

BUILDING ON FOUNDATIONAL MYTHS: FEMINISM AND THE RECOVERY OF “HUMAN NATURE”: A RESPONSE TO MARTHA FINEMAN

PETER M. CICCINO*

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Poverty law in the United States is largely law about women and the children for whom they care.¹ That assertion is meant to be something of an overstatement, but just something of an overstatement. The empirical realities of poverty and the lives of poor people in the United States, particularly as those realities apply to those who need or receive public assistance, is disproportionately about women and the children of whom those women are caretakers.² It seems, therefore, especially appropriate that those who identify themselves as “feminists”—those who support and strive for the full social, political, moral, and economic dignity and equality of human beings regardless of sex or gender—should raise their voices

* Assistant Professor of Law, American University, Washington College of Law. J.D., Harvard Law School, M.A., Fordham University, B.S., University of Scranton. The author wishes to thank his colleagues Joan Williams and Adrienne Davis for their invitation to participate in this journal symposium and for their constant support and friendship. Special thanks go to my colleague, Leti Volpp, who read and offered extremely valuable comments on an earlier draft of this Article.

1. See Peter M. Cicchino, *The Problem Child: An Empirical Survey and Rhetorical Analysis of Child Poverty in the United States*, 5 J.L. & POLY 5, 36-37 (1996) and accompanying notes (observing, *inter alia*, higher rates of child poverty in households headed by women). See generally MIMI ABRAMOVITZ, *REGULATING THE LIVES OF WOMEN: SOCIAL WELFARE POLICY FROM COLONIAL TIMES TO THE PRESENT* (1996) (surveying the history of the feminization of poverty, especially chapter 10 “Aid to Families with Dependent Children” describing the rise in poor households headed by women); see also LAWRENCE MISHEL, JARED BERNSTEIN, JOHN SCHMITT, *THE STATE OF WORKING AMERICA* 280-82 (table 6.4) (1998-1999) (noting highest rates—about 40%—of poverty for female headed households).

2. See *supra* note 3 and accompanying text.

in defense of poor people and those threatened by poverty.³

Martha Fineman is such a voice—a powerful, articulate, reasonable, and impassioned voice. Her article on the social responsibility for dependency, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*,⁴ will, I have no doubt, make an important contribution to the literature on law and social policy directed toward supporting those who perform functions that are socially valuable but undervalued or ignored by the market.

Laudatory introductions in response pieces are, however, rather like the antecedent clause in sentences that run: I have the greatest respect for X, but Whatever the magnitude of the praise that precedes the disjunction, one knows the thrust of a verbal dagger is soon to follow.

That is not my intention here. Rather, I want to identify and discuss, partly as good-natured teasing, but mostly because I believe it implicates an extraordinarily important development in contemporary feminism, one aspect of Fineman's argument. From the start it should be clear that Fineman's argument, at least the first part of her argument, is above all else a normative or moral argument about why we, as a society, ought to support caregivers. That point should be obvious.⁵

What may go unnoticed by readers most versed in feminist literature, readers long conditioned to respond with reflexive hostility toward essentialism of any kind, particularly that which takes the form of arguments from "nature," is that the structure and method of Fineman's argument is perfectly consistent with a tradition of moral argument that dates back at least to the time of Aristotle. This tradition of moral argument relies upon an idea that, for lack of a better term, may be called "human nature." This type of argument, while respecting the complexity and diversity of human experience, also holds that there are certain universal realities characteristic of the human condition across space and time: needs and capacities

3. The economic effects of the systemic subordination of women in our society are not confined to poor families. Affluent and well-educated women also face impediments to career advancement and economic success. See, e.g., Ann R. Tickameyer, *Public Policy and Private Lives: Social and Spatial Dimensions of Women's Poverty and Welfare Policy in the United States*, 84 Ky. L.J. 721, 725 (1995-96) (noting that the women have an "economic disadvantage in the labor market"). Given the abolition of the federal entitlement to public assistance in 1996, and the special urgency of the needs of the poorest families, the emphasis here is on female headed households in poverty.

4. See Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, 8 AM. U.J. GENDER, SOC. POL'Y & L. 13 (2000).

5. Though Fineman's analysis of the concepts of subsidy and dependency are especially insightful, my focus is on the first part of her argument for the collective responsibility to care for caregivers.

that all human beings, as human beings, share, and material conditions that make human flourishing more likely. Moreover, as I contend below, this type of moral argument takes the universal and inevitable aspects of our common humanity as the starting point for its political and ethical inquiry.

That one of the most prominent feminists in legal academy makes such an argument should not, in itself, be so surprising. But that such an argument should come from a writer who has so brilliantly uncovered and criticized the social construction of gender and family roles—quintessential examples of social realities long taken to be “natural”—is worthy of comment.⁶

In what follows, I will: (1) describe and commend an ancient tradition of western normative argument; (2) offer a schematic of Fineman’s central argument, as I understand it, on the social duty of care to caregivers, and explain why I believe Fineman’s argument in structure and method is similar to the traditional form of normative argument I have described and commended; and (3) offer concluding reflections on why I believe this similarity is part of a salutary and important development in feminism in the United States; a development that would be strengthened if scholars as prominent and prolific as Martha Fineman acknowledged explicitly that they have become part of that tradition of moral argument.

I. A TRADITION OF MORAL ARGUMENT

In his hilarious and withering critique of law and economics, the late Arthur Leff observed of the intellectual context in which we now exist:

While all this [the movement from Formalism to Realism in law] was going on, most likely conditioning it in fact, the knowledge of good and evil, as an intellectual subject, was being systematically and effectively destroyed. The historical fen through which ethical wanderings led was abolished in the early years of this century (not for the first time, but very clearly this time); normative thought crawled out of the swamp and died in the desert. There arose a great number of schools of ethics—axiological, materialistic, evolutionary, intuitionist, situationalist, existentialist, and so on—but they all suffered from the same fate: either they were seen to be ultimately premised on an intuition (buttressed or not by nosecounts of

6. See generally MARTHA ALBERTSON FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES* 44-47 (1995) (discussing the continuing debate over categorizing women, which revolves around universalized representations of women).

those seemingly having the same intuitions), or they were even more arbitrary than that, based solely on some “for the sake of argument” premises. I will put the current situation as sharply and nastily as possible: there is today no way of “proving” that napping babies is bad except by asserting it (in a louder and louder voice), or by defining it as so, early in one’s game, and then later slipping it through, in a whisper, as a conclusion.⁷

Leff’s description of the prevailing sense of the state of normative argument, at least among intellectuals, seems as true today as when it was written twenty-five years ago. The problem of the basis of moral knowledge—what for lack of a better term might be called the problem of foundations—has produced an immense literature in law reviews alone.⁸ The problem of foundations implicates not just whether normative propositions are true or false, but how we can know that truth or falsity. The stand we take on those issues significantly determines where we stand on a related but, from the standpoint of human community, no less important question: Are all moral arguments either circular or interminable since they rest on asserted premises for which no better argument can be made as opposed to an alternative set of premises?

The problem may be more easily seen by analyzing the structure of normative argument.

1. Mary asserts that X is good.
2. John asks Mary why she believes X is good.
3. Mary responds either:
 - a. X is good in itself; or
 - b. X is good in terms of Z, to which John may ask why is Z good, to which Mary will respond that Z is good in terms of W, and so forth until Mary reaches some entity that she claims is good in itself.

The difficulty with such an argument is that when Mary eventually reaches the entity that she claims is good in itself, John may ask, “Why is that good?” Without some persuasive response to that question, Mary’s argument, normative argument itself, appears either circular (importing the conclusion into the premises) or interminable (an infinite regress incapable of rational adjudication).

7. Arthur Allen Leff, *Economic Analysis of Law: Some Realism About Nominalism*, 60 VA. L. REV. 451, 454 (1974) (reviewing Richard Posner’s *ECONOMIC ANALYSIS OF LAW* (1992)).

8. See, e.g., Hans A. Linde, *Practicing Theory: The Forgotten Law of Initiative Lawmaking*, 45 UCLA L. REV. 1735, 1744-45 (1998) (applying notions of moral values on the process of lawmaking); Victoria Nourse, *The New Normativity: The Abuse Excuse and the Resurgence of Judgment in the Criminal Law*, 50 STAN. L. REV. 1435, 1458-59 (1998) (book review) (discussing application of morality based judgment in the criminal law context).

This state of affairs is nothing other than a restatement of the so-called Is-Ought divide, a divide that gives rise to one of the dogmas of contemporary ethical thought, the “naturalistic fallacy.”⁹ The basic idea is that it is impossible to move from an empirical or descriptive proposition to a normative or prescriptive proposition. That is to say, there are no “is” statements—no empirical claims about the world—that yield conclusions about how one ought to behave. Thus Is is Is and Ought is Ought and never the twain shall meet. Fact and Value remain eternally separated.

Historically, there have been three major candidates for escaping this abyss: God, Nature, and Reason. Throughout western history, one or more entities in that holy trinity served as a bridge over the chasm between Is and Ought, and as a way out of the problem posed above. Each member of that trinity has been attacked and, at least to many minds, discredited.¹⁰

The tradition of moral argument described here, however, need not be seen as committing itself to one member of that trinity as the “foundation” of moral argument. Rather, the description and defense of the tradition of moral argument I offer here begins with this insight: a way out of the Is-Ought divide would exist if there were certain true statements that we could make about the world in which the empirical and the normative, fact and value, were so inextricably intertwined that no rational person could deny such statements either in their empirical or in their normative implications. This kind of moral argument is characteristic of Aristotle, his Thomistic descendants, and many contemporary neo-Aristotelians. That is to say, whether we call them “first principles of practical reason” or attribute them, as Aquinas did, to a capacity he called *synderesis*,¹¹ there are certain statements about the world that are a practically inextricable mix of fact and value that no reasonable person could deny.

Let me use an example from Aristotle’s *Ethics*¹² to illustrate my

9. For the classic formulation of the Is-Ought/Fact-Value divide, see DAVID HUME, *A TREATISE ON HUMAN NATURE* I, iv, 6; see also WILLIAM K. FRANKENA, *ETHICS* 99-100 (2d ed. 1973) (providing a concise but clear explanation of the naturalistic fallacy and its weaknesses).

10. See generally ALISDAIR MACINTYRE, *AFTER VIRTUE* (1984) (providing an insightful narrative of this history in western culture).

11. See, e.g., THOMAS AQUINAS, *THE TREATISE ON LAW: SAINT THOMAS AQUINAS SUMMA THEOLOGIAE*, I-II; QQ 90-97, 237-38 (R.J. Henle, S.J. ed., 1993) (declaring that “[s]ynderesis is said to be the law of our mind, because it is a habit containing the precepts of the natural law, which are the first principles of human actions.”)

12. See generally ARISTOTLE, *NICHOMACHEAN ETHICS* (Benjamin Jowett trans., 1947). That the *Nichomachean Ethics* is fundamentally a political work, and on the unity of ethics and politics in Aristotle generally, see ALISDAIR MACINTYRE, *A SHORT HISTORY OF ETHICS* 57 (1966).

point. In Book VII, Aristotle continues his inquiry into the good at which political science aims.¹³ Aristotle's conclusion is *eudaimonia*,¹⁴ often translated "happiness" but, following contemporary scholars, I render *human flourishing*. Aristotle argues that human flourishing must be the ultimate good because it is something that is good in itself, something for which we desire all other goods.¹⁵ Aristotle describes this good as "self-sufficient" but

by self-sufficient we do not mean that which is sufficient for a man by himself, for one who lives a solitary life, but also for parents, children, wife, and in general for his friends and fellow citizens, since man is born for citizenship.¹⁶

Aristotle acknowledges that the conclusion that all human beings seek flourishing may "seem a platitude" until given fuller definition.¹⁷ Investigating the particular capacities and needs of human beings advances that process of definition and thereby, sketches some picture of a complete human life thereby producing an "outline of the good."¹⁸

There are four important points to be made about this method of argument. First, it is not deductive or *a priori*: it respects widely held views about human reality, but takes experience as its source and guide. Second, it takes seriously the materiality of human beings—their need for food, shelter, friendship, care, what might be called their basic dependency. Third, it is epistemologically modest—it does not claim to have the exactitude of mathematics, but rather is content to look for

such precision as accords with the subject-matter, and so much as is appropriate to the inquiry. For a carpenter and a geometer investigate the right angle in different ways; the former does so in so far as the right angle is useful for his work, while the latter inquires what it is or what sort of thing it is; for the geometer is a spectator for the truth.¹⁹

And fourth, it uses empirical claims about what human beings are like *as human beings* to draw conclusions about the ends human beings ought to seek.

It is, of course, possible to argue with Aristotle. I will not and

13. See ARISTOTLE, *supra* note 13, at 1097a.

14. See ARISTOTLE, *supra* note 13, at 1098a.

15. See ARISTOTLE, *supra* note 13, at 1097b.

16. See ARISTOTLE, *supra* note 13, at 1097b.

17. See ARISTOTLE, *supra* note 13, at 1097b.

18. See ARISTOTLE, NICHOMACHEAN ETHICS 1098b (Benjamin Jowett trans., 1947).

19. ARISTOTLE, NICHOMACHEAN ETHICS (Benjamin Jowett trans., 1947) 1098a-1098b.

cannot make a full defense of his position here, but consider this: What would we say to someone who seriously denied that human beings need food, or water, or shelter, or education, or the society of others to flourish? Or someone who claimed that he or she wanted to be unhappy, that the frustration of his or her desires is what he or she sought as the goal of his or her actions?

My contention is that someone who holds such positions is to ethics what someone who denies the principle of non-contradiction is to logic. Strictly speaking, you cannot “prove” such a person wrong precisely because he or she, by his or her denial, is abrogating a basic principle of rationality. But you can walk away in acknowledgement of the futility of trying to speak with someone who denies the possibility of meaningful speech itself. The consequences of walking away may be the strongest form of refutation.

II. THE STRUCTURE OF FINEMAN’S ARGUMENT

Having given a very rough sketch of an ancient tradition of non-relativistic normative argument, I now want to illustrate why Martha Fineman’s argument for the collective duty of care for caregivers fits well into that tradition. Initially, however, it is necessary to render Fineman’s argument in a more stylized form.

Premise 1: All human beings experience dependency, invariably at the beginning of life, frequently at some point during adulthood (e.g., during debilitating illness), and almost invariably at the end of life.²⁰

Premise 2: The human race could not survive (i.e. it is a necessary and inevitable condition of our existence) without caregivers to tend us through those periods of dependency.²¹

Premise 3: Society—including the form of political organization we call the “State”—has a vested interest in the biological preservation of its members and, in fact, would cease to exist if its members ceased to exist as a biological matter.²²

Conclusion A: Society, therefore, benefits from the work of

20. Fineman, *supra* note 4, at 18. “Far from being pathological, avoidable and the result of individual failings, dependency is a universal and inevitable part of the human development. It is inherent in the human condition.” As I will emphasize *infra* Fineman’s argument places great emphasis on the “universality and inevitability” of the empirical claims she makes about the capacities and needs of human beings. It is my contention that the set of “universal and inevitable” capacities and needs of human beings, what Fineman terms “inherent in the human condition,” is the functional equivalent of what the Aristotelian tradition means by human nature.

21. Fineman, *supra* note 4, at 18.

22. Fineman, *supra* note 4, at 18-19.

caregivers in sustaining the existence of its members (which, writ large, extends to the whole human race).²³

Premise 4: If an entity—either an individual or group—derives a benefit from the uncompensated labor of another entity, and depends upon that entity for its flourishing, the dependent entity, to the degree it can, has an obligation to support the care-giving entity in, at the very least, the giving of care.²⁴

Conclusion B: Accordingly, society (in this case, the state) has an affirmative duty or obligation to support caregivers.²⁵

The similarities between the method of Fineman's argument and the tradition of argument with which I have associated Aristotle are striking. Like that tradition, Fineman begins empirically with an observation about human beings as they actually exist.²⁶ Like that tradition, Fineman is especially concerned with the "universal and inevitable" aspects of the human condition.²⁷ Like that tradition, the pivotal moment in Fineman's argument is an empirical assertion that is also inextricably normative: humanity needs caregivers to survive, therefore, it must support its caregivers.²⁸ As Fineman herself notes about that assertion:

In other words, the realization that biological dependency is both inevitable and universal is theoretically important. Upon this foundational realization is built a claim for justice or right—the demand that society value and accommodate the labor done by the caretakers of inevitable dependants.²⁹

Now, of course, in theory one could challenge Fineman. Why is the survival of humanity a good thing? Who cares if the caregivers

23. See Fineman, *supra* note 4, at 28.

24. See Fineman, *supra* note 4, at 19. Fineman's text needs some interpretation to fit into the characterization I have given it, but that interpretation is entirely reasonable. The passage to which I refer reads:

Certain members of society may be recruited, volunteer, or even be drafted for service, but they have a right to be compensated for their services from collective resources. They also have a right to the necessary tools to perform their assigned tasks and to guarantees that they will be protected by rules and policies that facilitate their performance. Caretakers should have the same right to have their society-preserving labor supported and facilitated. Provision of the means for their task should be considered the responsibility of the collective society.

Id.

25. Fineman, *supra* note 4, at 19-20.

26. Fineman, *supra* note 4, at 18.

27. Fineman, *supra* note 4, at 18.

28. Fineman, *supra* note 4, at 18-19.

29. Fineman, *supra* note 4, at 18.

wither and are unable to sustain those in need?

My response to that wearisome and adolescent line of critique is the same as to those who challenge Aristotle's contention that all human beings seek their flourishing or happiness as they understand it. Namely, that line of critique reveals an abstraction from reality—a chasm between theory and praxis—so vast as to merit being termed “pathological.” From an interlocutor who seriously and steadfastly advances such a line of argument, one can only walk away.

That is not to say that Fineman's argument is rationally irrefutable. Although I agree with Fineman's general and specific conclusions, reasonable people might disagree *inter alia* about: (1) the best forms of subsidy to or support of caregivers; (2) the best sources of such subsidy; (3) the relative hierarchy of obligations of individuals or communities geographically and relationally nearer to the caregiver (friends, neighbors, employers, adult relatives, church, local community); and (4) the appropriate conditions (if any) that ought to attach to the support of caregivers.

Nevertheless, Fineman's basic point is unassailable: e.g., that we are, by nature as human beings, unavoidably, “universally and inevitably,” dependent at critical stages of our lives; that, as individuals, as societies, and as a species we cannot survive without a massive investment of time and energy and resources by caregivers; and that to the extent that we take our biological survival, other things being equal, as a self-evident condition of flourishing, we must support caregivers.

We are, in short, all dependent. In recognizing that dependency we need to surrender unrealistic myths of self-sufficiency, and fulfill our obligation to support the caregivers upon whom human survival depends.

III. FINEMAN'S ARGUMENT AS A SALUTARY TREND IN CONTEMPORARY FEMINISM

Material oppression, at least on a social basis, almost always is accompanied by ideological oppression. The need of the privileged to legitimate their privilege appears to be one of the constants of human history. In the history of the subordination of women,³⁰ “nature” is the frequent recourse of those who justify the status

30. The use of the “natural” to justify status inferiority is, of course, not unique to the long and horrible history of sexism. Contemporary ideologies of racism and homophobia have also relied heavily on the category of the “natural” to justify the subordination of their victims. See, e.g., JOHN BOSWELL, *CHRISTIANITY, SOCIAL TOLERANCE, AND HOMOSEXUALITY: GAY PEOPLE IN WESTERN EUROPE FROM THE BEGINNING OF THE CHRISTIAN ERA TO THE FOURTEENTH CENTURY* 303-33 (1980) (discussing homophobia in particular).

inferiority of women. Often “nature” takes the form of biological determinism, the argument that because of physical differences between men and women, women are inherently unsuited for positions of leadership, intellectual endeavor, etc. “Nature” can also take a more psychological or “spiritual” form, such as characterizing certain attributes as distinctly “feminine” in order to justify the status inferiority of women. In either case, heavy reliance is placed upon the “universality and inevitability” of the attributed characteristics.³¹

Is it any wonder, then, that those who fight on the intellectual front of the war against sexism show a particular hostility to terms such as “human nature”? That they regard assertions of “universality and inevitability” as inherently suspect? They might even coin an intrinsically pejorative term, say “essentialism,” with which to confront assertions about the “natural,” the “universal,” and the “inevitable”?

Such healthy skepticism is both an appropriate response to the ideological strategies of the privileged and the cornerstone of critical empirical consciousness. Virtue, however, lies in the mean. Taken to an extreme, the rejection of the concept of human nature, a reflexive hostility to any claims about trans-cultural, trans-historical (universal and inevitable) qualities of human beings, leads to an irrational and politically self-defeating subjectivism.

My contention is that a significant part, *though certainly not all*, of contemporary feminist theory, like much of contemporary Queer Theory, is afflicted by precisely that kind of extremism. I make this charge hesitantly, aware of the way in which opponents of human equality use distortion and caricature to label movements for human emancipation “political correctness.” Nevertheless, I think the criticism is a valid one. While not launching into a major defense of that assertion, I offer two bits of what I regard as extremely probative evidence.

The first is the amount of energy and passion currently invested by feminists in the debate over multiculturalism and the appropriate role of universals. My colleague Leti Volpp has written eloquently on this subject.³² Much of the political philosopher Martha Nussbaum’s

31. See GENDER: KEY CONCEPTS IN CRITICAL THEORY 3-88 (Carol C. Gould ed., 1997) (providing an interesting and representative sampling of feminist writings on the naturalness versus social construction of gender).

32. See Leti Volpp, *Feminism v. Multiculturalism*, in 1998-99 JAMES A. THOMAS LECTURE, YALE LAW SCHOOL (Apr. 5, 1999) (publication forthcoming, on file with the Journal); Leti Volpp, *Talking “Culture:” Gender, Race, Nation and Politics of Multiculturalism*, 96 COLUM. L. REV. 1573 (1996) (responding to backlash scholarship that has emerged in academic journals as a result of the progress of previously oppressed segments of society).

recent book, *Sex and Social Justice*,³³ is devoted to exactly that topic.³⁴ Unless we are willing to regard the interlocutors of that discussion as entirely irrational, a clearly unacceptable position, one must infer that the discussion of universals among feminists is indicative of a real deficiency in the theoretical framework of contemporary feminism.

My second bit of evidence is drawn from my own experience and that of others trying to engage in normative discussions in a multicultural setting. In *Sex and Social Justice*, Nussbaum recounts two examples from a conference on international development she attended. In the first example, a progressive male economist, whom we are led to believe is sympathetic to feminism, delivered a paper arguing that

traditional ways of life in a rural area of Orissa, India, [are] now under threat of contamination from Western development projects. As evidence of the excellence of this rural way of life, he points to the fact that whereas we Westerners experience a sharp split between the values that prevail in the workplace and the values that prevail in the home, [in Orissa], by contrast, exists what [he] calls "the embedded way of life." His example: Just as in the home a menstruating woman is thought to pollute the kitchen and therefore may not enter it, so too in the workplace a menstruating woman is taken to pollute the loom and may not enter the room where the looms are kept.³⁵

A woman who is an anthropologist and collaborator with the economist rises to the economist's defense when some feminists (an important point to note) challenge his cultural relativism. Drawing on the anti-essentialist critique of Derrida and Foucault, she argues that "there is no privileged place to stand" in judging such matters, and that those who criticize the Orissa practice are importing Western "essentialist" notions.³⁶ The anthropologist subsequently delivers a paper lamenting the introduction of the smallpox vaccine to India because it helped eliminate the cult of the Sittala Devi, the goddess to whom local people prayed to avoid smallpox.³⁷

Nussbaum's anecdotes confirm my own experience: a significant

33. MARTHA C. NUSSBAUM, *SEX AND SOCIAL JUSTICE* 38 (1999) (defending the empirical existence of universal ideas of the human, without having to resort to metaphysical explanation).

34. *See id.* See especially part I "Justice", chapter 1, "Women and Cultural Universals;" chapter 2, "The Feminist Critique of Liberalism;" chapter 3, "Religion and Women's Human Rights;" and particularly chapter 4, "Judging Other Cultures: The Case of Genital Mutilation."

35. *Id.* at 35.

36. *Id.*

37. *See id.*

amount of feminism, both as high theory and in the ordinary views espoused in classrooms and political organizations for women, displays the kind of misguided hostility toward universals evident in Nussbaum's examples.

Fineman's approach offers a way out of that irrational hostility. Admittedly, the tradition of normative argument with which I have compared Fineman's argument is, itself, fraught with the most horrifically sexist and inhumane conclusions. It was Aristotle, after all, who described the marriage relationship between a man and woman as analogous to master and slave.³⁸ That is the problem, however, with any normative argument that relies on empirical observation: sometimes you get things wrong. A spirit of self-correction, of constant and careful attention to the rich texture and fine detail of human experience, and a profound sensitivity to the marginalized and the oppressed, what the theology of liberation called a "preferential option for the poor," are essential to maintaining the vitality of such a method of moral argument. I am convinced, however, that such a method holds the greatest promise for feminists and those who labor on behalf of human emancipation.

Martha Fineman has made such an argument. My hope is that other feminists will follow.

38. See ARISTOTLE, *POLITICS* 1252(b), Bk I, Ch. 1 (Benjamin Jowett trans., 1947) (discussing the analogy).