

THINKING ABOUT FEMINISM, SOCIAL JUSTICE, AND THE PLACE OF FEMINIST LAW JOURNALS: A LETTER TO THE EDITORS

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Dear Editors:

You, like the editors who came before you, have staked a place in an invigorating and challenging conversation about the transformative potential of feminist approaches to social justice.¹ As you envision and edit your journal, fundamental questions about the purpose of feminist scholarship and the value of retaining an autonomous space for feminist jurisprudence loom large.

Not surprisingly, The Bluebook will provide little guidance on these topics. Instead, consistent with the feminist enterprise,² you will need to search out sources, both within and outside of the law school library, to spark your critical thinking. Ideally these will ensure that, through the daily editorial grind, you keep in mind multiple perspectives regarding the journal's overarching mission. More specifically, you will likely find yourself asking what you are doing, why you are doing it, and what you might accomplish.

With these questions in mind, this essay offers a framework for thinking about the project of a feminist law journal.³ The framework builds on two central beliefs about our journals. First, feminist law journals have a

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¹ As the "Why a Feminist Law Journal?" symposium illustrated during the proceedings and through the contents of this volume, feminist visions of social justice are diverse and, at times, conflicting. See, e.g., Linda E. Fisher, I Know It When I See It, or What Makes Scholarship Feminist: A Cautionary Tale, 12 Colum. J. Gender & L. 439 (2003); see also Feminist Legal Theory: An Anti-Essentialist Reader (Nancy E. Dowd & Michelle S. Jacobs eds., 2003); Global Critical Race Feminism: An International Reader (Adrien Katherine Wing ed., 2000). However, under any understanding of feminism, the questions and framework offered here should be relevant to all feminist law journals that seek to have an impact beyond the pages of their own and other scholarly journals.

² For a discussion of feminist methodologies, see Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829 (1990). See also Feminist Legal Theory, *supra* note 1; Global Critical Race Feminism, *supra* note 1.

³ Only one feminist law journal, the Yale Journal of Law and Feminism, uses the word feminism in its title. However, many more journals, including this one, describe in their mission statement their commitment to a feminist perspective.

self-consciously normative and transformative purpose. That is, feminist law journals deliberately set out, at a minimum, to advance views that will challenge sex and gender stereotyping and other barriers to women's equality.⁴ Second, this overt commitment to a vision of social change distinguishes feminist law journals from many others⁵ and has important effects on the journals' styles and contents. To build on the observation of Emma Coleman Jordan, feminist law journals play an insubordinate role in response to the subordinating effects of legal academia.⁶ My argument is that this role, in turn, plays a part in shaping the journals themselves.

Specifically, the journals' commitment to feminist visions of social justice affects who is writing for the journals, how we are writing, and what we are writing about. The essay will look at each of these in turn.

First, consider how the transformative, feminist aim affects who the journals consider to be among their body of potential authors. An admittedly unscientific survey of journal mission statements suggests that although feminist journals characterize their goals in somewhat different ways, almost all dedicate themselves to creating a forum in which practicing lawyers and others whose lives or work are affected by the law can advance their perspectives alongside legal scholars, judges, and law students.⁷ This overt embrace of non-academics differs substantially from

⁴ Again, as noted *supra* note 1, not all feminist journals or authors would agree on what would constitute equality for women nor on whether or how that goal can be achieved in the world today. Still, journals describing themselves as feminist address and respond to the ways in which concepts of sex and gender play a role in social subordination and inequality.

⁵ Most journals do not explicitly embrace a particular, consistent perspective on the issues they address. Indeed, the subject matter and underlying vision of the pieces published in a law review typically vary depending on the interests of each new editorial board. This is true even of many specialty law journals, which, while concentrating on a specific subject area (such as legislation, cyberlaw, or international law) or an approach to legal analysis (for example, a history- or economics-focused approach), do not generally commit themselves to a normative position on issues they cover. Of course, notable exceptions to this general rule exist, including journals focused on civil rights, among others.

⁶ During her remarks as a panelist at the symposium, Emma Coleman Jordan elaborated on how "if the law school is an environment of subordination, then the feminist law journals, the African American law journals, are structures of insubordination" (transcript on file with the Columbia Journal of Gender and Law). An important dimension of this observation, which falls outside this essay's scope, is the role the journals have played in creating a space in which feminist students can gather, socialize, and strategize, especially when the surrounding law school does not embrace feminist approaches to legal education.

⁷ See, e.g., Founding Committee, *The Birth of a Journal*, 1 Am. U. J. Gender & L. v (1993); Hastings Women's Law Journal Staff, *Preface*, 1 Hastings Women's L.J. n.p. (1989); *Mission Statement*, 1 J. Gender Race & Just. n.p. (1997); *Statement of Purpose*, 1 Mich. J. Gender & L. n.p. (1993); *Statement of Purpose*, 1 Wis. Women's L.J. v (1985); *Why A Women's Law Journal*, 1 Harv. Women's L.J. viii (1978); Berkeley Women's Law Journal, *Home*, at <http://www.law.berkeley.edu/journals/bwlj/> (last visited July 12, 2003); Cardozo Women's Law Journal, *Home*, at <http://www.cardozo.yu.edu/cwlj/> (last visited July

the strong preference of most other journals for the scholarly work of law professors and, to a limited extent, judges and law students over the work of lawyers in practice.⁸

Second, we need to consider the ways in which the feminist commitment to ending subordination based on sex (and often other characteristics, such as gender identity, race, ethnicity, class, physical ability, and sexual orientation)⁹ affects how writers speak in feminist law journals both in terms of their language use and their writing styles and formats.

With respect to terminology, the journals have provided a leading model for the use of non-sexist language. Although many different types of journals now have style manuals that prefer non-sexist language, the earliest volumes of feminist law journals had the opportunity to play a critical role in influencing others' language use. In remarks on the creation of the Wisconsin Women's Law Journal in 1985, Justice Shirley Abrahamson of the Wisconsin Supreme Court, now Chief Justice, reinforced the potential for this type of contribution. She observed that the journal had "a valuable opportunity to accustom its readers to language that is gender-free and to use words that reflect the realities of society today and reinforce the aspirations of tomorrow."¹⁰ For example, she wrote, the journal could "call homemakers *unsalaried*, not *unemployed*."¹¹

In addition to affecting editorial style, the focus on achieving feminist conceptions of social justice has led feminist law journals to value articles that do not follow a traditional law review format for their contribution to scholarly as well as strategic discourse. As a result, many have self-consciously shed the limitations of traditional legal academic writing by opening their pages to narratives, literary analysis, and other

12, 2003); Women's Rights Law Reporter, About the Reporter, at <http://www.pegasus.rutgers.edu/~wrlr/index.html> (last visited Oct. 29, 2003); Yale Journal of Law & Feminism, Fact Sheet, at <http://www.yale.edu/lawnfem/factsheet.html> (last visited July 12, 2003).

⁸ Of course, interdisciplinary journals also specifically support publication of scholarly works from disciplines outside law.

⁹ These are aspects of identity that many journals already consider part of their focus. See, e.g., Statement of Purpose, Mich. J. Gender & L., *supra* note 7 ("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."); Berkeley Women's Law Journal, *supra* note 7 ("We believe that excellence in feminist legal scholarship requires critical examination of the intersection of gender with one or more other axes of subordination, including, but not limited to, race, class, sexual orientation, and disability.").

¹⁰ Shirley S. Abrahamson, Foreword, 1 Wis. Women's L.J. 1, 3 (1985).

¹¹ *Id.*

genres that enable deeper exploration of the law's effects on women than reliance on legal scholarship alone would permit.¹²

The commitment to publishing work that has the potential to meaningfully transform women's lives and achieve greater social justice also helps explain why feminist law journals have often published legal briefs, especially including those filed in high-impact cases.¹³ These briefs are published not only for the practical benefit of others litigating similar issues, but also for their contributions to the theoretical discussion taking place among feminist lawyers and academics. They, along with submissions by practicing lawyers, enable a unique synergy between theory and practice. And this synergy dovetails neatly with the dual roles of feminist law journals to support both the development of feminist legal theory and the thoughtful analysis of strategies aimed at translating that theory into real effects on individual lives.

Third, the commitment of feminist law journals to transforming society as well as academic discourse affects the subjects the journals address. In 1985 Justice Abrahamson observed, for example, that women's law journals "can be a forum for speaking on issues that have been labeled women's issues, such as sexual abuse, sex harassment, child abuse, battered women. 'A few years ago,' Gloria Steinem has said, such matters 'were just called *life*.'"¹⁴ Nearly two decades later, Abrahamson's list of topics traditionally associated with women barely begins to describe the wide array of topics that today's journals, as revealed in their tables of contents, consider pertinent to women and to their feminist project.¹⁵

Indeed, it is this diversity that gives rise to this essay's one plea to the editors of feminist law journals. Since feminist journals, as opposed to other journals that occasionally publish feminist work, take as a primary

¹² I remember the sense of excitement on the editorial board of the Harvard Women's Law Journal when we created the Law and Literature section in the 1990 volume. By publishing fiction, literary analysis, and a piece in the words and handwriting of a client, we felt we had brought the journal a step closer to being a place for well-rounded, meaningful discussion of women's lives. *Editors' Note*, 13 Harv. Women's L.J. ix (1990). Cf. Kathryn Abrams, *Hearing the Call of Stories*, 79 Cal. L. Rev. 971 (1991) (discussing the value of feminist narratives).

¹³ See, e.g., Mary Bonauto et al., *The Freedom To Marry For Same-Sex Couples: The Opening Appellate Brief Of Plaintiffs Stan Baker et al. in Baker et al. v. State Of Vermont*, 5 Mich. J. Gender & L. 409 (1999); Lynette Labinger, *Respondent's Brief In Opposition: Brown University v. Cohen*, 20 Women's Rights. L. Rep. 97 (Spring/Summer 1999).

¹⁴ Abrahamson, *supra* note 10, at 2.

¹⁵ See, e.g., *Contents*, 13 Yale J. of L. & Feminism n.p. (2001) (including articles about sexual orientation and *voir dire*, the federal response to polygamy in the mid-1800s, the relationship between women's human rights and tobacco control, the inclusion of companion animals in protective orders issued in response to domestic violence, and review of a casebook from the perspective of "Storytelling and Contracts").

goal to foster feminist conversation, the journals might help bring some of that conversation to bear on specific topics. Although it is always exciting to see in one place how many different issues feminist journals can address effectively, having multiple writers bring feminist approaches to a common topic creates the possibility for synergies and new developments in feminist thought that might not happen amidst numerous unrelated articles. Whether the focus is on particular subject areas, such as poverty, the military, legal education, or marriage, or on doctrinal areas, such as civil procedure or torts, feminist journals would contribute significantly by bringing some of these conversations together in the same place and, if in a symposium, at the same time.

Finally, one additional observation about the meaning and scope of feminist law journals seems warranted in light of the framework offered here for thinking about whom, how, and what the journals publish. As we see in both judicial opinions and the public debate concerning the rights of transgendered individuals, the identity of “woman” is increasingly contested, as are the meanings of sex and gender.¹⁶ Feminist law journals will need to attend more and more to these interesting and difficult definitional questions that implicate the very identities and perspectives that fall under the rubric of feminism. The challenge will be to do so while also continuing to think carefully and creatively about eradicating the harassment, violence, and other forms of “run-of-the-mill” discrimination against women that remain incessant so many years after the first feminist law journals were founded to address them.

¹⁶ See generally Taylor Flynn, Transforming the Debate: Why We Need to Include Transgender Rights in the Struggles for Sex and Sexual Orientation Equality, 101 Colum. L. Rev. 392 (2001); Katherine M. Franke, The Central Mistake of Sex Discrimination Law: The Disaggregation of Sex From Gender, 144 U. Pa. L. Rev. 1 (1995); Julie A. Greenberg, When is a Man a Man, and When is a Woman a Woman, 52 Fla. L. Rev. 745 (2000); see also Judith Butler, Gender Trouble: Feminism and the Subversion of Identity 16 (1990) (describing gender as “a complexity whose totality is permanently deferred, never fully what is given at any juncture in time. An open coalition . . . will affirm identities that are alternately instituted and relinquished according to the purposes at hand.”).