

Issues in Legal Scholarship

Legal Feminism Now

Volume 9, Issue 2

2011

Article 2

LEGAL FEMINISM NOW

What I Learned About Feminism From the Early Women Law Professors

Herma Hill Kay*

*University of California, Berkeley, hkay@law.berkeley.edu

Recommended Citation

Herma Hill Kay (2011) "What I Learned About Feminism From the Early Women Law Professors," *Issues in Legal Scholarship*: Vol. 9: Iss. 2 (Article), Article 2.

DOI: 10.2202/1539-8323.1135

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For two decades, I have been working on a book about a small group of fourteen women – I call them the “Early Women Law Professors” – who entered the all-male world of law school teaching between 1900 and 1959 and who ultimately became tenured professors of law. What they did was extraordinary, and it opened the way for those of us who followed them into a challenging, difficult, but frequently rewarding profession. None of them, however, thought that what she did was particularly courageous, or even unusual. In holding this attitude, they were reinforced by their male colleagues, many of whom thought of them – not disparagingly – as “just one of the boys.” They were women, to be sure, and they had (successfully) invaded the men’s academic domain, but were they feminists?

In reflecting on that question for this symposium, another question has occurred to me: what have I, who have researched their lives and careers, (and consider myself a feminist) learned about feminism from their examples? When I began working on this project in 1989, nine of the fourteen women were still alive, and I interviewed all of them as well as a sample of their male colleagues, the women who came after them, and their students. Four of the fourteen I knew or had known personally: Barbara Nachtrieb Armstrong of Berkeley, who mentored me when I was hired as a beginning professor to replace her; Margaret Harris Amsler of Baylor, whose daughter was a friend and classmate of mine at SMU, and who encouraged me to go to law school against the more cautious advice of my mother; Soia Mentschikoff, who was the only woman on the Chicago Law faculty when I was a student there, and functioned as a role model for me even though I never took a class with her; and Ellen Ash Peters, the Chief Justice of Connecticut who had earlier been the first woman professor at the Yale Law School, and who is my colleague and friend on the Council of the American Law Institute. I knew two others professionally through our shared interests in Family Law: Joan Miday Krauskopf, who began at Ohio State and returned there after twenty-four years at Missouri-Columbus, and Marygold “Margo” Melli, who was also an expert on criminal justice administration at Wisconsin; and a third by reputation, Judge Dorothy Wright Nelson of the U.S. Court of Appeals for the Ninth Circuit and the first woman professor (as well as Dean) at USC Law Center. The others – Janet Mary Riley of Loyola, New Orleans, Helen Elsie Steinbinder of Georgetown Law Center, Maria Minnette Massey of the University of Miami, and Clemence Myers Smith of Loyola, Los Angeles, I met during my work on the project. The remaining three I learned about second-hand from their colleagues and students: Harriet Spiller Daggett of LSU, who specialized in oil and gas law as well as Civil Code subjects; Miriam Theresa Rooney, the founding Dean of Seton Hall Law School; and Jeanette Ozanne Smith, the highest-ranking graduate of the University of Miami Law School, who returned there to teach Contracts and Constitutional Law.

Although each of these fourteen women carved out an individual niche for herself, there are many similarities among them. They came from families who prized education, and were expected to make something of themselves. Most were encouraged to study law, either expressly by a well-meaning, if not always particularly well-informed mentor, during her early years, or implicitly by the example of her lawyer-father. And each was guided into law teaching, not infrequently because no suitable jobs were available in the practice of law. Thus several of them experienced overt discrimination at the outset of their careers, and several, particularly those who began their work after the 1950s, struggled to achieve tenure. Once established in their university law school settings, however, all of them became highly regarded teachers who mentored their own students, both male and female. All except one published – several were recognized as excellent scholars – and most were active in law reform. All but three of them married (those three were Catholics, who taught at Catholic universities), and of the remaining eleven, all but two had children. By religious affiliation, four were Catholics; one was Jewish (who immigrated to the United States from Germany with her family to escape the Nazis); one was a member of the Bahà'í Faith; one was Russian Orthodox; and the rest were Protestants (although one of these was a self-declared “heathen”). Nearly all were active in public affairs and community organizations outside the law school, and this activity increased after their retirement from teaching.

Although each of these fourteen women began law teaching before 1960, their careers spanned a period of ninety years: the first of them, Barbara Armstrong, began teaching in 1919; and the last one to retire, Minnette Massey, did so in 2009. During that time, they had many opportunities to declare themselves as feminists, had they chosen to do so. By one definition – that of being a pioneer who demonstrates that women can succeed in a male-dominated field – all of them were feminists. By another – that of being a woman who rejects a conventional lifestyle to forge a nontraditional path – none of them were feminists. For example, although not all lesbians are feminists, there were no lesbians among these fourteen: the first “out” lesbian to be hired as a law professor accepted her position in 1974. If political support for the feminist issues of the day is instead the standard, the record is mixed. The “first wave” of feminists in the United States had had successfully achieved Women’s Suffrage in 1920, the year after Armstrong began teaching. When the struggle to ratify the Equal Rights Amendment began in 1972, two of them opposed it as unnecessary and constitutionally unpredictable – one later changed her position – and one of them supported it. One denied that she was interested in the women’s movement, saying that she had never experienced discrimination herself. Two joined the National Organization for Women.

Measured by their scholarship and law reform activities, however, six of them consciously devoted part of their agenda to improving the legal status of women. This effort was demonstrated most clearly by the five of them who were known as family law specialists, but it was also evident in the work of one who specialized in corporate law. On the other hand, two of the three women who became law school deans did not seek out women for their faculties while they were in office, and one of those two declared that she would prefer a qualified male to a qualified female as a faculty candidate. As faculty members, one who served as Chair of her school's Faculty Appointments Committee accepted the post with the understanding that she would be actively seeking a female candidate (and succeeded in that quest), and several went to bat for their junior female colleagues when the tenure battles heated up.

These first fourteen women did not engage in "networking." Only a few of them knew each other personally – three of them were on the University of Miami Law faculty at the same time – and two of them worked together on the same ALI law reform project. As one of them told me, "We didn't talk about what we were doing: we just did it." And although I had the very good fortune to be mentored by Barbara Armstrong, she and I didn't talk about it either. Instead, our conversations focused on the subject matter interests we shared, Family Law and California Marital Property; the institutional affairs of the law school; and occasionally political issues of the day. What I absorbed about feminism from Barbara was a tacit understanding of how to function in a largely male environment and how to support our women students in their struggle to survive and even flourish there.

As I reflect on what I have learned from my own women students and junior colleagues at Berkeley and elsewhere, the core lesson centers on why it is so important to talk about who we are and what we are doing as women lawyers and law professors. The importance of theorizing about feminism grew out of consciousness-raising and what my student (and later Dean of Duke University Law School) Kate Bartlett famously called "Asking the Woman Question." That question, once asked, has led many of us to a lived-out focus in our scholarship and law reform activities that celebrates and seeks to understand the work that women do – for themselves, for their communities, for the establishment of an ideal of justice for all people that transcends sex, race, color, creed, religion, sexual orientation, age, and disability. That focus, to me, is the essence of feminism.

Does that focus gain clarity and strength when it is pursued in the name of "feminism?" Or is the "F word" a distraction from its attainment – perhaps even a divisive move that may offend potential allies? An early critique of the second wave of feminism held that the movement reflected only the perspective (and self-interest) of white, middle-to-upper class, educated women and was oblivious to

the concerns and needs of women of color, working class women, and lesbians. This critique has silenced many and discouraged others from calling themselves feminists.

Others have responded to these and other critiques (e.g., feminism has outlived its usefulness because discrimination against women is no longer a serious threat) by refusing to refer to themselves as “women,” let alone as “feminists.” This is a move with deep roots, having been adopted by a few of the early women law professors as well. While I agree that today’s multicultural society requires a broad banner, I am not persuaded that the best course is to retreat to a methodology that seeks to deny the still-inferior situation of women around the world as compared to that of men, and the compelling need to change the forces that have created that disparity and will – if left unchallenged – continue to perpetuate it. Instead, I believe that we should redefine “feminism” as an inclusive term that transcends the differences of class, race, color, sexual orientation, disability, and other particularized identities that divide us. At the same time, we should continue to hold firmly to feminism’s core concept of liberating both men and women from sexual stereotypes and barriers that prevent individual achievement regardless of sex and gender. We should reject the counsel of those who would seek to avoid this process of redefinition by choosing instead to “walk the walk without talking the talk.” Let us rather unfurl a transcendent feminist banner broad enough to encompass us all together, nourish our energies, and sustain our work.