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## I. INTRODUCTION

The continuity of a social structure requires a secure environment in which its members and institutions have to recognize its established order. This is a critical element in an order of domination, since it necessitates the *dominated* to acknowledge their inferior status. This perspective is driven by Pierre Bourdieu's notion of the *paradox of doxa* (i.e. the established order of the world):

The fact that the order of the world as we find it, with the one way street, and its no-entry signs, whether literal or figurative, its obligations and its penalties is broadly respected; that there are not more transgressions and subversions, contraventions and 'follies'; or still more surprisingly, that the established domination, with its relations of domination, its rights and prerogatives, privileges and injustices, ultimately perpetuates itself so easily apart from a few historical accidents, and that the most intolerable conditions of existence can so often be perceived as acceptable and even natural.<sup>1</sup>

It is quite conceivable, that without social recognition, the very existence of the established order of domination will be threatened. The predicament is how an unjust structure is recognized, along with its *intolerable conditions of existence*, without regard to its discriminatory effects.<sup>2</sup> For a masculine domination to sustain itself, the thoughts of women have to be structured in accordance with the prevailing male perception. Women's acts of *cognition*, then, inevitably become acts of *recognition*, of submission.<sup>3</sup> This creates an established order, or a paradox of doxa. From this approach, women, whether conscious or not, internalize a male perception of their thoughts, feelings and images, even their very image of freedom.<sup>4</sup> Therefore, they think, act, and plan within the limits imposed upon them by the dominant schemes of perception.

It is obvious that the biological division of the sexes is used to reflect more than just physical appearances. It refers to the corresponding unequal social division between

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<sup>1</sup> PIERRE BOURDIEU, MASCULINE DOMINATION 1(Polity Press trans., Stanford University Press 2001) (1998).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 13.

<sup>4</sup> The word internalize (make your own) is used here to refer to how women, whether aware or unaware, see their life and everything related to it from the male perspective. In this respect, women make the male point of view, their own point of view, and by that they, involuntarily, submit to the established order of domination.

men and women. In this context, the female body, a biological attribute, is socially desirable from the male point of view and in comparison to male's physical desire. The social construction of male and female identities is not inherited, natural or physical as such.<sup>5</sup> An argument typified by Professor Catherine MacKinnon, who believes that "male is a social and political concept, not a biological attribute."<sup>6</sup> The social identity imposed upon the sexes has to do with knowledge and experience. Men, whether conscious or not, accept the social identity imposed upon them because it confirms with their experience and it is in their interest.<sup>7</sup> Whereas, women are socially pressured to rationalize and see reality in terms of the dominant culture regardless of the truth "that it contradicts (at least some of) their lived experience."<sup>8</sup> Despite its irrationality for some, the dominant point of view is what prevails on both sexes. But why do women accept to be placed at a social lower stratum than men? Why isn't the powerless revolting?<sup>9</sup>

In a male dominant society, as Bordieu suggests, "women can only become what they are according to mythic reason, thus confirming, and first in their own eyes, that they are naturally consigned to what is low."<sup>10</sup> This represents the essence of an established order of male dominance, or a paradox of doxa. Divide and conquer is a Roman design, but it serves male dominance equally well. Divide the sexes, and

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<sup>5</sup> CATHARINE MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE 114 (Harvard University Press, 1989). Catharine Alice MacKinnon is an American feminist, lawyer, scholar, Professor and, activist.

<sup>6</sup> *Id.* For the counterargument to MacKinnon's suggestion concerning male dominance as a biological attribute, look at the biological theory argument regarding the production and reproduction of the established order of domination, see e.g., CHARLES DARWIN, ON THE ORIGIN OF SPECIES BY MEANS OF NATURAL SELECTION (London: John Murray 1869) (1859); EDGAR BERMAN, THE COMPLETE CHAUVINIST: A SURVIVAL GUIDE FOR THE BEDEVILED MALE (Macmillan 1982); STEVEN GOLDBERG, THE INEVITABILITY OF PATRIARCHY (Morrow 1974); CAMILLE PAGILA, SEXUAL PERSONAE: ART AND DECADENCE FROM NEFERTITI TO EMILY DICKINSON (Yale University Press 1990) ; CAMILLE PAGILA, SEX, ART AND AMERICAN CULTURE: ESSAYS (New York: Vintage 1992); CAMILLE PAGILA, VAMPS AND TRAMPS: NEW ESSAYS (New York: Vintage 1994); NANCY ETCOFF, SURVIVAL OF THE PRETTIEST: THE SCIENCE OF BEAUTY (New York: Doubleday 1999); MARTIN DALY & MARGO WILSON, HOMICIDE (Transaction Publishers 1988); EDWARD WILSON, SOCIOBIOLOGY: THE NEW SYNTHESIS (Harvard University Press 2000) (1975); EDWARD WILSON, ON HUMAN NATURE (Harvard University Press 1978); DAVID BARASH, THE WHISPERINGS WITHIN ((Harper & Row 1979), CHARLES LUMSDEN & EDWARD WILSON, GENES, MIND, AND CULTURE (Harvard University Press 1981) on (Developed gene and culture co-evolution); JOSEPH LOPREATO, HUMAN NATURE AND BIOLOGICAL EVOLUTION ( Allen and Unwin 1984); PIERRE VAN DEN BERGHE, HUMAN FAMILY SYSTEMS: AN EVOLUTIONARY VIEW (Elsevier 1978).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> The study provides an overview on why the powerless do not revolt in Chapter 1.

<sup>10</sup> BOURDIEU, *supra* note 1, at 30.

conquer women can be seen as the first fundamental principle to maintain the structure. From this approach, the process of justifying masculine ascendancy is driven by legitimating "a relationship of domination by embedding it in a biological nature that is itself a naturalized social construction."<sup>11</sup> The personal relation *the sexual* inevitably turns into a social relation of *power*. The biological division is as Bourdieu suggests "the fundamental principle of division."<sup>12</sup> It "creates, organizes expresses and directs desire."<sup>13</sup> Through this principle, the male desire becomes "the desire for possession, eroticized domination" while the female desire becomes "the desire for masculine domination, as eroticized subordination or even, in the limiting case, as the eroticized recognition of domination."<sup>14</sup> This divides the sexes into active/male and passive/female.<sup>15</sup>

Females become objects, "whose being is a being perceives."<sup>16</sup> Sooner or later, conscious or not, women come to perceive their biological capabilities as less significant compared to men's physical strength, and instead of rebelling against male power, they legitimize its existence by having sex with men. This sexual intercourse keeps women in "a permanent state of bodily insecurity, or more precisely of symbolic dependence."<sup>17</sup> From this approach, the relationship between the sexes becomes a dependency relationship, in which women dependent on men's approval regarding most decisions in their life.<sup>18</sup> MacKinnon suggests that "having power means, among other things, that when someone says 'this is how it is' it is taken as being that way – powerless means that when you say 'this is how it is' it is not taken as being that way."<sup>19</sup>

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<sup>11</sup> *Id.* at 23.

<sup>12</sup> *Id.* at 21.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 66.

<sup>17</sup> BOURDIEU, *supra* note 1, at 66.

<sup>18</sup> Females as young girls, they depend on their fathers' and/or brothers' approval regarding their attire, curfew, and future plans. As teenagers, they depend on their boyfriends' and/or guys' approval and attention regarding their looks and personality; while at the same time they still depend on their fathers' and/or brothers' approval regarding the aforementioned decisions. As married women, they entirely build their whole lives on their husbands' approval.

<sup>19</sup> CATHARINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 164 (Harvard University Press 1987) [hereinafter FEMINISM UNMODIFIED].

Men are powerful and women are powerless. This unequal distribution of power, with no need for further argument, disturbs the balance of the scales of justice. So how does an established order of domination sustain itself under law? Is there a relationship of law to domination? This study suggests that social institutions, particularly the legal system, have a role in maintaining and reproducing the established order of domination. It argues that law serves the dominant society in two respects. First is that law legitimates power of the established order, relations of domination, and itself. This argument is based explicitly on the Marxist theory and MacKinnon's assumptions. From this approach, law *maintains* the conditions of inequality that sustains the established order of domination which in itself is a tool of oppression.

The second is that law *reproduces* the established order of domination. This argument is built from the Socio-legal theory. In this approach, law is a set of rules, developed throughout history, which assign to each member his/her position in society, whether it is dominant or submissive. Based on these arguments, this study uses the Egyptian law, in particular those provisions in the law that are supposed to contain and outlaw sexual harassment, as an example of how law *maintains* and *reproduces* the established order of domination. By moving beyond the rhetoric promises of the Egyptian law and exploring its underlying meanings, it becomes clear that sexual harassment law (i.e., the provisions that outlaw harassment) serves men in two ways. First, it legitimates power of the dominant society, by reflecting an image of neutrality, while in reality it maintains the conditions of inequality that subject women to sexual harassment. Second, it reproduces the established order of domination by reflecting the dominant culture in its content. By that the Egyptian law directly contributes to the construction of dominant male and submissive female.

## II. THEORY

This Chapter is designed to explore the relationship of law to domination from different theoretical perspectives. Accordingly, it aims to examine the scope, nature and effect of law in a dominant society. The term male dominance does not refer to a cohesive concept of supremacy. Rather, it is a complex system with multiple dimensions and domains of power. It is a deep rooted structure that operates on both the collective and individual levels. From this perspective, there is more than one way of intervening in the discussion about law and domination, and indeed it is constructive to approach the issue from different angles.

Chapter one builds the theoretical background essential for the discussion that follows. The questions that guide the development of this study have divided this chapter into two independent sections. Section A maps the Marxist Theory assumptions regarding the legitimate effect of law. Section B explores the Socio-legal theory interpretations on how law reproduces the established order of domination. Each section is a self contained study and can be read with profit separately. They explore different facets of the relationship of law to domination.

### A. THE MARXIST THEORY

Marxism is the contemporary theoretical tradition that – whatever its limitations– confronts organized social dominance, analyzes it in dynamic rather than static terms, identifies social forces that systematically shape social imperatives, and seek to explain human freedom both within and against history. It confronts class, which is real. It offers both a critique of the inevitability and inner coherence of social injustice and a theory of the necessity and possibilities of change.<sup>20</sup>

Catharine MacKinnon

Capitalism is an unjust social system that provides advantages to capitalists (bourgeoisie) while diminishing opportunities for workers (proletariat).<sup>21</sup> In a

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<sup>20</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at preface.

<sup>21</sup> Marx suggests that "society as a whole is splitting up into two great hostile camps, into two great classes directly facing each other: Bourgeoisie and Proletarian," Marx uses the term bourgeoisie and bourgeois to refer to the social class who own capital and means of production; bourgeois refers to the male capitalist, and the bourgeoisie refers to the female capitalist. The proletarian class is the class who do not own means of production and they only receive capital when they sell their labor. On Capitalism, see generally, KARL MARX, ECONOMIC AND PHILOSOPHICAL MANUSCRIPTS

capitalist society, resources, power and control are unevenly distributed between social classes. The labor process is what shapes social relations in a class society. It transforms authority into capital, then capital into authority.<sup>22</sup> It defines the relationship between those who produce "labor products"<sup>23</sup> and those who gain from these products; between those who increase "the value of the world of things"<sup>24</sup> and those who increase their wealth; between the exploited/worker and the exploiter/capitalist. This division organizes the class society into a powerful capitalist class, who owns the means of production, and a powerless working class, who do not. Hence, "[w]ork is the social process of shaping and transforming the material and social world, creating people as social beings as they create value."<sup>25</sup>

MacKinnon suggests that '[s]exuality is to feminism what work is to marxism: that which is most one's own, yet most taken away.'<sup>26</sup> She argues that "[s]exuality is the social process through which social relations of gender are created, organized, expressed, and directed, creating the social beings we know as women and men, as their relations create society."<sup>27</sup> This division identifies the relationship between those who produce eggs and those who produce sperms; between those who are sexually exploited and those who exploit the sexuality of others; between the female sexual desirability and the male physical desires; between submissive female and dominant male.

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OF 1844, reprinted in Lawrence Simon, ed., KARL MARX: SELECTED WRITINGS (Hackett, 1994) [hereinafter MANUSCRIPTS]; KARL MARX, KARL MARX ON SOCIETY AND SOCIAL CHANGE: WITH SELECTIONS BY FRIEDRICH ENGLES 4 (Neil J Smelse ed., University of Chicago Press 1973) [hereinafter ON SOCIETY]; KARL MARX, A READER BY KARL MARX: ALIENATION (Jon Elster ed., Cambridge University Press 1986) [hereinafter ALIENATION]; KARL MARX & FRIEDRICH ENGELS, THE COMMUNIST MANIFESTO (David McLellan ed., Oxford University Press 2008) (1848) [hereinafter THE COMMUNIST]; KARL MARX & FRIEDRICH ENGELS, THE GERMAN IDEOLOGY 80 (reprint, People's Publishing House 2010).

<sup>22</sup> AUTOCRACY AND CHINA'S REBEL FOUNDING EMPERORS: COMPARING CHAIRMAN MAO AND MING TAIZU 268 (Anita M. Andrew, John A. Rapp eds., Rowman & Littlefield 2000) "In the process of strengthening and extending bourgeois rights, they transform authority into capital, then change capital into authority, and suck the blood of the workers."

<sup>23</sup> MARX, ALIENATION, *supra* note 21, at 37. Marx writes: "the object which labor produces "labor's product" confronts it as *something alien*, as a power independent of the producer."

<sup>24</sup> *Id.*, Marx suggests that "the devaluation of the world of men is in direct proportion to the increasing value of the world of things."

<sup>25</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at.3.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

Capitalism and male dominance are two organized structures of domination that represent the same thing; that is, the perpetuation of power imbalances. MacKinnon points out that Marxism and feminism "exist to argue, respectively, that the relations in which many work and few gain, in which some dominate and others are subordinated, in which some fuck and others get fucked – are the prime moment of politics."<sup>28</sup> MacKinnon suggests that gender is a political system that divides and distributes power.<sup>29</sup> In this context, political power is the organized power of one group to oppress the rights of the other. Relations of domination have been extended throughout history, pervading all cultures, economics, and institutions. In systems of domination, the state constitutes the social order in the interest of the powerful "through its legitimating norms, forms, relation to society, and substantive policies."<sup>30</sup>

So what is the relationship of law to domination? Marx suggests that in a capitalist society, law is an instrument that serves the interests of the bourgeois. He challenges the universality of capitalist law and its "self proclaimed rational objectivity."<sup>31</sup> He points out that "law, morality, religion, are to [the proletarian] so many bourgeois prejudices, behind which lurk in ambush just as many bourgeois interests."<sup>32</sup> From this perspective, capitalist law does not apply equally and fairly to all social classes. It does the exact opposite: it maintains the conditions of inequality that sustain the existence of the capitalist society. Marx indicates that "[bourgeoisie] jurisprudence is but the will of [the bourgeoisie] class made into a law for all, a will whose essential character and direction are determined by the economical conditions of existence of [the bourgeoisie] class."<sup>33</sup> This viewpoint suggests that the legal system contributes to the maintenance of capitalism by legitimating its powers. It reflects formal equality and promotes the image of "law for all," while in the practice of law, it justifies the inequalities of the system and the unequal distribution of social power.

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<sup>28</sup> *Id.* at 4.

<sup>29</sup> *Id.* at 160.

<sup>30</sup> *Id.*, at 162.

<sup>31</sup> HILAIRE BARNETT, INTRODUCTION TO FEMINIST JURISPRUDENCE 135 (Routledge 2013).

<sup>32</sup> MARX & ENGELS, THE COMMUNIST, *supra* note 21, at 1850.

<sup>33</sup> *Id.*, at 28. Marx writes: "your very ideas are but the outgrowth of the conditions of your bourgeois production and bourgeois property, just as your jurisprudence is but the will of your class made into a law for all, a will, whose essential character and direction are determined by the economical conditions of existence of your class."



The state, its institutions and its laws are tools in the hands of the bourgeois for their own protection. As Marx suggests, "the executive of the modern state is but a committee for managing the common affairs of the whole bourgeoisie."<sup>34</sup> He argues that "the attitude of the bourgeois to the institutions of his regime is like that of the Jew to the law; he evades them whenever it is possible to do so in each individual case, but he wants everybody else to observe them."<sup>35</sup> The law reflects the ideology of the bourgeoisie. In this approach, the bourgeoisie adjust laws that conflict with "their private interest."<sup>36</sup> They give law "only as much power as is necessary for their own safety and the maintenance of competition."<sup>37</sup> As Marx points out, the bourgeoisie override the law, acting "as citizens only to the extent that their private interests demand it."<sup>38</sup> Hence, law operates on two connected levels: it legitimates power of the capitalist society by reflecting an image of neutrality, which is generally accepted even by those who are economically underprivileged, while in practice it sustains the capitalist society which in itself is a tool of class oppression. Because the Marxist theory is complex and can be interpreted in different ways, it is more comprehensible to understand the legitimate effect of law from MacKinnon's point of view.

In the corresponding system of domination, MacKinnon suggests that in a male dominant society, "[l]aw – objectifies social life."<sup>39</sup> It reflects the social image of women. From this perspective, law perceives and treats women the same way society perceives and treats women.<sup>40</sup> MacKinnon points out that "[l]aw, structurally, adopts the male point of view:" it assumes that "sexuality concerns nature not social arbitrariness;" it considers women's subordination an issue of interpersonal relations not a result of social distribution of power; it perceives sex division as a "sex difference not sex discrimination."<sup>41</sup> Since women and men are not similarly situated in society, they are not similarly treated by law. MacKinnon asserts that "for a differential treatment to be discriminatory, the sexes must first be 'similarly situated'

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<sup>34</sup> *Id.*, at 486.

<sup>35</sup> MARX & ENGELS, THE GERMAN IDEOLOGY, *supra* note 21, at 80.

<sup>36</sup> *Id.*

<sup>37</sup> KARL MARX & FRIEDRICH ENGELS, THE GERMAN IDEOLOGY 377 (unabridged, reprint, Prometheus Books 1976).

<sup>38</sup> *Id.*

<sup>39</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 248.

<sup>40</sup> *Id.*, at 162; MacKinnon writes: "law sees and treats women the way men see and treat women."

<sup>41</sup> *Id.* at 216.

by legislation, qualifications, circumstances, or physical endowment."<sup>42</sup> Otherwise, the legal system's treatment of women is morally justified. As MacKinnon writes: "[t]he legal mandate of equal treatment – becomes a matter of treating likes alike and unlikes unlike, while the sexes are socially defined as such by their mutual unlikeness."<sup>43</sup> Law, therefore, serves men's interests at the expenses of women.<sup>44</sup>

From this standpoint, the state "legitimizes itself" by mirroring its view of society in law, and calls its view and its relation to society "rationality."<sup>45</sup> In this context, law contributes to the maintenance of the conditions of inequality that sustain the structure. MacKinnon argues that "[l]aw, as words in power, writes society in state form and writes the state onto society."<sup>46</sup> It legitimizes state's view of society and turns it into legal authority. Such law, as MacKinnon suggests, not only legitimizes masculine domination, but also rule in a male way.<sup>47</sup> In this approach, law reinforces the rule of men over women while maintaining "its own ideal of fairness."<sup>48</sup> In a male dominant society, the legal system denies the history of women's oppression and defends itself as being objective and neutral, while in actuality, it punishes men leniently when they abuse women or, in its ultimate triumph, it allows men to escape the deserved punishment.<sup>49</sup> In this context, "[t]he legal process reflects itself in its own image, makes be there what it puts there, while presenting itself as passive and neutral in the process."<sup>50</sup> In this approach,

No law gives husbands the right to batter their wives. This has not been necessary since there is nothing to stop them. No law silences women. This has not been necessary, for women are previously silenced in society – No law guarantees that women will forever remain the social unequals to men. This is not necessary, because the law guaranteeing sex equality requires, in an unequal society, that before one can be equal legally, one must be equal socially. So long as power enforced by

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<sup>42</sup> *Id.*, at 217.

<sup>43</sup> *Id.*, at 216.

<sup>44</sup> *Id.*, at 249. MacKinnon writes: "The legitimacy of existing law is based on force at women's expense."

<sup>45</sup> *Id.* at 162.

<sup>46</sup> *Id.*, at 163.

<sup>47</sup> *Id.* at 162.

<sup>48</sup> *Id.*, at 163.

<sup>49</sup> As will be shown in Chapter II: crimes of honor in Arab world [as an example of reduced sentences] and sexual harassment incidents [as an example of no punishment]; on crimes of honor in the Arab World See generally, Lama abu Auda, Crimes of Honor and the Construction of Gender in Arab, *Comparative Law Review* Vol.2

at:<http://www.comparativelawreview.com/ojs/index.php/colr/article/viewfile/18/22>.

<sup>50</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 248.

law reflects and corresponds – in form and in substance – to power enforced by men in society, law is objective, appears principled, becomes just the way things are.<sup>51</sup>

These words express a direct and crucial message; that is, women are only granted the rights approved by society.<sup>52</sup> But why do women accept this unequal protection under law? MacKinnon argues that "like the assumption that women generally consent to sex, is the assumption that women consent to this government."<sup>53</sup> But why do women accept this form of government and its differential treatment? Why do they adhere to a society that oppresses them? And why do women accept the rule of men? Generally, why in systems of domination, like capitalism and male dominance, the powerless are not revolting? The short answer to this question is that domination is deeply embedded into everything that surrounds the powerless, and for the powerless to rebel against the deep rooted structure, they have to first rebel against their own way of life. Shulamith Firestone writes:

So that just as to assure elimination of economic classes requires the revolt of the underclass (the proletariat) and, in a temporary dictatorship, their seizure of the means of *production*, so to assure the elimination of sexual classes requires the revolt of the underclass (women) and the seizure of control of *reproduction*: not only the full restoration to women of ownership of their own bodies, but also their (temporary) seizure of control of human fertility – And just as the end goal of socialist revolution was not only the elimination of the economic class *privilege* but of the *class distinction* itself, so the end goal of feminist revolution must be, unlike that of the first feminist movement, not just the elimination of male privilege but of the sex distinction itself: genital differences between human beings would no longer matter culturally.<sup>54</sup>

Firestone suggests a change in a biological reality and a complete transformation in women's way of life. From this perspective, women should no longer depend on males' sperms to reproduce. Rather they should use alternative means in order to

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<sup>51</sup> *Id.*, at 239; According to MacKinnon, women are silenced in society " by sexual abuse, by not being heard, by not being believed, by poverty, by illiteracy, by a language that provides only unspeakable vocabulary for their most formative traumas, by a publishing industry that virtually guarantees that if they ever find a voice it leaves no trace in the world."

<sup>52</sup> In this sense, if women are not granted certain social rights, they will not be granted these rights legally, because law reflects society and only grants women the rights accepted and approved by society, as will be shown in Chapter 2 section B.

<sup>53</sup> *Id.* at 161.

<sup>54</sup> SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* 8 (William Morrow 1970).

achieve their complete independence from male dominance and its political relations. Firestone points out that "the reproduction of the species by one sex for the benefit of both would be replaced by artificial reproduction; children would be born to both sexes equally, or independently of either, however one chooses to look at it."<sup>55</sup> From this approach, the family institution and its norms will disappear and make space for new possibilities. Power inequity between men and women will be redistributed in society and, consequently, in labor, state and law.

Firestone's radical suggestion is based upon her assumption that "no matter how many levels of consciousness one reaches, the problem always goes deeper."<sup>56</sup> From this approach, sex division is "so deep as to be invisible – or it may appear as a superficial inequality."<sup>57</sup> Women's reality, experience and knowledge are socially constructed based on the prevailing perception; the male point of view. This is how the structure of domination sustains itself. It dominates the thoughts and perceptions of women and changes them into male-friendly thoughts and perceptions. Through this, the structure secures women's "unquestioning acceptance of a male define and a male derived existence."<sup>58</sup> For this reason, women's "acts of *cognition* are, inevitably, acts of *recognition*, submission."<sup>59</sup>

So how do acts of *cognition* turn into acts of *recognition*? How do men come to control, dominate, and oppress women? What are the system mechanisms of domination? And how do systems of domination sustain themselves, throughout history, despite the injustices they produce? In a capitalist society, Marx argues that "[t]he *devaluation* of the world of men is in direct proportion to the *increasing value* of the world of things."<sup>60</sup> This suggests that the more the worker is devaluated, the more s/he produces labor products, and the wealthier becomes the capitalist. The worker becomes dependent on his/her work. S/he "becomes a servant of his object, first, in that he receives an object of labor, i.e. in that he receives work; and secondly,

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<sup>55</sup> *Id.*

<sup>56</sup> *Id.*, at 2.

<sup>57</sup> *Id.*

<sup>58</sup> Purple September Staff, *The Normative Status of Heterosexuality*, in LESBIANISM AND WOMEN'S MOVEMENT 80-1 (Nancy Mayron & Charlotte Bunch ed., 1975).

<sup>59</sup> BOURDIEU, *supra* note 1, at 13.

<sup>60</sup> MARX, ALIENATION, *supra* note 21, at 37.

in that he receives means of subsistence."<sup>61</sup> From this perspective, the worker, who owns nothing but his labor power, exchanges his productive activity with means of subsistence, i.e. capital, in order to be able to survive. S/he becomes a servant of his/her work, because that is all s/he owns. And without the means of subsistence that s/he receives, s/he will be unable to sustain a living. Marx argues that "this enable [the worker] to exist, first, as a worker, and, second, as a physical subject." <sup>62</sup>

On the other hand, the capitalist receives labor in exchange of the means of substance; his/her business grows, s/he increases "the value of the world of things", s/he becomes wealthier. This has the effect to place the worker in an oppressive cycle, the more s/he receives means of subsistence, the more s/he consumes, and the more s/he is dependent on selling his/her labor power for survival. In this approach, the worker, whether conscious or not, contributes to the reproduction of the conditions that oppress him/her in the first place. Marx suggests that "the more objects the worker produces the less he can possess and the more he falls under the sway of his product capital."<sup>63</sup> He also points out that "the more the worker spends himself, the more powerful becomes the alien world of objects which he creates over and against himself, the poorer he himself – becomes, the less belongs to him as his own."<sup>64</sup> In this sense, work becomes an involuntary action not a spontaneous activity, a mean to satisfy other means. <sup>65</sup> The worker, inevitably, put his/her life into labor; s/he wakes up every morning to produce *alien*<sup>66</sup> objects and increase labor profit that s/he does not gain. In this sense, the worker's "life no longer belongs to him but to the object." <sup>67</sup> Therefore, it can be argued that work is "most one's owned, yet most taken away." <sup>68</sup>

MacKinnon suggests that "[a]s the organized exportation of the work of some for the benefit of others defines a class, workers, the organized expropriation of the sexuality

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<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> MARX, MANUSCRIPTS, *supra* note 21, at 62.

<sup>66</sup> MARX, ALIENATION, *supra* note 21. The products that the worker produces confront him/her as something alien. Marx writes: "the object which labor produces "labor's product" confronts it as *something alien*, as a power independent of the producer."

<sup>67</sup> *Id.*

<sup>68</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 3.

of some for the use of others defines the sex, woman."<sup>69</sup> From this perspective, "a woman is identified as a being who identifies and is identified as one whose sexuality exists for someone else, who is socially male."<sup>70</sup> Woman's relation to her sexuality is similar to worker's relation to his/her labor. In this context, sexuality will not exist without women like labor will not exist without workers and women cannot be identified without their sexuality, like workers cannot be identified without their work. But how did women become identified by their sexuality? MacKinnon argues that "the modeling, direction, and expression of sexuality organizes society into two sexes: women and men."<sup>71</sup> She asserts that "[t]his division underlines the totality of social relations."<sup>72</sup> In this approach, relations between the sexes are based upon sex, "man fucks woman, subject verb object."<sup>73</sup> Men dominate the thoughts and perceptions of women and direct them to satisfy their male interests. They turn women into sex objects, valued only by their looks with respect to their possible usages.<sup>74</sup> As MacKinnon writes, "a sex object is defined on the basis of its looks, in terms of its usability for sexual pleasure, such that both the looking- the quality of the gaze, including its point of view- and the definition according to use become eroticized as part of the sex itself."<sup>75</sup> Sexuality for women is work for workers; not a spontaneous activity, just a mean to satisfy other means, i.e. sex and reproduction.<sup>76</sup> Only as a woman, she is sexual, and only as sexual she is a woman. From this approach, sexuality is forced on women. It becomes an obligation, an assignment, both originally and in daily life.<sup>77</sup>

MacKinnon suggests that "gender socialization – is the process through which women internalize (make their own) a male image of their identity as women, and thus make it real in the world." <sup>78</sup> It is no wonder that women's beauty industry is one of the largest industries in the world. From women in the caves, who did not have the luxury

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<sup>69</sup> *Id.* at 4.

<sup>70</sup> *Id.* at 118.

<sup>71</sup> *Id.* at 1.

<sup>72</sup> *Id.* at 1.

<sup>73</sup> *Id.* at 124.

<sup>74</sup> MACKINNON, FEMINISM UNMODIFIED, *supra* note 19, at 173.

<sup>75</sup> *Id.*

<sup>76</sup> Women who do not work, depend financially on men for survival. They perceive men as a mean to other means that is capital. Marriage in this sense becomes a mean for financial stability. Women depend on their husbands, like workers depend on their work.

<sup>77</sup> MACKINNON, FEMINISM UNMODIFIED, *supra* note 19, at 173. MacKinnon writes "Gender is an assignment made visually, both originally and in everyday life."

<sup>78</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 110-11.

of the mirror and ate anything that comes their way, to women striving to be as skinny as Victoria's Secret models.<sup>79</sup> The greater males' vision of sexuality, the harder women work to satisfy them. And the more women submit to the prevailing male perception of sexuality, the more women will follow their footsteps. Reversing the female image to the figure of cave woman, who had a different perception about sexuality, most likely is impossible.

Today's perception of sexuality is so deeply embedded in women's way of thinking to the extent that it defines their identity. MacKinnon points out that "femaleness means femininity, which means attractiveness to men, which means sexual attractiveness, which means sexual availability on male terms."<sup>80</sup> She argues that "what defines women as such is what turns men on, and everything any kind of women is, does."<sup>81</sup> In this approach, women, virtuous or not, are seen attractive.<sup>82</sup> Therefore, any kind of women is sexually exploited by men; there is nothing a woman can do to avoid being sexually exploited by men. Even when women are conscious of it, they are exploited against their will. MacKinnon argues that "men who sexually harass say women sexually harass them. They mean they are aroused by women who turn them down."<sup>83</sup>

Similar to workers who are servants of the capitalist society, women act like men's natural servants. They serve men's interests and their sexuality is exploited on male terms. But the problem seems more ruthless as it goes deeper. Women are treated worse than servants. Men not only exploit their sexuality, but their humanity too. Murdering women for the honor of the family, cutting off little girls clitorises, and sewing the remaining flesh together for the protection of their virginity, rapping, harassing and, battering wives are all facts "that a woman is socially defined as a person who, whether or not she is or has been, can be treated in these ways by men at

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<sup>79</sup> For reasons of time and space, this concept is not developed in this study. See e.g. NAOMI WOLF, *THE BEAUTY MYTH: HOW IMAGES OF BEAUTY ARE USED AGAINST WOMEN* (Random House 2013) (1990) for the concept of beauty and its development through the ages and its oppressive function today.

<sup>80</sup> MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*, *supra* note 5, at 110.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*, As will be shown in Chapter 2 section B, Egyptian women from all social classes are sexually harassed regardless of their looks and attire.

<sup>83</sup> *Id.*, at 141.

any time, and little, if anything, will be done about it."<sup>84</sup> In this approach, women act more like men's prisoners. MacKinnon suggests that:

The liberty of prisoners is restricted, their freedom restrained, their humanity systematically diminished, their bodies and emotions confined, defined, and regulated – they can be tortured at will, and it is passed off as discipline or as means to a just end. They become complaint. They can be raped at will, at any moment, and nothing will be done about it. When they scream, nobody hears. To be a prisoner means to be defined as a member of a group for whom the rules of what can be done to you, of what is seen as abuse of you, are reduced as part of the definition of your status. To be a woman is that kind of definition and has that kind of meaning.<sup>85</sup>

The underlying truth is that women are powerless and men are powerful.<sup>86</sup> Men's power over women is unchecked. The society provides them with power, the state maintains their power, and the law legitimates it. They possess enough power to do whatever they want to women. When men 'say this is how it is' it is taken as being that way, even if 'that way' is against women's will. But why do women accept this? The short answer is that the power relation between the sexes is disguised. It appears natural, since it is everywhere. Women, inevitably, submit to the belief that there is one way to become a woman; that is, the male way. Their thoughts are altered to believe that there is no choice, just like the worker who believes that only way s/he can survive is by selling his labor power. Both come to think that they were born inferior, and only as servants they can maintain themselves. When the law proclaims neutrality, it maintains these conditions of inequality. This legitimates powers of the dominant, legitimates the state, and legitimates law itself.

## **B. SOCIO-LEGAL THEORY**

The Socio-Legal theory explains the relationship between law and society. It suggests that analysis of this relationship is necessary to understand social structures. From this standpoint, law has to be understood in terms of the social relations to which it applies. In this approach, law has a central role to play in the establishment of the social order. Hans Kelsen suggests that "[o]nly on the basis of a clear comprehension

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<sup>84</sup> *Id.*

<sup>85</sup> MACKINNON, FEMINISM UNMODIFIED, *supra* note 19, at 170-71.

<sup>86</sup> *Id.*, This explains the radical feminist perspective that "maleness is a form of power and femaleness is a form of powerlessness."



of those relations constituting the legal order can the nature of law be fully understood."<sup>87</sup> Likewise, John Dewey argues that "law must be viewed both as intervening in the complex of other activities, and as itself a social process."<sup>88</sup> The former part of Dewey's statement suggests that law is not an independent entity. Rather, it is in direct relation to the social conditions it exists within.<sup>89</sup> For the purpose of this study, the latter part of the statement requires more in depth analysis of Dewey's philosophy of law.

Before proceeding to the main assumptions of the Socio-legal Theory, it is important to first provide brief definitions of the terms employed. This study adopts Max Weber's definitions of power and domination. Weber identifies power as "the probability that one actor within a social relationship will be in a position to carry out his own will despite resistance, regardless of the basis on which this probability rests."<sup>90</sup> He identifies domination as "the probability that a command with a given specific content will be obeyed by a given group of persons."<sup>91</sup> He suggests that "the existence of domination turns only on the actual presence of one person successfully issuing orders to others; it does not necessarily imply either the existence of an administrative staff or, for that matter, of an organization."<sup>92</sup> However, it is "uncommon to find it unrelated to at least one of these."<sup>93</sup> Weber suggests that "a ruling organization – exists insofar as its members are subject to domination by virtue of the established order."<sup>94</sup> Under the socio-legal theory, this study argues that law is a ruling organization that subject members of society to domination. It constructs subjects and turns them into dominant and submissive, according to their status in society.

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<sup>87</sup> HANS Kelsen, *GENERAL THEORY OF LAW AND STATE* 3 (reprint, The Lawbook Exchange, Ltd. 2009); Hans emphasizes that "It is impossible to grasp the nature of law if we limit our attention on the single isolation rule. The relations which link together the particular rules of a legal order are also essential to the nature of law."

<sup>88</sup> John Dewey, *My Philosophy of Law*, in *THE LATER WORKS OF JOHN DEWEY, VOLUME 14, 1925-1953* 115 (Jo Ann Boydston & Anne Sharpe eds., SIU Press 2008).

<sup>89</sup> *Id.*

<sup>90</sup> Max Weber, *Economy and Society: An Outline of Interpretive Sociology* 53 (Guenther Roth & Claus Wittich eds., reprint, University of California Press 1978).

<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

From this standpoint, Dewey asserts that there are three interrelated questions that one has to ask in order to examine the nature of law. They concern "the *source* of law, its *end*, and its *application*."<sup>95</sup> According to Dewey, "law is through and through a social phenomena."<sup>96</sup> The actual meaning of the word through is from side to side, or from end to end. This means that law is not an end in itself; it connects ends, and these ends are social. From this perspective, Dewey asserts that law is "social in origin, in purpose or ends, and in application."<sup>97</sup> To explain his view, Dewey uses a metaphor of a river valley, a stream, and banks:

The valley in its relation to surrounding country, or as the 'lie of the land,' is the primary fact. The stream may be compared to the social process, and its various waves, wavelets, eddies, etc., to the special acts which make up the social process. The banks are stable, enduring conditions, which limit and also direct the course taken by the stream, comparable to customs.<sup>98</sup>

In a given state (i.e., the lie of land), the social process like a stream is a continuous current in a specified direction, "craves its way from higher to lower levels, and when viewed as long run process (in time as well as in space) it forms and reforms its own laws (i.e., banks)."<sup>99</sup> Social customs, including traditions, are stable and enduring. They are acts formed by a long run process and have their own legal regulations.<sup>100</sup> They are part of the structure, not external influence. As Dewey writes "[f]or while they (i.e., social customs) constitute the structure of the processes that go on, they are the structure of the processes in the sense that they arise and take shape within the processes, and are not forced upon the processes from without."<sup>101</sup> In this approach, Dewey argues that "[h]uman beings form habits as surely as they perform deeds, and habits, when embodied in interactivities, are customs. These customs are, upon the

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<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 117. It is worth noting that Karl Llewellyn insisted that law should be a means to social ends and not as an end in itself "so that any part needs constantly to be examined for its purposes, and for its effect, and to be judged in the light of both and of their relation to one another." However, this is not what this study suggests. On the contrary, "law is not an end in itself" means that its actual function is to connect two ends. This can be negatively used in structures of domination, as will be illustrated later in this study. See, Karl N. Llewellyn, "Some Realism about Realism — Responding to Dean Pound," 44 *Harvard Law Review* 1222 (1931).

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*, Dewey uses this metaphor to explain other ideas. However, only the parts that satisfy the purpose of this study are used.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

view here taken, the *source* of law."<sup>102</sup> However, endorsing a custom into law reinforces and extends the "enduring and stable character" of the custom, "thus modifying its general character:" from a custom to a law.<sup>103</sup> In this approach, when social customs promote the division between the sexes, law gives the social division power and authority.

Kelsen suggests that "law is an order of human behavior."<sup>104</sup> It is a system that unites a set of rules. In this approach, law is not a single rule, it is a system.<sup>105</sup> Dewey contends that "[r]ules of law are in fact the institution of conditions under which persons make their own arrangements with one another."<sup>106</sup> These rules "canalize actions; they are active forces only as are banks which confine the flow of a stream, and are commands only in the sense in which the banks command the current."<sup>107</sup> From this approach, rules of law are not commands. They do not define the agreement between individuals; rather they state the conditions within individuals may settle upon the terms and within individuals can determine the consequences of breaking the conditions set by the law.

If as Dewey suggests law is customs, then it can be argued that law is a system of rules, developed throughout history, and its role is to canalize actions. But what is the relationship of power to law? In structures of domination, the role of law becomes more complicated than what Dewey suggests. Law is words in power. From this perspective, it can be assumed that in a just social order, law can be threatening to the powerful; in the sense that it limits their authority for a fair social distribution of power. However, in an unjust order, it might be threatening to the powerless, giving more power to the powerful. However, can such law be referred to as unjust? Kelsen argues that "[i]f only a just order is called law, a social order which is presented as law is – at the same time – presented as just; and that means it is morally justified."<sup>108</sup> In this sense, when law reflects an unjust society in its content, the society is justified not vice versa. This is the *legitimate effect* of law that was discussed in the Marxist

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<sup>102</sup> *Id.*, at 118.

<sup>103</sup> *Id.* at 119.

<sup>104</sup> KELSE, GENERAL THEORY OF LAW AND STATE, *supra* note 87, at 3.

<sup>105</sup> *Id.*

<sup>106</sup> JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS, 69 (Swallow Press 1954) (1927).

<sup>107</sup> *Id.*

<sup>108</sup> KELSE, *supra* note 87, at 3.

theory. What is proposed here is a different dimension of the relation of law to domination. From this standpoint, law has an essential role to play in structuring domination. It constructs subjects and turns them into dominant and submissive groups, according to their social status.

Since law has an enforcement power, it attaches force to certain conditions. As Kelsen suggests, "law attaches certain conditions to the use of force in relations among men, authorizing the employment of force only by certain individuals, and only under certain circumstances."<sup>109</sup> In this sense, law can directly motivate domination. Kelsen argues that "the social order can - without a threat of a disadvantage in case of disobedience, (i.e. without decreeing sanctions), require conduct that appeals directly to individuals as advantageous, so that the mere idea of a norm decreeing this behavior suffices as a motive for conduct conforming to the norm."<sup>110</sup> Kelsen's suggestion is not far from reality.<sup>111</sup> However, the relation of law to domination seems to go deeper.

Eugen Ehrlich suggests that law is "which not imprisoned in rules of law, but which dominates life itself."<sup>112</sup> From this perspective, law is a "living" thing, and it operates as an ordering of social relations within a given association.<sup>113</sup> Ehrlich identified law as "living law."<sup>114</sup> From this approach, Ehrlich argues that "law is an organization, that is to say, a rule which assign to each and every member of an association his position in the community, whether it be of domination or subjection, and his duties."<sup>115</sup> Although Ehrlich focuses on the relation of domination to association, he believed that law is an instrument of domination that has a role in every single social relation and found in all stages of social development. In this approach, law, is in fact, "which subjects the wife to the husband, the children to the father, the ward to the

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<sup>109</sup> *Id.*, at 21.

<sup>110</sup> *Id.*, at 15.

<sup>111</sup> As will be shown by the case of Egypt in chapter 2, the behavior of sexual harassment is perceived as an advantageous behavior, since the law does not attach force to the condition.

<sup>112</sup> STATE, SOCIETY, AND CORPORATE POWER 94 (Marc R. Tool & Warren J. Samuels eds., Transaction Publishers 1989).

<sup>113</sup> EUGEN EHRLICH, FUNDAMENTAL PRINCIPLES OF THE SOCIOLOGY OF LAW xxxix (Transaction Publishers 1936). [hereinafter FUNDAMENTAL PRINCIPLES].

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*, at 24.

guardian, the slave and the serf to the master."<sup>116</sup> Relations of domination have existed throughout history, even before law. However, with the existence of law, domination was authorized. From this perspective, relations of domination and subjection became "constituent parts of the legal order."<sup>117</sup> In this sense, "[d]omination in every instance is merely the counterpart of the defenselessness and helplessness of the person subjected."<sup>118</sup> From this approach, "a person who is in a relation of subjection to another is conscious primarily of serving the person to whom he is subjected."<sup>119</sup>

According to Ehrlich, as part of an association, individuals, whether superior or inferior, act to serve the structure itself. He suggests that relations of domination and subjection divide an organization into rulers and ruled.<sup>120</sup> But even those who are rulers are ruled too. For instance, in a male dominant society, lower class men *rule* lower class women; however, lower class men are *ruled* by higher class men and women, while lower class women are ruled by all of them. And all of them are ruled by society, state and law. Ehrlich points out, that the established order, with its relations of domination and subjection has to maintain harmony between rulers and ruled. In this approach, society "carefully eliminates everything that is found to be out of harmony with the existing situation."<sup>121</sup> From this perspective, the inner order of society has its legal regulations (in the form of norms) which are sustained by law. As Ehrlich contends "each society has legal norms of general validity through which it acts upon the inner order of the associations of which it is composed."<sup>122</sup> He writes "[w]e find everywhere not only individuals who are placed under a disadvantage by society, but also associations which are being slighted, outlawed, persecuted, e.g. marital relations; certain kinds of families; peoples; religious communities; political parties, to whom society makes life a burden."<sup>123</sup> The social norms in general, and specifically the legal norms, structure the established order of society.<sup>124</sup> They are regulations imposed upon smaller groups of society (e.g., the family institution). And

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<sup>116</sup> *Id.*, at 88.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*, at 151.

<sup>122</sup> *Id.*, 151-2.

<sup>123</sup> *Id.*, 152.

<sup>124</sup> *Id.*, at 152.

hence, it employs these smaller groups and pressures them to enforce the social norms against individuals, who enforce them upon others. As Dewey asserts:

Singular persons are the foci of action, mental and moral, as well as overt. They are subject to all kinds of social influences which determine what they can think of, plan and choose – when a public is generated, the same law holds. It arrives at decisions, makes terms and executes resolves only through the medium of individuals. They are officers; they represent a public, but the public acts only through them.<sup>125</sup>

Social influence is not an external force. Rather, it comes from within. It is an internal force that constitutes the structure itself. Law as part of this structure is *internally* and *structurally* influenced by society. It is social in origin, in its purpose and in its application.<sup>126</sup> It is also an *architect*, as it constructs subjects and turns them into dominant and submissive. But how does society employ smaller groups to reinforce the established order, whereby women are subordinated to men? To put it another way, how do women become submissive through the social process? Why do they stay submissive? And why do they confirm to their lower social status? As Dewey suggests, a person is subject to all sort of social influences that determine how s/he can think, plan or choose.<sup>127</sup> Social influences occur when a person's opinions, beliefs, and behaviors are affected by others. In this approach, woman's perception of herself is influenced and affected by others. Dewey argues that "in order to have a large number of values in common, all the members of the group must have an equable opportunity to receive and take from others – Otherwise, the influence which "educate some into masters, educate other into slaves."<sup>128</sup>

The division of the sexes constitutes the legal system and the social order. In an established order of domination, or a paradox of doxa, the influence of law educates males into dominant, masters of society, and educates females into submissive, slaves of the masters. From this view, all social institutions, including the legal system, promotes the master's point of view in its content; that is the male perspective. The social learning theory's approach is very useful to conceptualize the social process

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<sup>125</sup> JOHN DEWEY, THE PUBLIC AND ITS PROBLEMS, *supra* note 106, at 75.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> JOHN DEWEY, DEMOCRACY AND EDUCATION: AN INTRODUCTION TO THE PHILOSOPHY OF EDUCATION 58 (Free Press 1944) (1916).

that divides the sexes into dominant and submissive groups. This study will provide a brief account of the theory and its interpretations.

The social learning theory suggests that people learn how to behave. At the macro level, it explains how people learn behavioral patterns through laws and regulations set by the social order.<sup>129</sup> At the micro level, the theory explains how people learn through observing the behaviors of individuals whom they are associated with (family, peers, colleagues, community...etc.).<sup>130</sup> For the purpose of this study, the macro and micro levels of the learning theory are integrated into one framework, which outlines some of the major theories of both levels.

In a male dominant society, the male point of view is what prevails on both sexes. As Virginia Woolf suggests, "it is obvious that the values of women differ very often from the values which have been made by the other sex... it is the masculine values that prevail."<sup>131</sup> From this perspective, Arthur Brittan argues that the real crisis is that "men have come to believe that the distinction between reason and desire, the intellect and the body, the masculine and the feminine, is not only real, but necessary as well."<sup>132</sup> He identifies Masculinism as the male ideology which "justifies and naturalizes" male dominance.<sup>133</sup> According to Brittan, what is happening today is a *legitimation crisis*.<sup>134</sup> From this approach, the division of the sexes is taken as natural, as a fundamental sex difference, with no further doubt of its rationality. Brittan contends that masculinism "assumes that heterosexuality is normal, it accepts without question the sexual division of labor and it sanctions the political and dominant role of men in the public and private spheres."<sup>135</sup> From this perspective, woman's perception about herself is influenced by the ideology of masculinism. She comes to believe that heterosexuality is normal, and that her social worth is not labeled as low, it is rather, rational, and even necessary.

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<sup>129</sup> JOHN MARKERT, *THE SOCIAL IMPACT OF SEXUAL HARASSMENT* 194 (Marquette Books, LLC 2010). See e.g., JOHN DEWEY, *THE PUBLIC AND ITS PROBLEMS* (Swallow Press 1954) (1927).

<sup>130</sup> *Id.*, see e.g., ALBERT BANDURA, *SOCIAL LEARNING THEORY*, 2 (General Learning Press 1971) [http://www.asecib.ase.ro/mps/Bandura\\_SocialLearningTheory.pdf](http://www.asecib.ase.ro/mps/Bandura_SocialLearningTheory.pdf).

<sup>131</sup> VIRGINIA WOOLF, *A ROOM OF ONE'S OWN* 76 (Hogarth Press 1929).

<sup>132</sup> ARTHUR BRITTAN, *MASCULINITY AND POWER* 204 (Wiley 1989)

<sup>133</sup> *Id.* at 4.

<sup>134</sup> *Id.* at 194.

<sup>135</sup> Arthur Brittan, *Masculinities and Masculinism* in *MASCULINITIES READER* (S. M. Whitehead and F.J. Barrat eds., Routledge 2001).

Likewise, Jean Lipman-Bluman suggests that the "weight of tradition predisposes both women and men to take the social structure for granted, including the entire panoply of institutional arrangements based on laws, customs, and practices, rather than on individual talent."<sup>136</sup> In this approach, the social weight leads most men and women to accept the social order and its structural arrangements as natural. Each sex internalizes the stereotypical image into their belief system.<sup>137</sup> They perceive their roles as complementary not discriminatory. Men, hence, "attribute their own success to competence," while women have "more limited success to innate female incapacities."<sup>138</sup> Lipman-Bluman contends that rationalizing sex roles creates a social order, in which "men are situated in the highest stratum in every social institution, with women consistently located in strata below men of their own social group."<sup>139</sup> Therefore, she argues, "despite the fact that women may be the numerical majority in the world population, they are subordinate everywhere to men of their own social group."<sup>140</sup> And "as long as this key power relationship between men and women remains in the traditional balance, *all* institutions are protected from change."<sup>141</sup>

Carol Gilligan identifies the ways women alter their judgments in respect to the prevailing male perceptions.<sup>142</sup> According to this approach, women come to rationalize their feelings in relation to the opinions of others.<sup>143</sup> Gilligan suggests that "conceptions of the human life cycle represent attempts to order and make coherent the unfolding experiences and perceptions, the changing wishes and realities of everyday life."<sup>144</sup> However, she asserts, "the nature of such conceptions depends in part on the position of the observer."<sup>145</sup> In one of her experiments, Gilligan found that the sexes perceive the world and their relationship with others differently. Males saw themselves at the center of their lives, and saw their lives as a competition with others

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<sup>136</sup> Jean Lipman- Bluman, *Why the Powerless Do Not Revolt* in READINGS IN MANAGERIAL PSYCHOLOGY 397, 397-407 (Harold J. Leavitt et al., eds., University of Chicago Press 1988).

<sup>137</sup> *Id.* at 401.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.* at 402.

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 16 (the University of Michigan 1936).

<sup>143</sup> *Id.*, at 16.

<sup>144</sup> *Id.*, at 5.

<sup>145</sup> *Id.*



and the world around them. They saw their life revolves around them and this competition.<sup>146</sup> They identified themselves as independent individuals and perceived relations with others as a threat to their freedom.<sup>147</sup> Females, on the other hand, perceived the world from the complete opposite view. They saw "a world of care and protection, a life lived with others whom 'you may love as much or even more than you love yourself.'"<sup>148</sup> Gilligan also found that responsibility for male respondents meant "*not doing* what he wants because he is thinking of others," whereas it meant for female respondents, '*doing* what others are counting on her to do regardless of what herself wants.'<sup>149</sup> The results of Gilligan's experiment show how women alter their thoughts and feelings in respect to the society, whereby they are labeled as mothers and wives. Therefore, they develop characteristics of compassion and care. Men, on the other hand, are raised to become providers and householders, so they develop characteristics of competition and independence.

The institution of family plays an important role in validating the symbolic dependency relationship of women to men. As Lipman Blumen argues, the institution of family "promote[s] the growth of social, sexual, and affectional bonds that ease the power struggle between individual women and men."<sup>150</sup> In addition to this, early childhood lessons about the traditional female and male roles. From this approach, it can be argued that girls and boys are raised differently. Take for example the Barbie Doll, a famous toy that most parents get to their daughters. Barbie has the big house, the car, fancy clothes (e.g., a hair brush, make up, shoes, bags, accessories) and Ken (Barbie's male companion). It is quite imaginable, that most girls take Barbie as a role model for beauty and as an image of how a happy life looks like. They grow up having this childhood memory of the house, the car, the clothes and most importantly Ken. With the massive influence of the Barbie Doll on girls, different societies created other – culture relative – versions of Barbie. For example, Arab countries have the Fula Doll; it has all Barbie's accessories, the big house – etc. The only difference between the two dolls is that Fula wears a veil and looks exactly like the traditional Arab woman. It can be argued that the logic behind this is to protect Arab

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<sup>146</sup> *Id.* at 38.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

<sup>149</sup> *Id.*

<sup>150</sup> Lipman- Bluman, *supra* note 136 at 398.

girls from the influence of the western image of women. On the contrary, boys receive different toys. They get racing cars, soldiers, super heroes, and other toys that represent competition and success. It is no wonder that most of the successful businesses in the world are run by men. In this approach, boys are raised to compete with each other and with the world. As Lipman Blumen argues, a competition arises between women as well, but unlike men who compete for capital and power; women compete for "that scarce and valuable commodity – powerful men," in order to satisfy their needs.<sup>151</sup> According to this view, women perceive powerful men as their "one dependable route to economic and social security."<sup>152</sup>

Lipman Blumen suggests that the success of the traditional relation between men and women rest merely on the element of validation. From this approach, men depend on women to validate their power. Lipman Blumen argues that "[t]he existential condition – each individual's deep-seated awareness of his or her own human frailty and uncertainty –makes even the most renowned king seek approval of his decisions and beliefs, validation of his own existence."<sup>153</sup> In this context, the powerful "conspire with the less powerful to validate their own decisions, their own view of life."<sup>154</sup> Lipman Blumen contends that gender roles (labeled as separate yet complementary) results into "a sexual division of labor within the home and the marketplace that spawns a structured interdependence between men and women."<sup>155</sup> According to this view, men "need women, defined by gender roles as more moral, emotional, and nurturant than men, to assure them that the choices they make as agents of power are good, even lovable."<sup>156</sup>

Susan Brownmiller suggests that "femininity always demands more."<sup>157</sup> It demands women to constantly reassure their audience by a "willing demonstration of difference, even when one does not exist in nature."<sup>158</sup> From this approach, women's failure to satisfy the feminine requirements, is often conceived as a sign for less care

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<sup>151</sup> *Id.*

<sup>152</sup> *Id.*

<sup>153</sup> Lipman- Bluman, *supra* note 136.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.* at 398.

<sup>156</sup> *Id.* at 398.

<sup>157</sup> SUSAN BROWNMILLER, FEMININITY 15 (Fawcett 1984).

<sup>158</sup> *Id.*

to men, or is taken as a risk for the loss of male's attention and approval.<sup>159</sup> Brownmiller contends that "to be insufficiently feminine is viewed as a failure in core sexual identity, or as a failure to care sufficiently about oneself, for a woman found wanting will be appraised (and will appraise herself) as mannish or neutered or simply unattractive as men have defined these terms."<sup>160</sup>

From a different yet related dimension of the learning theory, Stacy De Coster and Karen Heimer suggest that the labeling of the sexes, dominant/subordinate, results in one sex, the male, to feel powerful enough to override the law.<sup>161</sup> They argue that "the labeling of individuals in ways that are consistent with stereotypical depictions of appropriate and inappropriate forms of deviance, in true, influences reflected appraisals of the self."<sup>162</sup> In one of their studies, they found that "the formation of self identities varied across gender, with males being more likely to form reflected appraisal as rule-violators and females being more prone to form reflected appraisals as distressed persons."<sup>163</sup> From this approach, gender has a role in the formation of rule violators. De Coster and Heimer relate masculinity to rule violation and femininity to depression. They found that "females are more likely to experience distress and depression as opposed to the male counterpart because depression is consistent with stereotypes associated with female phenomena."<sup>164</sup> Whereas, "law violating behaviors are considered to be more appropriate for males than females because these behaviors are consistent with the characteristics that are considered to be masculine, including aggressiveness, rationality and strength."<sup>165</sup>

Albert Bandura, one of the founders of the social learning theory, argues that all these behaviors are learned, either intentionally or unintentionally, through observations of other people.<sup>166</sup> He suggests that "man is neither driven by inner forces [in the form of

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<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> SOCIAL LEARNING THEORY AND THE EXPLANATION OF CRIME 133(Ronald L. Akers, Gary F. Ensen ed., Transaction Publishers 2011) (2003).

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> ALBERT BANDURA, SOCIAL LEARNING THEORY, 4 (General Learning Press 1971) at:[http://www.asecib.ase.ro/mps/Bandura\\_SocialLearningTheory.pdf](http://www.asecib.ase.ro/mps/Bandura_SocialLearningTheory.pdf).

needs, drives, and impulses] nor buffeted helplessly by environmental influences."<sup>167</sup> Rather, the mental and emotional functioning of individuals rest merely on "a continuous reciprocal interaction between behavior and its controlling conditions."<sup>168</sup> He suggests that observation of other people's experiences enables individuals to acquire similar behaviors "without having to build up the patterns gradually by tedious trial and error."<sup>169</sup> From this approach, emotional responses can be developed through "witnessing the affective reactions of others undergoing painful or pleasurable experiences."<sup>170</sup> For instance, individuals can overcome their fear by observing other people engaging in the feared activities without negative outcomes.<sup>171</sup> Bandura suggests that "man's superior cognitive capacity—determines, not only how he will be affected by his experience, but the future direction his actions may take."<sup>172</sup> From this approach, actions too are regulated by observing the consequences of other people's experiences. Bandura asserts that when an individual observes another person's perform the same behavior, s/he notes the consequences, and most likely will attempt to imitate this behavior.<sup>173</sup> Bandura's suggestion is better conceptualized by the following experiment.

The 'Bobo Doll' is a prominent series of experiments conducted by Bandura and other scholars, aimed at showing how children learn to aggress. The experimental procedure utilizes a plastic 'Bobo' doll, (a famous children's toy). In one of the experiments, three groups of children watched a film of an adult model performing aggressive acts on the Bobo Doll:

First, the model laid the Bobo doll on its side, sat on it, and punched it in the nose... the model then raised the doll and pummeled it on the head with a mallet. Each response was accompanied by the verbalization "Sockeroo...stay down." Following the mallet aggression, the model kicked the doll about the room... Finally, the

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<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

<sup>169</sup> *Id.* at 2.

<sup>170</sup> *Id.*

<sup>171</sup> *Id.*

<sup>172</sup> *Id.*

<sup>173</sup> JON ROECKELEIN, *DICTIONARY OF THEORIES, LAWS, AND CONCEPTS IN PSYCHOLOGY* 66(Greenwood Publishing Group 1998); see also, BANDURA & JEFFREY (1937); BANDURA, ROSS & ROSS (1963); BANDURA (1968, 1971, 1986).

model threw rubber balls at the Bobo doll, each strike punctuated with 'Bang.'<sup>174</sup>

Each group of children was shown a different ending to the film. The first group, "saw a second adult reward the aggressive model with...candy and lots of praise," the second group "saw the model spanked with a rolled-up magazine and warned not to act aggressively again," and the third group "was given no information about the consequences of the aggressive behavior."<sup>175</sup> Each child was left with a similar Bobo doll and other toys in separate rooms. Children from the first group were most likely to beat up the Bobo doll. Unexpectedly, a similar behavior was observed in children from the third group.<sup>176</sup> This shows that "seeing someone merely get away with aggressive behavior is just as likely to lead to modeling as seeing aggression rewarded."<sup>177</sup> Children from the second group were hesitant to use aggression since they watched the adult model being punished.<sup>178</sup> Bandura also found that children were more likely to imitate the behavior of the same-sex model.<sup>179</sup> The theory posits that when an individual observes an unpunished aggressive behavior; it affects his/her evaluation of the consequences of modeling the behavior. Consequently, the more evidence that an aggressive behavior goes without punishment; the more likely it would be imitated.

Therefore, women socially learn to behave in a feminine way; they develop characteristics of sexuality, depression, distress and other withdrawing emotions. Whereas, men socially learn to behave in a masculine way; they develop characteristics of law-violation, aggression, strength and they also proclaim rationality. From this approach, men are driven by sexual desires and aim to maximize their erotic pleasures, while women follow the prevailing norm and project a feminine demeanor. Take for example the behavior of sexual harassment. When a man sees a walking embodiment of his projected needs, he evaluates the consequences of other men's experiences when they violate the moral code (i.e.

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<sup>174</sup> ALBERT BANDURA ET AL. , RESEARCH IN BEHAVIOR MODIFICATION: NEW DEVELOPMENTS AND IMPLICATIONS, 590-591 (Holt, Rinehart and Winston 1965) [hereinafter BEHAVIOR MODIFICATION].

<sup>175</sup> JERRY BURGER, PERSONALITY 357 (8<sup>th</sup> ed., Cengage Learning 2010).

<sup>176</sup> BANDURA ET AL., BEHAVIOR MODIFICATION, *supra* note 174, at 590-1.

<sup>177</sup> ELLEN PASTORINO & SUSANN DOYLE-PORTILLO, WHAT IS PSYCHOLOGY? ESSENTIALS, 195(2<sup>nd</sup> ed., Cengage Learning 2013).

<sup>178</sup> *Id.*

<sup>179</sup> BANDURA ET AL., BEHAVIOR MODIFICATION, *supra* note 174, at 590-1.

sexually harassing women).<sup>180</sup> He soon realizes that most likely he will get away with it since the law supports the male point of view in its content. He feels strong and powerful. He acts masculine and violates the moral code. The harassed woman feels distressed, depressed and feminine. He feels sexually rewarded and she does nothing about it. Consequently, more men harass, and more women hesitate to take action. And other men replicate the behavior of sexual harassment again and again.<sup>181</sup> When the law reflects the prevailing norms of society in its content, it reproduces the conditions of inequality that allows men to harass women without fear from being punished. From this approach, it can be argued that law reproduces abusive relationships of domination, such as sexual harassment.<sup>182</sup>

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<sup>180</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 119.

<sup>181</sup> This scenario does not necessarily apply on all sexual harassment assaults, but indeed, it is one of the prevailing ones.

<sup>182</sup> Sexual harassment is an abusive relation between men and women, in which men sexually abuse women.

### **III. EGYPT AS AN EXAMPLE: SEXUAL HARASSMENT LAW**

Women's equal access to justice is not achieved through nondiscriminatory provisions of law; it is rather a complex process that involves more than rhetoric promises in textbooks. Women should not be recognized as full legal persons without considering the different implications of the legal system as a whole. The focus of this study is sexual harassment law, which in turn raises broader issues about the injustices produced by the legal hierarchical order.

#### **A. THE LEGITIMATING EFFECT OF LAW**

The assumptions of the Marxist theory offer most help in understanding the legitimate effect of the Egyptian law. This section argues that the Egyptian law fails to live up to its own principle of fairness. And therefore, it contributes to the maintenance of the conditions of inequality that oppress women. As will be shown in this chapter, the Egyptian law legitimates powers of the established order of domination and its neutrality is highly accepted by society. The Egyptian Criminal law proclaims objectivity and prohibits behaviors of sexual harassment and subject harassers to criminal penalties including fines and imprisonment, however, in actuality the underlying meaning of such law serves the dominant society.

There are three famous articles in the Egyptian Penal Code merit attention. The first is Article 278, which states:

Whoever commits in public a scandalous act against shame shall be punished with detention for a period not exceeding one year or a fine not exceeding three hundred pounds<sup>183</sup>

What is a public scandalous act? In 1929, the Court of Cassation ruled, in case no.1218, that "the assessment of such acts differs among contexts and atmospheres and the susceptibility of people's sense of shame."<sup>184</sup> But is such judgment wide enough to cover all aspects of sexual harassment? Although the Court's definition of 'scandalous act' is broad, there is no doubt that the characteristics of sexual

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<sup>183</sup> Article 278 of the Egyptian Penal Code, translated by Human Rights Watch, *In A Time of Torture: The Assault In Justice In Egypt's Crackdown On Homosexual Conduct*, 140(2004).

<sup>184</sup> *Id.*, at 140 footnotes.

harassment are of scandalous nature. Because Egypt lacks a concrete legal definition of sexual harassment, this study adopts the definition posed by the Egyptian Center for Women's Rights ECWR, a registered Non Governmental Organization with the Egyptian Ministry of Social Solidarity. The ECWR defines sexual harassment as "unwanted sexual conduct deliberately perpetrated by the harasser, resulting in sexual, physical, or psychological abuse of the victim regardless of location, whether in the workplace, the street, public transportation, educational institution, or even in private places such as home or in the company of others such as relatives or colleagues,"<sup>185</sup> Although article 278 does not cover private 'scandalous acts', the succeeding article number 279 of the Penal Code addresses this phenomenon, stating that "whoever perpetrates with a woman an immoral act, even not publicly, shall be punished with the previous penalty."<sup>186</sup> However, each society has its own understanding of the division between the public and private realms.

In several rulings of the Egyptian Court of Cassation, a public act has to be seen by anyone, to be considered public.<sup>187</sup> On one hand, the Court has specified that a public place can be "a place that any person can access or pass through, such as streets or public parks," or "a place that is open for the audience only at certain times, such as mosques, schools, or movie theaters," asserting that the later can only be public during its working hours and "become private as soon as the audience is denied access to them."<sup>188</sup> The Court adds that a public place can also be "originally private but becomes public when people gather contingently inside it, such as hospitals, prisons or public transportation," however such "places are only public while people are gathered in them and private during other times."<sup>189</sup>

On the other hand, the Court defines three categories of private spaces, stating that a private place can be, first, "a site on a ground floor with a window that overlooks a street or a public park," and 'an act is considered public if committed (for example) with the window open during the day or at night with the lights on," however,

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<sup>185</sup> The Egyptian Center for Women's Rights, *Clouds in Egypt's Sky: Sexual Harassment: From Verbal Harassment to Rape*, (2008).

<sup>186</sup> Article 279 of the Egyptian Penal Code.

<sup>187</sup> See, Cassation Court ruling in case no. 1151/Judicial year 28, November 10, 1958; In case no. 1411/Judicial year 38, December 30, 1968,; and in case no. 644/Judicial Year 43, October 14, 1973.

<sup>188</sup> HUMAN RIGHTS WATCH, *supra* note 173, at 140.

<sup>189</sup> *Id.*



"closing the window or turning off the lights would restore the place to privacy."<sup>190</sup> Second, a private place can be "a flat with a window that faces the window of another flat, as with previous category, the place becomes private as soon as precautions are taken to prevent other from seeing what happens inside it."<sup>191</sup> Third, the Court asserts that "private place not visible or transparent," and 'the private nature of an act committed within such places vanished if someone actually does succeed in observing it."<sup>192</sup> The Court's definition of public and private spaces is highly problematic when it comes to various scenarios of sexual harassment. Assume a female housekeeper, which is a common occupation among Egyptian women, being harassed by the homeowner, who took precautions to preserve the secrecy of his act, and no one "succeeded in observing it." Because of the private nature of the space, the female housekeeper is not protected under article 278. Further, assume a female who works at a fast food restaurant in a remote area outside the city, and after working hours, she was left alone with her boss who took advantage of the situation and sexually harassed her. In this scenario, also the woman is not protected under article 278 because the public place turns into private after the "audience' is denied access to it. In this context, article 278 invokes an undefined sense of shame against the right to privacy.<sup>193</sup>

However, the important question is whether these women are still protected under article 279 without the presence of a witness to prove that the incident took place. Considering the optimum outcome, one of the victims succeeds to go through the legal process without a witness; she files a complaint at the police station without any impediments, and the police summon the harasser. The harasser denies and accuses the woman of blackmailing for higher salary. It is a fact that this woman was sexually harassed, but without a witness, without a physical proof of harm and most likely without a job and would not be able to afford good lawyer, can the law still protect her? It is highly doubtful that the answer to the previous question would be in favor of the plaintiff, since the Court of Cassation requires proof that the act was against the victim's will, and without a witness or visible physical damages, the plaintiff's claim is

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<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

weak.<sup>194</sup> But should the law encompass and predict all possible scenarios in which sexual harassment take place? Certainly article 306(a) of the Penal Code is distinctive in covering the wide scope of sexual harassment, as it states:

A penalty of detention or a period not less than six months and not exceeding two years and a fine of not less than five hundred pounds and not exceeding two thousand pounds or either penalty shall be inflicted on whoever molests a person in a manner offending one's modesty by words or deed on a public road or a frequented place.

The provision of the previous clause shall apply if outraging the modesty of the female takes place by telephone or any telecommunication.

If the felon recurs once again to committing a crime of the type prescribed in the two previous clauses, within one year from the date of the sentence ruled against him in the first crime, the penalty shall be that of detention or a period not less than one year and a fine of not less than one thousand pounds and not exceeding five thousand pounds or either penalty.

In March 2011, the Egyptian Supreme Council of the Armed Forces, whose army personnel "forced "virginity testing" of seventeen women protesters" in the same month, amended article 306(a) to expand the forms of "insults" to include all means of telecommunication in order to protect women from sexual harassment resulting from the new trends of technology.<sup>195</sup> The SCAF also amended article 268 which previously stated that "whoever indecently assaults a person by force of threat, or attempts such assault shall be punished with hard labor for three to seven years." Although the amendments to article 306(a) increased imprisonment, prescribing sentences "between six months and two years and/or fines for verbal harassment," and the amendments to article 268 raised imprisonment for "sexual assaults" to reach 15 years, it is argued that "the introduction of these amendments has done little to combat or decrease the phenomenon and impunity for sexual violence and harassment remains rife."<sup>196</sup>

One potential problem with the substantive content of the Egyptian Penal code lies in the wording of the law that suggests that its intention might have different

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<sup>194</sup> Task Force Against Sexual Violence, *Proposal to Amend the Egyptian Penal Code* (Arabic) , twenty three Egyptian non-governmental organizations, (January,2011) at:[http://eipr.org/sites/default/pressreleases/pdf/sexualviolence\\_paper2.pdf](http://eipr.org/sites/default/pressreleases/pdf/sexualviolence_paper2.pdf).

<sup>195</sup> Amnesty International, *Gender-based Violence against women around Tahrir Square*, 9 (February 2013).

<sup>196</sup> *Id.*

implications. The insults and assaults laws are written to concern more than just one's wellbeing, as mentioned in article 306, "any cursing that...constitutes...an outrage of one's *honor* or *dignity*," or as stated in article 306(a), "whoever molests a person in a manner offending one's *modesty* by words or deed," as it further states "outraging the *modesty of the female*," or as written in article 278, "scandalous act against *shame*." Because these terms are moral values, they raise two interrelated concerns. The first is the ambiguity of the terms employed, which might influence the function of the judiciary, making its application of laws much harder than simply examining the wellbeing of the victim. This links to the second concern: who decides what outrages one's honor and dignity, or what is one's modesty, or more precisely, what is the modesty of the female, or who sets the sense of shame? Because of the ambiguity of these values, their definition has to be associated with the prevailing norms of society. This implies a dependency relationship between the legal system and society. The law reflects the prevailing norms of society, while proclaiming neutrality and objectivity. This is what is meant by the legitimate effect of law. In this approach, the law legitimates powers of the established order of domination.

At the time of this writing, on May, 7, 2014 the Egyptian government has drafted a new anti- sexual harassment law which provides, for the first time, a legal definition of sexual harassment. The law reads as follows: "sexual harasser is one who "accosts others in a public or private place through following or stalking them, using gestures or words or through modern means of communication or in any other means through actions that carry sexual or pornographic hints."<sup>197</sup> Although the new law subject harassers to "prison sentence, a fine or both,"<sup>198</sup> it leaves a lot of questions unresolved. One of which is in the wording of the law which indicates that it covers verbal, physical and other forms of sexual insults that happen only through "following" or "stalking." A recent study conducted in Egypt by the joint effort of the United Nations for Women, the National Demographic Center, and with the assistance of the European Union, found that the prevalence of other forms of sexual harassment, such as "whistling and verbal abuse," "exposure by the man of private part or hitting on it," "dirty look at the women's body," and "using obscene language,"

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<sup>197</sup> Ahram Online, Egypt's Cabinet Approves New Anti-Sexual Harassment Law, Wednesday 7 May 2014, at: <http://english.ahram.org.eg/News/100741.aspx>.

<sup>198</sup> *Id.*

represent a higher percentage of sexual harassment forms and ranked higher than "pursuing" and "stalking."<sup>199</sup> One question that arises here is whether there is a legal solution for the prevalence of sexual harassment in Egypt? One of the episodes of *Albernameg*, a popular Egyptian comedy show, presented by Egyptian Satirist Bassem Youssef, discussed the issue of sexual harassment in Egypt, claiming that even if the government drafts, and actually did enforce, an anti-sexual harassment law that punishes male harassers by cutting off their sexual organs, sexual harassment will still prevail.<sup>200</sup> *Albernameg* implies that sexual harassment is not entirely associated with male desire and sexual pleasure, the problem rather arises from the shared social mindset that harassing women is a male given right.<sup>201</sup> When law proclaims objectivity and fails to live up with to own principle of fairness, it maintains the social conditions of equality that oppress women.

## **B. LAW AS A TOOL OF MALE DOMINATION**

Based on the Socio-legal theory, this section argues that the Egyptian law contributes to the reproduction of the established order of domination. Before proceeding to examine the role of law in constructing subjects and turning them into dominant male and submissive female, it is important to first distinction between immodesty and indecency:

Indecency and immodesty violate the fundamental principles of morality: the former however in external matters, as dress, words, and looks; the latter in conduct and disposition. A person may be indecent for want of either knowing or thinking better; but a female cannot be immodest without radical corruption of principle. The indecency may be a partial; the immodesty is a positive and entire breach of the moral law. Indecency belongs to both sexes; immodesty is peculiarly applicable to the misconduct of females.<sup>202</sup>

Therefore, indecency is a lesser form of immodesty; it is related to the external looks of the individual, so why does the Egyptian law refer to modesty *hayaa'* instead of decency *ehte-sham'*?

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<sup>199</sup> *Id.* at 2.

<sup>200</sup> Bassem Youssef, *Albernameg*, season 2 episode 17 at 19:15-22:03: at: <http://www.youtube.com/watch?v=mmBwXx83vZc>.

<sup>201</sup> *Id.*

<sup>202</sup> GEORGE CRABB, *ENGLISH SYNONYMS EXPLAINED IN ALPHABETICAL ORDER* 591-2 (Baldwin, Cradock 1818).

The Egyptian Supreme Constitutional Court's rulings, in the case no.8 of judicial year 17 on Islamic law, veiling and civil rights, is one remarkable example. The Court was asked to give judgment upon the following question: "may the legislature prohibit the wearing of the *niqab* [face veil] in state-run schools?"<sup>203</sup> However, the Court's rulings did more than provide a legal answer to the addressed question. The S.C.C stated that:

Islam elevates the standing of the woman, requires her to preserve her modesty, and obliges her to cover her body from being despicable or sacrificing her dignity in order to protect woman from whatever may damage, or be detrimental to, her shame.(...) Therefore, she does not have the right to choose her dress according to her entirely free will.<sup>204</sup>

But what is the preserved 'modesty' that should protect woman from damages to her shame? In addressing this question, the Court "maintained that Islamic law lacks a definite provision," however, "in this case, *ijtihad* [derive a rule from Qur'an and Hadith, instead of *Fiqh*: Islamic jurisprudence] is therefore permissible."<sup>205</sup> The Court referred to the Qur'an provisions of sura 24 verse 31 and sura 33 verse 59:<sup>206</sup>

(Say to the believing women) that they should draw their veils over their bosoms; that they should cast their outer garments over; that they should not display their beauty and ornaments except what (ordinarily) appear thereof; that they should not strike their feet in order to draw attention to their hidden ornaments.<sup>207</sup>

The debate over how women should veil is a great concern to gender discussions, however, it does not meet the purpose of this study. The aim of this demonstration is to show the contribution of the Court's rulings to the reproduction of the prevailing norms of masculine domination. According to the S.C.C, "it is both the duty and the privilege of the legislature to regulate women's dress,"<sup>208</sup> in a manner conforming to "what is socially accepted and what is generally considered appropriate regarding customs and usages."<sup>209</sup> However, the Court asserted that such regulation "is subject

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<sup>203</sup> LEGAL PLURALISM IN THE ARAB WORLD 238 (Baudouin Dupret, Maurits Leger, & Laila al-Zwaini, ed.s, 1999) (emphasis added).

<sup>204</sup> S.C.C, 18 May 1996: 1035, translated in LEGAL PLURALISM IN THE ARAB WORLD, *supra* note 203, at 238.

<sup>205</sup> LEGAL PLURALISM IN THE ARAB WORLD, *supra* note 203, at 238.

<sup>206</sup> *Id.*

<sup>207</sup> S.C.C, *supra* note 204 at 238.

<sup>208</sup> LEGAL PLURALISM IN THE ARAB WORLD, *supra* note 203, at 239.

<sup>209</sup> S.C.C, *supra* note 204 at 238.

to change according to time and clime."<sup>210</sup> What influence it would have upon women, when the Supreme Court leaves them powerless, disoriented and hesitant regarding their freedom to dress? Or more broader, what influence it would have upon the legal assessment of a sexual harassment case, if the victim dressing is not in conformity with "what is socially accepted" or "what is generally considered appropriate"? The influence of such law educates men into masters of society, and educates women into slaves of the masters. Women's ability to voluntarily give away their liberty to dress becomes irrelevant, it is the society's approval of what's more appropriate to women that matters the most. From this approach, law constructs subjects and turns them into dominant male and submissive female. It reflects the social image of women in its content. In this sense, constructing a social image of women is one form of the social pressure imposed upon society. In which women are not as free as men to choose what attire fits most with their identity. In that sense, society reflects on women an organizational identity through an organizational dress code, which makes their existence in public acceptable.

In prescribing the image of modesty, the S.C.C has provided a figurative definition of what is the immodest image of the female. Immodesty is everything that does not conform to the modest image set by society and religion. The usage of the term modesty *haya*' instead of decency *ehte-sham* is highly problematic, as it involves more than just dress, words and looks. The S.C.C asserts that "the dress of the woman shall be considered an expression of her belief."<sup>211</sup>The figurative image of immodesty, hence, describes more than external reflection, it involves a radical corruption of the dominant principle and a false prejudice on belief. In this context, the image of female dress provokes more than a debate on decency; it rather links dressing to good manners vs. misbehavior. This means that immodest dressing is a violation of a moral law, and sexual harassment is often seen as a consequence for this violation.

Unfortunately, the behavior of sexual harassment is epidemic, if not cured from the roots, it spreads everywhere from streets to schools, universities, transportation, workplaces, and even police stations. However, it is doubtful, according to several studies, that immodest dressing is the root cause of sexual harassment. The United Nations for Women, and the National Demographic Center study proves that sexual

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<sup>210</sup> *Id.*

<sup>211</sup> S.C.C, *supra* note 204.

harassment has little to do with females "attire, looks, manner of speech or gait."<sup>212</sup> This study is distinctive, since it is "the first to [be] undertaken by a governmental body on the issue of sexual harassment."<sup>213</sup> The study confirms that 99.3 percent of the female respondents, from seven different governorates covering urban areas, the Canal area, Lower and Upper Egypt, have been "subjected to one form or another of sexual harassment."<sup>214</sup> Although the results reveal that all girls are liable to be harassed, regardless of their attire, age, marital status or class status, 29.9 percent of all respondents affirm that "the victim can sometimes be the cause for harassment,"<sup>215</sup> and 37 percent of the respondents victims of harassment admit that the "girl herself is the cause for harassment."<sup>216</sup>

The majority of married female respondents assert that sexual harassment has impacts on their relationship. Their responses explain four different dimensions: first, "if the spouse learns about harassment, he becomes jealous and this leads to daily problems between spouses," second, "harassment affects the wife's psychological condition," since "she becomes nervous and as a result, this reflects to a certain extent on her relationship with her husband," third, "that if the harassment they were subjected to included touching or rape, the spouse may divorce his wife, as the oriental man, in particular, does not accept that such an incident happens to his wife," confirming that "harassment has an impact on divorce caused by suspicion and tension among the spouses due to the jealousy of the husband," and fourth, "the impact of harassment creates domestic violence," indicating that "when the spouse learns that his wife has been subjected to harassment, he beats her or prevents her from going out alone and this may result in several problems within the family."<sup>217</sup> This has two implications: first it implies that women believe that their silence regarding incidents of sexual harassment will help them avoid worse confrontations with family and spouses. And second, it implies that women's lower social worth in the public is reflected in the private. This has the impact of reinforcing the injustices of the established domination instead of lessening them.

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<sup>212</sup> UN Women & the National Demographic Center, *Study on Ways and Methods to Eliminate Sexual Harassment in Egypt*, 6 (May, 2013).

<sup>213</sup> *Id.* at 2.

<sup>214</sup> *Id.* at 6.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.* at 7.

<sup>217</sup> *Id.* at 12-13.

Sexual harassment is not a consequence of immodesty; it is rather one dimension of how women are perceived as "walking embodiments of men's projected needs."<sup>218</sup> The intentions of this study is neither to defend the figurative image of immodesty nor to criticize the imposed image of modesty, it rather intends to show how society *legally* controls the free will of women, by tailoring the female image to its own advantage. One of the shared social beliefs claims that women are sexually harassed when they fail to meet the acceptable standards of modesty dressing. In a country where "70 percent" of its female population maintains the "modest" social image by wearing veils, it is surprising that victim blaming remains a general threat, despite the widespread of sexual harassment.<sup>219</sup> According to the results of a study conducted by the ECWR, 91.5 % of Egyptian women surveyed were sexually harassed in the public, and among this percentage 72.5% of victims were veiled.<sup>220</sup> The results "disprove the belief that sexual harassment is linked to the way women dress."<sup>221</sup> The study expressed that "these results illustrate the contradiction between society's beliefs that the appearance of the woman is a key factor leading to sexual harassment."<sup>222</sup> It confirms that "the stereotypical ideas of a patriarchal culture that blames women even if they are victims, is opposite to reality."<sup>223</sup>

Holly Kearn, in *Stop Street Harassment*, claims that the reason behind the high percentage of Egyptian veiled women is not entirely religious; veil is often worn as a protective shield against sexual harassment. "One ad campaign in Egypt warned, "A veil to protect, or eyes will molest."<sup>224</sup> For Kearn, "this is a flawed reasoning."<sup>225</sup> She believes that "harassing women and fetishizing body parts like breasts, buttocks, shoulders, ankles, wrists, and eyes are social constructs."<sup>226</sup> She argues that if sexual harassment is socially constructed, it can be socially deconstructed, "but instead of teaching men not to "lose control" and harass women, women have their lives

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<sup>218</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 5, at 119.

<sup>219</sup> HOLLY KEARL, STOP STREET HARASSMENT 75 (ABC-CLIO 2010).

<sup>220</sup> The Egyptian Center for Women's Rights, *Clouds in Egypt's Sky: Sexual Harassment: From Verbal Harassment to Rape*, 16 (2008).

<sup>221</sup> *Id.*

<sup>222</sup> *Id.*

<sup>223</sup> *Id.*

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> *Id.*



curtailed and their faces and bodies covered."<sup>227</sup> The society has placed the burden of modesty on women. In that sense, modesty is an obligation that needs to be fulfilled by women, protected by family, pressured by society and observed by the government.

The Committee on the Elimination of Discrimination against Women CEDAW asserted that violence against women in Egypt, "appear to be socially legitimized and accompanied by a culture of silence and impunity and that cases of violence are thus underreported."<sup>228</sup> In contrast, a demographic study conducted in the Suez Canal area found that the number of sexual assaults cases is "very low comparing to the expected number because of many reasons which are related to the culture and beliefs of the victims of sexual assaults as reporting will cause unwanted shame and stigma in the community which will affect their social and psychological state."<sup>229</sup> The study also found that "the most other common reasons given by the victims are the belief that it is a private matter, and that they fear reprisal from the assailant."<sup>230</sup> [incorporate Durkheim on law] During a women's march in Tahrir Square on January 2013, Dalia Abdel Fatah, an Egyptian singer, was "sexually assaulted" by a group of men; in her own words:

Suddenly a wave of people came onto me. I found myself on the ground for some five minutes, while millions of hands were violating me... In a second my jacket and bra were off, and my shirt and trousers were being pulled off, my spectacles were lost in the melee... They stepped on me, pulled my hair... I could no longer see faces. I felt that I could no longer breathe, I was suffocating. I was being pulled and pushed in all directions... I could no longer walk... I felt paralyzed, my brain was blank and I thought I was going to die.<sup>231</sup>

Dalia Abdel Fatah was "then dragged inside the mob to a dark street, pushed against a metal fence and threatened with a kitchen knife."<sup>232</sup> When the situation was controlled, the crowd encouraged her "not to speak out due to the fear of

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<sup>227</sup> *Id.*

<sup>228</sup> Comm. on the Elimination of Discrimination Against Women, *Concluding Observations of the Committee on the Elimination of Discrimination against Women (Egypt)*, 1 23, U.N. Doc. CEDAW/C/EGY/CO/7 (Feb. 5, 2010) [hereinafter *CEDAW Concluding Observations*], available at <http://daccessdds-ny.un.org/doc/UNDOC/GEN/N10/242/56/PDFIN1024256.pdf?OpenElement>.

<sup>229</sup> Azza H. El-Ellemi, Sahar M. Moustafa & Abeer M. Hagra, Reported Cases of Female Sexual Assault over 5 Years Period in Suez Canal Area, Egypt: Demographic Study, 1 EGYPTIAN J. OF FORENSIC SCI. 118, 121 (2011).

<sup>230</sup> *Id.*

<sup>231</sup> Amnesty International, *supra* note 195.

<sup>232</sup> *Id.*

stigmatization and shame.<sup>233</sup> Another crucial dimension to this problem that requires assessment is the social claim that harassers are "victims of economic and sexual frustrations."<sup>234</sup> One victim of sexual harassment, Dina Emad, succeeded in grabbing the harasser, and insisted on reporting the incident, despite people's pressure to let him go for the reason that "he is a mere kid and looks poor."<sup>235</sup>

Even worse, "in some settings assaulted women become outcasts...by their own families."<sup>236</sup> The family, as an embedded social institution, has a main effect on women experiences in the patriarchal society. A shared conventional belief among Egyptian families is that the honor of male members is measured by the "sexual conduct of the women of their family."<sup>237</sup> In Egypt, as Siham Abdel Salam notes "a woman may do all sort of things wrong in her professional or personal life and still hold her head up, so long as she follows the traditional conventions on sexual behavior, even if only in appearance."<sup>238</sup> The social rules that attempt to regulate the traditional female identity assume that "women are by nature virtuous and thus that any transgression in their conduct is a violation of their deepest "femaleness" or femininity."<sup>239</sup> Although violence against women is associated with power relations among members of society, "rather than arising from the way a woman looks or is dressed, society frequently convicts the woman...blaming her...as if it happened because she was not modestly dressed, or simply because she left her house."<sup>240</sup> A shocking article published in El Shorouk Newspaper, on May 2014, documented the incident of an Egyptian young girl who was sexually harassed in the presence of her father.<sup>241</sup> While walking on the streets of Al Haram District, the young girl was physically harassed by a group of men, and instead of grabbing the harassers, her father started beating her, shouting to the crowd that she brings shame to his family,

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<sup>233</sup> *Id.*

<sup>234</sup> Ramadan A. Kader, *Still Solo*, THE EGYPTIAN GAZETTE (June 25, 2012, 9:40:30 PM), <http://213.158.162.45/-egyptian/index.php?action=news&id=26441&title=Still%20solo>.

<sup>235</sup> *Id.*

<sup>236</sup> AZZA ET.AL., *supra* note 229.

<sup>237</sup> Siham Abdul Salam, Crimes of Honour in Egypt, in 'Honour': Crimes, Paradigms and Violence Against Women, 142-146 (Sara Hossain & Lynn Welchman eds., 2005).

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> Aya Amer, His Daughter was Sexually Harassed Infront of Him, So He Starts Beating Her, El Shorouk Newspaper, May, 4, 2014, 10: 49 AM [Arabic Source] at:

<http://www.shorouknews.com/mobile/news/view.aspx?cdate=04052014&id=d70705cf-e49b-48ec-9b3c-139cf92e27a3>

and accusing his daughter for projecting an immodest image.<sup>242</sup> The society has placed the burden of eradicating sexual harassment squarely on the shoulders of women, who have to defend their bodies from "molesting eyes."

The misconceptions behind the rationale of sexual harassment have expanded the gap between justice and society. When an Egyptian woman is sexually harassed, she is socially encouraged to remain silent, and if she succeeds to overcome social and legal obstacles and bring the harasser to justice, the perpetrator often escapes "with limited punishment."<sup>243</sup> Under Article 17 of the Egyptian Penal Code "the legislator gives discretionary authority to the judge to reduce the penalty in the event that there are mitigating circumstances for the perpetrator,"<sup>244</sup> as follows:

In the provisions on felonies [jinayat], where the circumstances of the crime which is the basis of the prosecution require the compassion of the court, it is permissible to replace the penalty as follows: the death penalty with hard labor for life or for a fixed term; hard labor for life with a fixed term of hard labor or a prison sentence; fixed term of hard labor with a prison or detention sentence of not less than six months; prison sentence with a detention sentence of not less than three months.<sup>245</sup>

In a country, where men occupy the majority of judge's chairs, this "discretionary authority" represents one of the core problems in the Egyptian legal system. "As a member of his society, the judge is inclined to society's view that a woman is the 'honor of the man'- whether this man is the father, the brother, the son."<sup>246</sup> In crimes of honor, for instance, the male judge may "consider a woman becoming pregnant through sex outside marriage, or suspicious about her behavior, to be among the circumstances inviting the compassion of the court for her murderer and thus permitting the reduction in sentence according to Article 17."<sup>247</sup> In 1998, the Criminal Court of Tanta used Article 17 to reduce the sentence of the perpetrator, illustrating that:

The brother of the victim was suspicious of his sister's behavior and thought that she had fallen pregnant through extramarital sexual

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<sup>242</sup> *Id.*

<sup>243</sup> AZZA ET.AL., *supra* note 229.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

relations; her husband has been out of the country for a period. He asked her to abort her pregnancy and she refused, so he hit her on the head and then set her on fire. She managed to put out the fire and shut herself in the water closet. He then poured petrol under the door jamb, set it alight and she burned to death. The forensic report showed that the victim was pregnant, and with that the court issued a ruling of prison for three years for the man who murdered his sister.<sup>248</sup>

It is evident that the position of the judiciary, in extreme cases of violence against women, "reinforces the idea of social and legal tolerance for the deliberate murder of women in certain circumstances."<sup>249</sup> In another case, the Criminal Court of Qena justified that:

'the accused succumbed (understandably so, in the eyes of the judge) to extreme psychological pressure; the notion that the victim, by defying prevailing traditions and customs (by, for example, dressing less conservatively, meeting a male friend alone, etc.) actually brought about her own death; and the notion that the defendant's act was a 'legitimate' attempt to restore his lost sense of honor and to ride himself and his family of the disgrace resulting from the female victim's alleged misconduct.'<sup>250</sup>

In that sense, the law does not only regulate women dressing, but also regulate how she should do with her body. The law constructs powerful/dominant male and submissive/powerless female. It reflects the traditional identity of women in its content, and it is clear about not defending her when it comes to murder.

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<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

#### **IV. CONCLUSION**

The writing of this study was driven by an urge to identify what is the relationship of domination to women. But in the process of research, the question multiplied into hundreds of what about this and that. Digging to the roots of an established order (i.e., a paradox of doxa) such as masculine domination is not as easy as it appears. The problem seems to always go deeper. But for the purpose of completing this study, the digging stopped, at least for the mean time, at the division of sexes in law. What was discovered after a very long and confusing journey is that the division female/male is everywhere and in everything. Even in the sacred foundations of justice.

After decades of male supremacy, it is not surprising that the exploitive system of domination has created social institutions to serve its needs and the interests of the powerful group. Under male dominance, men, women and social institutions contribute in the maintenance and reproduction of male power. The male point of view is what prevails. Women's acts of cognition become inevitably acts of recognition and submission. They think, act, and plan from a male's point of view. The structure divides people into dominant male and submissive female. The legal system perceives this division from the male point of view. In this approach, law is a male creation, and women's perceptions about themselves as well are male creation. When looking at the relationship between law to domination, one come to realize how deep rooted the structure is. The established order of domination continues to flourish, plants its roots in the fertile soil of individual and collective thinking, and legitimates, maintains and reproduces itself through law. Gender relations, in just about all cultures, can be conceived as relations of power. However, they might otherwise be seen as puzzling and paradoxical.

Male dominance creates social institutions of control that routinely initialize parameters to possible effort for equal distribution of power. The structure reinforces the dominant culture in all aspects of social relations, through engendering social values to its own advantage. It would be a mistake to regard law as an independent entity that has nothing to do with the social relations to which it applies. Law needs to be understood within a theoretical framework which proposes that law has a role to play in the maintenance and reproduction of the established order of domination.

Based on the assumptions of the Marxist theory, law *legitimizes* powers of the established order of domination. This happens when the practice of law reinforces the dominant culture while maintaining its own principle of fairness. This means that law proclaims a deceitful image of law for all, while in actuality it sustains the unequal distribution of social power. The society, including both powerful and powerless classes, accepts the neutrality and objectivity of law and through this, law legitimizes itself and maintains the structure. Second, this study identifies law as an instrument of power and domination. It has an active role in ordering relations of domination. From this approach, law constructs subjects and turns them into dominant/powerful and submissive/powerless. This happens when law reflects the dominant culture in its content. This study uses the Egyptian sexual harassment law as an example. It argues that the Egyptian law *maintains* and *reproduces* the dominant culture in two ways. The first is that the Egyptian law fails to live up to its own ideal of fairness, and hence it maintains the conditions of inequality that sustain the established domination. The second is that the Egyptian law is an instrument of power and domination. It *reproduces* the dominant culture. This "living law" has two roles in the reproduction of domination. First it serves as an ordering of relations of domination. By reflecting the dominant culture in its content, the law constructs subjects and turns them into powerful/male and submissive/female. Second, the Egyptian legal system is in itself a structure of domination. It consists of mainly male members, who are judges and police officers. This law is not an external force. Rather it is an internal force that employs certain social groups to reinforce the prevailing social norms. The influence of such law educates men into masters of society and women into slaves of the masters. Although the Egyptian law prohibits behaviors of sexual harassment and subject harassers to criminal penalties including fines and imprisonment, the underlying meanings of the law suggests that its intention might have different implications. When the law admits that women do not have 'the right to choose' their 'dress according' to their 'entire free will', when the law obliges women to protect their bodies from 'being despicable' or 'sacrificing' their 'dignity', when the law requires unattainable evidence from victims of sexual harassment to achieve justice, and when the law impedes the reporting process of sexual harassment incidents, then the promises of this law to women are as imaginary as its neutrality and objectivity.