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Feminist Assault on Reasonableness

Twenty years after women began attending law schools in greater numbers, feminists are turning up as law school professors, law review writers, state legislators, congressional staffers, prosecutors, law clerks and even judges. It's splendid to have women in all those positions, but large numbers of feminists are causing ominous dislocations in basic concepts of American law and justice. An excellent policy analysis on "feminist jurisprudence" by the CATO Institute explains why.

The feminist goal is **not** fair treatment for women, but the redistribution of power from the "dominant" class (the male patriarchal system) to the "subordinate" class (nominally women, but actually only the feminists who know how to play by rules they have invented).

Feminists have peddled the fiction that men are engaged in a vast conspiracy against women, that something like 85 percent of employed women are sexually harassed in the workplace, and that something on the order of 50 to 70 percent of wives are beaten by their husbands.

Feminists want to establish the rule that offenses against women should be defined (not objectively, but subjectively) on the basis of how the woman felt instead of what the defendant did.

Before the feminist movement burst on the scene in the 1970s, there were literally hundreds of laws that gave advantages or protections to women based on society's common sense recognition of the facts of life and human nature. These included the prohibition against statutory rape, the Mann Act, the obligation of the husband to support his wife and provide her with a home, special protections for widows (*e.g.*, one state gave widows a little property tax exemption, another prescribed triple penalties against anyone who cheated a widow), and laws that made it a misdemeanor to use obscene or profane language in the presence of a woman.

Ruth Bader Ginsburg was the premier feminist lawyer in the 1970s. Then a professor at Columbia University Law School, she argued that all such differences of treatment based on gender were sex discriminatory and, therefore, should be abolished. She won several Supreme Court cases on that theory. In state after state, as well as in Congress, feminist lawyers persuaded legislators to gender-neutralize their laws.

In theory, Ginsburg appeared to demand a doctrinaire equality, opposing the Mann Act because it "was meant to protect weak women from bad men," which she believed was demeaning to women. But in practice, she demanded affirmative action for women, even in the military. Ginsburg's exposition of her views on the "equality principle" are contained in her book *Sex Bias in the U.S. Code* (published by the U.S. Commission on Civil Rights, 1977, and summarized in the *Phyllis Schlafly Report*, July 1993).

In the 1990s, the feminists no longer even pay lip service to a gender equality goal (except, of course, when it suits their purposes). Their goals are the feminization and subordination of men, and their tactics are to cry "victimization" and "conspiracy." They have launched a broadside attack on such basic precepts as equality under the law, judicial neutrality, a defendant is innocent until proven guilty, conviction requires proof beyond a reasonable doubt, and guilt or liability should be judged according to the traditional "reasonable man" theory.

Female plaintiffs had always been able to sue for offensive sexual actions in the workplace by using the common law remedies of tort and contract. Feminists reject these remedies because they want sexual harassment cases to be based on the nutty notion of a male conspiracy to victimize women and/or their newly-invented legal theory that a "hostile work environment" is a form of "sex discrimination"

prohibited by Title VII of the Civil Rights Act.

The U.S. Supreme Court adopted this feminist theory in the 1986 case of *Meritor Savings Bank v. Vinson*, where the Court even went so far as to say that “‘voluntariness’ in the sense of consent” is not a defense. This notion had been invented by Michigan Law School professor Catharine Mackinnon, who was reported to have boasted, “What the decision means is that we made this law up from the beginning, and now we’ve won.” That’s exactly what happened.

In a 1991 Jacksonville, Florida case, a federal district court found an employer guilty of a “hostile work environment” even though there was no evidence of sexual language or demands directed at the plaintiff who claimed she felt sexually harassed. The other female workers said they did not feel sexually harassed, but the judge said that their testimony merely provided “additional evidence of victimization.” In order to accommodate their claim that 85 percent of employed women are sexually harassed, the feminists have defined it so broadly that it is trivialized to include behavior that is merely annoying.

A 1991 Ninth Circuit Court of Appeals decision replaced the common law “reasonable man” standard with a “reasonable woman” test, embracing the 1990s feminist notion that men and women can’t see the same events in the same way. The court declared that the old common law standard “systematically ignores the experiences of women.”

The “unreasonable woman” rule is what the feminists are demanding now. The feminists want the victim rather than the law to define the offense. Remember, the feminists repealed the old laws making it a misdemeanor to speak “any obscene, profane, indecent, vulgar, suggestive or immoral message” to a woman or girl. Now, they argue that it’s just as actionable for a man to call a woman “honey” or “baby” as to call her a “bitch.” The feminists are trying to enforce rules that any man’s words can be punished if a woman subjectively doesn’t like them, and the basis is how the *woman felt* rather than what the *man said*.

The feminists are actively promoting college speech codes to prohibit what they call discriminatory or harassing speech. Of course, jokes are not allowed because feminists have no sense of humor. Nearly 400 colleges and universities have these anti-First Amendment speech regulations, about a third of which target mere “advocacy of offensive or outrageous viewpoints or biased ideas.”

The feminists want the battered woman syndrome to free any woman from conviction of violent crime. The feminists are even pushing the Catharine Mackinnon fantasy that all heterosexual sex should be

considered rape unless an affirmative, sober, explicit verbal consent can be proved.

The feminists want the action of a battered woman who kills her husband to be considered as normal. They want us to believe that killing a man in his sleep can be excused as self-defense. They want to establish a license for women to kill their allegedly abusive spouses.

More lawyers, scholars and academics are badly needed to speak up and expose the feminist foolishness for what it is: a scurrilous attack on our Bill of Rights.

(See CATO Institute, *Feminist Jurisprudence: Equal Rights or Neo-Paternalism*, June 19, 1996)

The Feminists’ War on VMI

The successful legal and media campaign to force the all-male Virginia Military Institute to admit women wasn’t about “ending sex discrimination” or “allowing women to have access to the same educational benefits that men have at VMI.” It was a no-holds-barred fight to feminize VMI waged by the radical feminists and their allies in the Federal Government. The feminists just can’t stand it that any institution in America would be permitted to motivate and train real men to manifest the uniquely masculine attributes. Feminists want to gender-neutralize society so they can intimidate and control men.

The feminists’ longtime, self-proclaimed goal is an androgynous society. Repudiating constitutional intent, history, tradition and human nature, they seek to forbid us, in public or private life, to recognize the differences between men and women.

Feminist strategy is straightforward: whine that women are victims of centuries of “oppression” and “stereotyping,” lay a guilt trip on men, and use all the stereotypical cultural techniques that women have always used to wheedle what they want out of men. Then, use feminists on the public payroll in all three branches of government to change the laws in order to force us to conform.

So, the Supreme Court, speaking through Ruth Bader Ginsburg, ruled that it is unconstitutional for VMI to exclude women. The notion that a military institution that functioned with success, public acceptance, and significant prestige for 157 years, suddenly, one day in June 1996, could be rationally said to violate the Constitution is patently ridiculous. Black robes and Ginsburg’s devious rhetoric about “scrutiny” can’t make sense out of such judicial arrogance.

VMI is now trying to admit women and treat them just like the male cadets (which is what the feminists *said* they wanted *before* the Supreme Court decision).

Now it turns out that equality wasn't what the feminists wanted after all. Janet Reno's feminist Justice Department has gone into court to argue that failing to make adjustments for female recruits would amount to "discrimination" because it would discourage women from applying or lead them to drop out. Government lawyers are arguing that VMI must make far-reaching efforts to attract and retain female recruits and develop special training for them.

The VMI case is just one more example of the lies and double standards, the chicanery and hypocrisy, that are part and parcel of feminist strategy, tactics, and objectives.

The Feminists Have Global Goals, Too

Did you think that those United Nations Conferences held in Cairo, Beijing and Istanbul were just consciousness-raising sessions where the feminists in the Clinton Administration could commiserate with females from 189 countries about how badly women are treated by the male patriarchal society? Well, think again. When we give the feminists a tax-paid junket to cultivate their grievances, you can bet they will use that opportunity to cook up a lot of mischief.

Did you think that, in our constitutional government, "all legislative powers" are vested in the Congress, where laws, to be valid, must be passed by a majority in both Houses? Well, think again. The feminists have devised a sneaky way to bypass the constitutional process, achieve what they want by "consensus" at a UN conference, and then use the federal bureaucracy to implement their policies as though they were law.

In May 1996, the Clinton Administration set up the President's Interagency Council on Women chaired by those two longtime friends and co-conspirators in feminist activism, Hillary Rodham Clinton and HHS Secretary Donna Shalala. Its mission is to "follow up on U.S. commitments made at the UN Fourth World Conference on Women, Beijing, September 4-15, 1995." On September 28, 1996 the President's Interagency Council held a national conference via satellite to report on the "progress" made toward Beijing's "Platform for Action."

Soon after the feminists returned from China in 1995, UN Ambassador Madeleine Albright, who was the U.S. Delegation chair in Beijing, spelled out the goals in a document called "Bring Beijing Home." These included "family responsibilities must be shared" (obviously, the government should force husbands to do the dishes and the diapers) and, of course, assuring abortion rights. Albright announced that Beijing had produced "an international women's movement of

activists, advocates and advisors to the nations of the world." U.S. taxpayers paid one-third of the \$14 million bill for the gab session.

The Beijing commitments are now being implemented through a federal entity composed of high-level representatives from 30 federal agencies. It holds monthly meetings, engages in outreach activities, conducts local seminars, and uses a White House address.

The longtime feminist goal called "comparable worth" is a major goal of this President's Interagency Council. The feminists think it's unfair that jobs held mostly by men, such as plumber and prison guard, have higher pay than clerical jobs held mostly by women. The feminists allege that paper credentials are "worth" more than unpleasant or dangerous working conditions. Although nobody is stopping more women from becoming plumbers and prison guards, the feminists say "pay equity" requires freezing the wages of male-dominated jobs in order to increase the wages of the jobs women prefer.

This "comparable worth" notion has been rejected by all U.S. legislatures and courts that have considered it, but the feminists continue to pursue it. The Interagency Council's mission statement reveals that the feminists are trying to enforce it through their pals in the Labor Department's Office of Federal Contract Compliance, using new reporting requirements and "corrective remedies."

Another "top priority" of this group is ratification of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. Only radical feminists could believe the silliness that the lot of American women would be improved by allowing a UN agency to define our rights.

Domestic violence is another major item on the Beijing agenda. This will allow the feminists to assure that the \$1.6 billion voted by Congress for the Violence Against Women Act is treated as feminist pork and channelled to their friends.

The National Education Association has produced a video on the Beijing Conference called "Cornerstone for the Future" featuring (surprise, surprise) Hillary Rodham Clinton. Designed to promote discussions in middle schools about women as victims who need more government services, the video was launched by Mrs. Clinton at a middle school in Fairfax County, Virginia.

The behind-the-scenes activist who has been coordinating this agenda is Bella Abzug, the former Congresswoman who is now head of the Women's Environment and Development Organization, which (as expected) is a recipient of U.S. taxpayer grants. At

Feminist Expo '96, organized by former National Organization for Women head Eleanor Smeal and held in Washington, D.C. in February, Abzug boasted: "You made a contract with the world's women, and that has to be enforced. And how does it get enforced? By politics, by political action."

Abzug is an experienced activist. In addition to her 12-point "Contract with American Women" that includes demands for comparable worth and affirmative action, she boasts that work is under way to promote her platform in high schools, colleges and universities through courses and seminars on Beijing's notion of "gender equity."

If she runs out of U.S. taxpayer grants, she can call on the United Nations Development Fund for Women, whose literature announces that it is working with governments to transform Beijing's 362 paragraphs into "national strategic plans and programs." The 1996 UN conference in Istanbul, called Habitat II, even wants to add the "right to housing" to the UN's Global Plan of Action.

Feminists Try to Monitor Corporations

The Sisters of St. Francis in Philadelphia used their ownership of a little stock to engage in feminist mischief-making by demanding that a Silicon Valley company called Cypress Semiconductor select its board of directors on the basis of racial and gender diversity. CEO T.J. Rodgers wrote back with the put-down the nuns deserved. He rejected their arguments as "not only unsound, but even immoral." He admonished them that Cypress's board of directors "is not a ceremonial watchdog, but a critical management function."

The nuns had tried to lay a guilt trip on Cypress by suggesting that it lacks corporate "morality" and Christianity by failing to appoint a board of directors with "equality of sexes, races, and ethnic groups." Rodgers didn't hedge in his response. "I am unaware," he said, "of any Christian requirements for corporate boards; your views seem more accurately described as 'politically correct,' than 'Christian.'" Contrary to the nuns' argument, Rodgers explained that "a woman's view on how to run our semiconductor company does not help us, unless that woman has an advanced technical degree and experience as a CEO."

Sounds like common sense, doesn't it? "I believe," he said, "that placing arbitrary racial or gender quotas on corporate boards is fundamentally wrong." Then, Rodgers went on to argue that the nuns' presumptuous requirements for corporate boards are "immoral," which

he defined as "causing harm to people." He pointed out how all the retirees whose pension funds invest in Cypress would suffer if Cypress were run on anything other than a profit-making basis.

The letter from the nuns was so sanctimonious that it did not allow for any possibility that a CEO could be moral if he disagreed with their position! Rodgers told the sisters to "get down from your moral high horse." He reiterated that "choosing a board of directors based on race and gender is a lousy way to run a company. We will never be pressured into it. We simply cannot allow arbitrary rules to be forced on us by organizations that lack business expertise."

Rodgers obviously warmed up to the challenge from the nuns' do-good busybodyism. "The political pressure to be what is euphemized as a 'responsible corporation' today," he said, "is so great that it literally threatens the well being of every American." He listed some of the other special-interest groups that are harassing corporations about their pet issues. These include the complaints that corporations are not sufficiently "environmentally conscious," that they do business with certain countries, or supply the Armed Forces, or pay their CEO too much, or give to certain charities.

Rodgers cited a *Fortune* magazine report showing that the so-called "ethical mutual funds" that invest according to a social-issues agenda, which control \$639 billion in investments, produced an 18.2 percent return in the last 12 months, while the S&P 500 returned 27.2 percent. Thus, the investors in the "ethical funds" lost 9 percent of \$639 billion, or \$57.5 billion in one year, because they invested on a social-issues basis!

Rodgers concluded by stating that he stands for "personal and economic freedom, for free minds and free markets, a position irrevocably in opposition to the immoral attempt by coercive utopians to mandate even more government control over America's economy." May his tribe increase, and may his forthright statement embolden other CEOs to speak up, too.

<http://www.eagleforum.org>

eagle@eagleforum.org

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