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The Price She Pays

Cheryl Hanna[1]

In the summer of 2010, *The Atlantic* magazine's cover story was titled "The End of Men," by Hanna Rosin.[2] Reading this article was the first assignment I gave to my students in a Women and the Law seminar I taught at Seattle University School of Law that fall. I wanted my students—nine women and one man—to begin their study of gender and the law with a sense of popular cultural discourse about the roles of men and women in modern American society. It is a complicated narrative in which neither men nor women seem to have the upper hand. It is also a narrative that is predominately about heterosexual relationships, although that, too, is changing. These students will be entering a male-dominated professional world where women often face barriers to partnership and other career opportunities. This is a narrative that my students likely know well, and they often look to a course like Women and the Law to strategize ways to understand and overcome these barriers. So too do they see that the media portrays life as a zero-sum game of gender equity—as women gain power, men lose power. But it is not that simple, and I wanted my students to understand how these societal shifts, and the way we come to understand them, not only affect the culture, but affect each of us in our personal and professional lives as well. I also wanted my students to see that the power they wield in society is shifting; maybe for better, and maybe for worse, but in ways we most certainly have yet to realize.

In the article, Rosin asserts:

> To see the future—of the workforce, the economy, and the culture—you need to spend some time at America's colleges and professional

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[1] Professor of Law, Vermont Law School. I would like to thank all of the wonderful students at Seattle University, especially those in my Women and the Law class, who made my visit very meaningful.

[2] Hanna Rosin, *The End of Men*, THE ATLANTIC, July/Aug. 2010, http://www.theatlantic.com/magazine/archive/2010/07/the-end-of-men/8135/#.

> schools, where a quiet revolution is under way. More than ever, college is the gateway to economic success, a necessary precondition for moving into the upper-middle class—and increasingly even the middle class. It's this broad, striving middle class that defines our society. And demographically, we can see with absolute clarity that in the coming decades the middle class will be dominated by women.
>
> We've all heard about the collegiate gender gap. But the implications of that gap have not yet been fully digested. Women now earn 60 percent of master's degrees, about half of all law and medical degrees, and 42 percent of all M.B.A.s. Most important, women earn almost 60 percent of all bachelor's degrees—the minimum requirement, in most cases, for an affluent life. In a stark reversal since the 1970s, men are now more likely than women to hold only a high-school diploma. "One would think that if men were acting in a rational way, they would be getting the education they need to get along out there," says Tom Mortenson, a senior scholar at the Pell Institute for the Study of Opportunity in Higher Education. "But they are just failing to adapt."[3]

Rosin's article argues that the new economy is leaving men even more economically marginalized than they already are. While this topic is nothing new, Rosin's piece makes explicit what has been the whispered fear of many: the marginalization of men is no longer confined to the lower and middle classes. Rather, shifting gender roles were trickling up to the professional classes as well.

The economic marginalization of men has been discussed among both academics and popular writers for more than a decade now.[4] One of the earlier discussions of this trend was by the well-known feminist, Susan Faludi. Her controversial book, *Stiffed: The Betrayal of the American Man*,[5] garnered great popular attention.[6] Faludi argued that men are increasingly angry and

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[3] *Id.*

[4] *See infra* notes 5–9 and accompanying text.

[5] SUSAN FALUDI, STIFFED: THE BETRAYAL OF THE AMERICAN MAN (William Morrow & Co., Inc. 1999).

[6] *See*, *e.g.*, Judith Shulevitz, *The Fall of Man*, N.Y. TIMES BOOKS, Oct. 3, 1999, http://www.nytimes.com/books/99/10/03/reviews/991003.03shulevt.html. The *New York*

disconnected, suffering from what she describes as a crisis of masculinity, where traditional male attributes are no longer valued.[7] As I watched Faludi make the rounds on talk radio and late night TV, I could hear the anger and frustration of lower- and working-class men who were losing their economic and social status as manufacturing jobs began to decline, as the livelihoods that they once depended upon either evaporated or were outsourced.[8] Faludi did not blame women for the coming crisis of economic marginalization of men; for her, the problem lay with a shifting economy and with shifting cultural expectations of what it means to be a man.[9]

Soon after the publication of *Stiffed*, Christina Hoff Sommers wrote an equally provocative book called *The War Against Boys: How Misguided Feminism is Harming Our Young Men*.[10] Like Faludi, Sommers also documents the struggles that boys face in academic achievement and in finding an accepted place in the culture and the economy.[11] She discusses how all the attention directed at girls and their under-achievements obscured the ways in which boys were falling behind.[12] While Faludi blamed larger economic and social forces, Sommers squarely blames feminists and their stance that men and boys were to blame for the way the world shortchanges women and girls.[13] While many commentators dismissed Sommers because of her strident anti-feminist tone, she was absolutely correct to point out that the road young boys were travelling into manhood was neither easier, nor more certain, than the road for young girls into womanhood.

Times was one of many national publications that reviewed the book, and Faludi was frequently in the media discussing the book. *See* Sue Halpern, *Susan Faludi: The Mother Jones Interview*, MOTHER JONES, Sept./Oct. 1999, http://motherjones.com/media/1999/09/susan-faludi-mother-jones-interview.

[7] FALUDI, *supra* note 5, at 6.

[8] *See id*. at 43.

[9] *Id*. at 602–608.

[10] CHRISTINA HOFF SOMMERS, THE WAR AGAINST BOYS: HOW MISGUIDED FEMINISM IS HARMING OUR YOUNG MEN (Simon & Schuster 2000).

[11] *Id*. at 39.

[12] *Id*. at 102–103.

[13] *Id*. at 16, 59–62.

What neither Faludi nor Sommers did, however, was seriously speculate as to how the evolving role of men would impact the opposite sex. To answer that question, Kathryn Edin and Maria Kefalas's study, *Promises I Can Keep: Why Poor Women Put Motherhood Before Marriage*,[14] is an excellent place to start. Edin and Kefalas spent years interviewing poor women from all races and age groups to understand the choices that they were making, particularly the choice to become a mother, but not a wife, at a young age.[15] The authors found that motherhood was often welcomed by these women, and was not the result of poor planning.[16] But even more surprising to some was the authors' finding that poor women valued marriage as much as middle-class women, but that the pool of men these women were willing to marry was growing smaller each day.[17] A growing number of men were not financially secure, were unable to keep commitments, and were often in trouble with the law.[18] One of the suggestions that the authors make is to improve the marriage pool of men for poor women by working with young men to postpone fatherhood.[19] But in the end, the authors suggest that it was the economy that was pushing poor women to be single mothers, and poor men into the revolving door of relationships and biological parenthood instead of marriage and involved fatherhood.[20]

Edin and Kefala's observations, however, need not be just confined to the poor. One subtext of Rosin's article is that the pool of prospective husbands in every socioeconomic class is shrinking. She begins the article, ironically, with a conversation of sex selection, and with the fact that, despite worldwide trends, in the United States, people who use in vitro fertilization prefer girls to boys, in some cases by as much as two to one.[21] However, what Rosin does not

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[14] KATHRYN EDIN & MARIA KEFALAS, PROMISES I CAN KEEP: WHY POOR WOMEN PUT MOTHERHOOD BEFORE MARRIAGE (Univ. of Cal. Press 2005).
[15] *Id*. at 5, 13–14.
[16] *Id*. at 31–32.
[17] *Id*. at 130.
[18] *Id*. at 126–27.
[19] *Id*. at 217.
[20] *Id*. at 219.
[21] Rosin, *supra* note 2.

note explicitly is that, just like the poor women in Edin and Kefala's study, reproductive technologies have made putting motherhood before marriage a desired option for many in the middle and upper classes as well. And even absent reproductive technologies, Rosin notes that the phenomenon of single motherhood is no longer confined to the poor:

> After staying steady for a while, the portion of American children born to unmarried parents jumped to 40 percent in the past few years. Many of their mothers are struggling financially; the most successful are working and going to school and hustling to feed the children, and then falling asleep in the elevator of the community college.
>
> Still, they are in charge. "The family changes over the past four decades have been bad for men and bad for kids, but it's not clear they are bad for women," says W. Bradford Wilcox, the head of the University of Virginia's National Marriage Project.
>
> Over the years, researchers have proposed different theories to explain the erosion of marriage in the lower classes: the rise of welfare, or the disappearance of work and thus of marriageable men. But [Kathryn] Edin thinks the most compelling theory is that marriage has disappeared because women are setting the terms—and setting them too high for the men around them to reach. "I want that white-picket-fence dream," one woman told Edin, and the men she knew just didn't measure up, so she had become her own one-woman mother/father/nurturer/provider. The whole country's future could look much as the present does for many lower-class African Americans: the mothers pull themselves up, but the men don't follow. First-generation college-educated white women may join their black counterparts in a new kind of middle class, where marriage is increasingly rare.[22]

This article and the related themes of status and marriage were an ideal place to start our conversation on gender and the law for my students. If women were really outpacing men in education, workforce participation, and long-term earning potential, was this evidence that anti-discrimination laws

[22] *Id.*

were working? Did men now need some help, like affirmative action to help males in college admissions, as Rosin points out is a growing trend even among elite institutions?[23] Should our seminar be as much about class and race as it is about sex? These were wonderful questions with which to begin our studies.

But really, the article that I wish I had given my students was not published until the following fall. Continuing its superior attention to gender issues, *The Atlantic*'s November 2011 cover with the screaming title, "What, Me Marry?" features a photograph of the author, Kate Bolick, dressed in black lace and looking like a *Cosmopolitan* magazine cover girl.[24] The subtitle reads: "In today's economy, men are falling apart. What that means for sex and marriage."[25] *The Atlantic* had finally brought us full circle, from the War on Boys, to the End of Men, and, now, the End of Marriage.

Bolick is an educated, professional woman, now in her late thirties. She is like my women law students: smart, funny, attractive, and ambitious. And she is also very single. Of this she writes:

> What my mother could envision was a future in which I made my own choices. I don't think either of us could have predicted what happens when you multiply that sense of agency by an entire generation.
>
> But what transpired next lay well beyond the powers of everybody's imagination: as women have climbed ever higher, men have been falling behind. We've arrived at the top of the staircase, finally ready to start our lives, only to discover a cavernous room at the tail end of a party, most of the men gone already, some having

[23] *See* Nancy Gibbs, *Affirmative Action for Boys*, TIME, Apr. 3, 2008, http://www.time.com/time/magazine/article/0%2C9171%2C1727693%2C00.html (detailing the use of affirmative action in college admissions for boys).
[24] THEATLANTIC.COM, Nov. 2011, *available at* http://www.theatlantic.com/magazine/toc/2011/11.
[25] *Id*.

> never shown up—and those who remain are leering by the cheese table, or are, you know, the ones you don't want to go out with.[26]

With all the success of women has come the lack of success of men, thus resulting in an ever-shrinking pool of men who are better educated and earn more than their female spouse.[27] Women will either "marry down" or stay alone, she argues. And there are two distinct classes of men emerging: deadbeats (whose numbers are rising) and playboys (whose power is growing). Neither guy, Bolick argues, is a particularly promising partner.

But for Bolick, this is no reason for big (earning) girls to cry: what the change in the marriage landscape means is that people are free to pursue relationships outside of the traditional norm. Women can marry younger men, and date across race. It makes marriage equality for members of the queer community more realistic and opens up options for all sorts of unconventional relationships. One unexplored consequence of the marginalization of men is that it might be having a far more equalizing effect on the culture. And Bolick has a room of her own, a place in the world apart from any relationship. She likes being single.

Or does she?

What I like so much about Bolick's piece is the unspoken, yet palpable, coming-to-terms-with-it-all tone. She always assumed she would be married, as did most of her friends.[28] But now, as she approaches middle age and her marriage prospects dwindle, she is making the best of a situation she never truly contemplated when she was making those earlier choices about career and relationships. She can, of course, still decide to be a mother on her own, but this, too, one senses, was not part of her original plan.

What I was not so sure about is how my law students would react to Bolick's article. I have had many conversations over the years with my women

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[26] Kate Bolick, *All the Single Ladies*, THE ATLANTIC, Nov. 2011, http://www.theatlantic.com/magazine/archive/2011/11/all-the-single-ladies/8654/.
[27] *Id*.
[28] *Id*.

students who worry that by becoming a lawyer, they may also become a less desirable partner, especially to professional men, who might prefer a spouse whose ambitions and career take a back seat to those of her husband. Many women students have internalized the media-fueled hype that if they do not marry young, they will not marry at all.[29] And, so, it is my suspicion that Bolick's article, and the many others like it that suggest that educated, professional women are less likely to marry,[30] often make my women students wonder if the price of becoming a lawyer is too high.

This is not a new conversation, nor is it a new dilemma for women at the start of their professional careers. When I read Bolick's article, I was reminded of Peggy Orenstein's book, *Flux: Women on Sex, Work, Love, Kids, and Life in a Half-Changed World*,[31] which she wrote in 2000. *Flux* was also a book that scared young professional women about their futures. Orenstein was thirty-eight, married, and childless when she wrote this book, which shared the stories of women in their twenties, thirties, and forties. For Orenstein, it was not the world that needed to change to accommodate women; it was women who needed to change themselves, and their expectations about their futures.[32]

I reviewed Orenstein's book a decade ago for another law review article.[33] And so I went back and reread the book, and the review, and I was struck by how many of the concerns Orenstein discussed have become even more

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[29] *See*, *e.g.*, DOREE LEWAK, THE PANIC YEARS: A GUIDE TO SURVIVING SMUG MARRIED FRIENDS, BAD TAFFETA, AND LIFE ON THE WRONG SIDE OF 25 WITHOUT A RING (Broadway Books 2008); ANDREW J. CHERLIN, THE MARRIAGE-GO-ROUND: THE STATE OF MARRIAGE AND THE FAMILY IN AMERICA TODAY (Alfred A. Knopf 2009).

[30] *See*, *e.g.*, Tara Parker-Pope, *Marriage and Women Over 40*, N.Y. TIMES, Jan. 26, 2010, http://well.blogs.nytimes.com/2010/01/26/marriage-and-women-over-40/; Sam Roberts, *More Men Marrying Wealthier Women*, N.Y. TIMES, Jan. 18, 2010, http://www.nytimes.com/2010/01/19/us/19marriage.html.

[31] PEGGY ORENSTEIN, FLUX: WOMEN ON SEX, WORK, LOVE, KIDS, AND LIFE IN A HALF-CHANGED WORLD (Anchor Books 2001) (2000).

[32] *Id*. at 108–10.

[33] Cheryl Hanna, *Changing from Within—A Review of Peggy Orenstein's* Flux: Women on Sex, Work, Love, Kids, and Life in a Half-Changed World, 12 HASTINGS WOMEN'S L. J. 273 (2001).

magnified today. Orenstein suggested that many of the young women she interviewed were consciously making decisions about being wives and mothers long before they had to.[34] She told multiple stories about women in their twenties—what she calls "the promise years"—who start thinking about navigating a job and a family long before they have either.[35] For example, a young medical student chose radiology as her specialty because she assumed that it would afford her more flexibility for when she would eventually be a wife and mother.[36] Another twenty-something businesswoman left her boyfriend because he had low earning potential and she eventually planned to have a family.[37] Young women, Orenstein noted, go out of their way to ensure that they will have flexible careers, preparing for motherhood far in advance, and yet these decisions may be detrimental as the women making them track themselves into lower paying jobs.[38]

One of the most compelling parts of *Flux* is when Orenstein describes a dinner that she had with law students. Orenstein recounts that during this dinner conversation, she realized that she was everything that these young women hoped *not* to be.[39] Although married at the time, she was struggling with the decision of whether or not to be a mother. According to Orenstein, what women in their twenties most often fear is not career failure, but being thirty-something, single, and childless. She calls it marriage panic. In the 1990s, this panic was pronounced for women law students in particular, instigated by the popular television show *Ally McBeal*. The show was about a soon-to-be thirty-year-old lawyer who excelled in the workplace but not in her relationships. She had control over her cases and clients, but not her love life. She was the Kate Bolick of her time. Everyone loved Ally McBeal—but no one really wanted to be her.

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[34] ORENSTEIN, *supra* note 31, at 30–36.
[35] *Id*. at 15–92.
[36] *Id*. at 83.
[37] *Id*. at 71–73.
[38] *Id*. at 103.
[39] *Id*. at 140.

Orenstein's main point was that the gap between the relative contentment of midlife single women and younger women's perceptions of them was alarming, and that alarm was causing young women to make very bad choices about their careers.[40] Of course, the irony is that those twenty-somethings were right to worry. Many, like Bolick, now thirty-something, ended up alone. Yet, Bolick tries to tell this next generation of twenty-somethings that being single is not so bad, and that these younger women should ignore the media and just get on with their lives.[41] Unlike Ally McBeal, who was always in a state of marriage panic, Bolick tries to (perhaps not so convincingly) tell this next generation in their "promise years" to chill out—not to worry, just be happy. Bolick's message may indeed resonate more today than ten years ago, as perhaps today's twenty-somethings are less interested in more traditional relationships. But, then again, maybe not. In a recent study of marriage in America, Andrew Cherlin found that while the choice to marry is largely influenced by one's own individual circumstances, and today people have a host of relationship possibilities open to them, marriage remains the most prestigious one—a symbol of successful self-development.[42] To that end, I wonder if this generation of professional, educated women is really no different than the women in Edin and Kafala's study. They still desire marriage more than any other relationship. (I think it is interesting to note that the marriage equality civil rights movement has had the effect of reinforcing the notion that Cherlin suggests: that marriage is the most prestigious of the relationships that we form, and certainly the one that provides the most legal recognition.) But perhaps this generation of young women has resigned itself to the possibility that marriage may not happen. And thus, these women soldier on, making the best of a situation that was never of their choosing.

Bolick's message was recently echoed in a graduation speech given by Sheryl Sandberg at Barnard College in the spring of 2011. Sandberg is

[40] *Id*. at 16–19.
[41] Bolick, *supra* note 26.
[42] CHERLIN, *supra* note 29, at 140.

Facebook's Chief Operating Officer, and her speech to the women's college stirred a great deal of attention as she urged these young women to be unapologetically ambitious.[43] She said:

> [W]hat I have seen most clearly in my 20 years in the workforce is this: Women almost never make one decision to leave the workforce. It doesn't happen that way. They make small little decisions along the way that eventually lead them there. Maybe it's the last year of med school when they say, I'll take a slightly less interesting specialty because I'm going to want more balance one day. Maybe it's the fifth year in a law firm when they say, I'm not even sure I should go for partner, because I know I'm going to want kids eventually.
>
> These women don't even have relationships, and already they're finding balance, balance for responsibilities they don't yet have. And from that moment, they start quietly leaning back. The problem is, often they don't even realize it. Everyone I know who has voluntarily left a child at home and come back to the workforce—and let's face it, it's not an option for most people. But for people in this audience, many of you are going to have this choice. Everyone who makes that choice will tell you the exact same thing: You're only going to do it if your job is compelling.
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> If several years ago you stopped challenging yourself, you're going to be bored. If you work for some guy who you used to sit next to, and really, he should be working for you, you're going to feel undervalued, and you won't come back. So, my heartfelt message to all of you is, and start thinking about this now, do not leave before you leave. Do not lean back; lean in. Put your foot on that gas pedal and keep it there until the day you have to make a decision, and then make a decision. That's the only way, when that day comes, you'll even have a decision to make.[44]

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[43] Sheryl Sandberg, Chief Operating Officer of Facebook, Commencement Address at Barnard College (May 17, 2011), http://barnard.edu/headlines/transcript-and-video-speech-sheryl-sandberg-chief-operating-officer-facebook.

[44] *Id*.

Sandberg's speech went viral, and generated a great deal of attention. She was profiled in the *New Yorker*[45] and interviewed by Oprah live on Facebook.[46] She serves as one of the few public examples of a woman who seems to have it all at the same time—she is a wife, mother, and successful businesswoman. But she does not attribute that to luck as much as to her ambition, her personal choices, and her willingness to do the work. One gets the sense Sandberg never worried about marriage or men. She worked and planned and powered ahead. And I think what was so refreshing about Sandberg's speech is that she encouraged young women to make the choices that were within their control.

But Sandberg was not without her critics: the *New Yorker* shared some concerns about her speech. "Some critics . . . note that Sandberg is not exactly a typical working mother. She has a nanny at home and a staff at work. Google made her very rich; Facebook may make her a billionaire. If she and her husband are travelling or are stuck at their desks, there is someone else to feed their kids and read to them."[47] Sylvia Ann Hewlett, who directs the Gender and Policy program at Columbia, elaborated:

> "I think Sandberg totally underestimates the challenge that women face," she says. Hewlett agrees with Sandberg that women must be more assertive, but she believes Sandberg simply doesn't understand that there is a "last glass ceiling," created not by male sexists but by "the lack of sponsorship," senior executives who persistently advocate for someone to move up. A third of upper-middle managers are now women—"the marzipan layer"—she notes. This number has increased in recent years, but the women aren't rising to the top. She believes that Sandberg is insufficiently aware of this problem because she has benefitted from sponsors: "Sandberg, to her great credit, had

[45] Ken Auletta, *A Woman's Place*, THE NEW YORKER, July 11, 2011, http://www.newyorker.com/reporting/2011/07/11/110711fa_fact_auletta?currentPage=all.
[46] Editorial, *Oprah's Inspirational Moment From Sheryl Sandberg's Speech at Barnard*, WOWELLE, Sept. 15, 2011, http://wowelle.com/2011/09/15/oprahs-inspirational-moment-from-sheryl-sandbergs-speech-at-barnard/.
[47] Auletta, *supra* note 45.

> Larry Summers. She has had sponsors in her life who were very powerful, who went to bat for her. That's very rare for a woman.[48]

These, and other criticisms of her speech, are certainly helpful in painting a more complete picture of why women are not making the gains they should, especially in those high-powered positions. And they remind us that wealth and power make doing many things easier, including balancing work and family.

Putting aside these criticisms, however, the main point of Sandberg's speech, just like the main point of Orenstein's book *Flux*, was to be deliberate and rational in their choices, and not let fear of an unknown future hinder their lives. These women have tried to advise others to be ambitious in their professional pursuits and to be intentional in their decisions, and not worry so much about love and marriage and family—that those things will come, or they will not, but trading off professional success for some yet-to-be-realized relationship is not a good decision. That ceding their power and their potential too early or too quickly will not make them happy.

Our law students have to worry about a lot these days, including high debt and a shrinking legal market. Many of them wonder if the price they have paid for law school is worth it. Our women students, at least many of them, carry with them additional concerns: they worry whether or not they will be able to have a meaningful career and a meaningful relationship; whether they will have clients and children. I too worry that those fears, be they real or imagined, weigh too heavily on the choices that they may make.

Like Sandberg, I want my students to keep speeding along, constantly testing their potential. I want them not just to have choices, but to affirmatively make them. To that end, it is my hope that exploring popular discourse on gender gives my students not only greater insight into the world around them, but also deeper insight into themselves as well. I suspect many of them have

[48] *Id*.

never had a frank conversation with either themselves or their friends about what Sandberg calls leaning in and leaning out—about finding balance, about their worries over finding a mate or having children. One thing that we, as teachers, can do for our students is invite them to have that conversation, provide them with a framework for that discussion, and then provide support as they navigate these hard choices and their consequences, often unintended, in an ever-changing world.