

WHY A FEMINIST LAW JOURNAL? A CALL FOR PARITY

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We began at the beginning. The opening talk of the Columbia Journal of Gender and Law's Spring 2003 symposium "Why a Feminist Law Journal?" detailed the career of Myra Bradwell, legal publisher and icon of American women lawyers.¹

Bradwell famously and unsuccessfully appealed to the United States Supreme Court when Illinois refused to admit her to the bar.² Undaunted, she pursued a thriving career as the publisher of the Chicago Legal News, a mainstream law journal in which she championed suffrage and equal rights for women. Richard Chused, in concluding his remarks on Bradwell's use of her newspaper to espouse her lifelong feminist commitment, challenged the staff of this journal to make our work count: "Though you stand on Myra Bradwell's shoulders, the purpose of your voice is not as clear as hers."³

I would argue that it is. While we are privileged to live in a country where women now have formal equality of opportunity, today we must pursue a goal as tangible and crucial as suffrage was a century ago. I believe that our purpose—as feminists, as lawyers, as scholars, as women—is to work for absolute parity: women as fully half the participants in all spheres of life and in every center of power.

It is a goal so simple and clear it has been all but abandoned by feminist thinkers.⁴ Whether we presume that time will eventually get us there, or blame women for turning away from opportunities to lead, or throw up our hands in the face of sexism that feels anachronistic but

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¹ See Richard Chused, A Brief History of Gender Law Journals: The Heritage of Myra Bradwell's Chicago Legal News, 12 Colum. J. Gender & L. 421 (2003).

² Bradwell v. Illinois, 83 U.S. 130 (1872).

³ Chused, *supra* note 1, at 429.

⁴ In the past dozen years only a handful of articles have addressed parity and equal representation. A search for "parity or represent! and women" on Lexis in the summary field of American and Canadian law journals since January 1, 1990, produced eighteen articles, the majority of which discussed women's progress in law firms.

intractable—whatever our rationale, we are not working hard enough for equal representation.

The numbers are familiar, yet they still shock: in the United States, women hold fourteen percent of the seats in Congress.⁵ In this eighty-third year of our enfranchisement, a woman has never been president, vice-president, or Speaker of the House.⁶ There are three women in the current cabinet, out of twenty members.⁷ In the private sector, women run eight of the 500 largest companies in the United States.⁸ In the legal profession, the numbers are just as dismal: generations after women's grudging admission to law school, we are still only sixteen percent of top law firm partners,⁹ seventeen percent of federal judges,¹⁰ and twenty-three percent of tenured law professors.¹¹

⁵ U.S. House of Representatives, Congressional Profile, at <http://clerk.house.gov/members/congProfile.php> (last modified June 5, 2003) (women are seventy-six out of 535 members of Congress). For more information about women in Congress, see U.S. House of Representatives, Congresswomen's Biographies, at <http://bioguide.congress.gov/congresswomen/index.asp> (last visited Oct. 23, 2003).

⁶ See U.S. House of Representatives, Speakers of the House, at http://clerk.house.gov/histHigh/Congressional_History/speakers.php (last modified Jan. 10, 2003) for a list of all past Speakers of the House.

⁷ The White House, President Bush's Cabinet, at <http://www.whitehouse.gov/government/cabinet.html> (last visited Oct. 23, 2003).

⁸ Eight of the Forbes 500 have a woman chief executive. Patricia Sellers, Power: Do Women Really Want It?, *Fortune*, Oct. 13, 2003, at 80. The underrepresentation translates into dollars as well: women are almost half of the American wage force but earn 77.5 cents on a man's dollar. David Leonhardt, Gap Between Pay of Men and Women Smallest on Record, *N.Y. Times*, Feb. 17, 2003, at A1; see also United Nations Development Fund for Women, Progress of the World's Women 2002: Gender Equality and the Millenium Development Goals 33, table 4 (2002), available at <http://www.unifem.org/index.php> (regarding women's share of non-agricultural employment in relation to men).

⁹ Vivian Chen, Cracks in the Ceiling, *Am. Law.* (June 2003). Women comprise sixteen percent of the equity partners at the one hundred top-grossing firms in the country. Shrink the pool to the top twenty firms and the percentage of women drops to thirteen percent. See 2003 data collected by The American Lawyer at Law.Com, Measuring the Power, http://www.law.com/special/professionals/amlaw/2003/measuring_power.shtml (last visited Oct. 23, 2003).

¹⁰ See Federal Judicial Center, Judges of the United States Courts, <http://www.fjc.gov/newweb/jnetweb.nsf/hisj> (last visited Oct. 18, 2003). According to my calculations, there are 1,270 judges serving currently, of whom 1,056 are male and 214 are female. Take the number of male judges ever (2,780), subtract the number terminated before October 18, 2003 (1,808), and add back those terminated only through elevation (eighty-four). Then, take the number of female judges ever (234), subtract the number terminated before October 18, 2003 (forty-four), and add back those terminated only through elevation (twenty-four). Of the women currently serving, eighty percent are white, thirteen percent are African American, seven percent are Latina, and one woman is Asian American.

¹¹ Note that the overwhelming majority of those women, eighty-four percent, are white. Richard A. White, Association of American Law Schools Statistical Report on Law

Around the globe, women are vastly underrepresented. Of the world's nearly 200 nations, eleven are headed by women,¹² and eight send a woman to represent them at the United Nations.¹³ Internationally, women make up fourteen percent of parliament members on average.¹⁴ Nowhere in the world are women half of the legislature. Nowhere.¹⁵

Must everything be perfectly equal? Must every firehouse, every boardroom, every legislature be perfectly balanced? Is any level of gender difference acceptable? Without doing an extended review of difference theory, I would simply answer that as long as gender difference is an excuse to exclude women from centers of power and to undervalue and underpay the work that women do—no. As long as women are assistants, associates, and deputies, while men are directors, chiefs, and presidents—no. There are no separate spheres in international politics; there is no mommy track for world peace.

I. PARITY AS TRANSFORMATION

Every faction of the American suffrage movement believed that winning the vote would change the world dramatically.¹⁶ Through more than seventy years of struggle, some anticipated a more moral society while others sought perfect equality for women.¹⁷ All were disappointed when the world did not change overnight, but gradually it did change. The New Deal, the civil rights movement, women's eventual liberation¹⁸—none of these could have happened without the enfranchisement of all women.

School Faculty, 2000-01, table 1B, available at <http://www.aals.org/statistics/index.html> (last visited Oct. 28, 2003).

¹² Women currently hold the highest elected office in the Bahamas, Bangladesh, Burma, Indonesia, Ireland, Latvia, Panama, Philippines, New Zealand, Saint Lucia, and Sri Lanka. In Finland a woman serves as president, but the Prime Minister is the highest office. See Central Intelligence Agency, Chiefs of State and Cabinet Members of Foreign Governments, <http://www.cia.gov/cia/publications/chiefs/> (last updated Oct. 16, 2003).

¹³ The Bahamas, Barbados, Denmark, Estonia, Finland, Kenya, St. Vincent and the Grenadines, and Turkmenistan. Telephone interview with Angela E.V. King, United Nations Division for the Advancement of Women (Oct. 21, 2003).

¹⁴ United Nations Development Fund for Women, *supra* note 8, at 40.

¹⁵ Fewer than a dozen countries have met even the benchmark of thirty percent representation set in the Beijing Platform for Action. Of those, all had adopted a quota system. *Id.*

¹⁶ See, e.g., Nancy F. Cott, The Grounding of Modern Feminism 21, 29-30 (1987).

¹⁷ See Nancy F. Cott, Feminism in the 1920's: The National Woman's Party, 71 J. Am. Hist. 43, 47-48 (1984).

¹⁸ Even the six-decade struggle to pass an Equal Rights Amendment (ERA) was not for naught. Reva Siegel has argued that the norms of sex equality embodied in the ERA have been popularly ratified. See Robert C. Post & Reva B. Siegel, Legislative Constitutionalism and Section Five Power: Policentric Interpretation of the Family and

But women have learned, bitterly, that the moment of entry does not translate into power. The suffrage amendment, the slow trickle of women law students, Sandra Day O'Connor—these were change, progress, signposts, but they were not power. Power is five women on the Supreme Court and a woman in the White House. Do not say *it is impossible*; say *I will see it in my lifetime. I will make it happen*.

Parity is not simply inclusion for its own sake, but a transformative mechanism. It can be critiqued as too simplistic, too assimilationist, too accepting of hierarchies, but it is none of these things. Like the crusade for the vote a century ago, parity is a tangible goal with the potential to unify diverse women. As an objective, it has the potential to transform our institutions and our world. This belief in the power of women's equality lies at the heart of this journal, and it sparked the creation of this symposium.

The seed for the symposium was planted in the fall of 2002, when Columbia celebrated the seventy-fifth anniversary of women's hard-won admission to the law school. The weekend included an address by Justice Ginsburg and the announcement of the first endowed chair named for a woman faculty member. The anniversary marked the moment that Margaret Spahr '29 walked into Kent Hall, but it truly celebrated the transformation that occurred decades later when the tiny handful of women at the law school, a dozen or so per class from the 1930s through the 1960s, broke out as a force to be reckoned with.¹⁹ Women went from eight percent of the class of 1970 to thirty-two percent a decade later.²⁰ Only then did women faculty begin to be hired in more than token numbers, and in 1986 Barbara Aronstein Black was appointed Dean—the first woman to head an Ivy League law school.²¹ Perhaps encouraged by her appointment, women made up a record forty-five percent of the entering class the following fall.²² Those women, the class of 1990, helped found this journal.

Throughout the seventy-fifth anniversary weekend, the Columbia Journal of Gender and Law was repeatedly cited from the podium as

Medical Leave Act, 112 Yale L.J. 1943, 1985 (2003); Reva B. Siegel, Text In Contest: Gender And The Constitution From A Social Movement Perspective, 150 U. Pa. L. Rev. 297 (2001).

¹⁹ Whitney S. Bagnall, A Brief History of Women at Columbia Law School 12 (2002), at http://www.law.columbia.edu/law_school/communications/reports/Fall2002/brief (a Columbia Law School Report).

²⁰ *Id.*

²¹ But not, as Dean Black has pointed out, the first woman to head an American law school. Columbia alumna Soia Mentschikoff '37 became Dean of the University of Miami Law School in 1974. *Id.* at 15. See also *infra* note 23.

²² Bagnall, *supra* note 19, at 15.

evidence of women's progress at the law school.²³ This prompted today's journal staff to ask what exactly our existence was taken to mean. Surely it is significant that our journal was founded just as women were finally reaching equal representation in the student body. So is the journal a sign of power sought or power achieved? If we have become powerful, shouldn't questions of sex and gender be part of the mainstream? If they are, what then is the role of a dedicated journal? What does a separate feminist journal mean for the scholarship in its pages, and for the scholarship published elsewhere? What does it mean for the students who work on it? For the professors who publish in it?

To answer these questions and to ask others, we invited feminist legal scholars from around the country to come to Columbia. We were overwhelmed by the response—thirty-five professors accepted within weeks of receiving our invitation, and over the next months calls poured in from other scholars asking to participate. We had touched a nerve.

II. SO WHY A FEMINIST LAW JOURNAL?

Feminist law journals and their student editors play a key role in the transformation of American law, and the struggle for gender parity worldwide. Law can give women access to power outright via parliamentary quotas and suffrage laws, and it can break down discriminatory barriers to education, wages, and property ownership that keep women from full citizenship.

Feminist law journals are a unique part of this equation. As a forum, the journals are a hothouse for new ideas for women's advancement and a locus of debate over priorities and strategy. As a part of the academic enterprise, the journals expand opportunities for student editing and substantive input, they challenge the privilege of flagship journals as the only venues that "count" in tenure politics, and they demonstrate that feminist work is legal work, and it matters. As a symbol, feminist law journals remind students, professors, and practitioners that the struggle for women's access to power is not over.

Many presenters at the "Why a Feminist Law Journal?" symposium answered the eponymous question by challenging the audience to rethink the boundaries of feminist legal theory. Janet Halley provocatively suggested that "Taking a Break from Feminism" would be productive for liberal thinkers.²⁴ She urged that we resist the limitations inherent in defining our discourse by male subordination of female. In response, Tracy

²³ Examples can be found in the remarks the Columbia Journal of Gender and Law published earlier in this volume. See *Editor's Note: Introduction to Remarks from the 75th Anniversary of Women at Columbia Law School*, 12 Colum. J. Gender & L. 310 (2003).

²⁴ See Cossman et al., *Gender, Sexuality, and Power: Is Feminist Theory Enough?*, 12 Colum. J. Gender & L. 601, 604 (2003).

Higgins suggested that Halley's prescription could better be understood as "tak[ing] a Break from Subordination Feminism," and noted that one benefit of a hiatus could be forcing feminists to confront the power we wield.²⁵ Brenda Cossman reminded us how broad the palette of feminisms is, and argued for a "decentering" and disruption rather than a break.²⁶

Halley's suggestion is compelling, but I hesitate to embrace it. Subordination theory explains only part of why women hold so little public power. We lack power not only because the deck is stacked against us, but also because we are afraid to seize it, or because as currently structured, it is something we do not wish to seize. We must shake off the opiate of victimhood, but as Higgins and Cossman pointed out, doing so requires a gendered lens from which to assess our starting point.

Regardless of the analytic lens we choose, we need feminist law journals, in which questions about power and equity are asked and answered and asked again. To reach parity we need multiple feminisms and other-than-feminisms; a limited definition will not get us there. For women to acquire and maintain equal power in every facet of society, liberal feminists and radical feminists, sex positive feminists and queer theory feminists, non-feminists and anti-feminists will all have to participate. Reaching parity means that instead of advancing one right-thinking, presentable, representative woman at a time, we will flood the market with women.

We are still a long way from flooding the market at Columbia Law School and others like it. After more than seventy-five years of tolerating women in the student body, Columbia decided in 2001 to re-hang a series of portraits on the walls: fifty-one men and two women. After a student protest, a portrait of one of the women was moved to a more prominent location, but no other action has been taken.²⁷ The need for parity, for simple equal representation, is not purely an aesthetic question. The school's message seemed clear: even after extraordinary women make their mark on the profession and the world, their contributions do not count. Where are the portraits—or the endowed chairs, or the named awards—to honor extraordinary alumnae like Soia Mentschikoff '37, Bella Abzug '44, and Constance Baker Motley '46?²⁸ They are the forerunners of our struggle, and we owe it to them to remember—and to forge ahead.

²⁵ *Id.* at 635.

²⁶ *Id.* at 618.

²⁷ Angela Vicari, Women Largely Missing From Law School Portraits, 56 Colum. U. L. Sch. News 1 (Jan.-Feb. 2002) (describing the protest).

²⁸ Soia Mentschikoff left a legacy of firsts. She was the first woman to teach at Harvard Law School (from 1947-49, before women were admitted as students), the first woman on the faculty at the University of Chicago Law School, the first woman dean of an American law school (the University of Miami Law School), and the first woman president of the Association of American Law Schools. In addition, she was the first woman to

become a partner in a Wall Street law firm and was a co-drafter of the Uniform Commercial Code. See Zipporah Wiseman, Mentschikoff, Soia, in *American National Biography Online* (2000), at <http://www.anb.org/articles/11/11-01146.html>.

Long before she was elected to the United States Congress, Bella Abzug was a civil rights lawyer. She defended blacklisted teachers and artists during the McCarthy era, and in 1950 represented Willie McGee, a black man sent to the electric chair for the “rape” of his white girlfriend. A founder of Women Strike for Peace and a nationally known activist, Abzug served three terms in the House of Representatives, where she co-authored the Freedom of Information Act and introduced extensive anti-discrimination legislation. She unapologetically crusaded for women’s equality, peace, and justice throughout her life. See Blanche Weisen Cook, Bella Abzug, in *Jewish Women in America: An Historical Encyclopedia* 5-10 (Paula E. Hyman & Deborah Dash Moore eds., 1998).

Constance Baker Motley was the first African American woman appointed to the federal bench and the first woman of any race to sit in the Southern District of New York, where she now presides as a Senior Judge. Earlier, as chief counsel for the NAACP Legal Defense Fund she personally directed litigation efforts including the extended struggle to integrate the University of Mississippi. The first black woman to argue before the United States Supreme Court, she won nine of the ten cases she argued there. Before her appointment to the judiciary she was the first woman elected Manhattan Borough President, and the first African American woman in the New York State Senate. See Nancy MacLean, Using the Law For Social Change: Judge Constance Baker Motley, 14 *J. Women’s Hist.* 136 (2002).