

**GENDER STEREOTYPING: TRANSNATIONAL LEGAL PERSPECTIVES by
Rebecca J. Cook & Simone Cusack. Philadelphia: University of
Pennsylvania Press, 2010. 288 pp. \$49.95 hardback.**

The ability to eliminate a wrong is contingent on it first being “named,” by which is meant that a particular experience has been identified and publically acknowledged as a wrong in need of legal and other forms of redress and subsequent prevention. (p. 39)

INTRODUCTION

The book *Gender Stereotyping: Transnational Legal Perspectives* orients gender stereotyping as the underlying cause of much of the discrimination that occurs against women throughout the world. The book discusses the duty and ability of state and non-state actors to dismantle negative gender stereotypes and diminish their effect. The authors, Rebecca J. Cook and Simone Cusack, writing from a transnational perspective,¹ discuss this duty in the context of the Convention on the Elimination of All Forms of Discrimination Against Women (“Women’s Convention” or “Convention”). As Cook explained in another article, “[the Women’s Convention] is the definitive international legal instrument requiring respect for and observance of the human rights of women; it is universal in reach, comprehensive in scope and legally binding in character.”² The Convention has over 150 member states,³ referred to as “States Parties” (p.

1. A transnational legal process is characterized by four distinctive features:

“First, it is nontraditional: it breaks down two traditional dichotomies that have historically dominated the study of international law: between domestic and international, public and private. Second, it is nonstatist; the actors in this process are not just, or even primarily, nation states, but include nonstate actors as well. Third, transnational legal process is dynamic, not static. Transnational law transforms, mutates, and percolates up and down, from the public to the private, from the domestic to the international level and back down again. Fourth and finally, it is normative. From this process of interaction, new rules of law emerge, which are interpreted, internalized, and enforced, thus beginning the process all over again.”

(p. 8) (quoting Harold Hongju Koh, *Transnational Legal Process*, 75 NEB. L. REV. 181, 184 (1996)).

2. Rebecca Cook, *Reservations to The Convention on the Elimination of All Forms of Discrimination Against Women*, 30 VA. J. INT’L L. 643, 643 (1990).
3. United Nations Treaty Collection, Convention on the Elimination of All Forms of Discrimination Against Women, http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-

4). The Committee on the Elimination of Discrimination Against Women (“Women’s Committee” or “Committee”) was established to monitor States Parties’ compliance with the Convention (p. 131). The Women’s Committee was created, and its duties were subsequently expanded, in order to enhance the Convention’s role in eliminating harmful stereotypes and discrimination (pp. 131, 135).

This refreshingly pragmatic book will interest practitioners and scholars of women’s human rights alike. The authors make suggestions for how to argue that a state is in violation of the Convention and how the Committee should fulfill its role as a quasi-legislative body. In fact, the final chapters read as a handbook for both practitioners and members of the Committee itself.

The book begins with a description of gender stereotyping (pp. 9-38). The authors suggest a “coherent methodology to address gender stereotyping . . . in presenting arguments, and in proposing and drafting remedial judgments” (p. 177). This methodology consists of several steps, and can be applied to any context in which there is suspected gender stereotyping or discrimination. First, an advocate must name the operative gender stereotypes (pp. 39-70). This includes identifying their forms, contexts, and means of perpetuation and elimination (pp. 54-58). This also includes articulating the ways in which the stereotypes harm women (pp. 59-70). Once stereotypes have been named, and the harms have been identified, a remedial or preventive solution can be crafted (pp. 39-70). This process is analogous to the necessity of diagnosing a disease before it can be treated (p. 3).

In discussing this methodology, I will draw examples from an article in this volume of the *Berkeley Journal of Gender, Law & Justice*, titled *The New Boys: Women with Disabilities and the Legal Profession*.⁴ The author, Carrie Griffin Basas, describes her qualitative study of women with disabilities in the legal profession. She discusses the manner in which stereotypes about women with disabilities affect the women’s careers and lives.

The remaining chapters discuss the rights afforded by the Convention on the Elimination of All Forms of Discrimination Against Women and the application of the aforementioned methodology to issues that may be brought before the Women’s Committee. Chapter 3 emphasizes states’ obligations to eliminate gender stereotyping and discrimination under the Women’s Convention (pp. 71-103). Chapter 4 describes the States Parties’ obligation to eradicate gender stereotyping, which is itself a form of discrimination (pp. 104-30). The authors then delve into what the role of the Women’s Committee is, and what it could and should be to best advance the goals of the Convention (pp. 131-72). Although these chapters are informative and useful in understanding

8&chapter=4&lang=en (indicating which states have ratified the treaty since its inception in 1979, including most recently, Qatar in 2009) (last visited Mar. 24, 2010). The United States is a signatory to the Women’s Convention, but has not ratified it. *Id.*

4. Carrie Griffin Basas, *The New Boys: Women with Disabilities and the Legal Profession*, 25 BERK. J. GENDER L. & JUST. 32 (2010).

and combating gender stereotyping and discrimination in international bodies that have ratified the Convention, this article focuses on the first two chapters, which will likely be the most interesting to our readers.

I. THE WHAT, WHY, AND HOW OF GENDER STEREOTYPING

The book's overarching theme is the ability and duty of domestic and international law and actors to eliminate or ameliorate the negative effects of gender stereotyping and discrimination. Inherent in that theme is the concept that gender stereotypes are at the root of discrimination against women. In order to understand the causative relationship, and thereafter to fashion remedies, it is necessary to understand the nature of stereotypes (p. 3).

The first chapter, "Understanding Gender Stereotyping," goes in depth into the characteristics of gender stereotypes. Even for those of us that are aware of gender stereotyping and devote time to its study and elimination, this chapter will likely be illuminating. The authors regularly ask the reader to consider their own experiences when reading. I frequently paused to ponder the ways that stereotypes had affected my own life, whether I was being stereotyped or doing the stereotyping.

A perception can be deemed a stereotype despite a documented correlation between the characteristic and the group of people presumed to have that characteristic (p. 9). At the same time, not all stereotypes are negative. For example, the statistically accurate stereotype that "women are physically weaker than men" is not problematic unless it is applied to the detriment of, for example, a woman who is denied the ability to apply to be a firefighter regardless of her actual strength (pp. 12, 15-16). Discriminatory stereotyping occurs when one's individual characteristics are ignored, and other characteristics are prescribed or presumed to exist merely due to the individual's membership in a group. "All the dimensions of personality that make that individual unique are consequently filtered through the lens of a generalized view or preconception of the group with which the individual is identified." (p. 9) Stereotypes of men can also hurt women, and they are therefore also relevant to this discussion (p. 6). For example, the stereotype that a man is or should be the breadwinner hurts men because it assumes that they cannot play a caregiver role, and it hurts women because it forces them *into* the caregiver role (pp. 11, 50-51).

The authors explain the "complex, varied and, sometimes, contradictory reasons" people stereotype (p. 13). The major reasons we stereotype are: to maximize simplicity and predictability in our uncomprehendingly complex world (pp. 14-16); to assign difference by labeling "people as being other than the norm with which we are familiar, particularly ourselves" (p. 16); and to script identities, which involves, when discussing gender stereotypes, "prescrib[ing] attributes, roles, and behaviors to which men and women are expected to conform." (p. 18)

There are several types of gender stereotypes discussed in this book: sex,

sexual, sex role, and compounded (pp. 25-31). There is some conceptual overlap among the types of sex stereotypes. "Sex stereotypes" are those that are allegedly based on physical or biological differences (pp. 25-26). "Sexual stereotypes" are those based on the perceived characteristics that play a role in sexuality, including, for example, sexual initiation, intimacy, possession, and objectification (pp. 27-28). "Sex role stereotypes" describe a "normative or statistical view regarding appropriate roles or behavior for men and women" (p. 28). Although all are relevant to individuals interested in gender stereotypes, "compounded stereotypes" are most relevant to *Berkeley Journal of Gender, Law & Justice's* mandate to publish scholarship that examines "the intersection of gender with one or more other axes of subordination, including, but not limited to, race, class, sexual orientation, and disability."⁵ The difficulty in addressing and describing compounded stereotypes is "identify[ing] the different stereotypes that operate to discriminate against a woman because of each one of her traits, not just her gender." (pp. 29-30) The authors note that "[c]ompounded stereotypes often reflect false preconceptions about different subcategories of women, and evolve according to different articulations of patriarchy and power structures" (p. 31).

Carrie Griffin Basas provides an example of compounded stereotypes, namely, women with mental and/or physical disabilities in the legal profession. Women with disabilities are scripted as weak, inadequate, and dependent.⁶ Therefore, they may find it very hard to obtain and keep certain types of employment, such as in large law firms, irrespective of their actual attributes or abilities.⁷ These stereotypes illustrate the difficulty of separating the degree to which disabled women are scripted due to their gender versus their disability. To the extent that this stereotype is linked to gender, it can be thought of as a sex stereotype because the stereotype is based on assumptions about physical and mental capacities of women with disabilities, and thus are linked to physical and biological differences. Women with disabilities are also scripted as asexual,⁸ which is a sexual stereotype regarding the women's sexual capacity and the nature of her gender. Additionally, women with physical disabilities may be perceived as failing to, or feel they fail to, live up to the sex role stereotype that women should be attractive.⁹

Gender stereotypes do not, of course, occur in a vacuum. The contexts in which gender stereotyping can "contribute to social stratification and

5. *Berkeley Journal of Gender, Law & Justice*, <http://www.boalt.org/bgj/> (last visited Mar. 24, 2010).

6. Basas, *supra* note 4, at 73 n.192 ("Women with disabilities are often excluded from stereotypically feminine jobs, as well as stereotypically masculine jobs because of society's perception of them as weak, dependent, and asexual.") (citation omitted).

7. *Id.* at 73-75.

8. *Id.* at 73 n.192.

9. *See id.* at 73 ("More than anything, women with disabilities in mainstream American society often represent to others the perceived culmination of weaknesses, shortcomings, and inadequacies. They fail to meet gender ideals of beauty and perfection.").

subordination” are “individual,” “situational,” or “broad” (p. 32).

The “individual” context includes the cognitive and behavioral. Women may internalize individual factors, and “come to accept them uncritically as a normal or inevitable understanding of life” (p. 32). Therefore, “cognitive processes and social pressures to conform are often cited as barriers to change gender stereotypes. Once individuals accept a label from others, this secondary labeling results in them conforming their self-image and behavior to that label” (p. 32). As Basas explains, “over time, disabled women attorneys internalize . . . low expectations.”¹⁰ It is through internalization that gender stereotyping manifests in the “individual” context. Disabled women as a group are harmed when women with disabilities internalize the shame and fear around disability, and thus submit to the pressures to “cover.”¹¹ Covering occurs when individuals are asked to downplay their differences or “pretend that they are not affiliated with their minority identities.”¹² This results in “self-perpetuating” stigma, inasmuch as “opportunities are missed to make disability commonplace, familiar, and comfortable to nondisabled people.”¹³

“Situational” contexts include “predisposing conditions, found in different sectors, including the employment, family, and health sectors” (p. 32). Cook and Cusack explain that gender stereotypes are most likely to intrude in the situational context when one of three factors is present: when the “target or the subject of the stereotype is isolated”; when “[m]embers of a previously absent or omitted group move into an occupation or employment that is nontraditional for their group”; or when there is a “gender mismatch,” in other words, “a preconceived lack of fit between the person’s attributes and occupation” (p. 33). Not only are lawyers unlikely to have disabilities¹⁴ and women unlikely to make partner,¹⁵ but women with disabilities are perceived as having attributes (such as weakness) that do not fit with the attributes perceived as being required for being lawyers, particularly in large firms.¹⁶ That puts female lawyers with disabilities at a high risk of being the subject of hostile gender stereotyping, according to the theory explained by Cook and Cusack, which is supported by the data collected by Basas.¹⁷

Finally, gender stereotyping acts to subordinate women in “broader” contexts, such as “cultural, religious, economic, and legal” (p. 32). Basas describes the “ableist culture” of large law firms, dominated by “paternalistic power hierarchies, incentives, and social (dis)order,”¹⁸ which values men with

10. *Id.* at 55.

11. *Id.* at 56-57, 70-76.

12. *Id.* at 70.

13. *Id.* at 56-57.

14. *Id.* at 67 n.161.

15. *Id.* at 68 n.166.

16. *Id.* at 73-75.

17. *See generally id.*

18. *Id.* at 48.

disabilities over women with disabilities.¹⁹ Thus, gender and disability stereotypes act together within the professional culture of law firms to prescribe roles and limit opportunities for women with disabilities, but not necessarily for their non-disabled female and disabled male peers.

II. THE IMPORTANCE OF NAMING GENDER STEREOTYPES AND THE ASSOCIATED HARMS

Cook and Cusack indicate that in scholarship or advocacy one must enunciate the forms, contexts, and methods of perpetuation of stereotypes, as well as the harms caused by them. They refer to this as “naming” the stereotype and explain that it “is an important tool for revealing an otherwise hidden harm, explaining its implications, and labeling it as a human rights concern, grievance, or possible human rights violation” (p. 39). In fact, the ability to eliminate wrongful gender stereotyping is *contingent on* examining “the nature, forms, causes, and effects” of stereotyping (p. 40).

Naming gender stereotyping raises awareness of the harms associated with gender stereotyping (p. 41). This is especially important considering how much gender stereotyping operates at the subconscious level and is “frequently accepted as a culturally ‘normal’ aspect of our sexed and gendered lives” (p. 41).

Throughout the chapter, the authors recommend questions to ask to tease out gender stereotypes and the resultant sex discrimination that are sometimes difficult to detect. The two key questions necessary to “name” stereotypes are: “How does a law, policy, or practice stereotype men or women?” and “How does the application, enforcement, or perpetuation of a gender stereotype in a law, policy, or practice harm women?” (p. 42). Although the questions may seem obvious, the answers to these questions are vital to understanding and eliminating gender discrimination. Because the question of whether stereotyping is affecting individuals is ultimately a factual one (p. 46), the authors provide examples, expand on the above questions, and give factors that may indicate when gender stereotyping is present (pp. 46-58). Additionally, in answering these questions, the authors recommend that the forms, contexts, means of perpetuation, and means of elimination be considered (pp. 54-58).

Part of this process is exposing operative gender stereotypes and their forms. The authors, in this regard, suggest first identifying “what attributes, characteristics, or roles” the gender stereotype ascribes to individuals (p. 51). Then, one can ask, “What does it mean to ascribe to women certain attributes, characteristics, or roles?” (p. 51). This seems like an effective method for advocates and scholars to be clear and concise in “naming” gender stereotypes as the underlying cause of the harms discussed. Several examples include:

- “*women should be mothers* and, therefore, they and not men ought to

19. *Id.* at 55-56 (“Men with disabilities in the office had made partner years earlier or had directed some of the firm’s paid work toward disability initiatives.”).

be concerned with matters relating to the bearing and rearing of children;” (p. 51)

- “*women are sexually passive* and, therefore, they are disposed submissively to surrender to men’s sexual advances;” (p. 52)
- “*women should dress modestly* and, therefore, an immodestly dressed woman is responsible for her own sexual assault” (p. 53).

One such identification of gender stereotypes in Basas’s article would be:

- *women with disabilities are weak and helpless* and, therefore, they are not capable of performing the difficult and demanding work required in a large law-firm setting.

Identification of the stereotype is vitally necessary as the first step in dismantling it. The second step is identifying its form, including the type, context and means of perpetuation (pp. 54-58). Finally, the third step is naming the harm (pp. 59-68). As Cook and Cusack explain, these three steps “are critical to making [the gender stereotype] recognizable, and therefore legally cognizable, that is, able to be judicially examined. Naming a stereotype is necessary in much the same way that a medical diagnosis is required before treatment can be applied.” (p. 175)

The same stereotype may result in different harms “according to community, country, or region” (p. 60). The authors give the example of the gender stereotype of women as men’s property, which “may enable the marriage of girl children before the legal age of marriage in one community, contribute to some of the preconditions for forced marriage in another, or, elsewhere, the rape of a sister to punish her brother” (p. 60) (citations omitted). The authors indicate that “this section is intended to illuminate the *types of questions* that might prove helpful in exposing and acknowledging the harms of gender stereotyping for women in different contexts” (p. 60) (emphasis added).

When identifying the harm, Cook and Cusack indicate three major ways in which gender stereotypes can harm women: denying a benefit, imposing a burden, and degrading women by diminishing their dignity or otherwise marginalizing them (pp. 60, 59-68). The women in Basas’s study were denied a benefit when they were denied or forced out of employment, or certain types of employment, because they are women with disabilities²⁰ (p. 62). The burdens imposed on them due to stereotypes surrounding disability and gender include feeling the need to “cover.”²¹ Basas explains that, “[i]n order to succeed, they are expected . . . to fade gently into the background when any manifestation of their disability causes discomfort or awkwardness for their coworkers or

20. *See id.* at 64-66.

21. *Id.* at 70.

supervisors.”²² As Cook and Cusack explain, a “gender stereotype might burden women when it *restricts them to culturally acceptable roles or behavior*” (p. 63).

The third harm of gender stereotyping, degradation, manifests in number of different ways, including the “lowering of women’s status, position, or rank in their marriages, families, and communities” (p. 64). This includes “downplay[ing] or undermin[ing] women’s competence, such as in cases where stereotypes posit that women are incapable of rigorous, abstract thought” (p. 64). Another example of degrading harm is simply “being treated differently than a man on account of a gender stereotype,” or when it “diminishes their dignity as human beings” by “fail[ing] to recognize their intrinsic and equal worth as human beings or when, for example, it treats them in ways that do not take into account their actual situations” (pp. 64-65). The women in Basas’s study were degraded in this manner, when they were deemed incompetent to perform certain types of work regardless of their individual capabilities.²³

III. WOMEN’S CONVENTION AND WOMEN’S COMMITTEE

The Convention on the Elimination of All Forms of Discrimination Against Women explicitly links gender stereotyping to discrimination against women and is an extremely valuable tool for combating these problems in a forum specifically created to eradicate them. The authors provide a type of manual for litigating and arguing these types of claims, and include significant advice for the Women’s Committee members. This section gives a brief overview of the breadth and depth of the protections available under the Convention.

The Convention specifically requires states to take appropriate measures to eliminate wrongful stereotyping (p. 71). The Women’s Convention also requires States Parties to eliminate or modify “existing laws, regulations, customs and practices which constitute discrimination against women” (p. 72). The authors explain in detail what constitutes discrimination (pp. 104-30). Due to the highly factual nature of discrimination claims, the authors provide questions that should be asked in each circumstance to determine whether the action was prohibited by the convention. These include, for example, “Did a law, policy, or practice impair or nullify any of a woman’s human rights or fundamental freedoms?” and “Was the application, enforcement, or perpetuation of a gender stereotype in a law, policy, or practice justified?” (p. 106).

The Convention applies to all state actors, including the executive, legislative and judicial branches (pp. 84-88). Moreover, the Convention may also apply to non-state actors under certain circumstances. For example, a State Party can be held responsible for “its failure to act with due diligence to prevent, investigate, deter, punish, and remedy wrongful gender stereotyping by non-state actors,” such as private employers or places of public accommodation (p. 89).

22. *Id.* at 71.

23. *See id.* at 64-66.

The Convention requires States Parties to remedy wrongful gender stereotyping (p. 93). The failure to provide effective remedies “fuel[s] a climate of disregard, disrespect, and devaluation of women in all sectors of society” (p. 93). Cook and Cusack explain that effective remedies must contain individual compensatory remedies and “structural dimensions,” which deinstitutionalize gender stereotypes from the laws, policies, and practices of States Parties (pp. 94-98).

The Women’s Committee monitors States Parties’ compliance with the Convention. The Committee reviews States Parties’ periodic reports, which are submitted every four years (p. 131). The reports typically “address measures undertaken to eliminate discrimination against women, as well as any factors or difficulties affecting implementation of the Convention” (p. 131). The reporting process has caused States Parties to “reflect on the adequacy of their steps undertaken to address wrongful forms of gender stereotyping” (p. 132). The Committee views these as a “constructive dialogue” and takes the opportunity to question representatives on the State Party’s report and respond with Concluding Observations in which it identifies the strengths and weaknesses of the report (p. 132).

The authors stress the normative function of the Committee. The Committee is a quasi-legislative body, which can hear claims under certain circumstances and can issue written recommendations to the State Party if it is found to have fallen short on its obligations under the Convention (pp. 135-37, 142-60). In this regard, the authors suggest that “it would be helpful that the Committee not only articulate norms and standards on States Parties’ obligations to eliminate and remedy gender stereotyping, but that it also engage in detailed factual and legal analysis of wrongful gender stereotyping” (p. 156). Additionally, the Committee can formulate General Recommendations, which interpret and define the obligations under the Convention (pp. 134-35). The authors suggest ways in which the Committee could craft a General Recommendation regarding the scope of States Parties’ duties to eliminate wrongful gender stereotyping (p. 138). In many ways, this discussion mirrors the discussion in the preceding section of this article, regarding naming gender stereotyping and delineating its harms (pp.138-40). Finally, the Committee has the power to conduct an inquiry when it receives reliable information concerning grave or systematic violations by a State Party (pp. 160-65). At the end of the inquiry, the Committee publically issues its findings, comments, and recommendations to the State Party (p. 161). In all of these functions the Committee has the opportunity to play an important role defining the norms with which States Parties are expected to conform.

CONCLUSION

This book provides a clear and concise framework for discussing gender stereotypes and the manner in which they negatively impact women’s human

rights. For many inquiries it will be a starting point, and will suggest future areas to explore (such as other contexts in which a pernicious gender stereotype acts). In a similar manner, Basas's article is a starting point.²⁴ She has primarily named the stereotypes and described their harms. As Cook and Cusack have explained, the first step in treating a disease is to diagnose it (p. 3). Basas's work, in conjunction with Cook and Cusack's, would be invaluable to someone using the Convention to pursue rights for a woman with disabilities.

When women have been discriminated against on the basis of compound stereotypes, advocates and tribunals may fail to identify all of the harmful stereotypes. Instead, the focus may be on a single aspect, like race *or* gender *or* disability. Cook and Cusack describe a case in which a Turkish national woman residing in the Netherlands was terminated from her job after becoming a mother. The explanation for termination stated that unlike women from the Netherlands who, the employer assumed, give up working right away, "foreign women workers . . . take the child to neighbours or family and at the slightest setback disappear on sick leave under the terms of the Sickness Act. They repeat that endlessly" (p. 95). The woman was successful in her claim before the United Nations Committee on the Elimination of Race Discrimination that she was discriminated against on grounds of her ethnic Turkish status (p. 96). However, the Race Committee failed to recognize the gender stereotype that was at work, which stereotyped the woman "as an inferior mother because she had to combine her roles as both mother and contributing breadwinner" (p. 96).

It is easy to imagine that an advocate of a woman with a disability would focus solely on the disability as the claim of discrimination. This may be due to the difficulty of teasing out the various aspects of the discrimination. However, as Cook and Cusack explain, the Women's Convention is a valuable tool to women who have been discriminated against on the basis of compounded stereotypes. Basas's work lays the foundation for advocates of women with disabilities to understand the complex ways in which gender and disability stereotypes combine to negatively affect women.

Aurora Kaiser

24. *Id.* at 112. This is something that Basas recognized. She indicated, "While these data provide a start to understanding the processes that lead to career choice and stratification among women with disabilities, they deserve more attention and dedicated studies of their experiences." *Id.*