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Commentary

Berkeley Women's Law Journal: A Powerful Force at Twenty

Herma Hill Kay†

Anniversaries provide appropriate occasions to learn from our experiences by examining the past and planning for the future. We draw fresh inspiration from reflecting upon our hopes and dreams at the beginning of a mutual enterprise, and are able to create new goals based on those reflections. The Twentieth Anniversary of the founding of the *Berkeley Women's Law Journal* is such an occasion, and I am delighted to share in the distillation of our memories and the articulation of our plans.

Reading the "Founders' Roundtable" brought back a flood of memories, some joyful, others more painful. Thank you, Donna Ryu and Karen Schryver, for remembering my help in getting the *Journal* started. Of course, I didn't do it alone. I went to Boalt's Dean, Jesse Choper, and asked for his financial support. In his own wonderfully tolerant way, while approving my request, Jesse wryly remarked, "Just what the world needs: a new law journal!"¹ At the time, Boalt students were publishing five law journals, probably a record among our peer schools.² As it turned out, *BWLJ* added a significant element of diversity to that already rich mix.

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1. In confirming my recollection of this conversation on February 17, 2005, Jesse pointed out that he had given the same answer to other journals making similar requests.
2. The following Boalt student-edited journals preceded *BWLJ* and published their first volume in the designated years: *California Law Review* (1912); *Ecology Law Quarterly* (1971); *Industrial Relations Law Journal* (1976) [renamed *Berkeley Journal of Employment and Labor Law* (v. 14, 1993)]; *La Raza Law Journal* (Spring 1983) [renamed *Berkeley La Raza Law Journal* (v. 12, Fall 2001)]; *International Tax and Business Lawyer* (Summer 1983) [renamed *Berkeley Journal of International Law* (v. 14, 1996)].

Twenty years later, the number of women's law journals has grown sufficiently large to attract the attention of historians.³ The content of this new genre, however, is not yet uniformly established either as to which publication should be recognized as the first of its kind, or as to which journals should now be included in a definitive list. Several authors have recently offered lists of current journals. Richard Chused puts first *The Women's Rights Law Reporter*, published commercially in 1971, and brought in house by students at Rutgers, Newark, Law School in 1972 with its second issue.⁴ Laura A. Rosenbury begins her list with the 1978 appearance of the *Harvard Women's Law Journal*.⁵ I agree with Rosenbury that *HWLJ* should be counted as the nation's first academic women's law journal, since *WRLR* was initially conceived as a newsletter for practitioners who were litigating the early cases challenging sex discrimination in the courts⁶ and still maintains a substantial focus on litigation. Its historical importance and its continuous publication, however, should put it on the list.

The uncertainty over the content of the list relates to whether it should be confined to journals that focus exclusively on legal issues that affect women's interests, or whether it should also include those with broader missions that encompass, but are not limited to, women's issues. For example, *Law & Inequality: A Journal of Theory and Practice*, which was first published at the Minnesota Law School in 1983, included matters of concern to women and, indeed, devoted its first two issues to that subject. The founders chose, however, to focus more broadly on law and inequality because they "felt that existing legal literature did not sufficiently examine problems of inequality."⁷ For that reason, I did not list it in 1995 as among *BWLJ*'s predecessors.⁸ Nor does Chused include *L&I* in his list,⁹ but Rosenbury does.¹⁰ Another close case is that of the *Journal of Gender, Race & Justice*, first published by Iowa law students in 1997, which aims to "explore how we are classified, stratified, ignored and singled out under the law because of our race, sex, gender, economic class, ability, sexual identity and the multitude of labels applied to us."¹¹ Both Chused and Rosenbury

3. See Felice Batlan, *A Journal of One's Own? Beginning the Project of Historicizing the Development of Women's Law Journals*, 12 COLUM. J. GENDER & L. 430 (2003).

4. See Richard H. Chused, *A Brief History of Gender Law Journals: The Heritage of Myra Bradwell's Chicago Legal News*, 12 COLUM. J. GENDER & L. 421, 422 & n. 7 (2003).

5. See Laura A. Rosenbury, *Feminist Legal Scholarship: Charting Topics and Authors, 1978-2002*, 12 COLUM. J. GENDER & L. 446, 447 (Chart 1) (2003).

6. *Id.* at 446 & n. 1. See also Batlan, *supra* note 3 (accord).

7. See Catharine A. MacKinnon and Robert A. Stein, *Introduction*, 1 LAW & INEQ. *i, i* (1983).

8. See 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, 1 (1995).

9. See Chused, *supra* note 4, at 422 & n. 7.

10. See Rosenbury, *supra* note 5, at 447 (Chart 1).

11. See *Journal of Gender, Race & Justice* (Home Page), at <http://www.law.uiowa.edu/journals/grj/journal.php> (last visited Mar. 23, 2005).

include it,¹² as would I. I would exclude, however, as having a different and distinctive focus journals that center around the legal problems of sexuality or sexual minorities, such as *Law and Sexuality: A Review of Lesbian and Gay Legal Issues*, first published by Tulane law students in 1991.¹³ Chused includes Tulane in his list of schools publishing gender journals,¹⁴ but Rosenbury does not.¹⁵ Martha Minow, writing on the occasion of the twentieth anniversary of the *Harvard Women's Law Journal*, notes that the *Journal* had "more than a dozen sister journals at other law schools," and provides an illustrative list that includes *Law and Sexuality* as well as the newsletter of the ABA Section on *Women in Legal Education* and the magazine published by the National Association of Women Lawyers.¹⁶

These differences in classification naturally lead to differences in the count of the total number of women's law journals given by the various authors. In 2003, Chused named 20 gender journals currently being published,¹⁷ while Rosenbury's list had only 18.¹⁸ I counted 15 such journals in 1995,¹⁹ including one that is no longer published.²⁰ No new journals of this kind have appeared since *The Georgetown Journal of Gender and Law* began publication in 1999. One edited by law students at Ohio Northern University appeared in 1997, but

12. See *supra* notes 4 and 5.

13. This journal changed its name in 1997 to *Law and Sexuality: A Review of Lesbian, Gay, Bisexual and Transgender Legal Issues*, effective with Volume 7.

14. See Chused, *supra* note 4, at 422 & n.7.

15. See Rosenbury, *supra* note 5, at 447 (Chart 1).

16. See Martha Minow, *The Adulthood of a Women's Law Journal*, 20 HARVARD WOMEN'S L.J. 1, 1 & n. 4 (1997) (also listing journals published in other English-speaking countries, including *Australian Feminist Law Journal* and *Canadian Journal of Women and the Law*).

17. See Chused, *supra* note 4, at 422 & n. 7 (giving the total count in the text as 21, but listing 20 in the footnote). When I called this discrepancy to his attention, Professor Chused was kind enough to consult his notes, and informed me by email that the correct number is 20. E-mail from Richard Chused to the author (Feb. 24, 2005, 11:47:51 AM) (on file with the author).

18. See Rosenbury, *supra* note 5, at 447 (Chart 1). A comparison of her list with that of Chused shows the following differences: Chused includes three journals that Rosenbury omits – St. Mary's, Tulane, and Rutgers – while Rosenbury includes *Law & Inequality*, omitted by Chused. Chused's designation of St. Mary's apparently refers to *The Scholar: St. Mary's Law Review on Minority Issues*, which first appeared in 1999. Since its mission is "to speak on behalf of minorities by reaching out to the larger community," I agree with Rosenbury that it should not be included on a list of women's law journals.

19. See Kay, *supra* note 8, at 1 (listing two academic journals that preceded *BWLJ*), 7 (counting *BWLJ* and listing thirteen others that had appeared through 1994). Unfortunately, I failed to include *Circles*, now renamed *The Buffalo Women's Law Journal*, which first appeared in 1992.

20. *Golden Gate University Law Review* devoted one of its issues to a *Women's Law Forum* beginning with Vol. 8, No. 3 (Spring 1979). *WLF* had its own Editors, who expressed in a brief *Preface* their hope that "this yearly publication will meet the need within the legal and women's communities for a forum in which to discuss legal issues of special importance to women." *WLF* was published every year until it was discontinued after Vol. 29, No. 2 (Spring 1999). Between 1981 and 1993, *WLF* featured a *Survey of Women and California Law*. I agree with Batlan that a "larger analysis of the history of women's law journals" must take account of *WLF*. See Batlan, *supra* note 3, at 432 & n.7.

ceased publication in 1998 after two volumes.²¹ Guided by these considerations, my own list of current women's law journals begins with the *Harvard Women's Law Journal* and totals 18.²² *BWLJ's* Founders have every reason to be proud of their pivotal role in furthering the development of this new kind of academic publication.

The more painful part of the Founders' story is the realization of how isolated these talented and creative women felt themselves to be as law students. In unambiguous terms, they describe how the *Journal* became their refuge from an atmosphere that was intellectually inhospitable, even alienating, for women. Karen Schryver's vision of creating *BWLJ* as an alternative source of information about underrepresented women within the law school itself and making it available throughout legal academia was both an empowering stroke of retaliation against marginalization and a beacon of hope for women law students everywhere. Ann Lucas, who worked on Volumes 4 and 5 and was Editor-in-Chief (EIC) of Volume 6, provides the political context of the struggle for faculty diversity at Boalt Hall that helped to sustain the determination of many *BWLJ* members not only to create a new feminist journal, but to transform the law school and even legal education itself.²³ Elizabeth A. Landsberg, EIC of Volume 13, describes Boalt's turmoil over the crisis precipitated by the 1995 U.C. Regents' Resolution and extended statewide by voter adoption of Proposition 209 in 1997 eliminating voluntary affirmative action for the University and the State of California.²⁴ Both subjects, in turn, were featured in *BWLJ's* pages.²⁵

BWLJ's mission was unique at the time it was announced, and still remains distinctive: "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

21. See *Letter from the Co-Editors in Chief*, 1 *THE WOMEN'S LAW JOURNAL* iii (1997) ("The goal of the Journal is to increase dialogue with other schools and individuals with a genuine interest in women's issues."). Another early entry published by women affiliated with four law schools in the Los Angeles area published one volume with two issues. It appeared in 1976 and ceased publication in 1977. See 1 *WOMEN'S LAW JOURNAL* No.1 (1976); *id.* No. 2 (1977).

22. My list of eighteen includes journals edited by students at the following schools: American, Berkeley, Buffalo, Cardozo, Columbia, Duke, Georgetown, Harvard, Hastings, Iowa, Michigan, Rutgers, Texas, UCLA, USC, William & Mary, Wisconsin, and Yale. See also Stephanie L. Schmid, *Looking Back, Looking Forward: Changes on Our 20th Anniversary That Reflect our Founding Commitments*, 20 *BERKELEY J. GENDER L. & JUST.* 7, 9 n.7, 8 (2005) (listing the same 18 journals and analyzing their names and missions).

23. See Ann Lucas, *The Personal and the Political: Reflections on BWLJ at 20*, 20 *BERKELEY J. GENDER L. & JUST.* 55 (2005).

24. See Elizabeth Landsberg, *The Lessons of Law School*, 20 *BERKELEY J. GENDER L. & JUST.* 63 (2005).

25. See Eleanor Swift, *Becoming a Plaintiff*, 4 *BERKELEY WOMEN'S L.J.* 245 (1990); *Commentary: Boalt Hall in a Post-Affirmative Action Era*, 13 *BERKELEY WOMEN'S L.J.* 1 (1998).

existing literature.”²⁶ In my *Commentary* for *BWLJ*’s 10th Anniversary, I noted how difficult it had been for the early editorial boards to achieve and sustain that mission.²⁷ In this issue, Barbara Flagg, the Fall 1986 Executive Editor of Volume 2, congratulates the members of Volume 6 for having put the *Journal*’s mandate into practice by giving it priority both in soliciting articles that fulfilled the mandate and working with the authors to ensure that each piece gave attention to relevant differences among groups of women.²⁸ The editor-in-chief of Volume 6, Ann Lucas, makes clear in her own remarkable contribution to this anniversary issue the personal commitment that underlay that rededication and recalls the profound impact that her work with the *Journal* and its authors had on her political and intellectual identity.²⁹

The substantive articles included in this anniversary issue are ample proof that the *Journal*’s editors continue to honor and refine its mission. Alison Beck, EIC of Volume 15, analyzes the hugely controversial same-sex marriage debate from the perspective of a lesbian activist who married her partner in San Francisco two days before Valentines’ Day in 2004, only to have the union declared void exactly six month later.³⁰ Catherine Albiston, Co-EIC of Volume 10, magnificently demonstrates the *Journal*’s anti-essentialist philosophy by focusing on social policies that address two work and family issues – family leave and media treatment of working women who “opt out” of employment to stay home and care for their children – to reveal how both accounts obscure the interests of less privileged women, including women of color and low-wage women.³¹ Cassie Springer-Sullivan, EIC of Volume 17, offers an advocate’s trenchant account of the situation of those who suffer from fibromyalgia, a painful condition without identifiable cause affecting the muscles and connective tissue that primarily affects women, comparing it to earlier accounts of “female hysteria.”³² Taken as a group, these articles give voice to the legal concerns of lesbians, poor women, disabled women, and, implicitly, of women of color.

A recurrent theme found in anniversary issues of the earliest women’s law journals,³³ in inaugural issues of later ones,³⁴ and recently in a special

26. 1 BERKELEY WOMEN’S L. J. Editorial Page (Fall 1985). The mission of the *UCLA Women’s Law Journal* is similar. See Stephanie H. Villafuerte & Laura E. Reece, *Foreword*, 1 *UCLA WOMEN’S L. J.* 1 (1991).

27. See Kay, *supra* note 8, at 4-5.

28. See *Reflections on the Birth of the Journal: A Founders’ Roundtable Discussion*, 20 *BERKELEY J. GENDER L. & JUST.* 12 (2005).

29. See Ann Lucas, *supra* note 3, at 61.

30. See Alison Beck, *Taking the Long View: Reflections on the Road to Marriage Equality*, 20 *BERKELEY J. GENDER L. & JUST.* 50 (2005).

31. See Catherine Albiston, *Anti-essentialism and the Work/Family Dilemma*, 20 *BERKELEY J. GENDER L. & JUST.* 30 (2005).

32. See Cassie Springer-Sullivan, *The Resurrection of “Female Hysteria” in Present-day ERISA Disability Law*, 20 *BERKELEY J. GENDER L. & JUST.* 66 (2005).

33. See Minow, *supra* note 16; Sheila James Kuehl, *For the Women’s Reach Should Exceed Their Grasp, or How’s a Law Journal to be Born?*, 20 *HARVARD WOMAN’S L.J.* 5 (1997).

symposium issue of another³⁵ is to question the continued need for such journals. Speaking to this question, Catherine Albiston situates *BWLJ* within feminist legal scholarship and connects her answer to the *Journal's* mission. She observes that “*BWLJ* is organized around the idea that even innovative and revolutionary feminist legal scholarship tends to make implicit assumptions that obscure the race, sexual orientation, class and disability status of women.”³⁶ I agree with her that so long as the editors of *BWLJ* continue to seek out and publish work that remains true to that organizing principle, the *Journal* will fulfill an unmet need, and will remain a powerful force for change.

Today, Boalt students produce eleven journals,³⁷ including one that is published electronically only.³⁸ The energy and creativity of the student body that has given voice to such a wealth of scholarly inquiry is one of the most significant and enduring characteristics of this law school. At twenty, *BWLJ* has proven itself an outstanding member of that company. It is only fitting that, as five of its companion journals at Boalt have done,³⁹ *BWLJ* has changed its name, effective with this issue, to reflect its evolving image. Henceforth, it will be known as *Berkeley Journal of Gender, Law & Justice*. Volume 20 EIC, Stephanie L. Schmid,⁴⁰ gives an eloquent account of the “self-assessment, self-critique, and self-reflection” that led the membership to emphasize its “commitment to scholarship that is intersectional in both approach and analysis.” *BWLJ* has come of age during its first twenty years, and has claimed a distinctive place for itself among feminist law journals. Long may it flourish as *BGLJ*.

34. See Christine A. Littleton, *Q&A: Why A Women's Law Journal?* 1 *UCLA WOMEN'S L.J.* 3 (1991).

35. See *Symposium: Why A Feminist Law Journal?* 12 *COLUM. J. OF GENDER & L.* 407-672 (2003).

36. See Albiston, *supra* note 31, at 36.

37. In addition to *BWLJ* itself and the five journals listed *supra* note 2, the other five Boalt student-edited law journals are *High Technology Law Journal* (1986) [renamed *Berkeley Technology Law Journal* (v. 11, 1996)]; *Asian Law Journal* (Inaugural issue Oct. 1993); *African-American Law and Policy Report* (1994); *California Criminal Law Journal* (2000) [renamed *Boalt Journal of Criminal Law* (v. 7, June 2004)]; and *Berkeley Business Law Journal* (2004).

38. *Boalt Journal of Criminal Law*, *supra* note 37.

39. See *supra* notes 2 and 37.

40. See Schmid, *supra* note 22, at 7, 9.