Feminist Assault On Reasonableness

August 15, 1996 by Phyllis Schlafly

Now that women are attending law schools in greater numbers, feminists are turning up as law school professors, law review writers, state legislators, congressional staffers, prosecutors, law clerks, and even judges. The result is ominous for basic concepts of American law and justice, and an excellent policy analysis on "feminist jurisprudence" by the Cato Institute explains why.

The feminist goal is not fair treatment for women, but the redistribution of power from the "dominant class" (the male patriarchal system) to the "subordinate" class (nominally women, but actually only the feminists who know how to play by rules they have invented). They even want to establish a license for women to kill their allegedly abusive spouses.

They have peddled the fiction that men are engaged in a vast conspiracy against women, that something like 85 percent of employed women are sexually harassed in the workplace, and that something on the order of 50 to 70 percent of wives are beaten by their husbands. They want to establish the rule that offenses against women should be defined (not objectively, but subjectively) on the basis of how the woman felt instead of what the defendant did.

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

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

In theory, Ginsburg appeared to demand a doctrinaire equality, opposing the Mann Act because it "was meant to protect weak women from bad men" and that was demeaning to women. But in practice, she

demanded affirmative action for women even in the military.

Now the feminists don't even pay lip service to a gender equality goal. They have launched a broadside attack on such basic precepts as equality under the law, judicial neutrality, a defendant is innocent until proven guilty, conviction requires proof beyond a reasonable doubt, and guilt or liability should be judged according to the traditional "reasonable man" theory.

Female plaintiffs had always been able to sue for unwanted sexual overtures in the workplace by using the common-law remedies of tort and contract. Feminists reject this remedy because they want sexual harassment cases to be based on the notion of a male conspiracy to victimize women and that a "hostile work environment" is a form of sex discrimination prohibited by Title VII of the Civil Rights Act.

The Supreme Court adopted this feminist theory in the 1986 case of Meritor Savings Bank v. Vinson, where the Court even went so far as to say that "'voluntariness' in the sense of consent" is not a defense. These notions had been invented by Michigan Law School professor Catharine MacKinnon, who was reported to have boasted, "What the decision means is that we made this law up from the beginning, and now we've won."

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

Now the feminists are demanding the "unreasonable woman" rule. The feminists want the victim rather than the law to define the offense.

In a 1991 Jacksonville, Florida case, a federal district court found an employer guilty of a "hostile work environment" even though there was no evidence of sexual language or demands directed at the plaintiff who claimed she felt sexually harassed. The other female workers said they did not feel sexually harassed, but the judge said that merely provided "additional evidence of victimization."

The feminists are actively promoting college speech codes to prohibit what they call discriminatory or harassing speech. They argue that it's just as actionable for a man to call a woman "honey" or "baby" as to call her a "bitch"; and, of course, jokes are not allowed. Nearly 400 colleges and universities have these anti-First Amendment speech regulations, about a third of which target mere "advocacy of offensive or

outrageous viewpoints or biased ideas."

The feminists want the battered woman syndrome to free any woman from conviction of violent crime. The feminists are even pushing the Catharine MacKinnon notion that all heterosexual sex is rape unless an affirmative, sober, explicit verbal consent can be proven.

They want the action of a battered woman who kills her husband to be considered as normal, and that killing a man in his sleep can be called self-defense.

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