Gender Stereotypes: Transnational Legal Perspectives

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Outline of talk

• Argument
• Gender Stereotyping
• Sexual Assault
• Reproductive Health
• Review Argument
Argument

The elimination of gender discrimination requires an understanding of cognitive methods of marginalization

- Prejudices
- Stereotypes
- Biased assumptions
Gender Stereotyping

• Name the stereotype
• Expose its harms
• Understand its context
• Dismantle the stereotype
Transnational Law

International: to modify social and cultural patterns of conduct to eliminate *prejudices and practices* based on the inferiority or the superiority of either of the sexes, or on *stereotyped roles* for men and women

CEDAW, Art. 5(a)

Convention Belém do Pará, Art. 8(b)

Regional: IACHR, IACmHR

Domestic: Argent, Colom, Mex, Peru, U.S.
Sexual Assault

• Algodonero, 2009
• Ines Fernández Ortega, 2010
• Bustamente, 2014
• Gallagher, pending
Algodonero, 2009

Name: false stereotyping
Harms: blame the victim
Context: police
Dismantle: judicial recognition, training
Ines Fernández Ortega, 2010

Name: prejudice of indigenous women as lesser citizens

Harms: denial of equal access to justice

Context: military justice sexism + impunity

Dismantle:
  military training (gender + ethnicity)
Name: “sexual property”
Harms: biased treatment
Context: civilian justice
Dismantle: multiple violations, moral damages, military guidelines
Gallagher, pending

Naming: hostile labeling
Harms: military sexual trauma-related post traumatic stress disorder (PTSD)
Military context: sexism, misogyny, impunity
Dismantle: ???
Review of Sexual Assault

Name: “sexual property”
Harms: denial of equal citizenship
Context: criminal justice, military justice
Dismantle: training
Reproductive Health

C-355/06, Colombia 2006
Gonzales v. Carhart, US 2007
L.C. v. Peru, 2011
FIGO Ethical Guidelines
C-355/06 - Colombia, 2006

Name: “Reproductive instrument”

Harms: Denial of dignity

Criminal law context: *ultima ratio*

Dismantle: extend legal grounds
Gonzales v. Carhart, US 2007

Name:
  Majority: irrational and incompetent
  Dissent: autonomous decision maker
Harm: Infantilize women
Context: Judicial paternalism
Dismantle: “ancient notions about women’s place” (dissent)
L.C. v. Peru, 2011

Name: Prejudices about reproductive duties

Harms: age+poverty+pregnancy+sex discrimination

Context: arbitrary informal rules

Dismantle: allow abortion in cases of rape & sexual abuse
FIGO Ethical Guidelines
www.figo.org
Harmful Stereotyping of Women ..., 2011
avoid harmful gender stereotyping,
treat pregnant patients as individuals
Sexual Assault Guideline, 2014
post-exposure treatment
Violence against Women Guideline, 2014
training
Name: “reproductive instrument”
Harms: infantilize women
Context: informal rules
Dismantle: “their own priorities & aspirations”
Review Argument

• Name: “sexual property”
  “reproductive instrument”
• Harms: discriminatory consequences
• Context: gendered hierarchies
• Dismantle: “a judiciary whose impartiality is not compromised by biased assumptions”
Further Reading


*Stereotyping as a Human Rights Issue*, Brems & Timmer, eds. (Intersentia 2015)

*Aborto en Derecho Transnational*, Cook, Erdman & Dickens, eds. (FCE/CIDE 2016)