# LEGAL IMPLICATION OF THE DIFFERENCE THEORY OF LAW AND GENDER IN THE FEMINIST JURISPRUDENCE*


## Abstract

Formal equality assumes a basic sameness between men and women and the obligation of law to respect that sameness. substantive equality assumes some meaningful differences, and seeks to eliminate the disadvantages of those through various legal strategies. Non-subordination theory treats sameness and difference both as artificial constructs, designed to keep women in their place. Difference theory underscores important difference between women and men. Unlike substantive equality, however, difference theory sees at least some of these differences not as problems to be overcome but rather as potentially valuable resources that might provide a better model for legal and social institutions that do make characteristics and values. Therefore, the aim of this article was to examine the ethic of care and its legal implications, work and family, women in the justice system the challenges in the implementation of difference theory and the solutions to these challenges. The research methodology was doctrinal approach, using expository and analytical research design. The main sources of data collection were various legal literatures, both from the physical library and the e-library. It was found that conferral of value requires the transfer of some economic resources from the collective society to caretakers through the establishment of mechanisms that those who receive the benefit of caretaking in order to compensate those who do the caretaking. It was recommended that the state must use its regulatory and redistributive authority to ensure that those things that are not valued or are undervalued in market or marriage are nonetheless, publicly and politically recognized as socially productive and given value.



**Key Words:** *Difference, Feminist, Gender, Implication, Jurisprudence, Law, Legal, Theory*


## 1. Introduction

Difference theory underscores important differences between women and men. Formal equality assumes a basic sameness between men and women and the obligation of law to respect the sameness. Substantive equality assumes some meaningful differences and seeks to eliminate the disadvantages of that difference through various legal strategies. Non-subordination theory treats sameness and differences both as artificial constructs, designed to keep women in their place. Difference theory sees at least some of these differences not as problems to be overcome but rather as potentially valuable resources that might provide a better model for legal and social institutions than do male characteristics and values. Within this theory, women tend to be associated with the values of relationship, protection of the vulnerable and context-based reasoning, while men are identified with autonomy, individualism and risk taking. Feminist theories often view difference theory with suspicion because of the risk that attributing certain traditional virtues to women will reinforce the stereotypes upon which ideologies of subordination rest. At the same time, it is generally assumed that the increasing presence of women in law schools, legal practice, elected office, juries and the judiciary will affect how law


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is created, taught, practiced and applied. This theory explores the tension between embrace of gender variances as a means of improving legal institutions and rejection of gender stereotypes.

## 2. Conceptual Analysis of Feminist Jurisprudence

Feminist jurisprudence, also referred to as feminist legal theory is based on the belief that the law has been fundamental in women's historical subordination.[1] Feminist jurisprudence the philosophy of law is based on the political, economic, and social inequality of the sexes and feminist legal theory is the encompassment of law and theory connected. The project of feminist legal theory is twofold. First, feminist jurisprudence seeks to explain ways in which the law played a role in women's former subordinate status. Feminist legal theory was directly created to recognize and combat the legal system built primarily by the and for male intentions, often forgetting important components and experiences women and marginalized communities face. The law perpetuates a male valued system at the expense of female values.[2] Through making sure all people have access to participate in legal systems as professionals to combating cases in constitutional and discriminatory law, feminist legal theory is utilized for it all. Second, feminist legal theory is dedicated to changing women's status through a rework of the law and its approach to gender.[3] It is a critique of American law that was created to change the way women were treated and how judges had applied the law in order to keep women in the same position they had been in for years. The women who worked in this area viewed law as holding women in a lower place in society than men based on gender assumptions, and judges have therefore relied on these assumptions to make their decisions. This movement originated in the 1960s and 1970s with the purpose of achieving equality for women by challenging laws that made distinctions on the basis of sex.[4] One example of this sex-based discrimination during these times was the struggles for equal admission and access to their desired education. The women's experiences and persistence to fight for equal access led to low rates of retention and mental health issues, including anxiety disorders. Through their experiences, they were influenced to create new legal theory that fought for their rights and those that came after them in education and broader marginalized communities which led to the creation of the legal scholarship feminist legal theory in the 1970s and 1980s.[5] It was crucial to allowing women to become their own people through becoming financially independent and having the ability to find real jobs that were not available to them before due to discrimination in employment.[6] The foundation of feminist legal theory reflects these second and third-wave feminist struggles. However, feminist legal theorists today extend their work beyond overt discrimination by employing a variety of approaches to understand and address how the law contributes to gender inequality.[7] The first known use of the term *feminist jurisprudence* was in the late 1970s by Ann Scales during the planning process for Celebration 25, a party and conference held in 1978 to

[1] M A Fineman, "Feminist Legal Theory" (2005) *Journal of Gender, Social Policy & the Law* 13 (1). SSRN 2132233.

[2] C Bowman and V Quade, "Redefining Notions: Feminist Legal Theory Pushes into the Mainstream" (1993) *Human Rights*, 20 (4): 8–11. JSTOR 27879789.

[3] A *Scales, Legal Feminism: Activism, Lawyering, and legal Theory (New York University Press, 2006).*

[4] *L Nancy, V M Robert, Feminist Legal Theory: A Primer (New York University Press 2015) ISBN 978-1-4798-0549-5. OCLC 929452292.*

[5] R West, "Women in the Legal Academy: A Brief History of Feminist Legal Theory" (2018) *Georgetown Law Faculty Publications and Other Works*.

[6] *Ibid*.

[7] C A MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence". *Feminist Legal Theory* (2018) pp. 181–200. doi:10.4324/9780429500480-11. ISBN 978-0-429-50048-0.

celebrate the twenty-fifth anniversary of the first women graduating from Harvard Law School.[8] The term was first published in 1978 in the first issue of the Harvard Women's Law Journal.[9] This feminist critique of American law was developed as a reaction to the fact that the legal system was too gender-prioritized and patriarchal.[10] In 1984 Martha Fineman founded the Feminism and Legal Theory Project at the University of Wisconsin Law School to explore the relationships between feminist theory, practice, and law, which has been instrumental in the development of feminist legal theory.[11] The foundation of the feminist legal theory was laid by women who challenged the laws that were in place to keep women in their respective places in the home. A driving force of this new movement was the need for women to start becoming financially independent.[12] Women who were working in law started to focus on this idea more, and started to work on achieving reproductive freedom, stopping gender discrimination in the law and workforce, and stop the allowance of sexual abuse.[13]

## 3. Analysis of the Difference Theory

### 3.1 The Ethics of Care and Its Legal Implications

The basic case for difference theory is the women have distinctive traits and values that should be affirmatively valued in the public realm as well as the realm of private relationships and family. The ethics of care focuses attentions on the unique context of the dispute and the parties' ongoing relationships and interdependencies. Preventing hurt, preserving relationships and developing cooperative solutions roofed in the concrete particulars of the conflict are objectives of a care-oriented ethical analysis. Mary Becker explains that we need to target both the over-valuation or masculine qualities and the cultural under valuation of feminine qualities. She went further to say that Relational feminism stresses the need to value community, relationships and traditional feminine qualities because these valuable qualities have been so undervalued in our overly individualistic and masculinity culture.[14] However, if certain characteristics are sex-related, where did these differences come from? Robin West argues that connectedness is biologically and materially rooted in such experiences as pregnancy, heterosexual penetration, menstruation and breast feeding.[15] Philosopher Sara Ruddick locates gender difference in the social practice of mothering, in which boys develop their identities by separating from their differently gendered mothers, which reinforces for boys the values of separation and individualism, while girls develop by identifying with their mothers, to whom they remain connected, which reinforces for girls the values of relationship and communal identity.[16] Difference theory has been deployed in support of variety of legal reform proposals. According to Bender it can be used to support the expansion of legal obligations such as the duty to rescue in tort law or a greater obligation on the part of the state to support families.[17] According to Browne, difference theory can be used to explain why women invest less in their own human

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[8] P Smith, "Feminist Jurisprudence" (2010) *A Companion to Philosophy of Law and Legal Theory*. pp. 290–298. doi:10.1002/9781444320114.ch18. ISBN 978-1-4443-2011-4.

[9] *Ibid*.

[10] C Bowman and V Quade, "Redefining Notions: Feminist Legal Theory Pushes into the Mainstream" (1993) *Human Rights*, 20 (4): 8–11. JSTOR 27879789.

[11] "Feminism and Legal Theory" *Atlanta Emory University School of Law Journal* (2017).

[12] C L Sagers, "Review of Postmodern Legal Movements: Law and Jurisprudence at Century's End". *Michigan Law Review* (1997). 95 (6): 1927–1943. doi:10.2307/1290030. JSTOR 1290030.

[13] *Ibid*.

[14] M Becker, *Care and Feminists* 17 wis. Women L.J 57 607.

[15] R West, *Jurisprudence and Gender*, 85, U. chi. L. Rev. 1 (1988).

[16] Sara Ruddick, Maternal Thinking: Toward a politics of peace (1989).

[17] L Bender, A Lawyer's Primer on feminist theory and Tort 38 & Legal Educ. 3, 31-36(1988).

market capital than men chose the jobs they do, and thus earn less.[18] The questions are: Is there a female experience of the world? If so, does it matter whether it is based in biology or social practice? What difference do you think that an ethics of care would make in the law?

### 3.2 Application in Work and Family

This focuses on values beyond equality that might support greater subsidies for families. Difference theorists draw attention to the needs of society's dependents-especially children, the disabled, and the elderly. They tend to view the assignment of responsibility for the burdens of dependency to the family. In the first instance, and within the family to women operates in an unjust manner because this arrangement has significant negative material consequences for the caretaker. This obvious observation introduces an additional but often overlooked dependency arises on the part of the person who assumes responsibility for the care it captures the very single point that those who care for others are themselves dependent on resources in order to undertake that care caretakers have a need for monetary or material resources. They also need recourse to institutional supports and accommodate need for structural arrangements that facilitate caretaking. Currently, neither the economic nor the structural supports for caretaking are adequate. Many caretakers and their dependents find themselves impoverished or severely economically compromised. Some of their economic problems stem from the fact that within families, caretaking work is unpaid and not considered worthy of social subsides. Caretaking labour interferes with the pursuit and development of wage labour options. Caretaking labour saps energy and efforts from investment in career or market activities, those things that produce economic rewards. There are foregone opportunities and costs associated with caretaking and even caretakers who work in the paid labour force typically have more tenuous ties to the public sphere because they must also accommodate caretaking demands in the private. These costs are not distributed among all beneficiaries of caretaking (institutional or individual). Unjustly, the major economic and career costs associated with caretaking are typically borne by the caretaker alone. Further, most institutions in society remain relatively unresponsive to innovations that would lessen the costs of caretaking. Caretaking occurs in a larger context and caretakers often need accommodation in order to fulfill multiple responsibilities. For example, many caretakers also engage in market work. Far from structurally accommodating or facilitating caretaking. However, work places operate in models incompatible with the idea that workers also have obligations for dependency. Work place expectations compete with the demands of caretaking. Thus, it is assumed that workers are those independent and autonomous individuals who are free to work long and regimented hours.

### 3.3 Impact on Women in the Justice System

Women were previously denied opportunities in the Justice system. The reasons for exclusion involved concerns not only the proper role of women but also about the distraction and discomfort of men. It was until 1972 did all accredited law schools eliminate explicit sex-based restrictions in the United States of America. Women Participate in the justice system in every respect, as parties, judges, lawyers and witnesses. In Nigeria, women participate in all spheres of judiciary ranging from judges, lawyers, magistrates, registrars, court clerks, bailiffs, etc. They are even surpassing the men. The questions are: Would you expect women to bring different values to the system? Are lawyers, judges likely to bring gender biases to the court room or to be subject to such biases in the workplace? If so good should the legal system respond?

[18] K Browne, *Sex and Temperament in Modern Society: Darwmian View of the Glass Ceiling and the Gender Gap* (N. P. 1995).

## 4. Challenges in the Implementation of Difference Theory

Balancing personal and professional commitments: This is one of the challenges in the implementation of Difference theory. The questions are usually: Do you expect to work full time throughout you career? If so, how do you expect to meet family needs? Do you plan to have children? If so, who will take care of them? What accommodations do you think are fair to expect from your employer? Implications of difference theory for laws relating to women's reproductive rights: The question is would the state be entitled or compelled for example to take greater control over the mother's risk-taking behavior during pregnancy to express a stronger ethic of care.

## 5. Legal Implication of the Difference Theory of Law and Gender

The difference model emphasizes the significance of gender discrimination and holds that this discrimination should not be obscured by the law, but should be taken into account by it. Only by taking into account differences can the law provide adequate remedies for women's situation, which is in fact distinct from men's.[19] The difference model suggests that differences between women and men puts one sex at a disadvantage; therefore, the law should compensate women and men for their differences and disadvantages. These differences between women and men may be biological or culturally constructed.[20] The difference model is in direct opposition to the sameness account which holds that women's sameness with men should be emphasized. To the sameness feminist, employing women's differences in an attempt to garner greater rights is ineffectual to that end and places emphasis on the very characteristics of women that have historically precluded them from achieving equality with men.[21] The sameness feminist also argued that there was already special treatment for these so-called "differences" in the law, which is what was oppressing women. The idea of there being differences between the sexes lead to the classical thought that feminist legal theory was trying to get rid of. It forced women to prove that they were like men by comparing their experiences to those of men, all in an attempt to gain legal protection. This all only led to women trying to meet norms that were made by men without questioning why these were accepted as the norm for equality.[22] Men and women cannot be seen or defined as equal because they have completely different lived experiences. Understanding that access must be equal, but difference must still be recognized to diffract fairness and power struggle including unpaid societal standards like caring for children and the home, rather than feminine characteristics. Feminist legal theory produced a new idea of using hedonic jurisprudence to show that women's experiences of assault and rape was a product of laws that treated them as less human and gave them fewer rights than men. With this, feminist legal theorists argued that given examples were not only a description of possible scenarios but also a sign of events that have actually occurred, relying on them to support statements that the law ignores the interests and disrespects the existence of women.[23] Over half of cases involving feminist issues in the Supreme Court of the United Kingdom included

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[19] *Berkeley, "Difference, Dominance, Differences: Feminist Theory, Equality, and the Law". Berkeley Journal of Gender, Law & Justice. (2013) **5** (1). doi:10.15779/Z388C4M.*

[20] *L Nancy, V M Robert, Feminist Legal Theory: A Primer (New York University Press 2015) ISBN 978-1-4798-0549-5. OCLC 929452292.*

[21] *Berkeley, "Difference, Dominance, Differences: Feminist Theory, Equality, and the Law". Berkeley Journal of Gender, Law & Justice. (2013) **5** (1). doi:10.15779/Z388C4M.*

[22] C L Sagers, "Review of Postmodern Legal Movements: Law and Jurisprudence at Century's End". *Michigan Law Review* (1997). 95 (6): 1927–1943. doi:10.2307/1290030. JSTOR 1290030.

[23] *Ibid*.

elements feminist jurisprudence in their judgments.[24] The most common form of feminist legal reasoning was placing the case within a wider context of the experience of those involved or another wider context, which could involve showing empathy for women involved in cases.[25] Judges also considered the impact of judgments on disadvantaged groups, challenged gendered bias and commented on historic injustice.[26] Some feminist facts entered into the courts reasoning as common knowledge with feminist scholars being referred to. Lady Hale has used Intersectional arguments, arguments that extend the concept of violence in cases that domestic violence outside of physical violence.[27]

## 6. Appraisal of the Difference Theory in Feminist Jurisprudence

As a critical theory, feminist jurisprudence responds to the current dominant understanding of legal thought, which is usually identified with the liberal Anglo-American tradition.[28] Two major branches of this tradition have been legal positivism, on the one hand, and natural law theory on the other. Feminist jurisprudence responds to both these branches of the American legal tradition by raising questions regarding their assumptions about the law, including:

a) that law is properly objective and thus must have recourse to objective rules or understandings at some level
b) that law is properly impartial, especially in that it is not to be tainted by the personal experience of any of its practitioners, particularly judges
c) that equality must function as a formal notion rather than a substantive one, such that in the eyes of the law, difference must be shown to be "relevant" in order to be admissible/visible
d) that law, when working properly, should be certain, and that the goal of lawmaking and legal decision-making is to gain certainty
e) that justice can be understood as a matter of procedures, such that a proper following of procedures can be understood as sufficient to rendering justice.[29]

In fact, each of these assumptions, although contested and debated, has remained a significant feature of the liberal tradition of legal understanding.

Feminist jurisprudence usually frames its responses to traditional legal thought in terms of whether or not the critic is maintaining some commitment to the tradition or some particular feature of it. This split in responses has been formulated in a number of different ways, according to the particular concerns they emphasize. The two formulations found most frequently in American feminist jurisprudence characterize the split either as the *reformist/radical debate or as the sameness/difference* debate. Within the reformist/radical debate, reformist feminists argue that the liberal tradition offers much that can be shaped to fit feminist hands and should be retained for all that it offers. These feminists approach jurisprudence with an eye to what needs to be changed within the system that already exists. Their work, then, is to gain entry into that system and use its own tools to construct a legal system which prevents the inequities of patriarchy from affecting justice.[30] Those who see the traditional system as either bankrupt or

[24] R Hunter, and E Rackley, "Feminist Judgments on the UK Supreme Court". *Canadian Journal of Women and the Law* (2020) 32 (1): 85–113. doi:10.3138/cjwl.32.1.04. ISSN 0832-8781. S2CID 213021194.
[25] *Ibid*.
[26] *Ibid*.
[27] A P Harris, "Race and Essentialism in Feminist Legal Theory". *Stanford Law Review* (1990) 42 (3): 581–616. doi:10.2307/1228886. JSTOR 1228886.
[28] This tradition is represented by such authors as Hart 1961 and Dworkin 1977, 1986.
[29] D Cornell, *Beyond Accommodation: Ethical Feminism, Deconstruction and the Law* (Routledge, 1990).
[30] R Dworkin, *Law's Empire* (Harvaard University Press, 1996).

so problematic that it cannot be reshaped are often referred to as transformist or radical feminists. According to this approach, the corruption of the legal tradition by patriarchy is thought to be too deeply embedded to allow for any significant adjustments to the problems that women face. Feminists using this approach tend to argue that the legal system, either parts or as a whole, must be abandoned. They argue that liberal legal concepts, categories and processes must be rejected, and new ones put in place which can be free from the biases of the current system. Their work, then, is to craft the transformations that are necessary in legal theory and practice and to create a new legal system that can provide a more equitable justice.[31] Under the sameness/difference debate, the central concern for feminists is to understand the role of difference and how women's needs must be figured before the law. Sameness feminists argue that to emphasize the differences between men and women is to weaken women's abilities to gain access to the rights and protections that men have enjoyed. Their concern is that it is women's difference that has been used to keep women from enjoying a legal status equal to men's. Consequently, they see difference as a concept that must be de-emphasized. Sameness feminists work to highlight the ways in which women can be seen as the same as men, entitled to the same rights, protections, and privileges.[32] Difference feminists argue that (at least some of) the differences between men and women, as well as other types of difference such as race, age, and sexual orientation, are significant. These significant differences must be taken into account by the law in order for justice and equity to be achieved. What has been good law for men cannot simply be adopted by women, because women are not in fact the same as men. Women have different needs which require different legal remedies. The law must be made to recognize differences that are relevant to women's lives, status and possibilities.[33] The two characterizations of the debate about what perspective is best for understanding the problems of the law do share some features. Those who argue a sameness position are often thought to fit, to some degree, with the reformist view. Difference feminists are seen as sharing much with radicals. The parallel between the two characterizations is that both argue over how much, if any, of the current legal system can and must be preserved and put to use in the service of feminist concerns. The two characterizations are not the same, but the important parallel between them allows for some generalization regarding the ways in which each is likely to respond to particular theoretical and substantive issues. However, while the two may reasonably be grouped for some purposes, they must not be conflated.

Although it seems that the sameness/difference and the reform/radical debates could create an impasse for feminists, some theorists believe that some combination of the two views can be more effective than either alone. Williams[34] for example, believes that rights can function as powerful liberatory tools for the traditionally disadvantaged. However, she also believes that in a racist society such as contemporary America, racial difference must be recognized because it creates disadvantage before the law. In this way, she claims that some features of the liberal tradition, like rights, need to be maintained for the liberatory work they can do. However, she argues that the liberal tradition of formal equality is damaging to historically marginalized groups. This aspect of law needs to be completely transformed. As an example of the ways in which rights are still needed by the traditionally disadvantaged, she examines the relationship to rights that is enjoyed by a white male colleague. His sense of his rights is so entrenched that he sees them as creating distance between himself and others, and believes that rights should be

[31] H L A Hart, *The Concept of Law* (Oxford University Press, 1961).
[32] H H Kay, "Equality and Difference: The Case of Pregnancy," 1 *Berkeley Women's Law Journal* 1-37 (1985).
[33] M Minow, *Making All the Difference: Inclusion, Exclusion and American Law* (Cornell University Press, 1991).
[34] P Williams, *The Alchemy of Race and Rights* (Harvard University Press, 1991).

played down. In contrast, Williams expresses her own relationship to rights, being a black woman, as much more tenuous. The history of American slavery, under which black Americans were literally owned by whites, makes it difficult for both blacks and whites to figure blacks as empowered by rights in the same ways that whites are. This example shows how Williams weaves together important elements of both reform and radical positions, and at the same time includes the element of empowerment that is seen in dominance positions. She claims that for blacks, and for any traditionally disadvantaged group, rights are a significant part of a program of advancement. One's relationship to rights depends on who one is, and how one is empowered by one's society and law. For those whose rights are already guaranteed, what may be necessary for social change is to challenge the power of rights rhetoric for one's group. But for those whose rights have never been secure, this will not look like the best course of action. Williams' suggestion is that we recognize that rights and rights rhetoric function differently in different settings and for different people. But this, then, is a response which relies on the radical and difference premise that difference must in fact be attended to rather than elided. In order that rights be made effective for historically marginalized people, we must first see that they do not in fact function for all people in the way that they do for those they were created for.

Another approach to drawing the two sides of the debate in feminist jurisprudence together is offered by Judith Baer, whose claim is that feminist jurisprudence to date has failed to either reform or transform law because feminists in both camps have made crucial mistakes.[35] The primary error has been that feminist jurisprudence has tended to misunderstand the tradition it criticizes. Although feminist jurists recognize that the liberal tradition has secured rights for men but not women, they have failed to make explicit the corresponding asymmetry of responsibility. Women are accorded responsibility for themselves and others in ways that men are not. For example, women are expected to be responsible for the lives of children in ways that men are not; as noted above, this has implications in areas like workplace law.The second major error Baer sees in feminist jurisprudence is that it, along with most feminism, has tended to focus almost exclusively on women. This has drawn feminist attention away from men and the institutions that feminism needs to study, criticize, challenge and change. It has also created a series of debates within feminism that are divisive and draining of feminist energy. Again, the solution is to recognize when reform (sameness) and radical (difference) approaches are effective, and to use each as appropriate. Baer argues that:

> *[f]eminist jurists need not – indeed, we must not – choose between laws that treat men and women the same and laws that treat them differently. We already know that both kinds of law can be sexist. Our gender-neutral law of reproductive rights treats women worse than men, but so did "protective" labor legislation. Conversely, both gender-neutral and gender-specific laws can promote sexual equality. Comparable worth legislation would make women more nearly equal with men. So have affirmative action policies. Women can have it both ways. Law can treat men and women alike where they are alike and differently where they are different.*[36]

Baer provides critiques of both reform and radical feminist jurisprudence. She concludes that neither alone is sufficient, but that both, applied where appropriate, could be. She argues that the feminist focus on women has encouraged an inability to think on a universal scale. This leaves feminists, and law under feminist jurisprudence, mired in the particularities of individual

[35] J A Baer, *Our Lives Before the Law: Constructing a Feminist Jurisprudence* (Princeton University Press, 1999) p. 55.
[36] *Ibid*.

cases and individual traits. To move out of this mire, she suggests three tasks for feminist jurisprudence:

> *First, it must do the opposite of what conventional theory and feminist critiques have done: posit rights and question responsibility. Second, it must develop analyses that will separate situations from the people experiencing them, so we can talk about women's victimization without labeling them as victims. Finally, it must move beyond women and begin scrutinizing men and institutions.*[37]

Baer does not suggest that feminism, nor feminist jurisprudence, should give up the study of women and women's situations. Rather, her suggestion is that this study as an exclusive focus is not sufficient for either reform or transformation. Because "women neither create nor sustain their position in society" feminists need to scrutinize those who do. Baer's suggestion is that what is needed is an account of "what it means to be a human being, a man, or a woman, which makes equality possible."[38] The mistakes that feminist jurisprudence has made have prevented its developing this account, which Baer thinks could be the foundation of what she calls a feminist post-liberalism sufficient for feminist jurisprudence.

## 7. Conclusion

In order to move from our current situation to a move just resolution for the dilemma of caretaking and dependency, we will need to move than a responsive state. The state will also have to be an active participant in shaping and monitoring other societal institutions. One fundamental task will be monitoring and preventing the exploitation and appropriation of the labour of some citizen through institutional and ideological arrangements. This must be prevented even when the justification for the labour's appropriation and exploitation is that is that it is used for the good of the majority. Further, it must be prevented even in contexts where social constraints and conventions coerce consent from the labour.

The state must use its regulatory and redistributive authority to ensure that those things that are not valued or are undervalued in market or marriage are nonetheless, publicly and politically recognized as socially productive and given value. Conferral of value requires the transfer of some economic resources from the collective society to caretakers through the establishment of mechanisms that those who receive the benefit of caretaking in order to compensate those who do the caretaking. Other societies do this in a variety of ways, such as using tax revenues to provide child care allowances and universal benefits that assist caretakers, or through a basic income guarantee. Money, however, is not enough. The active state must also structure accommodation of the needs of caretaking into society's institutions.

[37] *Ibid*, 68.
[38] *Ibid*, 192.