

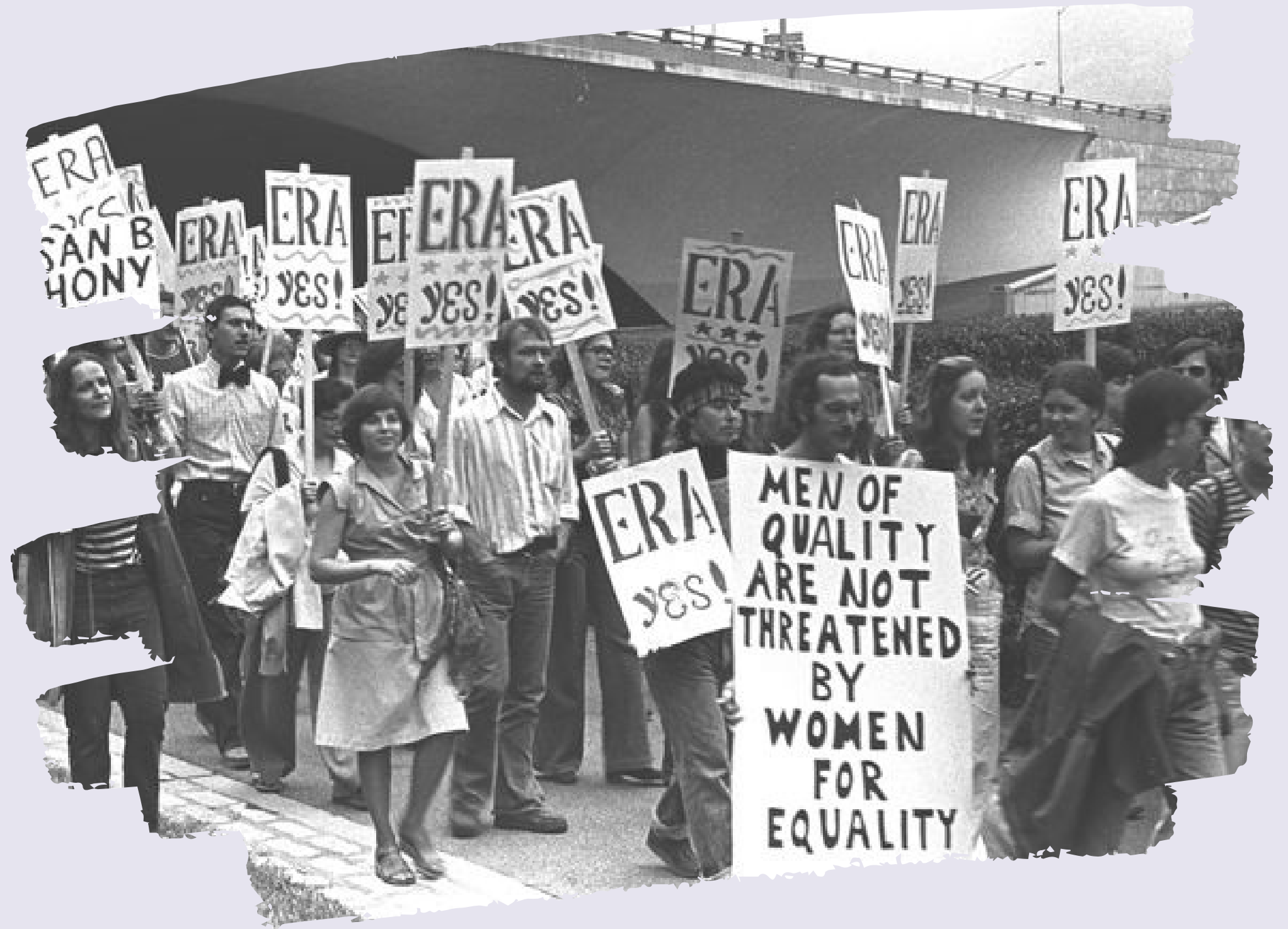
Feminist Legal Studies

Professor Burrell Vann Jr



Early 1970s

Women's rights advocates
fighting sex discrimination in
courts



Feminist Legal Theory

- Grew out of **women's studies** departments
- Critiques law's **treatment of women** and construction of (the **meaning of**) gender in society



The Equality Stage

- Rooted in liberal feminism
- Focused on individual autonomy of women
- Worked to dismantle system that **confined women to private sphere of home & family**
- Worked to show that **men and women are equal**
 - Women should have equal access to all public institutions, benefits, and opportunities as men



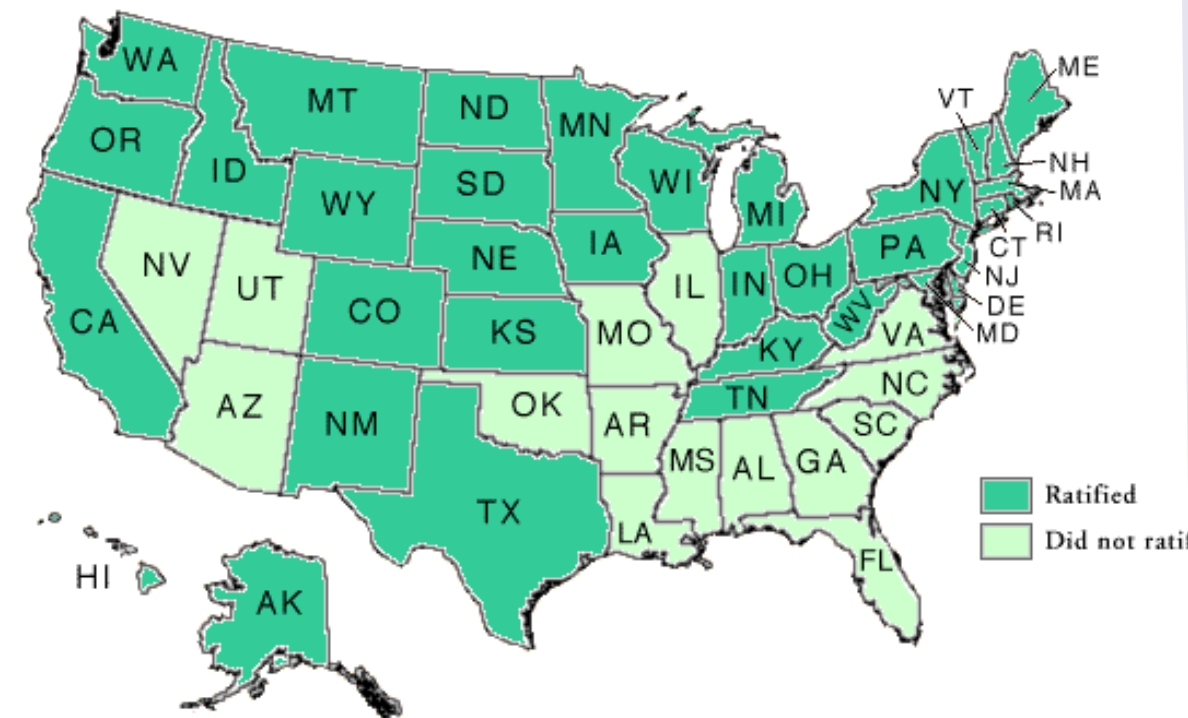
The Equality Stage

Equal Rights Amendment

- Congress adopted in 1971 (House) and 1972 (Senate)
- Sent to states for **ratification** within 7-year deadline
 - $\frac{3}{4}$ of all states in the Union must give formal consent to abide by amendment, then added to Constitution
- Ultimately *failed* to be ratified



Ratification of the ERA



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The Equality Stage

Advocates worked on typical issues for equality

- Equal pay
- Workforce participation
- University admissions
- Equal access to marital property

Equality also **extended to men** (in reverse) in traditionally “female” domains Alimony

- Custody
- Spousal benefits (e.g. social security and workers’ compensation)



The Equality Stage

Also worked on issues of individual autonomy

- Roe v. Wade (1973)
 - Made it a constitutional right to choose to have abortion in early stages of pregnancy
- Provided women liberty/freedom/autonomy to choose their own fertility plan



Difference Feminism

In 1980s, was reaction to Equality Stage Feminism

Argued that **reform along equality lines** (gender-blind) **would not fix inequality** between men and women

- Feminization of poverty
- Glass ceiling
- Gender gap in politics



Difference Feminism

Moved away from emphasis on sameness between sexes and focused on difference

Argued men and women start from different social locations

- Identical treatment would not produce **meaningful equality**

Law and norms should change to reflect women's distinctive needs



Difference Feminism

Catharine MacKinnon

Argued legal system **perpetuates male dominance** and **men's interests**

Confronted discrimination in areas of:

- Pregnancy
- Sexual violence
- Sexual harassment
- Domestic violence
- Pornography



Difference Feminism

Catharine MacKinnon

Argued sexual harassment perpetuates women's inferior status

Argued popular sexuality not authentic expression of women's desire, but **product of male desire**

Fought pornography

- Dominance and inequality are eroticized
- Made women seem like **sex objects**, tied to prevalence of **sexual violence**



Difference Feminism

Issues:

- Antipornography stance created rifts within feminist circles
 - Antipornography is **censorship** and **unconstitutional**
 - Ignores **agency** in sexual desire, practice, labor
 - Equates to **vicimization**



Cultural Feminism

Extension of Difference Feminism

Moved away from focus on male dominance,
focus on women's "cultural values"

- Caring
- Nurturing
- Empathy
- Connection

Argued women have **unique experiences** with pregnancy, childbirth, that connected them to a **"culture"**

Laid foundation for feminist legal reforms

- Maternity leave
- Comparable worth (pay)
- Increasing pay scales in "women's" work

Cultural Feminism

Issues:

- Critics argue this is too close to 19th Century depiction of women as **emotional, domestic**
 - Can push into “separate spheres” mentality
- Case against Sears
 - Feminist historian used cultural feminist argument that women better “equipped” for **low-pressure “soft” jobs in cosmetics**, where the compensation was less than similar commission sales positions held by men.

More issues:

- Anyone could appropriate cultural feminist claims to legitimate gender difference and status quo discrimination

Critical/Diversity Feminsim

Asks about women of color, lesbians, "outsider" women

- Race, class, ethnicity, disability, sexual orientation all play into gender/sex discrimination

Criticized **essentialism**, **hegemony**, **heterocentrism** of prior feminist scholarship

- Male v. female
- White v. black
- Straight

Introduced **intersectionality**

- People are not just black v. white, straight v. gay, etc
- All sections of identity shaped by versions of discrimination
- **Rejected dichotomous thinking** (categories of race and sex aren't mutually exclusive)

Explained **social construction of difference** along different axes