

NOTES ON *THE NEUTERED MOTHER*, OR TOWARD A QUEER SOCIALIST MATRIARCHY

Teemu Ruskola*

This tribute to Martha Fineman focuses on a key work that, to me, occupies one of the highest points in the intellectual arc of her career, namely her pathbreaking 1995 book, *The Neutered Mother, the Sexual Family and Other Twentieth Century Tragedies*. Below, I read it from the perspective of queer theory.¹ I first consider its unqualified demand for the abolition of marriage, and then turn to its commitment to refocusing family law on the figure of the Mother—a predecessor of the vulnerable subject, a theoretical construct that has come to dominate Fineman’s more recent work.²

Before proceeding, let me comment briefly on Martha Fineman’s status as a theorist—a qualification that is necessary, in the first place, even to consider her status as a queer theorist. In *The Neutered Mother*, Fineman builds her argument from an examination of law, history, and politics, yet the book soars far above and beyond the usual policy prescriptions that accompany works of legal scholarship. To be sure, her call for the abolition of marriage, for example, could be considered a policy recommendation. Yet Fineman is not naïve: she knows that the idea has zero likelihood of success in the current political climate. Significantly, though, she believes that envisioning what the world would look like *sans* state-sanctioned marriage is a vitally important intellectual project. She states the task of what she calls “utopian theory” with characteristic simplicity and clarity:

The production of practical suggestions is not the only justification for theory Sometimes re-visioning, even if utopian, is valuable simply because it forces us to look at old relationships in new lights and thereby understand some things about how we perceive the natural or normal, as well as how we create the deviant.³

* Jonas Robitscher Professor of Law, Emory Law School. I want to thank the editors, David L. Eng, and Debbie Dinner for their comments on this Essay.

¹ For Fineman’s personal effort to stage a conversation between queer theory and feminist legal theory, see Martha Albertson Fineman, *Introduction: Feminist and Queer Legal Theory*, in *FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS* 1–6 (Martha Fineman et al. eds., 2009).

² See, e.g., Martha Albertson Fineman, *The Vulnerable Subject: Anchoring Equality in the Human Condition*, 20 *YALE J. L. & FEMINISM* 1 (2008).

³ MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* 232 (1995).

Methodologically, Fineman's *The Neutered Mother* and queer theory share a commitment to utopian theorizing and the deconstruction of norms.⁴

I. ABOLITION OF MARRIAGE, OR QUEER SOCIALISM?

The most obvious way to read *The Neutered Mother* as a contribution to queer theory is to focus on its unequivocal and unqualified call for the abolition of marriage—a cause once embraced by queer politics, albeit in the last millennium.⁵ Although she does not state her case in quite these terms, Fineman objects to marriage essentially as a form of state-sponsored discrimination against single people—an institutionalized social structure that delivers ideological and material subsidies, through law and culture, to men and women who choose to marry.⁶

More specifically, Fineman objects to the fact that the privileged status of our contemporary conception of marriage is premised on the notion that romantic sexual affiliation between a man and a woman provides the essential foundation for family. She aptly calls this notion “the sexual family,” an understanding that excludes other forms of intimacy as less deserving of state protection and support.⁷ (After *Obergefell v. Hodges*, the right to marry has of course been extended to same-sex couples, but that has not altered the basic logic of marriage as a privileged sexual coupling.⁸) Although Fineman's critique of the sexual family might be read as anti-sex—or at least not affirmatively “sex-positive”—her position is very clear.⁹ By telling the state to get out of the business of marriage, Fineman wants to level the playing field for all manner of sexual affiliations, regardless of the gender or the number of parties, for example, that such arrangements may entail. As she observes emphatically, in a post-marriage world *all* voluntary adult sexual interactions “would be permitted—nothing prohibited, nothing privileged.”¹⁰ Fineman's argument

⁴ Cf. JOSÉ ESTEBAN MUÑOZ, *CRUISING UTOPIA: THE THEN AND THERE OF QUEER FUTURITY* (2009); MICHAEL WARNER, *THE TROUBLE WITH NORMAL: SEX, POLITICS, AND THE ETHICS OF QUEER LIFE* (1999).

⁵ See, for example, WARNER, *supra* note 4, at 88–89, for a discussion of queer critiques of marriage.

⁶ See FINEMAN, *supra* note 3, at 226–27.

⁷ See *id.* at 1–2.

⁸ *Obergefell v. Hodges*, 135 S. Ct. 2584, 2607–08 (2015).

⁹ Cf. Katherine Franke, *Theorizing Yes: An Essay on Law, Feminism, and Desire*, 101 COLUM. L. REV. 181, 203 (2001) (“The dependency or danger stance taken by most legal feminists when it comes to questions of sexuality is a testament to the persuasive power of the structural materialism of theorists such as Catherine Mackinnon and Martha Fineman.”). For an emphatic endorsement of *The Neutered Mother* as a vital text for sexual minorities, see Nancy D. Polikoff, *Why Lesbians and Gay Men Should Read Martha Fineman*, 8 AM. U. J. GENDER SOC. POL'Y & L. 167, 172–74 (2000).

¹⁰ FINEMAN, *supra* note 3, at 229–30.

against marriage and the sexual family it grounds is, in short, *anti-state*—not anti-sex. In fact, it is explicitly in favor of sex and its deregulation: to liberate sex, we must untie it from wedlock. “Instead, the interactions of female and male sexual affiliates would be governed by the same rules that regulate other interactions in our society—specifically those of contract and property, as well as tort and criminal law.”¹¹ This opens the door to an extraordinarily wide range of sexual, as well as non-sexual, intimacies. Indeed, in considering the parameters of “alternative” families, the introduction to *The Neutered Mother* asks pointedly, “Is it even necessary to have more than one person for the label to apply?”¹²

That Fineman’s call for the deregulation of sexual intimacies comes with no qualifications—with the exception of being limited to consenting adults—makes it queer indeed, freeing the social space to be occupied by “families we choose,” to borrow the title of Kath Weston’s pathbreaking ethnography of queer kinship.¹³ Indeed, these families can range anywhere from a single person to plural sexual groupings to non-sexual intimacies. Recalling this argument some two decades later is poignant. Whatever might have been queer about gay politics in 1995 or earlier has all but disappeared. A movement launched in the Stonewall era in the name of gay liberation has been transformed beyond recognition. Instead of seeking *freedom*, at some point the movement made a decisive turn toward *equality*, with “sexual liberation” turning into “marriage equality.”¹⁴ Rather than seeking to reimagine society, the movement took up the fight for the right to join the military and to get married, thereby assimilating into two of the most conservative institutions in society.

Same-sex marriage is undoubtedly an important achievement in terms of equality, given the numerous privileges it affords to couples who qualify. However, although equality is not a meaningless value, it is a limited one. Whatever else matrimony means, it emphatically does *not* signify sexual liberation. The AIDS crisis, which fueled queer rage and propelled utopian longing for radical futures in the 1980s and 1990s, gave way to long-term drug treatments, increased social acceptance of homosexuality, and neoliberalism. Same-sex marriage in turn is the political offspring of the perfect union of the sexual family and neoliberalism. The former is founded on a sexual contract,

¹¹ *Id.* at 229.

¹² *Id.* at 4.

¹³ KATH WESTON, *FAMILIES WE CHOOSE: LESBIANS, GAYS, KINSHIP* (1991).

¹⁴ It is no accident that the logo of the Human Rights Campaign (the leading LGBT rights organization in the United States), unveiled in 1995, is an equal sign. See *Our Logo*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/hrc-story/about-our-logo> (last visited Apr. 8, 2018).

while the latter finds no value higher than the pursuit of the satisfaction of private desire. From these premises, same-sex marriage follows as a matter of logic.

To be sure, this logic is more political than analytic. It may well be that marriage looms so large in our political imagination that it is a right “we cannot not want.”¹⁵ However, it is significant that equality is ultimately an abstract value. The formal condition of “marriage equality” can be achieved through two diametrically opposed strategies: by opening marriage to all, or by abolishing it for everyone. In fact, marriage is by definition an exclusive institution, and it remains so even after same-sex marriage gained legal recognition. Its most notable continuing exclusions are based on the number of spouses and rules of consanguinity—there is no “marriage equality” for polygamists or incestuous couples. Abolition of marriage, in contrast, would result in instant and perfect equality for *everyone*: no marriage for anyone. Nevertheless, although the formal logic of equality would thus seem to favor abolition, as a political goal “marriage equality” emphatically did not come to refer to the end of marriage, but to its expansion. The sexual family remains an ongoing, even intensifying, twenty-first century tragedy. With the assimilationist politics of homonormativity, we now witness the emergence of “the neutered queer.”¹⁶

Insofar as marriage is concerned, then, Martha Fineman is, and was back in 1995, far more queer than LGBTQ politics is today. However, although *The Neutered Mother* has revolutionary implications for the organization of sexual relations, spelling out those implications is not Fineman’s ultimate concern in the book. In her analysis, while sexual intimacy constitutes the primary ideological foundation for our conception of marriage, the sexual family that it underwrites is not just the home of sex. It is also one of the primary welfare institutions in society, one that provides a stunning amount of mostly invisible, largely gendered, and essentially unremunerated care, from household labor to caring for the young, the ill, and the old (to name just a few of the most obvious categories).¹⁷ Rather than detailing the outlines for sexual freedom in a utopian world that has de-linked sex from marriage, Fineman’s main focus in *The Neutered Mother* is to consider how relations of dependency ought to be organized when they are no longer housed inside the institution of marriage.

¹⁵ See Teemu Ruskola, *Gay Rights Versus Queer Theory: What’s Left of Sodomy After Lawrence v. Texas?*, SOC. TEXT, Fall–Winter 2005, at 235, 244 (analyzing Gayatri Spivak’s characterization of rights).

¹⁶ I borrow this term from Mel Chen. See MEL Y. CHEN, ANIMACIES: BIOPOLITICS, RACIAL MATTERING, AND QUEER AFFECT 66 (2012).

¹⁷ FINEMAN, *supra* note 3, at 205, 234–35.

Does this predominant focus on the material conditions of intimacies make her approach less “queer” than her call for the abolition of marriage? Whether an analysis of economic and social dependency among intimates whose relationships may or may not be sexual in nature qualifies as a proper subject matter of queer theory is a methodological question with no single answer. Some may wish to define queer theory by what it investigates, limiting its scope to queer sexual subjects. Others—I count myself among them—may prefer to identify queer theory by its method, rather than by the sexual identities of the subjects it investigates. From this perspective, anyone or anything can be the subject or object of a queer investigation, depending on one’s approach.¹⁸ On this view, Fineman’s analysis of relations of dependency beyond marriage need not qualify as any less queer than her critique of marriage and the narrowly defined sexual family.

Indeed, the implications of the de-legalization of marriage for relations of dependence among non-sexual intimates are no less revolutionary than its consequences for sexual relations. Fineman calls for the state to provide support to *all* caretakers who are looking after intimates, whoever those intimates may be—lovers, ex-lovers, children, parents, grandparents, aunts and uncles, friends, neighbors, or anyone else.¹⁹ We might even consider this a kind of “queer socialism.” Unlike more state-centered twentieth-century socialisms, it does not make the state directly responsible for those who cannot take care of themselves. Rather, it recognizes a value in allowing intimates—various kinds of alternative “families”—to carry out this care while giving them the right to claim support from the state. This is a radical and, in my view, certainly “queer enough” vision of social organization.

II. NURTURING FATHERS, OR QUEERING THE LAW OF THE MOTHER?

But there is more to Fineman’s analysis beyond liberating sex from marriage. As far as non-sexual intimacies are concerned, she has a specific focus. While Fineman’s utopian vision suggests that even a single woman can constitute a family on her own—one no less worthy of social and political recognition than any other—the paradigmatic single woman in *The Neutered Mother* is in fact a single woman *with a child*: a mother. This makes sense insofar as Fineman wants us to focus on the economic, social, cultural, and political conditions that structure relations of dependency. There is no question that single

¹⁸ I elaborate on the distinction between definitions of queer theory based on subject matter versus method in an earlier work. Teemu Ruskola, *Raping Like a State*, 57 UCLA L. REV. 1477, 1481 (2010).

¹⁹ See, e.g., FINEMAN, *supra* note 3, at 234–35.

mothers perform more than their fair share of unremunerated caretaking labor in society.

Yet Fineman's figure of the Mother—with a capital “M”—is not simply one particular instance illustrating a more universal phenomenon of dependence (or what Fineman calls “inevitable dependency,” which in turn gives rise to “derivative dependency” as caretakers of dependents become in turn dependent on others to perform their caretaking roles).²⁰ For Fineman, what she calls “the Mother/Child dyad” is exemplary. Although she recognizes that it does not exhaust the universe of dependent relations among intimates, nonetheless she sees this vertical “natural” relationship as the paradigmatic alternative to the horizontally oriented sexual affiliation that defines marriage and the sexual family for which it provides the foundation.²¹

Fineman's commitment to the Mother–Child pair may give pause to a queer reader. Queer theory is a heterogeneous field but if there is anything that unites it, it is an extreme reluctance—even axiomatic refusal—to make gendered distinctions. Whatever else it is, the image of a Mother–Child pairing is a highly gendered vision. Nonetheless, Fineman espouses it unapologetically—“even defiantly,” in her own words.²² She does not believe in the utility of gender-neutral laws in a world that still operates on the basis of gendered social norms. If labor markets pay men more than women, formal parental equality means that mothers are more likely to be caring for children at home than fathers are, and therefore less likely to be compensated for their contributions to the reproduction of social and cultural values.²³

However, Fineman's commitment to motherhood is not grounded only in sociological or economic fact. It is ultimately epistemological. Although she is evidently keen to attend to “real” mothers' needs, in her usage “Mother” does not refer only to women who are in fact mothers: “I realize there are mothers who abuse, neglect, and abandon children. I realize that there are women who do not want to mother and men who do,” she states forthrightly.²⁴ Ultimately, she offers Mother as a metaphor, a symbol indexing an ethical ideal.²⁵ What motivates her is the demeaned status of Mother in legal and cultural discourses. She observes that in the fields of psychoanalysis, anthropology, and policy

²⁰ *Id.* at 8.

²¹ *See id.* at 5.

²² *Id.* at 234.

²³ *Id.* at 37–38.

²⁴ *Id.* at 234.

²⁵ *See id.* at 234–35.

making (among others), motherhood is a “colonized category”: all manner of social, psychological, and cultural ills are routinely attributed to bad, inadequate, and deviant mothers.²⁶ Fineman’s mission is to de-colonize motherhood as a concept, to “re-claim” it as a symbol for an “ethical practice” that “embod[ies] an ideal of social ‘goodness.’”²⁷

Ethically appealing as this may be, it does bear the risk of invoking essentialist stereotypes of cultural feminism. Paradoxically, however, it is precisely because Mother *is* a gendered symbol that it has potentially unsettling implications for how we think about both parenting and dependency. In Fineman’s view, men, too, “can and should be Mothers.”²⁸ “In fact, if men are interested in acquiring legal rights of access to children (or other dependents),” she maintains that “they *must* be Mothers in the stereotypical nurturing sense of that term—that is, engaged in caretaking.”²⁹ In this vision, a father, properly construed, is a *male* Mother. The transfiguration of the gender-neutral notion of parenthood into an omnibus category of Motherhood thus carries potentially queer implications. Is a nurturing father a queer Mother? What kind of rearrangement of gender does he represent?

In the end, Fineman’s vision of Motherhood is more extensive still. Mother does not stand only for parenthood as such, subsuming fathers as well as mothers. It also stands for caretaking more generally, with the Mother–Child dyad as a metaphor for *all* relations of dependency among intimates. After Fineman has de-colonized her, the newly emancipated Mother sets out, it seems, to lay claim to all kinds of dependency in *her* name: “Mothering” becomes shorthand for taking care of “the ill, the elderly, the disabled, as well as actual children.”³⁰ The Law of the Father is succeeded by the Law of the Mother.

But again, insofar as this Mother is symbolically female, she has the potential to cause gender trouble. Fineman is openly hostile to social contract theories of the state.³¹ While contractarians start from a paranoid conception of human subjectivity, *The Neutered Mother* offers a benevolent—we might say “matriarchal”—conception of state power. The structure of politics need not—must not—be decreed by a Hobbesian state of nature, with the state standing as a prison guard making sure that the citizen-inmates do not kill each other, as

²⁶ *See id.* at 38.

²⁷ *Id.* at 235. Or as she states elsewhere: “To be a nurturing father is to concede the importance of mothering.” *Id.* at 205.

²⁸ *Id.* at 234.

²⁹ *Id.* at 234–35.

³⁰ *Id.* at 235.

³¹ *See id.* at 235–36.

they presumably would unless constantly policed by the institutions of the state. Instead, she envisions a society founded on taking care of others, rather than a paranoid logic of self-protection and self-interest.³² Of course, conservatives and libertarians have a ready-made name for this kind of polity: “nanny state.”³³ Although the term is meant as a pejorative, Fineman would no doubt find it appealing—with the rhetorical caveat that she would likely prefer to call it a “mommy state,” one that supports all people engaged in Mothering (read: care-taking) activities.

While I am highly suspicious of all gendered norms, I must admit that if it came to a choice between patriarchy and matriarchy, I would be more than happy to try out matriarchy for a change. But there is something about Fineman’s vision that is more complicated than simply a normative switch between male and female, exchanging patriarchy for matriarchy. Insofar as we understand the state to be male in its deep structure, turning it into Mother has complex implications. Ideologically, the nation-state has constituted the dominant political institution of our times. In the marriage of the nation to the state, the nation—understood as an essentially cultural, genealogical, and linguistic entity—is represented stereotypically as female, or Mother. In contrast, the state—viewed as an essentially political entity—is characterized by male attributes, as Father. From this perspective, transforming the state from a punishing Father to a nurturing Mother suggests a rather queer transfiguration. Reanimating the neutered Mother may not mean simply restoring her to her “original” state, an unqualified natural motherhood.

There is something of a contradiction, then, in Fineman’s disjunctive strategies with respect to marriage and motherhood, and the socio-cultural roles the two prescribe. When it comes to marriage as an institution, she finds it beyond redemption, with only one legitimate outcome: abolition. While she finds the discourse of motherhood corrupted as well, she chooses not to abandon it but to reclaim and reform its compromised terms. Contradictions, of course, are not objectionable as such. Indeed, as I have suggested, there may be something queer in this one.

It is notable, as I suggested in the introduction to this Essay, that the vulnerable subject has lately taken up the central position for Fineman that was previously occupied by Mother. It does not seem coincidental that insofar as

³² See *supra* note 19 and accompanying text.

³³ See, e.g., DAVID BOAZ, *THE POLITICS OF FREEDOM: TAKING ON THE LEFT, THE RIGHT, AND THREATS TO OUR LIBERTIES* ix–xi, xiii, 163–73 (2008) (offering a libertarian critique of both liberal and conservative politicians for creating a “nanny state” defined by paternalistic governmental policies).

vulnerability theory grows out of disability studies and crip theory, the latter in turn draw on queer theory, training critical attention on non-normative—indeed, queer—bodies and the compulsory able-bodiedness demanded by neoliberal capitalism.³⁴ The vulnerable subject thus seems no less suited to a queer reading than the figure of Mother in Fineman's earlier work.

³⁴ See, e.g., ROBERT MCRUER, *CRIP THEORY: CULTURAL SIGNS OF QUEERNESS AND DISABILITY* (2006).