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BOOK REVIEW

BATTERED WOMEN AND FEMINIST LAWMAKING

BY ELIZABETH M. SCHNEIDER

MOLLY DRAGIEWICZ*

Law Professor Elizabeth M. Schneider's, *Battered Women and Feminist Lawmaking*,¹ provides an insightful, historical account of the development of legal responses to domestic violence in the United States. Like other histories of family violence, Schneider's book records the transition from the earliest American laws limiting "chastisement" of women by male family members to the re-framing of "domestic violence" or "woman battering" as a crime. Schneider's account focuses on an area of current attention and concern: domestic violence as a human rights issue. An inventive integration of feminist theory, legal history, social history and contemporary legal practice sets this book apart from earlier histories of domestic violence. Schneider's exploration of contemporary legal responses to domestic violence summarizes the concerns over naming domestic violence; describes the need to challenge victimization/agency dichotomies in theory and in practice; and discusses the implications of patriarchal legal notions of domestic privacy. The book is divided into four sections. Part One establishes the historical and theoretical context for domestic violence as a social and legal problem. Part Two explicates key theoretical concerns for feminist lawmaking on battering. Part Three uses case studies to reveal the complexity of

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1. ELIZABETH M. SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING* (2000).

970 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

attempts to implement feminist lawmaking in the courtroom. Finally, part Four explores the risks and potential benefits of feminist engagement with the state. *Battered Women and Feminist Lawmaking* also provides a framework for thinking and teaching about battering through legal education and practice.

The book opens with a section on *Domestic Violence as a Social and Legal Problem*, which documents the social construction of domestic violence as a widely acknowledged problem. Schneider shows how contemporary legal work on domestic violence comprises the implications of court decisions that, on first glance, appear to be far afield from domestic violence. For example, the Supreme Court decision in *Planned Parenthood v. Casey*² recognizes the possibility that domestic violence could have an impact upon a woman's decision to have an abortion without her partner's consent.³ *Battered Women and Feminist Lawmaking* also addresses the importance of legislation that explicitly targets domestic violence, such as the Violence Against Women Act ("VAWA").⁴ In this first section, Schneider positions feminist legal work on "gender violence" in the context of more general feminist theorizations of heterosexual domestic violence as political and linked to patriarchy. Drawing heavily on Linda Gordon,⁵ Elizabeth Pleck⁶ and Reva Siegel's⁷ histories of family violence, Schneider frames the development of legal responses to domestic violence as a dialectical process. Through this process, political and cultural changes help to engender legal reform, and legal reform has real, if limited and conditional, potential to change attitudes about women and violence on the cultural and political levels. Schneider credits feminist theory with informing legal discourses on violence against women, and elaborates the perils and possibilities of legal responses to the problem. She also identifies feminist efforts to frame domestic violence as a civil rights and

2. 506 U.S. 833 (1992) (holding the husband notification provision of the Pennsylvania Abortion Control Act of 1982 unconstitutional because it placed substantial obstacles in the path of a woman seeking an abortion before the fetus was viable).

3. See SCHNEIDER, *supra* note 1, at 3-4.

4. See Title I of the Professional Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105 (1996) (codified as amended at 42 U.S.C.).

5. See LINDA GORDON, *HEROES OF THEIR OWN LIVES: THE POLITICS AND HISTORY OF FAMILY VIOLENCE* (1988).

6. See ELIZABETH PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* (1987).

7. See Reva B. Siegel, *The Rule of Love: Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117 (1996).

2003] REVIEW: BATTERED WOMEN AND FEMINIST LAWMAKING 971

human rights issue in connection with broader feminist legal work on such rights.

In Part Two, *Theoretical Dimensions of Feminist Lawmaking on Battering*, Schneider describes some of the fundamental theoretical concerns that impact feminist legal responses to domestic violence. Here, she describes the issues pertaining to the naming and definition of domestic violence. Schneider discusses the need to overcome the binary opposition that defines women in general, and female survivors of violence in particular, as either victims or agents. Such a dichotomy, she argues, is inadequate because common responses to battering include both activity and passivity. Women use whatever tactics they think will allow them to survive the violence.

Part Two is notable for its account of feminist legal critiques of “reason” and the problems battered women face in court on domestic violence cases.⁸ Schneider explains the benefits and drawbacks of using expert testimony on domestic violence in court by demonstrating how male-centered norms for reasonableness have made it difficult for women’s accounts of domestic violence to be intelligible in the courtroom. In this section, Schneider also considers the implications of legal discourses about “privacy,” and explains how popular ideas about privacy have helped to shape state responses to battering in counterproductive ways.⁹

Part Three, *Implementing Feminist Lawmaking*, uses the issues of battered women who kill, along with motherhood and battering to illustrate the difficulties involved in translating legal changes into strategies that work for battered women in the courtroom. These case studies reveal the need for attention to the implications of lawmaking and legal argumentation on both the particular and general levels. In other words, feminist responses to domestic violence must work “on the ground,” as well as in “grand theory,” in order to ensure that instrumental tactics used today don’t harm other women’s chances of being heard in court and getting a fair trial in the future.¹⁰ The chapter *Motherhood and Battering* is especially useful, given the number of battered women who report that their abusers use the custody process to punish women for leaving or for reporting abuse, and mounting evidence that domestic violence is not being adequately considered in child custody decisions.¹¹

8. See SCHNEIDER, *supra* note 1, at 79-83.

9. See *id.* at 87.

10. See *id.* at 101-04.

11. See LUNDY BANDCROFT ET AL., WELLESLEY CTRS. FOR WOMEN/BATTERED MOTHERS’ TESTIMONY PROJECT, BATTERED MOTHERS SPEAK OUT: A HUMAN RIGHTS

972 JOURNAL OF GENDER, SOCIAL POLICY & THE LAW [Vol. 11:2

In Part Four, *Aspirations, Limits and Possibilities*, Schneider discusses feminist concerns about engaging with the state in order to address domestic violence, as well as the radical possibilities posed by the Civil Rights Remedy of the Violence Against Women Act.¹² As Schneider argues, civil rights remedies are important because they explicitly link gender and violence. The recognition of violence as gendered is significant because one of the major feminist concerns about state responses to domestic violence is that they tend to leave gender out, resulting in a distorted response to the problem. The institutionalization of civil rights approaches to domestic violence may have the potential to shape domestic violence discourse and policy in fundamentally important ways by securing the place of gender as a salient category in analyses of domestic violence. Unfortunately, the federal Civil Rights Remedy for VAWA has been struck down since Schneider's book went to press.¹³ However, her arguments are still useful since states are free to enact their own civil rights options.¹⁴ In addition to state legislation, new bills to reinstate a Civil Rights remedy have been introduced at the federal level.¹⁵

In Part Four, Schneider advances efforts to integrate domestic violence into legal education,¹⁶ arguing that domestic violence is potentially relevant to almost any lawsuit. Incorporating feminist pedagogical theories, Schneider describes a complex of educational approaches to integrating domestic violence into law school curricula including: in-course content, "bridge" courses intended to link domestic violence to first-year courses that don't explicitly address it,

REPORT ON DOMESTIC VIOLENCE AND CHILD CUSTODY IN MASSACHUSETTS COURTS (2002), available at <http://www.wcwonline.org/pdf/batteredreport.pdf>; see also RACHEL ALLEN ET AL., CAL. NAT'L ORG. FOR WOMEN, FAMILY COURT REPORT 2002 (2002), available at http://www.canow.org/fam_report.pdf; *Small Injustice: Little Justice in America's Family Court* (Garland Waller ed., Intermedia 2002).

12. See SCHNEIDER, *supra* note 1, at 181-84.

13. See *United States v. Morrison*, 529 U.S. 598 (2000) (holding that in enacting VAWA's Civil Rights Remedy, Congress exceeded its constitutional authority under the Commerce Clause because the statute did not involve economic activity or interstate commerce).

14. The first state civil rights legislation was established in New York City, New York, in 2000, in order to continue the civil rights option after the United States Supreme Court vacated the federal civil rights remedy. See N.Y.C. ADMIN. CODE tit. 8, ch. 9, §§ 901-907 (2000), available at http://www.council.nyc.ny.us/pdf_files/bills/int0752-2000.htm.

15. See, e.g., Violence Against Women Civil Rights Restoration Act of 2003, H.R. 394, 108th Cong. (2003).

16. See, e.g., DEBORAH GOELMAN & ROBERTA L. VALENTE, ABA COMM. ON DOMESTIC VIOLENCE, WHEN WILL THEY EVER LEARN? EDUCATING TO END DOMESTIC VIOLENCE: A LAW SCHOOL REPORT (1997) (indicating how domestic violence is presented in law school classrooms and making recommendations for the future in order to better serve the needs of victims).

2003] REVIEW: BATTERED WOMEN AND FEMINIST LAWMAKING 973

the provision of a student-run clinic to provide assistance for women in need, and alliance with domestic violence practitioners in order to ensure that law students' research projects have practical applications and can address real needs. This chapter is the applied counterpart to the others, which consider larger theoretical questions about domestic violence. It provides specific examples of practices that can help to ameliorate the problems described in the preceding chapters.

Battered Women and Feminist Lawmaking also does a commendable job of addressing problems surrounding claims about "gender symmetry" in domestic violence, as well as misappropriations of "battered woman syndrome." Schneider's careful contextualization of these issues is a welcome contribution to the academic, professional, and public discussion, where they are often poorly considered. I would have liked to have seen more discussion of the ways that race, class, and sexuality shape the experiences of battered women in the courtroom, especially with regard to the construction of "deserving" and "undeserving" victims of domestic violence, and hope that this book will inspire additional work in these areas.

I would recommend *Battered Women and Feminist Lawmaking* to those working on domestic violence, lawyers, law students, and anyone interested in the practical implications of feminist theory. Although the book focuses on lawmaking, it provides an overview of key practical and theoretical issues that have implications for all areas of anti-violence work. Schneider skillfully integrates feminist theory, research on domestic violence, and legal texts in order to illustrate the connections across these areas. This carefully written discussion of the impact of sexism on court responses to heterosexual domestic violence is a valuable contribution to anti-violence work. The book dramatizes the necessity of starting from survivors' experiences when thinking about domestic violence, as well as the fundamental importance of recognizing the cultural milieu that shapes personal experiences of violence as well as community responses to it. The result is a compelling call for expanded gender-conscious theoretical, pedagogical and legal work toward the elimination of domestic violence.