

Session B6: Case Report

Instructions: You have been given a case study. Use the table below to brainstorm and draft 1 or 2 arguments, which you will present to the village elders later.

S/N	Problem <i>Write out the statements you are likely to hear when faced with such a situation</i>	Issue <i>Define the issue/question before the "Court"</i>	Arguments <i>- Are there religious and customary laws to support your argument? (general ideas of justice, equity etc...).</i> <i>- What gender stereotypes have opposing counsel relied on?</i> <i>- How has this caused unfair discrimination against your client?</i> <i>- How has this privileged the defendant/respondent unfairly?</i> <i>- Propose how the "Court" could assess the case instead</i>
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Session B6: Case Brief – Group 3

Instructions:

You have been approached to assist in a case of inheritance. You are acting for Ms. Mi Mi, a 35-year widow whose husband recently died. She has one 20-year old son and one disabled daughter. Her family is not rich and her husband left some property. Her son treats her very rudely and never helps the family. He sometimes drinks and plays cards. Although her daughter is a disabled person, she always helps her mother with the housework as much as she can. Ms. Mi Mi has trouble because her son asks her to share $\frac{1}{4}$ of the property as he is an orasa (the eldest child). But Ms. Mi Mi wants to give most of property to her disabled daughter. The case is brought before the village elders who are mostly men. You have to orally submit arguments to the elders and deal with the customs and norms that work for and against your client. Use the key steps in your handout as a roadmap to develop your arguments.

The son's statement

1. My name is Mg Mg. My father died 3 months ago. I have one disabled sister. My mother is still young and she might marry with someone someday.
2. I'm afraid that the property my father left will be owned by a stranger. So I want to have my share from my mother. I am the same sex with my father and I am 20 years old. I should get $\frac{1}{4}$ of the property as an orasa's right.

The mother's statement

1. I am Ms. Mi Mi. My husband died recently. We have one son and one disabled daughter.
2. My son failed 10th standard two times and he always wanders the whole day. Sometimes he drinks and treats me very badly and beats his younger sister. He never helps me but my daughter does.
3. I'm worried about my daughter because she cannot stand up for herself. So I want to give the most of property to her.
4. But my son asks for his $\frac{1}{4}$ share as heir. I'm afraid that he will spend all he receives and then ask for more again.

Chapter 1

Understanding Gender Stereotyping

What Is a Stereotype?

What precisely do we mean by the term “stereotype”? As understood in this book, a stereotype is a generalized view or preconception of attributes or characteristics possessed by, or the roles that are or should be performed by, members of a particular group (e.g., women, lesbians, adolescents).¹ In this view, a stereotype presumes that all members of a certain social group possess particular attributes or characteristics (e.g., adolescents are irresponsible), or perform specified roles (e.g., women are caregivers). It does not matter for purposes of characterizing a generalization as a stereotype that attributes or characteristics are or are not common to individual members of that group, or whether members perform those roles or do not. The key consideration is that, because a particular group is presumed to possess those attributes or characteristics or perform those roles, an individual, simply by virtue of membership in that group, is believed to conform to the generalized view or preconception. All the dimensions of personality that make that individual unique are consequently filtered through the lens of a generalized view or preconception of the group with which the individual is identified.²

Stereotypes have long been the subject of inquiry. Coined in 1798 by the French printer Fermin Didot, the term *stereotype* was first used to describe a method or process of printing whereby a cast-metal plate, or mold, was used to duplicate original material.³ The term itself derives from the Greek words *stereos* and *typos*, roughly translated to mean “solid” and “mold” respectively.⁴

In 1922, the usage of the term stereotype in printing was adapted metaphorically as a social science concept to explain how people preconceive others only as reprints from a mold.⁵ The “perfect stereotype” was described as follows: “Its hallmark is that it precedes the use of reason; is a form of perception, imposes a certain character on the data of our senses before the data reach the intelligence.”⁶ A stereotype tells us:

about the world before we see it. We imagine most things before we experience them. And those preconceptions, unless education has made us acutely aware, govern deeply the whole process of perception. They mark out certain objects as familiar or strange, emphasizing the difference, so that the slightly familiar is seen as very familiar, and the somewhat strange as sharply alien. They are aroused by small signs, which may vary from a true index to a vague analogy. Aroused, they flood fresh vision with older images, and project into the world what has been resurrected in memory.⁷

In this view, we human beings do not see the "world outside" exactly as it is; rather, we preconceive "pictures in our heads,"⁸ or stereotypes, that we rely upon to give meaning to the world we perceive. Simply put, stereotypes help us to understand, simplify, and process the infinitely variable personal attributes, characteristics, and roles in the world in which we live. Individuals can be placed in categories, or stereotyped, according to various criteria, such as their gender, pigmentation, age, language, religion, sexual orientation, and racial or ethnic origin.

The purpose of this chapter is to explore the meaning of stereotypes as they are applied to women. What is a stereotype? What does it mean to say that someone is stereotyping? Why do people stereotype? What purpose or purposes do stereotypes serve? Why do people conform to stereotypes, or break them? Are all stereotypes the same? Are there different forms of gender stereotypes? What is meant by the term "sex stereotype"? How does that term differ from "sexual stereotype," or "sex role stereotype"? What is meant by the term "compounded stereotype"? How do these various forms interact to formulate the overarching notion of a gender stereotype? What are the consequences to individuals, groups, or societies of gender stereotyping? How do their contexts matter? How do stereotypes evolve, and what is the role of the law in their evolution, perpetuation, and elimination?

We do not claim to have answers to every one of these questions. Rather, the purpose of this chapter is to explore these questions. Readers are encouraged to consider the various questions in light of their own experiences of stereotyping. It is hoped that these questions are helpful in illuminating the readers' personal experiences of how they, or their family and friends, have been stereotyped, or how they themselves stereotype others.

Consider, as an example, the stereotypical belief that "men are physically powerful." In this example, the social group in question is "men," while the generalized view concerns their physical strength. According to this stereotype, all men, by virtue of their membership in the social group of men, are considered physically powerful. When we stereotype, we do not consider the characteristics of a particular individual. For example, even though an individual man, say Tom, may be physically

weak or at least weaker than other men, and an individual woman may be stronger than he is, he will be stereotyped as physically powerful, because he is a man. The generalized, impersonal view or preconception of him renders unnecessary consideration of his particular physical capabilities.

Consider also the stereotypical belief that "motherhood is women's natural role and destiny." In this example, there is a generalized view that all women should become mothers, irrespective of their distinctive reproductive health capacity and physical and emotional circumstances, or their individual priorities. It does not matter for purposes of defining the stereotype that an individual woman, say Mary, may not wish, for whatever reason, to become a mother. Precisely because Mary is categorized as a woman, it is believed that motherhood is her natural role and destiny.

Conversely, it is irrelevant for the purpose of characterizing a generalization as a stereotype whether it is in fact an accurate reflection of an individual's needs, wishes, abilities, and/or circumstances. Assume for the purpose of the present discussion that Tom is indeed physically strong. His actual strength does not in any way render less true the fact that the generalization concerning his physical capabilities is a stereotype. While the stereotype coincides with his particular situation, no regard was paid to the latter when determining the existence of the stereotype. Rather, the fact that this stereotype does reflect Tom's individual situation bears only on the accuracy of the stereotype for him. The same could be said of Mary, whose reproductive goals and/or choices may in fact bear out the stereotypical belief that "motherhood is women's natural role and destiny."

To the extent that stereotypes ignore particular individuals' needs, wishes, abilities, and circumstances, they significantly impact their ability to create and/or shape their individual identities according to their own values and wishes. They also limit the full and diverse expressions of human character.⁹ Put differently, stereotypes infringe unduly on the capacity of individuals to construct and make decisions about their own life plans. For example, men, painted with the broad brush of stereotype, are often preconceived to be ill-suited to, or unwilling, or unable to fulfill caregiving roles, notwithstanding that men can and do fulfill such roles. Yet, owing to the embeddedness of these impersonal generalizations in popular culture, men face considerable obstacles in carving out identities as primary caregivers; instead, they frequently find themselves forced into breadwinning roles with limited opportunities for active caregiving. As Justice Mokgoro of the Constitutional Court of South Africa has observed, through reliance upon stereotypes regarding childcare responsibilities, society has "denied fathers the opportu-

nity to participate in child rearing, which is detrimental both to fathers and their children."¹⁰ Such stereotyping has also served to constrict women's identities, as, at the same time, women have been forced into caregiving roles without regard to their individual aptitudes, willingness, or preferences.¹¹

A stereotypical characterization is not necessarily negative.¹² Many generalizations based on statistical evidence, for instance, do not carry negative connotations, but nonetheless still qualify as stereotypes.¹³ Returning to the example of Tom, we see that the underpinning generalization in his case is concerned not with a negative assumption about men, but rather a statistical correlation between physical strength and being a man.

Yet, although negative connotations need not be present for a generalization to be a stereotype, many stereotypes do carry such connotations, such as where women are stereotyped as inferior to men. Take, as a further example, the generalization that women are incapable of making health care decisions in their own best interests, a stereotypical belief sometimes found in policies requiring nonmedical third parties (e.g., husbands) to authorize medical services for women.¹⁴ At the heart of that stereotype is the negative and false belief that women are unable to make sound medical decisions, a belief that fundamentally denies women's moral agency and reflects women's subordinate status in their marriages, families, and societies.¹⁵

If the term "stereotype" is applied to refer to a generalized view or preconception concerning attributes, characteristics, or roles of members of a particular social group, which renders unnecessary consideration of any particular individual members' needs, wishes, abilities, and circumstances, what does it mean to say that someone is stereotyping? The term "stereotyping" is employed in this book to refer to the process of ascribing to an individual specific attributes, characteristics, or roles by reason only of her or his membership in a particular group.¹⁶ Returning once more to the example of Mary, we see that the operative stereotypical belief about her concerns women's role as mothers; therefore, attributing maternal dedication to Mary as her natural role and destiny, because she is a woman, is stereotyping. In the case of Tom, the operative stereotypical belief about him concerns men's physical strength; therefore, ascribing the characteristic of physical strength to Tom, because he is a man, is stereotyping.

The Vanuatu case of *Public Prosecutor v. Kota*,¹⁷ concerning the kidnapping and forcible return of Marie Kota to her abusive husband, Walter Kota, provides a further example of stereotyping. Upon learning of the separation of Marie and Walter, two local Pacific Island chiefs organized a community meeting in an attempt to facilitate the couple's reconcilia-

tion. The defendants (including Walter and four police officers) forcibly took Marie to the meeting, where she expressed a clear intention to divorce her husband. Against her express wishes, the chiefs ordered that Marie be returned to the family home. A week after her forcible return, she fled the family home, seeking assistance from local authorities and the Women Against Violence Against Women Association.

The Supreme Court of Vanuatu found a violation of Marie Kota's constitutional right to liberty and freedom of movement by the local chiefs' stereotyping of Marie Kota as her husband's property and ordering her forcible return to the family home. According to Justice Downing, "Article 5 of the [Vanuatu] Constitution makes it quite clear that men are to be treated the same as women, and women are to be treated the same as men. All people in Vanuatu are equal and whilst the custom may have been that women were to be treated as property, and could be directed to do things by men, whether those men are their husbands or chiefs, they cannot be discriminated against under the Constitution."¹⁸ What is significant about this decision is that the Supreme Court was unwilling to allow a customary stereotype of women as men's property to restrict Marie Kota's right to liberty and freedom of movement, including making decisions about her own life and relationships.

Why Do People Stereotype?

Stereotypes are invoked for complex, varied and, sometimes, contradictory reasons. We stereotype to define a category of people. We create categories to maximize ease of understanding and predictability. We stereotype to know what people we are dealing with, and to anticipate how people we do not personally know will behave. We stereotype to differentiate among subcategories of people. We differentiate among subcategories to assign difference to people, to label and compartmentalize them in their subcategories. Sometimes, we stereotype to malign or subjugate people, and sometimes we stereotype people to protect or justify deferring to them. We stereotype "to script identities,"¹⁹ to assign norms and codes by which men and women can be preconceived and expected to live their lives. It is through the understanding of these and other reasons for stereotyping that we can uncover and dismantle the unstated assumptions behind stereotypes.²⁰ In so doing, we may hope to prevent their perpetuation when that is unjust to those preconceived through stereotypes, and prevent people from making inaccurate and unjust assessments of those seen only through stereotypes.

People might stereotype for one or a combination of reasons. It may not always be clear exactly why stereotypes have been invoked. Take the example of the stereotype of women as primarily caregivers. It can

often be difficult to determine whether women are being stereotyped into motherhood because they are, on average, more likely than men to care for children (statistical/descriptive stereotyping), or because social norms dictate that women, and not men, ought to perform the mothering role (normative/prescriptive stereotyping). Furthermore, as one commentator has illustrated, "Often when it is said that women are 'weak' or that they lack 'aggression,' . . . it is not clear whether the assertions signify empirical, statistical claims, or whether they signify instead normative claims about what it means to be a woman."²¹ Rather than viewing those claims as problematic, we need to embrace the fluidity of reasons, acknowledging that "Stereotypes not infrequently hover ambiguously between these meanings."²²

Sometimes we are unaware, or only partially aware, that we might be thinking in stereotypes. Stereotyping can be so much part of our perceptive fabric, our mode of thinking and categorizing, that we are unaware of it. That is, we have not diagnosed it as a problem in need of legal and other forms of redress. A challenge in combating sexism, which is often perpetuated through stereotypes, is that many of our attitudes are unconsciously formed. We are not always fully aware, or aware at all, of our sexism. To the extent that we are aware, we might have developed ways or rationalizations to conceal our prejudicial attitudes.²³

Whether consciously or unconsciously, we stereotype for different reasons. Those reasons can operate in different ways to reduce stereotyped subjects' enjoyment of their human rights and fundamental freedoms.²⁴ These different reasons affect the ways in which stereotypes should be approached, as well as the kind of remedial response that should be pursued.²⁵

TO MAXIMIZE SIMPLICITY AND PREDICTABILITY

In 1922, the idea was introduced that stereotypes serve the functional purpose of efficiently reducing, or reducing for the sake of simplicity, the challenge of comprehending the social complexity of the surrounding world. It was argued that "the real environment is altogether too big, too complex, and too fleeting for direct acquaintance. We are not equipped to deal with so much subtlety, so much variety, so many permutations and combinations. And although we have to act in that environment, we have to reconstruct it on a simpler model before we can manage with it."²⁶

As human beings, we are not able, for instance, to process and articulate the distinctive features of every individual we pass on the street or encounter in casual social or work-related settings. Instead, we conserve our resources, relying on generalized views or preconceptions to

help distill the outside world's complexity. It is for that reason that we classify passers-by on the street and in social and work encounters into generalized categories of human beings. On this view, there is economy of effort in stereotypes: "For the attempt to see all things freshly and in detail, rather than as types and generalities, is exhausting, and among busy affairs practically out of the question."²⁷

In addition to reducing the outside world's complexity, stereotypes help people to order and defend their positions within society.²⁸ It has been explained that stereotypes "are an ordered, more or less consistent picture of the world, to which our habits, our tastes, our capacities, our comforts and our hopes have adjusted themselves. They may not be a complete picture of the world, but they are a picture of a possible world to which we are adapted."²⁹ Understood thus, stereotypes provide predictability and security. One can feel comforted and confident in the familiarity that results from their repeated use: "In that world people and things have their well-known places, and do certain expected things. We feel at home there. We fit in. We are members. We know the way around. There we find the charm of the familiar, the normal, the dependable; its grooves and shapes are where we are accustomed to find them."³⁰

Sometimes people stereotype because they believe a particular attribute, characteristic, or role is constitutive of a certain social group. Phrased differently, they stereotype in order to describe "beliefs about the attributes, roles, and behaviors that characterize men and women,"³¹ and to describe how individuals typically are or typically behave.³² Examples of statistical or descriptive stereotypes include generalized preconceptions that "women are shorter than men," "women live longer than men," and "women assume primary responsibility for childcare." In the first and second examples, the stereotypes are based on a statistical reality that women are typically shorter and, on average, live longer than men. In the final example, the underpinning generalization derives from the fact that women, by common observation, are statistically more likely to assume primary responsibility for childcare.

Statistical or descriptive stereotypes can be problematic when relied upon to impose a burden on or deny a benefit to an individual who is atypical of the social group to which the generalization is applied. Consider the example of Mary, the female firefighter applicant who is denied employment on the basis of a stereotypical belief that women are physically weak and therefore lack the strength needed to be a firefighter, even though she herself is physically able to perform that role.³³ Here, there is a general preconception about the social group concerned—namely, women—that is pertinent to the employment decision: "Strength, let us suppose, really is a bona fide occupational qualification for a firefighter, and women really are, on average, weaker than

men. But this general fact does not bear on the question of Mary's suitability for the job if she is in fact stronger than most men—stronger, in fact, than the weakest male fireman.”³⁴

Sometimes, statistical or descriptive stereotyping misunderstands the relevance of the facts.³⁵ Although we may accept as fact that women are, on average, weaker than men, that fact should not matter in determining whether to hire Mary as a firefighter, when she is physically strong enough to perform the duties required of a firefighter. The statistical fact that women in general are weaker than men has no relevance to whether or not she in particular is a suitable candidate for the job of firefighter, and should not be allowed to influence the employer's decision whether to employ her.

TO ASSIGN DIFFERENCE

We stereotype to define difference, to label people as being other than the norm with which we are familiar, particularly ourselves. We label people so that we do not have to take the time or make the effort to understand their differences, to know them as individuals. People stereotype by falsely ascribing an attribute, characteristic, or role to an individual because they believe that all members of the social group with which that individual identifies are likely to have those attributes, or characteristics, or fulfill those roles.³⁶ One such example is that of ethnic stereotypes, which might, for instance, lead some employers to not hire, or to fire an ethnic foreign female worker because of stereotypical preconceptions of higher absenteeism among those with dependent children.³⁷ Assigning difference to an individual often reflects prejudice or bias about the group of which that individual is perceived to be a member. In addition to marginalizing an individual, a stereotype can exacerbate the subordination of the social group to which the stereotyped individual belongs.

There is a long history in the law of stereotypes of female witnesses as “inherently untruthful” or as “intrinsically unreliable,” and therefore more likely to lie about cases involving sexual assault.³⁸ Such false beliefs have often caused women as a group to be considered noncredible witnesses, and their testimonies to be viewed with suspicion. For example, in *R. v. Henry and Manning*,³⁹ Lord Justice Salmon commented that it was “really dangerous to convict [an accused of sexual assault] on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts, girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons, which I need not now enumerate, and sometimes for—

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son at all.⁴⁰ The preconceived unreliability of women as witnesses is a stereotype institutionalized in some applications of Islamic law, where a man's testimony can be equaled or countered only by that of two or more women.⁴¹

We often stereotype to assign difference to people for a variety of malign or hostile purposes, including to make ourselves feel special or superior, or as a way to distinguish the targets of our stereotyping as other than what we are, often called "otherizing." We do this in part because we do not want to identify with their characteristics and practices, even when we sense that we share those characteristics or engage in those practices. Paradigmatic examples include invoking harmful stereotypes with the intent to minimize another's enjoyment of their human capacities, or to acquire or maintain our social power. Male hierarchies in religious institutions, professions or, for instance, academic occupations, may accordingly stereotype women as incapable or unworthy of membership. The false stereotypical view of some religious hierarchies that women as such are incapable of spiritual inspiration and leadership, results in all women being precluded from religious ordination and ministry, without regard to their individual capacity and suitability.⁴²

False stereotypes can devalue the dignity or worth of individual members of the subject group on the basis of an attribute or characteristic that is wrongly ascribed to them. False stereotypes can treat particular social groups as something that they are not and, in so doing, devalue them as a group. For example, many false ethnic stereotypes are disparaging, even when presented as a form of humor.

We may also stereotype to assign difference or label people for protective or benign purposes. Protective policies are found in many sectors of the economy and life. Sometimes they are referred to as benevolent paternalism, such as the attitude of the kindly uncle who does not want his niece to have to "worry her pretty little head" about the business conducted by men. It has been explained that

— This underpin movement rape

the paternalistic person believes he or she is acting for the best, for the benefit of the person on the receiving end of the paternalism. They do not consciously "discriminate." Yet some of the most . . . sexist behaviour is expressed through paternalism.

The head of a . . . department who believes women are not physically, physiologically or mentally able to accept responsibility may hold that belief convinced of his very real concern for the well-being of women. . . . He may believe women should not be appointed to positions of responsibility because a senior post means late nights back at work, corporate meetings at odd hours or weekend work. He may consider this will upset the woman worker. He may think women employees will have to give up activities they prefer, such as meeting the children after school, cooking the evening meal or attending school meet-

ings. . . . [H]e may accept a general notion of women appropriately filling the role of nurse rather than doctor, because women "prefer" the "service role."⁴³

The holder of such beliefs may not be conscious of them, and be outraged, devastated, or bewildered by any suggestions that he or she is sexist.⁴⁴ "In contrast to hostile stereotyping, benevolent stereotyping entails employers who may see themselves as 'just being thoughtful' or 'considerate' of, for example, a new mother's responsibilities."⁴⁵

Protective stereotypes preclude consideration of individuals' needs, capacities, wishes, and interests because of the paternalistic instincts of the "protector." It reduces expectations one has of individuals because they belong to a certain group, without taking account of their actual interests. As one commentator has explained with regard to stereotyping of women and men as parents,

Regardless of whether stereotyping is hostile or benevolent, it strips the decision-making power about how to interpret the responsibilities of motherhood away from the mother herself, in favor of an assumption that she will (or should) follow traditionalist patterns. In one instance, after a husband and wife who worked for the same employer had a baby, the wife was sent home at 5:30 P.M., with the solicitous sentiment that she should be at home with the child. In sharp contrast, the husband was given extra work and was expected to stay late. The additional work was meant to be helpful, for the husband now had a family to support. The employer effectively created workplace pressures that pushed the family into traditionalist gender roles; the decision about how to distribute family caretaking responsibilities was taken out of the hands of the family itself.⁴⁶

TO SCRIPT IDENTITIES

A further reason people stereotype is to script identities,⁴⁷ to prescribe attributes, roles, and behaviors to which men and women are expected to conform.⁴⁸ That is, we script identities to describe how members of a group "ought to behave in order to conform appropriately to the norms associated with membership in their group."⁴⁹ Stereotypes that seek to prescribe identities are often called normative or prescriptive stereotypes.

An example of prescriptive stereotyping is the expectation that women conform to prevailing concepts of beauty, sexuality, and modesty. The phenomenon of surgical breast enhancement and the rise of slenderness-directed eating disorders, such as anorexia nervosa and bulimia, especially among Western women, echo stereotypical notions about what it means to be beautiful, and suggest that women are only valued for their beauty, sexual attractiveness, and submissive natures.⁵⁰ Such prescriptive norms require women, and not men, to wear makeup,⁵¹ or to wear

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sexually revealing work uniforms.⁵² Foot binding of Chinese women, for example, was associated with stereotypical notions that women should be submissive, obedient, and petite. As a result, foot binding was justified as a means to limit women's freedom of movement, and ensure their obedience.⁵³ As article 5(a) of the Convention on the Elimination of All Forms of Discrimination against Women ("Women's Convention" or "Convention"; see Appendix A) explains, when social norms or practices are centered on the idea of inferiority or superiority of either men or women, they become cause for concern. Dress and behavioral standards that objectify and construct women as inferior, submissive, incompetent or sexually provocative, are based on the idea of inferiority of women.

The case of *Price Waterhouse v. Hopkins* is illustrative of prescriptive stereotyping.⁵⁴ The issue in that case concerned behavioral expectations imposed by the accounting firm, Price Waterhouse, on its female employees. In 1982, Ann Hopkins, then a senior manager and key employee at Price Waterhouse, was passed over for partnership for displaying "unfeminine" attributes in the workplace. Although clients and some partners praised Hopkins for her accomplishments, others criticized her for failure to conform to norms of femininity. In particular, one partner informed Hopkins that she should walk, talk, and dress more femininely, "wear make-up, have her hair styled, and wear jewelry."⁵⁵ Other partners described Hopkins as "macho" and in need of "a course at charm school."⁵⁶ Still others objected to what they perceived to be Hopkins' "unfeminine" use of profanity.⁵⁷ When Price Waterhouse refused to repropose Hopkins for partnership the following year, she sued, alleging unlawful discrimination on the basis of sex.

The U.S. Supreme Court held Price Waterhouse's decision not to promote Ann Hopkins to partnership had been motivated by impermissible stereotyping, in violation of Title VII of the Civil Rights Act of 1964.⁵⁸ Justice Brennan, delivering the opinion of the Court, explained that, "In the specific context of sex stereotyping, an employer who acts on the basis of a belief that a *woman cannot be aggressive, or that she must not be*, has acted on the basis of gender."⁵⁹ In other words, the Supreme Court found that it was unlawful for an employer to deny a benefit to an employee, in this case promotion, because she (or he) failed to adhere to social norms of femininity (or masculinity). What was unjust about Price Waterhouse's failure to promote Hopkins was that it penalized her for being insufficiently feminine (e.g., she did not wear makeup, have her hair styled, or wear jewelry); that is, for being too masculine (e.g., she was too "macho" and regularly used profanity). According to Justice Brennan, such discriminatory behavior by an employer was no longer acceptable as "we are beyond the day when an employer could evaluate

employees by assuming or insisting that they matched the stereotype associated with their group."⁶⁰

What Are Gender Stereotypes?

Gender stereotypes are concerned with the social and cultural construction of men and women, due to their different physical, biological, sexual, and social functions. More broadly, they can be thought of as the "conventions that underwrite the social practice of gender."⁶¹ "Gender stereotype" is an overarching term that refers to a "structured set of beliefs about the personal attributes of women and men."⁶² Beliefs can cover a range of components, including personality traits, behaviors and roles, physical characteristics and appearance, occupations, and assumptions about sexual orientation.⁶³ A personal stereotype reflects an individual's personal beliefs about a subject group or the subject of the stereotype, while a cultural or collective stereotype reflects a widely shared belief about a subject group or the subject of the stereotype.⁶⁴ The components of gender stereotypes evolve and vary according to different contexts.

The process of gender stereotyping refers to the use of gender stereotypic knowledge in forming an impression of an individual man or woman.⁶⁵ Like gender stereotypes, gender stereotyping evolves, in part, due to how gender is understood. Gender stereotyping is not necessarily problematic. It becomes problematic when it operates to ignore individuals' characteristics, abilities, needs, wishes, and circumstances in ways that deny individuals their human rights and fundamental freedoms, and when it creates gender hierarchies. Understanding how the law embodies, and contributes to, gender stereotyping is part of understanding women's gendered experiences of inequality. For instance, legislation historically made by men considered women as incapable of civil capacity and, therefore, women could not be elected or appointed as members of legislatures,⁶⁶ or join learned professions such as law or medicine.⁶⁷

In understanding gender stereotypes, it helps to be clear about the different components of gender to which stereotypic generalizations are referring. For example, gender stereotypes might refer to intellectual or cognitive abilities, a psychosocial profile or biological differences, which render unnecessary any consideration of the attributes or characteristics of particular individuals in these three regards. Stereotypes of women's intellectual or cognitive abilities, as being weaker than those of men's, are often used to deny women positions in educational or professional arenas. Stereotypes of women's psychosocial abilities emphasize their skills for cooperation, while stereotypes of men value their aggressive and assertive attributes. As a result, women usually are not hired

in jobs that value aggressiveness and assertiveness, such as leadership positions. Women's biological ability to become pregnant and their hormonal differences with men have been used to promote gender classification of women. For example, gender stereotypes based on biological differences have been used to deny women jobs as flight attendants on airlines,⁶⁸ and promote stereotypes of girls as weak and therefore in need of protection through abstinence-only sex education programs.⁶⁹

Gender is at the core of understanding "gender stereotypes." The meaning of the term "gender" is fluid, its use is ambiguous, and it varies according to ideologies about women's proper role and behavior in society. The meaning of gender evolves over time, across nations and cultures, across decision-making bodies, and from judge to judge. Biological sex is "the raw material that cultures mold into genders and sexualities."⁷⁰ Some commentators use the terms "sex" and "gender" interchangeably because they want "to disavow the idea that either of these categories might be natural and thus immutable."⁷¹ Distinctions between men and women, whether based on constructions of sex or gender, change over time, and thus are not tied to the immutability of sex in the biological sense.

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Gender can describe a sense of identity, elaborating those "characteristics of individuals, the meanings of sex differences ingrained on bodies, minds and identities."⁷² Because of the complexity, variability, and multidimensional nature of gender, "gendered identities" might be a more appropriate term: "Not only are there numerous forms of identity explicitly related to gender, such as mother, feminist or Barbie doll, but also gender infuses and influences many other identities, including those of ethnicity, class, and occupation."⁷³

Gendered identities are often thought about in terms of what it means to be feminine or masculine. Masculinity and femininity vary according to time and place.⁷⁴ This is due in part to the fact that people do not share the same meanings of these terms because "the various gendered domains of life, such as personality traits, physical attributes, recreational interests, and occupational preferences, have different developmental histories and complex interactions."⁷⁵ In many cultures, for instance, being a physician is masculine in part because they are seen to treat disease and save lives, and being a nurse is feminine since it involves rendering tender loving care. As more women become physicians, and more men become nurses, the masculine and feminine connotations of the terms "physician" and "nurse" respectively will change over time.

The Committee on the Elimination of Discrimination against Women ("the Women's Committee" or "the Committee"), established under the Women's Convention⁷⁶ to monitor its implementation, adopted the definition of gender as the "socially and culturally constructed differences

between women and men.”⁷⁷ The definition explains that the term refers to “the social meanings given to biological sex differences. It is an ideological and cultural construct, but is also reproduced within the realm of material practices; in turn it influences the outcomes of such practices. It affects the distribution of resources, wealth, work, decision-making and political power, and enjoyment of rights and entitlements within the family as well as public life.”⁷⁸ This definition explains that “gender is a social stratifier, and in this sense it is similar to other stratifiers such as race, class, ethnicity, sexuality, and age. It helps us understand the social construction of gender identities and the unequal structure of power that underlies the relationship between the sexes.”⁷⁹

A particular characteristic of gender stereotypes is that they are resilient; they are pervasive and persistent. They are *socially pervasive* when they are articulated across social sectors and cultures, and they are *socially persistent* where they are articulated over time.⁸⁰ Conditions for social stratification and subordination of women exist when practices, including stereotypes, are both socially pervasive and socially persistent.⁸¹ These conditions for social stratification or subordination are exacerbated when the stereotypes are reflected or embedded in the law, such as in the implicit premises of legislation and the implications of judges’ reasoning and language.

The prescriptive stereotypes that women should be mothers, housewives, and caregivers are both pervasive and persistent. A former member of the Women’s Committee, Frances Raday, has explained: “The most globally pervasive of the harmful cultural practices . . . is the stereotyping of women exclusively as mothers and housewives in a way that limits their opportunities to participate in public life, whether political or economic.”⁸² She explains that the “stereotypical assignment of sole or major responsibility for childcare to women”⁸³ disadvantages women across cultures. The stereotypes that women should be mothers and homemakers, and therefore be “the center of home and family life” have had a long history of use to justify women’s exclusion from public life, such as their ability to hold or stand for public office⁸⁴ and to serve on juries.⁸⁵

In Ireland, for example, the stereotype of women as mothers and homemakers is reflected in the Constitution. Article 41(2) provides:

- (1) In particular, the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
- (2) The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.⁸⁶

The Women's Committee has expressed its concern at "the persistence of traditional stereotypical views of the social roles and responsibilities of women and men in the family and in society at large which are reflected in article 41.2 of the Constitution and its male-oriented language . . . in women's educational choices and employment patterns, and in women's low participation in political and public life."⁸⁷ Taking into account this concern, the Committee has urged the Irish Government to eliminate traditional stereotypical attitudes, including the stereotype of women as mothers and homemakers found in article 41(2) of its Constitution.⁸⁸

The distinctive kinds of stereotypes and biases against women, once they become mothers, is known as the "maternal wall" in the employment discrimination context. The maternal wall phenomenon shows that negative assumptions about decreased competence are attributed to mothers, and not fathers, or other women who are not mothers.⁸⁹ It has been explained that "both hostile and benevolent sexism affect working mothers. Hostile stereotyping involves strident criticism of women who do not adhere to traditionalist norms of selfless, stay-at-home motherhood. Benevolent stereotyping involves assumptions about mothers' availability or suitability for particular tasks. For example, employers may fail to consider a mother for a promotion because the higher-level job requires travel, but without asking the woman in question about her preferences."⁹⁰

The United Nations Special Rapporteur on Violence against Women, Yakin Ertürk, has explained that "the persistence of cultural and social norms, traditional beliefs and negative gender stereotypes were the obstacles most frequently cited by governments to the achievement of gender equality in all regions. . . . Even in countries where basic indicators of women's advancement show considerable progress and a 'critical mass' in decision-making positions ha[s] been achieved, gender roles and identities continue to be shaped by patriarchal notions of 'femininity' and 'masculinity' (albeit in modernized forms)."⁹¹ A Women's Committee member observed that she found it surprising that in all the countries the Committee had considered, including the apparently progressive Scandinavian countries, gender stereotypes had proved extremely persistent. While the Committee member noted that there was greater equality in some countries than others, "stereotypes about men and women persisted, particularly those that focused on women as caregivers."⁹²

These observations about the pervasiveness and persistence of gender stereotypes comport with observations in the psychological literature examining gender stereotypes: "the overall stereotype of women has remained remarkably stable, despite sweeping changes in gender relations. . . . We believe that stereotypes of women still contain significant

prescriptive content as well (e.g., that women ought to be nurturant and supportive of others). This is not to say that stereotypes of women have been unresponsive to social change. Changes, such as the movement of women into the paid workforce, are reflected in images of subtypes of women (e.g., career women), which are quite different than the general stereotype of women as a group."⁹³

Understanding why gender stereotypes are so resilient to change requires insight into the causes of gender injustice. Explanations for gender injustice vary, and they include political-economic, cultural, and ideological dimensions.⁹⁴ As has been explained, "On the one hand, gender structures the fundamental division between paid 'productive' labor and unpaid 'reproductive' and domestic labor, assigning women primary responsibility for the latter. On the other hand, gender also structures the division within paid labor between higher-paid, male dominated, manufacturing and professional occupations and lower-paid, female-dominated 'pink-collar' and domestic service occupations. The result is a political-economic structure that generates gender-specific modes of exploitation, marginalization, and deprivation. . . . Much like class, gender justice requires transforming the political economy so as to eliminate its gender structuring."⁹⁵

Barriers to valuing women and recognizing their worth are rooted in androcentrism and sexism: "a major feature of gender injustice is androcentrism: the authoritative construction of norms that privilege traits associated with masculinity. Along with this goes cultural sexism: the pervasive devaluation and disparagement of things coded as 'feminine,' paradigmatically-but not only-women."⁹⁶ Gender devaluation and disparagement happen in many ways, including

- ✱ • the different modes of sexual exploitation;
- devaluation in all spheres of public life, including denial of human rights;
- imposition of androcentric norms that privilege male superiority and emphasize female inferiority; and,
- attitudinal discrimination.⁹⁷

These injustices are buttressed by the many different forms of gender stereotypes, discussed immediately below. Dismantling stereotypes is difficult because they contribute to, and result from, the many different modes of patriarchy, power structures, and gender injustices embedded in societies.⁹⁸ In order to overcome them, androcentric norms need to be decentered, and sexism needs to be replaced with positive valuation of those attributes, characteristics, and behaviors that are coded as feminine.⁹⁹

4th Asia Pro Bono Conference and Legal Ethics Forum

Plan for Session B6, Fri., Sept 4, 2015, 9:45-11:00 am

Name of Session: Pro bono and customary law

Session Description/Aim:

This session will explore the application and need of pro bono services in customary law jurisdictions, with a focus on combatting gender stereotyping.

Total Session Minutes: (75 min)

Facilitator:

Jane Schukoske, S M Sehgal Foundation, j.schukoske@gmail.com

Co-Presenters:

1. Daw Khin Win Yee, Advocate, Myanmar, dawkhinwinyi7@gmail.com
2. Natasha Latiff, Strategic Advocacy for Human Rights natasha.latiff@gmail.com

Session Plan:

Activity Step	Activity Description	Time (Min)	Presenters	Materials Needed
1	Introduce session and presenters	5	Jane Khin Win Yee	NA
2	Presenters elicit examples of pro bono services being provided in customary law situations OR examples of the need for pro bono services in customary law situations.	5	Jane, Khin Win Yee	a. Flipchart b. Set of questions by facilitators to guide the conversation
3	Participants are divided into groups of 2 and they pair and share about what is customary law and why providing pro bono services to customary law situations may be different than other legal needs.	5	Co-Presenters to walk around and listen in & take notes for debriefing session	a. Slides: questions such as: What customary law issues have you faced in your jurisdiction? Are pro bono services provided in those situations? Give examples If no, how could they be and the benefits

4	<p>Mini-lecture: framework for identifying and challenging gender stereotypes</p> <p>Participants are divided into 4 groups and each group is given a different case scenario. The case scenarios involves a person who is providing pro bono services in a customary law situation and the person is faced with cultural, religious, ethnic, challenges. The participants should discuss ways and means to overcome these challenges and present back.</p>	<p>10</p> <p>15</p>	<p>Natasha</p> <p>Co-presenters circulate among the groups to hear the discussions, clarify instructions, if needed</p>	<p>Slides on 5 key steps (handout, too)</p> <p>Handouts on 4 case studies: Participants will act as counsel in a discussion between each other on four topics: rape, domestic violence, inheritance, and employment/pay equity.</p> <p>Slide:</p> <p>What law and customs affect the case?</p> <p>What problematic statements/words do you expect would come up?</p> <p>What would you say in response?</p>
5	<p>Small groups present case study reports, with a short role play demonstrating the kinds of statements that would come up</p> <p>Participants provide alternate responses</p>	<p>30 total</p> <p>5 mins per group</p> <p>10 min</p>	<p>Co-Presenters or other participants to provide input on other best practice ways of handling one or more of the issues/statements that come up</p>	<p>Flip chart</p>
6	Wrap-up	5	Natasha	Gender stereotyping: Transnational Perspectives (excerpt)
Total Time:		75		

August 14, 2015

B6 Customary law Employment Case Brief

Case Brief – Group 3

Instructions:

You have been approached to assist Ms. Sasha, a woman who works as an agricultural laborer in a rural village. A large landowner's manager hires laborers to tend his fields and harvest the crop. Ms. Sasha, a 25 year old villager, works long hours during the harvest season. As per local custom, the landowner's manager pays her as a village woman \$1/day. She has learned that the landowner's manager pays men doing the same harvest work \$2/day. Ms. Sasha has trouble covering her needs with the wages she receives and would like the village elders to correct what she sees as injustice in pay. The case is being brought before the village elders, who are mostly men. You have to orally submit arguments to the elders and deal with the customs and norms. Use the key steps in your handout as a roadmap to develop your arguments.

Worker's Statement

1. My name is Sasha. I live with my brother's family and work on my brother's small farm during the year. I know all about farming, from preparing the ground to harvesting the crops. I know that farmers prefer to harvest wheat by hand, rather than machine, because hand-harvesting gives a clean cut above the roots, and it keeps the harvested crop clean, not muddy.
2. During wheat harvest season, I work for the large landowner to help harvest his crop by hand at the best time. I work from morning to evening. The manager pays me \$1/day.
3. The manager hires men to do the same work, and pays them \$2/day.
4. It's not fair to pay the men twice as much. I work the same hours, and very hard.

Employer's Statement

1. My name is Ram and I manage the harvest labor for one of the village's large landowners.
2. Everyone knows men are farmers and women are just laborers. We have always paid women half the rate of men.
3. Women are smaller and not as strong as men, so it is fair to pay them a lower wage.

B6 Customary law

Case Brief – Group 1

Instructions:

You have been approached to assist a victim in a case of domestic violence. You are acting for the victim. The only evidence you have is a statement by the accused and the complainant. The case is being brought before the village elders. You have to orally submit arguments to the elders and deal with the customs and norms that work for and against your client. Use the key steps in your handout as a roadmap to develop your arguments.

Accused Statement

1. My name is Gin. I have been married to Lai for 10 years. We have 4 children together. It was a love marriage.
2. I am sorry I beat her but I have my side of the story as well. Lai knows me from before marriage. I am a hardworking man. I work as a carpenter. I work 12 hours a day. Sometimes I drink after work to relax myself. When I come home, I become very stressed because the food is not ready and the children are crying. Even my mother tells Lai that she is becoming lazy at home. I work so hard so she can stay at home but I do not feel appreciated.
3. Although I beat her, I always say sorry. It is a reflex. I cannot control myself. It just happens. That is the way men are.
4. If I beat her, I only use my hands. I do not use a stick or a cane like other men. There is no bleeding. Nothing serious. This is part of marriage. Sometimes situation is happy and sometimes it is not.
5. She takes it too seriously and now she involved her family. That was a big mistake. Now too many people are involved. This is a private matter.

Complainant's Statement

1. My name is Lai. I left my family home and returned back to my father's home because I was being beaten by Gin. I love him a lot and I care for him but he always comes home late and is drunk. He gets angry within a few minutes if I say one word against him.
2. When he beats me, everyone tells me it is not serious. But day by day, I feel emotionally and physically weak. I also feel scared closer to the time he comes home. I live in fear.
3. Sometimes I ask myself, is this my burden being a woman? That is what my family tells me.

B6 Customary law

Case Brief – Group 2

Instructions:

You have been approached to assist a victim in a case of rape. You are acting for the victim. The only evidence you have is a statement by the accused and the complainant. The case is being brought before the village elders, who are mostly men. You have to orally submit arguments to the elders and deal with the customs and norms that usually attribute blame to the victim of rape. You can also use customs and norms to support your client's case. Use the key steps in your handout as a roadmap to develop your arguments.

Accused Statement

1. On the 27th July 2013, my mother brought home a guest. Her name was Kai. She was not shy. She was very talkative, always laughing and looking at me from the side.
2. The next morning, my mother told me to take her to the bus station so she can take the bus home. My mother also asked me to pick up a letter from our old house post box on my way back. So at about noon Kai and I left for the bus station. The bus station is about forty minutes walk from my house.
3. As we started walking Kai said that she liked me. I liked her too. I knew she wanted to have sex with me and she was trying to seduce me. So I thought of stopping by at our old house with her. Once I got to the house I asked her if she wanted to come in to be sure that she actually wanted to have sex with me. She said she did not want to wait outside and would rather come in.
4. Once we got into the house I locked the door as we were about to do something very private and I did not want anyone else to see it. Once we got in the house I started touching her. She kept on resisting. At first I stopped. See I did not want to rape her. That's why I stopped. We talked a little. Then I approached her again. However I thought that if she did not want sex, she would have left the house but she just stayed inside the house. So when she resisted and said "no" a couple of times, I told her not to be shy. Then she was comfortable with me. And I was right, she gave in. So we did it. After it was over, I sent her to the bus stop and waited until she boarded the right bus.
5. 5 days later, her father appeared at our home. He was banging the door. When my mother opened the door, he ran towards me saying I had raped his daughter. I was very shocked.
6. I later learned that Kai had made a police report. The police came to our house. I offered to marry her. I don't know why this is a big deal.

Complainant's Statement

1. Once we were in the house Alef locked the door. That is when I realised something was wrong.
2. He came close to me and started touching me. He stopped once but he started again and I felt afraid he might hurt me. He asked me to not be shy and give in. I

got very nervous and scared. I begged him to stop three times but then I stopped because he was getting more aggressive. So I let it happen. He did not listen to me. He raped me.

B6 Customary Law

Case Brief – Group 4

Instructions:

You have been approached to assist the complainant wife in a divorce. You have agreed to act for the wife. The only evidence you have is a statement by the wife and the respondent husband. The case is being brought before the village elders. You have to orally submit arguments to the elders and deal with the customs and norms that work for and against your client. Use the key steps in your handout as a roadmap to develop your arguments.

The complainant wife's statement

1. I am Ms. Ma Ma. Our marriage was a lovely one during the last 7 years.
2. My husband gave me a piece of land attached with a house in a registration gift deed.
3. For the last three years, he has come home late and sometimes drinks too much. He always blames me and talks to me with cruel words. The worst is his being adulterous without my consent.
4. He has been married to a young girl from Karaoke where he used to go and spend the night. He often lives together with some other girls. His conduct and behavior make my mind and heart injured and hurt. He had made a grievous cruelty on me. So I want to divorce him and he has no right to get any of our property.

The respondent husband's statement

1. I am Ko Ko. I have been married to Ma Ma last 10 years ago. It was a lovely marriage but we have no child.
2. Two years ago I gave her a land attached with a house in a registration gift deed. I had inherited those properties from my dead father.
3. I sometimes come home late because of my work. Sometimes I drink to relax myself. At such times she scolds me. I often go to Karaoke to avoid her words.
4. I have been married to a young girl from Karaoke because she is very poor and young so I want to take care of her and another reason for my marriage is simple. I want to get a baby.
5. I also want to divorce my wife. But I have to get 2/3 of property said above as a nissiya (supporter) and she should get 1/3 as a nissita (dependent).