

INTRODUCTION:
MEN, MASCULINITIES, AND LAW
A SYMPOSIUM ON
MULTIDIMENSIONAL
MASCULINITIES THEORY

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I am pleased to introduce this volume of the *Nevada Law Journal* on Multidimensional Masculinities and the Law. Multidimensional Masculinities and the Law is an emerging legal discipline that uses masculinities studies from social sciences to interpret legal doctrine and to propose changes to legal interpretation. Those of us who are engaged in studying masculinities and incorporating that knowledge into our analysis of legal issues hope to use masculinities studies to improve legal interpretation and, thereby, justice in American law.

As you will see from the articles in this volume and the articles and books to which they refer, masculinities studies is a rich area for exploration that is multidimensional. By that, I mean that masculinities studies refers not to masculinity as a fixed natural response to biology, but rather to the socially constructed performances of masculinity that differ depending on men's varying identities: race, class, sexual orientation, age, and other identity factors. These performances of masculinity by men will also vary with the context of the situation. Moreover, other persons' responses to men's masculinity performances will, in turn, be affected by the varying identities of the man performing the masculine identity. Studies on cognitive biases explain that we all view and judge individuals through stereotypes or schemas that our brains unconsciously construct to permit us to sort information more quickly. The viewer's reaction to the masculinity performance, as filtered through a cognitively biased lens, will itself affect and alter the performances themselves. Thus, we can see that masculinity is varied and fluid depending on time, place, location, circumstances, and for whom and what reason the individual is performing his masculinity.

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But we cannot ignore that there still appears to be one preferred, powerful masculinity that many masculinity scholars call the hegemonic masculinity. This is the version of masculinity that we teach boys to aspire to, and which, in reality, almost no one is able to attain. Masculinities scholars see this societal pressure on boys as detrimental—not only to boys and men, but also to women, because boys and men often use women and girls as objects upon which they prove their masculinity. Consider the gang rape of college girls in fraternity houses, or the hostile work environments to which groups of men subject women and gender non-conforming men in predominately male workplaces. These behaviors are evidence of societal pressure and norms that encourage men to engage in competitive, aggressive behavior. Men and boys adopt this behavior, masculinities scholars tell us, in order to prove themselves to other men and boys. And we cannot underestimate the significance of shame in motivating boys and men to retaliate against others who do not respect them as men.

This volume is organized into a number of different sections ranging from origins of masculinities studies to immigration law, to work and family law, to masculinity outside the United States. The first section, *Masculinities Studies and Multidimensional Masculinities: Origins and Theory*, comprises three articles that deal with the origins of masculinities studies and the incorporation of those studies into legal analysis and theory. The second section, *Work, Family, and Masculinities*, deals with family law concepts such as the effect of class on marriage, the importance of vulnerability to fatherhood, and the limitations of sex discrimination law in the workplace where women or men engage in gender performances that defy societal norms. This section demonstrates that men are not monolithic. Depending on their class and race, they have fewer or more opportunities for work and even for marriage. It also shows that the gendered expectations that are built into the law can be harmful to men who may sacrifice connection to their children because of society's view of masculinity. These expectations may also harm women who present in more masculine ways at work.

The next section, *Masculinities and War*, stands by itself with a compelling set of narratives presented by Professor Kang's article on men and courage in wartime. The following section, *Masculinities and Education Law*, covers masculinity issues in education, both single-sex sports teams and competitions as well as the issue of single-sex classrooms. Both of these pieces demonstrate that whether we are dealing with wrestling teams or fifth grade classrooms masculinity norms can prevail that may harm not only the girls who are excluded but also the boys who are included. Next, the articles in *Masculinities Theory and Immigration Law* use historical analyses to explain how U.S. immigration policy and law have relied on gendered and racist narratives that undermine the masculinity of immigrants, such as the Chinese or Mexicans, to support stricter immigration regulations. In the section on *Masculinities Beyond Our Borders*, Professor Pozzo also uses a historical account to trace the development of concepts of masculinity in Italy and how they manifest themselves in law and film. Finally, in the last section entitled *Rethinking Identity Theories*, Professor Fineman questions whether any legal analysis built on identities is adequate to build legal arguments for legal and social change.

I. MASCULINITIES STUDIES AND MULTIDIMENSIONAL MASCULINITIES:
ORIGINS AND THEORY

In *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*,¹ Frank Rudy Cooper and I introduce Multidimensional Masculinities Theory (MMT) to law. We explain that the origins of MMT include feminist theory and feminist legal theory, critical race theory, critical race feminism, queer theory, masculinities studies, and multidimensionality theory. Masculinities studies emerged as a result of feminism in the social sciences and agrees with feminist theory that gender is socially constructed, not a result of nature. But feminist theory, the masculinities scholars claimed, did not examine men as the subject; men, in fact, appear monolithic in the early feminist writings. Masculinities theory focuses on men, and recognizes that while men as a group are powerful (and a hegemony of men exists), individual men often feel powerless because of social pressures to conform to established and unattainable norms of masculinity. Men, in turn, respond to this feeling in different ways and perform different types of masculinities. Depending on the man in question, racial, class, sexual, and other identities will affect how others view him and how he performs his identity. Thus, a multidimensional approach is preferred. Multidimensionality acknowledges that there are multiple identities, some privileged and others subordinate, that are co-constituted. That is, they cannot be separated and they act upon one another in a given context. Context is key. For example, while a black male firefighter may have advantages over a black female firefighter in the workplace, black men in the public square operate at a disadvantage when they are subject to racial profiling.

So how does law fit in? Law requires interpretation that depends largely on the interpreter's (judge, jury, lawyer, etc.) experience to analyze behavior. This interpretation often occurs through a screen of cognitive biases and stereotypes that are likely not conscious to the decision maker, many of which involve how a man should act or how a man has acted. Much of these judgments will depend on the race, sexual identity, class, and other identities of the man. In criminal law, family law, employment law, and immigration law, legal decision makers determine whether an individual's behavior was appropriate, often viewed through identity prisms. The essay concludes that we need to understand these prisms and attempt to correct for them in order to achieve a more just society.

In *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*,² Athena D. Mutua discusses the reason for applying multidimensionality rather than intersectionality theory to the study of masculinities in the legal context. She explains that the use of multidimensionality theory instead of intersectionality theory is partially a historical accident. Although intersectionality theory is sufficiently flexible to permit an analysis of masculinities, intersectionality was traditionally used to analyze women whose gender identity merged with their racial identity as members of racial minority groups. Black

¹ Frank Rudy Cooper & Ann C. McGinley, *Identities Cubed: Perspectives on Multidimensional Masculinities Theory*, 13 NEV. L.J. 326 (2013).

² Athena D. Mutua, *Multidimensionality Is to Masculinities What Intersectionality Is to Feminism*, 13 NEV. L.J. 341 (2013).

women, for example, belonged to at least two subordinate groups, and their racial and gender identities combined to create a different type of disadvantage. Intersectionality originally was not used to consider persons operating at an advantage and a disadvantage at the same time. Black men, for example, often are privileged because of their gender but subordinated because of their race; intersectionality, when it first was applied to black men, recognized this. But, Mutua rightly notes, black men can also be subordinated based on their gender combined with their race. This “gendered racism” as Mutua calls it includes racial profiling, hyper-incarceration, and higher levels of unemployment than black women.

Although masculinities studies have existed since the 1970s in the social sciences, it was not until the beginning of this century that we saw masculinities studies move into legal theory. At the same time, Darren Hutchinson and others began to describe multidimensionality theory, a theory that permitted analysis of multiple identities, privileged and subordinated, in context. While intersectionality theory is sufficiently flexible to do the same, multidimensionality theory expands intersectionality theory, and its enthusiasts see it as better capturing a complexity of identities that interact within a hierarchy of structures.

In *White Men as the New Victims: Reverse Discrimination Cases and the Men’s Rights Movement*,³ Bethany Coston and Michael Kimmel discuss the origins of the men’s rights movement. The men’s rights movement, the men’s studies movement, and the mythopoetic movement all emerged from the feminist movement. Men’s rights groups, however, broke off from the other groups and are currently populated by “angry white men” who believe that they are suffering from discrimination and who see the problems men have as resulting from feminism. Coston and Kimmel agree that gender expectations of men cause serious problems for men, but they take issue with the direction of the men’s rights movement. The authors argue that blaming feminism is not the answer to men’s problems because it is not feminism, but our societal gender regimes that cause men’s problems. Coston and Kimmel explain that the men’s rights movement—as represented by Roy Den Hollander, an activist corporate lawyer who has brought a number of unsuccessful lawsuits claiming discrimination against white men—espouses contradictory views. Men’s rights advocates seem to be angry both at traditional notions of gender roles as well as at gender equality resulting from feminism. Moreover, they concern themselves only with the issues of straight white men. They do not take on the causes of black or Latino men or gay men. These contradictions make individuals within the men’s rights movement personally confused and politically paralyzed. They hate men’s studies, a discipline that deals with the condition of men, because men’s studies does not engage in the blaming of women. They want change but cannot reasonably articulate non-contradictory reasons for what they desire and the types of change that they desire. Their angry rhetoric has led the Southern Poverty Law Center, which monitors “hate groups,” to include them on their list. But, the authors note, even though men’s rights advocates may not under-

³ Bethany M. Coston & Michael Kimmel, *White Men as the New Victims: Reverse Discrimination Cases and the Men’s Rights Movement*, 13 NEV. L.J. 368 (2013).

stand or communicate a coherent cause of men's problems and rational solutions, the pain under the surface of the followers of the movement is real.

II. WORK, FAMILY, AND MASCULINITIES

June Carbone and Naomi Cahn, in *Is Marriage for Rich Men?*⁴ offer empirical evidence of the importance of class in an analysis of men's economic and personal futures. Their article demonstrates that men who possess a high school education have experienced a serious decline in their ability to obtain and maintain good jobs. Lower-class women earn a much higher percentage of the income of their male counterparts whereas the difference in salaries between college-educated men and women has increased. Moreover, women with high school educations are increasingly deciding to have children on their own because they perceive that having men in their lives does not add value. While economic pressures harm unions at the lower end of the economic spectrum, many poor women decide not to marry the fathers of their children because of the men's engagement in poor behaviors such as domestic violence, drug abuse, incarceration, and infidelity. In contrast, women and men with college degrees are increasingly delaying parenting until they have sufficient income and resources to care for children. And, these marriages among college-educated individuals have a much lower divorce rate than that of their married counterparts without college educations. This picture means that there is a sharp difference in income between the upper middle class and working class. The authors conclude that the greater inequality between the top and bottom of the American spectrum is related to the destruction of the family. They propose that society focus on means to create greater employment opportunities for working class men and women and to ease the transition between jobs.

In *Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work-Life Balance in Large Law Firms*,⁵ Richard Collier explains that there is a potential collision of values between transnational law firms' methods of doing business and the new attitudes that young men display about fatherhood. Transnational business law has become even more time-consuming than in the past. It displays a hyper-masculine attitude that places the client's business above all else. Rather than a feminization of large law firms that one would expect from the increase of women lawyers, Collier notes, we are seeing an increased polarization and "gender segmentation" of work. Male lawyers have often resisted change to preserve their own status while at the same time aligning themselves with a gender-neutral view of equality. Collier notes that policy in this area is discussed using the framework of individual rational choice, a concept that is deeply imbedded in the culture of law firms and the legal profession. This discourse permits some men in law firms to support gender equity but to limit it to policies that fit within the law firm's organizational aims of maximizing profits. Moreover, while these men support gender equity, they

⁴ June Carbone & Naomi Cahn, *Is Marriage for Rich Men?*, 13 NEV. L.J. 386 (2013).

⁵ Richard Collier, *Rethinking Men and Masculinities in the Contemporary Legal Profession: The Example of Fatherhood, Transnational Business Masculinities, and Work-Life Balance in Large Law Firms*, 13 NEV. L.J. 410 (2013).

may not be likely to change the power structures of their own personal relationships.

Considering masculinities in law firms, Collier notes, is not simplistic. Men's individual notions of masculinity may change as their lives progress. Moreover, recent scholarship demonstrates that masculine models in business and law have also changed. Whereas earlier men were considered masculine if they adhered to the "gentleman's code," today there is an "overarching competitive individualism" and less of a sense of loyalty.⁶ This increasingly competitive environment co-exists with a stronger personal commitment to playing an active, engaged role as a father. This contradiction requires the legal profession to consider how work-life balance issues affect men's lives as well as women's lives.

In *Sperm, Testosterone, Masculinities and Fatherhood*,⁷ Nancy Dowd uses news articles about sperm donors and fathers' decreased testosterone levels to interrogate how our society perceives fatherhood. The sperm donor article, which appeared in the *New York Times*, explained that sperm banks are using donations from the same sperm donors repeatedly. One donor, for example, had fathered 150 children. The story further explained that many of the children—whose biological fathers are sperm donors—have sought to contact their biological fathers and siblings. It also discussed whether sperm donation should be regulated. A second report and the articles about it noted that testosterone decreases when fathers care for their children, and warned that caring for children may decrease manliness.

Dowd uses both of these accounts to discuss the view implicitly expressed about the relationship of masculinity and fatherhood. The first is quite complicated because a sperm donor may be donating to a single woman, a heterosexual couple, a gay couple, or even a single man. In all events, however, the sperm donor is virtually invisible. He has no rights. There is no counseling of sperm donors about loss or grief. In fact, at least where there is another man in the picture (the male partner of a heterosexual couple), the sperm donor's very existence is a threat to the intended father's masculinity. Thus, masculinity is constructed in a way that is in opposition to fatherhood and connection. The sperm donor is masculine, separate and rugged, while the intended donee is a father who cares for children. In the media accounts surrounding the testosterone article, men are warned that if they care for children they will be less masculine.

Dowd explains that the articles could have been characterized much differently. The authors could have contacted the sperm donors to seek their views of whether there should be regulation, to determine whether they experience loss. The testosterone articles could have suggested that a man's biology adapts to his role: of attracting and fertilizing a mate and of fathering children. Instead, the testosterone articles saw the evidence as a warning. Beware: if you take care of children, you will lose your manliness. Certainly, such approaches see

⁶ *Id.* at 432.

⁷ Nancy E. Dowd, *Sperm, Testosterone, Masculinities and Fatherhood*, 13 NEV. L.J. 438 (2013).

caring and connection in fathering as inconsistent with masculinity, with being a “real man.”

In *Three Tales of Female Masculinity*,⁸ Zachary A. Kramer uses three employment discrimination cases dealing with female masculinity to argue that sex discrimination law needs rethinking. The cases he discusses involve two women who display traits considered masculine—a very short haircut and masculine demeanor, and a refusal to wear makeup—and, who as a consequence, lose their jobs. In both of those cases, the courts concluded that there was no sex discrimination. In a third case, a man is hired to work in the Library of Congress, but when he tells his future employer that he intends to transition to female, the employer decides not to hire him. His photographs as a woman appeared to be a man dressed up as a woman, the decision maker stated. All three cases demonstrate, Kramer argues, that the law looks at whether the group (men or women) are discriminated against, rather than at the individual whose gender performance differs from that of the “norm.” Kramer advocates that the law protect the individual’s gender identity.

III. MASCULINITIES AND WAR

In *Does Manly Courage Exist?*⁹ John M. Kang posits that courage defines the man. He notes that there are, ironically, three paradoxes related to courage. First, men who go to war acknowledge that their courage is actually rooted in fear that others will not consider them masculine. It is, thus, the most “feminine” of characteristics—fear—that causes men to act courageously. Second, he explains that even so, acting recklessly in war (and courageously) can lead to feelings of euphoria. One is, in essence, most alive when he is acting courageously in war. Kang notes that Sebastian Junger’s work suggests, however, that it is not the killing per se that causes the thrill, but rather the fact that men are protecting others in their unit. Third, Kang explains that some theorists believe that courage cannot exist unless the courageous person thinks about what he plans to do and decides to take the courageous route. However, Kang notes, when men are acting courageously in war they act reflexively as a result of their training. They do not think—they act. Given these paradoxes and the fact that society does not accept men unless they prove their courage, Kang asks, what sense can we make of courage as the truly male virtue, and what does it mean to be a man?

IV. MASCULINITIES AND EDUCATION LAW

In *Wrestling with Gender: Constructing Masculinity by Refusing to Wrestle Women*,¹⁰ Deborah Brake analyzes the phenomenon of girls’ incursion into boys’ wrestling. Wrestling is considered a contact sport with a masculine identity, but there are certain aspects of wrestling that create a less masculine reputation than other contact sports such as football and basketball. Perhaps it is the

⁸ Zachary A. Kramer, *Three Tales of Female Masculinity*, 13 NEV. L.J. 458 (2013).

⁹ John M. Kang, *Does Manly Courage Exist?*, 13 NEV. L.J. 467 (2013).

¹⁰ Deborah L. Brake, *Wrestling with Gender: Constructing Masculinity by Refusing to Wrestle Women*, 13 NEV. L.J. 486 (2013).

skin-tight uniforms worn as well as the close contact with the competitor's body, including the buttocks and genital areas, that raise some issues concerning whether wrestling is truly a masculine, heterosexual sport. Girls have increased their participation markedly in wrestling, and the ability to perform well depends on girls' competition with male wrestlers. This increased participation has, however, threatened individual boys who wrestle competitively as well as the reputation of wrestling as a masculine sport. Recently, some boys have declined to compete with girls, instead forfeiting matches, claiming that wrestling with girls violates their religious principles and harms the dignity of girls. The media response, Brake notes, has been to laud the boys without hearing the girls' side of the story. Brake posits that boys' claims that wrestling with girls violates their principles should not necessarily end the inquiry. Religious or other values should not automatically overcome equality. In fact, Brake argues that a refusal to wrestle, when supported by the boys' schools, may actually violate the Equal Protection Clause of the Fourteenth Amendment and/or Title IX. Brake argues that some coaches, individual male wrestlers, and the media's coverage of the issue have furthered the status quo of sport as a masculine endeavor, reaffirming the superior position of men.

In *Girls Can Be Anything . . . But Boys Will Be Boys: Discourses of Sex Difference in Education Reform Debates*,¹¹ Juliet A. Williams explains that the debate over single-sex public education exhibits an odd asymmetry. Advocates for girls argue that girls can do anything. They eschew the traditional arguments that girls are limited by biology. Instead, they argue that social norms have restricted girls and women historically and that they should do so no longer. In contrast, advocates for boys depend on an essentialist view of boys that is rooted in biology. Thus, those advocates argue, based on questionable science, that boys' brains are different from girls' brains, and, therefore, boys should be taught in classrooms that take those differences into account. Williams questions the biological pre-determinism exhibited by the boys' single-sex education movement and argues that such essentialist attitudes prevent us from interrogating social norms of masculinity that may harm boys. The "boys will be boys" attitude harms boys because it excuses behaviors that are socially constructed as natural and may establish white boys' behavior as the natural masculine way to be. Williams sees the anti-sex stereotyping principle recently appearing in Fourteenth Amendment constitutional challenges to state actions as a means of dealing with classifications where there are real differences. In other words, Williams argues, the anti-stereotyping principle is now being used and should be used to question the "social meaning attributed to sex differences by a classification."¹² Doing this will require us to engage with the social meaning of masculinity.

¹¹ Juliet A. Williams, *Girls Can Be Anything . . . But Boys Will Be Boys: Discourses of Sex Difference in Education Reform Debates*, 13 NEV. L.J. 533 (2013).

¹² *Id.* at 544.

V. MASCULINITIES THEORY AND IMMIGRATION LAW

In *Anglo Views of Mexican Labor: Shaping the Law of Temporary Work Through Masculinities Narratives*,¹³ Leticia M. Saucedo studies the history of Mexican workers in the United States by examining the narratives of Anglo-Americans who describe Mexican and Mexican American immigrant workers. She explains that these narratives demonstrate that attitudes toward Mexican workers are both raced and gendered, and that these narratives affected the direction of law and policy in the United States with reference to immigration and employment. Mexican men were portrayed as not manly—dependent, simple-minded but also strong enough to do back-breaking work, and able to withstand heat and itinerant conditions because of the Indian blood that gave them their migratory characteristics. These narratives contrasted with those about Anglo workers who were superior, more intelligent, and more modern. Saucedo demonstrates that the policies that appear neutral in our modern immigration law were actually driven by these narratives that have racial and gendered roots, and she encourages us to consider the history of the narratives and the policies as we engage in policy and/or rule making in the future.

Jamie R. Abrams, in *Enforcing Masculinities at the Borders*,¹⁴ details the history of U.S. immigration policy and links those policies and laws to our concept of masculinity. She traces the history of Chinese immigration from 1840 to after the Civil War, explaining that Chinese immigration escalated at the time that U.S. masculinity was destabilizing. Chinese immigrants, who were predominately male, worked in railroads and mines, as laborers and as cooks, and in laundries. After the Civil War, opposition to Chinese immigrants rose as an economic depression in California spurred animosity toward the Chinese, who did not meet the ideal of Anglo-American masculinity. Nativist strategies framed the Chinese as effeminate and unwilling to protect their women from prostitution. These narratives justified more restrictive immigration policies toward the Chinese. In the late nineteenth and early twentieth centuries, manhood in America suffered with the industrial revolution. As a result, many white Americans opposed the rising tide of immigration and sought to return to historical notions of masculinity. These ideas spurred the adoption of quota systems in our immigration policy that were not overturned until 1965. But even since that date, notions of race, class, and masculinity have affected our immigration policy. Abrams notes the increase in patrols at the border between the United States and Mexico, and the role of citizen militias. Much of this reaction is connected to a sense of masculinity of white American citizens. Abrams argues that it is important to understand the role of masculinities in shaping immigration law and policy.

¹³ Leticia M. Saucedo, *Anglo Views of Mexican Labor: Shaping the Law of Temporary Work Through Masculinities Narratives*, 13 NEV. L.J. 547 (2013).

¹⁴ Jamie R. Abrams, *Enforcing Masculinities at the Borders*, 13 NEV. L.J. 564 (2013).

VI. MASCULINITIES BEYOND OUR BORDERS

In *Masculinity Italian Style*,¹⁵ Barbara Pozzo explains the background and history of masculinity and men's power in Italy. From early on, before the Italian unification in 1861, through the fascist period and after World War II, Italian law protected the superior position of men vis-à-vis women. Her article discusses the legal reforms to Italian law that have occurred since World War II and that have changed much of this disparity. It also explains the differences between legal interpretation in the more liberal North and the more conservative cities of the southern parts of Italy. The article tracks these legal developments with a discussion of Italian film and how it reflected different societal views of men and women. Finally, the article demonstrates that although there are significant changes in law and society, there are still important elements of difference between the sexes and masculinities performed. For example, former Prime Minister Berlusconi, Pozzo explains, represents "a perverse kind of old-fashioned Italian concept of masculinity"¹⁶ in that he presents himself as the only virile boss, speaks to groups of women using a simplified register, speaks about women in their traditional roles of wives, mothers, and daughters, and emphasizes women's role as "eye candy."¹⁷ Professor Pozzo concludes that despite these obvious traditional attitudes that are still prevalent in parts of Italy today, things have changed in Italian law and society and will continue to do so.

VII. RETHINKING IDENTITY THEORIES

In *Feminism, Masculinities, and Multiple Identities*,¹⁸ Martha Albertson Fineman questions the use of all identity theories, including masculinities theory, to effect legal reform. Her concern with masculinities insights is that "they seem more directed at giving guidance for the reform of feminist legal scholarship than focused on how legal institutions and practice might be approached and reformed."¹⁹ Fineman recognizes that the legal categories studied by feminist theory, intersectionality, masculinities theory, and other identity theories are inevitably imperfect, but refuses to be satisfied with new legal theories that merely reform theory without improving upon social justice. Fineman criticizes identity theories because they deal with an individualist discrimination model that does not focus on state institutions as having the potential of making positive change. She advocates a turn away from Locke's concepts of individualism and autonomy toward a theory of the state that recognizes that the common human condition—at least at some point during our lives—is vulnerability. The state, she argues, should recognize the vulnerability of human subjects and institutions, brought into existence through state mechanisms, and should provide resources that meet our physical, human, social, ecological or environmen-

¹⁵ Barbara Pozzo, *Masculinity Italian Style*, 13 NEV. L.J. 585 (2013).

¹⁶ *Id.* at 614.

¹⁷ *Id.* at 616.

¹⁸ Martha Albertson Fineman, *Feminism, Masculinities, and Multiple Identities*, 13 NEV. L.J. 619 (2013).

¹⁹ *Id.* at 625.

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tal, and existential needs. The problem with identity theories, Fineman asserts, is that often they do not move into legal action that benefits all vulnerable subjects.