Men and The Law

By Roy Den Hollander 2013

Theme: Since the industrial revolution (1760-1830), common law countries such as the U.S., England and Australia have established legal systems that discriminate against men largely to their detriment while discriminating against females mainly to their benefit.

Sir William Blackstone said in 1765, "So great a favorite is the female sex of the laws."

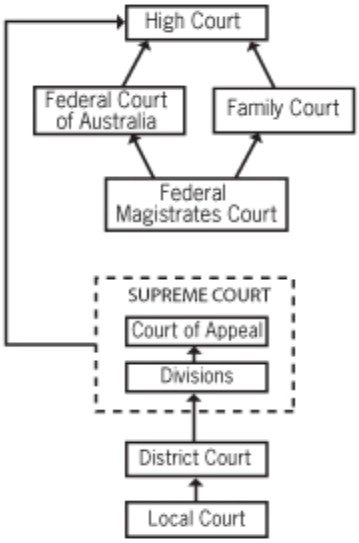
Week 1

Lecture will show similarities of the U.S. and Australian systems and the problem of the common law concept of *stare decisis* inherited from England with examples of the impact of that problem on three men's rights cases brought in the federal courts in New York.

1. Similarities of the U.S. and Australian legal systems
    a. Both were derived from the common law system as developed in England. The common law is distinct from the civil law systems that operate in Europe, South America and Japan, which are derived from Roman law and the Napoleonic Code.
    b. The chief feature of the common law system is that judges' decisions in pending cases are based on the decisions of previous cases with similar facts; whereas, in the civil system, a rule passed by a legislative body pretty much tells a judge how to decide.
    c. The common law system also has rules or statutes passed by legislatures and constitutional conventions. But unlike the civil law, a judge's interpretation of these statutes and constitutional rules, under *stare decisis*, have the force of law for subsequent cases. In fact, these judge made decisions are the primary source of the law.
    d. Both the U.S. and Australia have a federal system of government established by a constitution. Under both constitutions, powers are distributed between the federal

government and the states. The constitutions gave both federal governments the exclusive power to make laws on matters such as trade and commerce, taxation, defense, foreign affairs, and immigration and citizenship. The states and territories have independent legislative power in all matters not specifically assigned to the respective federal governments. Where there is any inconsistency between federal and state or territory laws, federal laws prevail. Federal laws apply to the whole of the U.S. and whole of Australia. Each of the federal and state systems incorporates three separate branches of government—legislative, executive and judicial. Legislatures make the laws, the executive government administers the laws, and the judiciary independently interprets and applies them.

Australian federal court structure:



U.S. federal court structure:

Supreme
13 Circuit Courts of Appeals
District Courts

British court structure:

Supreme
Court of Appeals, separate civil and criminal
Civil – High Court Justice, County Court
Criminal – Crown Court, Magistrates Court

2. The common law was inherited from England. But *stare decisis* creates a problem because it gives a judge the power to legislate, to create the law. When coupled with judges who are appointed for life, as in the U.S. and Australian federal systems, it creates a group of individuals largely immune from the electorate and able to effectively change constitutional law and laws passed by elected representatives.
    a. In the U.S., the President determines who is appointed to the Federal Courts, in Australia, it is the Governor-General in Council.
    b. Under President Bill Clinton, the appointments of federal judges where determined by the recommendations of his wife, Hillary Clinton. She naturally recommended those who agreed with her politically correct beleifs. Your Governor-General in Council, Quentin Bryce, like Hillary Clinton, is also a PC and most likely uses a litmus test for appointing federal judges.
    c. The result of Hillary Clinton's appointments of judges, the adherence to PC tenets of other judges, and the fear in the U.S. of the eastern liberal elite by still other judges was illustrated in three cases that I brought in the federal courts in New York.[1]

[1] Ladies Nights: Miriam Cedarbaum – appointed by Reagan and avowed feminist, Rosemary S. Pooler – appointed by Clinton to District and Appeals, Ralph K. Winter, Jr. – appointed by Reagan to Appeals, Roslynn R. Mauskopf – appointed by George W. Bush; VAWA: William H. Pauley III – appointed by Clinton, Amalya Lyle Kearse – appointed by Jimmy Carter to Appeals, Robert Allen Katzmann – appointed by Clinton to Appeals, Peter Welles Hall – appointed by George W. Bush to Appeals, Women Studies I: Lewis A. Kaplan – appointed by Clinton, Guido Calabresi – appointed by Clinton to Appeals, Chester John Straub – appointed by Clinton to Appeals; Women Studies II: Laura Taylor Swain – appointed by Clinton, Barrington Daniels Parker, Jr. – appointed by Clinton to Appeals, Susan Laura Carney – appointed by Obama, Jed Saul Rakoff – appointed by Clinton to Dsitrict Court.

Summary of the three Men's Rights cases

The three men's rights cases—or as the media described them "anti-feminist" cases, were brought in federal court. The cases are called "Ladies Nights," "Violence Against Women's Act" and "Women's Studies I and II.

Not once, not even close to once, did the federal courts reach the fundamental question in each case: Is it fair under the U.S. Constitution to give females preferential treatment at the expense of the rights of men? The cases were not about enforcing more rights for men, but defending the rights they allegedly had in the face of an onslaught by the belief system—political correctness.

As Howard Zinn said, "To exalt as an absolute is the mark of totalitarianism, and it is possible to have an atmosphere of totalitarianism in a society that has many of the attributes of democracy." Believing that certain political and personal beliefs are the only "correct" ones sounds absolute.

Every court used one of the many tactics that bureaucrats endowed with governmental power use, or more accurately abuse, in order to further their personal beliefs or demonstrate sequacious allegiance to those they fear. Every case was thrown out of court at the very first instance with complete disregard for what the blindfolded lady in the courthouse is supposed to represent.

Ladies Nights

The Ladies Nights' case challenged the charging of males more for admission than females by public accommodation nightclubs. The federal courts said that was okay under the U.S. Constitution because the government was not involved.

When private businesses like nightclubs, which are opened to the public, discriminate, it violates the Constitution only if (1) the state or federal government is involved to a large extent in the business's operations so that it is really the government controlling the business—this is called state action, or (2) the private parties have been delegated some of the government's traditional powers; that is, they carry out a public or state function.

State Action

The federal courts ignored that New York State does not just issue a license to sell alcohol, but extensively controls the people involved and all the activities of a public accommodation nightclub or bar. The State rules over the level of lighting inside, the panorama within, advertising, citizenship of the employees, moral character of the customers, interior floor plan, number and positioning of tables and chairs (ever wonder why every club has those little tables), exterior blueprint, block-lot diagram, landlord, type of building, history of the building's prior use, finances, manager, owners, owners' spouses, the people with whom the owners associate, reputation of the owners, waitress outfits (no dressing like furry little animals with cotton tails), who gets admitted (no falling-down drunks, minors, or terrorists), noise level outside a club, parking and traffic congestion by the club, and all other circumstances relevant to the "public interest" that "may adversely affect the health, safety and repose" of citizens. ABC Law § 64(6-a); SLA Rules, 9 N.Y.C.R.R. Pt 48; *SLA Handbook Retail Licensees*, p. 5.

The State also controls "the industry's structure … [and] the industry's behavior by prescribing and proscribing specific dimensions of business conduct," *Moreland Commission on the ABC Law*, No. 4, p. 6, which logically includes admission policies.[2]

[2] The Judge in the federal district court was actually a former lawyer for the Moreland Commission.

Despite the State's extensive involvement with nightclubs, the Ladies Nights' courts declared the State was only involved when an alcoholic drink was handed over to a customer, not when the customer entered the nightclub to reach the bar to buy that drink.

The federal courts found it necessary to ignore the reality of State control over the entire operation of public nightclubs in order to avoid overruling a 1969-70 case that found state action when a bar discriminated against two females. *Seidenberg v. McSorleys' Old Ale House, Inc.*, 317 F. Supp. 593 (1970)(Mansfield, J. granted plaintiffs' motion for summary judgment); *Seidenberg v. McSorleys' Old Ale House, Inc.*, 308 F. Supp. 1253 (1969)(Tenney, J. denied defendant's motion for a Rule 12(b)(6) dismissal).

The Ladies Nights' courts created a factual distinction to preserve the 1969-70 case by claiming the two females were refused alcoholic drinks and that involved state action; whereas, charging men more to enter a club did not. The files of the 1969-70 case, however, do not refer to any refusal to serve alcoholic drinks. The bar may have refused to serve the ladies soda, lunch, boiled eggs, or pickles—the Ladies Nights' judges did not know. So they simply assumed the fact to reach the decision required by the judiciary's PC ideology because now males were being discriminated against by bars instead of females.

The judges even ignored the U.S. Supreme Court's statement that the *McSorleys'* decisions meant that "federal and state courts uniformly have declared the unconstitutionality of gender lines that restrain the activities of customers of state-regulated liquor establishments…." *Craig v. Boren*, 429 U.S. 190, 208 (1976). Entering a nightclub is an activity of the club's customers, and for men, it is "restrain[ed]" by having to pay more than females.

Public Function

As for the nightclubs being delegated state power to carry out a public function, the federal courts simply ignored history:

> "A long history of regulation, control, price fixing, place of time and sale setting, and outright extinction lies behind the liquor business in this country since Colonial times, and it is too late today to suggest that the rights of those who choose to engage in it are on a constitutional or legal parity with the rights of people who trade in bicycles, or cosmetics, or furniture."

Seagram & Sons, Inc. v. Hostetter, 16 N.Y.2d 47, 61, 262 N.Y.S.2d. 75, 201 N.E.2d 701 (1965), *overruled in part on different grounds, Healy v. Beer Inst.*, 491 U.S. 324, 342, (1989). The states and only the states, except for Prohibition, have always controlled any activity concerning alcohol. "[T]he regulation of the liquor traffic is one of the oldest and most untrammeled of [state] legislative powers." *Goesaert v. Cleary*, 335 U.S. 464, 465 (1948), *overruled on different grounds, Craig v. Boren* 429 U.S. 190, 210 n. 23 (1976). Public function exists when there exists a history of exclusive government activity. *Flagg Bros. v. Brooks*, 436 U.S. 149, 158-59 (1978).

New York State always had absolute power to prohibit totally the sale of alcohol; broad power to control the times, places and circumstances under which alcohol is sold by nightclubs; and even to arrogate to the State the entire business of distributing and selling alcohol to its citizens. *Seagram & Sons, Inc. v. Hostetter*, 16 N.Y.2d 47, 61, 262 N.Y.S.2d. 75, 201 N.E.2d 701 (1965), *overruled in part on different grounds, Healy v. Beer Inst.*, 491 U.S. 324, 342 (1989).

"[W]hen private individuals or groups are endowed by the state with powers or functions governmental in nature; they become agencies or instrumentalities of the state and subject to its constitutional limitations." *Evans v. Newton*, 382 U.S. 296, 299 (1966). New York State chose

to delegate some of its exclusive functions to nightclubs for operating premises where persons could purchase and consume alcohol. Nightclubs, therefore, exercise a public function for which they are entirely dependent upon State decisions to operate successfully. *See Flagg Bros. v. Brooks*, 436 U.S. 149, 158-59 (1978).

The State could have decided to set up and operate nightclubs and bars itself while forbidding anyone else from doing so. In that situation, the discrimination of charging males more for admission would clearly constitute an action by the State and be unconstitutional. There's no legal or logical reason that because the State chose to delegate its public function to corporations operating under the State's extensive control, that involvement by the State somehow disappears and the same conduct becomes constitutional, unless it discriminates against females. *See Horvath v. Westport Library Ass'n*, 362 F.3d 147, 151 (2d Cir. 2004).

Under the courts' reasoning, nightclubs and bars can now charge one sex hundreds or thousands of dollars for admission, thereby effectively keeping that sex out of a nightclub, while allowing the other sex in for free, and it would be constitutional.[3]

Violence Against Women's Act

This case challenged the constitutionality of a secrecy law created by the Violence Against Women's Act that allows the Department of Homeland Security's immigration division to use proceedings kept secret from Americans to make findings of fact that those same Americans committed "battery," "extreme cruelty," or an "overall pattern of violence" against their alien spouses or lovers.

[3] It would, however, violate the laws of around 28 states, but not the U.S. Constitution.

This secret, "Star Chamber" like proceeding violates the procedural due process required by the Fifth and Fourteenth Amendments of the U.S. Constitution. Also, because the secret proceedings are used against a disproportionate number of American men—around 85%, it violates equal protection in the application of the law. Laws might not have specifically discriminatory classifications written in words, but they may be applied in a way so as to create such classifications and that's unconstitutional. *Yick Wo v. Hopkins*, 118 U.S. 356, 373-74 (1886).

The federal courts quickly dismissed the action for lack of injury based on the following Kafkian logic: Since the fact-findings about what an American did to his alien spouse or lover and the result of the release of those fact-findings to the alien, certain private Feminist organizations and various law enforcement agencies are kept secret from the American, any allegation of harm by him is "speculative" because he doesn't know what actually DHS found or how it was disseminated and impacted his life, such as the denial of a job or an investigation by the police. The plaintiffs, including me, could not find out what the federal government did behind closed doors concerning us because we were locked out; therefore, we could not say what we were found to have done or how those fact-findings were used against us by releasing the findings to various third parties. The courts ruled our allegations speculative even though it was the federal government's secrecy law that we were challenging, which allowed the courts to rule our allegations speculative. It's called Catch 22.

Once again, the federal courts' subservience to society's preoccupation with punishing males for any perceived or imagined slight to females—whether the females are citizens, aliens, prostitutes, or terrorists—caused the courts to ignore the wisdom of one of the better Supreme Court Justices: "'[Secrecy] provides a cloak for the malevolent, the misinformed, the

meddlesome, and the corrupt to play the role of informer undetected and uncorrected.' Appearances in the dark are apt to look different in the light of day." *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951)(Frankfurter J., concurring)(internal quote *U.S. ex rel Knauff v. Shaughnessy*, 338 U.S. 537, 551 (1950)(Jackson, Black, Frankfurter, dissenting)).

Women's Studies I and II

The first round of this case, *Women's Studies I,* largely relied on Equal Protection and Title IX to claim that federal and state support for Women's Studies programs were unconstitutional because there were no Men's Studies programs for the minority of students—men. In 2008, there were over forty Women's Studies programs in New York State's higher education system. Females made up 58% of all college students, received over 55% of the Bachelor degrees, over 63% of the Master's degrees, and over a majority of the Doctoral degrees, and yet there were no Men's Studies programs. N.Y. State Department of Education, *ORIS.*[4]

The federal courts again dismissed, at their first chance, by ruling that any harm caused the minority—males—by the lack of a college's Men's Studies program was "speculative." The federal courts, however, do not say the same about the lack of a female sports team when a college only has a male team.

Women's Studies I also claimed that Feminism was a religion and that New York State and the Federal Government's use of taxpayer dollars to incorporate Feminist and PC tenets into New York's higher educational system violated the first clause of the First Amendment:

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[4] By 2016, across America, females will receive 64% of the Associate degrees, over 60% of the Bachelor degrees, 53% of the Professional degrees, and 66% of the Doctoral degrees. National Center for Educational Statistics, *Digest of Educational Statistics*, Table 258.

"Congress [or state] shall make no law respecting an establishment of religion . . . ." To bounce this issue out of court, District Judge Kaplan simply made a finding of fact without any evidence that "Feminism is no more a religion than physics . . . ." Now that may be so, but in this day and age we are beyond accepting proclamations of what is true by the powerful just because they are powerful.

The Second Circuit Court of Appeals took a different tack on the religion issue by resorting to the hyper-technical pleading standards of the early 19th century. Because I did not write in the complaint that "I am a taxpayer," the Second Circuit ruled I did not have standing to bring the Establishment Clause challenge. Based on the absence of those four words in a 36-page complaint, the Second Circuit threw the case into the street.[5]

The Court did not bother to consider the obvious fact that I was a taxpayer. After all, I was admitted to practice before the Court of Appeals and the complaint stated I was a resident of New York. What adult living and working in this country does not have taxpayer status? The Second Circuit also did not bother using its power of "judicial notice" to determine whether I was a taxpayer even though the Federal Defendants conceded that I was. And, the Second Circuit did not bother remanding the case to the district court for a hearing on whether I was a taxpayer, which the Second Circuit had the power to do and I requested.

So why were the courts so determined to prevent even the appearance of rendering justice on the issue of whether Feminism is a religion aided by government? Because to do so, would

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[5] In oral argument, the Second Circuit also complained that the complaint did not include the relevant State and Federal Statutes. That is false. "*Equity for Women in the 1990s*" is a Regents' policy statement carrying the effect of law on higher educational institutions, Educ. Law § 207 (although § 207 was not cited, a summary of the text was at ¶ 28 of the Amended Complaint), and the Bundy aid statute was specifically cited at ¶¶ 49 and 157 in the Amended Complaint in the original action. The substance of other statutes were also pleaded, but not cited. "Affirmative pleading of the precise statutory basis for subject matter jurisdiction [standing] is not required if the complaint alleges facts to establish jurisdiction." *Moore's Fed. Prac.*, § 8.03[3], 3 ed. (based on cases from the 2d, 5th, 7th, and 9th Circuits).

mean a modern-day excommunication from the Feminist-PC Establishment—a barrage of personal invectives from PC zealots, criticism from the mainstream media, and ostracism from the politically correct elite.

In round two, *Women's Studies II*, the complaint specifically stated—four times—that I was a taxpayer and specifically cited all the relevant statutes. The federal district court threw the case out, anyway.

To do so, the court phonied the facts about what happened in *Women's Studies I*, so it could get rid of the case based on *collateral estoppel*. Under *collateral estoppel*, if issues were fully litigated, actually decided, and necessary or essential to the decision in a prior case, then those issues cannot be raised again between the same parties (remember this for later) in a subsequent case. The district court in *Women's Studies II* ruled that *collateral estoppel* prevented me from alleging that I had standing under the Establishment Clause to bring the case because that standing had been previously decided against me in *Women's Studies I*.

There are two different ways for a plaintiff to satisfy standing under the Establishment Clause: (1) having taxpayer status and (2) incurring a non-economic injury. Non-economic injury meant I found "offensive" the defendants' inculcation of PC and Feminist tenets in higher education. In my case, at Columbia University where its Institute for Research on Women and Gender, which runs Columbia's Women's Studies program, propagates PC and Feminism throughout the University and the Columbia community.

Both taxpayer and non-economic standing were never touched upon in the district court in *Women's Studies I*, but the Court of Appeals did find fault during oral argument for my not including the four magic words, "I am a taxpayer," in the complaint and said as much in its decision. The Court of Appeals, however, never mentioned non-economic standing during oral

argument or in its decision. So non-economic standing was an issue that was never dealt with in the prior case *Women's Studies I.* Further, the most favorable politically correct spin that could possibly be put on the court proceedings in *Women's Studies I* concerning non-economic standing was uncertainty, and that is not good enough for collateral estoppel under the law.

Had the law, instead of ideology, been followed in *Women's Studies II*, it would have resulted in a victory for men. To prevent that, the lady judge in the district court simply ignored the facts and ruled that "[b]oth the District Court and the Second Circuit necessarily decided the issue of Plaintiffs [Establishment Clause] standing in [*Women's Studies I*] …. The issue of Plaintiff's standing to litigate his Establishment Clause and related claims regarding the University's Women's Studies program was decided against him in [*Women's Studies I*]." Judge Swain's *Order* at 5. "Plaintiff's . . . objections, that collateral estoppel does not apply because . . . non-economic standing [was] not previously litigated [are] without merit." Judge Swain's *Order* at 4. The district court knew the answer it wanted, so it simply falsified the facts to reach that conclusion.

All was not yet lost in *Women's Studies II*, or so I thought. A key requirement of *collateral estoppel* is that it can only apply when the parties are the same, so I made a post-judgment motion to amend the complaint by adding two new male plaintiffs who came forward after the district court's decision and had the guts to fight for their rights. The district court could not possibly apply *collateral estoppel* against them because they were not involved in *Women's Studies I*. However, the court found another way to keep the case from going to trial.

The lady judge ruled that her court lacked the authority to allow the post-judgment amendment of the complaint to cure standing. Strange, that in the earlier case, *Women's Studies I*, Court of Appeals Judge Chester J. Straub, during oral argument, admonished me for not trying

to amend the complaint post-judgment in that case, which had also been dismissed for my lack of standing:

> Judge Straub: Did you ask [for] a further amendment after the court said there was no standing?
> Den Hollander: No at that point, the moment that I learned about the standing was the decision of the court. . . .
> Judge Straub: But did you ask?
> Den Hollander: No, I did not your honor.
> Judge Straub: [B]ut you first had the Magistrate judge's report.
> Den Hollander: That's correct your honor.
> Judge Straub: You objected to that but you didn't ask therein [for] leave to amend should the district court hold against you.
> Den Hollander: No I did not . . . objected to. . . .
> Judge Straub: The second time after he [District Judge Kaplan] did hold against, you didn't come back and say give me a chance to amend.
> Den Hollander: That's correct . . . .
> Judge Straub: Are you a lawyer . . . ?

(Transcript of oral argument before the Second Circuit Court of Appeals on April 8, 2010).

So which is it? Does a district court have the authority to allow a post-judgment amendment of a complaint that was dismissed for lack of standing? It all depends on whether it will aid that court in ridding itself of bothersome men fighting for their rights violated by the government's preferential treatment of females.

Useless as the effort was, I appealed *Women's Studies II* to the Second Circuit Court of Appeals. The three judge panel simply parroted the district court by saying that the issues of non-economic and taxpayer standing had been "fully litigated and decided" in *Women's Studies I*, when they hadn't, and that the complaint could not be amended because the two "new plaintiffs are not new evidence," even though the two would testify as to new facts, which sounded like evidence to me, and, of course, legally it was.

But the kicker to the judges' decision was their blatant abuse of power by threatening me with Rule 11 sanctions that forever banned me from representing the two new plaintiffs, or

anyone else for that matter, in any case raising the issue of whether Feminism is a religion. That's no different than a Jim Crow court in the 1800s threatening the attorney for the New Orleans Comité des Citoyens with fines, license suspension or disbarment for bringing another *Plessy v. Ferguson*, 163 U.S. 537 (1896), suit with a different plaintiff on the same issue—separate but equal. And no different than at the end of every year sanctioning the American Civil Liberties Union for bringing another action with new plaintiffs against Christmas displays.

So I asked the U.S. Supreme Court to not only reverse the Second Circuit's decision (Petition for Writ of Certiorari), but to tell it to rescind its threat of sanctions and to stop acting like King John of England by relying on their divine right of life long tenure to rule in accordance with their personal beliefs: "In the men's rights cases, the Second Circuit has acted beyond its authority by deciding in accordance with the current popular ideology Feminism, even though it is the imperative duty of the courts to support the Constitution. '[The] constitution is, in fact, and must be regarded by the judges as a fundamental law.' Alexander Hamilton, *Federalist Paper No. 78*. Supplanting it with the tenets of Feminism is an act beyond a court's authority and its duty to obey the rule of law—not the rule of the 'politically correct.'"

The Supreme Court, rarely a profile in courage, said no. The lower court decisions will stand because Justice Black was wrong when he once wrote, "Our Constitution was not written in the sands to be washed away by each wave of new judges blown in by each successive political wind. Rather, our Constitution was fashioned to perpetuate liberty and justice. . . ." *Turner v. United States*, 396 U.S. 398, 426 (1970)(Black, J., dissenting).

Through all these cases, the judges have been consistent in abusing their power to further their personal interests by using any means, such as phony facts, non-existent laws and Orwellian logic, to do the opposite of what they are supposed to do. They have forgotten that "in times of

repression, when interests with powerful spokes[persons] generate symbolic pogroms against nonconformists, the federal judiciary . . . has special responsibilities to prevent an erosion of the individual's constitutional rights." *Younger v. Harris*, 401 U.S. 37, 58 (1971)(Douglas, J., dissenting). "In a government like ours, entirely popular, care should be taken in every part of the system, not only to do right, but to satisfy the community that right is done." *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 172 n. 19 (1951)(Frankfurter, J., concurring)(quoting 5 The Writings and Speeches of Daniel Webster, 163).

The federal judges in the Men's Rights cases failed to realize that efforts to enforce unanimity of belief in any dogma claiming itself the sole possessor of the truth are doomed to fail. As U.S. Supreme Court Justice Jackson so aptly wrote in 1943, during another time of intolerance and hatred directed by the majority at those in the minority:

> Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishments must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. . . . Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Inquisition, as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to efforts of totalitarian [regimes]. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard."

West Virginia State Board of Education v. Barnette, 319 U.S. 624, 640-41 (1943).

Today in America, it is Feminism and political correctionalism that are succeeding in stamping their brand of thought, speech, and action on the nation at the expense of liberty.

Assignment 1: Familiarize yourself with Australia's Sex Discrimination Act of 1984 and how to file a complaint under the Act. Then come up with an example where you or someone you

know about was treated differently than their opposite sex and draft up a sample complaint of around 250 words or more.

Week 2

Lecture will look at some of the history of British and U.S. laws that gave females preferential treatment and how some of those laws compare to today's.

Employment

1. In 1842 the employment of females in mines was declared to be illegal in England. Arthur Rackham Cleveland, *Woman under the English Law the Landing of the Saxons to the Present Time*, at 250, London: Hurst and Blackett, 1896. For 1837-1895.
    a. Today in England and the U.S. less than one percent of miners are females.
    b. In America, the fatality rate from workplace injuries is more than nine times higher for men than for women, Stephen Greenhouse, *The Most Dangerous Jobs in America*, NY Times, Aug. 20, 2010.
    c. The 25 most dangerous occupations in America are 90% occupied by men—it's called the "Tombstone Cellar." They include:

        Commercial pilots
        Fishermen and fisherwomen
        Forestry labourers
        Drilling plant operators
        Mining labourers
        Ship's pilots and deck officers
        Structural steel labourers
        Truck drivers
        Excavation and earthmoving machinery operators

2. The British Factory Acts in the 19th century limited the hours beyond which no woman was to work during any one day, the time which was to be allotted to meals, the sanitation of the workrooms, and other matters of a similar nature. Cleveland at 250-51.
3. The 1906 International Convention prevented employers from working women at night. Signed by many European nations including England.
4. British Contagious Diseases Act of 1864 recognized prostitution as a calling, and required periodical examinations of all registered prostitutes who frequented neighborhoods of military installations [Act abolished 1886]. Cleveland at 251-52. In England prostitution was not a crime, but they had to be registered. Cleveland at 264.
    a. Some Feminists hold that prostitution, which they euphemistically call "sex work," can be a valid occupational choice for women.
    b. Problems with unregulated prostitution is as an Los Angeles Assistant District Attorney told me that prostitutes are often engaged in other crimes such as credit card fraud, the costs of which are passed along to other card holders. Prostitutes use emergency rooms for medical treatment, the cost of which are passed along to

those who have insurance. Prostitutes tend to spread contagious diseases if they are not checked.

5. In the later part of 19th century in England, all trades were open to females and many professions except, for example, the clergy, law and the military. Cleveland at 254.
6. In America in the 19th and early 20th centuries, statutes existed in all the States with a view to regulate and prescribe for the employment of women in hazardous occupations. Such laws forbid the employment of women in excess of a specified number of hours per day and per week. They also enumerated certain classes of labor in which they may either not be employed at all, or only under certain restrictions and conditions. A few of the States had also established a minimum wage to be paid to women engaged in certain occupations. Sanitary conditions were sometimes imposed, and provision made for medical supervision for women. In some cases, the times when wages must be paid, and restrictions upon payment in merchandise, were specified.

Vote

1. In England females could not vote for members of Parliament but could vote on county and local matters. Cleveland at 254.

Crime

Abortion

1. Prior to 1861, a female in England was not liable for intentionally causing her abortion, which is true today in the U.S. and England.
    a. *Roe v. Wade* gave American females the unilateral right to opt out of parenthood. Since that Supreme Court decision, females have aborted over 40 million incipient human beings. Center for Disease Control, *Abortion Surveillance*—U.S. 2004, Table 2. That's more than all the men who have died in all the wars America has fought.
    b. Some argue that females make mistakes, such as forgetting to take the pill. Over 40 million since 1973 are a lot of mistakes. Even assuming all of those were mistakes, sex is a repetitive activity, so people have fair warning to "be prepared," as the Boy Scouts say. When a cognitive human being chooses not to be cautious or is negligent, then she is responsible, not the innocent she destroys. If I get into a car drunk and hit a 16 year-old cheerleader, I'm the one to blame, I'm the one who must pay.
    c. The federal government awarded $265 million of taxpayers' money to Planned Parenthood in 2005. This tidy sum allowed the group to pay for nearly 250,000 abortions, which are often used as a means of birth control.
    d. No one wants to interfere with a girl's freedom except her freedom to act irresponsibly when it harms others.

Rape

1. In England prior 1861, the punishment was death, but an Act passed in that year made it 5 years to life.
    a. Today the penalty is a minimum of 10 years.
2. In America
    a. The leading feature in the crime of rape was that it was committed against the will of the person injured. Unless this was shown, conviction could not follow.

    b. Today, in many American colleges, if a female drinks some alcohol and then consents to sex, she can change her mind the next day and charge the guy with rape saying he gave her the alcohol to induce her to have sex. .

The Hyped Campus Rape That Wasn't, Nov 5, 2013

By Cathy Young

If a satirist had set out to write a scathing parody of the campus crusade against rape, he could not have come up with anything more bizarre, or more ridiculous, than the real-life comedy-drama that unfolded last month at Ohio University in Athens, Ohio.

The scandal started, like many scandals do these days, in the social media. On Saturday, October 12, amidst the school's Homecoming Weekend festivities, photos and a video of two young people engaged in a public sex act near the campus--the man on his knees performing oral sex on the woman while she leaned against a plate-glass window, half-sitting on its ledge--showed up online and promptly spread on Twitter.

On Sunday night, the woman in the photos, a 20-year-old Ohio University student, contacted Athens police to say that she had been sexually assaulted. The news media picked up the story; an October 16 report on the local television channel, WBNS-10TV, opened with the alarming announcement, "An Ohio university student says she was the victim of a rape. Making it even worse, someone photographed the alleged assault and shared it on social media." Within the OU community, there was widespread outrage, particularly at reports that at least a dozen people had witnessed the act. OU senior Allie Erwin lamented to 10-TV, "Our first instinct as a community was not to intervene and help this woman, but to post it on social media, and make a mockery of probably the most traumatic experience of her life."

While Athens police chief Tom Pyle warned against a rush to judgment, noting that the witnesses "may not have realized" they were seeing an assault and, in fact, that no assault may have taken place, the outraged student were not mollified. Said Erwin, "She obviously wasn't okay with what happened. It was rape. She reported it to the police as rape."

Meanwhile, the photos and videos--initially taken down after the rape complaint--resurfaced. They appeared to show a fully consensual encounter; the woman was seen smiling, flipping back her hair, at one point putting her hand on the back of the man's head, and even posing for the camera with a grin on her face. Witnesses confirmed that, while both participants were clearly drunk, the "victim" was not incapacitated and "seemed like she was enjoying it"; she also

left with the man afterwards, walking unassisted. (While none of the onlookers thought the sex was non-consensual, at least one or two of them berated the man as a "slut" and physically assaulted him after he stood up, bloodying his face--an ironic detail considering feminist complaints that women are stigmatized for sexually "loose" behavior while men are not.)

Despite the fact that this information was widely available in the social media and appeared in the campus newspaper, The Post, as early as October 17, the university community continued to treat the sexual assault as a fact, with commentary often omitting even the word "alleged." On October 22, students began to leave Post-It notes on the Chase Bank window where the "rape" occurred, with inscriptions that decried "victim-blaming" and offered supportive messages such as "You are not alone," "This is not your fault," "We let you down, I am so sorry," and "You are strong and brave." (An Athens policeman took the notes down and stopped the students from posting more, resulting in an informal complaint against him.) On October 24, the university hosted a student/faculty event titled "Campus Conversation: Sexual Assault, Consent, and Bystander Intervention." The topic, according to the official announcement, included "healthy sexualities, policy (sexual assault/misconduct definitions and existing policy), victim blaming, sexual assault, masculinity/power, consent, bystander intervention and outreach to the community." On the same day, The Post published a letter from more than thirty faculty members, including the Faculty Senate Executive Committee, expressing deep concern about "recent events involving alleged sexual assault, alcohol and social media on our campus and in our community."

A few days later, on October 28, Athens County prosecutor Keller Blackburn announced the results of the grand jury investigation: no charges were to be filed, since "a reasonable person would think that [the woman] was not intoxicated beyond the ability to consent." Blackburn also gave a detailed account of the night's events, pieced together from the video, security camera footage, and eyewitness testimony. (The woman and the man, also a 20-year-old OU student, both claimed to have no memory of what happened.) After leaving a nearby bar where they had been drinking, the pair began kissing in the street and then proceeded to further intimacies. At one point, when the man realized they had an audience, he asked the woman if they should stop; she encouraged him to proceed.

Perhaps the most astonishing aspect of this story is the virtually unanimous support for the "survivor" from anti-rape activists and their supporters. Letters published in The Post, from women and men alike, deplored the "disheartening" skepticism about the "poor woman's" claims and decried the pernicious sway of "the rape culture." Class of 2013 alumnus Jared Henderson chided "misguided skeptics" for failing to realize that "it takes incredible courage for a woman to come forward and report a rape," since she subjects herself to "massive public scrutiny." The fact that the woman was already unwillingly exposed (as it were) to public scrutiny had apparently escaped his notice: the facts, Henderson confidently asserted, gave "no reason to believe that this is an embarrassed woman crying wolf about rape to save her reputation."

Feminists outside the OU campus took the same stance. A column on ThinkProgress.org, the website of the Center for the American Progress, suggested that eyewitness accounts confirming that both participants in the act were "very, very drunk" proved that, no matter how consensual it looked, it fit Ohio University's criteria for sexual assault. (Actually, the university policy quoted in the column states that a person is unable to consent if "incapacitated" due to alcohol or other factors.) The writer, Tara Culp-Resser, did not seem to realize that by her definition, the man can be considered a victim of sexual assault as much as the woman--leading to the absurd conclusion that they were raping each other.

Culp-Resser laments, "When women allege that they have been sexually assaulted, everyone from police departments to university officials to their neighbors often tells them they're mistaken, and assumes they're simply 'crying rape' after waking up the next morning and regretting a sexual encounter." And yet, ironically, the Ohio University incident validates precisely that stereotype. Doing stupid things when one's judgment is impaired by alcohol is not the same thing as being coerced while unable to resist or consent. In a way, the advocates' fanatical insistence that the woman must be considered a victim because she says so is a perverse mirror image of the most misogynist traditional attitudes toward rape--such as the requirement, under some interpretations of Sharia law, that a rape victim must have four male eyewitnesses to prove her claim. In this case, there is not only eyewitness testimony but a visual record to show a consensual encounter; yet the activists' response seems to be, "Whom are you going to believe, the woman or your lying eyes?"

The university is still considering whether to take disciplinary action against one or both of the students. (One may safely assume that charges against the woman for filing a false police report is not one of the options on the table.) Meanwhile, a follow-up "campus conversation" on sexism, sexual assault, and alcohol is scheduled for November 18. Since the proposed topics include "double standards," it would be interesting to invite the discussants to consider the following scenario:

An intoxicated woman performs oral sex on an equally intoxicated man in public view. Some female passers-by outraged by the woman's loose conduct berate her as a slut and beat her up before she leaves the scene in the man's company. Which of the two would be seen as the victim deserving of public support?

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c. Such not only occurs in colleges. Ashleigh Loder, 25, wasted at least 100 hours of police time by inventing a rape charge. She first told officers that a male friend had forced her to have sex in her home. However, the friend she had accused was able to prove his innocence because he had filmed the sexual encounter on his mobile phone. The footage showed Loder, a mother-of-two from Bideford, Devon, was a willing and active sexual participant. She was drunk on vodka and

invented her story because the partner of the man with whom she'd had sex was a friend. So remember to film all your sexual encounters these days. Mia De Graaf, *Young mother jailed for making two false rape claims within hours after getting drunk and sleeping with friend's partner*, Mail Online, October 27, 2013

d. False allegations of rape range from 1.5% to 90% depending on the geographical location and study methodology. *False allegations of rape*, The Cambridge Law Journal 65, Rumney, P (2006).

e. In the 19th and 20th centuries, in prosecuting a rape, it was important that the prosecutrix commence such prosecution as soon after the injury as possible, and that her reputation for truth and chastity stands fair.
f. To conceal the outrage for an unreasonable time, or keep up a friendly acquaintance with the author of it after the offence, would materially impair the confidence, both of court and jury, in the victim's statements.
g. If the offender or offenders fled, or took to concealment, after the offence, that fact would be an important feature for the consideration of the jury.
h. If the act was committed in a place where the female could have been heard, and she neglected to cry out, such fact would have due weight in the judge's charge to the jury.
i. If, too, the prosecutrix be a person of ill fame that would go far towards damaging the probability of her story, though it would not entirely discredit it; nor would the punishment be any the less, because the crime was committed upon a kept mistress, or a common strumpet.
    1. Today rape shield laws prohibit the use of evidence of the nefarious activities by a women, such as working as a prostitute, but nearly everything about the accused, usually a man, is bandied about in court and the press.
    2. If a person accused of murder can use as a defense that the dead person had a tendency to violence, then a guy accused of rape should be able to show that the female was a prostitute.
j. Resistance to the atrocity was good evidence in favor of the prosecutrix. But it was not conclusive. A woman may make a show of resistance, and yet be more than half consenting to the act.
k. Non-resistance, on the other hand, was no evidence of consent. It may proceed from being overpowered, or from conviction of its uselessness, or from the confusion of terror, or from want of strength.
l. A husband cannot be guilty of a rape upon his wife.
    1. Today any wife can falsely accuse and get convicted her husband for rape.
m. Penalty for rape 10 years.
    1. Today 9 to 25 years in New York.

3. The problem with the courts in rape and sexual harassment cases is that they rest on a false assumption that females who claim to be victims are always telling the truth.
    a. According to a nine-year study conducted by former Purdue sociologist Eugene J. Kanin, in over 40 percent of the rape cases against men that were reviewed, the

female eventually admitted that no rape had occurred. Archives of Sexual Behavior, Vol. 23, No. 1, 1994. Kanin also studied rape allegations in two large Midwestern universities and found that 50 percent of the allegations were recanted by the accuser. He also found that most of the false accusers were motivated by a need to compensate for feelings of guilt or shame or a desire for revenge; that is, the female had second thoughts when she woke up from her drunk the night before, or the guy didn't call her back. It is true, of course that not every accuser who recants had accused falsely. But it is also true that some who did not recant were not telling the truth.

b. The United Kingdom bases the number of rapes on just allegations that are then multiplied by a factor of 10 based on an unsubstantiated belief that only 1 in 10 alleged rapes are reported. So if there is one rape, there will be allegations of 10 rapes and the U.K. government will report that there were 100 rapes.
c. A Washington Post investigation of rape reports in seven Virginia and Maryland counties in 1990 and 1991 found that nearly one in four were unfounded.
d. According to a 1996 Department of Justice Report, of the roughly 10,000 sexual assault cases analyzed with DNA evidence over the previous seven years, 2,000 excluded the primary suspect, and another 2,000 were inconclusive.
e. Linda Fairstein, the author of Sexual Violence: Our War Against Rape, says, "there are about 4,000 reports of rape each year in Manhattan. Of these, about half simply did not happen."
f. A Denver sex-assault unit commander estimates that nearly half of all reported rape claims are false.

4. What about females raping males or rape by fraud?

    a. Two common ways that females rape guys are (1) maternity frauds where they lie about being on a contraceptive or unable to conceive, or (2) paternity fraud where they lie about who is the biological father, of course, sometimes they play around so much that they don't know who is the real father. In the U.S., 30% of the non-custodial fathers are paying for children who are not theirs. WorldNetDaily, February 18, 2006.
        1. Feminine Reproduction Fraud ("FRF") is an extremely serious and harmful crime. When a female forces her reproductive capacity on a guy by fraud, it is rape, just as when a male physically forces his reproductive capacity on a female. But Feminists try to downplay the offense by females simply because the perpetrator happens to be a female. The only difference between the two is the means that a particular sex uses to get what they want. It does not matter whether the means is by fraud or physical force because the act intentionally harms another human being. Both have their associational, privacy, and economic rights violated. But men no longer have rights in America, so they are actually forced by government to pay their own rapists for the acts the rapists committed.
        2. The magazine "That's Life!" polled 5,000 females and asked them if they would lie to get pregnant. 42% of the females said yes. Imagine how many really would, and who ends up footing the bill.

3. The vast majority of illegitimacy is actually predatory reproduction by females for income or to control a man.
4. Duped dads deserve legal redress to protect themselves against maternity and paternity fraud. If a female lies to a man about her reproductive capacity to become pregnant, then takes his money or extorts him into marrying her; or if she tricks a guy into raising a baby not his own, sacrificing years of his life into an endeavor based on a falsehood, she should go to prison for decades or life.
5. Michael Gilding, sociology professor at Swinburne University in Australia, reviewed studies from around the world and concluded that 1-3% of children were fathered by someone other than the man who believes he's the daddy. Four million children are born in the United States each year, so using the mid-range 2% figure, which means 80,000 men become victims of paternity fraud every year. That's 80,000 rapes a year just for paternity fraud compared to 95,000 rapes of females. Factoring in maternity fraud, women rape more guys than vice versa.

Theft

As a general rule in England and America in the 19th century, a married woman could not be guilty of theft if she took her husband's goods.

Private Relations

The old theory that man and wife are one in the eye of the law was completely eliminated in the last half of the 19th century in England and America. He could not compel her to cohabit with him, his command over her property no longer existed, and he could no longer beat her without going to jail.

1. An 1820 Act forbade the flogging of women either in public or private, but not men. It was also okay to flog school boys with a cane but not a school girl.
2. In England and America in the 19th century and today, the mother is entitled to the custody of the illegitimate child, and the father was required to support the child, if in the 19th century, the evidence of the mother as to the paternity of the child was satisfactory to the court, which meant tears and her testimony. Today, there is DNA testing.
3. Under the 19th century common law when a mother had a child while married, the husband was presumed to be the father. Of course that was not always the case, but only lately has DNA testing been able to show such. So how do the courts react to that today?
    a. The American Association of Blood Banks reports that 30 per cent of men who suspect they are not biological fathers are right. In the United Kingdom, one in six men who took a DNA test to challenge claims by females that they were the fathers of their children were not.
    b. Even when the husband finds out the child is not his own and divorces his promiscuous wife, the courts in over 30 American states still require him to support the child that's not his. Those states rely on the 500-year-old English common law doctrine, which holds that a married man is always legally presumed to be the father of a child born during the marriage. Men are routinely forced to

pay tens of thousands of dollars in child support, even after DNA tests prove they are not the biological fathers.

4. In England, marriages before 1870, the husband was liable for his wife's contracts, torts or civil wrongs that occurred before they were even married.
5. In America in the 1800s, if a wife rented and occupied premises, her husband would be liable for the rent. If a married woman made a lease of property in her own right, such lease would not be binding upon her after the death of her husband.
    a. A Married woman could neither sue nor be sued separately on any contract made by her during marriage. The action had to be instituted by or against the husband and wife jointly.
    b. A suit could be brought by or against a married woman only for contracts made by her previous to her marriage. And even in such cases she had to be joined by her husband as co-plaintiff or defendant.
    c. A wife could not be sued for receiving stolen goods, if she received them from her husband.
    d. A married woman might be prosecuted for any personal injury, such as slander, assault and battery, and the like; but the suit had to be brought against her jointly with her husband.
6. In America in 19th and early 20th centuries, if a husband abandoned his wife, even with justification, he was nevertheless liable for her support and that of the minor children.

<u>Financial support for females</u>

1. In 19th and early 20th centuries in America, every wife was entitled to such necessaries as reasonably corresponded to the income of her husband and the social position of the parties. If the husband refused to supply such necessaries, the wife could apply to any court of equity for a separate maintenance, and also to determine a proper sum for her support. By force of marriage, a wife acquired a right to the support by the husband of herself.
    a. A wife was entitled to such support as would enable her to appear decently and respectably in the society in which she, with her husband, had been accustomed to move.
    b. When a husband refused to supply his wife with necessaries suitable to her rank and condition, the wife could obtain them from any tradesman or tradesmen, and the husband had to pay the bills.
    c. Tradesman could supply a wife with goods which she had been in the habit of purchasing, whether the same be necessaries or not, and the husband had to pay.
    d. A woman could complain of her husband's laziness, and compel him at court to give bonds for the support and also for the maintenance of his children.
    e. If a wife, who had left her husband, offered to return and the husband refused to receive her, the wife could, then purchase necessaries in his name without his consent, and the husband was liable for all necessaries so supplied.
    f. Any man who shall unlawfully neglect or refuse to support his wife or children, unless owing to physical incapacity or other good cause, might be convicted of a felony in some States, but liable to punishment in every State.

g. A wife has no right of support from any person except her husband, until she becomes poor and unable to support herself. Then she may, by legal process, in some States, obtain such support from husband, father and mother, grandfather or grandmother, children or grandchildren. If none of these persons were able to furnish or contribute to such support, the wife would be supported as a pauper.
h. A widow, in certain States, might in the same way, and under the same conditions, obtain support from any of the above named persons who may be alive.

7. An unmarried adult woman who becomes poor and unable to support herself, might, by legal process in some of the States, compel her father, mother, grandfather, grandmother, or any one or more of them, to furnish such support or to contribute towards it. If these relatives are not able to do so, the State, town or municipality would support the woman as a pauper.

Property

1. In the 1800s, a wife had a dower interest in her husband's real estate to the amount of one-third. During the life of a wife, a husband could not sell nor make a conveyance of his real estate either in whole or in part without her knowledge and consent.
    a. In New York:
        i. If there be children, the widow is entitled, in addition to dower in the real estate, to one third of the husband's personal property. Arthur Rackham Cleveland, *Woman under the English Law the Landing of the Saxons to the Present Time*, at 303, London: Hurst and Blackett, 1896. For 1837-1895.
        ii. If there be no children, the widow is entitled, in addition to dower in the real estate, to one half of the husband's personal property. *Id.* at 303.
    b. Today, she has a statutory right to usually one-third to one-half of the husband's entire estate no matter what the husband says in his will.
2. Except for the descent of freehold land to the males in preference to the females, a single woman stood in exactly the same position as did a man in 19th century England.
3. In America in the 1800s, except for five states, every woman possessed at marriage of property or acquired property during marriage by any means held it and all rents, profits and income from, to her separate use, free from the control of her husband and from attachment by creditors for his debts. A married woman could sell, convey, and devise her separate estate, or any interest or interests in any and every part thereof, the same as if she were single. A married woman could receive, from any person other than her husband, either real or personal estate, and hold and manage it for her separate use, free from the disposal of her husband, and from his debts.
    a. Even in those five states, in view of marriage, a female owning property might, with the assent and co-operation of her intended, settle all the estate she may then have, as well as all she may become possessed of by gift, bequest, heritage, or personal purchase during marriage, upon herself via a trust.
    b. A female about to marry could, by a deed of settlement of her estate, reserve to herself the right of disposing by will of all property in her own right after marriage.

4. In England in 1870, under the Married Woman's Property Act:
    a. All the earnings of a married woman were her own property, as also were her deposits in any Savings Bank.
    b. All personal property coming to a married woman, not exceeding £200, were her own.
    c. The rents and profits of all freehold property coming to her were her own.
    d. Every married woman was allowed to insure her own or her husband's life for her separate use.

        This opened the way for wives taking out insurance on their husbands and then killing them.

        Example

        January 13, 2004|Anna Gorman | LA Times Staff Writer
        Three months after Angelina and Frank Rodriguez were married, the Montebello woman took out a $250,000 life insurance policy on her husband and began trying to kill him.

        First, she fed him poisonous oleander plants sending him to the hospital with an upset stomach. Then, she allegedly loosened the gas cap on the clothes dryer at their home before leaving to visit a friend in San Luis Obispo. Finally, Rodriguez spiked her husband's Gatorade with shots of green antifreeze.

        Frank Rodriguez, a special education teacher, died on Sept. 9, 2000, with a lethal amount of antifreeze in his body. Three years later, Angelina Rodriquez was convicted of his murder.

        Los Angeles County Superior Court Judge William R. Pounders on Monday sentenced Rodriguez to death, saying that she killed her husband in an "exceptionally cruel and callous" way and that her guilt had been proved to "an absolute certainty."

        Rodriguez, 35, begged for leniency, insisting she didn't kill her husband and at times clashing with the judge.

        Rodriguez blamed her attorney for preventing her from testifying during her trial and said there was no way she could have made her husband drink antifreeze.

        "Are you suggesting he took it on his own?" Judge Pounders asked incredulously.

        "I know he did," Rodriguez replied. Then she challenged the judge: "Would your wife be able to hand you a cup of antifreeze?"

Los Angeles County Deputy Dist. Atty. Doug Sortino said outside court that Rodriguez blamed the slaying on a former co-worker and fabricated evidence in a failed attempt to get investigators to arrest him. “She’s a remorseless, cold blooded killer, and that’s why she’s in the position she is in today,” he said.

Hours after her husband’s death, Rodriguez called her insurance company, but an agent told her she wouldn’t receive any money until the coroner determined the cause of death.

During the trial, prosecutors presented evidence that Rodriguez had complained to a friend about her marital problems and talked of killing her husband instead of divorcing him in order to receive the life insurance money. Prosecutors also charged her with soliciting someone to kill that witness scheduled to testify against her. The jurors deadlocked on that count but found her guilty of threatening the witness.

Witnesses also testified about the 1993 death of Rodriguez’s 13-month-old baby, who died after swallowing part of a pacifier. The judge said Rodriguez received 60% of a $710,000 settlement in her daughter’s death, after filing a civil suit against the manufacturer. But a prosecution expert testified that medical records indicated that Rodriguez broke the pacifier herself and pushed part of it into her baby’s throat to suffocate her, authorities said.

Jurors convicted Rodriguez of murder in October, along with the special allegations that she killed her husband for financial gain and used poison as the murder weapon. Those allegations made her eligible for the death penalty.

e. In England, The Married Woman’s Property Act of 1882 allowed married women to acquire, hold, and dispose of property in the same way as could a single woman, which except for primogeniture, was the same as a male. All property belonging to a woman at the time of her marriage, or which came to her after marriage, including earnings and property acquired by the exercise of any skill or labour, was absolutely her own, and the husband had no rights whatever over the property of his wife.
    i. The Act allowed her to maintain an action in her own name, and without her husband’s concurrence, with regard to all property called by the Act separate property, or property belonging to her before marriage, and which the husband had by writing under his hand agreed should belong to her after marriage.
    ii. The 1882 Act allowed her to maintain an action, or be made a defendant in her own name, in respect of all property declared by that Act to be separate property, and generally to contract and do all other things relating to her separate property as if she were a single woman.

iii. A married woman trading on her own account could be made a bankrupt, but she could not be committed to prison for non-fulfillment of an order under the Debtor's Act of 1869. Arthur Rackham Cleveland, *Woman under the English Law the Landing of the Saxons to the Present Time*, at 282, London: Hurst and Blackett, 1896. For 1837-1895. Husbands, however, could be committed to prison for failing to pay certain debts.

iv. Under the 1882 Act, every married woman had the same remedies, civil and criminal, against all persons, including her husband, for the protection of her separate property, as if she were a single woman. *Id.* at 283.

f. Where husband and wife are both liable, the property of the husband must first be taken to satisfy the liability; and, if his property be insufficient, then the remainder must be made up by the wife.

Divorce

1. In 19th century England, judicial separation or divorce courts could grant alimony only to the wife and direct that the custody of the children of the marriage be given either to the innocent party.
2. In 19th century America, a wife was legally entitled to alimony but not the husband.
    a. In the matter of alimony, the husband had nothing to say. Whatever was the decision of the court, he had to abide by it.
    b. When a wife was the complainant, the court would make an order upon the husband for sufficient money to enable her to prosecute the suit to judgment, and also for her support in the meantime.
    c. A wife was not entitled to alimony when the husband had obtained a divorce from her for adultery.
    d. Today in America, most states have no-fault divorce thanks to Feminist lobbying efforts. That way, even if the wife's adultery caused the marriage breakup, she is allowed to receive alimony in some states and custody of the children in all states. With child custody comes child support that is usually more than needed so the wife can skim some of it .
        i. The advent of "no-fault" divorce has given rise to a system that strips fathers of their children, accelerates the breakdown of families, and makes a mockery of the marital contract.
        ii. Divorces initiated by females climbed to more than 70% when no-fault divorce was introduced, according to Margaret Brinig of the University of Iowa and Douglas Allen of Simon Fraser University. These divorce prone females are invariably "entitled" to child custody, child support, alimony, and the house, so mothers "are more likely to instigate separation, despite evidence that many divorces harm children."
        iii. The entire structure of American marriage and divorce is geared to financially supporting females, including the faithless ones. Men are 4 times more likely to lose their homes. One million American men are preemptively ordered out of their homes each year, even when no physical abuse is even alleged. Men now make up 80% of the homeless.

iv. 85% of divorce-related abuse allegations are manufactured by females (or urged upon them by their lawyers) to gain sole custody. Courts believe a female over a man, just because she is the mother. Many females also pressure and brainwash children into saying their fathers were abusers. Expectation of sole custody is the main reason a large number of divorce cases are initiated by women. Men are 5 times more likely to lose their children when families break down.

v. According to the Children's Rights Council, a Washington-based advocacy group, more than five million American children each year have their access to their non-custodial parents interfered with or blocked by custodial parents. 90% of custodial parents are mothers.

vi. No evidence exists that nearly half of American children were voluntarily abandoned by their own fathers. Feminist organizations and writers have propagated the myth that females are victims of an oppressive patriarchal society and that marriage is an inherently abusive institution.

vii. Numerous studies have concluded that children under shared parenting do significantly better on all adjustment measures than those in sole custody. Contrary to the claims of Feminist consultants to family courts, peer-review data shows that over time shared parenting decreases parental conflict, increases co-operation, and boosts support compliance. By 85 percent to 15 percent, a ballot initiative in Massachusetts in 2005 approved equal legal and physical custody of children whose parents are divorced.

viii. A father shouldn't have to fight a biased legal system so he can stay involved in the lives of his kids. Solving many of America's most vexing social problems—delinquency, drug abuse, teenage pregnancy—requires the recognition of the essential role of fathers in promoting safe and stable families.

ix. Absence of a father is the single biggest predictor of criminality for boys and low self-esteem for girls.

x. Children from a fatherless home are 5 times more likely to commit suicide, 32 times more likely to run away, 20 times more likely to have behavioral disorders, 9 times more likely to drop out of high school, 20 times more likely to end up in prison, and 10 times more likely to abuse chemical substances.

xi. 71% of teenage pregnancies happen to girls who reside in fatherless homes.

xii. 63% of youth suicides are from fatherless homes, 90% of all homeless and runaway children are from fatherless homes. U.S. Dept. Health and Human Services, Bureau of the Census.

xiii. 85% of all children that exhibit behavioral disorders come from fatherless homes. Center for Disease Control.

xiv. 71% of all high school dropouts come from fatherless homes. National Principals Association Report on the State of High Schools.

xv. 75% of all adolescent patients in chemical abuse centers come from fatherless homes. Rainbows For All God's Children.

xvi. 70% of juveniles in state-operated institutions come from fatherless homes. U.S. Dept. of Justice, Special Report, Sept 1988.
xvii. Many children end up being raised by chemical-abusing mothers who are far more likely to abuse or neglect them.

Illegitimate Children

1. In America in the 1800s, if an unmarried female was pregnant, she could be taken before a justice of the peace, who was authorized to question her under oath as to the name of the father. If the female told the name of the real father of the child, the father would be liable for the support and expenses of the mother's pregnancy and recovery, and also for the bringing up and education of the child. If the female refused to disclose the name of the father, she herself would be responsible for all the expenses attendant upon her pregnancy, and also for the education and bringing up of the child. If, by reason of sexual intercourse with two or more persons, a pregnant female, under oath, could not tell to whom to ascribe the paternity of the child, she herself would be liable for-all the expenses attendant upon its birth, education and support.
    a. Today in America, the female can accuse any man of being the father and the Social Service Department that provides her funds for raising the child will garnish the man's account even when there is DNA proof he is not the father. The Social Service Department of any state will send the man a letter claiming he owes the Department an amount of money for the services they provided the illegitimate child who is not his. At that point he has to hire an attorney in that state to go to court to prove he is not the father. The lying female does not have to prove he is the father and neither does the Social Service Department. He is assumed to be the father just on their say so and has to prove in court otherwise.

Example

Tulsa, Oklahoma athlete Michael Thomas never met Lawton drug user Tiffany Dickson. That didn't stop the Oklahoma Department of Human Services from getting Thomas declared the father of Dickson's baby daughter and badgering him until he dropped out of college, forfeiting a football scholarship. It also didn't stop DHS from taking a portion of his biweekly paychecks and seizing his $290 state and federal tax refunds. "This is unbelievable. This is crazy," said Thomas, 21, a former running back at Tulsa's Victory Christian School.

Thomas took DNA tests that proved he wasn't the father, DHS records show. However, DHS continued to take money from his paychecks and refused to tell him the results, Thomas said. He said it wasn't until he got a lawyer that DHS stopped seizing money from his checks. Thomas still hasn't gotten his money back.

Tulsa Attorney Billy Wiland III, who agreed to take Thomas' case without pay, said he has uncovered evidence that DHS filed reports with a Comanche County judge, who could have ended the bureaucratic mix-up. One report falsely claimed Thomas had "not responded to OKDHS letters, phone calls, or diligent search efforts" and had "not made any attempt to make contact with OKDHS."

Seduction

1 In the 19th and early 20th centuries in America, where a woman, who was of age, is seduced under a promise of marriage, she could personally sue the seducer.
    a. When the person seduced was of age, and the seducer was a single man, the latter would be compelled to make reparation by marriage. Where this could not be affected, exemplary damages would generally be obtained.
    b. Where the Seducer was a Married Man, and the person seduced knew that fact at the time, she could only sue for the damage done to her character. If she did not know it, and the seduction was effected under the double pretence that the seducer was single with a promise of marriage, aggravating damages could be obtained.
    c. A married man who, under the pretence that he was single, courts an unmarried female, who was ignorant of the fact of his marriage, and, under a promise of marriage, borrowed or took from her any money or other property, and did not upon demand return the same, would be deemed in law guilty of obtaining such money or property under a false pretence, and could, upon conviction, be imprisoned in a State prison for a term not exceeding three years.

Office Holders in the U.S. by 1929

1. With very few exceptions, women could hold any office in any of the States. They may have been members of a State legislature and they may have been members of Congress. They could hold the office of Governor of a State, except in Oklahoma and Wisconsin.
2. Women could not be jurors in Alabama, Arizona, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Maryland, Massachusetts, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Oklahoma, South Carolina, South Dakota, Tennessee, Texas, Vermont and Virginia. H. Harcourt Horn, *Handbook of Law for Women*, at 162-63, New York, Grafton Press, 1929.

Assignment 2: Read *Commentaries on the Laws of England*, by William Blackstone, Book 1, Chapter 15, Of Husband And Wife, 1765. It's on the Internet

Research and list the 25 most dangerous occupations in Australia, the percentage of men in each and the death rates for each and why you think those occupations have so many male employees in 250 words.
Or
Find a story or stories of an Australian man who spent time in prison for rape but was later exonerated, and summarize the story or stories in 250 words.
Or
Find a story or stories about a divorced father who deserved custody of his children, but a court awarded custody to the mother who then harmed the children. Summarize in 250 words.

Week 3

Lecture will look at (1) criminal sentencing of females compared to males, (2) female specific defenses that allow them to murder males with little or no punishment, and (3) the last remaining course of action for men to fight for their rights—civil disobedience.

1. Criminal Sentencing

Research shows men receive higher sentences than women for the same crime even when age, race, priors, family situation, and other factors are accounted for, and that "gender differences, favoring women, are more often found than race differences, favoring whites." (*Crime and Delinquency,* Justice Quarterly 1989, v 35, pp 136-168.)

A study published in the Justice Quarterly in 1986 found that, for the same felony, being male increased the chances of incarceration by 165% (being black increased the chance 19%). The gender of the victim matters as well. A drunk driver will receive an average of a 3-year higher sentence for killing a female than for killing a male. *Unconventional Wisdom*, Washington Post, Sept. 7, 2000.

Researchers Edward Glaeser (Harvard) and Bruce Sacerdote (Dartmouth) examined 2,800 homicide cases randomly drawn from 33 urban counties by the Bureau of Justice Statistics and found killing a female instead of a male increased sentences by 40.6%.

David Mustard, *Disparities in Sentencing: Evidence from U.S. Federal Courts*, Journal of Law and Economics, vol. XLIV (April 2001): All the below conclusions have accounted for other factors.

a. The Sentencing Guidelines and Policy Statements of the Sentencing Reform Act of 1984, apply to all federal offenses committed on or after November 1, 1987, were designed to eliminate sentencing disparities and state explicitly that gender should not affect the sentence length. *Id.* at 285-86.
b. For the 41 classes of crimes to which the Sentencing Guidelines apply, there is an even more pronounced difference between males and females than between people of different skin color. The average sentence for males is 278.4 percent greater than that of females (51.5 versus 18.5 months). *Id.* at 296. Data from 1991-94.
    Murder
    Manslaughter
    Kidnapping/hostage taking
    Sexual abuse
    Assault
    Bank robbery
    Other robbery
    Extortion
    Arson
    Drug trafficking
    Drugs: use of communication facilities
    Drug possession
    Firearm use
    Firearm possession/ trafficking

Burglary
Auto theft
Larceny
Fraud
Embezzlement
Forgery/counterfeiting
Bribery
Tax offense
Money laundering
Racketeering
Gambling/lottery
Civil rights
Immigration
Pornography/prostitution
Offenses in prison
Obstructing/impeding administration of justice
Environmental, game, fish, wildlife
National defense
Antitrust
Food and drug
Traffic
Other violent
Other drug
Other firearms
Other property
Other environmental
Other miscellaneous crimes

c. Figures estimate the extent to which an individual, who is in the same district court, commits the same offense, and has the same criminal history and offense level as another person receives a different sentence on the basis of gender. *Id.* at 300.
d. Females receive even shorter sentences relative to men than whites relative to blacks. The discrimination literature generally argues that females are objects of discrimination and receive worse outcomes. In sentencing, however, women receive better outcomes consistent with women being treated preferentially in court. Although some contend that the sentencing guidelines harm women, studies have usually concluded that females are sentenced more leniently than males. *Id.* at 302.
e. Whether sentencing done within the Guidelines or not, females receive less time than males. *Id.* at 302.
    i. Judicial departures from the Guidelines account for 67 percent of the gender differences
f. The six most frequently committed crimes: drug trafficking, fraud, larceny, firearm possession and trafficking, immigration, and bank robbery, constitute 77.2 percent of the cases. *Id.* at 304.
    i. The female-male difference is statistically significant for all six categories, the largest of which is for bank robbery, where females receive 21.6

months less than males, 11 months less drug trafficking, 3.7 months less firearms, .8 months less larceny, .8 months less fraud, 1.6 months less immigration. The percentage difference between males and females is also the largest for bank robbery (20.1 percent), but it exceeds 10 percent for drug trafficking, larceny, and immigration. The gender difference for drug trafficking was mainly the result of departures, which accounted for 73 percent of the male-female difference. *Id.* at 306.

g. Besides the disparities observed so far, there can be differences in who receives no prison term when that option is available.
    i. Females are more likely than males to be assigned no prison term when that is an option within the Guidelines. *Id.* at 306.
h. When judges depart from the Guidelines, as they do a majority of the time, females are more likely than males to receive downward departures and less likely than males to receive upward departures. *Id.* at 306.
    i. The magnitude of the departure is that females receive downward departures 6.9 months larger than males. *Id.* at 311.

Conclusion

This analysis estimates the extent to which an individual sentenced in the same district court, who commits the same offense, and has the same criminal history and offense level as another person receives a different sentence on the basis of gender. This disparity occurs in spite of explicit statements in the guidelines that these characteristics should not affect the sentence length. *Id.* at 311.

Over half of the unaccounted-for differences are generated by departures from the guidelines, rather than from differential sentencing within the guidelines. The differences by gender exist across offense types. *Id.* at 311-12.

Males not only receive longer sentences but also are less likely to receive no prison term when that option is available; more likely to receive upward departures, and less likely to receive downward departures. When downward departures are given, males receive smaller adjustments than females.

Laura Mansnerus, *Sometimes the Punishment Fits the Gender*, New York Times, November 16, 1997, § 4, at 1.

‘‘There’s a tendency to believe in female innocence,’’ said Cathy Young, a researcher at the Cato Institute and vice president of the conservative Women’s Freedom Network, who argues that offenders who are women are treated more leniently than men. ‘‘Feminists haven’t paid attention when gender bias goes in the other direction.’’

A broad concept of self-defense for battered women gained recognition. And new ‘‘rape shield’’ laws led to assertions that male defendants’ rights had been compromised.

2. Female Syndrome defense

In America females have a number of defenses in which they can commit premeditated murder and have the charges dropped or significantly reduced. The defenses do not apply to

men, and men do not have a similar set of defenses. Therefore, these female defenses violate the 14th Amendment to the U.S. Constitution, which requires the equal treatment of both sexes by state governments.

1. All men are demons, all females are angels: Females are presumed innocent and believable while males are presumed guilty, liars and disposable.

Examples:

Jane Taylor Quinn of Chicago

A black widow is a woman who murders two or more husbands or paramours to gain something she doesn't deserve or because her emotions told her to. Black widows date from at least from the second millennium BC to the present and exist in the U.S., England and Australia.

The arrest of Mrs. Quinn in 1911, after the death of her third husband, was made by the police who thought they had a strong circumstantial case against her. Her first husband died at London, Ontario in 1901, under mysterious circumstances. Her second spouse, Warren Thorpe, was found dead in bed on a morning in 1903, a bullet wound indicating murder. At that time Mrs. Quinn was charged with the murder, but was acquitted. John Quinn, the third husband, was shot to death as he lay in bed at night in 1911. There were powder burns on his night shirt. The revolver from which the shot was fired was found later in the Quinn bathroom, which appeared in a towel which was identified as one Mrs. Quinn had been seen to carry into the bathroom. The revolver was identified as one belonging to a roomer in the house who had mislaid the weapon from his bureau drawer about a week before the tragedy.

Quinn was acquitted by an all male jury in 1912. The failed Quinn prosecution was added to the long and rapidly growing list of Chicago female homicide cases resulting in non-convictions, which, by 1914 had become a national scandal.

Illinois State's Attorney Maclay Hoyne, declared that: "The manner in which women who have committed murder in this county have escaped punishment has become a scandal. The blame in the first instance must fall upon the jurors who seem willing to bring in a verdict of acquittal whenever a woman charged with murder is fairly good looking and is able to turn on the flood gates of her tears, or exhibit a capacity for fainting."

Prosecutor Hoyne aggressively lobbied the state legislature with a bill that would permit women to serve on Illinois juries, believing that male chivalry was so hopelessly entrenched that there was little point under existing conditions bothering even to go to trial against a female homicide defendant.

Biurny Peguero

December 11, 2009. A man behind bars for nearly four years for a gang rape that did not happen has been cleared after his accuser admitted she lied to make her friends feel sorry for her. New DNA tests played a part, but his exoneration hinged largely on his accuser recanting—a rarity after rape convictions. NY State Supreme Court Justice Richard Carruthers called the case

"a catastrophe" for both the criminal justice system and Mr. McCaffrey. The 22 year old female originally said three men, led by Mr. McCaffrey, raped her at knifepoint after luring her into their car after a night out in 2005. Mr. McCaffrey said she had agreed to go with them to a party, and they dropped her off unharmed after she changed her mind. The female told her story to a grand jury, took the stand again at Mr. McCaffery's trial and said at his sentencing that the "tragedy changed my life forever". He was convicted of charges including rape and kidnapping and received a 20-year prison term. His attorney later persuaded prosecutors to use new technology to retest DNA samples from an apparent bite mark on the female's arm. The new ones showed the genetic material not only was not Mr. McCaffrey's but came from at least two women, apparently friends of the alleged victim who fought with her. The victim eventually confessed her lie to a priest and then to authorities and got one year with parole for perjury. Prosecutors wanted her to be sentenced to two to six years "so that there's a chance that she will serve what he served." McCaffrey said that anyone who would "lie and paint somebody as a rapist is worse than a real rapist or a real murderer."

2. <u>PMS and Postpartum Depression or I kill whomever I want and blame it on my biology</u>: A female's hormones during menstruation and menopause are an excuse for deliberately killing a man.

Examples:

Mary Harris

At four o'clock in the afternoon on January 30, 1865, Mary Harris fired two shots at Mr. A.J. Burroughs, her former fiancé, as he walked down the hallway of the U.S. Treasury Building leaving work for the day. Burroughs fell dead and Harris was tried for murder.

Mary's prior fiancé, Mr. Burroughs, had broken off their engagement and married another girl, so Mary followed him to D.C. and shot him dead. Mary tearfully testified that Burroughs had promised to marry her but married someone else. After a 12-day trial in which she pleaded "not guilty by reason of being 'crossed in love and suffering from painful dysmenorrheal at the time of the shooting' or what is now called premenstrual syndrome, Mary was acquitted.

N.Y. Times, July 20, 1865 printed:

The verdict only furnishes a new illustration of what must be regarded as a settled principle in American law—that any woman, who considers herself aggrieved in any way by a member of the other sex, may kill him with impunity, and with an assured immunity from the prescribed penalties of law. The man may really have been guilty neither of a crime against her person, an assault upon her honor, nor an offence against her feelings; if she is seized by a fancy that his course of conduct toward her is not such as she had anticipated from his addresses, she may kill him upon notice or without notice. If a man is murdered by a member of the opposite sex in any of the cases supposed, or in almost any supposable case whatever, she is almost certain to escape, not only the extreme penalty of the law, but any penalty whatever.

It was useless to find fault with this state of things. It is peculiar to America, and people in general are decidedly proud of it. There is no reason in the nature of things why criminals of one sex should be treated with such exceptional and dubious honor; but who shall argue with the feelings of a jury, backed up by public sentiment and by custom? It is well enough, however, that every man should always bear the fact in mind, so that he may on all occasions so comport himself in the presence of the sex as never to give any of them either a real or fanciful pretext for taking him off untimely.

Sheryl Lynn Massip

She placed her 6-month old son under a car, ran over him repeatedly, and then, uncertain he was dead, did it again. She claimed postpartum depression. Massip was convicted by an Orange County jury of second-degree murder in 1988, but Superior Court Judge Robert Fitzgerald reduced the murder verdict to voluntary manslaughter and ruled that Massip was insane at the time of the killing. Temporary insanity similar to Mary Harris. The Judge allowed Massip to be treated as an outpatient by state mental health experts with the Community Release Program rather than be committed to a state mental hospital. Massip has been out of custody ever since.

3. <u>Battered Female Syndrome or he's dead so I can say whatever I want about him and the courts will believe me.</u>

Perversion of self-defense:

In 1990, the governor of Ohio, a man, released from prison 25 females convicted of killing or assaulting their husbands or boyfriends because each one claimed, without proof, the man had abused them.

It is self-defense for premeditated murder by women only. The theory is that a female whose husband or boyfriend batters her becomes fearful for her life and helpless to leave him so by killing him, she's engaging in self defense.

Under the law, self-defense required that (1) the defender not provoke difficulty (female's tongue is her gun), (2) there must be impending peril without a reasonable mode of escape (no where to run). It justifies an act done in the reasonable belief of immediate danger.

Of course, the battered syndrome does not fit the requirement of immediacy or no place to run. It does not require her to prove that she is in imminent danger of being killed without any possible physical escape. It is simply preferential treatment of females, which gives them a *carte blanc* ticket to murder their boyfriends or husbands. They are allowed to kill their sleeping boyfriends or husbands because they feel helpless.

Many men in war suffer posttraumatic stress disorder that is a form of battered male syndrome, yet they cannot kill their commanders and claim self-defense.

In America, there are many female shelters for allegedly battered females. Females also receive government funds to escape an abuser under VAWA, so there is no excuse for intentionally killing another person because there are many places to escape to.

Mary Winkler

After spending a total of seven months in custody, the Tennessee woman, who fatally shot her preacher husband in the back, was released. Mary Winkler, a 33-year-old mother of three girls, was freed from a Tennessee mental health facility where she was treated for depression and post-traumatic stress disorder. Mary brought a legal battle to win custody of her girls, which she won. Winkler returned to work at the dry cleaners in McMinnville, Tennessee, where she worked before the murder.

Winkler never denied shooting her husband, Matthew, the popular preacher at the Fourth Street Church of Christ in Selmer, a town of 4,500 people about 80 miles east of Memphis. On March 22, 2006, church elders found his body –with a shotgun wound to the back—in the bedroom of the parsonage after he failed to show up for an evening service. His wife was arrested the next day with the couple's three young daughters in Orange Beach, Alabama, on the Gulf coast.

In a statement to police after her arrest, Winkler said she didn't recall pulling the trigger. She said she apologized and wiped the blood that bubbled from her dying husband's lips as he asked, "Why?"

Mary Winkler was charged with murder, which could have sent her to prison for up to 60 years, but a jury found her guilty of voluntary manslaughter following an emotional trial in which she testified about suffering years of verbal and physical abuse. On the stand, Mary Winkler described a 10-year marriage during which, she said, her husband struck her, screamed at her, criticized her, and blamed her when things went wrong. She said he made her watch pornography and wear "slutty" costumes for sex, and that he forced her to submit to sex acts that made her uncomfortable. Prosecutors and Matthew Winkler's family members said he was a good husband and father.

She testified she pointed the shotgun at her husband during an argument to force him to talk through their problems, and "something went off" while he was asleep and lying on his stomach. A defense psychologist testified that she was depressed and showed symptoms of post-traumatic stress disorder.

She spent two months undergoing therapy at the mental health facility following her conviction for voluntary manslaughter and was released

The message of the Battered Syndrome Defense to Feminists is that a dead husband is better than a live witness.

4. <u>Svengali Defense or the devil, a man, made me do it.</u>

Declaring that women are "soft touches" for clever men, "particularly if sex is involved," a federal judge Tuesday refused to use federal guidelines for sentencing a woman convicted in a string of bank robberies and instead imposed a sentence of only two years.

Dannielle Tyece Mast, 24, dubbed the "Miss America Bandit" by the FBI, a former cheerleader and bank teller convicted of robbing five banks while disguised in flowing wigs and

sunglasses, faced a range of four to five years under mandatory federal sentencing guidelines. Judges are permitted to depart from the guidelines only under extraordinary circumstances.

The Judge said the lesser sentence was warranted because Mast had fallen under the "Svengali" spell of her boyfriend.

Her lawyer argued, "This young defendant succumbed to the Charles Manson syndrome--attachment to a sophisticated hustler who uses cocaine, sex and a 'fast-lane' life style to subdue a vulnerable young lady"

In a four-day trial in Los Angeles federal court, prosecutors said she left behind her small-town life in Oregon as a varsity cheerleader and basketball player, picked up with a boyfriend in Oakland, and launched into a spree of robberies.

At the sentencing hearing, she stood weeping in front of the judge through most of it while family members wiped away tears in the spectator rows.

The boyfriend was not charged in the case. The prosecutor in the case, Assistant U.S. Atty. Gregory W. Alarcon, objected to departing from the sentencing guidelines, arguing that Mast had shown no remorse for her crimes. There was "no evidence," he said, that her boyfriend exercised any undue influence over Mast. There was never any evidence introduced at trial about any connection between the boyfriend and the robberies. "It was never brought out at trial, and it was never brought out as a defense, and there was never any evidence that this person was anywhere near the bank robberies," he said.

Mast robbed the banks by displaying to tellers a gun. "Give me the money or I'll blow your head off," she told one teller at a Los Angeles branch of Security Pacific National Bank, according to police.

5. <u>Contract killing or get a guy to do it and then blame him</u>.

Dixie Dyson

Dyson was convicted in 1988 of first-degree murder, but the conviction was reduced to second-degree murder after she cooperated with the Orange County District Attorney's Office in the prosecution of her two accomplices in the murder-for-hire killing.

Mel Dyson, who was 30 when he was killed, was stabbed 17 times in his bed on the night of Nov. 17, 1984. Dixie Dyson initially told detectives that a masked intruder attacked her husband, then assaulted and raped her.

She was soon arrested and charged with plotting Mel Dyson's death with her lover, Enrico Vasquez, and George Ira Lamb, Vasquez's boyhood friend from New York. Dixie Dyson testified that Vasquez had been her lover and that he recruited Lamb to murder her husband. Both men were later convicted of first-degree murder at separate trials, in part because of Dixie Dyson's testimony. Vasquez and Lamb received life terms and both are still in prison.

4. <u>Civil Disobedience</u>

Resistance to Civil Government (Civil Disobedience) is an essay by American transcendentalist Henry David Thoreau that was first published in 1849. In it, Thoreau argues that individuals should not permit governments to overrule their consciences, and that they have a duty to avoid acquiescing to enable the government to make them the agents of injustice. Thoreau was motivated in part by his disgust with slavery and the Mexican–American War.

Thoreau asserts that because governments are typically more harmful than helpful, their actions are often not justified. Democracy is no cure because majorities simply by virtue of being majorities do not also gain the virtues of wisdom and justice. The judgment of an individual's conscience is not necessarily inferior to the decisions of a political body or majority, and so "[i]t is not desirable to cultivate a respect for the law, so much as for the right. The only obligation [a person] has a right to assume is to do at any time what [he] thinks right . . . . Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice."

Government, according to Thoreau, is not just a little corrupt or unjust in the course of doing its otherwise-important work, but in fact the government is primarily an agent of corruption and injustice. Therefore, it is "not too soon for honest men to rebel and revolutionize."

Political philosophers have counseled caution about revolution because the upheaval of revolution typically causes a lot of expense and suffering. Thoreau contends that such a cost/benefit analysis is inappropriate when the government is actively facilitating an injustice. Fundamental immorality justifies any difficulty or expense to bring it to an end.

Thoreau advocates that people cannot blame the Government injustices on government bureaucrats and officials, but must put the blame on those who are more interested in commerce and agriculture than they are in humanity, and are not prepared to do justice. There are thousands who are in opinion opposed to the discrimination of a particular group, who yet in effect do nothing to put an end to it.

He exhorts people not to just wait passively for an opportunity to vote for justice, because voting for justice is as ineffective as wishing for justice; what you need to do is to actually be just. This is not to say that you have an obligation to devote your life to fighting for justice, but you do have an obligation not to commit injustice and not to give injustice your practical support. Do what you can for justice in your own backyard.

In a constitutional republic like the United States, people often think that the proper response to unjust government actions is to try to use the political process to change the law, but to obey and respect the law until it is changed. But if the laws and application of the laws are itself clearly unjust, and the lawmaking process is not designed to quickly obliterate such unjust laws, then Thoreau says the law deserves no respect and it should be broken.

According to Thoreau, under a government which imprisons any unjustly, the true place for a just man is also a prison. He advocates casting of one's whole vote, not a strip of paper merely, but one's whole influence. A minority is powerless while it conforms to the majority; it is not even a minority then; but it is irresistible when it clogs the wheels of government by its whole weight.

Because the government will retaliate, Thoreau says he prefers living simply because he therefore has less to lose. He said, "I can afford to refuse allegiance to the Government. It costs me less in every sense to incur the penalty of disobedience to the State than it would to obey. I should feel as if I were worth less in that case."

He was briefly imprisoned for refusing to pay the poll tax, but even in jail felt freer than the people outside. He considered it an interesting experience and came out of it with a new perspective on his relationship to the government and its citizens. (He was released the next day when "someone interfered, and paid that tax.")

Because government is man-made, not an element of nature or an act of God, Thoreau hoped that its makers could be reasoned with. As governments go, he felt, the U.S. government,

with all its faults, was not the worst and even had some admirable qualities. But he felt we could and should insist on better. "The progress from an absolute to a limited monarchy, from a limited monarchy to a democracy, is a progress toward a true respect for the individual. . . . Is a democracy, such as we know it, the last improvement possible in government? Is it not possible to take a step further towards recognizing and organizing the rights of man? There will never be a really free and enlightened State until the State comes to recognize the individual as a higher and independent power, from which all its own power and authority are derived, and treats him accordingly."

Thoreau heartily accepted the motto,—"That government is best which governs least."

Most men are utterly helpless to affect public issues by the orthodox channels. They cannot depend on the courts to protect their rights for the judiciary has not shown an independence from the biases of the politically correct and Feminists. "The traditional methods of dissent, the use of public platforms and electoral process [are] insufficient." Howard Zinn, *Disobedience and Democracy—Nine Fallacies on Law and Order*. Their only recourse is civil disobedience.

"Civil disobedience is the organized expression of revolt against existing evils . . . . The deliberate violation of law for a vital social purpose. It becomes not only justifiable but necessary when [] fundamental human right[s] [are] at stake, and when legal channels are inadequate for securing [those] right[s]." *Id.*

"The purpose of civil disobedience is to communicate to others . . . ." *Id.*

"When the public fails in its duty, private men must take its place." Ralph Waldo Emerson.

As has occurred previously in America, it is now necessary to go outside the system's channels. Men are now the only dependable defenders of their own liberty—not the state.

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Assignment 3: Read Howard Zinn's *Disobedience and Democracy—Nine Fallacies on Law and Order.* In 725 words, do one of the following:

1. Find an example of one of the female defenses used in Australia, summarize it and comment on how it could be prevented; or

2. Find a new female only defense and do the same; or

3. Write up a civil disobedience action that will bring the attention of the public and government to discrimination against men, include why you think such an action would have the required effect.

Additional Sources

1858 George Bishop, *Every Woman Her Own Lawyer A Guide in All Matters of Law of Essential Interest to and by the Aid of Which Every Female May in Whatever Understand Her Legal Course of Redress and Be Her Own Adviser*

1901 George James Bayles, *Woman and the Law*

1914 Alvah L. Stinson, *Woman under the Law*