



FEMINIST PHILOSOPHY OF LAW: THEORETICAL FRAMEWORKS, CRITICAL DEBATES, AND LEGAL REFORMS

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Abstract: This article examines the theoretical evolution of feminist philosophy of law (feminist jurisprudence) and its critical deconstruction of traditional legal objectivity and neutrality. The study systematically analyzes key theoretical streams—Liberal, Difference (Cultural), Dominance (Radical), and Intersectional legal feminisms. Furthermore, it scrutinizes how classic legal frameworks embed patriarchal power dynamics through doctrines such as the "reasonable person" standard, the public/private dichotomy, and historic definitions of harm and consent, demonstrating how feminist legal theory works to transform law into a tool for substantive equality.

Keywords: Feminist jurisprudence, formal equality, substantive equality, dominance feminism, intersectionality, reasonable person standard, sex discrimination, ethics of care.

Annotatsiya: Ushbu maqolada feministik huquq filosofiyasi (*feminist jurisprudence*) rivojining nazariy bosqichlari, uning an'anaviy huquqiy tartibotlarga hamda "xolislik" va "neytrallik" doirasidagi klassik tushunchalarga tanqidiy yondashuvi tahlil qilinadi. Tadqiqotda liberal, differensial (madaniy), gegemonlik (*dominance*) va interseksional feminizm yo'nalishlarining mazmun-mohiyati yoritib berilgan. Shuningdek, erkaklar manfaatiga yo'naltirilgan an'anaviy huquqiy normalar, "oqilona shaxs" (*reasonable person*) standarti, ommaviy va shaxsiy huquq o'rtasidagi sun'iy chegara hamda jinsiy tegajaglik (*sexual harassment*) va rozilik (*consent*) institutlarining qayta ko'rib chiqilishi masalalari ilmiy va amaliy jihatdan tadqiq etilgan.

Kalit so'zlar: Feministik huquq filosofiyasi, shakliy tenglik, moddiy tenglik, gegemonlik feminizmi, interseksionallik, oqilona shaxs standarti, jinsiy diskriminatsiya, g'amxo'rlik etikasi.

Аннотация: В данной статье исследуется теоретическая эволюция феминистской философии права (*feminist jurisprudence*) и ее критический анализ классических представлений об объективности и нейтральности права. В работе систематизированы основные концептуальные направления: либеральный, дифференциальный (культурный), радикальный (доминантный) и интерсекциональный феминизм. Особое внимание уделено тому, как традиционные юридические институты воспроизводят патриархальные структуры власти через такие понятия, как стандарт «разумного человека», дуализм публичного и частного права, а также трансформация правовых подходов к понятиям вреда и согласия.



Ключевые слова: Феминистская юриспруденция, формальное равенство, фактическое равенство, доминантный феминизм, интерсекциональность, стандарт разумного человека, половая дискриминация, этика заботы.

Feminist philosophy of law identifies the pervasive influence of sex and gender, gendered norms, sexism, misogyny, and patriarchal structures on theories of law, legal institutions, legal actors, and people affected by law. It addresses how problematic assumptions about sex and gender underlie answers to conceptual questions about the nature of law and legal systems, such as whether law should be understood as the command of the sovereign, as an interconnected system of rules, as convention, or as inextricably linked to morality. It applies feminist lenses to basic values realized through law, such as freedom or equality. Feminists engage with normative theorizing about what law and legal systems should do, such as whether law should be limited to protecting people from harm from others, or extend to enforcing morality or guarding people from self-harm. Feminists take many different positions about whether the Millian “harm principle” should apply to limit interventions by law to situations in which people put others at risk of harm. Feminist legal philosophers also demonstrate the myriad effects of patriarchy on the material conditions of cisgender women and men, people who are nonbinary, and transgender people. Practically, feminists identify and develop legal reforms to correct gender injustice, exploitation, abuse, or repression.

Feminist legal philosophy is inherently interdisciplinary and appears in philosophy journals and monographs, journals in gender studies and feminism, generalist law reviews, and the many specialist law journals devoted to issues of gender and justice. The journal *Feminist Legal Studies* began publishing in 1993 and is notably international in its reach. The field is also contextual and practical, responding to existing legal structures and legal developments such as the US Supreme Court’s reversal of protection for reproductive choice as a federal constitutional right in 2022 (*Dobbs v. Jackson Women’s Health Organization*). The discussion in this article is primarily drawn from Anglo-American legal theory; however, continental feminist theorists have made important contributions to the field as well.

Feminism itself does not speak with a single voice. Liberal and neoliberal, pragmatist, relational, cultural, difference, dominance, radical, socialist, Marxist, postcolonial, transnational, postmodern, intersectional, along with other newly developing approaches to feminism provide contrasting contributions to feminist legal philosophy and take different approaches to concrete legal issues such as domestic violence or pornography.

Methodologically, feminist philosophy of law draws from feminist work in other areas of philosophy. Accounts of epistemic injustice (Fricker 2007) and the social nature of knowledge including standpoint theory (Wylie 2003) are especially salient to many questions about and within law. Trials, after all, depend



on testimony. Work in relational metaphysics has revealed how legal institutions can and should instantiate connections among people, including care relationships, while rejecting essentialist assumptions about women as caregivers (Herring 2019; Nedelsky 2012; McClain 2006. As practical and contextual, feminist legal theory engages with debates about non-ideal theory (Valentini 2012; Stemplowska 2016).

Feminism's approaches to law reform have been characterized as coming in historical waves (Dixon 2008; Chamallas 2010; Gruber 2013) although these characterizations are rough at best (Mayeri 2023). They also omit references to important earlier feminist thinkers relevant to law and human rights, such as Mary Wollstonecraft, author of *A Vindication of the Rights of Woman*; Catherine Cockburn, a theorist of natural law; and Mary Astell, a defender of equal moral worth. Nineteenth and early twentieth century feminism pursued basic political and legal rights, such as rights to vote, own property, and enter into contracts. Liberal feminism of the 1960s and 1970s sought to dismantle legal barriers and implement non-discrimination in social and economic life. In the 1980s, difference feminists pursued further reforms aimed to enable people to remain in the work force despite childbearing, parenting, or caring for elderly parents. During the same period, dominance feminists urged legal action against pornography, sexual harassment, and rape. Later wave voices in the 1990s and after brought intersectional, transnational, queer, and postmodern theories into the analysis of reform, arguing that apparently progressive policies such as mandatory prosecution of alleged domestic violence offenses have failed to benefit women in poverty, women of color, and immigrant women while increasing political support for the carceral state (Dixon 2008; Dempsey 2009; Goodmark 2018; Gruber 2020, 2023a, 2023b). Intersectionality theorizes how locations in multiple socially constructed categories such as gender, race, class, or disability create interlocking axes of privilege or disadvantage (Jones 2014; Crenshaw 2012; Haslanger 2012).

Despite these differences, some themes are common in feminist philosophy of law. Normative assumptions include the equal moral worth of all human beings (and perhaps of some non-human animals as well) and the entitlement to treatment on an equal basis under law. Equal treatment is understood as requiring more than the formalism of "treat like cases alike". Feminist philosophers of law also share certain basic criticisms of traditional views of the nature of law and legal reasoning, of patriarchy as reflected in structural injustice and in law, and of the problems people have in securing equal justice under law (MacKinnon 1993). They are attuned to the ways in which social power and misogyny have shaped and are shaped by legal systems and how these interactions affect possibilities for reform (Manne 2018; Suk 2023).

This entry begins with a brief overview of fundamental themes of feminist legal theory, followed by discussion of the evolution of views about needed institutional changes in selected substantive areas of law: political equality,



marriage, reproduction, pornography and prostitution, domestic violence and rape, and economic and social equality.

1. Fundamental Themes in Feminist Legal Philosophy. 1.1 Conceptualizing law: Historically, philosophers of law have debated answers to interrelated questions about the nature of law and legal systems, the meaning of the rule of law, and relationships between law and morality. On one side, natural law theorists hold that law and morality bear conceptual connections to one another: that meeting some kind of moral standard is either necessary or sufficient for a rule or principle being law. For these theorists, laws are normatively imbued, thus presenting reasons for action, perhaps even moral reasons for action. On the other side, legal positivists posit law as social fact such as command or accepted rule. For positivists such as H.L.A. Hart, legal and moral normativity differ; whether a norm is a law and whether it is just or unjust are separate questions. Contemporary forms of the debates between natural law and legal positivism emerged in the aftermath of World War II when defendants at Nuremberg on trial for crimes against humanity invoked the defense that they were following the German law in force at the time. These debates have continued over whether there are legal obligations in unjust societies such as apartheid South Africa, whether war crimes or crimes against humanity can be enforced by international tribunals, and whether the law should reach into domains of personal life such as family formation or reproduction.

For the most part, feminist legal theorists have not engaged directly in the debates between natural law theory and legal positivism about the nature and scope of law. However, developments in feminist metaphysics such as Haslanger's view (2012) that metaphysical questions should be addressed as projects in ameliorative justice suggest considering how conceptions of law undergird patriarchy and could be corrected. For example, the positivist separation of law from morality might enable clearer identification of when masculinist norms are implicit in interpretations of liberty protected under the due process clause of the US Constitution (Siegel 2023; Francis 2017).

1.2 The Rule of Law: The rule of law is an ideal of political morality under which communities should be governed by norms that are general, clear, public, prospective, stable, and implemented consistently. The rule of law has been identified with the neoliberalism of Friedrich Hayek, the "internal morality of law" of the natural law theorist Lon Fuller, or the interpretivist view of Ronald Dworkin. The coherence of any particular legal system can always be challenged, but on this approach an aspiration of any legal system is coherence. And (at a minimum) the appearance or illusion of coherence is maintained by requirements such as following precedent, treating like cases alike, and maintaining judicial impartiality.

Although the rule of law contrasts favorably with the exercise of unconstrained power by people who are not themselves subject to law (see Dyzenhaus 2016), feminists have been critical of the conservatism inherent in



much rule of law theory. Feminist critics point out that conceptualizing the rule of law in terms of coherence and consistency may reinforce and legitimate existing power relationships (Scales 2006; MacKinnon 1989). Indeed, one primary purpose of law as traditionally understood is to promote stability and order by reinforcing adherence to predominant norms, representing them not only as the official values of a society, but even as universal, natural, and objective. From these observations, feminist philosophers of law have concluded that law makes systemic bias invisible, normal, entrenched, and thus difficult to identify and to oppose, not only by legal actors such as judges but also by law's victims and beneficiaries (Minow 1990; Rhode 1989; MacKinnon 1989).

1.3. Judicial Decision Making and Originalism: As the legal actors charged with interpreting and applying law, judges play a central role in how the rule of law functions. What it means for judges to apply law is deeply contested, reaching back to fundamental metaphysical assumptions about what law is. Legal positivists such as H.L.A. Hart argue both that the law should not enforce morality and that there are hard cases that existing law is insufficient to resolve; when law is thus limited, judges function as legislators making new law. Natural law theorists contend to the contrary that moral principles are part of the law to be called on by judges. Critics point to the unacknowledged incorporation of conservative values into legal interpretation (Hanson 1992).

Originalism is the view that constitutions or laws should be interpreted in terms of their meaning at the time they were enacted. Originalism's proponents contend that it constrains judges from reading their own values into law (e.g., Baude 2015). Feminist critics argue that originalism continues to entrench patriarchal values (Case 2014). Originalism as found in *Dobbs*, writes feminist legal theorist Reva Siegel (2023: 1128), "locate[s] constitutional authority in imagined communities of the past—entrenching norms, traditions, and modes of life associated with old status hierarchies".

1.4 Equality and Difference: Feminists take different approaches to articulating and implementing requirements of equality. For liberal feminists, a primary task is achieving the principle of procedural equality that like cases should be treated alike and different cases differently in proportion to their differences. But procedural equality lacks specification of what makes cases relevantly similar. Here, the difference between biological sex and gender identity has loomed increasingly significant in legal disputes. One area of controversy concerns transition and the role of bodily interventions such as puberty blockers, hormonal treatment, or genital surgeries. In most countries of the European Union, surgery is not required for gender transition to be judged to be complete; a ruling of the Czech constitutional court in May 2024 reached the same conclusion (Reuters 2024) Controversy also attends whether categorizations such as in sports should be based on attributes of biology, themselves disputed, or on gender identity, as well as how the law should respond. In 2021, the International Olympic Committee issued a framework of fairness and inclusion



for gender identity and sex variations that left ultimate eligibility judgments based on evidence of disproportionate advantage up to the international bodies governing the various sports (IOC 2021). Caster Semenya, a female athlete diagnosed with the disorder of sex development 5 α -Reductase 2 deficiency, challenged a World Athletics requirement that she reduce her testosterone levels in order to continue competing as a female. In 2023, the European Court of Human Rights ruled the requirement had not been sufficiently reviewed by the relevant Swiss court, *Semenya v. Switzerland*. In November, 2023, the case was referred for review by the ECHR's Grand Chamber; no decision had been issued as of the start of 2025.

"Difference" feminists (e.g., Minow 1990) argue that equality requires taking physical, historical, social, and other significant differences into account in developing policy. One challenge for these feminists is whether and how to acknowledge differences without entrenching stereotypes, reinforcing detrimental customs, or promoting sexist socialization. Another challenge is that recognition of difference may warrant change that in turn incurs backlash. "Dilemmas of difference" (Minow 1990) occur when taking a difference into account seems to be required for equality—otherwise, women will face disadvantages that men do not—but also seems to critics to instantiate inequality by giving women benefits such as time off for pregnancy and birth that men do not have (or at least do not have under policies that grant parental leave based on status as giving birth). Minow would dissolve the dilemma with the recognition that the appearance of inequality rests on unstated norms about the status quo that disadvantage women, such as the lack of paid family leave. Of note, according to the Organization for Economic Cooperation and Development (OECD) Family Database (OECD 2024), the United States is the only member nation offering no paid family leave. Sophia Moreau (2020) argues that the unequal effects of such norms may constitute indirect discrimination against women.

Historically, feminists contend, differences based on sex were greatly exaggerated, as was their significance and the extent to which they could be attributed to biology rather than being socially constructed. Yet in the view of many feminists, the impact of pregnancy continues to be wrongly set aside, especially in the United States. In a single sentence in *Dobbs*, for example, Justice Alito dismissed the idea that protecting choices about pregnancy could be required as a matter of equality based on sex, reasoning that the lack of access to abortion would not have a differential impact on women because it would only affect people based on whether they could get pregnant. One US feminist commentator has called this reasoning, along with other decisions of the Court about gun rights and religious liberty, as a "jurisprudence of masculinity" that evinces a striking solicitude for constitutional rights that are associated with men and masculinity while exhibiting disdain for and disinterest in rights that traditionally have been associated with women. (Murray 2023: 800)





Relatedly, many feminists contend today that debates about legal recognition of gender identity mistakenly essentialize sex. These feminists are critical of how law constructs and maintains gender binaries by using “sex assigned at birth” as “legal sex” in areas from segregated housing in prisons to prohibitions of gender affirming therapy (Bell 2016). Feminists have argued that cis-women-protective laws such as those excluding transwomen from women’s sports or bathrooms reenact gender-protective hierarchies of the nineteenth century (McNamarah 2023). A 2020 decision of the US Supreme Court holding that discrimination because of sex in employment includes discrimination based on sexual orientation or gender identity, *Bostock v. Clayton County*, has drawn both high praise from feminists for its substance and criticism from conservatives for its alleged departure from originalism. In the European Union, [Article 21](#) of the Charter of Fundamental Rights prohibits discrimination based on sexual orientation and [Directive 2000/78/EC](#) directs implementation of this prohibition in the laws of member nations.

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