

A Doll's House and *Kramer vs. Kramer*: Objections to Family Law

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Abstract Ibsen's *A Doll's House* (1879) and Robert Bentons film *Kramer vs. Kramer* (1979) are two of the most significant family dramas in western culture. Not only because they deal with fundamental family relations, but because they challenge the legal boundaries for these relations. It could be argued that both dramas have had an impact on western family law. The article will compare *A Doll's House* and *Kramer vs. Kramer* with regards to both existential and legal themes. Both Nora and Ted make existential choices. She chooses freedom before her duties as a mother and wife. He gives up his personal freedom to be with his son. The ties between them are strong, and being a "weekend daddy" is no longer an option. He chooses love and parental duties before freedom, and his position is therefore more like Mrs Linde's, who needs "someone and something to work for." Legally speaking, *A Doll's House* represents a critic of several basic assumptions in nineteenth-century family law which subordinated the wife to the husband. *Kramer vs. Kramer*, on the other hand, represents a critique of twentieth-century child custody court which subordinated fathers to mothers as child carers. The common target for these critical efforts is the enlightenment theory of motherhood.

Key words *A Doll's House*; *Kramer vs. Kramer*; family Law; law and literature

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Law has always been an important literary theme, from the Greek drama, through Shakespeare and Kafka, and finally in the modern crime novel. Since the twentieth century, film and television have also revealed a great fascination of crime, investigation and court dramas. Ibsen is a part of this tradition. *A Doll's House* is not only about freedom and emancipation of women, it is also about crime and legal thinking, the kind of thinking that put women in a subordinated position in nineteenth-century society. In his drama, Ibsen exposes the basic assumptions for the nineteenth-century family law, and for this purpose Helmer plays an important role. He carries with him an ideological structure, and every time he opens his mouth, small pieces become exposed, connecting religious beliefs, moral standards, gender assumptions and aesthetic ideals about law. As it turns out, Nora is not too impressed with the laws.

Many have asked the question: Where did Nora go? My question is: What did

Helmer do after Nora left? One hundred years later, in 1979, Robert Benton gave an interesting answer in his film *Kramer vs. Kramer*, starring Meryl Streep and Dustin Hoffman. The film starts where Ibsen's play ends, a wife leaving her husband and child. In her absence a close relationship builds between Ted Kramer and his son Billy. Ted is a modern Helmer, except more sensitive, flexible and intelligent. When he is left alone with Billy, he transforms himself into a devoted father and a competent care person for his son. In the end, he has to fight in court to keep it that way. Helmer also had a genuine interest in how children should be raised.

In my book *Rettshistorier [Tales of Law]*,¹ I have argued that *A Doll's House* and *Kramer vs. Kramer* are two of the most significant family dramas in western culture. Not only because they deal with fundamental family relations (husband-wife, parents-children), but also because they challenge the legal boundaries for these relations. In fact, it seems like both dramas have had an impact on western family law. In the struggle to pass the 1888 Marriage Act [*Lov om Formuesforholdet mellem Ægtefæller*], Norwegian left wing politicians adopted both the dollhouse metaphor and Noras rhetoric regarding equality between the sexes. A century later, lawyers quoted *Kramer vs. Kramer* in legal disputes regarding child custody. According to the professor of law, Andrew Schepard, the film may well have had a significant influence on the changes in the child custody court the latter years.² It can therefore be said that both dramas have had an impact on the western legal culture: The way we think about right and wrong, legal and illegal, and law and gender. In this article I will compare the two dramas with regards to both existential and legal themes.

Complementary Dramas

A Doll's House and *Kramer vs. Kramer* are complementary dramas. The first focuses on the female character, the latter on the male. On the existential level, both Nora and Ted make important choices. She chooses what she calls “[m]y duty to myself” before her duty to be with her husband and children (Ibsen 105). She seeks the kind of basic personal freedom that is necessary for an independent human being. Ted has this basic freedom, even though he is torn between his employer and his son. But what is interesting, is that when Joanna returns and wants sole custody, Ted refuses. He chooses to be with his son, even if his personal and social freedom is limited. Being a “weekend daddy” is no longer an option. Ted chooses parental love and duties before freedom, and his position is therefore more like Mrs Linde's in *A Doll's House*, Nora's old friend who needs “someone and something to work for” (Ibsen 84).

On the legal level, *A Doll's House* represents a critique of several basic assumptions in nineteenth-century family law which subordinated the wife to the husband. *Kramer vs. Kramer*, on the other hand, represents a critique of the twentieth century child custody court which subordinated fathers to mothers as child carers. The common target for these critical efforts is the Enlightenment theory of motherhood, according to which the mother *in virtue of her sex* is a better provider of care for her children than the father. “The earliest education is most important and it undoubtedly is woman's work”, Jean-Jacques Rousseau writes in his famous book *Émile* from 1762. “If the author of nature had meant to assign it to men he would have given them milk

to feed the child" (Roussau 5, n. 1).

In *Kramer vs. Kramer*, Nora's project of emancipation is accepted and inscribed in the story of Joanna's struggle to become a whole human being and to gain economic independence. Unlike Helmer, Ted understands that Joanna had to leave her home, her husband and child, and that their marriage did not give her enough room to fulfil herself. But what he will not accept is the opinion that women are better parents than men. In the child custody trial at the end of the film, Ted argues that a father can take as good care of his child as a mother can. In relation to Ibsen, the play is now turned upside-down. The male protagonist struggles for equality between the sexes, while the emancipated woman uses the old ideology of motherhood as a discursive resource.

A Doll's House and the Norwegian Marriage Act

Let us take a closer look at the dollhouse metaphor and the Norwegian Marriage Act. In Ibsen's play, Nora has committed a crime in order to save her husband's life. She has forged her father's signature on an IOU (written acknowledgement of debt) to raise money so that the family could go abroad and Helmer could get the recreation his health depended on. When the play starts, he doesn't know about this, and he is looking forward to becoming the new manager of a bank. The trouble starts when he decides to fire Krogstad, the very person Nora borrowed the money from. Krogstad starts to blackmail her to get his position back, and the plot tightens. In the final argument between Nora and Helmer, she realizes that he is not the man she thought he was, and that their life together has been inauthentic. She is supposed to be his little skylark, not an independent human being. She has not been happy, she says, just merry:

But our home's never been anything but a doll's house. I've been your doll-wife, just as I was Papa's doll-child at home. And the children have been my dolls in their turn. I thought it fun when you played with me, just as they thought it was fun when I played with them. That's been our marriage, Torvald. (Ibsen 103)

The dollhouse is a metaphor for the bourgeois marriage. In the Marriage Act at the time, the wife had no legal capacity in financial matters. The husband was his wife's guardian; she was a ward. That is why Nora had to forge her father's signature in the first place. She was not allowed to borrow money in a regular way. As a ward, she is inferior to her husband, and the roles of the skylark and the doll-wife are well fitted for such a position.

Most interpretations focus on Nora's emancipation. But as I said, the play is also an investigation and exposure of the ideological conditions for the 19th century family law. Helmer carries with him an ideological structure, in which we find religious notions about husband and wife, a moral system where respect for the law is essential, romantic gender ideals, and a gender based anthropology, that says gender pervades the person. "Nora, Nora, you're a typical woman," Helmer replies when she says

she doesn't care about the creditors (Ibsen 11). These ideals also correspond with a certain kind of aesthetics that Helmer cultivates, a late romantic aesthetics called *biedermeier*. Helmer tries to make Nora into his little piece of biedermeier art, but in her tarantella dance at the end of the second act she breaks the rules, and drives Helmer out of his mind: "this is sheer madness," he says (Ibsen 78). It is this whole ideological structure that Nora turns her back to in the final scene, when she says that her duty to herself is just as sacred as her duties to her husband and children. "First and foremost you're a wife and mother", Helmer reminds her. But Nora no longer believes him:

I believe that first and foremost I'm a human being, just as you are, – or at least that I must try and become one. I know that most people will say you're right, Torvald, and that it says something like that in the books. But I can't go on accepting what most people say and what is says in books. I have to think things out for myself so that I'll understand them. (Ibsen 105)

Nora doesn't argue against the Marriage Act itself. She only questions the foundation for it. And she creates a powerful metaphor to describe her life under the law.

In the same year the play was released (1879), a process has already underway to introduce a new law regarding property of spouses. This process started in 1875 and was not finished before 1888, and the reason why it took so long was that the left wing and the right wing could not agree. The left wing struggled for equal rights, while the right wing wanted the husband to administer the marriage property, unless a marriage agreement was made. In the end, a moderate, left-wing bill was passed. Married women gained the same legal capacity as unmarried women, with some exceptions. This law was in fact written by Ibsen's literary fans. And we can see from the negotiations in the Parliament that a new kind of rhetoric gained ground, a rhetoric in the spirit of *A Doll's House*.

A modern society cannot live with the image of the married woman as a doll. When a metaphor like that is powerfully presented, society can only react in two ways. It can deny it, and challenge it with other, idealized images.³ Or society can accept and reproduce the image, and finally change the law. This was the strategy of the left wing. Here are some examples from the process:

1880: Gina Krogh, a prominent person in the women's movement, reviews *A Doll's House* in *Aftenbladet*. She internalizes and reproduces Ibsen's metaphor, encouraging women to face "the miserable doll-life" ["det elendige Dukkeliv"] many of them were living (Krogh 1). She also thanks Ibsen for the strict and stern judgement he had made. In fact, she pictures the author as a judge.

1880: In his book *Kvindens Myndighed og formueretlige Stilling i Ægteskabet* [On woman's legal capacity and financial situation in marriage], Hagbard Emanuel Berner writes about the injustice in "the many 'Doll's Houses'" ["de mange 'Dukkehem'"] in Norwegian society (Berner 7). The

book is about the Marriage Act.

1882: In the Parliament the struggle continues. Two contradictory bills (right wing vs. left wing) regarding property of spouses are given.

1884: Ibsen, Bjørnson, Kielland and Lie write a letter to the Parliament, arguing for equal rights in marriage. The letter is sent on by H. E. Berner, who later became one of the architects behind the new law.

1884: The letter is quoted in a document where the left wing stops a right wing bill (Indst. O. Nr. 80).

1885: *A Doll's House* is criticised by the priest M. J. Færden in his book *Kvindespørgsmaalet* [On the question of women's emancipation]. According to Færden, Nora's travelling bag will replace the wedding ring as a symbol of the woman's position in marriage.

1888: A moderate left wing bill regarding property of spouses is introduced by H. E. Berner and others. It says that married women shall have the same legal capacity as unmarried women, with some exceptions.

1888: In the Parliament debate, the left wing stresses the female perspective, criticises "the male view" ["Mandfolkbetragtningen"] and the lack of interest for women's social position in Norwegian literature (!). There are no explicit quotations from *A Doll's House* in the debate, but some of the statements echo both the play and the letter. For example, the left wing politician Viggo Ulman opposes the argument that the husband is the natural representative for the spouses. He says: "For it is crystal clear, that in the marriage both husband and wife should be equal representatives; and the only solid and reasonable thing is that they are given equal status, and that both represents the marriage and what follows from it" (*Storthingens Forhandlinger I Aaret 1888* 140)⁴.

Statements like this can be read as political responses to literature, responses to Nora's final argument and her vision about marriage as something more than just a life together.

***Kramer vs. Kramer* and the Sole Custody Adversary System Paradigm**

Kramer vs. Kramer does not offer a powerful metaphor. Instead, the film itself became a metaphor—for a failing child custody court system. That is why the film has become a point of reference in American family law.

The film starts with Joanna Kramer (Meryl Streep) leaving her home to become rehabilitated, after five years as a mother and wife in a traditional family. Her husband and careerist Ted (Dustin Hoffman) is left to care for their son Billy. Father and son develop a close relationship, and build a new life together. A year and a half

later, Joanna returns, now as a successful designer of sports wear, wanting her son back. Ted denies, but the court decides in Joanna's favour. Judge Atkins "went for motherhood straight down the line", we are told.⁵ But when Joanna comes to take Billy with her, she realizes that he already is at home.

Aesthetically, *Kramer vs. Kramer* is a good example of what I use to call "the plot of the single father", a plot developed in the 1860's with George Eliot's novel *Silas Marner* and Victor Hugo's *Les Misérables*. In the plot of the single father, the mother is manoeuvred out of the story, permanently or for a limited time, to create space for the development of a close father-child relationship. (Not necessarily the biological father.) In this process, the father figure goes through a metamorphosis. He becomes a primary care person for the child, and his values and priorities change. This is exactly what happens to Ted in *Kramer vs. Kramer*. He becomes a great father, he loves his son, and he also realizes that he has not been the kind of husband he should have been. He accepts Joanna's interpretation of their marriage. But he does not accept the idea that motherhood is superior to fatherhood.

In the film, the trial is a play-within-the-play, and it serves different goals. At one level, the courtroom is a battlefield where custody and gender roles are at stake. At another level, the legal theatre itself is questioned. Both lawyers play rough. They construct narratives and concepts of the enemy that neither Ted nor Joanna can answer for. They have lost control over their own conflict. "Did you have to be so hard on her?", Ted asks his lawyer. "Do you want the child or don't you?", he replies.

But the courtroom is also a room for reflection and self-awareness. Ted and Joanna have to listen to each other, and when they meet again at the end of the film, they have a different way of looking at each other. Benton also uses the trial as a narrative device. Here stories are told that the film doesn't show: the story of the marriage and the story of Joanna's new life.

In the legal argumentation, two principles govern: the principle of "the best interests of the child" and "the tender years doctrine", that says that a child should follow the mother, at least when it is young. Ted's rhetorical strategy is to disconnect the tender years doctrine from the principle of the child's best interests. Good parenthood is gender neutral, he argues. Joanna chooses the opposite strategy; she tries to strengthen the connection between the doctrine and the best interesting principle. She speaks about "my child", not "our child". When she says "I'm his mother", she is talking about something other than a genetically relation. It is an ideological statement. Ted can never parry it with the corresponding "I'm his father". Ted's testimony goes like this:

You know when you were talking before . . . I mean my wife . . . my ex-wife . . . when she was talking before about how unhappy she was during our marriage, I . . . I guess most of what she said was probably true. There's a lot of things I didn't understand, there's a lot of things I would do different if I could. Just like I think there's a lot of things you wish you could change. But we can't. Some things, once they're done, can't be undone. My . . . my wife . . . my ex-wife says that she loves Billy, and I believe she does. But I don't think that is

the issue here. If I understand it correctly, what means the most here is what's best for our son, what's best for Billy.

My wife used to always say to me: "Why can't a woman have the same ambitions as a man?" I think you're right. And maybe I've learned that much. But by the same token, I'd like to know what law is it that says that a woman is a better *parent* simply by virtue of her sex?

You know . . . a lot of time . . . think about what makes someone a good parent. You know, it has to do with constancy, it has to do with patience, it has to do with listening to him, it has to do with *pretending* to listen to him when you can't even listen no more. It has to do with love, like . . . like she was saying. And I don't know where it is written that a woman has a corner on that market, that a man has any less of those emotions than a woman does.

Billy has a home with me. I've made it the best that I could. It's not perfect. I'm not a perfect parent. Sometimes I don't have enough patience, and I forget that he is just a little kid. But I'm there. I get up in the morning, and then we eat breakfast, and he talks to me, and then we go to school, and at night we have dinner together, and we talk then, and I read to him, and . . . and we built a life together. And we love each other.

If you destroy that, it may be irreparable. Joanna, don't do that, please. Don't do it twice to him.

At the end of the film, Joanna realizes that Ted is capable of taking care of her little boy, and transfers the custody to him. It seems like we get a happy ending. But I don't think it is quite that easy. Sole custody is not necessarily the best solution. *Kramer vs. Kramer* is more than an attack on the tender years doctrine and its ideological foundation, the notion of motherhood that arose in the Age of Enlightenment. It is also an attack on a certain legal paradigm for solving conflicts. Andrew Schepard has called it "the sole custody / adversary system paradigm". Within this, the parents meet as opponents, and the dispute is solved by awarding one parent sole custody and the other visitation rights. Since 1979, the paradigm has been challenged. There have been changes, and according to Andrew Schepard, *Kramer vs. Kramer* is partly responsible for this. In his book *Children, Courts, and Custody*, he writes:

Because it is so well known and respected, *Kramer vs. Kramer* is a useful place to begin in order to understand the rapid changes in the child custody court from the time of the film's release until today. Indeed, the movie may well have had a significant influence on those changes, since it popularized and promoted the goals of gender equality in custody determinations and the notion that parents should forgo legal advantage, put aside their anger, and reach their own agreements in their child's best interests. (8)

If the Norwegian law regarding property of spouses from 1888 partly was a response to literature, the changes in American child custody court can partly be seen as a response to film. From this we learn that literature and film have played an important

role in the western legal culture. But does *A Doll's House* and *Kramer vs. Kramer* still have any actuality left?

As long as the Enlightenment theory of motherhood still inflates our thinking, our social practices and our laws about family life, these dramas will maintain their critical power. Women want an equal share of the duties and pleasures of child care, which is founded in biology, so that they can combine work with family life. While men want to spend more time with their children, no matter whether they are living with the children's mother or not. And it is exactly these two groups that lead the gender equality movement in Norway today.

[Notes]

1. Bjarne Markussen, *Retshistorier. Foreldre og barn i litteratur, film og lovgivning* (Oslo: UniPub, 2008).
2. Andrew Schepard, *Children, Courts, and Custody. Interdisciplinary Models for Divorcing Families* (Cambridge: Cambridge University Press 2004) 8.
3. In an article in *Luthersk Ugeskrift*, the priest M. J. Færden called the wife "the priestess of the hearth and altar of home." ["*Prestinde ved Husets Arne og Alter*"] (Færden 32 – 33).
4. For further documentation, see Markussen 35 – 46.
5. All quotations from the film are based on my transcriptions.

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