(*Ward v. Kedgewin*, no. 4, p. 8), and likewise Bordeaux, Brittany, and Scotland could each be localized in London (*id.*, no. 9, p. 14). An identical pleading was upheld in *Woodford v. Wyatt* a year later (Baker & Milsom, Sources of English Legal History, 2d ed., p. 494). In another of Paynell's cases, Dunkirk was put "in the Ward of Cheap" (*Cremer v. Tookley*, no. 262, p. 304). The lawyer Henry Calthorpe revolted against what he called, twice, this "fictionary" remedy (p. 307)—the only time that this word has been found in published nominate reports, and more than 250 years before the solitary cited use of "fictionary" in the Oxford English Dictionary. The particular fictitious pleading of a London, Middlesex, or Kent venue for a foreign place had been known at least since a Year Book report of 1440 (Y.B. Pasch. 20 Hen. 6, pl. 21, fol. 28b (Seipp No. 1442.042) and the earlier Y.B. Hil. 48 Edw. 3, pl. 6, fol. 2b-3b (Seipp No. 1374.006)), but lawyers had only been naming these devices "fictions of law" (*fictione juris*) since about 1590, most frequently in Edward Coke's reports. Paynell's reports add a bit to the story of that characteristic peculiarity of English common law, the legal fiction.

Translation is hard work, and tracking down thousands of citations and cross-references is a labor of devotion to our collective scholarly endeavor that deserves every legal historian's praise. Professor Bryson is to be congratulated for this excellent translation and scholarly edition of an important set of reports. Now let us get this online and searchable.

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MARTHA CHAMALLAS and JENNIFER WRIGGINS. *The Measure of Injury: Race, Gender, and Tort Law*. New York: New York University Press, 2010. 288 pp. $40.00 (cloth).

*The Measure of Injury: Race, Gender, and Tort Law*, by Martha Chamallas and Jennifer Wriggins, is a comprehensive analysis of tort law written from a feminist perspective. In its range and depth, it is a stunning achievement.

Tort doctrine evolved over many centuries as part of a common law system of adjudicating private disputes. History tells us that the adjudicators of these disputes were white men of a certain class

who lived in societies where gender, race, and class were crucially important categories. We would therefore expect to see traces of sexism, racism, and classism reflected in tort doctrine. Nevertheless, on the surface, these problems are not readily apparent. With the exception of a few outgrown doctrines, modern tort law appears to be a model of race and gender neutrality. But apparent neutrality is not the end of the story. Feminism teaches that oppression operates in many ways. Blatant discrimination is only one of the ways in which race and gender privilege can be asserted. Equally harmful is the invisibility that comes from on-going subordination; and it is this kind of invisibility that Chamallas and Wriggins document. The problem, they argue, is that tort law has rendered women and people of color virtually invisible by erecting seemingly neutral barriers against claims that reflect their particular concerns. Their argument begins with the central question of feminist theory: *Where are the women?*

The answer to this question is suggestive. In tort law, the women are here, there, and everywhere; but they are not clustered around traditional feminist concerns. The next logical question is: why? If tort law is meant to redress private injuries, why is it that common injuries incurred by subordinated groups do not provide a basis for recovery? Why is it so difficult to press claims for: 1) losses with respect to reproduction; 2) injuries from domestic violence; and 3) harms associated with bias and discrimination? Whether we think of the deterrence effect of tort law or its corrective justice rationale, it is hard to see why these claims should not be certain winners. Why has tort law's commitment to these goals so entirely failed those who are most in need of protection? Why are recoveries in these areas sporadic at best?

There are no easy answers to these questions. There are no ready doctrinal reforms that will improve the situation. Instead, it is necessary to dig more deeply into the structure of tort law. Chamallas and Wiggins argue that the above claims are generally ruled out of court as a result of two distinctions that are generally applied to tort claims. The first is that modern tort doctrine favors negligence-based claims over those based on intentional conduct; the second is that it favors physical claims over emotional ones. The authors argue that these two preferences literally rule out of court many of the claims that women and people of color might press.

At first blush, the explanation offered by Chamallas and Wriggins may not seem obvious. Certainly, many reproductive injuries are both physical and the result of negligence. Similarly, those who seek to recover for domestic violence are probably more interested in compensation for their physical injuries than for their hurt feelings. Discrimination, on the other hand, frequently involves economic harm—another category disfavored by tort law. As obvious as these comments may seem, they are not, as the authors saliently show in the context of tort law. Take their example: a man on horseback is negligent in handling his horse. As a result it rears up in front of a pregnant woman causing her to miscarry. Surely this woman's harm is physical rather than emotional. However, as any torts teacher knows, such a complaint will be treated as a case of emotional harm on the theory that there was an intervening emotion—fear—that caused the physical miscarriage.

Similarly, the intentional torts vs. negligent torts dichotomy operates in unexpected and ironic ways to exclude claims of sexual or racial harassment. Under the Civil Rights Act, plaintiffs often lose their cases because of the difficulties associated with proving that the defendant treated them badly *because* of their race or gender. They may have been yelled at, threatened, disadvantaged, and disparaged, but still there is a need to prove that all of this was motivated by racial or gender prejudice. Thus, the plaintiff must look to tort law for a recovery. Because the underlying conduct is intentional, the plaintiff may not appeal to the general rule of reasonable conduct that applies to negligence cases. Instead, she is relegated to the centuries old mechanisms of intentional torts—a landscape that is mined with technical requirements and counterintuitive results. Furthermore, the modern remedy—Intentional Infliction of Emotional Distress—requires a stiff showing of "extreme and outrageous" conduct paired with "severe" emotional harm, so that the civil rights plaintiff ends up with an extraordinary burden that was designed as an obstacle for those whose injuries are notably ambiguous and amorphous.

To prove their point, Chamallas and Wriggins delve into the history of tort law and provide many examples of its inability to provide adequate redress to women and people of color. In addition, they document a number of other ways in which tort law engages in subtle discrimination. These include:

1) The fact that tort law places a strong reliance on jury adjudication and therefore leaves women and minority plaintiffs vulnerable to the biases—both conscious and unconscious—of ordinary people.
2) The heavy emphasis on concepts of causation which in turn are influenced by common conceptions of what is "normal" and what is out of the ordinary.
3) The fact that discrimination against women and minorities is often hidden in evidentiary details such as actuarial charts that "prove" that losses of earning power are more costly for men than for women.

If you are skeptical about any of these points, I urge you to read the book. The authors have provided countless examples and ample proof of their claims. If, on the contrary, you are inclined to believe these claims and deplore the fact that tort law offers inadequate remedies for women and people of color, you too should read this book. For you, the book will provide a glimpse of how tort law might become a vehicle for racial and gender justice. By making an accurate assessment of the problem, it provides a realistic agenda for reform. Not surprisingly, it is not a simple agenda. It does not focus us on changing the phrasing in one section or another of the *Restatement*. Rather it suggests that reform will only come when we rethink some of the fundamental aspects of tort doctrine. This may seem to be replacing a small problem of repair with a larger one of reconstruction; but the difference is that the large ones are, as Chamallas and Wriggins show, susceptible to evidence and argument, while the smaller ones seem to manifest the apparent inevitability of the way things have always been.

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JOHN HEILEMANN and MARK HALPERIN. *Game Change: Obama and the Clintons, McCain and Palin, and the Race of a Lifetime*. New York: HarperCollins Publishers, 2010. 464 pp. $27.99 (cloth); $16.99 (paper).

*Game Change* is a wonderful read, but it's also useful as history too. Through the assiduous interviews and other research con-