A la Recherche du Temps Perdu: A Second Waver’s Reflections on Current Feminist Approaches to Employment Law

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The title of Marcel Proust’s famous series, “A la Recherche du Temps Perdu,” is often translated as “Remembrance of Things Past,” although it literally means “In Search of a Lost Time.” This paper will examine some key doctrinal developments in employment discrimination and employment law, their relationship to contemporaneous, second wave, women’s movement activities and theorizing, and the treatment of these issues and successor problems by a new generation of feminist theorists. It will focus in particular on the change in women’s economic status, over the past four decades, from purely peripheral, second-class worker to a less clear-cut category, partially integrated in both legal and economic terms, into the primary workforce. Political and legal developments related to key areas of specifically gender-related workplace norms and assumptions -- sexual harassment; discrimination related to pregnancy and reproductive capacity; women’s presumed family caretaking role, and its acceptance within workplace structures and employment policies -- will provide a lens through which to investigate the changes in the historic framing of feminist issues across time.

These are recollections of “things past,” but to some third wave (or even late second wave) generation feminists, they seem instead to have become a “lost time.” Earlier work and lived history is sometimes superficially examined and unsympathetically understood, even though many of the third wavers, at least in the legal academy, work side by side with the previous generation. Recent work of younger scholars too often simply ignores the lessons of prior experience in reaching contrary conclusions; while other recent work may take not very different paths to reach similar conclusions without recognizing the prior developments on which it builds.

To some extent, this is a product of the demand of both popular culture and academic standards of originality for characterization of new ideas and publications as “novel” rather than incremental change; it has the unfortunate side effect, however, of rendering earlier work and its proponents invisible and erased rather than appreciated in the context of its time. Of course, on the other hand, each generation must discover anew and on its own terms, how to resolve not only the problems of the present, but their relationship to the past. Second wavers themselves notoriously preferred to reinvent the wheel, “never trust a person over thirty,” and establish and build on our own foundations.

This paper is inspired by my students’ urging that I preserve some of my recollections of the history of second wave feminism, on whose foundations (they advise me) they hope and expect to build.