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Kenneth Lasson

When I see the elaborate study and ingenuity displayed by women in the pursuit of trifles, I feel no doubt of their capacity for the most Herculean tasks.

—Julia Ward Howe

Being a woman is a terribly difficult task, since it consists principally in dealing with men.

—Joseph Conrad

I. Lessons from Olympia: Some Foregone Conclusions

By providence or happenstance, modern feminism has achieved mythic proportions. The classic case of *Hercules v. Hera*, in which the heroic son of Zeus was sentenced to seemingly impossible labors by the vengeful goddess of women, is as relevant today as it was in ancient Greece.¹ The Battle of the Sexes is, after all, the true Mother of All Conflicts, a war that has been waged ever since Lysistrata exercised her wiles and maybe even back to Eve.²

Kenneth Lasson is Professor of Law, University of Baltimore School of Law. The author appreciates having on sundry past occasions been called a gentleman or scholar and, understanding that Hell hath no fury like a radical feminist scorned, realizes that after publication of this paper he is likely to be re-cast as curmudgeon or cur. Asserting the convictions herein may nevertheless reflect more naiveté than courage: in fact this piece was originally penned under a pseudonym, which was abandoned primarily at the behest of a number of women who read the manuscript. Among them was the writer’s thoughtful research assistant, Carolyn Knight Buppert, whose insightful suggestions sought valiantly to keep him honest and in many cases, he thinks, did.

1. “In heavenly minds can such resentments dwell?” (Virgil, as quoted in Bulfinch’s Mythology 290 (New York, 1934)). For this and other pertinent mythological references, I am indebted to Jim Chen, former executive editor of the Harvard Law Review. That many of the notes herein may be gruff, pointed, or pithy is entirely intentional, in hopes that some of them might actually be read. See introductory note to Kenneth Lasson, Scholarship Amok: Excesses in the Pursuit of Truth and Tenure, 103 Harv. L. Rev. 926 (1990). See also Kenneth Lasson, On Letters & Law Reviews: A Jaded Rejoinder, 24 Conn. L. Rev. 201, 205 (1991), wherein the author notes “the long odds against anybody reading this little flagon of well-aged whine.”

2. Though created as Adam’s “helpmate,” Eve proved herself to be a notably independent thinker; see Gen. 3:1–6. (Some other assertive women in the Bible: Jezebel, Delilah, Potiphar’s wife, and Judith.) Lysistrata was Aristophanes’ Athenian *femme fatale*, who sought to end the Second Peloponnesian War by persuading all Greek wives to deny their husbands sexual relations as long as the fighting lasted. Assuming that the men would be unable to endure prolonged celibacy and in order to hasten the war’s end, Lysistrata exposed a nude girl before the two armies—whereupon the Athenians and Spartans, both goaded by enough frustration to make them pant, declared peace quickly and departed for home and (it is presumed) connubial contentment.

Though modern critics would likely reject the “big bang” theory as to the origins of feminist jurisprudence, mythological references are gaining currency. See, e.g., Jean
Perhaps it is best to begin with the positive. From virtually any perspective, liberal and conservative feminists in the twentieth century have improved the quality of life for many women in a number of noteworthy ways. They have helped win the right to vote, to own property, to make contracts, to serve on juries, to use contraceptives. They have succeeded in asserting the need for enhanced economic opportunities: equal pay for equal work, maternity leave, flex-time for mothers. They have made significant advancements against both domestic battery and sexual harassment in the workplace. As a consequence of all these efforts, there are more women now than ever before in professional schools, city halls, state houses, and courts.³

Such well-deserved victories, however, have been achieved at the cost of a goodly number of Pyrrhic ones, not the least of which have been wholesale changes in the language and literature of the law—most of it force-fed to the silent majority of women everywhere and to a lesser extent the hapless readers of law reviews. Good people of both sexes have been stampeded into corners of stilted parlance and tortured logic by self-appointed thought police. Big Sister has imposed herself on us all; nowadays she throws no pots and burns no bras but brandishes instead a sacred and unabridgeable Lexicon of Political Correctness.⁴

It is not just labeling lawyers who apply the "reasonable man" standard as profoundly sexist⁵ or forcing substantial expenditures to render the text

Shinoda Bolen, Goddesses in Everywoman: A New Psychology of Women (San Francisco, 1984), wherein a Jungian psychiatrist advises women to meditate on the Greek goddesses and to imagine themselves as heroines in the myths of their own lives. 3. On this point I am challenged by my research assistant, who observes that the rights to vote, own property, make contracts, and serve on juries were all won in the late nineteenth and early twentieth centuries. "Have feminists been spinning their wheels for the last 70 or 80 years," she asks, "or what? One Supreme Court justice, a few heads of state, and lots of female law students don't seem like much of an accomplishment compared with what was done earlier."

4. Cf. the new Random House Webster's College Dictionary 1532 (New York, 1991), which offers an alternative spelling for "women" ("womyn"), and the Oxford English Dictionary 20:358 (Oxford, England, 1989), which allows "wimmin"—all to avoid any reference to "men." Choice of the right words can be confusing even to those who wish to be politically correct. Compare, for example, Mary Joe Frug, A Postmodern Feminist Legal Manifesto (An Unfinished Draft), 105 Harv. L. Rev. 1045, 1075 (1992) ("only when the word 'woman' cannot be coherently understood . . . will oppression by sex be fatally undermined"), with Rosalie Maggio, The Nonsexist Word Finder: A Dictionary of Gender-Free Usage 154 (Boston, 1989) ("'woman' is a respected, acceptable term that can be used anywhere, any time, any place, as long as the context in which it appears is not sexist or exclusive.") Homosexuals and lesbians, for another example, argue both for and against use of various terms to describe their sexual orientation (which may lead some irreverent language lovers to ask: Are we living in the Gay Nineties, or what?)

5. To be fair, not all arguments supporting a "reasonable woman" standard are based on the notion that men are oppressive. See, e.g., Kathryn Abrams, Hearing the Call of Stories, 79 Cal. L. Rev. 971 (1991); Bridget A. Clarke, Comment, Making the Woman's Experience Relevant to Rape: The Admissibility of Rape Trauma Syndrome in California, 39 UCLA L. Rev. 251 (1991); Nancy S. Ehrenreich, Pluralist Myths and Powerless Men: The Ideology of Reasonableness in Sexual Harassment Law, 99 Yale L.J. 1177 (1990).
Feminism Awry

of codes and constitutions “gender-neutral”6—or even likening the first movement of Beethoven’s Ninth to the murderous rage of a rapist.7 The vernacular required by Feminist Newspeak is as inconsequential as it may be silly or supercilious.

Nor does it cause anything more than a mild ripple among the cognoscenti when feminist professors demand removal of a Goya nude from a university lecture hall8 or loftily lump male law professors in with all the other licensed lechers seen to saturate the legal establishment.9

These are but the piddling quibbles.

More serious and wasteful—and ultimately more dangerous—is the inordinate attention paid to abstruse rantings by radical feminist theorists by the media and in political arenas,10 and the even more obsequious homage accorded the obscure ravings of their academic counterparts, the

6. Four states have statutory requirements for gender-neutral language: Maryland, Oregon, Washington, and Wisconsin. In seventeen states there is similar explicit policy but no such law: Alaska, Arizona, Colorado, Connecticut, Hawaii, Illinois, Indiana, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Dakota, Ohio, South Dakota, Texas, and Utah. In one state (Idaho), there is a statutory directive that the singular include the plural and the masculine include the feminine. National Conference of State Legislatures (1991). Various committees have also been appointed to review administrative rules and regulations. See, e.g., Report of the Special Joint Committee on Gender Bias in the Courts (Annapolis, 1989). But cf. 1 U.S.C. § 1 (1988), which adheres to usage of the traditional indefinite masculine pronoun but explicitly makes it include women. A male attorney and language lover (who wishes to remain anonymous) has suggested a universal pronoun—the shortest possible contraction of “she,” “he,” and “it”—which he claims is especially appropriate because it is not only gender-neutral but expresses our common humanity as well.


9. This particular kind of stereotyping appears to be endemic among the growing number of radical feminist law students. A professor at the University of Baltimore School of Law was recently chastised by one of his feminist students for having asked his law-and-economics class whether expert witnesses might sometimes be considered “whores”—a term the student felt was “mysogynistic.” See Duncan Kennedy, How the Law School Fails: A Polemic, 1 Yale Rev. L. & Soc. Action 71 (1970).


It might be said that if God had wanted women to be politicians, he would have made them with thicker skins, grosser tastes, an unparalleled egomania, and the inclination and capacity to absorb a fifth of Old Forester in any one tough campaign day without the benefit of Lydia Pinkham’s Compound.

Whether by cosmic design or chance, in the three billion years of animal history, only a handful of the million or so species (the South African phalarope and the striped hyena among others) are dominated by the female. If our present-day human phalaropophiles think they can buck this formidable fact and change their own natural endowments by edict, confrontation, petition, or constitutional amendment, they are smoking testosterone-cut hashish and bulling it through just like any male would flat on his back at the count of nine.

See also Brigitte Berger, Academic Feminism and the “Left,” Acad. Questions, Spring 1988, at 9.
Whether on the hustle or the hustings their words are often virtually incomprehensible, their writings filled with shrill jargon and polysyllabic gibberish—their voices as outraged as their messages outrageous. Whatever they lack in clarity is made up for in volume: they dominate the discussion of the agenda they so stridently dictate, lashing out against all those who do not accept their world view with the same unadorned scorn they heap upon tellers of off-color jokes. In so doing they serve to obfuscate the legitimate gains of the women's movement, shrouding it in the clothes of shrill revolutionary discourse. Many women have thus come to see the feminist movement as antimale, antichild, antifamily, and antifeminine.  

What we know as radical feminist jurisprudence has been with us for at least twenty years now. It is part of the curricula of many law schools.
and the focal point of an increasing number of law review articles. If this is "scholarship," what is it all about? Does the virtual absence of any meaningful challenge mean that the majority of male scholars tacitly agree with their radical feminist colleagues? Or are they too intimidated, bored, amused, or confused to respond? How much does the current literature continue to reflect a plaintive cry for equality by a sex unjustly scorned—and how much of it is strewn with the petty mewlings of pouty prima donnas who are intellectually dishonest to boot? Which are the rights, and which the trifles?

Such quaeres themselves, of course, can be criticized as gender-biased, and it is a virtual certainty that the answers suggested by this article—that the best-known feminist legal scholars have unfairly arrogated to themselves the right to speak for all women, that their advocacy is confounded
by their language, and that what they can or should get is more often limited by logic and the natural human condition than by an oppressive masculine society—will be dismissed as reflecting the misguided misogyny of a society dominated by male chauvinists.

So be it. The time is past due for an intellectually responsible challenge to the radical feminists who have assumed command of the Ivory Tower and the world beyond to which it beckons. Abdication of that responsibility—whether because it is felt that the feminists in question are unfathomable, or their agenda illogical, or that fighting them could be career-threatening—amounts to endorsement of an authoritarian ideology that runs roughshod over the few scholars who dare to question its merits. Just ask the handful of outspoken women who have had the temerity to denounce radical feminist scholarship in its own terms, calling it “a travesty of the intellect,”17 “bald ignorance,”18 and “pop fascism.”19

In truth, the thesis is a simple one: the legitimate gains achieved on behalf of all women—largely by the Herculean efforts of both latter-day Lysistratas and their high-minded male colleagues—are seriously diminished by the self-anointed high priestesses of women’s rights who minister their metaphysics from behind the protective walls of an unquestioning academy.20

II. Venus Redux: Feminist Law Identified

First feminism, then law.

—Catharine MacKinnon

There are as many definitions of feminism as there are sentences that use the word.

—Patricia Rozema (Canadian film director)

A. Definitions

Feminist scholars come in as many incarnations as did Venus, who was goddess of everything from fertility to love and marriage to venal lust.21 It

17. Berger, supra note 10, at 10, 15. “Academic feminism provides instructive insights into what can happen to an enterprise when its guardians do not take care to root out the first cropping of intellectual mischief, either because it appears too silly to bother with, or in the misguided hope that it will eventually die out on its own.” Id. at 7. See also infra note 92 and accompanying text.
19. Id.
20. The thesis may be simple, but it will likely be misconstrued by some as proof of the argument put forward in Susan Faludi’s much ballyhooed new book, Backlash: The Undeclared War Against American Women (New York, 1991), that lawmakers, the media, and others have consciously sought to diminish the gains of the women’s movement by making women feel guilty about their career achievements. See Bernard Weinraub, Say Hello to the Nanny from Hell, N.Y. Times, Jan. 5, 1992, at M13.
21. The many faces of Venus include her Greek personae as Aphrodite Urania, goddess of noble love; as Aphrodite Genetrix, who favored and protected marriage and to whom unmarried girls prayed in order to obtain husbands; and as Aphrodite Pandemos or Porne(), the goddess of lust and patroness of prostitutes. Venus was also the wife of Hephaestus, the ugliest and most graceless of gods, and took wicked delight in rousing the passionate desires of the Immortals and launching them on amorous adventures. Paul Hamlyn, Greek Mythology 63–68 (London, 1967).
is unclear how many of them would agree with MacKinnon, the current
guru of the radicals, or would instead treat feminist legal scholarship as an
integral part of a broader contextual framework, arguing simply that new
social orders require new legal structures.

But neither feminism nor feminist law is easy to define. A recent article
in the Harvard Law Review talked about a “self-consciously critical stance
toward the existing order with respect to the various ways it affects women
‘as women.’”22 What does that mean? The author seems to make three
points: (a) gender must be the central category for analysis; (b) specific
needs of women are actively frustrated by men or go otherwise unsatisfied;
and (c) we must do everything necessary to meet such needs. Feminism has
also been called an exploration of the implications of gender (how it affects
expectations, desires, self-perceptions, and choices)—in other words, the
effects of treating men and women differently or similarly.23 MacKinnon
defines feminism, with great clarity even if only for its shock value, as that
which “stresses the indistinguishability of prostitution, marriage, and sexual
harassment.”24

Conceptual definitions, however, do not really identify the feminist
phenomena currently in vogue. Because radical feminist legal scholarship
is predominantly ad hominem, such attempts to categorize are regarded with
suspicion in that they reflect what is considered a typically male thought
process. Similarly, even subjective definitions, in the style of Justice
Stewart’s description of pornography (“I can’t define it but I know it when
I see it”25) can be called chauvinistic.

Perhaps the most acceptable way to define feminist law is by reference to
the victories that have been won by way of trenchant challenges to
entrenched rules. Besides progressive legislation relating to marital prop­
erty, spousal abuse, and workplace environment, one might also point to
the way that politicians and practitioners of all ilks have been made to
recognize gender bias and have become sensitive to it.26

23. Mary Joe Frug, Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook, 34
Such “indistinguishability” may be one reason MacKinnon’s efforts on behalf of various
American antipornography statutes have been found unconstitutionally vague. See infra
notes 66–68 and accompanying text.
see pornography everywhere (except, of course, in their own prose). See infra notes
65–68 and accompanying text.
26. For example, a National Conference on Women in Legal Education was cosponsored
by the Association of American Law Schools, the American Bar Association Committee on
Women and the Profession, and the ABA Section on Legal Education and Admission to
the Bar. Many state courts have approved gender-bias studies, as recommended by the
Conference of Chief Justices in 1988. Since 1979, there has been a National Association
of Women Judges (current membership more than 800). Perhaps most symptomatic of
the new sensitivity about sexual harassment are popular television programs. Following
the nomination hearings of Clarence Thomas, specific episodes treated the issue on
“Designing Women,” “A Different World,” and “The Trials of Rosie O’Neill.” There is
even a new Henson Productions dinosaur character named Sexual Harris. Parade
But radical feminist scholars would reject any such litany of victories as made by a male. The disclaimer of any definitions that might be thus tainted suggests the related question, whether it is necessary to be a woman in order to be a feminist. On this fine point there is also a certain amount of disagreement, part of which centers around whether “women” present a valid category for analysis.\textsuperscript{27} Not all women are the same, after all; they may in fact be more dissimilar from each other than from men.\textsuperscript{28}

In the final analysis, however, what most makes defining feminist scholarship an idle and frustrating pursuit is the difficulty readers have in understanding it. Trying to grasp its gist or grist can addle even the most analytical of well-meaning minds. Like octopi, many feminist scholars hide themselves in their own inklings.\textsuperscript{29}

B. Levels of Inquiry into Feminist Legal Scholarship

Across the Divide

Getting a grip on the broad range of feminist literature is a daunting task. Feminist legal scholars appear to be interested in a wide gamut of issues, including abortion, alimony, career restrictions, child care and custody, comparable worth, divorce, domestic violence, interracial marriage, language bias, lesbian rights, pornography, pregnancy, prostitution, rape, sexual freedom, sexual harassment, sexual innuendo, surrogate motherhood, tenure, toilets, and zoning ordinances.\textsuperscript{30} Gender-bias legislation also covers the judicial process: selection of judges, jurors, and court personnel; attitudes by and toward lawyers; and treatment of women as litigants and witnesses.

On some of these issues the interest is selective if not sexist. For example, feminist scholars tend to take up the cudgels primarily in tenure battles that involve women, or in zoning legislation that might define the typical family as heterosexual. They are quick to come to the defense of any woman alleging rape or sexual harassment, often before hearing all the evidence and sometimes even after acquittal of the defendant. On other issues, most notably abortion, there are substantial disagreements as to why there should be disagreement. Besides the inherent tension between pro-choice and prolife (control over reproduction vs. protection of unborn fetuses), some feminists argue that abortion increases the availability of women for the sexual satisfaction of men because it removes the excuse that the woman

\textsuperscript{27} See Bartlett, \textit{supra} note 22, at 833 n.7 (1990).
\textsuperscript{28} You need a source for this? Try either Joan C. Williams, Dissolving the Sameness/Difference Debate: A Post-Modern Path Beyond Existentialism in Feminist and Critical Race Theory, 2 Duke L.J. 296 (1991), or the critique of Barbara Flagg, Women's Narratives, Women's Story, 59 U. Cin. L. Rev. 147 (1990) (reviewing MacKinnon's \textit{Toward a Feminist Theory of the State}).
\textsuperscript{29} Cf. the Ph.D. Squid, a spineless species recently identified by scientific explorers, whose primary impulse is to squirt ink in response to any stimulus. Theodore Ziolowski, The Ph.D. Squid, 59 Am. Scholar, Spring 1990, at 177.
might get pregnant. Similarly, feminist scholars who favor women having as much sexual freedom as men are opposed by those who say that free sex (by increasing the availability of women) contributes to their subordination. Likewise, there are sharply differing views on pornography, which some feminist scholars feel obliged to defend on First Amendment grounds, and which others attack as a mechanism for oppression.

The appropriate remedies for these perceived wrongs are debated just as vigorously. Some women scholars argue that all feminist points of view should be considered in public lawmaking, while others believe that issues such as abortion should be removed from the legal arena entirely and decided exclusively as private matters.

Although having some notion of common feminist goals should help define the purposes of feminist scholarship, the current literature is so filled with radically sex-centered introspection that the picture presented is thoroughly confused, with strident but unfocused arguments scattered about as if by blunderbuss. But if radical feminist legal scholarship is to be challenged, it must be fathomed and put in perspective, and for that it is helpful to analyze the different approaches taken toward the many issues addressed.

Descriptive Scholarship

The primary level of feminist legal scholarship is investigative and descriptive, with a proliferation of such titles as “Women in the Law,” “The Comparative Sociology of Women Lawyers,” and “Reflections on Women in the Legal Profession: A Sociological Perspective.” At this level are case studies of women at work, the specific demands they place on the law, and their representation in fiction. As with all legal scholarship, some of these articles are reasonably understandable and well argued. Others appear somewhat petty—examining, for example, the extent to which female scholars are not cited in the mainstream law reviews and calling for the inclusion of more women writers in law school reading lists. On
occasion there is an interesting intramural skirmish, such as that on the
mediation of wife-abuse cases: some feminists welcome extrajudicial reme-
dies, while others (especially the avant garde) claim that the new alterna-
tive methodologies for dispute resolution mask and perpetuate inequalities
of power. 39

"The Women's Questions"

There are also numerous studies in contemporary feminist literature
asking "The Women's Questions." The game is to identify rules that are
masked as neutral—but in truth are "masculine"; the goal is to expose how
such rules operate and to suggest how to correct them. Here are the
"women's questions" presented in a Berkeley Women's Law Journal article,
appropriately entitled "To Question Everything: The Inquiries of Feminist
Jurisprudence":

1. What have been and what are now all women's experiences of the "Life
   Situation" addressed by the doctrine, process or area of law under examina-
   tion? ... 
2. What assumptions, descriptions, assertions and/or definitions of
   experience—male, female, or ostensibly gender neutral—does the law make in
   this area? ... 
3. What is the area of mismatch, distortion, or denial created by the differences
   between women's life experiences and the law's assumptions or imposed struc-
   tures? ... 
4. What patriarchal interests are served by the mismatch? ... 
5. What reforms have been proposed in this area of law or women's life
   situation? How will these reform proposals, if adopted, affect women both
   practically and ideologically? ... 
6. In an ideal world, what would this woman's life situation look like, and what
   relationship, if any, would the law have to this future life situation? ... 
7. How do we get there from here? ... 40

Such broad inquiries lend themselves to specific and personal adapta-
tions, such as the efforts by feminist Bible students who seek to place
women at the center of a reconstructed past, and by revisionist historians
such as the feminist professor at Yale who says: "The study of the woman
question in Judaism is as important as the study of the Jewish question in
general history." 41

The "women's questions" have thus become sacred cows for radical
feminist scholars, providing a virtually endless amount of cud upon which
they can chew and achieve tenure.

C. Old and New Strands of Feminist Law

Regardless of the approach taken, heated arguments occur as well
between advocates of the old and newer strands in feminist legal thought.

and (for pedagogical purposes) to have diversity on reading lists, but proving some sort
of conspiratorial motive for excluding women is purely conjectural.
39. Lisa G. Lerman, Mediation of Wife Abuse Cases: The Adverse Impact of Informal
40. Heather Ruth Wishik, To Question Everything: The Inquiries of Feminist Jurispru-
dence, 1 Berkeley Women's L.J. 64, 72–77 (1985) (questions are uppercase headings in
original).
41. Paula Hyman, as quoted in a review by Midge Decter (Commentary, Jan. 1992, at
also infra note 93 and accompanying text.
Different observers apply different labels, but most seem to categorize feminists as either liberal, cultural, or radical.

Liberal Feminism: Vesta and the Virgins

Sometimes called liberal feminists or rational empiricists, those who reason on the basis of equality seek to minimize the differences between men and women and focus upon issues of equality. Proponents of this point of view argue that it is arbitrary and irrational to make any distinction between the sexes; their primary goal is passage of an Equal Rights Amendment; their principal voice is the National Organization of Women.

The equality approach has been responsible for most of the practical victories that have been won by women in the workplace. Using traditional legal methodology, liberal feminists reason on behalf of free choice and equal opportunity, even if that means accommodating women who find satisfaction in their roles as wives and mothers. They call for equality in areas where they can demonstrate irrational differences in the treatment of men and women. They want to avoid being perceived as overturning the world order.

But liberal feminists are sometimes faced with the practical problem that equality can work against women. Consider various areas of the law in which women once had a certain favored status. For example, the National Organization of Women has helped quash legislation that would allow adoption of out-of-wedlock children only by the mother's consent, void statutes requiring that only a husband need pay alimony, and oppose the male-only draft. In so doing, NOW clearly does not speak for all women.

Liberal feminists seem to agree that it does not matter whether the real differences between men and women are natural or constructed; the role of

42. See, e.g., Berger, supra note 10, at 9–10.
43. Vesta was the goddess of fire; her name means hearth or home. In Rome the task of always keeping a fire lit and dedicated to her was entrusted to a group of maidens, called vestal virgins; woe (i.e., live burning) to any of them who let the fire go out or who lost her virginity.
44. The new president of the National Organization of Women, Patricia Ireland, undoubtedly caused a backlash from people of both sexes when she announced that in addition to her husband she has had a concurrent "love relationship with a woman." See Quinn, supra note 12, at C2. Nor does NOW speak for all women when it denounces signs in bars that warn against drinking during pregnancy.

Feminists get suspicious when men argue along these lines—that is, that organizations such as NOW may work against women—and suggest that it is analogous to the bad joke that rape victims should keep quiet and enjoy the experience. It is just as likely, however, that men are simply bemoaning the decline of chivalry at the expense of feminism. How must men react, however, when a woman judge overturns the conviction of ten females found guilty of exposing their breasts in public, ruling that as a matter of equal protection of the law women's breasts should not be legally distinguished from men's? Chicago Tribune, Nov. 14, 1991, at 14.

It is interesting to note that, while sentences vary widely for battered wives convicted of clobbering their husbands, fewer men are charged with first- or second-degree murder for killing a woman they have known than are women charged with first- or second-degree murder for the homicide of men they have known. See M. J. Willoughby, Rendering Each Woman Her Due, 38 U. Kan. L. Rev. 169 at 179 n.14, 173 n.16 (1989) (citing Domestic Violence on Trial: Psychological and Legal Dimensions of Family Violence, ed. Daniel Jay Sonkin, 72 (New York, 1987)). Note further that a male spouse can now generally get as much of a dependency allowance as his female counterpart. See Califano v. Goldfarb, 430 U.S. 199 (1977).
feminists should be to reduce inequality by revaluing occupations, pursuits, and lifestyles. Women want to be taken seriously at work, but many of them have come to place a newfound priority on family matters. This justifiable ambivalence is perhaps the most significant and accepted aspect of what used to be called the women's liberation movement, particularly since women have begun to exercise more power in the workplace. Thus the recent burgeoning of a profamily feminist camp, which promulgates policies recognizing the importance of comparable worth, daycare, paid maternity leaves, and the creation of opportunities for fathers to share household responsibilities.

Other liberal feminist scholars criticize the concept of a "Mommy Track," arguing that women in the workplace should be treated without deference to their sex and that working women should realize they cannot have it both ways.

Working women with children, however, do not need scholars to tell them what it means to be caught between conflicting hopes for themselves and the expectations of family. For many of them the dilemma is too profound to be resolved simply by equalizing the roles of men and women.

Cultural Feminism: Minerva and the Muses

Cultural feminists take a more chauvinistic tack. Differences between men and women, they say, are profound and immutable. Further, the "different voice" of women—a truer, more caring nature—is one on which a superior feminist jurisprudence can be based.

Cultural feminism has been described (by one of its adherents) as follows:


47. See Kathryn Abrams, Gender Discrimination and the Transformation of Workplace Norms, 42 Vand. L. Rev. 1183 (1989); Leslie Bender, Sex Discrimination or Gender Inequality, 57 Fordham L. Rev. 941, 944 n.11 (1989).


49. Minerva (Athena to the Greeks) was the goddess of wisdom, science and art, and is said to have sprung (fully dressed in armor) from the forehead of her father Zeus. She never married and is variously depicted as wearing a helmet and carrying a spear, or holding a distaff (a tool for spinning thread) or a twig of an olive tree. The Muses, nine sisters each the symbol of one of the arts, were originally represented as virgins of strictest chastity; they later became less shy and had numerous love affairs.

[W]omen’s potential for a material connection to life entails (either directly, as I have argued, or indirectly, through the reproduction of mothering) an experiential and psychological sense of connection with other human life, which in turn entails both women’s concept of value, and women’s concept of harm. Women’s concept of value revolves not around the axis of autonomy, individuality, justice and rights, as does men’s, but instead around the axis of intimacy, nurturance, community, responsibility and care. For women the creation of value and the living of a good life, therefore depend upon relational, contextual, nurturant and affective responses to the needs of those who are dependent and weak, while for men the creation of value, and living the good life, depend upon the ability to respect the rights of independent co-equals and the deductive, cognitive ability to infer from those rights rules for safe living. Women’s concept of harm revolves not around the fear of annihilation by the other but around a fear of separation and isolation from the human community on which she depends, and which is dependent upon her.51

Cultural feminists maintain that all legal theory is male-oriented because all legal theory is based on the notion that each individual is separate. Women, however, are not separated but connected; they reason differently from men; they are more sensitive to situations in context; they emphasize practical results over abstract justice; they resist universal principles and generalizations. The attack on the male-oriented theory emphasizes the distinctive way in which women approach problems—advocating negotiation rather than conflict, making the most of feminine mystique, rising above principle.52

In other words, women are nurturing and altruistic, men individualistic and (it may be inferred) insensitive.

Radical Feminism: Discordia and the Amazons53

Radical feminists (the primary focus of this article) go even further than their cultural counterparts, beginning with the explicit assumption that men by their very nature consciously and systematically oppress women, who in turn are depicted as the primary victims of the male-hierarchic society. The differences between men and women are not just biological, say the radical feminists, but diabolical as well.54 The radicals do not hide how they feel. They are angry. And because the shrill voice is often the one that is most heard, they dominate both the popular media and the academic literature.

52. Id. at 15 and passim.
53. Discordia (Eris), the sister of the war god Ares, was considered a dangerous deity; she spread discord in Olympus as well as on earth and was feared by everyone until Zeus finally drove her out of heaven. The Amazons were perhaps the earliest radical feminists; from infancy they were trained for the chase and for war and were often characterized by their horror of men.
54. Compare this point of view with that of the critical race theorists. See, e.g., 105 Harv. L. Rev. 8 (1992). The radfems rarely note facts that might contravene their theory, e.g., that in the United States women live longer than men, or that they still legally possess most of the wealth.
III. Fates and Furies\textsuperscript{55}: The Agenda Unmodified

I went out at night; to smash a man's face in. I declared war. My \textit{nom de guerre} is Andrea One. I am reliably told there are many more; girls named courage who are ready to kill.

—Andrea Dworkin

Leaving sex to the feminists is like letting your dog vacation at the taxidermist's.

—Camille Paglia

A. Rights and Trifles

Cast in the light of Dworkin's belligerency, Phyllis Schlafly's take on the feminist agenda—"They hate men and they're out to destroy any man who stands in their way"—\textsuperscript{56} appears sufficiently succinct. But an even more lucid statement of the radical philosophy comes from a feminist scholar herself, in a recent issue of the \textit{University of Chicago Law Review}: "The important difference between men and women is that women get f——ed and men f——."\textsuperscript{57}

One difficulty with this theory is that it disregards the power women have over men concerning sex;\textsuperscript{58} another is that women may actually enjoy making love.\textsuperscript{59} But from their narrow perspective the radicals appear to be

\textsuperscript{55} The Fates, three sisters who held the mysterious thread of man's life, were governed by Fortuna, a blind Roman goddess said to preside over the lives of all humans. Nothing could prevent them from cutting the thread of life once the hour of fate had struck. Fortuna is represented in three distinct modes: with a horn of plenty as sovereign of riches; with a scepter as an emblem of her power; or holding a wheel, as a symbol of her fickleness and instability. The Furies were ministers of vengeance. Hell hath no Fury like a You Know What. See text \textit{infra} Part IV C.

\textsuperscript{56} A. M. Chaplin, Where Now Feminism? Baltimore Sun Mag., Dec. 8, 1991, at 12. Schlafly, president of an organization called the Eagle Forum, is a longtime foe of feminists such as Dworkin and MacKinnon.

\textsuperscript{57} West appears to walk a fine line between cultural and radical feminism, although it is difficult to understand her except when she uses four-letter words such as the one noted. The Uniform System of Citation says nothing about vulgarisms. Those who are unable to divine the expurgated words may consult the original text in the \textit{Chicago Law Review} (\textit{infra} note 51, at 13), which apparently has no compunctions about corrupting its younger readers. Although the quoted declaration would undoubtedly offend feminists if it were made by a male (see \textit{infra} note 9), it is unlikely that the scholar who wrote it has ever been inside a men's locker room or college fraternity-house, where a traditional rallying cry is, "Let's go out and get I—I—!"

\textsuperscript{58} See \textit{infra} note 1.

\textsuperscript{59} This has been fertile ground for dispute ever since the ancients. The Greeks told of how Zeus and Hera called upon Tiresius to settle their dispute over whether men or women derive more pleasure from making love. When Tiresius answered that women have ten times more fun (and consequently changed his gender from male to female), an enraged Hera caused him to become blind, whereupon Zeus gave Tiresius the gift of prophetic sight as a consolation. (Tiresius is said to have discovered which sex had more pleasure by killing a female serpent in the act of mating. Still another version is that Tiresius was blinded by Minerva for having watched her as she undressed and bathed.) \textit{Encyclopædia Britannica} 11:794, 18:918 (Chicago, 1986).

MacKinnon's logic is as follows: The only reason women may enjoy sex with men is that women have learned to enjoy degradation. See Levin, \textit{infra} note 16, at 209. Cf. Nancy Friday, \textit{Women on Top} (New York, 1991). Among Friday's findings are that many women like sex as much as (if not more than) men. She also provides details of women's sexual fantasies, including those that have themselves as perpetrators of rape and willing participants in bondage and bestiality. Time, Dec. 2, 1991, at 78–79. See also Quinn, \textit{infra} note 12; Leo, \textit{infra} note 45.
fundamentally opposed even to that kind of heterosexual activity, which to them entails two forms of oppression and subordination—intercourse and pregnancy. The leading exponents of this point of view are Dworkin and her academic Echo, MacKinnon. It is difficult to quote either of them in a dignified journal such as this one, however, without offending the casual reader’s sensibilities or violating contemporary community standards of decency.

In their obsessive determination to root out their male oppressors, radical feminists press the assertion that practically all heterosexual relationships amount to rape, assault, or at the very least harassment. For MacKinnon, no less than 92% of all women are sexually assaulted or harassed; anywhere from 25% to 75% of women experience serious violence in the home; 44% of all women are victims of rape or attempted

Happily for men and women who take pleasure in heterosexual liaisons, cultural feminists are quick to rebut: the argument that the sex act is a form of submission “fails to capture the phenomenological experience of intercourse as one of positive intimacy...not invasive bondage.” See West, supra note 51, at 46 (citing Dworkin).

60. Echo was a nymph who served Zeus by distracting Juno’s attention with chattering and singing every time his master paid court to another female. For this Juno punished Echo by depriving her of speech, condemning her to repeat only the last syllable of words spoken in her presence. Echo was thus unable to declare her love for the young Thespian named Narcissus, and she died of a broken heart. Her bones turned to stone; all that was left was her voice. The gods in turn punished Narcissus for spurning Echo’s love by making him fall in love with his own image. (There is a moral in here somewhere.)

61. At least not in the text. Here is a typical passage from Dworkin:

He has to push in past boundaries. There is the outline of a body, distinct, separate, its integrity an illusion, a tragic deception, because unseen there is a slit between the legs, and he has to push into it. There is never a real privacy of the body that can co-exist with intercourse: with being entered. The vagina itself is muscle and muscles have to be pushed apart. The thrusting is persistent invasion. She is opened up, split down the center. She is occupied—physically, internally, in her privacy...

She is a human being, is supposed to have a privacy that is absolute; except that she, a woman, has a hole between her legs that men can, must, do enter. This hole, her hole, is synonymous with entry. A man has an anus that can be entered, but his anus is not synonymous with entry. A woman has an anus that can be entered, but her anus is not synonymous with entry. The slit between her legs, so simple, so hidden—frankly, so innocent—for instance for the child who looks with a mirror to see if it could be true—is there an entrance to her body down there?...that slit which means entry into her—intercourse—appears to be the key to women’s lower human status. By definition...she is intended to have lesser privacy, a lesser integrity of the body, a lesser sense of self...[and] this lesser privacy, this lesser integrity, this lesser self, establishes her lesser significance...She is defined by how she is made, that hole, which is synonymous with entry; and intercourse, the act fundamental in existence, has consequences to her being that may be intrinsic, not socially imposed.


MacKinnon is no less reserved. In F.U. she asks, “Who listens to a woman with a penis in her mouth?” MacKinnon, supra note 24, at 193. She also wonders “whether a good fuck is any compensation for getting fucked” and says that “[a]bortion offers women the liberal feminist dream of being real women—that is, available to being freely fucked.” Id. at 144–45. More: “Women in pornography, when you tickle us, we get turned on; when you scratch us, we start to come; when you kill us, we orgasm until death.” Id. at 227.

“It is pretty crude to set out deliberately to horrify people...Mrs. Post tells us that no lady ever uses slang or swears.” Alice-Leone Moats, No Nice Girl Swears 7–8 (New York, 1933).
rape; and 14% of married women have been raped by their husbands.62 “Recent experimental research,” she declares, “makes normal men more closely resemble convicted rapists attitudinally, although as a group they don’t look all that different from them to start with.”63 She goes on to claim that “the family legitimizes violence to women and calls that civilization.”64

Radical feminists often vociferously oppose both liberal and cultural feminists, asserting that all women will be sold short by anything less than a cosmically changed social order. Neutral criteria, say the radicals, deprive women of the few protections they once had; they now lose more child-custody battles than before; they do not get as much alimony as they used to. Women do not need a declaration of equality, because it would inhibit the law from recognizing that men start with an unfair advantage. What women do need, say the radicals, is an aggressive affirmative action program—an Anti-Subordination Amendment rather than an Equal Rights Amendment.

Cultural feminists are likewise attacked by the radicals on the ground that those qualities traditionally ascribed to females—for example, compassion and empathy—are in truth neither natural nor inherent, but simply an adjustment to the social subordination of all women by all men. The differences that exist between the sexes are not to be celebrated, but deplored.

Radical feminists thus align themselves with lesbian-rights groups, which likewise attack the notion of a male’s right of access to women (and ultimately a rite of passage and conquest). The radicals see sexual coercion as the root of the whole “women problem.” It is this mindset that empowers their forays into the legislative and jurisprudential arenas, especially in the areas of sexual harassment and pornography. As to the harassment, the radical feminists sometimes take an unwarranted amount of credit. For example, the concept of sexual harassment as discrimination evolved as a common creation of both men and women practicing equal-rights advocacy; MacKinnon was still a law student when the pioneering cases came to trial in the mid-1970s, and her book Sexual Harassment of Working Women is largely derivative.65

MacKinnon is more properly given credit for coauthorship (with Dworkin) of antipornography legislation for the City of Minneapolis. That

63. F.U. at 187. Levin adds that “MacKinnon’s hysteria might be understandable if her statistics were trustworthy” and proceeds to demonstrate how they are not. Levin, supra note 16, at 207.
64. F.U. at 187. Compare MacKinnon’s outraged response to the rape acquittal of William Kennedy Smith (New York Times, Dec. 15, 1991, at E15) with this view from Camille Paglia: “Women should accept that men are biologically programmed as the aggressor and they should stop blaming society and crying assault. Instead, they should revert to the precautions women have always taken to avoid ‘being taken advantage of.’ A girl who gets drunk at a party or goes upstairs with a fellow-student is a fool.” Quoted in Charles Bremner, Feminist Fall Out in the Rape Debate, London Times, Feb. 2, 1991 (Overseas News).
65. Mullarkey, supra note 18, at 93.
ordinance, however, was uniformly rejected by various lower federal courts and the Supreme Court itself, on the ground that it was unconstitutionally vague. The Feminist Anti-Censorship Taskforce called it "squarely within the tradition of the sexual double-standard." The American Civil Liberties Union found the proposed law "extraordinarily ill-drafted," "fatally over-broad" (it would have prohibited even clinical illustrations in medical texts), filled with "multiple uncertainties," and "riddled with discriminatory distinctions." These are rather harsh indictments of a woman appointed at various times to the law faculties of Stanford, Minnesota, Chicago, Yale, and Michigan, and who has also been selected as a distinguished guest lecturer on civil liberty at Harvard.

To discern the difficulty people such as MacKinnon and Dworkin have with the First Amendment, all one need do is compare their position on pornography (which they would ban) with their own vulgar views on the oppressive male culture (such as in Dworkin's *Intercourse*). Compare, say, their condemnation of Bret Easton Ellis's *American Psycho* with their support of Helen Zahavi's equally obscene *The Weekend*. They have similar problems with due process and other rules relating to the fair administration of justice. Compare, for example, their routine condemnation of all sexual-assault defendants (both before and after hearing all the evidence)

66. Mullarkey, *supra* note 16. A similar ordinance in Indianapolis was likewise found unconstitutional. Nevertheless, MacKinnon celebrated a recent holding by Canada's Supreme Court—that violent or degrading pornography can be constitutionally outlawed—as vindicating her position that all pornography degrades women and should therefore be prohibited. N.Y. Times, Feb. 28, 1992, at B7. On the one hand, she probably misread the Court's narrowly focused and carefully worded decision; on the other, her radical feminist interpretation of what is pornographic—that which is violent or degrading—should likewise cause the censorship of such pop fiction as *Ice and Fire* by her coreligionist Andrea Dworkin, and maybe even such classic works as *The Taming of the Shrew* by Shakespeare. See Suzanne Fields, Porn by Gender, Wash. Times, March 5, 1992, at B1. See also *supra* notes 24, 62–64, and *infra* notes 67–68 and accompanying text.

67. Here is a bit of MacKinnon the Libertarian:

> [T]he First Amendment has become a sexual fetish through years of absolutist writing in the melodrama mode in *Playboy* in particular. You know those superheated articles where freedom of speech is extolled and its imminent repression is invoked. Behaviorally, *Playboy*’s consumers are reading about the First Amendment, masturbating to the women, reading about the First Amendment, masturbating to the women, reading about the First Amendment, masturbating to the women.

F.U. at 209.

For feminist scholars, the belly-button gazing engaged in by *Playboy* readers is evil incarnate and cannot be compared with the *omphaloskepsis* (contemplation of the navel) undertaken by academic tenure-seekers. See *supra* notes 40–41 and accompanying text.

68. Both involve serial torture-killers; both were universally panned by book reviewers as uniformly disgusting. The only ostensible difference between the two is that Ellis's protagonist is a male and Zahavi's (like Dworkin's in *Mercy*) a female. Zahavi herself calls *Dirty Weekend* a "deeply moral" book. Dworkin rallied to her defense by castigating the reviewers as "literary police [who] punish any fool who gets out of line; that is their job." Dworkin was quoted with favor by her comrade-in-arms Naomi Wolf (see *infra* note 77 and accompanying text), who argued in print that "women authors such as Zahavi and Dworkin ... are genuinely subversive and therefore ritually punished." Harvey Porlock, On the Critical List, London Sunday Times, April 28, 1991 (Features Section). To refresh your memory of Dworkin's own purple prose, you might try rereading note 61 *supra*. 
with what the law schools teach their students about rules of hearsay and other constitutional safeguards.

But in a broader sense the arguments of radicals like MacKinnon defy attempts at analysis or rebuttal. Those who challenge MacKinnon's manifesto are dismissed as having been programmed to do so by a male-dominated culture, or they are said to be simply seeking reaffirmation of the status quo, or to be rejecting revolution out of hand because fundamental change is always unpleasantly traumatic. Thus her views become unassailable.

To equate marriage with sexual harassment and prostitution, however, is to debase language—diluting the plain meaning of words merely in order to serve an argument. At what point can the case against MacKinnon's rhetorical declarations-of-fact be rested? How does one go about proving the negative, that most men do not oppress most women? How does one illustrate the likelihood that most men fully understand the horror of rape and abhor, for that matter, any aggressively violent behavior against another human being, whether within marriage or not? How does one refute the equation of marriage and prostitution, other than to assert that the experience of all those couples whose marriages are reasonably happy dictates the absurdity of that idea?

The radical feminists would have us believe that there are few if any reasonably happy marriages. MacKinnon's claim that men systematically enforce their sexual domination of women in multinefarious ways is supported by little more than the passionate expression of the certainty of her convictions. To be sure, she offers an abundance of statistical data, but they are selective and uncontroverted. When challenged even cursorily, they become highly suspect.

As one reviewer of Feminism Unmodified points out, MacKinnon's logic "depends on slogans, false premises, half-information, sinister innuendo and ad hoc reasoning," and her arguments "sink into sweeping, indiscriminate accusations that are never substantiated." For example, she seeks to prove that the legal changes fought for and won by the liberals who call themselves feminists have for the most part failed. Why? Because (she argues) there has been a concurrent increase in reported rapes and a decrease in convictions. Does that necessarily mean that rape is outpacing other violent crimes (which also happen to be rising)? To what extent could the alleged increase in rapes simply reflect greater documentation of assaults encouraged by a more supportive climate for the victim? Must it be assumed that more reported assaults will automatically engender more convictions?

Similarly, despite considerable evidence that coercion is rare in the porn industry, MacKinnon cites the "slave training" of certain actresses as the norm. Her proof is the experience of one woman; completely ignored is the ample testimony of many other porn queens who insist that coercion is rare

69. Mullarkey, supra note 16.
70. Levin, supra note 16.
71. Mullarkey, supra note 16.
72. Id.
(and unnecessary), as well as evidence that women may enjoy pornography themselves.\textsuperscript{73} Such selective perception permits MacKinnon to ignore or disesteem anyone with a contradictory opinion.\textsuperscript{74} For MacKinnon, the only true feminists are the radicals.\textsuperscript{75}

\textbf{B. Satyrs and Sirens\textsuperscript{76}}

The more recent literature leads us farther and farther down the barbed primrose path, with an almost fatal attraction to the world of absurdity. Naomi Wolf's bestselling book, \textit{The Beauty Myth: How Images of Beauty Are Used Against Women}, describes a society dominated by males who use pulchritude as a political weapon to hold women back. The author lashes out against what she calls the Professional Beauty Qualification (PBQ)—a man-made measurement she believes is "extremely widely institutionalized" as a condition under which women are hired, fired, and promoted. She rails about a male conspiracy that has created a "cult of thinness," which in turn causes women to hate their bodies, to starve themselves, and to "mutilate" their flesh under the knives of (mostly male) plastic surgeons.\textsuperscript{77}

Another common characteristic of radical feminist legal theory is that it is antimainstream and ever-more-often revisionist and revolutionary. By definition it regards the existing order as oppressive to women. Its primary

\textsuperscript{74.} Mullarkey, supra note 16.
\textsuperscript{75.} F.U., supra note 24, at 137.
\textsuperscript{76.} Satyrs (or Fauns) were scattered about in the country, chiefly serving Bacchus, the god of wine. Poets made them the terror of shepherds and nymphs. They should not be confused with satyrist(s) such as writers of articles like this one, or pundit(s) such as J. F. Saville, an English dramatist [1783–1853], who wrote that "Women have more strength in their looks, than we have in our laws; and more power in their tears, than we have by our arguments.").

The Sirens were three sea nymphs who lived on an island and sang so sweetly that passing sailors were drawn to them, spellbound, and shipwrecked on the isle. Odysseus stopped the ears of his crew with wax and ordered them to tie him to the mast until they were safely through.

\textsuperscript{77.} Could the author be a sheep in Wolf's clothing? Her thesis may be complicated by her own publicity tours, where she appears to be an attractive woman who does not disdain fashionable clothes, jewelry, or makeup. Has she been so victimized by the culture that she has no choice but to succumb? See M. G. Lord, This Pinup Drives Eggheads Wild, Newsday, Oct. 6, 1991, at 36. Nor does Wolf countenance the suggestion (made to the writer by both male and female readers of this manuscript) that women dress more for other women than for men.

Even hard-core feminists can find such theories a bit hard to take. Betty Friedan, whose 1963 book \textit{The Feminine Mystique} made her a mother of the women's liberation movement, says she finds Wolf's message "a bit distorted" and that "I don't think the great enemies of women today are beauty pornography or beauty preoccupation . . . . I think the real danger lies in the new feminine mystique that tells women to go back home again, and that preoccupation with sidebars on beauty is a digression from the real need to address the terrible social problems women need to face." Baltimore Sun, June 23, 1991, G1, 6, 7.

Another well-known feminist author, Susan Brownmiller, says Wolf's \textit{Beauty Myth} is nothing new. "I wrote that book and published it in 1984—it was called \textit{Femininity}. And while I think her points are valid I felt I covered all that material and did it very well." \textit{Id.} It would be interesting to know how Wolf reacted to the new book by Gloria Steinem, another mother of the movement, who now admits that she has long had serious problems with the way she looks and suggests that she has always wanted to feel attractive.
attack is against contemporary law itself, whose rules and methodology conceal and perpetuate oppression. The radicals take aim at the basic verities of all institutions and traditions, starting with religion and ending with the family. God the Father is anathema. The family is the principle focal point of oppression—perpetuating as it does a sexual hierarchy and promoting heterosexuality as the norm. Because they regard marriage as a form of prostitution, radical feminists have a detailed program for ridding the world of the nuclear family. They would like to see the term "family law" changed to "household law," so that they could have individual benefits and tax allowances. They would abolish all sorts of immunities from suit.

For them, solving "the women's problem" is usually not enough: the "women's problem" must be seen as part of a larger injustice. Their articles therefore attack all the ills of the world: poverty, discrimination, social and economic exploitation, or as one feminist scholar puts it, the whole range of "racist, misogynist, homophobic, patriarchic and economic hierarchies."78 In seeking a holistic theory of justice, feminist legal scholars conclude that all of our values have to be transformed. The code word is "empowerment"; political power is what radical feminists seek above all else—their agenda unmodified. Though "feminist theorizing is never far removed from 'political struggle,'"79 the radicals have little patience for conjecture about the nature of law, for precedent or jurisprudence. For them power is at the core of legal decision making. The radicals view the world as a male-dominated engine of oppression, which they would like to shift into reverse. Women would give the orders. It is They Who Must Be Obeyed.80

But shifting gears runs the risk of stripping them. Consider, for example, the feminist legal scholars' current criticism of typical marital property laws. When such laws were first passed in the 1970s, feminists strongly supported them as necessary to deal with a "women's problem," men who did not pay court-ordered alimony. Under the marital property acts the spousal assets would be divided at the time of divorce, with the woman getting a lump sum. Usually there is no alimony, and so no need to enforce monthly payments. Lobbyists supporting the acts persuaded legislators that the new laws would also solve a "men's problem"—that is, divorced women refusing to get a job or remarry because they could live

80. The phrase is from John Mortimer's Rumpole of the Bailey:

I Horace Rumpole, barrister at law, 68 next birthday, Old Bailey Hack, husband to Mrs. Hilda Rumpole (known to me only as She Who Must Be Obeyed) and father to Nicholas Rumpole (lecturer in social studies at the University of Baltimore, I have always been extremely proud of Nick) . . .


An equally acerbic male observation about obedience: "Women never truly command, till they have given their promise to obey; and they are never in more danger of being made slaves, than when the men are at their feet" (George Farquar, Irish playwright, as quoted in Tryon Edwards, The New Dictionary of Thoughts 793, rev. ed. (New York, 1960)).
better on their ex-spouses’ alimony payments. These days, though, radical feminists attach marital property acts as unjust, because older untrained women, wealthy when married, are now being denied alimony and forced to take minimum-wage jobs. Judges are likewise criticized for abusing their discretion, particularly when financial awards appear to favor the male party. The radicals’ remedy is to increase the number of female judges. Left unaddressed is the possibility that increasing the number of female judges might only throw the bias toward the females or bring about inconsistency in how the law is applied. 81

In trying to resolve such tricky strategic dilemmas, radical feminist scholars derive solace from and ally themselves with the critical legal studies people. Together they argue that law is indeterminate, that courts can do anything they please, and that all decisions are political. The enterprise is to prove that all legal doctrine is a “patriarchal construct” that should be “deconstructed,” its facade torn away so that the underlying infrastructure of oppression can be revealed. Once that is done, the remedy is not accommodation, but revolution. 82

And it is with strident revolutionary declarations that radical feminists skewer themselves, ignoring what could be much more persuasive arguments. For example, they could (but do not) assert that the changes they advocate would benefit men as well as women, in that working wives and mothers take some of the strain off men to provide for families. They should (but do not) emphasize the universal merits of a system in which everyone places a greater value on raising children, friendly relationships in the workplace, or the care of the elderly. They would do well to recognize (but do not) that men have human frailties as well.

C. Dominoes and Dominees

Feminist scholarship has by now been institutionalized into full-scale academic departments, foundations, and political interest groups, all of which have come to pervade the media, professional associations, and the government itself. It is lavishly funded, both privately and publicly 83; its spokeswomen are courted as avidly by universities as free agents are by baseball teams (though their playing quality is just as suspect). Catharine MacKinnon adorns the cover of the New York Times Magazine. 84

Many colleges have yielded to feminist demands for special departments, courses, and requirements in such traditional disciplines as history and science. In so doing they ignore studies that find both empty and

81. See West, supra note 51, at 46.
83. See Berger, supra note 10, at 14.
pernicious the claim that men and women are different in the way they conduct scientific investigations.\textsuperscript{85} They also help educate a generation of students who know more about Harriet Tubman than George Washington or Abraham Lincoln or Winston Churchill.\textsuperscript{86} If they had their way, the radicals would continue to increase the number of "subjective" courses, as well as adopt guidelines for nonmasculinist writing and grading of female students that is sensitive to their presumed nondominant attitudes.\textsuperscript{87}

Thus is diversity excluded even within the academy. For example, radical feminists have supported the exclusion of a male student from a class in feminist methodology because he proposed a project that included men and women as subjects of research.\textsuperscript{88} Even more deleterious is the ghettoization of women professors, a number of whom complain that they are discriminated against in appointment, promotion, and tenure decisions because they do not teach "feminist" courses or adhere to the radical philosophy.\textsuperscript{89} The intolerance also takes the form of blunderbuss charges in the name of political correctness, which in turn causes the idea of sexual harassment to be trivialized and diluted.\textsuperscript{90}

The irony, of course, is that much of the discrimination against women comes at the hands of the radical feminists themselves. For example, according to sources familiar with faculty politics at Harvard Law School, every woman professor voted against a nonradical (but otherwise qualified) woman candidate for a tenure-track position. The schism at Harvard is severe. A professor who sought to discipline students for an admittedly tasteless antifeminist parody said he couldn't care less about freedom of speech: "It's just not my thing."\textsuperscript{91}

In this atmosphere dissident voices are routinely suppressed. "There's a sense that if you're not exactly where I am in feminism, then you're betraying the cause," complains a woman professor at M.I.T. Another, from Wellesley, says "Suddenly we're not seen as feminists—because we won't politicize the entire spectrum."\textsuperscript{92}

But it is in the academic literature that radical feminists are seen to be most fruitful and multiply. Proliferation, of course, is characteristic of scholarship generally. Every law school has at least one law review. Professors have to publish to get tenure or to be recognized as scholars. And as more women go to law school and become professors, there are more feminists writing articles on feminist law.

Thus it is to be expected that feminist legal scholars regard the law journals as vital instruments in their crusade, a primary forum where professional opinion is developed. Feminist issues have become a favorite


\textsuperscript{87} Levin, supra note 79.

\textsuperscript{88} Hall of Shame, 8 Insight, April 20, 1992, at 28.

\textsuperscript{89} Mehren, supra note 73.

\textsuperscript{90} Barry Gross, Salem in Minnesota, 5 Acad. Questions, Spring 1992, at 67.


\textsuperscript{92} Mehren, supra note 73.

The law reviews are so dominated by radicals such as MacKinnon and Dworkin and a handful of others, it is easy to get the impression that there are no brakes to this bandwagon as it rambles so noisily through the wilderness of scholarship. The few voices in the silent majority are seldom even heard, much less heeded.93

IV. Between Scylla and Charybdis94: A Poor Man’s Responsa

What men need done to women so that men can have intercourse with women is done to women so that men will have intercourse.

—Andrea Dworkin

I understand a fury in your words
But not the words.

—William Shakespeare

Although some of the goals and strategies of feminist legal scholarship may be discernible, much of the literature remains virtually indecipherable to readers not already steeped in radical esoterica. To be fair at least part of the pettifoggery may be the generic nature of scholarship itself, where one would not expect to find the wisdom of Solomon95 or the skill of Shakespeare.96 But feminist legal scholarship seems to be written almost exclusively in arch academic prose: it is overwhelmingly windy and wit-less. Perhaps because it is so Serious it must be camouflaged in scholarly jargon.

A. A Profusion of Polemics

Even causes have saturation points. There is usually only so much one can write about a subject before readers become bored or glutted. But feminist legal scholarship appears to be churned out in geometrically

93. See Lasson, supra note 1, at 946–48; Daniel A. Farber, Gresham’s Law of Legal Scholarship, 3 Const. Comm. 307 (1986). See also supra note 16.

94. Men have always had a tough time holding their own with the goddesses. Circe was a beautiful sorceress who turned Odysseus’ sailors into swine. Charybdis was stricken down by Zeus and changed into a dangerous whirlpool in the Strait of Sicily. Scylla was a beautiful nymph changed into a monster by jealous Circe; terrified by her ugliness, she threw herself into the sea and became a rough rock between Italy and Sicily. She and Charybdis were greatly feared by navigators. Thus we say of a man coming between two dangers and not knowing where to flee that he is “between Scylla and Charybdis.”


96. Shakespeare had much to say about women and words. A sampling: “Do you not know I am a woman? When I think, I must speak.” (As You Like It, III, iii); “Do not play in wench-like words with that / Which is so serious.” (Cymbeline, IV, ii); “You cram these words into my ears against / The stomach of my sense.” (The Tempest, II, i).
expanding proportions, the process feeding on itself. Scholars must know
the literature, and to prove it they make painstaking reference to practically
anything previously published. In turn, each article becomes another
source to be taken into account, generating even more scholarly reaction in
the form of even more articles, comments, and book reviews.97

Every academic season seems to bring with it a new wave of feminist
scholarship about the ever-changing status of women in the workplace,
introspective arguments about what is wrong with the nuclear family, even
reviews of recent developments in feminist legal scholarship. Progress is
measured (or the lack of it bemoaned) ad nauseam.

Ultimately, polemics become part and parcel of the literature. The result
of all this is an entire body of learning that consists not of ideas, but of
words about ideas—the cats chasing their own tails.98

B. Bull-Dozing Through the Bombast

Perhaps the most self-destructive characteristic of radical feminist schol-
arship is its long-winded pretentiousness, a kind of catalytic clack that has
become a classic part of the process toward intellectual decay. In their
philosophical pursuit of answers to ultimate questions, the radfems get
mired in the multisyllabic muck of overintellectualization, lacing their ideas
with obscure cross-references and mind-numbing bombast, ultimately
turning words into meaningless twaddle. The burning bra has become a
boombox of babble. In the academy it's called the MEGO Syndrome, as in
Mine Eyes Glazeth Over.99

Here's a leading feminist scholar attempting to explain herself:

97. A goodly amount of such account taking occurs by way of footnotes, which have become
the ravenous vultures of "genuine" scholarship. Without them the accompanying text is
seen to lapse into that inferior genre called "popular writing," meritng the scholar little
more than a sneer and a likely demerit in tenure deliberations.

98. That may be an indecorous description of feminist legal scholarship, but no more so
than from a woman critic who characterizes MacKinnon's logic as "a snake pit of hissing
jargon that encircles itself and swallows its own tail." Mullarkey, supra note 16 at 722.

99. Perish the possibility that the writer himself be accused of pretentiousness; here is a
glossary that might help this paragraph explain itself:

Babble: Idle talk, senseless chatter; from Babel, a biblical city known for its
confusion of languages, now (often not capitalized) a place or scene of noise. . .
a confusion of cries, voices. . . . See "gabble."

Bombast: Inflated, pretentious language; implies grandiosity that so outruns the
thought that the attention is distracted from the matter.

Boombox: Not in the author's old Websters New Collegiate; perhaps, "a noise
machine in the form of a radio/tapedeck that serves to replace the chip on one's
shoulder."

Clack: Loud, continual, empty chatter; prattle.

Twaddle: Silly talk, gabble; see "prattle."

A more gentle literary critic might suggest that feminist legal scholarship suffers from
the "Buddenbrooks Effect." In Thomas Mann's novel Buddenbrooks, the hero is a strong,
practical man-of-affairs who accumulates a fortune; three generations later, though, his
family produces an other-worldly and ineffectual musical genius, not quite over the line
to madness.
The affirmation of the feminine may be impossible as other than the reversion to the old stereotypes. Undecidability cannot be wiped out in an appeal to knowledge if there is no ontological given to the feminine we can appeal to as our truth. We cannot know for sure, “Yes, this is definitely different. Now we are affirming Woman as other than the signifier of their desire.” But the possibility that we might be approaching a new choreography of sexual difference with every new step we take can also not be wiped out. The unexpected pleasure of the Other who remains with us, who keeps up the pace, is always a possibility. Affirmed as the feminine, the threshold might be the opening to a new alliance.\textsuperscript{100}

Is this scholarship to live by? Such near-incomprehensible exposition is slathered like sludge throughout much of feminist legal scholarship. The titles alone can be illustratively off-putting:

"Mind’s Opportunity: Birthing a Poststructuralist Feminist Jurisprudence"\textsuperscript{101}
"Feminism Historicized: Medieval Misogynist Stereotypes in Contemporary Feminist Jurisprudence"\textsuperscript{102}
"Feminism, Marxism, Method, and the State: An Agenda for Theory"\textsuperscript{103}
"The Dialectic of Rights and Politics: Perspectives From the Women’s Movement"\textsuperscript{104}
"Liberal Jurisprudence and Abstracted Visions of Human Nature: A Feminist Critique of Rawls' Theory of Justice"\textsuperscript{105}

What were once called “women’s questions” have become existential inquiries: “Do we know anything, and if we do, how do we know, and how do we know that what we know or think we know is right?” Thus the epistemology of the radical idealists results in the famous parody learned in Philosophy I: (a) nothing really exists; (b) if anything did exist it could not be known; and (c) if anything did exist and could be known, it cannot be communicated.

Ah, (c)! At least the radfems are clear about that.

To be sure changing anything by way of law review articles is problematic: even lawyers don’t read them, let alone the other movers-and-shakers. It is in just such a virtual vacuum, however, that radical feminist legal scholarship persists and flourishes, becoming ever more flighty in the pursuit of rights and trifles.

\textsuperscript{100} Drucilla Cornell, Beyond Accommodation: Ethical Feminism, Deconstruction, and the Law (New York, 1991). Or try this description of postmodernism in the \textit{Harvard Law Review}:

Postmodernism and poststructuralism are often used interchangeably, although each term has a somewhat unique genealogy. Postmodernism, originally used to describe a movement in art and architecture, has been used by Jean-Francois Lyotard and Fredric Jameson to describe the general character of the present age. For Lyotard, whose concern is primarily epistemological, the postmodern condition has resulted from the collapse of faith in the traditional “Grand Narratives” that have legitimated knowledge since the Enlightenment.


Does this mean that we have lost our faith in G—d and our confidence in ourselves? If it means that, then the message is as trite as its trappings are pretentious. If it means more, then what?

\textsuperscript{102} 75 Iowa L. Rev. 1135 (1990) (by Jeanne L. Schroeder).
\textsuperscript{103} 7 Signs 515 (1982) (by Catharine A. MacKinnon).
\textsuperscript{104} 61 N.Y.U. L. Rev. 589 (1986) (by Elizabeth M. Schneider).
Thus we are presented with everything from an exhaustive article about the sexist nature of a casebook on contracts to multitudinous autobiographia—described by MacKinnon as "the major technique of analysis, structure of organization, method of practices and theory of social change in the women's movement". This genre follows the feminist faith that men must be taught more about women, in order that men's thinking can be better informed and their attitudes made more sensitive as to how women feel about the world and the law. Such consciousness-raising is accomplished by having women write about their individual experiences. The theory seems to be that things will change for the better only if enough women go public with their hurt. Such open-heartedness, however, makes the literature more lugubrious than enlightening, the sheer mass of individual narratives nearly impossible to bulldoze through without feverishly seeking escape.

The moderate feminists are outshouted by their radical sisters' more intense and provocative prose. But at least MacKinnon's world view is relatively succinct and understandable:

Women know the world is out there. Women know the world is out there because it hits us in the face. Literally. We are raped, battered, pornographed, defined by force, by a world that begins, at least, entirely outside us. No matter what we think about it, how we try to think it out of existence or into a different shape for us to inhabit, the world remains real. Try some time. It exists independent of our will. We can tell that it is there, because no matter what we do, we can't get out of it.

Res ipsa loquitur.

106. The reference is to Frug, supra note 23, at 1094–97 (1985). The author's predictable conclusion—that the law is gender-biased—is based wholly on this piece of evidence: the majority of the buyers and sellers in the contracts casebook she examines (as well as the parties and the judges) are male. One result of this alleged bias is a vast predominance of male pronouns and pronominal adjectives—a cardinal violation of the rules in Feminist Newspeak. See supra note 6. In the cases in which women do appear, they play "womanly" roles, such as nurse and homemaker. One woman found to have broken a contract, Frug points out, was treated as greedy and fickle by the male judge. Moreover, the casebook already reflects male reasoning—abstract and analytical, organized by doctrinal categories—as opposed to taking the more feminine "problems" approach, emphasizing relational aspects. Finally, the book is branded too legalistic; that is, it stresses "neutral" principles and suppresses the ethical, social and moral issues masked by "legal reasoning" from precedent. Needless to say, such narrowly focused analyses have had very little impact on the compilation of casebooks, much less on anything else. Cf. Frug, supra note 4 and accompanying text.

107. F.U., supra note 24, at 57, 515, 519 n.2.

108. The rare feminist article written by a male is little different in its orientation. In a recent example from this can-you-believe-it? category—"Is the Maryland Director and Officer Liability Statute a Male-Oriented Ethical Model?"—the author answers "yes," because the new Maryland statute permits officers and directors to limit their liability (except in cases of overt dishonesty or receipt of inappropriate benefits) and because it does not refer to a duty of loyalty; the law is thus said to be based on a contractual model rather than a trust model that would presume the autonomy and equality of all parties and is therefore male-oriented because it is more concerned with power than it is with honesty and nurturing relationships. Paul Zwier, Is the Maryland Director and Officer Liability Statute a Male-Oriented Ethical Model? 18 U. Balt. L. Rev. 368 (1989).

109. F.U., supra note 24, at 57.

110. Latin for "Nuf said." For reasons of confidentiality, I cannot name the psychologist who (on reading the quoted passage) delivered his opinion that its author "needs cognitive therapy."
C. Humor from Hell

Feminist legal scholarship is not without humor, even if much of it is unintentional. The amusement derives largely from ironic paradox. Take, for instance, the savageness of the rhetoric used in pursuit of the transformation of values to achieve a kinder, gentler, more nurturing, caring world. Andrea Dworkin's persona in her latest opus, *Mercy*, wants to smash men's faces in, to declare war, to have the courage to kill. So much for nurturing, compassion, empathy. No such thing as "the fair sex" to Ms. Dworkin, unless the term means that the well-armed little ladies will refrain from shooting their oppressors in the backs instead of indulging in a more fairly feminine (macho?) full frontal assault.

Consider also the radical feminists' use of the academic enterprise, with all its trappings of rationality, to attack the law for its rational, neutral, and analytical aspirations; the contortionistic attempts to explain why heterosexual lovemaking is not (or should not be) fun; and criticism by feminists of the older Bluebook because the prescribed form of citing an author's first initial and last name served to suppress gender identification and deny female authors credit for their scholarship.

Most perversely humorous, perhaps, is that the articles themselves seem to be controlled by some bizarre academic imperative requiring thrice the daily recommended allowance of tortured English prose. As a Yale law professor of yesteryear was fond of saying, the best way to get a laugh out of a law review is to take a couple of drinks and then read one of these articles aloud.  

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111. Apparently this kind of sexual violence (by women against men) does not fall within the radical feminists' definition of pornography. See supra note 68 and accompanying text.

112. Bardett, *supra* note 22, at 829. But the feminist lobby appears to have won this little skirmish: for enlightenment in this regard, readers who have gotten this far are urged to see Jim Chen's reviews of the latest Bluebook (cited supra note 84).

113. Want proof? Here is more from MacKinnon:

With few exceptions, feminism applied to law has provided no critique of the state of its own, and little insight into specific legal concepts from the standpoint of women's experience of second-class citizenship. Particularly in its upper reaches, much of what has passed for feminism in law has been the attempt to get for men what little has been reserved for women or to get for some women some of the plunder that some men have previously divided (unequally) among themselves. This is not to argue that women should be excluded from the spoils of dominance on the basis of sex, exactly. Rather, it is to say that it is antithetical to what women have learned and gained, by sacrifice chosen and unchosen, through sheer hanging on by bloody fingernails, to have the equality we fought for turned into equal access to the means of exploitation, equal access to force with impunity, equal access to sex with the less powerful, equal access to privilege of irrelevance.

As male academics have been able to afford to talk in ways that mean nothing, so also women; as male pornographers have been permitted to subordinate women sexually through pictures and words, so also women. In the words of Andrea Dworkin, if this is feminism, it deserves to die. . . . I think the fatal error of the legal arm of feminism has been its failure to understand that the mainspring of sex inequality is misogyny and the mainspring of misogyny is sexual sadism. The misogyny of liberal legalism included. In fact, it is the woman who has not been sexually abused who deviates.

F.U. at 4-5.

V. Descending from the Etherworld: Some Humble Suggestions

Women govern us; let us try to make them more perfect.
—Richard Sheridan
(Irish playwright, 1751–1816)

It is only the nature of their education that puts a woman at such disadvantage, and keeps up the notion that they are our inferiors in ability. The best sources of knowledge are shut off from them, and the surprise is that they manage to keep so abreast of us as they do.
—Joseph Story
(Supreme Court Justice, 1811–45)

Justice Story notwithstanding, if radical feminist legal scholars feel the need to continue pressing their causes in law reviews, they would do well to follow a few simple precepts of persuasive writing. They should not explain all of their thought processes in such excessively detailed free-falls of free association; readers of neither sex are likely to be riveted by abstract personal narratives of women whom they do not know from Eve. They should avoid rash generalizations about men, if for no other reason than that men should be at least a major part of their intended audience. Accordingly, they should not make or agree with suggestions that women stifle their femininity. They should seek to persuade with clarity and concision, telling men why a certain type of new order (not one in which women smash men’s faces in) will be good for them as well. In sum, the old saw is still pertinent: more can be won with honey than with vinegar.

A healthy sense of humor would also be helpful. As sinners, after all, male and female were created alike. Let us all celebrate our similarities as well as our differences. Most men, like Mr. Justice Story, admire women and want to understand them. We have come a long way since Mr. Justice Holmes, who once put it this way:

The brain women never interest us like the heart women; white roses please less than red.115

For their part, men (especially male academics) must reaffirm their commitment to equality of choice and opportunity for women, while at the same time overcoming the apathy (or chauvinism, or chivalry, or chagrin, or whatever it is) that causes them to avoid confronting radical feminist effronteries to the intellect. They should meet illogical arguments with the voice of reason; they should scorn the absurd; they should recognize and resent bullying that masquerades as scholarship.

In a nutshell, the attention of reasonable men and women everywhere must be earned—and can be, if the case is made with more measured moderation and less hysterical rhetoric—with more good writing, instead of writing that is impossible to understand, and with more good ideas, instead of ideas that are impossible to implement.

115. The New Dictionary of Thoughts, supra note 80, at 737.
As the next generation of enlightened sisters might well have already begun to advise the current feminist legal scholars: Lighten up. Let us understand you. *Get a life.*

116. This expression, as explained to the author by his teenage daughter (who fancies herself a feminist), means "stop saying stupid things, get off your tushy and do something with yourself." (In all fairness it should be explained that she had just uttered "Get a life" to her younger brothers, both of whom, it is already obvious, are destined to become men.)