

# WOMEN LAW JOURNALS IN THE NEW MILLENNIUM: HOW FAR HAVE THEY EVOLVED? AND ARE THEY STILL NECESSARY?

*KATHERINE L. VAUGHNS\**

It is no secret that women are entering law school and the legal academy in significant numbers in the new millennium. And their numbers have been on the rise since the early 1970s. For those of us entering law school around that time, inspired by the women's movement of the 1960s and 1970s, we firmly believed that the legal profession would become, in effect, more caring—for want of a better expression—because women were entering the profession in greater numbers. But alas, we could not have been more naïve. Male orientation of the law and male domination of the legal profession has relentlessly persisted into the twenty-first century.

On a more sanguine note, emerging voices have found expression in the proliferation of specialty journals being published in the latter part of the twentieth century. These journals are in sharp contrast to general or “flagship” journals which have traditionally been viewed as male oriented and, more particularly, white male oriented. In fact, some have always perceived the law in general to be white and male, not gender- or race-neutral as others in the profession, the academy, and even the judiciary would have us believe.

Ten years ago, the American Bar Association (ABA) Commission on Women in the Profession sponsored an extraordinary program entitled “Is the Law Male?” as part of the ABA's annual meeting in New York City in 1993. The keynote speaker was the Honorable Judith S. Kaye, who only months earlier had been appointed Chief Judge of the New York Court of Appeals. I recall Chief Judge Kaye being the main inspiration for such a program. As an appellate jurist, she told the audience, she had had the opportunity to follow the law reviews closely and had monitored, in her words, “the marvelous development of feminist legal theory.”<sup>1</sup>

---

\* Professor of Law, University of Maryland School of Law.

<sup>1</sup> Judith S. Kaye, *Is The Law Male? Welcome Address*, 69 Chi.-Kent. L. Rev. 301, 301 (1993). The ABA Commission on Women in the Profession and the Chicago-Kent Law School joined together to initiate the “Is the Law Male?” Continuing Legal Education programs with the principal goal of introducing feminist legal theory to a wider legal community beyond the legal academy. Lynn Hecht Schafran, *Is The Law Male? Let Me Count The Ways*, 69 Chi.-Kent. L. Rev. 397, 397 (1993).

A program goal and part of the ABA Commission on Women in the Profession's mission is to build bridges "among the too-often-discrete worlds of the academics, the judiciary, and the practicing Bar,"<sup>2</sup> and to promote the diversity of ideas and insight expressed in specialty journals such as those devoted to women's stories and women's experiences.<sup>3</sup> This is especially noteworthy in light of the fact that although legal scholars cite specialty journals heavily, judges do not.<sup>4</sup> Not surprisingly, the program served to underscore the fact that the law is still male.<sup>5</sup>

Feminist law journals thus arose in response to the perception that the law is male and focused on more gender-oriented themes impacting women specifically, first addressing areas of the law normally relating to women, such as family law and employment law.<sup>6</sup> More recently, however, articles written in these journals have broadened their focus to include gender-oriented themes relative to more traditional subjects such as taxation<sup>7</sup> and corporate law,<sup>8</sup> and even influencing "flagship" journals in publishing so-called non-traditional scholarship.<sup>9</sup> Also, because of the increasing numbers of women entering law schools, a growing need for journal writing relating to their particular interests found a voice in these journals as well.<sup>10</sup> Much like other non-traditional jurisprudence that was

---

<sup>2</sup> Kaye, *supra* note 1, at 302.

<sup>3</sup> *Id.*

<sup>4</sup> Deborah J. Merritt & Melanie Putnam, Symposium on the Trends in Legal Citations and Scholarship: Judges and Scholars: Do Courts and Scholarly Journals Cite the Same Law Review Articles?, 71 Chi.-Kent. L. Rev. 871, 871-73 (1996).

<sup>5</sup> See generally Schafran, *supra* note 1, at 411 (concluding that the need for such programs like "Is the Law Male?" will no longer be necessary once women's perspectives become fully integrated into the law school curriculum, practicing bar, and judiciary, giving recognition to the diversity of the human experience).

<sup>6</sup> Laura A. Rosenbury, Feminist Legal Scholarship: Charting Topics and Authors, 1978-2002, 12 Colum. J. Gender & L. 446, 458 (2003).

<sup>7</sup> See, e.g., Marjorie E. Kornhauser, A Taxing Woman: The Relationship of Feminist Scholarship to Tax, 6 S. Cal. Rev. L. & Women's Stud. 301 (1997).

<sup>8</sup> See, e.g., Amy E. Decker, Women in Corporate Law: Rewriting the Rules, 4 Am. U. J. Gender & L. 511 (1996).

<sup>9</sup> See, e.g., Theresa A. Gabaldon, The Lemonade Stand: Feminist and Other Reflections on the Limited Liability of Corporate Shareholders, 45 Vand. L. Rev. 1397 (1992).

<sup>10</sup> See, for example, the statement of the Berkeley Women's Law Journal founding editorial board:

Over two years ago, a group of first year women law students came together to form an idea that has now become the Berkeley Women's Law Journal. We knew little about the law and less about publishing a journal. Yet we were rich in our ideas about women's issues, and dedicated to a vision of preserving our voices of diversity and

developing around the same time, feminist law journals were established at various law schools around the country to give voice to the increasing diversity reflected in law school student populations.<sup>11</sup>

As Professor Christine A. Littleton wrote in her introduction for the premiere edition of the women's journal established at the University of California at Los Angeles Law School in 1991, the need for women's law journals is undeniable.<sup>12</sup> According to Professor Littleton, however, the problem facing women's law journals and those which follow will be to negotiate the proper balance given the diversity within the feminist ranks.<sup>13</sup> Thus, consistent with her observation about editorial boards,<sup>14</sup> a time would undoubtedly come for the editors of feminist law journals to reflect on their purview and perhaps re-dedicate their efforts—either to the mission originally established or to a new scholarly path—so as to ensure their continued viability or (dare I say) relevance. Whatever the goal or focus, the time is now for such re-dedication.

maintaining our commitment to social change within the often stifling confines of a law school environment.

1 Berkeley Women's L.J. n.p. (1985); see also, for example, the mission statement of Columbia Journal of Gender and Law, which states in part as follows: "In fostering dialogue, debate, and awareness about gender-related and feminist issues, our goal is to advance feminist scholarship at the Law School and to serve as an outlet for students and faculty interested in issues of gender and the law." 1 Colum. J. Gender & L. n.p. (1991).

<sup>11</sup> See, for example, the Harvard Women's Law Journal's response to the question posed: Why a Women's Law Journal?

When the law first distinguished between men and women, distributing rights and responsibilities on the basis of sex, and provided them with different opportunities for participation in the legal system, the law took on a separate meaning for women. It is now necessary to examine the origins and the impact of this differential treatment, and to develop a feminist jurisprudence.

1 Harv. Women's L.J. viii (1978); see also, for example, the inaugural issue of The Georgetown Journal of Gender and the Law in which the editorial board stated in part as follows:

The *Journal*, whose mission is to explore the impact of gender and sexuality on both the theory and practice of law, is the result of over two years of planning and advocacy by Georgetown law students. . . . The *Journal* seeks to complement the critical work being done by existing feminist journals while expanding inquiries into the intersection between sexuality and gender.

1 Geo. J. Gender & L. n.p. (1999).

<sup>12</sup> Christine A. Littleton, Introduction: Q & A: Why A Women's Law Journal?, 1 UCLA Women's L.J. 3, 3 (1991).

<sup>13</sup> *Id.* at 5.

<sup>14</sup> *Id.* at 6.

Notwithstanding the increasing numbers of women in law schools, in the legal academy, the profession, and even in the ranks of the judiciary, the need for so-called women's or feminist law journals seems to remain ever present. Indeed, Professor Martha Minow on the occasion of the Harvard Women's Law Journal's twentieth anniversary celebration began her essay with a quote from the works of Ding Ling, a Chinese feminist, who once wrote: "When will it no longer be necessary to attach special weight to the word 'woman' and raise it specifically?"<sup>15</sup> And in exalting the important contributions of the Harvard Women's Law Journal during the twenty years after its founding in 1997 and evidencing "the progress and struggles of women in law," Professor Minow recognized the need, in effect, for continuing the scholarly debate in feminist legal journals.<sup>16</sup> Without hesitation, my reply to Ding Ling's undeniably important question would be, "not in my lifetime."

On the other hand, some might argue that the revolutionary experience to change the male-dominated focus of the law has failed. Some commentators have been proclaiming that feminism has lost its purpose and run out of ideas.<sup>17</sup> In other words, feminist law journals lack relevance today. If feminist law journals simply replicated traditional law journals (historically) established by males for males in terms of their structure, composition, and membership selection, are they essentially the same?<sup>18</sup> More troubling, if not more perplexing, are the kinds of issues that feminist law journals have attempted to face throughout the years of their development that relate to the intersections of race, gender, class, and sexual orientation, in the context of the diversity of women's issues and experiences. Undoubtedly, the perspectives of women from different backgrounds, ethnic or racial groups, and classes are not necessarily the same in terms of their individual life experiences even if experienced in the same context such as a law school classroom, courtroom, or corporate boardroom. But are these dissimilar experiences necessarily irreconcilable? In other words, is it possible to reach a point of collaboration concerning

---

<sup>15</sup> Martha Minow, Perspectives on Our Progress: Twenty Years of Feminist Thought: The Adulthood of a Women's Law Journal, 20 Harv. Women's L.J. 1, 1 (1997) (quoting Ding Ling, Thoughts on March 8, in I Myself Am a Woman: Selected Writing of Ding Ling 317, 319 (Tani E. Barlow ed., 1989)).

<sup>16</sup> *Id.*, at 4. Specifically, Professor Minow asked for "more debate, more engagement, [and] more pages of the WLJ [Harvard Women's Law Journal]." *Id.*

<sup>17</sup> Anita Bernstein, Symposium on Unfinished Feminist Business: Foreword: Still Unfinished, Ever Unfinished, 75 Chi.-Kent. L. Rev. 641, 641 (2000) (citing Martha Chamallas, Introduction to Feminist Legal Theory 307 (1999) and Orit Kamir, Feminist Law and Film: Imagining Judges and Justice, 75 Chi.-Kent. L. Rev. 899, 899 (2000)).

<sup>18</sup> As Professor Littleton noted in an essay inaugurating the publication of UCLA's Women's Law Journal in 1991, "the lack of a gender modifier in front of a law review's name . . . does not guarantee a lack of masculine gender in the history, composition, or orientation of the enterprise." Littleton, *supra* note 12, at 3 n.2.

this intersection in journal writing as opposed to an all or nothing approach? I certainly hope so.

This conference thus affords an opportunity to explore how far feminist law journals have evolved and whether they have delivered on their promise to present new insights, establish new jurisprudence, and engage different perspectives based on the diversity of all women's experiences in life and in the law. Because most law students arguably are from relatively privileged sectors of this society,<sup>19</sup> the daunting task confronting the editorial boards of feminist journals is to maintain their "focus on women without ignoring, obscuring or distorting the deep divisions of race, class and sexual orientation in this society and in its laws."<sup>20</sup> I am fairly confident that members of these editorial boards, including the Columbia Journal of Gender and Law's, are up to the task.

My sense is that within the last few years feminist law journals have made efforts to reach a point of harmonious congruence in terms of women's issues at the intersection of gender, race, class, and sexual orientation. But is that perception or reality? My guess is that the perception among young scholars of color is that feminist law journals may not be as receptive to their ideas as they might be to others. It has been my experience, at least, to equate feminist or feminism with issues not necessarily relating to women of color. From the vantage point of editorial boards of feminist law journals, depending on the heterogeneity of their composition, this is an understandable dilemma which they must attempt to confront. So, in the process, it may not be surprising to find that journals focusing on people at the margins of our society have also evolved, perhaps in the wake of the inability of feminist journals to capitalize on such diversity.<sup>21</sup>

---

<sup>19</sup> *Id.* at 5.

<sup>20</sup> *Id.*

<sup>21</sup> See, for example, the mission statement of MARGINS: Maryland's Law Journal on Race, Religion, Gender, and Class, which states as follows:

The mission of MARGINS is to create a meaningful forum in which to explore the intersection between the law and its impact upon individuals and communities along the lines of race, religion, gender, and class. The creation of MARGINS was inspired by the recognition that the study and practice of law is often infused with a brand of myopia that directs legal inquiry towards the language of statutes and case law, but away from the larger effects of those laws on the population in general, and particularly on the disenfranchised. MARGINS was conceived as neither leftist nor conservative, but dedicated to providing a forum for scholarly inquiry and penetrating discourse from a wide spectrum of academic and practical expertise.

available at <http://www.law.umaryland.edu/margins/> (last visited May 13, 2003); see also the mission statement of the University of Iowa School of Law's Journal of Gender, Race and Justice which states in part as follows:

Since I am not necessarily advocating a proliferation of specialty journals, my question becomes how to find ways for collaboration. In other words, in what ways can these journals foster the kind of collaboration among diverse groups of women scholars of all colors, and how should journals make themselves a more welcoming vehicle for publication of their ideas, experiences, and insights?

Several suggestions come to mind. For example, the editorial board could review its mission statement and revise it to enhance its receptivity to such scholarship. Another is the composition of the editorial board. Does it reflect the diversity of its student body population? Is selection done in the traditional fashion akin to the general law review process? Or has the board employed a more creative, out-reaching process to ensure its diversity? Why not devote a symposium issue on an annual or bi-annual basis to addressing such diverse ideas collaboratively? I am sure there are more creative ideas out there for consideration.

The reason for fostering collaboration on issues at the intersection of gender, race, class, and sexual orientation is to afford legal scholars writing in the non-traditional areas (or bringing "outsider" viewpoints to traditional areas) the opportunity to consider avenues of intellectual and scholarly pursuit in which there might be common ground ripe for exploration. In doing so, the opportunity to appreciate commonalities at the intersections of gender, race, class, and sexual orientation may be ever present. Otherwise, the probability of marginalization remains high and, thus, the perception of inhospitality persists.

Although women's law journals have evolved over the years since the first one appeared in publication in 1971,<sup>22</sup> their development will undoubtedly continue to expand into exciting new areas of insights and interests. In short, women's law journals in the new millennium are still very relevant and necessary.

---

Finally, we are a journal that promotes living discussion. Through our annual symposium, we will test, shape and strengthen our scholarship by bringing a myriad of experiences into the realm of legal thought. We intend to build alliances across differences, to rub ideas together and watch the sparks fly. . . .

1 *J. Gender Race & Just.* xi (1997-98).

<sup>22</sup> 1 *Women's Rts. L. Rep.* (1971).