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# A Journal of One's Own? Beginning the Project of Historicizing the Development of Women's Law Journals

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# A JOURNAL OF ONE'S OWN? BEGINNING THE PROJECT OF HISTORICIZING THE DEVELOPMENT OF WOMEN'S LAW JOURNALS

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Since the 1970s, feminism has helped transform the university and the production of knowledge. Not only have increasing numbers of female students, professors, and administrators entered universities, they have also created women's studies programs and courses, which have been slowly integrated into the various disciplines and university curricula. Further, feminism has spurred scholars to question traditional ways of knowing and teaching, academic disciplines, categorizations of knowledge, scholarly methodologies, and the university's separation from the broader community.<sup>1</sup> One component in this production and distribution of new knowledge has been the establishment of feminist academic journals such as *Feminist Studies* (1972), *Women's Studies* (1972), *Signs: A Journal of Women in Culture and Society* (1975), and *Frontiers: A Journal of Women's Studies* (1975). These journals created a space for the development of a body of literature that was oppositional but also sanctioned, institutionalized, and eventually legitimated.<sup>2</sup>

Feminism has also entered legal academia and had far-reaching effects on it, though these have been slower to take shape and often have

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<sup>1</sup> For a discussion of feminism's impact in the university see Marilyn Jacoby Boxer, *When Women Ask the Questions: Creating Women's Studies in America* (1998); Ellen Carol DuBois et al., *Feminist Scholarship: Kindling in the Groves of Academe* (1985); Alice Echols, *Daring to Be Bad: Radical Feminism in America, 1967-1975* (1989); *Gendered Subjects: The Dynamics of Feminist Teaching* (Margo Culley & Catherine Portuges eds., 1985); Florence Howe, *Myths of Coeducation: Selected Essays, 1964-1983* (1984); Paula A. Treichler et al., *For Alma Mater: Theory and Practice in Feminist Scholarship* (1985); *Women's Studies in Transition: The Pursuit of Interdisciplinarity* (Kate Conway-Turner et al. eds., 1998).

<sup>2</sup> See Patrice McDermott, *Politics and Scholarship: Feminist Academic Journals and the Production of Knowledge* (1994) for a discussion of the development and role of feminist academic journals. McDermott's excellent book on this subject essentially stands alone. Although McDermott lists a number of women's law journals in an appendix, she does not discuss them.

faced resistance. Within legal academia, somewhat later than the development of the major feminist academic journals, women's law journals were founded—not by established scholars but rather by law students. Leaving aside the peculiar origins and development of law reviews and law journals as a whole, there are unique features of the story of women's law journals—of their origin, evolution, and problematic status—that deserve study.

I am presently in the process of examining the history of two of the first women's law journals—the Harvard Women's Law Journal (HWLJ), established in 1978, and the Berkeley Women's Law Journal (BWLJ), established in 1985. This excerpt largely focuses on the early years of the HWLJ and the questions that I have brought to this project. I engage in a discourse analysis while also using an intellectual and social history perspective. I examine what women's law journal editors wrote about the roles of the journals, what authors were published, what topics were explored, the language and paradigms employed, the contours of debates engaged in, their institutional practices, and their conformity to or departure from traditional law review conventions. I also try to understand women's law journals as fluid, reflecting as well as constructing broader intellectual trends within academia, feminist publication, and the larger women's movement.

Women's law journals might be described as sites of irony. Critical theorist Donna Haraway writes, "Irony is about contradictions that do not resolve into larger wholes, even dialectically, about the tension of holding incompatible things together because both or all are necessary and true."<sup>3</sup> Patrice McDermott's remarks about feminist academic journals in general are equally true of women's law journals: "In claiming acceptance by the academic establishment while participating in feminism's challenge to it, feminist academic journals function as one of Haraway's ironic cultural contradictions."<sup>4</sup>

In the fall of 1977, through the efforts of a number of women law students including Sheila Kuehl, Harvard Law School staged Celebration 25 to honor a quarter of a century of women at Harvard. The event was entirely organized by women students who, without official sponsorship, commandeered a basement room and, as Kuehl describes, "made it a kind of women's center."<sup>5</sup> Kuehl understands these actions as "subversive" and "revolutionary," and writes that the administration sensed that a gathering of women at the law school would inevitably force a discussion about the

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<sup>3</sup> Donna Haraway, *A Manifesto for Cyborg: Science, Technology, and Socialist Feminism in the 1980s*, in *Simians, Cyborgs and Women: The Reinvention of Nature* 149 (1991), available at <http://www.stanford.edu/dept/HPS/Haraway/CyborgManifesto.html>.

<sup>4</sup> McDermott, *supra* note 2, at 12.

<sup>5</sup> Sheila James Kuehl, *For the Women's Reach Should Exceed their Grasp, or How's a Law Journal to be Born?*, 20 Harv. Women's L.J. 5, 6 (1997).

“male-centered nature of American law.”<sup>6</sup> Celebration 25 was a small reflection of the broader women’s movement of the 1970s. Like some of the writings in the feminist press, the law students who created Celebration 25 were searching for a usable past, finding and celebrating the women who had come before them, and attempting to create links between generations. As part of the celebration, the students published a commemorative volume, Harvard Women’s Law Journal Volume 1, which would become the first student edited and continuously published women’s law journal.<sup>7</sup> Thus Harvard, this elite institution, began to finance and house a feminist journal. This may indicate that the administration, in fact, did not find the presence of the journal truly threatening.

Although there is no direct evidence that the underground press or other feminist academic journals directly influenced the women who created the HWLJ, they were the first group of students who were undergraduates when the women’s liberation movement began influencing universities. Their very curiosity about the history of women at Harvard Law School and the questions that they asked indicates its effects. Thus one might understand the HWLJ as simultaneously born of a social movement but also rooted in the law school.

The editors’ note in volume one, Why a Women’s Law Journal, reads, “When the law first distinguished between men and women, distributing rights and responsibilities on the basis of sex . . . the law took on a different meaning for women. It is now necessary to examine the origins and impact of this different treatment and to develop a feminist jurisprudence.”<sup>8</sup> This statement can be read as quite radical. It has the tone of a feminist manifesto (common in the feminist press of the 1970s), asserting that “sex” determined the law’s impact, response, and opportunities for participation rather than being impartial and providing equal rights. Even the term “*feminist* jurisprudence” gestured to the political mission and alliance of the journal and situated it within the broader women’s movement. Furthermore, although the term “feminist jurisprudence” was as yet undefined, and the body of scholarship non-existent, the editors envisioned the journal as a place to begin such an endeavor. Yet, as the editors’ note indicates, the basis of their enterprise depended on an essentialized notion of

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

<sup>7</sup> Although the HWLJ was the first student edited and continuously published women’s law journal, it did have some precedents. The Women’s Rights Law Reporter out of Rutgers University episodically published volumes. However, it was directed towards practitioners. In addition, the Golden Gate Law Review devoted an annual issue to women. Any larger analysis of the history of women’s law journals must take account of these publications, especially the Women’s Rights Law Reporter. Space and time constraints have prevented me from doing so in this excerpt.

<sup>8</sup> Editors’ Note, Why a Women’s Law Journal?, 1 Harv. Women’s L.J. viii, viii (1978).

“woman” and “sex”—categories that would be uninterrupted by differences among women or that could take into account class, race, multiple identities, and sexuality.

Although the editors’ note was radical (as was the creation of the HWLJ) when historically situated within a particular institutional setting, the content of the journal, when viewed within the wider feminist movement, is more problematic. Yet, the mere presence of a feminist space within Harvard Law School was disruptive to its assimilative model and the dominant liberal vision of the law as neutral and ungendered. Furthermore, the creation of a space for women law students to act as editors and for women authors to publish articles about women and the law was a conscious effort to create both a feminist institution and a scholarly feminist public sphere of legal discourse that did not yet fully exist.

A comparison with a leading conventional law review is suggestive. My study of the Harvard Law Review from March 1977 to 1982 indicates that during this period the journal did not publish any article specifically about women and the law nor any article by a woman author, no matter what the topic. Volume one of the HWLJ lists a staff (including editors) of forty-three women and one man. In contrast, the Harvard Law Review, in 1978, lists approximately eight women out of a staff of sixty-seven. In 1980, there were ten women on a staff of eighty-four.<sup>9</sup> These numbers provide ample testimony that the HWLJ represented a women’s space providing opportunities to women law students and authors that the law review did not offer.

Yet if the HWLJ was radical from one perspective, it was not radical from another. The journal was produced from the site of an elite law school and, like other law journals, it was insulated within the university and not a larger community enterprise. Directed and managed by a group of Harvard law students, it served to create and maintain an elite circle of inclusion and a wider circle of exclusion. In a number of other ways, the HWLJ also replicated rather than challenged the practice of other law reviews.

Many historians and observers have remarked that feminist organizations in the 1970s saw hierarchies as a central feature of “patriarchal culture” and instead adopted egalitarian organizational structures.<sup>10</sup> This was not entirely the case with the HWLJ. Although the HWLJ was open to any

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<sup>9</sup> I have calculated numbers of men and women by reviewing the staff rosters published in the journals. When making a determination of who is male or female, I have used names as proxies for a person’s sex. Where a name might be that of a man or woman’s such as “Chris,” I have assumed that to be a woman’s name. In 1981, an editor of the Harvard Law Review wrote that out of eighty-nine editors on the Review, eleven were women and only one was a member of a minority group. At the time, the student body was twenty-eight percent female. See Robert J. Lack, *Challenge to the White, Male Legal Establishment*, N.Y. Times, Mar. 9, 1981, at A22.

<sup>10</sup> See McDermott, *supra* note 2, at 27; Rosalyn Baxendall & Linda Gordon, *Dear Sisters: Dispatches from the Women’s Liberation Movement*, 14-15 (2000).

Harvard law student, the editors and staff were divided, hierarchically paralleling and recreating the structures of other law reviews. The cover of the HWLJ resembled that of other law reviews, as did the page layout and citation form. Such visual clues indicate the editors' desire for acceptance as a "serious" law review and their willingness to play by at least some of the rules of the genre. In its adoption of these norms, the editors perhaps created the journal according to an equality paradigm—women could produce a law journal about women that would compete with traditional law reviews.

One notable exception existed to its standard stylistic and visual presentation. Most law reviews simply drop a note next to the author's name, providing a terse statement of the author's institutional affiliation and educational background. Instead the HWLJ provided a more complete biography along with the author's own statement regarding her commitment to feminism and work within the women's movement. Although the editors did not remark upon this process, it discursively situated the author as a political person—an advocate and not a supposedly impartial observer—and tied the author's professional commitments to her personal life. By the second volume, however, this practice was abandoned without comment.

From the first volume, however, the journal indicated its desire to publish articles from other disciplines. Some feminist scholars consider interdisciplinarity crucial to a feminist methodology, for, unhindered by disciplinary boundaries, it can allow for a fuller understanding of how gender functions. The major feminist journals, such as *Signs* and *Feminist Studies*, were always multidisciplinary.<sup>11</sup> The lead article in volume one of the HWLJ was Reflections on Women and the Legal Profession: A Sociological Perspective, authored by Rosabeth Moss Kanter, a Yale sociology professor. Yet the article, a study of women lawyers' career advancements in elite law firms, is troublesome. The author incorporated the assumption that women *should* want to join, work, and advance up the corporate ladder in such law firms, and that career success, and women attorneys' progress in general, should be defined as such. The article failed to discuss the legal substance of the work that such women would be performing and how it might conflict with feminist goals. It further adopted unstated assumptions that women lawyers were white, straight, and privileged. And perhaps it was a fitting piece for the HWLJ's commemorative issue, in that it spoke to and about the small number of women attending elite law schools who had the opportunity to join white shoe law firms.

Indeed, article after article in the journal's early volumes demonstrated an embrace of the market, and produced a generic and abstract woman lacking race, class, or sexual preference. The abstract, rights-bearing, contracting liberal man of legal discourse was simply replaced by the abstract, rights-bearing liberal woman. The absence of any class analysis or

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<sup>11</sup> See, e.g., DuBois et al., *supra* note 1; Christine A. Littleton, In Search of a Feminist Jurisprudence, 10 Harv. Women's L.J. 1, 4 (1987).

critique of capitalism is especially surprising, given that feminist scholarship from other disciplines was heavily influenced by what has been labeled "socialist feminism," which analyzed how modes of production and class interacted with gender.<sup>12</sup>

Part of these absences may have been caused by the confluence of a number of phenomena. Many of the articles published in the journal's early years were written by recent law school graduates or more experienced practicing attorneys. Both were trained to make arguments in a particular way for specific purposes using traditional legal discourse. Within these constraints and without a developed feminist legal theory, such authors may not have possessed the tools for offering a more sustained feminist critique.

In 1985, a number of women law students at Boalt Hall School of Law created the BWLJ. The editors' note in the first volume read, in part: "At the outset we formulated our priorities: to give voice to the complex and varying perspectives reflecting the legal concerns of all women, especially the women of color, lesbians, disabled women and poor women whose voices have been severely underrepresented in existing literature."<sup>13</sup> Perhaps this statement reflected the editors' own reading of the absence of such articles in the HWLJ. Furthermore, like the HWLJ's call for a feminist jurisprudence before it existed, the BWLJ was attempting to create a space for an alternative legal scholarship. In volume two, the editors wrote that they were actively contacting and supporting authors with hopes that those seeds would later bear fruit. In subsequent volumes, the new editorial boards reiterated their commitment and also acknowledged their failure. These statements highlight that the BWLJ was not only a space to publish articles that were not being published elsewhere but that it actively sought out and nurtured such scholarship.

In volume three, the editors issued a manifesto-like statement on the purpose of feminist legal scholarship and the journal. They wrote that "the battle" over feminist scholarship was not over and cited the recent decision of Harvard Law School to deny law professor Clare Dalton tenure. They noted further that they were having difficulty attracting articles, especially those by and about under-represented women. Finally they wrote that the purpose of the BWLJ was to provide a site for alternative scholarship, to empower law students who confronted a homogeneous faculty, and to provide tools to practitioners who address "the realities of women's lives."<sup>14</sup> In subsequent volumes, the editors repeatedly criticized law schools, writing that the tenure system prevented authors from publishing in women's law journals and condemning those who evaluated scholarship through "the myopic lenses of

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<sup>12</sup> A notable exception to this trend was Janet Rifkin's *Toward a Theory of Law and Patriarchy*, 3 Harv. Women's L.J. 83 (1980). This article became one of the foundational building blocks of feminist jurisprudence.

<sup>13</sup> Editors' Note, 1 Berkeley Women's L.J. n.p. (1985).

<sup>14</sup> Editors' Note, 3 Berkeley Women's L.J. n.p. (1987-88).

hierarchy; a hierarchy that rewards those who ignore the existence of sexism, racism, classism and homophobia.”<sup>15</sup> The BWLJ’s editors thus envisioned the problems that women faced in the law school to be part of a continuum with those of society, which reflected and constructed one another. In doing so, the editors were blatantly proscriptive, imagining what feminist legal scholarship could look like through the collective efforts of feminists in the academy and in the community.

Consistently, the BWLJ’s editors’ voices were much more present than the voices of the HWLJ’s editors. For example, the BWLJ’s editors repeatedly attacked the institutional policies of law schools regarding both tenure and student admissions and connected the struggles of women across various institutional sites. There is an irony that the BWLJ attacked the Dalton tenure decision, whereas HWLJ chose not to, even though the decision had direct impact on these students. Indeed the BWLJ did not hesitate to be overtly political and saw its mission as one of advocacy rather than adopting the supposedly apolitical stance of other law reviews.<sup>16</sup>

The BWLJ also sought to blend scholarship, community activism, and political advocacy. For instance, in 1989 it published an article by an author who in 1969 had litigated early abortion cases. The article began with an editors’ note stating that the Supreme Court had recently heard oral arguments in Webster v. Reproductive Health Services, and that the outcome of the case remained uncertain.<sup>17</sup> The editors wrote, “It is clear, however that women need to fight to retain our right to abortion. . . . A look back into the history of those early battles can teach us about how we should fight for abortion rights today.”<sup>18</sup> The article examined how women attorneys, established and grassroots women’s organizations, and individual women together brought and supported various lawsuits regarding abortion rights. Thus, the article argued that abortion rights cases were and must again become part of a larger social movement and not be limited to the domain of

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<sup>15</sup> Editors’ Note, 4 Berkeley Women’s L.J. n.p. (1988-89).

<sup>16</sup> The most overt political act that the HWLJ undertook was in 1993 when the editors began the journal with a seventy-eight page list, which they compiled, of African American female law professors and their credentials. The editors wrote that Harvard Law School had consistently failed to hire an African American woman professor on the grounds that none could be found. The list was intended to demonstrate the large number of African American women law professors available. See Women of Color in Legal Academia: A Biographical and Bibliographical Guide, 16 Harv. Women’s L.J. 1 (1993). Although beyond the scope of this excerpt, without doubt the boldness of the BWLJ compared to the HWLJ is related to the different atmospheres and histories of student radicalism on the two campuses.

<sup>17</sup> See Reprod. Health Serv. v. Webster, 492 U.S. 490, 500 (1989). Webster involved a Missouri law that sought to restrict the use of public funds, employees, and facilities to counsel women about abortion. The law also defined conception as the beginning of human life.

<sup>18</sup> Nancy Stearns, Roe v. Wade: Our Struggle Continues, 4 Berkeley Women’s L.J. 1, 2 (1988-89).



courts and legal professionals. The article also served to connect the early women's movement with feminist activism in the late 1980s, again highlighting the importance of creating a usable past. Following the article was a list of pro-choice organizations with their addresses and telephone numbers. Publishing this list transcended the role of traditional law reviews and situated the BWLJ as a publication that embraced advocacy and community organizing.

At least part of BWLJ's willingness and perhaps ability to be so outspoken may have, in part, been due to the institutional support that it garnered. The group of women who were contemplating forming the journal appear to have approached professor, later dean, Herma Hill Kay who became its long-term faculty advisor. Kay seems to have played a tremendously supportive role, which included contacting other law school deans to assure them that the BWLJ was a respectable journal in which faculty should be comfortable publishing. Kay also wrote the lead article for the premiere volume and many articles published in the journal acknowledged her support. In addition to an active faculty advisor, the journal, unlike most law journals but similar to other academic journals, formed a National Advisory Board. On the Board were eight women law professors, ten women attorneys including lawyers from the Lesbian Rights Project, the Legal Aid Society, the Asian American Legal Defense and Education Fund, and the Western Center on Law and Policy, one woman judge, a professor of sociology, a California State Senator, and the director of the Indian Resources Department at New Mexico State University.

Yet even with BWLJ's innovative steps, it, along with the HWLJ, had trouble attracting academics to publish in the journals. In the 1980s, a group of relatively young women feminist lawyers entered academia and began to develop the main tenets of feminist legal theory. Generally, although not always, they published at first in the more established journals and not in women's law journals. Within academic legal circles, there was a sense that publishing in a women's law journal was not a "real" publication credential.<sup>19</sup> Women legal academics who already had made the bold step to write about women may have sought more traditional places of publication, reasoning that they could later publish in a women's law journal (and indeed many did). For the most part, articles on feminist jurisprudence began to appear in non-Ivy League law reviews in the early 1980s.<sup>20</sup>

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<sup>19</sup> Herma Hill Kay, Berkeley Women's Law Journal: Ten Years of Giving Voice to Underrepresented Women and Their Concerns, 10 *Berkeley Women's L.J.* 1, 5 (1995).

<sup>20</sup> See, e.g., Mary Joe Frug, Securing Job Equality for Women: Labor Market Hostility to Working Mothers, 59 *Buff. L. Rev.* 55 (1979); Mary Joe Frug, A Symposium of Critical Legal Study: Re-reading Contracts: A Feminist Analysis of a Contracts Casebook, 34 *Am. U. L. Rev.* 1065 (1985); Frances Olsen, Statutory Rape: A Feminist Critique of Rights Analysis, 63 *Tex. L. Rev.* 387 (1984); Ann Scales, Towards a Feminist Jurisprudence, 56 *Ind. L.J.* 375 (1981).

The glass, however, might be imagined to be half full or half empty. In the absence of articles by legal academics, the journals served as a bridge between legal practitioners and the academic community. Thus the HWLJ and the BWLJ published articles written by attorneys practicing in diverse settings, legal instructors, activists from various organizations, recent law school graduates, and students. In this motley mix of authors, women's law journals resembled other nascent feminist publications such as *Feminist Studies* and *Frontiers*. Articles about pension plan discrimination, athletics and Title IX, and causes of action for employment discrimination may appear doctrinal and somewhat traditional to the reader looking for an engagement with critical theory and the destruction of the binaries that the law imposes. These articles, however, with their collection of cases, intensive research, and often creative and innovative lawyering strategies, may have been important to attorneys who litigated such cases. Moreover, we can understand them as constituting the actual praxis that some feminist scholars discuss in more general ways.<sup>21</sup> Furthermore, such articles may have served to create a communications network for publicizing legal cases and information from a wide array of sources that otherwise may have received scant attention. As such, these journals might be understood as being part of a feminist public sphere. Yet I use the phrase hesitantly for indeed a crucial question is what do we mean by feminist and what constitutes the public.

By 1995, the HWLJ and the BWLJ had matured, become fully institutionalized, won funding by the schools in which they were housed, and had developed their own networks and connections, as those who once worked on the journals became professors, practitioners, and authors who published in the journals. Perhaps these journals, as well as the more than a dozen other women's law journals that were established in the last decade, began to reproduce their own hierarchies. I conclude by asking a number of questions: Does the proliferation of women's law journals indicate that they have simply become part of a national but insulated discourse that poses little threat to either the law schools that house them or the larger legal system? Are women's law journals still or were they ever a literature of opposition? Finally, what role can these journals play in nurturing a revived women's movement while simultaneously de-essentializing our very understanding of "woman"?

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<sup>21</sup> Feminist theorist Patti Lather defines praxis as "theory relevant to the world and nurtured by actions in it." Patti Lather, *Getting Smart: Feminist Research and Pedagogy With/in the Postmodern* 11-12 (1991).