

WHY LESBIANS AND GAY MEN SHOULD READ MARTHA FINEMAN

NANCY D. POLIKOFF*

Martha Fineman is the preeminent feminist family theorist of our time. She barely mentions lesbian and gay families; in her article in this symposium issue she does not mention them at all.¹ Nonetheless, this article and her earlier work should be required reading for all those interested in family law from a gay and lesbian perspective, and most specifically for anyone participating in the debate about legalizing marriage for lesbians and gay men. Through reading Martha Fineman, it becomes possible to see that the equality model that seeks a right to marry on equal terms with heterosexuals, and the incantation of “choice,” as in “lesbians and gay men should have the choice to marry,”² fail to envision a truly transformative model of family for all people. It is that transformative model that Professor Fineman provides.³

For several years, activists and scholars in the gay and lesbian community debated the value of same-sex marriage.⁴ It was largely an

* Professor of Law, American University, Washington College of Law.

1. Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self Sufficiency*, 8 AM. U. J. GENDER, SOC. POL'Y & L. 13 (2000) [hereinafter Fineman, *Cracking the Foundational Myths*].

2. The clearest exposition of the equality based and “choice” based reasons to make obtaining legal marriage the preeminent issue for lesbians and gay men is contained in Evan Wolfson, *Crossing the Threshold: Equal Marriage Rights for Lesbians and Gay Men and the Intra-community Critique*, 21 N.Y.U. REV. L. & SOC. CHANGE 567, 580, 591, 599 (1994-95).

3. Fineman, *Cracking the Foundational Myths*, *supra* note 1, at 16-17.

4. One of the most widely cited set of articles taking opposing views on lesbian and gay marriage was written by attorneys Tom Stoddard and Paula Ettelbrick when both were working at Lambda Legal Defense and Education Fund, the nation's largest lesbian and gay legal organization. See Paula L. Ettelbrick, *Since When is Marriage a Path to Liberation?* and Thomas B. Stoddard, *Why Gay People Should Seek the Right to Marry* in LESBIAN AND GAY MARRIAGE (Suzanne Sherman ed., 1992). In addition to the article by Wolfson, *supra* note 2, law review articles reflecting this debate include Nan D. Hunter, *Marriage, Law and Gender: A Feminist Inquiry*, 1 LAW & SEXUALITY 9 (1991); Nitya Duclos, *Some Complicating Thoughts on Same-Sex Marriage*, 1 LAW & SEXUALITY 31 (1991); Mary C. Dunlap, *The Lesbian and Gay Marriage Debate: A Microcosm of Our Hopes and Troubles in the Nineties*, 1 LAW & SEXUALITY 63 (1991); William N. Eskridge, Jr., *A History of Same-Sex Marriage*, 79 VA. L. REV. 1419 (1993); Nancy D. Polikoff, *We Will Get What We*