

FORM, FUNCTION, AND FEMINIST LAW JOURNALS

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An inquiry into the function of feminist law journals needs to ask first: functions for whom? The answer must, it seems to me, vary depending upon whose perspective we take.

Let me single out for special emphasis the role of feminist journals for feminist law students. Journals provide one way to find like-minded souls and to infuse legal education with a perspective that many students find appallingly absent in classroom offerings. This magnet-like function strikes me as equally (if not more) important than anything else feminist law journals might do. I confess to being somewhat autobiographical here. As a law student in the early 1980s, the time I spent as an articles editor on the Harvard Women's Law Journal was among the richest parts of my law school experience. Through that journal work, I saw some tangible evidence of what it might actually mean to be a feminist lawyer—an idea that seemed to me, as a student, distinctly more abstract than concrete. But more importantly, I worked with a terrific group of women, several of whom today remain close friends and fellow travelers. We sometimes debated contentious issues about the feminist debate over pornography (a very hot topic at the time), the links between gender and race, the role of lesbians in the feminist legal movement, and other questions. I recall some passionate discussions engendered, so to speak, by several editors simultaneously taking an intensive January term Sex Discrimination class taught by the formidable Catharine MacKinnon. That class was as rich and provocative as anything I took in law school, but the discussions among Women's Law Journal staff members that spilled over into journal meetings added new dimensions and may have been where I, as a law student, most actively engaged the questions about equality that had brought me to law school in the first place.

There are, of course, many other perspectives we might take. For feminist lawyers and policy advocates, for example, feminist journals might provide guidance on new questions that have been relatively unexplored in courts or more conventional academic fora.¹ Likewise, feminist law journals

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¹ A good example is the body of work that appeared in feminist law journals on legal questions relevant to same-sex parenting, much of it before this topic became as high profile as it is today. For an early contribution, see, for example, Barbara Kritchevsky, *The*

provide a good place to publish for those seeking to influence ongoing debates in feminist theory.² And often, feminist journals provide engaging symposium questions that begin interesting conversations.³ Today's topic is a good example of a provocative symposium question that has induced many of us to think about a question that might not otherwise appear on our radar.

Indeed, as I have been moved to think more specifically about the roles of feminist law journals, I have come to see how existential questions about feminist journals are emblematic of much larger issues facing academic activists. I include in this category many scholars working in women's studies, race studies, ethnic studies, queer theory, disability studies, and beyond—fields that I will call “difference studies” in this paper. I will suggest that, as we look at the forms and functions of feminist law journals, we can see broader themes about the sometimes uneasy intersection between academia and advocacy for social justice.

Prompted by this symposium, I spent some time perusing the “mission statements” of many feminist law journals, statements that are available in many cases on journal websites.⁴ I wondered how these journals saw their own functions. Beyond their shared signature feature—the choice to engage the proverbial “woman question”—two broad commitments leapt out at me as particularly significant: commitment to scholarship that (1) is strongly committed to social equality; and (2) is both interdisciplinary and intersectional. These are not the only distinguishing features of the journals, but they are the two on which I would like to focus.

Unmarried Woman's Right to Artificial Insemination: A Call for an Expanded Definition of Family, 4 Harv. Women's L.J. 1 (1981). Another example is the many briefs that have been published in feminist law journals. For example, the Michigan Journal of Gender and Law has published several briefs in leading cases on sexual orientation and law. *See, e.g.*, Briefs, Baker v. Vermont (Vermont same-sex marriage case), 6 Mich. J. Gender & L. 1 (1999) & 5 Mich. J. Gender & L. 409 (1999); Nabozny v. Podlesny (anti-gay student harassment), 4 Mich. J. Gender & L. 425 (1997); Rosa v. Park West Bank & Trust (transgender discrimination), 7 Mich. J. Gender & L. 147 (2001).

² *See, e.g.*, Mary Jo Frug, Progressive Feminist Legal Scholarship: Can We Claim “A Different Voice”?, 15 Harv. Women's L.J. 37 (1992); Judi Greenberg et al., Contradictions and Revision: Progressive Legal Scholars Respond to Mary Jo Frug, 15 Harv. Women's L.J. 65 (1992).

³ *See, e.g.*, Symposium on Feminist Theories of Relation in the Shadow of the Law, 17 Wis. Women's L.J. 1 (2001); Symposium, Gender, Work and Family Project Inaugural Feminist Legal Theory Lecture, 8 Am. U. J. Gender Soc. Pol'y & L. 1 (1999); Symposium, Taxing Women: Thoughts on a Gendered Economy, 6 S. Cal. Rev. L. & Women's Stud. 287 (1997).

⁴ For a quick link to many of these sites, go to http://www.law.harvard.edu/studorgs/woman_law_journal/wjlnks.html (last modified Sept. 29, 2002).

First, and unsurprisingly, feminist law journals generally embrace the mantle of social justice. The Texas Journal of Women and the Law captures this quite succinctly, with a logo that shows a women's sign with scales of justice hanging on either side of its vertical bar.⁵ Many other journals communicate this message verbally. While seeing themselves as academic outlets and pursuing the advancement of knowledge, the journals frequently claim strong social justice commitments of some kind. For example, the American University Journal of Gender, Social Policy and the Law states that "by focusing on gender and social policy issues, we are committed to creating a dialogue among disparate social, economic, and gender groups in order to find our common humanity under the law."⁶ The Harvard Women's Law Journal says that it is "devoted to developing and advancing feminist jurisprudence."⁷ The Hastings Women's Law Journal asserts that it "strongly believe[s] that the law is a *solution* for the ills of the human condition, not merely a means of gaining and preserving privilege and position."⁸ And the Women's Rights Law Reporter notes that it was "founded in 1970 by feminist activists, legal workers, and law students."⁹

Second, many of the journals single out interdisciplinary scholarship as a priority. These journals expressly place legal questions involving the interests of women outside the frame of traditional legal scholarship and actively seek out work that is rooted in, or at least attendant to, disciplines beyond academic law. For example, the Columbia Journal of Gender and Law and the Duke Journal of Gender Law and Policy both expressly call themselves "interdisciplinary."¹⁰ The Harvard Women's Law Journal states that it combines "legal analysis with political, economic, historical and sociolegal perspectives."¹¹ Along similar lines, the Southern California Review of Law and Women's Studies says that it "strive[s] to illuminate the complex relationship of women and the law, from many perspectives, including those of history, sociology, psychology, theology, political science and literature."¹² As a variation on this theme, the Wisconsin Women's Law Journal notes that it "combines the University of

⁵ <http://www.utexas.edu/law/journals/tjwl/> (last modified Oct. 13, 2003).

⁶ <http://www.law.american.edu/pub/journals/genderlaw> (last modified May 4, 2000).

⁷ <http://www.law.harvard.edu/studorgs/wlj/index.html> (last modified Jan. 23, 2003).

⁸ <http://www.uchastings.edu/womenslj/index.html> (last visited June 11, 2003).

⁹ <http://newark.rutgers.edu/~wrlr/> (last visited June 11, 2003).

¹⁰ <http://www.columbia.edu/cu/jgl> (last visited June 11, 2003); <http://www.law.duke.edu/journals/djglp> (last visited June 11, 2003).

¹¹ *Supra* note 7.

¹² <http://www-rcf.usc.edu/~rlaws/mission.html> (last visited June 11, 2003).

Wisconsin's 'law in action' tradition with the inter-disciplinary nature of women's studies."¹³

In addition to being interdisciplinary, many of the journals evidence a strong commitment to a different kind of interrelationship. Among the journals, there is strong embrace of "intersectional"—or some might say "intersexional"¹⁴—scholarship that takes seriously how race, poverty, sexual orientation, and other identity categories intersect with gender. The Berkeley Women's Law Journal stands out here, placing the idea of intersectionality at the core of its conception of feminism:

We believe that excellence in feminist legal scholarship requires critical examination of the intersection of gender with one or more axes of subordination including, but not limited to race, class, sexual orientation and disability. Therefore, discussions of 'women's issues' that treat women as a monolithic group do not fall within our mandate.¹⁵

The Yale Journal of Law and Feminism offers a similar view of its *raison d'être*, stating that it is "committed to publishing pieces about women's experiences, especially as they have been structured, affected, controlled, discussed, or ignored by the law. These experiences include the particular experiences of women of color and of lesbians."¹⁶ Other journals echo this theme in their own mission statements.¹⁷ Now, I confess that I am not in a position to say to what extent these journals have actually *followed through* on these commitments because I have not attempted to track what journals that espouse intersectionality ultimately publish. My colleagues at Wisconsin focus heavily on the breach between the "law on the books" and

¹³ <http://students.law.wisc.edu/wwwl/> (last visited June 11, 2003).

¹⁴ Symposium, InterSEXionality: Interdisciplinary Perspectives on Queering Legal Theory, 75 Denver U. L. Rev. 1131 (1998).

¹⁵ 10 Berkeley Women's L.J. iv (1995). For more about the Berkeley journal's mandate, see the statement From the Editors, accompanying the 1995 symposium issue published to celebrate that journal's tenth anniversary, 10 Berkeley Women's L.J. v (1995). This introduction notes that the journal was founded in 1985 with a mandate to "publish scholarship about under-represented women" because "most feminist legal scholarship failed to address the needs of poor women, women of color, disabled women, and lesbians." *Id.*

¹⁶ Yale Journal of Law and Feminism, Statement of Purpose, available at <http://www.yale.edu/lawnfem/purpose.html> (last visited June 13, 2003).

¹⁷ See, e.g., 1 Mich. J. Gender & L. v ("The *Journal* is dedicated to providing a forum for exploring how gender issues and related issues of race, class, sexual orientation, and culture impact the lives of women and men."); Texas Journal of Women and the Law, Statement of Purpose, available at <http://www.utexas.edu/law/journals/tjwl> (last visited June 13, 2003) ("[W]e recognize that feminist legal inquiry should incorporate a broad spectrum of social equality issues, including issues related to race, ethnicity, class, religion, sexual orientation, and basic human and civil rights.").

the “law in action,” and there may be a gap here as well. But the extent to which intersectionality explicitly frames the missions of many journals is nevertheless notable.

What can we distill from the commitment to egalitarian politics, interdisciplinarity, and intersectionality that are reflected in many feminist law journals? What might these characteristics tell us about academic activism more generally? I see three enduring dilemmas reflected here.

Dilemma #1: What does it mean to be an academic activist? Are those two words a contradiction in terms? Like the fields of difference studies, feminist law journals were born of a progressive social movement, yet they today inhabit the realm of academia, with all of the normative apparatus, expectations, and infrastructure that come along with universities. Conventional academic theory, anachronistic as it may seem to some, insists upon political “neutrality” in scholarship. Challenging such neutrality has been a major emphasis within difference studies, including feminism:

Dominant American culture operates on a liberal, Enlightenment model of knowledge that posits that scholars can and should detach the substance of their work from issues of politics and power. Scholars “discover” objective, monolithic “facts” whose meanings exist independently of their contexts and uses. Feminist epistemology, on the other hand, argues that truth is plural and that its foundations lie in the shared historical and cultural meanings of the social world. Knowledge is not a monolithic truth achieved through abstraction, but “is always situated, perspectival, engaged and involved. It is based on unavoidable prejudgement and is, hence, always “biased.”¹⁸

One way we might look at this dilemma of academic activism is to notice how feminist theory, among others, has responded to the dilemma: by being activist *within* academia and challenging the once-dominant mode of conceptualizing academic inquiry itself. In publishing feminist scholarship of this sort, feminist law journals are part of this larger enterprise of challenging conventional academic norms of neutrality. But it would miss some of the complexities here to leave the dilemma of academic activism at that. For while feminist scholarship has been criticized from the right as insufficiently apolitical, it has also been criticized from the left as too theoretical, abstract, and rarefied and as insufficiently grounded in political practice. Both feminist activists and feminist scholars, unhappy with some of the turns academic feminism has taken, have criticized

¹⁸ Patrice McDermott, Politics and Scholarship: Feminist Academic Journals and the Production of Knowledge 154 (1994) (quoting in part Susan Hekman, The Feminization of Epistemology: Gender and the Social Sciences, 7 *Women and Politics*, at 65, 69 (Fall 1987)).

women's studies for failing to meet what Annette Kolodny has called the "revolutionary potential of feminist criticism."¹⁹ The simultaneous criticism that academic feminism is both *too political* and *not political enough* creates a double-bind of sorts for women's studies scholars, one that feminist law journals also confront.

Dilemma #2: How much separation, how much integration, in the pursuit of social change? In progressive movements, this question has often centered on the tension between assimilation and transformation as movement objectives. I think here of the debate within sexuality scholarship about whether same-sex marriage rights ought to be pursued.²⁰ In the academic world, this debate has focused on the extent to which it is wise or necessary for programs like those in difference studies to be separate, stand-alone programs, as opposed to programs woven into the fabric of existing disciplines and departments.²¹ Much angst has been displayed and much ink spilled over this question. Feminist law journals can be seen within the same frame: why a separate journal, as opposed to a commitment to working within existing journals to change what is published as legal scholarship? In many ways, this seems like a false dichotomy. The feminist law students who produce feminist journals, and the lawyers and scholars who publish in them, are generally engaged in both separationist and integrationist efforts,²² as evidenced by their work within the confines of law and law schools. And the same can be said of scholars in difference studies, many of whom *also* work hard to infuse their traditional disciplines with critical perspectives.

But I think there is a larger point here about separation and integration. Difference studies programs are, by definition, interdisciplinary and, as we have seen, many feminist law journals also have an interdisciplinary bent. Within this interdisciplinarity itself, there lies an interesting combination of both separationist and integrationist forces. The *separation* comes in the very choice to start a separate journal or program

¹⁹ Marilyn Jacoby Boxer, When Women Ask the Questions: Creating Women's Studies in America 172 (1998) (noting that Kolodny called "theory without action 'pedantry and moral abdication'"). For more analysis along these lines, see *id.* at 108-36.

²⁰ See Paula L. Ettelbrick, Since When Is Marriage a Path to Liberation?, OUT/LOOK, at 9 (Fall 1989); Thomas B. Stoddard, Why Gay People Should Seek the Right to Marry, OUT/LOOK, at 9 (Fall 1989).

²¹ See, e.g., Gloria Bowles & Renate Duelli Klein, Introduction: Theories of Women's Studies and the Autonomy/Integration Debate, in Theories of Women's Studies 1, 1-26 (Gloria Bowles & Renate Duelli Klein eds., 1983); Russel Endo & William Wei, On the Development of Asian American Studies Programs, in Reflections on Shattered Windows: Promises and Prospects for Asian American Studies 8-9 (Gary Y. Okihiro et al. eds., 1988).

²² Cf. Eve Kosofsky Sedgwick, The Epistemology of the Closet (1990) (on the conceptual dynamics of separation and integration in relation to gender and sexuality).

of studies. The *integration* comes in the decision to combine multiple disciplines in academic inquiry, whether it is the study of law or of other matters explored by difference scholars. The interdisciplinary move is in some sense inherently a choice to embrace more rather than less, to not leave behind and strike out on one's own so much as to join together diverse methods, projects, cultures, and traditions. Once again we can also see this as a kind of activism within academia, a way to change traditional, discipline-bound methods of inquiry. But even independent of that, the interdisciplinary approach taken by both difference studies and many feminist law journals strikes me as reflecting a complex, nuanced stance toward the classic problem of separation versus integration.

Dilemma #3: What stance should be taken in relation to identity categories? This is, of course, familiar terrain in the worlds of difference studies, as it is within legal scholarship in particular.²³ The very choice to publish a women's law journal, or to start a women's studies program, reflects some embrace of the category woman. The same is true across the realm of difference studies, where concepts like African American, Latino/a, Asian American, Indian, and disability are the animating ideas that organize and mobilize the entire academic enterprise. Yet the intersectionality on display in both feminist law journals and in difference studies programs²⁴ aggressively calls into question the very coherence of categories like woman or African American or gay. Although this paradox is hardly limited to academic domains,²⁵ it vividly illustrates one difficult challenge of academic activism: the need to find a pragmatic accommodation between central theoretical commitments (like intersectionality) and central political commitments (like the pursuit of group equality). Feminist law journals that both promote the study of

²³ The literature is vast. For useful perspectives, see After Identity: A Reader in Law and Culture (Dan Danielsen & Karen Engle eds., 1995).

²⁴ T.V. Reed, Heavy Traffic at the Intersections: Ethnic, American, Women's, Queer and Cultural Studies, in Color-Line to Borderlands: The Matrix of American Ethnic Studies 273-92 (J.E. Butler ed., 2001).

²⁵ It is also central paradox for political activists who are identity skeptics, such as lesbian and gay rights activists. See Jane S. Schacter, Skepticism, Culture and the Gay Civil Rights Debate in a Post-Civil War Era, 110 Harv. L. Rev. 684 (1997).

women and seek to change the concept of woman occupy a space marked, in part, by the creative tension between these two imperatives.