# [Anderson] Gör AC

### Plan Text

Plan Text: The ABA should amend Rule 1.8 (j) and all other relevant jurisdictional legislation to prohibit intimate relationships between Attorneys and clients in order to remove obstructions to the guilt-finding process, and to waive the attorney client privilege in all investigations of possible violations of the rule. I reserve the right to clarify the spirit of the text, and the meaning of the rules involved.

### Inherency

Contention 1 is Inherency.

The ABA allows relationships between the two parties in some instances. **ABA 13**

**ABA, “Rule 1.8: Current Clients: Specific Rules; Client-Lawyer Relationship; Rule 1.8 Conflict Of Interest: Current Clients: Specific Rules” Accessed. 11/27/13 http://www.americanbar.org/groups/professional\_responsibility/publications/model\_rules\_of\_professional\_conduct/rule\_1\_8\_current\_clients\_specific\_rules.html**

1.8 (j) **A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.**

And – no extra T or plan plus violation because waiving the privilege is necessary to institute a ban on intimate attorney client relationships. If there weren’t an automatic waive in every such situation, the investigation would be halted because attorneys could just claim that their “relations” are protected by the privilege.

Finally, Attorney client relations obstruct the truth seeking process – 4 warrants.

**[O’Connell 92]** John M. O'Connell Keeping Sex out of the Attorney-Client Relationship: A Proposed Rule. Columbia Law Review , Vol. 92, No. 4 (May, 1992), pp. 887-922. Columbia Law Review Association, Inc. http://www.jstor.org/stable/1122972

**A sexual relationship** between an attorney and client during a legal representation **creates a number of** potential **conflicts of interest. [First] The detachment that an attorney needs to render independent professional judgment is compromised, [Second] since the relationship creates a personal interest in the outcome of the litigation that affects the advice the attorney gives to the client.**5' **[Third] An attorney who is involved in or wants to develop a sexual relationship with a client may be tempted to use the professional role to prolong the representation unnecessarily;** 52 conversely, **[Fourth, and conversely] an attorney who wants to end such a relationship with a client or punish a client who has spurned the attorney's advances might expedite a matter to the client's detriment.**

Additionally, Attorney client relations blur the lawyer’s judgment in any and all situations because an extrafiduciary relationship takes their relation outside that of finding out who’s guilty and innocent.

**[Seymore 03]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

The reporter's commentary provides the following rationale for the rule: **The relationship between lawyer and client is a fiduciary one** in which **the lawyer occupies the highest position of trust and confidence. The relationship is almost always unequal; thus, a sexual relationship between lawyer and client can involve unfair exploitation of the lawyer's fiduciary role,** in violation of the lawyer's basic ethical obligation not to use the trust of the client to the client's disadvantage.In addition, such a relationship presents a significant danger that, **because of the lawyer's emotional involvement, the lawyer will be unable to represent the client without impairment of the exercise of independent professional judgment.**

MODEL RULES PROF'L CONDUCT R. 1.8(j) cmt. (2002).

### Feminism

Contention 2 is feminism.

We need to recognize that politics must be based in equality of participation, not material needs. Basing politics in recognition of needs, not a plurality of perspectives, leads to oppressive government control.

**[Borren 13]** Marieke Borren. “Feminism as Revolutionary Practice: From Justice and the Politics of Recognition to Freedom.” Hypatia vol. 28, no. 1 (Winter 2013). <http://www.academia.edu/1199929/Feminism_as_revolutionary_Practice._Justice_the_Politics_of_Recognition_and_Identity_Politics> Radboud University Nijmegen, Faculty of Philosophy, Theology and Religious Studies, Faculty Member

Arendt’s somewhat idiosyncratic use of the terms the social and society concerns a set of attitudes and interpersonal relationships, namely necessity, material wants, and natural bodily needs, on the one hand, and utility, instrumental concerns, and controllability, on the other. In her view, the social is a typically modern, hybrid sphere between the private and the public. Despite its non-political nature, the social tends to pervade the public sphere and push aside concerns that are not related to the satisfaction of needs and the promotion of interests, namely action and freedom. She argues that **concerns of necessity and utility have become the norm of** each and every attitude and relationship, including and most significantly, **the public sphere**. As a consequence, **politics has become economized and turned into** governance, **management**, or the promotion of interest. Neatly fitting in this logic, administration is used as the equivalent of government in the United States. The social also stands for the substitution of spontaneous, non-rule-bound action by behavior guided by particular rules and norms. Justice, as regards either economic or cultural issues, is a typically social concern. **The social possesses an inherent imperialist tendency** that threatens **to overwhelm the political, as a consequence of which,** in the first place, **plurality is destroyed.** The Arendtian notion of **“plurality” refers to differences of views between individuals** (rather than those between different groups), or in other words, to different perspectives that individuate people. Only these individual differences, in her view, are truly “political.” Social man, that is, the particular role we fulfill in a **social perspective**, on the other hand, **is concerned primarily with** meeting his or her **material and emotional needs** and wants. **These are** roughly **identical** and exchangeable **in all human beings**, according to Arendt, and therefore do not individuate people. Unlike the public sphere of plurality, that is, of equality, individuality, and distinction, **the social is therefore the sphere of normalization**, conformism, homogenization, and leveling of people. The “rise of the social” (Arendt 1958, 38) since the beginning of modernity has caused people to be concerned mainly with their private interests, but has also turned them into mere conformists at the expense of the possibility of individuality. Second, the **reduction of political issues to** concerns of **necessity and utility strikes at the roots of an authentic public sphere** in which citizens make their appearance vis-\_a-vis one another on equal terms in words and deeds, and maintain the common world that exists only by the grace of attribution of meaning by storytelling, judging, and so on. In short, what Arendt fears most is de-politicization, the loss or withdrawal of political, worldly reality and the equality and freedom that come with it. Whereas public space is for Arendt the sphere of political equality, the social is the sphere of sameness, that is, the extension of natural similarities between people belonging to the same social group. **Arendt distinguishes**, implicitly and frequently inconsistently, **between sameness and equality**. Equality pertains to citizens in the public sphere; in other words, it is a political notion. **Political equality is possible** only under conditions of plurality and can arise **only when citizens enter the public sphere.** As a consequence, in Arendt’s view, human beings are not naturally equal as a matter of course. **Equality is not an inalienable human property,** she maintained, **but comes into being only when people** start to act and speak vis-\_a-vis one another in public space and **grant** one another equal rights, **equal treatment before the law**, equal educational opportunities, and so on. The relation among citizens is horizontal. Relations of rule, that is, command and obedience, are by definition apolitical and hence undesirable in the civic sphere (Arendt 1958, 33). Since, strictly speaking, the plurality of human beings can appear only in public, it is only there that action, freedom, and equality can occur. Arendt’s notion of plurality presupposes an anthropology of human being-together, a sharing-of-the-world-with-others. Human existence is not isolated, but always occurs and is lived within a web of relationships. Political action is impossible whenever people are isolated from one another. As a consequence, plurality is opposed to the experience of isolation. More particularly, the political concerns “the coexistence and association of different men” (Arendt 2005, 93). Plurality refers simultaneously to what differentiates and relates people. I call this the paradox of difference and equality, that is, the fact that in public space, we live “as a distinct and unique being among equals” (Arendt 1958, 178). **Arendt’s notion of the political** implicitly **presupposes a strong norm of equality that should be guaranteed by** the constitution, civil rights, and the **law.** Plurality means that **as soon as we enter the public sphere we obtain equality by showing in words and deeds our own view of the world.** This view is always unique because we are situated beings with a unique biography, each taking a different perspective on the world. This implies that difference is not opposed to equality but that they mutually presuppose each other. If we were all the same it would make no sense to pursue equality. Equality, indeed, presupposes that a person is equal to someone else. In the same way, relevant differences can be identified only with respect to the norm of equality. **Equality**, therefore, **is a** political and **normative notion that refers to a**n ideal or **task, not a descriptive one that asserts** the **sameness** of all people.

Women must resist exclusion from the public sphere. This collective aim can be realized without a totalizing ideology.

**[Borren 2]** Marieke Borren. “Feminism as Revolutionary Practice: From Justice and the Politics of Recognition to Freedom.” Hypatia vol. 28, no. 1 (Winter 2013). <http://www.academia.edu/1199929/Feminism_as_revolutionary_Practice._Justice_the_Politics_of_Recognition_and_Identity_Politics> Radboud University Nijmegen, Faculty of Philosophy, Theology and Religious Studies, Faculty Member

Arendt could help feminists see that common empowerment is made possible not by a shared natural collective identity, which is the target of postmodernist critics, but by action in the service of a particular worldly issue or common end. Indeed, a minority of feminist Arendt scholars have already defended such an approach to feminist practices (Allen, 1999a and 1999b; Dietz 2002; Zerrilli 2005a). Amy Allen suggests that Arendt’s positive conception of power, entailing both the capacity to act in concert and empowerment, rather than the conventional concept of power as rule, control, or oppression, offers a good starting point for a non-identity-based feminist movement and for practices of group solidarity as expressions or modalities of this power (Allen 1999b). **Solidarity among**, for example, **women**, **is** something **to be achieved on the basis of concerted action, rather than to be assumed** in advance or given as based **on**, for instance, **a shared innate** collective **identity** (Allen 1999b, 112 –13). **Women have been invisible from** the perspective of **the common public world** for ages, **and** to a greater or lesser extent **still are**, **depending** up**on** geopolitical **location. Because of this exclusion** from the public sphere **they have enjoyed** the **public freedom that comes from it less than men have or even not at all.** Drawing on Arendt’s work, and in particular from her concept of freedom, Linda Zerrilli suggests that we think about feminism as a practice of freedom, that is, as a new beginning in itself (Zerrilli 2005a and 2005b). Finally, following Arendt, Sidonia Bl€attler argues that feminists should realize that issues become a political reality only in public articulation (Bl€attler 2001, 127). “Unlike a mere fact that befalls the affected diffusely and fatefully and to which they are delivered powerlessly due to its incomprehensibility, a political reality is characterized by the fact that it may be described, criticized, 206 Hypatia challenged, rejected and contested” (125; my translation). Instead of a shared natural collective identity, the **public presence of women** and female-specific issues **should provide the ground for feminist mobilization. These issues need not** be seen as **refer**ring **to an innate substance that all women allegedly share**, nor to ideological commitments, **but to particular worldly issues that affect women differently from men.** A particular problem may be felt to be pressing by people from entirely different backgrounds, in terms of either ideological or entirely pragmatic commitments or of collective identity. The under-representation of women in high positions in both academia and business, for example, is seen as a problem by most feminists, female and male, though for varying reasons. Also, arguments more pragmatic than those of feminists concerning the underutilization of a huge labor market potential are frequently brought into this debate.

This gives unique power to feminist legal discourse because women are affected differently within the justice system.

**[Seymore 2]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

Feminist scholars also emphasize the ways in which **dominant legal culture ignores the experiences of women.** As Robin West puts it, **"women suffer in ways in which men do not,** and... **the gender-specific suffering that women endure is routinely ignored or trivialized in the larger (male) legal culture.**'82Herein lies the importance of storytelling and narrative to feminist scholars. So**, there are always two sides to a story, voices that are silenced,** stories we never hear. **This is the power of [feminist legal discourse]** storytelling, whether in law or in literature-the **[it has the]"distinctive power to challenge and unsettle the legal status quo, because [these] stories give uniquely vivid representation to particular voices, perspectives and experiences of victimization traditionally left out."** The power of storytelling is especially effective in feminist re-vision because it provides an alternative discourse for silenced feminine voices and perspectives.83

And, we can’t just recognize that there’s a problem, recognizing the problem and neglecting it reentrenches patriarchal discourse, which destroys both ethics and criminal justice because it a. destroys any starting point for ethics and b. destroys any functional essentials to criminal justice because it forms a prior question. We must actively promote feminist participation.

**[Borren 3]** Marieke Borren. “Feminism as Revolutionary Practice: From Justice and the Politics of Recognition to Freedom.” Hypatia vol. 28, no. 1 (Winter 2013). <http://www.academia.edu/1199929/Feminism_as_revolutionary_Practice._Justice_the_Politics_of_Recognition_and_Identity_Politics> Radboud University Nijmegen, Faculty of Philosophy, Theology and Religious Studies, Faculty Member

Feminist (and other) critics of Arendt might indeed be right in claiming that Arendt underestimates the fact that social injustice affects political freedom and that she pays little attention to structural social inequalities and oppression. Still, **Arendt**’s innovation, which could be of interest to feminist political philosophers, is that she **focuses on what happens after social justice and recognition have been attained**, whereas most feminist philosophers tend to stop there, pretending that the job is done. For Arendt, on the contrary, **we have only just started the political play** or drama **at that point.** Also, **when social movements restrict their activism to** struggles for **recognition** of their collective identity and stop as soon as they have achieved this, **they risk** a lapse into **passivity, for political action requires** mutuality and symmetry—not just (passively) being recognized, seen, and heard, but also **actively** recognizing, **seeing, and hearing others**. In Arendt’s view, citizens are simultaneously perceiving and being perceived. This requires both a passive or receptive and an active or participative moment**, and hence reciprocity,** symmetry, **or mutuality**. This risk comes to the fore most clearly in Honneth’s theory of recognition. Although his groundbreaking 1995 book is called Struggle for Recognition, upon close inspection it appears that he is interested exclusively in the struggle for being recognized by others. **As soon as recognition is obtained, it seems justice is attained** and the political process or struggle is over. The formulated aim of this struggle as **“social inclusion” serves only to reinforce** Marieke Borren 209 the **passivity** inherent in Honneth’s model of recognition (Fraser and Honneth 2003,184–85). This is probably due to the fact that **this model is predicated** up**on the parent–child relationship, which** indeed **is poor in the** symmetry, **mutuality**, **and reciprocity** that is **needed in the relation between citizens.** For Arendt, on the contrary, the **political struggle for freedom is additionally characterized by participation**, active appearance and mutuality, that is, not just being seen and heard by others, but also seeing and hearing those others in return. What is the significance of the preservation of the distinction between the social and the political and, subsequently, of political rather than social struggles? According to Arendt, the political itself and consequentially political freedom are at stake (cf. Marchart 2005, 92–94; Villa 2008). She calls for saving the common world or for the repoliticization of the public world, against the socialization and moralization of the political. In contemporary words, this means a “return of the political.”8 What is eventually at stake in saving the political, Arendt argues, is the redemption of freedom. **The phenomenon of freedom that Arendt celebrates** also **plays an important role in the feminist movement.**

Thus, precedence within the criminal justice system ought to be evaluated through a framework of actively promoting feminist inclusion and gender equality.

### General Advantage

Contention 3 is the general advantage

Lawyers take advantage of their clients often; sex between lawyers and clients occurs very frequently. Also, 96% of sexual exploitations by lawyers occurs between a man in power and a woman under his care.

**[Seymore 3]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

Sex between lawyers and clients occurs far more frequently than many believe. **In a** 1993 **nationwide survey of attorneys, 18.9% of the respondents had sex with a client or knew of at least one other attorney who had.**7 **Despite this** figure**, there are only a handful of cases where attorneys have been disciplined for having sex with their clients.** The reported cases run the gamut- **some involve "quid pro quo" situations where the attorney required sex in exchange for legal services,** 8 **others involve forcible rape,** 9 **and some involve arguably consensual sexual relations.' ° Those that appear to be consensual relationships often involve vulnerable clients-clients who are suicidal,"** clientswho are **[or] victims of domestic violence,** 2 **clients suffering from mental and emotional problems known to the attorney,**'3 **and clients who are facing criminal charges.**14Many are divorce cases. **Virtually all of the cases involve a male lawyer and a female client.'**

[examples] 13. See, e.g., In re Heard, 963 P.2d 818 (Wash. 1998) (attorney representing client suffering from head injury who had been in a coma plied her with alcohol and engaged in sexual relations); Drucker's Case, 577 A.2d.

14. See, e.g., Disciplinary Counsel v. Booher, 664 N.E.2d 522 (Ohio 1996) (attorney had sex in jail meeting room with criminal defendant he was assigned to represent); Iowa Sup. Ct. Bd. of Prof Ethics and Conduct v. Steffes, 588 N.W.2d 121 (Iowa 1999).

[mostly women] 15. See also PETER RUETTER, SEX IN THE FORBIDDEN ZONE 20 (1989) (Ninety-six percent of sexual exploitation by professionals occurs between a man in power and a woman under his care)

Recognition of this exploitation is key to solve, it is a fact of material conditions and not essentializing.

And, intimate relationships between attorneys and clients occur in a convergence of two patriarchal power relationships.

[**Forrel 92]** Lawyers, Clients and Sex: Breaking the silence on the Ethical and Liability Issues, Caroline Forell 22 Golden Gate U.L. Rev. 611 1992

**When sex between an attorney and** his **client occurs, there is** usually **a convergence of two power relationships: attorney-client and man-woman. Since the overwhelming majority of cases involve male attorneys and their female clients, it should be acknowledged that this, like sexual harassment, is a women's issue**. It is also important to recognize that **the harm a woman client may suffer from sexual involvement with her attorney will be** both different and frequently **more severe than the harm a male client might suffer.**

Finally, Lack of regulation of Attorney-Client relationships sends a message of female inferiority.

**[Seymore 4]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

**Attempts to leave attorney-client sexual relationships behind the veil of privacy leave clients to be exploited by attorneys. The failure to regulate in this area,** when there are countless regulations governing conduct in the attorney- client relationship, **sends a powerful ideological message: [that]"The message of women's inferiority is compounded by the totality of the law's absence from the private realm. In our society, law is for business and other important things. The fact that the law in general has so little bearing on women's day-to- day concerns reflects and underscores their insignificance.** 250

### Sexual Availability

Contention 4 is sexual availability.

Current law ensures that women are coerced into sexual relationships with their attorneys.

**[Seymore 5]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

**While** another fifteen states **[some] have legal authority regulating attorney-client sexual relationships, they stop short of absolute bans on such relationships. Thus, the current state of the law ensures that women clients remain sexually available to their male attorneys.**

And, the idea that women are sexual objects absent informed and uncoerced consent (especially in Attorney-Client Relationships) is inherently patriarchal.

**[Seymore 6]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

Catharine MacKinnon identifies **one of the "perks" of male domination of women** as **[is] the sexual availability of women to men. "One of the advantages of male supremacy, along with money and speech and education and respectability, is sexual access to women .... Women being the universal object under male supremacy, sexual access to women makes you human.** It makes you real, like money .... **Men as a gender have had access to women."283** Recall the quote from a minister who had sex with a parishioner: "Could I once again get sexually involved with a member of my congregation? Absolutely, if I'm honest about it. I don't want to stop being sexually attracted to what's forbidden. To deny that would be to deny part of my manhood.,

The plan solves by putting a ban on these relationships – and making sure that clients caught at the crossroads of those two power constructs are completely unavailable to attorneys.

### Underview

Contention 5 is the underview.

1. Dominant legal culture excludes women. Feminist legal discourse has the ability to free us from this exclusion. This functions as an independent justification for my framework – accept it because of my discourse.
2. And, the plan is central to feminist legal discourse – this means no violations on T because if I win the framework this is literally the best topic we can talk about.

**[Seymore 7]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

**The area of attorney-client sexual relations** seems tailor-made for critique from feminist perspectives. It **raises questions of power, relationships, privacy, consent and sex, all of which are areas traditionally subject to attention by feminist legal scholars.** There has been, however, only one consciously feminist critique in this area. Linda Fitts Mischler argues against per se bans on attorney-client sex, which she sees as "an institutional control of sexuality that has its most egregious effect on women."

1. And, individuals aren’t going to restrain themselves – organizational action is necessary to stop these relations.

**[Seymore 8]** Seymore, Malinda L. “Attorney-Client Sex: A Feminist Critique of the Absence of Regulation.” 15 Yale J.L. & Feminism 175 2003. Professor of Law, Texas Wesleyan University School of Law.

Rutter further postulates that **"even ethical professional men wish to leave open the possibility that one day they will have a sexual encounter with a woman under their care.,** 288 **For these reasons, Rutter is skeptical about the ability of the professions to regulate themselves in this area: Asking men in power to prevent their colleagues' sexual exploitation in some way requires them to undermine their own fantasy lives**.... The medical, psychotherapeutic, pastoral, and **legal professions have long insisted on policing themselves about ethical matters. At this stage,** however**, men in these professions need the help that widespread public scrutiny** and growing public understanding can bring to this 289 problem.Rutter's skepticism seems **[this is additionally] warranted in light of the fact that only ten jurisdictions currently have rules of professional responsibility that regulate attorney-client sexual relationships.**

1. Violence against women is the greatest harm. Violence against women makes all forms of violence possible- including nuclear war.

**[Johnson 83]** Sonia Johnson, Candidate for the presidency. Didn’t plan on winning, only wanted to win an ear for her feminist position. “A Feminist Campaign for the Presidency.” New York Times (December 29, LN) http://www.nytimes.com/1983/12/29/garden/a-feminist-campaign-for-the-presidency.html

The Citizens Party will pick its candidate in June. Mrs. Johnson is by no means sure she will be the delegates' choice; she says her ideas may be too radical for that party. She argues, for example, that **violence against women is a fundamental political issue. As long as a society casually tolerates the crime of rape**, she says, **it will tolerate all other forms of violence, including nuclear war. ''We don't even know what peace is**,'' she says. **''Women are being waged war upon**. In our most intimate lives, **we are at war. Peace has got to begin with peace between the sexes.''** Is rape a crime that can, as she suggests, be wiped from the face of the earth? ''We don't know, do we?'' she says. ''We've never considered it important enough to find out. We don't even have a Presidential commission on it. We ought to have some of our best intelligences concentrating upon how to change that violent habit of mind.''