Sexual Assault Law and Policy Reading Group
Spring 2015
Working Syllabus

This reading group will survey areas of historical change and ongoing reform in sexual assault law and policy. The organizers hope to open the reading group to all interested 2L and 3L students, offering participants the option to complete one or both of the following components:

1) seminar-style weekly discussions of the materials listed on this syllabus, with professor and outside guest speakers, for one credit, and

2) optional additional supervised research for one credit, for students who want to do work on campus related to the prevention of gender based misconduct.

The supervised research credit may consist of organizing trainings on consent, bystander intervention, and similar topics; collaborating with student groups to organize topical panels on sexual assault and the law; collecting student feedback on resources and mandatory student trainings; and carrying out research related to Columbia University’s Gender Based Misconduct policy and prevention materials. Students who opt to pursue both credits are encouraged to write a policy reform proposal or reflection applying the readings to their own projects for publication in a participating CLS journal or blog. The reading group will be open to 1Ls and students from other Columbia programs on a voluntary basis.

Class One: History of Sexual Assault Law
   a) Section II: “Brief History of Rape Laws and Reform Movements”


3) Chapter 4 (“Rape”) in Kadish, Schulhofer, Steiker and Barrow, Criminal Law and Its

a) Section B. Statutory Frameworks

4) Vivian Berger Excerpts (p. 355; 377) -- Counterargument that overprotective sexual assault laws enfeeble, rather than empower women

5) Benjamin Porat “Lethal Self-Defense Against a Rapist and the Challenge of Proportionality: Jewish Law Perspective” Columbia Journal of Gender and Law Vol. 26.1

Class Two: Theories of Sexual Assault

Note: Each student will each take on 3-4 of these readings, rather than the entire group reading the entire list.

1) Ann Cahill, Rethinking Rape, pp. 1-49 [chapters on the problem of rape and feminist theories of rape], and 109-166 [chapters on rape as embodied experience and a phenomenology of fear]


4) Francis Shen, “How We Still Fail Rape Victims: Reflecting on Responsibility and Legal Reform” Columbia Journal of Gender and Law Vol. 22.1

5) Ben McJunkin “Deconstructing Rape by Fraud” Columbia Journal of Gender and Law Vol. 28.1


8) Kimberle Crenshaw, Race, Gender and Sexual Harassment, 65 S. Cal. L. Rev. 1467 (1991-1992)

9) Interview with Judith Butler: Gender is Extramoral:
   http://www.egs.edu/faculty/judith-butler/articles/gender-is-extramoral/
10) Lynn Schafran, Rape is a Major Public Health Issue
   http://the2x2project.org/the-public-health-crisis-of-sexual-violence/
12) Elizabeth Lopatto, Rape Culture is a Public Health Issue, Forbes.com (May 24, 2014)
14) World Health Organization, Understanding and Addressing Violence Against Women (background doc- international org approach to analyzing sexual violence)
15) Laura Hengehold, An Immodest Proposal: Foucault, Hysterization and the “Second Rape,” Hypatia Vol. 9 No. 3 (Summer 1994)
16) Judith Butler, Contingent Foundations: Feminism and the Question of “Post-Modernism,” in Feminist Contentions: A Philosophical Exchange [focus on 49-54]

Class Three: Title IX

1) A lack of consequences for sexual assault, Center for Public Integrity Feb 2010
2) DCL Guidance on Title IX
3) DOE List of Open Title IX cases
4) In a Mattress, a Lever for Art and Political Protest, NYTimes Sept 21, 2014
5) Roe v. St Louis University, National Women’s Law Center Amicus Brief, 2013 WL 2318009
6) Simpson v. U of Colorado, ACLU Amicus Brief, 2006 WL 2783574
9) Sherwin, Meet the Women who are starting a Revolution against Campus Sexual Assault
10) VAWA 2014 requirements re Education
11) CU Provost Welcome + Sexual Respect, Sept. 23, 2014
12) Repeat Offenders Reading: David Lisak & Paul M. Miller, 17 Victims and Violence 73 (2002)
13) (Alan Berkowitz, College Men as Perpetrators of Acquaintance Rape and Sexaul Assault (1992)
14) Judy Porter, Intimate Violence Against Underrepresented Groups on College Campuses


Class Four: Teaching Criminal Law


3) McMunigal, Reducing the Risks and Realizing the Rewards: An Approach to Teaching Rape Law, 34 San Diego L. Rev. 519

4) Susan Estrich, Teaching Rape Law, 102 Yale L.J. 509 (1992)

5) James Tomkovicz, On Teaching Rape

6) Is the Law Male?

7) Materials from Prof. Dershowitz’s 1L Criminal Law Students, Compiled for their Own Presentation on Sexual Assault (~50 pages)
   a. Acquaintance Rape on Trial
   b. Andrew Abrams, Asking for Consent is Sexy
   c. Katie Koestner, The Perfect Rape Victim
   d. Joanne Archambault, So How Many Rape Reports are False?
   e. Bill Ingram, What We’re Not Hearing about the Kobe Trial
   f. Successfully Investigating Acquaintance Sexual Assault: A National Training Manual for Law Enforcement
   h. Lynn Schafran, Trying to Conquer Sexism Through Casebooks
Class Five: Intersection with Race

1) Kimberle Crenshaw: Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women
2) Judy Porter, Intimate Violence Against Underrepresented Groups on College Campuses
4) Anne Crossins, Saints, Sluts, and Sexual Assault: Rethinking the Relationship between Sex Race and Gender
5) Aisha Gill, Violence against women in South Asian communities in the UK, in McGlynn and Munro, Rethinking Rape Law, pp. 308 – 321

Class Six: Intersection with LGBT

1) Bennett Capers, Real Rape Too, 99 Cal. L. Rev. 1259 (2011)
5) Pandora’s Project, Dealing with Rape as a “Hate Crime” Within the Lesbian Community, http://www.pandys.org/articles/rapeasahatecrime.html
6) Also see:
   a) http://www.wcsap.org/lesbian-gay-bisexual-transgender-queer-community
   b) http://www.pcar.org/sites/default/files/TAB_2013_Fall_ServingTransSurvivors.pdf
8) Rumney and Hanley, The Mythology of Male Rape: Social Attitudes and Law Enforcement, in McGlynn and Munro, Rethinking Rape Law, pp. 294- 307
9) Steger and Lind, Violence and Its Alternatives:
Class Seven: Challenges of Criminalization

1) Fed. R. Evid. 412 (Federal Rape Shield Law)
2) I. Bennett Capers, Real Women, Real Rape, 60 U.C.L.A. L. Rev. 826 (April 2013)
4) Judges Tell: What I wish I had known before I presided in an adult victim sexual assault case
5) Janice Du Mont and Deborah White, World Health Organization, The Use and Impacts of medico-legal evidence in sexual assault cases: A global review [Excerpt]
6) McGlynn and Munro, Rethinking Rape Law:
   a) pp. 30-43, Herring and Dempsey, Rethinking the criminal law’s response to sexual penetration: On theory and context
   b) pp. 281-293, Ellison and Munro, Jury Deliberation and Complainant Credibility in Rape Trials

Class Eight: Sexual Assault in Prisons

1) Prison Rape Elimination Act of 2003
2) The Urban Institute, Preventing Violence and Sexual Assault in Jail: A Situational Crime Prevention Approach (2011)
3) GAO Report to Congressional Requesters, “Immigration Detention: Additional Actions Could Strengthen DHS Efforts to Address Sexual Abuse” (November 2013)
4) Jerita L. DeBraux, Prison Rape: Have We Done Enough? And In-Depth Look Into the Adequacy of the Prison Rape Elimination Act, 50 How. L. J. 203 (Fall 2006).
6) Recent Reporting:
   a) Jessica Testa, A Transgender Woman Says She was Locked in a Cell with Her Rapist, Buzzfeed News (Sept. 26, 2014), http://www.buzzfeed.com/jtes/a-transgender-woman-says-she-was-locked-in-a-cell-with-her-r

7) See Just Detention International:


9) Valerie Jenness, Violence in California Correctional Facilities: An Empirical Examination of Sexual Assault (2007) [skim 1-10, read 26-64]

Class Nine: Street & Workplace Harassment

1) Cynthia Bowman, Street Harassment and the Informal Ghettoization of Women, 106 Harvard L. Rev. 3 (Jan 1993)


3) Deirdre Davis, The Harm that Has No Name: Street Harassment, Embodiment, and African-American Woman, 4 UCLA Women’s L. J. (2) (1994) [focus on 141-end]

4) Hawley G. Fogg-Davis, Theorizing Black Lesbians within Black Feminism: A Critique of Same-Sex Street Harassment, Politics & Gender (2) (2006)


11) Discussion of potential legal reform:

**Class Ten: Digital Era: Revenge Porn and Photo Leaks**

1) State laws:

2) Steger and Lind, Violence and Its Alternatives:
   a) pp. 129-132, Andrea Dworkin, Pornography and Grief
   b) pp. 133-144, Cindy Jenefsky, Andrew Dworkin’s Reconstruction of Pornography as a Discriminatory Social Practice

3) Mary Anne Franks, Drafting an Effective “Revenge Porn” Law: A Guide for Legislators (July 2014)

4) John Humbach, How to Write a Constitutional Revenge Porn Law (Oct. 2014)

5) Amanda Levendowski (Student Note), Using Copyright to Combat Revenge Porn, 3 N.Y.U. J. of Intell. Prop. & Ent. Law 422 (Spring 2014) [http://jipel.law.nyu.edu/2014/05/using-copyright-to-combat-revenge-porn/](http://jipel.law.nyu.edu/2014/05/using-copyright-to-combat-revenge-porn/)


9) Laurel O’Connor, Celebrity Nude Photo Leak: Just One More Reminder that Privacy Does Not Exist Online and Legally, There’s Not Much We Can Do About It, Golden Gate

Class Eleven: Human Trafficking


6) Mohamed Y. Mattar, Comprehensive Legal Approaches to Combating Trafficking in Persons: an International and Comparative Perspective. The Protection Project at The Johns Hopkins University School of Advanced International Studies


8) Convention on the Rights of the Child (1989), Articles 34 and 35


   http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx

10) United States v Pendleton, 658 F.3d 299 (3d Cir 2011)


Class Twelve: Sexual Violence in War
1) McGlynn and Munro, Rethinking Rape Law, pp. 47-91 (chapters on international criminal law and sexual violence, the Rwanda tribunal, and the force of shame)

Class Thirteen: International Comparisons
1) Background: World Health Organization, Ch 6: Sexual Violence
4) McGlynn and Munro, Rethinking Rape Law:
b. pp. 139-181, 183-262 (chapters on sexual assault law and reform in England and Wales, Scotland, Croatia, Italy, Sweden, Australia, and South Africa)

5) Ajzenstadt and Steinberg, Never Mind the Law: Discourse and Rape Reform in Israel (2001)
6) Benedet and Grant, Sexual Assault of Women with Disabilities: A Canadian Perspective, in McGlynn and Munro, Rethinking Rape Law, pp. 323-334

Class Fourteen: Reform

1) Ann Cahill, Rethinking Rape, pp. 198-207 (chapter on possibilities for resistance)
2) Discussion of student projects