

Martha Fineman and the Feminism and Legal Theory Project

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Introduction

Martha Albertson Fineman is Robert W. Woodruff Professor of Law and founder and Director of the Feminism and Legal Theory Project (FLT Project). I feel very fortunate and privileged to be able to work with Martha and the FLT Project and I'm glad we're getting a chance to celebrate and honor Martha and the Project as part of the first Emory Women's Symposium. As I'm sure many of you know, Professor Fineman is a phenomenal scholar, teacher, activist and mentor who continues to make tremendous contributions to feminism, legal theory, the legal academy and the profession of law. The Feminism and Legal Theory Project, as explained by Martha, embodies feminism as "not anchored in any one discipline – it presents a theory of gender and challenges the assertions and assumptions of gender-neutrality and objectivity in received disciplinary knowledge."¹ The impact made by the FLT Project is such that, as recently stated by another legal scholar, it is a "feminist institution" that has "shaped the development of contemporary legal theory."² Thankfully, Martha and the FLT Project have been part of the Emory community since 2004.

In 1984 Martha recognized the need for feminist legal scholars to be able to present a more coherent presence in order to refute grand legal theory's claims to objectivity, neutrality and rationality by revealing its saturation with white male

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¹ Martha Albertson Fineman, *Feminist Legal Theory*, 13 AM. U.J. GENDER SOC. POL'Y & L. 13-14 (2005).

² Ann Shalleck, *Institutions and the Development of Legal Theory: The Significance of the Feminism and Legal Theory Project*, 13 AM. U.J. GENDER SOC. POL'Y & L. 10, 7 (2005).

perspective.³ So, with an initial budget of \$2,500, Martha founded the FLT Project at the University of Wisconsin Law School.⁴ And for the next six years the Project hosted an annual summer conference to “provide a forum for interdisciplinary feminist scholarship addressing important issues in law and society.”⁵ Subsequently, the FLT Project relocated with Martha to Columbia Law School in 1990, then to Cornell Law School in 1999, where Martha held the first endowed Chair in the U.S. in Feminist Jurisprudence, and finally arrived at Emory University School of Law in 2004 where the Project will have a permanent home. With every move Martha was able to expand the scope of the Project – increasing the number and variety of annual workshops and presentations, and adding new programs.

Currently, the work of the FLT Project includes hosting four to five scholarly workshops per year with a core commitment “to foster interdisciplinary examinations of specific law and policy topics of particular interest to women.”⁶ But importantly, FLT Project inquiries do not address gender exclusively – Project scholarship is acutely concerned with equality issues related to the intersections of race, gender, class, sexuality

³ See Martha Albertson Fineman, *Introduction*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* xii (Martha Albertson Fineman & Nancy Sweet Thomadsen, eds., 1991) (explaining that “grand theorizing represents the creation of a new form of positivism in a search for universal truths discoverable and ascertainable within the confines of the methodology of critical legal analysis”). See also Kathryn Abrams, *Third Annual Ruth Bader Ginsburg Lecture: The Global Impact of Feminist Legal Theory*, 28 T. JEFFERSON L. REV. 314 (2006) (also noting that this remains a daunting task which must be accomplished largely in the face of “the palpably ambivalent gaze of colleagues who seem to be perpetually asking of [feminist] work what it has to do with law”).

⁴ See Emory Law School: Feminism & Legal Theory, <http://www.law.emory.edu/cms/site/index.php?id=1279> (noting that during the early years, the FLT Project was funded through grants from the Wisconsin Law School’s Institute for Legal Studies. Currently, funds from Martha’s Woodruff Professorship support the FLT Project and its programming) (last visited Sept. 30, 2007).

⁵ *Id.*

⁶ *Id.*

and ability. In addition, 2007 marks the fourth year of the wonderfully successful and popular FLT Project Visiting Scholars Program.⁷

Feminist Legal Theory – The Integration of Theory and Practice

Feminist legal theory has been well-described as “a collective project grounded in the foundational principle that women’s perspectives are systematically excluded from law and legal institutions.”⁸ Throughout the past twenty-three years the Feminism and Legal Theory Project has both driven and been driven by broad developments in feminist legal thought – the inspiration has always been mutual. Currently, practitioners of feminist legal theory focus on the gendered reality of women’s lives to expose bias in existing and proposed law.⁹ The ultimate goal of feminist legal theory is to improve all women’s lives by forcing law to take women’s lived experiences into account.

Scholars engaged with feminist legal theory have demonstrated the effectiveness of being concerned with both the development of theory and its practical application in law so that it profoundly impacts received legal theory, institutional wisdom, and the structure of law. The result is that feminist legal theory has changed the way the legal profession views many issues of central importance to women. For example, the profession no longer views violence against women as a private, “family matter;”¹⁰ lawmakers view reproductive freedom as encompassing both affirmative and negative

⁷ See Emory Law School: Visiting Scholar Program, <http://www.law.emory.edu/research-scholarship/feminism-legal-theory/visiting-scholar-program.html> (last visited Sept. 30, 2007).

⁸ Susan Bisom-Rapp, *Introduction to the Fifth Annual Women and the Law Conference: The Global Impact of Feminist Legal Theory*, 28 T. JEFFERSON L. REV. 89 (2005).

⁹ See *id.*

¹⁰ See generally NANCY K.D. LEMON, *DOMESTIC VIOLENCE LAW* (2001) (Chapter 1 provides a history and overview of domestic violence and the law; Chapter 10 discusses the passage of mandatory arrest statutes in various states; and Chapter 7 explains how domestic violence affects custody and visitation).

rights;¹¹ sexual assault within marriage is now considered rape;¹² and sexual harassment, including of the hostile work environment variety, is now prohibited by law.¹³ Feminist legal theory has also been instrumental in law reform concerning the division of property at divorce,¹⁴ and even the family itself was nudged toward the public sphere with passage of the Pregnancy Discrimination Act (PDA) of 1978 and the Family Medical Leave Act (FMLA) of 1993.¹⁵

The FLT Project has been engaged in critique throughout every major shift in feminist legal thought¹⁶ – theoretical developments beginning with the shift in the 1980s from a focus on formal equality as the primary strategy employed to remedy historic discrimination against women to a strategy of substantive equality which is concerned with a law’s result or effect and the need to correct social and legal inequities that continue to disadvantage women. In other words, substantive equality demands that law

¹¹ Affirmative rights to contraception (recognized for married couples in *Griswold v. Connecticut*, 381 U.S. 479 (1965), and abortion (held to be a privacy right under the Fourteenth Amendment in *Roe v. Wade*, 410 U.S. 113 (1973), and the negative right to be protected from compulsory sterilization (a right which gained support after WWII when the eugenics movement fell out of favor, and from the decision in *Skinner v. Oklahoma*, 316 U.S. 535 (1942) which recognized this right in the context of equal protection for prisoners).

¹² See Lisa R. Eskow, *The Ultimate Weapon? Demythologizing Spousal Rape and Reconceptualizing its Prosecution*, 48 STAN. L. REV. 677, 682 (1996) (includes discussion of the reform of the common law marital rape exemption). See also KATHARINE T. BARTLETT, ANGELA P. HARRIS & DEBORAH L. RHODE, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 989-991 (3d ed. 2002).

¹³ See CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW* 105-106 (1987). See generally Barbara A. Gutek et al., *The Utility of the Reasonable Woman Legal Standard in Hostile Environment Sexual Harassment Cases: A Multi-method, Multi-study Examination*, 5 PSYCHOL. PUB. POL’Y & L. 596 (1999).

¹⁴ See Martha Albertson Fineman, *Societal Factors Affecting the Creation of Legal Rules for Distribution of Property at Divorce*, in *AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY* 265, 272-273, 278 (Martha Albertson Fineman & Nancy Sweet Thomadsen, eds., 1991).

¹⁵ See generally Annie Pelletier, *The Family Medical Leave Act of 1993 – Why Does Parental Leave in the United States Fall So Far Behind Europe?*, 42 GONZ. L. REV. 547 (2006-2007).

¹⁶ See KATHARINE T. BARTLETT AND ANGELA P. HARRIS, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY* 261, 487, 705, 1007 (2d ed. 1998) (discussing the development of substantive equality (early 1980s), dominance theory or nonsubordination (mid 1980s), different voice theory or cultural feminism (late 1980s and early 1990s), and throughout all of these theoretical developments various scholars have cautioned against falling into reproducing different types of essentialisms in feminist legal theory).

take account of socially and culturally constructed differences to avoid gendered outcomes that disadvantage women.¹⁷

Contemporary feminist legal thought, lead by Martha Fineman, is particularly concerned with challenging the notion that privatization is the “solution to complicated social problems reflecting persistent inequality and poverty,”¹⁸ as well as being committed to addressing issues of systemic inequality associated with globalization. This intellectual work includes analyzing the differential impact of law on women who are differently situated, for example, attending to ways in which relatively affluent women can unintentionally contribute to the oppression of relatively poor women.¹⁹

Feminist legal theory has also helped to transform the legal academy, an institution historically dominated by men – not that we don’t still have quite a lot of work to do in this respect, but major gains have been realized.²⁰ For example, in 1973 (the year *Roe v. Wade* was decided) only 16% of law students were women, however, by 2004 women comprised 48% of all law students.²¹ And even though in 2004 only 18% of law school Deans were women this is double the figure from 1991.²²

Furthermore, there are currently a number of law reviews dedicated to publishing scholarship concerning women’s and gender issues, and the FLT Project regularly

¹⁷ See *id.* at 261.

¹⁸ Fineman, *supra* note 1, at 21.

¹⁹ See Kathryn Abrams, *Third Annual Ruth Bader Ginsburg Lecture: The Global Impact of Feminist Legal Theory*, 28 T. JEFFERSON L. REV. 322-323 (2006) (noting the phenomenon of child care and domestic work performed for professional women by egregiously underpaid migrant women).

²⁰ *But see* Sari Bashi and Maryana Iskander, *Why Legal Education is Failing Women*, 18 YALE J.L. & FEMINISM 391 (2006).

²¹ AMERICAN BAR ASSOCIATION, FIRST YEAR ENROLLMENT IN ABA APPROVED LAW SCHOOLS 1947-2004 (PERCENTAGE OF WOMEN) (2004), <http://www.abanet.org/legaled/statistics/femstats.html> (this document includes statistics not only for first year enrollment but also for the total number of women enrolled in ABA approved law schools).

²² See Richard K. Neumann, *Women in Legal Education: A Statistical Update*, 73 UMKC L. REV. 423 (2004) (also noting at 441-442 that tenured full professors are still overwhelmingly men whereas off-tenure-track skills teachers, such as clinical and legal writing professors, are still overwhelmingly women).

publishes edited collections from selected workshops. Of course publication of feminist legal scholarship has been integral to its gradual acceptance by the legal academy. Specifically, ground was broken on this front in 1991 when “papers from the early sessions of the FLT workshops became a part of the very first feminist legal theory anthology, *At the Boundaries of Law: Feminism and Legal Theory*.”²³

The Feminism and Legal Theory Project – Developing Theory and Creating Community

As noted by Ann Shalleck, because of twenty-three years of FLT Project scholarship, “feminism is now an essential component of any theoretical project” in law – “critical inquiry includes examining the significance of gender and attending to the positions and actions of women.”²⁴ The FLT Project provides a supportive intellectual and social network for feminist scholars engaged in the development of legal theory. In addition to being a brilliant theorist, Martha Fineman has an incredible talent for creating vibrant, diverse and inclusive communities of scholars who produce very exciting and interdisciplinary work. Not only do the Project workshops create consistent opportunities for collaboration among scholars from around the world, but each year numerous individual “visitors and speakers bring a wealth of new ideas and energy to Emory.”²⁵

The Feminism and Legal Theory Project is an institution that builds community on many levels. The Project has always been inclusive as all workshops are open to aspiring and junior colleagues, as well as to those who are already at the forefront of

²³ Fineman, *supra* note 1, at 13.

²⁴ Shalleck, *supra* note 2, at 7.

²⁵ Emory Law School: Feminism & Legal Theory, *supra* note 4.

feminist thought in their discipline.²⁶ Furthermore, every detail of each workshop is carefully planned to foster a sense of shared community among participants. For example, after the first session, which is purposely always the most theoretical, workshop participants share a delicious and elegant dinner while continuing discussions and becoming further acquainted with one another, and in between sessions the following day everyone will enjoy a similar lunch together.

Moreover, each panel is organized to stimulate new and often controversial ideas,²⁷ and it is customary for all participants to attend the entire day-and-a-half workshop rather than leave as soon as they've presented their own paper. Many scholars from across the country attend multiple FLT Project workshops a year which allows them to collaborate on a somewhat regular basis. In this inclusive and supportive context, scholars feel they have the resources to tackle even the most challenging topics and intransigent issues.

Martha Fineman is also a very powerful mentor. From my perspective, one of Martha's most important roles, which she has recently expanded, is that of nurturing the careers of feminist scholars just starting out. One way in which the FLT Project helps feminist scholars to advance their careers is through participation in the Visiting Scholars Program which Martha began at Emory. Visiting scholars, who are in residence anywhere from only a couple of weeks to an entire year, are provided with office space in the Law Library and possibly receive financial assistance as well. They also meet with Emory

²⁶ Interview with Martha Fineman, in Atlanta, Ga. (Sept. 20, 2007) (in the beginning, it was somewhat of a challenge for Martha to prevent the Project from being overly influenced by well-meaning and supportive male colleagues who envisioned it as more of an elite institution).

²⁷ In addition, there is a unique series of FLT Project workshops called "Uncomfortable Conversations" which are dedicated to bringing together perspectives that have experienced conflict with each other in order to ultimately combine strengths to forge creative approaches to the development of theory.

faculty, students, and librarians and enjoy access to all research resources available through Emory University Libraries. The FLT Project has sponsored over 40 visiting scholars at Emory since 2004.²⁸

Additional ways the FLT Project assists beginning feminist scholars are by simply providing multiple opportunities a year to present papers at academic conferences, as well as the important opportunity for publication in one of the anthologies which are periodically collected from work presented at FLT Project workshops. Publication translates into recognition at the participant's home institution, as well as in the academy generally, and can also provide increased confidence as a legitimate creator of feminist theory.²⁹

Thankfully, year after year without fail, Martha continues to lead feminist legal scholars in groundbreaking analytic work, crafting and sending out calls for papers that colleagues find timely and compelling. Martha is also constantly identifying fruitful partnerships between the FLT Project and various departments and initiatives across campus, as well as at other universities in both the U.S. and U.K. Finally, as difficult as I'd imagine this might sometimes be, Martha is always mindful to let the FLT Project develop in whatever directions around which community consensus builds.

²⁸ See Emory Law School: Visiting Scholar Program, *supra* note 7.

²⁹ See Shalleck, *supra* note 2, at 9.

The Feminism and Legal Theory Project Archives at Emory

The FLT Project Archive at Emory is a tremendous resource for feminist research³⁰ – it is an evolving record of the feminist thought and critique that twenty-three years of the Project has brought to the profession of law and to the next generation of legal professionals.³¹ It is also an archive of analysis of women’s subordination in law, for the purpose of law reform toward a more gender-equal society. The archives exist to organize and preserve unfiltered records of the collaborative development of decades of feminist legal theory so that future generations of feminist scholars will have access to these materials that are relevant to their work and to women’s lives.

Preserved in the archives are materials from over fifty-three different FLT Project workshops and conferences, as well as numerous other events, and excitingly, several workshop topics have been revisited multiple times spanning decades. The majority of the archived workshop papers are drafts, many of which were later revised and published in law reviews or anthologies.³² In addition to the scholarship in print, the archives include many audio CDs of the presentations at earlier workshops and DVDs of the presentations at most workshops from 1992 to the present. Contents of the FLT Project

³⁰ Upon arriving at Emory in 2004, Professor Fineman entrusted Emory University Libraries with the care of the Feminism and Legal Theory Project Archives. Note that at Emory is the first time these materials have been made accessible to students and other scholars.

³¹ The FLT Project Archive also traces the early thought and careers of many now celebrated feminist legal theorists including Patricia Williams, Robin West, Lucie White, Mary Jane Mossman, Linda McClain, and Dorothy Roberts.

³² Currently, five FLT Project anthologies have been published and two are forthcoming: *At the Boundaries of Law: Feminism and Legal Theory* (1991); *The Public Nature of Private Violence* (1994); *Mothers in Law* (1995); *Feminism, Media, and the Law* (1997); *Feminism Confronts Homo Economicus* (2005); *What’s Right for Children?* (forthcoming); and *Strange Bedfellows* (forthcoming).

Archive can be browsed on the Project's website,³³ however, to access the materials in the archive it is currently necessary to come into the Law Library.³⁴

I hope knowing more about Martha Fineman's work with the Feminism and Legal Theory Project will inspire even more members of the Emory community to join in working for the feminist transformation of society that the FLT Project helps to advance.

³³ Emory Law School: Archives, <http://www.law.emory.edu/research-scholarship/feminism-legal-theory/archives.html> (last visited Sept. 30, 2007).

³⁴ There are plans to digitize all contents of the FLT Project Archive for preservation, as well as, with permission of course, to make various materials accessible electronically to a limited extent.