

Course outline – Women's Rights

Advanced Master's Programme European and International Human Rights Law

2022-2023

Objectives

- Participants gain profound knowledge and understanding regarding women's rights, gender and intersectional discrimination
- Participants can articulate and discuss the main debates and latest developments regarding women's rights, in particular sexual and reproductive rights' and 'violence against women'
- Participants can assess and evaluate how these debates and developments may play out in concrete legal cases

Preparations

- Understanding the required readings
- Participating in class (including by preparing questions and cases)
- Finding and analyzing additional materials to prepare for symposium (see assessment method below)

Assessment method

- Presentation of ten minutes during a symposium on **17 May, 14:00 - 17:00**. You have to present in person in KOG C006. Fill out the title of your presentation in the Symposium Women's Rights in [link] by 12 May.
- The grading criteria are originality (40 %), sound understanding and research (30 %), delivery (20 %).
- Engagement with other presentations during symposium (10 %)
- [Here](#) is the online invitation.
- A written outline (of approximately 1000 words) with the main arguments presented is optional.

Contact

- Primary contact and course coordinator: a.m.h.nissen@law.leidenuniv.nl
- Assistant: Theo Tsomidis - t.tsomidis@law.leidenuniv.nl



Symposium – Women's Rights

Dear all

That's a wrap!

You can now find the programme of your Symposium on Women's Rights on Brightspace. The Symposium will start on 17 May, at 14h sharp. It ends at 17h.

[Here](#) is the online invitation. It explains: 'Participants of the Advanced Master's Programme European and International Human Rights Law will present on 'sexual and reproductive rights' and 'violence against women by their kin, business and the state'. They embrace an intersectional approach, demystifying dichotomous differences and patriarchal claims to impartial knowledge.'

You have to present in person in KOG C006. You are allowed to use your '10 minutes' time slot as you please. The only presenting duo get 15 minutes (in total). You can leave some time for questions during your time slot, but this is certainly not required. The time limitations are strict. The grading criteria are originality (40 %), sound understanding and research (30 %), delivery (20 %) and engagement with other presentations (10 %). Feel free to walk in and out of the room when you need an extra break.

The Symposium will not be recorded. It will, however, be streamed. **If you want to use slides, upload them on [We Transfer link] and copy-paste this link after your name [Google document] by 16 May.** It is your responsibility to double-check whether your link works. If your presentation may not be streamed for security reasons, then you should not use slides or upload slides directly on the computer in KOG C006 *before* the start of the Symposium. In that case, inform me about the security reasons *in person* before the start of the Symposium.

On Brightspace, you will also find a feedback sheet. Paper copies of this sheet will be provided. Give feedback on 3 presentations. Giving feedback on more presentations is optional. You can use [these tips](#). Your feedback will be used to assess your engagement with other presentations. **Email or give the sheet to me *before* leaving the Symposium.**

Submitting a written outline (of approximately 1000 words) with the main arguments presented is optional. If so, email or give your outline to me *before* leaving the Symposium. You will receive my feedback by 30 May.

Good luck!
Aleydis Nissen



Prize – Women's Rights

Leiden 18 May 2023

To whom it may concern

Hereby, I am glad to inform you that the audience of the Women's Rights Symposium decided the following:

The Best Presentation Prize to be awarded to [...] for the Presentation [...].

The Symposium took place on 17 May 2023 (14h – 17h) in Kamerlingh Onnes Building in Leiden. There were 16 presentations in total. In their assessment, the audience considered the originality, sound understanding and research and delivery by the presenters.

Yours sincerely,

Dr Aleydis Nissen

Notes – Women's Rights

by Aleydis Nissen

Lecture 1 Feminist theory and the state

From the 1980s, feminists started discussions on the uneasy relationship between gender and the state.¹ They agree that the state is an inherently patriarchal entity that formally structures gender inequality.² The state empowers men and disempowers women.³ However, feminist theory struggles with considering to what extent the state needs to be interrogated, and to what extent fruitful engagement with the state is possible.⁴ While some feminists find that they should turn their backs on the state, others have focused on getting seats at the table.⁵ While feminist theories cover a spectrum, it is useful to summarize the largest opposing theories in this section. This overview draws from Johanna Kantola's chapter 'State/Nation' and Celeste Montaya's chapter 'Institutions' in the *Oxford Handbook of Feminist Theory* (2016).⁶

A range of feminist traditions consider the state as a facilitator of male privilege which cannot be a 'sister in arms'. Notably, radical, Marxist and socialist feminism approach the state in this way.⁷ For radical feminists, the submission of women is systematic.⁸ The patriarchy is underpinned by state power which 'creates rules and distributes resources to entrench male domination'.⁹ In their heyday, radical feminists despised the state as well as feminists who engaged with the state.¹⁰ Marxist and socialist feminists teased out the relationship between capitalist production and social 'reproduction'.¹¹ Women's social reproduction activities are embedded in the contextual environment in which they are born, including access to clean water, electricity and food.¹² Marxist feminists considered the artificial subordination of women within the market. They blamed the familial ideology for prescribing how women's cheap reproductive work should subsidize productive work to benefit capitalists. Social feminists emphasize, in particular, that not only capitalists benefit from women's reproductive labour.¹³ Individual men also benefit from receiving the fruits of their labour at home, while they benefit from the gendered division of labour at work. As conventions created by humans, Marxist and socialist feminists do believe that institutions are not structured in a fixed way. But, 'once entrenched, they gain a potent hold over the popular imagination'.¹⁴ Worse, 'once "naturalized"', they 'gain impressive stability that makes them enormously difficult to transform'.¹⁵

Other traditions – including liberal and post-structural feminism – have considered the state and its institutions as a platform in which women can be more easily integrated. Liberal feminists are convinced that the state needs to be 'captured back' by women.¹⁶ Liberal feminism advocates engagement with the state 'as a strategy to foster societal change that might eventually affect unequal structures'.¹⁷ The liberal approach to feminism has been frequently dismissed because this approach overemphasizes choice, an option that many women of less privileged walks of life do not have.¹⁸ Liberal feminists also overlook power struggles that exist within institutions. Nevertheless, as will be discussed in Section III.C of this article, liberal feminism's struggle for representation in institutions is still relevant today. Finally, post-structural feminists – influenced by Judith

Butler and Michel Foucault – have sought to conceptualize the state as an amalgam of decentred institutions which have multi-faceted outlooks on gender.¹⁹ They recognize that engaging with institutions can be a negative as well as a positive experience for women.²⁰ Taking a constructivist approach to gender, intersectional feminists have, in particular, made a major contribution to all feminist theory. It is now widely accepted that feminist scholars have in the past overlooked that not all women's experiences are the same.²¹ Women are not a monolithic group. The concept of 'intersectionality' refers to the idea that people's disadvantage is 'composed of multiple and interlocking systems of power'.²² Women can, amongst others, be victims of poverty, of gender-based violence, new mothers, divorced, daughters-in-law, traumatized, widowed, trafficked, displaced, underaged, lesbian, transgender, immobile, migrant, pregnant, stateless, and in armed conflict. In the context of institutions, this means that feminist theory not only needs to study how they are 'gendered', but also how interlocking forms of oppression influence their *modus operandi*.²³

¹ Seung-Kyung Kim & Kyounghee Kim, *The Korean Women's Movement and the State: Bargaining for Change* (Abingdon-on-Thames: Routledge 2013), 4-8.

² Ibid.

³ Celeste Montoya, 'Institutions', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 367.

⁴ Dean Spade & Craig Wilse, 'Norms and Normalisation', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 551.

⁵ Johanna Kantola, 'State/Nation', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 915, 916-7.

⁶ Kantola, note 5; Montoya, note 3.

⁷ Kantola, note 5, 916-917.

⁸ E.g. Daly Mary, *Beyond God The Father* (Boston: Beacon Press 1973).

⁹ Montoya, note 3, 376.

¹⁰ Alice Echols, *Daring to Be Bad: Radical Feminism in America, 1967-75* (Minneapolis: University of Minnesota Press 1989).

¹¹ E.g. Evelyn Reed, *Woman's Evolution from Matriarchal Clan to Patriarchal Family* (New York: Pathfinder Press, 1973).

¹² Valerie Bryson, *The Futures of Feminism* (Manchester: Manchester University Press, 2021), 191.

¹³ E.g. Ibid, at 194; Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Toward a More Perfect Union*, in Lydia Sargent (ed.), *Woman and Revolution: A Discussion of the Unhappy Marriage of Marxism and Feminism* (Montréal: Black Rose Books, 1981), 363.

¹⁴ Montoya, note 3, 368-9.

¹⁵ Ibid.

¹⁶ E.g. Betty Friedan, 'Our Revolution Is Unique' in Kenneth Dolbeare and Michael Cummings (eds.), *American Political Thought* (4th ed, Washington: CQ Press, 1968).

¹⁷ Kantola, note 5, 917; Montoya, note 3, 367 and 376.

¹⁸ Suzanne Bergeron, 'Formal, Informal and Care Economies' in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 179, 192-3.

¹⁹ Wendy Brown, *States of Injury: Power and Freedom in Late Modernity* (Princeton University Press 1995), p. 177.

²⁰ Kantola, note 5, 922.

²¹ Mary Hawkesworth and Lisa Disch, 'Introduction. Feminist Theory: Transforming the Known World', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 1, 4.

²² Shreya Atrey, 'The Intersectional Case of Poverty in Discrimination Law' (2018) *Human Rights Law Review* 415.

²³ Montoya, note 3, 368 referring to Patricia Hill Collins, 'Toward a New Vision: Race, Class, and Gender as Categories of Analysis and Connection' (1993) *Race, Gender and Class* 25, 29-30.

Feminist theory and the state

Dr Aleydis Nissen | 17 February 2023



**Universiteit
Leiden**

Law

Discover the world at Leiden University

Today, we will study 'feminist theory and the state'. This is the first lesson in the course 'women's rights in European and international law'. The aim of this foundational lesson is to acquire comprehensive insights of feminist engagement with the state.



EDITED BY

LISA

DISCH

MARY

HAWKESWORTH

The Oxford Handbook *of*
**FEMINIST
THEORY**

FEMINISTS AGREE THAT...

- ... dichotomous difference is not natural
- ... knowledge is not universal and impartial
- ... some **women** suffer disproportionately

DICHOTOMOUS DIFFERENCE IS NOT NATURAL

- . but a vector of power
- . gendering is a political process that sustains divisions
- . and biology is mobilised for this purpose



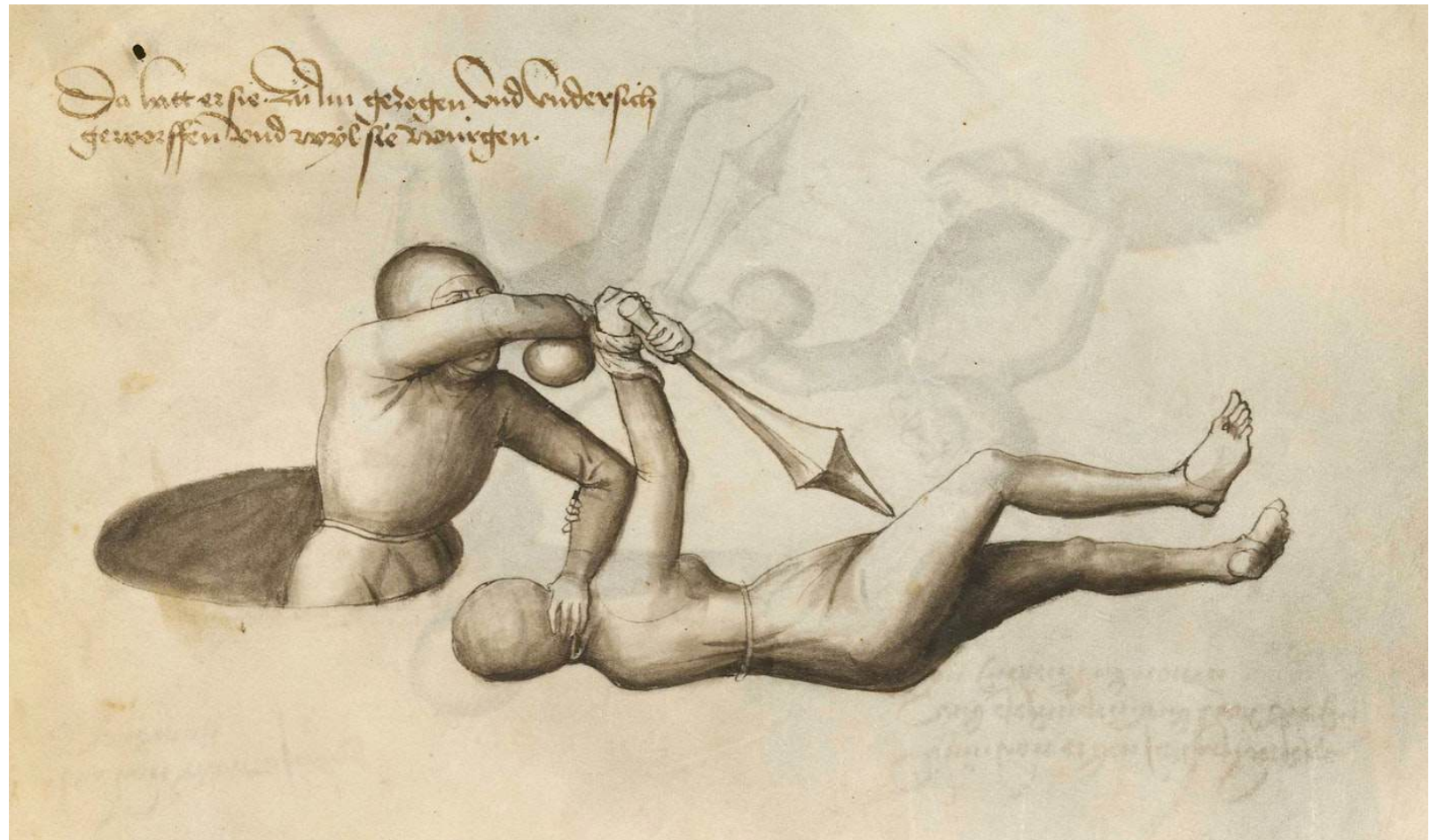
KNOWLEDGE IS NOT UNIVERSAL AND IMPARTIAL

- . specific experiences influence empirical and normative claims
- . not all 'what can be known' is equal



SOME **women** SUFFER DISPROPORTIONALLY

. intersectional lens

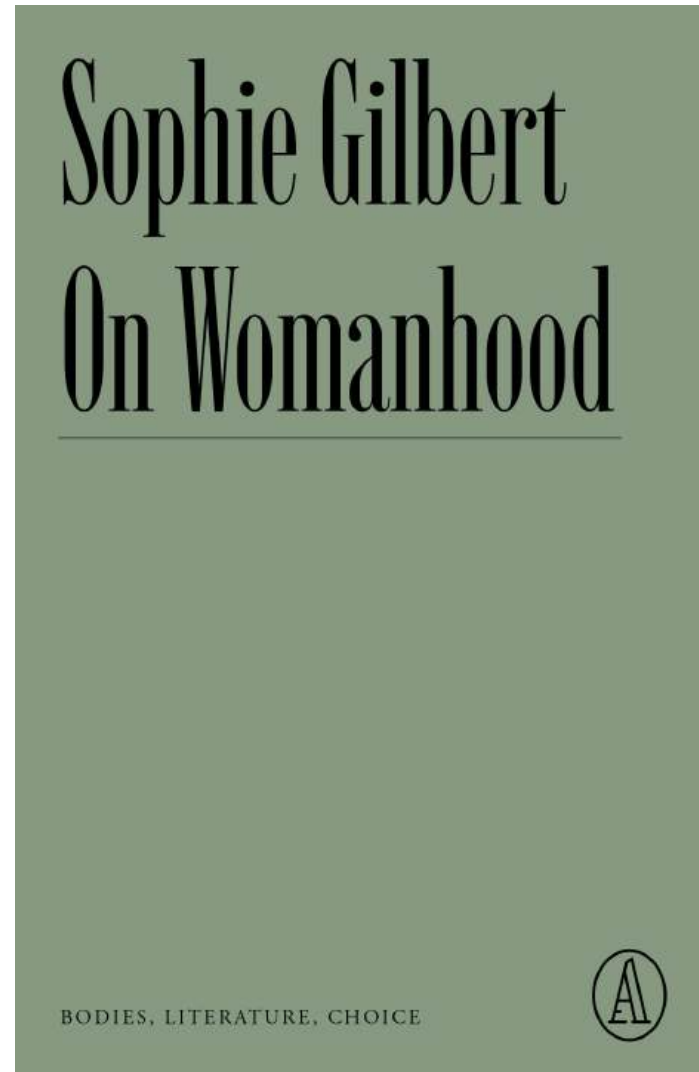
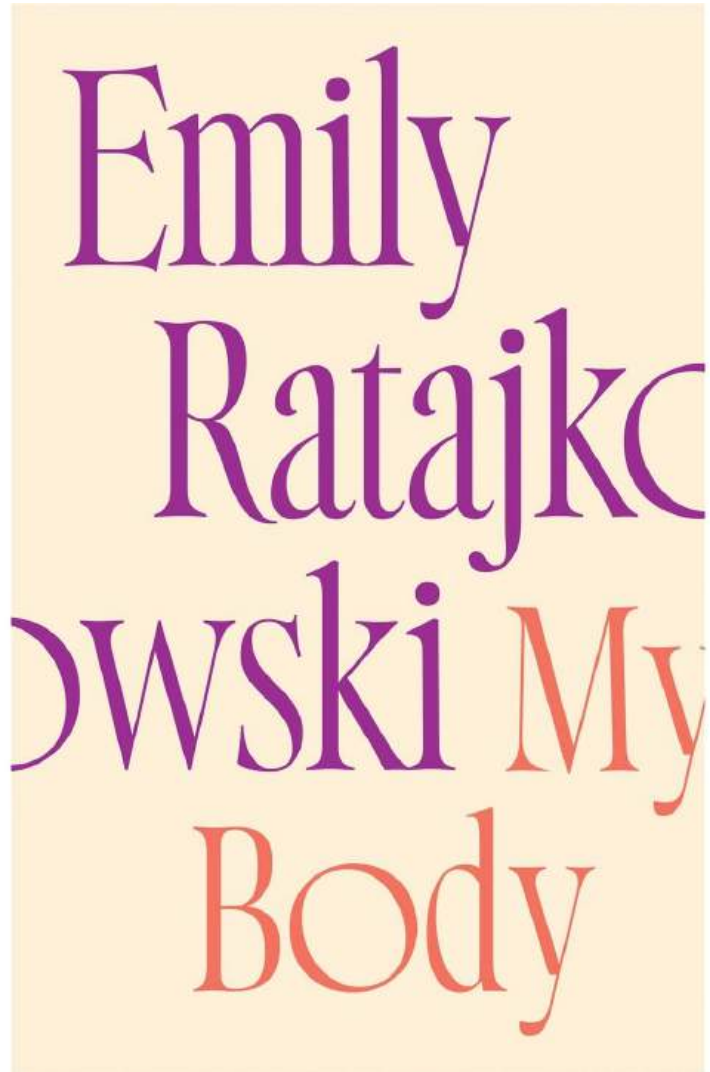


FEMINISTS AGREE THAT THE STATE...

... formally structures gender inequality

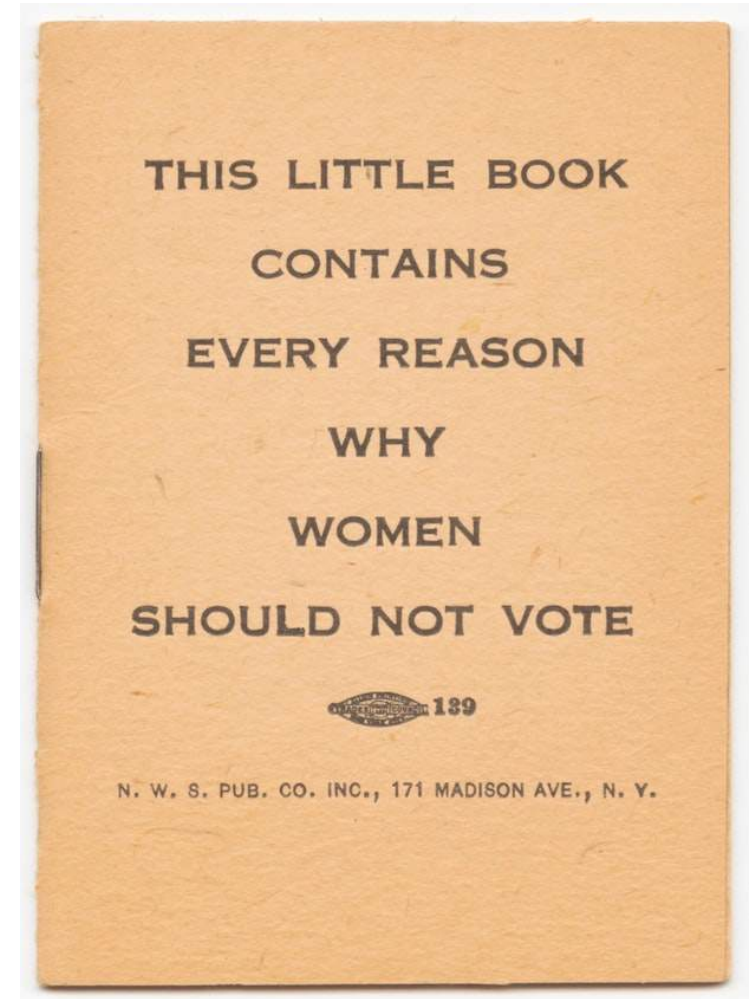
... empowers men, and disempowers women

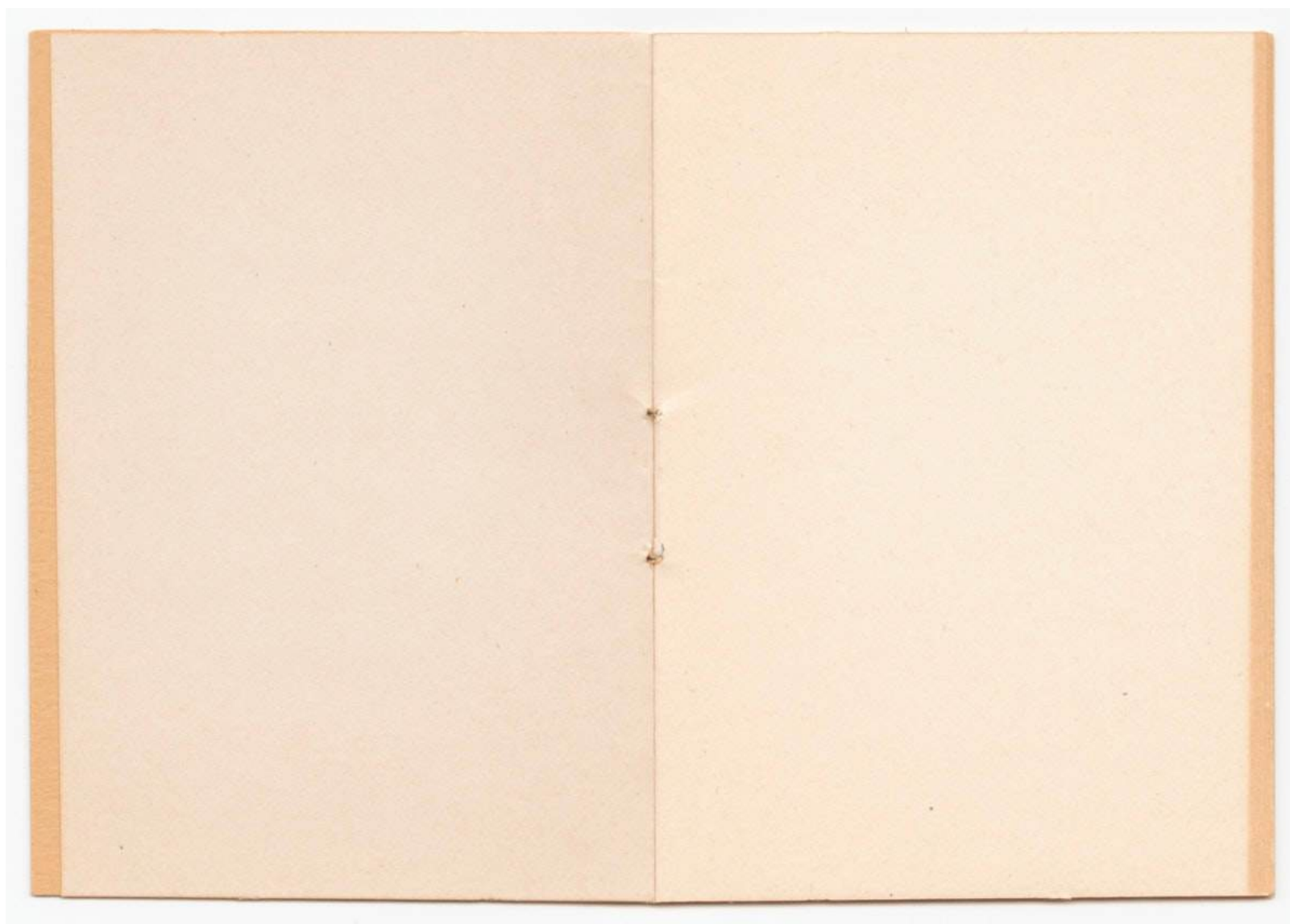
just as everyone else,
feminists are allowed to disagree, change opinions, etc



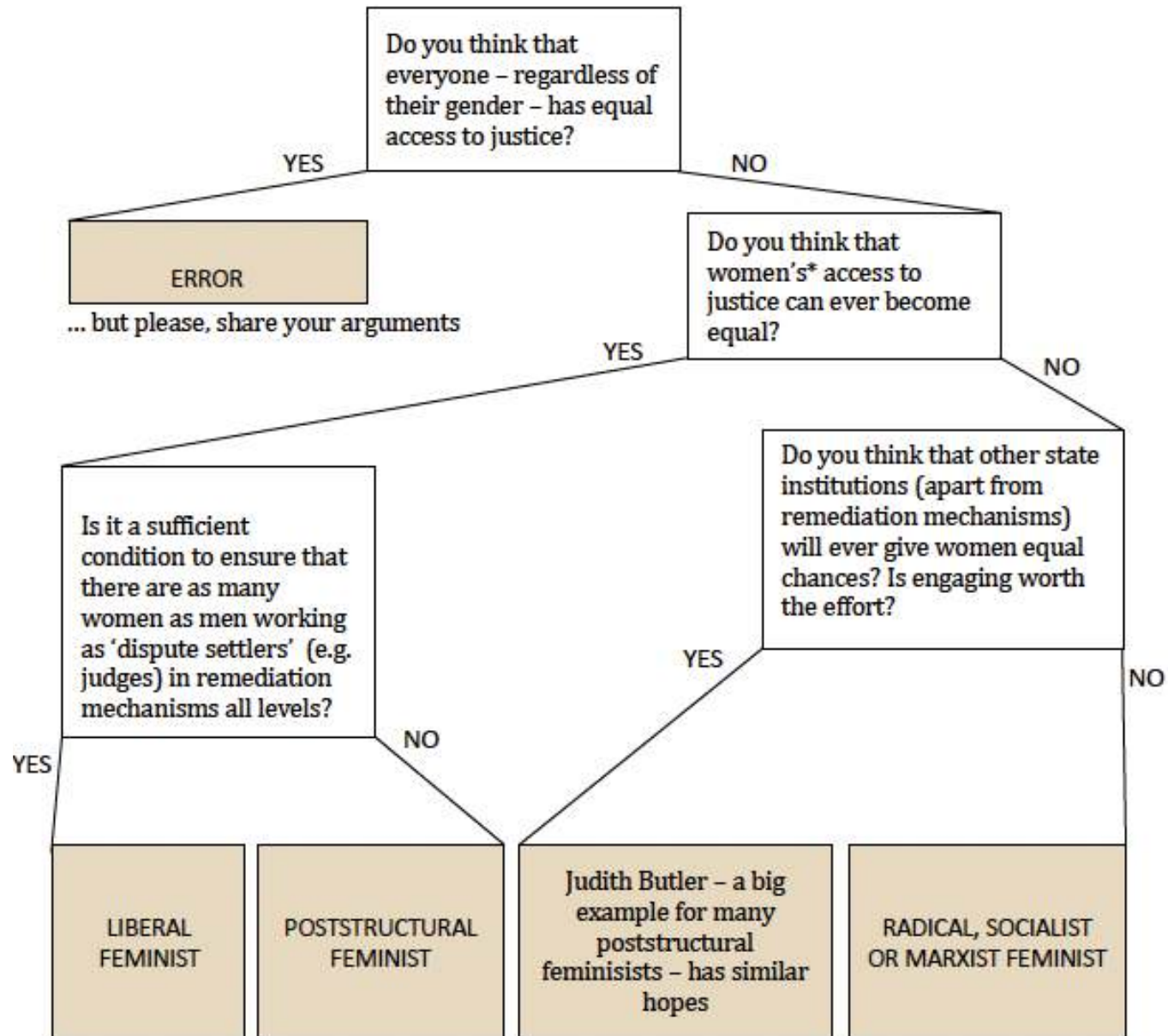
TAXONOMIES

1st WAVE	suffrage
2nd WAVE	sexuality reproductive rights women's roles
3rd WAVE	individualism grrrls
4th WAVE	





TAXONOMIES



OVERVIEW

- . radical, marxist and socialist feminism
- . liberal feminism
- . poststructural feminism

RADICAL MARXIST & SOCIALIST FEMINISM



RADICAL FEMINISM

men dominate

women are oppressed

Radical feminism and the State?

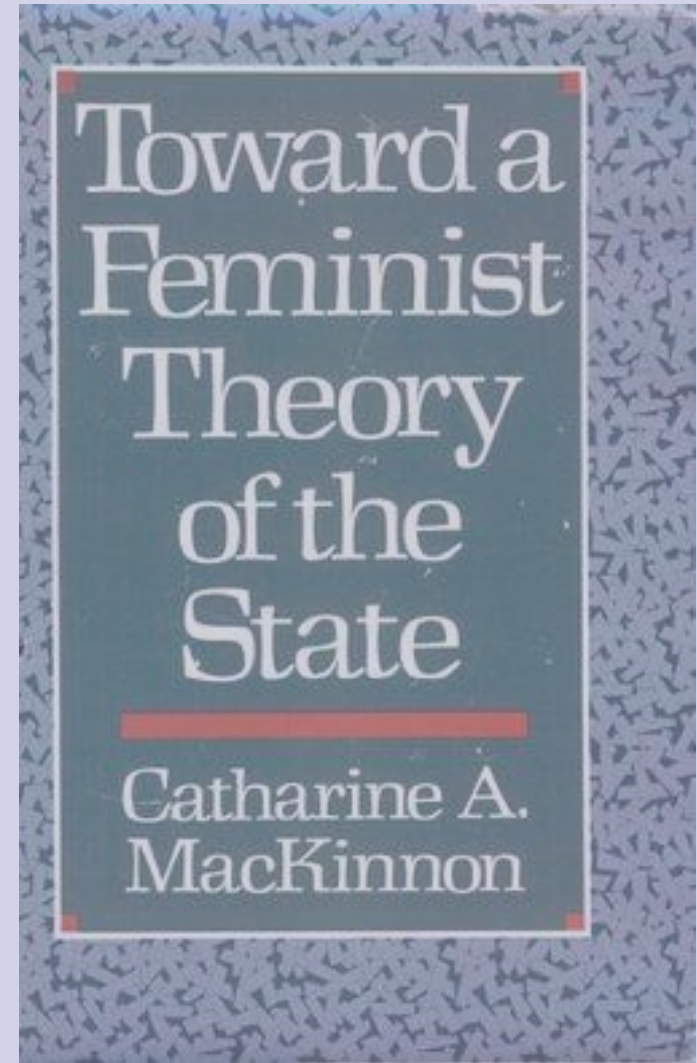
the State

- . systematically puts women down
- . creates rules
- . distributes resources

to entrench male supremacy

Radical Feminism and the State?

‘the definition of women in law and in life is “not ours”’



Radical Feminism and the State?

- . laws exist, but they are not enforced
- . engaging makes matters worse
- . engagement in civil society is more fruitful

MARXIST & SOCIALIST FEMINISM

capitalist production

x

social reproduction

MARXIST FEMINISM

- . blamed familial ideology
- . women subsidize productive work
- . to benefit capitalists

SOCIALIST FEMINISM

- . not only capitalists benefit
- . individual men benefit too
 - . at home
 - . at work

Marxist/Socialist feminism and the State?

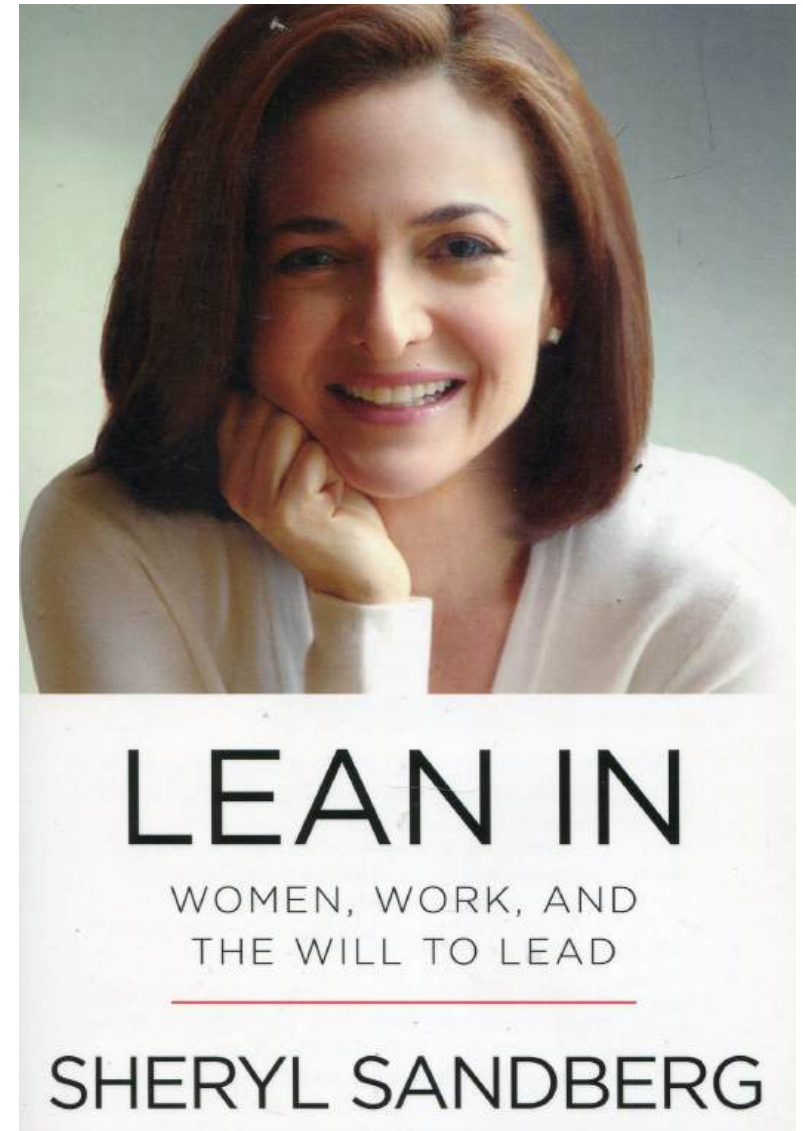
- . (not fully fixed) conventions created by humans
- . 'potent hold over the popular imagination'
- . 'impressive stability that makes them enormously difficult to transform'

LIBERAL FEMINISM



LIBERAL FEMINISM

- . 'take existing ideas and apply them to women'
- . long struggle for representation
- . overemphasize choice



Liberal feminism and the State?

- . women need to 'capture back' the State
- . changing laws and policies to foster societal change and ultimately affect unequal structures

Liberal feminism's struggle for representation

- . strengthened legitimacy
- . strengthened democracy
- . much-needed conversations

[insert painting] Toyin Ojih
Odutola, *Representatives of State*, 2016-17
Jack Shainman Gallery, New York
[not inserted her for copyright reasons]

tokens might...

‘when there.
are nine’

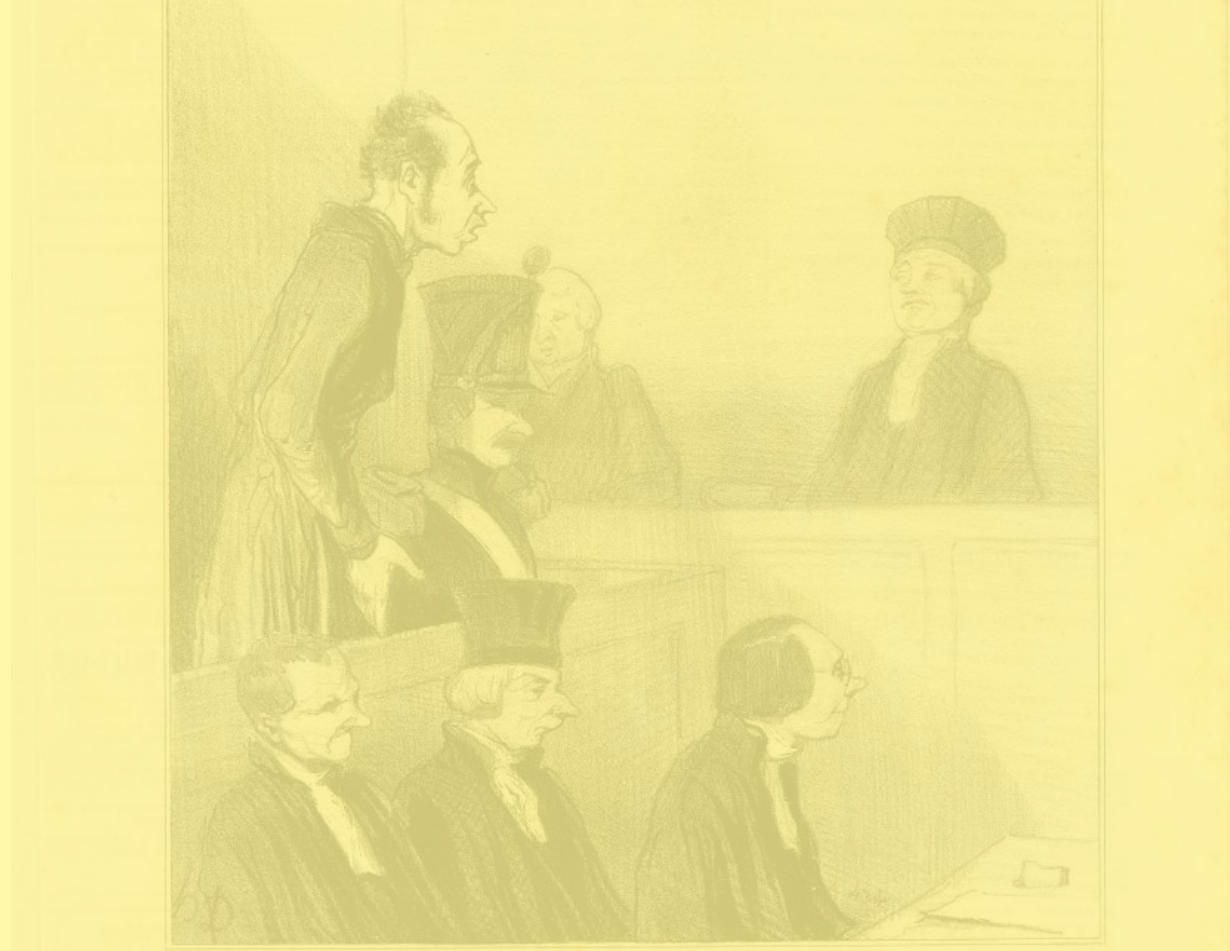
- . conform to masculine norms
- . display ‘queen bee’ behaviour
- . suffer from greater stereotyping and bias
- . get stressed out due to higher visibility and isolation

exercise

how is gender equality guaranteed amongst the judges in the European Court of Human Rights?

answer

not.



- . one out of three candidates needs to be from the 'sex' that has
- . less than 40 per cent representation in the court
- . unless exceptional circumstances exist

active struggle

- . accumulation of discriminatory acts
 - . fewer opportunities
 - . higher standards
- . accumulation of exclusionary acts
 - . networking events
 - . obscure selection processes

active struggle

- . data
- . resources
- . transparency

POST-STRUCTURAL FEMINISM



POST-STRUCTURAL FEMINISM

- . social construction of gender
- . discourses
- . 'abandons' female subject

Post-structural feminism and the State?

- . the State contains an amalgam of institutions
- . engagement with institutions can be negative or positive

End

References

Required reading...

Johanna Kantola, 'State/Nation', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016).

Celeste Montoya, 'Institutions', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016).

Suggested reading...

Aleydis Nissen, 'Gender-transformative Remedies for Women Human Rights Defenders' (2023) 8(3) *Business and Human Rights Journal*.

Feminists agree that...

Mary Hawkesworth and Lisa Disch, 'Introduction. Feminist Theory: Transforming the Known World', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 369.

Liberal feminism's struggle for representation...

Committee on the Elimination of all Forms of Discrimination against Women (CEDAW), *General Recommendation 33 on Women's Access to Justice*, U.N. Doc. CEDAW/C/GC/33 (July 23, 2015).

Lisa Disch, 'Representation', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 781, 781.

Mattei Dogan, 'Conceptions of Legitimacy' in Mary Hawkesworth and Maurice Kogan, *Encyclopedia of Government and Politics* (Milton Park: Routledge, 2004) 116, 119.

Nienke Grossman, 'Sex on the Bench: Do Women Judges Matter to the Legitimacy of International Courts?' (2012) 12 *Chicago Journal of International Law* 647.

John Kennedy, 'Judging, Personality, and Gender: Not Just a Woman's Issue' (2005) 36 *University of Toledo Law Review* 905, 909.

Sally Kenney, 'New Research on Gendered Political Institutions' (1996) 49(2) *Political Research Quarterly* 445.

Juan Linz, *Legitimacy of Democracy and the Socioeconomics*, in Mattei Dogan (ed.) *Comparing Pluralist Democracies: Strains on Legitimacy*, 65 (Milton Park: Routledge, 1988).

Seymour Lipset, 'Social Conflict, Legitimacy, and Democracy' (1969) 64 *Comparative Government* 52, 64.

References

Tokens might...

Council of Europe (Parliamentary Assembly), 'Committee on the Election of Judges to the European Court of Human Rights' <https://pace.coe.int/en/pages/committee-30/committee-on-the-election-of-judges-to-the-european-court-of-human-rights> (accessed 22 October 2022).

Suzette Coleo & Madeline Heilman, 'What Could Go Wrong? Some Unintended Consequences of Gender Bias Interventions' (2019) 7 *Archives of Scientific Psychology* 75.

Kristen Intemann, 'Feminist Standpoint', in Lisa Disch and Mary Hawkesworth (eds.), *The Oxford Handbook of Feminist Theory* (Oxford: Oxford University Press, 2016), 261, 262-263.

Jessica Fink, 'Gender Sidelining and the Problem of Unactionable Discrimination' (2018) 29 *Stanford Law & Policy Review* 57, 81-82.

Deborah Hensler, 'Studying Gender Bias in the Courts: Stories and Statistics' (1993) 45 *Stanford Law Review* 2187, 2192.

Ramit Mizrahi, 'Hostility to the Presence of Women: Why Women Undermine Each Other in the Workplace and Consequences for Title VII' (2004) 113 *The Yale Law Journal* 1597.

Shilpa Sadhavisam, 'Justice Amy Coney Barrett and What it Means to Have a Feminist Judiciary' (2021) *Harvard Journal of Law and Gender Online*, <https://harvardjlg.com/2021/02/justice-amy-coney-barrett-and-what-it-means-to-have-a-feminist-judiciary/> (accessed 22 October 2022).

Graham Staines, Carol Tavris & Toby Jayaratne, 'The Queen Bee Syndrome' (1974) 7 *Psychology Today* 55.

Françoise Tulken, 'More Women – But Which Women? A Reply to Stéphanie Hennette Vauche' (2015) 26(1) *European Journal of International Law*, 223.

Images...

Anna Atkins, Spencer Collection, The New York Public Library (1853-09).

Honoré Daumier, *Émotions Parisiennes* (1840).

Hans Talhoffer, *Battle of the Sexes* (1467).

sourced via publicdomainreview.org