

University of New South Wales Law Research Series

**Gender Disruption, Amelioration
and Transformation: A Comparative
Perspective**

Rosalind Dixon and Amelia Loughland

[2021] *UNSWLRS* 47

Forthcoming Deborah L. Brake, Martha Chamallas and Verna L.
Williams (eds) *Oxford Handbook of Feminism and Law in the U.S.*
(2022)

UNSW Law
UNSW Sydney NSW 2052 Australia

E: LAW-Research@unsw.edu.au

W: <http://www.law.unsw.edu.au/research/faculty-publications>

AustLII: <http://www.austlii.edu.au/au/journals/UNSWLRS/>

SSRN: <http://www.ssrn.com/link/UNSW-LEG.html>

Gender Disruption, Amelioration and Transformation: A Comparative Perspective

Rosalind Dixon & Amelia Loughland

American legal feminism is an increasingly rich body of thought: no other country today has the same depth and breadth of feminist writing and thinking as the U.S. And feminists elsewhere have been strongly influenced by leading U.S. feminist legal theories in developing their own distinctive approaches to a post-colonial or subaltern feminist project.¹ Such feminist projects have extended the range of transformational feminist goals, for example, to include different axes of oppression against women in post-colonial contexts.

This complexity, however, is both a strength and potential weakness to American feminist legal thought: the complexity allows us better to understand the full range of women's experiences, and the different ways in which law and social practice must change if we are to achieve gender justice for all. The various brands and strands of feminism that have emerged in the past half century, taken together, capture the diverse challenges and aspirations of generations of feminist activists and scholars.

Yet the dizzying array of competing feminist visions also runs the risk of creating a form of feminist "information overload," or of key audiences for legal feminist arguments – inside and outside the U.S. -- tuning out to the contributions of legal feminist thought. This risk may be especially great for newer more sex-positive, intersectional and post-modern/post-structural feminist theories. Here, especially, a sense of information overload may mean that the core message(s) of legal feminism – about the origins and potential

¹ See, e.g., ANUPAMA RAO, *GENDER & CASTE* (2003); FUMINOBU MURAKAMI, *POSTMODERN, FEMINIST AND POSTCOLONIAL CURRENTS IN CONTEMPORARY JAPANESE CULTURE: A READING OF MURAKAMI HARUKI, YOSHIMOTO BANANA, YOSHIMOTO TAKAAKI AND KARATANI KOJIN* (2005); *SOUTH ASIAN FEMINISMS* (Ania Loomba & Ritty. A. Lukose eds. 2012); RITU MENON & KAMLA BHASIN, *BORDERS & BOUNDARIES: WOMEN IN INDIA'S PARTITION* (1998).

approaches to overcoming gender injustice – are overlooked, or at the very least, only partially and incompletely understood.

As one of us has noted previously,² some feminists have attempted to address the problem of tuning out – and the kind of pluralism or information overload that seems to lie behind it – by attempting to bracket disagreement among feminists in particular contexts, and to adopt a form of “strategic essentialism” that emphasizes feminists’ shared concern for “f”, whether women, females or feminine roles, styles, and ways of thinking.³ The difficulty with this kind of approach, however, is that it tends to ignore the contribution of intersectional and post-structural/post-modern feminisms to feminist theorizing, and in particular, to ignore the arguments they make about the enduring effects of essentialist practices. One of our tasks as feminist legal scholars, therefore, is to find ways to reduce this danger of tuning out to the multiple strands and richness of the feminist theoretical corpus without distorting or erasing the differences among feminists and feminist approaches.

In prior work, one of us (Dixon) offered one such a roadmap, drawing on her own reading of feminist legal theory and insights from a process of “reflective” constitutional comparison.⁴ In this context, reflective comparison refers to the process of studying the constitutional system of different jurisdictions in order to critically compare them to one’s own constitutional model, both to better understand them and in a more critical light.

² Rosalind Dixon, *Feminist Disagreement (Comparatively) Recast*, 31 HARV. J. L. & GENDER 277, 286 (2008).

³ See JANET HALLEY, *SPLIT DECISIONS: HOW AND WHY TO TAKE A BREAK FROM FEMINISM* 16–26 (2006).

⁴ On reflective comparison, see, e.g., Frank Michelman, *Reflection: Symposium: Comparative Avenues in Constitutional Law - Borrowing*, 82 TEX. L. REV. 1737 (2004); Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 HARV. L. REV. 109 (2005); Sujit Choudhry, *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, 74 IND. L. J. 819, 838-839 (1999); Rosalind Dixon, *A Democratic Theory of Constitutional Comparison*, 56 AM. J. COMP. L. 947 (2008); Judge Guido Calabresi et al., *In Tribute: Frank I. Michelman*, 125 HARV. L. REV. 879 (2012).

The value to comparison of this kind is that it allows us to gain new insights about our own existing legal practices, ideas and understandings. It can give us newly critical ways of seeing those practices, or help reaffirm their normative importance, or importance to national constitutional identity. It can also offer new ways of understanding or describing those practices. Indeed, this is one of the great virtues to studying and researching law through a comparative lens. Certainly, Dixon’s experiences of studying and teaching in both Australia and the U.S. for an extended period has provided invaluable insights into both Australian and U.S. constitutional practices;⁵ and engaging with global practices from a U.S.-Australian vantage point has offered distinctive insights about the scope and stability of different models of constitutional rights protection and constitutional “abuse proofing,” i.e., the protection of liberal democratic norms from misuse for anti-democratic ends.⁶ This is also how Dixon arrived at a roadmap for understanding feminist disagreement, this time by engaging with U.S. and South African constitutional equality jurisprudence. This comparative process made it easier to see the three broad frames in which claims of gender justice could be understood in both nations, forming the backbone for the roadmap.⁷

That roadmap consisted of, first, a division of feminism into two broad waves or generations: “older” dominance, cultural and liberal feminist understandings dating from at least the 1970’s; and a “newer” set of feminist ideas developed from the 1990’s onwards, consisting of partial agency (or sex-positive) feminism, intersectional (or anti-essentialist) feminism and postmodern/post-structural feminism.⁸ Second, Dixon offered a three-part

⁵ See, e.g., Rosalind Dixon, *Amending Constitutional Identity*, 33 CARDOZO L. REV. 1847 (2012).

⁶ See, e.g., Rosalind Dixon, *An Australian (Partial) Bill of Rights*, 14 INT’L J. CONST. L. 80 (2016); Rosalind Dixon and Anika Gauja, *Australia’s Non-populist Democracy? The Role of Structure and Policy*, in CONSTITUTIONAL DEMOCRACY IN CRISIS (Mark Graber, Sanford Levinson & Mark Tushnet eds. 2018). On the concept of constitutional abuse proofing, see ROSALIND DIXON AND DAVID LANDAU, *ABUSIVE CONSTITUTIONAL BORROWING* 193 (2021).

⁷ Dixon, *supra* note 2.

⁸ Compare *id.* with Martha Chamallas, *Past and Prologue: Old and New Feminisms*, 17 MICH. J. GENDER & L. 157, 158 (2010).

model for understanding overlap and continuity -- but also divergence -- in the theoretical underpinnings and aspirations of these different feminisms. The key insight was that the different legal feminisms placed greater or lesser weight on feminist goals of amelioration, transformation and disruption of current gender norms, systems and hierarchies. Mapping each brand of feminism along these three goals reduces complexity by providing a common vocabulary to discuss the various feminisms but still permits theorists and activists to see and debate points of disagreements.

Dixon's roadmap has stimulated theorizing about the contours of legal feminisms. Some scholars have adapted and applied key aspects of the roadmap, finding it useful to understanding and explaining their own takes on the internal complexity within feminist legal thought.⁹ Others have suggested alternative ways of achieving the same ends, including the idea of a "feminist legal realist" turn, or "universal contextualism,"¹⁰ without, however, seeking to fundamentally challenge, or supplant Dixon's theory as a roadmap for understanding the richness and internal complexity to modern U.S. legal feminist debates.¹¹ This suggests that the roadmap may be most useful in helping scholars outside the U.S. discuss and organize around particular feminist initiatives.

In this chapter, we reprise both aspects of this roadmap as a guide to understanding contemporary American feminist legal theory and broader feminist debates both within the U.S. and elsewhere. Specifically, we show how this roadmap can clarify the stakes – or areas

⁹ See, e.g., Chamallas, *supra* note 8, at 158. See also Aya Gruber, *Rap, Feminism and the War on Crime* 84 WASH. L. REV. 581, 603-606 (2009); Douaa Hussein, *Legal Reform as a Way to Women's Rights: the Case of Personal Status Law in Yemen*, 3 OIDA 21, 27-29 (2012); Nahid Sorooshyari, *The Tensions Between Feminism and Libertarianism: A Focus on Prostitution*, 3 WASH. U. JUR. REV. 167, 168 (2011).

¹⁰ See, e.g., Mae C. Quinn, *Feminist Legal Realism*, 35 HARV. J. L. & GENDER 1 (2012); Helen Irving, *Where Have all the Women Gone? Gender and the Literature on Constitutional Design*, 4 CONTEMP. READINGS IN LAW & SOC. JUST. 89, 109 (2012) (on universal contextualism).

¹¹ Quinn, *supra* note 10, at 54 (noting Dixon's roadmap as an "alternative" approach to understanding feminist legal pluralism and feminist ideals of transformation); Irving, *supra* note 10, at 109 (suggesting that the roadmap or scheme Dixon provides is "valuable in conceptual design-work," but still potentially too complex in ways that call for further simplification in certain contexts).

of disagreement – in a vast and increasing literature on the gendered impact of the COVID-19 pandemic, and possible legal and policy responses to it, inside and outside the U.S.

The remainder of the chapter is divided into four parts following this introduction. Part I summarizes the rich array of existing feminist theories in U.S. legal thought, providing a condensed version of the contributions on feminist legal theory made in this volume. Part II explains the broad approaches to feminist legal theory and approaches for finding common ground among older and newer brands of legal feminism. Part III outlines Dixon’s three categories of disruptive, ameliorative and transformative feminism(s), as categories derived inductively from comparative constitutional inquiry, that help map areas of similarity and difference among different feminisms. Part IV sketches how this applies in practice, by reference to debates over the global response to COVID-19.

I. Feminist Theoretical Disagreement: Old(er) and New(er) Feminist Legal Voices

As the contributions in this volume suggest, today, feminist legal theory in the U.S. can be divided into six broad schools of thought, or theories: liberal, cultural, dominance, sex-positive, intersectional, and post-structural/post-modern feminism. Of these theories, the first three represent an older generation of feminist legal scholarship, which first developed in the late 1970s to early 1980s,¹² while the latter three represent a newer generation of scholarship that developed between the mid-to late 1980s and the early 1990s.¹³ Often individual

¹² For early liberal, cultural, and dominance feminist work, see, for example, Ruth Bader Ginsburg, *Sex Equality and the Constitution*, 52 TUL. L. REV. 451 (1978) (liberal feminism); CAROL GILLIGAN, *IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN’S DEVELOPMENT* (1982) (cultural feminism); Catharine MacKinnon, *Feminism, Marxism, Method and the State: An Agenda for Theory*, 7 SIGNS: J. WOMEN CULTURE & SOC. 515 (1982) (dominance feminism).

¹³ For early statements of sex-positive, intersectional, and post-structural/post-modern feminist work, see, for example, Sylvia A. Law, *Rethinking Sex and the Constitution*, 132 U. PA. L. REV. 955, 1019 (1984) [hereinafter Law, *Rethinking Sex and the Constitution*] (sex-positive feminism); Martha Minow, *The Supreme Court Term 1986, Foreword: Justice Engendered*, 101 HARV. L. REV. 10 (1987) [hereinafter Minow, *Foreword*] (intersectional feminism); JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990) (post-structural/post-modern feminism).

feminists have come to embrace elements of more than one school of thought.¹⁴ As theories, however, the six schools remain distinct, and offer quite different insights about the nature and sources of gender injustice.

In liberal feminist theory,¹⁵ the primary source of gender injustice in American social life lies in the way in which those in positions of power tend to link a person's biological sex with particular gender roles, without attention to individual capacities to perform such roles, or individual preferences in respect of these roles.¹⁶ Liberal feminists recognize that they must challenge stereotypical associations of this kind by directly addressing the linkage of biology with particular social domains or spheres. A central aim of liberal feminist scholarship has thus been to challenge society's "separate spheres" ideology,¹⁷ or the way in which jurisdictional boundaries have traditionally been drawn to demarcate certain harms as of private, local, or domestic concern, rather than public, national, or international concern.¹⁸

In a cultural (or relational) feminist account,¹⁹ the key source of gender injustice is understood to be the way in which "feminine" roles and modes of thinking are devalued, compared to roles and ways of thinking that are identified as masculine.²⁰ Cultural feminists suggest that this devaluation has two key costs. First and most immediately, they argue that it

¹⁴ See, e.g., ROBIN WEST, *CARING FOR JUSTICE* (1997) (combining cultural and dominance feminist arguments); Christine Littleton, *Reconstructing Sexual Equality*, 75 CALIF. L. REV. 1279, 1296 (1987) (combining cultural and dominance feminist arguments).

¹⁵ See Linda C. McClain & Brittany K. Hacker, *Liberal Feminist Jurisprudence: Foundational, Enduring, Adaptive*, this volume.

¹⁶ See generally Ruth Bader Ginsburg, *Some Thoughts on the 1980's Debate Over Special Versus Equal Treatment for Women*, 4 J. LAW & INEQ. 143 (1986); Ruth Bader Ginsburg & Barbara Flagg, *Some Reflections on the Feminist Legal Thought of the 1970's*, 1989 U. CHI. LEGAL F. 9; Wendy W. Williams, *The Equality Crisis: Some Reflections on Culture, Courts, and Feminism*, 7 WOMEN'S RTS. L. REP. 175 (1982).

¹⁷ Ruth Bader Ginsburg & Barbara Flagg, *supra* note 16, at 15, 17.

¹⁸ For a summary of the liberal feminist challenge to the public/private divide, see Frances Olsen, *Constitutional Law: Feminist Critiques of the Public/Private Distinction*, 10 CONST. COMMENT. 319, 319–27 (1993).

¹⁹ See Jennifer Nedelsky, *chapter name*, this volume.

²⁰ For leading cultural feminist works, see, for example, GILLIGAN, *supra* note 12; WEST, *supra* note 14.

has serious distributional consequences for women when it comes to the value placed on their labor.²¹ Second, they argue that it can result in a broader loss to society because of its tendency to lead to an under-emphasis on feminine values, especially in contexts where such values—or ways of thinking and interacting—could be extremely valuable.²²

Dominance feminists directly contest both of these understandings.²³ They argue that liberal feminist attempts to empower individual women, and cultural feminist attempts to revalue the feminine, are both misguided. In the dominance feminist account, female identity and the feminine as we know it are the products of a system of sexual subordination in which men have defined themselves as subjects, and women as objects, via pornography and other systematic practices of male-to-female rape, prostitution, battering, and harassment.²⁴ For dominance feminists such as Catharine MacKinnon and Andrea Dworkin, pornography (as well as rape, prostitution and sexual harassment), is the essence of this sexist social order because it socializes males to regard masculinity, sex, and sexual desire in terms of the objectification and sexual subordination of their opposite type, namely females, or to equate masculinity with being on top of a female, bound and gagged.²⁵

From the 1980s onwards, newer feminisms moved away from the traditional focus of female empowerment and towards challenging the social norms and expectations around gender itself. For example, sex-positive feminism challenges the premises of dominance feminism.²⁶ Sex-positive feminists argue that while sex might in some cases be a source of danger for women, it is also a potentially important site of pleasure, fulfillment, and even

²¹ See, e.g., WEST, *supra* note 14, at 100–38.

²² See, e.g., GILLIGAN, *supra* note 12, at 174; WEST, *supra* note 14, at 88.

²³ For the leading statement of dominance feminism, see CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* (1989); see also Kathryn Abrams, *chapter name*, this volume.

²⁴ MACKINNON, *supra* note 23, at 161.

²⁵ *Id.* at 204 (describing pornography as the “essence of a sexist social order, [and] its quintessential social act”); ANDREA DWORKIN, *PORNOGRAPHY: MEN POSSESSING WOMEN* (1981).

²⁶ See Susan Appleton, *Sex-Positive Feminism’s Values in Search of the Law of Pleasure*, this volume. Kathryn Abrams, *Sex Wars Redux: Agency and Coercion in Feminist Legal Theory*, 95 *COLUM. L. REV.* 304 (1995).

power.²⁷ In this sense, they share the approach of other “partial agency” feminist theorists who emphasize the possibilities for, rather than simply constraints on, female agency.²⁸ A key source of injustice, for sex-positive feminists, is the way in which women’s sexual agency is limited by prevailing ideologies, particularly “repronormative” ideologies, i.e., those that valorize reproduction over other socially productive activities and casts non-reproductive sex for women as dangerous and illegitimate.²⁹

In intersectional feminist theory, it is impossible to make even these more limited generalizations about the nature or sources of gender injustice.³⁰ In an intersectional feminist account, both sex and gender hierarchies circulate and intersect with other hierarchies in ways that make gender injustice deeply contextual in nature. Both the sources and nature of gender injustice must therefore always be considered with close attention to the way in which sex and gender intersect with race and class and other axes such as religion, age, disability, sexual orientation, and immigrant status.³¹ Intersectional feminists also argue that feminists should be extremely cautious about attempting to identify sources of commonality across women’s diverse experiences, understanding the act of foregrounding sex or gender as axes

²⁷ See, e.g., Law, *Rethinking Sex and the Constitution*, *supra* note 13 (confronting biological differences between the sexes and identifying women’s reproductive abilities as a source of power); Vicki Schultz, *The Sanitized Workplace*, 112 YALE L.J. 2061, 2087 (2003) (disputing an essentialist view of sex and sexuality as being always harmful to women in the workplace).

²⁸ See Abrams, *supra* note 26, at 348–76 (discussing such approaches, and coining the term “partial agency” feminism); see also Tracy E. Higgins, *Democracy and Feminism*, 110 HARV. L. REV. 1657 (1997) (urging democratic theorists to incorporate the insights of feminist theorists about the real but bounded nature of individual agency).

²⁹ See Katherine M. Franke, *Theorizing Yes: An Essay on Feminism, Law, and Desire*, 101 COLUM. L. REV. 181, 205 (2001).

³⁰ See Emily Hough, *chapter name*, this volume. See also Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 598 (1990) (accusing MacKinnon’s dominance feminist understanding of rape, which focuses on a generalized male/female hierarchy, as “shelv[ing] racism”).

³¹ See Minow, *Foreword*, *supra* note 13; Martha L. Minow & Elizabeth V. Spelman, *In Context*, 63 S. CAL. L. REV. 1597, 1632–33 (1990); Martha Minow, *Not Only for Myself: Identity, Politics, and Law*, 75 OR. L. REV. 647, 656 (1996).

of subordination as an exercise of power that depends upon and reflects the race and class privilege of the speaker.³²

Post-structural and post-modern feminists take yet another approach to the nature of gender injustice in America.³³ Rather than focusing on sex and gender stereotypes or hierarchies, post-structural/post-modern feminists focus on sex-based categories as a key source of gender injustice. They argue that our understandings of sex-based differences are highly contingent and that sex as we know it is entirely “performatively produced” rather than real.³⁴ Post-structural feminists argue that heterosexuality produces sex-based binaries because it conditions individuals to perform their sex/gender identity in a strictly binary and univocal way.³⁵

II. Finding Commonality and Convergence

In this part, we introduce three broad ideas or concepts -- the idea of a disruptive, ameliorative and transformative approach to gender justice -- to highlight potential areas of overlap and convergence between older and newer feminisms. We borrow the definitions of these three concepts from the Oxford English Dictionary to show the different emphasis of each broad goal, realizing that in practice the goals may intersect and strategies based on one goal may resemble those pursued from a different objective.

For this roadmap, *Disruption* refers to “the action of rending or bursting asunder; violent dissolution of continuity; forcible severance.” *Amelioration* refers to “the action of making better; or the condition of being made better; improvement.” *Transformation* refers to “a complete change in character, condition, etc.”

³² ELIZABETH V. SPELMAN, *INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT* 133–59 (1988).

³³ See Camille Gear Rich, *Feminism is Dead, Long Live Feminisms: A Postmodern Take On The Road to Gender Equality* this volume; see also Butler, *supra* note 13; Mary Joe Frug, *A Postmodern Feminist Legal Manifesto (An Unfinished Draft)*, 105 HARV. L. REV. 1045 (1992).

³⁴ Butler, *supra* note 13, at 33.

³⁵ *Id.* at 30.

A. Feminist Disruption: Connecting Liberal and Newer Feminisms

As mentioned earlier, liberal feminism, on its face, has little in common with newer feminisms. In a liberal feminist account, the primary source of gender injustice in the current social order lies in individual stereotyping, or the way in which those in positions of power tend to assign gendered roles to individuals based on biological sex without attending to individuals' actual capacities or preferences in respect to these roles. In newer feminist accounts, broader social structures of subordination and ideological constraints are the key source of gender injustice.

By focusing on the concept of disruption, however, it becomes possible to identify connections between liberal feminism and these newer feminisms. In a liberal feminist account, the feminist project is aimed at disrupting—or bursting asunder—the historical linkage between sex and gender, or between biological sex and particular roles or ways of thinking associated with particular genders. In newer feminist accounts, the focus of concern is on a much broader range of linkages and identity categories. For example, intersectional feminists are concerned with disrupting both stereotypical and hierarchical linkages between sex, gender, race, and class, while sex-positive feminists seek to disrupt the linkage between biological sex, gender, and sexuality, or between femaleness, women's role as mother, and women's limited sexual and political agency. For their part, post-structural/post-modern feminists work to disrupt sex and gender categories themselves, through acts such as literary parody and cross-dressing. In each case, however, the same concern with disrupting—or bursting asunder—various identity linkages and categories can be found.

As a conception of gender justice, the idea of disruption thus provides a way of re-explaining newer feminisms to broader legal actors, as simply involving a broadening and deepening of the liberal feminist commitment to unsettling current expectations and understandings about gender. Sex-positive feminism broadens the focus of

liberal feminism to include a focus on the link between sex, gender, *and* sexuality, while intersectional feminism expands the feminist focus further still, to interrogate the link between sex, gender, and other identity axes. Finally, post-structural/post-modern feminism deepens the commitment of liberal feminists to disruption, by turning it against the very identity categories with which liberal feminists start their analysis. In this sense, feminist disruption tends to involve longer term or structural commitments to gender justice, as opposed to ameliorative approaches which focus on shorter term manifestations of that injustice.

B. Feminist Amelioration and Transformation: Connecting Cultural, Dominance and Intersectional Feminism

As many feminist theorists have observed, there are potentially vast differences between cultural and dominance feminists, on the one hand, and intersectional feminists on the other. Feminists in these different schools strongly disagree about the nature and source of gender injustice and are also directly critical of the approach taken by each other's schools of thought. Dominance feminists, for example, have been sharply critical of attempts to celebrate or revalue 'the feminine' in the face of a system of sexual subordination which itself defines and sharply limits the feminine as we know it,³⁶ while intersectional feminists have criticized both cultural and dominance feminists for their failure to take proper account of race and other identity factors.³⁷

Even in the face of these differences, however, the concepts of amelioration and transformation help point to some continuity between these different feminisms in their underlying conception of the feminist project. Admittedly, when it comes to concerns

³⁶ See, e.g., CATHARINE MACKINNON, FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW 53 (1988).

³⁷ See, e.g., Harris, *supra* note 30, at 592–96.

about amelioration, the three different feminisms tend to adopt somewhat different approaches to defining the benchmark for amelioration or the particular gap to be narrowed. In a cultural feminist account, the focus will be on the gap between men and women when it comes to the rewards they enjoy for their different forms of labor, or alternatively, on the gap between the symbolic and practical value placed on masculine versus feminine gender roles. In a dominance feminist account, the focus will be on the gap between men and women in terms of the sexual and political agency they enjoy. In an intersectional feminist account, the focus will be on narrowing the gap between a wider range of more and less privileged groups such as white, privileged women and poor women and women of color. All three feminisms, however, treat the gap between the benefits enjoyed by the subordinating and the subordinated groups as the benchmark for change, or at least as a useful first step in a longer-term feminist project. It thus becomes possible to re-explain intersectional feminism to broader group of legal actors as simply a building out or adapting of these older feminists' concerns about hierarchy-based inequality to a wider range of hierarchies.

Similarly, when it comes to commitments to transformation, each feminism tends to adopt a somewhat different vision of the long-term goal to be realized. For cultural feminists, the project of feminist transformation will focus on the equal valuation of the feminine and masculine or the integration of feminine approaches into areas traditionally dominated by the masculine. For dominance feminists, transformation will involve creating a world in which men and women enjoy equal power, sexual agency, and bodily integrity and security.³⁸ For intersectional feminists, it will involve creating a world in which all forms of structural subordination and supremacist ideology are eliminated.³⁹ All three feminisms, however,

³⁸ See MACKINNON, *supra* note 23, at 247–49.

³⁹ Kimberlé Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1383 (1988).

adopt an approach that attempts to define what a world with gender justice would look like, and what (potentially radical) steps would be necessary to create and sustain such a world.

The concept of transformation thus helps re-explain the more radical dimensions of intersectional feminism to broader legal actors as a profound, but also logical, broadening of both the anti-subordination commitments of dominance feminism and the commitment to the ultimate “integration” or reevaluation of both masculine and feminine in cultural feminism. It thus also broadens its accessibility to a range of legal actors both in the U.S. and elsewhere. By enabling feminists of different “camps” to find convergences between their various projects, the roadmap thus provides opportunities for feminists to better address systemic and cross-jurisdictional problems, such as climate change or global pandemics.

III. The Framework in Practice: Covid-19

To illustrate how these different ideas work in practice, it is useful to consider scholarship and debates both in the U.S. and elsewhere about the gendered impact of the COVID-19 pandemic, and various government responses to it. Divergent feminist responses to the impacts of COVID-19 and its policy responses have nonetheless served to highlight an underlying commonality in goals for gender-based justice around the world.

No one has doubted the profound effects Covid-19 has had – and continues to have – on social, economic and political life worldwide. Many of these impacts are also profoundly gendered, and in ways that have disproportionately affected women and communities of color.⁴⁰ But there is also disagreement among scholars and commentators about these

⁴⁰ See, e.g., Catherine Powell, *The Color and Gender of COVID: Essential Workers, Not Disposable People*, THINK GLOBAL HEALTH (Jun. 4, 2020), https://www.thinkglobalhealth.org/article/color-and-gender-covid-essential-workers-not-disposable-people?utm_medium=social_owned&utm_source=tw_wfp; Naomi Cahn, *COVID-19's Impact on Women of Color*, FORBES (May 10, 2020, 6:01 PM), https://www.forbes.com/sites/naomicahn/2020/05/10/mothers-day-and-covid-19s-impact-on-women-of-color/?utm_source=Fordham+Master+List&utm_campaign=c748434591-EMAIL_CAMPAIGN_2020_05_15_06_23&utm_medium=email&utm_term=0_808eb3c98f-c748434591-172900181#6fbff50f41ac; Kimberly Crenshaw, *Under the Blacklight*, AAPF (2020), <https://www.aapf.org/aapfcovid>.

effects: have they been unremittingly negative, or effectively created a form of “patriarchal pandemic?”⁴¹ Or have they instead begun to shift how we see work and care, and their relationship, in ways that may have lasting benefits for feminist aims?⁴²

At the center of these debates lie potential disagreements among liberal, cultural and intersectional feminists.⁴³ However, the concepts of amelioration, disruption and transformation still provide a useful theoretical roadmap to understand both areas of convergence and divergence among scholars, and how different feminists have or are likely to respond to proposals for reform in this context.

A. Intensifying the Need for Amelioration

The overwhelming conclusion from social scientists and feminists alike is that COVID-19 has been bad for women and has increased the gender gap in a range of key social and economic areas. Whether we focus on health, employment, accumulation of wealth, etc, one set of feminist responses to the pandemic focuses on these adverse impacts on women – as implicitly a threat to the goal of gender-based amelioration.

In most countries, women have died at slightly lower rates than men of COVID-19 but have been more likely to suffer mental health effects as a result of the virus.⁴⁴ Women

⁴¹ See, e.g., Soraya Chemaly, *Coronavirus Could Hurt Women the Most. Here’s How to Prevent a Patriarchal Pandemic*, NBC NEWS (Apr. 20, 2020, 7:13 PM), <https://www.nbcnews.com/think/opinion/coronavirus-could-hurt-women-most-here-s-how-prevent-patriarchal-ncna1186581>.

⁴² See, e.g., Maddy Savage, *How COVID-19 is Changing Women’s Lives*, BBC (June 30, 2020), <https://www.bbc.com/worklife/article/20200630-how-covid-19-is-changing-womens-lives#:~:text=The%20absence%20of%20commuting%20time,Covid%2D19%2C%20says%20Milkie>.

⁴³ So far, sex-positive/agency feminists and post-modern/post-structural feminists have had less to say on these questions.

⁴⁴ See, e.g., Hannah Briggs & Thoai Ngo, *The Health, Economic, and Social Effect of COVID-19 and Its Response on Gender and Sex: A Literature Review*, POPULATION COUNCIL (Jun. 3, 2020), https://knowledgecommons.popcouncil.org/departments_sbsr-pgy/1006/; Fleury Heyworth & Tiphaine Di Ruscio, *COVID-19: What Does This Mean for Gender*, GENDER CHAMPIONS (Mar. 23, 2020), <https://genderchampions.com/news/covid-19-what-does-this-mean-for-gender>; Regan M. Johnston, Anwar Mohammed, & Clifton van der Linden. *Evidence of Exacerbated Gender Inequality in Child Care Obligations in Canada and Australia During the COVID-19 Pandemic*, 16 POL. & GEN. 1131 (2020); Muzhi Zhou et al., *Gender Inequalities: Changes in Income, Time Use and Well-Being Before and During the UK COVID-19 Lockdown* (2020) (unpublished manuscript).

have been over-represented in essential service roles, especially health care, where the risks of infection and mortality have been greater.⁴⁵ Interruptions in access to key health services have had a particular impact on women, especially pregnant women.⁴⁶

Women have also been more likely to lose their jobs, have their hours cut or be forced to reduce their working hours in order to respond to increased caring or homeschool responsibilities.⁴⁷ In most households, both men and women have increased the time they have spent on childcare, but women have continued to bear far more of the “second shift” or responsibility for household work, child-care and elder-care.⁴⁸ These impacts have been even greater for women of color. In the U.S. especially, women of color have been over-

⁴⁵ On women’s over-representation in these roles more generally, *see also* Sulzhan Bali et al., *Off the Back Burner: Diverse and Gender-Inclusive Decision-making for COVID-19 Response and Recovery*, 5 *BMJ GLOBAL HEALTH* 1, 1 (2020); Richard Blundell et al., *COVID-19 and Inequalities*, 41 *FISC. STUD.* 291, 302 (2020); Clare Wenham, *Women Have Been Largely Ignored in the COVID-19 Response. This Must Change*, LSE (May 12, 2020), <https://blogs.lse.ac.uk/covid19/2020/05/12/women-have-been-largely-ignored-in-the-covid-19-response-this-must-change/>; WORLD BANK, *GENDER DIMENSIONS OF THE COVID-19 PANDEMIC* (2020).

⁴⁶ Wenham, *supra* note 45; World Bank, *supra* note 45.

⁴⁷ Gina Adams & Margaret Todd, *Meeting the School-Age Child Care Needs of Working Parents Facing COVID-19 Distance Learning: Policy Options to Consider* 11 (2020) (unpublished manuscript); Melanie Antz, Sarra Ben Yahmed & Francesco Berlingieri, *Working from Home and COVID-19: The Chances and Risks for Gender Gaps* 6, LEIBNIZ INFORMATION CENTRE FOR ECONOMICS (2020), <https://link.springer.com/content/pdf/10.1007/s10272-020-0938-5>; Caitlyn Collins et al., *COVID-19 and the Gender Gap in Work Hours*, 28 *GEN. WORK & ORG.* 101,101-102 (2020) (on work hours); Sou-Jie Brunnersum, *COVID-19 Childcare Burden ‘Destroying’ Mothers Careers*, DW (Jul. 25, 2020), <https://www.dw.com/en/covid-19-childcare-burden-destroying-mothers-careers/a-54318258>; Helen Jaqueline McLaren et al., *COVID-19 and Women’s Triple Burden: Vignettes from Sri Lanka, Malaysia, Vietnam and Australia*, 9 *SOC. SCI.* 87 (2020); Janet Paskin, *Women Are Bearing the Brunt of Coronavirus Disruption*, BLOOMBERG (Mar. 12, 2020, 12:00 PM), <https://www.bloomberg.com/news/articles/2020-03-11/coronavirus-will-make-gender-inequality-worse>; Tania King et al., *Reordering Gender Systems: Can COVID-19 Lead to Improved Gender Equality and Health?*, 396 *LANCET* 80, 80 (2020); *US COVID: Child Care Closures Disproportionally Affect Women*, AL JAZEERA (Jul. 31, 2020), <https://www.aljazeera.com/economy/2020/7/31/us-covid-child-care-closures-disproportionally-affect-women>; Savage, *supra* note 42; Gema Zamarro, Francisco Perez-Arce & Maria Jose Prados, *Gender Differences in the Impact of COVID-19* (2020) (unpublished manuscript).

⁴⁸ *See, e.g.*, ALISON ANDREW ET AL., *THE GENDERED DIVISION OF PAID AND DOMESTIC WORK UNDER LOCKDOWN* 3 (IZA Institute of Labor Economics 2020); Daniel L. Carlson, Richard Petts & Joanna R. Pepin, *US Couples’ Divisions of Housework and Childcare During COVID-19 Pandemic* (2020) (unpublished manuscript); Daniela Del Boca et al., *Women’s Work, Housework and Childcare, Before and During COVID-19* (CESifo Working Paper No. 8403, 2020) (on Italy); Lidia Farre et al., *How the COVID-19 Lockdown Affected Gender Inequality in Paid and Unpaid Work in Spain* (IZA Discussion Paper No. 13434, 2020) (on Spain).

represented among those unemployed as a result the pandemic,⁴⁹ but are also over-represented in frontline roles that increase their exposure to the virus.⁵⁰

The long-term adverse impact of these changes is also likely to be large.⁵¹ Time out of the workforce has lasting effects on life-time earnings.⁵² So too do reduced hours or rates of pay. Current changes, therefore, are likely to have adverse impacts on gender and racial pay equity for many years after the pandemic is over.⁵³

Family violence has also increased during the pandemic for obvious reasons, as households have dealt with increased economic and psychological stress, and those at risk have been “locked down” with past or potential abusers.⁵⁴ Being ‘locked down’ has also disproportionately affected women, with a British study finding that more women left their jobs during the pandemic due to the impossibility of full-time caring and domestic work along with high-pressure jobs.⁵⁵

The pandemic has also sharpened the line between the experiences of girls and boys as members of their households. During lockdown, several studies found that girls were more likely than boys to increase household chores and responsibilities, at the expense of their education.⁵⁶ This disparity also intersected with the significant educational disadvantage of homeschooling for children from lower socio-economic backgrounds.⁵⁷

⁴⁹ Powell, *supra* note 40.

⁵⁰ *Id.*; Savage, *supra* note 42.

⁵¹ UNITED NATIONS, POLICY BRIEF: THE IMPACT OF COVID-19 ON WOMEN (2020); Savage, *supra* note 42.

⁵² Pietro Biroli et al., *Family Life in Lockdown* (HCEO Working Paper No. 2020-051, 2020).

⁵³ See UNITED NATIONS, *supra* note 51, at 4; Blundell et al., *supra* note 45, at 313-17.

⁵⁴ Heyworth & Di Ruscio, *supra* note 44, at 3; Cristina Enguita-Fernandez et al., *The COVID-19 Epidemic Through a Gender Lens: What If a Gender Approach Had Been Applied to Inform Public Health Measures to Fight the COVID-19 Epidemic?*, 28 SOC. ANTHROPOLOGY 263 (2020); Jenny Fisher et al., *Community, Work, and Family in Times of COVID-19*, 23 COMM., WORK & FAM. 247 (2020); Wenham, *supra* note 45.

⁵⁵ Savage, *supra* note 42.

⁵⁶ Katarzyna Burzynska & Gabriela Contreras, *Gendered Effects of School Closures During the COVID-19 Pandemic*, 395 THE LANCET 1968 (2020).

⁵⁷ Blundell et al., *supra* note 45.

Women and girls have also been under-represented in the decision-making structures that have shaped the policy response to the pandemic in most countries.⁵⁸ For example, a recent study of WHO Expert Advisory Panels found that only 34% of members were women.⁵⁹

Many feminist responses to these gendered impacts have focused on policies that can reduce or ameliorate these gendered effects, and their negative effect on the goal of closing various gender-based gaps.⁶⁰ In Australia, for example, there have been calls for the government to make childcare free and broadly accessible during the pandemic, even while schools and workplaces have been closed.⁶¹ There are also calls to increase resources for services that provide support to those experiencing family violence.⁶² In the U.K., local governments have moved to exempt eligible childcare centres from tax from 2020 to 2021, a move supported by a range of women's groups.⁶³ And countries such as Albania, Georgia, Turkey and Serbia created welfare schemes targeted specifically to women: Turkey and Serbia created cash payments targeted for women, while Albania and Georgia provided programs of food distribution as well as medical products and other services, specifically focusing on women-headed households and other vulnerable groups.

Feminist scholars have praised these schemes as “a crucial feature of the gendered response to COVID-19 and offer positive guidance for other governments,” implicitly based

⁵⁸ Bali et al., *supra* note 45.

⁵⁹ *Id.* at 1.

⁶⁰ *See, e.g., id.*; World Bank, *supra* note 45; UN, *supra* note 51; King et al., *supra* note 47.

⁶¹ MATT GRUDNOFF & RICHARD DENNISS, ‘PARTICIPATING IN GROWTH: FREE CHILDCARE AND INCREASED PARTICIPATION’ (Nordic Policy Centre & The Australia Institute 2020).

⁶² Kate Fitz-Gibbon, Jacqui True and Naomi Pfitzner, *More Help Required: The Crisis in Family Violence during the Coronavirus Pandemic*, THE CONVERSATION (Aug. 17, 2020, 4:13 PM), <https://theconversation.com/more-help-required-the-crisis-in-family-violence-during-the-coronavirus-pandemic-144126>.

⁶³ Sonia Elks, *Lack of Childcare Found “Destroying” UK Mothers’ Careers Amid COVID-19*, REUTERS (July 25, 2020, 1:59 PM), <https://www.reuters.com/article/us-health-coronavirus-women-careers-idUSKCN24Q0OY>; HC Deb (25 June 2020) (677) col. 1535 (UK).

on a form of gender amelioration-based logic.⁶⁴ The intensification of the gender gaps produced by the pandemic have created models for ameliorations which feminists hope will carry into a post-pandemic future.

B. Disruption of Prior Work-Household Practices

When the focus is on ameliorating gender gaps, the pandemic is largely bad news for feminist reformers whose see the growing disparities as cause for alarm. However, some feminists view COVID-19 as having greater benefits, or at least a silver lining, for gender justice. They note how crises such as COVID-19 can “bring to light many of the systemic and structural barriers that had held back the advancement of gender equality.”⁶⁵ And in doing so, they have tended to focus on the *disruptive* effect of the pandemic on existing gender norms and structures – and the ways in which law and policy may exploit the ongoing changes brought about by this disruption.⁶⁶

The pandemic has certainly disrupted people’s lives at almost every level – in how they work, shop, travel, socialize and move around their cities and localities.⁶⁷ This disruption has also extended to how households manage child-care and combine work and care, and led to more men performing care work or domestic labor, often while working from home. For example, research from academics at Canadian universities found that a substantial number of families had divided the housework more equally – with more than 40% of fathers saying they were cooking more, and around 30% reporting that they had increased the amount of time they spent on laundry and cleaning.⁶⁸

⁶⁴ Blerta Cela, *Expert’s Take: The Gendered Impact of COVID-19 Requires Transformative Changes in Economics Policies*, PREVENTIONWEB (Sept. 9, 2020), <https://www.preventionweb.net/news/view/74074>.

⁶⁵ Savage, *supra* note 42.

⁶⁶ See, e.g., Titan M. Alon et al., *The Impact of COVID-19 on Gender Equality 3* (NBER Working Paper No. 26947, 2020); Antz, Yahmed & Berlingieri, *supra* note 47, at 4; Blundell et al., *supra* note 45, at 293; Victoria Costoya et al., *The Impact of COVID-19 in the Allocation of Time Within Couples: Evidence for Argentina (2020)* (unpublished manuscript); Savage, *supra* note 42.

⁶⁷ Cf. Carlson, Petts & Pepin, *supra* note 48, at 1.

⁶⁸ Savage, *supra* note 42.

While Covid-19 has generally worsened the gender gap in paid work and increased the “second shift” burden on many women, there have been some exceptions: families that already had some degree of intra-household sharing of these responsibilities seem to have become more egalitarian.⁶⁹ And men who lost their own jobs, or who were able to work from home (WFH) while their female partners were not, took on a larger share of child-care responsibilities than previously.⁷⁰

This disruption has arguably helped shift the gender coding of some care roles, and especially the model of combining work and care, in a flexible way. As Canadian scholar Tania King and her colleagues note, “the COVID-19 pandemic has temporarily reshaped our domestic and working lives and could sow the seeds for change to advance gender equality.”⁷¹ Indeed, there is evidence from “policy changes that engineer a similar change” in male caring roles and responsibilities that even quite temporary changes can have “persistent effects on gender roles and the division of labor.”⁷²

The call, by those who focus on the benefits of this disruption, has been to find ways to promote these kinds of persistent effects. One way to do so, for example, would be for more countries to enact laws making flexible work – including working from home – a

⁶⁹ *Id.*; Karsten Hank & Anja Steinbach, *The Virus Changed Everything, Didn't It? Couples' Division of Housework and Children Before and During the Corona Crisis*, 33 J. FAM. RES. 99 (2020). This, for example, might explain why findings in Canada, which has more equitable ingoing divisions, have been slightly different: *see, e.g.*, Kevin Shafer, Melissa Milkie & Casey Scheibling, *The Division of Domestic Labour Before and During the COVID-19 Pandemic in Canada*, 57 CAN. REV. SOCIO. 523 (2020).

⁷⁰ *See* Alon et al., *supra* note 66, at 3; Andrew et al., *supra* note 48, at 3; Costoya, *supra* note 66, at 28 (reporting data from Argentina); Claudia Hupkau & Barbara Petrongolo, *Work, Care and Gender during the COVID-19 Crisis*, 41 FISCAL STUDIES 623 (2020); Almudena Sevilla & Sarah Smith, *Baby Steps: The Gender Division of Childcare during the COVID-19 Pandemic*, 36 OX. REV. ECON. POL. 169 (2020).

⁷¹ King et al., *supra* note 47, at 2.

⁷² Alon et al., *supra* note 66, at 3.

presumptive legal right for all employees, both male and female.⁷³ Or private companies could adopt an “all roles flex” policy, which makes WFH a continued entitlement.⁷⁴

Underneath these ideas, of course, is a fairly classically liberal feminist conception of the value of disrupting stereotypical assumptions about male and female roles. But some scholars also link the disruption of COVID-19 to a broader rethinking of the value of care work – or a disruption in people’s thinking about the work-care nexus in ways that are at least partially consistent with cultural and intersectional feminist understandings. The pandemic, for example, might cause us to rethink a work culture that only sees facetime and “full-time” work as contributing to productivity, in favor of a willingness to focus on outputs over inputs in the employment context, or to experiment with radical new models of team-based production or job-sharing.⁷⁵

C. COVID as the Impetus for Transformation

Those who see the greatest potential for Covid-19 to lead to lasting gendered change, however, are feminists and social policy makers who explicitly see gender justice through a transformative lens. For these feminists, the opportunity created by the pandemic is for societies to rethink the relationship between paid and unpaid work, or market and household forms of labor, and to find more sustainable ways for men and women to share in both forms of work.

⁷³ See, e.g., OECD, BE FLEXIBLE! BACKGROUND BRIEF ON HOW WORKPLACE FLEXIBILITY CAN HELP EUROPEAN EMPLOYEES TO BALANCE WORK AND FAMILY 12 (2016); ARIANE HEGEWISCH, FLEXIBLE WORKING POLICIES: A COMPARATIVE REVIEW 4-5, 9-10 (Equality and Human Rights Commission 2009); Rae Cooper & Marian Baird, *Bringing the “Right to Request” Flexible Working Arrangements to Life: From Policies to Practices*, 37 EMPLOYEE RELATIONS 568 (2015).

⁷⁴ See, e.g., Dana Brownlee, *Twitter, Square Announce Work From Home Forever Option: What Are the Risks?*, FORBES (May 18, 2020, 8:08 PM), <https://www.forbes.com/sites/danabrownlee/2020/05/18/twitter-square-announce-work-from-home-forever-optionwhat-are-the-risks/#533df6eb2565>; Rosalind Dixon & Richard Holden, *Liberalism After COVID: Toward a New Democratic Economics and Politics* (2020) (unpublished manuscript); *Our Approach to Flexibility*, TELSTRA, <https://careers.telstra.com/allrolesflex>.

⁷⁵ Cf. Rosalind Dixon, Jessie Zhang & Rose Vassel, *Reimagining Job Sharing* (2020), <https://apo.org.au/node/277446>.

COVID has highlighted a crisis of care, which many feminist scholars argue must be understood structurally⁷⁶ As Carlson and co-authors note, it has also “eliminated some of the *structural* barriers to sharing domestic work – particularly for men – as many adults are now working from home.”⁷⁷ And with the elimination of these barriers, has come the possibility of transforming the work-care relationship.

Beyond policies that can encourage and promote sharing of care work, cultural feminists also suggest that COVID may help encourage a broader rethinking in society’s approach to the *value* of care work, or current modes of production and reproduction. Feminist sociologist Lynn Craig from Australia, for example, suggests that “the fact that care is an essential bedrock to the economy has become more obvious” in many countries during the pandemic, and in the process helped clarify the significant economic value of both paid and unpaid care work.⁷⁸ Feminists Kate Bahn, Jennifer Cohen and Yana van der Meulen Rodgers in the U.S. likewise suggest that any “comprehensive response to the COVID-19 crisis [must] emphasize social reproduction as an integral part of the economic system and judge the success of policy responses by how they promote human wellbeing for all.”⁷⁹

Similarly, intersectional feminists suggest a meaningful response to the pandemic may help contribute to broader economic and political transformation – including in the domain of racial justice. By serving as a “miner’s canary” for what is wrong with liberal democratic structures, Catherine Powell suggests, both the COVID-19 pandemic and Black

⁷⁶ Lidia Katia C. Manzo & Alessandra Minello, *Mothers, Childcare Duties, and Remote Working under COVID-19 Lockdown in Italy: Cultivating Communities of Care*, 10 DIALOGUES IN HUM. GEO. 120, 123 (2020).

⁷⁷ Carlson, Petts & Pepin, *supra* note 48, at 1 (emphasis added).

⁷⁸ Lyn Craig, *COVID-19 Has Laid Bare How Much We Value Women’s Work, and How Much We Pay For It*, CONVERSATION (Apr. 20, 2020, 10:56 PM), <https://theconversation.com/covid-19-has-laid-bare-how-much-we-value-womens-work-and-how-little-we-pay-for-it-136042>.

⁷⁹ Kate Bahn, Jennifer Cohen & Yana van der Meulen Rodgers, *A Feminist Perspective on COVID-19 and the Value of Care Work Globally*, GENDER WORK ORGAN 695, 698 (2020); cf. Kate Power, *The COVID-19 Pandemic Has Increased the Care Burden of Women and Families*, 16 SUSTAINABILITY 67 (2020).

Lives Matter movement in the U.S. create the possibility of a form of “viral convergence” – or political moment that encourages mobilization on issues of such as “living wage laws, an essential worker bill of rights, and improved, universal access to health care.”⁸⁰

Many feminist and other critical scholars in the U.S. and elsewhere also emphasize that transformational thinking is exactly what is required in order to achieve justice during and after the pandemic.⁸¹ Scholars emphasize that the fallout from the pandemic allows us to see the connections between physical violence and economic exploitation. In Argentina, for example, Polischuk and Fay have argued that part of the response to COVID and its disproportionate impact on women should be for governments to do more to address the structural causes of gender violence, including the unequal distribution of unpaid labor.⁸²

These feminists may disagree on the precise policies likely to lead to transformative outcomes and which among several strategies are more likely to lead to long-term change – for example, investing more in access to paid childcare, or doing more to support those providing unpaid care. They may disagree about the best way to ensure economic justice within as well as across countries, i.e., how best to promote better paying jobs within a country, while also paying attention to questions of global welfare and economic and racial justice. But while these various feminists may disagree, or adopt different foci for their critiques, the concept of transformation usefully highlights areas of conceptual and practical convergence in their response.

IV. Conclusion

⁸⁰ Powell, *supra* note 40, at 17-19 (citing LANI GUINIER & GERALD TORRES, *THE MINER’S CANARY: ENLISTING RACE, RESISTING POWER, TRANSFORMING DEMOCRACY* (2002)) (on the miner’s canary effect).

⁸¹ See, e.g., Shai Davidai et al., *COVID-90 Provides a Rare Opportunity to Create a Stronger, More Equitable Society* (2020) (unpublished manuscript).

⁸² Luciana Polischuk and Daniel L Fay, *Administrative Response to Consequences of COVID-19 Emergency Responses: Observations and Implications from Gender-Based Violence in Argentina* 50 AM. REV. OF PUB. ADMIN. 675 (2020).

The insights provided by U.S. feminist legal theory are rich and complex. They include the insights provided by the “first wave” of liberal, cultural and dominance feminist legal theorists, as well as those of a later wave of intersectional, sex positive/agency and post-structural/post-modern feminist legal thinkers. And together, these various waves or schools of feminist legal thought draw attention to the many different forms of gender injustice experienced by women in the U.S. today – and the ways in which sex, gender, race, sexuality and other forms of disadvantage intersect to produce constraints and disadvantage for women and men of different backgrounds. They can likewise help us understand the experiences of women worldwide, and their search for gender justice.

The difficulty we suggest, however, is that this internal complexity or richness may lead to broader legal audiences “tuning out” to the full range of insights provided by American feminist legal thought – and especially the newer, more complex insights provided by intersectional, sex positive/agency and post-structural/post-modern feminist legal thinkers.

By comparison, the approach we propose – of mapping different feminist insights onto goals of gender-based amelioration, disruption and transformation – goes a long way to avoiding those dangers. While inevitably simplifying and reducing the nuance and complexity of feminist legal insights, our approach is broad enough to encompass the key insights of all major feminist legal theoretic approaches in the U.S. today, including both older and newer feminisms.

It also provides a roadmap for understanding the nature and reasons for differences among feminists, as well as areas of commonality: the goal of amelioration can sometimes work in tandem with more radical goals of disruption or transformation, but often the two sets of goals will be in conflict. Similarly, disruption may in some cases help pave the way for transformation, but in others produce too much uncertainty as to future change to be embraced by those seeking to pursue predefined transformative goals.

It is also a roadmap that comes from a process of reflective engagement with, and can assist in, understanding legal feminist claims beyond the U.S. We illustrate this in the chapter by reference to transnational accounts of the gendered impact of the Covid-19 pandemic, and government responses to it. Although these debates are ongoing, and will no doubt evolve in the future, the basic contours of the debate to date show the value of understanding feminist and gender justice claims through the lens of the goals of amelioration, disruption and transformation in gender justice.

Ultimately, “mapping” the debates according to these goals helps to illuminate continuities between different schools of thought, as well as differences, and thus clarify the conceptual and political stakes for efforts at feminist collaboration and coalition-formation. Feminist disagreement will live on even after this mapping is done. Indeed, it is arguably essential to our ability to capture the multiplicity of women’s experiences. But it need not stand in the way of coalition-driven efforts at feminist legal change in the U.S. or elsewhere. Gender amelioration, disruption and transformation are all goals that feminists can recognize as sources of common ground, even as we continue to understand them and their priority in quite different ways.