Feminist Social Movements

Prof. Kathy Abrams

Spring 2024

Course Description

Instructor: Kathryn Abrams (Berkeley Law School)

Email: krabrams@law.berkeley.edu

Meeting time/place: Mondays 2-5 pm, Wurster 101

Office hours: Weds 11:30-12:45 or by appointment (please email me first, in either case, to set up a specific time)

This course will survey recurrent dynamics of feminist social movements in the United States, while exploring in depth two contemporary social movements with ostensibly feminist agendas: the #MeToo Movement, and the movement to restore reproductive rights and advance reproductive justice after Dobbs.

The course will begin with a brief unit on feminist legal theories, exploring liberal (or “equality”) feminist theories that have emphasized equal opportunity and bodily and decisional autonomy, and dominance theories that have described sexualized injury as a vehicle for the production and maintenance of gender inequality. It will highlight critiques of both schools of feminist theory as “single-axis” theories that obscure or neglect the intersection of gender with race, class, sexuality, or immigration status.

It will then turn to the #MeToo movement, examining its use of online storytelling as a vehicle for exposure and solidarity, the largely extra-legal trajectory of its immediate consequences, and challenges that it has encountered over the long run, including: a "tactical freeze," or difficulty in translating the momentum of exposure into more systematic solutions; and a failure to reach from the comparatively elite contexts of entertainment and the professions to low-wage work in which problems of sexualized injury are also pervasive, and labor is performed primarily by low-income women of color, including immigrants, making barriers to reporting or resistance far higher.

Finally the course will study the movement for reproductive rights and justice that has emerged since the fall of Roe, particularly in abortion-restrictive states. It will examine the marginalization of women of color and low-income women that dates back to the abortion funding cases, and ask whether and how efforts to restore the abortion right can be built on a more inclusive foundation, that also centers the right to choose to have children and to raise those children in circumstances of dignity, safety, and material sufficiency, and to access broader rights of bodily autonomy. Consistent with this goal, it will ask how the mainstream impetus toward a singular focus abortion may fuel or detract from a broader agenda of reproductive justice -- which highlights the latter issues and connects reproductive oppression to larger structures of racism, income inequality, and re-emergent anti-LGBT politics.

The course will also have an "applied" component. Working within small groups, students will conduct a research project that investigates how these ideas play out in actual social movement organizations. In the first two or three weeks of the course, students will identify particular Bay Area organizations that play a role in in reproductive rights or justice, or in preventing or addressing sexual harassment and sexual violence. Students will provide the names of these organizations to me, and I will do outreach to confirm that the organizations identified are willing to participate in our research projects. Small groups of students will be assigned to work with participant organizations. Students will then visit organizations, research their programs, interview a member or members of their staffs, and (where possible) observe their operations, Through these efforts students will come to understand their specific organization’s agenda, its structure and operation, and the strategies and campaigns through which it advances that agenda. As we work on this assignment, there will be in-class discussions (during in the final hour of class) that focus on the functioning, resources, strategies/tactics, challenges and assessment of social movement organizations. These discussions may draw, where necessary, on additional readings.

After completing this project, the student groups will present to the class on their organizations during the final month of the semester. Then each person (individually, not with other group members) will write a final project in which they discuss what they have learned about their organization in relation to the themes articulate in the readings and discussion for the classroom portion of the course.

Course credit will be allocated as follows:

Class Participation (attendance and participation in discussions): 10%

Reading responses (2 2 pp. papers responding to readings for the week): 10%

Research Project and group presentation: 40%

Final Paper: 40%

Course Topics and Readings

January 22

Class #1 – Feminist Theory: Liberal Feminism or Equality Theory

Liberal feminism or “equality” theory was the first theory to be advanced by legal scholars and advocates arguing for sex or gender equality. Among the ways in which women were theorized as the equal to men (in the late 1960s and early 1970s, gender was conceived by legal advocates as binary) was their capacity to engage in the “public” world of politics and the market -- as compared to the private sphere of the home, to which white, middle-class women had often been legally and social confined. This claim in turn was based on a notion of women as capable of and entitled to decisional autonomy and the full range of choices about their life course. This latter understanding contributed to the basis for the right to reproductive autonomy, encompassed in cases on birth control and abortion. Ruth Bader Ginsburg, who advanced this vision first as an appellate advocate and ultimately as justice of the Supreme Court, was one of its best-known proponents.

* Martha Chamallas, **Introduction to Feminist Legal Theory** 23-38, 39-44, 53-62 (2003)
* David Cole, Strategies of Difference: Litigating for Women’s Rights in a Man’s World, 2 L & Ineq. 33 (1984), pp. 53-65
* Margaret Montoya, Mascaras, Trenzas, y Greñas: Unmasking the Self While Unbraiding Latina Stories and Legal Discourse, 15 Chicana/o Latina/o Law Review 1 (1994).

January 29

Class #2 – Feminist Theory: Dominance Feminism

Dominance theory, introduced by legal theorist and advocate Catharine MacKinnon, argues that gender inequality arises not from a cognitive error -- that is, the treatment of women as different when they are similar or equal – but from the imposition of male power through sexualization and sexual violence. Sexual violence not only prevents women from achieving equality in society, it shapes public conceptions of women (including the ways women think of themselves). This complicates strategies of resistance and requires intervention by the law. One example of such intervention is the claim for sexual harassment, pioneered by MacKinnon and accepted (albeit in domesticated form) by the federal courts. Dominance theory, even more than equality theory, has been the focus of critique by critical race feminists, who argue that its focus on male-on-female sexual coercion fails to take account of the qualitatively different dynamics produced by the intersection of gender with other structures of oppression such as race and class.

* Catharine MacKinnon, Difference and Dominance: On Sex Discrimination, and Afterword in **Feminism Unmodified** (1987). [32-45, 215-28]
* Catherine MacKinnon, Sexual Harassment: Its First Decade in Court, in Feminism Unmodified (1987) [103-116].
* Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 Stan. L. Rev. 58l, **581-601**(1990).
* Kimberle Crenshaw, *Whose Story Is It, Anyway? Feminist and Antiracist Appropriations of Anita Hill*, in Toni Morrison, ed., **Race-ing Justice, Engendering Power** (1992).

February 5

Class #3 - #MeToo: Movement or Moment?

The #MeToo movement provided a wake-up call to a culture and legal system that – despite the claim for sexual harassment and decades of rape law reform – had become quiescent about the continuing subordination of women in the workplace and elsewhere through the imposition of sexualized power. The movement, which had its origins in a face-to-face movement of women of color to empower each other in the effort to heal from sexual violence, claimed global attention when women and other survivors, incited by white actress Alyssa Milano, began revealing instances of sexualized coercion in the workplace under the hashtag #metoo. This movement generated online solidarity among those who had previously been silent, and resulted in sometimes-successsful public pressure on employers, advertisers, and investors to take action against the perpetrators whose acts had been revealed.

* Tarana Burke, MeToo is a Movement, Not a Moment, TED Talk, November 2018, https://www.ted.com/talks/tarana\_burke\_me\_too\_is\_a\_movement\_not\_a\_moment?language=en
* Rebecca Traister, Your Reckoning. And Mine, The Cut: New York Magazine, November 2017, <https://www.thecut.com/2017/11/rebecca-traister-on-the-post-weinstein-reckoning.html>
* Moira Donegan, I Started the Media Men List, The Cut: New York Magazine, January 10, 2018, <https://www.thecut.com/2018/01/moira-donegan-i-started-the-media-men-list.html>
* Tristin Green, The Significance of #MeToo as a Feminist Movement: The Power of the Collective, in Deborah Brake et al, eds., **Oxford Handbook of Feminism and Law in the United States** (2021)
* Masha Gessen, When Does a Watershed Become a Sex Panic, The New Yorker, November 18, 2017.

February 12

Class #4 - #Metoo, Race, Class and Migration: Farmworkers

The #MeToo movement succeeded in capturing public attention and reviving debates about sexualized coercion. However, its energies did not translate smoothly into legal or institutional remedies. The remainder of this unit examines those shortfalls. This week’s readings introduce two broad problems: the “tactical freeze,” in which a social movement, particularly one that ignites resistance and public consciousness-raising through online activism, stalls when it transitions to the phase of demanding institutional or legal remedies; and the failure of a movement based primarily on the exposure of abuses in the entertainment industry and the professions to extend its reach to low-wage work performed primarily by lower-income women of color. The readings examine this second failure in the context of farm work, in which structural problems (including physical isolation, inadequate oversight of supervisors, and reliance on immigrant labor) and the racial, economic, and immigration status of its labor force, combine to foster sexual exploitation and to thwart resistance. The readings also compare the efforts of legal advocates and grass-roots organizers to address these problems.

* Zeynep Tufekci, Twitter and Tear Gas (2016) [from Introduction, on the problem of “tactical freeze” in (online) social movements]
* Maximizing #MeToo: Intersectionality and the Movement, 62 Boston College Law Review 1797 (2021).
* Open Letter from Alianza Nacional de Campesinas, Latino USA, November 15, 2017.
* Bernice Yeung, In a Day’s Work: The Fight to End Sexual Harassment Among America’s Most Vulnerable Workers (2018), Ch 2 (“The Open Secret”).
* “We Can Figure Out How Best to Help Them”: Organization Working to Stop Sexual Harassment Against Farmworkers, kivitv.com (Idaho), October 13, 2021.

February 19

No Class – President’s Day

February 26

Class #5 - #MeToo, Race, Class, and Migration: Hospitality and Home Health Care Workers

This week’s readings explore two additional categories of employment in which pervasive problems of sexualized coercion remain unaddressed by the mainstream #metoo movement. These sites are similar to farm work in that their work forces are predominantly low-income women of color, including many with non-citizen immigration statuses; but they are also characterized by distinctive structural and cultural problems. In the hospitality industry, sexual harassment and other misconduct is often perpetrated by customers (who are largely outside legal constraints) as well as supervisors; in the hotel industry, the physical isolation and lack supervision that characterize the work, and the confluence of employee’s work spaces with customer’s living spaces creates distinctive, disempowering dynamics. The home health care context adds the complications produced by the often-intimate care relationship between providers and clients. In both contexts sexual and coercive dynamics are often shrugged off by employers or the public as a predictable feature of work at bottom of the pay and status scale (“bad work”). These problems may also be minimized because expectation of care and/or hospitality, notwithstanding sexualized treatment, is naturalized as a quality of the women who predominate among workers.

* Saru Jayaraman, Behind the Kitchen Door (2013) [pp. 69-72 and Ch 6]
* Irene Plangeanos and Kitty Greenwald, Mario Battali Steps Away from Restaurant Empire Following Sexual Harassment Allegations, eater.com, December 11, 2017
* Emma Goldberg, Is This the End of Tipping, New York Times, February 21, 2021
* Alexia Fernandez Campbell, How a Button Became One of the Greatest #MeToo Victories, Vox.com, October 1, 2019
* Julia Jacobs, Hotels See Panic Buttons as a #MeToo Solution for Workers. Guest Bans? Not So Fast, New York Times, November 11, 2018
* Ai-Jen Poo, The Age of Dignity (2015) [Ch 3 “The Caring Professionals”]
* Emily Peck, When Your Abuser is Also Your Patient, huffpost.com, June 2, 2018
* National Domestic Workers’ Alliance, Summary of the National Domestic Workers Bill of Rights

March 4

Class #6 - #MeToo and the Carceral System

Has a feminist focus on greater enforcement against sexualized injury – a pattern intensified by #MeToo – led to punitive or carceral solutions? Feminist in the late 20th century turned to criminal legal enforcement as an answer to sexual and intimate violence. And while the #MeToo movement played out predominantly in the “court of public opinion,” it also found expression in several prominent criminal trials, including those of Harvey Weinstein and R Kelly. This week’s readings examine #MeToo’s effects on a carceral system that has disproportionately harmed Black and other communities of color. It investigates alternative remedial strategies from collective action to restorative justice to abolition.

* Aya Gruber, The Feminist War on Crime (2020), excerpts from Chs 1, 2, 6.
* Dorothy Roberts, The Moral and Social Cost of Mass Incarceration in African American Communities, 56 Stanford Law Review 1271 (2004)
* Jo Hsu, (Trans)Forming #MeToo: Toward a Networked Response to Gender Violence, 42 Women’s Studies in Communication 269, [**read 269-75]** (2019)

Communities Against Rape and Abuse (CARA), Taking Risks: Implementing Grassroots Community Accountability Strategies, in INCITE, Women of Color Against Violence, ed., The Color of Violence: The INCITE Anthology 250-66 (2016).

* Critical Resistance, “From Critical Resistance to a New Way of Life” [film – Pt 1 ]

March 11

Class #7 – Dobbs and The New Abortion Landscape

This week begins our study of movements for reproductive rights and justice. We begin by analyzing the constitutional protection for abortion created by Roe v. Wade, and the fragility of a regime based on due process claims of privacy or autonomy. The readings then survey the transformations produced by the overruling of Roe in Dobbs: the patchwork of highly disparate regulation produced by the states; the effects on birthing people seeking abortions or care for complications of pregnancy, and on the incidence of abortion.

* Roe v. Wade, 410 U.S. 113 (1973)
* Ruth Bader Ginsburg, Some Thoughts on Autonomy and Equality in Relation to Roe v. Wade, 63 North Carolina Law Review 375 (1985)
* Dobbs v. Jackson Women’s Health Organization, 597 U.S. \_\_ (2022)
* David Cohen et al, The New Abortion Battleground, 123 Columbia Law Review 1 (2023), pp. 1-22
* Guttemacher Institute, State Abortion Policy Landscape One Year Post-Roe (June 16, 2023)
* Society for Family Planning, #We Count Report, April 2022 to March 2023 (June 15, 2023) pp. 1-8

March 18

Class #8 – Dobbs and Democracy

Since the fall of Roe, the most successful vehicle for the re-establishment of abortion rights has been initiative petitions, which place before voters measures amending state constitutions to include a right to abortion. These initiatives, while not available in all abortion-restrictive states, have triumphed in some surprising places, including states such as Kansas, Michigan, and Ohio. This week’s readings examine the successful ballot initiative campaign in Ohio, and the more troubled, ongoing effort in Missouri. The myriad efforts of state legislative and executive officials to thwart such initiative petitions raise the question whether Dobbs, as Justice Alito alleged, actually returned the question of abortion to the democratic processes of the states.

* Emily Bazelon, The Surprising Places Where Abortion Is on the Ballot and Winning, New York Times, September 12, 2023
* Ohioans United for Reproductive Rights, The Right to Reproductive Freedom with Protections for Health and Safety [Ohio, Issue 1, 2023]
* Alice Clapman and Yurij Rudensky, A Brazen Challenge to Democracy in Ohio, Brennan Center, August 3, 2023
* Michael Wines, Voters Reject Constitutional Change Intended to Thwart Abortion Amendment, New York Times, August 8 2023
* Kathryn Abrams, If You Want to Know Republican Abortion Plans Following the Ohio Abortion Vote, Look to Missouri, Slate, August 9, 2023
* Melissa Murray, Children of Men: The Roberts Court’s Jurisprudence of Masculinity, 60 Houston Law Review 799 (2023), pp. 858-63

March 25

No Class – Spring Break

April 1

Class #9 – From Reproductive Rights to Reproductive Justice

The struggle to protect reproductive rights in the courts grew up alongside a less-publicized, but more ambitious effort to achieve reproductive justice. This effort recognized a right to choose to have children or not to have children, and to raise those children with dignity, safety, and material sufficiency. This broader vision was pioneered not by lawyers in courts, but by Black women and other women of color working in their communities. It recognized the intersection of reproductive oppression with oppression on the basis of race, class, sexuality, immigration status and disability. Specifically, it challenged a reproductive rights movement that had marginalized the voices and experiences of women of color, and had analyzed abortion in isolation from racialized patterns of reproductive oppression such as coerced sterilization or birth control, disparate treatment of Black birthing people, including those living in poverty, and separation of families through “child welfare” systems. Reproductive justice drew theoretical support from the contemporaneous work of Black feminist scholars.

* Harris v. McRae, 448 U.S. 297 (1980)
* Khiara Bridges, Brief Amicus Curiae in June Medical Services v. Russo (2020)
* Loretta Ross & Sister Song, What is Reproductive Justice? Reproductive Justice Briefing Book, pp. 4-6
* Asian Communities for Reproductive Justice, A New Vision for Reproductive Justice
* Dorothy Roberts, Killing the Black Body [Introduction] (1997)

April 8

Class #10 – Criminalization of Pregnancy and the Outcomes of Pregnancy

This week’s readings examine the role of the criminal law system, itself critiqued as racially disparate in its enforcement practices and effects, in policing pregnancy, and the outcomes of pregnancy, including abortion, miscarriage, stillbirth, and live birth. Notably, few of the laws used to impose criminal penalties target pregnancy or abortion seekers per se; rather they target behavior from drug use or other forms of “chemical endangerment” to concealing, abandoning, or mishandling of a body. These laws may be triggered by reports from medical or social services professionals when pregnant persons present themselves for treatment; they have been disproportionately imposed on those who are young, reliant on social services, or members of communities of color. Patterns of criminal enforcement may, however, be exacerbated by “fetal personhood” statutes proliferating in the wake of Dobbs. Finally, the readings consider constraints on the reproductive rights and health of those who are already system-involved, including those who are incarcerated, on parole, or facing immigration enforcement.

* Pregnancy Justice, Criminalization of Pregnancy – Report (2023), Executive Summary and pp. 18-52.
* Michelle Goodwin, Policing the Womb: Invisible Women and the Criminalization of Motherhood (2020), Ch 3.
* NorCal ACLU Gender, Sexuality and Reproductive Justice Project, Reproductive Health Behind Bars in California (2016)
* Dobbs and Carceral Constraint – Media articles

April 15

Class #11 – Birth Justice and Disparate Birthing Outcomes

This week’s readings examine the disparities in care that affect birthing people of color who choose to carry pregnancies to term. These include the greater surveillance of those who are young or receive public assistance, and the racial bias and structural barriers to health care that have produced sharp disparities in maternal mortality. The readings also survey broader practices of obstetric violence, which include unconsented care and emotional and physical abuse during labor and delivery. This week’s materials also include a PBS documentary highlighting efforts among women of color – from doula-run “birthing villages” to the training of parent-educators, to the development of pilot OB/GYN programs run by Black medical practitioners – to address these problems.

* Khiara Bridges, Reproducing Race: An Ethnography of Pregnancy as a Site of Racialization (2011), portions of chapters 2-4
* Khiara Bridges, Racial Disparities in Maternal Mortality, 95 N.Y.U. L. Rev. 1229 (2020), pp. 1248-86
* Anna Annborn & Hafrún Finbogatdottir, Obstetric Violence, A Qualitative Interview Study, 105 Midwifery (February 2022)
* PBS, Birthing Justice (documentary, 2023)

April 22

Class #12 - Family Policing and the Right to Raise Children

This week’s readings focus on the final pillar of reproductive justice: the right to raise children. They highlight the critique of the family policing (or child welfare) system as separating and destroying Black families, and outline its defense by mainstream legal scholars. They then turn to the question of remedies, examining more narrowly targeted family defense program, and broader abolitionist solutions.

* Dorothy Roberts, Torn Apart: How the Welfare System Destroys Black Families and How Abolition Can Build a Safer World, portions of Chs. 1, 6, 7, 11 (2022)
* Elizabeth Bartholet, The Racial Disproportionality Movement in Child Welfare: False Facts and Dangerous Directions, 51 Arizona Law Review 871 (2009), pp. 898-921
* Dorothy Roberts, The Reproductive Violence of Family Policing and Separation [A comment on Justice Amy Coney Barrett], <https://blog.petrieflom.law.harvard.edu/2022/05/09/dorothy-roberts-torn-apart-family-separation/> (2022)
* Hernandez and Ismail, Radical Early Defense Against Family Policing, Yale Law Journal Forum 659 (November 18, 2022)
* NorCal ACLU, Fighting to End the Family Policing System, https://www.aclunc.org/issue/gender-sexuality-reproductive-justice/fighting-end-family-policing-system