

DIVERSITY, DISCOURSE, AND THE MISSION OF THE FEMINIST LAW JOURNAL

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I. INTRODUCTION

Why a feminist law journal? In recent years, there has been a proliferation of law school journals. At present many schools have, in addition to the traditional "law review," journals which focus on race, environmental law, gay and lesbian issues, or international law. In such a context, there seems little need to feel that one has to offer a specific justification for a feminist law journal.

In some ways, all law school journals serve similar functions. The most obvious purpose is to publish articles aimed at advancing legal theory and practice. A second function for these journals is to provide a context in which students can work together on areas of common interest while they enhance their substantive knowledge, improve their research and writing skills, and enhance their resumes. However, while the prestige of traditional law reviews attracts students without regard to political perspectives, special interest journals may be more likely to attract students who have at least some ideological or political commitment to a substantive area. Thus students with an interest in advancing women's interests often join journals that address women's issues. For such students, work on the journal may represent more than an academic exercise or a credential. It can be a context in which the student can act on and affirm a commitment to an area in which he or she hopes to have some long-term involvement. For some women students, the feminist journal may also provide a context that helps them to process gender issues relevant to their law school experience.

Research conducted by some of the speakers at this symposium indicates that in recent years, mainstream law reviews have become increasingly receptive to articles written from a feminist perspective.¹ In light of this development, the question "why a feminist law journal?" becomes an especially important one. Feminist journals must now compete with many others for interesting and compelling articles. In this brief essay I will discuss what I see as the mission of the feminist law journal and I will

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¹ See, e.g., Laura Rosenbury, *Feminist Legal Scholarship: Charting Topics and Authors, 1978-2002*, 12 Colum. J. Gender & L. 446 (2003).

offer a few practical suggestions for ways I think feminist law journals might continue to make themselves attractive to authors who now may have many more choices in placing their work.

II. THE MISSION OF THE SPECIAL INTEREST PUBLICATION

As I began to think about whether feminist law journals have a special mission, I thought about why I often read popular magazines aimed primarily at Black audiences. In addition to the many articles and publications I read in order to stay current in my work as an academic, I also subscribe to magazines such as *Black Enterprise*, *Ebony*, and *Essence*. I read these magazines because they offer me, as a Black person, something different than what mainstream publications provide. Magazines aimed at Black audiences often address issues that I have a personal stake in that mainstream magazines often ignore or gloss over. In chronicling, analyzing, and affirming the ongoing struggles and triumphs of Black people in our ongoing struggle for equality, these magazines challenge racism and subordination and have a mission of uplift and equality.

Feminist law journals serve a specialty audience of women and others who are interested in women's issues. Like magazines aimed at Black audiences, feminist law journals have a mission of critique, analysis, and inspiration for those working toward the common goal of a more just and egalitarian society. Traditional law reviews are generally neutral in terms of values; the articles published often reflect views that span the ideological spectrum. Thus, articles in these journals can be pro-tort reform or anti-tort reform, pro-affirmative action or anti-affirmative action, and pro-reproductive choice or anti-reproductive choice. While law reviews addressed to women's issues also publish articles representing some range of opinions, they tend to publish articles that deconstruct and challenge the subordination of women.

III. FEMINISM AND THE FEMINIST LAW JOURNAL

It might be helpful at this point to think about whether there is a distinction between a law journal that deals with issues of gender and a feminist law journal. At the present time, the increasing number of law school journals that address women's issues go by a variety of names. Some incorporate the phrase "women's law journal"² in their titles, others use the phrase "gender and law."³ Few journals actually use the word "feminism"

² See, for example, the *Texas Journal of Women and the Law* and the *Wisconsin Women's Law Journal*.

³ See, for example, the *Columbia Journal of Gender and Law*, the *Duke Journal of Gender, Law, and Policy*, and the *American University Journal of Gender, Social Policy & the Law*.

in their titles.⁴ This raises the question of, to quote from Shakespeare's *Romeo and Juliet*, "What's in a name?"⁵ It might be interesting to explore some of the history here. Did some journal founders explicitly decline to use the term "feminist" because of concern that some prospective authors might have a negative reaction to the word? Or was the decision not to use the term "feminism" a way of conveying a message that the goal of the journal was to address issues that are relevant to women, without reference to any particular perspective? The fact that an article concerns gender does not necessarily mean that it offers a feminist perspective. The use of the term "feminism" in the title of a journal may represent an explicit statement that a journal is committed to dismantling gender subordination. While as a practical matter those who write law review articles probably assume that all journals focusing on women in the law have a liberal, progressive orientation, a journal title that expresses a feminist mission might be especially attractive to some authors. Also, some journals without the term "feminism" in their titles contain prefatory statements of the journal's goal.⁶ In any event, regardless of a journal's name, it is important that those who publish it continue to think about whether the journal has a mission, and if so, what that mission is.

There is no one generally accepted definition of feminism and I certainly will not attempt to provide one here. As a Black woman, however, I believe that the feminist mission must go beyond issues of gender subordination to include as central themes the goals of eradicating racism, class exploitation, homophobia, and discrimination based on disability and age. In my view then, a critical part of the mission of the feminist law journal should be to reflect both the issues relevant to and the voices of a diverse group of women.

IV. THE CHALLENGE OF INCLUSION: DIVERSITY AND DIALOGUE

A. The Need for Inclusion

When I began to think about this article, it occurred to me that it might be helpful to undertake a brief, informal, and admittedly unscientific survey of the kinds of topics which have received coverage in feminist law journals in recent years. I felt that it was important for me to gain some sense of how frequently feminist law journals addressed issues of particular

⁴ See, for example, the Yale Journal of Law and Feminism. The Women's Rights Law Reporter's title also suggests that the journal has a clear mission.

⁵ William Shakespeare, *Romeo and Juliet*, act 2, sc. 2, at line 43 (T.J.B. Spencer ed., Penguin Books 1967) (1594).

⁶ See, e.g., 6 Berkeley Women's L.J. iii (1990-91) (statement of goal of addressing legal issues relevant to "traditionally underrepresented women").

relevance to women who fall outside of the demographic of being white, middle or upper-middle class, heterosexual, and relatively young.

As soon as I began my informal survey, however, it occurred to me that it might be important to make a further distinction between articles about particular groups of women and articles written by women who were actually members of those groups. This is not to suggest, for example, that only Black women should write about issues that affect Black women. Personal experience is not a requirement for compelling insights or suggestions. However, I am very much aware that in a society with entrenched hierarchies on the basis of factors such as race, class, and ethnicity, sometimes individuals who are not members of subordinated groups are set up as “experts” on those groups while the views of those who actually are members of the group and who have expertise are virtually ignored. In order for feminist journals to have integrity and credibility it is absolutely critical that the voices of women from diverse groups—in terms of race, class, sexual orientation, disability, and age—be a part of the discussion.⁷

Attaining diversity in terms of writers and perspectives does not happen automatically.⁸ Editors of feminist law journals cannot simply sit in their offices and hope to receive articles that will permit their journals to reflect the diversity that exists among women in this society. Instead, what will be required is deliberate and sustained action. In the remainder of this article I will suggest some ways feminist law journals might think about shaping the content of some of their issues so as to assist them in maintaining a position at the center of feminist scholarship.

B. Structuring a Diverse Discourse

One approach feminist journals might take would be to provide more symposia on particular groups of women. In 1990-91, the Berkeley Women's Law Journal, which has an explicit mission of focusing on legal

⁷ My informal survey suggested that women's law journals have made sincere efforts to address issues concerning marginalized women. However, there is still a clear need for more focused and intensive efforts in this area.

⁸ First, obviously, law journal editors can only choose from the articles that have actually been submitted to them. Second, the number of law professors who do not fit the demographic of white, upper-middle class, and heterosexual is limited, as are the number of women in law practice who can afford the luxury of writing law review articles. Third, in the world of legal academia, access to rewards such as tenure, promotion, invitations to conferences, and invitations to give lectures is heavily influenced by the status of the journals in which a professor has published, and publishing an article in a feminist journal may not yield as much career mileage as publication in highly-ranked, established, traditional law reviews. Finally, feminist journals must now compete with the more recent law journals that focus on race, ethnicity, or sexual orientation.

issues relevant to traditionally underrepresented women,⁹ published a groundbreaking volume on Black women in legal academia. Feminist law journals might consider publishing issues on other groups of women and the challenges they face in specific contexts, such as academia, other types of employment, or in society at large.¹⁰ Particular issues might focus, for example, on women with disabilities, single women, women who do not have children, or elderly women.

Editors of feminist journals might also consider making their publications known as forums in which extended discourses take place between women who are differently situated in terms of race, class, religion, age, or sexual orientation. For example, while Black women often write about race, it is rare to encounter meaningful dialogues about race and feminism *between* feminist scholars of color and white feminist scholars.¹¹ Feminist law journals could establish themselves as sites for these kinds of dialogues.

C. Family Law as an Example

I teach family law, an area in which feminist debates and feminist theory are central. Family law is also an area in which many women who consider themselves to be feminists disagree on a variety of issues such as the desirability of surrogacy and the balance between work and family. When one specifically and intentionally adds diversity to the mix, the situation becomes even more complex. Still, feminist theory and law practice would be enriched by an ongoing dialogue among diverse groups of women on issues, such as those in the following examples, that feminists, or those who define themselves as having the goal of advancing women's interests, care about.

1. *Transracial and International Adoption*. Feminists need to think more deeply about the fact that most transracial and international adoptions involve the transfer of children from some of the most disadvantaged

⁹ See Berkeley prefatory statement, *supra* note 6 (statement of journal's mission "to address the special legal issues affecting traditionally underrepresented women (poor women, women of color, lesbians, and disabled women)").

¹⁰ The Stanford Law Review devoted a substantial part of an issue to publishing articles presented at the Third National Conference of Women of Color in the Law, which was held in 1990. See Women of Color at the Center: Selections From the National Conference on Women of Color and the Law, 43 Stan. L. Rev. 1175 (1991).

¹¹ For an example of a book which did this in a non-legal context, see Gloria I. Joseph & Jill Lewis, Common Differences: Conflicts In Black And White Feminist Perspectives (1986). There has also been some pioneering work by white women exploring the relationship between white women, race, and racism. See, e.g., Ruth Frankenberg, White Women, Race Matters: The Social Construction of Whiteness (1993); Martha R. Mahoney, Whiteness and Women, in Practice and Theory: A Reply to Catharine MacKinnon, 5 Yale J.L. & Feminism 217 (1993).

women in a particular society or in the world, to the most advantaged women.¹² If feminists are concerned about issues involving mothering, globalization, poverty, and racism, then the interaction between poor women and more advantaged women with respect to the matter of mothering cannot be limited to the offer, by more advantaged women, to adopt the children that poor women are too poor to raise themselves in their own countries or communities.

It would be very interesting to have a dialogue about transracial and international adoption among Black women, white women, Asian women, and Hispanic women. A diverse group of women would probably differ in their definitions of the relevant personal, political, cultural, and sociological issues raised by these kinds of adoptions and would have different views as to what is at stake for the affected children, adults, communities, and countries.

2. *Women's Economic Dependence on Men.* In recent years family law and feminist scholars have been seeking to develop a theory of alimony. In my own work, I have examined the implications of this search for poor women and women of color who, because of the economic status of the men they marry, are least likely to become alimony recipients.¹³ The issue of alimony raises fundamental questions about the economic dependency of women on men, a subject about which women have very different views.

3. *Patriarchy.* Although most women who consider themselves to be feminists would probably agree that patriarchy subordinates women and should be dismantled, the analysis of and struggle against patriarchy is different for women who are paired with men who traditionally do not have the kind of power white men typically exercise in this society. I am certain that women of different races, ethnic groups, and religious and cultural traditions have analyses of patriarchy that reflect their own groups' unique historical, cultural, and political issues. A cross-dialogue that reveals the similarities and differences might be most illuminating.

4. *Domestic Violence.* Even though we all probably agree that no woman should tolerate domestic abuse, calling the police into your home, whatever the reason, has different political and symbolic implications as well as practical dangers in the case of women whose male partners are men who are themselves subordinated in this society.

5. *Marriage.* In recent years, the federal government and many states have initiated programs to encourage and strengthen marriage. To what extent do women of different classes, races, ages, ethnicities, and

¹² Twila L. Perry, *Transracial and International Adoption: Mothers, Hierarchy, Race, and Feminist Legal Theory*, 10 Yale J.L. & Feminism 101 (1998).

¹³ See Twila L. Perry, *Alimony: Race, Privilege, and Dependency in the Search for Theory*, 82 Geo. L.J. 2481 (1994).

sexual orientations have a stake in the continuance of marriage as an institution?

6. *Other Issues.* How does class background play into the lives of middle-class feminists and the analyses they might bring to legal issues? What about the relationship between older women and younger women around issues of aging and male/female relationships? What does the typical coupling of older men with younger women mean for feminist analysis of family law issues involving matters such as divorce, alimony, child support, and other issues that older divorced women often must confront as their spouses move on to second marriages, often with younger women?

One need not assume that discourses between diverse groups of women will inevitably be hostile or divisive.¹⁴ Instead, such discussions should be viewed as challenging and possibly transformative in advancing feminist theory.

The kind of explorations I am suggesting could take many different forms, such as traditional law review articles and short essays with commentary, as well as personal experience pieces. The Women's Rights Law Reporter, published at Rutgers Law School where I teach, is an example of a journal that has long been willing to combine traditional articles with other types of presentations, including briefs and transcripts of conferences. This kind of flexibility represents an acknowledgment that the evolution of feminist theory and practice can be in forms other than the traditional law review article and it affirms the important idea that substance is more important than form in the movement for social change.

V. CONCLUSION

Why a feminist law journal? Because women still are not accorded equal opportunity and equal dignity in this society. Because there is still work to do, there are issues to be examined, and there are stories yet to be told. Because diversity and inclusion in the women's movement are challenges that require a focused and sustained effort. At a time when feminist law journals must compete with so many others for compelling and insightful articles by a diverse group of writers, focused thinking about the purpose of the feminist journal is essential to enabling feminist journals to hold the places that they should hold at the forefront of feminist theory and law practice.

¹⁴ In connection with the Feminist Legal Theory Workshop, Professor Martha Fineman has begun a series of meetings which she describes as "uncomfortable conversations" designed to have feminists discuss issues about which there has been substantial disagreement. In this article, I envision feminist scholarship in which the interchanges specifically focus on the ways in which racial, ethnic, sexual orientation, economic, and age differences may affect the ways different women view particular issues.