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FOREWORD

TRAVERSING 2ND AND 3RD WAVES: FEMINIST LEGAL THEORY MOVING FORWARD

Barbara Ann White*

The difference between 2nd and 3rd wave is experiential — not chronological — *Gloria Steinem*¹

As a 3rd wave feminist asking you, a 2nd wave feminist . . . where should we go from here? . . . what do you want us to accomplish? *Query to Steinem by young woman during Q & A.*

I just want you to go . . . It's up to you [what you want to accomplish . . .] — *Ms. Steinem's response.*²

When I was first asked by my colleagues to join the organizing committee for the Conference on *Feminist Legal Theory & Feminisms* here at the University of Baltimore School of Law, I did so reluctantly. As a law & economics scholar, I had published a couple of articles on the potential synergy between my field and feminist analysis for setting general social policy. “Once ‘feminist’ appears in an article, I am forever branded a feminist scholar” I thought — with some resentment towards the sexist opportunism to dismiss my work that implied. My pieces weren’t even addressing “women’s issues,” I railed silently. Adapting feminism’s analytic techniques to resolve law & economics’ failed efforts at ethical decision-making did not a feminist make! Fifteen years of scholarship in law & economics, antitrust, and international economic globalization were swept away with the flick of one word.

Little did I know then, that I was cresting on feminism’s 3rd wave.

Furthermore, I thought feminism, as a field, was finished. Though I was singularly impressed with the power of the analytic techniques

* Professor of Law, University of Baltimore School of Law. The author thanks Leigh Goodmark and Margaret Johnson for organizing this inspiring conference, Shannon Beamer and Levi Zaslow, former Editor-in-Chief and Managing Editor of the Law Forum, and especially George Perry and Hae Min, their successors, for working tirelessly to publish ten outstanding papers from this conference. Thanks go to Gloria Steinem, who, after forty years of advancing the feminist movement with grace and style, still commands a standing ovation from a diverse audience in excess of 700. Finally, thanks go to Robert Baum and as always, Irene Rosenberg, for their constant encouragement.

¹ Gloria Steinem, *Keynote Address*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

² *Id.*

feminist theorists developed to expose the peculiar brand of discrimination that women faced, I felt by the mid-90s the job was largely done. There were still practical cases of glass ceilings to break, parity of treatment in multiple spheres of life yet to address, to be sure, but as a theoretical framework, the work reached its completion.

And it was impressive! Feminist legal theory found its way into many fields — often without its name even being used. However, many feminist theorists themselves seemed no longer to emphasize that aspect of their scholarship.

“Feminism Is Dead . . . Long Live Feminism!” a title of an essay I once had in the back of my mind to write some day, with the opening sentence being “I write to praise Feminism . . . not to bury it” with the intent to point out how its principles had been now incorporated into so many areas of law that as a field itself — it had all but disappeared.

Boy! (or rather . . . Grrr!) . . . was I wrong. I hadn’t been paying attention! And it took being involved in the organizing of this conference, following the lead of my (junior) colleagues, having the good fortune to serve as liaison between this journal, the Law Forum, and the presenters causing me to be in direct and regular contact with the authors before the event and then finally, sitting through a truly uplifting conference, capped by a presentation by Gloria Steinem herself, to realize how truly wrong I was.

I hope that the readers of this Symposium Volume (issues 1 and 2) can feel through these pages how stirring the conference was — and if not, that you go to our website: <http://law.ubalt.edu/template.cfm?page=928> where the entire conference is now podcast and you can watch any part of it with a click. It won’t bring you to the exuberant interactions that went on between sessions or the excitement of the smiles and hugs that were shared. But it is the next best thing.

Even as I wrote this essay — I worried — wasn’t this a little too self-focused? “No,” a (male) colleague pointed out to me, “it is very 3rd wave”

I. 3RD WAVE FEMINISM?

I’ve been a feminist for a pretty long time but I [would have] never thought that the Pussycat Dolls™ and I shared the same basic ideology.³

Leigh Goodmark, Conference Co-Chair, in her opening remarks about questions the conference might address, was commenting on an

³ Leigh Goodmark, *Opening Remarks*, PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

assertion by McG,⁴ a Hollywood producer of the female burlesque singing group's popular (some say pornographic) reality TV show, "Pussycat Dolls Presents: The Search for the Next Doll." McG, in fending off criticisms that the Doll personas were not good role models for young girls, argued that to the contrary, the Pussycat Dolls (whose sexually-charged hit song is "Don't Cha (Wish Your Girlfriend Was Hot Like Me?!)"⁵) was "frankly, 3rd wave feminism."⁶

If the reader is a novice regarding today's feminism like me, there must be some curiosity as to what 3rd wave feminism is. Apparently, that is a question even feminist theorists are grappling with, whether they identify with the 3rd wave or not. Certainly, surveying commentary and articles such as those presented in this symposium yields a broad array of possible 3rd wave characteristics: the "next generation" feminism, the "anti-'victim' feminism," the "socio-cultural-media-focused" feminism, the "anti-essentialist" feminism, the "empowering, sexually liberating" feminism, the feminism of "autobiography" or perhaps instead, the "narcissistic" feminism, the "retrogressive" feminism, the "disintegrative" feminism and conceivably, in an unkind cut, a different, yet still, "middle-class" feminism, which moreover continues to foster "western, liberal feminist imperialism" in other parts of the world as well as at home.

This is quite a list of seemingly contradictory descriptors. But what do these 3rd wave characterizations mean? Are they inconsistent? Mutually exclusive? Or, are they integrable in some efficacious manner?

Each of the papers presented, as well as the discussions following them, focused on one or more of the above listed characteristics in some fashion. The theme that emerged — for me anyway — is that 3rd wave feminism's rise has provoked, at the very least, a dichotomization of the feminist (or "woman's") movement and potentially, a splintering of its elements so refined that the 3rd wave sensibility might lead to the movement's demise altogether.⁷ On the other hand, and more optimistically, 3rd wave analysis also seems to be setting the stage for a reintegration and, as our other Conference Co-

⁴ Joseph McGinty Nichol, executive producer of numerous popular television shows as well as director of several successful movies, including the "Charlie's Angels" films.

⁵ PUSSYCAT DOLLS, DON'T CHA (Interscope Records).

⁶ Ed Wyatt, *Dolls Clad in Feminism, and Hardly Anything Else*, N.Y. TIMES, March 5, 2008, available at <http://www.nytimes.com/2007/03/05/arts/television/05cats.html>.

⁷ Marley S. Weiss, *A la Recherche du Temps Perdu: A Second Waver's Reflections on Current Feminist Approaches to Employment Law*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

Chair, Margaret Johnson suggests in her closing remarks, a potential for moving forward.⁸

Though most readers of this symposium issue are familiar with the notion of feminist “waves,” it is interesting that as challenging as it is to define and comprehend what 3rd wave feminism is, there is pretty much a consensus today as to what constitutes 2nd wave feminism. The 2nd wave typically refers to the struggles (and considerable successes) — mostly fought during the 1960s, ‘70s, and early ‘80s — to gain economic and political gender equality as well as parity in treatment of needs unique to women just as society had already met for the needs unique to men. Equal pay with access to education, jobs, careers and the professions, entitlement to maternity leave, abortion as well as other reproductive rights, freedom from domestic violence, sexual harassment and rape, are among the major accomplishments on behalf of women identified with the 2nd wave. Notables include not only our keynote speaker, Gloria Steinem, but also Betty Friedan, Bella Abzug, Carol Gilligan, Germaine Greer, Angela Davis, Catherine MacKinnon, Alice Walker, and Andrea Dworkin.⁹

Also, largely unchallenged is what constitutes the 1st wave. Historically more often identified with the suffrage movement, the 1st wave refers to the collective action to gain women the right to vote, to contract and to own property, all as part of an overall struggle for women’s legal and political autonomy. Familiar names identified with the 1st wave include Jane Addams, Elizabeth Cady Stanton, Mary Wollstonecraft, Susan B. Anthony, and Virginia Woolf.¹⁰ Though the women’s movement’s “first wave” spanned more than a century, the movement waned some time after the first World War (and after the passage in 1920 of the 19th Amendment to the Constitution giving women the right to vote). It did not see a rebirth until nearly half a century later, two decades after the second World War, under the rubric of the “women’s liberation movement”¹¹ and now referred to by many as the 2nd wave.

The rise of 3rd wave feminism in the 1990’s would suggest that 2nd wave feminism also waned as the 1st wave did seventy years earlier. Indeed, self-identified 3rd wave feminists often characterize 2nd wave

⁸ Margaret Johnson, *Closing Remarks*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 4 – CONTEMPORARY CULTURE, CLASS AND THIRD WAVE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

⁹ See, e.g., THE SECOND WAVE: A READER IN FEMINIST THEORY (Linda Nicholson ed., 1997); RORY C. DICKER, THE HISTORY OF U.S. FEMINISM (Seal Press 2008).

¹⁰ See, e.g., DICKER, *supra* note 9; Estelle Freedman, NO TURNING BACK: THE HISTORY OF FEMINISM AND THE FUTURE OF WOMEN (Ballentine Books 2002).

¹¹ Weiss, *supra* note 7.

feminism as no longer relevant.¹² Panelist Mary Clark notes that 3rd wave feminists “assert the necessity of the [3rd wave] generation ‘pick[ing] up the reins’ from earlier feminists, suggesting not so subtly that the reins had been dropped.”¹³ But to the contrary, 2nd wave feminism still exists and still exerts its presence, as exemplified by the concerns of most of our panelists, some of whom overtly identify themselves as 2nd wave, in particular: Marley Weiss, Naomi Cahn, June Carbone, and Ann Bartow. Additionally, Chih-Chieh (Carol) Lin’s paper on Regulating Pregnancy in Taiwan actually pleads for 2nd wave feminism’s influence to gain for women in Taiwan the reproductive rights that the 2nd wave achieved for women in Western society.¹⁴

In fact, the sometimes angst-filled efforts to grapple with the meaning and implication of 3rd wave feminism seem to arise because of its co-existence with 2nd wave sensibilities.¹⁵ Distinguishing between the two too often seems to require accepting perspectives of questionable appeal while rejecting others that seem essential to grasp closely, regardless of where one locates one’s values within the spectrum of feminism as a whole.¹⁶

¹² “We no longer live in the world that feminists of the second wave faced.” CATCHING A WAVE: RECLAIMING FEMINISM FOR THE 21ST CENTURY 10 (Dicker, Rory, and Alison Piepmeier eds. Northeastern Univ. Pr. 2003). Also, see the oft-quoted assertion that for third-wave women “[t]he . . . problem is that while on a personal level feminism is everywhere, like fluoride, on a political level the movement is more like nitrogen: ubiquitous and inert.” Bridget Crawford, *Toward a Third-wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99, 113 (2007) (quoting JENNIFER BAUMGARDNER & AMY RICHARDS, MANIFESTA: YOUNG WOMEN, FEMINISM AND THE FUTURE 17-18 (2000)).

¹³ See BAUMGARDNER & RICHARD, *supra* note 12. Mary Clark & Lynda Dodd, *What Third-Wave Feminism Can (and Should) Learn from First-Wave Feminism*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

¹⁴ Chih-Chieh Lin, *Regulating Pregnancy: An Analysis from an Asian Legal Feminist with Feminist Legal Theories*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 3 – THIRD WAVE – A MOVEMENT IN ACTION, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>. The Conference organizers wish to thank Professor Eric Min-Chiuau Wang of National Chiach-Tung University, Taiwan for standing in at the last minute and presenting Professor Lin’s paper when she was not able to. See also Chih-Chieh Lin, *Regulating Pregnancy in Taiwan: An Analysis from an Asian Legal Feminist Using Feminist Legal Theories*, 39.2 U. BALT. L.F. 204 (2009).

¹⁵ Astrid Henry has a very interesting analysis that the struggles between 2nd and 3rd wave feminism is really a generational “mother-daughter” struggle. ASTRID HENRY, NOT MY MOTHER’S SISTER: GENERATIONAL CONFLICT AND THIRD WAVE FEMINISM (Bloomington: Indiana Univ. Pr., 2004). She points out that 2nd wave feminists did not have to face this struggle because their “foremothers,” the 1st wave feminists, were for the most part deceased. *Id.* at 37.

¹⁶ Compare Ann Bartow’s and Cyra Choudhury’s conversation, during PANEL 2 – THIRD WAVE FEMINIST LEGAL THEORY AND SOCIAL JUSTICE, expressing dismay with some 3rd wavers’ belief that overt sexual expression in itself gave women power and agency (and

Nevertheless, there appears to be some consensus as to 3rd wave's foundational principles even though their various manifestations and resulting implications are controversial not only among 3rd wave's critics (including many 2nd wave voices) but also within the 3rd wave movement itself (as exemplified by our own 3rd wave panelists¹⁷).

As a cohort, 3rd wavers are typically characterized as the "next generation" of feminists.¹⁸ As children of the 2nd wavers, these young women have grown up not only with a sense of entitlement because of the battles won by the 2nd wave but also as witnesses to the growing battles within the women's movement itself.

Throughout the '80s, discord and strife among the women's movement's members arose as successes gave the movement itself an increasing sense of power. While the younger generation of women were coming of age, their mothers fractionalized over questions of feminism's essence and direction. Were feminist victories primarily meeting the needs of white, middle-class, heterosexual women, insensitive to the differing concerns of women of other races, classes, and sexual orientation? Was it necessary to give up some sex, some type of sex, or all sex with men to be a good feminist?¹⁹ Was sexually seductive dress and conduct undermining women's autonomy? Ought feminism include the concerns of the transsexual and the transgendered even though they were not born biologically as women? How were the demands of family and career to be balanced? Is the "mommy track" a sell-out? What is (Western) feminism's role

would stop rape) with Bridget Crawford's observation in PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY that 3rd wavers view 2nd wavers as "mean, male-hating, restrictive feminists who think all sex with men is rape." Note that Bartow self-identifies as 2nd wave and Choudhury's paper applies a 3rd wave principle to alter the Western view of Muslim women's religion. Moreover Crawford, though technically of the 3rd wave generation, is in fact quite critical of the 3rd wave's perspective. See CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS, <http://law.ubalt.edu/template.cfm?page=928>.

¹⁷ Among whom are: Mary Clark, Linda Dodd, and Darren Rosenblum. Many of our panelists apply 3rd wave analysis even if they do not explicitly identify as 3rd wave. See Section II, *infra*.

¹⁸ Gloria Steinem disagrees with the "generational" characterization, of the 3rd wave as the opening quote of this essay suggests. Steinem asserts that the feminist exposure that came before will impact a woman's "wave" orientation now. Steinem gives the example of a young woman raised in a very cloistered community untouched by feminist concerns. Now, as a young adult approaching feminism for the first time, she focuses on those issues that were of primary concern for 2nd wave feminists. See generally Steinem, *supra* note 1.

¹⁹ Andrea Dworkin analyzes the (social) context of heterosexual intercourse as constituting a man's invasion of a woman's body thus rendering women as an inferior class. ANDREA DWORIN, INTERCOURSE 122-24 (1987). Interpreted as a statement that all heterosexual intercourse was rape (which Dworkin denied was her intent while some critics find that incredulous), INTERCOURSE helped fuel what became known as the "Sex Wars" in which different feminists held conflicting views as to how harmful to women various aspects of heterosexual relations were including pornography, "alternative sex" lifestyles such as bondage and domination, sado-masochism, and prostitution.

regarding women of different cultures who live in other parts of the world? Moreover, how should feminism respond to the growing backlash not only from certain cultural and political sectors but also from substantive groups of women who reject feminism's new roles for women in society altogether and lobby against them?

These controversies became vitriolic and polarizing over time. The differing, increasingly rigid views of "acceptable" feminist positions and conduct demanded allegiance to their particular perspective. The voices that gained the most media attention became sufficiently strident and inflexible that increasingly, by the late 80s, women and in particular younger women were less willing to identify themselves as feminists, leading to a period some characterized as post-feminism.²⁰ Furthermore, many felt (as I did — a white, middle-class woman) that feminism had pretty much accomplished what it set out to do, anyway.

However, as the daughters of the women's movement came into their own, new voices emerged that reflected the sensibilities and concerns of this younger generation and so did new paradigms of what would constitute the feminism of the future. In expressing her outrage at the sexist tenor of the Hill-Thomas hearings,²¹ twenty-two year-old Rebecca Walker (daughter of 2nd waver, Alice Walker) called for women of her generation to see that "the fight [was] far from over" and "let that move you to anger" and to rise up into political action. In her essay in *Ms. Magazine* in 1992, she most famously concluded "I am not a post-feminism feminist. I am the Third Wave."²²

The perspectives this new "Third Wave" evolved are clearly in reaction to what came before. Instead of engaging in debates as to which feminist track is the "right" track, the 3rd wave chooses to transcend those discourses by recognizing the inevitability of contradictory views. Human beings by nature are complex, each person with his or her unique set of complexities. Instead of seeking to have one group's perspective prevailing over all, the 3rd wave calls for embracing the contradictions "and creating something new and empowering from them . . . leading . . . away from divisiveness and

²⁰ Susan Faludi argued in her prize-winning book that much of the disenchantment with the women's movement in the mid to late '80s was media created, which negatively and falsely recharacterized the "liberated woman" as suffering. SUSAN FALUDI, *BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN* (Crown, 1991).

²¹ The Hill-Thomas hearings refer to the United States Senate Judiciary Committee's investigation into Professor Anita Hill's allegations of prior sexual harassment by Supreme Court nominee Clarence Thomas while he was head of the Equal Employment Opportunity Commission and her superior. See Anita Hill, Op-Ed., *The Smear This Time*, N.Y. TIMES, Oct. 2, 2007, at A25.

²² Rebecca Walker, *Becoming the Third Wave*, MS. MAGAZINE, 1992, at 39.

dualism.”²³ Out of the celebration of contradictions “grows the power to choose as an end in itself, regardless of the choice made.”²⁴ “Feminism isn’t about what choice you make but the freedom to make that choice.”²⁵ Those choices, moreover, were now to include all those traditional female activities that the 2nd wave felt women were condemned to do. It is OK to dress in a sexually attractive manner, to be fashionable, to strive for a good-looking booty, to cook, to clean, and to stay home with the kids. It is also OK to be sexual, to take pleasure in sex, to make one’s own choices about sex — about with whom, about how, about how often, and with how many or none at all. We should use our diversity in thought and feelings to build alliances, not to distill commonalities as a basis for a collective force. Seeking to build on commonality will only result in the imposition of one group’s values on another’s and create divisiveness.

Finally, the 3rd wave is identified with a focus on self-discovery in the context of culture, with media as the venue of communication of self-identity and action. Recognizing the power that mainstream media has to shape people’s lives and their view of themselves, many 3rd wavers seek to infiltrate that control by drawing the media’s attention to themselves. It is through the media that many outspoken 3rd wavers communicate that feminism is good, feminism is fun, feminism is about expressing yourself and empowering you to make your own choices. The 3rd wave movement creates a new definition of girl power in which (young) women take charge of their own means of broad communication. Some assemble ‘zines — homemade pastiches of photos, cutouts, and autobiographical writings readily photocopyable for circulation, others compose internet website blogs filled with self-examining revelations fully exposed for anyone to scrutinize and comment on. Others develop internet “TV” shows to give forum to new feminist voices and, finally and most publically, there are 3rd wavers who draw attention to the new girl power through performance, performance art, and song. And this brings us to the

²³ Jennifer Gilley, *Writings of the Third Wave: Young Feminists in Conversation*, 44 REF. & USER SERVICES Q. 187, 189 (2005) (quoting Rebecca Walker, *Introduction to TO BE REAL: TELLING THE TRUTH AND CHANGING THE FACE OF FEMINISM* xxxv (Rebecca Walker ed., Anchor Bks. 1995)). Among the works I draw on, in addition to Gilley’s adroit overview of 3rd wave feminism’s key perspectives, is the excellent article by our panelist, Bridget Crawford, *Toward a Third-wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99 (2007). Both articles not only provide insight into 3rd wave feminist framework but also serve as comprehensive reference sources of 3rd wave writings.

²⁴ Gilley, *supra* note 23.

²⁵ See Gilley, *supra* note 23 (quoting Jennifer Baumgardner & Amy Richards, *The Number One Question About Feminism*, 29 FEMINIST STUDIES 448, 450 (2003)).

Pussycat Dolls and the question of whether their raw, raunchy sexuality on public display are indeed manifestations of the 3rd wave.

The contrasting ethos and methodologies between the 2nd and 3rd waves were repeatedly brought up by our panelists in various contexts: the meaningful differences between the two, the lessons 3rd wavers should learn from the feminism(s) that came before, what the 3rd wave rejects about 2nd wave feminism, what 2nd wave feminists fear that the 3rd wave neglects or misperceives, how 3rd wave principles improve or build upon 2nd wave approaches and finally, whether 3rd wave is even relevant for a broad spectrum of women — the very same charge 3rd wavers, in their anti-essentialist²⁶ stance, level at the 2nd wave.

What I found surprising was the extent to which the panelists were critical of or pessimistic about the current state of consciousness in the women's movement. This was true whether the panelists adapted what they identified as 3rd wave principles for an improved handling of certain gender issues, or whether they identified with the 2nd or no wave and focused instead on 3rd wave's failure to come to grips with the implications of its most vocal proponents' posture.

One fairly consistent view, however, was that 3rd wave feminism claims (whether valid or not) a distinctive, and to some a rebellious, departure from the 2nd wave.

II. 3RD WAVE APPLIED

Some presenters evaluate the particular issue that has drawn their attention either in the context of 3rd wave principles or by proposing methodologies that would achieve 3rd wave goals.

Justice Carol Beier and her co-author, Larkin Walsh, discuss a recent landmark decision by the Kansas Supreme Court regarding the parentage rights of a sperm donor when an unmarried mother conceives

²⁶ Anti-essentialism “rejects that there are properties essential to women and which all women share.” Alison Stone, *Essentialism and Anti-Essentialism in Feminist Philosophy*, 1 JOURNAL OF MORAL PHILOSOPHY 135 (2004). As a political question, anti-essentialism charged 2nd wavers’ “women’s agenda” with being really a “white middle-class women’s agenda.” However, Panelist Michele Gilman points out that though 3rd wave feminism’s anti-essentialist stance avoids being dominated by a white middle-class perspective, the 3rd wave nevertheless does not offer much hope to poor women. “[Third] wave feminism . . . focuses . . . on individual self-discovery, confession, autobiography, sexual exploration and sexual freedom [Women] who are humiliated and degraded [by our government’s welfare system], who lack food, shelter and other life necessities, [women] who are fearing physical abuse are not exactly the population headed for self-sufficiency and increased dignity.” Third wave feminism offers little for these women because “3rd wave feminism . . . focuses more on cultural impact than political change.” Michele Gilman, *Poor Women and the State of Surveillance*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 3 – THIRD WAVE – A MOVEMENT IN ACTION, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Michele Estrin Gilman, *Welfare, Privacy, and Feminism*, 39.1 U. BALT. L.F. 1 (2008).

the child without intercourse.²⁷ The majority opinion (written by Justice Beier herself) rejected a biological determination of parentage rights as well as a “best interests of the child” argument to interpret, instead, its state’s statute as barring the donor’s parentage rights unless a written agreement establishes otherwise. Requiring a contract, the presenters point out, achieves the 3rd wave goal of equality of agency between the potential birth father and mother; prior to the insemination, both are in a position to come to the negotiating table with equal bargaining power.²⁸

When considering how wartime rape should be treated in International Tribunals, Teresa Phelps also advocates for equal agency between the sexes to be the guide.²⁹ For some time, radical feminists have lobbied for wartime rape’s special treatment in international criminal prosecutions. Women’s subordinated position and their dependence on men’s opinion of them is what renders rape a tool for victors to demean the vanquished. The rape victim becomes an out-cast, being no longer “any good for a man” and therefore, radical feminists argue, rape is a particularly odious wartime crime and in a class by itself. Phelps rejects that view and argues that treating wartime rape differently from any other criminal act of wartime violence (for example, torture) actually reinforces women’s subordination by putting the stigma of the crime on the victim. Treating rape instead as equal to any other wartime violent crime shifts the stigma to the perpetrator where it belongs, leaving the victims’ honor intact and thereby putting victims who are women in parity with victims who are men.³⁰

To truly protect women’s rights, international law and policy must focus on empowering women, asserts Lacy Carra. “We can’t protect women — we have to make sure that women have the tools to protect themselves.”³¹ To accomplish this, Carra recommends employing the

²⁷ Carol A. Beier & Larkin E. Walsh, *Is What We Want What We Need, and Can We Get It in Writing? The Third-Wave of Feminism Hits the Beach of Modern Parentage Presumptions*, PANEL 3 – THIRD WAVE – A MOVEMENT IN ACTION, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Carol A. Beier & Larkin E. Walsh, *Is What We Want What We Need, and Can We Get It in Writing? The Third-Wave of Feminism Hits the Beach of Modern Parentage Presumptions*, 39.1 U. BALT. L.F. 26 (2008).

²⁸ Beier & Walsh, *supra* note 27.

²⁹ Teresa Godwin Phelps, *Feminist Legal Theory in the Context of International Conflict*, PANEL 2 – THIRD WAVE FEMINIST LEGAL THEORY AND SOCIAL JUSTICE, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Teresa Godwin Phelps, *Feminist Legal Theory in the Context of International Conflict*, 39.2 U. BALT. L.F. 173 (2009).

³⁰ Phelps, *supra* note 29.

³¹ Alicia Carra, *Creating Law and Policy with Women’s Voices; Feminism in Action*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 3 – THIRD WAVE – A MOVE-

paradigms that crises hotlines found most effective in assisting an individual woman in a desperate domestic situation. Women need to be *asked* what their concerns are and need to *make the decisions* about what they want to change. Telling women what to do only perpetuates their sense of lack of agency. Asking women *how* they would like to accomplish change shifts the locus of power away from the policymaker to the women who need to assert their own control.³²

The imperativeness of asking women to determine what constitutes harm and what remedy they want is made even more salient by Cyra Akila Choudhury's critique of Western feminist attitudes towards women of the Muslim cultures. The presumption by Western feminists that they "know" Muslim women are oppressed by their religion fails to recognize that many women of Islamic faith have an alternate view of flourishing, which explains their adherence to their religion. Strictures of Islam that Western feminists find oppressive, Islamic women experience as enhancing their sexuality, personhood, and autonomy. Choudhury cites to the case of a Muslim rape victim exclaiming thank goodness she had her religion to support her through the ordeal.³³

"Embracing the contradictions" yields an unexpected turn when I. Bennet Capers uses cross-dressing to assist in defining what constitutes criminal activity.³⁴ The "destabilizing effect" of "imaginative acts of cross-dressing" a person in the course of their conduct can uncover prejudicial filters in determining criminal activity. Adult women, for example, often get off with a slap on the wrist for molesting young boys, Capers points out. Imagine, in any particular case, if we "crossed-dressed" the parties. Would an adult man get off with a slap on the wrist for molesting a young girl?³⁵ "Imaginative

MENT IN ACTION, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Alicia C. Carra, *Creating Law and Policy with Women's Voices: Feminism in Action*, 39.2 U. BALT. L.F. 181 (2009).

³² Carra also discusses applying concepts from environmental law, in particular, "sustainability," to ensure that the reforms lead to change for women that are sustainable and will not dissipate over time. See Carra, *supra* note 31.

³³ Cyra Akila Choudhury, *Empowerment or Estrangement: Liberal Feminist Legal Theory, Muslim Feminist Translations, International Human Rights, and Progressing to the Third Wave*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 2 – THIRD WAVE FEMINIST LEGAL THEORY AND SOCIAL JUSTICE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Cyra Akila Choudhury, *Empowerment or Estrangement?: Liberal Feminism's Visions of The "Progress" of Muslim Women*, 39.2 U. BALT. L.F. 153 (2009).

³⁴ I. Bennet Capers, *Cross Dressing and the Criminal*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 4 – CONTEMPORARY CULTURE, CLASS AND THIRD WAVE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

³⁵ Those of us from the older 2nd wave generation must feel a sense of relief that there is no question in Capers' mind that an adult male molesting a young girl would be severely

cross-dressing” also works the other way. Would the jurors, who apparently discussed to some extent Martha Stewart’s multi-thousand dollar handbag in the course of their deliberations as to her guilt, been influenced by it as much if Martha Stewart were “dressed as a man” and it was a similarly priced briefcase instead? Would they have even noticed it? Applying “imaginative cross-dressing” to the Kobe Bryant rape case raises the question of whether it ever would be suggested that a male victim “was asking for it” by the way he dressed. Such a suggestion was made during the Bryant case to create doubt as to Bryant’s victim’s veracity. A tabloid newspaper blared a front page headline asking “Did she really say no?” Next to the headline was an old prom-night photo of the victim following the tradition of lifting her prom dress to display the prom garter belt on her lower thigh (a custom, by the way, not only for prom night photos but wedding photos as well).³⁶

Two noted 2nd wave scholars, in accord with 3rd wave’s attention to media’s impact on the sense of identity and perception of others, explore the ramifications of two very different current cultural phenomena. Taunya Banks reflects on the growing prevalence of reality TV judges and Ann Bartow examines the proliferation of mainstream pornography. Each presenter expresses concern for the lack of public discourse and assessment of each phenomenon’s effect on self-image and cultural sensibilities.

Banks points out that the large number of reality TV judges who are women, especially minority women, relative to the number of their male counterparts is out-of-sync with the gender and racial make-up of the real-world judiciary, which is predominately male and white.³⁷ She also calls attention to how frequently these shows distort real world judges’ roles and power and the extent to which the TV judges’ assertions, decisions, and conduct lack either a legal basis or comport with courtroom decorum.³⁸ The impact on the social psyche can only

punished. This had not always been the case – a testament to the brave women (and men) who fought at great personal risk to change society’s view of those offenses.

³⁶ Capers, *supra* note 34. See generally Rebecca Traister, *Did Bonnie Fuller really betray women?*, SALON, Oct. 31, 2003, <http://dir.salon.com/story/mwt/feature/2003/10/31/kobe/index.html>. Though the article displays the front page in discussing the photo published by the tabloid *The Globe*, Salon obscures the victim’s face and name.

³⁷ Taunya Lovell Banks, *Here Comes the Judge: Women Judges in Contemporary Television Reality Court Shows*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 4 – CONTEMPORARY CULTURE, CLASS AND THIRD WAVE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Taunya Lovell Banks, *Here Comes the Judge! Gender Distortion on TV Reality Court Shows*, 39.1 U. BALT. L.F. 38 (2008).

³⁸ This disparity between TV and real-life court conduct occurs despite the fact that all the reality TV judges are themselves former members of the judiciary. See Banks, *supra* note 37.

be speculated, Banks says, but clearly it calls for much needed empirical evaluation.

Bartow explains how without any cultural assessment or policy considerations, a 1979 5th Circuit opinion, by extending for the first time copyright protection to a pornographic film, turned pornography into a multi-billion dollar industry.³⁹ Pornography now is not only readily available on cable, DVDs, in hotel rooms, and on the internet, but the companies earning the most profit from it are powerful and prominent mainstream firms one would not normally associate with pornography. (The ones Bartow mentions, I might add, are all Fortune 500 companies — most of which are in the top 50.⁴⁰) Some 3rd wave feminists, in their pro-sex stance, dismiss pornography concerns by declaring pornography as much a women's product as a man's and is capable of expressing her agency as well. Bartow points out, however, if there were sufficient demand for "feminist" pornography then, in the interest of profits, the corporations would already be making it. But, as she also points out, they aren't.

Overwhelmingly, Bartow explains the current consumer of pornography is the heterosexual male and current pornography is filled with unrestrained scenes of derogatory and often violent acts towards women, whose consent to all the acts in the films is visibly uncertain. Moreover, Bartow says, the attitudes and conduct exemplified in current pornographic images are being socially and individually internalized. For example, Playboy sells children's chairs imprinted with the Playboy Bunny insignia, inculcating the acceptability of the Playboy philosophy in the impressionable minds of the very young. Bartow also observes that, in contrast to the pro-pornography 3rd wavers, other 3rd wave young women complain that pornography is ruining sex; too often they find their images exploited sexually on the

³⁹ Mitchell Bros. Film Group v. Cinema Adult Theater, 604 F.2d 852 (1979). Mitchell brothers produced one of the first pornographic films to achieve mainstream fame, *Behind the Green Door* (1972). It, along with *Deep Throat* (1972) and the *Devil in Miss Jones* (1973), ushered in a new era of "porn chic" that made pornography acceptable mainstream entertainment. Ralph Blumenthal, *Pornochic: "Hardcore" grows fashionable-and very profitable*, N.Y. TIMES, Jan. 21, 1973, at 28.

⁴⁰ Bartow mentions GM, Google, and Yahoo as the top three pornography profit centers. Marriott International, ATT, and HBO of Time Warner are other leading providers. Playboy, in addition to its well-known soft-core pornography division, also distributes the worst of the hardcore pornography under a separate trademark, Vivid Videos. See Ann Bartow, *Copyright Law and Pornography: Reconsidering Incentives to Create and Distribute Pornography*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 4 – CONTEMPORARY CULTURE, CLASS AND THIRD WAVE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Ann Bartow, *Copyright Law and Pornography: Reconsidering Incentives to Create and Distribute Pornography*, 39.1 U. BALT. L.F. 75 (2008).

internet without their consent⁴¹ or feel pressured by their dates to participate in real life acts seen on pornographic films. Though not anti-pornography per se, Bartow asserts the need for public conversation about pornography's impact on the individual and on the culture.

III. CONSCIOUSNESS-RAISING FOR THE 2ND & 3RD WAVES: THOUGHTS FOR RECONCILIATION AND A MOVING FORWARD

*[T]hird wave feminism is not as different as it thinks it is from 2nd wave feminism [S]econd wave feminists have many of the same ideological commitments that 3rd wave feminists do.*⁴²

*[C]ontemporary feminist thinkers, whether they express it or not — and whether they like it or not — are ultimately expressing 3rd wave feminist ideas. So that even if the express purpose of much of what is going on as feminist theory is not explicitly 3rd wave, it is, at the very least, implicitly 3rd wave.*⁴³

One significant distinction between 2nd and 3rd wave feminism is their different emphasis on forces for change. The 2nd wave typically looked and continues to look to political action and legal reform whereas the 3rd wave seeks progress through sexual, social, and cultural change. The 2nd wave tends to be group based whereas the 3rd wave tends to focus on the individual.⁴⁴ These distinctions reflect in part the polarization between the two groups.

⁴¹ Bartow, in a related paper, notes how champion pole-vaulter Allison Stokke's picture in her (university-required) skimpy uniform was plastered across the internet without her consent. Ann Bartow, *Pornography, Coercion, and Copyright Law 2.0*, 10 VAND. J. ENT. & TECH. L. 799, 815 (2008). The noted high school athlete, who also happens to be a quite attractive young woman, was dismayed to find not only her image on sexually explicit sites but also a video interview of her analyzing her performance at a meet posted on YouTube with over 150,000 hits. See, e.g., Eli Zaslou, *Teen Tests Internet's Lewd Track Record: California High Schooler Allison Stokke, 18, Becomes a Victim Of Unwanted Attention After Photo Is Posted on a Sports Blog*, WASHINGTON POST, May 29, 2007, at A01.

⁴² Bridget Crawford, *Anti-Essentialism, Sexual Agency, and Third-Wave Feminism: Approaches to Contemporary Legal Theory*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

⁴³ Darren Rosenblum, *Anti-Essentialism, Sexual Agency, and Third-Wave Feminism: Approaches to Contemporary Legal Theory*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

⁴⁴ See comments by panelists 3rd waver Mary Clark and 2nd waiver Marley Weiss. Both criticize the 3rd wave's focus though each has a different perspective with regard to the future. See CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

The fissure has its origins in the 1980s with the realization that feminism's successes were meeting primarily white middle-class women's interests. Equal access to education was mostly about women gaining access to law, medical, and other professional schools or training. Equal employment opportunity typically meant women rising out of the secretarial pool or leaving life as a full-time suburban homemaker and moving into positions with more economic autonomy such as managerial and professional occupations. Equal pay meant women earning the same salaries as men in those positions. Rights to maternity leave were fundamentally about protecting a woman's career while having children. Abortion rights served a similar function in addition to liberating women from enforced virginal and chaste lives. Freedom from sexual harassment also was a form of sexual liberation: women no longer had to tolerate verbal or physical groping by men in authority over them.

But women of lower socio-economic classes were not in a position even to consider going to medical school when getting through high school was the major challenge. Similarly, the opportunity for managerial or professional positions meant little without a bachelor's degree. It is important to note that in 1970 only fifty percent of the U.S. population even graduated from high school let alone collage and only ten percent graduated from college.⁴⁵ Similarly, to exercise one's abortion rights and reproductive control required discretionary finances that the lower socio-economic classes did not have.⁴⁶

Notwithstanding, the criticism of the 2nd wave (and the 1st wave, for that matter) for serving the interests of white, middle-class women is, in fact, a red herring.

First, being an activist about any gender issue is, to a large extent, a "luxury" the middle-classes can afford. As panelist Michele Gilman points out, despite the 3rd wave's anti-essentialist stance, its call for

⁴⁵ Nicole S. Stoops, *A Half-century of Learning: Historical Census Statistics on Educational Attainment in the United States, 1940 to 2000*, U.S. Census Bureau, Population Division, Education & Social Stratification Branch (2003) <http://www.census.gov/population/www/socdemo/education/introphct41.html>. Though the percentage of male and female high school graduates were about equal back then, of the ten percent of the population who did graduate from college, twice as many were men as were women. Therefore, only fifty percent of all women (i.e., those who graduated high school) even had the possibility of going to college. Of those female high school graduates, only eight percent (or four percent of the entire female population) were ever going to graduate from college. Therefore, the advances in higher level career possibilities for women that the women's movement first gained in the '70s were absolutely irrelevant for 96% of all women. (Even without gender roadblocks — career possibilities were irrelevant for 94% of men.)

⁴⁶ Though not without considerable political battle, eventually external sources of funding for reproductive control became available to the economically disadvantaged. See, e.g., the National Abortion Federation's history public funds for abortions for low income women at http://www.prochoice.org/about_abortion/facts/public_funding.html.

“individual self-discovery, autobiography, confession [and] sexual liberation” are not endeavors poor women can explore when worried about getting food, healthcare, and safety from domestic violence for their families.⁴⁷ Moreover, though initial 2nd wave reforms indeed did not reflect needs of women of different races and ethnicity — that was because, in 1970, the middle-class was almost exclusively white. Furthermore, the unease women felt was so inchoate, it was a struggle just to define what was wrong.⁴⁸ When white middle-class women were asking themselves “what changes do women want,” the answers naturally reflected white middle-class concerns.

Second, though the 3rd wave seeks to correct feminism’s initial essentialist course by being “multifaceted in its concern for intersecting racial, ethnic, class, and sexual identities,”⁴⁹ its focus on the individual’s social, cultural, and sexual exploration still primarily speaks to a middle-class audience. Only because the Civil Rights movement smashed racial and socio-economic barriers, concurrent with (and supported by) feminism’s 2nd wave, is there diversity in the middle-class today that allows the 3rd wave to encourage a broader spectrum of women to define who they are as women and what they want from their lives.

Finally, the freedom of choice the 3rd wave so rightfully advocates requires a social system to support it. As panelists Naomi Cahn and June Carbone demonstrate, that support is class-based. Women in the bottom quarter of the income distribution, compared with women in the top quarter, are less likely to be eligible for maternity leave, less likely to receive higher education, will have higher divorce rates and bear children at a younger age.⁵⁰

Moving into or being middle-class seems almost a de facto requirement to enjoy the fruits of much of feminism’s efforts. Once there, a woman is economically and socially more free to pursue 3rd wave goals and define what being a woman means to her.

The filters both 2nd and 3rd wave feminists wear blind each of them to the insights of the other. The 2nd wave may have indeed indiscriminately condemned enjoyable elements of sexual relationships with men in its efforts to throw off the shackles of sexual objectification of women.

⁴⁷ Michele Gilman, Director of the Civil Advocacy Clinic at the University of Baltimore, though of the 3rd wave generation, does not define her feminism as belonging to any particular wave. See Gilman, *supra* note 26.

⁴⁸ See, e.g., Weiss, *supra* note 7.

⁴⁹ Clark, *supra* note 13.

⁵⁰ Naomi Cahn & June Carbone, *Sex, Class, and Education*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 4 – CONTEMPORARY CULTURE, CLASS AND THIRD WAVE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; see also Naomi Cahn & June Carbone, *Lifting the Floor: Sex, Class, and Education*, 39.1 U. BALT. L.F. 57 (2008).

But a 3rd wave reaction to endorse indiscriminately all forms of sexual activity, including unchecked violent pornography, swings the feminist pendulum dangerously to the opposite extreme. The 2nd wave's unnuanced vision of women "having it all," marriage, motherhood, and career, may have led to the current state of women's exhaustion. The reaction, however, among young 3rd wavers to drop out of careers to raise a family for a decade or two ignores the 2nd wave's painful realizations about unrecoverable loss of agency that comes with years of economic dependency on another.⁵¹

Certainly, the criticism is justified that 2nd wave feminism developed a monolithic view of the "essential" woman, one consisting of characteristics all women supposedly shared but in fact excluded any elements not shared by white middle-class women. The 3rd wave's polar opposite of "anti-identitarianism"⁵² or "hyper-individuation,"⁵³ however, is equally destructive. The result of the 3rd wave's extensive multi-faceted focus on identity being based on the intersectionality of race, class, ethnicity, geography, etc., can lead a woman almost inevitably to view that, as a woman, hers is a singular individual experience. The loss to each woman of not realizing her experiences are shared by other women from whom she might draw support, is poignantly demonstrated by panelists Felice Batlan et al.'s study of Chicago-Kent law students.⁵⁴ In individual surveys, women students reported a number of negative law school experiences as well as a loss of self-esteem, experiences not reported by the men students. However, none of the women students identified gender as a defining law school experience (though they did identify race as one). Furthermore, three-fourths of Batlan's women seminar students, upon reading Lani Guinier et al.'s book *BECOMING GENTLEMEN*⁵⁵ about

⁵¹ Expectations of returning to the workforce twenty years later at the same point of departure are highly unrealistic. Climbing the career ladder and developing professional maturity requires an energy reserved for the young. The mature successful professional remains there because the wisdom accumulated from experience replaces the declining reservoirs of energy.

⁵² Rosenblum, *supra* note 43. "Anti-identitarianism" is used to criticize an extreme version of 3rd wave's anti-essentialism, which focuses on the multiple facets of an individual's uniqueness to such an extent that identification with others is nearly impossible.

⁵³ Clark's use of "hyper-individuation" is analogous to Rosenblum's "Anti-identitarianism." Clark, *supra* note 13; *see also* Resenblum, *supra* note 43.

⁵⁴ The researchers consisted of Professor Batlan and four women students from her seminar course: Kelly Hradsky, Kristen Jeschke, LaVonne Meyer, and Jill Roberts. *See* Felice Batlan et al., *Not Our Mother's Law Students?: A Feminist Study of Women's Experiences in Law School*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 1 – CROSSING THE WAVES OF FEMINIST LEGAL THEORY, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>; *see also* Felice Batlan et al., *Not Our Mother's Law Students?: A Feminist Study of Women's Experiences in Law School*, 39.2 U. BALT. L.F. 124 (2009).

⁵⁵ LANI GUINIER ET AL., *BECOMING GENTLEMEN: WOMEN, LAW SCHOOL, AND INSTITUTIONAL CHANGE* (Beacon Press 1997).

women law students at the University of Pennsylvania, stated they were surprised to recognize the experiences of the women law students in that book. Batlan's seminar students had each assumed their own feelings of alienation, depression and sinking confidence were their individual problems. Imagine the counter-effect a "feminist space" would have had for these women in coping with their feelings if they had realized that their female classmates shared them.

There is, however, an alternative to adopting one extreme of the "essential" woman or the other extreme of scrutinizing for every possible distinguishing characteristic so a woman fails to consider commonalities with other women. Women do share various characteristics in common with various other women — not all characteristics with all the same women — but some with some women and others with other women. The point of "consciousness-raising" is for discussion among those with common experiences to raise awareness of common problems and lead to common solutions. Feeling unique as a woman can lead to isolation and ineffectual fending for oneself.

Furthermore, integrating the 3rd wave's individual agency with the 2nd wave's collective action can only lead to greater force for change and is necessary, in particular, to bring change on behalf of those women who are not in a position to advocate for themselves. Michele Gilman notes that there is the question of who should speak for whom when referring to herself, a white middle-class woman, speaking on behalf of the poor women of all races and ethnicities she represents.⁵⁶ Lacy Carra, on the other hand, reminds us of the need for advocacy organizations regarding issues on which society has not yet come to a consensus.⁵⁷ Collective action does not require that all women share the same concerns — all that is necessary is that some women have an interest in common for some particular action.

Is there a framework that is sufficiently flexible to accommodate myriad groupings and re-groupings of women to effect change?

As potential role-models for feminism's future, panelist Kristen Kalsem points to both the federally-funded 1977 National Women's Conference in Houston, Texas, and the more recent, philanthropically-financed New Women's Movement Initiative begun in December 2003.⁵⁸

Though not widely-remembered nor currently well-known, the 1977 National Women's Conference nevertheless had an attendance of over 20,000 women, men, and children. In accordance with the Congressional bill that funded it, its official 2000 delegates

⁵⁶ Gilman, *supra* note 26.

⁵⁷ Carra, *supra* note 31.

⁵⁸ Kristen Kalsem, *Social Justice Feminism*, CONFERENCE ON FEMINIST LEGAL THEORY & FEMINISMS: PANEL 2 – THIRD WAVE FEMINIST LEGAL THEORY AND SOCIAL JUSTICE, March 7, 2008, <http://law.ubalt.edu/template.cfm?page=928>.

represented both urban and rural women from every U.S. state and territory, spanning all ages and ethnicities as well as all economic and educational levels. The conference's conclusion was a recommendation of a National Plan of Action to President Jimmy Carter that focused on women's equal opportunity in business, arts, education, credit, insurance, and social security; it asserted the need to address domestic violence, child abuse, the disabled, older women, minorities, rural women, and women in prison as well.⁵⁹

Despite the Conference's clearly inclusive foundation and perspective (akin to later "anti-essentialist" objectives), the women's movement subsequently splintered, fractionalized and lost much of its momentum a little more than a decade later. This created a vacuum that gave rise to the current 3rd Wave.

In 2003, in an effort to heal rifts, the New Women's Movement Initiative (NWMI) brought together more than fifty women leaders for meetings over the course of thirty months to resolve "long-standing divisions . . . and to build . . . relationships, trust and analysis necessary to revitalize U.S. feminism." Diversity was reflected in the source of support as well as among the leaders invited to attend. Support came from the Ford, Ms., Astrea Lesbian, and Third Wave foundations, as well as the Center for the Advancement of Women. The leaders attending the meetings included those from national and regional organizations that "advocate, educate and organize around" women's issues as well as philanthropic organizations that fund them and scholars who research and write about them. Strong emphasis was placed on a presence of women of color as well as cross-generational representation.⁶⁰

NWMI represented a return to the inclusive context created during the 1977 Conference. Probably the most pivotal debate during the NWMI was over whether to "aspire to be a women's rights movement or a social justice feminist movement" with social justice feminism ultimately prevailing. Social Justice Feminism means for NWMI, among other things, to focus on the "marginalized and vulnerable," on women's issues that integrate race, sexuality, class, age, and "other markers of inequity," to recognize issues of power and privilege both

⁵⁹ See *Women March On Houston*, TIME, Nov. 28, 1977, at 12, available at <http://www.time.com/time/magazine/article/0,9171,919136,00.html>; Debbie Mauldin Cottrell, *National Women's Conference, 1977*, HANDBOOK OF TEXAS ONLINE, <http://www.tshaonline.org/handbook/online/articles/NN/pwngq.html> (last visited Apr. 19, 2009); *Sisters of '77*, PBS INDEPENDENT LENS, <http://www.pbs.org/independentlens/sistersof77/conference.html> (last visited April 19, 2009); see also CAROLINE BIRD, THE SPIRIT OF HOUSTON, THE FIRST NATIONAL WOMEN'S CONFERENCE 9-12 (1978).

⁶⁰ See Linda Burnham, *The New Women's Movement Initiative* 1 (Aug. 16, 2007), available at <http://ms.foundation.org/user.assets/PDF/Program/NWMSummatonFinalDraft.pdf>.

in society and within the women's movement, and to "conceive of itself as part of broader social justice movement."⁶¹

Clearly Social Justice Feminism signifies a positive forward movement integrating 3rd wave's anti-essentialist self-affirmation with the power of the 2nd wave's group-based collective action and support. Kalsem says that what Congresswoman Barbara Jordan said was imperative for the 1977 National Women's Conference to accomplish can be the guide for Social Justice Feminism today. "It must be something 'productive, constructive and healing.'"⁶²

Social Justice Feminism seems like a good principle to pursue — it leads us back to the concept of "Justice for All."

IV. CONCLUSION

Without a doubt, the presentations at the conference and the papers published in this volume bring together a broad array of stimulating topics that nevertheless coalesce to create a coherent and insightful investigation into the current state of feminism and directions for its future. Our conference Co-Chairs, Leigh Goodmark⁶³ and Margaret Johnson,⁶⁴ are to be commended not only for conceiving and organizing such a wonderful conference but for providing superb leadership as well. There seems no better way to conclude this essay on the *Feminist Legal Theory and Feminisms Conference* than with Margaret Johnson's concluding remarks:

"Feminism is memory . . ." (quoting Gloria Steinem who quotes Native American women activists).

"Th[ese] . . . may be . . . false question[s]: what is 3rd wave feminism? . . . [and] have we moved beyond 2nd wave feminism? . . . "

"What we have demonstrated today is [that] theory is constantly changing, evolving, being applied [and] moving forward — we have our memories but keep moving forward and making new memories along the way"

⁶¹ *Id.* at 3.

⁶² Kalsem, *supra* note 58.

⁶³ Associate Professor of Law, University of Baltimore School of Law.

⁶⁴ Assistant Professor of Law, University of Baltimore School of Law.