

FEMINISM, LAW, AND HEDONIC LIVES

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Good afternoon, and so many thanks to everyone here, more thanks and gratitude than I can convey, I'm afraid. And of course, special thanks to Rona Kitchen and the WILE section of the AALS for this loving and humbling and utterly unexpected honor. And thanks and much more to Deborah Epstein and Marc Spindelman—who have been with me for almost every step of my journey, thinking through out-loud, so to speak, the meaning of equality, sexuality, sex, gender, mothering and much more, officiating and toasting at each others' weddings, and of course sharing over many years those interlocking circles of sympathy: enjoying each others' celebrations for well-earned accomplishments as well as lucky turns of fate, and shouldering in small ways each others' burdens, themselves brought on by the burdens, illnesses, and traumas borne by those we love; jointly deciphering the mysteries and wisdom and nonsense of our toddlers' and then children's and then teenagers' and young adults' actions and utterances, bearing witness to the mourning following the loss of each others' intimates and elders, and of course, always, in the interstices, gossiping, complaining and kvetching about institutional life. And now, sadly, bemoaning the tragic turn in our national life, trying to stay sane and trying to ascertain how to make a difference in a deformed political and legal world. The stuff of friendships, world-wide, throughout time. There are so many others to thank, and I want to mention a few. So, many thanks: to Heidi Feldman for being a loving comrade in every imaginable respect; Nan Hunter, David Luban, Chai Feldblum likewise. My colleagues and friends at Georgetown, Maryland and elsewhere: Mike Seidman, Gary Pellar, Abbe Smith, Lama Abu Odeh, Greg Klass, Mari Matsuda, Chuck Lawrence, Vicki Jackson, Wendy Perdue and Naomi Mezey from Georgetown, Jana Singer, Peter Quint, Danielle Citron and Theresa Glennon from Maryland, Cynthia Bowman and Mary Becker and Martha Nussbaum from Chicago, Richard Weisberg, JB White, Peter Brooks and Nan Goodman from various corners of the law and literature world. My wonderful deans: Robert Bogomolny at Cleveland State, Michael Kelly at Maryland, Judy Areen, Alex Aleinikoff and Bill Treanor at Georgetown—all of whom have been nothing but absolutely supportive of work the value or relevance of which was often painfully unclear. My early mentors: Jim Wilson, Peter Garland and Marjorie Kornhauser at Cleveland State, Tom Grey, Paul Brest, Deborah Rhode and Barbara Babcock at Stanford Law School—all of whom, when presented with drafts of articles that had opening sentences like “what is a human being,” never once said, “um, maybe you should narrow your topic.” Best mentors ever. And, I have an incalculable debt to my teachers, too numerous to list but nevertheless: a high school teacher named Tom Simpson, who joyfully taught me non-Euclidean geometry with a smile as broad

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as a half moon, a college professor named Annette Barnes who showed with her graceful intellect that language and rigorous thought can produce insight, which is the promise of philosophy, and so many wonderful law professors when I was a student at Maryland Law School—Ken Abraham, John Brumbaugh, Peter Quint—who demonstrated daily to me for three years the best and most devoted teaching I've ever seen, before or since. Because of my teachers, I aspire to approach my scholarship with joy, rigor, and devotion, which are also the elements of good pedagogy. In the last two decades, I've had students and fellows from whom I've learned more than I've taught: Meghan Boone, Shelly Laser, Rabia Belt, Allegra McLeod, Sherally Munshi, Kiel Marquez-Brennan and many others. And I cannot adequately put my gratitude into words to my family: my children Nick, Ben and Molly, and their father and my friend and husband of thirty years, Robert Green, now deceased, and whose brother Chris Green is here today, and my unexpectedly later-in-life husband David Grant, for his love, friendship, piercing intelligence, faith in democracy, pacifist politics and boundless generosity.

Beyond the people—the teachers, students, mentors, friends, family and colleagues—though, I am hugely grateful for the shape and spirit of the legal academy in the 1980s. I'd like to mention some of its qualities, partly to give it its due, and partly because that spirit is fragile, and some of these qualities might be disappearing. I am very thankful—particularly in retrospect—for the undisciplined interdisciplinary movement that took off in American Law Schools in the 1970s and 1980s. There was a sense, then, in the legal academy, of very public ownership of all of the academic canons—legal, economic, philosophical, literary and historical—and a conviction that they were there for the plundering, available to anyone who thought they might house insights important to understanding law. We were quite sure without ever uttering the sentiment that those canons did not exist for the benefit of their respective disciplinary members, that in point of fact they were part of the intellectual commons, open to all. Granting the downsides, I hope we can recapture some of that anti-disciplinary multi-disciplinarity, because it leads to open inquiry and sometimes very sharp insights. I also owe a huge debt to the then not-at-all-dead critical legal studies movement. Some of its turns were in my view deeply misguided, but the entire movement was absolutely vital to understanding the legalistic and constitutional boosterism of the day. Most important, the CLS thinkers helped all of us understand not only the legitimating costs of ideals of liberty in capitalist economies—a skepticism grounded in Marxism and that had already become familiar to many in the legal academy through the labors in the first part of the century of the legal realists—but also the legitimating costs of the peculiarly twentieth century legalistic ideals of formal equality and individualism—both of which, in the 1970s, had already also become ideals of modern feminism. That skepticism, first powerfully articulated by early CLS thinkers, found a natural home in more skeptical strands of feminism. Skepticism toward formal equality, within feminism, meant skepticism toward the otherwise bulletproof goal of anti-stereotyping: that impulse, legitimation theorists

reminded us, viewed critically, might tend toward sterility and a far-too-welcoming and assimilating stance to the demands of patriarchal liberal capitalism and hence the particular constellation of strengths—aggression, competitiveness, consumption, willfulness, ambition—that patriarchal markets and market ethics require. Skepticism toward individualism cautioned us away from unduly libertarian solutions and toward systemic analyses of sexual and gendered subordination, as well as toward the fecund suggestion that we need to look to the bottom to understand both our human situation and our ideals for addressing inequities. So in my view those are the debts feminism owes—at least they're the debts I feel I owe—to the legal academy of the 1980s: the interdisciplinary movement and the critical legal studies movements of the time produced currents that profoundly shaped that particular river.

The greatest debts I owe, however, and that I want to note, are some particular qualities of the feminism of that time—and again, I want to note them in part because of their fragility, and to urge we not abandon them. From mid and twentieth century feminism, in retrospect, for me, laid two pools of wise counsel. The deepest, and again, at least for me, most life-changing current, running through and around and behind twentieth century feminism, was the simple suggestion—command might be too strong—that women and girls learn to love, respect, honor and take guidance from the teachings of our own bodies. I tried to add to that deeply feminist suggestion, that we might learn and take guidance from what I came to call our hedonic bodies—by which I meant our sensate bodies that register pain, pleasure, fear, attraction, desire, and repulsion, that feel the ice-cold and the luke-warm and the red-hot, that menstruate, give birth, and lactate, that feel indignation, that recoil, that shudder, that need sleep, that grow ill, and die, that register in muscle fibers and nerve endings regret, sorrow, grief, joy, and ecstasy. The hedonic self that is anchored in that hedonic body—and just to emphasize, I mean the hedonic in contrast to the choosing, consenting, deciding, consuming, producing and preferring self, valorized by liberalism and legalism both—has much to say, if we listen. As lawyers know, women have been engaged in a two-century-long process of reclaiming legal ownership of our bodies, first from the totalizing ownership of patriarchal states and masters, then from long-term contractual agreements with husbands, then from the one-off transactional ownerships of johns and dates, and then from the forced ownership of strangers, and throughout, from the proprietary interests of state agents acting on behalf of the fetal life our bodies sometimes sustain. The fee simple ownership of the body turns out to be a simple idea that is very hard to maintain, as it pertains to women's ownership of women's bodies. Nevertheless, maintain it we have, at least as an idea, in fact, asserting and maintaining that fee simple has been *the* central legal labor—a central legal obsession—of the last century. Even harder though, and much slower coming, has been the accretion of the experience of the *indicia* of that ownership, including the use of our bodies for our own purposes, whether those purposes be tied to labor, reproduction, production, the pursuit of pleasure or the fulfillment of desire.

Slower and harder still has come an understanding of the body's experiences of pain and pleasure as a reliable guide to normative questions: a physical, mental and emotional awareness that what pleases us may be good and that what pains us may be what harms us. Years of upbringing for some of us and centuries of disciplining of the female body that still impacts us all has taught twisted lessons of female sacrifice, mutilation, submission and degradation, that collectively imply something like the inverse of that simple thought: the goodness of pain, for women, the evil of pleasure. Particularly against those lessons in self-abdication, I think it's worth insisting that the hedonic body and its pains and pleasures and desires may at times be a better guide to value, than either the commands of others, or the tallying of preferred transactions to which we consent: in other words, we might sometimes be best off trusting desire rather than either the dictates of authority or the lessons of choice. I also think this is a majorly undertheorized feminist insight, and one that we are in danger of losing. No one, in literature, has given this counsel as wisely and beautifully as Toni Morrison's character Sethe, in *Beloved*, who came over the course of that novel to own and treasure first her body and then her desires and then her self, and no one, in the political thought of our nation, has given stronger counsel on this point as it pertains to women, than Andrea Dworkin. I owe both writers a huge debt.

The second stream of insight coursing through feminism in the last decades of the twentieth century, and another we are in danger of losing, was the suggestion—again, imperative or command is too strong—that we ought to socially value women's lives as women have actually lived them, and not only as idealized, which means, in part, that we should value—as well as respectfully scrutinize and sometimes criticize—women's ways of being, thinking, learning, loving, working and, yes, moralizing; and that means in turn that we should unearth the ethics of acts of care, even when done by politically compromised human beings, in part—but only in part—because those acts of care have been such an outsized part of women's lives, world-wide and throughout time. There are powerful reasons to doubt the authenticity of women's yearnings to provide care, and to question the impulse to locate meaning and life's purpose in the act of nurturing others. There are also plenty of reasons to worry over the adverse consequences for the caregiver of valorizing a life lived around the axis of such an ethic. But there are likewise reasons to trust those yearnings and that impulse, not the least of which is that by holding true to them, we might better locate the source of the harm they seemingly occasion. The source of the harms to caregivers brought on by care may lie not in the caregiver's inauthenticity or submissiveness or false consciousness but in the way she, he or they is both regarded and dismissed—seen, but made invisible—idealized, but impoverished—adored but uncompensated—accorded respect, so long as enslaved. Care, here, along with its ethics, is not the problem. The contempt for and degradation of maternal care, and everything associated with it—from the dirt to the shit to the tears to the physical labor, to the blood, the birth, and the milk, to the experiences of mortality, of non-transcendence, of contingency, of human dependency and

of vulnerability, and ultimately to the value of both nature and the earth itself—ultimately the contempt for and degradation of *all* of that, collectively, is the problem. We owe Carol Gilligan's feminist moral psychology, Carol Merchant's ecofeminist histories, Nel Noddings' educational theories, Eva Kittay's philosophies, and Martha Fineman's jurisprudence, for their groundbreaking work that ferociously and collectively tried to turn that tide.

Lastly, legal feminism, which was in formation when I joined the legal academy. Legal feminists of that period showed that law can be brought to heel, that it is not nothing but a reflection of patriarchy, capitalism, or white supremacy, although it is always something of all of that, but that it contains the seeds of ideals to be made real that promote the interests and wellbeing of subordinated peoples worldwide. Ruth Bader Ginsburg not only changed constitutional jurisprudence forever with her lawyerly interventions, but she also planted the very idea of bringing law to heel, and using it against rather than in the service of power, patriarchal or otherwise—that's what that movie is all about. Catharine MacKinnon a decade later melded her feminist commitments to ending the violence in women's lives, her training and facility with Marxist tools of analysis, her (still largely unappreciated) liberal sensibilities, and her astonishingly deep knowledge of and love of the western legal traditions of the last two millennia, to create an entire jurisprudential canon that was then unknown to the academy. A little later Victoria Nourse fashioned a law to extend the state's promise of Protection of the Law to a promise to protect women against the violence they sustain in homes and schools, and ultimately the writings of Wendy Williams, Chris Littleton, Martha Fineman and others on caregivers lent weight and insight to the political movement to produce the first federal protection of caregivers at work, inadequate and limited though it may be; while Mari Matusda, Kimberle Crenshaw and Angela Harris prompted two successive generations of feminist scholars to refashion both feminism and law to speak to the position of all peoples at the bottom, on the margins, and in the intersections, and not seek only the assimilation of privileged people at the top. These were all monumental, historic changes; they all aspired to put law in service of rather than in opposition to women's lives. I am deeply grateful to have stood for a moment on the shoulders of these brilliant thinkers and I am still absolutely astounded that they all came from this peculiar place: the legal academy, where critical and interdisciplinary thought, feminist politics, liberal and radical sensibilities, and a respect for not only the threat law sometimes poses, but also for the ideals to which it is fitfully committed, can coexist and, sometimes, even, ignite beautiful changes that actually better the human family's shared hedonic life.