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The "F" Factor: Fineman as Method and Substance

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THE "F" FACTOR: FINEMAN AS METHOD AND SUBSTANCE

Review of *Feminist and Queer Legal Theory: Intimate Encounters, Uncomfortable Conversations*, edited by Martha Albertson Fineman, Jack E. Jackson, and Adam P. Romero (2009)

Nancy E. Dowd[*]

Martha Fineman's latest volume continues her long tradition of challenging, unraveling, and moving forward the dialogue of equality and justice.[1] In this latest volume to emerge from the Feminism and Legal Theory Project (FLTP), Fineman, together with her co-editors, Jack Jackson and Adam Romero, has gathered an extraordinary group of scholars who explore the intersections, differences, and synergies between feminist and queer legal theory. Not only does this volume provide a comprehensive introduction and sophisticated exposure to cutting-edge issues within and between these two theoretical schools of thought, but it also exposes Fineman's method of "uncomfortable conversations" at its best. With her sustained support of interdisciplinary work, her nurturing of scholars, and the platform she has provided for intellectual and practical work through the FLTP, Fineman has contributed enormously to critical theory, strategy, and action. Fineman, however, has made more than this methodological contribution. Her critique of foundational elements of law, including marriage, individualism, dependency, and relationship, has had a profound substantive impact, as

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[1] Martha Albertson Fineman has authored four volumes. *See* MARTHA ALBERTSON FINEMAN, THE AUTONOMY MYTH: A THEORY OF DEPENDENCY (2004); MARTHA ALBERTSON FINEMAN, THE ILLUSION OF EQUALITY: THE RHETORIC AND REALITY OF DIVORCE REFORM (1991); MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES (1995); MARTHA ALBERTSON FINEMAN, THE VULNERABLE SUBJECT: ANCHORING EQUALITY IN THE HUMAN CONDITION (forthcoming 2010). She has also edited and contributed to seven volumes in addition to the one reviewed in this Essay. *See* AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1990); FEMINISM CONFRONTS HOMO ECONOMICUS (ECONOMIC MAN) (Martha Albertson Fineman & Terence Dougherty eds., 2005); FEMINISM, MEDIA, AND THE LAW (Martha A. Fineman & Martha T. McCluskey eds., 1997); MOTHERS IN LAW: FEMINISM AND THE LEGAL REGULATION OF MOTHERHOOD (Martha Albertson Fineman & Isabel Karpin eds., 1995); THE PUBLIC NATURE OF PRIVATE VIOLENCE (Martha Albertson Fineman & Roxanne Mykitiuk eds., 1994); TRANSCENDING THE BOUNDARIES OF LAW: GENERATIONS OF FEMINISM AND LEGAL THEORY (Martha Albertson Fineman ed., 2010); WHAT IS RIGHT FOR CHILDREN? THE COMPETING PARADIGMS OF RELIGION AND HUMAN RIGHTS (Martha Albertson Fineman & Karen Worthington eds., 2009).

evidenced by the various interpretations of her work within this volume. This too is the "F" factor, particularly for feminist legal theory but more broadly for critical legal theory. In this review, I expose the particular impact of the "F" factor by first describing the contributions of this volume and then exploring the methodological and substantive aspects of the "F" factor.

I. FEMINIST AND QUEER LEGAL THEORY

This volume provides an unparalleled introduction to the connections and differences between feminist and queer legal theory. Part I encompasses foundational pieces that frame the dialogue, setting out core pieces and positions, particularly queer theory's challenge to feminist theory and the idea of "taking a break" or theorizing without reference to feminism.[2] It begins with a piece by Janet/Ian Halley, which remains a focus of many of the remaining chapters.[3] Halley suggests that queer theorists "[t]ake a [b]reak from [f]eminism."[4] While Halley does not advocate a complete separation of the two fields, she does argue for the value of divergence over congruence on the issue of sexuality.[5] In particular, she sees queer theory's position on sexuality as sex-affirmative, or what she describes as "a rich brew of pro-gay, sex liberationist, gay-male, lesbian, bisexual, transgender, and sex-practice-based sex-radical, sex-positive, anti-male/female model, anti-cultural-feminist political engagements, some more postmodernizing than others, some feminist, others not."[6] She describes queer theory not only as sex-affirmative but also as irrationalist (valuing contradiction, paradox, and crisis, affirming practices but not identities, and politically engaging on the left) and then disavows her own conclusion as doing exactly what queer theory is not, by naming what it is.[7]

Katherine Franke's chapter reinforces the critique of feminists who focus on danger and dependency without also considering desire and pleasure.[8] As

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[2] *Part One: Queer with or Without Feminist Legal Theory?*, *in* FEMINIST AND QUEER LEGAL THEORY: INTIMATE ENCOUNTERS, UNCOMFORTABLE CONVERSATIONS 7, 7–112 (Martha Albertson Fineman et al. eds., 2009) [hereinafter FEMINIST AND QUEER LEGAL THEORY].

[3] Janet Halley, *sub nom.* Ian Halley, *Queer Theory by Men*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 9–28.

[4] *Id.* at 9.

[5] *Id.* at 11.

[6] *Id.* at 15.

[7] *Id.* at 28 n.3 ("And indeed, that is how I saw it in 2004, when I wrote the article from which this chapter is abstracted. I now regard this Conclusion to be a profound error in intellectual and political strategy.").

[8] Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 29–44.

Franke asserts, feminists have worked to give women the right to say no, but they have not focused on what it means to say yes. She is also critical of feminists' disproportionate scrutiny of mothers, which she labels as "repronormative."[9] Martha Fineman might be read as both supporting and departing from Franke. Fineman's chapter summarizes her critique of the legal focus on and support of the "sexual family"—adult relationships, particularly marriage—instead of caretaking relationships, especially those of parents and children.[10] Without support for caretaking, patterns of care continue to be replicated in inegalitarian ways.[11] The sexual family as reproduced in law is hardly one that either feminists or queer theorists would embrace, even if they would reject it for different reasons, but Fineman argues that it is simply the wrong place for social and legal support.

Vicki Schultz's chapter argues for de-sexualization of the doctrine of sexual harassment in the workplace, and instead focusing on how harassment perpetuates sex segregation in jobs.[12] Schultz sees harm in current sexual harassment policies that clamp down or outlaw harmless sexuality in the workplace, but also under-enforce or too narrowly conceptualize sexual harassment with respect to gender policing of jobs.

Finally, Frank Valdes provides a comprehensive history of gay and lesbian rights and the evolution of queer theory.[13] Initially, queer theory scholarship focused on exposing how heterosexism operates in law and culture.[14] The second stage, with the emergence of queer legal theory, began to imagine and explore intersectionality and sexual orientation and moved from discrimination against sexual minorities to subordination of multiple identity groups.[15] Valdes is particularly concerned with the interrelationship between queer theory and intersectionality, using as his example race and color. He exhorts queer theory to be multiply inclusive and makes a passionate plea for

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[9] *Id.* at 30.

[10] Martha Albertson Fineman, *The Sexual Family*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 45–63.

[11] *Id.* at 62.

[12] Vicki Schultz, *The Sanitized Workplace Revisited*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 65–90.

[13] Francisco Valdes, *Queering Sexual Orientation: A Call for Theory as Praxis*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 91–112.

[14] *Id.* at 91.

[15] *Id.* at 92.

multidimensional analysis.[16] Valdes is the quintessential spokesperson for making second-stage scholarship anti-essentialist.

With these foundational pieces in place, Part II of the volume is about tensions, arguments, and hard conversations.[17] Martha McCluskey explores different takes on autonomy by feminists and queer theorists, as well as significant differences in views on the role of the state and morality-based positions.[18] Tucker Culbertson and Jack Jackson critique the positions of Halley and Schultz on feminism and argue in favor of collaboration rather than separation.[19] Mary Ann Case suggests that workplaces would benefit from a reasonable "incest taboo in the workplace" that would operate socially, rather than legally, to discourage or prevent relationships that limit equality of opportunity.[20] Her view would limit expression of sexuality and particular relationships in the workplace.

Mary Becker critiques those who are critical of feminists' emphasis on care, arguing that if we are to help real women, we must be concerned about care and how it shapes women's lives.[21] Finally, Adam Romero analyzes Halley's call to "take a break from feminism,"[22] urging against this view.[23] Romero claims Halley's argument ignores the range of both feminist and queer theory and explains that there is more to be gained by using both rather than setting up an artificial opposition between the two.[24] Romero's piece reminds us that these are diverse schools of thought, without fixed boundaries and with the hallmarks of considerable internal diversity and disagreement.

Part III of the collection underscores the internal diversity of both feminism and queer theory and the capacity of both for self-reflection and challenge

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[16] *Id.* at 93–94.

[17] *Part Two: Feminist with or Without Queer Legal Theory?*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 113–98.

[18] Martha T. McCluskey, *How Queer Theory Makes Neoliberalism Sexy*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 115–34.

[19] Tucker Culbertson & Jack Jackson, *Proper Objects, Different Subjects and Juridical Horizons in Radical Legal Critique*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 135–52.

[20] Mary Anne Case, *A Few Words in Favor of Cultivating an Incest Taboo in the Workplace*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 153–58.

[21] Mary Becker, *Care and Feminists*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 159–77.

[22] Janet Halley, *sub nom.* Ian Halley, *supra* note 3, at 9–28.

[23] Adam P. Romero, *Methodological Descriptions: "Feminist" and "Queer" Legal Theories*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 179–98.

[24] *See id.* at 197 ("Leaving discussion and debate over feminist and queer assumptions, conceptions, and aspirations perpetually unlocked and unfinished, the focus on method makes for and produces a more dynamic, mobile, transformative, responsive, informed, complex, and humble feminist and queer politics.").

from within.[25] This Part also considers the diversity that Valdes calls for in his chapter. It demonstrates how hierarchies and assumptions can be present even in progressive critique and underscores the importance of having multiple approaches to expose how subordination works. Kenji Yoshino discusses the erasure of bisexuality and the tendency to reinscribe a gay/straight binary, exploring why that tendency exists.[26] Devon Carbado critiques the focus of gay rights and civil rights and the implicit separation of race and sexual orientation.[27] He argues for an "anti-homophobic intervention into black civil rights advocacy and an anti-racist intervention into gay rights advocacy."[28] He emphasizes the importance of intersectionality, not only for legal strategy but also in relation to the ways community is imagined. Paisley Currah exposes how transgender identities reveal the importance of multiplicity, highlighting the importance of supporting gender pluralism.[29] Multiple definitions are preferable as long as their existence results in more justice for transgendered people.[30] Finally, Elizabeth Emens explores polyandry—plural relationships that are egalitarian rather than hierarchical—as opposed to monogamy and questions what is served by the monogamy norm.[31] All of these pieces are critical of progressive norms in a way that challenges assumptions and expands theory.

Part IV of the collection substantively focuses on family, relationships, care, and marriage.[32] It demonstrates the value of multiplicity and of the disagreements that have emerged in conversations between and among feminists and queer theorists. Carlos Ball wonderfully reframes the meaning of autonomy and the rationale for same-sex marriage, weaving together threads from feminist and queer theory.[33] Ball's shorthand for his approach is a sign

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[25] *Part Three: Pluralizing Difference*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 199–286.

[26] Kenji Yoshino, *The Epistemic Contract of Bisexual Erasure*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 201–22.

[27] Devon W. Carbado, *Black Rights, Gay Rights, Civil Rights*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 223–44.

[28] *Id.* at 223.

[29] Paisley Currah, *The Transgender Rights Imaginary*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 245–57.

[30] *Id.* at 256–57.

[31] Elizabeth F. Emens, *Compulsory Monogamy and Polyamorous Existence*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 259–86.

[32] *Part Four: The Politics and Law of Kinship, Intimacy, and Care*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 287–372.

[33] Carlos A. Ball, *This Is Not Your Father's Autonomy: Lesbian and Gay Rights from a Feminist and Relational Perspective*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 289–312.

from a San Francisco rally in support of same-sex marriage: "MARRIAGE = FREEDOM."[34] He argues autonomy is the ability to make choices, and it exists within relationships, not outside of them.[35] Ball sees a connection between Fineman's support for true autonomy and the gay rights' movement toward the same goal, although he concedes that the two disagree about marriage as the vehicle for autonomy.[36] Ruthann Robson and Anna Marie Smith, on the other hand, would both argue against the value of marriage—Robson because the compulsion to marry offends freedom[37] and Smith because marriage is used as empty social policy against poor women.[38] Smith would further argue that gays and lesbians who support same-sex marriage should refine their position to account for the state's coercive use of marriage with respect to poor mothers (the very state they call on for recognition uses that form of recognition to oppress another group).[39] Laura Kessler adds to the conversation about care by articulating a position different from queer theorists' critique of care and feminists' defense of the value of care.[40] Using examples of racial and ethnic minorities, gay and lesbian parents, and primary caretaker fathers, Kessler argues that care has value as a transgressive, liberating practice for caretakers. Her position implicates not only the liberatory potential of care but also how care can expand the scope and meaning of family, marriage, and caregiving relationships by transformation from within.

The final Part of the collection considers practical implications of the convergences and divergences of feminist and queer theories.[41] Lara Karaian considers the role of the gay, lesbian, and feminist communities in the struggle over pornography and the use of anti-pornography rules to target gay and lesbian sexualities.[42] Similarly, Lynne Huffer reminds us that by focusing on

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[34] *Id.* at 290.

[35] *Id.* at 311.

[36] *Id.* at 308–09.

[37] Ruthann Robson, *Compulsory Matrimony*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 313–28.

[38] Anna Marie Smith, *From Paternafare to Marriage Promotion: Sexual Regulation and Welfare Reform*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 329–48.

[39] *Id.* at 347.

[40] Laura T. Kessler, *Transgressive Caregiving*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 349–72.

[41] *Part Five: Law and Strategy at the Crossroads of Feminist and Queer Legal Theories*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 373–432.

[42] Lara Karaian, *The Troubled Relationship of Feminist and Queer Legal Theory to Strategic Essentialism: Theory/Praxis, Queer Porn, and Canadian Anti-discrimination Law*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 375–94.

the affirmative response to *Lawrence*, we have lost another part of the story that relates to the unconstitutionality of sodomy statutes.[43] In the same period when *Lawrence* was litigated, a parallel case involving heterosexual sodomy between an adult man and a teenage girl was appealed to the Georgia Supreme Court.[44] Huffer points out that, in the overall celebration of *Lawrence* as liberatory, this story of subordination and victimization was lost and needs to be remembered.[45] Ann Scales reminds us that these imperfect practical results are matched by the partiality of any attempt to pick the best approach or achieve better justice and equality.[46] She therefore rejects the notion that the two theoretical camps are in opposition or that one must choose between them. Rather, as Scales sees it, the more choices, the better; the more critiques, the more those choices will be improved. Practitioners, Scales argues, regularly use whatever best works in a particular situation and then modify the approach as needed. On a practical level, they practice the contingent, multiple, never-fixed approach of both feminists and queer theorists because their aim is to achieve the goals of more justice and more equality. In essence, she argues against getting too caught up in disputes in the academy while there is work to be done on the streets. She reminds us that, ultimately, how we think must impact what we do. Kathryn Abrams's postscript carries a similar message: there are more synergies than differences, and the value is in the conversations.[47] Even more so, there are affirmative examples to be learned, and Abrams points to cultivating ingrained, deep anti-essentialism while also challenging categories in order to create coalitions. Discomfort or challenge should bring epiphany, not dissolution.

At the end of this collection, it is clear how much the conversation suggests growth and change. This is linked, I would argue, to the "F" factor, both in method and substance. It is to these two observations that I now turn.

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[43] Lynne Huffer, *Queer Victory, Feminist Defeat? Sodomy and Rape in* Lawrence v. Texas, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 411–32.

[44] *Id.*

[45] *Id.* at 412–13.

[46] Ann Scales, *Poststructuralism on Trial*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 395–410.

[47] Kathryn Abrams, *Postscript: Curious Encounters, Unpredictable Conversations*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 433–38.

II. THE "F"(INEMAN) FACTOR

The method that produced this volume is one Fineman employs as a core piece of the FLTP: "uncomfortable conversations." As Fineman states in her introduction, "The purpose for holding Uncomfortable Conversations is to bring together people with many common, but also some potentially contentious and conflicting ideas. The Conversations provides a space where these ideas can be discussed, debated, and perhaps even improved upon."[48] She also clearly sees the product of this method as a better way to challenge inequality. She claims that "there is much to be gained from negotiating the fault lines and building off the highly critical intellectual energies that the queer-feminist tensions have produced."[49]

There are several pieces, then, to this method. First is the embrace of intellectual diversity even when it reflects profound disagreement. Second is the insight that one can learn most from those with whom you most disagree. Third is that disagreement is framed as constructive difference; that is, even when there are strong differences and claims of inadequacy, insufficiency, or error, the conversation is not personal. Often the conversation is political, as differences in perspective translate into differences in strategy. The commonality in overall goals of commitment to equality and justice, however, hold together the participants in the room. Fourth, this is a method that operates from an understanding of acceptance and comfort in the intellectual space even as it encourages strong critique and discomfort. Indeed, the "uncomfortable" part of the conversation is that those who may seem like natural allies may at the same time be each other's strongest critics. The discomfort arises not simply from difference, but also frequently from disclosure of an unspoken point of view or lack of inclusion marking a flaw or need for revision. The unease, then, often comes from embarrassment and exposure of hidden perspectives directly in contradiction with the speaker's express desire for inclusiveness.

It is very challenging to create a space where this method can be implemented. Fineman's reputation for creating this space has drawn amazing groups together under the aegis of the FLTP. She has been consciously multidisciplinary and comparative, incorporating cross-cultural as well as interdisciplinary perspectives. She has also included young scholars in the

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[48] Martha Albertson Fineman, *Introduction: Feminist and Queer Legal Theory*, *in* FEMINIST AND QUEER LEGAL THEORY, *supra* note 2, at 1 n.1.

[49] *Id.* at 6.

conversation, encouraging them to be fearless and challenging and mentoring them as they develop.

Uncomfortable conversations require a special kind of listening. Mari Matsuda eloquently describes this hard listening as essential to coalition building.[50] The importance of understanding means that difficult conversations should be understood not as breaking communication but rather as encouraging it: "strong words are acts of engagement, not estrangement."[51] Listening to what may be perceived as angry or strong words, Matsuda argues, is an opportunity for growth: "I could shelter myself from conflict by leaving the conversation, but I have come to believe that the comfort we feel when we avoid hard conversations is a dangerous comfort, one that seduces us into ignorance about the experiences of others."[52]

Accordingly, Fineman has contributed a powerful method to other feminist methodologies that have transformed critical jurisprudence. Nancy Levit and Robert Verchick describe feminist method as a means of exploring the real and concrete, including," (1) unmasking patriarchy, (2) contextual reasoning and (3) consciousness raising."[53] Katharine Bartlett's classic articulation of the feminist method identified the core attributes as "asking the woman question," feminist practical reasoning, and consciousness raising.[54]

Uncomfortable conversations are critical to reminding feminists of the unexamined perspective that presumes "woman" as a category that is race-less and class-less, when in fact it can be raced and classed depending on the approach. Angela Harris's and Kimberle Crenshaw's critiques of the unexamined racial assumptions of feminists made anti-essentialism a core method of feminist theory. This requires that the "woman question" include asking whether all women are considered, whether all women are similarly situated, and whether some women subordinate other women.[55] Just as

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[50] Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183 (1991).

[51] *Id.* at 1185.

[52] *Id.* at 1185–86.

[53] NANCY LEVIT & ROBERT R.M. VERCHICK, FEMINIST LEGAL THEORY: A PRIMER 45 (2006).

[54] Katharine T. Bartlett, *Cracking Foundations as Feminist Method*, 8 AM. U. J. GENDER SOC. POL'Y & L. 31, 35 (2000); *see also* Katharine T. Bartlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 829 (1990).

[55] *See generally* Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (discussing the marginalization of black women in feminist theory and in antiracist politics); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990) (discussing

importantly, their exposure of the workings of intersectionality and multiple core-identity characteristics make it critical that gender not be seen in isolation. This is captured by Mari Matsuda's method to "ask the other question."[56] That is, it is precisely when we think an issue is about women, or about gender, that we should ask what other markers of subordination may also be present.[57]

The classic critiques of critical race theorists remind feminists that "woman" is not white. Others have noted the importance of thinking from an express class perspective so that "woman" is not viewed as middle class.[58] The insights of gay and lesbian theorists and queer theorists are part of this tradition of reminding feminists that "woman" is not straight and further to question "woman" as a stable category as well as the binary category of gay/straight.[59] All of these critiques reiterate that not all women are subordinated and that women also may subordinate other women.[60] The most recent anti-essentialist reminder comes from masculinities theory, challenging feminists to consider the gendered lives of boys and men as encompassing both privilege and subordination.[61] In addition to the woman question, the gender

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that a woman's experience can be isolated and described independent of race, class, sexual orientation, and other realities of experience).

[56] Matsuda, *supra* note 51, at 1189 (internal quotation marks omitted).

[57] *Id.* ("The way I try to understand the interconnection of all forms of subordination is through a method I call 'ask the other question.' When I see something that looks racist, I ask, "Where is the patriarchy in this?" When I see something that looks sexist, I ask, "Where is the heterosexism in this?" When I see something that looks homophobic, I ask, "Where are the class interests in this?" Working in coalition forces us to look for both the obvious and non-obvious relationships of domination, helping us to realize that no form of subordination ever stands alone.").

[58] *See, e.g.*, MARION CRAIN, *Sex Discrimination as Collective Harm*, *in* THE SEX OF CLASS: WOMEN TRANSFORMING AMERICAN LABOR 1 (Dorothy Sue Cobble ed., 2007); Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality, and Labor Speech*, 82 GEO. L.J. 1903 (1994) (exploring the interstices of feminism and unionism, where working class women struggle to survive). *See generally* Marion Crain, *Feminism, Labor, and Power*, 65 S. CAL. L. REV. 1819 (1992) (advancing an alternative vision of power and its exercise by the experience of woman-centered labor unions).

[59] *See, e.g.*, RUTHANN ROBSON, LESBIAN (OUT)LAW: SURVIVAL UNDER THE RULE OF LAW (1992).

[60] *See supra* notes 53–59.

[61] NANCY E. DOWD, THE MAN QUESTION: MALE PRIVILEGE AND SUBORDINATION (forthcoming 2010); *see also* Nancy E. Dowd, *Masculinities and Feminist Legal Theory*, 23 WIS. J.L. GENDER & SOC'Y 201, 201 (2008). For a sampling of work on masculinities, or focusing on men as subjects, see, for example, Frank Rudy Cooper, *Against Bipolar Black Masculinity: Intersectionality, Assimilation, Identity Performance, and Hierarchy*, 39 U.C. DAVIS L. REV. 853, 853 (2006); Gail Dines, *The White Man's Burden: Gonzo Pornography and the Construction of Black Masculinity*, 18 YALE J.L. & FEMINISM 283, 285 (2006); Anna Gavanas, *Domesticating Masculinity and Masculinizing Domesticity in Contemporary U.S. Fatherhood Politics*, 11 SOC. POL. 247, 247 (2004); Olga Giller, *Patriarchy on Lockdown: Deliberate Indifference and Male Prison Rape*, 10 CARDOZO WOMEN'S L.J. 659, 660 (2004); Raymond Gunn, *Inner-City "Schoolboy" Life*, 595 ANNALS AM. ACAD. POL. & SOC. SCI. 63, 63 (2004); Fadi Hanna, *Punishing Masculinity in Gay Asylum Claims*, 114 YALE L.J. 913, 913 (2005); Joan W. Howarth, *Executing White Masculinities: Learning*

question, and asking the other question,[62] masculinities theory suggests that feminists "ask the man question." Asking the man question promises to uncover a more complex portrait of gender privilege as well as expose male hierarchies and male subordination.[63] It also strongly underscores how gender privilege can be completely undermined, particularly by race.[64] That insight from masculinities scholarship underscores the insight from critical race theorists that patriarchy is racial and, thus, that race is a feminist issue.

In addition to her theoretical contribution, Fineman's substantive work has been influential across several domains of legal scholarship. It is no exaggeration to say that no legal scholar of the family has gone untouched by Fineman's work.[65] The richness of her work, and the many possible reads, are

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from Karla Faye Tucker, 81 OR. L. REV. 183, 186 (2002); Kathleen Kennedy, *Manhood and Subversion During World War I: The Cases of Eugene Debs and Alexander Berkman*, 82 N.C. L. REV. 1661, 1661 (2004); Michael Kimmel, *Integrating Men into the Curriculum*, 4 DUKE J. GENDER L. & POL'Y 181, 181 (1997); Sherene Razack, *"Outwhiting the White Guys:" Men of Colour and Peacekeeping Violence*, 71 UMKC L. REV. 331, 331 (2002); Sylvia A. Law, *Homosexuality and the Social Meaning of Gender*, 1988 WIS. L. REV. 187, 187; Nancy Levit, *Feminism for Men: Legal Ideology and the Construction of Maleness*, 43 UCLA L. REV. 1037, 1038 (1996); Nancy Levit, *Separating Equals: Educational Research and the Long-Term Consequences of Sex Segregation*, 67 GEO. WASH. L. REV. 451, 451 (1999); Christopher D. Man & John P. Cronan, *Forecasting Sexual Abuse in Prison: The Prison Subculture of Masculinity as a Backdrop for "Deliberate Indifference,"* 92 J. CRIM. L. & CRIMINOLOGY 127, 130 (2001); Marc R. Poirier, *Hastening the Kulturkampt:* Boy Scouts of America v. Dale *and the Politics of American Masculinity*, 12 L. & SEXUALITY 271, 273 (2003); Corey Rayburn, *Why Are YOU Taking Gender and the Law?: Deconstructing the Norms That Keep Men Out of the Law School's "Pink Ghetto,"* 14 HASTINGS WOMEN'S L.J. 71, 73–74 (2003); Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1272 (2004); James E. Robertson, *A Clean Heart and an Empty Head: The Supreme Court and Sexual Terrorism in Prison*, 81 N.C. L. REV. 433, 434 (2003); Michael Selmi, *Sex Discrimination in the Nineties, Seventies Style: Case Studies in the Preservation of Male Workplace Norms*, 9 EMP. RTS. & EMP. POL'Y J. 1, 1–25, 35–41 (2005); Victor L. Streib, *Gendering the Death Penalty: Countering Sex Bias in a Masculine Sanctuary*, 63 OHIO ST. L.J. 433, 433 (2002); Rachel L. Toker, *Multiple Masculinities: A New Vision for Same-Sex Harassment Law*, 34 HARV. C.R.-C.L. L. REV. 577, 579–80 (1999); Francisco Valdes, *Queers, Sissies, Dykes, and Tomboys: Deconstructing the Conflation of "Sex," "Gender," and "Sexual Orientation" in Euro-American Law and Society*, 83 CAL. L. REV. 1, 3–5 (1995); Valorie K. Vojdik, *Gender Outlaws: Challenging Masculinity in Traditionally Male Institutions*, 17 BERKELEY WOMEN'S L.J. 68, 74 (2002); Stephen H. Webb, *Defending All-Male Education: A New Cultural Moment for a Renewed Debate*, 29 FORDHAM URB. L.J. 601, 601 (2001).

[62] *See supra* note 57.

[63] *See* Dowd, *Masculinities and Feminist Legal Theory*, *supra* note 61.

[64] *See generally* Cheryl I. Harris, *Finding Sojourner's Truth: Race, Gender, and the Institution of Property*, 18 CARDOZO L. REV. 309 (1997) (arguing that black women were important symbols because they represented everything that "woman" was not, thereby defining womanhood); Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1709 (1993) (examining how whiteness, initially constructed as a form of racial identity, evolved into a form of property and how it is protected in American law and continues in current perceptions of racial identity).

[65] For a very recent sampling, see, for example, Richard S. Collier, *The Fathers' Rights Movement, Law Reform, and the New Politics of Fatherhood: Some Reflections on the UK Experience*, 20 U. FLA. J.L. & PUB.

apparent in this collection. Her critique of marriage is grounded in the conviction that the parent–child bond, especially the mother–child relationship, is far more important and worthy of state support than the heterosexual adult bond—what she calls the sexual family—which is currently privileged through marriage.[66] Even if marriage were to encompass same-sex marriage, or if the state were to support or impose responsibilities on cohabitants, Fineman would still argue that this focus on adult sexual relationships is misplaced.[67]

Fineman's articulation of dependency, through the twin concepts of inevitable dependency and derivative dependency, exposes the fault lines of family relationships that have such a profound impact on equality, family structure, child welfare, and work/family balance. The need for state support is greatest in the context of those in dependent relationships. She links the lack of public policy to the mythology of autonomy, independence, and privacy that blocks meaningful support for families.[68] This profound fault line in public policy impacts families, particularly those headed by women and those in poverty, in serious ways.

Fineman's influence on family law and feminist theory has been profound. This collection adds to that influence, and it demonstrates the lasting methodological and substantive impact of the "F" factor.

POL'Y 65, 66 (2009); Ann Laquer Estin, *Sharing Governance: Family Law in Congress and the States*, 18 CORNELL J.L. & PUB. POL'Y 267, 282 (2009); Serena Mayeri, *New E.R.A. or a New Era? Amendment Advocacy and the Reconstitution of Feminism*, 103 NW. U. L. REV. 1223, 1255 (2009); Melissa Murray, *Strange Bedfellows: Criminal Law, Family Law, and the Legal Construction of Intimate Life*, 94 IOWA L. REV. 1253, 1256 (2009); Marc R. Poirier, *Name Calling: Identifying Stigma in the "Civil Union"/"Marriage" Distinction*, 41 CONN. L. REV. 1425, 1472 (2009); Nicole Buonocore Porter, *Why Care About Caregivers? Using Communitarian Theory to Justify Protection of "Real" Workers*, 58 U. KAN. L. REV. 355, 384 (2010); Alice Ristroph & Melissa Murray, *Disestablishing the Family*, 119 YALE L.J. 1236 (2010); Elizabeth S. Scott, *Surrogacy and the Politics of Commodification*, 72 LAW & CONTEMP. PROBS. 109, 132 (2009); Anne Shalleck, *Offspring and Bodies: Dependency and Vulnerability in the Constitutional Jurisprudence of Reproductive Rights*, 77 GEO. WASH. L. REV. 1620, 1620 (2009); Julie C. Suk, *Are Gender Stereotypes Bad for Women? Rethinking Discrimination Law and Work–Family Conflict*, 110 COLUM. L. REV. 1, 47 (2010).

66 *See generally* FINEMAN, THE NEUTERED MOTHER, *supra* note 1 (arguing that a mother–child model is a more important bond in the family than the traditional relationship between husband and wife).

67 *Id.*

68 *See generally* FINEMAN, THE AUTONOMY MYTH, *supra* note 1 (arguing for a social vision of collective responsibility and dependency by exploring autonomy).