
Preface

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The extent to which history is literally embedded in legal decision making even when dramatic departures from recent norms are being contemplated is revealed in the decision rendered by the U.S. Supreme Court in *Roe v. Wade*. Before addressing the claims made by legal counsel, Justice Harry Blackmun asserted in the 1973 majority opinion how desirable he felt it was to “survey, in several aspects, the history of abortion, for such insight as that history may afford us.” Opening himself up to what would prove fairly devastating critiques of his representation and use of history, and the relative relevance of these particular traditions to present-day reproductive politics, the Justice cited ancient Greek law as well as historical common law practices as the foundation for the Court’s decision establishing a new constitutional right for women to choose abortion. However flawed by an apparently idiosyncratic use of history, Blackmun’s reasoning amply demonstrates the degree to which practitioners of the law inevitably use, misuse, invoke, and write their own versions of history—especially when women are centrally involved. This iconic moment in legal decision making, public history making, and women’s history demonstrates a central precept animating this collection of essays: that the law comprises at once an engine of change and a buttressing of tradition, a view onto the past and a lesson in the significance and power afforded to history as it is conceived to shape the future.

Foundational to the thinking of the editors and contributors to *Feminist Legal History* is the idea that history—how it is imagined, who writes it, and how it is used—plays an integral role in the making and transformation of the law. No law is made or challenged or applied without reference, explicit or implicit, to an assumed past. Indeed, it could be said that the strategy of referring to a seemingly transparent (and deceptively so) past is perhaps most powerfully enacted by legal practitioners. What is considered reasonable or conventional is always determined so in light of a historical view of past practice. The more naturalized the categories and ideas at stake, the more this is true. Thus no arena of legal practice and lawmaking is

more dependent upon references to the past than those legal decisions which explicitly center, or implicitly hinge upon, ideas about gender and women. As feminists we believe that the assumptions that animate such decisions are not natural; they come from somewhere. Our mission as feminists interested in legal change is to expose the way that legal practice constructs a history within which women and men emerge as distinct realities. History is being done—either poorly, without reflection, or carefully with great attention to the consequences of one’s conclusions about the past—but, either way, in the assertion of legal practice and legal decision making, history is being produced through legal discourse all the time.

This volume is centrally concerned with not only how the law has changed but also how legal as well as extra-judicial discourse have—in the words of Reva Siegel, the keynote speaker for the October 2007 symposium held at the University of Akron that inspired this volume—“structured conversations between the public and the bench.” Much the same way that the efforts of the lay lawyers, justices, and activists who are examined in this volume have influenced the legal decisions and decision makers in previous eras, writing our own feminist legal history is a strategy we employ to reshape our world.

The contribution of the professional feminist historian of law to our understanding of present legal practice lies in the confluence between the two classifications. What professional legal historians set out to do is to redirect our gaze in ways that serve to question widespread assumptions about the past—rather than reiterate them or blindly support their fortification as one might do lacking the historical perspective of a trained scholar. For *feminist* scholars of legal history, this mission to think counter-intuitively about the past takes on added significance. In addition to producing insights as to how, under what conditions, and through what mechanisms the law has been transformed, the interventions of professional feminist legal historians comprise a direct and purposeful assault on conventional thinking about the relationship between law, gender relations, and women’s lives that is often directly undercutting what our legal system, stuck in a blind present, generally imagines to be natural or to have always been true.

Feminist Legal History is dedicated to just such illumination. This volume brings together those scholars of the law with distinct insights into historical ways that women have influenced and been shaped by law with those historians whose broad appreciation for the past brings new perspectives on what the law has meant to women within a larger context. By bringing the two disciplines together, we seek to contribute to the project of institutionalizing feminist history, feminist views of history, and feminist ideas of

women's legal roles and rights. In these ways we hope to contribute not only to a reconsideration of the past but also to the imagining of a more liberatory legal system and decidedly feminist future.

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