

# MOVING THE MARGINS

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Thank you to the symposium organizers for inviting me to speak. The symposium theme, an exploration of the justification and need for a feminist law journal, and the panel I participated in focusing on the concept of marginalization, strike me as familiar and somewhat heavily-explored areas of discourse. Surely when the founders of the Columbia Journal of Gender and Law ("JGL") proposed this scholarly endeavor, there were those who questioned the need for such a publication. While those early doubters probably included those who challenged the concept of sex discrimination, as well as the need for remediation, I assume there were those who genuinely wondered what role JGL could play in the development of feminist legal theory and discourse. As such, it is not merely an academic exercise to revisit this question of JGL's relevance, but rather an important stage of the development of feminist doctrine and feminism itself.

My answer to the question "Why a feminist law journal?" is simply "Why not?" My response is not intended to trivialize or avoid the underlying concerns of our inquiry, but rather to elevate what I consider the critical issue behind the inquiry. In my opinion, to ask "Why a feminist law journal?" is to ask "Why is feminism important? Why is feminism relevant to today's world? Why does anyone still consider it important to focus closely on the status of women and on gender issues?" Our panel, "Moving the Margins," similarly leads to several important questions. Due to limited time, I will focus on how a feminist law journal can serve as a "mover" in its own right and as a facilitator of "movers."

In considering these questions—which represent the underlying challenge to the validity and need for such a journal, and which are inherent in the "Why a feminist law journal?" inquiry—I suggest that we have validly shifted the inquiry to the proper source of concern. If the justification for JGL was adequately articulated at its founding, then to now ask "Why?" is to suggest that changed circumstances have put into question the original justification. My response "Why not?" focuses our thinking on

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whether circumstances have sufficiently changed to warrant a rejection of the original justification, unless some new justification can support its continued existence.

In every issue, JGL states that it seeks “to address the interplay between gender and law and its effects at the personal, community, national, and international levels. Our articles express an expansive view of feminism and of feminist jurisprudence, embracing issues related to women and men of all races, ethnicities, classes, sexual orientations, and cultures.”<sup>1</sup> Moreover, JGL states that its goal “is to advance feminist scholarship at the law school beyond traditional legal academic confines and to serve as an outlet for interested students, practitioners, and faculty members.”<sup>2</sup>

Keeping in mind these stated objectives and justifications for JGL, we must look to our current world. Circumstances have changed, but not so much that we can conclude that the original justification for JGL is insupportable. Women continue to stand in unequal positions in society as compared to men, unequal by traditional measures—that is to say socio-economic and political status. Arguably, our inquiry could end here, since inequality is by its very nature an area of valuable concern, one to be studied and dissected vigorously, frequently, and unrelentingly. However, there are other bases beyond mere status inequality that support the continued existence of feminist law journals. Before pursuing these other bases, we should begin with inequality because it is so easily proven and so often taken for granted.

We need not look far to find examples of inequality. The data are collected and widely available on the unequal earnings and status of women. Women earn less than men, have higher levels of poverty than men—even working women (5.9 percent for working women compared with 4.4 percent for working men in 1999)<sup>3</sup>—women hold dramatically fewer political and business leadership positions than men, and women have fewer rates of higher educational attainment in several subject areas, in particular math and science. As lawyers, law professors, and law students, we are naturally curious and aware of the position of women within the legal community. Unfortunately, despite constituting approximately fifty percent of the students in many law schools<sup>4</sup> and approximately twenty-nine

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<sup>1</sup> See, e.g., *Preface*, 12 Colum. J. Gender & L. n.p. (2003).

<sup>2</sup> *Id.*

<sup>3</sup> U.S. Department of Labor, *Poverty Rate Still Higher for Working Women*, MLR: The Editor's Desk, at <http://www.bls.gov/opub/ted/2001/mar/wk4/art01.htm> (Mar. 26, 2001) (hereinafter “*Poverty Rate*”).

<sup>4</sup> ABA, *Official ABA Guide to Approved Law Schools* (2000) (indicating women constitute 47.5 percent of all entering law students).

percent of all lawyers,<sup>5</sup> women still have not reached the higher echelons of professional success in numbers comparable to their numbers in the profession. For example, in the private sector, women constitute a mere 16.3 percent of partners in law firms,<sup>6</sup> and in the public sector there are few female corporation counsels and attorneys general. The number of female judges is also strikingly small. At the law schools, women constitute a disheartening small number of the nation's deans and law professors, a mere 12.5 percent and 22.9 percent, respectively.<sup>7</sup>

While this obvious disparity for women generally may be sufficiently persuasive to "make the case" in favor of a feminist law journal, I believe it does not fully present the challenges faced by women of color and thus does not fully respond to the question. This is where the focus of our panel is most critical to our discussion. There are tremendous gaps between women of color and other women, and women of color and men. By example, let us look at a group of women of color with whom I am most familiar, and who are part of the largest ethnic group in the country, namely Latinas.<sup>8</sup>

On the fundamental question of equality, the census and socio-economic data clearly reveal that Latinas in general not only fare less well than men, they fare less well than white women. The poverty rate for Latinos in 2001 was 21.4 percent compared with 7.8 percent for whites.<sup>9</sup> For Latino families, 19.4 percent were in poverty in 2001 compared with 5.7 percent for white families.<sup>10</sup> For female-headed households, the Latina poverty rate was 37.8 percent,<sup>11</sup> compared with 19.9 percent for white households.<sup>12</sup> Even working Latinas fare worse: the poverty rate for working Latinas in 1999 was 10.5 percent compared with 4.6 percent for

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<sup>5</sup> ABA Commission on Women in the Profession, Statistics and Data on Women in the Legal Profession, available at <http://womenlaw.stanford.edu/womenlawyerstats.html> (last visited Sept. 8, 2003).

<sup>6</sup> The National Association for Law Placement Foundation, Presence of Women and Attorneys of Color in Large Law Firms Continues to Rise Slowly but Steadily, at <http://www.nalp.org/press/minrwom02.htm> (Oct. 3, 2002).

<sup>7</sup> Richard A. White, Association of American Law Schools Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2000-2001, Table 1A, at <http://www.aals.org/statistics/> (last visited Sept. 8, 2003).

<sup>8</sup> While my comments focus on Latinas in particular, many of my comments apply equally, perhaps with greater strength, to other women of color.

<sup>9</sup> Bernadette D. Proctor & Joseph Dalaker, Poverty in the United States: 2001 4, available at <http://www.census.gov/prod/2002pubs/p60-219.pdf> (Sept. 2002) (published by the U.S. Census Bureau).

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 24.

<sup>12</sup> *Id.* at 23.

white women.<sup>13</sup> There are infinitesimally small numbers of Latinas serving in leadership positions in businesses and the government. In the legal profession, Latina lawyers, partners, and law professors remain in a minority. The numbers are difficult to confirm, but 3.9 percent of law school faculty are Latinas.<sup>14</sup>

Apart from the equality status basis, there are, as I mentioned above, other bases supporting the continued existence—and relevance—of a feminist law journal. These other bases focus on the more subtle issue that surrounds the research and interrogation of questions concerning Latinas and other women of color, their experiences, obstacles to success, and expectations. The manner and design of the issues and questions about women of color as part of the larger group of all women, as well as unique discreet subpopulations, provide additional grounds to tread. Are women of color being considered as full humans and agents of their own destinies? Do women of color define the parameters of the questions and issues? Even more fundamentally, are women of color being considered at all, and if so, how?

Over the past two decades there has been an increase in research pertaining to the status of women of color, as well as the role of race in defining and refining the lives of women of color. In the legal field, several legal scholars have founded and produced a genre of feminist-based legal analysis known as Critical Race Feminism.<sup>15</sup>

As described in *Critical Race Feminism: A Reader*, “Critical race feminists are anti-essentialists who call for a deeper understanding of the lives of women of color based on the multiple nature of their identities. They emphasize conscious considerations of the intersection of race, class, and gender by placing them at the center of analysis.”<sup>16</sup>

The interest in and development of this type of legal discourse is based in the perceived lack of sufficient examination of women of color within feminist and race-based analysis. As succinctly stated in *Critical Race Feminism: A Reader*, “Much of feminist theory has presumed that white middle-class women’s experiences can speak for all women. By the same token, much of the jurisprudence on race has unconsciously presumed that black males’ experiences hold true for black women and all minorities.”<sup>17</sup>

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<sup>13</sup> *Poverty Rate*, *supra* note 3.

<sup>14</sup> *White*, *supra* note 7, at Table 1B.

<sup>15</sup> See, e.g., *Global Critical Race Feminism: An International Reader* (Adrien Katherine Wing ed., 2000); *Critical Race Feminism: A Reader*, (Adrien Katherine Wing ed., 1996).

<sup>16</sup> *Critical Race Feminism: A Reader*, *supra* note 15, at 4.

<sup>17</sup> *Id.*

There has been significant effort to alleviate this representational error. While we can debate whether this work is complete, what continues to be true is the lack of significant, well-designed, and prepared raw data on women of color and the legal issues that affect them. As a consequence, research on women of color continues to expose this gap in information and analysis. For example, Latinas have sought to make visible intimate partner violence and its effect on the Latino community. Latina advocates and lawyers have also sought to articulate the legal obstacles to Latina survivors' efforts to access legal resources. This lack of research, data, and discourse has hampered much of the political work in this area.

Turning directly to the question posed by this symposium, a feminist law journal can serve a vital role by providing the venue for this research and discourse. This naturally includes publication space for articles on and by women of color, but it also includes constructing a feminist law journal as a space for the questions, "Why the disparate treatment?" and "What impact does such treatment have on feminist discourse and feminist strategies?" Thus merely publishing data and a few articles does not establish a journal as a "mover," and perhaps as barely a "facilitator of movers." Instead, the greater challenge is to accept the task of working through the dissonance and difference.

Unfortunately we are not even at the stage where feminist law journals provide sufficient publication space. For example, a recent computer search of JGL's publications over the past ten years indicated that only twenty-eight articles contained the words "women of color." Obviously, we have much work to do.

However, we have a real opportunity for journals to "move the margins" as well as to facilitate the "movers" of the margins. Knowing where there is a need and responding to that need is what feminist law journals are known for doing. Their very creation and existence are a testament to their understanding of these complex issues.

In conclusion, in answering "Why a feminist law journal?" I suggest the answer is found in what brought us to first consider the need for such an endeavor, and to reckon with the fact that we have not reached a point of equality or of representation. While women of color continue to be underrepresented in society and in legal and other scholarly research, this journal can serve as a place where information about women of color can be presented, and where we can challenge the assumptions about women of color, where we can also propose new ways of considering the experiences of women of color. Such an effort serves JGL's mission and is an honorable and worthy endeavor, not purely an academic enterprise, disconnected from community. Indeed, it is in keeping with the true spirit of feminism.