The Silent Weapon in War and Peace:
The Power of Patriarchy

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DECLARATION

I, **Louise de Bruin**, declare that the work presented in this dissertation is original. It has never been presented at any other university or institution. Where other people's works have been used, references have been provided, and in some cases, quotations made. It is in this regard that I declare this work as originally mine. It is hereby presented in partial fulfilment of the requirements for the award of the MPhil Degree in Multidisciplinary Human Rights.

Signature   :   _____

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I am grateful for certainty, unconditional love and unquestioning loyalty. From animals, not man, I learn to be a better person.

Abstract

History has proved that too much power, in any form, is detrimental to the greater good of the society concerned. People at the hands of the power-hungry face discrimination and are often subjected to extreme violence and abuse. Society has undergone several changes and progressions through time, including economic, political and social changes. One thing that has remained unchanged however, is man's power over woman. Patriarchal power is present in all sectors and scenarios of society, from the home to the international legal system.

My study focuses on the notion that an abundance of power leads to fear, violence and total disarray at the micro and macro levels of society. I argue that the essential problem in the relationship between man and woman is not a man's abuse of power, but rather that he has too much power in the first place. A culture of entitlement breeds among men, enabling them to treat women as inferior, sub-human objects.

Definitions of male and female prove to be concreted into specific roles and gendered identities within the home and the greater society. People fall automatically into these roles, blindly and unquestioningly. It is for this reason that I maintain all members of society ensure the survival of patriarchy – even if they do so unconsciously. While the difference in the understanding of rape and sexual intercourse should be stark, it is blurred because they are defined according to male terms. Man's entitlement allows him to think it his right to take sex from a woman, even if she does not offer it willingly. Culture and tradition serve as major obstacles in any possibility of society's progression. Culture has proved such an undisputed order in society that it even trumps the international legal system of human rights. Culture justifies, or at least trivialises, the abuse of women. The social stigmatisation of sexual abuse silences women, providing further endorsement for men to continue asserting their power. A woman's life, as determined by male hierarchy, gender bias, culture and social stigmas, is therefore fated. It is with this in mind that I strongly question the progression of society into a true form of liberality and equality. In order for society to attain such a transcended state, it will have to disregard everything that it knows and deconstruct everything that has defined it up to that point. Until this is achieved, women will continue to live their lives in fear of the silent weapon in war and peace.

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Chapter 1 – Introduction

> "The whole world is divided for me into two parts: one is she, and there is all happiness, hope, light; the other is where she is not, and there is dejection and darkness…"
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> - Leo Tolstoy, *War and Peace*[1]

Georg Hegel was of the opinion that a society's way of thinking and operating is due to its historical conditioning and constituency. An individual's ideas and thoughts are a direct product of their time. He suggests, however, that throughout history progressions are made through the resolutions of internal contradictions and conflicts, thus continuously attaining a higher form of society. According to Hegel, this process will lead society towards greater freedom and greater knowledge.[2]

But what happens if society's historical conditioning inhibits progression? Such society cannot then progress into greater freedom or greater knowledge and therefore will never evolve into a higher form itself. If society's conditioning is concreted in an establishment of power, then according to Hegel's philosophy of history, society will only ever continue to aspire towards what it always has. Its goal will be to attain more power in as many spheres as possible and nothing else.

In this study, "The Silent Weapon in War and Peace: The Power of Patriarchy," I base my assumption on the grounds that a society's way of thinking and operating is due to its historical conditioning of patriarchal power. As a result of such conditioning, individuals are a direct product of patriarchy. Because patriarchy persists, society is unable to progress into anything more evolved than a society defined by male hierarchy. The study looks at the inevitability of a society whose sole objective is to attain and assert as much patriarchal power in as many contexts as possible.

1.1 Thesis statement

The main aim of this study is to display the prominence of patriarchy in society. By highlighting patriarchy's survival through history and its ever-present prominent status, I aim to contradict Hegel's theory of society. I argue that society has not followed the natural progressive path as assumed by Hegel, arguing that society has failed to attain any higher form of itself. Society, and all its sectors, is in a habitual never-ending cycle of patriarchy. The failure of progress is accredited to culture and tradition which has preserved patriarchy as the ruling ideology in society, despite technological advancements and other forms of global development. The study aims to demonstrate how patriarchy has effectively structured society in such a way that all systems, whether at a micro or macro level of society, are determined and governed by it.

Although vast improvements have occurred in women's status in society, a woman's inferiority is still largely apparent in the legal, economic, political and familial sectors of society today. Law has been formulated in such a way as to not favour women. Women receive lower salaries and are rarely awarded top business positions. History has prevented women from having a voice at the political level. An underlining expectation for women to marry, raise children, cook and clean continues to breeds. I refine my focus to specifically look at the presence of patriarchy within the home. I maintain that patriarchy grows out of the

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[1] All quotes opening every chapter are taken from *War and Peace* by Leo Tolstoy
[2] Law, S. *The Great Philosophers*, (2007) 113

home into all parts of society. Through the developments of the study I focus largely on the violent and degrading effects of patriarchy. Rape is a means for asserting power and dominance, quickly and resolutely. I look at the specific weapons of patriarchy and how they are used in the home and in areas of conflict to establish and reaffirm male hierarchy and control. I argue that, although the international legal system has drawn its attention to the importance of gender equality and women's rights, it is formulated according to gender biases and male hierarchy. International law is therefore an impotent means of improving the lives of women – especially women who are raped and abused.

Through this analysis, I hope to highlight how patriarchy's effects have become a norm and inevitability in society. The attempt of the study is to show society's inability to progress to a higher form of knowledge and freedom in its failure to question and resolve internal conflicts and contradictions. I hold the belief that society is blind to the fact that the historically concreted construct of patriarchy is the root cause present in every relationship between man and woman and in every violent crime committed against women. Unless society chooses to overcome the one-sided archaic conception of patriarchy, it will prove impossible to eradicate and society will never arrive at what Hegel calls greater and eventual "absolute knowledge".

1.2 Assumptions

1.2.1 Society and its mediums are constructed according to patriarchy

Patriarchy, a social construct maintained through historical conditioning, nourished by culture and tradition, plays a significant role in the function and progress of society. Patriarchy exists in all areas of society, from the home to the greater operating levels of society. Because it has prevailed for so long, patriarchy has become a societal norm inherent and unquestioned in daily life.

1.2.2 Patriarchy predicts the impotence of international law

If it is said that society is moulded according to dominant social constructs as determined and maintained by history, then my understanding is that society's systems are too, determined by it. As a result of the dominance of patriarchy in society, its prevailing presence can also be seen in society's systems. I believe the international legal system exemplifies this notion. The international legal system has been constructed and governed in such a way as to maintain and enforce patriarchy. It is with this leaning that I make the assumption that the social conditioning of patriarchy predicts the impotence of international law.

1.2.3 Patriarchy's weapons erode society into disarray

It is vital for the systems of patriarchy to use all means necessary to uphold and ensure not only its presence but also its dominance. This form of power is implemented in families and the greater society, on the micro and macro level. When patriarchal power is threatened, weakened or jeopardised, men resort to drastic means, such as rape and other forms of violent abuse to ensure the roles of masculine dominance and feminine subordination are ascertained and rectified. This continuous affirmation of patriarchal power leads society into fear, havoc and destruction.

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1.3 Research questions

1.3.1 What are the dominant social constructs of a society?

Society conforms to power. The powerful seek to gain as much power on as many levels as possible. Man has sought control and dominion over others for centuries, particularly over his supposed lesser counterpart, woman. Patriarchal power, a dominant social construct, is exerted in a variety of ways at a variety of levels in society. Its longevity through the ages proves its unquestioning dominance.

1.3.2 Does international law serve justice or patriarchy?

Assuming history defines society, then a dominant feature found in almost every culture, throughout history, is patriarchy. Relying on Hegel's notions, I maintain that patriarchy constructs society, and hence international law. International law appears to be a vehicle for patriarchal power. It appears to prioritise its maintenance over its concern for justice.

1.3.3 What is the inevitability of a society governed by patriarchal power?

When power, authority and control are simply claimed, without going through gradual developmental processes, society is rattled. When power is taken by force, under the perception of entitlement, society plunges into chaos and disarray. This sense of entitlement exists because of a society's historical conditioning. Such conditioning is destructive to society and determines its demise.

1.4 Motivation

Society[3] remains clouded by the high level of abuse against women. Despite global development, gender inequality has led to a situation where one in three women worldwide is a victim of domestic violence.[4] Rape is so regular today it is estimated an average of 1 300 women are raped daily in South Africa; or as Interpol calculated, a woman in South Africa is raped every 17 seconds.[5] Sexual abuse is prevalent in women and children and the number of attacks headlining South Africa's news highlights the frequency of male family members as the rapists.[6]

The presence of patriarchy proves so potent that even children are actively participating in it. Even child rape has become an inescapable norm of society. An eight year old girl walking home from school is dragged off into the bushes by a 15 year old boy, is viciously raped and has her eyes gouged out.[7] The boy rapist briefly appeared in court, only to be released into his parents' custody. This is just one daily example of the despicable reality that is our society.

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[3] Unless specifically stated, I refer to society broadly. I perceive most societies today, as in bygone years, to share the predominant ideology of patriarchy. Societies, to a greater or lesser extent, deliberately or unconsciously, practice patriarchy. Please acknowledge the generalisations I make in this study, particularly when discussing men's violent domination of women.

[4] Meyersfeld, B. *Domestic Violence and International Law* (2010) 125

[5] Figures made available by the National Institute of Crime Rehabilitation and Interpol on www.rape.co.za (accessed 6 March 2012)

[6] Rape Statistics – South Africa and Worldwide 2011, www.rape.co.za (accessed 6 March 2012)

[7] Weiner, M. "Girl's eye ripped out after being raped," Eye Witness News, 26 April 2012, http://www.ewn.co.za/Story.aspx?Id=87240 (accessed 26 April 2012)

While much has been written on the subject of gender inequality and sexual violence, I feel it important to highlight and readdress the root cause of patriarchy present in all these exorbitant statistics. I believe it necessary to study the root cause of such a debilitating problem that affects everyone in society, even if not directly or physically. Such acts are committed because of the societal conditioning that women are sub-human or inferior to men and that a woman's main purpose is to serve man sexually. I assume the socially constructed ideology of patriarchy as the root cause for sexual violence across the world. Despite cultural, political and economic diversity globally, history identifies the universality of patriarchy, as displayed in the presence of sexual violence in almost every society of the world.

I rely heavily on the feminist theory of Catharine MacKinnon to argue the main theme of the study, namely that patriarchy orders society through the degradation and violence of women. Chief systems in society, such as the legal and familial systems, prove to maintain the dominance of patriarchal power. As a result of these inadequacies which I view in the study, the crime of rape is often accepted and goes unreported.

I am also motivated by Hegel's analysis of history and society; however, I argue society has failed to follow the ideal course of progression predicted by Hegel. I make the claims that society has remained stagnant. As a result, women have been positioned as a means to guarantee the political power of men. Because patriarchy has prevailed for so many years, women themselves have become accustomed to managing and maintaining the roles of submission in favour of men. Patriarchal power is handed over from father to son, breeding a culture whereby even schoolboys regard 'jackrolling', a slang term for gang rape, as fun.[8] This raises grave concern over the casual attitude in society, that sexual violence against women is ordinary and part of society because it has always been an inevitable part of the patriarchal course.

The prevalence of rape today proves a culture exists which proclaims man's birth right to assert his power over a woman. My study assumes the specific focus that patriarchy is a central reason for the injustice women face daily in their homes and in other areas of society. I use this study to voice my opinion that, because of this dominant ideology which has prevented society's progression, society is in regression. The assumption that men are entitled to treat women as inferior subordinates implies society is in a continuous state of chaos, not only in times of war, but also in times of peace.

1.5 Structure

Chapter outline

2. Society is constructed by patriarchy

I launch the study by defining patriarchy, so as to better understand the ideology that has defined society and its systems for so long. This chapter reflects the presence of patriarchy at the micro and macro level of society. Despite global developments, patriarchy continues to dominate society as it is continuously and unquestioningly revived and replenished through culture and tradition. I draw on the distinction between the public and private lives of women. By looking at the family scenario and how both men and women sustain the patriarchal expectations through their identities, encourages the degree of distinction to be questioned

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[8] Rape Statistics – South Africa and Worldwide 2011, www.rape.co.za (accessed 6 March 2012)

because the family proves a microcosm of the greater society. Sustaining this male hierarchy is the social process of sexuality which creates, organises and expresses social beings into women and men as they are known in society.[9] Cultural conditioning trivialises and justifies the discrimination and violence of women.[10]

3. International law furthers patriarchy

Being mindful of chapter two's highlighting of patriarchy's presence in society, I narrow the focus to specifically look at international law and how it serves as an agent of patriarchy. Although there may be legislation regarding gender inequality and sexual violence in place, chapter three highlights how the international legal system is largely impotent because of the presence of patriarchy in theory and practice. In *Women's Lives, Men's Laws*, MacKinnon writes that for most women, law has little to do with their everyday lives. Women are detached from law which is designed and applied by men.[11] I also address the complexities when law implements supposed and general norms to specific contexts and diverse cultures.

4. Rape as a weapon of patriarchy

After the previous two chapters' address of the dominance of man versus the submission of women, I consider how, through patriarchal power, men assume such hierarchical authority over women that their perceptions of sexual intercourse and rape become enormously blurred and distorted. I define rape in this chapter and the sadomasochistic interpretation[12] of it is also noted, showing how it is commonly decided that if sex occurs in private it must be consensual.[13] An overwhelmingly strong culture of entitlement breeds among many men, allowing them to think they are entitled to take sex from women by force. Through a reflection of the war scenario and the peace scenario, as well as a political reflection of South Africa's transition into democracy, it is evident men do in war what they do in peace.[14] It is clear that such practice has survived and continued for years. The weapon of rape is used on the battlefields in the home and in areas of conflict. I focus on the fact that whether societies are stable and at peace, or whether they are at war with others, a woman's life under the patriarchal system is governed by the fear of sexual attack because sex is ultimately what women are for.[15] The chapter reviews how, in times of war, rape becomes a systematic means in attaining the desired end of domination over opponents and women. Rape in war is an inevitability which is legally rationalised and formally condoned.[16]

5. Conclusion

This chapter summarises each of the chapters' attempts at displaying the presence of patriarchy in all of society, in war and peace. I conclude the study with the deduction that in order to bring awareness of the prevalence of patriarchy in society, people will have to recognise their active contribution to its maintenance, even if they are not in favour of it. I examine the complexity and even rarity of a society's progression in that for it to progress it would have to turn to what it knows, to what history teaches it, to what culture instructs is

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[9] MacKinnon, C. *Towards a Feminist Theory of State* (1989) 3
[10] Meyersfeld, B. *Domestic Violence and International Law* (2010) 100
[11] MacKinnon, C. *Women's Lives. Men's Laws* (2005) 32
[12] MacKinnon, C. *Toward a Feminist Theory of the State* (1989) 172
[13] MacKinnon, C. *Women's Lives. Men's Laws* (2005) 35
[14] MacKinnon, C. *Are Women Human?* (2006) 148
[15] MacKinnon, C. *Women's Lives. Men's Laws* (2005) 35
[16] MacKinnon, C. *Are Women Human?* (2006) 143

right, and then turn away from it all. In order for society to progress into the higher mode of itself that Hegel hypothesises, people will have to question and turn from everything they know to be true. I question the society's capabilities of doing so as it is essentially demanding people to reject their foundations, their existence. The likelihood of this is a far reality because, as witnessed in the study, men and women maintain and sustain patriarchy on a daily basis.

Chapter 2 – Society is constructed by patriarchy

"Everything depends on upbringing... The higher a man stands on the social ladder … the more power he has over other people, the more obvious the predestination and inevitability of his every action."

- Leo Tolstoy, *War and Peace*

In this chapter I assess society according to the notion that society is ruled by male hierarchy. As introduced at the beginning of the study, patriarchy structures society in such an all-encompassing way that all sectors of society are determined by it. Despite advancements in certain areas, the prominence of patriarchy implies society is not progressing, but rather undergoing a continuous cycle whereby history is repeated. This cycle is nurtured and nourished through culture and tradition. Through this chapter I endeavour to highlight the stagnant nature of society through a reflection of societal sectors at the public and private levels. These reflections prove to contradict Hegel's theory of society's continuous progression towards a higher mode of itself. I focus on four key areas in this chapter, which are carried throughout the rest of the study. These areas include the societal perception of gender roles and gender identity; male hierarchy which is displayed at a micro and macro level; power within the home and the broader society and lastly, the politics that grows out of relationships determined by power.

I begin the chapter's analysis by laying out workable societal definitions of hierarchy, patriarchy and gender identity so as to guide the rest of the chapter in the recognition and reflection of the ruling societal ideology of patriarchy at a micro and macro level. The definitions of these terms echo the strong feminist theory Catherine MacKinnon and other feminists writing on this topic postulate. I regard culture and tradition as important players at both levels of society in the maintenance of patriarchy and consider them fundamental preservers which have carried patriarchy through history into current so-called developed societies and liberal democracies.[17] I aim to reflect the stark presence of patriarchy at all levels of society, by highlighting how everyone in society participates in this ideology, even if unintentionally or unknowingly. The inevitable products of a man's power are discussed and society's view that male dominance and its products are expected norms is also noted.

MacKinnon defines hierarchy as a socially organised power, which justifies why one group has power, domination and superiority over another.[18] Patriarchy is a form of hierarchy whereby men have power, domination and superiority over women. Gender identity is a socially constructed concept which determines the patriarchal roles of male power and dominance and female inferiority and oppression. Gender identity always results in the constitution of particular meanings for specific ends,[19] namely patriarchal ends. It is the identity prescribed to woman, as laid out by historical and social constructs, which devalue and oppress her as the "castrated other."[20] Tradition encourages power and dominance to be associated with masculinity and submissiveness and inferiority with femininity.[21] As MacKinnon notes that women's identities are not theirs because the female identity is entirely constructed and defined by a patriarchal culture.[22] This patriarchal culture is developed by men, for men. The integration and interdependence of these three concepts irrevocably rely

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[17] I discuss the flaws of a so-called liberal democracy later in the study

[18] MacKinnon, C. *Women's Lives. Men's Laws* (2005) 92

[19] Murithi, T. "Mainstreaming gender into the AU peace and security agenda," in *The Politics of Gender* (2011) 164

[20] As above

[21] Bergen, R.K, *Violence Against Women* (2005) 319

[22] MacKinnon, C. in "Sovereignty, subjectivity and human rights: a gender sketch," in *The Politics of Gender*, 161

on each other in this chapter and I discuss them in union to highlight the suppression and limitation of a woman's freedom within the confines of both her home and society.

The notion of gender being equated as either dominant or inferior links to Christine Littleton's use of the term "phallocentrism" to describe the history of oppression by men of women.[23] Phallocentrism, for Littleton, includes more than the inequality and oppression of women. It extends to the dominant culture of that society which ascribes specific gender roles, identifying them distinctly as the highly valued "male" and the subsidiary "female". I draw emphasis to the point that phallocentrism is concerned with the culturally defined male which is conditioned to being dominant, better, of greater value.[24] This notion of inequality, as determined by the dominant culture, correlates with my study's address of the domination of patriarchy at the public and private levels. Littleton and the conception of phallocentrism endorse my view that culture ensures the survival and dominance of patriarchy through the culturally defined male and female. Phallocentrism conditions society into perceiving things as either male or female. I reflect this conditioning by looking at the public and private life and how it has identified woman.

Sylvia Walby, who has written extensively on patriarchy and gender relations, identifies that at the core of patriarchy are the notions of gender inequality and the degree of systematicity.[25] Walby regards gender inequality as men's domination over women. She cautions distinctions of gender to be based solely according to biology though, stating the social dimension as a pivotal part which cannot be ignored when evaluating the definition and composition of gender. Patriarchy's second component of systematicity defines patriarchy in terms of society by looking at women's subordination, which is evident at all levels, from the household to the economic and political structures of society.[26] Incorporating these definitions equates patriarchy as a system whereby men dominate, oppress and exploit women in all social structures and practices.[27]

Delving deeper into the issue of patriarchy within society, I consider the political nature patriarchy possesses. Robert Dahl defines a political system as "any persistent pattern of human relationships that involves, to a significant extent, power, rule and authority."[28] MacKinnon too argues the issue of gender as a social system divided by power. Gender identity can be regarded a political issue because it is based on nothing other than authority and control, on male dominance over the female. I concur with MacKinnon that any relationship based according to power is political. It is with this in mind that I make the generalisation that the relationship between men and women in private and public life is political. I discuss such politics further in this chapter.

Patriarchy is particularly persistent in certain structures of society, which can be composed into: patriarchal relations in household work; patriarchal relations in paid work; a patriarchal state; male violence; patriarchal relations in sexuality; and patriarchal relations in cultural

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[23] I reflect Littleton here as Karin van Marle did in her doctoral thesis, *Towards an "ethical" interpretation of equality* (1999) 281-284
[24] van Marle, K. *Towards an "ethical" interpretation of equality* (1999) 282
[25] Walby, S. "The 'Declining Significance' or the 'Changing Forms' of Patriarchy?" in *Patriarchy and Development* (1996) 20
[26] As above
[27] As above, 21
[28] MacKinnon, C. *Towards a Feminist Theory of State* (1989) 160

institutions.[29] Considering these structures indicates the all-encompassing presence of patriarchy, at the micro and macro level of a society.

2.1 Public and private life

In the following section I consider patriarchy at the micro and macro level of society. I delve into a reflection of how power is asserted at different levels within a relationship and also how power is present in the areas of work and politics. It is history which proves to condition its people into the practice and maintenance of patriarchy. Within this section, I make the assumption that patriarchy originates at the private level. It is passed down from generation to generation, which is defined and ordained by culture and tradition. It is from the home then that my study of patriarchy begins which extends into the rest of society and so the rest of the chapter. The patriarchal gaze is strongly present in the private and public life of society. Patriarchal relations within these two sectors influence, shape and nurture each other. It is clear that in both these spheres women are denied any form of power.[30] Because of this denial, women's human rights are not only violated but barely recognised.[31] This links to my argument that despite supposed advancements, society has, in essence, not progressed as Hegel said it would.

I perceive culture and tradition as practices in society which are rarely questioned or opposed. History has proved that society strives to maintain and preserve these practices no matter the consequences. Patriarchy is deeply embedded into many, if not most, societies' belief systems and imposes great injustice to the lives of women, within the home and community. Many autonomous groups claim their heritage includes the recognition of the differences between men and women.[32] This is often used as a valid reason for the oppression of women. Culture has continued to be regarded as an all-important, unchangeable feature of mankind which needs to be preserved and upheld, thus complicating the progression of households and society, of private and public life. Culture often surpasses and carries heavier weight than the systems of law and development. What proves clear from my research is that while things are developing, such as women's right to vote, patriarchy will never cease because of the patriarchal bridge connecting the developing public life to the stagnant private life, because of the sustenance by cultures and traditions. Jean-Jacques Rousseau looked into societal perceptions, as determined by dominant culture.[33] He philosophised over gender roles saying, "Woman and man are made for one another, but their mutual dependence is not equal. Men depend on women because of their desires and their needs. We would survive more easily without them than they would without us."[34] Rousseau suggests the inferiority of women here, as well as the perception that women serve men's needs and have little individual purpose or worth.

Abuse, especially sexual violence, is a potent weapon of patriarchy which I explore further later in the study. I note sociology theorist, Michael Johnson, so long however, in his reference to the systematic use of violence, economic subordination, threats, isolation and other control tactics which he says men use against women as 'patriarchal terrorism'.[35] MacKinnon adds to the range of patriarchal terrorism by including the objectification of

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[29] Walby in *Patriarchy and Development*, 24
[30] MacKinnon, C. *Are Women Human?* (2006) 151
[31] As above
[32] Meyersfeld, B. *Domestic Violence and International Law* (2010) 103
[33] Cahill, A.J. *Rethinking Rape* (2001) Rousseau reflected in "Subjectivity and the body," 50-71
[34] Cahill, A.J. *Rethinking Rape* (2001) 52
[35] Meyersfeld, B. *Domestic Violence and International Law* (2010) 113

women, murder, torture and sexual mutilation.[36] I assess sexual violence as a form of patriarchal terrorism later in the study. I emphasize the importance to be mindful of this fact that patriarchy is political because it is man's battle for power over woman. Patriarchal terrorism is evident at varying degrees in private and public life, at the micro and macro levels of society. It is with this notion of 'patriarchal terrorism' that I now turn to patriarchy at a micro or private level.

2.2 Patriarchy at a micro level

History and a society's culture have ensured patriarchy is instilled and that the highest degree of male supremacy between people reigns. Because of this, I claim both men and women participate actively in patriarchy, whether intentionally or unintentionally, knowingly or unconsciously, by their adherence to its strict stipulations of male dominance and female submission. This can be grouped under the definition of phallocentrism. I suggest the participation of all members in patriarchy because of society's historical conditioning to it. This is clearly viewed within the home by members of the household assuming and practicing very specific roles. From birth, women are subjected and moulded to being considered inferior to their male counterpart. Because this takes place from birth, women often fit into these roles unknowingly because they are not aware of anything different. Men are raised in such a way that it seems natural and normal for them to be considered worthier, stronger, better and smarter than women. It is with this in mind that I propose the birthplace of patriarchy to be in the home at the familial level. As family members of both genders leave the home, so patriarchy goes with them. Patriarchy therefore spreads easily into other parts of society and is sustained at all levels. Tradition, as based on gender identity and cultural beliefs, conditions the household into these very specific roles and family members are christened accordingly.

The patriarchal definition of marriage from antiquity, as defined by Romulus in 753 B.C., remains shockingly accurate in many unequal societies today. This first law of marriage was defined by married women being expected to "conform entirely to the temper of their husbands and the husbands to rule their wives as necessary and inseparable possessions."[37] This signifies the societal perceptions of gender roles and identity, and how history has ensured such perception is preserved.

It is generally accepted that the father is the head of the household with overruling authority. It is his duty as the man of the house to provide for his family's needs. His prominent career enhances his role as provider and his power status within his community. As a result of a man's guaranteed identity as head, the family relies fully on him to survive. This reliance escalates his power and so endorses patriarchy. The mother is caregiver to the family. Her gender identity, as determined by phallocentrism, expects her to reproduce in order to enrich her husband's societal status and fully carry out the duty of being a worthy choice. It is her duty to ensure the household is able to function at its optimal level. In order for her to fulfil this role, by preparing meals, clothing her family and ensuring a clean environment to live in, she is dependent on her husband and his money. Therefore, despite her important role within the family, her worth is essentially dependent on her husband providing her with money so as to fulfil her role, function and purpose. Without her husband, the woman is nothing. Even if a woman opposes the ideology of patriarchy, she is forced to support it through her

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[36] MacKinnon, C. *Are Women Human?* (2006) 142
[37] Dobash, R.E. "Wives: the 'appropriate' victims of marital violence," in *Violence Against Women* (2005) 169

unavoidable dependence on her husband. Thus, any efforts to oppose it will prove fruitless because of her inferior positioning within her home and the greater society.

Hegel sheds light on the patriarchal mode of the home by ascribing the private realm to the female and the public realm to the male: "The brother is the member of the family…enabled to turn towards another sphere, towards what is other than and external to itself, and pass over into consciousness of universality… The sister, however, becomes, or the wife remains, director of the home…"[38] This acknowledges the idea that man's existence is intended to grow and flourish, to acquire knowledge and development. A woman's life has no chance of following a similar course. Her life is predetermined and confined to the home. Hegel signifies the perception that women serve no greater purpose, other than whatever the needs of men require them for.

An age-old custom taught society that whoever purchases something is the rightful owner. This owner is entitled to do with his purchase as he wants. I suggest that this understanding is also adopted when a man has to choose an eligible wife – one which will fit the perfect gender role as defined by society. In certain cultures, particularly in Africa, a man pays a woman's family a bride price in order to make her his bride.[39] This creates an understanding that once the stipend has been paid the man owns that woman. Further, a husband's provision financially to his wife incites the notion that she is one of his many possessions and treated as such. In a study conducted by the Makerere Medical School of Uganda, research showed that the perception was common and clear that a woman was 'bought' into a man's household, which reduced her household decision-making role. The criteria of bride price limited women's independence and perpetuated unequal power relations. The study also showed that the culture of bride price carried severe sexual violence implications.[40] The culture of male dominance is also seen within the South African context of the legislation of the Recognition of Customary Marriages Act. This act permits the cultural tradition granting men the right to be married to multiple wives at the same time.[41] Women, however, are rarely granted the right to choose their own husband, let alone have more than one. Women are subjected to "rigorously strict chastity."[42] Upbringing and union within the private home thus enforce and reinforce levels of distinction and worth. Through culture and the accommodation of the legal system for culture, the worth and dominance of man is clear. The perception that women are mere possessions prevails within the home as female children are less valued than male ones. Simone de Beauvoir states, "It is an act of free generosity on the part of the father to accept the female child; woman gains entrance into such [patriarchal] societies only through a kind of grace."[43] Woman, together with his children, becomes man's property, which defines the minimal boundaries of his estate. As I have already said, possession of something implies the ownership over it. Because woman fall into the "minimal boundaries of his estate" he has power of her. The notion that a woman is a man's possession underscores the testament that a relationship between a man and a woman is political.

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[38] Cahill, A.J. *Rethinking Rape* (2001) 52-53

[39] Businge, G. "Women file petition against bride price in Uganda's Constitutional Court," 11 November 2011, UG Pulse, http://www.ugpulse.com/heritage/women-file-petition-against-bride-price-in-uganda-s-constitutional-court/752/ug.aspx (accessed 14 May 2011)

[40] Kaye, D.K. et al. *Implications of bride price on domestic violence and reproductive health in Wakiso District, Uganda* (2005) http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1831942/ (accessed 10 May 2012)

[41] Theme report: "Gender, culture, religion and traditional practices" http://www.cge.org.za/index.php?option=com_content&view=article&id=56:theme-gender-culture-religion-and-traditional-practices&catid=36:focus-areas&Itemid=59 (accessed 10 May 2012)

[42] Dobash, R.E. "Wives: the 'appropriate' victims of marital violence," in *Violence Against Women* (2005) 169

[43] de Beauvoir, S. *The Second Sex* (1949) 114

The political power within the private life between men and women suggests that many women are either unable or too scared to escape their dismal oppressive environments. The mentality of possession evokes a sense of invincibility within man which can lead him to violent and destructive ways. Domestic violence is a result of this and is an everyday occurrence that has been practiced for years. It continues because of society's allowing man to possess woman. There is an unspoken rule that speaks loudly in society that if abuse happens behind closed doors it should not be spoken of. Such violence is also not considered a serious crime, but rather regarded as a domestic quarrel, or as a husband having to rebuke his wife for something she has wrongly done. Sexual abuse is even more of a taboo topic that absolutely cannot be spoken of in public. Sexual intercourse and anything related to sex is not discussed openly because it is a private matter which has an almost embarrassing connotation to it, as set by dominating societal perceptions. Wife rape and battery are prevalent forms of patriarchal power that often escape fair unbiased conviction.[44] There is a troubling perception of rape at a micro level which is widely shared within society, namely that if a woman is raped by someone she knows it cannot be "that bad". Du Toit argues the trivialisation of rape as simple and not aggravated is an indication of the extent to which rape has become normalised in society.[45] "Simple" rape confirms that a woman's body and her sexual identity never belong to her.[46] The harsh reality and sad truth is that many women who are subjected to familial abuse choose to stay in their violent situations. These women are forced to weigh up the immediate versus long-term effects of their choice to leave. Financial vulnerability usually ties women tightly to their oppressive husbands' reigns. Louise du Toit suggests further incapacitating implications of a woman's financial dependence on her sexually abusive partner. Her dependence is likely to debilitate any chance of successful resistance.[47] Making the decision to flee is even more difficult when there are children who have to be considered. Fleeing violence in the home implies a woman makes choice to leave her husband and end her marriage. The failure of a marriage to meet an ideal standard of matrimony "until death do us part", as has been prescribed and conveyed through history, is reason many women choose to stay in oppressive and abusive situations.[48] Societal perceptions as manipulated by culture and tradition frown at divorce. A common thought is that a woman should "stick it through" and change *her* ways. Social stigmas are a prominent reason women suffer in silence. Although I am fully aware of the complicated decisions a woman is faced with when deciding whether to leave an abusive relationship, I maintain that by remaining in such circumstances she adheres to the social stigmas and actively participates in ensuring the survival and prominence of patriarchy.

Along with cultural practices, forced sex by a husband is often easily justified and defended because of legal, social and religious explanations determining gender status. MacKinnon supports this by suggesting that under law, rape is very difficult to define as a crime when it looks like sex.[49] Forced sex, or rape, is often condoned by culture as a means of punishment of a woman who fails to fit the gender role prescribed to her. Men believe, through historical conditioning and social maintenance, that they have the right and authority to discipline women and to 'put them in their place' in order to assert their manhood. Denying the integrity of a woman's body is at the heart of patriarchy.[50] Sexual abuse within the home is fast becoming a commonality and what often complicates the matter further is that, due to

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[44] Russel, D. "Rape in marriage," in *Violence Against Women* (2005) 98-109
[45] du Toit, L. *A Philosophical Investigation of Rape* (2009) 50
[46] As above, 54
[47] As above, 49
[48] Russel, D. in *Violence Against Women* (2005) 98-109
[49] MacKinnon, C. *Toward a Feminist Theory of the State* (1989) 172
[50] Leatherman, J.L. *Sexual Violence and Armed Conflict* (2011) 146

social conditioning, rape within the home is considered sexual intercourse because it is taking place between a husband and his wife and is therefore considered consensual, impossible to be a crime. As noted by Diana Russel, "The fundamental problem is not that husbands abuse their power, but that they have so much of it in the first place."[51] This abundance of power is guaranteed within the home and is awarded to men by society's gender bias. Louise du Toit describes rape as having the effect to remind women of what they know, namely the sex-specific fragility their selfhood.[52] This reaffirms my earlier reference that woman is man's possession and that man decides and controls a woman's life according to his wants and needs.

Research has shown that societies where a man's authority is not concreted within his home may be inclined to resort to means of aggressive domination to re-establish the subordination of women. Aggression in the form of rape is a powerful weapon of patriarchy. Societies that hold very clear and distinct definitions of the 'masculine' and 'feminine' have also shown to be more likely to rape women because of women's blatant inferiority. Societies with a higher rate of rape appear to place high regard on establishing strong hegemonies and hierarchies. Rape is used to regulate unequal power and so aids the maintenance of the cultural order. Rape is therefore a means to restore the phallocentric nature of a society. The everyday behaviour of these women is controlled by the constant threat of rape. Women live in fear at the ever-looming presence of rape should they "step out of line" or not fit the stereotypical roles prescribed to them by society and men. Rape, therefore, has the symbolic power to shape a society.[53] It also thoroughly serves to balance the gender roles of man and woman within a home, ensuring the man maintains his superior position.

While such research definitely does not exempt it from happening, it has shown that societies with fewer incidents of adult rape are those where male supremacy is completely assured, as in the Muslim society. Perhaps this research cannot be fairly considered though as in Muslim countries rape in marriage is not considered a crime. Irrespective of the rate of rape, I argue that patriarchy is rife in other forms within a Muslim household. The fact that a woman is compelled to wear a burka to cover up her face and body while a man has the freedom to dress as he chooses, suggests the level of equality in such society. It reflects male hierarchy and the power Muslim men have over their women by controlling what they wear. This enforces the political nature of a relationship between husband and wife. By women adhering to such dress codes, they are endorsing the patriarchal element prevalent in this culture. It also exemplifies how culture pardons human rights abuses and how the international society overlooks injustices because of culture. The rights of man are further maintained by culture when families marry their daughters off to adult men. These girls are as young as 12 when they are forced to leave their parents' homes to live with old men they are forced to call husbands. South Sudan has the highest death rate of girls under the age of 15 giving birth as a result of being forced into child marriages.[54]

Societies with a lower rape level are said to be those where women enjoy respect and retain an honoured status in their culture. It is important to note, however, that rape never discriminates. It is a cross-cultural practice that is present in all societies.[55] I also urge the

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[51] Russel, D. "Rape in marriage," in *Violence Against Women* (2005) 101
[52] du Toit, L. *A Philosophical Investigation of Rape* (2009) 5
[53] Seifert, R. "War and Rape: a preliminary analysis," in *Mass Rape* (1994) 57
[54] Information from UN High Commissioner for Human Rights, Navi Pillay, as presented at the 2012 Helen Kanzira Memorial Lecture on the topic "Valuing women as autonomous beings: women's sexual and reproductive health rights". This public lecture was presented by the Centre for Human Rights at the University of Pretoria on 15 May 2012
[55] Discussed broadly in *The Triumph of Ethnic Hatred* (2010) by H.M Zawati

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recognition of the many forms of patriarchy guaranteed to exist in the home through the gendered identity of the household. Forms of patriarchy include discrimination, emotional abuse, financial control and reproductive control.

Having reflected patriarchy as originating within the home, I move the study from patriarchy within the home to the greater society. The next section considers patriarchy and its effects in public, at a macro level of society.

2.3 Patriarchy at a macro level

Walby says although public life appears to have developed it has far from transcended its overruling favour for male hierarchy.[56] The only shift that has occurred has been a shift in the patriarchal strategy from female exclusion to female segregation and subordination.[57] Most of modern society and democracies today pride themselves on human rights and granting freedom for all its citizens. However, I make the claim that women do not fall into the consideration of human rights because of the gender bias of society and the associated identity awarded to them. As I indicated in the section regarding the micro level, the same speaks true at the macro level. Women are regarded inferior beings that can be purchased and possessed. In light of global development Simone de Beauvoir refers in a variety of contexts to a "false emancipation" of women, in that women "have only an empty liberty in a world of which man remains their sole master."[58] MacKinnon relies on this notion when she says that when women are offered the chance to assert equality with men, as is often the case in modern democracies today, they have only two options. The first option is for women to be viewed as if they were men, which she calls the equality rule. MacKinnon argues that this approach embraces the male standard for men and is applied to women. The second option in pursuing equality is to view women as men view women – needing protection, help or indulgence. This approach demands women meet the male standard for women, which is to uphold femininity, as would be defined according to strict patriarchal notions of gender roles.[59] These standards for equality are clearly defined according to a male superiority rubric, demonstrating the prominence and governance of patriarchy in all sectors of society, even in supposed developed societies. The true level of development and gender equality needs to be weighed up against the prevalence of patriarchy in modern democracies today and critically evaluated.

Delving deeper into the notion of false emancipation, the issue of global development and women at a macro level, I turn to Marxist theory as valuable insight and support for my assessment of patriarchal society. The Marxist viewpoint proposes capitalism to be the fundamental cause for gender inequality and patriarchy. Marxist theorist, Friedrich Engels, was of the opinion that prior to the development of commodity-based production outside of the home, no sexual inequality existed between men and women.[60] Although there was a natural division of labour based on physicality and biology, neither sex was regarded higher or more valued than the other. Society and its fields of politics, economics, technology and science have, over the years, developed and progressed at a steady pace. In the household, however, tasks and responsibilities have remained largely constant and unchanged. Needs, demands and duties within the home are mainly the same as they were in bygone years. Engels attributes the increased production outside of the home, which creates a surplus of

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[56] Baxter, J. "Families and Households" in *Society and Gender* (1992) 109-110
[57] As above
[58] de Beauvoir, S. *The Second Sex* (1949) 128
[59] MacKinnon, C. *Feminism Unmodified* (1987) 71
[60] Baxter, J. in *Society and Gender* (1992) 106

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wealth, as a prominent reason for the unequal value between women and men; for men being higher regarded than women because they assume the role outside of the undeveloped household. I base false emancipation and development on such theory as it offers reason why men are thought of as more developed and more reasoned than women. Men's power over women is therefore rationalised and upheld.

In light of the debate over global development and women's freedom, French feminist Christine Delphy also critiqued the capitalist societies of today.[61] She maintained there are two modes of production within any capitalist society, namely an industrial mode and a familial mode. The industrial mode, she said, leads to the capitalist oppression of women, while the familial mode leads to the patriarchal oppression of women.[62] In both modes men claim seats of power and control, suppressing women. The oppression women are subjected to in both modes is deeply rooted in the historical conditioning that men are expected to dominate women. Capitalism can therefore be branded as one of the many sectors constructed and controlled by patriarchy.

Religion, education and the media are other societal systems which play a crucial role in the preservation and support of patriarchy. These systems encourage specific roles to be assumed by women and men, so as to fit the perceptions of female insignificance and male hierarchy. These systems have been conditioned by history's categorisation of women and men into very specific gendered identities. Religion testifies women were made from men,[63] making way for patriarchal interpretation that women are less important than men. When women are encouraged to acquire a tertiary education, it is often so that they have something to fall back on or do part-time, not so as to pursue a successful career. Communal conversations often posit disfavour in women assuming better business positions than their husbands or partners. An inherent belief creeps through offices of high-rise buildings that men should be the major breadwinners of a family, that it is a man who should be paving the way in the professional world and that women should not neglect the home by spending time in the office. Women have also been encouraged, when embarking on tertiary education, to enter into fields such as teaching, nursing or secretarial assistance – all fields which adhere to the female stereotyped identity of care-giver to the young, nurturer and second-hand to her boss who would naturally, unquestioningly, be male. I view the media as regularly depicting women in a patriarchal light – reflecting man's desire and expectation of what women should look like and how they should behave. Reality television has taken on a whole new level of casting women into specific gendered roles. Pornography is an extreme form of patriarchy, objectifying women by displaying them as sex-symbols. Even if women go freely into such a "profession" I accuse them of supporting female oppression and patriarchy because they subscribe to specific male-defined gender roles and sex-symbol identities through their pornographic characters and representations. Andrea Dworkin[64] views pornography as explicitly portraying women solely as sexual objects created for the consumption of masculine desire. A further problem with this patriarchal medium is that it insists that the women it portrays voluntarily choose such a status, and that in fact, most women make identical choices.[65] Pornography, as a medium of entertainment, normalises sexual domination. Considering sexual domination and even abuse as entertainment exposes the

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[61] Baxter, J. in *Society and Gender* (1992) 109-110

[62] As above, 109-110

[63] I refer to the Christian understanding of the Creation as an example of the discussed: "So the Lord took one of the man's ribs…made a woman from the rib He had taken out of man, and He brought her to him." Taken from Genesis 2, The Holy Bible (2006)

[64] Dworkin in Cahill, A.J. *Rethinking Rape* (2001) 36-47

[65] Cahill, A.J. *Rethinking Rape* (2001) 41

warped mind-set of society. Pornography displays women as a simple means to men's sexual desires, wants and needs. Pornography, as seen with wife rape, evokes the societal perception that sex is what a woman is for. MacKinnon studies pornography as a means of turning sexual inequality into sexuality and male dominance into the sex difference,[66] endorsing societal perceptions of gender identity. Pornography, according to MacKinnon, makes inequality into sex, which makes it enjoyable, and into gender, which makes it seem natural.[67] This is another display of how patriarchy seeps into every sector of society – even entertainment – making it such a part of our daily lives, making it normal and therefore acceptable.

Patriarchy's nourishment within all the above-mentioned sections directs my analysis to an inevitability within the patriarchal construct of society, namely that of political assertion and gender violence. Patriarchal violence towards women is perhaps more evident at a macro level than at a micro level, only because it is not done behind the doors of the home. As I conferred earlier in this chapter's reflection within the home environment, rape is a means of asserting and affirming power. Because of the significant amount of power, I assert the issue of rape, within the home as well as outside of it on a macro level, be depicted as a political issue. When political certainty is therefore compromised, men will turn to such weapons as rape in an attempt of re-ordering, just as they turn to it when their position within their homes is compromised. Much of Africa is in a permanent political battle of leadership and governance. Together with these state problems, these countries also have a very high rate of sexual violence against women. It is with this in mind that I perceive the political battles of patriarchy as being closely connected to state level politics. If we consider rape's primary function as a means to assert power and control over another person, it cannot be disputed that it is a political weapon of authority. Susan Brownmiller defines rape as "a deliberate, hostile, violent act of degradation and possession on the part of the would-be conqueror, designed to intimidate and inspire fear."[68] The politically fragile nature of countries like the Democratic Republic of Congo (DRC) has shown to have very high rape rate. Research suggests three out of four women in North Kivu, Eastern DRC, have been raped.[69] Fuelling the horror of rape, and the extremity of power, is that in many of these cases, women are forced to endure extreme torture, such as irreparable fistulae; mutilation and death. According to a 2011 study published in the American Journal of Public Health, 1, 500 women were raped every day in the Congo.[70] Rape in such politically uncertain times can be seen as an attempt to establish some form of authority and supremacy, just as it serves to reaffirm power in the home and in society. I discuss rape at a macro level again in Chapter four. I focus on rape as a weapon of war and as a political agent.

2.4 The integration of private and public life

My attempts within this chapter have been to show the prominent level of patriarchy in society at both the micro and macro levels and the blatant presence of male domination at these levels. Patriarchal terrorism is nurtured through history, justified by religion and culture and pardoned by social stigma. Women are incapable of escaping the domination of men both

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[66] MacKinnon, C. *Feminism Unmodified* (1987) 3

[67] As above, 3

[68] Cahill, A.J. *Rethinking Rape* (2001) 19

[69] 'Women targeted or affected by armed conflict: what role for military peacekeepers? Conference, Wilton Park Sussex, U.K. May 27-29 2008, http://www.unifem.org/attachments/events/WiltonParkConference_SummaryReport_200805_1.pdf (accessed on 2 February 2012)

[70] 'More mass rapes in DRC as army runs amok,' 24 June 2011, http://mg.co.za/article/2011-06-24-more-mass-rapes-in-drc-as-army-runs-amok (accessed on 2 February 2012)

within the home and outside of it. Thomas Hobbes rightfully regarded the family to not only be under the power of the sovereign, but also to be a microcosm of it.[71] The patriarchal presence at the micro and macro levels of society proves this to be true.

Public life and social opinion has shown to be integral in keeping women in unhealthy situations. Society's stigma is a determinant when it comes to women considering fleeing the violent relationships they face daily in their homes. Common opinions society holds of a woman who is in an unfavourable environment is that she must have done something wrong, or that she did not adequately fit the role prescribed to her by society, or that she was asking to be in the position she is in. Emotions of shame and guilt, as encouraged by her community, are often worse than the fear and abuse she endures and so women often opt to remain in their situations.

The culture of a society affects and determines the behaviour of women and men at a micro and macro level. As seen in this chapter, a family's culture often determines the relationships within a household and also affects the orderings of a community. Social stigma is a powerful reason for keeping women in unfavourable conditions. Conservative societies hold a woman's chastity and honour among the most highly regarded values. Many women, for this reason, choose to remain silent about the horrendous abuses they have endured. Women who do speak out about their rape are faced with a debilitating stigma placed upon them by society. Women are accused of being promiscuous and asking to have been raped. As reports from the DRC show, women who have been raped are often rejected by their communities and husbands no longer want anything to do with them, portraying women as men's possessions. These women are left with a lack of adequate support structures and become even more vulnerable than before.[72] When women are raped in Muslim societies, many victims believe they should be punished to wash away the shame, others even ask the men in their families to kill them.[73] This signifies how women have also become conditioned to the patriarchal ideology of society.

Through the analysis of society at a micro and macro level, I hoped to show the presence of patriarchy in all sectors of society. Society's perceptions enable male hierarchy to exist. The power a man has over a woman, whether it is a husband over a wife, or a man's power over an unknown victim, shows the political nature which has come to be considered a norm in society. Through the rest of the study I will continue assessing society as constructed by patriarchy. Rape as a weapon of patriarchy will also be further discussed. Within the next chapter of chapter three I discuss the difficulty in proving gender abuse under a patriarchal-induced international legal system.

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[71] Newey, G. "Not a women hater: Hobbes's critique of patriarchy" in *The Politics of Gender* (2010) 11
[72] MacKinnon, C. in "Sovereignty, subjectivity and human rights: a gender sketch," in *The Politics of Gender* (2010) 150
[73] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 165

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Chapter 3 – International law furthers patriarchy

"Writing laws is easy, but governing is difficult."

- Leo Tolstoy, *War and Peace*

In this chapter, I set out to show how international law has failed to adhere to Hegel's theory of society, by not progressing into a higher mode of itself, but remaining stagnant and conditioned to patriarchy. I argue that international law is an agent of patriarchy and as such, becomes ineffective in the quest to right the wrongs done to women. Through my critique, I suggest international law contributes poorly to the progression of society away from patriarchy, into a higher mode of itself.

I endeavour to bridge the previous chapter's analysis to this chapter in key areas. Perception, hierarchy, power and politics are four concepts that will guide this chapter's course. These key areas affect the analysis of the international legal system as they did the previous chapter's analysis of private and public life. I make the claim that because the male hierarchy is ever-present in the construction and development of international law, women appear to be moulded in a very specific way. As I considered the denial of women's power at a micro and macro level of society in the previous chapter, I narrow the scope of their denial of power to within the legal system. Just as the relationship between women and men in the home is political because of men's dominance over women, I hope to show the relationship between women and the legal system as political. The international legal system forms part of the power play whereby men reign victoriously.

In the first part of this chapter, I discuss some of the international conventions pertaining to women, their rights and sexual violence. My interpretation of these conventions is according to a strong feminist theory and relies heavily on the work of MacKinnon for support. I suggest patriarchy is deeply rooted within the subtext of the discussed conventions, making their effect insignificant and the rights of women largely inconsequential. This corresponds to chapter two's analysis of the micro and macro levels of society and to the overall objective of the study, namely to show the prominent presence of patriarchy in society.

3.1 International law pertaining to women

Despite recent attention to gender equality and women's rights, I consider the international legal system has undergone a similar process of false emancipation, as noted by de Beauvoir and the liberty of women.[74] I propose this false emancipation of the international legal system because it is constructed by patriarchal hands. Despite legislation regarding women and the proclamation of their rights, the realisation of justice is largely a fallacy because of the powerful prominence of patriarchy within the theory and practice of international law. This correlates to my argument previously, in Chapter two, of the fallacy of global development and my disputation that society is not progressing into a higher form of itself as theorised by Hegel. Assessment of the following conventions reflects this.

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) was the first international convention which solely focused on women. It was adopted by the UN General Assembly in 1979. CEDAW intended to draw attention to the discrimination of women at predominantly the macro levels of society, such as the political,

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[74] de Beauvoir, S. *The Second Sex* (1949) 128

economic and civil fields.[75] In its definition of discrimination, CEDAW states it opposes any distinction, exclusion or restriction against women on the basis of sex. The patriarchal undertones of the convention are revealed in the statement that CEDAW opposes discrimination against women, "irrespective of their marital status."[76] The legal perception and gender bias that women should marry and raise a family, thus fitting a specific function and role, are reflected. While CEDAW is the only human rights convention affirming the reproductive rights of women, it also recognises the role of culture and tradition as influences of family relations. As discussed in the previous chapter, culture is a main agent of patriarchy which justifies not only a woman's inferiority but also extreme violence against her.

Recognising the fact that sexual violence and abuse against women can lead to international issues of peace and security, the UN body of international peace, the Security Council (UNSC), adopted Resolution 1325 in 2000. Resolution 1325 specifically deals with women in armed conflict. UNSC 1325 does recognise sexual violence committed against women during times of war and calls for the increased incorporation of women into the peace-process. It however fails to address perpetrators or highlight why such crimes are committed in the first place in times of conflict. It avoids tackling the root cause of this political problem of power and domination. Ruth Seifert, in her article "War and Rape: a preliminary analysis," argues that only when sexual violence is regarded as a political event, affecting international peace and security and made public as such, "can its causes and contexts be probed and strategies to overcome it be considered."[77] It is difficult to believe that sexual violence is not regarded a political issue, considering the exertion of power involved. The failure to recognise sexual violence in armed conflict for what it essentially is demands to question so-called global development and the extent of a woman's emancipation. Resolution 1325(2000) stresses the need for an overall greater percentage of women within the international sector. It recognises and accepts their importance at a decision-making level and the effective contribution they would make as special representatives and envoys. This reminds us of the lack of women in public sectors of society, such as the international level of politics; and the prescribed gender roles of a patriarchal society. The resolution calls for gender perspective; however, the definition of gender perspective has negative implications. It is imperative to question who defines and casts perspective on gender. If it is done according to a patriarchal gaze, the calling for gender perspective could do more harm than good as a woman's identity under this gaze is inferior and insignificant. This resolution, for example, calls for the need to incorporate gender perspective into peace-keeping operations. Such an order could in fact cause grave damage to women, by its patriarchal perception of gender. It acknowledges the need for gender-mainstreaming within the UN and also among Member States, however, I question the efficacy and significance of these efforts. The resolution invites the Secretary General to "carry out a study on the impact of armed conflict on women and girls, the role of women in peace-building and the gender dimensions of peace processes and conflict resolution."[78] One can find further fault in the fact that the focus of this resolution is ultimately on the impact armed conflict has on women rather than on the actual reason why it exists or how the international peace and security body aims to combat it. It also fails to acknowledge the need to re-establish concepts such as gender and mainstreaming.

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[75] Convention on the Elimination of All Forms of Discrimination Against Women, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed on 10 January 2012)
[76] CEDAW text, http://www.un.org/womenwatch/daw/cedaw/cedaw.htm (accessed on 10 January 2012)
[77] Stiglmayer, A. *Mass Rape* (1994) 68
[78] Women and Peace and Security, UNSC resolution 1325(2000), 13 October 2000, http://www.un.org/events/res_1325e.pdf (accessed on 12 January 2012)

In 2008 the UNSC adopted a follow-up to 1325 (2000) in resolution 1820. Resolution 1820[79] was adopted as a result of the weak prevention of sexual violence and the inadequate implementation of previous calls for the protection of women's rights up to that point. Such inadequate implementation can, of course, be attributed to the hindering presence of patriarchy within society and more specifically the international legal system. Eventually, in Resolution 1820, the impediment sexual violence has on the state of international peace and security is recognised. Here, for the first time, sexual violence is discussed as unacceptable and preventable, rather than as an inevitable feature of conflict. It regards sexual violence as having the potential to be a war crime, a crime against humanity and an act of genocide. This resolution also addresses the need for the protection of women against parties in armed conflict.[80] A key area of attention highlighted in this resolution is the demand for "training troops on the categorical prohibition of all forms of sexual violence,"[81] so that troops are able to recognise, prevent and respond to sexual violence. It also noted the importance to debunk myths that fuel sexual violence, thus acknowledging the hinges culture has on justice. It calls on Member States to ensure all sexual violence victims have equal protection under the law and equal access to justice and for more women to be appointed peace-keepers and police. However, such calls are subject to critique, because while in theory they may sound good, in practice their realisation is debateable. Even if more women enter such specified fields, they will be trained within an institution constructed by patriarchy. I hold the opinion that such training will endorse specific perceptions of women and the functions and roles they are expected to assume. Member States are also constructed by and conditioned to patriarchy, therefore efficacy, protection and justice will always be compromised in order to ensure the maintenance of patriarchy. While I acknowledge value in these calls and the recognition that sexual violence affects international peace and security, I am concerned of the failure to tackle the root cause of the problem – patriarchy.

UNSC resolution 1960 (2010)[82] reaffirms all previous resolutions addressing the rights of women and sexual violence. It discusses sexual violence as a tactic of war and requests information on parties suspected of sexual violence during armed conflict to be submitted to the UNSC. It expresses concern over the slow progress made in preventing sexual violence during armed conflict. By highlighting the importance of ending impunity in order for states to recover, resolution 1960 calls on parties to commit themselves to combatting sexual violence. It also calls the Secretary-General to strengthen policies on zero tolerance for abuse by all parties, including UN personnel.[83] The international body again falls into a trap by only addressing the combatting of sexual violence and not the actual reason and cause for it. The slow progress of prevention of sexual violence reflects society's general progressive hindrance into Hegel's expectation of a higher mode of itself.

I do not discredit these conventions and their construction to benefit and protect women. However, I am forced to question their full effectiveness in that none address the root of the problem. Until the root of the problem is addressed, the end of sexual violence and true justice is a far-off ideal. MacKinnon argues that it is the very manner in which abuse against women is handled by the international legal system that is the underlying problem to this

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[79] Women and Peace and Security, UNSC resolution 1820(2008), 19 June 2008, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement (accessed on 12 January 2012)
[80] UNSC resolution 1820(2008) http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N08/391/44/PDF/N0839144.pdf?OpenElement (accessed on 12 January 2012)
[81] As above
[82] Women, Peace and Security, UNSC resolution 1960(2010), 16 December 2010, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/698/34/PDF/N1069834.pdf?OpenElement (accessed on 12 January 2012)
[83] As above

battle against patriarchy.[84] According to MacKinnon, law enforcement is at fault for viewing sexual violence as an issue of sex. She underscores rape is a crime of violence, not sexuality. Sexual violence is not an abuse of sexuality but of power and should be treated as such.[85] As previously reflected, the politics centred on the abuse of women is a means to strip women of any hint of power and control, even of her own body, so as to endorse the patriarchal ideology of society and emphasize man's authority. Just as women are stripped from the slightest power and control in the home and workplace, so are women stripped of any authority over the crimes and injustice they endure under the international legal system.

In the second part of the chapter I discuss the international legal system in correlation with daily life, in key areas of perception, hierarchy, power and politics. I aim to consider reasons why domestic abuse and sexual violence continue and why the prosecution of such crimes does not correlate with the number and severity of women abused and raped.

3.2 Daily life and the law

Even at the international human rights level, abuse against women is regularly dismissed as a cultural phenomenon as highlighted in the previous section. Women abuse is also often regarded as a domestic criminal issue which cannot be dealt with at an international level. The international legal system rarely views violence against women as a threat to international peace and security. It rather turns a blind eye to a prevailing issue that persists in every country across the world every day. For most women in society, the law has very little to do with their everyday lives,[86] even when their days are comprised of abuse and sexual violence. I voiced in the previous section of the chapter the strong patriarchal tone of the international legal system. MacKinnnon too argues that those who are able to access the law and make it work in their favour are inevitably white upper-class men.[87] She says Human Rights Law essentially defines women as subhuman because they do not fit into the male mould established within the international legal system.[88]

I continue this notion that the international legal system is an agent of patriarchy and as a result, is completely inaccessible to most women. Here I show how a weapon of patriarchy such as rape, which is used at both the micro and macro levels of society, can be and is overlooked by the legal system because of the prevalence of patriarchy in the interpretation of the law and of the crime. Fuelling the power and prominence of patriarchy in the international legal systems is the same fuel that fuels the rest of society. I also aim to highlight the faults of the international legal system and what it lacks. Louise du Toit suggestions correspond with my focus.[89] She says rape law contains a performative paradox or contradiction, which works to the detriment of women. It presupposes what it undermines, namely women's full-blown sexual agency.[90] du Toit questions why rape is not simply defined as "forced sexual intercourse", considering rape law to encode and reinforce a male-dominated, male-biased and one-sided view of "normal heterosexual sex as such."[91] Rape law, according to Du Toit, serves to normalise male sexual agency as assertive, primary and active and female sexual

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[84] MacKinnon, C. *Feminism Unmodified* (1987) 85
[85] MacKinnon, C. *Feminism Unmodified* (1987) 85
[86] MacKinnon, C. *Women's lives. Men's laws* (2005) 32
[87] As above
[88] MacKinnon, C. *Are Women Human?* (2006) 142
[89] See du Toit, L. "The conditions of consent" in Hunter, R. *Choice and Consent* (2009) 58-73
[90] du Toit, L. "The conditions of consent" in *Choice and Consent* (2009) 59
[91] As above, 61

agency as secondary, passive and responsive.[92] I explore these suggestions further in the rest of this chapter.

Feminist critique, as already indicated, argues that the structures of international law-making and the content of international law are sexist. The very conceptualization of law serves as an instrument of oppression and domination, maintaining social and power relations.[93] It privileges men while largely ignoring women's interests, portraying women as either oppressed victims, incapable of decision-making, or as helpless objects, all the while reaffirming the function and role of women as the inferior other.

According to MacKinnon, law has very little idea what women face, think and feel on a daily basis.[94] Domestic violence is also not thought official international "business" and is often condoned. Men, as well as women, interpret sexual violence through a patriarchal gaze. It is man's way (and right) of showing "who's boss". Women often choose not to report their rape because they feel the social stigma will be worse than the actual rape. Men are often incapable of making a clear differentiation between sex and rape which is as a direct result of the overwhelming amount of power awarded to them. Culture and context feature as frequently considered reasons for the abuse of women which suggests justification – or at least trivialises the horrendous crimes committed. Cultural preference has proved to outweigh the protection of women from violent situations.

Gender roles hinder a victim's ability to recover. Apart from women falling into the patriarchal trap of social stigmatisation, reporting their rape also puts them in position of further victimisation because of the strong patriarchal subtext of the legal system. Victims fear, and rightfully so, that the legal system will not consider the attack from their point-of-view because of the gender perception awarded to women.[95] Sex is what a woman is meant for,[96] so rape is rarely recognised as forced intercourse, rather there is often accusation that women were asking for it or that they deserved it for not doing what was expected of them. Women are accused of promiscuity and made to feel at fault for being raped. Women that are raped by strangers are interrogated about where they were prior to the attack and what they were wearing – implying their choices had inevitable implications or that they were "asking for it" by their revealing attire. The previous Commissioner of Police in South Africa, Jackie Selebi said: "Most South Africa women who report rape are lying."[97] MacKinnon in her argument against the legal system says there is a built-in patriarchal bias which fails to protect women effectively.[98] In *Women's Lives. Men's Laws* she says the laws that are applied to women are not written by women and are definitely not based on their experiences. Law, she says, fails to consider women's interests when creating or applying it.[99] Furthermore, law has very specific factors determining what constitutes rape. If an attack does not fit into that frame it is not considered illegal.[100]

On the domestic front, if a raped woman chooses to leave the abusive confines of her relationship, apart from her willingly sacrificing her financial dependency, if she tries to gain

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[92] du Toit, L. "The conditions of consent" in *Choice and Consent* (2009) 61
[93] Lee, Y-L. *The Politics of Gender* (2010) 169, 174
[94] MacKinnon, C. *Women's lives. Men's laws* (2005) 33
[95] MacKinnon, C. *Feminism Unmodified* (1987) 88
[96] MacKinnon, C. *Women's Lives. Men's Laws* 35
[97] du Toit, L. *A Philosophical Investigation of Rape* (2009) 39
[98] MacKinnon, C. in *The Politics of Gender*, 169
[99] MacKinnon, C. *Women's lives. Men's laws* (2005) 33
[100] As above, 35

solace in the legal system she may realise the futility of her attempt. Proving she was raped by her husband is no easy task. How does a woman prove that it was not consensual after the incident occurred? Besides, it is a woman's duty to ensure her husband is happily satisfied, who is she to deny him of this? A woman's daily life has rules of its own which need to be followed. These rules directly affect her well-being. It is therefore more important for her to adhere to what the community permits, encourages and expects from her than take her complaint to the court.[101] In addition to communal rules, MacKinnon regards society to perceive sex as its being a sphere unto itself, possessing its own rules, which are not determined by law,[102] but rather by male supremacy and desires. Considering all these factors as reasons a woman chooses to remain silent of her rape, she may be even further dissuaded by the fact that the domain of the international legal system is contrary to the intimate details of her body.

Highlighting the overwhelming power of patriarchy and the blatant gender bias, in most Muslim countries rape in marriage is not considered a crime. Islamic lawyers in Malaysia noted that women are subject to their husbands' desires and may only refuse to have sex with them when the husbands have sexually transmitted diseases.[103] In Sudan, under national law, rape is not recognised as a crime and if action is to be taken, the law requires four male witnesses to corroborate the rape charge.[104]

This reinforces a key argument of the study, namely that a fundamental problem in the abuse of women is not a man's abuse of power, but rather that he has too much of power in the first place.[105] As a result of the power awarded to men, women are not viewed as social beings and therefore fall short of being recognised within the domain of human rights law.[106] Societal perceptions of gender roles filter into the legal system, which revels in male hierarchy, resulting in a political struggle between a woman not only with her rapist, but also with the legal system supposed to protect her.

3.3 What international law lacks and needs

The international legal system can thus be argued as being outmoded, along with the rest of society, because it has failed to progress into a higher mode of itself, remaining conditioned to patriarchy. There is an inherent patriarchal conservatism within legal institutions which serves as a major reason for the law's underlying bias, suggesting that law has and will continue to remain stagnant in its outlook. As Naffine and Owen argue, "law has always assumed and constituted a subject who is deemed to act in a certain way."[107]

While the feminist critique agrees in the many considerations that are needed when assessing sexual violence, it argues that international law should not lose sight of the act itself, namely the crime of rape.[108] The international legal system needs to move away from the belief that because sex is a typically private affair, it must be consensual.[109] By reflecting feminist critique I aimed to highlight the importance for international law to acknowledge the

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[101] MacKinnon, C. *Women's lives. Men's laws* (2005), 34
[102] MacKinnon, C. *Women's lives. Men's laws* (2005) 35
[103] Kent, J. "Malaysian rape law provokes storm," BBC News, 23 August 2004, http://news.bbc.co.uk/2/hi/asia-pacific/3592740.stm (accessed on 30 January 2012)
[104] Lee, Y-L. *The Politics of Gender* (2010) 150
[105] Russel, D. in *Violence Against Women* (2005) 101
[106] MacKinnon, C. *Are Women Human?* (2006) 148
[107] Lee, Y-L. *The Politics of Gender* (2010) 164
[108] As above, 135
[109] MacKinnon, C. *Women's Lives. Men's Laws* (2005) 35

patriarchal perceptions of gender and the expected roles of a group which exist within its system. Despite the already over-burdened judicial institutions, Fiona de Londras argues that "intersectional analysis must be personal, in-depth, expansive and non-reductionist."[110] Women cannot continue to be grouped into one large group of generalisations. Their cases need to be heard and considered from their individual point-of-views and positions. Women's cases need to be remedied without a patriarchal gaze having effect.

It is with the notion that men possess too much power that, in the next chapter, I embark on a further analysis. Chapter four focuses on rape as a means of asserting power and attaining patriarchal ends. Rape is discussed as a weapon of patriarchy both within the home and on the battlefields of war. I aim to show how rape is simply a means to an end – an end signifying male hierarchy and the political triumph of men. I concentrate on the power of patriarchy through its weapon of rape which is used in war and in everyday scenarios, in war and peace.

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[110] Lee, Y-L. *The Politics of Gender* (2010) 138

Chapter 4 – Rape as a weapon of patriarchy

"What is power? … Power is a word the meaning of which we do not understand."

- Leo Tolstoy, *War and Peace*

In this chapter I look at the destructive implications of patriarchy and the inevitability of possessing too much power. As the study has reflected society's conditioning according to history, here I re-emphasize that excess power is awarded to men through historical conditioning, which is maintained within societal sectors. As a result, patriarchal power is so concreted a man is able to take what he wants when he wants it. This has given birth to a culture of entitlement among men. I look at this culture of entitlement and the inevitability of a variety of contexts where the sole objective is to attain and assert as much patriarchal power as possible. I reflect the necessity to not only uphold and ensure patriarchy's presence in society, but to ensure its dominance at all times. When patriarchy's dominance is threatened, drastic means are resorted to. The continuous affirmation and enforcement of patriarchal power breeds a society based on women's fear and men's destructive ways. In this chapter I imply that because of patriarchy and the power it takes by force, rape has become an inevitable certainty.

My argument within chapter four relies on the previous two chapters' reflection of gender roles and the blurred view of the difference between forced rape and consensual sex. I consider gender bias an important component in the analysis of rape as a preferred weapon of patriarchy. In *Toward a Feminist Theory of the State*, MacKinnon defines the societal perception of sex as sadomasochistic because of the view that rape and consensual sex are ultimately one in the same thing.[111] Rape is intercourse with force and without consent. However, within the sadomasochistic view, MacKinnon argues that sexual intercourse with force (rape) becomes consensual through men's forceful dominance and women's fearful submission.[112] This evokes the sense of entitlement possessed by men – that it is their right to get what they want and when it is not given freely, to take it anyway.

As I have already briefly discussed in the previous two chapters, rape happens everywhere and does not discriminate. It is a cross-cultural practice that is present in all societies.[113] It happens every day between husband and wife, between a woman and a family member or friend, and between a woman and a complete stranger. It is the constant threat of rape in the bedroom, in a place of supposed safety, on the way to fetch water, or walking home from school that makes women live their days in absolute and constant fear.

I echo my voice in the previous chapter as well as MacKinnon's by regarding sexual violence not as an abuse of sexuality, but as an abuse of power.[114] Within the home, rape is a man's abuse of power over his wife. The psychology behind the rape of a wife is that man invades a woman's primary purpose and takes it by force. This suggests that even a woman's purpose of sex and of life itself is controlled by the man in her life. In times of armed conflict, apart from rape being a means of asserting power over women, it is also a means for man to show his authority and greater power over his male opponent because he invades and takes from another man's possessions. Rape provides a significant means of attaining war's objective, namely to assume as much power over the enemy as possible. In all contexts, sexual violence

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[111] MacKinnon, C. *Towards a Feminist Theory of the State* (1989) 172
[112] As above
[113] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010)
[114] MacKinnon, C. *Feminism Unmodified* (1987) 85

against women proves to be strongly connected to militarism because "the power over an 'other' provides the common thread between military campaigns and assaults against women."[115] Because a man is able to get what he wants by way of power over an other, regardless of its context, rape is in essence, a war-related crime. It is with this fundamental abuse of power in mind that the legacy of impunity for war-time rape is peace-time rape is affirmed and further discussed in this chapter.

In the following sections of the chapter I discuss instances of rape. These instances include rape within a society at peace as well as rape during times of war. I also reflect South Africa's political history and suggest because the faults of the past were not addressed or remedied, rape continues at an alarming rate. The reflection of the country's history sticks to the theme of contradicting the progression of society as theorised by Hegel. The following analyses confirm that while the context may differ, the source and purpose of rape is largely the same, implying that war-time rape is peace-time rape.

4.1 A weapon in peace

Taking into account the analysis of Chapter two, I turn to a South African incident to summarise and reflect the themes already discussed. This incident reinforces the notion that a woman is an inferior being to a man and that her sexuality is, socially, a thing that never belongs to her and can be taken by man at his will.[116] This reinforces a woman's gender definition as socially stigmatic. Because a man's power has caused his view on sex to be blurred, he has no idea of the meaning of the act to the raped woman. To men it is merely sex. A woman's view of it is irrelevant and ignored. This incident displays rape as an extreme form of patriarchy. Rape is a man's entitlement because of his excess power and position within his home and society.

A 2012 story consuming South Africa's headlines displays this chapter's argument of rape as a weapon of patriarchy, and more specifically, rape as a weapon of patriarchy in peace or in ordinary situations. Eight men aged between 13 and 20 gang-raped a 17 year old girl in Soweto. They also filmed the incident which went viral on the internet. The community's regard for this heinous crime depicts the societal perceptions of gender roles and sex. Apart from the majority of the community's unwillingness to discuss the event, those that did, did not regard it as rape, but rather suggested the girl was asking for it. They said the girl was known in the community as "Jackpot" because of her willingness to exchange sex for food and money.[117] This is a clear example of man's sense of entitlement. Men aged as young as 13 possess the opinion that they have the power and therefore entitlement to invade another person's being and take from it what he wants. It evokes Chapter two's hypothesis that patriarchy originates within the home, breeding a patriarchal household whereby boy children are moulded into the belief that they are entitled as the superior gender. This belief is carried out of the home, into the rest of society. This case also reflects society's regard for women and its view that sex is a taboo matter that should not be discussed in public. The girl's supposed promiscuity justifies the incident for the community. Because of her reputation the community does not consider it forced. The case also reflects the societal opinion that it is a man's right to take sex from a woman. This case clearly displays how such despicable events

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[115] MacKinnon, C. in Lee, Y-L. *The Politics of Gender* (2010) 160
[116] MacKinnon, C. *Toward a Feminist Theory of the State* (1989) 172
[117] Ndlovu, T. "Residents refuse to speak on rape video," 23 April 2012, http://www.ewn.co.za/Story.aspx?Id=86980
(accessed on 26 April 2012)

happen in a society because of gender perceptions and man's possession of power within society.

Rape within the home is also a clear reflection of a woman's inferior status whose sexuality does not belong to her, but her partner. He can do with it as he wants because society tells him she is inferior to him; because society awards him abundantly with power. Rape in a relationship is often a man's exertion of power because of a woman's noncompliance with gender requirements as determined by patriarchal society. Studies show nearly all such incidents occur either in the bedroom or the kitchen.[118] Such rape is a man's means of conveying discipline, dominance and possession over a woman.

MacKinnon resorts to state politics when trying to find answers in her analyses of instances as discussed above, scenarios of rape within a so-called ordinary society. She proposes that perhaps nothing serious is done about everyday rape, which occurs everywhere across the globe, because rape serves a greater purpose of power than just a single man's power over a single woman. MacKinnon suggests everyday rape in peacetime is a way to keep state power out of the hands of any weaker party. Perhaps permitting rape of women by men in the everyday context is a device of internal order within states, of defining hierarchy of men over women and other men, just as is done between states.[119] It is with this notion of political power that the analysis leads to a reflection of the favoured weapon of rape in war.

4.2 A weapon in war

In Chapter three, I dealt with the international legal system's perception that sexual violence is a by-product of war; however, rape has proven to be a systematic weapon used to achieve very specific political goals. Hilmi M. Zawati describes war rape as "one of the most important components of the male war strategy."[120] Rape in war stretches beyond the robbery of a woman's person to the breakdown of the men of the raped women. Rape has been used in wars throughout history as a successful means of assertion and power over the male opponent. Rape in war has both direct and symbolic purpose. It causes immediate physical damage to women, sometimes even death; it emaciates the opponent of his masculinity, power and worth because of his incapability to protect what belongs to him; it conveys a message to the community of the raped women that the community is infected by the enemy, even more so when pregnancy results; and it serves to destroy a people. The psychological damage holds enough power to "destroy the family and the fabric of society."[121] It is an effective propaganda tool affirming total victory over the enemy. The rape of women is a symbolic rape of the community.[122] It is a potent weapon which simultaneously destroys the enemy and everything that belongs to him.

Feminist thought depicts soldiers that rape as responding to a social pressure to demonstrate their superiority over their opponents and victims.[123] Wartime rape is a guaranteed means of exercising male power and domination. The rape of other men's women is a way of saying, "What is yours is now mine." MacKinnon says this institutionalises the rulership of some men over other men. Its function does not stop there, however, as it also establishes rulership

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[118] MacKinnon, C. *Toward a Feminist Theory of the State* (1989) 178
[119] MacKinnon, C. *Are Women Human?* (2006) 171
[120] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 145
[121] Bassiouni, M.C. *Sexual Violence* (1996) 6
[122] Stiglmayer, A. *Mass Rape* (1994) 63
[123] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 150

of all men over all women.[124] A few references below illustrate this notion of dominant power and rulership, as well as MacKinnon's notions of political power and domination between warring parties.

In WWI mass rape was conducted by German troops on French and Belgium women, however, the Allies[125] chose not to prosecute these crimes in the interest of political diplomacy in Europe.[126] This was a typical patriarchal reaction to a typical patriarchal crime, not concerning the many women who had to endure the consequences of a man's war. In WWII, Russian troops raped approximately two million German women as payback for the Nazi soldiers' rape of Russian women.[127] The view that women are mere possessions which can be disposed of or used in order to convey greater male power over the male opponent is displayed. In an account of the war in Vietnam, US soldiers said raping Vietnamese women was appealing because possessing complete power over the female body brought great pleasure.[128]

Rape in war has also served as a means to destroy the national identity of a party in an ethno-national agenda. This was evident in the Rwandan genocide where Tutsi women faced vicious attack by Hutu soldiers because of their ethnicity. In most of the rape reports of the Rwandan Genocide, cases revealed that along with being raped, Tutsi women were viciously mutilated before being killed.[129] Such violence was committed to ensure the termination of an entire people. This signifies how women are used by a group of men to achieve political ends. A woman's identity as reproducer was target and destroyed in the horrific genocide that was Rwanda.

Rape served a similar purpose in the war between Serbia and Bosnia-Herzegovina where the latter's Muslim women were savagely attacked because of their ethnic and religious identity. Wanting to grow their numbers, the Serbs deliberately and systematically used rape as a weapon of mass destruction against Bosnian Muslims. Muslim society regards sexual purity as one of the most important values of a woman. The Serbs' monstrous acts were a clear display of the disregard for women's status within their societies and the power of rape which stretches far beyond physical violation, into grievous implications for an entire community. Widespread, systematic rape in war also heightens the insecurity and fear in communities involved in conflict.[130] A soldier from this Yugoslav war reflects how rape was a means to convey a strong political message to the opponents of deep ethnic hatred, "When I rape your women, I destroy your property. I insult you. I humiliate you. If I rape all your women I defile an entire generation. And if I force your women to bear my children, I pollute your race."[131]

The examples of the Rwandan Genocide and the war between Serbia and Bosnia-Herzegovina emphasize the detrimental role culture and religion can have on a woman. In these instances in history, culture and religion were used as justifications for damage and destruction caused by patriarchy and the political battles for power.

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[124] MacKinnon, C. *Are Women Human?* (2006) 171
[125] The Allies were also known as the Triple Entente
[126] Bassiouni, M.C. *Sexual Violence* (1996) 4
[127] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 145-146
[128] Leatherman, J.L. *Sexual Violence and Armed Conflict* (2011) 139
[129] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 193
[130] UN Secretary General Ban Ki-moon, 'Women targeted or affected by armed conflict: what role for military peacekeepers? Conference, Wilton Park Sussex, U.K. 27-28 May 2008, www.securitycouncilreport.org (accessed on 12 January 2012)
[131] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 171

In the 2011 Libyan civil war, despot Muammar al-Qadhafi displayed what four decades in a seat of power could do. He ordered his troops to perform systematic rape of women and minors on mass scale. This served as a strategic weapon against his opponents, leaving thousands of women and children physically and psychologically damaged. Reports state Qadhafi gave his soldiers anti-impotence drugs and authorised them to "rape Libyan opponent women in a brutal continuing campaign."[132] Although the number of women who were raped is difficult to ascertain, Libyan rebels found "cell phone pictures and videos of rape, condoms and Viagra in the tanks and uniform pockets of Qadhafi loyalists who were captured on the battlefield."[133] This is a clear instance of women being a means to a male-orientated political end.

Reports have also shown many soldiers knowingly and purposefully infect the opponents' women with HIV.[134] Because women are regarded the maintainers of communal structure, rape targets the culture of the community, thereby destroying it. The pivotal component in the family and social structure, in terms of child-raising, feeding the family and so on, is then compromised. This inevitable demise of a community further enforces that such attacks are a conscious military tactic and a systematic weapon of power.[135] These instances exemplify the patriarchal notions of entitlement, domination and authority.

Recalling Chapter three, rape is very difficult to prove in the patriarchal sector of the international legal system. This is just another reason why rape is a favoured weapon in war because it is an effective means of ascertaining authority without carrying much consequence for the perpetrator. Many women, as I noted in chapter two, choose to remain silent for fear of social stigmatisation and exclusion from their families. The social constructs regarding sex tell women that discussing gruesome acts of sexual intercourse is distasteful and taboo. When a woman is raped her worth as a woman, wife and candidate for marriage is completely tarnished. For the sake of her future, for economic vulnerabilities and her children she often chooses to suffer and persevere in silence, haunted by the horror of what was done to her.

Apart from the many psychological consequences rape has, the actual physical event of war rape is associated with serious physical violence. Sexual torture; genital mutilation; electric shocks; forcing sharp objects and broken bottles into the victim's vagina; slashing their breasts and injecting pepper solutions in the vagina and anus are among the horrific associations with war rape.[136] This is a sick display that regards women subhuman and awards man complete power of any woman who he can use at his disposal.

4.3 The weapons of peace-keepers

This section briefly looks at the protected environment such refugee camps during war. There is a high rate of rape by peace-keepers. This evokes nothing more than a man's sense of entitlement and perception that women are nothing more than disposable objects. There is a sense that because peace-keepers are mandated to protect women, they are in possession of

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[132] Zawati, H.M. "Hidden deaths of Libyan rape survivors", 9 January 2012,
http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202537498000&Hidden_deaths_of_Libyan_rape_survivors&slreturn=1
(accessed on 23 January 2012)
[133] Zawati, H.M. "Hidden deaths of Libyan rape survivors", 9 January 2012,
http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202537498000&Hidden_deaths_of_Libyan_rape_survivors&slreturn=1
(accessed on 23 January 2012)
[134] Bloxham, D. *Genocide Studies* (2010) 71
[135] Stiglmayer, A. *Mass Rape* (1994) 63
[136] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 162

them. This notion of ownership provides man with the authority to do as he wants. Refugee camps are a confirmation of patriarchal power's victory in every possible scenario between women and men. Police officials and peace-keepers are among those who take advantage of their positions of power and women's vulnerability during times of conflict. UN troops violate those they are mandated to protect.[137] There have been many reports of crimes committed by UN peace-keepers, including rape, paedophilia and human trafficking.[138]

A well-known tactic of the UN peace-keeping industry in Congo, Somalia and Sierra Leone has been to barter food and protection from killing in exchange for sex. This reflects man's animalistic perception of sex. In 2005, there were 340 complaints of sexual exploitation by peace-keeping personnel, with 209 of these complaints coming from the DRC. The DRC has the largest UN peace-keeping mission.[139] The UN Organization Stabilization Mission in the Democratic Republic of the Congo (MONUC) is just one example of military and police deployed to concentrate their forces in the unstable eastern Congo who have failed to protect the innocent.

Rape within the safety nets of a refugee camp evokes the strong culture of entitlement possessed by men. Because these troops protect women from the barbaric nature of war, they are entitled to take sex from these women. More primary though is the gender bias within the male hierarchy of society. The societal perception that a woman's purpose is for sex is an evident notion held by peace-keepers that rape. The blurred vision of what constitutes sexual intercourse is also apparent when analysing rape within a refugee camp.

4.4 South Africa's rape problem

I now narrow my focus to the South African context to show how patriarchy, as constructed by history and carried through time, controls all sectors of society and conditions people's way of thinking. The South African context is an appropriate case showing the implications of a history that has not progressed. Since the fall of apartheid, South Africa has succeeded in establishing itself as a democracy. However, the country has the highest rape rate in the world. According to Doctors Without Borders, a woman is raped every 26 seconds in South Africa.[140] My point of this section of the chapter is to argue that the South African society has always oppressed a particular group. The apartheid society was characterised by the horrendous oppression on the grounds of a person's race. South Africa underwent successful transformation from the apartheid's oppressive government into the democratic rainbow nation of today. This transformation was commendably peaceful. However, what I argue is that while the new democracy may have brought freedom and hope for a better life for people of colour, for women of all races their conditions have remained unchanged. I argue that South Africa has always been marred by patriarchy, as have most societies; however, patriarchal oppression was overshadowed by the racial oppression and injustice that was apartheid. The continuously exorbitant level of rape in the country is proof of its patriarchal nature which appears to be stuck, unable to progress from a society regarding women inferior and there to serve men for their (sexual) wants.

[137] MacKinnon, C. *Are Women Human?* (2006) 146
[138] Leatherman, J.L. *Sexual Violence and Armed Conflict* (2011) 134
[139] Zawati, H.M. *The Triumph of Ethnic Hatred* (2010) 144
[140] "SA kids more likely to be raped," Rape Survivor Journey, http://www.rape.co.za/index.php?option=com_content&view=article&id=1178:sa-kids-more-likely-to-be-raped&catid=65:resources&Itemid=137 (accessed 26 April 2012)

If South Africa was able to supersede its racially segregated past, why has it stagnated in its patriarchal conditioning of the oppression of women? What went wrong in South Africa's success story of progression and transformation?

Louise du Toit's reflection[141] of the country's history and what it underwent to get to where it is today – a racially equal society with the highest rape rate in the world – supports my analysis of the dominance of patriarchy in the South African society. Du Toit investigates the issue of rape within the political context of the country by taking a thorough look at the way the Truth and Reconciliation Commission (TRC) dealt with the injustices of the country's past. She also looks into the notion of South Africa as a so-called "liberal democracy"[142] and questions the level of equity and equality. I express the view of Karin van Marle to explain my focus on the TRC and to support Du Toit's study of the lack of true transformation of this country. The TRC's ideals, as Van Marle identifies, were to reconcile, to find truth and to bring justice.[143] It is the TRC that comes to mind when considering the transformation of South Africa from authoritarian rule into the democracy we are known as today. I therefore feel it relevant to echo Du Toit in her argument that the TRC's failure to recognise all oppression in its national political reconciliation processes, and more specifically to recognise rape as a political crime during its years of oppression and segregation, implicated the country and permitted the dominance of patriarchy to persist. As the body "responsible" for the country's transformation, I consider it necessary to discuss as a point-of-departure the proceedings of the TRC and how they affected women then and now. By not addressing rape within the TRC and the reconciliation process of South Africa, I argue its severity was cushioned and the crime of rape domesticated and made into a purely private matter. The simple fact that the TRC selected its cases as it did suggests the political landscape of the country was dominated, determined and ultimately flawed by patriarchy.

I firstly consider what the transition meant to the country and the rest of the world from a patriarchal and thus political point-of-view. I then consider what this process meant to the women of South Africa, questioning whether the birth of equality was in fact relevant to all South Africans. I lean on Du Toit to support my argument.

The TRC was a court-like restorative justice body set up to deal with the gross human rights violations and violence committed during apartheid. No section of society escaped these abuses.[144] The aim of the TRC was to put some kind of closure on the violent and illegitimate past that was apartheid.[145] It certainly cannot be denied that the TRC was successful in its aim to right the wrongs of the racially divided nation. It led the country into peace and prospect. The transition guaranteed everyone the right to education and entitled them to live and move freely, as they chose. Holistically, the TRC brought bright hope and a new future to South Africa. However, for women, the rainbow was not all too colourful. Under the Promotion of National Unity and Reconciliation Act (no.34 of 1995), the TRC was mandated to "get as complete a picture possible of the nature, causes and extent of politically motivated gross human rights violations," which it effectively did. Rape, however, was not included in the list of "gross human rights violations."[146] This is a clear signification of the perception

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[141] See generally Louise du Toit in Hunter R. *Choice and Consent* (2007) 58-74; Du Toit in Veitch, S. *Law and the Politics of Reconciliation* (2007) 185-215; and du Toit, L. *A Philosophical Investigation of Rape – the making and the unmaking of the feminine self* (2009)

[142] Veitch, S. *Law and the Politics of Reconciliation* (2007) 187

[143] van Marle, K. *Towards an "ethical" interpretation of equality* (1999) 7

[144] The Truth and Reconciliation Commission website: http://www.justice.gov.za/trc/ (accessed 8 May 2012)

[145] Veitch, S. *Law and the Politics of Reconciliation* (2007) 192

[146] du Toit, L. *A Philosophical Investigation of Rape* (2009) 20

that rape is a sexualised issue and therefore a private matter which should steer clear of politics. The TRC modelled victimhood and political agency on masculine presumptions, creating a single-sex model of politics.[147] In so doing, the TRC essentially followed the dominant model of society.

With this in mind I argue the success of the TRC was only partial because of the dominance of patriarchy in the country and its systems such as the TRC. While the country's leadership may have switched from a racist positioning, patriarchy remained inherent.

The Cry of Winnie Mandela, written by Njabulo S. Ndebele, is fictional work depicting women's experiences of marginalisation during apartheid and the struggle.[148] The character of Winnie Mandela says, "For me, reconciliation demands my annihilation."[149] The regard for women as less important and inferior is evident by their fundamental exclusion from the 'victim' group of the forgiveness process. As Du Toit points out, a typical TRC process where women *were* involved only consisted of them being asked to forgive on behalf of male victims closely associated to them. They were not asked to forgive wrongdoings done to them as women.[150] The TRC, by its non-recognition of politicising sexual oppression and failure to recognise women as victims, silenced women to speak as individuals, as women. The omission of women from the national political process of reconciliation denotes women's exclusion from it and therefore, their positioning in society as of lesser importance, as exclusionary. The perception present in this instance is that women are inferior and insignificant and therefore not relevant in and to the political processes of the country. This view influenced the greater societal perception of women as society moved into democracy and permitted society to treat women inferiorly as well. Because no similar attempts were made as the reconciliation of racial issues, society has continued to treat women as an inferior grouping, at man's disposal. The strong social currents working through the TRC into present day are thus undeniably clear. If the TRC was mandated to address all forms of oppression, it failed as it did not recognise rape as a political act of women's subjugation.[151] The TRC therefore displayed women as inferior and irrelevant in the composition of the country. Women were not considered important agents to the creation of a democratic society. From a woman's perspective therefore, the TRC came to represent a single-sex model of politics – a masculine agency, contaminated with masculine biased concerns and language. The patriarchal regard of "real" women was controlled by not allowing them and their stories into the political arena during South Africa's transition. The common perception implied by the TRC's exclusion of women was that a good women should be apolitical and at home.[152]

While South Africa may have progressed from its racial past, oppression is still ever-present. Considering South Africa a "liberal democracy" can only be done according to a patriarchal mode of analysis. Patriarchy has remained dominant, leaving women's status as before, confined and submissive. The failure to recognise rape as a political problem in this new and "just"[153] democracy has positioned rape as a "purely private and domesticated"[154] matter and therefore is not publically spoken of and continues excessively and unhindered. The dawn of the "liberal democracy" reinstated South Africa as a newly established political body,

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[147] du Toit, L. *A Philosophical Investigation of Rape* (2009) 12
[148] Veitch, S. *Law and the Politics of Reconciliation* (2007) 185
[149] Ndebele, N.S. *The Cry of Winnie Mandela* (2004) 113
[150] Veitch, S. *Law and the Politics of Reconciliation* (2007) 191
[151] As above, 193
[152] As above, 194
[153] As above, 192
[154] As above

comprising masculine order. This may have been a significant progression from the previous racist state, however, it is still a masculine order of power and governance. Society and its state only switched hands from one patriarchal order to another, therefore, women were not truly liberated and their status remained as before. The failure to address sexual violence against women along with racial violence implied the unimportance of the issue to be regarded political. The shortcomings of the TRC to address all oppression in the country can be said to have implicated the progression for women in South Africa today and therefore the country as a liberal democracy. Rape in South Africa today is treated as a "purely personal" criminal act.[155]

Today, as an assumed liberal democracy, South Africa has no space for a truly sexually differentiated politics and symbolic order.[156] Du Toit suggests that the TRC's failure to take seriously women rape victims as first-order victims, is constitutive of the "new" patriarchal politico-symbolic order as patriarchal.[157] Today, violence against women in South Africa has, thanks to the handlings of the past, been successfully "domesticated,"[158] far removed from the political sphere of the country. South Africa's transition is therefore characterised by an effective erasure of sexual difference as a political issue and by the reinstatement of the newly established political sphere as a masculine space.[159]

Ultimately, sexual abuse is a systematic weapon in wartime, but also in the daily wars of woman's life. It is an ever-growing tumour that is fed by patriarchy to weaken and destroy women. In this chapter I have demonstrated that wherever a man's position of power is applicable, the culture of entitlement overwhelms his being. Extreme forms of patriarchy such as rape will be present. Rape proves to be a powerful weapon in political assertion between a man and woman and between parties. A society unable to progress into a true form of democracy was also presented. In this chapter I aimed to reveal how excess power gives man the freedom to do as he pleases. The inevitable certainty of such freedom is rape. Rape is an unhindered political weapon and there are absolutely no limits to what a man can do and "achieve" to the woman he is raping. It is the ultimate weapon of power which reduces woman to a mere corpse[160] and has the potential to bring a nation to its knees.

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[155] du Toit, L. *A Philosophical Investigation of Rape* (2009) 16
[156] Veitch, S. *Law and the Politics of Reconciliation* (2007) 187
[157] du Toit, L. *A Philosophical Investigation of Rape* (2009) 12
[158] As above, 16
[159] As above, 9
[160] MacKinnon, C. *Are Women Human?* (2006) 145

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Chapter 5
Conclusion – Where to from here?

"There will be today, there will be tomorrow, there will be always, and there was yesterday,
and there was the day before…"

- Leo Tolstoy, *War and Peace*

The main objectives I had for this study was to show the prominence of patriarchy and to address the implications of an abundance of power. I tried to show how most societies, by discussing "society" broadly and generally, unless specifically identified, are controlled by the dominant culture of patriarchy. My purpose for reflecting a variety of sectors of society was to show the effects of a society constructed by patriarchy. I view historical conditioning, as preserved by culture and tradition, as root causes for the prevalence and survival of patriarchy. Because of this conditioning, patriarchy has become the fundamental hindrance preventing society from progressing towards Hegel's eventual outcome. Such conditioning has implicated society in such a way that all people and all sectors are in some way, directly or indirectly, in support of the power of patriarchy. Households and beyond are conditioned into viewing roles and identities as either male or female. This distinction has developed a clear divide between the valuable man and the inadequate woman. I maintain that all members of society are conditioned in such a way that, even if they are not in favour of patriarchy and the oppression of the other, they support it by assuming the gender roles as identified and determined by the dominant cultural ideology of patriarchy.

Chapter two and three worked in conjunction to highlight patriarchy's presence in society – at the micro and macro levels of society. In Chapter two I discussed how patriarchy grows out of the home into the rest of society and how all members of the micro and macro level of society are active participants of patriarchy. Developing from the reflection of society's different levels, in Chapter three I concentrated on the futility of trying to change the status of women through the international legal system because, as a sector of society, it too is formulated and controlled by patriarchy. The analysis noted how social impact outweighs any possibility of legal impact. Through the display in Chapter two of social stigmatisation, I suggested in Chapter three that even if the international legal system was a true means of rectification, a woman's access to law would always be obstructed by society's views. Considering these arguments, my study progressed to show the inevitable implications of excess power in Chapter four. Society christens identity and roles according to gender, entitling man to the invasion and exploitation of the inferior woman. Women become a way men establish their power over the women in their lives and as a means to establish power among other men. However, for raped women it is always an act against women, it is always a real violation – irrespective of who rapes them or where they are raped.[161] Regardless of the context or political situation, rape is not an isolated event or individual interchange gone wrong, but an act of terrorism and torture within a systematic context of group subjection.[162] Through the treatment of and regard for women at a micro and macro level, I showed the ever-current threat of men losing their power. Rape instantly extinguishes any threats of losing such power. By highlighting men's struggles for power through force and the general presence of male supremacy, I claim the relationships between men and women are political.

Through the course of the study I presented the omnipresent nature of patriarchy at all levels hindering society's progression towards a higher mode of itself. I tried to show the very

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[161] MacKinnon, C. *Are Women Human?* (2006) 171
[162] MacKinnon, C. *Toward a Feminist Theory of the State* (1989) 172

specific identities, social relations and inequality between sexes which have existed for so many years that have now become a sort of undisputed habit, impossible to break. With the advancement of the study, I argued that society is trapped in the historical conditioning of patriarchy, implicating it from following the course of progression into greater knowledge, as theorised by Hegel. I disputed the likelihood of breaking the legitimacy of a system that has stood for years and that operates nationally and internationally, in all sectors of society, pondering this as an almost unmanageable task. Discussing the private and public life, the international legal system and rape as a result of patriarchy ascertains the urgent need to recognise that sex and violence are *not* mutually exclusive. I claimed that as it stands, rape laws and laws against gender inequality, despite their presence, do not exist to truly empower women's control over their sexuality. Societal perceptions implicate any form of effective progress. Finding difficulty in proving rape is just one example of the challenges society faces should it wish to truly progress and develop. For a woman to prove she was raped she is faced with the obstacle of social stigmatisation and the gender bias of the legal system and its definition of rape. I regard how a woman's harrowing attacks are perceived and interpreted under the patriarchal gaze of the legal system as fated. A raped woman is subjected to being defined as the guilty outcast. I believe sexuality is, and will continue to be, a social sphere of male power to which forced sex is paradigmatic.[163]

This forces the near impossible question to be raised how society can break the patriarchal cycle it has been stuck in for centuries. How can both men and women escape the trap of the historical conditioning of dominance and oppression? Having studied society's patriarchal construction, the question I critically wonder is whether it is at all possible for society to really follow Hegel's theory and progress into a higher mode of itself, aspiring towards absolute knowledge. In the search for answers, I consider MacKinnon's perception that the only way to progress and achieve sexual equality is to move away from this false notion of women's emancipation and gender rights that has become a feature of global development – and as I briefly discussed as a trait of the "new" South Africa. She emphasises the need to acknowledge women's difference from men and for society to abandon the traditional approach which assumes maleness as the benchmark.[164] This is a hefty demand for society and its sectors as it expects it to completely re-establish itself, its perceptions and all its definitions.

I view the global perception of liberal democracies to be inherently flawed. South Africa holds a prominent status because of its pioneering constitution and progressive recognition of human rights. Its transition into the "new" South Africa and its world-renowned constitution created the perception that all citizens are treated equally and enjoy equal rights. In theory and according to these perceptions, South Africa is compliant with Hegel's theory of society progressing on the path of transcendence. The common presupposition that all parties are equal and treated equally because of South Africa's transformation into a so-called liberal democracy is not an accurate reflection of the country, however. In the country's process of development, women were excluded and thus thought irrelevant. This democratic fallacy has moulded a belief that women are free to choose their sexual experiences and that they are treated equally during these chosen encounters. So often nowadays, it is believed that a woman does not assert herself by saying no before being raped and therefore can only really have herself to blame.[165] This opinion identifies the foolishness of society to think a woman's voice in such situations is heard.

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[163] MacKinnon, C. *Toward a Feminist theory of the State* (1989) 173
[164] As above 161
[165] du Toit, L. *A Philosophical Investigation of Rape* (2009) 42

South Africa and its constitution further reflect the false perceptions of liberal democracies in that the recognition of a person's individual right to religious, cultural and traditional practices and freedom of choice often oppress women. Even in my brief look into the transition process under the TRC, the degree of transition and the notion of a liberal democracy which defines the country seem flawed. How can such a society be a truly liberal democracy if it permits cultural practices which deliberately discriminate and oppress women? Culture and history as constructors of society need to be critically questioned whether their justification is beneficial for the society as a whole, for a liberal democracy in the true sense of the word, or whether its justification serves patriarchy and the perpetuation of discrimination against women.[166] Culture and tradition often enforce negative gender identities and implicate the subscription towards universal human rights.[167] Discrimination and oppression of women cannot continue to be justified according to culture and tradition in a liberal democracy. The "givens" of society need to be challenged and demolished in order for society to rightfully be defined as a liberal democracy.

Thoughts of tomorrow

It is with this in mind that I speculate the only true chance of the eventual eradication of patriarchy compels society to turn to its culture and history and realise the stagnation they have caused. Perhaps recognition is the first step needed to move onto a path of progression and strive towards a higher form of itself. If society wants to achieve true emancipation of women and really develop on a global scale, I hold the opinion that it will have to forsake everything it knows. For a truly liberal democracy to exist and to flourish, the subjugation and abuse of women cannot continue to be regarded as domestic issues. Rape against women must be correctly addressed as a political issue at a political level. The foundation of the political arena must be acknowledged as a masculine order of patriarchy which must be reconstructed and redefined. These expectations essentially require society's people to go against their home, their identity and their worth and find new testimonies to guide them through progression into a higher mode of being. The full spectrum of phallocentrism will have to be recognised, accepting that addressing the issue of a society's progression does not simply demand the recognition of the inequality, but also the dominant culture of patriarchy running through all systems in society, defining social institutions according to a male-dominated identity.

I did not set out at the beginning of this study to proclaim a radical feminist positioning. However, my understanding of society, as one driven by power, more specifically patriarchal power, male importance and female inferiority, has led me through this study into such a direction it seems. Because of my understanding and interpretation of society, I relied heavily on Catharine MacKinnon throughout this study. Her thorough investigation of male hierarchy and its resulted power corresponded and collaborated with my views of society.

I do not, however, think a strong feminist ruling of societal systems will necessarily "fix the problem". I agree with MacKinnon in her acknowledgement of the ineffectiveness of feminism to significantly improve the world for women. In order for this change to be achieved, women need to actually be part *of* the world, not just inferior disposable objects *in*

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[166] Theme Report: "Gender, culture, religion and traditional practices,"
http://www.cge.org.za/index.php?option=com_content&view=article&id=56:theme-gender-culture-religion-and-traditional-practices&catid=36:focus-areas&Itemid=59 (accessed 8 May 2012)
[167] As above

it.[168] Dominant liberal models of feminist politics are based on universality and gender mainstreaming which seldom manage to reach the critical depth needed to do justice to women's (current or desired) position within politics. Louise du Toit argues since women qua women are neither fully excluded nor fully included, a political strategy of simplistic "inclusion" is unhelpful.[169]

I am enticed by Drucilla Cornell and Karin van Marle's theories of ethical feminism[170] as glimmering light for the emancipation of society from patriarchy. Ethical feminism is concerned with the "should be" of relations. The ideal of ethical feminism is not to create a space for women within the current system of society, but to open the possibility of multiple interpretations of women which are free to criticise the repressive aspects of the current system.[171] It is imperative to not continue to deny the reality of difference. Progression is useless if society possesses the notion that women are equal to men because the understanding of equality is according to male definitions. van Marle also cautions us to be wary not to use classifications as if there is a natural way for things to be.[172] My study addressed society's fault in not adhering to such caution and the resulted implications thereof. Society is flooded by gender stereotypes and very distinct roles as determined by phallocentrism, which have proved to only impede general and specific progression and development.

I am slightly hesitant over all aspects of ethical feminism, however, considering it too idealistic at times. Ethical feminism's focal point is not about gaining power, but about the redefinition of all society's fundamental concepts. I firmly believe in the need to redefine concepts, gender roles and societal perceptions – this is imperative to any society, any democracy wanting to be truly liberal. I am not sure though whether such an ideal is possible without a somewhat "radical" point-of-departure, without a change in power, and more specifically political power. I wonder if, without power on your side, redefinition is not just a futile desire, destined to fail.

Perhaps what would make such an ideal more attainable would be to add the notion of *de*construction to the redefinition and reconstruction of fundamental concepts. I think, in order for the "should be" of society to have a chance of success, concepts such as gender roles, sexual intercourse and sexual identity will have to first be completely broken down, deconstructed and even erased. Classifications and stereotypes will have to become extinct. Only after such deconstruction is complete, can the processes of redefinition and reconstruction commence.

How will this be achieved? For any chance of a truly liberal democracy for all, society will have to adopt a new and ethical positioning. Ethical relations will have to be the only ideology permitted to dominate society. Such a stance will concern itself only with the way of being in the world that accepts divergent value systems and allows for the freedom to criticise the repressive aspects of competing moral systems.[173] As van Marle suggests, simply incorporating the oppressed, in this case women, into a present system will be of no benefit to

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[168] MacKinnon, C. *Feminism Unmodified* (1987) 2

[169] Veitch, S. *Law and the Politics of Reconciliation* (2007) 187

[170] van Marle discusses the notions of ethical feminism and Cornell in *Towards an "ethical" interpretation of equality*

[171] van Marle, K. *Towards an "ethical" interpretation of equality* (1999) 26

[172] van Marle discusses the work of Martha Minow of rights in relationships in *Towards an "ethical" interpretation of equality* (1999) 212

[173] Cornell, D.L. *Beyond Accommodation* (1991) as reflected by van Marle in *Towards an "ethical" interpretation of equality* (1999) 24

anyone. I tried to highlight this futility through the analysis of the international legal system as well as in the brief analysis of the "new" South Africa. van Marle claims that in order for significant reconstruction and transformation of society to take place, society and its sectors, from the private level through to the public level, will have to address the past and current exclusion of women.[174] All levels of society will have to be critically scrutinised and questioned in order to eradicate any "predefined" understanding of gender roles and identity. The progress of society towards Hegel's eventual "absolute knowledge" is dependent on this eradication. This eradication is imperative in order to erase the perception that man is superior to woman and thus entitled to use her at his disposal at a private and public level, in times of war and peace.

"The strongest of all warriors are these two – time and patience."
- Leo Tolstoy, *War and Peace*

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[174] van Marle, K. *Towards an "ethical" interpretation of equality* (1999) 87

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