

UNDERGRADUATE LAWS PROGRAMME BLOG

Feminist Legal Theory

Professor Jill Marshall, Module Convenor for Jurisprudence

In this blog, I want to highlight a few issues in current affairs, in the press, the news and society in general in the past 6 months or so. My purpose in doing this here, is to show how these examples raise legal theoretical issues and in particular for this post, how they relate to feminist legal theory and chapter 15 of your module guide.

You'll remember that feminist legal theory draws from feminist theory more broadly in other disciplines – such as sociology and political theory. Remember it is a movement, a group, a gathering, made up of many different variations of feminist theory.

However, they share some similar concerns:

Firstly, they show how law defines what is male, female, masculine or feminine. And that such definitions reinforce the position of men and women in society to men's advantage.

Secondly, they analyse how the differences between women and men should or should not be reflected in legal rules, institutions and structures.

Thirdly, they place the lives of real women at the centre of their scholarship.

Fourthly, they tend to stress the ideals of women's self-determination and freedom – in this sense to seek women are treated as fully human, which has much in common with a full realisation of liberal principles for women.

Fifthly, they are usually keen to bring change and transformation to society, including the legal system, to improve women's lives and people's lives in general.

With that in mind, let's look at some recent legal issues that bring to my mind the potential harm to girls and women in law's understanding of our lives.

The first issue I want to mention is a recent court case in the UK brought by a 14 year old girl against Facebook for allowing a naked image of her to be posted. She said this had been obtained through blackmail and posted by a man on a so-called shame page on Facebook several times between November 2014 and January 2016. She is seeking damages for misuse of private information, negligence and breach of the Data Protection Act.

In the autumn of last year, the High Court in Belfast in Northern Ireland granted leave for the girl to bring the claim against Facebook and it is due to be heard at a full trial in September 2017.

Her lawyers argue this is a method of child abuse and Facebook had the power to block any republication by using a DNA process to identify the image.

When the company tried to have the action dismissed at a preliminary stage, it was unsuccessful in arguing that a European directive provided protection from having to monitor a vast amount of online material for what is posted on one page. It was also stressed that the social network always respond to any reported breaches brought to its attention. The picture was taken down as soon as notification was received.

Feminist Legal Theory

But the girl's legal team countered that putting a naked picture of a 14-year-old should have been a "red-line" issue for the company. If the image had been blocked all subsequent publications would have been avoided, they contended. This is all reported in the Belfast Telegraph newspaper 24th of November 2016.

There has been a massive increase in the use of sexting – that is sending text messages or similar images over the internet, including as a form of revenge or blackmail either under false pretences from the start or as part of a trusting relationship that then goes sour with revenge porn – this is now illegal in the UK.

Think of all the implications for the people involved.

My second issue is a recent project I heard about relating to the forced sterilisation of women in Peru in the 1990s. This is called the quipu project. That's Q-U-I-P-U. In this project, the objective is to bring to light the shocking testimonies of victims with the aim of ensuring those responsible are punished.

They are using technology that's designed to reach those living in isolated communities. They have established a specially developed phone line connected to the internet that allows women to share their stories in their own words, listen to others' experiences, and be heard around the country and the world.

As a network of relationships, it brings to my mind the work of Carol Gilligan who wrote in a different voice in 1982 and discussion of women's ethic of care based on a network or thread of relationships. This also though can show the importance of an ethic of justice in standing up for individual rights – the rights of each woman affected. And this can link to liberal feminism. Also, we can see here raising of awareness which is similar to the method of consciousness raising which is advocated by radical feminism such as Catherine MacKinnon. Further there is the use of the internet here to help or improve women's awareness, empowerment, and sense of justice. In terms of my previous example, can sexting images of one's naked body – assuming one is of an age of consent and not a 14 year old girl – can this be seen as an empowering sense of freedom and justice issue as well or is it the opposite?

So to get back to my example in Peru, the Quipu team travel across Peru to the regions that were most affected by the sterilisation campaign – these are impoverished villages in the Andes and the Amazon. As they meet more people and collect their stories on the phone line, the real scale of the campaign starts to be revealed.

You can see more about these stories by following the links listed on my accompanying factsheet and doing any further research you would like to yourselves.

My third issue is the case of Civil Partnership for heterosexual couples. The UK Civil Partnership Act allows same sex civil partnerships but now with the same sex marriage Act, same sex couples can also be married. The civil partnership Act however does not allow heterosexual couples to enter into civil partnerships. Recently, the Court of Appeal in London ruled that the current ban on mixed-sex civil partnerships cannot continue indefinitely, although the couple bringing the case - Rebecca Steinfeld and Charles Keidan- lost in the split decision of the court (2 judges to 1) challenging the government's ongoing ban on mixed-sex civil partnerships.

Although all three judges agreed that the government's policy of "wait and see" must end soon, two judges concluded that the government should be allowed slightly more time before coming to a decision on the future status of civil partnerships. The ruling states that the government now has only a short window to 'wait and evaluate' before deciding whether to extend civil partnerships to all. If they fail to reach a decision soon the government will be in breach of the Human Rights Act so the court said.

Feminist Legal Theory

Campaigners want the UK government now to announce a simple amendment to the Civil Partnership Act so as to extend civil partnerships to all. They said there is clear demand for that to happen, it is simple to do, and it would be good for families and children. Again have a look at the sources I left in the accompanying document.

Do you think this is relevant in the 21st century? Are distinctions between genders or sexes relevant at all (and indeed what is the difference between these two concepts)?

These are just some issues for you to have in your mind and to think about in terms of current examples when you are reading the materials for the purposes of revision on feminist legal theory. I hope they've given you some food for thought. Thanks for your attention!