

ABSTRACT

A Feminist Theory of Harm

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Ideas of harm to women have been central to women's placement in legal discourse. Harms are widely assumed to be self-evident. Harms happen, when they do it is presumed patently obvious that the acts and their experience require little interpretation and debate. This is particularly true of physical harms, harms *to* the body are felt, seen and consequence usually follows. However, the general rule manifests certain pitfalls once applied to women. As this paper explores, in the case of actual physical harms to a women's body injuries may result as a descriptive matter, but such injury may not have legal consequences. In the well-trod context of sexual harm, the act of alleged physical injury may be assumed to be pleasurable and or implicitly consented to by the woman subject. Moreover, physical harms to the female body when incurring legal liability may have lesser legal consequences to the perpetrator than a similar injury applied to a man. All of this suggests that the descriptive definition of harm is differential, that women's experiences of harm have a patently different hue than the harms experienced by men, and that law operates to further delineate outcomes for similar experiences. The paper explores a series of case studies to explore the notion that women experience harms in differential ways and that there is a gap between gendered experiences of harm and their categorization by law as such. From this the paper seeks to articulate what a feminist theory of harm might compromise and how it might transform existing doctrinal and practical understandings of legal theory and practice.

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