

NOT WHISTLIN' DIXIE: NOW, MORE THAN EVER, WE NEED FEMINIST LAW JOURNALS

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Feminist and women's law journals have done terribly important work. They¹ have published articles that would not otherwise have been read, covered issues largely untouched by more traditional reviews, and reviewed books that might otherwise have gone unreviewed. They have provided for feminist dialogues—for women and feminist men to debate and discuss with one another—not only through publication but through the process of creating and running journals, holding symposia, and producing a publication. They have helped women seeking tenure on faculties throughout the country (although they have also sometimes caused problems for them), helped students learn to write better while enabling them to augment their résumés, and enhanced the prestige of legal institutions. They have not only helped put feminist and women's issues on the mainstream map, but also helped put women in a position to teach and practice from feminist perspectives.

But has their success become their failure? Now that feminist work is also published in mainstream and topical law reviews, most law schools have offerings in feminist theory, and several textbooks are available in the field (although none have yet had the distinction of generating a *Nutshell*), have gender journals rendered themselves obsolete? Or, have external conditions—from the emergence of e-publications and the Social Science Research Network,² to the proliferation of journals and law reviews (in 1995 there were, by one count, upwards of 380 in the United States alone³)—made them superfluous?⁴

I do not think so. Feminist perspectives on law are by no means adequately represented in law school teaching, nor in mainstream publications, whether “e-” or not, nor in law school curricula, textbooks, and classroom content. As long as they are not, gender journals can still

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¹ By my count there are about eighteen.

² Known as the SSRN, this is an e-publication that offers multiple listings of abstracts of works in many fields, including law.

³ Bernard J. Hibbits, *Last Writes? Reassessing the Law Review in the Age of Cyberspace*, 71 N.Y.U. L. Rev. 615, 639 (1996).

⁴ The number of law reviews has jumped from about fifty in the 1930s to nearly eighty in the 1950s to over 300 today. *Id.* at 629-39.

play an important role. Indeed, one of the most important roles feminist journals can play is to take on the legal academy. The only way to ensure that ongoing institutional change reflects feminist understandings, to the extent that these can be generalized, is to confront them head-on by publishing symposia that question the tenure system, the current curriculum, and the methods of delivering legal education, including law school testing methods, the bar exam,⁵ and other ineffective entry barriers, and perhaps even question the monopolization by lawyers of the right to offer legal problem-solving services in the first place.

Moreover, with the proliferation of information resources, especially but not only on the Internet, feminist journals which take seriously their responsibility to screen, edit, and check the bona fides and accuracy of that which they publish are increasingly valuable. We need to preserve sources where feminists can go for ready and reliable perspectives and information.

I was originally going to continue by discussing the changes in style, form, content, and organization feminist journals need to make to continue to be relevant to twenty-first-century feminism, law, and legal education. My ideas include creating a national or even international consortium of feminist journals to enrich discussion and reduce subject matter duplication,⁶ including more judges, practitioners, and scholars from other disciplines on advisory boards to enhance relevance and breadth, publishing no-footnote “think piece” volumes and other innovative formats, and publishing volumes quickly enough to be relevant to current debates.

But, under last spring’s daily barrage of televised shock and awe, in which massive destruction and death were treated like a fireworks display, warrior masculinity was glorified, and the rescue of one female American soldier was deployed to relegate the “accidental” slaughter of nine Iraqi women and children to yesterday’s news, I felt compelled to situate our journalistic work in a larger context.

What particularly set me off was a brief column in the New York Times about the small, vociferous, pro-war rallies taking place throughout the country in answer to the massive anti-war rallies occurring throughout the world.⁷ It is no surprise that there is pro-war sentiment in this country; the pundits and pollsters have been telling us so week in, week out for what feels like an eternity. But it was a surprise to me that these populist-seeming gatherings were being organized and backed by radio stations owned by

⁵ See Kristen Booth Glen, When and Where We Enter: Rethinking Admission to the Legal Profession, 102 Colum. L. Rev. 1696 (2002).

⁶ This idea is far from new. See, e.g., Hibbitts, *supra* note 3, at 632 (describing a 1925 effort by the University of Chicago, the University of Illinois, and Northwestern University to avoid duplication by sharing sponsorship of the same review).

⁷ Paul Krugman, Channels of Influence, N.Y. Times, Mar. 25, 2003, at A17.

radio conglomerates like Cumulus and Clear Channel Communications, which have close ties to, not to mention deregulatory needs from, the Bush administration. Cumulus banned the Dixie Chicks from the playlists of its forty-two country stations because singer Natalie Maines told a London audience, "we're ashamed the president of the United States is from Texas,"⁸ and Clear Channel allowed those of its more than 1,200 channels who wished to, to follow suit. Both Cumulus and Clear Channel helped organize boycotts, one of which featured a 33,000 pound tractor crushing "Dixie Chicks CDs, tapes and other paraphernalia."⁹ Their actions resulted in a twenty percent drop in the airplay of Dixie Chicks's music,¹⁰ despite the fact that country music listeners reported a Dixie Chicks's song, "Travelin' Soldier," to be their current favorite.¹¹

All very interesting, you say, but what has it got to do with the future of feminist law journals? You may even be wondering why I am mentioning Dixie Chicks in the same breath as feminism at all, but if so, try listening to "Goodbye Earl," a country music rendition of the battered women's defense, or "Fly," a paean to young girls who choose self-actualization over romance. Well, if the Dixie Chicks, one of the most popular bands around, can be made to apologize for this relatively mild statement—and apologize they did¹²—what chance has feminism got in the current climate to flourish and grow? How will feminists within the legal profession, especially law students caught within the confines of increasingly conservative and hostile institutions, preserve the energy and commitment to carry the torch without some safe spaces within law schools and within the academic community? The plight of the Dixie Chicks highlights perhaps the most important current function of our journals: to provide a space where it is (relatively) safe to talk freely, to take risks, to submit utopian hopes and unpopular theories, to find allies and shared values.¹³

⁸ *Id.* See also Warren St. John, The Backlash Grows Against Celebrity Activists, N.Y. Times, Mar. 23, 2003, § 9, at 1.

⁹ Krugman, *supra* note 7.

¹⁰ St. John, *supra* note 8.

¹¹ The drop in airplay did not slow sales. As of late March their recent album was number four on the Billboard Charts. *Id.* By April, the album had reached number one on Billboard's Top Country Albums chart. See CMT.com: Charts – April 19, 2003, at <http://www.cmt.com/news/feat/charts.041903.jhtml> (last visited June 11, 2003). Indeed, it is a credit to their fans that sales rose after these incidents, and that Dixie Chicks's concerts continue to be sold out.

¹² St. John, *supra* note 8.

¹³ Providing a place where alternative viewpoints and values can be expressed is ever more important as media concentration continues apace. "Fewer than ten transnational media conglomerates dominate much of our media; fewer than two dozen account for the

But are we not then merely talking to ourselves, preaching to the converted? And if so, how can feminist ideas, however defined, gain purchase in the real world outside, or even within, the ivory tower? It is a real concern. Perhaps the best we can do in the current atmosphere is placehold. However, I submit that the very existence of the enclaves that feminist journals create has an impact on the mainstream by helping students feel connected and supported to speak out in class and make waves in the academy, and by helping generate a new generation of practitioners, lawyers, and judges. The ideas published have a way, willy-nilly, of making their way from the academy into the world, despite the best efforts of those who seek to bulldoze them.

Yet, to augment audience and voice it remains crucial that journals work together with other like-minded folk—with LatCrit, critical race, queer theory, and poverty law journals, as well as related interdisciplinary journals—co-publishing issues or jointly sponsoring symposia and coordinating coverage. Indeed, in the wake of Wall Street's waves of merger and acquisition, not to mention those of trade unions, perhaps it is time to consider mergers among journals, in order to pool resources and command broader audiences, although I fear such a move would simply enable our institutions to cut back on resources, thereby weakening our collective voice and lessening all of the job enhancement resources journals offer.

But merged or allied, will this "safe haven" concept not simply guarantee us collective isolation, perhaps collective despair? Again, this is worrisome, especially in a world in which there is far greater media concentration than ever before in history, concentration in increasingly conservative hands whose perspective on feminism and other -isms carefully caters to elites or is openly hostile to the disadvantaged.¹⁴ It is difficult to make waves within mainstream thought in these conditions. And yet we do, albeit often through the voices of media legal writers who miscast, slant, or simply misunderstand our ideas.

These conditions suggest a second imperative for feminist journals: that they establish close and regular communication with and connection to like-minded overseas authors and journals. We have largely been raised on American isolationism with its culture of independence and superiority. Today progressive ideas seem to flourish more offshore than on the United States mainland. By forging these links we not only gain the support of knowing that our views are common elsewhere, but also, by publishing the work of overseas writers, enable our readership to see that as well.

overwhelming majority of our newspapers, magazines, films, television, radio and books." Robert W. McChesney, *Making Media Democratic*, The Boston Rev., Summer 1998, at 4. See also Robert W. McChesney, *Rich Media, Poor Democracy: Communication Politics in Dubious Times* (1999).

¹⁴ See *supra* note 13.

Lurking behind my claims is a (some would say “second wave”) view of twenty-first-century feminism about what it means to be a feminist in a world of corporate domination and corruption, of growing wealth disparity both within and across nations, of media consolidation, environmental degradation, and of rising fundamentalism, not only religious, but also ideological.

In my view, a feminist perspective requires at least five central commitments that have implications for both the form and the content of feminist journals. The first commitment is to understanding and eradicating oppression, which necessarily means not only identity oppression (race, gender, disability, etc.), but especially economic status, or class. You cannot be a feminist today and address a woman’s right to reproductive autonomy without raising questions about access to contraception and abortion any more than you can be a feminist and not question the deplorable societal treatment of those who carry out the work of caring for dependent elders, children, the disabled, and others. Journals should be actively seeking articles, comments, transcripts, essays, photos, and whatever else confronts or illustrates the role of law in fostering or overcoming oppression.

This does not mean eschewing articles focused on issues in corporate governance or bankruptcy reform. Indeed such articles would be a happy antidote to the habit of associating women’s issues largely with physical or sexual victimization, families, or workplace discrimination. But it does demand a careful review of the perspective espoused and the aim and implication of the argument about these subjects.

Some would say such subject matter screening would not only amount to inappropriate ideological screening but also lead to dull journalism. Nonsense. There is plenty of fierce disagreement among those who address oppression, and those who do so from ideologically mainstream to conservative perspectives get ample play in mainstream journals and magazines. Our purposes should be to express and elucidate, through scholarly debate in a variety of formats, differing perspectives among those who share basic values.¹⁵

The second feminist commitment is to economic equality. This is not the abstract equality of citizens before the law, nor the right to equal concern and respect; this is a commitment to distribute the world’s resources so as to eliminate the vast and growing gulf between the haves and have-nots. Is it possible to be a feminist and be agnostic about the enormous and increasing wealth divide in today’s world? Surely not, when the majority of the world’s poor are women. Economic equality entails not merely redistribution, but care and preservation of so-called public goods

¹⁵ There is room within this discussion for the use and the critique of many types of tools and methodologies, from anthropology, sociology, and psychology, to economics, statistics, and evolutionary biology, to postmodern and critical methodologies.

(physically, but also as *public* goods): future generations, the environment, public education, and democratic and community institutions.¹⁶

The third commitment is to bringing about the systemic change that makes the first two commitments genuine. It is no longer possible to be a feminist who merely seeks greater access to corporate headquarters—to crack the glass ceiling—without a strategy aimed at challenging corporate power and control, from its influence on elections and democracy to its exploitation of millions of people, the majority of them women, and its degradation of the environment in the name of so-called shareholder value (more accurately known as profit, since a fair amount of the value never redounds to shareholders). Cracking the glass ceiling might be a part of such a strategy, but it is not, by itself, sufficient. Journals can play a major role by putting articles in context using introductions and commentary, creating more explicit dialogue by inviting commentary, not simply from widely known authors, but by students, faculty, administration, and staff at the host institution. (Yes, the staff do have perspectives worth listening to.) I am particularly fond of the format of *The Boston Review*,¹⁷ which publishes a major paper on an important issue and solicits commentaries from others who share roughly the same values but have differing, sometimes quite dramatically opposed, perspectives.

Fourth, feminism means a commitment to collective action, to coalition. It means overcoming the negative aspects of identity politics such as the isolation from allies, competition for status (most oppressed, least represented, and so on), and a tendency to see problems from only one vantage point and, as a result, to offer divisive solutions.

Finally—and this is especially important for our journals—feminism requires a commitment to humor, to irony, to self-reflection, and to joy. There was a time when I would have refused to listen to a group with the word “chick” in the title. But Madonna and many others have taught us the value of turning the “system,” for want of a better phrase, against itself using irony, playfulness, and sheer exuberance. And our daughters have taught us the value of listening to these new voices! We need to find ways to incorporate in our journals the sort of joy and humor embodied in someone’s parody of the Chicks singer Natalie Maines’s answer to their detractors:

¹⁶ I am deeply indebted for much of my thinking about care and public responsibility to Professor Martha Fineman, whose writing has been inspirational and whose Feminist Legal Theory workshops, about to celebrate their twentieth year, epitomize the kind of “safe space” for which I am arguing. They feature contentious debate among feminists with shared values but strongly differing views, at the same time that they encourage and showcase new feminist scholarship.

¹⁷ *The Boston Review* is published by Boston Critic, Inc., E53-407, M.I.T., Cambridge, MA.

As a concerned American citizen, I apologize to President Bush because my remark was disrespectful. I now realize that whoever holds that office should be treated with the utmost respect.

I hope everyone understands, I'm just a young girl who grew up in Texas. As far back as I can remember, I heard people say they were ashamed of President Clinton. I saw bumper stickers calling him everything from a pothead to a murderer. I heard people on the radio and TV like Rush Limbaugh, Pat Robertson, Newt Gingrich and Trent Lott bad mouthing the President and ridiculing his wife and daughter at every opportunity.

I heard lots of people disrespecting the President. So I guess I just assumed it was acceptable behavior. But now, thanks to the thousands of angry people who want radio stations to boycott our music because criticizing the President is unpatriotic, I realize it's wrong to have a liberal opinion if you're a country music artist....

I also realize now that I'm supposed to just sing and look cute so our fans won't have anything to upset them....

And most important of all, I realize that it's wrong for a celebrity to voice a political opinion, unless they're Charlie Daniels, Clint Black, Merle Haggard, Barbara Mandrell, Loretta Lynn, Ricky Skaggs, Travis Tritt, Hank Williams Jr., Amy Grant, Larry Gatlin, Crystal Gayle, Reba McEntire, Lee Greenwood, Lorrie Morgan, Anita Bryant, Mike Oldfield, Ted Nugent, Wayne Newton, Dick Clark, Jay Leno, Drew Carey, Dixie Carter, Victoria Jackson, Charleton Heston, Fred Thompson, Ben Stein, Bruce Willis, Kevin Costner, Arnold Schwarzenegger, Bo Derek, Rick Schroeder, George Will, Pat Buchanan, Bill O'Reilly, Joe Rogan, Delta Burke, Robert Conrad or Jesse Ventura

God Bless America
Natalie¹⁸

¹⁸ Anonymous e-mail circulated in the spring of 2003.