NAMING: THE INEQUALITY

**Women as Citizens or Women as ‘Wives/Mothers-in-Waiting’:
Marriage Law, “Surnames”, and the Politics of Recognition in
Canadian, Québécois, and Japanese Society**

by

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ABSTRACT

To uphold equal citizenship in practice, the state must be accountable for the realities of women's oppression under public and private patriarchy. One area of the law that continues to promote the delineation of women's primary identity into the roles of wife/mother is marriage law. Using Pateman's concept of the "sexual contract", I outline the contradictions inherent in malestream liberal democratic theory that trump women's equality rights in contemporary Japan and Canada. Using Taylor's "politics of recognition", I expose the one-sided importance of men's last names as the refusal of society and the state to affirm women's human worth. Critiquing the "framework of choice" for its promotion of the moral regulation of women, I argue that marital naming serves as an important indicator of, and contributor to women's inequality. I conclude by recommending the Quebec model of birth name permanency that renders impotent the power of the marriage contract and patronymy over women's personhood.

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The nail that sticks up gets hammered down.

Japanese proverb

DEDICATION

I would like to dedicate this work to a sister “Lucy Stoner”,
Kaori Midorikawa, whose courage in pursuing the ‘gospel of
individual sovereignty’ and whose resilience against the
‘hammers’ of patriarchal society inspired me to pursue this issue
as the focus of inquiry for my Masters of Legal Studies thesis.

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INTRODUCTION

Naming – having a word for it – is an important part of the process of evolving consciousness. Naming a person isolates and defines one soul, one individual, one unit in the stream of the whole...

Lucil Hoerr Charles¹

The idea that women and their offspring are the property of the male ‘head of the household’ is not only considered obsolete in industrialized countries of the 21st century, but moreover, it smacks of an ideology of patriarchal familism that is counterintuitive to the individualistic notions of citizenship which have captured the minds of most liberal democracies, including Canada, Quebec and Japan. The post-WWII (hereafter post-war) era has seen a steady increase in the rights of the individual vis-à-vis the state. The exclusion of certain constituencies on the basis of race and also gender has been addressed to create the legal framework for the liberal democratic tradition of equality in modern Canada, Quebec, and Japan. Despite the commitment of politicians and philosophers to a political theory of democracy with the individual at its centre, the laws and regulations of modern Japan and Canada nonetheless reflect a nostalgic and outdated commitment to the patriarchal family as the basic unit of society. One area in which this contradiction becomes painfully evident is that of name change in the context of marriage.

Highlighting the ways in which marriage laws in Canadian provinces outside of Quebec and in Japan use the panacea of ‘choice’ to resolve the question of the last name post-marriage, I will attempt to demonstrate the extent to which liberal democratic theory has yet to be translated into equal citizenship for married women. The full impact of women’s subjugation, perpetuated through their change of last names upon marriage,

¹ Quoted in Richard Alford, *Naming and Identity: A Cross-Cultural Study of Personal Naming Practices*. (New Haven: Hraf Press, 1988) 1.

cannot be assessed in isolation of the ways in which women's existence and status are framed within family law, as well as within constitutional guarantees for citizens. Given the framework of equality provided by the Canadian and Japanese Constitutions, I will argue that *in this context*, the change of last name in marriage is inconsistent, and constitutes an important indicator of the unequal status of women in society, and their presumed roles as the wives/mothers of male citizens. I will argue that the legal framework of choice makes the state complicit in allowing society to direct women's appropriate role through moral regulation. As such, the Canadian and Japanese governments accept that the relationship between women and the state is of secondary importance to a woman's relationship with her husband, and therefore the roles of wife/mother continue to trump the right of all women to equal citizenship. More than simply a symbolic label, I will argue that the question of 'the family name' cuts to the heart of how the state views women within society, how women and men identify themselves vis-à-vis the state, how gendered individuals recognize one another as beings of equal worth (or not), and how they structure their personal, professional, and family identities in relation to one another, as well as in a hierarchy of loyalties.

In Chapter I, I will briefly outline the terms of reference to be employed in the discussion to follow, present my working assumptions, and comment upon the methodology used in this thesis. In Chapter II, I will outline the different demographic trends which have led to changes in the marriage laws of Canadian provinces and of Japan and trace the nature of last naming practices and the role of women within the family unit and in society in the past three centuries of Canadian, Québécois and Japanese societies. In Chapter III, I will first situate the current marriage laws of the

Canadian provinces and of Japan. Thereafter, I will expose the theoretical inequalities of current marriage laws by identifying the principles of the social contract, and of the underlying *sexual contract*, a concept developed by political theorist Carole Pateman.² In so doing, I will trace the role of patrilineality and paternal authority in the maintenance of patriarchal power over women and their offspring through the ideology of the family that is supported by the institution of marriage and expressed in “surnaming” practices.

In Chapter IV, I will first outline the politics of naming, and the role and power of naming and “surnames” in society. Building on this framework, I will introduce the basic tenets of philosopher and political theorist Charles Taylor’s “politics of recognition”.³ Applying this theory, I will explain the ways in which the current marital naming laws and practices in English-speaking Canadian provinces and in Japan are inconsistent with the principles of liberal democratic theory, which purports to provide the same rights and protections for all citizens, male and female. I will reveal the ways in which patriarchal power is being asserted through patrilineality and paternal authority, and the reality that women are still being understood by the state and judiciary as mothers/wives, rather than individuals in their own right. I will argue that the legal framework of “choice” for last names reinforces this vision of women by allowing for the continued moral regulation of women into familial categories, and by failing to protect women from being pressured into identities that are limited to familial gender roles. As such, I will argue that naming functions as a key indicator and marker of women’s (in)ability to achieve equal and independent status as recognized individuals within the family, and consequently, as autonomous rights-bearing citizens whose rights will be respected by the state, the

² Carole Pateman, *The Sexual Contract* (Stanford University Press: Stanford, 1988).

³ Charles Taylor, *Multiculturalism and “The Politics of Recognition”* (Princeton University Press: Princeton, 1992).

judiciary, and society. In my final chapter, I will conclude by recommending the Quebec model of birth name permanence as the best means for promoting the equal validation of women's citizenship, the protection of women's equality rights, and the recognition of the human potential of women and their equal worth in society.

Before moving on to the above-mentioned discussions, I would like to introduce what Alan Hunt terms "the itch", namely the events, thinking or circumstances which have prompted me to invest time in deconstructing, researching and understanding this particular issue.⁴

The "Itch"

My initial interest in the subjugation of women through the institution of marriage began with an undergraduate course in radical political thought at McGill University in which we explored competing theories of democracy, the social contract, and examined the role of the *sexual contract* through the work of Carole Pateman. In 1997, during my graduating year, my personal experiences of being engaged to a male partner allowed me to experience firsthand the extent to which women's identities and loyalties continued to be morally regulated in Canadian society in the late 20th century, and how this regulation intensified dramatically during the period leading up to the marriage celebration.

Having gone to great lengths to weed out the gendered and traditional (patriarchal) attributes of the marriage ceremony from my own wedding and relationship,

⁴ The term "the itch" was introduced by Professor Alan Hunt over the course of his class entitled, "Theory, Law and Social Transformation" in the Fall/Spring 2001-2. He used this term to invoke a sense of the specific events, disconnect or outright irritation with an issue, which has probed us to explore or be interested in our chosen topic. The "itch" compels a reaction because there is a level of discomfort or unease with the facts, views, or stories that are presented in the existing research on our given subject because they do not resonate with our particular understanding, perspective or lived experiences of the issue.

I was struck by the frequency with which my choices were reviewed, questioned, and challenged by friends, family, and even strangers who claim both to support gender equality and to have progressive views. Having chosen to retain my birth name, I was repeatedly questioned as to the rationale for this decision, and was challenged to consider how this might affect our (future) children. Likewise, people wished to know what my fiancé thought of my decision in order to gauge the extent to which I was being callous in hurting his feelings by rejecting his name. I was understood as being “difficult”, as “strident” in my feminist beliefs, and in protesting too seriously against a practice (taking the husband’s name) that simply had no meaning in today’s society of gender equality. As such, I was being unreasonable, and my poor partner was necessarily suffering the brunt of this obstinacy, as would my future children.

In addition to the open contestation of my choice, there were those who simply assumed I would be changing my name, and so sent their gifts in the form of a cheque written to Jean-Francois and Jackie Pouliotte, or even to Jean-Francois Pouliotte alone. Indeed, my ability to act as a responsible adult and cash a cheque deemed for our couple became suddenly uncertain given my intent to get married, and some friends of my parents proceeded to send things to the imminent “man of the house”. The meddlesome attempts to direct my life choices and proper place as “the wife” only strengthened my convictions, and in my desire to affirm my choice, I had a cheque written in the name of Jackie Pouliotte returned. Given that the legal person on the cheque did not and would not exist, I asked my father to explain that the false name created a legal incapacity for me to cash the cheque. Given the force of the name change custom upon marriage, the

bank would have likely not refused the cheque had I happily beamed, “I just got married”, but I was committed to having my identity as Jackie Steele remain intact.

As I reflected on these experiences, I began to question the extent to which the institution of marriage in particular plays a crucial role in formalizing not only the relationship between two individuals, but also in promoting and consolidating the gendered roles that society would have men, and particularly women, play within the family sphere. I was by no means a child of the first wave of feminism; sexual equality was supposed to be a given for my generation. Since 1982, the equality rights of women had been enshrined in Section 15 of the Charter of Rights of Freedoms, and Section 28 guaranteed the equality between men and women. As such, to be experiencing these intrusions on my personal space and choices as an individual fully (15) fifteen years later seemed highly contradictory to both the legal framework in Canada, as well as to my upbringing by well-educated, “modern” parents and their friends, a group supposedly committed to educating their daughters to be independent individuals who pursued rewarding professional careers.

Immediately after marrying, accompanied by my partner, I left Canada to pursue an employment opportunity in rural Nagano, Japan. Given the low status of Japanese women, the resilience of gender roles in rural areas in particular, I had prepared myself for the traditional views and judgements that I might encounter. Ironically, as a result of the reactions of personal circles in Canada, I was well versed in “what to say” to defend our egalitarian marriage. Many Japanese colleagues and friends were surprised that my partner and I had different last names, but they were more accepting of this fact given that we were from a different culture, and had practices “foreign” to the Japanese.

Consequently, my choice of last name was not necessarily understood as being a direct threat to the way things were done in Japanese society, and to some extent, this made the questioning less intense, and more out of curiosity. Upon different occasions, the bank disbelieved that my partner and I were married given our different names, and so refused to allow my husband to have access to a debit card for my (our) bank account. My colleagues from city hall were forced into the discussions, and we offered to show our marriage certificate to allow for my husband to be registered as a “dependent” for the purposes of our banking needs, or health insurance papers. In Japan, one is either the head of the household, or a dependent, indicating clear-cut roles within the family, with the financial rice-winner being the head of the household (kacho).

Having not witnessed any frustration expressed by married women regarding their last names, I began to accept that perhaps in Japan, the question of retaining one’s birth name was simply not an issue for most women. In practice and in principle, most women in the rural area where I lived did understand themselves to be appendages to their husband’s family, were legally defined as dependents, and readily identified themselves as “professional housewives”. The research that I had done for my honours thesis⁵ at McGill had provided me with the insight that many Japanese women and feminists have come to the *rational* conclusion that staying at home full time and fulfilling the female gender role is, in fact, the more liberating option. Japanese women rejected “equality” if it meant having to emulate the workaholic male lifestyle which effectively denies women the option of having a family, and wherein one is practically owned by the company.⁶ Without any significant changes to the economic structure in Japan, it will take many

⁵ This was a joint honours thesis in East Asian Studies and Political Science.

⁶ Jackie Steele, “Sexual inequality in Japan and Canada: A comparative approach” (Joint Honours Thesis, McGill University, 1997).

years before Japanese women can achieve a reasonable level of financial independence from the men in their lives. Despite a rising divorce rate that is beginning to approach other developed societies, the reality is that women in Japan still largely rely upon the institution of marriage and their husbands for their and their children's survival.⁷

Consequently, despite my convictions that being named by the husband in marriage was an oppressive patriarchal practice, and given the lack of discomfort among married Japanese women, when asked about my last name I would explain my reasons for rejecting the customary practice. Without receding into a place of cultural relativism that most often works to exempt the oppression of women from critical evaluation, and in an attempt to avoid cultural imperialism in the vein of the "West knows best", I was honest about my understanding of the oppression of women within the patriarchal family, the symbolic use of "surnaming", and the role of birth name retention in affirming equality of the two spouses. I was, however, cautious not to impose these beliefs upon Japanese society without having a better understanding of how Japanese women perceived themselves, their roles in the family and society, and how Japanese women actually understood and experienced this practice in the context of Japanese culture and identity.⁸

⁷ It is worth noting that the decline of the family wage in Canada, and the advent of neo-liberal economics are fundamentally reshaping the relationship of the Canadian state to its citizens. Women have been increasingly forced into precarious, part-time and/or other forms of non-standard work which are less and less likely to provide a wage that can support a family. As such, we may see a shift in Canada towards the Japanese scenario, wherein women become keenly aware that they may be able to find employment while they are single, but that the impact of having children is such that women require alternate financial support. In the absence of the welfare state in Canada, we may see a return to marriage as one of the main options of economic viability for Canadian women with children. For a more detailed discussion of this shift in Canada, see Judy Fudge and Brenda Cossman, *Privatization, Law, and the Challenge to Feminism* (University of Toronto Press: Toronto, 2002).

⁸ It is interesting to note a conversation that I had with a Professor of East Asian Studies at the Carleton Conference, *Perspectives and Prospects on Canadian-Japanese Relations* in September 2002, where I made a presentation entitled, "Traditions in Transition: Marriage Laws, Surnaming, and Gender Equality in Japan, Canada, and Quebec". He commented that women in Korea were prohibited from taking the

It would not be until my third year of living in Japan that I would learn that the issue of last names does affect Japanese women's sense of equality and is even a focus of mobilization among Japanese feminists primarily in urban centres. As a result of a friendship with a young Japanese woman who was committed to maintaining her own last name in marriage, my views on the issue began to shift towards my initial convictions that naming was indeed fundamentally important for gender equality. I met this woman at a presentation on Canada I had been asked to give to a group of Japanese adults associated with the local Post Office who met to practice English and learn about foreign cultures. After my talk, more personal questions about my life began to flow, and the fact that I had a different last name from my husband was revealed. This young woman was ecstatic to learn that in Canada it was legal for a couple to each have different names. The law in Japan allows for only one family name to continue after marriage, and makes couples "choose" whether they will both use the man's name, or both use the woman's name. Consequently, in order for her to maintain the use of her birth name for official documents and legal registrations, she was forced to submit a "paper divorce" every time her registration of residency, driver's license, or passport came up for renewal, in order for her to maintain her own last name for those documents.

Fascinated by the ease with which Japanese couples can register and unregister a marriage, and inspired by the level of commitment and the amount of effort this couple

name of their husbands in marriage, and that this effectively excluded them from inheritance and other rights over the family property. Under the woman's birth name, Korean women remain as "outsiders" to the husband's family, although they are no longer technically a part of their birth families either. As such, he noted that the fact that Japanese women were fully adopted into the husband's family and recognized within that structure perhaps allowed them greater equality within the family, and provided greater protections in the law than the system of denying women a name change in marriage as in Korea. Indeed, the legal system is composed of more than simply the laws that affect a woman's name. In order to evaluate the full impact of women's marital names, the written laws, unwritten customs, and cultural influences must all be taken into consideration, not to mention women's actual experiences of those laws and customs.

was willing to invest in order for her to keep her own birth name in marriage, I began to think about the marriage laws in Canada. I wished to explore how they differ from or are similar to those in Japan, the commons threads, and the gendered notions of citizenship that are expressed through the institution of marriage and marriage law itself. The aspect that seemed to unite the legal backdrop of English-Canadian provinces and of Japan was the “framework of choice”. Gender neutral laws create the opportunity for the couple, but more specifically the woman, to “choose” her last name based on individual preferences, while in practice, women’s names are more often influenced and determined by customary, religious, social, and moral attitudes about the proper role of women as wives/mothers. The moral regulation of women towards traditional gender roles occurs during an important developmental stage in women’s young adult lives, creating a ‘window of opportunity’ for society, friends, and family to direct women’s identity. As such, the choice of last names reflects the extent to which young women have already adopted, or are willing to adopt the role of wife/mother in terms of their primary identity, or whether they have rejected these gendered notions and wish to assert their primary identity as an equal citizen within society at large. Before exploring the historical roots of women’s oppression within the institution of marriage, in the next chapter I will briefly outline the main concepts and working assumptions upon which this thesis is premised.

CHAPTER I

CONCEPTS, WORKING ASSUMPTIONS AND METHODOLOGY

In this chapter, I will clarify the terms and definitions that will be used throughout this work. Thereafter, I will identify the working assumptions, perspectives and/or biases that will be implicit in my analysis of the subject at hand. Finally, I will outline the methodology that I have followed, and reveal some of the difficulties or challenges that have arisen over the course of the research.

To begin with the terms of reference to be used in the following pages, and given that certain of them may have different meanings depending on the discipline, culture or context within which they are used, I will briefly offer an explanation of what I mean by the following concepts: Liberal Democracy, Equality, Familialism, Public/Private Sphere, Citizen, Moral Regulation, Recognition, Japan, Canada, Quebec.

CONCEPTS

LIBERAL DEMOCRACY: As will be further explored in Chapter 2 through the theory of Carole Pateman, liberal democracy is generally understood as a form of governance based on the theoretical commitment to elected and democratic governance that guarantees individual liberty (against government intrusion) by allowing for the acquisition of private property through the free contracting of individuals in a society that supports a market-economy. At a minimum, liberal democratic regimes must meet a certain standard of electoral accountability, and provide a basic level of constitutional protection of their citizens' right to liberty. In the classic theories of the beginning of civil society, the social contract is understood as the first "contract" in which (male)

citizens freely engaged in order to end the chaotic “state of nature”. By creating a government, all gave up a part of their individual sovereignty, and accepted the rule of elected officials, for which in turn, citizens would receive equal protection by the state of their political rights.

EQUALITY: Despite the commitment to individual equality by liberal democratic theory, it is nonetheless a liberal predisposition to set actual outcomes aside and to put all of the emphasis on the mechanisms expressing a formal status, instead of interpreting ‘democracy’ as requiring a fully egalitarian society.⁹ However, Canada appears to have moved beyond the focus on formally equal status. Section 15 of the *Canadian Charter of Rights and Freedoms* has clearly been formulated and interpreted in such a way as to allow for the attainment of equality of outcome through affirmative action measures for historically disadvantaged groups listed under Section 15. As such, a commitment to “substantive equality”, rather than “formal equality”, would seem to have been achieved in the black letter of the *Constitution of Canada*, if not in all of the legal precedents that have ensued from its application and interpretation. This definition of equality was promoted by Canadian feminist legal scholars, feminist lawyers, and feminist activists in order to enshrine the notion of “substantive” equality, rather than the minimal protections of “formal” equality, which had been the disappointing legacy of the Canadian Bill of Rights.¹⁰ To achieve substantive equality for all citizens, it is necessary that the law not be limited to “negative” rights, but that it also protect “positive” rights. Construed as the right to conduct one’s life *free from* state intervention in one’s private affairs, negative

⁹ Richard Vernon, *Political Morality: a theory of liberal democracy* (Continuum: London, 2001) 1-2.

¹⁰ *Canadian Bill of Rights*, R.S.C. 1970, Appendix III.

rights are based on the assumption that the state is the only source of oppression in society. Positive rights recognize that a right on paper may not be a right in practice if there are significant barriers that prevent a citizen from exercising the rights made available to her. As such, the state has an obligation to eliminate all sexual, social, political, economic, racial, religious, linguistic, or cultural barriers, and ensure a citizen's ability to exercise and enjoy her/his protected rights.¹¹ When using the term "equality", I am adhering to this feminist, anti-racist, pro-queer perspective which demands that systemic discrimination, context, and all forces of oppression be taken into consideration when assessing the degree to which (substantive) equality has been achieved.

FAMILIALISM: The term familialism is used to refer to the patriarchal ordering of heterosexual spouses and their children under the male head of the household, wherein the family unit is viewed as the basic building block of society. The patriarchal cultures in England and France were transported to the Canadian/Québécois contexts, and have perpetuated paternalistic notions of women's inferiority in law and in society. A more feudal version of the "cult of domesticity,"¹² familialism concurrently glorifies and limits the abilities of women to the roles of mothers and wives, and attempts to constrict their destinies through their biological ability to procreate. At a very basic level, familial discourses attempt to locate the responsibility for social reproduction as naturally located within the family. The desire of middle class white Canadians to maintain the authority

¹¹ See Kathleen Mahoney, "The Constitutional Law of Equality in Canada", *Maine Law Review*, 44 (1992): 229-259.

¹² The "cult of domesticity" was coined by Betty Friedan in her groundbreaking work, *The Feminine Mystique*, wherein she names the "problem that has no name" and puts in evidence the malaise that many middle class white women in North America were experiencing about the purported benefits of fulltime housewifery, and the promise that motherhood would lead to women's foremost self-realization and development as individuals. Betty Friedan, *The Feminine Mystique*, With an introduction by Anna Quindlen (Norton and Company: New York, 2001).

of the protestant elite over Catholic, immigrant and other groups contributed to the promotion of familialism.¹³ In Quebec, familial notions were used by the francophone Catholic Church to promote the survival of the largely rural, uneducated French-Canadian population. The Catholic Church preached against the use of contraception, and encouraged women to have large families to protect “la petite patrie” against the forces of assimilation by the anglophone majority in Canada.¹⁴ In Japan, familialism is understood as stemming from the notions of the unified Japanese people who share common blood and culture through the Emperor to the leading clans, and down to the male heads of household; within familial relations, subordinating oneself to the head of the household is expected.¹⁵ Male children, in particular the senior male child, are important within familial cultures as they guarantee that the male line, family residence, and property continue through the senior male heir. The assumptions of familialism underpin the “abstract”, gender-neutral citizenship of many Western liberal democracies, and have led the state to persistently treat the patriarchal family as the base unit in Western societies, and have contributed to the ongoing inequality of women within both marriage and society.

PUBLIC/PRIVATE SPHERE: The terms public sphere and private sphere are used to reference the feminist perspective that the division of society into dichotomous categories

¹³ See Susan Smith, “Immigration and Nation-building in Canada and the United Kingdom”, in *Constructions of Race, Place and Nation*, P. Jackson and J. Penrose, eds., (UCL Press: London, 1993), 50-77; Sunera Thobani, “Closing ranks: racism and sexism in Canada’s immigration policy”, *Race and Class* 42 (2000): 35-55; Alan Sears, “Immigration Controls as Social Policy: The Case of Canadian Medical Inspection 1900-1920”, *Studies in Political Economy* 33 (1990): 91-112.

¹⁴ See Micheline Dumont, Michèle Jean, Marie Lavigne, and Jennifer Stoddart, *L’Histoire des femmes du Québec* (Quinze: Montréal, 1982); Armande Saint-Jean, *Pour en finir avec le patriarcat* (Les Éditions primeur: Montréal, 1983).

¹⁵ Mark Hudson, *Ruins of Identity: Ethnogenesis in the Japanese Islands* (University of Hawaii Press: Honolulu, 1999), 14.

of public and private spheres is a social construction wherein the paid work performed in the public sphere of government, economy, and civil society is viewed as the important realm of men. Conversely, the unpaid roles of the private sphere of family and home are the domain of women. Implicit in these terms are assumptions about women's primary role as caregivers in the forms of unpaid housekeeping, childbirth and childcare, eldercare, as well as assistance to physically or mentally challenged members of the family. This forced separation of private and public denies the realities of women's lives, and continues to impact negatively upon the perceived worth of women's contributions to society, their citizenship rights, and upon women's identity.¹⁶ The feminist notion of the public/private divide serves as a critique of political theories of citizenship which speak of the public and private as referring to the division between the government, whose activities are underwritten by the public taxpayer, and the private sector of companies, whose pursuits are underwritten by private and individual funds. The public/private dichotomy recognized by feminists exists as a result of political theorists' dismissal of the family sphere as a site of production and reproduction because women's roles were seen as a *natural* process, rather than a construct that resulted from the *political* social contract among male citizens.

CITIZEN: I use the term citizen as an abstract means of indicating all individuals who are subject to the laws of a given area, regardless of their legal status of belonging. This concept is complicated in the context of immigrant-receiving societies such as Canada,

¹⁶ For more in depth explanation, see Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (University of Toronto Press: Toronto, 1997); See also Judy Fudge and Brenda Cossman, eds., *Privatization, Law and the Challenge to Feminism* (University of Toronto Press: Toronto, 2002).

Quebec, and Japan, wherein transient workers, permanent residents, as well as illegal aliens are in residence. All of the aforementioned groups would be subject to the laws of the land wherein they reside, and therefore, for the purposes of this discussion are considered to be included within the abstract notion of “citizen”, even though they may not qualify for the legal status of citizen. A further point of clarification is necessary for this term, given the presence of First Nations, Inuit, Innu, and Métis peoples in Canada, as well as the Ainu peoples in Japan. By using the term “citizen” in this abstract way to encompass all those subject to the laws of the land, I am necessarily including the aforementioned Aboriginal and First Nations peoples, many of whom dispute the authority of Canadian law over them. This usage is not meant to contradict the First Nations’ views on Aboriginal sovereignty, but rather aims to be inclusive and realistic in terms of who is effectively subject to Canadian law in practice. Cognisant of the racist, patriarchal, and culturally imperialistic role of colonialism, I am sympathetic to the critique that Canada, Quebec and Japan’s political sovereignty lacks legitimacy given that they are founded upon imperialistic acts that aimed to destroy, assimilate, and annihilate the presence and political sovereignty of the First Nations¹⁷ and Ainu Peoples¹⁸. These racist and colonialist attitudes also came into play in the treatment of immigrants in

¹⁷ See Robert Williams, *The American Indian in Western Legal Thought: The Discourses of Conquest* (Oxford University Press: Oxford, 1998); Mary Ellen Turpel, “The Cultural Non-Homogeneity of Quebec: Secessionism, Indigenous Legal Perspectives and Inseparability”, in *Self-Determination: International Perspectives*, Donald Clark and Robert Williamson, eds. (Macmillan: London, 1996); James Tully, “Rediscovering America: The Two Treatises and Aboriginal Rights”, in *An approach to political philosophy: Locke in contexts* (Cambridge University Press: Cambridge, 1993); Brian Attwood, “White Man’s Law”, *The Making of the Aborigines* (Allen & Unwin: Sydney, 1989); Stuart Hall, “The West and the Rest: Discourse and Power”, in *Modernity*, Stuart Hall et al., eds. (Blackwell: Oxford, 1995); Jorge Larraín, “Ideology, Reason and the Construction of the Other”, in *Ideology and Cultural Identity: Modernity and the Third World Presence* (Polity: Cambridge, 1994); Derek Smith, “The Emergence of “Eskimo Status”: An Examination of the Eskimo Disk List System and Its Social Consequences, 1925-1970”, in *Anthropology, Public Policy, and Native Peoples in Canada*, N. Dyck & J. Waldram, eds. (McGill-Queens University Press: Montreal, 1993).

¹⁸ See Hudson; See also Michael Weiner, ed., *Japan’s Minorities: The Illusion of Homogeneity* (Routledge: London, 1997).

Canada¹⁹, and will be mentioned in connection with the historical evolution of women's political rights.

MORAL REGULATION: Using the definition developed by sociologist Alan Hunt, which draws heavily upon Michel Foucault's notions of "governmentality" and "discipline", moral regulation is a "process in which moral discourses, techniques and practices make up the primary field of contestation."²⁰ Expanding Foucault's notion of governmentality and discipline beyond the sites of institutional power, in the context of regulating women's bodies, Sandra-Lee Bartky similarly observes that this disciplinary power is peculiarly modern:

It does not rely upon violent or public sanctions, nor does it seek to restrain the freedom of the female body to move from place to place. The disciplinary techniques through which the 'docile bodies' of women are constructed aim at a regulation that is perpetual and exhaustive – a regulation of the body's size and contours, its appetite, posture, gestures and general comportment in space, and the appearance of each of its visible parts.²¹

Hunt reminds us that moral regulation is relational, and operates by asserting a generalized sense of the wrongness of certain conduct, habits or dispositions. An important aspect of moralization involves what Foucault has called 'dividing practices',

¹⁹ See Anthony Richmond, "Global Apartheid: Migration, Racism, and the World System", in *Perspectives on Ethnicity in Canada: A Reader*, M.A. Kalbach & W.E. Kalbach, eds. (Harcourt: Toronto, 2000); Audrey Kobayashi, "Challenging the National Dream: Gender Persecution and Canadian Immigration Law", in *Nationalism, Racism and the Rule of Law*, P. Fitzpatrick, ed. (Dartmouth Publishing Company: Aldershot 1995); Michael Shapiro, "Narrating the Nation, Unwelcoming the Stranger: Anti-Immigration Policy in Contemporary 'America'", *Alternatives* 22 (1997): 1-34; Thobani (2000); Susan Smith (1993); Alan Sears (1990).

²⁰ Alan Hunt, *Governing Morals: A Social History of Moral Regulation* (Cambridge University Press: Cambridge, 1999), 8.

²¹ Sandra-Lee Bartky, "Foucault, Femininity, and the Modernization of Patriarchal Power", in *The Politics of Women's Bodies: Sexuality, Appearance and Behavior*, Rose Weitz, ed. (Oxford University Press: Oxford, 1998), 41. For the role of the regulation of women in the context of abortion see, Barbara Duden, "The Fetus on the 'Farther Shore'", and Valerie Hartouni, "Epilogue: Reflections on Abortion Politics and the Practices Called Person", in *Fetal Subjects, Feminist Positions*, Lynn Morgan and Meredith Michaels, eds. (University of Pennsylvania Press: Philadelphia, 1999).

through which there is the construction of the ‘deserving’ and ‘undeserving’. Such a distinction promotes the moral regulation of subjects because it first moralizes the categories to delineate between good and bad, and second, it operates to legitimate the differential treatment of the two categories.²² As evidenced by the earlier discussion of my own experiences of birth name retention, and in the discussion of naming choices of married women that follows in Chapters II and III, I explore the pervasiveness of moral regulation in the absence of legal impediments to women retaining their birth names

RECOGNITION: Based on the arguments of Charles Taylor in *Multiculturalism and “The Politics of Recognition”*, the concept of recognition refers to the dialogical process through which the negotiation and formation of the self takes place. Taylor asserts that individuals from marginalized groups can suffer from a lack of recognition, a sort of *non*-recognition or *mis*-recognition of their selves, as a result of sexually, racially, or culturally discriminatory views and attitudes in society. Conversely, recognition from the state, society, and significant others, serves as a crucial form of validation and affirmation of one’s inherent worth, and promotes assurance of one’s human potential and one’s right to a life of dignity and equal respect. The communication of recognition through the values, assumptions, and worldview reflected in the laws of a given society, or the lack thereof, is proactive and constitutive of the core identity, the projected image, and the perceived worth that an individual associates with one’s self, and one’s rights as a citizen of that society.

²² Hunt, 8.

CANADA: When using the term Canada, I am referring to the laws and culture of largely English-speaking Canada, and the multicultural groups who identify with English-speaking culture in Canada.²³ Often termed ROC, the “rest of Canada” (outside Quebec), I associate Canada with the federal government as the national government, wherein the provinces have the administrative jurisdiction over affairs of a more local nature. There is no significant presence in any English-speaking Canadian province of a nationalist movement promoting a provincial separation from the Canadian federation in the name of the self-determination of its population. Except for a few provinces that have stronger identities with a particular culture and history, such as in the Maritimes, or that have felt economically disadvantaged by their lack of influence, such as Alberta and British Columbia, for the most part, the provinces are not seen as viable communities of “national” stature or potential, nor does the majority of the population in any province desire separation.

QUEBEC: Conversely, when using the term Quebec, I am referring primarily to francophone Québécois society and culture, and the multicultural groups that identify with francophone culture in Quebec.²⁴ This “projet de société” was asserted in earnest throughout the Quiet Revolution and has found strong expression in the social democratization of the Quebec state over the past 35 years. This process has led to the creation of a strong civic identity that is committed to, at a minimum, the promotion and preservation of the French language and the Québécois legal system within an

²³ This is not to suggest that all ethno-cultural groups necessarily identify with English-speaking Canada and the federal government, as some ethno-cultural groups do not identify with either.

²⁴ Similarly, there are ethno-cultural groups within Quebec society that do not identify with Québécois society, nor with the Quebec state.

increasingly multicultural society, as well as the distinct status of French-Canadians as a “founding people”, and therefore the distinct status of the province of Quebec within the Canadian federation.

JAPAN: When referring to the country of Japan, I am speaking of the predominantly Japanese ethno-cultural group, and the outwardly projected homogeneous image of Japan that is promoted by the government through its nationalist discourse. This image of Japanese identity, society and culture has been largely internalized by its population, despite its inherent contradictions, given the presence of the Ainu peoples, the documented proof of Japan’s multi-ethnic historical origins, and given the presence of sizeable Chinese, Korean, and Brazilian populations, as well as the ongoing recruitment by the government of other “foreign” populations for low-waged employment in modern Japan.²⁵

WORKING ASSUMPTIONS

First, it is important to note that I am approaching the following discussion of marriage law, political theories of citizenship, and notions of equality from a feminist perspective. My perspectives and understandings of the discourses underpinning Canadian, Québécois and Japanese society draw heavily upon analyses and critiques by feminist legal and political theorists, as well as a wide cross-section of research on women’s equality, gender, and power differentials between the sexes. These ideas form the basis of how I have come to understand substantive equality of citizens, and a meaningful notion of both negative and positive freedoms as necessary for the full empowerment of each individual

²⁵ For further reading on these topics, see Weiner; Hudson.

in society. Consequently, I critique the liberal democratic assertion that action taken as a result of a “choice” is necessarily liberating. Contractarians generally assert that an action cannot be viewed as oppressive of an individual if the consent of the individual was given. This statement assumes that human beings do not consent to things that are oppressive or detrimental to their person. Drawing upon the various feminist debates and discussions on the topics of prostitution, pornography, and surrogate motherhood²⁶, among others, it seems perfunctory to conclude that a specific choice demonstrates individual will in a positive sense, without any significant examination or critique of the context of the choice, that is the social, political, economic, legal, and cultural frameworks at play. As argued by Julie Maybee in “Politicizing the Personal”²⁷, by Ann Cudd in “Oppression by Choice”²⁸, and as is starkly evident after a reading of *Sophie’s Choice*,²⁹ inequality is structural or institutional, and oppression “by choice” is embedded in the economic, social, and political framework of a society.

I am arguing that naming is not simply symbolic, but rather, is a complex socio-cultural practice that is imbued with meaning and importance both to individuals and to society alike. The extensive cross-cultural study of naming practices by Richard Alford³⁰, among others³¹, supports this argument. Feminist discussions on the power and use of

²⁶ See Rose Weitz, *The Politics of Women’s Bodies: Sexuality, Appearance, and Behavior* (Oxford University Press: Oxford, 1998); Pateman, *The Sexual Contract*.

²⁷ Julie Maybee, “Politicizing the Personal and Other Tales from the Front Lines”, Anita Superson and Ann Cudd, eds., *Theorizing Backlash: Philosophical Reflections on the Resistance to Feminism* (Rowman and Littlefield: New York, 2002), 152.

²⁸ Ann Cudd, “Oppression by Choice”, *Journal of Social Philosophy* 25 (1998): 22-44.

²⁹ William Styron, *Sophie’s Choice* (Random House: New York, 1979).

³⁰ Alford.

³¹ See Mary Lassiter, *Our Names, Our Selves* (Heinemann: London, 1983); Ellen Markman, *Categorization and Naming in Children* (The MIT Press: Cambridge, 1989); Avner Falk, “Identity and Name Change”, *The Psychoanalytic Review* 62 (1974-75): 647-657; Donal Carbaugh, *Situating Selves: The Communication and Social Identities in American Scenes* (University of New York Press: New York, 1996); Masumi Arichi, “Is it Radical? Women’s right to keep their own surnames after marriage”, *Women’s Studies International Forum* 22 (1999): 411-415; Rubie Watson, “The Named and the

language, the role of labelling by others as detrimental to one's identity, and the value of self-naming in promoting self-determination and empowerment of an individual or group,³² all form the backdrop to my assertions and interest in the punitive role of "choice" for women to retain or abdicate their birth name in marriage. As has occurred in different countries around the world over the past two centuries, the reality that women in Japan are currently fighting for the legal right to retain their birth name in marriage suggests that it would be an insensitive denial of historical and ongoing struggles by women to simply dismiss the issue of naming as unimportant.

In recognition of the power of words to promote stereotypes that limit the full range of women's roles in society, in this paper, I would like to distinguish between the different expressions that are in use and which denote the idea of the last name in different contexts. In some feminist literature, the term surname has been linked to the meaning "sire name", and therefore has been understood as a patriarchal term denoting the last name of explicitly the male spouse and head of the household.³³ Whether there is disagreement on the origins of the word, or whether there is confusion as to actual linguistic precedents, in *Our Names, Our Selves: The Meaning of Names in Everyday Life*, Mary Lassiter traces the etymological origins of the word to the French, and thereafter as used in England following the Norman conquest. As such, she maintains that the actual origin of the word comes from the French word 'sur-noms', meaning

Nameless: Gender and Person in Chinese Society", in *Gender in Cross-Cultural Perspective*, Caroline Brettell and Carolyn Sargent, eds. (Prentice-Hall, Englewood Cliffs, 1997); Brent Hanneson, "What's in a name? Naming your baby", *Today's Parent* 2 (2001): 45-57.

³² See Dale Spender, *Man Made Language* (Routledge and Kegan: London, 1980); Casey Miller and Kate Swift, *Words and Women* (Anchor Press: Garden City, 1976).

³³ Rebekah Fowler and Ann Fuehrer, "Women's Marital Names: An Interpretive Study of Name Retainers' Concepts of Marriage", *Feminism and Psychology* 7 (1997): 31, Note 1.

“additional names”,³⁴ as opposed to the spelling “sirname” which has been rejected by feminists. Despite the neutral etymological origins, it is important to take note of the colloquial use of “surname” to mean the name commonly shared by members of a family.³⁵ By custom or cultural usage, it has seemingly become imbued with patriarchal assumptions that are associated with the term “family name”, implying a shared family name, and which most often refers specifically to the name of the husband that is adopted by the wife and children. As such, I will only be using the terms “surname” and “family name” in situations where it is intended to represent familial assumptions. The term “maiden name” will likewise be avoided as it refers to the name of a woman in the context where one assumes it to be customary, normative, and therefore “natural” for a woman to marry, and change her name in marriage. Women who did not marry were said to remain under their name as a single “maiden”, or were pejoratively referred to as “old maids”, and the title Miss was often used in combination to express the fact that they had not yet married. In order to avoid the gendered assumptions embedded in the abovementioned terms, I will be using the terms “last name” or “birth name” to denote the official second name that a woman holds from birth and which is used to register her legal personhood with the state.

Finally, I would like to briefly deal with the role of naming children. The central reason that I treat women’s name changes in this thesis as a separate issue from the naming of children, is the role of the concept of “choice”, which is never present for a child when she/he receives her/his name at birth. Consequently, from a theoretical

³⁴ Lassiter, 83.

³⁵ Miriam-Webster Online-Dictionary Website, <http://www.m-w.com/cgi-bin/dictionary>, accessed 17 June 2003. The Miriam-Webster online dictionary lists the term with two entries. 1) Denoting the term “additional name” that has been in circulation since the 14th century; and 2) The name borne in common by members of a family.

perspective, I perceive the issue of naming children, and that of an adult woman consciously accepting or choosing to change her name upon marriage, as fundamentally different questions in terms of their relationship to the concepts of moral regulation (of women), sexual discrimination, self-determination, and identity issues. That said, it is imperative that we take note of the interdependence of the two issues and recognize the presence of two kinds of inequality that flow from the naming of children, one that discriminates against the child, and the other that discriminates against the mother. First, the girl child is subjected to the moral regulation of her female person as a result of heterosexist expectations that when she becomes a woman, she will 1) marry a man, and 2) follow naming customs associated with marriage and abdicate her last name. As will be developed in Chapter 4, whereas the continuity and importance of a boy's name is sustained after birth, the girl child will receive a name upon birth, but patriarchal expectations promote her acceptance of the fact that her last name is temporary and will *naturally* be subject to change upon her marriage to a man, and that this symbolically communicates her attaining a woman's ultimate calling and vocation in life: wifedom and then motherhood. Secondly, the naming of children by "parents" suggests an equal role of mother and father in choosing the child's name, however, the very presence of the custom of women's name change alerts us to the reality that under most circumstances, the father has the right to give the child his last name. The mother shares in this name as a result of her earlier acceptance of the patriarchal custom of patronymy, which ascribes the greater value to men's names and therefore contributes to individual women feeling the need to change their last name upon marriage. Were a couple to have both chosen to

use a shared and completely new last name, then an equal sharing in the naming of their children would be in evidence.

As will be addressed in the discussion on patrilineality in Chapter III, and the moral regulation of women in Chapter IV, the issue of what to name future children is a strong factor that compels women to submit to the name change upon marriage. Alternatively, the decision of a woman to retain her birth name results in possible implications for her children's names, as this disrupts the heretofore *natural* right of fathers to name their children with the (his) "family name". In so far as it relates to the notion of "choice", a woman's decision to retain her name leads the couple to a subsequent "choice" with respect to the naming of their children. Contrary to the unified family name scenario, a couple with different last names is potentially more apt to consciously discuss the last name that they will give to their children, and the symbolic meaning imbedded in that choice. Although only a few quantitative studies have been done, most research reflects the contradictory reality that, regardless of a woman's decision to retain her birth name in marriage, it is still largely assumed by most women and men that the children will nonetheless receive their father's last name.³⁶

METHODOLOGY

The basis of my thesis will stem from an argument that I will be making through the application of the theories of Carole Pateman and Charles Taylor. Pateman's critique of liberal democratic theory in *The Sexual Contract*, and Taylor's arguments on the role of

³⁶ Margaret Intons-Peterson and Jill Crawford, "The Meaning of Marital Surnames", *Sex Roles* 12 (1985): 116; See also Laurie Scheuble and David Johnson, "Marital Name Change: Plans and Attitudes of College Students", *Journal of Marriage and Family* 55 (1993): 747-754; Andrew Cherlin, "Hereditary Hyphens?" *Psychology Today* (December 1978): 150.

the state in empowering or discriminating against marginalized groups through the “politics of recognition” will serve as the primary lenses through which to understand the impacts of public and private patriarchy, and the role of the ‘surname’ in the societies of Canada, Quebec, and Japan.

I encountered difficulties in researching aspects of Japanese society due to several reasons. First, being in Ottawa has not allowed me to access the kinds of secondary source materials on Japanese society to which I have access for Canadian society. Similarly, it has not been possible for me to obtain Japanese case law for decisions on marriage and divorce. More importantly, secondary source materials presenting an explicitly *Japanese feminist legal analysis* of the issues are less in abundance than feminist legal scholarship in North America. Furthermore, those works are not generally available in English. Nonetheless, there are many secondary source materials on the role and status of women in Japan and the labour-force participation of Japanese women, written by both Japanese and non-Japanese scholars. I have attempted to complement these materials with two other sources: 1) by consulting feminist Japanese-language websites that aim to educate women about their rights, 2) by referencing my personal experiences of working and living in rural Japan, during which time I was in a unique position to experience the pervasiveness of Japanese sex-roles and sexual inequality firsthand, albeit from a North American feminist perspective. I was also able to speak with Japanese women on a regular basis to explore areas of cultural tensions with respect to gender equality. For my doctoral work, I will be spending a year in Tokyo to further ground my research on women’s citizenship, however, for the scope of this Masters, it was not feasible to travel to Japan.

A second constraint worth noting is the dearth of current and of Canadian materials on the subject of marital names. Interest in marital names developed in earnest during the women's liberation movement of the 1960s, and peaked in the late 70s and early 80s when the laws in Canada (and the United States) were ultimately changed to provide women, and later men, with a variety of naming options in marriage. Consequently, the majority of research materials that I will be referencing date from that era. Moreover, although I was able to find a few studies that documented attitudes or naming preferences in Canada, the range of research, studies, commentary, articles and full books dealing with the topic of a married women's name was much wider in American scholarship and journals. In particular, one of the most quoted authors on the subject among American studies is Una Stannard, who published two detailed books (1973: *Married Women v. Husbands' Names*; 1977: *Mrs. Man*) on the subject during this crucial time.

Given the proximity of cultural attitudes in North America, and the lack of Canadian studies, I will be using both Canadian and American studies from that era to illustrate the thinking and opinions on this issue. This leads to two possible shortcomings; first, attitudes will have possibly changed over the past two decades, and may be more progressive, or conversely more traditional, than those reflected at the peak of the civil rights and second wave feminist movements. Ironically, my own experiences of marriage in 1997 resonated very closely with those cited of birth name-retainers of the 60s, 70s and 80s, and indeed are similar to those expressed by Lucy Stone as early as the 1850s.³⁷ Second, while American and Canadian cultures are similar, studies have shown

³⁷ Lucy Stone became famous for her repeated assertions that a woman has the right to retain her name in marriage. She is said to be the first, or one of the first, American women to retain her birth name in

that Canadians tend to be somewhat more progressive on issues relating to gender, the family, gay and lesbian unions, and women's reproductive health. As such, in order to effectively assess the actual attitudes in 21st century Canada, further research of this issue among Canadians of all provinces would be in order.

While interest in marital naming has continued throughout the 80's and 90s, as evidenced by sporadic journal articles that I have located, the lack of a specific movement in favour of legal changes has meant that the issue has received much less attention from academia, the women's movement, and popular newspapers in the past two decades. This dearth of discussion of the issue in the absence of a visible law reform effort provides us with insight into the ongoing impact of the law in serving as an important site of contestation in gender equality, and in contributing to the formation of social attitudes as a result of social movements and dialogue around specific law reforms.³⁸ Despite ongoing social resistance to women who choose "deviant" naming options such as birth-name retention and hyphenation, most Canadians likely believe that the issue has been equitably "resolved". Consequently, the effects of providing choice of naming options in marriage, and the impact that it specifically has upon women, has not been systematically studied in the past twenty years by academic scholars, nor by institutions such as the Law Commission of Canada.

Given that the vast majority of birth name retainers tend to be white, middle-class, and of professional or academic circles, Embleton and King report the misperception

marriage. After much legal and social resistance to a woman's right to her birth name, Ruth Hale and Jane Grant formed the Lucy Stone League, an organization whose aim was to revitalize the practice by forcing clerks, bureaucrats and the legal profession to acknowledge that a married woman's own name could be her legal one. Women who joined the 'movement' and retained their names in marriage were referred to as "Lucy Stoners". See Chapters 10 through 15 of Una Stannard, *Mrs. Man* (Germainbooks: San Francisco, 1977), 93-131.

³⁸ See Dorothy Chunn and Dany Lacombe, eds., *Law as a Gendering Practice* (Oxford University Press: Don Mills, 2000).

among these circles that more than 50% of women retain their names.³⁹ The lack of research may consequently stem from the persistence of parallel assumptions about marital naming among different social classes and their respective social networks, as a result of minimal discussion/interaction between birth name retainers and those who have succumbed to the pressures of tradition.⁴⁰ Kiecolt and Acock's study demonstrates that more important than maternal employment, there is a significant impact of highly educated mothers upon the socialization of daughters towards less traditional gender roles.⁴¹ Another interesting area of study would be the existence of a correlation between birth name retention by a mother and the marital naming choices of her daughters. As the daughters of first generation (1970s-80s) name retainers come of marrying age, and as more women pursue careers in academia or other high-level professions, a clearer pattern of support for birth name retention may be in evidence.

Finally, while my discussion will be largely dealing with the role and status of last names within the legal context of marriage and divorce, it is important to recognize that this excludes heterosexual couples in Japan and Canada who are living in a common law relationship by choice. Whereas the highest prevalence of common law coupling in Canada occurs in Quebec, the fact that in Quebec no name changes are permitted upon marriage suggests that both women living in common law unions and married women in Quebec are equally affected by the obligation to retain their birth name. According to the 1996 Canadian (including Quebec) census data, 86.5 percent of opposite-sex conjugal

³⁹ Sheila Embleton and Ruth King, "Attitudes Towards Maiden Name Retention", *Onomastica Canadiana* 66 (1984): 14.

⁴⁰ For Canada, see Embleton and King; for the United States, see Fowler and Fuehrer, 317; for more recent American trends, see Joan Brightman, "Why Hillary Chooses Rodham Clinton", *American Demographics* 16 (1994): 910.

⁴¹ Jill Kiecolt and Alan Acock, "The Long-Term Effects of Family Structure on Gender-Role Attitudes", *Journal of Marriage and Family* 50 (1988): 713

unions are marriages, and the remaining 13.5 percent, or approximately one out of every seven unions, is a common-law relationship.⁴² None of my research efforts have turned up studies on the informal naming trends used by common law couples, or couples living in Quebec, however, anecdotal evidence would suggest the possibility that some women in common law relationships choose to be, or accept being called by their partner's name in social settings or in those instances related to their children, when the children bear the father's last name.

Another unfortunate consequence of my focus on last names within the marriage context is the exclusion of all same-sex relationships. The legality of same-sex marriage has literally become accepted "as I type", with the Ontario Court of Appeal decision in *Halpern et al v. Attorney General of Canada et al.* striking down the federal law, effective immediately,⁴³ which restricted marriage to a union between one man and one woman.⁴⁴ The Liberal government has decided against appealing the judgement, and has prepared new legislation that will comply with the legal precedent. That said, resistance to same-sex marriage and discrimination against gays and lesbians based on heterosexist norms of the "ideal family" are likely to continue. Indeed, Alberta Premier Ralph Klein

⁴² Statistics Canada, "Population 15 Years and Over Living in Common-law Unions", Statistics Canada Website, <http://www.statcan.ca:80/english/census96/oct14/mar2.htm>, accessed 10 June 2003; see also "Profiling Canada's Families II", Vanier Institute of the Family, Ottawa (2000): 36-38.

⁴³ *Halpern v. Canada (Attorney General)*, [2003] O.J. No. 2268 (C.A.). The Quebec, [*Hendricks v. Quebec (Attorney General)*], [2002] J.Q. No. 3816, (S.C.), and British Columbia, [*EGALE Canada Inc. v. Canada (Attorney General)*], [2003] B.C.J. No. 994 (C.A.)] decisions struck down the legislation, but provided a time frame within which the federal government was expected to produce new legislation.

⁴⁴ On June 8, 1999, Canadian Parliamentarians voted overwhelmingly (216 - 55) in favor of a motion, introduced by the Reform Party of Canada, which defined marriage as a union between one man and one woman. See "Reform Party motion would restrict marriage to opposite sex couples", <http://www.islandnet.com/~egale/politics/motion.htm>, accessed 19 June 2003; To read the record of the debate in the Hansard, see the Hansard Website: http://www.parl.gc.ca/36/1/parlbus/chambus/house/debates/240_1999-06-08/han240_1020-e.htm#LINK47, accessed 19 June 2003.

has openly declared his intent to fight the legality of gay and lesbian marriage in the Province of Alberta.⁴⁵

Regardless of one's feelings in support of, or against the institution of marriage for straight or gay/lesbian couples, one possible outcome of gay/lesbian marriage may be a loosening of the gendered notions of wife/husband, and the expected sex roles that accompany them. In particular, the naming practices that will be adopted by married gay and lesbian couples represent a fascinating opportunity for further social inquiry on the absence/impact of gender roles, and their expression through last names. Research has shown that lesbian and gay partnerships tend to be more egalitarian than heterosexual ones,⁴⁶ and as such, one might hypothesize a future increase among married heterosexual couples of a) birth name retention, b) mutual name hyphenating, or c) a shared new last name, as egalitarian options gain more acceptance and legitimacy, and as birth name retention becomes less overtly linked with negative perceptions of (unreasonably) strident feminism. Conversely, if name retention becomes associated with lesbianism, and as traditional forces increase the fervour with which they promote the sanctity of the traditional heterosexual family and the protection of "family values", birth-name retention by women may decline in popularity out of fear of reprisal for being stereotyped, not only as a radical feminist, but possibly as a lesbian as well.

The social construct of the family has developed from a wide variety of competing and often contradictory ideologies about masculinity, femininity, motherhood,

⁴⁵ Keith Bradford, "Gay hate capital? Alberta's reputation made worse by stance, says magazine editor", *The Edmonton Sun*, 19 June 2003, <http://www.canoe.ca/EdmontonNews/es.es-06-19-0006.html>, accessed 19 June 2003.

⁴⁶ David Demo and Katherine Allen, "Diversity Within Lesbian and Gay Families: Challenges and Implications for Family Theory and Research". *Journal of Social and Personal Relationships* 13 (1996): 417. See their reference to studies by L. Kurdek, "Lesbian and Gay Couples", in *Lesbian and Gay Identities over the Lifespan: Psychological Perspectives on Personal, Relational, and Community Processes*, D'Augelli and Patterson, eds. (Oxford University Press: New York, 1995).

the role of the father, religious beliefs, morality, economic concerns, the viability of the nation, and respect for individual human rights. In order to fully grasp the implications of women's name change upon marriage, it is important to appreciate the underlying ideologies and discourses that have shaped and influenced the legal and customary framework of the institution of marriage that we have inherited in the 21st century. In order that history not repeat itself on my watch, I will now turn to a brief review of the historical and legal roots of the discourses on marriage and womanhood.

CHAPTER II

CRAFTING WOMANHOOD IN CANADA, QUEBEC AND JAPAN

To understand the legal developments of last name practices in Canada, Quebec and Japan since the post-war period, it is important to explore the historical context of these societies, the cultural and legal framework of the family, and the discourses that influenced the role of women within the institution of marriage, and that contributed to women's inequality within each of the respective societies. Beginning with the historical roots of women's personhood in Upper and Lower Canada, as well as in feudal Japan, I will highlight the assumptions and practices which have often been coined and promoted as the "traditions" of these societies to justify the continuance of discrimination against women, and their confinement to strictly gendered patterns of behaviour that were seen as appropriate for the female sex. These discourses, ideals, or traditions provide insight into the ways in which the private and public sphere roles of women were constructed, and inform us of the extent to which the custom of patronymy, wherein a woman takes her husband's family name, is intimately linked to women's designated status as mothers and wives, rather than as citizens in the social contract.

Despite important differences in the national, cultural, and religious development of Canada, Quebec, and Japan, similarities in terms of gender relations and the legal and cultural histories of women's subordination within the family are in evidence among all three societies. Following the early historical background, I will expose the interdependence of women's paid and unpaid roles by tracing the development of women's legal personhood in the past century, and by building connections between women's rights as paid workers and the dynamics of the patriarchal family. Preventing

the attainment of full equality of women by promoting and reproducing women's economic and political dependence within existing familial (unpaid) and market (paid) structures, the inferiority of women is publicly affirmed in marriage through the symbolic naming of women with their husband's name, communicating the proper sphere of women as that of wives and mothers-to-be, regardless of women's breadwinning/ricewinning or other roles in society.

To acknowledge the important cultural and societal developments that took place in the province of Quebec, the section on the Quiet Revolution will describe the shift towards a civic society based on the Québécois culture and French language, which has also served as a catalyst for the Québécois feminist movement and the full participation of women in Québécois society. I will conclude the section on Canada with an overview of the constitutional guarantees that serve as the guiding post for women's equality in Canada, and identify the renaissance of formal equality, and the challenge that it poses for women's right to equal citizenship in the 21st century. Finally, in the case of Canada, I will include a brief examination of the impact of colonial and patriarchal assumptions about the proper sphere of women upon Aboriginal women.

In Japan, the constitutional guarantees were entrenched in the early post-war period. Accordingly, the Japanese section is a single unit dealing with woman's citizenship rights and cultural resistance to the full implementation of sexual equality in Japan from the post-war era to the present. A section on the Ainu peoples, similar to that provided on Aboriginal women in Canada and Quebec, has not been included given my lack of familiarity with the history of the Ainu in Japan, and given the 'success' of Japanese assimilation policies. Although a revival of Ainu culture has been in evidence,

the vast majority of Ainu marry Japanese spouses, and have been subsumed within dominant Japanese society and culture.⁴⁷

THE CULTURAL/LEGAL ROOTS OF WOMEN'S INEQUALITY

CANADA and QUEBEC

The history of Canadian and Québécois women's legal rights has been at times, both asymmetrical and dichotomous due to divergent cultural paths, and at times similar due to similarities between the common law system in Canada and the civil law system in Quebec. Flowing from the British tradition, women in Canada customarily took their husband's name upon marriage, even though in Britain this was not a universal tradition. If a woman's name indicated a well-connected or wealthy family, she was likely to retain it in marriage, and in those rare instances where there lacked a male heir, taking the wife's surname was sometimes a pre-condition for marriage in order to ensure the inheritance of family wealth.⁴⁸ Following the civil law tradition and the Continental doctrine of community of property, women in Quebec had the capacity to retain property holdings in their own birth name. On the other hand, the management of that property fell to their husbands upon marriage.

Dickenson suggests that the common law system of *coverture* represented the culmination and consequence of a long decline in women's civil rights, including their rights in property. She argues that the codification of guild membership in the thirteenth and fourteenth centuries, like that of the laws under more centralized government, is what

⁴⁷ Tomoko Keira, "My Work as an Ainu Woman", in *Voices from the Japanese Women's Movement*, AMPO-Japan Asia Quarterly Review, ed., (M.E. Sharpe: New York, 1996), 162.

⁴⁸ Embleton and King, 12.

limited public-sphere access for women by changing the definitions of citizenship.⁴⁹ She observes:

In the period up to and including the seventeenth century, with the centralization and consolidation of states into absolutist monarchies, inheritance through the female line was barred. The compilation of laws into codes--often influenced by Roman law, which gave near absolute power to the father of the family—set forth the principles by which women were restricted from public participation and civil rights.⁵⁰

As *The Lawes Resolutions on Woman's Rights* enunciated in 1632, through coverture, the husband acquired control over his wife's property and earnings, and created the doctrine, "That which the husband hath is his own...that which the wife hath is the husband's."⁵¹

Blackstone articulated the common-law doctrine of coverture as follows:

The very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband; under whose wing, protection and cover, she performs everything; and is called in our law-French a *feme covert*, *faemina viro co-operta*; and is said to be *covert-baron*, or under the protection and influence of her husband, her baron, or lord; and her condition during her marriage is called her *coverture*.⁵²

Blackstone presented this doctrine as rational and consistent with the economic system, because it provided for the secure transmission of the property of the upper classes to their lawful heirs.

In the 18th century, many women in Quebec argued that they were better protected than their Canadian sisters. Although the civil law established the primacy of the male head of household over his wife and children, Quebec women continued to exist as

⁴⁹ Donna Dickenson, *Property, Women and Politics: Subjects or Objects?* (Rutgers University Press: New Brunswick, 1997), 80.

⁵⁰ Dickenson, 82.

⁵¹ Quoted in Dickenson, 83.

⁵² Dickenson, 83.

persons in the law after marriage. Conversely, under the common law system, marriage was said to constitute the “legal death” of women, in that wives were completely subsumed under the legal personhood of the husband in the marital union.⁵³ Invoking the legacy of the biblical creation story, Caparros explains, (trans) “he created woman from Adam’s rib, the common law took the *erunt duo in carne una*, and the spouses effectively become, from a legal perspective, one sole being: that of the husband.”⁵⁴ Finding justification in an “acceptable” religious past, Genesis 3 was likewise interpreted to justify men’s dominance within the family and that the “husband is the head of the wife”.⁵⁵

In 1866, the *Coutume de Paris* was updated into what is now considered the Civil Code of Quebec.⁵⁶ Following the Napoleonic Code of France, the legal structure of the family remained intact, with a few exceptions. The Civil Code maintained the necessity that a woman obey her husband, that she retain his citizenship, that he alone be authorized to choose the location of their residency, that she retain only that profession which her husband has, and that he alone be legally recognized as the guardian of their children.⁵⁷ To encourage the nuclear family under the guardianship of a man, a child born out of wedlock could be made ‘legitimate’ if the parents married.⁵⁸

⁵³ Dumont et al, 82/129.

⁵⁴ “Il créa la femme de la côte d’Adam, la common law reprend le *erunt duo in carne una*, et les époux deviennent effectivement, au point de vue juridique, une seule chair: celle due mari. ” Ernest Caparros, *Les lignes de force de l’évolution des régimes matrimoniaux en droits comparé et Québécois* (Les Presses de l’Université de Montréal: Montreal, 1975), 20; see also Margaret McCaughan, *The Legal Status of Married Women in Canada* (The Carswell Company: Toronto, 1977), v.

⁵⁵ Stannard, *Mrs. Man*, 51; see the discussion of *Bradwell v. The State* wherein American Justice Bradley invokes the “the law of the Creator”, in *Sex Roles in Law and Society: Cases and Materials*, Leo Kanowitz (University of New Mexico Press: Albuquerque, 1973), 42.

⁵⁶ Dumont et al, 152.

⁵⁷ Dumont et al, 153-155

⁵⁸ Dumont et al, 152-53

Given that married women under common law had no legal personhood, were incapable of entering into a contract, forfeited the right to manage their real property, and had no custodial rights over children within marriage,⁵⁹ women of Canada lobbied for greater protection in marriage, leading to the adoption of married women's property acts. Throughout the late 19th century, and into the early 20th century, Canadian provincial jurisdictions formed, and *Married Women's Property Acts* were passed and improved. By the end of the nineteenth century, women held the right to dispose of their goods as they saw fit in the majority of common law provinces.⁶⁰ Although developed in response to notions that women were "weak and liable to be imposed upon by their husbands", Chambers suggests that the paternal protection of women by the state in the *Married Women's Property Acts* was a crucial turning-point that allowed for further legal reform for all women, and hinted at the tentative recognition of women's emerging status as citizens.⁶¹ Nevertheless, husbands still had the right to beat or 'discipline' their wives, as well as having the right to their sexual services.⁶² The legal inability of women to be guardians of their children remained, and even upon his death, the father, through his will, could appoint the guardian of his children to the exclusion of their mother.⁶³

Society of late nineteenth century Canada and Quebec not only subscribed to the notion that women were naturally inferior to men, but also to the scientific understanding that only men were capable of originating a new life and were the sole progenitors. If the

⁵⁹ Susan Boyd, ed., *Challenging the Public/Private Divide: Feminism, Law, and Public Policy* (University of Toronto Press: Toronto, 2002), 22.

⁶⁰ Constance Backhouse, *Petticoats and Prejudice: Women and the law in Nineteenth-Century Canada*, (Women's Press for the Osgoode Society: Toronto, 1991), 177.

⁶¹ Lori Chambers, *Married Women and Property Law in Victorian Ontario* (University of Toronto Press: Toronto, 1997), 4.

⁶² Weitz, 4.

⁶³ Boyd, 23.

female womb merely provided the soil for men's generative seed⁶⁴, naturally, the father should have complete domain and naming rights over his offspring.⁶⁵ Furthermore, the financial asset that children represented in terms of their contribution to the household in both rural and pre-industrial economies was understood as an extension of men's property rights over his wife and children, as well as the fruits of their respective labour.⁶⁶ Under the Civil Code, women could be joint guardians with their husbands over their children, but upon separation, the ownership of the father took precedence. The sexual conduct of the mother was highly scrutinized in cases where the mother sought custody, and any assertion of adultery committed by the wife was sufficient cause for divorce and denial of the children's custody.⁶⁷

By the end of the nineteenth century, improvements in the law allowed mothers to have some rights to access and custody over their children after divorce; however, the overriding paternal authority over children and their mothers was the default position underpinning the law.⁶⁸ Indeed, the father, as 'sole guardian' could bind out his infant children, apprentice them, give them in adoption, educate them how and when he pleased, and in what religion he chose. Construed as not only the biological creator of children, the man in each family had the religious, economic, political and legal status as the head of the household. Both in the Canadian and Quebec legal systems and as woven into the cultural fabric, the authorship, ownership, and guardianship of a man over his family was

⁶⁴ Sharon Lebell, *Naming Ourselves, Naming Our Children: Resolving the Last Name Dilemma*. (The Crossing Press: Freedom, 1988), 46.

⁶⁵ Stannard, *Mrs. Man*, 14.

⁶⁶ Boyd, 26.

⁶⁷ Boyd, 29.

⁶⁸ Boyd, 30

expressed through the role of naming women and children with a man's last name, and served to affirm their dependent status to the public world of men.

JAPAN

Contrary to the formal legal tradition in Canada and Quebec, from roughly the ninth through the nineteenth century, Japanese society regulated itself largely by its own form of customary law that was "attuned to rice culture and peculiar feudal institutions."⁶⁹ Henderson describes the resultant customary law of the Tokugawa era (1603-1868) as almost exclusively unwritten, and "overlaid with a politico-legal tradition of Confucianistic social stratification and family hierarchy, the feudal devices of vassalage, and the symbolism of the Imperial Court in Kyoto."⁷⁰ As a result of exogamy (marrying outside one's kinship group) and patrilocal marriage (the custom whereby the wife is subsumed within the husband's family), daughters were considered 'lost' to the family of their future husbands, and were, therefore seen as a burden to be borne. The investment of time and resources in daughters would be reaped by their husband's family, as would any property a woman owned.

The head (*koshu*) of the pre-industrial Japanese household (*ie*)⁷¹ was most often male⁷², and had as his primary concern, the preservation of household property,

⁶⁹ Dan Henderson, "The Evolution of Tokugawa Law", in *Studies in the Institutional History of Early Modern Japan*, John Hall and Marius Jansen, eds. (Princeton University Press: Princeton, 1968), 204.

⁷⁰ Henderson, 204.

⁷¹ "Ie" is the Japanese word for household or family. It is written with characters that depict a pig under a roof. Not surprisingly, this character is used in combination with the character "inside", to create the word that a husband uses for wife: "kanai", or "person inside the household". The word "shujin" or "husband" in Japanese is the same as that used to denote one's "master". I preferred to use the term "tsureai" or "companion". When I explained my rejection of the word "shujin", most Japanese women were surprised by its alternate meaning, and had been rather oblivious of the power dynamics of the term, and disassociated it completely from the meaning "master" when using it to refer to their husbands. While I am using the term husband in this work, in my personal life, I likewise use the term "partner" in

occupation, name, and status in the local community. Functioning as a stem family, only one child remained with the parents after marriage⁷³ and therefore, parents looked to the heir, often the oldest son, to provide for them in old age. Family continuity was based on a patrilineal kinship that placed the emphasis of family authority and succession upon the senior male and son.⁷⁴ The worship of (most often) patrilineal ancestors was promoted as part of the national Shinto religion, and the househead performed the sacral worship and offerings.⁷⁵ Through the parent-child (*oyabun-kobun*) model, members were registered under, and legally subordinated to the househead, whose surname they shared, and who was responsible for the management of the household property.⁷⁶ Adults trained young female members, such as brides and daughters, and male members, including servants, to subordinate their personal hopes to the household needs.⁷⁷ In selecting a spouse, priority was placed on the interests of the family and most marriages were arranged.⁷⁸

English, or “conjoint” in French when referring to my “husband”. This is in part due to my rejection of the patriarchal origins of the word husband, and also in order to use a word that does not exclude same-sex and common law unions. My need to formalize a set word for my partner became clear in Japan as I negotiated daily the linguistic implications of Japanese characters, and the words that I felt were consistent with my feminist convictions. It is these kinds of extremely personal and simultaneously political challenges that make me passionate about cross-cultural work in gender, and which constitute some of the most rewarding opportunities that I have had to develop mutual understanding with diverse women.

⁷² Kathleen Uno notes that women who served as househeads during the Tokugawa era often did so during the period when a male heir was growing to maturity. Kathleen Uno, “Women and Changes in the Household Division of Labor”, in *Reinventing Japanese Women, 1600-1945*, Gail Bernstein (University of California Press: Berkeley, 1991), 24, footnote 25.

⁷³ Uno, 23.

⁷⁴ Norman Stockman, Norman Bonney and Sheng Xuewen, *Women's Work in East and West: The Dual Burden of Employment and Family Life* (UCL Press: London, 1995), 38.

⁷⁵ Munroe Smith, *A General View of European Legal History and Other Papers* (Columbia University Press: New York, 1927), 378.

⁷⁶ Mary Brinton, *Women and the Economic Miracle: Gender and Work in Postwar Japan* (University of California Press: California, 1993), 111.

⁷⁷ Uno, 23.

⁷⁸ Kyoko Yoshizumi, “Marriage and Family: Past and Present”, in *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Kumiko Fujimura-Fanselow and Atsuko Kameda, eds. (The Feminist Press: New York, 1995), 188.

The household was the fundamental unit of domestic and economic organization for all four classes: samurai, peasants, artisans, and merchants.⁷⁹ Brunner's concept of the 'whole house' describes nicely the fusion of the domestic and production functions that was the reality for most social classes in the Tokugawa era.⁸⁰ Walthall shows that peasant women engaged in many activities forbidden to the military class,⁸¹ and merchant class women could own property, be chosen to inherit the family business by taking a bridegroom and maintaining the family name.⁸² However, among the samurai elite, the role of women was increasingly marginal to economic transactions and led to women's low status within the family. The samurai wife managed domestic affairs and was trained as the chief servant of her husband, taking total responsibility for routine family expenses and the upbringing of the children.⁸³ The mobility of samurai women outside the home required an official 'woman's note' and was considered damaging to a samurai man's honour.⁸⁴ The ideal of the woman inside the home was attainable since samurai wives did not have to work for pay to ensure the household's economic success.⁸⁵ Among the ruling elite, restraints on samurai women became a mark of respectability and family honour, stigmatizing the freedom of women of the lower classes, and signaling the symbolic power of the ruling class.

⁷⁹ Rodney Clark, *The Japanese Company* (Yale University Press: New Haven, 1979), 14.

⁸⁰ Stockman, 33.

⁸¹ Anne Walthall, "The Life Cycle of Farm Women in Tokugawa Japan", in *Reinventing Japanese Women, 1600-1945*, Gail Bernstein (University of California Press: Berkeley, 1991), 42-70.

⁸² Joanna Liddle and Sachiko Nakajima, *Rising Suns, Rising Daughters: Gender, Class and Power in Japan* (Zed Books: London, 2000), 108.

⁸³ Stockman, 35.

⁸⁴ Liddle and Nakajima, 102.

⁸⁵ The polite term used by the Samurai class to refer to a wife, and which is used in contemporary Japan, was the term, "oku-san". This literally means "inside" or "private" and referred to the woman "way in the back" or in the innermost part of the castle, where she was contained and protected.

The inferiority of women in Canada and Quebec found justification in the Christian faith and the legal notion of a woman's *coverture* within the family. In feudal Japanese society, the values of Confucianism likewise coupled with the family system and the doctrine of the three obediences (*sanjun kun*) to place women in a position of servitude vis-à-vis the head of the household. Dating from the Chinese writer Lieh Tzu, and appearing in the great Japanese war romance entitled *Gempei sei suiki*, a woman was said to have "no way of independence through life. When she is young she obeys her father, when she is married she obeys her husband, when she is widowed she obeys her son".⁸⁶ While popular tracts, such as Kaibara Ekken's *Greater learning for women* (*Onna daigaku*) combined with the neo-Confucianism of the ruling class to emphasize women's responsibility to the "ie", their duty to obey husbands and seniors, and their innate inferiority,⁸⁷ the ideology of self-sacrifice and loyalty to the success of the household sanctioned women's participation in the economic life of the family unit for the non-samurai classes. As Henderson notes, during the Tokugawa era the Confucian-based natural law left the settlement of civil disputes to the will of the master, father, teacher, or other superiors as a matter of power or "jurisdiction".⁸⁸ This governance-obedience structure extended throughout society, a "family state", and established the relational rules and power dynamics between landlord/tenant farmer, employer/employee, men/women, and emperor/subjects.⁸⁹ Family suits were discouraged by harsh criminal

⁸⁶ Little and Nakajima, 87.

⁸⁷ Uno, 30.

⁸⁸ Henderson, 222.

⁸⁹ Yoshizumi, 187.

penalties, and in the case of spousal discord, a wife's incapacity to sue for divorce left only the option of divorce via the Colorful Divorce Temple (*enkiri-dera*)⁹⁰.

The new Meiji government was established in 1868, replacing the Tokugawa Shogunate, and with influences from Germany and France, it began to craft a European-style code of law.⁹¹ As Mioko Fujieda notes, "a new Japan, with the emperor as head of state, abolished feudalism, introduced a capitalist system, and pursued a path toward modernization, following the models of Western countries."⁹² In order to 'catch up' with the West, militaristic expansionism was pursued, and the slogan, "Enrich the nation, strengthen the army" was promoted across Japan.⁹³ Implicit in the idea of strengthening the nation was a utilitarian view of the family unit. Borrowing from the family "ideal" of the Tokugawa elite and unified by the Japanese Emperor, father of the feudalistic patriarchal family system, the Meiji Constitution (1889) and Civil Code (1898) prescribed the new social order.⁹⁴ The subjugation of women to the head of the household and to men in general, that had been established as customary among the samurai class of feudal Japan, found legal justification for families of all classes through the Civil Code of 1898. Signalling not only the symbolic, but the legal change in her familial ties, a woman who married was crossed off of her father's family registry (*koseki*) and written into that of her husband. The control of her property was transferred

⁹⁰ Henderson, 222, footnote 32; Two temples, Nantokuji in Nitta and Tokeiji in Kamakura, were recognized as asylums for runaway wives, who after three years of life in the temple as a nun were legally regarded as divorced.

⁹¹ Henderson, 204.

⁹² Mioko Fujieda, "Japan's First Phase of Feminism", in *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Kumiko Fujimura-Fanselow and Atsuko Kameda, eds. (The Feminist Press: New York, 1995), 323.

⁹³ Liddle and Nakajima, 21.

⁹⁴ Fujieda, 323.

to her husband, and the custody of children was held by the father exclusively.⁹⁵ The only cases in which the mother had parental rights were when the father died, abandoned the family, or became disabled.⁹⁶ Regardless of their economic, political, or social status, all women were placed outside the hierarchical ordering of (male) society. The aim of remaking Japanese women as part of the remaking of Japan was promoted by Meiji bureaucrats with the slogan, “good wife, wise mother” (*ryosai kenbo*)⁹⁷, and signalled the newly recognized importance of women’s education for the enhancement of their household and childrearing tasks.⁹⁸

Motherhood and the birth of sons became a central focus of women’s duties. Under the civil code, a husband’s illegitimate sons had prior rights to the family estate over legitimate daughters.⁹⁹ Continuing the legacy of male sex right, despite the fact that concubinage was abolished in 1880, licensed prostitution continued, and a polygamous attitude was present across all strata of Japanese society.¹⁰⁰ By granting illegitimate sons (*shoshi*)¹⁰¹ a higher rank in the succession line than female children born of a legal wife, the Japanese government effectively allowed men to commit adultery to ensure his family line, all-the-while making adultery a criminal offence for married women.¹⁰² The parent-male child relationship remained much more important than the relationship between

⁹⁵ Sachiko Kaneko, “The Struggle for Legal Rights and Reforms: A Historical View”, in *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Kumiko Fujimura-Fanselow and Atsuko Kameda, eds. (The Feminist Press: New York, 1995), 9.

⁹⁶ Yoshizumi, 188.

⁹⁷ Barbara Molony, “Equality versus difference: the Japanese debate over ‘motherhood protection’, 1915-50”, *Japanese Women Working* (Routledge: London, 1993), 126.

⁹⁸ Sharon Nolte and Sally Ann Hastings, “The Meiji State’s Policy Toward Women, 1890-1910”, in *Recreating Japanese Women, 1600-1945*, Gail Bernstein, ed. (University of California Press: Berkeley, 1991), 152.

⁹⁹ Kaneko, 5.

¹⁰⁰ Kaneko, 5.

¹⁰¹ *Shiseijii* was the term used for illegitimate children who were not recognized by the father for the purposes of the succession of his family line.

¹⁰² Yoshizumi, 189.

wife and husband. If the wife did not get along with her husband's parents or did not bear (male) children, a wife could be divorced against her will, placing her in a precarious status vis-à-vis all other adult members of the stem family.¹⁰³ In effect, under the Japanese family system, women had the status of daughters, wives, or mothers, and in all aspects of their economic and social roles, they were subordinate to the men with whom they were in relation. As Kyoko Yoshizumi observes, "women and men occupied positions of extreme inequality under the Meiji Civil Code",¹⁰⁴ which would form the basis of social and gender relations until the post-war period. The codification of the gendered hierarchy of the samurai class meant, similar to their Canadian and Québécois sisters, all Japanese women were given the surname of their husbands as a means of delineating to whom, and to which family they belonged.

WOMEN'S PERSONHOOD IN THE 20th CENTURY

CANADA and QUEBEC

The assertion of a public sphere identity has often begun with the recognition of civil and political rights for the individual. Property-based franchise through the *Constitution of 1791* had generally permitted widows in Quebec to vote in elections, however, in 1849 concrete steps were taken to formally exclude all women.¹⁰⁵ Ironically, Quebec women would then be the last in Canada to (re)gain the right to vote provincially. Beginning with the western provinces in 1916, followed by B.C. and Ontario in 1918, Canadian women gradually acquired the right to vote provincially. Women in Quebec would have

¹⁰³ Yoshizumi, 188.

¹⁰⁴ Yoshizumi, 188.

¹⁰⁵ Dumont et al, 126.

to wait until as late as 1940.¹⁰⁶ Federally, the fight for the vote was mainly promoted by an Anglo-Saxon Protestant social elite who endorsed woman's suffrage as a part of a larger reform program designed to reinstate puritan morality, Christianity, the family and the rule of the professional.¹⁰⁷ On the federal front, white women in Canada who were either a part of the First World War effort, or those who had (trans) "a close relative (father, brother, husband) who participated in the war"¹⁰⁸ obtained the vote federally in 1917. Thereafter, women 21 years of age, to the exclusion of Asian women (1947) and Aboriginal women (1960) were granted this basic right of citizenship in May of 1918.¹⁰⁹ A Committee of Québécoises 'suffragettes' formed in 1922 and petitioned the Pope in their efforts to secure the vote provincially. Given that Protestant women in the rest of Canada could vote, the Pope responded in favour of restoring a balance of Catholic voices through women's right to vote.¹¹⁰ Nonetheless, Quebec women faced much opposition among Quebec's own political and religious elite. The Quebec Catholic Press and Bishop Paul-Emile Roy described women's vote as an "attack against fundamental traditions of our race and of our faith"¹¹¹ and remained a vocal opponent for the following two decades.

Despite their acquisition of this most basic political right of citizenship (national suffrage), women's personhood continued to be mitigated by their roles of wife and

¹⁰⁶ Paul-André Linteau et al, eds, *Histoire du Québec contemporain, Tome II : Le Québec depuis 1930* (Boréal: Montreal, 1989), 596.

¹⁰⁷ Chantal Maillé, *Les Québécoises et la Conquête du Pouvoir Politique: Enquête sur l'émergence d'une élite politique féminine au Québec* (Éditions Saint-Martin: Montreal, 1990), 23.

¹⁰⁸ "Un proche parent (père, frère, mari) qui participe à la guerre", Maillé, 22.

¹⁰⁹ Patricia Monture-Angus, *Journeying Forward: dreaming First Nations' independence* (Fernwood Publishing: Halifax, 1999), 72.

¹¹⁰ Maillé, 26.

¹¹¹ Maillé, 26.

mother.¹¹² The *Factory Acts* sought to protect women from conditions that might prevent, or be a danger to, their childbearing roles by regulating the ‘permissible’ working hours.¹¹³ To protect and keep white women ‘pure’, the *Act to Prevent the Employment of Female Labour in Certain Capacities*¹¹⁴ made it illegal for white women to work in businesses owned and run by Asian Canadians.¹¹⁵ The standardized two-parent middle-class white family was seen as the foundation of the modern nation-state, and although married and single women worked in a number of public spheres during the First World War, it was assumed that women would retreat to their natural home sphere once their men returned.¹¹⁶ In 1929, the question of women’s legal personhood was put to the Canadian courts for review with disappointing results. Regarding the ability of a woman to be appointed to the Senate, the highest Canadian court asserted that women were “under a legal incapacity which the word ‘persons’ could not overcome”,¹¹⁷ and oddly declared that women were not ‘persons’ in the intention of the law.¹¹⁸ The Judicial Committee of the Privy Council in London, Canada’s final court of appeal until 1949, overturned this decision on appeal and created a legal precedent for women’s legal personhood.¹¹⁹

¹¹² Backhouse, *Petticoats and Prejudice*, 202.

¹¹³ Maureen Baker, ed., *Families: Changing Trends in Canada*, 3rd ed. (McGraw-Hill Ryerson: Montreal, 1995), 69.

¹¹⁴ *Act to Prevent the Employment of Female Labour in Certain Capacities*, S.S. 1912, c.17, s.1.

¹¹⁵ Constance Backhouse, *Colour-Coded: A Legal History of Racism in Canada, 1900-1950* (University of Toronto Press: Toronto, 1999), 136.

¹¹⁶ Boyd, 46.

¹¹⁷ *In the matter of a Reference as to the Meaning of the Word "Persons" in Section 24 of the British North America Act, 1867*, [1928] S.C.R. 276.

¹¹⁸ Beverley Baines, “Women, Human Rights and the Constitution”, in *Women and the Constitution in Canada*, Audrey Doerr and Micheline Carrier, eds. (Canadian Advisory Council on the Status of Women: Ottawa, 1981), 35.

¹¹⁹ *Edwards v. Attorney General for Canada*, [1930] 124.

As the family sphere became increasingly separate from the economy, women and children's role as economic actors diminished. Amongst the white, middle and upper classes of Canadian families, Baker asserts that wages and the ability to support a family on one's own became "a new yardstick of masculinity."¹²⁰ Conversely, femininity demanded that women perform the roles of unpaid caregivers and nurturers of children's development. Despite the fact that the majority of families strayed from the traditional nuclear breadwinner/housewife model¹²¹, the "cult of domesticity", an ideology among the elite that sought to render glamorous the role of the perfect wife and mother, coaxed women to view marriage and motherhood as the most rewarding opportunity available. The sexual division of labour reinforced women's isolation, their responsibility for children and teenagers, and their dependence upon husbands who worked outside the home. Children became more of a financial liability and the burden of their care was increasingly relegated to women.¹²²

The possibility for divorce likewise had important affects upon the rights and responsibilities of men and women within the family sphere. Acknowledging women's increased responsibility for children, in 1917, the province of British Columbia was the first to recognize in law the right of mothers and fathers to be the "joint guardians of their minor children with equal powers, rights and duties in respect thereto".¹²³ Women delayed marriage and reduced their family size,¹²⁴ and by the end of the First World War, the 1921 census showed the average family as having only three children, and the divorce

¹²⁰ Baker, 67.

¹²¹ Brenda Cossman, "Family Inside/Out", in *Feminism and Families: Critical Policies and Changing Practices*, Meg Luxton, ed. (Fernwood Publishing: Halifax, 1997), 133.

¹²² Boyd, 42.

¹²³ Boyd, 42.

¹²⁴ Bettina Bradbury, "Gender at Work at Home: Family Decisions, the Labour Market and Girls' Contributions to the Family Economy", in *Family Patterns, Gender Relations*, 2nd ed. Bonnie Fox, ed. (Oxford University Press: Oxford, 2001), 112.

rate more than doubled between 1921 and 1936. As women obtained greater guardianship rights over their children, divorce became a more palatable option, as they were less likely to have to sacrifice their relationship with their children. Quebec women were not legally granted joint parental authority over their children until as late as 1977.¹²⁵

Legal precedents continued to reflect judicial resistance to marital breakdown, and this had an overriding influence in the moral regulation of women's choices until the first federal Divorce Act in 1968.¹²⁶ Quebec judges expressed concern that wives not receive too generous financial support, and warned against high wages for working women, lest marriage and motherhood be put at risk.¹²⁷ Although a woman's right to have guardianship over her children was slowly developing throughout the 20th century, it is important to note the ways in which this was framed. First articulated in *Re Orr*¹²⁸, the "tender years doctrine" asserted:

In the case of the father and mother living apart and each claiming custody of a child, the general rule is that the mother, *other things being equal*, is entitled to the custody and care of a child during what is called the period of nurture, namely, until it attains 7 years of age, the time during which it needs the care of the mother more than that of the father, and then the father as against the mother becomes entitled to the custody and care of the child.¹²⁹

As Susan Boyd has extensively documented, "the limits of the tender years doctrine reveal biases that were extremely detrimental to women and that 'discipline' mothers

¹²⁵ Jennifer Stoddart, "Quebec's Legal Elite Looks at Women's Rights: The Dorion Commission 1929-31", in *Essays in the History of Canadian Law*, David Flaherty, ed. (University of Toronto Press for the Osgoode Society: Toronto, 1981), 323-57, 345.

¹²⁶ *Divorce Act*, R.S.C.1970, C-8.

¹²⁷ Boyd, 54.

¹²⁸ *Re Orr*, [1933] 2 D.L.R. 77 (Ont. C.A.), Mulock C.J.O. at 80-1.

¹²⁹ Boyd, 63.

unless they conformed to the expectations of female behaviour.”¹³⁰ Rather than locating their decisions within the context of the rights of women as mothers who gave birth to and nursed their children, thus recognizing women’s unpaid work and significant contribution to society, judges in Canada and Quebec preferred to rationalize their decisions to grant custody to the mother as being in the *best interests of the children*. As will be explored in Chapter III, the question of women’s last names in marriage also continues to be framed in terms of the ‘best interests of the child’, and this serves as a key focal point of their moral regulation towards their husband’s and the “family” name.

During the Second World War women in Canada again filled men’s workforce positions, performing a diverse range of non-traditional jobs, and serving as the breadwinner for their families. Regardless of women’s aptitude and right to paid work, the post-war period saw women being coerced yet again through public policies and moral judgements that encouraged them to cede their jobs to their deserving men. Although the post-war baby boom led to the zenith of the traditional nuclear family supported by a male breadwinner,¹³¹ by 1961 only 63% of families were of this formation.¹³² The employment options for women were not very attractive; bad working conditions, seasonal employment, low pay, and marriage contributed to women not staying for long periods in their paid jobs, and led to women being dubbed as unreliable and uncommitted workers.¹³³ Nonetheless by 1961, over 22% of married women were in the labour force.¹³⁴

¹³⁰ Boyd, 63.

¹³¹ Nancy Mandell and Ann Duffy, eds., *Reconstructing the Canadian Family: Feminist Perspectives*. (Butterworths: Toronto, 1988), 87.

¹³² Mandell and Duffy, 87.

¹³³ Mandell and Duffy, 151-2.

¹³⁴ Mandell and Duffy, 92.

As increasing numbers of divorced women adopted the position of breadwinner for their children,¹³⁵ women needed their rights as individuals and as paid workers to be better protected. Women had been hopeful that the Canadian Bill of Rights in 1960 would see their rights better protected, as it affirmed the existence of equality and fundamental freedoms without discrimination by reason of race, national origin, colour, religion, or sex.¹³⁶ Regrettably, the cases of *Lavell and Bedard*¹³⁷ and *Bliss*¹³⁸ revealed the Canadian Supreme Court's inadequacy in upholding gender equality in the interpretation of the 1960 Bill of Rights. With the realization that women would continue to be defined in terms of their roles as wives and mothers, and would be denied adequate protection of their rights for roles in society that fell outside of those categories, women began to push for more effective legal protection in the form of constitutional guarantees to equality.

The Quiet Revolution

Since the 1960s, Quebec society has undergone a period of intense modernization, civic rejuvenation, unionization, francisization, and democratization of its institutions. Termed the Quiet Revolution, this period constituted a major re-structuring of Quebec society, in terms of both its public infrastructure and of the ideological notions of French-Canadian citizenship that evolved into distinct notions of a Québécois society and identity. Although married women accounted for only 17% of the paid workforce in 1951, by 1971, Quebec women comprised 45% of the paid workforce, not including the thousands

¹³⁵ Mandell and Duffy, 95.

¹³⁶ *Canadian Bill of Rights*, R.S.C. 1970, Appendix III.

¹³⁷ *Canada (Attorney General) v. Lavell and Bedard*, [1974] 1 S.C.R. 1349.

¹³⁸ * *Bliss v. Canada (Attorney General)*, [1979] 1 S.C.R. 183.

of married women working in family businesses.¹³⁹ The separatist agenda in Quebec coincided with a rejuvenation of the Quebec women's movement, allowing women an opportunity to contribute to, and inform the ongoing nationalist debates that sought to redefine both Quebec society and the kind of citizenship that would be meaningful to pursue for an independent Quebec.¹⁴⁰

In 1964, some twenty years after winning the vote, Bill 16 brought an end to the legal incapacitation of women under civil law by recognizing them as autonomous entities within the marriage and allowing women to pursue professions different from their husbands, among other basic rights.¹⁴¹ As early as 1970, women constituted the majority of secondary and college graduates, as well as the majority of university degree holders in Quebec.¹⁴² The Parti Québécois announced an in-depth study to be led by the Council for the Status of Women, and in 1978 published progressive proposals for women's equality entitled, *Québécoises: égalité et indépendance*. Emphasizing the key role of Quebec women in a new nation-state, the report promoted the revision of all institutions, structures, and ideologies that continued to promote or protect unequal divisions of labour between men and women in Quebec.¹⁴³ Despite internal resistance to the implementation of this document, the Quebec feminist movement successfully pressed the government for key public policy changes. By 1980, the passing of Bill 89 brought the legal equality of spouses, the joint authority of both parents over their children, and allowed for the protection of the family residence in the case of divorce.¹⁴⁴

¹³⁹ Dumont et al, 411.

¹⁴⁰ Diane Lamoureux, *L'Amère Patrie: Féminisme et nationalisme dans le Québec contemporain* (Les éditions remue-ménage: Montreal, 2001), 139.

¹⁴¹ Dumont et al, 428.

¹⁴² Lamoureux, 147.

¹⁴³ Lamoureux, 149-50.

¹⁴⁴ Lamoureux, 140.

Reflecting the egalitarian values in circulation, the following year would dispose of the custom of patronymy, and usher in a new legal standard of marital naming: birth name permanence for all citizens.

Constitutional Protections

The inclusion of sexual equality in the *Charter of Rights and Freedoms* as a fundamental principle was championed primarily by the Canadian women's movement.¹⁴⁵ Wishing to maintain Quebec's sovereignty from the federal government, many nationalist and separatist women in Quebec saw the imposition of constitutional changes as an infringement upon the sovereignty of Québécois society. Their government in Quebec City had already enacted the *Chartre des droits de la Personne*, which had accomplished much of what the Canadian Charter promised for the protection of individual rights and freedoms for men and women.¹⁴⁶ Nevertheless, since 1982, the *Charter of Rights and Freedoms* has provided the legal standard for Canada and Quebec. The main cornerstones of women's equality rights were established in such a way so as to include the use of affirmative action policies. In order to uphold the substantive equality of women, the wording in sections 15 states:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

¹⁴⁵ Penny Kome, *The Taking of Twenty-Eight: Women Challenge the Constitution* (Women's Press: Toronto, 1983), 24; see also, Sandra Burt, "Women's Issues and the Women's Movement in Canada Since 1970", in *The Politics of Gender, Ethnicity and Language in Canada*, Alan Cairns and Cynthia Williams, eds. (University of Toronto Press: Toronto, 1986); Claire Bonenfant et al, eds, *L'avenir politique et constitutionnel du Québec vu par des groupes de femmes* (Group de recherche multidisciplinaire féministe: Université Laval, 1992).

¹⁴⁶ Linteau et al, 743.

(2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Coming into effect in 1985, section 15 has been a basis for litigation that has sought to uphold and promote the equality rights of women in Canada and Quebec. Appropriately, the Women's Legal Education and Action Fund, a feminist NGO, launched its first case on April 17, 1985, and successfully challenged the *Vital Statistics Acts* of provinces that required children to carry the last name of their father.¹⁴⁷ The Supreme Court of Canada decisions that have emerged over the past 20 years of litigation have produced some positive results for both women and men. However, the Court's inability or unwillingness to substantively deal with public policy legislation of an economic, social and cultural nature has become increasingly apparent over the past ten years of difficult economic times,¹⁴⁸ and has produced mixed results vis-à-vis women's equality rights.

¹⁴⁷ Razack, 63.

¹⁴⁸ This was most recently and most strikingly evident in the 2002 decision in a case brought by Louise Gosselin, which challenged Quebec's social assistance regulations on the grounds of Section 15 equality rights, and Section 7 right to security of the person. *Gosselin v. Quebec (Attorney General)*, [2002] S.C.J. No.85; See the Media Release: "Gosselin Decision: A Divided Court", National Association of Women and the Law, <http://www.nawl.ca/new-02-12-19.htm>, accessed 17 May 2003.

Aboriginal Women

After all, this labeling [of Indians] is not the responsibility of those who carry the false names... I tell this story about naming because it is symbolic. Growing up “Indian” in this country is very much about not having the power to define yourself or your own reality. It is being denied the right to say, “I am!”— instead, always finding yourself saying, “I am not!”.

Patricia Monture-Angus¹⁴⁹

As Mosse observes, “bourgeois and petit-bourgeois nationalist movements in both Europe and its colonies utilized the ideology of respectability and propriety to recast gender behaviour, family life, and sexual norms into a model of national citizenship.”¹⁵⁰

For the sake of better understanding the development of the legal and moral status of women in Canada, historically framed by racist attitudes which protected and defined white women in opposition to racialized “others”¹⁵¹, I will briefly identify the legal history of the family as it impacted with particularly devastating results upon Aboriginal women.¹⁵² In this thesis, I will only be arguing in favour of the specific legal framework that should be invoked by the Canadian, Québécois and Japanese governments. It is imperative that Aboriginal peoples in Canada and the Ainu peoples in Japan maintain the authority to determine the customary or legal frameworks that define their family structure. That said, the sexual equality of Aboriginal and Ainu women and the

¹⁴⁹ Patricia Monture-Angus, *Thunder in my Soul: A Mohawk Woman Speaks* (Fernwood Publishing: Halifax, 1995), 3.

¹⁵⁰ George Mosse, *Nationalism and Sexuality: Respectability and Abnormal Sexuality in Modern Europe*, (University of Michigan Press: Ann Arbor, 1985), cited in Himani Bannerji, Shahrzad Mojab and Judith Whitehead, eds., *Of Property and Propriety: The Role of Gender and Class in Imperialism and Nationalism* (University of Toronto Press: Toronto, 2001), 18.

¹⁵¹ Although I focus on Aboriginal women, it is important to note the effect of the law on other racialized women, such as Black women, Asian women, and other cultural minority women who have been similarly regulated by society and the state.

¹⁵² See Wendy Cornet, “First Nations Governance, the *Indian Act*, and Women’s Equality Rights”, in *First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports*, Judith Sayers et al, eds. (Status of Women Canada: Ottawa, November 2001): 120-130; For the proposed *First Nations Governance Act*, see the website of the Ministry of Indian and Northern Affairs, http://www.fng-gpn.gc.ca/FNGA_act_e.html, accessed 30 June 2003.

protection of their rights to equal citizenship both within their communities, as well as within Canadian and Japanese societies, are paramount.

While Canadian law's European origins reflect the practice of channeling property to the next generation through power and paid work roles relating to age and gender, Coontz notes that among native groups, the role of the family was "to circulate people and resources, ensuring that all individuals would have a call upon the labor or products of specific others. This militated against the development of economic inequalities...[and] reinforced an ideology that made sharing or generosity rather than profit accumulation the main source of prestige."¹⁵³ In most Aboriginal groups, the conjugal unit of husband, wife and children did not have great importance separate from the much wider kinship network; all members of the group shared in the work and the leisure.¹⁵⁴ As Monture-Angus has explained, having a concept of guardianship over land, rather than property ownership as in Western European societies, Aboriginal peoples' "holistic view of landholding enshrines not only the linear concept of ownership but also, at a minimum, spirituality and responsibility."¹⁵⁵

In an attempt to restrict the territories to be used by the First Nations Peoples, and given the prevalence of relationships between white men, and Indian women¹⁵⁶, as early as 1851 the government of Lower Canada (modern day Quebec) restricted Indian status to the paternal line in an attempt to limit the number of individuals who were entitled by

¹⁵³ Stephanie Coontz, *The Social Origins of Private Life: A History of American Families, 1600-1900*, New York: Verso, 1988), 46, quoted in Baker, 58.

¹⁵⁴ Baker, 58.

¹⁵⁵ Monture-Angus, *Journeying Forward*, 57.

¹⁵⁶ In order to reflect the terms used for First Nations peoples at different times in history, as well as recognize the variety of self-naming that has been advocated by various indigenous groups, the use of the term Indian, Aboriginal peoples, and First Nations are all used.

the negotiated treaties.¹⁵⁷ The federal government followed suit with the *Indian Act* in 1869, stripping Indian women of the ability to confer Indian status on their descendants.¹⁵⁸ Echoing the role of the law in conferring/denying rights that threaten the property claims of the state, Bannerji, Mojab, and Whitehead note, “Nationalism was related to commodified notions of territory through its claims to state power....In turn, notions of property were connected to discourses of gender through the legal/moral regulation of property, citizenship, marriage, the family, and inheritance.”¹⁵⁹ In compliance with the patriarchal assumptions in the laws of the settler population, Indian women who married outside their tribal group had to move to join the tribal residence of their husband’s kinship group, despite the historical role and political power of Indian women within what were often matrilineal societies. In the Mohawk culture, Chieftainships were determined through the female line, and were selected by the senior women of the clan.¹⁶⁰ Contrary to the imported European values, Mohawk women had retained control over their property, had full custody over their children, and possessed the right of divorce.¹⁶¹ Demands by the Grand Council of Indian Tribes of Quebec and Ontario to the federal government to re-instate Indian women’s rights were rejected, contributing to the imposition of colonial patriarchy upon Aboriginal women through to the 21st century.¹⁶²

¹⁵⁷ Dumont et al, 155.

¹⁵⁸ Monture-Angus, *Journeying Forward*, 141; See also Backhouse, *Petticoats and Prejudice*, 22.

¹⁵⁹ Bannerji, Mojab and Whitehead, eds., *Of Property and Propriety: The Role of Gender and Class in Imperialism and Nationalism* (University of Toronto Press: Toronto, 2001), 19.

¹⁶⁰ Monture-Angus, *Journeying Forward*, 144.

¹⁶¹ Backhouse, *Colour-Coded*, 108.

¹⁶² See Anne Panasuk and Claire Gagnon. “Amérindiennes : révolte de l’intérieur”, *Gazette des femmes*, 24: 5 (2003): 17-20; “L’argent des blancs...éléphants blancs”, 21-24; “Le sang ‘impur’ des amérindiennes”, 25-30; “Les oubliées des oubliées”, 36-38; “L’omerté autochtone”, 31-35.

The injustices of the colonial legacy would continue beyond the disappointing case of *Lavell and Bedard* in 1974.¹⁶³ Indian men alone could pass on Indian status to their children and grandchildren¹⁶⁴ until the *Indian Act* was amended as late as 1985. After the amendment, residual sex discrimination persisted through “Indian status entitlement provisions, access to band membership, participation in self-government, access to programs and resources controlled by band council governments on reserves, and the division of matrimonial real property on reserve.”¹⁶⁵ Having stripped Indian women of their historical roles and political power within First Nations communities, the proposed Bill C-7, the *First Nations Governance Act*, does not redress the federal government’s historic imposition of public and private patriarchy upon Aboriginal women. Introduced into the House of Commons on October 9, 2002, this Bill has been seen as yet another paternalistic and patriarchal attempt by the Government of Canada to dictate the terms of Aboriginal self-government to First Nations men and women.¹⁶⁶ Bannerji echoes the connections between the power dynamics of the past and those that shape our current worlds when she states:

Ideology, then, both as form and content, cannot be comprehended without its visceral connection with historical social relations and moral codes of power which texture the everyday life of any civil society and culture.¹⁶⁷

As seen earlier in the way in which the samurai elites protected their political dominance and class/sexual hierarchies by imposing their family “ideal” through law, in Canada it is

¹⁶³ Monture-Angus, *Journeying Forward*, 144.

¹⁶⁴ Monture-Angus, “Standing Against Canadian Law: Naming Omissions of Race, Culture and Gender”, in *Locating Law: Race, Class, Gender Connections*, Elizabeth Comack, ed. (Fernwood Publishing: Halifax, 1999), 91.

¹⁶⁵ Cornet, 122.

¹⁶⁶ This is based on a speech given by Terri Brown (Kukdookaa), National President of the Native Women's Association of Canada, at the Ottawa Social Forum, May 2, 2003

¹⁶⁷ Himani Bannerji, *Inventing Subjects: Studies in Hegemony, Patriarchy and Colonialism* (Tulika Books: New Delhi, 2001), 12.

Aboriginal women who have suffered the brunt of cultural and sexual imperialism at the hands of Canadian political elites on the noble path of nation-building.

JAPAN

Constitutional Protections and the Post-war Era

As seen earlier, Japanese women had few individual or political rights before the end of World War II. Under the prevailing “ie”, or family system, the proper place for women was deemed to be within the home, regardless of a family’s economic reality. Any type of involvement by women in political activities was thought to be contradictory to natural physiological and psychological laws and to the traditions and customs of Japanese society.¹⁶⁸ Following the Meiji Restoration in 1889, a Constitution was proclaimed and established the Emperor as monarch and the sovereign head of state. In 1890, the *Meeting and Political Organization Law* officially restricted any and all political activities by Japanese subjects.¹⁶⁹ Replaced by the *Police Security Regulations Law* in 1900, Article 5 specifically prohibited women and minors from joining political organizations and attending meetings or political speeches. The death of the Meiji emperor in 1912 allowed for an era of increased democracy. The Taisho period (1912-36) saw the emergence of a movement for the universal suffrage of men. Created in 1920, the first nationwide women’s association, *The New Women’s Association*, criticized the patriarchal family system, demanded rights for women and children, and petitioned the Diet to allow women’s political participation. In 1922, the petition was approved,¹⁷⁰ however Japanese women would have to continue their fight for the right to vote. After

¹⁶⁸ Kaneko, 3.

¹⁶⁹ Kaneko, 4.

¹⁷⁰ Kaneko, 6.

the granting of universal male suffrage in 1925, the Women's Suffrage League (*Fusen kakutoku domei*) was created with the following manifesto:

Women, who form one-half of the population of the country, have been left entirely outside the field of political activity, classified along with males of less than 25 years of age and those who are recipients of relief or aid from State or private organizations. We women feel ourselves no longer compelled to explain the reasons why it is at once natural and necessary for us, who are both human being and citizens, to participate in the administration of our country... We women must concentrate our energies solely on one thing, namely, the acquisition of the right to take part in politics, and cooperate with one other regardless of any political, religious and other differences we may have.¹⁷¹

By 1931, the government was on the verge of granting the franchise to women at the local level, however, increased expansionism by the Japanese military, and later the full onset of World War II brought women's political advancement to a grinding halt. After the attack on Pearl Harbor, the government consolidated all women's groups under the Great Japan Women's Organization in 1942. The defeat of Japan under the Potsdam Declaration on August 15th, 1945 lead to the establishment of women's suffrage by the post-war Cabinet under Prime Minister Shidehara Kijuro on October 10, 1945. Thereafter, the Supreme Commander of the Allied Forces under General Douglas MacArthur called for five basic reforms, including the emancipation of Japanese women through enfranchisement and the liberalization of education.¹⁷²

The end of World War II brought reforms to the Japanese Constitution that were meant to promote the pacification and democratization of Japan. Through Article 14 (1) women achieved a constitutionally entrenched protection against sexual discrimination: "All of the people are equal under the law and there shall be no discrimination in political,

¹⁷¹ Kaneko, 7.

¹⁷² Kaneko, 10.

economic, or social relations because of race, creed, sex, social status, or family origin.”¹⁷³ With respect to family law “traditions”, through Article 24, there was an attempt to bring equality to the spouses within marriage:

- 1) Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.
- 2) With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce, and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes.¹⁷⁴

To eliminate the unequal effects of the family system on women, Book 4 of the Civil Code on Relatives, and Book 5 on Succession were revised. Wives were granted recognition as having independent legal capacity, allowing for the separation of marital property upon divorce, and upholding for the first time, the joint exercise of custody by fathers *and mothers* over children during marriage. In divorce, custody of the children could be awarded to either spouse according to the best interests of the children.¹⁷⁵ With respect to marital last names, Article 750 of the Civil Code was revised such that a married Japanese couple were legally required to share the same family name, but it was no longer required that the family name be that of the husband. In accordance with Article 767, following a divorce, the partner who had changed their name would be required to revert back to their birth name.¹⁷⁶

Although the post-war reforms were meant to establish equality, resistance by conservative forces to the abolition of the family system led to its evolution into the

¹⁷³ Kiyoko Kinjo, “Legal Challenges to the Status Quo”, *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Kumiko Fujimura-Fanselow and Atsuko Kameda, eds. (The Feminist Press: New York, 1995), 353.

¹⁷⁴ Kinjo, 355.

¹⁷⁵ Kinjo, 355.

¹⁷⁶ Kinjo, 358.

family registration system, which allowed the state to control the behaviour of family members through practices of surveillance. Government officials had access to records, and on occasions like marriage or recruitment into an organization, employers or prospective spouses could request a copy of an individual's family registry to verify their marital status.¹⁷⁷ Foreshadowing a trend that would permeate the latter half of the century, the *Labor Standards Act* of 1947 essentially legislated a 'separate but equal' framework for women working for pay outside the home.¹⁷⁸ Article 4 only prohibited differential treatment of women in terms of their wages, but was silent with respect to different working hours, conditions, and other important factors in upwards mobility. The cultural expectation that marriage is a woman's 'career' remained the justification for many forms of discrimination, such as the denial of full time paid work to women seeking to re-enter the paid workforce, a dichotomous hiring policy that places all women in the clerical track (*ippan shoku*) and all men in the career track (*sogo shoku*), denial of family allowances and promotions, and gender-based mandatory retirement ages, to name only a few.¹⁷⁹ Employers' policies were shaped by traditional norms that stipulated women's place and roles as primarily in the home. Different from the Western "cult of domesticity", the post-war period saw the continuation of the Meiji state's view of womanhood as integrally linked to a "cult of productivity".¹⁸⁰ With a growing population, Nolte argues that the "cult of productivity" differed in focus from the "cult of

¹⁷⁷ Liddle and Nakajima, 216.

¹⁷⁸ Kinjo, 359.

¹⁷⁹ Mami Nakano, "The Equal Employment Opportunity Law", in *Voices from the Japanese Women's Movement*, AMPO-Japan Asia Quarterly Review, ed., (M.E. Sharpe: New York, 1996), 69; See also, Kinjo; Helen Goff, "Glass Ceilings in the Land of the Rising Sons: The Failure of Workplace Gender Discrimination Law and Policy in Japan", *Law and Policy in International Business* 26 (1995): 1147-68; and Alice Lam, "Equal employment opportunities for Japanese women: changing company practice", *Japanese Women Working* (Routledge: London, 1993).

¹⁸⁰ Nolte and Hastings, 173.

domesticity". Instead of promoting motherhood per se, the "ideal Japanese woman" was the embodiment of the virtues of the various classes; she was modest, courageous, frugal, literate, hardworking and productive.¹⁸¹ Moreover, the "inner" and "outer" realms of Japanese society differed from the Western concept of public and private spheres. The household was a "public place" that functioned as the building block of the nation, and made women's vital functions akin to those of a civil servant.¹⁸²

Designed and stabilized over the post-war period, the ideology of the lifetime employment system (*nenko joretsu*), based on the lifestyle of a married heterosexual male, consistently excluded women from competing in the paid workforce, and from benefiting from any position other than that of the 'professional housewife'. Critiquing the ideology of the post-war Japanese 'corporate family', Eric Hobsbawm declares: "the permanent employment system is an 'invented tradition', a set of practices that represent an attempt to establish continuity with a suitable historic past".¹⁸³ Rosenberg notes that in 1975, the percentage of full time housewives peaked at 55%, and lifelong employment with benefits and job security was only true for one third of Japanese men. As has been shown of the "breadwinner/housewife" model in Canada and Quebec, the reality is that this "traditional" division of labour was not universal, nor was it financially realistic for most families in Japan.

The paid worksphere roles of women continued to be shaped by their mothering roles in other ways as well. Similar to legislation passed in Canada and Quebec, paternalistic perceptions of women appeared in legislation that protected women's bodies

¹⁸¹ Nolte, 172.

¹⁸² Nolte and Hastings, 172-3

¹⁸³ Brinton, 112.

and fertility so as to not jeopardize their natural role of motherhood,¹⁸⁴ or through company recruiting requirements that demanded that women be unmarried, or that they live with their parents.¹⁸⁵ Employers play an active role in encouraging women into their perceived “proper sphere” by pressuring women to quit after marriage¹⁸⁶ and providing them with a “retirement gift”.¹⁸⁷ Rosenberger documents the control of Japanese women’s bodies and the role of the mother in the creation of the nation through discriminatory normative laws against out-of-wedlock pregnancy that are still in effect today, and the illegality of the birth control pill¹⁸⁸ to encourage the birth of children soon after marriage.¹⁸⁹ Echoing the Canadian ‘tender years doctrine’ in some ways, notions of skinship¹⁹⁰ reinforced the belief that women alone were capable of nurturing babies and young children, thus keeping them out of the continuous paid work patterns of men, and disqualifying them for well-rewarded jobs. Despite the adoption of the *Equal Employment Opportunity Law* in 1986, in recessionary times, women were either

¹⁸⁴ Molony, 125.

¹⁸⁵ Nakano, 69

¹⁸⁶ Stockman, 43.

¹⁸⁷ I contributed to several “retirement gifts” for women who were leaving Koshoku City Hall as a result of marriage or pregnancy.

¹⁸⁸ In 1991, the Health and Welfare Ministry was prepared to permit manufacturing and physicians’ prescription of the low-dose pill for contraceptive purposes, however the following year this plan was suspended in fear that it would lead to increases in AIDS as a result of decreased condom use. See Miho Ogino, “Abortion and Women’s Reproductive Rights: The State of Japanese Women, 1945-1991”, in (eds) Joyce Gelb and Marian Lief Palley, *Women of Japan and Korea: Continuity and Change* (Temple University Press: Philadelphia, 1994), 84.

¹⁸⁹ Rosenberger, 16-17. Contrary to other industrialized countries, widespread access to abortion is available to women in Japan, and is used mostly by married women who already have children. 1975, the highest percentage of abortions was among women aged 30-34 years old. See Coleman, Samuel, *Family Planning in Japanese Society: Traditional Birth Control in a Modern Urban Culture* (Princeton University Press: Princeton, 1983), 6.

¹⁹⁰ Skinship is a term used to denote the important physical contact between a mother and child of age 1-3 years old to secure the mother-child bond, and provide a stable source of reassurance to allow for the healthy psychological and mental development of the child. Japanese women will often maintain skinship with their children by strapping them to their backs or fronts and taking them wherever they go, to the extent that women will drive with them tied to their bodies, rather than risk traumatizing the child by placing him/her in a babyseat. This safety concern is beginning to take on increasing importance.

dismissed using the *Workers Dispatch Act*,¹⁹¹ or they were psychologically pressured to quit. As Japanese women attained higher levels of employment outside the home, the realities of childbirth became an important barrier. The *Child Care Leave Act* came into force in 1992, allowing a year's unpaid absence to either a father or mother. Rather than being derived from the right of women to maintain their employment positions after childbirth, this Act has been more plausibly linked to the government's alarm over the rapidly declining birthrate and sizeable aging population.¹⁹²

As aptly summarized by Kanai, the post-war societal project developed a corporate-centred patriarchy managed along the life cycle, and facilitated state and corporate intervention that resulted in the creation of the male role as a 'corporate warrior' and the female role as 'professional housewife', and later, as a 're-employable' (under)paid worker.¹⁹³ In contemporary Japan, family benefits are mostly awarded to married men and fathers to indirectly support the unpaid work of wives, whose dedication to the family is a necessary precondition for liberating men's time and energy for the company. Despite a labour force participation rate of 40% in modern Japan, women continue to serve as the reserve labour force, and in practice, they are denied the right to full time employment in circumstances where this may be disadvantageous to men.¹⁹⁴ Women who re-enter the paid workforce only acquire employment as a part time employee who is outside of the official "kinship" group. Given that there are no restrictions on the number of hours that constitute 'part time' work, women are often

¹⁹¹ This law legalized the "letting go" of workers as a means to enable smooth adjustments in the labour market based on supply and demand. Nakano, 66.

¹⁹² Emiko Ochiai, *The Japanese Family System in Transition: A Sociological Analysis of Family Change in Post-war Japan* (LTCB International Library Foundation: Tokyo, 1996), 161-3.

¹⁹³ Yoshiko Kanai, "Issues for Japanese Feminism", in *Voices from the Japanese Women's Movement*, AMPO-Japan Asia Quarterly Review, ed., (M.E. Sharpe: New York, 1996), 7.

¹⁹⁴ Kinjo, 355.

working full time, but simply have none of the benefits, promotions, or job security provided to male employees.¹⁹⁵ Kazuko Tanaka highlights the disappointing fact that Japanese woman's penetration into the labour market did not signify a real improvement in their status in society, given the persistence of the traditional normative family values.¹⁹⁶ Rather, laws, cultural assumptions, and customary gender roles have combined to prevent women from disrupting the current economic structure, which was designed to promote and protect property rights and wealth accumulation through the male line, and maintain women and minors under their control.

Womanhood Crafted as Second-Class Citizenship

The female citizen, through familial notions underpinning the family system in marriage, has been constructed as an important, if secondary, vessel through which the Canadian, Québécois, and Japanese citizen can be reproduced, nurtured, and empowered to invest *his* energy into the economic success of the country. By situating the historical and legal framework of women's existence, as well as the social and cultural construction of womanhood over the past three centuries of Japanese, Canadian and Québécois society, it is possible to grasp the attitudes, assumptions, and ideas that have both defined women within the context of the home and private sphere of the family, as well as pushed women into the public and paid labour force as back-up workers and wage-earners. Women's

¹⁹⁵ The 'part-time worker' more realistically resembles the status of 'contract workers' who have no benefits, career-track promotions, and who are open to non-renewal should the employer wish to terminate the relationship. The woman who was crucial to the success of my own work proposals within the bureaucracy was hired as a part-time worker. She worked anywhere from 30-60 hours a week to support my and other colleagues' work, and had been hired in that capacity for over 10 years. As a result of new regulations that sought a higher turnover of part time workers, she was essentially shut out of her position during my last year of employment.

¹⁹⁶ Kazuko Tanaka, "The New Feminist Movement in Japan, 1970-1990", in *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*, Kumiko Fujimura-Fanselow and Atsuko Kameda, eds. (The Feminist Press: New York, 1995), 344.

gains over the past three centuries have developed as a result of Canadian, Québécois and Japanese women's efforts in two related areas. First, women have had to struggle to undo the legal *non*-recognition by the state and society of women's equal value as persons. Second, women have had to expose patriarchal contempt for women by naming the *mis*-recognition of women's contributions as citizens in both the paid and unpaid spheres.

Throughout the 20th century, Canadian, Québécois and Japanese feminists have been fighting for recognition of women's contributions to society in the form of social reproduction, care for children, the elderly, and those with disabilities, and for the full implementation of constitutional guarantees that duly recognize, respect and promote the dignity of each individual woman, and her right as a citizen to substantive equality. Despite constitutional protections as early as 1947, Japanese women have spent the better half of the century fighting the legacy of their dependent status within the family system, and demanding the full implementation of sexual equality in all spheres of society.¹⁹⁷ In Canada, the past two decades have seen the Canadian federal government undertake a process of moving away from the post-war goal of "social liberalism" towards the neo-liberal values of market efficiency and consumerism.¹⁹⁸ Constituting an attack on the very foundations of post-Charter citizenship that Canadian feminists and other historically disadvantaged groups had proactively nurtured, neo-liberalism is placing the Charter vision of equality and inclusivity at risk.¹⁹⁹ The legacy of the Quiet Revolution in Quebec has been such that an ongoing commitment to social democratic citizenship, or

¹⁹⁷ Yoko Hayashi, "Policies of the Japanese Government Toward Women", in *Voices from the Japanese Women's Movement*, AMPO-Japan Asia Quarterly Review, ed., (M.E. Sharpe: New York, 1996), 84.

¹⁹⁸ Birte Siim, *Gender and Citizenship* (University of Cambridge: Cambridge, 2000), 25.

¹⁹⁹ Yasmeen Abu-Laban and Christina Gabriel, *Selling Diversity* (Broadview Press: Toronto, 2002), 45.

social liberalism has better protected social services and much of the welfare state infrastructure in Quebec. The past several years have seen the implementation of universal \$5/day daycare and improved maternity and parental leaves. Nonetheless, downsizing of health care jobs and a restriction of welfare services have negatively impacted upon Québécois women. Furthermore, the recent election of the Liberal Party in Quebec reflects a revival of the laissez-faire ideology, with the elimination of universal daycare. Rather, a neo-liberal vision of low government spending, and reliance on the market economy for service provision are now entrenched in the governing parties of both Canada and Quebec.

As the discourse of neo-liberalism continues to take hold among industrialized countries worldwide, women's traditional roles as underpaid workers and unpaid caregivers to children and elderly family members are being structurally maintained. As equally applies to all three societies, Tanaka warns, "The oppression of women has, in fact, become more submerged and less visible."²⁰⁰ Hiding behind the notion that gender equality has been achieved, and that the unequal impacts of social reproduction are a strictly private responsibility, the ability of women to achieve equality both in name and in spirit is seriously threatened. With this history of women's inequality in mind, we will now turn our attention to the theoretical foundations of citizenship, which are reflected in the marriage contract, the custom of patronymy, and the legal framework of marital naming practices in contemporary Canada, Quebec, and Japan.

²⁰⁰ Tanaka, "The New Feminist Movement in Japan, 1970-1990", 351.

CHAPTER III

THE THEORETICAL ROOTS OF THE SOCIAL CONTRACT

Marriage is the only actual bondage known to our law. There remain no legal slaves, except the mistress of every house.

John Stuart Mill²⁰¹

The institution of marriage is framed by a body of written, and unwritten rules, which actively promotes the coupling of like with like within social, cultural and religious groups.²⁰² The rules that are used to shape the nature of the family, the power dynamics among its members, and the labelling of each individual as belonging to a given social group, likewise follow those written and unwritten rules. In order to better understand the detrimental impact of patronymy, it is first important to evaluate its historical and ideological origins, and therefore the symbolic meaning it holds within the contemporary setting. Using the work of Carole Pateman, I will begin by exposing the malestream assumptions of patriarchal society, which have become encoded in the laws of liberal democracies, and reflect the underlying values of the patriarchal social contract. By tracing the prior existence of the sexual contract among men and women, I will uncover the patriarchal symbolism of the custom of patronymy in as far as it symbolizes the ownership/guardianship of women and children by husbands. I will draw links between the custom of patronymy, the ongoing role of paternal or patriarchal power of men within the family, and the persistent subordination of women within both the public patriarchy (civil society) and the private patriarchy (family) of these three societies. I will conclude

²⁰¹ John Stuart Mill, *The Subjection of Women*, 2nd ed. (Everyman's Library, 1869), 147.

²⁰² Serge Gagnon, *Mariage et famille du temps de Papineau* (Les Presses de l'Université Laval: Sainte-Foy, 1993), 146.

with a brief description of the legal and social framework of marital naming in contemporary Canada, Quebec, and Japan.

THE LEGACY OF THE SEXUAL CONTRACT

As was seen in Chapter II in the description of women's inequality among the societies of Canada, Quebec and Japan, the oppression and inferiority of women within the family found justification in a variety of religious, cultural, and customary practices long before being codified within the laws of these societies. Over the past three centuries, Canadian, Québécois, and Japanese societies managed, to varying degrees, to expand their legal notions of 'property-owning personhood'. A generalized equality among men was eventually accepted, and men of all races and classes began to participate in and benefit, to varying degrees,²⁰³ from the policies of the economic and political arena. Inheriting the liberal democratic tradition and its mythology from Europe, Canada, Quebec, and later, Japan saw the development of democratic rights for all of their citizens, and established a legal and constitutional framework of contemporary notions of citizenship by the end of the twentieth century. Nonetheless, one of the greatest failures of political theorists and political leaders of contemporary Canadian, Québécois, and Japanese societies remains their inability to genuinely incorporate women's legal personhood into the law on a par with male personhood. As observed by Mari Matsuda, among other feminists,²⁰⁴ "the refusal to acknowledge context – the actual lives of human beings affected by a particular abstract principle – has meant time

²⁰³ Racialized men, Aboriginal Peoples, and other minority and/or marginalized groups of men nonetheless did not, nor do they currently, benefit from the legal framework and power structures in Canada to the same extent as white, able-bodied, heterosexual males in Canada, and "racially pure", able-bodied heterosexual males in Japan.

²⁰⁴ Other feminist critics of Lockean liberalism include: Jean Bethke Elshtain, *Public Man, Private Woman: Women in Social and Political Thought* (Princeton University Press: Princeton, 1993), 108-46; Susan Moller Okin, *Women in Western Political Thought* (Princeton University Press: Princeton, 1979), 200-1.

and again that women's well-grounded, experiential knowledge is subordinated to someone else's false abstract presumptions."²⁰⁵ One area of the law where the norms of the abstract citizen are particularly evident is that of the marriage contract. As will be developed in the following section, feminist political theorist Carole Pateman maintains that the roots of this persistent contradiction can be found in the classic texts of the social contract, and in the body of the abstract citizen that thrives therein.

Challenging the systematic exclusion and denial of women's existence within patriarchal society, Adrienne Rich observed,

When someone with the authority of a teacher, say, describes the world and you are not in it, there is a moment of psychic disequilibria, as if you looked into a mirror and saw nothing. Yet you know you exist and others like you, that this is a game with mirrors. It takes some strength of soul--and not just individual strength, but collective understanding--to resist this void, this non-being into which you are thrust, and to stand up, demanding to be seen and heard."

The dissection of the rules of this political "game of mirrors" begins with the abstract citizen. The discourse of Western political thought that resonates in the contemporary laws of Canada, Quebec, and Japan, advances the abstract notion of the citizen without coming to terms with the fact that it is not abstract, neutral, nor genderless. Rather, it is imbued with male values about how the world should function, and understandings of citizenship that are patterned after the male worldview and male life experiences. Carole Pateman notes, "since the late seventeenth century, feminists have been pointing out that almost all political theorists have in fact, explicitly or tacitly, upheld patriarchal right".²⁰⁶

²⁰⁵ Mari Matsuda, "Liberal jurisprudence and abstracted visions of human nature: a feminist critique of Rawls' theory of justice", in Kelly Weisberg ed. *Feminist Legal Theory: Foundations* (Temple University Press: Philadelphia, 1993), 748.

²⁰⁶ Carole Pateman, *The Sexual Contract* (Stanford University Press: Stanford, 1988), 19.

Applying her critique explicitly to contemporary political theorists, in *The Disorder of Women*, she writes:

Feminist theory is distinctive because it has raised a new problem; or, more precisely, feminist theorists insist that a repressed problem lies at the heart of modern political theory – the problem of patriarchal power or the government of women by men. Political theorists have deliberated about power and government for at least two thousand years; in the modern period they have engaged in controversies about the legitimacy and justification of the power, for example, of masters over slaves and servants, the rich over the poor, governments over citizens, capitalists over workers, elites over masses, the vanguard party over the proletariat, and technocrats and scientists over laymen. In the texts of the famous theorists there are also discussions of the power of men over women, but contemporary political theory does not acknowledge this form of jurisdiction as political and pays no heed to feminist theorists who attack the legitimacy of patriarchal government.²⁰⁷

I shall begin, then, with Pateman's central critique of the work of John Locke, who, in the *Second Treatise on Government*²⁰⁸, puts forward the idea that civil society originated when men agreed to delegate the function of 'keeping the law' to government. Locke opines that government exists for "the mutual preservation of their lives, liberties, and estates-- three things bound up close together, because life is not safe for a slave, and life cannot be sustained without property."²⁰⁹ As we have seen illustrated in the legal framework of women's personhood over the past three centuries, women were mostly excluded from the group of citizens who could own property and exercise political will within society. If we return to the roots of liberal democratic theory, we find that women could never truly be considered party to the social contract among men, and therefore equal citizenship for women is an oxymoron. Pateman reveals the stark reality that the social contract was in fact premised *by design* upon the basis of women's exclusion. Yet,

²⁰⁷ Carole Pateman, *The Disorder of Women* (Stanford University Press: Stanford, 1980), 2.

²⁰⁸ John Locke, *Second Treatise on Government* (Harlan Davidson: Illinois, 1982).

²⁰⁹ Locke, *Second Treatise on Government*, s. 123-24.

Locke argues that all individuals must see others as property owners like themselves, or else they will see them as 'potential' property. He states, "every Man has a *Property* in his own *Person*. This no Body has any Right to but himself."²¹⁰ In *The Sexual Contract*, Carole Pateman demonstrates that this equality of recognition of each other as property owners never existed between men and women. Rather, due to the sexual contract, a patriarchal relationship that preceded the advent of the social contract, all men were understood as property owners, and all women were potential property to be exchanged.²¹¹ As shown in the history of Chapter II, Canadian, Québécois and Japanese women were all viewed as a transferable good, whose procreative labour, housekeeping, and sexual services could be acquired.

To be clear, within this liberal democratic framework, the heart of the political system is not just any individual, as some political theorists try to assert when they retroactively read women into the texts under the guise of masculine inclusive language. Rather, Pateman exposes the fact that it is a self-interested property-owning white male individual. By presenting the public world filled with sex neutral or 'universal' bodies, the interdependence of the meanings of 'private' and 'public' are effectively repressed. Pateman asserts that the abstraction from the body is necessary if the 'individual' is not to be revealed as a masculine figure.²¹² Further grounding her rejection of the 'abstract citizen', Pateman stresses that "womanhood and women's bodies represent the private; they represent all that is excluded from the public sphere."²¹³

²¹⁰ John Locke, *Second Treatise of Government: A Critical Edition with An Introduction and Apparatus Criticus* by Peter Laslett, 2nd ed. (Cambridge University Press: Cambridge, 1967), s. 27.

²¹¹ Pateman, *The Sexual Contract*, 14.

²¹² Pateman, *The Disorder of Women*, 3.

²¹³ Pateman, *The Disorder of Women*, 3.

As articulated by Dickenson, it is important to note that, “like the social contract in most interpretations, the sexual contract is presented in Pateman as metaphorical or hypothetical, not historical.”²¹⁴ Tracing the theoretical battles between 17th century patriarchalists and social contract theorists, Pateman identifies the debates through which political power evolved from the paternal power of the father to being located in the modern social contract. Paternal patriarchy becomes displaced by fraternal patriarchy, whereby all men gain political rights in the public sphere, and gain male-sex right over women in the private sphere.²¹⁵ The sexual contract that preceded the social contract among men is relegated to the private sphere. In theorizing the political nature of humanity, the sexual contract is presupposed, and therefore omitted. Yet classic political theory rests on the implicit assumption of the existence of both a ‘natural’ and a ‘civil’ state. Pateman notes that women have no part in the original social contract, but neither are they left behind in the state of nature:

Women are incorporated into a sphere that both is and is not in civil society. The private sphere is part of civil society but it is separated from the ‘civil’ sphere. The antinomy private/public is another expression of natural/civil and women/men. The private, womanly sphere (natural) and the public, masculine sphere (civil) are opposed but gain their meaning from each other, and the meaning of the civil freedom of public life is thrown into relief when counterposed to the natural subjection that characterizes the private realm. What it means to be an ‘individual’, a maker of contracts and civilly free, is revealed by the subjection of women within the private sphere.²¹⁶

In contrast to the interrelated experiences of inequality that women experience both within the marriage contract, as well as within civil society, the fundamental assumption of classical political theorists is that the patriarchal separation of the private/natural

²¹⁴ Dickenson, 80.

²¹⁵ Pateman, *The Sexual Contract*, 3.

²¹⁶ Pateman, *The Sexual Contract*, 11.

sphere from the public/civil realm is irrelevant to political life. Following Locke's famous formulation that 'every Man has a Property in his own person', in contemporary liberal democracies, it has been assumed that with the bestowal of rights upon all individuals, all citizens have become owners and everyone owns the property in their own capacities and attributes as a result of universal civil and political rights.²¹⁷ This fundamental premise was also central to the debates around freedom of the employment contract within Marx's *Capital*. And yet, for women, the common law doctrine of *coverture* in Canada and Quebec, as well as the Confucian doctrine of the *three obediences* in Japan explicitly promoted, until well into the 20th century, the contradictory idea that wives and the fruits of wives' labour were the property of husbands.

In the context of the overarching sexual contract, wherein women continue to be named and currently understood as a more liberated piece of male property, it is not possible to perfunctorily "add women and stir" to obtain substantive equality among men and women. Sexual equality is not simply a private familial problem that can be overcome by laws that treat women as though they were "the same" as male citizens. The interrelationship and interdependence of "public" and "private" patriarchy obscure the reality that all of society functions based on the assumption of women's inferiority and existence as 'potential (sexual) property'. Pateman critiques interpretations, such as those by Melissa Butler, that suggest that Locke was silent on women and the social contract because he simply did not wish to alienate his audience.²¹⁸ Arguing that Locke's individual is most definitely male, Pateman notes that when feminists follow standard

²¹⁷ Pateman, *The Sexual Contract*, 13.

²¹⁸ Pateman, *The Sexual Contract*, 21.

readings of Locke, patriarchy is seen as a pre-modern form, and modern society can then be painted as a post-patriarchal familial social form, rather than recognizing persistent sexual inequality in contemporary society.²¹⁹ Indeed, women could not and cannot be citizens in the vein of the liberal democratic 'male' citizen because they cannot establish the basis of their 'freedom' in a dichotomous heterosexual relationship with a subjugated 'wife' in the private sphere.

To be clear, the institution of marriage represented the legal embodiment of the acquisition of a woman's lifetime sexual and reproductive services. As seen earlier, women could not hold property until the late 19th century in Canada, and not until the mid-20th century in Japan and Quebec. The history of women's suffrage likewise dated from 1919 in Canada, 1940 in Quebec, and 1945 in Japan. Although women achieved recognition as individuals in terms of these two pillars of liberal democratic personhood, throughout the 20th century the customary force and ideological importance of the sexual contract among men endured such that marital rape would not be recognized within the law as a crime until 1983 in Canada and Quebec,²²⁰ and not until 2001 did Japanese law make "sexual abuse" by a marital partner subject to criminal punishment.²²¹ Rather than mainstreaming the liberal democratic notions of property-ownership and equal citizenship in law, the state has, through the marriage contract, continued to structure key aspects of society in such a way that patriarchal power over women is present in all social relations within both the private/natural sphere, as well as within the public/civil sphere.

²¹⁹ Pateman, *The Sexual Contract*, 21.

²²⁰ Edmund Coates, "Sex and Reason", *Quid Novi Online* 23, 11 March 2003, <http://www.law.mcgill.ca/quid/archive/2003/03031110.html>, accessed 3 June 2003.

²²¹ Suvendrini Kakuchi, Japan's Battlers of Sex Abuse Confront Culture, Law", *WeNews*, 18 July 2003, <http://www.womensenews.org/article.cfm?aid=1295>, accessed 18 July 2003.

The inherent contradictions of the marriage contract are inescapable. Dickenson notes the conflict that developed between modern, capitalist notions of *freedom of contract*, which imply the presence of two legal persons, and the doctrine of marriage, which produced a fixed *status*, under the concept of coverture:

The marriage *contract* could only be entered by two equal and independent agents, but paradoxically the woman lost all personhood upon assuming the overriding legal *status* of wife. Although both parties must have contracted for the marriage to be valid, neither could set the terms of the contract to differ from those recognized by coverture; nor could they terminate it by mutual consent. Further, despite their nominal freedom to accept or reject the marriage contract, women were assumed to be married. In law the *feme sole* did possess certain property rights, but there was considerable pressures on a *feme* not to remain *sole*: What of those who did not marry? Common law met that problem blandly by not recognizing it. In the words of *The Lawes Resolutions*: "All of them are understood either married or to be married."²²²

Given that marriage was assumed to be the inevitable path for all women, their existence as single women was considered merely "a phase". Even then, single women were understood as the property of their fathers, rather than as intelligible individuals with a selfhood that could realize the expression of its own destiny and future. Women were understood as having only those aspirations that were sanctioned by, or determined by their husbands. As explained in *Lawes Resolution*,

Man and wife are one person, but understand in what manner. When a small brooke or little river incorporateth with Rhodanus, Humber or the Thames, the poor rivulet looseth its name, it is carried and recarried with the new associate, it beareth no sway, it possesseth nothing during coverture. A woman as soon as she is married, is called covert, in Latin nupta, that is veiled, as it were, clouded and overshadowed, she hath lost her streame... To a married woman her new self is her superior, her companion, her master.²²³

²²² Dickenson, 87.

²²³ *Lawes Resolution*, Quoted in Dickenson, 87.

Miller and Swift remind us that the term family comes from the Latin term “famulus”, meaning a servant or slave, denoting the historic status of women and children as a man’s property.²²⁴ As Kant asserted of women, “[w]omen in general...have no civil personality, and their existence is, so to speak, purely inherent. They must be kept well away from the state, and must also be subject to their husbands – their masters – in marriage.”²²⁵ Conversely, Locke’s statement that “government exists to protect life, liberty and property -- three things bound up close together, because life is not safe for a slave, and life cannot be sustained without property,”²²⁶ reveals the fact that the Canadian, Québécois, and Japanese states have in effect not existed for the benefit of women. Representing Canada’s highest authority for legal recourse until 1949, Samuel Menefee documented 387 cases of wife-selling in England beginning with the 10th century and continuing through to the 20th century; ironically, the abolition of the slave-trade had no effect on the trade in wives.²²⁷ Between 1663-1673, the King of France would mobilize the recruitment of over 800 women from religious institutions, hospitals, orphanages, and poor families. Named “les filles du roy” given the King’s payment for their one-way passage to what is modern-day Quebec, these girls and women were expected to marry and reproduce with the local soldiers and colonists.²²⁸ Similarly, Japanese history depicts the open practice of selling daughters into prostitution that continued into the early 20th century,²²⁹ and the government-sponsored sexual abuse of ‘comfort women’ by the

²²⁴ Miller and Swift, 9.

²²⁵ Pateman, *The Sexual Contract*, 169.

²²⁶ Locke, *Second Treatise on Government*, s. 123-24.

²²⁷ Pateman, *The Sexual Contract*, 120.

²²⁸ Dumont et al, 48.

²²⁹ Liddle and Nakajima, 66.

Japanese military during World War II, which remains unresolved to this day.²³⁰ Disinherited from family property, the fruits of their productive and reproductive labour, and the property in their very persons, by custom or by law, women in each of these societies was made the servant or sexual slave of male citizens. While all men owned the property in their person, all women were potential property.

The claiming of a woman was made complete through a contract between a father and the husband-to-be, hence the tradition of asking the father for his daughter's hand in marriage, and the symbolism of the marriage ceremony, wherein the father "gives the bride away".²³¹ The father, as guardian/owner, ensured that the husband-to-be would provide for his daughter's future, and in exchange the husband-to-be gained access to the sexual, procreative, and homemaking labour that the daughter would provide. Although women were not recognized as legal, independent individuals who could enter into contracts, in the marriage ceremony women were nonetheless required to express their 'consent', so as to maintain the appearance of freedom of contract. However, it was the father's signature that confirmed the commitment in law. Likewise, under the Japanese family system, only marriages acknowledged and approved by the househead were recognized as legitimate and binding, and the commitment was confirmed when the househead registered the marriage with the local authorities.

As aptly noted by Alia, "marital re-naming is a form of linguistic domination, with the new name less symbolic of change than *ex* change (a transfer of ownership from

²³⁰ Liddle and Nakajima, 68; See also, Hiromi Yamazaki, "Military Slavery and the Women's Movement", in *Voices from the Japanese Women's Movement*, AMPO-Japan Asia Quarterly Review, ed., (M.E. Sharpe: New York, 1996), 90-100.

²³¹ Pateman, *The Sexual Contract*, 111.

father to husband.)”²³² The naming of female property by their new owner or guardian was linguistically reflected with the use of a female title combined with the name of her husband. Hence a woman became Mrs. John Smith,²³³ or in Québécois society, Mme François Tremblay. Likewise, in Japanese, a husband and wife would similarly be introduced as “Mr. and Mrs. Tanaka”, and a wife would always be called “Tanaka-san” given the predominant use of last names. In social settings, the introduction of a man and woman would clearly communicate whether they were in a marriage relationship, as they would share the same last name. As women began to assert their personhood and retained their first names, using Mrs. Jill Smith, the title of “Mrs.” became an important marker of women’s sexual unavailability as it allowed men to distinguish between those women who were married and those who were not.²³⁴ Coupled with the husband’s last name, the nominal use of “Mrs. Hisname” signified that a woman was “taken”, as well as identifying her master or husband. Conversely, the title “Miss” used in conjunction with a woman’s last name (that of her father) denoted that she was a female open to exchange and sexual relations.²³⁵

As Carol Rose observed of the founding myths of property regimes, “it is not enough for the property claimant to say simply, ‘It’s mine’, through some act or gesture; in order for the statement to have any force, some relevant world must understand the claim it makes and take that claim seriously.”²³⁶ The political construction of the social contract, preceded by the sexual contract over women, established this ‘relevant world’.

²³² Valerie Alia, “Women, Names, and Power”, *Women and Language* 8: 35.

²³³ Pateman, *Sexual Contract*, 121.

²³⁴ Pateman, *Sexual Contract*, 2.

²³⁵ Spender, 27; see Lassiter, 72-73.

²³⁶ Carol Rose, “Possession as the origin of property”, *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership* (Westview Press: Boulder, 1994), 18.

The claims of marriage law were not only created by and for men to the specific exclusion and control of women, but moreover, the “women’s registry” was conveniently upheld and enforced by the political and judicial bodies of the state that had been created by men. Initially established through the religious ceremony and/or the legal marriage contract and reflected among the naming customs of each society, as seen in Chapter II, the rules of this property system were later codified into the legal systems of Canada, Quebec and Japan. Most importantly, the legacy of the sexual contract was the consolidation of men’s power and control of women and children *both inside and outside* the marriage contract.

PATRIARCHY, PATRONYMY, AND POWER

*I try to distinguish between two meanings of motherhood, one superimposed on the other: the **potential relationship** of any woman to her powers of reproduction and to children; and the **institution**, which aims at ensuring that that potential - and all women - shall remain under male control.*

Adrienne Rich²³⁷

As seen in the historical chapter, women officially “lost their heads” in Judeo-Christian cultures in Genesis 3 for having attempted to acquire knowledge, and as such, the husband became the head of the wife.²³⁸ Notions of women’s intellectual inferiority contributed to the situation wherein women were seen as *non compis mentis*, like a child or an idiot, therefore requiring male supervision.²³⁹ Moreover, Stannard notes that females were initially not believed to be essential to the carrying on of life, but were

²³⁷ Adrienne Rich, *Of Woman Born: Motherhood as Experience and Institution*, 10th anniv. ed., (W.W. Norton and Company: New York, 1986), 13.

²³⁸ Stannard, *Mrs. Man*, 50.

²³⁹ Stannard, *Mrs. Man*, 8.

simply “receptacles in which men incubated their life, and any womb would do.”²⁴⁰ In *The Origins of European Thought*, Richard Onians documents considerable evidence that in early civilizations, men’s heads were believed to contain the source of life. The brain of a man was thought to be congealed seed which would travel down the body inside the spinal column, collect in the testicles, and wait to be discharged by the penis.²⁴¹ When men were seen as the sole progenitors of both intellect and human life, women were of much less social and biological value. Similar to the old theory of pregnancy wherein spirits magically entered into a woman’s body, women’s intelligence was likewise seen as limited to intuition or insight gained without effort from a mysterious outside source.²⁴² Stannard notes the irony that male intelligence was like having a baby. Men’s heads were the mental wombs of the world, giving birth to books, paintings, music and all other artistic and intellectual creations. She observes, “Socrates compared himself to a midwife who helped men’s brains give birth to their ideas”,²⁴³ and “Robert Schumann, upon finishing *The Spring Symphony* said that he felt ‘like a young wife just delivered of a child—so light, so happy, and yet so ill and weak.’”²⁴⁴ In fact the disorder of women from a political perspective was that they possessed an ability which men lacked: giving birth. Thus men “pre-empted both intellectual as well as physical motherhood”²⁴⁵ through other means.

As seen in the history of the three societies under review, the institution of marriage, coupled with laws on property inheritancy, children’s legitimacy, and women’s

²⁴⁰ Stannard, *Mrs. Man*, 303.

²⁴¹ Richard Onians, *The Origins of European Thought about the Body, The Mind, The Soul, The World, Time, and Fate* (1951), cited in Stannard, *Mrs. Man*, 50.

²⁴² Stannard, *Mrs. Man*, 303.

²⁴³ Stannard, *Mrs. Man*, 51.

²⁴⁴ Stannard, *Mrs. Man*, 51.

²⁴⁵ Stannard, *Mrs. Man*, 303.

legal and perceived intellectual incapacity placed the offspring of a women under the control and guardianship of men. For rural or farming families, the labour of one's children was considered an economic asset. In particular, having sons allowed for the transference of the property and family line from one generation to another, strengthening the family's power and wealth over the course of time. As Pateman has identified, the sexual contract of patriarchy facilitated the transfer of paternal male sex-right to a generalized fraternal male sex-right and effectively gave men of all classes equal access to women's sexual, reproductive, and homemaking labour through marriage. The non-compliance of women with the rules of the fraternal patriarchy was therefore a threat to the stability of men's political power, as well as the legal and economic structures wherein that power was forged. Echoing these fears, Hobbes warns that if women were to control their own bodies, they might prefer not to engage in social reproduction, and could threaten the political child of men: civil society.²⁴⁶ From the perspective of societal foundations, the sexual contract yielded the control of women's offspring to husbands, and secured men's status as, not only the superior sex, but as the creator of the relevant world of humanity. Pateman writes:

The story of the original contract tells a modern story of masculine political birth. The story is an appropriation by men of the awesome gift that nature has denied them and its transmutation unto masculine political creativity. Men gave birth to an 'artificial' body, the body politic of civil society....The birth of a human child can produce a new male or female, whereas the creation of civil society produces a social body fashioned after the image of only one of the two bodies of humankind, or more exactly, after the image of the civil individual who is constituted through the original contract.²⁴⁷

²⁴⁶ Dickenson, 75.

²⁴⁷ Pateman, *Sexual Contract*, 120.

Lebell maintains that patronymy was the code by which last names and family heritage became based on men's last names, and conveyed the implicit message as to the lack of importance of female heritage and female individuals more generally.²⁴⁸ By reversing the natural biological constituents of the family from mother and child, to the socially and politically constructed "family" composed of father and son, Lebell asserts that patronymy promotes the myth that men are fundamentally vital to the family, and is a vain attempt to deny the reality that men are biologically extraneous to the family after mating has taken place.²⁴⁹ Through marriage, then, the force of patronymy is such that in spirit as in name, "women are plugged into an artificial patrilineal scheme which confers intergenerational potency on the patronymic family name and on the male family figures, who are seen as the principal actors in the family's historical drama."²⁵⁰ As Lebell notes, "The father's position in the family [was] given an importance that is well out of proportion to his actual place, and demotes the mother's role."²⁵¹ Lebell contends that women are the true "heads of families".²⁵²

By symbolically reversing the facts of female significance, patronymy was an important linguistic tool that publicly communicated and reinforced the subordination of women to men. Women's duty to take the husband's family name was therefore a crucial first step, a pre-condition for perpetuating the inferior value and status of women within the family and within society at large. As affirmed as early as 1858, Julia Branch observed, "Resolved, that the slavery and degradation of woman proceeds from the institution of marriage; that by the marriage contract she loses the control of her name,

²⁴⁸ Lebell, 9.

²⁴⁹ Lebell, 42.

²⁵⁰ Lebell, 20.

²⁵¹ Lebell, 43.

²⁵² Lebell, 43.

her person, her property, her labor, her affections, her children and her freedom.”²⁵³ Coupled with patriarchal property regimes that passed wealth from father to son, reflecting the political reality that only men were recognized as individuals in the law, patronymy both reflected and reinforced the belief that only men could belong to the ‘relevant world’ of political and economic power.

The naming of a woman after the husband necessarily eliminated any and all competition from a woman’s family’s lineage, and created a scenario wherein all children would receive the name of their father. Stannard argues that fathers transmitted their own name to children as a way of signifying that their life (and in practice, their property) had been transmitted to the child. “Surnames became male pedigree names, male “life lines,” and men wanted children to carry on their name because they wanted pledges of immortality, sons to carry on their life. A father’s seeds of life did of course generate daughters, but since a daughter had no seeds of life she could not pass them on; a daughter was a ‘genetic dead end.’²⁵⁴

To increase the authenticity of a man’s paternity claim, women’s sexuality was morally and legally regulated by exalting virgins, promoting marriage, and denouncing “loose women” and “unwed mothers”. In order that a woman’s sexual shame be imposed upon her offspring to dissuade women from disobeying the public order of male sex right, the law created a second class status for an unmarried mother’s children. Lombard notes, “when they were recognized as belonging to anybody, illegitimates were recognized as belonging to their mothers and assumed their mother’s surnames at birth.”²⁵⁵ As seen in the histories of Canada, Quebec, and Japan, when codified, the law deemed that out-of-

²⁵³ Stannard, *Mrs. Man*, 103.

²⁵⁴ Stannard, *Mrs. Man*, 302.

²⁵⁵ Lombard, 133.

wedlock children be labeled with the mother's (value-less) last name, and this proactively contributed to the stigmatization of illegitimate or "bastard children", and their disobedient mothers.²⁵⁶ The rules of patronymy and legitimacy maintained the control of wealth in male hands.²⁵⁷ Given women's central role in social reproduction, this "wealth" was not restricted to actual properties and monies, but rather, extended politically and legally to include the acquisition by men of the "human capital" that women and their offspring entailed.

Not surprisingly, the combination of this legal governance and moral intimidation led the vast majority of women in society to follow the path of "acceptable" behaviour. Women understood the dire necessity of remaining chaste until marriage. This would be their only guarantee that the children were "legitimate", that the father would acknowledge them as heirs, and therefore endeavour to provide for them and their mother with his wealth. Given their inability to own property, women understood both the economic and the social requirement that they seek out a marriage contract with a man, and therefore proactively "chose" sexual subjugation as a matter of course. Perceived as the natural preference of women, marriage was an effective vehicle that effortlessly perpetuated women's political and social inequality in both the private and public worlds of men. Within the legal histories of Canada, Quebec, and Japan, the name of the father could only be given to legitimate children, or those illegitimate children who were explicitly recognized by him. This curtailed men's financial responsibility both for children born outside the marriage contract, and the livelihood of their mothers. Rather if children were not wanted or were not recognized by a man, the default position in the law

²⁵⁶ Lebell, 41.

²⁵⁷ Lebell, 42-3.

conveniently made the disenfranchised, likely property-less mother responsible for the child and her/his care, condemning unwed women and their offspring to a precarious fate. This was not meant to provide women with prior rights to their offspring, but rather was meant to punish those women who dared to stray from the security and promise of a man's protection, guardianship, and control through the marriage contract. Conversely, in those instances where the genetic links to a father could not be expressly ascertained, or where a potential financial or property gain could be achieved through a politically constructed basis of fatherhood, as Lebell notes, "patronymy was used to corroborate paternity symbolically."²⁵⁸

The patriarchal power relations that governed and prescribed the subordination of women functioned such that all men could enhance their individual power and be able to predict and agree to the appropriate treatment of women and their children under the law. Furthermore, this was accomplished in such a way as to not restrict male sex-right and male sexuality, but rather provided a win-win situation should they wish to pursue sexual relations, but not wish to be legally linked to the financial or other familial consequences that children entail. As such, male sex right served as the 'great equalizer', and provided each man with the same opportunity to belong to the 'relevant public world', exercise basic political rights, and use the labour of his wife and children to expand his own personal property. Finally, as a result of patronymy, the only legally documented *history* was that of the world of men. Immortality could be gained through the repute and feats of future sons who would invoke their father's existence, while remaining curiously silent as to the name and contributions of the creators of humanity.

²⁵⁸ Lebell, 10.

As Evelyn Fox Keller reminds us, gender, unlike sex, is not a biological given but is “a socially constructed and culturally transmitted organizer of our inner and outer worlds.”²⁵⁹ In the previous sections on the histories of patriarchy in Canada, Quebec and Japan, and in the theoretical deconstruction of women’s sexual slavery in Pateman’s exposure of the social contract, the subordination of women has been culturally and legally fabricated before our very eyes. If our understanding of laws, societal organization, and institutions are to be effective and just in their application and regulation of the lives of women in contemporary society, and if women are to benefit from the equal protection of the law in promoting their liberty and equality, it is essential that political theories, and political leaders come to grips with women’s lived realities. Custom, and its codified sister, the law, must evolve to encompass these perspectives into a plural, diverse, and sincere definition of citizenship for women that cannot be compromised through the marriage contract. The following section will therefore bring us up to date as to the current legal and social reality of marital naming in contemporary Canada, Quebec and Japan.

NAMING PRACTICES IN 21st CENTURY CANADA, QUEBEC, AND JAPAN

Legal Choice of Last Names within Canada

The custom of patronymy began as early as the thirteenth century²⁶⁰, but was not fully established until the early seventeenth century in England.²⁶¹ As early as 1628, Chief Justice Edward Coke stated that although a person may have only one Christian name,

²⁵⁹ Bernstein, 2.

²⁶⁰ Stannard, *Mrs. Man*, 1.

²⁶¹ Stannard, *Mrs. Man*, 151.

“he may have divers surnames...at divers times.”²⁶² Citing the Latin origins of this common law tradition, *mutare itaque nomen...sine aliqua fraude licito iure*, in his 1977 Masters thesis on the inequality of coerced name changes upon women, Nicola Palmieri likewise advances the position that a “person should be free to acquire notoriety and to be individualized with any etiquette-name...as long as no purposes of fraud or damage to others are the reasons for the change.”²⁶³ Inherited with the practices and customs of the common law, the practice of patronymy has been customary in Canada up until the last few decades. On formal social occasions, women sometimes still use their husband’s full Christian name and initials.²⁶⁴ Customs are a part of the social and cultural fabric of a society, but do not in fact inhabit the realm of codified law. Not surprisingly, in Canada, as in other common law countries, legal statutes have never explicitly required a name change by married women. Observed in the 1967 *Royal Commission on the Status of Women*, “Contrary to what many people may think, there is no law which requires a woman to adopt her husband’s name upon marriage. The change of name is a custom.”²⁶⁵

Historically there has been much confusion around the legality of a woman retaining her birth name after marriage. As Weitzman observed of the American backlash against women’s separate identity in marriage, “As long as most women quietly accepted wifehood and the feminine sphere, their names were not an issue. In fact there were no laws on the subject, other than the common law, which allowed persons to take any names they chose.”²⁶⁶ Not until the nineteenth century, when women began to assert their autonomy, did they begin to lose (in practice) their common law right to assert their

²⁶² *Commentaries on Littleton*, quoted in Una Stannard, “Manners Make Laws: Married Women’s Names in the United States”, *Names* 22 (1984): footnote 1.

²⁶³ Palmieri, 7.

²⁶⁴ McCaughan, 43; It is interesting to note that this practice is often still retained for wedding invitations, and other formal events. Wedding catalogues often show the formal patriarchal invitation with, “Mr. and Mrs. John Smith invite you to the wedding of their daughter, Jane Smith, to Tom Brown, son of Mr. and Mrs. Paul Johnson”.

²⁶⁵ *Royal Commission on the Status of Women* (The Commission: Ottawa, 1967), 235.

²⁶⁶ Weitzman, 9.

own name.²⁶⁷ Identifying the various sources of legal confusion, McCaughan notes that provisions for a *legal* change of name were introduced by the provinces, beginning with British Columbia in 1960.²⁶⁸ Under this law, neither the husband nor wife with a shared last name could unilaterally change their name, making it impossible for a woman to revert to her birth name after customarily adopting her husband's name in marriage.²⁶⁹ In response to administrative resistance to a woman retaining her birth name, some women attempted to effectuate a legal name change back to their own last names. Some provinces prevented this by making it a requirement of the *Change of Name Act* that all family members have the same last name.²⁷⁰

In the 1970s, in Manitoba, Nova Scotia and British Columbia, a woman could apply to revert back to her birth name if she had the consent of her husband.²⁷¹ The legal framework in Saskatchewan in 1976 was such that any woman who did not proactively register her intention to retain her birth name within six months of marriage was assumed to have taken her husband's name.²⁷² In the *Legal Status of Women in Canada* published in 1977, McCaughan advised that although "it is possible for a woman to change her name [back to her birth name] on social insurance records, bank account, and driver's licence without too much difficulty...with regard to credit cards, it would appear to be easier for those wives who have an income of their own."²⁷³ Reflecting the assumption that all wives were financially dependent upon their husbands, credit card companies likely wanted to maintain a connection to the legal name that represented the financial

²⁶⁷ Weitzman, 9.

²⁶⁸ *Change of Name Act*, R.C.B.C. 1960, c. 50.

²⁶⁹ McCaughan, 45.

²⁷⁰ Constance Mungall, *Changing Your Name in Canada: How to do it legally* (International Self-Counsel Press: Vancouver, 1977), 32-33, Table 1.

²⁷¹ Mungall, 20.

²⁷² Mungall, 6.

²⁷³ McCaughan, 44.

power within the family. McCaughan further noted that despite the absence of legal authority of the name change, “it is tacitly implied in some legislation and administrative practices that a married woman’s official name is that of her husband.”²⁷⁴ This led to the production of two handbooks on how to change your name in Canada, namely, Mungall’s *Changing Your Name in Canada: How to do it legally*, and David’s *Marriage and Family Law in Ontario*, published in the late 70s.²⁷⁵

Stannard, Daum, and Lamber, among others, have documented numerous examples of married women in the United States being denied the right to practice law, serve as a city councillor, or vote unless they registered under their husband’s last name.²⁷⁶ Regardless of the decision of the Federal State Department to recognize women’s names, Comptroller General McCarl continued to insist that married women sign their husbands’ names to the payroll. In 1925, fearing that Lucy Stoners were not reporting their marriages, he threatened to discharge women who did not immediately report their marriages and have their names changed on the payroll.²⁷⁷ Over forty years later, American researcher Conrad-Rice notes a conversation with the Director of the Seattle Office of Voting Registration in 1971, wherein he stated, “If a man gets married, he doesn’t have to go to register again. A woman can’t be registered under both names. Her legal name, if she’s married, is her new name, but she can be known by an ‘alias’, that is her privilege”.²⁷⁸ Similar forms of administrative resistance in Canada are

²⁷⁴ McCaughan, 44.

²⁷⁵ Rodica David, *Marriage and Family Law in Ontario*, Second Edition (International Self-Counsel Press: Vancouver, 1979).

²⁷⁶ See Stannard, *Mrs. Man*, Chapter 17; Roslyn Goodman Daum, “Married Women’s Surnames”, *Journal of Law Reform* 8 (1974): 64-102; Julia Lamber, “A Married Woman’s Surname: Is Custom Law?” *Washington University Law Quarterly* (1973): 779-819.

²⁷⁷ Stannard, *Mrs. Man*, 211.

²⁷⁸ Joy Belle Conrad-Rice, “The Legal Status of a Married Woman’s Maiden Name”, *Woman Lawyers Journal* 49 (1973): 99.

documented by Mungall, and social resistance to women's birth names is mentioned in Embleton and King's study,²⁷⁹ among others, as having influenced women's decisions to take their husband's name. The proposed 1975 omnibus bill on the status of women that arose out of the Royal Commission would have been a welcome relief, as it amended eight federal statutes that would, among other things, remove the mandatory requirement that a woman declare her marital status as a condition for voting in federal elections.²⁸⁰ Despite the optional nature of taking a husband's name, in 1976 women who sought passports in their birth name had to produce evidence or other pieces of identification with their birth name to prove that they were known by that name.²⁸¹ Oddly, the fall back position was that a woman's name automatically became that of her husband after marriage.

All of these instances reflect the inherent assumption underlying various pieces of legislation that the custom of a woman taking her husband's name had the force of law, and was *automatic* upon marriage. Una Stannard also observed of the United States that "whenever an American woman chose not to follow custom, she was almost invariably told by bureaucrats, lawyers, and judges that her name, will-she nill-she, had automatically been changed by her marriage as a matter of law."²⁸² In Canada, resistance by banks, creditors, public offices, newspapers, and even judges, to the legitimate and legal use of a women's birth name after marriage promoted the reality that most men and women assumed it to be illegal for a woman to use her own name. In somewhat of a comedy of errors, administrative, regulatory, and other arms of the state effectively

²⁷⁹ Embleton and King, 14-15.

²⁸⁰ "Federal status council's report saves harsh words for Indian Act", *The Globe and Mail*, 1 October 1975, 11.

²⁸¹ "Federal status council's report...", 11.

²⁸² Stannard, "Manners Make Laws...", 114.

placed the burden of proof on a married woman to defend the legal legitimacy of her personhood, and the last name that had represented it since her birth. In a letter to the *Globe and Mail* in January of 1982, Ann Sutherland of Vancouver mused about the ridiculous fact that Maureen McTeer, wife of Leader of the Official Opposition, Joe Clark, would need to “prove to the Passport Office that she is now who she was when she was born”, by showing 3 pieces of identification or a statutory declaration before a notary public.²⁸³ Nevertheless, a minority of women practiced what Elizabeth Cady Stanton termed, “the new gospel of individual sovereignty,”²⁸⁴ and continued to assert their individual personhood after marriage without fraudulent intentions, and exercised their customary right, to use their birth name, husband’s name, or any other name.

Perceived as an ‘alias’ at best, a woman’s “maiden” name, like the individual identity of its bearer, was assumed to have suffered a legal death upon marriage, in order to allow for the “wifely” identity of Mrs. Hisname to emerge. In 1983, Mirella Talariol challenged the divorce decree issued by County Court Judge E.G. McNeely, who clearly had no appreciation for the *Charter of Rights and Freedoms* passed the year prior, and had defiantly named Ms. Talariol with her husband’s name Webb. Literally ordering that her name be changed on the divorce papers over the objections of her husband’s lawyer, Judge McNeely unilaterally deemed Ms. Talariol’s birth name to be an ‘alias’ despite her consistent use of her name before and after marriage. Indignant at this injustice, she asserted her intent to have the Ontario Supreme Court correct the recorded divorce proceedings, “I want those judges out there to realize that a woman is a human being, that

²⁸³ Ann Sutherland, “Equality of Women”, *The Globe and Mail*, 7 January 1982, 7.

²⁸⁴ Stannard, *Mrs. Man*, 83.

her name counts.”²⁸⁵ From the perspective of the sexual contract and the male worldview, the post-marital use of a woman’s birth name was likely understood by men to be a form of “fraudulent intent” given that it could potentially obscure the smooth functioning of the women’s registry by allowing a married woman to nominally “pose” as a single woman. By unifying the Webb’s family name, Judge McNeely likely intended to send a message as to how Ms. Talariol *should* have been known.

In 1984, a policy paper drafted by the Ontario Ministry of Consumer and Commercial Relations finally recommended changes to the province’s *Vital Statistics Act* and *Change of Name Act* echoing recommendations made by the Ontario Law Reform Commission fully eight years previously.²⁸⁶ Representing a shift in the law, if not a shift in practice, enacted in 1987, the changes codified the right of married spouses to use each other’s names, hyphenated names, and to revert back to their own birth names more easily during and after marriage.²⁸⁷ Similar legislation would be passed in other provinces, although there were slight variations. For example, British Columbia’s *Name Act* allows for the use of one’s birth name and the last name of one’s spouse after marriage, but hyphenated names still require a legal name change for a fee of \$137.00.²⁸⁸

In contemporary Canada, the acceptance of two last names in marriage has thus become enshrined in the law, following women’s struggle for the respect of their own names and identities in the public sphere. A number of factors have contributed to the recognition of women as autonomous adults, and have effectively tied the public sphere identities of women to their birth names in professional and other adult relationships.

²⁸⁵ “Woman challenges judge over use of maiden name”, *The Globe and Mail*, 17 October 1983, 5.

²⁸⁶ *Report on Changes of Name* (The Ontario Law Reform Commission: Toronto, 1976).

²⁸⁷ Christie McLaren, “Change of surname would be made easier”, *The Globe and Mail*, 28 April 1984, 19.

²⁸⁸ *Name Act*, 1996 R.S.B.C. c. 328.

First marriages were occurring at an older age,²⁸⁹ and by 1985, more than half (55%) of married women were in the paid labour force.²⁹⁰ The nature and structure of “the family” continued to change at a rapid pace as a result of lower fertility, higher divorce rates, reconstituted families, and the battle for recognition of gay and lesbian relationships.²⁹¹ These realities served to increase the dialogue and debate around the institution of marriage. Administrative, legal, and social resistance to women’s customary right to use their birth name after marriage ultimately led to the codification of this custom in provincial *Change of Name Acts*. Consequently, since the late twentieth-century, Canadian men and women have had the option upon marriage of either retaining their birth name, or changing their last name to that of their spouse, and in some provinces, the additional options of adopting a new hyphenated name, or even an entirely new name.²⁹² In all circumstances other than marriage, individuals who wish to change their name must personally underwrite the administrative costs, and apply for the right to effectuate a legal name change through the province’s *Change of Name Act*.

Social Choice of Last Names within Canada

In Western societies, the “tradition” of marriage finds its roots in a patriarchal and patrilineal family union that entails a hierarchical ordering of heterosexual spouses in a legally and socially sanctioned relationship that is represented by the male head of the household. Despite the fact that women’s identities are no longer defined solely in

²⁸⁹ Jillian Oderkirk, “Marriage in Canada: Changing Beliefs and Behaviours 1600-1990”, in Jean Dumas, *Report on the Demographic Situation in Canada, 1992* (Statistics Canada Catalogue 91-209E).

²⁹⁰ Statistics Canada, *The Labour Force* (Catalogue 71-001, Minister of Supply and Services: Ottawa, 1986), 109.

²⁹¹ Statistics Canada, 109; See also, Scheuble and Johnson, 747.

²⁹² McCaughan, 44.

relation to marriage and family, that married women fought for the legal right to retain their birth names, and that marriage laws in Canada allow for the persistence of two individual identities, it is interesting, if not disappointing, to note that in 21st Century Canada, the vast majority of women are still compelled to take their husband's names.²⁹³

A 1994 American survey showed that fully 98% of women changed their names upon marriage; a mere 2% of women retained their birth names.²⁹⁴ According to Fowler and Fuehrer, these women tend to be younger, highly educated, and earned higher incomes than women who used their husband's name exclusively.²⁹⁵ Ironically, a cursory look at name-changing in the State of Hawaii in the late 1970's showed that 10% of couples either kept separate names or used hyphenated names,²⁹⁶ perhaps reflecting the influence of indigenous Hawaiian women, who culturally use their birth name regardless of marriage.²⁹⁷ In Britain, the origin of Canada's political and legal customs, over 90% of brides still take their husband's name.²⁹⁸

Regrettably, Statistics Canada does not produce data on last name changes across Canada. Conversations with their staff indicated that the standardized vital statistics form required for provincial marriage registrations does not provide a space to document the post-marriage names of couples, precluding any quantitative analysis of the frequency with which women give up their names in Canada. Not grasping the possible relevance of this phenomenon to women's equality, a researcher at Statistics Canada blatantly

²⁹³ McCaughan, 44.

²⁹⁴ Fowler and Fuehrer, 315.

²⁹⁵ Fowler and Fuehrer, 315.

²⁹⁶ Cherlin, 150.

²⁹⁷ Una Stannard, *Married Women vs. Husbands: The case for wives who keep their own name.* (Germainbooks: San Francisco, 1973), 18.

²⁹⁸ Ellen Goodman, *Guardian Weekly*, 13-19 September 2001, p. 35.

asked me why Statistics Canada would care if women changed their names upon marriage in response to my telephone inquiries about statistics on this matter.

Given the evidence from studies documenting attitudes in the United States,²⁹⁹ and a small Canadian study done by Embleton and King³⁰⁰, I would expect the Canadian situation to be somewhat closer to the British (90%), than the American (98%) situation. A literature review of trends in American and British society, studies on attitudes to birth name retention, and to the meaning of naming in the context of marriage, as well as anecdotal surveying of the perspectives, experiences and attitudes of women in my own social circles over the past ten years, all lead me to believe that a strong majority of Canadian women in the 21st century likely still take their husband's names in marriage. It would seem that a small portion of Canadian women and an even smaller number of men opt to hyphenate their names; however, even within my own generation and among university-educated friends and colleagues, only a small minority of women are confident that using their birth names before and after marriage is a legitimate choice that is in fact respected by society.³⁰¹ The persistence of this contradiction will be explored in Chapter IV with an in-depth examination of the moral regulation of women's personhood.

The Quebec Model – Birth Name Permanence

One notable exception to the Anglo-American trend of providing choice for name changes upon marriage can be found in Quebec. Up until the Quiet Revolution, women in Quebec were more consistently constrained by a morally conservative Catholic Church

²⁹⁹ Scheuble and Johnson, 747; Fowler and Fuehrer, 318-19; Foss, Karen and Belle Edson, "What's In a Name? Accounts of Married Women's Name Choices", *Western Journal of Speech Communication* 53 (1989): 362; Kline, Stafford, Miklosovic, 603-608.

³⁰⁰ Embleton and King, 11-22.

³⁰¹ Fowler and Fuehrer, 318-19; Scheuble and Johnson, 753.

and a political regime that used familial nationalism to maintain political power over the largely rural population. Gaining the right to vote provincially as late as 1940,³⁰² as documented earlier, women in Quebec have since played a significant role in the political renaissance of the Quiet Revolution, and the re-imagining of what the social contract in Quebec should entail. Fostering a dynamic feminist movement that was integrated into the political debates on Quebec sovereignty from the 70's through to the Quebec referendum of 1995, Quebec women have contributed to a fundamental rethinking of citizenship in which men and women are both integral actors.

For the case of naming in Quebec, the civil law tradition provided that the legal last name of any individual was the last name given at birth, and therefore if women sued a company or a person, or bought land, she did so under her own name.³⁰³ As a result of the influence of common law used across Canada, as Brière notes, the social practice of taking a husband's name had, in practice, achieved the force of law.³⁰⁴ Increasingly high divorce rates, the bureaucratic costs of customary name changes, and the reality that a significant percentage of Québécois were opting for common law relations³⁰⁵ brought the custom under review. Supported by women's groups in Quebec,³⁰⁶ with the Civil Code Revision Office basing its preferred framework on the principle of the permanence of the

³⁰² Linteau, 609.

³⁰³ Mungall, 5.

³⁰⁴ Germain Brière, "Les effets du mariage, selon la conception du législateur Québécois de 1980", *Revue Général de Droit* 13 (1982): 10-11.

³⁰⁵ Jo-Anne Belliveau, Jillian Oderkirk and Cynthia Silver, "Common-law union: The Quebec Difference", *Canadian Social Trends*, Summer 1994, Statistics Canada, 8-13.

³⁰⁶ Fédération des femmes du Québec, "Mémoire sur l'attribution du nom de la personne" (1979), 9. Cited in Boivin, 208, footnote 11; see also, "La réforme du droit du nom et du domicile", *Revue Général de Droit* 6 (1975): 471.

last name and equality of both parties,³⁰⁷ the Quebec government legislated in 1981 that wherever a legal relation is involved, the woman has not only the right but the *obligation* to use only her own last name.³⁰⁸ Recognized as daring by William Johnson in 1980,³⁰⁹ the change to Quebec's family law eliminated women's obligation to negotiate their name within the matrimonial relationship.

Boivin praises the law for effectively eliminating the possibility for "emotional blackmail by the new spouse, or even by the community."³¹⁰ Most fundamentally from the perspective of equal citizenship and liberal-democratic thought, in choosing to legally prohibit last name changes in marriage, the Quebec government has asserted that it is essential that women retain their birth names in order to act as citizens in a relationship with the state. Women who were married prior to the legal changes may use their husband's or ex-husband's names in combination with their own last names. However, as of April 2, 1981, the fact of contracting marriage no longer has any effect on the last name of the individual. Consequently, only in Quebec do 100% of women officially "keep" their birth names in marriage. Specifically, the website of the Quebec government states, (trans) "Married women must conserve their birth names in order to exercise their civil rights."³¹¹ To prevent the customary marital name change from continuing in practice, and without any mention of married men or the pretence of gender-neutral terms, the government insists that married *women* must conserve their

³⁰⁷ Suzanne Boivin, "The Surname of the Married Woman and of Children", in Elizabeth Sloss, ed., *Family Law in Canada: New Directions* (Canadian Advisory Council on the Status of Women: Ottawa, 1985), 119.

³⁰⁸ *An Act to Establish a New Civil Code and to Reform Family Law*, L.Q. 1980, c. 39, s. 7.

³⁰⁹ William Johnson, "Good for PQ! Bill on family law daring stuff", *The Globe and Mail*, 7 March 1980, 8.

³¹⁰ Boivin, 203.

³¹¹ "Les femmes mariées doivent conserver leurs noms de naissance pour exercer leurs droits civils", Communication Québec Website, http://www.separation-divorce.info.gouv.qc.ca/fr/tableau_imp.asp, accessed 10 September 2002.

birth names. Likewise, the *Change of Name* guidelines do not list marriage as one of the relevant considerations for legal name changes.³¹² As I assert in this thesis, from an ideological perspective, the legal changes made by the Quebec government in 1981 link the loss of women's birth names, the names under which they, as individuals, have established legal personhood with the state, to the loss formerly incurred by the doctrine of coverture, of women's civil and legal status as individuals within the social contract.

Legal Choice of "Surnames" within Japan

Despite modern technology, post-modern fashions, and the entrepreneurial role that the Japanese have played in the world economy, as seen in the previous chapter, relations between the sexes in 21st century Japanese society can still largely be understood through the lens of feudal familialism. Japanese people subscribe to a national myth of pure Japanese blood and cultural uniqueness that is represented in the Emperor, and is passed on through the male line to each head of the household.³¹³ With the Meiji Civil Code, family law was codified to require that a wife join her husband's family after marriage and that all family members declare the surname of the head of the family.³¹⁴ This requirement was modified when the post-war Constitution abolished all *prima facie* discriminatory practices against women. As such, since 1947, marriage law allows couples to choose "either" the husband's or wife's family name, but still requires family members to bear the same family name.

³¹² "Information on Civil Status and Changes: Why Change Names?", Website of the Ministry for Relations with citizens and immigration, <http://www.etatcivil.gouv.qc.ca/InfoChan/ENGLISH/InfChg2.htm>, accessed 15 July 2003.

³¹³ Hudson, 14.

³¹⁴ Masumi Arichi, "Is it Radical? Women's Right to Keep Their Own Surnames after Marriage, *Women's Studies International Forum* 22 (1999), 412.

It is important to identify the specificity of the last name or more literally, the “family” name in Japanese society and culture. Contrary to Western society’s predominant use of the first name, in Japan, it is the family name used in conjunction with an honorific title that is used in public and on a daily basis in interaction with acquaintances, colleagues, and also among friends.³¹⁵ Not only is it a tremendous inconvenience to change one’s pieces of identification, residency registration, and passport, among others, one’s personal seal (*hanko*), which serves as the individual’s official signature on legal records and financial transactions must also be re-ordered and re-registered under the new family name.³¹⁶ The ever-present Japanese business card must be altered and disseminated to all past professional, social, or other contacts, lest they lose contact with the marrying woman after her name change. Despite the widespread presence and popularity of the nuclear family in urban cities, the continuity and pervasive use of the family name perpetuates the cultural connotations of the history, status, and repute of successive househeads. In Japan, when one changes one’s family name as a result of marriage, this naming process still very much carries the meaning that one has literally changed families. This is symbolically communicated by the updating of records, wherein a (most often) daughter is crossed off her father’s family registry, and is written into her husband’s family registry.

Social Choice of “Surnames” within Japan

Japanese women are still expected to prioritize their obligations in the family sphere over those within the professional realm, regardless of their intellectual talent and individual

³¹⁵ Arichi, 411.

³¹⁶ Arichi, 413.

ability to contribute to society through a sustained commitment to the paid work sphere. The gendered patterns of Japanese familialism in marriage law have come to dominate and in effect trump the constitutional guarantees that govern the liberal-democratic structure of equal citizenship. While the option that a couple choose one family name appears to be fair and egalitarian, it necessarily forces a confrontation between the rights and preferences of the husband and wife. The extent to which women have a choice with respect to their last names can be measured. The *Nihon no josei data bank* (Data bank on Japanese Women) has documented that in modern Japan fully 98% of women abandon their last name in favour of their husband's.³¹⁷ Changes to the Civil Law that would allow for the retention of both family names in marriage were submitted by Japanese feminists to a subcommittee of the Legislative Council, an advisory body to the Justice Minister. Unfortunately, the proposal that advanced to the National Diet Session in 1996 was ultimately shelved.³¹⁸ Marking a slight relaxation of attitudes, since the fall of 2001, the government has allowed women in the federal bureaucracy to use their birth names among colleagues, however, the name plate worn for clients and customers must still reflect their legally registered name, that of their husbands.³¹⁹

Naming Under the Social/Sexual Contract

As has been illustrated in the past two chapters, the interconnectedness of the public and private spheres works to reinforce the overall persona that each citizen develops, nurtures, and with which they identify as their core “self”. Not surprisingly, one of the first things we want to know about anyone is their name. When we say that we have been

³¹⁷ Arichi, 412.

³¹⁸ Hiroshi Oda, *Japanese Law* (Oxford University Press: Oxford, 1999), 382.

³¹⁹ Upon a trip to Japan in January of 2002, I had the opportunity to learn of this modest improvement.

‘introduced’, at a minimum, this usually means that a third party has told each of us the other person’s name, even if no other information has been offered.³²⁰ Indeed, as Lebell points out, “Names are emotionally and spiritually powerful because we are our names and our names are us.”³²¹ Consequently, for a Canadian or Japanese woman who wishes to remain Ms. Hername, but is pressured upon marriage, as a result of custom, emotional blackmail, or administrative ease to change her name to Mrs. Hisname, the violation of her personhood and of her rights as a citizen are clear. Alia correctly argues that naming is a political activity and that “to give a name is to give power *to*, or gain power *over*, the named.”³²² Clearly, the custom whereby a woman and her offspring are named the property of her husband, is indeed pregnant with political and personal meaning. By tracing the origins of the sexual contract, it becomes clear the extent to which the religious and/or legal marriage contract may be understood as a registry, through which men would know which women were or were not available for their acquisition.

In analyzing Pateman’s deconstruction of marriage it becomes apparent that, philosophically and legally, the change of women’s last names hearkens back to a time when a married woman’s legal status was similar to that of a slave in terms of her ability to protect and sustain her own life through property-ownership. Pateman’s astute analysis of the sexual and social contracts makes it necessary to question even the possibility of equality among heterosexual spouses in marriage, in as far as the laws governing the public and private sphere continue to be imbued with patriarchal assumptions about male sex-right over women’s bodies. The role of patronymy in first claiming women, and then their offspring as property, highlights the extent to which

³²⁰ Lassiter, Preface.

³²¹ Lebell, 7.

³²² Alia, 34.

public patriarchy was forged through the social contract, but was premised upon the explicit control of men over the property in women's bodies within the sphere of private patriarchy. Reflecting the legacy of women's political exclusion from personhood, the custom of patronymy continues to invoke the notion of women's moral, intellectual, and physical inferiority to men. The customary naming practice that persists in contemporary marriages is an extension and reflection of that subordination. Patronymy serves as a stark reminder of an era when women were exchanged among men as goods, when they were seen as legal and moral inferiors whom men could acquire to perform sexual and homemaking services, and who were excluded from the status of "citizen", and from a relationship with the very state that shaped the legal parameters of their existence. As Judith Lorber has eloquently articulated, "there is no core or bedrock human nature below these endlessly looping processes of the social production of sex and gender, self and other, identity and psyche, each, which is a 'complex cultural construction'. The paradox of 'human nature' is that it is always a manifestation of cultural meanings, social relationships, and power politics."³²³ In the context of a married woman's last name, the moral regulation of women's choices has destined them to identify as wives first, and as individual citizens second.

Judith Butler has asserted, "not biology, but culture, becomes destiny".³²⁴ In the context of women's names, as articulated in the previous discussion, 'not law, but custom' determined women's nominal destiny as second-class citizens within the marriage and social contracts. In the 21st century, an era when the rights of women are recognized as human rights, a *customary* naming practice that marks the flow of women

³²³ Judith Lorber, "Believing is Seeing: Biology as Ideology", in Weitz, 21.

³²⁴ Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (Routledge and Kegan: New York, 1990), 8.

and their offspring among men can no longer be viewed as a benign symbol of marital unity, nor as a reflection of nostalgic invocations of romantic love and the ideal nuclear family. Having traced the historical construction of male dominance over women as conditioned by religious, legal, cultural, and scientific “truths”, the underlying values of the malestream social contract of liberal democratic thought are in evidence. As such, we are better situated to evaluate, in the following chapter, the role of *mis*-recognition in masking the oppression of women within the private sphere of the family, and consequently, the symbolic and actual oppression of women through patronymy, which both reflects and promotes women’s persistent status as second-class citizens within 21st century Canada and Japan.

CHAPTER IV

NAMING, RECOGNITION, AND THE ROLE OF THE STATE

My name is the symbol of my identity and must not be lost.

Lucy Stone³²⁵

In the following final chapter, I will attempt to weave together the various threads of women's inequality, the marriage contract, and marital naming that have been presented thus far. In order to expose the meanings and contradictions inherent in the practice of marital naming and thus to situate the discussion that follows, I will provide a brief overview of the role of names and naming. Thereafter, I will identify the key tenets of Charles Taylor's theory of the "politics of recognition". I will then apply the ideas presented in the "politics of recognition" to the examples of women's experiences, social attitudes, and negative stereotyping, which all affect women's choice of post-nuptial names. I will critique the rhetoric of choice in current naming laws, by exposing the coercive force of moral regulation of married women's last names, and the harm that it entails for the freedom and dignity of women, as well as of their ability to be self-determining. Finally, I will argue that the Canadian and Japanese states are failing to promote women's equality by legislating the framework of choice for marital naming. By articulating the responsibility of the state to promote the recognition of women as beings of equal worth in both the private (family) and public (civil society) worlds that define the Canadian, Québécois and Japanese social contracts, I will demonstrate that only the Quebec model reflects a genuine attempt to operationalize liberal democratic theory with the male *and* female individual at its centre.

³²⁵ Quoted in Arichi, 411.

THE POLITICS OF NAMING

A study by Intons-Peterson and Crawford showed that last names convey an important sense of identity to women just as they do to men, although both sexes underestimated the extent to which women identify with their premarital last names.³²⁶ Arthaud et al have noted a tendency for men and women to express greater satisfaction with their last names than with their first or given names, implying feelings of identity and security that are associated with the last names.³²⁷ Strunk maintains that “historically, one’s name has always represented an important aspect of the self”, and asserts the general belief that “one’s name serves as an ‘anchorage point’ for selfhood”.³²⁸ Quoting readers’ responses to the article entitled, “The Name Game”³²⁹, Falk similarly shows that the “emotional value of names is an indication of the deeper psychic implications of names and name changes”.³³⁰ As early as 1913, Freud discussed the high regard that primitive peoples, children and civilized adults have for their names, and noted that each group viewed the name as an integral part of personality.³³¹

We understand that the types of names given to individuals, the systems through which they are bestowed, and the ways in which names are used or avoided in social interaction vary widely from society to society.³³² A strictly pragmatic theory of naming might suggest that names are bestowed upon children as a direct and perfunctory means

³²⁶ Intons -Peterson and Crawford, 1163.

³²⁷ R. Arthaud, A Hohneck, C. Ramsey, and K Pratt, “The relation of family name preferences to their frequency in culture,” *The Journal of Social Psychology* 28 (1948): 19-37; quoted in Penelope Dralle, and Kathelynn Mackiewicz. “Psychological Impact of Women’s Name Change at Marriage: Literature Review and Implications for Further Study”, *The American Journal of Family Therapy* 9 (1981): 50-55, 52.

³²⁸ Orlo Strunk, “Attitudes Towards One’s Name and One’s Self”, *Journal of Individual Psychology* 14 (1958): 64.

³²⁹ “The Name Game”, *Time*, May 13, 1974; readers responses appeared in the June 3, 1974 issue; quoted in Falk, 649.

³³⁰ Falk, 649.

³³¹ Dralle and Mackiewicz, 51.

³³² Alford, 2.

of distinguishing one individual from another, but naming typically does much more than this.³³³ We know that, far from being a random selection from a name-book, determining the first, middle, and last name of a child, for example, is quite complicated depending upon the culture in question. Naming often reflects other family ties, or is even delegated to a senior “elder” within one’s family, community or religion.³³⁴ Names reflect parental aspirations of who the child will become upon adulthood, and the qualities that they wish for her/him to retain in their personhood. The identity promoted through names can range from being an expression of linguistic background, or of cultural or religious meaning; it can create ties to a parent or grandparent; and, as in Japanese society, it can be linked to seasonal reflections of the birthdate, the numbers of strokes in the characters that compose the parents’ names, and the selection of a spiritually ‘fortunate’ combination of both characters and strokes.

Names play an important role in creating associations in society, as a basis of discrimination, or in fostering one’s identity as it relates to a sense of belonging to a particular group based on gender, race, linguistic, and/or cultural heritage. Alia traces the devastating role of names in Germany after 1938, when Jews were prohibited from changing family names, leading to an ease of identification by the state, and their subsequent extermination.³³⁵ Lassiter documents the role of name changes in the post-war period in Los Angeles when 46% of petitioners were Jewish. She notes the role of anglicizing names for immigrants in England and America, and the insular attitudes towards ‘deviant names’. Moreover, implying the role of naming and its links to identity formation, Alia mentions the fact that the 35% of Chinese students at the University of

³³³ Alford, 30.

³³⁴ See Alford.

³³⁵ Alia, 35.

Minnesota with anglicized names were more likely to participate in non-Chinese associations, read fewer Chinese language publications, and were more willing to do manual jobs.³³⁶ Alford documents the power of a Tiv husband to name his wife upon marriage, and the practice wherein a Masai man gives his wife a new name upon the birth of their first child to note her new role as a mother.³³⁷ Sharing in the effects of the practice of patronymy in industrialized countries, the Masai naming system likewise reflects an attempt to dictate and determine who in society is important, and therefore remembered. Not surprisingly, the names of children, women, and warriors (unmarried men) are tabooed after their deaths, whereas the names of deceased men with children are systematically and carefully perpetuated. Alford notes that it is significant that only men with children happen to possess the only inheritable property: cattle. He states, “the Masai name tabooing and name perpetuating practices both symbolize and support these social definitions....naming practices are more than mere indexes or symptoms of social perceptions. Frequently, they are active forces in creating these perceptions.”³³⁸ As will become clear in the application of Taylor’s theory on the “politics of recognition”, for women, “married names” unleash assumptions and stereotypes about a women’s marital status, her willingness to assume the patriarchal role/identity of wife, or conversely, her political stripes with respect to gender equality and her feminist defiance of the patriarchal rules of social and familial organization.

To better situate the application of Taylor’s theory to the case of naming and women, I will first briefly identify the ways in which the framework of choice is central to the ‘dialogical’ nature of identity-formation and therefore marital naming. The factors

³³⁶ Lassiter, 106.

³³⁷ Alford, 88-89.

³³⁸ Alford, 117-18.

which have lead me to identify the dialogue encoded in the law as an active agent of women's oppression, rather than simply a benign exchange of information, stem from both personal experience and studies on attitudes towards birth name retention which will be presented in the following section. In order to ground my definition of oppression within a theoretical analysis of choice, I will refer to an article by Ann Cudd entitled, "Oppression by Choice".

Cudd first distinguishes herself from the arguments of theorist Micheal Levin, who, in *Feminism and Freedom*, puts forward the notion that actions which arise from choice necessarily negate oppression. More clearly, Levin suggests that if a feature of society is a consequence of the choices of *most* members of a group that are oppressed by it, then that feature is not oppressive. Critiquing the simplicity in this analysis, Cudd reminds us that this is "just the mistake that one makes in stereotyping groups, and clearly an individual can be victimized by such stereotyping when it does not apply to her."³³⁹ According to Cudd, oppression names a special kind of harm done to groups of persons by other groups of persons, and is composed of four key factors. It must involve some sort of physical or psychological harm, though it need not be recognized as harm by the ones who are oppressed. Second, it applies to groups who are identifiable independently of their oppressed status, whereby individual members of the group suffer by virtue of their membership in that group. Women as a group clearly qualify in both of these regards. Third, oppression implies that some persons benefit, or think that they benefit from the oppression of the other group. As has been shown in previous sections and as reflected in the following analysis of societal attitudes, men both benefit, and think that they stand to benefit from patronymy. Finally, the oppression must involve some

³³⁹ Cudd, 22.

coercion or force because the existence of coercion negates the voluntariness of an individual's choice. Coercion is not simply the absence of all choice, but a lack of the right kind of choices, namely those that are truly voluntary. Coerced persons often feel compelled to act as they do because they understand the unacceptability of the other options being presented. This last point in Cudd's definition sheds light on the fact that morally, coercion constitutes a *prima facie* wrong because it violates justice and the autonomy of its victim.³⁴⁰ In identifying coercion in this matter, it will become apparent the extent to which the moral regulation of women's marital names is a form of coercion that negates women's free choice of names. The moral regulation of women into the roles of wife and mother works to prevent women from choosing to retain their birth name. For many women, their "choice" to take their husband's name stems more from the unacceptability or risks associated with the other options being presented. In the following section, using the theory of the politics of recognition, I will illustrate the extent to which women's choices are constrained, and will demonstrate the fact that the vast majority of women continue to change their names in 21st century Canada and Japan is indicative of ongoing sexual discrimination against women, the degradation of their individual identity and collective status as a group, and therefore is an important factor in the ongoing oppression of women.

³⁴⁰ Cudd, 24-27.

THE POLITICS OF RECOGNITION

Our names act as our ambassadors, traveling to places and times where we ourselves can't be, acting as the representatives of our words, deeds, thoughts, feelings, physical characteristics, and gestures.

Sharon Lebell³⁴¹

In *Multiculturalism and "the Politics of Recognition"*, Charles Taylor argues that "our identity is partly shaped by recognition or its absence, and is often shaped by the *mis*-recognition of others."³⁴² Taylor outlines the need for recognition in a number of strands in contemporary politics, and notes that it particularly comes to the fore on behalf of minority or 'subaltern' groups. In particular, he notes that "not only contemporary feminism, but also race relations are undergirded by the premise that withholding of recognition can be a form of oppression."³⁴³ This is often described in contemporary Canada as the "politics of multiculturalism".³⁴⁴

Taylor outlines the advent of the politics of equal dignity in Western civilization in two authors, Rousseau and Kant. Arguing for an authenticity of identity in tune with one's own values and not with one's reputation among others, Taylor outlines Rousseau's more subtle argument as to the desirability of a perfectly balanced reciprocity among individual identities which would allow one to both "obey myself" and be a member of

³⁴¹ Lebell, 5.

³⁴² Taylor, 25.

³⁴³ Taylor, 36. While outside the scope of this thesis, I would likewise see the politics of recognition as a relevant theory that can be used to evaluate the role of the state in influencing the naming choices of marginalized ethno-cultural groups. The social pressures that work to make immigrants feel they should "standardize" their names makes them a similarly situated group in terms of the moral regulation of so-called deviant names, and of their culturally marked personhood. Alia underlines the role of domination of the "host" culture over immigrants in Canada, Alia, 35. Similarly, Robert Minear has documented the treatment of the Burakumin in Japan. Richard Minear, *Japanese Tradition and Western Law* (Harvard University Press: Cambridge, 1970); See also Setsure Tsurushima, "Human Rights Issues and the Status of the Burakumin and Koreans in Japan", in *Institutions for Change in Japanese Society*, George DeVos, ed. (Institute of East Asian Studies: California, 1984).

³⁴⁴ Taylor, 25.

the common project or “general will” which would bring one esteem. Distinguishing this form of recognition from the hierarchically-based notions of honour, Rousseau finds the balance for one’s freedom to pursue one’s identity. It is based upon the recognition of positive virtues in any and all, rather than the “other”-dependent forms of “honour” and “reputation”, which alienate us from remaining true to ourselves.³⁴⁵ Taylor speaks of the new understanding of individual identity that emerged at the end of the eighteenth century that is linked to “an individualized identity, one that is particular to me, and that I discover in myself. This notion arises along with an ideal, that of being true to myself and my own particular way of being.”³⁴⁶ In evaluating the role of society and the state, we must pay attention to the crucial feature of human life, which Taylor identifies as being fundamentally dialogical in character. He states:

We become full human agents, capable of understanding ourselves, and hence of defining our identity, through our acquisition of rich human languages of expression...we learn these modes of expression through exchanges with others. People do not acquire the languages needed for self-definition on their own. Rather, we are introduced to them through interaction with others who matter us to – what George Herbert Mead called “significant others.”³⁴⁷

Taylor astutely notes that “discovering my own identity doesn’t mean that I work it out in isolation, but that I negotiate it through dialogue, partly overt, partly internal, with others. That is why the development of an ideal of inwardly generated identity gives a new importance to recognition.”³⁴⁸ In addition to the dialogue that is undertaken with significant others, the relationship between a citizen and the state is likewise key to this process of self-definition. Taylor contends that “equal recognition is not just the

³⁴⁵ Taylor, 48.

³⁴⁶ Taylor, 28.

³⁴⁷ Taylor, 32.

³⁴⁸ Taylor, 36.

appropriate mode for a healthy democratic society. Its refusal can inflict damage on those who are denied it.”³⁴⁹ Indeed, the morality, basic principles, or guidelines for a society are explicitly or implicitly encoded within the law, and as such, they reflect various judgements of what society writ large is assumed to view and support as appropriate behaviour, the norm, or in some cases, the ideal citizen. In assessing one’s ability to become an accepted citizen who is in compliance with that ideal, male and female citizens are subtly regulated by the codification of laws that govern the relationships between citizens within the public and private spheres. Likewise name change laws shape and proactively promote the definitions of who and what it means to be a citizen, a husband or wife, a father or mother.

Turning then to the issue of marital naming, under the legal framework of name “choice” in marriage, the law in Canada and in Japan essentially tells women that they have the right to “obey myself” and voice their individual personhood in marriage, while patriarchal norms and societal attitudes about women, wives, and mothers simultaneously tell women to submit to the “general will” of patriarchal society and take their husbands’ names. In practice, what does this really entail? As accurately identified by Taylor, identity-development is fundamentally dialogical, and the languages of self-definition are introduced to us “through interaction with others”, specifically, with significant others. The past two chapters have illustrated the existence of historical, religious, scientific, and other dialogues or languages that tell the story about women’s personhood, their intellectual and biological make-up, as well as their destinies. Presented as truths, these “languages” have been introduced, promoted and perpetuated through the laws of the country, have worked to confine women to certain acceptable identities and roles, and

³⁴⁹ Taylor, 36.

attempted to justify the control of women's bodies by men. In the following section, I defend the position that in contemporary Canada and Japan, the patriarchal languages, truths, and assumptions about the value of women have simply moved underground to invade and dominate the self-defining process of naming that takes place within the psyche of every marrying woman. The majority of women have internalized the messages of patriarchy by the time they marry, and automatically take their husband's names when they marry. The experiences of the minority of women who attempt to resist, question or challenge the custom of patronymy to varying degrees, are therefore, the main focus of the discussion that follows.

The Moral Regulation of Women and Wives

*A name like Curtius' shall be his, On fame's loud trumpet blown,
Who with a wedding kiss shuts up, The mouth of Lucy Stone.*

The Boston Post³⁵⁰

In the context of marital naming, we must be mindful of the historical languages that have encoded the lives of women, as they function as a cacophonous backdrop to the "modern" framework of choice to override the message that a woman "obey herself". Even more distressing, the framework of choice effectively creates the situation whereby the voices and values of individual women are drowned out by the clammer of patriarchy, and are made secondary in the dialogue essential to self-determination. The existence of "choice" legally *invents* the premise for discussion and interaction with significant others, and effectively invites diverse individuals, significant others, and public actors into every woman's personal process of self-definition upon the announcement of marriage. The

³⁵⁰ Cited in Stannard, *Mrs. Man*, 95.

announcement of one's engagement acts as a catalyst, and encourages those in the "common project" of society to make inquiries, question the motivations for a woman's decision, as well as assert their views, opinions, assumptions, and values as to the appropriateness of her identity, and therefore the name that she uses after marriage. The naming laws that shape the institution of marriage trigger the bombardment of women by society in ways that an announcement of a couple "moving in together" does not.

Uncertain as to their right to simply "obey myself", some women engage in conversations with their fiancés, their family members, and their friends when attempting to negotiate an acceptable decision regarding their "married name".³⁵¹ Reasons cited for women's hesitance to retain their names are manifold. Some assume that their fiancés will be hurt or angry, and therefore choose to not even broach the subject. Other women are keenly aware of their partner's need to have his last name take precedence to become 'the surname', and although they feel the inequality, they acquiesce to maintain peace within the couple.³⁵² Concrete examples of this moral regulation can be found in the study by Embleton and King, who document the kind of investigative questioning that occurs to coerce a woman into taking her husband's name:

"Don't you love your husband? If you really loved him you would be proud to bear his name"; "But what will you call the children? It would be odd if your name were different from theirs, and hyphenation is impractical"; "But marriage will turn you into a new person, and you should show this by having a new name"; "That's just selfish"; "What does it matter anyway—any name is as good as any other, so use his"; "People will think that you are just living together"; "People will think your husband is weak"; "People will stereotype you as one of those feminist extremists"; "A common surname bounds a family together"; "But it's always been done that way"; "It will cost you 65 cents/month extra to have a second name in the phone book".³⁵³

³⁵¹ Kline, Stafford, and Miklosovic, 605.

³⁵² Kline, Stafford, and Miklosovic, 605/611.

³⁵³ Embleton and King, 14.

Palmieri traces the evolution of the name in the common law tradition, and puts forth the idea that the “private” function of names has been steadily “usurped” over the past few centuries, and has been invested with a second “public” function, becoming “more and more an *institution de police*.”³⁵⁴ Although the law purports to respect the private function of names by allowing a woman the right to identify herself and her person with the name of her choice, ultimately, the framework of choice ensures that the public function of the “institution de police” of public patriarchy will take precedence in the dialogue that ensues. Noting the power of social and moral regulation in modern society, Bartky observes that while the oppressive force of the law in the past made women perhaps more conscious of their limited choices, “power has now become anonymous...The image of the Panopticon returns,³⁵⁵...The gaze that is inscribed in the very structure of the disciplinary institution is internalized by the inmate.”³⁵⁶ Likewise in marital naming, as the “big day” approaches, women engage in a variety of conversations with their spouse, their friends and family, and with themselves, in order to negotiate a satisfactory decision that reconciles their own preference with the views of those around them, stereotypical or not, and choose a name that communicates the self-image they wish to project of themselves as women and as wives.

As echoed in the statement by Patricia Monture-Angus regarding Aboriginal peoples, more often than not, marrying women are in the defensive position of choosing names that attempt to communicate to patriarchal society what they, as women, are *not*.

³⁵⁴ Palmieri, 6.

³⁵⁵ In Foucault’s analysis of modern forms of discipline and governmentality, he describes the Panopticon, wherein the prisoner is constantly within view of those who are empowered to engage in a constant surveillance of his behaviour, and to punish behaviour that falls outside the realm of what is acceptable or allowed. Eventually, the prisoner internalizes the constant gaze of the surveillance, and begins to self-censor and self-police his own actions and behaviour, making the outside coercive force invisible and eventually unnecessary.

³⁵⁶ Bartky, 41.

In the late 1970s, as the debates on married women's names flourished, the Ontario Women's Bureau began to receive at least one call per day on the implications and steps to use one's birth name. Noting women's concern about possible perceptions of their marriage, research officer Lesley Lewis commented that "women who call need to talk about their feelings. They're asking for reassurance that the desire to keep their own identity, their own name after marriage, or to return to their own name after using their husband's does *not* mean lack of love or respect."³⁵⁷ Fowler and Fuehrer note that women who deviate from the name-changing custom are singled out for social and moral scrutiny: "She risks alienating certain family members, facing ridicule, and having her commitment to marriage and family questioned."³⁵⁸ Women choose the safer, less conspicuous name that will allow society to smile upon their relationship and extend approval to their familial priorities. The law does not empower women to communicate their identities through their names, as women's identities are perpetually eclipsed by the relational values that patriarchal society ascribes to the idea(l) of coverture.

Newspapers often chastised, dismissed or purposefully defied the decision of prominent women to retain their birth names so as to communicate "society's" disapproval of such extreme demonstrations of strident independence. For example, in a letter to the editor of the *Globe and Mail* in 1976, Debby Copes of Toronto admonished the paper's refusal to respect Maureen McTeer's decision to retain her birth name.

Responding to their February 24, 1976 article entitled, "Maureen McTeer Won't Disappear in Clark's Shadow", she criticizes the journalist for continuing to refer to Maureen McTeer as "Mrs. Clark", thereby confounding her with Joe Clark's mother, and

³⁵⁷ Mungall, 2-3.

³⁵⁸ Fowler and Fuehrer, 316.

for ignorantly, and perhaps defiantly, writing ‘Maureen Clark’ in the caption under Ms. McTeer’s picture.³⁵⁹ To the bitter end, the wishes of Lucy Stone were defied, and in a disrespectful display of arrogance, in 1893 *The New York Times* announced “The Death of LUCY STONE BLACKWELL”.³⁶⁰

Fowler and Fuehrer show that, although women in many countries have gained the right to retain their own birth name when they marry, few women choose to take up this right, and most do not even question the values or consequences behind it.³⁶¹ However, for women who are not “self-policing” or who have only *partially* internalized the message of patriarchy, the experience is quite different. Of the women studied by Lassiter, many experienced identity problems from feeling ‘mildly disorientated’ to saying, ‘I felt very uncomfortable’ or ‘I hated it’. Some mentioned that they would ‘get used to it’ and others admitted that they were ‘resigned now’, signalling their defeat and willingness to capitulate on this most personal and private marker of their personhood.³⁶² Lebell notes the process through which men and women come to internalize the inevitability of “patronymy’s contract”.³⁶³ She states,

Men and those women who have made the unconscious decision to see reality through a male-sympathetic lens have an especially difficult time understanding why there is a problem with patronymy. As is often the case with privilege, to those who possess it, the privilege seems like a fact of life, a birthright...Those with privilege build a fortress of entitlement around their privilege, which gets passed off as natural deservingness.³⁶⁴

³⁵⁹ Debby Copes, “Call me Ms.”, *The Globe and Mail*, 26 February 1976, Letters to the Editor.

³⁶⁰ Stannard, *Mrs. Man*, 156.

³⁶¹ Fowler and Fuehrer, 315.

³⁶² Lassiter, 68.

³⁶³ Lebell outlines the premises of Patronymy’s Contract in full. Lebell, 10-12.

³⁶⁴ Lebell, 15,

Conversations with Canadian women of my own generation have produced varying responses, but a cursory survey of current trends and existing studies on women's marital names suggests that the vast majority of British, American, and Canadian women in the 21st Century still take their husbands names in marriage, and cite either custom or negative attitudes of other people towards "maiden name" retention as their reason.³⁶⁵ Indeed, many women feel coerced to take their husband's names due to the unacceptability of the other options, which significant others, the media, and patriarchal society actively denigrate. A study of American college students showed that although the women were generally more accepting of birth name retention, or hyphenation than were the male students, the vast majority of young women still planned to simply follow the established norm of taking their husband's name.³⁶⁶ Amongst women who practice patronymy, some attempt to rationalize their "choice" by stating, "Oh, his name is prettier anyway".³⁶⁷ Conversely, by asserting that (their) "names don't mean much"³⁶⁸ women are able to diminish the importance of their own loss, while remaining curiously silent as to the importance of their husband's last name to his own identity and to the naming of *his* family. Indeed the desire to avoid a 'battle' with the in-laws, or appear disrespectful of their name was also cited as a motivation for changing one's name.³⁶⁹

The extent of questioning and inquiries that are made as to a woman's intent to keep or change her name also suggests that society is both interested and invested in the marital naming practice, and is exceedingly slow to accept non-familial naming patterns.

³⁶⁵ Embleton and King, 14,

³⁶⁶ Scheuble and Johnson, 753-4,

³⁶⁷ Lynnell Mickelsen, "Our Marriage Was Equal In Name and Spirit Until We Had to Name Our Baby", *Glamour* (May 1988): 34.

³⁶⁸ Foss and Edson, 362.

³⁶⁹ Kline, Stafford, Miklosovic, 604.

Reflecting the power of the Panopticon, many women come to realize the fact that life for them as women is simply easier if they go along with the norms and customs of patriarchal society. Rationally, they eventually abandon the pursuit of an “individualized self”, partly, as Taylor notes, “through the pressures toward outward conformity”, but also because “in taking an instrumental stance toward myself, [they] may have lost the capacity to listen to this inner voice.”³⁷⁰ Indeed, many men *and women* take the emotionally detached approach that ‘names are not important’. Women (and men) who practice patronymy often take an instrumental approach to (women’s) names. By stating that names are not important, they make the superior assertion that *their* identities are not hinged on any symbolic association or expression of relationship inherent in their names, suggesting that women who retain their names are somehow overreacting, or worse, are insecure in their own identities.³⁷¹ Ironically, in their study Fowler and Fuehrer document that only 2.4% of name-changers, compared to 100% of name-retainers, valued a continuity of their personal identity, suggesting that women who change their names lack confidence as to the value of their unique personhood continuing after marriage.³⁷² Likewise, 89% percent of name-changers, compared to only 17% of name-retainers held conventional views of marriage, denoting the degree to which name-changers have internalized the messaging, discourses, and languages of patriarchal marriage, and woman’s role therein.³⁷³

Scheuble and Johnson show that despite holding progressive views about women, many young men in the United States are still conditioned to expect a woman to follow

³⁷⁰ Taylor, 30

³⁷¹ Foss and Edson, 362.

³⁷² Fowler and Fuehrer, 316.

³⁷³ Fowler and Fuehrer, 316.

the custom of patronymy when they get married, and particularly in instances when the husband or his relatives think the wife should adopt his name.³⁷⁴ The small study by Embleton and Intons noted that the male respondents associated birth name retention with the stereotype of a woman who was more assertive and oriented towards her career, that a significant number of the men confused the terms feminine and feminist, and many did not know what it meant for a woman to maintain her “maiden name” after marriage.³⁷⁵ All of these responses suggest a lack of familiarity with women’s lived realities. Many men do not understand the damage that our naming system does to women. Although the continuing framework of choice may not have the intention of perpetuating the subordination of women within the family and society at large, it is not helpful that the vast majority of Canadian and Japanese legislators bring the male worldview to the legislative drawing board. As documented by Spender, language is a powerful and oppressive tool through which dominant groups assert their worldview:

In my research on language one factor which I have often observed is that while women may appreciate the parameters of male reality, men frequently cannot appreciate the dimension of female reality. Women live under the reality of the dominant group. They are required to ‘know it, to operate within it and to defer to its definitions, appreciate the reality of men, for in patriarchal order male reality has usually been posited as the only reality. Men have generated the reality...and they do not usually have reasons to believe that their reality is questionable. This is not just because they can dismiss any alternative meanings which women may offer as “unreal” (or crazy and neurotic) but because women may also collude in preserving the male illusions.³⁷⁶

Adrienne Rich describes patriarchy as “the power of the fathers: a familial-social, ideological, political system in which men -- by force, direct pressure, or through ritual,

³⁷⁴ Scheuble and Johnson, 751.

³⁷⁵ Embleton and Intons, 18.

³⁷⁶ Spender, 13.

tradition, law, language, customs, etiquette, education, and the division of labor, determine what part women shall or shall not play, and in which the female is everywhere subsumed under the male. It does not necessarily imply that no woman has power.”³⁷⁷ Indeed, the role of “choice” in marital naming is a case in point. No longer evoking in women the clear-cut sense of violation or victimization that resulted from laws or husbands that force patronymy upon women, by painting it as a “choice”, the law downloads the responsibility to women if they choose take up the yoke of wifely subordination in the face of social pressure. Through the languages, laws, customs, and historical division of labour within society and the family, the legacy of the sexual contract ensures that women internalize the appropriate image of themselves as women, and the roles that they should play within society.

Women have the illusion of self-determination as a result of being told that they are empowered to choose their last name. As Bartky argues, “the absence of a formal institutional structure and of authorities invested with the power to carry out institutional directives creates the impression that the production of femininity is either entirely voluntary or natural.”³⁷⁸ As Scheuble notes, “Bright boys know that if they say, ‘you do what-ever you want, dear’, the women are far more likely to change their name.”³⁷⁹ Patronymy and private patriarchy therefore continue as a reflection of “what women want”, and granting women that choice is safe to the extent that women continue the process of self-policing. Conversely, the minority of name-retainers are systematically scrutinized for their deviance. Lebell notes that “friends and family can make it hellish for you...They won’t address letters to you or your children with the correct names.

³⁷⁷ Rich, 57.

³⁷⁸ Bartky, 36.

³⁷⁹ Quoted in Goodman, 35.

They won't introduce you by the right name...Or they will hector you by saying 'And what are you calling yourself these days, Dear?'"³⁸⁰ Scheuble exposes the regulatory function of announcements in the wedding pages of the *New York Times*, which present women who keep their names as "breaking news" or "breaking norms".³⁸¹ Despite the fact that her and her husband's research shows that separate naming does not "hurt" a marriage, she observes, "[t]here is [a] social subtext to all of these public announcements: Ms. Smith, whose marriage will never make it, is keeping her name. Ms. Brown, a careerist who doesn't really believe in family, will keep her name."³⁸² Echoing the problem with *non*-recognition, many name-retainers simply want to be recognized as their own person. As Lassiter notes of her own experience, "The act of *not* changing one's name is far from passive...It wasn't even that I was so very keen on it [my name], ...but I didn't see marriage as a good enough reason for giving it up. Even now when a letter comes addressed to Mr. and Mrs B or someone addresses me as Mrs B, I resent the change being forced on me which I chose carefully not to make."³⁸³ In the year 2003, companies, telemarketers, and charities still continue to ask for Mrs. Pouliotte. Notwithstanding, the custom persists unblemished, is largely assumed to be free of coercion, and is rarely understood as a contributing factor in the oppression of women.

Far from benign, in Japan, the framework of choice places women's names in direct confrontation with that of their husbands. Ironically, within the 2% of cases, which often result from an absence of an (male) heir, a woman's family is sufficiently positioned to request a name change of the groom. If the husband is not the eldest son,

³⁸⁰ Lebell, 94.

³⁸¹ Quoted in Goodman, 35.

³⁸² Quoted in Goodman, 35.

³⁸³ Lassiter, 76.

then the pressure to continue his family name may be less present. While his agreement to take her name might suggest that their wives will achieve a higher level of status within the family, in fact, the groom is guaranteed a position of dominance within the couple as long as they are married.³⁸⁴ The expectation that the husband be the representative of the household, even if it has been *her* household since birth, continues within matrilocal marriages. Similar to the role of custom, attitudes and assumptions about women in Canada, the equality of “choice” provided by the law is neutralized by Japanese cultural or customary assumptions about the status of all men as the heads of the household. The groom is usually first adopted by the bride’s father to establish him as the successor and head of the household in the resulting union.³⁸⁵ In effect, even when the husband joins the wife’s family and takes her name, women are nonetheless denied the role of head of the household, and the patriarchal power relations continue undisturbed.

Through her married name, Canadian and Japanese woman are explained and defined for their political beliefs vis-à-vis the norm of taking a husband’s name. They are praised for adopting the role of wife, or conversely judged for exercising their right to equal status within the family. As Lebell notes, “women’s own names work in their disfavor as a kind of figurative neon sign on their chest that shrieks: ‘I am a feminist’ or ‘I am holding out for a principle’.”³⁸⁶ The use of one’s birth name in Japan also communicates the occurrence of divorce. Symbolically communicated by the updating of records, following a divorce, a woman’s name is crossed off the husband’s registry,

³⁸⁴ Liddle and Nakajima, 102.

³⁸⁵ Ochiai, 153-54; This was also substantiated through personal conversations with a Japanese colleague at Koshoku City Hall, Nagano Prefecture. As was the case for many men of the post-war era, my colleague’s father had joined his wife’s family due to the lack of a male heir.

³⁸⁶ Lebell, 27.

stigmatizing her as “batsu ichi”,³⁸⁷ or “strike one”, to reflect the failure of her marriage. Used as a means of securing information on prospective employees and marriage partners, the family register is often requested, and effectively reveals the marital status of a woman, and if she has children, makes public her failure as a mother to place the needs of her children above her own individual concerns. The impact of being forced by law to change one’s public sphere persona and disclose the private decision to marry to far-reaching societal networks has been increasingly experienced by a minority of Japanese women as an invasion of privacy and a loss of identity. Arichi maintains that the requirement of a unified family name, in practice, protects the “surname” of the husband. As such, the “choice” of changing one’s public identification is increasingly understood by Japanese women as an infringement on their human rights.³⁸⁸ Nonetheless, strong opposition from the Liberal Democratic Party in Japan continues to assert that “a married couple and their children who all share the same surname constitute a natural and stable unit in society”.³⁸⁹ The framework of choice not only tilts the balance in favour of husbands’ rights, when posed with the “wellbeing of children”, it also contributes to the emotional blackmail that paints independent women as selfish or irresponsible mothers.

³⁸⁷ This derogatory term is gradually becoming used to describe divorced men as well.

³⁸⁸ Arichi, 411.

³⁸⁹ Arichi, 413.

The Moral Regulation of Women as Mothers

Women are socially constructed as Mothers or childrearsers because of a system of power that keeps them from working to full capacity in the labor market.

M. M. Slaughter³⁹⁰

Pearson beautifully articulates the regulatory force of names when she asserts that the cultural expectation that women change their birth names to that of their husband is “part of the language system which systematically subordinates women, and underscores traditional roles in a patriarchal society.”³⁹¹ As seen in previous chapters, it is not social reproduction, but rather, social construction that dictates women’s destinies as appendages within the family. As poetically proclaimed by Simone de Beauvoir, “ONE IS NOT BORN, but rather becomes a woman.”³⁹² Women are expected to adapt their identities to fit the gender roles associated with marriage. This does not only entail the adoption of a wifely attitude or identity, but includes the appropriate behaviour that would be necessary for the social reproduction of humanity. Changing one’s name is not only part and parcel of this regulatory process, it is the symbol inscribed on women’s identities that reflects the degree to which patriarchy has been successful in encouraging women to accept the ‘relevant world’ of men and obediently aid in its reproduction.

Weitzman contends that a woman taking her husband’s name serves to symbolically reinforce the expectation that her identity as an individual is subsumed

³⁹⁰ M.M. Slaughter, “The Legal Construction of ‘Mother’”, Martha Albertson Fineman and Isabel Karpin, eds., *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood* (Columbia University Press: New York, 1995), 74-5.

³⁹¹ Judy Pearson, *Gender and Communication* (W.C. Brown Publishers: Dubuque, 1985), 80.

³⁹² De Beauvoir, *The Second Sex*, 267; Original text: “On ne naît pas femme: on le devient.” De Beauvoir, *Le Deuxième sexe*, 1.

under her status as a wife.³⁹³ In fact the gender roles associated with the name change are even more pervasive, in that a wife effectively takes on the name of her mother-in-law. A woman's identity is not only subsumed by her role as wife, but moreover, by becoming Mrs. Himself, both in spirit and *in name*, a wife is expected to fulfill the caregiving and mothering role previously provided to him by his mother, as well as prepare to become the mother of *his* children. The custom of a wife taking the husband's name, as seen earlier, is a precondition for the custom wherein all men have the right to name their offspring and assume prominence within the family as the head of the household.

The "choice" of marital names in Japan instigates the confrontation between wives and husbands, wherein they must choose whose identity and family name is more important and should continue within the resulting union. Former Prime Minister Yasuhiro Nakasone forcefully declared that it was too soon to put marital naming for debate in the National Diet because Japan is "at a stage when family values must be reinforced."³⁹⁴ Diet members continue to profess that families under a united 'surname' constitute a natural and stable unit in society. Underestimating the force of custom in Anglo-American societies, conservatives in Japan ignore both the weak presence of birth name retention in countries that offer a legal choice, and the reality that the vast majority of divorcing couples, in Japan as in Canada, in fact have a "united" last name. Rather, they continue to argue that different last names will undermine family values and the family system itself, and will cause negative emotional growth in children.³⁹⁵ Forcing family unity through the male person for the purported 'best interests of the child' is seen

³⁹³ Lenore Weitzman, *The Marriage Contract: Spouses, Lovers, and the Law* (Free Press: New York, 1981), 9.

³⁹⁴ Arichi, 413.

³⁹⁵ Joy Hendry, *Marriage in changing Japan* (Croom Helm: London, 1981), 413.

as of greater social value than the constitutional principle of equal citizenship for male and female citizens.

In Canada, the framework of choice, and consequently the option that a woman retain her birth name in marriage theoretically unleashes a check against the patriarchal assumption that every man has the right to name “his” offspring. Not surprisingly, the resistance to birth name retention among husbands is not simply due to many men’s desire that their fiancées adopt the “role” of wife, but rather, it is directly linked to the desire of men to retain paternal rights over their offspring, and thus require that their wives not assert their naming rights over the children to whom they give birth. Not wishing to be the “loser” in the battle of the sexes, the issue of women’s married names produces a much more serious level of resistance from individual men.

In Canada, by allowing a woman to keep her birthname, we have simply delayed the central confrontation between husbands and wives, fathers and mothers, to the advent of children. As Lynn Mickelsen’s article highlights, “the moment of truth came three years later when I became pregnant and a birth certificate loomed on the horizon. That sheet of paper is the bottom line: the place where the two-name couple learns whose name is really important. Our marriage [had] been equal in name and spirit until we had to name a baby.”³⁹⁶ In the 21st century most wives still assume that it is their husband’s right to name the children, despite the central role of women in procreation and childcare. Despite purported commitments to equality, many college-educated men still expect to maintain the privilege of naming their children, although they may not be opposed to their wives retaining their birth names in marriage. A study by Intons-Peterons and Crawford of American undergraduate and graduate students’ views on marital/children’s

³⁹⁶ Mickelsen, 34.

names showed that 82% of undergraduate men and 68% of graduate men preferred giving the father's name. Furthermore, when controlling for marital status, fully 80% of married males thought that their children should bear their names,³⁹⁷ reflecting a strong increase in men's commitment to patronymy after marriage once the issue has become personal in nature. The bitter battles that often ensue over a change in the last name of a child following a divorce³⁹⁸ suggests that fathers feel a sense of ownership and connection through the naming of their children. A study by Andrew Cherlin of 50 American couples who had hyphenated names showed that almost all of the couples nonetheless gave their child the father's name or a hyphenated name; not one couple chose to give just the wife's name. Some of the women explicitly admitted that they were not willing to "buck their husbands' strong feelings about using their names".³⁹⁹ The names of (future) children often serve to pre-empt the option of a woman retaining her name. Assuming that the children will have the father's last name, many women change their name to avoid being the one with the "oddball name",⁴⁰⁰ to create an image of family "unity", or for the sake of making things clearer for the children.⁴⁰¹ Conversely, some women who had originally retained their birth name, reverted to their husband's name upon pregnancy. One woman noted, "I kept my name for work for the first two years or so of marriage, but ultimately found it complicated to maintain two names and did not feel strongly enough about retaining my name. Expecting a child, who would take the

³⁹⁷ Intons-Peterson and Crawford, 116.

³⁹⁸ Alastair Bissett-Johnston, "Children in Subsequent Marriages – Questions of Access, Name and Adoption", in John Eekelaar and Sanford Katz, eds., *Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change* (Butterworths: Toronto, 1980), 387.

³⁹⁹ Cherlin, 150.

⁴⁰⁰ Lebell, 27.

⁴⁰¹ Kline, Stafford, and Miklosovic, 605/611.

married name, tipped the balance”.⁴⁰² Lassiter interviewed a couple who both disliked the husband’s surname, and although the wife’s name was more neutral-sounding, the idea that the husband and the child take her name was never explored.⁴⁰³ Some women retain their names in marriage, but give in to the pressures of patronymy for the names of their children. Some couples given the mother’s name as a middle name and the father’s name as the child’s last name. Lebell documents the feelings of many progressive couples in these contexts:

The best I could extract was guilt-ridden equivocations from the men and self-justifying, resigned mumbling from the women. The husbands awkwardly downplayed the importance of their names having won out as the names that will be officially used and perceived as the more important. The women were ambivalent; they felt as though they’d sold out. They also downplayed the significance of their decision. Several insisted that their naming decisions had been reached quite accidentally.”⁴⁰⁴

Attempting to dismiss the painful reality that they had acquiesced to male supremacy, Lebell notes that many of these successful, ambitious women shrouded the issue in silence or pretended that it was insignificant.⁴⁰⁵

Citing the historic role of laws that stigmatized illegitimate children and the taboos associated with ‘living in sin’ which continue as regulatory factors in diverse ethno-cultural and religious communities in Canada, Kanowitz notes, “once custom has been established, regardless of its underlying reason, departures entail serious difficulties – possible questions concerning the legitimacy of children of the marriage, suspicions raised among neighbours and acquaintances as to whether ‘wife’ and ‘husband’ have

⁴⁰² Lassiter, 68.

⁴⁰³ Lassiter, 144.

⁴⁰⁴ Lebell, 33.

⁴⁰⁵ Lebell, 33.

been married in accord with legal formalities, and the like.”⁴⁰⁶ In Japan, regulation of women’s sexuality is still present and the employers of young single women often regard themselves as being *in loco parentis*.⁴⁰⁷ Common law relationships are not viewed as legitimate, and pre-marital sex is still a factor that functions to stigmatize women’s reputations. Stannard documents the reality that it took a woman of great fortitude to go to a hospital to have a baby as Miss Hername.⁴⁰⁸ Although the recognition of common law partnerships in Canada has removed much of the distinctions of “legitimate” wives and children, the stigma of unwed motherhood and discrimination against single mothers continues both explicitly, as well as at a subterranean level.⁴⁰⁹ In Japan, children born out-of-wedlock continue to be stigmatized may suffer discrimination throughout their lives. Clearly the regulatory force of patronomy sustains and nourishes the power of the public and private patriarchy over women in these so-called progressive societies.

One might think that the power and prestige of being Queen of a major industrialized country might allow a woman to hold steady to the value of her own name. Given her marriage to the Greek prince, Philip Mountbatten, and the force of patronymic custom, in April 1952, Queen Elizabeth II issued an Order in Council confirming that her descendants should bear the name of the House of Windsor,⁴¹⁰ maintaining the primacy of her royal name for both herself and her descendents. As with most women, second thoughts prevailed and in February 1960, a new decree was issued that established the

⁴⁰⁶ Leo Kanowitz, *Women and the Law: The Unfinished Revolution* (University of New Mexico Press: Albuquerque, 1969), 41.

⁴⁰⁷ Stockman, 43.

⁴⁰⁸ Stannard, *Mrs. Man*, 233.

⁴⁰⁹ See Margaret Little, *No car, no radio, no liquor permit: the moral regulation of single mothers in Ontario, 1920-1997* (Oxford University Press: New York, 1998); Boyd; Carol Smart, ed., *Regulating womanhood: historical essays on marriage, motherhood, and sexuality* (Routledge: New York, 1992).

⁴¹⁰ Lassiter, 93.

last name of non-princely descendants as Mountbatten-Windsor.⁴¹¹ A *Globe and Mail* article reported the Queen as having “nicely acknowledged her husband by changing the family name from Windsor to Mountbatten-Windsor”.⁴¹² Even among royalty, it would seem that the importance of a man’s heritage to “his” descendants is able to not only match, but also trump, the prestige, status, and importance of a monarch. If the Queen of England is unsure of the value of her descendants carrying the Windsor family name *alone*, it is not surprising that many average women are hesitant to assert their right to retain their own insignificant names, let alone passing them on to their children as well. The fanfare associated with the birth of the Japanese Crown Prince’s first child, a baby girl named Aiko (love child) is telling.⁴¹³ Masako-sama, wife of the Crown Prince had been under significant pressure to produce an heir; however, given the patriarchal laws of inheritance in Japan, that pressure will not end with the birth of their only love child, as she is (regrettably) a female. In contemporary Canada and Japan, the patriarchal legacy of male supremacy endures.

Understanding that women are financially disadvantaged in comparison to men, Lebell draws connections between the practice of taking a husband’s name and a woman’s financial dependence in whole or in part. She asserts that giving the husband’s name to the children reflects a sort of *quid pro quo*. “Women give in on the name issue to men so that if the going ever gets rough, or if they have to leave the work force to care for children, those men will feel some kind of responsibility to them, personal and

⁴¹¹ Lassiter, 93.

⁴¹² Anthony Bailey, “Philip own man despite position”, *The Globe and Mail*, 12 June 1977, p. 10.

⁴¹³ “Royal baby named Aiko”, *Asahi Shimbun Online*,
<http://www.asahi.com/english/national/K2001120800193.html>, accessed 20 November 2001.

financial since they share the same last name.”⁴¹⁴ Insecure in their ability to provide for themselves and their children, many women acquiesce to their husband’s insistence that they take his name, and view it as a downpayment on their future security, in return for the husband’s assurance of financial support. However, as seen in previous chapters, the traditional heterosexual family based on the breadwinner/housewife model is an invented tradition. Although these “traditional” roles might have reflected the reality of gender relations at the height of the cult of domesticity in Canada for white, middle class families, and the height of the cult of productivity in for middle class families in Japan,⁴¹⁵ it has not been the experience of the vast majority of women. As Stannard has creatively put it, “in a world in which wives [are] more than wives [and mothers], for a woman with a career to go by the name of wife [is] mislabelling, or to coin a word, *Mrsnomerism*.”⁴¹⁶ Clearly, the “nominal” exchange of women denoted by patronymy can only be understood as regressive.

The Harm of Patronymy to Women as a Group

I am humbly standing unknown in the shadow of his glory.

Isabel Burton⁴¹⁷

Although not the cause of patriarchy, I support Lebell’s observation that “patronymy keep[s] patriarchy alive and well. Like random male violence, it is one of the vital links in the patriarchal chain that holds women back from the full freedom to be their authentic

⁴¹⁴ Lebell, 30.

⁴¹⁵ See Susan Orpett Long, “Nurturing and Femininity: The Ideal of Caregiving in Postwar Japan”, in Anne Imamura, ed., *Re-Imaging Japanese Women* (University of California Press: Berkeley, 1996).

⁴¹⁶ Stannard, *Mrs. Man*, 92.

⁴¹⁷ Quoted in Stannard, *Mrs. Man*, 19.

selves.”⁴¹⁸ Taylor asserts that “a person or group of people can suffer real damage, real distortion, if the people or society around them mirror back to them a confining or demeaning or contemptible picture of themselves.”⁴¹⁹ Kanowitz notes that although the change of a women’s name upon marriage represents the “destruction of a major facet of her personality”,⁴²⁰ women for the most part submit to that destruction knowingly and willingly. The religious duty to be an obedient wife, cultural expectations that women be sexually feminine and seek fulfillment through mothering, and patriarchal assumptions that a man has the right to be the dominant partner because he is the “breadwinner”, all serve to encourage women to place their own needs, desires and preferences second, and to take their husband’s name in marriage. This promotes the image of women’s identities as unstable and derivative of a man, and it symbolizes their secondary importance within the heterosexual family. Similarly, the name change affirms the second-class status of women as sexualized citizens in the malestream social contract. Taylor further states, “the projection of an inferior or demeaning image on another can actually distort and oppress to the extent that the image is internalized.”⁴²¹ As seen in the previous section, the framework of choice puts women in a position of either donning the label of “wife” and promoting the *mis*-recognition of their individuated selves, or defying custom and suffering the stigma of female deviance.

Dralle and Mackiewicz observe, “although for most women the name change may be of little significance and for some a sought-after honor, for others it may represent a significant loss and the beginnings of a pattern of self-depreciation and submission of

⁴¹⁸ Lebell, 28.

⁴¹⁹ Taylor, 25.

⁴²⁰ Kanowitz, *Women and the Law*, 41.

⁴²¹ Taylor, 36.

one's personality to that of another."⁴²² Drawing links to the impact of women's names upon the status of women, Kanowitz proposes that, "the probable effects of this unilateral name change upon the relations between the sexes, though subtle in character, are profound. In a very real sense, the loss of a woman's last name represents the destruction of an important part of her personality and its submersion in that of her husband".⁴²³ Taylor notes that the impact of *mis*-recognition and an internalization of one's lesser value can occur to the extent that even when some of the objective obstacles to an oppressed group's advancement fall away, they may be incapable of taking advantage of the new opportunities.⁴²⁴ As documented above, it seems clear that women in Canada and Japan have not been able to experience the full promise of gender equality within marriage as a partnership between two individuals, and moreover, they are unable to achieve a level of confidence in their own personhood, their names, and their inherent worth as citizens that is necessary for the choice (and consequences) of birth-name retention. Farley has documented links between independent naming styles and a woman's interest in further education and training.⁴²⁵ Her earlier studies from the 1970s likewise reveal an interdependence between the naming styles used by women at an employment agency and their success in finding a job; those using a more independent naming style were more likely to find employment than those who relied on their husband's names in whole or in part.⁴²⁶ Following the logic of Taylor's correlations of *mis*-recognition to 'missed opportunities', Farley notes that women who presented a self-

⁴²² Dralle and Mackiewicz, 50.

⁴²³ Kanowitz, *Women and the Law*, 40.

⁴²⁴ Taylor, 25.

⁴²⁵ Jennie Farley, "Married Women's Name Styles and Interest in Continuing Education", *Journal of Employment Counseling* (1975): 91.

⁴²⁶ Farley, 91.

image of themselves as individuals were likely seen as more competent than women who presented themselves as Mrs. John Smith. She states, “the identity of wife and the Mrs. John Smith name style are appropriate to the home, not to the classroom, the paid work place, or employment office.”⁴²⁷

Susan Moller Okin notes that the effects of women’s vulnerability and internalized subordination begin early, with their anticipation of marriage.⁴²⁸ Most couples assert that it is the unavoidable impact of women’s biological functions (pregnancy, childbirth, and nursing) that lead to the woman’s career becoming second fiddle within the couple. On the contrary, the gender role of accommodating *his* life goals begins far before the advent of children. Clement and Myles note that in the case of *childless* women, fully 43% had experienced at least 1 employment disruption, as compared with 17% of *all men* with or without children in their lives.⁴²⁹ Recent statistics on the unequal amount of carework performed by Canadian women within marriage in 2001,⁴³⁰ the disproportionate amount of paid work interruptions incurred by women⁴³¹, the poor employment choices available to women, the ghettoization of women in low-paying pink collar work,⁴³² the precariousness of women’s employment,⁴³³ and the

⁴²⁷ Farley, 95.

⁴²⁸ Okin, *Justice, Gender, and the Family*, 142.

⁴²⁹ Clement and Myles, 176-178.

⁴³⁰ Statistics Canada, “Number of persons aged 15 and over, by number of unpaid hours doing housework, Canada, 1996 and 2001”, Statistics Canada Website, <http://www12.statcan.ca/english/census01/products/analytic/companion/paid/canada.cfm>, 24 May 2003.

⁴³¹ Clement and Myles, 176-178.

⁴³² Pat Armstrong and Hugh Armstrong, *The Double Ghetto: Canadian Women and Their Segregated Work*, 3rd ed. (McClelland and Stewart: Toronto, 1994), Table 2: 22-23; Gosta Esping-Andersen, Chapter 6: “Welfare State and Labor-Market Regimes”, in *Three Worlds of Welfare Capitalism* (Polity Press: Cambridge, 1990); Rebecca Scherer, “Federal Child Care Policy Development: From World War II to 2000”, in Susan Prentice, ed., *Changing Child Care: Five Decades of Child Care Advocacy and Policy in Canada* (Fernwood Publishing: Halifax, 2001); Rosemary Crompton and Fiona Harris, “Explaining women’s employment patterns: ‘orientations to work’ revisited”, *British Journal of Sociology* 49 (1998): 119-136; Julia O’Connor, “Gender, class and citizenship in the comparative

disproportionate levels of women in non-standard work arrangements,⁴³⁴ all lead one to seriously question the assertion that we have achieved gender equality in society. The financial security of women, achieved in the paid workplace under the rules of public patriarchy, influences women's sense of self-sufficiency, their expectations with respect to accepting or rejecting traditional gender roles, and thereby structures women's relative negotiating power vis-à-vis their husbands both in terms of their choice of names upon marriage, their choice of employment opportunities, and their ability to be self-determining. The ghettoization of women in the service industry, which represents 70% of all jobs, is clear if we recognize that almost two thirds of working class women in Canada are in the clerical, sales and service occupations, and 79% are in unskilled jobs.⁴³⁵ In Japan, the persistent "M" curve⁴³⁶ of women's workforce participation reflects similar limitations and discrimination.⁴³⁷ In the mid-90's, women in Japan constituted approximately 38% of the total workforce, (49% if part-time workers are included), and their salaries were 60.2% of what men earn.⁴³⁸ Pateman constantly reminds us that "the refusal to admit that marital domination is politically significant obviates the need to

analysis of welfare state regimes: theoretical and methodological issues", *British Journal of Sociology* 44 (1993): 501-518; Mary Daly and Jane Lewis, "The concept of social care and the analysis of contemporary welfare states", *British Journal of Sociology* 5 (2002), 281-298; Paula England, "Marriage, the Costs of Children, and Gender Inequality", in Linda Waite et al., eds., *The Ties that Bind* (Walter de Gruyter: New York, 2000): 320-342.

⁴³³ Armstrong and Armstrong, 27; Judy Fudge, *Labour Law's Little Sister: the Employment Standards Act and the Feminization of Labour* (Canadian Centre for Policy Alternatives: Ottawa, 1991); Julia O'Connor, Ann Shola Orloff and Shelia Shaver, *States, Markets, Families: Gender Liberalism and Social Policy in Australia, Canada and Great Britain* (Cambridge University Press: Cambridge, 1999);

⁴³⁴ Fudge, *Labour Law's Little Sister*, 33.

⁴³⁵ Clement and Myles, 35.

⁴³⁶ A distinctive feature of Japanese women's paid workforce participation over the past 2 decade, the "M" curve graphs the pattern of high employment rates for women in their early to late 20s, a withdrawal from the paid workforce during the late 20s to mid-30s during childrearing years, and a re-entry into part time paid work after the children are in elementary school. Sumiko Iwao, *The Japanese Woman: Traditional Image and Changing Reality* (The Free Press: Toronto, 1993), 163; See also Naomi Neft and Ann Levine, *Where Women Stand* (Random House: New York, 1997), 346.

⁴³⁷ Iwao, 163.

⁴³⁸ Brinton, 83.

consider whether there is any connection between the marriage contract and other contracts involving women”.⁴³⁹ Opportunities for self-realization and self-development are likely being missed daily as a result of women’s internalization of their secondary importance within the family, and their socialization into the role of Mrs. Himself.

Asserting the damaging effects of the ‘surname’ tradition, Fowler and Fuehrer note that the custom of patronymy reflects the following sexist assumptions: “1) women’s birth names are so inconsequential as to be unworthy of lifelong retention; 2) of all the roles in people’s lives, women are expected to be wives foremost, hence they are referred to as ‘Mrs. His-name’; and 3) the transformation from single woman to wife should be more profound than the shift from single man to husband.”⁴⁴⁰ As seen in *Lawes Resolution*, all women were indeed understood as “married or to-be-married”, as nameless rivulets who would one day join with Rhodanus, Humber or the Thames.⁴⁴¹ Despite the fact that first and middle names of each girl child are carefully selected to match her (father’s) last name, upon marriage this important symbol of her identity is left to chance and is perfunctorily paired with the last name of the groom. The thoughtless and arbitrary results of naming women through patronymy can only be understood as a de-valuing, denigration, or *mis*-recognition of the woman’s identity and individuated personhood. As Lebell notes, “Personal names are the linguistic device we use to evoke and address someone’s “who-ness”...when a man is addressed by his name, his ‘who-ness’, his uniqueness is affirmed; his claim to his name is affirmed; his worth is affirmed.”⁴⁴² In fact, patriarchy and the custom of patronymy assume that the “who-

⁴³⁹ Pateman, *The Sexual Contract*, 7.

⁴⁴⁰ Fowler and Fuehrer, 316.

⁴⁴¹ Dickenson, 87.

⁴⁴² Lebell, 5.

ness” of women is less important than their ability to fill the generic roles of “wife” and “mother”. They lump all women together into the gender role called ‘wife’, and deny the reality that each woman, like each man, is a unique person with an inherent “who-ness” that is of value to the foundation and development of society.

Most men and women think that the idea of ‘women as male property’ is outdated and that society has progressed to offer a greater understanding of women’s abilities that extends above and beyond the call of wifedom and motherhood. Nevertheless, as late as 1980, a Canadian judge revealed his outdated views in a ruling on an application for a change of last name for a young girl. He noted, “The child is a female and in all likelihood will marry and lose whatever surname she has at that time, so why should one be concerned with her surname at all?”⁴⁴³ In a *Globe and Mail* article of July 2003, the Assistant National News editor and a self-proclaimed feminist clearly misses the connections between male power, patronymy, and property rights when she states, “today it’s family, not land, that needs to be identified in the minds of women who are deciding to change their name after marriage.”⁴⁴⁴ She then proceeds to quote a friend who suggests that not changing your name “sends the wrong signal—it seems that maybe you aren’t 100% committed to the new family you are building.”⁴⁴⁵ Indeed, a recent study of thousands of couples (married and unmarried, heterosexual, gay and lesbian) confirmed the importance of gender to our concept of marriage. Philip Blumstein and Pepper Schwartz’s findings in *American Couples* reveal the ways in which current family law and traditional expectations of marriage influence the attitudes, expectations, and behavior of married couples. The study concludes by stating: “While the heterosexual

⁴⁴³ *Re Gloade* (1980), 37 N.S.R. (2d) 445 (Co. Ct.), p. 450, quoted in Boivin, 202.

⁴⁴⁴ Melanie Coulson, “A feminist by any other name”, *The Globe and Mail*, 5 July 2003, p. F7.

⁴⁴⁵ Coulson, p. F7.

model offers more stability and certainty, it inhibits change, innovation, and *choice* regarding roles and tasks. Second, the heterosexual model...is predicated on the man's being the dominant partner."⁴⁴⁶

As early as 1998, Peta Tandrid noted the return to conservatism and family values as a factor in women changing their names. She states, "There is a fear that we have destroyed the family. This fits with a desire to rebuild it."⁴⁴⁷ By taking responsibility for the preservation of the (patriarchal) "family unit" while simultaneously subscribing to the rhetoric of our 'post-patriarchal world', many men and women unintentionally collude with private patriarchy's attempts to blame feminism for the evils of society. By defending patronymy as harmless, many women are active forces in the regulatory process that inscribes commitment and loyalty to family on the identities of wives/mothers' alone. Blumstein and Schwartz conclude that, while the more egalitarian two-paycheque marriage is "emerging" in contemporary society, "the force of the previous tradition still guides the behavior of most modern marriages."⁴⁴⁸ Implying that choice is empowering, Coulson opines that it is a woman's decision to change her name, and remains curiously silent about the obvious contradiction that men rarely choose to change their names. With an instrumental approach to 'self' and the assumption that her name is already derivative (of a man), Coulson rationalizes her own "choice" as a rejection of her absentee father. Finally, Coulson asserts that her *new* name is the symbol of the *new* family unit she is creating, and promotes the platitude that her name change merely represents the beginning of another "chapter" in her (rivulet-like) life.⁴⁴⁹

⁴⁴⁶ Cited in Susan Moller Okin, *Justice, Gender, and the Family* (BasicBooks: New York, 1989), 140.

⁴⁴⁷ Stephanie Nolen, "Name-change Revival", *The Globe and Mail*, 3 September 1998, p. C5.

⁴⁴⁸ Cited in Okin, *Justice, Gender, and the Family*, 140.

⁴⁴⁹ Coulson, p. F7.

Lebell observes that names locate us among the social strata; they can proclaim our uniqueness, or render us invisible, “hidden behind the mantle of other people’s identities.”⁴⁵⁰ Patronymy systematically erases the personhood, achievements, and herstories of all women. Stannard documents numerous remarkable women—a nerve pathologist, founder of a school for blacks, women’s rights advocates, a mountain climber, the first PhD, and authors galore—who all “disappeared” from history after marriage, no longer connected to the nominal identities that produced their accomplishments and contributions to society.⁴⁵¹ Conversely, birth name permanence suggests that a wife sees herself as her husband’s equal and has as good a chance as he in establishing social and professional security through her own identity and personhood, as they relate to *her* own accomplishments, talent, and “who-ness”. Rather than staying at home to fulfill the needs of her husband and her kids, her own goals and self-development may compete with his, posing significant obstacles to the unfettered pursuit of *his* professional success, and *his* path of self-determination. While birth name permanence affirms the worth of women, patronymy suppresses “female ethnic background and the spirit and life stories of female members of the family.”⁴⁵²

We intuitively know that the naming process is significant culturally and socially, as well as being bound up with notions of individual identity. As Lebell observes, “names possess a raw power rooted in our primitive human psychology and are recognized in biblical and mystical sources. Many ethnic and religious traditions regard naming as power in its most telescoped form.”⁴⁵³ Commenting on the symbolic force of

⁴⁵⁰ Lebell, 5.

⁴⁵¹ See Stannard, *Mrs. Man*, 76-9.

⁴⁵² Lebell, 20.

⁴⁵³ Lebell, 7.

naming, Lebell is not surprised that “the ‘code’ of patronymy requires a curious silencing of discussion, reflection, and public evaluation of the practice as though it were treasonous; this of course forestalls all possibility of opposition.”⁴⁵⁴ When asked about the topic of my Masters Thesis, I am often aware of the discomfort that develops in a room full of married couples who practice patronymy in full or in part. Men often defensively raise the absurdity of cumulative generations of hyphenation and assert that naming has no link to the actual equality of spouses in modern times. Women who feel that they ‘gave in’ to their husbands are not keen to have their choice explored publicly, and those who never questioned the practice are often defensive and or even resentful that I would feel the need to research such a trivial (yet loaded) issue. As with many patriarchal customs, women remain the proactive agents in practicing and maintaining patronymy. The burden of conformity therefore is inscribed upon and made visible through women’s names and women’s identities. An appropriate Japanese proverb states: “The nail that sticks up gets hammered down”, and there are likely many women in contemporary Canada and Japan who make the rational choice of taking their husband’s names to reduce the frequency with which they will be pummelled by social scrutiny. Far from trivial, the loaded significance of a woman’s choice of marital names in contemporary Canadian and Japanese societies functions as a key indicator and reflection of the inequality of women within modern forms of private and public patriarchy.

⁴⁵⁴ Lebell, 14.

THE ROLE OF THE STATE

Naming is a political activity. To give a name is to give power to or gain power over, the named.

Valeria Alia⁴⁵⁵

Pateman has exposed the political nature of male sex-right, as well as its suppression from the discourse of liberal democratic theory. The political construction, promotion and restriction of women's roles to the private sphere have had a very personal impact on individual women and on women's names. As reflected in previous sections, the feelings and fears of women regarding the decision to change or retain their birth name hint at women's internalization of stereotypes about their capabilities and appropriate "role", despite the modern laws on the books. Women's acceptance of life as a second-class citizen, whose destiny is shaped by gender roles associated with private and public notions of patriarchal marriage, is a learned behaviour. As more and more women rebel and throw off this label to assert the right to equal dignity and respect, patriarchal society responds with increased resistance to generate a backlash against this poignant symbol of women's autonomy and equality in marriage. Using the insightful language of equal dignity, Taylor's "politics of recognition" reveals the role of the state in *mis*-recognizing the human dignity of women through the framework of choice. By remaining silent on the fundamental worth of women's names, the state denies the fact of women's equal worth and inhibits the ability of women to contribute to society on a par with men. By denying women the liberty to determine their paths as citizens of the social contract, the state is complicit, not only in the oppression of each and every female citizen, but also contributes to the subjugation of women as a group.

⁴⁵⁵ Alia, 34.

As Taylor's politics of recognition would prescribe, the only possible solution is that the state proactively communicate and uphold an empowering message of citizenship in which the female self and name are of value and are worthy of recognition for her contributions both in the private and public spheres. The state must redefine what the "relevant world" entails, and in its architectural plans the significance of women must be integral by design. No longer based on the limited, patriarchal notions of womanhood, through its laws, the state must implement a vision of citizenship which assumes, in Herder's words, that "each of us has an original way of being human: each person has his or her own 'measure'".⁴⁵⁶ In order for society to celebrate women's own ways of being human, women can and should be socialized to value their names, their identities, their individual talents, and their accomplishments. They must be reassured of their right to set goals for their future, and experience themselves as stable personalities who have the capacity to determine their own destinies and shape the realities of the societies in which they live.

Given the promise of equality that liberal democratic citizenship puts forth, the state has an obligation to proactively promote the recognition of women as citizens, and to concern itself with the systematic documentation, protection, and promotion of women's names, achievements, and contributions to society in ways that support that recognition. Mickelsen describes the ongoing contradiction when she states, "Should we tell our kids that Mom and Dad are equal but Dad's name comes first because 'that's just the way things are?' Do we really want to pass on that particular lesson about women, justice, and the status quo?"⁴⁵⁷ More specifically, should the Canadian and Japanese

⁴⁵⁶ Cited in Taylor, 30.

⁴⁵⁷ Mickelsen, 34.

states continue to allow individual women and men to pass on that message about women, justice, and the status quo to their daughters and sons? As identified in Cudd's definition of oppression by choice, the legal framework of choice invites society to encroach upon the liberty of women, and as such, represents a *prima facie* wrong. With the backdrop of Pateman's and Taylor's assertions about what might constitute a healthy, and therefore non-sexist liberal democratic vision of society, in this thesis, I have defended the position that the "rhetoric of choice" is untenable in the context of the rights and freedoms guaranteed in the constitutions of Japan and Canada.

In the 18th century as in the 21st, the "gospel of individual sovereignty" communicates a message of women's equal worth to significant others, family, and society alike. Birth name permanence communicates a woman's connection to the social contract of the public sphere, rather than to her private sphere master under the sexual contract, and is therefore a rejection of the hierarchy of loyalties that the patriarchal marital name-change implies. Mironowicz documents that, in Canadian society, birth name retention is likewise understood as a means of saying, "this is a marriage in partnership rather than possession, independence rather than appendage."⁴⁵⁸ As a rejection of Confucian or Christian-derived myths of women's proper sphere, by not accepting to be a rivulet, nor a "nameless womb, so-and-so's wife, mother or daughter,"⁴⁵⁹ birth name permanence linguistically terminates the exchange of women between father and husband, and challenges the inherently sexist assumptions that a woman requires a husband in order to sustain her life, liberty and property in the person. Whereas patronymy prevents females from experiencing themselves as self-determining

⁴⁵⁸ Mironowicz, "Maiden names worth keeping, women say", p. 2.

⁴⁵⁹ Lebell, 17.

agents,⁴⁶⁰ as Fowler and Fuhrer document, birth-name permanence expresses a woman's desire for a relationship of equal partnership.⁴⁶¹

In Japanese society, numerous studies suggest that the persistence of women's subordination within the family is leading young Japanese women to re-evaluate their desire to marry. They have expectations of a more egalitarian marriage, and appreciate their own financial earning power.⁴⁶² Additionally, demographic pressures have rendered increasing numbers of men 'undesirable' marriage partners due to their status as the family heir, and the filial responsibilities towards aging parents that this entails for the wife/daughter-in-law. Furthermore, the study entitled, *Nijuisseiki Kazoku e* (Towards the 21st Century Family) notes that with only one to two children per family in the second generations of the post-war era, daughters are often faced with being successors themselves, creating a conflict as to which family's lineage will take precedence and survive as the focus of continuity in the resulting union if only one family name may continue.⁴⁶³ If female successors marry a male successor and are forced to give up the "surname" of their kinship group, the religious and spiritual implications for the woman's ancestry can be grave from the perspective of the older, more religious generations. In a sense, we are seeing not only a battle between the purported "tradition" of patriarchal familialism and modern democratic traditions of gender equality, but secondly, patriarchal familialism is now coming into conflict with the spiritual and religious traditions of Shintoism and Buddhism, which require that an heir look after the ancestors' spirits in the afterlife. As is the case for baby Aiko, female children require the rights and

⁴⁶⁰ Lebell, 28.

⁴⁶¹ Fowler and Fuhrer, 317.

⁴⁶² Iwao, 61-66.

⁴⁶³ Ochiai, 154.

privileges associated with birth name permanence, continuity, and historicity, as they affirm the fact of women's value, and of women's names as durable, and worthy of transmission to future generations.⁴⁶⁴

The role of the law in creating the conditions for social oppression or social transformation is significant. Over the past thirty years, women who retained their birth names have been consistently obstructed by legal, administrative hurdles, subjected to social and moral scrutiny, and essentially "hammered down" for their decision to hold true to their unique "who-ness". If power in the 21st century is diffuse and continues to find expression in the social definitions of heterosexual spouses within the family, then the responsible solution for the state is to pursue a more proactive policy that neutralizes and prevents the residual legal, social, and moral pressures of patriarchal naming. The construction of legal "choice" in marital last names hides the true dynamics of patriarchal power, by linking the persistence of this custom to the cumulative results of individual women making individual decisions about purely "personal" concerns. As such, it deflects our attention from the social reality that women's married names are directly connected to the value of women as a group.⁴⁶⁵

Concurring with Lebell, I believe that a culture of preserving and protecting women's birth names is fundamentally linked to the individual and collective ability of women to experience themselves as self-determining agents, and achieve expansive, varied, and fixed identities of empowered and multifarious selves.⁴⁶⁶ In Taylor's terms, the legal framework of choice lets women *choose* societal *non*-recognition and *mis*-recognition of their human potential and renders invisible the diverse ways in which their

⁴⁶⁴ Lebell, 17-18.

⁴⁶⁵ Lebell, 17.

⁴⁶⁶ Lebell, 27-8.

talents have, and continue to contribute to society. As such, the state not only downloads the burden of patriarchy and patronymy to each and every woman by isolating her in her choice, but most importantly, the state is an accomplice in her oppression by virtue of ignoring the harm done to her person and to women as a group. Girls' names, similar to those of boys, should be expected to continue so as to allow for the full expression of the human potential of girls and women within society without constraining their identities, roles, or names to prescribed categories wherein they are appendages to men. Those who fit the male norm, and moreover benefit from its privileges, will never feel the discomfort or consequences of *mis*-recognition, invalidation, and the oppression that it entails as long as women continue to serve as repositories of male personhood, male achievement, and male power. Democratic accountability to female citizens requires that the liberal democratic state fully implement and operationalize the principles that have been carefully encoded in the terms of the social contract among citizens. As the academic research, personal experiences of women, and social attitudes on marital naming attest, and as substantiated by the works of Carole Pateman and Charles Taylor, only a policy of birth name permanence, akin to the Québécois model, takes women's dignity seriously and would uphold the right of Canadian and Japanese women to equal citizenship, and to the equal benefit and protection of the law.

CONCLUSION

If we are to achieve a richer culture, rich in contrasting values, we must recognize the whole gamut of human potentialities, and so weave a less arbitrary social fabric, one in which each diverse gift will find a fitting place.

Margaret Mead⁴⁶⁷

When reading the discussion of the rampant popularity of birth name retention that was documented in *Globe and Mail* articles of the late 1970s, from the perspective of 2003, one marvels at the optimism and confidence of the projected linear pattern of progress that could only move gender equality full speed ahead. One article states, “When they were small in numbers, the women who were doing the unthinkable--not taking their husband’s name--were, to institutions and the male-dominated community a freakish outbreak who would strut and flap about, and eventually go away.”⁴⁶⁸ Similar to cavalier assertions of a post-feminist era, and perfunctory statements that “equality has been achieved”, it is fascinating how quickly the media was willing to claim the new naming trend a *fait accompli*. In 1977, President of the National Action Committee on the Status of Women in 1975, and a pioneer who reached back four generations to take her maternal grandmother’s birth name,⁴⁶⁹ Lorna Marsden commented, “the business of women hyphenating their names with their new husbands’ is just a fad”, and estimated that in 10 years the practice of a woman keeping her own name would be habitual”.⁴⁷⁰ Yet when I married in the year 2000, fully 23 years later, this was certainly not the reality in

⁴⁶⁷ Margaret Mead, *Sex and Temperament in Three Primitive Societies* (William Morrow: New York, 1963), 322.

⁴⁶⁸ Margaret Mironowicz, “Wives want a good name – maiden one”, July 9, 1977, p. 1

⁴⁶⁹ Mungall, 3.

⁴⁷⁰ Mironowicz, “Maiden names worth keeping, women say”, p. 2

Canadian society, nor have my research and experiences reflected any grand openness towards the practice.

Writing in 1973, Una Stannard reminds us of the parallels between women's struggles for suffrage and the right to retain their names: "[a] woman who wants to keep her own name...is willing to defy social convention in the interest of making it easier for a later generation of wives to retain their own identity... Before 1921 the majority of women did NOT want to vote; it was a tiny minority, willing to endure the hostility of society, who gave women a right they now take for granted."⁴⁷¹ I would not dispute Stannard's praise for women who stand against the beating force of the tide for the sake of women's equality, as it is the only way forward in the current legal context. Nonetheless, I am more concerned with the role of the state, than with an evaluation, critique or justification of the choices individual women have made. In an ideal world, all women would have information and awareness about the historical roots of patronymy, and would choose to affirm their independence within marriage. Realistically, in Japan as in Canada, many women are still financially dependent in whole or in part upon their husbands, and may have accepted long before marriage that they would be the secondary income earner and incur work interruptions to accommodate the childrearing role. Given the persistence of the social, economic and legal construction that is public and private patriarchy, I am singularly concerned with the fact that in the 21st century, the state is still complicit in the construction of 'man' and 'woman' into the dichotomous roles of citizen and wife. In the context of naming, it is truly disturbing that the state, through the rhetoric of choice, has proactively created in law the opportunity for the emotional blackmail of women by future husbands, family members, and society at large. The

⁴⁷¹ Stannard, *Married Women vs. Husbands*, 20.

cumulative results of women's "choices" are not only a crucial indicator of women's inferior status vis-à-vis their husbands, but more importantly, the framework of choice itself is constitutive of a vision of citizenship that projects assumptions of the state and the value it places on male as compared to female actors in society. As such, it reflects an ongoing commitment to the patriarchal family under the male citizen as the basic unit of society, to the detriment of all women.

In this thesis, I have explored the ways in which the state, through its marriage law and policies on last names, fails to fully operationalize the values inherent in liberal democratic thought, wherein the individual is the basic unit of the social contract. Consistent with the historical and legal roots of coverture and the perceived inferiority of women, I have argued that in Canada, as well as in Japan, the liberal democratic concept of "choice" is promoted because it allows the state to abdicate its role of protecting the equality of its female citizens. Deference to choice empowers the state to superficially proclaim that a level of equality has been achieved, and applaud the absence of an overtly coercive legal framework. By examining the sexual contract among men, and the force of moral regulation, I have attempted to illustrate the ways in which the framework of choice has simply privatized the burden of inequality onto the backs of women by allowing for the regulation of women's "proper sphere" in the informal setting of social and professional circles, where the state cannot be held to account. I have demonstrated that, in practice, the state continues to view women not as citizens, but as wives and mothers-in-waiting who are destined to marry and be governed by their husbands, the real citizens, contributors, and heroes of our societies. The legal "choice" to contract into a position of nominal, social, and de facto inequality within the family has been maintained

in order for male sex right to flourish. This framework continues to allow the exercise of patriarchal power over women and their offspring, as it indirectly upholds men's status as the "real" citizen within the marital union and as the head of the family household. This legal framework provides women with the opportunity to show their loyalty and devotion to their husbands, and to the family sphere by changing their family name to reflect their newly created role and ultimate purpose in life. Without requiring a formal change of name that is consciously registered with the state, the marriage contract conveniently facilitates the termination of a woman's existing identity vis-à-vis the state, and allows her to capitulate her rights and freedoms as a citizen of the social contract. Regardless of a woman's intellect, talent, or potential, by force of law, the state is an accomplice in fraternal patriarchy's attempt to carve out for all women, the *natural* role as the humble shadows of the few grand, many mediocre, but mostly immemorable Mr. Himselves in society.

In 1988 Lebell observed, "as with all major social change, a new idea starts out as a minority viewpoint, and gains acceptance gradually as it wins converts over from the prevailing view."⁴⁷² Doris Lessing eloquently stated, "Today's treason is tomorrow's orthodoxy".⁴⁷³ While these optimistic views may have been convincing when the promise of "choice" was still new, the lack of social change over the past 30 years is disappointing. In the past 10 years, women's actual standard of living has declined as a result of neo-liberal discourses and a mounting anti-feminist backlash.⁴⁷⁴ In the case of marital naming, some women have reverted back to using their husbands' names due to

⁴⁷² Lebell, 89,

⁴⁷³ Lebell, 88

⁴⁷⁴ See Superson, and Cudd; Ann Oakley and Juliet Mitchell eds., *Who's Afraid of Feminism: Seeing Through the Backlash* (The New Press: New York, 1997).

administrative or social ease, or the advent of children, and most young women take their husbands' names from the start, possibly to avoid the hassles and horror stories of women who dared to go against the grain, and were labelled with the "f" word. The beating that feminism has taken in the media and in society at large is indicative of the past 15 years, during which time positive social change in gender relations within the family has been significantly hindered by the renewed influence of formal equality and the strength and pervasiveness of the moral regulation of women. Furthermore, the active resistance and protection of patriarchal gender roles by individual marrying/divorcing men are being promoted through organized lobbies under the banner of "fathers' rights" and "equality for men". Sadly, women's equality, both in name and in spirit, has not become a 21st century orthodoxy.

The illustration of women's subordination as similar to that of a rivulet remains an appropriate analogy in contemporary Canada and Japan. From losing one's name, to being forced to follow one's master without bearing any sway, the protection of women's selfhood in law has been paternal at best. The law of men assumed the benevolent role of the father and husband in protecting women at different stages of their lives. Pateman has exposed the sexual oppression that underpinned the noble values espoused in the social contract of classical political theorists, the inherent tensions within liberal democratic theory, and the (gendered) 'abstract citizen' that is its foundation. As increasing numbers of women refuse to marry, and/or initiate divorce in the 21st century, the site of men's private power over women and children, that is, the patriarchal family, has come under attack. Increasingly, men are realizing their loss of control over *their* family, and are pursuing legal action to have those rights restored. In numerous legal battles

surrounding the last names of children over the past few decades, an unmarried woman's right to include or leave blank the information of the father has been upheld. Most recently, the 2002 Ontario decision in *Krelewetz v. Scopel*,⁴⁷⁵ and in the B.C. decision in *Trociuk v. British Columbia*⁴⁷⁶ upheld the common law right, reflected in statute, of unmarried mothers to register the birth and name of their children without the recognition or participation of the father. However, this common law right has been struck down by the Supreme Court of Canada as unconstitutional. Regressively, the Supreme Court of Canada in *Trociuk v. British Columbia*,⁴⁷⁷ overturned this centuries-old common law and removed the small legal preserve outside the realm of the marriage contract, wherein women and their children could not be subject to the control of men.

Similar to the backlash against women's decision to retain their birth names, as women have become increasingly willing to raise their children on their own, and as wives' and mothers' interests have come increasingly into conflict with the privileges of male sex right, the force of patriarchy is rearing its ugly head once again. Riding the wave of formal equality, and applying the Charter protection that was designed to protect women's equality rights against the legacy of their historical oppression, the precedent established in *Trociuk v. British Columbia* deems the law to be discriminatory *against men*. Balancing the rights and responsibilities of mothers and fathers vis-à-vis offspring, the Court prioritized men's right to "opt-in" to the role of father for children born out of wedlock for the purposes of naming their offspring, and abolished the right of an unmarried mother to autonomously register and name her child. Ironically, this decision

⁴⁷⁵ *Krelewetz v. Scopel Krelewetz v. Scopel* (2002), 60 O.R. (3d) 187 (C.A.).

⁴⁷⁶ *Trociuk v. British Columbia (Attorney General)*, [2001] B.C.J. No. 1052 (C.A.).

⁴⁷⁷ *Trociuk v. British Columbia (Attorney General)* [2003] S.C.J. No. 32.

contradicts the basic tenets of liberal democratic theories of property, that stem from Locke's assertion that:

The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his. Whatsoever then he removes out of the state that Nature hath provided, and left it in, he hath mixed his *Labour* with, and joyned to it something that is his own, and thereby makes it his *Property*.⁴⁷⁸

This latest decision is a striking example of the *non*-recognition of the reproductive labour and procreative contributions of women, and denies women's prior rights of guardianship over their offspring. In Pateman's terms, it regressively assumes sexually neutral or 'universal' bodies for its abstract citizen in order to arrive at the theoretical fiction wherein any aspiring father may be understood as having the same relationship (and therefore naming rights) to children as their maternal creators. Using this fabricated level of sameness, biological fathers may now socially and legally harass women by asserting the primacy of their relationship, ownership, and rights vis-à-vis offspring. As a symbol of this property claim, they demand that children be labelled with their last name. Similar to that exercised in divorce negotiations, men may use emotional or legal blackmail to ensure their control of married (and now unmarried women) through their offspring, regardless of the "opt-out" protections that both the law and patriarchal attitudes promote for fathers. More importantly, this injustice persists as a result of societal *non*-recognition and *mis*-recognition of the realities of women's unique role as creators, their central place as primary caregivers, and their *de facto* responsibility for the financial and emotional well-being of their children.

As in the 18th, 19th, and 20th centuries, the Supreme Court of Canada has just made sure that men of the 21st century may continue to exercise all of the rights, and

⁴⁷⁸ Locke, *Second Treatise of Government: A Critical Edition*, s. 27.

little of the burden of the law *in practice* with respect to their ability to claim authorship of children and fabricate their importance within the process of human social reproduction and family life. As the law, cultural attitudes, and most recently, the Supreme Court of Canada continue to deny women recognition for their procreative and childcaring contributions to society, Pateman's critique of the marriage contract and its function of upholding male sex right over women and children resonates all too clearly. It would seem that the Canadian state does continue to see women as primarily wives and mothers-in-waiting, and if the rights of fathers are challenged through divorce or other means, women's citizenship rights will likely be sacrificed due to the sanctity of private patriarchy.

In contemporary Japan, Diet members continue to profess that families under a united 'surname' constitute a natural and stable unit in society. Underestimating the force of custom, conservatives in Japan ignore both the weak presence of birth name retention in countries that offer a legal choice and the high levels of divorce among the vast majority of families who in fact share a "unified surname". Rather, they claim that different last names will undermine family values and the family system itself, and will be the cause of negative emotional growth in children.⁴⁷⁹ Forcing family unity through the male person for the purported 'best interests of the child' is seen as of greater social value than the fundamental political and legal foundation of equal citizenship for male and female citizens. As such, with respect to marital naming, it is highly unlikely under these circumstances that Canada or Japan will take steps to promote and protect women's personhood in the spirit of the Quebec model.

⁴⁷⁹ Hendry, 413.

The studies, research, and realities referenced in this thesis lead one to believe that in fact, we are a long way from attaining an equal validation of both sexes in the marriage context in Canada and in Japan. Far from being a value-free custom, the legal, social or moral obligation to change one's last name upon marriage is not a "non-issue" for most women and men. In countries where the state legally requires a unified name, as in Japan, the struggle for equal recognition pushes on. Having experienced the moral regulation of society, and having been forced to defend my own right to exist as the individuated person I have been since birth, I see the legal framework of choice in married names as an acute invasion of privacy and a fundamental denial of equal human rights. Most critically, it calls into question the very foundation of a liberal democratic government's claim to legitimately exercise power in the service of all of its male *and female* citizens.

Contemporary Connections

Just one year before the adoption of the Charter of Rights and Freedoms, in an article entitled, *Psychological Impact of Women's Name Change At Marriage: Literature Review and Implications*, Dralle and Maciewicz concluded with the following observation:

The custom of a married woman taking her husband's surname at marriage is so established in our society that the possible psychological effects on the woman, man, couple and family have not been recognized as appropriate areas for study. The name-choice issue is a frequently occurring and relatively universal variable which may reflect social change, which in turn has impact on family and marriage institutions.⁴⁸⁰

⁴⁸⁰ Dralle and Maciewicz, 54.

Despite the ongoing discussions on gender equality and the family, the reality is that marital naming has not been studied in Canada in a meaningful way for the past twenty years. It is with this in mind, that I became determined to explore in this thesis, the historical status of women, the persistence of gender roles within the family, and the degree to which substantive equality and equal citizenship can be achieved if women are consistently expected to bury their names, their identities, and their accomplishments under the protective wing of their husband.

This research is linked to current legal issues and debates taking place at a number of levels and in a number of contexts in Canadian and Japanese society. The issues I have raised are related to work presently on the agenda of the Law Commission of Canada, which is attempting to re-examine the role and parameters of the institution of marriage, as well as the legal framework that supports it throughout Canadian public policy. In particular, the Law Commission of Canada has published a report entitled, *Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships* wherein it is stated:

Another challenge is to ensure that previous patterns of discrimination and inequality are not repeated. Sometimes, statutes unwittingly reproduce distinctions that, while conceptually neutral, work unfairness in their actual operation. Achieving equality in statutes governing close adult personal relationships requires Parliament to develop its criteria of inclusion and exclusion with both their form and their practical impact clearly in view.⁴⁸¹

Indeed, in the current period of social transition marked by changes in gender relations, and the challenge to the institution of marriage as an exclusively heterosexual relationship, the Government of Canada must engage in a process of meaningfully and

⁴⁸¹ "Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships", <http://www.lcc.gc.ca/en/themes/pr/cpra/report.asp>, accessed 15 May 2003.

critically re-imagining marriage as a component of the legal framework of our society. By probing the underlying values reflected in current marriage laws in Canada, I hope that I have contributed to this dialogue.

The Justice Committee has recently evaluated proposed changes to the *Divorce Act*,⁴⁸² which will impact upon the rules governing the custody and future care of children by divorced spouses, and which could significantly put women's equality and women's safety at risk.⁴⁸³ My work with the *Ontario Women's Network on Child Custody and Access*, and for the *National Association of Women and the Law* on the changes to the *Divorce Act* has refined my analysis so as to enable me to identify the complicity of the family naming tradition in the treatment of women as vessels for wifedom and motherhood, rather than as individual citizens in their own right.

The Japanese feminist movement, as well as conservative religious forces are currently mobilizing for the ability of married spouses to have different names. Using arguments that assert the human rights of women, Japanese feminists have been advocating for the right of a woman to retain her name so as to protect her constitutionally guaranteed right to equality, as well as ensure the protection of her privacy rights. Given the tremendous decrease in the birthrate, and the consequent number of female successors, a portion of the religious factions in Japan are advocating for the right of daughters to continue as successors to the family name in marriage given the spiritual implications that this has on the ancestral well-being maintained in the

⁴⁸² *Divorce Act*, R.S., 1985, c. 3 (2nd Supp.).

⁴⁸³ Ontario Women's Network on Custody and Access, *Brief to the Federal, Provincial, Territorial Family Law Committee on Custody, Access and Child Support*, 6 June 2001; Andre Ct and Pamela Cross, "Preliminary Analysis of Bill C-22: An Act to Amend the Divorce Act", For the Ontario Women's Network on Child Custody and Access, the Ontario Women's Justice Network, and the National Association of Women and the Law, Draft Unpublished Version, February 5, 2003

afterlife. I hope to contribute to these debates and discussions by communicating the ideas of this paper to Japanese feminist organizations, such that their work on this issue can connect with international examples that alert them to the pitfalls of the framework of “choice”, as well as inform them of the benefits of the Quebec model of citizenship.

Finally, the notion of the family cuts to the heart of the most controversial issues, values, and principles of social organizing, regardless of the society in question. Consequently, I believe the central critique in this thesis to be both timely in the context of the battle for legal reform currently being fought in Japan, but also timeless in its focus on the ongoing contradictions that will affect Canadian, Québécois, and Japanese society throughout the 21st century as we struggle to implement a coherent theory of gender-equitable citizenship. The relationship of the sexes to one another within the family, in the paid workplace, and within the agora of civic participation, deserves ongoing and critical reflection. Ultimately, a renewed vision of gender-accountable democracy begins with our ability to imagine a citizen who is both worker and parent, who gets pregnant, cares for young children and other family members, who experiences illness or disability, who requires time for personal development and political participation, and whose human potential enriches the social fabric of our world. All of these assumptions must be effectively reflected within the legal, social, and economic frameworks of Canadian, Québécois, and Japanese society, if gender equality is to become a reality during my lifetime.

SELECTED BIBLIOGRAPHY

Books and Articles

- Abu-Laban, Yasmeen and Christina Gabriel. *Selling Diversity*. Broadview Press: Toronto, 2002.
- Alford, Richard. *Naming and Identity: A Cross-Cultural Study of Personal Naming Practices*. New Haven: Hraf Press, 1988.
- Alia, Valerie. "Women, Names, and Power". *Women and Language* 8: 34-36
- AMPO-Japan Asia Quarterly Review (ed). *Voices from the Japanese Women's Movement*. M. E. Sharpe: New York, 1996.
- Arichi, Masumi. "Is it Radical? Women's right to keep their own surnames after marriage". *Women's Studies International Forum* 22 (1999): 411-415.
- Arliss, Laurie. *Gender Communication*. Prentice Hall: Englewood Cliffs, 1991.
- Armstrong, Pat and Hugh Armstrong. *The Double Ghetto: Canadian Women and Their Segregated Work*. 3rd ed. McClelland and Stewart: Toronto, 1994.
- Attwood, Brian. "White Man's Law", *The Making of the Aborigines*. Allen & Unwin: Sydney, 1989.
- Backhouse, Constance. *Colour-Coded: A Legal History of Racism in Canada, 1900-1950*. University of Toronto Press: Toronto, 1999.
- Backhouse, Constance. *Petticoats and Prejudice: Women and the law in Nineteenth-Century Canada*. Women's Press for the Osgoode Society: Toronto, 1991.
- Baines, Beverley. "Women, Human Rights and the Constitution", In Audrey Doerr and Micheline Carrier (eds). *Women and the Constitution in Canada*. Canadian Advisory Council on the Status of Women: Ottawa, 1981.
- Baker, Maureen (ed). *Families: Changing Trends in Canada*. 3rd ed. McGraw-Hill Ryerson: Montreal, 1995.
- Bannerji, Himani. *Inventing Subjects: Studies in Hegemony, Patriarchy and Colonialism*. Tulika Books: New Delhi, 2001.
- Bannerji, Himani, Shahrzad Mojab and Judith Whitehead (eds). *Of Property and Propriety: The Role of Gender and Class in Imperialism and Nationalism*. University of Toronto Press: Toronto, 2001.
- Bartky, Sandra-Lee. "Foucault, Femininity, and the Modernization of Patriarchal Power". In Rose Weitz (ed). *The Politics of Women's Bodies: Sexuality, Appearance and Behavior*. Oxford University Press: Oxford, 1998.
- Bélanger, Yves, Robert Comeau et Céline Métivier (eds). *La Révolution Tranquille 40 ans plus tard : un bilan*, VLB éditeur, Montreal, 2000.
- Belliveau, Jo-Anne, Jillian Oderkirk and Cynthia Silver. "Common-law union: The Quebec Difference". *Canadian Social Trends*. Statistics Canada, Minister of Supply and Services: Ottawa, 1994.
- Bernstein, Gail (ed). *Recreating Japanese Women, 1600-1945*. University of California Press: Berkeley, 1991.
- Bissett-Johnston, Alastair. "Children in Subsequent Marriages – Questions of Access, Name and Adoption". In John Eekelaar and Sanford Katz (ed). *Marriage and Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change*.

- Cohabitation in Contemporary Societies: Areas of Legal, Social and Ethical Change*. (Butterworths: Toronto, 1980).
- Boivin, Suzanne. "The Surname of the Married Woman and of Children". In Elizabeth Sloss (ed). *Family Law in Canada: New Directions*. Canadian Advisory Council on the Status of Women: Ottawa, 1985.
- Bonenfant, Claire, Martine Bégin, Teresa Bassaletti et Jacques Méhu. *L'avenir politique et constitutionnel du Québec vu par des groupes de femmes*. Group de recherche multidisciplinaire féministe, Université Laval : Québec, 1992.
- Boyd, Susan (ed). *Challenging the Public/Private Divide: Feminism, Law, and Public Policy*. University of Toronto Press: Toronto, 2002.
- Bradbury, Bettina. "Gender at Work at Home: Family Decisions, the Labour Market and Girls' Contributions to the Family Economy" In Bonnie Fox (ed). *Family Patterns, Gender Relations 2nd ed*. Oxford University Press: Oxford, 2001.
- Brière, Germain, "La réforme du droit du nom et du domicile", *Revue Général de Droit* 6 (1975): 465-474.
- Brière, Germain, "Les effets du mariage, selon la conception du législateur québécois de 1980". *Revue Général de Droit* 13 (1982): 5-26.
- Brinton, Mary. *Women and the Economic Miracle: Gender and Work in Postwar Japan*. University of California Press: California, 1993.
- Brightman, Joan, "Why Hillary Chooses Rodham Clinton". *American Demographics* 16 (1994): 9-10.
- Burt, Sandra. "Women's Issues and the Women's Movement in Canada Since 1970". In Alan Cairns and Cynthia Williams (eds). *The Politics of Gender, Ethnicity and Language in Canada*, University of Toronto Press: Toronto, 1986.
- Butler, Judith. *Gender Trouble: Feminism and the Subversion of Identity*. Routledge and Kegan: New York, 1990.
- Caparros, Ernest. *Les lignes de force de l'évolution des régimes matrimoniaux en droits comparé et Québécois*. Les Presses de l'Université de Montréal: Montreal, 1975.
- Carbaugh, Donal, *Situating Selves: The Communication and Social Identities in American Scenes*. University of New York Press: New York, 1996.
- Chambers, Lori. *Married Women and Property Law in Victorian Ontario*. University of Toronto Press: 1997.
- Cherlin, Andrew. "Hereditary Hyphens?" *Psychology Today* (December 1978): 150.
- Chunn, Dorothy and Dany Lacombe (eds). *Law as a Gendering Practice*. Oxford University Press: Don Mills, 2000.
- Clark, Rodney. *The Japanese Company*. Yale University Press: New Haven, 1979.
- Clement, Wallace and John Myles. *Relations of Ruling: Class and Gender in Postindustrial Societies*. McGill -Queen's University Press: Montreal, 1994.
- Coleman, Samuel. *Family Planning in Japanese Society: Traditional Birth Control in a Modern Urban Culture*. Princeton University Press: Princeton, 1983.
- Comack, Elizabeth (ed). *Locating Law: Race, Class, Gender Connections*. Fernwood Publishing: Halifax, 1999.
- Conrad-Rice, Joy Belle. "The Legal Status of a Married Woman's Maiden Name". *Woman Lawyers Journal* 49 (1973): 98-102.
- Conway, John. *The Canadian Family in Crisis*. 3rd ed. James Lorimer and Company: Toronto, 1997.

- Cornet, Wendy, "First Nations Governance, the *Indian Act*, and Women's Equality Rights", In Judith Sayers, Kelly MacDonald, Jo-Anne Fiske, Melonie Newell, Evelyn George, and Wendy Cornet. *First Nations Women, Governance and the Indian Act: A Collection of Policy Research Reports*. Status of Women Canada: Ottawa, November 2001.
- Cossman, Brenda. "Family Inside/Out". In Meg Luxton (ed) *Feminism and Families: Critical Policies and Changing Practices*. Fernwood Publishing : Halifax, 1997.
- Cossman, Brenda and Judy Fudge (eds). "Introduction". In *Privatization, Law, and the Challenge to Feminism*. University of Toronto Press: Toronto, 2002.
- Côté, Andrée and Pamela Cross. "Preliminary Analysis of Bill C-22: An Act to Amend the Divorce Act". For the Ontario Women's Network on Child Custody and Access, the Ontario Women's Justice Network, and the National Association of Women and the Law, Draft Unpublished Version, February 5, 2003.
- Crompton, Rosemary and Fiona Harris. "Explaining women's employment patterns: 'orientations to work' revisited". *British Journal of Sociology* 49 (1998): 119-136.
- Cudd, Ann. "Oppression by Choice". *Journal of Social Philosophy* 25 (1998): 22-44.
- Daly, Mary and Jane Lewis. "The concept of social care and the analysis of contemporary welfare states". *British Journal of Sociology* 5 (2002): 281-298.
- Daum, Roslyn Goodman. "Married Women's Surnames". *Journal of Law Reform* 8 (1974): 64-102.
- David, Rodica. *Marriage and Family Law in Ontario*. 2nd Ed. International Self-Counsel Press: Vancouver, 1979.
- De Beauvoir, Simone. *Le Deuxième sexe*. Éditions Gallimard: Paris, 1949.
- De Beauvoir, Simone. *The Second Sex*. Translated by H. M. Parshley. Vintage Books: New York, 1989.
- Demo, David and Katherine Allen. "Diversity Within Lesbian and Gay Families: Challenges and Implications for Family Theory and Research". *Journal of Social and Personal Relationships* 13 (1996): 415-434.
- De Vos, George. *Institutions for Change in Japanese Society*. University of California: Berkeley, 1984.
- Dickenson, Donna. *Property, Women and Politics: Subjects or Objects?* Rutgers University Press: New Brunswick, 1997.
- Dralle, Penelope and Kathelynn Mackiewicz. "Psychological Impact of Women's Name Change at Marriage: Literature Review and Implications for Further Study". *The American Journal of Family Therapy* 9 (1981): 50-55.
- Duden, Barbara. "The Fetus on the 'Farther Shore'". In Lynn Morgan and Meredith Michaels (eds). *Fetal Subjects, Feminist Positions*. (University of Pennsylvania Press: Philadelphia, 1999).
- Dumont, Micheline, Michèle Jean, Marie Lavigne, and Jennifer Stoddart. *L'Histoire des femmes au Québec depuis quatre siècles*. Quinze: Montréal, 1982.
- Elshtain, Jean Bethke. *Public Man, Private Woman: Women in Social and Political Thought*. Princeton University Press: Princeton, 1993.
- Embleton, Sheila and Ruth King. "Attitudes Towards Maiden Name Retention". *Onomastica Canadiana* 66 (1984): 11-22.
- England, Paula. "Marriage, the Costs of Children, and Gender Inequality". in Linda Waite et al (eds), *The Ties that Bind*. Walter de Gruyter: New York, 2000.

- Esping-Andersen, Gosta. "Welfare State and Labor-Market Regimes". In *Three Worlds of Welfare Capitalism*. Polity Press: Cambridge, 1990.
- Falk, Avner. "Identity and Name Change", *The Psychoanalytic Review* 62 (1975-75): 647-657.
- Farlèy, Jennie. "Married Women's Name Styles and Interest in Continuing Education". *Journal of Employment Counseling*. (1975): 91-95.
- Fineman, Martha Albertson and Isabel Karpin (eds). *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood*. Columbia University Press: New York, 1995.
- Foss, Karen and Belle Edson, "What's In a Name? Accounts of Married Women's Name Choices", *Western Journal of Speech Communication* 53 (1989): 356-373.
- Fowler, Rebekah, and Ann Fuehrer. "Women's Marital Names: An Interpretive Study of Name Retainers' Concepts of Marriage". *Feminism and Psychology* 7 (1997): 315-320.
- Friedan, Betty. *The Feminine Mystique* (Introduction by Anna Quindlen). Norton and Company: New York, 2001.
- Fudge, Judy. *Labour Law's Little Sister: the Employment Standards Act and the Feminization of Labour*. Canadian Centre for Policy Alternatives: Ottawa, 1991.
- Fujieda, Mioko. "Japan's First Phase of Feminism". In Kumiko Fujimura-Fanselow and Atsuko Kameda (eds) *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*. The Feminist Press: New York, 1995.
- Fujikura, Koichiro (ed). *Japanese Law and Legal Theory*. New York University Press: New York, 1996.
- Fujimura-Fanselow, Kumiko and Atsuko Kameda (eds). *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*. The Feminist Press: New York, 1995.
- Gagnon, Serge. *Mariage et famille du temps de Papineau*. Les Presses de l'Université Laval: Sainte-Foy, 1993.
- Gelb, Joyce and Marian Lief Palley (eds). *Women of Japan and Korea: Continuity and Change*. Temple University Press: Philadelphia, 1994.
- Goff, Helen. "Glass Ceilings in the Land of the Rising Sons: The Failure of Workplace Gender Discrimination Law and Policy in Japan". *Law and Policy in International Business* 26 (1995): 1147-68.
- Guindon, Hubert. *Quebec Society: Tradition, Modernity, and Nationhood*. University of Toronto Press: Toronto, 1988.
- Hall, John and Marius Jansen (eds). *Studies in the Institutional History of Early Modern Japan*. Princeton University Press: Princeton, 1968.
- Hall, Stuart. "The West and the Rest: Discourse and Power". In S. Hall, D. Held, D. Hubert, and K. Thompson (eds), *Modernity*. Oxford: Blackwell, 1995.
- Hanneson, Brent. "What's in a name? Naming your baby". *Today's Parent* 2 (2001): 45-57.
- Hartouni, Valerie. "Epilogue: Reflections on Abortion Politics and the Practices Called Person". In Lynn Morgan and Meredith Michaels (eds). *Fetal Subjects, Feminist Positions*. (University of Pennsylvania Press: Philadelphia, 1999).
- Hayashi, Yoko. "Policies of the Japanese Government Toward Women". *Voices from the Japanese Women's Movement*. In AMPO-Japan Asia Quarterly Review. M.E. Sharpe: New York, 1996.

- Henderson, Dan. "The Evolution of Tokugawa Law". In John Hall and Marius Jansen (eds). *Studies in the Institutional History of Early Modern Japan*. Princeton University Press: Princeton, 1968.
- Hendry, Joy. *Marriage in changing Japan*. Croom Helm: London, 1981.
- Hirschon, Renée. "Introduction: Property, Power and Gender Relations". In *Women and Property-Women as Property*. Croom Helm: London, 1984.
- Hudson, Mark. *Ruins of Identity: Ethnogenesis in the Japanese Islands*. University of Hawaii Press: Honolulu, 1999.
- Hunt, Alan. *Governing Morals: A Social History of Moral Regulation*. Cambridge University Press: Cambridge, 1999.
- Imamura, Anne (ed). *Re-Imaging Japanese Women*. University of California Press: Berkeley, 1996.
- Intons-Peterson, Margaret, and Jill Crawford. "The Meaning of Marital Surnames". *Sex Roles* 12 (1985): 1163-1171.
- Iwao, Sumiko. *The Japanese Woman: Traditional Image and Changing Reality*. The Free Press: Toronto, 1993.
- Kanai, Yoshiko. "Issues for Japanese Feminism". In AMPO-Japan Asia Quarterly Review (ed). *Voices from the Japanese Women's Movement*. M. E. Sharpe: New York, 1996.
- Kaneko, Sachiko. "The Struggle for Legal Rights and Reforms: A Historical View ". In Kumiko Fujimura-Fanselow and Atsuko Kameda (eds). *Japanese Women: New Feminist Perspectives on the Past, Present and Future*. The Feminist Press: New York, 1995.
- Kanowitz, Leo. *Women and the Law: The Unfinished Revolution*. University of New Mexico Press: Albuquerque, 1969.
- Kanowitz, Leo. *Sex Roles in Law and Society: Cases and Materials*. University of New Mexico Press: Albuquerque, 1973.
- Kasirer, Nicholas and Jean-Maurice Brisson. *The Married Woman in Ascendancy, the Mother Country in Retreat : From Legal Colonialism to Legal Nationalism in Quebec Matrimonial Law Reform (1866-1991)*. University of Manitoba: Winnipeg, 1993.
- Keira, Tomoko. "My Work as an Ainu Woman". In AMPO-Japan Asia Quarterly Review (ed). *Voices from the Japanese Women's Movement*. M.E. Sharpe: New York, 1996.
- Kiecolt, Jill and Alan Acock, "The Long-Term Effects of Family Structure on Gender-Role Attitudes", *Journal of Marriage and Family* 50 (1988): 709-717.
- Kinjo, Kiyoko. "Legal Challenges to the Status Quo". In Kumiko Fujimura-Fanselow and Atsuko Kameda (eds) *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*. The Feminist Press: New York, 1995.
- King, Lynn. *What Every Woman Should Know About Marriage, Separation and Divorce*. James Lorimer: Toronto, 1980.
- Kline, Susan, Laura Stafford and Jill Miklosovic. "Women's Surnames: Decisions, Interpretations and Associations with Relational Qualities". *Journal of Social and Personal Relationships* 13 (1996): 593-617.
- Kobayashi, Audrey. "Challenging the National Dream: Gender Persecution and Canadian Immigration Law". In P. Fitzpatrick (ed.). *Nationalism, Racism and the Rule of Law*. Dartmouth Publishing Company: Aldershot, 1995.

- Kome, Penny. *The Taking of Twenty-Eight: Women Challenge the Constitution*. Women's Press: Toronto, 1983.
- Lam, Alice. "Equal employment opportunities for Japanese women: changing company practice". *Japanese Women Working*, Routledge: London, 1993.
- Lamber, Julia. "A Married Woman's Surname: Is Custom Law?" *Washington University Law Quarterly* (1973): 779-819.
- Lamoureux, Diane. *L'Amère Patrie: Féminisme et nationalisme dans le Québec contemporain*. Les éditions remue-ménage: Montreal, 2001.
- Larrain, Jorge. "Ideology, Reason and the Construction of the Other". In *Ideology and Cultural Identity: Modernity and the Third World Presence*. Polity: Cambridge, 1994.
- Lassiter, Mary. *Our Names, Our Selves*. Heinemann: London, 1983.
- Lebell, Sharon. *Naming Ourselves, Naming Our Children: Resolving the Last Name Dilemma*. The Crossing Press: Freedom, 1988.
- Lemieux, Denise and Lucie Mercier. *Les femmes au tournant du siècle*. Institut québécois de recherche sur la culture, 1989.
- Lerner, Gerda. *The Creation of Patriarchy*. Oxford University Press: Oxford, 1986.
- Liddle, Joanna and Sachiko Nakajima. *Rising Suns, Rising Daughters: Gender, Class and Power in Japan*. Zed Books: London, 2000.
- Linteau, Paul-André, René Durocher, Jean-Claude Rober, François Ricard. *Histoire du Québec contemporain, Tome II : Le Québec depuis 1930*. Boreal : Montreal, 1989.
- Linton, Eliza. "The Wild Women: As Politicians". In Susan Hamilton (ed). *Criminals, Idiots, Women and Minors: Nineteenth Century Writing By Women on Women*. Broadview Press: Peterborough, 1995.
- Little, Margaret. *No car, no radio, no liquor permit: the moral regulation of single mothers in Ontario, 1920-1997*. Oxford University Press: Toronto, 1998.
- Locke, John. *Second Treatise on Government*. Harlan Davidson: Illinois, 1982.
- Locke, John. *Second Treatise of Government: A Critical Edition with an Introduction and Apparatus Criticus by Peter Laslet*, 2nd ed. Cambridge University Press: Cambridge, 1967.
- Lombard, Frederica. "The Law on Naming Children: Past, Present and Occasionally Future". *Names* 32 (1984): 129-137.
- Long, Susan Orpett. "Nurturing and Femininity: The Ideal of Caregiving in Postwar Japan". In Anne Imamura (ed). *Re-Imaging Japanese Women*. University of California Press: Berkeley, 1996.
- Lorber, Judith. "Believing is Seeing: Biology as Ideology". In Rose Weitz (ed). *The politics of women's bodies: sexuality, appearance, and behavior*. Oxford University Press: New York, 1998.
- Luxton, Meg (ed) *Feminism and Families: Critical Policies and Changing Practices*. Fernwood Publishing : Halifax, 1997.
- Mahoney, Kathleen. "The Constitutional Law of Equality in Canada". *Maine Law Review* 44 (1992): 229-259.
- Maillé, Chantal. *Les Québécoises et la Conquête du Pouvoir Politique: Enquête sur l'émergence d'une élite politique féminine au Québec*. Éditions Saint-Martin: Montreal, 1990.
- Mandell, Nancy and Ann Duffy (eds). *Reconstructing the Canadian Family: Feminist Perspectives*. Butterworths: Toronto, 1988.

- Markman, Ellen. *Categorization and Naming in Children*. The MIT Press: Cambridge, 1989.
- Matsuda, Mari. "Liberal jurisprudence and abstracted visions of human nature: a feminist critique of Rawls' theory of justice". In Kelly Weisberg (ed). *Feminist Legal Theory: Foundations*. Temple University Press: Philadelphia, 1993.
- Maybee, Julie. "Politicizing the Personal and Other Tales from the Front Lines". In Anita Superson and Ann Cudd (eds). *Theorizing Backlash: Philosophical Reflections on the Resistance to Feminism*. Rowman and Littlefield: New York, 2002.
- McCaughan, Margaret. *The Legal Status of Married Women in Canada*. The Carswell Company: Toronto, 1977.
- Mill, John Stuart. *The Subjection of Women*. 2nd ed. 1869.
- Miller, Casey and Kate Swift. *Words and Women*. Anchor Press: Garden City, 1976.
- Miner, Richard. *Japanese Tradition and Western Law*. Harvard University Press: Cambridge, 1970.
- Molony, Barbara. "Equality versus difference: the Japanese debate over 'motherhood protection', 1915-50". In Janet Hunter (ed) *Japanese Women Working*. Routledge: London, 1993.
- Monture-Angus, Patricia. *Thunder in my Soul: A Mohawk Woman Speaks*. Fernwood Publishing: Halifax, 1995.
- Monture-Angus, Patricia. *Journeying Forward: dreaming First Nations' independence*. Fernwood Publishing: Halifax, 1999.
- Monture-Angus, "Standing Against Canadian Law : Naming Omissions of Race, Culture and Gender". In Elizabeth Comack (ed). *Locating Law: Race, Class, Gender Connections*. Fernwood Publishing: Halifax, 1999.
- Mungall, Constance. *Changing Your Name in Canada: How to do it legally*. International Self-Counsel Press: Vancouver, 1977.
- Nakane, Chie and Shinzaburo Oishi (eds). *Tokugawa Japan: The Social and Economic Antecedents of Modern Japan*. University of Tokyo Press, Tokyo, 1990.
- Nakano, Mami. "The Equal Employment Opportunity Law". In AMPO-Japan Asia Quarterly Review (ed). *Voices from the Japanese Women's Movement*. M. E. Sharpe: New York, 1996.
- Neft, Naomi and Ann Levine. *Where Women Stand*. Random House: New York, 1997.
- Nelson, Hilde Lindemann (ed). *Feminism and Families*. Routledge: New York, 1997.
- Nolte, Sharon and Sally Ann Hastings. "The Meiji State's Policy Toward Women, 1890-1910". In Gail Bernstein (ed). *Recreating Japanese Women, 1600-1945*. University of California Press: Berkeley, 1991.
- Oakley, Ann and Juliet Mitchell (eds). *Who's Afraid of Feminism: Seeing Through the Backlash*. The New Press: New York, 1997.
- Ochiai, Emiko. *The Japanese Family System in Transition: A Sociological Analysis of Family Change in Post-war Japan*. LTCB International Library Foundation: Tokyo, 1996.
- O'Connor, Julia. "Gender, class and citizenship in the comparative analysis of welfare state regimes: theoretical and methodological issues". *British Journal of Sociology* 44 (1993): 501-518.

- O'Connor, Julia, Ann Shola Orloff and Shelia Shaver. "Chapter 3". In *States, Markets, Families: Gender Liberalism and Social Policy in Australia, Canada and Great Britain*. Cambridge University Press: Cambridge, 1999.
- Oda, Hiroshi. *Japanese Law* 2nd ed. Oxford University Press: Oxford, 1999.
- Oderkirk, Jillian. "Marriage in Canada: Changing Beliefs and Behaviours 1600-1990". In Jean Dumas. *Report on the Demographic Situation in Canada*, Statistics Canada Catalogue 91-209E, 1992.
- Ogino, Miho. "Abortion and Women's Reproductive Rights: The State of Japanese Women, 1945-1991". in Joyce Gelb and Marian Lief Palley (eds). *Women of Japan and Korea: Continuity and Change*. Temple University Press: Philadelphia, 1994.
- Okin, Susan Moller. *Women in Western Political Thought*. Princeton University Press: Princeton, 1979.
- Okin, Susan Moller. *Justice, Gender, and the Family*. BasicBooks: New York, 1989.
- Ontario Women's Network on Custody and Access. *Brief to the Federal, Provincial, Territorial Family Law Committee on Custody, Access and Child Support*. National Association of Women and the Law: Ottawa, June 6, 2001.
- Pateman, Carole. *The Disorder of Women*. Stanford University Press: Stanford, 1980.
- Pateman, Carole. *The Sexual Contract*. Stanford University Press: Stanford, 1988.
- Pearson, Judy. *Gender and Communication*. W.C. Brown Publishers: Dubuque, 1985.
- Prentice, Alison, Paula Bourne, Gail Cuthbert Brandt, Beth Light, Wendy Mitchinson, and Naomi Black. *Canadian Women: A History*. Harcourt Brace Jovanovich: Toronto, 1988.
- Rapport sur la capacité juridique de la femme mariée*. Office de Revision du Code Civil : Montreal, 1964.
- Razack, Sherene. *Canadian Feminism and the Law: The Women's Legal Education and Action Fund and the Pursuit of Equality*. Second Story Press: Toronto, 1991.
- "Report on Changes of Name". *The Ontario Law Reform Commission*. Toronto, 1976.
- Rich, Adrienne. *Of Woman Born: Motherhood as Experience and Institution*. 10th anniversary edition, W.W. Norton and Company: New York, 1986.
- Richmond, Anthony. "Global Apartheid: Migration, Racism, and the World System". In M. Kalbach & W. Kalbach (eds). *Perspectives on Ethnicity in Canada: A Reader*. Harcourt: Toronto, 2000.
- Roquet, Louis. "De la Révolution tranquille à la nouvelle économie: le rôle de l'État québécois". In Yves Bélanger, Robert Comeau et Céline Métivier (eds). *La Révolution Tranquille 40 ans plus tard : un bilan*, VLB éditeur, Montreal, 2000.
- Rose, Carol. "Possession as the origin of property". In *Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership*. Westview Press: Boulder, 1994.
- Rosenberger, Nancy. *Gambling with Virtue: Japanese Women and the Search for Self in a Changing Nation*. University of Hawaii Press: Honolulu, 2001.
- Royal Commission on the Status of Women*. The Commission, Ottawa, 1967.
- Saint-Jean, Armande. *Pour en finir avec le patriarcat*. Les Éditions primeur: Montréal, 1983.
- Scherer, Rebecca. "Federal Child Care Policy Development: From World War II to 2000". In Susan Prentice (ed). *Changing Child Care: Five Decades of Child Care Advocacy and Policy in Canada*. Fernwood Publishing: Halifax, 2001.

- Scheuble, Laurie and David Johnson. "Marital Name Change: Plans and Attitudes of College Students". *Journal of Marriage and Family* 55 (1993): 747-754.
- Schroeder, Leila. "A Rose by any Other Name: Post-Marital Right to use Maiden Name: 1934-1982". *Sociology and Social Research* 709 (1986): 290-293.
- Sears, Alan. "Immigration Controls as Social Policy: The Case of Canadian Medical Inspection 1900-1920". *Studies in Political Economy* 33 (1990): 91-112.
- Shapiro, Michael. "Narrating the Nation, Unwelcoming the Stranger: Anti-Immigration Policy in Contemporary America". *Alternatives* 22 (1997): 1-34.
- Siim, Birte. *Gender and Citizenship*. University of Cambridge: Cambridge, 2000.
- Slaughter, M.M. "The Legal Construction of 'Mother'". Martha Albertson Fineman and Isabel Karpin (eds). *Mothers in Law: Feminist Theory and the Legal Regulation of Motherhood*. Columbia University Press: New York, 1995.
- Slovenko, Ralph. "Overview: Names and the Law". *Names* 32 (1984): 107-113.
- Smart, Carol (ed). *Regulating womanhood: historical essays on marriage, motherhood, and sexuality*. Routledge: New York, 1992.
- Smith, Derek. "The Emergence of "Eskimo Status": An Examination of the Eskimo Disk List System and Its Social Consequences, 1925-1970". In N. Dyck & J.B. Waldrum (eds), *Anthropology, Public Policy, and Native Peoples in Canada*. McGill-Queens University Press: Montreal, 1993.
- Smith, Munroe. *A General View of European Legal History and Other Papers*. Columbia University Press: New York, 1927.
- Smith, Susan. "Immigration and Nation-building in Canada and the United Kingdom". In P. Jackson and J. Penrose (eds), *Constructions of Race, Place and Nation*. UCL Press: London, 1993.
- Snell, James. *In the Shadow of the Law: Divorce in Canada 1900-1939*. University of Toronto Press: Toronto, 1991.
- Spencer, Margaret. "A Woman's Right to Her Name". *UCLA Law Review* 21: 665-690.
- Spender, Dale. *Man Made Language*. Routledge and Kegan: London, 1980.
- Stannard, Una. *Married Women vs. Husbands: The case for wives who keep their own name*. Germainbooks: San Francisco, 1973.
- Stannard, Una. *Mrs. Man*. Germainbooks: San Francisco, 1977.
- Stannard, Una. "Manners Make Laws: Married Women's Names in the United States". *Names* 32 (1984): 114-128.
- Statistics Canada. *The Labour Force*. Catalogue 71-001, Minister of Supply and Services: Ottawa, May 1986.
- Steele, Jackie. "Sexual inequality in Japan and Canada: A comparative approach". Jt Hon. Thesis, McGill University, 1997.
- Stockman, Norman, Norman Bonney and Sheng Xuewen. *Women's Work in East and West: The Dual Burden of Employment and Family Life*. UCL Press: London, 1995.
- Stoddart, Jennifer. "Quebec's Legal Elite Looks at Women's Rights: The Dorion Commission 1929-31". In David H. Flaherty (ed). *Essays in the History of Canadian Law*. University of Toronto Press for the Osgoode Society: Toronto, 1981.
- Strunk, Orlo, "Attitudes Towards One's Name and One's Self". *Journal of Individual Psychology* 14 (1958): 64-67.
- Styron, William. *Sophie's Choice*. Random House: New York, 1979.

- Superson, Anita, and Ann Cudd (eds). *Theorizing Backlash: Philosophical Reflections on the Resistance to Feminism*, Rowman and Littlefield: Oxford, 2002.
- Tanaka, Kazuko. "The New Feminist Movement in Japan, 1970-1990". In Kumiko Fujimura-Fanselow and Atsuko Kameda (eds) *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*. The Feminist Press: New York, 1995.
- Taylor, Charles. *Multiculturalism and "The Politics of Recognition"*. Princeton University Press: Princeton, 1992.
- Thobani, Sunera. "Closing ranks: racism and sexism in Canada's immigration policy", *Race and Class* 42 (2000): pp. 35-55.
- Tully, James. "Rediscovering America: The Two Treatises and Aboriginal Rights". In *An approach to political philosophy: Locke in contexts*. Cambridge University Press: Cambridge, 1993.
- Turpel, Mary Ellen. "The Cultural Non-Homogeneity of Québec: Secessionism, Indigenous Legal Perspectives and Inseparability". In Donald Clark and Robert Williamson. *Self-Determination: International Perspectives*. Macmillan: London, 1996.
- Uno, Kathleen. "Women and Changes in the Household Division of Labor". In Gail Bernstein, *Reinventing Japanese Women, 1600-1945*. University of California Press: Berkeley, 1991.
- Vanier Institute. "*Profiling Canada's Families II*". Vanier Institute of the Family: Ottawa, 2000: 36-38.
- Vernon, Richard. *Political Morality: a theory of liberal democracy*. Continuum: London, 2001.
- Waite, Linda (ed). *The Ties that Bind: Perspectives on Marriage and Cohabitation*. Aldine de Gruyter: New York, 2000.
- Watson, Rubie. "The Named and the Nameless: Gender and Person in Chinese Society", In Caroline Brettell and Carolyn Sargent (eds). *Gender in Cross-Cultural Perspective*. Prentice-Hall: Englewood Cliffs, 1997.
- Weiner, Michael (ed). *Japan's Minorities: The Illusion of Homogeneity*. Routledge: London, 1997.
- Weitz, Rose. *The Politics of Women's Bodies: Sexuality, Appearance, and Behavior*. Oxford University Press: Oxford, 1998.
- Weitzman, Lenore. *The Marriage Contract: Spouses, Lovers, and the Law*. Free Press: New York, 1981.
- Whitborn, Susan Krauss and Joyce Ebmeyer. *Identity and Intimacy in Marriage*. Springer-Verlag: Berlin, 1990.
- Whitehead, Ann. "Men and Women, Kinship and Property: Some General Issues". In Renée Hirschon (ed). In *Women and Property-Women as Property*. Croom Helm: London, 1984.
- Williams, Robert. *The American Indian in Western Legal Thought: The Discourses of Conquest*. Oxford University Press: Oxford, 1998.
- Yoshizumi, Kyoko. "Marriage and Family: Past and Present". In Kumiko Fujimura-Fanselow and Atsuko Kameda (eds) *Japanese Women: New Feminist Perspectives on the Past, Present, and Future*. The Feminist Press: New York, 1995.

Newspaper and Magazine Articles

- Bailey, Anthony. "Philip own man despite position". *The Globe and Mail*. 12 June 1977, p. 10.
- Copes, Debby. "Call me Ms." *The Globe and Mail*, 26 February 1976, Letters to the Editor.
- Coulson, Melanie. "A feminist by any other name". *The Globe and Mail*. 5 July 2003, p. F7.
- "Federal status council's report saves harsh words for Indian Act". *Globe and Mail*, 1 October 1975, p. 11.
- Ford, Charlotte. "A new etiquette for the ways of the unwedded". *The Globe and Mail*. 24 March 1979, p. 10.
- Goodman, Ellen. *Guardian Weekly*. September 13-19, 2001, p. 35.
- McLaren, Christie. "Change of surname would be made easier". *The Globe and Mail*, 28 April 1984, p. 19.
- Mickelsen, Lynnell. "Our Marriage Was Equal In Name and Spirit Until We Had to Name Our Baby" *Glamour*. (May 1988): 34.
- Mironowicz, Margaret. "Wives want a good name—maiden one". *The Globe and Mail*. 9 July 1977, p. 1.
- Mironowicz, Margaret. "Maiden names worth keeping, women saw". *The Globe and Mail*. 9 July 1977, p. 2.
- Mosher, Peter. "Let husband take wife's name, report urges". *The Globe and Mail*. 11 November 1976, p. 1.
- Nolen, Stephanie. "Private lives: name-change revival", *The Globe and Mail*, September 2, 1998: C5.
- Panasuk, Anne and Claire Gagnon. "Amérindiennes : révolte de l'intérieur". *Gazette des femmes*. 24: 5 (2003): 17-20.
- Panasuk, Anne and Claire Gagnon. "L'argent des blancs...éléphants blancs". *Gazette des femmes*. 24: 5 (2003): 21-24.
- Panasuk, Anne and Claire Gagnon. "Le sang 'impur' des amérindiennes". *Gazette des femmes*. 24: 5 (2003): 25-30.
- Panasuk, Anne and Claire Gagnon. "Les oubliées des oubliées". *Gazette des femmes*. 24: 5 (2003): 36-38.
- Panasuk, Anne and Claire Gagnon. "L'omertà autochotone". *Gazette des femmes*. 24: 5 (2003): 31-35.
- Sutherland, Ann. "Equality of Women", *The Globe and Mail*, 7 January 1982, p. 7.
- William Johnson. "Good for PQ! Bill on family law daring stuff". *The Globe and Mail*, 7 March 1980, p. 8.
- "Woman challenges judge over use of maiden name". *The Globe and Mail*, 17 October 1983, p. 5.

Online Sources

- Bradford, Keith. "Gay hate capital? Alberta's reputation made worse by stance, says magazine editor". *The Edmonton Sun*, Thursday, June 19, 2003. <http://www.canoe.ca/EdmontonNews/es.es-06-19-0006.html>. Accessed June 19, 2003.
- Coates, Edmund. "Sex and Reason", *Quid Novi Online*. 11 March 2003, <http://www.law.mcgill.ca/quid/archive/2003/03031110.html>. Accessed June 3, 2003
- First Nations Governance Act*. Ministry of Indian and Northern Affairs Website. http://www.fng-gpn.gc.ca/FNGA_act_e.html. Accessed 30 June 2003.
- Fukushima, Mizuho, "About Reforming the Civil Law", Personal Website, http://www.mizuhoto.org/seisaku/minpo_kaisei.html, Accessed 29 May 2003.
- Fukushima, Mizuho, "Women and the Family in Japan", *The Yokohama Women's Forum* 9, <http://www.women.city.yokohama.jp/english/tsushin/09/newscont1.html>, Accessed 30 May 2003.
- "Gosselin Decision: A Divided Court", National Association of Women and the Law Website, <http://www.nawl.ca/new-02-12-19.htm>. Accessed 17 May 2003.
- Hansard Debates. http://www.parl.gc.ca/36/1/parlbus/chambus/house/debates/240_1999-06-08/han240_1020-e.htm#LINK47. Accessed June 19, 2003.
- "Information on Civil Status and Changes: Why Change Names?" Website of the Ministry for Relations with citizens and immigration. <http://www.etatcivil.gouv.qc.ca/InfoChan/ENGLISH/InfChg2.htm>. Accessed 15 July 2003.
- Kakuchi, Suvendrini. "Japan's Battlers of Sex Abuse Confront Culture, Law". *WeNews*. 18 July 2003. <http://www.womensenews.org/article.cfm?aid=1295>. Accessed 18 July 2003
- "Quand un couple se sépare". Communication Québec Website, http://www.separation-divorce.info.gouv.qc.ca/fr/tableau_imp.asp. Accessed 10 September 2002.
- Law Commission of Canada. "Beyond Conjuality: Recognizing and Supporting Close Personal Adult Relationships. <http://www.lcc.gc.ca/en/themes/pr/cpra/report.asp>, p, accessed 15 May 2003.
- McLymont, Indi, "Giving up your maiden name: is it submission or empowerment?" *Jamaica Observer*. 21 April 2003, http://jamaicaobserver.com/magazines/AllWoman/html/20030420T210000-0500_42710_OBS_GIVING_UP_YOUR_MAIDEN_NAME_.asp. Accessed 26 June 2003.
- Miriam-Webster Online Dictionary. <http://www.m-w.com/cgi-bin/dictionary>. Accessed 17 June 2003.
- Nagamatsu, Tenko, "About Separate Names in Marriage", Personal Website, <http://www.pluto.dti.ne.jp/~tak-tak/>, Accessed 10 June 2003.
- "Reform Party motion would restrict marriage to opposite sex couples". <http://www.islandnet.com/~egale/politics/motion.htm>. Accessed 19 June 2003.
- "Royal baby named Aiko", *Asahi Shimbun Online*, <http://www.asahi.com/english/national/K2001120800193.html>. Accessed 20 November 2001.

Statistics Canada. "Population 15 Years and Over Living in Common-law Unions". Statistics Canada Website. <http://www.statcan.ca:80/english/census96/oct14/mar2.htm>. Accessed 10 June 2003.

Statistics Canada. "Number of persons aged 15 and over, by number of unpaid hours doing housework, Canada, 1996 and 2001". Statistics Canada Website. <http://www12.statcan.ca/english/census01/products/analytic/companion/paid/canada.cfm>, Accessed 24 May, 2003.

Court Cases

Bliss v. Canada (Attorney General), [1979] 1 S.C.R. 183.

Canada (Attorney General) v. Lavell and Bedard, [1974] 1 S.C.R. 1349.

Edwards v. Attorney General for Canada, [1930] 124.

EGALE Canada Inc. v. Canada (Attorney General), [2003] B.C.J. No. 994 (C.A.).

Gosselin v. Quebec (Attorney General), [2002] S.C.J. No.85.

Halpern v. Canada (Attorney General), [2003] O.J. No. 2268 (C.A.).

Hendricks v. Quebec (Attorney General), [2002] J.Q. No. 3816, (S.C.).

In the matter of a Reference as to the Meaning of the Word "Persons" in Section 24 of the British North America Act, 1867, [1928] S.C.R. 276.

Kreleweitz v. Scopel (2002), 60 O.R. (3d) 187 (C.A.).

Trociuk v. British Columbia (Attorney General), [2001] B.C.J. No. 1052 (C.A.).

Trociuk v. British Columbia (Attorney General), [2003] S.C.J. No. 32.

Re Gloade (1980), 37 N.S.R. (2d) 445 (Co. Ct.).

Re Orr, [1933] 2 D.L.R. 77 (Ont. C.A.).

Legislation

An Act to Establish a New Civil Code and to Reform Family Law, L.Q. 1980, c. 39, s. 7.

Act to Prevent the Employment of Female Labour in Certain Capacities, S.S. 1912, c.17, s.1.

Canadian Bill of Rights, R.S.C. 1970, Appendix III.

Change of Name Act, R.C.B.C. 1960, c. 50.

Divorce Act, R.S.C.1970, C-8.

Name Act, R.S.B.C. 1996 c. 328.