December 1987

Where We Stand: Observations on the Situation of Feminist Legal Thought

Clare Dalton

Follow this and additional works at: https://scholarship.law.berkeley.edu/bglj

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38ZS27

This Article is brought to you for free and open access by the Law Journals and Related Materials at Berkeley Law Scholarship Repository. It has been accepted for inclusion in Berkeley Journal of Gender, Law & Justice by an authorized administrator of Berkeley Law Scholarship Repository. For more information, please contact jcera@law.berkeley.edu.
COMMENTARY

Where We Stand:
Observations on the Situation of Feminist Legal Thought

Clare Dalton†

In September of 1987, a conference at Sag Harbor was the occasion for an organized discussion of "The Intellectual Wasteland" as a description of America today. The participants, mostly male, and white, were invited to join the sponsors in grumbling about the poverty of great thinking, and great thinkers, on the national scene. In October of 1987, senior sociologist Jessie Bernard, a woman, gave a lecture at Harvard University, on the subject of her new book, "The Feminist Enlightenment." She talked about now almost two decades of extraordinary intellectual contributions growing out of the women's movement—symbolized, for example, by the exponential increase in women's studies courses at universities around the country, from twenty in the academic year 1969-70, to 30,000 in the year 1986-87. These courses represent not only an amazingly speedy accumulation of enormous amounts of information about women and their lives, past and present, previously unavailable to thinkers, male or female, but the generation of new and challenging frames of inquiry, narratives and theories—collapsing disciplinary boundaries we previously took for granted and pushing beyond them.

The juxtaposition of these two events raises a set of interesting questions. Is there, in fact, a Feminist Enlightenment? If so, why do main-

† Assistant Professor of Law, Harvard Law School. B.A. (Hon.) Jurisprudence 1971, Somerville College, Oxford University; L.L.M. 1973, Harvard Law School. In May of 1987 the faculty of the Harvard Law School failed, by a few votes short of the necessary two thirds majority, to grant Professor Dalton tenure. She and seventeen of her tenured colleagues asked that the decision be reviewed, on the grounds that both political and gender discrimination had influenced the outcome. In March of 1988, after a review which failed to investigate the charges of discrimination, Harvard University President Derek Bok affirmed the faculty decision. A gender discrimination suit filed by Professor Dalton remains pending against Harvard University.
stream intellectuals not embrace and celebrate it? Does the mainstream tend simply not to notice it? Does the Feminist Enlightenment actually reinforce or contribute to mainstream malaise? These are the questions I want to address, not at large, but locally; in the context of legal scholarship and legal education.

It has certainly been suggested, by both right- and left-leaning observers, that mainstream post-realist legal thought qualifies as an intellectual wasteland. In relation to which, then, feminist legal thought could be viewed as our corner of the Feminist Enlightenment. In a short compass here I want to describe what I mean by feminist legal thought and the characteristic kinds of projects being undertaken in that name. I hope to convey my sense that this body of thought is one of the most intellectually lively, challenging and provocative current bodies of legal scholarship and practice. And I hope to offer the beginnings of an explanation for the paradoxical co-existence of wasteland and Enlightenment.

To be a feminist today, I think it is fair to say, is to believe that we belong to a society, or even civilization, in which women are and have been subordinated by and to men, and that life would be better, certainly for women, possibly for everybody, if that were not the case. Feminism is then the range of committed inquiry and activity dedicated first, to describing women's subordination—exploring its nature and extent; dedicated second, to asking both how—through what mechanisms, and why—for what complex and interwoven reasons—women continue to occupy that position; and dedicated third to change.

To be engaged in feminist legal thought is to be a feminist who locates both her inquiry, and her activity, in relation to the legal system. The legal system must here be understood broadly, as including the rules that constitute the formal body of law; the discourses in which those rules are situated, and through which they are articulated and elaborated; the institutions by means of which they are constantly subverted and modified in their implementation and administration; the specifically educational institutions through which legal culture is transmitted from generation to generation, and the various actors whose participation, as lawyers, clients, law enforcement officials, judges, jurors, arbitrators, mediators, social workers, legislators, bureaucrats, teachers or students, sustains the enterprise.²

---

¹ I should say at this point that while I do not think it impossible, in theory, to be male and a feminist, I use female pronouns out of the conviction that at least the overwhelming majority of feminists are women. Thus, while it is generally not a good idea for feminists to respond to our longstanding effacement behind male pronouns by practicing a parallel violence, in this particular context the “his or her” formulation would produce an unacceptable distortion of reality.

² Even this rather lengthy list is drastically truncated. It does not, for example, include all the witnesses, professional and lay, who assist in adjudicative settings, and all the experts who assist in legislative ones. Furthermore, if you view the legal system not as a self-contained entity, but as an arena of social practice inextricably intertwined with other arenas, it becomes
Feminist legal thought can be found today in many different settings: in print, in communities of women lawyers and legal academics committed to thinking together about the position of women in society and in law, in testimony against the nomination of certain Supreme Court hopefuls, in legislative reform efforts, and in law schools. I am going to put what I have to say in the framework provided by today's law schools, the context with which I (and probably some number of you) am most familiar.

In law schools today, feminist legal thought is most commonly offered as a specialized course. The earliest of these courses were usually called "Women and the Law," or "Sex Discrimination." Today, while those titles have not disappeared, others have appeared. "Feminist Jurisprudence" is a comparatively recent arrival on the scene, along with "Feminist Legal Theory" or the title I have used for this essay, "Feminist Legal Thought." There is no necessary link between course label and course content—all law school course titles are in some sense empty containers waiting to be filled, and each teacher is guided in her choice by a particular set of negative constraints and positive aspirations. Nonetheless, I want to suspend that understanding, for the time being, and structure what I have to say by asking what the differential implications of the different labels might be, if we took them seriously, and had no further information about course content to guide us.

It is important to recognize first, of course, that all the labels share one common problem. They all serve the conservative function of implying, or even insisting, that the concerns of women, and the contributions of feminists, can and should be contained in a single course, where they will neither affect nor infect the rest of the curriculum. Like segregation in the workplace, this separation out of "women's work" in legal theory probably contributes to its devaluation, which serves in turn as a further safeguard against the possibility that its influence might spread. On the other hand, the negative effects of segregation have to be measured against the advantages of obtaining a cloistered space within which to work—the intellectual equivalent of "A Room of One's Own."3

Let me begin where feminist legal thinking began,4 in the courses which appeared in the curriculum in the early seventies under the titles difficult to tell where law leaves off and something else—the market, for example, or medicine, or family, begins.

3 VIRGINIA WOOLF, A ROOM OF ONE'S OWN (1929). I am departing from the usual practice of including only the author's last name and first initial so that readers may know the gender of the writer.

"Women and the Law" or "Sex Discrimination." "Women and the Law" sounds promisingly comprehensive and at the same time concrete. But it did not traditionally provide the comprehensiveness and concreteness it promised. First, in directing attention to particular doctrinal areas, the course obscured the way in which the problems of women were present in every area of the curriculum; the way in which their absence from many areas of traditional legal discourse was as significant as their presence in others. Second, the traditional areas of doctrinal coverage themselves imposed particular limitations. The alternative title, "Sex Discrimination," provides the key.

Born in and of the women's movement, and sharing its priorities, the courses were originally designed to track developing legal doctrine that addressed women's unequal treatment in law and in society. They focused on constitutional doctrine, and developing statutory standards, addressing discrimination against women in employment, in education, or as recipients of public benefits. This was a strategy that accepted, for the purpose of argument, the supposedly neutral norms and universal principles of the legal system, like equality, and challenged the arbitrariness with which they were being applied. It taught men how to refocus their vision, to some extent, and to see women's sameness where before they had seen difference. It was a strategy born of women's exclusion, and designed to secure access for women to the male arenas in which most of society's benefits were handed out.6

It was a strategy that brought women important gains,7 the first crucial inroads on male monopoly. As time went by, however, its limitations became more visible. First, it turned out to have little power in


situations where women lacked the ability or the inclination to persuade men that they were “the same.” “Women and the Law” courses had traditionally brought within their purview, and within their discrimination analysis, those areas of law encompassing precisely the areas of women’s lives in which they seemed most inescapably and concretely unlike men—sexuality and reproduction. But despite heroic feminist efforts, judicially developing equality analysis proved unable to wrap itself around these intractably female issues, leaving the women’s movement split on whether to continue to urge equality, or instead to concede difference. Should women, for example, equate pregnancy with prostate trouble, or acknowledge the uniqueness of their childbearing capacity? This conflict and resulting uneasiness began to show up in the courses; the unifying framework provided by the original conception of equality, which in turn informed the original understanding of discrimination, began to lose its grip, and it became necessary to include in the course syllabi a variety of viewpoints, all claiming feminist status, on the best way out of the equal treatment/special treatment dilemma.

As this account suggests, the equality route had as one of its chief disadvantages its suppression of the concrete ways in which women’s lives tend to be shaped differently from men’s. The well-founded fear that where the law saw difference it would justify disadvantage, prevented women from insisting that the law take account of their reality. The price women paid was a theoretical legal equality which the actual, material constraints of their lives frequently left them unable to take advantage of. The equality model proposed, for strategic purposes, that what women wanted was access to a world already constituted; it stopped short of proposing that the workplace, or the university, or the professions, or the welfare system, or the family, should be re-envisioned or reconstructed by and with women’s participation, to reflect women’s reality. These problems too threatened the original understanding of the “Women and the Law” project, and provided a catalyst for change.


9 This approach justified men, too, in assuming that the admission of women into previously all-male institutions would leave the institutions unchanged. Dean Erwin Griswold, for example, said when women were finally admitted to the Harvard Law School as students in 1950:

[It does not seem to me that this particular development is either very important or very significant. Most of us have seen women from time to time in our lives and have managed to survive the shock. We have even had a few around Langdell and Austin for a good many years now, with no serious consequences. There seems to be no likelihood that we have a very large proportion of women among our students. I think that we will and I doubt if it will change the character of the School or even to a measurable extent. As of today, I doubt if this change alone will require any of our faculty members to revise many of their lectures.]

Dean Erwin Griswold, Developments at the Law School, HARVARD LAW SCHOOL YEAR BOOK 10 (1950).
"Feminist Jurisprudence" courses can be seen as one reaction to the proliferation of feminist legal theory produced by the unsettling developments of the late seventies and early eighties. They reflect the urgency of developing new approaches to the problems of women in law and in society, ones that will not founder on the rock of "equality," and they celebrate the range and power of the thinking and writing that has responded to this crisis. And yet, of all the possible titles for a course about women's situation with respect to law, "Feminist Jurisprudence" strikes me as in some respects the most problematic, the most expressive of dangers inherent in the project of feminist theory today.

"Feminist Jurisprudence" shares a very particular problem with Jessie Bernard's term "Feminist Enlightenment," which, in its effort to capture the energy and illumination emanating from the intellectual work driven by feminism, risks allying itself with a set of propositions ultimately foreign to feminism. The Enlightenment, after all, was about the Triumph of Reason, the exhilaration of Man's confidence that Truth and Justice were within his grasp. Jurisprudence—the philosophy of law—is, as it has been taught in our law schools, a prototypically Enlightenment project, having to do precisely with the eternals of truth and justice, dependent precisely on the power and priority of reason. Jurisprudence generates sentiments and aspirations like those expressed in the stone words engraved over the portals of Harvard Law School: "Not under Man, but under God and Law."

The problem was that when the men who ordered those words to be carved looked at God, they saw a man, and a man not unlike themselves. Women have long, if not always, held the suspicion, if not the knowledge, that what passed for point-of-view-less-ness was in fact His point of view. A point of view which did not always correspond to hers. Feminist epistemology starts from the premise that what has been presented as "the world" and "the truth" has obscured women's reality, and ignored women's perspective. It contains the explosive suggestion that what have passed as necessary, universal and ahistorical truths have never been more than partial and socio-historically situated versions of truth. It is in this sense, then, that "Feminist Jurisprudence" seems like a contradiction in terms.

Today the Enlightenment project is in trouble all over the place—not only in feminist thought, but in theory more generally—because it rests on those few simple but basic assumptions that many no longer feel able to take for granted: the idea that a "self" can be singular or coher-

10 The original "Women and the Law" project suppressed this core feminist insight, in order to claim the protection arguably offered to all, regardless of gender, under the supposedly neutral and objective system of legal entitlements. It was only as it became clear that this system, administered by men, would never in fact fulfill its expressed commitments, that this came to seem an unnecessary and potentially disabling strategy.
ent; the idea that knowledge can be objective (or the real-world-out-there correspond with the world-as-viewed-by-the-subject); the idea that certain minimal universal human needs or rights can be identified that are in no way contingent on the historical particulars of any given society, but for that very reason can be used to justify particular social and political structures. The multiplying challenges to the Enlightenment project in discipline after discipline go generally by the name of post-modernism. Feminism is, I believe, at its most powerful and best as a post-modern project.

Understood as a post-modern project, feminism has both positive and negative obligations. The positive obligations I will talk about later. The major negative obligations, I think, are two. First, a feminist narrative or theory should not imagine itself as replacing (but only as displacing) a male or masculinist one—how could feminists' situated claims to authority become absolute ones? Second, no single feminist narrative or theory should imagine that it can speak univocally for all women. We know that grand male theories have traditionally left out of their evidentiary bases and their intellectual formulations the experiences and perspectives not only of women (of all sorts) but also of minority or otherwise disadvantaged groups of men—why should we have different expectations of grand feminist theories?

Living with these limitations is not easy. Sometimes it seems that opposing the grandeur of "Jurisprudence" with anything else than another, perhaps differently gendered, "Jurisprudence" will be an exercise in futility—that proposing the demolition of a historic monument to make way for a variety of makeshift encampments is madness. Sometimes it seems as if humankind won't even have the luxury of a century or two to work this all out unless we feminists can substitute "our way" for "their way." But then again it seems that if feminists can only repeat the territorial battles of the past, if we cannot resist being drawn into the very expansionist warfare we have made it our job to criticize, our medium betrays our message.

This conviction makes me nervous about the kind of legal feminism that most aspires to "Jurisprudence," whether it is based on the core idea of "Woman" as "Mother," drawing usually on the theories of Chodorow, Dinnerstein and Gilligan, or the core idea of "Woman"

11 Nancy Chodorow, The Reproduction of Mothering (1978). Chodorow suggests that in a society in which strong cultural norms exist about the proper attributes, roles and behaviors associated with femininity and masculinity, the disproportionate role played by women in the parenting of young children serves to "reproduce" mothering qualities in each succeeding generation of women, while reproducing the antitheses of those qualities in men, who struggle to separate out from mother by becoming everything she is not.

12 Dorothy Dinnerstein, The Mermaid and the Minotaur (1976). Dinnerstein, whose book predates Chodorow's, shares Chodorow's perception that the developmental task of separating out from mother, differently experienced by boy and girl children, helps to recreate the cultural differences we commonly see between men and women. More central to her account,
as “Sexual Subordinate,” as represented in the work of Catharine MacKinnon. Feminist theorists must struggle continually against the temptation of asserting new “necessary, universal and ahistorical truths”—about “Woman,” or her adversary “Man”—against the temptation, that is, of reincorporating some new form of the Enlightenment project into feminist work. The danger here is that if we incorporate commonly held but unwarranted and essentialist assumptions about the nature of men, women, or their relationships one with another into feminist inquiry, our subjects will be robbed of other features that play important parts in the dynamic the inquiry seeks to understand. Race, class, sexual orientation, religion, ethnicity, gender identity (as opposed to gender attribution), employment status, physical and mental health—all these interwoven elements play a more or less important part in how we constitute ourselves in relation to others.

On the other hand, there is an enormous amount that is illuminating in this feminist jurisprudence. It has taught many women new things about themselves as women, empowered them by showing them some of the structures of their disempowerment, offered them new critical tools to apply to the dismantling of those structures, and given them new words to try out in their struggles to communicate with one another, and with the world they would like to change. It is all useful theory. It becomes destructive only when it becomes insistent and inflexible, when it imagines all women molded by the experiences that are in fact somewhat particular to the kind of women who become law students and law professors, or forces even women law students and law professors to choose between the archetypes of “Mother” and “Sexual Subordinate,” without reference to their many other differentiating experiences.

However, is the idea that the culturally constructed “mother” role makes successful separation-individuation extremely difficult for children of both genders, leaving men and women allied in a residual (unconscious) hatred and fear of mother, and women more generally. She traces the consequences of these attitudes towards women for adult relationships between men and women, and between men and the planet they inhabit and govern.

13 Carol Gilligan, In A Different Voice (1982). Gilligan suggests that there are two very different styles of thinking about moral questions, and the resolution of moral problems. One style, or ethic, stresses autonomy, rights, principles and exclusive solutions; the other stresses connection, contextual and consequentialist thinking, and inclusive solutions. The first ethic Gilligan found more prevalent in men, the second in women. Gilligan herself sees the results of her empirical work as confirming the psychoanalytic theory of Nancy Chodorow.

14 Catharine MacKinnon, Feminism Unmodified (1987). This latest book builds on MacKinnon’s earlier work in the areas of both sexual harassment and pornography, as well as her more theoretical contributions to the development of feminist legal theory.

15 In sociological literature, gender attribution is the process by which others come to assign gender to a person—to view them as male or female—whereas an individual’s gender identity reflects the individual’s own understanding of her- or himself as female or male. See, e.g., Suzanne J. Kessler & Wendy McKenna, Gender: An Ethnomethodological Approach 1-20 (1978). While it may be relatively unusual for an individual to have a conscious and continuous sense of her- or himself as belonging to the other gender than the one attributed to her or him, psychoanalytic theory suggests that much more commonly, but unconsciously, individuals can take on an identification with the opposite gender as a more or less important aspect of their emotional constitution.
At this point I want to point out a complementary danger, which I think feminists have not yet faced as directly. In the work of some of those theorists who react against the kind of new essentialism I have been describing, the voice of gender risks being lost entirely, and this too seems to me something to be wary of.

Let me identify three quite different ways in which this can happen. One version involves the theorist who, as I have just done, critiques feminist analyses for their essentialism, but who moves on to underscore the differences among and between women, without ever returning to ask whether those differences entirely undercut the “essentialist” claim, or only complicate and modify it. This has happened, I think, in recent reactions to the work of Carol Gilligan, and the ethic of care she identifies as characteristically informing the moral reasoning of her women subjects.\(^\text{16}\)

Another version of this dynamic finds support and expression in Lacan’s arresting claim that “woman does not exist,”\(^\text{17}\) or Luce Irigaray’s account of “Ce sexe qui n’est pas un.”\(^\text{18}\) Taken to the extreme, this is a portrayal of “woman” as so constituted by her oppression that she has no authentic voice in which to speak, no position to urge—the space she inhabits teaches us only about her oppressor, never about herself. Within this framework, the feminist must aspire to root out of herself those attributes woman has been assigned within a patriarchal culture—among which, presumably, would be her ethic of care—and somehow refashion herself, as if she were her own to make.\(^\text{19}\)

A third version of the dynamic seems to contain elements of both the prior two. In this version, as in the previous one, the “otherness” of gender, regardless of its particular content, is thought to give the feminist theorist a generic understanding of how dominant groups create “others,” enabling her to speak on behalf of other “others” than herself. This feminism of method, to the extent that it orients inquiry towards the differences of handicap, race, religion, and so on, need never focus its gaze on the substance of women’s lives. To that extent, it resembles the feminism that critiques feminist essentialism, without asking what is true

\(^{16}\) For a brief account of Gilligan’s work in moral development, see supra note 13. For critiques, see, e.g., Frug, supra note 4, at 34 (suggesting that “crude Gilliganism” “threatens to discredit women and their cause”) and ELIZABETH SPELMAN, INESSENTIAL WOMAN: PROBLEMS OF EXCLUSION IN FEMINIST THOUGHT (forthcoming Beacon Press 1988).

\(^{17}\) 20 JACQUES LACAN, LE SEMINaire, ENCORE, passim (1975); JACQUES LACAN, TELEVISION, passim (1974).

\(^{18}\) LUCE IRIGARAY, CE SEXE QUI N’EN EST PAS UN (1977), translated as THIS SEX WHICH IS NOT ONE (Catherine Porter, trans. 1985).

\(^{19}\) As MacKinnon puts it: “Feminism criticizes . . . male totality without an account of our capacity to do so or to imagine or realize a more whole truth. Feminism affirms women’s point of view by revealing, criticizing, and explaining its impossibility.” Catharine MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 SIGNS 635, 637 (1983).
as well as what is false about those "essential" analyses.\(^{20}\) Ironically enough, this care for others, to the exclusion of care for oneself, is exactly the behavior that the culture prescribes for women, and that the theorists attacked as essentialist describe as characteristic of women.

Why are feminists drawn away from specific questions about gender oppression and the mechanisms through which it operates? Out of the welter of possibilities let me identify three. One might be anger—an anger that leads us to reject (the existence or the value of) attributes, like caring, or sensitivity to others, that women develop, in significant part, because the important men in their lives insist on being taken care of. Another might be fear—that to acknowledge those attributes is to acknowledge the enemy within; is already to submit, or to be seen as submitting, to male demands that they be exercised, non-reciprocally, in the care and protection of men. In this view, denying the attributes is the only hope of resisting the appeal for their exercise. A third might be denial of a different kind, the kind that allows women, and especially feminists, to hide from ourselves the extent to which we do, in fact, submit to male demands for care and attention, for fear of what would happen if we did not.

Despite the legitimacy of both the anger and the fear that may shape these reactions, I wonder about the consequences, for women, of denying or withholding from themselves aspects of themselves they wish to deny or withhold from those whose claims they regard as illegitimate. There is, after all, a less self-mutilating option for each woman, which is to acknowledge, and even celebrate, those attributes in herself, while struggling to resist illegitimate demands for their exercise, and remaining aware of the extent to which she yields, of the extent to which resistance seems too costly.

For, as helpful as it is to be reminded that "woman," like other "others," is culturally constructed, the women whose lives are shaped by that construction, as it intersects with others, do indeed exist. They exist subordinated to men: poor, more than men; physically and sexually abused, more than men; paid less than men; promoted less than men; employed and managing a home, more than men; raising the children, more than men; underperforming relative to their male peers, in academic and professional settings; exploited, denigrated and stereotyped in popular cultural imagery, more than men; assigned the cultural function

\(^{20}\) The value of using feminist methodology in the service of other oppressed groups is well exemplified in the work of Martha Minow. See, e.g., Minow, *The Supreme Court. 1986 Term—Foreword: Justice Engendered*, 101 *Harv. L. Rev.* 10 (1987) (dealing with problems of “difference” in Supreme Court jurisprudence in the contexts of religion, ethnicity, race, and handicapping conditions, as well as gender), and Minow, *When Difference Has Its Home: Group Homes for the Mentally Retarded, Equal Protection and Legal Treatment of Difference*, 22 *Harv. C.R.-C.L. L. Rev.* 111 (1987). My concern is only that feminists not be drawn away from specific attention to or advocacy on behalf of women by these other concerns.
of reflecting men "at twice their natural size."21 They exist, sometimes colluding in their subordination, sometimes resisting it, using whatever their circumstances offer to piece a life together. And feminists, while continuing to acknowledge, celebrate and support the investigation of all the "differences" that divide and constitute both men and women, need not be embarrassed, and should not be afraid, to describe our work as being about women, and to imagine that our work is of a kind in which we have a special competence, and a special stake.

The feminist community within the nation’s law schools needs to move on, fortified by the past, beyond the original conception of “Women and the Law,” beyond “Feminist Jurisprudence,” into the curriculum at large—questioning everything, inserting women everywhere. And as the central operations room, in which the agenda is developed, the first experimental studies are produced, the tools are forged and tempered, let us use the ample space provided by a reimagined and concretized conception of “Women and the Law,” or by the comfortably modest and plural “Feminist Legal Thought.”

When the women’s movement began, post-modernism was still an alien in America. Now it is everywhere. Its minions live and work in a world of multiple realities, partial explanations, contingent truths, where scrupulous attention to the perspectived and fractured nature of your own understanding is your only hope of being able to enlarge it. At the same time, scrupulous attention to the perspectived and fractured nature of others’ understandings serves the important function of dislodging theories and facts that claim to be neutral, detached, objective, without bias or taint, without perspective, and (as if that were not already enough) internally flawless, coherent and whole. Post-modernism focuses on the power that legitimates particular understandings and explanations of the world, on the link between power and knowledge, even while it also sees power as diffuse, and legitimation of power as local, plural and immanent. It generates new forms of scholarship (and here I’m going to borrow some language I can’t improve upon):

large narratives about changes in social organization and ideology, empirical and social-theoretical analyses of macro-structures and institutions, interactionist analyses of the micro-politics of everyday life, critical-hermeneutical and institutional analyses of cultural production, historically and culturally specific sociologies. . . . The list could go on.22

What a field day for feminists—finally able, within a still marginal

---

21 The quotation is adapted from Virginia Woolf, A Room of One's Own 35 (1929): "Women have served all these centuries as looking-glasses possessing the magic and delicious power of reflecting the figure of man at twice its natural size." It has recently been borrowed by Dale Spender and Sally Cline as the title for their new book, Reflecting Men at Twice Their Natural Size (1987), a funny and poignant account of the ways in which this male demand is structured and expressed, and of the sanctions attendant on the failure to fulfill it.

but increasingly influential intellectual framework, to articulate women's many realities, and critique the cultural frames and forms which in so many varieties and ways have cabined women's bodies and minds, and imposed such severe restrictions on the articulation of women's grievances. Now we can not only research what happens to women in the world shaped by law, law language and legal institutions, but challenge even the structure of legal thought as contingent and in some culturally specific sense "male," implying the need for more radical changes than the ameliorative amendations we have offered in the past. Exposing the sites of legal education and practice as important creators and sustainers of the culture of gender, as well as the culture of law, we can assert the importance of studying the treatment of women, women's realities and women's concerns in legal education and the legal profession. Our theory can be at the same time our practice; at work politically as we work professionally, we can give new meaning to the crucial insight of the women's movement that "the personal is political," "the private is also public."

I have left until last the question of how legal feminists may expect their work to be received, by the mainstream. In this as in other settings, it is already a disadvantage to be a woman. But to be a woman who teaches and writes as a woman, addressing women's concerns, is to be almost certainly beyond the pale. All post-modernism poses an insistent challenge to the work and identity of mainstream (malestream) academics, undercutting their claims to universality, threatening their aspiration to immortality. But academic father-slaying, by sons, while a terrifying prospect for both generations, is at the same time recognized as a generational dynamic, tamed by the cultural institutions in which it plays itself out, and in some sense as permissible as it is inevitable. There is the further ameliorative factor that fathers have been sons in their time, and can identify, albeit only partially, with their aggressors. Whereas women, as mothers, but also as wives and daughters, have been assigned the function of admiring reflection, a task they doubly turn their backs on when they claim women as the subject of their study, and post-mod-


26 For an extended treatment of this theme in an academic setting, see HAROLD BLOOM, THE ANXIETY OF INFLUENCE (1973).
ern feminist theory as their intellectual tradition. No cultural model exists which can contain the threat posed by this withdrawal, or curb the fears of those who cease to see their images admiringly reflected in women's work.

In this respect not much has changed since Virginia Woolf wrote in 1929:

Whatever may be their use in civilized societies, mirrors are essential to all violent and heroic action. That is why Napoleon and Mussolini both insist so emphatically upon the inferiority of women, for if they were not inferior they would cease to enlarge. That serves to explain in part the necessity that women so often are to men. And it serves to explain how restless they are under her criticism; how impossible it is for her to say to them this book is bad, this picture is feeble, or whatever it may be, without giving far more pain and rousing far more anger than a man would do who gave the same criticism. For if she begins to tell the truth, the figure in the looking-glass shrinks; his fitness for life is diminished. How is he to go on giving judgement, civilising natives, making laws, writing books, dressing up and speechifying at banquets, unless he can see himself at breakfast and at dinner at least twice the size he really is?  

Except now the looking-glasses not only hang on the walls of dining rooms, but also stand in the halls of law schools, and their glass is less and less likely to magnify as it reflects. The distress and disorientation produced by this state of affairs can be diminished, it seems, only by the negotiation between mirror and mirrored of new relationships, and new imageries to instantiate and celebrate them.

27 VIRGINIA WOOLF, A ROOM OF ONE'S OWN 36 (1929).