

By Any Other Name: The Vocabulary of “Feminism” at the Supreme Court

McKaye L. Neumeister[†]

ABSTRACT: *Feminist legal theory is a significant area of scholarly inquiry, and the Supreme Court is no stranger to feminist legal arguments. Yet there has been no previous attempt to determine how the Court reacts to and makes use of the vocabulary of feminism. This Note conducts an empirical study of Supreme Court cases, and finds that—despite ample opportunity—the Court has only substantively discussed the words “feminist” or “feminism” twice in its history, both times in non-majority opinions. The Note attempts to understand this aversion to the vocabulary of feminism, examining factors from within the legal profession as well as the continuing societal aversion to the words. The Note contends that the Court both reflects and exacerbates society’s broader discomfort with the feminist label, and that the Court should do its part to reverse this semantic cycle.*

- INTRODUCTION..... 242
- I. THE STAKES OF FEARING A NAME 243
- II. EMPIRICAL STUDY OF “FEMINISM” AT THE SUPREME COURT 246
 - A. The Dearth of “Feminism” at the Supreme Court 246
 - B. Deliberate Bypass 249
- III. MAKING SENSE OF THE JUDICIAL AVERSION 253
 - A. Intra-Legal Factors 254
 - 1. Courts of Appeals 254
 - 2. Supreme Court Briefs 257
 - 3. Other Factors..... 259
 - B. Continuing Modern Hostility to Feminism..... 262
 - 1. The Fact of Popular Discomfort..... 262
 - 2. Source of Societal Resistance 263

[†] Yale Law School, J.D. 2017; Yale College, B.A. 2012. My heartfelt thanks to Noah Lindell for his helpful comments on earlier drafts, and to Professor Amy Chua for her guidance and support. Thanks also to the wonderful editors of the *Yale Journal of Law and Feminism*—especially Meghan Brooks, Callie Wilson, Kelsey Gann, and Kayla Oliver—for their valuable edits and suggestions.

C. Reversing the Feedback Effect	265
CONCLUSION	266

“Always use the proper name for things. Fear of a name increases fear of the thing itself.”¹

INTRODUCTION

It is 2017, and the United States has just elected a new president: a president who bragged about actions tantamount to sexual assault, publicly evaluated women based on their appearance, and proclaimed that women who obtain abortions should be punished by law.² The outcome of this election has been characterized as the result of anti-feminist backlash.³ Many Americans exhibited bias, overt or implicit, against Hillary Clinton because of her gender;⁴ others saw in Donald Trump’s promise to “Make America Great Again” a return to a time in which traditional family roles held sway.⁵ One recent poll found that male Republicans believe it’s a better time to be a woman than a man, while “only 19 percent of respondents said they considered themselves feminists.”⁶ This election underscored the extent to which identifying as a feminist and openly supporting feminism by its name remains controversial.

A popular aversion to the “F-word” has existed for decades and has yet to be fully eradicated. This Note demonstrates that aversion to the “F-words”—“feminist” and “feminism,” which I refer to together as the “vocabulary of feminism”⁷—extends to the nation’s highest court. In fact, excluding names of

1. J.K. ROWLING, *HARRY POTTER AND THE SORCERER’S STONE* 298 (paperback ed. 1999).

2. Jill Filipovic, *What Does President Trump Mean for Feminists?*, WASH. POST (Nov. 9, 2016), https://www.washingtonpost.com/posteverything/wp/2016/11/09/what-does-president-trump-mean-for-feminists/?utm_term=.c9a64a1c4fa0.

3. Amanda Marcotte, *Fighting Back Against Anti-Feminist Backlash: Women Can Win the Trump Era’s New Culture War*, SALON (Dec. 29, 2016), <http://www.salon.com/2016/12/29/fighting-back-against-anti-feminist-backlash-women-can-win-the-trump-eras-new-culture-war>.

4. See, e.g., Peter Beinart, *Fear of a Female President*, ATLANTIC (Oct. 2016), <http://www.theatlantic.com/magazine/archive/2016/10/fear-of-a-female-president/497564>; Carl Bialek, *How Unconscious Sexism Could Help Explain Trump’s Win*, FIVETHIRTYEIGHT (Jan. 21, 2017, 8:42 AM), <https://fivethirtyeight.com/features/how-unconscious-sexism-could-help-explain-trumps-win>.

5. See, e.g., Celeste Katz, *Think America Was Better Off in the 1950s? You’re Probably a Donald Trump Supporter.*, MIC (Oct. 25, 2016), <https://mic.com/articles/157553/think-america-was-better-off-in-the-1950s-you-re-probably-a-donald-trump-supporter#.V30EUS3EV>; Susan B. Ridgely, *The Role of Family Values in the 2016 Presidential Election*, OUPBLOG (Jan. 4, 2017), <http://blog.oup.com/2017/01/family-values-presidential-election/#sthash.eWgWeDVd.dpuf>.

6. Claire Cain Miller, *Republican Men Say It’s a Better Time to Be a Woman Than a Man*, N.Y. TIMES: UPSHOT (Jan. 17, 2017), <http://www.nytimes.com/2017/01/17/upshot/republican-men-say-its-a-better-time-to-be-a-woman-than-a-man.html>.

7. An exhaustive “vocabulary of feminism”—as the phrase might be most naturally understood—would entail a whole suite of words and phrases commonly used in feminist theory or feminist politics,

parties and amici, the U.S. Supreme Court has invoked the vocabulary of feminism only once in a majority opinion. That the popular hesitation to use the vocabulary of feminism also invades the judicial consciousness is troubling. Though we cannot definitively divine the reasons why the Supreme Court has largely avoided the words, that avoidance only amplifies feminism's taboo status.

In Part I, this Note explores the importance of word choice in the Supreme Court, and why it matters whether the Court uses—or avoids—certain vocabulary. Part II empirically explores the lack of feminist vocabulary used by the Supreme Court, demonstrating that avoidance of the “F-words” endures despite relevant opportunities to use them. Part III considers various factors that may be influencing the lack of vocabulary, including popular discomfort with the feminist vocabulary. Ultimately, I conclude that the dearth of feminist vocabulary in the Supreme Court is both a byproduct of—and contributes to—the general societal aversion to “feminism.”

I. THE STAKES OF FEARING A NAME

Whether or not the Supreme Court uses the words “feminist” or “feminism” in its opinions may appear a relatively insignificant issue of word choice. But as a general matter, word choice is important because it influences reality. People from across the political spectrum acknowledge that political, corporate, and personal word choice influence “how people think and how they behave.”⁸ In polling, for example, “word choices and context . . . ma[k]e a difference in how respondents react[] to the questions.”⁹ And studies have demonstrated that the metaphors and words we choose in describing a problem influence how we reason¹⁰ and how we conceptualize the solutions to a problem.¹¹ It is also acknowledged in legal literature that “language is an ‘active component’ in the

such as “intersectionality,” “gender normativity,” “patriarchy,” and “sex-role stereotyping.” However, “feminist vocabulary” and “vocabulary of feminism” as used throughout this Note are limited to the nominatives themselves: “feminist(s)” and “feminism(s).”

8. FRANK LUNTZ, *WORDS THAT WORK: IT'S NOT WHAT YOU SAY, IT'S WHAT PEOPLE HEAR*, at xxi-xxii (2007).

9. Michael Dimock, *Polling When Public Attention is Limited: Different Questions, Different Results*, PEW RES. CTR.: FACTTANK (May 22, 2013), <http://www.pewresearch.org/fact-tank/2013/05/22/polling-when-public-attention-is-limited-different-questions-different-results>.

10. Paul H. Thibodeau & Lera Boroditsky, *Natural Language Metaphors Covertly Influence Reasoning*, PLOS ONE (Jan. 2, 2013), <http://journals.plos.org/plosone/article?id=10.1371/journal.pone.0052961>.

11. See *id.*; Mitch Moxley, *Can Language Influence Our Perception of Reality?*, SLATE (June 2014), http://www.slate.com/articles/news_and_politics/uc/2014/06/can_language_influence_our_perception_of_reality.html.

creation and constitution of social relations” and “has the power to regulate human social relations in subtle ways that are difficult to see.”¹²

Word choice by judges in written opinions is particularly important. Vocabulary is one of a judge’s “tools of communication,” constituting part of a judge’s style.¹³ A “handbook to guide judges in how to best draft opinions . . . emphasizes that word choice is especially important ‘to the judicial writer.’”¹⁴ Judges “can make subtle distinctions between ideas by changing a single word.”¹⁵ Indeed,

[t]he breadth and malleability of the English language allow a judge a wide range of options in selecting the “right word,” and this selection may have “special legal significance” Justice Scalia, recognizing the importance of each individual word, called himself a “snoot,” a “nitpicker for the *mot juste*, for using a word precisely the way it should be used[,] [n]ot dulling it by misuse.”¹⁶

The words in judicial opinions communicate more than just objective information. “Language is ‘a medium of social action’ not ‘merely a vehicle of communication’ and the written judicial opinion is the primary, if not the sole, medium in which judges within our judicial system execute language.”¹⁷ The particular word choice of an opinion is significant because “it is the language of the Court that is used as a precedent for future decisions. Thus, the words used . . . by the Court [] are important to understand.”¹⁸

The relation of the courts to feminism also matters, because of the role of the courts in furthering the goals of gender equality. As Professor Wendy Williams wrote:

The way courts define equality, within the limits of their sphere, does indeed matter in the real world. . . . Legal cases have been and continue to be a focal point of debate about the meaning of equality. . . . The cases themselves, the participation they attract and the debate they engender,

12. Kathryn M. Stanchi, *Resistance Is Futile: How Legal Writing Pedagogy Contributes to the Law’s Marginalization of Outsider Voices*, 103 DICK. L. REV. 7, 7-8 (1998).

13. Richard A. Posner, *Judges’ Writing Styles (And Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1422 (1995).

14. Frank B. Cross & James W. Pennebaker, *The Language of the Roberts Court*, 2014 MICH. ST. L. REV. 853, 856 (quoting JOYCE J. GEORGE, JUDICIAL OPINION WRITING HANDBOOK 405 (5th ed. 2007)).

15. JOYCE J. GEORGE, JUDICIAL OPINION WRITING HANDBOOK 405 (5th ed. 2007).

16. Rachael K. Hinkle, Andrew D. Martin, Jonathan David Shaub & Emerson H. Tiller, *A Positive Theory and Empirical Analysis of Strategic Word Choice in District Court Opinions*, 4 J. LEGAL ANALYSIS 407, 410-11 (2012) (citations omitted).

17. *Id.* at 408 (citations omitted).

18. Cross & Pennebaker, *supra* note 14, at 856 (footnote and internal quotation marks omitted).

tell us important things about societal norms, cultural tensions, indeed, cultural limits concerning gender and sexual roles.¹⁹

Insofar as the Court plays a role in normalizing gender equality, and acceptance of feminism as part of that project, the Court's non-use of the words matters.

Not using "feminism" may be interpreted as subconsciously communicating things about the Court's relation to the concept. Because "language generates stigma," not using the feminist vocabulary could be contributing to stigma surrounding the concept, similarly to how "[t]erminology and framing discourse contribute to the dissemination of abortion stigma."²⁰ Additionally, "words carry emotional content"²¹ and "[l]inguists, sociolinguists, discourse analysts, and communications scholars . . . demonstrate [that] words, and the emotions behind them, provide valuable insight into people's intentions, motives, and desires."²² The omission of certain words is significant because it communicates an intent to omit certain other content, or communicates a speaker's feelings about a certain word such that it is foregone in favor of an alternative word. With regard to "feminism," its omission could be interpreted as communicating a disfavor of feminism and the content associated with the concept.

Furthermore, the Court's lack of feminist vocabulary usage could be interpreted as communicating that the words are not properly within the language of law. "Law is a species of language that some linguists call a 'language of power' or 'high language'—a prestigious type of language that must be used if the speaker is to function effectively and to which only the most powerful members of society have access."²³ As such, "[t]hrough its definitions and the way it talks about events, law has the power to silence alternative meanings—to suppress other stories."²⁴ Abjuring the words "feminist" and "feminism" communicate that they lack a place among the legal language. When law students become socialized in the language of law, and feminism has no proper place in that language, use of the word and the concept—and perspectives associated with it—is suppressed.²⁵

A lack of the vocabulary of feminism in Supreme Court opinions is particularly troublesome if it is deliberate. For decades, scholars have produced significant quantities of academic work contributing to the field of feminist legal theory. Prominent feminist legal advocates have made feminist legal arguments

19. Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 14 WOMEN'S RTS. L. REP. 151, 151-52 (1992).

20. Paula Abrams, *Abortion Stigma: The Legacy of Casey*, 35 WOMEN'S RTS. L. REP. 299, 310 (2014).

21. Ryan C. Black, Sarah A. Treul, Timothy R. Johnson & Jerry Goldman, *Emotions, Oral Arguments, and Supreme Court Decision Making*, 73 J. POL. 572, 573 (2011).

22. *Id.* (citation omitted).

23. Stanchi, *supra* note 12, at 9.

24. Lucinda M. Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 NOTRE DAME L. REV. 886, 888 (1989).

25. Stanchi, *supra* note 12, at 10.

to the Court in cases with clearly feminist implications. And yet, the feminist vocabulary is used in the content of a Supreme Court majority opinion only once, and feminism has only be substantively discussed twice only in concurrence and dissent.

II. EMPIRICAL STUDY OF “FEMINISM” AT THE SUPREME COURT

Though popular opposition to the words is clear, no one appears to have studied whether there is a similar aversion to using “feminist” and “feminism” in the law. The feminist legal literature has colloquially acknowledged the fact of the aversion.²⁶ For example, in a short essay from 1989, Mary Dunlap claims that “[f]eminism is widely perceived as a ‘dirty’ word, reduced to its first initial rather than spelled out,”²⁷ and says that it “can hardly be surprising that feminism has not been welcomed by [the U.S.] legal system.”²⁸ This study examines the use of the words “feminist” and “feminism”—what this essay refers to as the “vocabulary of feminism”—by the U.S. Supreme Court.²⁹

A. The Dearth of “Feminism” at the Supreme Court

A Westlaw search reveals that, as of December 2016, the Supreme Court has only issued twenty-two decisions that used the words “feminist” or “feminism.” Of these twenty-two decisions, eight were denials of petitions for certiorari, rehearing, or a stay,³⁰ in which the name of the party or a referenced opinion below included the word “Feminist.” Two decisions involve judgments below that were vacated and remanded in light of other opinions, in which the name of a party or amicus curiae included the word “Feminist.”³¹

26. See, e.g., Cheryl B. Preston, *This Old House: A Blueprint for Constructive Feminism*, 83 GEO. L.J. 2271, 2285-86 (1995) (footnotes omitted) (“A single word, even one with eight letters, is a very small gate to keep intellectual explorers out of a garden—indeed, a garden full of flowers, as well as some weeds and thorns. Nonetheless, the label “feminism” is frequently a barrier to learning and constructive communication. Lawyers unable to navigate through the terminology of feminism are denied access to a wealth of significant legal literature.”).

27. Mary C. Dunlap, *The ‘F’ Word: Mainstreaming and Marginalizing Feminism*, 4 BERKELEY WOMEN’S L.J. 251, 251 (1989).

28. *Id.*

29. In assessing the pervasion of the aversion to the vocabulary of feminism in the law, alternative approaches could examine the use of the terms “feminist” and “feminism” in legal literature, lower federal courts, state courts, or statutes and regulations. These other approaches are beyond the scope of this study.

30. *Real v. Feminist Women’s Health Center*, 516 U.S. 987 (1995); *Philibosian v. Feminist Women’s Health Center, Inc.*, 470 U.S. 1052 (1985); *Catholic League, Southern California v. Feminist Women’s Health Center*, 469 U.S. 1303 (1984); *Johnston v. United States*, 449 U.S. 876 (1980); *Johnston v. United States*, 449 U.S. 1027 (1980); *Mohammad v. Feminist Women’s Health Center*, 444 U.S. 924 (1979); *Palmer v. Feminist Women’s Health Center*, 444 U.S. 924 (1979); *Legion v. Weinberger*, 415 U.S. 939 (1974).

31. *Westby v. Doe*, 420 U.S. 968 (1975) (naming amicus “National Black Feminist Organization”); *Real v. Feminist Women’s Health Ctr.*, 512 U.S. 1249 (1994) (naming party “Feminist Women’s Health Center”).

Only twelve decisions involve actual opinions, one of which cites a secondary source with “Feminist” in the title,³² five of which mention an amicus curiae with “Feminist” in its proper name,³³ and one of which cites a case with “Feminist” in the case name.³⁴ Only five decisions from the Supreme Court mention “feminist” or “feminism” in the content of an opinion, and not merely as a citation.³⁵

Of these five content use cases, three used the vocabulary exclusively in dissenting opinions.³⁶ One of the dissent uses involved only a mention of the proper name of an organization involved factually in the case.³⁷ Another involved a passing mention of feminism, quoted from a secondary source in the appendix to the dissenting opinion.³⁸ And the third involves a substantive discussion of feminist activism and the feminist perspective in connection with the legislative history of the Family and Medical Leave Act, in a dissenting opinion by Justice Ginsburg.³⁹

Another of the five content use cases involves the mention of “antifeminism” in a concurring opinion and dissenting opinion in the Virginia Military Institute (VMI) case. In the VMI case, the Court held that Virginia’s attempts to maintain its prestigious military academy as a male-only institution violated the Equal Protection Clause of the Fourteenth Amendment. Justice Scalia argued in dissent that the evidence did not show that Virginia maintained VMI as an all-male institution based on “antifeminism.”⁴⁰ Chief Justice Rehnquist responded in his concurrence to Justice Scalia’s critique, stating: “We may find that diversity was not the Commonwealth’s real reason without suggesting, or having to show, that the real reason was ‘antifeminism.’”⁴¹

32. *Coker v. Georgia*, 433 U.S. 584, 597 n.12 (1977).

33. *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 842 (1992) (“Feminists for Life of America”); *Rust v. Sullivan*, 500 U.S. 173, 176 (1991) (“Feminists for Life of America”); *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 710 (1990) (“Fund for the Feminist Majority”); *Webster v. Reproductive Health Servs.*, 492 U.S. 490, 497 (1989) (“Feminists for Life of America”); *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416, 418 (1983) (“Feminists for Life”).

34. *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263, 308 n.2 (1993) (Stevens, J., dissenting) (citing to *Portland Feminist Women’s Health Ctr. v. Advocates for Life, Inc.*, 712 F. Supp. 165 (Ore. 1988)).

35. *Coleman v. Court of Appeals of Maryland*, 566 U.S. 30, 48-50 (2012) (Ginsburg, J., dissenting); *Christian Legal Soc’y v. Martinez*, 561 U.S. 661, 709 (2010); *United States v. Virginia (VMI)*, 518 U.S. 515, 580 (1996) (Scalia, J., dissenting); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753, 786 (1994) (Scalia, J., dissenting in part); *Ginsberg v. State of N.Y.*, 390 U.S. 629, 668 (1968).

36. *Coleman*, 566 U.S. at 48-50 (Ginsburg, J., dissenting); *Madsen*, 512 U.S. at 786 (Scalia, J., dissenting in part); *Ginsberg*, 390 U.S. 629, app. III at 668 (Douglas, J., dissenting), reprinting JOEL RINALDO, PSYCHOANALYSIS OF THE ‘REFORMER’: A FURTHER CONTRIBUTION TO THE SEXUAL THEORY 59 (1921).

37. *Madsen*, 512 U.S. at 786 (Scalia, J., dissenting in part).

38. *Ginsberg*, 390 U.S. at 668 (Douglas, J., dissenting) (“It is all a mad jazz jumble of hysterical incongruities, dog dinners, monkey marriages, cubism, birth control, feminism, free-love, verse libre, and moving pictures.” (quoting RINALDO, *supra* note 36, at 56-60)).

39. *Coleman*, 566 U.S. at 48-50 (Ginsburg, J., dissenting).

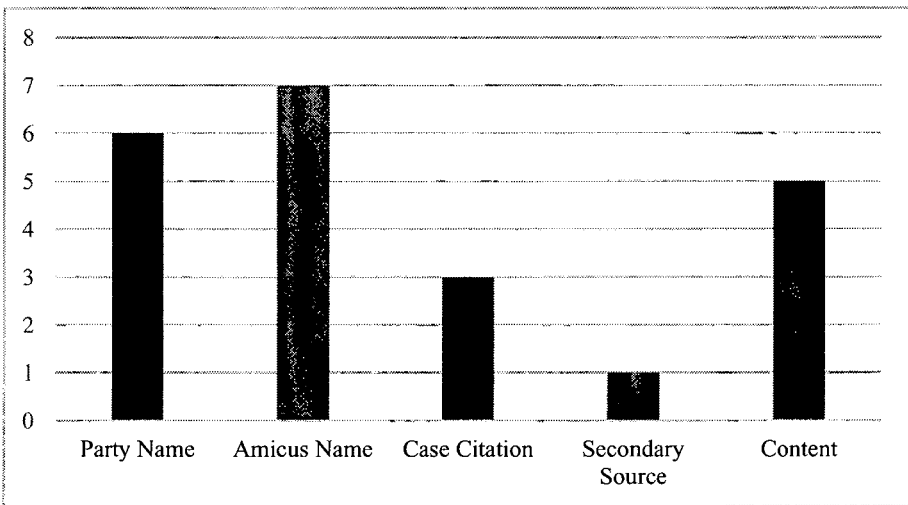
40. *United States v. Virginia (VMI)*, 518 U.S. 515, 580 (Scalia, J., dissenting).

41. *Id.* at 562 n.* (Rehnquist, C.J., concurring).

The fifth and final case involving content usage of “feminist” or “feminism,” involves the factual mention of the proper name of a student organization—the Clara Foltz Feminist Association. This organization was mentioned among a list of other campus organizations by both Justice Ginsburg in the majority opinion,⁴² and Justice Alito in a dissenting opinion,⁴³ to demonstrate the variety of students groups active at the college at issue.

This is all to say that, other than names of parties and amici and the title of one secondary source, the words “feminist” or “feminism” have only been used once in a Supreme Court majority opinion, and even this was only in the proper name of an organization involved in the facts of the case.⁴⁴ The words “feminist” or “feminism” have only been used substantively twice in any kind of Supreme Court opinion—once in dissent by Justice Scalia, attempting to exaggerate the standard for sex discrimination applied by the majority;⁴⁵ and once by Justice Ginsburg, explaining different feminist perspectives on the Pregnancy Discrimination Act and Family and Medical Leave Act.⁴⁶

Figure 1. Supreme Court Decisions, By Type of Usage



And lest we think that this aversion is confined to writing, a similar dearth of feminist vocabulary is evident in Supreme Court oral argument. A search of Westlaw’s oral argument transcript database reveals that the vocabulary was

42. *Christian Legal Society v. Martinez*, 561 U.S. 661, 692 n.22 (2010).

43. *Id.* at 709 (Alito, J., dissenting).

44. *Id.* at 692 n.22 (“CLS’s concern . . . that an all-comers policy will squelch diversity has not been borne out by Hastings’ experience. In the 2004-2005 academic year, approximately 60 student organizations, representing a variety of interests, registered with Hastings, from the Clara Foltz Feminist Association, to the Environmental Law Society. . .”).

45. *VMI*, 518 U.S. at 580 (Scalia, J., dissenting).

46. *Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 48-50 (2012) (Ginsburg, J., dissenting).

used in only three oral arguments since 1990. In one, Justice Scalia asked two hypotheticals invoking feminism as a belief structure analogous to religion.⁴⁷ In another, Justice Scalia asked a hypothetical involving a “feminist group” that wanted to “start a women’s political party” limited to women members.⁴⁸ Justice Stevens followed up with another question about “Justice Scalia’s feminist party.”⁴⁹ And in the third argument, feminism was mentioned not by a Justice, but by an advocate, comparing the viewpoints of “[f]eminist groups” with that of religious groups.⁵⁰ There are three observations to be drawn from this: (1) that feminist vocabulary is used equally rarely at oral argument; (2) only in cases unrelated to feminist legal theory; and (3) that the only Justice to bring up feminism of his own accord since 1990 is Justice Scalia, and only in hypotheticals implicitly invoking the unorthodox nature of the feminist viewpoint.

B. Deliberate Bypass

Key to understanding this dearth of the vocabulary of feminism is comprehending how many opportunities the U.S. Supreme Court has passed up to use the words. The Court has had innumerable cases over the years in which it would have been appropriate to cite feminist legal literature or acknowledge the impact of feminist theory on the Court’s reasoning. And the prevalence of these missed opportunities demonstrates the likelihood that the Court has intentionally avoided overt mentions of feminism.

For example, the Court has adopted feminist arguments in majority opinions without acknowledging their source. The understanding of sexual harassment as “discrimination on the basis of sex” began as a concept constructed and advanced by feminists in the 1970s,⁵¹ designed ultimately to be adopted by the courts.⁵² And in the reproductive rights context, Professor Reva Siegel noted that, “by the 1980s, the Supreme Court decisions concerning abortion quietly began to incorporate feminist equality claims for reproductive rights.”⁵³ However, the

47. Transcript of Oral Argument at 42-43, *Board of Educ. of Kiryas Joel Village Sch. Dist. v. Grumet*, 512 U.S. 687 (1994) (Nos. 93-517, 93-527, 93-539), 1994 WL 665057, at 42-43 (questioner identified from recording, see *Rosenberger v. Rector and Visitors of the University of Virginia*, OYEZ, <http://www.oyez.org/cases/1994/94-329>).

48. Transcript of Oral Argument at 8, *Morse v. Republican Party of Va.*, 517 U.S. 186 (1996) (No. 94-203), 1995 WL 605994, at 8.

49. *Id.* at 9. The opposing advocate later invoked this hypothetical again, characterizing it as “whether or not . . . a party could do unreasonable things, extreme things, be a feminist party, be a racial party. . . .” *Id.* at 33.

50. Transcript of Oral Argument at 53, *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819 (1995) (No. 94-329), 1995 WL 117631, at 53.

51. Reva B. Siegel, *A Short History of Sexual Harassment*, in *DIRECTIONS IN SEXUAL HARASSMENT LAW* 1, 8-9 (2004).

52. *Id.* at 5-16, 20.

53. Reva B. Siegel, *Equality and Choice: Sex Equality Perspectives on Reproductive Rights in the Work of Ruth Bader Ginsburg*, 25 *COLUM. J. GENDER & L.* 63, 72 (2013) (citing *Thornburgh v. Am. Coll.*

Court did so without acknowledging the feminist contribution to these arguments.

Furthermore, the Court has decided numerous cases involving professedly “feminist” litigation,⁵⁴ brought by known feminists such as Ruth Bader Ginsburg.⁵⁵ And the Court frequently decides cases involving issues of obvious concern to feminism. Abortion, for example, is an undoubtedly feminist issue, and feminists led the legal fight for a recognized constitutional right to abortion.⁵⁶ Since 1970, the Court has decided at least fifty cases involving abortion, including cases involving restrictions on the right itself, clinic access, and antiabortion protest.⁵⁷ But the Court has done so without acknowledging the feminist nature and origins of the arguments at stake.⁵⁸

Beyond abortion, the Court has decided over forty cases involving sex discrimination,⁵⁹ relying on the Equal Protection and Due Process Clauses of the

of Obstetricians & Gynecologists, 476 U.S. 747 (1986); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992)).

54. See, e.g., Naomi R. Cahn, *Defining Feminist Litigation*, 14 HARV. WOMEN’S L.J. 1, 2 (1991) (citing *Webster v. Reproductive Health Servs.*, 492 U.S. 490 (1989), and *United Autoworkers v. Johnson Controls, Inc.*, 499 U.S. 187 (1991), as examples of “feminist litigation.”).

55. Siegel, *supra* note 53, at 67 (reasoning that, through her arguments in *Struck v. Sec’y of Def.*, 409 U.S. 1071 (1972), “Ginsburg was giving early and especially forceful legal expression to equality arguments for reproductive rights advanced by feminists as they joined the campaign in the early 1970s to repeal abortion restrictions”).

56. See, e.g., Ruth Colker, Book Review, *The Female Body and the Law: On Truth and Lies The Female Body and the Law by Zillah R. Eisenstein*, 99 YALE L.J. 1159, 1170 (1990).

57. See, e.g., *Whole Woman’s Health v. Hellerstedt*, 136 S.Ct. 2292 (2016); *McCullen v. Coakley*, 134 S.Ct. 2518 (2014); *Lefemine v. Wideman*, 133 S.Ct. 9 (2012) (per curiam); *FEC v. Wisc. Right to Life, Inc.*, 551 U.S. 449 (2007); *Gonzales v. Carhart*, 550 U.S. 124 (2007); *Scheidler v. Nat’l Org. for Women, Inc.*, 537 U.S. 393 (2003); *Ayotte v. Planned Parenthood of N. New Eng.*, 546 U.S. 320 (2006); *Stenberg v. Carhart*, 530 U.S. 914 (2000); *Hill v. Colorado*, 530 U.S. 703 (2000); *Lawson v. Murray*, 525 U.S. 955 (1998); *Mazurek v. Armstrong*, 520 U.S. 968 (1997); *Lambert v. Wicklund*, 520 U.S. 292 (1997); *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997); *Leavitt v. Jane L.*, 518 U.S. 137 (1996); *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 517 U.S. 1174 (1996); *Lawson v. Murray*, 515 U.S. 1110 (1995); *Madsen v. Women’s Health Ctr., Inc.*, 512 U.S. 753 (1994); *Nat’l Org. for Women, Inc. v. Scheidler*, 510 U.S. 249 (1994); *Fargo Women’s Health Org. v. Schafer*, 507 U.S. 1013 (1993); *Bray v. Alexandria Women’s Health Clinic*, 506 U.S. 263 (1993); *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833 (1992); *Rust v. Sullivan*, 500 U.S. 173 (1991); *Ohio v. Akron Ctr. for Reproductive Health, Inc.*, 497 U.S. 502 (1990); *Hodgson v. Minnesota*, 497 U.S. 417 (1990); *Webster v. Reproductive Health Serv.*, 492 U.S. 490 (1989); *Frisby v. Schultz*, 487 U.S. 474 (1988); *Hartigan v. Zbaraz*, 484 U.S. 171 (1987); *Diamond v. Charles*, 476 U.S. 54 (1986); *Thornburgh v. Am. Coll. of Obstetricians and Gynecologists*, 476 U.S. 747 (1986); *Simopoulos v. Virginia*, 462 U.S. 506 (1983); *Planned Parenthood Ass’n of Kansas City, Mo. v. Ashcroft*, 462 U.S. 476 (1983); *City of Akron v. Akron Ctr. for Reproductive Health, Inc.*, 462 U.S. 416 (1983); *H.L. v. Matheson*, 450 U.S. 398 (1981); *Williams v. Zbaraz*, 448 U.S. 358 (1980); *Harris v. McRae*, 448 U.S. 297 (1980); *Bellotti v. Baird (II)*, 443 U.S. 622 (1979); *Colautti v. Franklin*, 439 U.S. 379 (1979); *Poelker v. Doe*, 432 U.S. 519 (1977); *Beal v. Doe*, 432 U.S. 438 (1977); *Maher v. Roe*, 432 U.S. 464 (1977); *Guste v. Jackson*, 429 U.S. 399 (1977); *Sendak v. Arnold*, 429 U.S. 968 (1976); *Bellotti v. Baird (I)*, 428 U.S. 132 (1976); *Singleton v. Wulff*, 428 U.S. 106 (1976); *Planned Parenthood of Cent. Mo. v. Danforth*, 428 U.S. 52 (1976); *Connecticut v. Menillo*, 423 U.S. 9 (1975); *Bigelow v. Virginia*, 421 U.S. 809 (1975); *Doe v. Bolton*, 410 U.S. 179 (1973); *Roe v. Wade*, 410 U.S. 113 (1973); *United States v. Vuitch*, 402 U.S. 62 (1971).

58. Cf. Siegel, *supra* note 53, at 72 (“*Roe* scarcely acknowledges feminist arguments of the era.”).

59. See generally Jody Feder, CRS Report RL30253, *Sex Discrimination and the United States Supreme Court: Developments in the Law* (Dec. 30, 2015), <https://fas.org/sgp/crs/misc/RL30253.pdf>.

Constitution;⁶⁰ Title VII, pay equity, and sexual harassment;⁶¹ pregnancy discrimination;⁶² and Title IX.⁶³ And in all but the VMI case, feminism was not mentioned. There is a surfeit of missed opportunities in numerous other subject matters as well—including parental rights of non-marital fathers, for which feminists fought notwithstanding internal disagreement.⁶⁴

The only two cases in which the Court has substantively used the term throw these missed opportunities into sharp relief. In the VMI case, Justice Ginsburg wrote the opinion for the majority, holding that the State of Virginia violated the Equal Protection clause by excluding women from the state's prestigious military academy.⁶⁵ Dissenting, Justice Scalia argued that VMI, and the long tradition of single-sex education in general, are constitutional under the Fourteenth Amendment.⁶⁶ In pointing out the flaws in the majority's opinion, Justice Scalia contended that the majority erroneously concluded that Virginia's "asserted interest in promoting diversity of educational options" by maintaining "VMI as an all-male institution" was not "genuine" but rather "a pretext for discriminating against women."⁶⁷ To the contrary, Justice Scalia asserts that "anti-feminism *was not*" the state's objective, and that the evidence "utterly refute[s] the claim that VMI has elected to maintain its all-male student-body composition for some misogynistic reason."⁶⁸

60. *Nguyen v. INS*, 533 U.S. 53 (2001); *Miller v. Albright*, 523 U.S. 420 (1998); *United States v. Virginia*, 518 U.S. 515 (1996); *J.E.B. v. Alabama ex rel. T.B.*, 511 U.S. 127 (1994); *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982); *Rostker v. Goldberg*, 453 U.S. 57 (1981); *Pers. Adm'r of Massachusetts v. Feeney*, 442 U.S. 256 (1979); *Caban v. Mohammed*, 441 U.S. 380 (1979); *Orr v. Orr*, 440 U.S. 268 (1979); *Califano v. Goldfarb*, 430 U.S. 199 (1977); *Craig v. Boren*, 429 U.S. 190 (1976); *Stanton v. Stanton*, 421 U.S. 7 (1975); *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971).

61. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Thompson v. N. Am. Stainless*, 562 U.S. 170 (2011); *Crawford v. Metro. Gov't*, 555 U.S. 271 (2009); *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007); *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006); *Pa. State Police v. Suders*, 542 U.S. 129 (2004); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003); *Kolstad v. Am. Dental Ass'n*, 527 U.S. 526 (1999); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *Burlington Indus. v. Ellerth*, 524 U.S. 742 (1998); *Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75 (1998); *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993); *Price Waterhouse v. Hopkins*, 490 U.S. 228 (1989); *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986); *Dothard v. Rawlinson*, 433 U.S. 321 (1977).

62. *Young v. United Parcel Serv., Inc.*, 135 S. Ct. 1338 (2015); *AT&T Corp. v. Hulteen*, 556 U.S. 701 (2009); *UAW v. Johnson Controls, Inc.*, 499 U.S. 187 (1991); *Gen. Elec. Co. v. Gilbert*, 429 U.S. 125 (1976); *Geduldig v. Aiello*, 417 U.S. 484 (1974).

63. *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246 (2009); *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167 (2005); *Davis ex rel. LaShonda D. v. Monroe Cty. Bd. of Educ.*, 526 U.S. 629 (1999); *Nat'l Collegiate Athletic Ass'n v. Smith*, 525 U.S. 459 (1999); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998); *Franklin v. Gwinnett Cty. Pub. Schs.*, 503 U.S. 60 (1992); *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979).

64. See Serena Mayeri, *Foundling Fathers: (Non-)Marriage and Parental Rights in the Age of Equality*, 125 *YALE L.J.* 2292, 2299-2300 (2016).

65. *United States v. Virginia (VMI)*, 518 U.S. 515, 534 (1996).

66. *Id.* at 569 (Scalia, J., dissenting).

67. *Id.* at 579.

68. *Id.* at 580.

In so asserting, Justice Scalia overstated the majority's position. He conflated the Court's conclusion that the State's diversity rationale was not "genuine" with a charge that the State's "real reason was 'antifeminism,'"⁶⁹ a conflation which Chief Justice Rehnquist corrected in his concurring opinion. In characterizing the majority as charging the state with "anti-feminism," Justice Scalia was likely intending to be provocative, painting Justice Ginsburg's opinion with a label it did not claim for itself. This is not to say that the majority opinion was not a feminist opinion—it clearly was. VMI has since become perhaps the key precedent on sex discrimination under the Equal Protection Clause, and the Court has continued to recognize that differential treatment of the sexes cannot be based on stereotypes or "overbroad generalizations."⁷⁰ But no other sex discrimination case—before or since—has explicitly mentioned "feminism."

The only other substantive discussion of "feminism" occurred in *Coleman v. Court of Appeals of Maryland*.⁷¹ Writing for the Court, Justice Kennedy held that Congress did not validly abrogate state sovereign immunity in enacting the "self-care" provisions of the Family and Medical Leave Act (FMLA).⁷² Dissenting, Justice Ginsburg argued that the "self-care provision . . . enforces the right to be free from gender discrimination in the workplace" and therefore Congress validly abrogated sovereign immunity under section 5 of the Fourteenth Amendment.⁷³ In so arguing, Justice Ginsburg gave a detailed legislative history of the FMLA, including the divergent positions of "equal-treatment feminists" and "equal-opportunity feminists" on the act.⁷⁴ Justice Ginsburg invoked the feminist role in enacting the FMLA in its entirety—including the self-care provisions—to support her argument that those provisions were also necessary to combat sex discrimination. By covering all self-care as the equal-treatment feminists advocated—instead of singling out pregnancy for special treatment—the act would "not create the risk of discrimination against pregnant women posed by legislation which provides job protection only for pregnancy-related disability."⁷⁵ Feminists were invoked here seemingly in their capacity as an expert interest group in diagnosing and theorizing sex discrimination. But although they were a crucial part of the enactment history of the FMLA—and presumably other sex discrimination laws—no other Supreme Court opinion involving statutory prohibitions on sex discrimination has expressly referenced the role of feminism.

69. *Id.* at 562 n.* (Rehnquist, C.J., concurring).

70. *Id.* at 533 (majority opinion).

71. 566 U.S. 30 (2012).

72. *Id.* at 37.

73. *Id.* at 46 (Ginsburg, J., dissenting).

74. *Id.* at 48-50 ("[E]qual-treatment feminists began work on a gender-neutral leave model, which eventually became the FMLA. . . . [E]qual-treatment feminists continued to believe that viewing pregnancy as *sui generis* perpetuated widespread discrimination against women.").

75. *Id.* at 50.

These few examples of the Court's use of the vocabulary of feminism—in one instance exaggerating, and the other ministerial—stand in marked contrast with other instances in which Justices have infused their opinions with the ideas of feminism without mentioning the words. In the *VMI* case again, for example, Justice Ginsburg recounted the evolution of the Court's sex discrimination doctrine as a parallel to the evolution of American society: "Inherent differences' between men and women, we have come to appreciate, remain cause for celebration, but not for denigration of the members of either sex or for artificial constraints on an individual's opportunity."⁷⁶ Justice Ginsburg expresses this clearly feminist sentiment—that she herself helped recognize in the Court's jurisprudence—without identifying it as espousing a feminist viewpoint.

Though it has had numerous opportunities to acknowledge the contribution of, or rely for support on, feminism, the Court has not done so. And though the Court is likely *aware* of these opportunities, it is also likely *choosing* not to engage with feminism on open terms.⁷⁷ The ultimate conclusion to be drawn from these missed opportunities—both by their volume and by their relevance—is that the Court has been deliberately bypassing the opportunity to recognize feminism and feminist theory by name.

III. MAKING SENSE OF THE JUDICIAL AVERSION

Having discovered this dearth of feminist vocabulary in Supreme Court decisions, the question remains: why? A first potential explanation could be that the law as an institution atop which the Supreme Court sits itself suffers from a lack of feminist vocabulary. Therefore, factors which influence the language of law may have negatively influenced the usage of "feminist" and "feminism" at the Court. Potential sources of influence that would contribute to low usage of feminist vocabulary include a dearth of the words in lower federal court opinions and in briefs filed at the Supreme Court. However, examining these legal factors empirically, we can draw no definitive conclusions about whether the Court is influenced by a lack of "feminism" in the law.

The other possibility may ring truer: that aversion to the vocabulary of feminism in society at large has rubbed off on the Supreme Court.

76. *VMI*, 518 U.S. at 533.

77. See Martha Minow, *Beyond Universality*, 1989 U. CHI. LEGAL F. 115, 117 ("[A]lthough feminists craft arguments in courts and legislatures, seldom are their own terms used in rebuttal.").

A. *Intra-Legal Factors*

1. *Courts of Appeals*

Lower court opinions inevitably influence the content of decisions of the Supreme Court. At a most basic level, it has been demonstrated that Supreme Court opinions occasionally borrow language from lower court opinions.⁷⁸ But more generally, it could be assumed that the popularity and appropriateness of certain vocabulary and concepts will filter up through the federal system to the Supreme Court. An examination of the usage of feminist vocabulary in the Courts of Appeals could therefore shed some light on Supreme Court practice.

As of December 2016, 305 opinions from the federal Courts of Appeals use the word “feminist(s)” or “feminism(s).” Focusing on a narrower period from 1970 through 2015,⁷⁹ the Courts of Appeals decided 1,917,930 total cases.⁸⁰ This means that the words “feminist” or “feminism” appear in only 0.016% of Courts of Appeals decisions in that period. To put this in context, the Courts of Appeals used the “F-words” in a smaller percent of cases than it used the word “bitch” (0.082%); and only slightly more often than it used the word “whore” (0.014%). And the negative notion of making a man more like a woman—emasculat⁸¹—received more discussion (0.040%) than the positive notion of equality for women.

Of the 305 Courts of Appeals opinions containing the vocabulary, 49 involve only the proper name of a party or amicus curiae that contains “Feminist.” Another 132 contain only a citation to a case with “feminist” or “feminism” in the case name, and 26 contain a citation to a secondary source with the vocabulary in the source title or journal name. Only 98 opinions contain the vocabulary in the content of the opinion itself. This takes the form of factual

78. See Pamela C. Corley, Paul M. Collins Jr. & Bryan Calvin, *Lower Court Influence on U.S. Supreme Court Opinion Content*, J. POL. 31, 37 (2009) (demonstrating that from the 2002 Term to 2004 Term, the Court’s majority opinions directly borrowed on average 4.32% of their opinions from lower court opinions).

79. Only one opinion from the Courts of Appeals included feminist vocabulary before 1970. See *Morris v. Wilson*, 295 F.2d 36, 36 (2d Cir. 1961) (“A comparison . . . discloses no similarity except the very general theme of the feminist movement, no copying and no identity of characters.”). I chose to focus on the period of 1970 to 2015 for analysis because the feminism movement was solidly in the national consciousness by then, and caseload data for 2016 was not yet available.

80. *Caseloads: U.S. Courts of Appeals, 1892–2016*, FED. JUD. CTR., <http://www.fjc.gov/history/courts/caseloads-u.s.-courts-appeals-1892-2016> (last accessed May 22, 2017).

81. A search for “emasculate,” “emasculating,” and “emasculat⁸¹” reveals 770 Courts of Appeals cases using those words from Jan. 1, 1970 to Jan. 1, 2016.

background,⁸² allegations of the parties,⁸³ discussion of the facts of another case being cited,⁸⁴ legal background,⁸⁵ and legal reasoning.⁸⁶

The question remains whether the lack of feminist vocabulary in the Supreme Court can be credited to the corresponding lack of vocabulary in the Courts of Appeals. The answer is uncertain. As demonstrated, 0.016% of Courts of Appeals opinions from 1970 to 2015 contain some usage of the vocabulary. By contrast, only twenty-one outcomes of the 273,794 cases filed in the Supreme Court from 1970 to 2015,⁸⁷ or 0.008%, contain the vocabulary. However, if we compare content uses of the feminist vocabulary, the Supreme Court outperforms the Courts of Appeals. The Supreme Court employed content-uses of feminist vocabulary in 0.088% of cases from 1970 to 2015, over seventeen times more frequently than the Court of Appeals (0.005%).

It therefore appears that the low numbers in the Supreme Court do not map perfectly onto low numbers in the Courts of Appeals. Moreover, there is a clear trend in frequency of use of the vocabulary in the Courts of Appeals, steadily increasing from 1976 to 1994, when it reached nineteen mentions a year; and then declining from 1994 to present, when only three mentions total were made in 2016. There is no such clear trend in the frequency of Supreme Court mentions, though usages at the Court seem to spike when Circuit Court usages are increasing.⁸⁸ Because of the small sample size, however, no definitive conclusions can be drawn.

Another problem with comparing Courts of Appeals to the Supreme Court is that not all circuits are made equal in terms of comfort with the vocabulary of feminism. Whereas the Ninth Circuit has used the vocabulary in the content of its opinions twenty-one times, and the Seventh Circuit has done so fourteen

82. *See, e.g.,* *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 898 (9th Cir. 2002) (“Barbie has been labeled both the ideal American woman and a bimbo. She has survived attacks both psychic (from feminists critical of her fictitious figure) and physical (more than 500 professional makeovers).”).

83. *Kachmar v. SunGard Data Sys., Inc.*, 109 F.3d 173, 176 (3d Cir. 1997) (“She alleges that because of her advice she was labeled a ‘feminist’ and a ‘campaigner for women’s rights,’ terms meant to be derogatory.”).

84. *See, e.g.,* *Al-Ghorbani v. Holder*, 585 F.3d 980, 995-96 (6th Cir. 2009) (“For example, the United States Court of Appeals for the Third Circuit has commented that Iranian feminists who refuse to conform to the government’s gender-specific laws and social norms constitute a particular social group.” (citing *Fatin v. INS*, 12 F.3d 1233, 1241 (3d Cir. 1993))).

85. *Bryant v. Int’l Sch. Servs., Inc.*, 675 F.2d 562, 576 n.22 (3d Cir. 1982) (“Mid-nineteenth century feminists, many of them diligent workers in the cause of abolition, looked to Congress after the Civil War for an express guarantee of equal rights for men and women. Viewed in historical perspective, their expectations appear unrealistic.”).

86. *Willey v. Springs*, 47 F.3d 1475, 1479 n.5 (7th Cir. 1995) (“The reasoning behind statutes restricting or eliminating breach of promise actions has been soundly criticized by modern feminist theory.”); *Troupe v. May Dep’t Stores Co.*, 20 F.3d 734, 738 (7th Cir. 1994) (“The Pregnancy Discrimination Act does not, despite the urgings of feminist scholars . . . require employers to offer maternity leave or take other steps to make it easier for pregnant women to work . . .”).

87. *Caseloads*, *supra* note 80. Note that this is meant only as a general and admittedly imperfect comparison, because it compares opinions to cases filed, whereas there may be multiple opinions filed in any given case.

88. *See infra* Appendix Figure 9. These spikes were in 1978-1980, 1989-1994, and 2010-2012.

times, the First, Eleventh, and D.C. Circuits have only used the vocabulary five times, the Tenth Circuit has only used it twice, and the Federal Circuit not at all. Even among well-performing circuits, there are variations: whereas the Ninth Circuit has only cited feminist secondary sources three times, the Seventh Circuit has done so eleven times.

Figure 2. Supreme Court Opinion Usage and Courts of Appeals Usage

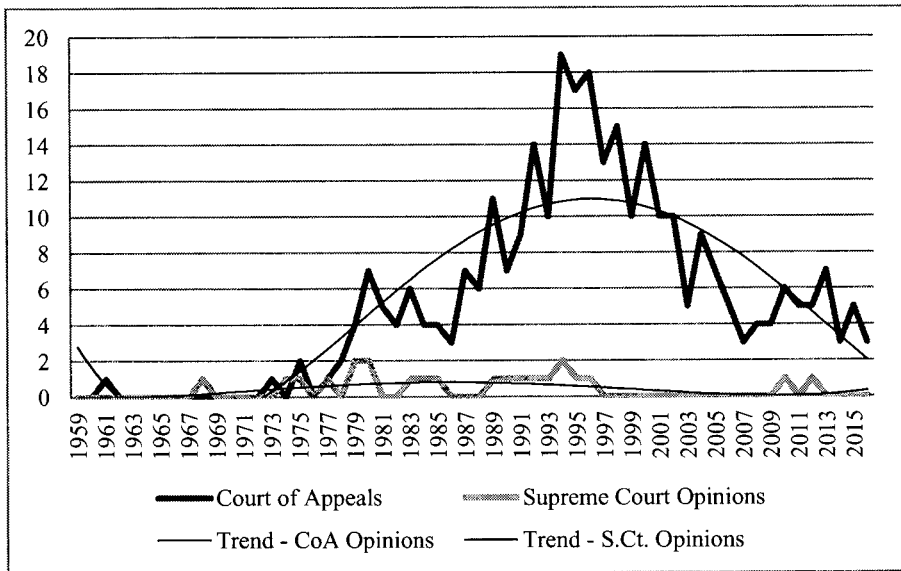
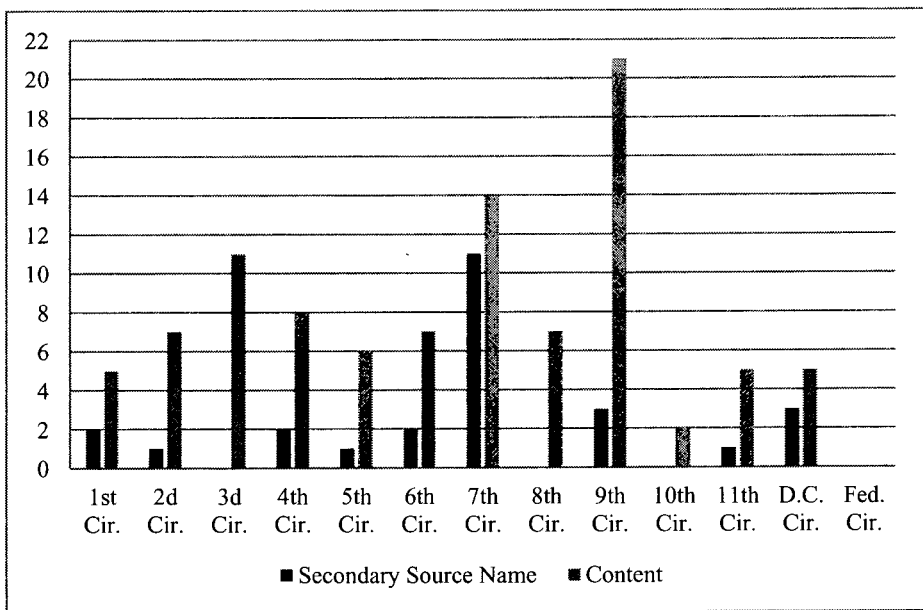


Figure 3. Substantive Uses of “Feminist/Feminism” in Opinions by Circuit



Ultimately, the data does not demonstrate any definitive trends between usage of feminist vocabulary in Courts of Appeals and the Supreme Court. From this, it is not possible to conclude that the dearth of feminist vocabulary in the Court is attributable to a dearth in the Courts of Appeals.

2. *Supreme Court Briefs*

Another factor that could be contributing to a dearth of feminist vocabulary in the Supreme Court is a concurrent lack of the words in the briefs filed at the Court. It has been demonstrated that party and amicus briefs influence the content of Supreme Court opinions, though quotations⁸⁹ and borrowed language.⁹⁰ This same logic would presumably apply to use of the feminist vocabulary: the more frequently the word is used in briefs filed at the Court, the more we might expect to find it in the Court’s opinions.

As of January 2017, a search for “feminist(s)” or “feminism(s)” on Westlaw turned up 560 total briefs filed in the Supreme Court containing the words. Putting aside fifteen duplicates and nineteen joint appendices, there were 526 total briefs filed in the Supreme Court containing the words. Of these, 360 were amicus briefs; 166 were filed by the parties, 109 at the certiorari stage and only 57 at the merits consideration stage. Table 2 breaks this down further.

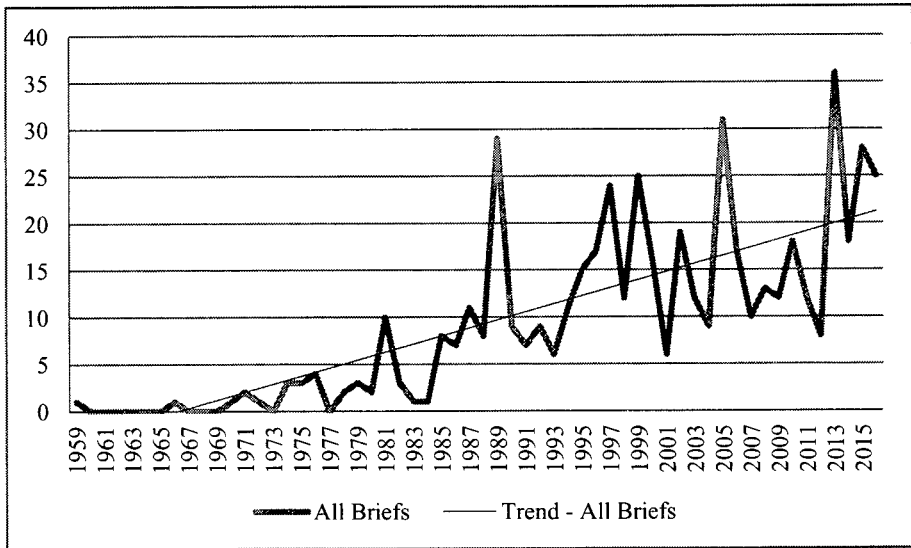
Table 2. *Supreme Court Briefs containing “Feminist(s)” or “Feminism(s)”*

Type	Quantity
<i>Certiorari Stage</i>	<i>[109 total]</i>
Petitions	77
Briefs in Opposition	27
Replies to Briefs in Opposition	5
<i>Merits Stage</i>	<i>[57 total]</i>
Petitioner	18
Respondent	15
Reply	17
Appellant	3
Appellee	4
<i>Amicus Curiae</i>	360
Total	526

89. Joseph Kearney & Thomas Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. PA. L. REV. 743, 757-58 (2000) (demonstrating the increasing amount of references to amici and quotations from amicus briefs in Supreme Court opinions).

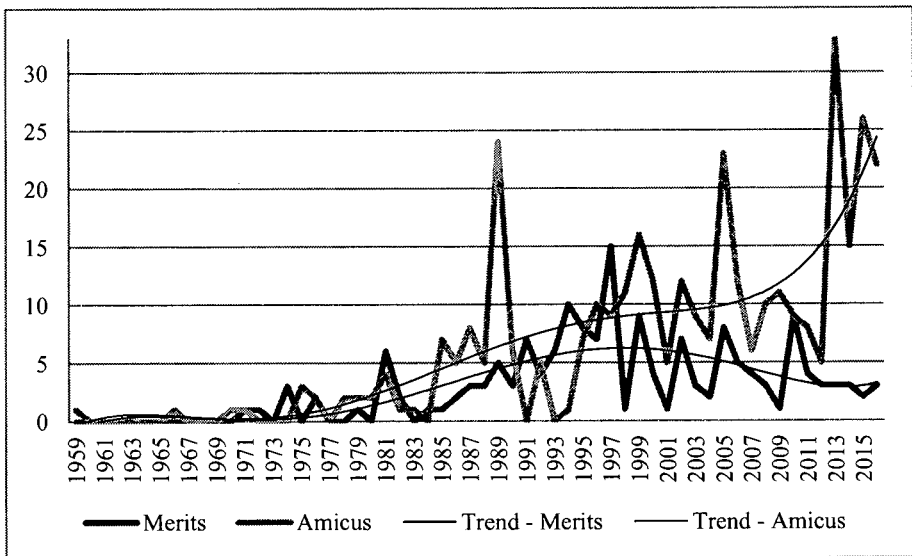
90. Pamela C. Corley, *The Supreme Court and Opinion Content: The Influence of Parties’ Briefs*, 61 POL. RES. Q. 468, 472 (2008) (demonstrating that from the 2002 Term to 2004 Term, the Court’s majority opinions directly borrowed on average 10.1% of the opinion from the petitioners’ briefs and 9.4% of the opinion from the respondents’ briefs).

Figure 4. Supreme Court Briefs with “Feminist(s)” of “Feminism(s)”



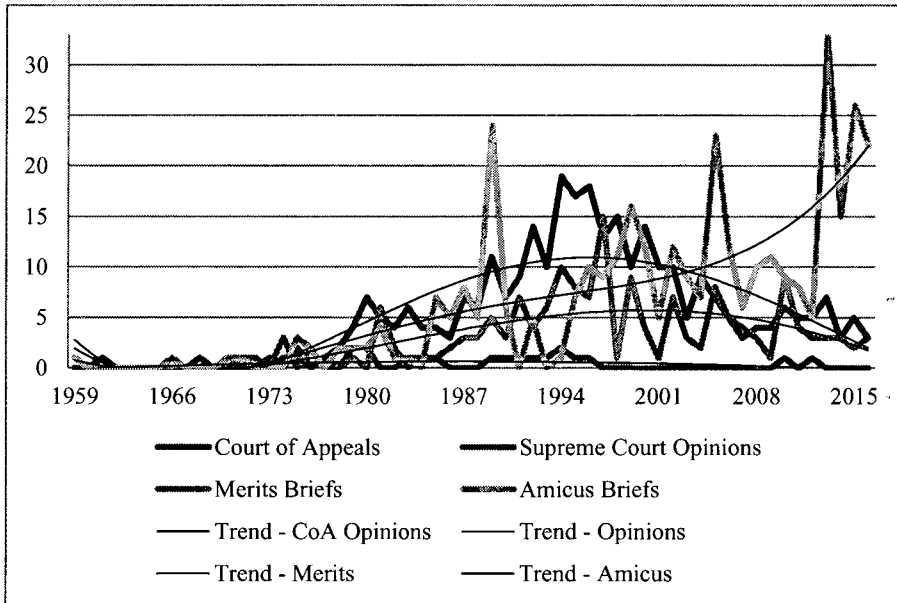
Examining the distribution of such briefs over time, there is a clear trend of the words being used with increasing frequency from 1965 to the present. Disaggregating amicus and merits briefs, the trend is different: both categories of briefs increased from roughly 1970 to 1997. However, from 1997 to the present, the frequency of “feminist” and “feminism” in amicus briefs has continued to increase whereas the frequency in merits briefs has decreased.

Figure 5. Supreme Court Briefs by Type



Though these trends are enlightening, they do not seem to explain the infrequency of the vocabulary in the Supreme Court. Whereas briefs generally, and in particular amicus briefs, have increasingly used the words over time, there is no such trend increase in Supreme Court opinion usage. There does seem to be similarity in Court of Appeals usage and merits brief usage, in that both increased from roughly 1970 to roughly 1996, and have since steadily decreased.

Figure 6. *CoA Opinions, S. Ct. Opinions, and S. Ct. Briefs*



But this similarity has no bearing on whether the trend in briefs has influenced the feminist vocabulary in Supreme Court opinions. Ultimately, we cannot conclude that the dearth of feminist vocabulary in the Supreme Court is attributable to the language of briefs filed in that Court. Whereas briefs containing the words “feminist” or “feminism” have steadily increased over time, there has been no such increase in Supreme Court opinions.

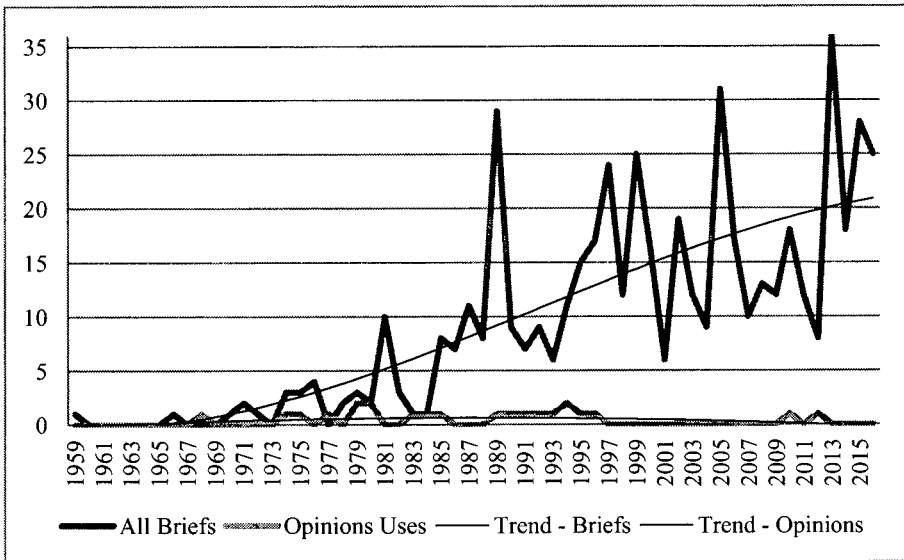
3. *Other Factors*

Beyond briefs and Courts of Appeals opinions, there are numerous other factors which could be influencing the vocabulary of the Supreme Court, including the language of legal literature and the gender of the justices. With regards to legal literature, the theory would be that these pieces of legal writing help establish which words are solidly within the legal vocabulary. Therefore, if legal literature is not using these words, then the Court may assume that the words are not appropriately within the legal vocabulary. However, this

supposition is clearly belied by the facts. A search of Westlaw in January 2017 revealed over 9,900 pieces in law reviews and journals that mention the words “feminist” or “feminism.”

Another potential inference is that the low number of women justices on the Court over time has contributed to the lack of feminist vocabulary. This inference assumes that women would be more inclined to openly mention feminism, perhaps out of their greater understanding of the need for it, or their greater likelihood of being feminists themselves.⁹¹ However, studies have called into question whether women as judges perform distinctively from men,⁹² and whether more women judges will necessarily produce more ideologically feminist decisions.⁹³ From these studies, we can draw a related doubt over whether women justices would be any more likely to use feminist vocabulary.

Figure 7. Supreme Court Briefs v. Opinion Usage



The limited data from Supreme Court opinions does not support this inference, either. Eight of the twenty-two uses of feminist vocabulary in Supreme Court opinions occurred before Justice O’Connor was appointed in 1981. Eight of the twenty-two uses occurred when Justice O’Connor was the only female

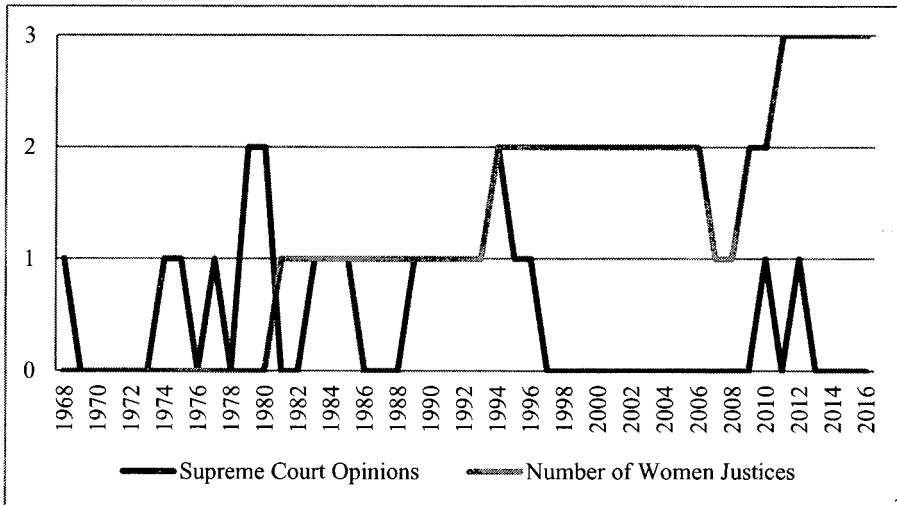
91. See Weiyi Cai & Scott Clement, *What Americans Think About Feminism Today*, WASH. POST (Jan. 27, 2016), <https://www.washingtonpost.com/graphics/national/feminism-project/poll> (finding that 33% of men and 60% of women consider themselves to be “feminists” or “strong feminists.”).

92. See generally Michael E. Solimine & Susan E. Wheatley, *Rethinking Feminist Judging*, 70 IND. L.J. 891 (1995) (critiquing the call for more female judges premised on the assumption that they decide cases differently than male judges).

93. See Rosalind Dixon, *Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination*, 21 YALE J.L. & FEMINISM 297, 299 (2010).

justice on the Court (1981 to 1993). Only four uses occurred which both Justices Ginsburg and O'Connor served on the Court (1993 to 2006). One occurred while Justices Ginsburg and Sotomayor served together (2009 to 2010) and one has occurred since Justices Ginsburg, Sotomayor, and Kagan served together (2010 to 2016). So although the small sample size does not allow for definitive conclusions, there nonetheless appears to be no correlation between more female justices and more uses of the vocabulary of feminism.

Figure 8. *Supreme Court Opinions by Gender of Justices*



By the data, then, none of these factors—usage in Courts of Appeals, Supreme Court briefs, secondary legal literature, or gender of the justices—seems to determine the lack of feminist vocabulary in the Supreme Court.

We therefore move our focus out from these individual empirical trees and look at the larger societal forest. The fact that the Court invoked the vocabulary of feminism so little is important. But equally telling is that it has been *Justice Scalia* who used the vocabulary in argument and opinions most. And that he appeared to use the words to ostracize feminism, treating feminists as a marginalized faction akin to radical religious or political groups.⁹⁴ Or, as in the *VMI* case, he wielded feminism as an exaggerated straw man with which to annoy a more progressive Justice.⁹⁵ That Justice Scalia felt comfortable using the terms in this way—and that he accounted for most of their use—strongly

94. See *supra* notes 70-73 and accompanying text. Similarly, Justice Alito's mention of a feminist group in *Christian Legal Society* as one "group[] that focus[ed] on gender or sexuality" was meant to demonstrate the spectrum of politicized/sectarian student groups at Hastings, including "political groups," "religious groups," "groups that promote social causes," and "groups organized around racial or ethnic identity." *Christian Legal Soc. v. Martinez*, 561 U.S. 661, 709 (2010) (Alito, J., dissenting).

95. See *supra* note 89 and accompanying text.

suggests that the less provocative Justices see the vocabulary of feminism as too hot to handle.

It is not necessarily that feminism is too “political” to be mentioned by the Court, in the narrow, partisan sense of the term. It is likely, however, that the Justices view the vocabulary of feminism as tainted by decades of culture wars that successfully equated the word “feminist” with “radical.” As a small-c conservative institution, it is improbable that the Court would embrace terminology it thinks may be toxic in American society, even if it agreed with feminist principles. But this only perpetuates the larger problem: to the extent the Court is a shaper as well as a reflector of societal norms, its refusal to engage with the vocabulary of feminism makes it that much harder to change public perception of feminist theory.

B. Continuing Modern Hostility to Feminism

1. The Fact of Popular Discomfort

For decades, “feminism” has been “widely perceived as a ‘dirty’ word,”⁹⁶ marked as “toxic in large parts of American culture.”⁹⁷ Consequently, many Americans do not self-identify as feminist. According to Gallup polling, 33% of Americans considered themselves to be feminists in 1992, while only 25% did so in 2001.⁹⁸ More recently, *Washington Post* polling from 2016 revealed an increase in feminist self-identification, with a total of 47% of respondents considering themselves to be “feminists” or “strong feminists”⁹⁹—comprising 33% of men and 60% of women.¹⁰⁰ However this is contradicted by other 2016 polling, showing only 26% of total respondents identifying as feminist, and 53% specifically considering themselves *not* to be feminists.¹⁰¹ And, as noted in the introduction, a December 2016 poll put the number at a dismal 19%.¹⁰²

Whatever the accurate percentage is, these polls detail revealing modern opinions about feminism. In a *Washington Post* poll, 43% of respondents in 2016 described feminism as “angry” and 30% described it as “outdated.”¹⁰³ According

96. Dunlap, *supra* note 27, at 251.

97. Toril Moi, “*I Am Not a Feminist, But . . .*”: *How Feminism Became the F-Word*, 121 PMLA 1735, 1739 (2006).

98. Jennifer Robison, *Feminism—What’s in a Name?* GALLUP (Sept. 3, 2002), <http://www.gallup.com/poll/6715/feminism-whats-name.aspx>.

99. *Washington Post-Kaiser Family Foundation Poll - Feminism in the U.S.*, WASH. POST 3 (Jan. 27, 2016) [hereinafter *Feminism in the U.S.*], <http://apps.washingtonpost.com/g/page/national/washington-post-kaiser-family-foundation-poll-feminism-in-the-us/1946>.

100. *Id.*

101. Peter Moore, *Less Than a Third of Women Are Feminists*, YOUGOV.COM (Feb. 23, 2016, 7:56 AM), <http://today.yougov.com/news/2016/02/23/less-than-third-women-feminists>.

102. Miller, *supra* note 6.

103. Cai & Clement, *supra* note 91.

to a 2016 YouGov poll, in explaining why they were not feminists, 40% answered that “feminists are too extreme,” and 18% that “feminists are anti-men.” Only 11% believed that “men and women are not equal.”¹⁰⁴

These polls consistently demonstrate that “[s]upport for what the feminist movement considers basic feminist issues is much greater than support for the feminist label itself.”¹⁰⁵ For instance, the *Washington Post* poll determined that, though only 47% of people considered themselves to be feminists, 94% of people agreed that “men and women should be social, political, and economic equals.”¹⁰⁶ In a PerryUndem poll, 93% at least claimed that they believed in “gender equality in work, life and politics,” and 57% agreed that “unequal responsibilities caring for family affected women’s rights,” though only 19% identified as feminist.¹⁰⁷ The aversion is thus to the words themselves, not to the concepts underlying feminism.

2. Source of Societal Resistance

Popular aversion to supporting feminism by name or identifying as a feminist is multi-faceted, influenced by cultural, social, and political factors. Perhaps the most commonsense interpretation is that individuals who otherwise believe in gender equality nonetheless do not want to be affiliated with the negative cultural stereotypes associated with feminism.¹⁰⁸ As constructed in the popular imagination, feminists are “emotionally unresponsive, rejecting, cold, domineering, and powerful” “man-hating” figures.¹⁰⁹ Scholars blame the development and dissemination of these stereotypes on the “conservative campaign against feminism,”¹¹⁰ as well as liberal critiques of feminism in the 1990s.¹¹¹ These were assisted by the “the mass media’s distaste for active, assertive women—and the way the media portray them,” which helped turn “‘feminists’ into a frightening fringe element.”¹¹²

Additionally, some argue that the culturally exclusionary tendencies of feminism prevent its wider acceptance. To the extent that “[f]eminist’ has come to mean ‘careerist’ — competing with men in the workplace on men’s terms,” it

104. Moore, *supra* note 101.

105. Robison, *supra* note 98.

106. *Feminism in the U.S.*, *supra* note 99. Though again different, the 2016 YouGov poll reveals a similar trend. Only 26% of respondents identified as feminists, but of those who did not, only 11% of non-feminists did not embrace the label of “feminist” because they do not believe men and women are equal. Moore, *supra* note 101.

107. See Miller, *supra* note 101.

108. See Bridget Murray Law, *What Feminism Means Today*, AM. PSYCHOL. ASS’N (Sept. 2006), <http://www.apa.org/gradpsych/2006/09/feminism.aspx>.

109. Moi, *supra* note 97, at 1739.

110. *Id.* at 1736.

111. *Id.* at 1737-38.

112. Debra Baker Beck, *The “F” Word: How the Media Frame Feminism*, 10 NWSA J. 139, 139 (1998).

otherizes women who want to prioritize other things over career.¹¹³ Furthermore, the feminist movement has a history of being insufficiently intersectional, and focusing on the priorities of white middle-class women to the exclusion of women of color.¹¹⁴ The labels therefore may not appeal to individuals who perceive feminism as insufficiently inclusive, either because the label is not inclusive enough to encompass themselves, or because they do not wish to be associated with a label that is not inclusive of others.

Socially, modern resistance to feminism is connected with the particular experiences of the younger generation of would-be feminists. Because “[t]he current generation has rarely experienced institutionally and legally sanctioned sexism,” younger individuals may not feel the need for feminism.¹¹⁵ Additionally, there is a general resistance to labels among younger generations, such that individuals who otherwise hold feminist beliefs simply do not want to have to self-identify as such.¹¹⁶

Politically, individuals may not want to be associated with what they perceive as the more controversial “political position[s]” associated with feminism, with which they may disagree.¹¹⁷ For example, some contend that the understanding of “feminism” in the popular consciousness is “gender feminism,” which claims “that gender is a patriarchal social construct created in order to oppress women.”¹¹⁸ If the popular understanding of feminism were “equity feminism”—“the belief in the social, political, and economic equality of the sexes”—most people would admit that they share these views; because “feminism” is associated with “gender feminism” and other concepts, this popular association prevents some individuals from identifying as feminist.¹¹⁹

A desire to avoid negative stereotyping and association with certain political beliefs, feminism’s exclusionary aspects, and resistance to labeling are just some of numerous factors contributing to the popular aversion to the vocabulary of feminism. Although this general aversion is well established, this author has come across no study of the aversion to using the terms “feminist” and “feminism” in the law.

113. Denise Cummins, *Why Millennial Women Don't Want To Call Themselves Feminists*, PBS (Feb. 12, 2016, 5:09 PM EDT), <http://www.pbs.org/newshour/making-sense/column-why-millennial-women-dont-want-to-call-themselves-feminists>.

114. NANCY LEVIT, *THE GENDER LINE* 143-44 (1998).

115. Cummins, *supra* note 113.

116. KRISTIN ROWE-FINKBEINER, *THE F-WORD: FEMINISM IN JEOPARDY: WOMEN, POLITICS, AND THE FUTURE* 5 (2004); *see also* LEVIT, *supra* note 114; Law, *supra* note 108.

117. LEVIT, *supra* note 114, at 125.

118. Cummins, *supra* note 113.

119. Barry X. Kuhle, *Giving Feminism a Bad Name*, PSYCH. TODAY (May 28, 2012), <https://www.psychologytoday.com/blog/evolutionary-entertainment/201205/giving-feminism-bad-name>.

C. Reversing the Feedback Effect

Highlighting this still-pervasive societal aversion to the feminist vocabulary helps us theorize the reasons underlying the Supreme Court's non-use of the words. While the Court is perhaps the most important body within the American legal system, it is also one of a number of institutions that undergird American society. It would be a mistake to assume that the Justices and their clerks are immune to the preferences and beliefs of the general public, or that they can afford to ignore those views when the Court's authority comes from its words and its reasoning alone. Therefore, the most natural hypothesis is that the Court is influenced by society: out of a desire not to use politicized words with negative connotations—to not get ahead of societally accepted norms—the Court abjures these terms even when their use would be appropriate. If we assume this effect, then the Court's aversion to feminist vocabulary is natural, if not expected.

However, at the same time, the Court's status as an important American institution means that it has the power to *shape* society as well as merely reacting to and reflecting it.¹²⁰ For example, in discussing Justice Sotomayor's use of the term "undocumented immigrant" rather than "illegal alien," Professor Cristina Rodríguez notes that word choice can actually reflect and substantiate a particular "substantive" legal theory.¹²¹ Professor Rodríguez further explains that "Justice Sotomayor's explanation for her choice of terminology highlights the hybrid legal/political role of the Supreme Court as an institution, and it could well have an impact on the construction of the unauthorized immigrant in public discourse."¹²² Similarly, on a subject like feminism in which there is a great disconnect between American acceptance of its tenets and rejection of its labels, there is space for the Court to lead rather than merely follow when it comes to terminology.

In addition to alleviating the potential harms caused by the dearth of feminist vocabulary,¹²³ the Court's affirmative use of the words could have positive externalities. First, within the legal profession, use of the words where appropriate would communicate that "feminism" is appropriately within the language of law. Subsequently, this would establish that scholarship, jurisprudence, and reasoning adhering to this appellation are within the language of law.

Beyond the law, greater usage of the words by the Supreme Court would contribute to normalizing them, thereby advancing their acceptability in the world at large. Law plays an important role in influencing the broader world. "The concepts, categories, and terms that law uses, and the reasoning structure

120. See Cristina M. Rodríguez, *Uniformity and Integrity in Immigration Law: Lessons from the Decisions of Justice (and Judge) Sotomayor*, 123 YALE L.J. F. 499, 504-05 (2014).

121. *Id.*

122. *Id.*

123. See *supra* Part I.

by which it expresses itself, organizes its practices, and constructs its meanings, has a particularly potent ability to shape popular and authoritative understandings of situations. Legal language . . . reinforces certain world views and understandings of events.”¹²⁴ By using the feminist vocabulary, the Court would communicate the validity of the label and concurrent perspective, combatting popular aversion. This could in turn influence more people to self-label as feminist, which “is associated with increased feminist activism.”¹²⁵

And although we may never be able to trace the influence of the Supreme Court’s vocabulary that far, we need not do so to conclude that the Court’s word choice matters. Words convey more than their objective meaning—and the words of a Supreme Court opinion are literally the law. Justices themselves are aware of the “sociological implications and political meaning of the language of Supreme Court opinions.”¹²⁶ And just as abjuring the feminist vocabulary communicates something consistent with society’s hostility towards the concepts, the opposite has the power to shape the opinion of society for the better.

CONCLUSION

The solution to this word puzzle is not readily apparent. We could advocate for socializing law students to understand feminism’s place amongst the language of law,¹²⁷ and for teaching them how to translate feminist critical theory into law practice.¹²⁸ Taking this tack pins its hope on law clerks influencing the Court to be more open to feminist words, or on counsel for litigants making more frequent use of the vocabulary. Another potential solution, designed to achieve the same result, is increasing overtly feminist litigation. “Feminist litigation” has been defined as involving “(1) naming and renaming, as a means of overcoming oppressions based on sex and sexuality; (2) using the lawyer’s own experiences and stories as the basis for litigation; and (3) listening to and elevating the client’s story.”¹²⁹ Having more self-identified and self-aware feminist litigation could impress upon the courts the essential role of the feminist perspective to procuring justice in certain kinds of cases and circumstances. And self-awareness of the litigants could influence courts to acknowledge the feminist nature of the representation.

Increasing such litigation may increase the comfort of the courts with the terms, and increase their usage. However, looking at the data, there does not appear to be a correlation between usage of the terms in briefs and opinions using

124. Finley, *supra* note 24, at 888.

125. Janice D. Yoder, Ann Tobias & Andrea F. Snell, *When Declaring “I Am a Feminist” Matters: Labeling Is Linked to Activism*, 64 *SEX ROLES* 9, 16 (2011).

126. Rodriguez, *supra* note 120, at 505.

127. See Stanchi, *supra* note 12, at 10.

128. See *id.* at 44-55.

129. Cahn, *supra* note 55, at 4-5.

the words. It is unclear whether an increase in openness of feminist perspective in litigation—and a concurrent increase of feminist vocabulary in briefs—would have an effect on the Court’s use of the term where there has been no correlation thus far. Perhaps usage must be orders of magnitude greater to spark a reaction.

In 1989, Professor Martha Minow remarked with delight upon the “current enthusiasm for feminism in law.”¹³⁰ That year corresponded with a substantial peak in the ever-increasing number of Supreme Court briefs containing the vocabulary (29 total briefs filed); a peak in the Courts of Appeals’ increasing number of opinions containing the vocabulary (11 total opinions); and the beginning of the Court’s longest-running streak of opinions containing the vocabulary (at least one per year from 1989 to 1996). But starting in the mid-1990s, this “enthusiasm” clearly fell off. Usages in the Courts of Appeals and usages in Supreme Court parties’ briefs dropped steadily starting in from 1997. And 1997 began the longest draught in the Supreme Court’s opinion usage of the vocabulary, with zero opinions filed containing the words from 1997 to 2009. Perhaps Professor Minow has hit on the only true solution: an overall renewal of the “enthusiasm for feminism in law.”

We appear to be caught a vicious circle. The courts do not desire to advance ahead of society in the use of a controversial word, and they therefore avoid a vocabulary with which people express discomfort. But in doing so, the courts influence the understanding of those words and concepts in society, and reinforce their perceived unacceptability. Perhaps the revolution will not be Shepardized. Which is to say, perhaps a popular reformation of attitudes toward the vocabulary of feminism will be required before the courts will discard their own fear.

130. See Minow, *supra* note 77, at 115.

APPENDIX

Table 1. Supreme Court Decisions Containing "Feminist" or Feminism"

Name and Citation	About Case	Use of Word	Quote/Source/Case Cited
Ginsberg v. State of N.Y., 390 U.S. 629 (1968)	Opinion upholding constitutionality of law prohibiting sale of obscene materials to minors	Dissenting opinion has appendix of excerpts from secondary literature, one of which mentions "feminism" in passing	"Homo-sexualism may not be openly admitted, but the 'sissy' and his red necktie are a familiar and easily understood property of popular jest and pantomime. It is all a madjazz jumble of hysterical incongruities, dog dinners, monkey marriages, cubism, birth control, feminism, free-love, verse libre, and moving pictures." 390 U.S. at 668 (Douglas, J., dissenting) (quoting J. Rinaldo, <i>Psychoanalysis of the "Reformer"</i> 56-60 (1921)).
Legion v. Weinberger, 415 U.S. 939 (1974)	Denial of petition for rehearing	Name of Amicus that moved to file a brief	National Black Feminist Organization
Westby v. Doe, 420 U.S. 968 (1975)	Judgment vacated and remanded in light of Hagans v. Lavine	Name of Amicus that moved to file a brief	National Black Feminist Organization et al.
Coker v. Georgia, 433 U.S. 584 (1977)	Opinion; holding that the Eighth Amendment prohibited a death sentence for rape of an adult	Citing a secondary source with "Feminist" in its title, in demonstrating that the majority nonetheless views rape as a serious crime	Note, <i>The Victim In a Forcible Rape Case: A Feminist View</i> , 11 AM. CRIM. L. REV. 335 (1973)
Palmer v. Feminist Women's Health Center, 444 U.S. 924 (1979)	Denial of petition for certiorari	Name of Party	Feminist Women's Health Center
Mohammad v. Feminist Women's	Denial of petition for certiorari	Name of Party	Feminist Women's Health Center

Health Center, 444 U.S. 924 (1979)			
Johnston v. United States, 449 U.S. 1027 (1980)	Denial of petition for rehearing	Citing opinion below, which had "Feminist" in the case name	United States v. Feminist Federal Credit Union, 635 F.2d 529 (6th Cir. 1980)
Johnston v. United States, 449 U.S. 876 (1980)	Denial of petition for certiorari	Citing opinion below, which had "Feminist" in the case name	United States v. Feminist Federal Credit Union, 635 F.2d 529 (6th Cir. 1980)
City of Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416 (1983)	Opinion; finding restrictions on abortion to be unconstitutional	Name of Amicus listed at beginning of opinion	Feminists for Life
Catholic League, Southern California v. Feminist Women's Health Center, 469 U.S. 1303 (1984)	Denial of application for stay	Name of Party	Feminist Women's Health Center
Philibosian v. Feminist Women's Health Center, Inc., 470 U.S. 1052 (1985)	Denial of petition for certiorari	Name of Party	Feminist Women's Health Center
Webster v. Reproductive Health Services, 492 U.S. 490 (1989)	Opinion; holding that banning of use of public funds for abortions is constitutional	Name of Amicus listed at beginning of opinion	Feminists for Life of America et al.
Austin v. Michigan Chamber of Commerce, 494 U.S. 652 (1990)	Opinion; upholding constitutionality of state law prohibiting corporations from making independent expenditures in elections	Name of Amicus; referenced in opinion	Fund for the Feminist Majority

Rust v. Sullivan, 500 U.S. 173 (1991)	Opinion; holding that it is permissible to prohibit spending of federal funds on abortion counseling	Name of Amicus listed at beginning of opinion	Feminists for Life of America et al.
Planned Parenthood of Se. Pa. v Casey, 505 U.S. 833 (1992)	Opinion; holding that limits on the right to an abortion are acceptable unless they constitute an undue burden	Name of Amicus listed at beginning of opinion	Feminists for Life of America et al.
Bray v. Alexandria Women's Health Clinic, 506 U.S. 263 (1993)	Opinion; upholding the rights of antiabortion demonstrators to obstruct access to clinics against a challenge from the clinics themselves	Dissenting opinion cites case with "Feminist" in the case name	"See . . . <i>Portland Feminist Women's Health Center v. Advocates for Life, Inc.</i> , 712 F. Supp. 165 (Ore. 1988) . . ." 506 U.S. at 308 n.2 (Stevens, J., dissenting)
Real v. Feminist Women's Health Center, 512 U.S. 1249 (1994)	Granting, vacating, and remanding clinic buffer zone case in light of <i>Madsen</i>	Name of Party	Feminist Women's Health Center
Madsen v. Women's Health Center, Inc., 512 U.S. 753 (1994)	Opinion; holding that buffer zone around abortion clinic did not violate the First Amendment	Factual use of proper name; Dissenting opinion mentioned name of an organization that edited a tape that was used in the case as evidence - the Feminist Majority Foundation	"The tape was edited down (from approximately 6 to 8 hours of footage to ½ hour) by Ruth Arick, a management consultant employed by the clinic and by the Feminist Majority Foundation. App. 527, 529, 533." 512 U.S. at 786 (Scalia, J., dissenting in part).
Real v. Feminist Women's Health Center, 516 U.S. 987 (1995)	Denial of petition for certiorari	Name of Party	Feminist Women's Health Center
United States v. Virginia, 518 U.S. 515 (1996)	Opinion; VMI Case; holding that state violated Equal Protection Clause for failure to show	In dissent, Justice Scalia essentially says that the Court faulted a report for	"But whether it is part of the evidence to prove that diversity was the Commonwealth's objective (its short report said nothing on that particular subject) is

	exceedingly persuasive justification for excluding women from military college	not proving that anti-feminism was not the motive for keeping VMI all-male	quite separate from whether it is part of the evidence to prove that anti-feminism was not." 518 U.S. at 580 (Scalia, J, dissenting).
Christian Legal Society v. Hastings, 561 U.S. 661 (2010)	Opinion; regarding school's nondiscrimination policy toward student organization	Proper name of a campus group, listed once in majority opinion and once in dissenting opinion among a variety of other student organizations, to demonstrate the breadth of various organizations sponsored	"During the 2004–2005 school year, Hastings had more than 60 registered groups, including political groups (e.g., the Hastings Democratic Caucus and the Hastings Republicans), religious groups (e.g., the Hastings Jewish Law Students Association and the Hastings Association of Muslim Law Students), . . . and groups that focus on gender or sexuality (e.g., the Clara Foltz Feminist Association and Students Raising Consciousness at Hastings)." 561 U.S. at 709 (Alito, J., dissenting).
Coleman v. Court of Appeals of Md., 132 S. Ct. 1327 (2012)	Opinion; finding that Congress did not abrogate sovereign immunity for suits for money damages under the Family and Medical Leave Act (FMLA)	In dissent, Justice Ginsburg discusses the feminist activism and perspective in connection with the legislative history of the FMLA	"The California law sharply divided women's rights advocates. 'Equal-treatment' feminists asserted it violated the Pregnancy Discrimination Act's (PDA) commitment to treating pregnancy the same as other disabilities. . . . 'Equal-opportunity' feminists disagreed, urging that the California law was consistent with the PDA Adhering to equal-treatment feminists' aim, the self-care provision, 29 U.S.C. § 2612(a)(1)(D), prescribes comprehensive leave for women disabled during pregnancy or while recuperating from childbirth—without singling out pregnancy or childbirth." 132 S. Ct. at 1340-42 (Ginsburg, J., dissenting).

Figure 9. Varieties of Uses of “Feminist” and “Feminism” in Courts of Appeals Over Time

