

**Point Break: Abandoning the Wave Metaphor and the Politics of Division**

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## INTRODUCTION

While the second wave of feminism produced numerous substantive legal changes, recent feminist legal successes have been fewer and farther between. In fact, many of the second wave's major legislative and legal achievements are being challenged in the courts and legislatures. To highlight a single example, reproductive choice has been, and continues to be, undermined by the legislative and judicial processes: approval for new types of contraception are bottlenecked at the Food and Drug Administration; legislation allowing pharmacists to exercise a moral veto and refuse to fill prescriptions for contraception has been discussed; benefit caps intended to deny welfare benefits to children born to women on welfare have been introduced as have policies requiring female welfare recipients to utilize long-term contraceptives such as Norplant in order to continue receiving benefits; access to abortion has been reduced to the extent that some states do not have a single abortion provider within their borders; the Supreme Court has gradually chipped away at *Roe v. Wade* (1973) allowing states to impose greater and greater restrictions on abortion from the moment of conception, including the recent decision in *Gonzales v. Carhart* (2007) which upheld Congress' Partial Birth Abortion Ban Act despite the fact that the law does not include an exemption for when the health of the pregnant woman is at risk as required by Supreme Court precedent; Congress is considering legislation that would prohibit women from using health care subsidies to purchase private insurance that covers abortion; and two of the three most recent appointments to the U.S. Supreme Court—Chief Justice Roberts and Justice Alito—oppose the central tenets of *Roe v. Wade* (1973). Despite these developments, the feminist response has been notably lacking.

There is disagreement among feminists, however, regarding the current lack of feminist mobilization in the United States. It has been suggested that the decrease in mobilizing the law to further women's rights reflects a backlash against feminism,<sup>1</sup> or the beginning of post-feminism as an explanation for the complacency among many young feminists.<sup>2</sup> At the same time, there are those who argue that feminism is alive and well in the twenty-first century as embodied by the rise of the "third wave" of feminism.

Beginning in the 1990s, a number of new feminist authors began to publish, and a variety of anthologies edited by young feminists were released.<sup>3</sup> These works reflected

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<sup>1</sup> Susan Faludi, *Backlash: The Undeclared War Against American Women* (1991).

<sup>2</sup> Gayatri Chakravorty Spivak, *Feminism 2000: One Step Beyond?* 64 *Feminist Review* 113-116 (2000).

<sup>3</sup> See Jennifer Baumgardner and Amy Richards, *Manifesta: Young Women, Feminism and the Future* (2000); Rory Dicker and Alison Piepmeier, *Catching a Wave: Reclaiming Feminism for the 21<sup>st</sup> Century* (2003); Astrid Henry, *Not My Mother's Sister: A Generational Conflict and Third Wave Feminism* (2004); Leslie Heywood and Jennifer

the views and interests of a new feminist generation identified as the third wave of feminism. The third wave's feminist philosophy may be loosely described as a unified deconstructionist theory that emphasizes individual experience and the multiplicity of identities. The third wave feminists make a valuable contribution to the feminist agenda by emphasizing the diversity of women's experiences and identities, but they have not indicated how their movement substantively advances the interests and rights of women in the United States. Instead, the third wavers offer a variety of amorphous and in some instances ambiguous goals that reflect their tendency toward non-legal solutions.<sup>4</sup> The failure to identify how the goals of the third wave of feminism may be operationalized and codified in law or implemented in practice is problematic because there is no proposed theory or mechanism for achieving change. Absent a theory or strategy, it is difficult to harness a variety of individual experiences to create a movement let alone one that produces substantive change and tangible results. As Rosemarie Tong explains:

young women today, including those who are doing feminism in the manner of third-wave feminists, are shaping a very particularistic, even individualistic form of feminism. This development in feminist thought is energizing the academy; yet, at the same time, it is making it difficult to ideologically ground and practically achieve the goals of feminist activists intent on improving women's lot worldwide.<sup>5</sup>

It is important to note that part of what differentiates the third from the second wave is the former's emphasis on individual experiences and definitions of feminism. As a result, many third wavers may identify the lack of a cohesive movement and legal strategy for achieving change as strengths of the third wave. Yet, given recent political, legal and social developments, it is clear that absent a coordinated feminist movement it is difficult to challenge the patriarchal state and infrastructure. In fact, the lack of a visible and coordinated twenty-first century feminist movement with concrete theories and proposals has enabled opponents of women's rights and proponents of patriarchal norms to undermine many of the gains of the feminist movement and obfuscate in the face of additional change. Given recent political and legal trends that pose a threat to women's equality, the absence of a coordinated feminist response and agenda for change is troubling. As we approach the second decade of the millennium, the time is ripe for a revived feminist movement(s) that builds on the legal and legislative successes of the second wave by emphasizing the need for additional laws guaranteeing the rights of women, while at the same time recognizing that women are a diverse group of individuals with different priorities and interests consistent with the third wave feminist philosophy. The challenge is to reconcile the emphasis that the second

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Drake, *Third Wave Agenda: Being Feminist, Doing Feminism* (1997); Rebecca Walker, *To Be Real: Telling the Truth and Changing the Face of Feminism* (1995).

<sup>4</sup> Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 U. of Michigan J. of Gender and Law 99 (2007).

<sup>5</sup> Rosemarie Tong, *Feminist Thought in Transition: Never a Dull Moment*, 44 Social Science Journal 24 (2007).

wave placed on “women” as a collective with the third wave’s recognition of difference. As Tong explains, “the future of feminist thought depends on its ability to resolve the sameness-difference debate, for unless women, (conceived as a class or group), as well as the category of gender have some role to play in feminism, it is not clear that labeling one’s self a ‘feminist’ makes sense anymore.”<sup>6</sup>

If, however, feminist legal theorists explicitly incorporate the third wave’s acknowledgment of diversity and its emphasis on the multiplicity of women’s experiences when crafting litigation strategies and legal theories, it may go a long way toward developing anti-essentialist legal solutions to the obstacles that women as a group continue to confront in the United States. The third wave’s feminist theory can inform feminist legal activists and vice versa in order to produce anti-essentialist legal solutions for advancing women’s rights. To that end, this article analyzes the strengths and weaknesses of the so-called second and third waves of feminism and attempts to link the theoretical contributions of the third wave with the practice-oriented approach utilized by the feminist legal activists of the second wave in order to imagine unifying feminist legal theories capable of mobilizing feminists to take collective action and defend the interests of women in the often hostile political and legal environments of the twenty-first century. While this article does not propose a single solution or specific legal strategies—it is necessary to hear from and incorporate the interests, wants and needs of women from a variety of backgrounds and experiences in order to devise multiple solutions and strategies—it does propose the following in an attempt to initiate a dialogue among feminists: first, it is imperative that feminists move beyond the antiquated and divisive wave metaphors; second, the law is a powerful tool for linking theory with practice and producing substantive legal and political changes and feminists need to recognize the value of legal proposals and solutions to the problems of women’s inequitable treatment; and finally, it is possible to craft feminist legal theories and solutions that acknowledge and privilege the voices and needs of a variety of women resulting in legal and political victories that reflect the goals and interests of a feminist movement broadly-defined.

## I. THE SECOND WAVE

The feminist movement that developed in the 1960s is often referred to as the second wave of the women’s rights movement. The first wave was the women’s rights movement active in the nineteenth century and the early twentieth century that culminated in women receiving the right to vote in 1920. A number of developments in the 1960s coincided to prompt a number of women to join together and form a variety of organizations and movements for women’s rights. Many women active in the civil rights movement were able to utilize their experiences lobbying to end racial and ethnic discrimination to inform the organization of women’s rights groups. At the same time, the issue of women’s rights was gaining saliency and the attention of the national government. In 1961, President Kennedy formed the Presidential Commission on the Status of Women to investigate the experiences of women in American society. The Commission’s Report was released in 1963 and documented widespread discrimination

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<sup>6</sup> See *supra* note 5 at 24.

against women across a variety of venues. Also in 1963, Betty Friedan published *The Feminine Mystique*, in which she identified and discussed “the problem that has no name,” and initiated a national discussion about women’s domestic roles.<sup>7</sup> A year later, the Civil Rights Act of 1964 was passed by Congress and included prohibitions on workplace discrimination on the basis of sex, and provided for the formation of the Equal Employment Opportunity Commission (EEOC) to monitor and enforce laws prohibiting discrimination in the workplace. In 1966, Friedan and members of the Presidential Commission on the Status of Women helped to found the National Organization for Women (NOW), an organization seeking to “take action to bring women into full participation in the mainstream of American society now, exercising all the privileges and responsibilities thereof in truly equal partnership with men.”<sup>8</sup> At NOW’s second annual meeting in 1967, the organization adopted the Bill of Rights for Women which included: an equal rights amendment to the U.S. Constitution; public funding for child care; and the repeal of all abortion laws.<sup>9</sup> In 1969, Friedan launched the National Association for the Repeal of Abortion Laws (NARAL), an organization committed to legalizing abortion, and NARAL began a campaign to overturn restrictive abortion laws across the United States.

At the same time, women active in the civil rights movement began to develop women’s rights organizations. The Black Women’s Liberation Group of Mount Vernon/New Rochelle, New York was launched by black female activists,<sup>10</sup> and in 1968, the Third World Women’s Alliance (TWWA)<sup>11</sup> was formed by black women active in the Student Nonviolent Coordinating Committee.<sup>12</sup> The TWWA issued the Black Woman’s Manifesto and stated: “The black woman is demanding a new set of female definitions and a recognition of herself as a citizen, companion and confidant, not a matriarchal villain or a step stool baby-maker. Role integration advocates the complementary recognition of man and woman, not the competitive recognition of same.”<sup>13</sup> A few years later, in 1972, women active in La Raza formed a women’s caucus and adopted a platform identifying a variety of issues including equal pay for equal work for Chicanas

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<sup>7</sup> Betty Friedan, *The Feminine Mystique* (1963).

<sup>8</sup> National Organization for Women, *National Organization for Women’s 1966 Statement of Purpose* (1966). Retrieved February 5, 2008, from <http://www.now.org/history/purpos66.html>.

<sup>9</sup> National Organization for Women, *Historical Timeline* (2008). Retrieved February 5, 2007, from <http://www.now.org/history/timeline.html>.

<sup>10</sup> Benita Roth, *Separate Roads to Feminism: Black, Chicana, and White Feminist Movement’s in America’s Second Wave* (2003).

<sup>11</sup> TWWA was initially called the Black Women’s Alliance but changed its name when its membership grew to include Puerto Rican and Asian-American women (*Id.* at 91).

<sup>12</sup> Rosalyn Baxandall and Linda Gordon, *Dear Sister: Dispatches from the Women’s Liberation Movement* 65 (2000).

<sup>13</sup> Third World Women’s Alliance, *Black Woman’s Manifesto* (no date). Women’s Liberation Movement Online Archival Collection, Special Collections Library, Duke University. Retrieved February 8, 2008, from <http://scriptorium.lib.duke.edu/wlm/blkmanif/>.

and legalized abortion.<sup>14</sup> These are only a few examples of the various organized movements lobbying for women's rights at this time.

Many of the individuals active in the second wave of the women's movement were legal activists and scholars. These women formed numerous organizations and aggressively lobbied politicians and the courts to produce legislation and legal decisions promoting the equal rights of women. Feminist legal activists sought to use the law as a mechanism to achieve change. In addition, during the 1970s, the number of women attending law school substantially increased:

In the mid-1940s, with a total enrollment of 43,719 students in the 111 ABA-approved law schools, only 3% were women. This ratio remained relatively static through the 1960s, although there was a marked increase in the number of approved law schools and in the total enrollment of students. By the end of the 1970s, the number of approved law schools had increased to 171 and the percentage of women students to 34% of the more than 125,000 total enrollees.<sup>15</sup>

The increase in female law students resulted in a subsequent growth in the number of women entering the legal profession. Many of these newly minted lawyers used the courts to produce substantive legal changes for women and later engaged in the enterprise of articulating feminist legal theories. These early feminists "were optimistic about using law to attain gender equality."<sup>16</sup>

For example, in 1972, the American Civil Liberties Union (ACLU) launched the Women's Rights Project, with Ruth Bader Ginsburg as its first director, to pursue women's equality. The Women's Rights Project played an instrumental role in getting sex discrimination cases in the courts and utilizing legal arguments designed to advance women's rights under the Fourteenth Amendment's equal protection clause. These cases included: *Reed v. Reed* (1971)—the first case in U.S. Supreme Court history in which the Justices used the Fourteenth Amendment's equal protection clause to invalidate a state law because it discriminated on the basis of sex; *Frontiero v. Richardson* (1973)—resulting in a plurality opinion advocating the use of strict scrutiny in sex discrimination cases; and *Craig v. Boren* (1976)—introducing intermediate scrutiny as the standard for evaluating classifications on the basis of sex.

In addition, the second wave of feminism produced a large and diverse body of feminist legal theory. Liberal feminists argued in favor of formal equality and stated that laws may not embody explicit sex-based distinctions. They emphasized individual autonomy, as opposed to talking about men and women as groups, and advocated a sex blind

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<sup>14</sup> See *Supra* note 12 at 77-78.

<sup>15</sup> Caroline Glassman, *Then and Now: A Perspective*, 50 *Maine L. Rev.* 405, 405 (1998).

<sup>16</sup> Martha Fineman, *Feminist Legal Theory*, 31 *Journal of Gender, Social Policy and Law* 13, 15 (2005).

approach to sex difference.<sup>17</sup> In contrast, difference (or cultural) feminists built on the work of psychologist Carol Gilligan<sup>18</sup> and suggested that legal and social reform should validate women's differences from men.<sup>19</sup> Difference feminists rejected the assumption that equality for women should be predicated on women demonstrating their similarities to men. They explained that requiring women to be like men has detrimental effects on women because applying a male definition of equality to men and women's different economic positions and reproductive capabilities disadvantages women.<sup>20</sup>

In contrast, feminist legal theorists such as Catharine MacKinnon were not interested in the sameness/difference debate. Instead, MacKinnon focused on the mechanisms through which women are subordinated to men, and examined how legal doctrine works in conjunction with other systemic factors to keep women oppressed. Radical feminists such as MacKinnon argued that the focus should be on the power differential between men and women—men have power and women do not—and employing the law and state to empower women.<sup>21</sup>

Finally, some feminists tried to use the tools of postmodern analysis to free the other schools of feminist legal thought from their essentialist premises. A handful of feminist theorists began to identify the multiple oppressions experienced by women of color, lesbian women, working class women, etc., and they produced anthologies and articles drawing attention to intersectionalities and the multiple oppressions experienced by many women. The anti-essentialist feminist theorists argued that women are not a homogenous group and drew attention to women's race, class, sexual orientation and other differences.<sup>22</sup>

The second wave of feminism produced a number of substantive legal changes as feminists made great strides in advancing women's interests and equality before the law

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<sup>17</sup> See Wendy Webster Williams, *Equality's Riddle: Pregnancy and the Equal Treatment/Special Treatment Debate*, 13 N. Y. U. Rev. of Law and Social Change 325 (1985).

<sup>18</sup> Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (1982).

<sup>19</sup> See Christine Littleton, *Reconstructing Sexual Equality*, 75 California L. Rev. 1279 (1987); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 Berkeley Women's Law Journal 39 (1985).

<sup>20</sup> Christine Littleton, *Reconstructing Sexual Equality*, 75 California L. Rev. 1279 (1987).

<sup>21</sup> Catharine MacKinnon, *Feminism Unmodified: Discourses on Life and Law* (1987).

<sup>22</sup> See Gloria Anzaldua and Cherrie Moraga (Eds.), *This Bridge Called My Back: Writings by Radical Women of Color*, (1984); Frances Beale, *Double Jeopardy: To Be Black and Female*, in *Sisterhood is Powerful: An Anthology of Writings from the Women's Liberation Movement* 340-353, (Robin Morgan ed., 1970); Angela Davis, *Women, Race and Class* (1981); bell hooks, *Feminist Theory: From Margin to Center* (1984); Gloria Hull, Patricia Bell Scott and Barbara Smith (Eds.), *All the Women are White, All the Blacks are Men, But Some of Us are Brave* (1982); Audre Lorde, *Sister Outsider: Essays and Speeches* (1984); Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 *Signs: Journal of Women in Culture and Society* 631 (1980).

in the United States; feminist legal theorists and lawyers played an immeasurable role in crafting the terms of the debates and executing the legal and legislative victories. The accomplishments of the second wave feminists include: the Supreme Court's decisions to declare unconstitutional laws prohibiting contraception, abortion and reproductive choice in the first trimester of pregnancy (*Griswold v. Connecticut* (1965), *Eisenstadt v. Baird* (1972), *Roe v. Wade* (1973)); prohibitions on workplace discrimination, including sexual harassment and pregnancy discrimination, were codified in federal law (Title VII of the Civil Rights Act of 1964 and the Pregnancy Discrimination Act of 1978); and Title IX of the Education Amendments of 1972 prohibited discrimination on the basis of sex at educational institutions.

One of the second wave's significant legislative accomplishments—Congress' passage of the Equal Rights Amendment (ERA) prohibiting discrimination on the basis of sex—failed to translate into tangible change for women when the ERA was not ratified by a sufficient number of states. Yet, the emphasis that many of the women active in the second wave placed on legal change as a mechanism to advance women's rights is clearly illustrated by the vast time and effort dedicated to pursuing a broad variety of sex discrimination claims in the courts and lobbying for legislative solutions in Congress.

The second wave of feminism has identifiable strengths and weaknesses.

The second wave used the law as a tool to help advance women's interests and produced an array of feminist legal theories articulating different legal strategies for advancing women's interests. But, the second wave is perceived as being an essentialist middle to upper class white women's movement. In *Feminist Theory*, bell hooks (1984) criticized the work of white second wave feminists for failing to account for and acknowledge the multiplicity of oppressions that many women experience.<sup>23</sup> Kimberle Crenshaw's groundbreaking article "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics" (1989) highlighted the absence of intersectionalities in much of second wave feminist theory. Crenshaw argued that the majority of feminist theory identified discrimination as a single categorical axis and in doing so systematically failed to account for the multiple burdens experienced by black women. As a result of this approach, Crenshaw explains that black women have been theoretically erased from feminist theory.<sup>24</sup> Similarly, Angela Harris (1988) argued that the use of the objective "we" when referring to women leads white feminist legal theorists to practice gender essentialism.<sup>25</sup>

## II. THE THIRD WAVE

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<sup>23</sup> bell hooks, *Feminist Theory: From Margin to Center* (1984).

<sup>24</sup> Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. of Chicago Legal Forum 139 (1989).

<sup>25</sup> Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stanford Law Review* 581 (1988).

The third wave of feminism builds on the multiplicity of experiences emphasized by the anti-essentialist feminist theorists writing toward the end of, and in response to, the second wave.<sup>26</sup> In fact, according to Henry (2004), the use of the terminology “third wave” initially indicated “a challenge by women of color to white feminists and the racism within the second wave...However, by the mid- to late 1990s, the term ‘third wave’ had become synonymous with younger feminists and with stressing generational differences from the second-wave feminists of the 1970s.”<sup>27</sup> In 1992, Rebecca Walker, daughter of Alice Walker, published an article in *Ms. Magazine* titled “Becoming the Third Wave” in which she announced, “I am not a post-feminism feminist. I am the third wave.”<sup>28</sup> Walker went on to found the Third Wave Foundation and to write *To Be Real: Telling the Truth and Changing the Face of Feminism*.<sup>29</sup>

The third wave identifies the need for a multiracial and diverse feminist movement in response to the perceived homophobia, racism and classism present in the second wave.<sup>30</sup> The third wave highlights intersections and women’s multiple identities, and attempts to avoid the essentialist pitfalls that it perceives in the second wave.<sup>31</sup> As a

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<sup>26</sup> See Gloria Anzaldua and Cherrie Moraga (Eds.), *This Bridge Called My Back: Writings by Radical Women of Color*, (1984); Frances Beale, *Double Jeopardy: To Be Black and Female, in Sisterhood is Powerful: An Anthology of Writings from the Women’s Liberation Movement* 340-353, (Robin Morgan ed., 1970); Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness and the Politics of Empowerment* (1991); Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, U. of Chicago Legal Forum 139 (1989); Angela Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *Stanford Law Review* 581 (1988); bell hooks, *Feminist Theory: From Margin to Center* (1984); Gloria Hull, Patricia Bell Scott and Barbara Smith (Eds.), *All the Women are White, All the Blacks are Men, But Some of Us are Brave* (1982); Audre Lorde, *Sister Outsider: Essays and Speeches* (1984); Adrienne Rich, *Compulsory Heterosexuality and Lesbian Existence*, 5 *Signs: Journal of Women in Culture and Society* 631 (1980).

<sup>27</sup> Astrid Henry, *Not My Mother’s Sister: A Generational Conflict and Third Wave Feminism* 24 (2004).

<sup>28</sup> Rebecca Walker, *Becoming the Third Wave*, *Ms. Magazine* January/February 1992 at 39-41.

<sup>29</sup> Rebecca Walker (Ed.), *To Be Real: Telling the Truth and Changing the Face of Feminism* (1995).

<sup>30</sup> Jennifer Baumgardner and Amy Richards, *Manifesta: Young Women, Feminism and the Future* (2000); Astrid Henry, *Not My Mother’s Sister: A Generational Conflict and Third Wave Feminism* 32 (2004).

<sup>31</sup> See Pamela Aronson, *Feminists or ‘Postfeminists’?: Young Women’s Attitudes toward Feminism and Gender Relations*, 17 *Gender and Society* 903-922 (2003); Natalie Fixmer and Julia T. Wood, *The Personal is Political: Embodied Politics in Third Wave Feminism*, 28 *Women’s Studies in Communication* 235-257 (2005); Leslie Heywood and Jennifer Drake (Eds.), *Third Wave Agenda: Being Feminist, Doing Feminism* (1997); Rebecca Walker (Ed.), *To Be Real: Telling the Truth and Changing the Face of Feminism* (1995).

result, the third wave emphasizes the individual as opposed to the collective.<sup>32</sup> As Dicker and Piepmeier (2003) explain, “Just as it is interested in a multiplicity of issues, the third wave operates from the assumption that identity is multifaceted and layered. Since no monolithic version of ‘woman’ exists, we can no longer speak with confidence of ‘women’s issues’; instead, we need to consider that such issues are as diverse as the many women who inhabit our planet.”<sup>33</sup>

At the same time, however, third wave feminists identify a variety of political and legal goals that they believe should be pursued including guaranteeing every woman’s right to make reproductive choices free from government coercion, access to healthcare, making the workplace responsive to the needs of various individuals, and passing the ERA.<sup>34</sup> When Rowe-Finkbeiner conducted a survey of women on college campuses across the country to find out what young women identify as the most salient social issues today, the 288 respondents replied that gender equality was the number one issue followed by reproductive rights, self-identity, work-and-family balance, violence against women, economic issues, health care, education, societal and media images of women, and civic engagement.<sup>35</sup> Thus, it appears that many of the third wave feminist goals are commensurate with the second wave’s political and legal agenda.

Yet, third wave feminists do not emphasize legal solutions or strategies. In fact, third wave feminists appear to reject many of the techniques and strategies used by second wave feminists and the movement-based politics of previous generations. Instead, the third wave “functions more like ‘an ideology without a movement.’...third-wave feminism is more about textual and cultural production, local forms of activism, and a particular form of feminist consciousness than it is a large-scale social justice movement.”<sup>36</sup> The decision to move away from movement-based politics and abandon, or at the very least not turn to, the law as a mechanism for achieving change is consistent with the third wave’s emphases on individuality and intersectionalities and a desire to avoid the essentialist tendencies of the second wave. Instead, third wave feminists emphasize local community activism and socio-cultural change as an alternative to coordinated political and legal change.<sup>37</sup>

A common concern, however, advanced by both proponents and critics of the third wave feminism is that it has not translated into a cohesive political movement.<sup>38</sup> Instead, the third wave feminist “movement” consists of a number of individuals defining

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<sup>32</sup> See *supra* note 4.

<sup>33</sup> Rory Dicker and Alison Piepmeier (Eds.), *Catching a Wave: Reclaiming Feminism for the 21<sup>st</sup> Century* 10 (2003).

<sup>34</sup> Jennifer Baumgardner and Amy Richards, *Manifesta: Young Women, Feminism and the Future* 279-281 (2000).

<sup>35</sup> Kristin Rowe-Finkbeiner, *The F Word: Feminism in Jeopardy* 59 (2004).

<sup>36</sup> See *supra* note 27 at 35-36.

<sup>37</sup> See *supra* note 35 at 88.

<sup>38</sup> See Astrid Henry, *Not My Mother’s Sister: A Generational Conflict and Third Wave Feminism* 32 (2004); Kristin Rowe-Finkbeiner, *The F Word: Feminism in Jeopardy* 59 (2004).

feminism in their own terms and living independent lives predicated on the common belief that women may choose to be whoever they want and do whatever they want free from the ideological constraints of the second wave feminist movement. In fact, some authors suggest that the focus on individuality and the resistance to collectivity is what defines the third wave movement.<sup>39</sup> As Tong explains:

As part of their study of interlocking forms of oppression, third-wave feminists engage in research and writing that attends to the lives and problems of specific groups of women. A typical third-wave feminist text will include articles about women who represent a wide variety of multicultural perspectives: Hispanic American, African American, Asian American, Native American, and so on. Indeed, one would be hard-pressed to find an article authored by a third-wave feminist that is not heavily hyphenated. Attention to this level of detail about women is, of course, important, but it is also empirically intimidating and conceptually challenging... Thus, third-wave feminists dare not speak for Hispanic women in particular, let alone women in general. In fact, they dare not speak about any group of women, however small and particularized, for fear of not recognizing the differences that exist within a group.<sup>40</sup>

Yet, according to Rowe-Finkbeiner (2004), “the lack of a cohesive movement is the crisis of the third wave.”<sup>41</sup> Despite the common concerns articulated by individual feminists, there is no cohesive movement or strategy to achieve positive change. In *Catching a Wave: Reclaiming Feminism for the Twenty-First Century* (2003), Dicker and Piepmeier acknowledge that the third wave has not produced an easily definable movement, but respond to this type of criticism by arguing that the third wave needs to be and can be a politicized and activist movement that engages in collective action to achieve its goals.<sup>42</sup>

Similarly, at the conclusion of *Manifesta: Young Women, Feminism and the Future* (2000), Baumgardner and Richards write that young feminists are still a pre-emergent movement, but they suggest that there are certain developments that may prompt the movement to coalesce and develop: “That could be a Republican victory in the 2000 election, and thus a President who would almost certainly appoint two conservative Supreme Court justices and overturn *Roe v. Wade*. If this occurred, the feminist response would be overwhelming and fierce.”<sup>43</sup> Yet, while the first part of the authors’ statement came true—George W. Bush was elected President in 2000 and again in 2004, and he was able to appoint two conservative Justices to the Supreme Court who appear to be predisposed to overturn, or at the very least undermine, *Roe v. Wade* (1973)—the latter prediction that young feminists would be mobilized by the

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<sup>39</sup> See Astrid Henry, *Not My Mother’s Sister: A Generational Conflict and Third Wave Feminism* 32 (2004); Naomi Wolf, *Fire with Fire: The New Female Power and How It Will Change the 21<sup>st</sup> Century* (1993).

<sup>40</sup> See *supra* note 5 at 33-34.

<sup>41</sup> See *supra* note 35 at 89.

<sup>42</sup> See *supra* note 33.

<sup>43</sup> See *supra* note 34 at 289.

nominations of two anti-choice Justices did not materialize. The feminist response to the nominations of Justices Roberts and Alito was not “overwhelming and fierce.” Furthermore, the Supreme Court’s recent decision in *Gonzalez v. Carhart* (2007) has failed to mobilize feminists. Yet, this decision clearly poses a threat to women’s reproductive rights as highlighted by Justice Ginsburg’s decision to read her dissent aloud from the bench and explicitly draw attention to the majority opinion’s hostility to the precedents established in *Roe v. Wade* (1973) and *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992).

Fixmer and Wood critique third wave authors for failing to recognize that the legal and political victories achieved by the second wave are not guaranteed and may be jeopardized now or in the near future:

The authors we read seem to assume that second wave feminists’ legal victories cannot be repealed and that there are no other important battles to be fought in the juridical realm. In response to what we perceive as naivety on the part of third wavers, we sound a cautionary note: Inattention to juridical power could allow reversals of gains won by earlier feminists—the imperiled *Roe v. Wade* decision exemplifies the state’s continuing power to constrain the most intimate of women’s choices.<sup>44</sup>

While the third wave’s embrace of individualism has positive connotations and in some ways acts as a testament to the success of the second wave feminist movement, there may be risks associated with the emphasis on individuality and the simultaneous fact that the third wave is not a collective movement lobbying for legal change. Tong suggests that, “The reason why third-wave feminists need to keep in touch with their second-wave feminist mothers is precisely to make sure that third-wave *feminism* does not degenerate into third-wave *postfeminism*.”<sup>45</sup> For example, the fact that young women believe that they can pursue any occupation reflects the success of the second wave, but the lack of a cohesive third wave political movement means that most of these women will confront numerous obstacles in the workplace and economic realm similar to those confronted by their mothers. Crawford points out that third wavers often identify issues of concern such as economic discrimination, but they fail to articulate a response or solution to women’s continued disadvantaged economic position: “Third-wave feminist commitment to the study and improvement of women’s economic position, however, remains somewhat elusive. Although economic equality issues appear on lists of third-wave feminist concerns, they remain largely unexamined in third-wave writings (which tend toward the personal narrative).”<sup>46</sup> The third wave’s failure to articulate a theory or mechanism for achieving its goals is problematic. Identifying economic discrimination against women as a problem or stating that abortion is a right may be accurate and/or powerful rhetorical statements, but these words do nothing to

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<sup>44</sup> Natalie Fixmer and Julia T. Wood, *The Personal is Political: Embodied Politics in Third Wave Feminism*, 28 *Women’s Studies in Communication* 248 (2005).

<sup>45</sup> See *supra* note 5 at 37.

<sup>46</sup> See *supra* note 4 at 23.

eradicate discrimination or protect abortion rights from encroaching government regulation.

Similarly, while the attention third wave feminists place on individual diversity and multiplicity of experiences reflects the perceived shortcomings of the second wave, these factors may prove to be problematic if they act as obstacles to a collective political movement or theory pushing for change. In this sense, the third wave's emphasis on the individual may have robbed it of the ability to be a collective movement that was one of the strengths of the second wave.

Finally, Spivak has argued that despite the third wave's anti-essentialist tendencies, it has actually produced a feminist theory that is essentialist in its own right:

the "new" feminist debates are perhaps too little reflective of the differences at work between and within women; that they are perhaps too narrowly addressed from and to the relatively privileged and affluent, to women who are not at the sharp end of daily brutalities such as racism, poverty, or homophobia; that they are perhaps a little too complacent about the gains they suppose women to have made since the second wave—gains which have benefited certain women to the exclusion of others...For some feminists, then, the politics of the "third wave" may seem a little too close to the politics of "post-feminism."<sup>47</sup>

Similar to the second wave, the third wave has both strengths and weaknesses. Its emphases on intersectionalities and individuality enable a more inclusive and encompassing feminism than the second wave. At the same time, however, the individuals of the third wave have failed to coalesce into a movement or to articulate the means to achieve their goals. As a result, nearly a decade into the twenty-first century, the third wave has not been successful in achieving substantive and tangible benefits for women or in stopping the courts from promulgating decisions that undermine the legal and legislative accomplishments of the second wave.

### III. POINT BREAK: UNIFYING FEMINIST LEGAL THEORIES

The following section attempts to synthesize the strengths of the feminist legal contributions to the second wave, a politicized and mobilized movement lobbying the legislatures and courts for equal rights for women, with the benefits of the third wave and its emphasis on individual autonomy and choice and the diversity of options and experiences available to women today. The goal in coming decade should be to move away from a practice of dividing and polarizing feminists in favor of theories that unify women to challenge the patriarchal state and infrastructure. In order to revitalize the feminist movement(s), feminists should: abandon and resist the use of the wave metaphor; resolve to link theoretical and rhetorical goals with practical and tangible results by using the law as a mechanism to advance women's rights; and commit to

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<sup>47</sup> Gayatri Chakravorty Spivak, *Feminism 2000: One Step Beyond?* 64 *Feminist Review* 113 (2000).

recognizing and incorporating the identities and needs of all women when crafting legal theories, strategies and solutions.

#### A. *Problems with the Wave Metaphor*

The wave metaphor is no longer a useful metaphor for describing the different phases of the women's movement. The continued use of this metaphor is problematic for a number of reasons. First and foremost, it pits feminists against one another. The wave metaphor implies that the waves of the women's movement are distinct and discrete or, at the very least, that one wave feeds into the next and the former ultimately is replaced by the latter. Yet, the reality is that the so-called waves of the women's movement are not as distinct as the wave metaphor (or some feminists) would lead one to believe. There is often a great deal of theoretical and practical overlap across generations, and the work of many feminists is not easily situated within a single wave. As a result, the distinctions among waves often are not very clear, but the wave metaphor works to exacerbate those divisions that do exist while simultaneously marginalizing the contributions of those feminists that do not fit neatly within a single wave. Furthermore, there is a great deal to learn from each of the so-called waves of the feminist movement and the success of one group of feminists is often predicated upon the successes and failures of previous feminist actors and activists. As a result, it is more useful to integrate the positive ideas and contributions put forth by feminists and activists from different generations, and stop talking about theories and individuals in opposition to one another.

Second, the wave metaphor is essentialist and works to exclude the contributions that women of color have made to the women's movement and feminist theory:

This model obscures the historical role of race in feminist organizing. If we consider the first wave as that moment of organizing encompassing woman suffrage and the second wave as the women's liberation/women's rights activist of the late 1960s, we effectively disregard the race-based movements before them that served as precursors, or windows of political opportunity, for gender activism.<sup>48</sup>

Thus, as Springer articulates, "Reexamining the wave model of the women's movement can only benefit the movement as we continue to expand the category of 'women' and make sure that, as bell hooks asserts, 'feminism is for everybody' (hooks 2000)."<sup>49</sup>

For example, when so-called third wavers juxtapose the second and third waves as polarized interests and critique the second wave of feminism as essentialist, the contributions of many second wave feminists that challenged the essentialist tendencies of their peers—e.g. Gloria Anzaldua, Frances Beale, Angela Davis, Audre Lorde, Cherrie Moraga, Barbara Smith, Alice Walker—are marginalized or erased. The wave

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<sup>48</sup> Kimberly Springer, *Third Wave Black Feminism*, 27 *Signs* 1061 (2002).

<sup>49</sup> *Id.* at 1062.

metaphor creates false dichotomies that exclude the contributions of these and other influential feminists.

In addition, the wave metaphor creates artificial divisions among feminists that may lead new generations of feminists to resist or reject the lessons and tools of their mothers' generation. If we acknowledge that the waves of the feminist movement are not as substantively divided as the wave metaphor may suggest, this will open up avenues for intergenerational collaboration. The feminists of the so-called second and third waves and the women that fall somewhere in between, have a great deal to learn from one another. As long as the wave metaphor exists it may work to inhibit sharing and cooperation while simultaneously increasing suspicion and defensiveness across the second and third waves of feminism. These artificial divisions do nothing to advance the substantive interests of women in the twenty-first century.

### *B. The Law as an Impetus for Change*

Much is to be gained by reprioritizing the law as a tool for advancing women's rights, including the possibility that providing strategies for achieving goals and ultimately producing substantive changes may mobilize individual women to coalesce into a reinvigorated feminist movement(s). As Martha Fineman explains: "One important characteristic of feminism is that it represents the integration of practice and theory. As noted by historian Linda Gordon, feminism is 'an analysis of women's subordination for the purposes of figuring out how to change it.'"<sup>50</sup> The women's movement developed in order to pursue women's interests and rights, and legal reform has proven to be a powerful tool for achieving the movement's goals throughout U.S. history. Most recently, in the 1960s, 1970s and 1980s, feminists active in the political and legal arenas lobbied legislators and the courts to produce policies and legal doctrines that advanced equal rights for women and agitated in response to legislative and legal defeats. Yet, as previously noted, using the law as an instrument to achieve social, political and legal change is not a priority for those active in the so-called third wave of feminism. Third wave feminists may have good reasons for exploring alternative avenues for articulating and advancing women's interests and rejecting an overwhelming emphasis on legal remedies. There is much to be gained from new forms of feminism and there is no doubt that the law is limited in its ability to achieve change, but the extent to which the third wave has abandoned the law is troubling. Legal strategies are valuable because they bring feminist activists into direct contact with the political and legal arms of the government; the venues capable of producing substantive and tangible changes. Furthermore, the absence of legal activism—defined as lobbying legislators for political reform and litigating in the courts—may act as an obstacle to movement building and make it difficult for feminists to advance or defend the equal rights of women across the United States. This is not to suggest that the social activism of the third wave should be abandoned, but rather that women's interests may be better served by a movement that relies on multiple strategies including legal activism.

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<sup>50</sup> See *supra* note 16 at 15.

One of the potential benefits of emphasizing legal activism is that identifying the law as an impetus for change enables theorists, activists and legal professionals to operationalize theories and strategies. This, in turn, enables feminists to make the move from articulating goals and engaging in rhetorical exercises to actually pursuing policy changes in the political and legal arenas. In short, the law provides the means to the ends. The identification of mechanisms for pursuing the goals of different women and the promise of delivering substantive quantitative and qualitative benefits to women may help to mobilize individuals and prompt the development of a feminist movement(s) thereby overcoming one of the perceived weaknesses—the emphasis on the individual at the expense of a movement—of the so-called third wave. Public mobilization of the law resulting in legal victories, or even defeats, may bring sex discrimination back onto the political agenda and translate into increased participation in the feminist movement. Women may be prompted to mobilize and engage one another if they believe that feminism can make a difference in their lives. While many women appear to think that there is no need for a feminist movement because feminism achieved all that it could, an emphasis on legal change may highlight and bring into the public view the many obstacles that women continue to face in contemporary American society.

Similarly, an additional advantage of legal activism is that the resulting policy changes and legal victories benefit all affected women not simply those active in the movement. For example, the Supreme Court's decision in *Roe v. Wade* (1973) invalidated restrictive abortion laws in forty-six states thereby extending one aspect of reproductive autonomy to all women and providing them with greater access to abortion providers should they so desire. In this manner, the law is a tool for linking theory and practice in ways that produce concrete changes in the lived out experiences of women in the United States. As Fineman explains, "many feminists gravitate toward law and legal reform as objects of study and action" because the law is a tool for linking feminist theory with feminist activism.<sup>51</sup>

When the emphasis on law is absent from the feminist movement, it is possible for those who oppose women's rights and benefit from the maintenance of a patriarchal system to erode the legal guarantees that women gained via previous legislation and court cases. Opponents of feminist goals and women's rights are able to defeat legislation that advances women's different interests and pass legislation that impedes on women's rights. State and congressional laws that encroach on the right to privacy and equal protection of the laws as well as instances of economic and sex discrimination in the private and public sectors are upheld by the courts.

Finally, the lack of an active feminist movement with a legal agenda, including specifically identified policy goals and legal strategies for achieving them, has led to a feminist movement with priorities but few means to further the feminist agenda. As we begin the second decade of the "new" millennium, it may be advantageous for feminists to utilize the law and revive the movement's emphasis on legal strategies as a mechanism for achieving reform. One of the most powerful tools available to a feminist movement is using the law to challenge the patriarchal system.

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<sup>51</sup> See *supra* note 16 at 15.

It is important to note that the abandonment of legal strategies by the so-called third wave feminists may reflect their concerns and/or dissatisfaction with the way that the law was employed previously as a mechanism for change. As noted above, one of the primary critiques of the second wave was that many of the women active in crafting and pursuing a legal strategy advanced priorities that privileged the experiences of some women over others. In addition, legal reform often emphasizes the neutrality of law and in doing so masks the distinctions among women. Because law is neutral the argument follows that the law does not allow women to be treated differently than men: equal protection of the laws must be applied to both sexes. This strategy identifies women as a collective homogeneous group and does not distinguish among women resulting in legal outcomes that may promote gender essentialism.

Many feminists may be resistant to emphasizing and relying on legal strategies to achieve change because they fear that this approach inevitably privileges the experiences of some women and masks the experiences of others. Yet, the time may be ripe to challenge this perception. Law is capable of recognizing intersectionalities, but the courts are reactive institutions. Feminists, however, are capable of crafting legal arguments (and have done so) that recognize and account for the injustices experienced by women of different races and ethnicities, sexual orientations and identities, and socioeconomic backgrounds. It is incumbent on feminists to advance these legal theories and arguments in the courts and legislatures in order to force these reactive institutions to adapt. This is not to suggest that change will be easy or quick, but a feminist movement (as opposed to individual instances of women pushing for change) that emphasizes intersectionalities and demands legal change that reflects the diversity of women's experiences is something that feminists should aspire to in the coming decade. At the very least these efforts will initiate a discussion in major state and national public venues thereby educating the public about the challenges that different women continue to confront.

Finally, one may argue that the absence of a vigorous feminist legal movement reflects how political dynamics changed beginning in the 1980s with the rise of the religious right and the success of Republicans running for office at the state and national levels: feminists intentionally are minimizing legal strategies because they fear that the courts are packed with opponents of women's rights which may lead to legal defeats that erode the gains that women have achieved in recent decades. This is certainly a valid concern, but the reality is that feminists are losing in the courts whether they pursue an aggressive legal strategy or not as exemplified by recent Supreme Court decisions in *Gonzales v. Carhart* (2007) and *Ledbetter v. Goodyear Tire and Rubber Company* (2007).

Furthermore, if feminists are uncomfortable utilizing courts to pursue legal change, they can focus their attention on lobbying legislators, including the Democratic Congress, to pass laws that reflect women's interests and repeal those that do not. Again, this strategy may bring salient issues into major public venues thereby educating the public and persuading legislators to be supportive of women's rights. If one branch of government does not appear to be a friendly venue there are other branches that may

prove more receptive, and there are abundant opportunities to lobby for change at the state and local level as well.

The benefit of a legal strategy is that it works toward achieving substantive tangible results and benefits for women. It also has the added potential to unite women in support of a feminist movement(s). Finally, even if a legal strategy confronts initial obstacles and results in defeats, it provides opportunities to increase the saliency of women's rights on the political and public agendas and educate elected officials and the public about the many obstacles and inequities that women continue to confront in the United States. The women's movement produced numerous positive changes throughout U.S. history, but much work remains to be done. Legal maneuvering provides an opportunity to draw attention to and pursue challenges to the remaining inequities, including those produced by an artificial belief in law's neutrality and women's homogeneity.

### C. *Toward Unifying Feminist Theories*

As long as feminists are not actively proposing and lobbying for political and legal change, the patriarchal state is exploiting this inactivity and divisions within the feminist community to its benefit. The challenge for feminists in the next decade is to find a way to unify women in opposition to patriarchy while recognizing the diversity of women's experiences. If feminists are mindful of avoiding essentialist pitfalls and recognize that women's multiple experiences mean that there must be multiple angles, agendas and solutions, it is feasible to craft feminist theories, legislative proposals and legal strategies that take into account these various interests and needs while simultaneously advancing women's rights. As previously noted, the problem that many feminists have with the second wave's emphasis on "women's issues" was that women were discussed as a single homogeneous group and the problems and solutions that were discussed often reflected the experiences of a select group of privileged women. As a result, unifying feminist legal theories must privilege the voices of all women as opposed to the unitary voice, the objective "we the women," often associated with the gender essentialism embodied in the writing of many second wave white feminist theorists.<sup>52</sup>

That being said, it is important to craft effective legal strategies that are capable of producing results in political and legal venues. As previously noted in the critique of the third wave, when the emphasis on pluralism is reduced to individual experiences at the expense of a movement, the risk is that feminism is rendered impotent as a movement for change. As Anzaldua explains, "Twenty-one years ago we struggled with the recognition of difference with the context of commonality. Today we grapple with the recognition of commonality within the context of difference."<sup>53</sup> Thus, the challenge is to find a way to channel the anti-essentialist theoretical contributions of the third wave into

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<sup>52</sup> See *supra* note 25.

<sup>53</sup> Gloria Anzaldua, *Preface: (Un)natural bridges, (un)safe places, in This Bridge We Call Home: Radical Visions for Transformation 2* (Gloria Anzaldua and Analouise Keating Eds., 2002).

a form of activism that is capable of demanding and achieving concrete and positive changes for women in the United States.

In order to move toward unifying feminist theories, feminists must capitalize on one of the strengths of the third wave and engage in an expansive dialogue that incorporates women from a variety of backgrounds with different goals and interests. Third wave feminists have, for example, utilized blogs and other alternative media such as 'zines to expand the feminist dialogue and create a safe space for the expression of diverse viewpoints. Feminists of all generations and schools of thought should take advantage of these venues to engage with one another and think about ways to link women's different experiences and needs with the concept of gendered oppression. There are a variety of women's issues—reproductive rights, child care, equal pay for equal work, health care, sexual violence—that impact women of all races, classes, sexual orientations and identities in the United States. One way to accomplish the union of the third waves' recognition of diversity with the second wave's feminist legal activism may be for feminists to acknowledge that women share a "gendered life"<sup>54</sup> that restricts, for example, the reproductive rights of women in contemporary American society and not the reproductive rights of men. While reproductive choice may mean different things to different women—e.g. one's race and ethnicity, socioeconomic background, geographic location, sexual orientation and identity, and age may influence one's priorities within the realm of reproductive rights—using the concept of a gendered life as a starting point makes it possible to bring women together to discuss how their individual experiences have led them to be marginalized and discriminated against as women. Some women may prioritize discrimination on the basis of a single identifying characteristic such as sex whereas other women may emphasize intersectionalities and multiple sources of oppression, but the resulting discussions will encompass a variety of issues, some more salient to certain women than others. Returning to the example of reproductive rights, such a conversation may include: contraception; abortion; pre-natal and neo-natal care; welfare benefits; child care; economic issues; maternity and family leave; health care; etc. Women will disagree about priorities, goals and solutions, but it is possible that women may find that they share common concerns or an interest in crafting broad legislative proposals and legal strategies that are capable of raising the saliency of and advancing a variety of interests.

In order for this type of approach to be successful, women must not exploit their privileges at the expense of other women. It benefits all women to challenge inequity and sex discrimination, including discrimination against women oppressed because of the intersection of multiple characteristics. In addition, the women's rights movement cannot demand or expect that women privilege one component of their identities over another. Women are not a homogenous group, and in order to bring women together to form feminist movements requires the recognition of women's differences and multiple identities and the different obstacles and inequities confronted by women.

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<sup>54</sup> Martha Fineman, *The Neutered Mother, the Sexual Family and other Twentieth Century Tragedies* 1995.

The third wave's emphasis on individual experiences makes a valuable contribution to the feminist dialogue when it explicitly draws attention to the nuances and variations among feminists and their priorities. Yet, diversity and pluralism need not be obstacles to a feminist movement. Unifying feminist legal theories that account for the diversity of women's experiences and allow for the recognition of multiple voices and goals may allow women to come together in collective movements to use the law as a tool to lobby for a variety of changes and challenge the patriarchal system.

#### CONCLUSION

As we enter the second decade of the twenty-first century, women across the United States are confronting discrimination on the basis of sex or the intersection of sex and other characteristics on a day to day basis in their homes, communities, workplaces, educational institutions, retail establishments, legal proceedings, medical facilities, etc. Yet, we often hear that we have entered the era of post-feminism which implies that feminism is either no longer necessary or viable. The reality, however, is that vibrant feminist movements capable of uniting women in the interest of promoting equal rights and pursuing women's various interests are both necessary and viable.

The recent emphasis on individual experiences and feminisms has contributed to the decline of feminist movements, but feminist movements are necessary to challenge the recent threats to the hard fought gains women have made over the decades and to continue the fight to eradicate the many remaining inequities inherent in the patriarchal state. Women cannot allow the politics of feminism to be replaced by a politics of division that falsely emphasizes the distinct waves of the feminist movement and the incompatibility of unity and difference because opponents of women's rights will exploit the divisions and absence of feminist movements to advance their interests.

The decline of feminist movements, however, does not reflect an abandonment of feminism. Many women continue to identify as feminists and it is possible to rally individuals and highlight the benefits of feminist movements. In order to contribute to the development of feminist movements in the coming decade, it will be necessary to abandon the divisive wave metaphor that frames one wave of feminism in opposition to the other in favor of drawing on the strengths of different components of feminism to advance women's interests. From the 1960s through the 1980s, feminist legal theorists, activists and legal professionals effectively framed the legal debate and utilized the law as a mechanism to advance women's rights in the state and national legislatures and the courts. Yet, the emphases on the neutrality of law and the homogeneity of women proved problematic in practice and excluded and alienated many women. This gender essentialism informed the scholarship and activism of many feminists including those coming of age in the 1980s. Many young feminists writing in the 1990s reacted to the gender essentialism they identified in feminism by emphasizing women's diverse and pluralistic experiences. This focus led them to abandon or reject a feminist legal movement in favor of individual definitions and manifestations of feminism. Many of

these women relied “on personal anecdote for their definitional and argumentative strategies” as opposed to crafting macro-level strategies for achieving change.<sup>55</sup>

Yet, the law is an invaluable instrument for furthering social and political change and improving the lives of different women. As such, it remains one of the most powerful tools available to a feminist movement in a patriarchal system. The use of law as an impetus for change can draw attention to discrimination and the inequities different women continue to face, and raise the saliency of these issues on the public and political agendas. It also serves as a mechanism for advancing the rights of women by providing the means to the feminist movement’s ends. In order to avoid the essentialist pitfalls associated with many previous feminist legal strategies, it is necessary to craft legal theories and proposals that account for the diversity of women’s experiences, their different priorities, and the nuances associated with many so-called women’s issues. This will require that feminists commit to hearing and recognizing one another, and engage in an open and forthright dialogue that may be painful and difficult at times. Yet, through this process it may be possible to craft unifying feminist legal theories that advance the interests of various women and continue the fight to achieve equal rights for all women not simply the privileged. My hope is that this article will contribute to this dialogue by highlighting the potential benefits of and opportunities for developing unifying feminist legal theories and engaging in movement building in the decade ahead.

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<sup>55</sup> Leslie Heywood and Jennifer Drake (Eds.), *Third Wave Agenda: Being Feminist, Doing Feminism 2* (1997).