

BOOK ANNOTATIONS

FEMINISM, WOMEN AND THE LAW

Feminism is approaching the turn of the century with an eventful past. With history comes legitimacy; accordingly, women's issues and feminist scholarship have established an unprecedented presence in academic and political arenas. In particular feminism has attained a unique prominence in philosophical and legal scholarship. At the same time, the women's movement has reached a point of aesthetic distance from the apex of the struggles for women's rights in the 1960s and 1970s. This distance and the increasingly conservative political climate of the 1980s and 1990s have prompted intensive reflection on feminism's past. Both the current emphasis on feminist history and the influence of feminist perspectives in philosophical and legal scholarship are reflected in recent book publications, some of which are annotated here.

Feminist scholars are exploring and re-explaining their past in order to encourage dedication to a revived movement. Some commentators examine women's experiences in the first and second wave of feminism, which correspond roughly to the struggle for women's suffrage and to the fight for ratification of the Equal Rights Amendment, respectively.¹ Many feminist thinkers are concerned that the women's movement is stalling² and have examined the similarities of the two preceding stages to identify some of the causes of the perennial difficulties that inhibit organized advancement of feminist agendas. A consensus is emerging about some of the central impediments to sustained activism. For example, many argue that the sameness/difference framework, which defines woman by comparison to man in order to justify reform, leads to theoretical conundrums and limits effective socio-political change.³ In their attempts to understand and surmount the seemingly intractable impediments to the feminist movement, Alice Echols, Deborah Rhode, and Diana E.H. Russell critically examine the theoretical and historical dimensions of the previous periods of heightened activism and bring the lessons of the past to bear on the obstacles of the present.

On another level, some feminist scholars use the timeless visions of a fem-

1. See ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967 - 1975* (1989); DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* (1989).

2. *E.g.*, DIANA E.H. RUSSELL, *RAPE IN MARRIAGE* (Revised Ed. 1990); ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967-1975* (1989); MARY ANN GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW* (1987).

3. *See, e.g.*, ROSI BRAIDOTTI, *PATTERNS OF DISSONANCE: A STUDY OF WOMEN IN CONTEMPORARY PHILOSOPHY* (1991); DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* (1989).

inist future to evaluate the shortcomings of the present.⁴ The feminist method of examining the experiences of women epitomizes nontraditional scholarship and interdisciplinary discourse.⁵ Recent feminist scholarship has continually grappled with issues of hierarchy, hegemony, multiculturalism, and diversity. The central issues around which the women's movement has organized (most notably reproductive freedom, racial justice, lesbian and gay rights, and poverty) are unquestionably some of the most pressing moral and legal issues of our time. Scholars like Drucilla Cornell and Rosi Braidotti continue to articulate and to explore visions of a feminist world. And work by Mary Ann Glendon and the essays collected by Martha Fineman and Nancy Sweet Thomadsen describe the dissonance and struggle between feminist visions and our world.

Michael Paul Bowen
Book Review and Solicitation Editor

JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW. By Deborah L. Rhode. Cambridge, Massachusetts: Harvard University Press, 1989. Pp. 428. N.p.

Our understanding of the past informs our experience of the present: *Justice and Gender* reexamines the legacy of the women's movement and brings an oft-forgotten past to bear on our world. History and the tradition of law have often exclusively and always predominately been male. In recounting the struggles of women within law's framework, Deborah Rhode, Professor of Law and Director of the Institute for Research on Women and Gender at Stanford University, locates, names, and preserves a women's legal history. Rhode starts with the premise that the ability to imagine richer concepts of justice and gender depends on a suitable appreciation of where we have been and how we got to where we are. Tracing women's demand for equality through changing historical, social and cultural contexts, she argues that the equal treatment/special treatment dilemma is essentially misplaced. She views the "difference" framework used by courts in deciding gender issues as inadequate and offers an alternative analysis, termed gender "disadvantage," that emphasizes the practical consequences of affording legal recognition to gender differences.

The book is divided into three sections. Part one presents an account of the debate over natural roles and natural rights which emerged from the background of nineteenth century domestic and legal ideology. Part two leads the

4. See, e.g., ROSI BRAIDOTTI, PATTERNS OF DISSONANCE: A STUDY OF WOMEN IN CONTEMPORARY PHILOSOPHY (1991); DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW (1991).

5. See, e.g., DRUCILLA CORNELL, BEYOND ACCOMMODATION: ETHICAL FEMINISM, DECONSTRUCTION, AND THE LAW (1991); AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY (Martha A. Fineman and Nancy S. Thomadsen eds. 1991).

reader through a history of the struggle over the Equal Rights Amendment and the evolution of sex-discrimination doctrine. The final part chronicles the relationships between legal doctrine and various social issues that involve gender: family policy, employment, violence against women, sexual identity, association rights and reproductive freedom.

The central dilemma that plagues modern feminist agendas — whether to talk in terms of “sameness” or “difference” in seeking to remedy gender inequality — has deep roots in the history of women. Rhode looks critically at the forces which created the early women’s movement and postulates explanations for the divisions which eventually stalled the first wave of feminism. Her account of the early women’s movement presents the suffragists struggling with many of the same theoretical and practical dilemmas as did proponents of the Equal Rights Amendment: Is an appeal for an abstract notion of “rights” necessarily an advance for women’s position in society? How do activist groups create and maintain mainstream support for their agendas without diluting their power to challenge an oppressive majority? How does a movement encompass the varying perspectives of its constituents? Can the paradigm of gender ever be viewed outside the refractions of class, race, and ethnicity? In discussing the shortcomings of the early women’s movement, Rhode includes a thoughtful analysis of race and class influences on what is too often considered a universal women’s struggle.

Rhode presents an analysis of the movement for women’s equality that developed in the late 1960s. She neatly draws parallels between the theoretical and political dilemmas of the suffragists and those encountered by women promoting the ERA ratification. By juxtaposing the historical contexts of these two movements, Rhode demonstrates the longevity and resilience of the difficulties created by a sameness/difference analysis. Rhode argues that any analysis premised on either emphasizing women’s sameness or recognizing women’s special characteristics as compared to men is inherently flawed: such an analysis necessarily reaffirms a male standard.

In her discussion of the evolution of sex-discrimination doctrine, Rhode spells out the inevitable limitations of the traditional equal-protection analysis, which is based on the Aristotelian assumption that equality means equal treatment for those similarly situated. The traditional analysis countenances different treatment for those who are considered to be different for “legitimate” reasons; but it “provides no standards for determining what differences are relevant and what counts as legitimate.” This shortcoming of the traditional analysis is patent and continues to hinder the development of sensible and just legal doctrines. As Rhode’s discussion of Supreme Court decisions like *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1970), and *Los Angeles Dep’t of Water & Power v. Manhart*, 435 U.S. 702 (1978), points out, the Aristotelian concept of equality is useless in determining what “equal treatment” means with regard to women in the workplace. Even under varied state statutory and constitutional schemes, judicial decisions often seem to miss the real dis-

pute, and "no systematic relation between result, rationale, and formal standard emerges."

Turning to specific laws and legal doctrines in part three, Rhode reveals the contradictions between jurisprudential treatments of women as "different" (in cases of pregnancy and childbirth) or "the same" (in cases of divorce and child-rearing) as their male counterparts. Rhode elaborates her critique of the sameness/difference analysis through an examination of contemporary legal issues. By emphasizing the significance of the historical context of legal controversies, Rhode takes on an ambitious project; in her discussions of sexual harassment, prostitution, abortion, rape, employment, divorce, cohabitation, and pornography, Rhode employs an impressive variety of interdisciplinary scholarship.

Justice and Gender seeks to shift Law's gaze away from a narrow determination of "difference or sameness" and toward a more comprehensive and contextual view of the advantages and disadvantages that flow from any given legal rule. Rhode describes what the law *should* be addressing, and on the whole her critique is compelling. Her arguments in favor of her proffered alternative framework, however, are unconvincing. While she states in the introduction that the legal framework of gender difference is inadequate and should be replaced by "gender disadvantage," she does not adequately define her new framework until well into the book. More importantly, the connection between this new framework and existing legal doctrines is not made explicit.

The chapters have an unfortunate a-chronicity to them: Rhode will often double back over ground which had been briefly addressed in the previous chapter. The connections between chapters are disconcertingly rough, and the chapters read more like individual units than a coherent whole. In addition, sentences and distinctive phrases which appear early in the book are repeated throughout, detracting from their force and adding to a sense of circularity in the argument.

By endeavoring to move beyond the dichotomous distinctions often employed in legal reasoning and to forge a new understanding of sex discrimination, *Justice and Gender* makes a valuable contribution to our understanding of the past. However, given that the judiciary is essentially a precedent-bound institution with limited ability to promulgate broad social policy goals, Rhode's suggestion that courts base their analysis on whether recognition of a gender distinction will result in power disparities, economic inequities or sizeable social distinctions between men and women seems hopelessly idealistic.

Kim Hawkins

DARING TO BE BAD: RADICAL FEMINISM IN AMERICA, 1967-1975. By Alice Echols. Minneapolis, Minnesota: University of Minnesota Press, 1989. Pp. xix, 416. N.p.

Daring To Be Bad is an "herstorical" account of a small but influential moment of modern American feminism: the radical wing that grew out of social change movements in the 1960s, flowered in the early 1970s, and died when faced with the growing prominence of cultural feminism in the mid-1970s. Alice Echols, a visiting assistant professor of history at the University of Arizona at Tucson, draws on published and unpublished writings of the period and on personal interviews she conducted with forty-one women who were involved in the women's liberation movement. She weaves a tale specifically about feminism, and more generally about the left and its difficulty in generating sustained collective action. The story of these women and their participation in the movement is relevant not only to current theoretical concerns, but also to current attempts to bring together vastly diverse populations to address the issues we face in common.

Echols explains that a separate radical feminist movement developed in part as a response to the misogyny of the New Left. Women in Students for a Democratic Society, Student Nonviolent Coordinating Committee, the Weathermen and similar organizations began to delve into and understand their own personal experiences in a political sense just as these groups were becoming more ideologically rigid and less open to self-exploration. As the various leftist groups began to deepen their commitment to revolutionary social change, women's concerns became increasingly marginalized and ignored; women's concerns were belittled as "personal" and thus "apolitical." Frustrated by radical men's refusal to recognize women's oppression as fundamental or even as real, small groups of women began to "organize around their own oppression" and to grope toward a new understanding of subordination.

Radical women, however, had difficulty organizing. Echols details the corrosive debates between the "politicos" and the "feminists." The politicians adhered to the socialist view that "women's oppression derived from capitalism, or 'the system.'" The feminists, in contrast, argued that the struggle against male supremacy should be primary and that male domination constituted the fundamental oppression of women. Eventually the feminist viewpoint came to be more widely accepted among radical feminists, although socialism and the ongoing social change movements continued to influence the development of radical feminism.

Radical feminism rejected both the socialist view that a class-based revolution would bring about women's liberation and the liberal feminist ideal of assimilating women into the public mainstream. "Radical feminists argued that women constituted a sex-class, that relations between women and men needed to be recast in political terms, and that gender rather than class was the primary contradiction." Radical feminists "wanted to render gender irrel-

evant;” they stressed women’s and men’s similarity. The emphasis on the understanding of gender as an oppressive mechanism and the rejection of the condescension of the New Left provided a strong (albeit transient) center for radical feminism. But the reactive stance, a hyperbolic insistence on similarity, and rigid adherence to developing feminist ideology generated both theoretical and practical internal schisms.

Echols discusses the wide variety of radical feminist groups that came together in the late 1960s and early 1970s. These organizations developed widely differing views on highly divisive issues, and diverging strands of radical feminism evolved from the irreconcilable views. Echols details these tensions, around which many of the debates among radical feminists centered, and about which the radical wing of the feminist movement convulsed.

Sexuality provoked controversy for the women’s movement. Echols highlights the ironic fact that while hostile members of the news media often portrayed “women’s libbers” as lesbians, most of the prominent early radicals were heterosexual. While some early radicals, especially Kate Millet and Shulamith Firestone, felt that radical feminism’s triumph would enable women to sexually express themselves more fully and to explore lesbianism and bisexuality, others were “skittish if not hostile toward lesbianism.” Some radicals objected to lesbianism as sexual and not political, while others seemed to base their rejection in homophobic stereotypes. Betty Friedan, in fact, labeled developing interest in lesbianism the “lavender menace,” warning that it could undermine the credibility of feminism generally. Echols further reports that Friedan allegedly spearheaded a drive to keep lesbians from being elected to New York-NOW offices in 1970. In 1969, the editor of New York-NOW’s newsletter, Rita Mae Brown, was relieved of her duties after taking a strong stance against homophobia. She left NOW, and along with other lesbians who had become disaffected with the broader feminist movement’s refusal to acknowledge the input and importance of lesbians to the movement, joined the Gay Liberation Front.

In the early 1970s, lesbians made several efforts to raise feminist consciousness about heterosexism and its corrosive results, but at the same time they began to form their own groups around the intersection of radical feminism and lesbianism. Radicalesbians, the Furies and other lesbian groups worked to raise their own consciousness and to develop strategies to address the increasing polarization of gay and straight feminists. The lesbian challenge to straight feminism forced the issues of sexuality to the forefront; and although this tension gave rise to thoughtful new understandings, it also contributed to the centrifugal forces besieging radical feminism.

Some feminist groups divided over the issue of marriage. Since many early radicals were straight, some had husbands or long term relationships with men. The Feminists, a New York-based group, stipulated that no more than one-third of their members could be married or living with a man in a sexual relationship. This exclusionary policy grew out of the radical feminist

attack on marriage, which ranged from theoretical proselytizing to protests at bridal fairs and at the Marriage License Bureau. The Feminists eventually hardened their position to exclude all married women from their group, a policy that other feminists decried as an attack on married women rather than on the institution of marriage itself.

Even more divisive and ultimately more destructive to radical feminist groups than battles over sexuality was the tension between commitment to radical democracy and the movement's need for effective leadership. Radical feminists worked hard to bring women from widely diverse class backgrounds into the movement; but this laudable strategy, when combined with the desire to foster radical equality among members of feminist groups, often backfired. The movement originally attracted a number of intelligent, well-educated and highly articulate women who naturally assumed leadership roles. However, as the ideology of equality swept radical feminism, many groups struggled to move to more participatory methods of decision making.

At its extreme the commitment to equality damaged and destroyed many feminist groups. Such noted feminist thinkers as Rita Mae Brown, Ti-Grace Atkinson, Anne Koedt and Shulamith Firestone were ejected from or chose to leave groups in which they had been heavily involved over charges of elitism and inappropriate use of power. Echols recounts painful battles over the regulation of speaking during meetings and the use of a lottery to divide tasks and to designate media spokespersons. Some groups attempted to create procedural mechanisms to facilitate equal participation. For instance, Atkinson's group adopted a system by which each woman would receive an equal number of chips at a meeting and would expend a chip each time she spoke; once her chips were gone, she would not be permitted to speak. Others tried to establish rotating contacts with the press so that the same women would not constantly be representing the movement. Women who wrote and spoke to the press often were accused of launching their careers on the back of the feminist movement. Eventually, many of the women who wrote and assumed leadership roles were frozen out of the very groups they had worked to form. Some groups then degenerated into recurrent battles over which members were privileged and which oppressed.

The radical feminism of this period was short-lived. Echols fixes its death around 1973. In addition to the divisive problems mentioned above, cultural feminism exploded onto the feminist scene at this time. Cultural feminism concentrated on valuing and exploring women's difference from men and on developing "women's culture." As the radical wing of the feminist movement disintegrated, the more introspective and less confrontational nature of cultural feminism appealed to many. Cultural feminists eschewed the tough struggle-intensive political orientation of radical feminism and turned instead to the cultivation of women's voices. Many women, burned out from the intense activism of the 1960s and early 1970s, found in cultural feminism a refuge from the public and political demands of radical feminism.

Yet, even in death, radical feminism had wide ranging effects on American society. The theoretical work of radical feminism laid the groundwork for many of the achievements of liberal feminism in the areas of child care, employment discrimination, and abortion. The organizational turmoil provided a training ground for a generation of women to develop the ability and the experience to speak on important political issues.

Echols is clearly sympathetic to the idealism of radical feminism. She admires the women who "dared to be bad" in their failures as well as in their successes. She sees the radical feminist movement not merely as historical artifact, but as a living monument with vital lessons for the current generation of feminists. She would like to recapture the passion of radical feminism and its willingness to tackle difficult political issues and combine it with today's attention to the many voices in which women speak. Most of all, she wishes to unearth a feminism that melds theoretical achievements with political accomplishments, a feminism that struggles toward concrete social change while acknowledging the complexities of the interactions among male dominance, capitalism, racism and sexual hierarchy.

In light of the impending demise of *Roe v. Wade*, the publicity over date rapes allegedly perpetrated by St. John's University lacrosse players and William Kennedy Smith, and the repudiation of Professor Anita Hill, Echols' wistful dream of a newly politicized radical feminist movement does not seem so far-fetched. As women's frustration over the current system's inability to take our concerns seriously increases, the coalescing of vital, active and strong feminist groups becomes more viable. At the same time, Echols' project of providing an explanation of the successes and failures of early radical feminism gains heightened relevance as a new generation of activists begin to consider strategies to formulate and implement broad social change.

Julie L. Novkov

RAPE IN MARRIAGE. Expanded & Revised Ed. By Diana E.H. Russell. Indianapolis, Indiana: Indiana University Press, 1990. Pp. xxxviii, 421. N.p.

When the initial edition of *Rape in Marriage* was published in 1982, marital rape was recognized as a crime in only eight states. The great wave of feminist scholarship that surged in the late seventies and early eighties, of which Russell's study was a part, led to a decade of significant reform. Today, the marital rape exemption has been repealed in forty-two states, the District of Columbia, and all federally-governed jurisdictions. Those readers too young to remember American society before the mid-seventies focus on gains still to be made and on those eight recalcitrant states, and are dissatisfied. Russell too is dissatisfied. A sociologist with a long history of involvement in the movements against gender-based violence and pornography, Russell targets this dissatisfaction as an impetus for renewed activism.

This expanded and revised edition of *Rape in Marriage* makes note of the

changes in state laws and of the difficult struggle to bring about such changes. But Russell's motivation in reissuing her study is not just to provide a list of recent statutes. Her targets this time are the generations of women old enough to remember what it was like "before" and the entrenched advocacy and protective institutions which grew out of that time. These institutions have such particularized and rigid agendas that the specific concerns of marital rape often go unaddressed, subsumed by programs which address wife-beating, substance abuse or non-marital assault. In her new introduction, Russell sharply criticizes the mentalities of self-satisfaction on the one hand, and compartmentalization on the other. She urges awareness of the continuum of inequality and abuse, hoping to incite a new movement to integrate services for women and to revitalize both legislative commitment and legal enforcement.

This introduction is, however, virtually the only new feature of the book. Although an expanded bibliography and appendices detailing state laws are included, the only new section in the body of the text, other than the introduction, is a brief discussion of these new laws. Russell's descriptions and comparisons of the various legislative approaches to the problem of marital rape are valuable. She compares the varying scope of the laws and compiles a chart for ease of reference. Yet the principal focus of the book is still the continued lack of enforcement, not the relative efficacy of differing statutes.

The bulk of Russell's study is presented without revision. Her original research, based upon an interview-type survey of married women in San Francisco, produced both hair-raising stories and consciousness-raising results. Yet there were considerable external and self-imposed constraints on the scope of her research at the time. For example, she interviewed no Chinese-American or Japanese-American women because she "was told" they would not open up to "outsiders" for cultural reasons. Russell not only fails to update any of her specific findings, which would be an admittedly difficult task considering the essentially anecdotal nature of the research, she also sees no need to bring a decade's worth of potential new insights and possibilities to her treatment of these findings, or to her overall approach to the material. In a real sense, the study is dated, an expedition back to a monolithic state of feminist discourse long since dead.

This is not to say that concerns about marital rape or about the inequality and abuse of women in general are in anyway passé. If anything, the recent gains by the conservative right, not to mention Justice Thomas's Senate confirmation hearings, show the continuing vitality of these issues. But Russell's approach may be outmoded. She takes as a given both the notion that all pornography is anti-woman and leads to violence, and the notion that any form of sexual relations not thoroughly conventional is by definition coercive. In her survey, she includes women whose husbands actually have forced sex upon them (with or without violence) and those whose husbands have tried — women who are clearly victims of rape or attempted rape. However, she also includes women who report simply that their husbands expressed a desire for

non-conventional sex, whether or not such wishes were acted upon, and in some cases where the women acceded to the activity with apparently no visible signs of distress and in the face of no manifest coercion. While such problems may fall along a continuum of male domination, they do not comprise rape.

In her passionate and personal introduction, Russell recounts her dismay when, at one of her lectures, she found herself seconded in an argument by a self-identified sado-masochist. She feared that appearing to accept the notion of consensual s-m, as well as other non-conventional relationships, would permit foes of the women's movement to return to their argument that women really want to be assaulted. The sad fact is that this assertion was never abandoned, and declaring a sexual orthodoxy only undermines the fight against marital rape by making its theoretical bases appear unsound. Perhaps more importantly, it permits men to continue to manipulate women's behavior. We cannot achieve our goals by denying our diversity.

Karen L. Mayer

PATTERNS OF DISSONANCE: A STUDY OF WOMEN IN CONTEMPORARY PHILOSOPHY. By Rosi Braidotti. Trans. Elizabeth Guild. New York, New York: Routledge, 1991. Pp. viii, 316. N.p.

Patterns of Dissonance is an unguided exploration of the void between feminist philosophy and the postmodern philosophical world. On the one hand is the effort to create a voice and a discourse which conforms to feminist conceptions of the rational; and on the other is a constructed voice which strives toward universality but which still utilizes the notion of woman as Other. Rosi Braidotti, Professor of Women's Studies at the University of Utrecht, links the crisis of rationality, which is currently laying siege to philosophy departments, with the emergence of feminist theory. Arguing against the philosophies of Michel Foucault, Jacques Derrida, and other modern philosophers, Braidotti's study emphasizes "dissonance;" the feminine is not "other," but "othernesses" the void is not "nothing," but a wondrous cacophony of differences.

At the outset, Braidotti rejects the logocentric format of thesis to conclusion, preferring a "nomadic" style of exploration. She writes that this format reflects the style of the feminist thinker: the tightrope walk between the collapse of discourse as viewed by current Continental philosophers and the freedom it creates for dissonant voices. To this end, her analysis is divided into two large parts: the deconstruction of the current notion of Other, and a positive, ambling journey through the territory of "real" feminist thought.

True to the European style, *Patterns of Dissonance* is multi-lingual, cross-cultural and interdisciplinary. Braidotti cites German, Italian, and American authors, and refers to literature, literary criticism, philosophy, psychoanalysis, and women's studies. Braidotti principally draws on a concentrated body of texts from European thought, most notably on works by Michel Foucault,

Jacques Derrida, Gilles Deleuze, Jacques Lacan, and Jean-Francois Lyotard. Braidotti begins with a short survey of the Continental Rationalist tradition, paying negligible attention to the British Empiricist/Analytic school of thought. She points out the self-indulgent nature of Continental philosophy, which she states is currently fixated on the death of the rational subject. What is most important to the Continental philosopher is not the displacement of philosophy from the center stage of intellectual thought, but that the philosopher still be allowed to perform the forensic study of the death of philosophy. As long as philosophers are permitted to continue theorizing, Braidotti contends, they will be happy, even if they are forced to analyze the death of rationality caused by the introduction of the feminine Other.

Braidotti's central objective is to analyze and to legitimate the feminist philosophy which has developed in concert with the waning of the logocentric Continental rationalists. The discourse of Reason was premised on the assumption of a universal rational subject, a notion which has now been discarded in light of the ascendancy of essentialist second wave feminism. Reason has been supplanted by the question, "Who's reasoning?" The second wave feminists, by adhering to a creed of essential identity, have shattered the pretension that a single philosophy could be relevant across genders, let alone universally.

In the meantime, Braidotti points out, feminist philosophers have taken advantage of the stalled state of Continental philosophy and have spoken during the awkward silence. The death of Reason has created an opportunity to seize the dialogue. Feminists do not, in the face of this silence, seek to speak with one unified, derivative voice, as the mistaken (postmodern) perception does. Rather, feminists seek to establish individuality and diversity within the silence. The voices are independent and hence more subversive than those which would mimic the discourse of patriarchal Rationalism.

Next, Braidotti traces the body of feminism beginning with Simone de Beauvoir, pointing out that her work pioneered the opening of the discourse to feminists and that de Beauvoir's ideas, banalities among current feminists, are the staple of the current philosophical construction of the Other. Current philosophy uses a notion of the feminine "Other" as the lethal injection into the discourse, but this "Other" is perpetually misrepresented. This notion was never meant to represent a single alien presence; rather it is a plurality of voices, focused on liberation. Braidotti argues that this is misunderstood by Continental male philosophers, who view the emergence of feminine thinking as a unified onslaught against Reason.

After discussing de Beauvoir's work, Braidotti displays a multi-hued array of feminist thinkers, with analyses of well-known thinkers like Julia Kristeva, Helene Cixous, Luce Irigaray, and Teresa de Lauretis. She dismisses the "dutiful daughters of reformist goodwill" as nostalgic, and then moves on to what she thinks is the real voice of feminist thought: feminism which defines woman rather than man. This school of thought does not focus on the iden-

tivity of women as other-than-man, but rather defines "woman" self-referentially. Braidotti relies on and refers to a wide range of feminist thought. For example, she discusses Susan Moller Okin's exploration of the political consequences of feminine exclusion from political discourse through the separation of family and civil spheres.

Though this is not an exhaustive exploration of contemporary philosophy, it is perhaps an example of poetic justice. As Braidotti points out, philosophy is often guilty of merely paying lip service to the notion of feminist thought, while actually misunderstanding and marginalizing feminist work. In the pages of *Patterns of Dissonance*, it is the philosophical establishment that loses ground to a greater understanding of the works of feminist scholars. Thus, those who have marginalized feminist discourse by insisting on a static notion of Otherness in postmodern philosophy find themselves marginalized and (mis)understood by feminist thought. This "turn about is fair play" is an enjoyable twist; it forces the reader to see how feminist thinkers have been shunted to the fringes of philosophy. The marginalization side effect of postmodern phallogocentrism does not lead radical feminists to reject Reason; rather they seek to redefine the role of the reasoner. Braidotti's treatment of feminist thought ranges broadly across time and space, looking at the roots and the growing tips of the field: the issues raised by both multicultural rejection and affirmation of essentialism.

Overall, this work serves both as a survey of the status of feminist thought in theoretical discourse and as an introduction and valuable resource for those who wish to learn more about feminist theory. It should not be relied on for a survey of what is currently referred to as philosophy or even Continental philosophy, but it does provide an interesting exploration of the (dis)placement of woman in this field.

John McCaffrey

AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY. Edited by Martha Albertson Fineman and Nancy Sweet Thomadsen. London: Routledge, 1991. Pp. xvi, 368. N.p.

As feminist legal theory enters the dark woods of the 1990s, accounts of personal experience and inquiry into the harm caused by a male-centered jurisprudence increasingly guide many feminist thinkers. Feminist legal scholarship looks toward an expanded vision of the law on a number of fronts. The problem is clearly identified: the law, as it is written and interpreted, reflects and maintains a hierarchical, male-dominated societal order. Feminist discourse generally proposes that rigid notions of property and contract be deconstructed, and that bodily integrity and self-determination be ensured for all women.

At the Boundaries of Law advances the use of personal experience to unify the voices of feminism. Based on a collection of papers presented at the Femi-

nism and Legal Theory Conference at the University of Wisconsin School of Law over the past four years, its authors are philosophers and legal scholars from the United States, Canada and Australia. *At the Boundaries of Law* is edited by Martha Albertson Fineman, Professor of Law and Director of the Feminism and Legal Theory Conference at the University of Wisconsin Law School, along with Nancy Sweet Thomadsen, a philosopher who has been a lecturer at the University of Wisconsin. The book is divided into six sections, each section heading loosely characterizing the essays that follow.

Martha Albertson Fineman is a self-described "legal scholar who has lost faith." She is concerned that feminist discourse has become muddled in abstract theory and terminology. In the introduction, Fineman predicts that the recently emerging feminist critique will set itself apart from other postmodern scholarship. She envisions, in the words of Robert Merton, a "theory of middle range," whereby personal experience bolsters feminist theoretical arguments. Her concern is the clear starting point for this collection.

The first section, entitled "Perspectives from the Personal," illustrates how the law regulates and limits the control women exercise over their bodies and their privacy. Kathleen Lahey, a professor of law at Queens University in Ontario, writes from the point of view of a "'white' lesbian survivor of various kinds of abuse." Lahey contends that current definitions of reasonableness render the behavior of many women unreasonable as a matter of law. Sexual equality will remain an impossibility as long as women's views and reactions are characterized as hysterical, quixotic, or otherwise unsound. Lahey recounts an instance of blatant sexual harassment in the workplace to demonstrate the general reluctance of male supervisors to believe the complaints of female employees. Most feign ignorance, and paint the complainant as emotionally unstable and prone to exaggeration. Lahey ultimately concludes that the terms "reasonable" and "woman" are contradictory in current law.

Lahey also speaks of the stigma attached to lesbian parenthood. The courts presume that women who are lesbians are unfit parents. Where the law would otherwise favor awarding custody to the mother, introducing the question of sexual orientation leads to intrusive questioning and often to the father's exclusive custody of the child. Heterosexuality, like reasonableness, is a normative concept which contributes to the oppression of women in our society.

Patricia Williams writes from a personal perspective as well. She examines the legacy of slavery, and how Western society continues to pay homage to its history by denying self-determination to racial and ethnic minorities. Williams' essay, "On Being the Object of Property," begins with an account of how her ancestors' enslavement shaped her own expectations as a Harvard law student. Williams, currently a professor of law at the University of Wisconsin-Madison, then discusses how the dynamics of slavery continue to inform the economic and personal interdependence of black and white culture: "I must assume, not just as history but as an ongoing psychological force,

that, in the eyes of white culture, irrationality, lack of control, and ugliness signify not just the whole slave personality, not just the whole black personality, but me." Williams' essay addresses a number of contemporary issues, including the commodification of sex and surrogacy, the fictions of monetary exchange and contractual bargaining, and health care at Harlem Hospital. She exposes the subtleties of the dominant culture which restrict opportunities for women and people of color.

The essays that focus on historical analysis explore the original justifications for the present hierarchy. The section entitled "Recasting Women's History" contains writings on the Antebellum Movement and religion, Social Feminism at the start of the Twentieth Century, and the history of Black single motherhood.

Barbara Omolade's historical study of Black single mothers finds that Black single motherhood is "both chosen by and imposed on Black women attempting to address social and economic changes." Omolade is a founder of the City College of New York's Center for Worker Education, and is widely known for her writings and lectures on feminism, racism, and the family. She compares institutionalized slavery with legal segregation, and with contemporary attempts at desegregation. Omolade argues that through each period, Black single mothers have served to maximize "profits and social control for the racial patriarch or ruling elite." The Black single mother bears witness to the tragic social death of the Black man in this society: he cannot provide for her if he is poverty-stricken, cannot protect her if he is shot down in the city streets. In order to accord fundamental respect and concern to Black women, the "traditional framework upon which we have based our person and our politic, our commitment to law and society, our experiences and learning about the family and home must change."

Other essays in this collection focus on how society's image of women is shaped almost exclusively by physical appearance and on the ways in which violence and contempt stifle women's attempts at achieving real equality. For example, in "Intimacy and Responsibility: What Lesbians Do," Claudia Card examines the social construction of sex, and what it means to have sex. Card, a professor of philosophy at the University of Wisconsin-Madison, stresses that intimacy must detach itself from reproduction if lesbian identity is to be recognized and protected in a legal system that prizes the heterosexual family unit. She suggests that women impose "on rituals and relationships meanings we can stand behind." Until the law respects the privacy and reflects the preferences of women, we should expressly disavow responsibility for those laws and institutions with which we disagree. Card's essay builds upon the general theme of this collection: if women are to change legal institutions, we must look beyond the confines of institutions created by white men and expand the law's peripheries. If legal institutions are to foster real equality, they must accommodate real diversity.

At the Boundaries of Law is a powerful collection. Each author's account

stands alone as painful and urgent testimony; together, these stories paint a poignant image of diversity and tolerance. These essays make feminist theory more accessible and compelling by demonstrating the countless ways in which oppression challenges the progress made by women.

Stefanie McArdle

ABORTION AND DIVORCE IN WESTERN LAW: AMERICAN FAILURES, EUROPEAN CHALLENGES. By Mary Ann Glendon. Cambridge, Massachusetts: Harvard University Press, 1987. Pp. 197. N.p.

After analyzing abortion and divorce law in Western Europe and comparing it to the United States, Harvard Law Professor Mary Ann Glendon concludes that the United States is morally schizophrenic. The laws on abortion and divorce in this country are more permissive than most other comparable Western nations. At the same time, however, the United States provides less in the area of maternal benefits or child care and support than any of the countries examined in Glendon's study. Glendon suggests that this schizophrenia is due in part to an American preoccupation with individual rights and liberties. The American people harbor a peculiar tolerance for unreconciled extremes; indifference to compromise, and to the interaction essential for compromise, results in moral stagnation. Thus, Glendon concludes, American abortion and divorce law is morally impoverished compared to European law.

Glendon's study intertwines two major themes about the function of law in modern society. Law has a pedagogico-moral dimension in two ways. First, it encapsulates moral ideals. Second, law is heuristic: the application of law in society should involve a dialectical movement between law's ideal and practical reality. The ideal is not tyrannically the final word; rather, it is the starting point. And compromise, which can be seen as antithetical to moral integrity, is essential for moral society and for action based on law's ideals. Glendon contends that European abortion and divorce laws reflect this pedagogico-moral dimension of law, and that consequently the European response to these issues is morally and practically superior to American law.

Glendon's book, based on a series of lectures given at Northwestern University, consists of three chapters. The first chapter examines the state of abortion law in Western European countries and applies what she considers to be the valuable aspects of this law to the United States. At the same time, Glendon provides her own analysis of the abortion debate in the United States and the problems she perceives with the current state of the law. The second chapter imitates the first in structure, but focuses instead on divorce law. The final chapter, entitled "Why the American Difference?," explains why the United States occupies the extreme end of the spectrum in both of these areas. Additionally, Glendon adds two appendices which summarize the state of

abortion law in eighteen European countries and a third appendix which provides a translation of excerpts from the French Abortion Law of 1975.

Glendon uses European abortion law to suggest alternatives to the positions taken in the American abortion debate, positions she considers "rigid and impoverished." According to Glendon, abortion law in Europe is imbued with moral compromise. In West Germany, for example, a 1975 Constitutional Court decision held that fetal life is constitutionally protected and that abortions performed without good reason violate the Constitution. However, the Court left enough room in its decision for the legislature to develop an abortion policy. Under the rules worked out by the legislature, women may obtain an abortion in the first trimester if two doctors certify that the pregnancy is causing emotional distress to the mother or that the abortion should be performed for social reasons, such as extreme poverty. In practice, this allows most women to obtain abortions in the first trimester. Similarly, in France, abortions are illegal unless the pregnant woman can show that she finds herself in "distress" as a result of the pregnancy, a determination which the woman herself makes. Glendon approves of these approaches, where the law reflects the grave moral implications of abortion and regulates the availability of abortion in theory, while maintaining the availability of abortions in practice. In this way the law stands as a point of compromise and continually informs and challenges social thinking and behavior, without totally restricting the practical needs of women.

In applying these European compromises to the United States, Glendon contends that *Roe v. Wade* should be overruled so that the state legislatures can hammer out compromise solutions along European lines. Unfortunately, Glendon does not address the crucial issues confronting the nation if *Roe* is overruled: namely, the terrible inequities that may result in different states as they work out their respective abortion policies, and the resulting plight of poor women in those states which forbid abortions entirely. In addition, while acknowledging that abortion policy would be decided by legislatures composed primarily of men, Glendon only sidesteps the point by mentioning that many men are pro-choice and many women are anti-choice and that the issue need not necessarily be viewed as one concerning only the interests of women.

A central element of Glendon's call for compromise on the abortion issue is her insistence that any abortion regulation must occur in the context of other laws relating to the welfare of women and children. She finds that, unlike the United States, where the government communicates to society that particularly poor children and their families are "undeserving of assistance," in Europe, generous maternity and child welfare laws and strict paternity and child support laws underscore the state's interest in the welfare of each child. Accordingly, abortion regulation occurs within the social welfare framework. Glendon argues that the United States, which currently lags far behind most industrialized countries with respect to the provision of family benefits and services, must follow Europe's lead and strive to "help those who bear and

raise children, not only during pregnancy but also after childbirth." Only then does she consider a stricter regulation of abortion to be "fair."

The second chapter, focusing on divorce law, is developed along similar lines. Like abortion law, according to Glendon, European divorce law is designed to send moral messages, and the law in most American jurisdictions is not so intended. As European countries modernized their divorce laws, they added "no-fault" grounds to the traditionally accepted "fault" reasons for dissolution. The "fault" grounds were retained, says Glendon, primarily to maintain the theoretical goal of family unity. In Sweden and nineteen American jurisdictions, on the other hand, "fault" grounds for dissolution have been eliminated entirely. Thus, whereas the European law again reflects a compromise between the practical need to be able to end unsatisfactory marriages and the ideal of preserving the basic social unit, the American law is premised on an individual "right" to divorce. Glendon contends that this sends the wrong moral message to Americans. Frequently, the no-fault divorce available in the United States conveys a sense of no-responsibility. American divorce law implies that marriage exists "primarily for the fulfillment of the individual spouses." When the marriage "ceases to perform this function, no one is to blame and either spouse may terminate it at will." European divorce law, on the other hand, provides a normative ideal, while in practice accommodating those who cannot live up to the ideal. This kind of compromise again allows the law to serve its educational purpose without unfair practical effects.

Acknowledging that the European divorce system is inextricably embedded in its social welfare laws, Glendon argues, as she does in the abortion chapter, that an "[i]mprovement of American divorce law must begin with a complete reorientation of the way we presently think about the rules governing the economic consequences of divorce." In the present system it is invariably children who suffer. Hence, a first step in such a reorientation should be toward a "children-first" principle, toward a system which distinguishes in a credible way between childless couples and families with children.

In her final chapter, Glendon begins by tracing the historic and philosophical sources for the contrasting conceptions of individualism resulting in such different approaches to divorce and abortion law in Europe and the United States. She continues by comparing family policies and notes, for example, that there are no American counterparts for the European cabinet ministers charged with responsibility for family affairs. She concludes that American law is designed to protect individual rights, while European law purports to encourage moral communal behavior by emphasizing moral compromise. In an attempt to loosen the unyielding positions of the abortion debate and in formulating a realistic family policy, Mary Ann Glendon suggests we look to the old world for a higher moral standard as well as for workable compromises.

Florian Miedel

