

Gender Stereotypes: Transnational Legal Perspectives

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www.law.utoronto.ca/programs/reprohealth.html

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)

Rodríguez Bustamante, 2014

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

Review of Reproductive Health

www.law.utoronto.ca/irshl/AbortionLaw

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

Cook & Cusack, Estereotipos de Genero, 2011, <http://www.profamilia.org.co/images/stories/libros/estereotipos-de-genero.pdf>

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

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