



**Martha Albertson Fineman, Terence Dougherty.** *Feminism Confronts Homo Economicus: Gender, Law, and Society.* Ithaca: Cornell University Press, 2005. xvii + 515 pp. \$29.95 (paper), ISBN 978-0-8014-8941-9.



**Reviewed by** Anupam Pandey (Independent Scholar)

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### Laying Siege: Within and Without

This edited volume is a feminist critique of the ever-expanding scope and impact of the philosophical school of law and economics and its substructure of neoclassical economics on the American economy, polity, and society. While some essays argue for reforming the system from within, using legal feminism and feminist economics, others call for complete disengagement with the means and methods of economics in order to effect radical change. However, certain common themes resonate throughout the book. The essays are united in their aim of exposing the myth of the sovereign, autonomous male who is the cornerstone of neoclassical economics and hence, the school of law and economics, and develop a critique of the goals of “efficiency,” privatization, and cutting back on welfare and subsidies, all of which hurt women. Fundamentally, the book serves to depict the disagreement between feminism and the school of law and economics wherein the latter serves to protect and benefit the powerful while the former seeks to change the conservative status quo.

Part 1 of the book discusses the relationship between the school of law and economics and neoclassical eco-

nomics, and makes an appropriate beginning by focusing on the problem of “method” wherein the essays reflect contending arguments. While Terence Dougherty’s essay extends the Kuhnian critique of positivism and objectivity that characterize neoclassical economics, Deirdre McCloskey adopts a middle path and is much more sympathetic to a positivist methodology. Instead of rejecting positivism as a method, she argues for making it more accurate and scientific and not merely “a chaos of precise ideas” (p. 30) by making room for emotions, values, ethics, morals, and so on. Dougherty is accurate in his analysis that the school of law and economics tries to hide its own conservative norms and larger political agenda behind a mask of positivism and so-called objectivity. Dougherty’s essay is important because it sets the tone of the book when it shows that epistemology and ontology are mutually constitutive and that all theory is normative theory. Conversely, McCloskey’s argument reflects larger debates within positivism, which increasingly has to reconsider its own basic premises in the face of internal and external critiques.

Paula England’s essay is an application of the critique

of positivism in which she shows how economics errs in its analysis when it dichotomizes the human agent into a “separatist” self (based on the self-interested, profit-maximizing, autonomous individual in the market) and a “soluble” self (who is completely altruistic, empathetic, selfless, and connected with the family). England makes a compelling argument by using the feminist economics of care to show that this polarized model of the individual is fundamentally flawed. As she correctly points out, material as well as nonmaterial concerns motivate human beings.

Part 2 of the book looks at the same debate as part 1 but through a sharper feminist lens. Neil Buchanan’s essay, “Playing with Fire” furthers Dougherty’s point of view, but is more pointedly critical of the positivist methods the school of law and economics espouses. He calls on feminist legal scholars to reject categorically the use of mainstream economic methods, not only because it shall prove to be self-destructive but also because economics can serve to justify the most unequal and unjust practices and setups in the name of “efficiency.”

In response to Buchanan’s absolute rejection of mainstream positivist economics, Douglas Kysar agrees that economics is indeed a eutrophic methodology; instead of shunning all contact with the former, however, he calls for an active engagement of feminist legal scholarship with law and economics and neoclassical economics. Otherwise, not only does legal feminism run the risk of being completely isolated but it also misses the opportunity to bring in a fresh analytical and critical perspective to the school. In support of his argument, he cites the examples of behavioral, sociological, and ecological economics.

Essays by Elizabeth Mayes as well as Regina Austin are highly useful since they show how women have been historically disadvantaged with respect to property rights in the United States. Mayes correctly points out that the key value of American polity, society, and economy is “freedom,” which is understood in the traditional Lockean sense as the freedom to own property. Thus women are automatically excluded from property ownership because they have traditionally been regarded as property and their biological functions of childbearing and child rearing also render them as “will vacant” objects rather than subjects of ownership (p. 122). Mayes argues that in an era of globalization, where tangible property and ownership are separate, there is a greater possibility of women possessing property rights. However, she does not elaborate why or how that is so. Lit-

tle evidence exists to suggest that globalization works to the advantage of the underprivileged; technology is also mired in, and controlled by, the interests of the powerful. She links capitalism and the lack of female property ownership but does not explain why globalization will not foster the same outcome.

Austin’s essay is a highly competent piece that explains black women’s historical material poverty. The article is important because it highlights not only material and structural factors but also cultural and psychological factors that serve as an impediment to black women’s access to and accumulation of wealth. This is significant because it dispels predominant American myths about black women in society. Black women’s behavior is often described as “deviant” (p. 140) and it is their “moral and cultural fiber that gets called into question when the subject turns to black women’s net worth” (p. 137).

Martha McCluskey’s article is one of the key pieces in the book since it questions the state-market dichotomy where, in conventional terms, the market/private is portrayed as evil and the state as the savior. Here, McCluskey exposes the relative autonomy of the state as superficial and shows instead how the state and the interests of capital are hand-in-glove. McCluskey uses feminist and deconstructive methods to highlight this false binarism and correctly points out the need for feminist and other challenges to rethink this dichotomy in order to find any real and lasting solutions. In another article in the following section, McCluskey gives the example of AFDC (Aid to Families with Dependent Children), to prove her point. She argues that feminists need to show that the rolling back of social welfare programs in the name of “efficiency” (a key goal of neoclassical economics) is not simply wrong but also misleading and inherently political. She correctly identifies the need for feminists to challenge this efficiency/equity binarism and show that social welfare reform can serve to benefit both equity and efficiency.

Part 3 of the book places theory in context and directly addresses the mounting challenge of the withering away of the welfare state and the rise of the neoconservative economic and political agendas. The essays are sharply critical of the role of the school of law and economics, which protects the same values and public policies that are the pillars of American society and polity.

Martha Fineman uses the feminist ethics of care in order to deconstruct the cornerstone of American society: the sovereign, autonomous, individual, white male agent. She correctly points out that his “freedom” and

“autonomy” is built on the “unfreedom,” “slavery,” and sacrifice of the many, in this case, women and families, specifically. The critical argument of the essay is the need to re-evaluate fundamental economic concepts such as “subsidy” which have a negative connotation attached to it. She redefines it as “the uncompensated labor of others in caring for us and our dependent needs” (p. 186). Fineman is accurate in her argument that, through biological dependency, there is a collective debt of society to its caretakers.

Linda McClain’s essay argues along the same lines and uses the concrete example of cutting back subsidies as is evidenced by the change from AFDC to TANF (Temporary Assistance to Needy Families) wherein people on welfare, especially mothers, are regarded as irresponsible citizens who drain tax-paying citizens’ resources. The analysis is accurate when she says that the problem of “family poverty is reduced to a poverty of values” (p. 237).

Part 4 of the book, “Feminism, Economics, and Labor,” is its most important section since labor is key to understanding feminist economics. While Katherine Stone and Risa Lieberwitz both discuss the new forms of discrimination against women in the market in a globalizing economy, the following two essays are critical because they represent two different arguments regarding women’s labor and the means for advancing women’s economic rights. The fundamental point of debate is whether women’s labor can be compensated through wages using the mainstream economic logic or whether that would mean commodification of women’s labor. Katharine Silbaugh sums up the debate as whether “we can know the price of something and simultaneously know that it is priceless” (p. 349). For Silbaugh, the answer is affirmative and gender equality demands that the economics of home and labor be taken more seriously. Thus, she tackles head-on the commodification critique, but the bottom line for her is that it would “mean to leave women without cash in the name of non-commodification” (p. 348). Silbaugh makes a persuasive argument when she shows the error in having a clear-cut boundary between commodified and non-commodified labor. This argument complements England’s belief that markets and monetary exchange can coexist with expressions of affection in a realistic reflection of women’s mixed motivations (p. 358).

In a highly nuanced essay, Laura Kessler seeks to expand how liberal feminism looks at and makes demands for women’s labor rights. She shows how women are al-

ways portrayed as victims who deserve rights and privileges since they are pushed into caregiving due to biological/cultural factors. Kessler argues for transcending this negative framework for more fulfilling solutions, keeping in mind women as agents who actively engage in caregiving out of choice and agency. Thus, unlike Silbaugh, she is wary of using neoclassical methods for advancing women’s rights.

The final section of this book is devoted to showing the incursion of law into the realm of the private and how it shapes the latter through laws on marriage, divorce, child rearing and responsibility, sexual orientation, division of labor within the family, and so on. The essays have in common the fact that they are all critical of the economic notion that families survive because they are “efficient” due to the division of labor between the male “breadwinner” and the female “homemaker” and that actors are motivated by “rational” choices. The feminist critiques in this part challenge the idea that economics is the chief motivation in the decisions women make within families and point out that the role of values, emotions, responsibility, and care has been completely negated. Yet it is interesting to note that the essays are considerably varied in range regarding the potential and limits of economic approaches.

June Carbone’s essay is significant because it criticizes both the economic view of the family and the feminist critique of the same, because both tend to examine women’s labor in the family through an economic lens. While Ann Estin makes a sharp critique of “efficiency” within the family because it is a result of women’s subordination and conservatism, Margaret Brinig represents a far more conservative point of view when she suggests that divorce laws needs to be toughened so that families and externalities, such as children, relationships, and communities, can be protected. Finally, the essay by Ertman is again at the opposite end of the spectrum when it attempts to show how contract law can be applied to family law.

Overall, the book is a timely interjection at a time when neoclassical economics dominates. We need to pay heed to the critique because it offers a rare alternate vision. The volume is a competent, comprehensive, and well-organized compilation that covers many different aspects of social, economic, and political life in the United States. It combines theory and practice, and epistemology and ontology, and correctly serves to show that they are mutually constitutive. The choice of essays is laudable in form and content as they are well researched and

represent contentious contemporary debates. However, the strength of the book is also its weakness. While the theory is universally valid (given the current pervasiveness of neoliberal economics), the examples being limited to the United States give it a somewhat insular tinge. To be fair, the book focuses on American jurisprudence, which means the examples are very much in context. Overall, the book is extremely useful for anybody interested not just in law or, specifically, American jurisprudence but any shade of feminist thought or criticism of neoliberal economics.

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