

A TRIBUTE FROM LEGAL STUDIES TO EVE KOSOFSKY SEDGWICK

INTRODUCTION

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This collection of essays is a tribute to Eve Kosofsky Sedgwick. It is a very specific offering, a collective moment of gratitude for Sedgwick's life and work from legal scholars and law teachers. All of them share a yearning to expand the scope of what you might (they might not) call queer legal studies. Sedgwick's work matters to all of them, though in various ways, as a way of thinking against the grain of legal scholarship, law reform, and/or law teaching. Rethinking gender as it has become normalized in civil and human rights law (Darren Rosenblum), rethinking the range of emotion taken into account by law (Clare Huntington), facing the dark side of dignity (Katherine Franke) and of consciousness (Susan Schmeiser), and re-engaging language as a medium not for the rational exposition of decently ordered ideas but as the very body of erotic love (Philomila Tsoukala)—these short essays mark pathways into queer thought *for law*. I think Eve would have pitied us for how short these pathways are in legal studies generally, and would have been thrilled to see the bold adventures undertaken here.

These essays were written in a context. They were the presentations on a panel entitled "Reconceptualizing the Affective Family: A Tribute to Eve Kosofsky Sedgwick" at a Family Law Summer Camp which my colleague Professor Jeannie Suk and I organized at Harvard Law School in July of 2009. This was an explicitly intergenerational event: the more senior participants included Mary Anne Case, Katherine Franke, Anne Alstott, Elizabeth Bartholet, and Duncan Kennedy; but the real purpose of the event was to bring together young scholars just beginning to teach Family Law and related courses and to talk about people's desires for reframing the field. Indeed Jeannie's work in Family Law, including her pathbreaking work on domestic violence and on the home,¹ seems to me to exemplify the possibilities for rejuvenation that the new generation of Family Law teachers represents.

The fact that Eve had died in April, just months before our gathering, seemed directly germane to the purpose of our gathering. How?

A lot of the most interesting young law teachers want to teach Family Law. To them, this is the single course in the law curriculum that concen-

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¹ See JEANNIE SUK, *AT HOME IN THE LAW: HOW THE DOMESTIC VIOLENCE REVOLUTION IS TRANSFORMING PRIVACY* (2009); Jeannie Suk, *The True Woman: Scenes from the Law of Self-Defense*, 31 HARV. J. L. & GENDER 237 (2008); Jeannie Suk, *Criminal Law Comes Home*, 116 YALE L.J. 2 (2006).

trates attention on lived gender. To many of them, Eve, Judith Butler, Michael Warner, Leo Bersani, and other gradually aging eminences of queer theory are not pathbreaking comrades; they are *canonical*. This new cohort of Family Law teachers studied Eve's work in undergraduate courses with the same degree of seriousness that they devoted to Hannah Arendt and Simone de Beauvoir. And when they came to Family Law they experienced a shock: how is it that Family Law as we know it cabins the dazzling, dizzying, thrillingly, dauntingly disparate forces of sexual and gendered life that they studied as undergrads into the idea of emotion as either selfish, grasping, dominating, and *bad* or altruistic, nurturing, subordinated, and *good*?

Their reaction resembles that of four-year-old Sam Bankman-Fried, son of my beloved Stanford colleagues Barbara Fried and Joseph Bankman, when he and his mother ended an afternoon of animal love at the petting zoo with a quick run to the grocery store for dinner supplies. Oh the glorious petting zoo—llamas and chickens and ducks and goats and baby lambs! Then, on seeing the refrigerated, discretely packaged, jelly-pale display of "chicken," Sam rightly asked—as young law scholars well-read in queer theory and confronted with the narrow range of emotional life currently admissible in Family Law are wont to do—"What *happened*?"

There is an answer to that question, and it lies in the isolation of Family Law as a "special" domain in the legal curriculum—as the site of private, affective, altruistic, intimate relations estranged from the various publics of the market, the workplace, and the state. Our idea was that this dichotomy could be deconstructed, that Family Law teachers could study the ways in which the family and the market are not so much opposites as mutually constitutive rhetorical and material artifacts. What if we saw them as *supplementary* in the Derridean sense²—that is, as reciprocally necessary complements, each making the seeming oppositeness of the other not only intelligible but also deeply misleading? Could we then teach Family Law as a crucial, immense part of, for instance, the social security system that liberal legal orders largely provide through the market and marginally through public assistance? Could we break the hold of expressions like "work/life balance"—that omnipresent slogan carrying its bizarre sentimentalization of the family into corporate policy everywhere!—to study, say, the distribution of wealth through forms of domesticity, the possibilities for joyful regeneration at work?

One of our most important questions concerned the allocation of emotional dependency to the family and of rational, self-interested action (merely distorted by "cognitive bias") to the market: what did this dichotomy do to skew our understanding of affect itself?

² JACQUES DERRIDA, ". . . *That Dangerous Supplement . . .*," in *OF GRAMMATOLOGY* 141 (Gayatri Chakravorty Spivak trans., 1997).

One thing it surely did, the campers seemed to agree, was to impoverish our approach to what we called the “Affective Family.” Here was the basic question Jeannie and I posed to the panel devoted to this topic:

This session will return to the conventional understanding of the family as a primarily affective, altruistic, and solidaristic social domain and of family law as primarily focused on making and maintaining it as such. What is to be done with this archaic remnant of separate spheres ideology? How can we upgrade our understanding of affective life, of the psyche, of the legal construction of social relations as either altruistic or individualistic?³

To help everyone approach these questions well outside the market/family frame in which most legal studies sit, Jeannie and I also assigned two essays as the focus of our work on them: Sigmund Freud’s *A Child is Being Beaten* and Eve’s essay in reflection on it, *A Poem is Being Written*.⁴ Our idea in selecting these two texts was to put the question of masochism directly to the group. Eve’s wonderful essay is quite explicitly titled to refer to Freud’s, so we assigned them both. My initial idea going in was that people would be struck (I use the word advisedly) by the intensely poetic activity that Freud and his patients produced as they transformed the imagined scene of a child being spanked so that it could hold an evolving array of erotic longings; and that they would be equally struck by Eve’s rewriting Freud’s idea into the language of her own memories of being spanked as a child. I mean “into that language” quite specifically: the rhythms of her writing—not just her poetry but all her writing—became the textile, the context, the matrix, the text of her desire to inhabit and transform the power wielded by her parents. Could the simultaneous horror and longing of masochistic desire somehow suggest a more complex idea of affect for teachers, scholars, and students of Family Law and related legal domains?

I think the essays collected here are various ways of answering that question with a resounding “Yes.”

And so when we gathered to think together about these two amazing works, we did so specifically in memory of Eve. It was an academic ritual of mourning and celebration, a communion of loss, a short but incandescent burning anew of Eve’s immense vitality. I am very grateful to their authors for writing the essays collected here and to the *Harvard Journal of Law and Gender* for publishing them. I hope these essays pass along, to queers in law

³ Draft Program, Family Law Summer Camp, Harvard Law School 4 (July 9, 2009) (on file with Harvard Law School Library).

⁴ Sigmund Freud, “*A Child is Being Beaten*,” *A Contribution to the Study of the Origin of Sexual Perversions*, in *FREUD ON WOMEN: A READER* 215 (Elisabeth Young-Bruhl ed., 1990); EVE KOSOFSKY SEDGWICK, *A Poem Is Being Written*, in *TENDENCIES* 177 (1993).

everywhere, the questing intelligence—the ornery contentiousness—the lambent desire—the resilience to dark knowledge—the profuse generosity—with which Eve led her life.