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The Case for a Feminist Torts Casebook

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THE CASE FOR A FEMINIST TORTS CASEBOOK

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Professor Leslie Bender's recent essay, *An Overview of Feminist Torts Scholarship*,[1] contributes substantially to the construction of feminist perspectives on tort law. She carefully and comprehensively surveys burgeoning feminist scholarship in the field of torts. Professor Bender closely examines feminist histories of substantive tort law, the application of feminist theory to tort doctrine, to tort law concepts, and to the teaching of torts, tort issues that are important to women's lives, social science research involving feminism and torts, book reviews that are relevant to feminist tort law, and overviews of material that implicate feminist viewpoints of torts.[2] After Professor Bender persuasively demonstrates the breadth and depth of feminist scholarship in the torts area, she recognizes that considerable work remains to be undertaken and concludes with a call for feminist torts scholars to redouble their efforts.[3]

Professor Bender specifically urges feminist legal theoreticians to challenge the approach of conventional tort law to fault, legal responsibility, harm and causation, to translate women's experiences of injury into cognizable causes of action that will compensate women, and to rethink traditional defenses to affirmative causes of action.[4] Professor Bender correspondingly recommends that feminist theoreticians challenge the organizational

* Professor of Law, University of Montana. I wish to thank Beth Brennan, Bari Burke and Peggy Sanner for valuable suggestions, Cecelia Palmer and Charlotte Wilmerton for processing this piece, and the Harris Trust for generous, continuing support. Errors that remain are mine.

1. Leslie Bender, *An Overview of Feminist Torts Scholarship*, 78 CORNELL L. REV. 575 (1993).

2. *See id.* at 577-95. *See generally* Paul M. George & Susan McGlamery, *Women and Legal Scholarship: A Bibliography*, 77 IOWA L. REV. 87 (1991) (providing representative bibliography on women and legal scholarship); Symposium, *Feminist Jurisprudence and Procedure*, 61 U. CIN. L. REV. 1139 (1993) (providing ideas similar to those of Professor Bender regarding civil procedure).

3. *See* Bender, *supra* note 1, at 595-96. Professor Bender is a prolific feminist torts scholar. *See, e.g.*, Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 J. LEGAL EDUC. 3 (1988) [hereinafter *Primer*]; Leslie Bender, *Changing the Values in Tort Law*, 25 TULSA L.J. 759 (1990).

4. Bender, *supra* note 1, at 596. *See generally* Nancy S. Erickson, *Final Report: "Sex Bias in the Teaching of Criminal Law,"* 42 RUTGERS L. REV. 309, 327-478 (1990) (providing similar suggestions regarding criminal law).

structure of the torts field and tort law's values, create new paradigms for treating personal injuries, analyze compensation schemes for evidence of systematic discrimination, and work to remedy or ameliorate the substantial human costs of physical and mental harm to individuals in society.[5] She also suggests that practicing attorneys and torts scholars assess litigation strategies and develop alternatives to dispute resolution (ADR) that protect vulnerable people and facilitate the prompt disposition of personal injury lawsuits.[6]

Professor Bender recommends as well that feminist legal theorists reevaluate all of the tort doctrines and the discipline's analytical concepts to prevent their prejudices involving gender, class, race and sexuality from being unconsciously reproduced in the future.[7] She asserts that "law schools need torts casebooks with feminist perspectives, or, at a minimum, books that include feminist materials."[8] I want to emphasize this insight as a springboard for providing a brief, friendly response that seeks to elaborate upon Professor Bender's informative essay.

Professor Bender is absolutely correct in urging that feminist legal theoreticians apply feminist "insights, methodologies, critiques, and reconstructions" to all of the specific aspects of tort law that she exhaustively enumerates and to numerous additional features of torts.[9] The broad spectrum of doctrinal tort law is illustrative. Every substantive area and particular doctrine has its own history, theory, justification, practice, understanding and applica-

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5. Bender, *supra* note 1, at 596.

6. *Id. See generally* 28 U.S.C. §§ 471-478 (1993) (requiring federal district courts to experiment with ADR and other measures to facilitate prompt disposition of civil litigation); Richard Delgado et al., *Fairness and Formality: Minimizing the Risk of Prejudice in Alternative Dispute Resolution*, 1985 WIS. L. REV. 1359, 1375-83 (warning of ADR's dangers for resource-poor individuals); Trina Grillo, *The Mediation Alternative: Process Dangers for Women*, 100 YALE L.J. 1545 (1991) (warning of ADR's dangers for women).

7. Bender, *supra* note 1, at 596. *See generally* Erickson, *supra* note 4, at 312-20 (providing similar ideas regarding criminal law); Judith Resnik, *Revising the Canon: Feminist Help in Teaching Procedure*, 61 U. CIN. L. REV. 1181 (1993) (providing similar viewpoints as to civil procedure).

8. Bender, *supra* note 1, at 596; *see also infra* note 27 and accompanying text. *See generally* Erickson, *supra* note 4, at 327-478 (criticizing criminal law casebooks from feminist perspective); Mary Joe Frug, *Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook*, 34 AM. U. L. REV. 1065 (1985) (criticizing contracts casebook from feminist perspective); Carl Tobias, *Gender Issues and the Prosser, Wade and Schwartz Torts Casebook*, 18 GOLDEN GATE U. L. REV. 495 (1988) (exploring gender in torts casebook).

9. Bender, *supra* note 1, at 575. *See generally* Elizabeth M. Schneider, *Gendering and Engendering Process*, 61 U. CIN. L. REV. 1223 (1993) (providing similar ideas regarding civil procedure).

tion, each of which feminist reexamination, rethinking and reworking could improve.

The area of intentional torts warrants reconceptualization in light of new appreciation that modern intentional torts to persons frequently involve relationships, such as husband-wife or employer-employee, in which a male possesses disproportionate physical power or economic resources that he has used to the detriment of a woman.[10] These recent insights have supported the modification of longstanding tort law rules, such as interspousal immunity from liability for harm that a husband purposefully inflicts upon a wife.[11] The new understandings should concomitantly be applied in recalibrating traditional intentional torts to encompass injuries that employers deliberately perpetrate on employees in the workplace.[12]

Feminist legal theorists also could contribute substantially to a reassessment of the important doctrinal area of negligence. For example, Professor Bender has invoked feminist approaches in persuasively suggesting that the conventional notion of duty to rescue be fundamentally recast.[13] Constructing or rethinking the

10. *See, e.g.*, Price v. Price, 732 S.W.2d 316, 316 (Tex. 1987) (involving claim by wife that husband's negligent driving caused wife's injuries); Hardy v. LaBelle's Distrib. Co., 661 P.2d 35, 36 (Mont. 1983) (involving false imprisonment claim by female employee against employer). *See generally* Daniel Givelber, *The Right to Minimum Social Decency and the Limits of Evenhandedness: Intentional Infliction of Emotional Distress by Outrageous Conduct*, 82 COLUM. L. REV. 42, 65-75 (1982) (discussing development of intentional infliction of emotional distress as tort to protect less powerful party in relationship); Tobias, *supra* note 8, at 509-19 (analyzing tort scenarios involving relationships in which women traditionally possessed less power).

11. *See, e.g.*, Waite v. Waite, 618 So. 2d 1360, 1361 (Fla. 1993) (abrogating doctrine of interspousal immunity); Burns v. Burns, 518 So. 2d 1205, 1209 (Miss. 1988) (abandoning common-law concept of interspousal immunity); *see also* Carl Tobias, *Interspousal Tort Immunity in America*, 23 GA. L. REV. 359, 359-61 (1989) (analyzing interspousal immunity doctrine). *See generally* Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1530-38 (1983) (examining methods adopted to improve legal status of women within marital relationship).

12. *See* Harris v. Jones, 380 A.2d 611, 615-16 (Md. 1977). *See generally* Regina Austin, *Employer Abuse, Worker Resistance, and the Tort of Intentional Infliction of Emotional Distress*, 41 STAN. L. REV. 1, 49-56 (1988) (espousing tort action of intentional infliction of emotional distress as weapon for remedying employer abuse of employees); Givelber, *supra* note 10, at 62-75 (discussing lack of uniformity among courts as to specific elements required to assert claim for intentional infliction of emotional distress despite widespread recognition of intentional infliction of emotional distress as independent tort).

13. *See Primer*, *supra* note 3, at 33-36; *see also* Bender, *supra* note 1, at 580-81 (challenging "no duty to rescue" doctrine by means of alternative feminist conceptions of human nature). *See generally* Linda C. McClain, *"Atomistic Man" Revisited: Liberalism, Connection and Feminist Jurisprudence*, 65 S. CAL. L. REV. 1171,

specific concept of the reasonable woman in the context of sexual harassment claims would correspondingly inform application of the general reasonable person standard in negligence law.[14] When considering the ideas in this paragraph and the one immediately above, it is important to remember that Professor Catherine MacKinnon has convincingly argued that sexual harassment should be treated as gender-based discrimination, rather than as a traditional tort.[15]

Feminist legal thought also could improve theory and practice in the products liability area. For instance, several feminist tort scholars have observed that numerous products, such as the Dalkon Shield, diethylstilbestrol (DES), birth control pills, bendectin and breast implants, which have severely injured thousands of women, implicate women's reproduction.[16] Increased work on these issues might run in a number of directions.

One critical question is why so many products that have seriously hurt women involve their reproduction, the answer to which could reflect the gender of the individuals whom medical scientists or society thinks should bear the risks of reproductive freedom or implicate the concomitant research that these scientists

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1228-42 (1992) (evaluating Professor Bender's proposal to recast "no duty to rescue" doctrine).

14. *See, e.g.*, Ellison v. Brady, 924 F.2d 872, 877-79 (9th Cir. 1991) (adopting reasonable woman standard in sexual harassment civil actions); Andrews v. City of Philadelphia, 895 F.2d 1469, 1482 (3d Cir. 1990) (concluding that sexual harassment must detrimentally affect reasonable person of same sex as victim); *see also* Harris v. Forklift Sys., Inc., 114 S. Ct. 367, 371 (1993) (requiring plaintiff in Title VII sexual harassment claim to establish objectively hostile or abusive environment as well as subjective perception of abusive environment). *See generally* CATHERINE A. MACKINNON, SEXUAL HARASSMENT OF WORKING WOMEN: A CASE OF SEX DISCRIMINATION (1979); Kathryn Abrams, *Gender Discrimination and the Transformation of Workplace Norms*, 42 VAND. L. REV. 1183, 1197-220 (1989) (discussing problem of sexual harassment in workplace and proposing elements of more effective approach to challenging pervasiveness of male-centered norms); Naomi R. Cahn, *The Looseness of Legal Language: The Reasonable Woman Standard in Theory and in Practice*, 77 CORNELL L. REV. 1398 (1992) (examining use of reasonable woman standard in context of sexual harassment).

15. *See* MACKINNON, *supra* note 14, at 83-90, 158-61.

16. *See* Tobias, *supra* note 8, at 500-01; *see also* Lucinda Finley, *A Break in the Silence: Including Women's Issues in a Torts Course*, 1 YALE J.L. & FEMINISM 41, 66-69 (1989) (discussing tort cases involving reproductive issues central to women's identities); Ellen Smith Pryor, *Flawed Promises: A Critical Evaluation of the American Medical Association's Guides to the Evaluation of Permanent Impairment*, 103 HARV. L. REV. 964, 970-73 (1990) (observing that injuries to females resulting in sexual impairment often have lower settlement value in workers compensation settlement guide published by American Medical Association). *See generally* Leslie Bender, *Feminist (Re) Torts: Thoughts on the Liability Crisis, Mass Torts, Power and Responsibilities*, 1990 DUKE L.J. 848 (criticizing legal system's over-reliance on economic, cost-based approach regarding mass tort litigation).

deem worthwhile. Another important issue is how to conceptualize the regulation of products that may endanger women in ways that reduce the possibility of harm before it happens. For example, feminist legal theorists could champion stricter regulation by calling for greater experimentation with medical devices prior to Food and Drug Administration approval.

Feminist legal thinkers might correspondingly develop and suggest better methods of resolving disputes after products have hurt women.[17] For instance, additional analysis of mass tort litigation involving the Dalkon Shield, DES, and breast implants[18] and of nationwide experimentation with techniques for expediting federal civil cases[19] may afford fairer and prompter means of treating these controversies. This evaluation could also yield improved ways of resolving the lawsuits that are responsive to significant process values embedded in the litigation, such as enabling injured women to tell their stories in a public forum.[20] These research efforts in the products liability field will probably show that current product regulation and extant doctrinal products law, much less proposals that would reinstitute negligence rather than strict liability,[21] are insufficiently attentive to the needs of women.

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17. *See* Gina Kolata, *Big Cases May End in Small Settlements*, N.Y. TIMES, Sept. 26, 1993, at E6; *see also supra* note 6 and accompanying text.

18. *See* Linda S. Mullenix, *Class Resolution of the Mass-Tort Case: A Proposed Federal Procedure Act*, 64 TEX. L. REV. 1039, 1060-63 (1986). *See generally* SHELDON ENGELMAYER & ROBERT WAGMAN, LORD'S JUSTICE (1985) (analyzing Dalkon Shield litigation); RICHARD B. SOBOL, BENDING THE LAW: THE STORY OF THE DALKON SHIELD BANKRUPTCY (1991) (examining Dalkon Shield litigation).

19. *See* 28 U.S.C. §§ 471-478 (1988). *See generally* Linda S. Mullenix, *The Counter-Reformation in Procedural Justice*, 77 MINN. L. REV. 375 (1992) (analyzing impact of Civil Justice Reform Act on federal judicial and legislative branches); Carl Tobias, *Civil Justice Reform and the Balkanization of Federal Civil Procedure*, 24 ARIZ. ST. L.J. 1393 (1992) (arguing that Civil Justice Reform Act is threatening uniformity and simplicity of federal civil procedure).

20. One important finding that Professor Lucinda Finley made when interviewing DES daughters is the womens' concern that they be able to tell their stories in open court. Telephone Interview with Professor Lucinda Finley, SUNY Buffalo, School of Law (Feb. 3, 1993); *see also* Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, 987-95 (1991) (presenting legal images of battered women); Joyce McConnell, *Incest as Conundrum: Judicial Discourse on Private Wrong and Public Harm*, 1 TEX. J. WOMEN & L. 143, 172 (1992). *See generally* Stephen B. Burbank, *The Costs of Complexity*, 85 MICH. L. REV. 1463, 1466-71 (1987) (book review) (discussing process values).

21. The RESTATEMENT (SECOND) OF TORTS § 402A (1965) and nearly all American jurisdictions now prescribe strict liability in torts for product liability. The Restatement (Third) of Torts, could modify this formulation. *See* James A. Henderson & Aaron D. Twerski, *A Proposed Revision of Section 402A of the* RESTATEMENT (SECOND) OF TORTS, 77 CORNELL L. REV. 1512, 1513 (1992); *see also* Henry J. Reske, *Experts Tackle Torts Restatement*, 78 A.B.A. J. 18, 18 (1992) (noting that § 402A may be subject to revision by American Law Institute).

The above ideas only illustrate the many areas of tort law in which considerable important work remains to be undertaken. In addition to opening debate and continuing dialogue across the entire doctrinal field of torts, we need to develop, refine, and more effectively link the history, theory and practice of tort law; to integrate and apply feminist legal thought and method; to incorporate feminist approaches across the curriculum, particularly in the first year courses, and throughout the law school environment; and to undertake much, much more.

Illustrative of most of these phenomena are the Married Women's Property Acts, the history of which raises gender issues that faculty and students can productively explore in property, contracts and civil procedure as well as torts.[22] The examination of this history also could promote integration of the first year curriculum, combatting the tendency to view these substantive areas as discrete, compartmentalized units.[23] The tort litigation process concomitantly provides valuable opportunities to consider women in the civil justice system as judges, lawyers, parties, witnesses and jurors.[24]

In short, we must reexamine, rethink, reorganize, and reconceptualize the field of tort law, essentially revolutionizing how we conceive of torts. A significant aspect of this worthy, if daunting, project is the need to unite the numerous disparate strands of tort law into a more coherent whole. Professor Bender has assembled and categorized a wealth of informative material that is important to feminist viewpoints of the tort area. We desperately need an efficacious means of organizing that sprawling discipline that is

22. *See, e.g.*, RICHARD H. CHUSED, CASES, MATERIALS AND PROBLEMS IN PROPERTY 254-56, 266-67, 496-503 (1988) (exploring Acts in property); CHARLES L. KNAPP & NATHAN M. CRYSTAL, PROBLEMS IN CONTRACT LAW: CASES AND MATERIALS 585-86 (3d ed. 1993) (exploring Acts in contracts). *See generally* NORMA BASCH, IN THE EYES OF THE LAW: WOMEN, MARRIAGE AND PROPERTY IN NINETEENTH CENTURY NEW YORK (1982) (exploring married womens' acts and exploring social and ideological conflict over appropriate role for married women in economic and political life of nation); Richard H. Chused, *Married Womens' Property Law: 1800-1850*, 71 GEO. L.J. 1359 (1983) (examining development of married womens' property acts).

23. *See* Jay N. Feinman & Marc Feldman, *Pedagogy and Politics*, 73 GEO. L.J. 875, 900-02 (1985).

24. *Cf.* Barbara Allen Babcock, *A Place in the Palladium: Women's Rights and Jury Service*, 61 U. CIN. L. REV. 1139, 1160-74 (1993) (providing similar ideas regarding womens' jury service); Resnik, *supra* note 7, at 1181-96 (providing similar ideas regarding civil procedure). *See generally* Judith Resnik, *Naturally Without Gender: Women, Jurisdiction and the Federal Courts*, 66 N.Y.U. L. REV. 1682, 1700-21 (1991) (discussing positions in federal court system potentially available to female candidates).

denominated torts. The overarching theory, the metatheory, if you will, already exists in the form of feminist legal thought. That theoretical construct must now be applied systematically to tort law.

The instrument that is critical to this enterprise is readily available. That mechanism is the torts casebook, which can be beneficially employed to revise tort law and to attain other important goals, such as infusing the study of torts with gender issues and feminist legal thought. The development and use of a feminist casebook, therefore, could have felicitous effects beyond uniting and clarifying the tort law field.

The creation and employment of this casebook should illuminate and emphasize gender issues throughout the torts course, requiring that faculty and students seriously consider questions that might otherwise remain unexamined. The casebook may also afford a congenial context for implementing feminist pedagogy. For instance, these teaching materials, when used with other techniques, such as small group sessions, collaborative writing assignments and problem sets that include women, could foster a classroom learning environment in which female students feel more comfortable participating.[25] The development of, and reliance on, a feminist casebook also may encourage more faculty and students to view gender issues and feminist approaches as institutionalized aspects of torts and of the broader law school curriculum and experience, thus increasing their legitimacy.

We have instructive models, such as the monumental effort of Professor Henry Hart and Professor Herbert Wechsler, *The Federal Courts and the Federal System*, a casebook that substantially contributed to conceptualizing and elucidating the enormous, complex field of federal courts.[26] Feminist torts theorists ought

25. *See* Catherine Weiss & Lquise Melling, *The Legal Education of Twenty Women*, 40 STAN. L. REV. 1299, 1356-59 (1988); Stephanie M. Wildman, *The Question of Silence: Techniques to Ensure Full Class Participation*, 38 J. LEGAL ED. 147 (1988); *cf.* Taunya Lovell Banks, *Gender Bias in the Classroom*, 38 J. LEGAL ED. 137, 151-54 (1988) (concluding that law professors must become more sensitive to language used and images conveyed in classroom). This treatment is obviously not intended to exhaust the issue of womens' participation or the broader area of feminist pedagogy. A number of the remaining articles in the symposium, *Women in Legal Education - Pedagogy, Law, Theory and Practice*, 38 J. LEGAL ED. 1 (1988), are applicable. *See generally* Feinman & Feldman, *supra* note 23 (proposing alternate approach to teaching basic courses in first year of law school).

26. *See* HENRY M. HART, JR. & HERBERT WECHSLER, THE FEDERAL COURTS AND THE FEDERAL SYSTEM (2d ed. 1973); *see also* ARTHUR T. VON MEHREN & DONALD T. TRAUTMAN, THE LAW OF MULTISTATE PROBLEMS: CASES AND MATERIALS ON CONFLICTS OF LAWS (1965) (analyzing multistate conflicts of law using traditional principles of legal analysis, which helped to organize field).

to draw on these exemplars in reconceiving torts. For instance, the scholars might initially formulate an effective organizational structure. They could then assemble and classify the scattered shards of tort law as constituents of the organic whole. The creation of this organizational framework also should facilitate the identification of gaps that require additional work and the designation of areas that warrant refinement. Once feminist theoreticians have completed these activities, they can begin integrating all of the pertinent information.

The casebook is the linchpin for reconceptualizing and uniting the sprawling field of tort law. Professor Bender has supplied many of the diverse threads. Quite significant to the development of a feminist torts casebook is Professor Jean Love's early effort to gather and organize relevant opinions and materials that could be employed in teaching torts from a feminist perspective.[27] This work should be integral to the larger project that I contemplate. The expansion of Professor Love's endeavor, in conjunction with the collection, categorization and organization of the material that Professor Bender has reviewed, should provide the foundation for constructing a more substantial edifice.

Since Professor Bender published her essay, feminist legal scholars have agreed to undertake a project similar to the one that I am suggesting.[28] Approximately twenty theoreticians have decided to develop a nontraditional torts casebook and have contacted a major law book publisher about the prospect. The participants are planning to depart in several important ways from the approaches that most existing casebooks in the field employ.

The group will probably rely on a format that differs significantly from conventional casebooks that emphasize the elements of affirmative causes of action and defenses for the major categories of intentional, negligent and strict liability torts.[29] The new materials would correspondingly include fewer appellate opin-

27. *See* Jean C. Love, Teaching Torts: A New Perspective - Selected Cases and Articles (Jan. 1987) (unpublished manuscript) (copy on file with author); *see also* Bender, *supra* note 1, at 595 (suggesting feminist approach to teaching moral theory in context of tort law classes). A few casebooks include some feminist materials. *See, e.g.*, DAN B. DOBBS, TORTS AND COMPENSATION 398-400, 429 (1993); HAROLD LUNTZ & DAVID HAMBLY, TORTS: CASES AND COMMENTARY (3d ed. 1992). *But see* Tobias, *supra* note 8 (criticizing treatment of women and gender issues in widely used torts casebook).

28. I rely substantially here on Telephone Interviews with Professor Phoebe Haddon, Temple University, School of Law (Nov. 5, 1993), and Professor Joan Vogel, Vermont Law School (Nov. 10, 1993).

29. *See* DOBBS, *supra* note 27, at 21-712; WILLIAM L. PROSSER ET AL., CASES AND MATERIALS ON TORTS 18-809 (8th ed. 1988).

ions and more secondary information, such as excerpts from law review articles and empirical data demonstrating, for instance, the high incidence of spousal rape.[30] Moreover, the casebook may well incorporate numerous critiques, radical and otherwise, of traditional tort law and might even explore alternatives to conventional notions of compensating injuries with monetary damages.[31] Finally, the authors are planning not only to apply feminist legal theory and method to tort law, but also to stress issues important to torts that involve race, class, and sexual orientation.[32]

The feminist scholars have issued a call seeking additional expressions of interest, support and ideas. The group has held several preliminary meetings to implement an organizational structure and to discuss effective ways of proceeding. The participants have agreed on an initial organizational scheme. A few individuals will be on the "front-line" of organizing, conceptualizing, and writing, and the remainder will provide support by, for example, compiling relevant sources and reading background material. The comparatively mundane tasks of allocating responsibilities for planning the project have not been particularly controversial.

Additional aspects of the undertaking have sparked lively intellectual debate and healthy exchange among the participants. Illustrative have been the discussions of the appropriate balance between the theoretical and practical treatment of tort law with some scholars preferring a more abstract approach and others advocating a comparatively pragmatic examination. The group members have apparently disagreed, and may continue to differ, over fundamentals, such as format, coverage, and how dramatically to depart from traditional presentations of tort law. Indeed, one of the most challenging features of the project may be translating the extraordinary promise of feminist legal thought into the reality of a feminist torts casebook.

The new effort to create the casebook is invaluable, and all

30. *See* Maria L. Marcus, *Conjugal Violence: The Law of Force and the Force of Law*, 69 CAL. L. REV. 1657 (1981); Elizabeth M. Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement*, 61 N.Y.U. L. REV. 589, 642-48 (1986).

31. *See* Richard L. Abel, *Torts, in* THE POLITICS OF LAW 326-49 (rev. ed. 1990); Morton J. Horwitz, *The Doctrine of Objective Causation, in id.* at 360-86; *see also* Bender, *supra* note 1, at 584-86 (discussing alternative tort remedies for injuries suffered by women).

32. The material in this paragraph is very tentative and is primarily premised on the conversation with Professor Vogel, *supra* note 28.

legal educators interested in feminist legal theory and practice should do everything possible to ensure its successful completion. This worthy endeavor and my suggestions may be incomplete, and both could encounter obstacles, experience missteps or lead to errors. The need for a feminist torts casebook, the possibility of better comprehending the field, and the benefits of integrating feminist legal thought into torts that the effort represents, however, are too great to delay any longer the attempt.