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# A Feminist Revisit to the First-Year Curriculum

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This article describes a seminar that I devised and have been teaching at Chicago-Kent. Fifteen students, having got through their first year of law school, gather with me to revisit the six subjects of that year: Civil Procedure, Contracts, Criminal Law, Justice and the Legal System, Property, and Torts. This time we pay primary attention to feminist concerns embedded in this curriculum. Although the students' research papers address feminism generally, our class discussion and readings focus on the first-year curriculum, seen both as a fixture of American legal education and as a shared immersion here at one school.

Colleagues occasionally ask me about the genesis of the seminar, whose seldom-spoken full name is A Feminist Revisit to the First-Year Curriculum. I attribute some paternal influence to the constitutional scholar Charles Black,[1] who in my student days taught an elective called Constitutional Law Revisited. In his course description posted in the hallway, Black assured his prospective students that he would make no effort to avoid chestnuts such as *Marbury*. "On the contrary," he wrote; and even though I never revisited the Constitution with Charles Black, I was instructed—then and there in the corridor—by his course title with its short, cheerful rationale.

Law school curricula in the United States are full of revisits. In separate individual courses and throughout the years of legal education, law professors harp and repeat. The educational benefits of such revisits, about which Black was so candid, are indisputable. As a pedagogical device redundancy can light up a lesson, as anyone who has ever used a blackboard or transparencies to repeat a point expressed orally can attest. Common ground emerges when

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1. For another tribute in this journal to the inspiration that Charles Black provided unknowingly, see Samuel W. Calhoun, Impartiality in the Classroom: A Personal Account of a Struggle to Be Evenhanded in Teaching About Abortion, 45 J. Legal Educ. 99, 99 (1995). Calhoun wrote that he was consoled by Black's Reflections on Teaching and Working in Constitutional Law, 66 Or. L. Rev. 1, 16 (1987), where Black acknowledged that he had not found his true vocation until he was past 40.

students hear the same concept in different classrooms: a student accepts the importance of causation, negligence, procedure-versus-substance distinctions, mental states, legislative history, and other staples of the curriculum because of their ubiquitousness. Redundancy is integral to legal education, not least because it distinguishes what is central from what is marginal.[2]

Black's course title, then, invites law teachers to make their own selection. What in the curriculum warrants the honor of a revisit? In this essay I have nominated the entire first-year curriculum. That year has other admirers: to many who teach there, the first year of law school is an almost sacred institution. Law professors tend to recall fondly their own first contact with the curriculum. In their role as administrative planners, they cram the first year with much of what they want students to take away from law school, sometimes generating the complaint that the upper-level curriculum is empty. Curricular reform efforts are often fixated on this first year, and proposals to change the upper-level curriculum have referred to the energy and momentum lost by the end of the crucial first year.[3]

My own revisit to the first-year curriculum uses feminism as a unifying and altering perspective on that tradition. I mean to give equal weight to both feminism and the domain of the first year of study—its constituent parts and the sum of the six courses examined. Both tribute and critique, the Feminist Revisit seminar makes comments on various fixtures taken for granted in the first-year curriculum, such as the canonical presentation of a sequence of courses and the formalist core-and-penumbra structure of doctrine within these courses.

The course also serves as an upper-level elective on feminism, often the only one offered in the semester at Chicago-Kent, and so I have joined a growing number of instructors who must consider the unique pedagogical demands of this subject. Like our predecessors who built courses on mid-twentieth-century jurisprudence and, later, on poverty law and environmental regulation, we who teach feminism must improvise at the edge of consensus about what belongs in the law school curriculum. From this vantage point we get a unique look at the whole of legal education, and often a new set of questions. Teaching feminism tends particularly to provoke thoughts about race, hierarchy, student life, and law school governance—connections that may be tangential or central to legal feminism. Feminist Revisit, a specialized way to teach legal feminism, does not escape these concerns, some of which I touch on below.

My description of the seminar in this essay is a succession of recurring choices and dilemmas. I begin by describing its design, with my provisional answers to the recurring questions—What is important? What shall we read?—

2. See Randy E. Barnett, The Virtues of Redundancy in Legal Thought, 38 Clev. St. L. Rev. 153 (1990).

3. See Frank J. Macchiarola, Teaching in Law School: What Are We Doing and What More Has to Be Done? 71 U. Det. Mercy L. Rev. 531, 534–35 (1995); Kristine Strachan, Curricular Reform in the Second and Third Years: Structure, Progression, and Integration, 39 J. Legal Educ. 523 (1989).

that accompany all of law teaching. New tradeoffs then arise. When I devised the seminar, the most fundamental question facing me was whether to teach instead a seminar on feminist legal theory, a freer exercise that would omit direct reference to the first-year curriculum. The last part of the essay moves away from the first-year curriculum and muses more generally about teaching this lively perspective on the law; I focus on the challenge of quality control. Feminist electives have been available in U.S. law schools for a generation. Once a radical novelty, the law school course on feminism now enjoys official acceptance. Obligations accompany this maturity: now that instructors are free to teach feminism, what steps can we take to do it well?

## The Seminar

Feminist Revisit follows Chicago-Kent's seminar rules (which will undoubtedly look familiar to readers who teach at other schools): two credits and once-weekly meetings, each two hours long, scheduled over a fourteen-week semester. Like all seminars at Chicago-Kent, this one is not populated entirely by devout fans of its content or its instructor, because all students must complete either a seminar or an equivalent independent research project after their second year of study, and a handful of them find Feminist Revisit simply the least of evils. Chicago-Kent also requires a research paper in each seminar, as part of a course of study that includes legal writing in all three years of the curriculum.[4] The students and I thus begin with constraints decreed by the institution. An additional constraint comes from the derivative nature of the class: we must attend to six particular substantive courses. I have not found these limits oppressive. As I elaborate below, they may be salutary when one teaches feminism.

Readings for Feminist Revisit are divided into two parts. The first half (Part 1) addresses doctrinal topics regarded as "women's issues"—that is, legal problems that may fall within the limits of Civil Procedure, Contracts, Criminal Law, Justice and the Legal System, Property, and Torts, but are nonetheless treated as peripheral. I sometimes refer to this material as the omitted curriculum.[5] Not all of it is in fact omitted: a few of my colleagues who teach Contracts, for instance, spend time discussing agreements to bear a child on behalf of an infertile couple. But most of Part 1 presents topics that the students have not yet encountered in class. Among the recurrent examples that I cover are seduction, or sexual fraud, as a tort; prenuptial agreements and other contracts regarding marital property; gender issues that arise in the dissolution of marital assets; intramarital crime (including marital rape, domestic violence, and battered women's syndrome as a defense to homicide); exclusion of jurors on the basis of sex; and statutes of limitation that disadvantage female plaintiffs who seek redress for childhood sexual abuse.

4. George D. Gopen, The State of Legal Writing: Res Ipsa Loquitur, 86 Mich. L. Rev. 333, 357–58 (1987).

5. Marjorie Maguire Shultz makes related points in The Gendered Curriculum: Of Contracts and Careers, 77 Iowa L. Rev. 55 (1991).

The second half of the seminar uses as a starting point the "different voice" thesis associated with Carol Gilligan.[6] We ask what first-year doctrine would look like if it were to emphasize care and connectedness, in addition to justice envisioned as an individual right. Like many feminists I have deep reservations about the notion of a uniquely feminine outlook on law, and so I try to construe Gilligan narrowly: in the seminar we do not assume that all or even most women have certain personality traits. Instead the different voice becomes an alternative aspect, not reliably linked to gender, that might now be inadequately assimilated into American law.

We begin Part 2 by devoting one of our weekly meetings to discussion of the different voice. Because this concept has been misconstrued by writers who want to exaggerate gender difference, I direct students to Gilligan's careful texts, both *In a Different Voice* and her chapter from a book on women and moral theory.[7] For background I spend about a half hour on the debate among biologists, psychologists, and others on the extent to which gender-related differences between females and males are innate. Throughout this lesson I urge students to be careful and parsimonious as they draw their conclusions. On the one hand I need to remind them that generalizations about the male-female gender dichotomy are easy to assert, hard to prove, and politically advantageous to those who profit from division and segregation.[8] On the other hand the seminar has thus far identified itself with liberal feminism—women-as-citizens, who are sometimes denied equality and parity with men—and any law school course with a title like ours ought to consider the provocations of "difference" feminism.

Apart from my belief that liberal feminism is a rich and nearly complete way to advance the status of women, I have a second challenge in teaching the different voice: its elusiveness. Gilligan's anecdotes and examples, about stealing from drugstores and the like (which may not prove her point, even if they are given credence[9]) have always struck me as flimsy. Her postulates are engaging, but they demand more detail. In class, then, I want to present different-voice feminism using illustrations from case law: Here's a woman whose story you can read in the case reports, and she seems different depending on whether you look at her from a liberal-feminist or a cultural-feminist perspective.

This woman is hard to find. For a different-voice case Katharine T. Bartlett offers *In re Lamb*,[10] where the California Supreme Court upheld the disbar-

6. In a Different Voice: Psychological Theory and Women's Development (Cambridge, Mass., 1982).

7. Moral Orientation and Moral Development, *in* Women and Moral Theory, eds. Eva Feder Kittay & Diana T. Meyers, 19 (Totowa, 1987).

8. See Carol Tavris, The Mismeasure of Woman 24 (New York, 1992); Katha Pollitt, Why Boys Don't Play with Dolls, N.Y. Times, Oct. 8, 1995, § 6 (Magazine), at 46.

9. See John M. Broughton, Women's Rationality and Men's Virtues: A Critique of Gender Dualism in Gilligan's Theory of Moral Development, 50 Soc. Res. 597 (1983).

10. 776 P.2d 765 (Cal. 1989).

ment of a woman named Laura Lamb for taking the bar exam in the name of her husband Morgan.[11] Morgan had become despondent and violent after failing the Texas and California bar exams; and so Laura made the unhappy decision to cheat for him. Seven months pregnant, disguised as Morgan, seriously ill with ketoacidosis and other acute complications of diabetes, Laura Lamb scored ninth highest among those who took the exam that day in California.[12] The case is unusual in the annals of professional misconduct: nobody doubted that Laura Lamb was driven to fraud by her strained marriage, her difficult pregnancy, her husband's rages, and her longing for a quiet home life—not the usual venality, carelessness, substance abuse, or mental incapacitation.

I try to pose the connection thesis in different ways. First I invoke Laura as feminine altruist, forfeiting her profession to stand by her impossible man. Students are skeptical. Next Laura and Morgan intertwined, with Laura miserable over her husband's disgrace to a depth that Morgan never would have known if their career experiences had been switched (would a husband ever pose as his wife so that she, undeserving, could sneak into a learned profession?); finally the Lambs' marriage, disastrous because it had the misfortune to defy a gender-pattern, pressing on Laura until she felt something like compulsion. Like Bartlett I think *Lamb* makes a pretty good different-voice case: Laura's gender seems pivotal to the story, in a psychological or attitudinal sense. The case appeals to the students. Liberal feminists get a chance to point out that prior California disciplinary decisions, cited in the *Lamb* dissent, had treated male lawyers more gently than Laura for deeds that look worse: cheating clients, selling drugs, suborning perjury, and soliciting a thug to maim a former client.[13] Other students, frustrated to see *Lamb* disposed of by simple recitation of California precedent, ask for a second case where adherence to cultural feminism ought clearly to change the outcome. I haven't found one, perhaps because the contextual inquiries of different-voice reasoning do not lend themselves to certain outcomes.

For an alternative approach to the same problem within the criminal law, I invoke Leona Helmsley, who both embraced and rejected the burden of Gilligan's ethic of care. I ask students to assume, as I do, that the punishment meted out to Helmsley for relatively minor tax evasion was harsher than usual for this crime.[14] Here Leona Helmsley becomes a character on our stage, and students consider her in light of the Gilligan ideal. Her crime in a sense was one of connectedness, with Helmsley's identity immersed in her beloved enterprise. In her mind the line between her hotels and her self may indeed have been erased, with improper tax deductions for personal expenses a

11. Gender and Law: Theory, Doctrine, Commentary 648 (Boston, 1993).

12. *Lamb*, 776 P.2d at 766 n.2.

13. *Id.* at 774 (Kaufman, J., dissenting).

14. In United States v. Helmsley, 941 F.2d 71 (2d Cir. 1991), an appellate panel affirmed all of Helmsley's convictions but remanded for a more lenient sentence. Helmsley eventually served 18 months, spending some of this time in comfortable quarters, and paid $8 million in fines and restitution. See The Forbes Four Hundred, Forbes, Oct. 16, 1995, at 135.

natural result. Like Laura Lamb, Helmsley suffered for the sake of her husband, who I think would not have escaped prosecution without her. We then switch to a more familiar character, the Queen of Mean, the martinet who believed that "only the little people pay taxes" (a remark she plausibly denied having made), an antithesis of care and connection.[15] Was Leona made to pay because of her indecorous contempt for the feminine role? She has said so.[16] Images of a different voice may have harmed her twice (or at least a liberal feminist would think she was harmed) in that they first caused her to take the rap for Harry and later punished her for noncompliance with a stereotype.

As we move on to consider the different voice in areas of the first-year curriculum, I continue to present this issue using case law and specific examples. Often this presentation leads me to exploit cases for nondoctrinal purposes, much as I rewrite Leona Helmsley into parables about gender and culture rather than see her as The Defendant in a tax prosecution. With this approach I am following a lead of Mary Joe Frug, who appropriated *Allied Van Lines, Inc. v. Bratton*[17] to make points about gender never intended by Mrs. Bratton, her lawyer, or the judicial author of the opinion.[18] In *Vokes v. Arthur Murray, Inc.*,[19] another contracts case that I sometimes use in Part 2, Audrey Vokes, who signed an unfortunate contract to buy thousands of hours of dance lessons, emerges in free brush strokes painted by Robert W. Gordon.[20] This postmodernist exercise sometimes makes students uneasy. No litigant in Feminist Revisit case law ever asked to be judged by the standard of a different voice; and so a few students object to what they see as a violation, or second victimization.

When I am in luck, another student will counter that old-fashioned doctrine exploits individuals' lives in an similarly nonliteral and nonconsensual fashion. One unique human being metamorphoses into, say, "the prosecutrix" or "the respondent"; her ambivalence into "laches" or failure to make a "prompt complaint"; her baby into a "nonfungible good." And our tropes and metaphors join a first-year curriculum tradition replete with peppercorns, eggshell skulls, hairy hands, long arms, unborn widows, bundles of sticks, and Mary Carter agreements. Our tactics in the seminar are closer to business-as-usual than they first seem. Looking for the different voice in contracts, property, criminal law and torts cases can freshen the students' perspective on the common law method.

15. See Gail Collins, Women in Power Who Give Women a Bad Name, Redbook, Oct. 1995, at 100; Ex-Inmates Say Helmsley Played Queen in Prison, Orlando Sentinel, Jan. 29, 1994, at A2.

16. See Glenn Plaskin, Playboy Interview: Leona Helmsley, Playboy, Nov. 1990, at 65.

17. 351 So. 2d 344 (Fla. 1977).

18. See Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook, 34 Am. U. L. Rev. 1065, 1125–34 (1985).

19. 212 So. 2d 906 (Fla. Dist. Ct. App. 1968).

20. See Unfreezing Legal Reality: Critical Approaches to Law, 15 Fla. St. U. L. Rev. 195 (1987); for elaboration see Dale A. Nance, Law and Justice: Cases and Readings on the American Legal System 360 (Durham, 1994).

New looks at case law, however, occupy only a minority of Part 2 readings; most readings come from the academy. We revisit contract law via the work of Stewart Macaulay and Ian Macneil, who have argued for a relational perspective on the subject.[21] Feminist scholars such as Mary Joe Frug, Elizabeth Mensch, and the student-professor team of Patricia A. Tidwell and Peter Linzer have extended relational contract theory by pointing out its similarities to the ethic of care.[22] Carrie Menkel-Meadow, expounding on a women's lawyering process, suggests a feminist approach to civil procedure nicely augmented by Judith Resnik on gender issues in federal jurisdiction.[23] Carol Rose combines game theory and feminism to outline her thoughts on women and property, to which I sometimes add Margaret Jane Radin on quasi-inalienable personal property or residential rent control.[24] Leslie Bender has an ambitious feminist theory of accident law that applies the ethic of care to a range of tort topics: negligence, strict liability, and the measure of damages.[25] Finally, we cover our unique Justice and the Legal System first-year course with an article by Karen Busby on gender bias in analytic legal philosophy.[26]

To these readings that we discuss in class I add a two-part writing requirement. The students' major project is an original research paper on a topic related to women and the law. Students choose their own topics after meeting individually with me. I prefer, but do not absolutely require, that the paper relate to an area within the first-year curriculum: among the occasional exceptions have been a paper on gender bias in vocational high school education and one on Title VII sexual harassment. Almost always, however, the first-year curriculum pertains to the students' theses. Their second writing requirement, called Reactions, is a one-page assessment of the readings for each class meeting, where the student reflects on the assignment and suggests some questions to be raised in class. Students must write Reactions for four of the twelve classes where readings are assigned.[27]

21. Macaulay, An Empirical View of Contract, 1985 Wis. L. Rev. 465; Macneil, The New Social Contract: An Inquiry into Modern Contractual Relations (New Haven, 1980).

22. See Frug, *supra* note 18; Tidwell & Linzer, The Flesh-Colored Band Aid: Contracts, Feminism, Dialogue, and Norms, 28 Hous. L. Rev. 791 (1991).

23. Menkel-Meadow, Portia in a Different Voice: Speculations on a Women's Lawyering Process, 1 Berkeley Women's L.J. 39 (1985); Resnik, "Naturally" Without Gender: Women, Jurisdiction, and the Federal Courts, 66 N.Y.U. L. Rev. 1682 (1991).

24. Rose, Women and Property: Gaining and Losing Ground, 78 Va. L. Rev. 421 (1992); Radin, Market-Inalienability, 100 Harv. L. Rev. 1849 (1987); Residential Rent Control, 15 Phil. & Pub. Aff. 350 (1986).

25. A Lawyer's Primer on Feminist Theory and Tort, 38 J. Legal Educ. 3 (1988); Changing the Values in Tort Law, 25 Tulsa L.J. 759 (1990).

26. The Maleness of Legal Language, 18 Manitoba L.J. 191 (1989).

27. Out of the fourteen scheduled meetings, I cancel one in the middle and hold private conferences with the students instead; another class is a writing lab where I teach diction, grammar, and other elements of expository writing.

**Feminist Revisit and Feminist Jurisprudence**

Courses called Feminist Legal Theory,[28] Feminist Jurisprudence,[29] Sex Discrimination,[30] Social Policy and Feminist Legal Thought,[31] and Women and the Law,[32] among many variations on this theme, have enriched the American legal curriculum for decades: a handful of them were around even in the 1960s, when Ruth Bader Ginsburg was teaching at Rutgers.[33] Casebooks on the subject have achieved renown,[34] and my rough count indicates that about 150 full-time law school teachers offer an elective on some approximation of Women and the Law.[35]

Soon after elective courses about women/feminism/sex discrimination began to flourish, scholars and teachers started to use feminist theory as a method to inform the study of more familiar subjects in the curriculum. Today the teacher or writer interested in feminist issues embedded in almost any traditional law school subject—contracts, torts, constitutional law, evidence, property, criminal law, income tax, international law, trusts and estates, clinical teaching, labor law, corporate law—can explore an ample literature. The growth of feminism-plus-doctrine in addition to feminist legal theory suggests a cogent curricular pattern for law teachers who combine legal feminism with a traditional doctrinal specialty. They can teach the feminist jurisprudence elective from time to time, and flavor the rest of their courses with a bit of perspective.[36]

Feminist Revisit reflects a different choice. I favor the flavor, as it were, and add feminism as a perspective when I teach Torts, Products Liability, Jurispru-

28. Katharine T. Bartlett, Feminist Legal Methods, 103 Harv. L. Rev. 829, 829 n.* (1990); Patricia A. Cain, Teaching Feminist Legal Theory at Texas: Listening to Difference and Exploring Connections, 38 J. Legal. Educ. 165, 165 (1988).

29. Morrison Torrey et al., Teaching Law in a Feminist Manner: A Commentary from Experience, 13 Harv. Women's L.J. 87 (1990).

30. Ann E. Freedman, Feminist Legal Method in Action: Challenging Racism, Sexism and Homophobia in Law School, 24 Ga. L. Rev. 849, 852 (1990).

31. Cheryl B. Preston, Joining Traditional Values and Feminist Legal Scholarship, 43 J. Legal Educ. 511, 515 (1993).

32. James J. White, Letter to Judge Harry Edwards, 91 Mich. L. Rev. 2177, 2182 n.1 (1993) (reciting Michigan elective curriculum).

33. Ginsburg, Treatment of Women by the Law: Awakening Consciousness in the Law Schools, 5 Val. U. L. Rev. 480, 480–81 (1971).

34. See Bartlett, *supra* note 11; Mary Becker et al., Feminist Jurisprudence: Taking Women Seriously (St. Paul, 1994); Mary Joe Frug, Women and the Law (Westbury, 1992) (published posthumously).

35. This count comes from the AALS Directory of Law Teachers, which uses Women and the Law as an umbrella designation covering gender, feminism, and sex discrimination. Course titles on this subject proliferate in bewildering array; it is not clear whether, say, Women and the Law is always less "radical" than Gender and the Law.

36. I do not mean to exaggerate a gap between courses that explicitly address the condition of women and those that do not. Gender and "women's issues" are found everywhere in the curriculum. See Judith Resnik, Visible on "Women's Issues," 77 Iowa L. Rev. 41 (1991). Whenever I teach, I presume that a "perspectives" influence in the traditional curriculum conveys some of Resnik's point about pervasiveness.

dence, and Professional Responsibility; but I have decided to teach Feminist Revisit rather than a traditional elective on feminist jurisprudence. The tradeoffs of this choice may interest readers who face a similar dilemma in devising a balanced array of course offerings and in deciding how to present feminist legal theory to their students.

One great benefit of Feminist Revisit, unavailable in a feminist jurisprudence course, is a grounding in specifics outside feminism. Six extrinsic reference points keep the seminar firmly in contact with "reality"—that is, our shared manmade environment. I seldom worry about roaming too far afield. As our discussions expand through the semester, students tend to specialize in the first-year course they liked best (Criminal Law seems to be the winner here), and so they can relate feminism to another subject where they feel confident, even masterful. The first-year curriculum takes shape as a coherent whole, as students build connections among the subjects.

Our attention to the first-year curriculum unites the students and me around a shared reference point that would be unavailable in a feminist jurisprudence elective. This reference point can be a burden sometimes. When I want to discuss expectation damages versus reliance damages and *they* want to gossip about their Contracts professor, I temporarily wish for an absence of remembered details. More often, however, the students and I are grateful for the guideposts of their traditional first-year experience. The variety of the first-year curriculum also encourages us to keep moving. I would tend to overrely on torts for illustrations if I were not continually reminded to look elsewhere. (The seminar has also provided an impetus for me to become more competent in basic doctrine outside my research interests.)

That the students have all been through the first year of law school yields a related benefit: an improved presumption of legitimacy for the seminar. A few students are angry about the curricular omissions that I detail in Part 1, but nobody in Feminist Revisit has ever expressed a belief that the first-year curriculum wastes their time with trivia. Students believe that the first-year curriculum is entitled to its privileged status, and therefore Feminist Revisit, reiterating some of this curriculum, shares in this entitlement.

With our bridge to tradition in place, feminism becomes not only a perspective on the American legal system but a force that can combat student passivity and immaturity. The seminar asks them to think about the required curriculum of their most crucial year in law school. This challenge, I hope, reminds students that *somebody* designs legal education, ranking priorities and connecting innovation with continuity. Our jumping from one first-year course to another in an effort to survey the whole conveys a message about opportunity costs, especially scarce time. Asking "the woman question,"[37] we follow trails blazed by some of the most gifted theorists of the American legal academy (as well as the university) yet stay in a framework suited to the analytic talents of second- and third-year students. Ideas have consequences, or so academics like to say; and Feminist Revisit, never far from the pragmatics

37. Bartlett, *supra* note 28, at 837.

of course schedules, lesson goals, and the mediation of conflicts, describes feminist theory as a task for planners who care about legal education. A course on feminist legal theory can achieve a similar effect, of course, but in Feminist Revisit this connection to the entire curriculum is more fundamental.

In comparing the costs and benefits of Feminist Revisit versus a course on feminist legal theory, I do not mean to polarize the two approaches. Comparing the two courses leads to a collection of two-sided coins: many conditions of Feminist Revisit can be seen as both advantages and disadvantages. For example, our ties to the traditional curriculum increase the "legitimacy" of the seminar, as I've said, but they may also send a conservative message to the students: stay within bounds, don't go far, don't be radical. Another example: Feminist Revisit inherently lacks a full sense of history. A course on feminist jurisprudence can begin with antiquity and end with today's newspaper and the current Supreme Court certiorari docket; but our material, like the first-year curriculum on which it is based, resists chronological presentation. I bring in history occasionally—Married Women's Property Acts, the common law refusal to punish marital rape and spousal battery—but only in small increments. Yet a historical approach to feminist jurisprudence raises its own problems: it can create the misimpression that once the law was bad but now it has enlightened itself. Wide-breadth-shallow-depth is the side of another coin I have chosen; someone else might prefer to cover less territory in greater depth, and for that purpose feminist legal theory would work better than Feminist Revisit.

A clear disadvantage of Feminist Revisit over a feminist legal theory course lies in its commitment to a curriculum with little statutory law and (at Chicago-Kent) few references to the Constitution and no international or comparative law. Even Civil Procedure, our first-year course least associated with the common law method, is vulnerable to this problem. I feel a pang or two about what we omit: the Civil Rights Act of 1964, the Fourteenth Amendment, the 1970s crusade for an equal rights amendment to the Constitution (now too distant to be remembered by the students), the EEOC guidelines on sexual harassment, and international covenants on human rights. Certainly the absence of statutes presents first-year subject matter in a misleading light.[38] In reaction to this concern I sometimes assign a statute or portions of the Model Penal Code, but always with the sense of a tradeoff: when I use materials absent from the first-year curriculum I veer from the theme of Revisit and the common law methods of analogy, synthesis, and accretion. I compromise by permitting students to write their papers on statutory, administrative, constitutional, international or comparative law. Despite this measure, the seminar underdescribes the legal terrain amenable to feminist reinterpretation and reform.

Other feminist roads that I seldom travel include law-and-literature analyses using texts such as *Antigone* and *The Handmaid's Tale;* studies of language

38. The complaint that law school curricula overemphasize appellate opinions at the expense of statutes is a venerable one. See Alfred Zantzinger Reed, Training for the Public Profession of the Law 285 (Carnegie Found. Bull. No. 15, New York, 1921).

and epistemology; critiques of legal ethics or professional responsibility (although the *Lamb* case touches on this subject); and detailed study of the relationship between feminist legal theory and other twentieth-century jurisprudential movements, of which legal realism and critical legal studies are especially important. Yet the Feminist Revisit format does not preclude some contribution from these quarters. I find I have the time to mention them all—very briefly. The first-year-curriculum theme forfeits some opportunities, but not to any preemptive extent.

A final drawback of Feminist Revisit is psychological: students can find it distressing to return to their first year of law school. The seminar celebrates and reinforces that year, and past curricular content shapes our readings and discussion, but for many students the first year cannot be recalled without pain. Like many law teachers I have fond memories of my own first year of school, which I like to remember as wonderful. To help bridge this gap between them and me, I have added a Postscript to the readings, consisting of Stephanie M. Wildman's article about women's silence in the classroom[39] and *The Legal Education of Twenty Women,*[40] on the subtle discomforts of first-year students at Yale.[41] Often I run out of time before we can discuss these final readings, but I refer to them during the semester and encourage the students not to flinch as they recall their own first year in feminist hindsight.

### Reflections on Quality Control

When I started planning a feminist revisit to the first-year curriculum, I immersed myself in the literature on the pedagogy of feminism in law schools, which was well underway back then in 1992,[42] and has since grown. These law review articles made my seminar possible; they provided me with theory, pragmatics, and an encouraging sense of fellowship and extended community. At the risk of sounding ungrateful, however, I want to comment here on a shortcoming of this writing. Some of it implies that reader and writer alike are to be congratulated for superior enlightenment, and the literature tends to ignore the possibility that feminism might be taught badly in law schools.

Law school courses on feminism may tend inherently to escape tough scrutiny and to deflect unwelcome criticism. Colleagues are usually not equipped to judge the readings or pedagogy used in the course. Victim-consciousness makes it easy for instructors to turn complaints back (often with

39. The Question of Silence: Techniques to Ensure Full Class Participation, 38 J. Legal Educ. 147 (1988).

40. Catherine Weiss & Louise Melling, The Legal Education of Twenty Women, 40 Stan. L. Rev. 1299 (1988).

41. One of my students read ahead to the Postscript and decided early in the semester to write her research paper expanding the empirical findings of *The Legal Education of Twenty Women.* She devised a questionnaire similar to the one used in the Weiss & Melling article, this time looking for differences in attitudes between women students who had attended single-sex colleges and those who had attended coed colleges. After completing her paper, she expanded her research design to study women students attending other Chicago law schools.

42. See Paul M. George & Susan McGlamery, Women and Legal Scholarship: A Bibliography, 77 Iowa L. Rev. 87, 87–100 (1991).

justification) on the critic who expresses them. Legal feminism has no canon of what must be taught—indeed, it has had plenty to say against the idea of a law school canon[43]—and so its adherents can insulate themselves from criticism about omissions. While in some law schools it may take bravery for an instructor to identify herself as a feminist and offer an elective on gender and the law, more commonly such a choice does not jeopardize a career but rather creates the danger that one will teach without effective feedback.

Although I am concerned that law school courses on feminism may be critic-proof to the point that the courses suffer, I do not mean to recommend the unquestioning absorption of negative comments from students, colleagues, administrators, or friends. It may be worth repeating that sexism still flourishes. So does reactionary thinking. New approaches to the law school curriculum still threaten some faculty who interpret innovations as personal attacks. Critical perspectives on the law still bear a burden of proof, an obligation to refute student skepticism, that does not weigh on noncritical perspectives. External criticism, then, is likely to be no more helpful than self-triumph to those instructors who seek to improve their teaching of legal feminism. Here I propose a third way: self-questioning. I enumerate below some of the pitfalls that I consider when evaluating Feminist Revisit each year, which I believe are pertinent to other law school courses on feminism.

### *Ethnocentrism*

Volumes have been written about the white and upper-middle-class biases embedded in mainstream academic feminism. This concern is important to teachers as well as theorists, especially when the teachers and the majority of their students are white. In this typical setting, the instructor will usually not be charged with prejudice if she ignores race in her teaching of feminism; yet this ethnocentrism will almost certainly be present in her classroom. I think of ethnocentrism as ineradicable. My own enrollments in Feminist Revisit have run about fifteen percent African-American, high when seen as a Chicago-Kent percentage but in reality just a handful of black women, called on continually to do extra educative work, despite my attempts not to tolerate the exploitation of these students for their "voice."[44]

What to do? Is black feminism different from white feminism, and can an instructor of any color transcend, or perhaps deliberately teach, the subject of race in American law? Having known only seminar-size enrollments in Feminist Revisit, I am unable to theorize about black feminists and white feminists in the classroom, but I notice that my white students seem to house their feminism in a relatively rigid container, while their African-American classmates mingle feminism with attention to other socially created dividers, including economic status and family membership. Often committed to a larger project of liberation, African-American students in my seminar have little

43. See, e.g., Frances Lee Ansley, Race and the Core Curriculum in Legal Education, 79 Cal. L. Rev. 1512 (1991).

44. Very few Latina or Asian-American students have enrolled in Feminist Revisit.

patience for any feminism that will not, in Kate Bartlett's phrase, "illuminate other categories of exclusion."[45] While I do not apologize for my attention to one matrix—gender—in Feminist Revisit, I try to continue the multiple-inputs theme of our revisit to six courses as I struggle with the omnipresence of ethnocentrism.

### *Accommodation of Change*

Another inquiry that I think the teacher of feminism should nurture pertains to the way she accommodates changed circumstances. No two law school classes are alike, and it may be true that courses on feminism react to these differences more profoundly than other courses do. New student enrollments yield different working conditions. Both enthusiasm and skepticism about feminism can dominate class discussions. Small changes in the level of male enrollment can make a big difference. And current events affect lesson plans: headliners like O.J. Simpson and Lorena Bobbitt, I recall, generated both enlightening and unenlightening discussions.

Accommodation of change demands vigilance. Of course, keeping current in one's field is necessary for teachers of any subject, but I think that a law school course on feminism is particularly vulnerable to becoming stale in at least three respects. First, the instructor likely has assembled some of her materials, and for this reason may feel pride of handiwork that obstructs revision. Second, the instructor receives external inputs for the course only sporadically. For my Torts, Products Liability, and Professional Responsibility courses, I can passively wait for the mail to bring casebooks, treatises, newsletters, and AALS announcements; for Feminist Revisit I must be proactive. These two points are not unique to feminism; they describe any boutique elective. My third concern about staleness, however, applies to electives that are activist or explicitly political in their focus: this kind of course can wither when its *auteur* gets discouraged about, or disengaged from, the struggle. Classroom approaches must shift to accommodate these changes in enthusiasm.

One type of change that affects the teaching of feminism in law school comes from college campuses. Increasing numbers of undergraduates receive training about diversity, multiculturalism, and sensitivity about the ethnic origin and sexuality of classmates. I have found myself inadvertently speaking buzzwords and provoking memories of a (fairly recent) freshman orientation program. Campus rape, pornography, fraternity regulation, and speech codes—as well as the question of whether "feminist" is a loathsome label—are among the many issues perceived differently by my current students than by their predecessors of a few years back. These political winds will continue to shift. It is worthwhile, I think, for the teacher of legal feminism to keep an eye on what goes on at American colleges, even if they seem remote:[46] a few minutes a week reading the *Chronicle of Higher Education* or *Lingua Franca* can pay off.

45. Bartlett, *supra* note 28, at 834.

46. This distance feels especially wide at law schools like Chicago-Kent that have little contact with an affiliated undergraduate institution.

*Women as Victims*

"Feminism shouldn't be only about avoiding responsibility," a student once remarked in my class. "Why do we always hear about protecting women? I think we should think about responsibilities and duties." This comment came at the end of Part 1 in the seminar—after I had queried whether sexual fraud should be actionable by the deceived, and suggested that women were entitled to more alimony, more protection by the criminal law, and additional theories to help them escape specific performance of surrogacy contracts. (I hadn't even got to the different-voice argument that might have made a contract voidable in *Allied Van Lines v. Bratton.)* I paused. Had I indeed been teaching "victim feminism," that plump target of so many women writers who complain about whining?[47]

Teaching feminism generates a dilemma about victims. The activist premise of such courses requires the instructor to present complaints about injustice. As we combine feminism with instruction about the American legal system, instructors necessarily focus on societal problems, and ask how the law has fostered conditions that impose detriment based on gender. Yet feminist legal theory pays heed to praxis—especially the engaged effort that results from political consciousness[48]—and requires participation. This goal of enlistment, a civilian Be All That You Can Be, conflicts with victim-consciousness, especially when the population that one seeks to engage consists mainly of sheltered and privileged young women who prefer to think of themselves as winners. Add to this mismatch a touch of American antideterminism—especially the myth that one makes it on one's own, and that those who falter should blame themselves—and feminism can get an image problem among the students.

In class I have argued that complaining is different from whining. Torts vocabulary familiar from the first-year curriculum—*trespass, plaintiff, complaint,* even *tort* itself—indicates etymologically that in the American legal tradition it is just fine for individuals to mount a law-based protest against injustice. When students accuse a litigant or scholar of whining, I sometimes ask them whether they would react so disapprovingly if the complaint were based on a condition other than gender. What bothers them about feminist complaining? Students' responses are often thoughtful and revealing. Sometimes they think that the importance of a problem has been exaggerated. Sometimes they worry about the overprotection and paternalism that are inherent in relying on legal shelter for vulnerable women.[49] Sometimes they compare our protagonists unfavorably with women they have known who coped better with equally demanding stresses. As these discussions get going, other students often

47. See Christina Hoff Sommers, Who Stole Feminism? How Women Have Betrayed Women (New York, 1994); Camille Paglia, Vamps and Tramps: New Essays (New York, 1994); Katie Roiphe, The Morning After: Sex, Fear, and Feminism on Campus (Boston, 1993).

48. See Catharine A. MacKinnon, Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence, 8 Signs 635 (1983).

49. For exploration of these concerns, see Jane E. Larson, Introduction: Third Wave—Can Feminists Use the Law to Effect Social Change in the 1990s? 87 Nw. U. L. Rev. 1252 (1993).

defend the criticized litigant or theorist, thereby helping us to focus on what makes a complaint compelling—an inquiry that is integral to learning how to build a lawyerly argument.

All that said, however, I think that the question of responsibility warrants class time in a course on feminism. The ethic of care, when misused, can slide into a lazy ethical relativism, where none can judge and where "context," never fully revealed to us onlookers, is always available to excuse. I have tried to press my students more on the question of where they believe feminists ought to be more tough-minded. The strain of self-help rhetoric in African-American writing may provide a useful parallel, although I happen to dislike most of what I read about bootstraps; my predilections aside, any instructor must deal carefully with analogies between race and gender (and the notion that race means black while gender means women).

### *Men Students*

Law school courses on feminism give men a chance to experience the conditions that go with gendered minority status: self-consciousness about their bodies; the possibility that they will be stereotyped, scapegoated, or misunderstood because of a genotype that they did not choose; and a course presentation that does not treat their gender as the universal human norm. This opportunity can be extraordinarily valuable to men especially if, like most male law students, they are white. Few sign up for the chance, in my experience. The percentage of male students in the seminar has been growing slowly, but the first two times I offered Feminist Revisit we had a 14:1 female/male ratio.

The gender dynamic among students deserves attention. Especially when enrollments are small enough for students to know that they are distinct individuals in the eyes of the instructor, it is safe and effective to prod them into noticing the function of gender in class. Many students, for instance, are familiar with the popular work of Deborah Tannen, whose bestsellers describe the effects of gender in day-to-day language,[50] and a feminism course makes a natural setting for continuing these observations. The instructor should react to what she sees. Consistent with my commitment to liberal feminism I strive to treat men and women equally in my classes; a different-voice feminist might use a contrary approach to connect theory and pedagogy.[51] Another way to learn from the gender dynamic in one's feminism classes is to invite an outsider to the class (to give a guest lecture perhaps) and later ask the visitor how gender seemed to function in the room.

50. Talking from 9 to 5 (New York, 1994); You Just Don't Understand: Women and Men in Conversation (New York, 1990); That's Not What I Meant! How Conversational Style Makes or Breaks Your Relations with Others (New York, 1986).

51. On "equal treatment" versus "equitable treatment" see Carrie Menkel-Meadow, Feminist Legal Theory, Critical Legal Studies, and Legal Education or "The Fem-Crits Go to Law School," 38 J. Legal Educ. 61 (1988).

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All overview elective courses, including courses on women or on feminism, present law teachers with the chance to assert their own priorities. The theme of repetition in Feminist Revisit doubles this chance. Whether instructors choose to teach a now-traditional elective on feminist jurisprudence or an alternative like Feminist Revisit, the classroom occasion is a solemn opportunity. Law teachers must think about what in the curriculum needs feminist reinforcement; whether their goals are well founded and attainable; which omissions in the standard curriculum carry hidden gender messages and thus warrant mention; and how to respect feminism's ideals of justice while teaching a diverse and unequally situated group of students.

Toward these ends, feminist teachers can benefit from descriptions of feminist knowledge. I have argued that we must work to know whether we are teaching effectively. Feminist Revisit offers a retrospective and a judgment on the first-year curriculum—an institution that law teachers at least accept, and often help to construct. Elective courses on legal feminism, which similarly blend the old and new, also demand a retrospective and judgment by those who teach them.

When they look back and evaluate, law teachers participate in an eclectic feminist tradition. Just as activists use "the master's tools"[52] to advance reform while staying alert to the flaws of these tools, instructors create change when they reexamine tradition. This process leads to the construction of new kinds of knowledge. Feminist theorists, as Kate Bartlett has elaborated in *Feminist Legal Methods,* have absorbed the insights of postmodernism, without becoming submerged under its despair. They have written about different vantage points and yet remain hopeful that human beings of good will can cooperate even though they stand in different places.[53] I offer Feminist Revisit in this spirit. My students and I find new terrain there whenever we return.

52. Audre Lorde, The Master's Tools Will Never Dismantle the Master's House, *in* Sister Outsider: Essays and Speeches 110 (Freedom, Cal., 1984).

53. See Bartlett, *supra* note 28, at 867–80.