

# WHY A FEMINIST LAW JOURNAL?

## INTRODUCTION TO THE ISSUE

### *EDITOR'S NOTE*

#### I. OUR PROJECT

The Columbia Journal of Gender and Law (JGL) editorial board formed in 1989, and we produced our first issue in 1991. But fourteen years after our conception, we found ourselves wondering, “Why a Feminist Law Journal?”—questioning both whether *we* are a feminist journal, and whether there should *be* feminist journals. We invited members of the legal academy to help us scrutinize the role of journals like ours by asking the following questions: Is our purpose still relevant? Considering how theory and practice look today, is a journal focused on the intersection between law and gender, women, or feminism still a useful forum? Do we have clear goals? Are journals devoted to gender or women even feminist? What does “feminist” mean, and is that a worthy mission?

The answers came pouring in from legal scholars across the nation. The participants at our April 4, 2003, symposium and the contributors to this special issue<sup>1</sup> offer a dizzying array of opinions about whether we and our sister journals at schools around the country continue to provide a valuable academic space. They question the relationship between feminism and journals focusing on women or gender. They examine the interplay between students who produce law journals and authors who publish in them, highlighting how our power to select and edit articles may dramatically affect professors’ quests for tenured positions, while also contributing to our own education as feminists and lawyers. They contemplate the varied needs not only of our diverse audience of students, scholars, and practitioners, but also of the diverse women and men who can benefit concretely from feminist legal analysis.

Our contributors do not simply evaluate; they submit constructive criticism and highlight recurring themes to guide us and feminism generally. Many contributors elaborate on how format and logistics impact the effectiveness of a journal. For example, as Taunya Lovell Banks remarked at the symposium, many journals conform to an “assimilationist” or “male model” by using traditional measures of prestige to choose their

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<sup>1</sup> Some authors included in this issue were unable to attend the symposium. Similarly, some panelists at the symposium were unable to contribute a paper. JGL retains transcripts of all symposium remarks.

staffs and select their articles.<sup>2</sup> Other contributors, including Carlin Meyer and Suzanne Goldberg, call for an expansion of feminist journals' willingness to print articles using non-traditional formats such as case briefs, narrative or informal writing styles, or unified pieces presenting dialogue among multiple authors. Several papers in this issue are examples of these last two unconventional styles. Many authors, including Twila Perry, suggest that journals would serve their mission better by presenting more issues that focus on single topics, allowing deeper and more diverse analysis.

Several contributors focus on concerns about deep rifts in the feminist community. A few authors grapple with the definition of feminism itself, including Linda Fisher and the four authors of Gender, Sexuality, and Power: Is Feminist Theory Enough? The contradictions between feminist generations, often divided into Second and Third Waves, were one inspiration for the panel we entitled "Why Do We Eat Our Young?" and come to the fore most explicitly in Regina Austin and Elizabeth Schneider's joint paper. The symposium participants explore clashes on the level of theory, such as in Amy Wax's condemnation of legal feminists' parochial unwillingness to engage the tools of approaches like law and economics, and in Janet Halley's plea to consider common feminist questions without the feminist lens. Several authors, including Twila Perry, Jenny Rivera, and Janis McDonald, emphasize the continuing need for feminists and feminist journals to push themselves and their audience to examine and eradicate oppression and inequalities based on attributes other than gender. Others, such as Hope Lewis, remind us to broaden such analyses beyond Western perspectives.

As we expected, this symposium accomplished more than simply "justifying our existence."<sup>3</sup> It provided an opportunity for a diverse group of participants, similar only in their interest in the intersection of law and feminism, to confront each other across sometimes uncomfortable divides of race, gender, sexuality, age, and prestige of institutional affiliation. It invigorated ongoing conversations among feminists regarding profound concerns about the boundaries and methods of feminism. Finally, it helped JGL and the participants at the symposium reassess the goals that originally inspired us to pursue our work.

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<sup>2</sup> JGL and many similar journals do deviate from the traditional model at least in our selection of members. All students at Columbia Law School are welcome to join JGL, including first year students, and rather than requiring that applicants complete the writing competition used by many other journals, we simply ask that applicants submit a statement of interest.

<sup>3</sup> In response to our invitation to attend the symposium, one prominent Columbia Law School professor expressed his regrets and acknowledged our tongue-in-cheek symposium title with a tongue-in-cheek retort: "Good luck justifying your existence!"

## II. PUBLISHING THE SYMPOSIUM ISSUE

This issue is organized into seven sections, which correspond to the panels we presented at the day-long event.<sup>4</sup> Although the subject matter and arguments presented in each section overlap, we hope that their juxtapositions, clustered according to particular aspects of our inquiry, help elucidate the dimensions of the questions and answers raised by the symposium.

We start at the very beginning, seeking to define feminist journals by looking at how and why they arose and describing their content in the first section, "Creating Context: Journals in Historical Perspective." Richard Chused's paper sets the stage for the development of feminist journals by describing the motivations and creations of Myra Bradwell, whose *Chicago Legal News* was the first legal journal published by a woman.<sup>5</sup> By examining the divergent origins and approaches of two of the first academic feminist law journals, Felice Batlan illuminates the paradoxical position of these journals as potential sites of both conformity with and dissent from traditional legal academic institutions and practices.<sup>6</sup> In her paper, Linda Fisher undertakes a definitional project underlying our inquiry about feminist journals: how do we know which works are feminist?<sup>7</sup> Finally, Laura Rosenbury grounds the symposium discussion by reporting concrete data she compiled about the subject matter and authorship of articles in feminist legal journals since 1978, comparing them to articles published in seven highly regarded mainstream law reviews.<sup>8</sup>

The second section, "Moving the Margins: Assimilation and Enduring Marginality," addresses whether feminist law journals remain—or ever were—marginal fora presenting scholarship on the margins of legal academia, and whether the journals' publication of select articles helps or should help move the margins of acceptability within the academy. Katharine Silbaugh argues that by providing a specialized forum, the journals help promote more feminist scholarship, particularly on subjects considered marginal within feminist scholarship.<sup>9</sup> Twila Perry asserts that

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<sup>4</sup> Authors whose papers appear in a particular section did not necessarily present on the corresponding panel.

<sup>5</sup> Richard H. Chused, A Brief History of Gender Law Journals: The Heritage of Myra Bradwell's Chicago Legal News, 12 Colum. J. Gender & L. 421 (2003).

<sup>6</sup> Felice Batlan, A Journal of One's Own? Beginning the Project of Historicizing the Development of Women's Law Journals, 12 Colum. J. Gender & L. 430 (2003).

<sup>7</sup> Linda E. Fisher, I Know It When I See It, or What Makes Scholarship Feminist: A Cautionary Tale, 12 Colum. J. Gender & L. 439 (2003).

<sup>8</sup> Laura A. Rosenbury, Feminist Legal Scholarship: Charting Topics and Authors, 1978-2002, 12 Colum. J. Gender & L. 446 (2003).

<sup>9</sup> Katharine B. Silbaugh, Proliferation, 12 Colum. J. Gender & L. 462 (2003).

feminism requires analysis of subordination along more lines than gender by diverse authors offering varied perspectives.<sup>10</sup> Jenny Rivera ratifies Perry's assertions and suggests that the journals should aggressively push established margins by challenging and analyzing the position of women of color.<sup>11</sup> Marjorie Kornhauser argues that feminist journals are necessary because feminist legal scholarship still has a marginal status, and furthermore, the journals could never outlive their usefulness because we need to maintain diverse fora for ideas.<sup>12</sup>

The following section, "Unity and Communities: Intersectionality, Privilege, and Membership," examines the reciprocal impact of journals and their law schools and staff members. Anne Dailey asserts that the journals enhance their law schools' educational project by both inherently and purposefully dissenting from dominant curriculum and thought.<sup>13</sup> Katherine Vaughns describes how the journals' content is shaped by the composition of their boards, whether homo- or heterogeneous, and the relative privilege of law students.<sup>14</sup> In their dialogue, Taunya Lovell Banks and Penelope Andrews highlight the contrasts between perspectives of the purposes or successes of feminist law journals, particularly based on whether an opinion arises from experience of a particular racial or global position.<sup>15</sup> In considering the challenges of feminist international human rights scholarship, Hope Lewis similarly reminds us to maintain a global perspective on the identity of the journals' members and authors and the effect that has on journal content.<sup>16</sup>

In "Confronting Obstacles: Tenure Politics, Rankings, and New Solutions," contributors describe and challenge how the unofficial but well-recognized hierarchies of scholarly orientations, law schools, and types of journals affect feminist journals' potential authors and readers. After she lambasts the way well-known law school ranking systems factor in

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<sup>10</sup> Twila L. Perry, Diversity, Discourse, and the Mission of the Feminist Law Journal, 12 Colum. J. Gender & L. 466 (2003).

<sup>11</sup> Jenny Rivera, Moving the Margins, 12 Colum. J. Gender & L. 473 (2003).

<sup>12</sup> Marjorie E. Kornhauser, Why a Duck? Are Feminist Legal Journals an Endangered Species, and If So, Are They Worth Saving?, 12 Colum. J. Gender & L. 478 (2003).

<sup>13</sup> Anne C. Dailey, Cultivating Feminist Critical Inquiry, 12 Colum. J. Gender & L. 486 (2003).

<sup>14</sup> Katherine L. Vaughns, Women Law Journals in the New Millenium: How Far Have They Evolved? And Are They Still Necessary?, 12 Colum. J. Gender & L. 492 (2003).

<sup>15</sup> Taunya Lovell Banks & Penelope Andrews, Two "Colored" Women's Conversation About the Relevance of Feminist Law Journals in the Twenty-First Century, 12 Colum. J. Gender & L. 498 (2003).

<sup>16</sup> Hope Lewis, Embracing Complexity: Human Rights in Critical Race Feminist Perspective, 12 Colum. J. Gender & L. 510 (2003).

scholars' publications, Joanna Grossman considers potential responses of feminist journals and authors.<sup>17</sup> Elvia Arriola encourages journal members and future scholars to ignore the established hierarchies and pursue their feminist interests.<sup>18</sup> Carlin Meyer argues that the low value of feminist scholarship within these hierarchies confirms the need for feminist venues to counteract oppressive forces that seek to silence dissent and stifle risk-taking.<sup>19</sup> Advancing a criticism rarely thoroughly developed amongst their own, Amy Wax rebukes fellow feminist legal scholars for failing to master and incorporate tools of other schools of thought, and argues that doing so would raise esteem of feminist journals by both strengthening feminist works and convincing non-feminists to ascribe feminist scholarship more value.<sup>20</sup>

Elizabeth Bruch sets up the subject of the fifth section, "Autonomy and Integration: Choosing Which Master to Serve," by examining why these conflicting goals of feminist projects are simultaneously attractive and effective.<sup>21</sup> Jane Schacter adds that the journals, as academic and activist pursuits committed to interdisciplinary and intersectional inquiries, draw strength from impulses that are both separatist and integrative not only in relation to the mainstream, but to other difference studies.<sup>22</sup> Suzanne Goldberg argues that feminist journals must maintain their autonomy to pursue socially transformative work.<sup>23</sup> While corroborating the importance of venues specializing in feminist ideas, Stephanie Farrior asserts that feminist scholarship should be fully integrated into mainstream legal thought, and looks at how student journal staff and law school curricula interact to either hinder or generate this integration.<sup>24</sup>

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<sup>17</sup> Joanna L. Grossman, Feminist Law Journals and the Rankings Conundrum, 12 Colum. J. Gender & L. 522 (2003).

<sup>18</sup> Elvia R. Arriola, Tenure Politics and the Feminist Scholar, 12 Colum. J. Gender & L. 532 (2003).

<sup>19</sup> Carlin Meyer, Not Whistlin' Dixie: Now, More Than Ever, We Need Feminist Law Journals, 12 Colum. J. Gender & L. 539 (2003).

<sup>20</sup> Amy L. Wax, Converted or Unconverted: To Whom Shall We Preach?, 12 Colum. J. Gender & L. 546 (2003).

<sup>21</sup> Elizabeth M. Bruch, Lessons About Autonomy and Integration from International Human Rights, Law Journals, and the World of Golf, 12 Colum. J. Gender & L. 565 (2003).

<sup>22</sup> Jane S. Schacter, Form, Function, and Feminist Law Journals, 12 Colum. J. Gender & L. 574 (2003).

<sup>23</sup> Suzanne B. Goldberg, Thinking About Feminism, Social Justice, and the Place of Feminist Law Journals: A Letter to the Editors, 12 Colum. J. Gender & L. 582 (2003).

<sup>24</sup> Stephanie Farrior, The Rights of Women in International Human Rights Law Textbooks: Segregation, Integration, or Omission?, 12 Colum. J. Gender & L. 587 (2003).

Next, four authors probe the edges of feminism in "Gender, Sexuality, and Power: Is Feminist Theory Enough?" Through their exchange about the boundaries and utility of feminism, Brenda Cossman, Dan Danielsen, Janet Halley, and Tracy Higgins imply that feminist journals may either stifle novel, illuminating analyses or may provide the safest or most welcoming fora for ideas skirting or defying established feminist perspectives.<sup>25</sup>

Finally, spurred by our belief that feminist journals should welcome diverse feminist perspectives, we take up the controversial subject of disagreements among feminists in "Why Do We Eat Our Young? Journals As a Feminist Battleground." Katherine Franke posits that feminists disagree badly because of power dynamics structuring relationships among feminists and between feminists and the mainstream.<sup>26</sup> Mary Anne Case suggests that women's established styles of disagreeing have stultified feminist scholarship and doubts that feminist journals provide a forum safe enough to stimulate significant scholarship that is candidly risk-taking.<sup>27</sup> Inspired by a particular incident at the symposium, Janis McDonald explores how white privilege exacerbates a communication divide between feminists.<sup>28</sup> In emulating the informal conversations that feminist legal scholar Mary Joe Frug hosted before her death, Regina Austin and Elizabeth Schneider illustrate the range of feminist conversations and the disagreements they can illuminate and bridge.<sup>29</sup>

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<sup>25</sup> Brenda Cossman et al., Gender, Sexuality, and Power: Is Feminist Theory Enough?, 12 Colum. J. Gender & L. 601 (2003).

<sup>26</sup> Katherine M. Franke, On Discipline and Canon, 12 Colum. J. Gender & L. 639 (2003).

<sup>27</sup> Mary Anne Case, Journals as a Feminist Playground, 12 Colum. J. Gender & L. 644 (2003).

<sup>28</sup> Janis L. McDonald, Looking in the Honest Mirror of Privilege: "Polite White" Reflections, 12 Colum. J. Gender & L. 650 (2003).

<sup>29</sup> Regina Austin & Elizabeth M. Schneider, Speaking Volumes: Musings on the Issues of the Day, Inspired by the Memory of Mary Joe Frug, 12 Colum. J. Gender & L. 660 (2003).

# CREATING CONTEXT

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## Journals in Historical Perspective