

# V. International Gender Workshop



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## **Sexism in law and the impact of gender stereotypes in legal proceedings**

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# Sexism – gender stereotypes

- **Sexism**   
prejudice, discrimination based on stereotyping  
typically against women, on the basis of **sex**
  - **Gender discrimination**   
is against **identity based orientation** stereotyping  
like third gender or queer
  - **Gender stereotypes – where do they come from?**  
**History, religion, culture, economic situation – biology?**
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# Origin of gender stereotypes in Germany

- **Classical period of German literature**
    - Schiller poem of the bell 1799
    - women's role domestic, the indefatigable and hard-working housewife – man in the public sphere, creating and earning
  - **Biedermeier period 19<sup>th</sup> cen.**
    - added halo of idyllic domesticity
  - **German Empire 1871-1918**
    - middle class/bourgeois orientation strengthened
  - **Nazi period (1933-45)**
    - glorification of the mother as the child-bearer and the heart and soul of the family
  - **Adenauer republic (1949-67)**
    - conservative family model Dear-Mother-Image, housewife as social status symbol
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# German Biedermeier



Ludwig Richter (1803 – 1884)  
Hausmusik im Winter

# Gender Stereotypes

- Which gender stereotypes come to your mind spontaneously?
  - Which gender stereotypes does a man/woman in the street have!
  - Note three!
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# Gender stereotypes

- **female:**
    - Dear mother - raven mother
    - Bitch
    - Beautiful / ugly / fat woman
    - Soft, good, emotional, lenient, illogical, caring, talkative, sensitive, empathetic, helpful, neat, helpful, fearful
  - **male:**
    - Great guy
    - Successful man
    - Fast climber
    - Looser
    - Alpha-man
    - Strong, brave, tough, authoritarian, dominant, logical, proud, intelligent, objective, assertive
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# Geschlechterstereotype

## männlich - weiblich

- **Durchsetzungsfähigkeit / Erfolg**
- **Dominanz, Autorität, flößen Angst ein**
- **Selbstinszenierung**
- **kultivieren die Männerrolle**
- **Aufstiegsorientierung**
- **Seilschaften**
- **Männer sind intelligenter und schlauer**
- **Männer sind mutig und stark**
- **auf Karriere angewiesen**
- **arbeiten viel**
- **delegieren**
- **Arbeitsplatz: Computer, Technik**
- **Kollegialität**
- **Objektivität**
- **Vaterstolz**
- **Männer fahren mit dem Auto zur Arbeit**
- **Männer dürfen Tennis spielen**
- **arbeiten außer Haus**
- **verdienen mehr Geld**
- **fleißig**
- **müssen sich anstrengen**
- **unlogisch, emotional, weinen**
- **emotional schwer berechenbar, zickig**
- **sprunghaft, unbeherrscht**
- **Konkurrenz von Frauen untereinander**
- **Ziele 'von hinten herum' erreichen**
- **neugierig, vorlaut**
- **Selbstaufopferung, Bescheidenheit, Rücksichtnahme**
- **fürsorglich, mütterlich, hilfsbereit**
- **sozial, sozial engagiert**
- **kommunikativ, kontaktfreudig, geschwätzig**
- **angepasst, ängstlich, nicht konfliktfähig**
- **harmoniebedürftig**
- **empfindsam, einfühlsam, mitfühlend**
- **nehmen sich gegenüber Vorgesetzten eher zurück**
- **Arbeitsplatz gemütlich, sauber**
- **gepflegtes Aussehen, hübsch**



## The ideal man?





GENDER STEREOTYPES



GENDER STEREOTYPES



## The ideal woman?



GENDER STEREOTYPES



GENDER STEREOTYPES



GENDER STEREOTYPES





## Difference women – men?

- Biology? Hormones? Aggression?
  - Intelligence?
  - Girls have better marks than boys?
  - Different spatial vision?
  - Women talk more than men?
  - Boys and girls prefer different toys?
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# Consequences

- Women considered to be more vulnerable, in need protection, less reliable maybe due to family breaks, performing less well
  - Women are due to male dominance subjected to physical, economic and psychological violence
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# Stereotypes in law

- Gender issues can be found hidden in all areas of law: tax, property, succession law, administrative law, social, labour law...
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# Consequence for legal status

- **Family law**
    - Wife owes obedience to husband
    - Husband has full custody over children
    - Husband has unenfringed right over wife's assets
    - Breadwinner – housewife model of family
  - **Labour law**
    - Husband could terminate wife's work contract
    - Women protection rules
      - Labour at night
      - Heavy bodily work
      - Maternal leave,
      - Breaks for breastfeeding
  - **Minijobs for women (and men)**
  - **Tax law: benefits for breadwinner housewife model**
  - **Social law: Derived health insurance, pension for housewife**
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## Consequences: e.g. gendered labour market

- **Unequal pay / gender pay gap / income gap**
  - **Women more threatened by unemployment**
  - **Levels of employment:**
    - Horizontal and vertical stratification
  - **Glass Ceiling**
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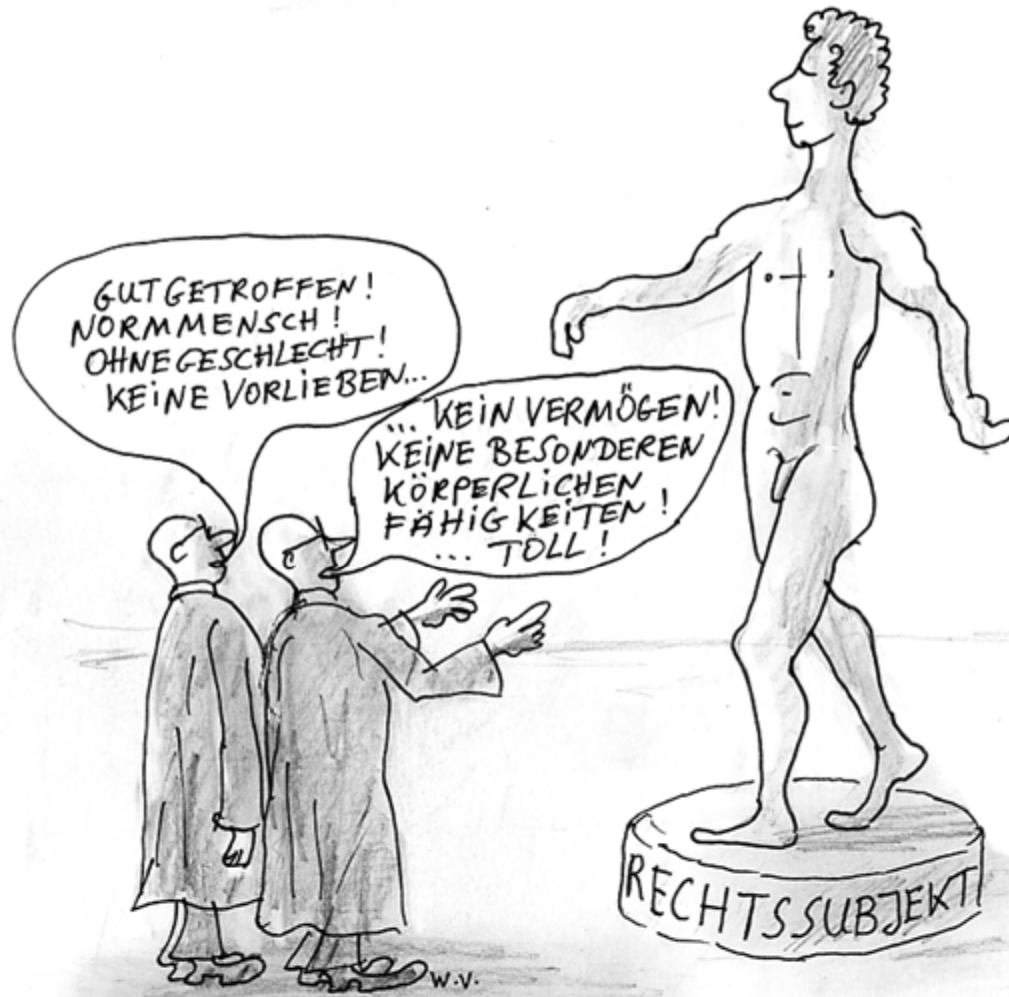
# Differences in criminal law – positive discrimination?

- Different crimes for men and women?
  - Homosexuality – male crime
  - Adultery
  - Abortion
  - Criminal statistics:
    - Crime connected with violence – male
    - Neglect of minors – only crime with a majority of female offenders
    - Comparably higher percentage of theft and fraud due to women's overall less good financial situation?
    - Proportion of female offenders for total criminal offence between 4 – 25
  - Own sample: 400 cases – 2 women accused
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# Differences in criminal law - explanations

- **Are women less delinquent/ more law abiding**
    - Due to biological factors
    - Ascribed gender characters
    - Different socialisation
    - Lived gender role as caregivers?
  - **Criminal code made by male legislator (1878) sanctionizing typical male behaviour?**
  - **Are women due to gender stereotypes treated differently by police, prosecution, judges?**
  - **In prison only 2-9% women**
    - They commit less serious crimes
    - Do they get more lenient sentences due to better social prognosis?
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## Female offenders rise in numbers - explanation

- Due to process of emancipation?
  - Women getting more violent (role models – pressure)
  - Due to changing gender roles and perceptions women more often investigated by police and accused by prosecution – women getting less pardon?
  - More light in darkfield?
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## Legal Proceedings

Who uses which stereotypes?

Do women judges make a difference?

Do they judge better?

# Do judges have stereotypes?

- Theory of the 1980s: preconceived opinions
  - *“Myth of colour and gender blind judge”*
  - *“Males and females develop different world views and see themselves differentially connected to society.”*
    - Different life experiences
    - Different world views?
  - What else matters?
    - Education
    - Background (class?), life circumstances, ethnicity
    - Financial situation
    - Family status
    - Political views
  - In how far can these different experiences come into the judgment?
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# Do women make a difference? No difference?

- Assimilation in legal education and training/practice to neutralised image of the judge, ideal universalism
  - Equal qualification
  - Primary identity as professionals (judges/prosecutors)
  - *“Individuals are more likely to be transformed by institutions than vice versa.”*
  - **BUT**
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## Difference?

### Do women judge differently **or even better?**

- *I would hope that a wise Latina woman with the richness of her experiences would more often than not reach a better conclusion than a white male who hasn't lived that life. (Judge Sonia Sotomayor)*
  - *The incorporation of difference on the bench subtly changes and, ultimately, improves the judicial product. (Brenda Hale)*
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## Men make a difference

- **Jurisdiction of the old men at the Highest Federal Court**
    - Man as head of the family
    - Decisions on procuracy
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# Outcome Gender matters in gender coded cases!

- **in any kind of family law**
    - custody cases v alimony cases? (Brasil, Poland, France, Germany ...)
    - More caring attitude from female judges (France, Israel)
    - Women judges rank work in family courts higher than their male colleagues (France)
  - **labour law**
    - sex discrimination, sexual and racial harassment cases (extended research USA)
    - individual effect – panel effect (men decide with women)
    - Women judges write more in a pro-women fashion
  - **administrative law**
    - Asylum cases (USA, Germany) – genital mutilation (Brenda Hale UK)
    - Consent to abortion (Argentina)
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# Outcome

## Gender matters in gender coded cases!

### ■ **Social law**

- viagra paid by insurance? (Germany)
- Pension law: widow benefit rules for non-married partners? (S.A.)
- Uniform tariffs for men and women in insurances (European Court of Justice – German judge Kokott)

### ■ **Criminal law**

- Criminal cases broad gateway for sexist arguments as perpetrator's (also witnesses and victim's) personality and act are evaluated
  - Either more rigid or more lenient attitude
  - Women judges rank work in criminal courts lower than their male colleagues
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## Differences in criminal law – empirical results

- Research 1980s and 90s:
  - Women could get a bonus if conforming to stereotypical gender role – being subserviant, gentle, helpless
  - Role-breakers run risk of less sympathetic treatment, stiffer sentences
  - Criminal proceedings not only as an investigation into their conduct, but also evaluation of expectations regarding their role as women
  - Women as victims of rape rather seen as seducing or provoking
  - **Today with almost 50% of female judges and prosecutors and 30% of women in the police???**
  - Women the true beast (Sunday TV crime series Tatort and court trial shows – judge Salesch, Hold)
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## Gender in the communication process

- Do women listen better?
  - Is their style of leading the proceedings and their style of interrogation friendlier, better? (France)
  - *Versus:*
  - *Male statements towards female participants in a proceeding (parties, accused, professionals) were geared towards establishing male power and hierarchical status. (Bryna Bogoch, Israel)*
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## Gender issues in judging current examples

- Cuts in alimony for divorced partners (disadvantaging mainly women)
- Child care rights of men and women
- Rights in same sex marriages (ECHR, ECJ, Federal Constitutional Court)
- Legal position of transsexual and intersexual persons
- Wearing of headscarf or burka in public
- Tax benefits for married couples
- Cuts in social benefits for non-married partners
- Interpretation of stalking, domestic and sexual violence
- Asylum or refugee status for women threatened by female genital mutilation

## Women's contribution? Do women judge better?

Do women judges promote substantive justice?

- Use a more interdisciplinary approach,
  - Avoid rigid application of universal rules and narrow doctrinal decisions,
  - Redraw the boundary between the legal and the social?
  - Do they reach more balanced decisions?
  - Avoid contentious solutions, search for win/win solutions?
  - Decisions written in a pro-woman (empathetic) fashion
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# What about gender awareness?

- In all gender coded cases it is important to
  - take gender aspects into account
- But: deficits in gender knowledge
  - In legal publications
  - In legal education
  - In judicial training
- How to create gender awareness
  - special gender trainings
  - gender aspects in any kind of judicial training
- Why is it so important?



## Lasting gender stereotypes

- I had written an editorial for our Journal for Judges and Prosecutors The editor in charge wrote to the colleague who had commissioned the article:
- *Herewith the corrections for the editorial the style of which strikes me as masculine and harsh rather than feminine and gentle. Never mind.*

# Why is it important to have women on the bench?

## Diversity on the bench

- is a demand of the gender equality principle in the constitution
  - is a demand of the EU and national anti-discrimination legislation
  - will give equal participation which is an inherent feature of a democracy
  - means that the judiciary will better reflect society and represent diversity of litigants
  - enhances legitimacy and public confidence into the judiciary
  - raises the awareness of gender issues within the judiciary and the public at large
  - counterbalances the traditional perception of the judiciary as a masculine enterprise
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