

WOMEN AND THE LAW

Fall 2005

Professor Caroline Forell

Required Texts: Caroline Forell & Donna Matthews, A Law of Her Own (paperback) (available used at Smith's or as a loaner from Professor Forell) (NYU Press 2000)
Carol Gilligan, In A Different Voice (paperback) (Harv. U. Press 1982) (available new or used)
Susan Estrich, Real Rape (paperback) (Harv. U. Press 1987) (available new or used).
Forell, Supplementary Materials (Bookstore)

Course Organization:

For the first nine to ten weeks of the semester we will follow this syllabus reading works of feminist theory and articles and cases on gender issues. Three themes run throughout the area:

1. The Difference Dilemma: the origins and significance of ascribed differences between men and women and law's role in creating and/or perpetuating them.
2. The Meaning of "Equality": while equal protection and equal rights have been the major legal means used to eliminate gender bias, how does equality analysis account for differences.
3. The Public/Private Distinction: how privacy has been a source of protection in some areas and a source of oppression in others, particularly the home.

Roughly the last three weeks of the semester will be devoted to student presentations. Each student will be responsible for selecting a topic concerning Women and the Law which will be the basis of both a comprehensive paper or creative project of a similar magnitude and her/his class presentation. A list of possible topics will be provided soon after school starts. By the beginning of the fifth week of class (September 13th) each student must have selected a topic. A detailed outline or rough draft of the paper must be submitted by beginning of the tenth week of class (October 18th). The final draft must be submitted no later than Monday, November 28th (The last day of fall semester classes).

For class presentations students working on related topics may be co-presenters; however, each student must write a separate comprehensive paper. PowerPoint presentations are encouraged but not required.

The grade for this class will be based on the following:

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| 1. | class attendance, preparation, and participation: | 25% |
| 2. | oral presentation: | 10% |
| 3. | written paper: | 65% |

Attendance is mandatory. Roll will be taken at the beginning of each class. Two unexcused absences will result in exclusion from and no credit being given for this class.

Use of laptops is prohibited except for PowerPoint presentations.

Except for the first day of class, you must submit a brief commentary describing your reaction to the assigned reading for the day by the beginning of each class -- no less than 75 words -- no more than 250 words. Submission of these written commentaries is also mandatory. If you miss a class, you must still submit the written commentary for the class you missed. Submission of the commentaries may be by e-mail or in person.

For each class beginning September 1st, two or three students will be responsible for leading the discussion on the readings for the day. I will provide a list of who will do this when by the end of the second week. If you know that you will not be available on a certain day, please let me know by the second class.

Set out below is a detailed syllabus.

We will be discussing Gilligan's book and commentary on it in the fifth week of class. I encourage you to start reading this book as soon as possible.

Introduction

I. What's Wrong with Feminism? and Intro to Feminist Method Class #1 – August 18th

Readings available at table next to the 3d Floor Reception desk.

Is O'Connor a Feminist? What She Meant for Women Class #2 – August 23d

Continue with Bartlett's Feminist Method

Readings on Justice O'Connor

Doing Feminist Legal Theory: The Reasonable Woman Class #3 – August 25th

Forell & Matthews, A Law of Her Own, Introduction, xviii-xxii and Chapters 1, 2, 3 & 4, pp.3-69.

Anna Quindlen, The Reasonable Woman Standard (handout)

Schultz, Sex Is the Least of It (handout)

Intersectionality

Class #4 – August 30th

Forell & Matthews, A Law of Her Own, Chapter 5, pp.70-96.

Tanya Hendandez, The Salience of Intersectionality Theory Analysis for Women of All Colors (handout)

Maria Ontiveros, Three Perspectives on Workplace Harassment of Women of Color (handout)

II. The Difference Dilemma

A. Introduction

M. Minow, Forward: Justice Engendered, 101 Harv. L. Rev. 10, 10-11 (1987) (supplement)

B. Woman as "Other"

S. Freud, Lectures on Femininity (supplement)

News Clippings on Religion & Feminism (supplement)

R. Posner, Sex and Reason 88-98 (Harvard 1992) (supplement)

R. Epstein, Gender is for Nouns, 41 DePaul L. Rev. 981 (1992) (supplement)

N. Angier, Biological Bull (supplement)

Z. Eisenstein, The Female Body and the Law 82-98 (1988) (supplement)

C. History

Quote from James Stephen (supplement)

D. Rhode, Justice and Gender 9-16, 18-32, 53-59 (1989) (**ON RESERVE IN LAW LIBRARY**)

Bradwell v. Illinois, 83 U.S. (16 Wall.) 130 (1873) (supplement)

K. O'Neil, Rough Justice, Oregon State Bar Bull. 41-42 (Oct. 1994) (supplement)

Fax poll, California Lawyer (May 1993) (supplement)

Muller v. Oregon, 208 U.S. 412 (1908) (supplement)

Hoyt v. Florida, 119 So.2d 691 (Fla. 1959) aff'd 368 U.S. 57 (1961)
(supplement)

Chemerinsky, The End of Gender-Based Preemptory Challenges (supplement)

J.E.B. v. Alabama Ex Rel. T.B., 114 S.Ct. 1419 (1994) (supplement)

D. Literature

S. Glaspell, A Jury of Her Peers (supplement and movie)

M. Angel, Criminal Law and Women, 33 Amer. Crim. L. Rev. 229, 235-246
(1996) (handout)

News Clippings on Domestic Violence & Violence to Pets (supplement)

E. Overview of Feminist Theory: Liberal, Cultural and Radical/Dominance Theories

Robin West, Jurisprudence & Gender, 55 U. Chicago L.Rev. 1-71 (1988)
(handout)

Martha Nussbaum, Sex and Social Justice 62-63 (supplement)

C. MacKinnon, Feminism Unmodified, Introduction, 1-17 (supplement)

III. A Different Voice

A. Introduction

Carol Gilligan, In A Different Voice (the entire book)

B. Commentary

On In A Different Voice: An Interdisciplinary Forum, 11 Signs 304 (Winter 1986)
(handout)

News articles on gender and difference (supplement)

Bad Boys, Watcha Gonna Do (supplement)

Posner, Conservative Feminism, 1989 The U. of Chi. Legal Forum 191, 209-
217 (supplement)

S. Faludi, Backlash 378-388 (Crown 1991) (supplement)

IV. Equality Analysis

United States v. Virginia, 116 S.Ct. 2264 (1996) (supplement)

News Clippings on Women and the Military (supplement)

On Being a Warrior (supplement)

A. Intermediate Scrutiny

Craig v. Boren, 429 U.S. 190 (1976) (supplement)

Catharine MacKinnon, Feminism Unmodified, Difference and Dominance (Harv.1987) (supplement)

B. Statutory Rape

Michael M. v. Sonoma County Super. Ct., 450 U.S. 464 (1981) (supplement)

Statutory Rape Laws--At Issue (supplement)

Oregon Revised Statutes (supplement)

V. Pregnancy and the Workplace

A. Cases

Geduldig v. Aiello, 417 U.S. 484 (1973) (supplement)

General Electric v. Gilbert, 429 U.S. 125 (1976) (supplement)

Health Plans Should Cover the Pill. (supplement)

Bray v. Alexandria Women's Health Clinic, 113 S. Ct. 753, 757-762 (1993) (supplement)

Cal. Fed. Savings & Loan v. Guerra, 479 U.S. 272 (1987) (supplement)

B. Commentary

W. Williams, Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate (supplement)

Family Leave in California Now Includes Pay Benefit (NY Times 2002) (supplement)

VI. Woman versus Child: Fetal Rights

A. Substance Abuse During Pregnancy

Pollitt, 'Fetal Rights': A New Assault on Feminism, The Nation 409-18, March 26, 1990 (supplement)

Exchange, The Nation (supplement)

Dorris, A Desperate Crack Legacy, Newsweek (supplement)

L. Erdrich, Forward to M. Dorris, The Broken Cord (supplement)

Is the Prosecution of 'Fetal Endangerment' Illegitimate? (supplement)

Whitner v. State, 492 S.E.2d 777 (S.C. 1997) (supplement)

Ferguson v. City of Charleston, 121 S.Ct. 1281 (2001) (supplement)

News Clippings on Mothers' and Fathers' Behavior (supplement)

B. Forced Caesarean Sections

In Re A.C., 533 A.2d 611 (D.C. App. 1987) (supplement)

In Re A.C., 573 A.2d 1235 (D.C. App. 1990) (supplement)

S. Faludi, Backlash 432-437 (supplement)

Ashe, Zig-Zag Stitching and the Seamless Web: Thoughts on 'Reproduction' and the Law (supplement)

News Clipping on Healthy Newborn (supplement)

Doctor Who Chose Baby Over Self Dies (supplement)

VII. Battered Women Who Kill and Are Killed

Movie - Sarah Buel - Symposium on Domestic Violence

Newspaper articles on Blanco, Leeper, Powell and Bianco cases (supplement)

Family Fights Bring Violence to Rural Towns (supplement)

Forell & Matthews, A Law of Her Own, Chapters 9, 10 & 11, pp.157-218

VIII. Movie – Adam's Rib

IX. Rape

S. Estrich, Real Rape (entire book)

Forell & Matthews, A Law of Her Own, Chapter 12, pp.221-240

Trial Magazine rape statistics (supplement)
Newspaper commentary and articles (supplement)
Eugene Register Guard article (supplement)
Podhoretz, Rape in the Feminist Eyes (supplement)
Faludi, Whose Hype, Newsweek (supplement)
Will, Sex Among SemiColons (supplement)
Antioch Response (supplement)
UO Student Conduct Code (supplement)

X. Different Voices: Women of Color and Lesbians

Patricia Williams, On Being the Object of Property 14 Signs 5 (1988)
(supplement)

Angela Harris, Race & Essentialism in Feminist Theory, 42 Stan. L. Rev. 581
(1990) (handout)

C. MacKinnon, Feminism Unmodified, Whose Culture? A Case Note on
Martinez v. Santa Clara Pueblo 63-69 (supplement)

Martha Nussbaum, Sex and Social Justice 118-129 (supplement)

Patricia Cain, Feminist Jurisprudence, Grounding the Theories, 4 Berkeley
Women's L. J. 191 (1990) (supplement)

Newspaper and magazine articles on Lesbian Legal Issues (supplement)

If you have a documented disability and anticipate needing accommodations in this course, please make arrangements to meet with me soon. Please request that the Counselor for Students with Disabilities send a letter verifying your disability.