

## Complex Feminist Conversations

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# Complex Feminist Conversations

Judith Resnik†

I have the pleasure of introducing this volume, *Feminism in the Law*. I begin, as will other contributors,<sup>1</sup> by sharing some of the history of *feminists* in the law.

When I started teaching law in the 1970s, a senior colleague on my faculty gave me a warning. He said: “Be careful. Don’t teach in any area associated with ‘women’s issues.’ Don’t teach family law, don’t teach sex discrimination, don’t teach about wills.” If I want to be taken seriously by my colleagues, he said: “Teach the ‘real’ stuff—torts, contracts, procedure, property. And don’t be visibly involved in women’s issues.”

At that time, I was in the midst of work on procedure, on adjudication, on habeas corpus, and on the rights of women in prison. I pursued these interests; I taught courses on procedure, federal courts, and prisoners’ rights.

The longer I was in legal academia, the more I saw that my colleague’s advice was close to the mark. I was one of two women on the law faculty at my university, and virtually all my male colleagues were clearly more interested in my work on procedure and less interested in my work on the problems of women prisoners. Further, the women to whom my male colleagues paid attention were those who wrote about and taught the “hard” stuff, (the “right stuff,” or the “real thing”)—to wit, antitrust, property, procedure, and torts. My faculty was not unique in its lack of interest in women-related subjects. For many women teaching law in the 1970s and 1980s, the message conveyed, sometimes by speech and sometimes by silence, was the same: If you want to be taken seriously, don’t talk about women’s issues.

In many of the settings in which I work, I am one of very few women. I am invited to institutions populated and controlled by men. I know that, whenever I do identify with and speak out about

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<sup>1</sup> See Ruth Bader Ginsburg and Barbara Flagg, *Some Reflections on the Feminist Legal Theory of the 1970s*, 1989 U Chi Legal F 9; Wendy W. Williams, *Notes From A First Generation*, 1989 U Chi Legal F 99.

women's issues, I am at risk of being marginalized, trivialized, not heard and hence, silenced. It is much safer in such settings to try to pass as a man, to say: "Yes, I'm a female, but I'm the same as the men on the faculty—I just dress a bit differently."

But "passing" proves to be impossible. First, I'm uncomfortable, for such a pose seems disingenuous. Second, I'm not sure I could hide, even if I wanted to. Third, and most importantly, I don't want to hide. Instead, I join in a shared enterprise of feminism, which is to take seriously and to help to make plain the myriad experiences of women, whose voices have not much been heard in accounts—in both scholarly and popular press—about what women's experience of this world is.

There is a bit of good news. It is not quite as risky for some (especially those who are white, middle class, and with sources of income not completely derivative from men) to be women as it used to be. As Ruth Bader Ginsburg's and Wendy Williams' essays demonstrate,<sup>2</sup> the levels of visible oppression have diminished for some women over the last decade. Members of some law faculties, some law firms, and some businesses now view the very small number of women workers to be a source of embarrassment—rather than a reflection of the "natural order." Thus, while we (who were not the "first generation")<sup>3</sup> can and should debate the nature of feminist enterprises, premises, goals, and strategies,<sup>4</sup> we can, should, and do gladly acknowledge our appreciation of the pain endured and the successes obtained by those who preceded us.

This brief account of one aspect of my experience as a law teacher during the era in which women law teachers were (and still are<sup>5</sup>) a novelty is one example of what is to come for the reader in this volume of essays. A first premise of feminist conversations is

<sup>2</sup> Ginsburg, 1989 U Chi Legal F at 10; Williams, 1989 U Chi Legal F at 112.

<sup>3</sup> Williams, 1989 U Chi Legal F at 99.

<sup>4</sup> Compare id with Christine A. Littleton, *Women's Experience and the Problem of Transition: Perspectives on Male Battering of Women*, 1989 U Chi Legal F 23. See also Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U Chi Legal F 139; Martha Minow, *Beyond Universality*, 1989 U Chi Legal F 115; and Robin L. West, *Feminism, Critical Social Theory and Law*, 1989 U Chi Legal F 59.

<sup>5</sup> See Richard H. Chused, *The Hiring and Retention of Minorities and Women on American Law School Faculties*, 137 U Penn L Rev 537 (1988). During the 1980-81 academic year women constituted 13.7 percent of the law teachers. During the 1986-87 academic year women constituted 20 percent. Id at 557. However, as Chused analyzes the data, women are underrepresented on the faculties of "elite" law schools and are disproportionately represented in the lower status jobs of law teaching. That "lower" status has been defined by the still dominantly male-run legal profession to include such work as teaching legal writing and teaching in clinical programs. Id at 548-55.

that we begin with the actual experiences of women. The realities of women's lives are central to feminist description, analysis, and theory. Feminists understand that the work that women do and those who think about women and women's work are often trivialized. One of my favorite examples comes from the field of procedure, in which, when someone wants to describe a rule or set of activities as unimportant, the tradition has been to call the rule or activity "housekeeping."<sup>6</sup> Of course, no one who has ever kept house would describe trivial activities as "housekeeping." Indeed, most human beings find that arrangements for eating and sleeping are quite central to their lives. But, in this culture, women are seen as responsible for enabling others to be able to eat and to sleep, and in this culture, such tasks are devalued.

A second key issue for feminists, and one that is evident in this symposium, is what I label the issue of "proximity." This symposium is about a topic that I care deeply about, that is closer to me than much of the other work I do. It is not that I am uninterested in the other fields to which I devote much of my time. I am passionately engaged by that other work—about adjudication, the role of judges, the structure of courts—and those issues have and will occupy much of my life. Indeed, law review readers will find that three of us here, Martha Minow, Richard Posner, and myself, have recently participated in another symposium—in honor of the fiftieth birthday of the Federal Rules of Civil Procedure.<sup>7</sup> While the occasion may seem dry to some, the event was marked with cake and candles and with some heated exchanges about the federal court system. Observers would have been fair to describe many of the contributions (including my own) as prompted by deeply-felt views of how the world is and should be ordered.

But there is a difference. My work on procedure exists at some distance from me, for I do not daily live and breathe the structure of the courts, the roles of judges, and the interaction between federal and state systems. But with feminism, there is no such space. I do live and breathe in a world in which, because I am a woman law

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<sup>6</sup> See, for example, *Statement of Justice Black and Justice Douglas on the Promulgation of Amendments to the Federal Rules*, 374 US 865-66 (1963) ("We believe that while some of the Rules of Civil Procedure are simply housekeeping details, many determine matters so substantially affecting the rights of litigants in lawsuits that in practical effect they are the equivalent of new legislation . . .")

<sup>7</sup> The conference, *The Fiftieth Anniversary of the Federal Rules of Civil Procedure*, sponsored by Northeastern University Law School, was held on October 7-8, 1988. See Stephen Labaton, *Federal Court Rules Challenged after 50 Years*, NY Times B5 (Oct 14, 1988). Proceedings forthcoming in 137 U Penn L Rev 1872 (1989).

teacher, I am an anomaly. On a daily basis, in numerous ways, my otherness as female is brought home to me; my modes of being are questioned. My sense is that many women and men may share the feeling that feminist issues are close, sometimes, for some, too close for comfort. While much of our other work is at some level about ourselves, feminism is so plainly about ourselves, about the construction of our lives and our relationships, that the protective veneer of professionalism is inadequate. This proximity translates, in practical terms, in a variety of ways. One of the artifacts of proximity is that feminism is a topic that makes many people nervous.

A third complicating aspect of feminist discussions arises from the question of audience. Since feminism takes seriously the act of connection and interaction, feminism does and must care a lot about not only the speaker but also the listener. So, we often ask: "To whom are we speaking?"<sup>8</sup>

In this volume, the answer is evident, for the readership will be a group of individuals, both women and men, who have varying degrees of affiliation with feminism. While talking with women is often an act of connection, talking with men about feminism is more complicated. One of the central aspects of feminism is an understanding that much of the activity in women's lives is directed toward seeking approval, permission, power, and legitimation from men. In this culture, many women are dependent upon men for economic survival.<sup>9</sup> In this culture, many women obtain their social status and their names from their affiliation with men.<sup>10</sup> In this culture, many women live in fear of male violence.<sup>11</sup> In this culture, most of the holders of power are men.

Feminism is an effort to help those of us who are women to take ourselves seriously and to enable us to give ourselves approval, permission, power and legitimation. Thus, both women and

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<sup>8</sup> See, for example, Ruth Bader Ginsburg's and Barbara Flagg's discussion of the litigation choices made by those bringing women's rights cases in the 1970s and Ginsburg's sense that, given the precedents of the time, judges and justices "needed basic education." As a result, claims were kept "comprehensible and digestible" to avoid the risk of "losing [the] audience." 1989 U Chi Legal F at 18 (cited in note 1). See also Martha Minow's essay, which gives voice to what she believes is some silent criticism of feminism by those in the legal profession. 1989 U Chi Legal F at 118 (cited in note 4).

<sup>9</sup> See generally Mary E. Becker, *Politics, Differences and Economic Rights*, 1989 U Chi Legal F 169.

<sup>10</sup> See, for example, Richard Posner's description of women who work, in terms of women as related to men. The term chosen is "housewives" rather than "homeworkers" or "householders." Richard A. Posner, *Conservative Feminism*, 1989 U Chi Legal F 191.

<sup>11</sup> Littleton, 1989 U Chi Legal F at 28 (cited in note 4); West, 1989 U Chi Legal F at 63 (cited in note 4).

men who engage in conversations about feminism are often self-conscious about the activity. If the activity is somehow to “explain” feminism to men, we must worry that what we are doing—seeking once again male approval or the male gaze<sup>12</sup>—is the very antithesis of what we hope feminism will enable us to achieve. At the same time, men may worry that they are engaged in an act of domination or empowerment that itself expresses the very problem at hand. The task is to engage in the conversation while fighting the acculturation that has for so long taught women to defer, to acquiesce, and to mistrust ourselves when we claim a space for ourselves.<sup>13</sup>

Given these problems—that at least some men and women do not take the enterprise of feminism or any enterprises of women seriously; that conversations about women’s lives are, at some level, always conversations about ourselves; and that much of the reality of women’s lives, currently, does involve seeking approval, if not permission, from men—it is not surprising that a final complicating factor for many of us who engage in feminist conversations and writing is the issue of anger. We have to be very very careful, because anger at the experiences of marginalization, trivialization, and subordination is not so far from the surface. As Mary Becker discusses in her article,<sup>14</sup> despite a multitude of strategies for de-emphasizing the conflicts between women and men, the conflicts are really there. And so is the anger.

If one gives voice to the anger, the risks are enormous. As Carolyn Heilbrun expressed so well:

It has been ridicule, misery and anxiety [this] patriarchy holds in store for those who express their anger about the enforced destiny of women . . . . Even today, after two decades of feminism, young women shy away from an emphatic statement of anger at the patriarchy. Perhaps only women who have played the patriarchal game and

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<sup>12</sup> See, for example, John Berger, Sven Blomberg, Chris Fox, Michael Dibb, and Richard Hollis, *Ways of Seeing* 45-64 (The BBC and Penguin Books, 1987). “Women are depicted in a quite different way from men—not because the feminine is different from the masculine—but because the ‘ideal’ spectator is always assumed to be male and the image of the woman is designed to flatter him. If you have any doubt that this is so, make the following experiment. Choose . . . an image of a traditional nude. Transform the woman into a man . . . . Then notice the violence which that transformation does. Not to the image, but to the assumptions of a likely viewer.” *Id.* at 64.

<sup>13</sup> See West, 1989 U Chi Legal F at 61 (cited in note 4), delineating a woman’s space from the universality claimed by critical theorists such as Foucault and Unger.

<sup>14</sup> Becker, 1989 U Chi Legal F at 169 (cited in note 9).

won a self despite it can find the courage to consider facing the pain that the outright expression of feminism inevitably entails.<sup>15</sup>

Of course, these issues—of trivialization, proximity, subordination, and anger—are not new to feminist conversations, and happily, we have developed a series of responses. One response has been a commitment to a mode of discourse that tries to make it easier for others both to listen and to speak, and to learn from silence and experience as well as from dominant voices.<sup>16</sup> This symposium exemplifies a feminist effort to engage and to discuss—to explore together rather than to attempt to prove which of us is “smarter,” to eschew efforts at intellectual domination, and to attempt to understand perspectives, some of which are not intuitively obvious. We hope this symposium will in turn engender further collegial discourse, in which many voices can be heard. However, I must record one regret as the symposium is translated from a two-day meeting into this volume. This book will capture some of the exchanges of those who have written essays but will not include the comments from panelist Fran Olsen,<sup>17</sup> from the moderators such as Jane Mansbridge and Cass Sunstein, and from members of the audience, who made important contributions to the conference itself and to the thinking reflected in these papers.

A second feminist response, again aimed at enabling many voices to be heard, is to try not to speak from an imperial position. A major shared premise is that knowledge of the world is constructed from one's viewpoint and that what has been assumed (by some) to be a universal viewpoint is, in fact, a viewpoint of some men, who have articulated a vision of reality and have claimed it to be true for us all. One of my colleagues, Catharine Hantzis, calls this “psychological imperialism.”<sup>18</sup> Feminists are at risk of assum-

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<sup>15</sup> Carolyn G. Heilbrun, *Writing a Woman's Life* 125 (W.W. Norton, 1988).

<sup>16</sup> See West, 1989 U Chi Legal F at 66 (cited in note 4), explaining the content of the silence of some women. See also the Dutch film, Marleen Gorris, director, *A Question of Silence* (Quartet/Films Inc—Sigma Films Ltd, 1983).

<sup>17</sup> Fran Olsen exemplified the effort, as a white woman, to be willing to “bumble along” in public to explore some of the implications of new technologies of reproduction for black women and for lower class women. Frances Olsen, *Race, Gender, Class*, remarks at the *Legal Forum* symposium, “Feminism in the Law: Theory, Practice and Criticism,” October 14-15, 1988 (recording on file with the *Legal Forum*).

<sup>18</sup> Correspondence with Catharine W. Hantzis, on file with the author. See also Catherine W. Hantzis, *Kingsfield and Kennedy: Reappraising the Male Models of Law School Teaching*, in *Women in Legal Education—Pedagogy, Law, Theory and Practice*, 38 J Legal Educ 155 (1988). See also Littleton, 1989 U Chi Legal F at 26 (cited in note 4), warning against translating “some women's experiences into other women's terms.”

ing that one's own experience of the world is another's experience of the world. We must then take seriously our obligation not to stipulate a universal "woman's experience," and to listen to women from many classes, of different races, of differing sexual preferences, of different modes of being.<sup>19</sup> This symposium is rich with diversity. Kimberle Crenshaw helps to educate those of us who are not black, as she speaks about the problems of "intersectionality" and "compoundedness," and of the dominance of the categories of whiteness and maleness that inhibits the willingness to attend to black women as black, as women, and as black women.<sup>20</sup> Chris Littleton warns us that, in acknowledging this "partiality," this pluralism of feminist problems and viewpoints, we might miss seeing what "links" us as women.<sup>21</sup> Mary Becker examines some of the incentives for women not to see those links.<sup>22</sup> Martha Minow explores the connections between feminism and other social and political theories,<sup>23</sup> while Robin West attempts to identify some of what is "selfhood" for women.<sup>24</sup> Thus, "we" are self-conscious about the use of the term "we," but "we" do not permit the awareness of the limits of the "we" to undermine what is shared.

Yet another important element of feminist discourse is to appreciate the contributions of the variety of individuals who enable conversations such as this to occur. Thus, I thank the students of the *Legal Forum*, who created the symposium and volume of articles. Their "housework" is greatly appreciated.

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<sup>19</sup> See generally Sandra Harding, *Other "Others" and Fractured Identities: Issues for Epistemologists*, in *The Science Question in Feminism* 163-96 (Cornell University Press, 1986).

<sup>20</sup> Crenshaw, 1989 U Chi Legal F at 139 (cited in note 4).

<sup>21</sup> Littleton, 1989 U Chi Legal F at 25 (cited in note 4).

<sup>22</sup> Becker, 1989 U Chi Legal F at 169 (cited in note 9).

<sup>23</sup> Minow, 1989 U Chi Legal F at 129 (cited in note 4).

<sup>24</sup> West, 1989 U Chi Legal F at 84 (cited in note 4).



