

Family Law and Female Empowerment

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Family law has endured multiple waves of encroaching feminism, with each wave sparking new scholarly questions as to the efficacy of the body of family law in achieving the central tenets of feminism. Generally, the advances of the past several decades have been lauded as having brought significant advances to women. Family law, many argue, has become increasingly progressive, and feminist scholars have both applauded those developments and pushed for continuing improvement.

This piece argues that modern family law, particularly that of the last ten years, wholly fails to achieve one of the central tents of feminism – female empowerment. Advances in domestic violence legislation, marital property theory, divorce legislation, and even reproductive technologies have demonstrated that family law has been woefully deficient in recognizing and fostering the empowerment of the women who depend on it.

The renewal of the Violence Against Women Act in 2013 was followed by a wave of domestic violence legislation around the country. Women enjoy the privilege of spousal support, which courts in some states are now mandated to award in domestic violence cases. Punitive damages are even available to victims of domestic violence now. These developments are difficult to criticize, and certainly have worth. But in terms of empowerment, they serve to foster the habituation to dependency that domestic violence legislation should seek to break.

Marital property theory, in its modern iteration, is even more problematic. Equitable distribution has brought women ownership of property with no management rights, effectively rendering their ability to exercise half of the prerogatives useless. And community property theory – still typically lauded as a significant advance in women’s rights – offends the empowerment principle even more strongly.

The now-universal approval of no-fault divorce among American states has resulted in an impoverishment of the very women it was intended to protect. The reform movement, sensible as it was, perhaps did not take adequate account of the economic opportunities available to women vis-à-vis their male counterparts, and has therefore largely failed to bring women the desired liberation from oppressive marriages.

Finally, the modern legislative attitude towards reproductive technology, and, in particular, surrogacy, wholly fails to honor empowerment theory. The failure of state legislatures around the country to recognize surrogacy at all, including, most recently, in Louisiana and New Jersey, denies both intended mothers and surrogates the reproductive opportunities technology can provide. And even in states that have sanctioned such reproductive choices legislatively, women’s reproductive decisions are all too often tied to that of their husbands’.

I hope to spark ongoing discussion of where we are and where we must go in terms of empowerment. Family law can, and should, do better to foster the future of its female constituents.