Welcome to the first stereotyping update of 2012

Following the 2010 publication of Gender Stereotyping: Transnational Legal Perspectives, which I co-authored with Professor Rebecca J. Cook, I created an email list on stereotyping.

The list was originally a very small and informal initiative. It was conceived of as a way of sharing information about legal developments in the field of stereotyping.

Growing interest in the initiative and expanding legal research on stereotyping prompted me recently to seek out others who might also be interested in receiving updates on developments in this field.

Looking for a more efficient and accessible way to disseminate legal (and other) information on stereotyping, I decided to publish regular ‘updates.’ The January 2012 stereotyping update is the first update to feature the new format.

I encourage you to share the updates with your colleagues and welcome any feedback you might have on how the stereotyping updates could be improved.

Happy reading!

Simone Cusack
25 January 2012
Articles and reports


Karen Tayag Vertido v. The Philippines, the most recent decision of the CEDAW Committee, takes issue with the widespread problem of stereotypes in rape trials. It is the first case of the CEDAW Committee that is concerned primarily with wrongful gender stereotyping, and the leading decision of an international human rights treaty body in this as yet underdeveloped area of human rights. This case note critically reviews the decision according to three major themes: jurisdictional limitations under the Optional Protocol to CEDAW; naming gender stereotypes in rape cases; and, States Parties’ obligations under CEDAW to address wrongful gender stereotyping.

http://hrlr.oxfordjournals.org/cgi/reprint/ngr004?ijkey=w1K5rISLjuQSrHB&keytype=ref


The psychological literature enhances our understanding of discrimination. This essay discusses three examples of how that literature can contribute to limiting destructive gender bias in the workplace, in private interactions, and in the courtroom. First, situational pressures have a powerful influence on our actions and must be taken into account in combating employment discrimination. A workplace designed for traditional male needs (limited parenting and home responsibilities) will continue to pressure females out of the workplace or childbearing despite formal equality rules. Second, the use of the term “disorder” as a frame for describing persons with an intersex condition may not achieve the ultimate goals of the movement, despite its perceived short-term advantages for communicating with the medical community. This frame may provoke reflexive images that hinder communications with a number of other groups, including parents and the community at large. Finally, although transsexual plaintiffs have been able to take advantage of Title VII under the Supreme Court’s “sex stereotyping” theory in Price Waterhouse, that theory ultimately reinforces stereotyping by requiring the plaintiffs to set up stereotypes for comparison, and that condition may ultimately reinforce the stereotypes. Rooting out gender inequality requires an understanding of how these inequalities are embedded in our thinking processes.


Holtmaat has published a legal commentary on article 5 of the Convention on the Elimination of All Forms of Discrimination against Women, as part of the first comprehensive commentary on CEDAW and its Optional Protocol.

The Commentary, which features Holtmaat’s chapter, describes the application of CEDAW through the work of its monitoring body, the Committee on the Elimination of Discrimination against Women. It comprises detailed analyses of the Preamble and each article of the Convention and of the Optional Protocol. It also includes a separate chapter on the cross-cutting substantive issue of violence against women. The sources relied on are the treaty language and the general recommendations, concluding observations and case law under the Optional Protocol, through which the Committee has interpreted and applied the Convention. Each chapter is self-contained but the Commentary is conceived of as an integral whole. The book also includes an Introduction which provides an overview of the Convention and its embedding in the international law of human rights.

http://ukcatalogue.oup.com/product/9780199565061.do
Sex-stereotypes are of perennial concern within antidiscrimination law and theory, yet there is widespread disagreement about what constitutes a “sex-stereotype.” This article enters the debate surrounding the correct understanding of “stereotype” and posits that the concept is too thin to serve as a criterion for distinguishing “discriminatory” gender generalizations from non-discriminatory probabilistic descriptions of behavior. Instead, “stereotype” is a heuristic that has been used by courts and commentators to crudely capture judgments about the justness of applying sex-respecting rules. In this light, the article argues for abandoning the stereotype heuristic in favor of a rule-centered analysis of sex-respecting generalizations. Arguing that courts and commentators have not objected to gender generalizations because they are descriptively inaccurate (as the stereotype heuristic suggests) but because they also exert unique prescriptive force, the article provides a new understanding of the theoretical basis for subjecting gender generalizations to antidiscrimination scrutiny.


The goal of this paper is to assess current measures of female politician stereotypes related to traits. We assess the theory of stereotypes that female politician stereotypes overlap with woman stereotypes (e.g., warm, nice, empathetic as in Deaux & Lewis, 1984) and whether other traits, such as negative traits found to describe women leaders, such as quarrelsome, bitter, and cold (e.g., Eagly & Karau, 2002), should be part of our measures. We hypothesize that the stereotypes of female politicians will be more similar to stereotypes of women professionals than to those of women and, further, will include negative stereotypic traits associated with women leaders. Using a ground-up methodology to determine stereotype content first used by Katz and Braly (1933), we find that, indeed, trait stereotypes of female politicians are distinct from those of women. Yet, we find that female politicians seem to be defined more by the feminine and masculine traits that they lack than the traits that truly characterize them. We discuss implications for the future of research on politician gender. http://ssrn.com/abstract=1901331


In the United States, mandatory maternity leave is sex discrimination, and mandatory retirement is age discrimination. By contrast, European antidiscrimination law is compatible with both types of mandatory employment policies. This article compares the jurisprudence and policy debates in the United States and Europe on mandatory maternity leave and retirement to unearth two different understandings of the state’s role in advancing equality. In the United States, employment equality is closely tied to preserving individuals’ choice to work, whereas in Europe, employment equality requires collectively imposed norms about the role of work in a person’s life cycle. The comparison highlights the tradeoffs between protecting individual autonomy and combating the social and economic forces that undermine equality. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1974627


The central tenet of this article is that stereotypes are both cause and manifestation of the structural disadvantage and discrimination of certain groups of people. Focusing on the gender case law of the European Court of Human Rights, this article explores what conception of equality the Court should embrace to adequately address the harmfulness of stereotypes. Since stereotypes are often the mechanisms that underlie discrimination, this article advances an antistereotyping approach that the Court could employ in its rulings. The proposed analysis consists of two phases: ‘naming’ and ‘contesting’ stereotypes. The whole argument is illustrated by Konstantin Markin v Russia and Rantsev v Cyprus and Russia, two recent cases in the area of gender equality.

http://hrlr.oxfordjournals.org/content/11/4/707.full.pdf?keytype=ref&ijkey=OH1kPWcui92Ycn5
Several articles in a recent edition of the Seattle University Law Review address gender stereotyping in the context of the work-family debate, including:

Beth A. Burkstrand-Reid, "'Trophy Husbands' & 'Opt-Out' Moms' (2011) 34 Seattle University Law Review 663

Ann C. McGinley, 'Work, Caregiving, and Masculinities' (2011) 34 Seattle University Law Review 703

Katharine B. Silbaugh, 'Deliverable Male' (2011) 34 Seattle University Law Review 733

http://digitalcommons.law.seattleu.edu/sulr/vol34/iss3/

IACHR addresses gender stereotyping in two recent reports

The Inter-American Commission on Human Rights addresses gender stereotyping in two of its 2011 reports.


abstractions, wrought in the most garish colors, that serve to reduce the diversity and complexity of the Muslim world to a set of fixed objects suitable for sound bites and not much else. In Framing Muslims: Stereotyping and Representation after 9/11, Peter Morey and Amina Yaqin dissect the ways in which stereotypes depicting Muslims as an inherently problematic presence in the West are constructed, deployed, and circulated in the public imagination, producing an immense gulf between representation and a considerably more complex reality. Crucially, they show that these stereotypes are not solely the province of crude-minded demagogues and their tabloid megaphones, but multiply as well from the lips of supposedly progressive elites, even those who presume to speak "from within," on Muslims' behalf. Based on nuanced analyses of cultural representations in both the United States and the UK, the authors draw our attention to a circulation of stereotypes about Muslims that sometimes globalizes local biases and, at other times, brings national differences into sharper relief.

http://www.hup.harvard.edu/catalog.php?isbn=9780674048522

Acclaimed social psychologist Claude M. Steele offers an insider’s look at his groundbreaking findings on stereotypes and identity. Through dramatic personal stories, he shares the experiments and studies that show, again and again, that exposing subjects to stereotypes—merely reminding a group of female maths students about to take a test, for example, that women are considered naturally inferior to men at maths—impairs their performance in the area affected by the stereotype. Steele’s conclusions shed new light on a host of social phenomena, from the racial and gender gaps in standardised test scores to the belief in the superior athletic prowess of black men. *Whistling Vivaldi* offers insight into how we form our senses of identity and lays out a plan for mitigating the negative effects of “stereotype threat” and reshaping our identities.

http://books.wwnorton.com/books/Whistling-Vivaldi/

Ellisabeth Young-Bruehl, *Childism: Confronting Prejudice against Children* (Yale University Press, 2012)

In this groundbreaking volume on the human rights of children, acclaimed analyst, political theorist, and biographer Elisabeth Young-Bruehl argues that prejudice exists against children as a group and that it is comparable to racism, sexism, and homophobia. This prejudice—“childism”—legitimates and rationalizes a broad continuum of acts that are not “in the best interests of children,” including the often violent extreme of child abuse and neglect. According to Young-Bruehl, reform is possible only if we acknowledge this prejudice in its basic forms and address the motives and cultural forces that drive it, rather than dwell on the various categories of abuse and punishment. “There will always be individuals and societies that turn on their children,” writes Young-Bruehl, “breaking the natural order Aristotle described two and a half millennia ago in his *Nichomachean Ethics.*” In *Childism,* Young-Bruehl focuses especially on the ways in which Americans have departed from the child-supportive trends of the Great Society and of the United Nations Convention on the Rights of the Child. Many years in the making, *Childism* draws upon a wide range of sources, from the literary and philosophical to the legal and psychoanalytic. Woven into this extraordinary volume are case studies that illuminate the profound importance of listening to the victims who have so much to tell us about the visible and invisible ways in which childism is expressed.  

http://yalepress.yale.edu/book.asp?isbn=9780300173116

**Jurisprudence**


The Committee on the Elimination of Discrimination against Women has found that Peru, through the actions of medical staff at a public hospital, engaged in wrongful gender stereotyping (among other things), in violation of article 5 of the *Convention on the Elimination of All Forms of Discrimination against Women.* In the Committee’s expert view, the decision of medical staff to delay necessary spinal surgery on L.C., a pregnant minor who had been repeatedly sexually assaulted and subsequently attempted suicide by jumping from a building, was based on the prescriptive sex-role stereotype that women should be mothers. The Committee reasoned that reliance on this stereotype had the effect of prioritising protection of the foetus over the life, health and dignity of L.C., and ultimately contributed to L.C. becoming a paraplegic.


The victim and her mother, the author of the communication, were represented by the Center for Reproductive Rights (CRR) and the Centre for the Promotion and Protection of Sexual and Reproductive Rights. Further information is available at:

http://reproductiverights.org/en/changetheworld

The CEDAW Committee held the Philippines legally accountable for gender stereotyping that affected Karen Vertido’s ability to access a fair trial (among other things). In reaching its finding, it noted that “the judiciary must take caution not to create inflexible standards of what women or girls should be or what they should have done … based merely on preconceived notions …” The Committee made this finding even though the right to a fair trial is not expressly guaranteed by CEDAW.

http://www2.ohchr.org/english/law/jurisprudence.htm

See also Simone Cusack and Alexandra Timmer, ‘Gender Stereotyping in Rape Cases: The CEDAW Committee’s Decision in Vertido v The Philippines’ (2011) 11(2) Human Rights Law Review 329

http://hrlr.oxfordjournals.org/cgi/reprint/ngr004?ijkey=w1K5rljJuQsrHB&keytype=ref

About stereotyping updates

The stereotyping updates are compiled and distributed by Simone Cusack.

Simone works at the Australian Human Rights Commission.* She has published and lectured on a range of human rights issues and is co-author (with Professor Rebecca J. Cook) of Gender Stereotyping: Transnational Legal Perspectives (Philadelphia: University of Pennsylvania Press, 2010). Simone holds a B.A./LL.B. (Hons.) from Monash University, Australia and a LL.M. from the University of Toronto, Canada.

*The stereotyping updates do not express the views of the Australian Human Rights Commission and are produced in Simone’s personal capacity.

Would you like to receive the stereotyping updates?

To subscribe to the stereotyping updates, please email your name, organisation and email address to simone_cusack@yahoo.com.

Do you have information on stereotyping that you would like to include in the updates?

List members are encouraged to share information (e.g., scholarship, jurisprudence) on recent developments in the field of stereotyping. Material from all fields, including law and psychology, and all jurisdictions are welcome.

Please email the relevant information, including the full citation and any links, to simone_cusack@yahoo.com.