orleck tells the story of how African

19. See Julie Korraine, *Critique of the Cambridge Child Care Resource and Referral Network's Child Care Enterprise Support Program* (Child Care Action Campaign Issue Brief, 1996); Peter Pitegoff, *Child Care Enterprise, Community Development, and Work*, 81 GEO. L.J. 1758 (1993).

American women who had migrated to Las Vegas from the Deep South organized themselves into a welfare rights group that contracted with the state to manage several state-funded social welfare programs in the 1970s.²⁰ In the course of managing these programs, the women engaged in the same kinds of practices of mutual support and consciousness raising, and produced the same kinds of social movement, that have been documented in the most successful loan circles. Yet, unlike the loan circle initiatives, which tend to deflect poor women's energies from increased public funding for basic welfare services, the Nevada women engaged in face-to-face empowerment practices in a setting which affirmed, rather than undermined, the law's redistributive role.

In another example, Sophia Bracy Harris, a gifted organizer in Alabama, has used the mutually supportive and politically empowering practices of the best loan circles to develop a statewide grassroots network of low-income providers and consumers of child care. This loose network of local groups has come together to lobby for increased funding and improved public law infrastructures for child care in the state.²¹

With respect to the strategy of promoting women's microenterprise development, feminist legal activists need to imagine, and then actively promote, the specific legal, economic, and social conditions that will enhance the chance that the target businesses can thrive. In the case of child care, for instance, the chances of successful micro-businesses will be greatly enhanced by increased public subsidies for the costs of doing business. For instance, new legislation could fund facility acquisition and improvement; or permit small providers to use existing government programs for subsidizing food, educational services, health screening, and the like; or facilitate or require in-kind assistance from large, local firms; or subsidize the training, licensing, salaries, and benefits of assistant or substitute teachers; or subsidize consumers or providers for the costs of other operating expenses. With such laws in place, it will be much more likely that a competent business woman can keep a child care microenterprise afloat, even in a low-income neighborhood. Without them, such an enterprise will be almost certain to fail. In every sector that is a focus of microenterprise development, feminist legal activists need to do this kind of analytic, political, and legislative groundwork. Indeed, this kind of "policy" work, that creates the infrastructural and budgetary environment in which particular microenterprises can thrive, is likely to be far more critical to the success of individual microenterprises than one-on-one technical assistance.

20. See ANNELISE ORLECK, *GAMBLING WITH HUMAN LIVES: WOMEN, CHILDREN AND WELFARE* (unpublished manuscript on file with the author).

21. See Ismael Ahmad, *Mother Jones Cites Local Woman's Efforts to Improve State's Child Care*, ALA. J. & MONTGOMERY ADVERTISER, Jan. 1, 1988.

Thus, feminism is facing some daunting challenges as we move into the twenty-first century. Yet, if we look at things realistically, we can see great potential for new forms of creativity and self-agency, both among low-income women and among their feminist lawyers. The path toward that new opportunity requires that we get out of the mind-set of looking to law for answers, and into the habit of speaking and working the law in ways that enable and extend our human agency, on our own ground. Yet, the path toward that new opportunity also calls on us to say where the law's power should be on the big questions of ensuring women's safety and power within "domestic" arrangements and redistributing social resources to promote our economic equality and spread the costs of care.

