

## **ROUNDTABLE DISCUSSION: IS SUBVERSION SUBVERSIVE?**

**Zipporah Wiseman\***

We have talked and tried to identify key questions that have arisen in the remarkable panels that we have all heard in the last two days. And what I am going to do is try to roll it all into one question, which is really six or seven, of course. Then, I'm going to ask each person to speak to those questions, but say what they have to say. We'll start with Kathy Abrams and go down the table.

This was not easy to do, and it's not necessarily a comprehensive overview. But, let me have just a try. In the framework of the conference, which was an attempt to look at subversion in the past, present, and hopefully in the future, there was an omnipresent theme which Janet Halley started us off with in the opening round table, which was, "what is feminist?" She talked about stepping aside from the feminist enterprise, but what is the feminist enterprise? And what particular strand of feminism—which label—do our scholarly perspectives, methodologies of teaching, or brands of activism represent? And that ran through everything.

It raises a very important question, which it would be good to talk about, which is, as David Kennedy phrased it: What are the costs and benefits of retaining the labels? Is it more important at this point to look at why the particular strands, labels, and general categories of feminism remain important, in contrast to how these divisions and strategies have clouded our vision and our political action? One panelist—and this is a particular shtick of mine, I must say—defined feminism as pulling the curtain to reveal power and as telling stories of women's material existence. It's been very interesting to me that the perspectives of one of our intellectual mothers of this movement, the person who first alerted us to the absolute necessity of pulling that curtain to reveal power, who was quite clear about what and whom she wanted to subvert and how, namely Catharine MacKinnon, has largely been absent from our discussions, and I wonder why. So in the context of the question of "what is subversion?," "what and whom do we want to subvert?," and "how do we now propose to try to continue to do it?," I'm going to open up the floor.

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### Kathryn Abrams\*:

Alright. I want to focus on two questions in my comments, and the first question, which Zipporah has already alluded to, is a version of the question framed by Janet Halley: "What is in the box [of feminism] and how should we best position ourselves in relation to the box?" And a second question is the one posed more generally by the title of the roundtable: "Does subversion subvert and how?" My response to each is going to be mediated by a particular text. We originally had the idea on this panel that we would bring a subversive text through which we could iterate our version of subversion or subversiveness, and I'm going to do that to some extent with each of these.

For the first question, the question of the box, the mediating text that I want to use is a wonderful article by Wendy Brown that was written about five years ago called "*The Impossibility of Women's Studies*." In this article, Brown positions herself either in the box or sort of teetering on the edge of the box, it's hard to exactly to know which, and she poses a challenge that is similar to Halley's. She suggests that the current anomie of women's studies departments may be produced by a structural tension or contradiction. On the one hand, much that we've learned from the constellation of left critiques suggests that you can't reduce subjectivity or identity to one element, in the way that many women studies programs or scholarly inquiries initially posited; in other words, there's got to be more in the box. But, if you acknowledge the full complexity of the way that power circulates and constructs subjectivity, can you really say you're doing something called women's studies?

Now, interestingly, Brown's move doesn't dwell on the horns of this dilemma but moves aside from it to focus on the kind of work that women's studies programs and feminists should be promoting, and she talks about two different kinds of inquiries. The first uses complex analyses of the circulation of power and the way it produces subjectivity—analyses that are particularized, historicized, local in their frame, and multifaceted in their view of subjectivity. So, that's one enterprise. Second, she proposes that we do analyses of how sex and gender are constructed and operate in the world, but analyses that don't assume that these elements by themselves constitute the subjectivity of any particular real living person. These kinds of analyses seem to me to be very much what I've seen going on in lots of different ways in this conference. Now, one can ask how these kinds of work relate to the category of "feminist." And, to me, this is both an interesting question and one whose stakes I'm not fully sure of. On the one hand, you can imagine a looser relation

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between the kinds of work that Brown specified and the label "feminist," which posits either that labels don't matter, or that there's a more contingent relationship between the label and the work that's being done, such that you might be brought by your connection with a political agenda that saw women as an oppressed group to a particular kind of work or substantive focus. But the analysis you pursue in order to make headway with that group or with that question is something different.

But there have also been voices at the conference that have suggested that the connection of this work to the term "feminist" or to a political agenda that focuses on women's oppression per se should be more fully theorized. I think today of an interesting historical cautionary note sounded by Linda Kerber, who talked about the moment after women's suffrage was achieved. Feminists decided that they could loosen their focus on women and move into a variety of areas just at the time where there was an upsurge of a backlash, and the confluence of those two factors was not very successful for feminists. So, I have no firm answers to how important it is to theorize the connection between the kind of work Wendy Brown talks about and the label "feminist." I can only say provisionally, first, that I find the two kinds of work that Brown proposes to be a very fruitful suggestion, and second, that I see a kind of genealogical connection anyway between these kinds of work and a variety of things one might label feminist. You might say that they are a part of feminism's subversive legacy.

On the second point, whether and how subversion subverts, I want to do two things. First, I want to suggest that subversion may be valuable as a supplement to traditional forms of legal normativity or strategies of law reform. And second, I want to explain the suggestion by reference to one of my favorite articles, Joan Nestle's wonderful essay, "*My Mother Liked To Fuck*." Now, this essay is a central text of the sex, which probably gazillions of you in the room are very familiar with; Joan Nestle tells the story of her mother, a working woman "who believed she had the right to have a penis inside of her if she liked it" and who was raped, robbed, beaten and reviled but "never bullied out of her sexual needs." Joan Nestle uses this story to trace the origins of her own sexual nonconformity and to answer Andrea Dworkin's "litany of the penis," as she refers to it. This tells us three kinds of things about how a model or paradigm of subversion might work. First, it operates to destabilize dominant categories or analytic forms, in this case, motherhood, sexual shame, violence, the dichotomy between agency and choice, either by blurring the boundaries of time-worn dichotomies (you might say that neither agency nor victimization is really relevant to the life of Regina Nestle) or through incongruous juxtapositions. I mean, think about the title, "*My Mother Liked to Fuck*," for God's sake. Anybody can like to fuck, but your mother? And, in some

ways, it is almost as incongruous as Martha Ertman or Mary Anne Case's suggestion that we can bring economic analysis to the realm of familial relations. Second, this essay demonstrates that the practices of subversion allowed for multiple points of intervention. First, we have the subversive performance. This is either Regina Nestle's living of her life or Joan Nestle's performance of bringing Regina's life to a particular audience. But also, as Domino Perez told us yesterday, we can have the subversive interpretation of any given performance and that's another element of subversiveness. Here this is either Joan Nestle's interpretation of Regina or our interpretation of Joan Nestle. Finally, one of the features of subversion that is embodied in this essay is the undecidable affects of subversion. The political effect of the subversion depends on how it's viewed by a variety of different audiences. Joan Nestle may be less subversive if people hear her story and say, as my students frequently say when they hear it, well this just shows that MacKinnon was right. Now, one of the things that strikes me about subversion is that one is never sure ex-ante whether it's going to be successful in destabilizing dominant norms, whether it's going to have little effect, or whether maybe it might even reinforce the status quo. So, how do these qualities suggest to me that subversion might be a useful supplement to what I might refer to as the confident linearities of a law reform model?

There are two ways, and in some ways, they're in tension with each other, but I'm going to live with that. First, I think that subversion can teach us humility. Not just about the naturalness of coherence of our legal categories or ideological categories, but about the potential of law reform efforts. When Susan Estrich said last night that thirty years is too long, I think she's right if she's talking about thirty years of women's suffering. But, I think she's wrong about the potential of any movement to negotiate in short order systems of power as long standing and complex as those in which we're currently enmeshed, and I think that the undecidability of subversion can teach us something about the posture with which we approach the law reform effort. Second, and again potentially contradictorily, I think subversion can give us a sense of our own agency as individual actors. The practice of subversion contemplates what has frequently been referred to as a defused sphere of the political, in which the usual instrumentalities of legal reform have some degree of purchase but no distinctive claim on what produces change in the world. In the words of Pierre Schlag, which I love, our legal normativity assumes that we are making an appeal to someone, a decisive, responsible actor who's "on the phone," but there's no one on the phone. If the bad news is that there's no one on the phone, the good news is that there are a broad range of interventions that might, though no one knows in advance, make a difference, and that we, each of us, individually, collectively, and in

groups, are what we have, to try and make that difference.

**Zipporah Wiseman:**

Thank you, would you identify yourself Kathy, I forgot to . . .

**Kathryn Abrams:**

I'm Kathy Abrams. And, I also want to apologize because I think it's one of the grosser parts of academic rudeness to lay out a bunch of things and then catch a plane, but, this is what I'm going to have to do, so I'm going to leave in about ten minutes; so, good-bye in advance.

**Zipporah Wiseman:**

Kathryn, thank you.

**Katherine Franke\*:**

I'm Katherine Franke, and I'd like to share some thoughts on Zipporah's kind invitation that we reflect on the day or the two days we've been here, but before we do that, I just want to thank Zipporah and Susan Heinzelman.

**Zipporah Wiseman:**

Sue, stand up.

**Katherine Franke:**

These conferences, as we all know, take so much work to make them come off as flawlessly as has this one; so, thank you to you two but I know there are legions behind you that made this possible including Peggy, who's still not here, right?

**Zipporah Wiseman:**

Right, to whom it's been conveyed. And, the organizing committee who are mostly here, Gretchen Ritter, Norma Cantu, where are you Norma, stand up please, Karen Engle, Jane Cohen. Have I forgotten anybody? No? Okay.

**Katherine Franke:**

I'd like to reflect on the challenge that the conference organizers have offered us: that of understanding our feminist legacies as forms of subversion. To that end, I want to think out loud about a few key questions. First, "what is the subject of feminist theory?" in the sense of,

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“What is the topic?,” “what is the ‘what’ of feminist theory?,” and “what is the ‘who’ of feminist theory?” I think these are inherently interrelated questions that provide two ways of organizing much of the discussion over the last couple of days. So, to start off I think that we need to resist coming up with a stable definition of the subject of feminist theory. To do otherwise is to make an essentialist mistake that all of us at some point have written about. Need we understand power the same way? Need we all share an account of subordination? Need we all share an account of gender? Need we all share an account of what women are? Need we all share an account of injury? No, I don’t think we do, and I think the rich papers we’ve seen over these two days show that we don’t. To demand otherwise is to confuse our ethical commitments with our research agendas. That is to say, no successful project can possibly take account of the full range of standpoints, oppressions, privileges and intersectional complexities of all women everywhere. We shouldn’t insist on this sort of comprehensiveness in order for a project to be feminist and ethically responsible, for it would risk being about nothing in its effort to be about everything. I think we all would agree that it’s time to give up the search for grand theory that offers *the* theory of women or *the* theory of women’s oppression.

### Zipporah Wiseman:

At least those of us who have tenure.

### Katherine Franke:

Well, even more women who don’t have tenure, I’d say, should not be tasked with coming up with grand theory that provides an account of all women—and certainly shouldn’t promise that they are.

Having said that, I want to offer an observation: I think we’re at a dangerous and exciting moment in feminist theory. Why is that? Because feminist theory has become a discipline. And in many ways that is great. When I went to law school there was no such thing as feminist theory. We have casebooks now. We have readers. We have whole departments. We have endowed chairs in feminist thought. We have a canon evolving in this discipline we call feminist legal theory. But it is precisely at this moment that we need to be careful not to be disciplined by this canonical moment, this canonical evolution, that risks sending the message that you’re not doing feminism if you’re not doing what’s embodied in that canon. There’s a disciplinary disciplining, if you will, that threatens us from within, and that’s troublesome. It’s troublesome for us and it’s troublesome for our students when they get the message that the ideas that they bring to the class are not feminist if they don’t fit in a particular set of boxes or get asked in a particular way.

Thus, it is precisely at these disciplinary moments where we have an evolving canon and we have something that we can excitedly say *is* feminist theory, that we have to be most worried about ourselves. This is the issue that I want to end on, moving out of “what’s the subject of feminist theory?” to the question we’ve all been asked to talk about these couple of days, which is about subversion. I think our subversive practices must transform and become more complex as a discipline evolves. We need to resist the disciplining dynamic of this thing called feminism. In so many respects what we were doing in the beginning was engaging in subversive feminist projects about the world out there, a world in which we applied feminist notions of justice. While we are still doing those projects we are also engaged in critiques and justice projects *within* feminism and among *feminists*. There are different ethical obligations and in some respects different relationships to discipline in those endogenous and exogenous subversive practices.

Now, I’m just going to say that I think we disagree badly as feminists, and I think we need to take this problem seriously. I think there’s a degree to which the personal being the political is not always a good thing. It’s a double-edged sword. The danger here draws from a set of commitments about the relationship of the material to the symbolic. We don’t want to forget the material, the personal, in developing our theoretical and political projects, but some of us—and I will say I have been an offender of this as well—have a tendency to autobiographize our work. What moves us, what is our passion in our work, is very often something interior, and we have to be careful about the degree to which we are generalizing about our own pain. Many people share our pain, our pain may be feminist pain, our pain may be women’s pain, but when our work comes from that place it makes disagreement all the more difficult because you’re attacking me when you attack my idea. You’re attacking my people when you attack my idea. So, I would throw out to the group to think more self-reflectively and more productively about how we disagree with one another as feminists. Those securities people don’t disagree with one another in the same way, and I think feminist theory suffers for it.

I leave you with an idea from Eve Sedgwick, who says that the best that we can do at any particular time, is engage in practices that are kind of hegemonic and kind of subversive.

### David Kennedy\*:

I would like to begin by thanking Zipporah and the other organizers for a fantastic event. You set a whole new standard for the level of intellectual engagement as well as the sheer level of organization. I think

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the encouraging part of the event has been a shared attitude towards exercising power, having desire, and being political that has been evident in a number of the panels and in a number of the conversations. A great deal of law wants not to be political, not to be subjective, and not to be desirous. Many legal scholars want to be experts advising princes or implementing the activities of princes or interpreting what princes say, but they don't want to be princes. But is there something wrong with being a prince? One of the things that has been terrific about this event has been the range of work that has bracketed for a moment or critiqued that hesitance or stigmatizing attitude towards desire and towards a will to power. Many of the papers I have heard have criticized practices of the left which stigmatize the exercise of power. Others have focused on the idea that an affirmative attitude towards power and the desire to rule doesn't mean a free for all discussion. One needs to actually figure out what the choices are that are involved, and it's been very exciting to see the different ways in which people have framed those alternatives. Most of the work that I've seen here has analyzed the symbolic productions of experts—of lawyers, of courts, of filmmakers, of other feminists—with a view towards identifying points for contestation. I think the word “subversion” in the title of the conference was intended to foreground the choices necessary if we are to accept our own will to power. And here the problem gets a little bit more difficult, and I've seen a number of different modes of identifying the choices involved in symbolic representation. I'd like to talk about two that are very familiar and then a few that are less familiar.

One common approach focuses on the goal of ensuring that the symbolic representations made by experts be correct. What would be a correct representation? One idea might be that it is wrong for the law to represent at all; that judges should refrain from using a narrative and instead focus on what is “really going on.” The politicization, the subversive act in this type of analysis, is the demonstration that the opinion is a representation. The goal is to eliminate all genres other than realism from legal work. I heard two fantastic papers this morning critiquing this idea, demonstrating the difficulties of placing so much of our subversive hopes on the narrative of realism, rather than contesting other aspects of the narratives that courts use. Another idea would be to insist that the judicial narrative be complete. One shouldn't oversimplify—the whole story should be told, all the voices should be allowed to speak. In this vein, we might also insist that the symbolic narratives of experts in the area of gender should be appropriate, not stereotypical. The injury arises and the moment for contestation arises where the judicial narrative in some way goes off the track of our own ideas about how we want ourselves and other people to be represented. There is a lot of helpful work out there which relies on these critical attitudes. But there are also difficulties. There is the



inevitability of wrong signification, and there is the problem of linking signification, whether right or wrong, to consequences in the world.

A second tradition of criticism focuses on the moment for choice, the moment for contestation in judicial work and on the outcomes that emerge from that work rather than on the appropriateness of the representations. This also turns out to be very difficult to do. Bad representations can have good outcomes, good representations can have bad outcomes, representations that have good outcomes today can have bad outcomes tomorrow and outcomes themselves turn out to be narratives. The outcome has to be read—what really was the outcome? The outcome needs to be read by the people involved—was I injured? How badly did it hurt?

For all the good work done in these traditions, we do not yet have a compelling or complete “how” to interpret patterns of symbolic representation as moments for politics and contestation. My sense of the rooms that I was in today was that there was a wide agreement on shared project of affirming desire and looking for moments of contestation—but there was no shared methodological sense about how one should interpret moments of symbolic representation in political terms. As opportunities for contestation looking for right representations? Are we looking for good outcomes? What are we actually looking for? What I’d like to do is offer a brief typology of methods that seem to me to be promising, all of which I saw in one way or another today. Each would take us away from a focus on right representation toward identification of the moment for political choice.

A first idea would be to translate the vocabulary of experts, the legal vocabulary, the forms of representation that are available to judges, into vocabularies that we more easily understand to be political vocabularies—vocabularies of interest (such as men or women) or vocabularies of ideology (such as left and right). In this translation project, you take the symbolic representations of the judge and seek to identify what is at stake, which representations are left and which are right, which are good for women and which aren’t in what kinds of circumstances, and to propose better expert action. It’s a difficult project. All the problems of translation are there. It’s unstable—what really is the left position? Still, I saw a lot of good examples of this type of work in the course of the day. One subverts by translating apparently apolitical rhetoric into rhetoric which we think of as being political for some reason. There are traditional rhetorics of contestation and sometimes you can get some contestability out of translating to them. When the choices are between an “objective test” and a “subjective test,” it’s hard to contest it. But, when the choices are between the “interests of men” and the “interests of women,” ah, okay, now I know which side I’m on. So this project of contestation as translation can be a politically interesting one.

A second approach looks at the expert vocabulary as a whole to identify its biases or blind spots. There were a couple of papers that did brilliant readings of particular modes of expert analysis and took on the whole box of available representations to figure out what's not there and how some questions are foregrounded for answering and other questions left off the table. Here the idea is to contest the whole vocabulary. And it is tempting to wish to be in another, better discipline. If only we could get out of the legal vocabulary and get into the economic vocabulary or the ethical vocabulary, or some other vocabulary, we'd be better able to contest what's at stake and identify the issues that concern us. If only the world was managed by literary critics, things would be so much more just. The difficulty here is always the false nirvana of the other vocabulary. A classic example for me is the concern in my own field of international law about nuclear weapons. The professional vocabularies of strategic studies or law can seem insensitive to the great harm nuclear weapons could cause. It is tempting to speak instead in terms of the "slaughter of the innocents." A more ethically evocative vocabulary—"the slaughter of the innocents" may give us access to something that's not available in the legal or the strategic studies vocabulary. The worry is that these alternative vocabularies would end up taking us right back to the same difficulties once we elevated them to manage the problem of nuclear weapons. I mean, are they innocent? Aren't they innocent? Are they slaughtered? What's the context? Soon we'll need doctrines—was it intentional slaughter? And so on.

The last thing I want to put on the table is the idea that we might identify the political as making a choice without knowledge about what to do. Politics in this last tradition is the situation in which a person decides knowing that there are consequences for which they will be responsible, but knowing that he or she doesn't know what to do, that, in one way or another the map has run out. The map of best practice, the map of expertise has run out. Schmitt calls this "deciding in the exception" and thinks only sovereigns do it but my own idea is that this experience is, and might be, more broadly available. Imagine a feminism which sought to encourage in the widest range of people the sovereign experience of deciding in the exception. Imagine a feminism which sought to make experts in every place understand that they were deciding rather than advising others how they should decide. Men would have to make decisions, women would have to make decisions, in places where our best practice and our expertise had run out, and where we would all need to take responsibility for the decisions we made which have affects on others in the condition of what I would call not knowing, or human freedom.

**Gretchen Ritter\*:**

I just want to say a few brief words. To begin, let me preface my remarks by talking about the conference and particularly about Zipporah Wiseman. Zipporah has lived with this conference day in and day out for the past several months. She's put her heart and her soul into it, and it's a conference that is happening at UT in a context where this conference could not have happened a couple of years ago. This conference in a context where Zipporah has worked at the UT Law School for years and years, often in isolation, or in ways that have been underappreciated. She has been one of the sole voices here thinking about gender, and thinking about gender as a project that is about democracy. This conference is a testimony to Zipporah, her work, and her achievements at UT. So thank you, Zipporah.

On the subject of feminism and what is its subject, I begin by wondering why it matters and what difference it makes what we call these things? I often do not feel that the label we use for our work and politics makes much difference. Rather, what matters is our ability to use gender as a lens for revealing hierarchy and pursuing democracy.

As someone who teaches large undergraduate classes on gender politics, I find that many of my students do not call themselves feminists. They nonetheless come to class with concerns about their lives that reflect their positions as men and as women in our society. And they often leave the class more convinced that their problems are social instead of personal. They also leave more determined to act—to do something that will correct the wrongs they have identified. That attitude and recognition is what matters to me, not whether or not we call it feminist.

That much said, I will now offer you a very brief and personal definition of feminism. In my view, feminism is simply about promoting democracy. It is also about opposing social hierarchy wherever and however we find it. It grows out of the realization that one of the foundational forms of social hierarchy in every society, is (and has always and everywhere been) gender. Certainly, that does not mean that gender hierarchy is the same everywhere—seeing the variation in gender hierarchy across time and place is one step in overcoming it. It does not mean that gender stands in isolation from other social hierarchies and forms of social power, such as race, ethnicity, or sexuality. But it does mean that gender matters—it cannot be forgotten or abandoned for those of us interested in addressing the myriad ways that power is organized in our culture. So, if we are democrats, in a way that addresses the organization and expression of power in our lived experience, then it strikes me we must also be feminists.

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In the context of this conference, it is also worth asking why we are so interested in the history and legacies of feminism. This is a question that I regularly ask myself, since so much of my own work is historical. I had a conversation yesterday with Linda Kerber over lunch, and she helped me to reflect on this issue. Kerber is working on a new book about gender in American Constitutional Law, and she said that one of the reasons that she is writing this book is because she feels that often students don't understand American gender politics because they think feminism efforts have only been happening for the last thirty years. Once students realize that these struggles have been ongoing for a century or two, and that American women and men have contributed to these struggles for generations, then they begin to comprehend the nature of American gender inequality in a much deeper way.

Further, for me, thinking about history means thinking about how gender works to structure politics. I draw inspiration from different women in American history. They provide models for me, despite their deep flaws, prejudices, and personal inadequacies. Elizabeth Cady Stanton, for instance, remains for me a brilliant, galvanizing figure—even though my assessment is complicated by my appreciation for the corrosive force of Stanton's racism.

History may also provide us with cautionary tales about things that seemed successful at first glance, but then turned out badly. Such cautionary tales include the lesson to be taken from 1970s' feminism of why you should not seek a totalizing narrative. Coming out of the New Left, many radical feminists were attracted by the power of Marxist explanations of global inequality and injustice. As Catharine MacKinnon wrote, translating this attraction into an analysis of sex inequality, "Sexuality is to feminism what work is to Marxism." Yet feminists quickly learned that the seeming power of such monocausal explanations came at the price of erasing the lived experiences of women in diverse social places.

The cautionary tales drawn from history also include my account of the women's suffrage movement in this country. I contend that when women won the right to vote it deprived them of a certain kind of gendered political identity that had been the basis for much of their political coherence and effectiveness prior to 1920.

And then there is the cautionary tale about sexual harassment. This is a tale about how the focus on sex sometimes leads us to results we didn't expect. Feminism succeeded in making the private and personal political. But it may have done so at the price of a regulatory regime that ultimately restricts women and sexual minorities.

These are some of the things that we learn by thinking about history.

Finally, in thinking about subversion and what it means, I want to

conclude with some reflections on the nature of power and what it means when feminists hold power. I have been struck in many of the conversations I have heard and participated in over the last couple of days that feminism must contend with its own rise to power. I do not mean to suggest, of course, that feminism has “won” and gender inequality has disappeared. That is a utopia that I doubt we will ever live to see. Yet looking around this room today, it seems to me that we need to acknowledge that some measure of power that has been gained for feminism and feminists. That is something to celebrate. It is also something that ought to make us wary. In acknowledging our own power and authority, we ought to be self-conscious about our everyday political practices and about the degree to which our project has been shaped by the institutional positions we now occupy. As teachers and colleagues, as parents, friends, and community members, have we managed to remain true to the search for democracy in our personal and professional lives? How attuned are we now to the ways that gender limits peoples’ lives? How willing are we to risk the privileges we have acquired in order to challenge social and institutional hierarchies? For myself, that is a project that is both worthy and ongoing. It is a project to be remembered and continued as we are doing here today.

**Zipporah Wiseman:**

Alright, you’re part of the conversation now.

**Audience Member:**

Katherine and I have been talking for a long time about this question of feminists disagreeing badly, and I wanted to take up the “securities folks do it differently” issue and put into the conversation two reasons why that might be so to ask how important we think each of them are. One that I’m always given when I make similar points is that securities is less personal in every sense of the word. I do find myself often asking why proponents of the efficient capital market hypothesis aren’t interrogated about their investment strategy in the same way as a feminist author is about her sex life, but that’s a sort of separate question. Then, a second more troubling one for me about feminists goes back to the stories about gender games of boys and girls that Carol Gilligan also mentions. The idea is that winners dispute. The girls stop the game whereas the boys incorporate a process of disputing into the game so that not only does the game become possible, but the disputing becomes part of it. I really hate to think of that kind of potentially essentializing explanation, but I do find myself coming back to it whenever among feminists a disagreement stops the game or stops the really important work or stops the conversation.

**Katherine Franke:**

I don't know that I was offering a Gilliganian or gonian or -gardian or whatever account. I don't think that that's what I'm seeing. I think we critically engage with one another's work, at times, by resorting to personal attacks, and in that sense, some of us critically engage badly and some more "goodly." It's not that I want to suggest that some people are acting in bad faith. But I also don't think that we stop the game and try to fix the relationships, which I think is what Gilligan is saying: that we care more about the relationships than the game. I think something quite different is happening in feminist intellectual and theoretical work. And I've been troubled by it for a long time, I know you have too—you and I are kind of the bad girls in some ways, in this game. And I don't think it needs to be that way, but I don't see it as a mirroring Gilligan kind of thing at all.

**Audience Member:**

I wasn't suggesting that we necessarily preserve the relationship. I was suggesting—it's not Gilligan's research, it's somebody else's research whose name escapes me and I apologize to that person—that we ask people who grew up more likely to be in environments playing hopscotch than environments playing kind of boys disputing games that taught us how to dispute have not learned how to dispute as part of the game and have grown up with that as sort of a cultural gap.

**Zipporah Wiseman:**

Can I say that I think that Katherine actually identified what is the reason that people in securities law have it so hard—their passion for securities law does not come from their very gut! And, I think that feminists' passion comes from their autobiography and their gut! And when you attack somebody's writing and their theories, they feel attacked in the gut and it hurts more. That's how I explain it. And the other thing—I don't think boys disagree well at all. I think they stop the game and knock the shit out of each other.

**Audience Member:**

Well, I think it would be a mistake not to try and engage here in the last minute with these ideas while we're here because they are very important ideas, and it seems to me they play on the themes of the conference in a very interesting way. So I just want to offer something somewhat orthogonal to what has already been said, but still see whether you two take these as friendly amendments'.

The first thing is, your point in part is that feminists treat attacks on their work as attacks on themselves. Now, it is also the case that those

attacks get theorized as subversive. Right? There are two prongs here. One is, attack my work, therefore attack me. The other thing is, attack my work, be subversive towards something within feminism that matters. And I think that, as feminists, we ought to have a response to each of those, a healthy response that is not a non-pathological response to each of those points.

The second thing I would say—now this may not be such a friendly amendment—is that the move away from theory, the move to generate, to take truth out of experience, to take truth out of the localism of personal experience invites this sort of problem. Whereas, if we step back and we theorize for the sake of theory rather than theorize out of experience, we are less vulnerable to that sort of thing. And that isn't always a bad thing, and it also has just enormous heuristic power. And so there are a number of suggestions here, but rather than make the suggestions, I'll just leave open those thoughts.

#### **Audience Member:**

I'm sitting here thinking I can't believe that we're actually suggesting that everybody isn't always involved in whatever work it is that they are doing. So I'm thinking of David's four or five different methods that we talked about. The one says that you look and it seems to be about law but actually it is about politics. What's the difference between "it seems to be about politics, but it actually is about the self," which is what the move that Katherine made that now is being picked up on here. So, they sound very similar to me. And part of the thing you were saying about grand theory was also about you and about politics, so I just feel like we're actually deploying maybe the same technique in a slightly different way, but I thought you all set some other methods on the table. I was very interested in the last one that I actually haven't heard you talk about, David. It seems to me that it does relate because of it's "okay, I don't know what the outcome is going to be, but I'm going to write the critique. And it really may turn out to be all about you, but sorry it hurt you, sorry you experienced it that way, but it's also not what I intended—it's not gratifying." So the sort of saying, and I'm going to write it, and there's the will to power, and a will to desire, and let the chips fall where they may. I'm being responsible, and I really think this is the right thing to do. So, I don't know, and I wonder how you all would connect these things to each other.

#### **Audience Member:**

This does seem like the moment, because I did want to respond to what David had said and how it related to the discussion amongst us. You set that up beautifully. I agreed with what you said at the end that

ultimately when we take political action, we do it with the responsibility of not experiencing that panic of not knowing the consequences of what we do. But I don't think that it is so disconnected from your very first point which had to do with the attempt to get the story right. Now maybe we don't care so much about the official story getting it right. That's not the desire. But I think that it is important for us to continue to struggle to get the stories right about what are our passions, what we care about, why we are in this business, why we want to do things, and why feminism is our lives, our souls, however our experience, our reason for being. And so, maybe that's a way of thinking about the discussion that getting it right as a lawyer for a person, a woman who we're representing, getting it right for a group of women whose interests are at stake, it seems to me a critical part of that last point you made about taking responsible action. Now, if you stop and don't take action until you say, "Oh, well I'm not going to do anything until I know I have it right." But the will to have it as right as you can at any given moment given the constraints of what you know and your own position and all of the many factors we've talked about today does seem like a piece of this that we shouldn't reject without believing necessarily that the official decision maker will get it right. But we need to move away, and not just in our law review articles, but in how those law review articles shape what we and others do as lawyers in our many different capacities.

### Audience Member:

I was in 17th-century English literature for ten years beginning in 1985. One of the reasons it was a good place to leave was that the linking of devotional life to interpretation of 17th-century lyric poetry produced precisely the dynamic that people today are claiming is unique to feminism. That is a complete and utter identification of the deepest, most innermost self with this scholarly product which is then subject to—it's like having all your nerve endings just suddenly prong out of your skin, and if anybody touches your work you are going to be ricocheting with pain for months. And I think that the new historicism was an effort to distance the field from that pathology which made it too hypersensitive, too confessional, uninteresting, no fun. I think the politics of injury and the politics of recognition and the idea that a legal report should reflect what is really true about women's real experience—that's a contestable piece of feminism, by no means all of feminism, but where it is in place, those sensitivities are much like the sensitivities that were in place in 17th-century English literature. It is too much invocation of personal pain as the motive force of scholarship. And I think it takes out the fun.

So, I would invoke Chantal's paper this afternoon as an example of some of the dangers of this approach for getting in right even under



conditions of unknowing. Chantal's paper on the debate between two politics of recognition projects in feminism over sex trafficking—which feminists would want to win in representing sex workers—has caused the NGO effort, I think this is how I understand the argument, to forget that a clause about repatriation of sex workers back into the very countries that are most likely to make their lives hell wasn't noticed by the feminists who were totally absorbed in getting their identities recognized in the normativity of law. And it seems like a really profound cautionary tale and also why that debate's not a fun one to enter in to if all the sensibilities of the players are really what it's all about. So, that would be my really strong plea to feminism to pull in the nerve endings a little bit. Make it fun again.

### **Katherine Franke:**

I just want to interject one response to that which is the fact that some feminists are engaged in recognition projects, however fun or not fun they are, is really not, I don't think critical to me. But what I find interesting is that to you (Professor Halley) say you must flee. And I don't see feminism as being only about recognition projects, and I don't see any insistence on anybody's part that you must sign up for that project. I don't see the fact that some women are engaged in projects that aren't what I do means that I have got to leave the room. And, I find that a troubling response to what is a real diverse set of projects, some which I think are righter than others and I'm not even sure how right any of the things I've done are. So, I try to have more humility about my own work, I think, than I hear in that comment.

### **Audience Member:**

The idea of the disciplinary modes of feminism include, I think, one of the disciplinary modes is the trope, "I care about it too much to have it criticized."

### **Katherine Franke:**

But, that's not all feminists, that's not all of us.

### **Audience Member:**

No, not at all. I think it's a contestable element of feminist politics that we should be contesting as feminists.

### **Audience Member:**

I really don't think so. I think that everybody writes from the gut. I don't think it matters what discipline you're talking about. I do think there are different degrees of self-realization. And as intellectuals, we're really

terrible because we get so high in to the head, and there can be so many elaborate layers getting farther and farther and farther away from the self. And the more elaborate the layers get, the less authentic that writing is really going to be. Of course everybody writes from the gut, or else why in the world would we be doing this? And the same sort of problems arise. I can predict, and I'm sure you can, the kind of scholarship my colleagues are going to produce. I don't care if they're teaching or writing in the area of securities. Is it from the gut? Of course it is, no question about it. Any discipline that you talk about, English, History, the horror stories abound. I don't like this idea that men are different from women and that we have to learn something that the guys figured out. I don't even think that is remotely true. I think that some people are just a whole lot more decent and a whole lot more understanding and upbeat than others. I've gotten wonderful help from securities people, you know, and some kinds of women have problems being good to each other. Not because they're women and not because we have something to learn, but because if you write from the gut, and you know it, and are able to get out of your head and develop a healthy sense of who you are. And to see that pattern and to be able to look back on it and say, "Now, I understand," and maybe at a certain point to become a little bit spiritual about it, whatever that might be.

#### Audience Member:

I'm Dutch, and the fact that this debate strikes me as American requires this autobiographicalization. It's just a brief comment, because what strikes me fascinating, kind of contradictory maybe, is on one hand over the past few days I've seen many pleas to do justice to all the issues that are at stake: race, gender, the whole issue of identity politics and how that plays out. Yet at the same time, no one wants to end it without theorizing, so we're stuck. On the other hand, there is this right or wrong thing, or who belongs in or outside the church almost. And I must say I'm inclined to think that that relates to American politics in general where you always have to choose between two parties, which are no choice really.

#### Katherine Franke:

So, we need a different break than the one Janet's urging.

#### Audience Member:

Very quickly. Several conferences ago, I went to a conference on local governance in connection with the environment. And, it was before the meeting in Johannesburg and people were talking about what kind of system could govern the environment. And I was terrified! Terrified! Because if there is a system, who's going to be running the system? I think in its claim of late capitalism, when many in the world are truly afraid that

America is seeking world domination, so am I. I'm afraid of that too. I think our only hope as feminists, as political people, is subversion as a strategy. I think anything can be commodified. And I think our wariness, all the different forms it takes—jumping out of the box, qualifying everything—is appropriate at this time.

### **Audience Member:**

Well, I think this conversation is very hard. I think this is a very hard subject. I think the issue of thinking about who we are, how we disagree, how we do that in a respectful way is very important. I think a lot of times I identify with what Gretchen said, particularly in teaching in a sense wanting to have a very cohesive, broad sense of, can I open ideas? Can I open doors? Can I figure out ways without necessarily cutting people off or names or whatever. To reach out and to open eyes in a different way. And I imagine that is what many of us think about doing as teachers. When we come to being scholars or colleagues, I don't think we necessarily think the same way. Some of it is investment in our own ideas.

But I want to say a couple things. One is, one of the things that I've felt very good about over the last couple of days, about this conference, is that coining the notion of subversion has actually opened up, in some of the panels I've been to, a broader range of people taking risks in opening up ideas. I've heard now a number of times people say, in various settings, "What I'm about to now say is something hard to say." And that doesn't mean that we are going to resolve here what those answers are, but it is a good step. And an important step for people to be in an environment where they can say things where they're going to feel very nervous about how other people are going to react. They're going to say important things. Plus, if we take humility seriously, and I can't think of anything that we have to take more seriously. You know, I read an article the other day, in which someone wrote, and I loved it, "You know, two years ago I wrote this and now I realize I was wrong." One of the cases that I teach to Civil Procedure students that I love is the case of Judge Motley saying, "I'm completely vacating my prior opinion. I was totally wrong." I mean, if we had more humility to say, "You know, what you just said, I'm not really sure what I think about it. I'm going to think about it." Isn't that really the enterprise that we're involved in?

So I'd say, first of all, I think you've all done a great job at creating the possibility of people saying some hard things. And, that I think we're not necessarily going to resolve them while we're here. But, if we do take humility seriously, and we also take the fact that things change, we change, ideas change, we look at something now differently than what it might look like five years from now and get a different take on it. All of these aspects, the whole notion of the very frame of subversive legacies, the sort of lines

that you gave us at the beginning. That means that at least opening the door and saying some of those, "I'm not sure whether this is a good idea, but let me throw this out." I'd love to be at more conferences, feminist or not, where I actually heard people say, "You know, I'm not sure this is a good idea, but let me throw it out and let's see what happens." That would be, in my view, a lot more of the vision of the academy that I'd like to be part of than a lot of what we all know and live with.

### Audience Member:

I think Liz's comment was really on to something when she said part of the problem is the academy, it's not feminism. We're operating within a particular institution that involves very personal convention of our work. But what we're doing, I think, in responding to this issue is we're shifting the question. We're not really talking about what is feminism anymore, we're talking about how we do it. And I think Gretchen is right. If we look at feminism as a political commitment to ending hierarchy, then we have a whole bunch of different matrices of hierarchy that we're going to look at. The question becomes, "How do we achieve that?" And that's the question that must acquire a broad diversity of answers.

And I had a great time! I think feminism is still very fun. And I think we do a really good job of disagreeing with one another. And the degree to which we get personal or engaged in attacks that cross the line—that's part of the academy. That's part of the poison of the academy that feminism's been trying to change. Because we haven't been successful in changing it completely doesn't mean that it's our fault or that we should be beating ourselves up because we subject ourselves to the disciplinary norms of the institution and that we're not always on top of our self-criticism.

### Zipporah Wiseman:

That's a very hopeful note to end on, thank you. David, you had one comment?

### David Kennedy:

I think we should end. I do have many comments, but I will save them for the next conference.