

RADICAL FEMINISM'S OPPOSITION TO LIBERTY

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I INTRODUCTION

The radical feminist, Kelly Weisberg, stated that 'the rule of law is too "patriarchal" and the laws we actually have are both masculine in terms of their intended beneficiary and authorship'.¹ This statement, however, is in direct opposition towards the very system that aids women in protecting their basic legal rights. Above all, such a reckless attack on the rule of law risks serving only to eradicate individual rights and responsibilities while promoting a culture that thrives off victimhood. This paper will argue that the function of the rule of law is to protect *all* individuals without distinction. Finally, this article critically analyses the radical feminist endorsement of a culture of victimhood coupled with the stereotyping of women as being 'damsels in distress' in a liberal society.

II THE RULE OF LAW

The rule of law is an essential feature required for a democratic society to function effectively. Its role is to provide a safeguard against abuses of power. It therefore endorses individual liberty while ensuring that there is consistency and predictability of the law. The ultimate goal is to provide

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¹ Kelly Weisberg, *Feminist Legal Theory: Foundations* (Temple University Press, 1993) 86.

for a generality of the law that protects individual rights without discriminating between these individuals.²

The crucial element considered necessary for the functioning of the rule of law is the requirement that it implies a certain generality of the law. This requires that the law should not be used to elevate the interests of some over others.³ In order to satisfy this, citizens are to be treated equally before the law. However, this does not mean there is to be a commitment towards the achievement of the equality of outcomes, but instead the equality of opportunity.⁴ Therefore, the law is to be applied without discrimination.

III LIBERAL AND RADICAL FEMINISM

Distinction must first be made between liberal feminism and radical feminist jurisprudence. Liberal feminism, also referred to as first wave feminism, established its primary focus on achieving equality of opportunity and legal rights between the sexes. This was to be done within the framework of a liberal, democratic society. This feminism, pushed forward by writers such as Mary Wollstonecraft and Elizabeth Cady Stanton, was based upon the belief that women were rational beings capable of making the same decisions as men and should be treated equally under the law.⁵

Liberalism, by definition, rejects discrimination and oppression of individuals or groups. Therefore, they agreed that people are to be judged

² Suri Ratnapala, *Jurisprudence* (Cambridge University Press, 2009) 214.

³ Augusto Zimmermann, *Western Legal Theory: History, Concepts and Perspectives* (LexisNexis Butterworths, 2013) 93.

⁴ Montesquieu, *The Spirit of Laws* (1748), Bk 8, Ch 3.

⁵ Zimmermann, above n 3, 235.

based on their merits, not their membership to a group.⁶ This concept of equality, therefore, was the pivotal driver of which these early feminists argued their case. As such, John Stuart Mill, the famous liberal thinker, in his essay *The Subjection of Women*, argued that discrimination based on gender is directly opposed to the fundamental principles of liberalism.⁷ This is because it offends against the concept of individual liberty, and instead focuses on an individual's membership to a group, in this case gender.

Radical feminist jurisprudence originated from the feminist movement, which emerged in the late 1960s and early 1970s, with writers such as Betty Friedan and Gloria Steinem. Generally speaking, they contended that the 'oppressed' status of women was caused by the very liberal society that originally liberated women. It is evident that this radical feminist jurisprudence ultimately goes hand in hand with anti-liberalism.⁸

Some of these feminists adopt a postmodern approach to establish that there is ongoing oppression of women in Western societies. Postmodern ideology is particularly promoted by writers like Bell Hooks, who directly attack the idea of thinking of the future and proclaims how silly it is for us to place any hope in it. Such thinking is dangerous because it promotes the idea of focusing only on the present. But if we are to think towards the future, we would have to understand that our actions have consequences and we therefore must exercise a degree of responsibility.⁹

⁶ Denise Meyerson, *Jurisprudence* (Oxford University Press, 2011) 347.

⁷ John Stuart Mill, *The Subjection of Women* (Frederich A Stokes Company, 1911) 4.

⁸ Ratnapala, above n 2, 233.

⁹ Tammy Bruce, *The Death of Right and Wrong: Exposing the Left's Assault on our Culture and Values* (Three Rivers Press, 2003) 156.

As can be seen, the 'women's point of view' has become the predominant focus in contemporary feminist theory, while liberal feminists believed in the importance of human rights in general.¹⁰ With this elevation of women's rights over men's, it is no wonder that radical feminists intend to discredit the rule of law. Without it, it would no longer be necessary to provide a safeguard against discrimination upon individuals based upon their identity. These contemporary feminists no longer fight for equality; their primary goal is now gender superiority.

IV RADICAL FEMINISM AND MARXISM

Just as Karl Marx described the inherent oppression that is placed by the bourgeoisie upon the proletariat, radical feminists such as Catherine MacKinnon apply the same analogy to the relationship between men and women. She argues that the State imposes male-oriented legality and that it treats women the exact same way that men see and treat women.¹¹ She then goes on to opine that the rule of law and the so-called 'rule of men' are the same: state power exists only to elevate male power, which she labels as being systemic and legitimated. According to those who subscribe to this view, our liberal democracy amounts to a hegemonic masculine regime that assists male dominance over women.¹²

Radical feminist jurisprudence complements the goal of Marxist jurisprudence as they both aim to denounce individual rights and equality before the law. Equality is considered to be a bourgeois construct, which

¹⁰ Winifred Holtby (1926) in: Christina H. Sommers, *Who Stole Feminism?: How Women Have Betrayed Men* (TOUCHSTONE Rockefeller Centre, 1994) 19.

¹¹ Catharine A MacKinnon, *Towards A Feminist Theory of the State* (Harvard University Press, 1989) 162.

¹² *Ibid* 170.

helps maintain their dominance in society.¹³ Community rights are additionally elevated above individual rights.¹⁴ Likewise, radical feminists contend that male power over women is embodied in the ideal of individual rights under law.¹⁵ Just as Marx describes capitalism as being the economic system by which the bourgeois impose their values and supremacy over the proletariat, contemporary feminist jurisprudence views the rule of law as a male-oriented ideology masking the oppression of women and that promotes and legitimizes the sexual division of labour. Feminist jurisprudence therefore becomes the advocacy of women against men, just as Marxist jurisprudence established the proletariat's perpetual struggle against the bourgeois.¹⁶

Radicals such as Catherine MacKinnon support the dangerous notion that objectivity of the liberal State is the ultimate culprit of female subordination. What is furthermore concerning is that she argues that individual rights in law represent male power over women. Does this then mean that the ultimate freedom for women lies in the promotion of group rights where subjectivity reigns as the supreme method of determining the difference between right and wrong? Above all, such ideology effectively aims to create a form of legal segregation based on sex that serves only to promote the impression of there being 'female exceptionalism, not exceptional females'.¹⁷ This form of moral relativism

¹³ Karl Marx and Frederick Engels, *Manifesto of the Communist Party* (1848) at <<http://www.anu.edu.au/polsci/marx/classics/manifesto.html>> (viewed 4 May 2015).

¹⁴ Ibid.

¹⁵ MacKinnon, above n 11, 244.

¹⁶ David. T Koyzis, *Political Visions and Illusions: A Survey and Christian Critique of Contemporary Ideologies*, (InterVarsity Press, 2003), 176-7.

¹⁷ Elle Hardy, 'Wither Feminism' *IPA Review* (Melbourne), 1 February 2015, 34.

invariably promotes a culture of victimhood which holds women as the sole beneficiaries and authors.

V MORAL RELATIVITY AND A CULTURE OF VICTIMHOOD

The West's embracing of moral relativity has created a culture of victimhood amongst radical feminists. This culture has the capability of completely undermining what first wave feminists originally fought for and should be eradicated since it opposes the concept of individual liberty. While there are still issues in our society that directly affect women—such as domestic violence, sexual violence and objectification—denouncing a system that may aid women with fighting against these injustices is certainly not the solution. Instead, it may act to their disadvantage when the effects of moral relativism creep in and the distinction between what's right and wrong blur.¹⁸

One need not look much further than the writings of Carol Gilligan to observe the misleading victimization of women. She is committed to the argument that Western society is largely unsympathetic to women and makes statements such as: 'As the river of a girl's life flows into the sea of Western culture, she is in danger of drowning or disappearing'.¹⁹ This is patently sexist and nonsensical since it should be noted that, at the present time, female students make up the majority demographic in higher learning institutions in the United States.²⁰ And yet, victimisation of women is being used to override the rule of law and to advocate gender based segregation. Tammy Bruce, former President of the Los

¹⁸ Tammy Bruce, *The Death of Right and Wrong: Exposing the Left's Assault on our Culture and Values* (Three Rivers Press, 2003) 30.

¹⁹ Christina H Sommers, *The War Against Boys: How Misguided Feminism is Harming Our Young Men* (New York Rockefeller Centre, 2000) 17.

²⁰ Ibid 31.

Angeles National Organisation of Women ('NOW'), had this to say about the current state of Western culture:

I have seen firsthand how the agendas of feminism... have been consciously used to break down morals and values that the activists saw as obstructions to their achieving, first, cultural acceptance and, ultimately, cultural domination. Where feminism means isolating and demonizing men instead of bringing them with us as partners into our interdependence.²¹

Organisations like NOW prefer to portray women as invariably victims, and to enforce the idea that their victimhood is their power.²² It has consequentially become increasingly difficult to question this way of thinking. When attempting to criticize radical feminist ideology, males are labeled as being 'sexist' and 'reactionary' while female critics are denounced as being 'traitors'.²³ This serves only to alienate women and men alike, furthermore playing into the hands of the Radical Left's attempt to segregate society into groups banded against each other.

The case of *United States v Virginia*²⁴ highlights the impacts of radical feminism on the operation of the rule of law. This is the case in which the *Virginia Military Institute* was held to have violated the 14th Amendment by excluding girls in their all boys same-sex education program. Justice Ruth Bader stated that sex classifications may be used to compensate women for particular economic disabilities they have

²¹ Tammy Bruce, *The Death of Right and Wrong: Exposing the Left's Assault on our Culture and Values* (Three Rivers Press, 2003) 33.

²² Ibid 81.

²³ Christina H Sommers, *Who Stole Feminism?: How Women Have Betrayed Men* (TOUCHSTONE Rockefeller Centre, 1994) 18.

²⁴ *United States v Virginia* (1996) 116 S Ct 2264.

suffered in order to promote equality of opportunity. But at what cost? In light of this case's ruling, it has been established in Virginia that all-girl programs could still be seen as compensatory, while all-boys programs are instead regarded as discriminatory.²⁵

A study in 1995 demonstrated that boys were increasingly performing at a level substantially below that of girls of the same age group.²⁶ In an effort to counter this trend, American schools tried to develop special programs for male-only students. And yet, organisations such as NOW and the American Civil Liberties Union react by rising up in opposition.²⁷ Above all, decisions such as the one mentioned above undoubtedly make the task of correcting this inequality of education increasingly difficult.

VI CONCLUSION

For a liberal and democratic society to flourish the rule of law must not only be embodied in its legal system but it must be accepted as a valid norm within that society. Statements like Kelly Weisberg's must be criticized for their disturbing attack on the rule of law, for, without the rule of law, we as individuals will not be safeguarded against tyranny. Hence, to say that the rule of law is too patriarchal and that its primary beneficiaries and authorities are male is absurd. Such an assumption constitutes a direct attack on the very liberal ideals that liberated women in the first place. By presuming that men are banding together to keep women down and that their system only benefits men, women are invited and encouraged to group together in a kind of resentful community. As

²⁵ John Danforth, 'Single-Sex Education vs. Women at VMI' *Washington Times* (Washington DC) 17 January 1996, A15.

²⁶ Larry Hedges and Amy Nowell, 'Sex Differences in Mental Test Scores, Variability, and Numbers of High Scoring Individuals,' (1995) 269(5220) *Science* 41, 45.

²⁷ Sommers, above n 24, 171.

discussed above, it may instead be argued that Western society is veering toward the complete opposite direction; that the rule of law is effectively operating to the benefit of all women.