

A Socialist Feminist Legal Theory for Our Time

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Cynthia Grant Bowman, *Recovering Socialism for Feminist Legal Theory in the 21st Century*, 49 **Conn. L. Rev.** 117 (2016), available at [SSRN](#).

In the aftermath of the 2016 presidential campaign and the dramatic defeat of an avowedly feminist Hillary Clinton to a demonstrably misogynistic Donald Trump, many have called into question the future of feminism. Clinton's loss to a significantly less qualified candidate and the startling statistic that fifty-three percent of white women voted for her opponent raises questions about the persuasive power of mainstream feminism. Clinton's campaign revealed the stubbornness of misogyny both in the political system and socially. Yet, even as misogyny became increasingly apparent in the primaries and then more blatant in the presidential race, for progressive women, Clinton's gender identity and her liberal positions on women's issues were not enough to overcome their economic concerns and social concerns. Rather, they were drawn to Senator Bernie Sanders' reinvigorated socialism in the primary race even though they eventually voted for Clinton in the general election.

Prior to this recent campaign, as Cynthia Grant Bowman notes in her article *Recovering Socialism for Feminist Legal Theory in the 21st Century*, socialism had been largely absent from mainstream party politics in the United States. However, it was critical in the ideological development of a number of social movements in the 1960s and 70s, including those for civil rights, labor rights, and women's rights. In her article, Bowman seeks to now reintroduce this work to feminist legal theorists to advance an "agenda for both research and legal reform." (P. 119.)

The article has two main contributions that make it important reading. First, it recovers a strand of feminist theorizing that is once again becoming important particularly to younger feminists. With growing inequality and a breakdown of the state's commitments to social services, this history reminds us of prior struggles. Her literature review provides a map of socialist feminist thinking and a starting point for those who are unfamiliar with it. The second important contribution is that she revisits Catherine MacKinnon's early dismissal of Marxism. And while not overstating MacKinnon's influence, Bowman suggests that much has been missed by feminist legal scholars who pursued Critical Legal Studies or Critical Race Theory rather than developing a robust socialist strand of feminist legal theory. What might such a socialist feminist legal theory have looked like? Bowman explores this question as well as what a turn now to socialism in feminist legal theory (FLT) in the legal academy could yield if we take up her suggestion. Given the recent turn of events in the political and economic fortunes of women and minorities, there is no time like the present to do so.

Part I of the article lays out a very important history of feminism and Marxism in the 1960s and 70s. In the milieu of a number of social movements and student activism against the Vietnam War, Bowman traces the rise of feminist critiques of Marxism and socialism and the development of socialist feminism. According to her account, by the mid-70s, socialist feminism had established itself as a distinct branch of feminism. Distinguishing itself from both Marxism and radical feminism, socialist feminism "could develop a theory and politics that would address 'the political/economic/cultural totality of monopoly capitalist society,' including understanding the interconnection between the subjugation of women and the atomization of the working class." (P. 129.) This history is important particularly for younger feminist legal theorists who have not had the opportunity to engage with the literature before. If, as she

encourages, we are to incorporate socialist feminism into FLT, we must go back and read these key texts by theorists like Angela Davis, Shulamith Firestone, Iris Young, Zillah Eisenstein, Nancy Hartsock, Heidi Hartmann, and Alison Jagger to name just a few. FLT scholars are likely to be familiar with the works of Nancy Fraser and Sylvia Federici, but considerably more work is out there to be mined for ideas as Bowman aptly demonstrates.

In the second part of the article, Bowman takes up the development of FLT in the 1970s. She asks why there is no strong current of socialist feminism in the law today. After all, during the 1970s, women were entering law school in record numbers. Socialist feminists were present in many other parts of the academies from which these students had received their undergraduate training. Yet in the legal academy, even while women were using the law to win greater equality for women, those strategies were informed by a more mainstream liberalism than socialism. The strategy of Ruth Bader Ginsburg, working on the ACLU's Women's Rights Project, was to bring cases advancing women's formal equality. The strategy was largely successful until women's biological difference became a stumbling block. The losses in cases dealing with pregnancy discrimination, for example, demonstrated the limits of formal equality. Some feminist scholars like Robin West raised questions about using men as a yardstick for equality when women's particularities made that measure problematic. They advocated for greater "understanding and valuing of the unique experiences of women." (P. 156.) In the early 1980s, Catherine MacKinnon intervened in this sameness/difference debate with a critique of both sides. Rather than using men as the norm, her project was to develop a theory that articulated the use of sex to distribute power.

By the 1990s, an array of critiques had emerged in feminist legal thought. African-American, Latina, and Lesbian feminists charged mainstream FLT with essentialism. The field of feminist thought became more complex and contested, yet no specifically and overtly socialist strand of FLT emerged from the fragmentation of the field. The only legal theorist at the time to take Marxism seriously was MacKinnon. Her engagement with Marx was profound. Her thorough reading of the literature led her to conclude that Marxism and feminism could not be synthesized as others had tried to do because Marxists "ignored sexuality as a form of power." Marx failed to question the way women were defined by nature and therefore he did not consider sex-based subordination as requiring an explanation. Engels was better on this score, but as Bowman points out, he "understood women's status as simply a product of the family form particular to capitalism." (P. 159.) Changes in family, therefore, were a result of economic changes. Bowman goes on to describe MacKinnon's assessment of the only semi-successful project of synthesis, which was the "wages for housework" movement. By bringing housework into view as work in the way it is understood by Marxists (as having the possibility to both oppress and liberate), the wages for housework movement made substantial advances, but, according to MacKinnon, it still fell short of articulating a theory and method that accounted for the relationship between sexuality and power that would lead to full liberation of women. (Pp. 160-161.)

While MacKinnon's negative assessment had a powerful impact on FLT, Bowman argues it is not the sole reason for the arrested development of socialist FLT. So, what does explain this gap? One possible explanation is that feminists gravitated to alternative movements, like Critical Legal Studies, that emerged at the same time. Bowman argues that this turn away from socialist feminism was a missed opportunity and impoverished the developing field of FLT. In Part III of the article, Bowman explores the potential of socialist feminism to inform a richer, more emancipatory FLT. For starters, she accepts the socialist axiom that even the most benevolent forms of capitalism will not bring human flourishing to women. In order to achieve this, socialism's core commitments to using collective resources to meet basic needs, to collective decision-making and bargaining in work, and to genuine equal voice in government are indispensable. In addition, socialist feminism would bring its insights into the "interdependence and interpenetration of the public and private spheres and the economic impact of that interdependence." (P. 165.) The inclusion of globalized conceptions of race and class in legal

analyses that are sensitive to women's multiple roles would flesh out current FLT. In terms of U.S. doctrinal areas of study, socialist FLT would offer a more nuanced understanding of the sexual division of labor and how this undergirds the tenacious discrimination faced by women. In family law, socialist feminism would help illuminate the incompatibilities in the structures of families and markets and shift away from liberal attempt to reconcile the two. In addition, I would add that socialist feminism may inform the ways in which the family and market have also been co-constructed in capitalism to the detriment of women's autonomy and flourishing. As feminism's potential for emancipatory change is in question, there is no time like the present to take up Bowman's call to revisit some of the more radical theoretical work of the past and introduce it to feminist legal theory.

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