
Preface

Contemporary feminist legal scholarship engages with law in both critical and normative ways: it aims to understand how law contributes to the subordination of women, and to articulate the ways in which law might be best used to end that subordination and thereby improve women's lives, consistent with law's commitments to justice. The body of work that has resulted has employed a range of theoretical points of departure for the critical dimension of this mission, including, among others, liberal theory, Marxism, pragmatism, postmodernism and the insights of critical race and gender studies, and has impacted a range of areas of law, including family law, antidiscrimination law, constitutional law, international law and criminal law, among others. After an introductory essay that provides an overview of these schools and their contributions, the chapters in this volume explore both the theoretical and normative dimensions of legal feminism. Part I explores legal feminism's major theoretical variants, with essays on liberal feminism, radical feminism, relational and vulnerability-based feminisms, socialist feminism, intersectional and critical race feminisms, postmodern feminism and sex-positive or queer feminisms. Collectively, the chapters in Part I explore legal feminism's internal debates and varying perspectives, which often follow from these often radically contrasting theoretical perspectives. Parts II through VII then explore feminism's critique and reconstruction of some of the major doctrinal areas of law that have to date been most impacted by feminist interventions.

Part I begins with a chapter by Sylvia Law, one of the architects of liberal feminism and a major contributor, both as a lawyer and as a scholar, to liberal and liberal feminist reform efforts over the last half century. Professor Law provides in her chapter a history of liberal feminism and defends both the theory and its achievements against efforts by the ascendant far right to undermine it. Those efforts have achieved a kind of culminating victory in the election of Donald Trump in the United States but also reflect worldwide trends. Law's chapter spells out those anti-feminist and anti-liberal efforts, and responds. The next chapter, on radical feminism, by Chao-ju Chen, first restates Catharine MacKinnon's major theoretical contributions, including, prominently, a radical critique of sexuality and an anti-subordinationist theory of equality. It then defends radical feminism (sometimes called 'equality feminism') against its most prominent critics, including some liberal and sex-positive feminists who worry that it overstates the significance of sexuality to women's subordination and others who are concerned that MacKinnon's theory makes women into victims and paves the way to excessive state involvement in women's and men's private lives.

Robin West's chapter on relational feminism focuses on the potential of relational feminist legal theory to look toward transformative goals that assume a more relational rather than highly individualized human subject. Martha Albertson Fineman's chapter on vulnerability theory provides a history of dependency and vulnerability theory and relates that history to feminism. Cynthia Grant Bowman reintroduces socialist feminism to modern readers, exploring the ways in which its intersectional approach to

feminist and socialist commitments can clarify the subordinating dimensions of some areas of law and the liberatory trends of others.

The remaining theoretical perspectives introduced in Part I are united by one critical point of departure that distinguishes them all from those in the first set: they all, in various ways, eschew all-explanatory ‘grand narratives’ and those narratives’ attendant ideals and impulses. Consequently, and to varying degrees, they all criticize liberal, radical and relational feminisms (primarily) for indulging them. Dorothy Roberts’ chapter on critical race feminism summarizes both the critical and substantive contributions of intersectional feminists: first, their criticism of radical, liberal and relational feminisms for their tendency to prioritize white women and a circumscribed set of concerns and ambitions – the ambition to smash glass ceilings, to achieve success relative to men and to secure rights to abortion and birth control technologies, primarily. Roberts then describes an affirmative and intersectional feminist agenda more attuned to, but also more driven by, the ambitions and ideals, as well as the interests, of women at the intersection of axes of discrimination, including African American women and other women of color, lesbians, trans and disabled women. Intersectional feminism seeks a theoretical stance that privileges rather than marginalizes the interests and ideals of women with these multiple identities.

Postmodern and sex-positive feminisms are explored in the chapters by Laura Rosenbury and Nan Hunter, respectively. The two chapters reveal a substantial overlap between these two perspectives – both rest on a resistance to the overarching claims regarding the oppressive nature of sexuality central to radical feminism, and both seek a more open, less essentialist and less absolutist account of the human subject than that put forward by radical, liberal or relational feminist approaches. Postmodern feminism, however, is more focused on method, and particularly on ensuring a pragmatic approach to strategic issues of concern to feminist advocates as dictated by women’s felt interests, while pro-sex feminism couples that pragmatism with a more substantive and affirmative stance toward sexuality. The pro-sex branch of feminism thus looks very broadly to understand feminism as a body of thought and advocacy that will affirm rather than challenge a range of sexualities and gender performances.

The remainder of the book examines some of the areas of doctrinal law most impacted by feminist scholarship and highlights the ways in which the reforms advocated in that literature reflect that body of scholarship’s theoretical commitments. The four chapters in Part II explore the role of law in regulating, prohibiting, sanctioning or facilitating sexual violence. Deborah Tuerkheimer begins with an examination of the contemporary debates over the definition of rape and the role of rape law in the US in regulating, and sometimes facilitating, sexual violence against women. Nivedita Menon’s contribution examines rape and rape law in India, as well as feminist and post-feminist efforts to reform that law. Victoria Nourse examines a contradiction in the condemnation of violence at the heart of systems of criminal justice, alongside the widespread resistance by otherwise liberal men to the feminist idea that violence against women should be legally attacked as violative of women’s civil rights. Ngaire Naffine looks at a similar contradiction inherent in legal systems worldwide and in traditional criminal jurisprudence, by virtue of their condemnation of rape and other crimes of violence yet simultaneous endorsement of the permissibility of sexual violence against wives by husbands, as embodied in so-called ‘marital rape

exemptions.’ All four chapters rest either explicitly or implicitly on the radical feminist theoretical claim that violence against women is a concern not only of the criminal law, but of feminism as well, and that acts of violence are not only criminal assaults, but also subordinating violations of women’s equality.

The chapters in Part III look at reproductive rights and liberties. The first, by Lisa Ikemoto, compares liberal and intersectional feminist approaches to abortion rights, using the comparison as a way to bring out the strength – and necessity – of both approaches. The second, by Noya Rimalt, acquaints the reader with what she believes to be the strongest liberal feminist (and liberal) defense of abortion rights: that, without this right, women, but not men, carry obligations to help strangers, thus violating political and constitutional norms against formal equality. Both chapters question the wisdom of the US Supreme Court’s privacy jurisprudence, but do so in very different ways. Ikemoto aims to construct an account of abortion rights based on anti-subordinationist and intersectional understandings of equality. Rimalt looks toward the construction of a universal understanding of the abortion right, strengthened rather than weakened by a classically liberal argument stressing the need to equalize the burdens placed on all by virtue of shared citizenship.

Part IV includes three chapters that revolve around women’s civil rights at work or school and sexual harassment as a violation of those rights. The first two in this set focus in different ways on sexual harassment law, in the US and in Israel. Kimberly Yuracko looks at the development of harassment law in the US, providing a history and analysis of its strengths and shortcomings. Orit Kamir introduces a feminism based on the centrality of dignity, rather than equality or liberty, which she argues better reflects international feminism and can better counter honor-based systems of reward and punishment. She then situates Israel’s sexual harassment law, which she helped to author, in that context, contrasting it with US and liberal approaches. She concludes with a discussion of the possibility of rethinking rape law as grounded in the value of dignity and of what a rape law so construed would constitute.

Katharine Baker’s piece on education law closes out the chapters on the fields of law influenced by the US civil rights acts. Baker usefully contrasts the role of formal equality and the antidiscrimination principle in Title IX, which guarantees women equal educational opportunity, with the understanding of antidiscrimination that dominates Title VII law, which governs employment, and particularly with the iconic Title VII cases prohibiting race discrimination in employment.

Part V examines constitutional law and constitutional values, and the role of feminism both in constructing them and in criticizing them. Julie Nice looks critically at the Fourteenth Amendment to the US Constitution, assessing its massive contributions to second- and third-wave feminism, but also its limitations for feminist politics and women’s equality. Mary Anne Franks looks at the First Amendment, and the promise and peril it holds for women’s equality, explaining the ambivalence toward it felt by a range of feminists because it constructs a wall of rights – but also of privilege – around large swaths of behavior, as well as around speech and thought. That wall of privilege is a mixed blessing at best for subordinated groups, including women. The two chapters taken together suggest the promise but also the severe limits of constitutional approaches to the political work of achieving equality on behalf of disempowered groups.

The chapters in Part VI look at the impact of feminism on the development of three core fields of private law: tort law, contract law and family law. Martha Chamallas tracks the impact of feminist intervention in the field of tort law from the development of a reasonable woman standard to the increased salience of various torts promising relief for emotional harm. Hila Keren examines feminist theory and contract law, comparing the roles of economic or market-based valuations with other forms of value and the use of each in contractual decision-making. Susan Frelich Appleton looks at the near-complete revolution undertaken in family law, largely by virtue of feminist law reform efforts and feminist scholarly insights, from the movement away from fault-based divorce and alimony assessments to the recognition of non-traditional families. Julie Suk's chapter looks in detail at one aspect of family law and life: the provision for family or maternity leave accorded working women and men by their employers. She examines both maternity leave policies and gender-neutral parental leave policies, showing how some stem from liberal premises of anti-stereotyping and formal equality and others from non-liberal or relational premises valuing maternal and parental life.

Finally, Part VII takes up feminist critiques and reconstructions of the field of international law. It begins with a chapter by Adrien Wing that looks in detail at the contribution to international law made by feminists and critical race theorists, as well as the contribution to feminist legal theory made by international lawyers. The book then closes with a chapter by Irem Çağlar and Berna Akçali Gür, two feminist legal scholars from Turkey, which looks at one corner of human rights law: the duty of the state to protect its citizens against violence, including sexual assault and domestic violence. Çağlar and Akçali Gür examine the impact of feminist activism and scholarship on the increasing trend in international law to recognize and enforce such an obligation.

The chapters in this volume collectively reveal a coherent body of legal scholarship aimed at both criticism and reform and grounded in feminist understandings of the centrality of gender, sex and sexual orientation to the development of both law and theories of justice. They also evidence the degree of intra-feminist debate or contestation: feminist legal theorists disagree on the wisdom of regulating pornography, of legalizing sex work, of providing or requiring additional benefits for pregnant women and mothers on the job that may not be required for disabled men, of responding to the ongoing and various epidemics involving sexual violence with the criminal justice arm of the state, of 'sanitizing' the workplace of sexual expression through sexual harassment law and of providing maternity leave or familial leave from employment. Some of these differences have been prescriptive or pragmatic, but some have been deeply theoretical or philosophical: they reflect differing assessments of the value of formal equality, of the nature of subordination, of the role of sexuality in subordination and liberation, of the value and importance of different modes of moral thinking that may correlate with sex or gender and of the cohesiveness and sensibility of categorical identifications such as 'woman' or 'gay' or 'African American.' Those differences in turn reflect still deeper disagreements over the value or point of 'grand narratives,' of the importance or limitations of perspectival accounts of truth, of the appropriate role of the state in the governance of a just society, of the place of cross-cultural analysis in political theory and of the importance or authenticity of phenomenological or experiential accounts of subjectivity in both politics and law. The chapters collected in this

volume do not individually or collectively settle any of these disagreements. They may, however, help to clarify their terms, implications and origins.

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