

SOURCEBOOK ON FEMINIST JURISPRUDENCE

Hilaire Barnett, BA, LL.M
Lecturer in Law
Queen Mary & Westfield College



Cavendish
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First published in Great Britain 1997 by Cavendish Publishing Limited,
The Glass House, Wharton Street, London WC1X 9PX
Telephone: 0171-278 8000 Facsimile: 0171-278 8080

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British Library Cataloguing-in-Publication Data.

Barnett, Hilaire A
Sourcebook on feminist jurisprudence
1. Feminist jurisprudence
I. Title
340.1'1'082

ISBN 1 85941 113 4

Printed and bound in Great Britain

*[W]omen have sat indoors all these millions of years, so that by this time the very walls are permeated by their creative force, which has, indeed, so overcharged the capacity of bricks and mortar that it must needs harness itself to pens and brushes and business and politics. But this creative power differs greatly from the creative power of men. And one must conclude that it would be a thousand pities if it were hindered or wasted, for it was won by centuries of the most drastic discipline, and there is nothing to take its place. It would be a thousand pities if women wrote like men, or lived like men, or looked like men, for if two sexes are quite inadequate, considering the vastness and variety of the world, how could we manage with one only?*¹

Virginia Woolf, 1929

1 *A Room of One's Own* (1929) (Penguin, 1993), p 79.

PREFACE

The literature on feminist jurisprudence is now both extensive and impressive. Whilst the modern feminist quest for equality may be traced to the writings of Mary Wollestonecraft in the 18th century, and that of John Stuart and Harriet Mill in the 19th century, the scholarship on women and law is of more recent origins. However, with the revitalised interest of the 1960s through to the current time, feminist jurisprudence has come of age. No longer is it possible to view feminist legal scholarship as a 'minority' interest. Whether the interest lies in identifying and campaigning for the removal of the remaining legal disabilities of women, or in theorising about the manner in which law reflects and reinforces gender-based inequalities, or in infusing traditional legal scholarship and teaching with a feminist perspective, feminism has become a mainstream discipline.

In this book I have attempted to reflect the richness and variety of feminist scholarship. The book is divided into four parts and 12 chapters. In Part I, factual data on the position of women throughout the world is provided through the United Nations, 1990 and 1995 Reports. The manner in which women have been treated, in differing parts of the world, in the past and present, as a result of cultural norms is considered in Chapter 2. In Chapter 3, the scope and evolution of feminist jurisprudence is considered. Chapter 4 is devoted to three articles outlining the methods used by feminist scholars in order to advance their work. Part II is devoted to central concepts in feminist jurisprudence: those of patriarchy and gender. In Part III the role of women in political and legal theory through the ages is considered. Positivism, liberalism, Marxism and social contract theory have provided fertile areas for feminist inquiry. Also considered are the feminist debates in contemporary jurisprudence. In Part IV the key issues facing feminist jurisprudence are discussed. Violence against women, the treatment of women in the legal system, pornography, women and medicine and the status of women under international law are considered in this Part.

Inevitably, given the wide-ranging nature and volume of feminist legal scholarship, and the limits of space, the compilation of this collection has proved to be a selective exercise. I have endeavoured to present some of the now-seminal work on feminist legal thought and some of the challenging and more recent literature. It has also been my objective to give adequate attention and space to the ever-increasing Australian and British scholarship on feminist jurisprudence.

Production of this collection has been delayed by some nine months because of the difficulties caused by copyright permission requests. Requests ignored has been a principal problem, as have permissions being granted on prohibitive terms and conditions. It has been my principal aim to produce a book which will serve as a working tool for students; not to provide an expensive reference work which would find its way only into specialist library collections. As a result, the cost of copyright permissions inevitably and regrettably had to play a role in the inclusion or exclusion of many works. I am most grateful to all the authors who have helped me to get permission through personally contacting their recalcitrant publishers. Without their personal help, this collection would be the poorer.

Sourcebook on Feminist Jurisprudence

My thanks are due to many friends and colleagues who have actively encouraged the development of this book. If through either inclusion or exclusion of some material I have failed to match their expectations I hope to be forgiven. My thanks also go to Jo Reddy, Kate Nicol and Cathy West of Cavendish Publishing.

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University of London
March 1997

ACKNOWLEDGMENTS

Grateful acknowledgment is made for the following:

Albury, R, 'Law Reform and Human Reproduction: Implications for Women', in Simms, M (ed), *Australian Women and the Political System* (Longman, Melbourne, 1984)

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CONTENTS

<i>Preface</i>	<i>vii</i>
<i>Acknowledgments</i>	<i>ix</i>
PART I: INTRODUCTION	1
1 FACTUAL DATA ON THE WORLD'S WOMEN	3
The United Nations Reports: The World's Women 1970–90	3
2 WOMEN AND CULTURE	21
Janet Rifkin: Toward a Theory of Law and Patriarchy	23
Mary Daly: Gyn/Ecology	26
Marianne Hester: Lewd Women and Wicked Witches	35
Thomas Hardy: The Mayor of Casterbridge	39
Elaine Pagels: What Became of God the Mother? Conflicting Images of God in Early Christianity	44
Mary Daly: Beyond God the Father: Toward a Philosophy of Women's Liberation	47
THE TRANSITION FROM CULTURE TO LAW AND LEGAL THEORY	50
Emile Durkheim: The Division of Labour in Society	51
Eugen Erlich: Fundamental Principles of the Sociology of Law	53
William Graham Sumner: Folkways	53
3 THE EVOLUTION AND SCOPE OF FEMINIST JURISPRUDENCE	59
WHAT IS FEMINIST JURISPRUDENCE?	61
Christine Littleton: In Search of a Feminist Jurisprudence	61
Elizabeth Grosz: What is Feminist Theory?	64
Margaret Thornton: Feminist Jurisprudence: Illusion or Reality?	75
EVOLUTION AND FLUX IN FEMINIST JURISPRUDENCE	77
Ngairé Naffine: Law and the Sexes	77
Carol Smart: Feminism and the Power of Law	81
Anne Bottomley: Feminism, the Desire for Theory and the Use of Law	84
4 FEMINIST LEGAL METHODS	93
Katharine Bartlett: Feminist Legal Methods	94
Ann Scales: The Emergence of Feminist Jurisprudence	105
Mary Jane Mossman: Feminism and Legal Method: The Difference it Makes	107

PART II: CENTRAL CONCEPTS IN FEMINIST JURISPRUDENCE	121
5 PATRIARCHY: PUBLIC AND PRIVATE	123
Sylvia Walby: Theorising Patriarchy	124
Shelley Wright: Patriarchal Feminism and the Law of the Father	127
THE PUBLIC/PRIVATE DICHOTOMY	135
John Stuart Mill: The Subjection of Women	135
Cedric Thornberry: What Price the Missus Now?	141
FEMINIST CRITIQUES OF THE PUBLIC/PRIVATE DICHOTOMY	143
Carole Pateman: The Disorder of Women	143
Katherine O'Donovan: Sexual Divisions in Law	146
6 GENDER: EQUALITY/SAMENESS/DIFFERENCE	161
GENDER DETERMINATION – BY LAW	164
Katherine O'Donovan: Legal Construction of Sex and Gender	171
Lucinda Finley: Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning	176
Sheila Duncan: The Mirror Tells its Tale: Constructions of Gender in Criminal Law	186
THE EQUALITY/SAMENESS/DIFFERENCE DEBATE	193
Simone de Beauvoir: The Second Sex	194
Carol Gilligan's research	194
Carrie Menkel-Meadow: Portia in a Different Voice: Speculations on a Women's Lawyering Process	196
Leslie Bender: From Gender Difference to Feminist Solidarity: Using Carol Gilligan and an Ethic of Care in Law	203
Catharine MacKinnon: Difference and Dominance: On Sex Discrimination	211
Drucilla Cornell: Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State	221
Robin West: Jurisprudence and Gender	227
Deborah L Rhode: The 'Woman's Point of View'	244
Angela P Harris: Race and Essentialism in Feminist Legal Theory	249
Patricia A Cain: Feminist Jurisprudence: Grounding the Theories	256
Joan C Williams: Deconstructing Gender	268

PART III: WOMEN IN POLITICAL AND LEGAL THEORY	275
7 ANCIENT POLITICAL THOUGHT	277
Plato: The Republic	277
Plato: Symposium	280
Aristotle: The Politics	281
Susan Moller Okin: Women in Western Political Thought	286
8 'TRADITIONAL' JURISPRUDENCE	301
POSITIVIST LEGAL THEORY	301
Ngairé Naffine: Law and the Sexes	302
Margot Stubbs: Feminism and Legal Positivism	303
Nicola Lacey: Feminism and the Tenets of Conventional Legal Theory	309
SOCIAL CONTRACT THEORY	315
John Locke: Two Treatises on Government	316
Melissa Butler: Early Liberal Roots of Feminism: John Locke and the Attack on Patriarchy	317
John Rawls: Theory of Justice	323
Mari J Matsuda: Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls's Theory of Justice	325
Carole Pateman: The Sexual Contract	327
FEMINISM AND MARXISM	328
Hugh Collins: Marxism and Law	329
Engels: The Origin of the Family, Private Property and the State	332
Simone de Beauvoir: The Second Sex	333
Rosalind Delmar: Looking Again at Engels's Origins of the Family, Private Property and the State	335
Carole Pateman: The Sexual Contract	339
FEMINISM AND CRITICAL LEGAL STUDIES	341
Frances Olsen: Feminism and Critical Legal Theory: An American Perspective	342
Deborah L Rhode: Feminist Critical Theories	347
Robin West: Deconstructing the CLS-FEM Split	362

PART IV: KEY ISSUES IN FEMINIST JURISPRUDENCE	369
9 WOMEN, VIOLENCE AND THE LEGAL SYSTEM	371
THE PERSONNEL OF LAW	371
Hilaire Barnett: The Province of Jurisprudence Determined – Again!	371
Albie Sachs and Joan Hoff-Wilson: Sexism and the Law	374
VIOLENCE AGAINST WOMEN	377
RAPE WITHIN MARRIAGE	378
Susan Atkins and Brenda Hoggett: Women and the Law	379
Ngairé Naffine: Possession: Erotic Love in the Law of Rape	385
RAPE	389
Susan Estrich: Rape	389
Susan Brownmiller: Against Our Will: Men, Women, and Rape	398
DOMESTIC VIOLENCE	404
The United Nations Report: The World’s Women, 1970–90	404
Susan Atkins and Brenda Hoggett: Women and the Law	405
Susan Edwards: Battered Woman Syndrome	408
Aileen McColgan: In Defence of Battered Women Who Kill	412
Sheila McLean: Female Victims in the Criminal Law	421
10 PORNOGRAPHY	433
INTRODUCTION	433
DEFINITIONS	434
LEGAL REGULATION OF PORNOGRAPHY IN ENGLAND	435
The Obscene Publications Act 1959	435
Conspiracy to Corrupt Public Morals	436
Australia, Canada and the United States of America	437
THE SCALE OF ‘THE PROBLEM’ OF PORNOGRAPHY	437
John Stuart Mill: On Liberty	439
Andrea Dworkin: Pornography: Men Possessing Women	443
Andrea Dworkin: Whores	445
Catharine MacKinnon: Francis Biddle’s Sister: Pornography, Civil Rights, and Speech	450
Catharine MacKinnon: Only Words	460
Elizabeth Wolgast: Pornography and the Tyranny of the Majority	463
Emily Jackson: The Problem with Pornography: A Critical Survey of the Current Debate	476

Contents

11 WOMEN AND MEDICINE	491
Elizabeth Kingdom: Consent, Coercion and Consortium: The Sexual Politics of Sterilisation	493
Sally Sheldon: 'Who is the Mother to Make the Judgment?': Constructions of Woman in English Abortion Law	507
Katherine O'Donovan: The Medicalisation of Infanticide	518
Rebecca Albury: Law Reform and Human Reproduction: Implications for Women	523
12 WOMEN AND INTERNATIONAL LAW	535
Hilary Charlesworth, Christine Chinkin and Shelley Wright: Feminist Approaches to International Law	537
The United Nations Report: The World's Women, 1995	554
Jane Connors: Violence Against Women	558
Geraldine Van Bueren: International Protection of Family Members' Rights	576
Andrew Byrnes: Women, Feminism and International Human Rights Law – Methodological Myopia, Fundamental Flaws or Meaningful Marginalisation?	583
Jane Connors: Mainstreaming Gender Within the International Framework	603
<i>Index</i>	617

PART I
INTRODUCTION