"...Until Women Themselves Have Told All That They Have to Tell …"

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Abstract
Feminist legal scholarship is an as yet largely unrecognized field There is, however, a growing body of feminist scholars who are speaking out against the universal acceptance of traditional (masculine) ideologies, and Professor Lahey here examines the unique methodologies and processes that these scholars are struggling to develop.
"... UNTIL WOMEN THEMSELVES HAVE TOLD ALL THAT THEY HAVE TO TELL..."¹

BY KATHLEEN A. LAHEY*

Feminist legal scholarship is an as yet largely unrecognized field. There is, however, a growing body of feminist scholars who are speaking out against the universal acceptance of traditional (masculine) ideologies, and Professor Lahey here examines the unique methodologies and processes that these scholars are struggling to develop.

I.

From the viewpoint of mainstream legal or academic endeavours, feminist legal scholarship is an uncatalogued item, a yet-to-be-recognized enterprise. Unlike the category 'women', which was at least entered under

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* Professor, Faculty of Law, University of Windsor. This essay is somewhat unusual because my voice struggles to free itself from the linearity and logic of the first several paragraphs ('the topic') by finding expression in some (but not all) of the footnotes. This transformed the text to such an extent that toward the end of the essay I felt that I could speak in the text again. This is not to say that either the footnotes or the text should or can be read independently of each other; they have been written to be read together. This essay is also unusual because some of the people who read earlier drafts now also speak in the notes and text: I have tried to retain the sense of dialogue and process by incorporating and attributing some of their comments. The authors of these comments might not have intended the connotation that I, or a reader, might give them, but that is the risk to which all participants in such a process must expose themselves.

Sarah W. Salter influenced the development of this essay in a profound way that encompasses and surpasses the realms of practice and theory; indeed, much of what I am struggling to say in this paper is what she took the trouble to teach me about the nature of knowing and of being. I have also been influenced in the development of this essay by Diana Majury, who almost single-handedly constituted the study of feminist theory and method as an aspect of legal education in her Women and Law seminars at Windsor and who exemplifies in her daily practice much of which I speak. I would also like to acknowledge some of the women who have participated in creating a process (if not a place) in which women can experience feminist method and theory: Mary Lou Fassel, Christine Boyle, Mary Jane Mossman, Martha Fineman, Isabel Marcus, Monique Charlebois, Mary Joe Frug, Angela Miles, and Mary O'Brien. Without the discourses that these women have made possible and in which they have participated 'as their authentic selves', much of the 'scholarship' of which I speak in this essay would not exist. I would also like to acknowledge the sensitive and careful editing performed by Theresa Macpherson.

A note on citation style: part of the purpose of this essay is to explore the implications that gender has for the apparently gender-neutral enterprise known as scholarship. In order to uncover gender, I have used the full first names of writers in my footnotes. First names do not always disclose gender but they usually do; however, female gender does not always correspond to feminism.

¹ "We may safely assert that the knowledge which men can acquire of women, even as they have been and are, without reference to what they might be, is wretchedly imperfect and
the heading of 'prostitution' in most early library classification systems, there is no entry for 'feminist legal scholarship' in the *Index to Canadian Legal Publications*; it does not appear in most card catalogues; it does not appear in law school curricula (although it is beginning to nudge its way in at some schools); and its practitioners have to struggle for publication. Should mainstream legal academics concede that there is such a thing as feminist legal scholarship, there is further controversy over just what it should be called. Because of its clearly adisciplinary nature, there is serious question as to the existence of a distinctly legal branch of the general area of feminist scholarship. There is also disagreement as to whether the admittedly political goals of most feminists who are engaged in legal studies make it impossible to consider their work as 'scholarship', the suggestion being, in some people's minds, that such overtly political material is mere polemic. Additionally, of course, there is ongoing discussion as to whether this field of (legal) scholarship is feminist because not all women scholars — even those who practise what has come to be known as the new scholarship concerning women — can be (or care to be) described as feminists; not all self-identified feminists are women; and it may even be possible to become engaged in feminist (legal) scholarship without being a woman, a feminist, or a scholar.

superficial, and always will be so, until women themselves have told all that they have to tell." Harriet Taylor, *The Subjection of Women* (1970) at 26 (first published by John S. Mill in 1869). This telling was in 1869; despite the passage of more than a century, it is still a risky venture. "And this time has not come; nor will it come otherwise than gradually. . . . As yet very few of them dare tell anything, which men, on whom their . . . success depends, are unwilling to hear." Ibid. at 26. Even though Harriet Taylor is now read as a liberal feminist, the radical feminist epistemology that she suggests has not yet been 'heard' in academia. (Epistemology means 'ways of knowing things'.)

A note on attribution: mainstream scholars attribute authorship of *The Subjection of Women* to John Stuart Mill, and contend that Harriet Taylor helped with the editing, at best. See, for example, Wendell Robert Carr, "Introduction" in *The Subjection of Women*, ibid. Some feminist scholars argue that most of the work published under John Mill's name was jointly authored with Harriet Taylor, a position that he himself takes. See Phyllis Rose, *Parallel Lives: Five Victorian Marriages* (1983) at 127-29. I reject both of these styles of attribution because I have always believed that John Stewart Mill could not have written that book if he had not appropriated her critique of male domination, her ideas, her caregiving energies (which made it physically possible for him to sit down and do the writing), her editing abilities, and her politics. She could have written that book by herself, but there is no way that he could have written it without her.

2 Feminist frustration at barriers to publication has now resulted in the publication of a new multidisciplinary journal, The Canadian Journal of Women and the Law. The content is openly feminist, which means that contributors do not have to deal with issues of legitimacy. This has freed up a lot of energy that can now be devoted to exploring the substantive implications of feminist critiques of doctrine, process, method, and theory.

3 Some people think that it is more accurate to describe feminist scholarship as being inter-, trans-, cross-, and multi-disciplinary. I think those people are really saying that feminist scholarship strains and breaches the traditional boundaries between the 'disciplines' that have falsely separated (male) scholars from each other; I think it is more direct to describe these strains and breaches as being 'adisciplinary', in the sense of being without discipline.
However, such definitional approaches to the question of what is feminist legal scholarship do not address the real questions. Like the question: “And who takes care of your children, dear?” the question of what is feminist legal scholarship is one that people who are fundamentally hostile to feminist action in academe and in the professions raise or would like to raise when they are confronted with feminist work. Depending on who is asking the question, the answer (in the questioner’s mind) might be any of the following: (a) ‘feminist’ legal scholarship is just sour grapes; feminists cannot do authentic legal scholarship; (b) ‘feminist’ legal scholarship is really just a variant of radical socialism, or liberalism, or anarchism, or existentialism...; (c) ‘feminist’ legal scholarship is too trivial to be taken seriously. Feminist scholars themselves sometimes betray some unease when confronted with this question because some of them fear that the answer may be either (d) that it is futile for committed feminists to try to participate in male-dominated academic and professional organizations or (e) that women who operate within those institutions must inevitably begin to speak in the gender-neutral, classless, and universalist voices of (male) scholars or professionals.

4 “Kirsten Emmott, “‘Who Looks After Your Kids?’” (1985) 4:7 Our Times 35:

“Who looks after your kids when you work?”
“Who does the housework?”
“How do you manage working those long hours with a family?”
“How do you manage with the kids?”

Well, there’s their father, and a nanny and a day care centre but they don’t really hear, the people who ask.
They don’t want to know about it.

What they want to hear is:
Who does the housework? My henpecked worm of a husband.
Me,
Until four in the morning. A Jamaican wetback whom we blackmail into slaving for peanuts.
Nobody, we all live in a huge tattered ball of blankets like a squirrel’s nest.
Who bakes the bread? Never touch it. Mac’s Bakery.
The pixies.
A little old Irishwoman named Kirsten Emmott comes in every week.

How do you manage with the kids? I don’t. I neglect them.
I’m on the verge of a nervous breakdown, please help me.
I’m drinking heavily. I don’t give a damn about the kids, let them go to hell their own way.

Who looks after the kids? Nobody, I tie them to a tree in the back yard every day. My senile old grandmother. The Wicked Witch of the West.

5 Diana Majury helped me unravel the motivations that often lie behind the definitional approach.
For women who identify themselves as feminists, feminist scholarship is positively empowering: it is part of a process of positive politicization and self-recognition for women who would be feminists and legal academics; it also enables such scholars to come to terms with the necessity of male approval, or the price of deciding to do without it. Thus a purely definitional approach to feminist legal scholarship is flawed because the definitional approach trivializes or distorts the political questions that are inevitably raised by feminist scholarship. A definitional approach also obscures the political tensions that feminist scholarship uncovers because the methodological deviations of much feminist work, and its creative impulses, will be held against women academic workers and used to demonstrate that they are not scholars. The effect in the long run will be to delegitimatize feminist voices in the academic community and to limit feminist participation in the development, packaging, and distribution of units of certified knowledge. These political tensions also extend to non-academic, non-professional feminists, who have good reason to expect that no matter how hard their academic or professional sisters may personally have struggled against the forces of assimilation, compromise, accreditation, and co-optation, these academics or professionals are permanently affected by the ideological climate in which they have chosen to live their working.

The struggle for feminist representation in the production of knowledge is therefore a political struggle. This struggle is not unique to the area of academic and intellectual endeavours known as law; however, it is a struggle that has developed a special urgency within the legal community as women students and academics — who are represented in increasing numbers — have begun to expect that their feminist work will be treated with respect. Additionally, the struggle for feminist understanding of what academic and professional women are doing is also a political question because activists and grass-roots women often consider academic and professional women as having been assimilated into (male) academic and professional culture.

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6 Diana Majury wrote this sentence.

7 Political awareness, I contend, is one of the essences of intellectual work; workers who deny political content, in contrast, are the embodiment of anti-intellectualism. Consider in this light the ‘law and rhetoric’ movement, which contributes to the mystification of the politics of law. Compare Lorenne Clark, “Politics and Law: The Theory and Practice of the Ideology of Male Supremacy; or, It Wasn’t God Who Made Honky Tonk Angels” in David Weisstub, ed., Law and Policy (1976) 35, in which Clark uncovered the misogyny of much of the political and social theory from which lawyers and legal theorists have derived many justifications for legal norms.

8 While I was writing this passage, I almost ended up having lunch with a woman lawyer who was in search of specialist (academic) information on “a constitutional issue.” She was
II.

Hostility to the political content of feminist scholarship emerges in two ways. One form of this hostility is typified by Walter Goodman, who recently sneered that women's studies is merely "putting scholarship to the service of ideology."9 This hostility also takes the form of trivialization of women's scholarship. A good example of this second type of attack on feminist legal scholarship is found in the SSHRC report on Canadian legal scholarship. In trying to assess the eventual impact of what it sees as competing scholarly forces, the report suggests that feminist scholarship is a single-issue politics that ought to be, and ultimately will be, subsumed in the larger and more authentic projects of jurisprudence, legal history, or even access to justice: "Challenges presented by such current issues as...women's rights...[and] areas like access to justice, legal history or jurisprudence [suggest that the latter have the] ability to stimulate and inform research in any area."10 In the larger scheme of scholarship, then, the social influence of 'the latter group', that is, legal history or jurisprudence, or even access to justice, is thought to be less immediate, but in the long run greater than, the influence of 'women's rights issues'. Despite the recent development of a vast body of scholarship,11 women's studies or feminist scholarship still reduce down to 'women's rights issues' in the (trivializing) universalist mind.12


10 Consultative Group on Research and Education in Law, Social Sciences and Humanities Research Council, Law and Learning (Chair: H.W. Arthurs) (1983) at 126. The SSHRC report is not mentioned because it is unusually offensive; in fact, it is quite mild compared to typical nonfeminist attitudes toward women's studies. It is mentioned merely because the symposium for which this essay was written started out as an attempt to critique the SSHRC report on legal scholarship. In fact, the attitude toward legal scholarship in the report is quite enlightened in many ways.

11 So vast that Florence Howe has recently said that to gain an understanding of the new scholarship on women is comparable to beginning to earn a new doctorate. This scholarship encompasses eleven major areas, which range from the history of patriarchy to laws affecting women and social change, and all of these topics have to be approached from several perspectives: race, class, nationality, and other elements of social identity, in addition to the western masculinist perspective. See Florence Howe, "Feminist Scholarship: The Extent of the Revolution" in Charlotte Bunch & Sandra Pollack, eds., Learning Our Way: Essays in Feminist Education (1983) 98 at 102-5.

12 These attacks also disclose the uses to which male intellectual workers put their powers to define, and therefore to exclude. Very few (male) academic workers know (or care) anything at all about feminism, its scholarship, or its methods, beyond what they might pick up in the halls or from the popular press. Yet this does not seem to prevent them from pronouncing judgment on the scholarship of feminist academics; their lack of desire to learn anything about feminist
The SSHRC method of ignoring feminist scholarship is different from Walter Goodman's method, but Walter Goodman's critique is implicit in the SSHRC attitude, and both come to the same conclusion: that feminist scholarship does not have to be taken seriously. And whether the critic of feminist scholarship takes either a 'definitional' or an overtly political approach, the central objection to feminist work is that it is 'feminist' instead of gender-neutral.

Within the (male) paradigm of scholarship, "the pursuit of knowledge is — or should be — accepted as intrinsically valuable, as the very reason for the existence of the university."\textsuperscript{13} “Knowledge” is to be obtained by what is referred to throughout the SSHRC report as “fundamental [empirical] research,” which is motivated by the goal of producing new data, which in turn will spark new speculative scholarship of the non-empirical variety, and so on.\textsuperscript{14} Implicit in this paradigm is the belief that in order to count as new data or as knowledge, the information that is produced by scholars will be objective and neutral; indeed, the whole scholarly process that is described here would break down if knowledge units could not be considered to be 'objective' and scholars were not thought to be 'neutral' in all respects, including in respect of gender.

Margrit Eichler has summed up non-feminist criticisms of feminist scholarship quite nicely: “For non-feminists, the adjective ‘feminist’ has the connotation . . . of an ideology, of a previously established value commitment . . . which works to the detriment of other more traditional value commitments and is hence seen as being liable to distort reality by a biased emphasis.”\textsuperscript{15} Margrit Eichler responds to this criticism of feminist scholarship by turning it right back onto non-feminist scholars: “[F]or a feminist, non-feminist [scholarship] has exactly these connotations,” because feminist scholarship is a concept that “makes sense only in the context of an overwhelmingly sexist science.”\textsuperscript{16} The existence and claims of feminist scholarship thus expose the ideologies that lie

\textsuperscript{13} Supra, note 10 at 105.
\textsuperscript{14} Ibid.
\textsuperscript{15} Margrit Eichler, The Double Standard: A Feminist Critique of Feminist Social Science (1980) at 118.
\textsuperscript{16} Ibid.
at the core of non-feminist (male) scholarship: the ideologies of ‘objectivity’, ‘neutrality’, and ‘universalism’. Feminists and feminist scholars reject the (male) claim of ‘universalism’ because they can see that belief in ‘universalism’ can be asserted only by denying the reality of sexism. They also question the possibility of ‘objectivity’ when they know from their own experience that ‘objectivity’ is possible only if one denies the ‘subjective’ experience of sexism. Feminists and feminist scholars distrust claims of ‘neutrality’ when they see ‘neutrality’ operating to perpetuate sexism. And feminists (including feminist scholars) assert that ‘universalism’, ‘objectivity’, and ‘neutrality’ are illusory not because those feminists are biased, but because they know that sexism makes the male bias that is the essence of sexism invisible to non-feminist eyes.

Thus when feminist scholarship is charged as being flawed because of its ideological commitments, whether that charge is delivered by a direct attack or by trivializing it as ‘single-issue scholarship’, that charge itself exposes the ideological basis of non-feminist scholarship: that charge amounts to nothing more than a refusal to admit the existence or significance of ‘sexism’. In turn, this refusal makes it clear that the debate over feminist scholarship is about who may speak for other people and how the appropriation of experience can be legitimated in the process of constructing knowledge. Without wanting to sound over-determined, one could posit an important gender link in the (male) definition of scholarship: a process will be considered to be ‘scholarship’ to the extent that it appears to conform to norms of objectivity, rationality, and so on; and it will be considered to be ‘not scholarship’ to the extent that it overtly attempts to take account of women’s social experiences, as expressed through a deconstruction of falsely universalized knowledge and theory.

III.

Although feminists and feminist scholars do agree that claims regarding the objectivity, and so on, of (male) scholarship simply signal the presence of sexism, they do not all agree on whether it is possible to reconstruct objectivity in a non-sexist form. Some feminists, among them Margrit Eichler, seem to think that once the sexism, and so on, which are masked by claims to objectivity, and so on, are exposed — by demonstrating that these claims arise out of the privilege accorded the male point of view — it then becomes possible to do research and scholarship that are “truly” neutral and non-judgmental because they
have been "corrected" for sexism, and so on. Thus objectivity in science or scholarship is still possible if it is conducted in this corrected fashion. For other feminists, the very concept of "science" is implicitly structured around a masculinist (universalist) world view that will have to be so transformed to accommodate feminist insights that it will be difficult to think of the resulting endeavour as "science."

The subtleties of the differences between feminist visions of 'corrected' scholarship and 'transformed' scholarship are largely invisible to non-feminists. What does seem to register with non-feminist observers is the feminist insistence — common to both the 'correctors' and the 'transformers' — that the male perspective has its own point of view, and that feminists object to treating the male point of view as a universal point of view. Feminist attacks on these false universalisms are then 'flipped' or reversed into condemnation of feminist 'subjectivity' or 'polemic', because the privileged stance of (universalist) male scholars gives them the authority to declare other scholars to be deficient in some crucial quality.

17 This seems to be Margrit Eichler's goal when she describes "sexist" science and how to do "nonsexist" science. Ibid. at 118-23. See also "Editorial Preface" (1984) 10 Signs 1, in which the investigatory spirit of feminist scholarship is described as "the respect one life pays to another"; in order for scholarship to be "truly scientific," it has to recognize both the scholar's "own mixture of disinterested and personal motives" and the "subject's complicated and at times ambiguous feelings." Ibid. at 1-2. In most non-feminist science, of course, the scholar's own motivations are usually denied, or, at best, submerged in the bland and pseudo-disinterested persona of (male) scholarship and the subject's feeling are systematically controlled, or simply ignored, in as many sampling procedures as possible.

18 See Margaret Benston, "Feminism and the Critique of Scientific Method" in Angela R. Miles & Geraldine Finn, eds., Feminism in Canada: From Pressure to Politics (1982) 47 at 53-57, in which she demonstrates that "science" as currently practised epitomizes patriarchal power relations. Compare Evelyn Fox Keller, A Feeling for the Organism: The Life and Work of Barbara McClintock (1984), in which the author argues for an integrative vision of science, a science that respects and values differences instead of one that strives for universality.

19 See Catherine MacKinnon, "Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence" (1983) 8 Signs 635 at 638-39. Mary Jane Mossman has elaborated this point:

The real tension in feminist legal theory seems to me to derive from the assertion that law is not neutral or objective — when that idea is so pervasive or fundamental to law's authority. This is why I think MacKinnon's 'point-of-view-lessness' critique is often received with so much anger. We all think that neutrality or impartiality or objectivity is the same as or is the means to achieving fairness or justice. In many ways, the feminist critique in law parallels feminist critiques in science and social science where 'facts' are revealed by feminism to be not neutral or not objective. However, I think the feminist critique in law is different from that in science or social science — because law is entirely a social construct, without any external ('objective') reality. Moreover, law legitimates decisions by some people about others and is, therefore, more about power than anything else. So there is a real terror in the notion that impartiality or neutrality or objectivity in law does not exist — for what then is justice? Or fairness? I think it is not just conservatism that is threatened by such a critique — but also those for whom the idea of standards is essential even if the standards must be changed.

Letter from Mary Jane Mossman to Kathleen Lahey (August 5, 1985), Toronto. (On file with K. Lahey, Faculty of Law, University of Windsor, Windsor, Ontario. N9B 3P4.)
Feminist critiques of the (male) paradigm of knowledge do not stop at simply calling into question the norms of objectivity, neutrality, and universality. Because women scholars have consistently experienced themselves as deviationists from the canons of legitimated research methodologies, they have extended their critiques of objectivity, neutrality, and universality to fuller descriptions of feminist thinking about knowing. One such strand of thinking about knowing focuses directly on the ‘sexism’ of much legitimated scholarship, and invites feminist intellectual workers to uncover the methodological determinants of that sexism. Thus Margrit Eichler points out that sexism shows up in at least five aspects of present scholarship: language, concepts, androcentric focus, research design, and interpretation of results.20 Lawrence Kohlberg’s research on moral development, which has been subjected to stringent feminist critiques culminating in the well-known work of Carol Gilligan, typifies this notion of sexism in its relentless use of the moral development of (Caucasian) males as the norm against which all other human beings — including, and especially, women — are evaluated for deviance. The Kohlbergian research is sexist in its language (all the research instruments and reports use male pronouns), concepts (masculinist characteristics are held out as desirable goals of moral development), androcentric focus (the research concentrates exclusively on “public world” problems as the point of moral development), research design (the samples consist only of males), and interpretation of results (women are evaluated by reference to the results of these so-called objective studies).21


21 Margrit Eichler’s methodological approach is associated most closely with the liberal feminist tendency, in law or in feminist thought, which is largely preoccupied with extending (male) liberalism to include women without disturbing any present processes, institutions, or values. Liberal feminism is legitimated feminism, and many people think that it is the only feminism there is. On the methodological level, liberal feminists accept the possibility of objectivity and neutrality — indeed, the possibility of objectivity and neutrality is crucial to the whole ideology of liberalism — but they feel that processes, concepts, and so on, cannot be truly objective or neutral until they take both women and men into account.

For a further elaboration of the ways of knowing things and things that count as knowledge in liberal feminism, see Alison Jagger, Feminist Politics and Human Nature (1983) at 355-57. Alison Jagger observes that liberal feminism is the only version of feminism that does not directly challenge the primacy, let alone the possibility, of objectivity as a criterion in deciding what counts as knowledge, ibid. at 358. Recent liberal feminist attempts to reconstruct the liberal notion of equality, for example, should get hopelessly entangled in the methodological difficulties that are implied by setting up a so-called objective standard that can be related to two different types of life experiences. This has not really happened, although it seems to have driven some would-be liberal feminists into radical feminism or socialist feminism out of a recognition of the
Another strand of feminist thinking about knowing, best illustrated by the work of Jill Vickers, focuses on the micro-construction of legitimated (male) knowledge in an attempt to explain how it is that feminist scholars actually go about trying to uncover the sexisms of (male) scholarship, or trying to do something that can be called feminist scholarship, or both. Jill Vickers' own method is non-idealistic; instead of prescribing goals like truth, inter-subjective transmissibility, or objectivity for her own work, she examines scholarship that she as a feminist recognizes as being itself feminist, and describes the kinds of thinking that she finds in this work. Starting from the perception that western dualisms of thought lie behind most of the methodological or ontological oppressions of (male) scholarship, she examines specific examples of (male) thought in order to explode further the myth of objectivity. Her unique contribution to feminist thinking about knowing has been to identify the most subversive 'methodological rebellions' that characterize feminist scholarship; these rebellions include the refusal of opposition.

methodological limitations of liberal feminism. See, for example, Ann Scales, "Towards a Feminist Jurisprudence" (1980-81) 56 Indiana L.J. 375 at 426-37 (using a minimalist notion of the social function of present women in order to justify an "incorporationist" notion of equality that stays within the (male) liberal paradigm); Deborah Poff, "Feminism Flies Too: The Principles of a Feminist Epistemology" (1985) 14:3 Resources for Feminist Research 6 (using Jill Vickers' "methodological rebellions," "Memoirs of an Ontological Exile: The Methodological Rebellions of Feminist Research" in Miles & Finn, supra, note 18, to prescribe a feminist methodology); compare Linda Krieger & Patricia Cooney, "The Miller-Wohl Controversy: Equal Treatment, Positive Action and the Meaning of Women's Equality" (1983) 13 Golden Gate L. Rev. 513 at 565-72 (resorting to dialectical materialism to justify "different" treatment for the so-called disability associated with pregnancy); Ann Scales, "The Emergence of Feminist Jurisprudence: An Essay:" (forthcoming Yale L.J.) (using recent radical feminist legal scholarship as examples from which suggestions on feminist methodology can be deduced); Angela Miles, "Sexuality, Diversity and Relativism in the Women's Liberation Movement" (1985) 14:3 Resources for Feminist Research 9 (reinterpreting methodological formulae as an imminent critique of the patriarchal epistemology).

All of this should not be read as a rejection of Margrit Eichler's critique of methodological sexism; indeed, it is of particular use to scholars who are considering empirical research into the effects or functioning of the legal system. In addition, sensitivity to the pervasive effects of sexism in thinking could be thought of as the first step toward developing feminist consciousness.

22 Vickers, ibid. at 27.

23 Thinking in opposites seems to promote idealization of types, which in turn leads to dichotomy and then to hierarchy, in the Aristotelian sense. In feminist terms, the refusal of opposition has special meaning in so far as gender dichotomies are concerned, because dichotomies are hierarchies of gender and gender-linked characteristics that operate systematically to deny that female social or biological experience offers any basis for the formation of knowledge. Specifically, feminists tend not to define 'feminist' oppositionally. When dichotomized thought is abandoned, several of the dualisms and categories that are characteristic of discussions of (male) scholarship dissolve into meaninglessness. For example, the distinction between 'political' and 'objective' scholarship was deeply troubling to the authors of the SSHRC report; they could not decide how the seeming disparities between the professional, governmental, and academic functions of legal research can be reconciled with each other. The authors of the report were disturbed by the implicit non-objectivity of much of this body of scholarship, and seemed to want to explain away somehow its overtly political objectives, or at least to contain its political impulses. From feminist viewpoints, however, to deny the political motivations of work in professional, governmental, and academic contexts is to mischaracterize it seriously and to raise the possibility that the work will be taken as being something which it is inherently incapable of being. The motivations of so-called
the rejection of de-contextualization, the restoration of agency, and the rejection of linearity, inevitability, or laws. To this deconstruction of objectivity or neutrality can also be added the recognition of the partial-

governmental and academic researchers might vary in political purpose, but to feminist observers, they do not vary in kind.

Feminist distinctions between objective or neutral (male) scholarship and feminist scholarship also uncover an emerging methodology of disciplinary research and speculation that dissolves the dichotomy in the SSHRC report between legal theory and fundamental research. If the feminist claim as to the impossibility of objectivity is heeded, then theory and knowledge cannot be dichotomized; instead these categories are blurred and transformed as the non-neutrality of theoretical significance and the universalities of theory are exposed as falsely denying the particularities of social realities. As Angela R. Miles, “Feminism, Equality, and Liberation” (1985) has pointed out, feminist theorists “trace the persistence of dualism as the defining characteristic of ‘male-stream’ thought and patriarchal social structure and ... find the seeds of an alternative integrated vision in women’s lived experience.” Margrit Eichler also begins her critique of ‘sexist’ methodology with a critique of dualism; she explains how dichotomies are really the products of interpretation, not of ‘objective’ or observable ‘reality’. Eichler, supra, note 15 at 42. However, she also argues that nonsexist research would be “neutral, non-judgmental” description and analysis, despite her own admission that in any interpretation that has gender implications, observers may have one of ten different perspectives; this insight would seem to argue for the indeterminacy of knowledge rather than for the neutrality of knowledge. Ibid. at 24, 21.

In de-contextualized thinking, an asserted universality obscures particularities of context, and especially particularities that arise from the gendered-ness of social experience. The rejection of de-contextualizing research methods arises most immediately from women’s personal experiences, from the urge to show that something is different. For example, issues that are traditionally thought to be ‘women’s concerns’ in law, such as rape, wife assault, or child abuse, are deeply contextualized and resist efforts to analyze them in terms of superficial determinants. Legitimated (male) researchers, however, are suspicious of women’s re-contextualizations of issues in terms of women’s experiences, because contextualization limits the possibility of prediction. Predictability is the essence of the notion of validity, and validity is one of the hallmarks of competent (objective or neutral) (male) research.

The restoration of agency is related to, if not precisely synonymous with, the rejection of instrumentalism, the refusal of reversal, and the recognition of reverse instrumentalism. These critical concepts simultaneously deny the personification of non-human forces (false attribution of human motives to generalized phenomena) and the depersonalization of human actors (false characterization of individual action as that of abstract phenomena). The restoration of human agency further subverts objectivity or neutrality because, at the very least, this restoration amounts to a repudiation of false generics and nonreal abstractions in language, which are generally thought to be crucial preconditions to the inter-subjective transmissibility of knowledge. The restoration of human agency thus reinforces feminist perceptions that knowledge has no meaning without context.

Rejection of linearity, inevitability, or laws implies a recognition of the falsities of unities of knowledge, linearities of progress, predictabilities, and non-particularities. See Vickers, supra, note 22 at 29-31, 34-43 for fuller elaboration of these rebellions.

This methodological approach is usually associated with the radical tendency in feminist thought. Jill Vickers herself draws heavily on Mary Daly, Gyn/Ecology: The Meta-Ethics of Radical Feminism (1978) both for examples of (male) scholarship and for the notion of a journey toward feminist consciousness. This is the book in which radical feminism ‘went too far’ (in the minds of those who think that it did go too far), but the book has been an important influence in the development of feminist epistemologies and legal theories.

To the extent that socialist feminism can be considered to have a distinct methodology, it can be discussed as well. However, I tend to agree with Zillah Eisenstein, “Introduction” in Zillah Eisenstein, ed., Capitalist Patriarchy and the Case for Socialist Feminism (1979) 1, that socialist feminism is a dialectical synthesis of Marxist feminism and radical feminism; my belief is one which relies on feminist consciousness raising for method. Some self-described socialist feminists have tried to synthesize radical and Marxist feminisms at the level of epistemology; apparently
ness (partiality) of knowledge, which suggests ambiguously both the incompleteness of knowing and the biased-ness of knowing.27

Both of the types of methodological investigations represented by Margrit Eichler and Jill Vickers' work are essential to feminist deconstructions and reconstructions of the scholarly enterprise, but by themselves, they do not fully answer central questions about method that have been raised by feminist challenges to (male) scholarship and theory. To reject (male) claims that objectivity or neutrality can ever be attained is, at the most fundamental level, to ask rather than to answer questions. If knowledge is so completely determined by personal experience that people cannot prove it objectively or in terms which will induce others to agree with their interpretations of experience, then how does the recognition of so-called subjectivity improve the theoretical project? Does not the substitution of subjectivity for objectivity merely replace the impossible with the imponderable? What way of thinking about knowing can surpass the polarities of objectivity versus subjectivity and of universality versus particularity that are implicit even in feminist critiques of knowing and telling?

Roberto Unger succeeds as well as any other (male) theoretician in describing the dead-end state of contemporary strategies for reconciling consciousness (the impulse toward understanding, analysis, and abstrac-

27 I am grateful to Mary Joe Frug and Martha Minow for pointing out this dynamic ambiguity, and to the study group on feminist methodologies for giving this ambiguity meaning for me in the course of subsequent discussions.
tion) and reality (the impulse toward concretization and particularities). Of the contemporary strategies, Roberto Unger recognizes that structuralist social theories make the biggest theoretical concessions to subjectivity, but that they do so by locating the subjective in the unconscious, which has the result of intensifying the dichotomy between subjectivity and consciousness. Roberto Unger more or less concedes that he himself has failed to formulate the breakthrough methodology that can rescue theory, and thus knowledge, from the unrelenting grip of ambiguities and ambivalences; however, he does seem to perceive that a new dimension of knowing might be generated by the movement from the universal, which is rational and abstract, to the particular, which is historical and specific; he seems to believe that this movement is the hermeneutic flip on the earlier movement in social theory from the particular to the universal.

28 These strategies are Marxian dialectics, Max Weber's ideal-type method, and contemporary structuralism. See generally, Roberto Unger, Law in Modern Society: Toward a Criticism of Social Theory (1976) at 16-19. Roberto Unger also describes these strategies as attempts to grapple with the conflicts between what he calls the rationalist and historicist traditions; each of these strategies tries to join whole-istically perceived elements in a non-linear fashion that helps express their simultaneous and circling interconnectedness. Thus Marxian dialectics express the interconnectedness of ideology, politics, and economy under capitalisms, but not yet under socialisms; the Weberian ideal-type method, according to Roberto Unger, concretizes the vision of man's [sic] place in the world that is entertained by adherents to the protestant ethic; contemporary structuralisms try to unite the subjective with the objective by finding unifying abstract concepts in universal unconscious patterns.

29 Ibid. at 17. It is intensified because one's own subjectivity is supposed to be unknowable and unreachable. When subjectivity is relegated to the unconscious, it is accessible only with the assistance of certified specialists like psychotherapists, and then only partially accessible.

30 Ibid. at 267-68. Roberto Unger's main contribution to this particularization of universals revolves around the forms that the normative functions of society take in relation to religious, political, and economic variants. Thus his own efforts most resemble the neo-Marxian dialectic or hermeneutic mode of contemporary social theory; he concludes with an oath of allegiance to theory itself: the reconciliation of the conflict between the sense of natural order and free will is "the precondition to our ability, as theorists, to bridge the gap between subjectivity and objectivity in social understanding and to perfect our vision of social order." Ibid. at 266. According to Roberto Unger, this gap must be bridged in order to stay within the realm of theory; when understanding or interpretation "flounders in ambiguity," then theory becomes impossible. Ibid. at 13.

The nature of Roberto Unger's understanding of theory helps clarify some of the issues that are implicit in much contemporary feminist theory. He has been strongly influenced by Hegel's and Sartre's notions of "transcendence" and perhaps by Simone de Beauvoir's theoretical division between transcendence and immanence (the feminine, the "other"). Her purpose in genderizing these two ontological modes is to show how limited the mental development of women has been; her suggestion is that women should struggle to free themselves from immanence in order to join in the (male) project of transcendence. "Men have presumed to create a feminine domaine — the kingdom of life, or immanence — only in order to lock women therein." Simone de Beauvoir, The Second Sex (1949). Writing after Simone de Beauvoir, Roberto Unger also organizes his inquiries around the dichotomy between transcendence and immanence, but with some crucial differences: (1) he is not overtly concerned with feminism at all, or with gender; his writing is assiduously gender neutral (if the masculine is indeed used in the universal sense); (2) western cultural institutions are considered to be 'transcendent,' while eastern cultures are 'immanent'; (3) the paradigm of western law that he develops (customary law — bureaucratic law — formal legal order) is driven by the need for transcendence, and has strong connection with religious modes (Western:
Much of present feminist social theory also tends toward structuralism, especially feminisms of radical tendencies which find women’s oppressions in unconscious structures of patriarchalism that shape institutions, individual experiences, and so on. Yet (male) social theorists have yet to understand how feminist processes of consciousness raising might be the type of methodological breakthroughs for which the unified-theory theorists like Roberto Unger are looking. Feminist structuralists start with theoretical apprehensions of patriarchal hegemony, in which the subjective participations of self and of others in the perpetuation of patriarchal structures are attributed both to consciousness and to unconsciousness. To the extent that the effects or premises of patriarchal domination are determined by unconscious ‘structures’ in the minds of self and of others, these effects or premises are initially perceived as universal tendencies, that is, tendencies that are innate in the mind rather than actively created and revised by conscious subjects, whether the subject is the self or others. This feminist structuralism, however, only starts with such a theoretical approach; feminists then generate moments-of-knowing by ‘raising’ unconsciousness to the level of consciousness. Unconscious structures of the mind are exposed and changed as they are brought into contact with conscious structures through the active participation of the subject in the conscious (real) world. Such moments-of-knowing can exist only when the real world of the subject is scrutinized by the subject in an intensely conscious manner, and of course, any moment-of-knowing radically alters the consciousness of the subject from that moment onward.31

transcendent; eastern: immanent). On a deep level, then, some readers (feminists?) might interpret him as arguing that cultural ‘immanence’ is the feminine, which leaves women (feminists?) in the unenviable position of trying to figure out how to valorize that ‘immanence’ while rejecting the very obvious fact that immanence (and feminism?) is patriarchy. See generally, Unger, ibid. This puts the burden of analysis on women to show how feminist thought then differs from contemporary critical (male) thought. And like Simone de Beauvoir, he fails to develop a critique of immanence as a mode of patriarchal domination, or which discloses that women-as-immanence is a product of patriarchy. For some insight into patriarchal visions of woman-as-immanence, see Aldous Huxley, Island (1962) (Aldous Huxley also wrote Brave New World).

For a published critique of the Marxian underpinnings of dialectics, see Elizabeth Ettore, Lesbians, Women and Society (1980) at 157-74, in which she tries to deconstruct existentialist method around the social construct of power in order to demonstrate that the particularities of women’s oppression constitute the method as well as the purpose of patriarchal domination.

31 See Maren Carden, The New Feminist Movement (1974) at 33, for details of early feminist consciousness raising processes; see Alix Kates Shulman, “Sex and Power: Sexual Bases of Radical Feminism” (1980) 5 Signs 590 for information on the origins and purposes of early feminist consciousness raising processes; for process guidelines, see Pamela Allen, Free Space: A Perspective on the Small Group in Women’s Liberation (1970), and Kathie Sarachild, “A Program for Feminist Consciousness Raising” in Shulamith Firestone, ed., Notes From the Second Year (1970); for a discussion of the relationship between group therapy and feminist consciousness raising processes, see Hester Eisenstein, Contemporary Feminist Thought (1983) at 36; for an analysis of the relationship between Marxian methods and feminist consciousness raising processes, including the methods that have been developed around consciousness raising, see Jagger, Feminist Politics, supra, note 21. For tantalizing suggestions of the roles that feminist consciousness raising processes might
As a methodology, consciousness raising struggles to unite the sources of subjectivity with consciousness and thus subverts, at the same time that it surpasses, false (male) dichotomies between objectivity and subjectivity, consciousness and unconsciousness.\(^2\) The consciousness raising process thus reveals that so-called objectivity is only one mode of subjectivity,\(^3\) and that it is male privilege that transforms masculist subjectivity into (universalist) objectivity.\(^4\)

The process of consciousness raising is an ongoing struggle, rather than a goal which is capable of producing a static state of precisely describable and perfectly communicable knowledge.\(^5\) The process is also limited in present practice by the simple fact that there are at least two sets of consciousness involved in any exchange of moments-of-knowing. To the extent that participants do not have any facility in consciousness raising processes, or to the extent that they even resist the connection of the personal with the political that is inherent in the consciousness raising process, the temptation is to substitute an imputed consciousness. It is, of course, difficult enough to struggle to unite the observer with the observed within oneself; it is utterly impossible to unite them within oneself on behalf of another person at the same moment that one struggles to unite them within oneself on behalf of one’s own self. Nonetheless, that filtered interchange is an essential part of one’s own consciousness raising process.\(^6\) In the end, the process of consciousness raising does not so much solve the problem of inter-subjective transmission of moments-of-knowing as it discloses more fully its limitations.\(^7\)

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\(^2\) H. Eisenstein, *Contemporary Feminist Thought*, ibid. at 35-36 does the best job of relating consciousness raising processes to the phenomenon of power, which is at the heart of domination and therefore at the core of feminist analysis. She attributes the usefulness of consciousness raising to the nature of patriarchal consciousness, in which the organizing feature of the social order — which is male domination — is made invisible at the same time that its effects are attributed to some allegedly natural or higher order. This process mystifies power by projecting a domination of ideas into the world of consciousness, a domination which thus depends on some external normative standard. This so-called consciousness is counterposed against, and distinguished from, the unconsciousness of the psychoanalytic model, which is the terrain of the unbearable, unknowable, or repressed. By raising the unconscious acceptance of the (un)natural order to the level of consciousness, feminist consciousness raising gives subjectivity back to people.

\(^3\) Sarah Salter wrote this clause.

\(^4\) Similarly, class/race/affectional/et cetera privilege transforms classist/racist/heterosexist/et cetera subjectivities into (universalist) objectivity.

\(^5\) It is crucial to an understanding of feminist consciousness raising processes to realize that women’s consciousness is not discovered in collective action — it is forged in collective action. The process is not an idealistic one. See Miles, supra, note 23.

\(^6\) Diana Majury wrote this sentence.

\(^7\) Liz Stanley & Sue Wise, *Breaking Out: Feminist Consciousness and Feminist Research* (1983) at 130-31, 189 extend this point when they argue, first, that consciousness is all we have: it
When feminist consciousness raising processes are seen as being central to feminist methods, feminism will then require a new conception of theory and scholarship, which includes feminist legal theory and feminist legal scholarship. Feminist consciousness raising is a process, an experience, a re-ordering of understanding. Implicit in any understanding or consciousness is 'theory': unverified but possibly correct interpretations is "the entirety of what we know and do and how we know and do it," and second, that different states of consciousness are not just different ways of interpreting the social world, but that they "lead us into constructing different social worlds." Because consciousness is reality, and because consciousness must be subjective, Liz Stanley and Sue Wise have turned to interactionism, phenomenology and ethnomethodology for hints on how to break down the special status of the scholarly expert and begin the process of describing and legitimating non-hegemonic consciousness. This passage of the book contains an excellent critique of these (male) approaches, and some useful suggestions on how radical feminists can preserve the possibility of communication at the same time that they avoid the re-creation of further expert subject splits.

An excellent example of how ethnomethodology works as scholarship is provided in Susan Krieger, The Mirror Dance: Identity in a Women's Community (1983). The author is a lesbian feminist, and she has conducted a study of lesbian feminist communities by means of extensive tape-recorded, and then transcribed, thematic interviews; she then wove the interviews together to tell the story of one lesbian community in which she was involved. As author, she allowed herself no editorial voice, aside from the introduction, matters of description and a postscript, and she tried as fully as possible to re-create the voices and perspectives of the participants. In a challenging appendix to the study, Susan Krieger directly confronts the feminist dilemma in the social sciences: because social science is ideally "committed to the explicit articulation of assumptions and to the separation of data from theory," social science does not "rest easy" when theory is thoroughly embedded in and embodied in "the forms of everyday life," which is precisely the feminist experience of "theory" and "reality." Ibid. at 180. Susan Krieger rejects the easy solution — which asserts that to describe is to explain — and instead has been working toward a process of observation, interpretation, and communication that provides "a kind of bumpy buggy ride through the back roads of one or another group's collective internal consciousness . . . in explanation of a central . . . process of their situation." Ibid. at 194-95. Her goal is to capture and explore complexities, ambiguities, and ambivalences of group members; at the same time, her aim is to avoid the "comfortable or conventional description" of the journalist, the plot management or resolution of the novelist, and the free-standing theoretical 'insights' of the conventional social scientist. I think that she succeeds admirably in capturing multiple viewpoints while conveying a sense of the structure of reality itself.

I think that Liz Stanley, Sue Wise, and Susan Krieger come very close to operationalizing consciousness raising as a method, but their work has other significant methodological dimensions: celebration and resistance. The characteristic of resisting the unrelenting pressure to accept mainstream models of scholarship is fairly obvious in their work; this they have in common with other radical feminists, such as Jill Vickers. The celebratory aspect of their work, however, is less obvious and can be misread as bias or irrationalism. It may well be that celebration, which uncaps energies otherwise repressed by a sense of dissatisfaction or unacceptability, is how we learn to live with the imperfections of communication and take strength from, even rejoice in, irreducible differences in experience and vision. Andrea Nye has suggested that in feminism we might finally have come to understand that the Hegelian insistence on individual, separated, and wholly distinctive consciousness is not a philosophical necessity; indeed, that 'individualism' can be experienced only in interactions with others. Andrea Nye refers to the celebrator mode, which undercuts the Hegelian concepts of individualism and consciousness as 'non-appropriating desire', 'non-delusive reciprocity', 'non-arbitrary ethics', and 'non-alienated knowledge'. Consciousness raising may well only 'work' because it has a celebratory aspect, and feminist formats (conferences, study groups, workshops, teaching) may succeed as consciousness raising because they also celebrate women's sameness and differences simultaneously. See Andrea Nye, "Preparing the Way for a Feminist Praxis" (1986) 1 Hypatia 101.

The implications for legal processes of radical feminist processes for generating moments-
or predictions of other experiences. Thus feminist theory struggles to remain experiential; when it grows only through abstraction or through telling, it ceases to be grounded in experience and ceases to be ‘feminist’ theory. Just as no one person’s moments-of-knowing are considered to be privileged, theories that grow out of process and out of experiences are not privileged as between each other. Feminist epistemology contemplates a multiplicity of consciousnesses, of moments-of-knowing, of theories, and of strategies. One role of theory is, therefore, to translate moments-of-knowing into strategies for real action.

Implicit in the whole process of feminist scholarship, then, is a rejection of dualism, a rejection of polarized thinking at all points along the consciousness-theory-strategy continuum. Theory is revealed as yet another embodiment of consciousness, strategy is revealed as an extension of consciousness, and scholarship emerges as an attempt to affect and

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38 As Christine Boyle has pointed out, theory has other functions as well: one woman’s theoretical work may help another woman ‘know’ things about the world, and action itself produces theory, too. Thus the relationship between theory and moments-of-knowing and strategy is interactive. For published discussions of the nature of feminist theory and its relationship to consciousness raising, see Annette Kuhn & AnnMarie Wolpe, “Feminism and Materialism” in Kuhn & Wolpe, eds., Feminism and Materialism: Women and Modes of Production (1978) 1 at 4-7; Charlotte Bunch, “Not By Degrees: Feminist Theory and Education” in Bunch & Pollack, supra, note 11 at 248, 249-51; Nancy Hartsock, “Feminist Theory and the Development of Revolutionary Strategy” in Z. Eisenstein, supra, note 26 at 57, 59-66; H. Eisenstein, supra, note 31 at 37-40, 59-60, 110, 132-33; compare Jagger, supra, note 21 at 268, in which she contends that radical feminism, with its emphasis on ‘renaming’ and on personal experience, must be considered to be pretheoretical or atheoretical. However, Alison Jagger does concede that the goal of radical feminism is a change of consciousness that is so extensive that it produces a paradigm shift.

39 Feminist writers are turning to the notion of a continuum in an attempt to find a way to describe related clusters of experiences without falling into the habit of dualism, separation, or polarization. ‘Continuum’ does not imply linear relationships; it is suggestive of multiple dimensions of intensity, duration, and timing. See Adrienne Rich, Compulsory Heterosexuality and Lesbian Existence (1980) at 20-23: lesbian continuum “as a range — through each woman’s life and throughout history — of woman-identified experience”; Andrea Dworkin, Woman Hating (1974) at 183: “We are, clearly, a multisexed species which has its sexuality spread along a vast fluid continuum where the elements called male and female are not discrete.”
support consciousness in the same way as the consciousness raising process.40

If feminist consciousness raising is taken seriously as a way of opening up the possibilities for moments-of-knowing, then its implications for the nature of feminist theory, and for feminist legal scholarship, are explosive. Not all feminists, however, are comfortable with such an open-ended agenda. It is difficult to break radically with the (male) traditions of scholarship; it is even more difficult to make oneself vulnerable by openly exploring non-dualistic ways of thinking in print.42 For those who

40 Thus one of the characteristics of (radical) feminist scholarship is that it struggles to affect consciousness. This accounts for the fact that so much of radical feminist literature is evocative, challenging, tending toward metaphor and poetry, confrontational; by (male) standards, it just does not look or sound like 'scholarship'. However, as H. Eisenstein, supra, note 31 at 162 observes, feminist scholarship, radical or otherwise, is not the equivalent of consciousness raising; it is a solitary and, therefore, a separating activity which can be seen as a regression away from radical feminism and toward masculinist models of interaction. It is becoming increasingly apparent that feminist scholarship has to develop other media for its processes, such as leaderless group discussions, multi-voiced conversations, and facilitated workshops. These interactional processes can be transcribed and distributed in order to reach more people, if prevailing notions of what printed scholarship looks like can be confronted. The 1985 Critical Legal Studies Feminist Conference experimented with facilitated workshops, small group discussions and open-ended panel discussions, which gave valuable insight into how to transform legal scholarship and make room for feminist theory and scholarship.

41 Dualisms and the need for certainty seem to be important cultural products. Even though Alison Jagger more or less appropriates radical feminist consciousness raising processes in her construction of socialist feminist methodology, she seems to feel impelled to separate radical and socialist feminisms; she differentiates, and holds up to ridicule, radical feminist epistemologies and uses "metatheoretical criteria" to create a hierarchy among competing approaches. As a self-identified socialist feminist, it is not surprising that her metacriteria: objectivity, impartiality, and so on, demonstrate that socialist feminism is the most adequate approach. See Jagger, supra, note 21 at 373-76, 380-83, 388. Quere the extent to which Alison Jagger feels endangered by adopting an open-ended radical feminist methodological stance.

For an example of feminist legal scholarship that attempts to expose the limitations of dichotomized and hierarchical thinking, see Frances Olsen, "The Family and the Market: A Study of Ideology and Legal Reform" (1983) 96 Harv. L. Rev. 1497, in which she combines a direct attack on oppositional feminist strategies — because, according to Olsen, they reinforce dichotomized thinking about gender and institutional arrangements. Although radical feminists might question Fran Olsen's use of metatheory to resolve the issues that she raises about strategy (she concludes her essay with a prescription sounding, and abstractly derived call to androgyny), her essay is a ground-breaking attempt to expose the influence that dichotomized legal thought has had on the formulation of (liberal) feminist strategies.

42 Stanley & Wise, supra, note 37 and Smith, supra, note 25 make themselves very vulnerable in their critiques of male method. Parallel work in feminist legal scholarship tends to be less confrontational. See also Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine" (1985) 94 Yale L.J. 997, especially 1112-14. Clare Dalton has taken an important step toward adapting feminist consciousness raising processes to an analysis of legal materials in her use of deconstructionist techniques. This step consists of 'reading' dichotomized categories of legal reasoning for what they have to say about hierarchy, power, and repression. As Maryellen Symons describes it, the Derridian deconstruction which Dalton has used consists of psychoanalyzing Hegelian dialectics for insight into what powerholders think that power confers on them, for example, objectivity. By suggesting an analogy between the devalued or weaker ends of legal dichotomies — which are repressed — and the unconscious, Clare Dalton engages in a process that resembles consciousness raising when she examines the construction and reproduction of those dichotomies and, therefore, of the power relations which these dichotomies reinforce or construct. Dalton concludes with an ambivalent note: she suggests that her reading of the dichotomies of contract
do feel some commitment to the scholarly life, to make oneself that vulnerable is highly dangerous; it can be professional suicide.\footnote{43}

VI.

And what of the tensions in feminist thinking between radical feminist disruptions of categories, dualisms, and hierarchies, and liberal or socialist feminist searches for some external groundings, even if those groundings are located off on the horizon of metatheory? This question is one of the methodological problems that has caused some women to doubt the possibility of continuing to practise feminism, because it is nothing less than the question of the role of ambiguity and ambivalence. Some feminists

doctrine is only one of many 'takes' on that material. She apparently feels constrained from suggesting that the female-male dichotomy she has used in a feminist deconstruction may be an archetypal dichotomy that makes it possible to articulate other dichotomies in this culture.

The process that Clare Dalton has used in her essay should not be mistaken for actual consciousness raising because it was still a solitary exercise; although it was one that did involve her in ongoing discussions with her colleagues on a somewhat collectivized basis. However, it is an important departure from other ways of doing feminist legal scholarship because she attempts to involve the reader in the process in which she herself was actively engaged. Thus she enables the reader to experience, rather than be told, her conclusion: that in exposing the role of power in producing dichotomy, we also expose the illegitimacy of the so-called knowledge, and thus of the power, that is justified in the names of dichotomy and hierarchy. See also Mary Joe Frug, "Re-Reading Contracts: A Feminist Analysis of a Contracts Casebook" (1985) 34 Am. U.L. Rev. 1065. Mary Joe Frug surpasses the solitary or one-on-one effect of much written consciousness raising, that is, feminist legal scholarship, by creating a cast of 'characters' who react to the texts she re-reads, and who occasionally interact with each other. The searching quality of the analysis in this paper has much the same impact as the consciousness raising workshops Mary Joe Frug developed around "reading cases as feminists." Toni Pickard, "Experience as Teacher: Discovering the Politics of Law Teaching" (1983) 33 U. Toronto L.J. 279, is an earlier description of consciousness raising as a teaching technique; my reaction to that essay is ambivalent, in part due to the (apparently?) (deliberate?) ambiguity with which Toni Pickard submerges the question of gender.

\footnote{43} As Diana Majury has observed, male scholarship thus appears to be protection against such vulnerabilities: it is 'impregnable'. See, for example, the story of how Marylee Stephenson was denied tenure at McMaster University for violating the "methodological canons of sociology" in Vickers, supra, note 22 at 45. Marylee Stephenson made an early and crucial contribution to the development of Canadian feminist scholarship with Marylee Stephenson, ed., Women in Canada (1973); this work went into two editions, and introduced, for example, Dorothy Smith's important thinking on women and corporate capitalism. As Sally Gearhart has warned in "If the Mortarboard Fits . . . Radical Feminism in Academia" in Bunch & Pollack, supra, note 11 at 2, 10, in order for radical feminists to survive in universities, they must know that they "can and will at any time disengage from the institution." Any other stance is just not safe.

Between the rejection of consciousness in (male) scholarship, the dangers of practising scholarship as a mode of raising and supporting scholarship, and the fact that radical feminist scholars know that they must always be able to live without the academy, there are grave risks built into the enterprise. However, there is another risk as well: the risk that scholarship, like consciousness raising processes themselves, might become the "politically neutral activity" of "toothless gums . . . smacking away." See Ti-Grace Atkinson, Amazon Odyssey (1974) at 145. Because of this risk, one must constantly take context into account. Ti-Grace Atkinson is certainly correct when she predicts that limiting the women's movement, or any other movement, to consciousness raising processes will neutralize that movement's political impact; however, within the notoriously 'neutral', politically and otherwise, contexts of legal education and legal scholarship, scholarship or education as a mode of consciousness raising can be the first step toward political engagement.
are coming to the recognition that the ambiguities and ambivalences, which are the hallmarks, in (male) thought, of uncompleted or imperfect theory are, within a feminist praxis, crucial aspects of moments-of-knowing. This recognition takes feminist thought into the realm of atheoretical work, an as-yet-uncharted terrain of the mind that depends on the perception of unresolved contradictions, impenetrable ambiguities, uncontrollable ambivalences, to indicate whether and where something important is happening to consciousness. As dualistic, dichotomized, dialectic, or even hermeneutic oppositions are exposed and rejected, deconstructed and surpassed, feminists are coming to a clearer understanding of the roles that oppositional and conflictual ways of thinking play in the social construction and allocation of power, domination, oppression, and exploitation. And to a clearer understanding of the real dangers that theory can pose to feminist thinking.

I will tell a story to illustrate this point. Once upon a time, you decided to represent women in the legal system with respect to issues of special importance to women by drawing attention to the fact that women are less like men — or more like men — than people in the legal system had been acknowledging or realizing. And this was having negative effects on women, in terms of self-concept, physical safety, wealth, personal self-determination — all of the things that women saw being allocated to the advantage of men and to the disadvantage of women. So you developed a feminist strategy. This strategy sought to communicate women's experiences within the legal process, and it involved communicating the fact that women are actually more like men — or less like men — than the legal system had previously seemed to acknowledge.

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44 See, for example, the Ungerian project, supra, note 28.

45 Read in your own issue: pornography, battered women syndrome, premenstrual syndrome (PMS), equity in property settlements, equity in taxation, sexual harassment, the equal rights amendment, protective labour legislation, the vote, sexual assault legislation, comparable worth, or whatever.

46 Choose one, depending on which story you have decided to read, and which subtext of that story you are going to start with.

47 In this context, 'feminist strategy' means a strategy to help women relative to men.

48 Your choice here will probably, but not necessarily, be the opposite of the choice that you made in the text accompanying note 46.

49 For example, if you are reading the battered-wife-syndrome story, and your subtext started out with the belief that women are less like men than the legal system seemed to acknowledge or realize, then your story would have feminist lawyers working to develop a battered-wife-syndrome version of the criminal law defence of self-defence. See Elizabeth Schneider, "Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense" (1980) 15 Harv. Civil Rights Civil Liberties L. Rev. 623; Elizabeth M. Schneider & Susan B. Jordan, "Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault" (1978) 4 Women's Rights L. Rev. 149. This version of the defence would concentrate on showing how (a) the contexts and power structures within which women experience provocation and (b) the reasonableness of killing in light of the
You then struggled to implement this strategy, and to use it in the legal process in a feminist way, that is, in a way that would improve women's positions, options and so on, in this culture. And then you, or maybe someone else, discovered that even though your strategy grew out of your desire to help women, it was actually hurting or might hurt other women, or maybe even hurt the women that you thought you were helping. So now you revise your strategy: you decide to develop a new strategy in which you stress that women are less like men—or more like men—than you had initially believed; you begin to figure out how to build on the successful part of your earlier strategy while simultaneously solving the problems that you, or someone else, had discovered that you had caused with your first strategy.

Sometimes this story happens very quickly. Sometimes it takes a

constant threat of assault, require the legal system to redefine provocation, reasonable belief, reasonable force, and other elements of the defence; this is required in order to evaluate meaningfully women's claims that they acted in self-defence, and to ensure a fair allocation of those defences on a gendered basis.

To continue the example of the battered-wife-syndrome strategy, you or someone else discovered that the feminist version of the defense actually reinforces stereotypes about the way women think and act, their need for 'special' (legal) protections, and their differences from men. It also sets up a new stereotype that hurts some specific women who never make it into the new stereotype: women who react in a 'masculinist' way to provocation, and who would be able to fall within the stereotypes of reason, passion, provocation, and strength that are implied in the (male) defence of self-defence; or women who are physically strong enough to have repelled assaults in the first place; or women who fall somewhere in between, or who sound crazy, or whatever. These 'deviations' were mentioned by Elizabeth Schneider in the victimization workshop at the 1985 Critical Legal Studies Feminist Conference, Boston, Massachusetts. Or see Phyllis L. Crocker, "The Meaning of Equality for Battered Women Who Kill Men in Self-Defense" (1985) 8 Harv. Women's L.J. 121.

If you are telling the battered-wife-syndrome story, or perhaps the PMS story, or the pornography story, or whatever, you might now select 'more like men'.

If you are Elizabeth Schneider, you get to discover your mistakes yourself, and now have the opportunity to try to ride the hermeneutic spiral as it flips around; if you calculate the velocity, degree, and volume of the flip accurately, you may make it around the corner and up the spiral one more turn. If you are Andrea Dworkin or Catharine MacKinnon and have chosen to utilize the adversarial legal process to uncover and challenge male power, you are not allowed to articulate your ambivalences within that process — and Nan Hunter, or Varda Burstein, or somebody else gets to act as if you have never experienced ambivalence. You are now committed both to oppositional and confrontational stances, and have put yourself into the position of having to deny and simultaneously to overpower the spiral as it flips over right onto your head. If you are Lenore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (1985), you get to accuse earlier (liberal) feminists of formulating 'bad strategies' around the issue of no-fault divorce, and tell them that they were mistaken in their expectations of equality. If you are trying to decide which of the two sides of women's social experience to act upon in formulating a legal strategy — those two sides being victimization and empowerment, or perhaps dependency and self-sufficiency, or whatever — you flounder in ambivalence and are accused of taking a position that cannot possibly solve the problem, or that is too ambiguous, or that can be exploited by men, or that is too complex, or . . .

For example, the pornography story happened within a couple of years. For one description of just what happened, see Myra Ferree & Beth Hess, *Controversy and Coalition: The New Feminist Movement* (1985).
long time — decades and lifetimes. No matter which story is told, however, a certain number of common events take place. When the turn or the flip occurs, even earlier feminists sometimes become the 'other', the enemy, the oppressor. The strategies of the past were the problem — not the system in which they operated. The new solution focuses on undoing the earlier strategy, instead of asking why it failed in the particular way and at the particular time that it did. If the authors of the new strategy do not re-examine the criteria of success that they applied to the old strategy, or do not feel the need to re-open discussions about the best way to describe their goals, or do not question whether those goals are appropriate for the women who belong to the constituency that they imagine themselves to be representing, then the new strategies will fail (apparently) just like the old ones (apparently) did.

VII.

"Where an old paradigm exists, a new paradigm can come into being." When viewed against what feminists are now coming to understand about feminist thinking about law, Susan Griffin’s reassurance

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54 The story of protective labour legislation has been played out over nearly a century, and is probably now approaching the next turn of the spiral.

55 Both radical feminists and Marxist feminists seem to be moving toward a recognition that this process (of the continuing (apparent) failure of feminist strategies) is due not to the selection of ‘bad’ strategies; rather, it is due to the dynamic nature of patriarchal domination and to the difficulties that both radical and Marxist feminisms have had in moving away from one-dimensional explanations of domination. Radical feminism started out with a theory of sexual hierarchy, and has only recently become self-conscious about gaps in its accounts of sexual hierarchy: the history of patriarchy and the nature of other hierarchies, such as class, ability, race, age, sexual orientation, and marital status. Marxist feminism started out with a theory and history of class hierarchy, and has now become self-conscious about the gaps in its overall accounts of class hierarchy: the role of sexual hierarchy and the nature of other hierarchies, such as ability, race, age, and so on. To the extent that both radical and Marxist feminisms were initially modelled on unitary (masculinist) theories, these feminisms proved to be inadequate to deal with the realities of patriarchal domination. As feminist thought has taken up the complexities of oppressions that really exist, however, it has become more adequate and complete. (There is considerable dispute over the proper term for this more complete and adequate model: is it radical or socialist feminism?) Ironically, the categories or stances that feminism is now taking up, such as problems of race, age, ability, and lifestyles, were recognized earlier by liberal feminism; this fact demonstrates the importance of liberal feminism to the more radical tendencies, as well as the inadequacy of liberal feminism.

How can feminist strategies move out of the oppositional mode, and begin to deal with ambivalences and ambiguities? To the extent that the story I just told about you is at all paradoxical, the way out of the paradox is to reject the necessity of polarized thinking, reject the necessity of choosing between (unsatisfactory) alternatives, reject the necessity of theorizing, reject the necessity of abstraction. Good (feminist) solutions will depend on embracing ambivalence, exploring ambiguity, insisting on complexity. If feminist scholars abandon the consciousness raising process and return to the haven of abstractions, women will never be able to tell all that they have to tell. So long as only a few women at a time break out of the paradigm of (male) scholarship, all women remain vulnerable, and will never dare to tell things “which men, on whom their . . . success depends, are unwilling to hear.”

blurs ambiguously into a warning. Without care, she seems to be warning, the new paradigms can look very much like the old ones: dichotomizing and dualistic tensions along a continuum threaten to dissolve the continuum itself into poles. Without care, ambivalence will be taken for weakness of intellect; ambiguity can be interpreted as an admission of confusion; paradox is taken as the signal that the paradigm is too small; contradiction will become the call for confrontation instead of for healing. Without care, feminists, along with all other would-be scholars, may overlook the essence of feminist scholarship:

Thus I begin to learn to live with questions. With uncertainty. With an unknowingness. At times frightening, at other times this state of suspension makes me fall in love with the world. I find myself laughing. I am surprised, delighted. The universe holds a secret larger than me. I listen.57

Without care, scholars may continue to practise scholarship for the sake of power — power over as well as power to — rather than for the sake of loving the world. When seekers of moments-of-knowing no longer struggle to listen to secrets that are larger than themselves, scholarship then becomes mere power over knowledge, ambiguity flees before the reductionism of certainty, and thinking as well as strategy remains encaged in either-or oppositions.

57 Ibid. at 290.