

TENURE POLITICS AND THE FEMINIST SCHOLAR

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I. CONFRONTING OBSTACLES

I begin my remarks here today by assuming that someone else in this symposium has affirmed the positive role played by the feminist law journal, as a material byproduct of the women's movement in academia, in shaping the discipline of feminist legal theory, its methodology, visions, and goals. Yet, the symposium organizers asked us to consider whether there are obstacles that stand in the way of this significant role for the feminist review. I find it ironic that this question has been posed to someone like me who views herself as a wounded feminist scholar—wounded by the system of white male supremacy in legal education, but even more so wounded by my own past internalized attitudes¹ of resistance to my spirit² as a critical Latina, lesbian, and feminist scholar.

Let me explore some further assumptions embedded in the question of what exactly compromises the effectiveness of the feminist law journal. The symposium organizers have posed that question to those whom presumably are interested in publishing feminist research and preferably, though not exclusively, in feminist law journals. Initially, I asked myself whether this was a question of audience or mission. I will talk about the question of mission later. As a question of audience, however, I could not really see a problem. Presumably, those writing for the feminist law journal are probably also regular readers of feminist reviews. So, the editors of the journals should continue doing what they are doing. That is, unless the staff and resources of the journal are so compromised that they cannot produce quality work, or those desiring to publish feminist articles are themselves compromised by other conflicting goals and needs that interfere with the production of quality feminist writings. In which case we may have a problem.

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¹ I mean by this internalization as a strong desire for the approval by the very colleagues who most resisted my professional identity and who targeted me for harassment, exclusion, and employment discrimination when I was on the tenure track from 1991 to 1995 at an elite southwestern law school.

² Patricia Williams has referred to this resistance as "spirit murder." See Patricia Williams, *The Alchemy of Race and Rights* (1991).

I have several points to offer in this light, as someone who has written and published feminist scholarship and expects to continue doing so.

1. Personally, I owe my career development to the existence of feminist law journals. My very first publication appeared in the then only existing feminist law review in the country, the Women's Rights Law Reporter.³
2. I continued intentionally publishing in feminist law journals when the opportunity arose because I liked the quality of the editing skills, talent, and feedback offered by feminist review editors.
3. The feminist law journal has a history of struggle for recognition,⁴ but that is no reason to abandon the project.
4. I would hope that the members and staff of feminist journals do not internalize the attitude that they aren't sufficiently mainstream to serve as part of the untenured professor's successful publishing track record. This latter point does not mean there isn't a real tension between the journals' goals and those of new scholars (e.g., when the latest bright star in feminist writing chooses not to publish with a review because she or he believes it will affect her or his prospects of faculty approval required for tenure).
5. When the editors of a feminist law journal succumb to the view that as a specialized review, it isn't sufficiently mainstream (*ergo* not good enough), they have allowed themselves to be defined by the very power structure that is the reason for the journal's existence. Is it not, after all, the role of the alternative, feminist, critical law review to destabilize the status quo? That is, to provide a voice that resists definitions of what is "neutral," "right," and "good" according to the presumptions of an establishment which has historically been in the hands of powerful white men?

This last point encourages me to offer added words to the untenured scholar (or future feminist scholar):

- a) Your work and your vision are needed today.
- b) Beware of the subtle and not-so-subtle forms of resistance to those, like yourself, who take on the mission of criticizing the norms of masculinity in law and society. The academy remains largely controlled by white males and there is tremendous

³ See Elvia Rosales Arriola, Sexual Identity and the Constitution: Lesbians and Gay Men as a Discrete and Insular Minority, 14 Women's Rts. L. Rep. 263 (1992) [hereinafter Sexual Identity and the Constitution].

⁴ In the mid-80s one could not even locate a feminist review on the "mainstream" research engines of Westlaw and Lexis-Nexis.

resistance in some of these institutions to the critical and/or feminist voice. There are individuals in some of these institutions whose personal and professional agenda is to undermine the efforts to institutionalize the critical voice through, for example, the proliferation of “alternative” journals. This is a dangerous yet real phenomenon, and if you plan on entering teaching you might as well know this before you begin your journey. At least being forewarned may preserve your sanity.

The second point will become clear with a personal narrative. I was hired in 1991 as the first woman of color at the University of Texas School of Law. I came on to the tenure track with two solid publications.⁵ Around my second year, as I was diligently beginning work on a third major article, I was approached by a female colleague with the question, “What are you working on?” I responded with a casual description of a clear feminist project in mind.⁶ Because I had come on to this faculty with a clear feminist/alternative/critical agenda, an article on constitutional rights for sexual minorities, and one using social legal history to examine the role of sexual harassment on tradeswomen in New York City, I was stunned by the comment that followed. Rather than giving any support for what I was excited to work on, this same individual then asked me, “*But why do you want to write about this topic? Are you sure you really want to write about this topic pre-tenure?*”

Now, I could have taken this question in one of two ways—as either a reality check or a helpful suggestion that I rethink my writing and publishing goals. Certainly, the reality check was clear. After all, I had been hired by an elite school. In my mind, one of those dozens of schools who compete every year, through the highly questionable ratings of a magazine,⁷ for ranking “best” among fifteen or twenty “best” law schools in America. I was at a school that cared deeply about those rankings, even if they are

⁵ Sexual Identity and the Constitution, *supra* note 3; Elvia R. Arriola, “What’s the Big Deal?” Women in the New York City Construction Industry and Sexual Harassment Law, 1970-1985, 22 Colum. Hum. Rts. L. Rev. 21 (1990).

⁶ The project turned into an article and a book review with clearly feminist/queer implications. See Elvia R. Arriola, Gendered Inequality: Lesbians, Gays and Feminist Legal Theory, 9 Berkeley Women’s L.J. 103 (1994); Elvia R. Arriola, Coming Out and Coming to Terms with Sexual Identity, 68 Tul. L. Rev. 283 (1993).

⁷ The rankings of the U.S. News and World Report have created amazing revenue profits for the most unscientific venture to capture the feelings of insecurity of the nation’s public and private law schools. Details on the venture and alternative ranking systems being developed were discussed by my co-panelist Professor Joanna Grossman (Hofstra) at this symposium. See Joanna Grossman, Feminist Law Journals and the Rankings Conundrum, 12 Colum. J. Gender & L. 522 (2003).

arbitrary, questionable, and unrealistic pictures of what “quality” really means at a law school. Nevertheless, a faculty largely committed to maintaining the illusions of power in being considered if not the best in the nation, at least the best in a region or a certain category (e.g., money, scholarship subjects, size of offices, hallways, salaries, and egos), I was being forced to face the facts. If I published on issues or subjects that a critical mass of the faculty disapproved of for an elite school, then I was threatening my own chances for a successful tenure candidacy. I would be committing grave error in imagining that I somehow was going to overcome the institutional resistance and outright hostility by some members of that faculty to the “feminist club.”⁸

But there was another way I took the question, and that was as a not-so-subtle effort to undermine my development as a feminist scholar. The truth was I did not want to do anything else, and I said that to my colleague. Not surprisingly, this individual turned out to be someone I could not trust. My distrust was repeatedly confirmed in other undermining efforts she would perform as a “self-appointed dean of women” on the faculty. By this I mean someone who could not ally herself with other women and who lacked vision for the creation of a supportive women’s culture on the faculty. Instead, she actively catered to the most conservative male egos and views of the “proper” role for a woman on a law faculty. This meant engaging in whatever conduct would maintain *her* personal and professional safety, which could then be viewed by the conservative colleagues in her corner as a good role model for all female scholars. Sadly, this meant not only not supporting the vision and work of anyone who might want to become a new critical/feminist/anti-status quo voice in the academy (whether male or female), but also actively undermining the efforts of other female faculty who claimed unjust treatment by their male colleagues.⁹

⁸ I have now published this story twice. See, e.g., Elvia R. Arriola, Welcoming the Outsider to an Outsider Conference: Law and the Multiplicities of Self, 2 Harv. Latino L. Rev. 397, 414-22 (1997) [hereinafter Welcoming the Outsider]. The rest of the story involves the examples of the hostility that appeared in the tenure review process that I ultimately abandoned in the fall of 1995. One especially telling example of the hostility appeared when the Chair of the Tenure Committee sent out my articles for review by feminist scholars. Although I never felt I had his full support for my candidacy, he at least acted fairly in one important task. After the reviews came in and they were decidedly positive, he wrote, and shared copies of his communication with me, to one of our colleagues who had negative views of my work. He asked him if, in light of the overwhelming positive review of my publications I had received from then prominent scholars, he would rethink his written opinion of my scholarship (which he had trashed). The professor wrote back with a fiery response that he would do no such thing because the views of these outside reviewers were just those of biased “feminists...[who] want Arriola to get tenure here.” *Id.* at n.40 and accompanying text.

⁹ See Anonymous, Barbecue of the Vanities, 10 UCLA Women’s L.J. 1 (1997) (parody of male-female tensions on this faculty).

Some of you may know the rest of my story—the lawsuit I decided not to file after I resigned from the tenure track, and the writing block that lasted for several months because I was so devastated by the trauma of my decision to give up the fight. I kept journal notes for sanity (and “for a book some day,” I promised myself). But I did survive even while staying in a limbo status at this institution for very personal reasons for many years. Doing so I knew I was increasing the likelihood of not being able to relocate to a new law school considering my defiant choice to continue to produce scholarship with a feminist orientation, whether I was tenured or not. Yet, I did survive. So here I am to tell the story of my survival, wishing it were one that did not also confirm that the power structure is so real and so strong that it almost encouraged me to leave law teaching altogether.

When I returned to the hiring market I did not get large numbers of interviews like the first time I sought my luck in teaching. Instead, the combined factors of a prolific and long “feminist/queer/critical” curriculum vitae, and the raw fact that I was coming from an elite institution countered the distrust from hiring committees over my many years of untenured teaching experience and visitorships. In the eyes of the “mainstream culture” I was deemed a failure. In the end I have attributed the success of my reentry to tenure track teaching (and ultimately achieving tenure) to three things: 1) I turned my hurt and anger into fuel for creative scholarship; 2) I continued to publish as often as I had the chance; and 3) I welcomed the love and support of colleagues involved in the burgeoning LatCrit movement.¹⁰ Thus part of my survival story is a warning to the untenured professor who wants to contribute to feminist, critical scholarship. That is, that you *do* threaten the status quo when you write as a critical or feminist scholar and when you do not back down from a question like, “*Why do you want to write about this before tenure?*”

My story is not a lesson of what you should or should not do. You must decide for yourself what your path will be. I happened to have been guided by a principle I gained from the words of a valued mentor, a white male tenured professor at one of the nation’s elite schools who took me under his wing long ago and who said to me, “Write about what you love. If you don’t do that your work won’t be good.”¹¹ Other words of advice I would offer to the critical scholar, are: create a community that believes in you and supports you outside of the academy and do not let yourself be completely defined by the rules of the academy. You are not your writings,

¹⁰ This scholarship movement surfaced just as I was resigning from the tenure track at the University of Texas but I did not know about it then. I was privileged to attend the First Annual Latina/o Critical Legal Theory conference where I was able to share my story, my pain, and the reality about the politics of tenure for the critical/feminist/queer scholar. See *Welcoming the Outsider*, *supra* note 8, at 397.

¹¹ I owe so much to the wisdom, experience, and support of Professor William Nelson of New York University Law School.

in the same way that you are not the opinions of those who either love or hate your writings. But, finally I have to say that we must remember and honor the early tools, methods, and visions of the feminist movement that birthed the inspiration for feminist scholars and journals. That is, we must engage in some continued forms of consciousness raising and we do that best by communicating in our work the voices of experience.

II. RANKINGS

On the issue of rankings, I believe I have said enough. I do not agree with the current system and, if they are needed at all, we need to work for ratings that are more complete, honest, and less tied to wealth. We probably need to diversify the ways in which the quality of a school is ranked. So much of what is seen as “good” is attributable to the attitudes shared between and among men who want to sustain the status quo and is also attributable to other underlying assumptions based minimally on gender, race, and class.¹² Arguably, current ranking systems are nothing more than a reflection of institutionalized norms of masculinity—aggression, competition, hierarchy, power over others, or the legacies of other questionable criteria to measure “quality” that are associated with the backlash against affirmative action.¹³

Of course, given the tenure politics that do surround the choices for writing and publishing I would at least say this to the untenured scholars: you might want to choose an established journal that has the experience and expertise to help with the editing process and/or get the advice of someone you respect and trust on what to do and where to go with a potential publication. I have personally chosen feminist and alternative editorial boards because I have had many excellent experiences with skilled editing.

III. NEW SOLUTIONS

To me, the most obvious solution is to return to the values of the movement that gave birth to the feminist law journal. The feminist viewpoint is a voice that *is* different. It is about embracing difference in the way described by Audre Lorde, who wrote in her path-breaking essay The Master’s Tools Will Never Dismantle the Master’s House that we need to

¹² See, e.g., Martha West, Faculty Women's Struggle for Equality at the University of California Davis, 10 UCLA Women's L.J. 259 (2000); Pamela J. Smith, The Tyrannies of Silence of the Untenured Professors of Color, 33 U.C. Davis L. Rev. 1105 (2000); Leslie G. Espinoza, Masks and Other Disguises: Exposing Legal Academia, 103 Harv. L. Rev. 1878 (1990); Richard Delgado & Derrick Bell, Minority Law Professors' Lives: The Bell-Delgado Survey, 24 Harv. C.R.-C.L. L. Rev. 349 (1989).

¹³ See Daria Roithmayer, Deconstructing the Distinction Between Bias and Merit, 85 Cal. L. Rev. 1449 (1997).

see our differences as a source of strength.¹⁴ Feminist law journals should be the haven for the critical scholar who is viewed as controversial because s/he threatens the status quo. It should do just that. Lastly, I personally think that the Critical Race Theory and Latina/o Critical Legal Theory movements have disproved the belief that writing critical scholarship will not get you tenure.

I have some final thoughts for the staff of these journals. That is, that you must get clear about your mission. Are you an editor for a feminist journal just because you could not get on the “mainstream” review and you need/want something to put on your resume? Is it really about exploring the deepest and broadest meaning of gender as a category of analysis, one that will interrogate issues of gender, race, class, sexuality, culture, religion, and social justice? Are you using your critical analytical tools to challenge the contemporary expression of unbridled masculinity? I ask you to ponder these questions because I believe we are living in dangerous and fearful times. Fear has been commodified. War has been promoted and marketed as the answer to our deepest worries (about home, family, identity). In this global age we have a government run by men who have sought to recreate a period in our history that is identified with the McCarthyist attitudes of spying, identity borders, and scapegoating. It is the same era that was decried by the feminist writers of the 60s and 70s for its reinforcement of rigid and misogynistic attitudes towards women.¹⁵ Is it not time then for the feminist law journal to rethink its roots and traditions of promoting a more nurturing, healing, peaceful world through dialogue, discourse, and theory that is non-patriarchal and connected to the voice of experience?

Personally, I think it would be sad if we lost the venue of the feminist law journal. My hope is that you will use this symposium as a tool for inspiration and reeducation on the feminist intellectual task identified as bringing the cultural forces of masculinity and femininity into equal balance.¹⁶

I will close with a quotation from a recent essay by Clarissa Pinkola Estes, author of Women Who Run with the Wolves: “We are needed, that is all we can know. And though we meet resistance, we more so will meet great souls who will hail us, love us and guide us, and we will know them when they appear.”¹⁷

¹⁴ Audre Lorde, The Master's Tools Will Never Dismantle the Master's House, in This Bridge Called My Back: Writings by Radical Women of Color 98-101 (Cherrie Moraga & Gloria Anzaldúa eds., 1983).

¹⁵ Betty Friedan, The Feminine Mystique (1963).

¹⁶ Riane Eisler, The Chalice and the Blade: Our History, Our Future (1990).

¹⁷ Clarissa Pinkola Estés, Letter to a Young Activist During Troubled Times (2003), at <http://www.mavenproductions.com/estes.html>.