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Feminist Jurisprudence

Catherine Wright

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Feminist Jurisprudence

Patricia Smith, ed.

New York: Oxford University Press, 1993,
628 pp.

Reviewed by Catherine Wright[†]

Feminist legal scholars have recognized the exclusion of feminine voices in our legal system, and our concepts of equality, justice, and rights. In particular, feminist scholars have challenged the assumptions of objectivity and neutrality that are ostensibly the foundation of our legal system.

Feminist Jurisprudence is a collection of these excluded voices initially brought together for a course in feminist legal theory. Editor Patricia Smith selected twenty-five previously published articles from such feminist legal scholars as Andrea Dworkin, Frances Olsen, Catharine MacKinnon, Martha Minow, and Deborah Rhode.

In the introduction, Smith defines feminist jurisprudence as the "analysis and critique of law as a patriarchal institution."¹ The rejection of patriarchy defines feminism. There is, however, no clear method by which to achieve this purpose. The result is a diversity of views within feminism. The presentation of the liberal, radical, Marxist, socialist, postmodern, and relational feminist perspectives is thus helpful when seeking to understand some of these views, although Smith warns that "nearly all feminists are too eclectic to fit neatly into any one category."²

The articles cover six main traditional, philosophical subjects typically found in general jurisprudence texts such as: equality, justice and harm, adjudication, freedom, human dignity, and legal theory. Each section has its own introduction and provides background analysis of the subject area. Smith compensates for the exclusion of the issues of "rights" and "punishment" by including suggested readings in her bibliography. This bibliography also con-

[†] B.A. (Toronto), LL. B. anticipated 1995 (Dalhousie).

¹ P. Smith, ed., *Feminist Jurisprudence* (New York: Oxford University Press, 1993) at 3.

² *Supra* note 1 at 9.

tains further readings on the subjects covered in the book as well as general reference materials.

While each article raises questions about traditional legal assumptions and analysis, the selection and placement of the articles also serves as a learning experience for the reader by illuminating the history and scope of the debate. Smith provides a selection of more general articles along with detailed discussions of particular approaches. The inclusion of summary articles, such as Christine A. Littleton's "Reconstructing Sexual Equality," give the reader perspective on the development of an issue or case law.

The juxtaposition of contrary viewpoints highlights the differences in perspective or approach within the feminist community. An example of this is the pairing of Robin West's "Jurisprudence and Gender" with Joan C. Williams' "Deconstructing Gender." West suggests that our legal and political system needs to develop the "value of intimacy" and that feminism should use women's experiences to express the need for a community, including a judiciary, that incorporates "nurturant, caring, loving, empathic values."³ Williams rejects this approach, instead attributing the economic marginalization of women to this "feminism of difference," and argues that inequality is the inevitable result of a perspective which celebrates difference. She attempts to deconstruct gender by disassociating gender roles from biological sex differences, thereby allowing for reforms in areas like childcare which will not backfire and keep women marginalized.⁴

The inclusion of articles focussed on a particular law allows for a concentrated critique of some of the more sexist areas of law and shows how feminist scholarship can help to transform specific laws. The section on "Justice and Harm" contains articles on rape, spousal abuse, and sexual harassment which examine the recognition of the "new" interests women have in their personal integrity.

Problems within the feminist debate are raised throughout. In the section entitled "Freedom: Restriction, Regulation, and Reproductive Autonomy," the articles deal mostly with concerns and controversies surrounding reproductive control. However, Laurie Nsiah-Jefferson's chapter entitled, "Reproductive Laws, Women of Colour, and Low-Income Women," indicates a key problem in feminist debate: How can legal challenges accommodate the

³ R. West, "Jurisprudence and Gender" in P. Smith, ed., *supra* note 1, 493 at 525.

⁴ J. C. Williams, "Deconstructing Gender" in P. Smith, ed., *supra* note 1, 531.

various interests where the solution for one group of women may have negative political and social affects on another group?

This collection provides much scope for class discussion and its arrangement may provide further insight into the development of various feminist perspectives. However, the section introductions are generally cursory and do not discuss the reasons for Smith's inclusion of the articles found in that section. This leaves the reader who is new to this field, and outside a classroom setting, without an indication of the special contribution some of the chapters make to legal scholarship in general, and to feminist jurisprudence in particular. A notable example of this is Susan Estrich's piece entitled "Rape." In this article the author's own experience as a rape victim personalizes her critique of the law of rape, thereby precluding any recourse to the traditional assumption of objectivity. The piece is thus an example of how feminist scholars are not only changing the content of the traditional debate but also the way in which the debate is conducted. The omission of a note on the contribution of this piece and others leaves the reader without needed background. However, this may not be a great a disadvantage where the book is used as part of a course and the professor is able to provide the necessary background.

Smith recommends *Feminist Jurisprudence* as a text for a "special topics" course in jurisprudence,⁵ requiring the accompaniment of a general text in jurisprudence. Regrettably, Smith has not been as inclusive in her selection as she could have been. Her selection is limited to American scholars and has therefore not benefited from Canadian perspectives or other contributors. Furthermore, while this collection provides a good sense of the range of theoretical perspectives involved in the feminist legal debate, other perspectives, such as those of lesbian or disabled women, are not well represented.

Another limitation of this collection is that it contains only previously published articles, spanning from 1983 to 1990. As a course text, this book will likely age quickly as new voices demand to be heard. What *Feminist Jurisprudence* does accomplish, however, is to bring many important articles together under one cover. Previous American collections have been quite small, and the richness of this collection may be welcomed by professors and students.

⁵ *Supra* note 1 at ix.

Feminist Jurisprudence provides a good sampling of the complexities surrounding the philosophical and practical concerns within the feminist debate. The various issues covered suggest different angles on the attack of patriarchy while underlining how deeply our social structure, and the laws which sustain it, have been constructed according to a patriarchal blueprint.