

## Finding Common Feminist Ground: The Role of the Next Generation in Shaping Feminist Legal Theory

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*This article explores the ways in which current feminist frameworks are dividing the women's movement along generational lines, thereby inhibiting progress in the struggle for gender equality. Third-wave feminists, or the generation of feminists that came of age in the 1990s and continues today, have been criticized for focusing on personal stories of oppression and failing to influence feminist legal theory. Yet this critique presupposes that third-wave feminism is fundamentally different from the feminism of past generations. In contrast, this article argues that third-wave feminism is rooted in the feminist legal theory developed in the prior generation.*

*This article demonstrates that the third-wave appears to be failing to influence feminist legal theory not because it is theoretically different, but because third-wave feminists approach activism in such a different way. For example, third-wavers envision "women's issues" broadly, and rely on new tactics such as online organizing. Using the case study of Spark, a nonprofit organization employing third-wave activism to support global grassroots women's organizations, this article provides a model of this new brand of feminism in practice.*

*This article proposes the adoption of social justice feminism, which advocates casting a broader feminist net to capture those who have been traditionally neglected by the women's movement, such as low-income women and women of color. Social justice feminism is a way to broaden the focus from a rights-based approach to an examination of the dynamics of power and privilege that continue to shape women's lives even when legal rights to equality have been won. Adopting social justice feminism can be a way to bridge second- and third-wave feminism and create a more robust and unified feminist movement, thereby mending the divisions that currently prevent unification in the women's movement.*

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## INTRODUCTION

“Third-wave feminism” is a term that has come to define the generation of the women’s movement that began during the 1990s and continues today. The third-wave is sometimes described as a response to frustrations with the second-wave or the women’s movement that began in the 1960s and continued through the 1970s and 1980s. While the “waves” categorization has become part of common parlance to describe different generations of the women’s movement, this splitting along generational lines has also unnecessarily divided the greater cause, pitting “older” and “younger” feminists against each other in unproductive ways that fail to reflect the common ground that exists amongst all generations of feminists. These divisions create one of the biggest challenges to building a cohesive movement for gender equality in the modern era.

Specifically, some scholars within feminist legal theory have been critical of what they see as a failure of the next generation of feminism—evolving from Generation X and Generation Y—in shaping feminist legal theory.<sup>1</sup> Yet, this critique presumes that there are in fact significant differences between second- and third-wave theory, which, I argue, is not the case. Instead, third-wave rhetoric builds on the theories of feminist jurisprudence first envisioned by second-wave feminists. I argue that the difference is not with the theoretical underpinnings of these waves but in the way that second- and third-wave feminists approach activism. Whereas prior generations have employed feminism in the streets, the third-wave of feminism takes the movement online through blogs such as *feministing.com*, that aim “to connect feminists online and off, and to encourage activism,” thereby creating “a forum for a variety of feminist voices and organizations.”<sup>2</sup> Thus, while the feminist movement is alive and well, grounded in the theories of prior generations, this new form of feminist activism masks common theoretical ground between the second- and third-wave, perpetuating perceived differences that do not necessarily exist.

This article begins by exploring the development of third-wave feminism over the past two decades, examining how the “waves” categorization has been more harmful than helpful to the women’s movement. Part II identifies common ground between third-wave feminism and feminist legal theory, showing that many of the concepts of third-wave feminism are actually rooted in theoretical concepts of feminist legal theory. Part III considers why third-wave feminism has been criticized for failing to influence and/or be considered by feminist legal theory. I suggest that much more common ground exists than is traditionally acknowledged, with much of the third-wave theory emanating from the theoretical roots of the second-wave. I argue that common ground is not more evident because younger feminists’ application of feminism looks so different in practice. Using the example of Spark, an organization I co-founded to engage young professionals in global women’s issues, Part IV will demonstrate how the next generation of feminism operates in practice, using networks as opposed to top-down leadership and online organizing as opposed to more traditional

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1. See, e.g., Bridget J. Crawford, *Toward a Third-Wave Feminist Legal Theory: Young Women, Pornography and the Praxis of Pleasure*, 14 MICH. J. GENDER & L. 99, 125 (2007).

2. About, FEMINISTING BLOG, <http://community.feministing.com/about/> (last visited Jan. 15, 2013).

methods, such as protesting. Finally, Part V describes the concept of social justice feminism and articulates how key tenants of third-wave feminism can build upon feminist legal theory in order to strengthen feminism's struggle for gender equality. Drawing from stories of how Spark's grantees leverage the methodology of social justice feminism, this article provides a path for third-wave influence on the law in practice by incorporating concepts of the third-wave while also building on traditional feminist legal theory in order to develop a more inclusive and intergenerational brand of feminism.

#### I. FROM SECOND- TO THIRD-WAVE: HOW THE WAVES PARADIGM HAS CREATED DIVISIONS

Although concepts of feminism have been developing since as long ago as the eighteenth century, the movement is often broken down into three parts: first-, second- and third-wave feminism. While each "wave" shares the common goal of gender equality, they have been categorized as representing different eras of feminists, each with purportedly unique identities and theories of change.

First-wave feminism generally refers to the women's movement in the late nineteenth century and early twentieth century, whose focus was primarily on gaining women's right to vote. The term "first-wave" was not coined until much later, in the 1970s, when the second-wave of the feminist movement, also known as the women's liberation movement, acknowledged its predecessors as the first-wave of feminism and self-proclaimed their own era as the second-wave. Second-wave feminism traditionally refers to the period of activism between the 1960s and the early 1990s, and is characterized by the struggle for equality in the workplace and eliminating sexual harassment. Third-wave feminism was born in the early 1990s when then twenty-two-year-old Rebecca Walker, distraught by the way in which Anita Hill's power and credibility came into question during Senate proceedings regarding her accusations of sexual harassment against Clarence Thomas, wrote famously in *Ms. Magazine*, "I am not a postfeminist feminist. I am the Third-wave."<sup>3</sup>

Since that time, the term third-wave feminism refers to the generation of activists who came of age during the 1990s and 2000s, and who identify themselves as subscribing to a broader, more inclusive version of feminism that extends beyond the experience of the white, middle-class woman. As such, the use of personal storytelling to help deconstruct the myth that being a woman is a singular experience has been one of the defining features of third-wave feminism.<sup>4</sup> For example, Daisy Hernandez writes about the experience of a working-class Latina feminist in "Bringing Feminism a la Casa,"<sup>5</sup> Lisa Tiger

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3. Rebecca Walker, *Becoming the 3<sup>rd</sup> Wave*, *MS. MAGAZINE*, Jan./Feb., 1992, at 87.

4. Numerous anthologies collecting these third-wave stories have been published over the course of the past ten years. See e.g., *CATCHING A WAVE: RECLAIMING FEMINISM FOR THE 21ST CENTURY* (Rory Dicker & Alison Piepmeier eds., 2003); *CLICK: WHEN WE KNEW WE WERE FEMINISTS* (Courtney Martin & J. Courtney Sullivan eds., 2010); *COLONIZE THIS!: YOUNG WOMEN OF COLOR ON TODAY'S FEMINISM* (Daisy Hernández & Bushra Rehman eds., 2002); *LISTEN UP: VOICES FROM THE NEXT FEMINIST GENERATION* (Barbara Findlen ed., 2d ed. 2011); *THIRD WAVE FEMINISM: A CRITICAL EXPLORATION* (Stacy Gillis et al., eds., 2007). For an excellent summary of the writings of third-wave feminism, see Crawford, *supra* note 1, at 109–16.

5. Daisy Hernandez, *Bringing Feminism a la Casa*, in *LISTEN UP: VOICES FROM THE NEXT FEMINIST*

describes her Native American community's reaction to the news that she is HIV-positive in "Woman Who Clears the Way,"<sup>6</sup> and Rebecca Walker tells the tale of her complicated relationship with her mother—poet, novelist and second-wave feminist Alice Walker—who she claims nearly robbed her of the chance of becoming a mother because of her rejection of the social construct of motherhood in *Baby Love*.<sup>7</sup>

In the course of telling their stories of womanhood, third-wave feminists define the goals of feminism in a broad way. In *Manifesta*, Jennifer Baumgardner and Amy Richards claim that feminism is no longer limited to the areas where it is most expected, such as reproductive rights, but instead outline a thirteen-point agenda of how the third-wave encompasses a variety of issues, from health care to gay and lesbian rights.<sup>8</sup> Leslie Heywood also emphasizes the broad scope of third-wave feminism, which she says

has never had a monolithically identifiable, single-issue agenda that distinguishes it from other movements for social justice. One of its main emphases, in fact, has been on feminism and gender activism as only one part of a much larger agenda for environmental, economic, and social justice and one of its main arguments is that it is counterproductive to isolate gender as a single variable.<sup>9</sup>

In this way, third-wave feminists pride themselves on viewing all social justice issues through a feminist lens as opposed to categorizing certain struggles as "women's issues."

In addition to the use of personal narrative and a broad characterization of "women's issues," the third-wave distinguishes itself from past generations by emphasizing how their brand of feminism necessarily operates in a new way to take into account the new era and current culture in which we live. For example, young feminists emphasize the importance of media and culture in the women's movement, focusing on "female pop icons, hip-hop music, and beauty culture, rather than traditional politics per se."<sup>10</sup> *Bitch Magazine*, launched in 1996 by third-wave feminists Lisa Jervis, Benjamin Shaykin, and Andi Zeisler with a mission to provide and encourage an engaged, thoughtful, feminist response to mainstream media and popular culture, is an example of how the third-wave views its role in responding to the portrayal of gender roles in the media.<sup>11</sup> Similarly, music became an important outlet for third-wave feminists in the

GENERATION 209–11 (Barbara Findlen ed., 2d ed. 2011).

6. Lisa Tiger, *Woman Who Clears the Way*, in LISTEN UP: VOICES FROM THE NEXT FEMINIST GENERATION 153 (Barbara Findlen ed., 2d ed. 2011).

7. REBECCA WALKER, *BABY LOVE: CHOOSING MOTHERHOOD AFTER A LIFETIME OF AMBIVALENCE* 5–7 (2007).

8. JENNIFER BAUMGARDNER & AMY RICHARDS, *MANIFESTA: YOUNG WOMEN, FEMINISM AND THE FUTURE* 17 (2000).

9. 1 THE WOMEN'S MOVEMENT TODAY: AN ENCYCLOPEDIA OF THIRD-WAVE FEMINISM, 366–67 (Leslie Heywood ed., 2006) [*hereinafter* THE WOMEN'S MOVEMENT TODAY vol. 1].

10. R. Claire Snyder, *What is Third-Wave Feminism? A New Directions Essay*, 34 SIGNS: J. WOMEN CULTURE & SOC'Y 175, 178 (2008).

11. History, BITCH MAGAZINE WEBSITE, <http://bitchmagazine.org/history> (last visited Jan. 15, 2013).

development of the riot grrrl movement – a series of underground feminist punk bands that address feminist issues such as rape, domestic abuse, sexuality, racism, patriarchy, and female empowerment. Finally, and perhaps most importantly, the third-wave has been instrumental in bringing the feminist discussion online in fora such as feministing.com and Twitter, where thousands of young feminist activists tweet minute-by-minute about the latest issues. These new online outlets provide a space for young feminists to share information, create community, and encourage activism in innovative ways.

Although the wave paradigm has become a common way to describe different phases of the women's movement, the third-wave's self-characterization of how it is distinct from the second-wave has resulted in pitting generations against each other. In this section, I argue that the waves categorization actually creates unnecessary divisions, which inhibit unification of the feminist movement and prevent feminists of different generations from recognizing common ground.

#### A. Third-wave Feminism As a Response to a Perceived Past

One way in which the wave paradigm has been divisive is by forcing generations to distinguish themselves from one another. In the pursuit of self-definition, third-wave feminists have been criticized for distinguishing themselves in ways that are based on misperceptions of their second-wave predecessors.<sup>12</sup> "Informed by the writings of Katie Roiphe and the later work of Naomi Wolf, which blame feminists for maintaining myths that ultimately perpetuate and celebrate women's victimization, these third-wave Generation X chimeras are believed to position themselves against 'an oversimplified, limited and monolithic caricature of second-wave feminism.'"<sup>13</sup> This perceived mischaracterization of the third-wave's feminist foremothers has created significant animosity between the waves.

Taking third-wave literature as a whole, third-wavers seem to simultaneously honor the contributions of second-wave feminism, while also criticizing it. Because of the second-wave's successes, third-wave feminists recognize that they are able to embrace feminism all around them: "for the presence of feminism in our lives is taken for granted. For our generation feminism is like fluoride. We scarcely notice that we have it – it's simply in the

12. See, e.g., Snyder, *supra* note 10, at 179. For a description of how the third-wave's self-definition has pitted it against the second-wave, see, e.g. Astrid Henry, *Enviously Grateful, Gratefully Envious: The Dynamics of Generational Relationships in U.S. Feminism*, 34 *WOMEN'S STUD. Q.*, Fall-Winter 2006, no. 3/4, at 140, 140–53; Amber Kinser, *Negotiating Spaces for/through Third-Wave Feminism*, 16 *NWSA J.*, Autumn, 2004, no. 3, at 124, 124–53; Colleen Mack-Canty, *Third-Wave Feminism and the Need to Reweave the Nature/Culture Duality*, 16 *NWSA J.*, Autumn, 2004, no. 3, at 154, 154–79; Katha Pollitt, *Feminist Mothers, Flapper Daughters?* *THE NATION*, Oct. 18, 2010, at 9; Jennifer Purvis, *Grrrls and Women Together in the Third-wave: Embracing the Challenges of Intergenerational Feminism(s)*, 16 *NWSA J.*, Fall 2004, no. 3, at 93, 93–123; and Roberta Sigel & John V. Reynolds, *Generational Differences and the Women's Movement*, 94 *POL. SCI. Q.*, 635, 635–48 (Winter, 1979–80).

13. Jennifer Purvis, *Grrrls and Women Together in the ThirdWave: Embracing the Challenges of Intergenerational Feminism(s)*, 16 *NWSA J.*, no. 3 at 93, 96 (Fall 2004) (quoting Helene Shugart et al., *Mediating Third Wave Feminism: Appropriation as Postmodern Media Practice*, 18 *CRITICAL STUD. MEDIA COMM.* 194, 194–95 (2001)).

water.”<sup>14</sup> This description by Jennifer Baumgardner and Amy Richards of feminism as ubiquitous seems to be a reverent nod to the success of their second-wave predecessors.

At the same time, however, some third-wave feminists also express frustration with earlier feminists and the movement they created. Third-wavers are frustrated to have inherited a brand of feminism from the second-wave that doesn't immediately seem to represent their lives.<sup>15</sup> For example, Naomi Wolf refers to second-wave feminism as “victim feminism” and portrays it as “sexually judgmental, even antisexual,” “judgmental of other women's sexuality and appearance,” and “self-righteous.”<sup>16</sup> In response to this stereotypical characterization, some third-wave feminists claim to be “less rigid and judgmental than their mothers' generation, which they often represent as antimale, antisex, antifemininity and antifun,” depicting their version of feminism as more inclusive and racially diverse than the second-wave.<sup>17</sup>

As a result, the development of the third -wave of feminism has created deep divisions. Second-wavers criticize the third-wave for distorting history and distinguishing itself from a perceived past, the “frumpy, humorless, antisex caricature of second-wave feminists that papers over the differences and nuances that existed within that movement.”<sup>18</sup> This focus on generalized characterizations of the second-wave has resulted in a “personalization of waves” which “complicates the view of feminist activism by reducing the difference between waves to personal intergenerational struggles.”<sup>19</sup>

Ironically, because the third-wave's critique of their feminist foremothers occurred in the context of a backlash against the feminist movement more generally, simultaneous attacks from the conservative right reinforced the third-wave's generalizations about the second-wave feminist. As Susan Faludi describes in her book “The Undeclared War Against American Women,” conservatives have painted the feminism of the 1970s as having resulted in “unhappy fast-tracker” professional women who are “‘dehumanized’ by their careers,” “uncertain of their gender identity,” and “relegated” to “solitary nights of frozen dinners and closet drinking.”<sup>20</sup> The fact that the third-wave's criticism played into the backlash against feminism more generally has created even more animosity between generations.

In sum, because third-wave feminism has spent a significant amount of time criticizing what might be perceived as a “caricature” of the second-wave, often defining itself by what it is not as opposed to what it is, the third-wave's message

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14. BAUMGARDNER & RICHARDS, *supra* note 8, at 17.

15. Snyder, *supra* note 10, at 179.

16. *Id.* (quoting Naomi Wolf, *Two Traditions, from Fire with Fire*, in 2 THE WOMEN'S MOVEMENT TODAY: AN ENCYCLOPEDIA OF THIRD-WAVE FEMINISM 13-19 (Leslie Heywood, ed., 2006) [*hereinafter* THE WOMEN'S MOVEMENT TODAY vol. 2]).

17. *Id.*

18. *Id.* at 182.

19. Nancy Naples, *Confronting the Future, Learning from the Past: Feminist Praxis in the Twenty-First Century*, in DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN'S MOVEMENT 221 (Jo Reger ed., 2005).

20. SUSAN FALUDI, BACKLASH: THE UNDECLARED WAR AGAINST AMERICAN WOMEN xii-xiii (1991) (quoting MEGAN MARSHALL, THE COST OF LOVING: WOMEN AND THE NEW FEAR OF INTIMACY).

is sometimes lost. It has also created unnecessary divisions between the older and younger generations, which fail to account for all of the ways in which feminists can relate to the struggle toward the common goal of gender equality.

### B. How does the Waves Categorization Inhibit the Women's Movement?

More generally speaking, while the "wave" discourse is regularly used in feminist circles, numerous academics have warned of the dangers of fragmenting the women's movement into arbitrary categories, which do more to divide feminists than bring them together. As Stacy Gillis and Rebecca Munford describe, the waves model is set up for failure: "Feminist history is traditionally understood as a succession of waves. However, the trouble with this model is that generations are set up in competition with one another . . ."21 Pitting the second- and third-waves against each other creates division within the movement, even when there might be more agreement than disagreement on fundamental issues surrounding gender equality. As Nancy Naples has said, this leaves everyone feeling unappreciated: third-wave feminism is perceived as misremembering and failing to honor the accomplishments of second-wave feminism, and "younger feminists express resentment that their perspectives on and practices of feminism are discredited by feminists associated with the second-wave."22 By making the waves a personal issue, it "complicates the view of feminist activism by reducing the difference between waves to personal intergenerational struggles over definitions of feminism" as opposed to focusing on the substantive issues of gender inequality at hand.23

Similarly, the wave metaphor forces individuals to identify with members of "their" generation in a way that may or may not reflect their individual views of feminism, thereby ignoring differences and commonalities between generations, and reinforcing a paradigm of oppositional change.24 As Astrid Henry writes "[a] generation is an imaginary collective that both reveals truths about people of a particular age and tries to mold those people into a unified group."25 Lisa Marie Hogeland also cautions against generational thinking, which she says is "always unspeakably generalizing."26 Such generalizations risk excluding potential advocates for the greater cause of gender equality, as opposed to developing the more inclusive movement of a broader audience to create lasting change.

There are likely many ways in which second-wave feminists might identify

21. Stacy Gillis & Rebecca Munford, *Genealogies and Generations: The Politics and Praxis of Third-Wave Feminism*, 13 *WOMEN'S HIST. REV.* 165, 176 (2004).

22. Naples, *supra* note 19, at 221; *see also* Purvis, *supra* note 13, at 94 ("I have witnessed how generational differences function to proliferate animosity and divisiveness among feminists, especially in conversations surrounding the thirdwave.").

23. Naples, *supra* note 19, at 221.

24. Lisa Shapiro Sanders, 'Feminists Love a Utopia': Collaboration, Conflict and the Futures of Feminism, in *THIRD-WAVE FEMINISM: A CRITICAL EXPLORATION* 8-9 (Stacy Gillis et al. eds., 2007).

25. Astrid Henry, NOT MY MOTHER'S SISTER: GENERATIONAL CONFLICT AND THIRD-WAVE FEMINISM 6 (2004).

26. Lisa Marie Hogeland, *Against Generational Thinking, or, Some Things that "Third-wave" Feminism Isn't*, 24 *WOMEN'S STUD. IN COMM.* 107, 117 (2001).

with the third-wave and vice versa. For example, the activist style of riot grrrls and younger feminists bears marked similarities to early second-wave activities such as zap-actions, mimeographed flyers, and other materiality of second-wave protest.<sup>27</sup> Similarly, Lisa Hogeland points to the stylistic similarity between the rhetorical strategies of the personal essays that characterize the third-wave with the ways in which individual stories influenced the second-wave movement.<sup>28</sup> By failing to recognize these similarities, the waves paradigm “divides work effectively to prevent [feminists] from seeing the powerful persistence of political beliefs, of specific women’s issues and of strategies for change.”<sup>29</sup>

Additionally, because the second-wave of feminism has been associated with the Baby Boomer Generation, and third-wave feminism has been associated with Generation X and Generation Y, the waves characterization of feminism limits the movement to only those who share the historical experience of being born within these two timeframes.<sup>30</sup> As someone who was born on the cusp of the Millennial Generation, I can say from personal experience that there are ways in which I identify with both second- and third-wave feminism, and yet I find myself isolated from claiming either as my own because I did not come of age until well after third-wave feminism had taken hold. Similarly, women who are coming of age today may question where they fit into the wave dichotomy. As such, the third-wave definition is “insufficient because it eliminates from the picture multitudes of feminists who came of age in and after the second-wave, but who are part of the contemporary feminist landscape, and whose feminist politics are also directly caught up in the cultural predicament of feminist consciousness in the fine-de-siècle United States.”<sup>31</sup>

The waves characterization also raises the question of what happens to each wave as it “ages out” of relevance.<sup>32</sup> For example, does the third-wave’s existence necessarily mean that those who identify with second-wave feminism must retire? And if the Third-wave Foundation, an organization started by some of the key leaders of third-wave feminism such as Rebecca Walker and Amy Richards, describes its mission as supporting young women between the ages of 15 to 30, what happens when third-wavers turn 31? Although the wave metaphor signifies continuity, allowing the next wave to build on the last one, it also necessitates the start of something new, or discontinuity, forcing individuals to both “identify and disidentify with the past.”<sup>33</sup>

Astrid Henry, who has written extensively to challenge the generational paradigm that has come to define feminism, argues that only through cross-generational identifications – and disidentifications – can we achieve political emboldening among feminists of all waves.<sup>34</sup> I argue that the same is true in the

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27. *Id.*

28. *Id.*

29. *Id.*

30. Henry, *supra* note 25, at 5.

31. Ednie Kaeh Garrison, *Are We on a Wavelength Yet? On Feminist Oceanography, Radios and Third-wave Feminism*, in *DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN’S MOVEMENT* 250–51 (Reger ed., 2005).

32. Henry, *supra* note 25, at 34.

33. *Id.* at 25.

34. *Id.*



legal theory realm, begging the question: how can we identify common ground to create cross-generational identifications and develop a more inclusive brand of feminist legal theory?

## II. FINDING COMMON GROUND BETWEEN THIRD-WAVE FEMINISM AND FEMINIST LEGAL THEORY

From a feminist legal theory perspective, some have argued that the third-wave has yet to influence the academy. Because third-wave literature has focused primarily on gender equality from the perspective of the personal narrative of primarily organizers, activists, writers, or bloggers, critics claim that third-wave feminist writing focuses on social change as opposed to legal issues, strategies, or legal theories.<sup>35</sup> Similarly, although third-wave literature has featured prominently in gender studies departments around the country since the 1990s, some claim that the legal academy is at fault for not explicitly integrating third-wave theories into feminist legal jurisprudence, or creating any relationships between third-wave writings and feminist legal theory.<sup>36</sup>

In this section I argue that these critiques are misplaced because they assume that third-wave theory is rooted in concepts that are distinct from the prior generations of feminism. As I demonstrate, many of the concepts of third-wave feminism are actually rooted in theoretical concepts of feminist legal theory that have been percolating for the past several decades.

### A. Critiques of the Third-Wave's Failure to Influence Feminist Legal Theory

Despite the potential for third-wave theory to build upon and improve the social movement created by the second-wave, some scholars have argued that the third-wave has failed to achieve its full potential as a social movement because third-wave discourse has happened primarily in the narrative space as opposed to using the theoretical tools of academia. As Bridget Crawford has described, third-wave feminism has engaged three principle methods of achieving its goals: personal storytelling, coalition building, and use of popular, as opposed to academic, channels to disseminate its message.<sup>37</sup> Each of these methods, she argues, has in some way prevented the third-wave from achieving significant influence in feminist legal theory.

For example, while storytelling has been a hallmark of the third-wave,<sup>38</sup> it has also been criticized as one of the third-wave's greatest weaknesses: "Narrative collections do not translate easily into political strategies or legal theories. In this way, third-wave feminism seems more like a literary form than a social movement or a basis for enriching feminist jurisprudence."<sup>39</sup> Similarly, Crawford argues that third-wave feminism has employed coalition-building as a method for gaining support trying to make the movement as accessible as possible to as many as possible, while at the same time risking of "emptying

35. Crawford, *supra* note 1, at 103.

36. *Id.*

37. *Id.* at 104.

38. See discussion, *supra* section I.

39. *Id.* at 126.

feminism of its political content.”<sup>40</sup> Finally, Crawford claims that third-wave feminism has primarily used popular channels for disseminating their message, as opposed to academic outlets.<sup>41</sup>

Regardless of whether third-wave feminism intentionally avoids leveraging academic theory as a means to advance the women’s movement, some have argued that the failure to participate in academic discourse has inhibited the third-wave’s ability to realize its full potential. As Snyder states,

[w]ithout the theoretical edifice for context . . . third-wave feminist confessionals often read as simply apolitical manifestations of expressive individualism that characterizes our predominantly liberal culture. The theoretical tools of academic feminism allow third-wave scholars to push popular articulations of women’s experiences in a postmodern, critical direction, rendering them more radical and theoretically sophisticated.<sup>42</sup>

Following this line of reasoning, if third-wave feminists continue to avoid academic discourse as a tool for advancing the women’s movement, they will be perceived as lacking a “compelling theoretical analysis or alternative solution to many of the difficult dilemmas that hobbled the second-wave” and “the bigger picture [will get] lost among the multiplicity of personal narratives.”<sup>43</sup>

Similarly, and specifically within the context of legal theory, some have argued that third-wave feminism has yet to make its mark. Bridget Crawford poses four potential explanations for the absence of meaningful consideration of the law in most third-wave writings. Crawford’s first hypothesis is that third-wave writing is pre-legal; third-wave feminists simply have not thought enough about the law to articulate its function in achieving their aims. Her second hypothesis is that third-wave feminists take a limited-means view of the law, i.e., that the legal system has inherent limitations in what it can accomplish for women. A third possibility is that third-wave feminists take a limited-ends view of the law, i.e., that the accomplishments of second-wave feminists (largely achieved through the legal system) have failed to translate into sufficient change (or enough of the right kind of change) in women’s lives. Finally, third-wave feminists “may take an extra-legal view of change, seeking to abandon the law entirely, and instead transform society through culture.”<sup>44</sup>

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40. *Id.* at 127 (quoting RORY DICKER & ALISON PIEPEMEIER, INTRODUCTION TO CATCHING A WAVE: RECLAIMING FEMINISM FOR THE 21<sup>ST</sup> CENTURY 10 (2003)).

41. *Id.* at 129. This shift away from academic feminism has largely been an intentional approach of third-wave feminism: “The Third Wave is, in the main, rather self-consciously poised against the academy, even though almost all of the [third-wave] authors have been or look forward to being, college-educated, and many tell of taking courses in women’s or gender studies.” Snyder, *supra* note 10, at 191 (quoting Elizabeth A. Kelly, *Review Essay: A New Generation of Feminism? Reflections on the Third-wave*, 27 NEW POL. SCI. 233, 239 (2005)). Third-wave feminism challenges academic theorists for failing to provide theory that is meaningful or relevant to women outside of academia, rejecting academia’s claims that third-wave narratives are not “academic” or “theoretical” enough when it is the second-wave academy itself that claimed that the “personal is political.” *Id.* (citing THE WOMEN’S MOVEMENT TODAY vol. 1, *supra* note 9, at 9.)

42. Snyder, *supra* note 10, at 191.

43. *Id.*

44. Crawford, *supra* note 1, at 105.

Crawford goes on to argue that just as the third-wave has failed to influence feminist legal theory, contemporary law scholars have not made an effort to incorporate third-wave theory into their work.<sup>45</sup> As Crawford states: “[t]he writings of third-wave feminists are not well known to or understood by feminist lawyers or scholars. Extrapolating legal theories and methodologies from non-legal, third-wave feminist writings lays a foundation for an incipient third-wave feminist jurisprudence.”<sup>46</sup>

Each of Crawford’s hypotheses presumes that the primary tenets of the third-wave are new and distinct from past waves. As I describe more fully below, third-wave theories instead significantly build on the seeds that were planted by second-wave feminist legal theories in the 1980s and 1990s.

### B. Finding the Roots of the Third-Wave in Feminist Legal Theory

Despite criticism that the third-wave has failed to influence legal theory, the third-wave actually has more common ground with the historical roots of feminist legal theory than has been acknowledged. While third-wave feminism has been criticized for defining itself more by what it is against than by what it is for, key characteristics of the movement – focusing on the personal narrative, implementing a broader postmodern approach to gender equality, and espousing a nonjudgmental philosophy – all represent positive theories of change which augment the struggles of second-wave feminism to bring about a new approach to feminist legal theory which has significant potential.

Feminist legal theory seeks to explain the ways that the law subordinates women’s status, while simultaneously attempting to use the law as a tool to promote gender equality. To do so, feminist legal theory draws on the theoretical foundations of feminist thought in a variety of disciplines, including women’s studies, history, philosophy, economics, sociology, psychology, and literary and cultural studies.<sup>47</sup> It has been said that feminist legal theory can be divided into six broad schools of thought, or theories: liberal, cultural, dominance, sex positive, intersectional, and post-structural/post-modern feminism.<sup>48</sup> Liberal, cultural, and dominance theory were developed during the late 1980s to early 1990s with, for example, Ruth Bader Ginsburg’s work on liberal feminism in *Sex Equality and the Constitution*, Carol Gilligan’s work on cultural feminism, and Catharine MacKinnon’s development of dominance feminism, particularly in relation to the debate over pornography.<sup>49</sup> In the 1990s, a newer generation of scholarship focused on theories of sex positive, intersectional, and post-structural/post-modern feminism.<sup>50</sup>

45. *Id.* at 168.

46. *Id.*

47. MARTHA CHAMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY 16 (2d. ed. 2003).

48. Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277, 279 (2008).

49. *Id.* at 280 (citing Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451 (1978)); see generally CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT (1982); Catharine MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN CULTURE & SOC. 515 (1983).

50. *Id.* (citing Sylvia Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 1019 (1984))

Nevertheless, even theories that have been defined as “newer” are based on ideas that have been developing since the earlier phases of the second-wave. For example, in Deborah Rhode’s work on what she calls “critical feminism,” she cautions against generalizing feminist theories, which “risks homogenizing an extraordinarily broad range of views.”<sup>51</sup> Rhode’s goal of “underscore[ing] the importance of multiple frameworks that avoid universal or essentialist claims and that yield concrete strategies for social change,”<sup>52</sup> seems to invoke the same mentality as the third-wave’s goal to claim your own F word.

Thus, while feminist legal theory has traditionally been divided into categories such as liberal, cultural, dominance, sex positive, intersectional, and post-structural/post-modern feminism, such categories should not be considered as rigidly fixed in order to avoid “universal or essentialist claims.”<sup>53</sup> Instead, by thinking about these frameworks in a more fluid way, we can see the ways in which the third-wave is actually rooted in feminist legal theories initiated prior to the 1990s.

### C. Building Bridges Between Third-Wave Feminism and Feminist Legal Theory

The third-wave’s focus on the personal narrative, implementing a broader postmodern approach to gender equality, and espousing a nonjudgmental philosophy are all rooted in concepts of second-wave feminism, thus generating a new approach to feminist legal theory that is rooted in the past.

#### 1. The Role of the Personal Narrative

Substantively, third-wave feminism relies heavily on personal narrative. As R. Claire Snyder describes, “in response to the collapse of the category of ‘women,’ the thirdwave foregrounds personal narratives that illustrate an intersectional and multiperspectival version of feminism.”<sup>54</sup> As such, third-wave feminism seeks to establish an open women’s movement based on the experiences and stories of many types of women, as opposed to essentializing the experience and existence of women to oppression by men. The focus of third-wave feminism on the personal narrative as a vehicle for change is most prominently evidenced in the two volumes of personal essays that “became a model for much of the third-wave writing that has followed.”<sup>55</sup> The first,

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(describing sex-positive feminism); see generally Martha Minow, *The Supreme Court Term 1986, Forward: Justice Engendered*, 101 HARV. L. REV. 10 (1987) (describing intersectional feminism); JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990) (describing post-structural/post-modern feminism). These “stages” of feminist legal theory have also been divided further into three primary phases: The *Equality Stage* of the 1970s, the *Difference Stage* of the 1980s and the *Diversity Stage* of the 1990s onward. See CHAMALLAS, *supra* note 47, at 16–17 (drawing on Patricia A. Cain’s theories feminist jurisprudence, sometimes referred to as “feminist legal theory” because of the connotations of “jurisprudence” in *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN’S L.J. 191, 205 (1988–90)).

51. Deborah L. Rhode, *Feminist Critical Theories*, 42 STAN. L. REV. 617, 617 (1990).

52. *Id.* at 619

53. *Id.*

54. Snyder, *supra* note 10, at 175.

55. Crawford, *supra* note 1, at 110.

Rebecca Walker's *To Be Real: Telling the Truth and Changing the Face of Feminism*, is a series of personal stories about everything from marriage to the internet, hip-hop music to racial identity.<sup>56</sup> Similarly, Barbara Findlen's 1995 *Listen Up: Voices from the Next Feminist Generation* is a series of stories from young women of diverse backgrounds who "acknowledge, struggle with and incorporate feminism into their everyday lives."<sup>57</sup> Because the personal narrative has become one of its hallmark features, third-wave feminism has been criticized for its reliance on storytelling that "at times seems to comprise the entirety of third-wave feminism,"<sup>58</sup> as opposed to translating that narrative into broader academic theories.

And yet the use of personal narrative as a vehicle for raising social consciousness is not new to the third-wave, but is instead deeply rooted in the history of the women's movement, particularly in feminist legal methods. Feminists have been writing about their experiences as women in the first person since long before Rebecca Walker and her cohorts. As Carol Hanisch first wrote in her famous 1969 essay, "the personal is political."<sup>59</sup> The emphasis of feminist scholarship on women's personal experience can be traced back to the consciousness-raising groups of the late 1960s and early 1970s, "where women were encouraged to express their subjective responses to everyday life and discovered that their personal problems also had a political dimension."<sup>60</sup>

Since that time, feminist legal methods have also focused on the importance of drawing on women's experiences as a way to understand the effect that law has on their everyday lives. Patricia Cain's definition of feminist legal scholarship includes an analysis "formed by a distinctly feminist point of view, a point of view that is shaped by an understanding of women's experiences," which "can come either from living life as a woman and developing critical consciousness about that experience or from listening carefully to the stories of female experience that come from others . . . [L]egal scholarship is not feminist unless it is grounded in women's experience."<sup>61</sup> Similarly, Katharine Bartlett's work on feminist legal methodology has distilled the fundamentals of feminist methods to unmasking patriarchy, contextual reasoning, and consciousness-raising, all of which require incorporation of the personal experience.<sup>62</sup> As Nancy Levit and Robert Verchick describe, "[d]rawing general conclusions about institutional oppression from private observation grounds social theory in actual experience and affirms the union between the personal and the political."<sup>63</sup>

56. *Id.* (citing REBECCA WALKER, *TO BE REAL: TELLING THE TRUTH AND CHANGING THE FACE OF FEMINISM* (1995)).

57. *Id.* at 112 (citing *LISTEN UP: VOICES FROM THE NEXT FEMINIST GENERATION* (Barbara Findlen ed., 1995)).

58. Crawford, *supra* note 1, at 126.

59. Carol Hanisch, *The Personal Is Political*, in *NOTES FROM THE SECOND YEAR: WOMEN'S LIBERATION 76* (Shulamith Firestone & Anne Koedt eds., 1970).

60. Chamallas, *supra* note 47, at 4.

61. *Id.* at 5 (citing Patricia A. Cain, *Feminist Legal Scholarship*, 77 *IOWA L. REV.* 19, 20 (1991)).

62. NANCY LEVIT & ROBERT R. M. VERCHICK, *FEMINIST LEGAL THEORY: A PRIMER* 45 (2006) (citing Katharine T. Bartlett, *Feminist Legal Methods*, 103 *HARV. L. REV.* 829, 836-37 (1990)).

63. *Id.* at 49.

The extent to which feminist legal theory is grounded in the personal experience of women is thus a common bridge that can be drawn between the second- and third-wave in the development of feminist legal theory. The extensive use of the personal narrative by third-wave feminists does not indicate a new form of feminism, but instead suggests a continuation of second-wave feminism, which has always been rooted in the personal stories of women as a way to understand how women experience the law and are subordinated by it. By realizing this common ground as opposed to trying to distinguish the third-wave or create a new era of feminism, we increase opportunity for these personal narratives to have a greater impact as opposed to dismissing the third-wave for being too “personal” and not “theoretical” enough.

## 2. A Postmodern and Antiessentialist Orientation

Another key feature of third-wave feminism is its postmodern orientation, which emphasizes the “destabilizing fixed definitions of gender and rejection of unitary notions of ‘woman’ and ‘feminism.’”<sup>64</sup> By not assuming that women fall into only one category - women - third-wavers take an antiessentialist position, embracing the idea that members of a particular race, class, gender, and sexual orientation have different experiences. As such, the third-wave strives to accommodate a broader variety of identities, depicting their version of feminism as more inclusive and racially diverse than the second-wave.<sup>65</sup> This is evident in Leslie Heywood’s 2006 book, *The Women’s Movement Today: An Encyclopedia of Third-Wave Feminism*, in which Heywood describes third-wave feminism as respecting not only differences between women based on race, ethnicity, religion, and economic standing but also considers the possibility of different identities within a single person.<sup>66</sup> Third-wave discourse is thus grounded in discussions of race, class, and the experience of living with multiple identities, such as biracial, bisexual, and multicultural.<sup>67</sup>

64. Snyder, *supra* note 10, at 186 (quoting THIRD-WAVE FEMINISM: A CRITICAL EXPLORATION 257–58 (Stacey Gillis et al. eds., 2007)).

65. *Id.* at 186–87.

66. THE WOMEN’S MOVEMENT TODAY vol. 1, *supra* note 9.

67. Snyder, *supra* note 10, at 180 (citing Joan Morgan, WHEN CHICKENHEADS COME HOME TO ROOST: MY LIFE AS A HIP-HOP FEMINIST (2006); see e.g., Kristina Sheryl Wong, *A Big Bad Prank: Broadening the Definition of Asian American Feminist Activism*, in YELL-OH GIRLS! EMERGING VOICES EXPLORE CULTURE, IDENTITY AND GROWING UP ASIAN AMERICAN 278 (Vickie Nam ed., 2006) (author’s autobiographical discussions of race, class, and gender); WITHOUT A NET: THE FEMALE EXPERIENCE OF GROWING UP WORKING CLASS (Michelle Tea, ed., 2003) (compiling stories of working-class women); Bushra Rehman & Daisy Hernandez, *Introduction* from COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM (Bushra Rehman & Daisy Hernandez eds., 2006) (discussing “color feminism”); Lisa Jones, BULLETPROOF DIVA: TALES OF RACE, SEX, AND HAIR (2006) (discussing various identities); Cristina Tzintzun, *Colonize This!* in COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM 17 (Bushra Rehman & Daisy Hernandez eds., 2006) (discussing race in dating); Riki Wilchins, *Queerer Bodies: When I Was in Gender and You Were the Main Drag* in GENDERQUEER: VOICES FROM BEYOND THE SEXUAL BINARY 33 (Joan Nestle et al. eds., 2006) (discussing gender and identity); Rebecca Hurdis, *Heartbroken: Women of Color Feminism and the Third Wave*, in COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM 279 (Bushra Rehman & Daisy Hernandez eds., 2006) (discussing multiple identities); Lisa Weiner-Mahfuz, *Organizing 101: A Mixed-Race Feminist in Movements for Social Justice*, in COLONIZE THIS! YOUNG WOMEN OF COLOR ON TODAY’S FEMINISM 29 (Bushra Rehman & Daisy Hernandez eds., 2006) (discussing biracial identity).

While this postmodern slant has become a key feature of third-wave feminism, it is again in no way unique. Instead, this feature is historically grounded in the women's movement. A focus on destabilizing fixed notions of gender has been a part of feminist legal theory for decades. Deborah Rhode and Katharine Bartlett's casebook *Gender and the Law* begins its section on intersectionality by citing back to the work of Sojourner Truth, who fought to demonstrate that racial differences were acknowledged within the women's movement as far back as the 1850s.<sup>68</sup>

The concept of essentialism arises in a variety of contexts throughout the second-wave, including the complaint that the feminist legal critique is too narrow in its category of "women," overemphasizing the situation of white, middle class, heterosexual, and otherwise privileged women it is too narrow in its categorization of culture. Essentialism assumes the sex/gender system is inevitable and biologically determined, and it falsely attempts to distill our understanding of gender inequality into singular theoretical notions.<sup>69</sup> For example, critical race theory has been a crucial tool for pointing out the role of race in the context of feminist legal theory. As Angela Harris describes in her seminal work, *Race and Essentialism in Feminist Legal Theory*, "[s]ince the beginning of the feminist movement in the United States, black women have been arguing that their experience calls into question the notion of a unitary 'woman's experience.'"<sup>70</sup> Harris goes on to note that particularly in the context of feminist legal theory "it is mostly white, straight, and socio-economically privileged people who claim to speak for all of us."<sup>71</sup> Similarly, in *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, Kimberlé Crenshaw points out that "[b]ecause the intersectional experience is greater than the sum of racism and sexism, any analysis that does not take intersectionality into account cannot sufficiently address the particular manner in which Black women are subordinated."<sup>72</sup>

Similarly, feminist legal theory is full of second-wave feminists who criticize traditional feminist theory's exclusion of non-heterosexuals. Most prominently, in her article describing the marginalization of the lesbian experience by feminist legal theorists, Patricia Cain criticizes Catharine MacKinnon for equating the experience of heterosexual women to that of lesbians, thereby creating a false sense of universalization.<sup>73</sup>

Each of these antiessentialist scholars (Harris, Crenshaw, and Cain)

68. KATHARINE BARTLETT & DEBORAH RHODE, *GENDER AND LAW: THEORY, DOCTRINE, COMMENTARY*, 964-66 (2006) (citing *Sojourner Truth: Reminiscences by Frances D. Gage, Akron Convention (May 28-29, 1851)*).

69. *Id.*

70. Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581, 586 (1990).

71. *Id.* at 588.

72. Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 *U. CHI. LEGAL F.* 139, 140 (1989).

73. Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 *BERKELEY WOMEN'S L.J.* 191, 193-94 (1989-90).

graduated from law school in the 1970s and 1980s and would likely fall within the technical definition of second-wave feminists. And yet, their influence is clearly seen in third-wave literature which, as described above, prides itself on respecting a multiplicity of identities. Thus, to claim that a multi-dimensional, anti-essentialist approach to feminism is new or unique to the third-wave is misleading. Instead, this critique is yet another example of the ways in which third-wave feminism is grounded strongly in the roots of second- and even first-wave feminism, and feminist legal theory more generally.

### 3. Nonjudgment and Sex-Positive Feminism

Another defining characteristic of the third-wave is a philosophy of nonjudgment.<sup>74</sup> This approach has been most prominent in third-wave discourse about the sex wars, which caused a strong schism in second-wave feminism concerning whether pornography, sex work, adomasochism, and butch/femme roles are necessarily degrading to women or whether they can assume an empowering role for women. Third-wave feminism clearly identifies with the pro-sex side of that split, incorporating a diversity of views on sexuality and not judging any of them. As Rebecca Walker acknowledges, third-wave feminism asks the question “what do young women need to make sex a dynamic, affirming, safe, and pleasurable part of our lives?”<sup>75</sup>

The third-wave’s focus on sex-positive feminism is also rooted more generally in postmodern feminist legal theory, which encapsulates a range of generations and is not limited to younger feminists. Sex-positive feminism originally developed as a response to Catharine MacKinnon’s feminist campaign against pornography in the 1980s, with activists such as Ellen Willis and Carole Vance opposing the anti-pornography stance by referring to themselves as “pro-sex” or “sex-positive feminists.” Postmodern feminists believe that “sex can never be universally experienced” thereby implicitly rejecting “a conception of sex acts as inherently dominating or subordinating.”<sup>76</sup> Queer theory has been an extension of postmodernism, rejecting categorizations and instead focusing on the fluidity of gender, sex, and identity.<sup>77</sup> For example, Janet Halley suggests that we should “take a break from feminism,” as there are many constituencies who would “imagine and thus wield power differently; each would govern differently; each would precipitate different sexual possibilities and realities; each would distribute status and authority to different bodies, different acts, different relationships – and (let’s face it) take status and authority from different bodies, acts, relationships.”<sup>78</sup> This diverse view of sexual possibilities and realities aligns with the third-wave’s view that sexuality is unique to each individual and should not be judged.

In sum, as so many different strains of postmodern feminist legal theory

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74. Snyder, *supra* note 10, at 188.

75. Rebecca Walker, *Lusting for Freedom*, in LISTEN UP: VOICES FROM THE NEXT FEMINIST GENERATION 23 (Barbara Findlen ed., 1995).

76. FEMINIST JURISPRUDENCE CASES AND MATERIALS 187 (Cynthia Grant Bowman et al., eds., 4th ed. 2011).

77. *Id.* at 188.

78. JANET HALLEY, SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM 14 (2006).



claim ownership over the sex-positive position, this is yet one more area in which the second- and third-waves can find common ground, creating a united theoretical front in the realm of feminist jurisprudence.

### III. A NEW APPROACH TO FEMINIST ACTIVISM

If, in fact, there is so much overlap between the theoretical seeds of the second- and third-wave principles, how is there a continuing perception that these waves represent unique phases of the movement as opposed to a continuation of the same movement? I argue that while third-wave principles are based on concepts that arose from the second-wave, the younger generation of feminists approach activism in new ways that are indeed distinct. This new form of feminist activism masks common ground between the second- and third-wave, creating perceived differences where they do not necessarily exist. In this section, I use the example of Spark,<sup>79</sup> a nonprofit that engages young professionals in global women's issues, to demonstrate a unique form of feminist activism led by the next generation.

#### A. How the Third-Wave Organizes Social Activism

While the third-wave of feminists are building on the second-wave to inform how they think about feminism substantively, they are at the same time completely transforming the women's movement approach to social change. While organizing during the 1960s and 1970s happened through collective thinking and protesting, consciousness-raising today happens in different fora, including the blogosphere. This unique approach to social activism is a sharp shift from prior generations representing a distinguishing characteristic of third-wave feminism. While the relationship between consciousness and social change is fundamental to defining feminism's vision, goals and accomplishments,<sup>80</sup> consciousness-raising happens differently for the younger generation of feminists. For example, campus feminism is significantly different today from the 1960s and 1970s.<sup>81</sup> Due to the success of the feminist movement, female students now have a broad range of opportunities to participate in extracurricular activities such as athletics, student government, or the student publications, and still be a feminist. As a result, campus activism has become more marginalized. At the same time, strains on students' time forces organizers to consider how they can allow working students to contribute in an efficient way, while also creating opportunities to fulfill the organizations' obligations through activism, such as creating internships or encouraging student activism through academic paper writing about feminism.<sup>82</sup> As Sarah Boonin describes, redefining concepts of activism to meet the demands of current college campuses paid off for the Feminist Majority Foundation: "[b]y thinking in terms of the

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79. For more information about Spark, visit [www.sparksf.org](http://www.sparksf.org).

80. Hogeland, *supra* note 26, at 107–08.

81. See Sarah Boonin, *Please – Stop Thinking about Tomorrow: Building a Feminist Movement on College Campuses for Today*, in *CATCHING A WAVE: RECLAIMING FEMINISM FOR THE 21<sup>ST</sup> CENTURY* 147 (Rory Dicker & Alison Piepmeier, eds. 2003).

82. *Id.* at 152–53.

benefits of participating in campus feminism, we have fostered a respect for student work and time, and the students themselves have developed a sense of worthiness. Recruitment has shifted from begging students to participate to offering them an *opportunity* to participate."<sup>83</sup>

A marked shift in how organizing happens in the third-wave has also been characterized by the transition to online discussions as a means to raise consciousness. With the prevalent use of Facebook, Twitter, blogs, and other websites to voice opinions, raise consciousness, and organize collective action, the Internet has become an ideal medium for communications and grassroots activism, in some ways offering an even richer form of interconnectivity and activist engagement than was possible during second-wave feminism.<sup>84</sup> For example, the Internet offers a space for feminist discussion groups to take place, creating unique forms of national and international community-building. At the same time, this kind of activism results in a slower, less tangible, but nonetheless important form of social change. As Barbara Duncan describes:

Activism in third-wave [online] communities rarely results in definitive, immediate, or decisive victories; rather, it is molded by small, everyday, niche events or protests and is driven by temporary leaders who take up for a particular cause at a particular time. While this is also true for second-wave feminism, third-wave feminism provides, through the medium of technology, a potentially strong voice to every participant, and a mobilized and ever present sense of home and community. Online networking in the third-wave provides feminists with a home place, a protected space to return to and build a community after working toward activist goals.<sup>85</sup>

While organizers who recognize this new form of social change have reaped the benefits, many younger feminists are left feeling misunderstood by older feminists who do not acknowledge this important shift. For example, a woman described these tension within her feminist organization, saying:

I was talking with an older woman our organization serves the other day just about the trends in the nation, changes in foreign policy, and you know the whole John Ashcroft thing. She said, "When this happened to my generation, we were out in the streets, and I would just hope that your generation will also take up the charge if you need to."<sup>86</sup>

This young woman writes about how she feels invalidated by the older woman whom she respects, but who dismisses the activism of today's youth.

Such misunderstandings between older and younger feminists are further perpetuated by the fact that when organizing happens online, it is often invisible

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83. *Id.* at 153.

84. Barbara Duncan, *Searching for a Home Place: Online in the Third-wave*, in *DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN'S MOVEMENT* 161 (Jo Reger ed., 2005).

85. *Id.* at 161-62.

86. Susanne Beechey, *When Feminism is Your Job: Age and Power in Women's Policy Organizations*, in *DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN'S MOVEMENT* 131 (Jo Reger ed., 2005).

to those who do not subscribe to Facebook or Twitter, or spend time participating in online conversations about feminism. For example, at a recent planning meeting I organized between Stanford students and professors to help create an intergenerational panel discussion about the future of leadership in the women's movement, the young women were taken aback when one of the professors expressed concern that young women did not care as much about the women's movement. One of the young women, a founder of a prominent feminist blog, explained that young people approach activism in different ways, relying heavily on online organizing. This conversation resulted in tension within the represented generations, with the older generation concerned about the apparent apathy of the younger women, and the younger women feeling unappreciated.

In sum, it is logical that because of today's unique culture context and cultural emphasis, organizing happens in different ways amongst today's youth. And yet, because these new forms of activism sometimes happen in less visible ways, third-wave feminists often feel falsely accused by older generations of being apathetic to the continued gender inequality that we face in today's society. Because they look so different, newer forms of "doing feminism" also run the risk of being marginalized as entirely new waves when, in fact, they share more theoretical roots than the women's movement is able to see, preventing the cohesion necessary to create a united push toward gender equality.

#### B. Intersectionality: Placing "Women's Issues" in New Spaces

Third-wave feminism is also unique in the way that it conceptualizes "women's issues." While the first-wave is often characterized by women's suffrage, and second-wave feminism by the legal fight for reproductive rights, the third-wave has been criticized for not having a focused agenda. Jennifer Baumgardner and Amy Richards' *Manifesta* was an attempt to respond to criticism that third-wave feminism lacked direction, and sets forth a series of tenets for which the third-wave stands.<sup>87</sup> While the third-wave *Manifesta* has in turn been criticized for trying to be about everything, this statement of beliefs is a demonstration of how third-wave feminists conceptualize women's issues in a much more intersectional way than prior waves.

Whereas prior generations mobilized around "women's issues" such as reproductive choice, the complexity of the issues that we face in today's society has called for a more diverse approach to addressing gender inequalities. As a result, the current generation has approached the feminist movement in a way that does not focus on "women's issues" per se, but instead examines a multiplicity of issues such as environmentalism, human rights, and anti-corporate activism through a gender lens.<sup>88</sup> As Leslie Heywood and Jennifer Drake have argued, third-wave feminist thinking is informed by the fact that "the majority of young Americans have experienced relative gender equality in

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87. BAUMGARDNER & RICHARDS, *supra* note 8.

88. Leslie Heywood & Jennifer Drake, 'It's All About the Benjamins': Economic Determinants of Third-wave Feminism in the United States, in *THIRD-WAVE FEMINISM: A CRITICAL EXPLORATION* 117 (Stacey Gillis et al. eds., 2007).

the context of economic downward mobility.”<sup>89</sup> Because third-wave feminists have been profoundly shaped by globalization and the new economy, they have responded by locating feminism in a broad field of issues as opposed to thinking about women’s issues in isolation.<sup>90</sup> For example, third-wave feminists cannot imagine addressing reproductive rights issues without considering how HIV/AIDS disproportionately affects women of color, or how access to health care is a daily struggle for some women.<sup>91</sup>

This broad way of envisioning feminism affects the ways in which young feminists organize themselves. In describing her experience organizing for the Feminist Majority Foundation on her college campus in the 1990s, Sarah Boonin describes her unwillingness to abandon the complexity of modern-day feminist issues, embracing everything from pro-choice, pro-LGBT rights, pro-civil rights and affirmative action, pro-environment, pro-nonviolence, antidiscrimination, and pro-labor, all as part of a feminist agenda.<sup>92</sup> Boonin’s efforts were successful because students on campus have a “much fuller and more complex concept of feminism than ever before.”<sup>93</sup> This multi-issue approach also facilitated cooperation with other groups on a variety of issues under the umbrella of feminism, thereby enabling broader coalition building on campus.

Third-wave feminists also embrace the idea of individuals developing their own definition of feminism, creating a more inclusive version of feminism. In “The Bust Guide to the New Girl Order,” *Bust* editor Marcelle Karp proclaims: “We’ve entered an era of DIY feminism – sistah, do-it-yourself; Your feminism is what you want it to be and what you make of it. Define your agenda. Claim and reclaim your F-word.”<sup>94</sup> This message was echoed in a recent student activist campaign by the Women’s Community Center at Stanford University, in which students placed a large canvas on the campus quad with the statement “What does the F-word mean to you?”, and provided students with the opportunity to write their answers on the canvas, each claiming their own definition of feminism.

By becoming involved with many different movements where sexism and gender equality manifest in more subtle ways, third-wave feminists risk being considered unfocused by feminists who might have a more narrow view of women’s issues. Many younger feminists have expressed that they feel resentment, as their perspectives on and practices of feminism are discredited by second-wave feminists.<sup>95</sup> Accordingly, third-wave feminists must wage a constant battle to show that, although they are becoming more dispersed into multiple social struggles, they are not any less committed to women’s issues or

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89. *Id.*

90. *Id.* at 118.

91. Boonin, *supra* note 82, at 147.

92. *Id.*

93. *Id.*

94. Astrid Henry, *Solidary Sisterhood: Individualism Meets Collectivity in Feminism’s Third-wave*, in *DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN’S MOVEMENT* 83 (Jo Reger ed., 2005).

95. Nancy Naples, *Confronting the Future, Learning from the Past: Feminist Praxis in the Twenty-First Century*, in *DIFFERENT WAVELENGTHS: STUDIES OF THE CONTEMPORARY WOMEN’S MOVEMENT* 221 (Jo Reger ed., 2005).

any less feminist.<sup>96</sup> By contrast, third-wave membership may actually be much larger than originally imagined: as opposed to being nonexistent or less organized than feminism has been in the past, the third-wave may be just as organized, but in a different way.

While imagining feminism in this broader sense can be unsettling, as Sarah Boonin describes, it can also be empowering and even inspiring for younger feminists:

It also makes it possible for us to imagine and believe in an entirely new level of change. We are less reined in by our past experiences and more willing to take risks. As there is no blueprint for equality, success in the movement is a process of trial and error. We never know when, where, or from whom we might hear the very concept that will transform our work.<sup>97</sup>

Similarly, the third-wave's complexity and multiplicity approach can be a way to enrich the movement as a whole.<sup>98</sup> This broad, intersectional, and entrepreneurial approach to feminism is a signature characteristic of third-wave activism.

### C. The Spark Model: Addressing a New Brand of Feminism

Over the past six years, I have been involved in founding and building a nonprofit organization called Spark,<sup>99</sup> which focuses on cultivating a constituency of young leaders committed to fighting the patterns of gender inequality around the world. The Spark model is an example of how the next wave of feminist advocacy is implemented.

Through a membership model, Spark targets a diverse group of young professionals between the ages of 21 and 45 in community building, volunteering, advocacy, fundraising, and grant-making for grassroots women's organizations who are inspiring positive change in their communities locally and around the world. In eight years, with only one staff member and hundreds of volunteers, Spark has become a network of over 5,000 young professionals, both men and women, across the country and around the world. Spark has raised over \$1.5 million dollars, consisting of relatively small contributions - an average of \$50 to \$100 per individual. Through building Spark we have realized that, as one of the few women's organizations in the country targeting a young adult constituency, Spark fills a unique place within the women's movement. Spark is an example of how the next phase of the women's movement builds on the theoretical constructs initiated by the second-wave, while infusing a new brand of social activism unique to the next generation of feminists. As the Spark example shows, however, because feminists participating in the 'third-wave look so different, the movement as a whole is distracted from seeing the theoretical bridges between them that do in fact exist.

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96. Heywood & Drake, *supra* note 89, at 122.

97. Boonin, *supra* note 82, at 144.

98. Cathryn Bailey, *Making Waves and Drawing Lines: The Politics of Defining the Vicissitudes of Feminism*, 12 HYPATIA, 17, 26 (1997).

99. Spark, [www.sparksf.org](http://www.sparksf.org) (last visited Jan. 18, 2013).

### 1. Spark's Inclusive Nature

As described above, feminism has evolved to encompass the experiences of women *and* men as opposed to emphasizing women's oppression *by* men.<sup>100</sup> Spark has embodied this philosophy since its founding, resulting in a membership that is nearly 50 percent people of color and 50 percent men, thereby creating a rich group of voices contributing to the advancement of gender equality in a diversity of ways. As part of the Women's Funding Network, a collaborative of over one hundred women's foundations across the country, other women's foundations often ask us how we accomplished such diversity. For example, how can more women's organizations get men involved? Our answer is always the same: just ask them. At Spark events and committee meetings, we create spaces where men feel comfortable joining the conversation. For example, whereas the feminist movement has been criticized for its perceived emphasis on the existence of oppression by men in our society, we examine the roots of gender inequality from a systemic perspective. As opposed to blaming men and making them feel ostracized, Spark engages men in the discussion. Male Spark members feel proud to support women's issues and embrace gender equality as beneficial to society as a whole. While not theoretically novel, including men in the process is indeed a new form of activism for the women's movement.

Similarly, just as third-wave feminism validates individuality, building on the antiessentialist principles of the second-wave where everyone is permitted to "claim and reclaim" their F-word,<sup>101</sup> Spark is organized as a network of members, each of whose opinion is validated and each of whom has the opportunity to shape the direction of the organization. Spark is not a top-down organization with a strategic plan dictating its five- or ten-year goals. Instead, Spark's leadership derives from the bottom-up, whereby members participate in organizational direction setting. This network model enables a broader scope of social change, with ripple effects that are difficult to measure.<sup>102</sup>

While we did not set out to create a third-wave philanthropic network, because of the way that this generation of feminists organizes, that was our result. When we started Spark, we did not have any staff, and necessarily relied on our members to help plan events, research potential grantees, and reach out in the community to recruit new members. Organically, we realized that our Millennial peer group thrived on this kind of structure—Millennials like to make their own decisions and take ownership over their results. Simultaneously, we realized that Spark was riding the wave of a new kind of leadership as described in the book *The Starfish and the Spider*<sup>103</sup>: If you cut off a spider's leg, it is crippled; if you cut off its head, it dies. But if you cut off a starfish's leg it grows a new one, and the old leg can grow into an entirely new starfish. By operating as a starfish,

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100. Snyder, *supra* note 10, at 184.

101. Henry, *supra* note 95, at 83.

102. Monitor Institute, *Catalyzing Networks for Social Change* (2011), available at [http://www.monitorinstitute.com/downloads/Catalyzing\\_Networks\\_for\\_Social\\_Change.pdf](http://www.monitorinstitute.com/downloads/Catalyzing_Networks_for_Social_Change.pdf) (last visited January 18, 2013).

103. See generally ORI BRAFMAN & ROD BECKSTROM, *THE STARFISH AND THE SPIDER: THE UNSTOPPABLE POWER OF LEADERLESS ORGANIZATIONS* (2006).

Spark creates enormous leadership potential and lasting sustainability within the organization.

Thus, with only one staff member, Spark relies upon its volunteers to run organizing committees, develop advocacy initiatives in support of gender equality and plan events to raise collective awareness about these issues. The average Spark board member dedicates dozens of hours per month to the organization and Spark members dedicate up to hundreds of hours per year. Spark's network organizational structure is intentionally designed to allow a multiplicity of voices to be heard. While Spark is strategic about its direction as an organization, we intentionally do not have a five- or ten-year plan, allowing the network flexibility to shape the organization's direction. Spark grants are made by an Investment Committee on which any Spark member may sit, leaving key strategic decisions open to hundreds of people. All of Spark's committee meeting minutes are available to its membership through online wiki websites, allowing Spark members to participate in decision-making in dynamic ways. Further, through our "Spark Champions" program, where members commit to raising \$1,000 for the organization, dozens of champions develop creative initiatives to help raise awareness in their communities about women's issues. By creating a vehicle for our members to take ownership over their involvement in the organization, we have created an organization that is based on inclusivity as opposed to exclusivity, a hallmark of third-wave feminists' social activism.

Spark's investment committee is now made up of nearly 420 members who are active in global women's issues in a way that they may not have been otherwise. These young professionals are lawyers, bankers, teachers, and chefs by trade, but through the leadership training they have received from Spark, they have become advocates for women's issues in their communities, they have learned how to ask tough questions about gender equality, they have envisioned creative ways of leveraging extensive resources on behalf of the organizations that we support, and many have even quit their full-time corporate jobs to dedicate their careers to women's issues.<sup>104</sup> This demonstrates the value of Spark's approach, which creates space for the ripples that change people's behaviors and improve women's lives everywhere.<sup>105</sup>

In sum, Spark's new form of organizing in networks, as opposed to uniting around top-down leadership, is a way in which the third-wave of feminists has contributed to the practical applications of feminist theory.

## 2. Spark's Approach to Women's Issues as Intersectional

Similar to how the third-wave of feminism has embraced the intersectionality of women's issues with the whole gamut of societal problems we face today, Spark also focuses on the multidimensional aspects of gender equality issues, thereby building on the concepts of intersectionality initiated by second-wave theory, but in ways that are unique to the way the third-wave approaches activism. Each year, Spark's Grants Committee votes on themes that

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104. For example, when I started Spark I was a corporate lawyer. I am now focused on promoting gender equality in a more full-time capacity through my teaching and writing.

105. For more information about Spark's Investment Committee, visit [www.sparksf.org/strategy/](http://www.sparksf.org/strategy/).

will form the basis of our volunteer, advocacy, education, and grantmaking initiatives over the course of the next year. During the past few years, none of these themes have been traditional “women’s issues.” Instead, the selected issues are generally broader societal problems, such as education, water, civic leadership, and violence prevention, which Spark then uses as a platform to illustrate how women are disproportionately affected. By applying a gender lens to a broad range of issues, Spark trains its members to think about all issues as women’s issues, a defining characteristic of intersectionality and the third-wave.

In the same vein, Spark consciously educates its members that issues which women face globally are not just “over there,” but also right here in our own backyard, thereby instilling the concept of intersectionality not only locally but also globally. We do so by ensuring that for each organization we fund globally, we also support a local organization focused on similar issues. For example, a few years ago Spark awarded a grant to a running training camp for girls founded by Kenyan Lorna Kiplagat, an internationally-medaled marathon runner who developed a camp where girls are empowered through sports. To highlight the ways in which sports can be used to empower girls locally, Spark also supported an organization called Girls on the Run, which encourages self-esteem and healthy lifestyles in preteen girls through running. By focusing on global as well as local issues, Spark places the women’s movement in the context of modern-day globalization, as opposed limiting it to our own local spheres of influence.<sup>106</sup>

### 3. Spark’s Innovative Approach to Social Activism

What is perhaps most unique about Spark is the way it approaches social activism. Just as third-wave feminism embraces new forms of organizing and raising consciousness, the Spark model validates a multifaceted approach to activism as opposed to simply turning to street protest as a way to show discontent and attempt to affect change, an approach that is drawing on many of the signature elements of how younger generations enact social change. During the course of membership surveys it has become clear to us that young professionals participate in Spark because they want to “be involved in their community.” But when we dig deeper, it seems that what members mean by being “involved” can run the gamut from making an online donation to running one of our committees. Instead of dismissing those who view involvement as something as simple as making a contribution to a women’s organization as apathetic or lazy, Spark validates our members’ involvement at every level. This is distinct from traditional nonprofits, which tend to emphasize cultivating larger donors as opposed to acknowledging philanthropic contributions at lower levels. Spark recognizes that philanthropy and activism can mean different things to different people, and whether it is giving money, time, contacts, expertise, or anything else, Spark meets its members where they are.<sup>107</sup> As such, Spark seeks

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106. See Heywood & Drake, *supra* note 89, at 122.

107. In this way, the Spark model is representative of the new form of “engaged philanthropy,” which has become a signature form of giving for the millennial generation. For an excellent overview of engaged philanthropy in practice, see LAURA ARRILLAGA-ANDREESSEN, *GIVING 2.0* 8–12 (2012) (describing that it is not about *how much* you give, but about *how* you give.) Another example of this



to redefine what it means to be an activist within the women's movement, thereby creating a more inclusive and broader vision for affecting change, if only by the very fact that we are including more people in the process.

Spark's online presence has become a crucial way to redefine activism in line with third-wave feminism. Whether Spark is creating a blog to establish a forum to learn about and discuss ways in which women experience inequality around the world, using a wiki to distribute committee meeting notes, or using Facebook to try to find pro bono help for a grantee who needs legal assistance, technology is an important source of Spark's vision for social change. And while this type of activism happens in ways that are perhaps less visible than the protests of the 1960s and 1970s, it is nonetheless crucial to the consciousness-raising necessary to elevate the women's movement to the next level.<sup>108</sup>

#### IV. IMAGINING A MORE INCLUSIVE THIRD-WAVE INFLUENCE ON FEMINIST LEGAL THEORY: HOW MIGHT SOCIAL JUSTICE FEMINISM BRIDGE THE GAP?

Until feminist legal theory begins to acknowledge the commonalities between the second- and third-waves, such as antiessentialism, nonjudgment, and intersectionality, we run the risk of isolating feminist theory from the movement. In this section I analyze feminist methodology and consider social justice feminism as a way to bridge the gap by incorporating concepts of the third-wave while also building on traditional feminist legal theory to develop a more inclusive and intergenerational brand of feminism. I conclude by using the stories of Spark grantees to demonstrate how social justice feminism manifests in practice, incorporating third-wave principles while also creating a more inclusive feminist movement.

##### A. The Roots of Social Justice Feminism

The concept of social justice feminism began to gain traction following the New Women's Movement Initiative, a series of meetings and retreats that took place from December 2003 to March 2006 to "address long-standing divisions within the women's movement and to build the relationships, trust, and analysis necessary to revitalize U.S. feminism."<sup>109</sup> This series, funded by large national foundations such as the Ford Foundation, the Ms. Foundation for Women, and the Center for the Advancement of Women, were designed in large part to bridge precisely the rift that I have described between various generations of feminists. Despite the "complex histories and dynamics among participants," one of the primary outcomes of the New Women's Movement Initiative was a substantive consensus on vision and analysis through the lens of "social justice feminism."<sup>110</sup>

Social justice feminism initially emerged as a theory proposed by Joan

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model for giving is Silicon Valley Social Ventures("SV2"), founded by Arrillaga-Andreessen in 1998. SV2, [www.sv2.org](http://www.sv2.org) (last visited Jan. 18, 2013).

108. Duncan, *supra* note 85, at 161.

109. Report from Linda Burnham, *The New Women's Movement Initiative* (Aug. 16, 2007) (on file with the Duke Journal of Gender Law & Policy).

110. *Id.*

Callahan and Dorothy Roberts in connection with their analysis of the inequalities affecting women's reproductive choices as an "approach to questions of law and policy that address concerns about systemic inequities."<sup>111</sup> Roberts and Callahan distinguish social justice feminism from liberal feminism as a way to shift the focus beyond individual liberty to other important considerations, thereby combining concepts of both negative and positive rights.<sup>112</sup>

Throughout the course of the New Women's Movement Initiative, as organizer Linda Burnham describes, participants struggled to reach a consensus about whether the women's movement should aspire to be about rights or social justice.<sup>113</sup> Those who advocated for rights feminism were concerned that a social justice framework would "fail to center on the specific issues and barriers that face women" and that "presumed social justice allies were often unreliable or completely absent when called upon to support a feminist agenda."<sup>114</sup> Those advocating for social justice feminism were concerned that the rights framework had traditionally neglected issues of low-income women and women of color, that women's rights feminism isolates women's issues outside the larger social justice agenda, and that a women's rights focus limits our focus to legal rights, "failing to take into account the dynamics of power and privilege that continue to shape women's lives even once legal rights to equality have been won."<sup>115</sup>

The group found that social justice feminism is an opportunity to focus on those who are especially marginalized and vulnerable, promoting an approach to women's issues that integrates race, class, sexuality, nationality, citizenship, age, ability, and other markers of social inequity. The group also viewed social justice feminism as a way to recognize and challenge the operation of power and privilege, both in the broader society and within the women's movement itself. Additionally, the group viewed social justice feminism as a way to incorporate a broader audience, pursue an agenda that centers on the status and well being of women, actively challenge racism, heterosexist bias, and class privilege and being intentional about ensuring that those most affected by policies and practices are at the decision-making table. Through the social justice feminism lens they recognized that important, often groundbreaking developments in women's leadership and women's issues is being done by organizations that do not self-identify as feminist organizations, and sought to increase dialogue and alliance with such organizations. Finally, they noted that social justice feminism recognizes the struggle for gender justice and women's human rights as global, and sought dialogue and alliance with women's organizations worldwide.<sup>116</sup>

In the end, the New Women's Movement Initiative participants reached the consensus that more efforts must be made within the women's movement to infuse feminist principles and values into the larger social justice movement, an implied endorsement for and consensus around social justice feminism's role in

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111. Joan C. Callahan & Dorothy E. Roberts, *A Feminist Social Justice Approach to Reproduction-Assisting Technologies: A Case Study on the Limits of Liberal Theory*, 84 KY. L.J. 1197, 1200 (1995-96).

112. *Id.*

113. Burnham, *supra* note 109.

114. *Id.*

115. *Id.*

116. *Id.*

bringing the feminism movement together.

Since the New Women's Movement Initiative findings were released three years ago, the concept of social justice feminism has begun to gain traction within legal academia. Kristin Kalsem and Verna Williams wrote about the potential for social justice feminism as a way to identify "what, going forward, can be done differently so as not to repeat a history that has led so many women to feel that the feminist movement does not support what they really want."<sup>117</sup> For example, Kalsem and Williams describe traditional liberal feminism, in both practice and theory, as "focused primarily on a white, middleclass, heterosexual female subject, examining her status when compared with her male counterpart."<sup>118</sup> By contrast, social justice feminism "strives to uncover and dismantle those structures, such as white privilege, heterosexism, able-ism, and classism."<sup>119</sup>

The call for social justice feminism is also different from traditional feminist legal theory in its methodology in that social justice feminism is grounded in prioritizing practice as opposed to theory.<sup>120</sup> The bridge between theory and practice has always been a key component of feminist legal theory. As Catharine MacKinnon has said,

The movement for the liberation of women, including in law . . . is first practice, then theory. . . . For women in the world, the gap between theory and practice is the gap between practice and theory. We know things with our lives, and live that knowledge, beyond anything any theory has yet theorized.<sup>121</sup>

Thus, as Martha Fineman describes, "the task of feminists concerned with the law and legal institutions must be to create and explicate feminist methods and theories that explicitly challenge and compete with the existing totalizing nature of grand legal theory."<sup>122</sup> As such, feminist legal scholarship has developed as much as a methodological description as a theory. As Katharine Bartlett has written, "the adjective 'feminist,' when applied to legal scholarship is best understood as a methodological description."<sup>123</sup> Thus, "[r]ather than develop any substantive theory of sex inequality or how to remedy it, feminist legal methodology focuses on the tools of how to practice feminist legal thinking and the ways of documenting the experiences of gender."<sup>124</sup> The three feminist methods that Bartlett identifies are: (1) asking the woman question – what are the gender implications of rules and practices which might otherwise seem neutral; (2) feminist practical reasoning – bringing real-life feminist perspectives into the

117. Kristin Kalsem & Verna L. Williams, *Social Justice Feminism*, 18 UCLA WOMEN'S L.J. 131, 139 (2010).

118. *Id.* at 157.

119. *Id.*

120. *Id.* at 161.

121. Catharine A. MacKinnon, *From Practice to Theory, or What is a White Woman Anyway?* 4 YALE J. L. & FEMINISM 13, 14 (1991).

122. Martha Albertson Fineman, *Introduction* to AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY, xiii (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1991).

123. Katharine Bartlett, *Cracking Foundations As Feminist Method*, 8 AM. U. J. GENDER SOC. POL'Y & L. 31, 34 (2000).

124. Levit & Verchick, *supra* note 62, at 45.

analysis; and (3) consciousness-raising – an interactive and collaborative process for articulating experiences.<sup>125</sup>

Building on Bartlett's work, Kalsem and Williams identify the three different methods that social justice feminism might employ.<sup>126</sup> First, social justice feminism looks at history to understand subordinating structures. Second, social justice feminism focuses on examining the inter-relationships between interlocking oppressions, asking how issues of gender, race, class, and other categories of identity and experiences work together to create social justice. Finally, social justice feminism seeks to ensure that principles of dismantling these interlocking oppressions focus on bottom-up strategies in developing remedies. Given that social justice feminism avoids labels, this new area of feminist legal theory may very well present a way to bridge the generational divide which has plagued the feminism movement. Specifically, social justice feminism is a way to build on the theoretical ideas of the second-wave that have continued in the third-wave, while embracing new methodological ways of implementing feminism in practice.

#### B. How Does Social Justice Feminism Bridge the Gap Between Second and Third-wave Feminism?

Drawing on Katharine Bartlett's seminal piece on feminist methodologies, Kalsem and Williams' discussion of social justice feminist methodology provides a clear path for third-wave feminism's novel activism approach to influence feminist legal theory. Because proponents of social justice feminist methods build upon second-wave theory instead of discarding it, this path could also bridge the strong divisions in the women's movement created by the "waves" categorization over the past two decades, thereby creating a stronger, more inclusive women's movement. Indeed, the stories of Spark's grantees show how this kind of influence is already happening on the ground.

##### 1. Looking at History to Understand Subordinating Structures

As Kalsem and Williams describe, whereas feminist legal theory has always focused on "uncovering 'lost' histories" and working to understand how history is misconstrued by those in power, social justice feminism also focuses on "uncovering stories and experiences that have not been told or included in accounts of history" and their relation to the intersections and margins.<sup>127</sup> Relating the stories of how existing structures affect those at the intersections and margins in order to understand how subordinating structures are created and maintained is an area where third-wave feminism can influence discourse using social justice feminism. Indeed, because third-wave feminism is premised on the personal narrative of a broad range of experiences and strives to "demonstrate the gaps between dominant discourses and the reality of women's lives,"<sup>128</sup> these stories have the potential to shed new light on feminist discourse and introduce

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125. Katharine Barlett, *Feminist Legal Methods*, 103 HARV. L. REV. 829, 831 (1990).

126. Kalsem & Williams, *supra* note 117, at 175.

127. *Id.* at 176–77.

128. Snyder, *supra* note 12, at 184.

perspectives that may not otherwise be heard.

A good example of how social justice feminism introduces marginalized stories to influence the law is a Spark-supported project at the Center for Young Women's Development (CYWD) in San Francisco.<sup>129</sup> CYWD is one of the first non-profits in the United States that was run and led entirely by young women. The Center organizes young women in San Francisco who are the most marginalized, particularly those working in the street economies and involved in the juvenile justice system, to design and deliver peer-to-peer education and support.<sup>130</sup>

Over the past few years, Spark has supported CYWD's Sisters Rising project, which provides young women who have been through the juvenile justice system with a paid internship that incorporates healing, skills development, political education, community organizing, and reintegration into the community. Through this program, CYWD and Spark help young women who are struggling to stay out of the criminal justice system stabilize their lives by providing them with gainful and meaningful employment, which is the primary obstacle facing these young women. In turn, these women receive political awareness and civic engagement training that allows them to bring meaningful voices to their experiences and the issues they have faced in order to impact law and policymakers. Specifically, participants identify issues that they will research and discuss, allowing them to select those issues with the most significant effect on their lives. Sisters Rising participants have lectured at U.C. Berkeley, Stanford, and the University of San Francisco on issues pertinent to young women and social justice. But, perhaps most importantly, the Sisters Rising project places these young women in the offices of local and state policymakers so that their stories can directly impact the law. By encouraging these young women who are in the margins of society to tell their stories – as opposed to an educated third party acting on their behalf – the Sisters Rising program promotes social justice feminism

## 2. Examining the Interrelationships Between Interlocking Oppressions

While Bartlett identifies “asking the woman” question as an important feminist legal method, social justice feminism takes this one step further by looking not only at women, but also seeking to identify the implications of race, class, and other subordinating structures.<sup>131</sup> This focus on an intersectional approach is precisely the way in which third-wave feminism addresses the struggle for gender equality, as evidenced by Jennifer Baumgardner and Amy Richards' *Manifesta*, describing “women's issues” as everything from education to health care. Thus, because social justice feminism seeks to examine the implications of race, class, and a variety of other subordinating structures, third-wave feminism is well positioned to influence this discussion. Notably, this is precisely the third-wave's approach, and third-wavers apply a gender lens to a

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129. For more information about the Center for Young Women's Development, visit [www.cywd.org](http://www.cywd.org).

130. The Center for Young Women's Development, *available at* [www.cywd.org](http://www.cywd.org) (last visited January 18, 2013).

131. Kalsem & Williams, *supra* note 118117, at 187.

multiplicity of intersectional issues such as environmentalism, human rights, and anti-corporate activism in order to understand how women are subordinated in the process.<sup>132</sup>

Spark's grantees regularly employ an intersectional approach to social justice feminism in their work, as exemplified by the Young Women of Color HIV AIDS Coalition (YWCHAC).<sup>133</sup> YWCHAC was founded in 2005 by a group of young women of color who realized that traditional approaches to addressing rising HIV rates among women of color between the ages of 13-24 were not working. Individuals from each of the five New York boroughs came together to found a coalition for and by young women of color with the aim of fostering the organizational and advocacy skills necessary to decrease the rapidly rising HIV rates amongst their peers. YWCHAC's strategy epitomizes the intersectional nature of social justice feminism, as the organization does not simply focus on HIV issues as they relate to young women, but also emphasizing a plethora of other issues that influence the HIV epidemic including poverty, access to health care and education, and violence against women. By employing a social justice feminism strategy that emphasizes these underlying issues as well as the problem of rising HIV rates, YWCHAC is able to influence policymakers in a more meaningful way in order to generate laws that can truly have an impact on curbing the increasing HIV rates among young women in their community.

### 3. Developing Solutions Informed by a Bottom-Up Approach

Finally, social justice feminism builds on traditional feminism by continuing feminism's commitment to making a difference in people's lives, instead of just theorizing. Social justice feminism takes feminist methodology one step further by "consciously fashion[ing] strategies for social change;" in particular, using bottom-up strategies.<sup>134</sup> As Mari Matsuda described: "[W]e cannot, at this point in history, engage fruitfully in jurisprudence without engaging in coalition, without coming out of separate places to meet one another across all the positions of privilege and subordination that we hold in relation to one another."<sup>135</sup> Again, this is precisely third-wave feminism's approach, which is transforming the way that we think about social activism. As discussed previously, while organizing in the 1960s and 1970s happened through collective thinking and protesting, consciousness-raising today happens in different fora, including the Internet. This shift affords the third-wave a perfect opportunity to influence feminist legal theory's approach to facilitating change and creates even broader opportunities for using bottom up strategies in order to consciously fashion strategies for social change.

The partnership between Spark and one of its recent grantees, Akili Dada, is an example of how strategies for change can be developed using a social justice feminism bottom-up approach. Akili Dada is an organization that provides scholarships, mentors, and leadership training to bright young women scholars

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132. See generally Heywood & Drake, *supra* note 89.

133. For more information about YWCHAC, visit [www.ywchac.org](http://www.ywchac.org).

134. Kalsem & Williams, *supra* note 118117, at 183.

135. *Id.* at 184 (quoting Mari J. Matsuda, *Beside My Sister, Facing the Enemy: Legal Theory Out of Coalition*, 43 STAN. L. REV. 1183, 1188 (1991)).

from low-income families in Kenya. Akili Dada partners their scholars with mentors from a network of Kenyan women leaders in medicine, finance, media, and government to empower the next generation of Kenyan women leaders. After connecting girls with scholarships and a growing network of peers and mentors, Akili Dada's scholars join a leadership training program. The curriculum is designed to help the girls become agents of change in their home communities while achieving academic excellence, self-awareness, and a strong sense social responsibility.

Three years ago, Spark began supporting Akili Dada through a series of grants.<sup>136</sup> In fact, Spark was their first formal funder. Spark also began providing technical assistance and raising awareness about Akili Dada's work through Facebook and other social media channels. Within a month of our partnership, Akili Dada was awarded a grant from the Global Fund for Women and the coveted UN Marketplace of Ideas Award for innovation in education. The funding and awareness that we raised was essential to Akili Dada's future, but what they needed immediately was an accounting system, so Spark placed a call for help on Facebook. Shortly thereafter Spark received a call from a member named Shaw, a 33 year-old businessman in San Francisco. Shaw said, "I saw that there is a woman running a program who needs help. I run 3 businesses and I'm really good at Quickbooks. Could I be the one who helps her?" The organizations that we support – grassroots, start-up enterprises – are looking for financial resources but also connectivity that will help them scale up their goals. By using grassroots organizing by way of technology, Spark is able to provide unique solutions that would otherwise be unavailable to its grantees. Although not directly related to legal or policy change, the Akili Dada partnership with Spark demonstrates how innovative approaches to grassroots organizing via technology can create meaningful social change within a social justice feminist framework.

## CONCLUSION

In sum, while third-wave feminism has emerged as the next generation of feminist thought, its perceived failure to make headway in feminist legal theory is creating unnecessary divisions that prevent the feminist movement as a whole from achieving its full potential. As the stories of Spark's grantees illustrate, drawing on third-wave principles to engage in social justice feminism can not only be a powerful form of social change, but also an opportunity for the third-wave's approach to feminist activism to influence this emerging area of feminist legal theory. Because social justice feminism incorporates the past instead of discounting it or pitting itself against prior generations, this type of feminism has the potential to achieve a more powerful and inclusive movement for achieving gender equality than we have ever experienced.

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136. For more information about Akili Dada, visit [www.akilidada.org](http://www.akilidada.org).