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### Afterword: Pulling for the Shore of Independence

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## AFTERWORD: PULLING FOR THE SHORE OF INDEPENDENCE

BARI R. BURKE\*

Finally, there is the pervasive theme of “selfhood” for women. The dominant male society suppresses woman’s individuality, inhibits her intelligence and talent, and forces her to assume standards of appearance and personality that coincide with the masculine ideal of how a woman should behave and look.

Over the years many feminists have wondered: What would women be like if they were free to develop without being pressured to conform to some pattern set by men? This theme was and remains one that lies close to the heart of feminism; it evokes the visionary image of the “true woman.”<sup>1</sup>

Woman’s most persistent problem has been to discover for herself an identity not limited by custom or defined by attachment to some man.<sup>2</sup>

Emily Eva Mullenger Sloan’s search for selfhood stretched over ninety years and withstood forces that would have defeated less resolute women. During her lifetime, she received few of the customary rewards—recognition, professional respect, social standing, financial security—that the successful exercise of autonomy usually brings for men. Instead, her attempt at autonomy was a daily struggle between her resolve to achieve autonomy, and the social safety and

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\* Professor, University of Montana School of Law. I owe much to my colleagues who are consistently willing to respond to my work, often on short notice. Thank you to Margaret Bentwood, Melissa Harrison, Thomas Huff, Peggy Sanner, Carl Tobias, and Maxine Van de Wetering. I also thank Elsie Amlong, Emily Sloan’s oldest daughter, for holding fast to her faith in her mother, knowing that someday someone would come along and celebrate Emily Sloan’s contribution to women’s legal history. Ms. Amlong is more than a devoted daughter; she is also an incisive editor and a knowledgeable historian.

This essay is part of a sabbatical project researching the lives of women who were admitted to the Montana Bar between 1889 and 1969. I appreciate the generous support of the University of Montana for my sabbatical project. As an outgrowth of my sabbatical work, I plan to write a full-length biography of Emily Mullenger Sloan.

1. FEMINISM, THE ESSENTIAL HISTORICAL WRITINGS xvi (Miriam Schneir ed., 1972).
2. CAROLYN G. HEILBRUN, REINVENTING WOMANHOOD 72 (1979).

positive regard that went with conventional "womanhood."<sup>3</sup> Because Emily Sloan remained a woman despite her characteristically male ambitions and accomplishments, she could never quite measure up in the man's world in which she lived and worked. She came to recognize early that male and female worlds were sharply distinguishable, that women and autonomy were rarely paired, and that "the world is hard with women."<sup>4</sup> Near the end of her life both her hope and her heartache fed this remark: "That I have been a howling failure on the surface there can be little doubt, but somewhere deep in my heart is the consciousness that in spite of appearances, and in spite of all the stumbling blocks and blundering, 'All is well.'"<sup>5</sup> Emily Sloan's essay, *The Coming American Woman*, may be her accounting for the conclusion that "all is well," despite her lifetime of "unapplauded achievement."<sup>6</sup>

Emily Eva Mullenger was born on October 27, 1878, the ninth child and sixth daughter in a family that eventually numbered thirteen children. Wisconsin was her birthplace; her father traveled throughout that state selling insurance. Emily loved the creeks, woods, flowers, and sand pits of northern Wisconsin; it was the beauty of her physical surroundings that she most prized and longed for during the rest of her childhood and married life. These physical surroundings gave Emily great comfort while she received little from her parents who were too busy to dote on any one of the thirteen children.

To Emily's dismay, when she was seven, her family moved to Springfield, South Dakota; eight years later, they moved to Belle Fourche, in the northwestern part of the state. Robert Mullenger, Emily's father, was admitted to the Bar of South Dakota in 1890; he was elected county judge (judge of juvenile and probate court) in 1894, the first year that the family lived in Belle Fourche.<sup>7</sup>

Just twelve days shy of her seventeenth birthday, Emily Mullenger married Al Sloan, hoping to escape her inattentive and unaffectionate family. She lived for seventeen years with him on an isolated South

3. Carolyn Heilbrun loosely characterizes the distinction between women and autonomy:

Men have monopolized human experience, leaving women unable to imagine themselves as both ambitious and female. If I imagine myself (woman has always asked) whole, active, a self, will I not cease, in some profound way, to be a woman? The answer must be: imagine, and the old idea of womanhood be damned.

*Id.* at 34.

4. Emily Sloan, *The Coming American Woman*, 59 TENN. L. REV. 469 (1992).

5. Emily Sloan, Unpublished Manuscript 3 (approximate date mid-1960s)(copy on file with author).

6. CAROLYN G. HEILBRUN, *WRITING A WOMAN'S LIFE* 26 (1988).

7. Ms. Sloan's father died during his third term as county judge, while she was pregnant with her fourth child and before she began studying law.

Dakota ranch, raising four children: Edith, Elsie, Dean, and Stanley. Except for the pleasure of her four children, those prairie years were hard on Ms. Sloan: her husband typically ignored her wishes, treating her less as a partner than as his assistant. For example, early in their marriage he filed a homestead claim without first showing the land to Ms. Sloan. Not only was the land desolate, the homestead cabin was a tarpapered shack, ten feet by twelve feet in dimension. Describing her years on the ranch, Ms. Sloan said, "Oh, yes, the prairie's wonderful, for cattle, coyotes, rattlesnakes, and men; but not for women and children."<sup>8</sup>

When Ms. Sloan's children were practically grown, she considered resuming her education and attending college. Although she had wanted to be a writer since the age of eleven and was the author of a volume of published poetry by the age of thirty-one,<sup>9</sup> her husband refused to pay for "a literary course" and convinced Ms. Sloan to begin studying law by enrolling in the American School of Correspondence. She compromised her preference in order to equip herself to escape the ranch someday.

I told him that all I wanted was to write. I would study anything in that line I could get my hands on. He said if I thought he would be damned fool enough to give me money, or spend his money on anything like that, I just didn't know him. Well, I knew him, all right. He talked a whole afternoon. Finally, when I could endure no more I said, "O-kay. I'll take the law. If I can't have a whole loaf, I'll take a half of one, and convert it into what I want."<sup>10</sup>

Although Ms. Sloan found the law books boring, she completed the correspondence course, earning good marks along the way.

One seemingly trivial event finally convinced Ms. Sloan that her marriage was past hope. Accompanied by her eleven-year-old son, she drove a spring wagon<sup>11</sup> five hundred miles to fetch Elsie who was visiting Edith and Edith's first child. Ms. Sloan asked her husband to look after things at the ranch, including some flowers she had planted to welcome Elsie home from school. He neglected even this small favor.

It was then something inside of me gave up completely in regard to ever establishing a real home with him. He had no conception of what the word meant. I had so wanted Elsie to see the dooryard pretty and attractive for once in her life. The long years had been a series of letdowns. . . . Well, I had stayed there alone long enough. There comes a limit to human endurance.<sup>12</sup>

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8. Sloan, Manuscript, *supra* note 5 at 235.

9. EMILY SLOAN, *BALLADS OF THE PLAINS* (1909).

10. Sloan, Manuscript, *supra* note 5 at 271.

11. Ms. Amlong described the spring wagon as a "double-seated surrey."

12. Sloan, Manuscript, *supra* note 5 at 283, 292.

Ms. Sloan left the ranch when she was thirty-eight "and started out building a new world for myself."<sup>13</sup> On October 1, 1917, she enrolled as a full-time law student at the University of Montana School of Law.<sup>14</sup>

Emily Sloan was admitted to the Bar of Montana on June 10, 1919. She moved to Billings, Montana, where she opened a law practice and made a home. She soon began a political career; in 1920, she ran for the Montana Legislature, but lost in the primary. In 1921, Ms. Sloan lost the race for County Attorney of Carbon County; in 1923, she won that very post by thirty-three votes, thus becoming the first female county attorney in Montana. Two years later, she ran for reelection but lost. A state district court judge in Billings who respected Ms. Sloan's legal work arranged for her to serve as district probation officer, which she did for the following twenty-six months until early 1929. Economic times were notoriously difficult,<sup>15</sup> prompting Ms. Sloan to leave Billings sometime during the early 1930s for Washington, D.C., to look for work with the federal government. She eventually secured a job with the Agricultural Adjustment Administration where she worked for three months before poor working conditions and loneliness provoked her to return to Billings.

She remained in Billings only for a short time before moving to Tacoma, Washington, where her daughters lived. She spent the rest of her life in Tacoma, except for six months (September 1941 through March 1942), when she went to Anchorage, Alaska, to look for work. She held a variety of jobs in Tacoma: she sold cosmetics door-to-door; she worked on a gas rationing board at the shipyards; she worked in the stock room in a drug store; she worked as a clerical worker in an insurance company; she worked in a typewriter supply office; she worked in the Miscellaneous Department at Fort Lawton, soon transferring to the office of the trial judge advocate; she bought and managed an Introduction Club (correspondence club and matrimonial bureau); and she worked two holiday seasons in a large office supply and book store in Seattle.

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13. Emily Sloan did not divorce her husband until several years later.

14. For Emily Sloan's account of her time studying law by correspondence and at the University of Montana School of Law, see Emily Sloan, *Completing My Education*, 52 MONT. L. REV. 419 (1991).

15. Perhaps the Depression was not the only reason that Ms. Sloan found it difficult to make economic ends meet as a female attorney with her own practice in the 1920s and 1930s in Montana. Catharine Waugh, a graduate of the Union College of Law in 1886, wrote a memoir detailing "[h]er tribulations and frustrations in attempting to situate herself, a single 24-year-old female lawyer, in the male legal establishment of Chicago in 1886." Nancy F. Cott introduces that memoir in an essay that describes some of the obstacles to women's entry into the legal profession. Nancy F. Cott, *Women as Law Clerks: Catharine G. Waugh in THE FEMALE AUTOGRAPH* 160, 161 (Donna C. Stanton ed., 1984).

Not until Ms. Sloan lived in Tacoma for about five years and reached her middle sixties had she saved \$125, the cost of applying for admission to the Washington State Bar. The Board of Examiners denied her application on the grounds that she had been out of practice too long. The Board of Examiners granted Ms. Sloan permission to take the bar examination, if she would attend the University of Washington Law School for a few months. Unfortunately, she did not have the money to enroll in school, pay the fee for the bar examination, and open a law office.

Although she never had the opportunity to practice law in Washington, Ms. Sloan continued to write fiction, poetry, and essays, succeeding in having one book<sup>16</sup> and many poems published. In fact, Ms. Sloan won awards for several of her poems.

How could Emily Sloan come to believe that her lifetime of magnificent efforts and accomplishments—raising four children in a one room shack marooned on an isolated ranch, becoming a lawyer in 1919, serving as the first female county attorney in Montana, publishing poetry and fiction—could be perceived as a howling failure? Women learn early that “[i]t’s a mighty tough world on us women folks . . . ,”<sup>17</sup> and that sometimes neither of the two available choices (being Mary or Martha, but not Maud, Margaret, Myrtle, or Miranda) suits any one of us. Emily was not a Mary or Martha as her life story discloses.

Although Emily Sloan and Robin West have larger purposes for their essays, both *The Coming American Woman* and *Reconstructing Liberty* are, in part, their authors’ versions of the constraints on the female search for selfhood. Professor West and Ms. Sloan agree that the female quest for autonomy conflicts with constraints that “profoundly limit women’s political participation, economic self-sufficiency, physical security and psychological well-being . . . .”<sup>18</sup> According to West, one of the most effective constraints on women’s autonomy is the allocation to women of domestic responsibilities:

First, women, far more than men, live within the constraints of gender roles [which assign] to women far greater responsibility for child-raising and domestic labor. . . . As long as there is laundry to wash, diapers to change, children to feed, houses to clean, and meals to make, and as long as women disproportionately are doing it, there is that much less time for women to vote, campaign, hold public office, sit on boards, create art and culture, and live otherwise positively free lives.<sup>19</sup>

Ms. Sloan’s life story reveals her personal experience with domesticity and childraising: from the age of sixteen, when Emily Sloan

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16. EMILY SLOAN, PRAIRIE SCHOOLMA’AM (1956).

17. Sloan, *The Coming American Woman*, *supra* note 4 at 471.

18. Robin West, *Reconstructing Liberty*, 59 Tenn. L. Rev. 441 (1992).

19. *Id.* at 454.

married, until the age of thirty-eight when she left the ranch and began to attend law school, “the constraints of gender roles” trapped Emily Sloan on a barren ranch in South Dakota answering to her husband, caring for her four children, and pining for other people, in particular women (“for three or four months at a time I had not seen a woman’s face”<sup>20</sup>). Ms. Sloan published a book of poetry, creating culture, but she had little opportunity to live a public life.

In *Reconstructing Liberty* and *The Coming American Woman*, West and Sloan also agree that patriarchy portrays those gender roles as natural, inevitable, even inescapable. Professor West says:

[T]he assignment to women of disproportionate child-raising labor, domestic chores, and of a lesser role in public life is made . . . by a . . . web of shared understandings about the nature of women and men, women’s *natural capacity for motherhood* and disinclination for the life of the citizen, artist, intellectual, artisan, or wage-paid laborer, and men’s societal inclination for all of the above, and *natural disinclination for parenting*. We might . . . call this . . . web of shared understanding “patriarchy.”<sup>21</sup>

Ms. Sloan’s essay tells the story of how Eve *naturally* became the family caretaker and Adam’s subordinate:

Adam tried to help a little but he was of single mind. He was utterly incapable of boiling the kettle and tending the baby at the same time, so he said, “You are much more competent than I am, Eve. See, the baby howls for you. I think my whiskers scare it. Anyway, I saw some of the dandiest speckled fish in the brook yonder and I think if I brought some of them for little Cain to eat, and a few lion cubs and a parrot or two for him to play with, he might behave himself and not make Abel and the baby squall so much; and it will make things easier for you, dear. . . . [A]nd besides sweetheart, this hut is beastly hot; it’s better for my health outside.” . . . As for him [Adam], he simply could not endure the cry of an infant. It drove him insane. He simply had to take to the bush.<sup>22</sup>

In addition to the constraint of gender roles, West identifies sexual violence as a fundamental constraint to women’s autonomy. Although Ms. Sloan does not mention sexual violence, she repeatedly identifies the techniques of flattery and trickery as part of the process of subordinating women. For example, Eve “who had held her own with Adam up to that time [when he proposed to go catch fish rather than help with child care], wavered when she thought of Adam’s health, and fell for the decorations and the sweet words. We all do.

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20. Sloan, Manuscript, *supra* note 5 at 283.

21. West, *supra* note 18 at 457 (emphasis added).

22. Sloan, *The Coming American Woman*, *supra* note 4 at 472-73.

It's so nice to be loved."<sup>23</sup> Next, according to Ms. Sloan, man usurped woman's trousers by telling her that she looked graceful and queenly in his robes rather than her trousers; he also promised her that he would help with the domestic tasks made more difficult by garments that "wrapped around shins" and left the wearer unable to navigate. "Therein was her downfall, and the downfall of her daughters and her granddaughters. Man had learned the subtle art of flattery and women fell for it right and left."<sup>24</sup>

The primary purpose of Emily Sloan's essay was not the same as that of Professor West's essay. West hopes to influence constitutional jurisprudence in a way that protects those spheres of decision-making most central to women's lives;<sup>25</sup> Ms. Sloan hoped to answer the questioning public's concern with the future American woman. Looking not simply to the past to identify the processes of women's subordination, Ms. Sloan shared her vision of the future. Both in her stories of the past and her predictions of the future, Ms. Sloan touched on themes that continue to engage and perplex contemporary feminism: the nature of "ordinary womanhood" and gender role stereotypes,<sup>26</sup> the assignment of domestic labor primarily to women,<sup>27</sup> the institution of motherhood and "the reproduction of mothering,"<sup>28</sup> women as wage-laborers and equal pay for equal work,<sup>29</sup> the possibilities of combining professional work with marriage and motherhood,<sup>30</sup> and the character of relationships between

23. *Id.* at 472.

24. *Id.* at 474.

25. West, *supra* note 18.

26. See e.g., SUSAN BROWNMILLER, *FEMININITY* (1984); CAROL GILLIGAN, IN *A DIFFERENT VOICE* (1982); CAROLYN G. HEILBRUN, *WRITING A WOMAN'S LIFE* (1988); CAROLYN G. HEILBRUN, *REINVENTING WOMANHOOD* (1979); Adrienne C. Rich, *Compulsory Heterosexuality and Lesbian Existence* in *POWERS OF DESIRE: THE POLITICS OF SEXUALITY* (Ann B. Snitow et al. eds., 1983); Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988).

27. See, e.g., SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX* (1970); SUSAN MOLLER OKIN, *JUSTICE, GENDER & THE FAMILY* (1989).

28. See, e.g., DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* (1976); ADRIENNE RICH, *OF WOMEN BORN* (1976); NANCY CHODOROW, *THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER* (1978); Martha L. Fineman, *Images of Mothers in Poverty Discourse*, 1991 DUKE L.J. 274.

29. See, e.g., Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497 (1983); Roslyn L. Feldberg, *Comparable Worth: Toward Theory and Practice in the United States*, 10 SIGNS 311 (1984); Deborah Rhode, *Occupational Inequality*, 1988 DUKE L.J. 1207; Deborah Rhode, *Perspectives on Professional Women*, 40 STAN. L. REV. 1163 (1988); DEBORAH RHODE, *JUSTICE AND GENDER* (1989).

30. See, generally, FAYE J. CROSBY, *JUGGLING* (1991); Symposium on Women in the Lawyering Workplace: Feminist Considerations and Practical Solutions, XXXV N.Y.L. Sch. L. Rev. (1990). Women are recapturing our history as well as



women and men.<sup>31</sup> No doubt her wisdom grew from her valiant efforts to extricate herself from the almost total isolation of the male west and to build a new world for herself.

Throughout her life, Emily Sloan rowed toward the shore of independence. She never reached the safety of the shore; she never achieved the luxury of public recognition or financial security. But Emily Sloan apparently knew what Carolyn Heilbrun knows: a woman's exercise of autonomy, the search for female selfhood, is not truly about "happily ever after" endings or finality.

We women have lived too much with closure: . . . there always seems to loom the possibility of something being over, settled, sweeping clear the way for contentment. This is the delusion of a passive life. When the hope for closure is abandoned, when there is an end to fantasy, adventure for women will begin. Endings . . . are for romance or for daydreams, but not for life.<sup>32</sup>

Safety and closure, which have always been held out to women as the ideals of female destiny, are not places of adventure, or experience, or life. . . They forbid life to be experienced directly. Lord Peter Wimsey once said that nine-tenths of the law of chivalry was a desire to have all the fun. The same might well be said of patriarchy.<sup>33</sup>

Emily Sloan—daughter, sister, wife, mother, lawyer, woman, writer, citizen—exemplifies the "Coming American Woman." I eagerly anticipate the day that more of us follow the lead of our braver sister Emily and try "to make the path less rough for those who follow after us."<sup>34</sup>

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inventing our future. For a historical account of female attorneys' attempts to combine professional and personal lives, see Virginia Drachman, "My 'Partner' in Law and Life": *Marriage in the Lives of Women Lawyers in Late 19th and Early 20th Century America*, 14 LAW & SOC. INQUIRY 221 (1989).

31. See generally, Barbara Easton, *Feminism and the Contemporary Family in A HERITAGE OF HER OWN: TOWARD A NEW SOCIAL HISTORY OF AMERICAN WOMEN* (Nancy F. Cott & Elizabeth H. Pleck eds., 1979); JEAN B. MILLER, *TOWARD A NEW PSYCHOLOGY OF WOMEN* (1976); Paula Rothenberg, *The Political Nature of Relations Between the Sexes in BEYOND DOMINATION: NEW PERSPECTIVES ON WOMEN AND PHILOSOPHY* (Carol C. Gould ed., 1983).

32. HEILBRUN, *WRITING A WOMAN'S LIFE*, *supra* note 6 at 130.

33. *Id.* at 20.

34. Sloan, *The Coming American Woman*, *supra* note 4 at 476.