September 2005

The Personal and the Political: Reflections on Berkeley Women's Law Journal at Twenty

Ann Lucas

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

Recommended Citation

Link to publisher version (DOI)
https://doi.org/10.15779/Z38QfR18S

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.
The Personal and the Political:
*Reflections on Berkeley Women’s Law Journal at Twenty*

Ann Lucas†

I. INTRODUCTION

I began Boalt Hall’s Jurisprudence and Social Policy (JSP) Program in the fall of 1987 and joined the law school one year later. I was excited to be embarking on both the law and graduate programs, but soon found Boalt to be a stultifying institution in several ways. Fortunately, the friends that I made, and the frustrations I experienced at Boalt, led me to become an active member in the *Berkeley Women’s Law Journal* (BWLJ). Although I had always supported women’s equality, it was not until I became a law student that I overtly self-identified as a feminist or immersed myself in feminist scholarship. These proved to be the most effective tactics to ensure my survival and sanity in my first years at Boalt.

My time with *BWLJ* soon provided me with much more than mere survival techniques, and the Journal augmented my legal education in ways no law class ever could. I was exposed to an incredibly wide range of legal scholarship, learned volumes about writing and editing for publication, and was introduced to areas of research that soon became important in my own work. In the course of my time there, I developed a passion for feminist advocacy, learned about my own administrative weaknesses and strengths, and worked with notable feminist scholars from across the country. On a personal note, I developed sustaining relationships with other journal members and found a place within the larger...
institution from which to respond to the academic and world events that affected all of us at Boalt.

During my years at Boalt, many events—local, national, and global—aFFECTed the law school community. These events shaped our understanding of the law and its implementation in the outside world. As Boalt weathered disruptions and controversies, I was deeply grateful for my homes in BWLJ and JSP, which helped me make sense of events and formulate my own response to them. BWLJ helped me develop a critical feminist jurisprudential “lens” with which to examine both everyday practices and world-changing events, a perspective that was often lacking elsewhere in the halls of Boalt.

II. TURMOIL AT HOME: FACULTY HIRING CONTROVERSIES AT BOALT HALL

At Boalt, one of the most pressing issues in the late 1980s was faculty diversity—specifically, the lack thereof. When I entered Boalt there were just two tenured white women on the faculty, one tenured man of color, and one tenured white woman with a 50% appointment in JSP, along with 42 tenured white male faculty.1 A majority of both faculty and students seemed to agree that diversifying the faculty was important, but they did not all agree on how to achieve diversity, or whether the school had done all it could to pursue that goal. Faculty often responded to student criticisms by saying that only a small pool of qualified “diversity candidates” existed,2 and that competition for them among top law schools was fierce. Many students felt that the problem was not a shallow pool, but rather a shallow definition of “quality” coupled with an only tepid commitment to diversification. From many students’ perspective, not only was the faculty overwhelmingly white and male, but it also lacked ideological diversity. Some vocal faculty members were very uncomfortable with the “Critical Legal Studies” (CLS) movement then coming to prominence in American law schools, arguing that Boalt should not hire CLS scholars because of the divisiveness such hires might cause.3

Student members of Boalt’s Coalition for a Diversified Faculty (CDF) strategized about ways to push the Boalt administration to move more quickly towards faculty diversity. In the time-honored Berkeley tradition, students staged sit-ins at the Dean’s office, boycotted classes, and held protest marches and rallies, often supported by 80-90% of the student body.4 Students (including

2. See id. at 1400.
3. As Boalt faculty knew, Harvard Law had been characterized as the “Beirut of American law schools” due to conflicts between CLS supporters and opponents, including the highly contentious denial of tenure to two CLS scholars. See, e.g., Deborah Graham, Alumni Concerned, Students Aren't; Effect of Harvard Strife Uncertain, LEGAL TIMES, Jan. 6, 1986, at 1; David A. Kaplan, Letter Calls for Harvard Probe; Academic Freedom in Peril?, NAT'L L.J., Aug. 10, 1987, at 3.
myself) were arrested for trespassing at several such sit-ins, although charges were eventually dropped without prosecution. Another tactic was simply to keep the issue prominent in the halls of Boalt, and to that end many students wore CDF-designed t-shirts graphically demonstrating the lack of faculty diversity at Boalt.

The denial of tenure to a female faculty member, Eleanor Swift, in 1987 kept the issue of diversity very much at the forefront of law school politics. Swift hired an attorney and filed a grievance to fight the denial, and students also rose to her defense, holding rallies, teach-ins, and the like. After an independent review committee found prima facie evidence of gender discrimination, Swift won a settlement that awarded her the tenure she had earned. Shortly thereafter, another female faculty member who had been improperly denied tenure in 1985— and subsequently became the only permanent lecturer in the entire University of California system—had her case reconsidered, and was also awarded tenure as a full professor. In the period when the two women were denied tenure, all ten men who had been considered for tenure at the same time were approved.

More progress was made in 1988, when Boalt added five people to its faculty; as a group, this set of hires was the most diverse in the school's entire history. Four of the five added to the visible diversity of the faculty—one white woman, one woman of color, and two men of color. However, when the law school arguably violated "standard search procedures" to offer tenure-track positions to two white job candidates in the winter of 1989, 11 students (including one BWLJ member), wrote a letter to the candidates over winter break asking them not to accept the offers so as not to "mortgag[e] our future for [faculty] diversity at Boalt." Many members of the Boalt community, both students and faculty, were outraged by this action. The candidates accepted the job offers, and the tension over the letter slowly subsided, even though the larger issue of faculty diversity remained important and unresolved. Keeping the issue of diversity in the forefront, in April 1989, the CDF coordinated and led a

6. Id.
9. Cho & Westley, supra note 1, at 1392 & n.34.
10. Id. at n.34.
11. Id. at 1396 n.40.
14. Memorandum from Jesse Choper, Dean of Boalt Hall School of Law, to Boalt Students, Staff and Faculty (Aug. 20, 1990) (on file with author).
nationwide law student strike for faculty diversity,\textsuperscript{15} and the following spring, Professor Derrick Bell took a highly-publicized leave of absence from Harvard Law School to protest the school’s failure to grant tenure to any woman of color in its entire history.\textsuperscript{16}

In 1990, the Boalt faculty created the Faculty-Student Diversity Committee\textsuperscript{17} to explore ways to attract more diverse faculty, and also to explore the possibility of involving students in faculty recruitment; I was a student member of that committee in 1990-1991.\textsuperscript{18} To my knowledge, no policy changes resulted from our work,\textsuperscript{19} despite the lengthy, intense discussions and extensive research in which the committee engaged while developing the recommendations it made to the full faculty. Since then, although more women, people of color, and gays and lesbians have joined the ranks of Boalt faculty, Asians, Latinos and African Americans remain greatly under-represented, and the JSP faculty remains 100% white.\textsuperscript{20} Moreover, progress also lags in the University as a whole, where departments have continued to attempt to deny tenure to talented women; several have successfully appealed these decisions, either administratively or in the courts.\textsuperscript{21}

\section*{III. Turmoil in the Nation and Abroad: Boalt Students’ Responses}

In January 1991, President George Bush launched “Operation Desert Storm,” the Persian Gulf War. As word spread on the afternoon war was declared, Boalties increasingly huddled in student offices around televisions and radios, most profoundly dismayed. Many had participated in anti-war activities in the weeks leading up to Desert Storm, hoping that the march to war could be halted.

President Bush ended the war in late February, leaving Saddam Hussein in power. Shortly thereafter, another event captured national attention – the

\begin{itemize}
  \item 15. Cho & Westley, \textit{supra} note 1, at 1395-96.
  \item 17. Memorandum from Jesse Choper, Dean of Boalt Hall School of Law, to Boalt Hall Community (Feb. 12, 1990) (on file with author).
  \item 18. Memorandum from Malcolm M. Feeley, Chair of the Boalt Hall Faculty-Student Diversity Committee, to the Diversity Committee (March 15, 1990) (on file with author).
  \item 19. \textit{See Memorandum from Bob Berring, Faculty member of the Boalt Faculty-Student Diversity Committee, to the Law School Faculty (Oct. 31, 1990), reprinted as Berring Confronts Faculty on Diversity Inaction, BOALT HALL CROSS-EXAMINER (Boalt Hall Student Newspaper), Nov. 1990, at 1.}
  \item 20. \textit{See The Princeton Review, Best Law Schools: Ranked, available at http://www.princeton review.com/law/research/rankings/rankingDetails.asp?topicID=9 (last visited Apr. 10, 2005) (Boalt is not among top-ranked law schools for faculty diversity, nor for Best Environment for Minority Students, Best Quality of Life or Best Overall Academic Experience, while competitors of similar caliber like Stanford and UCLA are); Boalt’s JSP Faculty Profiles, at http://www.law.berkeley.edu/academics/jsp/faculty.html.}
  \item 21. \textit{See, e.g., UCB Women, 5 WAGE NEWSLETTER #7 (Spring 1997), at http://www.wage.org/vol/volcount.html (detailing cases of five women denied tenure at the University of California, Berkeley who later won tenure or monetary settlements).}
\end{itemize}
videotaped beating of motorist Rodney King by members of the Los Angeles Police Department, the California Highway Patrol, and the Los Angeles County Sheriff's Department in early March 1991. Well before “driving while Black” became a synonym for racial profiling by police, the King beating graphically demonstrated the use of excessive force by law enforcement against people of color.

Later that year, in October 1991, sexual harassment became a major topic within and outside of the law school, as a result of Anita Hill’s testimony against U.S. Supreme Court nominee Clarence Thomas. The confirmation of Thomas, and six months later, the acquittal of three of the police officers accused of beating King and subsequent riots, left many at Boalt dispirited about the possibilities for racial and gender justice. However, these events also demonstrated to us how important our work as legal advocates can be to the country, not just to our individual clients or causes. Those of us working on BWLJ appreciated, yet again, the importance of our mandate as a small part of promoting equal justice for everyone and redressing past injustices based on race, sex, class, disability, sexual orientation, national origin, and the like.

IV. BWLJ AS A PLACE TO LEARN AND AS AN ACADEMIC HOME

As these events took place in the local, national and global communities, I was simultaneously working at BWLJ. The first issue of the Berkeley Women’s Law Journal on which I worked was Volume 4, published in 1989. That issue included the first interdisciplinary article published by BWLJ, along with other strong pieces on reproductive choice, affirmative action, same-sex marriage, and pornography. It also included a book review of a volume entitled Sex Work: Writings by Women in the Sex Industry. My friend, Forrest Martin, BWLJ Book Review Editor, brought Sex Work into the office and was eager to find a reviewer for this ground-breaking collection of essays. Having known someone who worked as an escort, I had been interested in prostitution as a social issue but had never heard the term “sex work” before. At best, I had given only passing thought to prostitution as something I might study as an academic, and had never really thought of sex workers as fellow feminists. With my introduction to Sex Work, those things changed. Over the next few years, I began to study prostitution as a legal, social, historical and gendered phenomenon. Ultimately, I decided to write my doctoral dissertation on the criminalization of prostitution and the social construction of gender. My involvement with BWLJ thus assisted and hastened my selection of prostitution as a primary area of scholarly specialization.

A second issue of Volume 4 was published in 1989-1990, devoted to

23. The term was coined by Carol Leigh around 1980. Carol Leigh, AKA Scarlot Harlot, Inventing Sex Work, in Whores and Other Feminists 223, 229-30 (Jill Nagle ed., 1997).
papers from the 20th Annual Women and the Law Conference that was held in Oakland. I was honored to be the articles editor assigned to work with Professor Patricia Cain on her piece *Feminist Jurisprudence: Grounding the Theories.*24 I had attended her talk at the conference and had been impressed with her ability to cover so much ground in a clear and engaging way, while simultaneously offering nuanced insights about the trajectory, and oversights, of feminist legal theory. Working on the written piece gave me a deeper understanding of the development of feminist legal thought, and was a remarkable introduction to articles editing. The piece was thoughtful, well organized and compelling, and Professor Cain was gracious in responding to our questions and suggestions.

I had an equally enriching experience working on Volume 5, for which Lisa Guerin and I edited Suzanne Homer and Lois Schwartz’s *Admitted but not Accepted: Outsiders Take an Inside Look at Law School.*25 The piece meant a lot to many of us on *BWJ*, because it reported findings from the authors’ study of Boalt Hall students about whether men and women experienced law school differently, and if so, whether those differences disadvantaged women. It validated many *Journal* members’ experiences of law school as often stifling, and our belief in the need for a broadening of the curriculum and the faculty. More importantly, the article offered empirical data for what previously had been suspected but not substantiated, and its analysis insightfully explained the study findings in light of current legal theory. Just as I had learned much about grounded theory and persuasive writing when I worked with Pat Cain, so too did I learn much about survey design, data interpretation and how to present findings cogently when I worked with Sue and Lois.

Volume 5 also furthered my education about sex work with the publication of Jody Freeman’s thoughtful article about feminist prostitution debates,26 an article I still cite in discussing different schools of thought about prostitution’s feminist implications. Moreover, thanks to my friend and *BWJ* Essay Editor Susan Huber, Volume 5 also contained a commentary by Joycelyn Elders about adolescent pregnancy.27

With the encouragement of outgoing Co-Editors in Chief Lori Chamberlain and Diane Kallas, I ran for the position of Editor in Chief for Volume 6, and gladly assumed the position for academic year 1990-1991. That year was both immensely challenging and rewarding. We worked diligently to publish pieces

---

27. M. Joycelyn Elders, Jennifer Hui, & Steff Padilla, *Adolescent Pregnancy: Does the Nation Really Care?*, 5 BERKELEY WOMEN’S L.J. 170 (1989-1990). Although we could not know it at the time, Dr. Elders would, in a few years, be selected by President Clinton to be the U.S. Surgeon General.
that focused on traditionally underrepresented women and the law, the goal of which was the founding "mandate" of the Journal. As we wrote in the introduction to Volume 6:

We gave the mandate priority in evaluating submissions, actively solicited articles that met the mandate, and worked with authors and prospective authors to ensure that each piece gave attention to relevant differences among groups of women. In the process, we came to realize that beyond representing a philosophical/moral position, the mandate helps us identify good scholarship by eliminating vague, overbroad, and universalist or essentialist writing from consideration.\(^{28}\)

In the process of reviewing submissions for Volume 6, we were contacted by Professor Emma Jordan, representing the Northeast Corridor Collective of Black Women Law Professors. The Collective was trying to select a law journal to publish a special issue devoted to pieces by its members. We were overjoyed when the Collective selected \textit{BWLJ} as its forum for this project. As a result, Volume 6 was published in two parts; Part I was devoted to articles and essays written by faculty who belonged to the Collective, and Part II contained the "regular" commentary and articles we had selected for publication.

The 1990-1991 Editorial Board was also committed to making decisions by consensus. This made for some long, and occasionally uncomfortable, discussions about \textit{Journal} policy and about individual articles. But, at its best, this process also gave everyone involved a sense that decisions were not being made from the top, and that her/his participation mattered. Having the \textit{Journal} work with the Collective also created some challenges for us, since we were used to working with authors individually. Naturally, the Collective wanted policies that supported its members, while the \textit{Journal} wanted to maintain its editorial independence. Although there were frustrations on both sides, the process was productive, and ultimately we reached agreements that respected the interests of both groups. Several of the Collective pieces reflected on the "role model" argument advanced by Derrick Bell when he took leave from Harvard, including one by Lani Guinier,\(^{29}\) soon to be a Clinton nominee for U.S. Attorney General. Moreover, several of those pieces later appeared in a collection edited by one of the Volume 6 authors, Adrien Katherine Wing,\(^{30}\) a volume now in its second edition.\(^{31}\)

After my year as Editor in Chief, having completed my J.D., I also ended my tenure with \textit{BWLJ} in order to concentrate on the Ph.D. However, I remained involved with \textit{BWLJ} in other ways. In November of 1994, the \textit{Journal} organized a symposium for its tenth anniversary and invited me to present a paper. This

\begin{enumerate}
\item\(^{28}\) Untitled introduction, 6 \textit{BERKELEY WOMEN'S L.J.} iii, iii (1990-1991).
\item\(^{30}\) CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing ed., 1996).
\item\(^{31}\) CRITICAL RACE FEMINISM: A READER (Adrien Katherine Wing, Richard Delgado & Derrick Bell eds., 2d ed. 2003).
\end{enumerate}
was my first academic presentation, which was made more difficult due to the death of my father a few weeks earlier. Nonetheless, despite some anxiety and a few hostile questions that I have since learned come with the territory when one discusses prostitution, my talk was warmly received. As with many things surrounding BWLJ, it was another nice introduction, this time to the world of academic conferences. Volume 10, published in 1995, contained the written version of that presentation, and was also my first publication as a student.

V. CONCLUSION

In talking to academic colleagues as well as prospective law and graduate students, I have often said that whatever my frustrations as a J.D./Ph.D. student, I would not hesitate to do it all over again. The legal and interdisciplinary training I received in both programs is something I treasure, and it informs everything I do as an academic. The feminist community in Boalt and J.S.P., along with that in the university as a whole, played an indispensable part in my academic development. The Berkeley Women's Law Journal was particularly pivotal in that regard, and thus I am honored to have this reflection included here to help commemorate its 20th Anniversary. I continue to feel as our Editorial Board did in 1991:

We all look forward to the day when students, professors, practitioners, employers, and tenure committees routinely value progressive and feminist law journals at least as much as they respect more traditional and mainstream law reviews for their contributions to social progress, public debate, and legal scholarship.

Thanks to its authors, student members and editors, advisors, subscribers, donors, and readers, with each year of publication the Berkeley Women's Law Journal has helped us move ever closer to that goal. I join its community of supporters in anticipating the Journal's continued success in the decades to come.